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The meaning of 'Religion' in Maltese legal system

SUMMARY: 1. Introduction - 2. The meaningfully conditioning of catholic thoughts in the school and in the family life - 3. Conclusions about the meaning of religion in Malta.

1 - Introduction

The Republic of Malta, is a Southern European island country in the Mediterranean Sea, with the smallest national capital in the European Union, of which is a member since 2004, and member of Eurozone since 2008⁵⁹¹. In order to decode the meaning of religion in Malta, we must consider the fact that the country is an interesting example of the paradoxical coexistence of outdated confessionism and the unstoppable contemporary tendency to move towards cultural and religious pluralism. The centrality assigned to the Catholic Church does not affect the freedom of other confessions.

Malta has always had a tight relationship with religion. On one hand, we find the ancient story of Saint Paul shipwrecked in the bay between Mistra and Mgiebah, described in the Acts of Apostles in 28,2, where the Apostle defines the indigenous as "barbarians showed us extraordinary kindness". This event has been interpreted as a sign of blessing and divine predilection for the island⁵⁹². On the other hand, there is the presence of St. John's Knights of Jerusalem (The Order of Malta). For this reason Malta enjoys the privilege of a long Christian legacy and effectively become an Archdiocese in 1964⁵⁹³.

The Maltese religious population is composed more than 90% by Christians, generally belonging to the Roman Catholic Church, which is

⁵⁹¹ **M. HARWOOD**, *Malta in the European Union*, Routledge, London-New York, 2014.

⁵⁹² The Saint Paul tale could be used as symbol of opening to outsider and overcoming the fear of difference and cultural and religious prejudice, **A. GRIMA**, *Critical Mediterranean Voices*, in **S. GALEA, A. GRIMA**, *The Teacher, Literature and the Mediterranean*, Sense Publisher, Rotterdam, Boston, Taipei, 2014, pp. 103-104.

⁵⁹³ file:///G:/Malta/Malta,%20Religion%20and%20Social%20Profile%20_%20National%20Profiles%20_%20International%20Data%20_%20TheARDA.htm; <http://www.catholic-hierarchy.org/diocese/dmalt.html#details>.



also the main faith and the traditional religion of the State⁵⁹⁴, as found in Article 2 of Malta's Constitution, adopted on 21 September 1964⁵⁹⁵.

2 - The meaningfully conditioning of catholic thoughts in the school and in the family life

In Malta, religious freedom and freedom of conscience are incorporated in the same framework of legal protection. In fact, Article 40 of the Constitution states that "All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship." Article 45 recognizes the so-called principal of *equality at law*. This principle means that the government does not make any kind of discrimination - a sort of equality in front of the law - yet it does not mean that the government cannot make "normative differentiation" with regard to religious issues⁵⁹⁶.

In many aspects of life in Malta, there is very strong the influence dictated by the presence of a State Church, involving an anachronistic action of the Catholic Church's interference in temporal matters - an aspect that in many other Western countries has been marginalized. However, more can be said with regard to this aspect. At first glance, a legacy of *jus commune* appears to survive on the island, due to the fact that the same legal system makes use of civil law and Canon law at the same time. The "hybrid"⁵⁹⁷ Maltese legal system refers to Canon law, specifically with

⁵⁹⁴ P.W. BARKER, *Religious nationalism in Modern Europe. If God be for us*, Routledge, London- New York, 2009, p. 150. About the deep religious culture in Malta see J. BOISSEVAIN, *Ritual escalation in Malta*, in AA. VV., *Religion, Power and the Protest in Local Communities. The Northern Shore of Mediterranean Sea*, ed. by E.R. Wolf, Mouton Publishers, Berlin, New York, Amsterdam, 1984, pp. 163-184.

⁵⁹⁵ Constitution of Malta art. 2: "The religion of Malta is the Roman Catholic Apostolic Religion. But there is more. The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education" (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>). For a complete informations about Maltese legal system see J. DRAKE, P.G. XUEREB, E. BUTTIGIEB, *Malta in Information Sources in Law*, edited by J.R. Winterton, E.M. Moys, Bouker Saur, London, Melbourne, Munich, New Providence, N.J., 1997, pp. 307-320.

