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P R E S E N T A T I O N

The ~~Colombian~~ Concordat between the Republic of Colombia and the Vatican signed in 1887 is here studied, by a Colombian protestant author, from a historical and doctrinal point of view.

The frame of reference for analysis and evaluation of the Colombian experience is in ^{the} present study, the background and evolution of the traditional and modern Roman Catholic thinking on Church-State Relations, Religious Liberty, etc.

Mr. Gonzalo Castillo C. has had the opportunity to ^{do research} ~~make researches~~ in the Vatican Library, ~~xxxxxxx~~ in preparation for this volume, which was presented as Master's Thesis in Sacred Theology, at Union Theological Seminary, in New York, in April, 1962.

CIDOC Sondeos program is pleased to present this volume as a valuable background study for the understanding of the present state of ~~religiousxxxxxxxColombia~~ religious affairs in Colombia, where the existence of and adherence to such a document plays an important role.

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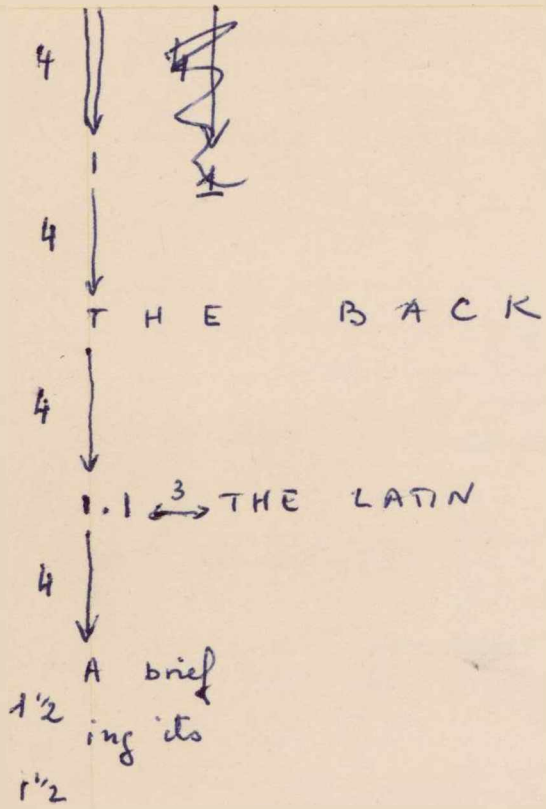
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P R E F A C E

1.1 THE BEST WAY TO KILL A HORSE

The first thing that one sees in the landscape is a horse. For some reason or other this horse is not what we want here.

Where there is another person involved, it is sometimes very difficult to do as you wish about many things.

1 (1) Where there are many people in the forest, there are also many trees.

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Americans in partnership as members and officers of the mission." (A Vision Becomes Flesh, Latin America Evangelist, p. 5) Other groups had hired nationals as, say, evangelists, but it was quite another thing to accept them into positions of equal status and function along with the missionaries. The present general director of the mission clarified the motive behind this policy when he wrote:

1 (2) Neither is He honored by the inability of missionaries and nationals in many parts of the world to work together amicably in a demonstration of that unity which God gives to those who stand together on the level ground at the foot of the Cross.....
ness on one side or the other cannot be the will of God. FENTON, Horace L., Jr., Here We Stand, Latin America Evangelist, September-October, 1965, p. 6,7.

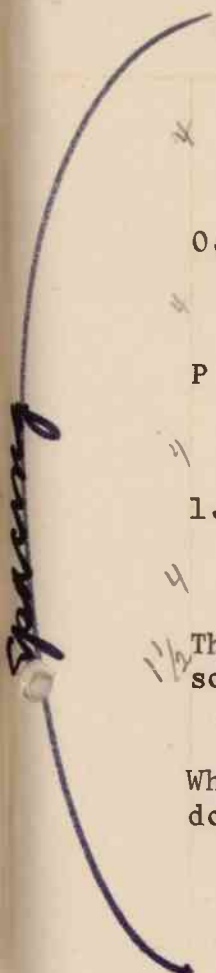
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INTRODUCTION

Nota. Borrerons: he aqui un resumen de mi antigua introduccion a la tesis. No le quitado ni añadido nada substancial al original. G. Bastillo

During the present century there has been relatively little official Catholic teaching on Church-State relations^(*). Several Papal pronouncements did touch one or other aspect of the question, mainly with the purpose of defending the Church against the totalitarian claims of certain States, or the pretensions of modern ideologies. But there has not been any systematic teaching comparable to that impressive body of doctrine produced by the ¹⁹ XIXth Century Popes, particularly by Leo XIII. Besides, the few ~~important~~ documents which have been issued on this ~~important~~ subject of Church-State relations during the recent decades, seem to depart both in emphasis and in orientation, from the positions taken by the great Pope who ~~was~~ wrote such encyclicals as "Immortale Dei", "Diuturnum" and "Libertas Humana".

This may be due, in part at least, to the obvious fact that the context of the Church-State problem suffered radical changes since the death of Leo XIII, in 1903. The sudden surge, after the First World War, of new States with democratic forms of government whose Constitutions ~~guaranteed~~ guaranteed civil rights including freedom for all religions, as ^{it} was the case in the ~~Nineteen~~ Weimar Republic, the new Poland, the Baltic States, ^{and} Ireland; ^{to power} the rise/of various forms of totalitarianism, such as National Socialism, Fascism and Communism; and the rapid polarization of the world into two camps, particularly after the Second World War, ^{among the} important developments which help us ~~to~~ understand the few Papal pronouncements touching the political organization of States and the Church-State question, ~~which have been produced~~ ^{issued} during the first

(*) The reader must ^{keep in mind} ~~remember~~ that the present thesis was written before Pope John XXIII and the II Vatican Council.

half of the ²⁰ ~~XIX~~th Century. In his Encyclical Dilectissima Nobis (June 3, 1933), addressed to the Spanish Bishops on the condition of the Church in Spain, Pius xi emphasized the point that the Church is never bound to one form of government as long as the divine rights of God and of the christian consciences are duly safeguarded. Pius xii, in his Christmas Message of 1944, On Democracy and Peace, even though he did not align himself with any specific form of government, certainly not unconditionally with democracy, strongly rejected all forms of absolutism, laying at the same time great stress upon the individual "rights" and duties of the citizen, on human dignity and the importance of civil equality. In the Message the Pope reminded Catholics that "according to the teaching of the Church it is not forbidden to prefer temperate, popular forms of government".(*) "Specially in our day", said the Pope, "when the activity of the State is so vast and decisive, the democratic form of government appears to many as a postulate of ~~reason~~ nature, imposed by reason itself". In spite of his cautiousness about the many ~~various~~ perils that this form of government may entail, the Pope realized that the call for democracy could not have any other meaning "than to place the citizen ever more in the position to hold his own ~~various~~ personal opinion, to express it and to make it prevail in a fashion conducive to the common good"(**)

Even More important than the Christmas Message of 1944 was ^{Pius xii's} the Address ~~delivered by Pius xii~~ to the National ~~Council~~ ^{Convention}

(*) The Pope refers to Pope Leo ~~xiii~~ ^{xiii} Encyclical Libertas, June 20, 1888: "It is not forbidden to prefer temperate popular forms of government, without prejudice, however, to Catholic teaching on the origin and use of authority..." ^{xii}

(**) Four Great Encyclicals of Pope Pius ~~xii~~ Deus Books, Paulist Press, pp. 194 ff.

source (1)

of Italian Jurists, on December 6, 1953. The Pope took advantage of this occasion to discuss the completely new situation created by the coming into being, after the Second World War, of a World Society of Nations in which Christians were in actual minority. It was ~~xxxx~~ evident for the Pope that the Catholic Church must, somehow, rethink the whole question of the status of minorities! And this was precisely what the Pope attempted to do in his famous Address. In facing the problem of "practical coexistence of catholic communities with those that are non-catholic" (*) the Pope discerned two basic issues. ~~xxx~~ ~~xxxxxxxx~~ ^{First,} ~~One,~~ about objective truth and the obligation of conscience to follow what is true and good. On this point an international community could hardly establish any rule, or reach any agreement. ^{Second,} ~~Two,~~ about the practical attitude to be assumed by different sovereign States, and between each one of them and the international community, with regard to religion and morality. About this latter question it was conceivable that the International Society could reach agreements. Having this concern in mind the Pope laid down several norms ~~which were~~ of the utmost importance for the Church-State question. First, "No human authority, no State, no community of Nations, whatever their religious character, can give a positive command or positive ~~xxxxxxxx~~ authorization to teach or to do that which would be contrary to religious truth or the moral good" (**). The second had to do with the question whether "the free practice of religious or moral beliefs that is valid in one of the member-States" can be impeded in any other of the member-States by State laws or coercive measures. The Pope answered this second question in the negative because the reality of the world

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 before Idem.

(*) The Four Great Encyclicals of Pius XII, p. 214

(**) Idem., p. 215

Subtitle: two schools of thought

showed that although "error and sin are in the world in great measure.. God permits them to exist" (*) "Besides", he added, "the duty to suppress moral and religious error cannot be an ultimate norm of action. It must be subordinated to higher and more general norms which, under certain circumstances, permit and may even make it appear that the best choice for promoting the greater good is the toleration of error" (**)

The chief criterion to follow in this respect was to be, therefore, "the question of fact", i.e., the promotion of the greater good, or the avoidance of greater evil in specific circumstances.

With regard to Concordats the Pope affirmed that such documents "are an expression of the collaboration" between the two societies, since the Church cannot approve, in theory, the complete separation of the two powers. ~~xxx~~ Besides, Concordats "must assure to the Church a stable condition of right and of fact within the State". But they do not necessarily ~~xxxx~~ mean approval of the Catholic Church, nor the granting to her of any special position of privilege. A Concordat, said the Pope, "may signify and express approval, but it may also set forth a simple tolerance according to those two principles which are the norm for the coexistence of the Church and her faithful with the Civil power" (***)

~~first, that error does not have the right to exist, to be propagated or activated; and second, that the State's failure to impede error can be justified in the interests of a higher good.~~ (')

There is no doubt that Pius xii's Address involves a substantial development in the doctrine of Church-State relations, one which had been brewing within Catholicism for several decades and which the Pope reflects and expresses in his famous speech. Today, two

TWO SCHOOLS OF THOUGHT

- (*) Idem., p. 216
- (**) Idem., pp. 216-217, underlining in the original.
- (***) Idem., p. 220
- (') Idem., p. 217.

// Subtitle: two schools of thought

schools of thought can be distinguished rather sharply among contemporary Catholic writers on the matter of Church-State relations. One group comprises the majority of canonists, and it ~~may~~ might be said to represent the "traditionalist" position. They start from the basic premise that the true religion can only be one, and that this religion is the Catholic, Apostolic and Roman Religion. Consequently, they draw precise conclusions about the only type of Church-State relations which does full justice to that presupposition. ~~For~~ Their contention ~~they~~ find abundant support both in the actual history of the Church's relation with the Civil power, as well as ~~in~~ ⁱⁿ Papal statements. ~~and~~ The other group starts from an equally valid and fully orthodox principle, i.e. that the act of faith has to be a free act. They trace the history of this principle to the very beginnings of Christianity, and claim ~~that even St. Augustine~~ ^(*) to find support for their position even in St. Augustine (*) to whom are often traced the most traditionalist views on the subject. It is the second trend that we will expound at certain length in the present study, particularly in chapters II and III. It will provide us with a "modern" Catholic standpoint from which to evaluate the Colombian Concordat and the type of Church-State relations embodied therein. But, before entering fully in our study, it is necessary, first, to summarize the "traditionalist" position.

According to this view, ^(**) the Church is a "perfect" society endowed with legislative, executive and juridical powers. So ~~it~~ is also the State. But the Church is a supernatural society, divinely instituted by Christ in order to lead the faithful to sanctity and eternal life, and endowed with proper means to ~~xxxx~~ accomplish this task. The State, on the contrary, is a natural society, a response to human need. Its purpose is also a temporal purpose, and its means are also human means. The Church is, therefore far superior to the State, since the hierarchy of societies is

(*) Augustine said: "Man cannot believe otherwise than of his own free will", quoted by Leo xiii, Immortale Dei, Paulist Press, p. 17.
 (**) cf., for instance, Alfredo Cardinal Ottaviani, Institutiones Juris Publici Ecclesiastici, ed. 4a, Romae, 1936; Michiels, G., O.M. cap., Principia Generalia, 1942; Jung, Nicholas, Le Droit Publique de l'Eglise, Paris, 1948.

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determined by the relative nobility of their respective ends. And a system of Church*State relations must be founded upon the recognition of this superiority, and ~~in~~ it must entail, therefore, the subordination of the State to the Church. Such subordination is not direct, but indirect; i.e., first, that the State must be an indirect cause of the Church's security; second, that the State must be subordinate to the Church when its temporal concerns become spiritual (i.e., church property); and third, that the State must submit to the ~~te~~ teaching of the Church in those "mixed matters" which pertain to both societies (i.e., marriage, education, et.al.). Within the context of these presuppositions, what are the duties that the State owes to the Church in a Catholic Country? The answer should be obvious. "If there is only one true religion, and if its possession is the most important good in life, for States as well as individuals, then the public profession, protection and promotion of this religion, and the legal prohibition of all direct assaults upon it, become one of the most obvious and fundamental duties of the State. For it is the business of the State to safeguard and promote human welfare in all departments of life".(*) In short, according to this view, the type of Church-State relation which does full justice to the divine nature ~~of~~ and mission of the Church is an alliance ~~xxxx~~ between the two powers, in which the duties of the State could be summarized as follows: 1. To profess publicly the Catholic faith, 2. To grant full freedom to the ecclesiastical society, in no ^{way} ~~impeding~~ its sanctifying work, 3. to remove impediments to the work of the Church, and 4) to make available to the Church its coercive power for the enforcement of its discipline upon its subjects, since sometimes spiritual punishments are not sufficient. As a natural corollary, the Catholic State shall not grant full liberty to dissident sects, certainly not the liberty to express their views publicly or spread their errors. Such abuses of freedom would be an offense to the truth, a danger to national unity, a menace to the Catholic faithful, and a crime against the common good.

This position is often called the "thesis" of Catholicism, that is, the full application of its principles, which can only

(*) Ryan and Boland, Catholic Principles of politics, the Macmillan Company, New York, p. 319.

occur in a completely Catholic State. When the "thesis" cannot be achieved, the Church can accept the "hypothesis", ~~or~~ (subordinate or secondary thesis), for example in cases like the following: 1. in Catholic countries where many ~~Christians~~ ^{citizens}, though baptized, do not practice, ~~or where~~ and where serious or violent reactions would take place if the "thesis" were applied in all its vigor; 2. in religiously pluralistic societies; and 3. in countries where the rulers are not Catholic. When these unfortunate conditions exist the Church demands only the right to preach, to guide and rule the baptized, to administer the sacraments, to organize private and public worship, and to possess property necessary for the attainment of her ends. In these situations the State can tolerate dissident sects for the sake of avoiding greater evils, not because of any matter ~~of~~ ^{of} principle, ~~or~~ nor on account of any "merits" of the non-catholic opinions in themselves or any "rights" ~~to~~ of dissidents to practice or propagate their errors. In short, where unity of religious practice exists the State cannot, under any pretext, introduce freedom of worship because this would tantamount to the betrayal of its own natural task, ~~or~~ which is the promotion of the common good; but where there is no religious unity then force should not be used to achieve it. This tolerance, however, must remain civil and juridical, never religious or ideological.

