

1992

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### Recommended Citation

Francesco Cossiga, *A History of Religious Freedom in Italy*, 23 Loy. U. Chi. L. J. 619 (1992).  
Available at: <http://lawcommons.luc.edu/lucj/vol23/iss4/2>

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## A History of Religious Freedom in Italy\*

*President Francesco Cossiga of the Republic of Italy\*\**

I am honored and grateful for the Honorary Degree in Humane Letters which has been conferred upon me by this distinguished Loyola University.

It honors me both as an Italian and as a Catholic: as an Italian, in that it is an acknowledgement of the contribution that my country has made, and continues to make, to culture and the progress of mankind, especially in the fields of law and justice; as a Catholic who is deeply conscious of the important place your University occupies in American life, bearing testimony to the Catholic Church's interest in and love for culture and the general advancement of authentic human values.

Precisely in order to manifest my awareness of the importance that I, as a legal scholar and a member of the Catholic Church,

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\* The following is an address given during Commencement, January 11, 1992, at Loyola University Chicago.

The *Journal* thanks the Italian Consulate for providing the written translation from Italian into English, the Italian Cultural Institute for its invaluable assistance, and Dr. Barbara Carle of Loyola University and Loyola Law student Br. Owen Meegan, *F.S.C.*, for their vital contributions.

\*\* President Francesco Cossiga was elected President of the Republic of Italy in 1985, and served until he resigned in April 1992. Born in Sardinia, Cossiga is the son of a middle-class family whose origins are both humble and scholarly. One of the President's great-grandfathers was well known as "the Christian poet" and wrote in *Lugodrese*, a Sardinian language. Francesco Cossiga graduated in law from Sassari University where he began his academic career. He is the author of several legal works and a specialist in constitutional law. He also has played an active, important role in various Catholic movements and has scholarly knowledge of the work of philosopher and theologian Cardinal John Henry Newman. President Cossiga was elected Deputy to the Italian Parliament in 1958 and served several times on the Bureau of the Parliamentary Christian Democratic Group. His work in government as a minister began in a coalition under Prime Minister Aldo Moro, whose teachings and examples have always inspired President Cossiga's public and political life. President Cossiga held important positions in several different administrations until he was elected President in 1985. Some of the main concerns of his political career have included institutional policy, defense, and security. President Cossiga has received special degrees from a long list of institutions including York University in Canada, Barcelona University in Spain, and Columbia and St. John's Universities in New York. He also has been honored by Oxford and Yale Universities. Among other distinctions, he is a Knight of Malta and has awards and decorations from more than twenty countries. At this Commencement address, Loyola University Chicago presented Francesco Cossiga with the degree Doctor of Humane Letters *honoris causa*.

attribute to this degree, I would like to dwell briefly on the manner in which religious freedom is guaranteed in my own country. I have also chosen this subject as a sincere and dutiful act of homage to those theologians and jurists of the Society of Jesus to whom I owe a great debt of gratitude, admiration, and affection as a layman: men who have made such a great contribution to civil society and to the ecclesial community by developing and establishing the concept and the practical principle of the right of all men to religious freedom.

Concluding his work on *The Travail of Religious Liberty*,<sup>1</sup> Roland Bainton realized that he had gone beyond the immediate problem of religious freedom to discuss every freedom. But he justified it by the fact that all freedoms are bound together, and that civil freedoms very rarely thrive where religious freedoms are not guaranteed, and vice versa. For Bainton, underlying all these freedoms is a philosophy of freedom that presupposes a varied range of human behavior patterns, honors the integrity and respects the dignity of man, and seeks to follow the example of the compassion of God.

There was nothing novel about this idea of the solidarity between all freedoms. As I shall be saying shortly, the same idea had already been expressed by a great Italian jurist, Francesco Ruffini, who said it is the spirit of tolerance that underlies each of the freedoms. Yet these statements emphasize the similarities between the approach of historians and theologians—of whom Bainton stands out as the epitome of the scholars of these disciplines—and the reasoning of jurists, albeit with cultural and conceptual differences, who have long placed great emphasis on the indivisible bond linking all freedoms.

