

The 1984 Covenant between the Republic of Italy and the Vatican: A Retrospective Analysis after Fifteen Years

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On 18 February 1984, the Republic of Italy and the Vatican signed the Revised Agreement of the 1929 Lateran Covenant.¹ This entered into effect in the Italian legislation on 25 March 1985 (Law No. 121) after ratification by the House of Representatives and Senate.

The Agreement called for the creation of a Bilateral Commission in charge of developing a specific regulation on two difficult and controversial matters: the regulation of ecclesiastical institutions and the review of the financial commitments of the Italian government in favor of the Catholic clergy.

Within the assigned time frame the Commission drafted a regulation on these subjects which was approved by the Italian government and the Vatican in a special protocol signed on 15 November 1984. Fifteen years after the historic Revised Agreement, in spite of the long

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1. After the *Risorgimento*, which led to the Unity of Italy and was concluded with the annexation of Rome, capital of the Vatican, to Italy (1870), the Lateran Covenant carried out a much needed reconciliation between the Italian state and the Catholic Church. The expression "Lateran Covenant" or "Lateran Agreement" refers to two protocols signed by the Italian government and the Holy See on 11 February 1929 in the Lateran Apostolic Palace. The protocols are composed by: i) a Treaty, with four enclosures, and in particular a) the Vatican City territory map; b) a list of real estate privileges of extraterritoriality and immunity from expropriation and taxation; c) a list of real estate with immunity from expropriation and taxation; and d) a financial Convention; ii) a Concordat. The purpose of the Covenant was to resolve two historical problems of national importance: the well known "Roman issue," regarding the territorial status of the city of Rome, and the other concerning the expression of religion and the position of the Catholic Church in Italy. The Treaty was principally intended to solve the first; the Concordat the second. For a complete treatment of this subject, see V. Del Giudice, *Manuale di diritto ecclesiastico* (Milano, 1964). For the relations between the Lateran Covenant and the Revised Agreement, see S. Lariocia *Diritto ecclesiastico* (Padova, 1986).

debate that followed it, both the Catholic Church and the Italian people have strongly benefited from it.

The 1929 Covenant resolved the so-called "Roman issue" and reestablished religious peace in Italy but, after more than half a century, was considered by everyone concerned to be outdated. Moreover, its provisions, such as the establishment of Roman Catholicism as the sole state religion, contradicted the principles of a secular state, equality of all citizens before the law, and the freedom of confession and belief as established by the Italian Constitution and endorsed by the Second Vatican Council II.² In addition, Article 7 of the Constitution, which was approved by a large majority, not only mentions the Lateran Covenant as an instrument that defines the relationship between the Republic of Italy and the Catholic Church, but also expresses the principle that special agreements are required to regulate the relationship between the Republic and all religious confessions in Italy (Art. 8).³

The Revised Agreement of 1984 resolved these historical issues that had caused friction between Italy and the Catholic Church for

2. It is important to note that Article 1 of the Lateran Covenant, quoted in Article 1 of the Concordat, defined the Roman Apostolic Catholic Religion as the "only religion of the State." This principle was consistent with the conception that identifies a state with its Prince (in this sense, the Catholic state was the state governed by a Catholic prince, subject to the Canon Law) and justified the existence of many privileges granted to the Catholic Church. On the contrary, a central point of the Revised Agreement 1985 is the lack of any reference to an established religion and the express provision that "the principle formerly established in the Lateran Covenant affirming that the catholic religion is the only religion of the State, is no longer in effect." The subject of religious freedom is very wide and complex in the Canon Law. It is possible to say, in summary, that the idea of freedom of confession originates from theological requirements and that it is not indifferent to the content of a particular religion, nor does it consider equivalent all the religions. For a specific treatment of this subject see F. Finocchiaro, *Libertá religiosa, Enciclopedia Giuridica* (Rome, 1990). One of the main sources of religious freedom and "*Libertas Ecclesiae*" in the Canon Law is certainly the *Declaratio de libertate religiosa seu de jure personae et communitatum ad libertatem sociale et civilem in re religiosa* of 7 December 1965. It was defined by the Second Vatican Council "*Declaratio dignitatis humanae*" and it is correctly considered "the real and actual present Magna Charta of freedom of confession for the Catholic Church post Concilium." On this point, see P.A. D'Avack, *Trattato di diritto canonico* (Milano, 1980); and J.C. Murray, *Religious Freedom* (New York, 1966).

