



D*r*ReSoM

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Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات

多元化社会中的法与宗教

**LAW, RELIGION
AND COVID-19
EMERGENCY**

EDITED BY
PIERLUIGI CONSORTI

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DiReSoM Papers

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LAW, RELIGION AND COVID-19 EMERGENCY

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Pierluigi Consorti

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.

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THE LOYAL COLLABORATION BETWEEN STATE AND RELIGIONS AT THE TESTING BENCH OF COVID-19 PANDEMIC. A PERSPECTIVE FROM ITALY*

Fabio Balsamo

The ongoing health emergency proposes many questions for ecclesiastical law¹. First of all, the limitation of numerous fundamental rights ordered by the Government Decrees dated 8th, 9th, 11th and 22nd March 2020², as well as by the Law Decree 25th March 2020, n. 19, represented a balance test between the fundamental rights³, with particular regard to the relationship between the right to health (art. 32) and the right to religious freedom (art. 19). Moreover, government measures, affecting the organization of religious rites and ceremonies, reverberate on the principles of autonomy and confessional freedom, expressly

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¹ See P. Consorti, *Religions and virus*, in www.diresom.net, 9th March 2020.

² The adoption of government decrees is based on powers established by the Government legislative Decree dated 23th February 2020, n. 6, containing *Urgent measures for the containment and management of the epidemiological emergency from COVID-19*".

³ See R. Bin, *Critica della teoria dei diritti*, Franco Angeli, Milano, 2018, especially p. 142 ss.

guaranteed by articles 7 and 8 Const. for the Catholic Church and for all other religions.

On this point, it should first be noted that, lastly, art. 1, lett. *b)* of the Law Decree dated 25th March 2020, n. 19, in providing for the possibility of imposing limitations on the only “entry”⁴ into places of worship, has modified the provision of art. 1, lett. *i)* of the Government Decree dated 8th March 2020, which, otherwise, imposed limitations on the “opening” of places of worship⁵. The use of the word “opening” was really misleading and, not by chance, it induced the Cardinal Vicar of the Diocese of Rome, on 12th March 2020, to issue a decree – [modified the following day](#) – ordering the “closure” of the parochial and non-parochial churches of the Diocese of Rome, and more generally of the worship buildings of any kind [open to the public](#).

The Decrees emanated for the containment of the contagion constitute a «*unicum*»⁶ from the second post-war period to the present and reflect on the collective dimension of the exercise of the right to religious freedom, in some way similar to the

⁴ The literal tenor of art. 3 of Law Decree dated 25th March 2020, n. 19 also seems to allow mayors and governors of the regions to adopt further restrictive measures for entry to religious buildings.

⁵ Art. 1, lett. *i)* of the Government decree dated 8th March 2020, extended to the whole national territory with the subsequent Government Decree dated 9th March 2020, stated that: «*l'apertura dei luoghi di culto è condizionata all'adozione di misure organizzative tali da evitare assembramenti di persone, tenendo conto delle dimensioni e delle caratteristiche dei luoghi, e tali da garantire ai frequentatori la possibilità di rispettare la distanza tra loro di almeno un metro di cui all'allegato 1 lettera d). Sono sospese le cerimonie civili e religiose, ivi comprese quelle funebri*».

⁶ See M. L. Lo Giacco, *In Italy the freedom of worship is in quarantine, too*, in [www.diresom.net](#), 12th March 2020.

interventions adopted, for reasons of public safety protection, after the terrorist attacks of 2001⁷.

The incisiveness and the unilaterality of government measures to suspend all religious ceremonies, including funeral ceremonies, raises a question about the potential damage to confessional autonomy guaranteed by the Constitution and reaffirmed in bilaterally contracted rules. Perhaps it would have been appropriate to ensure, despite the emergency, some form of prior dialogue with the confessional authorities⁸, even if the potential conflicts seem to be absorbed by the enhancement of the principle of loyal and mutual collaboration between the State and the Church, explicitly referred to in the Concordat in force since 1984 with the Catholic Church.

From this point of view the management of this health emergency represents an interesting - and we hope unrepeatable – testing bench of the good stability of the principle of collaboration between State and religions.

It will be interesting to examine how religious confessions will behave in the period immediately following the expiry of the term fixed for the suspension of religious rites, especially considering that the eventual resumption of ceremonies is currently set for Saturday 4th April 2020, the eve of Holy Week, traditionally considered central to the massive popular participation.

⁷ See R. Mazzola, *La convivenza delle regole. Diritto, sicurezza e organizzazioni religiose*, Giuffrè, Milano, 2005; P. Consorti, F. Dal Canto, S. Panizza (edited by), *Libertà di espressione e libertà religiosa in tempi di crisi economica e di rischi per la sicurezza*, Pisa University Press, Pisa, 2016.

⁸ See V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in www.olir.it, 16th March 2020.

