

Rivista N°: 2/2017
DATA PUBBLICAZIONE: 31/05/2017

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THE PLACE OF MINORITY RELIGIONS AND THE STRATEGY OF MAJOR DENOMINATIONS. THE CASE OF ITALY**

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1. Introduction

Along with other Mediterranean Countries, until few decades ago Italy was a Country of emigration: from the unification of the State in 1861 until the 1970s an impressive number (almost 27 million) of Italian people went abroad desperately seeking for a job. Today around 5 million of people holding an Italian passport still live abroad, where the total number of people of Italian origin, migrants and their descendants, is about 60 millions. Since the 1970s Italy has then become a State of immigration. In the beginning the number of people coming from abroad was modest.¹ It is only in more recent years that human migration from developing Countries has been more visible. As such, this phenomenon has had an important effect on the State's religious geography that, due also to the pressing process of globalization, is now facing a new kind of pluralism.²

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** An abridged version of this article was presented at the International Conference on "Governance and Religion in Europe", organised by the University of Luxembourg and the EUREL Project (Luxembourg 29-30 September 2016).

¹ U. Ascoli, *Movimenti migratori in Italia*, il Mulino, Bologna 1979.

² S. Allievi, *Multiculturalism in Italy: The Missing Model*, in A. Silj (ed.), *European multiculturalism revisited*, Zed Books, London 2010. pp. 147-180.

Before the recent wave of immigration and the process of globalization,³ Italian religious population was pluralistic, but with a number of denominations having a similar (Judeo-Christian) tradition. Today, on the contrary, the neo pluralism indicates the presence of people from very different cultures that, compared to the Judeo-Christian ones, involve distinctive customs, peculiar value systems and unique religious practices.⁴ How has the State's legal system reacted to this new situation?

Many different legislative Acts have dealt with immigration. None of them, however, contain reference to the cultural and religious impact of the immigrant populations.⁵ This is surprising since the debate on new cultures has been violently raised, politically exploited and largely covered by the media. Moreover, many disputes on the pluralisation of Italian society are focused on Islam, even though the Islamic presence in the Country is not as significant as it is in other European States.⁶

Often these debates are primarily based on the way the issues concerning Islam are perceived and felt and not on the actual reality of the situation. For example, the question of religious veils is fiercely questioned, even if few women wearing Islamic scarves actually appear in the Italian cities. Similarly, the discussion about places of Islamic worship, mosques and minarets, is vividly present on the Italian media, even if few visible mosques and no minarets have been built in the Country. The problem of genital mutilations has in some local context been described as a health emergency, long before concrete significant cases have been recorded and investigated by the competent authorities. Not to mention the arguments related to the *burqa*, which has led to the proposition of a law banning it from public schools, even if until now no student has worn a *burqa* in the Country.

³ M.R. Ferrarese, *Prima lezione sul diritto globale*, Laterza, Roma-Bari 2012; M.R. Ferrarese, *Il costituzionalismo globale tra "non luogo" e "dislocazione"*, in «Diritto pubblico comparato ed europeo», 2013, II, p. 440.

⁴ F. Alicino, *Western Secularism in an Age of Religious Diversity*, in «International Review of Sociology», 2014, 22:2, pp. 305-322.

⁵ See the Law no. 943 of 30 December 1986, *Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine* (Provisions concerning the employment and treatment of extra-communitarian immigrants and against clandestine immigration); the Legislative Decree no. 416 of 30 December 1989, better known as the Martelli's Decree (at that time Claudio Martelli was the Vice President of the Council of Ministers of the Italian Republic, who strongly promoted the Decree); the legislative Decree no. 489 of 18 November 1995, the Legislative Decree no. 286 of 25 July 1998, better known as the Turco-Napolitano Law (Livia Turco and Giorgio Napolitano were two Ministers of the centre-left Government, the so-called Prodi's Government, Romano Prodi was the Prime Minister of the Council of Ministers; in the 2005 and in the 2013 Napolitano was elected President of the Italian Republic); the Law no. 189 of 30 July 2002, better known as the Bossi-Fini Law (Umberto Bossi and Gianfranco Fini were two minister of the Berlusconi's Government as well as the leaders of the right-wing political parties called *Lega Nord* and *Alleanza Nazionale*). For a more detailed analysis of these Laws see S. Allievi, *Immigration, Religious Diversity and Recognition of Differences: The Italian way to Multiculturalism*, in «Identities», 2014, 21:6, pp. 724-737; F. Pastore, *Immigration in Italy Today. A community out of Balance: Nationality Law and Migration Politics in the History of Post-Unification Italy*, in «Journal of Modern Italian Studies», 2004, 9:1, pp. 27-48.

⁶ A. Frisina, *Young Muslims' Everyday Tactics and Strategies: Resisting Islamophobia, Negotiating Italianness, Becoming Citizens*, in «Journal of Intercultural Studies», 2010, 31:5, pp. 557-572; C. Bonini and G. D'Avanzo, *Il mercato della paura. La guerra al terrorismo islamico: Inchiesta sull'inganno italiano*, Einaudi, Torino 2006; G. Marranci, *Multiculturalism, Islam and the Clash of Civilizations Theory: Rethinking Islamophobia*, in «Culture and Religion», 2004, 5:1, pp. 105-117.

In brief, all these issues are imported from other Western States where the presence of Islamic organizations has been more long-standing stronger than it is in Italy. In any case, the debate concerning religions is now focused on both Islam and problems that, at the moment, do not always have real (empirical) foundation. On the other hand, with regard to the new Italian religious pluralism, no coherent political and legislative project has been produced yet.

The threat of terrorism, fed by religious fundamentalism, and the fact that the phenomena of immigration and pluralisation of society are relatively recent may partly explain this outcome. Nevertheless, there are also cultural, political and historical specificities of Italy that need to be taken into serious account in order to better understand the approach of the State and the relative authorities in regulating religions and religious questions. One of these specificities refers to the connection between Catholicism (the major religion in the Country) and Italian society.

In the first part of this article I will focus the attention on the peculiar connection among Italian society, national identity and Catholicism. Then I will analyse the legal and political strategies through which the Catholic Church and, to some extent, other confessions (those that have long co-existed in Italy) seek to preserve a special status and the relative privileges. On the other hand, I will investigate the manner in which 'neo' religious groups (which are made up of the recent wave of immigration) operate with a view to improve their legal status, also considering some provisions stated by the 1948 Constitution, including those related to the supreme principle of State secularism (*principio supremo di laicità*), as the Italian Constitutional court has called it. The fact is that, in the light of a current unprecedented religious pluralism, this principle seems to be reflecting in a legal policy based on a 'limited secularism' or, as some have said, a baptised *laicità*. As a consequence, the same legal policy, which seems attractive for some religious groups, is systematically seen as a disadvantage as well as discriminatory towards other communities.