An obvious objection to the "thesis-hypothesis" position is dealt with by Cardinal Ottaviani in the following ~~text~~ manner:

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"Sometimes the following criticism is directed against us: 'you maintain two principles, two different standards of action, according to your own convenience. In ~~the~~ a Catholic country you maintain the ideal of the confessional State, on which it is laid the duty of protecting the Catholic religion and it alone. When you are in the minority, you claim the right to toleration, or even to the equality of all religions before the law. That means two weights and two measures, a real ~~inconsistency~~ inconsistency that is embarrassing, and from which Catholics who take account of the present development of civilization would rather gladly be free."

To which Cardinal Ottaviani himself retorts:

"Why yes ! Exactly so ! Two weights and two measures -- one for truth, and the other for error". (*)

Other serious difficulties, which cannot be disposed of as quickly as the preceding ~~or~~ one, become apparent in ^a or study of the Colombian Concordat, a document which fully incorporates the "traditionalist" position that we have described.

(*) Doveri dello Stato Cattolico verso la Religione, Roma, 1953, pp. 19-20. *Personal translation from the original Italian version*

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Chapter I: THE COLOMBIAN CONCORDAT

← The "Concordat" currently regulating the relations between the Holy See and the Republic of Colombia is one of the documents of its kind which best incorporate the Catholic doctrine on Church-State Relations, as it was understood and formulated by the nineteenth-century papacy. It was first signed in 1887. During its eighty years of existence it has suffered only minor revisions, none of them, however, affecting in any way the substance of the treaty.¹⁽ⁱ⁾ Thus, the Colombian Concordat has proved to be one of the most long-lasting treaties in the whole history of international relations of modern times. Today, however, it is being seriously

Sangria 1.(1) It has been supplemented, however, with several Conventions. One of such additional agreements was signed in 1892 dealing with the prerogatives of the clergy ("fuero eclesiastico), the administration of cemeteries, and the civil registry of citizens. Similar Conventions have been signed at different times and for definite periods by direct agreement between well-disposed Colombian presidents and the Pope, but without the approval of the Colombian parliament. This has been done on the basis of Art. 31 of the Concordat itself which states that "Agreements between the Holy See and the Government of Colombia for the encouragement of Catholic missions among the barbarian tribes will not require the subsequent approval of Congress." Even though the Constitutionality of this article, and of the entire Concordat for that matter, has been challenged several times, the Conventions signed on its authority have been respected and consistently enforced by all administrations. The most striking of such Conventions is the one signed in 1953 between Pope Pius XII and the Acting President of Colombia, Roberto Urdaneta-Arbelaez, entitled "Convencion sobre Misiones" which in practice sets apart about two thirds of the entire national territory, and places them under the trusteeship of the Church. (The official text of the Convention is found in Raccolta di Concordati su Materie Ecclesiastiche tra la Santa Sede e la Autorita Civili, a cura de Angelo Mercati, Tipografia Poligotta Vaticana, 1954, Vol. II, pp. 79-83.)

challenged. The strong and invigorating new winds which have been blowing for a couple of decades through almost every corridor of the Church's imposing structure, are bringing in fresh insights and new approaches to old Catholic themes, and are bound to affect the entire Church-State question, probably the most characteristic and controversial of all issues having to do with the Church's relation to society. ~~This has already begun to take place, at the conceptual level, in the impressive currents of theological renewal which found expression in the Second Vatican Council's Declaration on Religious Liberty. Such renewal, however, will have to prove itself genuine through its capability profoundly to transform concrete patterns of relations, such as the one represented by the Colombian Concordat, which were expressions of earlier historical conditions and radically different theologies.~~

To make the case for this change is not, however, the purpose of this paper. Our aim is neither polemical nor political. We simply attempt here to analyse^z and clarify the Colombian Concordat, both in its conceptual basis as well as in some of its practical implications for Colombian society. In doing this we will entirely rely on outstanding Catholic exegetes and commentators of the Treaty. Before the analysis of the text itself, we will first look historically at the Colombian situation which produced it.

1.1
A.

Historical Antecedents

The Iberian Kings, culture and Religion that consummated the conquest of America, were emphatically Catholic. The long struggle with Islam had contributed to this temper. The Iberian people had fought for their land for eight centuries not only with the ideal of obtaining political freedom but, mainly, having in mind the higher aim of safeguarding the Christian traditions. The discovery of America, an event which occurred when military triumph over the Moors had been assured, was received as a prize for their fidelity to Christ. It was looked upon as an indication of Providence that the Iberian nations were to be the champions of the True Faith in all Europe, a large part of which had become, by the time, heretical. To begin a crusade in the interests of Holy Faith would require material resources which did not exist in the Peninsula. God, therefore, who provides everything to His faithful servants, had given them an entire continent that would prove to be a perennial fountain of gold.

Spanish Catholicism was, in the ^{16th} sixteenth Century, largely ¹⁶ independent of Rome. It was, to be sure, emphatically orthodox in doctrine and in full communion with Rome, but it was also much more Spanish than Roman. The Crown had insisted on controlling the Church and had succeeded in getting from Rome a series of Papal grants, privileges and concessions, known collectively with the name of Royal Patronage (Patronato Real). It originated in the Bull "Inter Caetera", of March 24, 1493, by which the Pontiff

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Alexander VI gave to the Catholic Kings, Ferdinand and Isabel, "all continents and islands discovered and to be discovered towards the West and the South" . . .but enjoining them at the same time to "dispatch to the said mainlands and islands honest and God-fearing men . . .to instruct the natives and inhabitants in the Christian Faith." ² *Fam* Later, the same Pontiff granted to the Crown the collection of the tithes in the new territories with the understanding that the Monarchs, on their part, would support the future churches, provide for the proper sustenance of the clergy, and foster divine worship. ³ Finally, Julius II favored the Kings with the right to establish new ecclesiastical foundations, and to appoint successors to vacant ecclesiastical offices and dignities. ⁴ All this meant in fact the full identification of the Church with the Crown and for all practical purposes the domination of the former by the latter. So much so, that both in Spain and in the Colonies Papal decrees could be published only with the consent of the Monarch, and no priest could go from the mother country to the colonies without the approval of the government. This was not, however, without reward for the Church. The Crown supported the Church with financial subsidies and compelled submission of the natives to the religious

²Quoted from: Anne Fremantle (ed.), The Papal Encyclicals in Their Historical Context, a Mentor Book (New York: The New American Library, 1956), p. 79.

³Cf. Bull, "Eximiae devotionis sinceritas," in Francisco J. Hernandez, S. J., Collecion de documentos eclesiasticos, 1879, p. 20.

⁴Bull "Universalis Ecclesiae Iurisdictionis", idem., p. 24.

authorities. The enemies of the Church were generally denied admission to the colonies. The Spanish Inquisition was established in Peru and Mexico in 1570, and in Cartagena, Colombia, in 1610. It took upon itself the responsibility of keeping the ground clear of heresy and of all religious and intellectual influences opposed to orthodox Catholic doctrine. ^{5 Sangre} The Church, in return, blasted the enemies of the Crown with the most severe punishment, excommunication. This close partnership lasted during the whole colonial period.

In the long run this marriage of the Sword and the Cross proved to be fatal for the future of the Church in Latin America. The wars of independence precipitated the crisis which had been latent in such an abnormal relationship. Many Bishops and other ecclesiastics identified themselves so closely with the interests

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On the power of the Inquisition in Spanish America, Cf. Henry C. Lea, The Inquisition in the Spanish Dependencies, (New York, 1908.) A vivid account is also given by Jean Plaidy, The End of the Spanish Inquisition (London, 1962.) The Mexican writer Justo Sierra in his book Evolución política del pueblo Mexicano, writes about the role of the Inquisition in Latin America: "Felipe II tuvo empeño en fundar en toda regla la Inquisición en su Nueva España; era el complemento indispensable de su obra política y religiosa; el mundo nuevo debía vivir por medio de aislamientos interiores y exteriores, la Inquisición tenía por objeto mantener a toda costa esta política; era en el orden mental y religioso, lo que los Consejos de salubridad modernos son en materia de higiene; las ideas eran los microbios, los gérmenes de muerte de que había que defenderse. Y figurémonos un grupo de gobernantes para quienes las epidemias espirituales eran de trascendencia infinitamente mayor que las físicas (lo que era cierto) y entonces la Inquisición queda explicada, no absuelta. . ." (Universidad Nacional Autónoma de México: 1948), pp. 90-91.

que las físicas - lo que era cierto -

of the Spanish Crown that when its defeat was consummated they abandoned their dioceses and returned to their mother-country, leaving behind thousands of people spiritually abandoned in moments when they needed most their spiritual care. ^{6 Sangria} The worst was, however, that this situation continued for several decades because of the reluctance of the Holy See to recognize the independence of the new Republic and its consequent impossibility to appoint successors to vacant episcopal Sees, a right which, according to the Patronage, belonged to the Spanish Crown. ^{3 Sangria}

^{1 (4)} ⁶ Such was the case, for instance, with Salvador, Obispo de Popayán, who in a letter to General Bolivar, on June 7, 1822, requested a passport to return to his country--Spain--"because of powerful reasons of conscience and politics." The Bishop asked for Bolivar's sympathy with his "virtue of being faithful and loyal to his own nation" and announced that he had already presented his resignation "to the Spanish Courts." Bolivar wrote to him a remarkable admonition, April 10, 1823, in which he said: "I dare to think that you, most illustrious Sir, far from following the course of your religious career according to your duty, are obviously going away from it, abandoning the Church that the heavens have entrusted to you because of political reasons in no way connected with the Lord's vineyard." Secret Vatican Archives, Secretary of State, "Affari d'America," 1829, Rub. 279, Busta 592, Fasc. 50.

^{2 Sangria (5)} ⁷ The situation was such that the Colombian minister of Foreign Relations, Dn. Pedro Gual, wrote to the Holy See's Secretary of State the 19th of June, 1823: "for over twelve years the Catholic Church of Colombia finds itself in a most painful orphanhood, being as it is deprived from any communication with the Vicar of Christ on earth. . ." Not until four years later, however, were the first appointment of bishops announced by the Holy See, and this because of the insistence of the Colombian Government. Such insistence reached the point where the above mentioned Minister of Foreign Relations threatened the Holy See with desisting from any attempt to maintain relation with Rome and even declared that "the Church of Colombia," if not promptly given spiritual assistance, "shall find within itself the remedy to its situation." (Secret Vatican Archives, idem.) Various segments of the Church, in fact, attempted in several occasions to separate themselves from Rome, establishing schismatic Churches. This in fact happened, for example, in the Socorro Province, where a local

It is against this background that we can understand the fact that all the early Constitutions of La Nueva Granada (Colombia) or of its Provinces, explicitly stated the desire to establish diplomatic relations with the Holy See. To initiate such relations was considered of utmost importance for two reasons. Firstly, as a token of international recognition of the nation's independence, and secondly, as a means to obtain official confirmation from the Holy See of the Republic's right to inherit the Spanish Patronage. *Sanguin*

This latter concern, in fact, was to be present at all subsequent Assemblies and Congresses of the newly born Republic, becoming the source of heated debates. In the Congress of 1824, the following law was approved:

- Sanguin*
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| Art. 1. | The Republic of Colombia should continue in the exercise of the right of Patronage which the Spanish Kings had over the metropolitan Churches, Cathedrals and Parishes on this side of America. |
| Art. 2. | It is a duty of the Republic of Colombia and of its Government, to sustain this right and to demand from the Apostolic See that nothing be changed or introduced at this respect; <i>yes</i> this |

Junta appointed Mgr. Andres Maria Rosillo as Bishop of their diocese. Cf. Juan A. Eguren, S. J., El derecho Concordatorio Colombiano, (Bogotá: Pontificia Universidad Javeriana, 1960), p. 45.

Sanguin 1 (6) 8 The constitution of the Province of Cundinamarca, 1811, expressed the common desire: "to establish direct correspondence with the Holy See in order to negotiate a Concordat, and the continuation of the Patronage which the Government has with regard to the Churches of these dominions." The same was expressed in the Federal Act of November 27th, 1811, and the Decree of the Electoral College of Cundinamarca, July 24, 1813. Juan A. Eguren, S. J., El Derecho Concordatorio Colombiano (Bogota, 1960), p. 45.

principle the executive power will celebrate a Concordat with His Holiness so that this prerogative be forever assured to the Republic. . . .⁹

The Holy See, however, was not willing to move in this direction, and when it finally agreed to make certain concessions, it did so in a most cautious and slow manner. It did accept, for instance, the nominations for bishops sent in by the government of the Nueva Granada¹⁰ but ~~it~~^{Sangre The Pope} was careful never to recognize openly the prerogatives claimed, as a right, by the new Republic. With the appointment of bishops, however, the Patronage of the Church in America was definitely dissociated from the Spanish Crown.

It took twenty-five years after the declaration of independence before the Holy See officially recognized the New Granada as a sovereign nation.¹¹ Only then was the Colombian representative before the Vatican admitted into the Papal States after eleven years of rather humiliating wait.¹²^{Sangre} In the same year (1835) the Pope sent to Bogota his Internuncio, Mgr. Gaetano Baluffi, who presented his Credentials to the Colombian government on January 22nd,

⁹ Juan Pablo Restrepo, La Iglesia y el Estado en Colombia (Londres, 1885), pp. 147, 148.

¹⁰ ^{Sangre (8)} On Feb. 28th, 1827, Pope Leo XII, in a motu proprio, appointed Archbishop of Bogota and Caracas, Sres. Fernando Caicedo y Florez and Ramon Ignacio Mendez, respectively, and new bishops to the dioceses of Santa Marta and Antioquia.

¹¹ In 1835, by Pope Gregory XVI.

¹² ^{Sangre (9)} The Colombian Commissioner, Dn. Ignacio Sanchez de Tejada, had arrived in Rome in 1823. Because of complaints of the Spanish Ambassador, however, he had been requested to leave the Holy City, first to Bologna and then to Firenze. (Information taken from the Vatican Archives, Vatican Secretary of State, ibid.)

1837. Official diplomatic relations between the two sovereignties, State and Church, were thus formally initiated.

The period between 1837, the arrival of Mgr. Baluffi, and 1887, when the Concordat was finally approved, is characterized by a most tense and precarious pattern of relations between the two powers. The positions were roughly the following: the State, on the one side, supported by the "liberal" political leaders, claimed the right of the Republic to inherit the Spanish Patronage and hence to ^{exercise control over} ~~dominate~~ the Church. The Church, on the other side, supported by the "conservative" political leaders, endeavoured to retain as many privileges associated with the Patronage as possible while at the same time rejecting all forms of domination or control of the Church by the State. The conflict was nourished by the contemporary bitter struggles going on in Latin Europe between the clericalist and the anti-clericalist movements.

In the course of the quarrel several attempts were made to reach a compromise. One ~~of~~ such attempts was the Project of Concordat drafted by Mgr. Baluffi, the first Vatican^a Internuncio in Bogota. In this project Mgr. Baluffi proposed ^{that} His Holiness, firstly, ~~to~~ give to the State the right to appoint Bishops, Chapters and priests; secondly, ~~to~~ grant to the government two-ninths of the tithes as well as the benefits known as "medias anatas" and the bishops' possessions after their death. All this was in conformity to what had been the practice with the Spanish Crown. On the other hand, the Church would preserve its absolute liberty to ordain bishops, to judge without interference over all internal ecclesiastical matters, to have convents and seminaries, and to

carry on all its educational and evangelistic work in full freedom. The government would contribute towards the sustenance of the bishops and the support of missionary work among the Indian tribes. In the Universities and schools only books "of ^{morally good} good moral, and not contrary to the Catholic religion" would be ^{used.} ^{13 Sangria} taught. In the documents of this year, preserved in the Vatican Archives, no evidence is found that this project of Concordat ever received any consideration. Apparently no answer whatsoever was given to it. ¹⁴⁽

All efforts towards a mutual understanding failed and the tension between the two powers continued to mount. Relations became more and more precarious. The crisis reached its peak during the liberal administration of President Tomas Cipriano de Mosquera. In a discourse to the Congress (1849), the President explained that if the State was going to protect and support the Catholic Religion it was also its right to inspect and supervise the finances and properties of the Church. If this was not accepted the Government should give up all rights to Patronage and declare the full separation of Church and State. This solution was finally enacted and incorporated in a new Constitution approved by the Congress ~~the~~

¹³ ⁽¹⁰⁾ ^{Sangria} The project of Concordat was sent by Mgr. Baluffi to the Cardinal Secretary of State ~~the 4th~~ of July 1837. It is preserved in the Secret Vatican Archives: Affarid d'America, Rubrica 279, year 1837, number 68.694 of protocol. A full reproduction of the text is found in Gabriel de Ibarra, O.F.M., El Concordato de Colombia (Bogota, 1941), pp. 246 ff.

