HUMAN AFFAIRS *18*, 23–36, 2008 DOI: 10.2478/v10023-008-0003-7

HANDLING RELIGIOUS DIVERSITY: THE CASE OF "HOLY/REST DAYS" IN ITALY

TIZIANA FAITINI, ALESSANDROANTONIO POVINO

Abstract: The accommodation of a plurality of values within the same institutional framework is one of the main challenges with which contemporary democracies have been persistently confronted. This challenge has recently gained strength even in such traditionally homogeneous countries as Italy, as a consequence of an increase in the number of residents committed to diverse religious beliefs. Against this backdrop, this paper focuses on the case of requests for the legal recognition of religion-specific holy/rest days in Italy. The analysis of such a case will disclose—or so we believe—some valuable pointers as to how democratic societies could try to accommodate religious diversity in a way that is both respectful of the specificities of each religious group and compatible with the typically liberal commitment to the safeguard of individual freedom.

Keywords: pluralism; religious freedom; equality; democracy; secularism.

Introduction

The accommodation of a plurality of values within the same institutional framework is one of the main challenges facing contemporary democracies. One such challenge has recently gained strength in such traditionally homogeneous countries as Italy, especially following the increase in the number of residents committed to diverse religious and ethical beliefs.

The problematic nature of the situation emerges clearly if one takes seriously the claim that a distinguishing feature of contemporary democracies is their non-discriminatory treatment of different religious and secular ethics-based cases (Rawls 1993), (Barry 2000)[1]. Particularly problematic are those cases in which the fulfilment of a legal obligation clashes with compliance with moral obligations deriving from the individual's ethical and religious commitments. Facing such situations, democracies are required, by their very nature, to handle such conflicts in compliance with the principles of freedom and the equality of treatment of all individuals irrespective of their gender, race and religious or ethical convictions. These are fundamental values and give substance to fundamental rights recognized at an international level[2].

In particular, as far as the right to equality of treatment is concerned, the European Community is deeply committed, as it emerges from consideration of the so-called second

[1] See also the Universal Declaration of Human Rights (art. 2); the European Convention on Human Rights (art. 9 and 14); and directive 2000/78/EC on non-discrimination.

[2] See the Universal Declaration of Human Rights (1948–art. 2); and the Charter of Fundamental Rights of the European Union (2000–art. 21, part 1).

generation directives regarding non-discrimination in the workplace[3]. These have extended the grounds on which a worker should not be discriminated against, from such basic aspects as race or ethnical origins, to include religion, personal convictions, disadvantage, age and sexual orientation.

For the purposes of the current paper, it is interesting to note that the right to equality of treatment is also established in the Italian constitution, whose third article explicitly mentions the principle of non-discrimination[4]. One of the relevant aspects of this right is its declaration in terms of the equality of treatment in the workplace[5]. Such a declaration acquires particular importance in the Italian context given the crucial role attributed to work by the constitution. Article 1 (part 1) establishes that "Italy is a democratic republic founded on labour". Moreover, article 4 establishes that "The republic recognises the right of all citizens to work and promotes those conditions which render this right effective. Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society". According to these articles, the involvement of all citizens in work activities is not merely conceived as a means to satisfy the individual's needs and interests, but also as the basis of the individual's personality and role in society. Besides work, however, it would be impossible to deny that the full development of the human personality is dependent on other crucial aspects including, most notably, religious and ethical commitments, and the republic also has a commitment to respect these latter, *qua* expressions of the right to freedom of conscience (safeguarded by articles 19 and 21 of the constitution[6]).

Against this backdrop, a twofold conflict of obligations may occur. On the worker's part, work-related demands may come to clash against those arising from religious convictions. The institutions should be able to strike a balance between the fulfilment of the obligations associated with the right to equal treatment of all workers and the concession to some form of differential treatment that is required to safeguard compliance with the individual's potentially conflicting, religious values.

In this paper we shall focus on a particular instance of such a conflict: considering the requests for abstention from work on holy/rest days other than those traditionally recognized by Italian institutions. Such requests have been put forward by members of different religious

---

[3] See directive 2000/78/EC and, more specifically, directives 93/104/EC and 2000/34/EC.

[4] See, in particular, art. 3 of the Italian Constitution: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country". http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf (Last accessed: 23.03.2008).

[5] It should be noted that the importance of realizing the principle of the equality of treatment in the workplace is also acknowledged at an international level. For instance, it is endorsed by the International Labour Organisation (ILO) Conventions 106/1957 (made executive in Italy with the Presidential Decree 1660/1961) and 111/1958 (ratified in Italy with the law 405/1963).