⁵⁹⁶ A. BETTETINI, *Report su Religion and Secular State: Malta*, in *Religion and the Secular State: Interim National Reports - The XVIIIth International Congress of Comparative Law (Washington D.C., 25 july-1 August 2010)*, under the direction of J. Martinez Torrón, W. Cole Durham Jr., Published by The International Center for Law and Religion Studies, Brigham Young University, Provo-Utah, 2010, pp. 494-504, specially p. 496.

⁵⁹⁷ See K. AQUILINA, *Rethinking Maltese Legal Hybridity: A Chimerich Illusion or a*



regard to marriage (see the marriage act. Art. 21). At times, it might seem that there is a limited space for a dualistic vision of the relationship between Church and State.

Pushing towards a more in-depth understanding of the legal structure of Maltese society, we must look at the educational system, influenced by the dominant Catholic thinking. According to the country's Constitution (Article 2), amended in 1974⁵⁹⁸, the duty to handle the education of young people in Malta, choosing ethics principles that contribute to found the legal system in the country, is attributed to the Catholic Church. This kind of confessionality has a special social sense, because reflects the real composition of the Maltese population: in fact the majority of Maltese citizens belong to that religion, but it doesn't mean it's a system closed to other religious option.

Currently, according to the Agreement between Malta and the Holy See in 1989⁵⁹⁹, there is the obligation to teach catholic religion, with the same status as other teachings, however national law requires, in every school, a Religious counselor (ex Art. 3 of the Agreement)⁶⁰⁰, who is different from the religion teacher, and who is also an integral part of school structures. This role does not attempt to add religious information, but rather tries to facilitate the spiritual and religious aspects to be expressed in the school setting⁶⁰¹.

However, new contemporary imprinting on Maltese institutions have had a strong influence, therefore in 2011 the Ethics Education Program

Healthy Grafted European Law Mixture?, in *Journal of Civil Law Studies*, vol. 4, 2011, pp. 261-283.

⁵⁹⁸ Act n. LVIII 1974 n. 4 (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27324&l=1>).

⁵⁹⁹ http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19930218_santa-sede-rep-malta-scuole_en.html.

⁶⁰⁰ Agreement between the President of Maltese Episcopal Conference and The Minister of Education of the Republic of Malta, Art. 3: "L'animazione religiosa e la guida morale degli studenti, come parte essenziale della loro educazione religiosa, sarà assicurata da "Religious Counselors" nominati dal Vescovo Diocesano nel cui territorio è situata la scuola ed aventi lo "status" di "Counselor in the Education Department" o uno "status" ad esso equipollente. Essi svolgeranno la loro attività educativo-pastorale secondo le direttive della Conferenza Episcopale Maltese; Articolo 4: L'"Education Officer (Religion)" sarà un ufficiale del Governo scelto tra i ministri ordinati della Chiesa Cattolica. Egli dovrà avere l'approvazione, non revocata, della Conferenza Episcopale Maltese".

⁶⁰¹ C. BORG, *Catholic Hegemony in Malta: State Schools as sites of Cultural reproduction*, in *Rethinking hegemony*, edited by T. Clayton, James Nicholas Publishers, Albert Park, 2006, pp. 65-67.



was founded in order to develop a more mature individual moral outlook and sensibility based on pluralistic values⁶⁰².

This initiative appears to be a realistic attempt to oust the Catholic Church from its monopoly on public education, denying the power to issue the moral rules of an entire country, as established by Constitution art. 2. The introduction of ethics in addition to religion offers a chance to build a “common ethical ground for an increasingly pluralistic society”⁶⁰³.

In my opinion, we should highlight the offer set forth by the Archbishop of Malta to the possibility that the same Catholic schools host the teaching of the Muslim religion⁶⁰⁴. A debate broke out⁶⁰⁵ and Archbishop Scicluna insisted saying “the Catholic ethos is one of inclusion that respects the religious freedom of Catholic parents as well as that of parents of other faiths”⁶⁰⁶. However, pursuant to Article 47 (5) of the Education Act the parents of any minor have the right to ask that their children to be exempted from religion lessons, although no alternative has been offered yet, and the students sit out the lessons alone or receive free lessons.