2. Italian Society and Religions

In Italy the Catholic Church still plays an important role in civil society and in politics, as is demonstrated by many empirical indicators, including those referring to the national education system. In this case, the majority of pupils (90% in 2014) are educated at public schools, and about 65% of non-State schools are Catholic. Since 1984, the year in which the 1929 Lateran Pacts between the Kingdom of Italy and the Holy See was renewed,⁷ every student at any level of public education can choose to attend (1 hour per week) the teaching

⁷ On this questions see *infra*, para. 4.

of Catholic religion. In the last years about 88% of the Italian students have chosen to attend this teaching.⁸

Another significant indicator derives from the national fiscal system. According to Article 47 of the 222/1985 Legislative Act, all Italian taxpayers can participate to a sort of 'poll' to allocate 0.008 of their income tax (called *IRPEF*) to one of the following three institutions: the State, the Catholic Church, and one of the religions (other than Catholicism) that have signed an understanding with the State (ex Article 8.3 of the Constitution).⁹ The entire fund – i.e. the overall amount of 0,008 of the *IRPEF* – will then be divided proportionally amongst the choices made by the taxpayers.¹⁰ In 2014, about 7% of taxpayers chose the State, while 37% chose the Catholic Church and 3% other confessions. The remaining 57% of the taxpayers did not sign at all, which means they did not choose any institutions.¹¹

In general, in Italy citizens and non-citizens belonging to non-Catholic communities are between 4.350.000 and 6.450.000: among these believers there are Muslims (about 1.860.000), Orthodox Christian (1.685.000), Protestants (658.377), Buddhists (256.000), Hindus (177.792), and Jewish (42.700).¹² It means that the majority of the population (more than 70%) still identify themselves as affiliated to the Catholic Church.¹³ The fact is that this bound implies different interpretations, diverse meanings, and unique practices. As such, the people's way of being Catholic is reflected into one of the distinctive characteristics of current Italian religious pluralism, which *inter alia* underlines two trends: one outside the Catholic world, the other within this world.¹⁴

2.1. The Italian Way of Being Catholic

As a matter of fact, in Italy only 22% of the Catholics define themselves as religiously convinced and active, while 32% of them are convinced but not always active. 35% of the Catholics adhere to this religion for traditional or educational reasons: they share its funda-

⁸ R. Mazzola, *La religion à l'école en Italie: état des lieux et évolutions*, in J. P. Willaime (ed.), *Le défi de l'enseignement des faits religieux à l'école*, Riveneuve, Paris 2014, pp. 103-120; C. Giorda, *Religious Diversity in Italy and the Impact on Education: The History of a Failure*, in «New diversities», 2015, 17:1, pp. 77-93.

⁹ This Article regulates the kinds of understandings called *intese*. See *infra*, para. 4.

¹⁰ In this manner, even the taxpayers who did not choose any denomination will end up funding one according to the selection made by those who did sign to give their taxes to a religious group or to the State. See F. Alicino, *Un referendum sull'otto per mille? Riflessioni sulle fonti*, in «Stato, Chiese e pluralismo confessionale», 2013, no. 33, http://www.statoechiese.it/index.php?option=com_content&task=view&id=636&Itemid=41 (last accessed 1 November 2016).

¹¹ See http://www1.finanze.gov.it/finanze2/pagina_dichiarazioni/ottoxmille.php (last accessed 1 November 2016).

¹² See Centro Studi e Ricerche IDOS, *Dossier Statistico Immigrazione 2015*, IDOS Edizioni, Roma 2015; P. Zoccatelli and M. Introvigne, *Il pluralismo religioso italiano nel contesto postmoderno*, <http://www.cesnur.com/il-pluralismo-religioso-italiano-nel-contesto-postmoderno-2/> (last accessed 1 November 2016).

¹³ EURISPES, *27° Rapporto Italia*, Istituto di Studi Politici Economici e Sociali, Roma 2016. See also EURISPES, *Italia: superare la sindrome del Palio, passare dal contro al per e trasformare la nostra potenza in energia*, <http://eurispes.eu/content/rapporto-italia-2016-la-sindrome-del-palio> (last accessed 29 August 2016).

¹⁴ F. Garelli, *Flexible Catholicism, Religion and the Church: The Italian Case*, in «Religions», 2014, 4, pp. 1-13.

mental ideas and values, but they interpret them in an autonomous and subjective way. Over the last 20 years there has been a decrease in the number of Catholics who are not always active in religious practices. On the other hand, there has been an increase in the number of those who declare themselves Catholic more as a result of the culture of origin than for religious or spiritual reasons. This sub-groups takes form in a 'religious belonging without believing': they belong to the Catholic Church because with this religion and the relative values they 'feel at home'; at the same time, they do not believe in God.¹⁵

This indicates that in Italy there is a flexible relationship between many people and religion, which is a typical feature of those who value the sense of belonging to the Catholic community for some of its aspects, while interpreting others in a very personal way. But it also shows that the Italian Catholic world is internally differentiated, with many different ways of understanding and viewing this common religious belonging.¹⁶

It is worth pointing out that this situation does not reproduce individualism in belief or the so-called 'religion à la carte', as any person can become the locus of religious authority.¹⁷ Yet the tendency to 'think of oneself' as Catholic is much more widespread than considering oneself unrelated to religious values. In brief, despite uncertain and ambivalent convictions, the majority of the population prefers to declare themselves as 'Catholic' rather than 'without religion'. And this probably explains the limited number of atheists or agnostics.¹⁸ Persons who have no religious affiliation and even the 'nones groups' (the without religion communities)¹⁹ are constantly increasing in many European Countries: they, for example, amount to 35-40% of the population in France, Belgium and Germany. In Italy the corresponding number stands at around 9%, and over the last decades it has shown no particular growth trend.²⁰

¹⁵ Cf. M. Ventura, *Creduli e increduli. Il declino di Stato e Chiesa come questione di fede*, Einaudi, Torino 2014, pp. 14-30.

¹⁶ F. Garelli, *Religion Italian Style. Continuities and Changes in a Catholic Country*, Ashgate, Farnham 2014, pp. 87-115.

¹⁷ R.W. Bibby, *La religion à la carte : pauvreté et potentiel de la religion au Canada*, Fides, Montréal 1988; L. Witham, *Marketplace of the Gods. How Economics Explains Religion*, Oxford University Press, Oxford 2010, pp. 156-158; S. Lefebvre, *Religion in Court, Between an Objective and a Subjective Definition*, in L.G. Beaman, *Reasonable Accommodation. Managing Religious Diversity*, UBC Press, Vancouver-Toronto 2012, pp. 32-51.

¹⁸ Of course, this picture changes in accordance with either the socio-demographic characteristics of the population or the different contexts where people live. The young-adult persons, for examples, identify social categories most characterized by a difficult relationship with the Catholic Church, especially in not accepting various precepts concerning sexual morality. However, this does not mean that among the young generations the orientation to define oneself 'Catholic' and to consider religious faith as a reference point in life does not prevail. On the other hand, it can be seen that the levels of religiosity are higher in the South of Italy than in the other geographical areas of the country; this is due to the greater diffusion in the South of a popular religiosity of ancient origins.

¹⁹ E. Drescher, *Choosing Our Religion. The Spiritual Lives of America's None*, Oxford University Press, New York 2016, pp. 16-52; G.A. Zurlo and T.M. Johnson, *Unaffiliated, Yet Religious: A methodological Demographic Analysis*, in R. Cipriani and F. Garelli (eds.), *Sociology of Atheism*, in «Annual Review of the Sociology of Religion», 2016, pp. 50-75; R.T. Cragun, B. Kosmin, A. Keysar, J.H. Hammer and M. Nielsen, *On the Receiving End: Discrimination toward the Non-Religious in the United States*, in «Journal of Contemporary Religion», 2012, 27:1, pp. 105-127.

²⁰ F. Garelli, *Flexible Catholicism, Religion and the Church: The Italian Case*, above n. 14.

In sum, in Italy many people consider religion as a point of reference in terms of ideas and values and not for daily and family life. This clarifies the low attendance to ordinary religious practises (Sunday worship service, private and corporate prayer, study and reading of the Scriptures, etc.), while there is a widespread tendency to focus attention on the great religious events involving the Catholic Church (the World Youth Days, the proclamations of Saints, the PopÈs visits to local dioceses, the commemoration of charismatic religious figures).

Finally, it should be noted that the vast majority of Italians participate in religious rites of passage (baptisms, church weddings, religious funerals), often seen as solemn celebrations of the most important moments in a person's life as well as in the life of the local and national community. This justifies why many Italians continue to see in religion an important resource for their existence, especially when facing the negative moments encountered in human experience. Instead, ideas denying the importance of religion in the present day are normally rejected. In other words, popular feasts, celebrations marking important stages of one's own existence, and religious events still attract many people. Conversely, an important part of the Catholic world normally deserts parishes in everyday life. Here is one of the paradoxes of Italian Catholicism: it is still able to fill the public squares, whereas the churches remain substantially empty.

