

RESEARCH ARTICLE

## The Legal Treatment of Muslims in Italy in the Age of Fear and Insecurity

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### Abstract

Although diverging influences have always characterized the relation between religion and democracy, in Italy, tensions arising from these divergences are especially exacerbated by the country's current religious diversity and plurality, and they are magnified when combined with chronic emergencies such as immigration and international terrorism. These critical factors complicate the application of freedom of religion and the supreme principle of secularism (*principio supremo di laicità*), which are essential parts of the Italian legal system. This article analyzes these aspects of the law by considering the relation between Islamic communities and the state. In particular, the article focuses on both endogenous influences (Italy's traditional system of state–church relationship) and exogenous influences (immigration and international terrorism). These factors muddle the interpretation of constitutional rights, including the right of Muslims and Islamic groups to be equal and equally free before the law.

**Keywords:** Muslims; Italy; church-state relations; constitution; freedom of religion

### Introduction

Conflicting tendencies have always characterized the relation between religion and democracy. Across generations, the major religious traditions have produced their own forms of extremism that have contradicted essential elements of constitutional democracies. Additionally, the connections between religious identity and authoritarian ideas have been so frequently replicated in the history of democracy<sup>1</sup> that the rule of law and the rule of God

<sup>1</sup> See the contributions in Liah Greenfeld, ed. “Religion and Nationalism,” special issue, *Religions* (2019), [https://www.mdpi.com/journal/religions/special\\_issues/nationalism](https://www.mdpi.com/journal/religions/special_issues/nationalism); Lahouari Addi, *Radical Arab Nationalism and Political Islam* (Washington, DC: Georgetown University Press, 2017); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983); Philip W. Barker, *Religious Nationalism in Modern Europe* (London: Routledge, 2008); Mark Juergensmeyer, “Religious Nationalism in a Global World,” *Religions* 10, no. 2 (2019): article 97, <https://doi.org/10.3390/rel10020097>; Gregory Goalwin, “‘Religion and Nation Are One’: Social Identity Complexity and the Roots of Religious Intolerance in Turkish Nationalism,” *Social Science History* 42, no. 2 (2018): 161–82; Anna Grzymala-Busse, “Religious Nationalism and Religious Influence,” *Oxford Research Encyclopedias* (2019), <https://doi.org/10.1093/acrefore/9780190228637.013.813>.



often appear to be an odd couple of sorts, and opposed in many respects.<sup>2</sup> At the same time, religion remains an integral part of democratic landscapes.<sup>3</sup> Religious organizations can act as agents of civic mobilization and networks of peaceable coexistence, thereby nurturing the civic skills required for democracy, such as cooperation, solidarity, accountability, consensus building, and public participation.<sup>4</sup>

These diverging influences, far from being reduced, are even more accentuated in the current age of religious diversity and plurality, especially when combined with economic and political crises like the ones of the past two decades, including the 9/11 attacks and the subsequent war on terror, the 2007–2008 financial disaster, the 2009–2010 Arab Spring, the perennial turmoil in the Middle East and North Africa, and the ongoing COVID-19 global pandemic. Such crises tend to go hand in hand with other long-term issues, from immigration to religion-inspired terrorism, thus stirring a sense of fear and insecurity in many democratic states. This rising level of uncertainty often fuels anti-immigrant sentiments and suspicion toward some religious minorities: whether justified or not, these groups are considered not only as threats to political and social stability but also as undemocratic, if not unmodern, religions. For the same reasons, emergency scenarios complicate the equal application of the principle of secularism, which is fundamental to a functioning and pluralistic constitutional democracy. In a democratic state, secularism implies both the right of all persons to hold any religion or beliefs and the prohibition of discrimination based on religious or nonreligious affiliation.<sup>5</sup> Democracy thus protects minority rights, regardless of the party in power or the majority religion or belief in the state.<sup>6</sup>

From these points of view, Italy represents an interesting case study of a state experiencing a form of religious pluralism that is new to it. Pluralism itself is not novel in the Italian context.<sup>7</sup>

<sup>2</sup> Ran Hirschl and Ayelet Shachar, “Competing Orders? The Challenge of Religion to Modern Constitutionalism,” *University of Chicago Law Review* 85, no. 2 (2018): 425–45.

<sup>3</sup> See, for example, Robert Audi, “Religion & Democracy: Interactions, Tensions, Possibilities,” *Dædalus* 149, no. 3 (2020): 5–24; Roger Finke and Laurence R. Iannaccone, “Supply-Side Explanations for Religious Change,” *Annals of the American Academy of Political and Social Science* 527 (1993): 27–39; Roger Finke and Rodney Stark, *The Churched America, 1776–1990* (New Brunswick: Rutgers University Press, 1992); Paul Froese, “After Atheism: An Analysis of Religious Monopolies in the Post-communist World,” *Sociology of Religion* 65, no. 1 (2004): 57–75; Ben Gaskins, Matt Golder, and David A. Siegel, “Religious Participation and Economic Conservatism,” *American Journal of Political Science* 57, no. 4 (2013): 823–40; Anthony Gill, “Religion and Comparative Politics,” *Annual Review of Political Science* 4, no. 1 (2001): 117–38; Antony Gill and Erik Lundsgaarde, “State Welfare Spending and Religiosity,” *Rationality and Society* 16, no. 4 (2004): 399–436.

<sup>4</sup> Brian J. Grim and Melissa E. Grim, “Belief, Behavior, and Belonging: How Faith Is Indispensable in Preventing and Recovering from Substance Abuse,” *Journal of Religious Health* 58, no. 5 (2019): 1713–50; Pazit Ben-Nun Bloom and Gizem Arikan, “Priming Religious Belief and Religious Social Behaviour Affect Support for Democracy,” *International Journal of Public Opinion Research* 25, no. 3 (2013): 368–82; Pazit Ben-Nun Bloom and Gizem Arikan, “Religion and Support for Democracy: A Cross-National Test of the Mediating Mechanisms,” *British Journal of Political Science* 43, no. 2 (2013): 375–97; Pazit Ben-Nun Bloom and Gizem Arikan, “A Two-Edged Sword: The Differential Effect of Religious Belief and Religious Social Context on Attitudes towards Democracy,” *Political Behavior* 34, no. 2 (2012): 249–76.

<sup>5</sup> European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs, *Religious Practice and Observance in the EU Member States* (Brussels: European Union, 2013).

<sup>6</sup> Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights, *Freedom of Religion or Belief and Security. Policy Guidance* (Warsaw: OSCE/ODIHR, 2019). On this document, see Silvio Ferrari, “La sinergia tra libertà religiosa e sicurezza nelle Linee Guida OSCE 2019” [The synergy between freedom of religion and security in the 2019 OSCE Guidelines], in *Libertà religiosa e sicurezza: con la prima traduzione italiana delle Linee guida OSCE 2019 su Libertà di religione o convinzione e sicurezza* [Freedom of religion and security: The Italian translation of the 2019 OSCE Guidelines on freedom of religion and belief and security], ed. Gabriele Fattori (Pisa: Pacini, 2021), xi–xv; see also Pasquale Annicchino, “La traduzione delle Linee Guida OSCE in materia di libertà di religione o convinzione e sicurezza” [The Italian translation of the 2019 OSCE Guidelines on freedom of religion and belief and security], in Fattori, *Libertà religiosa e sicurezza*, 199–212.

<sup>7</sup> Stefano Allievi, “Multiculturalism in Italy: The Missing Model,” in *European Multiculturalism Revisited*, ed. Alessandro Silj (London: Zed Books, 2010), 147–80.

Various minority religions have long been part of the national scene and have often enjoyed a level of public consideration far out of proportion to their numerical constituency. Today in Italy, however, some religious organizations point to constitutional difficulties in light of the tradition of considering church-state relations only in terms of the Roman Catholic Church. In particular, this traditional method of understanding church-state relations has increasingly come to be seen in terms of “negative externalities”: while creating privileges for the Catholic Church and a few minority denominations, it produces unreasonable discrimination against all other religions.<sup>8</sup>

In theory, the Italian method of state-church relations (also known as bilateralism) promotes rules that combine respect for general constitutional obligations and attention to specific religious claims. This method underscores the importance of religious denominations in society and, as such, seems suitable to govern religious diversity in a democratic and pluralistic state. However, the practical implementation of bilateralism is complicated by some political factors, including Parliament’s inability to implement a general law on religious freedom. Consequently, minority religions that do not have an understanding with the state (Article 8.3 of the Constitution) are still subjected to the 1929 law, no. 1159, on “admitted religions” (*culti ammessi*) which, having been approved during the Fascist regime, is not always congruent with the 1948 republican Constitution. Moreover, both the practice of state-church relations and the 1159/1929 law, combined with the highly discretionary powers granted to the government,<sup>9</sup> can lead to unreasonable and discriminatory distinctions between, on one hand, religions that benefit from bilateralism and, on the other hand, confessions that not only are excluded from this benefit but also are sometimes not even legally recognized as religions.

This is true of Muslim communities, which are often considered incapable of embracing democratic prerogatives,<sup>10</sup> including human rights and the principle of religion-state separation.<sup>11</sup> This opinion is also supported by references to the relations between some Islamic organizations in Italy and the governments of Muslim-majority countries in the Middle East and North Africa: for example, some Muslim organizations in Italy are funded by these governments.<sup>12</sup> Furthermore, in the context of recent problems of immigration and international terrorism, Islamic organizations are viewed with much more suspicion by

<sup>8</sup> Francesco Alicino, “The Italian Legal System and Imams: A Difficult Relationship,” in *Imams in Western Europe: Developments, Transformations, and Institutional Challenges*, ed. Mohammed Hashas, Jaap de Ruiter, and Niels Valdemar Vinding (Amsterdam: Amsterdam University Press, 2018), 359–80.

<sup>9</sup> See Corte costituzionale, no. 52/2016. Decisions of the Italian Constitutional Court can be accessed on the Court’s website, <https://www.cortecostituzionale.it/actionPronuncia.do>.

Some judgments are also available in English: <https://www.cortecostituzionale.it/actionJudgment.do>.

<sup>10</sup> Carmela Decaro Bonella, “Le questioni aperte: contesti e metodo” [Open questions: Context and method], in *Tradizioni religiose e tradizioni costituzionali. L’islam e l’Occidente* [Religious traditions and constitutional traditions: Islam and the West], ed. Carmela Decaro Bonella (Rome: Carocci, 2013), 17–56.

<sup>11</sup> Ahmet T. Kuru, *Islam, Authoritarianism, and Underdevelopment: A Global and Historical Comparison* (Cambridge: Cambridge University Press, 2019); Michael Driessen, “Religious Democracy and Civilizational Politics: Comparing Political Islam and Political Catholicism,” Center for International and Regional Studies, Georgetown University School of Foreign Service in Qatar, Occasional Paper no. 12, 2013, <http://hdl.handle.net/10822/558215>; Salim Cevik, “Myths and Realities on Islam and Democracy in the Middle East,” *Estudios Políticos, Instituto de Estudios Políticos*, no. 38 (2011): 121–44.

<sup>12</sup> Francesco Saverio Dalba, “Forme e modalità di finanziamento delle associazioni confessionali islamiche in Italia” [Forms and methods of financing of Islamic confessional associations in Italy], in *Comunità islamiche in Italia. Identità e forme giuridiche* [Islamic communities in Italy: Identity and legal forms], ed. Carlo Cardia and Giuseppe Dalla Torre (Turin: Giappichelli, 2015), 299–334; see also Jonathan Laurence, “Managing Transnational Islam: Muslims and the State in Western Europe,” in *Immigration and the Transformation of Europe*, ed. Craig A. Parsons and Timothy M. Smeeding (Cambridge: Cambridge University Press, 2006), 252–73; Christian Chesnot and Georges Malbrunot, *Qatar Papers: Comment l’émirat finance l’islam de France et d’Europe* [Qatar Papers: How the emirate finances Islam in France and Europe] (Paris: Michel Lafon, 2019).

some prominent political actors and parts of the Italian populace.<sup>13</sup> All of this describes how endogenous and exogenous political issues may muddle the interpretation of Italy's constitutional rights, including those related to the principle of secularism, which implies the right of any religious groups to be equally free before the law.

In what follows, I focus on the system of relationships between the state and religions in Italy. While creating privileges for the Catholic Church and a few minority denominations, this system produces unreasonable discriminations against all other religions. This situation is even more evident for conspicuous religious groups, like Muslim ones, whose legal status is still regulated under more generic laws governing recognized and unrecognized associations. Islam also has become the discursive symbol of Italy's current religious pluralism and tends to call attention to sensitive problems like immigration and religion-inspired terrorism. Looking at the example of Islam helps in analyzing how urgent domestic and external causes complicate the implementation of the Constitution, which includes the rights of all individuals and all religious denominations to be equal and equally free before the law without unreasonable distinctions—that is, without discrimination.

