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The Emerging Pattern of Church and State in Western Europe: The Italian Model

*Silvio Ferrari**

I. INTRODUCTION: POINTS OF METHOD

The classification of church-state systems in Western Europe is traditionally based on a tripartition; they are identified variously as separation systems, concordatary systems, and national church systems. Unfortunately, this traditional classification is outdated and of little use in understanding what is currently happening in the field of church-state relations. The traditional classification overemphasizes the formal aspects of church-state relations and it does not pay enough attention to their content, that is, the legal powers given to churches and the protections afforded to individual believers. Consequently, it is also of little use in perceiving whether, despite formal differences in the various European systems, a common model is taking shape in the countries of Western Europe.

I do not by any means contend that the formal categories of separationist, concordatary, and national church systems are equivalent, however. Establishing church-state relations through a concordat is clearly different from doing so through a state law as happens in those states with a separation system or a national church system.¹ But the signing of a concordat is not the definitive element of a state's attitude towards a church, either from a political or from a legal point of view. For instance, in Belgium there is no concordat; nevertheless, the Catholic Church enjoys a better legal position in Belgium than

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1. See JAVIER MARTINEZ-TORRÓN, *SEPARATISMO Y COOPERACION EN LOS ACUERDOS DEL ESTADO CON LAS MINORÍAS RELIGIOSAS* (1994). According to many scholars, provisions in a concordat have the same strength as international law provisions and cannot be modified unilaterally; therefore, they afford stronger protection to churches than do state laws.

it does in some countries where a concordat has been stipulated.

Much of what has been said about concordatory and non-concordatory systems can also be applied to the traditional distinction between state law systems in which churches enjoy public law status (as in Germany and Greece) and those in which they are accorded only private law status (as in the separationist nations of Netherlands and France). If we approach the problem of church-state relations from the point of view of their content—that is, the actual status of churches and individual believers under the nation's laws—the public law or private law status that a nation grants its churches is not the decisive factor. For example, churches in Ireland are not public law corporations, but they have as strong a legal position as do churches in Germany, which are public law corporations.

This article will focus on two primary questions. First, considering the content of the church-state systems existing in Western Europe, is it possible to discern a common model? Second, how comparable is the Italian system with this "common model?"

II. CHURCH AND STATE IN WESTERN EUROPE

It is possible to detect a common pattern of church-state relations in Western Europe, even if that pattern is applied in different ways. The main elements of the pattern are: (1) at an individual level, the neutral attitude of the state toward the different religious subjects who are free to profess adherence to whatever religion they prefer; (2) at the collective level, the demarcation within the "public" sector of a "religious" sub-sector (the "playing field" or "protected area") where the different religious subjects can enjoy a preferential treatment in comparison with nonreligious subjects; and (3) at both levels, the confining of state interference with religious subjects to the setting of ground rules or to seeing that the "playing field" is level and its boundaries are respected.

The same pattern can be detected in the structure of the international and constitutional legal provisions concerning religious freedom and church-state relations in Western Europe.² These provisions guarantee an impartial attitude on

2. See Jean Duffar, *Le régime constitutionnel des cultes* (Paris, November

the part of public authorities because officials are bound to respect the citizen's right to follow or join any religion³ and to be protected from discrimination based on religion.⁴ These provisions also protect the internal autonomy of religious denominations to an extent greater than that guaranteed for non-religious associations.⁵ They likewise contain favorable arrangements for religious denominations' external activities, such as the teaching of religion in state schools, the conducting of religious services in the Army, and the building of worship centers.⁶ Finally, limitations on the manifestation of religious freedom (such as the protection of morals, public order, health, safety, or third party rights) are always included in these provisions in order to further define the ground rules and designate "playing field" boundaries.⁷

These elements outline the boundaries of the "playing field" where religious subjects enjoy preferential treatment vis-à-vis nonreligious entities. However, this picture obviously oversimplifies the complexity and the nuances presented by the different legal systems. First, some terms have different meanings in different countries. The phrase "internal autonomy of the religious community," for example, has a much broader content in Germany (where it also covers the educational and social activities of churches) than it does in Spain (where it covers only religious activities). And while many nations affirm the internal autonomy of the religious communities in common

18-19, 1994), in EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, THE CONSTITUTIONAL POSITION OF THE CHURCHES IN EUROPE (1995); J. van der Vyver, *Legal Dimension of Religious Human Rights Constitutional Texts* (Atlanta, October 6-9, 1994), in RELIGIOUS HUMAN RIGHTS IN THE WORLD TODAY (forthcoming 1995).

