

## CAESAR'S COIN: HOW SHOULD CHURCH AND STATE INTERACT ?

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**Editor's Comment:** Archbishop Roland Minnerath, Archbishop of Dijon, was in Australia last July for the Helder Camara Lecture Series. As a former professor of Church history at the University of Stasbourg, he was also the chaplain to the Catholic members of the European Parliament in Strasbourg for whom he wrote *Pour une éthique sociale universelle. La proposition Catholique* (Paris: Cerf, 2004). He has collaborated for over twenty years with the Washington-based International Religious Freedom Association, and been a member of the International Theological Commission for nearly ten years. The following is an edited version of the text of his lecture in Melbourne.

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Our topic is the evolution of State-Church relations. Clearly, legal norms governing religious freedom and the relations between State and religious organizations are widely inspired by the experience of the Christian churches along the last two centuries.

The words of Jesus about Caesar's coin, "Render therefore unto Caesar the things which be Caesar's, and unto God the things which be God's" (Mt 22, 15-22), suggest one of the principles that shape our modern understanding of Church-State relations, namely their mutual autonomy. When these words were proffered, they conveyed a rather new vision of how religion and society should relate, and of the role of political power with respect to religion. The community around Jesus is made up of men and women from all conditions, religious background, cultures, and nations. In his time, each religion was identified with a specific people, even with a city, or an ethnic group. Religion was the common link of a given society. With the early Christian experience, the religious community does not simply overlap with the political community. Yet Christians claimed to be loyal citizens even if they refused to take part in the official worship of the gods of the city—or the Empire. At the same time, Christians expected from their respective city to be allowed to worship according to their conscience.

The words of Jesus imply that Church and State encompass two different domains. The same person can belong to each of these, even though in a differentiated kind of

membership. The domain ruled by the State implies a compulsory membership; while the domain of the Church is based on free membership. The first governs all needs of temporal life. The latter addresses human conscience and the transcendent destiny of the human person grounded in a sense of the ultimate meaning of life, history, and of the universe itself.

The early Christians had to pay a high price for their commitment to this new conception of religion. The Roman Empire, coherent with its understanding of civic religion, persecuted Christians for their beliefs. But at the beginning of the 4<sup>th</sup> century, the emperors Constantine and Licinius recognized for the first time a right to religious freedom for all citizens with the so-called Edict of Milan in 313. This was the answer to a typically Christian request. This situation of freedom lasted for a short time, only seven decades. In 381, the edict of Thessalonica marked the beginning of Christianity as official religion the Roman Empire. This represented a return to the former traditional use of religion as compulsory social link of society.

The legal framework of present-day Church-State relationships owes a great deal to the history of the Christian experience. Question regarding the distinction or non-distinction between the religious and political spheres have hugely influenced the shaping the history of our societies.

Today, we have reached, at least in that part of the world marked by Christianity, a wide consensus on how both institutions should interact. This consensus is not shared by countries with other cultural and religious backgrounds.

“Autonomy” is in a way a rediscovered principle. It has lain concealed for a long period of time. From the 4<sup>th</sup> to the 18<sup>th</sup> century, Christianity had become everywhere a State Religion. In the East, the Byzantine experience has survived in the Orthodox model of the national Churches strongly controlled by the political power. In the West, the Catholic Church struggled over the centuries to maintain the distinction between the two “swords”, namely, the spiritual and the temporal sphere. While the Lutheran and reformed Churches were put under the supreme authority of their respective sovereigns, the non-conformist movements in the 17<sup>th</sup> century for the first time set up churches without State control. The first immigrants to North America were non-conformists, and gave birth to a radically new experiment in matters of Church – State relations. They wanted no established Church. They wanted the freedom to worship according to their conscience.

Allow me to present the following remarks under three headings:

1. The re-emerging of the principle of autonomy
2. Church and State searching for a common understanding
3. Different models and common principles

## **I. The re-emerging of the principle of autonomy**

The First Amendment of the United States Constitution in the year 1791 expresses this new vision of the relationship between church and state: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Such was the fruit of the American experiment of a plurality of peoples and religions deciding to live in the same State. The state must be religiously neutral, but not hostile to religion. For example, as the *Declaration of Independence* of 1776 clearly shows, this State would not be antireligious. Yet it would not be confessional, even though respecting all religions.