3. In Italy commentators debate on the nature of the agreements reached by the state with the non-Catholic confessions: "Their relations with the State are regulated by the law on the base of agreements with their respective representatives" (Article 8.3 of the Constitution). On this point see F. Finocchiaro, *Le intese nel pensiero dei giuristi italiani, Le intese tra Stato e confessioni religiose: problemi e prospettive* (Milano, 1978); and F. Bolognini, *I rapporti tra Stato e confessioni religiose nell'art. 8 della Costituzione* (Milano, 1981). However, also considering these agreements differently from the Concordat, it remains that Article 7.2 and Article 8.3 of the Constitution "have a common general principle that prescribes that the public legislation on religious matter can not be unilateral, but previously agreed" (as stated by V. Crisafulli, *Art. 7 della Costituzione e vilipendio della Religione dello Stato, Archivio penale*, 1950, II, 415).

more than a century by establishing the principle of separation (a free church in a free state) and by setting the precedent that special agreements are to be signed between the Republic and all religious confessions in Italy, not simply with the Roman Catholic Church.

It goes without saying that this solution may not be valid forever and should be reevaluated again if the conditions change. Nevertheless, it is important to realize that the main achievement of the Covenant was not to free the government from clerical bounds, as some maintain or to free the church from political affiliation as others contend. There are indeed good and bad concordats as there are good and bad regimes for the separation of church and state (rather anticlerical in the case of France; more interesting is the United States one). It is obvious, however, that in Italy the potential for conflict between the government and the church has always been very strong. As stated by Professor Carlo Cardia, a prominent lay negotiator for this agreement: "A good covenant ensures greater legal and political stability than a separation regime. In the first case you have a bilateral agreement between two countries that only a long and complex process can change, whereas in the case of a separation regime any parliamentary majority can bring modifications and revitalize old tensions."

The implementation of Article 8 of the Italian Constitution resulted in important agreements with several non-catholic confessions including the Valdese (Waldesian)⁴ Church (21 February 1984), the Union of Italian Adventist Churches of the Seventh Day (29 December 1986), Assemblies of God in Italy (29 December 1986), and most recently the Italian Jewish Community. These agreements concern the civil recognition of religious marriages, the legal status of religious institutions, and the incentives given to charity activities. Some of these agreements also involved the participation of citizens in financially supporting clergy, based on the principle of personal freedom of choice. All are based on the notion that religious entities play an important role in society and that the state takes seriously the task of defining its relationship to religious communities. Therefore it can be said that the model set forth by the Constitution was strengthened and consolidated after the Revised Agreement.

An intense debate has been occurring on some delicate issues regarding the relation between the state and the Catholic Church, but for the most part the intervention of the Constitutional Court has clarified them. The first issue concerns teaching the Catholic religion in public

4. This Christian community, based in Northern Italy, separated from the Roman Catholic Church after its founder, Peter Waldo, was excommunicated in 1184 for advocating vernacular services, reform of church administration, and greater lay participation in worship. It is considered by many to be the oldest "Protestant" denomination.

