

# From tolerance to the secular State in Italy

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## Abstract

The discourse on tolerance began over two centuries ago and yet is still unfinished. Was Voltaire in 1763 with his *“Treatise on Tolerance”*, condemned religious intolerance persuaded by religious fanaticism of the judgment of the Court of Toulouse. Although the idea of tolerance was born in Europe, it saw and still sees intolerance. Intolerance of yesterday reminds us wars, inquisitions and crusades, instead the modern Europe shows that even between globalization and multiculturalism often proves incapable of “import” different cultures<sup>1</sup>.

But from the legal point of view the term tolerance is far from that of secularism. It follows that individuals in a system that tolerates doesn't enjoy equality their fundamental rights, because they are not legally placed on the same level.

Legal Italian tolerance experience has been for many years a condition for the cults other than Catholic. The Albertine Statute in 1848 welcomed it in the article 1, and it was the task of the new Constitution outlining the principles of a State not only secular but also pluralistic.

**Keywords:** tolerance; religion; secularism; multiculturalism

## Introduction

The word tolerance comes from the Latin “tolus” meaning “weight”, and unlike as it might seem at first glance, indicates a negative attitude.

Visentini affirms that tolerance is generated not only by mutual respect but it is a technique of coexistence for “*cohabit*” consensus in diversity and that “*the foundation of free societies is the principle of tolerance*”<sup>2</sup>.

It must be regarded as an absolute and universal value, that does not generate even relativism of values, but it looks “*as the ethics of coexistence consensual*”<sup>3</sup>.

So tolerance is an undisputed value, for what you have to go beyond the skeptical conception with the goal of a peaceful mutual indifference.

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<sup>1</sup> S. Ferrari, *L'articolo 19 della Costituzione*, in *Pol. dir.*, 1996, p. 97.

<sup>2</sup> Cfr., K. R. Popper, *Tolleranza e responsabilità intellettuale*, in *Saggi sulla tolleranza*, Il Saggiatore, Milano 1990.

<sup>3</sup> G. Visentini, *L'etica del diritto è la tolleranza*, Luiss, Dipartimento di Scienze Giuridiche, Ceradi, 2008. p. 74-75-76;

## From tolerance to the secular State

In the Italian legal experience the principle of tolerance has been for many years a condition for the non-Catholic religions<sup>4</sup>. The Albertine Statute of 1848 states in the art. 1 that *"The Catholic religion, Apostolic and Roman is the only State Religion. The other religions now existing are tolerated under the laws."*

So that the Apostolic Roman religion becomes a constitutional institution<sup>5</sup> or better constitutionally guaranteed.

The *"social contract"*<sup>6</sup> did not guarantee equality of treatment between the Catholic religion and other religions simply tolerated. But it was the first step to transform a State that simply tolerated to a secular State.

However, can not be disputed that, from the point of view of history *"tolerance has often formed the necessary antecedent, or at least a useful preparatory element and prodromal"*<sup>7</sup> in the foundation of religious freedoms. In the statutory charter cults before non-Catholics were only tolerated<sup>8</sup> and then, at a later time, formally admitted<sup>9</sup>.

Despite the wording of discriminatory article 1 of the Statute and the imprint confessional of the Italian State, the ordinary legislation signaled a strong secularism against minority faiths merely tolerated.

Campolongo argues that article 1 did not mean in reality *"that the State could have a concept, a belief in religion, but that was the favored religion, and who enjoyed privileges in the State."*<sup>10</sup>

Later the laws that came into force were not about religious freedom but the relations between Church and State. Through the Siccardi laws of 1850 abolished the ecclesiastical Courts, the right to asylum, ect.,

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<sup>4</sup> C. Lavagna, in *Istituzioni di diritto pubblico*, VI ed., Torino, UTET, 1985, in specific in p. 127 identifies as the relations between the Italian State and the Catholic Church *"have gone through four stages: pre-unitary statute, statutory post-unitary, concordat before the Constitution and the concordat next to the Constitution"*

<sup>5</sup> V. Manzini, *Trattato di diritto penale italiano secondo il codice del 1930*, vol. VI, Unione Tipografico Editrice, Torino 1935, p. 8.

