



The Value of Contracts in a Long-Term Context—An Example Based on the Lateran Treaty and the Concordat of 1984

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1 Genesis of Lateran Pacts

Understanding the content of 1929 Lateran Pacts requires a brief introspection in the “*Questione Romana*”, the strong debate arisen since the battle of Rome in 1870 and the capture of the city.

In fact, the capture of Rome (“*Presa di Roma*”), on 20 September 1870, was the last war event of the long process of Italia’s genesis and the Risorgimento, marking both the unification of the whole Italian peninsula under House of Savoy and the ultimate defeat of the Papal States under Pope Pius IX after 1116 of continuous years of reign (since Anno Domini 754).

Cavour, the Italian statesman appointed by the King Victor Emmanuel II for the birth of the Italian State, had firmly believed that without Rome as the capital, Italy’s unification would be meaningless; it was said that “to go to Rome” was not merely a right but a meaning necessity, not only for the geographical position of the town in the centre of peninsula but also for the remarkable role of the Eternal City embedded by the immortal memories of the Roman Empire, cradle of modern law and spiritual guide of the Catholic Church.

In regard to the future relations between Italian State and Holy See, Cavour’s famous dictum was “A free State in a free Church” separating the role of spiritual guide of the Holy See by political affairs of the Kingdom. However, Pius IX, the longest reigning elected pope in the history of the Catholic Church named “Papa Re”, refused that concept of cohabitation and in July 1870, two months before defeat (20 September 1870), affirmed the doctrine of papal infallibility through the First Vatican Council. Certainly, it is not a coincidence that the last political act of Holy See just before the final defeat of the Kingdom was to create a special dogma

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that states that the Pope is preserved from the possibility of error while he is defining a doctrine concerning faith or morals to be held by the whole Church.

This declaration was the political response to the “face-saving proposal” previously sent by the Italian King which allowed the Pope to retain the inviolability and connected rights attaching to him as on sovereign and the full jurisdiction of a small part of the city of Rome called the Leonine City. The proposal was strongly refused by Pius IX immediately before *Presa di Roma* considering it as an act of disloyalty.

After the proclamation of Kingdom of Italy, the Papal States were incorporated into the new nation except for the Roman’s premises: for nearly sixty years, relations between the Holy See and the Italian Kingdom were difficult and the struggle became known as the “Roman Question”.

In fact, after the capture of Rome, Pope Pius IX and further popes refused to recognize the new institution, and related jurisdiction, established as Italian Government.

Thus, the Italian King perceived different solutions, including reconsidering Florence as the capital of Italy, but there was widespread agreement that government must be held in Rome to ensure the survival of the new state. In an attempt of resolving the dispute, Italy’s Law of Guarantees, approved by the Parliament on 13 May 1871, provided to the Pope some privileges at the same level of the Italian Kingdom, included the right to provide proper ambassadors and financial payment on an annual basis to the Vatican.

On the contrary, the Pope did not accept any attempt by the Italian Government to set rules on the former territory of the papal properties (“*Stato Pontificio*”) and clearly declared that the Holy See must be considered independent from political power in both spiritual and domain’s jurisdictions.

Emblem of that period of struggle were the words with which the Holy See enjoined upon Italian Catholics the policy of abstention from the polls in Italian elections: Roman Curia used the Latin phrase “*Non expedit*” which means it is not fair for a Catholic to deal in political activities.

Moreover, on 11 October 1874, the Pope declared that every kind of opening granted by the Holy See to the Italian Government could be interpreted as the formal end of the Vatican power.

In 1926, Italian Government and Holy See started negotiations for defining the Roman Question; those attempts ended in the Lateran Pacts of 11 February 1929, signed by Benito Mussolini, on behalf of King Vittorio Emanuele III, as Prime Minister of Government, and by Cardinal Pietro Gasparri, on behalf of Pope Pius XI, as Secretary of State: the agreements took place in the Lateran Palace in Rome, from which they take their name “*Patti Lateranensi*”.

2 Context and Scope of Agreement in 1929

The Lateran Pacts were agreements made between the Kingdom of Italy and the Holy See, settling the “Roman Question” signed on 11 February 1929, in the Lateran Palace. The Treaty recognized Vatican City as a State being an independent

entity and the Italian Government agreed to give the Roman Catholic Church financial compensation for the loss of the Papal States.