[6] Art. 19 reads as follows "Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality", and art. 21 part 1 establishes that "Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication".

communities in order to comply with the prescriptions of their faith and are revealing of an increasing pluralization of the Italian *ethos* in religious matters.

To provide a satisfactory overview of the whole issue, an historical and legal reconstruction of the evolution of religious freedom in Italy over the last sixty years is necessary. The first part of the paper is devoted to this purpose. With this backdrop in place, we shall move on to study the use that Italian institutions have made of bilateral agreements, as a means of handling the relationship between the State and religious communities. Such an analysis will allow us (part II) to point to some of the negative and positive aspects of this approach in accommodating religious diversity, and will disclose—or so we believe—some indications as to how democratic societies could try to accommodate religious diversity.

Religious Freedom in Italy: a Reconstruction

In section (a), after presenting the approach to religious freedom embedded in the articles of the Italian constitution, we shall describe the juridical instruments that grant an institutional role to the Catholic Church and outline their gradual modification, as a component of the process of the secularisation of the Italian State. We shall then address the relationship between the State and other religious communities, and give an account of both the agreements that have thus far been either drafted or stipulated, as well as of the procedure to stipulate them. Against this backdrop, in section (b) will be devoted to the specific case of rest day requests.

(a) Historical and juridical reconstruction

In order to establish a general framework, it may be useful to provide a short survey of the articles of the Italian constitution that are relevant to our matter. The right to religious freedom is explicitly safeguarded by the Italian constitution at two levels:

(i) the individual level, safeguarded by article 19. It affirms that anyone is entitled to freely profess their religious belief in any form, and safeguards the fundamental practices characterizing a religion, provided they are not offensive to public morality. Article 3 as mentioned above is also relevant here, as it establishes the equality of all citizens without distinction of religion.

(ii) the community level, safeguarded by articles 7 and 8, which regulate the relationship between the State and the churches. Specifically, art. 7 is devoted to the relation between the State and the Catholic Church, establishing that ‘the State and the Catholic Church are independent and sovereign, each within its own sphere’, and that their relations are regulated by the *Lateran Pacts* and by the following agreements. Article 8 affirms that all religions are equally free. It also lays down the relationship between the State and religions other than Catholicism by virtue of the relevant bilateral agreements (*intese*).

Such a constitutional arrangement reveals, on closer scrutiny, the problematic nature of our case in point, especially if one considers the traditional status and institutional role of the Catholic Church in Italy, whose primacy remained substantially untouched until the 1980s. The *Lateran Pacts* were signed in 1929 and introduced the distinction between the state religion and many “admitted beliefs”, jointly proclaiming Catholicism as the State religion[7] and reserving

[7] Art. 1: “Italy recognizes and re-affirms the principle established by art. 1 of the Kingdom’s Statute 4 March 1848, according to which the Roman Catholic religion is the only religion of the State”.

it some fiscal privileges. Catholicism also enjoyed an exclusive penal safeguard, as established by articles 402-405 and 724 of the Penal code, which punished crimes of offence against the State religion. Article 406 was devoted to crimes against religions other than Catholicism, establishing penal sanctions that were, as a matter of fact, softer than those provided for Catholicism.

The revision of such a privileged status took a long time and there was lively debate at a political level as well as in jurisprudence. The *Lateran Pacts* were eventually modified by the 1984 Concordat[8] after a long negotiation, whose conclusion was also linked to the redefinition of political *equilibria* that led in 1983 to the election of the first socialist prime minister. On that occasion, a recurrent issue was that related to the question of the constitutional legitimacy of the exclusive penal safeguard enjoyed by the Catholic religion. In 1995, the Constitutional Court repealed the discriminatory provisions[9]. And, finally, law 85/2006 abrogated all legal references to Catholicism as the "State religion".

Such a composite revision may be seen as a crucial moment in the process of the secularisation of the Italian State, as well as in the effective realization of the equal recognition of diverse religions. This latter has involved, at least, two distinct but intertwined elements, i.e. (1) the abandoning of the exclusive privileges accorded to the Catholic Church (as explained above), and (2) the explicit recognition of religious beliefs other than Catholicism. Let us now turn to this latter element.