At the end of the last century in one of the most comprehensive general theories of subjective public rights ever published,<sup>2</sup> George Jellinek described the "status libertatis" as the eminently negative juridical status, on the ground that rights to freedom are nothing other than manifestations of one single right, which is specified through many prerogatives that have been claimed throughout history and affirmed to offset restrictions imposed in the past. This structurally unitary construction of the "right to freedom" certainly elevated the bond that links all freedoms, but it ultimately

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1. ROLAND BAINTON, *THE TRAVAIL OF RELIGIOUS LIBERTY* (Philadelphia, Westminster Press 1951).

2. GEORGE JELLINEK, *DAS SYSTEM DER SUBJECTIVAN OFFENTLICHEN RECHTE* (1892).

viewed freedom merely as exemption from illegal constraints: this basically creates the equation "freedom—legality." And this conclusion is certainly fully consistent with the overall view of subjective public rights as the reflex of self-limitation by the State. The essence and the mode of being of all freedoms are ultimately left to decisions taken by the State.

What is of relevance here, namely, the solidarity of all freedoms as emphasized by Bainton, is also affirmed by conceiving of freedoms not as a unified whole, but as many individually distinct rights, each one specifically defined and protected in terms of the interest at issue.

In the early decades of the Nineteenth Century, a saintly priest, a great philosopher and theologian, and an Italian patriot, Antonio Rosmini, held that the right to religious freedom, like every substantial right, is based on the nature and the dignity of the human person. The whole rationale underlying his view is the fact that "the person is the source of law: indeed, the person is the embodiment of law."

"History has taught us that citizens did not assert, fight for and defend any single, generic freedom by waging glorious battles throughout the ages, but certain specific and distinct freedoms, beginning with the freedom of religion, wresting them one by one from sovereign absolutism."<sup>3</sup> These were the incisive words of Francesco Ruffini, a distinguished Italian historian and jurist, and a great defender of civil rights against the authoritarianism that was becoming established in our country at the time. In his *Course of Italian Ecclesiastical Law*,<sup>4</sup> he based the right to freedom, and primarily religious freedom, on the concrete reality of historical experience, severing these rights from over-rigid dogmatism, but without ever losing sight of the juridical essence of freedom. And when Ruffini so masterfully set out the history of the idea of religious freedom in his earlier work, he said that it is not "a philosophical concept or principle," or even "a theological concept or principle," but "an essentially juridical concept or principle: . . . religious freedom does not take the side of the faith or unbelief; but in that unremitting struggle that has been fought between them ever since man has existed and will perhaps continue so long as man exists, religious freedom stands absolutely aloof."<sup>5</sup> The pur-

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3. FRANCESCO RUFFINI, *Corso di diritto ecclesiastico italiano*, in *LA LIBERTA RELIGIOSA COME DIRITTO PUBBLICO ITALIANO* 185 (Torino, Bocca 1924).

4. *Id.*

5. 1 FRANCESCO RUFFINI, *La liberta religiosa—Storia dell'idea* 7 (Milano 1967).

pose of religious freedom, according to Ruffini, is

wholly practical. And it consists of creating and maintaining a state of affairs in society such that every individual may pursue and acquire for himself those two supreme ends (faith or free thought) without other men, individually or grouped together in associations or epitomized in that supreme community of all which is the State, being able to raise the slightest obstacle or inflict the least damage by so doing.<sup>6</sup>

Francesco Ruffini later clarified the basis of the rights of freedom in a book published in 1926 by Piero Gobetti,<sup>7</sup> the fearless young liberal leader after the First World War who died as a result of the blows inflicted on him by violent politicians, which was "a political battle before being an essay on law." This publication, which soon became unobtainable, was a "passionate defense of the rights of freedom, in which the jurist lends a hand to the historian and the politician," and it was a bold act of faith in his own ideals at a time in which freedoms had been placed in jeopardy.<sup>8</sup>

The rights to freedom, according to Ruffini, do not stem from self-limitation by the State and are not subsequent to the State.

