

# SEPARATION, COOPERATION AND FREEDOM OF RELIGION AND BELIEF: ANALYZING THE CONSTITUTIONALITY OF THE AGREEMENTS BETWEEN THE FEDERAL REPUBLIC OF BRAZIL AND THE HOLY SEE

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## Resumen:

Este artículo tiene como propósito identificar las principales características del régimen brasileiro de secularidad, e investigar si los acuerdos entre Brasil y la Santa Sede son admisibles a la luz de la Constitución Federal de 1988

**Palabras clave:** laicidad; secularismo; cooperación; libertad religiosa; Concordato

## Abstract

This article aims to identify the main characteristics of the Brazilian regime of secularity and to investigate whether the agreements between Brazil and the Holy See are admissible in the light of the 1988 Federal Constitution.

**Keywords:** *Laïcité*; Secularism; Cooperation; Religious freedom; Concordat.

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## 1. Church-state relations in Brazil and the Proclamation of the Republic

From the Independence of Brazil in 1822 until late 19th century, the religion established by the Monarchy was Roman Catholicism. The constitution of 1824 granted special protections to the Church, while all other faiths suffered restrictions. These could only be practiced privately or in specific places, but these places could not have the form of a traditional church building. During this period, almost all the Brazilian population was Catholic.

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Concerning the separation regime, the initial breakthrough came with Decree 119-A of 1890. It proscribed governmental intervention in religious matters, ensured freedom of religion and belief, and eliminated the Patronage, by which the Holy See delegated to the government the administration of churches. Therefore, the Catholic Church was disestablished (although it was not politically disentangled).

The bill of rights of the first republican constitution (1891) introduced the establishment clause in Brazilian constitutionalism, which reaffirmed the lost of state religion status by the Catholic Church. Clauses such this one can be found in each subsequent constitution, namely, the constitutions of 1934, 1937, 1946, 1967, in the authoritarian general review of 1969 (during the military dictatorship that prevailed from 1964 to 1985), and in the current constitution (1988). Constitutional clauses have been protecting freedom of conscience, religion and belief as well, with some variations – for instance, conscientious objection was first introduced in 1946, strongly restricted by the constitution of 1967 and reintroduced in 1988.

Regarding the 1891 constitution (which is a milestone in the constitutional history regarding religion-state relations in Brazil), it came into force after the Proclamation of the Republic on 15 November 1889 (the “Old Republic”). Although the concrete reality did not correspond to the normative prescriptions, this period was characterized (again, at least from the legal perspective) by laicization policies. For example, the constitution required the removal of religious education from public schools curricula (Article 72.6), the secularization of religious cemeteries (Article 72.5), and that religious marriage had to be replaced by civil marriage only (Article 72.4). The constitution also provided that those who claimed reasons of religion or belief to be exempt from any duties imposed by law would lost all political rights (Article 72.29).

However, those laicization provisions had a short life, enduring almost 43 years. By the constitution of 1934, religious education was reestablished, however as an optional course and in accordance with the student’s religion (Article 153). It also enabled the creation of cemeteries by religious organizations as well as it allowed the free exercise of religious worship in the public ones (Article 113.7), and it recognized the civil effects of religious marriage under the condition its celebration observed the relevant legal procedures and requirements (Article 146). These clauses were broadly kept by the subsequent constitutions.

## 2. The current constitutional framework

Although the Roman Catholic Church remains as the majority religion, the number of its adherents has declined considerably in past decades, while the number of Protestants, members of other religious groups, and non-religious people has been rising. According to the last census, in 2010 (when the population of Brazil was almost 191 million), 64.6 percent of the population remain Catholics (against 91 percent in the 1970<sup>2</sup>), while 22 percent are Protestants, 8 percent have no religion, 3.2 percent declared themselves followers of other religions, and 2 percent are Spiritualists. This religious switching was facilitated by the institutional separation between religion and state besides the expansion of legal protection of religious freedom.

Concerning the 1988 constitution, Article 19.I prescribes that the Federal Republic of Brazil is forbidden to “establish religions or churches, subsidize them, hinder their functioning, or maintain dependent relations or

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<sup>2</sup> DECOL, René D., *Mudanca religiosa no Brasil: Uma visao demografica*, *Revista Brasileira de Estudos Políticos*, v. 16, n. 1/2, p. 121–137, 1999, p. 124.

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alliances with them or their representatives, with the exception of collaboration in the public interest, as provided by law". In turn, Article 5.VI-VIII provides comprehensive protection for religious freedom, which includes, in addition to freedom of belief (*forum internum*) and its individual or collective manifestation in public or private (*forum externum stricto sensu*), the protection of places of worship, religious assistance in entities of collective confinement (such as hospitals and prisons), and conscientious objection.

These structural norms and fundamental rights are reinforced by the principle of equality, which compels the state to promote the welfare of all without any prejudice (Article 3), to respect and promote formal equality (Article 5 heading), as well as to repress acts of discrimination that violate fundamental rights (Article 5.XLI).

Based on this framework, it is not rare to find in the legal doctrine, case-law and the media, the recognition of the Federal Republic of Brazil as a "*République laïque*" (at least in the legal and constitutional perspective). For example, in the Allegation of Disobedience of Fundamental Precept 54 (2012), the Federal Supreme Court, following the opinion of the Judge-Rapporteur, affirmed that Brazil is not a religious state that tolerates minorities, but it is a *laïque* state ("*Estado laico*") that tolerates religions, and that religious moral views should be confined to the private sphere.

However, the identification of Brazil with the *laïque* regime (or *laïcité*) does not seem to be appropriate (nor it is a mere terminological issue), especially because of the ideological burden that historically accompanies the adjective in the Catholic countries of the south of Europe and in Latin America, which is not in line with the Brazilian constitutional values and norms.

Different from the Mexican Political Constitution, which defines the country as a "*República laica*" (Article 40), as well as that education is "*laica*" and therefore shall be maintained entirely apart from any religious doctrine (Article 3.I), the Federal Constitution of Brazil does not establish *laïcité* (Pt. *laicidade*) or republican secularity (Pt. *secularidade republicana*) as a constitutional principle.

In spite of the influence of the French and American constitutionalism towards the Proclamation of the Republic and the country's constitutional experiences, the Federal Republic of Brazil developed its own regime of religion-state relations<sup>3</sup>.

