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CHURCH-STATE RELATIONS FROM A CATHOLIC PERSPECTIVE: GENERAL CONSIDERATIONS ON NICOLAS SARKOZY'S NEW CONCEPT OF *LAÏCITÉ* *POSITIVE*

FR. EVALDO XAVIER GOMES[†]

In two-thousand years of Church history there have been many different conceptions and doctrines of Church-state relations. In the post-Constantinian age, the Church was a public institution, linked to, and at the same time, part of the Empire. It was a relationship characterized by advantages and disadvantages. In response to this situation, Pope Gelasius I established the doctrine called "Gelasian dualism" that would later develop into the theory of the "two swords."¹ The doctrine conceived by this Pope, in his short pontificate from 492 to 496 A.D., would deeply influence the life of the Church and Canon

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¹ Pope Gelasius I (492–496) in his letter *Famuli vestrae pietatis* (492) to the Emperor Anastasius I, refers to "*auctoritas sacrata pontificum et regalis potestas*." The same concept would influence subsequent Church-state doctrine. In the year 506, Pope Symmachus (498–514) in his letter *Ad augustae memorie*, writing also to Emperor Anastasius I, reaffirms the existence of two powers: ecclesiastical and temporal. The same concept appears also in the letter *Proposueramus quidem* (865) of Pope Nicholas I (858–867) to Emperor Michael. Innocent III (1198–1216) using the analogy of the sun and the moon ("*duo magna luminaria in firmamento*") to explain the two powers ("*duas magnas instituit dignitates*"), "*pontificalis auctoritas et regalis potestas*." Pope Boniface VIII (1294–1303) in his Bull *Unan sanctam* (1302) applies the image of two swords, one representing the spiritual authority and the other the temporal power ("*In hac eiusque potestate duos esse gladios, spiritualem videlicet et temporalem . . .*"). See HEINRICH DENZINGER, *ECHIRIDION SYMBOLORUM: DEFINITIONUM ET DECLARATIONUM DE REBUS FIDEI ET MORUM* (Herder 27th ed. 1974) (1854).

Law in the centuries ahead.² According to this theory, the Church is in charge of all issues of a spiritual nature, while the Empire is in charge of its own temporal affairs. The theory's main characteristic, among others, is that there is a division between Church and Empire, each with its own "dignity" and acting in its own sphere of competence.

One of the main arguments proposed by Gelasius to sustain this theory is that the Church was founded by Christ with the purpose of taking care of souls.³ Temporal power, on the other hand, exists for the care of temporal affairs.⁴ Thus, with temporal issues the priest must obey the emperor, and in spiritual matters, the emperor must obey the priest. Through this "formula" Pope Gelasius tried to define the space the Church occupies in human society.

The Pope's main target was the defense of the Petrine primacy⁵ and the protection of the Church from the interference of imperial authority in matters of faith. In other words, he was trying to protect the Church from *Caesaropapism*,⁶ or *symphonia*,⁷ in its Byzantine version, as a tendency in medieval

² ENNIO CORTESE, LE GRANDI LINEE DELLA STORIA GIURIDICA MEDIEVALE 34–36 (Il Cigno Edizioni 2000).

³ ARCHBISHOP FRANCIS CARDINAL GEORGE, PONTIFICAL COUNCIL PLENARY ASSEMBLY: THE CHURCH AND THE CHALLENGE OF SECULARISATION, *WHAT KIND OF DEMOCRACY LEADS TO SECULARISM?* (2008).

⁴ See CORTESE, *supra* note 2, at 35–36.

⁵ Under the tradition of the Church, the Petrine Primacy is based on the biblical texts like 16 and others texts. See, e.g., *Mathew* 18:19 (New American). Canon 331 of the Code of Canon Law in vigour brings the following definition:

The office uniquely committed by the Lord to Peter, the first of the Apostles, and to be transmitted to his successors, abides in the Bishop of the Church of Rome. He is the head of the College of Bishops, the Vicar of Christ, and the Pastor of the universal Church here on earth. Consequently, by virtue of his office, he has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power.

CODEX IURIS CANONICI c.331 (Canon Law Society of America trans., 1983) (1983).

⁶ "[*Quell'orientamento volto a restituire, com'era nel mondo romano precristiano, un primato dell'autorità civile (Cesare) sull'autorità religiosa (il Papa).*]" GIUSEPPE DALLA TORRE, LA CITTÀ SUL MONTE: CONTRIBUTO AD UNA TEORIA CANONISTICA SULLE RELAZIONI FRA CHIESA E COMUNITÀ POLITICA 33 (AVE 2002).

