



**D<sub>i</sub>ReSoM**

Diritto Religione Società Multiculturali  
Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات  
多元化社会中的法与宗教

# LAW, RELIGION AND COVID-19 EMERGENCY

EDITED BY  
PIERLUIGI CONSORTI

**D<sub>i</sub>**  
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DiReSoM Papers

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**LAW, RELIGION AND COVID-19 EMERGENCY**

edited by

Pierluigi Consorti

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.

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# LAW, RELIGION AND COVID-19 EMERGENCY.

## INTRODUCTION

Pierluigi Consorti

1. In 2019 the World Health Organization warned that «The world will face another influenza pandemic – the only thing we don't know is when it will hit and how severe it will be. Global defences are only as effective as the weakest link in any country's health emergency preparedness and response system». This threat has suddenly come to light, first in China (officially, December 31<sup>st</sup> 2019), then in Italy (officially, on 31<sup>st</sup> January 2020, when two Chinese tourists in Rome tested positive for the virus) and quickly all over the world. A new coronavirus named SARS-CoV-2<sup>1</sup> has been identified as the cause of the Covid-19 disease. This new strain of virus spreads primarily through interpersonal human contact and interaction. Those who contract the virus are carriers of Covid-19 and can spread the acute respiratory condition through the exchange of droplets of saliva via touching, coughing and sneezing, and by infecting surfaces which in turn spread the virus through contact.

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<sup>1</sup> SARS stands for «severe acute respiratory syndrome», recognized as a global threat in March 2003, after first appearing in Southern China in November 2002; CoV stands for «coronavirus»; according to the International Committee on Taxonomy of Viruses (ICTV), the novel coronavirus has been labeled «2», as it is a sister to SARS-CoVs.



The reaction of the world's society has involved all fields of human activities, without ruling out the law, since the battle against the virus was fought with an ancient weapon: that of social distancing. In fact, despite great scientific advances, humanity in the 21st century fights epidemics with a millennial remedy: «stay away», and don't be the cause of the contagion.

In the stories of the Hebrew Bible, G-d is usually accountable for all spheres of life. Hence, G-d has a role both in bringing illness and in curing from it. For instance, G-d sent 10 plagues before the Jews were liberated from their slavery in Egypt: one of which was the plague of boils on human and animal bodies (Exodus 9:9), conceived as an evidence of G-d's power. Nevertheless, as the Covid-19 epidemic continues to rage all over the world, Rabbinic authorities have written that «the sword is hitting the entire surface of the planet», and for believers it represents a message to humanity to wake up and move towards an internal renewal that cannot be postponed. The current pandemic poses a question of meaning, as it challenges the man to question his ability to fight an unknown and invisible enemy, counting only on rational or scientific forces. Rabbis link the observance of religious precepts to the rigorous application of state regulations; indeed, respect for the latter is itself a religious obligation, as the orthopraxis of Judaism translates precisely into the observance of the mitzvot, and the law represents its ontological essence, as recalled by the Talmudic saying of Solomon «Dina de-Malkuta Dina» («The law of the kingdom is law»). G-d commands: «Now choose life, so that you and your children may live» (Deut. 30:19). Therefore, compliance with all the *mitzvot*, even in the most problematic circumstances, is combined with the irrepressible obligation to protect one's own health and that of others by every means.

A deeply rooted narrative throughout medieval Christian Europe understood the epidemic as a divine punishment, from which it was possible to escape only with prayers and devotional rites. The challenge posed by the deadly bubonic plague in the mid-14th century triggered a search for the sources of the calamity: Europe's Jews were a handy and suspicious target. Pogroms against Jewish spread around Europe and Jews were bludgeoned and burned to death.

In August 1527 the bubonic plague had come to Wittenberg, Germany. Everyone who could get out of the village was getting out. The cause of the disease and its mode of transmission was not known, but the conventional wisdom was clear: «stay away from the sick». The Elector of Saxony, John the Steadfast, ordered Martin Luther to leave. He refused, and wrote a letter entitled «Whether one may flee from a deadly plague», to explain the importance of caring for our neighbor and suggesting the community to take the necessary steps to protect others. Luther defended public health measures such as quarantines and seeking medical attention when available. Those in ministry, he wrote, «must remain steadfast before the peril of death». The sick and dying need a good shepherd who will strengthen and comfort them and administer the sacraments—lest they be denied the Eucharist before their passing. Public officials, including mayors and judges, are to stay and maintain civic order. Public servants, including city-sponsored physicians and police officers, must continue their professional duties. Even parents and guardians have vocational duties toward their children. But Luther does not encourage his readers to expose themselves recklessly to danger. His letter constantly straddles two competing goods: honoring the sanctity of one's own life and honoring the sanctity of those in need.

Islam relies on some teachings related to the life of the prophet Muhammad - Peace be upon Him - «when you hear that [a plague] is in a land, do not go to it and if it occurs in a land that you are already in, then do not leave it, fleeing from it». Other hadith says: «There is no unbidden contagion, no evil omen, no death bird (*hama*), no tape-worm (*safar*), and one should keep away from a leper as one keeps away from a lion».

2. To achieve this social distancing, it was necessary to restrict many fundamental freedoms, mainly that of movement and reunion. Freedom of worship was necessarily limited too, and the world's religious authorities have had to cope with the contagion by changing millennial rules. As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space to collect documents, comments and other useful materials related to the emergency, in order to assess the outcomes of the normative decisions made by civil and religious authorities. So, on March 8<sup>th</sup> we have created [www.diresom.net](http://www.diresom.net). By the end of April, we had already published more than 500 documents and comments related to this issue, and more than 20.000 unique visitors had surfed our website. Therefore, we decide to edit an open source book to share in a more orderly way the Comments that we have already published online, thus giving the possibility to consult these first guidelines to all those who want to study or analyze the legal reaction, both state and religious, to this pandemic.

Our intention is to collect material which will, in time, allow a more careful study of the social and religious transformations brought about by the war against the virus. At the moment, we have identified three major research question.

The first concerns the relationship between law, religion and emergency rules. The emergency creates a state of exception that produces new laws, rules and behaviors determined by the need to react quickly, which should be characterized by temporariness. And this is not an appropriate attitude for producing rules that will last in an indeterminate time.

The second one involves a more specific aspect of religious rules, which by their nature seem to be not modifiable by human will. Many religious rules are based on God's will, and therefore appear substantially unmodifiable. However, the fight against coronavirus has produced changes previously unthinkable, therefore the emergency appears as a source of religious law. Is it possible to imagine a "state of exception" for religious laws?

Finally, the third question concerns the quality of this emergency, which is health-related, and therefore different from other emergencies that may also produce legal modifications or rules of exception, such as wars or natural disasters.

We hope to be able to answer to these and other scientific questions, and in the meantime we offer the academic community the comments that we have begun to outline while we are still in full emergency.



## LAW AND RELIGION



## RELIGIONS AND VIRUS\*

Pierluigi Consorti

The health emergency triggered by the epidemic caused by the Coronavirus Covid-19 is producing new rules of coexistence. To guarantee collective security, States are reacting by severely limiting some fundamental freedoms: among these, religious freedom - especially in its dimension as freedom of worship manifested in communion with others - is strongly restricted. Many voices have been raised against what seems an interference by state authorities into religious affairs. Some have resisted more or less openly and there have been cases of blatant disobedience.

Such attitudes bring to light ancient questions, obviously never dormant, which have heated a conflict between science and faith. Atheistic thought interprets the same religions as viruses that hinder rational action, causing a dangerous conflict between opposing truths<sup>1</sup>. A few days ago, [William Schweicker](#) pointed the finger at the "infectious religion", accusing the Korean Church Shincheonji of Jesus of having propagated the virus due to the adoption of religious rules, which contribute to the spread of the

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\* Submitted: March 4<sup>th</sup> 2020. Published: March 9<sup>th</sup> 2020. For ITA version [click here](#).

<sup>1</sup> See M. Karsny, [Religion Is a Virus](#), Mother Jones, 1997; C. A. James, *The Religion Virus: Why we believe in God*, 2010.



disease. The faithful of this church cannot wear masks or glasses and must sit on the floor in line with the other believers; they must take part in the rites even in case of illness and must engage in proselytizing activities. Shincheonji teaches that illness is a sin and that members should carry out their mission to proselytize even if they are sick. Luckily Lee Man-hee, the still-living founder of the Church, has urged his followers to abide by the instructions of the Korean government, while claiming that "this disease outbreak is the work of the devil, who is determined to stop the rapid growth of Shincheonji"<sup>2</sup>.

William Schweicker himself speculates that the position of the Korean Church is not isolated. To reinforce this thesis, he recalls that, on the occasion of the 13th Congress of the European Society for Evolutionary Biology (held in Tübingen in 2011), the American evolutionist biologist David Hughes theorized a link between the birth of the great world religions and infectious diseases, by virtue of which the former allegedly modelled themselves in relation to the latter. I don't want to get into this sectorial controversy<sup>3</sup>. However, we cannot fail to note that religious rules have a lot to do with personal hygiene and health. Some denominations related to Christianity, such as the Seventh-day Adventists or the Church of Jesus Christ of Latter-day Saints, emphasize in a special way the link between religion and health, which is nonetheless present in all religions of the world<sup>4</sup>.

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<sup>2</sup> See C. Sang-Hun, [\*Shadony Church Is at Center of Coronavirus Outbreak in South Korea\*](#), in *New York Times*, 4 March 2020.

<sup>3</sup> See E. Pennisi, [\*Does Religion Influence Epidemics?\*](#), in *Science*, 2011.

<sup>4</sup> See F. Caretta, M. Petrini, *Ai confini del dolore. Salute e malattia nelle culture religiose*, 1999.

The Covid-19 epidemic is therefore unavoidably destined to produce effects also on religious cultures, on the way of being of religions and on their laws.

Religious authorities are changing centuries-old rules to tackle the epidemic, just as the young Korean Church has done. For Italian rabbis "the duty to safeguard one's life and one's health and the life and health of others is a halakhic duty", which is equal to that of "observing the health-related recommendations of the competent bodies. These two fundamental duties must be reconciled as far as possible, even if safeguarding life and health clearly takes precedence over everything"; therefore, they envisage unprecedented ritual accommodations<sup>5</sup>. The chief rabbi of Israel has asked to suspend the practice of kissing the Mezuzah and European rabbis have required those who have symptoms related to the virus not to go to the synagogue for the Shabbat<sup>6</sup>.

Even the Christian Churches are adopting measures by suspending Lent liturgies and recommending participation in the rites via the web. The Italian Catholic Church has experienced many internal controversies for having voluntarily abided by the exceptional rules established by the government. The choice to distribute the particle only on the hands and not also in the mouth has prompted traditionalist segments to attack the bishops, accused of giving in to the overwhelming power of the state, equated to Soviet totalitarianism<sup>7</sup>. The decision to suspend masses throughout Italy from 8 March has then been considered a

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<sup>5</sup> See [here](#).

<sup>6</sup> S. Winer, [Coronavirus takes toll on religious life as rabbis advise against ritual kissing](#), in *The Time of Israel*, 4 March 2020.

<sup>7</sup> See [here](#).

“capitulation of faith before the coronavirus”<sup>8</sup>. Episodes of actual disobedience have indeed taken place.

The Islamic world has referred to a hadith that regulates the behavior to be adopted in cases like this one: “if an epidemic should appear on earth, do not go; and if you find yourselves in it, you do not go out of this earth by running away». The Union of Italian Islamic Communities has adopted a measure to conform drastically to state provisions<sup>9</sup>, but more generally in all the world Islamic rites are also undergoing many transformations<sup>10</sup>.

The battle that humanity is waging against the Covid-19 virus is changing the way we live at an enormous speed. State laws influence religious behavior and old-centuries rules that have resisted many other plagues. It is certainly not possible to draw conclusions, but it is necessary for scholars who deal with the legal regulation of the religious phenomenon to offer their knowledge to follow a process whose development in time and space nobody today is able to foresee.

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<sup>8</sup> R. Ravasio, [\*La capitolazione della Fede davanti al coronavirus\*](#), in *La nuova bussola quotidiana*, 8 March 2020.

<sup>9</sup> See [here](#).

<sup>10</sup> [\*Coronavirus is changing the way Muslims worship across the world\*](#), Al-Jazeera, 4 March 2020.

# LAW AND RELIGION DURING (AND AFTER) COVID-19 EMERGENCY: THE LAW IS MADE FOR MAN NOT MAN FOR LAW\*

Luigi Mariano Guzzo

*We're not going back to normal* said Gideon [Lichfield](#), the editor in chief of MIT Technology Review. And it's likely that, once Sars-Cov-2 pandemic is overcome, an update of the Law and Religion studies will be a new issue to think about as well. Nowadays, in fact, it's easy to see how the traditionally used categories are no longer adequate to understand the reality. We are witnessing a crisis of the “vertical” configuration (or “vertex-shaped”) of religions' public law, built on a pact-related model<sup>1</sup>. On the other hand, the thought of a horizontal setting for the Law and Religion studies is becoming stronger and stronger: a new dimension, that “encloses diverse possible expressions of the human spirituality, the ones related to choices of faith and the ethical ones, also reaching the

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\* Submitted: March 24<sup>h</sup> 2020. Published: March 30<sup>th</sup> 2020. For ITA version [click here](#).

<sup>1</sup> [Pacillo](#), for instance, highlighted the Italian context, *where* the suspension of the constitutionally-guaranteed fundamental freedoms has “overwhelmed” the concordat system. V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in *Oliv*, 16 marzo 2020.

ones originated from different kind of values, such as peace, justice, brotherhood, solidarity, environmental protection”<sup>2</sup>.

If we focus, as Schmit somehow does, on the regulatory and political systems’ vertex, on the relation between decision and regulation, we miss all the rest, and “rest” means the social reality. If we focus, as Schmit does in some ways, just on the regulatory and political systems’ vertex, on the relation between decision and regulation, we risk losing all the rest, and “rest” means the social reality. If we look just at the appearance, we shut our eyes on the substance. And the law abdicates to be a useful resolution tool for social conflicts, as it is for practical problems.

Sars-Cov-2 is actually showing it ruthlessly: the mere analysis of the legal provisions is not so useful to stop the infection, and therefore to save the humankind, without an appropriate consideration of their application<sup>3</sup>. The jurist, in front of “stream of regulatory sources”<sup>4</sup> appears confused. And he seems having the only path that leads to the shelter of the traditional paradigms of our juridical system to follow. The scheme is from time to time equal to itself: the regulation urgently decreed is examined and interpreted on the basis of the reference constitution, trying to highlight any possible aporia. Then everything is explained through the state of necessity, including the moment of suspension of the

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<sup>2</sup> P. Consorti, *Diritto e religione. Basi e prospettive*, Laterza, Roma-Bari, 2020, p. 17.

<sup>3</sup> M.Barberis, who teaches Philosophy of Law in Trieste, has well summarized this issue with a post on Facebook: “Even the juridical realism, the real one (mine), helps in some ways. Everyone hurries to give an interpretation of the decrees in order to understand what can and cannot be done. The juridical realist, instead, go out in the morning, under a fine drizzle, and see how the decree are put into practice” (12<sup>th</sup> March 2020).

<sup>4</sup> “profluvio di fonti normative”, I. Massa Pinto, *La tremendissima lezione del Covid-19 (anche) ai giuristi*, in *Questione giustizia*, 18 marzo 2020.

constitutional freedoms. So far the problem seems solved. No matter if everything around us is changing fast. We keep on adapting our life to the rules, but Sars-Cov-2 forces us to adapt the rules to our life instead. In fact, the call by the Government to our responsibilities has becomes more and more persistent.

Here starts, first of all, the need of a “horizontal” reflection on the Law studies about the religious and ethical choices; the values behind these personal choices cause, in each person, “responsible” behaviour, that is those ones aimed at saving the communities and the humankind itself<sup>5</sup>. Human race is being saved, not by the political decisions (much less those ones with one man at the wheel), but the behaviour of the people who are building wide and innovative solidarity networks, locally, digitally and globally. The virus overthrows sovereignisms and the last nationalistic privilege, legacy of an old legal system, that is the citizenship as well. And the issue of a Earth constitution is becoming urgent, as [La Valle](#)<sup>6</sup> and [Ferrajoli](#)<sup>7</sup> remind us, because of the total interdependence of the inhabitants of the planet<sup>8</sup>. How is it possible that all this remains uninvolved in the juridical reflection? Everyone can see the reality: the mercantile vision of the globalized law doesn’t work; the subjective law is not typically

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<sup>5</sup> In fact, even a “horizontality of duties” is being discussed. T. Greco, *Il ritorno dei doveri*, in *Cultura e diritti. Per una formazione giuridica*, n. 1/2012, pp. 91 ss.

<sup>6</sup> R. La Valle, *Imparare da ciò che siamo*, 14 marzo 2020, in <http://ranierolavalle.blogspot.com/2020/03/imparare-da-cio-che-patiamo.html>.

<sup>7</sup> L. Ferrajoli, *Il virus mette la globalizzazione con i piedi per terra*, in *Il manifesto.it*, 17 marzo 2020.

<sup>8</sup> Cfr. A. Philippopoulos-Mihalopoulos, *Covid, la malattia etica*, in *Calumet*, 16 marzo 2020.

“individual”, because it originates in a regulatory relations system that causes the social rights<sup>9</sup>.

Our religious and ethical choices have a main role, in our conscience, in these processes; but we have to ask ourselves about the religions, as collective subjects. What about them and what are they going to be? The Sars-Cov-2 not only has overthrown the governments’ and citizenship’s barriers, but also those of religious affiliation.

The impact of Coronavirus on religions is so strong that even [Wikipedia](#) has made a page about it, constantly updated, in English. This confirms the “global” reply by the religious organizations. All the regulatory scheme, except for some ritual and confessional characteristics, are very similar, as well in their actualization: similar are, in fact, the sanitary and safety measures during the celebrations, and the number of people during them, the suspension of the collective meetings, the cancellation of big events, and, in most cases, the closure of the places of worship or the denial of access for the worshippers. There are few groups who challenge the laws of nature, not worrying about the infection and perhaps enhancing new outbreaks (such as South Korea and Campania-Italy); they are minority groups, or, sometimes, “extremist” fringes. This is illustrating an acquired fact in the religious studies: through the single religious experiences is generally possible to trace a concept of religion, according with a phenomenological approach (such as the one of Rudolf Otto).

Of course, we have to deal with this kind of perspective taking into consideration that the self-executing “degree” of the religious

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<sup>9</sup> I wonder if, once the pandemic is passed, in the Law studies departments, having the Trade Law as a fundamental and the Third Sector Law as an optional, will still make sense. Or maybe the jurist’s education priority have to be revised?

rules can be different in each context. The Catholic religious authorities suspend the Sunday Mass, just like the Islamic ones suspend the Friday prayers, and so the Protestant with their cult. And Jews synagogues close. Priests and bishops get the infection and, without their knowledge, infect. The virus crosses the Vatican City borders as well. Lourdes baths close and so the Buddhist places of worship and the Holy Sepulcher of Jerusalem. The spread of the measures is similar: via websites or official pages on Facebook or Twitter. And this occurs all around the world, no matter what the religion is.

In these situations, the ones who study Law or Religion feel disoriented. Even the already tested relation system between public powers and religion can't help to understand what's happening in this phase: the laical France, with its notorious separatist model, has started a debate with [religions' delegates](#); Italy seems, during this emergency, to have set aside its traditional bilateral concordat with (except for a small [dialogue](#), that causes doubts more than certainty<sup>10</sup>, with the Catholic Church, about the Holy Week rituals). It's also necessary think about the Roman Catholic Church model, as we know it, with its hierarchical and universal structure, with the Pope at the top. But the Pope doesn't choose for the whole Church. Francesco acts in his typical way, as the Rome bishop, leaving the responsibility to the other bishops<sup>11</sup>. This can seem a

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<sup>10</sup> See the two comments on my blog ([www.luigimarianoguzzo.com](http://www.luigimarianoguzzo.com)): *Coronavirus, la Conferenza Episcopale Italiana pubblica gli Orientamenti per la Settimana Santa: i provvedimenti governativi sulla libertà di culto possono essere derogati per "sentito dire"?*, 24<sup>th</sup> March 2020; *Coronavirus, il Ministero dell'Interno chiarisce: alle messe può partecipare una rappresentanza di fedeli*, 28<sup>th</sup> March 2020.

<sup>11</sup> This is an example of the synodal attitude that belongs to the ecclesiastical update process conducted by Francesco. Cfr, for everyone, A. Mantineo, *Il*



paradox for the Canon Law scholars, but he's more "*primus inter pares*" than Patriarch Bartholomew, who, quite the opposite, decides to [suspend](#) the celebrations in all the Greek Orthodox Churches. And so The Church of Jesus Christ of Latter-day Saints does: a [measure](#) suspends all the celebrations *worldwide*. Aren't these elements to bear in mind in our analysis from now on?

There is a national law (and supranational) and a religion law of the emergency ([www.diresom.net](http://www.diresom.net), here a wide collection of measures, regulations and provisions). In the religious rights it's generally possible to find several previsions of exceptions to the rule. But these exceptions themselves are not enough compared to the sanitary emergency. As the liberal constitutions, even the confessional organizations aren't prepared to cope with Sars-Cov-2, that means to adapt it to their regulatory categories. The only exception is made by the Islamic tradition, that has a specific *hadit*, that refers precisely to epidemics: "If an epidemic may appear in a land, don't go there; and if you are in that land, don't escape from it"<sup>12</sup>.

All these new emergency rights have a further characteristic in common: all the provisions are made, more or less formally, on the basis of the political measures. That means that the religions' independence and autonomy from the political communities, and on this detachment are based all the conceptualization of the secularity, are actually limited. There are issues, such as the human safety on Earth, on which the religions don't have authority,

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*ritorno al Concilio Vaticano II e l'aggiornamento del diritto ecclesiale nel tempo di Papa Francesco*, in *Stato, Chiese e pluralismo confessionale*, n. 27/2017.

<sup>12</sup> The [UCOII](#) mentioned it recently. See also M. Abu Salem, *L'Islam italiano e le regole religiose di fronte all'emergenza del COVID-19: "L'avversità si accompagna alla buona sorte"* (*Cor* 94, 5-6), in *Oliv*, 13<sup>th</sup> March 2020.

because they aren't able to solve the mean issues the people have to deal with<sup>13</sup>. So far, nothing new: the modernity probably starts from here. What's new is that this time religions have clearly admitted this principle. The religions at last are willing to render unto God what's God's and to leave to Caesar what's Caesar's. When the [Pointer Institute](#) declares that faith cannot save the humankind, everything is perfectly normal; but, when the religions themselves, declare it explicitly, we are witnessing a deep change, that cannot be simply explained with the matter of secularism. Therefore, seemingly there is no difference between the [Imam](#), who asks to the Muslims to follow the Saudi Arabia civil law, and the Episcopal Conference's news agency, that publishes [an article](#) in which we can read: "the power of faith and of clergy is in addition and can't substitute the civil power". Pope Francesco himself, who [declared](#) he prayed God to stop the epidemic by "His hand", on the 22<sup>th</sup> March [angelus](#) talked about the need of doing "what the Government asks us to do for everyone's sake". Even [Dalai Lama](#) writes that it is necessary to employ "science and human ingenuity with determination and courage to overcome the problems that confront us". The separation between religion and science has therefore been made. After all, the Dominican Tommaso Campanella as well, in his "Defense of Galileo", wrote (1616): "Each cult or human institution that forbids the investigation of natural things must be considered suspect of counterfeiting"<sup>14</sup>.

So Coronavirus reconciles everything, even the religions, that in these days provide their services online, via streaming. It seems

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<sup>13</sup> Cfr. Y. N. Harari, *21 lezioni per il XXI secolo*, Bompiani, Milano, 2019, p. 177.

<sup>14</sup> See T. Campanella, *Apologia per Galileo*, Bompiani, Milano, 2001.

that no religion is capable to give a specific, personal answer, adequate for contrasting and limiting the infection. A part from the answer of the prayer, a sensible answer. And this is not small thing. But some religions - especially the Abrahamic ones –, starting from this crisis, might get the chance to activate, within themselves, reform processes, that deal with the relations between top and basis, authority and popular participation. In addition, we have to ask ourselves, within the relation between religion and innovation, how much all this affects the symbols and the liturgy: vinyl and nitrile gloves for Catholic priests, the individually packed particle for the Anglicans, the single-use mat for the Muslims.

It has to be clear that this is the only way religions could be act in, that is with responsible actions, that put everybody's life at the center. But we can't avoid the question: what will be the impact of Sars-Cov-2 on religions in the long-term (as [Gary Bouma](#) already wondered)?

Religions have always offered safety. And today religions entrust this safety to science; the science that has even aimed to take over God. Buddhists, Waldensians, Catholics, Muslims allocate funds to the research, acting not differently from several NGOs: over the centuries public powers have found many ways to finance religions, now religions finance the public health. Everybody thinks that these are common sense choices. Most likely all this will not lead to the eclipse of religions from the public space (especially if the public space expands to digital ...). There is a lot at stake: maybe were we already in front of the first signs of a super-religion, that “ensures the Heaven to the enhanced man, on

Earth as in Heaven”<sup>15</sup>? And could be this super-religion the achievement of Gioacchino da Fiore’s previsions, whose theology of history considers the third age the one of the Spirit, with an Ecumenical, free and tolerant church (and religion)? Does it not go in this direction, the idea of universal human brotherhood, for world peace and common coexistence, of which above all the Catholic Church and Islam have promoted, with the [Abu Dhabi document](#) (2019), now referred to as “global fraternity” in a [document](#) of the Pontifical Academy of Life?

Perhaps we are going a bit further. But these are challenges the juridical studies about religion have to cope with. Because *we’re not going back to normal*, after Sars-Cov-2. Included our Law and Religion studies.

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<sup>15</sup> M. Ventura, *Dio non basta, è ora di super religione*, in *Corriere della Sera – La Lettura*, 17<sup>th</sup> January 2016, p. 7.



## I HAVE A DREAM: RESTARTING, BUT GOING WHERE?\*

Antonino Mantineo

These tough quarantine days have driven us in a mood where the dominant feelings are sorrow, grief, and loneliness; they are giving us several occasions to find ourselves and to ponder over the effects of the pandemic on both our lives and our communities.

Everything is changing, in our everyday life's pace and in our relationships without hugs, warmth, handshakes, contacts. Even the language adjusts itself: if earlier we talked about the need of "infecting" each other with empathy, concrete acts of solidarity, generosity, to live as real human being, nowadays we perceive the word «infection» ontologically negative. We have witnessed the humanitarian acts of many women and men who, even sacrificing their own lives, spent themselves, wearing themselves out, to cope with the illness and the loneliness of the suffering people. Generosity actions made by many volunteers, who once again compensate for the public service deficiencies and delays; in fact, the efforts made by the institutions to corporatize the public health and to balance the budget have made the service unable to assure the basic level of safety and the health no longer an universal good.

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On the other hand, there have been crazy fears and mass phobias as well: people hunting for the “plague spreaders”, real or presumed, fingered as the source of our uncertainties and the main threat to the public health. They searched for them among those who knocked at our doors: young people who often have lost their job, coming from Northern Italy or from abroad to reach their families.

Those who often felt themselves as strangers in the countries that welcomed them, have known the humiliation of being rejected in their own cities.

How much sorrow we have seen with our own eyes! At last they appear more open to another people pain. Even to the sorrow of the women who are victims of domestic assault. During this isolation days, they are paying the highest price within their houses’ walls to men who feel themselves as the owner of their partners’ lives and emotions.

Pope Francesco told us how this storm has showed our forgotten weakness, that everyone owns, and how it reminds us we are not omnipotent. So, we should learn again to feel ourselves as part of the humankind, all on the same ship of life.

We have to guard Pope Francesco’s words and actions. As usual since his call to lead the Catholic Church, few days ago he talked to Christians, Catholics, even to the wider circle of women and men of good will, actually to everyone who are willing to feel again the pleasure and the joy of a fulfilling life, within and beyond these days of abandonment.

We would like to start our thinking from these positive and hopeful feelings.

Let’s start from this statement and draw your and my attention to a basic “existential” question: we have heard something about,

within the speeches of many (maybe too many) political communication experts, who tell us “everything will change and nothing will be as it was before”.

I wonder to myself and I ask you to find all together the answers: who will have to develop the “plan” for our coming back to normality? And what kind of normality? What kind of change do we need and which one we wish for?

Today I would like, first of all, to share a wish with you, it is a dream as well, and maybe a utopia.

Today, after more than seventy years from the founding of our Constitution, I believe that the good “laical” feelings, that belong to the human community -without distinctions of sex, culture, social status, religion- are the ones, of our underlying principles, within the article 1 («Italy is a democratic Republic based on work»), and article 11 («Italy repudiates war»). Our rulers have forgotten and circumvented these principles, actually closing all the factories, but keeping weapons production, and therefore the sources of destruction and death, operative. It is necessary to close, permanently, these factories, and build granaries; we need bread to share within the human family, hospitals and a local health able to prevent epidemics, and cure not only pandemics, but also social ills. But hopefully we’ll come back to this.

This is the point: we have to start from our Constitutional Charter.

The Bishop Martini, first, as the emeritus President of the Constitutional Court, Gaetano Silvestri, after, have reminded and highlighted it several times: generally speaking, we are all sure that the basic constitutional principles are a sort of update of the Gospel Beatitudes and they can represent an answer to the hunger



of justice, equality, peace, love in each man's heart. A man with or without faith, but who believes in life.

Moreover, Pope Francesco, meeting the popular movements of the continents, wanted to share the fight (yes it is) for the fundamental rights affirmation, necessary to make the world more human and, therefore, a place where it is possible to nurture the desire of goodness and happiness: land, house and job.

The Constitution itself reports these rights: the right to the land, to guard and love as the mother (art. 9 Const); the right of building a family, having a safe and respectable house (art. 2 and 31); the right to work (art. 1, 4 Const.), that allows the achievement of personal and domestic independence, and, above all, as a means and not an end, that contributes to the "material and spiritual progress" of the community (art. 4 Const.). All these three rights are solemnly enumerated in our Constitutional Charter.

So, let's wonder: what is necessary to give full and complete effect to the unaccomplished principles and values?

We'll consider all together whether, besides the "twin" values, supposed to mark out the participatory, pluralistic, personalistic and laical (as we say in Italy to identify the secular principle) democracy of our *Res publica*, of freedom and equality, can be placed the fraternity principle, that the French revolution had already hiked as a banner to depose the regime.

Nowadays the word fraternity gains a full meaning; we are living in a context of destruction of boundaries, sectionarism, individualism and sovereignism, caused by a microscopic, but lethal virus. We need a border-free world to feel again ourselves as citizens, guests and keepers of this wonderful world.

The *Fraternité*, not explicitly mentioned in our Constitution, can be put in contact with that yearning to feel ourselves all the

same, because we share the same destiny and condition, and to re-found the dimension of fraternity and sorority. In fact, our principle of substantial equality, introduced by art. 3 Const., according to which “it’s task of the Republic, that is of each of us, to remove the economical and social obstacles that, ... hinder the full growth of the human being and the actual participation of all the workers to the political, economical and social organization of the country”, leads us towards this dimension and perspective.

To be equal in the diversity and also in the uniqueness of each person it’s necessary to take off the reasons behind the inequality; that inequality that refuses the access to and the fruition of the main services (health, education, dwelling, leisure, food, etcetera..) and that restricts the opportunities to start, denied to some but favourable to others. These opportunities actually entail that some individuals, or groups, struggle because of the few privileged ones ahead of them.

I would like to add something else.

When we wonder about what kind of change we have to expect, we have to assume some responsibility. This means a common commitment to find fair, friendly, peaceful, sympathetic solutions for the new world coming. This commitment does not contemplate any power of attorney.

All together, we have to ask ourselves what is the change necessary to reverse the route and to stop the trend of death, violence, escape, emigration, inequality, prejudice, war, backwardness, consumerism and individualism, lethal diseases, such as Covid-19, on which we have just opened our eyes. They are rotten fruits of a wild globalization and of “indifference”, as Pope Francesco claimed.

And here it is the first utopia: I would like to muster all those who can appear crucial for a change of attitude and perspective, close or far.

I do not think anyone has got the magic wand. Politics professionals are not necessary either. I imagine and hope for a convivium of poets, artists, literatus, farmers, artisans, non-narcisistic intellectuals serving the community, doctors, co-workers and volunteers; and, among them, a great majority of women. Each of them engaged to ponder, dialogue, search for the solutions to put into effect the denied Constitution principles; those about job, health, environment, education, peace and non-violence, religious freedom, local and eco-friendly development.

We are approaching to the end of a tunnel, but we should be found ready to recognize sources of ideal beauty, justice, freedom, on which build politics, economics, civil relationships. This is all possible.

After the second mondial conflict, women and man of various cultures, religions and political beliefs wrote the most beautiful pages about the constitutional rights and Spinelli, Colorni and Rossi wrote the Manifesto of a federation of European States in a condition of exile in Ventotene. So why cannot we find, here and now, the enthusiasm and the passion to enhance this utopia and give it effect, especially in this phase of reconstruction and changing? Changing. If not now, when?

## STATE LAW



## IN ITALY THE FREEDOM OF WORSHIP IS IN QUARANTINE, TOO\*

Maria Luisa Lo Giacco

The 9<sup>th</sup> March 2020 Government Decree, renamed “I stay at Home”, extends to the whole Italian territory the prohibitions that the previous Decree, dated 8<sup>th</sup> March, established for “Red Areas”, the areas most affected by the coronavirus epidemic. It provides for the suspension of “all events in a public or private place, including those of a cultural, recreational, sporting, religious nature” (art. 1, g). Furthermore, “the opening of places of worship” is “conditioned on the implementation of organizational rules that allow to avoid gatherings of people, considering the size and characteristics of the places”, and respecting the distance of at least one meter between people. It suspends “civil and religious ceremonies, including funerals” (art. 1, i).

These rules constitute a *unicum* in relation to the exercise of freedom of worship in Italy. The art. 19 of Italian Constitution protects the exercise of worship, in public and in private. It derives directly from religious freedom and it has a single limitation: rites should not be contrary to morality. Other constitutional rights and

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freedoms have also been limited. As Azzariti pointed out, only the state of emergency makes rules, that affect fundamental rights, legitimate<sup>1</sup>. Indeed, he cites articles 16 and 17 of the Constitution, which state that freedom of movement can be limited for “health or safety reasons” and that freedom of gathering may be limited for “proven reasons of security and public safety”. These limits are not present in art. 19. The Constituents established that public health and safety are valid reasons to limit free movement and assembly, but not religious freedom. Francesco Finocchiaro wrote that freedom of religion is to be considered as “a privileged freedom, in its various manifestations, both on the freedom of assembly and association, and on the freedom of manifestation of thought”<sup>2</sup>. For this reason, the Constitution does not establish limits on the worship activity: “Religious rites are not a show or event that are offered to the public [...] but they are an expression of the gathering of the faithful in the cult of divinity”<sup>3</sup>. Art. 9 of the European Convention for Human Rights, which is only two years after the Italian Constitution, makes a different choice, and it provides for the protection of health as a possible limit to religious freedom.

However, doctrine and jurisprudence have always agreed that health protection needs should also prevail to the detriment of religious freedom: from this point of view, therefore, there is no doubt about the legitimacy of the decree which, as an urgent matter, also intervened on such a delicate matter, the celebration of the rites, which belongs to the order of the Church (and of the

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<sup>1</sup> Cfr. the interview with L. Milella, *Coronavirus, Azzariti: “Le misure sono costituzionali a patto che siano a tempo determinato”*, in *La Repubblica*, 8th March 2020.

<sup>2</sup> F. Finocchiaro, *Diritto ecclesiastico*, Zanichelli Bologna, 2009<sup>10</sup>, p. 163.

<sup>3</sup> *Ibidem*.

other religions). Art. 1 of the Villa Madama Agreement, after establishing that the State and the Catholic Church are independent and sovereign, commits them to mutual “collaboration for the promotion of humanity and the well-being of the country”.

Since the outbreak began, the collaboration of the Catholic Church has not been lacking. With a document of March 5<sup>th</sup>, the Italian Bishops' Conference provided for particular precautions to be adopted in the areas most at risk of contagion; among these, “in light of the confrontation with the Government”, the suspension of masses for a week. In the rest of the national territory, the Italian Church is committed to respecting all the precautions useful to limit the contagion, such as to maintain the distance of at least one meter between people and to avoid gatherings, preserving “the possibility of celebrating Holy Mass, as of promoting the appointments of prayer that characterize the time of Lent”. Thus, there remained a space for exercising freedom of worship, even if it was necessarily reduced.

The other religions have shown the same collaborative spirit. On March 5th, the Assembly of Italian Rabbis released a statement containing some recommendations for the celebrations. The rabbis recall that, according to Jewish law, it is a “duty for everyone to observe the *mitzvot* even in difficult situations”. However, it is also a duty to “safeguard one's life and one's own health and the life and health of others, and therefore it is a halakhic duty to observe the health recommendations of the competent authorities. These two fundamental duties must be reconciled as far as it is possible, even if the protection of life and health clearly takes precedence



over everything”<sup>4</sup>. The rabbis then give some practical instructions: during Shabbat make sure that the functions are short, and that people sit down keeping the safety distance between them, possibly establishing a maximum number of participants. The document also contains some recommendations for the Purim festival, scheduled for 9-10 March, during which it is asked to make a greater number of celebrations, to reduce the number of participants in each of them. It is recommended to celebrate with family or friends, avoiding public events. On 8th March, the Jewish authorities intervened again. Even in the red areas the cult is guaranteed; in Milan in places that allow “to be subject to the government’s indications”, in Venice “also on Shabbat day, with a limited entrance. They will therefore only enter the members of the Community, respecting the indications provided by the government about the distance that must be kept”<sup>5</sup>. On March 9<sup>th</sup>, Rav Alfonso Arbib published some instructions for the celebration of Purim in the synagogue: when reading the Meghillà “it is absolutely necessary that people sit at a safe distance, therefore it is necessary to organize a reading with a limited number of people who must sit at a distance from each other. If this is not possible, several readings must be scheduled at different times”. The ritual then provides that two portions of ready food (*manòt*) must be sent to a person: “We remember that the *manòt* can be sent without delivering them directly”. It is recommended to have the festive lunch in the family, without organizing public lunches, while gifts to the poor must be distributed “keeping due distances or sending

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<sup>4</sup> *Il messaggio dei rabbini italiani “Salvaguardia vita e salute ha precedenza su tutto, in moked. Il portale dell’ebraismo italiano, 5<sup>th</sup> March 2020; see [here](#).*

<sup>5</sup> *L’appello dei leader ebraici: “Calma e collaborazione, così ne usciremo”, in moked. Il portale dell’ebraismo italiano, 10<sup>th</sup> March 2020; see [here](#).*

them through other people”. The document ends asking to observe the feast precisely because we are in a difficult period, citing a poetic passage read during Kippur: “Repentance, prayer and tzedaka take away the bad decree”<sup>6</sup>. The divine intervention saves from danger.

Also the UCOII (Union of Islamic Communities in Italy), on 5th March 2020, published the “Coronavirus emergency provisions for Islamic communities”. It is the community circular no. 1/2020, which in art. 1 affirms the general principle of the prevalence of the health protection over the obligation of daily community prayer. Very interesting is the art. 2, which reinforces the quarantine obligation for the infected by reporting a hadith of the Prophet Muhammad who, in the event of epidemics, invited believers to self-quarantine with these words: “If an epidemic appears on one land, don’t go there; and if you find yourself in it, you won’t leave that land by running away”. The UCOII has decided to temporarily close all Islamic centres in Italy, and to suspend the five daily prayers and all the other cultural and worship activities. However, it considers “binding” the “funeral and the prayer of the *gha’ib* which can be performed in small groups by closing the doors, respecting the meter away and equipped with masks to avoid direct contact as much as it is possible” (art. 5)<sup>7</sup>. Therefore, even for the most representative of Italian Islamic organizations, there remains a small chance to celebrate the cult, with the limits necessary for the protection of the health of the participants.

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<sup>6</sup> Cfr. Rav A. Arbib, *Le mitzvot di Purim (ai tempi del coronavirus)*, in *Mosaico*, 9<sup>th</sup> March 2020; see [here](#).

<sup>7</sup> See the document [here](#).

Among the Christian churches, we emphasize the position of the Waldensians and Lutherans. The moderator of the Waldensian table [wrote](#) to the churches on 5<sup>th</sup> March stating that restrictions on demonstrations and events should not be considered an impediment to worship. On March 10, however, with a new letter, in light of the new governmental provisions valid across the country, and following a consultation within the Church, the moderator [ordered](#) the suspension of all community worship activities, including public weddings and funerals and urged the spiritual accompaniment of relatives of the deceased. Evidently, the worsening of the health situation convinced the governing bodies of the Church that it was appropriate to completely suspend worship activities. The consistory of the Lutheran Evangelical Church left the individual communities the decision “whether or not to cancel the cults and spiritual encounters” [inviting to consider](#) the need to “not respond with isolating measures to the difficult situation regarding the physical and soul state of people. We can read the invitation to continue the public worship, scrupulously observing the hygiene measures provided for by the government decree”.

In this scenario, the decision of the Italian Bishops' Conference to suspend all liturgical celebrations, even Sunday ones, stands out. In reality, from the literal tenor of the document, it would seem that the Catholic Church had to adapt to a decision taken by the Italian government, without negotiating margins. We can in fact read in the press release published, in the late afternoon of Sunday 8th March, through the National Office for Social Communications that: “The government’s interpretation strictly includes funeral masses and rites between religious ceremonies. It is a highly restrictive passage, the reception of which encounters

suffering and difficulty for Pastors, priests and faithful. The [decree](#) is accepted only thanks to the desire to do its part, also in this situation, to contribute to the protection of public health”. Also in the subsequent [press release](#) of 10<sup>th</sup> March, signed by the General Secretariat of the CEI, the “regret and disorientation” that the government’s decision created “in the Pastors, in the priests, in the religious communities and in the people of God” is expressed; it was “accepted - therefore not agreed – by virtue of the protection of public health”.

The disconcert of the Italian Catholic Church is understandable. As Antonio Staglianò [writes](#) on the newspaper *Avvenire* of February 27, 2020, in difficult times believers should pray more and celebrate more masses. In history the Church has built a tradition of prayers against the plague, infectious diseases, other diseases, and in the past, when the plague raged, the faithful asked for help from their patron saints. Franco Cardini also recalled in an [article](#) published by the newspaper *La Stampa* that “once during the epidemics novenas and processions were organized to invoke divine protection, today the churches are closed”. According to Andrea Riccardi, the government’s decision does not take into account the reality of the Italian Catholic Church, which in times of crisis has always been a support in the country and whose contribution is extremely important even in this difficult moment<sup>8</sup>. Perhaps they could have left the possibility of celebrating at least Sunday mass, with all the necessary precautions, such as the minimum distance between the faithful, or in the presence of a maximum number of people calibrated according to

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<sup>8</sup> Cfr. A. Riccardi, *Il coronavirus e la sospensione delle messe: così c’è il rischio di sottovalutare la solitudine*, in *Il Corriere della Sera*, 8<sup>th</sup> March 2020, also available [here](#).

the size of the place. Probably the Episcopal Conference itself would have decided autonomously to suspend the celebration of the masses, to protect the health of the faithful and for the good of the country.





# THE LOYAL COLLABORATION BETWEEN STATE AND RELIGIONS AT THE TESTING BENCH OF COVID-19 PANDEMIC. A PERSPECTIVE FROM ITALY\*

Fabio Balsamo

The ongoing health emergency proposes many questions for ecclesiastical law<sup>1</sup>. First of all, the limitation of numerous fundamental rights ordered by the Government Decrees dated 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup> and 22<sup>nd</sup> March 2020<sup>2</sup>, as well as by the Law Decree 25<sup>th</sup> March 2020, n. 19, represented a balance test between the fundamental rights<sup>3</sup>, with particular regard to the relationship between the right to health (art. 32) and the right to religious freedom (art. 19). Moreover, government measures, affecting the organization of religious rites and ceremonies, reverberate on the principles of autonomy and confessional freedom, expressly

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<sup>1</sup> See P. Consorti, *Religions and virus*, in [www.diresom.net](http://www.diresom.net), 9<sup>th</sup> March 2020.

<sup>2</sup> The adoption of government decrees is based on powers established by the Government legislative Decree dated 23<sup>th</sup> February 2020, n. 6, containing *Urgent measures for the containment and management of the epidemiological emergency from COVID-19*.

<sup>3</sup> See R. Bin, *Critica della teoria dei diritti*, Franco Angeli, Milano, 2018, especially p. 142 ss.



guaranteed by articles 7 and 8 Const. for the Catholic Church and for all other religions.

On this point, it should first be noted that, lastly, art. 1, lett. *b)* of the Law Decree dated 25<sup>th</sup> March 2020, n. 19, in providing for the possibility of imposing limitations on the only “entry”<sup>4</sup> into places of worship, has modified the provision of art. 1, lett. *ì)* of the Government Decree dated 8<sup>th</sup> March 2020, which, otherwise, imposed limitations on the “opening” of places of worship<sup>5</sup>. The use of the word “opening” was really misleading and, not by chance, it induced the Cardinal Vicar of the Diocese of Rome, on 12<sup>th</sup> March 2020, to issue a decree – [modified the following day](#) – ordering the “closure” of the parochial and non-parochial churches of the Diocese of Rome, and more generally of the worship buildings of any kind [open to the public](#).

The Decrees emanated for the containment of the contagion constitute a «*unicum*»<sup>6</sup> from the second post-war period to the present and reflect on the collective dimension of the exercise of the right to religious freedom, in some way similar to the

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<sup>4</sup> The literal tenor of art. 3 of Law Decree dated 25<sup>th</sup> March 2020, n. 19 also seems to allow mayors and governors of the regions to adopt further restrictive measures for entry to religious buildings.

<sup>5</sup> Art. 1, lett. *ì)* of the Government decree dated 8<sup>th</sup> March 2020, extended to the whole national territory with the subsequent Government Decree dated 9<sup>th</sup> March 2020, stated that: *«l'apertura dei luoghi di culto è condizionata all'adozione di misure organizzative tali da evitare assembramenti di persone, tenendo conto delle dimensioni e delle caratteristiche dei luoghi, e tali da garantire ai frequentatori la possibilità di rispettare la distanza tra loro di almeno un metro di cui all'allegato 1 lettera d). Sono sospese le cerimonie civili e religiose, ivi comprese quelle funebri»*.