<sup>6</sup> The Constitution already for its etymology *cum statuere* means establish, founding. It is this the principal guarantee, ie establish the basis for ensuring the rights and freedoms of coexistence and make them stable. Before the comparison with the social pact was only a philosophical movement, but today it is not so and is considered as a legal category. N. BOBBI called the Constitution *"a compromise, a pact between the parties"*, in his paper, *"Origine e caratteri della Costituzione, in Dal fascismo alla democrazia"*, Milano, Baldini e Castoldi, 1997, pp. 159-183; Cfr., N. Bobbio, *Profilo storiografico del '900*, Milano, Garzanti, 1990; AA.VV. *Storia d'Italia*, vol. 5, di G. G. Ambrosini, *Costituzione e società*, Torino, Einaudi, 1973, pp. 2001-2041; G. Filangi, *La Costituzione e i cittadini*, pp.2045-2069; E. Cheli, *Il dibattito storiografico*, pp. 174-181, in AAVV *Storia d'Italia-1*, Firenze, *La nuova Italia*, 1978; N. Bobbio, *L'età dei diritti*, Torino, Einaudi, 1992.

<sup>7</sup> P. Grossi, *Note introduttive per uno studio su tolleranza e diritto di libertà religiosa, in Il diritto costituzionale tra principi di libertà e istituzioni*, Cedam, Padova, 2008, 2ed. pp. 105, 106.

<sup>8</sup> D. Jahier, *Il primo articolo dello Statuto e la libertà religiosa*, Torino, 1925.

<sup>9</sup> P. Grossi, *Note introduttive per uno studio su tolleranza e diritto di libertà religiosa*, p. 107.

<sup>10</sup> F. Campolongo, voce *"Culti (reati contro la libertà dei)"*, in *Digesto Italiano*; vol. VII, part 4<sup>a</sup>, Unione Tipografico Editrice, Torino 1926, p. 785.

But it was the policy of Cavour which marked an important stage in the process of secularization, followed by the Casati laws in 1859 that reformed the educational system by removing the monopoly structures religious education.

Even the laws of “subversion” of 1866<sup>11</sup> and 1867, had an enormous importance to the secularization of Italian society<sup>12</sup>.

This whole situation resulted as a form of “*jurisdictionalism attenuated*”<sup>13</sup> although “*not suppressed any religious Order and no religious Order disappeared as a result.*”<sup>14</sup>

With the Law of Guarantees (1871), the liberal State was forced to unilaterally regulate the relations with the Church. In particular, it stated in article 2, 4° that “*The discussion on religious matters is fully free.*” It thus marks an important step towards secularism.

A few years later in 1877 was enacted the Coppino law, strongly criticized by Catholics for his cutting secular because made so optional the teaching of the Catholic religion in public schools and removed the theological subjects in universities.

But the real equalization (under criminal profiles) of all cults came with the new penal code Zanardelli 1889.

It unified the legislation in criminal matters throughout the Kingdom, in articles 140-142, marking a turning liberal. In these articles tolerance was not mentioned in the Statute and as we understand from formulation a breath of non-discrimination that equal all cults admitted to the State, that is not favored one religion or another.

In reality, the criminal law was against the statute that excluded the equalization in legal terms. That is to say, the article 1 of the Statute was “*implicitly repealed by the Code of 1889*”<sup>15</sup>, quietly transforming the Italian State from a State that simply tolerate in a State of law.<sup>16</sup>

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<sup>11</sup> R.d. 7.7.1866 n. 3036, art. 1 provides that “*Non sono più riconosciuti nello Stato gli Ordini, le Corporazioni e le Congregazioni regolari e secolari, ed i Conservatori e Ritiri, i quali importino Vita comune ed abbiano carattere ecclesiastico. Le case e gli stabilimenti appartenenti agli Ordini, alle Corporazioni, alle Congregazioni ai Conservatori e Ritiri anzidetti sono soppressi*”.