3. See [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 9, § 1, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953), as amended by Protocol Nos. 3 & 5. Most Western European constitutions contain similar provisions [hereinafter E.C.H.R.].

4. See, e.g., E.C.H.R. art. 14; COSTITUZIONE [Constitution] [COST.] art. 3 (Italy); LA CONSTITUTION [CONST.] art. 2 (France); CONSTITUCION [C.E.] art. 14 (Spain).

5. COST. art. 8 (Italy); WEIMAR CONSTITUTION art. 137 (incorporated into the German Constitution or *Grundgesetz* ("basic law") by GRUNDGESETZ [GG] art. 140 (F.R.G.)); IR. CONST. art. 44.

6. See GG art. 7 (F.R.G.); LA CONSTITUTION [BELG. CONST.] art. 127 (Belgium). More frequently, similar provisions are found in non-constitutional laws. See generally EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, CHURCH AND STATE IN EUROPE: STATE FINANCIAL SUPPORT, RELIGION, AND THE SCHOOL (1992); EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, MARRIAGE AND RELIGION IN EUROPE (1993).

7. E.C.H.R. art. 9, § 2; COST. arts. 8, 19 (Italy); GREECE CONST. art. 5.

with the European pattern, "internal autonomy" may have a different meaning and therefore a different impact on such areas as labor law, trade union law, and competition law in the various European states.

Second, while the pattern is the same almost everywhere in Western Europe, its practical manifestations differ from country to country. For example, it is easy to find a difference between the teaching of religion in the state schools of Italy and France: in Italy, the teaching of at least one religion is guaranteed, while in France there is no religious education in the schools. But this contrast shows only the different degree to which the public powers cooperate with religious institutions, rather than opposing attitudes towards the very idea of state cooperation with religious education. For example, even in France, which according to Minister of Interior Charles Pasqua is "the only secular state in Europe,"⁸ chaplains have access to secondary schools. The primary school timetable is also arranged in a manner that allows students to obtain religious education without any difficulty. This same spirit of cooperation is seen in French prisons, hospitals, and the French Army, where chaplains paid by the state provide religious services. To a lesser degree, the spirit of cooperation extends even to the area of financing, where churches enjoy some tax exemptions, and where donations in favor of religious communities can be deducted from the taxes that the donors are required to pay.

The religious assistance existing in Italy or Germany may be more favorable to churches than is the French system, but it would be wrong to say that the French state does not cooperate with the churches at all in areas like religious instruction, assistance, and finance. Therefore, we see that there are different versions of the common model, rather than just alternative models. Following the classification of church-state systems recently proposed by Cole Durham,⁹ we could conclude that the models prevailing in the member states of the European Union range from cooperation to benevolent separation; that is, they could all be placed within a fairly narrow range on the spectrum of church-state systems

8. INAUGURATION DE LA MOSQUÉE DE LYON, ALLOCUTION DE MONSIEUR CHARLES PASQUA (Sept. 30, 1994) (calling France "le seul État laïc d'Europe").

9. W. Cole Durham, Jr., *A Comparative Framework for Analyzing Religious Liberty*, in RELIGIOUS HUMAN RIGHTS IN THE WORLD TODAY (forthcoming 1995).

proposed by Professor Durham. Moreover, even the countries where a national or state church exists can be placed in this range.

However, there are some national laws that cannot be characterized as a particular version of the pattern, but rather contradict the pattern itself. Some examples include: (1) the prohibition against proselytizing in Greece;¹⁰ (2) the prohibition of religious marriages without a previous civil marriage in France, Germany, and Belgium; and (3) the financing of some churches by the general budget of the state—that is, with the taxes of citizens who are not members of the religious communities receiving economic support—as happens in Greece and Denmark. In short, these are the areas in which some changes are needed in order to bring the various national systems in line with the common European pattern.

III. CHURCH AND STATE IN ITALY

Italy fits quite well within the general European pattern. It is largely a Catholic country; more than ninety percent of Italy's inhabitants are baptized in the Catholic faith (though only thirty percent of them regularly attend the Sunday mass). Moreover, the Papacy resides in Italy, which gives the Catholic Church great influence over political and social events in the country regardless of the statistical figures on the religious beliefs of Italians.