⁷ *Symphonia*, a feature of Byzantine political theology, describing the unity of political action between church and state. 'Symphony' is usually used in the argument that 'Caesaropapism' is not an adequate term to describe relations between church and state in Byzantium, partly because the two domains have never been clearly distinguished. Often the Byzantine

society to join political and religious power in the hands of the ruler. *Caesaropapism* is the attempt to restore those practices of pre-Christian societies, which imposed the secular authority (Emperor) over religious authority (Pope).⁸ Being even more precise, it represents not only the intervention of the secular ruler in the internal affairs of the Church, but also implies an interference in religious matters that affects even truths of faith.⁹ The doctrine of Gelasian dualism comes as a reaction against the abusive interference of the secular authority in Church affairs.

Although simple, and for a long time effective, this doctrine was not immune from distortions. In the Carolingian age (751–987 A.D.), against the teachings of the dualist doctrine, which proclaims a separation between the Church and the Empire, there was a union of religious and temporal power.¹⁰ From this perspective, the chief example of which is the Emperor Charlemagne's regime, both powers should be united under one main authority that unites humankind in this world in *unum corpus mysticum*, whose head is Christ. It was his desire to establish the so-called *Respublica gentium christianarum*, in which there were no boundaries between Empire and Church.¹¹ This theory proclaimed the constitution of one unique "body" in which there was no space for diversity. Under this "unionist"¹² model of Church and state relations, society was characterized by only one faith, one Church, and one temporal authority. It was a society in which human beings were simultaneously *civis* and *fidelis*. There was no room even for the idea of secularism, nor for a distinction between vassal and faithful, as both fused into one.¹³

emperor is referred to as a semi-priest and his coronation as an eighth sacrament.

Peter Petkoff, *Church-State Relations Under the Bulgarian Denominations Act 2002: Religious Pluralism and Established Church and the Impact of Other Models of Law on Religion*, 33 RELIGION ST. & SOC'Y 315, 332 n.9 (2005).

⁸ DALLA TORRE, *supra* note 6, at 33.

⁹ See CORTESE, *supra* note 2, at 29.

¹⁰ See Suzanne F. Wemple, *Claudius of Turin's Organic Metaphor or the Carolingian Doctrine of Corporations*, 49 SPECULUM 222, 222 (1974).

¹¹ DALLA TORRE, *supra* note 6, at 86.

¹² CARLO CARDIA, *STATO E CONFESIONI RELIGIOSE: IL REGIME PATTIZIO* 9–14 (II Mulino 1992).

¹³ The only exception was the Jews, who were "merely tolerated." Cf. DALLA TORRE, *supra* note 6, at 86.

In this regime, called *res publica Christiana*, dissention inside the Church, like heresy, was considered an evil to be fought against by all means,¹⁴ since it was seen as a threat to the harmony of society.¹⁵ Church and Empire identified with each other in a mutually indissoluble unity.

In medieval times, the right to freedom of religion was not even under discussion. Being a predominantly monist society, characterized by one Christian religion—a single Church—and founded in a religious unity that congregated peoples, languages, cultures, law, and usages, this question was irrelevant.¹⁶ In this context, where religious and political spheres coincided, the position of citizens and believers were so mixed as to make it difficult to distinguish between one and the other.¹⁷ In this sense, the sacred texts were also legal texts, and those who did not belong to the main religion were considered second-class vassals.¹⁸

Social and political changes in modern times would modify Church and state relations radically. Progressively, religion began to be considered an internal affair within the private life of a human being without a place in the public sphere.

In modern times, a pioneer document in the Catholic Church proclaiming the right to freedom of religion is the Encyclical *Rerum Novarum* (1891) of Pope Leo XIII, which affirms the right of freedom of religion as a fundamental right of human beings, with special reference to the right to observe Sunday as a holyday and the right of each person to worship.¹⁹ The Pope considers fundamental rights in religious matters untouchable. One hundred years later, Pope John Paul II, in his Encyclical

¹⁴ JOSEPH RATZINGER, *IGLESIA, ECUMENISMO Y POLÍTICA: NUEVOS ENSAYOS DE ECLESIOLOGÍA* 253 (Biblioteca de Autores Cristianos 1987).

¹⁵ Illustrative is the episode between the Emperor Charlemagne and Paulinus of Aquileia, who in the *Capitulario de partibus Saxoniae* of 785, imposed on the conquered Germanic populations. This measure caused a strong reaction from Paulinus of Aquileia, who vehemently objected to the forced conversion. Cf. ALFREDO BATTISTI, *IL PARADOSSO DELLE BEATITUDINI* 42 (Paoline 2006); POPE PAUL VI, *DECLARATION ON RELIGIOUS FREEDOM DIGNITATIS HUMANAЕ* ¶ 2 (1965) [hereinafter *DIGNITATIS HUMANAЕ*]; FRANCESCO D'AGOSTINO & PAOLO ALBERTO AMODIO, *LE LIBERTÀ DI RELIGIONE E DI CULTO: CONTENUTO E LIMITI* 1–2 (G. Giappichelli 2003).

¹⁶ DALLA TORRE, *supra* note 6, at 86.

¹⁷ Ottavio de Bertolis, *La libertà religiosa: problemi e prospettive*, 94 *PERIODICA DE RE CANONICA* 681–702 (2005).