Closer to home, The Constitution of the Australian Commonwealth of 9<sup>th</sup> July, 1900, section 116, adopted a wording similar to the American First Amendment:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Throughout the 19<sup>th</sup> century, the principle of separation between Church and state gradually challenged the State-Church establishments, along with all State-controlled church systems. It was not obvious, however, what option Europe would take in terms of separation. Take the example of revolutionary France. In the very same year of America’s First Amendment, it adopted a quite opposite view. What is remarkable is that, while proclaiming in the 1789 *Declaration of the Rights of Man and of the Citizen* the freedom to have “even religious opinions”, the French revolution did not institutionally separate the state from the Church. In fact it regressed to models practiced only by Orthodox or Lutheran powers up to that time. Paradoxically, the Catholic Church became a State Church in a state that was formally not Catholic. The *Civil Constitution of the Clergy* (1791) reorganized the territorial setting of the Church, separated it from Rome and gave it its internal laws. All this took place without any regard for the Church’s wishes. In a word, the Church had totally lost its

autonomy, even that which it enjoyed under the former monarchical regime. Thus, France initiated another approach, quite different from the American one. It was characterized by a hostile state-control of the Church.

In Europe, the way to autonomy was rather gradual. It began with those States which had to deal with important religious minorities in their realm. Already in the 18<sup>th</sup> century, although Lutheranism was the state religion in Prussia, a law of 1794 (*Allgemeines Landesrecht* §1 and 2 II 11) recognized the right of Catholics to worship and to freely administer their affairs. In Austria, a similar law of tolerance had already been promulgated in 1781 (*Toleranzpatent*).

The Belgian Constitution of 1831, which is still in force today, was considered to be at the vanguard of liberal Fundamental Law. In matters of religion, it put an end to state control over the churches. Specifically, it expressly abolished one of the most repressive features of state control over internal church-life, namely, the appointment of bishops and other ministers by the political power (art. 16). Thereafter, the Catholic Church could freely communicate with Rome.

In Austria, the March Constitution of 1849 introduced individual and corporate religious freedoms for Catholics, Reformed, Lutheran, and Orthodox. This measure was confirmed by the 1867 *Fundamental Law on Basic Rights of Citizens* (art. 15). This legislation—more clearly than the Belgian constitution of 1831—explicitly recognizes the internal autonomy of churches, and can be considered the first law to do so. It states: “Every Church and religious society recognized by the law has the right to communal public worship, to order and administer its internal affairs autonomously, and to retain possession and enjoyment of its institutions”. The recognized religions were considered public-law corporations. In 1874, a further step was taken: a law dealing with the recognition of religions opened the possibility for previously unrecognised religious organizations to attain the status of a recognized religion.

In 1919 the full institutional autonomy of churches appears as a fundamental principle in the German *Weimar Constitution*. Article 137 is exemplary in prohibiting the establishment of a state church. It further decrees that “every religious body regulates and administers its affairs autonomously within the limits of the law valid for all. It confers its offices without the participation of the State or the civil community.” The Evangelical and Catholic Churches were immediately recognized as “corporate bodies under public law.” Other religious organizations could apply to

be accorded the same status “where their constitution and the number of their members offers an assurance of permanency.” The same article extends the possibility of according the status of a corporate body under public law to associations of a more philosophical character. This legal status would enable churches and similar associations to levy taxes on their members with the help of the public administration. Articles 136 through 141 of the Weimar Constitution were incorporated in the Basic Law of the Federal Republic of Germany 1949.

Thus a new model emerged. Under this approach, “no particular identification between the Church and State is meant”; quite the contrary. Further, in contrast to other public corporations, “the religious communities with this status are not integrated into the State’s structure. They retain their complete autonomy . . . .” This special status has now been attained by a broad range of religious communities. A recent decision by the German Constitutional Court, in 2000, involving Jehovah Witnesses, has sharply limited the grounds on which stable religious groups willing to live within the constitutional order can be denied public corporation status. Moreover, even religious communities that do not acquire public corporation status are assured of broad autonomy rights. Thus, for example, in a case involving the Bahá’i, the Constitutional Court held that legal requirements that governed acquisition of status as a civil association had to be adjusted to meet the peculiarities of a religion’s organizational requirements.