Now, it is important to underscore that this situation is also a result of the unique historical process, which has left significant traces in the Country's religious identity. As such, it has strongly influenced the way the State governs religious issues, including those related to cultural pluralism, on which the immigration phenomenon is now playing a crucial role.

2.2. The Major Religion and Italian Politics

In Italy the presence of non-Catholic religions was in the past mostly limited to small Jewish communities in some main cities and the Waldensians in some Western Alpine valleys. Catholicism was one of the few common traditional characteristics of a Country that, otherwise, was divided by languages, cultures, and socio-economic conditions. Thus, after the Kingdom of Italy was formally unified (1871), with a weak national identity, and despite the opposition of the ecclesiastical hierarchy to that unification, religious belonging was one of the few elements through which many people recognised themselves as Italians. And this, of course, ended up influencing the Italian politics.

It is safe to say that during what was called the First Republic (1946-1993) the Christian Democracy (CD) – a Catholic-inspired political party that ruled the Country from 1948 to 1993 – embodied the relationship between Italians and Catholicism. But again that relationship took shape in different forms, which did not always coincide with the proposals made by the ecclesiastical hierarchy and the CD's leadership. This was very well demonstrated by the social and political changes of the 1960s and the 1970s, when many Italian Catholics supported legislative reforms in some gender-sensitive issues, such as divorce and abortion. As a matter of fact, these practices were legalized by specific Laws, which were submitted to national referendums by the CD party with the important operative support of the ecclesiasti-

cal hierarchy: Italians were thus requested to strike down those Acts. However, the majority of the electorate, including many Catholics, rejected these request.²¹

After the Second World War the Catholic Church retained its legal status, which was reflected into its political prestige and influence, as confirmed by Article 7 of the 1948 Constitution²². However, this Constitution was not meant to be a Constitution of a Catholic State. From a political, social and (to some extent) legal point of view, Catholicism was still there and it remained the major religion in Italy. Yet the 1948 Charter was also, if not predominantly, based on fundamental freedoms, human rights, principle of equality, and cultural-religious pluralism that, in the end of the day, was also (and still is) an important characteristic of the Catholic community.

The collapse of the First Republic as a result of a series of public corruption scandals, better known as *mani pulite* (clean hands),²³ led to the end of the Christian Democratic party, which split into small new political parties, while many of its leaders positioned themselves as members of the old ones.²⁴ Since then the Catholic Church has lost one of the most privileged points of reference in politics. However, the relationship between religion and politics in Italy is not limited to the existence of Catholic-inspired parties. As we saw, it implies other dimensions, such as the Holy See's direct intervention in the Country's political and legal vicissitudes, as demonstrated by the first Italian Law (no. 40/2004) on assisted conception.

Originally – that is before the decisions of both the Constitutional Court's and the European Court of Human Rights –²⁵ this Law banned access to treatment for reason other than diagnosed clinical infertility. It banned, for example, any form of treatment with the donated gametes, cryopreservation of embryo, embryo experimentation therapeutic cloning, both in the public and in the private sector. On the other hand, the Law allowed three embryos to be treated at the time, all of which had to be implanted even if graded of poor quality. In June 2005, with the intent to reverse those bans, a referendum to modify the 2004 Law's most controversial dispositions was instituted. But this referendum had to be called void, as the quorum (50+1% of the Italian electorate) was not reached; only 26% took part in

²¹ E. Lecaldano, *Cattolica, morale della Chiesa*, in E. Lecaldano (ed.), *Dizionario di bioetica*, Laterza, Roma-Bari 2015; F. Garelli, *L'Italia cattolica nell'epoca del pluralismo*, il Mulino, Bologna 2006, pp. 135-146; G. Scirè, *Il divorzio in Italia. Partiti, Chiesa società civile dalla legge al referendum*, B. Mondadori, Milano 2007; G. Scirè, *L'aborto in Italia. Storia di una legge*, B. Mondadori, Milano 2008; C. Dau Novelli, *Le trasformazioni della famiglia, identità*, Rubettino, Soveria Mannelli 2003, pp. 283-296.

²² As we will see, Article 7 of the Constitution was considered as an instrument that was meant: 1) to protect both the State and the Catholic Church, as two independent and sovereign entities; 2) to secure the Lateran Pacts, approved during the fascist regime in 1929, and to pave the way for their reform at the more convenient time.

²³ *Mani pulite* was a nationwide judicial investigation into political corruption held in the 1990s. The corrupt system uncovered by this investigation was also referred to as *Tangentopoli*. See M. Damilano, *Eutanasia di un potere. Storia politica d'Italia da Tangentopoli alla Seconda Repubblica*, Laterza, Roma-Bari 2013; A. Carlucci, *1992 L'anno che cambiò tutto*, Baldini & Castoldi, Milano 2015; G. Colombo, *Lettera a un figlio su Mani pulite*, Garzanti, Milano 2015.

²⁴ S. Colarizi and M. Gervasoni, *La tela di Penelope. Storia della Seconda Repubblica*, Laterza, Roma-Bari 2014.

²⁵ See G. D'Angelo, *Diritto ecclesiastico e legalità convenzionale. Laicità e libertà religiosa tra Italia e Corte di Strasburgo. Casi e questioni*, Giappichelli, Torino 2016, pp. 238-262.

the voting. Many have suggested that the low attendance was due to the Catholic Church, whose hierarchy strongly endorsed the call to boycott the referendum.²⁶

It should be also noted that today, along with many Italian political parties, the Catholic Church is an institution that do not always enjoy the greatest level of trust in the Country. This seems to be mainly due to some recent scandals involving the Church, such a corruption, investigative report on the Vatican Bank²⁷, and the clergy sexual abuse cases.²⁸ These episodes are supporting the idea that in Italy the Catholic Church holds too much power, enjoys undue advantages and has an invasive presence in the political sphere. This is an idea that is further reinforced in the light of current religious panorama.

3. Italy's Neo Religious Pluralism

In the last years immigration and globalization have favoured transnational cultural exchanges, making it easier for Italians to have access to other doctrines. In addition, these processes have sustained the gradual development of individualization and privatization in religious belief, practice and belonging. It explains why many Catholics see now religion from a more intimate point of view, preferring to follow their own ideas on faith, even though they conflict with the Church's official orthodoxy. If we consider that these phenomena are situated in an increasingly secularized context, where religion plays a diminishing role within civil society, it becomes clear that the role of the Catholic Church is weaker and less rooted than superficially thought.²⁹

This, however, does not mean that the Church has no role within Italian society: Catholicism in general and the Roman Church in particular remain some of the most important religious reference points in Italy. Moreover, to talk about the relationship between religion and politics in the Country is still necessary to understand the complex connection that exists between Catholicism and Italy's population. This is relevant, for example, for a better understanding of Italian people's attitudes and behaviour with respect to some serious issues, including the persistent development of immigration.

It is no coincidence that the presence of Catholic institutions in Italy have important effects on the integration of immigrants coming from abroad, exactly as they had from the 1950s to the 1980s, a period of a sustained internal migration, mainly due to the traditional North–South cleavage. The key roles played by some Catholic organisations (such as Cari-

²⁶ See A. Barenghi (ed.), *Procreazione assistita e tutela della persona. Atti del Convegno di Roma, 30 maggio 2001*, CEDAM, Padova 2011; F. Buzzi, G. Tassi, *La procreazione medicalmente assistita. Normativa, giurisprudenza e aspetti medico legali*, Giuffrè, Milano 2011.

²⁷ This Bank is better known as IOR (*Istituto per le opere religiose*).