¹⁸ *Id.*

¹⁹ See LEO XIII, *ENCYCLICAL LETTER RERUM NOVARUM* ¶ 41 (1891).

Centesimus Annus (1991) and in his Apostolic Letter *Dies Domini* (1998), reaffirmed the same rights and principles.²⁰ Pope Wojtyła saw in *Rerum Novarum* an embryo of the modern concept of freedom of religion.²¹

Pope Leo XIII, in the Encyclical Letter *Immortale Dei* (1885), reaffirmed the old theory from the beginning of Christianity—the theory of the two powers: ecclesiastical and temporal.²² This letter was issued during a very difficult period for Church-state relations. It came at the end of the Papal States, during the suppression of religious orders in Spain and Portugal, and during a period when several other conflicts between civil and ecclesiastical authorities raged. Pope Leo XIII mentions both as supreme powers, each one in its own field, with specific limits following from the finality and nature of each.²³

Until not long ago, the conception of the Church as *societas iuridice perfecta*, literally as a perfect society, remained strong.²⁴ Under this conception, the Church is a society ordered to the good, sufficient, and autonomous.²⁵ The basic idea is that the Church is not a society created inside a specific state or by this same state's juridical system, and therefore, not like other societies created under civil law that we can find in our states. Rather, being created by Jesus Christ, the Church has the *voluntas* (or will) of the Son of God as its foundational act and not the wish of a human being. Considering itself as a *societas iuridice perfecta*, the Church proclaimed some specific rights: the

²⁰ See JOHN PAUL II, ENCYCLICAL LETTER *CENTESIMUS ANNUS* ¶ 9 (1991) [hereinafter *CENTESIMUS ANNUS*]; JOHN PAUL II, APOSTOLIC LETTER *DIES DOMINI* ¶ 66 (1998).

²¹ See *CENTESIMUS ANNUS*, *supra* note 20, ¶ 9.

²² See LEO XIII, ENCYCLICAL LETTER *IMMORTALE DEI* ¶ 13 (1885) [hereinafter *IMMORTALE DEI*].

²³ LEO XIII, APOSTOLIC LETTER *ANNUS INGRESSI* (1902), in *Leonis XIII P.M. Acta*, vol. XXII, p. 52-80.

²⁴ The first papal document that explicitly declares the Church as *societates perfecta* is the Encyclical Letter *Immortale Dei* (1885) of Pope Leo XIII. *IMMORTALE DEI*, *supra* note 22. Pope Pius XI in his Encyclical Letter *Divini illius magistri* (1929) ascribes three "societates necessariae": the family, the state, and the Church. PIUS XI, ENCYCLICAL LETTER *DIVINI ILLIUS MAGISTRI* (1929). All of them are considered "in se perfecta." *Id.*

²⁵ In accordance with the classical definition of Cardinal Ottaviani, it is a society "quae bonum in suo ordine completum tamquam finem habens, ac media omnia ad illud consequendum iure possidens, est in suo ordine sibi sufficiens et independens, id est plene autonoma." 1 A. OTTAVIANI, *INSTITUTIONES IURIS ECCLESIASTICI* 46 (Typis Polyglottis Vaticanis ed., 4th ed. 1958).

right to exist, the right to announce and proclaim the gospel, the right to teach the Christian faith, the right of worship, the right to have and build communities, and others.

This was the conception that prevailed in the doctrine of canon law before the Second Vatican Council, but it is not in much use anymore. The Vatican Council was a turning point in Church-state relations. After this important event, the prevalent conception has been the idea of the Church as People of God—the community of *Christifideles* (the faithful in Christ).²⁶

Vatican II is also a turning point in Catholic doctrine concerning freedom of religion. To understand its importance, it is enough to mention that exactly one hundred years before, in 1864, Pope Pius IX in the famous *Syllabus*, condemned as an error the right to freedom of religion²⁷ and the separation of Church and state.²⁸

The Declaration “*Dignitatis Humanae*” affirms the right to freedom of religion, not only in its juridical dimension but also as a theological value.²⁹ Vatican II sees two pillars sustaining the right to freedom of religion: the pillar of natural law in relation to the dignity of the human being, and a theological pillar, which declares the right of all human beings to seek the truth and to worship.³⁰ Each person has the natural right to hear and know the religious message and to join or not join a society that professes those beliefs.³¹ Freedom of religion is also understood in a double sense. On the one hand, it is an immunity or freedom from suffering and coercion in matters of religion (*libertas seu immunitas a coërcitione in re religiosa*), as an individual and as a

²⁶ See JOHN PAUL II, POST-SYNODAL APOSTOLIC EXHORTATION *CHRISTIFIDELES LAICI* ¶ 19 (1988).

²⁷ “*Liberum cuique homini est eam amplecti ac profiteri religionem, quam rationis lumine quis ductus veram putaverit*” (Every man is free to embrace and profess that religion which, guided by the light of reason, he shall consider true). 2 ENCHIRIDION DELLE ENCICLICHE 525 (Dehoniane ed., 2d ed. 1998).

