

Lecture On Religion and the Maltese Constitution : some reflections

14th January 2026 at 1600 Boardroom

Probably the first taste of religion in constitutional affairs may be found in the mid-19th century in 1870 when a referendum was held to ask the limited electorate of that time, whether ecclesiastics could contest political elections.¹ The result was an astounding yes. 96% voted in favour, though only 59.53% of the 2464 eligible voters cast their vote. It is interesting to note that all referenda in Malta's constitutional history have returned a yes vote: integration in 1956, the Independence Constitution in 1964, the EU accession in March 2003, the divorce referendum in 2010 and the spring hunting one in 2014.

The second constitutional encounter with religion occurred soon after the granting of self-government in 1921. The Amery-Milner Constitution of that year which inaugurated the first Maltese bi-cameral legislature for internal affairs did not contain a religion clause. However, in the first sittings of the legislature, the first law to be enacted by the new Legislative Assembly and Senate was an ordinary law proclaiming the Roman Catholic Apostolic religion as the religion of Malta. The Act styled the Religion of Malta Act 1922 reflected a Declaration of the Legislature of 3 November 1922. The Act stated :

The Religion of Malta is, as it has ever been in the past, the Roman Catholic Apostolic religion. As from that very day of enactment and in the debate preceding the enactment, the legal issue was: is this a mere declaratory law, or does it have a concrete influence on the legislation enacted by the Legislature ?. The Act, as Archbishop Scicluna observes ²was clearly seen by ecclesiastical quarters as a guarantee and

¹ Several Catholic prelates were elected to the legislature after the granting of self government in 1921. Mgr Michael Gonzi and Mgr Ignazio Panzavecchia were elected to the Senate in 1921,. Mgr. Enrico Dandria ,Mgr Francesco Ferris , Canon Carmelo Bugelli and Mgr Alfonso Hili were elected to the Legislative Assembly

² Charles Scicluna: *Religion and the 1921 Constitution- Genesis and Implications* (KITE)(2019) 63 *et seq.*

safeguard of the Church's vested rights . That was the proper meaning in their view of the words "as it has ever been in the past" The question remained unresolved and was never court- tested.

The fact remains that the British authorities refused to insert a religion clause in the 1921 Constitution leaving it up to the Maltese legislature to make a declaration as it did in November 1921 and a law in 1922.

A religion clause was only inserted in the Independence Constitution. The so-called smaller parties ,sharing between them 9 seats out of 50 in the legislature immediately preceding Independence on 21 September 1964, insisted on an iron-clad protection clause for the Roman Catholic Church. Indeed, the clause which they proposed gave legal protection to the rights and privileges enjoyed by the Catholic Church constitutionalizing them. It laid down that:

The Roman Catholic Religion and the Roman Catholic Church shall continue to enjoy all those rights, privileges and prerogatives in accordance with the Laws of Malta and the Code of Canon law obtaining on the appointed day (i.e. 21 September 1964.)

The original version proposed by Government and later withdrawn provided that no human rights action could be triggered off on the basis of such rights and privileges . The proposal ran as follows;

Nothing done by the Roamn Catholic Church in the exercise of its spiritual powers and duties shall be held to be in contravention of any of the provisions of this Chapter.³

Nothing contained in or done under the authority of any law for the protection of the Religion of Malta shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

These provisions were later on withdrawn .

Ultimately the version which was accepted by the British was the following:

The religion of Malta is the Roman Catholic Apostolic Religion.

The State guarantees to the Roman Catholic Apostolic Church the right freely to exercise her proper spiritual and ecclesiastical functions and duties and to manage her own affairs.

³ The Chapter referred to is one containing a list of fundamental human rights

This provision was entrenched in the Constitution and could only be altered by a law obtaining the support of at least two-thirds of all the members of the House of Representatives and also needed approval in a referendum.

The religion clause was altered in 1974 constitutional amendments.