The process of negotiation between the State and non-Catholic religious groups began with a 30-year delay after the establishment in the constitution of the principle of the equality of all religions (arts. 3, 8, 19). The first such instance was the Memorandum stipulated on 17 January 1955 by the Federal Council of Evangelic Churches. It was sent to the government, political parties and the parliament, in order to propose the formation of a commission including representatives of the State and of non-Catholic religions, so as to establish the bilateral agreements (*intese*) for which art. 8 of the constitution had made provisions (see point (ii) above). In the following years, though, a kind of indifference and mistrust seemed to be felt by religious groups towards the very instrument of bilateral agreements. That might have been due either to a negative bias against such a legal instrument; or to the need of some religious communities to focus on questions of doctrine and internal organization first[10]; but probably it was mostly related to the wait for the preliminary request for the revision of the *Lateran Pacts* to be fulfilled. Therefore, such a delay may be mainly linked to the difficult and complex

---

[8] The Concordat abolished the definition of Catholicism as the 'State's religion'; the teaching of the Catholic religion was established as a 'facultative' (and no longer compulsory) part of the curriculum of primary and secondary state schools. It also abolished some significant institutional interventions in ecclesiastical affairs in (e.g. the approval of the Government to the designation of ecclesiastics).The Concordat still reserved some fiscal privileges to the Catholic Church. Moreover, each tax payer can choose to devolve 0.008 of his taxes on income to one of the recognized churches; due to the procedure of distribution, although 35% of tax payers prefer to donate to the Catholic Church, it receives 89% of the available founding (data 2006, see www.uaar.it, last accessed: 29.03.2008).

[9] See judgments nos. 440/1995, 329/1997, 508/2000, 168/2005. Regarding the previous interpretation of the Constitutional Court on this matter, see judgments nos. 125/1957, 14/1973, 147/1987, 925/1988, 54/1989.

[10] This is the case of the Jewish community, which went through many years of debate, congresses, studies and proposals concerning both doctrinal and organizational issues before they could find a satisfactory solution and write a draft agreement.

Table 1

Agreements that have been stipulated and ratified	
Religious community	*Date of stipulation and law of ratification*
Waldenses Community	21 February 1984, law 449/1984. Modified with law 409/1993 (further modification stipulated in 2007, regarding fiscal regimes, is still pending)
Assemblies of God in Italy	29 December 1986, law 517/1988;
Union of Seventh-day Adventist Churches	29 December 1986, law 516/1988. Modified with law 637/1996 (further modification stipulated in 2007, regarding fiscal regimes, is still pending);
Union of Jewish Communities in Italy	27 February 1987, law 101/1989. Modified with law 638/1996;
Christian Evangelic Baptist Union of Italy	29 March 1993, law 116/1995;
Lutheran Evangelic Church in Italy	20 April 1993, law 520/1995.
Agreements waiting to be ratified	
Religious community	*Date of stipulation*
– Apostolic Church in Italy – The Church of Jesus Christ of Latter-day Saints – Christian Congregation of Jehovah's Witnesses – Holy Archdiocese and Exarchate of Southern Europe – Buddhist Italian Union – Hinduist Italian Union	April 2007
Agreements under preparation	
Italian Buddhist Institute Soka Gakkai	

framework of negotiation between the Italian institutions and the Catholic Church that we have briefly described above.

This hypothesis may be corroborated if one considers that the stipulation of the first bilateral agreement (with the Waldenses community) in 1984 corresponded to the reformulation of the relation between the State and the Catholic Church in the Concordat of the same year. After that, the agreement with the Union of the Seventh-day Adventist Christian Churches was stipulated in 1986, while the Agreement with the Union of Jewish Communities in Italy was signed the following year. The process of the enactment of art. 8 of the constitution and of the stipulation of the remaining agreements came to a halt in the early 1990s, as the Government began formulating the intention to propose a comprehensive framework law on religious

[11] See Bill 3947/1997 "Norms on religious freedom and abrogation on rules on admitted beliefs".

freedom[11] (see section (f) below). However, a number of new agreements were drafted in 2007. All agreements stipulated to date are summarised in the following Table 1.

Before focusing on the case of rest days, it may be useful to give a brief account of the procedure that religious groups are currently required to follow in order to stipulate an agreement with the Italian State. All religious groups interested in stipulating an agreement should first obtain recognition of their legal status, according to law 1159/1929, upon receiving the favourable opinion of the State Council. Then, the religious communities should address the prime minister, who allocates the task of negotiating with the representatives of the religious communities to the undersecretary of the Council of Ministers. After negotiation, the agreement is signed by the prime minister and the person in charge of the relevant religious community, and should be passed on to parliament for translation into law. It is in virtue of such strict procedural requirements of representation that an agreement has not yet been stipulated with Islamic communities. Indeed, the most serious difficulty in reaching an agreement with them lies in the fact that such communities have no officially and unitarian recognized hierarchy. It is mainly for this reason that thus far only a few drafts with different Islamic organizations[12] have been produced (more on this in section (e) below).

(b) The case of 'holy/rest days'

Within this complex framework, a particularly contentious issue seems to be related to the request for recognition of specific holy or rest days other than those belonging to the Catholic tradition. To fully appreciate the relevance of such a question, it should be noted that conformity to religious prescriptions in terms of days of rest and prayer appears to be a crucial matter as these qualify as those fundamental practices characterizing a religion which are formally safeguarded by art. 19 of the constitution. Accordingly, the fulfilment of such requests seems to be an integral part of any policy committed to granting religious freedom.

