

ARTICLE SYMPOSIUM

THE CATHOLIC CHURCH TESTED FOR CONFESSIONALISM: THE VATICAN II DOCTRINAL PRINCIPLES

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ABSTRACT

In Catholic doctrine, church and state are two different and autonomous institutional subjects, but they are mutually linked. Therefore, a believer, as a citizen, is a subject simultaneously of two legal systems; the state is bound to recognize the confessional dimension of its own members, and the church is called to realize its proper ends within a precise political-social context. The Second Vatican Council (1962–1965) constitutes for the Catholic Church a point of change and renewal. It did not limit itself to affirming the coexistence of the two systems in their independence, but it declared the necessity of a mutual alliance for the good of citizens and believers.

Therefore, the church offers its own contribution to the state, favoring in this way the right to religious liberty; and the state allows the church to establish itself and carry out its proper mission in an institutional form, guaranteeing the protection of the rights of citizens as believers for the free expression of their faith, whether in a private dimension or in an organized form. Vatican II abandons, therefore, the concept of “state religion” in the classic sense of the term, and thus the privilege reserved to one among numerous religious expressions, and opens an authentic collaboration between parties as a prerequisite for the good not only for individual believers and religious organizations, but also for society itself. In particular, religious liberty finds its foundation no longer in the concept of truth (that legitimized the exclusion of other confessions in that they were “not true”), but in the concept of the dignity of the person, which must be protected as such.

KEYWORDS: Catholic Church, confessionalism, Second Vatican Council, state religion, religious freedom

INTRODUCTION

The issue of state confessionalism is often dealt with from a dual perspective: the theoretical one and the practical one. According to the former, several theories tend to frame the delicate relationship between religion and state, although with multiple differences due to geographic and cultural reasons.¹ In this context, words such as *freedom*, *neutrality*, *separation*, and *autonomy* can be

1 See F. VAN LIEBURG, CONFESSIONALISM AND PIETISM: RELIGIOUS REFORM IN EARLY MODERN EUROPE (2006); F. JIMENEZ GARCIA, EL PRINCIPIO DE NO CONFESIONALIDAD DEL ESTADO ESPAÑOL Y LOS ACUERDOS CON LA SANTA SEDE [THE PRINCIPLE OF NONESTABLISHMENT OF THE SPANISH STATE AND THE CONCORDATS WITH THE HOLY SEE] (2007).

found in the Western world. Not always, though, as we well know, are these theories shared.² From the latter point of view, the issue presents itself whenever events undermining this fragile relationship occur. This can include government measures that affect religious congregations and, in particular, their freedom of worship, organization of religious life, financing, and moral matters.³ In this case as well, fundamental principles are often invoked to try to adjust a relationship that is anything but peaceful.⁴

It is not enough, then, to confine oneself and observe the matter from solely the state point of view. It is likewise important to examine—even if only through a brief overview—the basic religious doctrines and principles, particularly those of the Catholic Church, on the correct relationship with the state. It is a complex and labored doctrine, including documents, studies, social encyclicals, and other interventions of church teaching.⁵

In this brief essay, the focus is on the development of Second Vatican Council (hereafter Vatican II) principles that established a significant turning point on the matter of confessionalism, by providing some essential definitions to rightly frame the relationship between church and state. The resulting ecclesiology brought the church back to thinking of itself in the light of the revelation, focusing on its Holy Scripture, the church's fathers, and to its tradition, and no longer as merely a sociopolitical entity, which had been the main angle from which it considered itself. Therefore, for reasons of legitimacy and autonomy, the church switched to a *sana cooperatio*,⁶ or an attitude of dialogue and a shared future, focusing on the conscience, rights, and freedoms of the human being, without any pretension of supremacy or claim of privileges.⁷ The Catholic Church, however, never loses track of its unfringeable rights and necessary duties in relation to state confessionalism and, more generally, in its own relationship with the political community.

The reflection here confines itself to the Catholic Church's thought and vision as it stemmed from the Vatican II, which took place from October 11, 1962, to December 8, 1965. The outcome of those three years of reflection is critical in order to assess the issue of the relationship between the church and the political community. Vatican II's contribution is crucial, in fact, since state

2 See Heiner Bielefeldt, *Freedom of Religion: A Human Right Contented*, 4 *CONCILIUM* 53–67 (2016); Michael Driessen, *Religion, State and Democracy: Analyzing Two Dimensions of Church State Arrangements*, 3 *POLITICS AND RELIGION* 1, 55–80 (2010); Jonathan Fox & Shmuel Sandler, *Separation of Religion and State in the Twenty-First Century: Comparing the Middle East and Western Democracies*, 37 *COMPARATIVE POLITICS* 317, 317–35 (2005); ERNST-WOLFGANG BÖCKENFÖRDE, *CHRISTIANITY, FREEDOM, DEMOCRACY* (2007).

3 See LA LIBERTAD RELIGIOSA Y SU REGULACION LEGAL: LA LEY ORGANICA DE LIBERTAD RELIGIOSA [RELIGIOUS LIBERTY AND ITS LEGAL REGULATION: THE SYSTEMATIC LAW OF RELIGIOUS LIBERTY] (Rafael Navarro-Valls, Joaquín Mantecón Sancho & Javier Martínez-Torrón eds., 2009).

4 See CHURCH AUTONOMY: A COMPARATIVE STUDY (Gerhard Robbers ed., 2001); David McClean, *The Changing Legal Framework of Establishment*, 7 *ECCLESIASTICAL LAW JOURNAL* 292 (2004); JOHN HABGOOD, *Church and Nation in a Secular Age* (1983).

5 LORENZO SPINELLI, IL DIRITTO PUBBLICO ECCLESIASTICO DOPO IL CONCILIO VATICANO II: LEZIONI DI DIRITTO CANONICO [PUBLIC ECCLESIASTICAL LAW AFTER THE SECOND VATICAN COUNCIL: LESSONS OF CANON LAW] (1985).

6 SECOND VATICAN COUNCIL, GAUDIUM ET SPES [Pastoral constitution on the church in the modern world] (1965), § 76, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html; Jérôme SEMBAGARE, *La traduction canonique du principe conciliaire de la "Sana Cooperatio" de "Gaudium et Spes" no. 76, entre l'Eglise et la communauté politique* [The Canonical Translation of the Conciliar Principle of "Sana Cooperatio" of "Gaudium et Spes" Number 76, Between the Church and the Political Community] (Rome 1993); GIUSEPPE LEZIROLI, STATO E CHIESA PER UNA STORIA DEL DUALISMO GIURISDIZIONALE CRISTIANO [STATE AND CHURCH FOR A HISTORY OF CHRISTIAN JURISDICTIONAL DUALISM] (1991).