schools. The Revised Agreement (Art. 9) resolves this issue by guaranteeing that the government will continue "to ensure the teaching of Catholic religion in public schools other than universities, in the framework of the general educational purposes of schooling." However, "in order to ensure the respect of freedom and parental responsibility over education everyone is granted the right to choose whether to attend the teaching of the Catholic religion and no form of discrimination shall derive from this choice." The controversial aspect of this disposition is to determine whether religious education should be considered elective or required and therefore whether it should be taught after or during regular school hours. The decisions of the Constitutional Court (No. 203 on 12 April 1989 and No. 13 on 14 February 1991) recognized that teaching of Catholic religion is lawful and that alternative activities cannot be made compulsory, thereby allowing students who do not choose religious education to leave school early or enter later than others. It is interesting to note that 90 percent of Italian students and their families have chosen religious education.⁵

Religious matrimony is the second historical subject dealt with by the Covenant. Article 8 of the Revised Agreement established the principle of legal and civil recognition of all legal effects of weddings celebrated according to the Code of Canon Law, as well as the validity before Italian law of the cancellation of marriage (annulment) pronounced by ecclesiastical courts, following practices applied in the case of foreign courts.

One major problem was classifying whether Italian civil courts had any jurisdiction if a church marriage was declared invalid or annulled by canonical (e.g. religious) authorities; that is to say, would a secular court have the authority to declare a marriage legally valid even if an ecclesiastical tribunal had invalidated it? (Cassation Court, 13 February 1993, n. 1824). The legal difficulties associated with this stem not only from the interpretation of the Covenant rules but also from the law which gives civil recognition to canonical marriage. The Constitutional Court eliminated any uncertainty on this point (Constitutional Court, 1 December 1993, n. 421) and reaffirmed the principle that

5. Articles 9 and 10 of the Revised Agreement and numbers 5 and 6 of the Additional Protocol regulate the teaching of the Catholic religion in the public schools. This issue raised many difficulties in the process of reform of the Concordat. The Revised Agreement establishes important general principles, but it postpones the solution of the most difficult practical problems to subsequent agreements between the competent school boards and the Italian Episcopal Conference. For a specific treatment of this subject, see S. Lariccia, *L'insegnamento della religione tra concordato e legislazione unilaterale dello Stato, Il diritto ecclesiastico* (1983), I, 3; G. Dalla Torre, *L'insegnamento della religione nel concordato revisionato, Il diritto ecclesiastico*, 1984, I, 379; and G. Feliciani, *Il dibattito nel mondo cattolico, Città e religione*, 1977, 201.

jurisdiction over the canonical wedding belongs only to the ecclesiastical judge, even after it is registered for civil effects.⁶

Other subjects that the Covenant addresses are: religious assistance, ministry education, and culture. While the Covenant guarantees its availability for police forces, in many instances it is ad hoc subnational regulation that guarantees religious ministry in hospitals and prisons and in the Army (2 December 1993). Regarding education, a special agreement was made to grant legal recognition to academic degrees earned in institutions approved by the Holy See, such as seminaries. In regard to culture, the Vatican and Italy recently signed a protocol of cooperation for the conservation of the historical and artistic heritage pursuant to Article 12 of the Covenant, which calls for "measures to protect value and enhance cultural heritage of religious interest belonging to ecclesiastic institutions and . . . the conservation of historical archives and libraries" of the church. This field is of primary importance considering the size and value of ecclesiastically-based cultural heritage in Italy, such as historical charities and monasteries and the artwork contained in them.

The most innovative part of the Revised Agreement is the regulation of ecclesiastic institutions and the measures to financially support the clergy. The formulation of the norms regarding these two points had been the result of six months of work of the Bilateral Commission. The regulation of ecclesiastical institutions had already been an important matter in the 1929 Covenant and Italy had previously devoted to that issue law No. 848 of 27 May 1929 and other related norms (R.D. 2262 of 2 December 1929).⁷ In 1984, Cardinal Casaroli, Secretary of State of the Vatican, upon signing the protocol of agreement with Italy mentioned the importance of ecclesiastic institutions for the church not only for their religious purpose but "to develop that ample charitable action, assistance, education and cultural initiatives that form almost a natural integration and emanation of the Church's spiritual mission." The Revised Agreement defines more accurately than ever before several key aspects regarding ecclesiastical institutions. Article 7 reaffirms

6. The commentators have deeply studied the problems related to the matrimonial matter (principles established by the Constitution, introduction of divorce in Italian law, family law reform), and, especially, the significance of the provisions of the Revised Agreement. For a summarizing analysis of this subject, see S. Lariccia, *Diritto ecclesiastico* (Padova, 1986).