On 4th April 1969 on Good Friday, an agreement was reached between the Catholic Church and the Labour Party in opposition. The agreement provided that:

1. There has to be a distinction between the political community and the Church.
2. The ecclesiastical authorities have the right and duty to safeguard the spiritual and temporal interests of the Church and where necessary to teach which principles are right and which are wrong.
3. The Church shall not impose mortal sin as a censure.

I am reproducing this private agreement made public, because in 1974 part of it was culled and introduced in the Constitution. The current religion clause as amended in 1974 now reads as follows:

2. (1) The religion of Malta is the Roman Catholic Apostolic Religion.
(2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
(3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education

Before analysing this religion clause, it is pertinent to point out that the Maltese Constitution is not the only one in an EU country which contains a religion clause. Similar confessional proclamations are found in the Greek and Irish Constitution. Article 3(1) of the Greek Constitution reads as follows:

“The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodical canons and sacred traditions.”

The preamble of the Irish Constitution, even after the introduction of abortion in Irish law, states as follows:
“In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We, the people of Éire, Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who

sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves this Constitution. ”

First of all, it is interesting to note that while sub-article 2 is entrenched, and therefore may be changed only by a law which has the support of at least two-thirds of all the members of the House of Representatives , the first and third sub article namely the declaration that the religion of Malta is the Roman Catholic Apostolic religion and the compulsory instruction of the Catholic religion in State schools are not so entrenched ,and may be changed, indeed repealed, by a majority of one of all the members of the House. This can eventually lead to the absurd situation where a Government ,having a majority in the Maltese legislature would abolish the declaration relating to religion as well as compulsory religious instruction , but still the article stating that the right and duty to teach which principles are right and wrong would remain , since that clause need a two thirds majority in Parliament to alter.

As in 1922 the question arises: is this constitutional provision enforceable? Before answering this question it is pertinent to underline the provision’s legal significance, and its shortcomings.

It is interesting to note that compared with the 1964 Constitution this provision also imposes a duty on the State to provide for the instruction in Catholic religion in all schools belonging to the State .

The second point is that sub-article 2 is taken practically word for word from the Good Friday Agreement of 1969. It is doubtful whether such provision should have been inserted n a constitutional document , the supreme law of the land.

One can understand a provision constitutionalising the *right* of the Church to teach what is right and wrong. But what about the *duty*? And why is this duty

to teach what is right or wrong limited to the Catholic Church and not to other religious denominations?

Besides, does this mean that any person aggrieved by the inertia or silence of the Church on any matter of public and religious importance can sue the Church alleging an abdication of its constitutional duty?

The question revolves around the legal effects of this provision.

The fact that the religion of Malta is the Catholic religion has in practice not prevented the Government from passing through Parliament laws which are in direct contrast with the Catholic faith such as divorce, the freezing of embryos etc. These facts seem to indicate, therefore, that the provision is merely declaratory in nature. One can however argue that while this provision in no way limits a Government from passing legislation which is not in line with the tenets of the Catholic faith, this provision inserts a statement in our supreme law. Is it just a statement of fact?

This provision was tested in Court in only one case, which shall be delved into deeply considering that it is the only case decided by our apex Court in Malta which has interpreted this provision. This happened in the *Wahid* case⁴. In that case applicant, who was serving a life sentence for multiple murder, and had already spent 25 years in jail, argued that a law which *a priori* excluded the application of parole to persons serving such life sentence, went against the values of mercy inherent in the Catholic religion which is considered in article 2 to be the State Religion. The Constitutional Court did not accept this argument and stated that :

Article 2 of the Constitution is not a source of subjective rights but gives legal recognition to a state of historical fact, namely that the Roman Catholic Religion is embraced by a large majority of the Maltese people. The State of Malta, however, according to the Constitution is not founded on the said religion but on the principles of democracy, work and respect for fundamental rights....consequently while this Court certainly appreciates and greatly respects the teachings of the Catholic religion, even because it is recognized by the Constitution as the

⁴ *Ben Hassine Ben Ali Wahid v. Prime Minister et* (CC)(7 November 2016) (60/13).

religion of Malta, it is not bound in its judicial role by what is taught by the said religion, while it has to execute its functions according to the Maltese legal system and the international obligations assumed by the State of Malta.