Another relevant test of the communion between religious and secular elements is the incorporation of the Faculty of Theology in the University of Malta following the Agreement between The Government and the Holy SEE in 1995, included in Article 84 of the Education Act. Academic degrees and diplomas conferred by the Faculty of Theology will have canonical and civil value.

The study of Canon Law only exists in this Faculty in the Department of Pastoral Theology, Canon Law and Liturgy. There is no faculty similar to our Ecclesiastical law, or comparative law studies, in the Faculty of Law.

⁶⁰² The purpose of the Ethics Program are first to develop a mature individual moral outlook and sensibility based on values that are uncontroversial in principle; second to make mature and informed moral judgments based on the values, in a pluralistic society; third to respect the integrity of those who think differently; Fourth: values of this kind correspond with democratic behavior.

⁶⁰³ *Religion as an identity totem*, in www.maltatoday.com.mt/comment/editorial/76361/religion_as_an_identity_totem#.WSfzyLhkbyY.

⁶⁰⁴ **J. PISANI**, *The Archbishop and Muslims* (in <https://yforc.wordpress.com/2017/03/18/muslim-lover/>).

⁶⁰⁵ **K. SANSONE**, *Debate on whether Islam should be taught at secondary schools heats up 'Exposure to other faiths helped foster tolerance'* (in <https://www.timesofmalta.com/articles/view/20170326/local/debate-on-whether-islam-should-be-taught-at-secondary-schools-h>).

⁶⁰⁶ **P. COCKS**, *Archbishop reassures Church schools 'will always remain Catholic'* (in http://www.maltatoday.com.mt/news/national/75533/watch_archbishop_reassures_church_schools_will_always_remain_catholic#.WS).



The monopoly of Catholic Church in the field of family life⁶⁰⁷ has been quite thoroughgoing until the Marriage Act in 1975, which provides for the introduction of civil marriage on the anglo-saxon model⁶⁰⁸. This reform produced a discrimination between catholics and non-catholics, because only the second type of citizen could contract a civil marriage in a religious form, and it would be valid from both, the religious and the civil viewpoint. So catholics had to celebrate two marriages until 1993 when the Marriage Agreement between Malta and the Vatican provided the recognition of the civil effects of canonical marriage⁶⁰⁹.

According to this Agreement, Church tribunals took precedence over the civil courts, only if the spouses are agree to choose a court, civil or ecclesiastical. This norm doesn't exist in others concordats. This prevents civil separation from taking place if annulment proceedings have already begun.

The Marriage Act was amended in 1995, and became definitively pluralistic, incorporating both the anglosaxon system both the canonic one. Registration of decisions delivered by Ecclesiastical Tribunals are now effected by the Court of Appeal, which delivers a decree declaring the decision enforceable in Malta, after a procedure similar to Italy (*delibazione*) art. 24 Marriage Act. This was a first step to re-engage a civil jurisdiction over marriage⁶¹⁰.

⁶⁰⁷ **A. ABELA**, *Relationship Education for Families in Transition between Different Cultural Value Systems. A Maltese perspective*, in H. Benson, S. Callan (eds.), *What works in relationship education: Lessons from academics and service delivers in the United States and Europe*, Doha International Institute for Family Studies, Doha, 2009, pp. 149-160.

⁶⁰⁸ "Civil effects are recognized for marriages celebrated in Malta according to the canonical norms of the Catholic Church, from the moment of their celebration", and "The Republic of Malta recognizes for all civil effects the judgements of nullity and the decrees of ratification of nullity of marriage given by the ecclesiastical tribunals and which have become executive". Generally see **R. FARRUGGIA**, *International Marriage and Divorce Regulation and Recognition in Malta*, in *Family Law Quarterly*, Vol. 29, No. 3 (Fall 1995), pp. 627-634; **ID.**, *The influence of Roman Catholic Church in Maltese Family Law and Policy*, in **AA. VV.**, *The Place of Religion in Family Law*, ed. by J. Mair-E. Orücü, Intersentia, Cambridge, 2011, pp. 187-206.