<sup>6</sup> See M. L. Lo Giacco, *In Italy the freedom of worship is in quarantine, too*, in [www.diresom.net](#), 12<sup>th</sup> March 2020.

interventions adopted, for reasons of public safety protection, after the terrorist attacks of 2001<sup>7</sup>.

The incisiveness and the unilaterality of government measures to suspend all religious ceremonies, including funeral ceremonies, raises a question about the potential damage to confessional autonomy guaranteed by the Constitution and reaffirmed in bilaterally contracted rules. Perhaps it would have been appropriate to ensure, despite the emergency, some form of prior dialogue with the confessional authorities<sup>8</sup>, even if the potential conflicts seem to be absorbed by the enhancement of the principle of loyal and mutual collaboration between the State and the Church, explicitly referred to in the Concordat in force since 1984 with the Catholic Church.

From this point of view the management of this health emergency represents an interesting - and we hope unrepeatable - testing bench of the good stability of the principle of collaboration between State and religions.

It will be interesting to examine how religious confessions will behave in the period immediately following the expiry of the term fixed for the suspension of religious rites, especially considering that the eventual resumption of ceremonies is currently set for Saturday 4<sup>th</sup> April 2020, the eve of Holy Week, traditionally considered central to the massive popular participation.

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<sup>7</sup> See R. Mazzola, *La convivenza delle regole. Diritto, sicurezza e organizzazioni religiose*, Giuffrè, Milano, 2005; P. Consorti, F. Dal Canto, S. Panizza (edited by), *Libertà di espressione e libertà religiosa in tempi di crisi economica e di rischi per la sicurezza*, Pisa University Press, Pisa, 2016.

<sup>8</sup> See V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in [www.olir.it](http://www.olir.it), 16<sup>th</sup> March 2020.

At the moment it is already known that rites officiated by the Holy Father will take place “behind closed doors” and, in any case, according to organizational methods suitable for guaranteeing the [prevention of contagion risks](#).

The diocesan decrees with which the bishops have hitherto dispensed, in accordance with can. 1245 *C.i.c.*, the faithful from the obligation of observance of the precept related to the celebration of feast days<sup>9</sup> included in the period 9<sup>th</sup> March 2020 – 3<sup>rd</sup> April 2020 will have to take into some account the non-participation in the Holy Easter Mass of Resurrection, since the Catechism of the Catholic Church obliges the faithful to receive the Eucharist at least once a year, possibly during the Easter period (n. 1389) and can 1246 - § 1 *C.i.c.* states that «*Sunday, on which by apostolic tradition the paschal mystery is celebrated, must be observed in the universal Church as the primordial holy day of obligation*». And these choices must be taken by the Bishops, the only ones who have legislative power in liturgical matters, even if the *Congregation for Divine Worship and the Discipline of the Sacraments*, on 19<sup>th</sup> March 2020, with a special *Decree on Holy Easter* has already dictated indications to allow the celebration of the rites of the *Easter Triduum* without the presence of the faithful<sup>10</sup>. Furthermore, due to the persistence of the pandemic threat, the *Congregation for Divine Worship and the Discipline of the Sacraments*, with a Decree dated 25<sup>th</sup> March 2020, detailed the indications contained in the *Decree on Holy Easter*, prescribing specific measures for each

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<sup>9</sup> See F. Marini, *Il precetto della Messa festiva: un obbligo individuale per un'assemblea che celebra la memoria pasquale*, in *Quaderni di Diritto Ecclesiale*, 18, 2005, pp. 259-277.

<sup>10</sup> See the *Decree on the Holy Easter* by the *Congregation for Divine Worship and the discipline of the Sacraments* dated 19<sup>th</sup> March 2020 (the decree can be consulted [here](#)).

liturgical moment of the Holy Week<sup>11</sup> and, above all, by inviting the Bishops to advise the faithful of the start time of the celebrations so that they can unite in prayer in their homes, also through live, [unregistered electronic means of communication](#).

In accepting the indications of the *Congregation for Divine Worship and the Discipline of the Sacraments*, the Italian Episcopal Conference, with its Document *Orientamenti per la Settimana Santa* dated 25<sup>th</sup> March 2020, has suggested to the Bishops to defer processions and other rites of popular piety to dates of 14<sup>th</sup> and 15<sup>th</sup> September 2020. But above all in these guidelines it is acknowledged that the Italian Episcopal Conference, at the outcome of an interlocution between its *General Secretariat* and the *Presidency of the Council of Ministers*, has obtained that the celebration of the rites during the Holy Week, even if deprived of the physical presence of the faithful, may take place at least with the participation of a deacon, of those who serve the altar, as well as a reader, a cantor, an organist and, possibly, two operators for the transmission. In this way, as underlined in the guidelines, a “minimum of dignity” can be assured for these celebrations<sup>12</sup>, always respecting the sanitary measures and the interpersonal distance of one meter.

It therefore seems that a satisfactory balance between the protection of public health and the exercise of worship in a central

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<sup>11</sup>The Decree, in addition to providing specific changes to the rites of Palm Sunday, Chrism Mass, Holy Thursday, Good Friday and Easter Vigil, establishes that Bishops and Presbyters could avoid concelebration and celebrate Holy Week rites without the presence of faithful.

<sup>12</sup> The guidelines of Italian Episcopal Conference dated 25<sup>th</sup> 2020 can be consulted at the web pages of Italian dioceses, e.g. the [Archdiocese of Naples](#).

moment – such as Holy Week – has been found, thanks to the dialogue with the *Presidency of the Council of Ministers*.

Moreover, the ongoing pandemic confirmed the increasingly decisive role assumed by religious bodies in substitution for the dismantled system of welfare state<sup>13</sup>.

The dynamism of religious bodies, also in relation to the management of the health emergency, has manifested itself through collaboration with civil authorities in a context of horizontal subsidiarity.

It's emblematic the case of the construction of a field hospital by the non-governmental Christian-Evangelical organization *Samaritanian's Purse*, based in the USA, to support the deficiencies of the Cremona hospital<sup>14</sup>.

To consent to the initiative, coordinated by the senator of evangelical faith Lucio Malan, it has been necessary to provide urgently by inserting a special article into the Law Decree n. 18 (so called “*Cura Italia*”), dated 17<sup>th</sup> March 2020, that, by way of derogation of the general rules (artt. 49 and 50 of the Presidential Decree 394/1999), has allowed, for the entire duration of the epidemiological emergency from Covid-19, the temporary exercise of health professions by qualified foreign personnel.

Equally remarkable was the choice of the Italian Buddhist Union (UBI) to allocate part of the resources received with the “*Otto per Mille*”, for a total of 3 million euros, in equal shares to the

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<sup>13</sup> See M. d'Arienzo, *La Chiesa e l'economia*, in *Diritto e Religioni*, 2-2009, pp. 214-224, especially p. 224; Ead., *Nuove problematiche circa i rapporti tra potere pubblico e strutture di natura confessionale nell'azione di accoglienza dei migranti*, in *Democrazia e Diritti Sociali*, 1-2019, pp. 41-51.

<sup>14</sup> See C. Baldi, *Un ospedale da campo davanti all'ospedale di Cremona*, in *La Stampa*, 16<sup>th</sup> March 2020.

Civil Protection for the immediate management of the emergency and to a special fund for Third Sector organizations engaged in the necessary support work, including economic, for the most fragile people<sup>15</sup>. With a view to horizontal subsidiarity<sup>16</sup> and on the basis of the emergencies that will be reported, UBI will cooperate with the various organizations of the Third Sector identified from time to time to prepare the necessary aid interventions, in view of the significant economic repercussions that will presumably be recorded even after the pandemic emergency has been overcome.

The Italian Episcopal Conference itself, in the wake of the example of Pope Francis<sup>17</sup>, has allocated 10 million euros to the 220 diocesan Caritas scattered throughout the country and half a million euros to the Foundation *Banco Alimentare Onlus* to guarantee support for families who are in situations of inconvenience, providing for the purchase of basic necessities and the maintenance of takeaway canteens and [protected dormitories](#).

Lastly, [the Valdensian Table](#), on 19<sup>th</sup> March 2020, has decided to allocate 8 million euros, drawn from “*Otto per Mille*”, for the establishment of a special fund for emergency management, in synergy with institutional entities and third sector organizations.

Eventually, allow me one last tough.

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<sup>15</sup> In the [press release](#) dated 16<sup>th</sup> March 2020 it has been affirmed that: «In questo momento non semplice restituiamo agli italiani la fiducia che ci hanno dimostrato con l'8x1000 e supportiamo anche le organizzazioni del Terzo Settore, da sempre vicino ai cittadini in difficoltà, nell'emergenza e soprattutto nel dopo».

<sup>16</sup> See *ex plurimis*, G. D'Angelo, *Principio di sussidiarietà ed enti confessionali*, ESI, Napoli, 2003.

<sup>17</sup> [Pope Francis](#) on 12<sup>th</sup> March 2020 allocated the sum of 100,000 euros to Italian Caritas to meet the needs of the weakest.

The epidemic from Covid-19 will also be remembered for having brought about a clear acceleration, if not a real turning point, regarding the use of digital tools for the celebration of religious rites<sup>18</sup>.

Massive use of *Whatsapp* groups and *Live Facebook* has been made.

Certainly, the tool of *Live Facebook* has taken on a great use to allow the participation of the faithful in religious rites. Furthermore, this tool is perfectly in line with the indications of the *Congregation for Divine Worship and the Discipline of the Sacraments* of 25<sup>th</sup> March 2020 - confirmed by the guidelines of the Italian Episcopal Conference - which suggested the involvement of the faithful in the celebration of the rituals through the use of live electronic means of communication.

However, as is known, it should be emphasized that the full usability of all content published on *Facebook* is guaranteed only to members of the *social network*. And this unlike the *Youtube* platform - which has also been frequently used to allow remote participation of the faithful in religious rites - that, on the contrary, is freely accessible by every user without the need for prior registration.

This finding seems to demonstrate the effective existence of the risks recently underlined in the doctrine: namely that the concrete possibility of exercising the right to religious freedom in the cybernetic space may be anchored not to the regulation of

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<sup>18</sup> See M. d'Arienzo, *Zuckerberg e i nuovi rapporti tra diritto e religioni. A proposito di libertà di coscienza nell'era digitale*, in *Diritto e Religioni*, 1-2019, pp. 384-396; S. Baldetti, *Il razzismo in rete a 80 anni dalle leggi razziste di San Rossore. La tutela del sentimento religioso nelle regole delle online communities*, in vol. P. Consorti (edited by), *Costituzione, religione e cambiamenti nel diritto e nella società*, Pisa University Press, Pisa, 2019, pp. 227-237, especially p. 231.

public, supranational or at least national law, but to a power private, that of the owners and managers of digital platforms and social networks<sup>19</sup>.

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<sup>19</sup> See M. d'Arienzo, *Diritto e religioni nell'era digitale: Zuckerberg ci salverà? I nuovi paradigmi ermeneutici della libertà di coscienza tra verità, errore e falsità delle informazioni*, in *I-LEX. Rivista di Scienze Giuridiche, Scienze Cognitive e Intelligenza Artificiale*, 12, 1-3, dicembre 2019, p. 258, where the Author states that the right to religious freedom in the digital space is often anchored «non alla regolamentazione del diritto pubblico, sovranazionale o almeno nazionale, ma ad un potere privato, quello dei proprietari e gestori delle piattaforme digitali e di *social networks*».





# RELIGIOUS FREEDOM AT THE TIME OF CORONAVIRUS\*

Gabriele Fattori

In the global emergency of Covid-19 three selected episodes, one in South Korea, one in Italy and one in Pakistan<sup>1</sup>, demonstrate how religion, sometime and at any latitude, can still be a very strong motive which leads, in the name of faith, to challenge the democratic laws (where they exist) or common sense, the scientific evidence and, as in these cases, even fate<sup>2</sup>. Another the point of view could be that these cases demonstrate how religion and religious minorities can become an easy target and how much more easier it is for religious liberty to be infected in the time of the coronavirus<sup>3</sup>.

The episode in South Korea. Until the middle of February and despite the geographical proximity and the frequent exchanges

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<sup>1</sup> These are not the only cases of this type: *see*, for example, *Deux mille pèlerins, cinq jours de prière et un virus: à Mulhouse, le scénario d'une contagion*, in [www.lemonde.fr](http://www.lemonde.fr), 27.02.2020.

<sup>2</sup> *See* P. Consorti, *Religions and virus*, in [www.diresom.net](http://www.diresom.net).

<sup>3</sup> United States Commission on International Religious Freedom (USCIRF), *Releases New Factsheet on the impact of Coronavirus on Religious freedom*, in [www.uscirf.gov](http://www.uscirf.gov).

with China, South Korea did not yet have any certified deaths by Covid-19 and the infection remained limited to 30 cases. From 17th February the number of positives to coronavirus suddenly grew: tripled in a week-end, immediately rose to nearly a thousand, then reached and surpassed 4,000 officially infected people and in a few days one already counted many tens of deaths. The hotspot of the epidemic in South Korea was a couple of ceremonies of the Shincheonij congregation, namely the Church of Jesus, Temple of the Tabernacle of the Testimony, celebrated in Daegu, the fourth largest city in South Korea with two and a half million inhabitants. The diffuser of the virus seems to have been a 61 year old woman. The woman who was already positive to coronavirus as confirmed by a test carried out on the 18th February, was a follower of the cult and was present at both events held for two consecutive Sundays and was among over a hundred followers. The spread of the virus was certainly favored by a few ideas and the conduct of the religious group. The members considered the infection a weakness and an obstacle to practise the faith. For this reason, when people were ill they tried to hide it or tried to convince themselves that they were not ill. Lee Man-hee, founder and messiah of the movement, before being arrested with the charges of murder and «conscious negligence» and before his excuses (on his knees) to the nation, had attributed the coronavirus to the devil and to «who is jealous of our growth». The leader had then convened two ceremonies and imposed on his followers a rite of purification to remove the virus from the body: it, then, seems that during the course of the gatherings of Daegu, the followers sat on the ground holding hands, groaning and panting without wearing eyeglasses or any protection for the face. Moreover, these

gatherings were carried out in grand secret and not even family members knew about it.

The result? An explosion of the epidemic in South Korea, infections and deaths which attacked 60% of those belonging to the group.

Soon after the South Korean episode, there was an analogous episode in Italy. During a religious neocatecumenal gathering in Vallo del Diano, an area south-east of the province of Salerno, sixteen people resulted positive to coronavirus. Even in this case, the infection was the consequence of the participation of a 76 year old person, who was a healthy carrier of the virus but who subsequently died on the 10th March. After the first gathering in Atena Lucana between 28th February and 1st March, the faithful met a second time in Sala Consilina on the 4th March. The spread of the virus led to the quarantine of the four municipalities of Atena Lucana, Sala Consilina, Polla and Caggiano and provoked the indignation of the civil authorities and of the citizens. The ecclesiastical authorities admitted that the believers «have certainly not been opportunely guided or coordinated by those who had the responsibility to do so» but being sorry for having seen «those belonging to a Catholic path with a proposal for a Christian life pass for virus-spreaders and disobedient people». The ecclesiastical authority wanted to precise overall that the followers of the Neocatecumenal Way «have always respected the indications prescribed by the decrees of the Prime Minister and by the votes in turn shared and made by the Italian Episcopal Conference»<sup>4</sup>. In

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<sup>4</sup> Cfr. Ministry of Interior, *Parere del Dipartimento per le libertà civili e l'immigrazione, Direzione centrale degli affari dei culti*, on *Quesiti in ordine alle misure di contenimento e gestione dell'emergenza epidemiologica da Covid-19. Esigenze determinate dall'esercizio del diritto alla libertà di culto*.

relation to this, it should be remembered that on the 24th March, a regulation by President De Luca of the region Campania had, in effect, only *recommended* to the mayors to monitor and forbid «the organization and the performance of every manifestation which leads to meetings or gatherings of the citizens»<sup>5</sup>. Moreover, even the D.l. 23rd February 2020 n. 6, art. 1, comma 1, lett. had only *allowed* «in the municipalities and in the areas in which results positive at least one person», the «suspension [...] of events and of every form of public and private meetings even of a religious [...] character , even if in closed places but open to the public».

The third episode, in Pakistan, is, in order of time, the last example of infection by Covid-19 provoked by religious reasons and practices. In Lahore, in Pakistan, between 11th and 15th March 2020, a religious gathering in which took part around 250,000 people was, in fact, very probably the fuse of the epidemic which spread in large parts of the Middle East. It was concerning a meeting for the diffusion of the faith organized every year by Tablighi Jamaat, an Islamic integralist movement with an enormous number of followers on the Indian sub-continent and in middle eastern Asia and present in at least 80 countries in the world. On 12th March, the organizers of the event were asked to forbid the event. But for the leaders of the sect to cancel the prayer meeting due to an infective illness, even if with high mortality, would have meant to disobey the command of Allah. The Imam of the movement, Muhammad Taqi Usmani, immediately replied that the religious meeting served to «share the cure for the virus». Even in this case, the price for religious disobedience was high: 1,000 infected in one week only in Pakistan and the spread of the

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<sup>5</sup> Giunta Regionale della Campania, *Ordinanza del Presidente*, 24.02.2020, n. 1

virus into Kirghizistan and Saudia Arabia. Even the rest of the Middle East risks to be overwhelmed by the epidemic. In Lebanon people positive to coronavirus are already nearly 400, in Israel around 3,000, in Saudia Arabia nearly 1,000 and everywhere they start to count the first deaths. In Iran the situation has already become tragic: around 30,000 infected and over 2000 deaths.

From a superficial point of view, the episodes in South Korea, in Italy and in Pakistan present connections and analogies well visible. All these episodes show how religion remains a factor of legitimacy which contributes to the construction of the public sphere; how faith still has the force to put in great difficulty rights and laws as obligatory benchmarks regarding the management of problems and conflicts or the force to oppose common sense; how religious obedience at times can express itself, more or less explicitly, as civil or social disobedience.

Nevertheless, from a more profound point of view, the three episodes show differences otherwise revealing. At least two. To start the protagonists are diverse. In the South Korean and Pakistan cases, the protagonists are religious groups of a cultic character: in South Korea, a secret semi-Christian and apocalyptic sect; in Pakistan, an Islamic integralist movement which had called a gathering of the faithful when numerous muslim countries such as Turkey, United Arab Emirates, Iraq and Jordan closed the mosques. In the Italian case, instead, the Neocatecumenal Way represents a recognized movement and integrated in the ecclesiastical reality of Catholic Christianity. But the most significant difference is in the nature of the contested initiatives. The gatherings of the sects of South Korea and Pakistan were born to exorcize the virus with rites and prayers of purification, that is, they were moved by the disbelief towards science. Diversely, seems

the objective of the gathering of the Neocatecumenal Way which was to complete a course of prayer and the participants had respected the rules of prudence and of ‘social distancing’ which the health emergency had imposed.

If we stop to consider the Italian case, it should also be recognized, finally, that religion is certainly not the unique factor which competes with policy-making in the public sphere. The economy not is a lesser factor, for example. Not by case, Italy tried to select and to graduate as much as possible in time the actions of containment of the Covid-19 epidemic to reduce the recessive economic effects. From the less to the more restrictive, the interventions with which Italy has faced the health emergency – even though rather close together – have been deferred in around two months<sup>6</sup>: five decrees<sup>7</sup>, ten decrees realized by the Prime

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<sup>6</sup> <http://www.governo.it/it/approfondimento/coronavirus/13968>.

<sup>7</sup> D.l. 23.02.2020, n. 6 «Misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19» (GU n. 45 del 23.02.2020); D.l. 02.03.2020, n. 9 «Misure urgenti di sostegno per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19» (GU Serie Generale n. 53 del 02.03.2020); D.l. 9 marzo 2020, n. 14 «Disposizioni urgenti per il potenziamento del Servizio sanitario nazionale in relazione all'emergenza COVID-19» (GU Serie Generale n. 62 del 09.03.2020); D.l. 17 marzo 2020, n. 18 (c.d. «#CuraItalia») «Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19» (GU Serie Generale n. 70 del 17.03.2020); D.L. 25 marzo 2020, n. 19 (GU Serie Generale n. 79 del 25.03.2020).

Minister (d.p.c.m.)<sup>8</sup>, two ministerial decrees<sup>9</sup>, five ministerial regulations<sup>10</sup>, a ministerial circular<sup>11</sup>, a resolution of the Cabinet<sup>12</sup>, various other precautional/ protective measures<sup>13</sup>.

The Italian case demonstrates, then, that at the time of Coronavirus, our Constitutional priorities should certainly change, but by how much and how, instead, are a matter of points of view.

The Covid-19 emergency demonstrates, in particular, how different, for example, are the considerations of religious freedom in the hierarchy of fundamental constitutional rights when they pass from the State perspective of democratic laws to the religious perspective of religious rights and practices.

In the State perspective, the policy-making options dictated by the epidemic alarm have determined, at a juridical level, a new

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<sup>8</sup> DPCM, 23.02.2020; DPCM 25.02.2020; DPCM 22.03.2020; DPCM 01.03.2020 abrogativo dei precedenti (GU Serie Generale n. 52 del 01.03.2020); DPCM 04.03.2020 (GU Serie Generale n. 55 del 04.03.2020); DPCM 08.03.2020 abrogativo dei precedenti (GU Serie Generale n. 59 del 08.03.2020); DPCM 09.03.2020 (GU Serie Generale n. 62 del 09.03.2020); DPCM 11.03.2020 (c.d. decreto ‘#IoRestoInCasa’, GU Serie Generale n. 64 del 11.03.2020); DPCM 22.03.2020 (GU Serie Generale, n. 76 dl 22.03.2020); DPCM 01.04.2020.

<sup>9</sup> Minister of Economic Affairs Roberto Gualtieri, Decreto ministeriale 24.02.2020; Minister for Economic Development Stefano Patuanelli, Decreto ministeriale 25.03.2020.

<sup>10</sup> Cfr. Minister of Public Health Roberto Speranza, Ordinanza 30.01.2020 (GU Serie Generale n. 26 del 01.02.2020); Ordinanze of Minister of Interior: Ordinanza 31.01.2020; ordinanza 21 febbraio 2020; Ordinanza 20.03.2020; Minister of Public Health Roberto Speranza and Minister of Interior, Luciana Lamorgese del 22.03.2020.

<sup>11</sup> Ministry of Interior, Circolare 14.03.2020.

<sup>12</sup> Council of Ministers, Delibera 31.01.2020 «Dichiarazione dello stato di emergenza in conseguenza del rischio sanitario connesso all'insorgenza di patologie derivanti da agenti virali trasmissibili» (GU Serie Generale n. 26 del 01.02.2020).

<sup>13</sup> See, for example, the rules of the national health authorities and of national authorities of civil protection since the 30.01.2020.



hierarchy among constitutional interests which put in first place the defence of public health (art. 16 and 32 Cost.). To pay the price are those fundamental rights and freedom among which is the exercise of the right of religious freedom as set out in art. 19 of the Constitution. Therefore, the exercise of the right of religious freedom can not but be seen as illegitimate or irresponsible with respect to the higher need for containment of the epidemic.

In the religious perspective of the Catholic church even in an health emergency the principle of distinction of the temporal order of the State from the spiritual order of the Catholic church must be protected (art. 7 Cost. it.). For this reason, the Catholic Church confirms by way of autonomous ecclesiastical provisions: the suspension of religious functions disposed by the civil authorities<sup>14</sup>; the defence of the right of the faithful to receive the sacrament<sup>15</sup> and the duty of pastors to administer it; and the affirmation of prayer as a need also and overall in the time of coronavirus. However, the provisions do allow the restrictions of the civil authorities to religious freedom if they conform to an objective moral order<sup>16</sup>.

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<sup>14</sup> G. Dalla Torre, *Gli ordini dello Stato e gli ordini interni della Chiesa*, in [www.avvenire.it](http://www.avvenire.it), 22.03.2020.

<sup>15</sup> *Codex Iuris Canonici* 1983, can. 813.

<sup>16</sup> Second Vatican Ecumenical Council, *Declaration on religious freedom Dignitatis Humanae*, n. 7. See also the guidelines of Italian government of 20.03.2020 available at: <https://www.interno.gov.it/it/notizie/chiese-aperte-funzioni-religiose-ma-senza-partecipazione-dei-fedeli>.

# PUNISHMENT, VIRUS AND RELIGIONS\*

Domenico Bilotti

It seems commonly recognized that Italy has now overtaken South Korea and the Islamic Republic of Iran considering the deceases and the contagions due to the so called Covid-19 (coronavirus)<sup>1</sup>.

It is substantially correct to report this information in a dubitative way because there are some different elements in undoubtedly counting the exact amount of verified infections (the timing for diagnoses, the criteria to declare the ascertained contaminations, the communication between public medical authorities and the governmental agencies in charge<sup>2</sup>).

In South Korea, even inside nationalist Christian and Lutheran groups, largely secularized and well-learned about the scientific progress, the idea of death is often linked to the inescapable process of life<sup>3</sup> and many early deceases were originally considered among the closest communities as a result of a dangerous spirit or

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<sup>1</sup> A detailed cartography available on <http://www.worldometers.info/coronavirus>.

<sup>2</sup> Y. Chen, R. Woo, *China Doctors Seek Tougher Discharge Criteria After Positive Coronavirus Tests*, Reuters, online edition, 3<sup>rd</sup> March 2020.

<sup>3</sup> G. S. Han, *Nouveau-riche Nationalism and Multiculturalism in Korea. A Media Narrative Analysis*, Routledge, London-New York, 2015.

a bad inexplicable illness passing across people and the smallest internal towns – it results even in a very low profile use of pharyngeal tests since the beginning<sup>4</sup>. The same complexity raised about first Southern American and African cases<sup>5</sup>: initially, tribal communities opposed (and they probably still do) diagnostic technologies. Actual circumstances anyhow made the declaration of pandemic by the World Health Organization definitely obligated<sup>6</sup>.

If it is formally deserved that the more incisive measures should be taken by each country, it is likewise obvious that an international epidemic phenomenon inevitably recalls a much deeper level of coordination and cooperation in disciplining border transfers. On the other hand, the States affected by the most unpredicted increase in contagions and deceases need to face the emergency still considering the specific local conditions of propagation and healthcare assistance. A particular focus should be adopted regarding the weakest social parts easily subjected to a more invasive risk of lethal infections.

In Italy an impressive protest raised in many national prisons with documented events of violent jailbreaks, massive public forces' reactions, widespread disorder<sup>7</sup>. The prison system in Italy

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<sup>4</sup> A. Bendix, *South Korea has tested 140,000 people for the coronavirus. That Could Explain Why its Death Rate Is Just 0.6% - Far Lower than in China or the US*, in *Business Insider*, online edition, 6<sup>th</sup> March 2020.

<sup>5</sup> Considering the above suspicion African hike, A. R. A. Shaban, D. M. Mumbere, *Rolling Coverage of the Coronavirus Outbreak in Africa*, *Africa News*, 11<sup>th</sup> March 2020.

<sup>6</sup> Official statement on <http://www.who.int>: "WHO Characterizes COVID-19 as a Pandemic", 11<sup>th</sup> March 2020.

<sup>7</sup> Y. Gostoli, *Six Immates Die as Prison Riots over Coronavirus Rules Grip Italy*, *al Jazeera*, online edition, 9<sup>th</sup> March 2020; Z. Tidman, *Italy Prison Riots: Six Die Amid Protest over Coronavirus Restrictions*, *Independent*, 9<sup>th</sup> March 2020.

has never shown this level of tension since the period of political turmoil (ending in the first half of the Eighties), when an absolutely various and heterogeneous coalition of political activists, organized crime high and low profile imprisoned and not classified incarcerated people chose to react against a restrictive and perceived inhuman criminal treatment<sup>8</sup>. In these days, the themes of the protest can basically be summarized in two different aspects: the concrete situation of the medical nationwide surveillance and assistance and the rules contained in two consecutive decrees of the President of the Council of Ministers of the Italian Republic<sup>9</sup>. New provisions actually concern many relevant aspects as the regime of the regional mobility in zones classified like “risk areas” or, more simplistically, “red zones”. These administrative orders, although necessary, are generally missing the opportunity to give the national public opinion a cohesive sense of organization and conformity in numerous crucial branches (for instance, the internal regulation of judiciary courts<sup>10</sup> and public schools or similarly a comprehensive program to avoid deliberate violations to the local restrictions<sup>11</sup>, by now generalized).

Many observers have considered that this still not totally clear strategy is an alarming joint negligence of both the public opinion, not enough responsible to respect even widely acceptable limitations, and the political power, so much divided by an

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<sup>8</sup> M. Mafai, *Perquisizioni, vetri divisori, quant'è difficile essere la madre di un brigatista*, *la Repubblica*, 11<sup>th</sup> February 1981.

<sup>9</sup> DPCM, 4<sup>th</sup> March 2020 and DPCM, 8<sup>th</sup> March 2020, DPCM 9<sup>th</sup> March 2020, available on <http://www.gazzettaufficiale.it>.

<sup>10</sup> G. D. Caiazza, *Emergenza sanitaria: in via di definizione il Decreto Legge relativo alle misure eccezionali nel comparto giustizia*, in <http://www.camerepenali.it>, 8<sup>th</sup> March 2020.

<sup>11</sup> C. Melzi D'Eril, G. E. Vigevari, *Coronavirus: il decreto tra obblighi, divieti, raccomandazioni e semplici consigli*, *il Sole 24 Ore*, 8<sup>th</sup> March 2020.

undeveloped Parliament majority and a quite opportunistic coarse opposition<sup>12</sup>. It is not properly the case to become involved in mere propagandistic claims about the morality of thoughtless flights to not heavily infected regions and the inner overindulgence in selling out pubs and clubs during a so extreme global condition. At the same time, it seems a crocodile tears consideration to condemn the general division in political parties who have not shown in recent years the unitary and universal identification on defending constitutional principles and common goods<sup>13</sup>. Many cultural, social, religious and associative recreational agencies are fortunately demonstrating a more alert approach in containing the sense of panic and public fear and even more in collaborating to affirm virtuous praxes. We can positively consider a not limited spectrum of useful behaviors: shared grocery shopping, hygienic preventive prophylaxis, joint smart-working, social use of Internet connections to have reunions, meetings and even moments of worship and meditation.

Rather, from a constitutional point of view, it is very important to analyze models of legal intervention and administrative reforms in order to identify and to eventually adapt a correct institutional process. It is even more relevant to recognize a distinctive contingency that has affected Italy in tackling (or trying to tackle) the “*corona-virus case*”. Italy is for the moment the first country considering the percentage of mortality after ascertained infections. Biologists, virologists, scientific specialists,

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<sup>12</sup> A raucous but concise reconstruction in G. Cavalli, *Irresponsabili, presuntuosi e incapaci, Left*, 9<sup>th</sup> March 2020.

<sup>13</sup> A predictive lecture about this faded conception of politics was advanced, in the public law field, by L. Ventura, *Il governo a multipolarità diseguale*, Giuffrè, Milano, 1988.

have so far excluded a typical and more aggressive mutation of the virus itself; so, it definitely means that the country has demonstrated a list of undervalued criticalities and the overcrowding of prisons is exactly in the same line, although it has not gained – but it could easily gain in the nearest future in default of more balanced provisions – a specific impact on corona-virus contagions.

The Iranian Republic is a Twelver Shia Islam State<sup>14</sup> and since the Islamic Revolution of 1979 has progressively known an interesting development in criminal law sciences often legislating in the direction of capital punishments as the appropriate penalty to major crimes (maybe a too much expansive list including hypotheses of rape, corruption, homicide, terrorism, foreign drug trade)<sup>15</sup>. The criminal system of the Republic has adopted more recent rules in the last version of the Criminal Code, realized and reassessed by the Guardian Council, but it is not an opinion that those rules still do not seem a liberal body of concessive norms. The main structures of the jailing procedures still yearn for a religious basement and the stigma of some assumed dangerous conducts is however linked to a preliminary Quran condemnation (female adulteries, blasphemy, schismatic religious confraternities)<sup>16</sup>. On 3 January 2020, a US drone strike killed

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<sup>14</sup> S. A. Dudoignon, *The Baluch, Sunnism and the State in Iran. From Tribal to Global*, Oxford University Press, Oxford-New York, 2017, pp. 180-181.

<sup>15</sup> S. Alasti, *Juvenile Death Penalty in Islamic Countries: the Road to Abolition is Paved with Paradox*, in P. Hodgkinson, *Capital Punishment: New Perspectives*, Routledge, London-New York, 2013, pp. 73-74.

<sup>16</sup> M. J. Fischer, *Legal Postulates in Flux: Justice, Wit and Hierarchy in Iran*, in D. H. Dwyer, ed., *Law and Islam in the Middle East*, Begin & Garvey, New York-Westport-London, 1990, pp. 115 ss.

Qasem Soleimani<sup>17</sup>, the major general in the Islamic Revolutionary Guard Corps: the deputy most important role in the concrete order of the Iranian Law. Even in a so chaotic internal framework, between numerous and unpublicized political clashes and a tremendous crisis of fair trades also in providing medicines and therapies, Iran has temporally released more than 54.000 prisoners in a comprehensible effort to combat the enormous spread of corona-virus diseases in crowded jails. Security prisoners sentenced to more than five years will not be let out: a reassurance conceived to avoid a general sense of impunity.

This effort could obviously fail because the virus is dramatically beating not only the weak masses, the aged population and the already seriously ill categories.

In Iran a leading figure of the Expediency Council, Mohammad Mirmohammadi, died as a result of an infection and State media did not recognize it as a specific grave symptomatic case. Everyone can die, but the Iranian Republic pointed to the prison overcrowding eventually being an affecting condition to regulate the newest infections. It is not properly an amnesty<sup>18</sup>, as we look at it in the tradition of the rule of law<sup>19</sup>, but it is certainly a

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<sup>17</sup> K. Zraick, *What to Know About the Death of Iranian General Suleimani: The Killing of the Powerful General in Baghdad Could Have Drastic Consequences around the World*, in *New York Times*, 6<sup>th</sup> January 2020.

<sup>18</sup> D. Pulitanò, *Diritto Penale*<sup>5</sup>, Giappichelli, Torino, 2013, pp. 573 e ss. G. Zagrebelsky, *Amnistia, indulto e grazia. Profili costituzionali*, Giuffrè, Milano, 1974; V. Maiello, *Clemenza e sistema penale*, ESI, Napoli, 2007.

<sup>19</sup> Specifically considering the religious background of Western constitutionalism, C. J. Friedrich, *Transcendent Justice. The Religious Dimension of Constitutionalism*, Duke University Press, Durham, 1964. For an interesting overview of the American legal system on religions, K. Greenwalt, *Secularism, Religion and Liberal Democracy in the United States*, in *Cardozo Law Review*, 2009, pp. 2383-2400.

political judgment against the collective harmfulness of a penitentiary promiscuous and over-fulfilled context. The Italian criminal law basement does not have anymore a so identifiable religious root, but it is anyway well accepted that many judiciary institutions have at least a canon law ancient foundation (the concept of legal pardon<sup>20</sup>, the structure of the trial<sup>21</sup>, the functions and the purposes of the punishment for the declared guilty criminal<sup>22</sup>). The proposal of a general provisory release from prison, strictly modulated around the lowest kinds of misbehaviors, could simultaneously be relevant from a religious-charitable point of view and useful considering the extreme danger of a chronic overcrowding. It is reasonably hopeful that Italy could respectfully study a reformist block of rules concerning the execution of the criminal law sentences encouraging alternative kinds of detention for minor violations<sup>23</sup> and an ambitious program to guarantee the health of people subjected to legal restrictions in segregating communities, from the prisons to the other and not less problematic forms of internment. “I was naked and you clothed me, I was sick and you visited me, I was in prison and you came to me”<sup>24</sup>.

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<sup>20</sup> M. Ascheri, *I diritti del Medioevo italiano: secoli XI-XV*, Carocci, Roma, 2000, pp. 234 ss.

<sup>21</sup> Especially mentioning even the different theological context, E. Corecco, L. Gerosa, *Il diritto della Chiesa*, Jaca Book, Milano, 1995, pp. 94-95.

<sup>22</sup> M. Ventura, *Pena e penitenza nel diritto canonico postconciliare*, Edizioni Scientifiche Italiane, Napoli, 1996; R. Botta, *La norma penale nel diritto della Chiesa*, il Mulino, Bologna, 2001.

<sup>23</sup> The same suggestion was largely extractable in European Court of Human Rights, *Torreggiani and others vs. Italy*, 8<sup>th</sup> January 2013.

<sup>24</sup> A reference to Matthew 25, 36 (English Standard Version).





## COVID-19: LIMITATIONS TO PUBLIC WORSHIP IN ITALY, SPAIN AND POLAND\*

Valerio D'Alò

The current pandemic offers ideas for reflection on the tension between constitutionally relevant principles that also include religious freedom.

This circumstance deserves to be assessed - in addition to the principle of separation<sup>1</sup> - both with regard to the limitations provided for other rights of freedom, and in relation to the balance of the different rights that come into play, in order to weigh up the degree of protection that must be granted to them in such an emergency.

In this contribution we will see how, in correlation with the evolution of the pandemic situation, the complexity of the management of emergency rules, both in the state and in the confessional sphere, is increasingly emerging. To this aim, we will see the different choices that have been made in three European concordat states: Italy, Spain and Poland.

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<sup>1</sup> In Italy, this is constitutionally provided for in Article 7 of the Constitution: cf. V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in <https://www.olir.it/focus/vincenzo-pacillo-la-sospensione-dei-diritti-nel-tempo-della-pandemia/>, 2020.

As we know, religious freedom, in addition to the constitutional level, is protected by both art. 9 ECHR both from art. 18 of the International Covenant on Civil and Political Rights of 1966, which nevertheless allow restrictions by law, on the grounds of public health requirements, among other things. These are limitations required by the emergency, but they must be reasonably adopted in a framework of proportional balance between fundamental rights, which implies the need not to take restrictive decisions producing a detrimental effect not necessary for the protection of the interest pursued. In other words, while it is generally acceptable for States to take on restrictive rules of freedom in order to ensure the right to health for the lives of citizens, these restrictions must be reasonable and proportionate to the effect without prejudice of the rights that can continue to be exercised, as well as, at the same time, the effect of emergency management. In essence, it is necessary to check whether the limitations of religious freedom rights are indeed necessary in order to contain contagion and thus safeguard the health and life of citizens.

In Italy, drastic measures limiting the public exercise of worship, protected by the Constitution and subject of further specific concordat protection, have been adopted, without prior consultation with ecclesiastical authority<sup>2</sup>. At first, the Italian Bishops' Conference adhered to the government rules, but issued an official note – in the form of a press release – in which it noted "with suffering" the "interpretation provided by the Government" aimed at preventing the "religious ceremonies", including funeral

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<sup>2</sup> See d.l. 23 febbraio 2020, n. 6, d.P.C.M. dell'8, 9, 11, 22 marzo, d.l. 25 marzo 2020, n. 19, d.P.C.M. 1 aprile 2020 e 10 aprile 2020, in <https://www.gazzettaufficiale.it/>.

ones, implicitly suggesting a disagreement with a decision that seemed too drastic. This dissent was not, however, manifested in official forms<sup>3</sup>, but widely expressed by Catholic public opinion, which did not fail to highlight the contradiction between the suspension of religious ceremonies and the continuity of other services considered essential, subordinate solely to observance of the rule of personal distancing. The first measures taken by the public authority – which, in truth, lack the necessary formal clarity and leave too much room for discretionary interpretation – seemed to be pursuing the purpose of preventing gatherings of people, by discouraging opportunities for "social encounters" that are not strictly necessary, and by subjecting the exercise of essential services to the adoption by the managers of organizational measures such as to "avoid gatherings of people taking into account the size and "guarantee to visitors the ability to respect the distance between them by at least one meter". In accordance with this rule, churches can be opened, if distances can be maintained within them, but the prohibition on the celebration of 'ceremonies' persists: an uncertain expression, but it has been interpreted in a very broad sense, leading to the prohibition of any form of meeting.

The rationale of the measure is clear; however, one can legitimately ask whether the decision to ban any form of worship does not exceed the limits of reasonableness and proportionality, especially when one considers that this choice is the consequence of a previous decision discriminating between "essential" and 'non-essential' services, which the government authority has assumed on

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<sup>3</sup> Cf. "Nota dell'Ufficio Nazionale per le Comunicazioni Sociali" of 8 March 2020, no. 11, <http://massacarrara.chiesacattolica.it/wp-content/uploads/sites/2/2020/03/Comunicato-8-marzo-2020.pdf>.

the basis of political discretion, in a sense by invading the religious order and deciding that the demands of public manifestation of worship are not 'essential' and therefore go without other prohibited. It would probably have been more legitimate to subordinate the exercise of this right to the same precautions dictated for public access to other places that remained open. For example, cults could be celebrated by avoiding gatherings, and legitimately preventing the exercise of worship in places that are too crowded or that otherwise prevent the prescribed interpersonal distances.

Such a solution would have had the merit of taking into due consideration the Catholic perspective, which gives common participation in worship a sacramental meaning, so that the prohibition of public celebration of Holy Mass in fact results in deprivation of a right of the faithful. It goes without saying that the creative remedy of moving religious ceremonies online presents itself as a substitute, which can alleviate spiritual suffering, but does not solve the substantial problem<sup>4</sup>.

In Poland, the closure or suspension of various activities has deliberately excluded places of worship and suggested an increase in the possibilities of attending religious ceremonies, counting on the fact that an increase in supply led to a decrease in the number of the number of people who would gather in the same place of worship<sup>5</sup>. The Polish Bishops' Conference, for example, has limited participation in religious offices to no more than fifty

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<sup>4</sup> Cf. Decree of the Apostolic Penitentiary concerning the granting of special indulgences to faithful in the current pandemic situation of 19.3.2020, in <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2020/03/20/0170/00378.html>.

<sup>5</sup> <https://it.euronews.com/2020/03/12/chiudete-tutto-ma-non-toccate-la-messa>.

people<sup>6</sup>, and appealed to the diocesan bishops to grant dispensations from participation in Sunday Masses to the most vulnerable: elderly people, the sick and children, as well as adults who care for them, recommending their participation in the celebrations through the media<sup>7</sup>.

In Spain, measures like those in Italy have been taken, "to avoid clusters of people, in relation to the size and characteristics of the places, in such a way as to ensure that the frequenters can respect the distance at least one meter", conditions that also subordinate the opening of places of worship. Therefore, "civil and religious ceremonies, including funeral ceremonies", can be celebrated, in accordance with these conditions<sup>8</sup>.

Over time, the overall state rules have undergone several adjustments that will need to be evaluated more carefully. For example, in Italy the idea prevailed that the rationale of preventive measures was not exactly to maintain interpersonal distance, but to restrict freedom of movement to the essentials: therefore, all movements that do not respond to actual and documented needs are prohibited. The repeated slogan "Stay at home" does not leave much room for interpretation. The Ministry of the Interior has specified, with a note, that churches can be opened, but one cannot go out to go to church, while one can enter an open church if it is on an authorized route<sup>9</sup>.

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<sup>6</sup> <https://www.agensir.it/quotidiano/2020/3/14/coronavirus-covid-19-polonia-stato-di-emergenza-epidemiologica-i-veicoli-celebrazioni-via-radio-tv-e-internet/>.

<sup>7</sup> <https://www.agensir.it/quotidiano/2020/3/12/coronavirus-covid-19-polonia-primo-decesso-dispense-dalla-partecipazione-alle-liturgie-domenicali/>

<sup>8</sup> See art. 11 R.D. 14 de marzo 2020, n. 463, in <https://boe.es/boe/dias/2020/03/14/pdfs/BOE-A-2020-3692.pdf>.

<sup>9</sup> <https://www.interno.gov.it/sites/default/files/allegati/specifiche-chiese.pdf>.

In Poland, instead, in the context of further restrictions on movement<sup>10</sup>, some exceptions have been provided for, including the possibility of continuing to wait for religious worship demonstrations within the limit, however, reduced by five people per celebration.

In Spain funeral ceremonies have since been suspended until the end of the state of emergency, due to the "peculiar characteristics" that connote such rites, which make it difficult to ensure "the application of containment and space measures with the at least one metre to limit the spread of the virus"<sup>11</sup>.

However, the Spanish Bishops' Conference has left it up to the individual Bishops to decide to dispense the faithful from observance of the Sunday precept, drafting some general guidelines, which are resolved in the recommendation to participate in liturgical celebrations through media and IT tools, as well as in the invitation to the elderly, the sick and their cohabitants to avoid frequenting places of worship<sup>12</sup>. The Tarraconian Bishops' Conference decided to suspend public worship and hold funerals using the simplified formula "until the pandemic is over"<sup>13</sup>, while the celebrations of the Easter Triduum took place in the Diocese of Granada, although there were some unpleasant "incidents" with the police authorities. What happened in the Cathedral of Granada, where the police raided the liturgy on Good Friday, presided over

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<sup>10</sup> <https://www.gov.pl/web/koronavirus/aktualne-zasady-i-organizacja>.

<sup>11</sup> See Orden SDN/298/2020, de 29 de marzo, in <https://www.boe.es/boe/dias/2020/03/30/pdfs/BOE-A-2020-4173.pdf>.

<sup>12</sup> Cf. *Orientaciones ante la situación actual*, de 13 de marzo, Comisión Ejecutiva de la Conferencia Episcopal Española, in <https://conferenciaepiscopal.es/orientaciones-ante-la-situacion-actual/>.

<sup>13</sup> <https://www.vaticannews.va/it/chiesa/news/2020-03/planellas-fedeli-chiesa-coronavirus-settimana-santa.html>.

by Archbishop Francisco Javier Martínez, due to the presence of about twenty faithful, was striking<sup>14</sup>. This episode was stigmatized by representatives of the Partido Popular, who denounced a violation of religious freedom<sup>15</sup>.

The Polish Church, instead, considered "the closure of churches unimaginable, because they serve to heal the diseases of the soul"<sup>16</sup>.

Finally, it seems interesting to point out that the Italian Church has made some restrictive choices in the Holy Week celebrations without waiting for the government decision to maintain the restrictions even in that period. The celebrations have all been without participation of the people, but in the presence of a representation and staff necessary to ensure their solemnity. In the aforementioned ministerial note, the government has taken note of this choice and authorized the exit from the homes of people who have to go to places of worship, equating it to a "work requirement". It seems, therefore, that a few days later relations between Italy and the Catholic Church have reversed: it is the second that gives indications to the first<sup>17</sup>. Perhaps also because the Italian Church has decided to be more clearly inspired by the principle of mutual collaboration aimed at the "promotion of the person" and the "good of the Country", which governs concordat relations<sup>18</sup>.

