



Research Center
for European Analysis
and Policy



EMUNA Working Paper 1/2024
Religion, public powers, law and economy

The following English version has been produced by the author.

The revision of the Concordat, Catholic ministers of worship and the autonomy of the Catholic Church: towards a sustainable and generative secularism

Vincenzo Pacillo

PISAI – Pontifical Institute of Arabic and Islamic Studies, Rome – November 25, 2024

1. The starting point: the legal status of the Catholic Church in Italy...

Describing the legal status of the Catholic Church in Italy means delving into a labyrinth of rules, often deriving from agreements of a primary or secondary nature, interpretations and practices that, stratified over time, have given shape to a legal construction that is as solid as it is flexible, capable of resisting social changes without losing its identity. We are faced with a normative edifice that is supported by well-defined pillars: the concordat system, the mutual autonomy of State and Church, and the complex interweaving of *res mixtae*, that is, those issues that, like a finely woven fabric, are intertwined between the religious and civil spheres.¹

The history of this legal relationship is in some ways similar to that of an ancient alliance: two sovereign entities, each jealous of its own autonomy, but aware of the need to dialogue to avoid conflicts of jurisdiction. This dialogue, which has unfolded over decades, is made possible by the principle of bilateralism: the two parties are allowed to negotiate in a structured way, establishing rules that allow for peaceful and orderly coexistence.² The Concordat, by its nature, is not a simple treaty, nor a mere administrative instrument: it is a

¹ The analysis of the relationship between the State and the Catholic Church in Italy must begin with the recognition that we are dealing with two independent and sovereign legal systems, distinct yet inevitably interconnected. This situation implies the need to manage an intermediate area, which is technically referred to as *res mixtae*—that is, matters in which civil and religious interests simultaneously overlap. Such management takes place pursuant to Article 7, paragraph 2, of the Italian Constitution, typically through bilateralism as implemented via the Concordat instrument. The function of the Concordat is to create a kind of legal interface that enables the harmonious and peaceful coexistence of both orders (the civil and the religious), as well as of both legal systems, avoiding both the risk of hegemony by one and direct conflict between the two. From this perspective, the Concordat takes on a much more complex meaning than that of a simple treaty or international agreement: it represents, in fact, a point of balance that succeeds in keeping two institutional dimensions separate yet interconnected, dimensions that might otherwise be in permanent conflict. Its role is, therefore, to guarantee a balanced relationship between mutual autonomy and necessary cooperation, creating the conditions for ongoing and open institutional dialogue.

This balance is ensured by the presence of a third principle which, alongside those of mutual autonomy and institutional cooperation, constitutes a crucial factor for harmonizing relations: the principle of *laicità* (secularism). In its constitutional dimension, this principle does not imply a mere passive neutrality of the State toward the religious sphere, but rather an active and inclusive stance that promotes confessional and cultural pluralism, while at the same time preventing religion from being politically instrumentalized or subordinated to the aims of the political majority of the moment. The principle of *laicità* must therefore be interpreted not only as a limitation on confessional interference in public life, but also as a genuine instrument for the inclusion and promotion of religious and cultural diversity within Italian society. In this sense, *laicità* becomes a fundamental component of the Republic's constitutional identity, capable of concretely guaranteeing religious freedom—not merely as a negative right (freedom from interference), but above all as a positive right aimed at the free and full realization of each individual's religious and cultural identity.

It follows that the Concordat and the constitutional principle of *laicità* must be understood together, as two complementary tools that contribute to defining the distinctive Italian system of relations between the State and the Catholic Church. This system is simultaneously based on the protection of confessional autonomy and on the need to maintain a unified, inclusive, and pluralist constitutional framework, capable of responding effectively to the challenges posed by a contemporary society marked by increasing cultural and religious diversity.

² In the legal reasoning concerning cooperation between the State and the Catholic Church, a principle of methodological clarity must first be affirmed: such cooperation is neither an alliance nor a merger of purposes. It is a legal relationship grounded in the mutual recognition of autonomy and in the identification of clearly defined areas of operational convergence. As has been authoritatively noted, the principle of cooperation—while

balancing mechanism, a sort of legal scale that must avoid both privilege and discrimination, maintaining that regulated distance separating – and at the same time connecting – the State and the Catholic Church.³

But balance does not mean immobility. The Concordat system moves on a thin line, where any misstep could translate into an overlapping of competences or a claim to supremacy. And here the *res mixtae* come into play, that is, those situations in which the State and the Church inevitably find themselves interacting: marriage, religious education in schools, spiritual assistance in public institutions. Their main characteristic is a double legal relevance: they belong to the religious world for their spiritual nature, but they take on a civil dimension as soon as they enter the public space, making it necessary to have a regulation that is the result of harmonization rather than a simple juxtaposition.⁴

constituting one of the key pillars of the constitutional framework governing relations between the State and religious denominations—is structurally linked to the principle of the distinction of orders (see S. Berlingò, *Fonti del diritto ecclesiastico, Digesto delle discipline pubblicistiche*, VI, Utet, Turin, 1991, pp. 471 ff.). It is precisely this connection that prevents the cooperation from becoming a covert form of assimilation, which would lead to the State's abdication of sovereignty in matters falling within its exclusive competences. Cooperation is therefore possible only to the extent that it preserves the distinction between the aims proper to the State's legal system and those of the religious system, while remaining open—pursuant to Article 20 of the Constitution—to the active participation of religious entities in areas involving socially shared objectives.

The case of environmental protection is emblematic: as has been clearly observed, the diocesan Offices for the Care of Creation, in promoting environmental protection practices, do not act as part of a confessional legal order but as collective actors operating within the framework of horizontal subsidiarity under Article 118, paragraph 4, of the Constitution. In this case, legitimacy is not institutional but functional: it is based on participation in the common good according to the general rules of the State legal system (see F. Balsamo, *Religioni ed ambiente: il contributo delle confessioni religiose alla costruzione di una "democrazia ambientale"*, *Diritto e Religioni*, 2, 2014, pp. 113 ff.). This principle is also helpful in correctly interpreting regional statutory provisions that refer to collaboration (or sometimes cooperation) with religious denominations: although these norms fall within political and territorial contexts, they do not entail any innovative attribution of competences to the Regions. The latter (and more generally local authorities) may certainly engage in collaborative relations with religious institutions present in their territory, provided such relations remain within a perimeter of competences that are not confused and are always oriented toward a form of coordination respectful of the structural diversity of the respective interlocutors. In light of these considerations, cooperation between the State and the Catholic Church may be broad in content, but only if it remains rigorously defined in its constitutional foundations.

³ The 1984 revision was not—as authoritative scholarship clearly notes—a mere *maquillage* operation on an authoritarian instrument, but rather a profound transformation: a change in both perspective and method. With the introduction of the so-called *parliamentarization* of the negotiation, the State chose to entrust Parliament—the arena of democratic debate—with the task of preliminarily guiding the negotiations with the Holy See. Thus, what was once a secret understanding between powers became a transparent procedure, capable of giving voice to the various cultural and political sensitivities present in the country. In this light, the Concordat takes the form of a flexible legal platform, capable of accompanying the transformations of society without sacrificing the balance between identity and freedom. See, in particular, F. Margiotto Broglio, *Il ruolo del Parlamento nella revisione del Concordato*, in AA.VV., *La grande riforma del Concordato*, edited by G. Acquaviva, Venezia, Marsilio, 2019, pp. 53–64; F. Margiotto Broglio, *I dibattiti parlamentari sulla revisione del Concordato*, in «Rivista di Studi Politici Internazionali», 1984, no. 201, pp. 3–24.

Along similar lines, though with a different emphasis, other authoritative scholarship highlights its evolutionary nature: from an instrument of privilege to a device of freedom. The concordatary system, traversing nearly a century of history, has progressively shed the garments of confessional supremacy to assume those—more sober and promising—of a law of coexistence. Bilateralism is interpreted not merely as a diplomatic technique, but as a generative principle of positive *laicità*, capable of recognizing and enhancing the contribution of religions to democratic life. According to this vision, it is not a matter of managing differences as if they were anomalies, but of building with them a shared civil fabric, open to intercultural and interreligious dialogue.

For a broader view of the historical, cultural, and legal implications of the Italian concordatary system in terms of overcoming authoritarian drifts and the political instrumentalization of religion, see A. Melloni, *Il frutto, il fango, il nodo*, «Diritto e Religioni», Quaderno monografico, 1, 2020, pp. 29 ff., which offers a comprehensive reconstruction of the historical-political context and the deeper reasons behind both the initial stipulation of the Lateran Pacts and their subsequent evolution.

⁴ On the subject of *res mixtae*, Mario Ricca's insight remains indispensable (see M. Ricca, *Pantheon. Agenda della laicità interculturale*, Torri del Vento, Palermo, 2008, pp. 171 ff.). He observed that these spaces represent a shadow zone between different legal worlds—hybrid territories where state law encounters, and at times clashes with, religious law. However, far beyond the mere acknowledgment of their composite nature, the *res mixtae* reveal a deeper and more radical transformation of sovereignty and of the very modalities of contemporary normative production. They stand as emblems of the crisis of traditional legal categories: they appear as legal laboratories, privileged arenas for experimenting with new forms of integration and intercultural translation.

Res mixtae challenge the law to rethink its language and practices, suggesting the need for a new paradigm—one capable of harmonizing universality and difference, while ensuring institutional stability and cultural flexibility at the same time. We may consider *res mixtae* as true juridico-cultural “Zones,” in a metaphor inspired by *Picnic sul ciglio della strada* by the Strugatsky brothers (see the edition edited by P. Nori, Marcos y Marcos, Milan, 2022). Like the literary *Zone* of the Strugatskys, *res mixtae* are liminal territories, enigmatic spaces where state law inevitably meets the universe of religion—with its semantic codes often irreducible to traditional normative logic. Venturing into these territories is akin to the journey of the *stalker*: one proceeds without guarantees, in an environment where usual legal references progressively lose their effectiveness, allowing the unknown, the ambiguous, and the unpredictable to emerge.