### 3. Has Brazil adopted *laïcité* as an implicit constitutional principle?

#### 3.1. The meaning of *laïcité*

Secular republicanism or *laïcité* is one of the results of secularization, which is the historical process by which social practices in general (social, cultural, political, legal) emancipate themselves from religious normative frameworks that served as their reference. Broadly speaking, secularization is a sociocultural phenomenon that encompasses different aspects of life, including the political-institutional organization. While the sociocultural secularization refers to the reduction of the influence of religion in social and cultural life in a

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<sup>3</sup> ALVES, Rodrigo Vitorino Souza, Religious freedom, anti-discrimination, and minority rights in Brazil, in: DURHAM, W. Cole; THAYER, Donlu (Orgs.), **Religion and Equality: Law in Conflict**, Farnham: Ashgate, 2016, p. 56–69.

comprehensive way, the political-institutional secularization is one of its manifestations<sup>4</sup>.

In the course of the Western secularization<sup>5</sup>, various regimes have been developed. Broadly speaking, this historical process resulted in the reduction of the influence and participation of official religions in the exercise of political power - these began to be treated merely as symbol and tradition (such as the Anglican Church in England and the Lutheran Church in Denmark, Norway and Finland), the separation between state and religion (in the US style), as well as the opposition to clericalism and to the presence of religion in public space (*laïcité* in France). Arose therefore different secular regimes, which have in common the differentiation between state and religion, and that can be classified essentially as liberal secularity, which is characterized by critical respect for the diversity of cultural and religious manifestations (whether having or not an official or preferential religion<sup>6</sup>), and republican secularity or *laïcité*, which aims at promoting a civic-public identity common to all citizens<sup>7</sup>.

While the terms *laïque/laïcité* and secular/secularity are made equals in the Portuguese speaking world, in order to affirm that both refer to the same regime and to reduce the differences to mere terminological question, the former set of terms are usually used to expel religion from the public life (the Federal Supreme Court's decision aforementioned is an example of this use).

On the relationship between secularity and *laïcité*, José Casanova<sup>8</sup> comments these are expressions that, although similar, describe different characteristics and have different backgrounds. *Laïque* (or *laico* in Portuguese and Spanish) refers to a concept that has meaning only in Catholic and Latin countries, designating the opposition to the exercise of political power by the clergy, that is, opposition to clericalism<sup>9</sup>.

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<sup>4</sup> TARAMUNDI, Dolores Morondo, *Secularización, laicidad y principio antidiscriminatorio*, in: REUS SJ, Manuel (Org.), **Secularización, laicidad y religión**, Bilbao: Universidad de Deusto, 2014, p. 28–29. According to José Casanova (Secularisation, Religion and Multicultural Citizenship, in: WEISS, Wolfram *et al* (Orgs.), **Religions and Dialogue: International Approaches**, Münster: Waxmann, 2014, p. 28.), “Every early modern European state (with the exception of the Polish-Lithuanian Commonwealth), was defined confessionally as Catholic, Anglican, Lutheran, Calvinist, or Orthodox. In this respect, religious homogenisation and in many instances ethno-religious cleansing are found at the very origin of the modern European state. This is the fundamental factor of early modern European history which will determine the various patterns of European secularisation. Comparatively speaking, European secularisation can be best understood as a process of successive de-confessionalisations of states, nations and peoples, which has been phenomenologically experienced as a process of liberation from confessional identities. This is what determines the historically unique character of European secularisation, which is now increasingly being recognised as a form of ‘European exceptionalism’ rather than as a general model of modernisation that is likely to be replicated elsewhere. In fact, the European pattern of secularisation can hardly be replicated in other contexts in which there was no previous historical pattern of confessionalisation of states, nations and peoples requiring their secularisation, that is, their de-confessionalisation”.

<sup>5</sup> Concerning sociocultural secularization, see TAYLOR, Charles, **A Secular Age**, Cambridge, London: The Belknap Press of Harvard University Press, 2007.

<sup>6</sup> For the debate on liberal secularism and separation, see BHARGAVA, Rajeev, Political secularism: why it is needed and what can be learnt from its Indian version, in: LEVEY, Geoffrey Brahm; MODOOD, Tariq (Orgs.), **Secularism, Religion and Multicultural Citizenship**, Cambridge: Cambridge University Press, 2009, p. 82–109; MODOOD, Tariq, State-Religion Connexions and Multicultural Citizenship, in: COHEN, Jean; LABORDE, Cécile (Orgs.), **Religion, Secularism, and Constitutional Democracy**, New York: Columbia University Press, 2015, p. 182–203.

<sup>7</sup> TAYLOR, Chales; MACLURE, Jocelym, **Secularism and Freedom of Conscience**, Cambridge, London: Harvard University Press, 2011, p. 34–35.

<sup>8</sup> CASANOVA, José, *Secularización y laicidad en España y Europa. Una perspectiva comparada global.*, in: REUS SJ, Manuel (Org.), **Secularización, laicidad y religión**, Bilbao: Universidad de Deusto, 2014, p. 113–115.

<sup>9</sup> MACHADO, Jónatas E. M., **Estado Constitucional e Neutralidade Religiosa: Entre o Teísmo e o (Neo)Ateísmo**, Porto Alegre: Livraria do Advogado, 2013; CATROGA, Fernando, **Entre deuses e céсарes: secularização, laicidade e religião civil**, Coimbra: Almedina, 2006, p. 297.

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Protestant countries use the term “secular”, which means something different. It is not an anticlerical concept because there was not historically a Protestant clericalism. Moreover, Protestantism, though having eliminated the clergy, does not set great distinction between the secular and the religious, since the secular (non-confessional state) is a requirement of religion, as seen in the United States and other countries characterized by a Protestant cultural matrix. The secular and the religious are not distinct phenomenological experiences, not being required by modernity a breakage or alternative choice between the religious and the secular, as it is typical of Protestant modernity being a religious, political, democratic, moral, and free individual.

Thus, while secularity fundamentally requires differentiation between state and religious spheres, *laïcité* (republican secularity) adds to this distinction other features, such as the (unilateral) independence of the state in the face of religions, anti-clericalism, the privatization of religious manifestations, and even the opposition against any denominational allusion. In turn, the model that adds to the differentiation between state and religion their (mutual) independence or (at least relative) autonomy and the protection of freedom of religion and belief may be designated as secular-liberal regime. *Laïcité* and liberal secularity, therefore, are two historically and conceptually different species. They are two schemes with their own settings that have developed in the course of secularization.

Therefore, laicism is a form of secularism, and not one of its synonyms. It is the doctrine or ideology that inspires and promotes *laïcité*, which means, in its negative dimension, the exclusion of religion from the public sphere, and positively, the advancement of a republican identity common to all citizens. This doctrine is present especially in France, Belgium and in the Catholic countries of southern Europe, in different levels.