7 See MATTEO NACCI, CHIESA E STATO DALLA POTESTÀ CONTESA ALLA SANA COOPERATIO: UN PROFILO STORICO-GIURIDICO [CHURCH AND STATE FROM POWER STRUGGLE TO SANA COOPERATIO: A HISTORICAL-JURIDICAL PROFILE] (2015).

recognition of a religion can take place only after careful observation of a religion's self-understanding and of its relationship with the political realm.⁸

Just as several structures and expressions are hidden behind the concept of *state*, the definition of *religion* is not unanimous at all. It is one thing to consider religion as simply the expression of a shared spiritual and transcendental feeling. It is another to take part in a discussion with a real establishment that bases itself on religion but that has developed a distinct structure and organization that seeks specific recognition. The state's point of view and the religion's point of view can be reconciled only by having the abovementioned institutions confront each other, rather than by sticking solely to doctrinal studies.⁹

The unique starting point from which the Catholic Church's thought originates is given by the concurrent belonging of Catholics to a double system. On one hand, Catholics participate in the political sphere by virtue of a citizenship that makes them subjects of rights and duties. On the other hand, they belong to the church on the basis of the baptism that makes each one of them a person inside the church,¹⁰ therefore granting them a peculiar legal capacity and, in most cases, the ability to act.

According to the teachings of the Catholic Church, the first consequence of such a singular point of view is the overcoming of the temptation to place these two levels in direct opposition to each other. The fact that Catholics belong both to the church and to the citizenry avoids understanding confessionalism as an endowment to the church of privileges and a broader protection than that which the state accords to other religions. Catholics do not treat the state as if it were an external system of rules; rather, Catholics see themselves as members of both systems, which they understand to be in a mutual relation.¹¹

What does the Catholic Church then claim through seeking the state recognition? It seeks acknowledgment of its own self-understanding as a legal system, with a proper substratum and specific purposes, so that the dialogue between systems is from the beginning a dialogue between doctrines.¹² For this purpose, the main referential texts of the Vatican II are *Gaudium et Spes*,¹³ especially the portions pertaining to the church-world relationship, and *Dignitatis Humanae*.¹⁴ My choice to examine these conciliar documents is further justified by the fact that they are expressly quoted by the introduction to the Pact of Revision of the Italy-Holy See Agreement, dating from February 1984 and still in force, thus receiving a particular juridical relevance.¹⁵

8 GIORGIO FELICIANI, *CONFESSIONI RELIGIOSE E FEDERALISMO: ESPERIENZE E PROSPETTIVE* [RELIGIOUS CONFESSIONS AND FEDERALISM: EXPERIENCES AND PERSPECTIVES] (2000).

9 See MATTEO Visioli, *Il dialogo ecumenico nella prospettiva giuridica canonica* [Ecumenical Dialogue in the Juridical-Canonical Perspective], 29 *QUADERNI DI DIRITTO ECCLESIALE* 264–83, 264 (2016).

10 See can. 96 CIC.

11 “The root requirement for a sound mutual cooperation between Church and the body politic is not the unity of a religio-political body, as the *respublica Christiana* of the Middle Ages was, but the very unity of the human person, simultaneously a member of the body politic and of the Church, if he freely adheres to her.” JACQUES MARITAIN, *MAN AND THE STATE* 160 (1951); see also *CHURCH AND STATE IN THE MODERN AGE: A DOCUMENTARY HISTORY* (J. F. Maclear ed., 1995).

12 See CARLO CARDIA, *ORDINAMENTI RELIGIOSI E ORDINAMENTI DELLO STATO: PROFILI GIURISDIZIONALI* [RELIGIOUS SYSTEMS AND STATE SYSTEMS: JURISDICTIONAL PROFILES] (2003).

13 *GAUDIUM ET SPES*, *supra* note 6, paras. 40–45.

14 SECOND VATICAN COUNCIL, *DIGNITATIS HUMANAЕ* [Declaration on religious freedom] (1965), paras. 73–76, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_1965_1207_dignitatis-humanae_en.html.

15 “La Santa Sede e la Repubblica Italiana, tenuto conto del processo di trasformazione politica e sociale verificatosi in Italia negli ultimi decenni e degli sviluppi promossi nella Chiesa dal Concilio Vaticano II; avendo presenti, da

This exploration of church documents will conclude by defining the church and the state as two different, autonomous institutions that are nonetheless linked one to another. Since citizen-believers are subject to both legal systems, the state must acknowledge their religious dimensions, and the church must pursue its aims within a specific sociopolitical context. The state and the church should not simply operate within the same environment, but rather as mutual allies. The state and the church are independent from each other; the church offers the state its own contribution for the good of its believers, thereby fostering the right to religious freedom, while the state allows the church to deliver its mission through its own institution, without which it could not operate. In order to accomplish these goals, all that is needed is a free cooperation between the two, not the establishment of the church as the official religion of the state.

CHURCH AND POLITICAL COMMUNITY IN *GAUDIUM ET SPES*

The Church's Mission and the Goals of the Society

Gaudium et Spes lays the the foundation for the understanding of the proper relationship between the church and the world, stating,

Everything we have said about the dignity of the human person, and about the human community and the profound meaning of human activity, lays the foundation for the relationship between the Church and the world, and provides the basis for dialogue between them. In this chapter, presupposing everything which has already been said by this council concerning the mystery of the Church, we must now consider this same Church inasmuch as she exists in the world, living and acting with it.¹⁶

The relationship between the church and the world is of a dynamic of mutual belonging. The church finds herself in the world, acts within it, shares its reasons and values; and the world (a term to be later defined) is made of the church as well, which is one of its integral components.¹⁷ The church is thus not a reality confined to an interior, spiritual, disembodied dimension; rather, its mission fully intertwines the history of men and women and wholly incorporates it.¹⁸

parte della Repubblica italiana, i principi sanciti dalla sua Costituzione, e, da parte della Santa Sede, le dichiarazioni del Concilio Ecumenico Vaticano II circa la libertà religiosa e i rapporti fra la Chiesa e la comunità politica, nonché la nuova codificazione del diritto canonico.” (“The Holy See and the Italian Republic, taking into account the political and social transformation occurring in Italy over the last decades and the evolution promoted in the Church by the Second Vatican Council; with Italy taking into consideration the principles stated in its Constitution and the Holy See the declarations of the Second Ecumenical Vatican Council on religious freedom and the relationship between the Church and the political community, as well as the new Canon Law codification.”) *Accordo tra la S. Sede e la Repubblica Italiana e Protocollo addizionale*, 18 febbraio 1984, ACTA APOSTOLICAE SEDIS 72 [1985], p. 521. Unless otherwise indicated, all translations are mine.

16 *GAUDIUM ET SPES*, *supra* note 6, para 40.