Precisely in this sense, the dialogue between State and religious denominations (and between the legal system of the State and religions) can be interpreted as an act of *stalking*: whoever undertakes it crosses not only theological boundaries, but also legal and cultural ones. Every authentic

When on February 11, 1929 the Kingdom of Italy and the Holy See found themselves signing the Lateran Pacts, History performed one of its capricious retreats upon itself, resolving with a diplomatic act what for almost sixty years had been a fracture that seemed difficult to heal: the Roman Question. The Vatican Hill, reduced to 0.44 km², became a State, but not just any State: a State that exists to guarantee the independence of the Pope, a sovereign who reigns over a minimal territorial reality and a universal spiritual reality. The Lateran Treaty, the Concordat and the Financial Convention thus formed a legal triptych destined to mark the history of relations between Italy and the Catholic Church, a relationship that, by its nature, can never be merely legal, but moves on a political, historical and symbolic ridge. Now, when the Italian Constitution saw the light in 1948, the issue of the Lateran Pacts immediately arose. What was to be done with them? They represented an agreement between two sovereign systems, but also a product of the fascist regime. However, they were now part of the legal structure of the nation and, what is more important, no one in the Constituent Assembly wanted to reopen the Roman Question for the umpteenth time. So a peculiar path was chosen: not to directly insert the Pacts into the Constitution, but to guarantee them constitutional coverage, making them modifiable only by mutual agreement between the parties. The second paragraph of art. 7 states that “their relations are regulated by the Lateran Pacts. The modifications of the Pacts, accepted by both parties, do not require a constitutional revision procedure”. A refined compromise?⁵

dialogue is in fact a true exploration of the *Zone*, with all the inherent difficulties and risks. There are no reliable maps or guaranteed paths: one constantly navigates between the risk of cultural assimilation (loss of one’s identity) and that of self-referential closure (inability to communicate with the other).

The challenge posed by *res mixtae* to state law is, therefore, no different from that faced by the *stalker*: in both cases, what is at stake is the ability to navigate undefined territories, where state law can no longer claim to function as an absolute, demiurgic, and all-encompassing normative force. On the contrary, within these *Zones*, it becomes necessary to develop new legal tools—more fluid, more adaptable, and more humble—capable of adjusting to the cultural dynamism and symbolic complexity that inevitably accompany encounters with religious otherness.

Thus, in the *Zone* of dialogue, the *stalker* becomes a central figure: he or she is the one who mediates, who translates, who crosses and connects diverse identities. He/she is the juridico-cultural mediator who takes the risk of failure, just like the *stalker* of the Strugatskys before the Golden Sphere. The latter—symbol of the utopian ideal of universal understanding (“happiness for everyone, free of charge, and no one will be left behind”)—directly evokes the desire underlying every authentic interreligious dialogue: to achieve perfect mutual comprehension. Yet, just like in the Strugatskys’ narrative, the *Zone* leaves open the crucial question of the actual attainability of such a utopia.

The inevitable conclusion, then, is that both *res mixtae* and interreligious dialogue constitute genuine juridical and cultural *Zones*. They challenge the law to relinquish any dogmatic claim and force it to reinvent itself continually. From this perspective, law becomes like the *stalker*: no longer mastering the territory, but crossing it with caution and respect—aware of its own vulnerability, yet also of the extraordinary creative potential that only an encounter with the unknown and with the Other can generate.

⁵ It has been authoritatively observed that Article 7 of the Italian Constitution, in its final form, is not merely the reflection of a contingent political balance, but rather the result of a process of constitutional engineering that successfully held together institutional continuity and the safeguarding of fundamental freedoms. The reference to the Lateran Pacts does not, in the mind of the Constituent Assembly—as has also been subsequently affirmed in the hermeneutics of the Constitutional Court—amount to their strict constitutionalization: their bilateral amendability, enshrined in the second paragraph, preserves the system’s flexibility and renders it compatible with a legal order that recognizes the inviolable rights of the person as the foundation of the Republic.

We find ourselves on a boundary line, in a *Zone* where international treaty law and constitutional law refract one another without merging. The result is a constitutional norm that, in synthetic form, encapsulates a plurality of functions: historical pacification, mutual autonomy guarantees, and an opening toward religious pluralism through the forms and structures of the legal order. See, for example, F. Margiotta Broglio, *Alle origini degli articoli 7 e 8 della Costituzione del 1948*, «Il Politico», 82, no. 3 (246), 2017, pp. 76–94. JSTOR, <http://www.jstor.org/stable/45433793>.

Those who have reconstructed the drafting process of Article 7 with historical sensitivity have highlighted its nature as a *translational resultant* of different legal proposals, visions, and languages. Among all the figures who emerged in the debate, that of Giuseppe Dossetti stands out in particular. His proposal, deeply informed by legal culture and historical awareness, conceived of a State that does not claim to be self-referential, but rather recognizes the existence of other legal orders, among which is the Catholic Church. In this perspective, the State does not present itself as an exclusive power, but as a coordinating system—capable of recognizing, without subordinating, the autonomy of collective entities endowed with their own legitimacy. Article 7, in its Dossettian formulation, is therefore not merely a political declaration, but a device of legal engineering (or perhaps of legal architecture?) structured around the reworking of the concepts of independence, bilateralism, and guarantee within the prismatic framework of a renunciation of confessional privilege and of the need for a regulatory mode based on dialogue and reciprocity.

The guarantee of freedom of conscience and the equality of all citizens before the law in religious matters are grounded in various constitutional articles (notably Articles 2, 3, 19, and 20). However, it is in the relational core between Articles 7 and 8 that the Constituent Assembly’s maturity of vision is most clearly revealed: the public presence of religious denominations—first and foremost the Catholic Church, but not only—was not regulated by means of exclusion or assimilation, but through the recognition of their legal subjectivity and their social function.

The question of the relationship between State and religious denominations was not removed, but regulated through instruments that provide room for the evolution of the system, of society, and of the urgencies of the real. It was a compromise—yes—but one designed to endure. See L.

But stability is a relative concept. In 1984, with the Villa Madama Agreement, the Lateran Pacts underwent a profound transformation: Italy ceased to be a confessional State and the Catholic religion was no longer “the only religion of the State”, as the Concordat of 1929 declared. Here a decisive step was taken: the revision of the Agreement definitively paved the way for the principle of *laicità* of the State, but it did so without denying the Concordat model. The solution adopted was, once again, typically Italian: no radical break, but a negotiated evolution, an updating of the pact that did not deny the past but reformulated it.⁶

The key principle that emerges from this transformation is that of bilateral agreements. As will be seen better below, the 1984 Agreement is not a simple revision of the Concordat of 1929: it is a renegotiation based on mutual recognition between two legal systems that consider themselves independent and sovereign, each in its own order. This means that any future change to the relationship between the State and the Church must be the result of an agreement between the parties, avoiding unilateralism and imbalances of power.

This Italian peculiarity is the result of a long history of tensions and accommodations, conflicts and convergences, in which the law has proven to be a flexible tool for managing a complex relationship. Art. 7 of the Constitution and the 1984 Agreement have crystallized this approach, ensuring a stability that avoids both privilege and marginalization.

And yet, the debate is not over: Italian society is changing, regulatory needs are evolving, and the challenge of religious plurality makes it increasingly urgent to reflect on how the concordatory model can adapt to a changing world. It remains to be seen whether the bilateral agreement will be able to renew itself once again or whether, sooner or later, the issue of relations between State and Church will return to being an open problem, just as it happened a century ago.

These are not just theoretical questions. If the Concordat represents the highest level of bilateralism, there is a more fluid and dynamic level which we could define as diffuse bilateralism: a network of agreements and administrative practices that allow the collaboration between State and Church to adapt to daily needs. These procedural and implementing agreements do not always follow the same formal rigor as the Concordats, but they perform an essential function in ensuring the operation of the system. The risk, however, is that this proliferation of uncoordinated local agreements generates a sort of normative entropy, in which the linearity of the principle of equality is compromised by a multiplicity of differentiated treatments. Law, as we know, tends to build orderly systems, but sometimes these systems, if left to themselves, risk multiplying in an uncontrolled way, like a living organism that escapes from the control of its creator.⁷

If bilateralism and regulated cooperation are essential elements of the system, so too is the principle of equal freedom enshrined in Article 8 of the Constitution. The concordatory model, however historic and consolidated, cannot translate into an exclusive advantage for the Catholic Church: the Constitutional Court has repeatedly emphasized that it must conform to the principles of *laicità* and pluralism, preventing the

Musselli, *Chiesa e Stato all'Assemblea costituente: l'articolo 7 della costituzione italiana*, «Il Politico», 53, no. 1, 1988, pp. 69–97. JSTOR, <http://www.jstor.org/stable/43100631>.

⁶ It has been authoritatively noted that the 1984 revision of the Concordat represented, from this perspective, a true paradigm shift in the relationship between the Italian State and the Catholic Church. The transition from the 1929 Concordat regime to the new agreement marked a deliberate choice—on the part of the Church as well—to move beyond a system based on unilaterally granted privileges, in favor of an institutional arrangement grounded in cooperation and shared responsibility for the common good. This transformation entailed a redefinition of the respective boundaries of autonomy, safeguarding the independence of both parties while simultaneously fostering constructive and dialogical interaction. Silvestrini further emphasizes that the new concordatary model introduced elements of greater normative flexibility, capable of responding to the needs of contemporary Italian society without renouncing respect for the specific confessional identity of the Catholic Church.

In this way, the revision of the Concordat emerges as an instrument which, in harmony with the Italian Constitution, contributes to ensuring confessional and cultural pluralism as a fundamental value for the country's democracy and social cohesion. See A. Silvestrini, *Chiese e Stato di fronte alla revisione del Concordato*, in G. Acquaviva (ed.), *La grande riforma del Concordato*, Venice, Marsilio, 2019, pp. 15–16.