It is noteworthy that, due to the historical connection of laicism with the opposition to the religious presence in public schools, this doctrine not only refers to the ideological orientation that supports *laïcité*, but also to the doctrine which is advocated and taught especially by educational institutions of the *République laïque*, aiming at the laicization of society. Thus, the state assumes or recognizes itself as the agent of socialization of values pertaining a certain moral system<sup>10</sup> (a non-religious or anti-religious morality) and of a form of (negative) evaluation of the religious phenomenon (moving itself away from the alleged neutrality).

In short, if we assume that the term secular and its variations (secularity and secularism) basically indicate the distinction between the state sphere and the religious sphere that results from the historical secularization process, as well as represent a level of distance between state and religions (which may be higher or lower, mutually or unilaterally)<sup>11</sup>, these terms are considered genres, so that the arrangements and the ideologies provided with specific features are species. In this sense, the secular-liberal regime and the republican secularity are species of secularity, as well as the liberal secularism and republican secularism (laicism) are species of secularism<sup>12</sup>.

### 3.2. Origins and characteristics of *laïcité*

Regarding the legal and political system of *laïcité*, this is historically linked to the French opposition to

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<sup>10</sup> *Ibid.*, p. 302.

<sup>11</sup> MODOOD, State-Religion Connexions and Multicultural Citizenship, p. 182–184.

<sup>12</sup> Charles Taylor and Jocelym Maclure (**Secularism and Freedom of Conscience**, p. 27–35.) distinguishes the liberal-pluralist model and the republican model as two regimes of secularism.

clericalism, to establishment of religion and to the doctrines that promote the political role of religious legal frameworks<sup>13</sup>. *Laïcité* is one of the forms of state secularism, informed by a comprehensive theory of republican citizenship built in France since the Revolution of 1789, as an alternative to the notion of tolerance of political liberalism (such as in John Locke's writings). Republican secularism is articulated around three ideals: equality (religious neutrality of the public sphere - *laïcité stricto sensu*), freedom (individual autonomy and empowerment in opposition to religious oppression) and fraternity (civil loyalty to the citizens of the community)<sup>14</sup>.

This version of secularism (laicism), which holds a republican feature and provides ideological support for *laïcité*, supports an expansive conception of public sphere<sup>15</sup>. When compared to liberal secularism, in its defense of religion-state institutional separation besides broad freedom of religion<sup>16</sup>, one realizes that republican secularism places higher demands not only on state institutions, but also on citizens.

Republican secularism makes comprehensive requirements for the reason that it aims to promote the homogeneity of the citizens' public identity<sup>17</sup>. This paradigm contains the institutional doctrine on the relationship between state and religion – when it proposes that states may not establish any kind of religious affiliation, dependence or preference – and also a doctrine of consciousness – as it advocates the imposition of rules of conduct to religious organizations and individuals, which restrict the expression of religion or belief in public places (especially at educational institutions), for these places are included in the public sphere concept<sup>18</sup>. Thus, *laïcité* is not just a system that regulates the operation of public institutions; it requires from the individuals to be *laïque*.

The type of relationship between state and religion proposed by republican secularism cannot be confused with the kind of separation advanced by liberal secularism. While it is common to refer to *laïcité* as a regime of separation (such as the 1905 law entitled “Separation Act of Church and State”, which is the legal basis for *laïcité* in France<sup>19</sup>), and although it requires disestablishment of religions, it is not actual separation, but

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<sup>13</sup> TARAMUNDI, *Secularización, laicidad y principio antidiscriminatorio*, p. 30–31.

<sup>14</sup> LABORDE, Cécile, **Critical Republicanism. The Hijab Controversy and Political Philosophy**, Oxford: Oxford University Press, 2008, p. 7–8. For Taylor (Why we need a radical redefinition of secularism, *in*: MENDIETA, Eduardo; VANANTWERPEN, Jonathan (Orgs.), **The power of religion in the public sphere**, New York: Columbia University Press, 2011, p. 39–40.), “In the French case, *laïcité* came about in a struggle against a powerful church. The strong temptation was for the state itself to stand on a moral basis independent from religion. Marcel Gauchet shows how Renouvier laid the grounds for the outlook of the Third Republic radicals in their battle against the church. The state has to be ‘*moral et enseignant*’ (moral and a teaching agency). It has ‘*charge d’âmes aussi bien que toute Église ou communauté, mais à titre plus universel*’ (charge of souls just as does the church or religious community, but on a more universal scale). Morality is the key criterion. In order not to be under the church, the state must have ‘*une morale indépendante de toute religion*’ (a morality independent of all religion), and enjoy a ‘*suprématie morale*’ (moral supremacy) in relation to all religions. The basis of this morality is liberty. In order to hold its own before religion, the morality underlying the state has to be based on more than just utility or feeling; it needs a real ‘*théologie rationnelle*,’ like that of Kant. The wisdom of Jules Ferry, and later of Aristide Briand and Jean Jaurès, saved France at the time of the Separation (1905) from such a lop-sided regime, but the notion stuck that *laïcité* was all about controlling and managing religion”.

<sup>15</sup> Cécile Laborde (**Critical Republicanism. The Hijab Controversy and Political Philosophy**, p. 41.) comments that “Separation doctrines in general are founded on a distinction between the public and the private spheres; what characterizes *laïcité* is the relatively expansive construal of the former in relation to the latter”.

<sup>16</sup> For example, the religion clauses in First Amendment to the US Constitution: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*, p. 32–33.

<sup>19</sup> For Raphaël Liogier (*Laïcité on the edge in France: between the theory of Church-State Separation and the praxis of*

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unilateral exclusion<sup>20</sup>. While it supports the exclusion of religion in the field of public aims and state institutions (protecting the state against the “threats” of religion), laicism argues that the state should retain the power to interfere in religion and to broadly regulate or limit religious manifestation.

Laicism is therefore a secularist ideology that justifies previously any kind of state interference in religion. Thus, *laïcité* cannot be translated or understood as separation, but as a unique kind of political interference in the religious field, which claims to be neutral or indifferent in spite of being selective about the ideological manifestations that should be allowed<sup>21</sup>.

Laicism was developed in opposition to the official and socially dominant religion in French society and in Southern Europe – Roman Catholicism –, seeking to replace it not only at the state level, but also in society, becoming hegemonic in educational institutions. Laicism, in this sense, can be considered as a form of protest against religious worldviews and as an alternative proposal to them, or even as a kind of agnostic or atheist “Protestantism”<sup>22</sup>. It is therefore a negative position regarding the religious phenomena, one that refuses to accept the knowledgeability of religious truths and/or the existence of any kind of divinity or transcendence.

