

THE CONSTITUTION AND RELIGION IN MALTA BETWEEN 1921 AND 1974

George Grima

Malta had eight Constitutions between 1921 and 1974.⁽¹⁾ Of these, the most important, in so far as religious matters are concerned, are the Self-Government (1921), the Independence (1964) and the Republic Constitution (1974). What these three Constitutions have in common is that they all recognize the right to freedom of conscience and worship. In fact, the formulation which the Constitution of 1921 gives of this right is retained in subsequent Constitutions. For this reason, it may sound somewhat strange to speak of the constitutional history of this right in Malta. Yet, it is possible to see this right in a historical perspective, because the *context* varies from one Constitution to the other. The 1921 Constitution contains only one section on religion which, in the first place, affirms everyone's right to freedom of conscience and worship and, secondly, prohibits religious discrimination in any public career. While declaring the Roman Catholic religion as the religion of Malta and guaranteeing freedom and independence to the Roman Catholic Church, the 1964 Constitution includes freedom of conscience and worship as well as equality of treatment, prohibiting religious (and other forms of) discrimination, among the fundamental human rights. The 1974 Constitution does substantially the same except that it practically abolishes the special guarantee which the Roman Catholic Church enjoyed under the previous Constitution.

Although freedom of conscience and worship has been forming part of Maltese Constitutions since 1921, it has been only very recently that it acquired the importance which it deserves. Ironically enough, the Catholic Church, which initially had so many reservations to and even objections against this basic right, has been the first one since Malta became independent to appeal to it in order to defend its freedom.⁽²⁾ In 1983 it sued

GEORGE GRIMA studied arts and theology at the University of Malta and at the University of Louvain from where he obtained a licentiate in philosophy and a doctorate in theology. He did post-doctoral work in the field of social ethics at the University of Tübingen with the help of a Fellowship awarded by the Alexander-von-Humboldt Foundation. He was ordained priest in 1972 and at present is a lecturer in Moral Theology at the Faculty of Theology, Malta.

1. For an analysis of the Constitutions of Malta between 1813 and 1961 see J.J. Cremona, *An Outline of the Constitutional Development of Malta under British Rule*, Malta, 1963.

2. An earlier case, involving the right to freedom of conscience and worship, was that instituted by the late Dr Anton Buttigieg as editor of *The Voice of Malta* over the circular of April 25, 1962 by which the Chief Government Medical Officer on behalf of the Minister of

the Government, alleging that the *Devolution of Certain Church Property Act (1983)* violates a number of fundamental human rights, including the right to freedom of conscience and worship.⁽³⁾ A year later, it challenged the constitutionality of the *Education (Amendment) Act (1984)*, alleging that it violates freedom of conscience and worship as well as other fundamental rights.⁽⁴⁾

There is, in my opinion, a historical reason which explains why the political community and the Church in Malta have taken so long to realize the significance and value of the Constitutional right to freedom of conscience and worship. The main religious *issue* seems to have centred always on the fate of the Roman Catholic religion and the Roman Catholic Church. This was already clear enough at the beginning of British rule in Malta when His Majesty the King was requested by the Maltese to uphold and protect their religion.⁽⁵⁾ Preoccupation with the local religion made the right to freedom of conscience and worship appear as something either to be opposed, because it was harmful or to be ignored, because it was harmless. In 1921 such a right was seen mostly as a form of unpalatable foreign interference in the Maltese religious way of life. In 1964 and 1974 it was accepted without much ado more or less as a legacy which could give the Church hardly any protection and the Government scarcely any trouble.⁽⁶⁾ The real issues on both occasions was not religious freedom but the freedom of the Church.

Responsible for the sudden discovery of the importance of the constitutional right to freedom of conscience and worship for the proper safeguarding of the liberty of the Church (and other religious bodies) has been the change of political circumstances taking place in recent years. Having managed to weaken considerably the guarantee with which the Independence Constitution provided the Church to ensure its freedom, the Malta Labour Party, which has been in government since 1971, thought that the door was then open for it to enact a series of legislation in order to diminish the Church's social influence. On its part, the Church, realizing that it could only depend on the protection provided by the Constitution to human rights, relied on the right to freedom of conscience and worship and other relevant human rights to restrain the State from interfering unduly in

Health prohibited the entry in the various hospitals and branches of the medical department of newspapers which were condemned by Church authorities. The decision of the Privy Council on the case is included in *Ghaqda Studenti tal-Liġi, Deċiżjonijiet Kostituzzjonali 1964 – 1978*, pp. 138 – 163.

3. The claim of the Church had been upheld by the Civil Court, acting as a Constitutional Court. The case is now before the Court of Appeal.

4. Court proceedings in this case were interrupted in November, 1984 after the presiding judge decreed that in the circumstances he could no longer continue to hear the case.

5. Cf. *Declaration of Rights of the Inhabitants of the Islands of Malta and Gozo*, reproduced in Cremona, *op.cit.*, pp. 77 – 79.

6. Note, however, the amendments which the Nationalist Party proposed to the Draft Independence Constitution to the section on the interpretation of Human Rights. Cf. below p. 31.

its own religious sphere. How far will this course of action help the Church has yet to be seen, for the matter is still pending before the local Court.

In the meantime, however, it is useful to try to trace the main stages in the development of the constitutional right to freedom of conscience and worship in Malta. The significance of this right emerges, in my opinion, if it is seen in the context of what the various Constitutions actually say on religion and in the light of the socio-historical background of the time.

The Self-Government Constitution: Freedom of Conscience and Worship as Religious Toleration

The 1921 Constitution gave the Maltese people the power to govern their purely local affairs. Among the limitations imposed by the British through this Constitution on the Maltese legislative assembly was one relating to religious toleration. Section 56 laid down the following two provisions:

- (1) All persons in Malta shall have the full liberty of conscience and the free exercise of their respective modes of religious worship.
- (2) No person shall be subject to any disability or excluded from holding any office by reason of his religious profession.