### Relations between State and Religions in Italy: From Legal Benefits to Unreasonable Distinctions

Article 7 of the Italian Constitution establishes the mutual independence and sovereignty of both the state and the Roman Catholic Church. Less strongly, this principle is also affirmed in Article 8.2, which recognizes the right to self-organization for minority religions, defined as “denominations other than Catholicism” (*confessioni diverse dalla Cattolica*). At the same time, Articles 7.2 and 8.3 of the Constitution regulate state-church relations. Based on what scholars typically refer to as the bilateralism method (*metodo della bilateralità pattizia*), these articles promote legislative rules that combine respect for general constitutional obligations and attention to specific religious claims.<sup>14</sup>

<sup>13</sup> Conrad Hackett, *5 Facts about the Muslim Population in Europe*, Pew Research Center, November 29, 2017, <https://www.pewresearch.org/fact-tank/2017/11/29/5-facts-about-the-muslim-population-in-europe/>; Fabrizio Ciocca, *L' Islam italiano. Un'indagine tra religione, identità e islamophobia* [Italian Islam: An investigation into religion, identity and Islamophobia] (Milan: Meltemi, 2019).

<sup>14</sup> Francesco Finocchiaro, *Diritto ecclesiastico* [Ecclesiastical law] (Bologna: Zanichelli, 2012), 128; Giorgio Balladore Pallieri, *Diritto costituzionale* [Constitutional law] (Milan: Giuffrè, 1970), 124; Francesco Margiotta Broglio, “Dalla questione romana al superamento dei Patti lateranensi” [From the Roman question to the overcoming of the Lateran Pacts], in *Un accordo di libertà: la revisione del Concordato con la santa Sede, la riforma della legislazione sugli enti ecclesiastici e i nuovi rapporti con altre confessioni religiose* [An agreement on religious freedom: The revision of the Concordat with the Holy See, the reform of legislation on ecclesiastical institutions, and new relations with denominations other than Catholicism], ed. General Director of President of the Council of Ministers (Rome: Istituto Poligrafico e Zecca dello Stato, 1986), 19–57; Salvatore Berlingò, “Fonti del diritto ecclesiastico” [Sources of ecclesiastical law], *Digesto discipline pubblicistiche*, no. VI (1991), 455–69; Giuseppe Casuscelli, *Concordati, intese e pluralismo confessionale* [Concordats, understandings and confessional pluralism] (Milan: Giuffrè, 1974), 144; Giuseppe Casuscelli, *Post-confessionismo e transizione* [Post-confessionism and transition] (Milan: Giuffrè, 1984), 55; Raffaele Botta, *Tutela del sentimento religioso ed appartenenza confessionale nella società globale. Lezioni di diritto ecclesiastico per il triennio con appendice bibliografica e normativa* [Protection of religious faith and denominational affiliation in global society. Lectures on ecclesiastical law for the three-year course with bibliography and rules in Appendix] (Turin: Giappichelli, 2002), 54; Carlo Cardia, *La riforma del Concordato. Dal confessionismo alla laicità dello Stato* [Reform of the Concordat: From confessionism to the secular state] (Turin: Einaudi, 1980), 108–09; Giovanni Battista Varnier, “La prospettiva pattizia” [The future of bilateralism], in *Principio pattizio e realtà religiose minoritarie* [Bilateralism as a principle and the reality of minority denominations], ed. Vincenzo Parlato and Giovanni Battista Varnier (Turin: Giappichelli, 1995), 8–13; Ilia Pasquali Cerioli, “Interpretazione assiologica, principio di bilateralità pattizia e (in)eguale libertà di accedere alle intese ex art. 8, terzo comma, Cost. [Axiological interpretation, the principle of bilateralism and (un)equal freedom of access to the system of understandings under Article 8.3 of the Constitution], *Rivista telematica Stato, Chiese e pluralismo confessionale*,

More specifically, Article 7.2 declares that the Lateran Pact of 1929<sup>15</sup> governs relations between the state and the Catholic Church. However, this article also affirms that any change to that pact, when accepted by the Holy See and the state, does not require constitutional amendment.<sup>16</sup> Both the Lateran Pact and Article 7.2 are thus seen as legal prototypes of the bilateralism principle, which is also incorporated into Article 8.3 of the Constitution.<sup>17</sup> Accordingly, only legislative acts can regulate relations between minority religions and the state.<sup>18</sup> Nevertheless, these acts must be based on *intese*, which can be translated as “understandings” between the state and confessions other than Catholicism.<sup>19</sup>

In other words, once the Italian government has signed an agreement with the Catholic Church or an understanding with a minority religion, the respective documents need to be approved by specific legislative acts of the Parliament. Organizations without *intese* are in another category; they are subject to the 1159/1929 law on “admitted religions.”<sup>20</sup> Approved during the Fascist regime, this law is not always congruent with current constitutional provisions.<sup>21</sup> The 1929 law is still in force, however, as the

no. 26 (July 16, 2016), [https://www.statoechnese.it/images/uploads/articoli\\_pdf/pasquali\\_interpretazione.pdf?pdf=interpretazione-assiologica-principio-di-bilateralita-pattizia-e-ineguale-l](https://www.statoechnese.it/images/uploads/articoli_pdf/pasquali_interpretazione.pdf?pdf=interpretazione-assiologica-principio-di-bilateralita-pattizia-e-ineguale-l); Giuseppe Casuscelli, “Il pluralismo in materia religiosa nell’attuazione della Costituzione ad opera del legislatore repubblicano” [Pluralism in matters of religion and the implementation of the Constitution by the legislator during the period of the Republic of Italy], in *Diritto e religione in Italia. Rapporto nazionale sulla salvaguardia della libertà religiosa in regime di pluralismo confessionale e culturale* [Law and religion in Italy. National report on the safeguarding of religious freedom in a regime of confessional and cultural pluralism], ed. Sara Domianello (Bologna: Il Mulino, 2012), 23; Giuseppe D’Angelo, *Repubblica e confessioni religiose tra bilateralità necessaria e ruolo pubblico: contributo alla interpretazione dell’art. 117, comma 2, lett. c) della Costituzione* [The Republic of Italy and religious denominations between the need of bilateralism and the role of public authorities: The interpretation of Article 117.2 (c) of the Constitution] (Turin: Giappichelli, 2012), 13.

<sup>15</sup> Francesco Margiotta Broglio, *Italia e Santa Sede dalla grande guerra alla conciliazione* [Italy and the Holy See from the Great War to conciliation] (Rome: Laterza, 1966), 77; Roberto Pertici, *Chiesa e Stato in Italia. Dalla Grande Guerra al nuovo Concordato. Dibattiti storici in Parlamento* [Church and state in Italy: From the Great War to the new Concordat. Historical debates in Parliament] (Bologna: Il Mulino, 2009), 185.

<sup>16</sup> This procedure is regulated by Article 138 of the Italian Constitution.

<sup>17</sup> Nicola Colaianni, *Confessioni religiose e intese. Contributo all’interpretazione sistematica dell’art. 8 della Costituzione* [Religious denominations and understandings. The systematic interpretation of Article 8 of the Constitution] (Bari: Cacucci, 1990), 132.

<sup>18</sup> Francesco Modugno, “Norme singolari, speciali, eccezionali” [Singular, special, exceptional rules], in *Enciclopedia del diritto* [Encyclopedia of law], vol. 28 (Milan: Giuffrè, 1978): 506–33; Mario Ricca, *Legge e Intesa con le confessioni religiose: sul dualismo tipicità-atipicità nella dinamica delle fonti* [Law and Understanding with minority denominations: On the duality of typicality-atypicality under the dynamics of legal sources] (Turin: Giappichelli, 1996), 25.

<sup>19</sup> Giuseppe Casuscelli, “La rappresentanza e l’intesa” [Representatives of minority denominations and understanding], in *Islam in Europa/Islam in Italia tra diritto e società* [Islam in Europe/Islam in Italy between law and society], ed. Alessandro Ferrari (Bologna: Il Mulino, 2008), 285–322, at 304.

<sup>20</sup> Giorgio Bouchard, “Concordato e intese, ovvero un pluralismo imperfetto” [Concordat under Article 7 of the Constitution and understandings: The unperfect pluralism] *Quaderni di diritto e politica ecclesiastica*, no. 1 (2004): 65–72, at 70–71.

<sup>21</sup> According to this law, the minister of the interior will take into consideration the characteristics of the denomination or religious entity that claims recognition. For example, the minister will take into account: (1) the number of the claimants’ members and how widespread they are in the country; (2) the compatibility between the claimants’ statutes and the main principles of the Italian legal system; (3) the aim of the denomination that wishes to be recognized by the state, an aim that has to be based “prevalently” on religion and worship. In contrast, religious groups possessing an understanding with the state are no longer subject to the 1929 law, whose rules are entirely replaced by those, more favorable, of legislative acts approving *intese*. See Andrea Bettegini, “Alla ricerca del ‘ministro di culto’: Presente e futuro di una qualifica nella società multireligiosa” [In search of the “minister of worship”: Present and future of a qualification in multireligious society], *Quaderni di diritto e politica ecclesiastica*, no. 1 (2000): 249–68; Angelo Licastro, *I ministri di culto nell’ordinamento giuridico italiano* [The ministers of worship in the Italian legal system] (Milan: Giuffrè, 2005), 482; Cesare Mirabelli, *L’appartenenza confessionale* [Confessional affiliation] (Padua: CEDAM, 1975), 359; Onida Francesco, “Voce Ministri di culto” [On ministers of worship] *Enciclopedia giuridica* [Legal encyclopedia], vol. 20 (Rome: Istituto della Enciclopedia italiana, 1990): 1–6.

Parliament has not been able to replace it with more constitutionally aligned legislation.<sup>22</sup>

On February 18, 1984, the Holy See signed its current agreement with the state. Also known as the Villa Madama Accords, this legal document is similar to an international treaty and replaced the 1929 Lateran Pact, except for one part. In 1984, the Italian government also signed the first *intesa* with the Waldensian church. Since then, the government has signed at least fifteen different *intese*, thirteen of which have been approved by the Parliament to date.<sup>23</sup> In 1985, the Villa Madama Accords were ratified by the Parliament with the 121/1985 law, which can be amended only on the basis of a new agreement between the state and the Catholic Church.<sup>24</sup>

This method of bilateral legislation, in affirming significant legal benefits for religious organizations, underscores the importance of the Catholic Church and other minority religions in society.<sup>25</sup> As such, the method seems suitable to govern the religious diversity in the framework of a democratic, pluralistic legal system. This method is even more relevant in light of the principle of *laicità* (secularism). Although *laicità* is not expressly enshrined in the 1948 Constitution, this has not prevented the Constitutional Court from specifying that, on the basis of a series of constitutional provisions,<sup>26</sup> secularism is one of the

<sup>22</sup> See Roberto Zaccaria et al., eds., *La legge che non c'è. Proposta per una legge sulla libertà religiosa* [The law that does not exist: A proposal for a law on religious freedom], (Bologna: Il Mulino, 2019).

<sup>23</sup> See the Italian President of the Council of Ministers, Office for Relations between the State and Denominations, “Le intese con le confessioni religiose” [Understandings with religious denominations], accessed July 30, 2022, [http://presidenza.governo.it/USRI/confessioni/intese\\_indice.html](http://presidenza.governo.it/USRI/confessioni/intese_indice.html). In March 2000, the Italian Christian Congregation of Jehovah’s Witnesses and the government signed an *intesa* that was never approved by the Italian Parliament: the parliamentary debate stated in a superficial manner and without any concrete evidence that the congregation not only refuses blood transfusions and transplants for its members and their children, but also “conceals crimes committed within the congregation.” In 2007, the congregation signed another *intesa* with the government, which was very similar to the previous one: on this occasion, too, the majority of the Parliament decided that the congregation was not worthy of such an understanding. These are illustrative examples of discrimination against a religious denomination based mainly on political—not legal—reasons. See the Chamber of Deputies of the Italian Parliament, *XIII Legislatura, I Commissione permanente (Affari costituzionali, della Presidenza del Consiglio e Interni), Resoconti di mercoledì 10 gennaio 2001 e di giovedì 4 dicembre 2012* [Thirteenth Legislature, First Permanent Commission (Constitutional Affairs, Presidency of the Council and Home Affairs), Reports of January 10, 2001, and December 4, 2012], accessed July 30, 2022, [http://leg13.camera.it/\\_dati/leg13/lavori/bollet/200101/0110/html/01/frame.htm](http://leg13.camera.it/_dati/leg13/lavori/bollet/200101/0110/html/01/frame.htm); <http://documenti.camera.it/leg16/resoconti/commissioni/bollettini/html/2012/10/04/01/comunic.htm#data.20121004.com01.bollettino.sede00010.tit00030>. See Pierangela Floris, “Intorno all’intesa con i Testimoni di Geova” [About the agreement with the Jehovah’s Witnesses], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 13 (2021): 120–49.