17 See the preface of *GAUDIUM ET SPES*, the council constitution: “The joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ. Indeed, nothing genuinely human fails to raise an echo in their hearts,” *id.* at para. 1, later specifying that not only Jesus’s disciples individually but the entire church as a whole “realizes that it is truly linked with mankind and its history by the deepest of bonds.” *Id.*

18 See the enlightening excerpt from paragraph 8 of *Lumen Gentium*, in which—thanks to no weak analogy with Christ’s mystery of the embodied Word—the institutional dimension of the church is indicated as a constitutive element of its nature: “the society structured with hierarchical organs and the Mystical Body of Christ, are not to be considered as two realities, nor are the visible assembly and the spiritual community, nor the earthly

In other words, such a mission does not confine itself to the spiritual and intimate dimension. By being willing to contribute to an ever more similar resemblance of the world to God's design, the church means to "humanize" the world, to make it more authentic:

Pursuing the saving purpose which is proper to her, the Church does not only communicate divine life to men but in some way casts the reflected light of that life over the entire earth, most of all by its healing and elevating impact on the dignity of the person, by the way in which it strengthens the seams of human society and imbues the everyday activity of men with a deeper meaning and importance. Thus through her individual members and her whole community, the Church believes she can contribute greatly toward making the family of man and its history more human.¹⁹

Essentially, the most mundane and temporal elements of the world both are in need of and benefit from the light of Christ as reflected through the church, as they become lifted up and more fully human because of Christ and the church. When the world is humanized, God's design is ultimately reflected therein.

The church and the world, in their mutual belonging, share the same purpose: the full accomplishment of God's kingdom. The church, in fact, does not identify itself with God's kingdom, but it is—to quote once again the constitution *Lumen gentium*—"in Christ like a sacrament or as a sign and instrument both of a very closely knit union with God and of the unity of the whole human race."²⁰ This complete communion with God and with men is the kingdom toward which the church and the world are walking, each with its own prerogatives and its own means, but bound by the same interest.

What does "the world" mean for the council? It means "the world of men, the whole human family along with the sum of those realities in the midst of which it lives; that world which is the theater of man's history, and the heir of his energies, his tragedies and his triumphs; that world which the Christian sees as created and sustained by its Maker's love."²¹ So, council documents testify to the clear awareness of two separate yet mutually intertwined realities. They are separate because of their order and belonging, but intertwined for composition and sharing of some goals, such as greater good, universal fraternity, human progress towards the ultimate values.

For this to happen, the church-world relationship cannot be solely one way. The church does not in fact hold herself back by only offering to the world its contribution for a humanization process: it also receives from the world the means and the values that enable it to pursue its mission. A mutual favor exists between God's people and humanity.²² Therefore, the church "is convinced that she can be abundantly and variously helped by the world in the matter of preparing the ground for the Gospel. This help she gains from the talents and industry of individuals and from human society as a whole."²³ The church thus denies any position of supremacy by virtue of spiritual and

Church and the Church enriched with heavenly things; rather they form one complex reality which coalesces from a divine and a human element." PAUL VI, *LUMEN GENTIUM* [Dogmatic constitution on the church] (1964), para. 8, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

19 GAUDIUM ET SPES, *supra* note 6, para. 40.

20 LUMEN GENTIUM, *supra* note 17, para 1.

21 GAUDIUM ET SPES, *supra* note 6, para 2. The next paragraph defines the church's will to offer to the world an "honest assistance in fostering that brotherhood of all men which corresponds to this destiny of theirs" *Id.* para. 3.

22 GAUDIUM ET SPES, *supra* note 6, para. 11.

23 *Id.* para. 40.

transcendent values, and puts itself into a context of dialogue and service, as it is aware of the separation but also of the reciprocity with the world.²⁴

The political power, which is part of the concept of “world,” falls into this vision: it ascertains the otherness of the church from the world but also reminds of the mutual immanence of one into the other. By claiming autonomy from the state, the church does not mean to isolate itself in its own, private, internal environment, nor is it willing to express its demand of being the proper religious expression of a legal system. This seemingly contradictory dynamic of autonomy between the two systems, on the one hand, and mutual belonging, on the other, opens up to the possibility of understanding the relationship between state and Catholic Church in the light of the Vatican II’s contribution.

The Catholic Church’s action toward human society as a whole is and remains a “religious” one, but as such it contributes to the good of all mankind. “Christ, to be sure, gave His Church no proper mission in the political, economic or social order. The purpose which He set before her is a religious one. But out of this religious mission itself comes a function, a light and an energy which can serve to structure and consolidate the human community according to the divine law.”²⁵ The church’s commitment is tangible as well: “As a matter of fact, when circumstances of time and place produce the need, she can and indeed should initiate activities on behalf of all men, especially those designed for the needy, such as the works of mercy and similar undertakings.”²⁶

Yet it is most of all the dedication to the unity of mankind the one thing that the church feels as its own peculiar assignment, to be carried out even in the form of a systematic legal prospect. “The Church recognizes that worthy elements are found in today’s social movements, especially an evolution toward unity, a process of wholesome socialization and of association in civic and economic realms. The promotion of unity belongs to the innermost nature of the Church, for she is, ‘thanks to her relationship with Christ, a sacramental sign and an instrument of intimate union with God, and of the unity of the whole human race.’”²⁷ The contribution to the unity of mankind is fostered by the fact that the church, “since in virtue of her mission and nature [she] is bound to no particular form of human culture, nor to any political, economic or social system.”²⁸ Therefore, “the Church by her very universality can be a very close bond between diverse human communities and nations, provided these trust her and truly acknowledge her right to true freedom in fulfilling her mission.”²⁹ The above excerpts from *Gaudium et Spes* point to a fundamental component of the subject of this article: that is, the relationship between civil law and canon law. It is the assertion of the Catholic Church’s freedom with a double meaning, in that (1) it is being freed and untied

24 “No longer would the Church seek separation from the world but in the midst of the world in service to the world. The cooperation between Church and state is actively sought out by the believer, not in the mode of convention, but as a witness through the very service to the world.” J. P. Hittinger, *The Cooperation of Church and State: Maritain’s Argument from the Unity of the Person*, in REASSESSING THE LIBERAL STATE: READING MARITAIN’S MAN AND THE STATE 200 (Timothy Fuller & J. P. Hittinger eds., 2001); see also F. Ricciardi Celsi, *Il principio di sana collaborazione tra Chiesa e comunità politica a cinquant’anni dal Concilio Vaticano II* [The Principle of Healthy Collaboration Between the Church and the Political Community Fifty Years after the Second Vatican Council], in RECTE SAPERE. STUDI IN ONORE DI GIUSEPPE DALLA TORRE [RECTE SAPERE. STUDIES IN HONOR OF GIUSEPPE DALLA TORRE] 561–83 (Geraldina Boni et al. eds. 2014).

25 GAUDIUM ET SPES, *supra* note 6, at para. 42.

26 *Id.*

27 *Id.* (quoting LUMEN GENTIUM, *supra* note 17, para. 1).

28 *Id.*

29 *Id.*

from any cultural or political, economic, and social system, and (2) it requests from human communities and national organizations the freedom to fully operate its mission.

While not expressly talking of “state confessionalism,” Vatican II excludes the pretense that the Catholic Church can and must be considered a fully fledged official state religion, if this definition means that the state recognizes only one specific religious institution or entails the mixture between political and religious levels. By noticing its autonomy from any political and social system, the Catholic Church states, nevertheless, its decisive contribution so that human society might find fulfillment and reach its set goals.