The first affirms the right to freedom of conscience and worship, while the second prohibits religious discrimination. Before examining the meaning of these two clauses on religion, it is important to bring out the Maltese reaction to them.

In the Draft Constitution which the National Assembly, a body set up to defend and work for the right of the Maltese people to self-government, had originally submitted to the British Government in 1919 there was only one reference to religion in the form of a declaration, made at the very beginning, that the religion of Malta and its Dependencies is the Roman Catholic religion.⁽⁷⁾ In making this proposal, it had no intention whatsoever to impose Catholicism on anyone. It had earlier rejected the request made by representatives of the Cathedral Chapter⁽⁸⁾ to lay down in the Constitution that the Roman Catholic religion is the religion of the Government of

7. Cf. *L'Assemblea Nazionale di Malta: 25 Febbraio 1919 – 27 Maggio 1921*, published in 1923 by order of the Maltese Parliament, 46–49, p. 46. This publication will be referred to as *L'Assemblea Nazionale*.

8. *Ibid.*, p. 137. The Cathedral Chapter was not in any way representing the official view of the hierarchy on the issue. In their joint Pastoral Letter of May 8, 1921, the Bishops of Malta and Gozo did not seem to have made any difference between “the religion of Malta” and “the religion of the Government of Malta” (*Ibid.*, pp. 104–106). Besides, members of the clergy taking part in the debate did not take a unanimous stand in favour of the Cathedral Chapter’s proposal. It was, in fact, Mgr. Panzavecchia who first proposed, in his second Draft Constitution, that the Constitution should begin with a declaration that the religion of Malta and its Dependencies is the Roman Catholic Religion (*Ibid.*, 143–148, p. 143).

Malta, precisely because that would prejudice unnecessarily the Maltese position *vis-à-vis* the Colonial Office by creating the false impression that such a clause was being proposed with a view to allow a future Government to engage in religious persecution.⁽⁹⁾

The amendment which the Cathedral Chapter submitted raised a crucial point which, unfortunately, had not been discussed fully at the time. Why was it acceptable for the Constitution to declare what is the religion of *Malta* but not what is the religion of the *Government*? Where exactly did the difference lie? In fact, there was quite an important difference, since Malta stood for *Maltese society*, while Government stood for *civil authority*, the former being a wider concept than the latter. Society includes the political dimension, that is, the exercise of power on behalf of society as a whole, but it embraces other dimensions as well, including the religious dimension which the Government is bound to respect as an essential feature of human life and, at the same time, to recognize as a sphere in which it is not competent to interfere. In choosing to include in the Constitution simply that the religion of *Malta*, rather than the religion of the *Government* of Malta, is the Roman Catholic religion, the local political community wanted to make a factual rather than a normative statement, to say what *is* rather than what *is to be* the religion of Malta.⁽¹⁰⁾

Surely, the Cathedral Chapter had no intention whatsoever of making Catholicism compulsory for anyone in Malta. Citing a manual of moral theology, its representative in a sub-commission of the National Assembly commission explained that the purpose behind the proposal was to affirm constitutionally that in framing its laws the local Government should be inspired by the religious feelings shared by the entire people of Malta.⁽¹¹⁾ Catholic social teaching itself had been insisting on the duty of the State to profess the true religion (i.e. Catholicism) and to govern in accordance with natural and divine law.⁽¹²⁾ State confessionality in the Catholic social tradition presupposed the desacralization of political power. It was the confession that power should never assume an absolute character and elevate itself to a place which actually belongs to God.⁽¹³⁾

In spite of its positive intentions, Catholic teaching on the confessional State, however, encountered a serious problem in explaining how a Catholic State was to deal with people professing a different religion or no religion at

9. *Ibid.*, p. 44.

10. In its observations on the Draft Constitution proposed by the British Government in June 1920, the Chamber of Advocates noted that the purpose of a constitutional statement declaring that the religion of Malta is the Roman Catholic religion is *to state a fact*. *Ibid.*, 55 – 65, pp. 61 – 62.

11. *Ibid.*, pp. 161 – 162. The manual quoted is Petro Scavini, *Theologia Moralis*, Vol. IV.

12. Cf. Leo XIII, *Immortale Dei* (1885).

13. Cf. John Courtney Murray, "Leo XIII on Church and State: The General Structure of the Controversy", *Theological Studies*, Vol. XIV (1953), pp. 1 – 30; "Leo XIII: Separation of Church and State", Vol. XIV (1953), pp. 145 – 214.

all. Although this teaching affirmed unambiguously the voluntary character of the act of faith and so excluded categorically the imposition of the faith, it maintained that Catholicism alone, being the true religion, had in principle the right to exist in society, that is, to have public recognition; other religions should be tolerated out of deference to the people professing them but their social manifestation and public exercise should be regulated according to the principle that truth alone has rights, while error has no rights.

The option of the local political community to ask for the constitutional identification of the religion of Malta rather than that of the Government marked a notable achievement in the history of religious freedom in Malta. In identifying the particular religious character of the Maltese way of life (as a socio-historical reality), the Constitution would not interfere in any way in the legitimate autonomy of the political order. Civil authority would certainly be expected to take into account in its legislation the fact that Maltese society is a Catholic society. But this would follow from a purely political principle, namely, that the State is meant to serve the people. Besides, a non-confessional State in a constitutionally declared Catholic country would enjoy the necessary freedom to legislate in such a way that the rights of non-Catholics would be duly and fully respected.

