



ITALY AND RELIGIOUS DENOMINATIONS: A BILATERAL RELATIONSHIP. SOME INTRODUCTORY REMARKS

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Bilateralism as a rule in the relations between State and Religious Denominations has recently been consolidating more and more in Italy. There has been a long list of agreements such as the one with different Churches represented by the Tavola Valdese, signed on February 21st, 1984; the one with the Unione Italiana delle Chiese Cristiane Avventiste del Settimo Giorno, signed on December 29th, 1986 and, on the same day, with the Assemblee di Dio in Italy; the one with the Unione Italiana delle Comunità Ebraiche signed on February 22nd, 1987; the one with the Unione Cristiana Evangelica Battista d'Italia signed on March 29th, 1993; the one with the Chiesa Evangelica Luterana d'Italia signed on April 20th, 1993.

As for the Catholic Church, after the Concordat of February 18th, 1984, a protocol was signed on November 15th, 1984 on the discipline of ecclesiastical bodies and property and on the institutions for the maintenance of the clergy. Moreover we must add the agreements between the State and the Catholic Church signed by the President of the Italian Bishop Conference and the Education Ministry, organizing the teaching of religion in State schools, on December 14th, 1985, on June 10th, 1986, on May 4th, 1987, on July 15th, 1987 (two on the same date) on June 13th, 1990.

Further agreements were later signed referring to the spiritual assistance to the State Police with the Home Ministry on April 4th, 1991; referring to historical and scientific heritage, with the Ministry of Cultural and Natural Heritage on September 13th, 1996.

On November 23rd, 1985, an exchange of diplomatic notes enforced articles 3 n° 2 and 6 of Villa Madama Concordat referring to informing the State about appointments to ecclesiastical offices relevant for the admission of some religious holidays as and article 10 n° 2 paragraph 1, referring to the acknowledgement of academic achievements and diplomas granted by Papal Universities, on January 25th, 1994.

Indeed we want to draw particular attention on the peculiar and multiform bilateralism concerning the Catholic Church, investigating its coherence, also

considering agreements with different Religious Confessions other than the Catholic, as laid down by the third paragraph of article 8 of the Italian Constitution.

The new 1984 Concordat with the Catholic Church is in the line of a *formal continuity* with the Patti Lateranensi (the former Concordat), as a typical bilateral agreement. Nevertheless it is possible to perceive also a formal discontinuity if we consider bilateralism as a whole. As a matter of fact, it is sometimes enacted as necessary for ruling the very subject of the Concordats, keeping an eye on the single steps one must go through in order to carry out the various issues.

First of all we must stress the basic value, as a method programme, on article 13, n.° 2 of the 1984 Concordat, which states an essential double level in bilateralism with the Catholic Church. As it has been pointed out, «further subject matters for which cooperation between the Catholic Church and the State may be felt necessary shall be ruled both through new agreements between the Parties and new terms between the proper State Authorities and the Italian Bishop Conference». Therefore, in coherence with the latter provision, new agreements are expected, in compliance with articles 3 n.° 2; 6, 7, n.° 6; 10 n.° 2 whilst in articles 11 n.° 2 and 12 n.° 1 (to which article 5 b of the additional protocol must be added) agreements of a different level are expected, i.e. between the proper organs of the same contracting parties.

Such a complicated bilateralism, even if perfectly coherent as a whole with the system of relations between the State and the Catholic Church as laid down in article 7 of the Italian Constitution, is, at the same time, deeply new. First of all we must perceive how coherent the system laid down in article 7 of the Constitution is with bilateralism with the Catholic Church, contained in the 1984 Concordat. It is essential, under this point of view, to consider that, through that constitutional provision, the Catholic Church has been recognised as independent and sovereign in its order.

This provision, though it cannot be considered as granting sovereignty to the Catholic Church, must indeed be held as an acknowledgment of the scope that the State assigns to it as its own and consequently as a statement of non-competence of the State itself in such an order¹. It is an absolutely peculiar limit, the more if it is compared with the limit towards foreign States. In fact it is settled with reference to an order with which the Italian State has subjects and territory in common, but, on the other hand, is deeply and painstakingly different in the competence proper to the one and the other order².

It cannot be denied, as P. A. D'Avack states, that «the real cause of the aged strife and ever new conflicts between the two powers has been the lack of any

1. Cfr. O. GIACCHI, *Sovranità della Chiesa nel proprio ordine e limiti della giurisdizione statutale*, in *Libertà della Chiesa e autorità dello Stato. Studi*, Milano 1963, pp. 1-30; G. CATALANO, *Sovranità dello Stato e autonomia della Chiesa nella Costituzione Repubblicana. Contributo all'interpretazione sistematica dell'art. 7 della Costituzione*, Milano 1974, pp. 12-20.