<sup>24</sup> Carlo Cardia, “Concordato, intese, laicità dello Stato” [Concordat, understandings, secularity of the State], *Quaderni di diritto e politica ecclesiastica*, no. 1 (2004): 23–34, at 30.

<sup>25</sup> Francesco Alicino, *La legislazione sulla base di intesa. I test delle religioni “altre” e degli ateismi* [Legislation based on understanding. The test of religions “other” than Catholicism and atheisms] (Bari: Cacucci, 2013), 23–64.

<sup>26</sup> These provisions include the following articles of the 1948 Constitution: Article 2 (under which “[t]he Italian Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic, and social solidarity be fulfilled”); Article 3 (regulating the principle of equality); Article 7 (concerning the relation between the state and the Catholic Church); Article 8 (para. 1: “[a]ll religious denominations are equally free before the law”; para. 2: “[d]enominations other than Catholicism have the right to self-organization according to their own statutes, provided these do not conflict with Italian law”); Article 19 (“[a]nyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality”); and Article 20 (“[n]o special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organization on the ground of its religious nature or its religious or confessional aims”).

supreme principles (*principi supremi*)<sup>27</sup> of the Italian legal order.<sup>28</sup> *Laicità* does not imply indifference toward religions but acknowledges the special status of denominational religions while also affirming the impartiality of the state.<sup>29</sup> While recognizing the separation of state and religion, the principle of secularism takes a positive attitude toward confessions,<sup>30</sup> whose importance is precisely delineated through the so-called *favor religionis* (Articles 7, 8, and 20 of the Constitution),<sup>31</sup> which is strictly connected with the method of bilateral legislation.<sup>32</sup>

It is important to note, however, that since 1984 the practical implementation of relations between the state and minority religions has been characterized by “copy-and-paste” production of law. As a result, all *intese* now in force have a very similar content. Even though the legal effects of the *intese* are quite different from those of the Villa Madama Accords, all *intese* more or less replicates matters from these Accords, at least concerning freedom of religion, spiritual assistance in hospital and prisons, religious teaching in

<sup>27</sup> Francesco Finocchiaro, “‘Principi supremi,’ ordine pubblico italiano e (auspicata) parità tra divorzio e nullità canonica del matrimonio” [“Supreme principles,” Italian public order, and (desired) equality between divorce and canonical nullity of marriage], in *Matrimonio concordatario e tutela giurisdizionale* [Marriage under the Concordat and legal protection], ed. Francesco Cipriani (Naples: ESI, 1992), 67.

<sup>28</sup> See the following decisions of the Italian Constitutional Court: Corte costituzionale, nos. 203/1989, 259/1990, 13/1991, 467/1991, 195/1993, 421/1993, 149/1995, 440/1995, 334/1996, 235/1997, 329/1997, 507/2000, 508/2000, 327/2002, 389/2004, 168/2005, 102/2008, 52/2016.

<sup>29</sup> Sergio Lariccia, “Problemi in temi dello Stato e delle istituzioni civili” [Problems in the matter of state and civil institutions], in *Scritti in memoria di Livio Paladin* [Essays in memory of Livio Paladin] (Naples: Jovene, 2004), 1251; Stefano Sicardi, “Il principio di laicità nella giurisprudenza della Corte costituzionale (e rispetto alle posizioni dei giudici comuni)” [The principle of secularism in the jurisprudence of the Constitutional Court (and with respect to the positions of the ordinary judges)], *Associazione Italiana dei Costituzionalisti*, January 9, 2007, 1–31, [https://www.associazionedeicostituzionalisti.it/old\\_sites/sito\\_AIC\\_2003-2010/materiali/convegni/200611foggia/sicar/di1.html](https://www.associazionedeicostituzionalisti.it/old_sites/sito_AIC_2003-2010/materiali/convegni/200611foggia/sicar/di1.html).

<sup>30</sup> Nicola Colaianni, *La lotta per la laicità. Stato e Chiesa nell’età dei diritti* [The struggle for secularism: State and church in the age of rights] (Bari: Cacucci, 2017), 19.

<sup>31</sup> See, among others, the following: Giuseppe Casuscelli, “La ‘supremazia’ del principio di laicità nei percorsi giurisprudenziali” [The “supremacy” of the principle of secularism in jurisprudential processes], in *La laicità del diritto* [The secularism of the law], ed. Angelo Barba (Rome: Aracne, 2010), 101; Francesco Margiotta Broglio, “La laicità dello Stato” [The secularism of the state], in *Le ragioni dei laici* [Reasons for secularism], ed. Geminiello Preterossi (Rome: Laterza, 2005), 79–96; Cesare Mirabelli, “Prospettive del principio di laicità dello Stato” [Views of the principle of the secularism of the state], *Quaderni di diritto e politica ecclesiastica*, no. 2 (2001): 331–36; the contributions in Mario Tedeschi, ed. *Il principio di laicità nello Stato democratico* [The principle of secularism in a democratic state] (Soveria Mannelli: Rubbettino, 1996); Augusto Barbera, “Il cammino della laicità” [The path of secularism], in *Laicità e diritto* [Secularism and law], ed. Stefano Canestrari (Bologna: Bononia University Press, 2007), 33; Giuseppe Casuscelli, “La laicità e le democrazie: la laicità della ‘Repubblica democratica’ secondo la Costituzione italiana” [Secularism and democracies: The secularism of the “Democratic Republic” according to the Italian Constitution], *Quaderni di diritto e politica ecclesiastica*, no. 1 (2007): 169–202; the contributions in Giuseppe Dalla Torre, ed., *Lessico della laicità* [Lexicon of secularism] (Rome: Studium, 2007); Giuseppe Dalla Torre, *Il primato della coscienza. Laicità e libertà nell’esperienza giuridica contemporanea* [The primacy of consciousness: Secularism and freedom in contemporary legal experience] (Rome: Studium, 1992); Sara Domianello, *Sulla laicità nella Costituzione* [On secularism in the Constitution] (Milan: Giuffrè, 1999); Silvio Ferrari, “Religione civile in Europa. Laicità asimmetrica” [Civil religion in Europe: Asymmetrical secularism], *Il Regno*, no. 6 (2006): 200–12; Ombretta Fumagalli Carulli, “A Cesare ciò che è di Cesare, a Dio ciò che è di Dio.” *Laicità dello Stato e libertà delle Chiese* [“Unto Caesar what belongs to Caesar, unto God what belongs to God”: Secularity of the state and freedom of the Churches] (Milan: Vita & Pensiero, 2006); Nicola Colaianni, *Diritto pubblico delle religioni. Eguaglianza e differenze nello stato costituzionale* [Public law on religion: Equality and differences in the constitutional state] (Bologna: Il Mulino, 2012), 46–54.

<sup>32</sup> Giovanni Battista Varnier, “Il modello pattizio Stato-confessioni alla prova delle nuove dinamiche della società italiana” [The state-confessional pact model tested against the new dynamics of Italian society], in *Europa e Islam. Ridefinire i fondamenti della disciplina delle libertà religiose* [Europe and Islam. Redefining the foundations of the discipline of religious freedom], ed. Valerio Tozzi and Gianfranco Macrì (Soveria Mannelli: Rubbettino, 2009), 31–39, at 34.

schools, legal capacity of religious institutions, religious ministers, marriages, taxation, state funding to religions, and so on. Thus, the *intese* now in force have established a de facto common legislation of sorts.<sup>33</sup> This legislation refers exclusively to all religious denominations that have an *intesa* with the state. All other minority religions remain subject to the 1159/1929 law.

Moreover, there is no law outlining the procedure for implementing Article 8.3 of the Constitution. In practice, this means that the decision on whether to start negotiations to sign *intese* is a matter for the Italian government. Under the 1159/1929 law on admitted religions, the government—particularly the Ministry of the Interior—also plays a significant and unique role in determining whether an organization can be legally recognized as a religious denomination. Legal recognition under the 1159/1929 law is the first, although not decisive, step toward achieving an *intesa*.

Hence, the discretionary power of the government can become discriminatory between religions with *intese* and those without.<sup>34</sup> Furthermore, based on the government's attention and support, the bilateralism method leads many minority religions to consider the state-church relation not only as an opportunity to exercise constitutional prerogatives but also, and above all, as an instrument of public legitimacy. This is even more evident in reference to conspicuous religious groups, like Islamic ones, whose legal status is still regulated under more generic laws governing recognized and unrecognized associations.<sup>35</sup> These groups are not only excluded from the benefits of *intese* but also impeded from being legally recognized under the 1159/1929 law on admitted religions.<sup>36</sup>

The current legal framework does not prevent legal recognition of Muslim communities. The most important obstacle in this regard is the influence of politics and the predominant (political) role of the government. This influence means that the bilateral state-church legislation functions in a way contrary to fundamental rights and freedoms, including those related to both *favor libertatis* (Articles 2, 3, and 19) and *favor religionis* (Articles 7, 8, and 20)<sup>37</sup> of the Constitution—which not by chance but rather by necessity are integral parts of the supreme principle of secularism.<sup>38</sup> Indeed, the Constitution recognizes all persons as equal before the law and entitled to freely profess, practice, and propagate religion in any form, individually or with others (*favor libertatis*). The Constitution also guarantees to all religious denominations and associated organizations equal freedom before the law, without discriminations on the basis of their religious nature or aims (*favor religionis*).

This point of discussion becomes more pertinent when in the context of the jurisprudence of the European Court of Human Rights, which has held that the European Convention on Human Rights does not require a member state to create a particular legal framework in order to grant religious communities a special status. Yet a state that has created such a

<sup>33</sup> On the difference between “common legislation” and “general legislation,” see Francesco Carnelutti, *Teoria generale del diritto* [General theory of law] (Rome: Edizioni del Foro italiano, 1951), 42; Vezio Crisafulli, “Voce Fonti del diritto (dir. cost.)” [On the sources of law (constitutional law)], *Enciclopedia del diritto* [Encyclopedia of law], vol. 17 (Milan: Giuffrè, 1968), 925–66.

<sup>34</sup> See Corte costituzionale, no. 52/2016.

<sup>35</sup> Erminia Camassa, “Caratteristiche e modelli organizzativi dell'Islam italiano a livello locale: tra frammentarietà e mimetismo giuridico” [Characteristics and organizational models of Italian Islam at the local level: Between fragmentation and legal camouflage], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 123–49.

<sup>36</sup> Valerio Tozzi, “Le confessioni religiose senza intesa non esistono” [Religious confessions without understandings with the state do not exist], in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino* [Equity or God. Essays in Honour of Rinaldo Bertolino] (Turin: Giappichelli, 2011), 1033–60, at 1038.

<sup>37</sup> Nicola Colaianni, “Trent'anni di laicità (Rileggendo la sentenza n. 203 del 1989 e la successiva giurisprudenza costituzionale)” [Thirty years of secularism (Rereading sentence no. 203 of 1989 and subsequent constitutional jurisprudence)], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 21 (2020): 52–66.