7. For an analysis of the historical roots of the ecclesiastical institutions in the Canon Law before the 1983 Codex of Canon Law, see V. Del Giudice, *Nozioni di Diritto canonico* (Milano, 1953). After the Codex, see G. Feliciani, *Le basi del diritto canonico dopo il codice del 1983* (Bologna, 1983). Regarding the problem of the ecclesiastic institutions in the relations between Italy and the Vatican, see V. Del Giudice, *Manuale*; S. Lariccia, *Diritto ecclesiastico*; and T. Mauro, *Il contenuto del Concordato: gli enti ecclesiastici, I problemi di Ulisse*, 1980, 126.

the full legal status and capacity of ecclesiastical institutions "which have religious and worship purposes." In addition, the Agreement confirms the freedom of the church to develop activities other than those which Italian law considers religious and worship. This is recognized both with the general statement that "the Italian Republic recognizes that the Catholic Church has full freedom to develop its pastoral, educational and charitable mission and to preach the gospel" (Art. 2), and with the disposition that "nonreligious activities developed by ecclesiastical institutions, according to their structure and purpose, are subject to the Italian Law, including the tax regime" (Art. 7, No. 3).

Following these principles, the Revised Agreement concentrated on the clear definition of ecclesiastical institutions so that, once defined properly, both Italian and Vatican regulation over such institutions is fully compatible and noncontradictory.

Institutions that belong to the Catholic Church, religious institutes, and seminaries are not required to be certified with regard to their ecclesiastical status, which is considered automatic by Italian law. In any other case, obviously the majority, in order to obtain legal recognition, an institution is examined to determine whether the activities it sponsors follow a religious or worship-based purpose. It is interesting to note that this evaluation is not done on the basis of the institutional *objectives* of a given entity but on the actual *activities* that it carries out or sponsors. These activities are examined to determine if the religious purpose is "essential and inherent," although it does not have to be exclusive. In fact any other purpose "directed to charitable ends in accordance with the Code of Canon Law" is admitted.

The Agreement also defines activities that are considered religious in order to separate them from others. This was not an easy task but it was necessary to "give additional certainty to procedures that recognize the legal status of ecclesiastical institutions," thereby limiting the discretionary power of those public officials who certify that status. Religious activities were defined as "those directed to the practice of worship, care of souls, education of clergy, missionary activities, catechism and Christian education." A more daunting task was to define activities which are not considered inherently religious, because the church was obviously cautious to preserve its mission also in charitable activities and education. Nonreligious activities have been defined as "those directed to assistance, volunteer work, instruction, culture and in any case all for-profit activities." The new system is therefore much more precise in defining the recognition of ecclesiastical institutions. For instance, the presence of schooling, assistance, and volunteer work tended to exclude the ecclesiastical nature of an institution, and an in-

stitution that performs those activities can be defined as ecclesiastical only if it meets the above mentioned definition.

Naturally, all these activities can be freely developed by any entity which is recognized by the Canonical Code or linked to the Catholic Church, but this will not earn it a recognition as ecclesiastical. These entities will instead be considered by the Italian law as private legal entities, pursuant to Article 10 of the Agreement, and be eligible to apply for legal status granted by the law, which grants them ample freedom in carrying out ministry, charitable, and education activities (Art. 33 and 34 of the Constitution).⁸

Of all the issues addressed by the Revised Agreement, the most complex and controversial has been the new regime for the remuneration of clergy.⁹ Article 7, No. 6 of the Agreement signed on 18 February 1984, entrusts this matter to the Bilateral Commission and calls for "the revision of the financial commitment of the Italian Republic in managing ecclesiastical institutions." This broad definition allowed the Commission to work independently on this delicate subject under the sole guidance of the dispositions of Italian law and the Second Vatican Council.