Out of respect for the citizens' Rights of freedom, the freedom of the State . . . is not a voluntary limitation acquired by the State, but rather a necessary and congenital limitation. Hence the inviolability, hence the inalienability of these Rights of freedom—so long, of course, as there exists a real State based on the rule of law, and we could go so far as to say, so long as a State exists.<sup>9</sup>

The fact that religious denominations with different features exist, and even the peculiar configuration of the Catholic Church, with its own law that is not derived from the State, is once again linked, in the crystal clear thinking of Francesco Ruffini, to the problems of religious freedom and equality, or the equality of creeds. "Religious associations for worship," says Ruffini,

can enter into relations with the State not only in so far as the State protects their religious freedom, but particularly in so far as they are organized and governed by charters, like any other association, which not only relate to faith and discipline, but wholly different matters, wholly secular in character: for example, the acquisition of property, and its administration.<sup>10</sup>

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6. 1 *id.* at 6.

7. FRANCESCO RUFFINI, *Diritti di liberta* (Piero Gobetti ed., 1st ed. 1926).

8. PIERO CALAMANDREI, *Introduction to FRANCESCO RUFFINI, Diritti di liberta (La Nuova Italia, Firenze ed., 2d ed. 1946).*

9. RUFFINI, *Diritti di liberta*, *supra* note 7, at 136.

10. RUFFINI, *LA LIBERTA RELIGIOSA COME DIRITTO PUBBLICO ITALIANO*, *supra* note 3, at 13.

Every religious denomination therefore has its own distinctive and differing features. "To ensure that religious freedom is truly equal for all and hence complete in a State, is it really necessary for the State to treat all the religious associations of worship in a perfectly identical manner, even in respect of purely temporal affairs?"<sup>11</sup>

Ruffini answers this question in the negative. Against the principle "Equality at any price," he sets another: "Governing all unequal juridical relations equally is as unjust as unequally governing all equal juridical relations."<sup>12</sup> This opens the scientific and conceptual path to a differentiated system for governing relations with the churches, in accordance with the system under which the public authority governs each one proportionally, but always according to the canons of freedom. In other words, not by reference to freedom of conscience and worship, which must necessarily be equal for all, but only limited to the regime and the forms (internationally relevant instruments, agreements, Acts of Parliament) with which these relations are governed in terms of organizational discipline, and by no means—and I wish to emphasize this point—in relation to the freedom of conscience and freedom of worship.

This reference to the thought of Francesco Ruffini is not solely as a due act of homage to this great and courageous liberal democratic jurist, but because it reveals a few aspects of the influence that his teaching has exercised over the development of ecclesiastical law in Italy, and in the governance of relations between the State and the Church, and between the State and the religious denominations.

Ruffini was writing—and we would do well to remember this—before the Reconciliation between the Italian State and the Church. The 1848 Fundamental Statute of the Kingdom of Sardinia, which subsequently became the Constitution of the Kingdom of Italy in 1861, granted by King Carlo Alberto, took its inspiration from confessional principals, considering the Catholic religion as "the only State religion," with the other denominations that then existed "tolerated according to the laws." This legal provision did not, however, prevent the Subalpine Parliament from enacting a law only a few months later, to remove any doubt whatsoever about the civil and political capacity of citizens who did not profess the Catholic religion, by providing that, "Allegiance to a different denomination does not create an exception to the enjoy-

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11. 1 RUFFINI, *La liberta religiosa—Storia dell'idea*, supra note 5, at 13.

12. 1 *id.* at 15.

ment of civil and political rights and to eligibility for admission to civilian and military posts.”

The confessional rationale of the Statute did not, however, prevent the abolition of the traditional ecclesiastical courts and immunities, or the suppression of Religious Orders and other ecclesiastical entities, or make it possible to completely suppress the religious guilds and devolve their assets to the public domain.