With great respect, therefore, this council regards all the true, good and just elements inherent in the very wide variety of institutions which the human race has established for itself and constantly continues to establish. The council affirms, moreover, that the Church is willing to assist and promote all these institutions to the extent that such a service depends on her and can be associated with her mission. She has no fiercer desire than that in pursuit of the welfare of all she may be able to develop herself freely under any kind of government which grants recognition to the basic rights of person and family, to the demands of the common good and to the free exercise of her own mission.³⁰

Thus, Vatican II affirms the fundamental principle of secularity, according to which the distinction between religious and political systems is decisive for a rightful framing of the relationship between institutions.³¹ This distinction, though, also involves a strict and mandatory relationship.

Three Statements on the Relationship between Church and Political Community

Moreover, when it comes to the relationship between the Catholic Church and the political community, three particular statements from the constitution *Gaudium et Spes*, deserve to be taken into consideration. In the first place, there is the distinction between the individual believers’ action and responsibility and the church’s: “It is very important, especially where a pluralistic society prevails, that there be a correct notion of the relationship between the political community and the Church, and a clear distinction between the tasks which Christians undertake, individually or as a group, on their own responsibility as citizens guided by the dictates of a Christian conscience, and the activities which, in union with their pastors, they carry out in the name of the Church.”³² There is certainly a distinction between the church acting as a corporate body publicly and individual Christians exercising their baptismal mission in society as part of their call to

³⁰ *Id.*

³¹ The Christian social doctrine states the necessity of a distinction among powers “is not in opposition to the Christian message but rather indebted to it.” BENEDICT XVI, Letter of His Holiness Benedict XVI to the Hon. Mr. Pier Fernando Casini, President of the Chamber of Deputies of the Italian Republic, https://w2.vatican.va/content/benedict-xvi/en/letters/2005/documents/hf_ben-xvi_let_20051018_on-casini.html (last visited Sept. 6, 2018). So the pope reaffirms, “the distinction between religion and politics is a specific achievement of Christianity and one of its fundamental historical and cultural contributions.” Address of His Holiness Benedict XVI to Mrs. Cristina Casta Ver-Ponce Enrile, New Ambassador of the Republic of the Philippines to the Holy See, https://w2.vatican.va/content/benedict-xvi/en/speeches/2008/october/documents/hf_ben-xvi_spe_20081027_ambassador-philippines.html (last visited Sept. 6, 2018); see also BENEDICT XVI, *Deus Caritas Est* [Encyclical letter] December 25, 2005, in ACTA APOSTOLICAE SEDIS 98 (2006) n.28.

³² In this regard, the whole Canon Law about the ecclesial organizations (associations, schools, charity institutions, and the like) can be recalled: according to which are distinguished *nomine proprio* actions and *nomine Ecclesiae* actions, by choosing as a differentiating parameter the juridical nature of the examined institution.

holiness. The latter is certainly more the fundamental manner with which the church works in the world than is the former.

The second statement concerns the church's freedom under any political system: "The Church, by reason of her role and competence, is not identified in any way with the political community nor bound to any political system. She is at once a sign and a safeguard of the transcendent character of the human person."³³ This kind of freedom, which the Catholic Church needs for its very mission, does not accept limitations on the church's rights.³⁴ The church makes use of "temporal things insofar as her own mission requires it" but is willing to give them up—although legitimate—if they reveal themselves to obstruct its testament. According to *Gaudium et Spes*, "She, for her part, does not place her trust in the privileges offered by civil authority. She will even give up the exercise of certain rights which have been legitimately acquired, if it becomes clear that their use will cast doubt on the sincerity of her witness or that new ways of life demand new methods."³⁵ This principle persuaded a part of the legal doctrine that the season of institutional relationships between state and church was over. They envisaged the relationship between the two systems only in the form of basic relationships and not so much in their respective powers.³⁶ The meaning that scholars normally attach to the quoted lines is that

the excerpt in question, while it reconfirms the totally undisputed and traditional doctrine, according to which the Church can only place her hope in the "Resurrected Lord's strength", it does not deny in the least that she could legitimately acquire privileges from the civil jurisdiction and make free use of them. It only informs that she will renounce by herself to use them, whenever they should be of objective obstacle to her mission or should not comply with her necessities because of the changed historical circumstances.³⁷

In other words, there is no single model of church and state relationship; but what the church is seeking from the state is the possibility of pursuing her mission, which takes priority over the legal privileges that she may enjoy.

The third, decisive statement pertains to a dual, essential principle: the independence and autonomy of the political community and the church, as well as the cooperation between the two. Independence and autonomy do not quite set the two realities apart because, although with

33 GAUDIUM ET SPES, *supra* note 6, at para. 76.

34 "It is only right, however, that at all times and in all places, the Church should have true freedom to preach the faith, to teach her social doctrine, to exercise her role freely among men, and also to pass moral judgment in those matters which regard public order when the fundamental rights of a person or the salvation of souls might require it. In this, she should make use of all the means—but only those—which accord with the Gospel and which correspond to the general good according to the diversity of times and circumstances." GAUDIUM ET SPES, *supra* note 6, para. 76.

35 See what Pope Benedict XVI later states according to this Council doctrine: "[T]he Church, in Italy and in every Country as well as at the different international Meetings, does not intend to claim any privilege for herself, but only the possibility of carrying out her own particular mission, with respect for the legitimate secularity of the State." BENEDICT XVI, Letter of His Holiness Benedict XVI to the Hon. Mr. Pier Fernando Casini, *supra* note 19.

36 See in this regard GIUSEPPE CASUSCELLI, CONCORDATI, INTESE E PLURALISMO CONFessionALE [CONCORDATS, AGREEMENTS AND CONFessional PLURALISM] 136 (1974); MARIO TEDESCHI, *Le attuali relazioni tra Chiesa e Stato* [Current Relations between Church and State], in SAGGI DI DIRITTO ECCLESIASTICO [ESSAYS IN ECCLESIASTICAL LAW] 136 (1987); PIERO BELLINI & ATTILIO NICORA, LE DUE SPONDE. MORTE E RISURREZIONE DEI CONCORDATI [THE TWO EDGES. THE DEATH AND RESURRECTION OF CONCORDATS] (1984).

37 Giorgio Feliciani, *La laicità dello Stato negli insegnamenti di Benedetto XVI* [The Secularity of the State in the Teachings of Benedict XVI], in AEQUITAS SIVE DEUS. STUDI IN ONORE DI RINALDO BERTOLINO [AEQUITAS SIVE DEUS. STUDIES IN HONOR OF RINALDO BERTOLINO] 244 (Ilaria Zuanazzi ed., 2011).

different purposes and through different courses of action, they are both aimed at the same recipients, namely the people, and seek everybody's well-being. The council's words are crystal clear:

The Church and the political community in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all. For man's horizons are not limited only to the temporal order; while living in the context of human history, he preserves intact his eternal vocation. The Church, for her part, founded on the love of the Redeemer, contributes toward the reign of justice and charity within the borders of a nation and between nations. By preaching the truths of the Gospel, and bringing to bear on all fields of human endeavor the light of her doctrine and of a Christian witness, she respects and fosters the political freedom and responsibility of citizens.³⁸

While the church and the world are certainly distinct, they are called to cooperate together so that the human person may flourish. The distinction between the church and the world should not lead to separation, as they are both called to the personal and social vocation of the human person.