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<sup>14</sup> <https://inforaticana.com/2020/04/11/la-policia-interrumpe-la-celebracion-del-viernes-santo-en-la-catedral-de-granada/>.

<sup>15</sup> <https://www.larazon.es/andalucia/20200413/32xnmknyqnx7neoy4nccvbfq.html>.

<sup>16</sup> See note 5.

<sup>17</sup> <https://diresom.net/2020/03/28/italy-a-letter-to-episcopal-conference-by-the-ministry-of-interior>.

<sup>18</sup> Cf. P. Consorti, *La Messa non è finita*, 2020, in [https://people.unipi.it/pierluigi\\_consorti/la-messa-non-e-finita/](https://people.unipi.it/pierluigi_consorti/la-messa-non-e-finita/).





## THE GREEK ORTHODOX CHURCH AT THE TIME OF THE SARS-COV-2 EPIDEMIC\*

Enrica Martinelli

Last week the Greek government informed the population of the urgent need to adopt prevention and containment measures against the spread of the Covid-19virus, indicated by the WHO, which also prohibited gatherings of people, even in open spaces, and the closure of schools, universities and public establishments.

In respect of these measures the hierarchy of the Orthodox Church, which in Greece enjoys a State prerogative, demonstrated its wish not to come to terms with the virus, unconditionally trusting in the salvific work of Christ the Saviour.

Therefore, churches remained open for worship with the icons displayed without prohibiting the devotional kiss<sup>1</sup> and the services celebrated as usual with the participation of the public, called upon to pray<sup>2</sup> and to respect the rules of Lent, including that of fasting.

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<sup>1</sup> Even if this is a practice that is not currently recommended, despite the sanitisation of the icons.

<sup>2</sup> The ecclesiastic authority “paternally admonished” the sacred clergy and the Orthodox population to “direct all our prayers to the Winner of corruptibility and death, our Lord Jesus Christ, to keep his People healthy and unharmed. For

This ecclesiastical decision led to a critical reaction, but it was also supported by worshippers, who entrust their salvation – on the earth and in heaven – to Christ and his Church.

A particularly controversial point was that related to the maintenance of the traditional form of distribution of the Eucharist, in its dual form comprising bread and wine, with the same teaspoon for all the worshippers. In response to the medical/scientific evidence that has unquestionably proven that contagion takes place particularly through saliva, the ecclesiastical authorities stated that: “For members of the Church, the approach to the Eucharist and the Communion of the Holy Cup of Wine, certainly cannot be a cause for the transmission of diseases as worshippers of all eras know that the approach to the Eucharist, also during times of pandemic, constitutes on one hand a real statement of remission to the living God and on the other hand an immense display of love that overcomes all human fear, even justifiable”<sup>3</sup>.

The Autocephalous Church of Greece Permanent Holy Synod met on 9 March to underline the appropriateness of the choice, distinguishing between the unquestionable nature of the scientific evidence, and the just as valid certainty that faith in *μυστήριον*, i.e. in the sacrament, is a gift (*θαῦμα*) of the incarnate Word; therefore “those who approach God with awe, faith and love and with complete freedom, without any constrictions, receive the body and

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that purpose, it begs the Eminent Metropolitans to advise priests, so that before the end of the Mass next Sunday, the second Sunday of Lent (15.03.2020), they pray in all the churches in Greece for the containment of this disease”. Resolution of the Permanent Holy Synod of 9 March, which can be consulted online at this [link](#).

<sup>3</sup> Compare also the documents on the website <https://www.ekklisiaonline.gr/category/ekklisiaellados/>

blood of Christ which becomes a “medicine of immortality”, for the forgiveness of sins and eternal life”. Thus any contrary opinions were declared to be completely unfounded, as “they are based on other, different assumptions and on a different approach” (which is not the fideistic one Ed.). The ecclesiastical authority [stated](#) that “members of the Church know that Communion, i.e. the relationship, is the fruit of love and expression of freedom, precisely because it knows no suspicions, prejudices and fears [and that] there is no fear in love. But perfect love drives out fear” (1 John 4,18)”.

However, it would be difficult for such declarations, which are certainly inadequate for the current emergency situation and actually dangerous to public health, to have a different content, given that they represent the traditional theological interpretation of the sacrament of the Eucharist.

Also the use of the same teaspoon for all the worshippers is a symbol of the full communion of the people of God, a mysterious icon of the communion of Christ with the Apostles who, at the last supper, ate the same bread and drank the same wine from the same cup. Therefore the Synod “without condemning anyone for their fear and worry” specifies that “all worshippers shall continue to come to our Orthodox Churches and receive Communion, in the certainty that they receive it in life and in immortality”<sup>4</sup>.

In Greece the orthodox church plays a central role, given that religious sentiment, along with the need for identity belonging, is strongly perceived, therefore the declarations of the ecclesiastical authority placed many citizens/worshippers in the face of a dual dilemma of consciousness. On one hand, awareness of the

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<sup>4</sup> Resolution of the Permanent Holy Synod, 9 March, cit.

methods of transmission of the virus placed the worshippers in the position of avoiding participation in the liturgy of the Eucharist, but finding themselves in the condition of being stigmatised as Christians with lukewarm faith. On the other hand, they found themselves in a conflict of loyalty between obedience to the government's instructions, which included staying away from crowded churches and therefore taking part in religious celebrations<sup>5</sup>, and the invitation of the Church to approach the Eucharist as the "medicine of immortality for the forgiveness of sins and eternal life".

In the face of these dilemmas, the government has taken cautious steps to prevent initiating a conflict with the Orthodox Church. It has encouraged the ecclesiastical authority to adopt the envisaged measures, but has stopped at the threshold to churches. Despite the increase in contagion, the Ministry of Health, on 13 March, recognised the incompetence of the executive power in contesting the ecclesiastical statements, as they are covered by the guarantee of respect for [freedom of worship](#)<sup>6</sup>. The Holy and Sacred

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<sup>5</sup> "The representative of the Ministry of Health and professor of infectious diseases Sotiris Tsiodras, during an update of health workers, held on 6 March, stated that: "The obligation to avoid crowded gatherings also relates to churches, in particular for people who belong to risk categories and attend these places". On this point, the scientist specified that "great attention must be paid to reaching an agreement with the local metropolitan churches so that they provide the relative instructions" and added that "an agreement has been reached between the Ministry and the heads of the Church in the affected areas, so that they provide appropriate instructions". However, up to now no particular measure has been announced. Discussion of this issue which affects millions of worshippers throughout the Country, is "heated" (compare [here](#)).

<sup>6</sup> With regard to the political opposition forces, only the centre-right of Syriza and Kynal continues to insist on imposing draconian measures on the Church, to protect citizens' health, based on the example of many other countries *where*

Synod of the Ecumenical Patriarch also took part in the debate, which met on 11 March presided by Saint Bartholomew, issuing a statement in which it invited worshippers to comply with the health indications of the WHO, following the legislative provisions issued by the States. However, on the *punctum dolens* of the Eucharistic communion, the position of the Holy Synod of Constantinople does not differ from that of the Holy Synod of Greece, in fact it supports and reinforces it, proclaiming that “the Great Church of Christ knows from two thousand years’ experience that the Eucharist is the “medicine of immortality” and remains in the current Orthodox doctrine of the Holy Eucharist”<sup>7</sup>.

On 12 March, the Clergy Association of the Church of Greece denounced the intensification of persecutory attitudes towards the Church “by the usual environments, but also by isolated individuals who, with hatred, most of the time, and with strong doses of irony, spread their poison”<sup>8</sup>.

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*there* is also strong religious sensitivity. The most critical positions towards the “submissiveness” of the government can be read at this [link](#).

The reaction of the physician and former Minister of Health, Pavlos Polakis, is particularly controversial as he contests the government’s contradiction of having cancelled carnival celebrations in order to protect public health but having continued to allow everyone to drink from the same spoon in churches”. On this issue, the former Minister talked about a “Christian talibanism” phenomenon.

<sup>7</sup> The text of the statement of the Holy Synod of the Ecumenical Patriarch can be read at this [link](#), and in Italian on [OLIR](#) – Observatory of Religious Freedom and Institutions.

<sup>8</sup> The text of the press release is significant as it is inspired by the health emergency situation touching on an issue that is very dear to the ecclesiastical hierarchy: the system of relations between the Hellenic Republic and the Greek-Orthodox Church. “Over recent days we have also heard talk of a State - Church separation and we can’t really understand how the problem of the threat of the virus to human health is connected with the issue of the State – Church separation. What amazes us is that we have never heard anyone say that we must

A step in the direction of mutual understanding was taken on the evening of 12 March by the Head of Government who, in a statement to the Greek people broadcast by the media, urged all citizens to take personal responsibility for safeguarding public health and called directly upon the Archbishop Ieronymos to ask for his cooperation in the battle against the virus. Under these circumstances “Our faith is not tested, but our attitudes show our love for others” - the Prime Minister said - “Therefore religious duties must also adapt to reality. And they must be performed at home, as far as possible, in order to limit large gatherings of people. I am counting on the support of the heads of the Church. But my institutional role obliges me to clarify the issue. I know that faith often begins where science ends. But the faith that we need now is that which enables us to overcome the crisis. Everyone just needs to slavishly follow the indications of the doctors and specialists”<sup>9</sup>.

The appeal of the Head of Government led to an extraordinary convocation of the Holy Synod which on 16 March resolved to adopt measures of doubtful utility and poor effectiveness for the current level of spread of the epidemic. In

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intensify our prayers, kneel down together with the psalmist and whisper what we recently listened to in the celebration of the Thursday of the 2<sup>nd</sup> week of Lent. On the other hand, the disarticulated cries of those who have opened the Gates of Hades and ask for the closure of the churches are multiplying”.

The complete text of the press release can be found at this [link](#).

<sup>9</sup> The text of the statement of the Head of Government of 12 March can be consulted at this [link](#).

According to some ecclesiastical organisations, the Prime Minister anticipated what the Church had already decided. In fact, measures have been adopted such as the suspension of catechism, parents' school, Byzantine music school, hagiography school and many other activities; the suspension of events, trips and sports activities that had been planned for this period and young people have been advised not to meet in closed places with concentrations of many people.

particular, churches remain open and worshippers can choose whether or not to take part in the liturgies which “with a sense of pastoral responsibility” will be celebrated “soberly in the morning time”. Nothing is stated regarding the Eucharistic Communion<sup>10</sup>.

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<sup>10</sup> The full version of the Synod’s resolution can be consulted at this [link](#). Below is the English translation of the resolution.

*Extraordinary meeting of the Permanent Holy Synod*

Today, 16 March 2020, the Permanent Holy Synod of the Church of Greece met for an extraordinary meeting, in the 163rd Synodic Period, presided by the Archbishop of Athens and of the whole of Greece Ieronimos, in order to reassess its decisions in light of the exponential increase in infection from coronavirus. All the Metropolitans of the 11 Holy Metropoles took part in the meeting.

The Permanent Holy Synod and the Metropoles were informed, in relation to the danger of the spread of coronavirus, by Sotirios Tsiodras, professor of infectious diseases and representative of the Ministry of Health, who was sent for this reason by the President. The update was followed by a long in-depth discussion. After the debate, the Permanent Holy Synod decided that:

1. Churches will remain open only for individual prayer.
2. Everyone, particularly the elderly and those who belong to particularly vulnerable categories of the population, is required to stay at home, in order to prevent gatherings of people. Everyone should behave as a carrier of this virus and is required not to infect others, *therefore* must protect him/herself and others. *Therefore*, with a sense of pastoral responsibility, a sober celebration of the Holy Mass is recommended as of next Sunday (22.3.2020) until Lazarus Saturday (11.4.2020), from 7 to 8 am, as also for the Annunciation (25.3.2020).
3. All holy processions and all planned weddings and baptisms are suspended, but if absolutely necessary, these sacraments take place with the presence of the parents, godparents and witnesses only.
4. Funerals are held inside the church in the presence of the close relatives of the deceased only. In the same way, memorials of deceased will be celebrated on their tomb only.
5. In the Holy Convents, the planned Holy Processions of the Nuns will be celebrated without the participation of pilgrims.
6. It will adopt all the measures taken by the State to fight the spread of the virus and of its own initiative everything necessary on the basis of the evolution of the situation in the near future.



Therefore, the Church did not go back on its decision. At 9.43 pm on 17 March, the Prime Minister tweeted “All services in all places of worship, regardless of religion or dogma, are suspended. Churches will remain open for individual prayer only. Protecting public health requires clear decisions”<sup>11</sup>.

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7. Calm, self-control and faith in the health authorities and in the government are recommended and people are warmly invited to prevent spreading feelings of panic and insecurity. It is underlined yet again that everyone must comply with the health regulations and the rules set down by the public health authorities, as also outlined in the previous statements of the Holy Synod.

8. It appreciates the discretion with which the State expresses respect for the religious sentiment of the worshippers of our Church. It also declares that should any changes in the near future lead the Authorities to adopt further extraordinary measures, it will meet to examine the issue again.

Such decisions of the Permanent Holy Synod are the result of the loving provision of our Church and Its desire to embrace all men living in our Country. Our Christians are urged, every evening from 10 to 10.15 pm, to pray with us in their own homes for the end of temptation and disease and to support the sacrifice of the service offered by doctors, nursing staff and scientists/researchers, whom we all thank with gratitude and bless.

The alarm has already sounded in our Monasteries for continuous prayer. We all hope that our Lord Jesus Christ grants rest to our brothers who have passed away because of this deadly virus and consolation for their loved ones who are mourning, and pray for the speedy recovery of those who are ill and for the end of this terrible trial.

The Holy Synod of the Church of Greece.

<sup>11</sup> The text of the tweet can be found at this [link](#).

In the Greek Government Gazette, dated 16 March, the decision of the Ministers of Education, Religious Affairs and Health was published, which establishes the suspension until 30 March “of services in all places of worship, for all dogmas and all religions”; only individual prayer is allowed, for a few minutes and respecting the distance of at least two metres between worshippers. Compare

ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ ΤΗΣ ΕΛΛΗΝΙΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ  
, 16 Μαρτίου 2020, Αριθμ. 2867/Υ1.

At this point it is legitimate to ask whether the Government should have waited for ecclesiastical consent before adopting the necessary measures for safeguarding public health, which is certainly a responsibility of the State. But on the other hand, the Greek church could not be expected to renounce its declaration of millennial truths of faith.

Therefore, the conflict remains open and only time will tell.

### *Post scriptum*

On 18 March the decision taken by the Ecumenical Patriarch of Constantinople to limit the spread of contagion from Covid-19 was published.

The Patriarch Bartholomew announced the suspension, until 31 March, of religious services and celebrations in all regions of the world that depend on the authority of the Ecumenical Patriarch (including some regions of Greece, such as Macedonia, Thrace, Crete, Patmos and many of the islands of the Dodecanese group). In relation to the Orthodox Church in the USA, the decision, taken in accordance with the Archbishop Elpidophoros, is that of holding services in churches with closed doors, without the presence of worshippers.

The Patriarch Bartholomew calls upon all worshippers to do their duty by staying at home, praying alone and scrupulously following the instructions of their governments.

The statement of the Patriarch can be read (and heard) at this [link](#).



## ORTHODOX EASTER CoViD-19: ISRAEL ALLOWS THE OPENING OF THE HOLY SEPULCHER TO RECEIVE THE “LIGHT OF RESURRECTION”\*

Enrica Martinelli

The past week has truly been one of passion for the Orthodox ecumene, already marked by suffering due to the impossibility to participate in the celebrations of Holy Week due to the [pandemic](#), but, even more so, being suspended in the anguished doubt as to the accomplishment of the miracle of the lighting of the “Sacred Fire”, the central fulcrum of the celebrations of Orthodox Easter, this year or perhaps especially this year.

Given the strict restrictive measures adopted by Israel to contain the contagion from Covid-19- which led to the closure of the Basilica of the Resurrection in Jerusalem until a date yet to be decided - until the last minute there was great uncertainty as to the possibility to draw on the “Holy Light”, which is released at the time of “Anastasi” from the Savior’s tomb.

In fact, since time immemorial, inside the Basilica of the Holy Sepulcher during the Easter liturgy, the spontaneous ignition of a prodigious flame has taken place in the hands of the Greek Orthodox Patriarch. In the place where Christ, by rising, defeated

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death, the miracle is renewed every year and, according to Eastern tradition, will cease only at the advent of the final apocalypse.

During Vespers on Holy Saturday evening, after being stripped of all liturgical vestments - except for the sticarium - and being scrupulously searched by the Israeli civil authorities, the Orthodox Patriarch of Jerusalem<sup>1</sup>, enters, accompanied by the Armenian Patriarch, into the Sepulcher, bringing with him the extinguished torches.

Even the shrine of the tomb of Christ is previously searched and closed with honey and wax seals, on which the Christian confessions and the civil authorities affix their effigy, having for centuries, in various capacities, boasted rights over the Basilica<sup>2</sup>.

The Patriarch gathers in prayer, in absolute silence until a hiss is heard, accompanied almost simultaneously by blue and white flashes which, flickering from all sides, invade the Church of the Resurrection. At that moment, the Patriarch's torches light up spontaneously with a blue flame that is lit but does not burn<sup>3</sup>: it is the "Sacred Fire", which miraculously symbolizes the resurrection of Christ, light of the world.

Released from the Sepulcher, the Greek Orthodox Patriarch distributes the "Holy Light" to the faithful gathered in prayer and

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<sup>1</sup> Among the representatives of the Christian churches in the Holy Land, he is the only person authorized to welcome the "Sacred Fire".

<sup>2</sup> The Latin, Greek and Armenian churches alone, which are entrusted with the daily opening and closing of the Holy Sepulcher, recognize the right to celebrate liturgies *there*. Further prerogatives are boasted by other Christian communities, such as the Armenian Apostolic Church, the Coptic Orthodox Church and the Syriac Orthodox Church. By ancient tradition, two Muslim Palestinian families have the key to the only access door to the Sepulcher.

<sup>3</sup> The sacred fire is lit for thirty-three minutes exactly, after which it begins to burn and the flame changes color, from blue-green to red.

to the representatives of the other Orthodox churches, who wait outside and then transport it, with great solemnity, to their respective countries<sup>4</sup>.

The miracle of the ignition of the *Άγιο Φως*, documented from ancient sources, has never been interrupted over the centuries<sup>5</sup>. On the only occasion of 1349, entry to the Savior's tomb was prohibited, due to the spread of the "black plague", which was causing millions of victims in Europe and Asia and almost permanently marking that painful period of the Middle Ages.

Covid-19 is therefore the second pandemic in history to have imposed the closure of the Holy Sepulcher, decreed precisely by the Israeli Minister of Health, Rabbi Yaakov Litzam.

Thus even Jerusalem, the Holy City *par excellence*, has had to bow to the invisible enemy<sup>6</sup>: this caused bewilderment in the Orthodox world where the miraculous gift of the "Holy Light" and its distribution in every church, even in the most small and remote parish, is a unique and essential part of the Easter celebrations, awaited with extreme emotion and trepidation by worshippers.

In order to preserve this age-old tradition and to protect freedom of worship - already severely compressed everywhere by measures to contain the epidemic - feverish consultations have begun between the Greek Orthodox Patriarch Theophilos III, the Custos of the Holy Land Francesco Patton, the Patriarch Armenian Nourhan Manougian and the Israeli authorities.

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<sup>4</sup> In most Orthodox countries, the event is televised live and takes on a particular symbolic and liturgical value during Holy Week.

<sup>5</sup> See F. Cardini, S. Della Seta, *Il Guardiano del santo Sepolcro*, Mondadori, 2000.

<sup>6</sup> The epidemic also prevented the celebrations of Latin Easter at the Holy Sepulcher, including the *Via Crucis* on the Via Dolorosa and the Passion. Compare [here](#) and [here](#).

Not without some understandable difficulties<sup>7</sup>, the Foreign Minister of Israel, with a decision greatly appreciated by the Orthodox world, has finally granted permission to the religious authorities, in observance of all the precautions imposed by the health emergency, to enter the tomb of Christ to receive and transfer the Light of the Resurrection to the representatives of all the Orthodox countries gathered in Jerusalem.

The ceremony, which in normal times would have seen thousands of worshippers waiting in the medieval courtyard of the Holy Sepulcher and all around the Basilica, took place this year in a [deserted Jerusalem](#), in the presence of the few representatives of the Orthodox churches<sup>8</sup>, who were able to witness the repetition of the prodigious event.

During the trip to Ben Gurion airport in Tel Aviv, the “Holy Light”, escorted by the Israeli police, stopped at the Jaffa Gate, one of the eight oldest gates of the old city of Jerusalem, where representatives of the Russian, Ukrainian, Serbian, Romanian, Georgian and Vltava Churches were waiting for it in order to transport it in time for the *Ἀνάσταση* to the lands of origin.

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<sup>7</sup> For the government of Israel to comply with the requests of Christian leaders and give them access to the Sepulcher to welcome the “Sacred Fire”, it meant opening a dispute with Jews and Muslims since the Minister of Health has ordered the closure of every place of worship, also of the Western Wall, of all mosques and synagogues.

<sup>8</sup> The Greek Orthodox Church, in observance of the contagion prevention measures ordered by the government, avoided sending, as usual, its own representation to the Greek delegation who went to Jerusalem to receive the *Ἅγιο Φῶς* and accompany it during the journey to Athens. This year it was the Consul General of Greece in Israel who delivered the “Holy Light”, to the steps of the Air Force aircraft (provided by the Greek State for this purpose) to the crew, who were not allowed to step onto Israeli soil, due to the quarantine. See [here](#).

The current exceptional circumstances thus imposed drastic downsizing even of the ceremonies scheduled on arrival at the destination of the *Άγιο Φως*.

According to custom, the ceremony reserved for Heads of State is applied in Greece upon the arrival of the extraordinary “guest of honor”. On the contrary, this year, at Athens airport, solemnities were limited, reduced to the presence of a small military procession, a few representatives of the government and the local Church – including the Exarch of the Holy Sepulcher – and a very reduced number of members of the press, all [at a safe distance](#).

Despite the satisfaction deriving from the successful outcome of the diplomatic negotiations with the Israeli government, conducted with “[surgical caution](#)”, the Greek government’s dilemma for days was that of the possible risk implications of the distribution of the “Holy Light” throughout the national territory.

In the face of the unavoidable dangers of spreading the virus associated with the numerous journeys - by land, air and sea - necessary to reach the most distant places, the scattered islands and the most isolated parishes, the government had to take into due consideration the high expectations of Orthodox worshippers, already intensely tested by the closure of the churches unilaterally ordered by the Government at the end of a long tug-of-war with the ecclesiastical authorities, of which significant controversial reflections have not yet been extinguished.

For the executive power, it was a matter of finding a fair and delicate balance between the irrepressible requirements to protect public health and the right of religious freedom of citizens.

The statement by the Deputy Foreign Minister, Konstantinos Vlassis, expressed on Good Friday evening, finally put an end to the expectations of the ecclesiastical authorities and worshippers:



the *Άγιο Φως*, which arrived from Jerusalem to Athens on the afternoon of Holy Saturday, “from the airport will only be transferred to the Exarchate of the Holy Sepulcher, where it will be kept. In observance of the measures taken against the pandemic by CoViD-19, it will not be transferred to other parishes nor will it be distributed to the faithful”<sup>9</sup>.

This decision was certainly difficult to make as it was very unpopular; however, on this occasion, the Orthodox Church sided with the Government of Kyriakos Mitsotakis and through the mouth of the [Archbishop of Athens](#) and all of Greece, Ieronimos, encouraged his flock not to disperse, but to “experience the Resurrection in the ecclesial communion of domestic churches, staying at home for love, placing the we before the I”.

The intense and penetrating verse of the poet Kostas Varnalis, seems to have been written for the painful Easter celebrations of this year, at the end of which worshippers would not be able to bring the “Holy Light” to their homes, but only to keep it in their hearts: “It is not worthy to see your holy light / the eye without crying tears of blood”<sup>10</sup>.

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<sup>9</sup>See [here](#) and [here](#).

<sup>10</sup>Kostas Varnalis, *Ντροπή* (“Shame”)

“Δε ’ναι άξιο ν’ αντικρίσει το άγιο φως σου  
το μάτι χωρίς αίμα να δακρύσει”

# FREEDOM OF THE PROFESSION VERSUS THE HEALTH EMERGENCY: THE PHYSICAL AND SPIRITUAL PROTECTION OF THE LUTHERAN CITIZEN. A SHORT CHRONICLE FROM THE KINGDOM OF SWEDEN IN THE MIDST OF THE COVID-19 PANDEMIC\*

Giuseppina Scala

On the 11<sup>th</sup> of March, the Swedish Government adopted, in response to the health emergency from Covid-19, the ordinance SFS 2020: 114, which entered into force the following day<sup>1</sup>. This provision prohibits, until further notice, gatherings and public events throughout Sweden with the participation of over five hundred people<sup>2</sup>.

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<sup>1</sup> SFS stands for *Svenske författningssamling*, that is the Swedish Code of Statutes. The ordinance is available [here](#).

<sup>2</sup> The penalty for violating the cited prohibition is the imprisonment for at most six months or a fine pursuant to Chapter 2, Section 29 of the Public Order Act (1993: 1617). The reasons why the government has chosen the threshold of 500 people are not known, because, unlike what happens for the laws, for the Förordnings, the preparatory works are not published. However, the Government has a constitutional obligation to consult the competent authorities before taking decisions (*Regeringsform* [see [here](#), note 4], Chapter 7. art. 2 “the necessary information and opinions must be provided by the competent public authorities”). In this case it was the Swedish Public Health Agency which stated that *there* is an increased risk of infection in events *where* public participation is

The Swedish Constitution establishes that the Government, in given circumstances, may limit some constitutional freedoms and rights as provided for by section 24 of Chapter 2 of the *Regeringsform*<sup>3</sup> which states: “Freedom of assembly and freedom to demonstrate may be limited in the interests of preserving public order and public safety at a meeting or demonstration, or with regard to the circulation of traffic. These freedoms may otherwise be limited only with regard to the security of the Realm or in order to combat an epidemic”<sup>4</sup>.

The aforesaid ordinance are based on the provisions of Chapter 2, section 15 of the Public Order Act, where it is stated that the Government can prohibit public gatherings in the event of war (or risk of war) and in order to avoid epidemics or epizootic events<sup>5</sup>.

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[widespread](#). It remains however unclear, to date, for the writer, what are the medical and political evidences on the choice of the threshold of 500 people. It is likely that this number will be lowered very soon.

<sup>3</sup> The *Regeringsform* (The Government Instrument of 1974) is one of the four texts of the Swedish Constitution which is in fact described by Italian doctrine as multi-textual or fragmented. In this regard, see G. Morbidelli – L. Pegoraro – A. Reposo – M. Volpi, (editors), *Diritto Pubblico Comparato*, 3<sup>rd</sup> ed., Turin, Giappichelli, 2009, p. 76. The other constitutional texts are: the Act of Succession of 1810 (*Successionsordningen*), the Law on Freedom of the Press of 1949 (*Tryckfrihetsförordningen*) and the Law on Freedom of Expression of 1991 (*Yttrandefrihetsgrundlagen*).

<sup>4</sup> The Constitution of Sweden, The Fundamental Laws and the Riksdag Act, Sveriges Riksdag, Stockholm, Sweden, 2016, p. 71, available [here](#). For the interpretation of the terms “public order” and “public safety”, see, in general, Swedish doctrine, K. Åström, *The freedom of Religion in relation to Other Human Rights*, cit., p. 90.

<sup>5</sup> *Ordningslag* (1993: 1617), available [here](#). Article 15, Chapter 2 affirms: “The Government may prohibit public meetings and public events in a specific area, for war or risk of war for Sweden or to prevent epidemics or epizootic events under the epizootic law (1999: 657)”. The preparatory works for the Act, however, largely concern the need to guarantee respect for the freedoms and

The Lutheran Church of Sweden is also taking extraordinary measures in order to adapt to the emergency regime the religious practices that faithful normally put in place in a situation of physical contiguity<sup>6</sup>.

First, a series of options have been made available at the [institutional website](#) of the Church of Sweden for faithful who feel the need to contact their proper religious authority to request spiritual support: a phone call, e-mail correspondence, or through the use of social media such as *Facebook*, *Twitter* and a dedicated blog.

Secondly, the Church of Sweden has disseminated some “recommendations” concerning the rite of the Holy Mass in order to protect the health of the minister of the sacrament and to ensure protection to the faithful from any infection: it is about of avoiding from the handshake during the rite of peace and from receiving the Holy Communion at the Chalice and the host directly in the mouth<sup>7</sup>.

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rights provided for in the Constitution. On this point, see K. Åström, *The freedom of Religion in relation to Other Human Rights*, in H. Bernitz, V. Enkvist (editors), *Freedom of Religion: An Ambiguous Right in the Contemporary European Legal Order*, Bloomsbury Publishing, 2020, p. 91.

<sup>6</sup> On the role of the Lutheran Church in Sweden and, in general, on the role of Churches in the Nordic Countries, see L. Christoffersen, K. A. Modéer, and S. Andersen (editors), *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, 2010.

<sup>7</sup> The [website](#) at the section: “Fortsatt gemenskap kring nattvarden” (“The Lord’s supper continues”, the translation is ours). For a brief examination of similar recommendations within religious denominations, see, P. Consorti, [Religions and virus](#), 9<sup>th</sup> March 2020. As an example, the author underlines, quoting S. Winer, that “The chief rabbi of Israel has asked to suspend the practice of kissing the Mezuzah”.

On the relationship between the Catholic faithful and the sacraments at the time of the Coronavirus, see, V. Pacillo, [The suspension of the right to religious freedom in the](#)

The reasons behind these constraints on the exercise of freedom of worship are explained by Archbishop Antje Jackelén in a video release, appeared on March 12th at the web page of the Church of Sweden<sup>8</sup>. In this circumstance, the Archbishop invites her faithful to follow all precautions and hygiene rules, as established by the Swedish State Public Health Agency, thus respecting the directives of the Government ([\*Folkhälsomyndigheten\*](#)).

In order to reinforce this exhortation, Luther's writings were also recalled. During the plague of 1520, Luther incited the population to follow doctors' suggestions and to give help to the most vulnerable individuals, using common sense thus avoiding the risk of infection.

In addition, the Lutheran Church of Sweden, in compliance with the aforementioned ordinance SFS 2020:114, has also decided to cancel religious practices that would have provided for a gathering of more than five hundred people<sup>9</sup>.

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[\*time of the pandemic\*](#), March 16, 2020. *Here*, in fact, the author clearly highlights that: "The redefinition of the whole structure of Catholic celebrations in Italy has not only – in fact – redefined the structure of public worship, but also the relationship of the faithful with the Holy Eucharist".

<sup>8</sup> For a brief biography of the Archbishop of the Swedish Lutheran Church, see, C. R. Brakenhielm, *The Study of Science and Religion*, Wipf and Stock Publishers, Eugene, Oregon, 2018, p. 157, note 9.

<sup>9</sup> "Planerade arrangemang med fler än 500 deltagare kommer att ställas in, med hänvisning till regeringens beslut" ("Scheduled events with more than 500 participants will be canceled, with reference to the government decision", the translation is ours), see [\*here\*](#). The Fittja Ulu Camii Mosque in Stockholm also suspended Friday prayers. It is interesting to note that the decision does not regard the closing of buildings' Churches but only gatherings. In a comparative perspective, as regard to the latter, in Italy *there* as been criticalities on the interpretation of governmental decision. See, for example, S. Montesano, [\*L'esercizio della libertà di culto ai tempi del Coronavirus\*](#), visited on March 20<sup>th</sup>, 2020.

The cited Act on public order does not seem to pose any doubts about the obligation on the Church. In particular cases, such as the contingent ones, Chapter 2, section 1.3 establishes that a public assembly must also be understood as a gathering of people who collectively perform a religious practice<sup>10</sup>. Being, therefore, a religious assembly similar to any other type of assembly, the Church of Sweden has complied with the State precepts.

What has been examined so far leads us to deal with two considerations.

The first is that the Archbishop's speech, which is universalistic and addressed to the Nation and not only to faithful, is certainly characterized by a theological content but it is also relevant as regards to the relationship between temporal and spiritual power as it invites faithful to unconditionally observe the rules imposed by the State.

In this sense, the conception that the Church of Sweden, despite the privileged role it plays in comparison with other religious organizations, adjusts its own ministry - in exceptional cases such as the ones we are facing now - in order to preeminently protect all faithful due to the prevalence of public health.

The second consideration is that the Church, orienting itself in accordance with the will of the State – and in view of the protection of the public interest- does not relate to the latter as an entity carrying religious purposes but in a manner similar to any

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<sup>10</sup> “2 kap. Allmänna sammankomster och offentliga tillställningar. Definitioner [...] 3. sammankomster som hålls för religionsutövning” (“Ch. 2. General meetings and public events. Definitions [...] 3. meetings held for the exercise of religion”, the translation is ours). In a comparative perspective, on the relationship between the Italian governmental measure “I stay at home” and freedom of religion in Italy, see: M.L. Lo Giacco, [\*In Italy the Freedom of Worship is in Quarantine, too\*](#), visited on March 22nd, 2020.

other organization operating within a legal system. The Church of Sweden does nothing but recognizes the need for measures established under a State law, especially in the contingent limitation of fundamental rights in view of a higher general interest, thus preventing the occurrence of a fracture difficult to heal once the emergency situation will be solved.







## **RELIGION, LAW AND COVID-19 EMERGENCY: A BRIEF REPORT FROM MONTENEGRO\***

Nikola B. Šaranović

The Covid-19 epidemic in Montenegro was declared on March 26<sup>th</sup> 2020. Due to timely measures and recommendations by the relevant state authorities, Montenegro was the last European state that had been hit by the Covid-19 epidemic; beginning February 28<sup>th</sup>, almost a month before the appearance of the first reported cases, a total of 74 such measures and 19 [recommendations](#) by April 4<sup>th</sup>, 2020 has been put in place.

The Covid-19 epidemic limited, among other human rights and freedoms, the freedom of religion in Montenegro. As laid down by the Constitution of Montenegro, freedom to expression of religious beliefs may be restricted only if so required in order to protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution<sup>1</sup> (the ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations

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<sup>1</sup> Article 46 of the Constitution of Montenegro

differently from the internal legislation<sup>2</sup>). These restrictions are envisaged in the Law on Protection of Population from Infectious Diseases.

The first measure indirectly restricting freedom of religion was passed on March 13<sup>th</sup>, to prohibit the population from assembling in indoor and outdoor public places (public gatherings, events relating to sports, politics, religion, culture and art, along with private gatherings, ceremonies and events in line with the law; [Measure No. 12](#)).

In accordance with this measure, the Orthodox Church has suspended mass protest-processions against the recent Law on Freedom of Religion and Legal Status of Religious Communities, which had taken place twice a week in almost all Montenegrin cities. Religious teachings and other events were also suspended, while epidemiologists and other experts were invited to the Church-owned media in collaboration with the Institute of Public Health. Moreover, the Orthodox Church offered its premises to the state for the purpose of combatting the virus.

The Islamic Community suspended the Friday Prayer and daily group prayers, on all religious sites, as well as its educational activities, i.e. all gatherings and events of a religious and cultural nature.

The Roman Catholic Church suspended all religious/ catechetical/ pastoral activities and gatherings until further notice, called on believers to refrain from coming to Holy Mass and to have funeral rites performed in accordance with the recommendations of those in charge.

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<sup>2</sup> Article 9 of the Constitution of Montenegro.

These are not the only measures taken by religious communities.

The new state measure, directly restricting freedom of religion, followed on March 21<sup>st</sup>: the obligation of religious communities to adapt their activities to the current epidemiological situation and perform religious ceremonies in religious infrastructure, exclusively without the presence of followers ([Measure No. 60](#)) The reason for this measure was a misunderstanding between the state and the Orthodox Church when it came to receiving Eucharistic Bread and Wine from the common spoon for holy communion.

According to the report of the Institute for Public Health, one religious gathering near Podgorica, the capital of Montenegro, resulted in a cluster of infected people.

On March 19<sup>th</sup> the Police summoned two Orthodox priests for informative questioning about the religious gathering in Kotor (a city in the south of Montenegro). The Police arrested on March 29<sup>th</sup> an Orthodox priest who served a Holy Liturgy in one monastery near Budva (a city in the south of Montenegro) in the presence of 11 people. He has been held criminally liable for failing to comply with health regulations for the suppression of a dangerous infectious disease.

On April 12<sup>th</sup>, the head of the Orthodox Church in Montenegro Metropolitan Amfilohije Radović and several priests were summoned by the Police for informative questioning about the Holy Liturgy served near Podgorica as well as about the gathering in the Cathedral of the Resurrection of Christ in Podgorica. The same day, one Orthodox priest was also questioned by the Police about the Holy Liturgy served in Kolašin (a city in the north of Montenegro).

After the Catholic Church celebrated Easter without the presence of laymen, the question of all questions was how Easter will be celebrated by the Orthodox Church on April 19<sup>th</sup>. After exchanging different views in public, a meeting between Church representatives and State institutions resulted in the Church's decision to celebrate Easter without the presence of laymen.

Putting some exceptions aside mainly caused by different interpretations of restricting measures, churches and religious communities in Montenegro uphold their role in the prevention of the Covid-19pandemic, in accordance with their line of duty recognized in the said law, by which they participate, among other entities, in providing and implementing protection of the population against infectious diseases<sup>3</sup>.

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<sup>3</sup> Article 14 of the Law on Protection of Population from Infectuous Diseases

## RELIGIONS, AFRICA AND COVID-19\*

Stefano Picciaredda

Certainty came on the eve of Holy Week. Covid-19 has not forgotten sub-Saharan Africa. For some time, it had been hoped for. Some continental peculiarities, such as climatic characteristics, the young age of the population, the presence of antibodies generated by other pandemics, had authorized optimistic forecasts. Instead, even without presenting itself with the exponential growth rates experienced in the northern hemisphere, the virus has crept in and began to claim victims in all countries south of the Sahara<sup>1</sup>. At the moment, those reporting the highest number of infections are South Africa (5,647), Ghana (2,074), Nigeria (1,932), Cameroon (1,832), Guinea (1,495), Ivory Coast (1,275), Djibouti (1,089). They are the only countries to have crossed the threshold of a thousand cases, an event which, considering the whole continent, occurred in ten states: Egypt (5,537), Morocco (4,423), Algeria (4,006)<sup>2</sup>. The real representativeness of these figures is necessarily conditioned by the costs necessary to carry out the tests to detect positivity. Apart from the numbers, it is nevertheless interesting to observe

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<sup>1</sup> Lesotho and the Comoros are still exceptions.

<sup>2</sup> Data from European Centre for Disease Prevention and Control ([ecdc.europa.eu](http://ecdc.europa.eu)). Last update May 1, 2020.

the attitude of the religious communities, which in Africa are distinguished by the plurality of religious affiliations and the high participation of the population in the moments of worship, although a clear process of secularization and disillusionment is rapidly changing the behaviour of African women and men, in the context of increasing urbanization<sup>3</sup>.

The containment measures adopted by governments have not been uniform. They range from the extreme lockdown decided by South Africa, which has classified the measures into five levels - the fifth, the most restrictive is now in force -, to the almost normalcy of Burundi, which "is an exception among nations because it is a country that has put God first, a God who scrutinizes him and protects him from any discomfort", as the spokesman for the Presidency of the Republic explained in an interview with the BBC<sup>4</sup>. It is to be hoped that this celestial privilege - in truth, not very observable in the recent history of the country - will last, and protect the population that in these days is gathering in the electoral rallies convened for the May 20th presidential election. But countries - Tanzania and Benin are among them - that trust in the possibility of maintaining normalcy are in the minority. Most governments, even in the face of a small number of contagions, have opted for rather sharp limitation measures, although not always extended to the entire territory of the state. In Ivory Coast the capital Abidjan has been "closed" on entry and exit; in Kinshasa the "red zone" has been applied to the Gombé district, that of business, ministries and embassies. The common feature of the measures adopted is the ban on gathering, with a limit set at 20, 50

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<sup>3</sup> See E. Messi Metogo, *Dieu peut-il mourir en Afrique?*, Karthala, Paris 2013; V.S. Naipaul, *La maschera dell'Africa*, Adelphi, Milano 2010<sup>2</sup>.

<sup>4</sup> <https://www.bbc.com/news/topics/ce1qrle07t/burundi>.

or 100 people. Where it is in force, it necessarily involves, whether there is an explicit ban or not, worship activities. In addition to this measure, in many cases, given the difficulty or impossibility of practicing the lockdown - on which I will return later - the curfew measure has been adopted from Tunisia to South Africa, from Nigeria to Kenya. Movements are allowed for a few hours a day, and at the time of closing, the army and the public order forces are authorized to intervene to enforce the ordinances, which has already provoked cases of shooting with victims among the population (in Nigeria, on April 17, eighteen deaths, against twelve caused by the virus)<sup>5</sup>.

The analysis of the declarations, documents and directives issued by bishops, episcopal conferences, councils and coordination committees of the Churches, imams and ulema, shows, in general, an attitude of collaboration, adherence and support to government directives, often supported from practical indications that interpret them in a restrictive and prudential sense. The catholic episcopal conferences, for example, have opted, almost without any exception, for celebrations in absence of the faithful, without taking advantage of the non-explicit suppression of the right of assembly within the limits of established participants. Therefore, even where it would have been possible to celebrate a mass with a predetermined number of faithful, it was decided to avoid.

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<sup>5</sup>I get this data from the following sources: the magazine *Jeune Afrique*; broadcasters *Radio France International*, Bbc, Radio Okapi; press agencies NAN (News Agency of Nigeria, government), SANews (South African Government News Agency); websites *fides.org*, *africanews.com*, *nigrizia.it*; African bishop conferences webpages.



The majority of African Christians therefore participated in the most important rites of the year - those of Holy Week and Easter - remotely, via radio, television and social media. For the first time in history, an Easter on air, or via cable. A revolution? Not entirely. Indeed, it should be remembered that in recent years religious subjects have made extensive use of the means of communication, acquiring channels and radio and television broadcasters. The trend has certainly grown with the advent of "neo-Pentecostal" groups, which has pushed other confessions to adapt.

We asked the faithful to emphasize personal and family prayer. Since the celebrations will be held without the participation of the people of God, we asked the priests to be more creative at the pastoral level to offer reflections, homilies and exhortations to the faithful through social networks. We must also take this opportunity to live solidarity better in a concrete way. It is not a question of visiting people, but of approaching them in various ways: through calls, messages on networks, etc. We must also help those who have difficulty living in containment to find ways to do it. A large part of our populations live in a precarious situation and will not be able to support containment measures. It's up to us to help them<sup>6</sup>.

So said the archbishop of Lomé, capital of Togo, Barrigah-Benissan. The secretary general of the episcopal conference and member of the Zimbabwe Council of Churches, p. Frederick Chiromba, has announced the suspension sine die of the cults of all religious denominations, specifying that "believers will be able to attend all the functions of Holy Week through live streaming on

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<sup>6</sup> Statement issued to [www.omnisterra.fides.org](http://www.omnisterra.fides.org).

the web"<sup>7</sup>. In Cameroon, by decision of the bishops, the masses will be held only in the main parishes, while in the mission churches they will be suspended. "Fortunately - said Msgr. Esua, bishop emeritus of Bamenda - we have Catholic radio and TV stations that will broadcast the entire function. Our people have been warned and invited to stay at home as much as possible"<sup>8</sup>. In Guinea Bissau, Catholic radio is the most listened station, despite the fact that in the country Christian faithful are around 10% of the population. The director, an Italian PIME missionary, revolutionized the schedule by inserting programs for catechumens, prayers for the end of the pandemic, transmissions for Lent with the possibility of intervening and the Via Crucis.

Many South African parishes, according to the emeritus archbishop of Pretoria Slattery, are able to stream the functions via radio and TV. And so it happened, having the bishops decided that under no circumstances should the liturgical celebrations be public, "in full compliance with the guidelines of the government, which was very wise". Also in Uganda, obligatory celebrations without people in all dioceses, and baptisms scheduled for Easter night have been postponed. Card. Ambongo, archbishop of Kinshasa, presided over all Holy Week celebrations from the cathedral, broadcasted on Catholic radio and TV.

If Christians have experienced a Easter "of the heart" rather than a celebrated one, it is now up to the Muslim faithful to experience for the first time a new way of living the holiest month, that of Ramadan, located in this 2020 between April 23 and May 23. On this occasion, Egyptian cities, including Cairo with its nearly

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<sup>7</sup> *Catholic Church in Zimbabwe to live stream Mass*, in thezimbabwemail.com, March 21, 2020.

<sup>8</sup> Statement issued to [www.omnisterra.fides.org](http://www.omnisterra.fides.org).

15 million inhabitants, used to enlighten themselves, with full of gatherings, parties and prayers all night long, until dawn. This year it won't happen the same. The places of worship will remain closed, and the same will happen in mosques in all African countries where containment actions are in place. But in the Maghreb countries the authorities have introduced lightening measures. From April 30 in Algeria, from May 3 in Tunisia, where the head of government has declared that the situation is almost completely under control. The curfew has been postponed for two hours, from 18 to 20. If mosques remain closed, news show a certain indisposition to respect the rules of isolation and distancing in this month of celebration by the population. In the meantime, the more general debate about the opportuneness to respect fasting at the time of the pandemic is still open, given the consequences that abstention from solid and liquid nourishment causes on the body, weakening the ability to protect and react to the virus. At the moment, Al-Azhar has not yet pronounced a fatwa to exempt from ritual obligations.