Germany has thus found a way to maintain the principle of legal separation between church and state. At the same time, it recognised the principle of juridical cooperation between the civil and the religious while allowing for the internal autonomy of each church organization. This underlines that the church, though separate from the state, is nonetheless inserted into the legal framework of society.

The principles of church autonomy appear in other constitutions of the first half of the twentieth century. For instance, Ireland, a Catholic country, never had an officially established Catholic Church. From 1800 to 1871, the Anglican Church was the established church to which Catholics also had to pay taxes. When Ireland became independent, the principle of religious freedom was fixed in the constitution of 1922 (Art. 16). Article 44 of the revised constitution of 1937 makes clear that the State should finance no religion, and further that “every religious denomination shall have the right to manage its own affairs. . . .”

Then, Italy. The 1948 constitution of Italy did not revise the Lateran Treaty of 1929 with the Holy See, which stipulated that Catholicism continued to be “the only religion of the State”. The Constitution formulated the relationship between the Catholic Church and the state in these words: “The Church and the State, each one in its own sphere, are independent and sovereign” (art 7). In the revised Concordat of 1984, the reference to the state religion was eliminated. But Article 1 retained the formulation of “independent and sovereign” anchored in the constitution.

A less peaceful kind of separation is witnessed by France in 1905. The law of separation suppressed the Napoleonic regime of the “legally recognized religious bodies”. Clearly, the intent was to weaken as much as possible the influence of religion in society. But the happy result of this rather hostile separation was an increased internal autonomy of the former “recognized” religions. Still, religious organizations had to accept the juridical form of religious associations set up by the state in order to control their personnel and property. Furthermore, monastic and other religious orders were prohibited, and the clergy was forbidden to teach in state schools.

The ideology of hostile separation found its most radical and oppressive expressions in the harsh persecutions of religion in communist regimes, beginning with the Soviet law of separation of Church and State on the one hand, and of Church and School on the other, in 1918.

The modern state gradually imposed separation between Church and State, and so promoted the autonomy of religious bodies.

## **2. Church and State Searching for a Common Understanding**

Until 1948 there was no international instrument protecting freedom of religion. The *Universal Declaration* adopted by the United Nations takes into consideration individual freedom as a basic human right, as well as freedom of thought, conscience, opinion and expression. With this *Declaration*, a major change was introduced in the self-understanding of the State under the rule of law. The State has to protect and foster the human rights of its citizens, and so to clearly put a limit to its competence. It left the private sphere to the philosophical or religious options of citizens. So it became clear that the State must not impose or forbid a religion, but, rather, guarantee the right of its citizens to have, or not to have, a religion.

### *A. Autonomy in International Law*

International instruments protecting human rights have been primarily concerned with individual rights, but in this area as well, the growing consensus concerning the right to religious autonomy is evident. It is true that the corporate right to autonomy did not keep pace with developments in the individual right to freedom of religion and belief. In the major international instruments articulating the right of individuals to freedom of conscience and religion, there is no express mention of the corporate rights of religious organizations. Nonetheless, these rights are suggested indirectly, albeit often through derivation from individual rights. The *International Covenant on Civil and Political Rights* (ICCPR 1966), for example, notes that religion is practised not only alone, but also “in community with others”, and that the right to manifest one's faith or belief includes the activities of “worship, observance, practice and teaching” (art. 18). Obviously, such activities generally have a collective aspect. Religious freedom, therefore, has communal dimensions. Though the ICCPR does not expressly treat religious organizations as bearers of rights, it is clear that corresponding protections can be derived from the rights granted to individuals.

