



Marco Parisi

(professore associato di Diritto ecclesiastico comparato nell'Università degli Studi del Molise, Dipartimento Giuridico)

**Multiculturalism, multireligiosity and relations
between the State and religious organizations ***

SUMMARY: 1. Introduction - 2. Constitutional project of ecclesiastical politics and cultural resistance to a correct interpretation of the fundamental provisions of freedom - 3. Secularity of the legal system, religious pluralism and human freedoms.

1 - Introduction

The European societies are currently characterized by phenomena (such as globalization, multiculturalism and ethical relativism) which, besides being able to change the traditional manifestations of religion and, consequently, the organization of national legal systems, can also modify the intersubjective relations (between individuals and collective subjects) within the same social systems. This affects the known mechanisms of regulation of religious freedom, to the point that, often, they show elements of weakness together with evolutionary lines.

After all, multiculturalism is one of those phenomena that, even when it is supposed to be known in its constitutive profiles, shows rapid modifications and variety of contents, which impose not easy adaptation processes¹.

* Il contributo, sottoposto a valutazione, riproduce, con l'aggiunta delle note, il testo dell'intervento alla 6^a edizione dell'*International Summer School* dei corsi di Scienze Politiche sul tema "*The Making of Europe: social and intercultural integration, legal issues and local development*", organizzata dall'Università degli Studi del Molise (Agnone, IS, 19 luglio 2018).

¹ Multiculturalism, understood as a political project that provides a space for the affirmation and protection of the rights of every ideal community (alongside the protection of individual rights), has met, over time, a significant change from its original formulation. Since its first manifestation in the seventies to the thunderous explosion in the eighties and nineties of the last century, multiculturalism has undergone continuous mutations. This is due to the necessity of having to confront, gradually, with increasingly different and demanding questions, imposed by the changing of the social contexts of reference. This situation has made the identification of individual ideal differences much less complex



In this regard, it is worth reflecting (albeit briefly) on the significance of multiculturalism and multireligiosity in their evolutionary manifestation, with particular regard to the progressive incidence on the entity and the thickness of change in the intersubjective relations within our socio-juridical system. This is to understand the possible meanings of multiculturalism, in an attempt to represent the capacity of the legal system in responding to new social needs.

Multiculturalism and multireligiosity which, in their manifestation on a planetary scale, tend to assume also the typical characteristics of globalization, are the effect of different and complex social, economic, political and juridical phenomena, containing in themselves a polysemic value. Precisely, because of their objective and complex nature, it is difficult to identify an univocal concept of multiculturalism and multireligiosity, imposing its contingency assessment in relation to the chosen speculative sphere².

What interests us, specifically, is the juridical notion of multiculturalism, identified on the basis of the changed function of law in the contemporary society. Through the law, the relationships between the different (social, political and institutional) subjects and between the different cultures (also religious ones) are regulated and articulated. Thus, the multiculturalism that is taken into consideration is the phenomenon that tends not only to register differences, but also to govern them, recognizing that they constitute a value in themselves, which is not weakened by the persistence of (social, cultural, legal, religious, economic) conflicts or difficulties in the integration processes³. Integrating otherness is a phenomenon that belongs to social and juridical dynamics, activated as concrete manifestations of a community organization that is recognized in

than the substantial affirmation of the equal dignity of any cultural identity, which has come to depend on the commitment of the public authorities to satisfy, effectively and fairly, all the requirements of identity visibility. See **E. CANIGLIA**, *L'Europa e il multiculturalismo*, in *Società mutamento politica*, 2010, 1, pp. 127-142.

² **P. VERONESI**, *Diritti costituzionali e multiculturalismo*, in *Diritto e società*, 2012, 1, pp. 19-54.

³ Therefore, the objective to pursue is the search for shared legal values, without, however, distorting the identification profiles of each belief and any ideal orientation. The constitutional dynamics should allow the preparation of appropriate regulations to meet the needs of minority groups, avoiding the continuous tendency to adopt laws that are culturally oriented to respond to the needs of the dominant spiritual groups, even if they are conformed to the constitutional dictate. See **A. FUCCILLO**, *La multireligiosità tra possibile "normazione" ed ipotetica "autonormazione"*, in A. Fuccillo (ed.), *Multireligiosità e reazione giuridica*, Giappichelli, Torino, 2008, pp. 280-281.



its evolutionary dimension. In this perspective, the recognition of otherness and of the different traditional and religious heritages, belonging to the many cultural communities that cohabit - for historical and political destiny - in the same territories, becomes an unavoidable political act for a social system. Especially when the social arrangements are in search of the rules on which, on the one hand, to orient the cohabitation between the different subjects and, on the other, to get the reconciliation between individual rights and collective rights⁴.

The challenge to the liberal and democratic systems is based on the critical review of many previous legal and conceptual categories. Above all because those same categories appear to be the result of an overcome cultural and religious homogeneity, which is questioned by the profound social changes taking place⁵. The elaboration of juridical rules, capable of enhancing differences, appears to be the main way to govern in a successful way the multicultural societies.

The multicultural and multireligious society must be able to prepare the instruments necessary to ensure a widespread development, the growth of the country and the mutual enrichment of all the social components, while transiting through a phase of conflict. The conscious awareness of one's own cultural identity and of the characteristics of diversity,

⁴ In essence, democracy and pluralism, as structural elements of the political organization of a society, presuppose, above all, the need to define the rules of cohesion and compatibility of social diversity. In the field of religious experience, the principles of neutrality and non-identification of the state are worth, in fact, to recognize the differentiation of options of faith. Those principles are valid to ensure that the comparison between the different religious components and the satisfaction of their interests could take place in compliance with the cohesive values of reference. In fact, the transition from a pluralistic society, from the religious point of view, to a multicultural society, proposes life models, behavioral forms and relational schemes not united by substantial basic affinities. We are faced with strong and opposing identities, which, as such, present themselves for being difficult to negotiate. Thus, multiculturalism seems to question the foundations of the democratic government of the plural society: compatibility and negotiability of the interests at stake. It is therefore up to the constitutional principles of equality, freedom, neutrality and non-identification to operate as an instrument for rationalizing the confrontation between the different ways of being of faith. See **A. FUCCILLO**, *Il diritto ecclesiastico come "diritto vivente" nella esperienza giuridica contemporanea*, in M. Tedeschi (ed.), *Il riformismo legislativo in diritto ecclesiastico e canonico*, Luigi Pellegrini Editore, Cosenza, 2011, pp. 414-415; **I. VECCHIO CAIRONE**, *Democrazie in crisi e credenze di fede*, in G. D'Angelo, G. Fauceglia (ed.), *Rigore e curiosità. Scritti in memoria di Maria Cristina Folliero*, Giappichelli, Torino, 2018, pp. 753-754.

⁵ See **S. FERLITO**, *Società multireligiosa e interpretazione normativa*, in A. Fuccillo (ed.), *Multireligiosità e reazione giuridica*, cit., p. 156.



constituting the elements of recognition of one's specificity, allows the individual components of the social system to experience the change of legal structures and to understand the development of political, economic and cultural dynamics in a logic of solidarity and perception of one's own protagonism. It follows that the thematic area of religion/law is the most effective strategic place from which to face the complex problems raised by the coexistence of differences.