¹⁴ The author of this paper had the privilege of having access to the Archives by kind permission of the Secretary of State of the Vatican, during the first semester of 1961.

~~21st~~ of May, ²¹ 1853.

The reaction of the clergy to this measure was immediate and violent. In several parts of the country the bishops instigated the people to revolt and the situation threatened to develop into a real civil war. The national government finally dominated the situation and responded with strong measures to curb the Church, including expropriation of many ecclesiastical properties, and the supervision of all religious work. Those ecclesiastics who, like the Archbishop of Bogota, refused to submit to the new laws were imprisoned or expatriated. This situation lasted almost twenty-five years until the election of General Trujillo to the presidency, in 1878. The new President manifested immediately his desire to have the situation changed and he himself laid down the basis for the complete reversal of things which was to be realized by his successor, President Rafael Nuñez.

It was obvious, indeed, that somehow the situation had to change. The religious fight had monopolized all the attention of the State. The belligerent attitude of the clergy on the one side, and the extreme repressive measures of the anti-clericalist government on the other, had made any sound work of nation-building, ^{particularly} and education, impossible. The religious quarrel had effectively and tragically impaired all serious planning towards the common welfare, divided the strength of the nation, and created antagonisms which are by no means completely eradicated today. In the course of the quarrel it became progressively clearer that without the cooperation of the Clergy all efforts to organize and strengthen the political institutions of the country were condemned in advance

to failure.

Nobody realized this more than President Nunez. His main political concern became, therefore, to settle the religious issue in such a way as to placate the Church and gain its support. To this end he summoned an Assembly composed of eighteen representatives picked ^{out} ~~up~~ by the governments of the Provinces and charged with the task of drafting a new Constitution which was to replace that of 1853. The job was quickly done. In the New Political Chart (1886) the Catholic Religion was declared "the Religion of the Country" and, therefore, "an essential element of the social order." The government declared it to be its duty "to protect the Catholic Religion" and to guarantee to it "the full enjoyment of its rights and prerogatives." Education, according to the new Constitution, was to be "organized and directed according to the beliefs and practices of the Catholic Religion." On this constitutional basis, itself a victory for the Church, negotiations were started towards the establishment of a stable pattern of relations with the Holy See. For such an enterprise the Church was, during these years, exceptionally well prepared. Pope Leo XIII, in particular, had given rigorous formulation to the Catholic "doctrine" of Church-State relations in a famous trilogy of Encyclicals: Diuturnum, "On Civil Government" (1881); Immortale Dei, "On the Christian Constitution of States" (1885); and Libertas Humanas, "On Human Liberty" (1888). The polemic character of these documents was the reflection of the bitter confrontation between a militant Papacy and the liberal elites of the Latin countries of Europe, violently anticlerical and agnostic. The negotiations with

the Colombian government culminated in the Concordat, signed on December 31~~st~~, 1887, which is an almost perfect embodiment of the papal doctrine. ^{15 Sangre} Our analysis of its text will be done in two parts. The first has to do with the basic principles contained in the first four articles of the Concordat, which are the conceptual basis of the entire document. The second part will deal with some of the practical implications, as they appear in articles 5 to 33, which have proved of crucial importance for Colombian society in the course of the odd/eighty years of "Concordatarian relations" with the Vatican.

1.2 ~~2~~ BASIC PRINCIPLES.

1.2.1 ← 1. Article one of the Concordat states that,

Sangre 1(12) { The Roman Catholic, Apostolic Religion is the religion of Colombia; the public powers recognize it as an essential element of the social order; and they are bound to protect it and to enforce respect for it and for its ministers, leaving to it at the same time the full enjoyment of its rights and prerogatives.

In this Article three important affirmations are made: first, that the Roman Catholic Religion is the religion of Colombia; second, that the same religion is "an essential element of the social order"; and, in view of this double recognition,

ngria 1(15) ¹⁵The Official Vatican text of the Concordat is to be found in Acta Sanctae Sedis, 1888, XXI, pp. 7-12. The English translation used here has been made from Raccolta di Concordati su materie ecclesiastiche tra la Santa Sede e le Autorita Civili, a cura di Angelo Mercati, Tipografia Poliglotta Vaticana, I, 1051-1061, where the official texts, both in Latin and in Spanish, are found. (For full text in English, see Appendix "A").

third, that the State is bound to guarantee protection and respect for that religion, and for its ministers.

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According to Catholic exegetes, the first of these statements means that ("the Catholic Religion is the religion of the Colombian nation, i.e., both the religion of the Colombian people and of its government."¹⁶) This is considered to be not only the recognition of a fact ("the Catholic fact") but also a profession of faith by the people and by the government. Such "profession of faith" is seen as "a natural duty," that is, an obvious demand, having its basis in natural law (lex naturae), because "being God its immediate Author the Civil Society is ordained toward Him as towards its ultimate end." But, the State could not fulfill this sacred obligation except by professing the worship of true Religion, "because it would be absurd even to think in the possibility of rendering due worship to God by professing a false religion; . . . and the only true Religion whose profession is binding for all men, as individuals and as society, is the Roman, Catholic and Apostolic Religion."¹⁷

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The further affirmation that the Roman Catholic religion is "an essential element of the social order," implies the political duty of the State to protect and respect the Catholic Church since refusing to do so would be tantamount to the betrayal

¹⁶Cf. Juan A. Eguren, S. J., El Derecho Concordatorio Colombiano (Bogota: Universidad Javeriana, 1960), p. 123.

¹⁷Gabriel de Ibarra, O.F.M., El Concordato de Colombia, Estudio historico-juridico (Historical and juridical study) (Bogota, 1941), pp. 45-46.

of its own end, which is the promotion of the people's happiness and social well-being. Without the protection of the true Church "it is impossible to dream ^{of} with a permanent peace and ^{of} with the fostering of the common good, since to achieve this end harmony must prevail between the individual conscience and the State's laws.¹⁸ Or, in the words of another Catholic interpreter, "there is no means which is more adequate for the preservation of the social order than the practice and due protection of the religion of the Colombian people."¹⁹ The protection which the State owes to the Church is, therefore, according to the third affirmation contained in Article one of the Concordat, a natural corollary of the preceding statement: that the Catholic religion is an essential element of the social order.

There are, however, several kinds of protection. There is a certain form of protection that implies also control over the protected society or individual. Such is the protection, for example, which the parents owe to their children during their minority of age. This is obviously not the kind of protection referred to in the Concordat. Catholic exegetes distinguish, therefore, between authoritative and ministerial protections. The former is rendered by the superior to its subject. The latter is that which the subject gives to the superior; custody,

¹⁸ Cf. Eguren, op. cit., p. 123.

¹⁹ Octavio Tobón R., Compendio de Derecho Público Eclesiástico (Summary of Ecclesiastical Public Law) (Bogota, 1954), p. 93.

guard, defense.²⁰ Since by principle the Catholic Church, most perfect society in its spiritual order, is far superior to the State, it follows that the protection which the State owes to the Church is only a "ministerial protection."²¹ Concretely, such protection consists in

- Sangria 1(17)
 1. Assuring the Church's freedom in the exercise of its triple power: legislative, executive and judicial, which belongs to the Church by divine will; 2. Supporting and helping the Church in the enforcement of its decisions; 3. Defending it against the assaults of the impiety of the dissident sects. . .; and 4. Inflicting the proper punishments on delinquents against the religious sentiment. . .²²

The full import of the first article of the Concordat is, therefore, according to Catholic exegetes, that the Colombian State is a confessional State, not in the sense that the Catholic Church is, in any way, under the jurisdiction of the secular authority, nor that the Church grants to the Civil Power the right of Patronage or other similar rights, but rather in the sense that the Colombian State professes the Catholic faith and declares that it is its duty to protect that Church in the exercise of its rights and prerogatives.

1,2,2 (2) Article two of the Concordat reads:

Sangria 1(18) | The Catholic Church will enjoy complete liberty and independence of the civil power, and consequently there shall be no intervention of this power in the free exercise of

²⁰Cf. Felix Cavagnis, Institutiones Iuris Publici Ecclesiastici, t. I., pp. 352-353.

²¹Ibarra, op. cit., p. 47.

²²Eguren, op. cit., p. 123.

its spiritual authority and ecclesiastical jurisdiction, its government and administration conforming to its own laws.

By this article the Church's sovereignty is guaranteed. This is done not by way of concession but rather, in full consonance with the traditional position developed by ecclesiastical jurists, as the recognition of an inherent right. ^{23 *Singria*} According to this position the Catholic Church is, by virtue of its divine institution, an absolutely independent, "perfect," society. Its "perfection" consists, precisely, in the fact that its end is not one of the ends pursued by the civil society, but a far superior one, a supernatural end. The Church itself is a supernatural society which, by reason of its own nature, cannot depend on a temporal society. Its sovereignty is, therefore, a natural right. Moreover, according to the same Catholic doctrine, this sovereignty was so willed and intended by Jesus Christ when He founded it on Peter, who is the Head and Chief of the Apostles, and in no way under the civil authorities. The second article of the Concordat fully recognizes these claims when it states that the "Catholic Church will enjoy complete liberty and independence of the civil Power."

The same article of the Concordat guarantees the Church's

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This position has received full treatment by competent and authoritative Catholic scholars, and has been widely applied in Catholic countries. Cf. Alfredo Cardinal Ottaviani, Institutiones Juris Publici Ecclesiastici, II Vols., 1935; Felix M. Cappello, S. J., Summa Juris Publici Ecclesiastici, ed. La Roamae, 1936; Michiels, G., O.M. cap., Principia Generalia . . ., 1942; and Iung, Nicholas, Le Droit Publique de L'Eglise (Paris, 1948).

right to the "free exercise of its spiritual authority and ecclesiastical jurisdiction." That is, both its spiritual as well as its juridical freedom are recognized. By virtue of its spiritual authority the Church is independent and enjoys full liberty in the preaching and teaching of divine truth and in the use of all those religious means designed to lead men to their spiritual end, i.e., sacraments, etc. Since man is essentially a social being, the Church's spiritual authority includes also the Church's right to intervene in public life insofar as it involves and affects spiritual and moral aspects of men. "In fact," says a Catholic interpreter, "this authority (of the Church) is not reduced to the government of the faithful within the temples; it must also be able to make the Christian be Christian in the public life."²⁴

By virtue of its "ecclesiastical jurisdiction" the Church has the innate right, fully recognized in the same article of the Concordat, to enjoy complete freedom in the government of its faithful, leading authoritatively their acts in matters of faith and morals.²⁵ This government is exerted by the Church's hierarchy according to its own Constitution and Canons, including the Pope's right to maintain permanent contact with the Colombian Hierarchy without the interference of the civil authorities. It

²⁴ Ibarra, op. cit., p. 52.

²⁵ cf. Ottaviani, Institutiones Iuris Publici Ecclesiastici, t. I., n. 112, p. 216.

is this right which is recognized by the Concordat when it states that the Church's government "conforms to its own laws." Such right is more fully stated, however, in the third article.

1.2.3 ← 3. Article three of the Concordat says:

Canonical legislation is independent of the civil law and forms no part of it; but it will be solemnly respected by the authorities of the Republic.

This statement is in full consonance with the nature of the Church as a "perfect society," which implies the right to legislate independently of any external power or authority, as well as the power to enact the laws promulgated (executive power) and to judge the conduct of its members in relation with the same laws (judicial Power). Now, it is the Catholic contention, fully accepted and incorporated in the Concordat, that all these prerogatives belong to the Church by the expressed will of its divine Founder, who also intended His Church to be absolutely free from any human society.²⁶ Sang.

The term "Canonical legislation" defines that body of law with which the State cannot interfere and which the authorities of the Republic commit themselves "solemnly" to respect. Such canonical legislation is found "in the Codex Juris Canonici, in

²⁶ Ibarra, op. cit., p. 55, quotes as proof of the Catholic claim, the Gospel's passage about "bind and loose" power conferred to Peter by Christ, Matt. 16:18, 19. Also, The Council of Trent, whose Canon 8^o, Session vii, says: "Si quis dierit baptizatos liberos esse ab omnibus sanctae Ecclesiae praecipis, quae scripta vel tradeta sunt, ita ut ea observare non teneantur nisi se sponte illis submittere voluerint, anathema sit," Denzinger, no. 864. Also Syllabus, propositions 19, and 20, Denzinger, no. 1719 1720.)

force since 1918, and in the several decisions of the Pontifical Commission encharged with its interpretation."²⁷ *Sury.*

What is ^{it} meant by the "solemn respect" which must characterize the State's attitude vis-a-vis the Church's legislation? It means, for sure, that the internal legislation of the Church stands in a special relation to that of the secular government and that it enjoys a special status, one that is not recognized or given to any other institution. Any legislation regulating the internal life and relations of any society stands under, and needs the approval of, the civil government, having to be in consonance ^{with,} and certainly not in contradiction ^{to,} civil legislation. "Canonical legislation," on the contrary, is not only independent, but "solemnly respected" by the authorities of the Republic. This is one of the special prerogatives that belong to the Church.

"Canonical legislation"; however, is not to be considered a part of the civil legislation, as if it were, so to say, incorporated within the juridical statutes of the State. This would detach the "ecclesiastical legislation from its origin and hence,

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²⁷ Ibarra, op. cit., p. 56. The Codex consists of three kinds of canons: Canons of Faith, containing those revealed truths which the faithful must firmly believe in (i.e., about the hierarchy, cc. 107, 108; about the Roman Pontiff, cc. 218, 219; about the sacraments, cc. 731 ff.; about the divine magistry of the Church, cc. 1255, 1322, et. al.) Secondly, Canons of conduct, which explain those moral precepts that are binding over all men. Thirdly, Canons of discipline, which are intended to safeguard the purity of faith and morals, and the holiness of divine worship (for instance, those canons which prescribe appropriate penalties to delinquents in matters of faith or morals, i.e., 2314, 2350 ff., those which deal with the administration of Sacraments, i.e., cc. 733, 1144 ff., etc.)

from the only society that is qualified to interpret and apply it." Such incorporation, moreover, would imply that the secular juridical order would have to apply its own conceptions of law to the "canonical legislation," doing away, thus, with its independence and, in fact, transforming such legislation. On the contrary, the intention of the Concordat is precisely the preservation of the full independence and special character of the religious society and of its legislation. According to both secular and ecclesiastical jurists, therefore, the Concordat means, in its ~~second~~^{third} article,

that canon rules are accepted by the law of the State as simple indicative norms, that is, as norms which continue to be considered as foreign to the juridical order (of the State), but with the inherent characteristics and the force and relevance which they hold in the juridical order to which they belong.²⁸

From this, several important consequences are drawn. Among them are included:

the possibility of denouncing violations committed by civil authorities, the application of canon norms by State's judges even if those norms are not invoked by any of the parties in a civil trial; the necessity that their interpretation be made in accordance with those criteria provided by canon law; that with reference to canon legislation certain criteria--proper to the State's law--which are in contradiction with those of Canon Law, are not applicable (for instance, the principle that ignorance of the law is not a valid excuse); and, most important, the impossibility of conflict between civil and canon Law, since the State's special deference for the Canonical legislation implies that the State admits it as it applies to the canonical institution.²⁹

²⁸Supreme Court of Justice, Sala de Casacion Civil, May 15, 1954, in Gaceta Oficial, May, 1954, no. 2141, pp. 579-587.