The Lateran Pacts are three different treaties: a 27-article “Treaty of conciliation”, a 3-article financial “Convention” annex and a 45-article “Concordat”.

The scope of the agreement is declared in the beginning of the Treaty of conciliation: it reports the convenience among the parties by eliminating the struggles among Italian State and Holy See, pursuing a definitive and stable relationship among them and giving absolute independence in the mission of the Vatican Church. It is said that Holy See has full and international sovereignty and owns the full property of the Vatican City together with jurisdiction in its matters: *“The Holy See and Italy have recognized the desirability of eliminating every existing reason for dissension between them by arriving at a definitive settlement of their reciprocal relations, one which is consistent with justice and with the dignity of the two Parties and which, by assuring to the Holy See in a permanent manner a position in fact and in law which guarantees it absolute independence for the fulfillment of its exalted mission in the world, permits the Holy See to consider as finally and irrevocably settled the “Roman Question”, which arose in 1870 by the annexation of Rome to the Kingdom of Italy under the Dynasty of the House of Savoy; Since, in order to assure the absolute and visible independence of the Holy See, it is required that it be guaranteed an indisputable sovereignty even in the international realm, it has been found necessary to create under special conditions Vatican City, recognizing the full ownership and the exclusive and absolute power and sovereign jurisdiction of the Holy See over the same; His Holiness the Supreme Pontiff Pius XI and His Majesty Victor Emanuel III King of Italy have agreed to conclude a Treaty, appointing for that purpose two Plenipotentiaries, namely, on behalf of His Holiness, His Eminence Cardinal Pietro Gasparri, his Secretary of State, and on behalf of His Majesty, His Excellency Sir Benito Mussolini, Prime Minister and Head of Government”* (see: <https://www.vaticanstate.va/phocadownload/laws-decrees/LateranTreaty.pdf>).

The treaty has four different annexes:

- Map and extension of Vatican City-State (SCV);
- List and consistency of the buildings with extraterritorial privilege and exemption from expropriation and taxes;
- Financial convention agreed on as a definitive settlement of the claims of the Holy See following the loss in 1870 of its territories and property;
- Concordat regulating relations between the Catholic Church and the Italian State.

Among the rules, it is important to underline the following articles of the Treaty:

- Unique Catholic religion in the Italian State (1);
- Unique authority of Holy See in religion concerns (4);
- Pope identified as the Governor of the Church (8);
- End of the Roman Question (26).

The concordat states that the “Spiritual power” is limitless and that Rome must be preserved as Eternal City. The Pope is pledged to perpetual neutrality in international relations and to abstention from mediation in a controversy unless specifically requested by all parties.

Since 1871, the Holy See refused to accept any offer by the Italian Government until the agreements of the Lateran Treaty and the Church organization considered themselves as prisoners in a small portion of area inside Rome named the Vatican.

To commemorate the successful conclusion of the negotiations, the Italian governor Mussolini commissioned “Via della Conciliazione” (Road of the Conciliation), which would symbolically link the Vatican City to the heart of Rome, and the railway connection, through a bridge called “Viadotto del Gelsomino”, from Italian “S. Pietro” station to the “Vatican” station in the Holy See premises, which is still the shortest international link among two states.

3 Juridical Nature of the Public Contract and Economical Aspects

Since the definition of the agreement known as Lateran Pacts, many historians and law experts investigated the nature of the Treaty: according to some of them, it was an international treaty among Italian Kingdom and Holy See while others believed it was something new, a sort of new entity separated from both Italian State and Catholic Church (third government theory).

Also different theories were elaborated going through a deep analysis regarding the scope of the Treaty: the “*teoria del privilegio*” (privilege’s theory), according to which the Church had finally obtained a special status and some financial provisions in order to compensate the end of Vatican Kingdom; the “*teoria contrattuale*” (contract’s theory) which underlined the nature of a deal among the two entities from different perspectives concerning both power and economical aspects.

One-third doctrine (Schiappoli 2018; Wernz 1937) describes the Lateran Pacts as a bilateral and public agreement that was firstly reached through a negotiation among parties but became enforceable only after the publication of law in the Italian Government.