Authorities who chose to decisively deal with the health emergency had the Chinese and the European examples available. But are these models reproducible in sub-Saharan Africa? Is it possible to implement the lockdown in Africa? On the night of Thursday 26 March this question rises dramatically in the capital of the Democratic Republic of the Congo, Kinshasa. A three-week period of confinement, total was to begin the following morning, proclaimed by the governor of the city-province Gentiny Ngobila. The announcement had provoked in the days leading up to a race to acquire food reserves. Prices had soared. But perhaps only half of the more than ten million inhabitants (the exact number cannot be calculated) participated in this competition for food. Most

*kinoi*, in fact, live in the moment. They buy food for the evening with the proceeds of the morning's activities: *obimi te okolia te* (if you don't go out, you don't eat), says a saying Lingala. Immediately, civil society associations and political representatives of the ruling and opposition coalition called for the national government to revoke the measure, which came overnight. The closure has been postponed to a date to be set. A significant, if not decisive, influence on this decision is due to the intervention, both public and discreet, of Archbishop Ambongo, created cardinal in the last consistory and destined to collect a political legacy, as well as spiritual. Faced with dictatorships and embezzlement, with internal and international conflicts that have affected their country, Ambongo's predecessors such as Malula and Monsengwo have embodied, willy-nilly, the role of the alternative, of denunciation, of the opposition. Ambongo vigorously asked the authorities to guarantee food and drinking water for the whole population through free distributions, without which the confinement would result in a death sentence for many. His appeal - as we have seen - was heard, and four weeks later, on April 22, President of the Republic Felix Tshisekedi appointed the cardinal to head the coordination that will oversee the administrative structure of the Solidarity Fund to fight the virus, with a substantial budget. In the crisis, and in the storm of controversy triggered by the declaration of a state of emergency, Tshisekedi has not neglected to take care of relations with religious representatives. So the press described the meeting on April 20:

Les chefs des principales confessions religieuses du pays ont été reçus ce lundi par le président de la République, Félix Tshisekedi. La rencontre entre le chef de l'État et les leaders religieux a tourné notamment autour de la participation de l'église

dans la lutte contre l'épidémie de coronavirus. Selon le cardinal Fridolin Ambongo, qui a conduit la délégation de ses pairs à la cité présidentielle de la N'sele, le chef de l'État a « estimé que c'était donc le moment ultime d'associer les confessions religieuses dans ce combat commun contre cet ennemi qu'est COVID19. » Malgré l'interdiction des cultes qui frappe les églises, Félix Tshisekedi a demandé aux confessions religieuses de continuer à intercéder pour le pays. Après échanges, les hommes d'églises ont promis qu'ils vont continuer à jouer leur rôle en tant que leaders d'opinions en sensibilisant les fidèles sur les risques réels du Covid-19<sup>9</sup>.

Religious leaders have therefore collaborated and aligned themselves with the choices of the authorities, aware of the worrying repercussions of the restrictive measures on the population, potentially worse than the contagion itself. The Africans, moreover, are well aware of the limits of the health systems of the countries in which they reside<sup>10</sup>, and seem to understand the need for "fasting of worship" to which they are forced. The concern and fear for the spread of the virus are indeed strong. In addition to physical suffering, those who exhibit symptoms must also face the stigma and distrust of neighbours: sources report about entire streets that are empty, with residents leaving home, to the news - real or presumed - of the occurrence of a case of positivity.

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<sup>9</sup> [www.cas-info.ca](http://www.cas-info.ca).

<sup>10</sup> According to *Jeune Afrique*, compared to the thousand care places available in South Africa, there are only 15 in Burkina Faso and Somalia, less than one hundred in many other countries. There would be just 3 respirators in the Central African Republic, 4 in Togo, 5 in Niger, 10 in Congo Brazzaville, 11 in Burkina Faso, between 15 and 20 in Cameroon.

There is also, however, a phenomenon of opposite sign, in rapid development, and it will be interesting to observe which religious leaders will choose to be his spokespersons, in addition to the pastors who complain about the interruption of the payment of tithing and the drying up of their sources of livelihood<sup>11</sup>. While fear spreads, in fact, a narrative of a different sign grows, strongly critical on the adoption of "western" measures in a radically different context, and averse to the "prone" acceptance by the authorities of measures taken elsewhere. The Ivorian writer Gauz<sup>12</sup>, from the columns of *Jeune Afrique*, expressed it with the usual sagacity. He wrote that Africa is closing and confining itself "like a mad dog in seeing its master afraid. [...] With the significant exception of Benin, all its leaders repeat the speeches of European leaders to the letter. "It is the demographic difference, the different structure of the age pyramid that makes the African reality completely not comparable to the European one: "As of March 30, in France, the average age of the positives was 62.5 years, 84% of the deceased were over 70 years old. [...] In France 20.3% of the population is over 65, in Ivory Coast 3 out of 100 [...]. Life expectancy in Africa does not exceed 62 years, in Niger and Uganda the average age is 15 years. A fifty-year-old in Bouaké is a person miraculously cured". Not without controversy he concludes:

Coronavirus in the west is a very serious problem. Africa is not involved in the same way for the simple reason that, for sixty years, the neglect of its politicians, the greed of the financial

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<sup>11</sup> See *Afrique: la fermeture des églises provoque un débat sur le versement de la dîme*, in [evangeliques.info](http://evangeliques.info), 8 avril 2020.

<sup>12</sup> Pen name of Armand Patrick Gbaka-Brédé, Gibert Joseph 2014 price of French booksellers with *Debout-Payé*,

systems, the nonsense of the structural adjustment plans, the ambitions of adventurers without faith or law they have already done the job: there are no more old men to kill on our continent<sup>13</sup>.

In his bitter considerations Gauz does not note how in sub-Saharan Africa, like the rest of the world, the absolute number and percentage relevance of the elderly is constantly increasing. Even in Africa, their lives are at risk, and with them that of health workers, even less protected and even more exposed than ours, and key to general sustainability. The African peoples have already paid, among all, the highest price for the pandemic from HIV-AIDS, to Ebola, and continue to be weakened by malaria, in its various forms, suffering among other things from the lower right of access to treatment compared to the other. Preserving them from contagion, and treating them and vaccinating them when possible, is in everyone's interest.

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<sup>13</sup> *Le coronavirus n'a plus de vieux à tuer sur ce continent*, in "Jeune Afrique", April 16, 2020, page *Tribune*. Gauz adds: "We understand well the tormented peoples of Europe and America. We are in solidarity, and we know that they will come out of it, they who have been able to think only of themselves for so long, of their material well-being, they who for centuries have walked the world building their precious lives on the negligence of those of the others. They will come out of it. They have the political, historical and cultural material to do it. We don't live the same fight. Absolutely not. *There* are no older men to kill *here*. Poor virus!"

# PANDEMIC AND RELIGIOUS LIBERTY IN THE USA: BETWEEN PRIVATIZATION OF THE CHURCH AND NEO-INTEGRALISM\*

Massimo Faggioli

The relationship between scientists, politicians, and the churches/religious groups could take on a particular dimension in the United States, and not just because of a very plural and polarized religious landscape even within one same religious tradition. The reception by religious groups of ordinances and decrees that prevent meetings in places of worship here in the USA already provides us with a very interesting panorama. On the one hand, there are pastors of evangelical and Pentecostal megachurches who are publicly challenging the prohibitions: it is one of the effects of the “prosperity Gospel” according to which some would be sheltered from the pandemic by divine decree. But there is also the pressure of the “market of religions” in the USA, where the shutdown will have a financial impact on entrepreneurial religious businesses – but also on Catholic parishes - counting on a constant [flow of cash](#). On the other hand, governors in some states have granted churches and religious groups exemptions from the ban on meeting for [public health reasons](#).

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It would be wrong to see this as an issue only for evangelical Christian denominations or other sectarian religious groups with little or no appreciation for the secular nature of public institutions and for everyone's responsibility toward everyone else during this pandemic. In the United States, the Catholic Church itself shows signs of reluctance to obey the guidelines aimed at the prevention of the spread of the virus, meaning a suspension of the celebration of the Masses with the people. Militant Catholics have submitted petitions to Church authorities requesting access to the sacraments, in defiance of both public and ecclesiastical ordinances prohibiting religious gatherings due to the [pandemic](#). Catholic media conglomerates with a large national audience like EWTN and intellectual magazines like *First Things* have sent messages to the bishops asking them to ask exemptions for religious rites as "essential services". This is not only because of the tendencies towards an "evangelicalization" of Catholicism in the United States and what this theological turn entails for the understanding of the relationship between church and state, religion and the common good. The demand is that civil authorities recognize religious services as essential services and therefore let the churches continue with their activities, under the thin proviso "with due precautions". The argument is not about asking church leaders more creativity in providing access to the sacraments; it is about the Church being a service comparable to other essential businesses.

This more vigorous reaction of US Catholics, compared, for example, to European Catholics, is not a surprise and it's not just a consequence of different degrees in the secularization of the two continents. If one looks at the last decade of activity of the United States Conference of Catholic Bishops (USCCB), it is evident that

the initiative that characterized the most important public mobilization of bishops was the issue of religious freedom, with the “Fortnight for Freedom” which began in [July 2012](#). That mobilization of the bishops was a response to a more aggressive secularism in legislation at the federal and state level, and more generally to the secularization of the country: in this respect, it would be instructive to re-read the historical and political narratives of modernity and secularization in the speeches delivered by Benedict XVI to the bishops of the United States during their *ad limina* visit between 2011 and 2012. But from an historical point of view, the US Catholic bishops’ emphasis on religious freedom was also a response to the Obama administration’s major policy achievement, namely the law that extended health coverage in America thanks to the “Affordable Care Act” (ACA, also called “Obamacare”). That law created a system of access for low-income citizens without private insurance, but at the same time created a mandate for health care facilities to provide benefits in conflict with the magisterium of the Catholic church (included contraception and abortion).

Now, there is no denying the ideological blindness behind some of the politics of the mandate in Obamacare. There is also no denying the ideological stultification of important parts of the ecclesial landscape in the USA in their fight against the health care reform in the name of religious freedom. It is evident that the opposition against mandated coverage of contraception and abortion was just one part of the motive, the other motive being the growing inability of some bishops and circles of Catholic conservative intellectuals to see the role of state/government in the protection of the common good.

It must be said that the gist of the bishops' conference argument was shaped and provided by law firms and legal thinkers, and not by theologians. This is one of the deeply problematic effects of running a church like a business. The last decade has provided evidence of a stunning turn in the culture of civic responsibilities of the Catholic Church: from the Catholic social teaching of *Rerum Novarum* to an idea of a privatized religious business – but with the presumption of a higher moral legitimacy of the Catholic Church, founded in natural law. It's not only the product of the reliance of some of the most important think tanks and intellectual circles (but also of the diocesan and parish system) in the US Catholic Church on wealthy donors. It has become the corruption of an intellectual and magisterial tradition of the Catholic Church.

This crisis of legitimacy of public institutions in the eyes of the Catholic clerical leadership and intelligentsia represents evidently a serious issue in a pandemic emergency. As one of the most insightful analysts of all things Catholic in the USA, Michael Sean Winters, noted lately, the Church's response to the pandemic has revealed an impoverished understanding of [solidarity](#).

The attempt to make an argument about the role of the Church in public life as private businesses in the last few years produced embarrassing alliances in the fight against health care reform. For example, the big retailer chain "Hobby Lobby" fought against some of the mandates of ["Obamacare"](#), and now, unsurprisingly, it is fighting against the [stay-at-home orders](#). ("Hobby Lobby" is owned by evangelicals also known for having amassed one of the world's largest private collections of [biblical antiquities](#)).

The pandemic represents a test for recent turns in the relations between Church and State in the USA. It is also a particular kind of test for the Catholic Church, part of its hierarchies and their tendency to argue for religious freedom on the basis of a privatistic idea of its activities. It is a mentality that is not very different from other kinds of religious entrepreneurship, but that is clearly at odds with the intellectual and magisterial tradition of the Catholic Church.

Another issue that should require a separate and longer analysis is a growing intellectual movement, coming in large part from the upcoming generation of lawyers and legal scholars in major law schools in American universities, that proposes a new constitutional philosophy. In the background of this intellectual movement, partly identified with the so-called “integralists” lies the rejection of the secular state and government as a space maintaining a possible neutrality between different religious claims, in favor of a new moral consensus which these authors identify with the higher moral authority guaranteed by the magisterium of the [Catholic Church](#).

The integralists’ attempt to interpret the conciliar and post-conciliar magisterium in light of a religious ideology of political supremacy of the church on the temporal order, in a sort of post-modern neo-temporalism, represents a challenge to the legitimacy of the state, government, and public authorities – and a problem for the intellectual tradition of Catholicism. The starting point, in the context of the “culture wars”, was the controversy against the radical individualization of the idea of freedom, especially on issues of defense of life. Today the point of arrival is the delegitimization of every instance that is not referable or attributable to public powers embodying the teaching of neo-integralist Catholicism - the

only one that can provide moral legitimacy to political authorities. These are not isolated positions of some bloggers: they are expressed by [well-known professors](#) in important universities such as Harvard University, the University of Notre Dame, and the Catholic University of America.

It is clear that the response to the pandemic provides, on a global scale, the states and national governments with a pre-eminent role in the defense of health and public order – a role with which religious groups, included the Catholic Church, cannot and should not compete. But the reception of this new balance between Church and State will depend on the widely different juridical, political and intellectual situations, even within the same Western world. This perversion of the Catholic intellectual tradition comes mostly from legal scholars and political theorists, and not from theologians, but has theological consequences as it tries to fill the theological vacuum created by the crisis in the authority of the institutional church. In the USA the roots of the culture of freedom have produced fruits of anti-liberal but essentially libertarian ideology, even in those intellectual and clerical circles that appeal to the authority of the magisterium of the church.

# **THE MEASURES TAKEN IN THE FIELD OF RELIGION IN TURKEY AGAINST THE THREAT OF PANDEMIC OF COVID-19 VIRUS\***

Mustafa Yasan

The first case of Covid-19 Pandemic in the Republic of Turkey was detected on 10.03.2020 according to the official release of the Ministry of Health. The date of the first death due to the virus was 15.03.2020. The date of the preparation of this text is 25.04.2020. As of this date, the total number of cases of coronavirus is 107.773 while the total number of death is 2.706 according to the statements made by the Minister of Health, Fahrettin Koca. Another statistic is about the number of patients who have recovered. As of today, 25.582 patients have been discharged from hospitals.

Up to now, various measures have been taken by the Presidency and Ministries in Turkey to struggle the Covid-19 Pandemic. The first of these measures was the establishment of a scientific board within the Ministry of Health in 10.01.2020. The Scientific Board has been acting as an advisory board presenting the required measures to be taken to the authorized institutions. The recommendations of the Scientific Board have been largely

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adopted by the competent authorities, and decisions have been taken on measures, following the recommendations. Some of these measures were specific to religious life in Turkey. In Turkey, the Presidency of Religious Affairs (PRA) is the constitutional institution that is authorized to coordinate and regulate the religious services for the Muslims<sup>1</sup>. However, PRA has been strongly criticized by society because of being too late to take and apply the required measures.

In this text, the measures taken on issues falling within the mandate of the PRA and the effects of these measures will be emphasized. However, we must express that the Christian and Jewish communities have taken their precautions and measures by using their own initiative based on the Treaty of Lausanne with the coordination of the Ministry of Internal Affairs<sup>2</sup>. Accordingly, all Christian and Jewish congregations interrupted their mass worships and services until the threat of coronavirus ends. Until then, it was also decided to carry out the services and worships with a closed-circuit system.

Although the Ministries and related public institutions announced their measures in the days following 10.03.2020, when the first case was declared, the PRA had not revealed any measures until 16.03.2020. This delay is still considered as one of the reasons for the spread of the pandemic in Turkey. In this process, PRA was contended with stating that only those who were sick should not come to the Friday prayer, which is performed collectively. It was not a prohibition but wish only. This passive approach of the PRA was criticized in public opinion, and the PRA had to make

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<sup>1</sup> The Constitution of the Republic of Turkey Article 136.

<sup>2</sup> As a sample, for Armenian Orthodox Church <http://www.turkijevermenileripatrikligi.org/site/corona-virusu-ile-ilgili-onlemler/>

important resolutions within the scope of the fight against the Covid-19 virus on 16.03.2020. The most prominent of these measures was the interruption of mass worships in mosques and masjids, including Friday prayers, until the danger of spreading the corona virus disappears. However, it was stated that mosques will be kept open for those who want to worship individually.

The PRA made a decision that was subject to controversy and criticism in the public on 27.03.2020. By that decision, the Friday Prayer was performed only in Ankara and at a mosque and with the participation of a limited number of public officials determined beforehand. That Friday Prayer was broadcasted live on a state TV channel. The live broadcast of the prayer and the mosque where was the prayer was performed was located in the Presidential complex were criticized by both religious scientists and social scientists. Despite these reactions, this symbolic performance of Friday Prayer is still being applied by the PRA except live TV broadcast<sup>3</sup>.

In Turkey, a part of the measures taken in the religion sphere against the threat of coronavirus is related to the holy month of Ramadan, a month which is considered special and holy by Muslims. The Scientific Committee established within the Ministry of Health declared the precautions to be taken in Ramadan, and within this framework, the Circular on the Measures of Ramadan was put into effect by the Ministry of Interior. These measures can be briefly followed by the banning of collective iftar and sahur meals<sup>4</sup>, restriction of the shrine, tomb visits, visiting the cemeteries

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<sup>3</sup> <https://www.diyaret.gov.tr/tr-TR/Kurumsal/Detay/29453/diyaret-isleri-baskanligindan-cuma-namaz-i-ile-ilgili-aciklama>

<sup>4</sup> İftar is the dinner for the end of fasting worship. Sahur is the breakfast for the beginning of fasting worship.



only individually in a controlled manner such as using masks<sup>5</sup>. The PRA made another decision regarding the month of Ramadan on 08.04.2020. According to this decision, the tarawih prayer, which is performed collectively in mosques during Ramadan, will not be performed in mosques as long as the measures taken about the coronavirus continue.

Another development regarding the measures for coronavirus threat on religion sphere of Turkey was about umrah visits. Umrah is a visit to the holy lands such as Mecca and Medina as well as the pilgrimage. In Turkey, close to 100,000 people perform the Umrah visit within a year. Although opinions had been made in the public that umrah visits should have been cancelled when the threat of the coronavirus occurred in China, the PRA did not resort to any measures in this regard<sup>6</sup>. On the other hand, the Ministry of Health declared the quarantine for 10.330 Turkish citizens who were performing Umrah visits. For applying the quarantine Umrah visitors were settled in empty dormitories in Konya and Ankara after their arrivals. The quarantine was decided for 14 days as first and then it was extended to 21 days. In addition to that, there is uncertainty about the pilgrimage organization that is supposed to be held in July this year, since Saudi Arabian officials have declared that pilgrimage agreements have been postponed for now.

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<sup>5</sup> <https://www.icisleri.gov.tr/koronavirus-ile-mucadelede-ramazan-ayi-tedbirleri-genelgesi>

<sup>6</sup> <https://www.diyaret.gov.tr/tr-TR/Kurumsal/Detay/28361/umre-ziyaretleriyle-ilgili-basin-aciklamasi#>; <https://www.diyaret.gov.tr/tr-TR/Kurumsal/Detay/29397/diyaret-isleri-baskanligindan-koronaviruse-karsi-alinan-tedbirlerle-ilgili-aciklama>

# SAUDI ARABIA'S CAUTION IN TIMES OF HEALTH EMERGENCY\*

Caterina Gagliardi

The advent of the *Covid-19* pandemic and the resulting social distancing have revolutionized individual and collective life globally. In addition to affecting the economic and political dynamics of the countries involved, the socio-sanitary crisis has revealed a strong impact on the 'spirituality' of each individual and community. Believers of different faiths have been called to change their *habits* - especially of sharing the Word - and in some cases it has been impossible to observe the fundamental religious precepts.

From this point of view, the planetary incidence that Saudi Arabia has had on the collective exercise of Islamic worship must be considered crucial. As guardian of the two holy Mosques of Mecca and Medina, in fact, the Kingdom has found itself adopting strategic measures which have affected the religious life, not only of its citizens, but also of all the Muslims who every year reach the sacred sites to fulfil the *Hajj* and the *Umrah*<sup>1</sup>.

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<sup>1</sup> The data, elaborated by the *Central Department of Statistics and Information*, are reported on the website of the *Saudi Ministry of Hajj*: <http://www.hajjinformation.com/main/u1.htm>. It is, in particular, the *Supreme Hajj Committee* which, established under the chairmanship of the *Ministry of the Interior*, oversees the general planning of religious events, studies, proposals and recommendations presented by the *Subcommittee for the development of Hajj structures*,

With regard to these religious events, it is worth highlighting how the grouping of the many faithful who take part in them has, since ancient times, attracted the attention of government and medical authorities because of its possible effects on health.

In the history of Saudi Arabia, already starting from 632 a.d., the first outbreak of infectious diseases was recorded in the *Hajj*, which, together with those spread in later times, put the national health system to the test<sup>2</sup>. And it is precisely in the efforts made to face these considerable challenges that the reasons for the prudential approach adopted by the Kingdom in seeking a proper balance between the right to health and freedom of worship can probably be found. Given the need to guarantee collective rituals that weren't considered a danger to the health of the participants, the monarchy is committed to acquiring an adequate capacity to manage health security conditions in the main places of worship<sup>3</sup>.

With the re-emergence of new viruses in the last decade, however, the religious aggregation has returned to be considered

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also with a view to adopting the necessary provisions for the safe reception of the faithful.

<sup>2</sup> On this subject we refer to the reflections of M.A. Farid, *The pilgrimage and its implications in a regional malaria eradication programme*, in *Bulletin of the World Health Organization*, 15 (3-5), 828 – 833.

<sup>3</sup> On the occasion of the annual religious gatherings, in order to minimize health risks for pilgrims, the *Saudi Ministry of Health* maintains contact with the governments of all the countries from which the faithful come to visit Mecca and Medina. It is committed to disseminating the health requirements for the issuance of travel visas and provides advice on public health guidelines, strengthening their dissemination also with education and prevention campaigns through reading materials, travel agents, group leaders and media communications. Finally, the Ministry provides a proactive public health program that focuses on the provision of safe water and food, sanitation, carrier control, health checks and specific immunization in the port of entry, provision of free health care for pilgrims through various clinics and hospitals.

the ideal *habitat* for the transmission of serious epidemic infections. The reappearance of the need to protect the welfare of pilgrims and Saudi residents has thus prompted government administrations to develop optimal recommendations for the prevention and control of potential contagious diseases, as well as specific national and global public health surveillance strategies.

The continuous monitoring carried out by the multidisciplinary committees set up for this purpose, for example, allowed Saudi Arabia to report for the first time, in September 2012, the *Middle East Coronavirus Respiratory Syndrome* (MERS-Cov)<sup>4</sup>. This implied the adoption by the *Ministry of Health* of targeted health instructions<sup>5</sup>, including mandatory vaccination against polio. The establishment of the *Global Center for Mass Gathering Medicine*<sup>6</sup>, whose scientific research is one of the main platforms from which to draw results and knowledge for the protection and improvement of the health of participants in meetings of the Islamic community and beyond, also dates back to the same period.

In response to the seriousness of the health emergency from *Covid-19*, the Saudi monarchy has accelerated and consolidated the

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<sup>4</sup> World Health Organization MERS-COV Research Group, *State of knowledge and data gaps of Middle East respiratory coronavirus syndrome (MERS-CoV) in humans*, in *PLoS currents* (2013) - [ncbi.nlm.nih.gov](http://ncbi.nlm.nih.gov), pp. 1-30.

<sup>5</sup> Based on the clinical, scientific and epidemiological data generated by the *Global Center for Mass Gathering Medicine*, the Saudi *Ministry of Health* has decided that people with the following risk factors should postpone *Hajj* or *Umrah*: individuals over 65 years of age; individuals with chronic, cardiac, renal, respiratory, autoimmune or immunodeficiency (congenital and acquired) diseases; individuals taking immunosuppressive drugs; individuals with malignant or terminal disease; pregnant women and children under 12 years of age.

<sup>6</sup> Further information on the work of the research centre can be found on the official website: <https://gcmgm.moh.gov.sa>.

strategies of planning and control of religious public places. This is a mission that the Islamic State has carried out and continues to carry out in the footsteps of the *Hadith* of the Prophet, who make explicit reference to the instructions to be observed in cases where a mass epidemic breaks out<sup>7</sup>.

With a directive from the *Ministry of Foreign Affairs*, adopted on 26 February 2020, the Kingdom has thus decided to implement stringent solutions, including the suspension of entry for those who would have wanted to fulfil the *Umrab* in the Great Mosque of Mecca and visit the Prophet's Mosque in Medina<sup>8</sup>. The directive was followed by an order from the *Ministry of the Interior*, which also decided to suspend the *Umrab* for the citizens and residents of the country<sup>9</sup>. To these decisions was added the invitation, addressed to the faithful, to refrain from planning trips to fulfill the *Hajj*.

If these initial measures of prevention were finalized to the containment of the incoming and outgoing flows sustained prevalently for reasons of worship, the subsequent decisions aimed, instead, at the limitation of the movements within the same borders of the Kingdom through the prevision of a national curfew, forbidding, however, the residents of the thirteen Saudi regions to leave or move to another region<sup>10</sup>. Among these anti-

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<sup>7</sup> From the teachings reported in the prophetic tradition of self-quarantine emerges a prudent approach to the risk of contagion, defined as the 'dodging'. In some *Hadith*, the Prophet reads: "If an epidemic should appear on a land, do not go there; and if you are in it, do not flee from this land"; "If the plague is in a country, do not enter, but if you are in one where the plague scourge remains".

<sup>8</sup> The directive is available on the website of the Saudi government: [www.spa.gov.sa/2039971](http://www.spa.gov.sa/2039971).

<sup>9</sup> The order of the *Ministry of Interior* is published at [www.spa.gov.sa/2042784](http://www.spa.gov.sa/2042784).

<sup>10</sup> These additional precautionary measures have been applied since 15:00 on 26.03.2020.

accounting measures, there was also a ban on entering and leaving the cities of Mecca and Medina as they were subject to a 24-hour curfew<sup>11</sup>; a provision which, although necessary in an inevitable process of adaptation to the civil rules of the emergency, added further repercussions on the exercise of worship.

In the timely implementation of the recommendations drawn up by national and international health institutions, other governmental interventions continued to affect the sacred sites. Starting with an initial temporary daily closure for the sterilization of the sites<sup>12</sup>, they ended up suspending daily and Friday prayers inside and outside the Mosques. As decided by the *Grand Mufti Abdulaziz Al al-Sheikh*, together with the *Council of Senior Scholars* which he chairs, the practice of worship continued, at least until the order of closure, only in the holy Mosques of Mecca and Medina, with the express prohibition for potentially infected believers to take part.

The 'spiritual' implications of the global epidemic therefore required an immediate approach by the religious institutions of the Saudi Islamic sovereign State, also called upon to contribute to the fight against the spread of the *virus* through a renewed analysis of worship practices. Community leaders shared the isolation strategies indicated by science and called on the faithful to strictly observe all the provisions and guidelines indicated.

With the closure of places of worship, most religious services are therefore conducted at family level: each house has become a small mosque. In this respect, clerical institutions have made use of 'alternative' instruments of guidance and accompaniment for the

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<sup>11</sup> The 24-hour curfew also covered *Riyadh*, *Dammam*, *Tabuk*, *Dhahran* and *Hofuf*.

<sup>12</sup> Decision n. 246 of 12 March 2020, available at [www.spa.gov.sa](http://www.spa.gov.sa).

faithful, and digital communication has proved to be of great support.

In the *domestic* mosque, another Pillar of Islam is destined to be observed: *Ramadan*. The month of fasting and sharing has changed its connotations and its 'limited' celebration has been legitimized by a *fatwa* of the supreme Saudi religious authority. The prohibition of gathering, which is essential, at least, until the risk of contagion tends to weaken significantly, seems to imply the impossibility of celebrating its traditional rites, such as the feast of *Eidal-Fitr*.

The Muslims of Saudi Arabia, like the believers of all religions, have found themselves ministers of their own cult. Solidarity and collaboration, associated with a strong sense of responsibility, have become the key words to face the adversities of this difficult historical phase with the firmness and coherence of believers<sup>13</sup>.

To date, the rigour of government intervention seems to be gradually diminishing. King *Salman bin Abdulaziz Al Saud* has approved a first partial measure to restore religious services in the two holy Mosques, maintaining the suspension of public participation of the faithful<sup>14</sup>. And with the intention of authorizing the start of certain economic activities in the presence of the necessary health conditions, with an order adopted on 26 April

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<sup>13</sup> This is what the Sovereign said in a speech published at [www.spa.gov.sa/2049571](http://www.spa.gov.sa/2049571).

<sup>14</sup> The decision of King *Salman bin Abdulaziz Al Saud* is intended to allow the prayers of *Tarawih* to take place. The service will be reduced to five greetings and the entire reading of the *Holy Koran* will be completed during the prayer of *Tabajjud*. The Order of the Sovereign, adopted on 22 April 2020, is available at [www.spa.gov.sa/2077577](http://www.spa.gov.sa/2077577).

2020 the Saudi King also ordered the partial lifting of curfew measures in almost all regions of the Kingdom<sup>15</sup>.

Although the danger of contagion hasn't yet been completely overcome, Saudi Arabia seems to want to move towards a return to normality. Of course, one wonders what the future normality will be!

It's still too early to formulate opinions on the actual economic, political and social consequences of the *Covid-19* crisis. But looking at the 'spiritual' test to which the epidemic has put the entire Saudi community through, the task that will surely be the responsibility of the religious leaders will be relevant. They will probably have to reconsider the prescriptions concerning places of worship, symbols and rites. But even more, taking up the words that *Ayatollah Alireza Arafī* has addressed to all religions, the leaders of the communities will be called to strengthen with prayer the foundations of the faith, weakened by the tribulations, to face together the other contemporary emergencies<sup>16</sup>.

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<sup>15</sup> The decision, however, excludes Mecca and other cities previously confined for specific socio-sanitary reasons.

<sup>16</sup> The news is available in *vaticannews.va*.





# THE SAFFRON WAVE AGAINST VIRUS. THE HINDU NATIONALISTS AND THE COVID-19 EMERGENCY\*

Chiara Lapi

Even sickness can be used for political, discriminatory and sectarian aims. Around mid-February 2020, Chakrapani Maharaj, who is the President of the Indian fundamentalist party “All India Hindu Mahasabha”<sup>1</sup>, asserted that “corona is not a virus, but an angry *avatar* who came into the world to punish those who eat meat and to protect poor people”<sup>2</sup>. This Party has actually one delegate in the *Lok Sabha* of Parliament of India<sup>3</sup> and represents the right wing of *Bharatiya Janata Party*, the party which won the 2019 elections and leads the country since 2014 with the Prime Minister Narendra Modi<sup>4</sup>.

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\* Submitted: March 9<sup>th</sup> 2020. Published: March 19<sup>th</sup> 2020.

<sup>1</sup> The party was founded in the 1910s by Veer Savarkar who reckoned that “The Mahasabha is a pan-Hindu organization shaping the destiny of the Hindu Nation in all its social, political and cultural aspects”. N. Gondhalekar and S. Bhattacharya, *The All India Hindu Mahasabha and the End of British Rule in India, 1939-1947*, in *Social Scientist*, Vol. 27, No. 7/8, p. 51.

<sup>2</sup> See *Hindu Mahasabha says coronavirus an ‘angry avatar’ to punish meat eaters*, in [diresomnet.files.wordpress.com/2020/03/coronavirus-meat-eater.pdf](https://diresomnet.files.wordpress.com/2020/03/coronavirus-meat-eater.pdf).

<sup>3</sup> See, <http://loksabha.nic.in/Members/partyar.aspx>.

<sup>4</sup> From 2014 to 2018, the BJP increased the consensus: in fact, in 2014 it had a majority in 7 out of 29 states, in 2018 it held a majority in 21 out of 29 states. E.

On last Saturday (14<sup>th</sup> March 2020), the “Hindu Mahasabha” gathered 200 people in order to drink cow urine to prevent the infection caused by the CoVid-19. The embellishment of the participants characterized this meeting so much that one of them stated firmly that: “we have been drinking cow urine for 21 years, we also take bath in cow dung. We have never felt the need to consume English medicine”.

As is typical of other populist movements<sup>5</sup>, “Hindu Mahasabha” use symbols and images capturing the attention, especially of less educated people. Indeed, during the above-mentioned party, Chakrapani Maharaj wanted to be photographed as he turned the cow’s urine with a spoon into a saucepan and served it in the glasses of the diners, while a caricature of the virus’s cell stood out in the background of the photo with the inscriptions “Save Animals, Save Life”.

Thus, the virus becomes the pretext for politically fighting against those who eat cow meat: especially against Indian Muslim minority. This approach is compliant with what the Hindu movement has done with regard to killing cows. While several Indian states banned the slaughter of cows, an army of Hindu young voluntary men formed to defend the cow from those who usually kill her to the cry “the cow is the mother of the world”<sup>6</sup>. This religious and political fanaticism identifies itself by the color of dresses which men and women wear: the yellow-orange saffron.

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Anderson and A. Longkumer, ‘Neo-Hindutva’: *evolving forms, spaces, and expressions of Hindu nationalism*, in *Contemporary South Asia*, Vol. 26, No. 4, 2018, pp. 371-372.

<sup>5</sup> N. Colaianni, *Populismo, religioni, diritto*, in *Questione Giustizia*, n. 1/2019, pp. 151-161.

<sup>6</sup> E. Schmall, *AP Photos: India’s sacred cow a symbol of rising nationalism*, in *apnews.com*, April 9, 2019.

Scholars have indeed described the growth of Hindu nationalist movements as the “saffron wave”<sup>7</sup>.

Fortunately, while nationalist movements were joking around with the cow’s urine, the public institutions – as the Government of Delhi or the Archeological Survey of India – imposed strong restrictions to avoid commercial, cultural, political and religious gatherings<sup>8</sup>.

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<sup>7</sup> T. B. Hansen, *The Saffron Wave: Democracy and Hindu Nationalism in Modern India*, Princeton, Princeton University Press, 1999.

<sup>8</sup> See, *The Economic Times*, March 17, 2020.



## **IN PAKISTAN MOSQUES WILL REMAIN OPEN FOR RAMADHAN BUT WITH RESTRICTIONS\***

Vasco Fronzoni

Pakistan has adopted emergency lockdown and social distance rules to hinder the spread of the pandemic. Some regions such as Kashmir are less compromised while others such as Punjab have been more attacked by the contagion. The situation is constantly monitored on institutional websites (<http://covid.gov.pk/stats/pakistan>).

Pakistan, religious authorities and political leaders agreed to conditionally allow prayer congregations during the next Holy month of Ramadhan and have developed a 20-point policy agenda regarding rules for the containment of the pandemic coronavirus crisis.

The main rules dictate that people are directed to wear masks at mosques and do ablution at home. Mosque floors and prayer mats must be washed with chlorine disinfectants and chlorine mixture, prayers will be offered on the floor with a distance of six feet between the people offering prayers, while people are refrained from any sort of gathering after the prayers. Children and people above the age of 50 as well as those suffering from any disease

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including flu, fever and cough will not come to the mosques for prayers.

Tarawyh prayer will be offered within the premises of the mosques and not on the roads and footpaths. Both political and religious authorities said that rules could be changed during the Holy Month as needed if necessary.

These are the twenty rules in detail:

1. No carpets or mats to be laid down in mosques because the virus is airborne. Clean floors for prayers must be ensured.

2. If people want to bring prayer mats from home they may do so.

3. No gatherings after offer prayers will be permitted.

4. If a mosque has an open area like a musallah it is preferable to conduct prayers there.

5. People over 50 years of age, children should not be allowed in mosques.

6. Everyone must follow the instructions of social distancing by W.H.O. and other health experts.

7. Tarawyh prayer (the additional prayer performed at night after isha during the Holy Month) should not be conducted on roads, footpaths and anywhere else than the mosque premises.

8. People should continue to keep observing regular prayers at home.

9. Mosques floors should be washed with chlorinated water regularly.

10. There should be a six-foot distance between people during congregational prayers.

11. The mosque should form committees to ensure that people are abiding by the rules.

12. Markers should be made on the floors of mosques to guide people about the distance they should keep from others.

13. People should do ablution at home.

14. People must wear face masks when coming to mosques and maintain physical distance.

15. People must avoid handshakes.

16. P'tikaf (that is, the introspective practice that is usually performed in a mosque) must be observed at home.

17. No one must prepare or hold Suhur or Iftar (the meal consumed at dawn or sunset before or after fasting) in mosques.

18. Mosque committees should be in constant contact with the provincial government.



19. Mosques committees are allowed to conduct Tarawyh.

20. If during Ramadhan, authorities feel that the situation has got out of control and the number of cases surge, they can review the decisions taken.

## LESSON FROM THE SHINCHEONJI CASE IN SOUTH KOREA: MONITORING WITHOUT SCAPEGOATING\*

Massimo Introvigne

On February 19, 2020, I received the first phone calls from media about a South Korean new religious movement known as Shincheonji, which was somewhat related to the spread of Covid-19 in its country. I was the only Western scholar who had studied Shincheonji, published about it, and interviewed its founder, Chairman Lee Man Hee.

In the following days, all hell broke loose. On the one hand, during my study of Shincheonji in South Korea, I had met many intelligent and articulated women and men who were part of the movement, and I was concerned about their health. On the other hand, I was horrified in reading so much nonsense about Shincheonji in international media. Reporters who had never heard the name of Shincheonji before became amateur theologians overnight, or simply relied on low-level Internet sources.

I felt a responsibility to correct inaccurate information that were spreading from one media to the next. Shincheonji's theology is certainly distinctive, as it believes that some of the events described in the Bible's Book of Revelation already happened in

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South Korea, and that the man who founded the movement in 1984, Chairman Man Hee Lee, is the “promised pastor” who will guide humanity into the Millennium. However, it is not distinctive in its theology of the Millennium, a thousand-year kingdom without illness or death, an idea shared by millions of conservative Protestants.

Some media confused Shincheonji’s idea of the Millennium with its attitude to the present world. No hospitals will be needed in the Millennium, because illnesses will disappear. However, we are not yet in the Millennium, and until we enter this glorious kingdom, we will need doctors, tests, and hospitals. Some members of Shincheonji work in hospitals as doctors and nurses, and it is totally false that Shincheonji’s devotees regard themselves as invulnerable to sickness or refuse modern medicine or medical tests when needed.

It is also false that Shincheonji regards illness as a sin. As many Protestants (and Catholics), its members believe that illness entered the world because of sin, and that the Bible symbolically teaches this through the story of Adam and Eve. But this concerns humanity in general, and does not mean that each individual illness is connected to an individual sin.

Why were so many fantasies about Shincheonji believed by some Korean and international media? The answer is connected with the history of South Korean Protestant Christianity, where for historical reasons connected first with what groups sent more missionaries from the West, and then with the Korean War, arch-conservative and fundamentalists, who are marginal in other countries, came to be the majority of local Protestants. They also learned from their American counterparts how to vote as a bloc and exert a decisive influence on some politicians and media.

Their seemingly unstoppable growth found an obstacle in Christian new religious movements, among which Shincheonji is the fastest growing. Rather than asking themselves why a significant number of their members were converting to Shincheonji, they explained its growth with the usual laundry list of accusations against the “cults,” and tried to have it banned well before the coronavirus. They also took the law into their own hands. Parents kidnapped and detained their adult sons and daughters, and fundamentalist pastors tried to “deprogram” them and “de-convert” them from Shincheonji. The persistence of deprogramming, a practice deemed illegal by American and European courts more than twenty years ago, in South Korea attracted international condemnation when, in 2018, a female Shincheonji member was killed by her father when she tried to escape the deprogrammers. In a book just published by the Belgian NGO Human Rights Without Frontiers (HRWF), the sad story of thousands of attempted deprogrammings of Shincheonji members is told in detail.

HRWF also teamed with my own organization CESNUR to investigate what exactly happened with respect to Shincheonji and Covid-19, and published a white paper on Shincheonji and Coronavirus in South Korea: Sorting Fact from Fiction. What is certain about Shincheonji and the virus is that Patient 31, a female Shincheonji member from Daegu, was hospitalized after a minor car accident on February 7, diagnosed with a common cold, and sent to her normal life, where she attended several Shincheonji services and set in motion a chain of events leading to thousands of her church’s members being infected. Only on February 18, as her symptoms got worse, she was hospitalized again and tested positive to the virus. Patient 31 claims that nobody told her about

a possible virus infection before February 18, and that the claim by the hospital's doctors, who understandably try to cover themselves, that she was offered the test twice before and refused, is false. The doctors could have forcibly quarantined her before February 18, but didn't. At any rate, in hours after it learned about Patient 31, Shincheonji closed all its churches in the country.

The White Paper also goes into details about the lists of more than 200,000 members of Shincheonji that the government requested from Shincheonji and that were handled within six days. It quotes the statement by Korean deputy minister of Health, Kim Kang-lip, that there is "no evidence that Shincheonji supplied incomplete or altered lists," although they did include some mistakes, as it is normal in such huge compilations. At the urge of the Mayor of Seoul, a well-known opponent of Shincheonji, the church's premises were raided, and the lists of members seized there compared with those Shincheonji has supplied. The authorities concluded that discrepancies were minor, and that Shincheonji had not been guilty of supplying incomplete or false data.

It is true that some members tried to hide their affiliation with Shincheonji in schools and workplaces, although the movement's instructions were to cooperate with the authorities. But we should consider that in South Korea admitting that you are a member of Shincheonji may get you beaten or fired from your job. We have examined reports of more than 7,000 instances of discrimination against members of Shincheonji during the coronavirus crisis. Two female Shincheonji members "fell" from the windows of their apartments and died, while "discussing" with their husbands, who were hostile to their belief and had a story of domestic violence. These incidents are still being investigated, and are cause for

serious concern. The U.S. Commission on International Religious Freedom has also expressed concern about the scapegoating of Shincheonji.

Did Shincheonji make mistakes? Yes, and Chairman Lee admitted them publicly in a press conference on May 2, when he kneeled to ask for forgiveness in a typical Korean style. Shincheonji may have been slow to realize the magnitude of the problem, that threatened its very existence as well as Korean public health. But these mistakes do not amount to criminal negligence, and scapegoating an unpopular movement for an epidemic is something we have already seen in history. Jews were blamed for the plague epidemics in Europe, and we have seen elsewhere religious groups criticized for the virus outbreak. Certainly, religions should be monitored during epidemics, as religious gatherings, just as sport events or popular feasts, may create opportunities for viruses to spread. Monitoring and scapegoating, however, are very different attitudes.



# FIRST OBSERVATIONS ON LAW, RELIGION AND COVID-19 IN JAPAN. BETWEEN THE “CONFUCIAN STYLE” LOCKDOWN AND RELIGIOUS RESPONSE TO PANDEMIC\*

Simone Baldetti

The Japanese reaction to pandemic caused by SARS-COV-2 virus shows some profiles of interest, especially if compared to those of the European countries. At the moment, in Japan there has not been so far a high number of infections. Thus, the Government has chosen to use a “soft power” approach to the issue, which some have blamed on the desire to confirm the organization of the Tokyo Olympic Games scheduled for this summer<sup>1</sup>, and which now actually have been officially postponed. Drastic measures have not been taken, since the Government has “asked” – not ordered - for schools to be closed and strongly discouraged the organization of events that involve the meeting of groups of people, even cancelling some events, such as *sumo* tournaments<sup>2</sup>. Tokyo Governor’s Yuriko Koike simply asked

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<sup>1</sup> <https://www.japantimes.co.jp/news/2020/03/17/national/shinzo-abe-tokyo-olympics-japan-coronavirus/#.XpSDmplS9EY>

<sup>2</sup> <https://diresom.net/2020/03/09/sumo-tournament-without-fans/>.



people to stay at home and to refrain from all non-essential outings<sup>3</sup>.

On March 14<sup>th</sup>, a Diet's enactment of revise law allows the Japanese Government to declare the state of emergency<sup>4</sup>, which only recently has been done<sup>5</sup>. Then, no law has forced people to stay at home, but they have just been requested to follow some rules (social distancing, wearing mask) to prevent contagion.

This use of soft power seems typical of a society of Confucian tradition, where unformal law and social norms are respected alike State law, so a piece of advice given by the authority applies as an order<sup>6</sup>. In general, Japan has so much tradition of informal law that it has become a stereotype of a country where people “don't like law<sup>7</sup>”. However, not all Japanese share this cultural trait in the same way<sup>8</sup>, so it is possible that in the absence of a real prohibition, not all people will stay at home and practice social distancing. In fact, on Hanami – the traditional cherry blossom festival – many Japanese celebrated as if the pandemic were not there. So, the Government seems to practice a “Confucian style” lockdown, where people do not need a formal law to stop mass gatherings and stay at home, but they do it by themselves.

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<sup>3</sup> See [here](#).

<sup>4</sup> See [here](#).

<sup>5</sup> [Japan state of emergency to cover Tokyo, Osaka and five other prefectures, in Japan Times, 6 April 2020.](#)

<sup>6</sup> See P. H. Glenn, *Tradizioni giuridiche nel mondo. La sostenibilità della differenza*, Bologna, Il Mulino, p. 524-535; C. Nakane, *Japanese society*, London, Weidenfeld & Nicolson, 1970.

<sup>7</sup> Y. Noda, *Introduction to Japanese Law*, Tokyo, University of Tokyo Press, 1976.

<sup>8</sup> S. Baldetti, *La recezione delle ADR nella cultura giuridica giapponese. Primi spunti di riflessione per un approccio interculturale*, in «Calumet. Intercultural law and humanities review», p. 2-4.

This “Confucian style” approach also has involved religious organizations, which have not been restricted in their religious freedom. Art. 20 of the Japanese Constitution protects religious freedom and guarantees free access to places of worship and performing religious rites. In other countries, such as Italy, the freedom of worship has been strictly limited by Governments in order to contain pandemic<sup>9</sup>, while currently in Japan no formal rules restrict constitutional rights of religious communities. So, ritual activities can freely take place, although some monotheistic confessions have stopped activities involving meetings of multiple people. For instance, the Catholic Diocese of Tokyo has suspended all midweek and festive celebrations<sup>10</sup> and started broadcasting online religious ceremonies. The Tokyo Union Church too has chosen to perform religious rites in streaming and suspended some of its important events “to prevent the spread of the virus<sup>11</sup>”. Similarly, several mosques in Japan have suspended religious ceremonies<sup>12</sup>.

Regarding local religious tradition, Shintoism and Buddhism, probably their first role against pandemic may be traced as part of the Japanese cultural background. Shintoism, the ancient Japanese faith, conceives the purity of the body as the first requirement to live in society and to approach the sacred, and even Japanese Buddhism pays attention to purity and respect for the other people. Given the contribute of these religious traditions founding the

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<sup>9</sup> See M. L. Lo Giacco, *In Italy the freedom of worships is in quarantine, too*, in <https://diresom.net/2020/03/12/the-freedom-of-worship-is-in-quarantine-too/>.