⁶⁰⁹ **A. BETTETINI**, *L'Accordo 3 febbraio 1993 tra la Santa Sede e la Repubblica di Malta sul matrimonio: brevi annotazioni*, in *Il diritto ecclesiastico*, I, 1997, pp. 103-115. See the Chapter 255 Marriage Act art. 2 (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lo&itemid=8749&l=1>).

⁶¹⁰ **A.S. PULLICINO**, *The Church-State Agreement on the Recognition of Civil Effects of Marriage and Declaration of Nullity Delivered by Ecclesiastical Tribunals*, in *Forum, A Review of the Maltese Ecclesiastical Tribunal*, No. 1, Vol. 6, 1995; Art. 24 Marriage Act, Chapter 255 Laws of Malta 1975, emended in 1995: "Registration of a decision as is referred to in article 23 shall be effected by the Court of Appeal. (2) A request for such registration shall be made by application filed in the registry of the said court, and which shall be served on the



The big change came in 2011 when divorce was introduced by a referendum and then with the Law n.218 2012, with the approval of a Catholic group (Kattolici)⁶¹¹.

In 2014 a third Additional Protocol has been added to the Concordat of 1993, allowing that an ecclesiastical tribunal will no longer prohibit a civil tribunal from declaring the same marriage to be null, for all civil purposes even on the same grounds of nullity. It appears a jurisdictional competition in place of the previous exclusivity.

Another strong wound to Church jurisdiction concerning marriage was produced in 2014 when the Civil Unions Act Chapter 550 of Laws of Malta⁶¹² was promulgated, defining equality among different types of families that already existed in social life on the island, opening the doors to same sex adoption⁶¹³.

Despite these new open viewpoints to secularist social transformations, Malta remains the stronghold of pro-life beliefs, deeply rooted in the local Catholic culture, even more than in Italy or in the other Catholic countries in Europe.

As a matter of fact, Malta is the only country in Europe where abortion is prohibited under all circumstances. Abortion is a crime pursuant to Articles 241-244, the Criminal Code of Malta, Chapter 9 of the Laws of

Director of the Public Registry and where it is presented by one only of the spouses, on the other spouse. (3) The respondents shall have a right to file a reply within twelve working days of the service upon them of the application. (4) Together with the application, the applicant shall file (I) One of the parties in the marriage is domiciled in, or a citizen of, Malta; (II) The Tribunal was competent to judge the case of nullity of the marriage insofar as the marriage was a Catholic Marriage; (III) The right of action and defence of the parties have been safeguarded in a manner substantially not dissimilar to the principles of the Constitution of Malta; (IV) In the case of a marriage celebrated in Malta after the 11th August, 1975, there has been delivered or transmitted to the Public Registry the act of marriage; (V) There does not exist a contrary judgment binding the parties pronounced by a court, and which has become final and definitive, based on the same grounds of nullity" (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8749&l=1>).

⁶¹¹ "Referendum is Catholics' chance to be protagonists in their own church" (in <https://web.archive.org/web/20110711065554/http://maltatoday.com.mt/news/referendum-represents-chance-for-catholics-to-become>).

⁶¹² Chapter 550, Civil Unions Act: art. 4.(1) Save as provided in this Act a civil union, once registered, shall *mutatis mutandis* have the corresponding effects and consequences in law of civil marriage contracted under the Act (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12172&l=1>).

⁶¹³ First gay adoption in Malta was given by FAMILY Court in 13 July 2016 (in <http://www.independent.com.mt/articles/2016-07-15/local-news/Malta-s-first-child-adopted-by-a-gay-couple-parents-appeal-the-public-to-educate-others-6736161027>; <http://www.timesofmalta.com/articles/view/20160713/local/court-gives-go-ahead-for-adoption-by-gay-couple-in-first-for-malta.618685>).



Malta. That said, current politics are now more inclined to legislate assisted pregnancies rather than legalize abortion.

In the evolution of the Maltese awareness as a modern country, increasingly distant from the catholic principles and, at the same time, inclined to the protection of human rights, we find Bill n. 113 of 2015, introducing an ideal change on the vilification of religion by creating a balance between two equivalent rights in a multicultural society: freedom of speech and freedom of worship⁶¹⁴.