<sup>38</sup> Andrea Pin, *The Legal Treatment of Muslim Minorities in Italy* (London: Routledge, 2016).



status through specific bilateral state-church legislation must comply with its duty of neutrality and impartiality. In particular, the state should ensure that any group has a fair opportunity to apply for special status, and that the criteria established are in accordance with the principles of proportionality and nondiscrimination.<sup>39</sup> This requirement is even more relevant when referring to Article 117.1 of the Italian Constitution, which provides that legislative (state and regional) powers shall be “in compliance with the constraints deriving from EU legislation and international obligations,” including those referring to the European Convention on Human Rights.<sup>40</sup>

The European Convention on Human Rights leaves to each contracting state the task of securing the rights and liberties it enshrines. By reason of their direct and continuous contact with the populace of their countries, state authorities are in a better position than the European Court of Human Rights to opine on the exact content of those rights and freedoms as well as on the “necessity” of “restrictions” on them. This is especially the case for the individual and collective aspects relating to the right to freedom of religion (Article 9 of the European Convention on Human Rights). Here the machinery of protection established by the European Convention on Human Rights is subsidiary to the national systems.<sup>41</sup> This means that member states have an obligation to secure the rights within their domestic sphere before they are brought before the European Court of Human Rights. The principle of subsidiarity is often connected with the balancing principle and a proportionality test,<sup>42</sup> which must be conducted in order to check whether the legal restrictions imposed at the national level on rights and freedoms are proportionate and reasonable.<sup>43</sup> The outcomes of the test also depend on the European consensus standard,<sup>44</sup> which is a generic label used to describe the inquiry of the European Court of Human Rights into the existence or nonexistence of a common ground, mostly in the law and practice of the member states. The principle of subsidiarity has given this standard a key role in the application of margin of appreciation—the space for manoeuvre that the European Court of Human Rights is willing to grant national authorities in fulfilling their obligations under the European Convention on Human Rights, including those related to freedom of religion. The main argument is that, because there is no European consensus on the issue, national authorities have a margin of appreciation in interfering with the rights enshrined in the Convention, while the European Court of Human Rights is required to consider whether domestic interferences are reasonable and necessary in a democratic society.<sup>45</sup>

<sup>39</sup> *Savez crkava “Riječ života” and others v. Croatia*, Application No. 7798/08 (2010), <https://hudoc.echr.coe.int/eng?i=001-102173>; *İzzettin Doğan and others v. Turkey*, Application No. 62649/10 (2016), <https://hudoc.echr.coe.int/eng?i=001-162697>.

<sup>40</sup> Nicola Colaianni, “Laicità e prevalenza delle fonti di diritto unilaterale sugli accordi con la Chiesa cattolica” [The principle of secularism and the primacy of unilateral sources of law over agreements with the Catholic Church], *Politica del diritto*, no. 2 (2010): 181–225.

<sup>41</sup> See *Handyside v. United Kingdom*, App. No. 5493/72 (December 7, 1976); *Kokkinakis v. Greece*, App. No. 14307/88 (March 25, 1993).

<sup>42</sup> Gino Scaccia, “Proportionality and the Balancing of Rights in the Case-Law of European Courts,” *Federalismi.it*, no. 4 (2019), <https://www.sipotra.it/wp-content/uploads/2019/03/Proportionality-and-the-Balancing-of-Rights-in-the-Case-law-of-European-Courts.pdf>.

<sup>43</sup> Pasquale Annicchino, *La religione in giudizio. Tra Corte Suprema degli Stati Uniti e Corte europea dei diritti dell'uomo* [Religion in judgment: Between the Supreme Court of the United States and the European Court of Human Rights] (Bologna: Il Mulino, 2018).

<sup>44</sup> Kanstantsin Dzehtsiarou, “European Consensus and the Evolutive Interpretation of the European Convention on Human Rights,” *German Law Journal* 12, no. 10 (2011): 1730–45.

<sup>45</sup> See *Leyla Şahin v. Turkey*, Application No. 44774/98, 2005-XI European Court of Human Rights 173, <https://hudoc.echr.coe.int/eng?i=001-70956>; *S.A.S. v. France*, Application No. 43835/11, 2014-III European Court of Human Rights 341, <https://hudoc.echr.coe.int/eng?i=001-145466>; *Otto-Preminger-Institut v. Austria*, Application No. 13470/87 (1994), <https://hudoc.echr.coe.int/eng?i=001-57897>; *Dahlab v. Switzerland*, Application

The rules and principles of the European Convention on Human Rights have already called into question some aspects of the 1984 Villa Madama Accords regulating the relations between the Catholic Church and the Italian state. The most remarkable examples are the European Court of Human Rights's decisions of *Pellegrini v. Italy* and *Lombardi Vallauri v. Italy*, delivered respectively on July 20, 2001,<sup>46</sup> and October 20, 2009.<sup>47</sup> This jurisprudence is important because it marks the point of rupture between the historical system of relationship between the Catholic Church and the Italian state, which impaired the very substance of the some fundamental rights provided by the European Convention, such as those in Article 6.<sup>48</sup>

All of this means that in Italy, the obligations stemming from the European Convention on Human Rights cannot result in a protection of fundamental rights inferior to those ensured by the jurisprudence of the European Court of Human Rights,<sup>49</sup> and that the violation of European Convention on Human Rights's rules and principles may also result in a violation of Article 117.1 of the Italian Constitution.<sup>50</sup>

For these reasons, the way in which the government and the Parliament have used the bilateral legislation could conflict not only with Articles 2, 3, 8, 19, and 20 but also with Article 117.1 of the Constitution. More specifically, in the light of both Italy's Constitution and the European Convention on Human Rights, the benefits of bilateralism could be viewed as "negative externalities": these benefits, while creating privileges for the Catholic Church and for a few minority denominations, produce unreasonable discriminations against all other religions, including Islam, which is now the largest religion in Italy after Catholicism.<sup>51</sup>

In fact, under current legislative and governmental practice, the method of bilateral legislation ends up having an impact on the rules and principles of both the Constitution and

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No. 42393/98, 2001-V European Court of Human Rights 447, <https://hudoc.echr.coe.int/eng?i=001-22643>; Lautsi v. Italy, Application No. 30814/06 (2009), <https://hudoc.echr.coe.int/eng?i=001-95589> (judgment of the Second Section); Lautsi v. Italy, Application No. 30814/06, 2011-III European Court of Human Rights 61, <https://hudoc.echr.coe.int/eng?i=001-104040> (judgment of the Grand Chamber). See also Maria Iglesias Vila, "Subsidiarity, Margin of Appreciation and International Adjudication within a Cooperative Conception of Human Rights," *International Journal of Constitutional Law* 15, no. 2 (2017): 393–413.

<sup>46</sup> Case of Pellegrini v. Italy, App. No. 30882/96 (July 20, 2001).

<sup>47</sup> Lombardi Vallauri v. Italy, App. No. 39128/05 (October 20, 2009).

<sup>48</sup> Francesco Alicino, "La libertà religiosa" [Religious freedom], in *La Corte di Strasburgo* [The Court of Strasbourg], ed. Francesco Buffa and Maria Giuliana Civinini (Milan: Key, 2019), 458–67.

<sup>49</sup> Antonio Ruggeri, "Tutela dei diritti fondamentali, squilibri nei rapporti tra giudici comuni, Corte costituzionale e Corti europee, ricerca dei modi con cui porvi almeno in parte rimedio" [Protection of fundamental rights, imbalances in the relationship between ordinary judges, the Constitutional Court and the European Courts, and the search for ways to partially remedy them], *Consulta Online*, March 17, 2012, <https://www.giurcost.org/studi/Ruggeri12.pdf>.

<sup>50</sup> Corte costituzionale, nos. 348/2007, 349/2007, 80/2011.

<sup>51</sup> In 2020, roughly 1.6 million Muslims lived in Italy. The most numerous national origins of Muslims living in the country are Morocco (450,000 people), Albania (205,000), Bangladesh (139,000), Pakistan (120,000), and Senegal (109,000). Other surveys report that approximately 2.5 million Muslims make up about 4 percent of the Italian population. The Muslim population comprises native-born citizens, immigrants, and resident foreigners, but most of its growth comes from large numbers of immigrants from Eastern Europe, Africa, the Middle East, and South Asia, the majority of whom live in the north of Italy. See US Department of State, Office of International Religious Freedom, "2019 Report on International Religious Freedom: Italy" (Executive Summary), accessed July 22, 2022, <https://www.state.gov/reports/2019-report-on-international-religious-freedom/italy/>. See also DOXA-UAAR, *Sondaggio Doxa su religiosità e ateismo* [DOXA survey on religiosity and atheism] (2019), accessed July 22, 2022, <https://www.uaar.it/doxa2019/>; CESNUR, *Dimensioni del pluralismo religioso in Italia (2021)* [Dimensions of religious pluralism in Italy (2021)], accessed July 22, 2022, <https://cesnur.com/dimensioni-del-pluralismo-religioso-in-italia/>; ISTAT, *Aspetti della vita quotidiana: Pratica religiosa—regioni e tipo di comune* [Aspects of daily life: Religious practice by region and type of municipality] (2020), accessed July 22, 2022, <http://dati.istat.it/index.aspx?queryid=24349>.

the European Convention on Human Rights, including those pertaining both to the duty of neutrality and impartiality and to the right of minorities to be equal and equally free before the law. The negative externalities are such that the implementation of these rules and principles is impeded by unreasonable distinctions, the origins of which lie in long-standing political tendencies.

### Relations between Islam and Italy's Democracy

Under the Italian Constitution, all individuals and communities with religious aims are equal and equally free before the law. They can operate without authorization or prior registration. The only limit is based on the protection of public order and common decency. This means that, under the 1948 Constitution, fundamental rights, including the right to religious freedom, are not absolute. As the Constitutional Court has stated, there is no doubt that the practice of religion, where it contrasts with public morality, falls outside constitutional protection; it is equally clear that, if the members of a denomination organize themselves in a way that is incompatible with the state's legal order, they cannot invoke the protection of the Constitution. All constitutionally protected rights are subject to necessary balancing to ensure a unified and not fragmentary protection of all constitutional interests, in such a way that none of these rights enjoys unlimited protection.<sup>52</sup> Thus, among the constitutional interests that must be adequately considered in protecting the freedom of religion are those concerning safety, public order, and peaceful coexistence.<sup>53</sup>

In light of these considerations, Muslims have in theory the right to profess freely and propagate their religion in any form, including that of religious denomination.<sup>54</sup> In practice, however, apart from the Islamic Cultural Centre of Italy,<sup>55</sup> the vast majority of Muslim groups constitute themselves as unrecognized associations with a very weak legal capacity.<sup>56</sup> Through registration at the local prefecture, Muslim organizations can also choose the form of recognized associations that have legal personality. But these associations are not comparable to religious denominations with *intese* under Article 8.3 of the Constitution.<sup>57</sup> Moreover, Islamic communities are normally prevented from being legally recognized even under the 1159/1929 law on admitted religions.<sup>58</sup> Hence, some Muslims groups have sought

<sup>52</sup> See Corte costituzionale, no. 85/2013.

<sup>53</sup> See Corte costituzionale, no. 63/2016.

<sup>54</sup> Livio Paladin, "Voce Ordine pubblico" [On public order], *Novissimo Digesto italiano* 12 (1965): 130–35, at 130.

<sup>55</sup> This association is the only one that has been recognized as a religious legal entity under the 1159/1929 law on admitted religions. See Decreto del Presidente della Repubblica 21 dicembre 1974, n. 712 [Decree of the President of Italian Republic of December 21, 1974, no. 712], "Riconoscimento della personalità giuridica dell'ente Centro islamico culturale d'Italia" [Recognition of the legal personality of the Islamic Cultural Centre of Italy], *Gazzetta Ufficiale* [Official gazette], accessed July 22, 2022, <https://www.gazzettaufficiale.it/eli/id/1975/01/11/074U0712/sg>.

<sup>56</sup> In accordance with Articles 36–38 of the Italian Civil Code, this kind of association implies independence in property matters and the possibility to receive donations. Unrecognized associations are the simplest model of association that does not provide particular control from the state's authorities.

<sup>57</sup> See the 2000 decree of the President of Italian Republic, no. 361, *Regolamento recante norme per la semplificazione dei procedimenti di riconoscimento di persone giuridiche private e di approvazione delle modifiche dell'atto costitutivo e dello statuto (17 dell'allegato 1 della legge 15 marzo 1997, 59)* [Regulation containing rules for the simplification of procedures for the recognition of private legal persons and the approval of amendments to the memorandum and the statute of associations (no. 17 of Annex 1 to law no. 59 of March 15, 1997)].

<sup>58</sup> Pierangela Floris, "Comunità islamiche e lacune normative. L'ente che non c'è: l'associazione con fine di religione e di culto" [Islamic communities and regulatory deficits. The entity that does not exist: The association with the aim of religion and worship], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 75–97.

to bypass this law, encouraging forms of cooperation with the government in order to sign an *intesa*.<sup>59</sup>

In 1990, two years after its establishment, the Union of Islamic Communities and Organizations in Italy publicly stated its intention to issue a draft understanding (*intesa*) and send it to the government. Similar attempts have been made by other groups, such as the Association of Italian Muslims (1994) and the Islamic Italian Community (1996).<sup>60</sup> Yet this approach has not been followed by public authorities, who have most often opted for informal mechanisms over Article 8.3 of the Constitution or the 1159/1929 law.<sup>61</sup>

For example, in 2005 the Minister of the Interior established the Council for Islam in Italy (*Consulta per l'Islam italiano*),<sup>62</sup> which supplied documents<sup>63</sup> aimed at both reaffirming the “values” of the Italian Constitution and encouraging the creation of an Italian federation of Islamic groups.<sup>64</sup> Three years later, this council issued the *Carta dei valori della cittadinanza e dell'integrazione* (Charter of Values for Citizenship and Integration), conceived as the basis for a future understanding between the state and Islam(s),<sup>65</sup> the Scientific Committee with the same composition as the council was responsible for disseminating and promoting the content of the charter within both public authorities and the Islamic community in Italy.<sup>66</sup>

In 2010, the Minister of the Interior also established the Comitato per l'Islam Italiano (Committee for Islam in Italy), which was made up of nineteen members, including not only Muslim representatives but also non-Muslim academic experts on Islam and even anti-Muslim prominent figures in journalism: the composition of the committee was intended to correct the vague attempt of representativeness of the previous council.

