

CHURCH AND STATE
IN ITALY
1947-1957

LEICESTER C. WEBB



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The State and the Catholic Church are, each in its own sphere, independent and sovereign. Their relations are regulated by the Lateran Pacts. Modifications of the Pacts, mutually agreed upon, do not require the procedure necessary for the amendment of the Constitution.

—Constitution of the Italian Republic, Article 7.

It is the Church that has kept, and keeps, Italy divided. Now of a truth no country has ever been united and happy unless the whole of it has been under the jurisdiction of one republic or one prince, as has happened to France and Spain. And the reason why Italy is not in the same position, i.e. why there is not one republic or one prince ruling there, is due entirely to the Church. For, though the Church has its headquarters in Italy and has temporal power, neither its power nor its virtue has been sufficiently great for it to be able to subjugate Italian tyrants and to make itself their prince; nor yet, on the other hand, has it been so weak that it could not, when afraid of losing its dominion over things temporal, call upon one of the powers to defend it against an Italian state that had become too powerful.

—Niccolo Machiavelli, *Discourses*, Bk 1.12.7.
(Translated by Leslie J. Walker)

. . . the finest tradition of our Risorgimento is represented in my opinion by such men as Manzoni and Cavour and many others, who firmly believed in the possibility of a reconciliation between a free and independent Italy and the religion of the great majority of the Italians. They professed that a true love of liberty was compatible with Catholicism, and that Catholicism had everything to gain from a true practice of liberty.

—Alexander Passerin D'Entrèves,
An Inaugural Lecture delivered before the University
of Oxford, 11 February 1947.

Preface

THIS ESSAY might be regarded as a postscript to D. A. Binchy's *Church and State in Fascist Italy*. Binchy's work, published in 1941 when Fascism was still in power and the issue of World War II was still in doubt, deals with the background and with the consequences over a decade of the settlement between the Italian State and the Catholic Church contained in the Lateran Pacts. My own essay, which is more on the scale of a reconnaissance than of a full survey, takes up the story of Church-State relations in Italy in the period from the end of the war to the present.

As yet there is no connected and detailed account of the development of the religious question in the period between the publication of Binchy's book and the elections to the Constituent Assembly in 1946—a period covering the collapse of the Fascist dictatorship, the German occupation, the Resistance, the episode of the Salò Republic, and the negotiation of the armistice. This gap handicaps anyone seeking to understand the present situation; in particular, the complex relationship of Church, Catholic Action, and Christian Democracy will not be clear until more is known about the part played by Catholic Action between 1941 and 1945. But it may be a long time before there is a full and objective history of those tumultuous years.

One justification for a necessarily tentative account of the Church-State situation in Italy since 1945 is that some grasp of this situation has become crucial to an understanding of the contemporary trend of political development in western Europe. Up to World War II, most English and American observers saw Italy's problem of Church and State in the simple terms of a conflict between the national aspirations of the Italian people and a Church obliged by its nature and temporal circumstances to oppose those aspirations. In a sense, those are still terms of the problem: in spite of all that has happened in the last two decades, the Roman Church still finds difficulty in accommodating itself to the idea of a strong Italian State. The change is not so much in the problem itself as in its world setting and in the perspectives of those who are trying to see its significance.

What was once regarded as a conflict between democratic enlightenment and clerical reaction has begun to look more complex. The Church's almost instinctive resistance to the development of a strong Italian State can no longer be seen merely as a rearguard action to preserve for itself an anachronistic status on Italian soil; it must be seen also in relation to newer currents of thought which regard the subordination of national independence and State sovereignty to the idea of a European politico-economic community as the best hope for preserving European civilization. With the emergence of Christian Democracy as the strongest political force not only in Italy but in western Europe as a whole, there has opened to some minds the vista of a revived Christendom with Christian Democracy as its motive force and the Church as its tutor. And if this seems far fetched, it can at least be conceded that almost every step towards European integration, from the Schuman Plan to the Common Market, has owed much to Catholic social thinking and to a Christian Democratic initiative.

At the same time as the Church's attitude towards Italian nationalism has begun to appear in a different light, the assumption that the Church is of its nature incapable of accommodating itself to democracy (strengthened in the view of some by the agreement of 1929 with the Fascist régime and by the sacrifice of Don Sturzo's Popular Party in the interests of that agreement) has been called in question by the success of Christian Democrat parties in Western Europe and by the generally benevolent attitude of the Church towards such parties. Binchy, having dealt with the events leading to the collapse of the Popular Party, and having contemplated the possibility of Fascism being supplanted by a dictatorship of the Left, ventured this prophecy:

But later, perhaps, when men's souls have been sickened by the tyranny of both revolutionary creeds in succession, they may once more turn towards a conception of political society founded on Christian faith and Christian charity, a conception which found noble expression in the programme of the Popolari, however imperfectly they may have attempted to translate it into practice. In the long run, therefore, the words with which Don Sturzo took leave of the Turin Congress in 1923 may prove to be prophetic: 'Victory belongs to the ideal, not to us; defeat falls on us, not on the ideal'.

Whether the present Italian Christian Democrat Party represents this turning towards 'a conception of political society founded on Christian faith and Christian charity' or whether (as some of its critics say) it is an instrument of indirect ecclesiastical control over Italian society is a question of some moment, and not only for Italians.

But the deeper interest of the Church-State situation in Italy since World War II is suggested by Binchy's other excursion into prophecy. In his last chapter he thus envisages the consequences for the Church of a victory for the Allied Powers and the overthrow of Fascism:

That there will be a strong reaction against the Church is almost certain, and an extremist section, whether actually included in the Government or merely tolerated by it, will press for a war of extermination against this last 'survival of Fascism'. For the first time since the reign of Diocletian the Church of Italy will be faced with a real persecution, beside which the pin-pricks administered by Crispi and Mancini . . . will almost seem caresses. An attempt to secularize all departments of Italian life, notably marriage and education, seems very probable, as also the confiscation of all clerical property and the abolition of the State subsidy to clerical incomes. The fall of the monarchy will entail the disappearance of the Constitution of 1848, with its famous First Article, and 'the Catholic Roman and Apostolic religion' will be formally disestablished for the first time.

This forecast was wrong on every point. The Church emerged from the overthrow of Fascism in a stronger juridical and political position in Italy than at any time in the past three centuries. Not only were the status and privileges secured by the agreement with Mussolini confirmed; they were reinforced by being given virtually the status of a fundamental law of the Italian Republic. Moreover, the Constituent Assembly, in taking these steps, did so by an overwhelming majority that included the representatives of the Italian Communist Party.

In making his forecast Binchy was reflecting the almost unanimous opinion of observers of the Italian scene, excepting only the supporters of the Fascist dictatorship. He was, moreover, forecasting events which seemed the culmination of a train of historical development. From 1848 onwards the Church, though formally established, had been gradually losing its privileges;

it had arrested this development by an agreement with the Fascist régime; but it seemed inevitable that with the collapse of Fascism the Risorgimento would be consummated by the complete and formal secularization of the Italian State. The dramatic falsification of these expectations seems to mean that between the rise of Fascism and the end of World War II the political thinking and attitudes of the Italian people changed so profoundly as to close off a period of history.

This, at any rate, is the opinion of the foremost contemporary Italian writer on Church and State, A. C. Jemolo, in the majestic and sombre passages that conclude his major work. After surveying present trends in Italian political life and noting a general indifference towards juridical principles and abstract values, he casts a backward glance at the men and ideas of the Risorgimento and bids us believe that continuity with this period has been lost—*‘tutto questo appartiene ad un mondo che nulla ha più a che fare col nostro’*.

The changes of which Jemolo speaks are changes that are in process throughout the western world. They are easier studied in Italy than in most other countries because, in the period from 1946 onwards, the Italian people, having rejected the Fascist system and its ideas and having abolished the monarchy, were faced with the task, not only of thinking out anew the principles of political organization, but also of redefining the boundary between the political order and the religious order.

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Church and State in Italy 1947-1957

TO THE MEN of the Risorgimento, or to most of them, the path to full and secure Italian statehood seemed to lead inevitably to the laicization of the State and its instruments of government. Although the Statuto Albertino of 1848, later to become the constitution of a united Italy, provided in its first article that 'the Catholic Apostolic and Roman religion' was to be the religion of the State, in fact the whole trend of religious legislation was in the direction of depriving the Church of its privileges and curtailing its freedom.

Not, as Binchy points out, that Italian nationalism was inherently anti-Catholic.¹ In the earlier phase of the Risorgimento, patriotism and religion were closely allied, as in the writings of Rosmini and Gioberti, and it seemed for a time that Italian unity could most readily be achieved by a federation of Italian states centred on the Papacy. But the dream of a neo-Guelphist Italy collapsed when Pius ix found it impossible to reconcile his position as an Italian patriot with his responsibilities as head of a world-wide Church. In the disillusionment that followed, it was natural that the statesmen of the Risorgimento should regard separation of Church and State as a condition of a stable Italian unity.

But in Italy the lay State was also the liberal State, and as such it did not strike deep roots in Italian soil. The reason commonly given today by Socialists and by those whose thinking has been moulded by Catholic social doctrine is that, in the form it assumed in the second half of the nineteenth century, the lay State 'was the State of a thin layer of privileged persons, largely indifferent to the miserable conditions of life of the great majority of the population, which indeed the advent of the liberal State had aggravated'.² On this view it was the failure of the liberalism of the Risorgimento to produce a tolerable alternative to the social equilibrium it had helped to destroy that deprived the lay State of popular support and left the Italian

¹ D. A. Binchy, *Church and State in Fascist Italy* (Oxford, 1941), pp. 17-18.

² Lelio Basso in *Il Mondo*, 30 April 1957.

masses still attached in a political as well as a religious sense to a Church which at least understood the dimensions of the social problem and which opposed a positive social doctrine to the abstractions of *laissez-faire*. This, perhaps, is a vast over-simplification, but it seems at least true that by the turn of the century the Italian ruling classes were beginning to turn away from liberalism to the support of political Catholicism as a force capable of commanding mass allegiance and at the same time willing to maintain the old social hierarchy.

The view of the Church as the natural enemy of the political aspirations of the Italian people thus belonged to a particular phase of the Risorgimento, and at no time had much relevance to the economic and social aspects of politics. The possibilities of political Catholicism were shown by the spectacular initial success of Don Sturzo's Popular Party in the elections of 1919—a success that marked it out as the coming mass party of the Centre, gaining its strength at the expense of the liberals on the Right and the Socialists on the Left. This situation gives us some part of the background of Fascism's attitude to the Church and of the events leading to the conclusion of the Lateran Pacts. Mussolini, whose virulent anti-clericalism did not cloud his political realism, knew well enough in the early 1920s that Fascism and political Catholicism were in conflict primarily because they were rival heirs to a decaying liberalism; the fact that the Popular Party was able to collaborate with him within certain limits made it more and not less dangerous to his ambitions.

To this situation a decisive element was added by the personality of Pius XI, who succeeded to the papal throne in February of 1922, Fascism's critical year. Stefano Jacini, the historian of the Popular Party and one of its right-wing members during this period, has given a memorable analysis of that personality:

The new Pontiff was . . . by origin a typical Lombard and conservative. As a Lombard he had observed in his youth the regrettable conflict between intransigent and liberal Catholics at Milan, and so came to desire above all things a reconciliation, political and legal, with the Italian State; a direct renewal of contact, in which the existence of an independent party of Catholics might in some circumstances help, but might also stand in the way. As a conservative he could never hide a certain distrust of Christian democracy, of

which the P.P.I. was in its way the concrete political expression. To this prejudice was added an almost physical horror of Bolshevism . . . and therefore an instinctive sympathy towards those forces, whatever they might be, which seemed to oppose Bolshevism most energetically and effectively. All this . . . goes to explain how in the first part of Pius xi's pontificate he lent an ear to the views of those who saw in the rising star of fascism above all the defeat of traditional Liberalism; and how he supported those elements in the Church which were not hostile to the developing dictatorship, and that small group in the P.P.I. which was least violently opposed to it.³

Pius xi's background and prejudices—and perhaps also his political inexperience—thus opened to Mussolini the possibility of a strategy whereby he might at one and the same time conciliate the Church and discredit political Catholicism. There were, of course, other considerations; a dictator with imperial dreams could scarcely fail to see in the tradition of the Papacy something that might be of service to him. There is a story that Mussolini, having watched the scene in St Peter's Square on the day of Pius xi's election, said to his companions: 'It is incredible that our Liberal Governments could have failed to see that the universality of the papacy, heir of the universality of the Roman Empire, represents the greatest glory of Italian history and tradition.'⁴

The Eclipse of the Popular Party

Mussolini played his double strategy with refinement and ruthlessness. Elaborate gestures of respect towards the Catholic religion alternated with warnings to the Church that it would suffer if the irresponsibilities of political Catholicism were allowed to continue, and at intervals these warnings were reinforced by acts of violence against Catholic institutions. At the same time as he exploited the pre-existing tension between the higher ecclesiastics and the Popular Party, Mussolini sought to drive a wedge into the party itself by concentrating his attack

³ Stefano Jacini, *Storia del Partito Popolare Italiano* (Milan, 1951), pp. 115-16, quoted by Michael P. Fogarty, *Christian Democracy in Western Europe 1820-1953* (London, 1957), p. 324.

⁴ Binchy, op. cit., p. 100. But S. Lener, *Civiltà Cattolica* (1947), vol. 3, p. 131, says that Mussolini made this statement in a speech to the Chamber of Deputies in 1922. Lener does not give a reference note and I have not been able to check his version.

on Sturzo's leadership and showing favour to the party's right wing in selecting his first ministry. At the party congress of April 1923, the party's policy towards the régime inevitably came under review. The outcome was a defeat for the right wing's proposal for unconditional collaboration and the overwhelming endorsement of a resolution drafted by Sturzo, proposing collaboration on conditions that amounted to a challenge to Fascism's central tenets. This precipitated the withdrawal of the Popular Party ministers from the Cabinet and a redoubled campaign of vituperation against Sturzo. Finally, on 11 July 1923, Sturzo resigned his position as party secretary, giving as his reason that political activities were interfering with his duties as a priest.⁵ Although the precise circumstances of his resignation have not been disclosed, one can accept Binchy's cautious verdict from the evidence then available: 'That some pressure had been successfully brought to bear on the Vatican seems certain.'⁶ Three months later, on the suggestion of 'a high Vatican personage', who also provided the necessary passport and money, he went into exile.⁷

Sturzo's resignation was the turning-point in relations between Fascism and the Church and also the beginning of a swift decline in the fortunes of the Popular Party. After the Matteotti murder and the secession to the Aventine, the party considered the possibility of an alliance with the Socialists, thereby drawing upon itself Pius xi's unequivocal condemnation:

It is truly painful to the heart of the Pope to see good children and good Catholics divided and engaged in mutual combat. Why, in the name of Catholic interests, oblige others or hold oneself obliged to adhere to a quarter where 'non-confessionalism' is erected into a programme, which might lead to ignoring even the Catholic confession itself?⁸

The Pope followed this by a letter to the Italian bishops advising

⁵ For an account of the events leading to Sturzo's resignation see Jacini, *op. cit.*, pp. 157-89, and Binchy, *op. cit.*, pp. 147-53. Gaetano Salvemini, in his *Azione Cattolica sotto il Pontificato di Pio XI*, p. 38, says that Pius xi, having been warned that the tactics of the Popular Party would lead to an anti-clerical campaign by the régime, decided to sacrifice the party in the interests of Catholic Action. This interpretation of the episode has been questioned by Francesco Ferrari in a correspondence published in *Il Mondo*, 9 April 1957.