By decriminalizing the vilification of religion, the Maltese government eliminates the no longer tolerable difference between the Roman Catholic Church and others, while also granting protection, which was previously restricted only to the Catholic religion⁶¹⁵, to a whole range of civil rights and liberties that the Constitution of Malta and the European Convention on Human Rights impose. But there is a Legal objection raised by the Curia and some jurists about the danger of circumventing the Constitution's rule which expressly establishes on "public morality or decency" in Articles 38, 40, 41, 42⁶¹⁶.

Due to the reduced number of members of others religions, the problem of regularization, by agreements or a general law, has not yet developed in Malta.

With regard to family life the marriages entered into according to the rites or usages of a different church, or religion, are recognized as civil marriages by art. 17 Marriage Act, if such churches or religions are generally accepted, or if the Minister responsible for public justice declares them as recognized by law⁶¹⁷.

⁶¹⁴ **T. ZAMMIT CUTAJAR**, *Freedom of Speech and Defamation*, *Times of Malta*, (February 11 2016); *Religion and Free Speech: It's Complicated*, *Index on Censorship* (1 March 2013) (in <https://www.indexoncensorship.org/2013/03/free-expression-and-religion-overview/>).

⁶¹⁵ **K. AQUILINA**, *Religion Needs Protection*, *Times of Malta*, July 22 2015, in <http://www.timesofmalta.com/Articles/view/20150722/opinion/Religion-needs-protection.577592>; **I. MARTIN**, *Vilification of Religion laws to be more reflective of today's society* (2nd February 2016), *Times of Malta* (in <http://www.timesofmalta.com/Articles/view/20160202/local/vilification-of-religion-to-be-decriminalised-to-be-more-reflective-of.601041>).

⁶¹⁶ The Curia opposed this solution, arguing that Articles 163 and 164 should not be repealed and eventually should be amended only to establish there it should be no difference between the sanctions imposed on those vilifying the Roman Catholic religion and those vilifying any other religion or non-belief. See **CONFERENTIA EPISCOPALIS MELITENSIS**, *Position Paper on the Decriminalization of the Public Vilification of Religion and Pornography*, 7th August 2015 (in https://www.um.edu.mt/__data/assets/pdf_file/0008/273095/POSITIONPAPER-AUGUST2015.pdf).

⁶¹⁷ Article 17[2] of the Marriage Act - Chapter 255 of the Laws of Malta (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8749&l=>).



Based on the terms in Article 8 of the Education Act (Chapter 327 of the Laws of Malta), the Minister of Education has the power to issue a licence to open a private school with religious orientation (In 1997 was established the first Muslim school). Very recently a controversy has arisen between The Moviment Patrijotti Maltin and Laiq Ahmed Atif, Ahmadiyya Muslim Community President, about the articulated proposal to remove Christian education from school and to allow Muslims to receive lessons in Arabic. The main argument to contest the proposal was the impossibility to understand what they are saying, with the danger of introducing extremist ideas contrary to Maltese way of life⁶¹⁸. But the extraordinary news is that Archbishop Scicluna welcomes the idea of opening Catholic schools to Islam, as I said before⁶¹⁹.

In any case, religious minorities enjoy the same freedom as the Catholic Church and no recognition procedure is currently required. Many rules of the Penitentiary Regulation of 1995, emended in 2016, are directed to guarantee religious freedom to all confessions⁶²⁰.

3 - Conclusions about the meaning of religion in Malta

Religion in Malta is not only a bond with past memory, tradition, the island's peculiar history, but it is also a guide for the present, through personal and community practice and through the shaping of national identity⁶²¹ thanks to the educational system, but it is also a guide for the future, even if perhaps in a new pluralistic view. However, the current situation in Malta, full of peculiarities, embodies a detachment from the concept of secularism adopted in western society⁶²². Basically, Malta

⁶¹⁸ **P.L. GANADO**, *Patrijotti hold protest over teaching of Islam in Church schools* (in <https://www.timesofmalta.com/articles/view/20170402/local/patrijotti-hold-protest-over-teaching-of-islam-in-church-schools.644249>).

⁶¹⁹ See *retro* p. 129.

⁶²⁰ Subsidiary Legislation 260.03 Prisons Regulations, 1st October, 1995, art. 40-45, Religious and moral assistance (in <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9674&l=1>).