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Idem., pp. 580 ff.

In other words, the "solemn respect" which the State owes to canon law

is no mere formul^e of Concordat's diplomacy, but has a practical meaning, i.e., that when a conflict arises between civil and canon law, on matters which belong to the field of the Church, the State must recognize the canon law and give priority to it, while in mixed matters the State cannot legislate, without taken into consideration the canon Law.³⁰

12.45 4. Article four of the Concordat says:

The State recognizes in the Church, represented by its legitimate hierarchical authority, true and proper juridical personality, and capacity to enjoy and exercise the rights that appertain to it.

The content of this article is also in full consonance with Catholic doctrine. According both to the canonical notion of Societas juridice perfecta, and to that of public law of "Primary Juridical Order," the Church is an independent and complete society. That is, it does not depend on any other juridical order.³¹ Ecclesiastical jurists have gone even further. In substance, they contend that in the Church concur the three constitutive elements of a State: territory, people and sovereignty,³² a fact that makes her a real and true State, although peculiaris generis (of a special kind), differing from all others as to its end.³³ As Societas

³⁰ Ibarra, op. cit., pp. 58-59.

³¹ This notion, which prevailed during the entire Middle Ages, was the result of the application of the categories of Roman Law to the theological conception, or dogma, of the nature of the Church as Bride, Kingdom and Mystical Body of Christ. Its first systematic exposition is due to Giacomo de Viterbo in "De Regimine Christiano," 1301-1302.

³² See Giacomo de Viterbo, op. cit., p. 94.

³³ Cappello, Chiesa e Stato, pp. 150-153.

Juridice Perfecta, the Church^{is} not only ~~is~~ an autonomous and unitary juridical organism; she is also subiectus juris, a juridical "person." This concept of the Church as a moral and juridical "person" is, on the one hand, the juridical counterpart of the theological conception of the Church as being identified with Christ Himself, or intimately united to Him, as His Mystical Body, and on the other, the natural corollary of the juridical notion of the Church as a Societas Juridice Perfecta. Once ~~admitted~~ those two notions^{are admitted,} the concept of subiectus juris is natural and a necessary consequence. As a juridical "person" the Church is a moral collegiate person with regard to the populus fidelium (the faithful), but she is also a noncollegiate (Institutional) person with reference to its (hierarchical) form of government; the Holy See being, in fact, the Church's Juridical Personality.³⁴(

This rather complex doctrine is implied in the article of the Concordat that is under our consideration. The words: ("The State recognizes in the Church, represented by its legitimate hierarchical authority, true and proper juridical personality. . ." ³⁵) refer ultimately to the Pope, in whom all jurisdictional authority finally resides in the Catholic Church.³⁶(Sang

³⁴Cf. Pietro Agostino D'Avack, Chiesa, Santa Sede e Citta del Vaticano nel Jus Publicum Ecclesiasticum, Firenze, 1936, ch. I, II.

³⁵"By juridical person it is understood a fictitious person juridically capable to exercise rights and to contract civil obligations, as well as to be represented judicially and extra-judicially." (Colombian Civil Code, Art. 633).

³⁶A further obvious implication, for those at least that

As a moral "person" furthermore, the Church claims all the rights that appertain to her, de jure and even more, de jure divino, as a primary juridical order, superior to the State. This is implied in the words: "The State recognizes in the Church. . . capacity to enjoy and exercise the rights that appertain to her."

From what has been said it is clear that in the Concordat the State "recognizes," does not grant, juridical personality to the Church. "The State's recognition of this juridical personality," says Father Gabriel de Ibarra, "does not mean the authorization to exist as a juridical person," since the Church exists as such independently of any human society, by the very wish of its Divine Founder."³⁷ (

A final obvious implication of article four is that the State recognizes juridical personality not only to the Church, as a whole, but also to its members, institutions, as hierarchically inferior juridical "persons," as long as they are instituted as such by the proper ecclesiastical authorities. Congregations, Orders, parishes, etc., when instituted and authorized by the hierarchy, become ipso facto juridical persons which the State is bound to recognize as such. This is explicitly stated in the Concordat itself, (Art. 10):

accept the Catholic juridical system, is that in the fourth article of the Concordat the international personality of the Church is also implicitly recognized.

³⁷Op. cit., p. 62.

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Religious Orders and associations of both sexes may be freely constituted and established in Colombia, always provided that their canonical foundation is authorized by the competent ecclesiastical authority. These will be governed by their own constitutions; and, in order for them to enjoy juridic personality, and to be under the protection of the (civil) laws, they shall submit to the Civil Power the canonical authorization granted by the respective superior ecclesiastical authority.

This brief exposition of the first four articles of the Concordat suffices, we believe, to show to what extent the "traditional" Catholic doctrine of Church-State relations was fully incorporated in the Concordat. ³⁸ *Sangria* The other twenty-nine articles which compose the Document, as well as the Additional Convention of 1892, and the Convention on Missions of 1953, are practical consequences or corollaries of the general principles stated above, or at least, they could be shown to be in perfect consonance with them. We proceed now to call attention to the major practical implications of the foregoing principles. Some of such implications are already stated and defined in the Concordat itself, others are logically drawn from it by Catholic commentators, and are usually taken for granted both by the government and by Church.

1.3 ~~e.~~ PRACTICAL IMPLICATIONS.

The Colombian Concordat, supplemented by its additional Conventions, ³⁹ covers most of the points where the two spheres of

³⁸ At the end of his "Summary of Ecclesiastical Public Law" (Compendio de Derecho Publico Eclesiastico), Father Octavio Tobon, referring to the first four articles of the Concordat, exclaims: "These beautiful formulæ are the cristalization of all the ecclesiastical public law which we have expounded." (p. 94.)

³⁹ Specially two: Additional Convention of 1892, and the Convention on Missions, of 1953.

authority, civil and ecclesiastical, come in contact with each other. For instance, the following matters are included:

1) On the financial support of the Church: Arts. 5, 6, 9; 2) On the rights and privileges of the clergy ("fuero eclesiastico"): Arts. 7, 8; add. Conv. (1892), Arts. 1-14; 3) On the rights of religious Institutes: Arts. 10, 11; 4) On the rights of the Church in the field of education: Arts. 12, 13, 14; 5) On the privilege of intervention by the State in "major causes" of the Church: Arts. 16, 17; 6) On the rights of the Church on Christian marriages: Arts. 17, 18; 7) On military privileges and prayers for the country: Arts. 20, 21; 8) On indemnization of properties expropriated to the Church by previous governments: Arts. 22-29; 9) On the rights of the Church with regard to cemeteries: Art. 30, add. Conv. Arts. 15-21; 10) On rights of the Church with regard to missions within the country: Art. 31, add. Conv. (1953); 11) On civil enrollment (registro civil): Add. Conv. Art. 22, 23; 12) On the manner to modify, or solve problems of interpretation of the Concordat: Add. Conv., 1892, Art. 24. We will not deal with all of them separately. Rather, we will select and highlight some practical applications, defined in, or implied by, the Colombian Concordat which have been, historically, of the greatest moment, both for Colombian society and for the particular historical experience of the Catholic Church in Colombia.

Having this in mind, we shall consider the provisions about Public Education, the intervention of the State in "affairs of major import" of the Church, the cooperation of the Civil Power in the enforcement of ecclesiastical legislation and rights, and,

finally, the question of Religious Liberty which is present in each one of the foregoing matters.

In calling attention to these practical applications of the Catholic theory we will not try to make any point of our own, or to prove any a priori assertion. We will abstain, that is to say, from making any value judgment about the practical consequences of the Concordat. Nor shall we try to detect to what extent the provisions of the Colombian Concordat have been effectively carried out in recent history. We will rather point to the way in which several important issues of the relations between the two Authorities have been settled ~~down~~ in the Colombian Concordat. In some instances we will complement our analysis with the evaluation that some eminent Catholic interpreters make of specific Concordat-arian agreements from the points of view of the general Catholic doctrine on Church-State relations.

1.3.1 1. On Public Education.⁴⁰ Articles 12 to 14 of the Concordat tackle this crucial question.⁴¹ They define, at least, five points about the rights of the Catholic Church concerning

PP2 40 Although by "public education" it is generally understood the education imparted by the State, some Catholic interpreters make the point that "public" education refers to all education as long as it is intended for "the public." So, for instance, Eguren, op. cit., p. 103, and Tobon, op. cit., p. 95. We use the term, however, in the first sense (instruction imparted by the State) since we believe it is in this sense that the word is used in the Concordat. Moreover, to call the instruction given by the State "official instruction," as suggested by Father Tobon (op. cit., p. 95) could be taken to imply "instruction given with official purposes," or showing certain "official" tendencies, and would be, therefore, misleading.

PP1. 41 Their full text may be seen in Appendix A.

public education:

a. That "education and public instruction will be organized and directed in conformity with the dogmas and morals of the Catholic Religion";

b. that "religious (Catholic) instruction will be obligatory in such centers (Primary and Secondary Schools, Colleges and Universities) and the pious practices of the Catholic Church will be observed in them";

c. that "regarding religion and morals" the Church "will exercise the right of inspection and review of textbooks";

d. that "the government shall prevent, in the conduct of literary and scientific courses, and, in general, in all branches of instruction, the spreading of ideas contrary to Catholic dogma and to the respect and veneration due to the Church"; and

e. that, if the religious instruction given in centers of public education does not conform to Catholic doctrine, "the respective diocesan Ordinary may deny the professors or teachers (involved) the authority to teach such material."

Catholic interpreters regard the above measures as a "necessary consequence of the principles expounded in the first four articles of the Concordat."⁴² Such measures, granting to the Catholic Religion the exclusive privilege to enforce her teaching and her religious practices upon all Colombian students and to avert any spreading of ideas contrary to Catholic dogma, were

⁴²Tobon, op. cit., p. 94; Also Eguren, op. cit., pp. 148 ff.

considered by the Colombian Episcopate in 1948, as the proper fulfillment of the State's duty "to protect and enforce respect for the Catholic Apostolic Religion and for its ministers, guaranteeing to it, at the same time, the full enjoyment of her rights and prerogatives." (Art. 1) Furthermore, the Episcopate found such measures in full consonance with "the natural right and divine constitution of the Church" and with the ("social fact that the Colombian people is, in its moral totality, Catholic."⁴³)

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However, some interpreters find the Concordat still deficient since according to Canon Law ^{44 Sarg} (which the State is solemnly bound to respect) the integral right of the Church includes its power to approve or disapprove not only professors of "religion and morals" but teachers of all other matters as well.⁴⁵ (

1.3.2 2. The State's privilege of intervention in "causae maiores" of the Church: ^{46 Sarg} This privilege refers to such matters

⁴³ Collective Declaration of the Colombian Episcopate on Church State Relations regarding the matter of Education, 1948, Conferencias Episcopales de Colombia, pp. 301, 302.

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⁴⁴ Canon 1381 says: "1. The religious instruction of the young in all Schools is subject to the authority and inspection of the Church. 2. Local Ordinaries have the right and duty to watch that in the schools of their territory nothing contrary to faith and morals be taught or done. 3. The local Ordinaries also have the right to approve the teachers and text-books of religion and to demand that teachers or books that offend against faith and morals, be removed." (Rev. Chas. Augustine, O.S.B., A Commentary on the Code of Canon Law, Vol. VI, pp. 423 ff. The underlining is in the text.)

⁴⁵ So, for instance, Tobon, op. cit., p. 96.

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⁴⁶ By this name are designated "those affairs of major import" which are reserved to the Roman Pontiff. Canons 219-220 read: "The Roman Pontiff, lawfully elected, obtains by divine

as the appointment of Bishops to vacant Sees, and the erection of new dioceses. Articles 15-16 of the Concordat⁴⁷ establish at this respect that,

a. "The right of appointment to vacant Archbishoprics and Bishoprics belongs to the Holy See" (Ius. . . proprium et peculiare");

b. "As proof of special deference," however, "and with the intention of preserving harmonious relations between Church and State," the Holy Father grants to the president of Colombia a special privilege consisting of: first, the possibility to recommend candidates for the episcopal dignity, and, secondly, the opportunity to know, beforehand, the names of the candidates that the Holy See wishes to promote so that "it may learn whether the President has reasons of a civil or political character to consider the said candidates as undesirable" (personae non gratae); and

c. The Holy See will also consult with the Government before establishing new Dioceses or altering territorial limits of those already in existence.

It is not difficult to detect in the above privileges a remnant of the Spanish right of Patronage which the Colombian Republic claimed for itself, as a right, and exercised de facto,

right full power of supreme jurisdiction at the moment when he accepts office. All affairs of major import (causae maiores), by their nature or by positive law, are reserved to the Roman Pontiff." Cf. Chas. Augustine Bachofen, O.S.B., Vol. II, pp. 207-208.

⁴⁷ See full text in Appendix A.

for three decades after its independence from Spain.

Nobody can fail to see the danger involved in connecting the appointment of spiritual authorities in the Church (the designation of its Pastors), with "reasons of civil or political character" entertained by the Civil Government. Catholic interpreters take pains in pointing out that "the privilege of pre-notification grants (to the Civil Power) only the faculty to put forth the political reasons entertained against a candidate," but that it does not include the right to reject any candidate, because ("if ^{Sang} the Church considers that the objections (adduced by the government) are not well founded, she simply notifies this to the President and proceeds to the appointment of the candidate. . . ." ⁴⁸)

Were this to happen, however, it is not difficult to see that bitter conflicts lie at the door. Besides, what is to be understood by "reasons of civil or political character"? It has been pointed out that such reasons

do not include tendencies accepted in the social and political life of the nation which might differ from the government's point of view, but rather reasons having to do with the safeguard of the unity of the country, the preservation of its territorial integrity and of social peace. ⁴⁹

Here, however, we walk on slippery ground unless both parties were willing definitely to recognize that the definition of "those tendencies accepted in the social and political life of the nation" are to be found in the Constitution of the nation,

⁴⁸ Octabio Tobon R., op. cit., p. 101.

⁴⁹ Juan A. Eguren, S. J., op. cit., p. 157.

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and only there.

1.3.3 3. The Cooperation of the Civil Power in the enforcement of ecclesiastical legislation.

We have already seen that according to the set of principles lying at the basis of the Concordat, the State "is bound to protect" the Catholic Church and to guarantee to her "the full enjoyment of her rights and prerogatives." (Art. 1) The same set of principles recognizes the independence of Canon Law, asserting that such legislation "will be solemnly respected by the authorities of the Republic." (Art. 3) Now, from the basic Catholic standpoint that the Church is superior to the State by reason of its nature and end, the above principles of the Concordat, translated into practical terms, must only mean, first, ("that civil legislation should not contradict canon law and, in the event of conflict between the two, the latter must prevail over the former";⁵⁰) and secondly, that ("the State must give to the Church the aid of its armed forces, if the Church so demands, in order to enforce its sentences, defend its usurped rights, or remove obstacles to the ordered guidance of the faithful towards their spiritual end."⁵¹)

In other words, that the State must put at the disposal of the Church its coercive power so that canon law might produce its desired effects.⁵² Sang.

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⁵⁰Tobon, op. cit., p. 73.

⁵¹Idem.

⁵²With regard to both of these points there has been, and there is still, a great deal of discrepancy between ecclesiastical

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In the Concordat we find several well-defined points in which the State not only shows respect for Canon Law but also grants its coercive power to enforce such legislation upon all Catholics. Such is the case, for instance, with regard to matters such as financial obligations acquired because of religious services rendered by the Church; Canonical legislation on marriage; and, disciplinary sentences pronounced by the ecclesiastical courts.