²⁸ “*Ecclesia a statu statusque ab Ecclesia seiungendus est.*” (The Church ought to be separated from the State, and the State from the Church). *Id.* at 537.

²⁹ *DIGNITATIS HUMANAË*, *supra* note 15, ¶ 9.

³⁰ ELIZABETH M. BUCAR & BARBARA BARNETT, DOES HUMAN RIGHTS NEED GOD? 142–43 (2005).

³¹ *Cf.* Francesco D’Agostino, *Le libertà religiosa come valore teologico*, in *LE LIBERTÀ DI RELIGIONE E DI CULTO: CONTENUTO E LIMITI* 21, 21–28 (2003).

collective,³² on the other hand, it has the objective of allowing human beings to worship God:

[C]onsistit, quod omnes homines debent immunes esse a coërcitione ex parte sive singulorum sive coetuum socialium et cuiusvis potestatis humanae, et ita quidem ut in re religiosa neque aliquis cogatur ad agendum contra suam conscientiam neque impediatur, quominus iuxta suam conscientiam agat privatim et publice, vel solus vel aliis consociatus, intra debitos limites.³³

Even if it is a different conception, the challenges did not change, and the necessity of guaranteeing the freedom of the Church continues.

In his speech to the International Barristers' Association, Pope John Paul II³⁴ stated that the right to freedom of religion was not founded exclusively on norms of positive law or national law, nor exclusively in international human rights law. Pope Wojtyla affirmed that it was not a right merely conceded by the state or the international community, but rather the recognition of the right of each human being to "express [on] the social level what are his deepest feelings."³⁵

Relevant to the understanding of Catholic teaching, in terms of the collective dimension of freedom of religion, is the distinction made by Pope Benedict XVI between the Christian faith and the conception of tolerance practiced by the Roman Empire.³⁶ Facing eternal realities, and in opposition to the state's devotion to earthly realities, Christianity meant a rupture in the old model of religious tolerance then-existent in the Roman Empire. In old Rome, religious tolerance denoted an acceptance of every religion together in a common pantheon, in "*intercambio*

³² Dalla Torre observes that the Second Vatican Council did not dedicate even one document specifically to the question of teaching religion in public schools. See GIUSEPPE DALLA TORRE, *LA QUESTIONE SCOLASTICA NEI RAPPORTI FRA STATO E CHIESA* 31–32 (2d ed. 1989). The only documents which mention this question are the Declaration *Gravissimum educationis* and note five of *Dignitatis Humanae*. *Id.*

³³ This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits.

DECLARATIO DE LIBERTATE RELIGIOSA *DIGNITAS HUMANA* ¶ 2 (1965).

³⁴ Pope John Paul II, Address to the Congress Members of the International Union of Lawyers (Mar. 23, 1991).

³⁵ *Id.*

³⁶ See RATZINGER, *supra* note 14, at 231, 234.

*y reconocimiento de otros dioses.*³⁷ Any religious community could have the benefit of this policy of tolerance because it placed all religious communities in the private sphere and on the same level. The Church denied this idea and advocated recognition by the public authorities. It could not accept that Christian monotheism should be banished to the dimension of private law. For this reason the Church searched for its dignity and for public recognition.

In his discourse with the United Nations General Assembly in 1979, Pope John Paul II warned the international community of the need for the norms of national and international law to respect what he called the “exact tenor of the exercise of freedom of religion,” which includes the protection of religious institutions.³⁸ Without this protection, religious freedom will never be completely assured and will be a “narrow” freedom, limiting the spiritual dimension of human life by not guaranteeing authentic religious needs.

The Church needs this freedom to accomplish its own mission. When applied to the Catholic Church, we call this right *libertas Ecclesiae*. In his letter of July 7, 1981 to the Church of Poland, Pope John Paul II explained the concept of *libertas Ecclesiae* as follows:

*L'Église a besoin de cette liberté—il s'agit de liberté de religion et de liberté de conscience—dont le but, unique et exclusif, est de lui permettre de servir l'homme et la société, l'homme et la nation; de pouvoir servir dans la vérité et dans l'amour nés de l'Évangile, en contribuant ainsi à la véritable dignité de tout homme et au progrès de la société qu'on ne saurait mesurer à l'étalon des conquêtes exclusivement matérielles.*³⁹

The Church does not consider this statement to be a request for a privilege, but rather a request for recognition of its fundamental right as a community to follow its mission.⁴⁰ In

³⁷ *Id.* at 234.

³⁸ Pope John Paul II, Address to the United Nations General Assembly (Oct. 2, 1979), available at http://www.newadvent.org/library/docs_jp02u1.htm.

³⁹ JOHN PAUL II, LETTRE A L'EGLISE DE POLOGNE LA DOCUMENTATION CATHOLIQUE 786 (1981).