²⁸ G. Nuzi, *Via crucis*, Chiarelettere, Milano 2015; G. Fittipaldi, *Avarizia*, Feltrinelli, Milano 2015; M. Politi, *Joseph Ratzinger. Crisi di un papato*, Laterza, Roma-Bari 2013; M. Teodori, *Vaticano rapace. Lo scandaloso finanziamento dell'Italia alla Chiesa*, Roma, Marsilio 2013; C. Maltese, *La questua. Quanto costa la Chiesa agli italiani*, Feltrinelli, Milano 2008.

²⁹ F. Garelli, *Flexible Catholicism, Religion and the Church: The Italian Case*, above n. 14; F. Alicino, *Western Secularism in an Age of Religious Diversity*, above n. 4, pp. 305-322.

tas, Sant'Egidio Community, Christian Associations of Italian Workers-ACLI, several missionary orders and local parishes) are clear examples of that. These institutions have factually helped many immigrants at all levels. Furthermore, in these cases people practising different creeds have in a way or another discovered a common religious grammar. And, in doing so, they have mitigated the harmful effects of the Italian legal system, which is often incapable of successfully addressing the problems related to immigration and the new religious pluralism.

The fact that some components of the Catholic world, including high media-visibility figures and distinguished members of the ecclesiastical hierarchy, have expressed critical opinions about immigrants and the recent pluralism in Italy does not contradict this evidence. It only shows that, just like the secular segments of Italian society, Catholicism is internally divided over cultural and religious diversity. And it is even more so particularly when debating on Islam and the role of Islamic organizations within the Country. Therefore, in this case we should ask ourselves why in Italy the questions relating to immigration and cultural-religious pluralism are almost always focused on Islam.

3.1. Why Islam?

The mentioned debates (concerning veils, mosques, minarets, female infibulation, etc.), together with the issues related to terrorism and fundamentalism, seem to be the symptom of the imaginary of Islam in Italy. In the last decades the changes within Italian society are even more traumatic and the issues to face even more decisive than those related to the presence of Muslims and Islamic groups in the Country: in any case, these changes do not involve only Islam and Muslims. Nevertheless, given its specificity (especially when compared to religions that have long been present in Italy) and its problematic history (which currently implies the emergence of transnational fundamentalism and terrorism), Islam highlights the most striking aspects of the Country's neo cultural-religious pluralism: it indicates and signals the pluralisation of Italian society.³⁰

Islam has in other words become the discursive substitute for religious and cultural pluralism, which implies other sensitive matters that, in a way or another, are correlated to this religion: gender roles, clothing codes, family models, the relationship between religion and politics, the role of religions within a democratic system, the rights and duties of the major religion, the rights and duties of religious minorities. So, in the light of these issues, Islam has become the most extreme example of 'other' religions, other than traditional ones.³¹

As said before, religious pluralism is not a recent phenomenon in Italy, since various religious minorities have long been present on the national scene, and are characterized by

³⁰ S. Allievi, *Immigration, Religious Diversity and Recognition of Differences: The Italian way to Multiculturalism*, above n. 5, pp. 724-737.

³¹ F. Alicino, *Imams and other Religious Authorities in Italy*, in «Stato, Chiese e pluralismo confessionale», 2015, 1, http://www.statoechiese.it/index.php?option=com_content&task=view&id=726&Itemid=41 (last accessed 1 November 2016).

their active and dynamic existence not only at a national level, but also within some territorial areas. The long established communities – such as the Evangelicals, the Jews, and the Jehovah's Witnesses – make up part of the picture of a Country that is historically marked by a strong Catholic tradition. Moreover, some of these groups have often enjoyed a level of public consideration far superior compared to their numerical importance. Today, however, under the pressing rush of immigration, in Italy there are many religious groups introducing different cultures and holding different worldviews. This is exactly the case of Islam(s).

With the continuous flow of foreign immigrants into Italy, particularly from North Africa and Eastern European Countries, the composition of minority religions is changing. In this new context, Islam is becoming Italy's second religion (after Catholicism). This is because Islam has a substantial following among the foreign immigrants, who find in religion not only a bond with their culture of origin, but also an important factor in the fight for their (individual and group) rights, including those stated in the Italian Constitution. But, and at the same time, it should not be forgotten that this is happening in a Country where the laws regulating the relationship State-religions is usually based on the Catholic Church's needs and the needs of a few confessions of a similar tradition or that have long co-existed with this tradition.

4. Italy's Legal Policy. The Strategy of Major Religion

In Italy the laws regulating the religious issues, including the relationship between the State and confessions, has been strongly influenced by the traditional role played by the Catholic Church. This has been evident since Italy has become an independent Country, in the second half of nineteenth century. It is true that the unification of the State in 1871 abolished the secular-territorial power of the Catholic Church, which generated the hostility of the ecclesiastical hierarchy towards the new political entity³². However, it is also true that the predominantly moderate policy of the Italian Kingdom made the relations with the Catholic authorities progressively less tense; and that was even more evident during the fascist regime.³³ The 1929 Lateran Pacts represented the historical turning point towards this trend. It is not by chance that these Pacts were considered a law framework to reconcile the two parties, the Roman Catholic Church and the Kingdom of Italy.³⁴

While rebuilding the relationship State-Kingdom, the 1929 Pacts marked a specificity of the State's laws regulating the freedom of religion, which implies the freedom – i.e. autonomy – of religious organizations. Since the Pacts were approved, in Italy the State has been

³² F. Margiotta Broglio, *Italia e Santa Sede dalla grande guerra alla conciliazione*, Laterza, Roma-Bari 1966; R. Pertici, *Chiesa e Stato in Italia. Dalla Grande Guerra al nuovo Concordato. Dibattiti storici in Parlamento*, il Mulino, Bologna 2009.

³³ A. Ferrari, *The Italian Accommodations. Liberal State and Religious freedom in the "Long Century"*, in L. Derocher, C. Gélinas, S. Lebel-Grenier and P. C. Noël (eds.), *L'État canadien et la diversité culturelle et religieuse 1800-1914*, Presses de l'Université du Québec, Québec 2009, pp. 143-153.

³⁴ See F. Ruffini, *Corso di diritto ecclesiastico. La libertà religiosa come diritto pubblico subiettivo*, F.lli Bocca, Torino 1924; A.C. Jemolo, *Chiesa e Stato negli ultimi cento anni*, Einaudi, Torino 1971.

considered 'secular', but only in a relative sense of the term. This is evident by the fact that those Pacts established a pro-active role for the Catholic Church in affirming the State's legislation regulating some rights, especially those related to religion. More importantly, the Pacts started a specific method of collaboration State-Church(es)³⁵ that, since the 1948 Constitution entered into force, has partially been extended to denominations other than Catholicism.³⁶

This result has been made possible thanks to Articles 7 and 8 of the 1948 Charter that, from this point of view, yet again underlines the historical bonds between the State and Catholicism.³⁷

Article 7 of the Constitution is devoted to the relationships between the State and the Catholic Church, whose organization is considered as an Italian prototype of religious denomination.³⁸ In particular, Article 7 establishes the mutual independence and sovereignty of both the State and the Church. Albeit less strong, this principle is also affirmed in Article 8.2 of the Constitution, which guarantees the free organization of denominations other than Catholicism.

At the same time, Article 7.2 declares that the relationships State-Church are regulated by the Lateran Pacts and that any change to these Pacts, when accepted by both parties, does not require the procedure of constitutional amendments.³⁹ It means that, when there is a bilateral agreement, a legislative (not constitutional) act is sufficient in order to amend the 1929 Pacts and regulate the connection between the State and Catholicism. Another point of reference for the method of bilateralism is Article 8.3 of the Constitution, which affirms that legislative acts regulate the relationships between minority religions and the State.⁴⁰ But these acts must be based on *intese*, which literally can be translated into 'understanding' between State and religious denominations.⁴¹

Once the Italian Government and the representatives of a given religion have signed an agreement (Article 7.2) or an *intese* (Article 8.3), these two documents need to be ratified (agreement) or approved (*intese*) by specific acts of the Italian Parliament. Concerning the

³⁵ P. Floris, *Laicità e collaborazione a livello locale. Gli equilibri tra fonti centrali e periferiche nella disciplina del fenomeno religioso*, in «Stato, Chiese e pluralismo confessionale», 2010, http://www.statoechiese.it/index.php?option=com_content&task=view&id=326 (last accessed 1 November 2016).