The National Assembly left out from its Draft Constitution any provision guaranteeing specifically the freedom of the Church. This was not an oversight. In fact, the Assembly discussed a motion, which seems to have had a fairly wide backing among the clergy, exactly on this matter.¹⁴ The motion said that Parliament should have no power to enact legislation which was harmful to the interests and freedom of the Church. This motion was defeated. But the reason was not that the freedom of the Church was a controversial issue at the time. On the contrary, those who spoke against the motion held that a constitutional provision of that kind reflected badly on the individual members of Parliament, since it presumed that they were not already so well-disposed toward the Church that they would defend spontaneously its interests and freedom. Besides, they held, members of Parliament, being actually Catholic (though they did not need to be so), would be much more effectively deterred from passing legislation hostile to the Church by means of the provisions of Canon Law than those of the Constitution. Such an argument was plausible in the socio-historical circumstances of the time. For the time being, a specific clause in the Constitution guaranteeing the freedom of the Church was judged to be

14. The motion read: "Nessuna legge si potrà avanzare per la discussione nelle due Camere, tendente a ledere gli interessi e il culto della Chiesa Cattolica Apostolica Romana, dovendo detti interessi e libertà di culto godere il privilegio riconosciuto agli interessi imperiali". For the debate on this motion in the National Assembly cf. *L'Assemblea Nazionale*, pp. 45 – 46. The proposal was originally made by the (Malta) Cathedral Chapter (*ibid.*, p. 137) and the College of Parish Priests of Gozo (*ibid.*, p. 150). The motion was presented in the National Assembly by Mgr. Panzavecchia (*ibid.*, p. 45).

superfluous in view of the fact that Maltese society, including the political community, took such freedom for granted.

But there is another point to consider. In my opinion, the National Assembly had given the declaration which it wanted to include in the Constitution, namely, that the Roman Catholic religion is the religion of Malta, so much weight that it did not see any reason why the Constitution should explicitate that the Church would be free to exercise its mission. This emerged, indirectly at least, at a later stage when the Assembly met to submit its own observations on the British Draft Constitution. The latter contained only one clause on religion (a) asserting everyone's right to freedom of conscience and worship and (b) prohibiting religious discrimination in any public career.⁽¹⁵⁾ In 1906 the British Government had already proclaimed its intention of regulating the exercise of religion on the basis of the principle it was enunciating in its Draft Constitution.⁽¹⁶⁾

The National Assembly, having proposed once more to include in the Constitution (this time heading the section on religion) a declaratory statement saying that the Roman Catholic religion is the religion of Malta, agreed to propose a reformulation of the right both to freedom of conscience and worship and to equality of treatment.

In place of the categorical affirmation of everyone's right to full freedom of conscience and worship, as stated in the British Draft Constitution, the National Assembly proposed:

“Either ‘Every person professing a religion other than the Roman Catholic Religion shall be tolerated in the exercise of this religion’.

Or ‘No person professing a religion other than the Roman Catholic Religion shall be molested because of his religious convictions or in any way hindered from the exercise of his worship’.”⁽¹⁷⁾

The way in which the National Assembly was proposing to reformulate the right to freedom of conscience and worship showed that the Roman Catholic Religion was not being placed on the same level of other religions. The right of Catholics to exercise their religion, individually and collectively, in private and in public, was taken as self-evident or, one may say, as a corollary of the constitutional declaration that the Roman Catholic religion is the religion of Malta. Others would also be allowed to practice their religion, because Maltese society would be constitutionally bound to tolerate the practice of a religion other than Roman Catholicism. More

15. British Draft Constitution published in the Government Gazette of June 12, 1920, section 56 (1) – (2).

16. His Majesty's Order in Council, October 27, 1906.

17. *L'Assemblea Nazionale*, pp. 54, 77.

simply, one may say that in Malta, a Catholic country, Catholics would have *religious freedom*, while others would have *religious toleration*.

The amendment which the National Assembly proposed to the provision in the British Draft Constitution on religious discrimination⁽¹⁸⁾ confirmed that the local political community was drawing a line, implicitly or explicitly, between Catholics and non-Catholics, granting full freedom to the former and restraining, where necessary, the freedom of the latter. Though religious discrimination was to be prohibited in general, there were cases in which a certain degree of religious discrimination might have to be accepted in the interest of the common good. Health and education were the two most sensitive areas in this respect. Should not Maltese patients in public hospitals and clinics have the services only of Catholic nurses and doctors who would be in a better position to understand their religious needs? Should not teaching in public schools be open only to those who profess the Catholic religion, given the great risk to which the faith of children and young people would be exposed through the employment of non-Catholic teachers in public schools? This was one of the most hotly debated issues at the time. Eventually, the National Assembly agreed to propose the following amendment to 56-(2) of the British Draft Constitution:

“No person shall be subjected to any disability or excluded from holding any office by reason of his religious profession, provided that persons not professing the Roman Catholic Religion may be debarred from holding any office connected with public instruction or education”.⁽¹⁹⁾

The fact that the local political community justified religious discrimination in *one* case only, that is, in the interest of the spiritual welfare of Maltese children and young people in general, showed, at least in the circumstances, how wide was the scope of religious toleration it was prepared to admit. The fact, however, of allowing even a very limited form of religious discrimination proved that the notion of *full* freedom of conscience and worship was still unacceptable. The limitations which the Maltese political community in the early twenties contemplated to impose regarding the exercise of freedom of conscience and worship went beyond those dictated purely by public safety, public order, public morality or decency, public health or the protection of the rights and freedom of others. The right to freedom of conscience and worship, it was supposed, could also be restrained in the interest of a *spiritual* good: the religiously sound upbringing of children and youth. That meant that the Constitution, as envisaged from the Maltese point of view, was to give Government the necessary power, in the first place, to cater for the rights of the Catholic people in

18. Section 56 (2).

19. *L'Assemblea Nazionale*, pp. 54, 77.