It is therefore not surprising that the conceptual framework of church-state relations in Italy relies heavily on the idea of cooperation, since this is an idea which has always been upheld by the Catholic doctrine and put into practice through the ratification of concordats between the Church and various governments, including the Italian government. The Italian State has also completed agreements patterned after the Catholic concordats with six minority denominations that must likewise be considered in the light of the same principle of cooperation. The prevailing trend toward a strictly defined cooperation between the state and churches has been tempered by the principles of religious liberty and equality affirmed during the liberal period and, after the fall of the Fascist regime, by the Constitution of 1948. Even if the

10. See GREECE CONST. art. 13, § 2; see also *Kokkinakis v. Greece*, 93 Eur. Ct. H.R. (Ser. A) at 260 (1993).

implementation of the Constitution has been quite slow, these principles have been applied quite extensively since the 1960's.

In summation, Italy (together with Germany and Spain) represents the "cooperationist" version of the European pattern. The common features of cooperationism are implemented in Italy, as in other cooperationist nations, through a system of agreements between the state and the religious communities.

A. *Church and State in Italy Since the Unification*

The unification of Italy in 1860 provoked a serious crisis in the relations between the Catholic Church and the new state. The liberal government of Cavour and his successors pursued a process of secularizing public institutions and public life, including (1) the introduction of obligatory civil marriage in 1865; (2) the restriction of Catholic religious education in state schools in 1877; (3) the reform of the penal laws for the protection of religion in 1889; and (4) state control of the welfare and charitable institutions in 1890. The opposition of the ecclesiastical hierarchy was further aggravated by measures aimed to diminish the economic power of the church (especially by way of abolishing certain church entities and confiscating their property in 1866 and 1867).

The unification of Italy was completed in 1870 by the capture of Rome, which put an end to the secular power of the Popes. This event gave particular strength to the hostility felt by many Catholics towards the Kingdom of Italy, which Catholics accused of trying to rob the Pope and the church of their remaining liberty. After the promulgation of the Law of Guaranties in 1871 (*legge delle Garantigie*) the Italian Government retained a predominantly moderate policy. Furthermore, Pope Leo XIII (1878-1903) and Giovanni Giolitti (who led Italian politics in the first fifteen years of the twentieth century) both adopted more flexible attitudes. Notwithstanding these compromises, the conflict between the Catholic Church and the Kingdom of Italy was not resolved until World War I.

Following the war, the Fascist party, which was in power from 1922 until the end of the Second World War, initiated a policy of conciliation towards the Catholic Church which culminated in the signing of the Lateran Treaties in 1929. These treaties solved the problem of Rome by creating the Vatican state. The treaties also restored some of the church's privileges—in matrimonial and economic matters and in the

field of religious education in state schools—that had been lost during the liberal period.

The promulgation of the Republican Constitution in 1948 created the basis for revising those provisions of the concordat that were least compatible with the principles of religious freedom and equality enshrined in the Constitution. For a number of national and international reasons, however, the reform of Italian ecclesiastical law could not be initiated until the 1980's, by which time Italy had gone through a significant process of secularization. For instance, legislation first introduced legal divorce in 1970, and abortion was legalized in 1978. These changes had a profound impact on Italian society.¹¹

B. The Constitutional Framework

1. Description of constitutional provisions

The fundamental provisions of Italian ecclesiastical law are contained in the Constitution. Articles 7, 8, and 19 have twin aims: (1) safeguarding the liberty of the individual in religious matters; and (2) guaranteeing a system of cooperation between the state and the religious denominations. Fascism had just ended when the Constitution was formulated in 1947. Religious liberty was a central consideration when the provisions were drafted. The agreements between the state and the religious communities were determined to provide the best protection against another "totalitarian" experience. After the memory of Fascism faded away, the church-state agreements were seen as a way to allow the churches to effectively contribute to the development of provisions which respect the church's identity and are appropriate to their needs. Several reforms of the Constitution have been proposed in Italy in recent years, but none has contemplated altering the provisions governing religious liberty and church-state relations. The prevailing opinion is that these provisions do not need any substantial changes.