A clear picture, useful to this research, originates from this triple statement. The Catholic Church itself does not accept being involved in a state confessionism that can restrict its action because of particular and exclusive privileges. Nor can it institutionally wade into the political dynamics to the point of taking somebody else's place or give up its freedom and independence, which are typical and undeniable characteristics.³⁹ Finally, there is one last consideration that leads us toward the next step: the church's essence, as it descends from the Second Vatican Council documents, conceives its cohesion with that freedom that it recognizes at the same time to other religions. For this reason, a state confessionism that placed the institutional relationship with the Catholic Church in a sort of exclusive *regime* would go against the very same nature of the church's doctrine on religious freedom, which was also a key topic at the Second Vatican Council

RELIGIOUS FREEDOM IN *DIGNITATIS HUMANAЕ*

Religious Freedom before the Second Vatican Council

Credit must be given to Vatican II for also putting the subject of religious freedom into a deeply changed setting, compared to the tradition and the past. By issuing the decree *Dignitatis Humanae*, the council offers and makes regulatory for the church, most importantly, from the inside, a new and correct way of interpreting religious freedom. This has prompted a partially new vision of the relationship between church and state and of what the church expects for itself and for other religious realities.

Before the council, the starting point was not religious freedom, which was considered a dangerous concept if meant in the sense that everyone is free to choose and to profess the religion they want, but the "religious" duty that every man has to adhere to God's truth. Freedom is then strictly bound to truth: only one who adheres to truth has the right to full freedom. This also applies to the state. Since the true religion is only the one that is professed and lived by the Catholic Church,

³⁸ GAUDIUM ET SPES, *supra* note 6, at para. 76.

³⁹ The 1983 Code of Canon Law adopts this principle of independence and sanctions it through different Canons about specific juridical issues. See in this regard Giorgio Feliciani, *La Chiesa di fronte agli Stati [The Church in Front of the States]*, LA SCUOLA CATTOLICA 124, 263–87 (1996).

consequently all men must adhere to the Catholic church only on behalf of a freedom that is such if it coincides with truth. No one can be forced, because the acceptance of faith must be free by its own nature but, on account of the duty to seek the truth, adhering to it cannot be morally avoided. The Catholic Church alone then has the right to full freedom.

The state—particularly if it is “Catholic,” or in any case willing to give value to the truth—cannot do anything besides favoring the Catholic Church and the adherence to it, to its doctrine, celebrations, and so on. It can only “tolerate” other religions. This is the approach, for example, of the 1929 Lateran Pact between Italy and the Holy See: the Catholic religion is considered the Italian “state religion”⁴⁰ and in some way favored by the agreement’s instructions. For all the other religions in Italy there was—and still is—a law on “admitted religions” instead.⁴¹

From Freedom to the Person

Vatican II, through *Dignitatis Humanae*,⁴² radically changes the approach. It does not give up the belief in the duty to look for the truth and to stick to it. Instead, it finds the right to religious freedom no longer on truth, but rather upon the human person and dignity. One can gain the right to full religious freedom not only by following the truth, but by being a “person,” even when adhering more or less consciously to a wrongful doctrine. For this reason, the right to religious freedom is “at the roots of every other right and every other freedom.”⁴³

40 “L’Italia riconosce e riafferma il principio consacrato nell’articolo 1° dello Statuto del Regno 4 marzo 1848, pel quale la religione cattolica, apostolica e romana è la sola religione dello Stato.” (“Italy acknowledges and reaffirms the principle legitimized in article 1 of the Kingdom Statute of March 4th, 1848, according to which the Catholic apostolic and Roman religion is the only State religion.”) Trattato, art. 1.

41 See Legge 24 giugno (1929), n. 1159: “Disposizioni sull’esercizio dei culti ammessi nello Stato e sul matrimonio celebrato davanti ai ministri dei culti medesimi.” (“Dispositions on the practice of religions allowed in the State and on weddings performed by the ministers of the said religions.”)

42 The bibliography on the subject is vast. Some of the relevant studies concerning the present research are Matteo Visioli, *Una verità, molte coscienze. Il rapporto Chiesa—Stato alla luce di Dignitatis Humanae* [*One Truth, Many Consciences. The Church-State Relationship in Light of Dignitatis Humanae*], in GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO, LIBERTÀ RELIGIOSA E RAPPORTI CHIESA—SOCIETÀ POLITICHE [RELIGIOUS LIBERTY AND CHURCH-POLITICAL SOCIETY RELATIONSHIPS] 39–67 (2007); Mile Babić, *Il cristianesimo: dalla religione di stato alla libertà religiosa* [*Christianity: From the Religion of the State to Religious Liberty*], 4 CONCILIUM 27–40 (2016); Joan Bada, *El context eclesiològic i la significació política del Concili Vaticà II* [*The Ecclesiological Context and the Political Significance of the Second Vatican Council*], in LAS DIMENSIONES JURÍDICO-PÚBLICAS DE LA DIGNITATIS HUMANAЕ [THE PUBLIC JURIDICAL DIMENSIONS OF *DIGNITATIS HUMANAЕ*] 1–18 (Álex Seglers Gómez-Quintero ed., 2007); SILVIA SCATENA, LA FATICA DELLA LIBERTÀ. L’ELABORAZIONE DELLA DICHIARAZIONE “DIGNITATIS HUMANAЕ” SULLA LIBERTÀ RELIGIOSA DEL VATICANO II [THE STRUGGLE OF LIBERTY. THE ELABORATION OF THE DECLARATION “DIGNITATIS HUMANAЕ” ON RELIGIOUS LIBERTY OF VATICAN II] (2003); Giovanni Battista Re, *La libertà religiosa* [*Religious Liberty*], in LE LIBERTÀ GARANTITE. ATTI DEL CONVEGNO NAZIONALE DI STUDI, 4–5 MARZO 2005 [GUARANTEED LIBERTIES. ACTS OF THE NATIONAL STUDY CONFERENCE, 4–5 MARCH 2005] (Elisabetta Conti ed., 2006); PIETRO PAVAN, LA LIBERTÀ RELIGIOSA. DICHIARAZIONE: “DIGNITATIS HUMANAЕ” [RELIGIOUS LIBERTY. DECLARATION: “DIGNITATIS HUMANAЕ”] (1967); Ottavio De Bertolis, *Libertà religiosa: problemi e prospettive* [*Religious Liberty: Problems and Perspectives*], 94 PERIODICA 693, 693–94 (2005).