<sup>12</sup> C. Ghisalberti, *Storia costituzionale d'Italia (1848-1994)*, Roma – Bari, 2003, p. 132.

<sup>13</sup> C. Lavagna, *Istituzioni di diritto pubblico*, Torino, 1979, p. 127.

<sup>14</sup> G. Rocca, *Istituti religiosi in Italia fra Otto e Novecento in Clero e società nell'Italia contemporanea*, edited by Mario Rosa, Laterza, Bari, 1992, p. 231.

<sup>15</sup> V. Manzini, *Trattato di diritto penale italiano secondo il codice del 1930*, cit., p. 8; Cfr., the same thought also I. Rignano, *Della uguaglianza civile e della libertà dei culti secondo il diritto pubblico del Regno d'Italia*, Tipografia Franc. Vigo, Livorno 1868, pp. 5-26.

<sup>16</sup> Cfr., G. Crivellari, *Il Codice Penale per il Regno d'Italia interpretato sulla scorta della dottrina, delle fonti, della legislazione comparata e della giurisprudenza*, vol. V, Unione Tipografica Editrice, Torino 1894, pp. 432-433.

So the Italian legislature through the protection offense that could result in any cult<sup>17</sup>, has been able to adapt the law to the needs of the social context, in fact transforming Italy, although only half as claimed doctrine in those years, in a secular State.

In any case, the road that was following was the one that led to a full and secular and the article 1 was considered "*unhappy and false in itself, as illiberal and false concept that expresses*"<sup>18</sup>.

So, cautiously, Italian ordinance went to empty his confessionism, weakening therefore the content now formal of article 1 of the Statute.

Even though years later Italy comes as a fully secular State<sup>19</sup>, but despite all these legislative initiatives engraved on the liberal model, it was impossible to suppress the religious sentiment rooted for centuries in the Italian Catholic society<sup>20</sup>.

Then at the beginning of the '900 we see a return to confessionism State, a return to the "tolerance" but this time in terms of "admissibility". This is the period of the Lateran Pacts, which interrupts the process of secularization of the liberal State and give life again of the article 1 of the Statute<sup>21</sup>, so of the principle of tolerance.

But tolerance is conceptually distant from the right to religious freedom. As noted Grossi in his *Notes on tolerance* argues that "*politically and socially, in fact, the tolerance is set up as a commitment not to hinder, not to prevent, not to interfere, not to disturb the enjoyment of a sphere of activity freed from control and the intervention of authority, but, unlike the legal freedom, structurally it gives rise to a condition of mere legality objective, that is, without attributing to its beneficiaries the ownership of individual rights, much less claim procedurally protectable through proceedings or legal action*"<sup>22</sup>.

Only with the Republican Constitution of 1948, can be considered, in the Italian experience clearly overcome the previous positions of mere tolerance<sup>23</sup>.

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<sup>17</sup> "If I have a right to ask of the social authority to protect my dog, my tree, my home, as I will not have the right to demand that it also protects the altar before which I bow to get closer to my God?". Text in original "*Se ho diritto a chiedere all'autorità sociale che protegga il mio cane, il mio albero, la mia casa, come non avrò io diritto di esigere ugualmente che essa protegga l'altare innanzi al quale mi prostro per avvicinarmi al mio Dio?*". F. Carrara, *Programma del corso di diritto criminale*, special part, 4° ed., Prato 1883, vol. VI, ss 3251, p. 438.

<sup>18</sup> Comment on the decision of the Court of Appeal of Parma, judgment 21 marzo 1872, in *Monitore dei Tribunali*, 1872, note 1, p. 345.

<sup>19</sup> L. Musselli, *Libertà religiosa e di coscienza*, in *Dig. disc. pubbl.*, IX, Torino, Utet, 1994, p. 220.

<sup>20</sup> Cfr., C. Cardia, *Libertà di credenza*, in *Enc. giur.*, Roma, Istituto della Enciclopedia Italiana, 1990, p. 2.

<sup>21</sup> Cfr., C. Ghisalbetti, *Storia costituzionale d'Italia*, cit., p. 366.