<sup>59</sup> See Alessandro Ferrari, “Libertà religiosa e nuove presenze confessionali (ortodossi e islamici): tra cieca deregulation e super-specialità, ovvero del difficile spazio per la differenza religiosa” [Religious freedom and new confessional presences (Orthodox and Muslims): Between blind deregulation and super speciality, the difficult space for religious diversity], *Rivista telematica Stato, Chiese e pluralismo confessionale* (July 2011), at 13, <https://doi.org/10.13130/1971-8543/1213>. See also Stefano Allievi, *Islam italiano. Viaggio nella seconda religione del Paese* [Italian Islam: The journey of the second religion of the country] (Turin: Einaudi, 2003).

<sup>60</sup> Luciano Musselli, “A proposito di una recente proposta di bozza d'intesa con l'Islam” [On the recent proposed draft understanding with Islam], *Il Diritto ecclesiastico*, no. 1 (1997): 295–96, at 295; Mario Tedeschi, “Verso un'intesa tra la Repubblica italiana e la Comunità islamica in Italia?” [Towards an understanding between the Italian Republic and the Islamic Community in Italy?], *Il diritto di famiglia* 25, no. 4 (1996): 1574–82, at 1574; Agostino Cilardo, “Diritto islamico, diritto occidentale: ambiguità semantica” [Islamic law, Western law: Semantic ambiguity], in Tozzi and Macrì, *Europa e Islam*, 85–95, at 94.

<sup>61</sup> Giuseppe Casuscelli, “La rappresentanza e l'intesa,” in Ferrari, *Islam in Europa/Islam in Italia tra diritto e società*, at 304.

<sup>62</sup> Silvio Ferrari, “La consulta islamica” [The council for Islam], in *Dodicesimo rapporto sulle migrazioni 2006* [The twelfth migration report, 2006], ed. ISMU (Milan: FrancoAngeli, 2007), 249–63.

<sup>63</sup> See “Documenti del Comitato per l'Islam italiano” [Documents of the Italian Islamic Committee], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 663–94.

<sup>64</sup> See “La Dichiarazione di intenti per la federazione dell'Islam italiano” [The declaration of intent for the federation of Italian Islam], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 659–62.

<sup>65</sup> See Carlo Cardia, “Introduzione alla Carta dei valori della cittadinanza e dell'integrazione” [Introduction to the Charter of Values for Citizenship and Integration], in *Carta dei valori della cittadinanza e dell'integrazione* [Charter of Values for Citizenship and Integration], ed. Ministero dell'Interno (Rome: Ministero dell'Interno, 2008), 1–10, at 8; Nicola Colaianni, “Alla ricerca di una politica del diritto sui rapporti con l'Islam (Carta dei valori e Dichiarazione di intenti)” [In search of a legal policy on relations with Islam (on the Charter of Values and the Declaration of Intent)], *Rivista telematica Stato, Chiese e pluralismo confessionale* (January 2009), <https://doi.org/10.13130/1971-8543/2856>. It should be noted that in 2012, the Minister for Cooperation and Integration created a Permanent Conference on Religions, Culture, and Integration, where representatives of Muslim organizations and experts on Islam and other religions were properly represented; however, the conference was essentially conceived as a space for meetings and seminars rather than a consultative body.

<sup>66</sup> Carlo Cardia, Franco Testa, and Maria Patrizia Paba, “Relazione sull'Islam in Italia” [Report on Islam in Italy], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 617–58.

In 2015, it was the turn of another body, called the Council for the Relations between Italy and Islam, consisting of university professors and experts. This council set up a common agenda with representatives of the major national Muslim associations: the Islamic Cultural Centre of Italy, the Union of Islamic Communities and Organizations of Italy, the Italian Islamic Religious Community, the Union of Muslim Albanians in Italy, the Association of Muslim Women in Italy, the Sheikh Ahmadou Bamba Association, the Association of Somali Mothers and Children, the Islamic Association of Imams and Religious Leaders, and the Pakistani Islamic Association “Muhammadiah.” In 2016, the council issued the National Pact for an Italian Islam Expression of an Open Community.

This pact has three parts. The first part refers to the constitutional rules concerning religious freedom. The second and third contain two “decalogues” calling on representatives of Muslim communities and the Ministry of the Interior to support the establishment of an Italian federation of Islamic communities, which, among other things, should help to prevent and oppose religion-inspired violent radicalization. Most important, the pact aimed to begin the process of legal recognition of Muslim communities, which is the preliminary condition to start negotiations related to Article 8.3 of the Constitution. The pact also underscores the necessity to “train imams and religious leaders who can act as effective mediators to ensure full implementation of the civil principles of coexistence, state secularism, legality, and equality of rights between men and women.” Finally, the pact supports Muslim organizations that ensure the utmost transparency in funding they receive from Italy or abroad and that deliver the Friday sermons in Italian.<sup>67</sup>

The content of all these documents helps to gain a better appreciation of how the Ministry of the Interior is trying to create administrative channels of communication that support a better collaboration between the state and Muslim groups. Similar approaches have been followed by other branches of the public administration, as demonstrated at local levels by consultative forums with representatives of Muslim communities and experts in religion.<sup>68</sup>

More significantly, in recent years, mini-understandings (*mini intese*) have been signed between national representatives of the public sector and minority religions, including Muslim ones.<sup>69</sup> Thus, following the example of the mini-understandings between the Italian Department of Penitentiary Administration and the Jehovah’s Witnesses and Protestant churches, on November 5, 2015, the Department of Penitentiary Administration and the Union of Islamic Communities and Organizations in Italy signed a protocol allowing Muslim religious ministers to enter prisons; this protocol was renewed on January 8, 2020, and, in October of the same year, extended to the Italian Islamic Conference.<sup>70</sup>

<sup>67</sup> Ministero dell’Interno, Patto nazionale per un Islam italiano [National pact for an Italian Islam], February 1, 2017, accessed July 22, 2022, <https://www.interno.gov.it/it/amministrazione-trasparente/disposizioni-generali/atti-general/atti-amministrativi-general/decreti-direttive-e-altri-documenti/patto-nazionale-islam-italiano>. See Paolo Naso, “Visible but Unrecognized. The Case of Italian Islam,” *De Europa* 4, no. 2 (2021): 35–47, at 43–44.

<sup>68</sup> For example, in February 2016, the city of Florence and a local Muslim community also signed a pact for integration and citizenship. In the same period, the city of Turin and twenty local Islamic organizations signed *il Patto di condivisione* (the Pact of shared values), approved in the context of Turin Islamic Forum. For previous agreements between Muslim communities and local governments, see Jacopo Pacini, “Le relazioni dei centri islamici con enti locali ed istituzionali” [Relations between the Islamic centers and local and institutional entities], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 245–69.

<sup>69</sup> Francesco Alicino, “La bilateralità pattizia Stato-confessioni dopo la sentenza 52 52/2016 della Corte costituzionale” [The state-religions bilateralism after the decision of the Italian Constitutional Court no. 52/2016], *Osservatorio sulle Fonti*, no. 2 (2016), <https://www.osservatoriosullefonti.it/mobile-note-e-commenti/note-e-commenti-n-2-2016/1021-osf-2-2016-alicino>.

<sup>70</sup> These protocols allow imams to offer spiritual assistance to Muslim inmates detained in Italian prisons. UC0II and IIC will provide prison administration with a list of people who “perform the functions of imam in Italy” and who are “interested in guiding prayers and worship within prisons nationwide.” The list will also specify at which mosque or prayer room each imam normally performs his worship. Imams will have to indicate their preference for

Other initiatives of this kind have been taken during the global emergency of the COVID-19 pandemic. Attention has focused on the protocol concerning the resumption of public Masses, which was first signed on May 7, 2020, by the president of the Council of Ministers (Giuseppe Conte), the minister of the interior (Luciana Lamorgese), and the president of the Italian Episcopal Conference (Cardinal Gualtiero Bassetti).<sup>71</sup> A few days later, very similar —“copy-and-paste”—documents were signed by other religious representatives, including those representing groups without *intese* or even without legal recognition as religions, as is the case of Muslim communities.<sup>72</sup>

These protocols have nothing to do with the bilateralism method, given that they fall under neither Article 7.2 nor Article 8.3 of the Constitution. On the contrary, the protocols are part of the unilateral law that regulates public administrative procedure, according to which associations or private committees (that have concrete interest for the defense of legally important situations and that could be prejudiced by the measure taken by public authorities) have the right to intervene during rule-making, administrative proceedings.<sup>73</sup> The administrative nature of the 2020 protocols is also confirmed by the *Comitato Tecnico Scientifico* (Technical Scientific Committee),<sup>74</sup> which approved the documents before going to the state authorities and the religious representatives for their signature.<sup>75</sup>

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three provinces where they would be willing to lead prayers for inmates. See Marco Belli, “Religione in carcere: intesa tra Dap e Comunità Islamiche” [Religion in prison: the agreement between DAP (Department of Penitentiary Administration) and the Islamic Community], *gNews*, June 5, 2020, <https://www.gnewsonline.it/religione-in-carcere-intesa-tra-dap-e-comunita-islamiche/>. See also the following: Francesco Alicino, “Italy Tested by New Religious Diversity: Religion in the Italian Prison System,” in *Religion and Prison in Europe*, ed. Anne-Laure Zwilling and Martínez-Ariño (Cham: Springer, 2020), 219–36; Silvia Angeletti, “L’accesso dei ministri di culto islamici negli istituti di detenzione, tra antichi problemi e prospettive di riforma. L’esperienza del Protocollo tra Dipartimento dell’Amministrazione penitenziaria e UCOII” [The access of Islamic ministers of worship in detention institutions, between old problems and perspectives of reform. The experience of the Protocol between the Department of Penitentiary Administration and UCOII], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 24 (2018), <https://doi.org/10.13130/1971-8543/10331>.

<sup>71</sup> The document states that Masses for the public would resume on May 18, 2020, but under strict conditions. Its clauses say that religious ministers determine the maximum number of people who can fit in a church while staying at least one meter apart. If there is demand, additional Masses would be held, rather than allowing more people into the church for one service. The faithful would have to wear masks in church. Priests celebrate most of the Mass without masks, but they have to wear one, as well as gloves, when they distribute the eucharist. The protocol also states that choirs are banned, holy water fonts remain dry, and the traditional exchange of a sign of peace, usually in the form of a handshake, is eliminated. The collection, in which a basket is passed around for offerings of money, is replaced by containers where the faithful can make contributions. All rooms and objects used are to be sanitized at the end of each ceremony. See Government of Italy, *Protocollo circa la ripresa delle celebrazioni con il popolo* [Protocol on the resumption of public worship], May 7, 2020, [http://www.governo.it/sites/new.governo.it/files/Protocollo\\_CEI\\_GOVERNO\\_20200507.PDF](http://www.governo.it/sites/new.governo.it/files/Protocollo_CEI_GOVERNO_20200507.PDF).

<sup>72</sup> Government of Italy, *Protocollo con le Comunità Islamiche* [Protocol with the Islamic Community], May 15, 2020, accessed July 22, 2022, [https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_comunita\\_islamiche.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_comunita_islamiche.pdf).

<sup>73</sup> Legge 7 agosto 1990, n. 241, *Nuove norme sul procedimento amministrativo* [New rules on administrative procedure]. See Nicola Colaiani, “Il sistema delle fonti costituzionali del diritto ecclesiastico al tempo al tempo dell’emergenza (e oltre?)” [The system of constitutional sources on ecclesiastical law at the time of the emergency (and beyond?)], *Rivista Associazione Italiana Costituzionalisti AIC*, no. 4 (2020): 209–27, <https://www.rivistaaic.it/it/rivista/ultimi-contributi-pubblicati/nicola-colaiani/il-sistema-delle-fonti-costituzionali-del-diritto-ecclesiastico-al-tempo-dell-emergenza-e-oltre/>; Giovanni Cimbalo, “Il papa e la sfida della pandemia” [The pope and the challenge of the pandemic], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 9 (2020): 13–20, at 15.