The Italian Constitution guarantees religious liberty to everyone, regardless of their citizenship. Article 19 provides that "[a]ll are entitled to freely profess their religious convictions in any form, individually or in associations, to propagate them and to celebrate them in public or in private, save in the

11. See ARTURO CARLO JEMOLO, *CHIESA E STATO IN ITALIA NEGLI ULTIMI CENTO ANNI* (new ed. 1963) (providing the best portrayal of the Italian church-state history).

case of rites contrary to morality."¹² Article 19 provides for freedom of religion, but it does not address the specific issue of freedom of belief. The prevailing interpretation is that the freedom to have and to disseminate an atheistic or agnostic belief is also fully guaranteed. Additionally, the freedom to change your religion is unanimously considered a constitutional right even if it is not specifically included in Article 19.

Two articles of the Italian Constitution deal with religious communities. Article 7 provides that

The State and the Catholic Church are, each within its own ambit, independent and sovereign.

Their relations are regulated by the Lateran Pacts. Such amendments to these Pacts as are accepted by both parties do not require any procedure of Constitutional revision.¹³

Under Article 7, the relations between the State and the Catholic Church are dictated through concordats, which are considered to have the same validity as international conventions. The current concordat, *Accordo di Villa Madama*, was concluded in 1984.

Article 8 affirms that all religious communities are equally free before the law and, in its second part, deals with religious communities other than the Catholic Church, giving them the right to organize themselves according their own statutes so long as they are not contrary to general law.

All religious denominations are equally free before the law.

Religious denominations other than Catholic are entitled to organize themselves according to their own creed provided that they are not in conflict with Italian judicial organization.

Their relations with the State are regulated by law on the basis of agreements with their respective representatives.¹⁴

Relations with the state are to be dictated by agreements, or *intese*. The Italian State has already concluded agreements with the Waldensians (1984), the Pentecostals and Adventists

12. COST. art 19 (Italy), translated in *The Constitution of the Republic of Italy*, in 9 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD at 51 (Albert Blaustein & Gilbert H. Flanz eds., 1987) [hereinafter *Constitution of Italy*].

13. COST. art. 19, translated in *Constitution of Italy*, *supra* note 12, at 48.

14. COST. art. 8, translated in *Constitution of Italy*, *supra* note 12, at 48.

(1986), the Jews (1987), and the Baptists and Lutherans (1993).

Articles 7 and 8 of the Italian Constitution are particularly important for the self-determination of religious communities. Besides recognizing the sovereignty and independence of the Catholic Church in its own order,¹⁵ Articles 7 and 8 grant all other denominations a high degree of internal autonomy.¹⁶ Non-Catholic denominations are free to organize themselves in whatever manner they think best and are protected against any assertion of jurisdiction by the state. The constitutional caveat that these organizations must respect the Italian law applies only to the organizational structure of the denominations, which must not be in conflict with the general principles of Italian law on the subject of legal entities; it does not concern the doctrines or other ideological principles of the various denominations. Moreover, the last sections of both Article 7 and Article 8 guarantee the autonomy of the religious denominations. These sections provide that the state may only deal with the legal organization of a denomination through a formal agreement; that is, under the condition of reaching an understanding with the denomination. Once this agreement is in place, any amendments to the agreements may be made only through a bilateral arrangement between state and denomination. Hence, the state does not have the power to change the agreement through a unilateral initiative. This allows the Catholic Church and the six other denominations that have reached an agreement with the state to know that their present legal status will not be altered against their will.

The remaining denominations, which operate in Italy without a formal agreement, are governed by the law n. 1150 of June 24, 1929. This law, because of the historical background behind its enactment, contains components that are contrary to the principles of the constitution. A proposal for the reform of n. 1150, approved by the Council of Ministers in 1990, has not yet been submitted to the Parliament for approval. Having been enacted by the state unilaterally, Parliament can alter n. 1150 without the agreement of the religious denominations affected by that law.

15. See COST. art. 7, ¶ 1.

16. See *id.* art. 8, ¶ 2.

2. *Discussion of constitutional issues*

As concerns the individual rights to religious freedom and equality, the Italian legal order is in line with the main provisions of international law and the principles contained in most of the constitutions of the remaining Western countries. The discussion becomes more complex when one passes from the rights of individuals to the legal position of the denominations, however. In this domain, the Italian system of concordats and agreements discriminates in some ways among the various denominations. In some cases, these differences may have an effect on the legal position of individual members of the various denominations. Examples of this discrimination can be found (i) in the ways in which the state assists in the financing of different denominations and (ii) in the kinds of religious education it permits in state schools.

