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**Public space and religion
in the transformation of the form of the State**

SUMMARY: 1. Public Space, Religion and Solidarity: A Premise - 2. School Space, Religion and 'Nation Building' Process in Nineteenth Century Italy - 3. Ethical State and Scholastic confessionality during the Fascist Period - 4 From Confessionality to the Italian 'Laicità': A New Model for State-Society Relations - 5. Concluding Remarks.

1 - Public Space, Religion and Solidarity: A Premise

Regulation of public space and Law and Religion system are two normative areas from which it is possible to draw valuable information on the qualification of the form of a State⁴⁴. Public space is in fact the place of living together, where collective ethics underlying the law flows and manifests itself⁴⁵. Here people (*personae*⁴⁶) meet and exchange messages, linguistic and symbolic, often of "spiritual"⁴⁷ content. These exchanges

⁴⁴ Cf. **A. MORELLI**, *Simboli e valori della democrazia costituzionale*, in **VV. AA.**, *Symbolon/Diabolon. Simboli, religioni, diritti nell'Europa multiculturale*, edited by E. DIENI, A. FERRARI, V. PACILLO, il Mulino, Bologna, 2005, p. 167 ff.

⁴⁵ This is a deliberately broad definition of public space. For a "deconstruction" of this notion see **S. FERRARI**, *I simboli religiosi nello spazio pubblico*, in *Quaderni di diritto e politica ecclesiastica*, no. 2 of 2012, p. 325 ff. (now also in **ID.**, *Scritti. Percorsi di libertà religiosa per una società plurale*, edited by C. CIANITTO, A. FERRARI, D. MILANI and A. TIRA, il Mulino, Bologna, 2022, p. 247 ff.).

⁴⁶ In Latin '*persona*' means 'mask'. In this sense, the person is the projection of the human being within society. On the evolution of the concept of person in constitutional law, see fairly recently **S. RODOTÀ**, *Il diritto di avere diritti*, Laterza, Bari-Roma, p. 140 ff. On the anthropological conceptions of the Italian constituents instead see **F. PIZZOLATO**, *Finalismo dello Stato e sistema dei diritti nella Costituzione italiana*, Vita e Pensiero, Milano, 1999.

⁴⁷ Reference is made here to a wide concept of the 'spiritual', such as the one enshrined in the second paragraph of Article 4 of the Italian constitution. According to **G. CASUSCELLI**, *Post-confessionismo e transizione*, Giuffrè, Milano, 1984, p. 29 ff., the scope



help to build the code of social solidarity⁴⁸; a value substratum (perhaps minimal⁴⁹) on which the law also rests, even in a pluralistic context - "polytheistic", to quote Max Weber⁵⁰. In fact, as pointed out (among others) by Henri Bergson, law, in its dimension of principles, springs from ethics which constitutes the main historical source⁵¹ of juridical revolutions⁵².

For this reason, the 'physiognomy' of the public space (the container) can influence the ethical, and even legal, development of society⁵³. In a democratic system, political-value choices are made according to a bottom-up process which leads to the translation of a shared conviction into norm; therefore, public space must be devoid of elements capable of contaminating the free marketplace of idea. In autocratic systems, on the other hand, the established power often wants to regulate and shape the public space in its image and likeness and in accordance with its political order.

In this control operation, authoritarian States have historically made use of religion and its institutional apparatus.

Religions, in fact, have always occupied a central role within the public life. They constitute vehicles of identity, providing "a narrative in which it is possible to recognize oneself"⁵⁴; a direction "for one's life and

of the spiritual (referred to in the article cited above) is broader than that of the religious, also encompassing the dimensions of art and science.

⁴⁸ On the constitutional concept of solidarity, see for all **F. GIUFFRÈ**, *La solidarietà nell'ordinamento costituzionale*, Giuffrè, Milano, 2002. On the principle of solidarity, see also **A. MORELLI**, *I principi costituzionali relativi ai doveri inderogabili di solidarietà*, in *Forum di Quaderni Costituzionali*, Online journal (www.forumcostituzionale.it), 2015.

⁴⁹ On the idea of a positive law that respects the ethical minimum cf. **J. RAWLS**, *A Theory of Justice*, The Belknap Press of Harvard University Press, Cambridge (MA), 1971.

⁵⁰ This is the famous Weberian definition of the pluralist society. Cf. **G. DALLA TORRE**, *Le frontiere della vita. Etica, bioetica e diritto*, Edizioni Studium, Roma, 1997, p. 45 ff.

⁵¹ On the process of affirming the concept of the historicity of law, see **P. GROSSI**, *Mitologie giuridiche della modernità*, Giuffrè, Milano, 2007.