⁶ Binchy, *op. cit.*, p. 152.

⁷ Jacini, *op. cit.*, p. 189.

⁸ Quoted by Binchy, *op. cit.*, p. 158.

them to instruct their clergy to refrain from identifying themselves with any political party, a move clearly designed to deprive the Popular Party of clerical support. Within a year the party had virtually ceased to exist and within another year the negotiations had begun that were to end in a formal settlement of the Roman question. It would be wrong to see a clear road from Don Sturzo's resignation to the conclusion of the Lateran Pacts; it is certain, however, that no progress along this road would have been possible had not the Church been willing to play its part in stifling political Catholicism.⁹ In his recent survey of Christian Democracy in Western Europe, Michael Fogarty sums up the matter in a sentence that is both brutal and accurate: 'It was more than once made clear, in the face of the Fascist threat, that from the Church's point of view the P.P.I. was expendable.'¹⁰

The Lateran Pacts

The Lateran Pacts, as signed by Mussolini and Cardinal Gasparri on 11 February 1929, consist of a treaty between the Holy See and the Italian Government concerning the territorial status and rights of the Holy See as a subject of international law, a concordat between the Holy See and the Italian Government regulating the position of the Church in Italy, and a supplementary financial convention.¹¹

The purpose of the Treaty is admirably summarized in the preamble, which (in part) records:

... that the Holy See and Italy have recognized the convenience of

⁹ How much the Lateran Pacts owed to the circumstance of a Fascist régime is arguable. Benedetto Croce, in the debates on the 1948 Constitution (*Atti della assemblea costituente*, vol. 111, pp. 2005-8) claimed that a reconciliation between Church and State had always been a goal of liberal statesmanship. The evidence supporting this claim has been assembled by S. Lener ('I Precedenti Legislativi e Storici dell'articolo 7 della Costituzione', *Civiltà Cattolica* (1950), vol. 3, pp. 248-60) and is convincing. But whereas Lener draws from it the conclusion that the Pacts were the culmination of a development which began with Cavour and have no special connection with Fascism, it seems equally possible to draw the conclusion that the atmosphere of Fascism was more favourable than the atmosphere of liberal democracy to a Church-State reconciliation.

¹⁰ Fogarty, *Christian Democracy in Western Europe*, p. 325.

¹¹ For texts of the Lateran Pacts see *Patti Lateranensi: convenzione e accordi successivi fra il Vaticano e l'Italia fino al 31 dicembre 1945* (Vatican City, 1946); *Convenzioni ed Accordi fra il Vaticano e l'Italia vol. 11 dal 1 gennaio 1947 al 31 dicembre 1954* (Vatican City, 1955); *Concordats Conclus durant le Pontificat de sa Sainteté le Pape Pie XI* (Rome, 1934). The last-named volume, edited by the Gregorian University, has useful annotations, usually expressing the point of view of the Holy See.

eliminating all reason for disagreement between them by the conclusion of a definitive systematization of their reciprocal relations which is in conformity with justice and with the dignity of the two Parties and which, by assuring to the Holy See on a stable basis a condition of fact and of right which guarantees it absolute independence for the discharge of its high mission in the world, enables the said Holy See to recognize the definitive and irrevocable settlement of the 'Roman question', created in 1870 by the annexation of Rome to the Kingdom of Italy under the House of Savoy.

The corresponding statement in the Concordat records:

... that following upon the initiation of discussions between the Holy See and Italy for the solution of the 'Roman question', the said Holy See has proposed that the treaty relative to this question be accompanied, as a necessary complement, by a Concordat, for the purpose of regulating the condition of religion and of the church in Italy.

It is clear from the two preambles that the Holy See and the Italian Government regarded Treaty and Concordat as related and complementary, a point which the Holy See has frequently emphasized and which has some importance in view of the fact that, whereas the Treaty has few enemies, the Concordat has many. The interdependence of the two instruments is strengthened by what is, from the legal point of view, an inconsistency of drafting—though perhaps not an accidental inconsistency. The Italian Government's declaration that it 'recognizes and reaffirms' the provision of the Statuto Albertino of 1848 making Roman Catholicism the sole religion of the Italian State appears, not in the Concordat where it properly belongs, but as the first article of the Treaty. Legal considerations apart, the interlocking of Treaty and Concordat has great practical significance. It is sometimes contended that the relationship between the Italian State and the Pope in his capacity as the head of an international institution is, as a matter of historical reality as well as of law, distinct from the relationship between the Italian State and the Pope in his capacity as Primate of Italy and that the two relationships can in practice be dealt with as though they were independent of one another. The Lateran Pacts imply a contrary view—the view that the functioning of the Church as an international institution is inevitably affected by its Italian circumstances. This is the 'Roman question' in its true dimensions and

it is not a problem to be solved but a situation to which the Holy See and the Italian people have to accommodate themselves. The question the Lateran Treaty settled is the more limited one raised by the Holy See's need for a visible territorial independence; that is, for a sovereign jurisdiction recognizable in terms of international law. That alone is the significance of the Treaty and of its offspring, the Vatican State (lo Stato della città del Vaticano).

The Concordat (including for the sake of logical arrangement Article 1 of the Treaty) establishes Roman Catholicism as the sole religion of the Italian State and defines the rights and privileges incidental to establishment. Some of these will be dealt with in detail later; here it is sufficient to record that the Church acquired sole jurisdiction in matrimonial causes, that Catholic religious instruction was stipulated for all State schools, that the State agreed to maintain clerical stipends at the 1929 level, and that ex-priests and priests under ecclesiastical censure were barred from State employment.

Establishment of a religion normally involves concession to the State of certain rights of intervention in ecclesiastical affairs, and of these rights the most important concerns ecclesiastical appointments. Under the Law of Guarantees of 1870, which was in force when Mussolini came into power, episcopal appointments were subject to the *exequatur*; that is, a newly appointed bishop could not assume office until his instrument of appointment had been approved by a royal decree countersigned by the Minister for Justice. Appointments to lesser benefices required the royal *placet*, issued usually by a local court official. The Concordat retains the substance of this system but establishes procedures that are both simpler and less likely to lead to open conflict. The choice of bishops and archbishops is recognized to be a function of the Holy See, but it is provided that, before making an appointment, the Holy See shall communicate the name of the person selected to the Italian Government in order to ascertain whether there are political objections to his appointment. These proceedings take place in secrecy, which is perhaps why no provision is made for resolving a deadlock. In the case of minor benefices, the right of nomination rests in the diocesan bishop, who communicates the name of the person selected to

the local prefect. If no objection is lodged within thirty days, the appointment is finalized. If the prefect objects, he communicates his reasons to the bishop and to the Minister for Home Affairs. If the State's objection is sustained, the bishop may either make another nomination or refer the matter to the Holy See for negotiation with the Government. This degree of State influence over ecclesiastical appointments is perhaps safe enough, from the Church's point of view, in a country where there is political stability, or in a democratic country where the alternation of governments gives a variety of political influences. The record of the Italian Church (as distinct from the Holy See) during the Fascist period shows how dangerous it can be under a totalitarian régime of long duration.

It remains to notice, in view of what has been said about the episode of Don Sturzo's resignation and the attitude of the Holy See to the Popular Party, that the Concordat commits the Church to neutrality in party politics. The first paragraph of Article 43 confers State recognition on Catholic Action organizations on condition that they are under direct control of the hierarchy and have no party-political connections; in the second paragraph of the same article the Pope expressly forbids ecclesiastics to join political parties or to be active in them. As we shall see, this aspect of the Concordat has acquired a central importance in republican and democratic Italy.

The Church and the Fall of Fascism

When the Lateran Pacts were signed, it was widely prophesied (Binchy's forecast has been quoted in the Preface) that in the long run the Church would pay dearly for its bargain and that the fall of Fascism would be accompanied by a wave of anti-clericalism. Why this did not happen is a question that cannot be answered satisfactorily without exploring the effects upon political attitudes of social and economic changes that have been operating for half a century or more. But it is possible to identify some of the more immediate reasons why the fall of Fascism did not react unfavourably on the position of the Church in Italy.

When Pius XI died in February 1939, the general estimate of him was very different from what it had been when the Lateran

Pacts were signed, almost exactly a decade before. Then, the obvious qualities were his mistrust of liberalism and democracy and his apparent willingness to conciliate Fascism. In 1939 the picture in the popular mind was of a man who had stood rock-like in defence of the Church's rights and who, with bluntness of statement and a caustic wit as his only weapons, had challenged the claims of all forms of State absolutism. Particularly during the racist controversy, Pius XI had stood out as a defender of the traditional values of western civilization against the new barbarism.

The increasingly bitter struggle between the Government and the Church over Catholic Action also did something to modify the first impression of the Church's attitude to the régime.¹² In the plebiscitary elections that followed the signing of the Lateran Pacts, Catholic Action members were instructed to vote 'yes' and in many parishes the clergy led their parishioners to the polling booths. While the record of Catholic Action's lay leaders under Fascism was at no time remarkable for dignity or courage, the mere fact that the organization was persecuted and attacked with increasing vigour did something to dispel the impression that the Church and the régime were in partnership.

It is to the Resistance, however, that one must look for the main clues to events and political attitudes in the immediate post-war years. In 1946 when the country was stable enough for consideration of constitutional matters, including the Church-State relationship, Italians were still living in the afterglow of a movement that had united Italy as it had not been united since the early period of the Risorgimento. In the Resistance the leaders of the Church and of the extreme Left had come to know and respect one another, and the Vatican City had been a refuge for men hunted by Italy's oppressors. In the great demonstration of gratitude to the Pope on the day following the liberation of Rome, Socialists and Communists were among the great crowd that assembled in the square of St Peter's, and for the first and last time the red flag dipped in salute before the Pope's window. Political leaders of almost all shades of opinion were at this time determined that the religious question should not bedevil the

¹² For an account of the relations between Italian Catholic Action and Fascism, see Binchy, *Church and State in Fascist Italy*, ch. xviii.

work of reconstruction and were therefore willing to accord to the Church a position of dignity and freedom consonant with its international responsibilities and its special relationship with the Italian people.¹³

The Resistance period also witnessed a vigorous upsurge of Christian political movements. Of these, the most important was Christian Democracy, which in its ideas and leadership was in a direct line of descent from Sturzo's Popular Party. In its Resistance phase, Christian Democracy was firmly committed to the principles of religious as well as political freedom. One of its earliest manifestos contains this passage:

The indispensable condition and necessary safeguard of the inviolable rights of the human person, and of all civil liberty, is political freedom . . .

Representative democracy, expressed through universal suffrage, based on the equality of rights and duties, and animated by the spirit of brotherhood, which is the vital ferment of Christian civilisation: this must be the regime of tomorrow . . .

In the face of every intolerance of race or religion, the democratic regime will maintain the most rigorous respect for freedom of conscience . . .¹⁴

In addition to Christian Democracy there were other Christian movements farther to the Left—Gerardo Bruni's Christian-

¹³ For an account of this period see Arturo Carlo Jemolo, *Chiesa e Stato in Italia: negli ultimi cento anni* (Rome, 1955), ch. viii. This work has a pre-eminent place in the post-war literature of Church and State in Italy. First published in 1949, it has been through three editions and in 1955 appeared in a popular abbreviation as *Chiesa e Stato in Italia: dal Risorgimento ad oggi*. The abbreviated edition has an additional chapter dealing with events since the framing of the Constitution of 1948. Because he is one of Italy's foremost ecclesiastical lawyers (he holds the chair of ecclesiastical law in the University of Rome), because he is a devout Catholic, and because his writing has the eloquence of intense conviction, Jemolo is by far the most influential individual critic of the present Church-State relationship. His general point of view is that of a Risorgimentalist liberal. Lener, in *Civiltà Cattolica* (1951), vol. 3, p. 610, calls him 'l'implacato spirito risorgimentale', which is misguided, since Jemolo is not at the laicizing extreme of Risorgimentalist thinking. Mario Einaudi, in *Christian Democracy in Italy and France* (Notre Dame, 1952), p. 21, calls him with more point but considerable exaggeration a 'restless commentator on the Italian political scene, who resides in the foggy bottom lands of progressivism'. The trend of Jemolo's thought in the last chapter of his main work is undoubtedly hard to follow. As a practising lawyer, Jemolo has played a notable part in the legal battle to establish freedom of religion in Italy.

¹⁴ *Idee Ricostruttive della Democrazia Cristiana*. Manifesto circulated during the Resistance years 1943-5. Quoted by Michael P. Fogarty, *Christian Democracy in Western Europe*, p. 323.

Social Party, a Catholic communist movement centred mainly in Rome, the 'Sinistra Cristiana', and a left-wing group within Christian Democracy itself—which, although they were of short duration, had the important effect of shading for the time being the differences between political Catholicism and the Marxist Left.¹⁵

The Constituent Assembly Elections

From the point of view of those who sought a liberal solution of the problem of Church and State it was a misfortune that, as the date for the election of the Constituent Assembly drew near, events conspired both to put the Christian Democrats in a position of considerable strength and to move the party as a whole farther to the Right. In March 1946 local elections were held in about three-fourths of the communes and provided the first post-war test of Italian political feeling. Those elections showed a wide gap between the voting for the three mass parties—the Christian Democrats, the Socialists, and the Communists—and all other groupings.¹⁶ This in itself tended to make Christian Democracy the rallying-point of that large and miscellaneous section of the electorate which desired merely to escape a government of the Left; and it was perhaps natural that the Christian Democrat leadership should seek to strengthen this tendency by playing down the distinction between Fascists and anti-Fascists. There were also signs that the Church's attitude towards the Catholic Left was beginning to harden. A straw in the wind was Guido Miglioli's expulsion from the Christian Democrat Party and from Catholic Action for publishing a book on the theme that Communism and Catholicism were not irreconcilable.¹⁷ And in 1945 the Consistorial Congregation, under a mandate from the Pope, and presumably with the elections to the Constituent Assembly in view, issued a communication to the clergy on:

¹⁵ Carlo Falconi, *La Chiesa e le organizzazioni cattoliche in Italia (1945-1955)* (Torino, 1956), pp. 485-528, deals in detail with the left-wing Catholic movements of the period 1943-8. Falconi is an ex-priest and a militant anti-clerical. His book is very fully documented and is a valuable source of information concerning the personalities and ideas of what might be called nonconformist Catholicism.