Malta and, secondly, to protect the religious freedom of others in so far as such freedom was compatible with the legitimate religious interests of the Maltese people. The deep consciousness of the obligation of the Government to keep always in view the fact that Malta was a Catholic country led the local political community to look at freedom of conscience and worship with some reservations.

The Colonial Government stuck to its original position. It rejected the Maltese proposal to introduce a new clause recognizing the special historical and social status of Roman Catholicism in Malta and to amend the clause on freedom of conscience and on religious discrimination. Explaining its decision on the matter, the Secretary of State said that the Constitution was not the proper document to declare what is the religion of the country. The Constitution should lay only the essential framework for self-government, imposing on the Maltese Parliament only those limits which were really necessary in the circumstances. Parliament remained free to make whatever legislation it deemed proper regarding the "security, well-being and public recognition of the Catholic Church in Malta" as well as "the safeguarding of their (i.e. the Maltese) religious institutions and the maintenance of the faith of their (i.e. Maltese) fathers".⁽²⁰⁾

In the situation, the Maltese could only proceed to implement the proposal of the British Government and enact that the Roman Catholic Apostolic religion is the religion of Malta.⁽²¹⁾ This was the first Act of Parliament passed under the Self-Government Constitution as a symbolic gesture of protest against the Colonial Government and a reaffirmation of the general local feelings on the matter.⁽²²⁾

This is not the place to discuss at length the position of the Colonial Government. Suffice it to say that when a Constitution is stating what is the religion of the country, it is serving to identify the particular cultural and social make-up of the country in question; it is a way of expressing somehow the national identity. In taking cognizance of certain characteristic features of society, the Constitution reflects the general feelings, attitudes and way of life of the people involved. This is not out of place, for people are not abstract individuals but concrete human beings whose sensibilities and outlook on life have been moulded through their social and historical experiences in which religion very often plays a decisive part. In the context of the Maltese determination to assert their own self-identity as a nation having its own history and religion the emphasis which the National Assembly placed on the declaration that the religion of Malta is the Roman Catholic religion acquires a special significance. Such a declaration would

20. Letter of L.S. Amery for the Secretary of State to Governor Plumer, dated 9th April, 1921. Reproduced in Cremona, *op.cit.*, pp. 118 – 129, p. 120.

21. *The Religion of Malta Act (1922)*.

22. The debate in the Legislative Assembly of Malta is reported in the *Official Report of the Debates*, First Session – First Legislation, Vol. I, pp. 80 – 86; 537 – 541.

have expressed in a very important way the major aspiration of the Maltese at the beginning of the present century.

Taking the 1921 Constitution as it actually stood, however, one may ask: what was the position of the Roman Catholic religion and the Church under that Constitution? The answer is quite simple: People professing the Catholic faith had *at least* the same liberty to follow their conscience and to exercise their religious mode of worship as anybody else. This was the minimum which Parliament had to grant them. In this case the minimum consisted in *full* freedom of conscience and the free exercise of *their respective mode* of religious worship. In other words, the Constitution in 56 – (1) was recognizing the right of Catholics (and others) to act according to the dictates of their conscience and to worship God according to the principles of their faith. Recognition of the right to freedom of conscience and worship constituted the only possible constitutional basis of the Church's (and other religious bodies') claim to exist and operate in society freely and peacefully.

The 1921 Constitution, however, was not restraining the local Government from enacting such legislation as it deemed necessary in order to protect and promote the Catholic religion as well as to safeguard and help its institutions in the light of the special place which Catholicism held in Maltese society. As interpreted by the Colonial Government, the right to freedom of conscience and worship bound the State not to interfere in matters of conscience and religion but left it free to provide those conditions which it judged to be necessary to help the Maltese people to exercise their religion in a fuller way. So in recognizing freedom of conscience and worship, the State was declaring not its indifference to but its concern about the exercise of religion in Malta both on an individual and a collective level.

The sub-title which the 1921 Constitution gave to the section on religion is very significant, because it indicated the philosophical context in which the Constitution was seeing freedom of conscience and worship as well as religious non-discrimination. The context was clearly that of *religious toleration*. As it has been pointed out already, Catholic tradition accepted the principle of religious toleration but in a different sense. The argument was that the Church alone had, strictly speaking, the right to operate freely in society, for it alone professes the true religion. Others had no such right but they should be tolerated. Society should, therefore, ensure religious freedom for Catholics and religious toleration for others. The Constitution used the concept of religious toleration more in the Lockean sense, that is, to express the duty of the State and society in general, including churches, to respect everyone's right to follow one's own conscience and practise one's own religion.⁽²³⁾ The notion implied that freedom of conscience and worship was a human right. Nevertheless, the Maltese interpreted clause

23. Cf. John Locke, *The Second Treatise of Civil Government and A Letter Concerning Toleration*, ed. and introd. by J.W. Gough, Oxford, 1948, pp. 121 – 165.

56—(1) and (2) more as an imposition by a foreign power to limit the jurisdiction of local Parliament than as an inalienable human right.

The Independence Constitution: Freedom of Conscience and Worship as a Fundamental Human Right

The Independence Constitution recognized the Roman Catholic religion as the religion of Malta, guaranteed the Roman Catholic Church the autonomy necessary to exercise its ecclesiastical functions and manage its own affairs, affirmed the right to full freedom of conscience and worship and prohibited religious discrimination:

- 2—(1) The Religion of Malta is the Roman Catholic Apostolic Religion.
 - (2) 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.
- 41—(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society.
- 46—(1) ... no law shall make any provision that is discriminatory either of itself or in its effect.
- (2) ... no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.
 - (3) ... 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not subject or accorded privileges or advantages which are not accorded to persons of another such description''.