2. Cfr. A.C. JEMOLO, *Premesse ai rapporti tra Stato e Chiesa*, Milano 1965, pp. 72-78.

possible sharp discrimination between the two relationship levels, namely the fact that there are an incredible lot of fields, objects, institutions which, because of their very nature and their effects, reflect either permanently or incidentally both orders at the same time and imply that the two authorities presiding over them must necessarily be in conflict as to competence»³.

Yet these very conflicts show how impossible it is to reduce the Church order to the State order and how one must examine the actual existence of a sphere where the former is of utmost importance; this consideration induces to search for the real meaning of a law which, recognizing a limit to State sovereignty, is certainly the embodiment of a deeply felt need.

The first paragraph of article 7 of the Italian Constitution certainly aims at justifying dogmatically what is sanctioned in paragraph two, meaning then that the State, when acting under a Concordat with the Catholic Church, considers the latter as being on the same level for what sovereignty and independence are concerned. Moreover the meaning of the limit assigned to the State in such a provision of the Constitution gains real importance in its relationship with the second paragraph of article 7.

Article 7, in its first paragraph, not only acknowledges the existence of such a limit but, in the second paragraph, also examines it very closely and in concrete terms. Facing the problem under a constitutional point of view, there is no doubt about the continuity between the old (1929) and the new (1984) bilateralism stated in both Concordats. This does not at all imply as a consequence the same guarantee as provided in the second paragraph of article 7 of the Constitution⁴.

What has just been said is valid even if we consider the partial or total amendments⁵ made by the new Concordat of 1984, most of all taking into consideration the final part of article 13 n 1. In fact the Concordat itself has been legally produced not only for what is stated in the preamble of the same according to the actual meaning of article 7 of the Italian Constitution.

It is absolutely necessary to determine the reciprocal orders, no matter how we may shape them. Indeed the Italian State and the Catholic Church, dealing with the same subjects within the same territory, sometimes ruling on the same issues (even if under different points of view), at times end up with giving them a peculiar hew; the difference is immediately evident, as for instance in marriage legislation. Many conflicts may rise in each and everyone of these fields and, if they are not settled, they affect those people who are both citizens and Catholics, forcing them to a dramatic conflict between opposing loyalties.

3. D'AVACK, *I rapporti tra Stato e Chiesa nella Costituzione repubblicana italiana*, in «Il diritto ecclesiastico» 60 (1949).

4. Cfr. on this matter for instance: G. ZAGREBELSKY, *Il sistema costituzionale delle fonti del diritto*, Torino, 1984, pp. 147-151; F. FINOCCHIARO, *Diritto ecclesiastico*, Bologna 1996, pp. 126-132; C. CARDIA, *Manuale di diritto ecclesiastico*, Bologna 1996, pp. 205-213.

5. «La "revisione" non importa limiti di contenuto e può spingersi fino alla rinegoziazione totale di accordi bilaterali» (G. ZAGREBELSKY, *Il sistema costituzionale*, cfr. ad. 4).

Our Constitution, through bilateralism in the relationship with the Church, gave a hint for the solution of such conflicts. In this context article 7 of the Italian Constitution owns a peculiar perfection as a whole: namely it acknowledges, through a bilateral agreement, the validity of the Church law within a clearly definite sphere⁶. Therefore there is a Church order guaranteed by the Constitution in its relations with the State within clearly set limits, even if peculiarly resilient; the State declared itself absolutely incompetent beyond these limits and under the present legislation it is impossible for it to produce laws in this field⁷.

Yet in the new 1984 Concordat regarding this legal situation, but in contrast with it, there has been a statement referring to the new very incisive function of bilateralism with the Catholic Church, considering it as a *method* for a working programme of State and Church, which may operate distinctly but both aiming at positively contributing (as underlined in article 1 of the Concordat)⁸, to «the promotion of man and the welfare of the Country».

Indeed there is «a scheme of «reciprocal cooperation», set up as a basic principle and a method for the development of the relationships between State and Church institutions, which implies and suggests a number of connections on different levels, with different forms and formal expressions for every single subject and the interests at stake»⁹.