⁷ See also V. Pacillo and B. Hussen, *Lezioni di diritto e religione*, Giappichelli, Turin, 2025, especially pp. 108 ff.

privilege from turning into a criterion of exclusion for other religious confessions. Moreover, contemporary ecclesiastical law cannot afford the luxury of immobility: the Italian religious panorama has changed profoundly, and with it the need for a law that is not only the guarantor of ancient balances, but also one capable of responding to the needs of a society in which confessional plurality is now a given.⁸

Further complicating the picture is the role of international and European law. The Catholic Church, in addition to being a religious entity, is also a legal person under international public law, with the Holy See operating as a sovereign and independent body. This allows it to negotiate international treaties and agreements, placing it in a unique position in the panorama of global religious institutions. Yet, its status cannot be analyzed without considering the impact of European rules: the Treaty on the Functioning of the European Union, in Article 17, explicitly recognizes the autonomy of churches,⁹ but at the same time the Charter of Fundamental Rights prohibits any discrimination based on religion. We are faced with a structural balance, in which the encounter between ecclesiastical law, state law and supranational law produces a constant tension between tradition and innovation, between stability and change. Ultimately, the legal status of the Catholic Church in Italy is a complex construction, made up of rules and practices, agreements and interpretations, continuity and transformation. It is the result of centuries of negotiations, conflicts and reconciliations, a legal organism that lives in a condition of perpetual adaptation. And perhaps it is precisely in this ability to adapt without dissolving, to evolve without denying its roots, that the true strength of this system lies: the ability to be, at the same time, ancient and modern, institutional and flexible, sovereign and dialoguing.

2. ... and the Concordat revision

If there were a geometry of law, Article 7 of the Constitution would seem to outline a clear and self-sufficient axiomatic structure: the freedom of the Catholic Church, the distinction between the order of civil questions and the order of spiritual questions, the Concordat regulation of the relationships between two sovereign entities. However, as mathematicians and jurists know well, every system of principles, however elegant, must deal with the boundary conditions, and it is precisely in this interstice that the complexity of the relationship between the Concordat and the Italian constitutional system lies.

As already mentioned, the revision of the Concordat of 1984 marked a crucial step in Italian legal history, but to understand its significance, a technical reading of the rules is not enough. It is not a simple administrative reorganization of religious pluralism, nor a refined operation of constitutional engineering to align the Italian legal system with constitutional principles. If it were only this, it would be little more than a technical adjustment. In reality, it was an act that redefined the very meaning of *laicità*, not as a definitive arrangement,

⁸ “There still exists today a certain reluctance to conclude agreements with some denominations, despite their longstanding tradition and large number of adherents [...]. It is well known that for certain religions—Islam among them—the legal concept of ‘denomination’ cannot be fully applied, and must therefore be reinterpreted through a pluralist lens.” A. Fuccillo, *Le intese senza intesa: nuovi modelli per la cooperazione Stato-confessioni religiose*, in *Diritto e Religioni*, Monographic Issue No. 1, 2020, p. 229.

On this topic, see most recently and in greater depth B. Hussen, *Rawlsian Constructivism and the Challenge of the Principle of Bilateralism in the Relations between the Italian Republic and Religious Denominations: Toward an Inclusive Model*, forthcoming in *Il Diritto Ecclesiastico*, 1, 2025. More generally, see G. Casuscelli, *Libertà religiosa e fonti bilaterali*, in AA.VV., *Studi in memoria di Mario Condorelli*, vol. I, Giuffrè, Milan, 1988, pp. 319 ff.; E. Vitali, *A proposito delle intese: crisi o sviluppo?*, *Quaderni di diritto e politica ecclesiastica*, 1, 1997, pp. 93 ff.; G. D’Angelo, *Repubblica e confessioni religiose tra bilateralità necessaria e ruolo pubblico: contributo alla interpretazione dell’art. 117, comma 2, lett. c) della Costituzione*, Giappichelli, Turin, 2012; F. Alicino, *La legislazione sulla base di intese. I test delle religioni ‘altre’ e degli ateismi*, Cacucci, Bari, 2013.

⁹ See F. Margiotta Broglio and M. Orlandi, *Article 17 of the Treaty on the Functioning of the European Union*, in AA.VV., *Trattati dell’Unione europea*², edited by A. Tizzano, Giuffrè, Milan, 2014, pp. 454 ff.; A. Licastro and A. Ruggeri, *Diritto concordatario versus diritto euorounitario: a chi spetta la primauté?* (concerning the judgment of the Court of Justice of 27 June 2017, C-74/16, on tax relief for the “economic activities” of the Church), in *Stato, Chiese e pluralismo confessionale*, no. 26, 2017, pp. 3 ff.; M. Lugato, *L’Unione europea e le Chiese: l’art. 17 TFUE nella prospettiva del principio di attribuzione, del rispetto delle identità nazionali e della libertà religiosa*, in *Quaderni di diritto e politica ecclesiastica*, 2, 2014, pp. 305 ff.; M. Ventura, *L’articolo 17 TFUE come fondamento del diritto e della politica ecclesiastica dell’Unione europea*, in *Quaderni di diritto e politica ecclesiastica*, 2, 2014, pp. 293 ff.; V. Marano, *L’art. 17 TFUE e il ruolo delle Chiese in Europa*, in *Ephemerides iuris canonici*, 2015, 1, pp. 21 ff.

but as a process in continuous evolution: a process that does not end with the elimination of the confessional principle, but which inaugurates a new mode of interaction between law and religion, a form of coexistence that is no longer subordination or jurisdictional confessionism, but not even a clear separation. In the fascist political project, the relationship between the State and the Catholic Church was regulated within the area dominated by a "Constantinian" paradigm: a system in which the Church enjoyed peculiar legal prerogatives by virtue of its central position in Italian society. The revision of the Concordat marked the definitive overcoming of this approach, inaugurating a model in which the Church is no longer a privileged interlocutor of the State, but a subject with which the latter interacts according to rules of equidistance and impartiality with respect to all other religious confessions, in a perspective that sees the second paragraph of art. 7 Cost. to be structured in a hermeneutic reading side by side with articles 3, 8 and 19 of the Constitution.¹⁰

It is clear that the reformed Concordat has inaugurated a form of "cooperative secularism", a model in which the State and religious confessions interact without undue overlaps or subordination: not a cold and detached neutrality, but an impartiality capable of guaranteeing a legal environment in which confessional plurality can develop without implicit hierarchies or forms of marginalization.¹¹

Usually, when discussing cooperative secularism, the debate moves between two opposite poles: on the one hand, those who interpret it as a compromise between neutrality and recognition of the religious fact, on the other, those who fear it as a Trojan horse to keep historical privileges intact. The problem is that in both visions, secularism is reduced to a technique for managing differences, a sort of normative algorithm that serves to

¹⁰ See V. Pacillo and B. Hussien, *Lezioni di diritto e religione*, cit., pp. 14 ff.; S. Domianello, *L'evoluzione costituzionalmente sostenibile delle fonti del diritto ecclesiastico italiano tra unilateralità (da recuperare) e bilateralità (da custodire)*, in *Quaderni di diritto e politica ecclesiastica*, 1, 2023, according to whom the bilateral model fully adopted the ecclesiastical policy project envisioned by the Constituent Assembly, "...thus paving the way for a transition from the model of *pacta unionis* adopted for the Lateran Concordat to a model of *pacta libertatis et cooperationis*, not only compatible but even consistent with a democratic, secular, and pluralist republic" (p. 47).

¹¹ According to M. Ventura, *Sintesi. Trasformazioni della bilateralità nel diritto ecclesiastico*, *Quaderni di diritto e politica ecclesiastica*, 1, 2023, p. 309: "Contacts between religious representatives and State representatives, at the most diverse levels, are a defining feature and a fundamental necessity of our time, both in Italy and elsewhere. These contacts may be referred to and interpreted in various ways. They may be classified as forms of cooperation—a widely used term, though absent from the Constitution—as collaboration, the term adopted in the Villa Madama Agreement, or as dialogue." For Ventura, then, such relationships can be framed in lexically interchangeable categories, depending on the context, political intentions, or communicative function of the moment. In other words, this would constitute a legitimate and inevitable semantic slippage, further justified by the absence of the word "cooperation" in the Constitution and by the lexical variability found in the different agreements or legal texts.

This position, while capturing an undeniable sociological fact—the increasing frequency of relationships between religious actors and public institutions—risks producing a dangerous legal short circuit. The idea that such contacts can be indiscriminately classified as dialogue, collaboration, or cooperation overlooks the fact that each of these terms refers, within constitutional language and legal systematics, to distinct normative categories, with different assumptions, purposes, and implications.

The "collaboration" referred to in the Villa Madama Agreement (and in the agreements pursuant to Article 8 of the Constitution) is, first and foremost, a technical construct of coordination between two autonomous legal systems, based on treaty-based bilateralism and on the distinction of ends. It presupposes formal negotiation, the delineation of intervention areas, and an institutional framework capable of ensuring its implementation in accordance with the fundamental principles of the constitutional system.

"Cooperation", on the other hand—when not confused with collaboration—can evoke, particularly in the language of territorial autonomies, a more fluid practice of interaction based on functional and pragmatic grounds, which does not always enjoy direct constitutional backing.

"Dialogue", finally, implies no legal obligation: it is a relational practice, legitimate and often desirable, but devoid of direct juridical effects.

The attempt to reduce these distinctions to mere rhetorical variants reveals an underestimation of the safeguarding function of ecclesiastical law within its constitutional framework. These are not mere nominalisms, but theoretical and practical instruments for precisely delineating the scope of legitimate interaction between State and religious denominations.

The alleged fungibility of these concepts ultimately results in the derealization of institutional responsibility and in a tangible risk of erosion of the principle of secularism. Moreover, to claim that "contacts" are a constitutive feature of our time does not equate to legitimizing every form or content of such relationships.