³⁶ C. Cardia, *Concordato, intese, laicità dello Stato*, in «Quaderni di diritto e politica ecclesiastica», 2004, 1, p. 30; N. Colaiani, *Confessioni religiose e intese*, Cacucci, Bari 1990, p. 97.

³⁷ Devoted to the relationships between the State and religious denominations, these Articles are included among the 'Fundamental principles' (Articles 1-12) of the Italian Constitutions and, consequently, commonly held as unchangeable. On the contrary, Articles 19 and 20 of the same Constitution deal with freedom of religion as an individual right (not necessarily connected with its institutional-collective dimension). They are placed in the part of the Constitution concerning the Civil relations (Articles 13-28).

³⁸ N. Colaiani, *Diritto pubblico delle religioni. Eguaglianza e differenze nello Stato costituzionale*, il Mulino, Bologna 2012, p. 137.

³⁹ This procedure is provided by Article 138 of the Constitution.

⁴⁰ G. Bouchard, *Concordato e intese, ovvero un pluralismo imperfetto*, in «Quaderni di diritto e politica ecclesiastica», 2004, pp. 70-71; G.B. Varnier, *La prospettiva pattizia*, in V. Parlato and G.B. Varnier (eds.) *Principio pattizio e realtà religiose minoritarie*, Giappichelli, Torino 1995, pp. 8-13.

⁴¹ G. Casuscelli, *La rappresentanza e l'intesa*, in A. Ferrari (ed.), *Islam in Europa/Islam in Italia tra diritto e società*, il Mulino, Bologna 2008, p. 304.

recent relationships between the State and the Catholic Church, on 18 February 1984 the State and the Holy See signed an agreement, which was then ratified by the Italian Parliament (Law no. 121/1985).⁴² This Law is an 'atypical legislation' because, once it enters into force, it can be amended only on the basis of a new agreement between the State and the Church: no amendment based on a unilateral legislation made by the Parliament is possible. The same can be said about a legislative act approving an *intesa*: this act can only be changed via another legislative act on the basis of another understanding between the State and the confession concerned. In this manner, the Catholic Church and some other religious denominations (those that have signed an *intesa*) have the guarantee that their legal status, benefits and privileges cannot be altered without considering their will.⁴³

For all these reasons, the Country's traditional denominations particularly support the method of bilateralism. Clearly, this method represents a legal part of the Catholic Church's strategy to preserve its special status and privileges within the State. The other elements of this strategy are based on political, historical and social discourses that, as seen before, tend to underscore the ancient connection between Italy and Catholicism.

4.1. The Place of Minority Confessions

As far as minority religions are concerned, the method of bilateralism generates two main problems. First, it presupposes a relatively comprehensive religious institution capable of representing a denomination at the national level; this is a requirement that proved to be problematic for some denominations, such as those referring to Islam.⁴⁴

The second problem is generated by the excessive amount of discretion that the Government possesses in deciding whether to accept or reject the proposal made by a denomination to enter into negotiations for concluding an *intesa*. In this case, the attention is particularly focused on the 52/2016 decision of the Italian Constitutional Court, which establishes that the Government's refusal to open negotiation concerning *intesa* is a 'political act'. As such, this act cannot be subject to judicial review. This in practice means that the Government can freely decide which religion is entitled to sign an *intesa* with the State: on this matter, there is no legal limitation on the Government's power and discretion. Which risks being transformed into discrimination against some religious minorities.⁴⁵ This danger is emphasized in the light of the principles stated in Articles 8.1, 19 and 20 of the Italian Constitution, under which:

⁴² M. Ventura, *Creduli e increduli. Il declino di Stato e Chiesa come questione di fede*, above n. 15, p. 30.

⁴³ S. Ferrari, *Il Concordato salvato dagli infedeli*, in V. Tozzi (ed.), *Studi per la sistemazione delle fonti in materia ecclesiastica*, Edisud, Salerno 1993, p. 127.

⁴⁴ C. Decaro Bonella, *Le questioni aperte: contesti e metodo*, in C. Decaro Bonella (ed.), *Tradizioni religiose e tradizioni costituzionali. L'islam e l'Occidente*, Carocci, Roma 2013, p. 34.

⁴⁵ F. Alicino, *La bilateralità pattizia Stato-confessioni dopo la sentenza n. 52/2016 della Corte costituzionale*, in «Osservatorio sulle fonti», 2016, 2, [file:///Users/francescoalicino/Downloads/OSF_2_2016%20Alicino%20\(3\).pdf](file:///Users/francescoalicino/Downloads/OSF_2_2016%20Alicino%20(3).pdf) (last accessed 1 November 2016).

- all religious denominations are equally free before the State's law;
- all confessions and the relative members have the right to profess freely their religious faith in any form, individually or in association, to disseminate it and to worship in private or public;
- the religious character or the religious aim of some associations or institutions cannot justify neither special legal limitations nor greater fiscal tax for their constitution, status or any of their activities.

But such legal antinomies are even more evident when one refers to the prior decisions of the same Court that, since 1989, has placed secularism (in Italian *laicità*) among the supreme principles of the State's constitutional system (*la laicità è uno dei principi supremi dell'ordinamento costituzionale*).⁴⁶ It is a result of the combined interpretation of various constitutional provisions, which do not imply indifference towards religions, but equidistance and impartiality towards different denominations.

In other words, the supreme principle of *laicità* is based on the prohibition of unreasonable discriminations as well as the State's positive attitude towards all religious communities.⁴⁷ This means that, compared to the previous (fascist) regime, there can no longer be an unreasonable (not-constitutionally based) distinction between not only the Catholic Church and other denominations, but also between the minority religions that have signed an *intesa* and those that do not possess any understanding yet⁴⁸. Nonetheless, the practical implementation of these constitutional principles – including the supreme principle of *laicità* – has revealed many interconnected difficulties, especially in relation to the method of bilateralism and in the light of the neo religious pluralism.⁴⁹

One of these difficulties is due to the fact that both Article 7.2 and Article 8.3 of the Constitution are used by the State to award to some confessions a set of rights, benefits and privileges. In this way, questions related with the fundamental rights can become matter of specific accords subject to the will of selected confessions and the Italian Government which, as stated by the 52/2016 Decision of the Constitutional Court, has a great discretion on this field. And this is not all.

⁴⁶ See the following decisions of the *Corte costituzionale*: no. 203/1989; no. 259/1990; no. 13/1991; no. 195/1993; no. 421/1993; no. 334/1996; no. 329/1997; no. 508/2000; no. 327/2002.

⁴⁷ N. Colaianni, *Laicità: finitezza degli ordini e governo delle differenze*, in «Stato, Chiese e pluralismo confessionale», 2013, 39, http://www.statoechiese.it/index.php?option=com_content&task=view&id=643&Itemid=41 (last accessed 1 November 2016); G. Dalla Torre, *Ancora sulla laicità. Il contributo del diritto ecclesiastico e del diritto canonico*, in «Stato, Chiese e pluralismo confessionale», 2014, 4, http://www.statoechiese.it/index.php?option=com_content&task=view&id=656&Itemid=41 (last accessed 1 November 2016).

⁴⁸ V. Tozzi, *Le confessioni religiose senza intesa non esistono*, in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino*, Giappichelli, Torino 2011, p. 1033.