Italian ecclesiastical law forms a three-tiered system. The most prominent position is held by the Catholic Church, which enjoys a preferential position secured by the *Accordi di Villa Madama* and numerous other regulations in various ordinary laws. Those religious communities that have come to an agreement with the state hold an intermediate position. The groups concerned here are those which have existed in Italy for a long time (i.e., the Waldensians, the Jews, and the Protestants), or more recent groups which have no characteristics incompatible with Italian law. They are guaranteed a position equivalent, if not equal, to that of the Catholic Church. In the lowest tier are groups who have only recently settled in Italy and whose doctrines and practices are perceived to be in conflict with public order. Some of these groups, like the Muslims and Jehovah's Witnesses, have a significant number of adherents. These groups are regulated by law n. 1159 of 1929 and the general laws on associations. The lowest tier groups are excluded from some important privileges which are granted to those churches that have the benefit of a concordat or agreement.

The three-tiered system developed as a result of Italian history and culture. Moreover, a number of European countries use similar multi-level classifications. Although it is widely accepted, the tier system should not be immune from further examination. A central problem with this system is its applicability only to a limited number of denominations and the tendency of treaties and agreements with individual denomina-

tions to expand to include matters which could have been dealt with more effectively by uniform state laws. For instance, because they do not have agreements with the state, Muslims and Jehovah's Witnesses cannot participate in the distribution of the state-collected taxes (0.8 percent of individual revenue assessments) which are devoted to the financing of religious denominations, nor can they deduct the sums donated to their religious community from their taxable income, as do members of denominations that do have such agreements.¹⁷ A state law opening these channels of funding to all denominations would show more respect for the "equal freedom" guaranteed by Article 8 of the Italian Constitution.

A similar criticism applies to other areas of Italian ecclesiastical law. There is no law common to all religious communities concerning problems which could be solved uniformly like pastoral access to public institutions and schools. If such uniform a policy were in force, the concordats and agreements would have to deal only with problems that are of particular interest to separate denominations. For example, conscientious objection to military service for Jehovah's Witnesses, ritual slaughter of animals for the Jews, Sabbath rest for the Jews and Adventists are issues of special interest and would be suitable subjects for the kind of special accommodation the state can give through a concordat. While maintaining the cooperation between the state and the religious denominations, the content of the agreements would be reduced to the matters which cannot be administered uniformly. Disparities among different religious communities would thus be reduced.

a. The legal position of the religious communities. In order to understand how the Italian system works and how the relevant constitutional provisions are implemented, we must look beyond the constitutional questions to the way Italy has resolved some of the other important issues of church-state relations. We may begin by examining the legal status of religious communities in Italian law.¹⁸

While only six religious groups enjoy the special status afforded by a concordat or other treaty-like agreement, any group with religious aims may be founded without any prior

17. Muslims and Jehovah's Witnesses are respectively the second and third largest religious communities in Italy as measured by the number of adherents.

18. See GIANNI LONG, *LE CONFESSIONI RELIGIOSE "DIVERSE DALLA CATTOLICA"* (1991).

authorization or registration and may operate within the Italian legal order. The only limits are those imposed by considerations of public order and common decency. Religious denominations (or their legal entities) may choose to establish themselves according to any one of four different types of legal structures: (1) non-recognized associations, (2) recognized associations, (3) groups recognized under the Treaty of Friendship with the United States, and (4) registered religions.

First, religious groups may attain private law standing by constituting themselves as non-recognized associations.¹⁹ Under this designation, the denomination may enjoy a limited legal personality, including independence in property matters and the ability to take legal action. The denomination could attain this status without having to submit its constitutive act or statute to any form of state control.

Second, a denomination could attain legal status as a recognized association under Articles 14-35 of the Italian Civil Code.²⁰ The establishment of this status involves more precise and binding rules than does organization according to the first method. Recognized associations enjoy greater legal capacity, but their foundation and activity is subject to considerable supervision by the state authorities. In particular, recognized associations cannot purchase real property or accept donations, inheritances or bequests without state authorization.²¹

Third, denominations may obtain civil law legal recognition under Article 2 of the Treaty of Friendship, Commerce and Shipping concluded with the United States in 1948. About thirty denominations have applied for and obtained legal standing in this manner. Until recently, organization under this treaty had the advantage of granting tax benefits. Following some variations in interpretation which resulted in the loss of these privileges, however, these thirty denominations have now been granted a legal status similar to that of recognized associations.