The Court then went on to examine the other grievances of appellant and ruled in his favour in the sense that an *a priori* exclusion of parole in all cases relating to life imprisonment was an inhuman and degrading t. It ordered the Parole Board to examine his case, which it did, but the Board ruled against granting parole. Applicant then instituted a case in Court to declare that the exercise of the discretion by the Board was unreasonable but lost. He later committed suicide in prison.

The point can be made that article 2 is not devoid of meaning. For instance, would the abolition of the criminal offence of vilification of the Catholic Religion in the Criminal Code be inconsistent with this provision? Kevin Aquilina argues⁵ that “

It does not make sense, both from a logical and legal perspective, to declare the Roman Catholic Apostolic Religion as the religion of Malta in the highest law of the land to then allow its flagrant vilification with impunity. If the Roman Catholic Apostolic Religion is an important symbol for Malta, then the natural corollary is that it has to be protected by the criminal law. Otherwise, the constitutional recognition given thereto is rendered worthless. The deletion of article 163 of the Criminal Code may be challenged by any person in court in terms of article 116 of the Constitution on the basis of a popular action.”

A middle of the road approach by Professor Ian Refalo is that “an admission of belonging and an affirmation of a cultural identity as long as such affirmations are kept in proper check and are not allowed to overflow into divisiveness, is healthy and proper. Indeed, a constitution is not made solely of rules, laws and political usages, it is also made of symbols which permit to foster common identity and the sense of people.”⁶

⁵ See Aquilina K., *The Vilification of Religion* (TOM 22 July 2015):

⁶ Ian Refalo : *Constitutional Change in Malta* in *The President's Forum* (First and Second Edition) (Office of President) (2013) (Malta Govt. Printing Press)).

In Italy, following the signing of the Lateran Treaty on 11 February 1929, the State acknowledged the Catholic Faith as the religion of the State. Eventually in 1983 this provision was deleted but the vilification of any religion including the Catholic one is still a criminal offence.

In Malta the exact opposite has happened. We have retained the Catholic⁷ Religion as the State religion but abolished the crime of vilification of religion

It is interesting to note that when the crime of vilification of religion was introduced in our Criminal Code in the early thirties, it applied to all religions and not just the Catholic one although in respect of the latter, the vilification was more severely punished. Besides, vilification is not only harsh criticism but an act of ridiculing to the extent of spreading hate. In the *Abdilla* case,⁸ in 1962 a poster, stuck to the facade of a political party club at Zurrieq during a visit to that town by the Archbishop, with the Latin words *Ave Nero urbs quam incendisti te salutat* was not deemed to be a vilification of the Catholic religion but an criminal act of slander against the person of the Archbishop.

This leads us to the question whether everything contained in the Constitution is enforceable in a court of law. For instance, it is expressly provided in the Constitution in article 22 that the provisions of Chapter 2, namely the Declaration of Principles are not justiciable. However, this does not mean that they are of no relevance.⁹ Similarly article 2 in Chapter 1, is part of a written

⁸ *Police v. Rokku Abdilla et.* (Court of Appel Inferior 13 January 1962 Volume 46D (1962), Part 4, Page 788 it was stated: "Our Criminal law in the provisions envisaging the crime of vilification of the Catholic Apostolic Religion and that relating to whoever offends that religion by vilifying *inter alia* its Ministers, requires for the completion of the crime, ..the specific intention to vilify that religion "

"Il-Ligi Kriminali, fid-dispozizzjoni li tikkontempla r-reat ta' vilipendju lir-Religjon Kattolika Appostolika Rumana u dak ta' min joffendi dik ir-religjon billi jivvilifika "inter alia" il-Ministri taghha, ghandha titqies illi tirrikjedi ghall-integrizzjoni tar-reat, anke' ta' dak kontemplat fit-tieni lok, l-intenzjoni specifika fl-imputat li joffendi r-religjon

⁹ Durga Das Basu "Commentary on the Constitution of India Eight Edition" (2007) (Lexis Nexis) Volume III 4031: "If it cannot be denied that the Directives are part of the Constitution as much as the mandatory provisions, it follows that according to the rule of harmonious construction all parts of the Constitution must be read together, so that in the matter of interpreting the mandatory provisions, the court cannot ignore the Directive Principles."