⁵² See **H. BERGSON**, *Les Deux Sources de la morale et de la religion*, Félix Alcan, Paris, 1932. Cf. on this point **C. CARDIA**, *Il fondamento etico del diritto*, in *Stato, Chiesa e pluralismo confessionale*, Online journal (<https://www.statoechiese.it>), no. 20 of 2012, p. 21.

⁵³ Since "the medium is the message", one might say with a clear reference to **M. McLUHAN**, *Understanding Media: The Extensions of Man*, McGraw-Hill, New York City (NY), 1964.

⁵⁴ **S. FERRARI**, *Tra geo-diritti e teo-diritti. Riflessioni sulle religioni come centri transnazionali di identità*, in *Quaderni di diritto e politica ecclesiastica*, no. 1 of 2007, p. 10, now



solidarity among the members of the community”⁵⁵. Beyond their sacred and ritual aspect, religions are often associated with ethics. They propose rules or, at the very least, principles for human coexistence; commands that may therefore be of juridical significance⁵⁶ since they condition behavior of the citizens-believers⁵⁷. In other words: religions contribute to building social solidarity, as well as they might crack it. Therefore, the examination of the relationship between public powers and religious denominations acquires importance from a legal perspective.

Based on these premises, an analysis will be made of the regulation of the religious factor in the public space, to outline some elements that have characterized the different constitutional forms assumed by the Italian State. For the sake of synthesis, it was decided to narrow the field to the ‘educational space’ and, specifically, on the public-school space. In the latter, in fact, the community takes shape since the ethics of the different families (in a broad sense) meet for the first time.

I will start with the first sixty years (approximately) of the Italian Kingdom, from its proclamation to the advent of the Fascist Party.

2 - School Space, Religion and ‘Nation Building’ Process in Nineteenth Century Italy

Throughout the second half of the nineteenth century, the issue of education was at the center of political debate. The ruling classes that had led the country to unity, in fact, envisaged a process of cultural

also in **ID.**, *Scritti. Percorsi di libertà religiosa per una società plurale*, cit., p. 227 ff. (my translation).

⁵⁵ **S. FERRARI**, *Tra geo-diritti e teo-diritti*, cit., p. 10.

⁵⁶ Cf. **S. BERLINGÒ**, *Ordine etico e legge civile: complementarità e distinzione*, in *Iustitia*, 1996, p. 229.

⁵⁷ Catholicism has been an important factor in the construction of the ethical, and therefore political and legal shape of western national communities. For centuries, in fact, the unity of the European identity, already divided into different populations, was found in the set of principles of the *Res Publica Christiana*. Then, at the end of this experience, we have two models of modern State, that could be summarized in the formulas *cuius regio eius religio* (confessional State) and *etsi deus non daretur* (neutral liberal State), both concerning the relationship between public authorities and religions. To reconstruct this historical path in an effective but concise manner cf. **P. BELLINI**, *Respublica sub Deo. Il primato del sacro nell'esperienza giuridica dell'Europa preumanista*, Edumond Le Monnier, Firenze, 1981; **G. CAPUTO**, *Introduzione allo studio del diritto canonico moderno. Lo jus publicum ecclesiasticum*, CEDAM, Padova, 2009, II ed., t. I, pp. 3-56.



transformation that was to transform the Italian State into a modern nation-State⁵⁸. It was necessary to “invent”⁵⁹ an Italian tradition to complement territorial sovereignty. “We have made Italy, now we must make Italians”, according to the motto usually attributed to Massimo D’Azeglio.

To complete the nation building process, it was imperative to construct a national education system, capable of bringing together and coordinating the institutions already present in the Italian territory⁶⁰.

Thus initiated a conflict with the Catholic Church, which until then had enjoyed a monopoly in the field of education⁶¹. The “scholastic *Kulturkampf*”⁶² is perfectly inscribed within the secularization path of Western societies. As has been accurately observed by Adolfo Ravà, in fact, the modern State wants, as an ethical subject, to eliminate any influence of any other authority (first, the Church of Rome) in the dimension of education⁶³, claiming sovereignty over the so-called “cultural lever”⁶⁴.

The Italian context, however, was quite peculiar. Catholicism, in fact, constituted one of the few common identity features of a culturally divided population. Hence an ambivalent attitude towards religion: the Kingdom was at the same time in conflict with the ecclesiastical

⁵⁸ As pointed out by **P. CARROZZA**, *Nazione*, in *Digesto delle discipline pubblicistiche*, Utet, Turin, 1995, vol. X, p. 136, it is the State that creates the nation and not vice versa.

⁵⁹ **E.J. HOBSBAWM, T.O. RANGER**, *The Invention of Tradition*, Cambridge University Press, Cambridge, 1983.

⁶⁰ Cf., on this point, **L. BORGHI**, *Educazione e autorità nell’Italia moderna*, La Nuova Italia, Firenze, 1974, p. 4.