Bilateralism therefore, exclusively within the frame set up by the Constitution, is not only statically but also dynamically engaged in sorting out what belongs to the State and what belongs to the Church order; it will be necessary to choose the trends of a common effort to solve real problems. This method will be tested by applying it to actual situations and it will be possible to decide whether more lights than shades are to be found.

Indeed this new function gives bilateralism a wider scope, considering that paragraph 3 of article 8 of the Italian Constitution extends it also to the relations with Religious Denominations other than the Catholic. In this way a problem rises concerning the compatibility and coherence with the global system of bilateralism as an ordinary way of interacting between State and Religious Confessions in general.

The Italian State does consider its citizens not only as individuals, but also as parts of a whole, under a social point of view. This fundamental feature is one of utmost interest because it offers a considerable improvement in quality, as compared with the nineteenth century situation, when «an individual was considered... almost exclusively as a *citizen*, i.e. *in connection with the State*, apart from

6. P. GISMONDI, *Lezioni di diritto ecclesiastico. Stato e confessioni religiose*, Milano 1965, p. 70.

7. Cfr. F. ONIDA, *Giurisdizione dello Stato e rapporti con la Chiesa*, Milano 1964, pp. 120-131.

8. Cfr. on the matter G. LO CASTRO, *Ordine temporale, ordine spirituale e promozione umana. Premesse per l'interpretazione dell'art. 1 dell'Accordo di Villa Madama*, in «Il diritto ecclesiastico» 95/1 (1984) 507-567.

9. C. MIRABELLI, *Le prospettive di integrazione della disciplina concordataria*, in «La scuola cattolica» 114 (1986) 92.

his real social position, which was absolutely insignificant according to the Constitution»¹⁰.

The present settlement of the relations with the State is particularly centred on man as an individual who shapes himself as a single person, but also through common social acts which, in the Italian setting, do not result as homogeneous; in fact they develop a number of structures¹¹ which, in turn, avail themselves of several legal forms, and whose activity does not consist exclusively of actions concerning the State.

The general setting of our considerations should be better examined, at least in our opinion, to frame the whole issue¹² where pluralism plays a fundamental role in its interaction with the law. First of all one must bear in mind that man, to achieve his self-realization, is more and more turning to group work; each group will contribute its own cultural identity¹³, being bound by the synchronic presence of all the other groups. Whenever we feel that something is lacking, we necessarily seek to find it: in this case all groups long for a total social experience. Each single group is as important as all the rest of them and each culture represented bears the same deep existential values. At the same time one must not neglect how basically different from one another they may be.

Pluralism is mainly concerned with solving the problem of «being different» in a social environment where *equality* means unity and *freedom* means diversity; that is the question: as long as we do not try to confront continually the different instances of various groups interacting in social life, we will not achieve any form of pluralism at all.

Each culture must be carefully examined to find the real importance of one as referred to another, in order to see how pluralism can work on the whole matter. Three points of view must be borne in mind when considering the situation of groups: some may be reciprocally homogeneous and others may be non homogeneous; some of these latter may also be a part of a wider group; we must remember that some groups work together for a social aim only partially, within the limits of wider groups.

In the case of non-homogeneity, when groups perform considerable differences in functions both diachronically and synchronically, a sharp separation between competences should appear without causing competition problems. Nevertheless it is difficult to tell which functional level the group belongs to, even if,

10. V. CRISAFULLI, *Individuo e società nella Costituzione italiana*, in «Diritto del lavoro» 28/1 (1954) 74.

11. With reference to the confessional problem cfr.: G. CASUSCELLI, *Concordati, intese e pluralismo confessionale*, Milano 1974.

12. Cfr. on the matter: G. CAPOGRASSI, *Note sulla molteplicità degli ordinamenti*, in «Opere» IV (Milano 1959) 181-221. Cfr. also what I have written on another occasion («Continuità» e «discontinuità» nel diritto ecclesiale e nell'esperienza giuridica totale dell'uomo, in AA.VV., *Raccolta di scritti in onore di Pio Fedele*, vol. I, Perugia 1984, pp. 31-54).

13. Cfr. also what I observed on this matter on another occasion: «Scuola a sgravio» e *Pluralismo scolastico*, Milano 1979, pp. 19-33.

when trying hard, we may be helped to find out by the actual social experience of the group in question. In my opinion the relations between State and Religious confessions seem to belong to this sphere.

In the case of function homogeneity, groups lie on the same level. They are highly competitive and vary in their characterization both diachronically and synchronically; they frequently try to rule over each other: relations among States or relations among different Religious Confessions belong to this category.