With regard to financial obligations having their origin in religious services, the Concordat says:

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Art. 9. The diocesan Ordinaries and the Parish Priests can collect from the faithful emoluments and ecclesiastical rents, canonically and equitably established and based on either (in memorial) custom in each Diocese or the performance of religious services; and, in order that the acts and obligations thus originating create civil effects, and that the temporal authority shall lend its aid, the Ordinaries will act in agreement with the Government.⁵³

"Emoluments and ecclesiastical rents" (Emolumentos y proventos eclesiasticos) refer to tithes, firstfruits and other ecclesiastical taxes.⁵⁴ The rights of the Church in this regard are defined in Canons 1502, 1504, 1505, 1507, et al.⁵⁵ ^{art 4} The

canonists and secular jurists. From a secular, juridical, standpoint the Church's claim (that, in the event of conflict, Canon Law must prevail over civil law) is considered entirely groundless, specially since the Constitutional Reform of 1936 by which all articles, that supported the Concordat, were eliminated from the National Constitution. However, the Concordat itself was not, and has not been, revoked. See for instance, Angarita, Manuel J., Comentarios a la Ley 153, Bogota, 1891. More recently, Alfonso Lopez, La Politica Internacional, "Mensaje al Congreso," Marzo 23, 1936, pp. 207 ff.

⁵³ Underlining not in the original.

⁵⁴ Ibarra, op. cit., pp. 134 ff.

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⁵⁵ Canon 1507 comprises the following taxes: a) those

Colombian State, by virtue of the Concordat, not only recognizes the Church's right to collect contributions and taxes from the faithful, according to the Church's internal legislation, but also commits itself to "lend its aid" causing the above religious duties to "create civil effects," provided that the Ordinaries act in agreement with the government. Therefore, an element of coercion--coming from the State--is added to the religious duty of paying tithes and giving voluntary contributions for the support of the Church. Ecclesiastical interpreters of the Concordat consider this a "superb" (insuperable) measure "since the Republic, by recognizing and guaranteeing the Church's rights on this point, helps in this way to the support of worship and of its ministers."⁵⁶

With regard to marriage the State recognizes and accepts Canon Law on the matter.⁵⁷ It also has, nevertheless, a legislation of its own about matrimony.^{58 Same} Thus, Colombian citizens (since 1924) are offered the possibility ^{of choosing} (to choose) between

levied for the exercise of voluntary jurisdiction, i.e., dispensations, commutations (except matrimonial dispensations, can. 1056), and funeral taxes, can. 1234; b) the executoriae or fees for the execution of papal rescripts; c) charges for the administration of the Sacraments and sacramentals. Not included are taxes imposed for ecclesiastical trials, which are subject to the rules laid down in can. 1909. Cf. Chas. Augustine Bachofen, O.S.B., op. cit., pp. 565-5655.

⁵⁶ Ibarra, op. cit., p. 141.

⁵⁷ Arts. 17-19. See full text in Appendix A.

⁵⁸ Art. 115 of the Colombian Civil Code reads: "the marriage contract is established and perfected by free and mutual consent of the partners expressed before the competent functionary, according to the form, solemnities and requirements established by this Code. . . ."

Emylin
(44)

ecclesiastical (Catholic) marriage and civil (secular) marriage; that is, either according to Ecclesiastical Canon Law or according to the Civil Law, these being the only two forms of matrimony accepted by Colombian Legislation.

The fact that an alternative possibility to Catholic marriage is offered points to a certain amount of freedom from confessional monopoly at this point. As a matter of fact, however, by virtue of the Concordat, the State is committed to the use of its coercive power when necessary in order to enforce Canon Law, at several concrete points which we now proceed to underline.

a. A baptized person (in the Catholic Church), ^(if desirous) ~~(if desirous)~~ to contract civil marriage is forced by the State to declare in writing that he has formally abandoned his Catholic faith. ⁵⁹ This declaration is transmitted by the government to the ecclesiastical Ordinary in order that the person involved be entreated to abandon ^{his} their intention and, if persisting in it, be subject to the proper ecclesiastical penalties. ⁶⁰

⁵⁹ This was the result of an agreement between the Colombian government and the Holy See about the interpretation of the Concordat at this point. The agreement was incorporated in the Colombian Legislation, by Law 54, 1924, known as "Ley Concha."

⁶⁰ Such penalties are: excommunication, speciali modo reservata sanctae Sedi (Can. 231 a, n, 1); social ostracism: "they are to be treated as public sinners. . . as living in concubinage. . . and therefore "infamous" (infames)," (Decree Sacred Penitentiary, Jan. 15, 1873, and Canons 2293, and 2357, n. 2); their children are to be considered illegitimate" (Can. 1114) . . . Persons married by civil law suffer "impediment of public decency. . . which arises from invalid marriage" (Can. 1078). All these canonical penalties have been brought to the attention of the Colombian people, time and again, by the episcopate and by ecclesiastical Ordinaries, whenever a civil marriage between former Catholics have taken place. Cf. Eguren, op. cit., p. 170.

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← b. The Concordat establishes (Art. 9) that "Causes affecting the bond of matrimony and the cohabitation of husband and wife, as well as those relating to the validity of betrothals, will be under the exclusive jurisdiction of the ecclesiastical authorities."⁶¹ The State thus limits its own responsibility and action with regard to "the bond of matrimony" to the enforcement of Canon Law on the matter.⁶² This means that the dissolution of the matrimonial bond (divorce) is possible in Colombia only in those cases foreseen in the internal legislation of the Catholic Church. Accordingly, divorce can be secured only "by solemn religious profession (i.e., becoming a priest or a monk) and by a dispensation granted by the Holy See. . ." (Can. 1119)

← c. However, priests and religious who have pronounced solemn vows ("higher orders"), even if they formally abandon the Catholic faith, can never contract marriage in Colombia.⁶³ This is the civil enforcement of Canon 213, n. 2, which reads: "A cleric in higher orders (who has returned to the lay state) remains bound by the law of celibacy. . ." ⁶⁴

← d. Persons married by civil law cannot discharge any public post having to do with education. This is the consequence of the Concordat's regulations on the matter, and also the

⁶¹Underlining not in the original.

⁶²Canons 1118-1120.

⁶³Ley 54, 1924, n. 1 (Ley Concha).

⁶⁴Cf. A. Bachofen, op. cit., Vol. II, p. 194.

enforcement of canons 1099, 1078 and 2314.

65 Smg. (49)

e. A final point refers to the enforcement of disciplinary sentences pronounced by ecclesiastical courts. By the Concordat the Catholic Church obtained "the aid and support" of the civil authorities so that ecclesiastical judges may enforce and execute the penalties and sentences pronounced by them in the sphere of their competence."⁶⁶

The State, in this wise, assumes the role of being the "secular arm" of the Church⁶⁷ (to execute its sentences and punish religious delinquents. This role the Colombian State has, on several occasions, faithfully fulfilled.^{68 Smg.}

⁶⁵"The impediment of public propriety (decency) arises from invalid marriage, whether consummated or not, and from public or notorious concubinage. . . (Can. 1078) "If apostates, heretics and schismatics have joined a non-Catholic sect, or publicly professed themselves members thereof, they are by this very fact (ipso facto) infamous." (Can. 2314, no. 3) A concrete application of these Canons occurred in August 20, 1959, when the Ministry of Education, by Resolution Number 097 of 1959, declared to be applying Canons 2314 and 1099 as the basis for denying registration as teacher to Sra. Isabel Orozco de Siciliani, "because her religious condition deprives her of moral authority necessary for the educational mission."

⁶⁶ Additional Convention, 1892, Art. 10. (Underlining not in the original.)

⁶⁷ Cf. Tobon, op. cit., p. 94.

⁶⁸ For instance, on April 4th, 1960, a Juvenile Court Judge, executing a sentence pronounced by the Archdiocesan Tribunal of Medellin, ordered the seizure of three children whose father had "committed the crime of heresy." State's police carried out the order, taking the children away from their father and turning them over to their uncle's (Catholic) care. In an "official explanation" the Archdiocese of Medellin defends the measure by quoting the Concordat and, also, by adducing other theological and historical reasons in support of the measure. Cf. Bulletin 61 of the Evangelical Confederation of Colombia, CEDEC, April, 1960.

1.3.4

X. The freedom of conscience and religion within the context of the Concordat.

"The State guarantees," says the present Constitution of Colombia, "liberty of conscience" . . . and "liberty of all cults not contrary to Christian morals or the laws." The same basic political Charter of the country defines that ("nobody shall be molested by reason of his religious opinions, nor compelled to profess beliefs or to observe practices contrary to his conscience."⁶⁹)

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The Concordat, however, although still in force, was conceived and informed by a quite different legislation on this point, that of the Old Constitution of 1886, which established a union of Church and State that left no room for the sort of freedom (of conscience and cults) that is guaranteed by the present Constitution. In the Old Constitution, in fact, no liberty of conscience was guaranteed, and with regard to non-Catholic cults only "tolerance," not "liberty," was consecrated (Art. 40, Const., 1886). It is only on the basis of ~~that~~ old premise that we can understand the Concordat, a premise, however, that was fully disavowed by the Constitutional Reform of 1936 which is currently in force. ⁶⁹³(

Nobody can fail to see that, being this the case, the Concordat has today no legal status with reference to the Constitution, except that of a juridical anomaly. To make the case for this assertion is not, however, our purpose here. We want rather to ascertain what amount of freedom of conscience, or liberty of

⁶⁹ Political Constitution of the Republic of Colombia, Title IV, Art. 53.
⁶⁹³ cf. Guccio Mozo, José, La Reforma Constitucional de 1936, (Bogotá, Editorial ABC, 1938)

religion, is compatible according to Catholic interpreters, with a pattern of relations between Church and State like the one established by the Colombian Concordat, an arrangement which was considered for a long time, and it is still considered by many, as a "model of conventions of its kind."⁷⁰ *Sarg*

We have already seen to what extent, before the establishment of the Concordat, the relations between "the two powers" were, to say the least, precarious. While still in the process of laying out the political foundations of the nation (drafting its constitution), the State encountered in the Church the strongest opposition whenever the ecclesiastical claims were not satisfactorily recognized. Among these claims the right to be recognized as the only religion of the nation was always considered by the Church of paramount importance. "We have strongly protested," said Pius IX in 1852, "against two projects of law, the first of which abolished the tithes, without consulting with the Holy See, while the second guaranteed to men from any nation, who might immigrate to the New Granada (Colombia), the right to exercise their own form of worship, no matter which it might be. . . . In reprobating these projects," continues the Pope, ^{*Sarg*} "we have requested, in the strongest possible terms, that they never be carried through

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⁷⁰ "The Concordat between the Republic of Colombia and the Holy See, was considered by Leo XIII as a model of Conventions of its kind" (Marco Fidel Suarez, quoted with approval by Eguren, op. cit., p. 5). Father J. Ivan Cadavid G., in his book Los Fueros de la Iglesia ante el Liberalismo y el Conservatismo en Colombia, p. 132, says: "This exemplary Concordat is one of the most Catholic and complete among those conventions existing today in the whole world."

Eguren
(50)

Sangria
 (51) so that the Church might make use of all its rights and fully enjoy its liberty."⁷¹) The legislators of 1886 faithfully submitted to the Pope's protest. The prevailing contention was that the full rights of the Catholic Church are properly safeguarded only when the public exercise of non-Catholic cults is not permitted. On the basis provided by this premise the State's duty "to protect and enforce respect" for the Catholic Church and for its ministers, and to guarantee to her "the full enjoyment of its rights and prerogatives," as it was stated in the Old Constitution and in the Concordat, implies that no other religious confessions shall be either officially recognized by the State, nor permitted to make public manifestations of their faith. Towards them the State's attitude must be one of tolerance.⁷² *scout*

Defining his attitude towards Protestants as one of "tolerance," Cardinal Crisanto Luque, Primate of Colombia,⁷³ (explained in 1959: ("I accept without any difficulty that Protestants in Colombia enjoy full guaranties to worship in their temples, or places intended for that purpose, and to educate their children according to their beliefs."⁷⁴) The Cardinal's position had also

Sangria
 (52) ⁷¹Allocution before the Secret Consistory of Sept. 27, 1852, Codicis Iuris Canonici Fontes, Vol. II, Roma, 1948, pp. 873-878.

⁷²"...with the discernment of a true mother, the Church... while not conceding any right to anything save what is true and honest, she does not forbid public authority to tolerate what is at variance with truth and justice... ." Leo XIII, Ency. Libertas Humanas, Paulist Press, pp. 22-23.

⁷³Died, 1959.

⁷⁴Letter to the Community of Taize, France, published by

been the official position of the irregular administration of General Gustavo Rojas Pinilla (1953-1957), which had defined in 1954 the situation of non-Catholics in the following terms:

- 1. Non-Catholic residents in Colombia--nationals or foreigners--enjoy full freedom of conscience;
- 2. Such persons cannot be molested or disturbed in the exercise of their religion, provided that their acts of worship take place in temples or chapels intended for that purpose;
- 3. Non-Catholic residents of Colombia--nationals or foreigners--whether they are ministers, pastors, or simple believers, cannot develop any public proselytistic action, nor use any means for propaganda, outside their places for worship.

What we find here is an attempt to reconcile the present Constitutional norms which prescribe liberty of conscience and of worship with the religious premise and spirit of the Concordat which grants an exceptional position of privilege to the Catholic Church, while it allows only "tolerance" to non-Catholics. This is done, first, by declaring the existence of freedom of conscience and worship, and, second, by defining the meaning of the ^{freedom of worship} ~~second~~, as freedom of non-Catholic groups to worship inside edifices intended for that purpose. . .but without any public manifestation, or propaganda, outside those places. The government does not give, however, any definition of "freedom of conscience." It would be hard, in fact, to produce one ^{a definition} that would fit within the context of

Noticias Ecumenicas, year 1, No. 5, pp. 21-22, publicacion del subsecretariado de Fe y Moral, Bogota, Sept., 1959.

⁷⁵ Minister of the Interior, Circular Letter, Jan. 28, 1954, published by Eduardo Ospina S. J., Las Sectas Protestantas en Colombia, Bogota, 1954, pp. 23-28.

the Concordat. What can, indeed, be understood by "freedom of conscience" when the coercive powers of the State are called ^{upon} to enforce the religious norms (Canon Law) of a given religious body? In what sense is the individual conscience of Catholic citizens protected when they are forced, by the State, to obey and practice the norms established by their Church, on the penalty of being deprived of the full enjoyment of their basic rights as citizens of the country and human beings (of the possibility, for instance, of becoming a public teacher or, in the case of an ex-priest, of establishing a home?)

The Church of Colombia does not show any concern for the freedom of the individual conscience, ^{76 Same 56} but only for ("the protection of the religious conscience of the community."⁷⁷) When this

Sanguin
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⁷⁶ It must be remembered, however, that such lack of concern was derived from the Papal teaching during the XIXth century. Pope Gregory XVI, (Ency. Mirari vos): "From that poisoned root of indifference springs the false and ridiculous maxim, or rather the mad belief ("deliramentum"), that every individual must be allowed or guaranteed freedom of conscience, one of the most contagious of errors, the way to which is made easier by that utter and unbridled freedom of opinion, which is spreading on all sides, to the ruin of the Church and the State, and which some men have the effrontery to represent boldly as serving the cause of religion. . ." Pope Pius IX (Ency. Quanta cura), 1864, says: ". . .In the pursuance of this entirely wrong idea of the government of society (the idea that the State is not under the obligation to deter by the imposition of penalties those who attack the Catholic religion) they have no hesitation in encouraging that mistaken opinion, one that is utterly disastrous to the Catholic Church and the welfare of souls and that our predecessor Gregory XVI called a mad idea, namely, that freedom of conscience is a right due to every man. . ." Quoted by Carrillo de Albornoz, Roman Catholicism and Religious Liberty (Geneva: The World Council of Churches, 1959), pp. 58 ff.