The major difference between the Self-Government and the Independen-

dence Constitution lies, in my opinion, not so much in the recognition which the latter takes of the special status of the Roman Catholic religion in Malta as in the specific guarantee of freedom which it gives to the Roman Catholic Church. The desirability of giving this constitutional guarantee was discussed in connection with the Constitution of 1921 but it did not gain the necessary support especially among the lay political community. While there was national unanimity on the need to include in the Constitution that the Roman Catholic religion is the religion of Malta, it was practically only the clerical side which insisted that the freedom of the Church should be guaranteed explicitly. Differences of opinion on this matter, however, were of minor importance in practice, because, as it has been noted already, the general assumption was that Parliament should not restrain the legitimate freedom of the Church in any way.

The socio-political context in the sixties was different.⁽²⁴⁾ The debate on the Independence Constitution raised the question about the relationship between Church and State. The Constitution was creating not simply a State which was sovereign in relationship to other States but also a State which was autonomous in relationship to the other institutions in Maltese society, particularly the Church which had traditionally exercised considerable influence. The authority of the new Maltese State *vis-à-vis* the Church was the principal issue underlying the discussions on the religious question.

There were two main currents of thought, one emphasising the autonomy of the *Church* in relation to the State, the other emphasising the autonomy of the *State* in relation to the Church, one maintaining that the Constitution should restrain the power of the State, the other maintaining that the Constitution should leave the State free with respect to its relations with the Church. The Church itself played a very active role in the whole issue, having already pronounced itself concerning the threat which the Malta Labour Party, the party campaigning for the secularization of the State, posed for the free and effective exercise of its mission in Maltese society. The Church felt that its position was so precarious that it even declared it a mortal sin to vote for the Malta Labour Party and imposed a number of ecclesiastical sanctions on its members and supporters.⁽²⁵⁾ Under-

24. Cf. Adrianus Koster, *Prelates and Politicians in Malta: Changing Power-balances between Church and State in a Mediterranean Island Fortress (1800–1976)*, Assen, The Netherlands, 1984, pp. 151–196.

25. The Party leader and members of the Party executive were interdicted, while well-known supporters were refused Church burial and Easter house blessing. Cf. Koster, *op.cit.*, pp. 169–185. The objections of ecclesiastical authorities against the Malta Labour Party stemmed in general from the fact that the Party called itself a *socialist* party. The approach of the local Church to socialism was influenced mainly by the teaching of Pius XI on the matter (*Quadragesimo Anno*, nn. 111–126). In this encyclical the Pope noted the developments that had taken place within socialism but he reaffirmed the incompatibility of Catholic social teaching with socialism in so far as it implied, among other things, the laicization of society or the creation of a form of life from which God is absent and in which religion is doomed to a purely private existence. The Church in Malta seemed to have been very much afraid that it

standably enough, this made the party concerned very much conscious of the actual power of the Church and very strongly interested in restraining such power. In my opinion, the problem would not have been solved merely by a more qualified approach on the part of the Church, for the key problem was whether the party promoting the concept of a lay State was actually prepared to allow the Church the freedom to which it was entitled in a democratic country.

The side favouring the traditional position of the Church submitted two proposals to ensure the Church's freedom under the new Constitution. The pro-Church minority parties proposed the reaffirmation of the status-quo:

“The Roman Catholic Religion and the Roman Catholic Church in Malta shall continue to enjoy all those rights, privileges and prerogatives, in accordance with the laws of Malta and Code of Canon Law obtaining on the appointed day”.⁽²⁶⁾

The party in government proposed to exempt the Church in the exercise of its spiritual powers or duties and the State in protecting the religion of Malta from the provisions of human rights:

“48 (10) Nothing done by the Roman Catholic Church in the exercise of its spiritual powers or duties shall be held to be in contravention of any of the provisions of this Chapter.

(11) Nothing contained in or done under the authority of any law for the protection of the Religion in Malta shall be inconsistent with or in contravention of any of the provisions of this Chapter”.⁽²⁷⁾

This proposal betrayed a certain prejudice against fundamental human rights, particularly freedom of conscience and worship and religious non-discrimination. Rather than looking at such rights as giving a foundation to the Church's own claim to freedom and equality, the Government of the day feared that human rights could somehow be interpreted and applied to restrain the Church's freedom of action.

Unfortunately, neither those in favour nor those against explicit constitutional recognition of the Church's right to freedom saw the relevance of approaching the whole issue from the point of view of the fundamental human right to religious freedom. Those in favour regarded

would lose its legitimate freedom under a socialist Government. Cf. the *Lenten Pastoral Letter* of 1960, Empire Press, Valletta, p. 10, where the bishops of Malta and Gozo referred to the socialists' attempts in other countries to monopolize the educational system and suppress private schools. Cf. also, the *Pastoral Letter* issued on 1/9/1964 in commemoration of the Independence celebrations in which Mgr Gonzi stated that the Church opposed only those constitutional changes which could harm and even destroy Catholic traditions, denying the Church its true freedom.

26. Koster, *op.cit.*, p. 188.

27. *Proposed Constitution for Independence*, 1964, section 48.

the right to full freedom of conscience and worship as an insufficient guarantee of or even as a possible hindrance to the Church's freedom. Those against appealed to the early liberal principle about the equality of all religions to justify their demand for narrowing down the Church's sphere of influence; while affirming the right to freedom of conscience and worship, they failed to see the practical implications of this right for the freedom of the Church in a truly democratic society.