At the moment it is already known that rites officiated by the Holy Father will take place “behind closed doors” and, in any case, according to organizational methods suitable for guaranteeing the [prevention of contagion risks](#).

The diocesan decrees with which the bishops have hitherto dispensed, in accordance with can. 1245 *C.i.c.*, the faithful from the obligation of observance of the precept related to the celebration of feast days⁹ included in the period 9th March 2020 – 3rd April 2020 will have to take into some account the non-participation in the Holy Easter Mass of Resurrection, since the Catechism of the Catholic Church obliges the faithful to receive the Eucharist at least once a year, possibly during the Easter period (n. 1389) and can 1246 - § 1 *C.i.c.* states that «*Sunday, on which by apostolic tradition the paschal mystery is celebrated, must be observed in the universal Church as the primordial holy day of obligation*». And these choices must be taken by the Bishops, the only ones who have legislative power in liturgical matters, even if the *Congregation for Divine Worship and the Discipline of the Sacraments*, on 19th March 2020, with a special *Decree on Holy Easter* has already dictated indications to allow the celebration of the rites of the *Easter Triduum* without the presence of the faithful¹⁰. Furthermore, due to the persistence of the pandemic threat, the *Congregation for Divine Worship and the Discipline of the Sacraments*, with a Decree dated 25th March 2020, detailed the indications contained in the *Decree on Holy Easter*, prescribing specific measures for each

⁹ See F. Marini, *Il precetto della Messa festiva: un obbligo individuale per un'assemblea che celebra la memoria pasquale*, in *Quaderni di Diritto Ecclesiale*, 18, 2005, pp. 259-277.

¹⁰ See the *Decree on the Holy Easter* by the *Congregation for Divine Worship and the discipline of the Sacraments* dated 19th March 2020 (the decree can be consulted [here](#)).

liturgical moment of the Holy Week¹¹ and, above all, by inviting the Bishops to advise the faithful of the start time of the celebrations so that they can unite in prayer in their homes, also through live, [unregistered electronic means of communication](#).

In accepting the indications of the *Congregation for Divine Worship and the Discipline of the Sacraments*, the Italian Episcopal Conference, with its Document *Orientamenti per la Settimana Santa* dated 25th March 2020, has suggested to the Bishops to defer processions and other rites of popular piety to dates of 14th and 15th September 2020. But above all in these guidelines it is acknowledged that the Italian Episcopal Conference, at the outcome of an interlocution between its *General Secretariat* and the *Presidency of the Council of Ministers*, has obtained that the celebration of the rites during the Holy Week, even if deprived of the physical presence of the faithful, may take place at least with the participation of a deacon, of those who serve the altar, as well as a reader, a cantor, an organist and, possibly, two operators for the transmission. In this way, as underlined in the guidelines, a “minimum of dignity” can be assured for these celebrations¹², always respecting the sanitary measures and the interpersonal distance of one meter.

It therefore seems that a satisfactory balance between the protection of public health and the exercise of worship in a central

¹¹The Decree, in addition to providing specific changes to the rites of Palm Sunday, Chrism Mass, Holy Thursday, Good Friday and Easter Vigil, establishes that Bishops and Presbyters could avoid concelebration and celebrate Holy Week rites without the presence of faithful.

¹² The guidelines of Italian Episcopal Conference dated 25th 2020 can be consulted at the web pages of Italian dioceses, e.g. the [Archdiocese of Naples](#).

moment – such as Holy Week – has been found, thanks to the dialogue with the *Presidency of the Council of Ministers*.

Moreover, the ongoing pandemic confirmed the increasingly decisive role assumed by religious bodies in substitution for the dismantled system of welfare state¹³.

The dynamism of religious bodies, also in relation to the management of the health emergency, has manifested itself through collaboration with civil authorities in a context of horizontal subsidiarity.

It's emblematic the case of the construction of a field hospital by the non-governmental Christian-Evangelical organization *Samaritanian's Purse*, based in the USA, to support the deficiencies of the Cremona hospital¹⁴.

To consent to the initiative, coordinated by the senator of evangelical faith Lucio Malan, it has been necessary to provide urgently by inserting a special article into the Law Decree n. 18 (so called "*Cura Italia*"), dated 17th March 2020, that, by way of derogation of the general rules (artt. 49 and 50 of the Presidential Decree 394/1999), has allowed, for the entire duration of the epidemiological emergency from Covid-19, the temporary exercise of health professions by qualified foreign personnel.

Equally remarkable was the choice of the Italian Buddhist Union (UBI) to allocate part of the resources received with the "*Otto per Mille*", for a total of 3 million euros, in equal shares to the

¹³ See M. d'Arienzo, *La Chiesa e l'economia*, in *Diritto e Religioni*, 2-2009, pp. 214-224, especially p. 224; Ead., *Nuove problematiche circa i rapporti tra potere pubblico e strutture di natura confessionale nell'azione di accoglienza dei migranti*, in *Democrazia e Diritti Sociali*, 1-2019, pp. 41-51.