<sup>22</sup> P. Grossi, *Note introduttive.*, cit., p. 106; Cfr. M. LA TORRE, *Tolleranza*, in La Torre M. e Zanetti, *Seminari di filosofia del diritto*, Soveria Mannelli, 2000, p. 151.

<sup>23</sup> Cfr. G. Dalla Torre, *Libertà religiosa e Costituzione italiana*, in *Le libertà di religione e di culto. Contenuto e limiti*, a cura di D'Agostino E Amodio, Torino, 2003, p. 29.

Until the proclamation of the Charter did not exist in the Italian sorting an explicit rule that guaranteed citizens the freedom in religious matters, thus leaving a void for years the spheres of fundamental rights.

In those years there has been talk in terms of the admissibility of Worship other than Catholic, and the law n. 1159/1929 with article 1 sanctioned a true principle of admissibility<sup>24</sup>, providing that *“Are allowed in the State cults other than the Catholic Apostolic and Roman, provided they do not profess principles and not follow rites contrary to public order and morality. The exercise, even in public, of these cults is free.”*

This period is characterized by a kind of discrimination against minority religions, many authors have spoken in terms of persecution. Since the admission evaluation of a cult belonged to the public power, this situation often entailed restrictions and limitations. We may recall here Worship Pentecostal or Protestant.

A further discrimination, it appears with the entry into force in 1930 of the Rocco Penal Code which in the articles 402, 405 outlined a specific protection for the Catholic religion. In other words, the punishment was considered a lesser if offense or the disturbance was not directed against the Catholic but to an admitted cult<sup>25</sup>.

Surely the entry into force of the Lateran Pacts revived the article 1 of the Statute outlining the features of a State tolerant of other faiths.

It was the task of the new Constitution outlining the principles of a State not only secular but also pluralistic, and indeed, *“was the pluralism that transformed the principle of tolerance in that of religious freedom”*<sup>26</sup>. And religious freedom finds its guarantee only in a secular and non-confessional State.

A few years after the entry into force of the Constitution, Jemolo which had held that the Constitution could not *“renounce the postulate of religious freedom”*<sup>27</sup>, but he strongly criticized the Constitution and declare that it's outlined foundations of a State neither *“secular”* neither *“confessional”*<sup>28</sup>.

<sup>24</sup> In these terms also C. Cardia, *Libertà di credenza*, p. 3.

<sup>25</sup> Today this view certainly seems anachronistic. The elimination of privileges has led to a division in the doctrine, some argue that the protection of the religious phenomenon does not even exist because incompatible with the principle of State secularism. Instead the other hand argues that complies with the Constitution and it is the duty of the State to protect the religious sentiment.

<sup>26</sup> Cfr. N. Matteucci, *Pluralismo*, in *Enciclopedia delle scienze sociali*, VI, Roma, Enciclopedia Italiana Treccani, 1996. pp. 594-601, spec. p. 594; Cfr. so N. Bobbio, *Pluralismo*, in *Dizionario della politica*, Torino, Utet, 1990, pp. 789-794.

<sup>27</sup> A. C. Jemolo, *Per la pace religiosa in Italia*, Firenze, 1994, p. 33; Cfr. G. Long, *Alle origini del pluralismo confessionale*, pp. 268, 270.

<sup>28</sup> A. C. Jemolo, *La Costituzione. Difetti, modifiche, integrazioni, Relazione tenuta all'Accademia dei Lincei* (1965), Roma, 1996; Cfr., P. Valbusa, *I pensieri di un malpensante. Arturo Carlo Jemolo e trentacinque anni di storia repubblicana*, Firenze, 2008, pp. 96 e ss.

In fact was Jemolo who had argued that “*all constitutions can not be read and interpreted except with historical criterion, remembering that their disposal are often a protest against what follows in the previous period.*”<sup>29</sup>

But tolerance is now being understood as a negative concept, from the legal point of view, for this reason, “the different” is no longer tolerated but protected, because according to the principle of equality provided for in article 3 of the Constitution which provides that all citizens have equal social dignity and are equal before the law without distinction of religion<sup>30</sup>.