⁴⁰ A. Rosmini, in reference to Italy, affirms that: “[l]a Religione Cattolica non ha bisogno di protezione dinastiche, ma di libertà: ha bisogno che sia protetta la sua libertà e non altro.” 4 ANTONIO ROSMINI, *Centro Internazionale di Studi Rosminiani*, in GRANDE DIZIONARIO ANTOLOGICO DEL PENSIERO DI ANTONIO ROSMINI 144 (Cirillo Bergamaschi ed., 2001).

other words, it is the “*derecho de la Iglesia a ser Iglesia y a vivir conforme a su modo de ser.*”⁴¹ Being even more precise, it is the recognition of the right of the Church to “be able to live and act according to its own nature and follow its own purposes.”⁴² Considering that social development is made not only of material conquests, the state must respect this freedom as a right of each human being, as a right owed to people gathered in the community in the name of God, and as members of the Church.⁴³

Analyzing the interrelation between Christianity and democracy, then-Cardinal Joseph Ratzinger remembered that the root of the persecution of Christians in the old Roman Empire was the argument that the Christian faith promoted anarchy and for this reason was a threat to the empire.⁴⁴ The current Pope, Benedict XVI, sees a permanent “temptation of anarchy”⁴⁵ as Christian messianism focuses on the absolute Reign of God, while the Empire focuses on earthly realities that are essentially imperfect and relative. He considers the state a *societas imperfecta* in relation to which the Church finds itself on the same level and equally public. In a complementary relation, the state is itself “*imperfecto y vacilante,*”⁴⁶ and for this reason, it needs the sustenance given by religion and religious values, which are able to help its deficiencies and are capable of giving the moral strength necessary to its survival—which only the Church can provide.

II. CATHOLIC CHURCH AND PROSELYTISM

Another important concept in Catholic teaching on freedom of religion is reflected in the speeches of the recent popes on proselytism. John Paul II, in his Post-Synodal Apostolic Exhortation *Ecclesia in America*, published in Mexico City on January 22, 1999, under the perspective of the missionary dimension of the Church, considers the form of proselytism developed by some religious groups as an obstacle to evangelization understood to announce the Gospel and

⁴¹ RATZINGER, *supra* note 14, at 220.

⁴² GIUSEPPE DALLA TORRE, *IL PRIMATO DELLA COSCIENZA: LAICITÀ E LIBERTÀ NELL'ESPERIENZA GIURIDICA CONTEMPORANEA 186–87* (1992).

⁴³ See RATZINGER, *supra* note 14, at 283–87.

⁴⁴ See *id.* at 197.

⁴⁵ *Id.* at 232.

⁴⁶ *Id.* at 234.

Catechesis.⁴⁷ Pope Wojtyla criticized proselytism itself and saw it as a damaging factor, considering it an offense against individual freedom.⁴⁸ In this sense, Catholic teaching not only rejects the practice of proselytism as violence against freedom, but also refuses to adopt practices similar to certain other religious communities. As an alternative to proselytism, the Church suggests a specific missionary activity, the so-called action of evangelization, which respects the “sanctuary of every individual’s conscience,” preserving the individual and communal freedom of each human being.⁴⁹

In this sense, as evangelization respects individual conscience, there is no violation of any freedom, as stated by Pope John Paul II in his encyclical *Redemptoris Missio*.⁵⁰ From this perspective, we can make two main conclusions: The conversion of a non-Catholic to the Catholic faith must always be a free choice, and real missionary activity must be done in total respect for human freedom.

Recently, Pope Benedict XVI, in a speech to the bishops of Central Asia, emphasized that the Church does not impose, but rather offers the Catholic faith as a free option. He states that “[f]aith is a gift and [the] work of God.”⁵¹ Going even further than his predecessor, Pope Ratzinger proclaimed that in every circumstance it is forbidden to practice a proselytism that obliges, incites, or attracts anyone by fallacious means to embrace the faith.⁵² Under today’s Catholic doctrine, conversion is always a process of mature and responsible reflection. In this same speech, Pope Benedict XVI finally stated that freedom to profess one’s own faith is a fundamental and universal human right, and the law of a state can never violate this right.⁵³

⁴⁷ See JOHN PAUL II, POST-SYNODAL APOSTOLIC EXHORTATION *ECCLESIA IN AMERICA* ¶ 73 (1999).

⁴⁸ See *id.*

⁴⁹ *Id.*

⁵⁰ See JOHN PAUL II, ENCYCLICAL LETTER *REDEMPTORIS MISSIO* ¶ 8 (1990) (discussing the permanent validity of the missionary mandate).

⁵¹ Pope Benedict XVI, Address of His Holiness Benedict XVI to the Ordinaries of Central Asia on Their “Ad Limina” Visit (Oct. 2, 2008).