⁴⁹ F. Finocchiaro, *Diritto ecclesiastico*, updated by A. Bettetini, G. Lo Castro, Zanichelli, Bologna 2012, p. 229; A. Bettetini, *Commento all'art. 20 Cost.*, in R. Bifulco, A. Celotto and M. Olivetti (eds.), *Commentario alla Costituzione*, UTET, Torino 2006, I, p. 441; M. Ricca, *Art. 20 della Costituzione ed enti religiosi: anamnesi e prognosi di una norma "non inutile"*, in *Studi in onore di Francesco Finocchiaro*, CEDAM, Padova 2000, p. 1557; P. Di Marzio, *L'art. 20 della Costituzione. Interpretazione analitica e sistematica*, Giappichelli, Torino 1999, p. 12; S. Fiorentino, *Gli enti ecclesiastici e il divieto di discriminazione*, in G. Casuscelli (ed.), *Nozioni di diritto ecclesiastico*, Giappichelli, Torino 2006, p. 57.

The situation is made worse by the fact that in the last thirty years the practical implementation of Article 8.3 of the Constitution has been characterized by the phenomenon of the so-called 'photocopy understandings' (*intese fotocopia*), that is to say by the substantial similarity of all *intese* (twelve) that have been signed by few minority religions until now.⁵⁰ As a result, these *intese* have established a *de facto* common legislation, which is far from being considered general legislation:⁵¹ this legislation is common to those religious denominations that have signed an understanding, but it cannot be applied to other confessions that do not have an *intesa* yet.⁵² Here is the reason why minority religions see Article 8.3 more as an instrument of political-legal legitimation than as a legal opportunity to enjoy their religious freedom, which implies the possibility to express their specific identities and needs.⁵³

To this respect, it should be recalled that there is no formal procedure of using Article 8.3, which can turn the discretionary power of the Government into unreasonable (not-constitutionally based) discrimination towards religious denominations excluded from the common legislation based on *intese*. These denominations remain in effect subject to the 1929 Law (no. 1159) on 'admitted religions' that, approved during the fascist regime, legitimize an even greater discretionary power by the Italian Government.⁵⁴ On the contrary, religious groups possessing an understanding with the State are no longer subject to the 1159/1929 Law, whose provisions are entirely replaced by those (more favourable) affirmed in the legislative act approving an *intesa*.

It is not without a reason that when this bilateral-common legislation procedure was extended (in 2012) to some very 'new' religious organizations – which more than others mark their difference from the Catholic Church – very complex judicial disputes came out. A telling example is the agreement between the State and the Italian Buddhist Union (UBI), whose provisions have produced intricate legal paradoxes, alimented by the 'strangÈ relationship between the common legislation based on *intese* and the 1929 Law on admitted religions.

With the aim to celebrate religious marriage with civil effects, on 9 June 2009 two *dharma* masters of the Temple of *Shōbōzan Fudenji*, a Buddhist organization that is member of the UBI, requested to be recognised by the State's authority. In accordance with the provisions of the 1929 Law and after a long administrative dispute, the Italian Minister of Interior appointed (January 2013) these *dharms* as religious ministers. But twenty days later an *intesa* between the State and the UBI association entered into force, replacing the 1929 Law

⁵⁰ See http://presidenza.governo.it/USRI/confessioni/intese_indice.html (last accessed on 1 November 2016).

⁵¹ V. Crisafulli, voce *Fonti del diritto (dir. cost.)*, in «Enciclopedia del diritto», 1968, XII, p. 948. M. Ricca, *Legge e Intesa con le confessioni religiose: sul dualismo tipicità-atipicità nella dinamica delle fonti*, Giappichelli, Torino 1996, p. 25; F. Carnelutti, *Teoria generale del diritto*, Soc. ed. del Foro italiano, Roma 1951, p. 42.

⁵² B. Randazzo, *Diversi ed eguali. Le confessioni religiose davanti alla legge*, Giuffrè, Milano 2008, p. 21.

⁵³ See F. Alicino, *La legislazione sulla base di intesa. I test delle religioni "altre" e degli ateismi*, Cacucci, Bari 2013, pp. 93-108.

⁵⁴ According to the 1929 Law, the Minister of Interior will take into consideration the assets of the denominations or religious entity that claims recognition. For example, it will take into account the number of the claimants' members and how widespread they are in the country; the compatibility between the claimants' statute and the main principles of the Italian legal system; the aim of the denomination that claim to be recognised by the State, an aim that has to be "prevalently" of religion and cult.

that, in respect to all members of that association, could no longer produce legal effects. This means that the *dharma* masters were not considered any more as religious minister under the 1929 Law. They could acquire the status of religious ministry by the norms of the 2013 agreement: it seemed, then, that from the *dharma*'s point of view it did not matter at all whether or not the 1929 Law was effective. However, that was not the case. The 2013 *intesa* does not provide any rule regulating the religious marriage with civil effect; which, as said before, is the main (if not the only) reason for the *dharma* masters to want to be appointed by the State. So, since the 2013 agreement entered into force, the marriage celebrated by those masters can no longer have any civil effect, unless the Temple of *Shôbôzan Fudenji* chooses not to be part of the UBI association and to re-submit itself and its members to the less favourable provisions of the 1929 Law. Whatever be the choice, this example is quite revealing that the Italian legislation regulating State-confessions relations does not always meet the needs of 'new' (i.e. very different) denominations, within which both the model of the 'traditional Church' rarely have corresponding components.⁵⁵

It should also be noted that the 1159/1929 Law was designed to regulate the traditional denominations other than Catholicism. These are minority denominations whose notion was based on Italy's religious geography of the first half of twentieth century: a geography that, under the pressing process of immigration and the elusive phenomenon of globalization, has now been modified.⁵⁶ It explains why the provisions of the 1159/1929 Law do not always meet the needs⁵⁷ of those religious communities whose presence in Italy is relatively recent, as is the case of the Islamic organizations.⁵⁸

Having said that, it is important to underscore that one of the barriers to the use of Article 8.3 of the Constitution is not the peculiar characteristic of Islam and Muslim groups. Quite the contrary, one of the biggest obstacles is that in Italy many Islamic communities are not recognised as religious creeds. So, they have no possibility not only to sign an *intesa*, but also to establish any connection with the State's legal system.

4.2. Italy's Limited Secularism

In Italy any community with religious aims can operate within the State, without authorization or prior registration. The only limit is based on the protection of public order and common decency. In theory, Islamic groups may thus choose among various types of legal capacity.⁵⁹ In practice, these groups are normally regulated by the general legislation con-

⁵⁵ F. Alicino, *Lo strano caso dei ministri di culto buddhisti. Ovvero la legge sui culti ammessi vs la legge di approvazione delle intese*, in «Quaderni di diritto e politica ecclesiastica», 2013, 2, pp. 409-429.

⁵⁶ J. Laurence, *Managing transnational Islam: Muslims and the state in Western Europe*, in A. Craig Parsons and M. Timothy Smeeding (eds.), *Immigration and the Transformation of Europe*, Cambridge University Press, Cambridge 2006, pp. 252-273.

⁵⁷ V. Ahmad 'Abd Al Waliyy, *L'Islam e lo Stato in Italia*, in S. Di Bella and D. Tommasello (eds.), *L'Islam in Europa. Tra Passato e futuro*, Pellegrini, Cosenza 2003, p. 33.

⁵⁸ S. Allievi, *Immagini di un Islam plurale*, in «Humanitas», 2000, 55, pp. 858-873.