Moreover, the requests for alternative rest days evoke two other main issues:

(I) the actual realization of the ideal of the equality of all religions within a secular state, thus contracting the privileges that had traditionally been recognized as belonging to the Catholic Church;

(II) the non-discrimination of individual workers on the grounds of their religious beliefs, requiring special attention to the array of claims connected to an increasing number of religious "minorities".

[12] Three draft agreements have so far been proposed by three distinct associations: the Union of the Islamic Communities and Organizations in Italy; the Association of Italian Muslims in Rome; and the Islamic Religious Community in Milan.

[13] In keeping with the constitution (arts. 3, 36, 37), the Italian laws on work (see law 405/1963; the workers' statute law 300/1970 arts. 15 and 16; and Legislative Decrees 215 and 216/2003) reveal a deep commitment to the equal treatment of all workers in their workplace. They also prevent work conditions from undermining personal freedom and dignity, a crucial component of which may be thought to be an individual's beliefs, and establish that employers should set tasks associated with a specific job so as to safeguard "the physical integrity and moral personality of workers" (art. 2087 of the Civil Code), while they maintain that the employee should accomplish with diligence the task assigned by the employer (see art. 2094 and 2104 of the Civil Code; art. 2106 establishes the provision of sanctions in cases of breaches of such prescriptions).

The link between (I) and (II) becomes clear if one considers that the exclusive privileges traditionally recognized in favour of Catholics (e.g. the exclusive recognition of Catholic rest days) may be seen to have provoked some *de facto* discrimination, with Catholic workers better safeguarded than others as far as the fulfilment of their religious obligations was concerned.

In accordance with the historical reconstruction provided in section (a), it may be argued that the establishment of different days of rest is strictly related to the process of the secularisation of the Italian State. The right for workers to have a weekly day of rest is established by the constitution in art. 36. Moreover, the laws on work have always been committed to the principle of non-discrimination[13], and the recognition of the right to observe a weekly rest day—respecting, if possible, the requests of religious minorities - had already been stated in the 1957 ILO Convention (ratified in Italy in 1961[14]). Nevertheless, in Italy such a day has usually been set as a Sunday (as established by art. 2109 of the Civil Code) and the only recognized days of rest have been those considered "holy days" by the Catholic Church. This situation remained unchanged until the approval of the first bilateral agreement (1984), making specific provisions to include the recognition of holy and rest days other than Sunday. Similar provisions are present in all the subsequent agreements, and may be summarized as follows:

(1) the right to rest on days other than Sunday should be exercised in the framework of organizational work flexibility, in such a way that missed working hours can be made up for on Sundays or on other days, with no overtime pay. The exercise of such a right should be, by all means, compatible with the organizational and production-related needs of the firm. From this, it emerges quite clearly that the actual fulfilment of the workers' right to rest is currently left to private negotiation between employers and employees (or trade unions in cases of collective contracts).

(2) The right to abstain from activity as established in the agreements is not limited to the workplace; it also concerns compulsory education.

(3) Schools and public bodies must take this right into account when planning public exams and competitions, and must grant candidates the opportunity to take the exam on another day, should some candidates request it on the grounds of their religious convictions in terms of rest/holy days.

(4) Each religious community has the obligation to communicate its own calendar of religious celebrations to the Minister of Internal Affairs, who should publish it in the Official Gazette.

Besides these provisions, institutional consideration of this issue is left to the good will of the public administrators, as testified by the provisions made by some regions to adapt the planning of holidays so as to include those celebrations observed by the religious communities that are well represented in a certain school[15]. Nevertheless, as section II will highlight, it should be noted that, in lack of an agreement, the actual fulfilment of the right to rest on days other than a Sunday leaves some room for discrimination.

In closing, it seems plausible to argue that at the heart of the State's response to these requests lies a commitment to granting religious freedom in keeping with the constitutional principles (Arts. 3, 8, and 19), (Pizzetti 2001). This institutional commitment to the principle

---

[14] The International Labour Organisation (ILO) Convention (106/1957) on weekly rest at work, made executive in Italy with the Presidential Decree 1660/1961, in particular art. 6, part 4 ("The traditions and customs of religious minorities shall, as far as possible, be respected.").

[15] See for example, Regional Council of Campania—Resolution no. 2221/2003 and no. 809/2004.

of equality and freedom of all religions has been affirmed *qua* independent of the numerical weight of the considered group. It is important to note that, although it has been recognized that compliance with the precepts of an individual's religion—that is, with their own moral obligation—is a constitutive part of human personality, equality, freedom and dignity (and, thus, a crucial component of personal identity), the right to abstention from work on holy/rest days has never been directly accorded to the individual. Its recognition has always been realized through the stipulation of an agreement between the State and the religious group of which the individual is a member[16].

