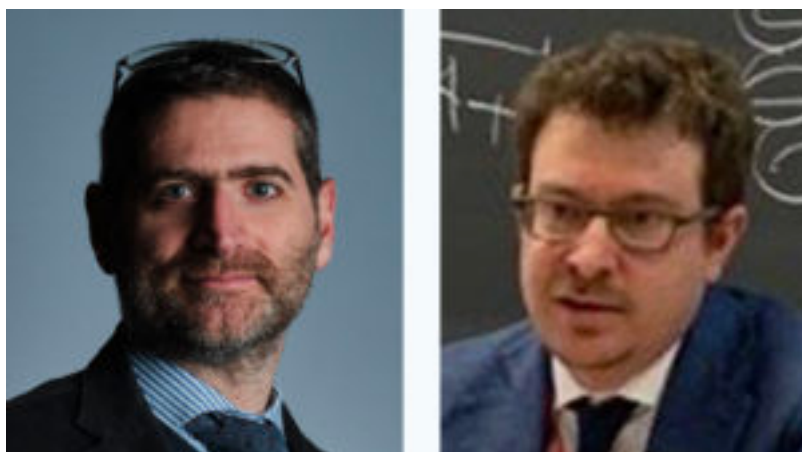


## TALK ABOUT: LAW AND RELIGION

Working to secure the blessings of freedom or religion or belief for all people

MARCH 16, 2020

### Protecting Religious Freedom from Fear: Italian Lessons on Islam, the Public Sphere, and the Limits of Judicial Review



Post by **Andrea Pin**, Associate Professor of Comparative Public Law, University of Padua, and **Luca Pietro Vanoni**, Associate Professor of Comparative Public Law, University of Milan

The Italian constitutional framework might be of interest for those who reflect on the avenues of religious and social integration in the early 21st century. Though the 1948 Constitution has secured ample religious freedom guarantees for citizens and noncitizens alike, recent years have put increasing pressure on Italian legal infrastructure.

#### Church and State in Italy: Friends or Foes?

Despite unification succeeded against the will of the Pope in the nineteenth century under the Kingdom of Piedmont, Italy has always been quintessentially Catholic. Even Mussolini boosted his regime by blending Fascism, Italian nationalism, and the national Catholic identity. Italian politics between the 1940s and the 1990s was largely controlled by the Christian Democratic Party. Romans and even off-the-city Italians alike still gather each Sunday to attend the Pope's address at the twelve o'clock *Angelus* in Vatican's St. Peter's square.

The Italian State and the Papacy struggled also in the twentieth century, when the secular culture heralded by the Communist Party, a few atheist thinkers, and some

intellectual figures mainly of Protestant lineage wrestled with the overwhelming Catholic political culture. After freedom of speech and association were restored in 1948, conflicts between Catholics and secularists monopolized religious freedom debates. By far, the biggest issue at stake was the political role of Catholicism, with secularists promoting religious freedom and freedom from religion for everyone, as well as confining the role of religion within the private sphere.

The influx of early immigrants in the 1970s did not alter the scenario. Muslim or Orthodox Christian immigrants, generally wrapped up in finding employment and settling into a new culture, were left out of religious freedom debates. Eventually, the 1980s rocked the Italian boat. In 1984, a Socialist-led coalition signed an agreement between Italy and the Holy See in pursuance of Article 7 of the Constitution. The new Church and State agreement retired the centuries-old status of Catholicism as Italy's official religion. The new, more egalitarian nature of church-state affairs triggered two effects, discussed below.

### **Religious Freedom and State-Religion Relationships: The Equalitarian Approach**

**First**, under Article 8 of the Constitution many religious minorities concluded their own agreements with the state following the path opened by the new State-Holy See agreement. Church-state agreements started with longstanding Italian religious minorities, namely the Waldensians and the Jewish Communities, and later included groups who lacked roots in Italian history, such as Buddhists, Hindus, or Latter-day Saints. These pacts bestowed special protections, including special autonomy and tax benefits, and permitted religious personnel to solemnize civil marriages and provide spiritual comfort to the members of their churches who were hospitalized, were institutionalized, or served in the military.

**Second**, the 1984 State-Holy See agreement triggered the Italian Constitutional Court's activism in the field of religious freedom. The first wave of constitutional cases starting in the late 1970s had emphasized that the freedom of religion encompassed freedom of conscience, thereby protecting conscientious objections to military service. The post-1984 wave was more daring and theoretical. Borrowing from the lexicon of separatist France, the Court first established that the Italian Constitution commanded official religious neutrality but then defined neutrality with a special twist. Unlike the French *laïcité*, which promotes equality through the neutralization of the public space, the Italian *laicità* overall ensured equality and fostered pluralism without pushing religion out of the public sphere (see the Constitutional Court's seminal judgments nr. 203 of 1989; 13 of 1991; 440 of 1995; 235 of 1997; 329 of 1997).