Finally pluralism may be examined within the group itself. Again diachronic alterations may occur and synchronic discrepancies may be found. Groups sometimes aim at homogeneity and the pluralistic issue is therefore weaker, while there may be cases when great differences may occur, and consequent competition, among groups inscribed in the same wider group. When this trend is overwhelming, some lesser groups may leave the wider organization or the wider group may break off, giving rise to a number of different single groups.

In promoting pluralism both within and without groups, even serious distortions may be caused by stronger groups who try to overpower the weaker ones, in the effort to establish their supremacy; they reach their goal in several ways, like conditioning them under a social, economic, ideological point of view. Namely we must not underrate ideological conditioning, state conditioning in particular, even if it is not the only one «being the role of ideologies that of covering with veils or blankets the real cause moving Power to act, a public and lawful form of the “noble lie” coming down from Plato, or of the “permissible falsehood” maintained by those who make a theory of the Reason of State»¹⁴.

The individual will end up as being the victim of this dangerous pathology, being partially integrated in a number of groups with different roles to play, which will often intersect and lie over one another, causing more and more conflicts; the single person will thus live several conflicts, even if sometimes partial, but the values at stake might be extremely rendering when one is compelled to face a dramatic choice between opposed loyalties.

Bearing this pluralistic horizon in mind, it goes without saying that all this must affect the legal system. Social relationships must follow an order; this is the only way of turning a number of individuals with no ties among one another into a society. Without an *order* no community has a chance to exist because it would lack the necessary cohesion that the Law alone is able to protect. The Law that, according to Dante's genial intuition, may be defined as «*realis et personalis hominis ad hominem proportio, que servata hominum servat societatem, et corrupta corrumpit*» (the way that men follow to interact both regarding persons and objects: if this way is kept, the civil society will be kept and guarded, if not, the civil society will be corrupted)¹⁵.

14. N. BOBBIO, *La grande dicotomia: Pubblico/privato*, in *Stato, governo, società*, Torino 1985, p. 21.

15. *Monarchia*, 2, 5, in *Le opere di Dante*. Testo critico della Società dantesca italiana, Firenze 1960, p. 350. Cfr. P.A. BONNET, *Comunione ecclesiale e diritto*, in *Comunione ecclesiale diritto e potere. Saggi di diritto canonico*, Torino 1993, pp. 951.

A human being is a meeting ground for the manifold essence of the Law, whose aim is to rule over the social activities of man. The legal system as a whole peculiar human experience, is a unique, singular, complex organization. *In the sign of man* it is therefore possible to find a certain contact among the many laws which embody social pluralism¹⁶. Mankind embraces an entire legal experience whose fragments are to be considered as splinters of the whole. These splinters are law themselves but, at the same time, they are not sufficient by themselves, as they represent only an episode of the whole and must be recomposed with the others to form the entire legal experience of man.

Man is represented by individuals, both synchronically and diachronically situated; the same is true for the legal experience, so complex and manifold, which lives, when more when less, including and excluding its peculiar forms, sometimes winding, sometimes wound up. Each single fragment of this complex reality is a peculiar way of existing, of being at man's service, a path to enhance a total legal experience, so that every law strives to achieve, *in its particular fashion*, a global unity. In the legal system as a whole, all components are considered and used, each one in turn and when needed, being *equal* in their lawfulness, but also *free* in the variety of their experience.

Under this point of view the unity of the human juridical experience develops into a multiplicity. Equality therefore is represented by the very freedom it guarantees, which freedom, in turn, gives vitality to equality. «In conclusion we may say that there is an undeniable and insuperable antinomy in legal experience: the antinomy of this unity and this multiplicity. Both unity and multiplicity are ineliminable. But the one is contained within the other: this is the teaching and the secret of legal experience. History keeps arranging these two terms in a certain order: at times the stress is laid on unity, at times on multiplicity»¹⁷, sometimes, then, the moment of equality is stressed, sometimes the one of liberty.

A complex and articulate social and legal order is, in my opinion, a general context where we must place the peculiar sociality through which our religious beliefs are expressed. Considerations on the religious field cannot be complete, should we forget that religion, before being a collective and public dimension, is an experience through which man accomplishes his peculiarly individual dimension. The State, bearing in mind article 2, paragraph 2 and 19 of the Italian Constitution, must carry out this social and legal order, promoting the religious welfare, first of all as an individual interest.