From 1976 to 1982, six drafts of the revision of the Lateran Covenant were elaborated, but none of them addressed the issue of financial commitments of the Italian Government vis-à-vis the Catholic Church. The first and second draft simply reinstated the old discipline on this subject and recommended a later agreement on this topic. The third and fourth drafts omitted this issue and only the fifth draft called for the establishment of a Bilateral Commission to work on this subject which later resulted in Article 7, No. 6 of the Revised Agreement. The Commission devoted most of its efforts to the definition of a new regime to financially support clergy (Title II from Art. 21 to Art. 53). These articles have been accepted by both parties and became law in Italy on 20 May 1985, No. 222.

The Commission's solution is based on the principles of freedom of the Catholic Church and of collaboration between the Italian government and the church. The first principle implies not only freedom in the pastoral ministry but also in the administration of ecclesiastical assets. This objective has been achieved by exempting these assets from government control in case of sale or reinvestment.¹⁰ The second prin-

8. On the reform of the regulations of ecclesiastical institutions introduced by the revised Agreement, see G. Dalla Torre, *La riforma della legislazione ecclesiastica. Testi e documenti per una ricostruzione storica* (Bologna, 1985); and S. Lariccia, *Diritto ecclesiastico*.

9. On this point see *ibid.*

10. On the development (government control) of the clerical institutions, see F. Finocchiaro, *Enti Ecclesiastici Cattolici, Enciclopedia Giuridica* (Roma, 1989).

ciple implies the acceptance of the commitment of the Italian government, through the contributions of the Catholic community to financially assist the church and especially to support the priests. The government was not willing to withdraw completely its assistance given the extent and the importance of social work done by the church in Italy. The difficult task was therefore to harmonize these principles with the Constitution of the Republic which recognizes the equality of every religion before the law and the equality of every citizen notwithstanding religious beliefs.

The system that resulted is based on two sources of financing. The first is the donation that any citizen can make to a central fund established within the Italian Episcopal conference, which is not taxed up to an amount of \$1000 per year (two million Italian liras). The second source is a transfer from the Italian government of 0.8 percent of revenues of the personal income tax (Irpef). Every citizen when filing income taxes has the option of assigning this fixed percentage of his taxes to the Catholic Church, to other churches, or to social and assistance work done directly by the government. The Italian Republic has signed special agreements with several churches to include them as potential recipients of these funds.¹¹ Proceeds from this second source are not directed specifically to support clergy but can be used also for this purpose if donations from the Catholic community or other income coming from church activities is insufficient to that end. On the other hand, the church commits itself to use that financing to satisfy the religious demands of the population as well as to promote charitable work in local communities and abroad in developing countries.¹²

The Commission arrived at this result after taking into account three factors. First, the Italian legal and historical tradition since the Middle Ages is based on the concept of *beneficium ecclesiasticum*¹³ and on the obligation of the state to meet the financial needs of the church (Art. 30 of the 1929 Lateran Covenant). Second, there remains a need to compensate the Catholic Church for the confiscation of its assets that started in Italy in the eighteenth century and was intensified after

11. For the specific agreements with non-Catholic religious confessions, see S. Berligò, *Sostentamento dei Ministri di Culto*, *Enciclopedia Giuridica* (Roma, 1993).

12. On this point, see F. Margiotta Broglio, *Riforma della legislazione concordataria sugli enti e sul patrimonio ecclesiastico: I principi della Commissione Paritetica Italia-Santa Sede*, *Foro italiano*, 1984, V, 368; G. Feliciani, *Sostentamento del clero*, *Enciclopedia Diritto* (Milano, 1990); and C. Cardia, *Il finanziamento della Chiesa, Politica in Italia. I fatti dell'anno e le interpretazioni* (Bologna, 1991).