Constitution . Perhaps, as correctly stated by the Constitutional Court, on its own such provision does not create rights and obligations ;but it can surely be used to interpret other parts of the Constitution which are enforceable such as the meaning of the word “person” in the context of the right to life in article 33.

Another provision of the Constitution which refers to religion is found in article 45 (9) as to the protection from discrimination, It is expressly provided for in the Constitution that :

(9) A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of this article

Freedom of conscience and worship

A fundamental right enshrined in our Constitution and in the European Convention on Human Rights is the protection of freedom of conscience and worship, closely linked to religion.

There have been three interesting cases related to this freedom in the context of religion.

In the first case,¹⁰ a government circular prohibiting the entry into state hospitals by hospital employees of newspapers condemned by the Catholic Church was deemed to be an unreasonable breach of freedom of expression but not of freedom of conscience.

The second case¹¹ met with success in the sense that applicant’s request was acceded to.

In 1983 Parliament passed Act No XI of 1983 which abolished perpetual pious burdens attached to property and prohibited for the future such burdens if they exceeded twenty five years in duration. The burdens generated revenue whereby

¹⁰ *Dr A Buttigieg vs Dr P Borg Olivier noe* (FH)(11 March 1963)(Mr Justice JH Xuereb; confirmed by CA (10 January 1964) and by the Judicial Committee of the Privy Council (29 July 1966)(ALL ER 459).

¹¹ *Mgr G. Mercieca pr et noe v Prime Minister* (FH)(24 September 1984)(Mr Justice S, Borg Cardona).

the celebration of Catholic masses for the repose of the souls of the departed was guaranteed. The extinction of such burden by law was considered to be not only in violation of article 37 of the Constitution (right to property) but also in breach of one's right to worship. It stated:

Although a testator leaves a material object to a foundation for the celebration of masses, such as funds, his intention is related to his faith; such as for instance leaving a golden object to adorn a statue of Our Lady; the scope is one of faith and devotion, for materially the statue does not require any embellishment.”

The law was therefore in breach of freedom of conscience and worship.

In the same case, Act No. X of 1983 which practically expropriated *ex lege* all the immovable property of the Catholic Church except that which was used for purposes of worship against irrisory compensation, was deemed to be unconstitutional.

A recent case was that of *Boni*.¹² In that case applicant's daughter was killed in a tragic traffic accident at Naxxar. She was buried by the authorities in a body bag, rather than dressed in coffin. Applicant who adhered to the Catholic faith alleged that this form of burial was in breach of his freedom of conscience and worship.

The Court ruled that:

It does not result that for a burial to be consonant with the norms of the Catholic faith it is necessary that the corpse be dressed at any cost; the witness only explained that a corpse whether in a burial ceremony or cremation, must be treated with respect and dignity.

In *Calleja*,¹³ the Constitutional Court considered that the tearing by a police officer of a poster with the words *Catholic Malta offended by the new Marriage law* amounted to breach of freedom of expression and assembly, and therefore

¹²*Salvatore Boni et v Chief Officer Mater Dei Hospital et* (CC)(23 June 2025)(234/20)

¹³*Mgr.Philip Calleja vs. Inspector Dennis Balzan noe* (CC)(23 June 1976) (52/75).

did not give any decision on the allegation that such police act amounted also to breach of freedom of conscience and worship.

Conclusion

This brief examination of principles, law, practice and case law goes to show that religion has played a pivotal role in constitutional history; it has also created norms of a legally mandatory nature such as compulsory religious instruction and others which still have to be interpreted in the future to gauge their full significance.