This theory in particular points out that only the Italian State has full jurisdiction which can give a binding value to a moral agreement among the two entities. According to the authors, art. 45 of the Concordat does not recognize the value of an international treaty but underlines the conclusion of an agreement that will be enforceable through mutual ratification and in particular the publication of the Italian law: “*The present Concordat shall come into force by exchange of the ratifications at the same time as the Treaty between the two High Parties for the elimination of “the Roman Question”*”. So, the whole Treaty acquired juridical effects only after the Laws n. 810 27 May 1929 and n. 887 30 November 1939.

The content of art. 44 is also important, as it underlines the value of a long-term contract with the Lateran Treaty establishing that *“If any difficulty shall arise in the future concerning the interpretation of the present Concordat, the Holy See and Italy shall proceed by a common examination to a friendly solution”*.

4 Italian Constitution’s Recognition (1947) and “Villa Madama” Agreement (1984)

When the Lateran Treaty was undersigned, the Italian Government was ruled by a monarchy and a dictatorship which ended in 1944 after the Second World War. In 1948, the Italian Government turned into a democratic Republic and the Italian Constitution, enacted by the Constituent Assembly on 22 December 1947, had to recognize the unique role of the Catholic Church among other religions in a liberal state.

In the Constitution, Italian State and Catholic Church are both independent and sovereign in its own activity. Also the “Carta Costituzionale” establishes freedom of religion providing for all kind of spiritual thought the right of self-organization within the Italian law while opening to set up specific agreements with the Italian State; in this terms, Article 7 of Constitution provides a special status to the Catholic Church given by the Lateran Treaty of 1929 which can be emended without requiring an approval of constitutional law.

From a juridical point of view, it is important to underline that the agreement was not only fully recognized but, giving a particular value to the Lateran Treaty (art. 45 of the concordat), each modification could be adopted without the complex procedure provided for revising the Constitution.

The Lateran Treaty continued to be unmodified until a new agreement was reached in 1984, named “Accordo di Villa Madama” or “Concordato bis”.

The new agreement, which does not overrule the whole Lateran Treaty, originated in order to take into consideration some aspects concerning the Catholic religion and the necessity to consider also different religions in a democratic State.

In fact, the Treaty was later modified by a new agreement between Church and State in 1984.

In this circumstance, both parties agreed to the following declaration: *“The principle of the Catholic religion as the sole religion of the Italian State, originally referred to by the Lateran Pacts, shall be considered to be no longer in force”*.

Only in that moment, the sole state-supported religion of Italy ended; at the same time, the original state financial provision was replaced by a personal income tax called *“otto per mille”* (8% of tax incomes) also granted for other religious organizations.

The revised concordat set up, for the first time, some rules for Catholic marriages which, if registered as particular contracts, can provide some duties and patrimonial consequences ruled by Italian civil code. The same happens in case of declaration

of “nullity of marriage” by the ecclesiastical court named “Tribunale della Sacra Rota”, which is different from ordinary “divorce” not possible for Catholic marriages.

The recognition in the Italian State of titles of nobility granted by the Holy See was abolished as, since the birth of Italian Republic, those kinds of prerogatives could not be legally considered.

Those modifications were a result of a debate in the Italian Society during 1970–1980 which led Vatican and Italian State to confirm the original Concordat, thus introducing new agreements which took into account the development in society and also in the vision of a State open to different forms of religions but always recognizing the strong role of Catholic Church in Italy.

5 What We Can Learn from Concordat’s Experience

Some useful lessons can be learned through the analysis of the Concordat over 90 years from the signature.

First of all, it is important to consider that the Concordat is a long-term agreement (LTA) undersigned by two different parties, not only for the statutory scopes of the singular entities but also for the different juridical nature of the proponents; in fact, Holy See could not be considered as a State in a proper manner, because of lack of jurisdiction and also deficit of power originated since the foundation of Italian State since 1870. This is a crucial characteristic of the agreement which is rather unique in the history of international treaties.

Moreover, it is also remarkable to underline the “win-win” attitude in terms of negotiation that both representatives of the two parties have had through the willingness of resolving the “Roman issue”. The Italian State, in fact, could not gain political consensus without Catholics which also have a politic influence which, later, became a strong party called “Democrazia Cristiana”. The Holy See, at the opposite, had the necessity to obtain a sort of “redemption” in front of the Italian Monarchy in order to justify the loss of material power and the prosecution in the spiritual role of guiding the Catholic religion. There were also economical aspects that needed to be solved in order to compensate bilaterals gains and losses and to create more value on both sides.