Starting from the principle of equality - and not solely- in religious matters that the *Consulta* in the judgment of 1989 declares secular Italian State. It considers no longer in force article 1 of the Treaty of Lateran of 1929 which recalls the article 1 of the Albertine Statute that recognized in the Catholic religion, apostolic and Roman the only State religion<sup>31</sup>.

### The identification of secularism

The principle of the secular State is not expressly enshrined in the Italian Constitution as in other constitutions, as in that of Russia or the Turkish and in the European Union only France makes express provisions in its Constitution<sup>32</sup>.

In Italy this principle states notoriously in case law, in particular is defined in the rulings of the Constitutional Court, as a “*superprincipio*” means “supreme principle of the constitutional order.”

The category of *superprincipi*, although unexplored but identified by the Court “*just to indicate some parameters of constitutional legitimacy that it may draw in its judicial activities, referring to the Constitution material not only to the formal. They*

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<sup>29</sup> A. C. Jemolo, *Le libertà garantite dagli artt. 8, 19 e 21 della Cost.*, in *Dir. eccl.*, 1952, p. 406.

<sup>30</sup> Cfr., J. Rawls, *Political Liberalism*, Columbia University Press, New York, 1993, trad. it. *Liberalismo politico*, Milano, Edizioni di Comunità, 1994; Cfr., J. Rawls, *Una teoria della giustizia*, 1971. Which argues that equality in the enjoyment of fundamental freedoms is an absolute right. Grossi also notes that equality is not required under Paragraph 3 not among all men, even among all religions, but among all citizens. (in P. Grossi, *Note introduttive per uno studio su tolleranza e diritto di libertà religiosa*, cit., p. 110; Cfr., C. Esposito, *Eguaglianza e giustizia nell'art. 3 della Costituzione*, in *La Costituzione italiana, Saggi*, Padova, 1953, p. 23-24; P. Barile, *Il soggetto privato nella Costituzione italiana*, Padova, 1953, p. 51.)

<sup>31</sup> In particular in point 4 of the judgment n. 203 of 1989 the Court pronounces in these terms “*Il Protocollo addizionale alla legge n. 121 del 1985 di ratifica ed esecuzione dell'Accordo tra la Repubblica italiana e la Santa Sede esordisce, in riferimento all'art. 1, prescrivendo che (Si considera non più in vigore il principio, originariamente richiamato dai Patti lateranensi, della religione cattolica come sola religione dello Stato italiano), con chiara allusione all'art. 1 del Trattato del 1929 che stabiliva: (L'Italia riconosce e riafferma il principio consacrato nell'art. 1o dello Statuto del regno del 4 marzo 1848, pel quale la religione cattolica, apostolica e romana è la sola religione dello Stato).*”

<sup>32</sup> The French Constitution stipulates in article 1 the principle of State secularism. Specifically states that “France is an indivisible, secular, democratic and social Republic. It ensures the equality to all citizens before the law without distinction as to origin, race or religion. It shall respect all beliefs. Its organization is decentralized”.

*are principles that are defined, from time to time, (...) are typically used to declare the constitutionality of the laws.*"<sup>33</sup>

Of its existence, as a fundamental principle or supreme, in Italy we know only relatively recently by the judgement n. 1146/1988<sup>34</sup> with which the *Consulta* ruled claiming the existence of unchangeable principles in their existence that it calls "*fundamental principles and inalienable rights*"<sup>35</sup>.

The principle of State secularism is included so in the absolutely mandatory, by the same constitutional legislator, constitutional values. Not even rebuttable and editable in its essential content. So although not expressly mentioned among those not subject to the procedure for constitutional amendment, the principle of secularism is "*the essence of supreme values in which is based the Italian Constitution*" (Constitutional Court, Judgment no. 1146 of 1988). Not modifiable always less than a regime change<sup>36</sup>. But their recognition by the Courts also involves risk, because the interpretation or identification may be influenced by the political circumstances of the country<sup>37</sup>.