⁵⁹ L. Paladin, voce *Ordine pubblico*, in «Noviss. Digesto it.», XII, 1965, p. 130.

cerning association in its double version: recognised and non-recognised associations.⁶⁰ This means that in Italy Muslim communities are not only excluded from some important privileges (like those established by both the *intese* and, with the mentioned problems, the 1159/1929 Law⁶¹), but also from the possibility to be legally recognised by reasons of their religious aims. They can only enjoy the legal benefits guaranteed to all other private associations, which are irrespective of religious connotations.⁶²

Now, whatever ideas one may hold about Islam, one can still infer that in Italy many, if not all, Islamic groups may be defined as religious denominations. And if it is true, these groups can sign (at least potentially) an *intesa* with the State, in accordance with the principles of the Italian Constitution. Some Muslim organizations have in fact tried to engage forms of cooperation with the State, promoting negotiations with the Italian Government in order to sign an *intesa*. This is the case of *UCOII* (Union of Islamic Communities and Organizations in Italy) that, only two years after its establishment (1990), publicly manifested that intention, issuing a draft agreement and sending it to the Government. The same attempt was made by other Islamic organizations, like the Association of Italian Muslims (1994) and the Islamic Italian Community (1996).⁶³ All these efforts, though, have not been taken into consideration by the Italian public authorities that, instead of using the section 3 of Article 8 of the Constitution, have chosen other instruments for regulating the relationship with Islam.

For example, in 2005 the Italian Minister of the Interior established the Consultative Council for Islam in Italy (*Consulta per l'Islam italiano*)⁶⁴. In the following years, the Council issued documents that aimed at reaffirming the values of a secular State and religious freedom as well as encouraging the creation of a federation of Islamic groups.

Likewise, in 2010 the Minister of the Interior established a Committee for Islam in Italy (*Comitato per l'Islam Italiano*). Made up of 19 members, this Committee included not only

⁶⁰ They, for example, may constitute themselves as 'non-recognized associations' (Article 36-38 of the Italian Civil Code): also used by political parties and trade union organizations, this is the simplest model of association that does not provide particular control from the State's authorities. They can also choose the form of 'recognized associations', which provides legal personality through registration at the local Prefecture (Articles 14-35 of the Civil Code and the 2000 decree of the President of Italian Republic (no. 361)). The legal capacity of an Islamic organization may finally be obtained via Article 16 of the Provisions on law in general (*Disposizioni sulla legge in generale*) that, based on the principle of reciprocity, may grant foreign Muslim organizations the same rights guaranteed to the Italian legal bodies.

⁶¹ The Italian Centre of Islamic Culture (*Centro Islamico Culturale d'Italia*) is only Islamic organisation that is not an association and that, in accordance with the 1929 Act (no. 1159), has been recognised as a religious legal entity. See the decree of the President of the Italian Republic, 21 December 1974. On this point see A. Ferrari, *Libertà religiosa e nuove presenze confessionali (ortodossi e islamici): tra cieca deregulation e super-specialità, ovvero del difficile spazio per la differenza religiosa*, in «Stato, Chiese e pluralismo confessionale», 2011, p. 13, http://www.statoechiese.it/index.php?option=com_content&task=view&id=467&Itemid=41 (last accessed 1 November 2016).

⁶² S. Allievi, *Islam italiano. Viaggio nella seconda religione del Paese*, Einaudi, Torino 2003.

⁶³ L. Musselli, *A proposito di una recente proposta di bozza d'intesa con l'Islam*, in «Il Diritto ecclesiastico», 1997, I, p. 295; M. Tedeschi, *Verso un'intesa tra la Repubblica italiana e la Comunità islamica in Italia?*, in «Il diritto di famiglia», 1996, p. 1574; A. Cilardo, *Diritto islamico, diritto occidentale: ambiguità semantica*, in V. Tozzi and G. Macri (ed.), *Europa e Islam. Ridiscutere i fondamenti della disciplina delle libertà religiose*, Rubbettino, Soveria Mannelli 2009, p. 94.

⁶⁴ S. Ferrari, *La consulta islamica*, in *ISMU, Dodicesimo rapporto sulle migrazioni 2006*, FrancoAngeli, Milano 2007, pp. 249-263.

Muslim representatives but also non-Muslim academic experts on Islam and even anti-Muslim prominent figures in journalism. This choice was clearly intended to soften the vague attempt of representativeness of the 2005 Consultative Council. The Committee was performing consultative functions and the Ministry listened to its views on some matters. Since then, this approach has also been followed at the local level, where Consultative forums with representatives of local Muslim communities and experts in religion have been established.⁶⁵

In March 2012 the Minister for Cooperation and Integration created a Permanent Conference on Religions, Culture and Integration (CRCI), in which there were representatives of Muslim organisations and experts on Islam and on other religions. The CRCI was essentially conceived as a space for meetings and seminars rather than a consultative or decision-making body.

On December 2015 the Department of Penitentiary Administration (DAP) and the UCOII signed a Memorandum of understanding, which may be seen as an important effort towards a more reasonable approach of the questions raised by the growing presence of Muslim inmates in the Italian prison system.⁶⁶

On January 2016 the Italian Minister of Interior established the Council for Relations with Italian Islam (*Consiglio per le relazioni con l'Islam Italiano*), made up of experts in Ecclesiastical law, religions and Islam. The Council provides opinions and formulating proposals on the integration of the Islamic population in Italy. In this context, on February 2017 the Minister of Interior and some Islamic organizations signed the National Pact for an Italian Islam (*Patto nazionale per un Islam Italiano*), which aims “to strengthen dialogue and active collaboration with the interior ministry administration, continuing efforts to work against expressions of religious extremism and promoting a process of legal organization of Islamic organizations in harmony with the principles of current regulations on the issue of religious freedoms”.⁶⁷

Now, it seems that all these political attempts have not been coherent and, above all, they have not been taking into consideration the principles and the instruments established by the Italian Constitution. Moreover, these attempts reveal some sort of epistemological obstacles,⁶⁸ upon which the Italian public actors tend to consider Islam and the corresponding groups unable to have a factual collaboration with the State.⁶⁹

⁶⁵ F. Alicino, *Costituzionalismo e diritto europeo delle religioni*, CEDAM, Padova 2011, pp. 86-89.

⁶⁶ Ministero della Giustizia, *Protocollo d'Intesa tra il Ministero della Giustizia, Dipartimento dell'Amministrazione Penitenziaria e l'Unione delle Comunità e delle Organizzazioni Islamiche in Italia (UCOII)*, see https://www.giustizia.it/giustizia/it/mg_1_8_1.page;jsessionid=Edi-VHc1sKnxqff4SYnf3AMp+?facetNode_1=0_2&facetNode_2=4_10&facetNode_3=0_2_6&facetNode_4=0_2_6_9&contentId=SDC1252173&previousPage=mg_1_8 (last accessed 20 May 2017).

⁶⁷ See http://www.interno.gov.it/sites/default/files/patto_nazionale_per_un_islam_italiano.pdf (last accessed 20 May 2017).

⁶⁸ In this case I refer to the Gaston Bachelard's notion of 'obstacles épistémologiques': G. Bachelard, *La formation de l'esprit scientifique*, Librairie Philosophique J. Vrin, Paris 1938, p. 337: “[I]es obstacles épistémologiques affirment toujours quelque part des ombres ... sur la connaissance du réel, qui n'est jamais immédiate et pleine. Les révélations du réel sont toujours récurrentes. Le réel n'est jamais “ce qu'on pourrait croire” mais il est toujours ce qu'on aurait dû penser”.

⁶⁹ J.-F. Gaudreault-Desbiens, *The Legal Treatment of Religious Claims in Western Multicultural Societies: Limits and Challenges*, in C. Decaro Bonella (ed.), *Religious Claims in Multicultural Societies: The Legal Treatment*, Luiss University Press, Rome 2014, pp. 17-40.

In other words, the Italian attitude on the questions related to Islam seems to be based on the fact that the Islamic organizations are considered 'other' than those denominations that are more compatible with the traditional system of relationship State-confessions established in Italy until now:⁷⁰ a system that has been determined through the implementation of Articles 7 and 8 of the Constitutions and the 1159/1929 Law. Hence, since Islamic groups are different from the traditional creeds, public actors tend to promote new pathways, like those referred to as *Consulta, Comitato, Conferenza, Consiglio, Patto*.