⁶¹ See **S. MANZIN MAESTRELLI**, *Istruzione dell’obbligo*, in *Digesto delle discipline pubblicistiche*, 1994, vol. IX, p. 2. Cf. **G. DALLA TORRE**, *La questione scolastica nei rapporti fra Stato e Chiesa*, Pàtron Editore, Bologna, 1988, p. 27 ff.

⁶² **G. CHIOSSO**, *La questione scolastica in Italia: l’istruzione popolare*, in **VV. AA.**, *Il kulturkampf in Italia e nei paesi di lingua tedesca*, edited by R. LILL and F. TRANIELLO, il Mulino, Bologna, 1992, p. 339.

⁶³ **A(dolfo) RAVÀ**, *Lo Stato come organismo etico (1914)*, in **ID.**, *Diritto e Stato nella morale idealistica*, CEDAM, Padova, 1950, p. 147 ff.

⁶⁴ In the sense pointed out by **G. ZAGREBELSKY**, *Fondata sulla cultura. Arte, scienza, Costituzione*, Einaudi, Torino, 2014, p. 11 ff.



institution⁶⁵ and in need of Catholicism as a fundamental factor in the nation building project⁶⁶.

These ambiguities were reflected in the discipline of the school. In fact, the introduction of a centralized school system raised the practical problem of delimiting the competences of the religious authority in this matter, without however renouncing the benefits that religion could had for the education.

For this reason, first the Kingdom of Sardinia (1720-1861) and then the Kingdom of Italy moved very cautiously in this field, through a system of progressive reforms. To simplify an analysis that should necessarily be more detailed, I will dwell on a few regulatory elements contained in the 'Casati' Law and in the 'Coppino' Law that constitute, respectively, the initial moment and the apogee of the secularization process of the Italian school⁶⁷ during the so-called liberal period⁶⁸. I will focus on the regulation of primary school to verify how public space and religion were used to shape the cultural physiognomy of citizens from the age of childhood.

In the regulatory framework designed by the 'Casati' Law of 1859 (the "Magna Carta"⁶⁹ of the secular school) religion was valued by the ruling class as an indispensable factor in the formation of citizens, especially in the early school years. Two facts bear witness to this. The first, literally symbolic, is the presence of the crucifix in all classrooms, as imposed by Article 140 of the Royal Decree no. 4336 of 15 September 1860, implementing the 'Casati' Law. However, it is necessary to emphasize how, in this context, the display of the crucifix assumed a cultural and non-denominational value⁷⁰. At that time, in fact, there was no link between the Church and the State, that, as stated, were at loggerheads. Hence, the display of the Christian symbol has to be interpreted as a

⁶⁵ The word "institution" is used here in the sense indicated by **S. ROMANO**, *L'ordinamento giuridico* (1918), Quodlibet, Macerata, 2018.

⁶⁶ On the attempt by the liberal ruling class to use Catholicism as a traditional moral support, see **G. FORMIGONI**, *L'Italia dei cattolici. Fede e nazione dal Risorgimento alla Repubblica*, il Mulino, Bologna, 1998, p. 34.

⁶⁷ For an overview of the main problems in law and religion and church politics of the period see **A. TIRA**, *Alle origini del diritto ecclesiastico italiano. Prolusioni e manuali tra istanze politiche e tecnica giuridica (1870-1915)*, Giuffrè, Milano, 2018.

⁶⁸ On the will of the liberal ruling class to reform schools in a secular sense see **A. TALAMANCA**, *Libertà della scuola e libertà nella scuola*, CEDAM, Padova, 1975, p. 51 ff.

⁶⁹ **L. BORGHI**, *Educazione e autorità*, cit., p. 9.

⁷⁰ As highlighted by **G. DALLA TORRE**, *Dio o Marianna? Annotazioni minime sulla questione del crocifisso a scuola*, in *Giustizia Civile*, no. 2 of 2004, p. 512.



tribute to the creed of the majority of the population (and thus to the underlying ethical minimum) and not as the symbol of an alliance with the ecclesiastical authority.

The second symbolic element is the placement of the religion course at the top of the list of subjects to be attended in primary school, pursuant to Article 315 of the Law. Catholicism, however, was taught in the interest of the State. The course was indeed provided by lay teachers, under the guidance of spiritual directors appointed by the Ministry of Education, who concurred, together with the school authorities, in the choice of programs.

It also notes the elimination of the formula contained in the Lanza Law (Law no. 2328 of 22 June 1857), according to which Catholicism represented the “foundation of religious instruction and education”. This expression, in fact, had in the past suggested the religious foundation of the entire elementary school curriculum, which had to conform overall to the dictates of Catholic morality and culture. The disappearance of this provision would therefore seem to set back the possibility of control by the Church authority over other types of teaching, particularly of a scientific nature.