Some Critical Notes

In the light of the historical and legal reconstruction above, we would like to present in this part a few critical considerations aimed at suggesting a general assessment of the Italian State's approach to issues of religious diversity. Our analysis will be mainly devoted to highlighting the elements of tension inherent in the way in which the Italian State has dealt with the problem of accommodating diverse religious groups, in general, and of granting non-discriminatory treatment to religious workers, in particular. In so doing, we do not aspire to provide any normative indication as to how such a complex task may be more fruitfully fulfilled. Our main aim is, rather, to emphasise the shortfalls of the current arrangements and pose some *desiderata* that an alternative course of actions should take into account.

(c) General notes on the institutional approach to religious plurality

On a general note, facing a plurality of religious commitments, sometimes in competition with the political loyalty required from all citizens, institutions may take at least three distinct courses of action in granting religious freedom as well as respecting a basic commitment to non-discrimination:

(α) First, they can direct their policies to the formal protection of individual religious freedom. This typically liberal approach is based on the value of individual negative freedom (in terms of a lack of external constraints on the individual's action). Each citizen must be free to choose her religion, and this choice cannot constitute grounds for discriminating against her and her basic rights in the social and political arena (Barry 2000).

(β) Second, institutions may focus their actions on protecting the freedom of groups to worship. This community-centred approach recognizes that religious groups have intrinsic value, and aims to realize religious freedom in positive terms. Citizens, *qua* members of a certain community, must be enabled to comply with the moral prescriptions deriving from their membership. The commitment to non-discrimination translates here into the recognition of the equality of all religious groups (Parekh 2000), (Taylor 1992), (Kymlicka 1995).

(γ) Third, institutional provisions could be oriented towards protecting the neutrality of the State (*laicité*)[17]. Such a republican principle, on the one hand, grants the neutrality of the public

---

[16] Opinion no. 3000/94 of the second section of the State's Council emphasizes that this is in fact the only procedure authorized by the constitution.

[17] See the French report on "laïcité", "Rapport au Président de la République 11 décembre 2003": http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf (Last accessed: 03/03/2008).

space by protecting it from the "colonisation" of religious beliefs. On the other hand, it offers the same safeguard for all religions, on the presumption that only a neutral and impartial State can assure them equal and non-discriminatory treatment (Laborde 2005, 305-329).

(d) The Italian approach to religious plurality

The Italian republican constitution combines at the same time the underlying principles of these three courses of action, trying to harmonize the potential conflicts between them. In particular, it recognizes (α) the religious freedom of every person as an individual right (arts. 3, 19 of the constitution); and (β) the equal value of all religious groups (Arts. 7, 8 of the constitution), and establishes bilateral agreements as a means of handling relations with them. These provisions (γ) are embedded in a secular framework, though conceived in much weaker terms than those traditionally endorsed by such states as France (Pena-Ruiz 2003 and 2005; Baubérot 2003 and 2007).

The translation of these three principles into distinct but combined political courses of action is meant to allow institutions to recognize the equal social value of all religions and to permit individuals to comply with the moral obligations deriving from their religious commitments, safeguarding the values of freedom, equality and non-discrimination. In greater detail:

(α) The principle of religious freedom is meant to protect all individuals, including non-citizens and those who do not belong to a group that is officially recognized by the State.

(β) Bilateral agreements are meant to prevent the State from making unilateral decisions and taking potentially repressive measures against certain religious groups. Moreover, the very instrument of bilateral agreements has been conceived as a means of implementing the commitment to the recognition of the value, dignity and social specificity of religious groups, allowing these latter to negotiate their requests to address the State themselves, thus shaping their own political identity (without having it imposed on them from above).

(γ) Finally, the mutual recognition of different areas of sovereignty and of the equality of all religions before the law reveals the State's commitment to neutrality (*laicité*) and to religious pluralism.

The relationship between these three lines of action, as well as their joint realization, is far from being free from difficulties. In particular, within the same framework provided by the commitment to secularism, the safeguard of liberal individual rights may be difficult to combine with the attention for group-based specificities.