The Italian Constitution does not establish a general duty of permanent interlocution between the State and religions, but rather lays out rigorous conditions—such as the bilateral nature of agreements and the neutrality of institutions—that regulate and limit such relations. The recognition of religious pluralism, in other words, does not authorize undifferentiated relational practices, but requires a legal discipline coherent with the principle of separation between normative orders. For this reason, Ventura's thesis—if understood as a neutral description of relational dynamics—may indeed serve as a sociological suggestion. But if proposed as a legal criterion for systematic interpretation, it appears theoretically weak and institutionally hazardous: cooperation, in a secular legal system, is not the name of a spontaneous agreement between mutually appreciative actors, but the result of a closely supervised legal construction, capable of respecting differences without turning them into an excuse for indistinction.

avoid conflicts, to distribute spaces, to regulate rights and duties. But secularism is not just a set of rules, just as religion is not just a phenomenon to be administered. If there is something that the Concordat of 1984 has demonstrated, it is that secularism is never a point of arrival, but a complex balance, always renegotiated, always in transformation. And, precisely for this reason, secularism cannot be seen as a tool to solve the problem of religion in the public space; rather, it is a form of relationship between systems of meaning that, by interacting, redefine one another.¹²

Too often, when we talk about the autonomy of spheres, we take it for granted that law and religion are two parallel universes, each with its own logic, its own objectives, its own languages. We imagine law as a closed, self-referential system, impermeable to external influences, and religion as something that exists in a separate space, at most tolerated or regulated. But law is not just a set of rules, it is also a field of meaning, a network of symbols that structures our experience of coexistence. And religion, in turn, is not only a system of beliefs, but a way of constructing meaning. To clearly separate these two spheres is a simplification that does not stand the test of history, nor the reality of contemporary societies.¹³

The Concordat of 1984, if read in its deepest dimension, represented precisely this: the recognition that secularism is not a closed system, but a process in which law and religion interact and develop themselves. The elimination of the confessional principle has not only changed the institutional relations between State and Church, but has also redefined the way in which religion is perceived in the public space. It is no longer an implicit normative matrix, no longer a criterion of legitimation of political power, but one of the many sources of meaning that coexist and interact in the construction of the legal order. One could conclude, with a hint of cynicism, that the State has simply stopped dealing with religion, relegating it to the private sphere. But that would be a mistake. Religion has not been expelled from the public space, but rather reinserted into a broader framework, where secularism is no longer the juxtaposition of two separate orders, but an area of interaction in which different horizons of meaning confront and redefine each other.

If we look closely, the real crux of the 1984 Concordat was not so much the removal of the privileges of the Catholic Church – a fundamental operation, certainly, but one that could have been resolved with a less radical revision – as the transformation of the very way in which law and religion relate to each other. The point is not that the Church has lost its privileged position, but that it has had to redefine its presence in the public space in a context in which there is no longer a single normative matrix, but a plurality of codes that coexist and interact. The law has not limited itself to dictating new rules of the game, but has modified the very conditions of participation. And this means that secularism, like religion, can no longer be thought of as something static, but as a device for translating between different systems of meaning.

One could say, with hyperbole, that the 1984 Concordat has not only changed the ecclesiastical law of the State, but has changed the law itself. It did not limit itself to resolving a question of institutional relations, but redefined the framework within which these relations can develop. It did not simply update a regulation, but inaugurated a new way of thinking about secularism, no longer as a regulatory principle, but as a dynamic space for building coexistence. In this sense, speaking of generative secularism is not a rhetorical formula: it means recognizing that secularism is not a legal category given once and for all, but a form of permanent negotiation between different languages of meaning. A negotiation that, like all negotiations, never has a definitive outcome, but only provisional configurations that can always be called into question. The 1984 Agreement therefore put an end, symbolically and operationally, to an era in which the relationship between State and Church was regulated by a logic of confessional privilege. The transition from the "union pact" to the "freedom pact" has opened the way to a model of secularism that is neither hostile nor subordinate to the

¹² See M. Ricca, *Pantheon. Agenda della laicità interculturale*, cit., pp. 44 ff.

¹³ See M. Ricca, *Pantheon. Agenda della laicità interculturale*, cit., pp. 168 ff.

religious dimension, but acts as a guarantor of a pluralist democracy, in which the *laicità* of the State is no longer a governance of the religious fact but a legal principle based on cooperation between the State and religions. The path is not yet linear, nor free from resistance, but the result is a system in which cooperative secularism is no longer an exception (concordat), but a structural component of the Republic: this depends on the fact that the 1984 Agreement has therefore not simply updated the Concordat of 1929, but has freed it from a conception of the State in which the dominant religion constituted the implicit normative matrix, affirming instead the principles of distinction of orders and freedom of conscience. The essence of this cooperative secularism is - to use an expression by Mario Ricca¹⁴ - endowed with a strong generative component: the 1984 Agreement does not represent the legal result of an agreement between sovereign powers, but the precipitate of a complex process of interaction between different normative, cultural and symbolic horizons, within a context in which the different systems of meaning dialogue with each other, generating new forms of mutual understanding. A generative secularism, in this sense, is not a simple compromise between the neutrality of the State and the presence of religion, but a process of co-creation of meanings, in which law and religion influence each other without either domain prevailing over the other.

This approach allows us to overcome both the model of administrative secularism (which limits itself to managing religious pluralism) and that of authoritarian secularism (which imposes a clear separation between law and religion), opening up space for new forms of interaction.

This evolution, moreover, finds its premises in the conciliar turning point. Vatican II, with an awareness matured through the comparison with modernity, redefined the role of the Church in the contemporary world, suggesting a clearer separation from temporal power and a rediscovery of the value of individual conscience. The 1984 Agreement was therefore part of this path, translating into a legal norm that paradigm shift that post-conciliar theology had already prefigured: no longer a religion imposed from above and institutionally imposed, but a faith that is realized in the free assent of believers.

Italian *laicità*, if taken seriously, is never just a principle of separation, nor a neutral position of the State with respect to the religious phenomenon: it is, rather, a continuous exercise in rewriting languages, a laborious architecture of pluralism that, in order to function, must be able to deconstruct its own implicit premises. In Italy, however, the discourse on secularism is confronted with a historical and symbolic stratification that makes it impossible to treat all religious confessions as if they were on the same level. The Catholic Church, although no longer the state religion, continues to occupy the invisible center of the normative universe, and this is not because it formally imposes it, but because the doctrinal and legal structure on which it is based is already implicit in the way in which the law thinks and expresses itself. The Concordat, more than an agreement between two legal systems, has become a legal grammar: it dictates the structure of the discourse, establishes what can be said and what cannot, without needing to raise one's voice. This centrality is not manifested through proclamations, but through the unsaid. The Villa Madama Agreement eliminated the

¹⁴ M. Ricca, *Intercultural Spaces of Law. Translating Invisibilities*, Springer, Cham, 2023, pp. 40–41: “Secularization cannot hover above differences but must instead stand horizontally in the midst of them, as a (possible) emergence from the flux of their intersections and reciprocal translations. It is thus not neutral, in the sense of ‘culturally aseptic,’ but rather reticularly in-between, creatively transactional and therapeutic. The prerequisite for the achievement of such an inclusive and self-transforming cultural and political disposition is the abandonment of any idea that secular/rational discourse can be imagined as a linguistic/semantic platform that is pre-existing to any translational activity. If the ‘secular’ is to be functional to equality, then it is to be imagined as a *thirdness*—and, in any case, not an all-comprehensive one—sprouting simultaneously from the flowing of translational/transactional activity.”

And p. 97:

“A genuine secular equality should be inspired by a kind of semantics that is equi-representative and equi-responsive. This entails, in turn, that legal rules should embody a weighted and thoughtful synthesis among the manifold cultural semantics corresponding to the different subjectivities extant in the social landscape. In short, the features of the legal subject should be the result of such a synthesis. And only when the legal framework is created as a condensation of differences and of their universe of meaning—rather than as an uneven accommodating (and often merely commodifying) juxtaposition—can it truly deserve to be defined as inclusive.”

confessional formula, but it did not erase the symbolic effectiveness of a relationship that continues to orient the hierarchies of visibility and access to the public arena. The Catholic Church does not need to ask for space: it already lives there, without having to justify it, without having to demonstrate compatibility with the republican order, since Italian law continues to speak, often without realizing it, a language in which the lexicon of the Catholic religion slips naturally into the concepts of order, family, education, even the common good. And while the Concordat is continually renewed, adapting to changing times without ever losing its normative force, the agreements provided for by art. 8 of the Constitution remain, for other confessions, an uncertain, irregular path, often blocked by an institutional silence that is not neutral but profoundly performative. In theory, the agreements should be instruments of cooperation and freedom. In practice, they have become discretionary filters, mechanisms that select who is recognizable as an interlocutor and who still has to prove it. The asymmetry is evident, but it is not declared: it is semantic, symbolic, stratified in practices. Some faiths speak from within the system, others still knock from outside in the hope that someone will open. In this context, talking about pluralism risks becoming a rhetorical exercise. Because if there is no effective equality in the times, methods and effects of recognition, then it is not pluralism, but a managed imitation of it. The system of agreements, as it is implemented, produces a paradox: it claims to guarantee religious freedom through tools that depend on political will and that, in the absence of legal obligations to proceed, end up replicating inequality under the guise of cooperation.

And yet, *laicità* could – and should – work differently. Not as an orderly administration of differences, but as a critical space in which differences can question the forms of law and transform them. Not as a neutral container that welcomes compatible faiths, but as a listening device that lets their languages pass through, even when they appear foreign, eccentric, not immediately translatable. Secularism, then, not as formal balance, but as permanent tension, as a work of translation that does not reduce difference to silence but recognizes it in its generative power.

The 1984 Agreement, in addition to guaranteeing freedom of conscience in matters of religious education, recognized that freedom of belief is not an isolated right, but is part of a legal system that protects individual self-determination in a broad sense. The Constitutional Court, on several occasions, has defined freedom of conscience as "the privileged relationship of man with himself", a statement that might appear unexpectedly lyrical for a court of judges, but which in reality captures the central issue: no individual can be forced into a faith, just as no faith can aspire to a hegemonic position in the public space, and the law is not called upon to decide what "authentic religion" is, nor to distinguish "true" spiritual experiences from spurious ones. But it can – and indeed must – recognize that religious experience, as a tension towards an ultimate meaning, produces culture, solidarity, languages, rites, institutions: elements that also belong to the construction of the common good.