The relationship with ethnic, ethical, cultural and spiritual diversity is increasingly a field of tension between politics and religion, between State and Churches⁶. Thus, the approaches to multicultural society, the relationship with globalization, the debate on multiculturalism are felt and interpreted as a test of the ability of the Churches to speak to the Italian civil society and its institutions⁷. The government of a multicultural society became a question of ecclesiastical politics and of relations between the State and the Churches. The discussion on the accommodation models (the assimilationist, the communitarist and the integrationist one) – with all its stereotypes - is no longer limited to the mere immigration policies. It is now a question of an overall issue that involves the relationship between ethics and politics, the identity of the country and the State, the concept of secularism, the global framework of relations between religions and public institutions.

⁶ The stable establishment of new ethnic communities, following the migratory flows coming from geographically and culturally distant areas of the world, proposes many new cultural and religious models to the attention of the host society. We are faced with a real change in the 'religious market', destined, due to the production of new social identities in terms of the experience of faith, to increase, in the contemporary democratic society, the differences. An accentuation of the complexity of the social structure is determined, thus contributing to test the procedural and substantive paths of the democratic State. See **I. VECCHIO CAIRONE**, *La dimensione nazionale del diritto ecclesiastico: percorsi evolutivi*, in **G. D'ANGELO**, *Ordinamenti giuridici e interessi religiosi. Argomenti di diritto ecclesiastico comparato e multilivello*, Giappichelli, Torino, 2017, pp. 59-60.

⁷ In this respect, it should be noted that the public authorities themselves discount a deficit in terms of vision, tools and policies, due to the prevalence of the expansion of private subjects over public ones. It is the affirmation of subsidiarity, in which the role of the catholic tradition and voluntary service is exalted. A role that is considered to be indispensable in the current political and social framework. See **M. VENTURA**, *Stato e Chiese nel governo della società multiculturale*, in R. De Vita, F. Berti, L. Nasi (ed.), *Ugualmente diversi. Culture, religioni, diritti*, Franco Angeli, Milano, 2007, pp. 53-54.



2 - Constitutional project of ecclesiastical politics and cultural resistance to a correct interpretation of the fundamental provisions of freedom

The phenomenon of immigration to Italy of people coming from the Mediterranean and Sub-Saharan African countries is causing significant changes in the previous social structure. This is both for the economic costs and for the media impact on public opinion of the sea rescue and first reception policies (fixed by *Mare Nostrum*, *Triton* and *Sophia* operations, only partially financed by the European Union). But it is also for the space that is occupied by immigrants in the less qualified working areas (in particular, the reference goes to the sectors of construction, agriculture, services and industry, as neglected ones by the native workers⁸). Furthermore, another important argument is the diversity of cultures and life habits of migrants, presenting aspects that are not always fully compatible with customs, traditional sociality and legal principles of our country⁹.

This intense multicultural and multireligious character of our contemporary society offers the opportunity to reflect on the continuing existence of limits, defaults and shortcomings in the full and correct implementation of the Constitution and its project of religious policy, as well as to suggest solutions and proposals to satisfy all the social religious needs. The representation of the civil regulation of religion and, consequently, the political, legislative and administrative activities seem to be based primarily on the relationship between religious denominations and the State. This in a logic for which the concrete religious needs of the people and the requests addressed to the public powers are relegated to a residual role, as possibly recipients of the outcomes of those relationships. That is, it seems to be in front of the continuous representation, as forms of

⁸ On these topics see **M. SAVINO**, *L'Italia, l'Unione Europea e la crisi migratoria*, in *Il Mulino*, 2/2017, pp. 273-283.

⁹ As it is imaginable, this is particularly true for muslim immigrants, linked to a religious and cultural system that has difficulty in relating to modernity and achieving a guarantee of compatibility with western democratic values. The strangeness of the islamic world to our system of life is highlighted not only by the difficulty of sharing some basic values, but also by the consequent lack of aptitude for integration. This has meant that the islamic immigrant has become a witness of diversity, because the religious issues have been accompanied by social exclusion and by the emphasis on respect for religious precepts as an emblem of the rejected social identity. See **G.B. VARNIER**, *Religione e nazione. Le coordinate del sistema italiano*, in G.B. Varnier (ed.), *Fattore religioso, ordinamenti e identità nazionale nell'Italia che cambia*, Accademia Ligure di Scienze e Lettere, Genova, 2014, pp. 146-150.



satisfaction of the religious freedom, of the favorable regime, of the privileges that the bilateral regulations grant to the dominant religious groups.

A system of ecclesiastical relations of a pyramidal nature has been established in Italy. A model in which the more politically authoritative religion, that is the Catholic Church, has obtained a doubly privileged *status*: in the form, because it is guaranteed by the Constitution and by the international law); in the content, because it recognizes significant benefits for the Church of Rome, starting, for example, from the teaching of religion in the public schools); benefits that are denied, in terms of their specific weight of benefits, to any other religious organization. Other Churches, admitted to stipulate agreements with the State, have obtained a worse statute than that of the Catholic Church, but better than that of the religions without any pact with the public institutions. Then, an unknown number of religious organizations is recognized as such, but it enjoys limited rights, provided for by a unilateral law of the state (the famous law n. 1159 of 1929 on the 'admitted cults to the State'), inherited from the Fascist age. At the bottom of the pyramid, finally, we can find all those religious groups that, for different reasons, are not recognized as religious denominations from the State and, consequently, live in anonymity, without specifics and special regulatory protections. It is clear that this hierarchical structure is offered to the political objective to reward the strongest and socially reassuring confessional subjects, selected in a non-respectful way of a rigorous application of the principle of equality, of the impartiality of public powers with respect to all beliefs and religious institutions, of the freedom of some specific religious groups¹⁰. In essence, in Italy there is a rewarding and selective system of ecclesiastical relations, which, as interpreted and implemented, is not extended to the religious groups that have appeared on the social scene in the last thirty years. A system that strongly conditions the public authorities when they have to elaborate an 'identikit' to identify the interlocutors with whom to establish the type of relationships that has been constitutionally foreseen¹¹. This is the case of Islam, which enjoys a

¹⁰ See **M. VENTURA**, *Un diritto per il fenomeno religioso. Strumenti e idee in un nuovo contesto*, in R. De Vita, F. Berti (ed.), *Pluralismo religioso e convivenza multiculturale. Un dialogo necessario*, Franco Angeli, Milano, 2003, p. 475.

¹¹ See **M.C. FOLLIERO**, *Costi e benefici e varianti dell'attuale sistema costituzionale di collegamento con le religioni. Esempi*, in V. Tozzi, G. Macrì (ed.), *Europa e Islam. Ridiscutere i fondamenti della disciplina delle libertà religiose*, Rubbettino, Soveria Mannelli, 2009, p. 45.



strong social following, but it is still considered not adaptable to the legal format of religious denomination¹².

In reality, we are in front of an approach that is directly a consequence of a fundamental misunderstanding of the current institutional framework.

The interventions of the public authorities (implemented through the legislative instrument, characterized by their financial nature or by their conferring a specific guaranty of freedom) only in rare cases have appeared based on the actual existence of widespread interests. They have been, mostly, provided for the benefit of certain religious denominations. This is because the religious groups have proved capable of exercising a fair influence on political power, succeeding in presenting themselves to the public institutions as legitimate representatives of all religious social interests, and not of a mere portion of them, as it is in the concrete reality of the dynamism of the religious phenomenon¹³.