If the liberal perspective is well grounded in the practices of most European countries, the community-centred approach has attracted increasing attention in recent years (Rawls 1993), (MacIntyre 1981), (Taylor 1994). This last perspective may provide valuable indications on how to manage religious diversity in the public space, going beyond the rather abstemious attitude that liberalism has always had towards it. As Jürgen Habermas has recently argued, the inclusion and recognition of religions in the political arena seems to be an important component of a lively public sphere and nuanced public debate (Habermas 2006). According to Habermas, religious traditions seem to "have a special power to articulate moral intuitions", especially "with regard to vulnerable forms of communal life". For this reason, the liberal state could have an interest in unleashing religious voices in the political public sphere, for otherwise society would cut itself off from key resources for the creation of meaning and identity. Regardless, contributions given by religious citizens should be translated "into a generally accessible language" (Habermas 2006) so as to avoid any risk of confessionalism.

In so doing, religious and secular citizens would undergo a complementary learning process that may allow welcome religious instances in a neutral space. The assignment of such a role to religious discourse may contribute, in Habermas's view, to improving mutual knowledge between the State and different religions, and between religious groups themselves; such knowledge, Habermas's argument proceeds, could then soften possible conflicts as well as create a relationship of mutual trust (Rawls 1999), revealing the relevance of the inclusion of religions in terms of social stability as well.

It is precisely from this perspective that bilateral agreements seem to be fruitful in addressing religious diversity, as they may contribute to granting the neutrality of the State and improving the public visibility of the identity of each religious community, according to its own self-understanding. Indeed, the negotiation and stipulation of bilateral agreements open up an exchange of mutual knowledge that promotes the integration of religious communities in the state, thus recognizing the dignity of their different beliefs. This particular instrument, with its standardised procedure, insures the impartial and equal treatment of diverse religious groups, whose relations with political institutions are thus not merely left to the contingent and varied outcomes of *ad hoc* negotiations. Moreover, as the terms of such requests for political recognition come from below, and are not simply imposed by the State through general law, they seem able to capture the specificity of each religious group, thus allowing it to articulate its self-understanding in the political arena.

(e) Some flaws in the Italian approach

Although such an approach seems to be appealing, its implementation has revealed some flaws, as the historical and legal reconstruction in part I has illustrated. Let us try and revisit its main points.

The first important problem arises in terms of neutrality. As already highlighted, the privileged status of the Catholic Church has constantly risked jeopardizing the constitutional commitment to neutrality. This situation remained untouched until 1984, when "under the influences of social and political change" (Mauro 1987, 522) such a privilege was reduced[18].

The second relevant problem lies in the procedure to stipulate an agreement with the State, as previously described. The very procedure of agreement seems to influence the relationship between the State and religions in such a way as to prefer those religions that are organized in an institutional manner. Indeed, it requires, as a pre-condition of negotiation, the recognition of a religious community as a juridical person and the establishment of ministers of faith as its official representatives.

This problem affects those religions external to the Jewish-Christian tradition, such as Buddhism and Hinduism. These religions have a heterogeneous composition and no hierarchical structure, hence their difficulty in establishing who their ministers of faith are. The latter operation is instead crucial in order to have access to the negotiation procedure leading to the stipulation of an agreement with the State[19]. Requiring such an operation from them may thus appear potentially discriminatory and disrespectful of their inherent specificity.

---

[18] It should in any case be noted that some privileges still remain. See above, footnote 8.

[19] This particular problem seems to have been solved in this case. Representative of the two religions signed an agreement that is awaiting ratification. The obstacle has been avoided recognizing that those religions have global recognition therefore they are consistent with good customs.

A similar problem concerns the Muslim communities. As has already been noted, the most serious difficulty in reaching an agreement with them lies in the fact that the State has to negotiate with a plurality of subjects, where no official hierarchy is established[20]. It is mainly for this reason that although the possibility of stipulating an agreement between the State and Muslim communities has been discussed since 1990, few drafts have been produced so far and this fact is quite relevant if one considers that, due to the increasing number of Muslim immigrants, Islam is now the second religion in Italy, counting at least 700,000 believers. In any case, it should be underlined that, although no explicit and legal recognition has so far been granted, Muslims do benefit from a *de facto* recognition of their worship and of some specific religious claims (e.g. see the law on ritual animal slaughter[21]).

This aspect, whose future relevance emerges clearly if one considers the increasing pluralisation of our societies, reveals another weak point of the instrument of bilateral agreements. The exclusive use of this instrument may lead to discrimination in the treatment and legal recognition of the rights of those groups who have signed an agreement and those who have not. This problem is strengthened by the fact that the signing of an agreement usually requires a considerable amount of time (see section (a) above). Besides being at odds with the commitments to the values of freedom and equality presented respectively in (α) and (β) above, this would be inconsistent with the constitutional provisions (arts. 3, 19), according to which any individual is entitled to the right to religious freedom, regardless of the group she belongs to.

The core of the problem seems to lie in the necessity of striking a balance between the two abovementioned different orientations: a universalistic one, providing for the equal treatment of individuals, regardless of the group to which they belong; and a community-centred one, aiming to recognize the specificities of each group and the differences between them.