¹⁶ Muriel Grindrod, *The Rebuilding of Italy: Politics and Economics 1945-1955* (London, 1955), pp. 23-4; Jemolo, *Chiesa e Stato* (1952 ed.), pp. 695-7.

¹⁷ Jemolo, *Chiesa e Stato* (1955 ed.), p. 698.

the duty to instruct the faithful concerning their grave obligation to exercise their right to vote and to confer their suffrage only on those candidates or lists of candidates who are certain to respect and defend the divine law and the rights of religion and of the Church in private and public life.¹⁸

In a speech in Rome on 7 April Togliatti, the leader of the Communist Party, protested that 'the intervention of ecclesiastical authority to exercise a terror by spiritual means against a political party like ours, a legal party, a party of the government, a party which proclaims its objectives before everyone . . . is a violation of the Concordat'.¹⁹ The subsequent attitude of the Communist Party to the Concordat gives this protest a special significance.

During the campaign that preceded the election of the Constituent Assembly the Church not only used its influence against the Left; it also focused attention on the Church-State issue and indicated clearly enough the type of solution it was seeking. During April a directive was issued to Catholic Action emphasizing that any future constitution must take account of relations between Church and State and that the formula embodied in the Lateran Pacts must be considered permanent.²⁰ The same directive rejected the view that the position of the Catholic religion in relation to Italy's social, political and cultural life was a function simply of the great preponderance of Catholics in the population; Catholicism was 'intrinsically an essential and primary element in the character, the civilisation and the grandeur of the nation'. The same theme was expounded in numerous articles in *Civiltà Cattolica*.²¹ Thus, long before the polling day, it was clear that for the Church the religious question had ceased to be one for negotiation or compromise; the Holy See was taking its stand on the Lateran Pacts and was seeking to entrench them against the possibility of abrogation or substantial amendment.

¹⁸ Quoted in *Civiltà Cattolica* (1948), vol. 1, p. 565.

¹⁹ *Ibid.*, p. 573.

²⁰ *Ibid.* (1946), vol. 2, p. 236.

²¹ See particularly R. Lombardi 'Uno mano tesa minacciosa: a proposito del discorso Togliatti', *Civiltà Cattolica* (1945), vol. 2, pp. 147-59; F. M. Capello, 'Il Concordato fra la S. Sede e lo Stato Italiano nell' ora presente', *Civiltà Cattolica* (1946), vol. 1, pp. 323-31; S. Lener 'Chiesa e Stato Oggi in Italia', *Civiltà Cattolica* (1946), vol. 4, pp. 91-104, 247-62.

In the polling for the Constituent Assembly, held on 2 June 1946, the predominance of the three mass parties was even more pronounced than it had been in the preceding local elections.²² The voting, which was compulsory and under a system of proportional representation, resulted as follows:

<i>Party</i>	<i>Votes</i>	<i>Seats</i>
Christian Democrats	8,083,208	207
Socialists	4,744,749	115
Communists	4,342,722	104
National Democratic Union	1,559,417	41
Uomo Qualunque	1,209,918	30
Republicans	997,690	23
National Freedom Bloc	636,493	16
Action Party	333,758	7
Other Lists	1,044,935	13
	22,952,890	556

Besides the factors already noted, an important element in the increased strength of the Christian Democrats, compared with the local elections, was the access of women electors, now voting for the first time. In Italy, as elsewhere, women are more susceptible to religious influence than men.

Church and State in the Constituent Assembly

The Constituent Assembly delegated preliminary consideration of the Church-State question to the First Sub-commission, a body of eighteen members whose terms of reference included 'Discussion of the State as a juridical order, and its relations with other orders'. By bringing the relations between Church and State under this heading the Assembly was taking a decision of more than procedural importance; in effect, it was rejecting in advance all formulas that would have implied either the subordination of the Church to the juridical order of the State or the restriction of the Church's authority to the spiritual sphere. The dimensions of the claim implicit in the sub-commission's terms of reference were made explicit in the pages of *Civiltà Cattolica*, which during the deliberations of the Constituent Assembly and its various committees concentrated its formidable resources of

²² Elio Garanti, *Sociologia e Statistica della Elezioni Italiane nel Dopoguerra* (Rome, 1954), pp. 62-9; Grindrod, op. cit., pp. 26-7.

legal, theological, and historical scholarship on a re-statement of Catholic doctrine concerning the relations of the Church with the State and with society. Thus, according to Lener,²³ the sovereignty of the Church was a true juridical sovereignty, comparable with the sovereignty of the State and operative not only in the field of canon law but also in the international order and in the internal order of all States that recognize the Holy See. The relations between Church and State, therefore, were external relations between two juridically sovereign entities, and the external union between Church and State in Italy, formalized by the Concordat, was not merely political but was also juridical in the same sense as were unions between subjects of international law. It followed that the Italian people were under a Church-State dyarchy and would be so whether or not there was a concordat. The Cavourian formula, 'libera Chiesa in libero Stato', was 'equivocal' because the Church was not 'in' the State, any more than the State was 'in' the Church.

The doctrinal basis for these claims rested upon the Church's consistent rejection of the Marsilian thesis that the true and only sphere of the Church's activity and authority was spiritual. The Church, according to Lener, was 'Chiesa di diritto' and 'Chiesa di carita'. It was 'Chiesa di diritto' because legal existence and independence were indispensable to its preservation in human society and to its development in time and space; it was 'Chiesa di carita' because love was the *vinculum perfectionis* that united all its members, past, present and future. It should be noted that Lener was making these claims only for the Roman Church and not for churches generally. The relevance of this point will appear when we come to consider the position of other religious bodies under the 1948 Constitution.

If the terms of reference of the First Sub-commission boded ill for the prospects of a liberal solution of its main task, so also did its composition. The seven Christian Democrat members—three lawyers, including Umberto Tupini, who became chair-

²³ S. Lener, 'Definizione Razionale dei Rapporti fra Chiesa Cattolica e Stato Moderno', *Civiltà Cattolica* (1947), vol. 2, pp. 26-36; 'La Chiesa Cattolica come ordinamento giuridico', *Civiltà Cattolica* (1947), vol. 1, pp. 25-40. These articles were referred to frequently during the Constitutional debates, and their line of argument was followed closely by Giuseppe Dossetti, who was the principal Christian Democrat spokesman on the Church-State issue.

man, and four professors, including Giuseppe Dossetti, a noted authority on canon law, and the dynamic Giorgio La Pira, later to make an international reputation for himself as mayor of Florence—were men who combined religious fervour with outstanding legal and theological competence.²⁴ For the rest, the First Sub-commission consisted of three Communists, including Togliatti, three Socialists, two Liberals, one Republican, one representative of Democratic Labour, and one independent. Because it was compact and sure of its purpose, and because the other members could seldom find common ground, the Christian Democrat group dominated the sub-commission's proceedings.

The first major conflict arose on an issue that (as we have noted) seemed to be pre-judged by the sub-commission's terms of reference.²⁵ The laicists (according to Calamandrei) were not opposed to the inclusion in the Constitution of a passage securing the autonomy of the Church in matters spiritual, and they were willing to recognize the Church as a juridical order. But they wished to avoid the appearance of an encroachment by the Church upon the political power properly reserved to the State; for this reason they spoke of the 'independence' of the Church

²⁴ La Pira and Dossetti were the recognized leaders of the 'academic left' of the Christian Democrat Party. In social policy they were vigorous critics of capitalism and advocated State control of economic life functioning through a hierarchy of corporate institutions; politically, they advocated collaboration with the Communists. 'Today', wrote Mario Einaudi in 1951, 'they find themselves amid the crudities of the cold war, torn between a desire to continue the "dialogue" with Communism and the duties of filial piety and discipline which they have to accept as children of the Church. As a whole, they have remained within the fold of the faithful and accepted the consequence of the Church's position with regard to Communism.' The political position of La Pira and Dossetti is relevant to the outcome of the sub-commission's work and to the attitude of the Communist members.

²⁵ The official record of the deliberations of the Constituent Assembly and of its committees and sub-committees has been published by the Chamber of Deputies. The proceedings of the Assembly in plenary session are in numbered volumes under the title, *Atti della assemblea costituente*. The volumes recording the proceedings of the various commissions and sub-commissions are not numbered. The proceedings of the First Sub-commission appear in a volume, the title of which begins, *Assemblea costituente commissione per la costituzione prima sottocommissione discussione dal 24 luglio 1946—al 19 dicembre 1946* . . . The volume recording the proceedings of the Commission of Seventy-five is entitled *Assemblea costituente commissione per la costituzione adunanza plenaria discussione dal 20 luglio 1946—al 1 febbraio 1947*. Piero Calamandrei, in 'Storia quasi segreta di una discussione e di un voto', *Il Ponte* (May 1947), pp. 409-21, gives an account of the political manoeuvring on the Church-State issue. The discussions are usefully summarized in Jemolo (1955 abbreviation), pp. 411-30, and by S. Lener 'Discussione e votazione dell'art. 7', *Civiltà Cattolica* (1947), vol. 2, pp. 423-37.

and not of its 'sovereignty'. They also wished that the formula embodying the recognition of this independence should be consistent with the style of a constitution. In their view a constitution should contain definitions of the powers and the structure of the State; the inclusion of bilateral agreements between powers was entirely inappropriate. The formula drafted by Cevolotto, the Democratic Labour representative, was: 'The State recognises the independence of the Catholic Church in its internal affairs'. However, the Christian Democrats Tupini and Dossetti agreed with Togliatti on a formula that read: 'The State and the Catholic Church are, each in its proper sphere, independent and sovereign,'²⁶ and this formula was adopted by the sub-commission by twelve votes to three on 18 December 1946.²⁷ Because of his share in this curious transaction, the Communist leader was praised by Lener in *Civiltà Cattolica* for the soundness of his grasp of the issues.²⁸

The Lateran Pacts and the Constitution

The more serious question facing the sub-commission was the manner in which the Constitution should deal with the Lateran Pacts—if, indeed, it was to deal with them at all. Dossetti proposed on behalf of the Christian Democrat bloc the formula: 'The relations between the State and the Catholic Church shall continue to be regulated by the Lateran Accords.' The attitudes of the other members to this proposal were confused. Most of them, it would seem, were alive to the dangers of a formula that might be construed as conferring constitutional validity upon agreements that in places reflected the ideas of the Fascist period. On the other hand, such was their desire to maintain the religious peace that had carried over from the Resistance period, and such was their reluctance to bring the 'Roman question' again under debate, that they were not willing to advocate the abrogation of the Lateran Pacts or even their modification. Nor did they question that the method of the Concordat was the desirable method of adjusting the relations between Church and State in Italy. Their position was thus a weak one; for, if they accepted the Lateran Pacts in their existing form, and if also they accept-

²⁶ *Assemblea costituente commissione per la costituzione prima sottocommissione* . . . , p. 479. ²⁷ *Ibid.*, p. 481. ²⁸ *Civiltà Cattolica* (1947), vol. 1, p. 468.

ed the concordatal method of adjusting Church-State relations, on what grounds (their opponents asked) could they reasonably reject the Dossetti formula? Togliatti, groping for a compromise that would avoid any suggestion of constitutionalizing the Lateran Pacts suggested that the Constitution itself should contain the simple formula: 'The relations between Church and State shall be regulated by concordat [in termini concordatarii]', but that, having voted the Constitution, the Constituent Assembly should forthwith affirm by resolution that the Lateran Pacts were still in force.²⁹ At the session at which these proposals were brought forward, Marchesi, one of the other Communist members, asserted that they represented the extreme limit to which his party was prepared to go in seeking a compromise.³⁰ In the event the Dossetti formula, altered slightly in form, was adopted in sub-commission by ten votes to seven.³¹

From the First Sub-commission the draft went briefly to a body usually referred to as the Commission of Seventy-five, where it was discussed and approved on 23 January 1947.³² This discussion brought into the debate for the first time Piero Calamandrei, the noted Florentine lawyer and editor of *Il Ponte*, the quarterly round which were gathered many of the most influential figures in Italian liberalism. Calamandrei was in later proceedings by far the most cogent and detailed critic of the formula devised by the First Sub-commission. The main interest of this phase of the proceedings was a speech by Togliatti that moved his party one step farther away from those groups who regarded the lay State as a desirable and possible solution to the religious problem.³³ The Church-State formula that went forward to the full Constituent Assembly as Article 5 of the draft and that later became Article 7 of the Constitution was as follows:

The State and the Catholic Church are, each in its own sphere, independent and sovereign. Their relations are regulated by the Lateran Pacts. Modifications of the Pacts, mutually agreed upon, do not require the procedure necessary for the amendment of the Constitution.

²⁹ *Assemblea costituente commissione per la costituzione prima sottocommissione* . . . , pp. 479, 482-3. ³⁰ *Ibid.*, p. 480. ³¹ *Ibid.*, p. 485.

³² *Assemblea costituente commissione per la costituzione adunanza plenaria discussione dal 20 luglio 1946—al 1 febbraio 1947*, pp. 145-59. ³³ *Ibid.*, p. 148.

The plenary debate on Article 5 of the draft went on intermittently for some three weeks—from 4 to 25 March—and is worth study for the insight it gives into the mood of Italian post-war politics. By this time the discussion on the first part of of the article—that establishing a juridical parity between Church and State—had become somewhat perfunctory: the crucial question was whether the Lateran Pacts should by implication be given constitutional status. Most of those who took part were aware of the difficulty of reconciling the norms of the Pacts with the norms of the Constitution proper and were aware, therefore, that Article 5 was from the juristic standpoint undesirable, but they tended to reduce the issue to a choice between ‘principles’ and ‘social reality’. Togliatti had set this fashion when he told the First Sub-commission that it faced a state of fact—the Lateran Pacts and the general religious situation in Italy—and ‘an exigency of principle relative to the independence of the State from the Church and complete liberty of conscience and of worship’.³⁴ Fact was in conflict with principle, it being manifest, for instance, that the fact of the confessional State conflicted with the principle of the parity of rights of all religious denominations. And in all subsequent contributions to the debate both Togliatti and Marchesi left no doubt that their party put social reality on a higher plane than principle.

This reverence for reality (and the apparent acceptance of the view that principles, particularly liberal principles, are unrelated to reality) had powerful support from some of the elder statesmen. Francesco Nitti, having commended the wisdom of French Catholics and their clergy in accepting the lay State, and having affirmed that Article 5 was a political and juridical mistake, nevertheless announced his intention to vote for it because he feared the social consequences of not voting for it.³⁵ Carlo Sforza, having reminded his hearers that he was a Republican in the tradition of Mazzini, supported Article 5 because in his view its national and international advantages outweighed its dangers. That there were clauses in the Lateran Pacts which were unsuited to a republican democracy he did not deny, but he was

³⁴ *Assemblea costituente commissione per la costituzione prima sottocommissione . . .*, p. 421.