From here onwards, there is a constant effort to mitigate the residual denominational influences in the public school⁷¹. Already in the ministerial instructions attached to the 1867 school curricula, the transmission to students of catechisms and dogmatic concepts was decisively rejected, even during religion classes. The document insisted on the need to disseminate the “pure idea of God”, deprived of any connection with a revealed religion⁷². Here too, the aim was to preserve the moral principles of the Catholics (the basis of the collective ethics), removing them from the control of the ecclesiastical authority.

A few years later, in the aftermath of the ‘breach of Porta Pia’, the ‘Correnti’ circular of 29 September 1870 made religious education in elementary schools optional and separated in terms of time planning.

In the meanwhile, political pressures grew to replace the religion courses, already reduced to a teaching of Christian ethics, with civic education lessons, freed from any reference to the theological-fideistic dimension of Catholicism. Thus, the ‘Coppino’ Law (Law no. 3968 of 15 July 1877) had expunged religion from the list of subjects to be studied in

⁷¹ **A.C. JEMOLO**, *La crisi dello Stato moderno*, Laterza, Bari-Roma, 1954, p. 141 underlines the rationalistic and positivistic spirit of many teachers of the time.

⁷² On this point, see **G. CHIOSSO**, *La questione scolastica*, cit., p. 337, nt. 4.



primary schools, introducing in its place, still in a symbolic position, the “first notions of the duties of man and citizen”. According to a circular from the Minister, the aim of the course was to “form a population, as far as possible, educated, but mainly honest, hard-working, useful to the family and devoted to the Fatherland and the King”⁷³. The intention was thus to instill in the population the principles of a rational religion that could “strengthen the feeling of duty weakened by revolutions and materialist doctrines”⁷⁴. An operation that often took the form of indoctrination; the same one that was strongly condemned when it came from the Church.

In the light of these elements, can it be said that the Italian State of the nineteenth century was still a confessional State, as envisaged in Article 1 of the Albertine Statute⁷⁵? Considering the collective ethics of the time, the answer can only be positive⁷⁶. The value plot underlying the legal system (the public ethics presupposed by law) was in fact borrowed from the Christian axiological system, albeit deprived of theoretical-theological justifications. In this sense, the provisions of the first article of the *octroyée* constitution must be interpreted, which rather than re-proposing the institutional alliance between the State and the Church, intended to claim the existence of a common socio-cultural identity, to be respected in the laws of the Kingdom.

3 - Ethical State and Scholastic confessionalism during the Fascist Period

There are many aspects of continuity between the liberal State and the Fascist Order. Mussolini's purported ‘revolution’ (the “transformation of the State”⁷⁷ heralded by Alfredo Rocco) was indeed gradual⁷⁸.

⁷³ My translation. See on this point A.A. MOLA, *Michele Coppino. Scritti e discorsi*, Famija Albeisa, Alba, 1978, p. 555.

⁷⁴ In this sense, G. VERUCCI, *L'Italia laica prima e dopo l'Unità 1848-1876*, Laterza, Bari-Roma, 1996, p. 176 (my translation).

⁷⁵ Based on which: “The Catholic, Apostolic and Roman Religion is the only Religion of the State. The other cults now existing are tolerated in accordance with the laws” (my translation).

⁷⁶ According to J. PASQUALI CERIOLI, *Potere, simboli, religione: dal confessionismo di Stato alla laicità del diritto*, currently being published, the Kingdom separated the civil institution from ecclesiastical power, but did not 'separate' itself from religion.

⁷⁷ A. ROCCO, *La trasformazione dello Stato. Dallo Stato liberale allo Stato fascista*, La Voce, Roma, 1927.



With regard to schools, the Fascists approach was particularly cautious; just a few framework measures, followed by a multiplicity of smaller amendments. A legislative fragmentation to which the alternation in government of nine different education ministers, animated by very different political ideas, also contributed.

In his first years in government, Mussolini preferred to rest on the results of the early 20th century debate, from which an unusual alliance between idealists and populars had emerged⁷⁹. Indeed, both 'factions' opposed the anti-religious spirit of nineteenth-century positivism, believing that the school should not only educate, but also transmit a complex spiritual heritage to young people⁸⁰.

It is in the wake of this conception that the thought of Giovanni Gentile, who was the first education minister in the Mussolini government, is placed. In fact, Gentile's reform, on which all subsequent legislative measures were based, was more reactionary than fascist⁸¹. Indeed, it favoured an elitist⁸² reading of society, imposing a rigid division of schools according to social classes. At the center of the educational system, there was the classical high school (*liceo classico*), within which a kind of humanistic mysticism was taught, based on classical culture, Latin tradition, and philosophical studies.

According to Gentile's conception, religion was instead to constitute a preparatory phase of education; a propaedeutic course to that of philosophy (*philosophia minor*) and therefore destined to be superseded with later maturity⁸³. It was to mould the child's mind, transmitting to

⁷⁸ Cf. **L. PALADIN**, *Fascismo (dir. cost.)*, in *Enciclopedia del Diritto*, Giuffrè, Milan, 1967, vol. XVI, p. 902 ff. and **S. CASSESE**, *Lo Stato fascista*, il Mulino, Bologna, 2010, p. 47 ff.