In this perspective, cooperation between the State and religious confessions – far from contradicting *laicità* – can be understood as a mediation device that allows the law to dialogue with the symbolic energies produced by religions without subordinating itself to them. It is a form of controlled openness, in which the distinction between orders (political and religious) does not prevent the recognition of their mutual fruitfulness, accepting that religion, when it does not degenerate into ideology or power, can function as a principle of revelation of reality, that is, as a stimulus to responsibility, inner freedom, social justice.

But in order for this openness not to transform itself into a new privilege, and not to surreptitiously reintroduce a hierarchy among religious discourses, it must take the form of a real legally relevant intercultural translation, in which the State renounces its role as an instance that evaluates from the outside the compatibility of religious visions with public order and instead takes on the more arduous task of negotiating its own lexicon. Law, in this perspective, does not limit itself to regulating differences, but allows itself to be questioned by them: it is forced to deactivate its own predefined categories, to discover its own semantic ambiguities, to deal

with what does not yet have a name in its codes. Cooperation, then, is not a pact technique, but a hermeneutic practice: a space of normative co-construction, where religions are not called to conform to a dominant cultural model, but rather invited to contribute to the common reworking of public meanings.

Laicità no longer coincides with the absence of religion in civil space, but with the ability of institutions to host its difference, without fearing it or canonizing it. Faiths, as systems of meaning, become not only cultural but also legal interlocutors, as long as they agree to enter the dialogical process of reciprocity, in which no position is guaranteed once and for all, and every identity claim must confront the plurality of voices. In this framework, the relationship between the State and religions is no longer based on the vertical distinction between sovereignty and the private sphere, but on a symbolic economy of reciprocity, in which the law presents itself as an open and imperfect space for negotiation, capable of welcoming – and transforming itself through – the encounter with the other. The necessary condition for this to happen is that religious confessions are recognized not for their greater affinity with the dominant legal tradition, but for their ability to generate meaning, to indicate possible worlds, to reawaken attention to what remains opaque in the established legal order.

Ultimately, it is not a question of inserting religion into the grids of the secular State, but of ensuring that the secular State learns to redefine itself through listening to symbolic otherness. In this sense, cooperation is not an exception to *laicità*, but its most sophisticated manifestation: an unstable and dynamic equilibrium, based not on harmony, but on the continuous exercise of translation.

Not only has faith emancipated itself from the political and institutional dimension with the revision of the Concordat, escaping what we might define as a theology of citizenship, but a real transposition has been structured: the State, by removing religion from any form of confessional protection, does not marginalize it, but rather reinserts it into a broader horizon, regulated no longer by the principle of the pre-eminence of one faith over others, but by that of equal freedom.

3. Ministers of Worship of the Catholic Church: Autonomy in Appointment and Freedom of Ministry

Addressing the issue of the appointment and freedom of ministry of ministers of worship of the Catholic Church in the Italian legal system means venturing into one of those legal-cultural zones in which law and religion observe, touch, negotiate, without ever fully interpenetrating. It is an intermediate space, a porous border in which the secularity of the State and the autonomy of the Catholic Church balance each other in a game of checks and balances that finds its foundation in a structured bilateralism, but also in a sort of normative diplomacy that adapts to changes in society.

Let's start with a necessary premise: there is a subtle, yet deeply rooted, error in the way in which we often deal with religious rights. An error that arises from a conditioned reflex: that of reducing reality to the legal category that should represent it. Let's take the case of the minister of worship. In jurisdictional language, this figure appears well defined: it is the subject who, in a given religious system, carries out functions related to the public exercise of worship, of spiritual authority and, sometimes, also of representation towards the State. Nothing simpler. Or at least, so it would seem.¹⁵

¹⁵ According to authoritative legal scholarship, the notion of *minister of worship* in civil law is a legally complex figure, structured around three essential elements: first, the individual's membership in a group recognized by the State's legal system as a religious denomination; second, the performance of an activity that the State's legal order qualifies as the exercise of a religious ministry; and third, a concrete and formal investiture of the individual by the religious group itself. The determinations made by the religious group acquire direct relevance within the civil legal system, allowing for the application of State norms that govern the legal status of ministers of religion. Such application is possible not only when the group to which the individual belongs is recognized as a religious denomination, but also when the activity actually performed by the individual corresponds to what the State's legal system defines as ministerial exercise.

But it is enough to stop for a moment, to try to look at reality without the distorting screen of prepackaged definitions, to realize that this vision is reductive. If a minister of worship appears before us, who do we really have in front of us? A minister of worship is never just a "religious official": he is also, and above all, the result of a relationship with his community, with the social context in which he operates, with the system of values he embodies.

If secularism were simply a principle of separation between State and religion, the problem would not arise. It would be enough to apply the law, without asking too many questions. But *laicità*, as generative secularism, is not content with preserving a static balance but questions how to build spaces of recognition and dialogue, requires a further effort. It requires looking beyond categories, understanding the concrete function that a religious figure plays in society, asking how law can interact with it without distorting it, without crushing it into pre-established schemes.

The question is crucial because it touches the very crux of the relationship between law and religion. The traditional jurisdictional model tends to consider state law as the only legitimate language. The language of religious rights, in this scheme, can be regulated, recognized or, at most, tolerated: but always from above, always with the idea that it is positive law that grants space to the religious dimension, and not the other way around.

Generative secularism, on the other hand, changes perspective. It does not see law as a mechanism of mere regulation, but as a process of negotiation and mutual recognition. It is not a question of granting or denying rights, but of building together the conditions for their exercise, without rigid preconceptions.

The first thing to do is to reject the temptation of simplification. Defining a minister of worship means understanding his actual role in the community, the meaning he assumes for the faithful, the type of bond he establishes with public institutions. Is he a spiritual guide or a disciplinary authority? Does he act as a facilitator of coexistence or as the guardian of a separate identity? Does he have a power that can become oppressive or does he exercise a function of protection of the most vulnerable? These questions are essential, because the same category of "minister of worship" can encompass very different realities, which must be understood before being regulated.

The second step is to resist the temptation to apply fixed legal schemes, without considering the complexity of concrete situations. The crucial point is this: we cannot think of religious rights as a static normative order, which exists independently of the social and legal context in which it develops. If a minister of worship asks for State recognition, this recognition cannot be granted automatically, but neither can it be denied in the name of an abstract principle of neutrality. What is needed is a process of mediation and comparison, in which the law is not a simple instrument of control, but an element of mutual construction. The chorological perspective¹⁶ is placed in this direction, which invites us to replace the idea of a uniform and undifferentiated legal space with that of an articulated space, marked by multiple normative presences and in constant dialogue. The law

However, there exists an alternative doctrinal perspective, according to which the formal criterion of religious qualification should be balanced with a substantive criterion based on the actual activities carried out by the individual. From this point of view, the assessment of the legal status of a minister of religion within the State legal system must take into account both the formal qualification and the substantive nature of the activities performed.

See A. Licastro, *I ministri di culto nell'ordinamento giuridico italiano*, Giuffrè, Milan, 2005, esp. pp. 143 ff.; A. Bettetini, *Alla ricerca del "ministro di culto". Presente e futuro di una qualifica nella società multi-religiosa*, in «*Quaderni di diritto e politica ecclesiastica*», 1, 2000, pp. 249 ff.

¹⁶ M. Ricca, *How to Make Space and Law Interplay Horizontally: From Legal Geography to Legal Chorology* (March 2, 2017). SSRN: <https://ssrn.com/abstract=2926651> or <http://dx.doi.org/10.2139/ssrn.292665>

does not operate in an axiological vacuum: it moves in symbolic territories already inhabited by rules, memories, hierarchies of meaning that cannot be erased simply by applying a general criterion. Chorology is not only a theory of space, but a theory of responsibility: it implies that every legal intervention must measure itself against the symbolic ecosystem it intends to regulate, knowing that every rule is also an act of cultural transformation. Thinking about religious recognition in a chorological way means abandoning the idea that there is a spatial neutrality guaranteed by the law and assuming, instead, that every legal act affects a lived space, reorders it, enhances some elements and marginalizes others. The act with which the State recognizes - or refuses to recognize - a religious authority is never neutral, because it occurs within an already stratified field in which some religions speak with an institutionalized voice and others remain silent or barely whispered. In this field, secularism cannot be an abstract formula, but must become a method of orientation, a tool for translation, a criterion of symbolic balance. Chorological logic then requires a rethinking of the relationship between law and territory, where the territory is not only geographical, but also and above all symbolic, made up of practices, languages, representations. It is within this dense and stratified space that religion manifests itself and asks to be recognized not as an exception, but as an integral part of the polis. The legal response, in this framework, cannot but be situated: it must question the context, decipher history, listen to the voice of those who inhabit that symbolic territory. Only in this way does the law stop being a vertical imposition and become a language that is constructed in dialogue.

Understood in this way, legal chorology is not normative relativism, but awareness of the semantic density of social space. It is a theory of law that renounces thinking of itself as self-sufficient knowledge and accepts learning from what it encounters. And what it encounters – the variety of religious expressions, the multiplicity of spiritual authorities, the plasticity of beliefs and affiliations – does not only ask for protection, but active recognition: the capacity to host, without domesticating, otherness. This is the task of a secularism that does not take refuge in indifference, but exposes itself to the risk of listening: a secularism that is no longer geometric, but chorological.

Now, if we look at the relationship between the State and the Catholic Church, we must remember that, with the revision of the Concordat of 1984, an end was put to a long cycle of jurisdictionalism, recognizing the Catholic Church's full autonomy in the appointment of its own ministers of worship. The Italian State, in the act of breaking away from a tradition of interference, did nothing other than recognize a legal reality that was already consolidated: the distinction of orders implies the separation of functions, and the appointment of priests, bishops and prelates belongs exclusively to the ecclesiastical sphere. The right to confer the ministry is therefore an expression of religious freedom in its highest dimension, the institutional one, and is protected by a legal regime that guarantees non-interference by the State.