The aforementioned methods of legal organization are potential avenues for obtaining legal recognition for any group, whether religious in nature or not. A fourth possibility, exclusively for religious organizations, is to obtain the status of a recognized religion. Most of the important minority denomi-

19. See CODICE CIVILE [C.C.] arts. 36-38 (Italy) (the Italian Civil Code).

20. *Id.* arts. 14-35.

21. See *id.* art. 17.

nations like the Muslims, Mormons, Jehovah's Witnesses and Buddhists have used this method to obtain legal recognition. This method is based on a law conceived especially for groups with religious aims—law n. 1159 of 1929—which governs the exercise of the religions registered in Italy. The law establishes that religious groups will benefit from the same privileges as groups with charitable and educational objectives, including important tax privileges for the benefit of registered religions.

However, this law subjects bodies with religious objectives to stricter control than the recognized associations, requiring authorization for purchases and sales and granting the state authorities the right to replace the administrative bodies of the associations by a state commissioner and to annul their decisions. In spite of all the disadvantages linked with this provision, the acknowledgement of legal recognition for religions under law n. 1159 of 1929 has great significance because it confirms the religious nature of the recognized body. It forms the basic precondition of an application for concordat-like agreement with the Italian state under Article 8, Paragraph 3 of the Constitution. As previously mentioned, the six denominations that have entered into agreements with the Italian state are no longer subject to law n. 1159 of 1929. These denominations enjoy more favorable provisions which are contained in their individual agreements.

A central problem with this system of differing levels of legal status is that it gives too much discretionary authority to public powers to decide which legal status a group should have under Italian law. Religious communities do not have an inherent right to conclude an agreement with the government; the government has discretionary powers to determine whether it will enter into an agreement with a given religious group, or even open negotiations with a group seeking such an agreement. There is no barrier to guard against the government improperly using its discretionary powers to grant preference to a denomination for political reasons. The same criticism applies to the recognition of legal capacity for a religious group on the basis of the law n. 1159, because such recognition depends on evaluations which, broadly speaking, could be defined as "political." A margin of flexibility in dealing with the various applications coming from religious communities would likely be appropriate. The lack of a definite procedure and the imbalance of power, however, invites abuse on the part of the government.

b. Religion and the schools. In the sphere of education there is a clear difference between the provisions that apply to the Catholic Church and those that apply to other denominations.²² The Treaty of Villa Madama stipulates that two hours of Catholic religious education will be taught in play school and primary school and one hour at senior school per week. No religious education is provided at the university level. The state bears the total financial burden of providing Catholic religious education. Each year at enrollment the pupils or their parents must declare whether they intend to take part in Catholic religious education classes. If they decline, the pupils may concentrate on other subjects during the designated period or they may leave the school grounds.

The teachers of religious education are appointed by the state educational authorities on the nomination of the diocesan bishop. They must possess certain certificates of training which are proof of their qualifications in theology and the church disciplines. Additionally, they must be recognized by the appropriate church authority, usually the diocesan bishop, who gives written confirmation that they are qualified to teach religious education. If this approval is not granted, the state school authorities may not appoint the teacher. If the approval is withdrawn, even during the course of the school year, the teacher is precluded from further professional activity in that subject.

The six "state agreement" denominations may send their own teachers to the state schools if pupils, their parents or the school bodies request them. School authorities and the church representatives privately arrange these classes and the denomination bears the entire financial burden. Meanwhile, the denominations without a formal state agreement do not have the right to send representatives of their own to state schools.