⁷⁹ On the school debate at the beginning of the 20th century, see **M. BELLUCCI**, **M. CILIBERTO**, *La scuola e la pedagogia del fascismo*, Loescher, Torino, 1978, p. 51 ff.

⁸⁰ Cf. **A. TALAMANCA**, *Istruzione religiosa*, in *Enciclopedia del Diritto*, Giuffrè, Milan, 1973, vol. XXIII, p. 123.

⁸¹ See **J. CHARNITZKY**, *Fascismo e scuola. La politica scolastica del regime (1922-1943)*, La Nuova Italia, Firenze, 1999, p. 190.

⁸² A vision according to which the educated had to rule while the masses had to obey. Cf. **L. AMBROSOLI**, *Libertà e religione nella riforma Gentile*, Vallecchi, Firenze, 1980, p. 68.

⁸³ On the religious idea in Gentile thought see, for all, **G. MOLTENI MASTAI FERRETTI**, *Stato etico e Dio laico. La dottrina di Giovanni Gentile e la politica fascista di conciliazione con la Chiesa*, Giuffrè, Milano, 1983.



him an idea of limitation and submission to something allegedly superior, be God or the nation⁸⁴.

Article 3 of the Royal Decree no. 2185 of 1 October 1923 imposed a course of “Christian doctrine according to the form received from the Catholic tradition” in primary schools, as the “foundation and crown of education”. Religion thus became the ethical pillar of the State, as the primal creed on which the most pervasive sense of national belonging would be grafted.

The renewed display of the crucifix next to the portrait of the King in all the classrooms of primary schools (ordered by circular letter from the Minister of Public Education no. 68 of 22 November 1922) must also be read in the sign of nationalism⁸⁵. The crucifix was in fact only one of the symbols of identity present in the school space in the 1920s⁸⁶. Already in 1923, the Italian flag was hoisted in all schools and students were required to pay homage to it during a weekly ceremony. Then, a decree of 5 June 1924 prescribed the presence in all primary school classrooms of “a bas-relief of the Goddess Rome guarding the body of the Milite Ignoto, detail of the monument to Vittorio Emanuele II in Rome”. To complete the symbolic imagery of that political project, in 1926 the exhibition of a portrait of Mussolini was also imposed, in a triad with the images of Christ and the Monarch (circular letter from the National Fascist Party of 24 November 1926).

In the aesthetic supremacy over space, the Fascist State’s ambition for ethical supremacy was manifested. A primacy in the field of morality that opposed any form of interference by ecclesiastical authority. For this reason, the 1929 agreements with the Church were disapproved by Gentile⁸⁷. His design of an ethical state postulated the severing of any relationship with religious institutions at least on an equal footing. To

⁸⁴ See **G. GENTILE**, *Discorsi di religione*, Sansoni, Firenze, 1935, p. 121. Cf. **L. BORGHI**, *Educazione e autorità*, cit., p. 279.

⁸⁵ Cf. **J. PASQUALI CERIOLI**, *La mediazione laica sul crocifisso a scuola nel diritto vivente: da simbolo pubblico “del potere” a simbolo partecipato “della coscienza”*, in *Diritto di Famiglia e delle Persone*, no. 1 of 2022, p. 16, who points out the formal and substantial extraneousness of the regulations on the display of the symbol to concordat relations with the Catholic Church.

⁸⁶ On fascist symbolism, see **E. GENTILE**, *Il culto del littorio. La sacralizzazione della politica nell’Italia fascista*, Laterza, Bari-Roma, 1993, p. 57 ff.

⁸⁷ Cf. **H.S. HARRIS**, *La filosofia di Giovanni Gentile*, Armando, Roma, 1973, p. 276. On the theoretical reasons for this hostility see **G. MOLTENI MASTAI FERRETTI**, *Stato etico*, cit., p. 164 ff.



enter into agreements with the Church, in fact, meant recognizing the original sovereignty of that order and admitting the spiritual incompleteness of the State.

According to Mussolini, instead, the contradiction between confessionalism and the ethical conception of the State had to be resolved from a pragmatic point of view, with the substantial incorporation of the ecclesiastical institutions present on the Italian territory within the fascist public dimension. In other words, as explained by Mussolini himself, Italy was to be “Catholic and Fascist”, but “above all exclusively, essentially Fascist”⁸⁸; this is the core of the new “ideological confessionalism”⁸⁹, which goes beyond the original Gentile perspective.