The most reprehensible aspect of this way of operating, however, seems to be constituted by the exasperated recourse to the bilateral legislation. In fact, the excessive use of bilaterally agreed legislation, in order to satisfy the requests made by the religious groups, has led to the unfortunate consequence that the ordinary and unilateral legislation concerning religious interests has been produced and interpreted, at least until today, as an appendix of the norms contracted with the religious denominations.

¹² The legal status currently experienced by Italian Islam is the classic example of the tendency to keep under observation the cohesive and ordering capacities of religions in immigrant communities, in order to contain their supposed and potential social antagonism. In the end, the overall and proven ability of a community of immigrants to fit into a framework of common rules of cohabitation appears to be the primary condition for integration and acceptance (and, therefore, for the enjoyment of religious freedom). See **M.C. FOLLIERO**, *Libertà religiosa e società multiculturali: la risposta italiana*, in M.L. Tacelli, V. Turchi (ed.), *Studi in onore di Piero Pellegrino. Scritti di diritto canonico ed ecclesiastico*, vol. I, Edizioni Scientifiche Italiane, Napoli, 2009, p. 618.

¹³ The religious denominations, even if they are socially relevant because instrumental to the satisfaction of the religious needs of their followers, are bearers of partisan interests. Therefore, they cannot assume the role of general guarantors of religious freedom in their relations with the public institutions, because they represent only a part of the wide universe of the religious phenomenon. Precisely for this reason, the religious denominations cannot claim to be constituted in the public civil space as subjects carrying universal values, pretending that their values are established as mandatory rules for all. See **V. TOZZI**, *Dimensione pubblica del fenomeno religioso e collaborazione delle confessioni religiose con lo Stato*, in R. Coppola, C. Ventrella (ed.), *Laicità e dimensione pubblica del fattore religioso. Stato attuale e prospettive*, Cacucci Editore, Bari, 2012, p. 233.



This situation also seems to be due to the cultural and juridical resistance linked to the full overcoming of the previous model (dating back to the Fascist era) of relations between citizens and public powers. A model based on the system of 'reflex rights', involving the supremacy of public institutions and the exercise of a careful police control on the needs of individuals, for which the direct protection of the rights of the human person was recessive and subordinate to the protection of the needs of organized forms of religiosity, with absolute priority for those needs¹⁴.

In reality, the current constitutional provisions suggest an interpretation of the whole of the fundamental Charter norms concerning the religious phenomenon as instrumental to the promotion of the personalistic principle, understood as the foundation of the unifying pact the national society around the institutions of the State, without gender, cultural, social and religious distinction. Bearing in mind that the true object of the public dimension of the religious phenomenon must be considered to be the religiousness as human behavior, that is beneficiary of primary constitutional protection, and not the power of the dominant religious groups, it should be up to the unilateral State legislation the task of giving regulation to the individual and collective right of religious faith. Starting from this basic vision, it would be possible to identify, in harmony with the spirit of the Constitutional Charter, the most correct method through which to evaluate the relations, object of the contracted legislation, with the most present and rooted religious groups in our society.

¹⁴ A legislation that, approved in a neoconfessionist perspective, supports an indirect protection of the freedom of faith, thus favoring some religious organizations and not others. It could be enough to consider the requirements to which, pursuant to art. 3 of the law n. 1159 of 1929 and of the articles 20-21 of the Royal Decree n. 289 of 1930, the approval of the provision of legal recognition of the appointments of non-Catholic ministers is subject to approval. These rules provide that, if "[...] the cult is not, or for the erection of its institutions in a moral body or otherwise, already known to the Government", the instant provides information "[...] about the denomination of it, its aims, its rites, the financial means of which it disposes, the names of the administrators, the ecclesiastical authority on which it depends". The article. 21 of the aforementioned Royal Decree, then, refers to other, compared to those indicated above, "[...] necessary informations to complete the investigation". Informations that must be taken by the territorially competent prefects, who transmit the documents to the Ministry of the Interior. As it can be seen, it is only the example of a procedure that is coherent with the political situation in which it has been devised. Thus, it may well be said that the legislation on the 'admitted cults to the State' is expressive of an action of 'ecclesiastical police' aimed at controlling and supervising the activities of non-Catholic religious groups, in the fascist logic of the controlled number of the religious denominations. See **F. ALICINO**, *La legislazione sulla base di intese. I test delle religioni "altre" e degli ateismi*, Cacucci Editore, Bari, 2013, pp. 54-57.



The prevalence of an interpretation aimed at attributing a specific public role to the religious denominations, in an ideal line of continuity with the choices operated in the Fascist era¹⁵, is considered misleading even with respect to the expectations of a reading of the Constitutional Charter in harmony with the transformations of the society and with the commitment of the institutions to deal with them. In a pluralist and multicultural society, based on the primacy of human dignity and on inviolability of the fundamental human rights, it must be considered at least eccentric that the religious dimension of life is subjected to a civil law regulation according to which the spiritual freedoms of the citizens obtain protection mainly through the activities of the religious organizations which they can (or not) join. The contemporary multiplicity of the religious identity dimensions, all constitutionally worthy of protection, requires that the offered standards by legal freedoms have to be articulated with reference to the priority needs of realization of the individual dignity of the human person. Thus, the dynamic character of religious experience, object of attention by the Fundamental Charter, cannot subtract individual members from the protection given by the State (also, possibly, towards the groups to which they can choose to join).

Indeed, the satisfaction of the inviolable right of religious freedom must be considered entrusted with the requirements of the art. 19 of the Charter, given that this norm ensures to everyone, individuals and groups, the widest profession of faith, with an enhanced warranty potential when it is read in connection with the indications of the art. 20, protecting all the religious groups by possible social and legal discrimination. Both the provisions operate a strong general protection for the concrete implementation of the spiritual needs of people and social formations, if compared with the specific protection capacity of the religious denominations ensured by the articles 7 and 8 of the Constitution. Therefore, if religiosity is understood as a human behavior which is

¹⁵ It can be enough to think, for example, that in the fascist dictatorial regime, the recognition of civil effects to the sacrament of catholic marriage, set by art. 34 of the Lateran Concordat, entrusted to Church the task of managing the prevailing part of family relationships in Italy according to values and rules elaborated by it (and adopted by the fascist-confessionist State). So, the Church realized its own need, the care of souls, the assumption of its own values as values of the whole society and, at the same time, played the role of a large public agency of social control (the religion of the State). As already mentioned above, therefore, the applied model, in the absence of a direct protection of citizens' rights, has created a system of rights satisfied only through the intermediation of the Church, that is to say under the obedience, control and management of the Catholic ecclesiastical institution, erected to the role of public body in the fascist State.



instrumental to pursue the constitutional objective of improvement of the human person, this purpose appears to be more guaranteed by specific provisions, such as the articles 19 and 20, designed to protect individual and collective religious freedom.

With respect to these constitutional reference principles, consistently with the true spirit of the Fundamental Charter, it is likely to consider the consequent development of the original autonomy of the religious denominations and of the bilateral legislation with the major spiritual groups. The overall draft of the negotiated law between the State and the religious denominations should be returned to the logic that was proposed by the Constituent Assembly, as a method of governing relationships - for well-defined subjects - between autonomous and independent entities. Such relationships should not have any direct impact on civil religious rights, but they only should have the aim to realize the specific interests and needs of the confessional groups. Interests and needs, in any case, not classifiable as general and collective ones, and to be considered as distinct from those placeable in the category of the 'public interests'. Thus, a further confirmation is obtained that the individual denominational groups, even if recognized as significant interlocutors for the public authorities (due to their generic ability to promote the fulfillment of the spiritual needs of the persons), are, however, tending to the achievement of partisan interests and, consequently, they would have no title in claiming the function of exclusive guarantors of the individual religious freedom of their members¹⁶.