A year later, in 1989 with the sentence n. 203 the Court was judging on unconstitutionality the class time of religion, bringing to light not only the principle of secularism concealed in the Constitution but also the principle of equality in religious matters, in "*Thus the principle of equality, finished in offside position with the case law on the supreme principles, enters fully into play just as the supreme principle, sub species of secularism: constituting, indeed, the backbone, to the extent that the union of secularism, resolves in the ordinary equality = non-discrimination.*"<sup>38</sup>

In particular, the Court wrote "*in matter harassed articles 3,19 are in evidence as the values of religious freedom in the dual specification of prohibition: a) that citizens are discriminated for religion reasons; b) that the religious pluralism limits the negative freedom to not profess any religion.*"

It also ruled that judgment in 1989 that the supreme principles of the constitutional order have "*a higher value than the other rules or laws of constitutional rank, even when considered that the provisions of the Concordat, which enjoy the particular*

<sup>33</sup> P. Consorti, *Diritto e religione*, cit., p. 24.

<sup>34</sup> Judgment 1146/1988, "*La Costituzione italiana contiene alcuni principi supremi che non possono essere sovvertiti o modificati nel loro contenuto essenziale neppure da leggi di revisione costituzionale o da altre leggi costituzionali. Tali sono tanto i principi che la stessa Costituzione esplicitamente prevede come limiti assoluti al potere di revisione costituzionale, quale la forma repubblicana (art. 139 Cost.), quanto i principi che, pur non essendo espressamente menzionati fra quelli non assoggettabili al procedimento di revisione costituzionale, appartengono all'essenza dei valori supremi sui quali si fonda la Costituzione italiana.*"

<sup>35</sup> Cfr., A. Spadaro, *I valori dello Stato "laico" (... o "Costituzionale")*, magazine n. 2/2011, issue 03/06/2011 in [www.rivistaaic.it](http://www.rivistaaic.it), p 6.

<sup>36</sup> N. Colaianni, *La laicità tra Costituzione e globalizzazione*, in *Questione giustizia*, 2008.

<sup>37</sup> P. Consorti, *Diritto e religione*, cit., p 24; Così anche G. Catalano, *Brevi considerazioni sul difficile parto di un nuovo diritto matrimoniale*, in *Diritto ecclesiastico*, 1989, I, p. 393.

<sup>38</sup> N. Colaianni, *Eguaglianza, non discriminazione, ragionevolezza*, cit., pp. 65-66.



*coverage constitutional provided by article 7, second paragraph, of the Constitution, do not escape ascertain their conformity with the supreme principles of the constitutional order.”<sup>39</sup>*

The judgments of the Court are an important contribution that helped to define the secular character of the State. But the point of reference were definitely the constitutional provisions as the articles 2, 3, 7, paragraph 1, and articles 8, 19, 20 which are the basis for the reconstruction of secularism. Without forgetting that secularism in itself is the reference point for the reconstruction of a free and egalitarian.

The judgment n. 203 clarified consequently also the position into the order of Concordat provisions, which does not avoid and are subject to the control of constitutionality concerning not only the basic principle but also the inalienable rights of the human person<sup>40</sup>.

The principles contained in this judgment will prove significant not only for the breakthrough but also for the impact that it will have later in the area of freedom of religion.

*“The State is secular, word of the Court,”* writes Barile<sup>41</sup>, and so goes to *“a system of ecclesiastical law finally (...) more coherent with the constitutional framework.”*<sup>42</sup>

Musselli contrary criticized the Court’s decision, holding that it did not set a secular State, indifferent or agnostic, nor a State or anticlerical neo-giurisdizionalis but simply a neutral State in religious matters<sup>43</sup>. Even the phrase *“non-indifference of the State before the religion”* has sparked debate in doctrine, which has recognized in it the *positive secularism* expression often considered no different from *“healthy secularism”*<sup>44</sup>, and from this perspective it is believed that the consequence is the recognition of the *favor religionis* of Republican Charter.