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⁷⁷ Cardinal Crisanto Luque, Address of Greetings to the Colombian President, Alberto Lleras Camargo, Aug. 26, 1958. Cf. full text in Eguren, op. cit., pp. 110 ff.

community is a Catholic community, as it is considered to be the case in Colombia, its conscience is, for all practical purposes, the Catholic hierarchy to which the community is bound in conscience and by positive law. This is the reason why whenever the Concordat has been fully enforced, the Constitutional guarantees of "*religious liberty*" ~~and~~ *and* ~~has meant firstly and foremost~~, "liberty of conscience", ~~and~~ *have meant* ~~liberty of religion~~ *firstly and foremost* the freedom of the ecclesiastical society (the Catholic Church) "to enjoy the full exercise of its rights and prerogatives," ⁷⁸ *Sant* and only secondarily, the freedom of the individual's conscience.

In ^{*the foregoing*} ~~an~~ analysis of the Concordat ~~that regulates the relations between the Republic of Colombia and the Holy See~~ we have been careful to underline the fact that the practical implications of such document for matters *such as education, marriage, and Religious Liberty,* are the logical consequence of certain basic conceptual premises, characteristic of the Catholic doctrine on Church-State Relations, as formulated by the nineteenth century Papacy. Today, a radically different situation of the world ^{*is*} ~~has~~ giving rise to new doctrinal formulations ~~that~~ *that* would require radical changes *in such specific patterns of Relations as represented by The Colombian Concordat*

56 ⁷⁸ "Native rights--of the Catholic Church--are the right to preach the gospel, can. 1322; to educate and train the clergy, can. 1375; to found and maintain her own schools, can. 1375; to possess her own cemeteries and property, can. 1206 and can. 1495; to enjoy the judiciary and coercive power, canons 1553 and 2214. "These are essential rights," Chas. Augustine, O.S.B., *op. cit.*, Vol. VIII, p. 336.

~~For instance, chapter one of the 11 Vatican Council's Declaration on Religious Liberty, begins thus: "This Vatican Synod declares that the human person has the right to religious~~

Persisting elements in the Roman

Chapter ~~II~~ ~~The Roman~~ Catholic Doctrine of Church-State Relations.

Having in mind the type of Church-State relations set forth in the Colombian Concordat we are in a position to appreciate, in all its import, the new developments which are taking place in Roman Catholicism ⁱⁿ at this regard.

An important part of these new trends is the form in which modern Catholic scholars state the doctrine of Church-State relations, reduced to its simplest form, to its essentials, to its basic principles. A second aspect characteristic of the new tendencies is their ability to interpret, from the vantage point of these basic principles, the crucial centuries of the Middle Ages, a period of the Church's history which exhibits certain exceptional particularities.

We proceed, therefore, firstly, to expound the Catholic principles and, secondly, to review the situation of the Middle Ages from the perspective provided by them.

2.1

Preliminary observations:

Before all, two important remarks ~~have~~ ^{have} to be made with regard to facts which are generally realized and accepted by most Catholic theologians. First, that the Church did not enter the world with a ready-made doctrine - fully defined - about

the relations she should maintain with the secular powers. The New Testament does not provide, in fact, such a doctrine. It does provide, according to the Catholic Church, a well-delineated doctrine of the Church as a visible, hierarchical society. But the New Testament fails to give such clear doctrine both about the character of the secular society and about its relations with the spiritual one.

In view of this fact we must believe that the Lord who placed His Church in the middle of the institutions of this world, wanted her to learn by experience, under the direction of the Holy Spirit, what kind of relations she should maintain with them. According to Joseph Lecler, S.J., this is exactly what has happened. ("The Church," he says, "has defined her attitude step by step, in order to cope with situations which grew progressively more complex. Over a period of almost two thousand years she has known every kind of political régime, she has been in contact with the most diverse civilizations, she has experienced, in turn, man's favour, his indifference and his hostility she has learned wisdom by contact with events and enriched herself from century to century through an ever wider experience of men and things". 97)

Sangre
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97. L'Eglise et la souverainete de L'Etat, Flammarion, Paris 1946. English translation: The Two Sovereignties, trans. Hugh Montgomery, London, Burns Oates and Washbourne, Publishers to the Holy See, 1952, p. 51-2.

Second, that the Church has never formulated an ultimate, definitive dogma, endowed with infallible character, about Church-State relations. At different times, according to different circumstances, the Church has assumed different positions without "consacrating" or "canonizing", any one of them.

In the first four centuries of her life the Church experienced, in turn, three different kinds of relations with the Roman Empire. She was first tolerated as innocuous, then persecuted as dangerous and finally protected as useful. The Church did not consider, however, any one of these relations as permanent or ideal. The last one of these three types of relations - inaugurated by Constantine - proved to be the most tempting and dangerous for the Church, and it was not established without a good deal of opposition from within the Christian community.⁹⁸ In fact, very soon it became clear that toleration could easily mean absorption and that "protection" could ^{be} turned into control.

^{In} At this respect, however, the two main geographical branches of 'Christendom' were to follow different ways. While in the East the Church submitted herself entirely to the State,

Sangua
2(2)

98. The rise of the monastic movement, which coincides with the new situation, may be interpreted as a protest, on the part of many, against this union with the world. The first monks were Christians who felt that this connection of the Church with politics, had not been intended by Christ and hence was not good. Cf. Luigi Sturzo, Church and State, Notre Dame: University of Notre Press, 1962, p. 40.

giving origin to the famous "Alliance Constantinienne", in the West the Church managed to get rid of the imperial "protection". This was possible thanks to several decisive events: Constantine's change of capital from Rome to Constantinople, the ever weaker condition of the Empire, and its final collapse in the West (476) under the push of the barbarian hordes.

The Middle Ages were to produce a new kind of Church-State Relations. Starting from a situation characterized by a mutual penetration of the Church and the barbarian states,⁹⁹ the partnership led to a full domination of the latter by the Church. This development reached its peak in the well known quarrels between the Pope Gregory VII and the Emperor Henry IV, and continued during the Pontificates of Innocent III (1198-1216) and Boniface VIII (1294-1303). To this time can be traced back the famous theory of the "direct power", known also with the names of "theory of the secular arm" and of "the two swords". According to this doctrine the spiritual power, bequeathed by Christ to Peter and his successors, includes the temporal power, the latter being an emanation or delegation of the former.¹⁰⁰ Sang

99. Cf. J. Lecler, op. cit., pp. 55 ff. Also, H.X. Arquilliere, L'Eglise au Moyen Age, Bibliothèque Catholique des Sciences Religieuses, Librairie Bloud and Gay, 1939, pp. 17 ff.

Sang 2(3)

100. Classical formulation of this theory was given by Giacomo di Viterbo, in De Regimine Christiane, II, 7; edited by H.X. Arquilliere, under the title Le plus Ancien traité de l'Eglise, Paris, 1926, pp. 236-37.

This theory, although practised and widespread in the West, was never turned into a dogma of the Church. In fact, it is said today, such a kind of relations between the two powers was only possible in the context of certain exceptional conditions which characterized the Medieval civilization.¹⁰¹ When those conditions ceased to exist, and were replaced by new ones, the Church "advanced" towards new kind of relations and formulated new theories in which she has incorporated the experience of the previous centuries.

The two ~~observed~~ preceding observations could lead us to the conclusion that the Catholic Church, in her relations with the temporal powers, has been informed only by a spirit of opportunism and expediency. If the Church, in fact, has modified her theories of Church-State relations according to different situations, cultures and civilizations, are we not authorized to conclude that she, like any other purely political organization, aiming at the domination of the world, would wait for the opportunity when she may again be able to impose her medieval dreams of temporal power? As a matter of fact, has not been this the case in Spain, Colombia and other countries of Latin America, where history seems to indicate that the Church has

101. Lecler, op. cit., p. 62.

endeavoured to reproduce, and to maintain, a Mediaeval type of society, so that the Mediaeval pattern of Church-State relations might also be put into practice in those countries? The change of attitude, observable in the papal pronouncements of recent times does not simply mean that the Church is concealing her reverses by means of changes of front and prudent withdrawals?

Such an idea is completely repugnant to modern Catholic theologians. Not being able to find anything else than "opportunism" in the attitude of the Catholic Church is proper only of minds "which are impervious to spiritual ideas or completely blinded by political prejudice".¹⁰² These theologians do not only see in the modern attitude of their Church a "change" but "a step forward", a decision taken on the basis of past experience which amounts to a positive "enrichment" of the Church in her understanding of the relations which are proper for her to maintain with the secular powers.

Which is, then, the modern Catholic doctrine of Church-State relations?

2.2 Basic principles:

In his Encyclical Arcanum, on Christian marriage, Leo XIII stated the doctrine in a single paragraph:

102. J. Lecler, op. cit., p. 81.

Sungren
2 (5)

No one can doubt, he said, that the Divine Founder of the Church, Christ Jesus, desired ecclesiastical authority to be distinct from civil authority and that each should be free, and in a position to carry out its own mission, with this proviso, however, which is useful to each of the two powers, and which safeguards the interests of humanity, that agreement and harmony shall prevail between them, and that in questions which fall beneath the jurisdiction of both - even though under different aspects - the power which has charge of things human shall depend, in a suitable and seemly manner, on that which has received the guardianship of things divine.¹⁰³

In this comprehensive statement the three basic principles which inform the Church in her relations with the temporal powers are summed up: 1) A clear distinction between the Church and the State, and their respective autonomy; 2) The necessity of their harmony for the common good of humanity, and 3) The inequality of the two powers, in nature and dignity, which implies the primacy of the spiritual power in matters common to both.

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The ;*

2.2.1 Distinction and autonomy of the two powers:

From a Roman Catholic perspective the world is seen divided by God into "two powers", "two authorities", "two societies": the secular and the spiritual, the civil and the ecclesiastical, the State and the Church! "The Almighty God, says Leo XIII, has

103. Arcanum, Feb. 10, 1880.

given the government of the human race to two powers, the ecclesiastical and the civil...."104 (

It is evident that before the Christian era society was not so divided. It was, on the contrary, characterized by its unity whose symbol and guaranty was its ruler. Religion and politics were all included within the framework of the State.

Sanguin
2(4)

"The pagan city claiming to be the only wholeness of the human being, absorbed the spiritual within the temporal, while, at the same time, made the State divine".¹⁰⁵ In the Roman Empire, in particular, the priests were state functionaries. The emperor was at the same time Pontifex Maximus. It was in virtue of an internal logic that the emperors became to be considered divine.

Against this background the completely new factor brought about by Christ is considered to have been the foundation of the Church, as an organization, a society, free and parallel to the State, with full and divine authority over spiritual things.¹⁰⁶ ^{Sanguin} The tension implied in this dualistic character of society is, hence, considered by the Catholic Church to be

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104. Immortale Dei, Paulist Press, New York, p. 7.

105. Jacques Maritain, Primaute du Spirituel, Paris, Plon, 1927, p. 11.

Sanguin
2(5)

106. "The original contribution of Christianity, says M.G. Renard, is the organization of the rights of conscience by means

intended by Christ. He said, in fact, "My Kingdom is not of this world", but He also commanded His disciples "Go ye into all the world", He called His Church from the world but He sent her back to the world. She was to be "the salt of the earth and the light of the world". The division of society into two sovereign powers is, therefore, willed by God and presupposed as a basic premise in the Catholic approach to the question of Church-State relations.

Given this fact, (that "God has given the government of the world to two powers") the ideal relation between them would be one of perfect equilibrium. Twenty centuries of history, however, bear witness to the fact that balance between the two is almost impossible to achieve. Sometimes the State becomes persecutor and sometimes the clerics usurp the rights of the State. "Every form of separation and union of the two", says the Jesuit scholar Henri de Lubac, ("has its own dangers, and the symbioses of the greatest perfection are by that very fact the more dangerous, for here the best runs easy into the worst, and when it does it is not always clear which power has become the slave of the other - whether it is the Church which is domineering | the "world" or the world which is taking possession

106 (continued). of the establishment of an external society, perfect and endowed with a sovereignty like that of the State, the rival of the State", in "L'Eglise et la Souverainite", La Vie Intellectuelle, 1932, p. 14.

Sangria
2(6)

of the Church". 107)

Because of these grave dangers the Church has learned to draw the clearest possible distinction between the two powers. Way back, towards the end of the fifth century, Pope St. Gelasius insisted in this distinction as a permanent remedy against the tendency to dominate which is inherent in the human spirit. Said St. Gelasius:

Sanguin
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Before the advent of Christ the Holy Scripture tells us that there were men who were really priests and Kings at the same time, such as Melchisedech, but since the true Priest-King has appeared, the emperor has no longer assumed the title of Pontiff, nor has the priest claimed the royal dignity Christ, in fact, out of consideration for human weakness, was careful to adopt, with wonderful wisdom, the measures most fitted to save the salvation of His own. Wishing, then, to save those that believed in Him by the medicine of humility, instead of exposing them anew to the danger of perdition by the seductions of pride, He has divided the functions of the two powers, assigning to each one its proper task and dignity. The spiritual power keeps itself detached from the snares of this world and, fighting for God, does not become entangled in secular affairs, while the secular power, for its part, refrains from exercising any authority over divine affairs. By thus remaining modestly within its own sphere, each power avoids the danger of pride which would be implicit in the possession of all authority and acquires a greater competence in the functions which are properly its own. 108)

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- 107. Meditation sur l'Eglise, editions Montaigne, Paris. English version, The Splendour of the Church, Sheed and Ward, New York, p. 115.
 - 108. De Anathemis Vinculo, 4, Migne, Patrologia Latina, LIX, 108-9.

In this way was clearly expounded, for the first time, the theory of "the two powers", each one having different tasks, different ends, and different spheres ^{in which} where to exert their authority, each one being bound, by the intention of God, to remain within the limits of its own competence. Such an arrangement, according to St. Gelasius' keen insight, was established by Christ "out of consideration for human weakness", that is, taking into account man's inherent lust for power which, had not been the demarcation of the two societies clearly fixed, might lead one or the other power into the precipice of tyranny.

During the Middle Ages this sound emphasis was changed, or even completely superseded by a new one, or rather, we could add, by a completely new theory of Church-State relations. The desire for the unification of society, prompted by the special conditions exhibited by Europe after the collapse of the Old Roman Empire, led the Church to advance the theory of the "direct power", which would concentrate both the secular and the spiritual powers in the hands of the Pope. ^{109 Sang} When those

Sanguin
2 (8)

109. By the time of Boniface VIII, the Franciscan theologian Alvaro Pelayo, stated the theory as follows: "We do not, it is true, read in the Gospel that Christ gave Peter the temporal power, but we must reply that he on whom what is essential has been conferred has ipso facto received the accessories. Christ, in bestowing on Peter the spiritual power, which is the principal thing, undoubtedly also conferred on him the temporal power in bestowing the keys of the Kingdom of Heaven, Christ gave to Peter at once the temporal and the spiritual jurisdiction." De Plancta Ecclesiae, I, 57; Rocaberti, Bibliotheca Pontificia, III, pp. 172-173.

special conditions disappeared, however, given way to the modern age,¹¹⁰ ^{Sorry} and very specially since the nineteenth century when the possibility of returning to the Middle Ages type of society proved definitely gone, the Church has recovered the Gelasian emphasis of the distinction and sovereignty of the two powers.