(f) Some working indications for the management of religious plurality

The faults in their implementation, the amount of time required for agreements to be signed, and their inherent discriminatory bias against non-hierarchically-structured religions seem to suggest the need for an improvement in such a balance. In order to do so, we would like to devote the remainder of the paper to suggesting a few *desiderata* that we think should be taken into account in any project regarding reform of the current policies for the management of religious diversity.

First, in compliance with the recognition of the equality of all religions, a new definition of the procedure to stipulate an agreement with the State may be advisable, in order to soften its strict procedural requirements and to grant to every religion the possibility of starting negotiations, without imposing on it potentially disrespectful structural transformations.

Second, a better safeguard of individual religious freedom should be granted. Currently, individuals that are not members of a community recognized by an agreement are protected

---

[20] Most of the organizations are in fact "non-recognized", see: http://www.forumcostituzionale.it/site/images/stories/pdf/nuovi%20pdf/Paper/0012_colaianni.pdf. (Last accessed: 03/03/2008)

[21] The Italian government, in order to protect religious freedom, established through a ministerial decree—11 June 1980—a derogation, allowing practices of ritual slaughtering in accordance with religious prescriptions. This decision was confirmed in the agreements between the State and the Jewish community (27 February 1987, law 101/1989; 6 November 1996, law 638/1996). All the following laws on slaughtering recognized this derogation—the last law on the matter is the 333/1998. See http://euroethos.lett.unitn.it/home.php?database&75 (last accessed: 09/03/08).

only by constitutional provisions and by a few disjointed laws[22]. To overcome this problem, it might be worth considering the possibility of collecting all religious-related provisions in a framework law, which may ensure the effective implementation of constitutional articles 3 and 19. Such a law should grant all individuals a basic safeguard of the religion-related rights they are entitled to, regardless of whether they belong to a specific community. In 1997, the parliament started a discussion on a framework law but without success. In 2007, the project was again discussed[23], and many religious communities and associations have been consulted in the meantime. However, the premature termination of the legislature in 2008 brought the process to a further halt.

Up to now, due to the lack of a framework law on religious freedom, the agreements have had to attend to two needs, i.e. the recognition of individual religious freedom (in accordance with α above), and the recognition of the equality of religions (in accordance with β above). A framework law may safeguard individual religious freedom, granting each individual the right to it by virtue of some specific provisions (e.g. the right to have religious assistance in hospitals; the right to have alternative rest days according to religion). Such a law may also make general provisions to assure the equality of all religions, laying out their juridical status and the relationship between them and the State. In the presence of such a framework law, the agreements could well be devoted only to establishing the terms and conditions of some forms of differential treatment accorded, on demand, to certain religious groups (thus focusing on the community-centred approach in β), in order to integrate the general provisions made by the law, should it prove to be necessary.

In this complex scenario, how should the issues of holy and rest days be tackled? Ensuring a general right to rest in accordance with religious prescriptions within a framework law may be a promising solution, insofar as it may safeguard the individual right to religious freedom and affirm in general terms the equality of all religions before the law. In any case, the effective implementation of such a right should be determined by bilateral agreements. Indeed, considering the varied and religious-specific nature of the different requests, some provision for differential treatment must be made. Moreover, although the right could be recognized in terms of the individual, it is important to note that she would only be entitled to it *qua* member of a religious community who demands such a moral obligation in terms of rest/holy days. To sum up, a framework law could establish that each religious community is entitled to ask for differential treatment for its own members in terms of choosing a relevant day of rest. However, to secure its effective implementation, a dedicated agreement with the State seems to be equally necessary.

Conclusion

Issues concerning the establishment of religious-specific days of rest are strictly related to the process of the secularisation of the Italian State and embody a claim for the equal recognition of religions other than Catholicism.

---

[22] Some pre-republican norms (law 1159/1929, Royal Decree 289/1930) on religious freedom and on admitted beliefs are still in force (except the articles referring to the state religion, that were repealed by the Constitutional Court, see sect. Ia); some religious-related provisions are contained also in the penal code (arts. 401-406 and 724, see sect. Ia) and in other laws ruling some specific matters, e.g. the laws on slaughtering (see endnote XX).

[23] See Bill 134/2006, http://www.cesnur.org/2006/spini.pdf (Last accessed: 03/03/2008).

In particular, on the grounds of the moral obligation to abstain from work on days established by the individual's religion and of that to pray and/or rest from work on holy days (i.e. religious celebrations), the claim has been put forward according to institutional procedures as a group request for differential treatment. The claimants requested that religious motives should be included in the bilateral agreements and in employment laws as grounds for making it possible to derogate from the provision that establishes Sunday as the ordinary day of rest.