The regulation of religious education contained in the Treaty of Villa Madama and the other six agreements present some problems: (1) pupils are obliged to declare whether they want to take part in Catholic religious education or not (there is no protection of confidentiality); (2) the state is charged with the financial burden of Catholic religious education, but not for the education of students of other denominations (in some cases it is the denominations themselves that reject the possibility of state financial support); (3) religious education classes are

22. See GIUSEPPE DALLA TORRE, *LA QUESTIONE SCOLASTICA NEI RAPPORTI FRA STATO E CHIESA* (1988) (discussing the teaching of religion in the state schools).

provided in response to the requests of pupils only from those denominations that have concluded an agreement. The problems of religious education are, however, general problems and cannot be changed except by fundamental decisions that would require the reform of the entire Italian ecclesiastical law. Similar problems appear in other parts of the system as well.

c. *The financing of religious communities.* The system of financing of religious communities is based on two principles: the channelling of individual income tax monies to religious organizations, and the availability of tax deductions for contributions to religious groups.²³ Italian law requires that 0.8 percent of the income tax revenue be allocated either to religious purposes or to social interest purposes. The individual taxpayer can choose whether his tax is applied to the religious purposes or to the social interest. The social interest purposes include extraordinary measures against famine in the world, natural disasters, aid to refugees, conservation of cultural monuments, etc. Money funnelled to the Catholic Church is used for the worship necessities of the population, the support of the clergy, and welfare measures benefitting the national community or third world countries. Money can also be channelled to one of the other six denominations that have signed an agreement with the Italian state.

The names of the religious communities admitted to take part in the financing system is printed on the tax return form that each taxpayer has to complete. The taxpayer makes his choice by signing under the name either of one of these churches or of the state. The whole system is run by the state, which collects tax return forms and money from taxpayers. Once the state determines how much of the 0.8 percent has to be allocated to each entity, the state transfers the corresponding money to them. The revenue accruing from persons who have not declared their preference is distributed among the different recipients on the percentage basis determined by the rest of the population.

The second principle of the financing system is the possibility of off-setting, from taxable income, donations of up to Lit. 2,000,000 to the Catholic Central Institute for the Support of the Clergy, or to other denominations that have entered an agreement with the state.

23. See GIUSEPPE VEGAS, *SPESA PUBBLICA E CONFESIONI RELIGIOSE* (1990).

The two channels of funding described above are open to the Catholic Church and to the six denominations which have signed an agreement with the Italian state. There are, however, certain notable peculiarities. For instance, the Christian Evangelical-Baptist Union has declined to take part in the distribution of the 0.8 percent of income tax revenues. The Union of Hebrew Communities has also declined, but has negotiated a tax deduction for donations in its behalf up to a maximum amount of Lit. 7,500,000 (instead of Lit. 2,000,000, as prescribed for other denominations). The other four denominations with agreements make use of both possibilities. The Waldensians, Adventists and Pentecostals have decided—apart from relinquishing their right to the proportion of the 0.8 percent of the income tax equivalent to the “choice not expressed” persons—to use these revenues for social and humanitarian purposes only. These churches are of the opinion that the financing of the church and the maintenance of the clergy should rely exclusively on donations by their members.

The new system of financing is generally better than the previous one. Before 1984, only the Catholic Church was entitled to state financial support, and that support came from the general budget of the state. Under that system, the money collected from all the citizens, even those who were members of other religious denominations, was given to the Catholic Church. The new system eliminates this unfairness. There are, however, certain fundamental characteristics of the present provisions which, as was already observed in the context of religious education, may present problems. Particularly problematic is the precondition of a state agreement for access to the two main channels of church finance (0.8 percent of income tax and donation deductible from taxable income). Those denominations without a formal agreement are excluded from every form of financing.

IV. CONCLUSIONS

The Italian version of church-state relations is a good example of the virtues and the flaws of a system where the cooperation between the state and the religious communities is realized through a number of agreements.

On one hand, through the *concordati* and the *intese*, religious groups directly participate in the formation of the laws in areas of specific interest to themselves. In this process, they have the opportunity to voice their needs and to propose the

legal solutions that they think might satisfy those needs. Within certain limits, a legal system based on agreements can lead to the fruition of a large amount of freedom for each denomination, as religious communities are not confined within a legislative framework that, conceived for all the denominations, does not suit any of them perfectly.

On the other hand, this system fosters a certain degree of inequality among religious communities. Such disparity might be acceptable if these differences reflected the different characteristics of each religious group. Different legal rules cannot be tolerated, however, if the legal recognition of one group infringes, even if indirectly, on the fundamental rights which must be assured to every group and to every individual regardless of their religion.

The prominent jurist and legal scholar Hans Kelsen was convinced that the orderly progress of society results from the right combination of liberty and equality. To maintain the balance between these two precepts is the challenge that the Italian system of church-state relations must now face.