⁵² See *id.*

⁵³ See *id.*

III. CHURCH AND SECULARISM

An important concept in Catholic doctrine on Church-state relations is the notion of the secular, understood as a principle of distinction between Church and state.⁵⁴ The term “secular” indicates the modern doctrine that shapes the relationship between Church and state in many nations. Dalla Torre defines it as a corollary of the distinction between Caesar and God, meaning the principle that “opposing itself to every form of ‘sacralization’ of politics or ‘politicization’ of religion” creates the consciousness of the independence “of the temporal order[,] and by the distinction between Church and State, affirms as legitimate the ‘healthy laicity’ of the State.”⁵⁵

Such a principle received even the seal of the Church in 1958 when Pope Pius XII made use of the expression “*sana laicità dello stato*.” In this way, he legitimized secularity as one of the attributes of the state in the eyes of the Church.⁵⁶ Catholic doctrine distinguishes between secularity—according to the meaning above—and secularism.⁵⁷

The latter is characterized by a negative conception of separation between Church and state, in which the Church is persecuted or denied its basic rights. The secularist conception creates a certain secular religion, or civil religion, confined to the state for which the civil order is the only ethical source.⁵⁸ With this perspective, soldiers are the new monks, the fallen are the martyrs of the homeland, hospitals and schools are “public,” religion is considered restricted to the private sphere, and the Church is seen merely as a civil association.⁵⁹ According to the Catholic conception, secularity is understood as a healthy cooperation between Church and state. In this sense, the Church and state are not opposed to each other; both are in the service of human beings, so between them there must be dialogue, cooperation, and solidarity.⁶⁰ In making such a distinction between the secular sector and the Kingdom of God, popes have

⁵⁴ GIUSEPPE DALLA TORRE, *EUROPA: QUALE LAICITÀ?* 9 (2003).

⁵⁵ *Id.*

⁵⁶ PIUS XII, *ALLOCUTION Ci riesce* 794–802 (1953).

⁵⁷ See OMBRETTA FUMAGALLI CARULLI, *IL GOVERNO UNIVERSALE DELLA CHIESA E I DIRITTI DELLA PERSONA* 250–52 (2003).

⁵⁸ See ROBERT N. BELLAH, *THE BROKEN COVENANT: AMERICAN CIVIL RELIGION IN TIME OF TRIAL* (Univ. of Chicago Press 1992) (1975).

⁵⁹ Bertolis, *supra* note 17, at 696.

⁶⁰ CARULLI, *supra* note 57, at 257–60.

even considered the secular state as a benefit to the Christian community, allowing a balance between faith and reason. In this perspective the secular is not against religion.

The document *Gaudium et Spes* exalts the importance of a healthy cooperation between Church and state.⁶¹ Because both Church and state are not opposed to the legitimate exercise of their interests, but rather oriented to the service of people, they should seek dialogue, cooperation, and reciprocal solidarity.⁶²

Paul VI, in the Apostolic Exhortation *Evangelii Nuntiandi*, also distinguishes between secularism and secularization.⁶³ In his view, secularism, which he calls “militant atheism,” is seen as the desire of suffocating faith—combatting it and extirpating it from society.⁶⁴ In this sense, he considers it a negative idea. Secularization, on the contrary, is considered by the Pope as a positive concept, meaning the autonomy of the sciences and of culture, something that the Pontiff considers legitimate and fair.

Even if secularization means separation between state and Church, Catholic doctrine notes that its application depends on the reality of each nation, which generates many different meanings for the same term. In a European context, the predominant conception of secular is that of “non-religious” and not “non-confessional” (which is more restricted in relation to its effects); the European “juridical system” is permeated by a “healthy-secularism” that can be understood as the distinction between what concerns religion and what refers to the juridical order and its institutions.⁶⁵

IV. CHURCH AND POLITICS

There is a tendency to make a straight and clear distinction between religion, on the one hand, as belonging exclusively to the private sphere of human life and politics, on the other hand, as an exclusively public space. Religion and politics, in this view, are considered matters completely distinguishable, separate, and without any interrelation. For a long time this position was rejected by Catholic doctrine. Pope Leo XIII strongly

⁶¹ See PAUL VI, PASTORAL CONSTITUTION *GAUDIUM ET SPES* ¶ 76 (1965).

⁶² CARULLI, *supra* note 57, at 257–60.

⁶³ See PAUL VI, APOSTOLIC EXHORTATION *EVANGELII NUNTIANDI* ¶ 55 (1975).

⁶⁴ *Id.* ¶ 54.