³⁵ *Atti della assemblea costituente*, vol. 111, p. 2662.

sure that at the appropriate time Church and State would by agreement eliminate or amend them.³⁶

Moreover, even among those who for various reasons and on various points opposed Article 5 there was an almost fervent willingness to put the discussion of Church-State relations on a new basis, to reject clericalism and anti-clericalism as outmoded categories, and to give full weight to the Catholicism of the Italian nation. Pietro Nenni, although he protested that the Christian Democrats were trying to import the Lateran Pacts into the Constitution by subterfuge, was also emphatic that no Socialist wanted to bring the Lateran Treaty under discussion or would suggest unilateral changes in the Concordat. 'The smallest agricultural reform', he added, 'interests me more than the revision of the Concordat, even if that were desirable.'³⁷ Ugo Della Seta, who put forward on behalf of the Republicans an amendment that would have constitutionalized the norms of the Pacts only to the extent that they did not conflict with the norms of the Constitution proper, began by rejecting the Cavourian formula, '*libera Chiesa in libero Stato*', as unrealistic. There was, he maintained, an unavoidable interdependence between the two institutions, and it was not possible for the State to avoid taking advantage of the Church's 'spiritual magistracy'. Separation of Church and State, in Della Seta's view, did violence to 'sociological and ethical reality'. Having thus arrived within a hair's breadth of the Christian Democratic position, Della Seta switched his argument to a condemnation of the confessional State, as smacking of paternalism and dictatorship, and of the Lateran Pacts on the ground that they were of Fascist origin and did not reflect the will of the Italian people.³⁸ Where he came to rest between his rejection of the confessional State and his rejection of separation of Church and State was never clear.

Almost the only opponents of Article 5 who did not debilitate their arguments by accepting a dubious antithesis between principle and reality and by over-anxiety to avoid the stigma of anti-clericalism were Cevolotto and Calamandrei. The former did not deviate from the position he had taken up in the First Sub-commission, which was that separation of Church and State on the French model was the only system compatible with

³⁶ Ibid., p. 2470.

³⁷ Ibid., p. 1947.

³⁸ Ibid., pp. 2438-41.

the spirit of the new Constitution.³⁹ Calamandrei exposed, in telling detail, the precise points at which the Lateran Pacts were in conflict with the Constitution and, like Cevolotto, came out squarely for separation of Church and State.⁴⁰ But although his cogency made him the most formidable critic of the Christian Democratic position, his political isolation—he was a member of the now minute Action Party—deprived his contribution of any but a forensic interest.

The Communist Attitude

From the beginning of the plenary discussion it was clear that everything turned on the attitude of the Communists. In the First Sub-commission, as we have seen, Togliatti had proposed that relations between Church and State should be regulated 'in termini concordatarii', leaving out any reference to the Lateran Pacts, and Marchesi had said emphatically that this was the farthest the party was prepared to go by way of compromise. In the Commission of Seventy-five an amendment to this effect had been rejected by a narrow margin—thirty-two votes against twenty-seven.⁴¹ The outcome of the plenary discussion was therefore by no means a foregone conclusion. The Christian Democrats were not in an absolute majority, and although their disciplined strength might have enabled them to force acceptance of their draft upon a fragmented opposition as they had done in the commission stages, the wisdom of a settlement of the religious question which could command only a narrow majority was open to doubt. According to Calamandrei, the Christian Democrats were until the last prepared to compromise in the interests of a broad-based religious peace. It seemed to be within the power of the Communists to force such a compromise. So far as the literal meaning of words went, Togliatti's first speech in the plenary session did not modify the Communist position.⁴² The party still wanted to maintain the religious peace, still regarded the Lateran Treaty and the Con-

³⁹ *Assemblea costituente commissione per la costituzione prima sottocommissione* . . . , pp. 418-20; *Atti della assemblea costituente*, vol. 111, pp. 2310-19.

⁴⁰ *Atti della assemblea costituente*, vol. 111, pp. 2283-90.

⁴¹ *Assemblea costituente commissione per la costituzione adunanza plenaria discussione dal 20 luglio 1946—al 1 febbraio 1947*, pp. 157-8.

⁴² *Atti della assemblea costituente*, vol. 111, pp. 1995-2005.

cordat as 'the two pillars' of that peace, and still objected to the insertion of the Treaty and the Concordat in the Constitution. But these reaffirmations were preceded by an excursion into social theory that caused the more politically experienced members of the Assembly to sniff the wind. Togliatti spoke of the post-war situation in Italy as marked by the confluence of two great currents of thought—on the one side the 'human and social solidarism' of the Communist Party, on the other side 'a solidarism of ideological origin'. Both these currents led to a new conception of economic life, contrasted with the individualistic and atomistic doctrines of liberalism and involving a redefinition of the limits of property rights. Here, manifestly, was an attempt to align Communism with Christian Democracy and more particularly with the integralist left-wing of Christian Democracy, of which Dossetti and La Pira, the principal spokesmen of their party on the Church-State issue, were the acknowledged leaders.

If there were doubts about the direction of the wind, Marchesi dispelled them three days later. The Lateran Pacts, he said, opened a new phase in the relations between Church and State, a phase which the Communists hoped would continue; their objection to Article 5 was merely that they did not want the Pacts to become ossified through inclusion in the Constitution. Here was a significant change of emphasis, but even more significant was Marchesi's development of Togliatti's theme of an essential identity of interests between Christianity and Communism. One passage will suffice to give the flavour:

I understand an anti-Communist liberalism; I do not understand an anti-Communist Christianity. I understand the Liberal who affirms that economic freedom is an essential factor, indispensable to social and individual progress; I do not understand the Christian and Catholic who affirms that without the profession of a specific, positive religion one cannot live honestly and generously . . . It is a difficult problem for you to know how one can live like a Christian without professing Christ. It is a difficult mystery, but accept it as you accept the whole doctrine of the Church. On these benches you find some professing Christians; we others may live in the dark but we live honestly; we are participating Christians. I use Thomist language. Don't put barriers between Christianity and Communism.⁴³

⁴³ *Ibid.*, p. 2104.

No one could doubt, after hearing such words, that the Communist Party's strategy in the Constituent Assembly was focused on objectives that took precedence over the desired form of Article 5, and it was therefore with more derision than surprise that the opponents of Article 5 heard Togliatti announce on 25 March that his party would vote for the existing text, which was approved by 350 votes to 149 and became Article 7 of the Constitution. If the Communists had voted according to their previous attitude the result would have been a fairly even division.

Communism and Christian Democracy

The reasons for the Communist *volte-face* are an evergreen topic for Italian political journalism. This is partly because, as the Church-State situation has developed, Togliatti's strategy in the Constituent Assembly seems to have miscalculated the interests of his party and weakened the basis of the religious peace it was ostensibly intended to preserve. But it is also because one cannot probe this strategy without coming to grips with a problem that is central to any understanding of Italian (and perhaps European) politics—the problem of the relationship between Communism and Catholicism. In his speech to the Assembly on 25 March, Togliatti justified his attitude on the familiar grounds of political realism; the tasks of economic reform were so pressing that the Italian people must not be distracted from them by a renewal of religious conflict. And in a justificatory article in *L'Unità* a few days after the Assembly's vote he savagely attacked the Action Party ('questi ultimi mohicani'—Calamandrei was one of them) for their lack of that sense of social realities without which all political action is fruitless.⁴⁴ But the argument from realism, however convincing it may have sounded in 1947, is not one that the Communists use in 1958, when their whole complaint is that Christian Democracy is attempting to turn Italy into a theocracy and is in the process violating the spirit and the letter of the Constitution. For the obvious retort is that, by voting Article 7 into the Constitution, the Communists created a conflict of principles that has played into the hands of the enemies of Italian democracy.

⁴⁴ *L'Unità*, 2 April 1947.

Latterly, therefore, the defence has changed ground. Togliatti now claims that the vote on Article 7 signified simply 'the constitutional recognition on the part of the new democratic State of the closure of the Roman question and of the Concordat which forbade religious organisations to intervene in political life'.⁴⁵ It is true that the Concordat (in Article 43) contains a somewhat equivocal provision limiting the political activities of ecclesiastics; it is also true, as we have seen, that as early as April 1945 Togliatti had good reason to know that the Church did not consider itself inhibited by the Concordat from using the full weight of its influence against the Communist Party in elections.

Calamandrei, in the article in *Il Ponte* already referred to, took the view that Togliatti's manoeuvring on the Church-State issue was dictated by nothing more profound than the imminence of a general election and the need for the Communists to avoid the stigma of anti-clericalism. To this it could be added that at the time of the critical vote, tripartitism (the sharing of governmental power by the Christian Democrats, the Communists, and the Socialists) was in the balance. Dossetti and La Pira and their colleagues of the Christian Democrat left wing were fighting for its continuance, and it was therefore expedient for Togliatti to demonstrate that Catholicism had nothing to fear from Communism.

That the expediency of the moment played some part in deciding Communist strategy on 25 March is certain. But it may be suspected that there were other and more profound reasons why, at the critical moment, Togliatti joined forces with the Christian Democrats rather than with the liberals whose assistance would probably have enabled him to force a modification of Article 7. The liberals (using the term in its wide sense) are the true inheritors of the Risorgimentalist aspiration to make Italy into a strong, united, and sovereign State. In the last analysis, this aspiration represents the real opposition to Communism—as it does to Catholic integralism. It may be, too, that Communism and Christian Democracy have more in common than a negative antipathy towards the ideal of a strong Italian State.

⁴⁵ Palmiro Togliatti, 'Laici e non-laici', *Rinascita*, vol. xiii, no. 6.

Antonio Gramsci, a former leader of the Italian Communist Party, wrote in 1922:

Christian Democracy is a necessary phase in the process of adhesion of the entire Italian proletariat to Communism. Christian Democracy creates forms of associated life outside of the industrial factory, that is, in areas where Socialism cannot operate because of lack of the objective conditions of a capitalistic economy. They are furnishing an initial orientation to the still-confused working masses who know that they are part of a great historical process but who don't understand it because they do not live within the walls of a modern industrial plant.⁴⁶

Christian Democracy will ultimately collapse, Gramsci prophesies, because the masses, having acquired through collective action a sense of their own power, will reject a leadership that invokes transcendental values in political and economic life. There is some support for this thesis in the fact that, in the 1953 elections, Communist gains were greatest among the peasantry of Southern Italy, where the Christian Democrats had made their most strenuous efforts to introduce economic reforms.⁴⁷

The Conflict of Constitutional Norms

But, whatever the motives of the Communist Party may have been, the effect of their vote on 25 March 1947 was to leave Italy in a state of juridical schizophrenia that has grown steadily more acute in the ensuing decade. The Constitution that came into force on 1 January 1948, if one puts aside Article 7, redeems the pledge that the Italian Government gave in Article 5 of the Peace Treaty (signed while the Constituent Assembly was in session) to:

take all the measures necessary to assure to all persons under its jurisdiction, without distinction of race, sex, language or religion, the enjoyment of the rights of man, including liberty of speech, liberty of the press and of publication, liberty of religion, liberty of opinion, and liberty of association.

All these freedoms are, or appear to be, guaranteed by the Constitution, which in addition guarantees those more positive freedoms enunciated in the Atlantic Charter.

It shall be the duty of the Republic to remove obstacles of an economic or social nature which, by restricting in practice the free-

⁴⁶ Quoted by Einaudi, *Christian Democracy in Italy and France*, p. 23.

⁴⁷ Grindrod, *The Rebuilding of Italy*, pp. 45-6, 92-7.

dom and equality of citizens, prevent the full development of the human personality and the effective participation of all workers in the political, economic and social organization of the country. [Article 2]

The Constitution proper is an amalgam of orthodox liberalism with some welfare state ideology and some reflection of the organic view of society inherent in Catholic social doctrine.⁴⁸ In those passages dealing with the rights of man its norms are the norms of the American Constitution. But Article 7 appears to import into the Constitution, or at any rate to endow with a special juridical status, a set of agreements whose norms are not those of liberal democracy. Article 8 of the Constitution, for instance, provides that 'all religious creeds shall be equally free before the law', and Articles 19 and 20 purport to safeguard the right of religious association and to prevent the State from discriminating against associations on religious grounds. How are such provisions to be reconciled with the Lateran Pacts whose purpose and effect is to turn Italy into a confessional State?

But before entering upon the question of the compatibility or otherwise of the 'Bill of Rights' passages in the Italian Constitution with the Lateran Pacts, it is necessary to take notice of a preliminary question that has been much debated by Italian constitutional lawyers, viz.: What is the effect of Article 7 of the Constitution upon the juridical status of the Lateran Pacts? There are two main points of view. One, which finds its advocates mainly among liberals and radicals and those who, for various reasons, oppose clericalism in politics, is that Article 7 embodies a directive or instrumental norm and not a constitutional norm.⁴⁹ That is, it merely establishes the method by which the relations of Church and State are to be regulated, i.e. by

⁴⁸ For a general outline of the Constitution and its ideological background see Mario Einaudi, 'The Constitution of the Italian Republic', *American Political Science Review*, vol. xlii, no. 4, pp. 661-76; Grindrod, op. cit., pp. 51-4; Giuseppe D'Eufemia, *Le Costituzioni* (Rome, 1955), pp. 72-87.

⁴⁹ For statements of this point of view see Arnaldo Bertola's contribution to *La Costituzione Italiana de 1948* (ed. Emilio Crosa, Paris, 1950), pp. 215-19; Cesare Magni, 'Incompatibilità dell'articolo 5 del Concordato con le norme della Costituzione' in 'La Libertà Religiosa in Italia', *Quaderni del Ponte*, No. 4 (Florence, 1956), pp. 24-8; Paolo Barile, 'Costituzione e Concordato', paper read before the 6th Convention of the 'Amici del Mondo', Rome, 1957. What might be called the liberal interpretation of Article 7 is weakened by the fact that, during the Assembly debates, some liberals based their case for the rejection of Article 7 on the view that it did constitutionalize the norms of the Pacts.

means of an agreement between the two powers; it is the concordatal procedure that is constitutionalized, not the actual content of the Lateran Pacts. Hence, every modification of the Lateran Pacts by the agreement process must be subordinate to its compatibility with the Constitution. As might be expected, this view is contested by the *Civiltà Cattolica* group and by the opponents of liberal democracy. Thus, Lener affirms that Article 7 amounts to 'a new and autonomous insertion of the norms of the Lateran Pacts in the Constitution';⁵⁰ it is difficult, he says, to regard Article 7 as instrumental when it refers to norms already in force. If the Constituent Assembly had not intended Article 7 to constitutionalize the Pacts it would presumably have adopted the Togliatti draft which proposed simply that relations between Church and State should be regarded 'in termini concordatarii', without specific reference to the Lateran Pacts.