The requests have drawn on a (nationally and internationally recognized) inalienable right to rest from work, associated with the principle of equality of treatment and free exercise of all religious beliefs.

The legal response to such a plurality of requests has found its expression in the stipulation of individual bilateral agreements between the State and diverse religious groups, thus establishing a limit to the privileged status from which the Catholic Church had traditionally benefited as a crucial component of the Italian *ethos*. In the holy/rest day case, the implementation of the agreements has consisted of including the provisions made by bilateral agreements in collective work contracts.

As we have tried to show, however, such an institutional answer seems to recognize the religion-related right to rest only in terms of the members of those groups that have signed a bilateral agreement, thus risking discrimination against those who did not (or could not) do so.

Although bilateral agreements are valuable instruments, a framework law could solve the shortfalls underlined above, providing the necessary minimal level of safeguard for everyone's individual right to religious freedom and to rest from work on a suitable day.

As suggested at the end of part II, it is our conviction that bilateral agreements and a comprehensive framework law on religious matters are compatible and, if jointly realized, could satisfy the different requirements arising out of the two abovementioned perspectives in terms of a group-based equal recognition of religious specificities, on the one hand, and a universal individual right to religious freedom, on the other. This seems the only way to grant a fully-fledged and all-round equal and non-discriminatory treatment of religious diversity.

The analysis of the Italian case has been conducted in the hope of providing some critical considerations on what we deem to be a promising way of handling religious diversity and reconciling contrasting values in a democracy. The universalistic strains denoting the liberal commitment to negative freedom as well as the republican principle of *laicité* have proved valuable in terms of granting basic rights to individuals and preventing the public political arena from being invaded by specific and parochial requests. Nevertheless, this orientation seems to fail to capture the importance of granting a positive dimension of individual freedom, which is intimately related to the accomplishment of specific group-based religious and moral obligations, whose safeguard requires some kind of differential treatment that would find no place in either a purely liberal or purely republican institutional arrangement.

From this viewpoint, bilateral agreements appear to be valuable instruments, not only in the Italian context. Being flexible and context-sensitive they seem appropriate in recognizing the specificity and value of each religion. Moreover, they seem to provide a valuable method of promoting mutual knowledge and, in so doing, integrating different religious beliefs. For these reasons they may be a profitable complement to a universalistic framework law in handling religious diversity and the related conflicts of values and obligations.

References

Barry, B. *Culture and Equality.* Cambridge: Polity Press, 2000.

Baubérot, J. *Histoire de la laïcité en France.* Paris: PUF: collection Que sais-je ?, 2003.

Baubérot, J. *Les Laïcités dans le monde.* Paris: PUF, collection Que sais-je ?, 2007.

Kymlicka, W. *The Rights of Minority Cultures*. Oxford: Oxford University Press, 1995.

Habermas, J. Religion in the Public Sphere. In Id. *Between Naturalism and Religion*. Cambridge: Polity Press, 2006.

Laborde, C. Secular Philosophy and Muslim Headscarves in Schools. *Journal of Political Philosophy*, 13 (3), 305-329, 2005.

MacIntyre, A. *After virtue*. London: Duckworth, 1981.

Mauro, T. Interventi dello stato in materia religiosa. In *Digesto delle Discipline pubblicistiche.* Torino: UTET, 1987, vol VIII.

Parekh, B. *Rethinking Multiculturalism*. Basingstoke: Macmillan 2000.

Pena-Ruiz, H. *Histoire de la laïcité : genèse d'un idéal.* Paris: Découvertes Gallimard, 2005.

Pena-Ruiz, H. *La laïcité*. Paris : GF Flammarion, 2003.

Pizzetti, F. Le intese con le confessioni religiose, con particolare riferimento all'esperienza come Presidente della Commissione per le intese, delle trattative con i Buddisti e i Testimoni di Geova. In A. Nardini (Ed.). *Dall'Accordo del 1984 al disegno di legge sulla libertè religiosa*. Roma: Dipartimento per l'informazione e l'editoria della Presidenza del Consiglio, 2001.

Rawls, J. *Political Liberalism.* New York: Columbia University Press, 1993.

Rawls, J. The Idea of Public Reason Revisited. In Id. *The Law of Peoples with 'The Idea of Public Reason Revisited'*. Cambridge: Belknap Press of Harvard University Press, 1999.

Taylor, C. The Politics of Recognition. In A. Gutmann (Ed.). *Multiculturalism and the 'Politics of Recognition'*. Princeton: Princeton University Press, 1992.

Department of Philosophy
History and Cultural Heritage
University of Trento
Trento, Italy
E-mails: tizianafaitini@yahoo.it, aleworst@yahoo.it