In promoting this kind of secularist ideology, the state distances itself from the ideal of religious neutrality<sup>23</sup>, imposing limitations on the (unwanted) presence of religion in the public space, which is understood broadly in *laïcité* regimes, aiming to promote a *laïque*, civic and communal identity, to the detriment of individual peculiarities. Furthermore, the state prefers or requires that its citizens live in accordance with an agnostic or atheistic worldview, to the detriment of theistic worldviews of any kind.

Although set up as “neutrality,” it proposes the “neutralization” of public manifestation of religion, and therefore fails to distinguish political-institutional secularization from sociocultural secularization, placing the state as the agent of neutralization<sup>24</sup>. This, however, is not conceivable in democratic societies, in which the requirement of (critical) respect regarding different religious, nonreligious and anti-religious manifestations

State-Church Confusion, *Macquarie Law Journal*, v. 9, n. 1, p. 25–45, 2009, p. 25.), *laïcité* and church-state separation cannot be assumed as synonymous in the French context “because the Conseil d’État determines which entities are to have the legal status of religious associations, interference in religion by public authorities is the norm rather than the exception. In taking upon itself the role of neutral arbiter in relation to religious practices and institutions, the French State has made itself a permanent presence in religious affairs in the same way that a referee is an essential element of sporting matches”.

<sup>20</sup> BHARGAVA, Rajeev, State and Religious diversity: Can something be learnt from the Indian model of Secularism ?, *RSCAS Policy Paper*, n. 2014/03, p. 1–12, 2014, p. 3.

<sup>21</sup> LIOGIER, *Laïcité on the edge in France: between the theory of Church-State Separation and the praxis of State-Church Confusion*, p. 27.

<sup>22</sup> CATROGA, *Entre deuses e césores: secularização, laicidade e religião civil*, p. 315.

<sup>23</sup> “The French State has never unequivocally and strictly declared itself incompetent in religious matters, preferring to emphasise its neutrality, assimilated with the ‘general interest’, a concept requiring no justification as being purportedly self-evident. Like every dogma, ‘general interest’ is unquestionable and unassailable by nature and confers the right to unlimited interference. In the 19th century, the Republic thus invested itself, including in the discourses and declarations of its most moderate harbingers, with ‘spiritual authority’; a lofty vocation to transmit universal values, hence the vital strategic importance of State schooling as the prime instrument for the application of this ambitious programme. Successively, the anti-clerical groups or the congregationalists would gain the upper hand, winning institutional and symbolic power, in either case they impose their particular representation of the general interest and a specific content of ‘neutrality’ (which matches with their specific interest!)” (LIOGIER, *Laïcité on the edge in France: between the theory of Church-State Separation and the praxis of State-Church Confusion*, p. 31.).

<sup>24</sup> TAYLOR; MACLURE, *Secularism and Freedom of Conscience*, p. 36–39.

cannot be confused with the expulsion of all religious and ideological contributions from the public sphere<sup>25</sup>.

Nevertheless, it would be permissible, in the light of the human rights framework, the democratic adoption of a limited *laïque* regime in countries where society is highly secularized, in contexts of oppression carried out by a dominant religion and in states where the majority religions are voluntarily private. In all these cases, religious minorities should be protected and reasonably accommodated.

It would be inconsistent with religious freedom to impose a *laïque* regime in predominantly religious societies whose individuals and religious groups have the intention or a moral duty to express themselves religiously in the public sphere, a situation that differs from the previous cases. In these societies, governments should advance equal protection of religious freedom to the entire population, avoiding to make negative *a priori* evaluation of religious groups and their manifestation.

While *laïcité* and liberal secularity refer to some kind of regime in which the state distance itself from religions<sup>26</sup>, they are different from each other since the scope of a common civic identity required of individuals is wider in the former and narrower in the latter, as it is the scope of the public sphere regulated by the principle of religious neutrality.

The highest requirements of *laïcité* raise the issue of restrictions on the exercise of religious freedom, especially in relation to the manifestation of religion or belief in public places<sup>27</sup>. By imposing restrictions on religious manifestations in these spaces, *laïque* regimes demand the privatization of the religious phenomenon and impose extensive homogenization of cultural identity of persons and groups, resulting in excessive and inappropriate restrictions in societies that aim to be plural, free and fair.

### 3.3. The main features of Brazilian secularity

In order to identify the Brazilian type of secularity, it is essential to take into account the whole set of constitutional norms that regulate the exercise of religion and its relationship with the state. As seen in the beginning of this study, the Federal Constitution protects freedom of conscience, belief and religion (Article 5.VI), allows religious assistance in places of collective confinement (Article 5.VII), provides for conscientious objection (Article 5.VIII), prohibits any kind of discrimination (Articles 3.IV and 5.XLI) as well as forbids the state from establishing religions or churches, subsidizing them, hindering their functioning, and maintaining dependent relationship or alliances with them or their representatives (Article 19.I).

Regarding this latter clause, the Federal Constitution adds to the neutrality mandate a limitation to its scope, since it authorizes “collaboration in the public interest” (Article 19.I *in fine*). Moreover, other constitutional provisions indicate that the Constitution takes no *a priori* position contrary or indifferent to the religious phenomenon, and it does not establish an absolute separation between state and religions. For example, clergy and similar religious officials are exempt from compulsory military service (Article 143, para. 2), temples of any religion are granted tax immunity (Article 150.VI-b), religious education shall be an optional course during normal school hours in public elementary schools (Article 210, para. 1), public funds may be allocated to faith-based schools (Article 213) and, the state recognizes the civil effects of religious marriage

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<sup>25</sup> HABERMAS, Jürgen, Notes on Post-Secular Society, *New Perspectives Quarterly*, v. 25, n. 4, p. 17–29, 2008, p. 28.

<sup>26</sup> TAYLOR; MACLURE, *Secularism and Freedom of Conscience*, p. 15.

<sup>27</sup> *Ibid.*, p. 36–39.



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(Article 226, para. 2). Federal laws add to this framework, among others, the broad autonomy of religious organizations to create their own administrative structure and internal order (Civil Code, Article 44 para. 1)<sup>28</sup> and the criminalization of acts that violate religious sentiments (Criminal Code, Article 208).