Paradigm shift also emerges from school discipline. Article 36, third paragraph of the Concordat (made enforceable by Law no. 810 of 27 May 1929), in fact, had introduced the institution of the “certificate of fitness”, issued by the ordinary of the diocese and preparatory to the teaching of religion in public schools. Another significant change concerned the choice of teachers who were to be selected, primarily, from among priests and religious and only in a subordinately from the lay people, in the sign of a greater interpenetration between the State public apparatus and the Church hierarchy.

The overcoming of the Gentile model is also witnessed by the extension of the course of the Catholicism to secondary school. Religion, in fact, thus abandoned the role of *philosophia minor*, to become a permanent element within the national mass school. As we will discuss in the following section, this is an approach that was to resist, for several years, the republican and democratic transformation of the legal system.

4 - From Confessionalism to the Italian ‘Laicità’: A New Model for State-Society Relations

The new scholastic confessionalism was not immediately canceled by the fall of the Mussolini regime⁹⁰. The express mention of the Pacts in Article 7

⁸⁸ As clarified by Mussolini himself in a speech to the Italian parliament on 13 May 1929.

⁸⁹ According to the definition of J. PASQUALI CERIOLI, *Propaganda religiosa: la libertà silente*, Giappichelli, Torino, 2018, p. 56.

⁹⁰ Cf. on the point J. PASQUALI CERIOLI, *Potere, simboli, religione*, cit., for which, “even the advent of democracy had to pay a certain conservation price in order not to



of the Constitution⁹¹ allowed Article 36 of the Concordat to survive the advent of the Republic. The direct and specific reference to ‘Mussolini and Gasparri agreements’ in the Charter had in fact resulted in the elevation to the rank of the Constitution of the norms of concordat derivation⁹², so that for forty years religious courses, of an eminently dogmatic character, continued to be imparted, in the same manner, in primary and secondary schools, as (at least from a formal point of view) the “foundation and crown of public education”.

It was only after the stipulation of a new concordat⁹³, in 1984, that this discipline was modified and brought more into line with the principles expressed by the Republican Constitution. Under new regulations, Catholicism continues to be instructed in the State schools of every order and grade, but in conformity with the aims of public education; either way, everyone is guaranteed the right to choose whether to attend the course. This is what is currently provided for in Article 9 second paragraph of the Agreement.

The provision must be interpreted in the light of what the Constitutional Court stated in judgment no. 203 of 1989⁹⁴. According to the Court, there are two main points of systemic evolution contained in this Article. The first is the affirmation of the formative value of religious culture, which however, in a lay context, should not be taught in catechetical way. The second is the recognition of a real and proper subjective right not to participate in religion classes, within the framework of a broader recognition of freedom of conscience in religious matters. In

expose the newborn Republic to the risks of a juvenile disease that could have been fatal” (my translation).

⁹¹ According to which: “The State and Catholic Church are, each within their own reign, independent and sovereign. Their relationship is regulated by the Lateran Pacts. Amendments to these Pacts, which are accepted by both parties, do not require the procedure of constitutional amendment” (my translation).

⁹² On this topic see for all **G. CATALANO**, *Sovranità dello Stato e autonomia della Chiesa nella Costituzione repubblicana*, Giuffrè, Milano, 1974, and **P. BELLINI**, *Sui limiti di legittimità costituzionale delle disposizioni di derivazione concordataria contrastanti con valori costituzionalmente garantiti*, in **VV. AA.**, *Studi per la revisione del Concordato*, CEDAM, Padova, 1970, p. 125 ff.

⁹³ On the merely modifying or renewing nature of the 1984 agreement, see for all **L.M. DE BERNARDIS**, *Copertura costituzionale dell’Accordo di Villa Madama?*, in *Il diritto ecclesiastico*, no. 1 of 1984, p. 407 ff.

⁹⁴ Constitutional Court, judgment of 12 April 1989, no. 203. The parts of the judgment subsequently quoted have been translated by me.



this perspective, religion is taught in the educational interest of citizens and not of the State, as a personality development factor.

These two novelties, according to the Constitutional Court, would be fully consistent with the form of State inaugurated by the entry into force of the Constitution. The new discipline in fact appears to be inspired by an “instrumental logic that welcomes and guarantees the self-determination of citizens”, according to criteria of impartiality.

As pointed out by the judgment, the current secular and democratic system eschews “ideologised and abstract postulates of extraneousness, hostility or confession of the State [...] but places itself at the service of concrete instances of the civil and religious conscience of citizens”. In this clarification lies the overcoming of the paradigm of the modern State (conceived as a unity of sovereignty), in favour of a model of participatory management of power, which allows citizens to actively contribute to shaping the physiognomy of the public service⁹⁵.

It is from this conception of the State that the recent ruling of the United Sections of the Supreme Court of Cassation on the display of the crucifix in school classrooms also moves⁹⁶. The judgment will be examined

⁹⁵ Cf. **G. DALLA TORRE**, *Dio o Marianna? Annotazioni minime*, cit., p. 517, and **A. VITALE**, *Laicità e modelli di Stato*, in **VV. AA.**, *Il principio di laicità nello Stato democratico*, edited by M. TEDESCHI, Rubbettino, Soveria Mannelli, p. 236.