⁶⁵ VINCENZO BUONOMO, COOPERAZIONE E SVILUPPO: LE REGOLE INTERNAZIONALI: CODICE PER LE DISCIPLINE INTERNAZIONALISTICHE 290–92 (2005).

opposed this particular view in his encyclical *Cum multa sint*, subtitled “On Conditions in Spain,” of December 8, 1882.⁶⁶ In this document, he stated that religion and politics are interdependent.⁶⁷ In his view, religion cannot be eliminated or ignored by the state, for which it means health, justice, balance, and “virtue.”⁶⁸ He warned, however, against what he considered the opposite error, which is that of considering every dimension of public life as subject to religion.⁶⁹ In fact, Leo XIII advocated a balance between religious and secular society, allowing each one to help the other in maintaining its own characteristics, independence, identity, and spheres of competence.⁷⁰

Pope Benedict XVI reaffirms the traditional Christian conception of separation of Church and State in which the Christian faithful are free to live their faith without being in conflict with the political order.⁷¹ The present Pope refers to the “*secolarità dello Stato nel quale i cristiani coabitano, nella libertà.*”⁷²

Then-Cardinal Ratzinger observed that there is a common moral responsibility between being Christian and being a citizen. The Christian faith distinguishes between the secular sphere and the Kingdom of God, which does not exist as a political reality here in this world but becomes a reality in faith, in hope, and in charity, encouraging that earthly realities be transformed from inside. He considered the secular character of the state as both a benefit for Christianity and as an expression of an appropriate balance between reason and religion.⁷³ On the other hand, he condemned the harmful secularism which he called “*Stato della pura ragione,*”⁷⁴ which puts reason above all values, separating or denying their historical roots and becoming, in consequence, unable to be influenced by the moral foundations given by religion, which guides reason. In such a context, affirms the

⁶⁶ LEO XIII, ENCYCLICAL LETTER *CUM MULTA* ¶ 6 (1882).

⁶⁷ *See id.*

⁶⁸ *Id.*

⁶⁹ *See id.* ¶ 7.

⁷⁰ *See id.* ¶ 6–9.

⁷¹ *See* Joseph Ratzinger, *L'Occidente, l'Islam e i fondamenti della pace*, IL LEGNO STORTO, July 16, 2005, (Ita.), available at http://www.legnostorto.com/index.php?option=com_content&task=view&id=14319&Itemid=9.

⁷² *Id.*

⁷³ *See id.*

⁷⁴ *Id.*

present Pope, there is a decadence in the state of law. The secular character of the state, viewed from a positive perspective, does not mean the denial of religion, but on the contrary, implies the right and the obligation to search for deep moral roots. In Pope Ratzinger's view, the state cannot be neutral in relation to values, but must recognize and reflect moral foundations. The freedom of the state and the freedom of the Church are not in opposition; each is benefitted by the dynamic and cooperative relationship with the other.⁷⁵ In practice, he considers religion as one of the moral foundations of law and state, without which the juridical order loses its deepest references. In this sense, the negative conception of the secular is transformed into a positive perspective in which the state insists on the freedom and protection of religion and recognizes its fundamental contribution to the welfare of the whole society.

V. LAÏCITE POSITIVE: A NEW CONCEPT⁷⁶

Finally, it is very important to highlight the newborn concept of *laïcité positive*.⁷⁷ Recently, a new conception of Church-state relations has appeared, which is the fruit not of an intervention by a religious authority, but by the President of France.⁷⁸ Two high points in the launching of this new theory were his speech at St. John Lateran, in Rome, in mid-December 2007, and his

⁷⁵ See CARDINAL JOSEPH RATZINGER, CHURCH, ECUMENISM AND POLITICS: NEW ESSAYS IN ECCLESIOLOGY 270 (Robert Nowell trans., Crossroad 1988) (1987).

⁷⁶ Although its international repercussions have been a merit for President Sarkozy, the expression "*laïcité positive*" is not new in the French context. The first to make use of this expression, was M. Jean-Pierre Chevènement, minister of the interior and responsible for the cults in his speech "*L'importance du fait religieux dans notre société*," pronounced in the French concordatary city of Strasbourg, on November 23, 1997, on the occasion of the Episcopal Ordination of Archbishop Joseph Doré, Catholic archbishop, and speaking to the representatives of the different confessions assisting the ceremony. See M. Jean-Pierre Chevènement, Remarks Before Religious Leaders Following the Ordination of Archbishop Joseph Doré in Strausberg, Germany (Nov. 23, 1997).

⁷⁷ For the comprehension of Nicolas Sarkozy's understanding of state and religion relations see NICOLAS SARKOZY, LA RÉPUBLIQUE, LES RELIGIONS, L'ESPÉRANCE (2004).

⁷⁸ See *Intervista al presidente della Repubblica francese, Nicolas Sarkozy: Una laicità positiva per dare speranza alla società di oggi* [Interview with President of French Republic, Nicolas Sarkozy: A positive secularity to give hope to society today], L'OSSERVATORE ROMANO, Dec. 22, 2007, at 1 (Vatican City) [hereinafter *Intervista al presidente*].

speech in Riyadh, Saudi Arabia, at the beginning of 2008.⁷⁹ During his visit to Rome in December 2007, President Nicolas Sarkozy made a speech at the Basilica of St. John Lateran, the Cathedral of Rome, in which he used the expression *laïcité positive*, meaning “an open secularism, an invitation to dialog, tolerance, and respect. It is a new chance, a jump, a further dimension to public debate.”⁸⁰ One of the most important contents of this speech was the assertion that religious morality is superior to secular morality.