There certainly are different reasons that can justify the existence of those standards, such as the protection of the religious entities against any abusive state interference (which could restrict the collective exercise of religion through taxation of the temples) and the feasibility of religious education for those individuals who cannot afford to enroll in private denominational schools (ie, the offer of the religious education in public schools as an instrument to promote material or substantive equality). However, an underlying reason is that religions are not considered harmful, offensive or dangerous *prima facie*. Moreover, when the Federal Constitution ensures its exercise in public, determines the offer of religious education in public schools, grants tax exemption, and allows support for practices motivated by religion that contribute to the achievement of public interest, the constituent saw positively at least some faith-based actions. In the same spirit, the Constituent Assembly, in a public space and at the political arena, made a religiously motivated declaration when it promulgated the constitution “under the protection of God” (Preamble), and placed the Bible on the main table of the National Congress in addition to the Crucifix on the front wall (in order to symbolically include the fastest-growing religious group in the country – the Evangelicals)<sup>29</sup>.

Therefore, the Constituent Assembly was not guided by an ideology or doctrine of *laïcité*. As seen above, while the state does not identify itself with nor shows preference to any religion, it is not opposed to religions nor inclined to the exclusion of religious manifestation from the public space. In addition to this, the principle of separation should be applied not only to religions or religious systems, but also to doctrines that contain ideas regarding existential issues about mankind and the cosmos, as do the agnosticism and atheism. In light of that principle, while the state cannot establish an official Catholic or Protestant church, it cannot be agnostic or atheist as well, albeit in the name of *laïcité*.

The Brazilian secular regime has liberal features, namely the distinction between state and religious spheres, separation clause, comprehensive protection of religious freedom, and several guarantees to ensure the peaceful coexistence of different cultural and religious expressions in society. However, in addition to the dissociation from *laïcité*, Brazil has not erected a “high and impregnable” wall of separation either<sup>30</sup>. The Brazilian wall is high but permeable; the boundaries are porous (Rajeev Bhargava<sup>31</sup>). Although requiring institutional and structural separation, the Federal Constitution allows communication and connections between the two spheres, and for that reason it should be named liberal-cooperative secularity (Pt. *secularidade liberal e cooperativa*).

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<sup>28</sup> Until 2003, all religious organizations had to adapt their structures to the requirements of the Civil Code regarding the creation of associations or foundations in general. However, in that year the Civil Code was reformed to provide that religious entities may be created and organized freely, and that the government is forbidden to deny the recognition or registration of their incorporation and other necessary acts.

<sup>29</sup> ALVES, Brazil, p. 43.

<sup>30</sup> US Justice Hugo Black, writing for the Court, affirmed that “The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach” (*Everson v. Board of Education*, 330 U.S. 1, 1947).

<sup>31</sup> BHARGAVA, State and Religious diversity: Can something be learnt from the Indian model of Secularism ?, p. 6–8.

## 4. Does Brazilian secularism prevent the establishment of diplomatic relations and international agreements with the Holy See?

Since the establishment of diplomatic relations with the Holy See in 1826, Brazil has signed three bilateral agreements: the Administrative Agreement regarding the exchange of correspondence of 1935, the Agreement on pastoral care in the Armed Forces of 1989 and the Agreement on the legal status of the Catholic Church in Brazil of 2008<sup>32</sup>. One problem that might be raised against these agreements is that Brazil would not be allowed to establish international relations with the Holy See under the religion-state separation clause<sup>33</sup>.

In the international order, the Holy See is a *sui generis* entity. In terms of territorial and administrative organization, the City of the Vatican has no population apart from resident functionaries, and its sole purpose is to support the Holy See as a religious entity. In spite of this anomalous character, it is widely recognized as a legal person with treaty-making capacity<sup>34</sup>. Within the United Nations system, the Holy See became a Permanent Observer State on 6 April 1964, it has been a party to diverse international instruments, it enjoys membership in various UN bodies and agencies, and it has the rights and privileges of participation in the UN sessions and work<sup>35</sup>. Therefore, the Holy See unequivocally has international personality.

The fact that the Holy See is a denominational entity has not been regarded as an obstacle to the establishment of international relations. Even considering its religious dimension alone, it can be assumed that the separation clause does not prevent Brazil from adopting bilateral instruments with the Holy See, since the religion-state separation requirement has to be understood in the light of the constitutional permission for the state to cooperate with religious groups.

Regarding the 1935 Agreement, it does not pose any additional constitutional issues, since it merely grants legal protection for containers carrying official correspondence or other objects (diplomatic bags) between the Apostolic Nuncio to Brazil and the Holy See, as well as between the Brazilian Embassy at the Holy See and its home government. The two other agreements require more extended comments.

### 4.1. The Agreement on Pastoral Care in the Armed Forces of 1989

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<sup>32</sup> More information available at <https://www2.senado.leg.br/bdsf/bitstream/handle/id/243036/02652.pdf?sequence=1>.

<sup>33</sup> See, for example, Valerio de Oliveira Mazzuoli (O Direito Internacional Concordatário na ordem jurídica brasileira, *in*: MAZZUOLI, Valerio de Oliveira; SORIANO, Aldir Guedes (Orgs.), **Direito à liberdade religiosa: desafios e perspectivas para o século XXI**, Belo Horizonte: Forum, 2009, p. 257–260.), who contends that agreements between the Holy See and Brazil shall be deemed as unconstitutional for the reason they create distinctions between Brazilian citizens on the grounds of religion, give privileges to the Catholic Church to the detriment of other religious groups and violate freedom of religion and belief.

<sup>34</sup> CRAWFORD, James, **Brownlie's Principles of Public International Law**, Oxford: Oxford University Press, 2012, p. 124.

<sup>35</sup> Resolution adopted by the United Nations General Assembly on 1 July 2003 (UN Doc. A/RES/58/314), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/58/314&Lang=E](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/58/314&Lang=E).

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The agreement between the Brazilian Republic with the Holy See signed in 1989 aims to allow the Catholic Church to provide pastoral care for the Catholics who are members of the Brazilian Armed Forces and to establish the Military Ordinariate.

The Military Ordinariate of Brazil is an ecclesiastical province of the Roman Catholic Church which is headed by an Ordinary, which has the rank of Archbishop. Immediately subject to the Holy See, it provides pastoral care to Roman Catholics serving in the Brazilian Armed Forces and their families. The Military Ordinariate was established by the Apostolic Constitution *Spirituali Militum Curae* of 1986<sup>36</sup>, replacing the Military Vicariate, which was established in Brazil in 1950. After the 1989 Agreement, the Ordinariate received a new structure, under the Decree *Cum Apostolicam Sedem*<sup>37</sup>, which was approved by the National Conference of Bishops of Brazil in 1990.