Religious Freedom and the Constitution

The conflict between the norms of the Constitution and the norms of the Lateran Pacts has been most obvious in the religious field. The passages in the Constitution dealing directly with religious rights are as follows:

All citizens have equal social standing and are equal before the law, without distinction of sex, race, language, religion, political opinion or social and personal conditions. [Article 3]

All religious creeds are equally free before the law. Religious creeds other than the Catholic have the right to organize themselves according to their own statutes so long as they do not conflict with the law of the land. Relations with the State shall be regulated by law on the basis of agreement between their respective representatives. [Article 8]

Everyone has the right freely to profess his own religious faith, in whatsoever form, individual or collective, to propagate it and to worship in private or in public, providing that the rites do not offend against public decency. [Article 19]

No special restrictions shall be imposed by law upon any association or institution by reason of its religious nature and its purpose of religion or worship, nor shall any special fiscal burdens be imposed in respect of its constitution, its legal capacity or its activities in any form. [Article 20]

Other articles in the Constitution, as for instance Article 17,

⁵⁰ S. Lener, 'L'interpretazione dottrinale dell'articolo 7 della costituzione', *Civiltà Cattolica* (1950), vol. 3, pp. 357-68, 604-13.

dealing with the right of assembly, and Article 21, dealing with freedom of speech and publication, bear indirectly on religious rights. There is also some reinforcement of religious rights in the Treaty of Friendship between Italy and the United States, which was signed in February 1948, and which provides, in Article 11 (1), that the citizens of each contracting party are to enjoy in the territory of the other full freedom of worship, individual and collective.

It is beyond dispute that, in the period since the Constitution came into force, all religious creeds have not been 'equally free before the law', that non-Catholic religious groups have been subjected to discriminatory treatment by the central government and the prefectural authorities, and that Protestant pastors have suffered grave disabilities in carrying out their functions. The objectionable Fascist legislation of 1929-30 which confers on public authorities special powers of control over non-Catholic religious groups has remained in force and in use. Nor has it been uncommon for local authorities to prevent Protestant pastors from functioning in their districts by such devices as cutting off the water supply to their houses.⁵¹

Those who can be assumed to express the views of the Catholic Church in this matter do not deny that non-Catholic religious groups have not been accorded parity of treatment by the State. Their contention is that the Constitution, whatever the appearances may be, does not prescribe parity of treatment. Thus Messineo argues that a requirement to accord equality of treatment to religious bodies is not a requirement to ignore the differences between such bodies; it would be 'substantially unjust' to treat all religious bodies as intrinsically equal, ignoring differences in the extent and nature of their influence on the moral and religious life of the Italian people.⁵²

⁵¹ For instances of official discrimination against non-Catholic religious groups see *La Libertà Religiosa e la Condizione dei Protestanti in Italia* (Federal Council of the Evangelical Church of Italy, Rome, 1955); Giorgio Spini, 'Le Minoranze Protestante in Italia', *Quaderni del Ponte*, No. 4 (Florence, 1956); Paolo Barile, 'Costituzione e Concordato', paper read before the Convention of the 'Amici del Mondo', Rome, 1957. Most of the writers referred to are strongly anti-clerical but the examples of discrimination given by them are in most cases adequately documented. Nor is it only foreign non-Catholic religious bodies that have suffered disabilities. The long struggle of the Waldensian sect against official hostility is in itself sufficient proof that the provisions in the Constitution for religious freedom and equality do not mean what they seem to mean.

⁵² A. Messineo, 'Democrazia e parità dei culti', *Civiltà Cattolica* (1951), vol. 2, pp. 382-99.

Lener holds that although, in the international order, units (States) are of equal juridical capacity, irrespective of differences of size and power, in the order of the State the units (social groups) are not of equal juridical capacity because that order is essentially hierarchical. Moreover, since, according to Article 7 of the Constitution, the relationship between the Catholic Church and the Italian State is a relationship between sovereign entities, it would be difficult, indeed impossible, to assimilate to this position that of the various Protestant sects, particularly as some of these bodies have no juridical existence.

Lener, it is important to note, does not accept the view that the treatment accorded by the State to religious groups is discriminatory; nor in his view is the Italian State correctly described as 'confessional'. Italy's catholicity is 'a general qualification of the legal order comprehensively considered, not the reflection of a discrimination between Catholic and non-Catholic citizens'. The Concordat with the Vatican represents 'a general political interest of the Italian State'; for a member of a Protestant sect to object to the special position it accords to the Catholic Church is as though an Italian citizen were to object to the projected customs union with France on the ground that his own commercial transactions were principally with Andorra.⁵³

Discrimination against non-Catholic religious bodies has also been justified by reference to Article 1 of the Concordat which says (in part):

In consideration of the sacred character of the Eternal City, episcopal seat of the Supreme Pontiff, centre of the Catholic world, and goal of pilgrims, the Italian Government has the duty to prevent in Rome everything which might be in conflict with this character.

This provision, which (as will be seen) has become dramatically prominent in the controversy surrounding the Italian Constitutional Court, is held by the Holy See to be incompatible with proselytism by non-Catholic religious bodies in Rome.⁵⁴

Another point of conflict between the Lateran Pacts and the

⁵³ S. Lener, 'Religione di Stato e Principio Democratico nella Costituzione Italiana'. *Civiltà Cattolica* (1951), vol. 3, pp. 394-405, 610-22; 'Principio d'uguaglianza e religione di Stato', *Civiltà Cattolica* (1951), vol. 4, pp. 505-16; 'Equivoci e Pregiudizi sull'uguaglianza in materia di religione', *Civiltà Cattolica* (1952), vol. 1, pp. 402-16, 611-22, vol. 3, pp. 467-9.

⁵⁴ *Concordats Conclus durant le Pontificat de sa Sainteté le Pape Pie XI* (Pontificia Università Gregoriana, Rome, 1934), p. 136, n. 24.

Constitution that has aroused much controversy concerns the position of priests and ex-priests in relation to public employment. Article 51 of the Constitution declares: 'Public office and elective posts are open to all citizens of either sex on a footing of equality, in accordance with the requirements established by the law.' But Article 5 of the Concordat reads:

No ecclesiastic may assume or remain in an employment or office of the Italian State or of a public enterprise dependent upon it without the *nulla osta* of the diocesan bishop. The revocation of the *nulla osta* shall deprive the ecclesiastic of the capacity to exercise the employment or office assumed. In all cases apostate priests or priests subject to censure may not assume or be retained in teaching posts or in any office or employment in which they are in immediate contact with the public.

In this matter the State has adhered faithfully to the terms of the Concordat.

It will at first seem to a foreigner that the amount of space and argument devoted by Italian newspapers and periodicals to the conflict between Concordat and Constitution on such issues as religious equality and the employment of priests by public authorities is out of proportion to their practical importance in the everyday life of the Italian people. In all, there are probably not more than 120,000 adherents of non-Catholic religious bodies in the whole of Italy, and it is noticeable that the sects most frequently in conflict with the Italian authorities are those which belong to the eccentric fringe of Protestantism. Italy is not the only country in which Jehovah's Witnesses have been considered a threat to public order. The ban on the employment of apostate or censured priests is no doubt hard to reconcile with a provision for the equal access of all citizens to public employment, but not even the most extravagant of anti-clericals would put the number of persons immediately affected at more than 10,000. Moreover, the more vociferous defenders of the rights of Protestant minorities are small liberal and radical groups—Togliatti's 'ultimi mohicani'—having for their creed an extreme form of anti-clericalism that may seem unrealistic in a community so overwhelmingly Catholic. The political parties representing this point of view—the Liberals and the Republicans—have between them a mere seventeen seats in a Chamber of

Deputies consisting of 590 members. But the struggle for religious freedom in Italy is not an affair simply of minorities—Protestant sects and purist liberals; it is seen, correctly, as part of a struggle to make a working reality of the 1948 Constitution which, after ten years, is still only partly effective. Religious freedom is the issue that simplifies and dramatizes the inherent contradiction between the liberal and egalitarian ideas of the Constitution and the hierarchical and corporative conceptions of society that were in the minds of the authors of the Lateran Pacts.

The Constitutional Court

The connection between the issue of religious freedom in Italy and the broader issues of political freedom and equality has been amply demonstrated by the history of the Constitutional Court, and particularly by the events leading up to the resignation of its first president, Enrico De Nicola. The drafters of the Constitution were well enough aware that its principles were in sharp conflict with much existing legislation carried over from the Fascist period and that in any case Article 7 must involve difficult problems of interpretation. Accordingly, in a section significantly headed 'Constitutional Guarantees' (Articles 134 to 137) they provided for the establishment of a Constitutional Court with power to decide:

on controversies relating to the constitutional legitimacy of bills and acts which have the power of laws, both in the State and in the regions; on conflicting spheres of action between the various State organs, between the State and the regions, and between the different regions; on accusations brought against the President of the Republic and the Ministers under the Constitution. [Article 134]

These powers are made even more formidable by the provision (Article 136) that a law declared unconstitutional by the Court ceases to have effect on the day following the decision and by the fact that private persons have access to the Court for the purpose of challenging the constitutionality of laws. As originally conceived, the Court was to be something more than a dispute-settling body; it was to be the instrument for bringing the Constitution into effect.⁵⁵

⁵⁵ Gian Galeazzo Stendardi, *La Corte Costituzionale; il guida di legittimità costituzionale delle leggi* (Milan, 1957), ch. 1, gives an account of the legal and political theories which went to the making of the Court.

The Court has had a curious and disquieting history. Article 135 of the Constitution provides that it is to consist of fifteen judges—one-third nominated by the President of the Republic, one-third by the two Houses of Parliament in joint session, and one-third by the higher magistracy. In order to bring the Court into operation, it was necessary for Parliament to pass legislation defining the Court's procedures and establishing the qualifications of the judges and the method of electing them. A bill for this purpose was approved by the Senate on 17 March 1949 and transmitted to the Chamber of Deputies. But by this time the political atmosphere was very different from what it had been during the sessions of the Constituent Assembly. The cold war had begun; tripartitism in government was at an end; and the Christian Democrats and their allies of the Centre, absorbed in the fight against Communism, were reluctant to bring into operation an institution that was likely to initiate sweeping changes in the organization and powers of the State. The Christian Democrats made an initial and ominous attempt to bring the Court under political control by providing that the President of the Republic should exercise his power to appoint five judges 'by decree issued upon recommendation of the Minister of Justice and countersigned by the President of the Council'. This amendment, which would have enabled the Government majority in Parliament to control the appointment of two-thirds of the judges, was rejected by the Senate on 5 May 1951.⁵⁶ At this point the Government lost interest in the Court, and for the next few years the Communists and their allies were able to pose as the true defenders of constitutionalism and democracy and to accuse the Government, with some justification, of being unwilling to dispense with Fascist legislation which, though clearly in conflict with the spirit and letter of the Constitution, was of great assistance in dealing with troublesome political minorities. As late as 1954 Gaetano Salvemini was able to point out that a Fascist law was still in force condemning to fourteen years' imprisonment any anti-Fascist exile who spread 'false and tendentious rumours about the Fascist regime'.⁵⁷ It was only with the approach of the 1953 elections for the Chamber of

⁵⁶ Mario Einaudi, *Christian Democracy in Italy and France*, pp. 76-7.

⁵⁷ In *Il Ponte*, March 1954, quoted by Grindrod, *The Rebuilding of Italy*, p. 54.

Deputies that the Government felt obliged to give some indication that it did not intend to let the Constitution remain dormant indefinitely. On 11 March 1953 Parliament passed the legislation necessary to bring the Court into existence,⁵⁸ and in the same month the magistracy exercised its right to appoint five of the fifteen judges. The elections returned the Government to power, and it was not until July 1954 that Parliament made its first attempt to agree upon its nominees—an attempt that failed because of the insistence of the Communists that their numerical strength entitled them to have at least one of their candidates nominated. There the matter rested until, in April 1955, a failure of discipline in the Christian Democrat Party brought the defeat of its official candidate for the Presidency of the Republic and the election of a left-wing Christian Democrat, Giovanni Gronchi,⁵⁹ who had pledged himself either to bring the Constitution into force or to secure its amendment. In November 1955 the parliamentary deadlock was at last resolved by the Communists agreeing to the nomination of a former member of their party, and on 4 December the President of the Republic added his five nominees.

Thus the Constitutional Court, which was to have been the key-stone of the whole Italian constitutional structure, came into existence more than eight years after the promulgation of the Constitution itself. It faced a task of extraordinary difficulty. The Christian Democrats, always divided in their attitude to those parts of the Constitution that derived from individualist liberalism, had become habituated to governing through a State apparatus that was in part a heritage from Fascism. By activating the Constitution, the Court was certain to create some temporary administrative confusion. Moreover, the Constitution itself embodied, as we have seen, a fundamental conflict of principle: on the one hand it professed to make all citizens of equal legal and social standing, irrespective of differences of race, sex, religion or political opinion; on the other hand, Article 7 established the principles of the confessional State, principles that seemed in important respects incompatible with this equality.

⁵⁸ Constitutional Law, 11 March 1953, No. 1.

⁵⁹ Grindrod, *op. cit.*, p. 118; Roy Pryce, 'Italy's Constitutional Court', *Parliamentary Affairs*, vol. x, no. 2, pp. 140-2.

It was not as though the Court was functioning in a political community accustomed to judicial review. Mario Einaudi wrote in 1948:

The experiment is a bold one for a country brought up in traditions of Roman, civil, and codified laws and for a country which, like France, has for so long accepted the principle that the legislative power is supreme and that anything approved by Parliament and meeting the outward procedural requirements is law. This is a tradition which has so far made it impossible to distinguish between positive and higher law. The new Italian Constitutional Court is therefore faced with the necessity of breaking with all traditions and precedents in order to carry out its task.⁶⁰

One development did much to offset these unfavourable auspices. At its first meeting on 23 January 1956 the Court elected as its first president Enrico De Nicola, a Neapolitan jurist of liberal principles and unquestioned integrity. He had held ministerial office under Nitti and Orlando, was Speaker of the Chamber of Deputies in 1920, and during the Fascist period had retired from active political life. In June 1946 the Constituent Assembly elected him provisional head of the State by an overwhelming majority. De Nicola's personal prestige, his independence of outlook, and his high reputation as a lawyer, added to the circumstance that he had been selected by his fellow judges, were in the public mind some assurance that the Court would not fall under the influence of the executive power. Even so, De Nicola had no illusions about the road ahead. It was early decided that all judgments and the reasons attached would be discussed and signed by all members of the Court, including those dissenting from the majority. In a very frank press statement De Nicola drew attention to the difference between this procedure and that of English and American courts, where dissenting judges are free to record and justify their dissent. 'I trust', he said, 'that the United States procedure may some day be adopted in Italy also. This will not, however, be possible before the stability of the Constitutional Court is secured.'⁶¹

The Constitutional Court in Difficulty

The Court's first decision, which concerned some thirty cases

⁶⁰ Mario Einaudi, 'The Constitution of the Italian Republic', *American Political Science Review*, vol. xlii, no. 4, p. 674.