¹⁶ The interests of a religious group, as regards a community, more or less an extensive one, but always part of the society considered as a whole, require a representation that is an entity capable of expressing their synthesis in the relationships with political authority and institutions. A representation, which is normally made up of organs of the organization of the group. These representatives objectively interpret the needs of the group, but not necessarily those of their individual followers or internal or inferior collectives of the group itself.

In public interventions (aimed at protecting the needs of a collective subject, through laws, administrative acts, material or financial supports), the problem of the current relationship between the collective interests of the group and the individual ones of the individual belonging is always expressed. Indeed, the group to which the individual binds can both enucleate a synthesis of the needs manifested from his followers; a synthesis, which should be homogeneous of intents and needs. That is, the group can set rules, its own values, enucleated from the elite of its government, which could correspond or diverge or not coincide with those of its followers. Consequently, on the one hand, the organization of collective interests is constitutionally entitled to act as a center of imputation of the protections, rights, guarantees, which the system ensures to all social components; on the other hand, the attention or acceptance and protection of the needs expressed by these



It should also be noted that the tendency to consider the agreements with the Catholic Church and other religious denominations as the central focus of the constitutional draft on ecclesiastical politics must be considered

collective organizations should never be binding on the individual participant. In this sense, we could speak of an instrumentality of the satisfaction given by civil institutions to the needs of the groups organized by religious interests; these particular collective needs are protected according to the individual interests that make up that organized collectivity.

It should be noted that the membership in a social formation is the expression of the freedom of the individual, who voluntarily shares the organization and the rules of the group; a phenomenon that acts as a legitimization of the internal rules that the group gives itself. But just the voluntariness of this relationship of belonging relativizes, in front of the civil institutions, the internal rules that the particular social formation has given itself. This is because the public institutions cannot recognize absolute constraints on these internal rules, to the point of treating the innate freedom of the individual to escape from some of these rules or the bond of belonging to the group itself.

It follows that, the civil authority, as guarantor of the common good, can recognize that representation of the expressed religious group within the organization of the group itself, but it cannot establish it as legal representation, that is as mandatorily inclusive of wills and desires of the individual or minor internal groups. The representation of the interests of the respective faithfuls by the organs of each religious group, made in the relations with the State authority, cannot be that a democratic political representation, that is subject to the respect for the freedom of disagreement of the individual or minor internal groups and to the preparation of tools for checking the correspondence between the needs represented by the religious institution and the different needs. That's why the State authority is obliged by the constitutional principles to protect one and the other interests, which are likewise protected.

The obligation to protect a religious denomination or any kind of religious institution is born, by constitutional provisions, if and when they have in Italy a social basis of reference; moreover, such protection can never come to sanction the legal representation of the interests of the respective group followers. If this happens, there would be the concealment of the religious rights of the faithfuls, where they do not coincide with those of the representative body.

The flexibility of the relationship of the individual belonging to a group is an empirical fact of which the legal system cannot fail to take into account. Therefore, the representation of the religious interests of their followers by the organs of the group organization must remain as voluntary, that is to say linked to the actual will of the followers themselves. Faced with this problem, the representation of interests becomes an important theme that the public institutions are called to consider. It is a question of deepening the methods that the public institutions must elaborate, the instruments that the legal system must prepare, because both categories of interests mentioned here have equal right to consideration and protection. See **A. FUCCILLO**, *Superare la sola eguaglianza formale: verso la libertà religiosa delle opportunità*, in A. Fuccillo (ed.), *Le proiezioni civili delle religioni tra libertà e bilateralità. Modelli di disciplina giuridica*, Editoriale Scientifica, 2017, pp. 60-61; **V. TOZZI**, *Brevi riflessioni su appartenenza e rappresentanza. L'attenzione dell'ordinamento statale al rapporto tra individui e soggetti collettivi religiosi di appartenenza*, in *Stato, Chiese e pluralismo confessionale*, Telematic magazine (www.statoechiese.it), 27/2012, pp. 10-12.



not only reductive in a logic of valorization of the ideal diversity deriving from contemporary social pluralism, but also negative for having produced the tightening of political choices regarding religious freedom in a regulatory framework which - as already mentioned before - is not subject to the free unilateral modifiability of the State. Indeed, the weight of the constitutional coverage of the bilateral regulations, qualified as sources of atypical production, has made these provisions as not amendable by the Parliament, and, subsequently, as not modifiable by ordinary law without prior consultation of the ecclesiastical counterpart. Furthermore, the contractual regulations are not subject to an abrogative referendum, but they can be considered only subject to the screening of constitutional legitimacy on the basis of the parameter of the supreme principles of the legal system¹⁷. This has determined the outcome of an endless crystallization of the normative data, where, instead, the dynamism, the variability and the heterogeneity of the social framework would require legislative regulations able to be more flexible and open to the reception of the identity requests actually felt by the citizens, on the one hand, and the newly emerged spiritual needs, on the other¹⁸.

¹⁷ This is an interpreting strand that has characterized the constitutional jurisprudence in ecclesiastical matters, starting from the second half of the Seventies of the last century. With the sentence n. 16 of 2 February 1978, the Constitutional Court declared inadmissible the request for a referendum for the repeal of the art. 1 of the law 27 May 1929 n. 810, in the parts concerning the entire Concordat and several articles of the Lateran Treaty. This is because the proposal for an abrogative referendum would have been directed against a normative act similar to the constitutional provisions, both in terms of its peculiar passive force (which makes it insurmountable to be validly repealed by subsequent ordinary laws), and because it is comparable to an authorization law to ratify international treaties. Thus, for the constitutional judges, the bilaterally agreed derivation provisions, even if they do not have the active force to deny the supreme principles of the constitutional order, are considered similar to the constitutional regulations in terms of passive force or resistance to repeal. For more information on these guidelines of constitutional jurisprudence, see **A. ALBISETTI**, *Il diritto ecclesiastico nella giurisprudenza della Corte costituzionale*, Giuffrè, Milano, 2014, pp. 29-31

¹⁸ The pluralistic and multireligious character of contemporary society implies, of necessity, a flexible use of the normative instrument. That is, the law will have to demonstrate adaptability to the non-homogeneous reality that surrounds it, and this will be valid both for the interpreter of the norm within the religious communities and within the political ones. Both will have to take into account, for the purposes of the common objective of cohabitation, to adapt their regulatory frameworks to the dimension of flexibility, particularity and concreteness. More specifically with regard to civil legislation, this will not mean renouncing the homogeneity of the regulatory system, but rather avoiding the risk that the uniformity and rigidity of legal rules may suffocate the identity of individual religious, ethnic and cultural communities. See **S. BERLINGÒ**, *Mediazione e*



It seems appropriate not to forget, moreover, that, in the configuration being assumed by the bilateral coordination, the needs of enhancing cultural and religious pluralism appear to be mortified by an excessive repetitiveness of the contents, initially entrusted to the unilateral legislation of the State and now constituting the main part of the concluded agreements. Along the lines of what already widely recognized in the 1984 agreements with the Catholic Church, the generality of the pacts between the State and the other religious denominations presents features of strong internal homogeneity. This is the natural outcome of a degeneration of the contractual system, deriving from its use not as a mean for the normative specification of the confessional differences, but as a mean of flattening religious groups on the model of the particular relations between the State and the Catholic Church¹⁹.