43 JOHN PAUL II, *Discorso ai partecipanti al IX Colloquio internazionale romanistico canonistico organizzato dalla Pontificia Università Lateranense* [*Speech to the participants to the IX International Canonistic Roman Colloquium organized by the Pontifical Lateran University*] Rome, December 11, 1993, para. 3, https://w2.vatican.va/content/john-paul-ii/it/speeches/1993/december/documents/hf_jp-ii_spe_19931211_colloquio-romanistico.html; see also the same pope’s definition, given to the members of the Società Paasikivi at the Concert Hall in Finland on June 5, 1989: “uno dei pilastri che sorreggono l’edificio dei diritti umani” (“one of the pillars that

The Council breathes the spirit of an increased sensitivity to the topic of freedom:

A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man, (1) and the demand is increasingly made that men should act on their own judgment, enjoying and making use of a responsible freedom, not driven by coercion but motivated by a sense of duty. The demand is likewise made that constitutional limits should be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations.⁴⁴

This is particularly valid in the religious realm.⁴⁵ The person in itself is the center and foundation of religious freedom:

This Vatican Council declares that the human person has a right to religious freedom . . . The right to religious freedom has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself. This right of the human person to religious freedom is to be recognized in the constitutional law whereby society is governed and thus it is to become a civil right.⁴⁶

Thus, the council teaches that religious liberty is engrained in human nature, and no human person should ever be impeded from exercising their religion. At the same time, the Declaration addresses those who will not seek to exercise their right to religion.

The document therefore goes on to state that “the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it and the exercise of this right is not to be impeded, provided that just public order be observed.”⁴⁷ There is no doubt that the duty of looking for the truth and adhering to it remains absolutely intact, as the declaration states more than once from the beginning:

On their part, all men are bound to seek the truth, especially in what concerns God and His Church, and to embrace the truth they come to know, and to hold fast to it. This Vatican Council likewise professes its belief that it is upon the human conscience that these obligations fall and exert their binding force. The truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.⁴⁸

Likewise, *Dignitatis Humanae* does not alter the traditional doctrine that

God Himself has made known to mankind the way in which men are to serve Him, and thus be saved in Christ and come to blessedness. We believe that this one true religion subsists in the Catholic and Apostolic Church, to which the Lord Jesus committed the duty of spreading it abroad among all men. Thus He spoke to the Apostles: “Go, therefore, and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all things whatsoever I have enjoined upon you” (Matt. 28: 19–20).⁴⁹

sustain the human rights’ building”), para. 2, http://w2.vatican.va/content/john-paul-ii/it/speeches/1989/june/documents/hf_jp-ii_spe_19890605_soc-paasikivi.html.

44 DIGNITATIS HUMANAЕ, *supra* note 13, para. 1.

45 “This demand for freedom in human society chiefly regards the quest for the values proper to the human spirit. It regards, in the first place, the free exercise of religion in society.” *Id.*

46 *Id.* para. 2.

47 *Id.*

48 *Id.* para 1.

49 *Id.*

However, together with these traditional doctrinal aspects, a turning point emerges which will have repercussions on several areas, among which is the Church's relationship with the political community, and the possibility that the Church might become a "State religion."

Vatican II is certain that the right and duty to religious freedom articulates itself over two complementary styles. On one side, in negative terms, since the state is incompetent in religious matters, it must restrict itself to "not imposing" and "not obstructing" the practice of religiousness among single citizens and groups. The concept of "public order"⁵⁰ can and must limit this principle in negative terms. The content of religious freedom is hence defined through the statement 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 ways 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."⁵¹

The Declaration advocates the immunity from state coercion on the transcendent nature of human beings:

The religious acts whereby men, in private and in public and out of a sense of personal conviction, direct their lives to God transcend by their very nature the order of terrestrial and temporal affairs. Government therefore ought indeed to take account of the religious life of the citizenry and show it favor, since the function of government is to make provision for the common welfare. However, it would clearly transgress the limits set to its power, were it to presume to command or inhibit acts that are religious.⁵²

As it focuses on the transcendent inclination of human beings, the church's doctrine on this subject therefore does not propose the "Catholic" or confessional State, but one that truly respects its citizens and the associated life organizations⁵³ even in their way of expressing themselves religiously, first and foremost abstaining from "imposing" or "limiting."

Religious Freedom in Its Public Form

The Declaration specifies which elements of religious freedom must be recognized for groups. The text deserves a detailed analysis because it indirectly expresses what the church asks for itself from the state as well. It is, first of all, a freedom pertaining to the *internal structure* and life of the church: of public worship, charity practices, teaching, institutional life forms.

Provided the just demands of public order are observed, religious communities rightfully claim freedom in order that they may govern themselves according to their own norms, honor the Supreme Being in public worship, assist their members in the practice of the religious life, strengthen them by instruction, and promote institutions in which they may join together for the purpose of ordering their own lives in accordance with their religious principles.⁵⁴

50 It is defined as an "effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality." *Id.* para. 7.

51 *Id.* para. 2.

52 *Id.* para. 3.

53 "The social nature of man, however, itself requires that he should give external expression to his internal acts of religion: that he should share with others in matters religious; that he should profess his religion in community. Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed." *Id.* para. 3.

54 *Id.* para. 4.

To this must be added the right of a religion to *freely act* toward its ministers, to communicate, to build places of worship, to use its own goods:

Religious communities also have the right not to be hindered, either by legal measures or by administrative action on the part of government, in the selection, training, appointment, and transferral of their own ministers, in communicating with religious authorities and communities abroad, in erecting buildings for religious purposes, and in the acquisition and use of suitable funds or properties.⁵⁵

Another very important area of freedom for religions concerns the teaching of their own creed. Hence, “Religious communities also have the right not to be hindered in their public teaching and witness to their faith, whether by the spoken or by the written word.”⁵⁶

The freedom of the Catholic citizen to fully cooperate with society in matters that pertain to the common good, on their own their beliefs must then be recognized: “In addition, it comes within the meaning of religious freedom that religious communities should not be prohibited from freely undertaking to show the special value of their doctrine in what concerns the organization of society and the inspiration of the whole of human activity.”⁵⁷

The abovementioned general principles found the right to gathering and associating, which the decree also advocates. It states, “Finally, the social nature of man and the very nature of religion afford the foundation of the right of men freely to hold meetings and to establish educational, cultural, charitable and social organizations, under the impulse of their own religious sense.”⁵⁸ Also present is the underlining of the freedom of education within the family, a particular kind of social life that the political system includes as part of itself. On this point, the Declaration states, “the family, since it is a society in its own original right, has the right freely to live its own domestic religious life under the guidance of parents. Parents, moreover, have the right to determine, in accordance with their own religious beliefs, the kind of religious education that their children are to receive.”⁵⁹ The decree’s doctrine thus ramifies into a series of individuals, and groups’ rights that shield their religiosity—whatever it might be—from state coercion.