13. On the nature of the ecclesiastical benefits in the Canon Law before the 1983 Code of Canon Law, see V. Del Giudice, *Nozioni di Diritto canonico*. The Code of Canon Law (canon 1272) recommends the abolition of such benefits and its substitution with other means of maintenance.

the unification in the nineteenth century (see law No. 3036 of 7 July 1866, on the suppression of religious corporations). Finally, the Second Vatican Council forbids priests to use their ministry in for-profit activities and to retain earnings for their own families. The Council also affirmed the right of the clergy to obtain sufficient support, the obligation of the Catholic community to participate with donations, and urged the reform of ecclesiastical benefits paid by the government. This reform was the responsibility of the Commission that reviewed the Canonical Code. The new Code in effect since November 1983 clearly affirms the need to devise a new system to support clergy based on Diocesan Institutes (Canon 1274).

Three factors accelerated the need for reform: (i) financial support provided by the Italian government to the clergy before 1984 had become outdated as it was meant to guarantee a minimum of four hundred dollars of income per year, obviously insufficient to cover basic needs; (ii) government control over revenues obtained from the sale of ecclesiastical assets and the requirement to reinvest them resulted in undue interference in the management of church assets and caused their investment in liquid instruments rather than real estate; (iii) the reduction of clergy in Italy after the Second World War opened the issue of how to cover for the shortfall for government benefits, which were assigned *per capita*.

Before settling this issue, the Commission considered other solutions to support clergy. One entailed freezing government financial contributions to clergy and transferring them to a central institute from where they would have been distributed to each priest. This was not accepted by the delegation of the Vatican because of the maintenance of governmental controls and influence over the direction of these contributions. In addition, it would have compounded the problem of loss of purchasing power of contributions over time given that the government was not willing to index them to the inflation rate. A second proposal was for the government to directly assure the responsibility of supporting clergy on the basis of their social work, but this would have put priests under direct control of the state, a solution obviously not favored by the Vatican. A third solution could have been the disbursement of a single lump sum to the Catholic Church and the end of any state support thereafter. This option was not considered viable given the potential public opposition to a large transfer, the issue of how to invest those resources, and the need to ensure support of the clergy over time.

The solution that prevailed is based on the principles of *libertas Ecclesiae* (freedom of the church) and *sana cooperatio* (healthy cooperation) and has the advantage of being applicable to any religious con-

fession. In summary, the main advantages of this approach are: (i) the new system determines the end of the interference of the Italian Republic *circa sacra*; (ii) it insulates the church from the potential negative influence resulting from paying a salary to the priests or controlling church assets; (iii) it has the advantage of giving the same treatment to all Catholic clergy as recommended by the Second Vatican Council; and (iv) it allocates the main responsibility of supporting clergy to the Catholic community.

After fifteen years, the system has proved to be successful. More than 80 percent of revenues of the 0.8 percent of income taxes has been voluntarily assigned by citizens to the Catholic Church. This allowed the church to support all priests, to contribute to the restoration of its historical sites, and to carry out charitable activities both domestically and internationally. The system also has the advantage of being transparent given that every year the income statement of ecclesial institutions is approved by the Italian Episcopal Conference and made public. The clergy was initially skeptical but then widely accepted the new system even though the principle of equal remuneration of all priests has brought a substantial decrease in disposable income, especially for high clergy members such as bishops and monsignors. The system has been somewhat less successful in providing an incentive to citizens' donations. Although tax deductible up to \$1000 per year, these donations averaged an estimated \$25 million per year, well below the \$200 million needed to support Catholic clergy in Italy.

In conclusion, it can be said that after fifteen years, the Revised Agreement has achieved almost all of its objectives. In particular it has been successful in the difficult task of adapting old and outdated practices to the new requirements of the 1948 Italian Constitution and the dispositions of the Second Vatican Council. The Agreement reconfirms and strengthens the fundamental principles of sovereignty, freedom, and pluralism.