<sup>74</sup> This is an advisory board of experts supporting the head of the Civil Protection Department. See the Ordinance of the Head of the Civil Protection Department no. 663 of April 18, 2020, accessed July 30, 2022, <https://www.protezionecivile.gov.it/it/normativa/decreto-del-capo-dipartimento-n-371-del-5-febbraio-2020-istituzione-del-comitato-scientifico>.

<sup>75</sup> See the above-mentioned *Protocollo circa la ripresa delle celebrazioni con il popolo*, where it is stated that “il Comitato Tecnico-Scientifico, nella seduta del 6 maggio 2020, ha esaminato e approvato il presente Protocollo circa

All of this also explains why, in December 2020, Minister Lamorgese appointed the Council for the Relations between the State and Islam in Italy. This was not only to favor a better implementation of the 2017 national pact but also to support a process leading to more effective and formal recognition of Muslim communities within the Italian legal system.<sup>76</sup>

### The Influence of Immigration Issues

Changes within Italy's religious landscape are due not only to Islamic groups.<sup>77</sup> Given the peculiarity of Islam, however—especially when compared with Jewish and Christian traditions—Muslim communities have become the discursive symbol of the country's current plurality and diversity.<sup>78</sup> This focus tends to highlight sensitive problems like immigration and religion-inspired terrorism that, rightly or wrongly, are often correlated to religion.<sup>79</sup>

It is interesting to note that many legislative acts deal with immigration. None of them, however, contains explicit reference to the cultural and religious impact of Muslim immigrants, which is perhaps indicative of the “deafening silence” for which these laws are notable.<sup>80</sup> In fact, when considering the larger political context and the media influence, one can appreciate how these legal documents are the result of the impact of the social alarm generated by the presence of immigrants, grossly associated with both an increase in crime rates and the number of foreign citizens residing in the country.<sup>81</sup> To a significant extent, the

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la ripresa delle celebrazioni con il popolo” (“during the meeting of 6 May 2020 the Technical-Scientific Committee has analyzed and approved this ‘Protocol Concerning the Resumption of Public Masses’”) (my translation).

<sup>76</sup> See Ministero dell'Interno, “Nuovo impulso al Consiglio per le relazioni con l'Islam italiano: decreto del Ministro Lamorgese [New impetus for the Italian Council for Relations with Islam: The Italian Ministry of the Interior Luciana Lamorgese's decree], December 2, 2020, <https://www.interno.gov.it/it/notizie/nuovo-impulso-consiglio-relazioni-lislam-italiano-decreto-ministro-lamorgese>.

<sup>77</sup> Marco Ventura, *Creduli e increduli. Il declino di Stato e Chiesa come questione di fede* [Believers and nonbelievers: The decline of the state and church as the issue of faith] (Turin: Einaudi, 2014), 14–30.

<sup>78</sup> Franco Garelli, *Religion Italian Style: Continuities and Changes in a Catholic Country* (Farnham: Ashgate, 2014), 87–115.

<sup>79</sup> Stefano Allievi, “Immigration, Religious Diversity and Recognition of Differences: The Italian Way to Multiculturalism,” *Identities* 21, no. 6 (2014): 724–37 [doi.org/10.1080/1070289X.2013.828623](https://doi.org/10.1080/1070289X.2013.828623); Ferruccio Pastore, “Immigration in Italy Today: A Community Out of Balance: Nationality Law and Migration Politics in the History of Post-Unification Italy,” *Journal of Modern Italian Studies* 9, no. 1 (2004): 27–48.

<sup>80</sup> See Legge 30 dicembre 1986, n. 943, 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]; Decreto legislativo 30 dicembre 1989, n. 461 [also known as the Martelli's Decree (at that time, Claudio Martelli was the vice president of Italy's Council of Ministers; he strongly promoted the Decree)]; Decreto legislativo 18 novembre 1995, n. 489; Decreto legislativo 25 luglio 1998, n. 286 [also known as the Turco-Napolitano Law (Livia Turco and Giorgio Napolitano were two ministers of the center-left government, Romano Prodi was the President of the Council of Ministers)]; Legge 30 luglio 2002, n. 189 [also known as the Bossi-Fini Law (Umberto Bossi and Gianfranco Fini were two ministers of Berlusconi's government and the leaders of the right-wing political parties Lega Nord and Alleanza Nazionale)]. See also Disegno di legge n. 840/2018, di Conversione in legge del decreto-legge 4 ottobre 2018, n. 113., Decreto-Legge convertito con modificazioni dalla legge 8 agosto 2019, n. 77, recante disposizioni urgenti in materia di ordine e sicurezza pubblica. Finally, see Legge 18 dicembre 2020, n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare [Conversion into law, with modifications, of law decree 21 October 2020, n. 130, laying down urgent provisions on immigration, international and complementary protection].

<sup>81</sup> Vincenzo Bove, Leandro Elia, and Massimiliano Ferraresi, “Quando l'insicurezza percepita supera quella reale” [When perceived insecurity overcomes real insecurity], *Lavoce.info*, September 13, 2020, <https://www.lavoce.info/archives/61069/quando-linsicurezza-percepita-supera-quella-reale/>.

inflow of migrants to Italy has been represented as a threat to national security and a menace to Italian identity and national values, while critics blast the commitment to save migrants with what is called an “Islamic pedigree”—especially while disregarding persecution of Christians in remote countries—as an act against Italy, if not Western civilization as a whole.<sup>82</sup>

This attitude is even more evident in view of the fact that in the past two decades the debate on Islam has been marked by violence, politically exploited, and covered extensively by the media,<sup>83</sup> even though the presence of Muslims and Islamic groups in Italy is not as significant as it is in other European states.<sup>84</sup> For example, the discussion about places of Islamic worship, namely mosques and minarets, is vividly present in the Italian media, urban laws,<sup>85</sup> and judicial disputes,<sup>86</sup> even though few mosques and no minarets have been built in the country.<sup>87</sup> In some local contexts, genital mutilation of girls has been described as a health emergency, long before concrete and significant cases have been recorded and investigated by competent authorities. The use of hijabs is fiercely debated even though few women wear them in Italian cities. The debate about full-face veils (niqab and burqa) has led to proposals to ban them in schools, even though no pupils have worn such veils to date. Some 60 per cent of the population believes that incoming refugees increase the likelihood of terrorism in the country,<sup>88</sup> even though Italy has remained largely unscathed by deadly Islamist attacks.<sup>89</sup>

All of these issues are in effect imported from other Western democracies, where the presence of Islam has been more long-standing and influential than in Italy.<sup>90</sup> Together with

<sup>82</sup> Michela Ceccorulli, “Back to Schengen: The Collective Securitisation of the EU Free-Border Area,” *West European Politics* 42, no. 2 (2019): 302–22.

<sup>83</sup> Chantal Saint-Blancat, “Italy,” in *The Oxford Handbook of European Islam*, ed. Jocelyne Cesari (Oxford: Oxford University Press, 2014), 265–310; Stella Coglievina, “Italy,” in *The Yearbook of Muslims in Europe*, ed. Jørgen S. Nielsen et al. (Leiden: Brill, 2013), 351–67.

<sup>84</sup> It is not by chance that in Italy the population overestimates the presence of Muslims by a staggering amount. That is even more evident in the 2016 IPSOS survey: see “Perceptions Are Not Reality: What the World Gets Wrong,” Ipsos, December 14, 2016, <https://www.ipsos.com/en-uk/perceptions-are-not-reality-what-world-gets-wrong>.

<sup>85</sup> Roberto Mazzola, “Libertà di culto e ‘sicurezza urbana’ nella ‘Direttiva del Ministro dell’Interno per le manifestazioni nei centri urbani e nelle aree sensibili’” [Freedom of worship and ‘urban security’ in the ‘Directive of the Minister of the Interior for events in city centres and sensitive areas’], *Quaderni di diritto e politica ecclesiastica*, no. 2 (2009): 403–14, at 403; Massimo Rizzi, “Chiesa e Islam: una prospettiva locale” [The Church and Islam: A local perspective], in *Migrazioni e religioni. Un’esperienza locale di dialogo tra cristiani e musulmani* [Migration and religion: A local experience concerning the dialogue between Christians and Muslims], ed. Chiara Brambilla and Massimo Rizzi (Milan: FrancoAngeli, 2011), 17–70, at 21.

<sup>86</sup> Corte costituzionale, nos. 63/2016, 67/2017.

<sup>87</sup> In reality, there were approximately eight hundred unofficial Muslim places of worship. This is because Muslim communities experience difficulties in acquiring permission from local governments to construct mosques or keep them open. See Francesca Oliosi, “La questione dei luoghi di culto islamici nell’ordinamento italiano: alla ricerca di un porto sicuro” [The question of Muslim places of worship in the Italian legal system: In search of a safe port], in Cardia and Dalla Torre, *Comunità islamiche in Italia*, 175–210.

<sup>88</sup> Richard Wike, Bruce Stokes, and Katie Simmons, “Europeans Fear Wave of Refugees Will Mean More Terrorism, Fewer Jobs,” Pew Research Center (July 11, 2016), <https://www.pewresearch.org/global/2016/07/11/europeans-fear-wave-of-refugees-will-mean-more-terrorism-fewer-jobs/>.

<sup>89</sup> See Andrea Beccaro and Stefano Bonino, “Terrorism and Counterterrorism: Italian Exceptionalism and Its Limits,” *Studies in Conflict and Terrorism*, published ahead of print, December 9, 2019, <https://doi.org/10.1080/1057610X.2019.1700027>.

<sup>90</sup> Stefano Allievi, “Costruzione del nemico, bisogno di sicurezza e conflitto” [Creating enemies, need for security and conflict], in *I musulmani e la società italiana. Percezioni reciproche, conflitti culturali, trasformazioni sociali* [Muslims and Italian society. Mutual perceptions, cultural conflicts, social transformations], ed. Stefano Allievi (Milan: FrancoAngeli, 2009), 20.



the climate of fear and insecurity,<sup>91</sup> these issues have in any case produced epistemological obstacles upon which media, politicians, and public actors tend to consider Islam as something other than a “religion.”<sup>92</sup> This is because Muslim communities do not align as thoroughly as required with the traditional category of religious belief, as defined during the history of relations between the Italian state and the church. Even if Muslim groups pass the “denomination test” to be deemed religions, they must prove that they satisfy the requirements of national law and tradition. This makes the collaboration and interaction between the state legal system and Islam very difficult.<sup>93</sup>

In other words, Islam and its related groups are often suspected of being potentially undemocratic religions that, for instance, do not accept the separation of church and state and, further, drive believers to illicit practices and conducts. As such, these communities are constantly subject to at least two kinds of tests: the test of being a religion under Article 8 of the Constitution, and the test of being a religious organization that is compatible with Italy’s constitutional democracy. It should not be forgotten that this happens at the same time that Italian political rhetoric increasingly suggests combining security policies, economic strategies, and immigration concerns with religion-orientated values of democracy and popular sovereignty, reinforcing the idea that Muslims are “the others.” Evidence of this phenomenon can be seen when considering other problematic issues, such as those related to religion-inspired extremism, upon which Islam and the related groups are often judged as a potential war-like religion that pushes believers into the spiral of violent radicalization, if not terrorism.

### The Influence of Religion-Inspired Terrorism

The vast majority of Western democracies usually refer to various forms of religion-inspired extremism as *jihadist terrorism*.<sup>94</sup> This kind of terrorism involves groups of persons who, allegedly, recruit, indoctrinate, finance, or facilitate individuals traveling to join ISIS, al-Qaeda, or other radical movements in the Middle East and North Africa. Cells preparing attacks in the West have also been taken into account by legislators, judicial proceedings, and police forces. Despite vast data and decades of relevant experience in this field, however,

<sup>91</sup> Annalisa Frisina, “Young Muslims’ Everyday Tactics and Strategies: Resisting Islamophobia, Negotiating Italianness, Becoming Citizens,” *Journal of Intercultural Studies* 31, no. 5 (2010): 557–72; Carlo Bonini and Giuseppe D’Avanzo, *Il mercato della paura. La guerra al terrorismo islamico: inchiesta sull’inganno italiano* [The market’s fear. The war on Islamist terrorism: An enquiry into Italian deception] (Turin: Einaudi, 2006); Gabriele Marranci, “Multiculturalism, Islam and the Clash of Civilizations Theory: Rethinking Islamophobia,” *Culture and Religion* 5, no. 1 (2004): 105–17.