Also, the necessity of a stable situation or necessity in balance of power for both negotiators must be taken into account if we assume that, since 50 years from 1870, Rome was yet a former capital of the Italian State but not from a substantial point of view.

The idea besides the concordat was in fact that the Eternal City had to be considered as having a new international guiding role also from an outside view, after the Roman Empire and the Church Empire that lasted for centuries.

It is truly conceivable that, under these pre-conditions, an agreement named “Concordat” could represent the best win-win perspective for both parties.

But the revolutionary idea in which the Treaty showed one of the best agreements which paved the way for a long and not discussed partnership was the vision in a complete new invention of the mission acknowledged by both parties.

In fact, in giving to both entities a different slice of power represented the remarkable difference if compared to past attempts to solve the Roman issue: the strength of the Concordat is, in other terms, to understand the new context and to create conditions, for both parties, is having a modern vision of two modern States, open minded to the changes that they have to face in a complex thus challenging century.

So, while the Italian State needed to reinvent its mission and to appear as a secular institution towards the religious organization, the Catholic Church needed to modify the steady non-compromising approach used in the past and to open up to the world, thus maintaining and reinforcing the international role of teaching and promoting its values—so-called *evangelizzazione*.

This strong identification of the two fields of interest is the sparkle that allowed both parties to purchase an agreement which could satisfy both different interests in that historical moment and also in further decades.

On referring to nowadays business negotiations, it is useful to underline the mutual understanding of the zone of potential agreement, ZOPA, using a specific term of Harvard School of negotiation (Fisher and Shapiro 2005; Shonk 2020), which was understood by both parties: from the Holy See side, the ZOPA was represented by the necessity of acquiring or maintaining the power in representing the religion guide at a worldwide level and also unique in the Italian State; from the Italian Monarchy side, the ZOPA was identified by assuming that the material power in ruling the nation was only a task of the national government, while the Church could gain this exclusive role of guide only in religion matter.

There is no doubt that the Lateran Treaty can be considered as one of the best agreements in government negotiations and still could be one of the best examples in this particular field.

6 Nowadays Local and Global Challenges: Towards a New Concordat?

Nowadays, the lesson learned from the Concordat and, above all, the long and stable duration of the deal can be and can be seen very useful in an international framework, especially in dealing with government-to-government agreements (Terzi 2013).

Negotiators can assume that sitting at the table having a clear vision of the own and the counterpart objectives is crucial, and the only way in which it is possible to gain advantages is by maintaining a flexible approach to the goal. In other terms is not only important to define, from the beginning, the best result but also to imagine a different scale of solutions in order to purchase a powerful and durable agreement (Salacuse 1991).

In that extent, the Holy See was able to imagine that, instead of attempts on rekeeping the power to rule a State, it was better to maintain the monopoly in teaching religion and values in the Italian State and to obtain the power to promote its values at a worldwide level.

Moreover, the agreement was also significant from a financial side, as the Church obtained relevant compensations by the loss of its lands and its jurisdiction.

Nowadays, and after the 1984 revision, the question concerning the single municipal tax exemption granted by Italy to Holy See is still present not only on religion estates but also in commercial activities.

The position is strongly opposed by the owners of commercial activities outside of religion estates.

Recently, the European Court (decision on Judgment in Joined Cases C-622/16 P C-623/16 P and C-624/16 P) recalls that the adoption of an order to recover unlawful aid (as the tax exemption for commercial activities by the Vatican) is the logical and normal consequence of a finding that it is unlawful.

Admittedly, the EU Commission cannot require the recovery of aid if this would be contrary to a general principle of EU law, such as the principle that “no one is obliged to do the impossible”.

However, the Court points out that the recovery of unlawful aid may be regarded as objectively and absolutely impossible only where the Commission finds, following a scrupulous examination, that two conditions are satisfied, namely that the difficulties relied on by the Member State concerned genuinely exist and that there are no alternative methods of recovery.

Now, the Italian State is obliged to reconsider its position on tax exemption for commercial activities related to Holy See which derives directly from the Lateran Treaty.

In that field, it could be possible to renegotiate a new and “third” concordat by reaching a new compromise among the Italian State and the Church in order to maintain stable relationships also at a European Level and, maybe, to reconsider the tax law principles.

After two thousand years since Church foundation and 90 years since Lateran Treaty Rome, the Eternal City, could still be at the cradle of negotiation activities that could modify international juridical frameworks always assuring a long-term agreement for secular entities.

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