In this context, what became known as the “Roman question,” namely, the domestic and international political dispute caused by the occupation of Rome by the Kingdom of Italy, and the transfer of the capital from Florence to Rome (a political question, but nevertheless one that influenced relations between Church and State, and hence the regime of religious freedom itself), was solved unilaterally by a State law which the Holy See never accepted, and which attributed to the Supreme Pontiff and the Holy See special personal “guarantees” and immunities.

The Holy See reacted with the famous “non expedit,” which, *inter alia*, forbid Catholics to vote at the general elections: this was a great error that adversely affected the whole of the political and religious life of Italy until 1919!

The same legislative policy subsequently created a special “Fund,” initially made up of the equivalent value of the Church assets that had been taken over by the Italian State, from which to pay the clergy a stipend that was essentially equivalent to making the State their paymaster.

It was with the “Lateran Pacts” executed in 1929 between the Holy See and the Italian government, which was by then controlled by the Fascist Party, that legislative, and with it ecclesiastical, policy thinking changed substantially. The Treaty and the Concordat, which made up those “Pacts,” put an end to the “Roman question” once and for all, on a bilateral basis. While the Treaty assured the Holy See of “absolute and visible independence,” by creating a territorial entity, Vatican City State, the Concordat, which governed the status of the Church in Italy, developed the confessional approach, reaffirming the renewed recognition of the Catholic religion as the State Religion, tempered by a regime, not a full freedom, but at least of juridical tolerance, inherited from the previous liberal democratic age.

The overall design underlying the Concordat guaranteed an area of freedom for the Church and her organizations within the context of an authoritarian regime, but it did not do away with the areas of friction in relations with the State, particularly with regard

to the education of youth and the work of Catholic associations, with the inevitable political repercussions to which they might give rise. It was more a means of settling a dispute, and hence staking out the respective spheres of the State and the Church, than of enhancing the rights of the person in his twofold capacity as a citizen and a believer.

This new ecclesiastical political-legislative approach was also broadened, as I mentioned earlier, to the other religious denominations. The Law of June 24, 1929<sup>13</sup> enacted new "provisions for the exercise of the denominations admitted into the State and on marriage celebrated before the ministers of these denominations." Denominations other than the Catholic Church were no longer "tolerated," but "admitted," provided that they did not profess principles and did not re-affirm the old principle that "Allegiance to a different denomination does not create an exception to the enjoyment of civil and political rights and to eligibility for admission to civilian and military posts"<sup>14</sup> and "there is total freedom of religious debate."<sup>15</sup> But the real and total enjoyment of religious freedom, under these circumstances, appeared to be constrained by controls and ultimately restricted in many respects.

It is significant that even in the political and ideological environment of those years, a particular discipline was dictated for the Jewish communities and for the Union "designed to look after and protect the general rights of Jews in the Kingdom."<sup>16</sup> From the very first moment, the new law was deemed "perhaps a unique example in our legal system of a charter for a religious denomination drafted and enacted by the State," a real civil constitution of a religious denomination created by the State legislator, according to the judgment of Arturo Carlo Jemolo, a great Catholic and liberal jurist.

A completely new age for religious freedom, with the comprehensive recognition of inviolable human rights, dawned with the 1948 Republican Constitution which profoundly innovated the very foundations of the system of relations between the State and the Catholic Church; between the State and religious denominations; and between the State, citizens, and religious communities, in relation to freedom of religion, conscience, and worship.

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13. *Legge 24 giugno 1929*, n. 1159, in *Gazz. Uff.*, 16 luglio 1929, n. 164.

14. *Id.* § 4.

15. *Id.* § 5.