¹⁴ See C. Baldi, *Un ospedale da campo davanti all'ospedale di Cremona*, in *La Stampa*, 16th March 2020.

Civil Protection for the immediate management of the emergency and to a special fund for Third Sector organizations engaged in the necessary support work, including economic, for the most fragile people¹⁵. With a view to horizontal subsidiarity¹⁶ and on the basis of the emergencies that will be reported, UBI will cooperate with the various organizations of the Third Sector identified from time to time to prepare the necessary aid interventions, in view of the significant economic repercussions that will presumably be recorded even after the pandemic emergency has been overcome.

The Italian Episcopal Conference itself, in the wake of the example of Pope Francis¹⁷, has allocated 10 million euros to the 220 diocesan Caritas scattered throughout the country and half a million euros to the Foundation *Banco Alimentare Onlus* to guarantee support for families who are in situations of inconvenience, providing for the purchase of basic necessities and the maintenance of takeaway canteens and [protected dormitories](#).

Lastly, [the Valdensian Table](#), on 19th March 2020, has decided to allocate 8 million euros, drawn from “*Otto per Mille*”, for the establishment of a special fund for emergency management, in synergy with institutional entities and third sector organizations.

Eventually, allow me one last tough.

¹⁵ In the [press release](#) dated 16th March 2020 it has been affirmed that: «In questo momento non semplice restituiamo agli italiani la fiducia che ci hanno dimostrato con l'8x1000 e supportiamo anche le organizzazioni del Terzo Settore, da sempre vicino ai cittadini in difficoltà, nell'emergenza e soprattutto nel dopo».

¹⁶ See *ex plurimis*, G. D'Angelo, *Principio di sussidiarietà ed enti confessionali*, ESI, Napoli, 2003.

¹⁷ [Pope Francis](#) on 12th March 2020 allocated the sum of 100,000 euros to Italian Caritas to meet the needs of the weakest.

The epidemic from Covid-19 will also be remembered for having brought about a clear acceleration, if not a real turning point, regarding the use of digital tools for the celebration of religious rites¹⁸.

Massive use of *Whatsapp* groups and *Live Facebook* has been made.

Certainly, the tool of *Live Facebook* has taken on a great use to allow the participation of the faithful in religious rites. Furthermore, this tool is perfectly in line with the indications of the *Congregation for Divine Worship and the Discipline of the Sacraments* of 25th March 2020 - confirmed by the guidelines of the Italian Episcopal Conference - which suggested the involvement of the faithful in the celebration of the rituals through the use of live electronic means of communication.

However, as is known, it should be emphasized that the full usability of all content published on *Facebook* is guaranteed only to members of the *social network*. And this unlike the *Youtube* platform - which has also been frequently used to allow remote participation of the faithful in religious rites - that, on the contrary, is freely accessible by every user without the need for prior registration.

This finding seems to demonstrate the effective existence of the risks recently underlined in the doctrine: namely that the concrete possibility of exercising the right to religious freedom in the cybernetic space may be anchored not to the regulation of

¹⁸ See M. d'Arienzo, *Zuckerberg e i nuovi rapporti tra diritto e religioni. A proposito di libertà di coscienza nell'era digitale*, in *Diritto e Religioni*, 1-2019, pp. 384-396; S. Baldetti, *Il razzismo in rete a 80 anni dalle leggi razziste di San Rossore. La tutela del sentimento religioso nelle regole delle online communities*, in vol. P. Consorti (edited by), *Costituzione, religione e cambiamenti nel diritto e nella società*, Pisa University Press, Pisa, 2019, pp. 227-237, especially p. 231.

public, supranational or at least national law, but to a power private, that of the owners and managers of digital platforms and social networks¹⁹.

¹⁹ See M. d'Arienzo, *Diritto e religioni nell'era digitale: Zuckerberg ci salverà? I nuovi paradigmi ermeneutici della libertà di coscienza tra verità, errore e falsità delle informazioni*, in *I-LEX. Rivista di Scienze Giuridiche, Scienze Cognitive e Intelligenza Artificiale*, 12, 1-3, dicembre 2019, p. 258, where the Author states that the right to religious freedom in the digital space is often anchored «non alla regolamentazione del diritto pubblico, sovranazionale o almeno nazionale, ma ad un potere privato, quello dei proprietari e gestori delle piattaforme digitali e di *social networks*».

As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space to collect documents, comments and other useful materials related to the Covid-19 emergency, in order to assess the outcomes of the normative decisions made by state and religious authorities. So, on March 8th we have created www.diresom.net. By the end of April, we had already published more than 500 documents and comments related to this issue, and more than 20.000 unique visitors had surfed our website. Therefore, we decide to edit an open source book to share in a more orderly way the comments that we have already published online, thus giving the possibility to consult these first guidelines to all those who want to study or analyze the legal reaction, both state and religious, to this pandemic.

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