<sup>92</sup> In this case, I refer to Gaston Bachelard’s notion of *obstacles épistémologiques* (epistemological obstacles): Gaston Bachelard, *La formation de l’esprit scientifique: contribution à une psychanalyse de la connaissance objective* [The Formation of the Scientific Mind: A Contribution to a Psychoanalysis of Objective Knowledge] (Paris: Librairie Philosophique J. Vrin, 1938), 13: “[l]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” (“epistemological obstacles always project shadows somewhere ... on the knowledge of the real, which is never immediate and plain. The revelations of the real are always recurrent. The real is never ‘what one might believe,’ it is always what one should have thought.”).

<sup>93</sup> Jean-François Gaudreault-Desbiens, “The Legal Treatment of Religious Claims in Western Multicultural Societies: Limits and Challenges,” in *Religious Claims in Multicultural Societies: The Legal Treatment*, ed. Carmela Decaro Bonella (Rome: Luiss University Press, 2014), 17–40.

<sup>94</sup> See, for example, EUROPOL, *European Union Terrorism Situation and Trend Report (TE-SAT) 2020* (2020), 32–51, <https://www.europol.europa.eu/activities-services/main-reports/european-union-terrorism-situation-and-trend-report-te-sat-2020>.

there is no clear comprehension of the phenomenon. Particularly, there is no consensus on the relation between jihadist terrorism and Islam: in this matter, it is very difficult to distinguish what is real from what is only a perception of reality.<sup>95</sup>

In any case, states tend to emphasize that the prevention of jihadist terrorism implies additional and extraordinary legal measures under which, for example, even the dissemination of messages or images, whether online or offline, may be considered part of terrorist activities and therefore legally punishable.<sup>96</sup> This approach reflects many provisions of state criminal codes, including the Italian one. Several articles of Italy's penal code<sup>97</sup> have entered into force after attacks or planned attacks by terrorist groups in the West since 9/11.<sup>98</sup> In order to prevent terrorist attacks, these rules give judicial courts and security forces considerable powers, which many times justify significant restrictions on the fundamental freedoms, especially when referring to Muslims and Islamic communities. These restrictions, in turn, reinforce and reinvigorate public prejudices toward Islam.<sup>99</sup>

<sup>95</sup> For governmental responses to religion-inspired terrorism, see, among others, the following: Regulation 2021/784 of the European Parliament and of the Council of 29 April 2021 on Addressing the Dissemination of Terrorist Content Online, 2021 O.J. (L 172); Council of the European Union, *EU's Response to the Terrorist Threat, New EU Rules for Removing Terrorist Content from the Internet* (March 18, 2021), <https://www.consilium.europa.eu/en/policies/fight-against-terrorism>; European Commission, Migration and Home Affairs, *High-Level Commission Expert Group on Radicalisation: Final Report*, May 18, 2018, [https://home-affairs.ec.europa.eu/system/files\\_en?file=2020-09/20180613\\_final-report-radicalisation.pdf](https://home-affairs.ec.europa.eu/system/files_en?file=2020-09/20180613_final-report-radicalisation.pdf). On the difficulty in distinguishing religious or Islamic inspired terrorism, see Heather S. Gregg, "Defining and Distinguishing Secular and Religious Terrorism," *Perspectives on Terrorism* 8, no. 2 (2014): 36–51; Council of the European Union, "Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism," May 19, 2014, <http://data.consilium.europa.eu/doc/document/ST-9956-2014-INIT/en/pdf>.

<sup>96</sup> Michael Ignatieff, *The Lesser Evil. Political Ethics in an Age of Terror* (Princeton: Princeton University Press, 2004), 2; Bruce Ackerman, "The Emergency Constitution," *Yale Law Journal* 113, no. 5 (2004): 1029–91; Wim Smit, "Security versus Liberty? Ethical Lesson from Post-9/11 American Counter-Terrorist Security Politics," in *The Moral Dimension of Asymmetrical Warfare: Counter-terrorism, Democratic Values and Military Ethics*, ed. Th. A. van Baarda and D. E. M. Verweij (Leiden: Brill, 2009), 401–18; Luigi Ferrajoli, "Due ordini di politiche e di garanzie in tema di lotta al terrorismo" [Two sets of policies and guarantees in the fight against terrorism], special issue, *Questione giustizia* (2016): 8–15.

<sup>97</sup> See Codice penale, Articles 270-bis, 270-bis.1, 270-ter, 270-quater, 270-quarter.1, 270-quinquies, 270-quinquies.1, 270-quinquies.2, 270-sexies, 270-septies. On these provisions, see the special issue published by the Italian Association of Professors in Penal Law, "La società punitiva. Populismo, diritto penale simbolico e ruolo del penalista" [The repressive society. Populism, symbolic criminal law and the role of criminal lawyers], *Diritto penale contemporaneo* (December 21, 2016), <https://archivioldpc.dirittopenaleuomo.org/upload/DibattitoAIPDP.pdf>.

<sup>98</sup> Adelmo Manna, "Alcuni recenti esempi di legislazione penale compulsiva e di ricorrenti tentazioni circa l'utilizzazione di un diritto penale simbolico" [Some recent examples of compulsive criminal legislation and recurring temptations regarding the use of a symbolic criminal law], *Diritto penale contemporaneo* (December 21, 2016): 7–13, <https://archivioldpc.dirittopenaleuomo.org/upload/DibattitoAIPDP.pdf>; Vincenzo Militello, "Terrorismo e sistema penale: realtà, prospettive, limiti" [Terrorism and the penal system: Reality, perspectives, limits], *Diritto penale contemporaneo*, no. 1 (2017): 3–10; Roberto Bartoli, "Legislazione e prassi in tema di contrasto al terrorismo internazionale: un nuovo paradigma emergenziale?" [Legislation and practice on countering international terrorism: Is this a new emergency paradigm?], *Diritto penale contemporaneo*, no. 3 (2017): 223–59; Edoardo Mazzanti, "L'adesione ideologica al terrorismo islamista tra giustizia penale e diritto dell'immigrazione" [Ideological affiliation to Islamist terrorism between criminal justice and immigration law], *Diritto penale contemporaneo*, no. 1 (2017): 26–43.

<sup>99</sup> See Nicola Colaiani, "Sicurezza e prevenzione del terrorismo cosiddetto islamista: il disagio della libertà" [Security and prevention of the so-called Islamist terrorism: The discomfort of freedom], in *Terrorismo di ispirazione religiosa. Prevenzione e deradicalizzazione nello Stato laico* [Religion-inspired terrorism. Prevention and deradicalisation in the secular state], ed. Francesco Alicino (Rome: Apes, 2020): 13–56; Roberto Mazzola, "'Stato d'urgenza,' 'ragion di stato' e 'fattore religioso'" ["State of emergency," "reason of state" and "religious phenomenon"], in *L'impatto delle situazioni di urgenza delle attività umane regolate dal diritto* [The impact of emergency situations on human activities regulated by law], ed. Roberto Martino, Francesco Alicino, and Antonio Barone (Milan: Giuffrè, 2017), 15–40.

Given its long and intense history of struggle against both domestic terrorism (for example, the so-called *anni di piombo*, or years of lead in the 1970s) and criminal organizations (mafia, 'ndrangheta, and camorra),<sup>100</sup> Italy has developed a highly efficient system of preventive measures: a system that, after the Italian Parliament approved the 2015 anti-terrorism decree,<sup>101</sup> can also be applied to prevent current forms of international terrorism, including religion-inspired ones.<sup>102</sup>

In particular, the preventive measures include the mechanisms and procedures of the antimafia code,<sup>103</sup> whose application is based on “symptoms of social dangerousness” (*indizi di pericolosità sociale*). In cases like these, judicial authorities can authorize preventive measures not just when persons have committed a crime but also when there is reasonable evidence to consider them “socially dangerous” (*socialmente pericolosi*). Specifically, judicial authority can order dangerous people to maintain lawful conduct, not to give cause for suspicion, not to associate with persons convicted of criminal offences or subject to preventive measures, not to own or carry firearms, not to enter bars or nightclubs, not to take part in religious meetings, and not to use telephones and the internet without specific authorization. If necessary, these measures may be combined either with the prohibition of residence in some cities (*divieto di soggiorno*) or, in the case of particularly dangerous persons (*persona di particolare pericolosità*), with an order for compulsory residence in a specified municipality (*obbligo di soggiorno in un determinato comune*). The violation of these conditions is punishable by criminal laws.<sup>104</sup>

As some relatively recent experiences have demonstrated, on the basis of Article 8 of the anti-mafia code regulating atypical preventive measures (*misure atipiche di prevenzione*), judicial authority can order a person to attend a deradicalization program. This program can be elaborated in collaboration with public and private institutions and implemented under the control of the court, which also guarantees that individuals’ freedom of religion and the state’s principle of secularism will be respected.<sup>105</sup>

<sup>100</sup> Adriano Prosseri, “L’esperienza della storia italiana, antica e recente” [The experience of Italian history, ancient and recent], special issue, *Questione giustizia* (December 21, 2016): 16–25.

<sup>101</sup> Decreto-legge 18 febbraio 2015, n. 7, Misure urgenti per il contrasto del terrorismo, anche di matrice internazionale [Urgent measures to combat terrorism, including of international origin].

<sup>102</sup> More specifically, after the above-mentioned law decree no. 7/2015 entered into force, Article 4 of the legislative decree no. 159/2011, also known as *Codice antimafia* (Antimafia Code), ruled that the preventive measures can be applied for “those who, working in groups or individually, are engaging in preparatory acts, objectively relevant, directed to take part in a conflict in foreign territory in support of a terrorist organization which pursues the aims laid down in article 270-sexies of the Italian penal code.” See Lukas Staffler, “Politica criminale e contrasto al terrorismo internazionale alla luce del d.l. antiterrorismo del 2015” [Criminal policy and countering international terrorism in the light of the 2015 anti-terrorism legislative decree], *Archivio penale*, no. 3 (2016), at 7–11, <https://archiviopenale.it/politica-criminale-e-contrasto-al-terrorismo-internazionale-alla-luce-del-dl-antiterrorismo-del-2015-/articoli/14061>.

<sup>103</sup> Decreto legislativo 6 settembre 2011, n. 159, Codice delle leggi antimafia e delle misure di prevenzione, nonché nuove disposizioni in materia di documentazione antimafia, a norma degli articoli 1 e 2 della legge 13 agosto 2010, n. 136 [Code of anti-mafia laws and preventive measures, as well as new provisions on anti-mafia documentation, pursuant to articles 1 and 2 of the law of 13 August 2010, no. 136].

<sup>104</sup> Vincenzo Maiello, “La prevenzione ante delictum, lineamenti generali” [*Ante delictum* prevention, general outline], in *Trattato teorico pratico di diritto penale* [Theoretical and practical Treatise on Criminal Law], ed. Francesco C. Palazzo and Carlo Enrico Paliero (Turin: Giappichelli, 2015), 299–322, at 322; Vincenzo Maiello, “Profili sostanziali: le misure di prevenzione personali” [Material aspects: Personal preventive measures], *Giurisprudenza italiana*, no. 6 (2015): 1523–28, at 1528; Antonio Balsamo, “La prevenzione ante delictum” [*Ante delictum* prevention], in *Contrasto al terrorismo interno e internazionale* [Countering domestic and international terrorism], ed. Roberto E. Kostoris and Renzo Orlandi (Turin: Giappichelli, 2006), 51–76.

<sup>105</sup> Tribunal of Bari, Decreto del 25 gennaio 2017, and Appellate Court of Bari, Decreto del 4 dicembre 2017, which refer to the decree issued by the Tribunal of Bari on January 25, 2017. See Vera Valente, “Misure di prevenzione e de-radicalizzazione religiosa alla prova della laicità (a margine di taluni provvedimenti del Tribunale di Bari)”

While both penal laws and preventive measures may diminish the probability of terrorist attacks, these provisions restrict fundamental rights. In particular, due to the nature of current forms of terrorism, these provisions tend to limit the right of Muslims and Islamic groups to practice their faith openly.<sup>106</sup> Concerns about terrorism also explain the debate on the boundaries of freedom of expression, especially when related to hate speech, which may involve Muslim groups both as perpetrators and as victims.<sup>107</sup> In this way, the state's efforts to prevent religion-inspired terrorism intermingle not only with human rights and public order<sup>108</sup> but also with the securitization of religious freedom, under which sometimes the right to freedom of religion of Muslims and related organizations is subordinated to security concerns.<sup>109</sup> That intermingling, in turn, helps one to understand how immigration emergencies and the prevention of international terrorism could have an impact on the interpretation of constitutional rules, including those governing relations between the state and Islam.<sup>110</sup> The 2016 decision (no. 52) of the Italian Constitutional Court is a clear example.<sup>111</sup>

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[Preventive measures and de-radicalisation of religion-inspired terrorism tested by the principle of secularism (comment on the preventive measures of the Tribunal of Bari)], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 37 (2017), <https://doi.org/10.13130/1971-8543/9255>.