⁶²¹ For a sociologic reconstruction of the idea of identity **Z. BAUMANN**, *Intervista sull'identità*, a cura di B. Vecchi, Laterza, Roma-Bari, 2008; about juridic consequences **G. PINO**, *Identità personale, identità religiosa e libertà individuali*, in *Quaderni di diritto e politica ecclesiastica*, 1/2008, pp. 119-151. About Maltese religious identity **A. ABELA**, *Shaping a National Identity*, in *International Journal of Sociology*, 35/4, 2006, pp. 22-25; **D.A. GADZDECKA**, *Rights, Religious Pluralism and the Recognition of difference: off the Scales of Justice*, Routledge, London-New York, 2015, pp. 59-60.

⁶²² About the birth of secularism in Europe: **H. LÜBBE**, *La secolarizzazione. Storia e analisi di un concetto*, Freiburg-München, 1965, ed. it by P. Pioppi, il Mulino, Bologna, 1970, p. 19;



signifies a strong civil recognition of religious principles in a modern formal constitution, in a period when all the pluralistic countries try to lighten any residual religious content from their legal systems, in order to allow for coexistence in the absence of contrasts that are ideologically aimed. It appears that Malta is an ancient State that derives its authority from God, or a paternalistic and ethic State, and not a modern, democratic and secularist State, which founds its legitimization not only by the equal political participation of all citizens, but also an open and neutral space for multicultural dialogue⁶²³. Malta would appear as a fundamentalist State, as a “subtle theocracy”⁶²⁴, anchored to the medieval theological myths, in which religious reason replaces the public reason who only can satisfies all citizen needs⁶²⁵. The Maltese political class still feels that it is a categorical imperative to align political choices to the religious beliefs of the majority of the country’s citizens. However, the weight behind the numeric criterion of the majority is still too strong. We live the time in which individuals use religion as an identification of the stability of their identity, be it ethnic or

G. PRETEROSS, *Prefazione a E.W. BÖCKENFÖRDE, Diritto e secolarizzazione. Dallo Stato moderno all’Europa unita*, Laterza, Bari, 2007, pp. VI-VII; **W. MÜLLER**, *La grande secolarizzazione e il tramonto della Chiesa dell’Impero*, in **W. MÜLLER, J. BECKMANN, L. COGNET, P.J. CORISH, O. KÖHLER, H. RAAB, B. SCHNEIDER, B. STASIEWSKY**, *La Chiesa nell’epoca dell’Assolutismo e dell’Illuminismo. Storia della Chiesa*, vol. VII, ed. J. Jedin, Prefazione **L. MEZZADRI**, Jaca Book, Milano, 1972, new ed. 2007, pp. 527-590. Alcuni cenni al criterio della maggioranza, superato dalle pronunce della Corte Costituzionale italiana 925/1988 e 440/1995, in **D. LOPRIENO**, *La libertà religiosa*, Giuffrè, Milano, 2009, pp. 153-154. About the italian doctrine of secularism: **C. CARDIA**, voce *Stato laico*, in *Enciclopedia del Diritto*, vol. XLIII, Giuffrè, Milano, 1990, p. 874 ss; **M. VENTURA**, *La laicità dell’Unione europea. Diritti, mercato, religione*, Giappichelli, Torino, 2001, pp. 106-107; **O. FUMAGALLI CARULLI**, *A Cesare ciò che è di Cesare, a Dio ciò che è di Dio*, Vita e Pensiero, Milano, 2006; **A. RIGOBELLO**, *Laicità e secolarizzazione*, in **AA.VV.**, *Lessico della laicità*, a cura di G. Dalla Torre, Studium, Roma, 2007, p. 197 ss.; **G. DALLA TORRE**, *Metamorfosi della laicità*, in **AA.VV.**, *Laicità e relativismo nella società post-secolare*, a cura di S. Zamagni, A. Guarneri, il Mulino, Bologna, 2009, p. 143 ss.; **G. FELICIANI**, *La laicità dello Stato negli insegnamenti di Benedetto XVI*, in **AA.VV.**, *Aequitas sive Deus, Studi in onore di Rinaldo Bertolino*, vol. I, Giappichelli, Torino, 2011, p. 239 ss.; **P. CAVANA**, *Laicità e libertà religiosa nella giurisprudenza della Corte di Strasburgo*, in *Res publica*, vol. 8, 2014, pp. 87-110; **A. FUCCILLO**, *Esercizi di laicità interculturale e pluralismo religioso*, Giappichelli, Torino, 2014.