⁶¹ *Italy in 1956* (Agenzia Est-Ouest Italiana, Rome, 1957), p. 9.

arising under Fascist legislation prohibiting the public display of posters, the distribution of pamphlets, and the use of loud-speakers without prior police permission,⁶² raised two fundamental questions; namely, whether it had jurisdiction over laws passed before the 1948 Constitution came into force and whether it was to treat the provisions of the Constitution as immediately mandatory or (according to a thesis much favoured by conservatives) as merely programmatic. On the first question the Court's answer was in the affirmative; on the second question it decided that, even if some parts of the Constitution were programmatic, it still had the right to decide whether or not a law was unconstitutional. 'People will now feel', wrote Calamandrei, 'that the constitution is not merely a piece of paper with writing on it, and that the Republic is not a trick.'⁶³

But it was soon clear that the Court's efforts to weed out the Fascist legislation that was choking the growth of constitutionalism were not to pass unchallenged. Later judgments took away police powers carried over from the Fascist period, including 'ammonizare' (the power to subject persons to special surveillance on suspicion of offence) and 'confino' (forced removal of persons to remote parts of the country without trial). The Minister of the Interior complained to Parliament that the police had been deprived of powers necessary to combat crime, and posters appeared throughout the country implying that the Court was the friend of criminals and Communists. Apparently the poster campaign was the work of right-wing extremists, but there were charges that some Christian Democrats were implicated. It was also suggested that the Government was attempting to thwart the Court by not taking the legislative action made necessary by some of the Court's decisions. In September it was reported that De Nicola had threatened resignation and that a crisis had been averted only by the intervention of the President of the Republic.⁶⁴

Up to this point public criticism of the Court had come mainly from a minister who had come to rely on Fascist police powers. But when, as happened early in 1957, the Court became

⁶² Consolidated Law of Public Security, 1930-1, Article 113.

⁶³ *La Stampa*, 16 June 1956, quoted by Pryce, 'Italy's Constitutional Court', p. 144.

⁶⁴ Pryce, *op. cit.*, pp. 144-7.

involved in the issue of religious freedom, and consequently in the conflict between the norms of the Constitution and the norms of the Lateran Pacts, it found itself opposed by forces that were much more formidable. In April 1956 the Court of Cassation referred to it a case in which an evangelical pastor had been charged under Article 25 of the Consolidated Law of Public Security 1930-1 with having conducted a religious ceremony outside the premises appointed for his denomination without having given the prescribed preliminary notice to the authorities. In the course of his argument, counsel for the State put squarely the proposition (among others) that the Constitution allowed differentiation between Catholic and non-Catholic religious bodies by reason of the Lateran Pacts. In a decision delivered on 8 March 1957 the Court declared the relevant provision of the Consolidated Law of Public Security unconstitutional,⁶⁵ thereby removing one of the main legal instruments of religious discrimination and implicitly rejecting (so it would seem) the *Civiltà Cattolica* view that equality of religions was something substantially different from parity of religions.

Meanwhile, a few days before the Court's decision on the freedom of religious bodies, the Pope delivered what was commonly interpreted as a direct attack on its previous decision, already referred to, nullifying that part of the Consolidated Law of Public Security which had given the police certain powers of combating crime, including control over posters and the distribution of pamphlets.⁶⁶ In forceful language, the Pope deplored the prevalence in Rome of 'vulgarly pornographic' posters, the display of pornographic literature on the news-stands, and the immorality of the cinema and even of television 'which penetrated into the intimacy of the home'. These things were calculated to arouse 'impure thoughts and feelings', especially in the young, and to corrupt the populace, with grave danger to the welfare of the nation. The Pope also drew pointed attention to the terms of Article 1 of the Concordat, imposing upon the Italian Government the duty to suppress manifestations incompatible with the sacred character of the Holy City. As there seemed, he said, little prospect of effective measures against such manifesta-

⁶⁵ Constitutional Court, Judgment No. 45, 1957.

⁶⁶ *Osservatore Romano*, 6 March 1957.

tions, 'particularly since the declaration of the unconstitutionality of certain previous laws', it was the duty of the Catholics of Rome, together with all others who were solicitous for the morals of the people, to arouse public opinion to the point at which the competent authorities would be obliged to take the necessary action.

These words touched off a public controversy of considerable violence. The Communist organ *L'Unità* commented that when the head of the Catholic Church was

audacious enough to declare that the State has not fulfilled its obligations, it is our duty to recall that the undertaking of non-intervention—without which probably not even Fascism would have agreed to close the Roman question—has been violated on a wholesale scale by Catholic organizations on definite instructions from the highest ecclesiastical authorities.⁶⁷

La Voce Repubblicana spoke of the 'contempt for the constitutional charter displayed in the Pope's allocution'.⁶⁸ Lelio Basso, a member of the Secretariat of the Socialist Party, wrote:

What is happening to-day is . . . an attempt to set up an indirect temporal power, that is to say, a temporal power exercised not directly by the ecclesiastical authorities but through the medium of a Catholic party bound to obey the ecclesiastical authorities whenever they see fit to give their instructions to Catholics.⁶⁹

Il Popolo, the Christian Democrat organ, and *Il Messaggero* protested that the Pope had simply spoken in defence of morality; his allocution was neither an incursion into politics nor an attack on the Constitutional Court.⁷⁰ *Osservatore Romano* put forward the more dangerous defence that to criticize the Pope for interfering in affairs of State was misguided because he could not be regarded as an 'authority' or 'power' external to the Italian State.⁷¹

Resignation of De Nicola

The controversy took a new turn on 16 March when *L'Unità* reported that De Nicola had resigned from the Court, and went on to attack the Social Democrats for supporting a Government which now (in *L'Unità's* view) represented the forces of Catholic

⁶⁷ *L'Unità*, 7 March 1957.

⁶⁸ *La Voce Repubblicana*, 7 March 1957. ⁶⁹ *Avanti*, 8 March 1957.

⁷⁰ *Il Popolo*, 9 March 1957; *Il Messaggero*, 7 March 1957.

⁷¹ *Osservatore Romano*, 9 March 1957.

integralism. De Nicola, it was implied, had been forced out of office for attempting to make the Court an independent authority. The report turned out to be correct; De Nicola had on 10 March sent a letter to the Head of the State with a copy to Azzariti, the senior judge of the Court, tendering his resignation on the ground that he no longer had the unanimous support of his fellow judges.⁷² What happened next is a matter of conjecture. According to most reports, both the Head of the State, Gronchi, and the remaining members of the Court tried to persuade De Nicola to withdraw his resignation, and there appears to have been some confusion as to whether De Nicola was complaining of a lack of common ground with his fellow judges in matters of law or simply of a lack of confidence in him as president. On 29 March most newspapers printed the text of a letter from De Nicola to Gronchi saying that he had never considered that decisions must be unanimous. However, he felt that as President he must enjoy that unanimous support which had led to his appointment. He had realized that this support was lacking 'as a result of serious happenings whose significance was beyond discussion and of the constant restriction of his Court duties'.⁷³ On 8 April the Court elected Azzariti its new president and declared that it 'was in a position to fulfil its duties irrespective of the personalities of its members'.⁷⁴

Since De Nicola's record and reputation had meant much to the Court's prestige, his resignation aroused widespread uneasiness, and not only in quarters that were traditionally anti-clerical. 'If divergences on principle of a general nature exist in the Constitutional Court', said *La Stampa*, 'it is not an exaggeration to say that Constitutional foundations are being undermined.' The matter was still more serious 'if extra-Statal influences were being brought to bear', and it was the duty of the Christian Democrat Party 'to re-establish distinctions, distances and harmony'.⁷⁵ In a signed leading article in the same paper, A. Frassati said that the episode was not a De Nicola crisis but 'a crisis of the Constitutional Court and of democracy'. He asserted significantly that De Gasperi's only reason for putting

⁷² *Il Messaggero*, 27 March 1957.

⁷³ *Ibid.*, 29 March 1957.

⁷⁴ *Ibid.*, 9 April 1957.

⁷⁵ *La Stampa*, 28 March 1957.

off the election of judges by Parliament was that he and a section of his party had not wanted the Court to function.⁷⁶

Not enough time has passed and not enough material is available to enable De Nicola's resignation to be seen in a correct perspective. It is clear, however, that the episode was precipitated not solely by the direct issue of Church and State but also by the issue (not unrelated) of the Sicilian High Court. The Constitution of 1948, partly as a result of the influence of Catholic social doctrine, provides (Article 4) that the Republic 'shall recognize and promote local autonomies' and shall 'adapt the principles and methods of its legislative measures to the requirements of autonomy and decentralization'. The creation of nineteen regions is contemplated (Article 131) but so far only four—Sicily, Val d'Aosta, Trentino-Alto Adige, and Sardinia—have come into existence as governmental units. Sicily, which had developed a separatist movement after the Allied landings in 1943, was granted a regional statute in 1943, and this was adopted without change by the Constituent Assembly.⁷⁷ The statute provided for the establishment of a Sicilian High Court with judges nominated in equal numbers by the State and the region and with powers to determine the constitutionality or otherwise of regional legislation. Towards the end of 1956 five cases involving the issue of the constitutionality of Sicilian laws came before the Constitutional Court, five of whose judges were also members of the Sicilian High Court. These latter immediately raised the question of the Constitutional Court's competence, thereby facing it with the most difficult and, from the point of view of its own future, the most critical decision it had yet had to make. For clearly, if the Sicilian High Court's competence in cases involving the constitutionality of Sicilian laws were upheld, the position of the Constitutional Court as the supreme constitutional authority and guarantor of constitutional rights, and indeed the supremacy of the Constitution itself, would be undermined.

In a judgment reached on 27 February and published on 9 March—De Nicola's first letter of resignation was written on 10 March—the Court took the view that its jurisdiction had

⁷⁶ *Ibid.*, 30 March 1957.

⁷⁷ Grindrod, *The Rebuilding of Italy*, p. 61.

absorbed the Sicilian High Court's jurisdiction and affirmed emphatically that the principle of unified constitutional jurisdiction was a necessary consequence of the Italian constitutional system. The judgment stated:

This Constitutional system provides for regional autonomy, but within the framework and upon the foundation of the unity of the State, solemnly consecrated in the Constitution and in the special regional Statutes, a precious heritage from our fathers which the unity of Constitutional jurisdiction supports, confirms and guarantees.⁷⁸

The Constitutional Court's procedure whereby all its judges sign all its judgments and no dissenting opinions are recorded makes it impossible to discover by what majority this particular judgment was agreed. But the judgment does record that the five judges who were also members of the Sicilian High Court questioned the Constitutional Court's competence to deal with the cases under consideration and this, taken together with the terms of De Nicola's letter of 29 March, seems to justify the assumption that the decision was reached only after a hard and perhaps embittered struggle. It also seems clear that the decision on the Sicilian cases brought the relations between De Nicola and the Government to a crisis. The Court's decision, coupled with its forceful affirmation of the principle of unified constitutional jurisdiction, appeared to impose on the Government the obligation to abolish the Sicilian High Court. It so happened that Parliament was at this time due to elect two new members to the Sicilian Court. Gronchi, who had from the first been a champion of the Constitutional Court and the Constitution, advised Parliament that the election should be indefinitely postponed, and affirmed that the Constitutional Court must henceforth be regarded as the only body competent to judge regarding the constitutional standing of laws passed by the Sicilian regional assembly.⁷⁹

Nevertheless, the patent reluctance of ministers to commit themselves on the central issue raised by the judgment justifies the assumption that many Christian Democrats found the judgment unpalatable and were prepared to put up a fight for the

⁷⁸ Constitutional Court, Judgment No. 38, 1957.

⁷⁹ Agenzia Est-Ouest Italiana, *Daily Report*, 4 April 1957.

Sicilian Court. Given their premises, their attitude was logical, for the decision on the Sicilian cases involved issues far more momentous than the future of Sicilian autonomy—important as regionalism was in Christian Democratic ideology. It could not escape notice that the status of the Sicilian Statute in relation to the constitution was somewhat analogous to that of the Lateran Pacts. Both, in some sense that was difficult to define satisfactorily, had been linked with the Constitution. What did this imply—that their norms had parity with the norms of the Constitution, were in fact part of the Constitution, or merely that they had acquired a special status short of ‘constitutionalization’ and that in the last analysis they must give way to the Constitution proper? The Constitutional Court, it seemed, had declared that the norms of the Sicilian Statute were subordinate to the norms of the Constitution. Might not a similar line of reasoning lead it to a similar view of the norms of the Lateran Pacts? After all, in its decision on the issue of religious equality and the rights of the sects, the Constitutional Court had already, in the eyes of many Catholic theorists of the Constitution, taken a view of religious equality that was out of harmony with the principles of the Concordat.

It is perhaps permissible to reduce the issue to even simpler terms. At the level of formulated policy, Italian Christian Democracy has made its accommodation with the Italian State, but never far below the surface of its thinking is a tendency, inherited from the struggles of the *Risorgimento*, to assume that basically a strong, unitary Italian State is inimical to the interests of the Church. Its attachment to regionalism and pluralism is as much the result of a desire to keep the State weak as of the influence of Catholic social doctrine.⁸⁰ The almost provocatively emphatic words which the Constitutional Court used in the Sicilian cases to proclaim the sovereignty of the Italian

⁸⁰ Fogarty, *Christian Democracy in Western Europe*, p. 321, says of Romolo Murri, a Christian Democrat leader of the 1890s: ‘The enemy . . . tended to become the State as such, not merely its liberal form. If Murri emphasised decentralisation and local autonomy, it was not merely because of the usual pluralist assumptions of Christian Democracy. It was because he doubted whether there was in any case room in Italy for a strong State—even one inspired by Christianity—as well as a strong Church. He cast the Papacy for a role like that envisaged by the neo-Guelfs before 1848, as the focus of the country’s temporal as well as spiritual life.’

people and the unity of the State as the basis of the whole Constitutional structure could hardly have failed to bring this tendency to the surface. For better or for worse, the Court (or perhaps one should say the majority of the judges represented in its decisions) has become the protagonist of the Italian State. That is the ultimate source of the difficulties which led to De Nicola's resignation.

The Terms of the Church-State Problem

Those who drafted the 1948 Constitution left—and knew they were leaving—an unresolved conflict between the norms of the Lateran Pacts and those of the Constitution proper. Since all the parties represented in the Constituent Assembly professed a desire to keep the religious issue out of party politics, it is reasonable to ask how they expected the conflict to be resolved. Carlo Sforza, as we have seen, was hopeful that at a favourable moment the Italian Government and the Holy See would come together and negotiate the elimination or amendment of those clauses in the Pacts that were inappropriate to a republican democracy. Few can have taken the suggestion seriously, for it was even then clear that the Holy See was not disposed to surrender anything that it had gained by the agreement of 1929. More plausibly, the members of the Constituent Assembly might have argued that, if they were leaving a judicial confusion behind them, they were setting up, in the Constitutional Court, an institution with formal powers sufficient to enable the confusion to be tidied up at the level of judicial interpretation. If this was in fact their hope, it is no longer tenable. The Constitutional Court, far from keeping the religious issue out of politics, has itself been dragged by that issue into politics. Since De Nicola's resignation there has been a significant upsurge of anti-clericalism in the liberal and left-wing press, with a corresponding tendency on the part of the Christian Democrats to move to the defence of the Church.