Furthermore, it should also be noted how, in the transformation of the social framework of reference, the presence of religious cultures and faiths originated from political-institutional experiences that do not accept the distinction between religious faith and civilian powers, has made difficult the application of the logic of the 'different statutes' presupposed by the bilateral agreements method. With regard to these groups, however well rooted in the Italian economic and social reality, it seemed inappropriate the application of the method of relations between autonomous systems; this is not so much due to the fact that the doctrinal heritage, that is followed by them, do not present characters of assimilable originality to those of Western-based religions, but because of their difficulty to hypothesize a religious discipline distinct from the civil one²⁰.

Religioni: la sfida in una società complessa, in *Stato, Chiese e pluralismo confessionale*, cit., 22/2018, pp. 5-10; **R. MAZZOLA**, *La convivenza delle regole. Diritto, sicurezza e organizzazioni religiose*, Milano, Giuffrè, 2005, pp. 38-39.

¹⁹ **M.C. FOLLIERO**, *Laicità e postdemocrazia*, in A. Barbera, A. Loiodice, M. Scudiero, P. Stanzone (a cura di), *Scritti in memoria di Fulvio Fenucci*, vol. II, Rubbettino, Soveria Mannelli, 2010, p. 170.

²⁰ The immediate reference is to Islam, where there is no distinction between religious community and civil and political society. In fact, as it is known, the Islamic system knows only one law, civil and religious at the same time, thus characterizing itself as a monistic system. Even more upstream of this, there is the incompatibility of language, so some expressions like 'human rights and religious freedom', 'democracy', 'woman's role', 'monogamous marriage' can have completely different valences compared to those of western matrix. Consequently, the Islamic religious phenomenon is suspended between social reality and the search for a juridical dimension, faced with the need to regulate the discipline of Islamic religious groups in terms not provided for in the Constituent. With regard to the new spiritual organizations and the new religious movements, the Italian



Also the recent round of agreements, activated starting from 2012, has confirmed such critical issues, noting that the insistence on the method of bilateral collaboration has been originated from a wrong interpretation of the public role of the religious phenomenon (far from exhausting in the simple dimension of social and institutional importance of the religious denominations). A willingness to promote the bilaterally agreed legislation which is directly due, on one side, to the persistent actuality of an incomplete and chaotic implementation of many constitutional freedoms, and, on the other, to the failure to abrogate some laws (such as the cited fascist legislation on the 'admitted cults in the State') approved in the pre-republican period. The legislative power has therefore distinguished itself for an attitude of inertia and reluctance in the necessary regulation and implementation work of the constitutional strategies, preferring to delegate to the jurisprudence of the Constitutional Court the adoption of the more significant changes for the affirmation of social and religious pluralism²¹.

3 - Constitutional project of ecclesiastical politics and cultural resistance to a correct interpretation of the fundamental provisions of freedom

The new democracy, affirmed after the phase of the fascist dictatorship, should have profoundly innovated the scheme of the relations between

legislator is considerably delayed in the work of conferring to them a status adapted to their specific characteristics; this is due to the fact that we are dealing with a regulatory framework, also a very valuable one, but developed in years when the current reality was completely unpredictable. See **G.B. VARNIER**, *Libertà, sicurezza e dialogo culturale come coordinate del rapporto tra Islam e occidente*, in G.B. Varnier (ed.), *La coesistenza religiosa: nuova sfida per lo Stato laico*, Rubbettino, Soveria Mannelli, 2008, pp. 53-56.

²¹ The current reality is that of an incorrect interpretation of the constitutional precepts, well represented by the disruption of the bilateral instrument; a stalemate that is essentially imputable to the incapacity of the Italian political class in dealing with and managing the issues underlying the demands for religious freedom. For the non-Catholic denominations, the recourse to agreements with the State has been the only legal means by which they could escape the compliance with the rules approved in 1929. The consequence has been a substantial flop of bilateral legislation in considering the necessary specificity of individual legal relationships that have been created. A failure due, on the one hand, to the stubborn immobilism of the legislator and, on the other, to the inadequacy of the 'agreement with the Catholic Church/agreements with the other religious groups' parallelism, envisioned by the Constituent Assembly for a historical period much less complex than the present one. See **P. CONSORTI**, *La libertà religiosa fra democrazia bloccata e globalizzazione*, in M. Parisi (ed.), *Per una disciplina democratica delle libertà di pensiero e di religione: metodi e contenuti*, Arti Grafiche La Regione, Ripalimosani (CB), 2014, pp. 54-55.



citizens and public powers, in all social relationships, including those of a religious nature.

As it has been mentioned, in the articles 19 and 20 of the Constitution, the religious phenomena are the subject of a general discipline, which identifies the right of profession of religious faith as a specification of an inviolable right of human person²², disciplining it in a manner that is perfectly consistent with the model of rights and freedoms that regulate relations between citizens and public powers.

These principles set the broader and more democratic project of religious freedom that the Country has ever had, referring both to individuals and to social religious groups of any nature, consistency and rootedness in our society. Those constitutional legal regulations guarantee both citizens and their religious organizations, and prohibit public institutions to make any form of discriminatory or restrictive intervention on fundamental freedoms, which would be assured to all in the same way.

Despite this, concretely, after 1948, the art. 7 of the Fundamental Charter, intended for the general regulation of the juridical condition of the Church of Rome, has become the key to the constitutional discipline of religious phenomena, also influencing the normative regulation of the

²² It is worth remembering that the most important aspect of the new democracy is constituted by the fact that religious freedom, both in its personal and collective dimensions, is recognized as an inviolable right of the human person. Indeed, it has already been pointed out that religiosity is appreciated by the State system as a human behavior having a propulsive force, which contributes to the promotion of the person and to the material and spiritual progress of society. In this sense, the Italian Constitution recognizes that the religious denominations have a special function (of civil and social nature), considering them to be fundamental instruments of growth and integration of the social members in the general framework of the political community of the State. The confessional organizations are fully part of the social formations and they constitute particular aggregations in which, and through which, the individual realizes the spiritual dimension of his personality, making use of them for the purpose of meeting the needs connected to the profession of faith religious. It should always be reiterated that our Constitutional Charter enhances the public role of religious confessions, only because, alongside and in a complementary way to other social institutions, they are considered to contribute - in a qualitative way - to the affirmation and integral growth of the person human. Performing a particular formative function that projects them in the public sphere, the religious communities are able to offer a significant contribution to the spiritual progress of civil society (article 4 of the Constitution), through the construction of the foundations of values of the political community and the pursuit of some of the axiological objectives indicated by the same constitutional text. See **M. PARISI**, *Diritti della persona e libertà religiosa*, in *Annali Univ. Molise*, 18/2017, pp. 53-56: **V. TOZZI**, *La libertà religiosa in Italia e nella prospettiva europea*, in *Stato, Chiese e pluralismo confessionale*, cit., 35/2014, pp. 14-15.



status of other religions. Confronted with an increasingly multireligious and multicultural society, today's architecture of ecclesiastical relations has confirmed its selective and discriminatory characterization. As already argued, the juridical condition and the prerogatives of the Catholic Church, of the endowed religions with agreement with the State, of the religious groups belonging to the so called 'admitted cults' and of those that have the form of associations of common law have clearly been differentiated²³. Thus determining the need for clarifications regarding the category 'religious confession', introduced by the Constituent, also in order to better understand the effects deriving from its recognition²⁴.