The 1989 Agreement provides that the Military Ordinary is appointed by the Holy See, after consultations with the Brazilian government, and is linked to the highest military command of Brazil (*Estado Maior das Forças Armadas*), and that the Office of the Ordinary and his Curia is in the Headquarters of the Armed Forces. It also provides that the military command should provide, according to its availability, material resources, budget and personnel for the operation of the Curia.

According to the 1989 Agreement, the religious services of the Ordinariate will be performed by priests who are to be called military chaplains. It also states that the admission and access of military chaplains is defined by specific legislation in Brazil, as the religious-canonical recognition is made by the Military Ordinariate. The 1989 Agreement also provides that the number of Catholic chaplains will be in accordance with the proportion determined by Brazilian legislation.

Two issues might be raised regarding the Agreement: first, does it violate Brazilian legislation? Second, does it have legal force in Brazil?

Concerning the first issue, Brazilian legislation governs the admission and activity of chaplains since 1944, when the Service of Religious Assistance in the Armed Forces (*Serviço de Assistência Religiosa nas Forças Armadas – SARFA*) was first established. The Decree 6535 of 1944<sup>38</sup> stated that the service, which comprised spiritual assistance, religious education and moral instruction, would be formed by chaplains of Brazilian nationality, who were priests or religious ministers belonging to the Catholic Church, to the Protestant churches or any other religion, in accordance with the religions professed by at least one-twentieth of the personnel of a military unit, provided those religions did not offend the discipline, the morals and the laws of the country. Those chaplains were to be selected and paid by the government (the Ministry of War), receiving the same salary and benefits as a first lieutenant. The reasons that inspired the creation of the service were that religious assistance contributes to strengthening the “moral energy, discipline and good manners”, that moral and civic education is a “major factor in the formation of the military temper”, and that in war operations Brazilian forces have always received religious assistance.

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<sup>36</sup> The document is available at [https://w2.vatican.va/content/john-paul-ii/pt/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_19860421\\_spirituali-militum-curae.html](https://w2.vatican.va/content/john-paul-ii/pt/apost_constitutions/documents/hf_jp-ii_apc_19860421_spirituali-militum-curae.html)

<sup>37</sup> The document is available at <http://www.arquidiocesemilitar.org.br/wp-content/uploads/2015/05/VADE-MECUM-PARA-O-ORDINARIADO-MILITAR-DO-BRASIL-02.pdf>

<sup>38</sup> <http://www2.camara.leg.br/legin/fed/decllei/1940-1949/decreto-lei-6535-26-maio-1944-451974-publicacaooriginal-1-pe.html>

The service was then governed by Decree 8921 of 1946<sup>39</sup>. While keeping most of the provisions of the previous decree, the new one brought some important changes. The first change was the removal of the indication of any religion from the text, adopting the broad expression “belonging to any religion” when indicating the religions protected. Nevertheless, although the Decree seemed more neutral and equidistant from religious groups, it made more difficult for religious minorities to receive religious assistance in the Armed Forces, as it raised the minimum of military personnel professing a religion from one-twentieth to one third of the personnel of a military unit. Finally, the decree also included the chaplains in the structure of the Armed Forces, as captains, colonels and majors.

In 1971, the Decree 8921 was succeeded by Law 5711<sup>40</sup>, which allowed the Armed Forces to hire civilians to perform religious assistance in addition to the military chaplains, added to the expression “priests or religious ministers” the term “pastors”, and changed the restriction imposed on religions, so that only religions that undermined the Constitution and Laws should be excluded from the service (and not religions that offended “the morals” of the country). Finally, while removing the minimum number of believers required for the opening of a chaplain position, the law provided that each Armed Force would establish the number of chaplains of each religious creed according to the creeds professed by its personnel.

The current legislation that governs the service is the Law 6923 of 1981. This law provides that military chaplains are paid for with public funds in accordance to their rank, it does not include a permission to hire civilian chaplains, it provides that any religion that offends “the morals” (as well as the discipline and the legislation of the country) may not have chaplains in the Armed Forces, and requires that each Armed Force should maintain due proportionality between the chaplains of the various regions and religious professed in the respective Force.

Military chaplains exist in Brazil for decades and are formally organized under the Service of Religious Assistance since 1944. Current legislation admits religious chaplains in the Armed Forces and provides that their salaries should be paid by the state – SARFA (including its personnel and structure) is maintained by public funding for it is understood as public service. For these reasons, and since the 1989 Agreement does not grant privileges or preferential treatment towards Catholics, it does not violate Brazilian laws. Regarding the internal organization of the Military Ordinariate, the recognition of the religious powers of the Military Ordinariate over the status of priests and in relation to spiritual or religious issues by the 1989 Agreement are matters of autonomy of the Catholic Church, which is protected under the collective aspect of the freedom of religion and belief (a fundamental right in the 1988 Constitution).

Concerning the second issue, whether or not the 1989 Agreement has legal force in Brazil, Article XVI of the Agreement provides that it should enter into force on the date of its signing and that it may be denounced one year in advance by either High Contracting Parties through diplomatic channels. However, while Article 84.VIII of the Brazilian Constitution provides that the President of the Republic has the power to conclude international treaties, conventions and acts, it requires the approval of the National Congress. Concerning the 1989 Agreement, although it was signed by a representative of the President of Brazil, it has never been confirmed by the National Congress, and therefore cannot have legal force in the country.

In spite of this, considering that the admission and activity of chaplains are governed by the national

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<sup>39</sup> The document is available at [http://www.planalto.gov.br/CCIVIL\\_03/Decreto-Lei/1937-1946/Del8921.htm](http://www.planalto.gov.br/CCIVIL_03/Decreto-Lei/1937-1946/Del8921.htm).

<sup>40</sup> The document is available at [http://www.planalto.gov.br/ccivil\\_03/leis/1970-1979/L5711.htm](http://www.planalto.gov.br/ccivil_03/leis/1970-1979/L5711.htm).

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legislation in force (which is confirmed by the 1989 Agreement), that the regulations concerning the Military Ordinariate are matters of canon law and not state law, that the other provisions could be decided by the President of the Republic as the Commander-in-chief of the Armed Forces (Article 142 of the Constitution), that Article XVI allows either parties to unilaterally denounce the Agreement, and that the 1989 Agreement does not result in charges or onerous commitments to Brazil (Article 49 n. I of the Constitution), the referendum by the National Congress of this international act is not necessary – the 1989 Agreement could be understood as an executive agreement.

A remaining issue is the constitutionality of public funding of religious chaplaincy in the military forces. Despite the fact that chaplaincy services could be understood as a form of cooperation between state and religions, this is not an issue of (un)constitutionality of the 1989 Agreement itself, but of the national legislation that regulates those services.