The outcome of the whole (very hot) debate was, however, not altogether unsatisfactory. Full freedom of conscience and worship as well as religious non-discrimination were recognized as fundamental human rights and, therefore, as limits to civil power in religious matters. Besides, after declaring that the Roman Catholic religion is the religion of Malta, the Constitution proceeded to affirm the *autonomy* of the Church in the exercise of its specific mission. In my opinion, the autonomy of the Church was already implied in the fundamental human right to full freedom of conscience and worship. It was affirmed separately more for sociological and historical than for strictly logical reasons. In Malta as in Italy (to mention only one example), where the Roman Catholic religion has played a dominant rôle for centuries, the problem of religious freedom very often reduced itself chiefly to the problem of Church-State relations. The Concordat between the Republic of Italy and the Holy See, signed in 1984, after referring in the preliminary section to the modern concept of religious freedom, devoted the very first article to the affirmation of the independence and sovereignty of both Church and State in the respective spheres of their own competence.⁽²⁸⁾ The Independence Constitution did basically the same thing, the reason being, obviously, that of laying down the fundamental principle for the regulation of healthy relations between Church and State. Apparently, however, the party promoting the secularization of the State was not in favour of the way in which the Independence Constitution formulated this principle, as one can see from an examination of the amendment of article 2 (2) introduced, on its insistence, in the Republic Constitution.

The Republic Constitution: Freedom of Conscience and Worship as Basis for the Freedom of the Church?

The Republic Constitution made several amendments to the clauses of the Independence Constitution on religion. For subsection 2 (2) it substituted the following:

“2 (2) The authorities of the Roman Catholic Apostolic Church have

28. “La Repubblica italiana e la Santa Sede riaffermano che lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani, impegnandosi al pieno rispetto di tale principio nei loro rapporti ed alla reciproca collaborazione per la promozione dell'uomo e il bene del Paese”. Concordat between the Holy See and the Italian Republic, Roma, 1984, art.

the duty and the right to teach which principles are right and which are wrong”.

Right after this, it introduced a new (unentrenched) subsection:

“2 (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all state schools as part of compulsory education”.

Regarding 41 (1), it laid down the following two provisions:

“41 (2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attended the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:

41 (3) Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes, and except so far as that requirement is shown to be reasonably justified in a democratic society”.

The Republic Constitution includes also a new section on corrupt practices which, as I shall say presently, has to be read especially in the light of the Malta Labour Party’s dispute with the Church in the sixties.

Like the other Constitutions, the Republic Constitution has to be seen in the socio-political context of the time. Being in government, the Malta Labour Party was in a much more favourable position this time to implement its ideas on religion than it had been a decade before. Unfortunately, the whole religious question reduced itself again to the problem of Church-State relations. For the ruling party the main target was to water down the obligation which the Independence Constitution had imposed on the State to respect the autonomy of the Church.

The step which the Labour Government was taking could not but raise certain fears about its future intentions. Was it preparing the way to interfere in the legitimate freedom of the Church? It was somewhat difficult to answer this central question in the circumstances. The local Church upset many people by keeping silent on an issue in which it was directly involved and for which it had fought so strongly in the early sixties.⁽²⁹⁾ The Government found it politically convenient to remove the highly controversial matter from the arena of public debate by declaring that Church

29. Cf. Koster, *op.cit.*, pp. 231 – 235.

authorities in Rome had already given their approval to the proposed amendments.⁽³⁰⁾ It seemed however, that the Holy See had not actually agreed with the specific amendments which the Government had submitted but that it had simply raised no objections, in the light of the clarifications which were made, to the positive consideration of such amendments.⁽³¹⁾ Lack of proper public information on what was going on behind the scenes indicated that the future of the Church under a Labour Government was somewhat uncertain.

The discrepancy between what the Malta Labour Party had agreed to concede to the Church in 1969 and what it was proposing now as a substitute for 2 (2) was another possible cause for concern. The agreement, which the Malta Labour Party and the local Church reached in 1969 and which brought to an end, at least for the time being, the dispute that they had during the previous decade, included acceptance of the duty and the right of Church authority (a) to safeguard its spiritual and temporal interests and (b) whenever need arises, to teach which principles are right and which are wrong.⁽³²⁾ Basically, this was only a reformulation of the existing constitutional provision declaring the State's obligation to respect the independence and sovereignty of the Church in its own proper sphere. Unfortunately, the Malta Labour Party proposed to include in the Republic Constitution only part of what in 1969 it had agreed that the Church had a right to. In fact, it left out that the Church had also the *right* to safeguard its spiritual and temporal interests. This omission revealed, even if indirectly, the Labour Government's inclination to assume increasing power over the Church. This would raise, however, the more basic constitutional problem, namely, the scope of religious freedom under the Maltese Constitution. Before taking up this issue, it is useful to examine the question of corrupt practices, as it also has a bearing on the present subject.

The question of corrupt practices constituted probably the chief bone of contention in the quarrel of the Church with the Malta Labour Party in the early sixties. In practice, what the Malta Labour Party was seeking was to prevent the Church from declaring it a (mortal) sin to vote for a particular party, whatever its ideology, claiming that such a measure

30. Cf. Press Release of the Department of Information, 21.8.74.

31. According to the *Avvenire*, the position of the Holy See on the matter was the following: "On the part of the Holy See (whilst reiterating, naturally, the autonomous responsibility of Maltese political elements in decisions relating to the modification of the State's constitutional laws), considering the furnished clarifications, no objections were raised to positively considering the submitted points in the interest of peaceful relations between the State and the Church in Malta" (22.8.74) as reproduced and translated by Koster, *op.cit.*, p. 230.

32. The agreement between the Church and the Malta Labour Party, signed on April 4, 1969, said: "In modern society it is necessary that distinction be made between the political community and the Church. The very nature of the Church demands she does not interfere in politics. The Church Authority has the duty and the right to safeguard her spiritual and temporal interests and whenever need arises to teach which principles are correct and which are wrong. The Church does not impose mortal sin as a censure".

amounts to undue interference in a purely political matter. The Church had actually made such a declaration in 1930 and 1962 to warn its members of the grave spiritual consequences they would suffer, if they voted for a party which embraced an ideology that was in conflict with Catholic social teaching. Yet, the Church had agreed in 1969 not to impose mortal sin as censure. This was, of course, a piece of theological nonsense, for mortal sin is never imposed but incurred. Without entering into the prudence or otherwise of the Church's approach to the politico-religious issue in the thirties and sixties, one may say that the Church can, at most, only give certain guidance to help the individual Christian to realize the gravity of the matters on which he has to decide one way or another. But sin is never inflicted by an outside authority, not even by the Church; it is a self-inflicted wound or a sickness in which one falls through one's subjectively wrong decisions.