These uncertainties are due to the political and juridical limit constituted by a particular arrangement of relations between the State and the Catholic Church, which has determined a highly unbalanced situation. For this reason, the articles 19 and 20 (which are implementing the fundamental right of religious freedom, both for individuals and for religious organizations) and the articles 8 and 7 (which constitute the sub-system of relations between the State and the most relevant collective religious organizations) have never had a coordinated implementation.

As said before, in 1984, the Catholic Church and the Italian State have signed an agreement in order to revise the 1929 Concordat; the goal should have been to make the adjustment of those relations to the democratic form assumed by Italy since 1948. Only after this, it has been given an initial implementation to the agreements with some minority religious organizations, that is to say the most historically known ones in Italy

²³ See **G. RIVETTI**, *Islam-Occidente. Nuove identità religiose*, in G. Rivetti, P. Picozza (ed.), *Religione, cultura e diritto tra globale e locale*, Giuffrè, Milano, 2007, pp. 89-90.

²⁴ The term 'religious confession' has been used in the Italian legal system, for the first time, with the creation of the first paragraph of article 8 of the Republican Constitution, without, however, specifying what should be understood with it. In paragraph two of the same article 8, a reference was made to 'religious confessions other than Catholicism'. In this way, the Constituent Assembly wanted to consider the Catholic Church as a religious confession, using it as a model to package the new category of collective religious subjects. Consequently, the doctrine has deduced that the typical form of religious organizations with complex structures, social follow-up and historical-cultural roots in the Italian society is legally considered 'religious confession'. With article 8, it has been tried to assure to the other religions a juridical regime in some way corresponding to that guaranteed to the Catholic Church from the article 7, referring to the Lateran Pacts. See **A. MANTINEO**, *Associazioni religiose e "nuovi movimenti" religiosi alla prova del diritto comune in Italia e del diritto comunitario*, in *Stato, Chiese e pluralismo confessionale*, cit., October 2009, pp. 1-5; **V. TOZZI**, *Le confessioni prive d'intesa non esistono*, in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino*, vol. II, Giappichelli, Torino, 2011, pp. 1033-1034.



(Waldensians, Jewish Communities, Pentecostals, etc.), being discretely selected and identified as religious denominations. Only a few religious organizations, using the instrument of agreements provided for in paragraph III of art. 8 of the Constitution, have received concessions and guarantees that are similar to those enjoyed by the Catholic Church. The season of agreements with some minority religious denominations has had inconstant developments, according to the changing political will of the governments to meet the needs of the other religious groups, and it has shown its function of covering (in a political way) the privileges granted to the Church of Rome²⁵. Moreover, the extension of some benefits also to the minority religious groups has been used more in order to brake, from a cultural point of view, the massive immigration from countries of islamic culture than with the aim of giving life to a full and open confessional pluralism²⁶.

With the 2001 constitutional reform (by constitutional law of October 18, 2001, no. 3), the method of preservation of the authoritarian model of regulation of the religious freedoms was further stiffened. This law establishes the exclusive competence of the Government in matters of standardization in the relations between religious confessions and the central State (article 117, paragraph 2, letter "c"), in perfect counter-trend with the structure of the public powers which, since 1970, has progressively strengthened the system of local powers (Regions, Provinces, Municipalities, Mountain Communities). The centralization of legislative power in this area is in conflict with the fact that most of the interventions for the promotion of religious needs are ensured through regional laws and administrative acts of the Municipalities or other local authorities. The

²⁵ The benefits enjoyed by the Catholic Church are, above all, of a fiscal and economic nature. It could be enough to think about the enjoyment of the share of eight per thousand Irpef, through which the Church of Rome annually receives about one billion euros of State funding. In fact, it would be really desirable that, finally, we could get a system that, avoiding unreasonable discrimination and privileges, can facilitate: 1) all initiatives of solidarity, both social and humanitarian; 2) the peculiar ethical-religious and cultic activities of any spiritual order; 3) non-commercial and culturally oriented initiatives, that is, lived on the basis of both religious and ethical-political orientation. This evolution should take concrete form on the basis of a secular interpretation and application of the constitutional principles of equality and subsidiarity. See **F. FRENI**, *La libertà religiosa tra solidarietà e pluralismo. Analisi e proposte sul modello di laicità «all'italiana»*, Jovene Editore, Napoli, 2013, pp. 78-80.

²⁶ **F. ALICINO**, *The Universal Constitutionalism in an Age of Religious Diversity. Western Secularism Tested by "New" Cultural Conflicts*, in F. Alicino, F. Botti (ed.), *I diritti culturali-religiosi dall'Africa all'Europa*, Giappichelli, Torino, 2012, pp. 300-302.



religious assistance, the financing of religious buildings, the religiously oriented social assistance and the charity activities, the private education and the protection of some cultural assets of religious interest are all areas of social life whose protection and development are predominantly entrusted to local authorities, regardless of whether they have a contractual origin between religious denominations and the State or if they are provided for by laws of common law.

Faced with these obvious difficulties in the full implementation of the constitutional precepts, a large part of the secular doctrine in Italy requires the enactment of a general law on religious freedoms. The pursued objective would be to get a source of common law, which can translate the principles of the Constitution into practice, applying them to the needs of the contemporary society, preserving the necessary flexibility for the adaptations that may be required by the social changes. This law should coordinate the general protection of religious freedoms, both individual and collective ones, as foreseen by the constitutional project, without directly affecting the negotiated law between the State and the religious denominations. That is, it should only indicate the general lines of the system, so as to highlight the privileged aspects established in the contracted legislation. The work to be carried out could affect the interpretation of the rules contracted by the religious groups with the State, in order to better regulate the scope of their freedom, limiting it in the perspective of adapting their specific structures to the common legislation²⁷. The new model of relations between the State and the confessional communities should go beyond the perspective of a relationship between powers (civil and religious ones), rediscovering the value and the meaning of the Republic as a place of coexistence of different subjects and different communities²⁸.

²⁷ With reference to the function of the bilateral cooperation system in the framework of the Republican Charter, it is a shared opinion, also in light of a relevant line of the constitutional jurisprudence, that all the agreements of the State with the religious denominations are preordained to perform two tasks. First of all, that of ensuring the civil effectiveness, under the agreed conditions, of acts and provisions of the ecclesiastical authorities, where the parties agree that they (in whole or in part) do not belong exclusively to the religious order, and / or granting particular advantages, especially in the tax area. Then, that of guaranteeing the equal freedom and at the same time the protection of the specific features of a religious denomination, respecting the neutrality of the State with regard to all collective experiences of faith. See **G. CASUSCELLI**, *Una disciplina-quadro delle libertà di religione: perché, oggi più di prima, urge "provare e riprovare" a mettere al sicuro la pace religiosa*, in *Stato, Chiese e pluralismo confessionale*, cit., 26/2017, p. 21.