<sup>10</sup> *Precautionary Measures Concerning COVID-19 from 15th March and Beyond*, online [here](#).

<sup>11</sup> <https://diresom.net/2020/03/16/tokyo-union-church-and-covid-19-letter-to-the-congregation/>.

<sup>12</sup> See [here](#).

Japanese culture, over time religious rules on hygiene of body and spirit have become part of social rules. So, wearing a mask, washing our hands, paying attention to daily hygiene practices have all become a social sign of respect for one's own and others' health. Respect of hygiene rules now have been conceived as a cultural norm which exceeds the religious-only field - also because Japanese religions have not actually “divine law” - and they are seen as a way of being of the entire population<sup>13</sup>. Additionally, it's useful to observe from an institutional perspective Japanese religions actions to combating contagion. According to the Shinto's point of view, people pray to *kami* (“Gods, spirits”) to achieve good fortune and health, so some religious rites have been officiated praying *kami* for the end of pandemic. For example, the Shinto Shrine of Kamigamo, in the usual ceremony of March 3 in which it usually performs a public rite for the health of the country, was dedicated this time to praying the end of the epidemic and to offering votive peach flowers and magnolia, which is traditionally believed to protect against disease<sup>14</sup>.

Moreover, the Jinja Honcho, a religious organization gathering 80,000 Shinto shrines, has disseminated useful indications to manage the pandemic, arranging the cancellation of some important *matsuri* – Japanese traditional and religious festivals - and meetings<sup>15</sup> to the priests through its official publications (Jinja Shinpo). Although they have to agree with the civil authority on

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<sup>13</sup>M.E. Kruglikova, *Cultural and social practice of traditional religion in everyday life of modern Japan*, in *Journal of economics and social sciences*, 2013, 3, p. 3.

<sup>14</sup>[https://www3.nhk.or.jp/nhkworld/en/news/20200303\\_27/](https://www3.nhk.or.jp/nhkworld/en/news/20200303_27/).

<sup>15</sup><https://diresom.net/2020/03/23/mimusubi-association-of-shinto-shrine-advice-for-covid-19/>.

the use of public space<sup>16</sup>, Shinto shrines enjoy some autonomy about the celebration of *matsuri*, which become local festivals and attract a large number of people, both as participants in the collective ritual, and as tourists who just want to attend the event. Furthermore, the traditional ablutions of the faithful before entering Shinto shrines have been adapted to the need to improve their effective sanitation and avoid contact between people who could spread the virus, for example converting traditional ablution tools into more modern and safe ones<sup>17</sup>.

Religious institutions, with cancellation of larger gatherings and adapting religious rules, maybe also go beyond a mere application of Government's soft power approach, so it appears to be an act of responsibility towards faithful and the society.

Over time we will be able to understand whether the "Confucian style" lockdown has paid off and whether the contribution of religion has been enough. Given the increase in the number of coronavirus cases<sup>18</sup>, a more decisive intervention of the State seems necessary, instead of waiting for another "divine wind" (*kamikaze*) to save the Rising Sun.

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<sup>16</sup>H. Hardacre, *Shinto. A History*, Oxford, Oxford University Press, 2017, p.476 and following.

<sup>17</sup>See <https://news.livedoor.com/article/detail/17987518/>, transl. [here](#).

<sup>18</sup>Updated [here](#).



# THE REPUBLIC OF SAN MARINO AND THE PRACTICE OF WORSHIP IN THE COVID-19 ERA: BETWEEN HISTORY, COMMON LAW AND EMERGENCY DECREES\*

Antonello De Oto

## 1. The disease of 1855 and the emergency “notification” in San Marino yesterday as today

Only a few years after Garibaldi’s “escape” in San Marino, where the hero of the two worlds found hospitality hunted by the Austrians in the most serious hour<sup>1</sup>, a new fearful danger for the

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\* Submitted: 28<sup>th</sup> March 2020. Published: April 3<sup>rd</sup> 2020. For ITA version [click here](#).

<sup>1</sup> On the morning of July 31, 1849 the torn, hungry and tired *garibaldini*, pursued by four armies, decided to violate the border of the Republic of San Marino. After exchanging a few words with the Barnabite friar Ugo Bassi, the Hero of Two Worlds, who had arrived in the city, he immediately went to the Government Palace where he explained the painful situation his troops were in to Regent Belzoppi who replied: “Well come the refugee, this hospitable land welcomes you, O General. The rations are prepared for your soldiers, your wounded are received, and they are cured; you owe us the return, sparing this land feared evils and disasters. I then accept the mandate that you offer me, because to lend it to you is a humanitarian office that I am grateful to perform”. See L. Simoncini, *Giuseppe Garibaldi e Ugo Bassi a San Marino: appunti storici*, Balda, San Marino, 1949.

survival of the oldest Republic in the world loomed on the horizon. This time it was not the fear of being invaded by the weapons of others, but a subtle and invisible enemy that crossed the borders without showing any documents, just the disease that in 1855 arrived on the Titan, just as today the Coronavirus, silent and deadly, crosses the doors of the “Serenissima” Republic bringing infection and death. The “Asian disease” that appeared in 1855 in the small State forced the Captains Regent of that time to produce (yesterday as today) an emergency decree on several occasions in an attempt to contain the infection. Certainly the times and the scientific knowledge as well as the hygienic conditions of that time were different, the sovereign diarches of the small State promulgated then “a Notification that alerted the population to use every precaution expected by the proximity of the scourge of cholera”, recommending that the houses be kept clean, forbidding “the pouring of unclean materials from the windows and piles of manure near the houses”<sup>2</sup>. Forbidding furthermore the sale of overripe fruit, meat, fish, cold meats and pork, thinking that the spread of evil would also depend on the state of preservation of these foods. And then again and again notifications from the Government in a short period of time, until September 27th 1855 when Captains Regent Gaetano Belluzzi and Francesco Rossini had to admit *coram populo* that “the terrible disease, which has been infesting the nearby districts for some time, invaded even this our Republic”. On October the 20<sup>th</sup> of the same year, the outbreak ended with a heavy balance, 245 infected citizens of whom 99 dead,

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<sup>2</sup> See D. Pezzi, [\*San Marino. La sofferenza di un Paese impreparato.\*](#)

a major bill for a small community like that of San Marino in 1855 that counted only 6,000 subjects.

Today as yesterday on the Titano, small state set between the Romagna and Marche regions, in the geographical heart of central-northern Italy and with a population of over 33,000 Italian-speaking people living within its borders, there are emergency decrees aimed at containing a reactive and penetrating virus such as Covid-19. A disease yesterday as it was then, which has slowly crossed the complex and ancient structures of a micro-State of medieval origin that survived free and independent to many political seasons, serving only a short but suffered period of occupation from Cardinal Alberoni<sup>3</sup>. A micro-State governed by a mix of rites and history, a diarchy<sup>4</sup> with ancient institutions of participatory democracy<sup>5</sup> that still today have brought the common

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<sup>3</sup> In San Marino every 5<sup>th</sup> February, the celebrations for Sant'Agata, national holiday dedicated to the patron saint of the Republic, are held. It celebrates the anniversary of the end of the Alberonian occupation, which occurred on February 5, 1740. In the Serenissima Republic is a very important anniversary, of those that are celebrated, with the active participation of the Captains Regent who wear collars for the occasion. For further information see M.E. Bartoli, *Il cardinal Giulio Alberoni e San Marino*, Faenza, 1960.

<sup>4</sup> At the top of the State *there* is the Institute of the Most Excellent Regency made up of two Captains Regent appointed by the Great and General Council (unicameral Parliament) who act for a period of six months and collectively as Heads of State. See comment F. Morganti, *L'Istituto della Reggenza nell'Ordinamento giuridico Sanmarinese*, in AA.VV., *Identità Sanmarinese: Riflessioni sulla libertà e la democrazia fra politica, storia e cultura*, Dante Alighieri, San Marino, 2009, 151.

<sup>5</sup> Reference is made *here* to the so-called “istanza d'arengo”, a typical legal institution in the long history of San Marino, which has come down to us in its modern version, becoming a sort of right of petition with which the people on the occasion of the election of the Captains Regent can bring petitions to the attention of the governing bodies of the Republic. See R. Regoli and G. Bianchi



law being the heart of the legal framework of the Republic<sup>6</sup>, which refers, with her name, to the life and history of the founding saint, the Dalmatian stonemason Marino “*libertas auctor*”. A Republic that links its institutions in many ways to a confessional fact, as it was founded in that Christian sign<sup>7</sup>, even though it is a secular or rather non-confessional State<sup>8</sup>, having a complex, particular<sup>9</sup> secularity and with a growing rate of secularisation as witnessed by the marriages celebrated in 2019, of which only 23.1% celebrated with religious rite<sup>10</sup>. On the other hand, it is precisely in the moral

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di Castelbianco, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche – Unicatt*, n. 14/2018, 11-12.

<sup>6</sup> An important source of San Marino law is still today the common law, formed by Roman law, canon law, Germanic law and statutory law which includes the instrument of custom. See L. Lonfernini, *Elements of San Marino Civil Law. The sources of civil law. The rights of the person. Legal acts and facts.*, Trad. En., San Marino, 2002, 527 which also notes that: “*Canon law* after Roman law is the one that most contributed to the formation of common law”.

<sup>7</sup> As noted by L. Lonfernini, *Diritto costituzionale sammarinese*, Banca Agricola Commerciale della Repubblica di San Marino, San Marino, 2006, 18.

<sup>8</sup> In this sense G. FELICI, *Profili di diritto costituzionale sanmarinese*, Edizioni del Titano, San Marino, 1999, 113.

<sup>9</sup> For an in-depth analysis on this point see V. Parlato, [\*Alcune considerazioni sulla laicità della Repubblica di San Marino\*](#).

<sup>10</sup> The social fabric of the Republic has changed rapidly, and at this stage the political affirmation of the political party Democrazia Cristiana no longer reflects in some social dynamics the San Marino of the past, which was once described precisely on the theme of marriage only thirty years ago in this term: “Despite the introduction of civil marriage with the law n. 37 of 1953, Catholic marriage has always been, and still is, the marriage of San Marino people, that is, the marriage chosen by almost all the people”; see S. Di Grazia, *I rapporti tra matrimonio religioso e matrimonio civile nel diritto Sanmarinese*, in *Quaderni di diritto e politica ecclesiastica*, 1988, 97. On the secularization of marriage in the Republic of San Marino see L. Iannaccone, *Il matrimonio religioso nella Repubblica di San Marino*, in A. De Oto and L. Iannaccone (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, Rimini, 2013, 57 ff.

heritage of San Marino that lies the legacy of independence, distinctive of its precious freedom. Freedom and secularity expressed in the sentence with which Saint Marino began their independence: “*relinquo vos liberos ab utroque homine*”, this is to say “*I leave you free both from the Emperor and the Pope*”, the two figures who at the time dominated the political scene. This freedom was always defended with greatest pride, even though without having a professional army, with the weapons of diplomacy; a freedom that has made it famous in history as a space of protection and refuge, as a place of neutrality and culture of peace. Suffice it to say that in 2007 the Republic of San Marino, when holding the Presidency of the Committee of Ministers of the Council of Europe, brought inter-religious dialogue and forms of contemplation of confessional differences in Europe as the guiding theme of that period of government, in order to promote intercultural dialogue, political and economic stability and peace among peoples, always and by all legal means.

## **2. The closure of religious buildings: Decree no. 52 of 20 March 2020 for the containment of Covid-19**

Article 6, paragraph I, of the *Declaration of Citizens' Rights and Fundamental Principles of the Order of San Marino*, made operative by Law no. 59 of 8 July 1974, and subsequent amendment of 26 February 2002 no. 36, guarantees freedom of expression of thought, worship and conscience with a formula that prudently takes into account the temporary suspension for emergency reasons and in exceptional cases of civil and political liberties: “The

law may limit the exercise of these rights only in exceptional cases for serious reasons of public order and public interest”<sup>11</sup>. In issuing “emergency laws”, the San Marino legal system also relies on the conditions of necessity and urgency referred to in article 2, paragraph 2, letter b) of Constitutional Law no. 183 of 15 December 2005 and article 12 of Qualified Law no. 184 of 15 December 2005. This jumble of arrangements today is useful to manage the Covid-19 emergency which powerfully spreads over the Italian soil and immediately reached the Titan rock, causing several victims in relation to the resident population. The Government then issued an initial Decree Law no. 51 of March 14, 2020, Article 1, letter f) of which states: “all events organized, conferences, congresses, meetings, as well as events in public or private places, including those of a social, cultural, recreational, sports, religious and trade fair nature, even if held in closed spaces but open to the public, such as, for example, major events, cinemas, theatres, pubs, dance schools, games rooms, betting and bingo halls, discos and similar venues, shall be suspended. All activities are suspended in these places. The violation of the suspensions contained in this letter is punished with an administrative fine of € 2,000.00 (two thousand/00) and with the suspension of the operating licence for 30 (thirty) days”. The sanctioning corollary of the norm refers, given the tenor, essentially to commercial businesses but in the abstract, only for the pecuniary

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<sup>11</sup> On the socio-normative scope of the *Declaration of Citizens' Rights and Fundamental Principles of the San Marino Order* and subsequent amendments see R. Regoli and G. Bianchi di Castelbianco, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche – Unicatt*, n. 14/2018, 10-13.

part *obviously*, it would seem applicable also to ministers of worship who wish to continue to hold collective rites within demonstrations with religious content. In letter r) of the same article 1 of the Decree it is then noted that “the opening of places of worship is conditioned on the adoption of organisational measures such as to avoid the gathering of people, taking into account the size and characteristics of the venues, and such as to ensure that visitors can respect the distance between them of at least one metre referred to in Annex 1, letter d) of the present decree-law. Civil and religious ceremonies, including funeral ceremonies, are suspended”. This first rule did not therefore decree the closure of places of worship which, observing the measures of social distancing, were still be frequented. This regime for worship intended buildings, due to the worsening of the overall health situation, lasted only six days until the issue of the new Decree-Law no. 52 of March 20, 2020 which completely closes the places of worship at every attendance and use to the new art. 1 letter r) which reads as follows: “The places of worship are closed. Civil and religious ceremonies are suspended, including funeral ceremonies, except for the minimum burial service, according to the arrangements given for essential public services”. Thus differentiating itself from the nearby Italian Republic, which has never declared in the six emergency decrees issued in just one month a total closure of places of worship<sup>12</sup>, also because of the difficulties that would be operatively encountered in managing the balance of constitutional values at stake and the nature of the article

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<sup>12</sup> In this sense also the [specifications](#) of the Italian Ministry of the Interior, which came as a result of questions formulated by the CEI on the exercise of worship in the country.

itself. 19 of the Italian Constitution which presents itself, by the consolidated case-law guidelines, as a perfect subjective fundamental right, not subject to conditions of reciprocity, and unavailable which expressly guarantees the exercise of worship in public<sup>13</sup>. In the previous Emergency Decree of 14 March last, the Titan's legislator includes an important arrangement that in art. 4 contemplates the possibility of requisitioning real estate by the Extraordinary Commissioner for the Coordination of Health Emergencies and that will see, if the situation worsens further, certainly involved the San Marino Diocese with a substantial real estate assets, in order to make agreements in this sense. Agreements, however, without prejudice to the third paragraph of article 4 in question: "Without prejudice to the right to define with the private property concerned agreements aimed to obtain the immediate availability of the aforementioned facilities" and necessary, in the case in point, also for coordination with the arrangement from article 8 of the 1992 Framework Agreement between the Holy See and the Republic of San Marino<sup>14</sup>. Article

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<sup>13</sup> On the balance of articles 19 and 32 of the Italian Constitution and the solutions adopted to guarantee a limited exercise of worship in the "Belpaese" see F. Balsamo, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy*, in [www.diresom.net](http://www.diresom.net).

<sup>14</sup> Article 8 of the *Framework Agreement* of 2 April 1992 between the Holy See and the Republic of San Marino reads: "1. The ownership, acquisition, possession, administration, administration and alienation of temporal goods by ecclesiastical bodies, as well as the succession to such goods in favour of the same bodies, are regulated by ordinary laws of general application. 2. In the event of the vacancy of an ecclesiastical benefit, the legal representation of it shall be established on the basis of the provisions of canon law. 3. The establishment or acceptance of pious foundations, pious legacies, as well as, even for those already existing, the administration of goods and the satisfaction of the relative burdens, are the

the one relating to the requisitioning of the buildings, which was then entirely re-proposed by the Secretary of Internal Affairs in the formulation of Decree no. 52 of 20 March 2020.

With regard to the measures for the total closure of places of worship that have raised constitutional perplexities, which are, however, overcome at the root by the clear formulation of the articulate formulation on the subject contained in the *Declaration of Citizens' Rights and Fundamental Principles of the Order of San Marino*, which allows this operation in the light of the framework of a very serious health emergency in progress, the Catholic Church has also intervened through a statement from Bishop H.E. Andrea Turazzi, leading the Diocese between two States<sup>15</sup> – San Marino and Montefeltro – has shown full understanding of the extent of the facts taking place in an emergency with unforeseen and unpredictable contours and recognizing clearly the boundaries of governance of spiritual matter with respect to what is the responsibility of Government's power, as per the Concordat approach<sup>16</sup>: “Such a radical decision is arousing understandable reactions: the claim of free exercise of worship and the possibility of the “open church” as a sign of hope (even if, in fact, one should

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exclusive competence of the ecclesiastical authority”. For the complete text see [here](#).

<sup>15</sup> For more information on the nature, history and structure from the point of view of canon law of the Diocese of San Marino-Montefeltro see P. Stefani, *Note di diritto canonico sulla Diocesi di San Marino – Montefeltro*, in A. De Oto and L. Iannaccone (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, Rimini, 2013, 43 ff.

<sup>16</sup> The Framework Agreement of 2 April 1992 between the Holy See and the Republic of San Marino in its Proemio highlights precisely “the mutual respect for independence and sovereignty which each has in its own order”; see *Acta Apostolicae Sedis*, 85 (1993), 324-334.

not go to church because of the limitations of movement already established). Reactions worthy of respect. It is necessary, however, to reflect without emotional impulses and to recognize that the situation that the authorities are called to govern is of a complexity never seen before, of which we can only grasp some evidence. It is not for the Church, but for the State to legislate on public health”<sup>17</sup>. So following this decision taken by the San Marino authorities, the Bishop Andrea Turazzi, in order to maintain a lively contact with the ecclesial community, has, in the phase that the country is going through, set up “alternative” garrisons, above all in order to allow the use of the Sunday precept and mass in general, through *streaming* masses also transmitted by the State TV; correlatively encouraging the *social* tool with a page dedicated to the emergency on the Diocese website, and the implementation of the *twitter* page of the diocesan Ordinary.

On 24 March 2020 the Bishop of San Marino, given the emergency situation also from logistic point of view, with the presence of a high number of faithful in danger of death and the expected peak of deaths in our hospitals, decided to issue Decree no. 40 on the subject of *Absolution to several penitents without prior individual confession* where it is provided that hospital chaplains in hospitals and nursing homes “may impart absolution to several penitents without prior individual confession when the patients admitted to them are in danger of death or are in wards where it is not possible to guarantee the secrecy of the confession and the

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<sup>17</sup> Statements taken from the SIR Information Agency: *Coronavirus Covid-19: places of worship closed in San Marino*, [www.agensir.it](http://www.agensir.it), 21 March 2020.

appropriate health measures”<sup>18</sup>, expressly referring in the *Preamble* of the Decree itself to the Note of the Apostolic Penitentiary of 19 March 2020, the orientation of the presidency of the CEI as a service of the Diocese in Italy (given that part of the diocesan territory falls there) and canons 961 and 962 contained in Book IV, Title IV of the 1983 Code of Canon Law on the Sacrament of Penance, as well as nn. 31-35 of the *Rite of Penance*.

Other micro-States in Europe with legal systems of medieval derivation, the result of complex geo-political balances that have led to elaborate government structures in small territories, are now facing a health emergency of global importance that risks disrupting, much more than other federated States in supranational organizations, economic-political realities survived several times to changes in situations around them. Often small State realities completely surrounded at the level of political borders by one or two large states which, over the years, have played, depending on the historical passages, alternately the role of friend, protector or enemy of considerable proportions from which to beware, small states such as the Co-Principality of Andorra, the Principality of Monaco or the Principality of Liechtenstein, states which today, precisely because of their limited territorial scope and without potential shock absorbers due to their belonging to over-state containers such as the EU, are afraid to emerge from this terrible

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<sup>18</sup> See the Decree of the Bishop of San Marino – Montefeltro n. 40/2020, *Absolutions to several penitents without prior individual confession*.



pandemic economically shattered and broken in their identity structure<sup>19</sup>.

Of course, even in the serious emergency situation, this is not the ultimate scenario for the *Serenissima* Republic of San Marino, which, although not belonging to the EU, is a member of many international organizations such as the UN, and specialized agencies such as the ILO, WHO, FAO, UNESCO, UNICEF<sup>20</sup> and above all because of its relationship with Italy, with which it has always sought a privileged and fraternal relationship, in the respect of the independence of the ancient Republic and in the satisfaction of mutual interests, a collaboration that has been concretely realized also in this emergency with the stipulation of an additional agreement to the normal health agreements in force between the two countries, in order to manage together the international emergency caused by the fearsome Covid-19<sup>21</sup> virus

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<sup>19</sup> On the identity factor in the small States, reference should be made to the reflections already made in A. De Oto, *Piccoli Stati e fattore religioso*, in A. De Oto and L. Iannaccone (ed.), *Il fattore religioso nella Repubblica di San Marino*, Il Cerchio, Rimini, 2013, 125.

<sup>20</sup> See R. Regoli and G. Bianchi di Castelbianco, *Il sistema politico istituzionale e i rapporti Stato-Chiesa nella Repubblica di San Marino*, in *Quaderni di Scienze Politiche - Unicatt*, n. 14/2018, 23.

<sup>21</sup> See *Coronavirus: San Marino-Italy, signed Memorandum of Understanding on mutual cooperation*, 26 marzo 2020 ([here](#)).

# **CORONAVIRUS EMERGENCY IN THE MONASTIC AUTONOMOUS REPUBLIC OF MOUNT ATHOS. CONTAGION WITHOUT COVID-19\***

Pierluigi Consorti

In the Aegean Sea, precisely in the Chalkidiki peninsula, seats the Monastic Autonomous Republic of Mount Athos. It became a center of organized monastic life in monasteries in the year 963, and now it is composed by twenty monasteries and some villages and houses that depend on them. About 2.000 Orthodox monks of different traditions live there playing introspection and prayer.

The monasteries are exempted from the authority of the local bishop and are placed directly under the responsibility of the Ecumenical Patriarch. On the political and administrative level, it is the Greek Ministry of Foreign Affairs which manages, on behalf of the Hellenic Republic, questions relating to the peninsula, which is a Greek territory, but where different laws apply, compatible with the *Abaton*: that is the rule which defend the monastic strict enclosure. The access of «any female creature» is strictly forbidden, with two exceptions: hens (for eggs, used in cooking and for icons painting) and cats (to hunt rodents). Its legal status is protected by the Greek Constitution (art. 105), and ruled

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by the Charter of Holy Mountain, which was drawn up and voted by the Athonite monastic authorities in 1924, and afterwards ratified (with some amendments) by the Ecumenical Patriarchate of Constantinople and then definitely approved by the Greek Parliament on September 1926<sup>1</sup>. The administrative power lies in self-administration operated by the Holy Community (Ierà Kinòtita, composed by twenty monks, each of whom represents one monastery) and the Ierà Epistasìa, which comprises four monks drawn annually from four monasteries in rotation. The leader of the Ierà Epistasìa is called the First (= Protos). Greece is responsible for safeguarding public order and security, assured by a (civil) Deputy Commander. Because a lot of provisions of the Monastic Republic law are opposite to the principles of the European Union (for example the clausura to women, the special license in order to visit the peninsula, the taxation and customs privileges etc.), its special status was included in the [Final Act of the Agreement concerning the accession of the Hellenic Republic in the European Economic Community](#) (1979), nowadays European Union, as well as in the [Schengen acquis on 1990](#), that both recognize the special status granted to the Monastic Republic, as guaranteed by the Greek Constitution, as justified exclusively on grounds of a spiritual and religious nature.

Despite the strict enclosure, the coronavirus has entered Mount Athos too. Probably, because of [three monks](#) who travelled to the UK at the invitation of the Archbishop of Thyateira and Great Britain, where they transported a fragment of the sacred relic of St. George from the Xenophontos Monastery. One more source says that the fault is of an Italian pilgrim (but he was then [negative](#)

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<sup>1</sup> See more details [here](#).

[to the test](#)). The monks had been quarantined and did not come into contact with anyone. A special disinfection was ordered at the Xenophontos Monastery upon the order of the Deputy Commander of Mount Athos. At the beginning, the Holy Community, only discussed the possibility of closing Mount Athos to the pilgrims, deciding that this should not be done for “spiritual reasons”, but on March 19<sup>th</sup> it took the unprecedented decision to prohibit admission to pilgrims and other visitors in order to safeguard its residents from the coronavirus epidemic (those who work on the Holy Mountain are still admitted, due to the Hellenic emergency rules).

The decision was in keeping with the recommendations of the Hellenic government, which adopted a very early policy of containment of contagion, restricting public gatherings and the possibility of outsiders bringing the highly infectious virus into the Monastic Republic too. In a first time, the issuing of admission passes was suspended until March 30, following the instructions given by the Greek Orthodox Patriarch Bartholomew for the temporary suspension of churches services till the end of March, even though the Patriarch had excluded monastic communities from such closures and suspension of services. However, the increasing spread of the coronavirus and public health and safety concerns have taken precedence. In a second time, the closure has been extended and now it is a sine die provision.

Religious services continue to be conducted for residents of the community, which will continue to receive supplies from the regular ferries. Their worship has been modified too. For example, on Friday 27 March into Saturday 28 March the monks of Mount Athos, in every monastery, skete and cell, held an all-night vigil against the pandemic of the coronavirus. The vigil was dedicated

to the Panagia, who is the protectress of the Holy Mountain, as well as the Holy Hieromartyr Haralambos, who is noted especially for his miracles in vanquishing plagues and epidemics, including an epidemic that once infected the monks of the Holy Mountain and which he was responsible for dispelling. In all the monasteries, during Matins, a special canon to the Holy Trinity for deliverance from pestilence was chanted, as well as a canon to the Theotokos and a canon to Saint Haralambos. Also, during the vigil, were read [three special prayers](#) written for the deliverance from epidemics and pestilence.

So, even if the Monastic Republic has closed its port, worships and prayers continue. The Holy Community also asked to hold cross processions with relics and wonderworking icons at the discretion of and according to the custom of the holy monasteries. Do we have to admit that the measures taken in Greece have [so far been very successful](#), perhaps also thanks to the monks' prayers?

# VATICAN CITY STATE AND COVID-19 EMERGENCY\*

Matteo Carnì

## **1. The smallest State in the world and Covid-19 emergency**

The quick and aggressive outbreak from Covid-19 that spread across the planet did not spare Vatican City, the smallest State in the world created in 1929 to guarantee the Holy See “absolute independence for the fulfillment of His high mission in the world”.

The finalistic element underlying the institution of Vatican City allows us to understand the qualifications of the *Civitas Vaticana* that have been offered over time: State-medium, Instrumental State, Apparatus State. This naturally does not detract from the character of a true State that it possesses, nor does it undermine that purpose which is proper and characteristic of every political society, namely the pursuit of the common good of the affiliates.

Vatican City is developed in an area of just 0.44 square kilometers, inside the city of Rome. This is unique reality compared

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to other traditional constitutive elements of each state, namely the people and sovereignty<sup>1</sup>.

The Vatican people is composed by Vatican citizens. Vatican citizenship, which is granted for the free determination of sovereign authority, is a functional citizenship, issued mainly from the office covered by each citizen in the Vatican State or in the Roman Curia.

Vatican sovereignty belongs to the Holy See, understood in the most restricted sense of the Roman Pontiff. The Pope is in fact the absolute monarch, bringing together all the powers (legislative, executive and judicial), even if ordinarily he does not exercise them directly but through the permanent entrustment to organs that, with distinct competences, perform the related functions.

We are in the presence of a single state reality, in which there is no real stable population and no social classes and political or cultural currents. Hence the inopportunity of any definition of Vatican City as a theocratic or hierocratic state since the *Civitas Vaticana*, while presenting a priestly caste in a pre-eminent position with respect to citizens, is nothing but a “great ecclesiastical apparatus that governs itself”, without therefore oppress their own population in the name of a certain religious creed as happens instead in true theocratic states<sup>2</sup>.

To the aforementioned constitutive characteristics of the state is also added the fact that no productive activities are found in *Civitas Vaticana*, in fact there is a public monopoly of economic activity.

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<sup>1</sup> On constitutive elements, see G. Dalla Torre, *Lezioni di diritto vaticano*, Giappichelli, Torino, 2018.

<sup>2</sup> C. Cardia, *Principi di diritto ecclesiastico. Tradizione europea legislazione italiana*, Giappichelli, Torino, 2019<sup>4</sup>, pp. 308-310.

## 2. Covid-19 crosses the Vatican walls

The normal and daily contacts between Italy and Civitas Vaticana, on various institutional, work and religious occasions, have allowed the outbreak of the virus rapidly cross the Vatican walls, making the boundaries between the two state realities imperceptible precisely because of the nature of the enclave that characterizes the Vatican City, entirely surrounded by Italian territory.

The actual<sup>3</sup> cases of infection, between Vatican citizens and employees of the Holy See, are eight.

A small number if compared to the large and sad numbers of the various European states and the rest of the world. It appears even less if we consider the large flow of people who pass through the Vatican's daily access for work reasons. Think also of the pilgrims and tourists who visited – before the closing measures – St. Peter's Basilica or the Vatican Museums or the numerous Italians who go daily to the Vatican Pharmacy.

Adding this the continuous flow of people in other 'Vatican' properties, mostly located in the immediate vicinity of the Vatican State – in which many Dicasteries of the Roman Curia and connected to the Holy See. It is therefore evident “that contiguity of personal and legal relationships that connects both sides of the Tevere river, and that commonality of language, habits, lifestyle, which constitutes the substratum of all true familiarity. It follows, for example, that very few of those who cross the imaginary line that unites the two ends of Bernini's colonnade in St. Peter's Square psychologically warn that they are crossing the border

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<sup>3</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 8<sup>th</sup> April 2020.



between two states [...]. Too many links between the Vatican, the Roman reality, the Italian Church, ecclesiastical institutions and civil institutions, which end up favoring the dense network of contacts, exchanges of opinions and proposals, which make the two realities close and almost intimate, one to the other”<sup>4</sup>.

The concerns arising from Covid-19 that animate the Vatican City State seem – at first sight – to be the same as those that are afflicting the other state realities of the world, all aimed at protecting the health and life of the affiliates.

Whether it is the Holy See or ecclesiastical authorities at national and local level, there is therefore the sharing – by the entire Catholic Church – of the just concerns of civil authorities towards “situations such as the one in which it is in play the good health and the good life of every single person, as well as the common good of the whole society”<sup>5</sup>.

### **3. Covid-19 and legislative/administrative measures in Vatican City State**

The Pope’s state has been able to react to the Covid-19 emergency with promptness and determination, adopting numerous measures in coordination with those launched by the Italian authorities<sup>6</sup>. It should be stressed that these are measures

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<sup>4</sup> C. Cardia, *La condizione giuridica ex art. 16 Trattato del Laterano del Pontificio Seminario Lombardo (Parere pro rei veritate)*, in G. Dalla Torre e P.A. Bonnet (a cura di), *Annali di diritto vaticano 2017*, LEV, Città del Vaticano, 2017, pp. 14-15 (my translation).

<sup>5</sup> G. Dalla Torre, *Gli ordini dati dello Stato e l’ordine interno della Chiesa*, in *Avvenire*, 22<sup>nd</sup> March 2020, p. 3 (my translation).

<sup>6</sup> On Italian measures, and their influence on the “religious behavior and old-centuries rules that have resisted many other plagues”, see P. Consorti, *Religions and virus*, 9<sup>th</sup> March 2020, now in this same volume.

which are sometimes of a regulatory nature, sometimes of an administrative nature.

As for the former, think of the *Rescriptum ex audientia Sanctissimi*, and its annex, with which some extraordinary and urgent measures have been issued to counter the epidemiological emergency from Covid-19 and contain the negative effects on the conduct of judicial activity. The suspension of all procedural activities in progress at the judicial offices of the SCV was therefore ordered, as well as the related limitation and forfeiture terms, then providing for exceptions with regard to the internal investigative activity and more generally prior to the hearing and with regard to those procedures that need to be treated for urgent reasons<sup>7</sup>. This is basically a regulatory provision adopted directly by the Holy Father as monarch of the state, and therefore not by the Pontifical Commission for the Vatican City State which usually exercises the legislative power which the Pontiff is in any case owner of.

The measures adopted of an administrative nature, think of the provisions that already on 25<sup>th</sup> February the Health and Hygiene Directorate of the Governorate of the Vatican City State sent electronically for the prevention and spread of the Covid-19 infection, to be posted in the places of work and at the entrance of services open to the public. Or to the provisions of the same

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On the “new emergency rights” see L.M. Guzzo, *Law and Religion during (and after) Covid-19 Emergency: the law is made for man not man for law*, in *Diresom Papers*, 30<sup>th</sup> March 2020, now in this same volume.

<sup>7</sup> Segreteria di Stato, *Rescriptum ex audientia Sanctissimi*, 18<sup>th</sup> March 2020, in *L'Osservatore Romano*, 20<sup>th</sup> – 21<sup>st</sup> March 2020, p. 7. Suspension until 3<sup>rd</sup> April 2020, later prolonged to 4<sup>th</sup> May 2020 by a new *Rescriptum* (1<sup>st</sup> April 2020, in *L'Osservatore Romano*, 3<sup>rd</sup> April 2020, p. 8).

Health and Hygiene Department which have re-proposed those prudential containment measures adopted by most States<sup>8</sup>.

It should be noted how similar provisions were adopted through administrative measures by one of the Departments that make up the Governorate of the Vatican City State and therefore not by resorting to those provisions having the force of law that the President of the Pontifical Commission for the State Vatican City has the power to enact in cases of necessity and urgency.

By extending the radius of action to the entire Roman Curia and to the entities connected to the Holy See<sup>9</sup>, the first section of the Secretariat of State has released some special rules to be observed by proposing even more drastic rules of prudence for Civitas Vaticana and for extra- territorial<sup>10</sup> buildings, considering the extent of the infection<sup>11</sup>.

This resulted in the closure, as a precaution, of the Vatican Museums, the Excavation Office, the Museum of the Pontifical Villas and the museum centers of the pontifical basilicas<sup>12</sup>, and, a few days later, the closure of the Piazza and the Basilica of San

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<sup>8</sup> Stato della Città del Vaticano, Governatorato, Direzione di Sanità ed Igiene, *Norme per il contenimento dell'infezione da Covid-19*, 6<sup>th</sup> March 2020.

<sup>9</sup> See J.I. Arrieta, *Le istituzioni collegate con la Santa Sede*, in G. Dalla Torre e P.A. Bonnet (a cura di), *Annali di diritto vaticano 2016*, LEV, Città del Vaticano, 2016, pp. 7-28.

<sup>10</sup> See G. Dalla Torre, *L'“extraterritorialità” nel Trattato del Laterano*, Giappichelli, Torino, 2016.

<sup>11</sup> Segreteria di Stato, Prima sezione – Affari generali, *Norme speciali da osservarsi nei Dicasteri e negli altri Enti della Santa Sede o ad essa collegati e nel Governatorato dello Stato della Città del Vaticano, per il contenimento dell'infezione da Covid-19*, 8<sup>th</sup> March 2020.

<sup>12</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 8<sup>th</sup> March 2020.

Pietro and the opening with contingent entrances to the Vatican Pharmacy and Annona supermarket<sup>13</sup>.

The provision of the Papal Secretariat on the one hand notes that the containment measures “impact on the private and working life of Vatican employees”, on the other it explicitly states that “it trusts in the sense of responsibility of each in the adoption of all measures [...] indicated to protect one’s own health and that of the whole working community”<sup>14</sup>.

The statements made by the Secretariat of State may seem obvious, completely coinciding with what is foreseen by other States, but it assumes – for the Vatican working reality – an additional value since the employment relationship with the Holy See and the Vatican City State goes beyond the traditional concept of labour<sup>15</sup>.

As sustained by John Paul II in the letter to Cardinal Agostino Casaroli, those who work for the Holy See and the Vatican City State constitute a singular community that operates “*sub umbra Petri*”, in such immediate contact with the Apostolic See. Beyond the duties carried out, each worker participates “truly in the one and unceasing activity of the Apostolic See, that is, in that ‘concern

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<sup>13</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 10<sup>th</sup> March 2020.

<sup>14</sup> Segreteria di Stato, Prima sezione – Affari generali, *Norme speciali da osservarsi nei Dicasteri e negli altri Enti della Santa Sede o ad essa collegati e nel Governatorato dello Stato della Città del Vaticano, per il contenimento dell’infezione da Covid-19*, 8<sup>th</sup> March 2020.

<sup>15</sup> See M. Persiani, *Il lavoro sub umbra Petri*, pref. di G. Dalla Torre, Studium, Roma, 2016.

for all the Churches' [...] in a primary measure [...] the prerogative of the successors of St. Peter in the Roman See"<sup>16</sup>.

In such a scenario of service to the Apostolic See there is also the decision – to “ensure essential services to the Universal Church” – to keep the dicasteries and entities of the Holy See and of the Vatican City State open, in coordination with the Secretariat of State<sup>17</sup>, applying at the same time all the sanitary norms and flexibility mechanisms at work established by the Papal Secretariat such as delocalized work, limiting the movements of the employees<sup>18</sup>.

Despite the appropriate precautionary measures, the opening of the various Dicasteries and institutions – continuing only with essential and mandatory activities – has guaranteed, and guarantees, the exercise of the Petrine ministry<sup>19</sup>.

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<sup>16</sup> Giovanni Paolo II, *Lettera del Sommo Pontefice circa il significato del lavoro prestato alla Sede Apostolica*, 20<sup>th</sup> November 1982, in *Acta Apostolicae Sedis*, 75 (1983), pp. 119-125. See A. M. Cappelletti, *Lettera del beato Giovanni Paolo II circa il significato del lavoro prestato alla Sede Apostolica del 20 novembre 1982*, in *Scritti in onore di Franco Bolognini*, Pellegrini, Cosenza, 2011, pp. 165- 184.

<sup>17</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 12<sup>th</sup> March 2020.

<sup>18</sup> Segreteria di Stato, Prima sezione – Affari generali, *Disposizioni per il personale dei Dicasteri, degli altri Enti della Santa Sede o ad essa collegati e del Governatorato dello Stato della Città del Vaticano*, 11<sup>th</sup> March 2020.

<sup>19</sup> Segreteria di Stato, Sezione per gli affari generali, *Lettera (n. 487.558) del Segretario di Stato Card. Pietro Parolin ai Capi Dicastero della Curia Romana*, 30<sup>th</sup> March 2020.

#### 4. Economic consequences deriving from Covid-19 in Vatican City State

As for the disastrous economic consequences deriving from Covid-19, with reference to the situation of some enclave states, such as the Co- Principality of Andorra and the Principality of Monaco, it has been argued that the aforementioned micro-states “because of their limited territorial scope and without potential shock absorbers due to their belonging to over-state containers such as the EU, are afraid emerge from this terrible pandemic economically shattered and broken in their identity structure”<sup>20</sup>.

What is expected for the Vatican City State, which is an enclave of Italy and the European Union?

Any reflection in this regard must take into due consideration the peculiarities of the Vatican City State, an enclave State which can only be assimilated in part to the aforementioned micro-states since in the *Civitas Vaticana*, where, among other things, there is a public monopoly on economic activity, it is not there are productive activities. The Holy See and Vatican City State also find themselves operating *in hoc mundo* like Italy and other states and remain subject to the same contingent concerns, including economic and financial ones<sup>21</sup>. Think of the decrease in revenues deriving from the temporary closure of the Vatican Museums,

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<sup>20</sup> A. De Oto, *The Republic of San Marino and the practice of worship in the Covid-19 era: between history, common law and emergency decrees*, 3<sup>rd</sup> April 2020, now in this volume.

<sup>21</sup> On relationship between Church and economy see M. d'Arienzo, *Chiesa ed economia*, in *Diritto e religioni*, 2009, 2, pp. 214-224.

whose sale of entrance tickets is one of the most important revenues for the State<sup>22</sup>.

### **5. Old and new bonds of solidarity between the Holy See, Vatican City State and Italy**

In other respects, the Covid-19 emergency has strengthened the bonds of solidarity between the Holy See, Vatican City State and Italy, ancient bonds that have always involved Italy and the Holy See in “mutual collaboration for the promotion of man and the good of the country”, as stated in the first article of the Agreement of Villa Madama. A first bond of solidarity is found precisely in the timely adaptation of the Italian legislation by the Vatican City State, however without formally transposing the Italian provisions, but on the basis of Vatican regulatory and administrative provisions in line with the Italian ones<sup>23</sup>. This solidarity has made it possible to avoid the creation – through the invocation of concepts such as sovereignty and independence – of the areas totally free from the common struggle against Covid-19 such that they cannot contain the spread of the epidemic. Other constraints of solidarity are found in some initiatives adopted by subjects and entities belonging to the Holy See. Think of the

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<sup>22</sup> See P. V. Aimone Braida, *Le finanze del Papa*, LEV, Città del Vaticano, 2016, pp. 212-214.

<sup>23</sup> N. Colaïanni, *La libertà di culto al tempo del coronavirus*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica ([www.statoechiese.it](http://www.statoechiese.it)), 2020, 7, p. 39, says that Pope Francis has spontaneously observed in Vatican City State Italian decrees [“Consapevole che il suo Stato è una *enclave* nel territorio italiano, non ha deciso indipendentemente le misure da adottare né ha imbastito intese con lo Stato ma ha applicato spontaneamente al suo interno decreti italiani”].

willingness manifested by the Administration of the Patrimony of the Apostolic See (APSA) and of the Congregation for the Evangelization of Peoples<sup>24</sup>, owners of the management of the properties of the Holy See, to accept requests for temporary reduction of commercial lease payments, in light of the situations of particular economic suffering that the tenants of properties located in Italy are facing, as a consequence of the measures issued by the Italian Authorities to stem the spread of Covid-19. Or think of the invitation made by Cardinal Konrad Krajewski, Almoner of His Holiness, to about 250 heads of dicasteries, secretaries and prelates, to donate a monthly salary, as a sign of union with the Holy Father, who will then decide the destination of the collected alms for the Covid-19 health emergency<sup>25</sup>.

Another sign of solidarity with Italy, expressed by the Holy See, was the display of flags at half-mast, in mourning, to express their closeness to the victims of the pandemic in Italy and in the world<sup>26</sup>.

## **6. Vatican City State and Covid-19 emergency between God and Pope Francis**

Finally, a consideration must be made about the confessional nature of the Vatican City State as a “Catholic State”.

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<sup>24</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 10<sup>th</sup> March 2020.

<sup>25</sup> See [here](#).

<sup>26</sup> Holy See Press Office, Bollettino, *Comunicato della Sala Stampa*, 31<sup>st</sup> March 2020.



In order to qualify the *Civitas Vaticana*, this expression indicates a state which, “in its political action and in its right, tends to conform to the teachings of the Church on temporal realities and their regiment. The values conveyed by these teachings certainly animate and support the Vatican order”<sup>27</sup>.

Contrary to one of the possible scenarios recently and rhetorically proposed for other states, namely “a West [which] will emerge from the emergency strengthened in its identity as a secularized space, in which the power of science counts most and where religion it survives only as subordinate and residual”<sup>28</sup>, for the Holy See and the Vatican City State, awareness of the role of the Catholic religion and other religions remains firm.

The Cardinal Major Penitentiary in the letter to the confessors said that “the social distancing required for health reasons, even if necessary, cannot, nor should ever translate into ecclesial distancing, let alone in theological-sacramental distancing” after specifying that “Mercy does not it stops and God does not distance itself”<sup>29</sup>.

Even in the Vatican City State, God does not remain on the edge of the scene.

And certainly Pope Francis, who is the absolute monarch of the Vatican State, is not at the margins of the scene, not at all resigned to the tragic situation that the world is experiencing, and

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<sup>27</sup> G. Dalla Torre, *Lezioni di diritto vaticano*, p. 55 (my translation).

<sup>28</sup> M. Ventura, *Dov'è Dio? Dio soffre con l'uomo. Il contagio sfida la fede*, conversazione con R. Dell'Oro, S. Dianich e C. Militello, in *La lettura, Corriere della Sera*, 22<sup>nd</sup> March 2020, pp. 8-9 (my translation).

<sup>29</sup> *Lettera del Card. Mauro Piacenza, Penitenziere Maggiore, ai penitenzieri e ai confessori in occasione della S. Pasqua 2020*, 4th April 2020, see [here](#) (my translation).

who – in the storm of his controversial pontificate<sup>30</sup> – thinks of his “current responsibilities and in the after that he will come”, to his “service as bishop of Rome, as head of the Church”, living the pandemic in the name of prayer and having as his greatest concern that of “accompanying the people of God and being closer to him”<sup>31</sup>.

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<sup>30</sup> See A. Mantineo e L.M. Guzzo (a cura di), *Il Papa venuto dalla “fine del mondo” per la Chiesa del terzo millennio*, CEDAM, Padova, 2020.

<sup>31</sup> See A. Ivereigh, *Il Papa confinato. Intervista a Papa Francesco*, in *La Civiltà Cattolica*, 8<sup>th</sup> April 2020, see [here](#).