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Today, the definition given by Leo XIII is considered standard and definitive: "Each one of them (the two powers), within its own order, is sovereign (Utraque potestas est, in genere suo, maxima); each one of them is closed within limits perfectly determined and traced in exact conformity with its own nature and principle. Each one of them is, hence, reduced to a sphere where it is able to act and move in virtue of its own laws (jure proprio)".¹¹¹ This is, therefore, the first principle of Church-State relations.

2.2.2 Harmony should exist between the two powers:

We have seen how, within the Catholic universe of discourse,

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110. The decline of the Medieval synthesis began, in fact, in the 13th century with the renaissance of Roman Law, the development of Thomism, with its clear distinction between nature and grace, reason and faith, and was accelerated with the beginning of national states. Cf. Georges de Lagarde, La Naissance de L'esprit laique au declin du Moyen Age, Ed. Nauwelaerts, Louvain, Paris, 1934, Vol. 1.

111. Immortale Dei, Paulist Press, p. 7.

the main contribution of Christianity, as far, at least, as its social import goes, was the dissociation, introduced by Christ Himself, between the "spiritual" and the "temporal". From this perspective Jesus' famous answer to the question concerning the legitimacy of paying tribute to Caesar, "Render to Caesar that which is Caesar's and to God that which is God's" (Matt. 22:16-22), does not only refer to the fact that God is different from Caesar, and that everybody, according to his conscience "must obey God rather than man" (Acts 4:20). With His answer as understood from the Roman Catholic outlook, Christ was also pointing to the fact that, henceforth, society was to be divided into two powers, into two organized societies: the temporal and the spiritual, the secular and the divine, the State and the Church. Christ did never intend, however, to establish a radical separation between the two societies, much less a mutual animosity or hostility, but rather a relation of common accord and harmony, that is, a mutual cooperation. And this is the second Catholic principle on Church-State Relations.

Such a desire for harmony has at its roots a respectful attitude towards the State whose authorities "have been instituted by God" (Romans 13:1). The apostles instructed early Christians to pray for the civil authorities (I Tim. 2:2-4) and we have sufficient evidence that they did. ("Grant them, O Lord - prayed St. Clement of Rome - peace, concord, and

Sanguin
2(11)

Stygian

stability in order that they may freely exercise the authority which Thou hast conferred upon them. For it is Thou, O Heavenly Father, who givest to the sons of men glory, honour and power over the things of this earth. Direct, O Lord, their counsels in accordance with all that is good, all that is agreeable in Thine eyes, in order that, wielding peaceably and with gentleness the power which Thou hast given them, they may obtain Thy mercy".¹¹²

The Middle Ages gave origin - as we have said before - to a sort of relations between Church and State which can only be described as "abnormal", and which Catholic historians call "special" and "exceptional".¹¹³ Such relations were characterized, as we shall see later, by a gradual incorporation of the State within the Church, of the civil within the ecclesiastical authority; with the consequent belittlement of the status and dignity^{of the former.} In modern times, however, the Church has constantly recognized, as we have seen above, the natural right of the State as a sovereign society, like the Church, with the proviso, however, that friendly harmony should prevail between them.

Such agreement and harmony is the more necessary in view

112. Ad Corinthios, 61; Hemmer's edition, p. 127.

113. Cf. for instance, H.X. Arquilliere, op. cit., pp. 17 ff.

of the fact that the ends of the two societies, although of different orders, are closely connected. Both powers are in fact oriented to the common good and welfare of their members. Since men are neither merely material nor purely spiritual beings, only a close cooperation of Church and State is able to guarantee that the total good of man be properly cared for. Moreover, both societies exercise their ministry upon the same subjects, and on common domains of their lives, i.e., education, public justice, morality, etc. These are "mixed questions" which cannot be resolved by mere general principles but require friendly cooperation and harmony. Recent Popes have constantly emphasized this necessity. ("Although the civil authority," says Leo XIII, "has not the same proximate end as the spiritual, nor proceeds on the same lines, nevertheless, in the exercise of their separate powers they must occasionally meet. For their subjects are the same, and not infrequently they deal with the same objects, though in different ways. Whenever this occurs, since a state of conflict is absurd and manifestly repugnant to the most wise ordinance of God, there must necessarily exist some order or mode of procedure to remove the occasions of difference and contention, and to secure harmony in all things". 114)

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2(14)

This principle explains, also, why the Popes have so

114. Libertas Humanas, 1888, Paulist Press, New York, p. 15.

Leo XIII

energetically rejected the idea of a full separation of Church and State in the sense of an artificial situation in which both societies either attack or ignore each other.¹¹⁵ (

In practice the principle of cooperation and harmony can take different forms according to circumstances. ("The relations between Church and State - ^{bruit} writes Cardinal Baudrillart - are not regulated according with absolute and, so to speak, geometrical principles; they result from the social and political situation and from the manner in which the Church adapts her principles to meet it."¹¹⁶) Such a "regulation" has been done, in modern times, by way of juridical agreements (Concordats), between the Holy See and the different secular governments.¹¹⁷ (

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2(13)

In spite, however, of the plausible idea lying behind such documents¹¹⁸ ^{Sanguin 2(14)} they have been, not in few cases, the cause of many conflicts.¹¹⁹ (Sometimes such Arrangements have been used to

115. Cf. Leo XIII, Arcanum, 1880; Pius X, Vehementer, 1906; Pius XI, Rappresentanti in terra., 1929.

116. Card. ^{bruit} Alfred B., ^{audrillart} Quatre cents ans de Concordat, Paris, 1905, p. 14.

117. Inmortale Dei, No. 15, p. 8.

Sanguin
2(14)

118. They are "solemn conventions between the Supreme religious authority (the Pope and the Civil Power) with the purpose of establishing and regulating the relations between the Church and the State, having for object (not exclusively) those matters which concern both authorities" (Felix M. Cappello, Summa Iuris Publici Ecclesiastici, p. 401.

119. i.e., between secular jurists and canonists with regard

break the equilibrium they were supposed to preserve. Such has been the case in France where, during the nineteenth century, the State tried to include in the Concordat of 1801 the famous collection of "Liberties of the Gallican Church", "with the clear purpose - says Father Lécler - of putting the clergy of France under the rigorous control of the secular authority".¹²⁰ (

The conflict ended in the unilateral abolition of the Concordat of 1801 by the French Government in 1905. Inversely, couldn't we ^{not} say that the Church has used the Concordats to break, in ^{her} his favour, the equilibrium between the two societies in such cases ^{as} like Spain, Colombia, Dominican Republic, etc.? In spite of these disadvantages "the Church, as we may well imagine, is, in principle, altogether favorable to this system".¹²¹ (At any rate, in the Catholic doctrine of Church-State relations what is really important is that a permanent harmony prevail between the two powers, be it with, or without, a Concordat. This attitude was admirably assumed by Pius XI when in his allocution Jam Annus, Dec. 14, 1925, ^{he} evaluated the "régime of separation" established in Chile, in the following terms: ("In the light ^{Sungria} 2 (17)

119. (continued). to the very nature of these Conventions!

120. L'Eglise et la Souverainite de l'Etat, English version, p. 44.

121. Lécler, op. cit., p. 43.

Sanguin
2 (15)

of the Catholic faith this arrangement, to be sure, is not in consonance with the doctrine of the Church Nevertheless, it is applied in such a well-intended fashion that far from being a separation it is, above all, a friendly union".¹²²

2.2.3 The primacy of the Spirituals:

Having established the first two principles which guide the Church in her relations with the secular powers - autonomy and sovereignty of the two societies and their need for constant harmony - Catholic theologians and jurists proceed to ask whether State and Church should treat each other as equals. The answer they give is, unhesitatingly, negative. The two societies belong to different orders and these orders stand in hierarchical levels. The origin of the Church is divine, supernatural. The State is a terrestrial organism, the product of human nature and the response to social needs. Their ends are also of different orders. The Church concerns herself with the eternal good of men, the State with their temporal welfare. The Church, therefore, is superior to the State since it is not only logical and reasonable, but also it has been divinely established that the spiritual should have primacy over the material.

But how are we to understand such primacy? How is it

122, Quoted by Lecler, op. cit., French edition, p. 66.

expressed in practice? This is a very complex problem which has been variously solved by the Church in the course of history, and which "even today gives rise to heated discussions".¹²³ A look at history leaves us with the impression that only expediency has informed the Church in her relations with the secular society. A study of the Concordats which are today in force does not convey an altogether different impression. The Church has always felt, however, that in her tense and often hazardous relations with temporal authorities she has only been moved by her desire to defend her spiritual treasure and the rights of conscience.

In modern times, the theory which prevails as to the manner to revindicate the primacy of the spiritual, is known as the theory of the "indirect power", in opposition to that of "direct power" which was practised in the Middle Ages. Although never "canonized" by the Church, that is, never turned into a dogma, it may claim official approval. In his Syllabus Pius IX condemned the proposition "that the Church has no temporal power, either direct or indirect".¹²⁴ Cardinal Merry del Val, Papal Secretary of State under Pius X, remarked in a letter to Cardinal Sevin, Archbishop of Lyons, that Catholic writers err very often in political matters, "particularly when they think of the two societies - civil

123. Idem., p. 51.

124. Denzinger, Enchiridion, No. 1724.

and ecclesiastical - as simply co-ordinated with each other, or when they reduce to a merely directive authority the indirect jurisdiction which the Church has the right to exert over temporal affairs when these have a supernatural aspect".¹²⁵

How does the Church exert this "indirect jurisdiction" in temporal matters - in rebus temporalibus - ? Here again, several interpretations have been given. Some interpret it to mean only the power of persuasion which the Church exercises over governments, the Pope being with regard to the secular Prince like the father to an eldest son.¹²⁶ Others hold the interpretation given by Cardinal Bellarmine:

"We understand by indirect jurisdiction" - he says - ¹²⁷"that which the Sovereign Pontiff possesses over temporal things in view of a spiritual end. The Papal powers is specifically, and of its very nature, spiritual in character and it only aims directly and as the first object of its activity, at spiritual affairs. Indirectly, however, that is to say, when such means are necessary in order to obtain spiritual ends, it intervenes also in temporal affairs, which are regarded as a secondary object with which the spiritual power is only concerned in exceptional circumstances."

Obviously, this interpretation entails the power of direct

125. AAS., 1913, p. 559. Underlining in the original text.

126. So Dante, De Monarchia, III, 16.

127. De Potestate papae in rebus temporalibus, c. 5, Opera Omnia, Naples Edition, 1872, V., p. 278.

intervention of the Church in the orbit of the State, but only in exceptional cases, that is, when it can adduce a raison d'Eglise ("In view of a spiritual end"). This, ~~tantamounts~~, however, ~~to~~ *is tantamount* *to making* ~~make~~ of the Church an ecclesiastical counterpart of the totalitarian states which claim the right to intervene in the affairs of the Church in virtue of a raison d'Etat.

Modern Catholic writers tend to prefer the interpretation offered by John of Paris (1303),¹²⁸ a disciple of Thomas Aquinas, who inspired by his master's emphasis in the natural rights of the State, sustained¹²⁹ that the "indirect jurisdiction" of the Church in temporal matters is exerted only by way of repercussion of the Church's spiritual ministry in the temporal realm. "It can be said in the same way" - explains Joseph Lecler - "that the magisterium of the Church, exerting authority over men's consciences, acts indirectly on temporalia ("indirecte possunt in temporalibus") by causing a sense of justice and of charity to permeate little by little the social life of mankind."¹³⁰

*Song.
2(20)*

In normal cases the primacy of the spiritual is revindicated by the Church with relation, only, to the so called "mixed matters".

128. So, for instance, Lecler, op. cit., pp. 78 ff.

129. In his treatise De Potestate regia et Papali, edited by Dom Jean Leclercq, "Jean de Paris et l'ecclesiologie du XIIIe. siecle", Paris, 1942.

Lecler

130. Op. cit., p. 74.

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"As regards questions which are subject to simultaneous assessment by both Cities" - writes Leo XIII - "even though under different aspects, the city which has to do with human things is dependent, as it is right and proper, on the other City which has received the custody of heavenly things".¹³¹ This dependence, however, does mean the loss of the State's autonomy and sovereignty. It means, rather, that the State's authority cannot be absolute or exercised without regard for God or the moral law. Such indirect dependence does not mean, either, that the State is relieved from all responsibility of its own, or that the State has no natural rights, with regard to such areas as education, marriage, social justice and the like. These areas are by nature the concern of the State. It is the State's natural right, and duty, to provide education for the people, to see to it that families may be established and that they be able to maintain permanent relations, that the people be set free from conditions that make hunger, misery, exploitation and suffering inevitable, that steps be taken toward the relief of those who are in need. The State's rights and duties in these matters are inherent to its very nature. But the State's authority is not the only one having jurisdiction on these matters. They belong equally to the sphere of the Church, they

131. Encyclical Arcanum, 1880.

are the object of the Church's concern. But not only this. Since such "mixed matters" have to do with men's spiritual and moral life, the State must, in dealing with them, receive and follow the teaching of the Church. Because it is the Church which has received from God revealed truth about moral and spiritual matters, the only society, therefore, which has supreme jurisdiction on these questions. The State, thus, depends on the Church for its knowledge as to how best these matters are to be resolved.

What would be the practical consequence, in terms of Church-State agreements, to be drawn from the principle of the primacy of the spiritual? We have already seen, in our exegesis of the Colombian Concordat, how the "traditional" position answers this question. In our next chapter we will see how the new trends in Roman Catholicism handle the same problem.

2.3 The exceptional situation of the Middle Ages:

From a "modern" Roman Catholic perspective the relations which prevailed during the Middle Ages between the Church and the secular powers appear as completely exceptional. Such relations exhibit, in fact, characteristics which make them not only different but even in full contrast both with the preceding centuries - during the Old Roman Empire - and with the modern era, the era of the national States.

Such a contrast is readily seen by a mere glance at the following texts which are typical of their own ages. The first one by Pope St. Gelasius, at the end of the vth century. The second one by Pope Gregory VII, in the xith century. The last one by Leo XIII, in the nineteenth century.

St. Gelasius wrote to Emperor Anastasius:¹³²

" Christ has divided the functions of the two powers, assigning to each one its proper task and dignity. The spiritual power keeps itself detached from the snares of this world and, fighting for God, does not become entangled in secular affairs, while the secular power, for its part, refrains from exercising any authority over divine affairs".

Gregory VII, addressing to the Roman Synod, on the occasion of his second excommunication, and deposition, of Emperor Henry IV, said:¹³³ (to the bishops)

"Make certain now, I pray you, most holy Fathers and Lords, that the entire world understand and know that, if you can bind and loose in Heaven, you can here on earth remove from, and give to, each one according to his merits, empires, kingdoms, principalities, duchies, marquisates, counties, and all the possessions of men. Often you have deprived perverse and unworthy men of patriarchates, primacies, archbishoprics, bishoprics, to give them to truly religious me. If you are then able to form judgments on spiritual things, what power must you not have over the things of this world?"

132. De Anathemis Vinculo, 4. Migne, Pat. Lat. LIX, 108-9.

133. Gregory VII, Registrum, VII, 14, a; ed. Caspar, Berlin, 1930, p. 487.

Leo XIII writes in his famous Encyclical Immortale Dei (1885):¹³⁴

"The Almighty has given the government of the human race to two powers, the ecclesiastical and the civil Each power in its order is supreme - utraque potestas est in genere suo maxima -".

We cannot fail to see that the first and third quotations are at one in recognizing the legitimate existence and rights of two separate societies which have their origin in the will of God. The second statement, on the contrary, reveals a situation in which authority is seen centralized in the ecclesiastical power. The Pope and the bishops have received, according to the Gregorian statement, included in the power of the Keys, supreme authority over both the spiritual and the secular orders. In this way, as the Middle Ages' Catholic scholar H.X. Arquilliere has said,¹³⁵ "The State's natural authority, which proceeds the Church, founded on the primitive requirements of human nature, independent and sovereign in its own domain, is completely ignored, absorbed within the ecclesiastical authority".