Another important example of the Italian attitude on this field is given by the Charter of values for the integration and citizenship (*Carta dei valori per l'integrazione e la cittadinanza*),⁷¹ also sponsored as the basis for a future understanding between the State and Islam.⁷² In this case, the Italian Committee for Islam has suggested that at very least Islamic imams should subscribe to this Charter. This must be done in accordance with the 1159/1929 Law that, to this aim, has to be accompanied by a circular of the Ministry of the Interior that, in turn, must give a constitutional interpretation of the 1929 Law.⁷³ This proposal raises some delicate questions. First, for what reason do we need a ministerial circular to clarify the purpose of the 1159/1929 Law? Second, why must the subscription of the *Carta dei valori* (which has no legal status) be considered a prerequisite in order to appoint an imam, when this same duty is not requested from religious ministers of other confessions? And, last but not least, why must the public actors exclude the possibility to regulate this and other issues through Article 8.3 of the Constitution, as has been done with twelve denominations other than Islam?

5. Conclusion

In Italy the method of bilateralism in general and the use of Article 8.3 in particular remain tailored on the exigencies and the notion of traditional creeds. In turn, this notion is mainly based on the model of Catholic Church's organization, the major religion in the Country. As a consequence, in the light of a current (unprecedented) religious and cultural pluralism, the Italian laws seem to be characterized by a limited secularism or, as some have said, a baptised *laicità*. Tending to privilege some denominations, those legal instruments are not used for regulating different (theologically and structurally) religions.

⁷⁰ S. Allievi, *Costruzione del nemico, bisogno di sicurezza e conflitto*, in S. Allievi (ed.), *I musulmani e la società italiana, Percezioni reciproche e conflitti culturali, trasformazioni sociali*, FrancoAngeli, Milano 2009, p. 20.

⁷¹ S. Ferrari, *La Carta dei valori, della cittadinanza e dell'integrazione*, in ISMU, *Tredicesimo rapporto sulle migrazioni 2007*, FrancoAngeli, Milano 2008, pp. 265-277.

⁷² See C. Cardia, *Introduzione alla Carta dei valori della cittadinanza e dell'integrazione*, in Ministero dell'Interno, *Carta dei valori della cittadinanza e dell'integrazione*, (s.i.d.), 2008, p. 8; N. Colaianni, *Alla ricerca di una politica del diritto sui rapporti con l'Islam (Carta dei valori e Dichiarazione di intenti)*, in «Stato, Chiese e pluralismo confessionale», 2009, http://www.statoechiese.it/index.php?option=com_content&task=view&id=225&Itemid=41, (last accessed 1 November 2016).

⁷³ See Parere del Comitato per l'Islam Italiano, *Parere su Imam e formazione*, 31 May 2011, p. 6, http://www.coreis.it/documenti_13/6.pdf (last accessed 1 November 2016).

Thus, the relationship, or even the connection, between the State and religions through the bilateral legislation and the 1159/1929 Law is becoming increasingly difficult and, at times, harshly contested. As a matter of fact, this problem is exacerbated by the fact that religions, including minority ones, are seeking a greater role in the public space as well as in the political arena. In other terms, Italian limited secularism can be perfectly used when referring to traditional denominations. On the contrary, it can hardly be taken into account for other (minority) religious organizations, such as the Islamic groups, usually made up of immigrants.⁷⁴ This is because limited secularism seems to be rooted in the past, when a mono-religious landscape characterized the Country: it is thus incapable of describing and governing today's religious reality in Italy.⁷⁵ It explains why limited secularism seems attractive for some denominations, while it is systematically seen as a disadvantage, if not discriminatory, by other creeds and their relative members.⁷⁶

The illustrative example of that is now given by the 15 May 2017 decision of the Supreme Court of Cassation, which ruled against the Sikh Indian migrant who wanted to carry a *kirpan*, a small knife or sword, because it was considered against the Italian law. Moreover, in this case the Court stated that migrants have a duty to conform to values of the society they choose to move, and to check in advance whether their behaviour is compatible with local norms.⁷⁷ So, the Court not only ignored the fact that *kirpan* is a religious symbol and that carrying of *kirpan* is essential and mandatory part of religious code of conduct of an *Amritdhari Sikh*. It also established the principle under which all migrants must 'adapt' to Italy's traditional values that, as we saw, on the ground of relations State-confessions are strongly influenced by the Catholicism and other few (traditional) beliefs.

Thus, in the light of these considerations, one is able to see and understand two different legal policy strategies implemented by religions in Italy:

- one supported by the Catholic Church and, to some extent, by minority confessions that have long co-existed in Italy and that have signed an *intesa*;
- the other strategy refers to the new religious communities made up of the recent wave of immigration.

On the one hand, the Catholic Church seeks to preserve its special status and the relative privileges by marking the traditional connection among Italian society, national identity, and the major religion. In this perspective, the State is requested to recognize "the value of the religious culture and the principles of the Catholic Church", which are considered inte-

⁷⁴ C. Saint-Blancat, *Italy*, in J. Cesari (ed.), *The Oxford Handbook of European Islam*, Oxford University Press, Oxford 2014, pp. 265-310; S. Coglievina, *Italy*, in J. Nielsen, S. Akgönül, A. Alibašić and E. Raciuc (eds.), *The Yearbook of Muslims in Europe*, Brill, Leiden 2013, pp. 351-367.

⁷⁵ V. Tozzi, *Le moschee ed i ministri di culto*, in M.L. Tacelli and V. Turchi (eds.), *Studi in onore di Piero Pellegrino. Scritti di diritto canonico ed ecclesiastico*, ESI, Napoli 2009, II, pp. 474-475.

⁷⁶ N. Fiorita, *Remunerazione e previdenza dei ministri di culto*, Giuffrè, Milano 2003, p. 37.

⁷⁷ *Corte Suprema di Cassazione, Sez. I penale*, sent. 15 May 2017, no. 24084. See also *Corte Suprema di Cassazione, Sez. I penale*, sent. 14 June 2016, no. 24739, and 16 June 2016, no. 25163. Concerning this jurisprudence see A. Licastro, *Il motivo religioso non giustifica il porto fuori dell'abitazione del kirpan da parte del fedele sikh (considerazioni in margine alle sentenze n. 24739 e n. 25163 del 2016 della Cassazione penale)*, in «Stato, Chiese e pluralismo confessionale», 2017, no. 1, http://www.statoechiese.it/images/uploads/articoli_pdf/licastro_m_il_motivo.pdf (last accessed 20 May 2017).

gral “part of the historical heritage of the Italian people”. It should be noted that these ideas are expressly affirmed in Article 9.2 of the 1984 Agreement modifying the 1929 Lateran Pacts⁷⁸. Likewise, we should not forget that this Agreement is the most important example or prototype of the method of bilateralism, which has traditionally regulated the relationship State-religions, as stated by Articles 7.2 and 8.3 of the Constitution. The fact is that, together with the 1159/1929 Law on admitted religions, these method seems to privilege traditional denominations, while not taking into serious account the needs of different neo religious groups.

On the other hand, and at the same time, these neo religious groups operate with the aim to improve their legal status. In doing so, they too refer to the 1948 Constitution, where it is stated that “[a]ll religious confessions enjoy equal freedom before the law” and that “[e]veryone has the right to profess freely their religious faith in any form, individually or in association, to disseminate it and to worship in private or public”.⁷⁹ Which also implies the fundamental right of neo religious communities and their adherents to be different.

For its part, the StatÈs policy remains passive before the issue raised by the current religious pluralism. Moreover, it appears to be trapped in a limited secularism and, as a consequence, it is unable to strike a right (constitutional-based) balance between those two strategies.

⁷⁸ *Supra*, para. 4.

⁷⁹ Articles 8 and 19 of the Italian Constitution.