## ANDORRA AND COVID-19. EXPLANARY NOTE\*

Antonello De Oto

The Co-Principality of Andorra – this is its official name – is a small member state of the UN and the Council of Europe whose very first traces can be traced back to 819 A.C. but which will see a real start only with the Arbitration Convention of 1278 A.C., confirmed the following year at the time of the pontificate of Pope Martin IV. A very ancient nation, nestled in the Pyrenees mountain range and bordering two major European states such as France and the Kingdom of Spain, a micro-State that covers a total of 462 square kilometers and is inhabited by about 90,000 people (of which only a third are Andorran natives). The two co-princes that jointly and indivisibly carry on the functions of Head of State are respectively the Bishop of Urgell and the President of the French Republic, a mixed secular-ecclesiastical diarchy that until the second half of the twentieth century governed with absolutist tradition of medieval derivation but which today, especially after the launch of the new Constitution in 1993, while maintaining the same form of State, has become a constitutional Co-Principality governed by a unicameral Parliament named Consell de 24. Andorra recognizes a special condition to the Catholic religion,

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maintaining diplomatic relations with the Holy See since 1975 and achieving in 2008 the signature of the Concordat. This document contains articles mainly concerning the status of the Bishop of Urgell, the legal status of the Catholic Church and canonical marriage in Andorra and the teaching of the Catholic religion in public schools. It should be noted that the Country elementary administrative unit is defined as a parish, testifying to the foundational interaction between the confessional system and the state system. Also, the regulations reported here<sup>1</sup>, on the subject of containment and contrast to the pandemic by Covid-19, refer to an elaboration of the normative texts that is affected by special prudence with regards to the regulation of the religious factor and the exercise of worship.

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<sup>1</sup> <https://diresomnet.files.wordpress.com/2020/04/decree-11-3-2020-coronavirus-andorra-1.pdf>;  
<https://diresomnet.files.wordpress.com/2020/04/decree-13-3-2020-coronavirus-andorra-1.pdf>;  
<https://diresomnet.files.wordpress.com/2020/04/decree-14-3-2020-coronavirus-andorra-1.pdf>;  
<https://diresomnet.files.wordpress.com/2020/04/decree-17-3-2020-coronavirus-andorra-1.pdf>;  
<https://diresomnet.files.wordpress.com/2020/04/decree-03.04.2020-coronavirus-andorra.pdf>;  
[https://diresomnet.files.wordpress.com/2020/04/mesures\\_excepcionals\\_i\\_urgents\\_per\\_la\\_situacio\\_emergencia\\_sanitaria1794.pdf](https://diresomnet.files.wordpress.com/2020/04/mesures_excepcionals_i_urgents_per_la_situacio_emergencia_sanitaria1794.pdf);

## RELIGIOUS LAW



## HYGIENE OF THE BODY AND OF THE SPIRIT\*

Luigi Mariano Guzzo

The Covid-19 epidemic also changes our manner of being in church. Besides the need to respect the safety distance of at least one meter during religious services, in line with the government provisions, Calabrian bishops (and not only they) adopt further measures, ranging from the presence of a hydroalcoholic solution at the entrance of the places of worship to the warning requiring to wash one's hands well, especially directed at priests, deacons, and ministers of the Eucharist. Within a religious community, these hygienic-sanitary indications, acquire a spiritual significance, which can be traced back to the ancient practices of personal purification, associated with the element of water. In general, as a religious act, purification marks the passage from the profane to the sacred, but also from a life of sin, of flesh, to a new life, of spirit; from what is impure to what is pure... Water has an expiatory meaning that underlies the idea of a moral and at the same time spiritual regeneration. Jewish wisdom, through Psalm 26, makes one sing: "I wash my hands in innocence and go around your altar." In the Christian revelation, water is itself a symbol of salvation: as John writes (19:34), blood and water flow out from the pierced side of

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Jesus after his death on the cross. Before the passion, during the last supper, it is Jesus again who indicates a new style, a ministry of service, by washing the feet of the apostles with water (Jn 13: 1-15).

It is interesting to observe that over the centuries the different practices of purification have also taken on health-related functions. In the sixth century, for example, Cassiodorus founds a monastic institution, the "Vivarium," on some coastal inlets washed by the Ionian Sea, and also uses these natural pools for therapeutic purposes. Even today, as it is well known, ablutions are performed by Muslims in preparation for prayer, according to the indications of the Koran: "O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows and wipe over your heads and wash your feet to the ankles. And if you are in a state of janabah, then purify yourselves" (Sura, 6). One may also think of the immersion in the sacred river Ganges prescribed to the Hindus.

Certainly, in Christianity, as health issues were progressively absorbed (and resolved) by the competences of the public authorities, ablutions became increasingly symbolic - starting with baptism, which is not, moreover, a baptism "with water" (as was that of John the Baptist) but in "Holy Spirit and fire" (Lk 3:20). In the Catholic liturgy there are other forms of purification - of people (the sprinkling of the faithful, or the washing of the priest's hands both after the prayer for the offerings and after the communion) and sacred objects (the purification of chalice and paten). These rites manifest the desire for a purification that is primarily interior. On the other hand, the Christian message goes beyond the simple ritualism of the gestures: the Pharisees and scribes marvel that Jesus' disciples "take food with impure hands, that is, unwashed"

hands (Mk 7: 2). But the large baggage of information that is preserved in religious traditions teaches that the hygiene of the body is closely connected to the hygiene of the spirit, and vice versa. In the time of the Covid-19 epidemic, this is a lesson to be kept in mind.



## **“NON IN PANE SOLO VIVET HOMO”. CATHOLICS IN FRONT OF COVID-19\***

Daniela Tarantino

“Non in pane solo vivet homo, sed in omni verbo quod procedit de ore Dei” (*Mt.* 4,4 and *Lk.* 4,4). So Jesus answered to the devil’s invitation to turn desert stones into bread, in order to satisfy the hunger that had come after 40 nights and 40 days of fasting; he meant that man lives not only on material nourishment, but above all on spiritual nourishment, especially when facing the desertification of existence and its precariousness. Never as in this time – which seems to flow more slowly in the deafening silence of deserted streets and empty churches, where the sound of sirens takes your breath away while your heart skips a beat – do the faithful deeply miss the proclamation of the “Word that saves” and the act of approaching the real presence of Christ in the sacrament of Eucharist. Never as in this situation is the need for the “Word of God” regarded by Catholics and by the Church as an anchor to cling to in order not to be completely overwhelmed by the tumultuous sea of uncertainty, restlessness, anguish, fear, despair and in order to have still hope of “rebirth”. Never as in these convulsive and ruthless days, in which science is divinized in the face of the Coronavirus emergency, do the faithful feel hunger, a longing not merely for food, but for peace to be found in the power

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of prayer, which is the way to “resist” the pandemic and to live the encounter with the transcendent dimension.

Epidemics have been a constant presence in the history of humanity, with a characteristic cyclical trend, to the point of influencing its growth and development<sup>1</sup>. The prayer, the recitation of the Holy Rosary, the act of turning to the patron saints of the great epidemics have helped the faithful feel less lonely and make them perceive the constant presence of Christ in every moment of history<sup>2</sup>. Popular faith has always turned to special protectors - from Saint Rita to Saint Roque, from Saint Michael the Archangel to Saint Antony abbot, from Saint Cristopher to Saint Sebastian – in order to prevent and fight diseases, by organizing prayers in public form, large processions, long pilgrimages<sup>3</sup>. In 1576, when the plague broke out in Milan, Saint Charles Borromeo opposed the magistrates of the city who wanted to forbid the processions and collective prayers of the faithful. In those dramatic moments, three large processions took place in the city center over three different days, led by the barefoot cardinal and archbishop of the city of Milan, whom the canonization decree defined as “un uomo che, mentre il mondo gli sorride con le maggiori blandizie, vive crocifisso al mondo, vive dello spirito, calpestando le cose terrene, cercando continuamente le celesti, emulo in terra, nei pensieri e

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<sup>1</sup> For further information on the topic see I. Meloncelli, F. Motta, S. Pirotta and G. Trezzi, *Quando le epidemie mietevano a piene mani: lazzaretti, croci devozionali e fopponi disseminati sul nostro territorio*, in *Storia in Martesana*, 11/2018.

<sup>2</sup> See A. Staglianò, *La forza delle nostre preghiere per «contrastare» l'epidemia*, in [www.avvenire.it](http://www.avvenire.it).

<sup>3</sup> See R. Maccioni, *I santi da invocare contro l'epidemia*, in [www.avvenire.it](http://www.avvenire.it).

nelle opere, della vita degli Angeli”<sup>4</sup>. A few years later, in 1630, the magistrates of Milan asked Cardinal Federico Borromeo, Charles’ cousin, to carry the body of Charles in a solemn procession through the streets of the city, in order to ward off the threat of the plague. The cardinal accepted the request, although he did not conceal his doubts about the usefulness of such a religious operation, both for reasons of security, related to the risk of increasing the infection, and for reasons of faith, related to the fear that the community might lose its faith in the saint in case of failure<sup>5</sup>.

Whereas Saint Charles Borromeo was convinced that everything was dependent on the great mercy of God, regarded as the beginning and the end of the plague<sup>6</sup>, today those – who say that the coronavirus could be a warning from God and compare it to the plague faced in the 16<sup>th</sup> Century or to the Spanish flu of the last century<sup>7</sup> – are faced with the position of Cardinal Angelo Scola,

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<sup>4</sup> See the the canonization bull *Unigenitus* (1<sup>st</sup> November 1610) issued by Paul V, published in R. de Mattei, *Come san Carlo Borromeo affrontò l’epidemia del suo tempo*, in [www.corrispondenzaromana.it](http://www.corrispondenzaromana.it).

<sup>5</sup> A. Staglianò, *La forza delle nostre preghiere*, quoted above.

<sup>6</sup> As he stated: “Città di Milano, la tua grandezza si alzava fino ai cieli, le tue ricchezze si estendevano fino ai confini dell’universo mondo [...] Ecco in un tratto dal Cielo che viene la pestilenza che è la mano di Dio, e in un tratto fu abbassata la tua superbia [...] Egli ha ferito e ha sanato; Egli ha flagellato e ha curato; Egli ha posto mano alla verga del castigo e ha offerto il bastone del sostegno”; C. Borromeo, *Memoriale al suo diletto popolo della città e diocesi di Milano*, Michele Tini, Roma, 1579, pp. 28-29 e p. 81.

<sup>7</sup> The Spanish flue in 1918 disrupted traditional religious rites, such as funeral and burial rites (“Per evitare assembramenti è proibito seguire i carri funebri col prete a bordo o far sostare i feretri in chiesa, laddove l’ufficio avviene senza il corpo del defunto [...] non più croci, non più preti, non più campane, dritti al cimitero senza passare dalla chiesa. Nell’ottobre del 1918 a Milano trasporti notturni di salme accatastate senza bara», as we can read in A. Guasco, *Vivere ai*

according to whom God, while knowing and predicting events, does not determine them. In an interview by Paolo Rodari published in the newspaper *La Repubblica*, the emeritus archbishop of Milan rejected the idea that there could be divine punishment behind the coronavirus, stating that “Dio vuole il nostro bene, ci ama e ci è vicino. Il rapporto con lui è da persona a persona, è un rapporto di libertà [...] Per i cristiani Dio comunica attraverso le circostanze e i rapporti. Anche da questa circostanza potrà emergere un bene per noi. Fra i tanti insegnamenti la necessità di imparare a stare nella paura portandola a un livello razionale”<sup>8</sup>. Cardinal Scola praises the initiatives taken to prevent the infection, although there has not been an unanimous consensus on the preventive suspension of civil and religious ceremonies, including

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*tempi della spagnola*, in [www.associazionepopolari.it](http://www.associazionepopolari.it). At that time, many believed that the contagion was a sort of new plague of Egypt or an apocalyptic punishment – in any case a divine punishment for the sins of the world. The same thing happens today as regards the coronavirus. Suffice it to mention Father Livio Fanzaga, director of Radio Maria, who claims that Covid-19 is a divine punishment, triggering the harsh reaction of Father Antonio Spadaro, director of *La Civiltà Cattolica*, who has tweeted as follows “Nel frattempo c’è povera gente alla quale lupi travestiti da pastori fa credere che la Madonna ha inviato il coronavirus per punire l’umanità. Mentre politici irresponsabili usano la paura del contagio per diffondere il consenso” (in F. Gnagni, *La Chiesa alla prova del coronavirus (che sbarca in Vaticano)*, in [www.formiche.net](http://www.formiche.net)).

<sup>8</sup> M. Bazzi, *Dietro il coronavirus non ci sono castighi divini*, in [www.ansa.it](http://www.ansa.it). The archbishop, aware of the possible spread of the contagion, has forbidden the gathering of people inside closed spaces, while organizing ‘continuous prayers’: “Sette volte durante il giorno e sette durante la notte, le campane invitavano il popolo alla preghiera e tutti, ovunque si trovassero, dovevano recitare litanie, salmi e invocare la misericordia divina. Carlo Borromeo era mosso anche da ragioni igieniche. Vietando era necessario organizzare messe in autentiche ‘chiese da campo’”; D. Crippa, *Quando la peste infuriava sulla Brianza*, in [www.ilgiorno.it](http://www.ilgiorno.it).

funeral ceremonies, throughout the national territory, enacted by the Italian Bishops' Conference (IBC) in the context of a relationship of collaboration and alignment to the measures of prevention, containment and contrast adopted by the State lawmaker<sup>9</sup>.

This suspension – along with the decision to remove blessed water from the stoups, to advise against the gatherings of the faithful, to remove the liturgical leaflets and the hymns, to receive Holy Communion only in the hand<sup>10</sup>, to recite the Angelus in streaming –has appeared to some not only as an unjustified restriction, but also the expression of a sort of “spiritual impermeability” of the Italian ecclesiastical authorities, who would allegedly renounce their mission<sup>11</sup>, without even attempting to try different solutions<sup>12</sup>.

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<sup>9</sup> Decreto “coronavirus”: la posizione della CEI, in [www.chiesacattolica.it](http://www.chiesacattolica.it).

<sup>10</sup> As Father Mauro Leonardi said: “Dei cristiani che sentono l’anelito al martirio volendo la Comunione in bocca se il vescovo dice di prenderla in mano, che vogliono abbracciarsi in una messa gremita di gente per scambiarsi il segno della pace, ricordino che martire è colui che offre la propria vita, non quella degli altri: quest’ultimo si chiama *kamikaze* che vuole uccidere stando in mezzo alla folla”; *Andare a messa durante un’epidemia*, in [www.agi.it](http://www.agi.it).

<sup>11</sup> It is Riccardo Cascioli, director of *La Nuova Bussola Quotidiana*, who has accused the bishops to behave, in this circumstance, as “health ministers”, providing health advice rather than “care” for souls (cfr. P. Floder Reitter, *Ora i vescovi si comportano come i ministri della Salute*, in *La Verità*, 9 marzo 2020, p. 13).

<sup>12</sup> Unlike IBC, the Catholic Church in Poland has decided to increase the number of masses so as to have fewer faithful in each celebration, while imposing the respect of a safety distance (see [here](#)). In Africa, religious and socio-cultural events have been canceled or postponed (see *Coronavirus: des événements religieux également annulés en Afrique*, at [www.cath.ch](http://www.cath.ch)). As happened in 2014 during the Ebola epidemic, religious ceremonies take place having regard to some specific precautions: buckets of water and bleach are placed at the entrance of the places of worship in order to guarantee minimum levels of hygiene; gatherings,



After the declaration of IBC's National Office for Social Communications of 9<sup>th</sup> March, which referred to an "authentic interpretation" of the government provisions as including not only extraordinary ceremonies, but also Sunday Masses, one may wonder whether the ease, with which the Italian Church has seemed to align itself with governmental provisions, may in some way set a dangerous precedent for the *libertas Ecclesiae*<sup>13</sup>. Immediately after the decisions taken by the Italian Church, Andrea Riccardi, the founder of the Community of Sant'Egidio – in a comment published in the newspaper *La Stampa* – said he was embittered by a choice grounded on fear and on the Church's flattening on the secular institutions<sup>14</sup>. This position is shared by the historian Alberto Melloni: in the newspaper *La Repubblica*, he

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pilgrimages and processions are prohibited, and so are the use of blessed water and the sign of peace during Mass; the Eucharist is received exclusively in the hand (see Coronavirus in Africa: the churches help do not close, in [www.radiomaria.it](http://www.radiomaria.it) and Guinea Bissau, the Church in the field against Ebola, in [www.lastampa.it](http://www.lastampa.it)). Likewise, the Russian Church – which invites to moderation, intensifies hygiene levels and disinfection practices and relies on common sense – allows full participation in the sacraments; see V. Rozanskij, *Russian Orthodox Church: alert on coronavirus, communion, kiss of the icon*, in [www.asianews.it](http://www.asianews.it).

<sup>13</sup> It has been maintained that the mission of the Church is independent of "the historical contingencies in which it lives: it, the Mystical Body of Christ, has been able in every age to conserve and dispense the means necessary for the salvation of the soul, not fearing those who can kill the body (cf. Mt. 10:28), but always and only loving the Just Crucified. Abdicating this mission means giving up its primary duty, the comfort and salvation of souls, in the name of an ambiguous and horizontal pseudo-pastoral option, which instead of alleviating the sufferings of the present hour aggravates them with an immanent, reckless, maddening emptiness much more serious and longer harmful to the soul and body"; F. Adernò, *La Messa è finita. La scandalosa rinuncia dei vescovi*, in [www.marcotosatti.com](http://www.marcotosatti.com).

<sup>14</sup> F. Gnagni, *La Chiesa alla prova del coronavirus*, quoted above.

has blamed the bishops for a “too much bureaucratic laziness”, stressing the need for a truly virtuous and credible clergy<sup>15</sup>. Likewise, Enzo Bianchi, the prior of the monastic community of Bose, has wondered on Twitter whether such drastic measures against the possibility to spread the contagion are truly supportive of those who suffer, who are afraid and who seek consolation<sup>16</sup>. On the same wave, in the newspaper *La Stampa* the historian Franco Cardini has remarked that, in the past, novenas and processions were organized during epidemics in order to invoke divine protection, while today churches are closed. According to him, “aver reciso il cordone con il sacro ha portato ad assolutizzare l’individuo e ciò spiega perché ci comportiamo da bambini sciocchi davanti al coronavirus”<sup>17</sup>. In the same way, with regard to the closure of the pools of Lourdes in order to protect the safety and health of pilgrims and of the working community of the sanctuary, the historian Roberto de Mattei has stated that: «Chi nega il carattere miracoloso dell’acqua di Lourdes, chi teme che le piscine di Lourdes possano produrre contagio, nega il potere di Dio, nega le promesse della Madonna, nega il significato di Lourdes»<sup>18</sup>.

Although the complexity of the circumstances can make the Church run the risk of confusing the faithful<sup>19</sup>, one can try to be a

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<sup>15</sup> *Ibidem*.

<sup>16</sup> *Ibidem*.

<sup>17</sup> “Un tempo contro le epidemie si pregava, oggi si chiudono le chiese”, in [www.lastampa.it](http://www.lastampa.it).

<sup>18</sup> F. Boezi, *Ecco perché le chiese non devono chiudere*, in [www.ilgiornale.it](http://www.ilgiornale.it).

<sup>19</sup> Suffice it to mention the Decree issued on 12<sup>th</sup> March by Cardinal De Donatis concerning the closure of all churches in Rome. The day after it was modified by the same cardinal, upon an intervention of the Pope, and the opening of the parish churches was authorized, on the grounds that «every ecclesial precautionary measure must take into account not only the common good of

“pilgrim” even without going to a sanctuary; one can be part of a community even from a distance; one can pray even without going to the Church. There are many passages in the Gospel which show how this way to relate to God is envisaged by Christ himself: “Perché dove sono due o tre riuniti nel mio nome, io sono in mezzo a loro” (*Mt.* 18,20); and also: “Tu invece, quando preghi, entra nella tua camera e, chiusa la porta, prega il Padre tuo nel segreto; e il Padre tuo, che vede nel segreto, ti ricompenserà” (*Mt.* 6,6). Although the forced limitation of diocesan events due to the health emergency does not allow to live the “public dimension of the faith”, the mystical prayer carried out in silence and in solitude continues to give comfort and is enriched, in the digital age, by a new form: this is the prayer made in “community”, where one is related to the other one even if at a distance and the link with the sacred is intensified; it is the prayer made “in connection”, “on the net”, where online groups that recall the importance of faith are organized. The IBC itself has launched a new digital platform containing news and reflections that help to live this difficult moment, giving the possibility to download texts – updated and enriched weekly – to “celebrate and pray in times of epidemic”. It is emphasized that the impossibility to carry out celebrations in the assembly context does not mean the impossibility to enter into communion with God<sup>20</sup>. The Holy Masses, in fact, continue to be

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the civil society, but also that unique and precious good that is faith»; *Decree of Cardinal Angelo De Donatis for the diocese of Rome*, available in [www.diresom.net](http://www.diresom.net).

<sup>20</sup> It is advised to use these texts along with the Liturgy of the Hours, which may be downloaded for free from the ad hoc app containing both the texts and the audio files; see CEI, *Sussidio per celebrare e pregare in tempo di epidemia*, in <https://chiciseparera.chiesacattolica.it>.

celebrated regularly without the convocation and participation of the assembly, and the Eucharistic Sacrifice continues “ad essere offerto per tutta la Chiesa, con la possibilità dei fedeli di unirsi spiritualmente nell’orazione e di sostare in adorazione dinnanzi al tabernacolo nelle chiese, che continueranno a rimanere aperte”<sup>21</sup>.

The bishop of Lecce, mons. Michele Seccia, has decided to compose and send a prayer to all the priests on the difficult moment we are going through. The prayer has been sent in paper and via the web to all the priests, who in turn are to spread it amongst the faithful of their own communities, along with the invitation to recite family prayers every day, in order to obtain the liberation from the virus through the intercession of the Virgin Mary and the patron saint Oronzo who, in the past, had already saved the city of Lecce from the plague<sup>22</sup>. Due to the emergency that the country is experiencing, the “Rinnovamento nello Spirito” has also launched a national campaign to pray the Holy Spirit, inviting everyone to pray the rosary in their own homes every Thursday, starting from 27 February, in the time slot that goes from 19 to 23, by placing a light next to the window, or on the balcony, or yet outside the door, so that the prayer “guarisca coloro che sono nella sofferenza, ispiri la scienza ai medici e la sapienza ai

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<sup>21</sup> “*Vuolsi pregare ma non tentare Iddio*”: la fede ai tempi del colera, in [www.breviuarum.eu](http://www.breviuarum.eu). The Italian Government and the Ministry of Health have confirmed the possibility for the faithful to attend a place of worship for individual prayer, regardless of the suspension of religious ceremonies, in [www.diresom.net](http://www.diresom.net).

<sup>22</sup> See *Coronavirus Covid-19: Lecce, mons. Seccia invia alle famiglie della diocesi una preghiera per la protezione dalle malattie*, in [www.agensir.it](http://www.agensir.it).

governanti, infonda coraggio a tutti coloro che sono nello sconforto e nella paura”<sup>23</sup>.

On 11<sup>th</sup> March Angelo De Donatis, the cardinal vicar for the Diocese of Rome, established a day of prayer, fasting and solidarity with the sick and with those working for them in Italy and in the world. Through the listening to the word of God and the rediscovery of what is essential in these days of desperate and anguishing silence, one is invited “a vivere con la forza della fede, la certezza della speranza, la gioia della carità, il gusto della preghiera”<sup>24</sup>. In fact, as the cardinal said, “si sperimenta la forza della preghiera quando siamo consapevoli delle nostre debolezze, delle nostre fragilità, del senso di smarrimento che avvertiamo davanti all’imprevisto e all’ignoto”<sup>25</sup>. This is the same reflection that can be found in the words of Julián Carrón, president of the Fraternity “Comunione e Liberazione”; in a letter sent to Luciano Fontana, director of the newspaper *Corriere della Sera*, he stressed that “il nemico con cui ci troviamo a combattere non è appena il coronavirus, ma la paura”<sup>26</sup>. This is a fear, which we are not always able to deal with rationally and against which it is not easy to develop antibodies<sup>27</sup>.

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<sup>23</sup> A. De Donatis, *Coronavirus Covid-19: RnS, al via da giovedì una Campagna di preghiera allo Spirito Santo*, in [www.agensir.it](http://www.agensir.it).

<sup>24</sup> *Ibidem*.

<sup>25</sup> *Coronavirus: una giornata di preghiera e digiuno per chiedere l'aiuto del Signore*, in [www.vaticannews.it](http://www.vaticannews.it).

<sup>26</sup> The text can be found in F. Gnagni, *La Chiesa alla prova del coronavirus*, quoted above.

<sup>27</sup> Suffice it to mention the young people ‘fleeing’ from the red areas of northern Italy to the more ‘reassuring’ Southern regions of Italy when the ‘closure’ of Lombardy was announced – a situation closely resembling Manzoni’s description: “Sono partiti prima della mezzanotte. Nonostante le grida che

In these weeks, the planetary interconnection makes us experience a paradoxical condition: the more connected we are, the more the contact becomes “contagion” and communication turns into “contamination”<sup>28</sup>. We find ourselves fragile, vulnerable, insecure, precarious, “human”; the boundaries that previously stretched beyond the horizon now shrink inexorably to the point of closing us within the domestic walls<sup>29</sup>. The “virus fear” accompanies a daily life where we struggle to glimpse a foreshortening of the future and are crushed by the weight of impotence. At this juncture, in which unprecedented scenarios are the background of our days, it is necessary, albeit not simple, to feel this experience not as a privation, but as an opportunity to discover new ways to relate to each other and between us and God<sup>30</sup>. Therefore the Church reiterates the following message to

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proibivano di lasciare la città e minacciavano le solite pene severissime, come la confisca delle case e di tutti i patrimoni, furono molti i nobili che fuggirono da Milano per andarsi a rifugiare nei loro possedimenti in campagna” (A. Manzoni, *I promessi sposi*, cap. XVI).

<sup>28</sup> See A. Spadaro, *La politica del coronavirus: attivare gli anticorpi cattolici*, in [www.avvenire.it](http://www.avvenire.it).

<sup>29</sup> “La preghiera”, Pope Francis tells us from the virtual pages of the online press, “ci fa capire la nostra vulnerabilità. È il grido dei poveri, di quelli che stanno affondando, che si sentono nel pericolo, soli. E in una situazione difficile, disperata, è importante sapere che c’è il Signore a cui aggrapparsi”; in [www.lastampa.it](http://www.lastampa.it).

<sup>30</sup> As stressed by Cardinal Peter Turkson, Prefect of the Department of Integral Human Development, God can be prayed «perché accresca la nostra fede, aiuti gli ammalati nella guarigione e sostenga gli operatori sanitari nella loro missione [...] imparando a non stigmatizzare il “malato” [...] a coltivare la “Sapienza del cuore” come atteggiamento di sa aprirsi alla sofferenza dei fratelli e riconosce in essi l’immagine di Dio [...]». Così, possiamo affermare, come Giobbe, ‘Io ero gli occhi per il cieco, ero i piedi per lo zoppo’”; P.K.A. Turkson, *Rafforzare solidarietà e amicizia nel tempo del coronavirus*, in [www.vaticannews.it](http://www.vaticannews.it).

its people: the absence of celebrations and liturgies can be a sign of pastoral responsibility and discernment, and not of giving up faith; all must comply with the envisaged rules of conduct to avoid the spread of the infection; the care for souls is the mission of priests, who must continue to accompany, support, assist and comfort the exhausted people of the faithful<sup>31</sup>; the word of God may also be listened to through a proclamation having a digital dimension; hope can have the voice of prayer, even of that made in solitude, although this is not a substitute for the sacrament of Holy Eucharist<sup>32</sup>. We remain in wait of an appropriate reflection and

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<sup>31</sup> In the *Angelus* of 15<sup>th</sup> March, Pope Francis addressed his thanks to the priests who, in these situations «pensano mille modi di essere vicino al popolo, perché il popolo non si senta abbandonato; sacerdoti con lo zelo apostolico, che hanno capito bene che in tempi di pandemia non si deve fare il “don Abbondio”» (Francesco, *Angelus*, 15 marzo 2020, in [www.vatican.va](http://www.vatican.va). The Press Office of the Holy See communicated that the Pope visited the Basilica of Santa Maria Maggiore in the afternoon of the same day, “per rivolgere una preghiera alla Vergine, *Salus populi Romani* [...] facendo un tratto di Via del Corso a piedi, come in pellegrinaggio, il Santo Padre ha raggiunto la chiesa di San Marcello al Corso, dove si trova il Crocifisso miracoloso che nel 1522 venne portato in processione per i quartieri della città perché finisse la ‘Grande Peste’ a Roma. Con la sua preghiera, il Santo Padre ha invocato la fine della pandemia che colpisce l’Italia e il mondo, implorato la guarigione per i tanti malati, ricordato le tante vittime di questi giorni, e chiesto che i loro familiari e amici trovino consolazione e conforto”; M. Bruni, *Francesco: a Santa Maria Maggiore e San Marcello al Corso per “invocare la fine della pandemia che colpisce l’Italia e il mondo”*, in [www.agensir.it](http://www.agensir.it).

<sup>32</sup> At this regard, after the *Angelus* of 15<sup>th</sup> March, the Pontiff stated that: “In questa situazione di pandemia, nella quale ci troviamo a vivere più o meno isolati, siamo invitati a riscoprire e approfondire il valore della comunione che unisce tutti i membri della Chiesa. Uniti a Cristo non siamo mai soli, ma formiamo un unico Corpo, di cui Lui è il Capo. È un’unione che si alimenta con la preghiera, e anche con la comunione spirituale all’Eucaristia, una pratica molto raccomandata quando non è possibile ricevere il Sacramento” (*ibidem*).

solution provided soon by the pontifical magisterium to the problem of the Eucharistic fast that we are experiencing.





## “MERCY IS WHAT PLEASES ME, NOT SACRIFICE”: LITURGIES, IN PANDEMIC, NOT RITES\*

Francesca Oliosi

On Friday 27 March 2020 millions of people around the world attended the special moment of prayer with [Pope Francis](#). The apocalyptic images of Piazza San Pietro, empty and shiny from the rain, will go down in history as the symbol of the relationship between faith, religious freedom and the pandemic from Covid-19.

In the most important week of the entire liturgical year, the Church has celebrated the Easter Triduum for the first time without the presence of lay people. Physical absence, but virtual presence of people: from their homes, from hospice for the elderly, from hospitals all over the world, the *people of God* concelebrated the entire triduum, in new, unprecedented, contingent, but still valid ways.

It is not the defeat of the faith nor the “outgoing church”, nor an unbrave choice: exactly the opposite. If there is one thing that this emergency is clearly highlighting, it is the very essence of who is Mother to the *Christifideles*, the Church, and who is their guide and Pontifex, Pope Francis.

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The health emergency highlights some aspects of the Church's legal order often left in the shadows or forgotten.

The first is the image of this man who alone filled the square symbol of Christianity (and usually full of faithful), reminding us that the essence of the Petrine ministry is to be a “bridge builder” (just *ponti-fex*) between God and the His people<sup>1</sup>.

The second is the true nature of the Church. As postulated by the Vatican Council II<sup>2</sup>, it is made up of a people on the move. The distinction between lay and ordained has lost its initial relevance to give way to a concept founding the entire codification of 1983: the *populo Dei*.

A universal people united by faith, God and participation in divine life through sacramental action, a people characterized by substantial equality but functional diversity.

The words of Vatican Council II are actual, almost prophetic: “In the Church there is diversity of ministry, but unity of mission”<sup>3</sup>.

Each *Christifideles* in his ministry (and in his vocation) can or, *rectius*, must contribute to achieve the third fundamental aspect of ecclesiology and which is emerging in its true essence of *suprema lex* (can. 1752): the *salus animarum* which, as the Code says, must always be the supreme law in the Church.

The aim of the salvation of souls gives all other laws a particular character of elasticity, becoming a guiding criterion which, unlike secular systems, allows to change the law to serve the soul and therefore also adapt to changing circumstances.

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<sup>1</sup> Pope Francis is also *defensor urbis*, as remembers [Alessandro Ferrari](#).

<sup>2</sup> In particular the dogmatic Constitution *Lumen Gentium*.

<sup>3</sup> Cfr. *Lumen Gentium* ns. 13, 32.

Examples of this particular elasticity are The [“In Covid Time II” Decree of the Congregation for Divine Worship](#) and the Discipline of the Sacraments and the [Decree of the Apostolic Penitentiary](#) on the granting of special indulgences to the believers in the current pandemic situation.

The first outlines the physiognomy (also liturgical and ritual) of Holy Week at the time of the pandemic, the second offers the possibility of obtaining plenary indulgence to the faithful coronavirus patients, as well as to health workers, family members and all those who in any capacity even with prayer, take care of it.

In a few days (the decree of the Penitentiary goes back to March 20; that of the Congregation for Worship at 23 and the Pope’s *Urbi et Orbi* blessing at 26) the Church has put first the health of the body and soul of the believers, reaffirming the importance of the internal forum and domestic celebrations, and sharing the celebrations in new ways (also in the multimedia sense of the term).

In this way, the Church has even exceeded the limits of traditional liturgical forms and administration of the sacraments, activating the extraordinary ones that allow it to carry out the work of sanctification (the *munus sanctificandi*) so as not to leave the faithful “alone and afraid in the storm”.

For the Catholic Church, Lent is excellence *tempus ieiunii et poenitentiae*, for this reason the extraordinary indulgence granted by the decree of the Apostolic Penitentiary to those who are in any measure involved in the Coronavirus emergency and extended by Pope Francis *toto corde et urbi et orbi* on 26th March takes on symbolic importance.

The time of the year devoted to repentance and forgiveness as a preparation for Easter remained unchanged despite the pandemic, thanks to the adoption of extraordinary forms: “collective absolution”, that is of the most faithful together, “without individual confession before”, authorized by the note of the Apostolic Penitentiary and consolidated with the decree *ex auctoritate Summi Pontificis*, which also granted the plenary indulgence.

All this confirms the main characteristic of this papacy, which with the extraordinary Jubilee of Mercy had already underlined a fundamental point of Christianity. Once again the Pope invokes the Mercy of God and continues to do it even now, even alone, in a deserted square like the world, which looks up in the storm. An *Urbi et Orbi* Mercy, which overcomes the rigor of the rite and goes straight to the heart of humanity.

## **“I ABSOLVE YOU”. THE PRIEST AS MEDICUS ANIMARUM AT THE TIME OF THE COVID-19\***

Daniela Tarantino

This year's period of Lent, among the tribulations that have marked it, has also been characterized by the impossibility to participate in the liturgy and the sacraments, making the situation even more difficult for believers. The Catholic Church has reacted by accommodating certain rules on the carrying out of its *munera* to take care of *salus animarum*, the supreme law of the Church, also with reference to the sacrament of Reconciliation. Can. 960 of *Codex Iuris Canonici* provides that individual confession is ordinarily carried out, although collective absolution is foreseen as an exception in the event of imminent danger of death (Can. 961 § 1 CIC), or of grave necessity (Can. 961 § 1, 2 CIC). The competence to decide, in case these exceptions occur, belongs to the diocesan Bishop, according to criteria agreed on with the other members of the Italian Bishops' Conference (Can. 455 § 2 CIC). In any case, the validity of absolution remains subordinate to the *votum sacramenti*, that is, the engagement that the penitent must make to confess, as soon as possible, the individual serious sins which, for the mentioned reasons, he or she was unable to confess (Can. 962

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§ 1 CIC). In case of necessity, according to an ancient medieval tradition, the individual priest can still impart the general sacramental acquittal, notifying in advance the diocesan bishop or in any case informing him as soon as possible (see *Ordo Paenitentiae*, no. 32)<sup>1</sup>. The Apostolic Penitentiary, with a Note dated 20<sup>th</sup> March 2020, specified that «especially the places most affected by the pandemic infection, and until the phenomenon does not return under control, fall in the cases of serious need, to which the aforementioned Can. 961 § 2 CIC applies». On 19<sup>th</sup> March 2020 the Penitentiary had already issued a decree *ex auctoritate Summi Pontificis*, by virtue of which it granted «the gift of special Indulgences to the faithful affected by the Covid-19 disease, commonly known as “Coronavirus”, as well as to health workers, family members and all those who, under any title, even with

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<sup>1</sup> The modalities of administration of the sacrament of confession have evolved over time. In the early Church only public, unique and unrepeatable penance was practiced. As early as the fourth century, it began to give way to other forms as (see E. Mazza, *La celebrazione della penitenza. Spiritualità e pastorale*, EDB, Bologna, 2001, pp. 11-37 and O. Condorelli, *Dalla penitenza pubblica alla penitenza privata, tra Occidente Latino e Oriente Bizantino: percorsi e concezioni a confronto*, in *Lex Iustitia Veritas. Per Gaetano Lo Castro. Omaggio degli allievi*, Jovene, Napoli, 2012, p. 131 ss.). Approximately in the sixth century the practice of the so-called Celtic penance was administered on the basis of the first penitential books (see B. Ferme, *Introduzione alla storia del diritto canonico. I. Il diritto fino al Decretum di Graziano*, Pontificia Università Lateranense, Roma, 1998, pp. 108-194 and L. Musselli, *Chiesa e società politica dalla fine del mondo antico alla “Renovatio Imperii”*, in *La Chiesa e l'Europa*, edited by G. Leziroli, Pellegrini Editore, Cosenza, 2007, pp. 11-19). This insisted more on the vindictive rather than medicinal aspect of penance. This practice officially imposed itself throughout the Church from the thirteenth century, also featuring some additional peculiarities such as repeatability, secrecy (not only of sins but also of the penitent), satisfaction of punishment (see A. Grillo, *Il Rito della Penitenza e la guarigione dal peccato. La terminologia del IV sacramento e il suo rapporto con l'iniziazione cristiana*, in *Vita monastica*, LVII/2003, n. 224, pp. 16-52).

prayer, take care of them». The Note has remembered how «Even in the time of Covid-19, the sacrament of Reconciliation is administered in accordance with the universal canon law and in accordance with the provisions of the *Ordo Paenitentiae*».

In this regard, during the homily of the Mass in Santa Marta on Friday 20 March, recalling the richness of the tradition and remembering that there is always a way for God's mercy that is open to all, Pope Francis said that, in the impossibility to find a priest for the confession, one can “speak” sincerely with God, entrusting him with pains, afflictions, sins, asking for his forgiveness with contrition, because with «a well-done Act of Pain, our soul will become as white as snow». This position is also present in numbers 1451 and 1452 of the Catechism of the Catholic Church which, in the wake of the Tridentine Council<sup>2</sup>, teaches that in the impossibility to receive sacramental absolution, the “perfect contrition” – expressed by a sincere request for forgiveness from the penitent, as he or she is able to express it and accompanied by the *votum confessionis* – results in the forgiveness of, even mortal, sins.

The “serious need” determined by the current pandemic requires the search for exceptional forms to carry out the confession, different from the ordinary ones experienced so far. For example, Mgr. Reinaldo Nann, Peruvian bishop of the Prelature of Caravelí authorized the priests to make confessions by

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<sup>2</sup> The Council of Trent emphasized the importance of absolution as a judicial act, emphasizing a conception of sin as transgression of a divine law and subjecting the ecclesiological dimension of reconciliation to the priestly power to absolve or condemn. Thus, the judicial function of the confessor prevailed over the medicinal one (cf. D. Tarantino, *Il sigillum confessionis: dalla tutela dell'intimità alla realizzazione della metanoia*, in *Diritto e religioni*, 2/2016, pp. 58-87).



telephone, accentuating the medicinal aspect of the sacrament and attributing to the confessor the role of *medicus animarum*<sup>3</sup> before that of *index peccatorum*.

The image of the confessor as a physician of souls is also present in the *Codex Iuris Canonici* of 1917 (Can. 888 § 1), in the *Ordo Penitentiae* of 1974 - issued on the basis of conciliar ecclesiology (no. 10 a, c) - and in the current Latin and Eastern Codes<sup>4</sup>. Moreover, the Catechism of the Catholic Church also defines penance - together with the anointing of the sick - as a healing sacrament, recalling in turn the image of the medical priest of souls<sup>5</sup>.

This does not mean that the role of the priest is associated to that of the psychologist, nor that the medicinal function of confession should be confused with psychotherapeutic remedies<sup>6</sup>.

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<sup>3</sup> In St. Luke's Gospel we read: «et respondens Iesus dixit ad illos: non egent qui sani sunt medico sed qui male habent. Non veni vocare iustos sed peccatores in paenitentiam» (Lc., 5, 31 s). On this issue see D. Tarantino, *Dalla riconciliazione alla guarigione. Alcune riflessioni sulla confessione come cura animarum nella teologia morale e nel diritto canonico*, in [www.statoechiese.it](http://www.statoechiese.it), n. 9/2017, pp. 1-18.

<sup>4</sup> According to Can. 978 CIC: «Meminerit sacerdos in audiendis confessionibus se iudicis pariter et medici personam sustinere ac divina ei iustitiae simul et misericordiae ministerium a Deo constitutum esse, ut honori divino et animarum saluti consulat»; according to Can. 732 CCEO: «Pro qualitate, gravitate et numero peccatorum, habita ratione paenitentis condicionis nec non eiusdem ad conversionem dispositionis, confessarius convenientem morbo afferat medicinam opportuna opera paenitentiae imponens».

<sup>5</sup> «The Lord Jesus, doctor of our souls and of our bodies, the one who forgave the sins of the paralytic and made him health of the body, wanted the Church to continue, in the power of the Holy Spirit, her healing work and of salvation, even among one's members. It is the purpose of the two sacraments of healing: the sacrament of Penance and the Anointing of the Sick "(CCC 1421).

<sup>6</sup> As John Paul II said in his [\*Discorso del 27 marzo 1993 alla Penitenziaria Apostolica. In another speech\*](#) to the same dicastery, he specified that «the priest, minister of the sacrament of penance, must model himself, in this sublime and vital task, on Jesus, teacher of truth, physician of souls».

The priest is *medicus animarum* as a minister of divine mercy. For this reason, the use of digital tools for the administration of reconciliation, which at first glance might appear extravagant or even impractical, do nothing but bring to the attention the opportunity to use instruments that can make effective the administration of a sacrament otherwise impossible. In a sense, it is a way to take advantage of ways of administering a therapy that were once unthinkable, while today they are within everyone's reach.

A recurring objection to the use of technological tools, which allow distance confession, consists in the lack of security of the inviolability of the sacramental seal, given the potential interception of the conversation by third parties or the presence of other people in the place from which the penitent speaks. In this regard, it is useful to remember that Canon Law already envisages hypotheses of intervention by third persons in the context of an individual confession - such as the interpreter, for example - and that it does not prescribe under penalty of invalidity that the sacrament must be celebrated in places inaccessible to others. This shows that the guarantee of secrecy does not constitute a condition of inadmissibility or invalidity of the sacrament. Furthermore, unlike the 1917 Code which did not distinguish between seal and secret (see Can. 889 §§ 1- 2), the current Code expressly refers to sealing only as regards the confessor (see Can. 983 § 1), while it uses the term 'secret' when referring to any interpreters and anyone who has come to know the content of the confession (see Can. 983 § 2)<sup>7</sup>. This is meant precisely to distinguish the role of the

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<sup>7</sup> The matter of the sacramental seal and that of sacramental secret are the same, what changes is the area in which they apply: the sacral area of the absolution of sins in the former case, the area of natural secret and Canon Law in the latter

confessor from that of others who might listen to the conversation, and to safeguard the medicinal function attributed to the minister, who acts *in persona Christi*, as *medicus animarum par excellence*.

In this historical moment, characterized by the importance of the work done by the doctors of the “body” to treat the sick and contain the contagion, it seems even more appropriate to enhance the importance of the work of the doctors of the souls, by providing them with the appropriate tools to carry out their sacramental reconciliation ministry. And it is at this juncture that Canon Law can offer practical solutions<sup>8</sup>, which are useful to overcome the difficulties of material and spiritual life, so that the Church can manifest itself not only as an institution, but also as «freedom of the Spirit ... That doesn’t mean that canon law is not important: it is, it helps, and please let’s make good use of it, it is for our good ... (because) the whole of canon law is for the salvation of souls»<sup>9</sup>. As «the difficulties of the moment have stimulated the creativity and inventiveness of many priests, who – by using the new means of communication – make themselves present in the life of communities and families locked up in houses of semi-deserted cities»<sup>10</sup>, the same technological and digital means of interconnection can now play an important role in curing souls, so that «this evil will not harm our trust in the Father and solidarity

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case (on this issue, see P. Ferrari Da Passano, *Il segreto confessionale*, in *La Civiltà Cattolica*, vol. IV, 1993, pp. 361-362).

<sup>8</sup> On this issue, see P. Consorti, [\*Relazione di sintesi: la necessità di tornare a un diritto canonico pratico, DE 2016\*](#).

<sup>9</sup> Francesco, in Austen Ivereigh, [\*Pope Francis says pandemic can be “a place of conversion”\*](#)

<sup>10</sup> A. Tornielli, *Introduzione*, in [\*Forti nella tribolazione. La comunione della Chiesa sostegno nel tempo della prova\*](#).

between us, but will become an opportunity to look at what is truly essential for our lives»<sup>11</sup>.

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<sup>11</sup> *Ivi*, p. 6.



# DOES THE COVID-19 PANDEMIC AUTHORIZE THE DEROGATION FROM THE CANONICAL RULE OF ABSOLUTION NECESSARILY PRECEDED BY INDIVIDUAL CONFESSION? (CANON 961 CIC)\*

Stefano Testa Bappenheim

In this period there is a very serious state of global emergency worldwide and also at the extra-ecclesial level as explicitly repeated [several times](#) by Pope Francis, who in the *Angelus* on 22<sup>nd</sup> March raised the alarm: “In these trying days, while humanity trembles due to the threat of the pandemic, I would like to propose to all Christians that together we lift our voices towards Heaven. I invite all the Heads of the Churches and the leaders of every Christian community, together with all Christian of the various confessions, to invoke the Almighty, the omnipotent God”<sup>1</sup>, and he

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\* Submitted: April 8<sup>th</sup> 2020. Published: April 22<sup>nd</sup> 2020. For ITA version [click here](#).

<sup>1</sup> Francesco, [Angelus](#), march 22<sup>nd</sup>, 2020.

underscored the extraordinary dangerousness of the situation in the ‘Extraordinary [moment of prayer](#), and so it appears especially significant and relevant that the [Note from the Apostolic Penitentiary on the Sacrament of Reconciliation in the current pandemic](#) was issued last March 20<sup>th</sup> with which it *alio modo dicto* (stated in a different way) declared it to be ‘Defcon-2’.

Last March 20th, the Apostolic Penitentiary issued a note in which it *ea ipsa* declared to have considered the hypotheses established by Canon 961, § 1, n. 2, to give absolution in general form to a number of penitents together, without their prior individual confession. In fact, it underscores the “*gravis necessitas*” that authorizes diocesan bishops (*ex Can. 961 § 2*) to use the special faculties provided for pursuant to *Can. 961 § 1*.