⁹⁶ United Sections of the Supreme Court of Cassation, 9 September 2021, no. 24414. There have been many comments on the judgment. Among the first see **F. ALICINO**, *Il crocifisso nelle aule scolastiche alla luce di Sezioni Unite 24414/2021. I risvolti pratici della libertà*, in *www.diritticomparati.it*, 11 novembre 2021; **ID.**, *Ceci n'est pas une pipe: The Crucifix in Italian Schools in the Light of Recent Jurisprudence*, in *Canopy Forum. On the Interactions of Law and Religion* (<https://canopyforum.org>); **P. CAVANA**, *Le Sezioni Unite della Cassazione sul crocifisso a scuola: alla ricerca di un difficile equilibrio tra pulsioni laiciste e giurisprudenza europea*, in *Stato, Chiese e pluralismo confessionale*, Online journal (<https://www.statoechiese.it>), no. 19 del 2021, p. 1 ss.; **A. CESARINI**, “Vecchie” questioni e nuovi strumenti: il crocifisso scolastico e il diritto antidiscriminatorio, in **VV. AA.**, *I simboli religiosi nella società contemporanea*, edited by A. NEGRI, G. RAGONE, M. TOSCANO, L.P. VANONI, Giappichelli, Torino, 2022, p. 79 ff.; **N. COLAIANNI**, *Dal “crocifisso di Stato” al “crocifisso di classe” (nota a margine di Cass., SS. UU., 9 settembre 2021, n. 24414)*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 17 del 2021, p. 17 ff.; **A. FUCCILLO**, *Il crocifisso negoziato. Verso la gestione “privatistica” dei simboli religiosi*, in *giustiziacivile.com*, no. 12 del 2021; **A. LICASTRO**, *Crocifisso “per scelta”. Dall’obbligatorietà alla facoltatività dell’esposizione del crocifisso nelle aule scolastiche (in margine a Cass. civ., sez. un., ord. 9 settembre 2021, n. 24414)*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 21 del 2021, p. 17 ss.; **S. PRISCO**, *La laicità come apertura al dialogo critico nel rispetto delle identità culturali (riflessioni a partire da Corte di Cassazione, Sezioni Unite civili, n. 24414 del 2021)*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 21 del 2021, p. 53 ss.; **M. TOSCANO**, *Il crocifisso ‘accomodato’. Considerazioni a prima lettura di Corte cass., Sezioni Unite civili, n. 24414 del 2021*, in *Stato, Chiese e pluralismo*



in more detail in subsequent contributions. A brief analysis is therefore sufficient to complete the framework.

The decision starts from the recognition of the ancipital nature of the school space. The classroom is in fact, on the one hand, an institutional space, therefore an expression of the public administration, and on the other a participatory space⁹⁷, whose identity depends on the personal contribution of those who attend it.

For this reason, the institutional or non-institutional nature of the crucifix depends on the exposure mode. If imposed by public authorities, the presence of the symbol in schools' spaces clashes with the principle of distinction of orders, which prevents the State from requiring the individual to behave in a way that take on religious significance, even passively. More so if the crucifix is placed high above the chair, behind the 'authority'⁹⁸.

The spontaneous and bottom-up display of religious symbols (not just the crucifix), as the result of a reasonable accommodation⁹⁹, may instead be compatible with the principle of neutrality of the legal order so long as it avoids undue attributions of religious identity to the State apparatus¹⁰⁰. More, it is in the interest of the best education of students, which benefits from the fruitful contamination of ideas that takes place in a pluralist context. In this way, in fact, the classroom becomes a place of dialectical confrontation, in the wake of a series of legislative reforms that

confessionale, cit., no. 18 of 2021, p. 45 ff. More recently **J. PASQUALI CERIOLI**, *La mediazione laica sul crocifisso a scuola*, cit., p. 9 ff. and **G. PAVESI**, *Simboli religiosi e accomodamento ragionevole 'all'italiana' nella recente giurisprudenza di legittimità*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 6 of 2022, p. 1 ff. to which reference is also made for further bibliographical elements.

⁹⁷ An anthropological space, as **N. COLAIANNI**, *Il crocifisso di nuovo in Cassazione. Note da amicus curiae*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 12 of 2021, p. 18 defines it.

⁹⁸ The point had already been made by **J. PASQUALI CERIOLI**, *Laicità dello Stato ed esposizione del crocifisso nelle strutture pubbliche*, in **VV. AA.**, *I simboli religiosi tra diritto e culture*, edited by E. DIENI, A. FERRARI, V. PACILLO, Giuffrè, Milano, 2006, p. 139.