⁶²³ **J. HABERMAS**, *Religion in the public sphere*, in *European Journal of Philosophy*, vol. 14, 2006, pp. 1-25, p. 5 and p. 24.

⁶²⁴ The expression is in **A. SCIBERRAS**, *Poll: Secular State or Subtle Theocracy? Article 2 of the Constitution of Malta?* (in <http://andrew-sciberras.blogspot.it/2009/08/poll-secular-state-or-subtle-theocracy.html>).

⁶²⁵ **J. RAWLS**, *The Idea of Public Reason Revisited*, in *The University of Chicago Law Review*, n. 3, 1997, p. 766: “In short, it concerns how the political relation is to be understood. Those who reject constitutional democracy with its criterion of reciprocity will of course reject the very idea of public reason”.



cultural, specifically in the contest of a forced migration due to war, poverty, or negation of the fundamental rights in their native countries. The construction of the modern State that occurs through the interruption of the bond between religion and violence - due to the modern virtue of tolerance - is perhaps a concept that should be reassessed as an attitude (tolerance) and as a practice (toleration). Today, pluralism is the new reality, which replaces tolerance⁶²⁶ and equality at the same time. This term embraces these concepts in an afterthought of the political choices that takes into account the different visions of the life, tightly connected to a religious option or a belief. However, it is quite evident that religion cannot be ousted from political discourse, due to its important role in a citizen's private life, sometimes also a greater motivation to participate in civic life (electoral battles on family issues or bioethics), and limiting religion to the inner courts could be dangerously short-sighted. Religion is a very human experience and contributes to the birth of a personal and collective conscience, and as a result the birth of a civil, complete and pacific living.

We should also note that Maltese society is developing, like many others in the Western world, leaving behind a recent fundamentalist age, and now trying to update a rather anachronistic legislation, in the pursuit of a balance between Catholic traditions and new pluralistic needs. In conclusion, divorce and the reform of vilification of religion are, for example, the mark of a new modern country ready to now accept the secularist influence, in which the meaning of religion is opening, not only, to traditional religious thoughts, but also all kind of beliefs, not strictly connected to a church. Malta offers protection to these beliefs based on human rights. Proof of the balance that has been reached today is evident in the lack of important leading cases regarding religious issues, in internal Courts as well as in front of the European Court of Human Rights, with the exception of the support to Italy in the famous matter of the crucifix - deeming the crucifix to be a symbol of European identity and heritage. It is quite likely that the reason behind this balance is found in what the Acts of Apostles say about the Maltese population, defining these people as having a "rare humanity" and "extraordinary kindness", and this quality is wonderfully expressed in the current work of the Archdioceses. I believe that thanks to some corrections to the Constitution, the great limit is the art. 2, the Maltese legal system can reach a perfect fusion of different cultural

⁶²⁶ "Lo Stato moderno non deve conoscere più tolleranza, ma solo libertà": **F. RUFFINI**, *La libertà religiosa. Storia dell'idea (1901)*, Feltrinelli, Milano, 1967, p. 11; for a modern reflection about tolerance: **M. WALZER**, *Sulla tolleranza*, Laterza, Roma-Bari, 1998; **M. D'ARIENZO**, *Actualité de la tolérance*, in *Revue d'éthique et de théologie morale, Le Supplément*, n. 227, 2003, p. 103 ss.



components. The country could still remain anchored to its origins and identity, yet without appearing as a legacy of the ancient *Respublica sub Deo* and the unique experience of *jus commune*.

ABSTRACT: The meaning of religion in Malta is strictly connected to the peculiar confessional setting of his legal order. At the base of this setting there is the art. 2 of the Constitution which confers only to the catholic church the role of country's moral guide. But despite the anachronistic nature of this norm, the republic of Malta is opening to the reality of a balanced religious and cultural pluralism.