Apparently to give a constitutionally binding force to the 1969 declaration that mortal sin would not be imposed as a censure, the Malta Labour Party insisted that the new Constitution should be free from corrupt practices and, shortly afterwards, amended the Electoral (Polling) Ordinance by substituting the phrase "any temporal or spiritual injury" for the phrase "any material or moral injury".⁽³³⁾ Seen in the context of the earlier dispute of the Church with the Malta Labour Party, this change had an obvious purpose, namely that of extending the definition of undue *influence* (a form of corrupt practice) to restrain the Church from making the kind of declarations it had made in connection with the 1930 and 1962 elections.

The present legal situation may give rise to certain unnecessary problems over the behaviour of the Church in future general elections. Assuming that the Church will exercise much prudence when declaring what is and, especially, what is not to be expected of a Government in a contemporary democratic society, one may still envisage situations in which the Church will be morally bound to say that the ideology of some party or parties, contesting an election, is seriously harmful to the fundamental human rights or the salvation of the soul and that Catholics have a grave obligation to take this fact into account in forming their own conscience and making their particular decision to vote or not vote for this or that party. Will a declaration in this sense amount to undue influence and, therefore, a corrupt practice? Both Vatican II and Canon Law affirm that the Church has the right and the duty to express itself in matters involving violation of the dignity and fundamental rights of man or the salvation of the soul.⁽³⁴⁾ The modality of exercising such right and duty in practice is

33. Act No. LVI, 1974.

34. "She (i.e. the Church) also has the right to pass moral judgments touching the political order, whenever basic personal rights or the salvation of souls make such judgments necessary". Vatican II, *The Church in the Modern World* edit. by Walter M. Abbott, S.J. and Mgr. Joseph Gallagher, London, 1965, n. 76. Cf. also *Canon Law*, 747 (2).

another question which cannot be discussed in the present context. In principle, however, one can say that the Church should remain free to give whatever spiritual and moral guidance it judges to be fitting in the particular circumstances.

As we have seen, the 1974 constitutional amendments were principally directed to deprive the Church of the special guarantee which it had been enjoying since Malta became independent. But the major question remains: has the Church actually lost the constitutional right to the free exercise of its ecclesiastical rights and duties and the free management of its affairs? The answer to this question depends on (a) whether the right to freedom of conscience and worship applies to religious bodies and, if in the affirmative, (b) whether such freedom is wide enough to give religious bodies an opportunity to fulfil their proper mission, as they understand it. By way of conclusion, I should like to offer some observations on the scope of freedom of conscience and worship and religious discrimination.

A Note on Freedom of Conscience and Worship and on Religious Discrimination

In 41 (1) the Constitution is not speaking of one right but of two rights, for freedom of conscience, though related to, is not identical with freedom of worship. It is important to deal with these two rights separately, especially when discussing whether they apply to individuals only or to organizations as well. The general rule is that human rights apply to physical as well as juridical persons, unless the nature of the right in question requires otherwise, as it is the case with the right to life which is evidently only applicable to physical persons.³⁵ So if one is seeking to know whether freedom of conscience and worship extends to organizations, like churches, one should first examine the meaning of *conscience* and *worship*.

Conscience is a moral phenomenon. It constitutes the immediate norm on which the individual person is entitled and bound to act in all spheres of his life. What X feels to be his duty may not be exactly what Y feels to be his duty in an identical situation. This does not mean that there is no objective and so no universal norms to guide human behaviour. Such norms exist but how the individual interprets them may vary from case to case. The right to freedom of conscience gives the individual the right to interpret and apply the objective norm on the basis of one's own understanding and appreciation of the various factors entering into the context of the whole action.

"Having a conscience" is not identical with "having a religion", because even an atheist has a conscience which he has the right to follow and others have the duty to respect. Conscience may lead the individual to embrace a specific religious belief and join a religious organization. On the

35. Cf. Felix Ermacora, *Handbuch der Grundfreiheiten und der Menschenrechte: Ein Kommentar zu den österreichischen Grundrechtsbestimmungen*, Wien, 1963, p. 447.

contrary, it may lead him to change his religion and leave his Church. Properly understood, the right to freedom of conscience entitles one "to keep one's distance", if one so decides, from the beliefs and practices of others. This is the fundamental reason why the individual should be free from any form of coercion, whether by the State, the Church or anyone else, in the exercise of his freedom of conscience. Vatican II described conscience as the sanctuary where the person is alone with God.⁽³⁶⁾

By definition, therefore, the right to freedom of conscience refers directly and immediately to the individual. But what about the individual who is a member of a particular church? For example, the Catholic remains free even to leave the Church, if he wants to do so. He is, however, equally free to remain a Catholic and accept the moral and spiritual guidance of the Church. In this case, is his conscience not violated, if the Church is denied, for example, the right to communicate with its members? Is it reasonable to say that someone who is, for example, a bishop can actually enjoy full freedom of conscience, if he is impeded from governing his community in accordance with the teaching and norms of the Church, that is, if the Church is not allowed to exercise its mission in peace and freedom? In my opinion, freedom of conscience postulates the freedom of religious bodies.⁽³⁷⁾

In the case of *worship*, there is clearly not only a personal but also a social dimension. The theology of Catholic worship – to mention one example of a specific form of religious worship – insists upon the sincerity of heart (the personal aspect), as a necessary condition for authentic worship. But it insists also on the need for people to worship God together (the social aspect), as a sign that they are one family, having a common Father and a common destiny. The word *liturgy* itself, of which the Eucharist is the apex, means the worship of the Church as the *people* of God.