16. Art. 30 Royal Decree, 30 ottobre 1930, n. 1731, in *Gazz. Uff.*, 15 gennaio 1931, n. 11.

After the tragic experience of totalitarianism and the havoc caused by the Second World War, the cultural climate, including legal culture, emerged completely changed. The year in which the Italian Constitution was promulgated was also the year of the Universal Declaration of Human Rights (December 10, 1948). Principles and positions were affirmed which, as one of Italy's most original philosophers of law, the Catholic Giuseppe Capograssi, stated, "are not an arbitrary excogitation of individual or groups, however authoritative: they are the effect of fundamental needs felt by contemporary man as a result of the experiences to which he has been subjected." Along similar lines, the European Convention for the Protection of Human Rights and Fundamental Freedoms became effective on November 4, 1950. The individual and collective right to freedom of religion, already fully guaranteed by the Italian Constitution, was further protected by the international undertakings of the State, with a variety of guarantees in the unity of juridical experience.

The specific originality of the Italian Constitution, developing coherently from a pluralist standpoint gives full recognition to the legal systems of religious denominations and governs relations between them and the State under bilateral agreements.

It is evident that such far-reaching innovative principles, dictated by the provisions of the Constitution, would have to be developed at a later stage by a comprehensive renewal of ecclesiastical law, which has largely been completed over the past few years.

The new approach to dealings between the State and the Catholic Church not only draws on the radical changes that have taken place in the organization of the State and Italian society itself, but also on the new thinking on the part of the Church in the wake of Vatican II. Without proceeding further to analyze this aspect of the question, we should recall that the Council clearly stated that "the human person has a right to religious freedom," and that this freedom is "really based on the very dignity of the human person," and consists of immunity "from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his convictions nor restrained from acting in accordance with his convictions in religious matters in private or in public, alone or in associations with others."<sup>17</sup> Equally outspoken, the Council, taking a clear dualistic approach, spelled out the principles governing relations between the Church and the community and political institutions. Using an expression

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17. *Dignitatis Humanae* 2 (Dec. 7, 1965).

that seems to be wholly consonant with the provisions of Article 7 of the Italian Constitution, the Council stated that, "The political community and the Church are independent and autonomous of each other in their own fields;" and while using temporal goods to the extent that her mission requires, the Church "never places its hopes in any privileges accorded to it by civil authority; indeed, it will give up the exercise of certain legitimate rights whenever it becomes clear that their use will compromise the sincerity of its witness."<sup>18</sup> It is therefore not strange that "in consideration of the process of political and social change that has occurred in Italy" and "the developments fostered by the Church since the Second Vatican Council" (the words of the preamble to the new agreement signed in February 18, 1984), the State and the Church concluded a new pact, completely amending and replacing the 1929 Concordat.

The Preamble to the new agreement explains that the Holy See and the Italian Government "recognized the appropriateness" of amending the 1929 Concordat. The reasons are both "the process of political and social change which has occurred in Italy in recent decades," and the "developments promoted" by Vatican II in the Church.

There had, in fact, been a change of political regime in Italy; a new Constitution had been adopted; radical changes had occurred in mentalities, customs, and also in the religious life; in the Church a new ecclesiology had been developed, and a new view of relations between the Church and civil society had come into being.

Since the old Concordat had been influenced by the ideology of the authoritarian regime and the ecclesiology current at that time, radical changes were necessary to bring it into line with the principles enshrined in the Italian Constitution, and with the declarations of Vatican II on religious liberty and relations between the Church and the political community.

The innovations made to ecclesiastical legislation related significantly to other religious denominations, too. This made Article 8 of the Constitution fully effective under a specific provision governing relations with the religious denominations concerned under legislation which essentially enacted agreements signed by the government and their representatives. In this way, superseding the old provision for "admitted denominations," relations were established with the churches represented by the Tavola Valdese,<sup>19</sup> the Italian

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18. *Gaudium et Spes* 78 (Dec. 7, 1965).

19. *Legge 11 agosto 1984*, n. 449, in *Gazz. Uff.*, 13 agosto 1984, n. 222.