²⁸ **G. DAMMACCO**, *Il diritto ecclesiastico tra riformismo e multiculturalismo*, in M.



The law, which is hoped for a swift adoption by the Parliament, should implement the individual and collective religious freedom in the light of equality and solidarity. With a good national organic law, also on the basis of European Community law and international treaties in force, the revaluation of the articles 19 and 20 of the Constitution could finally take place, in a logic of freedom from the conditioning being exercised by the relationships between the State and the religious denominations. Essentially, the framework law on religious freedoms should fulfill the obligation, first scientific and then political one, to identify the limits of the matter of relations between the State and the religious groups to be regulated by bilateral agreements. In fact, the requirements of protection of the religious denominations are, at least, in a condition of parity with those of protection of individuals and groups, and with the general principle of the promotion of the human person²⁹.

In short, only in this way, the principle of equality can be more strictly observed, avoiding the tendency to favor only the strongest confessional groups and those being capable of a decisive unitary social presence. Moving from the need to prepare the instruments for the implementation of individual and collective religious freedoms in the secular and pluralist Charter project, this law should focus on the clear enunciation of the general rules, suitable to guarantee a minimum level of equal rights in religious matters. So as not to limit such a guarantee only to the most influential organizations, and not to exclude the individuals or the less organized religious social formations. In fact, many religious groups do not have an organizational structure like that of the Catholic Church. In many cases, the groups, spread in the Italian territories, recognize themselves for the community of faith, but deny any hierarchical or dependency relationship with each other. The most current example of this problem is constituted by the groups of Islamic culture. To impose on them the obligation to have a unitary representation or a single coordinating religious organism means to estrange them from their history and reality³⁰.

Tedeschi (ed.), *Il riformismo legislativo in diritto ecclesiastico e canonico*, cit., p. 174.

²⁹ M. PARISI, *Uguaglianza nella diversità. Identità religiose e democrazia costituzionale*, in *Stato, Chiese e pluralismo confessionale*, cit., 19/2018, p. 9.

³⁰ The reference is to some recent initiatives of a governmental nature, aimed at devising the relations with the Muslim cult, which, in addition to not fully respecting the specificity and the internal variety of this spiritual current, propose solutions that deviate from the existing constitutional system. In fact, the establishment of an 'Islamic Council', the adoption of the 'Charter of Values, Citizenship and Integration', the signing of a 'Declaration of intent for the federation of Italian Islam' are all attempts that, in addition to



For groups of followers of the Islamic faith there is the impossibility of structuring as a religious denomination, in the sense attributed to this term by the Constitution. At the most, some forms of religious associations on a national basis or of geographical-cultural areas or interpretive strands of the Koranic tradition can be realized (Sunnis, Shiites, Salafis, etc.); these would however remain without religious hierarchical structures, unlike what happens for the spiritual organizations of Christian origin³¹.

Thus, also to truly guarantee the needs of the new citizens of heterodox religious faith, the primary objective of the juridical discipline of religious freedoms must be that of guaranteeing to individuals and to all the collective subjects to which individuals give life (to their organizations), the freedoms as a whole. That is to say, the freedom of thought, of conscience, of faith, of adhering and withdrawing from a group, of manifesting the faith or of not being forced to manifest it. This perspective should redefine the role of all the subjects, both individual and collective ones, of all the organizations of the religious phenomenon present in the institutional space, in a more respectful manner of the principle of equality, without distinction of ideal contents or geo-politic belongings.

Nevertheless, it is precisely this perspective that prevents the adoption of such a legislative provision, especially due to the absurd fears for the maintenance of public order³² and to the resistance of the

assuming the appearance of problematic measures in terms of internal sources, generate the suspicion of being scarcely operational in terms of integration of the involved religious groups. We are faced with the effort of a heterodirect institutionalization of the Italian Islam, that is detrimental to the organizational autonomy of confessional organizations and unwelcome by the Islamic world itself, as demonstrated by the explicit refusal of some Muslim association movements. A resistance that is expressive of the deep and persistent divisions within the Italian Islamic associationism, and from which it is possible to get the perception of the strong difficulties encountered for the attainment of an Islamic unity in our country. See **G. CASUSCELLI**, *La libertà religiosa alla prova dell'Islam: la peste dell'intolleranza*, in *Stato, Chiesa e pluralismo confessionale*, cit., July 2008, pp. 3-8; **F. ALICINO**, *Costituzionalismo e diritto europeo delle religioni*, Cedam, Padova, 2011, pp. 85-89.

³¹ **A.S. MANCUSO**, *La presenza islamica in Italia: forme di organizzazione, profili problematici e rapporti con le istituzioni*, in *Stato, Chiesa e pluralismo confessionale*, cit., 32/2012, p. 8.

³² Unfortunately today, the multicultural coexistence is mainly perceived by the legislator as a problem of public order. So that the Parliament has started to address these issues in a logic of defense, aimed at satisfying the need for security that would emerge from the population, even sacrificing more important legal principles and affecting the guarantee of subjective rights. Thus, the protection of human rights seemed to be fading, on the basis of a strong insistence on distinguishing between regular and irregular foreigners. The latter are considered illegal immigrants, with the implementation of a



confessional lobbying³³. Under this profile, all the political parties that are represented in the Italian Parliament do not dare to produce this law, in fear of losing the possible electoral support of the Catholic Church or of its peripheral organizations. In the democratic game, it is obvious that the Church tries to direct the legislator towards the approval of the measures that it considers best, as well as trying to dissuade Parliament from adopting unwelcome laws. What is unacceptable is the inertia of political forces in launching a law that could support and realize religious and ideal

defensive legal scheme in which the recognition of freedoms is subordinated to the degree of the achieved collective security. This thanks to an increasingly strict discipline of entry and residence in the national territory (in the logic of the closed number), to a constant reference to the government of migration policies (based on the parameter of the permit linked to the employment relationship), to the abandonment of real integration policies (realized only for the benefit of the hypothetically branded immigration as 'good' one). See **P. CONSORTI**, *Pacchetto sicurezza e fattore religioso*, in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino*, vol. I, cit., pp. 727-730.

³³ There is little doubt about the existence of a situation of conflict between the Catholic Church and the democratic system, as demonstrated by the phenomenon of 'inverted separatism', for which only in theory the ecclesiastical authority seems to support the autonomy and separation of the civil and religious systems. Concretely, the ecclesiastical hierarchy demands its realization only for the religious order, exerting all its force of pressure in order to direct the choices of the State, so as to bend them and to make them conform to its doctrine. The Church willingly accepts the opportunities offered by the democratic form of the State, taking advantage of its values and taking advantage of its limits, trying to exploit its problematic aspects and inserting itself into the transformation processes, collaborating with the State when it is convenient and demanding separation when it intends to defend its principles or to support its own interests (not always strictly religious ones). In this the Church maintains an ambiguous attitude and, almost waiting for a historical revenge, it tends to structure its organization and its activity in function of competition and conflictuality. In particular, the catholic ecclesiastical hierarchies are distinguished by frequent interventions in italian political affairs, with such assiduousness that they constitute a constant in the history of the democratic institutions of our country. This occurs, above all, on the occasion of the electoral deadlines, the referendums or on the occasion of the approval of some laws; in these cases, the Catholic Church deems it appropriate to intervene in political competition to offer its own orientation in the democratic selection between the values of religious ethics and those of secular ethics, convinced of the necessity of its contribution in the construction of the social organization and in the elaboration of political decisions. From the Church's point of view, this 'new' model of presence in public life would find explicit recognition in the interpretation of art. 1 of the 1984 Concordat, which attributes to the ecclesiastical institution a role of 'mutual cooperation' with the State 'for the promotion of the human person and the good of the country'. See **L. ZANNOTTI**, *La sana democrazia. Verità della Chiesa e principi dello Stato*, Giappichelli, Torino, 2005, pp. 77-83; **V. TOZZI**, *Società multiculturale, autonomia confessionale e questione della sovranità*, in V. Tozzi (ed.), *Integrazione europea e società multiculturale. Nuove dimensioni della libertà religiosa*, Giappichelli, Torino, pp. 154-155.