Much the same can be said with regard to the 1981 UN *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief*. It repeats the notion taken from the ICCPR: freedom of thought, conscience and religion finds expression “either individually or in community with others” (Art. 1,1). Virtually all of the specific examples of freedom of religion or belief enunciated in Article 6 of the 1981 *Declaration* presuppose religious autonomy. Thus, it guarantees the following rights to:

- “worship or assemble in connexion with a religion or belief”;
- “establish and maintain appropriate charitable or humanitarian institutions”;
- “make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief”;
- “write, issue and disseminate relevant publications” and “[t]o teach a religion or belief in places suitable for these purposes”;
- “solicit and receive voluntary financial and other contributions from individuals and institutions”;
- “train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief”;

- “establish and maintain communications with individuals and *communities* in matters of religion and belief at the national and international level”.

An even more explicit recognition of the right to religious autonomy is evident in the Helsinki Process. In the follow-up conference held under the auspices of the *Helsinki Final Act* that concluded in Vienna in 1989, the scope of religious freedom was elaborated with some precision. Principle 16 commits the participating states to eliminate all forms of religious discrimination against individuals or communities; and to guarantee effective equality between believers and non-believers. Further, it encourages dialogue between believers of different communities. Participating states committed themselves to granting legal entity status to all religious all communities desiring it, and willing to practice their faith within the constitutional framework of their states. Moreover, they commit themselves to respect the following “rights of these communities”:

- to establish and maintain places of worship;
- to organize themselves according to their own hierarchical and institutional structure;
- to choose, appoint and replace their personnel according to their own rules and needs;
- to receive financial contributions.

These are, of course, key requirements of religious autonomy. Principle 16 also commits states to protect the right to receive and provide religious education individually or in association with others. In addition, it urges states to allow the training of religious ministers in appropriate schools, and to respect the right of believers and communities to possess books or objects needed for religious practice. It further stresses the right of “religious faiths, institutions and organizations to produced and import and disseminate religious publications and materials.” This document in effect constitutes a manifesto of corporate rights of religious organizations. The general right to self-government is implied and specified in considerable detail.

The right to religious autonomy has also found strong support under the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as manifested by decisions of the European Court of Human Rights. This may be seen at two levels. First, the Court has recognized the importance of a crucial threshold condition for autonomy by recognizing the right of religious organizations to acquire



legal entity status. In a series of decisions first under Article 11 (freedom of association), and then under Article 9 (freedom of religion or belief), the Court has stressed the importance of this right. In *Sidiropoulos v. Greece*,<sup>1</sup> the Court stated categorically that “the right to form an association is an inherent part” of the right to freedom of association. It further recognised that “citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning.”<sup>2</sup> Cases decided under Article 9 have made it clear that the right to legal entity status applies with equal, if not greater force, where it is asserted by religious groups.<sup>3</sup> The Court underscored this point in *Metropolitan Church of Bessarabia v. Moldova*,<sup>4</sup> holding that,

since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. *Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.*

### ***B. Church autonomy after Vatican II***

In the 1965 Vatican II constitution *Gaudium et Spes*, the relationship between church and state was defined in a way much similar to international standards: “The political community and the Church in their own field are independent from one another and autonomous” (Par, 76) On the other hand, a “healthy cooperation” between both is desirable. The way of cooperating may vary from one context to the other. The doctrinal foundation of internal autonomy of churches is the right to religious freedom itself. The 1965 Vatican II Declaration *Dignitatis humanae* stressed that religious freedom by its very nature has a social or community dimension. The basic principle is that religious communities should “govern themselves according to

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<sup>1</sup> ECtHR, App. No. 26695/95, Decision of 10 July 1998.

<sup>2</sup> *Id.* at para. 40.

<sup>3</sup> ECtHR, App. No. 25528/94, Dec. 16, 1997; *Canea Catholic Church v. Greece*, 27 E.H.R.R. 521 (1999).

<sup>4</sup> ECtHR, App. No. 45701/99, Decision of 13 Dec. 2001.

their own norms” (DH 4). This implies that they should have the freedom to worship in public and private, to teach to their own members, develop institutions through their members, and to organize their life in accordance with their faith. Religious organizations should have the freedom to organize their internal structure, train and appoint their ministers according to their own rules, communicate with fellow members abroad, have appropriate buildings for worship, own property, organize meetings and develop charitable programs. On September 1, 1980, Pope John Paul II wrote letters to the Heads of the States parties to the Helsinki Act. He included a list of the community rights required by religious freedom and the principle of internal autonomy.