But the expression of the Court *“non-indifference”* does not seem sufficient to indicate the *favor religionis*, moreover this formula can not - and will not must- read alone, and

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<sup>39</sup> Judgment. n.30 del 1971, n. 12 del 1972, n. 175 del 1973, n. 1 del 1977 e n. 18 del 1982

<sup>40</sup> Judgment n.183 del 1973 e n. 170 del 1984. Cfr. sentenza n. 1146 del 1988.

<sup>41</sup> P. Barile, *Lo Stato è laico, parola di corte*, in *La Repubblica*, 13 aprile 1989.

<sup>42</sup> M. Ventura, *La religione tra Corte costituzionale e giurisdizioni europee*, p. 372; Cfr., G. G. Floridia - S. Sicardi, *Dall'eguaglianza dei cittadini alla laicità dello Stato. L'insegnamento confessionale nella scuola pubblica tra libertà di coscienza, pluralismo religioso e pluralità delle fonti*, in *Giur. cost.*, 1989, p. 1086 ss.

<sup>43</sup> Also for this author the doctrine followed by the Court approached the idea of German and French secularism. L. Musselli, *Insegnamento della religione cattolica e tutela della libertà religiosa*, p. 909.

<sup>44</sup> G. Feliciani, *La laicità dello Stato negli insegnamenti di Benedetto XVI*, in *Stato, Chiese e pluralismo confessionale*, Online magazine ([www.statoechiese.it](http://www.statoechiese.it)), april 2011, p. 6 ss. The others consider the contrary, believing that the positive secularism as a modern expression, indicates the evolution of the conception of the Church of authentic secularism, indicating an opening, a recognition of the division of responsibilities between Church and State. So the positive secularism is presented as an evolution of healthy secularism. So G. Della Torre, *Sana laicità o laicità positiva?*, in *Stato, Chiese e pluralismo confessionale*, online magazine ([www.statoechiese.it](http://www.statoechiese.it)), novembre, 2012, p. 8.



takes on its true meaning with the other party, for that “*The principle of secularism, which is clear from articles 2, 3, 7, 8, 19 and 20 of the Constitution, does imply non-indifference of the State before the religions but State guarantees for the protection of freedom of religion, in the regime confessional and cultural pluralism*”.

## Conclusions

Secularism is a core value of a democratic Republic, whose purpose is to bring together atheists and believers without privilege or discrimination<sup>45</sup>.

And undoubtedly secularism as extrapolated by the Italian Constitution makes us understand that the Constitution becomes a container of values, sometimes expressed explicitly and sometimes not.

Thus secularism is a necessary value and indispensable to manage diversity. In a perspective where society has changed profoundly, modernism and globalization have contaminated cultures<sup>46</sup> and made complex and delicate coexistence in a plural society, the solution is the awareness that their proper ideas are not the only, and it is unreasonable to impose<sup>47</sup>.

Because the layman as emphasized Scarpelli is not “*the denier of God*” but “*who think out of the hypothesis of God, accepting the absolute limits of existence and of human consciousness*”<sup>48</sup>.

Considered this it is clear that the task of the State and of modern Constitutions, as Rawls deems, is to ensure full autonomy to man.

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<sup>45</sup> M. Marzano, *Il valore della laicità*, Repubblica 15.5.11.

<sup>46</sup> F. Margiotta Broglio, *Il fenomeno religioso nel sistema giuridico dell'Unione Europea*, in F. Margiotta Broglio, C. Mirabelli, F. Onida, *Religioni e sistemi giuridici. Introduzione al diritto ecclesiastico comparato*, Bologna, 1997, p. 88.

<sup>47</sup> J. Rawls, *Political Liberalism*, Columbia University Press, New York, 1993, tras. it. *Liberalismo politico*, Milano, Edizioni di Comunità, 1994, p. 23.

<sup>48</sup> U. Scarpelli, *Bioetica laica*, Baldini & Castoldi, Milano, 1998, p. 11.

6. Bobbio, N., *Pluralismo*, in *Dizionario della politica*, Torino, Utet, 1990, pp. 789-794.
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