But it is necessary at this point to be clear on what the argument is about. It is not a reopening of the 'Roman question' in its old form, for in so far as the Lateran Treaty is simply a settlement of the international status of the Holy See no political group seeks its abrogation or revision. The controversial docu-

ment is the Concordat, and there is a considerable agitation for a revision of, for instance, the clauses relating to the Church's matrimonial jurisdiction and the restriction on State employment of priests and ex-priests. Even so, except for the numerically insignificant Republican and Liberal parties, there is no disposition to revive the ideal of separation of Church and State. Communists and Socialists, as well as Christian Democrats, have accepted the Catholicism of the Italian State as a social reality that demands legal expression. The motive force behind the agitation against those parts of the Concordat that conflict with the 'Bill of Rights' sections of the Constitution is not so much the tradition of the Risorgimento, with its emphasis on juridical principles (though that still finds a vigorous expression in men like Jemolo), as the fear that if the norms of the Pacts prevail so also will the integralist tendencies in Italian Christian Democracy. 'A republic on the Salazar model', Jemolo has said,⁸¹ 'is certainly, among the dangers impending upon Italy, the most imminent.' It cannot escape notice that the defence of the Lateran Pacts by the Christian Democrat régime and the Church has also involved the defence of legislation and administrative practices carried over from the Fascist period. In a sense, therefore, the conflict over Church-State relations is also a conflict over the form of the Italian State.

Moreover, the means by which the conflict is being waged are as important as the issues—are indeed interwoven with the issues. In Italy, Church and State are parallel institutional expressions of the same society. It is therefore a misleading simplification to think of their relationship solely as a form of treaty relationship arrived at by negotiation between the governing authorities of two sovereign and separate entities. There is a static relationship that can be expressed as a legal definition of respective rights and spheres of authority. But the static relationship is only a momentary and particular expression of a dynamic relationship that consists in the interaction of the influences that each exerts on Italian society. On this view, the crucial problem of Church-State relations in Italy is not so much to define the rights of each at a given moment but rather to determine the mutual limits of their social action. As we have seen, the

⁸¹ Jemolo, *Chiesa e Stato* (1955 abbreviation), p. 476.

boundary does not lie between the temporal and the spiritual, for in Italy the Church claims (and the claim is conceded in Article 7 of the 1948 Constitution) a true juridical sovereignty over the Italian people.

It was Mussolini's view (and it is today the Communist view) that the boundary limiting the action of the Church upon Italian society lies somewhere short of party politics. As we have seen, the turning-point in the relations between the Church and the Fascist régime and the beginning of that process of reconciliation which culminated in the signing of the Lateran Pacts was Sturzo's decision in 1923, under pressure from the Vatican, to resign the secretaryship of the Popular Party—a decision that led to the rapid decline of the party as an effective force. By acquiescing in, and even assisting, the suppression of political Catholicism, Pius xi opened the way to the recognition of Catholic Action by the State. The balance of the transaction is indicated clearly enough in Article 43 of the Concordat. The first paragraph of this article gives formal recognition to the organizations of Catholic Action on condition that their activities are unconnected with political parties and that they are 'under the immediate direction of the hierarchy of the Church for the diffusion and actuation of Catholic principles'; the second paragraph contains a prohibition, directed to all ecclesiastics and religious in Italy, against joining or becoming militant in any political party.

If one accepts the Church's proposition that it has the right and duty to combat Communism, it is difficult to see how Article 43 could govern the Church's policy in a liberal democratic Italy. Under Fascism, the Church could afford to withdraw itself and all organizations of the faithful from politics because the Fascist State was in itself a rejection of Communism. But such a strategy could hardly be appropriate in a State that conceded freedom of action to Communists and in which the Communist Party had massive electoral support; and in *Civiltà Cattolica*, from about 1946 onwards, one can see emerging the outlines of a theory of the relationship between the Church and politics appropriate to the new Italy. In general, but subject to drastic qualifications, the twin propositions of Article 43—that Catholic Action is unconnected with political parties and that ecclesiastics may not

be active in political parties—are maintained.⁸² Thus Brucculeri, having quoted Pius XI to the effect that representative institutions ‘are not of themselves in opposition to Catholic doctrine’, draws the conclusion that as the Church does not disapprove representative government, it must therefore approve political parties. But this approval of the existence of political parties as a necessary incident of representative government does not involve intervention in their activities, in so far as those activities are merely political; nor can the Church, being universal and a perfect society, afford to identify itself with any one party. It follows that religious organizations and those directly under the control of the hierarchy may not constitute political parties. Parties like the Christian Democrats are not confessional parties, though they may be considered (following Maritain’s formula) as ‘la manifestazione temporale dell’ ispirazione evangelica’.

The Church and Party Politics

This apparent withdrawal of the Church from the field of party politics must, however, be interpreted in the light of Brucculeri’s distinction between politics and morals. When the activities of associations and groups raise issues of honesty or justice subject to a moral valuation, this is a proper field for the Church as the teacher and defender of ethical norms. Therefore the Church can intervene in the political sphere ‘per tutelare la morale’. Further, the Church is entitled to declare whether the ideology of a political association conforms to the moral law and whether or not adherence to a particular association is permissible. (This covers the Pope’s broadcast message of 24 December 1947, in which he condemned parties who sought by deception to gain power in order to suppress religious liberties, and also his later statement that for the faithful to support parties with materialistic philosophies signified ‘to desert the Church, to cease to be Catholic’.) But—and one must remember that Brucculeri was writing on the eve of the fateful 1953 parliamentary elections—the Pope need not confine himself, in his capacity as tutor of morals, to the negative function of forbidding adherence to parties that do not conform to the moral law. He has also the function of exhorting Catholics not to disperse their

⁸² A. Brucculeri, ‘Chiesa e partiti’, *Civiltà Cattolica* (1953), vol. 2, pp. 375-66.

resources in the political combat or to fight in open order. 'When Christian values are at stake, Catholics must have a single mind.' Brucculeri does not deny that such interventions by the Church will have their political consequences, but he holds that, by defending the moral order and thereby giving to human life its 'essential moral integration', the Church does not weaken, rather it strengthens, the political order.

Lener, the boldest of the *Civiltà Cattolica* group where legal or political theory is involved, has a somewhat different approach to the problem of adapting the political clauses of the Concordat to the present situation.⁸³ Whereas Brucculeri and Messineo overcome their difficulties by reducing the content of politics to a mere matter of techniques and by making the Church the sole authority on moral issues, even though the exercise of this authority may have important political consequences, Lener seems to call in question the commonly-held view that the Concordat pledges the Church to withdraw from the political field. Article 1 of the Lateran Treaty, by recognizing Roman Catholicism as the sole religion of the State and by recognizing also that the Italian State is Catholic, consequentially recognizes (so Lener argues) that the Catholic Church exercises in Italy 'a public, and one might say, a political function'. It follows that the purpose of the Concordat is not to withdraw the Church from Italian politics but to define the limits of its political activity; and upon the paragraph of Article 43 that forbids ecclesiastics to join and become militant in political parties, Lener passes the comment: 'this is therefore *the only* political activity which in terms of the Concordat is forbidden to the clergy'. Lener similarly glosses Article 71 of the Electoral Act, which provides that 'the minister of any religious body who, in abuse of his proper function, attempts to bind the votes of electors for or against a specified list or specified candidates', is liable to penalties. A Catholic priest, says Lener, who influences voters in accordance with an instruction from his ecclesiastical superiors does not violate this provision because, having been so instructed, he is not acting outside his proper function. Moreover, since the law refers only to specified lists or candidates, it

⁸³ S. Lener, 'Difesa della religione e competizione elettorali in Italia', *Civiltà Cattolica* (1948), vol. 1, pp. 561-78.

is not violated if the name of the party or the names of individual candidates are not specified.

Anyone who looks only at the writings of the *Civiltà Cattolica* group in the period immediately preceding and since the framing of the 1948 Constitution will have the impression that the wall interposed by Article 43 of the Concordat between the Church and party politics has been so eroded by the glossators that its significance is now mainly historical. This impression is supported by reliable accounts of Italian election campaigns and can be confirmed by even a casual observer of Italian political life. Indeed, it would not be difficult to collect from the files of *Civiltà Cattolica* and *Osservatore Romano* an impressive body of evidence in support of the thesis of *L'Unità*, *Il Mondo*, and *Il Ponte*, that the object of the Church in Italy is to merge the citizen in the professing Catholic, civil society in the religious community, and the State in the Church. But there is another side to the picture. While it may be true that Article 43 of the Concordat has ceased to be a serious restriction on the Church's freedom of action in the political field, it should not be supposed that there is now no check on the integralist tendencies at work in Italian Catholicism. The extent and the strength of the links between the Church and Christian Democracy are a matter of conjecture, but it is clear that on either side there are limits of prudence. There is, for instance, no reason to doubt the emphatic assertions of Catholic writers that the Christian Democrats are not a confessional party and that the universality of the Church prevents it from identifying its interests, at any rate permanently, with those of any political party. The history of Catholic parties in Europe, and of the Italian Popular Party in particular, provides ample evidence in support of this proposition.

From the side of the Christian Democrat Party itself, the prudential limits on connections with the Church and upon confessionalist tendencies were clearly stated by the greatest Catholic political leader of post-war Europe—Alcide De Gasperi. All De Gasperi's thinking on political strategy was dominated by his conviction that for Italy the ultimate political disaster would be the emergence of the conflict between Catholic and lay forces as the major line of division. The future of Christian Democracy, in his view, depended on its ability to avoid becom-

ing 'involved in the toils of the traditional choice between Guelphism and Ghibellinism'⁸⁴ and to this end it was essential that party strategy should be based on three points. The first was that the party should avoid the reality or the appearance of direction by the Church. The second was that its objectives should be in the field of social and economic policy and that the task of defining and adjusting relations between Church and State should be left to the representatives of the Church and the Government of the day. The third point was that Christian Democracy should maintain close links with the forces of secular democracy. Thus, after the elections of April 1948, when the Christian Democrats won an absolute majority in the Chamber, De Gasperi was strong enough to persuade the party to accept a coalition government including representatives of the Social Democrats, the Republicans, the Liberals and two independents.

Whether Christian Democracy can hold to the course charted for it by De Gasperi and before him by Sturzo is an open question on the answer to which largely depends the future of Italian democracy. Mario Einaudi says:

The problem of the relationship of Christian Democracy to the Church is a basic one. Politically, the question is not: Can, in principle, a Christian Democratic party be founded which at all times will be free of Church control? It rather is: Have there been times when a Christian Democratic party has been free of Church control?

According to Einaudi, the second question can be answered in the affirmative; from 1919 to 1924 the Italian Popular Party was, in his view, 'an independent movement free of Church control'.⁸⁵ What is now known of the circumstances surrounding Sturzo's resignation from the secretaryship of the party in 1923 suggests that this is an overstatement. In any case, the position of the present Christian Democrat Party in relation to the Church is so different from that of the Popular Party that such precedents as may have been set between 1919 and 1924 are of small relevance. The Popular Party owed little to Church support or encouragement in its origins; it was actively disliked by Pius XI;

⁸⁴ Letter of 9 August 1954, published after De Gasperi's death in *Il Popolo*, 21 August 1954, quoted by Grindrod, *The Rebuilding of Italy*, p. 66.

⁸⁵ *Christian Democracy in Italy and France*, p. 12.

and if it had a certain freedom from ecclesiastical interference, the reason can be found in the Vatican's refusal to be implicated in its affairs. On the other hand, the present Christian Democrat Party was in its formative years the nurseling of a Church that had come to take a radically different view of the value and possibilities of a Christian initiative in political life. Most of its present leaders were formerly members of the Popular Party who were protected by the Church in the period of Fascist repression and enabled to maintain a skeletal organization. De Gasperi, for instance, after a period in prison, found refuge as a cataloguer in the Vatican library. From the first the leaders of the Christian Democrat Party, unlike the leaders of the Popular Party, have been in close personal relationship with the men of the Church.

Catholic Action and Christian Democracy

It is, however, impossible to understand the position of the Christian Democrat Party, as differentiated from that of the Popular Party, without taking into account changes in the structure and functions of Catholic Action in the last half century. Giovanni Spadolini, a Catholic and right-wing critic of Christian Democracy, has pointed out that whereas the success of the Popular Party in the period 1919 to 1922 weakened Catholic Action, the post-war period has seen Christian Democracy and Catholic Action growing together in strength and developing intricate techniques of co-operation.⁸⁶ One reason for this contrast is that in the early years of the century a distinction between the activities of Catholics in party politics and the activities proper to Catholic Action as an organized entity had not been developed. Thus in 1903, when Pius x modified the *non-expedit*,⁸⁷ he entrusted to an organization known as the Electoral Union of Catholics, which was formally a part of Catholic Action, the responsibility of issuing instructions to Catholic voters. The emergence of the Popular Party increased

⁸⁶ Giovanni Spadolini *L'Opposizione Cattolica* (Florence, 1954), appendix, pp. 688-703. He says, at p. 700, 'Catholic Action, without constituting itself a party, and rejecting the pledges and responsibilities of a party, has contributed greatly to the success of Christian Democracy.'

⁸⁷ In 1867 the Holy See declared it inexpedient (*non-expedit*) for Italian Catholics to exercise the vote. Leo XIII made this a formal prohibition in 1895.

this confusion, for although Sturzo insisted that his party had no formal links with the Church or with church organizations, the distinction was not commonly understood or accepted because of the overlap of membership. Sturzo himself had been secretary of the Central Committee of Catholic Action, and the great majority of party members were also members of Catholic Action. The first systematic attempt to clarify and differentiate was made in 1923, when it was already apparent that the activities of Catholic Action would be a major point of contention between the Church and the Fascist régime.⁸⁸ Under statutes promulgated in that year, Catholic Action was placed under the direction of a Central Committee consisting of a president and four members, all nominated by the Pope in his capacity as Primate of Italy. At the level of the dioceses, control was vested in a committee of elected members with a chairman nominated by the bishop. Similarly, at the parish level there was an elected committee with a chairman nominated by the priest. All officers from the Central Committee downwards were laymen, ecclesiastical supervision being maintained at each level by chaplains appointed by the appropriate ecclesiastical authority. At the same time it was laid down that Catholic Action was not to enter the field of party politics and this prohibition was reinforced by Article 43 of the Concordat.

These measures did not save Catholic Action from sustained attack by Fascism and on 30 May 1931 Pius XI instructed the bishops to take over immediately personal control of the entire movement, a step that amounted to a suspension of the lay officers and was presumably intended to emphasize Catholic Action's conformity with the definition of it in the Concordat as an organization 'in immediate dependence on the hierarchy'. This was followed on 2 September by an announcement that the Holy See and the Government had reached an agreement, the principal terms of which were that Catholic Action was diocesan in character and under direct episcopal control, that its officers would not be chosen from among those who had belonged to 'parties averse to the régime', that the professional

⁸⁸ This account of the changes in the organization of Catholic Action in the Fascist period follows that given by Binchy, *Church and State in Fascist Italy*, ch. xviii.

sections were to have no syndicalist functions, and that youth organizations were to refrain from sporting and athletic activities.