Yet this autonomy is not without tensions. We are not faced with a clear separation, but rather with a constantly renegotiated balance, in which the state system recognizes the autonomy of the Church, but reserves the right to regulate the perimeter within which this autonomy can be expressed without conflicting with the fundamental principles of the State. The only remnant of a bygone era is the formal communication of the appointment to the civil authorities, an act without direct legal consequences, but significant from a symbolic point of view, because it maintains an open channel of dialogue between the two systems. Freedom of ministry is the natural corollary of this autonomy: once appointed, the minister of worship exercises his role without state constraints, following exclusively the pastoral and spiritual needs of the ecclesial community. This principle is part of a perspective of generative secularism, or a model of relations between the State and religions that is not limited to a formal and impersonal detachment, but which recognizes the social importance of the religious phenomenon and facilitates its expression within a framework of mutual respect. If generative secularism is not passive neutrality, but rather a legal architecture that allows religious confessions to express their public role without fearing undue interference, and the State to preserve its

impartiality without emptying religious pluralism of meaning, it is clear that this must (cannot fail to) also have effects with regard to the civil relevance of the acts performed by ministers of worship.

One of the most emblematic aspects of this freedom is the protection of the secrecy of confession, recognized as an expression of a sacramental prerogative that the State undertakes not to violate. The Villa Madama Agreement of 1984 strengthened this protection, establishing that ministers of worship cannot be forced to reveal information acquired in the exercise of their ministry. But this protection is not without grey areas: the boundary between religious ministry and social activity is not always clear, and here lies the risk of judicial interference that, in some cases, could undermine the very principle of autonomy.

3.1. The jurisprudential issue: who decides what is a ministry?

Recently, a ruling by the Court of Cassation¹⁷ has reopened the debate on this point, establishing that the secrecy of the confessional cannot be extended to all forms of moral or social assistance provided by a priest or a religious person. In other words, the Court has introduced a distinction between sacramental activities and activities that, while having a pastoral value, do not fall within the strict definition of religious ministry. Here the issue becomes complicated: who decides what falls within the ecclesiastical ministry? Can the State arrogate to itself the right to define the boundaries of the religious function?

This ruling marks a critical point in the dialectic between legal systems because it risks transforming the judge into an arbiter of the boundary between sacred and profane, introducing an evaluation criterion that could have profound consequences for all religious confessions. If ministerial secrecy is restricted, not only for the Catholic Church but also for other faith communities, we find ourselves faced with a new paradigm in which the State does not limit itself to guaranteeing religious freedom, but reserves the power to regulate its contours. The chorological perspective requires us to read the figure of the minister of worship not as a function that can be homologated to an already codified institutional model – often implicitly borrowed from the Catholic ecclesial structure – but as a reality that is expressed in multiple, flexible forms, linked to situated community practices, which are not always expressed through titles, hierarchies or standardizable curricula.

If the law wants to avoid exercising an assimilationist function, it must be able to question the context in which the religious function takes shape, recognizing that spiritual authority is not always attributable to a professional model, nor to an officially ordained figure, but can be expressed through widespread leadership, community roles, shared charisms that escape the classical legal lexicon. In this sense, the recognition of the status of minister of worship must pass through a dialogic and argumentative process in which the legal system accepts to question itself, renouncing the claim to unilaterally define the conditions of religious legitimacy.

¹⁷ Court of Cassation, Fourth Criminal Section, 15 December 2016 – 14 February 2017, no. 6912. On this subject, see G. Boni, *Sigillo sacramentale e segreto ministeriale*, in «Stato, Chiese e pluralismo confessionale», no. 34, 2019, pp. 27 ff., who argues that the judgment of the Court of Cassation, Fourth Criminal Section, 15 December 2016 – 14 February 2017, no. 6912, represents a problematic turning point in case law regarding ministerial secrecy and the sacramental seal. The author observes that this decision introduces an invasive judicial scrutiny over the legitimacy of the secrecy invoked by ministers of religion—scrutiny that, due to its scope, risks clashing with fundamental constitutional and Concordat-based principles, such as religious freedom and the autonomy of the Catholic Church.

Consequently, Boni calls for a return to more cautious approaches, aligned with the bilateral agreements in force, in order to ensure rigorous protection of the confessional secret without yielding to undue judicial interference. Moreover, the author highlights the longstanding terminological and substantive issue concerning the figure entitled to the *ius tacendi*: while the Code of Criminal Procedure employs the term “minister of religious denominations,” Concordat law uses the notion of “ecclesiastic.” Boni therefore points out the existence of a lively scholarly debate about the actual scope of the protected category, particularly regarding the possible inclusion—alongside ordained priests—of non-ordained religious and even laypersons, provided they hold specific ministerial functions officially recognized by canon law. This reflection, for the author, underscores the need for an interpretation that fully respects the peculiar and plural nature of ecclesiastical roles and their inter-systemic legal implications.

3.2. *Bilateralism as a Guarantee of Balance*

The Concordat, despite its nature as a bilateral agreement, has historically served as the principal instrument for safeguarding ecclesiastical autonomy. However, recent jurisprudential trends suggest that bilateralism must be continually reaffirmed and renegotiated to prevent it from becoming a mere formal act devoid of real effectiveness. *Generative secularism* does not merely entail the recognition of religious diversity, but also ensures that such diversity can be expressed without being confined to a private and socially irrelevant sphere. The issue of freedom of ministry must be understood within this framework: it is not only a matter of confessional autonomy, but also a litmus test for the coherence of a secular state. If the principle of non-interference is to be upheld, the State cannot limit itself to guaranteeing religious freedom in the abstract; it must also refrain from exercising discretionary control over how that freedom is concretely expressed. The Church's autonomy in appointing and ministering its clergy is not a relic of a bygone era, but a concrete manifestation of a relational model in which secularism is not the denial of otherness, but its legal recognition. Should jurisprudence persist in redefining the boundaries of ministerial freedom, a new scenario would emerge in which the tension between Church and State would no longer concern abstract principles, but rather a more precarious terrain: the regulation of religious practices. Here, generative secularism would risk devolving into regulatory secularism, turning into an exercise in legal engineering whereby the State arrogates to itself the power to determine what is genuinely religious and what is not.

In the ongoing dialogue between law and religion, the freedom of ministry remains one of the last strongholds of confessional autonomy. If the Concordat has ensured that the Church need not answer to the State in the selection of its ministers, contemporary jurisprudence must avoid introducing a new form of control—more subtle, but no less invasive—over the ways in which this ministry is exercised. Generative secularism must not be allowed to degenerate into selective secularism. The distinction between the two orders must remain a substantive principle, not a tolerated exception subject to revocation.

4. **The civil relevance of the functions performed by Catholic ministers of worship¹⁸**

The 1984 agreement between the Italian State and the Holy See not only seals a balance between two historically distinct institutions, but also recognizes the civil relevance of some of the functions performed by

¹⁸ For ministers of worship of the Catholic Church, no administrative authorization is required to perform their functions with civil legal effects due to the special Concordatary discipline established by the 1984 Agreement revising the Lateran Concordat. By virtue of this agreement, the State directly recognizes the civil effects of appointments made by the Catholic ecclesiastical authority, without the need for prior intervention or further state authorization. In this regard, only a subsequent notification to the civil authorities is required for the appointments of archbishops, bishops, parish priests, and holders of other ecclesiastical offices that are relevant for the State's legal order—such as those who celebrate marriages with civil effects or who administer ecclesiastical entities recognized under civil law (Art. 3, second paragraph, Law No. 121/1985). Conversely, for ministers of religious denominations other than the Catholic Church, in the absence of specific agreements (*intese*), the regime established by Law No. 1159 of 1929 and its implementing regulation (Royal Decree No. 289 of 1930) remains in force. This regime requires a prior authorization (governmental approval) from the Ministry of the Interior. This administrative measure is subject to verification of the candidate's personal, moral, and legal requirements, with particular regard to the protection of public security and order, as well as to the verification of the alignment between the ministerial activities performed and the normative standards established by the State.

The function of this authorization is thus to confer civil relevance to the acts performed by the minister of religion, such as the celebration of marriages with civil effects or the provision of spiritual assistance in protected public institutions (hospitals, prisons, armed forces). This distinction between the two regimes highlights a marked difference in treatment resulting from the bilateral and pact-based nature of the relationship between the State and the Catholic Church, which allows for a specific and simplified discipline, as opposed to the unilateral, general, and more strictly controlled administrative regime applied to ministers of denominations without an *intesa*.

See S. Berlingò, *Il potere autorizzativo nel diritto ecclesiastico*, Giuffrè, Milan, 1974, pp. 382–385, who argues that governmental approval of the appointment of ministers of religion constitutes an authorization that confers public powers on approved ministers, enabling them to perform acts with civil legal effects; C. Mirabelli, *L'appartenenza confessionale*, Cedam, Padua, 1975, pp. 329–336, who distinguishes the confessional-spiritual profile from the properly civil and public dimension of the minister's activity, emphasizing the need for a discretionary State assessment limited to the requirements of capacity for the exercise of analogous public functions.

Catholic ministers of worship. If religion, as we know, exists within its own normative dimensions, state law cannot always afford to ignore the concrete effects of an act of a religious authority recognized as such within a confessional system. And in fact, even in the absence of an explicit normative definition, the category of ministers of worship includes those who, by virtue of their role as spiritual authority recognized by confessional norms and as public leaders of worship to whom rights and obligations are attributed by a religious legal system, and perform functions that extend well beyond the exclusively spiritual sphere. These individuals, recognized by their respective confessions as religious authorities, carry out activities that, although rooted in a spiritual dimension, have concrete and tangible impacts on the secular level, so much so as to acquire legal relevance within the state system. As we will see, this relevance is mainly manifested in those functions that, although regulated at the confessional level, produce direct legal effects in the State legal system, as in the case of the celebration of marriages with civil effects, or assistance in contexts that involve the administration of justice or public health, such as in hospitals and prisons. In these areas, ministers of worship are not only mediators of religious practices; they play a role that integrates with the state administrative machine, assuming legal responsibilities that entail legal obligations and powers recognized by the civil system.¹⁹ Thus, the Agreement between the State and the Catholic Church, while maintaining the distinction of orders, establishes that in certain contexts the activities of ministers of worship not only can have, but do have direct legal effects, going beyond the sphere of confessionality to enter the domain of State law. Cavana²⁰ highlights how this interaction is not simply a bureaucratic formality or a non-interference agreement, but a real recognition of the social and civil importance of ecclesiastical activity, which reverberates in society through spiritual, moral and welfare actions of great relevance.