⁹⁹ On this subject see **G. PAVESI**, *Le frontiere europee della religious accommodation. Spunti di comparazione*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 10 of 2021, p. 75 ff.

¹⁰⁰ On the need to also protect learners' freedom of conscience, see **G. CASUSCELLI**, *Il crocifisso nelle scuole: neutralità dello Stato e «regola della precauzione»*, in *Il diritto ecclesiastico*, no. 1 of 2005, p. 532.



have progressively returned the school to the civil community¹⁰¹. A transition, which in this respect appears to be fully consistent with the project of participatory democracy made proper by the Constitution¹⁰², in the sign of the definitive overcoming of the Mussolini's motto "everything within the State, nothing outside the State".

5 - Concluding Remarks

The regulation of religious education in the public school and the display of the crucifix in classrooms is a matter highly sensitive to changes in the form of the State. The analysis we have carried out has led us to doubt the actual neutrality of the nineteenth-century Italian state. The liberal legal order, in fact, interfered in the sensitive choices of the subjects, with the aim of safeguarding the political stability of the "bourgeois public sphere"¹⁰³. First with the religion courses and then through civic education it is registered the attempt to decisively influence the moral development of citizens, to carry about the 'nation building' project. This is the prodrome of tyranny. Fascism, in fact, constituted a reactionary response to the crisis of the liberal state model, due to the fragmentation of social reality into a multiplicity of interest groups claiming autonomy¹⁰⁴. To dominate the magmatic mass society, the Mussolini's regime tried to regiment public space by imposing a multitude of symbols of national identity. These included the crucifix, that, despite being already prescribed, had in substance disappeared from the school space, as we learn from ministerial circular letter of that time¹⁰⁵.

¹⁰¹ I tried to retrace the evolution of this discipline in **F. COLOMBO**, *Laicità e sovranità della Repubblica nel suo ordine simbolico: il caso del crocifisso nelle aule scolastiche*, in **VV. AA.**, *I simboli religiosi nella società contemporanea*, cit., p. 101 ff.

¹⁰² Cf. **M. VENTURA**, *Il crocifisso dallo Stato-istituzione allo Stato-comunità*, in *Quaderni costituzionali*, no. 4 of 2021, p. 956 f.

¹⁰³ The expression is from **J. HABERMAS**, *Storia e critica dell'opinione pubblica*, translated by A. ILLUMINATI, F. MASINI, W. PERRETTA, Laterza, Bari-Roma, 2005, p. 111 ff. (Original edition: *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, Luchterhand, Neuwied, 1962).

¹⁰⁴ A reaction to the "State crisis" announced by **S. ROMANO**, *Lo Stato moderno e la sua crisi* (1909), in **ID.**, *Lo Stato moderno e la sua crisi*, Giuffrè, Milano, 1969, p. 5 ff. For an overview of this topic see **M. FIORAVANTI**, *La crisi dello Stato liberale di diritto*, in *Ars interpretandi*, no. 1 of 2011, p. 81 ff., and **S. FERRARI**, *Francesco Ruffini nella crisi dello Stato liberale*, in *Nuova antologia*, 1993, p. 168 ff.

¹⁰⁵ Circular letter from the Minister of Public Education no. 68 of 22 November 1922.



Current Constitution radically rejects this State-centric paradigm. The Italian Republic, as an expression of post-modern times¹⁰⁶, intends to return public space to the civil community, as the first holder of sovereignty. In the present democratic context, religion constitutes one of the factors contributing to the development of the human personality, not an instrument of government. It is therefore forbidden for public authorities to influence the choices of individuals, favoring, through greater visibility, a specific choice of conscience in the religious field over another. For the same reason, the State-authority must not prevent citizens from manifesting their identity in public space, *inter alia* through symbols, as it has to guarantee everyone, also through positive action, freedom of religion. This seems to me to be the direction indicated by the Constitutional Court and the Court of Cassation with their judgments, which, while exposing themselves to possible criticism in some respects, have correctly highlighted the distance between the Italian '*laicità*' and those models of indifference towards social formations of a religious nature and confessionalism that have characterized other periods of Italian and European legal history¹⁰⁷.

¹⁰⁶ See **P. GROSSI**, *La Costituzione italiana quale espressione di un tempo giuridico post-moderno*, in **ID.**, *L'invenzione del diritto*, Laterza, Bari-Roma, 2017, p. 39 ff.

¹⁰⁷ To appreciate how a difference in the way "*laicità*" is understood can affect school discipline see **A. FERRARI**, *Libertà scolastiche e laicità dello Stato in Italia e Francia*, Giappichelli, Torino, 2002. For a comparison of secularisation on the European and American continents, see **L.P. VANONI**, *Pluralismo religioso e Stato (post)secolare. Una sfida per la modernità*, Giappichelli, Torino, 2016, p. 7 ff.