<sup>106</sup> Francesco Alicino, "Le emergenze del terrorismo islamista e le necessità dello Stato laico costituzionale di diritto" [The emergencies of Islamist terrorism and the needs of the secular constitutional state and the rule of law], in Martino, Alicino and Barone, *L'impatto delle situazioni di urgenza delle attività umane regolate dal diritto*, 41–84.

<sup>107</sup> Cristiana Cianitto, *Quando la parola ferisce. Blasfemia e incitamento all'odio religioso nella società contemporanea* [When the word hurts: Blasphemy and incitement to religious hatred in contemporary society] (Turin: Giappichelli, 2016). See also Richard Wike et al., "Minority Groups," Pew Research Center, October 14, 2019, <https://www.pewresearch.org/global/2019/10/14/minority-groups/> (reporting that 55 percent of the Italian population does not have positive views of Muslims); Antonia Roberta Siino, "Islamophobia in Italy. National Report 2019," in *European Islamophobia Report 2019*, ed. Enes Bayrakly and Farid Hafez (Istanbul: SETA, 2020), 433–53.

<sup>108</sup> Liora Lazarus, "The Right of Security. Security Rights or Securitising Rights," in *Examining Critical Perspectives on Human Rights*, ed. Rob Dickinson et al. (Cambridge: Cambridge University Press, 2012), 87–106.

<sup>109</sup> Jocelyne Cesari, "Securitization of Islam in Europe," in *Muslims in the West after 9/11: Religion, Politics and Law*, ed. Jocelyne Cesari (London: Routledge, 2010): 9–27; Jonathan Fox and Yasemin Akbaba, "Secularization of Islam and Religious Discrimination: Religious Minorities in Western Democracies," *Comparative European Politics* 13, no. 2 (2015): 175–97; Stefano Bonino, "The British State 'Security Syndrome' and Muslim Diversity: Challenges for Liberal Democracy in the Age of Terror," *Contemporary Islam*, no. 10 (2016): 223–47.

<sup>110</sup> Liav Orgad, *The Cultural Defence of Nations: A Liberal Theory of Majority Rights* (Oxford: Oxford University Press, 2015), 231–36.

<sup>111</sup> See *ex plurimis*: Giuseppe Casuscelli, "La tutela dell'identità delle minoranze religiose deve potersi avvalere di 'un giudice e un giudizio' (ancora sulla sentenza della Corte costituzionale 52/2016)" [The protection of the identity of religious minorities must be able to rely on 'a judge and a judgment' (comment on the Constitutional Court's ruling no. 52/2016)], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 21 (2018), <https://doi.org/10.13130/1971-8543/10261>; Salvatore Prisco and Fulvia Abbondante, "Intendersi sulle intese" [How to understand the understandings], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 3 (2018), <https://doi.org/10.13130/1971-8543/9520>; Giovanni Amoroso, "Le pronunce della Corte di cassazione oggetto di conflitto di attribuzione innanzi alla Corte costituzionale (Nota a Cass. 25 gennaio 2017, n. 1046)" [Decisions of the Italian Supreme Court subject to a conflict of jurisdictions before the Constitutional Court (Comment on the Italian Supreme Court's judgment of January 25, 2017, no. 1046)], *Foro italiano* 141, no. 6 (2016): 1951–57; Lorenza Carlassare, "L'atto politico tra 'qualificazione' e 'scelta': i parametri costituzionali" [The political act between "qualification" and "choice": The constitutional parameters], *Giurisprudenza costituzionale* 61, no. 2 (2016): 554–60; Nicola Colaiani, "La decadenza del 'metodo della bilateralità' per mano (involontaria) degli infedeli" [The decline of the "bilateralism method" by the (unintentional) acts of nonbelievers], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 28 (2016), <https://doi.org/10.13130/1971-8543/7597>; Marco Croce, "Alla Corte dell'arbitrio: l'atto politico nel sistema delle intese" [The unpredictable Court: The political act and the system of understandings (intese)], *Giurisprudenza costituzionale* 61, no. 2 (2016): 560–69; Giovanni Di Cosimo, "Carta bianca al Governo sulle intese con le confessioni religiose (ma qualcosa non torna)," [The government's complete power on understandings with minority denominations (but something does not add up here)], *Rivista telematica Stato, Chiese e pluralismo confessionale*, no. 2 (2017), <https://doi.org/10.13130/1971-8543/8035>.

## A Changing and Unpredictable Reality

The 52/2016 decision concerned the request of the Italian Union of Atheists and Rationalist Agnostics, also known as UAAR, to start negotiations with the government to sign an *intesa* under Article 8.3 of the Constitution. The Constitutional Court held that this article is no longer tied to the right of all religions to be equally free before the law.<sup>112</sup> The real function and meaning of Article 8.3 consists in its extension of the bilateralism method from the Catholic Church to non-Catholic religions. This is possible where that method reflects the common intention of both the minority religion and the government not only to sign an *intesa* but also to initiate negotiations under Article 8.3.<sup>113</sup>

The Court also affirmed that the legal instrument of *intese* does not involve the right to profess religious belief. This right, they clarified, is protected overall by other provisions,<sup>114</sup> including those related to Article 19, in conjunction with Article 8.1, of the Constitution. These provisions recognize all persons as free and equal before the law and entitled to freely practice and propagate religion in any form, individually or with others.<sup>115</sup> Concerning the bilateralism method, the Court stated that the government holds a broad margin of political discretion in the matter. This implies the power to legally recognize a group as a religious denomination, as well as the power to assess whether it is appropriate to launch negotiations with a particular association and, upon conclusion thereof, sign an *intesa*. In this case, the government may be held responsible before the Parliament but not before judicial courts. In other words, the government's decision has only political (not legal) implications and, as such, is not justiciable—meaning that the decision is not subject to the right to a fair trial.<sup>116</sup>

It is important to note that the Constitutional Court supported the 52/2016 judgment with a significant *obiter dictum*, underscoring

the changing and unpredictable reality of national and international political relations, which may lead the government to conclude that it is not appropriate to allow an association that requests it [an *intesa*] to launch negotiations. When confronted with this considerable variety of situations, which by definition does not lend itself well to classification, the government is vested with a broad discretion, the only limit to which may be found in principles of constitutional law, which could induce it to refrain from granting even the implicit *de facto* “legitimizing” effect that the association could obtain from the mere launch of negotiations. Due to the reasons that justify them, choices of this type cannot be subject to review by the courts.<sup>117</sup>

<sup>112</sup> Corte costituzionale, no. 52/2016.

<sup>113</sup> Corte costituzionale, no. 52/2016.

<sup>114</sup> In particular those of Articles 3, 8.1, 8.2, 19 and 20 of the Constitution.

<sup>115</sup> Corte costituzionale, no. 52/2016.

<sup>116</sup> On *atti politici* (political acts) see: Vincenzo Cerulli Irelli, “Politica e amministrazione tra atti ‘politici’ e atti ‘di alta amministrazione’” [Politics and public administration between “political” and “higher administrative” acts], *Diritto pubblico*, no. 1 (2009): 101–34; Aldo Maria Sandulli, “Atto politico ed eccesso di potere” [Political act and excess of power], *Giurisprudenza completa della Corte suprema di cassazione—Sezioni civili* [Complete jurisprudence of the Supreme Court of Cassation—Civil Sections], vol. 22 (1946), 517–25.

<sup>117</sup> Corte costituzionale, no. 52/2016, para. 5.2 (my translation). The following is the original version of the *obiter dictum*:

[I]a serie di motivi e vicende che la realtà mutevole e imprevedibile dei rapporti politici interni e internazionali offre copiosa ... possono indurre il Governo a ritenere non opportuno concedere all'associazione, che lo richiede, l'avvio delle trattative. A fronte di tale estrema varietà di situazioni, che per definizione non si presta a tipizzazioni, al Governo spetta una discrezionalità ampia, il cui unico limite è rintracciabile nei principi costituzionali, e che potrebbe indurlo a non concedere nemmeno quell'implicito effetto di 'legittimazione' in fatto che l'associazione potrebbe ottenere dal solo avvio delle trattative. Scelte del genere, per le ragioni che le motivano, non possono costituire oggetto di sindacato da parte del giudice.

Strangely enough, this dictum has nothing to do with UAAR. In fact, it has to do with specific and conspicuous groups that in the future will seek to launch negotiation under Article 8.3 of the Constitution.

The obiter dictum supports the idea that the legal implication of the relations between state and minority religions should be described in light of the reality that is changing in unpredictable ways. That is because—as the Constitutional Court seems to affirm—this reality is affected by ongoing emergencies, from immigration to international terrorism. In turn, these emergencies are related to both religion and national contexts where there is no separation of state and religion. This explains the Constitutional Court’s reference to the “national and international political relations, which may lead the government to conclude that it is not appropriate to allow an association that asks it to launch negotiations.”

In sum, the Constitutional Court, while deciding about the request of the UAAR to start negotiation under Article 8.3 of the Constitution, intended to deal with similar requests put forward by Muslim groups. The fact that the Court did not explicitly mention Islam is very significant. This case, too (the 52/2016 constitutional decision), is notable for its silence.

## Conclusion

In constitutional democracies, religion establishes itself as a complex subject involving belief, behavior, and belonging.<sup>118</sup> This complexity reflects a conception of religious freedom that, in conjunction with the principle of equality, is rooted not in the quest for uniformity but rather in the recognition of diversity and plurality. Here the conceptual boundary of democracy expands to such an extent that it includes not only the self-determination of the individual with regard to religion but also the protection of religious identity through which people share lifestyles and collective worship. For these reasons, constitutional democracies, while underscoring the universality of human rights discourse, have to deal with religious organizations. They have to do so in such a way that the presence of major religions does not infringe not only upon the principle of nondiscrimination against those who do not adhere to them, but also upon the right of all (theistic, nontheistic, and atheistic) minority groups to be equally free before the law.

Freedom of religion is not limited in its application to large religions, nor is the principle of equality limited to religions with institutional characteristics or practices analogous to traditional views. However, the real or perceived concerns related to the current emergencies, from immigration to terrorism, lead to suggestions that some aspects of this freedom should be sacrificed for better security. That sacrifice would complicate the implementation of constitutional rules surrounding religious issues, including state-church relations, which in some contexts are still framed with regard to traditional denominations.

An illustrative example of the challenge comes from Italy. In particular, the example resides in the very historical forms of the bilateral legislative method for determining relations between the state and religious confessions, a method that does not fit in easily with today’s religious landscape. This method seems to be trapped in the twentieth century, in old ways of governing religious pluralism strictly connected with the traditions of the Catholic Church and a small number of minority confessions. Because the Italian Parliament has not been able to implement generally applicable law on religious freedom, this bilateralism method must coexist with both the 1159/1929 law on admitted religions and

<sup>118</sup> Douglas A. Marshall, “Behavior, Belonging, and Belief: A Theory of Ritual Practice,” *Sociological Theory* 20, no. 3 (2002): 360–80; Brian Barry, *Culture and Equality* (Cambridge: Polity Press, 2001); Sonu Bedi, “What Is so Special about Religion? The Dilemma of the Religious Exemption,” *Journal of Political Philosophy* 15, no. 2 (2007): 235–49; Matthew Festenstein, *Negotiating Diversity: Culture, Deliberation, Trust* (Cambridge: Polity Press, 2005); Martha Minow, “Should Religious Groups be Exempt from Civil Rights Laws?,” *Boston College Law Review* 48, no. 4 (2007): 781–849.

the discretionary power of the government, under which the system of state-church bilateral legislation is characterized by a practice of copy-and-paste understandings. The bilateralism method, while granting Catholicism and a few other religions access to important state benefits, thus prevents wider implementation of constitutional rights that recognize all individuals and all denominations as equal and equally free before the law. This restriction is even more evident when referring to Muslims and Islamic groups, whose relation with the Italian legal order is now strongly influenced by other emergency-related issues, such as immigration and religion-inspired terrorism.

For many years, a sort of cold peace has marked the relationship between the Italian state and Islam. Under the pressure of domestic and external political factors, this peace is now not much more than an armistice. Far from supporting the pillars of constitutional democracies, this armistice seems to be dictated by unreasonable distinctions, reciprocal suspicion, rampant insecurity, and emotional and irrational perceptions.

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