Union of Christian Seventh Day Adventist Churches,<sup>20</sup> the Assemblies of God in Italy,<sup>21</sup> and with the Union of Italian Jewish Communities.<sup>22</sup> The agreement with the Jewish communities made it possible for the Union of Italian Jewish Communities to freely adopt their own autonomous Charter, which superseded the State legislation governing the Jewish Community in such a singular manner.

Religious freedom is therefore recognized for what it is: a fundamental right of the individual person, but also of the religious communities that are made up of persons. Religious freedom also implies the real possibility for the free expression of opinions, freedom of worship, and also the freedom to create, develop, and manage a whole organization.

The State's duty is to enact legislation to recognize, protect, and promote the exercise of religious freedom by individuals and organizations.

In a pluralist and secular society, it is important for the State to regulate legal relations with religious communities and to enact common legislation to prevent conflicts. But there are two types of secular societies: one in which there is a levelling-down of religion that impoverishes the culture and the civilization of that society in the name of legal equality; and one in which the identity and specific features of the various religions and churches are respected and recognized.

However, the State cannot interfere, ruling on the spiritual and religious contents of the religious communities, since these "transcend of their very nature the earthly and temporal order of things." Civil society, "the purpose of which is the care of the common good in the temporal order, must recognize and look with favor on the religious life of the citizens. But if it presumes to control or restrict religious activity, it must be said to have exceeded the limits of its power."<sup>23</sup>

There are countless legal provisions for and practical consequences of the fundamental right to religious freedom. Religious freedom not only concerns the internal life of individuals and communities, but also their outside action, not only acting as individuals, but also their social, charitable, missionary, and organized

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20. *Legge 22 novembre 1988*, n. 516, in *Gazz. Uff.*, 2 dicembre 1988 *suppl. ord.*, n. 282.

21. *Legge 22 novembre 1988*, n. 517, in *Gazz. Uff.*, 2 dicembre 1988 *suppl. ord.*, n. 283.

22. *Legge 8 marzo 1989*, n. 101, in *Gazz. Uff.*, 23 marzo 1989 *suppl. ord.*, n. 69.

23. *Dignitatis Humanae*, *supra* note 17, at 3.

work, and the problems of maintaining, acquiring, and using property. Religious freedom relates, above all, to family life, the parents' responsibilities to educate their children, and the choice of schools without being required to pay more than all other citizens, for it is here that genuine legal equality is demonstrated.

In conclusion, this brief account, and these short considerations bring us back to what I said at the beginning and to an appreciation of the way in which some of Ruffini's scientific ideas have been proven and developed in actual experience. If the principle of equality does not mean "to each the same" but "to each his own," this has been done in recent Italian ecclesiastical legislation that assures full and equal freedom to all religious denominations, seeking to lay down provisions, with the consent of the denominations concerned, that are congenial to the needs of each one, and according to the situations or the different phenomena that require regulation.

Freedom of religion is thereby recognized, affirmed, and guaranteed. But it is always beset by enemies! Enemies such as clericalism, both ecclesiastical and lay, fundamentalism, and proselytism, that violate the freedom of conscience of individual persons!

Then there is physical and economic violence to religious freedom, and psychological, social, and moral violence. All of these conflict with freedom of conscience and religious freedom, which are peerless assets to every human society, and authentic conditions for just and peaceful coexistence, and also the guarantees of civil progress.

But one must also consider the fact that religion and faith are not, cannot, and must not be indifferent to human and social life. Individuals and associations can base their social lives on religious principles and can lead the civil institutions according to the fundamental values of man enshrined in religious values.

Religious communities can also conclude agreements, understandings, and protocols with the State and civil institutions, according to the identity and the nature of their own religious structures.

If religious freedom is to be a fundamental rule of civil coexistence and to produce general freedom and moral well-being for all persons and the whole of civil society, the democratic methods must be put into practice and loyally respected, because the general rule of freedom also includes religious freedom and democracy, which are two immense assets and values for the civil progress that lies ahead of mankind.