In Catholic areas, there has been a widespread acceptance, since Vatican II, of the principle of church autonomy for the benefit of all confessions. It is acknowledged that the Catholic Church, with the Declaration on Religious Freedom, not only supported religious freedom as a personal natural right, but also developed the collective implications of this right. The Council discarded the theory of the Catholic confessional state, and endorsed the notion that the State should not impose or prohibit religious belief. Rather, it should positively support the exercise of religious freedom as a civil right.

Therefore, it is no surprise that the phrase “independent and autonomous” has received an increased acceptance in more recent concordats signed by countries with the Holy See. Concordats (also called conventions, accords, or agreements) are bilateral treaties. States having concordats with the Holy See generally have parallel agreements between the state and the other religious communities, as in Spain and Italy. The concept of autonomy has become integral to common understanding of the very nature of the corporate freedom of religious communities.

### **3. Different models and common principles**

#### ***A. Different models***

The demands of Churches and religious organizations may still conflict with legislation inherited from the past in the case of State-controlled churches and their respective restrictions on religious freedom.

For the sake of clarity, I would distinguish between four legal configurations of Church-State relations existing at this time:

- Established churches and legally protected Churches
- Separation between Church and State with mutual cooperation
- Separation without either legal recognition or cooperation between Church and State.
- Hostile legislation against religious freedom.

Our Churches have a long history. Many of them still show the marks of the time when they were more or less narrowly linked to national monarchies. For example, the Anglican Church in England and the Presbyterian one in Scotland are “established churches”; while the Anglican Church in Wales, Northern Ireland and Scotland is “de-established”. All other churches in Britain are “non-established” and enjoy the status of a private organization. Established Churches enjoy less autonomy in regulating their inner affairs than the non-established. The British Parliament has to decide ultimately upon issues such as the ordination of women, and the official Prayer Book. Moreover, the Crown appoints the bishops.

Norway and Denmark have State Churches. Finland has two State Churches, the Lutheran and the Orthodox. In Greece, the Orthodox Church continues to enjoy special legal protection. The two spheres, the religious and legal, as a result are not always separated. For instance, a representative of the government assists in the election of the archbishop. As the “dominant” Church, the Orthodox Church also has the right to limit the religious rights of other so-called “free” Churches. Not a few cases of alleged violation of the rights of Greek Catholic citizens have been brought before the Court of Human Rights in Strasbourg.

In Europe, the model of separation of Church and State, yet with institutional cooperation, is widely in force. Actually, the official language is “distinction”, not “separation”. Distinction is taken to mean that Church and State constitute two different juridical bodies. There is no part of the Church in the State, and no part of the State in the Church. A condition for fruitful cooperation between both is precisely that they are mutually independent.

There are, admittedly, areas in which cooperation is needed. For instance religious education in public schools, legal validation of religious marriage, religious assistance to persons in prisons, hospitals or barracks, access to public media, and so on.

Institutional cooperation can be achieved in different ways. It can be either unilaterally fixed by law or custom, or bilaterally agreed by a concordat. In Germany and Austria, the respective constitutions elaborate the juridical status of the Churches. In this system of the religious neutrality of the State, legal cooperation is developed to a maximum of efficiency. Churches, as well as philosophical groups, may accede to the status of *Körperschaft des öffentlichen Rechts*, that is, corporations recognised by law. This enables them to raise taxes from their members with the help of the State administration. Even for religious communities who do not claim this status, the German legislation endeavours to facilitate the practical exercise of religious freedom. Consequently, Churches receive huge state support in the area of education, health-care, and charitable organisations, while being allotted time in radio and TV broadcasting.

In Italy and Spain, cooperation between the Catholic Church and the State is regulated by concordat, and by similar agreements between the State and other religious communities. The financial problem is resolved in a satisfactory way by the possibility offered to Church members to devote a specific tax raised by the administration and redistributed to their respective Church.