Indeed, *Can. 960* foresees that individual and integral confession constitutes the only *ordinary* means to receive absolution from a priest. The general absolution is only foreseen by the Codex for absolute emergency situations of a general nature, and this is the case envisaged by *Can. 961, § 1, at No. 2* (the “*gravis necessitas*” (grave necessity), to which the Signatura refers), or of a personal nature, provided for in *No. 1* (*‘periculum mortis’* (danger of death).

Canon 961, § 2, therefore, refers the decision back to the diocesan bishops, in which two lines of thought can be identified: on the one hand, in fact, there were many bishops and archbishops who made use of this faculty by declaring the state of total global general emergency, and by granting the priests the power to administer the general absolution, and it appears worth noting that it is a matter of circumstances that are not geographically circumscribed: by making a non-exhaustive overview (also because the list is being constantly updated), we can recall: in Italy, the Archbishop of Arezzo (S. E. [mons. Fontana](#)), and the Bishop of San Marino<sup>2</sup>; in Scotland, the Bishop of Motherwell<sup>3</sup>; in the United States, the Bishops of Albany (NY)<sup>4</sup>, Pittsburgh (PA)<sup>5</sup>, Fort Worth (TX)<sup>6</sup>, Lexington (KY)<sup>7</sup>, the Archbishops of Santa Fe (NM)<sup>8</sup>, Cincinnati (OH)<sup>9</sup>; in Japan, the Archbishop of Tokyo<sup>10</sup>; in the Holy Land, the Apostolic Administrator<sup>11</sup>; in Mexico, the Archbishop of Chihuahua<sup>12</sup> and that of Puebla<sup>13</sup>, the Apostolic Administrator (and Bishop emeritus) of Querétaro<sup>14</sup>, the Bishop of Texcoco<sup>15</sup>; in Nicaragua, the Cardinal Archbishop of Managua<sup>16</sup> and the Bishop of Granada<sup>17</sup>; in Malaysia, the Archbishop of Kota Kinabalu<sup>18</sup> and the Bishops of Malacca Johore<sup>19</sup> and of Penang<sup>20</sup>.

Then there are at least (so far) three Episcopal Conferences which have collegially not only defined the general criteria,

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<sup>2</sup> S.E. Mons. Turazzi, *[I sacerdoti assistenti religiosi presso le strutture, i presidi ospedalieri e le case di Cura.](#)*

<sup>3</sup> S.E. Mons. Toal: “I give all celebrants permission to celebrate the 3rd Form of the Rite of Reconciliation – General Absolution. This can only be used in exceptional circumstances, which is clearly the case at present. I recognise also that those who attend Daily Mass would probably wish to go to Confession before Easter, and that will be difficult in the weeks ahead. By celebrating the Sacrament in this way, they are receiving the consolation of the Lord’s mercy and forgiveness as they face this prolonged period without Mass and Holy



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Communion. If someone present at Mass tomorrow is living with grave sin they are still required to make an individual confession as soon as possible. I ask priests to carry out this instruction and to explain to the faithful the reason for celebrating the sacrament in this way. I recommend that a reasonable amount of time is allowed for people to examine their conscience and express their sorrow communally before the absolution and to joyfully pray the Gloria in thanksgiving for the Lord's forgiveness"; see [here](#).

<sup>4</sup> S.E. Mons. Scharfenberger: "As of March 22, beginning at 8 pm, we will be in a situation of 'grave necessity' with respect to the granting of permission for general absolution in certain cases. This is due to the Order of Governor Cuomo (03.20.20), which means it is not possible for people to celebrate individual confession/reconciliation. *Therefore*, priests may give general absolution in *certain* cases. Please contact either of the Vicars General [...] to see whether the conditions are in place for the giving of general absolution, and only then to receive the necessary mandate by the Vicar General. As is always the case, if you must give general absolution immediately due to some unforeseen and urgent situation (that is before checking with either of the Vicars General), you must notify one of them as soon as possible after the absolution has been given. It should be remembered that serious sins that could not be confessed at the granting of general absolution should be confessed in due time"; see [here](#).

<sup>5</sup> S.E. Mons. Zubik: "*Therefore*, in hospitals, nursing homes and other healthcare facilities, *where* a priest is not allowed to personally interact with patients or staff due to COVID-19 restrictions, he may grant general absolution. The faithful are to know that he is offering absolution and his voice should be able to be heard by those receiving absolution, this could be over a PA system or by some other means. If a priest imparts general absolution, he is to inform penitents of the need to confess serious sins at the earliest possible moment"; see [here](#).

<sup>6</sup> S.E. Mons. Olson: "1. Apart from immediate danger of death, authorization of general confession and absolution according to the prescript of canon 961 § 1, 2°, is restricted to celebrations within hospitals and nursing homes including residents, staff and all workers present. General absolution remains forbidden *elsewhere* in the diocese"; see [here](#). Again: "In the time since promulgating that instruction [*the aforementioned one*], I have received pious and zealous requests from the clergy of the diocese to extend that authorization for general absolution beyond hospitals and nursing homes to also include all jails, prisons and detention centers located within the territory. I am pleased to grant these requests *motu proprio*, and do *hereby* judge that the same onerous conditions of grave necessity laid out in canon 961 § 1, 2°, also apply to the incarcerated and detained within the diocese for the duration of the state of emergency on account of the COVID-19 pandemic. Furthermore, I decree that the diocesan

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norms laid out in the aforementioned instruction are to be likewise interpreted and diligently applied in the granting of general absolution not only for all residents, staff, and workers present inside hospitals and nursing homes within the territory, but also for similar such persons within all jails, prisons, and detention centers as well, without prejudice to the prescripts of universal and particular law as well as those liturgical adaptations already in force throughout the diocese”; see [here](#); see also P.L. Consorti, *L’assistenza religiosa ai carcerati*, in AGFS, 1988, pp. 39 ss.; ID., *Alcuni cenni sulle origini della pena carceraria secondo il diritto canonico e civile*, in DE, 1986, pp. 354 ss.; J.I. Arrieta, *La asistencia religiosa, particular referencia a los centros de especial sujeción: fuerzas armadas, centros de detención y centros sanitarios*, in AA.VV., *La Libertad religiosa. Memoria del IX Congreso internacional de Derecho Canónico*, México, 1996, pp. 219 ss.

<sup>7</sup> S.E. Mons. Stowe: “If conditions become such that a number of patients in the same hospital ward or a place functioning as a hospital ward are in need of absolution, general absolution could be offered to them with a simple explanation by the priests of how the penitents are to participate: ideally with a brief passage from Scripture, an act of penance and the formula of general absolution. In necessity, only the formula of absolution is necessary. Every priest with faculties in the Diocese of Lexington has my authorization to use general absolution in the circumstances described above”; see [here](#).

<sup>8</sup> S.E. Mons. Wester: “2) General Absolution: In case of sudden need to impart absolution to several faithful together due to: 1) imminent danger of death; 2) insufficient time to hear individual confessions; 3) grave necessity, priests are to: a. Inform the Archbishop if possible. If imparted due to insufficient time or ability to inform the Archbishop beforehand, do so as soon as possible; b. Accompany the general absolution with a reminder that they are obliged to seek individual sacramental confession as soon as possible if they are able and the sacrament is available. I emphasize that general absolution should be imparted only in those cases *where* the current pandemic and/or the imminent danger of death make it is necessary. This would include, but is not limited to, circumstances *where* the priest cannot enter a ward with dying COVID-19 patients or even with those who will hopefully recover but would be comforted by the absolution of their sins”; see [here](#).

<sup>9</sup> S.E. Mons. Schnurr: “However, at this time, Archbishop Schnurr has authorized priests to use general absolution CF: confer the Rite of Reconciliation of Several Penitents with General Confession and Absolution in ONLY the following situation: 1) A hospital ward, 2) In which *there* is danger of death, 3) And individual confessions are deemed impossible, 4) And the penitents are instructed that they are to confess their sins individually when they next have the opportunity”; see [here](#).

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<sup>10</sup> S.E. Mons. Kikuchi: “General absolution refers to imparting collective absolution, without prior individual confession, *where there* is ‘grave necessity’, such as an imminent danger of death. The Apostolic Penitentiary believes that a case of ‘grave necessity’ has already occurred, especially in places most affected by the pandemic contagion, at this present situation until it subsides. However, general absolution to every person each time will not be imparted individually, and will only be applicable for occasions when *there* are several faithful seeking the Sacrament of Reconciliation, all of whom ‘resolve to confess serious sins in due time, which at that time could not be confessed’ (Can. 962, §1) when the situation normalizes. Each parish may respond differently according to the needs of the situation. However, I have granted permission, on this occasion, to all the parish priests of the Tokyo Archdiocese to provide opportunities to impart general absolution”; see [here](#).

<sup>11</sup> S.E. Mons. Pizzaballa: “Negli ospizi per anziani, negli ospedali e nelle case di accoglienza per disabili o di altro genere, dove comunque sono raccolte diverse persone in stato di necessità, è possibile dare assoluzioni collettive, come prescritto dal Codice di Diritto Canonico (961§2). I sacerdoti rileggano il rito del sacramento nella parte che riguarda questa possibilità, senza inventare nulla di nuovo o di diverso”; see [here](#).

<sup>12</sup> S.E. Mons. Weckmann: “6. Autorizo a los Sacerdotes dar la Absolución General al terminar la Misa Dominical del 22 de Marzo (que es mañana), a los Fieles que estén en posibilidad de recibirla”; see [here](#).

<sup>13</sup> S.E. Mons. Sánchez Espinosa: “confiero a todos los sacerdotes de la Arquidiócesis de Puebla de los Ángeles (diocesanos y religiosos), la facultad de administrar la ABSOLUCIÓN GENERAL, únicamente durante el tiempo de la contingencia sanitaria con motivo de la presencia de coronavirus”; see [here](#).

<sup>14</sup> S.E. Mons. Gasperín: “c) Nuestra situación. Durante el tiempo que dure el Covid-19 podrá impartirse la absolución general en los casos de aglomeración de enfermos, por ejemplo en los hospitales o casas de asistencia, hogares concurridos en cuarentena, o cuando la absolución individual no sea humanamente posible, procurando que los enfermos puedan escuchar las palabras de la absolución. [...]”

e) Posibilidad. Cuando no sea posible observar estas precauciones y haya sido solicitado el sacramento de la reconciliación, procédase a impartirlo con absolución general. Estos casos pueden presentarse durante todo el tiempo que dure la emergencia sanitaria. Donde felizmente y con certeza no exista la pandemia, ni peligro de contagio, se observará la práctica acostumbrada;

f) Derecho permanente pero limitado. Por tanto, permanece el derecho de los fieles de pedir la reconciliación individual, pero está limitado por la gravedad de las circunstancias. Durante la pandemia la administración del sacramento de la

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reconciliación por medio de la absolución general, es enteramente legítima. Deben observarse las cautelas arriba anotadas, especialmente la absoluta guarda del sigilo de la confesión y la debida reserva. La Iglesia administra los sacramentos en el contexto de la caridad pastoral del celebrante y de la petición razonable de los fieles.

5°. Validez de la absolución general. Para la validez de la absolución general, es decir, para obtener la gracia del perdón de los pecados, veniales o mortales, se necesitan los siguientes requisitos indispensables de parte del penitente: La debida disposición y el propósito de confesar los pecados graves aquí perdonados, en la próxima confesión individual tan pronto como sea posible, “de no interponerse causa justa” (Cf c. 963). En nuestro caso, es posible que, para algunas personas, esto sólo sea realizable hasta el término de la pandemia. Todo perdón de los pecados pasa por manos de la santa Iglesia y el corazón de su esposo y cabeza, Jesucristo”; see [here](#).

<sup>15</sup> S.E. Mons. Sancilla Sánchez: “Los sacerdotes, al tenor del Derecho Canónico, den a los fieles la absolución general sin confesión individual, en las fechas programadas de confesiones cuaresmales en cada decanato”; see [here](#).

<sup>16</sup> S. Em.za Card. José: “Sobre el Sacramento de la Reconciliación: autorizo al clero en la Arquidiócesis aplicar la absolución general prevista en las disposiciones de la Penitenciaría Apostólica, recordando a los fieles que la reciben la obligación de acercarse a la confesión individual concluida esta situación especial. Quienes no puedan asistir ante el ministro del sacramento recordarles la enseñanza sobre la contrición perfecta (cfr. C 961, §2 CIC; CC 1452)””; see [here](#).

<sup>17</sup> S.E. Mons. Solorzano Pérez: “Para evitar el contagio del virus, la Iglesia permite en sus normas canónicas (can. 961 § 2 y el Catecismo de la Iglesia Católica #1452) que quienes acuden al sacramento de la Reconciliación se les dé la absolución general de sus pecados, con el compromiso que se puedan confesar individualmente lo más pronto posible pasada la crisis de la pandemia. Por ello, autorizo a los sacerdotes de nuestra Diócesis, ejercer esta práctica en lo que queda del Tiempo de Cuaresma y Semana Santa”, see [here](#).

<sup>18</sup> S.E. Mons. Wong: “Dates and times for the yearly Penitential Services in the parishes for Lent (beginning from 2<sup>nd</sup> March 2020) has been published. However, to avoid the numerous and close personal contact individual confession involve, and as a prudent precaution against the possible spread of the COVID-19, the Archdiocese of Kota Kinabalu has decided on the following: [...]. 4. Instead of personal confessions however, the priest shall give General Absolution to all present”; see [here](#).

pursuant to Canon 961 § 2, but also established that the emergency conditions provided for in § 1<sup>21</sup> have been met: this concerns the Hungarian Bishops' Conference<sup>22</sup>, as well as that of South Africa<sup>23</sup> and the Philippines<sup>24</sup>.

Does this ever-growing application not risk altering the exceptional nature of the assumption? In order to answer this, it behooves us to get a comprehensive picture, which can offer us a sense of the unfolding of the regulation over time, since the current code arrangement is the outcome of an interesting historical evolution: among the previous variants of the general absolution

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<sup>19</sup> S.E. Mons. Paul: "Penitential Service continues with full liturgy of the Word (2 Readings); homily, examination of conscience, act of contrition, common penance to be fulfilled, general absolution to all present"; see [here](#).

<sup>20</sup> S.E. Mons. Francis: "Due to this 'grave and urgent necessity', the Bishop of Penang, Rt Rev Sebastian Francis has decided that at all Masses within the weekend of March 22 and 29, 2020 on the 4th and 5th Sundays of Lent, the presiding priest shall give a General Absolution will be given to all present.' As for the chapels and Mass centres in the Diocese of Penang, this general absolution will be done at any time during the Season of Lent. However, priests are requested to make themselves available for individual confessions as and when required"; see [here](#).

<sup>21</sup> V. L. Navarro, *Manifestazioni giuridiche della comunione fra i vescovi*, in *IE*, 1991, pp. 573 ss.; J.T. Martín de Agar, *Normativa de las Conferencias episcopales sobre el Sacramento de la Penitencia*, in *AC*, 1992, pp. 497 ss.; A. Riccardi, *Chiesa del papa e Chiesa locale*, in AA.VV., *Divinarum rerum notitia: la teologia tra filosofia e storia. Studi in onore del Cardinale Walter Kasper*, Roma, 2001, pp. 347 ss.

<sup>22</sup> "We shall follow state epidemic protocols while caring for the sick, hearing confessions and administering extraordinary communion. Due to the extraordinary situation – effective immediately until revoked – absolution may be imparted in a general manner (CIC Can. 961–963) [...]. This instruction concerns the Latin rite dioceses of Hungary"; see [here](#).

<sup>23</sup> "Safer measures are to be taken in administering the Sacrament of Penance and Reconciliation. Necessary permission will be granted for general absolution for the duration pandemic"; see [here](#).

<sup>24</sup> "Since the Lenten season is the time for Kumpisalang Bayan, each bishop may grant the permission for the use of General Absolution in this cases"; see [here](#).

given to soldiers before the battle, we can recall that of Pope Saint Leo IX, who in 1053 granted it to all his soldiers before the battle of Civitate, against the Normans<sup>25</sup>.

Already in 1915, a few months after the start of the First World War, the Sacred Penitentiary<sup>26</sup>, with the Declaration of February 6, 1915, allowed military chaplains<sup>27</sup> to administer the general absolution of soldiers who were called to the front even without their previous confession, if this were impossible<sup>28</sup>. A document that immediately followed this (which recalls and quotes a previous reply given in 1912 to a request from French Bishops<sup>29</sup>)

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<sup>25</sup> V. C. Munier, *Le pape Léon IX et le droit canonique de son temps*, in AA.VV., *Léon IX et son temps: Actes du colloque international organisé par l'Institut d'Histoire Médiévale de l'Université Marc-Bloch*, Strasbourg-Eguisheim, 20-22 juin 2002, Turnhout, 2007, pp. 385 ss.

<sup>26</sup> V. P.L. Consorti, *Guerra giusta? Tra teologia e diritto*, in RDC, 2004, pp. 69 ss.; ID., *La Chiesa in armi*, in RTM, 2000, pp. 209 ss.

<sup>27</sup> J.M. Bergoglio, *Ponerse la patria al hombro*, Buenos Aires, 2004, pp. 23 ss.; R. Morozzo della Rocca, *La fede e la guerra: cappellani militari e preti-soldati, 1915-1919*, Roma, 1980, passim; A. Crescenzi, *I cappellani militari italiani e l'“inutile strage”*, in AA.VV., *Benedetto 15.: Papa Giacomo Della Chiesa nel mondo dell'inutile strage*, Bologna, 2017, pp. 190 ss.

<sup>28</sup> “Declaratio de absolutione impertienda militibus ad praelium vocatis. Proposito huic sacrae Poenitentiariae dubio: “An liceat milites ad praelium vocatos, antequam ad sacram Communionem admittantur, absolvere generali formula, seu communi absolutione, sine praecedente confessione, quando tantus est eorum numerus, ut singuli audiri nequeant, doloris actu debite emisso?” Eadem sacra Poenitentiaria, mature consideratis expositis, benigne sic annuente sanctissimo Domino nostro Benedicto Papa XV, respondendum esse censuit: “Affirmative. Nihil vero obstare quominus sic absoluti in praefatis adiunctis ad sacram Eucharistiam suscipiendam admittantur. Ne omittant vero cappellani militum, data opportunitate, eos docere absolutionem sic impertiendam non esse profuturam, nisi rite dispositi fuerint, iisdemque obligationem manere integram confessionem suo tempore peragendi, si periculum evaserint”, in *AAS*, 1915 (VII), p. 72 (and [here](#)).

<sup>29</sup> V. M. d'Arienzo, *La laicità francese: ‘aperta’, ‘positiva’ o ‘im-positiva’?*, in *DeR*, 2011, pp. 354 ss.; Eadem, *La “religione della laicità” nella Costituzione francese*, in P. Becchi

expanded the scope of the general absolution, which could be granted to all mobilized soldiers, and no longer only to those who had been sent to the front<sup>30</sup>.

These decisions of the Penitentiary, clearly in favor of the *salus animarum*<sup>31</sup> took place while the work on the drafting of the Codex of 1917 was at an advanced stage, and it does not seem - as far as it is known on the basis of an initial, rapid and preliminary research - that the schemes on the (future) canons relating to the Sacrament of Penance foresaw a hypothesis of general absolution without confession. After the war, these special faculties were revoked by a decree of February 22, 1919<sup>32</sup>, returning back to the necessary

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– V. Pacillo, *Sull'invocazione a Dio nella Costituzione federale e nelle Carte fondamentali europee*, Lugano, 2013, pp. 139 ss.; P. Valdrini, *Il principio di laicità nel diritto francese. Neutralità dello Stato e libertà dei cittadini*, in *EIC*, 2015, pp. 39 ss.; M. Impagliazzo, *Francia e S. Sede nella Grande guerra*, in *Studium*, 1992, pp. 43 ss.; F. Fede – S. Testa Bappenheim, *Dalla laicità di Parigi alla Nominatio Dei di Berlino, passando per Roma*, Milano, 2007, pp. 11 ss.

<sup>30</sup> “Dubium de militibus in statu bellicae convocationis

Proposito huic sacrae Poenitentiariae dubio: Utrum miles quicumque in statu bellicae convocationis, seu, ut aiunt, mobilitationis, constitutus, ipso facto equiparari possit iis qui versantur in periculo mortis, ita ut a quovis obvio sacerdote possit absolvi.

Resp. Detur responsum diei 18 martii 1912, ad Episcopum V., nempe: Affirmative, iuxta regulas a probatis auctoribus traditas”, in *AAS*, 1915 (VII), p. 282.

<sup>31</sup> J.I. Arrieta, *La salus animarum quale guida applicativa del diritto da parte dei pastori*, in *IE*, 2000, pp. 343 ss.

<sup>32</sup> “Decretum de cessatione quarumdam facultatum quae sacerdotibus durante bello concessae sunt.

Quum atrox bellum, quod plures annos Europam cruentabat, Dei miserentis gratia, finem tandem habuerit, oportet ut, cessante causa; facultates quoque extraordinariae circumscribantur quae sacerdotibus, militaribus copiis addictis, in suum ac militum bonum fuerunt tributae. Ne autem, in re tam gravi, angustiis et ambiguitatibus pateat locus, SSmus D. N. Benedictus PP. XV censuit expedire ut pressius determinetur quatenus ex praedictis facultatibus cessasse

individual confession which had been theologically defined at the Council of Trent<sup>33</sup>. In 1939, at the dawn of the Second World War, and with the CIC-17 having been promulgated and in force, Pius XII, with the Apostolic Exhortation *Asperis Commoti*, announced that he was thinking of granting “new and extraordinary faculties to all the Military Ordinariates or Chaplains of the nations or regions in which the state of war or mobilization exists or will exist — without prejudice to the ordinary faculties already granted.

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dicendae sint. Itaque, de mandato SSnii, declaratur natur a sua finem habuisse facultates ut supra sacerdotibus factas, quae sequuntur:

- 1) absolvendi in quibusdam casibus milites generali formula, seu communi absolutione sine praecedenti confessione;
- 2) absolvendi ab omnibus censuris et casibus reservatis;
- 3) Missam celebrandi in quocumque loco, etiam sub dio, remoto quidem irreverentiae periculo;
- 4) bis in die, etiam una hora post meridiem, et in casibus extraordinariis vel non servato ieiunio, Sacrum peragendi;
- 5) Missas votivas loco propriae a rubricis praescriptae legendi;
- 6) asservandi SSmum Sacramentum in bellicis navibus et in stativis castrorum valetudinariis;
- 7) benedicendi unico crucis signo coronas, cruces, numismata cum applicatione indulgentiarum;
- 8) sese eximendi a recitatione divini officii, ac pariter idem officium in alias pias preces commutandi.

Hisce demptis, reliqua quae attinent ad iurisdictionem Ordinariorum castrensiarum, usque dum eorum ministerium subsistat et servetur, sarta tecta quae sunt.

Curae tamen ipsorum Ordinariorum Castrensiarum erit vigilare ut omnia quae pertinent ad sacrae liturgiae observantiam, praesertim in Missae celebratione, a sacerdotibus sibi adhuc subditis adamussim et ex integro serventur.

Officii pariter omnium Ordinariorum locorum erit curare ut sacerdotes in dioecesim e militia reversi ad pristinam perfectamque sacrorum rituum observantiam redeant”, in *AAS*, 1919 (XI), pp. 74 ss. (and [here](#)).

<sup>33</sup> V. P. Erdő, *Il valore teologico del diritto canonico: una questione storica*, in J. Miñambres (a cura di), *Diritto canonico e culture giuridiche nel centenario del Codex Iuris Canonici del 1917. Atti del XVI Congresso Internazionale della Consociatio internationalis Studio Iuris Canonici Promovendo*, Roma 4-7 ottobre 2017, Roma, 2019, pp. 181 ss.



These new and extraordinary faculties”, which were phenotyped by the Penitentiary on August 30th, and by the Sacred Consistorial Congregation, on December 8, 1939, in the *Index Facultatum*<sup>34</sup>, provided for the possibility of general absolution to be further enlarged to englobe entire groups of civilians exposed to cannonades and aerial bombardments<sup>35</sup>.

These provisions were better defined and specified first by two instructions issued by the Congregation for Sacraments, the first dated April 22, 1940, the second on July 26, and later a response, dated December 19, 1940, from the Penitentiary to a *Dubium circa absolutionem generali modo impertiendam militibus imminenti aut commisso proelio*<sup>36</sup>. Towards the end of the war, the *Ut dubia*

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<sup>34</sup> In *AAS*, 1939 (XXXI), pp. 710 ss. (and [here](#)).

<sup>35</sup> “14. Imminenti aut commisso proelio: [...]”

b) liceat iisdem sacerdotibus absolvere a quibusvis peccatis et censuris quantumvis reservatis et notoriis, generali formula seu communi absolutione, absque praevia orali confessione, sed doloris actu debite emisso, quando sive prae militum multitudine sive prae temporis angustia singuli audiri nequeant, eosque ita absolutos, ad S. Mensam Eucharisticam, per modum Viatici, admittere. Ne omittant vero poenitentes docere absolutionem ita receptam non esse profuturam, nisi rite dispositi fuerint, eisdemque obligationem manere integram confessionem suo tempore peragendi;

c) [...] Quoniam vero occasione belli ipsae civitates, quae liberae seu apertae vocantur, aeris incursionibus expositae inveniuntur, ne christifideles religionis subsidiis in vitae discrimine destituantur, liceat sacerdotibus, instante mortis periculo durantibus praefatis incursionibus, eosdem a quibusvis peccatis et censuris reservatis et notoriis, etiam formula generali eadem ratione de qua sub n. 14 absolvere, eisdemque impertire Benedictionem Apostolicam cum Indulgentia plenaria de qua supra”

<sup>36</sup> “In Indice facultatum, quas Ssmus Dominus Noster Pius div. Prov. Pp. XII concessit pro tempore belli, et de quibus in Acta Ap. Sedis, a. 1939, p. 710 et sqq., legitur: «Imminenti aut commisso proelio [...] liceat [...] Sacerdotibus absolvere a quibusvis peccatis et censuris quantumvis reservatis et notoriis, generali formula seu communi absolutione, absque praevia orali confessione, sed

Instruction, dated March 25, 1944, extended the absolution beyond moments of belligerence<sup>37</sup>: the points 4 and 5 reaffirmed the duty

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doloris actu debite emissio, quando sive prae militum multitudine sive prae temporis angustia singuli audiri nequeant».

Iamvero quaesitum est: Quid faciendum si aliquando circumstantiae tales sint ut praevideatur moraliter impossibile aut valde difficile fore ut milites turmatim absolvi possint ‘imminenti aut commisso proelio’?

Sacra Paenitentia Apostolica, omnibus mature perpensis, respondendum censuit: In praedictis circumstantiis, iuxta Theologiae moralis principia, licet, statim ac necessarium indicabitur, milites turmatim absolvere. Sacerdotes autem sic absolventes ne omittant paenitentes docere absolutionem ita receptam non esse profuturam, nisi rite dispositi fuerint eisdemque obligationem manere integram confessionem suo tempore peragendi”, in *AAS*, 1942 (XXXII), pp. 571 ss. (and [here](#)).

<sup>37</sup> “Circa sacramentalem absolutionem generali modo pluribus impertiendam.

Ut dubia et difficultates removeantur in interpretanda et exsequenda facultate impertiendi in quibusdam rerum adiunctis absolutionem sacramentalem generali formula seu communi absolutione, sine praevia peccatorum confessione a singulis Christifidelibus peracta, Sacra Paenitentia opportunum ducit haec quae sequuntur declarare atque edicere:

I. Sacerdotes, licet ad confessiones sacraméntales excipiendas adprobati non sint, facultate fruuntur absolvendi generali modo atque una simul: a) Milites imminenti aut commisso proelio, prout in mortis periculo constitutos, quando, sive prae militum multitudine sive prae temporis angustia, singuli audiri nequeunt. Si tamen rerum adiuncta eiusmodi sint, ut vel moraliter impossibile, vel admodum difficile videatur milites absolvere imminenti aut commisso proelio, tunc licet eos absolvere statim ac necessarium iudicabitur [...] b) Cives et milites instante mortis periculo, durantibus hostilibus incursionibus.

II. Praeter casus in quibus agitur de mortis periculo, non licet sacramentaliter absolvere plures una simul, aut singulos dimidiate tantum confessos, ratione tantum magni concursus paenitentium, qualis verbi gratia potest contingere in die magnae alicuius festivitatis aut indulgentiae (cfr. Prop. 59 ex damnatis ab Innocentio XI die 2 Martii 1679): licet vero si accedat alia gravis omnino et urgens necessitas, gravitati praecepti divini integritatis confessionis proportionata, verbi gratia si paenitentes — secus nulla sua culpa — diu gratia sacramentali et sacra Communionem carere cogantur. Decernere autem si militum aut captivorum aut civium turba in tali necessitate inveniat, locorum Ordinariis reservatur, ad quos praevis recurrere tenentur Sacerdotes, quoties id possibile sit, ut licite eiusmodi absolutionem impertiant.

to confess one's mortal sins as soon as possible, however - foreseeing that many of the faithful would not have this concrete possibility - point 5 specifies that the priests, before granting collective absolution, should remind the faithful of their specific duty "*occasionem expectantes*", i.e., had there been favorable circumstances<sup>38</sup>. This document is particularly important, in as much as it generalizes collective absolution beyond wartime, allowing it if a group of believers found themselves in emergency circumstances.

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III. Absolutiones sacramentales pluribus una simul a Sacerdotibus arbitrio suo impertitae, extra casus de quibus in n. I, vel non obtenta praevia Ordinarii licentia, licet hic adiri potuerit, iuxta dicta in n. II, utpote abusus habendae sunt.

IV. Antequam Sacerdotes sacramentalem absolutionem impertiant, quantum rerum adiuncta permittant, de his quae sequuntur Christifideles commonere debent: a) Necessarium scilicet esse ut se quisque paeniteat admissorum suorum et a peccatis abstinere proponat. - Convenit etiam Sacerdotes opportune monere paenitentes, ut contritionis actum externo aliquo modo ostendant, si possibile sit, verbi gratia suum percutiendo pectus. b) Atque omnino necesse esse ut, qui absolutionem turmatim acceperint, in primo deinceps suscipiendo Paenitentiae Sacramento, gravia singula peccata sua rite confiteantur, quae non antea conf essi fuerint.

V. Sacerdotes aperte fideles doceant eos graviter prohiberi, ne, quamvis sibi conscii sint culpae mortalis, nondum in confessione recte accusatae et remissae, et obligatio integre lethalia peccata confitendi urgeat ex lege sive divina sive ecclesiastica, de industria declinent huic obligationi satisfacere, occasionem expectantes, qua absolutio turmatim detur.

VI. Meminerint vero locorum Ordinarii ut de hisce normis gravissimoque officio tunc Sacerdotes commonetaeiant cum iisdem facultatis usum permittant — in peculiaribus rerum adiunctis — sacramentalem absolutionem generali formula una simul impertiendi.

VII. Si tempus suppetat, haec absolutio sueta atque integra formula in plurali numero impertienda est; secus vero haec brevior formula adhiberi potest: Ego vos absolvo ab omnibus censuris et peccatis in nomine Patris et Filii et Spiritus Sancti [...]”.

<sup>38</sup> In *AAS*, 1944 (XXXVI), pp. 155 ss. (and [here](#)).

After the general reforms launched following the Council – extremely important as regards the main traditional scenario of the ‘ordinary’ confession, namely that of the parish church<sup>39</sup> –, the reforms, decided therein, led to the document *Sacramentum Poenitentiae* of the Sacred Congregation for the Doctrine of the Faith<sup>40</sup>, which confirmed the possibility of general confession everywhere in the event of grave necessity (no. III) alongside the traditional case of the danger of death (no. II)<sup>41</sup>.

The scope of the document was illustrated by Paul VI himself in one of the audiences immediately following its promulgation<sup>42</sup>, recalling the possibility and lawfulness, and at the same time the exceptionality, of the general confession.

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<sup>39</sup> M.G. Belgiorio de Stefano, *La parrocchia prima e dopo il Concilio Vaticano II*, in AA.VV., *Studi in onore di P.A. D’Avack*, I, Milano, 1976, pagg. 206 ss.; F. de Gregorio, *Il Concilio Vaticano II e la libertà religiosa*, in *Coscienza e libertà*, 1991, pp. 91 ss.; J.T. Martín de Agar, *El canon 964 del CIC: sobre el uso del Confesionario*, in AA.VV., *Reconciliación y Penitencia*, Pamplona, 1983, pp. 1011 ss.; O. Condorelli, *Dalla penitenza pubblica alla penitenza privata, tra Occidente latino e Oriente bizantino: percorsi e concezioni a confronto*, in G. Ruysen (a cura di), *La disciplina della penitenza nelle Chiese orientali. Atti del simposio tenuto presso il Pontificio Istituto Orientale, Roma, 3-5 giugno 2011*, Roma, 2013, pp. 29 ss.

<sup>40</sup> In *AAS*, 1972 (LXIV), pp. 510 ss. (see [here](#) and also [here](#)).

<sup>41</sup> “Praeter casus in quibus agitur de mortis periculo, licet sacramentaliter absolvere una simul plures fideles generice tantum confessos, sed apte ad paenitentiam revocatos si accedat gravis necessitas, nimirum quando, attento paenitentium numero, confessariorum copia praesto non est ad rite audiendas singulorum confessiones intra congruum tempus, ita ut paenitentes-absque sua culpa-gratia sacramentali, vel sacra Communione diu carere cogantur. Quod evenire potest, praesertim in terris missionum, sed in aliis etiam locis, necnon apud coetus personarum, in quibus illa necessitas constat.

Hoc vero non licet, cum confessarii praesto esse possunt, ratione solius magni concursus paenitentium, qualis verbi gratia potest haberi in magna aliqua festivitate aut peregrinatione”.

<sup>42</sup> Paolo VI, *Il Sacro Ministero per la riconciliazione nella penitenza, Udienza generale del 19 VII 1972*.

Other normative interventions from the Congregation for Divine Worship followed, which, with the decree *De novo Ordine Paenitentiae*, of December 22, 1973<sup>43</sup> – with which the new *Rituale Romanum ex decreto Sacrosancti Œcumenici Concilii Vaticani II instauratum auctoritate Pauli PP. VI promulgatum: Ordo Paenitentiae*<sup>44</sup> was promulgated, which was in turn, openly based on the *Sacrosanctum Concilium* 72<sup>45</sup> – expressly provides for the “joint celebration of reconciliation with general confession and general absolution”: a case that is possible, but still one with an “exceptional character”<sup>46</sup>, both *in se ipsa*, as well as in the conditions of admissibility, so that it is not up to the individual priest, but only “to the Ordinary, after consulting other members of the Episcopal Conference, to judge whether there are indeed the necessary conditions established by the Apostolic See and specified in the Norm No.3. [Nonetheless the matter is indeed so exceptional that] The Ordinaries were not authorized to change the required conditions, to replace them with other conditions, or to determine the grave necessity according to their personal criteria, however worthy they might be. The document “*Sacramentum Paenitentiae*” recognized that the norms governing the fundamental discipline of the ministry of

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<sup>43</sup> In *AAS*, 1974 (LXIV), pp. 172 ss. (and [here](#)).

<sup>44</sup> *Rituale Romanum: Ordo Paenitentiae, editio typica*, Typis Polyglottis Vaticanis MCMLXXV; *Rituale Romanum: Rito della Penitenza* [Conferenza Episcopale Italiana], Città del Vaticano, 1974.

<sup>45</sup> In *AAS*, 1964 (LVI), p. 118 (and [here](#)).

<sup>46</sup> Paolo VI, [La penitenza, sacramento della Risurrezione e della Pace, Udienza generale del 23 marzo 1977](#); cfr. J.P. Schouppe, *Convergences et différences entre le droit divin des canonistes et le droit naturel des juristes*, in *IE*, 2000, pp. 29 ss.

reconciliation in the Church are matters of special interest to the universal Church and of regulation by the supreme authority”<sup>47</sup>.

John Paul II took this up once again, stressed and reiterated the emergency character of the general absolution first in his speech of January 30, 1981, to the Penitentiary<sup>48</sup>, and then slightly after the promulgation of the new *Codex*, as well as in the post-synodal exhortation *Reconciliatio et Paenitentia*<sup>49</sup> and in a speech given

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<sup>47</sup> Paolo VI, *Speech 'In the name. Ad sacros Praesules districtus Neo-Eboracensis, in Foederatis Americae Septentrionalis Civitatibus'*, in *AAS*, 1978 (LXX), pp. 328 ss. (and [here](#)).

<sup>48</sup> “La Chiesa di recente, per gravi ragioni pastorali e sotto precise e indispensabili norme, per facilitare il bene supremo della grazia a tante anime, ha esteso l'uso dell'assoluzione collettiva. Ma voglio richiamare la scrupolosa osservanza delle condizioni citate, ribadire che, in caso di peccato mortale, anche dopo la assoluzione collettiva, sussiste l'obbligo di una specifica accusa sacramentale del peccato, e confermare che, in qualsiasi caso, i fedeli hanno diritto alla propria confessione privata”; Giovanni Paolo I, *Speech 'Ad S. Paenitentiariae Tribunal et Urbis basilicarum paenitentiariorum: sacramentalis confessionis necessitas, iure divino introducta, adhuc viget et semper in Ecclesia vigeat'*, January 1st, 1981, in *AAS*, 1981 (LXXXIII), pp. 201 ss. (and [here](#)).

<sup>49</sup> “33. Nel nuovo ordinamento liturgico e, più recentemente, nel nuovo Codice di diritto canonico (*Codex Iuris Canonici*, can. 961-963), si precisano le condizioni che legittimano il ricorso al «rito della riconciliazione di più penitenti con la confessione e l'assoluzione generale». Le norme e gli ordinamenti dati su questo punto, frutto di matura ed equilibrata considerazione, devono essere accolti e applicati evitando ogni tipo di interpretazione arbitraria.

È opportuno riflettere in maniera più approfondita sulle motivazioni, che impongono la celebrazione della penitenza in una delle prime due forme e consentono il ricorso alla terza forma. Vi è, anzitutto, una motivazione di fedeltà alla volontà del Signore Gesù, trasmessa dalla dottrina della Chiesa, e di obbedienza, altresì, alle leggi della Chiesa; il Sinodo ha ribadito in una delle sue «Propositiones» l'immutato insegnamento, che la Chiesa ha attinto alla più antica tradizione, e la legge, con cui essa ha codificato l'antica prassi penitenziale: la confessione individuale e integra dei peccati con l'assoluzione egualmente individuale costituisce l'unico modo ordinario, con cui il fedele, consapevole di peccato grave, è riconciliato con Dio e con la Chiesa. Da questa riconferma dell'insegnamento della Chiesa risulta chiaramente che ogni peccato grave deve

at the Congregation for the Sacraments, on April 17<sup>th</sup>, 1986<sup>50</sup>, in which the Pope complained of some abuses, reaffirming the exceptional nature of the general absolution. He invited the

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essere sempre dichiarato, con le sue circostanze determinanti, in una confessione individuale.

Vi è, poi, una motivazione di ordine pastorale. Se è vero che, ricorrendo le condizioni richieste dalla disciplina canonica, si può fare uso della terza forma di celebrazione, non si deve però dimenticare che questa non può diventare una forma ordinaria, e che non può e non deve essere adoperata - lo ha ripetuto il Sinodo - se non «in casi di grave necessità», fermo restando l'obbligo di confessare individualmente i peccati gravi prima di ricorrere di nuovo a un'altra assoluzione generale. Il vescovo, pertanto, al quale soltanto spetta, nell'ambito della sua diocesi, di valutare se esistano in concreto le condizioni che la legge canonica stabilisce per l'uso della terza forma, darà questo giudizio con grave onere della sua coscienza, nel pieno rispetto della legge e della prassi della Chiesa, e tenendo conto, altresì, dei criteri e degli orientamenti concordati - sulla base delle considerazioni dottrinali e pastorali sopra esposte - con gli altri membri della conferenza episcopale. Parimenti, sarà sempre un'autentica preoccupazione pastorale a porre e garantire le condizioni che rendono il ricorso alla terza forma capace di dare quei frutti spirituali, per i quali essa è prevista. Né l'uso eccezionale della terza forma di celebrazione dovrà mai condurre ad una minore considerazione, tanto meno all'abbandono, delle forme ordinarie, né a ritenere tale forma come alternativa delle altre due: non è, infatti, lasciato alla libertà dei pastori e dei fedeli di scegliere fra le menzionate forme di celebrazione quella ritenuta più opportuna. Ai pastori rimane l'obbligo di facilitare ai fedeli la pratica della confessione integra e individuale dei peccati, che costituisce per essi non solo un dovere, ma anche un diritto inviolabile e inalienabile, oltre che un bisogno dell'anima. Per i fedeli l'uso della terza forma di celebrazione comporta l'obbligo di attenersi a tutte le norme che ne regolano l'esercizio, compresa quella di non ricorrere di nuovo all'assoluzione generale prima di una regolare confessione integra e individuale dei peccati, che deve essere fatta non appena possibile. Di questa norma e dell'obbligo di osservarla i fedeli devono essere avvertiti e istruiti dal sacerdote prima dell'assoluzione». Giovanni Paolo II, Es. ap. postsin. *'Reconciliatio et poenitentia'*, december 2<sup>nd</sup>, 1984, in *AAS*, 1985 (LXXVII), pp. 185 ss. (and [here](#)).

<sup>50</sup> Giovanni Paolo II, *Speech 'Ad eos qui plenario coetui Congregationis pro Sacramentis interfuerunt coram admissos'*, in *AAS*, 1986 (78), pp. 1124 ss. (and [here](#)); cfr. S. Mückl, *In der Welt, nicht von der Welt*, in *AA.VV., Theologia Iuris Canonici. Festschrift für Ludger Müller zur Vollendung des 65. Lebensjahres*, Berlin, 2017, pp. 115 ss.

bishops to instruct the faithful so that they would not confuse general absolution and individual confession, the latter remaining necessary “as soon as it was possible”, even after receiving the general absolution for serious sins committed. On this occasion, the Pope also clarified that individual confession was not only an obligation, but also a real right: a reflection of that personal relationship that the good shepherd strives to establish with each sheep of his flock, whom he knows individually, indeed - according to beautiful expression of the Gospel of John – he calls his own sheep by name” (cf. Jn 10, 3). For this reason, he agreed with the necessary clarification, given by the individual Episcopal Conferences, of the cases of “grave necessity” foreseen by the Code of Canon Law [...] for the legitimate recourse to absolution in collective form, and then constantly working to guide the pastoral practice of their Churches in accordance with these directives “(No. 5).

An initial intervention to standardize the provisions of SP with the new Code had immediately taken place, with the decree *Variationes* of the Congregation for Divine Worship and the Sacraments, where it was precisely specified how the liturgical provisions on collective absolution that did not coincide with the canonical norms were abrogated<sup>51</sup>.

The Pontifical Council for Legislative Texts also intervened on this point in 1996, with a note in which it reiterated that” what is prescribed in Can. 961 concerning the general absolution is of an exceptional nature, and remains subject to the dictate of Canon 18: “*leges quae [...] exceptionem a lege continent, strictae subsunt interpretatione*”; it therefore must be interpreted in a strict manner.

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<sup>51</sup> In *Notitiae*, 1983, pp. 541 ss. (see [here](#)).



John Paul II, in the previously aforementioned Apostolic Exhortation, expressly underscored the exceptional character by recalling Can. 961: “Immineat periculum mortis”, such that there is no time for the priest or the priests to hear the individual confession (with an explicit reference to the original reasons for the granting of the general absolution in wartime); and “adsit gravis necessitas”: when the number of penitents and the scarcity of priests means that the faithful, through no fault of their own, remain deprived, for a considerable time, of sacramental grace or holy communion. In order for this state of “grave necessity” to occur, two elements must both exist: firstly, that there is a shortage of priests and a large number of penitents; and secondly, that the faithful did not have or do not have the opportunity to confess before or immediately after. In practice, that they do not bear the responsibility, with their neglect, for the current deprivation of the state of grace or the impossibility of receiving holy communion (*sine propria culpa*) and that this state of affairs will predictably continue for a long time (*din*).

It therefor follows, for example, that the meeting of large masses of faithful does not justify collective absolution in and of itself. Therefore, the same canonical norm specifies that “it is not deemed a sufficient necessity, when the confessors cannot be available, owing to the great presence of penitents in and of itself, which might occur in some major feasts or pilgrimages”.

Canon 961, § 2 establishes that it is up to the diocesan bishop to determine whether in the concrete case, in light of the criteria “agreed upon with the other members of the Episcopal Conference”, the conditions for giving the general absolution have been met. He has, therefore, in concrete cases and in light of the criteria established by the Episcopal Conference, the task of

verifying the presence or absence of the conditions established by the Code, but does not have the power to modify, add or remove the conditions already established in the Code and the criteria agreed with the other Members of the Episcopal Conference.

Indeed, John Paul VI of venerable memory, in a speech to the Bishops of the United States, stated: “Ordinaries were not authorized to change the required conditions, to substitute other conditions for those given, or to determine grave necessity according to their personal criteria, however worthy”. John Paul II in the aforementioned Apostolic Exhortation reiterated this grave duty: “*Episcopus ergo, cuius solius est, intra fines suae dioecesis, aestimare utrum condiciones reapse habeantur... hoc iudicium faciet graviter onerata conscientia pleneque observata lege et praxi Ecclesiae necnon ratione habita criteriorum et mentium directionis [...], cum ceteris membris Conferentiae Episcopalis convenerit*”.

IV. The process of drafting Canon 961 as well, submitted to the Episcopate at the time, highlighted the exceptional nature of reconciliation through general absolution, as can be seen through the study of the documents published in the review *Communicationes*. Emblematic, in this regard, is the transition from an initial formulation that positively provided for the possibility of general absolution, to a formulation which, on the contrary, directly forbids general absolution by foreseeing it only as an exception.

V. The correct application of the rules relating to general absolution also requires compliance with the provisions set forth in the subsequent Canons 962 and 963.

Canon 962, § 1 establishes an additional specific obligation relating to general absolution. In order for the general absolution administered in accordance with canonical criteria to be valid, in

addition to the provisions necessary for confession in the ordinary way, it is required that there be the intention of individually confessing all the grave sins that could not be confessed because of the state of grave necessity.

In the Apostolic Exhortation *Reconciliatio et Paenitentia*, after recalling that individual confession is the only ordinary means of reconciliation, [John Paul II] writes: “Ex hac confirmatione Ecclesiae doctrinae consequitur manifesto ut omne peccatum grave semper sit declarandum” in individual confession.