#### **4.2. The Agreement on the legal status of the Catholic Church in Brazil of 2008**

The Agreement between the Federal Republic of Brazil and the Holy See on the legal status of the Catholic Church in Brazil was signed by President Luiz Inácio Lula da Silva and Pope Benedict XVI in the Vatican City State in 2008, approved by the Brazilian National Congress and ratified by the President of the Republic in 2009. The Agreement, which defines the relationship between Brazil and the Catholic Church, entered into force in Brazil on the date the Decree 7101 was published in the official journal, on 12 February 2010.

Although it is a comprehensive instrument, most of its articles reaffirm rights and protections already granted to religious bodies in general by the Brazilian Constitution and legislation (in some cases with language variations), as well as express unilateral commitments made by the Holy See and the Catholic Church. By the 2008 Agreement, the contracting parties reaffirm the diplomatic guarantees of the Apostolic Nuncio in Brazil and the Brazilian Ambassador accredited with the Holy See (Article 1). The Republic of Brazil agrees to protect the public exercise of the activities of the Catholic Church based on the right to religious freedom and according to its laws (Article 2) and reaffirms the legal personality of the Catholic Church and its Ecclesiastical Institutions in consonance with Canon Law where it does not contravene its laws (Article 3). The Holy See declares that the religious government of its ecclesiastical provinces in Brazil shall not be based in a foreign country (Article 4). The parties affirm that ecclesiastical institutions that have the purposes of assistance and social solidarity shall enjoy the same rights and benefits granted to other entities with similar purposes under Brazilian laws, provided they fulfil the requirements of Brazilian laws (Article 5). Brazil agrees to protect, according to its laws, the places of worship, liturgies as well as symbols, images and objects of veneration of the Catholic Church, and to protect its objects and buildings against destruction, occupation, transportation, modification, and against the use for other purposes, except for the cases provided for in the Constitution (Article 7). The Catholic Church commits itself to provide religious assistance to its faithful at civilian and military establishments for collective confinement and Brazil agrees to guarantee the right of the Catholic Church to perform this service (Article 8). Reciprocal recognition of academic degrees will be subject to the requirements of both legal systems (Article 9). Brazil guarantees the right of the Catholic Church to establish and manage educational and cultural institutions, and to recognize the degrees obtained in those institutions in line with Brazilian laws, while the Catholic Church agrees to continue serving the society through those institutions in compliance with the requirements of Brazilian law (Article 10). While Brazil affirms the right to freedom of religion as well as recognizes cultural and religious diversity, it respects the importance of religious education towards the integral human development and affirms that it should be

offered in public schools as stated in its Constitution (Article 11). The contracting parties recognize the civil effects of marriages concluded in consonance with Canon Law and Brazilian laws (Article 12), and protect the secrecy of the priestly office (Article 13). Brazil also grants tax immunity to the ecclesiastical legal persons of the Catholic Church and gives to the other Catholic charitable institutions the same legal treatment given to similar charitable entities (Article 15). The Agreement states that there is no employment bond with those that, on a voluntary basis, perform apostolic, pastoral, liturgical, catechetical, social assistance, and the like (Article 16 para. 2). Bishops may invite foreign religious ministers to come to Brazil (Article 17).

Other provisions of the 2008 Agreement include matters that are not provided for in Brazilian legislation. Some of them do not raise constitutional issues. The three last provisions govern the interpretation and implementation of the Agreement (Articles 18 to 20). Two other requirements embody the constitutional principle of cooperation. By Article 6, the contracting parties recognize the historical, artistic and cultural heritage of the Catholic Church as well as the documents preserved in its archives and libraries as important parts of Brazilian cultural heritage; therefore, movable and immovable property that is deemed by Brazil as part of its cultural and artistic heritage shall be protected. In Article 14, Brazil agrees to allocate spaces for religious purposes in urban planning instruments (despite being a new provision within the national law, planning instruments already provided for the allocation of institutional spaces, in which religious spaces are implicitly included). Finally, the Agreement allows Bishops to apply to Brazilian authorities on behalf of foreign religious ministers for a visa to enter the country (Article 17).

However, three clauses bring relevant normative innovations and thus require further comments. Firstly, Article 11, in addition to the recognition of the importance of religious education mentioned above, defines in its paragraph 1 that religious education shall be taught in accordance with Catholic doctrine and other religious doctrines: “Article 11. Paragraph 1. Religious education, both Catholic and of other religious denominations, shall be an elective course regularly offered in normal hours of state schools in primary education, so long as the respect for religious diversity of Brazil is ensured, in compliance with the Constitution and other laws, without any form of discrimination.” Although the Constitution does provide that “religious education shall be an optional course during normal school hours in public elementary schools” (Article 210 para. 1), it does not require it to be “Catholic and of other religious denominations”. For that reason, the constitutionality of Article 11 para. 1 of the Agreement has been challenged before the Supreme Federal Court. In the Direct Action of Unconstitutionality 4439, which was filed by the Attorney’s Office in 2010, it is argued that religious education in public schools may not adopt a confessional or denominational approach due to the constitutional clause of separation between church and state. The case is still pending in the Supreme Federal Court, which held a public hearing on the subject on 15 June 2015<sup>41</sup> (the guests were invited to debate on the issue of whether religious education should be denominational or not – the majority of the 31 participant entities defended the position contrary to denominational religious education)<sup>42</sup>.

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<sup>41</sup> Information about the public hearing can be found at <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=293675>

<sup>42</sup> Concerning the constitutionality of the denominational religious education, Fábio Carvalho Leite (*Estado e Religião: A Liberdade Religiosa no Brasil*, Curitiba: Juruá, 2014, p. 446.) argues that denominational religious education in public schools is not unconstitutional *per se*; to avoid excessive entanglement between state and religions, teachers should be appointed by religious groups and their salaries should not be paid by the state. Similarly, Jayme Weingartner Neto (*Ensino religioso nas escolas públicas: a tensão do caso brasileiro*, *Revista latinoamericana de derecho y religión*, v. 2, n. 1, p. 1–31, 201628–30.) states that both interdenominational or denominational religious education in public schools

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Concerning this issue, it can be said that religious education in public schools is ensured by the constitution, that the separation clause does not require exclusion of religion from the public spaces where social life takes place (in which public schools could be included), and that the content or curricula of religious education should be established by the Legislative and Executive branches – the former provides for general guidelines and the latter defines specific and more concrete provisions. Therefore, judicial review could only be legitimate to ensure that relevant procedural norms and fundamental rights are respected, especially freedom of conscience and religion, equality and non-discrimination. Religious education, denominational or not, should be respectful of and reflect the existing religious diversity of the Brazilian society.