Religious Freedom “In Positive Terms”: Protecting, Favoring

Since religious freedom, insofar as founded on the person, falls into the “common good” sphere, it has to be protected, and even more favored by everybody, particularly by the State:

Since the common welfare of society consists in the entirety of those conditions of social life under which men enjoy the possibility of achieving their own perfection in a certain fullness of measure and also with

⁵⁵ *Id.*

⁵⁶ *Id.* To which it adds, with the purpose of avoiding misunderstandings and mistreatments, “However, in spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people. Such a manner of action would have to be considered an abuse of one’s right and a violation of the right of others.” *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* para. 5. “Government, in consequence, must acknowledge the right of parents to make a genuinely free choice of schools and of other means of education, and the use of this freedom of choice is not to be made a reason for imposing unjust burdens on parents, whether directly or indirectly. Besides, the rights of parents are violated, if their children are forced to attend lessons or instructions which are not in agreement with their religious beliefs, or if a single system of education, from which all religious formation is excluded, is imposed upon all.” *Id.*

some relative ease, it chiefly consists in the protection of the rights, and in the performance of the duties, of the human person. Therefore the care of the right to religious freedom devolves upon the whole citizenry, upon social groups, upon government, and upon the Church and other religious communities, in virtue of the duty of all toward the common welfare, and in the manner proper to each.⁶⁰

Therefore every government

is to assume the safeguard of the religious freedom of all its citizens, in an effective manner, by just laws and by other appropriate means. Government is also to help create conditions favorable to the fostering of religious life, in order that the people may be truly enabled to exercise their religious rights and to fulfill their religious duties, and also in order that society itself may profit by the moral qualities of justice and peace which have their origin in men's faithfulness to God and to His holy will.⁶¹

Religious freedom, public morality, and societal peace thus form a triangle in the church's doctrine, which calls the state to intervene, favoring religiosity, while staying away from coercion.

Within this framework, the issue of the privileges granted by the state to a certain religious denomination is further developed. The position taken by the Vatican II in doctrine on this matter is essential to justifying the particular position that the church covers in some legal systems, but also to protecting the church itself in settings in which it finds itself a minority religion inside a totalitarian state. *Dignitatis Humanae's* line of thought is very clear: "If, in view of peculiar circumstances obtaining among peoples, special civil recognition is given to one religious community in the constitutional order of society, it is at the same time imperative that the right of all citizens and religious communities to religious freedom should be recognized and made effective in practice."⁶²

The recognition of a position "of privilege" to one particular religious institution rather than to another is not to be excluded. This can happen not only for political reasons, but also because of historical, cultural, and social motives. This priority, nevertheless, cannot and must not, exempt the state from recognizing the whole body of rights to anybody who expresses their own religious belief, be it through an individual or an organized structure.⁶³

The Church's Freedom and Religious Freedom

There is only one remaining question of interest that the Vatican II faces in *Dignitatis Humanae*: Is it enough that the church is granted the same religious freedom established for any other religious group for it to enjoy the freedom that the mission given to it by Christ expects? Or does the church deserve a different treatment because of its nature? This claim cannot be grounded on the belief that

⁶⁰ *Id.* para. 6.

⁶¹ *Id.*

⁶² *Id.*

⁶³ A recent example of the demand for implementation of this principle by the Catholic Church is the pronouncement of the Spanish Episcopal Conference on the occasion of the Spanish bills on education in Spanish schools. The Ley Organica de Calidad de la Educaci3n (LOCE), first, and the Ley Organica de Educaci3n (LOE), later, meant to impose an educational system that would forbid Catholic Church-run schools the concession—over some ethical and anthropological matters—of that freedom that the church is invoking for herself as a right. The documents of the Episcopal Conference state this right as the true expression of a rightful relationship between the church and the political community. See on this regard Matteo Visioli, *Le dichiarazioni sull'educazione della Conferenza episcopale spagnola alla luce dei principi conciliari* [*The Declarations on Education of the Spanish Episcopal Conference in Light of the Conciliar Principles*], 26 QUADERNI DI DIRITTO ECCLESIALE 300, 300–32 (2013).

truth dwells exclusively in the church, as used to occur before the Vatican II. Does it now aim to participate in the worldly society as an overall particular expression of religiousness compared to all the other religions, to which it equally recognizes rights and duties?

Canon law scholars disagree on the subject. On the one hand, some ground the Catholic Church's freedom in religious freedom, conceiving the former as a specific aspect of the latter. Thus, the church's *ius libertatis* (right to freedom) would only be a way of expression of the wider *ius ad libertatem religiosam* (right to religious freedom).⁶⁴ On the other hand, there are canonists who, starting from the Vatican II's doctrine, bifurcate the two liberties according to *Dignitatis Humanae's* statement that there is a "harmony" between the church's freedom and religious freedom. The word *harmony* would assume not an identity, but rather a distinction: the Catholic Church's freedom would be based on its divine foundation, while other religions would be protected by religious freedom.⁶⁵

The Vatican II then specifies two levels on which the church claims its freedom. These levels differentiate it from the other religious expressions and put it in a peculiar situation, by excluding the danger of a religious indifferentism. The first level is explained in the declaration that "the Church claims freedom for herself in her character as a spiritual authority, established by Christ the Lord, upon which there rests, by divine mandate, the duty of going out into the whole world and preaching the Gospel to every creature."⁶⁶ While the second one says that "The Church also claims freedom for herself in her character as a society of men who have the right to live in society in accordance with the precepts of the Christian faith."⁶⁷

64 "La libertà della Chiesa è rispettata colà ove sia rispettata la libertà religiosa; i cristiani come gli altri uomini godono del diritto civile di non essere impediti di vivere secondo la propria coscienza. Possiamo notare come l'unica *potestas* che la Chiesa rivendica verso la *civitas* sia una *potestas libertatis* e cioè la pretesa al riconoscimento di un diritto soggettivo ed originario della Chiesa, come realtà unitaria e nello stesso tempo sintetica di tutte le comunità ecclesiali locali, alla libertà, diritto che, per l'ambito in cui si pone e per le modalità con cui è proclamato, si può qualificare come peculiare espressione e specificazione del generale diritto di libertà religiosa, inteso nel suo senso più lato di libertà di manifestazione interiore del proprio credo sia nei rapporti con il pubblico potere che nei rapporti con gli altri consociati e coi gruppi in cui questi si raccolgono." ("The Church's freedom is respected where religious freedom is respected; Christians, like all other men, enjoy the civil right to not be obstructed while living according to their conscience. We can notice how the only *potestas* the Church is claiming from the *civitas* is a *potestas libertatis*, that is the demand of the recognition of a subjective and original right of the Church, as a whole entity and at the same time uniting the local church communities, to freedom, a right that, given the context in which it stands and the modalities through which it is affirmed, can be described as a peculiar expression and specification of the wider right to religious freedom, meant in its broader sense of freedom to interior display of one's own belief in the relationships with both the public authority and with the other individual citizens and the groups formed by them.") LUCIANO MUSSELLI, CHIESA CATTOLICA E COMUNITÀ POLITICA [THE CATHOLIC CHURCH AND THE POLITICAL COMMUNITY] 74–76 (1975).