Among the most salient activities of Catholic ministers of worship that have a civil scope and are therefore regulated by law, are, as mentioned, the celebration of marriages with civil effects and spiritual assistance in specific contexts such as hospitals, prisons and the armed forces. While the Catholic Church, within its legal system, conceives marriage as a contract-sacrament of an intra-systemic nature, the State, in its regulatory function, cannot ignore the civil effects of an act that also has public relevance in the cases and under the conditions provided for by art. 8 of the Villa Madama Agreement. In this sense, Italian law provides specific methods to ensure that religious marriage can produce civil effects, legally relevant. Article 8 of the Villa Madama Agreement, later implemented by law no. 121/1985, establishes in detail the obligations connected to the celebration of the concordatory marriage.

When a minister of worship celebrates a marriage, he exercises a public function and takes on the responsibility of acting as a public official, with all the obligations that come with it. Immediately after the religious celebration, the parish priest or his delegate has the task of reading to the spouses Articles 143, 144 and 147 of the Civil Code, which outline the mutual rights and duties of the spouses. This act of reading is not a mere formality, but an essential step that must be documented in the marriage certificate, drawn up by the minister of worship in two original copies, as required by law. The possibility of including, in the same certificate, any declarations on patrimonial aspects or on the recognition of children born out of wedlock (Articles 254 and 283 of the Civil Code, in light of Law No. 219/2012) makes it clear that religious marriage, like civil marriage, marks a new legal condition for spouses which cannot be ignored by the legislator.

However, the mere drafting of the act does not exhaust the office of the minister of worship. In fact, he must provide, within five days of the celebration, to send the marriage certificate, accompanied by the *nulla osta*, to the civil registrar, who will register it in the appropriate registers. In this way, religious activity takes on an administrative dimension that cannot be separated from the legal dimension of the State. The parish priest, or

¹⁹ A. Fuccillo, *Giustizia e religione*, II, Giappichelli, Turin, 2011, pp. 31 ss.

²⁰ P. Cavana, *I ministri di culto in Italia*, in «Stato, Chiese e pluralismo confessionale», n. 19, 2022, pp. 19 ss

whoever acts for him, thus takes on the role of public official with the obligation to answer for his actions, both civilly (articles 2699 and 2700 of the civil code) and criminally (articles 357 and 476 of the criminal code), for any omissions or poor performance of his duties. The exercise of this function entails the obligation to observe specific legal formalities, including the reading of articles 143, 144 and 147 of the Civil Code, which regulate the rights and duties of spouses. The Court expressly emphasized that the violation of these obligations not only compromises the civil validity of the marriage, but entails a legal liability of the minister of worship, both civil and criminal, for any omissions or carelessness in fulfilling the procedures provided for by law.

The Court pointed out that the minister of religion, in exercising a religious function that carries civil effects, assumes a role that transcends the purely confessional sphere and becomes part of a public function. Consequently, their responsibility is not limited to a simple act of faith certification but extends to the administration of a legal act relevant to the State. Negligence or omission in such a context, therefore, is not without legal consequences, but exposes the minister of religion to civil and criminal liability, due to the inability to guarantee the legal validity of the celebrated act.

Authoritative legal scholarship,²¹ in analyzing this interweaving between secular law and the confessional system, emphasizes how the activity of the minister of religion is not limited to a mere certification of acts, but gives rise to a true interaction between the two distinct orders. Despite its undeniable confessional dimension, the ecclesiastical ministry thus becomes an integral part of the State's administrative system, while preserving its original nature. Indeed, the fact that the minister of religion assumes public functions demonstrates that the relationship between secular and confessional law is not exhausted by a simple distinction between separate spheres, but may be (and in fact is) configured as a dynamic interaction between distinct normative systems, in which the ecclesiastical ministry actively participates in the construction of hybrid normative spaces, where civil and religious legal systems intertwine without cancelling one another.

The minister of religion thus becomes a mediator between two distinct and interconnected legal systems (and systems of values), and reconfigures the religious legal order within the public legal space through processes of adaptation and translation.

Emblematic in this regard is Article 4, paragraph 2, of Law no. 121/1985, which provides that Catholic ministers of religion, in the event of general mobilization, may be employed in the armed forces or in health services, unless they are engaged in the care of souls. This provision shows how the State integrates religious functions into its institutional structure without dissolving their specificity, but rather recognizing their public role in exceptional circumstances. From this perspective, secularism does not appear as a principle of exclusion, but as a generative device that allows for the interaction between different normative systems, giving rise to a juridical-cultural Zone in which the coordinates of State law and religious law are redefined.

The Italian State has recognized, over time, the particularity of the role played by Catholic ministers of worship, reserving specific rights and functions for them, precisely because of their ability to influence civil life. In this context, the same ministers of worship of other confessions that have stipulated agreements with the State are subject to a similar legal regime, although this regime depends on the relationship established between the State and the respective confession. It has been pointed out that Article 4, paragraph 2, of Law no. 121/1985 provides that Catholic ministers of worship can be employed in the armed forces or in health services if they are not engaged in the care of souls: similar provisions are provided for the ministers of worship of the Seventh-day Adventist Church, which, pursuant to Article 6, paragraph 3, of Law no. 516/1988, may be exempted from military service or assigned to alternative civil service, while the chief rabbis of the Jewish community are exempted from the call to arms pursuant to Article 3, paragraph 2, of Law No. 101 of 1989. The same ministers

²¹ P. Cavana, *I ministri di culto in Italia*, cit., p. 23

of worship of religious confessions without an agreement but recognized by the State, as provided for by Article 7 of Royal Decree No. 289 of 1930, may obtain exemption from military service upon certification of the indispensability of their spiritual work. It should also be remembered that the Consolidated Law on Immigration (Legislative Decree No. 286/1998) provides specific methods of entry and facilitated residence for ministers of worship who exercise their functions in Italy, simplifying the issuing of visas for religious reasons and recognizing the social and civil value of their ministry. The requirements for issuing a visa include documentation certifying the religious nature of the activities or events for which entry is requested and the guarantee of adequate means of support, if the expenses are not covered by religious bodies.

In addition to the aforementioned provisions, the Civil Code attributes other specific rights and functions to ministers of worship, a sign that state law does not limit itself to recognizing the presence of the religious person in society, but actively integrates him or her into the functioning of the legal system. This recognition is not the residue of a confessional past nor a simple formal concession: rather, it is the expression of the continuous interaction between secular law and religious instances, according to the logic of generative secularism.

Article 352 of the Civil Code provides that archbishops, bishops and ministers with the care of souls may be exempted, upon their request, from assuming or continuing legal guardianship. This provision is based on the assumption that the commitment of the minister of worship in spiritual and pastoral guidance is of such public importance as to justify an exemption from an obligation that normally weighs on all citizens. Here, the religious function is recognized not only in terms of individual freedom, but as a social dimension that the State takes into account in its regulatory discipline. The legal system does not limit itself to guaranteeing ministers of worship a space for action, but recognizes their impact on collective life, providing adaptation mechanisms that avoid putting their pastoral responsibilities in conflict with civil obligations that could compromise them.

Even more interesting is Article 609 of the Civil Code, which grants all ministers of worship the power to receive wills in exceptional situations, such as in the event of epidemics or disasters. Here the minister of worship takes on the role of public official, provided that the act takes place in the presence of at least two witnesses. This provision is particularly significant, as it demonstrates that the State, in regulating a legal act of fundamental importance such as the disposition of assets post mortem, does not limit itself to managing public functions in a bureaucratic manner, but integrates the social and relational role of the minister of worship into a legal device that ensures the continuity of law even in emergencies. This rule does not represent a simple concession to the Church or religious confessions, nor does it imply a return to a sacralized vision of the law. Rather, it is the recognition of the capacity of the figure of the minister of worship to operate as a point of reference in critical conditions, where civil institutions may be less accessible or not immediately operational. At a time when the legal order risks collapsing, the law partially delegates to the religious a function that normally belongs to the public authority, precisely by virtue of social trust and the role of mediation that the minister of worship exercises within the communities.

This provision therefore presents itself as a paradigmatic example of generative secularity. State law does not overlap with religious law, nor does it subordinate it to itself; rather, it recognizes that the social structure cannot be rigidly divided into watertight compartments between the sacred and the secular. The minister of worship, in this perspective, is not a subject who operates on the margins of the State, but a figure who participates in the construction of the legal life of society in situations in which the law cannot ignore the symbolic, relational and community capital of religion.

The attribution to ministers of worship of the possibility of receiving wills in emergencies demonstrates how state law is not impervious to the social and symbolic structures of religion, but rather, in some circumstances,

makes use of them to guarantee the functionality of the legal system. This solution challenges the rigidity of the model of separation between State and religious confessions, revealing that secularism cannot be understood as a principle of exclusion of the sacred from public space, but as a device that regulates the intersections between different legal dimensions, creating mechanisms of adaptation and mutual recognition.

5. Criminal Law

Even within the perspective of criminal law, the legal status of ministers of religion can be interpreted through the lens of generative secularism—a model that does not merely separate State and religion, but seeks to enhance the interactions between the two spheres without compromising their autonomy. Article 61 of the Italian Criminal Code provides for two general aggravating circumstances relevant to our analysis: number 9 aggravates offences committed through abuse of powers or violation of duties related to the status of minister of a religion, while number 10 applies to offences committed against a minister of the Catholic religion or of a religion recognized by the State, provided that the offence occurs in the performance of or due to their functions.

It should also be recalled that the minister of religion is granted criminal protection against acts of contempt under Article 403 of the Criminal Code, as amended by Law no. 85/2006. This provision punishes with a fine from 2,000 to 6,000 euros anyone who offends a religious denomination by insulting one of its ministers. The reform extended this protection to all ministers of religion, regardless of their denomination, abandoning the previously foreseen custodial sentence.