Secondly, because of the adoption of the Agreement, for the first time the Superior Court of Justice of Brazil recognized an ecclesiastical judgment of annulment of marriage in 2013, which had been confirmed by the Supreme Tribunal of the Apostolic Signatura, in the Vatican. The ruling was based on the Article 12, para. 1 of the Agreement, which grants religious judgments made by the Holy See the status of foreign judgments, and for that reason they may be recognized by Brazilian courts. The details of the case were not disclosed by the Superior Court of Justice because of the judicial secrecy statute rules (that is a Family Law case)<sup>43</sup>. Regarding this case, it is possible to conclude that, since the recognition of the annulment of marriage was made based on the international legal personality of the Holy See and on the judicial nature of the ruling (the procedure that was followed in Brazil was the regular procedure of recognition of foreign judicial decisions), it cannot be deemed as recognition of a judgment for the reason of its religious character, and therefore it does not pose a religion-state issue.

Finally, Article 16 para. 1 affirms that, due to the religious and charitable character of the Catholic Church and its institutions, there is no employment relation or bond between the Church and its ministers, as their activities have a religious nature, unless a distortion of the ecclesiastical institution is proven. Although there is no specific provision in Brazilian laws about this theme, most of the national case law and legal literature rightly adopt the same approach<sup>44</sup>.

## 5. A reaction to the 2008 Agreement: The General Law of Religions

The 2008 Agreement has been criticized by several sectors of society, including non-Catholics and secularist groups, a fact that became evident during the public hearing convened by the Supreme Federal Court that was mentioned above. Much of the criticism pertains to the issues related to the interpretation of the religion-state separation clause (Article 19 n. I of the Constitution) and the special treatment given to the

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might be legal, under the condition it does not violate other constitutional values, such as equal freedom and human dignity.

<sup>43</sup> Information about the case is available at <http://www.conjur.com.br/2013-jun-19/stj-homologa-anulacao-casamento-religioso-decretada-vaticano>.

<sup>44</sup> See, for example, Ordinary Appeal 12853520105010451 RJ (2013). In this case, the Federal Labor Court in the state of Rio de Janeiro ruled that “Although the presumption that there is no employment relationship between a minister and his respective ecclesiastical authority is not absolute, the absence of that bond must be recognized if the evidence brought together is not sufficient for its characterization. Although the clergyman is dedicated exclusively to preaching in a particular church, in which he has to observe certain rules relating to religious entities, and in spite of receiving financial aid, these are not compelling evidence for the recognition of employment status”. The case is available at <http://trt-1.jusbrasil.com.br/jurisprudencia/24915070/recurso-ordinario-ro-12853520105010451-rj-trt-1>.

Catholic Church, as it became be the only religious group in Brazil that is protected under a specific piece of legislation.

However, in the political arena, the reaction was not towards the repeal of the Agreement, but the proposal of a bill granting the same rights to the other religious groups in the country on the grounds of equality and non-discrimination.

In 2009, Bill n. 160<sup>45</sup> was proposed, also known as the General Law of Religions, which provides for the guarantees and rights to freedom of religion and belief. The proposal of the pastor of the Universal Church of the Kingdom of God and Congressman George Hilton aimed to establish mechanisms that ensure the free exercise of religion, organizational autonomy, protection of places of worship and of rites, the inviolability of belief, and religious education in public schools (as an elective course).

Although the General Law of Religions aims to ensure several rights to religious entities, it faces some resistance by politicians and religious people. They are afraid of state interference in religious matters (to date, there is no statute that regulates religious freedom). Members of unorganized religions, mainly the Afro-Brazilian religious groups, are especially reluctant, since they fear being unprotected, as it was declared in the Social Affairs Committee meetings.<sup>46</sup> Nonetheless, the bill does not distinguish between religions; instead, it aims to promote equal treatment for all religious organizations.

The bill has already been approved by the Chamber of Deputies (where it had been named Bill n. 5598 of 2009)<sup>47</sup>. At the Senate, during an extraordinary meeting held on 12 June 2013, the Social Affairs Committee approved the bill, which had already been examined and approved by the Committee on Education, Culture, and Sports on 6 July 2010. The justification of its approval was to ensure equality between religious organizations operating in Brazil. In 2014, the Government (Executive Branch) declared support for the bill<sup>48</sup> and on 16 March 2016 it was approved by the Commission on Constitution, Justice and Citizenship of the Senate<sup>49</sup>. The next stage is the voting by the Senate plenary.

## 6. Final remarks

In addition to the protection of the exercise of religion and belief as a fundamental right, the constitution provides that separation and cooperation are the basic rules concerning religion-state relations. These clauses provide the framework for a distinctive kind of relationship between the political-institutional and the religious spheres, which cannot be identified with a strict “wall of separation”, *laïcité* or the establishment of religion. For the purpose of terminology, it could be called liberal-cooperative secularity (Pt. *secularidade liberal e cooperativa*), an expression that assembles the three basic clauses of Articles 5.VI and 19.I of the constitution: freedom, separation and cooperation.

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<sup>45</sup> The document is available at [http://www.senado.gov.br/atividade/materia/detalhes.asp?p\\_cod\\_mate=92959](http://www.senado.gov.br/atividade/materia/detalhes.asp?p_cod_mate=92959).

<sup>46</sup> See <http://www12.senado.gov.br/noticias/materias/2013/05/23/debatedores-pedem-rejeicao-de-projeto-de-lei-que-regula-religiao>.

<sup>47</sup> The document is available at <http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=441559>

<sup>48</sup> See <http://www12.senado.leg.br/noticias/materias/2014/09/04/lei-geral-das-religioes-segue-sem-definicao>.

<sup>49</sup> More information available at <http://www25.senado.leg.br/web/atividade/materias/-/materia/92959>



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Regarding the last clause, the constitution recognizes the possibility of collaboration with the state based on the potential social contributions that religions can make – all of them, at least *prima facie* and as long as their manifestation is consistent with the underlying democratic foundations of the Brazilian society, as expressed in the basic principles and fundamental rights provided for in the federal constitution. The exercise of collaboration does not mean that the separation clause is violated, since the state does not identify itself with any religion and it does not impose on individuals a duty to adopt any religious belief or dogma.

Therefore, connections established between state and religious communities should not be deemed as unconstitutional *per se*, under the condition that they do not mean arbitrarily favoring a religious or an equivalent ideological group to the detriment of the others, and that the relevant norms are respected, such as the requirements of freedom of conscience, freedom of religion and belief, equality and non-discrimination.

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