pluralism, in full conformity with the constitutional dictate³⁴. The 'normative silence' (imputable both to the Parliament and to the Government) produces the result of delaying beyond measure the repeal of obsolete legislative disciplines, of fueling uncertainty (allowing the continuous jurisprudential recall to outdated principles and rules), of preventing the formation of a coherent common law that should represent the parameter of the constitutional legitimacy of each differentiated discipline, of allowing the continuation of favorable treatments for the Catholic Church (postponing the constitutional implementation in sensitive sectors)³⁵.

It should not be forgotten that the secular State is not indifferent to religions, although it does not ignore its difficult relationship with the various spiritual orientations and, at the same time, the difficulty of the relations of the various religions among them. Precisely, in order to remain impartial and equidistant, the secular State can never express preference for a fideistic orientation, but it is required to assume an ecclesiastical policy committed to promoting religious and cultural confrontation. The function of the secular and democratic State is to guarantee the conditions for the coexistence of the various ideal conceptions against the prevalence of

³⁴ It would be really desirable for the political forces to react to the pressure exerted by the ecclesiastical hierarchy, claiming their autonomy and recalling the principle of secularism of the State. The obligation of an impartial political practice, subtracted from the influence exerted by religious beliefs and institutions, constitutes the true litmus test of a secular and democratic system. Unfortunately, the perceived threat of a weakening of the country's traditional cultural identity, hypothetically determined by the multiplicity of the faiths and of the ideal orientations present in contemporary society, has meant that the Catholic Church has been assigned the role of interpreter of the 'natural law' and guardian of 'healthy traditional values'. In this way, it has emphasized the public projection of Catholicism, encouraging the approval of normative choices designed to downsize the principle of non-identification and neutrality. See **M.C. FOLLIERO**, *Multiculturalismo e aconfessionalità: versioni attenuate dei principi di pluralismo e laicità*, in A. Fuccillo (ed.), *Multireligiosità e reazione giuridica*, cit., pp. 134-136

³⁵ It should not be forgotten, then, that the regulatory gaps dilate the discretion of the Public Administration, which fills the spaces by measures inspired by contingent political choices, sometimes in open violation of the principle of impartiality, which should govern it, and of the principles of neutrality and equidistance, which are at the heart of democratic secularism. The legislative inaction constitutes a violation of the responsibility of the State in its task of protecting minorities, identifying in advance, and in compliance with the principle of equality, the timing, the modalities, the procedures and the limits of promotional measures in favor of the freedoms of minority individuals and groups. See **G. CASUSCELLI**, *Diritto ecclesiastico ed attuazione costituzionale tra deformazione e proliferazione delle fonti*, in M. Tedeschi (ed.), *Il riformismo legislativo in diritto ecclesiastico e canonico*, cit., pp. 237-240.



fundamentalisms. Nevertheless, the public institutions must also represent themselves as the engine and the summarizing place for the cultural and political competition that takes place in society. The fundamental task of the secular and democratic State is, today more than ever, the social integration, so as to allow cultural and religious diversities - without exclusions and without prizes - to be related to each other and to be involved in the public debate on the guidelines for the best political action³⁶.

In this way, to guarantee the full realization of cultural and confessional pluralism, it is necessary to abandon any conservative strategy that aims to evade or circumvent the central theme of the freedom of religion as a right of all individuals and of the equal freedom as a right of all the religious denominations. The safeguarding of constitutional legitimacy requires restoring a priority position to the common law, favoring its maximum expansion, as a guarantee of the renewed centrality of the principles of equality and non-identification³⁷. The hope is that the minimum content of a plural and secular democracy could be finally achieved. Through a correct application, in a secular and democratic sense, of the constitutional requirements, it would be possible for the individuals as well as the ethical-religious communities to live their specific cultural project, thanks to equal opportunities for enjoying all the basic rights and freedoms. In this way, it would be achieved the desired outcome of a legal organization of civil cohabitation characterized as respectful for the rights of all (believers and non-believers)³⁸. The compromise between ideologies,

³⁶ L. ZANNOTTI, *La politica ecclesiastica nel tempo della secolarizzazione e del multiculturalismo*, in N. Fiorita, D. Loprieno (ed.), *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali*, Firenze University Press, Firenze, 2009, pp. 280-281.

³⁷ On this point see R.M. DOMIANELLO, *Libertà religiosa tra bilateralità necessaria, diffusa e impropria*, in A. Fuccillo (ed.), *Le proiezioni civili delle religioni tra libertà e bilateralità. Modelli di disciplina giuridica*, cit., pp. 52-53, which highlights the need to work simultaneously on three fronts. The first is that of a secularization of the common laws, which can take care of, on an unilateral basis, the constitutional duty to effectively satisfy the rights of all, and not only the interests of the strongest ones. The second front is constituted by the necessity of a unilateral revision of the legislation inherited from the fascist period, so that, filling in content the principles of religious pluralism and the equal freedom of all confessional organizations before the law, it may rise to the rank of interposed source. The third front, finally, is that of a development and a permanent update of the laws produced (directly and indirectly) in a bilateral way, in order to ensure that they are reasonably packaged only to guarantee the particular specificity of a confessional group or of a unique stock of religious denominations.

³⁸ This is the goal and, at the same time, the way of being of contemporary multicultural and multireligious democracy, which is concerned with opening up the society, of which



wisely achieved in the Constituent Assembly, must be constantly pursued over time, by means of a continuous hermeneutical updating of the Charter and of its secular application³⁹. Only in this way, the structural principles of freedom, in the current multireligious society, could widen and extend to the weaker components of the social body which, overcoming the experienced situations of marginality, could be put in condition of acquiring a full citizenship of rights. That is to say, a not only formal, but, above all, a substantial enjoyment of the fundamental rights.

it is an expression, to heterodox cultures and religions. This type of democracy welcomes foreigners not only as a mere workforce, but as resources that, paradoxically, expand the basic culture and the traditional religion. The effort, therefore, is to combine equality and differences, knowledge and enhancement of all religious and areligious cultures, including them in a communicative democracy on the basis of the full enjoyment of individual and collective guarantees of freedom. See **N. COLAIANNI**, *Tra eguaglianza e differenza: i diritti cultural-religiosi*, in F. Alicino, F. Botti (ed.), *I diritti cultural-religiosi dall'Africa all'Europa*, cit., p. 24.

³⁹ In the objective of the realization of a 'practice concordance', achievable by conceiving the legal system as a place of equilibrium between formal law and religious identity, between authority and individual conscience. See **R. MAZZOLA**, *La convivenza delle regole*, cit., p. 37.