Although Canon 963 does not specifically specify a precise time period within which to make this individual confession, it does however establish clear normative criteria: an individual confession must be made before another possible general confession and must be made “*quam primum*”, i.e. as soon as the exceptional circumstances that had led to the use of collective absolution have ended”<sup>52</sup>.

Pope Wojtyla returned again on the subject with his *Motu Proprio “Misericordia Dei”*, of April 7, 2002, in which he reaffirmed that

“4. In the light of and within the framework of the above norms, the absolution of a number of penitents all together without previous confession, as envisaged by Can. 961 of the Code of Canon Law, is to be correctly understood and administered. Such absolution is in fact “exceptional in character” (18) and “cannot be imparted in a general manner unless:

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<sup>52</sup> Pontificio Consiglio per i Testi Legislativi, *Nota esplicativa dell’8 novembre 1996*, in *Comm.*, 1996, pp. 177 ss. (and [here](#)).

1° the danger of death is imminent and there is not time for the priest or priests to hear the confessions of the individual penitents;

2° a grave necessity exists, that is, when in light of the number of penitents the number of confessors is insufficient and not readily available to hear the confessions of individuals in an appropriate way within an appropriate time, so that the penitents would be deprived of sacramental grace or Holy Communion for a long time through no fault of their own; it is not considered sufficient necessity if confessors cannot be readily available only because of the great number of penitents, as might occur on the occasion of some great feast or pilgrimage”.

With reference to the case of grave necessity, the following clarification is made:

a) It refers to situations which are objectively exceptional, such as those which might occur in mission territories or in isolated communities of the faithful, where the priest can visit only once or very few times a year, or when war or weather conditions or similar factors permit.

b) The two conditions set down in the Canon to determine grave necessity are inseparable. Therefore, it is never just a question of whether individuals can have their confession heard “in an appropriate way” and “within an appropriate time” because of the shortage of priests; this must be combined with the fact that penitents would otherwise be forced to remain deprived of sacramental grace “for a long time”, through no fault of their own. Therefore, the overall circumstances of the penitents and of the Diocese must be taken into account, in what refers to its pastoral organization and the possibility of the faithful having access to the Sacrament of Penance.

c) The first condition, the impossibility of hearing confessions “in an appropriate way” “within an appropriate time”, refers only to the time reasonably required for administering a valid and worthy celebration of the Sacrament. It is not a question here of a more extended pastoral conversation, which can be left to more favourable circumstances. The reasonable and appropriate time within which confessions can be heard will depend upon the real possibilities of the confessor or confessors, and of the penitents themselves.

d) The second condition calls for a prudential judgement in order to assess how long penitents can be deprived of sacramental grace for there to be a true impossibility as described in Can. 960, presuming that there is no imminent danger of death. Such a judgement is not prudential if it distorts the sense of physical or moral impossibility, as would be the case, for example, if it were thought that a period of less than a month would mean remaining “for a long time” in such a state of privation.

e) It is not acceptable to contrive or to allow the contrivance of situations of apparent *grave necessity*, resulting from not administering the Sacrament in the ordinary way through a failure to implement the above mentioned norms, (20) and still less because of penitents’ preference for general absolution, as if this were a normal option equivalent to the two ordinary forms set out in the Ritual.

f) The large number of penitents gathered on the occasion of a great feast or pilgrimage, or for reasons of tourism or because of today’s increased mobility of people, does not in itself constitute sufficient necessity.

5. Judgement as to whether there exist the conditions required by Can. 961 §1, 2 is not a matter for the confessor but for “the diocesan Bishop who can determine cases of such a necessity in light of criteria agreed upon with other members of the Episcopal Conference” (21) These pastoral criteria must embody the pursuit of total fidelity, in the circumstances of their respective territories, to the fundamental criteria found in the universal discipline of the Church, which are themselves based upon the requirements deriving from the Sacrament of Penance itself as a divine institution.

6. Given the fundamental importance of full harmony among the Bishops’ Conferences of the world in a matter so essential to the life of the Church, the various Conferences, observing Can. 455 § 2 of the Code of Canon Law, shall send as soon as possible the text of the norms which they intend to issue or update in the light of this *Motu Proprio* on the application of Can. 961 to the Congregation for Divine Worship and the Discipline of the Sacraments. This will help to foster an ever-greater communion among the Bishops of the Church as they encourage the faithful everywhere to draw abundantly from the fountains of divine mercy which flow unceasingly in the Sacrament of Reconciliation.

In this perspective of communion, it will also be appropriate for Diocesan Bishops to inform their respective Bishops’ Conferences whether or not cases of *grave necessity* have occurred in their jurisdictions. It will then be the task of each Conference to inform the above-mentioned Congregation about the real situation in their regions and about any changes subsequently taking place.

7. As regards the personal dispositions of penitents, it should be reiterated that:

a) “In order for a worshiper to validly avail himself or herself of the sacramental absolution simultaneously given to many persons at one time, it is required that that not only he or she be suitably disposed, but also at the same time he or she intends to confess the serious sins, which at the present moment in time cannot be confessed”.

b) As far as possible, including cases of imminent danger of death, there should be a preliminary exhortation to the faithful “that each person shall take care to make an act of contrition”.

c) It is clear that penitents living in a habitual state of serious sin and who do not intend to change their situation cannot validly receive absolution.

8. Without prejudice to the obligation “to confess one’s serious sins at least once a year”, “a worshiper to whom serious sins are remitted by means of general absolution, should approach individual confession as soon as soon as there is an opportunity to do so, before receiving another general absolution, unless a just cause intervenes<sup>53</sup>.”

In conclusion, therefore, we would like to point out some of the most important differences between the current and previous law governing the granting of collective absolution; moreover, the evolution of the law has gone in the direction of not increasing, as some might have wished, but of reducing the possibility of absolution of many penitents at the same time without their previous individual confession:

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<sup>53</sup> Giovanni Paolo II, *M.P. Misericordia Dei*, april 7<sup>th</sup>, 2002, in *AAS*, 2002 (94), pp. 452 ss. (and [here](#)).

I) it is currently only up to the Diocesan Ordinary, and no longer to the individual priest, as established in *Sacramentum Paenitentiae*, No. 5, to judge whether there is a grave necessity pursuant to Can. 961 § 1 no. 2, or conditions that allow collective absolution, although the penitents are not in danger of death;

II) the Diocesan Ordinary can no longer limit himself to consultations with neighboring bishops on the existence of the preconditions for collective absolution, as required by SP no. 5 (“after discussing it with other members of the Episcopal Conference”), but collegial decisions must be taken, pursuant to Can 961 § 2 (“taking into account the criteria agreed with the other members of the Episcopal Conference”).

We live today in a pluralistic world, and this pluralism also affects the life of the Church in an ever-increasing way: in the context of the Sacrament of Confession, more and more in recent decades, but as indeed already in previous centuries, the Church has shown that it knows how to adapt : when the going got tough, the Church has been able to continue playing, that is when a changed background scenario has required it to do so, the Church has been able to foresee and authorize even new ways to manage its economy of salvation: it has the power to give mankind the sacrament of salvation in various forms (Can. 960)<sup>54</sup>, and the history of the Sacrament of Confession shows how it has been closely linked to the historical situation: therefore the Church, in

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<sup>54</sup> V. CCC nn. 553 and 979 ([here](#)).



each historical phase, can and will be able to establish how the sacramental salvation of men can be transmitted<sup>55</sup>.

History also shows the dynamic side of the Church, which has always tried to offer men, in whatever situation or danger they might find, the possibility of obtaining forgiveness of sins and Salvation<sup>56</sup>.

The initial multiplicity of the forms of confession, theorized by the Shepard of Hermas, by Hugh of Saint Victor, Urban III, Gregory VII, Saint Leo IX, Peter Lombard, Simon of Tournai, was then simplified, starting from the thirteenth century, to one only: the Lateran Council IV, of 1215, annually fixed Confession and Communion at least at Easter<sup>57</sup>; the Council of Trent, convened to respond to Luther and his ideas<sup>58</sup>, established that the forgiveness of sins was divided into three phases: contrition, confession and forgiveness, and that the absolution by the priest was a judicial act<sup>59</sup>, and, on the basis of the principle that the full confession of sins by the baptized was necessary by divine law<sup>60</sup>, for the following centuries the Church regulated the form of the Sacrament of Confession, up to the reforms that we saw at the turn of the First

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<sup>55</sup> A. Riccardi, *Il futuro del cristianesimo*, in AA.VV., *I cattolici e le chiese cristiane durante il pontificato di Giovanni Paolo II*, Cinisello Balsamo, 2006, pp. 11 ss.; J.I. Arrieta, *The Internal Forum: Notions and Juridical Regime*, in *SC-RCDC*, 2007, pp. 27 ss.

<sup>56</sup> V. M. d'Arienzo, *Diritto canonico e storia. I paradossi interpretativi tra tradizione e innovazione*, in *DeR*, 2018, pp. 69 ss.

<sup>57</sup> H. Denzinger, *Enchiridion Symbolorum*, Freiburg i.Br – Basel – Wien, 2017, 812 ss.; v. F. Marti, *Il favor fidei nello ius novum. Analisi delle fonti normative*, in *IE*, 2014, pp. 359 ss.

<sup>58</sup> V. M. d'Arienzo, *Il contributo del pensiero riformato del XVI secolo all'ermeneutica della laicità*, in *AGFS*, 2018, pp. 697 ss.; A. Melloni, *Il caso e la cosa. Lutero nella storiografia italiana del Novecento*, in *CnS*, 2016, pp. 613 ss.

<sup>59</sup> H. Denzinger, *Enchiridion Symbolorum*, cit., 1676 ss.

<sup>60</sup> Ivi, 1679.

World War and the codification of the CIC-17, to the reflections and general reconsiderations of Vatican Council II, to the codification in force, demonstrating – once more – that the canonical norms – and, more generally, confessional, they change in terms of function: *salus animarum suprema lex*<sup>61</sup>.

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<sup>61</sup> P.L. Consorti, *Contributo metodologico alla comparazione dei diritti religiosi: il valore dei formanti*, in *DeR*, 2015, pp. 255 ss.



## IS THE SUSPENSION OF MASS IN PUBLIC FORM LEGITIMATE?\*

Maria d'Arienzo

As an emergency issue according to the contagion prevention, the doors of the churches remained locked, and when open, no public celebration have been admitted. Some States, for example Italy, have decided the suspension of all religious ceremonies, including funeral. Nevertheless, Masses have been celebrated *sine populo*, often live streamed by television and social media.

I want to express further considerations regarding the power of ecclesiastical authority to preclude the faithful from attending Mass. In many articles – even published in the press - it has been affirmed that the decision of Catholic Church authorities to suspend religious ceremonies constitutes a violation of the right of the faithful to participate in the Sacraments.

Actually, canon 1245 of the *Codex juris canonici* expressly allows the competent ecclesiastical authority (i.e. the Bishop and, according to its provisions, the parish priest) to «grant in individual cases a dispensation from the obligation of observing a feast day» for a «just cause», and it is possible to commute the precept «into other pious works».

The possibility of dispensing from a universal and particular obligation falls within the capacity recognized to the Bishop « whenever he judges that it contributes to their spiritual good» (can. 87 § 1), and for

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a «just and reasonable cause» (can. 90 § 1). Such a dispensation does not prevent general compliance with the rule but limits its exercise in particular cases and for individuals.

On another hand, one must consider that attending Mass is not only a duty, but a right of the faithful, since «sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them» (can. 843 § 1). So, in the specific pandemic situation, the Bishops have dispensed from the duty, and have applied can. 223 too, according to which it falls to the same authority to define the exercise of the Christian faithful, both as individuals and gathered together in associations, taking into account «the common good of the Church, the rights of others, and their own duties toward others».

That decision does not affect the right of the faithful, since it simply defines its method of exercise.

The measures of suspension of the public Masses are necessary and exceptional, and do not interfere with the sacramentality which concerns the Eucharistic rite, which is part of the Mass. Although the participation via web or video is a very different way to attend it. The Holy Father himself, in the homily of the Mass in Santa Marta on 17 April, warned about the risks of a «virtual faith», hoping for an imminent return to «normalcy».

## THE TALMUD TEACHES: “WHEN PESTILENCE IS IN THE CITY, STAY INSIDE” (BAVÀ QAMMÀ 60)\*

Enrica Martinelli

As the CoViD-19 epidemic continues to rage all over the world, Israel’s chief rabbi, David Lau, has invited Jewish believers to observe a day of fasting and prayer on Wednesday 25 March, the eve of the first day of the Hebrew month of *Nissan*<sup>1</sup>. In a statement released on 22 March, rabbi Lau wrote that “the sword is hitting the entire surface of the planet”, and for believers it is a message to humanity to wake up and move towards an internal renewal that cannot be postponed. Therefore it is time to observe the ancient rule that urges *teshuvà* (repentance), *tzedaka*<sup>2</sup> and

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<sup>1</sup> The choice of the eve of *Nissan* is very significant since the first day of *Nissan*, *Rosh Chodesh Nissan*, is the beginning of the Jewish calendar. The order to count time and establish the calendar is the first *Mitzvah* that Israel receives from G-d in view of the next liberation from slavery in Egypt. On the first day of *Nissan*, Israel, begins to observe the *mitzvot* by counting time and giving meaning to the existence of time. Israel begins to create the world in collaboration with G-d (observing the *mitzvot*) on the first day of *Nissan*. *Nissan* is the month of freedom, salvation and love. A *Nissan* G-d has redeemed Israel and *Nissan* will redeem it in the future. *Rosh Chodesh Nissan* is *rachamim*’s New Year, mercy.

<sup>2</sup> This literally means “to dispense loving kindness” and is a fundamental social value in the daily life of Jews.

fasting<sup>3</sup>, meditating on one's actions, striving for spiritual improvement and making real personal [change](#). On this occasion, every member of the people of Israel must engage in the rigorous application of the *mitzvot*, both of which guide the relationship between man and G-d and those which determine human relations. Therefore fasting<sup>4</sup> will be accompanied by the afternoon prayers of *Minchà*, recited for the salvation of all generations; those who pray in solitude because of the meeting ban<sup>5</sup> will also recite the *Selichot* (prayer for forgiveness). The chief rabbi assures that merciful G-d will be able to listen to the plea, save the people of Israel and protect all humanity from catastrophe.

Rabbi Riccardo Di Segni<sup>6</sup>, chief rabbi of Rome, also expressed similar words. He recalled the serious epidemics that the Bible itself testifies as a constant presence in Jewish history, observing that the current pandemic poses a question of meaning, as it challenges man to question his ability to fight an unknown and invisible enemy, counting only on rational or scientific forces.

Forced isolation due to the need to prevent contagion is an opportunity for separation from the community and for introspection, rediscovering the fragility of humanity and the richness of the “traditional Jewish religious recipe (and not only) because of these circumstances” based on the order to follow medical instructions and on three subsequent points: “Social

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<sup>3</sup> See [here](#) the press release on the fast of the chief rabbi of Rome, dated 23<sup>rd</sup> March.

<sup>4</sup> For those who cannot practice fasting, for health reasons or otherwise, not even half a day, fasting with the tongue is prescribed, excluding the reading of the Torah and prayer.

<sup>5</sup> Without a *minyan*, which is the ten-person quorum needed for public prayer. For Orthodox Jews, ten adult men must be present for a *minyan* to exist.

<sup>6</sup> In an interview released to *Il Messaggero* newspaper on 19 March, available [here](#).

solidarity (because other human beings are more at risk than us), prayer (because the human perspective is not everything) and the review of one's own behavior which is perhaps the most difficult thing to do".

The words of the rabbis significantly link the observance of religious precepts to the rigorous application of state regulations; indeed, respect for the latter is itself a religious obligation, as the orthopraxis of Judaism translates precisely into the observance of the *mitzvot*, and the law represents its ontological essence, as recalled by the Talmudic saying of Solomon "Dina de-Malkuta Dina" ("The law of the kingdom is law"). This interpretation is a constant in the history of the Jewish people, characterized by the phenomenon of "double obedience"<sup>7</sup> to Halakhic and civil law<sup>8</sup>.

Compliance with the law is a reminder of the responsibility that every Jew is required to observe in current circumstances, thus reconciling faith with reason. This coronavirus challenges the public good and calls for observance of the fundamental Jewish principle of the sacredness of human life, which belongs only to the Creator who forged it in His image and likeness<sup>9</sup>. G-d

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<sup>7</sup> Clearly represented by the precise observation of F. Lucrezi, *Appunti di diritto ebraico*, I, Giappichelli, Torino, 2015, p. 50.

<sup>8</sup> For a historical reading of the principle and how it survived the values of the Enlightenment and the French Revolution, see G. Graff, *Separation of Church and state, Dina de-Malkuta Dina in Jewish Law, 1750-1848*, University of Alabama Press, Birmingham 1985. For an in-depth application thereof to family law, see Rabbi A. Di Porto, *Dina demalkuta dina*, in *Le relazioni familiari nel diritto interculturale*, in I. Zuanazzi and M.C. Ruscazio (ed.), Libellula, Tricase, 2018, pp.73-81.

<sup>9</sup> "Our sages teach us that God, in granting each of us a soul, invites us to be His partners in creation. We all have the power to act and behave in a way that helps make the world a better place". Reflection by rabbi Warren Goldstein, chief rabbi of South Africa, available [here](#).



commands: “Now choose life, so that you and your children may live” (Deut. 30:19), and this precept represents the *Knotenpunkt* through which the interpreters must reconcile every instance posed by contingent and changing needs with the protection of the principles on which tradition is based.

From this fundamental postulate it follows that saving a human life is a religious duty; that in the event of a threat to life, any religious precept must be suspended; that man is the guardian of his body, which has been given to him and which must be preserved in the best way<sup>10</sup>; that believers must practise compassion, which derives from the precept of loving one's neighbor as oneself<sup>11</sup>.

Therefore, compliance with all the *mitzvot*, even in the most problematic circumstances, is combined with the irrepressible obligation to protect one's own health and that of others by every means<sup>12</sup>. Therefore we can understand how compliance with the health recommendations of competent bodies and instructions issued by civil authorities in different countries, including the lock-

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<sup>10</sup> For example, by not exposing yourself to the danger of contagion or by behavior that could cause contagion or that could cause other diseases or by accepting all the necessary treatments for recovery.

<sup>11</sup> “With all of humanity originating from two people only, our sages say that God also conveys the sanctity of every human life. Just as saving Adam or Eve at the dawn of Creation would have meant saving the entire world, so too should we recognize that each life has the value of the world”. See the reflection of rabbi Warren Goldstein, cit.

<sup>12</sup> “These two fundamental duties must be reconciled as much as possible, even if the protection of life and health takes precedence over everything”. Statement from the Assembly of the Rabbis of Italy.

The chief rabbi of France, Haïm Korsia, talks about the principle of *Pikuach nefesh*, during the religious program *A origin Berechit. Emission spécial Pessah. La préservation des vies* aired on Sunday 5 April on France 2. An excerpt is available [here](#).

down, are a halakhic obligation<sup>13</sup>, pursuant to which synagogues, schools and community facilities were [closed](#) and common prayer services were canceled, obliging people to undertake domestic prayer only.

In Israel, religious authorities supported state authorities in taking the necessary measures to contain the spread of the infection<sup>14</sup>, encouraging worshippers to stay in their homes and

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<sup>13</sup> *On this point Rabbi Alberto Somekh, states: “I believe that the most significant Talmudic passage for our current situation is the following: *deverba-ir – kannèsragleka* (Bavà Qammà 60): ‘When pestilence is in the city, stay inside’”, i.e.: stay at home. Talmud contains three verses that support this recommendation. The first is taken from the last plague of Egypt, the death of the firstborns, which happened at midnight. Jews were asked not to leave their houses until the morning (Shemot 12,27), because once the plague hit it would make no more distinctions. And should *there* be any doubt about the restriction only being valid for one night *there* is another verse: “My people, come into your chambers and close your door about you; hide for but a moment, until the wrath is past” (Yesha’yahu 26,20). And should we again think that it may do us good to go out together with others to overcome the fear within, we should remember that “From outside, the sword (of disease) will bereave, and terror from within” (Devarim 32,25). Hence, recent government regulations are perfectly in line with tradition and should be respected. Anyone who leaves their house without a reason to do so is not just breaking a law of the State, but also Halakhah”. Compare [here](#).*

<sup>14</sup> With the sole exception of the strong - and sometimes violent - opposition from ultra-Orthodox Jews. Numerous prominent rabbinic leaders in Israel announced that they would not comply with government directives and that their schools and *yeshivas* would remain open and lessons regularly taught, justifying such a decision on the basis that children studying *Torah* offer physical protection to the Jewish people (compare [here](#) and also [here](#)). After weeks of stalemate, the oldest ultra-Orthodox rabbinic leader, rav Chaim Kanievsky, ordered community members to obey government orders of social distancing, equating contrary behavior to attempted murder, subject to being reported to the police: see [here](#).

The spread of numerous infections in ultra-Orthodox communities is worthy of note (the ultra-Orthodox city of Bnei Brak was found to have the highest number of patients per capita infected with coronavirus: see [here](#)), all educational

[celebrate \*Shabbat\*](#) and the other religious holidays that precede *Pesach*<sup>15</sup>, without going to the Temple.

In Italy, state provisions have also prohibited funeral ceremonies, making it impossible for a *minyan* and consequently the recitation of the mourning *kaddish*, even for those who die due to reasons other than viral infection. Similarly, ceremonies related to ritual circumcision, generally festive and participatory occasions, and the *mikveh* bathing ritual, have become impractical.

The most painful deprivation concerns the impossibility to celebrate the imminent Passover according to traditional methods. The Passover *sèder* is the most important occasion for Jewish families, and also involves those who are less observant, as it summarizes the fundamental principles and values of Judaism and takes place according to a complex ritual of biblical derivation<sup>16</sup> that this year will not be possible to follow, forcing many families

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institutions have now been closed by order of the Minister of Health, MK Yaakov Litzman. See the *Arvenire* newspaper of 31 March (linked [here](#)).

<sup>15</sup> See [here](#). Many holidays, also in Italy, were celebrated in streaming, such as, for example, the *Purim* festival, with the reading of the *Meghillat Esther*, thanks to the purchase of the SW Zoom meeting platform by Ucei. See [here](#).

The statement from the Assembly of Italian Rabbis provided detailed instructions on how it is possible to fulfill the *mitzvot* related to the celebrations without violating the Halakhic duty to comply with government regulations.

<sup>16</sup> *Passover is the stem cell of the Jewish people*, in *The New York Times*, 31 March 2020. Rabbi Roberto Della Rocca explains the message that can be drawn from the Jewish tradition, in this moment of great difficulty. “Our history is the paradigm of resilience. Just think that the *Haggadah*, which we will read the first two evenings of *Pesach*, and which sees us as direct protagonists of the exodus from Egypt, has invariably been read over the centuries: even in the most tragic moments the Jews have not ceased to teach their children, during the *Sèder*, that the Eternal Father continued to free us from slavery and that we were free” (see [here](#)).

to remain separate or to meet only in [online video conferences](#)<sup>17</sup>. The CoViD-19 pandemic has deeply attacked Jewish religiosity, characterized by a family and community life which has been wounded by the necessary social distancing, causing afflictions on the same psychological wellbeing of believers, which the Communities try to sustain by combining “institutional support”<sup>18</sup> with respect for the deepest Tradition of Jewish religious life, which invites us to “stay in ourselves, to return to ourselves”, developing the domestic dimension of Judaism<sup>19</sup> by compensating the necessary renunciation of the community dimension, rediscovering the sense of *Shabbat*, “momentary pause to listen to our inner voice, an interruption, to ask ourselves who we are and where we are going, in fear that the agitation, the profuse energies, the conflicts undertaken [...] will not make us forget the values that justify the existence of a Jewish community and of the people who make it up. Our sages say that if all Jews observed a Shabbat

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<sup>17</sup> Israel has limited Easter celebrations to 10 people - a paltry number taking into account the many large families – and President Donald Trump has asked Americans to do the same. However, not all rabbinic authorities agree that online celebrations are possible or lawful: in this regard, see the [opinion](#) of the Assembly of Rabbis of Italy.

<sup>18</sup> See interview by Noemi Di Segni, President of the Union of Italian Jewish Communities to The Jerusalem Post available [here](#).

<sup>19</sup> “Those who are alone will not have a less important Pessah, they will simply have a real Pessah *where* they will deepen the sense of liberation”. Just as happened in the land of Egypt, when the angel of death passed and the Jewish people had to lock themselves in the house to be saved, at the present moment, it is necessary to stay in houses to be spared from the epidemic. These were the words of rabbi Haïm Korsia in [www.diresom.net](#). On the way of understanding and experiencing the Passover holidays spent in isolation, see also the [Open letter from the chief Rabbis of the world](#).

entirely, the Messiah would come immediately [...]. Let us take this great opportunity!”<sup>20</sup>.

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<sup>20</sup> Rabbi Roberto Della Rocca, Director of the Training and Culture Area of the Union of Italian Jewish Communities. See his reflection [here](#).

## FROM SOCIAL DISTANCE TO MUSLIM SOLIDARITY PROXIMITY AT THE TIME OF COVID-19\*

Vasco Fronzoni

The Italian Muslim communities have faced the challenge of contagion with a pragmatic spirit. As it known, Islam does not recognize universal leaders, and therefore chooses on the basis of the general reference principles, which in the case of epidemics refer to a *hadith* that prescribes «*if you hear of a plague in a land do not enter it; and if it breaks out in the land where you stay, do not leave*»<sup>1</sup>. Muslim communities in Italy have given consistent indications with this substantial precautionary principle, stopping the movements generally linked to production activities; remaining on Italian territory despite being the one most penalized by contagion after China; closing prayer rooms and mosques to avoid contagions, in line with government regulations. It should be noted that this attitude is grafted on the homologous attitude of the ecclesiastical authorities, who have indicated to the faithful alternative ritual paths by accepting the limitations imposed by governments<sup>2</sup>.

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<sup>1</sup> Al Bukhari, *Sahih*, Al-Maktaba al-‘Asriyya, Beyruth, 1427 H., IV, n. 5728.

<sup>2</sup> A. Fuccillo, *La religione “contagiata” dal virus? La libertà religiosa nella collaborazione Stato-Chiesa nell'emergenza covid-19*, in *Osservatorio delle Libertà ed Istituzioni Religiose*, [www.olir.it](http://www.olir.it), 21/04/2020.

In addition, Muslims in Italy are particularly notable for their concrete, supportive attitude, which follows their contribution capacity and which goes beyond any confessional boundary, which essentially recalls the obligation of zakat, one of the pillars of Islam. For Muslims, solidarity practices and philanthropic acts not only affect a social attitude but also constitute an essential element of religious practice. In this respect, the principle of solidarity is a key element of the whole Muslim society, basic as Buddhist ethics of compassion and the Christian commandment of love for neighbor<sup>3</sup>.

In Islam, brotherhood of faith replaced the ancient clan, tribal, race and ancestry ties that existed in the pagan era «*The believers are but brothers*» (Quran, XLIX, 10)<sup>4</sup>, generating a sense of belonging that is concretized in a spiritual and material solidarity, according to the Quranic precept: «*And cooperate in righteousness and piety*» (Quran, V, 2). Based on this principle, the Islamic community takes care of both spiritual and material well-being: «*Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful*» (Quran, IV, 36). The primary function of altruistic activities in Islam is therefore to achieve an equitable distribution of income and wealth in different ways, through direct donations from the rich to the poor, with projects of assistance for disadvantaged people and programs for

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<sup>3</sup> H. Kung, *Islam: passato, presente e futuro*, Rizzoli, Milano, 2005, p. 685.

<sup>4</sup> For Quran, it was used the revised edition edited by the General Presidency of the Islamic Scientific Research Directorate, Ifta, Preaching and Religious Orientation of the Kingdom of Saudi Arabia, al-Madinat al-Munawwarah (Medina), 1351 H. (1932).

community development, or through targeted interventions that will enable the poor to become economically more autonomous<sup>5</sup>.

Based on these shariatic references directed to humanitarian action, the Italian Muslim community stood out for the following initiatives, monitored from the beginning of the health crisis.

1) March 23, 2020. The Muslim community in Alexandria has decided to participate in the solidarity initiatives undertaken to deal with the Coronavirus epidemic by announcing that it wants to create an internal fundraiser to donate to the local hospital, and in the meantime, they have organized a blood donation<sup>6</sup>.

2) March 23, 2020. The Essalem cultural association of Fornovo donated € 2,700 in favour of the Fornovese Green Cross in aid of the commitment to fight the epidemic<sup>7</sup>.

3) March 23, 2020. The Muslim community of Forlì donated € 7,000 to the local health agency (Ausl)<sup>8</sup>.

4) March 23, 2020. The Muslim community in Imola through its association House of Islamic Culture donated € 1,000 euros to the local health agency<sup>9</sup>.

5) March 24, 2020. In Bergamo, the local Muslim community, through the Toubkal association in collaboration with Muslim Young-BG and the Muslim Association of Bergamo, set up home

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<sup>5</sup>In tal senso M. Ariff, *La raccolta delle risorse attraverso il volontariato islamico nel Sud-est Asiatico*, in A. Pacini (a cura di), *Tasse religiose e filantropia nell'islam del Sud est asiatico*, Edizioni della Fondazione Giovanni Agnelli, Torino, 1997, p. 23.

<sup>6</sup><https://www.dailymuslim.it/la-comunita-islamica-di-alessandria-avvia-raccolta-sangue-e-fondi/>

<sup>7</sup><https://www.dailymuslim.it/covid-19-la-solidarieta-dellassociazione-essalem-per-la-croce-verde/>

<sup>8</sup><https://www.dailymuslim.it/la-comunita-islamica-di-forli-dona-7mila-euro-allausl/>

<sup>9</sup><https://www.dailymuslim.it/la-comunita-islamica-di-imola-dona-mille-euro-allazienda-sanitaria-locale/>



delivery of groceries and medicines for the neighbourhood and for elderly people in need<sup>10</sup>.

6) March 25, 2020. The Muslim community of Bassano del Grappa has launched an online fundraiser for donations to the San Bassiano hospital<sup>11</sup>.

7) March 26, 2020. The Islamic cultural association of Ticino has decided to contribute to solidarity initiatives against the spread of Covid-19 by donating the sum of € 1,500 to the Municipality of Castelletto Sopra Ticino for the purchase of health disposals. Fundraising continues through a dedicated online platform and the local Islamic community solicit to donate in favour of the Volunteer Ambulance Corps, Civil Protection and Hospitals<sup>12</sup>.

8) March 26, 2020. The hospital of Manerbio received € 1,800 from fundraisers promoted by the Islamic association Chorouk that invited the local community to continue donating what it can to fundraising for the Garda health agency<sup>13</sup>.

9) March 27, 2020. The Muslim community of Carnate, through the local cultural center, made a small but significant donation to the AVPS association of Vimercate, whose volunteers serve in the nearby hospital<sup>14</sup>.

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<sup>10</sup><https://www.dailymuslim.it/le-associazioni-islamiche-di-bergamo-al-servizio-di-chi-e-in-difficolta/>.

<sup>11</sup>[https://www.gofundme.com/f/emergenza-nazionale-corona-virus?member=&utm\\_medium=email&utm\\_source=customer&utm\\_campaign=p\\_email%2Binvitesupporters](https://www.gofundme.com/f/emergenza-nazionale-corona-virus?member=&utm_medium=email&utm_source=customer&utm_campaign=p_email%2Binvitesupporters).

<sup>12</sup>[https://www.gofundme.com/f/emergenza-nazionale-corona-virus?member=&utm\\_medium=email&utm\\_source=customer&utm\\_campaign=p\\_email%2Binvitesupporters](https://www.gofundme.com/f/emergenza-nazionale-corona-virus?member=&utm_medium=email&utm_source=customer&utm_campaign=p_email%2Binvitesupporters).

<sup>13</sup><https://www.dailymuslim.it/lassociazione-chorouk-dona-altri-1500e-allospedale-di-manerbio-bs/>.

<sup>14</sup>[Here](#).

10) March 30, 2020. The Muslim community of Sermede and Felonica, in the province of Mantova, made a donation through the Amici della Pace Association a contribution to the local hospital<sup>15</sup>.

11) March 30, 2020. The Islamic Cultural Center of Brescia has donated € 7,000 to the Spedali Civili di Brescia and is also engaged in the distribution of food at home for families who are in a state of difficulty and who are unable to benefit from social safety nets<sup>16</sup>.

12) March 31, 2020. The Islamic Culture Center of Cuneo has launched a fundraiser in favour of the local Santa Croce Hospital, appealing to the entire Muslim community and to all the citizens of Cuneo to support operators engaged in the front line to contain the advance of the Coronavirus epidemic in the city<sup>17</sup>.

13) April 1, 2020. The fundraising organized by a collective of 13 different Muslim associations in the province of Brescia yielded € 55,805, donated to the Fondazione Comunità Bresciana onlus in favour of the public health system<sup>18</sup>.

14) April 1, 2020. In Carpi the local Pakistani community donates € 10,000 for the fight against Coronavirus and

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<sup>15</sup> [www.dailymuslim.it/anche-a-sermede-la-comunita-islamica-contribuisce/](http://www.dailymuslim.it/anche-a-sermede-la-comunita-islamica-contribuisce/)

<sup>16</sup> <https://www.dailymuslim.it/la-comunita-islamica-di-brescia-dona-7mila-euro-agli-spedali-civili/>.

<sup>17</sup> [https://www.gofundme.com/f/aiutiamo-1039ospedale-s-croce-di-cuneo?utm\\_source=customer&utm\\_medium=copy\\_link-tip&utm\\_campaign=p\\_cp+share-sheet&fbclid=IwAR0i-zKNq770OsG-1C3q0JZmqEslGpeFPsxcwPOG7EPfe9j6MH0kiNOE30](https://www.gofundme.com/f/aiutiamo-1039ospedale-s-croce-di-cuneo?utm_source=customer&utm_medium=copy_link-tip&utm_campaign=p_cp+share-sheet&fbclid=IwAR0i-zKNq770OsG-1C3q0JZmqEslGpeFPsxcwPOG7EPfe9j6MH0kiNOE30).

<sup>18</sup> <https://www.dailymuslim.it/brescia-record-di-donazioni-dalla-comunita-islamica-superati-i-55-mila-euro/>.

the mayor has publicly thanked the community from his facebook page<sup>19</sup>.

15) April 2, 2020. The Muslim community of Crema has collected € 4,450 in favour of the local hospital, reporting on the bank transfer “Covid-19 emergency”<sup>20</sup>.

16) April 6, 2020. The Muslim community of Reggio Emilia donates € 56,000 to the structures involved in tackling the epidemic in the city and the mayor has publicly thanked the Muslim families who contributed to the fundraising<sup>21</sup>.

17) April 6, 2020. Even DailyMuslim, the online newspaper of Italian Muslims, through Nexilia, the network of digital solutions for independent publishers, has decided to contribute during the Covid-19 emergency, by donating all the advertising revenue generated on the home pages of the network sites to Italian Red Cross, through the #RestoInHome campaign<sup>22</sup>.

18) April 11, 2020. The Muslim community of Catania has donated € 6,000 in health disposals (gloves, masks, disinfectant) to the local Garibaldi hospital, also launching a fundraiser and continuing the distribution of food packages for families in need<sup>23</sup>.

19) April 11, 2020. The Muslim community of Santa Croce sull’Arno donated some funds to the Coronavirus Pisa

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<sup>19</sup><https://temponews.it/2020/03/31/il-grande-abbraccio-della-comunita-musulmana-a-carpi/>.

<sup>20</sup><https://www.dailymuslim.it/a-crema-lamministrazione-ringrazia-la-comunita-islamica/>.

<sup>21</sup><https://www.dailymuslim.it/reggio-emilia-la-comunita-islamica-dona-56mila-euro-e-il-sindaco-ringrazia/>.

<sup>22</sup><https://www.restoinhome.page/>.

<sup>23</sup><https://www.facebook.com/comunitaislamicadisicilia/posts/2111816985692488>.

Mutual Aid Fund, set up by the Società della Salute Empolese Valdarno Valdelsa, receiving public thanks from the Mayor<sup>24</sup>.

20) April 13, 2020. The Muslim community of Perugia and the local Muslim donor group AVIS responded with great participation to the request for blood<sup>25</sup>.

21) April 14, 2020. The Islamic centres in Lughese Area (Lugo, Fusignano, Alfonsine, Massa Lombarda, Cotignola, Conselice, Lavezzola and Bagnacavallo) collected and donated € 22,670 to the Umberto II hospital in Lugo, to counteract the health emergency<sup>26</sup>.

22) April 14, 2020. The Islamic cultural association Amici Del Valdarno has launched a volunteer project aimed at people who are unable to go out for shopping because of the epidemiological emergency. The initiative made in collaboration with the Islamic Federation of Toscana and the Red Cross of Figline and Incisa Valdarno provides the door shopping service for families in need<sup>27</sup>.

23) April 15, 2020. A group of women from the Islamic association of Molinella, with a collaboration and social help spirit, create 7400 masks and donate them to the local citizenship in help to counter Coronavirus.<sup>28</sup>

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<sup>24</sup><https://www.facebook.com/congiuliadeidda/posts/1581820935309428>.

<sup>25</sup><https://www.dailymuslim.it/a-ponte-felcino-perugia-la-comunita-islamica-risponde-presente-alla-richiesta-di-sangue/>.

<sup>26</sup><https://www.dailymuslim.it/i-musulmani-del-lughese-donano-oltre-22-mila-euro-al-locale-ospadale/>.

<sup>27</sup><https://www.dailymuslim.it/la-comunita-islamica-di-valdarno-arezzo-attiva-nella-solidarieta/>.

<sup>28</sup><https://www.dailymuslim.it/molinel-la-bo-donne-musulmane-producono-e-donano-7400-mascherine/>.

Some initiatives have also been recorded in the international arena, like those adopted by countries such as China and Russia. Intra-Islamic cooperation, in fact, stood out for the humanitarian activism undertaken to support Italy and the Muslim communities present in the territory in the fight against the spread of the virus through substantial donations.

24) April 8, 2020. The World Muslim League, known for being the most important NGO in the Islamic world based in Mecca, has donated 1 million dollars to Italian civil protection as a contribution to combat the spread of Coronavirus<sup>29</sup>.

25) April 9, 2020. Qatar has sent two field hospitals to support the Coronavirus emergency in Italy<sup>30</sup>.

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<sup>29</sup><http://www.futuroquotidiano.com/coronavirus-la-lega-musulmana-mondiale-dona-1-milione-di-dollari-allitalia/>.

<sup>30</sup><https://www.dailymuslim.it/il-qatar-dona-due-ospedali-da-campo-allitalia/>.

## POSITION PAPER



# PROPOSAL FOR A SAFE RESUMPTION OF RELIGIOUS CELEBRATIONS IN ITALY\*

edited by DiReSoM

In our capacity as professors and researchers of law and religion in state universities, and as founders of the "Diresom" research group - which during this pandemic activated the first international web portal on Law, Religion and Coronavirus ([www.diresom.net](http://www.diresom.net)) - we are please submitting to the Italian government and to the religious bodies a contribution to the debate concerning the possibility of allowing celebrations of religious worship, in compliance with the measures which are necessary to prevent the infection of the Sars-Cov-2 virus, namely the cause of the Covid-19 disease.

1. State of affairs. The emergency rules which have been enacted in Italy to contain the contagion throughout the national territory have limited various freedoms. Mainly, freedom of movement has been limited, as it has been restricted only to the hypotheses of "verified work demands or situations of necessity or movements for health reasons". In this emergency scenario, "religious and civil ceremonies, including funeral ceremonies" have also been suspended and the opening of places of worship has been

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conditioned to the "adoption of organizational measures aimed at avoiding gatherings of people, taking into account the size and the features of the spaces, so as to guarantee to visitors the possibility of respecting the distance between them of at least one meter ... »(Order of the Prime Minister 8 March 2020).

Unfortunately, this emergency regulation has resulted to be comprehensively unclear.

It left room for a discretionary reading, which has been only partially resolved by the publication of responses on institutional sites, as the latter have always been nevertheless very restrictive about personal mobility. For example, the opening of places of worship has not been considered as a sufficient condition to make a move from one's home legitimate, if the latter was not close to it (Faq 10 April 2020), even though entering the places of worship has been considered as acceptable - under generally established conditions - if the mobility had been determined by other legitimate reasons (Faq of the Ministry of Health of 15 March 2020; Note from the Central Directorate for Religious Affairs of the Ministry of the Interior, 27 March 2020).

On the occasion of the Easter celebrations, the participation in Catholic religious rites of a certain number of worshippers has been considered as acceptable, and the possibility to celebrate religious marriages has been clarified, provided only the presence of the celebrant [rectius: the religious minister, who is not the celebrant of the canonical marriage], of the married couple and of the witnesses, and, in any case, always in compliance with the prescribed sanitary rules and the necessary interpersonal distance.

Such rules, even if they have been specified in a ministerial note addressed to the Italian Episcopal Conference, must be

considered operative towards all the expressions of religious worship by virtue of the principle of secularism of the state.

The headlines of the last few days have broken the news that there have been contacts between the Italian Episcopal Conference and the Government authorities so as to agree about appropriate ways of exercising freedom of worship in the so-called "second phase", which has been announced for the period after 4 May 2020. However, the Order of the Prime Minister 26 April 2020 has fully preserved the general framework, only admitting the celebration of funerals, which should "preferably" be outdoors, with the participation of no more than 15 participants. The Italian Episcopal Conference has therefore issued an immediate note of dissent, complaining about the impairment of the exercise of freedom of worship" and, on the same date, the Prime Minister announced that "in the coming days a protocol will be studied which will allow the adherents to participate in liturgical celebrations as soon as possible in conditions of maximum security".

2. Challenging issues. From a technical-legal point of view, everyone should remember that in our legal system freedom of worship of everyone is protected under article 19 of the Constitution, therefore differentiated rules based on religious affiliation are not admissible. This means that the Protocol referred to by the Prime Minister's Office must provide measures addressed to all religious denominations, even those that have not entered into an agreement with the Italian state, pursuant to art. 8 paragraph 3 of the Constitution. We remind that the dialogue with religious denominations is constitutionally favored and represents a legal obligation, without however conferring on the religious

actors a regulatory competence that is mirrored in the affairs of the state.

The principle which underlies the legitimacy of the both past and future emergency rules, consists in the prevention of contagion, therefore, for this purpose, subordinating ordinary social activities to compliance with specific conditions of caution is legitimate, taking into account both the type of space where each needs to enter and the reason that led to leaving everyone's home. In the light of the general principles and guidelines contained in the Order of the Prime Minister April 26th 2020, which are globally aimed at introducing some partial relaxations of the previous restrictions on freedom of movement, in our opinion, considering mobility lawful for those who intend to go to a place of worship, also to participate in a religious celebration may be legitimate, as long as gatherings are prevented, social distancing is maintained and the necessary conditions of safety and sanitization of the premises are guaranteed. Limiting the stay in places of worship to the strictly necessary time will also be necessary.

3. Guidelines. We propose the adoption of the following guidelines in order to facilitate this operational possibility. Such guidelines make the collective celebration of any religion subject to the respect of the same measures of social distancing and hygienic-sanitary nature that can be established for other similar allowed forms of meeting

The places of worship may be open only if the conditions of sanitization and hygiene, which have been established for the entry into other closed but open to public spaces, are provided, and in particular:

a) possibility to maintain the measure of interpersonal distancing is guaranteed;

b) cleanliness and environmental hygiene are guaranteed at least twice a day and according to the opening hours. Surfaces must be cleaned with chlorine and alcohol based disinfectants;

c) adequate natural ventilation and air exchange is guaranteed;

d) availability and accessibility to disinfection systems of the hands is guaranteed;

e) the use of masks and disposable gloves is provided;

f) adequate access is available to information about the need to observe the mandatory sanitization measures and the prescribed social distancing at the entrance to the religious buildings.

2. The simultaneous entry into places of worship is allowed to a maximum number of people such as to allow compliance with the prescribed interpersonal distances:

a) the maximum number of people admitted to the entrance at the same time has to be considered in advance on the basis of the internal surface of the space (maximum three every forty square meters);

b) a warning has to be displayed at the entrance of the place of worship indicating the maximum number of simultaneously admissible people;

c) access is therefore properly organized under the responsibility of those who organize the worship meeting in order to limit the entrance to the maximum number of allowed people, and to prevent improper gatherings of people waiting outside the places of worship.

3. The celebration of worship in open spaces is encouraged, as in such spaces compliance with all the provisions adopted for

entry into closed spaces is not required, without prejudice to the need to ensure social distancing.

4. The religious authorities have to take appropriate measures of accommodation of religious ceremonies so as to respect the measures of prevention of contagion, taking care of the observance of interpersonal distancing and prohibiting any promiscuous use of containers for drinks and food of any type and for any purpose

5. Religious authorities commit to inform adequately their adherents about the obligation not to leave their houses, and therefore not to participate in the religious celebrations, whenever they are subjected to the quarantine measures or have been tested positive for the virus or whenever they exhibit symptoms of respiratory infection and (higher than 37.5° C) fever. This also applies to religious ministers.

6. Appropriate representative bodies must be locally set up, so as to allow prefectures and mayors to monitor, in collaboration with the local faith communities, both the prevention of contagion and the respect of individual freedom to participate in religious celebrations. Such bodies have to make use of the advice of experts with proper technical-scientific skills, so that any specific precautionary measures may be adopted and adapted taking into account the specific local context.

The present Position Paper has been drafted by DiReSoM and is the result of the collective reflection of:

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Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات

多元化社会中的法与宗教

1 – *Law, Religion and Covid-19 Emergency*, edited by Pierluigi Consorti





As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space to collect documents, comments and other useful materials related to the Covid-19 emergency, in order to assess the outcomes of the normative decisions made by state and religious authorities. So, on March 8th we have created [www.diresom.net](http://www.diresom.net). By the end of April, we had already published more than 500 documents and comments related to this issue, and more than 20.000 unique visitors had surfed our website. Therefore, we decide to edit an open source book to share in a more orderly way the comments that we have already published online, thus giving the possibility to consult these first guidelines to all those who want to study or analyze the legal reaction, both state and religious, to this pandemic.

**Pierluigi Consorti**, Full Professor of Law and Religion at the University of Pisa (Italy), is the Chairman of the Association of Academics of the Legal Regulation of the Religious Phenomenon in the Italian Universities (Adec) and the Coordinator of Research Group DiReSoM.

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