Under this new conception of *laïcité*, the state is not anti-religious. In his speech in Riyadh, Sarkozy asserted that religious feelings are not dangerous (“*ce n’est pas le sentiment religieux qui est dangereux.*”).⁸¹ Going even further, he asseverated that a civil society owes religions for the principles of universal morality, human dignity, the universal values of freedom, responsibility, honesty, and rightness.⁸² In Sarkozy’s own words, there is a need for a *laïcité positive* that preserves freedom of thought and does not consider religion as dangerous, but rather as positive.⁸³

Pope Ratzinger would recall the same expression during his visit to France in September 2008. In his speech in Paris, at the Elysée Palace, he judged the “fine expression,” *laïcité positive*, as a more open understanding.⁸⁴ On that occasion the Pontiff

⁷⁹ President Nicolas Sarkozy, *Allocution de M. le Président de la République dans la salle de la signature du Palais de Latran* (Dec. 20, 2007), http://www.elysee.fr/documents/index.php?mode=cview&cat_id=7&press_id=819 [hereinafter *Allocution de Latran*]; President Nicolas Sarkozy, *Allocution du président de la République, M. Nicolas Sarkozy devant le conseil consultatif saoudien-Riyad* (Jan. 14, 2008), http://www.ambafrance-dz.org/article.php3?id_article=1840 [hereinafter *Allocution de Riyad*].

⁸⁰ *Allocution de Latran*, *supra* note 79.

⁸¹ *Allocution de Riyad*, *supra* note 79.

⁸² C’est peut-être dans le religieux que ce qu’il y a d’universel dans les civilisations est le plus fort. Ce sont les religions, malgré tous les forfaits qui ont pu être perpétrés en leur nom, qui nous ont les premières appris les principes de la morale universelle, l’idée universelle de la dignité humaine, la valeur universelle de la liberté et de la responsabilité, de l’honnêteté et de la droiture.

Id.

⁸³ See *Intervista al presidente*, *supra* note 78, at 3.

⁸⁴ At this moment in history when cultures continue to cross paths more frequently, I am firmly convinced that a new reflection on the true meaning and importance of *laïcité* is now necessary. In fact, it is fundamental, on the one hand, to insist on the distinction between the political realm and that of religion in order to preserve both the religious

proclaimed the new concept of *laïcité*, as a historical step in Church-state relations. The main meaning is that the state is no longer anti-religious but has a role as the protector of believers and religions. He affirmed the necessity for a review of the “dogma” of French *laïcité* and rejected the radical concept of *laïcité de combat* that excludes religion from public spaces and wants to protect the state from religious influence.⁸⁵ With an optimistic view, the present Pope acknowledged the French “current institutional framework” as an opening to a new path in Church-state relations.⁸⁶

In this sense, religious communities should no longer be considered a threat to the state, rather they should be seen as partners. This is an evolution from the previous concept of *sana laicità*. No doubt it is a surprising and radical change in French *laïcité*; however, since the change is brand new, it is too early to make final conclusions.

The French President has departed from an articulated reflection that keeps in mind the “return of religion” to the world scene in the beginning of the twenty-first century—even in its more dangerous and fanatical forms.

What the French President expressed in Rome, and later in Riyadh, was a desire to progressively move toward a new concept of *laïcité*, which is not synonymous with laicism—in other words, a *laïcité* that does not mean the expulsion of the religious from social and political circles. To understand the new concept of *laïcité*, it is necessary to refer to another concept in which it is inserted. The *politique de civilisation*, is cast by Sarkozy as a “*politique de civilisation pour que la France soit l’âme de la nouvelle Renaissance dont le monde a besoin.*”⁸⁷ This *politique de*

freedom of citizens and the responsibility of the State towards them; and, on the other hand, to become more aware of the irreplaceable role of religion for the formation of consciences and the contribution which it can bring to—among other things—the creation of a basic ethical consensus in society.

Pope Benedict XVI, Address of His Holiness Benedict XVI: Welcome Ceremony and Meeting with Authorities of State (Sept. 12, 2008).

⁸⁵ See *id.*

⁸⁶ Pope Benedict XVI, Address of His Holiness Benedict XVI: Meeting with French Episcopal Conference (Sept. 14, 2008).

⁸⁷ President Nicolas Sarkozy, *Conférence de presse suivie d’une séance de questions/réponses au Palais de l’Elysée* (Jan. 1, 2008), <http://www.presidence-de-la-republique.fr/edito/index.php?id=33&page=11>.

civilisation launched by Sarkozy must include the theme of religion in a world in deep mutation.

The theme of *laïcité positive* is articulated in two key points. First, it ought to be a principle of respect for all religious beliefs and not an opposition towards religious feeling as such. The second point concerns the recognition of the decisive role that religion can play in the political and social context of our post-industrial and post-secular societies. The reform of the French concept of *laïcité* started by Sarkozy in France testifies to the urgency in modern societies of opening a public debate on the role of religion at the international and national level in the new world's political order.