The model of total legal separation of Church and State with no institutional cooperation may be favourable or hostile.

- In the USA, Church and State are separated, but the Nation is not separated from God. God is mentioned in the *Declaration of independence*, and religious values are publicly confessed by politicians more than in any free country of the world.
- In the case of France, separation has been established in a way that prevents Churches from being recognized as such by law. Church institutions, therefore, have the form of private associations. Still, current practice complies with international standards of religious freedom.
- Netherlands suppressed in its constitution of 1983 all reference to religious institutions. Now churches are considered as private corporations, even though until 1972, the clergy of all denominations were financially supported by the State. Institutional separation is now complete.

- Hostile separation was predominantly the situation in Eastern Europe under Communist rule. Churches were strictly controlled by government officials and suffocated in their community life, even though constitutions formally proclaimed the right of freedom of conscience. It must be noted that many States in the world do not comply with the internationally recognized rights to religious freedom.

For all religious communities, a new challenge is emerging. European legislation is growing fast, and already has had not a little influence on legal aspects of Church activities. In the treaties of the European Union, religion and religious communities are considered as such in the appendix to the Maastricht Treaty. The project for a Constitutional treaty for the European Union considered the Churches and similar organizations as partners in a dialogue with the Union.

### *B. Common principles*

Nevertheless, the general trend is running in the direction of religious freedom and Church autonomy. Wherever State religions still exist, the State under the rule of law generally avoids any legal discrimination of the fundamental rights of citizens belonging to other creeds. So Sweden abolished in 2000 the position of the Lutheran Church as State Church. In 2001 the President of Finland renounced his right by law to appoint the bishops of the two State Churches.

Some recent constitutions mention the right to autonomy of religious organizations. The Spanish Constitution of 1976, Art. 16, speaks of freedom of religion for communities as well as for individuals. The Portuguese constitution of 1976, Art. 41, is still more explicit. It specifies that "Churches and religious communities are separate from the state and free to organize and exercise their own ceremonies and worship". The 1991 Constitution of Gabon stated that "religious communities order and manage their own affairs in an independent way" (Art. 1, 13).

The Catholic Church, since Vatican II, has been strongly engaged in the defence of the right to religious freedom for all. In this context, the Church explicitly renounced the legislation which gave it a special protection in some countries. Until 1976, in both the concordat with Spain and in the Lateran Treaty with Italy (until its modification in 1984), the Catholic religion was mentioned as the religion of the State. In Latin America

various constitutions still grant special protection to the Catholic Church, evidence of the survival of the old *padronado* system. Since Vatican II, new conventions signed with countries such as Argentina, Colombia, Spain, Peru and Italy omit all reference to Catholicism as a State religion. Only some smaller States still constitutionally maintain Catholicism as their official religion—the instances here are Monaco, Malta, Lichtenstein and San Marino.

But in none of these cases does the State interfere anymore in the appointments of bishops; neither do State agencies meddle in Church issues. No new concessions to governments regarding the appointment of Church officials have been granted by the Holy See since Vatican II. The nearly sixty concordats or agreements since signed are all designed to articulate mutual relations between Church and State in the framework of the common right to religious freedom, and hence do not imply any privileged legal position for the Catholic Church compared to other Churches.

Recent concordats from different regions and cultural backgrounds contain the concept of “independent and autonomous” as the formulation of church-state relations in regard to internal affairs. San Marino, in the preamble to its 1992 agreement with the Holy See, proposed anew the formula of the above-mentioned Italian revised concordat. Poland, in article 1 of the 1993 Concordat, used the words “independent and autonomous,” and in its constitution of 1997, Art. 25, employed the concept of “autonomy and mutual independence of [state and churches] in [their] own sphere[s].” Croatia, in its convention of 1996, Art. 1, recognised that church and state are “independent and autonomous”, and that the Church has exclusive competence in its internal governance (Art. 5). Also, Kazakhstan, in 1998 (Preamble), supported “the principles of respect and non-interference in internal affairs.” In Germany, where concordats were signed with the new *Länder*, after reunification, the constitutional principle of *Selbstbestimmung* (Church “autonomy”) was reaffirmed. This was also the case in Mecklenburg-Vorpommern (1997, Preamble) and Thüringen (1997, Art. 1,2). Saxony stated that the Church “orders and manages its own affairs in an autonomous way in the framework of the laws valid for all” (1998, Art.1, 2).