For many years, Italy saw more of the same. The state and religion agreements mushroomed but virtually copycatted the earlier ones. Some Constitutional Court's rulings used *laicità* to target penal rules that privileged Catholicism but preserved the protection of religion through penal sanctions. In general, both political and judicial bodies focused more on equality than on pluralism and the need to accommodate religious diversity. Yet, longstanding fights between secularists and Catholics survived and occupied public debate, pushing the issues raised by minority religions into the background. For example, after winning early battles for conscientious objection to

military service in the 1970s, Jehovah's Witnesses have still not been able to push their agreement with the State to finality, despite significant number of believers.

### **Muslims, State Institutions, and the Civil Society**

Muslims have faced an even more difficult road, which is worth analyzing in detail. Over the years, Muslims have failed to get an agreement with the State. Between the 1990s and early 2000s, various Muslim groups proposed alternative agreements but refused to gather into a unified body that would represent the entire Islamic community. The 9/11 attack worsened their situation and further cast a very dark cloud on the integration of Islam in Italy, where many Muslims were immigrants with visibly different backgrounds and lifestyles, and an even darker cloud on the likelihood that Muslims and the State would sit around a table and agree on a list of mutual rights, duties, and forms of cooperation. Several governments, formed by different political parties, explored other forms of dialogue with Islam but were more symbolic than effective. One attempt after another failed to gather all the prevailing Islamic voices together with the Government and effectively brought negotiations to a stalemate.

Though national negotiations stalled, private and local accommodations flourished. Italy is replete with relatively successful attempts to accommodate Muslims' needs. Experiments include a Mosque co-financed and co-run by a local government, as well as factories partially reshaped to allow ritual prayers.

The political and media's emphasis on integrating Islam, however, has had unintended consequences. The close institutional and media attention paid to Muslims was never seen before in any Italian traditional religion-state relationship. The special treatment reserved for Islam confirmed those who thought that this religion deserved special attention. The ISIS-inspired attacks that have taken place in Europe since 2015 only surfaced in Italy in 2016, when two police officers killed a Tunisian national who had rammed people in a market in Berlin a few days before. But the echoes of terrorist attacks in Europe certainly affected the reputation of Islam at-large in Italy.

While the agreement between Islam and the state disappeared from the horizon years before, wider political and social hostilities toward Muslims have gained traction lately, spilling into local political agendas. Two Italian regions (Lombardy and Veneto) utilized their limited legislative powers on land-use planning to discourage the establishment of Muslim buildings and institutions by conditioning their permits on the use of Italian language during prayers or the pre-existence of an agreement with the State.

Since 2016, the Constitutional Court has played an unusually active role in protecting religious freedom for Muslims. The Court normally has a secondary role in the field of religious freedom. With a few exceptions, it worked on the edges, e.g., trimming down outdated penal provisions, or provided more theoretical substance to the discussion on the secularization of the public sphere. For procedural reasons, the Court was even almost absent from the *Lautsi* case on the crucifix in classroom, which still stands out as the religious freedom equivalent of pizza for the Italian reputation worldwide. Surprisingly, however, the Constitutional Court has been patrolling the freedom of Muslims quite attentively. Notably, it has struck down provisions that, either directly or

indirectly, affected Islamic groups' freedom to worship (judgments no. 63 of 2016; 254 of 2019). This is certainly very positive, but it might not be enough.

The Italian Constitutional framework for welfare is complex. It envisions a strong partnership of private and public institutions. In 1948, when the Republic was born, such players were mostly Catholic in nature or inspiration, though a few Protestant and Jewish institutions played a marginal role. Old public institutions founded during the Fascist period (such as the Institute for Industrial Reconstruction) were redirected to serve the Constitution. The Communist Party also set up a strong pipeline of unions, institutions, and cultural centers.

However, the traditional collaboration between private and public institutions in Italy has not supported Islam. With few exceptions, distrust for Islam has taken hold of various strata of the Italian society. This is slowly turning into a widespread rejection of Islamic institutions and initiatives. No matter what the Constitutional Court does or says, it cannot force reconciliation and mutual understanding; it cannot build trust. A complex network like the Italian welfare system works well only if its components are willing to cooperate. The Constitutional Court itself has identified that loyal cooperation among social institutions is necessary, but cooperation is hardly subject to judicial review and certainly cannot be enforced.

### **Religious Freedom and a Lively Public Sphere: What is Needed**

Years ago, ISIS tried to create a rift within Western societies. By targeting civilians, it aimed to widen the gap between Muslims and non-Muslims through triggering fear. Non-Muslims would thus start fearing Muslims, who, in turn, would perceive themselves as outliers and consider radicalization. This would throw the West into a spiral of mutual fear and extremism. Public institutions, and especially courts, may not be biased, but they can hardly convince people not to fear their equals. This is a hard work, which only civil coexistence can achieve.

This is a challenge that will confront Italy for many years to come, no matter how the Constitutional Court decides a case or which political majority wins. If Italian society does not sew up the gap that now divides Islam from the rest, then pushing religion - any religion - out of the public social sphere may become the only viable alternative. But all religions and all religious people would pay a very high price for this alternative. Even nonreligious people would also lose something: a society that does not accept religious viewpoints necessarily restricts political and cultural narratives for everyone. Thus, the challenge of integrating Islam must be solved in order to ensure the survival of a lively public sphere.