Moreover, as it has been noticed by an authoritative scholar¹⁸, it also has a social relevance, which must not «make us forget the basic “extraneity” of reli-

16. G. CAPOGRASSI, *Note sulla molteplicità* (cfr. ad. 12), pp. 181-221.

17. CAPOGRASSI, *Note sulla molteplicità* (cfr. ad. 12), p. 220.

18. Cfr. D. BARILLARO, *Nozione giuridica di edificio destinato al culto*, in «Archivio giuridico» 146 (1959) 54.

gious demands and aims as regards the ones belonging to the State and their being proper to an interacting sector characterized by the highest degree of liberty and autonomy»¹⁹. Nevertheless the religious field is often concerned with man's self-realization in his social and public experience which, sometimes in a very essential fashion and in much wider grounds, ends in setting up those very special groups formed by Religious Confessions.

The Religious Confessions participate in the general common circle where a truly complex reality is shaped, going beyond the mere total of individual interests, becoming a synthesis made up of a «common interest of each member of a given social group»²⁰. Therefore it is also made up of a particular standing point which is an essential instrument to satisfy a number of individual interests beyond the condition of each member of the group, the single individual remaining the essential landmark for whatever interest may rise.

If we consider in particular articles 2, 3 paragraph 2, 7 and 8 of the Italian Constitution about this general interest, it goes without saying that the State must act in such a way as to protect its being absolutely unrelated to the religious human experience and as to ensure that this dimension can be easily carried out. This general aspect of the citizens' religious interest must be examined, to be correctly understood, in the wider social and legal environment we mentioned above. Under this point of view, even religious interests live the argumentation between unity and liberty, which indeed are the basic principles strictly characterizing, in our legal system, even the ruling of the religious field.

As a matter of fact all actions, both under an individual and a general point of view, must follow the provisions of the Italian Constitution «(ar. 2, 3, 7, 8, 17, 18, 19, 20, 21, 30, 54, in particular)» from which we may assume that the State, while keeping a substantially agnostic attitude towards religion, aims at ensuring equal religious freedom to all its citizens and considers all religious confessions equally free by law; yet equality in legal dealings does not correspond with equality in liberty, in the belief that treating substantially different realities and cases in a different way not only does not harm but complies with the principles of true justice even more²¹ and therefore with equality.

This is the wide scope outlined in the Italian Constitution on the freedom of religion which goes along with equality at all levels and every Confession in itself is absolutely equal to all the others; no variations are normally possible as to quality or as to quantity. Nevertheless each Confession as a community should be able to live its own identity even in its differential features, without being compe-

19. P. MONETA, *Stato sociale e fenomeno religioso*, Milano 1984, p. 125.

20. S. LARICIA, *La rappresentanza degli interessi religiosi*, Milano 1967 (but cfr. in general what has been said on pages 928).

21. L. DE LUCA, voce, *Diritto, partizioni, IX, diritto ecclesiastico*, in *Enciclopedia del diritto*, vol. XII, Milano 1964, p. 986.

lled to level out (as it has brilliantly been defined) as «an anonymous accumulation of undistinct matter»²².

Following therefore the pluralistic outline characterizing the global system, the ruling of the religious instance is basically obtained through pluralism. This pluralism must be understood mainly as a method to guarantee (with the help of the communities wishing to assert their own religious freedom) the functional regulation for the different identities of each religious Confession, all being in harmony with a basic constitutional development of freedom.

Bearing all this in mind, since there is a «full correspondence of the covenant principle as expressed essentially in articles 7 and 8 of the Constitution, with the comprehensive model of democracy outlined by the Constitution»²³ this same principle, without contradicting the constitutional provisions but even enhancing them, ought to become, even regarding the Catholic Church, following the traditional path of concordats²⁴ «more articulate and agile, through sectional agreements which are much more fit for the everchanging social realities and can be modified much faster; they may also produce profitable and essential relations among local religious and social communities»²⁵.

22. Cfr. G. PEYROT, *Significato e portata delle intese*, in AA.VV., *Le intese tra Stato e Confessioni Religiose. Problemi e prospettive*, Milano 1978, p. 50.

23. C. MIRABELLI, *Alcune considerazioni preliminari sul principio pattizio*, in «Il diritto ecclesiastico» 95/1 (1984) 617.

24. On this point cfr. G. CATALANO, *Problematica giuridica dei concordati*, Milano 1963.

25. F. MARGIOTTA BROGLIO, *Sistema di intese e rapporti con la Chiesa cattolica*, in AA.VV., *Le intese tra Stato* (cfr. ad. 22) p. 144.