Proclaiming the internal autonomy of religions is one thing. But does such a proclamation presume that the state both knows and recognises Church structures in its legal expressions of recognition? There would be no real autonomy of the Churches, if these churches had to submit to an imposed civil configuration in order to exist and to act in the legal system of the State that was not fully aware of what is

involved. Traditionally, the legal recognition was granted by States in which Catholics were the majority-population—as with Columbia (concordat of 1973, art 4), Spain (1979, art. 1, 3-4), Italy (1984, art. 4), Poland (1993, art. 4), Croatia (1997, art. 1-2).

But a significant new trend is to be observed in the last decade. We have instances of States with no Catholic background granting a legal recognition of the juridical personality of the Catholic Church and of all the Church institutions recognised by canon law. Here, the examples are Israel, Estonia, Gabon, and the Palestinian Liberation Organization.

Four years after the *Fundamental Agreement* (1993), Israel and the Holy See signed a special *Legal Personality Agreement* (1997). It gives “full effect in Israeli law to the legal personality of the Catholic Church itself” (art. 2), of the Catholic Eastern and Latin Patriarchates, their respective dioceses, the Assembly of the Catholic bishops of the Holy Land, many other entities (art. 3), and also extending to the institutes of consecrated life (art. 5). It is recalled that these ecclesiastical juridical persons have been created according to the legislation of the Holy See which is sovereign in international law (art. 6). But the provisions of art. 6 make clear that any legal act made by ecclesiastical juridical persons in Israel is governed by the law of Israel. However, the designation of the ecclesiastical officer able to act in behalf of the legal person is governed by canon law.

In Estonia, where Catholics are a small minority, “the Catholic Church as also its institutions which in accordance with Canon law have the status of either public or private juridical persons, shall enjoy juridical personality in civil law, according to the legislation of the republic of Estonia...” (1997, art. 2). But such institutions have to register with the Estonian authorities. Also Gabon recognizes the juridical personality that the Catholic Church embodies by its very nature, and also the legal personality of its institutions (1997, art. 2). With the Palestine Liberation Organisation an Agreement was signed on February 15th, 2000. According to Art. 7, “full effect will be given in Palestinian Law to the legal personality of the Catholic Church and of the canonical legal persons”.

## Conclusion

All these examples clearly show that there are some common trends in the legal treatment of religious organizations. International Conventions and international case law have heavily contributed to the emergence of these common norms. We might sum up the evolution in Church-State relation along the two last centuries, as follows:

- State churches or State religions are no longer accepted in a democratic society and a State under the rule of law. Where such a position is maintained, religious freedom is nevertheless guaranteed to all religious organizations. As we know, in other cultural and religious contexts, where a distinction between State and religion is not even thinkable, non conformist religious groups are hardly tolerated, frequently prohibited and persecuted. The obvious examples here are found in most Muslim countries and some Hindu states.
- The concept of autonomy of religious bodies with respect to the political power has gradually imposed itself in the western world. Autonomy means self-regulation of inner affairs and right to propagate beliefs, in compliance with the laws of the state. Where the rule of law does not prevail, religious organizations are put under strict control. We could mention China or Vietnam.
- The idea of cooperation between Churches and state is still regarded with some suspicion. The US model allows for no institutional form of cooperation. The same goes for France. But in France an official dialogue has been set up between both entities, and this presumes ongoing exchanges.
- In such a dialogue the Catholic Church enjoys the position of a juridical person in international law. It is able to approach the State on a basis of equality. Concordats or conventions concluded between both are often models for other legal agreements stipulated between the state and other religious organizations.

In countries with a Christian tradition or a western state system it can be said that Caesar's Coin has become a symbol of that mutually recognized autonomy, thanks to which both the State and the Church are able to work each on its own level for the common good of society.