Finally, in April 1939, when it seemed that another attack on Catholic Action was imminent, the Pope brought the revisions of 1931 to their logical conclusion by abolishing the Central Committee and vesting central control in a Commission consisting of three members of the Italian hierarchy (the Cardinal Archbishops of Palermo and Genoa and the Patriarch of Venice), thereby terminating the direct link between the papal curia and the organization. Three months later the commission issued a new set of statutes under which the last vestiges of lay direction were abolished. At the diocesan level, control was vested in a Catholic Action office under the personal supervision of the bishop, and at the parish level there was a corresponding office directly responsible to the priest. It is perhaps unnecessary to say that for an organization that had been conceived as giving concrete expression to the 'apostolate of the laity' these changes represented a move of desperation.

The post-war reorganization of Catholic Action took place under the impetus of two needs.⁸⁹ The first arose from the political confusion of the Resistance period during which Catholics had become involved in political movements, such as the Sinistra Cristiana, which were causing anxiety to ecclesiastical authority; the second arose from the imminence of elections to the Constituent Assembly, a body that would necessarily have the task of defining the Church-State relationship in the new Italy. It was urgent, from the Church's point of view, that lay organizations of Catholics should be brought back under discipline and that they should be strengthened in preparation for the exercise of their function as defenders of the rights of the Church. In January 1946, Pius XII announced the appointment of an Episcopal Commission to revise the general statute of Catholic Action and to consider 'the relations of this organization with the other organizations and movements of the apostolate, particularly those in the field of social activity'. The new statute, promul-

⁸⁹ The development of Catholic Action in the post-war period is dealt with by Falconi, *La Chiesa e le organizzazioni Cattoliche in Italia*, ch. xiv and appendices.

gated in October 1946, was in a large measure a return to the principles of the statute of 1923, that is, it restored to the laity responsibility for the practical direction and execution of the organization's work. The Central Committee and the Diocesan and Parish Committees are once again composed entirely of laymen, but there is a significant difference from the 1923 arrangement in that above the Central Committee there is now a Commission of Cardinals with a general supervisory function. The new statute also established the position of Catholic Action as 'the principal organization of militant catholics' with supervisory functions over other 'catholic institutions of education, of propaganda, of charitable activities'. According to Falconi, Catholic Action emerged from the reorganization of 1946 as the most flexible and the best organized instrument that the Church has ever possessed, with a sufficient lay element to give it a certain autonomy but with sufficient hierarchical control to make it easily manoeuvrable.

The Civic Committees

As we have seen, Catholic Action played a vigorous part in the elections to the Constituent Assembly. This was not considered to be an intervention in party politics but rather an intervention for the purpose of safeguarding the rights of the Church at a critical period in its history. It was clear, however, that the continued intervention of Catholic Action in elections would place itself and the Church in a position of some danger, if only because it could be held to be a breach of the Concordat. As the elections for 1948 approached, the prospect of Communist gains in the south created some alarm in Christian Democratic and Church circles. The outcome was the creation, at the suggestion of Professor Gedda, later national president of Catholic Action, of the Civic Committees.⁹⁰ In effect, these Committees, of which Christian Democracy and Catholic Action may be regarded as joint sponsors, consist of the heads of the Catholic organizations in the various parishes and dioceses. As such, they include bishops and priests who, under the Concordat, are prohibited from being active in political parties. The practical consequence

⁹⁰ The origin and functions of the Civic Committees are dealt with by Falconi, *op. cit.*, pp. 378-92; Grindrod, *op. cit.*, pp. 78-9; Einaudi, *op. cit.*, pp. 85-6; Fogarty, *op. cit.*, pp. 328-9.

of this somewhat equivocal set-up is not unfairly summarized by a writer in *Il Mondo*:

If Gedda as vice-president of Catholic Action is not able to take part in politics, he can freely carry out such activities by calling himself president of the Civic Committees. If the diocesan section of Catholic Action cannot intervene in an electoral campaign because the Concordat forbids it, their respective heads (the bishops) have licence to do so on the sole condition that they involve the Civic Committees rather than Catholic Action. The identity of the physical person . . . does not prevent, at the appropriate moment, an opportune dissociation, and the label of the Committees will cover perfectly the whole structure of Catholic Action.⁹¹

There are now some 24,000 Civic Committees at the parish level⁹² and although their main formal function is to combat Communism, in fact they are a bridge between Catholic Action and Christian Democracy and constitute the real foundation of Christian Democracy's electoral strength.

The activities of the Civic Committees were debated at some length during the 1953 elections, when newspapers of the Left complained that their intervention on behalf of the Christian Democrats was a violation of the Concordat.⁹³ Particular attention was drawn to a statement by the Pope to representatives of the committees in which he said:

You do not constitute a political party, but no one can deprive you of the right to unite, to organize, and to intervene with every legitimate means to the end that legislation affecting the family, laws for the more equal distribution of wealth and the education of the young, and all measures touching the field of morals and faith, shall be framed according to Christian postulates and thinking and according to the teaching of the Church.⁹⁴

Not unreasonably this was taken as an exhortation to the committees to enter the electoral campaign in support of the Christian Democrats; and as the committees include parish priests and bishops it was alleged that the Church was becoming directly involved in party politics. Answering this charge in *Civiltà Cattolica*, Messineo made some significant admissions.⁹⁵ The Civic Committees, he said, 'worked magnificently during the election campaign, engaging their members in the battle and

⁹¹ *Il Mondo*, 24 November 1951.

⁹² Fogarty, op. cit., p. 328.

⁹³ *Avanti*, 12 April 1953.

⁹⁴ Quoted in *Civiltà Cattolica* (1953), vol. 2, p. 362.

⁹⁵ A. Messineo, 'I Cattolici e la vita politica', *Civiltà Cattolica* (1954), vol. 2, pp. 3-15.

thus helping to overcome the organizational difficulties of Christian Democracy'. But the Civic Committees, though they may have emanated from Catholic Action, were not to be confused with the Church itself. Catholic citizens, like other citizens, had the right to organize; they were entitled to constitute centres of action and of propaganda, either within parties recognized as having a programme conforming to Catholic ideas, or outside parties in autonomous formations. Parish priests and bishops had been involved in the work of the Civic Committees, but priests and bishops also were citizens and had rights of organization and propaganda. Their action as citizens had to be within certain limits, so that their ecclesiastical function was not impeded; these limits were not, however, intrinsic but depended on prudence.

These post-war changes in the structure of Catholic Action and the development of the Civic Committees out of Catholic Action have taken place to the accompaniment of a power struggle within the organization—a power struggle that has reflected profound differences of opinion within the Christian Democrat Party and Catholic Action itself over the role of the latter in the political community. It has been said earlier that, in its present form, the problem of relations between Church and State is not so much to define the rights of each in juridical terms but rather to determine the mutual limits of their social action. It is now possible to give this statement greater precision by relating it to these opposed conceptions of the functions of Catholic Action.

The Influence of Maritain

Catholic theory postulates that Church and State are two perfect societies (perfect in the sense of being complete in themselves) and that the Church has superiority over the State in virtue of the superiority of the spiritual over the temporal. How is this superiority to be expressed? In the sacral civilization of the Middle Ages, when Church and State were imperfectly differentiated and all citizens were churchmen, it was expressed by the use of the State to further the spiritual ends of the Church. In a secular civilization, and in situations where the political community is heterogeneous as to religion, Catholics have found,

both in practice and in theory, different ways of expressing the superiority of the religious to the political order. At one extreme on the spectrum of theory is the school (prominently represented by Jacques Maritain and John Courtney Murray) that boldly seeks to accommodate Catholic thinking on this point to democratic ideas.

The supreme, immutable principle of the primacy of the spiritual and the superiority of the Church can apply otherwise—but not less truly, and even more purely—when, from the very fact that the State has become secular, the supreme functions of moral enlightenment and moral guidance of men, even as concerns the standards and principles which deal with the social and political order, are exercised by the Church in a completely free and autonomous manner, and when the moral authority of the Church freely moves human consciences in every particular case in which some major spiritual interest is at stake. Then the superior dignity and authority of the Church asserts itself, not by virtue of a coercion exercised on the civil power, but by virtue of the spiritual enlightenment conveyed to the souls of the citizens, who must freely bear judgment, according to their own personal conscience, on every matter pertaining to the political common good.⁹⁶

At the other end of the spectrum are those who, like some of the Spanish bishops, hold to the medieval view that, at any rate in predominantly Catholic states, civil authority can and should be used to advance the Church's supernatural ends.

In the present setting of the Church in Italy this question of the nature of the indirect power and the means by which it should be exercised arises most directly in connection with the role of Catholic Action, since Catholic Action is the main instrument by which the Church acts upon civil society. If the Maritain view is accepted, then the function of Catholic Action is not to act upon society as a disciplined and centrally-directed collective force but rather to sensitize the consciences of its members and to instruct them in Catholic social doctrine, leaving it to each individual to apply the principles of that doctrine to particular circumstances as he sees fit. In fact, Maritain has been a substantial though usually a minority influence on Italian Catholic thought, with a particular appeal for Dossetti and La Pira and their colleagues of the 'academic left' of

⁹⁶ Jacques Maritain, *Man and the State* (Chicago, 1956), pp. 163-4.

Christian Democracy. After the formation of the Civic Committees, this group waged a vigorous battle against what it regarded as a dangerous tendency to carry through a political mobilization of Catholic Action; thus, Giuseppe Lazzati, who was prominent as a leader of the anti-Fascist wing of the Catholic Youth organization (*Gioventù italiana*), protested:

The end of Catholic Action is identical with that of the hierarchy. That end is exclusively supernatural, whatever may be the field in which or the means by which it is pursued . . . Catholic Action engages Catholics as Catholics; it engages the Church. This conception justifies the limits which are placed on Catholic Action and which it cannot exceed without denying its own essential character and therefore without compromising the Church . . . Political and social action is not the field of Catholic Action. At this boundary, Catholic Action stops. It is not competent in this field because its proper end is apostolic, not profane and temporal.⁹⁷

For Professor Gedda, on the other hand, Catholic Action is the vanguard of Christian integralism; the prime duty of its members is to constitute a force that is unified, compact and dedicated. Maritain's notion of the instructed but freely acting Christian conscience is thrust brusquely aside:

No Christian may discuss the competence and methods of the Church. Only the Church under God can be the judge of her rights and duties. In the name of this divine magistracy and not of certain philosophies from beyond the Alps, which are not desirable imports, we affirm that wherever the Christian goes, the Church goes as instructor and there also Catholic Action can go. That holds good even in politics. Who labours to serve God and the Church, even in politics, is an apostle. Fascism imposed twenty years of difficulty on Catholic Action and tried to confine it to the sacristy. Some politicians would seek to bring it back to this point . . . If anyone seeks through Catholic Action to attack the Civic Committees, which have astonished the world, we say they are not only ungrateful but stupid. Italian Catholics are Catholics of the frontier; one should not seek to weaken the cement which unites them or to undermine the wall which holds back the floods of disorder.⁹⁸

Passages such as these give the tone and the issues of a debate that was carried on vigorously in Catholic publications between about 1947 and 1954. The Maritain influence was, however, greatly weakened by the withdrawal of Dossetti from politics in

⁹⁷ *Cronache Sociali*, No. 20, November 1948.

⁹⁸ Quoted by Falconi, *op. cit.*, pp. 379-80.

1951 and by the winding up in the same year of *Cronache Sociali*, the organ of his group. In 1954, Professor Gedda and the exponents of Christian integralism won a seemingly decisive victory with the removal of Mario Rossi from the presidency of 'Gioventù italiana', the last stronghold in Catholic Action of the anti-Gedda forces. *Il Messaggero* said bluntly that Rossi had been superseded because he had persisted in maintaining a democratic line unacceptable to Professor Gedda.⁹⁹ *Osservatore Romano* denied that the change had political significance but admitted significantly that 'the competent ecclesiastical authorities had for some time been concerned over certain perilous doctrinal tendencies in Gioventù italiana . . .'.¹

The Future of Christian Democracy

The dominance of the Gedda faction in Catholic Action and their frankly integralist objectives have brought them increasingly into conflict with those leaders of the Christian Democrat Party who have sought to prevent it becoming confessional and to maintain links with forces of secular democracy. From 1951 onwards, Gedda was openly critical of De Gasperi on the grounds that the Prime Minister clung too much to constitutional reforms in the fight against Communism and that the Christian Democrat Party was not sufficiently active in defence of Church interests. The party's heavy dependence during elections on the organizing resources of the Civic Committees has made its fight for autonomy a difficult one. After the local elections of 1951, Gedda announced that the electoral achievements of the committees gave them the right and the duty to state their point of view more often than in the past—a point of view based on the conception of democracy as 'an harmonious, coherent and authoritative system'. 'The mortgage of Catholic Action . . .', says Mario Einaudi, 'weighs very heavily on present-day Christian Democracy.'²

Church, Catholic Action, Christian Democracy—the relationship is too subtle and too flexible to be grasped in its working reality except by those who are involved in it directly and at a high level. The outside observer, seeking to judge in what degree

⁹⁹ *Il Messaggero*, 19 April 1954.

¹ *Osservatore Romano*, 23 April 1954.

² Einaudi, *Christian Democracy in Italy and France*, p. 26.

the Christian Democrat Party is autonomous within the field of political action, is perhaps over-prone to rely on surface indications. These, admittedly, are not reassuring. Both in the conflict over the relationship of the Lateran Pacts to the Constitution and in the protracted crisis of the Constitutional Court, the Christian Democrat Party has appeared in the role that both Sturzo and De Gasperi regarded as fatal—that of defender of the rights and privileges of the Church. And it is clear that Catholic Action, under its present leadership, seeks to hold it to that role. It is significant, too, that the post-war trend of the *Civiltà Cattolica* group's interpretation of Catholic doctrine has been, on the one hand, to assert the Church's moral authority in terms that reduce politics to a matter of techniques of power and, on the other hand, to minimize formal restraints on the political activities of ecclesiastics and Church organizations. But surface appearances can be misleading, if only because they depend so much on the printed word. Italian journalism, in spite of its profusion, is sometimes a poor guide to the state of public opinion because the great majority of newspapers and journals are the tied organs of political parties. And when it comes to the most fundamental issue of Italian politics, that of the political role of the Church, opinions seldom bear much relationship to established political divisions. The division between Guelphs and Ghibellines runs through all sections of Italian life. Indeed, one of the safeguards against the Christian Democrat Party becoming an instrument of ecclesiastical policy is the fact that, within its own ranks, the issue of relations with the Church is debated as vigorously as it is between *Il Mondo* and *Il Popolo*. Similarly, the reader of *Osservatore Romano* and *Civiltà Cattolica* may be tempted to think of the Church as an intellectual monolith. But if he moves among the religious of the orders and among the priesthood of the parishes he will become conscious of powerful currents of thought that find little or no expression in Catholic journals. In particular, he will become conscious of the unending tension between those who have in their hands the direction of the Church as a temporal institution and those whose concern is the cure of souls and who see in the 'politica della chiesa' only a stumbling-block to the faithful.

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