This legal framework presupposes the recognition of a public role, which is particularly evident in the obligation to inform the ecclesiastical authority in the case of criminal proceedings against a cleric. This obligation reflects a form of implementation of the principle of bilateralism, aimed at ensuring respect for confessional autonomy within the framework of State jurisdiction: indeed, Article 129 of the implementing provisions of the Code of Criminal Procedure—which obliges the judicial authority to inform the Ordinary of the competent diocese when a criminal proceeding involves a cleric or Catholic religious—incorporates the provision of the Additional Protocol to the Villa Madama Agreement of 1984, which binds the Italian Republic to notify the ecclesiastical authority of any criminal proceedings brought against ecclesiastics. At the same time, the prohibition for ministers of religion to influence voting by abusing their position reaffirms the neutrality of the democratic process, without denying them freedom of expression.

These provisions outline a balance between the protection of religious functions and the safeguarding of public order, avoiding both the marginalization of the religious phenomenon and the risk that it may turn into a form of domination. Generative secularism thus manifests itself in the State's ability to interact with religious denominations through a legal framework that regulates their presence in the public sphere without precluding their contribution to the social and cultural life of the country.

6. Final remarks

In the labyrinth of legal categories, the minister of religion is an elusive figure—a guardian of rites whom the State attempts to capture within the language of norms, almost as if wishing to possess its essence through the precision of a definition. But every definition is a frontier: it establishes a boundary and, in doing so, renders it rigid. The legal designation of minister of religion is, in this sense, the reflection of an ancient jurisdictional temptation—the desire to imprison the sacred within a recognizable form, to reduce the irreducible to a list of requirements, to determine, with the presumption of universality, what is instead merely the result of a contingent negotiation between powers, beliefs, needs, and histories.

And yet, as doctrine rightly emphasizes, space is never neutral.²² Temples are not merely buildings but maps of a social order; cities are not simple agglomerations, but structures of meaning in which the sacred and the secular intersect and contend for territory. Spatial justice does not merely determine who has the right to build a place of worship but interrogates the forms through which the sacred and the legal are inscribed within shared space.²³ Thus, the minister of religion is not only a function but a threshold—an intersection between two dimensions that law obstinately tries to separate, yet which in the reality of social life never cease to meet, to overlap, to blur.

When the law arrogates to itself the power to establish a priori who may be a minister of religion, it carries out an operation that is both regulatory and performative: it does not merely recognize, but creates; it does not only observe, but imposes. The jurisdictionalist error lies precisely here: in the illusion of being able to establish once and for all the criteria for belonging to a function that, by its very nature, eludes the fixity of norms and is redefined through encounter—with the community, with time, with necessity. The law, in other words, becomes a demiurge, forgetting that the sacred is always surplus, always beyond the word that seeks to codify it.

But if the minister of religion is a threshold, then his or her legal recognition should not be understood as an act of fixation, but as a process—a continuous dialectic. This is why it is appropriate to speak of secularism as a form of spatial justice, a principle that does not merely delimit, but allows for the recognition of stratifications, porosities, ambiguities. Its perspective suggests that generative secularism is not a barrier, but a field of negotiation, a device of translation between languages that would otherwise remain incommunicable. The same should apply to the legal definition of the minister of religion: it cannot be conceived as a closure, but as an opening—a threshold through which the sacred enters the secular and vice versa.

In this perspective, the role of the minister of religion is never static, nor reducible to a single function. He or she is not only a spiritual guide, nor merely a representative of a religious denomination before the State. He is an interpreter, a mediator, a witness of a reality that the law attempts to frame, but which exists before any definition. Just as religious spaces in contemporary cities are not merely physical structures, but signs of presence, memory, and ongoing transformation, so too the minister of religion is an index of the transformations in the relationship between law and religion—the point at which normativity meets experience and must reckon with its irreducible multiplicity.

Perhaps the law will continue to construct ever more sophisticated categories to classify ministers of religion, as though it were possible to reduce them to an absolute order. But the sacred—like space, like time—is always vaster than any of its representations. And the real challenge of generative secularism is not to imprison this vastness in a legal formula, but to accept its openness, to make it the place of an encounter that is never reducible to a simple act of recognition, but that is always, inevitably, an act of translation.

If we accept the idea that generative secularism is a space of negotiation and not a system of fixed delimitations, then the Concordat and the agreements (*intese*) cannot be viewed as mere instruments of legal techno-political regulation, but as mechanisms of translation between the language of the State and that of religious denominations. Just as spatial justice has been rightly described as an attempt to harmonize law and use, so too concordatarian law (*diritto pattizio*) could be understood not as an architecture of separated powers, but as a place where those powers meet and are redefined.

²² M.L. Vazquez, *Varieties of Religious Space. Freedom, Worship and Urban Justice*, Roma, 2024, pp. 135 s..

²³ «Any proposed new use of space, whether repurposing previously religious buildings or building new ones must engage a process of translation with past and present uses if it aspires to equity. Otherwise, it risks resorting to the kind of power moves that too often characterize urban decision making» M.L. Vazquez, *Varieties of Religious Space. Freedom, Worship and Urban Justice*, cit., p. 28

The Italian legal tradition has often treated the Concordat and the agreements under Article 8 of the Constitution as tools for delimiting the respective spheres of competence between State and religious denominations, in an attempt to avoid jurisdictional conflicts. But this jurisdictionalist approach risks turning them into acts of normative fixation, as if the relationship between religion and law were a problem to be resolved once and for all, rather than a tension to be managed over time.

If instead we adopt the perspective of generative secularism, then the Concordat and the agreements should be read as forms of mediation—as attempts, never definitive, to establish a common language between different normative systems. They should not be instruments to crystallize prerogatives or delimit spheres, but occasions to create a fluid legal space, capable of adapting to the mutability of society and of religious experience itself.

Within this dynamic, the minister of religion should not be defined *a priori* but recognized in his or her function as a mediator between the sacred and the secular. If doctrine brilliantly shows us that spatial justice is not an abstraction, but a practice built over time through dialogue among subjects with different needs, then the legal recognition of ministers of religion should likewise take place through a process of negotiation and adaptation—not through a rigid list of formal criteria.

The agreements could be the tool to preserve this fluidity, preventing the recognition of ministers of religion from becoming a mere concession of the State or a notarial registration of the sacred. They could serve to provide a flexible legal status that takes into account the pluralistic reality without falling into the temptation to standardize or crystallize. If secularism is a space of intersection between different systems of meaning, then the Concordat and the agreements cannot be viewed as accords that separate and delimit, but as instruments that facilitate the passage between different legal dimensions—as a bridge between the world of State law and that of religious normativity.

In this sense, we could say that the Concordat and the agreements should not serve to fix an order, but to ensure that order always remains open to transformation—not instruments of separation or privilege, but of interaction, capable of giving structure without stifling freedom, capable of creating an inclusive legal space where the sacred and the secular are not antagonists, but coexist in a constantly renegotiated balance. They are institutional agreements that should be understood as mechanisms of adaptation and mediation, capable of ensuring that the legal order remains open to transformation—whereas the current practice of “photocopy agreements” (*intese fotocopia*) betrays this very perspective and risks placing itself outside the constitutional framework, which demands the overcoming of a jurisdictionalist approach and the conception of concordatarian law not as a rigid structure but as a process in motion, in which the categories of the sacred and the secular do not oppose but fertilize one another (“not indifference toward religion”... “but protection of religious freedom in a pluralistic sense”).

However, as doctrine emphasizes,²⁴ the current configuration of bilateralism risks betraying this dynamic function, transforming itself into a selection mechanism that excludes many religious denominations from access to concordatarian instruments, consolidating confessional hierarchies that compromise the principle of equal dignity among religions. Here emerges the paradox of a system that, though formally based on bilateralism, in reality prevents genuine equal access to concordatarian law, subordinating the possibility of reaching an agreement (*intesa*) to contingent political choices.

²⁴ B. Hussen, *Rawlsian constructivism and the challenge of the principle of bilateralism in the relations between the Italian Republic and religious denominations: toward an inclusive model* (fn. 8).

If the Concordat and the agreements are truly to be instruments of generative secularism, they must shed their function as mechanisms of exclusion and become tools that guarantee all denominations the possibility of being recognized in the public space. The result otherwise is that bilateralism strays from its original function of regulating pluralism and becomes a tool that crystallizes the historical weight of certain denominations at the expense of others. This is not merely a religious issue, but one that more broadly concerns the construction of legal spaces within society: just as, in Vázquez's view, the management of urban space is never neutral and reflects relations of power, so too concordatary law reveals itself as a tool for organizing the visibility of religious communities, determining who may legitimately occupy public space and who must remain at its margins. If generative secularism requires us to rethink the relationship between State and denominations in more dynamic terms, then the entire concordatary framework must be reformulated to ensure that the legal recognition of religious communities is no longer a privilege granted at the discretion of the Government, but a right based on objective criteria accessible to all denominations. From this perspective, the greatest risk of the current system is that political discretion may end up consolidating a conception of secularism not as a space of inclusion, but as a mechanism for regulating difference, where some denominations are fully recognized and others are forced to move to the margins of legality. This is precisely what Vázquez describes when analyzing how spatial justice defines who may be visible in urban space and who remains confined to a peripheral dimension: access to concordatary law, like access to public space, does not occur neutrally, but responds to power dynamics that must be constantly questioned.

If we accept this interpretation, then the Concordat and the agreements cease to be mere normative acts and become arenas in which the very issue of religious inclusion in contemporary society is played out. The problem, therefore, is not only to increase the number of agreements, but to radically rethink the function of concordatary law, so that it is no longer a device that locks in the past, but a process open to the transformations of pluralism. Here lies the true fertilization between secularism and pluralism—not in the mere multiplication of existing legal categories, but in the transformation of the concordatary model into a mechanism that guarantees the continual renegotiation of the relationship between the State and the religious phenomenon, free from contingent political decisions.

Perhaps, then, the Concordat and the agreements should not be thought of as legal acts that close a matter, but as instruments that create a space of possibility, where the minister of religion is not a fixed figure, but an interpreter of the mutability of the relationship between religion and law, within the prism of a bilateralism that writes and rewrites itself continuously in the landscape of relationality.