65 "La libertà religiosa è, nell'accezione conciliare, un concetto negativo, concretizzandosi nell'immunità da coercizioni esterne in materia religiosa o di coscienza. La *libertas Ecclesiae*, al contrario, è un concetto positivo, per il quale la Chiesa nel suo agire deve godere di "tanta libertà quanto le è necessaria per provvedere alla salvezza di tutti gli esseri umani" (dich. *Dignitatis humanae* § 13). Il primo concetto attiene all'ordine interno dello Stato; l'altro, al contrario, riguarda l'ordine esterno." ("Religious freedom is, according to the Council, a concept affirmed in negative terms, that materialises in the immunity from external coercion on issues of religion or conscience. The *libertas Ecclesiae*, on the contrary, is stated through positive terms: the Church, while taking action, must be allowed to enjoy 'as much freedom as necessary to provide salvation to all mankind' (*Dignitatis humanae* § 13). The first concept pertains to the internal order of the State; the second one, on the contrary, concerns the outer order.") GIUSEPPE DALLA TORRE, LA CITTÀ SUL MONTE. CONTRIBUTO AD UNA TEORIA CANONISTICA SULLE RELAZIONI FRA CHIESA E COMUNITÀ POLITICA [THE CITY ON A HILL. CONTRIBUTION TOWARD A CANONICAL THEORY ON THE ACTIONS BETWEEN THE CHURCH AND THE POLITICAL COMMUNITY] 116 (2007).

66 *DIGNITATIS HUMANAЕ*, *supra* note 13, para. 13.

67 *Id.*

It would appear at this point that the freedom claimed by the church is much more than a general religious freedom, and that the church demands for itself a treatment of greater freedom, on the basis of the specific identity that characterizes it. *Dignitatis Humanae* clarifies this doubt in the opposite way, by stating,

In turn, where the principle of religious freedom is not only proclaimed in words or simply incorporated in law but also given sincere and practical application, there the Church succeeds in achieving a stable situation of right as well as of fact and the independence which is necessary for the fulfillment of her divine mission. This independence is precisely what the authorities of the Church claim in society. At the same time, the Christian faithful, in common with all other men, possess the civil right not to be hindered in leading their lives in accordance with their consciences.

The summation is immediate: “Therefore, a harmony exists between the freedom of the Church and the religious freedom which is to be recognized as the right of all men and communities and sanctioned by constitutional law.”⁶⁸ Whether the term *harmony* is perceived as a synonym of *identity* or, on the contrary, as an indicator of a difference, the will of the church to be placed by the political community into the wider and more shared right to religious freedom, is clear.

The church does not claim for herself any particular treatment, on the basis of the uniqueness of the Gospel’s announcement that cannot and must not also be granted to those who rightfully and conscientiously profess their faith, trusting their right to religious freedom. Likewise, the state has the duty and the capacity to take interest in religious issues in order to reach its goals. This excludes any state’s opposition or indifference toward religion, which is typical of totalitarian regimes. In other words, religion is not a merely private issue of individual or associated people, which should not interfere with the public environment.⁶⁹

SOME OPEN CONCLUSIONS ON THE COUNCIL’S TEACHINGS

The most representative doctrinal principles that led to a turning point during the Vatican II can now be summarized.⁷⁰ First and foremost, *church* and *state* must not be understood only as juxtaposed realities, but as mutually related ones. Each of them has its own organization, but the place of each one is illuminated also by the relationship that it entertains with the other. The Christian is also a citizen of a state, and the state acknowledges that the religious dimension of its citizens is a reality that cannot be ignored. Both the church and the state, although provided with their own goals and autonomy that must be respected and protected, have a mutual institutional interest. This interest is not determined by a pursued advantage, but by a right and duty inherent to the realization of their own purposes: a religious purpose for the church, that is to say to give some sense to

⁶⁸ *Id.*

⁶⁹ This doctrinal perspective is absorbed into a canon law environment by the 1983 Code of Canon Law, in which a correspondence can be found between the provision of some canons and the principles expressed by the Vatican II document. For a synoptic overview, see Matteo Visioli, *Una verità, molte coscienze. Il rapporto Chiesa—Stato alla luce di Dignitatis Humanae* [*One Truth, Many Consciences. The Church-State Relationship in the Light of Dignitatis Humanae*], in *LIBERTÀ RELIGIOSA E RAPPORTI CHIESA—SOCIETÀ POLITICHE* 64–67 (Gruppo Italiano Docenti di Diritto Canonico, 2007).

⁷⁰ See Carlo R. M. Redaelli, *Ordinamento canonico e ordinamento civile in Italia: i principi conciliari e costituzionali; gli accordi e la prassi* [*The Canonical System and the Civil System in Italy: The Conciliar and Constitutional Principles; the Accords and Praxis*], 26 *QUADERNI DI DIRITTO ECCLESIALE* 206–50, 206 (2013).

the world, by announcing to mankind a message of safeness; a public purpose for the state, which recognizes that its citizens have a vested right in enjoying their spiritual dimension, as individuals or through their associations.

In this way, the church, in the concept of Vatican II, not only presents to the civil society its own contribution, but also receives from it at the same time an irreplaceable support, namely, the possibility to divulge its message and structure itself as an embodied reality in history. As human society is structured in institutional organizations that allow the achievement of the common good by granting a peaceful and rightful cohabitation, with its own structure, authority, legislation, to which everybody contributes in different ways, believers included—so the church is equally organized in its own institutional shape that owes to the world the ability to express itself but claims its own autonomy and independence.

The state surely does not have direct jurisdiction in the religious matter, but it must respect the dignity-grounded right to religious freedom, which belongs to the church as well as to other religious groups and denominations. This respect is both in negative terms (no coercion nor obstruction) and in positive ones (protection and promotion). It does not include mutual indifference, but, as it requires the church to recognize the state's value for common good and individual lives, so it has the state recognize the value of religiosity.

It is far from the doctrine of the Catholic Church to facilitate the idea of a state confessionism that gives to the church or to other religious denominations the role of “state religion,” according to the doctrine of public ecclesiastical law that prevailed in the church of the nineteenth century. This theory, though, does not *tout court* take the place of a secular, neutral, indifferent state, unrelated to its members' religious dimension. Vatican II's expression of *sana cooperatio*,⁷¹ in the end, means to summarize this newly acquired belief. It is therefore possible to state that

the Second Vatican Council gave birth to such a strong new way of thinking of the “Church-World” relationships that it can be defined a real “cultural instability” from the public law scholars' point of view. Why? If the relationships between these two institutions are now set . . . on *sana cooperatio*, it goes with it that the ecclesiastical public law will lose its apologetic afflatus and at the same time, not having to tire itself to necessarily show the Church's juridical perfection and her being an original law system, it will acquire a progressively bigger awareness of its importance in the management of the relationships between the Church and political communities, starting from a new self-determination of opening to the external world.⁷²

71 GAUDIUM ET SPES, *supra* note 6, para. 76.

72 MATTEO NACCI, CHIESA E STATO DALLA POTESTÀ CONTESSA ALLA SANA COOPERATIO. UN PROFILO STORICO-GIURIDICO [CHURCH AND STATE FROM POWER STRUGGLE TO SANA COOPERATIO: A HISTORICAL-JURIDICAL PROFILE] 144 (2015).