Golsong, director of Juridical Affairs at the Council of Europe, attaches a lot of importance to the qualifying phrase "in community with others", used in the European Convention's formulation of the right to freedom of religion,⁽³⁸⁾ to prove that religious freedom extends both to physical and juridical persons. Ermacora, member of the European Commission of Human Rights, states that it is natural for people to worship God or to exercise their religion together as a community.⁽³⁹⁾ Our Constitution

36. Cf. Vatican II, *The Church in the Modern World*, n. 16.

37. Hence, although it is true to say (as, for example, Ermacora does, *op.cit.*, pp. 363 – 365) that freedom of conscience belongs essentially to the physical person, it seems to me that for the concrete individual (for example, a member of or an authority in a particular church) the full exercise of freedom of conscience is meaningless in the absence of the freedom of the Church.

38. H. Golsong, "La Convention européenne des Droits de l'Homme et les Personnes morales", in Premier Colloque du Département des Droits de l'Homme, *Les droits de l'homme et les personnes morales*, Burxelles, 1970, 15 – 33, p. 28.

39. Ermacora, *op.cit.*, pp. 447 – 448.

asserts simply that “all persons in Malta . . . enjoy the free exercise of *their respective mode* of religious worship”. This is actually a short formula for saying that people professing a religion, like Christianity, where the formation of the faithful into one community is essential, have a constitutional right to exist and act as a religious organization.

Granted that the right to freedom of worship has both a personal and a community dimension, there is still the problem concerning the scope of this right. This is not an easy problem to solve, since the more recent formulations of this right seem to prefer to speak of “freedom of religion” than of “freedom of worship”.⁽⁴⁰⁾ Besides, the manifestation of worship is often presented as one of the components (along with “teaching, practice and observance”) of freedom of religion. Naturally, the Constitution would make things easier, if it explicates, as far as possible, the meaning of the key terms it is using, particularly in the case of very important sections like that of human rights. As we have seen, the clause on freedom of conscience and worship was never reformulated since 1921; it passed unchanged from one Constitution to the other in the form given by the Colonial Government. In my opinion, however, the way it was and is still phrased gives every religious body the right to state itself in what manner it believes God should be worshiped. In fact, the Constitution says that “all persons in in Malta shall . . . enjoy the free exercise of *their respective mode* of religious worship”. What is the mode of religious worship specific to a religious body is something which only the religious body concerned is competent to say.

The law has no right to set a limit to the exercise of any mode in which a church may believe that it should worship God, as long as such exercise does not harm the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others. This means that a Christian church, for example, should be fully entitled to work for the promotion of human rights through its educational and charitable institutions, given that such work is one of the essential Christian ways of worshiping God in practice and, if it is missing, liturgical worship itself loses its authenticity.

The Maltese Constitution corroborates further the right to freedom of conscience and worship by prohibiting religious discrimination. The definition which the Constitution gives of discrimination, however, can easily give rise to an erroneous interpretation of religious discrimination.⁽⁴¹⁾ In the light of this definition, discrimination on the basis of creed should mean that A is not being given the same treatment as B, because A belongs to

40. Cf. *The Universal Declaration of Human Rights*, art. 18 and *The European Convention of Human Rights*, art. 9. On the history of the formulation of art. 18 of the *Universal Declaration* see Ph. De La Chapelle, *La Déclaration Universelle des droits de l'homme e la catholicism*, Paris, 1969, pp. 146 – 152.

41. Section 46 (3).

creed X and B belongs to creed Y. In other words, A and B share a common point of reference or a common way of description, that is, description by creed. The discrimination verifies itself, whenever persons are treated differently, simply and solely because their creed is different. But what does *description by creed* mean?

When the Constitution speaks of *description by creed*, it means more than the description of people according to the religion to which they belong. If a person is asked to say what is his creed, he can answer that he is a Catholic, Protestant, Hindu or an adherent of some other religion or that he has no religion at all. But *having no religion* indicates also description of a person *by creed* for one's own creed, that is, outlook on life and basic norm of conduct may not necessarily be religious but it may also be purely secular and even atheistic.

If the interpretation of religious discrimination which has been submitted is a valid one, the law will discriminate against religious bodies, even when it subjects *all* such bodies to certain disabilities. In fact, the test of religious non-discrimination should not be simply that no discrimination is made between one religious body and another but also that no discrimination is made between religious bodies and bodies which are established, for example, to promote and propagate atheism.

Conclusion

In my opinion, what the three major Constitutions that have been examined have said on religion is not merely the result of the pressure exerted or the power exercised by certain individuals, institutions and foreign or local Governments. It is also in a certain way the product of a historical process which has had its own logic.

In the context of the Maltese people's attempt in the 1920's to assert their own national identity it is reasonable to find a local community insisting on the need for a form of a religious self-identification by means of a suitable constitutional declaration. The freedom of the Church was taken for granted, while freedom of conscience and worship was seen more or less as a foreign intrusion to be accepted only with certain reservations.

Independence gave Malta for the first time the opportunity to create a sovereign and independent State. Among other things, that involved for some the affirmation of the legitimate independence of the Church from the State and for others the assertion of the sovereignty of the State over the Church. Hence, the key issue was the autonomy of the Church from the State, while the constitutional identification of the religion of Malta raised no problem and recognition of freedom of conscience and worship was made, apparently without realizing its full implications.

The experience of society and the Church in independent Malta seems to have led slowly to the development of a new consciousness. This is the consciousness that the real problem now is not how much power is the State

to have over society and the Church but how much freedom are society and the Church to have in a truly democratic country. The politico-religious issue today coincides with the socio-political issue, as the problem for the Church and society is basically the same, namely, the meaning which fundamental human rights actually have in Malta.