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How has this happened? How has such a synthesis been realized? The answer provided by history is, for modern

134. Paulist Press edition, New York, p. 7.
135. L'Augustinisme Politique, Essai sur la formation des Theories politiques du Moyen-Age, Paris, Librairie Philosophique J. Vrin, 1955, p. 23.

Catholic scholars, fully satisfactory. Pope Gelasius, in the fifth century, found himself in the face of an age-old, powerful empire, fully conscious of itself and its rights, firmly rooted in the Roman juridical tradition. The Pope therefore in his affirmation of spiritual rights of the Church, stops before the existing secular authority, acknowledging its legitimacy and rights.

The definitive collapse of the Roman Empire, however, and the advent of the barbarian tribes (monarchies), inaugurate an entirely new situation in the midst of which the Church stands as the only organized power having some notion of the res publica, that is, some political knowledge. The barbarian kings, illiterate, in want of all other knowledge different from the use of force, have to rely completely on the Church for their instruction, not only religious but also intellectual and political. It is not difficult to see how the Church becomes, in a very real sense, the "soul" of the State. As a result of this teacher-pupil, and paternal, relation the European society - fully penetrated by religion and the Church - begins to be considered as a "unity", within which the "two powers" loose their demarcations, and ^{become} ~~are~~ integrated into one single "Christendom".

The process which led towards such an "integration" of society - and which would culminate with the Pontificates of

Gregory VII and his successors - was characterized by two interesting developments in the conception of the origin, nature and purpose of the secular powers. Firstly, it took place what a Catholic scholar calls "a progressive 'erasure' of the State's natural authority"¹³⁶ and of its independent, natural, origin. Secondly, the incorporation of the State within the ecclesiastical society.

Gregory VII, in fact, - having forgotten as everybody else in his time - the existence of a legitimate, separate, human authority, whose ultimate fountain is found in God Himself (Rom. 13:1 ff.), traces the origin of the temporal power back to the devil! "Who does not know", writes the Pope to Bishop Hermann of Metz, "that kings and temporal princes had as their ancestors men who, ignoring God, endeavoured with blind passion and intolerable presumption to domineer over their equals, that is, other men, by means of pride, rapine, treachery, murder, in fact, by an infinity of criminal acts, very probably instigated by the prince of this world, the Devil?"¹³⁷

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Against the background of this conception all lawful

136. "L'effacement progressif du droit naturel de l'Etat", Arquilliere, ibid., pp. 37-38.

137. Register, VII-VIII, 21; Caspar's edition, Berlin, 1923.

authority is seen concentrated in the religious society, that is, in its Head, the Pope, without whose institution and delegation no other society can lawfully wield any authority. This development reached its climax during the Pontificate of Boniface VIII. By this time Giacomo de Viterbo gave articulate formulation to this official theory in the following terms:¹³⁸

The quality of inferior things is contained in superior things, effects are present in their causes. In conformity with these principles, the temporal power, which is related to the spiritual power as the inferior quality to the superior and as the effect to its cause, is comprised in the spiritual power. This is why it is taught that the rights of heavenly and earthly rule have alike been bestowed on Peter by Christ. Peter, and after him any of his successors, in whom reside the plenitude of the spiritual power, possesses for this very reason the temporal power also"

Pope Innocent IV is even more explicit. For him the theory which would concentrate all authority in the Head of the ecclesiastical organization has its basis in the Christological doctrine of the Church. Being Christ "True King and true Priest after the order of Melchisedech" he has bequeathed to the Popes "not only the Pontifical, but also the Royal Monarchy, not only the Heavenly Empire, but also the earthly one".

138. De regimine Christiane, II, 7; edited by H.X. Arquilliere, as Le plus ancien traite de l'Eglise, Paris, 1926, pp. 236-7.

Consequently, "the secular powers, when they exercise their authority, they are simply using a force which has been transmitted to them by the Church".¹³⁹

Within this context, what is the purpose of the secular power? The answer given by Mediaeval theologians is a quite logical one. The temporal power, not having any independent right of its own, does not have, either, any independent purpose or goal. It has, rather, a function, a ministerium to fulfill within the Church. The purpose of the secular power is to be "the secular arm" of the Church. This theory received classical formulation by Isidoro de Sevilla:

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139. Encyclical Ager dei levias, (1245) in Winkelmann, Acta imperii inedita, Innsbruck, 1885, v. II, p. 698, cited by Aquillière, op. cit., pp. 34-35. The same thesis is also sustained in the famous Bull Unam Sanctam, issued by Boniface VIII (1294-1303) during his famous quarrel with Philip the Fair:

"We are instructed by the words of the Gospel", says the Pope, "that two swords are in the power of Peter, the spiritual and the temporal. In fact, when the Apostles said: 'there are two swords here', i.e., in the Church, the Lord did not reply: 'that is too much', but 'that is enough'. Certainly, he who denies that the temporal sword is in Peter's power, forgets the Lord's words: 'put back thy sword in its sheath'. Both swords are thus in the power of the Church, the material and the spiritual, but the former is wielded on behalf of the Church, the latter by the Church; the latter by the hand of the priest, the former by the hand of the king or knight, on the word, and with the consent, of the priest. It is in fact needful that one sword should be below the other and that the temporal authority should be subject to the spiritual power". Cf. Joseph Lecler, "L'Argument des Deux Glaives", in the Recherches de Science Religieuse, 1931, pp. 299-339; 1932, pp. 151-177.

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The secular princes attain sometimes the highest power in the Church in order to protect, with their might, the ecclesiastical discipline. Otherwise, this power would not be necessary were it not to impose, by the terror of discipline, that which the priests are incapable to do by preaching Let the secular princes know that God will demand from them account of the Church that He has put under their protection".¹⁴⁰

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If we spell out what it is said, or implied, here we find that, 1) the State's natural right is obscured and tends to disappear; 2) the "religious function" of the State appears as its only reason to exist; 3) Such existence is only justified by the fact that the force of its sword must complement the action of the Church and the preaching of the priest; and 4) that the basis of the secular power is to be found, not in the natural order, but in the ecclesiastical authority. "Its end continues to be, in fact, the common good of its subjects, but the common good as it is understood by the Church and preached by the priest to the faithful".¹⁴¹

The logical consequence of all these developments was the appearance of a g^odiiose doctrine which has been called "the Mediaeval pontifical theocracy", according to which "The world

140. Isidori, III, 51, in Patrologia Latina, b. LXXXIII, col. 723-724.

141. Arquilliere, op. cit., p. 42.

is governed by God through His Supreme Vicar, the Pope. Other powers are not legitimate unless they receive their institution from this supreme authority".¹⁴²

This whole conception and practice, although it is sometimes talked of, in modern times, with certain nostalgia,¹⁴³ has been, in general abandoned as the product of certain specific historical circumstances which have passed away for ever. This is, particularly, the position assumed by some new trends in Catholic thought as we shall see later.

142. Arquilliere, Augustinisme Politique, p. 36.

143. "There was once a time when States were governed by the principles of the Gospel teaching. Then it was that the power and divine virtue of Christian wisdom had diffused itself throughout the laws, institutions, and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by the favor of princes and the legitimate protection of magistrates; and Church and State were happily united in concord and friendly interchange of good offices." (Pope Leo XIII, Encyclical Inmortale Dei, cited in Catholic Principles in Politics, Ryan and Boland, pp. 293 ff.).

Chapter III: Modern Catholic Tendencies on Church-State Relations.

In interpreting the Catholic principles on Church-State relations, and in drawing from them the proper practical conclusions, modern Catholic scholars lay the strongest possible emphasis in the following realizations. First, the new form which the whole Church-State problematic assumes in contemporary society and which calls for corresponding developments in Catholic principles. Second, on the paramount significance of human personality and personal conscience. Third, on the central place which must be accorded to full religious liberty - only to be limited by the natural laws of morality and by the exigences of the common good - in the context of the doctrine of Church-State relations and of the whole spiritual life and mission of the Church.

In the first part of the present chapter, therefore, we proceed to consider these three major emphases, leaving for the second part the question as to how modern Catholic scholars understand the principles about Church-State relations.

3.1 Modern Catholic emphases:

- 3.1.1 *modern Problematic* 1. Firstly, great emphasis is laid in the new form which the Church-State question assumes in contemporary society and

the consequences of this for Catholic doctrine. The Medieval synthesis or concentration of all power, spiritual and temporal, in the ecclesiastical society was challenged by the rise of a new political fact which finally led to the disintegration of the synthesis produced by the Middle Ages. The new political fact was the assertion of the independence of the temporal kingdom and of the kingly rule. The Medieval conflict between sacerdotium and imperium reached its climax, as we have said, in the famous quarrel between Boniface VIII and Philip the Fair, of France. Boniface took the stand on libertas ecclesiastica¹⁴⁴ and Philip on libertas regalis. The reconciliation between the two positions proved impossible because of the intransigence of both canonists and lawyers.

Modern Catholic scholars find an analogy between this conflict and the one ^{that is} characteristic of contemporary society. "The basis of the analogy", says Father John Courtney Murray, S.J., "is that now, as then, a political development has created a situation of social fact and of political right which must be reckoned with the modern development is the rise of democracy,

144. The immunity of the Church in its inner life and organization, and its right to preach its doctrine and to proclaim its laws so as to obtain effective obedience of its subjects.

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a political development of first magnitude, the greatest since the rise of the nation-state, and greater than it".¹⁴⁵ Referring to this momentous new fact Pope Pius XII said: "in our times, in which the activity of the state is so vast and decisive, the democratic form of government appears to many as a postulate of nature imposed by reason itself".¹⁴⁶

At the heart of this new development of modern political society there stands - solidly established on juridical and even on theological foundations - the human person, the "citizen", fully armed with the concept of libertas civilis, that is, with a set of "civic liberties" that is today the recognized and indispensable means for the citizen to vindicate his rights and to take, responsibly, his share in the direction of the political process, in the democratic institutions. It is this set of libertas civilis which make possible for the citizens, in the words of Pius XII, "to express their own opinion on the duties and sacrifices that are imposed on them" and "not to be constrained to obey without having been heard". Only these civic liberties are able "to put the citizen in a continually better position to have a personal opinion and to enforce it in a manner that

145. Art. "Contemporary Orientations of Catholic Thought on Church and State in the Light of History", in Theological Studies, Vol. X, Nr. 2, p. 181.

146. "Christmas Radio Message", 1944, in Four Great Encyclicals of Pope Pius XII, Paulist Press, p. 197.

will contribute to the common good".¹⁴⁷ In a democratic society the due protection of these liberties is, in fact, part of the common good. They - freedom of opinion, of association, of speech, of press, of religion - are an integral part of the very definition of a democratic state. They form a coherent whole. They^{are} all - including "freedom of religious association and a constitutional right to the free expression of religious opinion"¹⁴⁸ - ~~are~~ contained in the concept of libertas civilis.

Now, it is in this concept of libertas civilis where some modern Catholic scholars find the contemporary counterpart to the concept of libertas regalis wielded by Philip the Fair, in the twilight of the Middle Ages, as opposed to the concept of libertas ecclesiastica, of Boniface VIII. Here, hence, lies the problem and challenge presented both to the Church and to the State in the formulation of a theory about their mutual relations. "It will not be solved save by a doctrinal effort, such as Boniface VIII failed to make, the effort to construct a doctrinal synthesis of Church-State relations which will be at once true to permanently valid traditional principle

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147. Ibid., pp. 196, 197.

148. J.C. Murray, op. cit., p. 182. To exclude this freedom, says Father Murray, ".... is not just, for it inevitably implies some violation of that political equality which all the citizens of a State may justly claim as a basic civic right". (Idem.)

and also universally valid within the horizons of today's factual and legitimate political development".¹⁴⁹ But of the greatest importance for the solution of the problem is the capacity to see clearly which are the exact terms in which the problem is posited today. It is no longer posed in terms of sacerdotium and imperium, nor in terms of sacerdotium and regnum, but in terms of sacerdotium and civis, the civic person, who as free citizen is the responsible agent in democratic institutions. He is "the man" whom, as Pius XII says, "the absolute order itself of beings and purposes shows as an independent person, namely, the subject of inviolable duties and rights, who is the source and end of his own social life...."¹⁵⁰

"The problem in its new phase", says Father Murray, "is governed by a new dyarchy, Church and Christian citizen, which has behind it all the warrant in theological and political principle, and in papal approval, necessary to legitimate the erection on it of a genuine Catholic thesis".¹⁵¹

What theologians like Murray and Sturzo¹⁵² are saying at this regard is that the Church is today at the point where

149. Murray, Ibid., p. 184.

150. Christmas Message, op. cit., p. 199.

151. Op. cit., p. 231.

152. Don Luigi Sturzo, Church and State, London, 1939, pp. 399 ff., 429, 527.

its doctrine and principles demand a corresponding development to that which has already taken place in the secular side. The bases for such development were laid by Leo XIII - who although still bound to the special situation created by the nineteenth-century doctrinaires of the secular state - was able to see the new demands of contemporary society. These, however, have been more clearly realized by the Popes of the present century. With relation to the Church's contribution to the development of the equality of man, and to the surmounting of national divisions, for instance, Pius XII said that the Church makes this contribution

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.... by penetrating into the deepest intimacies of the human being and by placing it at the center of the whole social order. Now this human being is not the abstract man, nor man considered only in the order of pure nature, but the complete man as he is in the eyes of God, his Creator and Redeemer - man in his concrete and historical reality, which can never be lost sight of without compromising the normal order of human living together. The Church knows this and acts accordingly. It may be that in certain places and at certain times one or other culture (civilta), one or other ethnic group or social class have more than others made their influence felt upon the Church; Nevertheless this does not mean that she is enfeoffed to any of them, or that she becomes, as it were, petrified in a given moment of history and closes herself to all further progress. On the contrary, bent as she is in constant attention over man, listening to all the beatings of his heart, she knows all its riches, and is aware of all its aspirations with that clarity and keenness of intuition which can come only from the doctrine

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of Christ and from the supernatural warmth of a divine charity. So in her progress the Church follows without pause or stoppage the providential path of history and circumstances. This is the profound meaning of her vital law of continual adaptation, which some, because they cannot rise to the height of this magnificent conception, have interpreted and presented as 'opportunism'. 153

In this remarkable paragraph the Pope sees man at the center of the "whole social order"; man and society as subject to the law of history; and the Church itself "following the providential path of history and circumstances" in obedience to "her vital law of continual adaptation". Modern Catholic theologians find this vital need for adaptation - not to surface movements, or currents of error, but to profound exigences of history - supremely relevant to the Church's doctrine on relations of Church and State. 154

3.1.2 *Centrality of Personal Conscience*

2. One further tenet, the one - perhaps - of greater spiritual significance, which occupies prominent place in modern Catholic trends, is the paramount importance which they accord to human personality and the deep concern which they manifest for the integrity of personal conscience.

This development has its roots in deep theological

153. Allocation to the New Cardinals, Feb. 21, 1946, Atti e discorsi di Pio XII, 8, 122.

154. Murray, op. cit., p. 213.

reflections, as we shall see later, but also in a fresh look at the history of the Church from the perspective provided by recent political experiences. As a result, hence, of both theological investigation and historical analysis an important realization is becoming clearer and potent, namely, that the person is the existencial point at which the introjection of transcendent and immanent takes place, in the person of Christ and in the person of every Christian. Consequently, "the person stands revealed as the basis of the entire social structure".¹⁵⁵

It has become clearer that the first and most far-reaching contribution made by Christ, and the Christian movement, to the ancient world was the liberation of the individual conscience from being inevitably bound to social institutions. "Human personality cramped by group-religions had become the slave of the laws of the collectivity", says Sturzo, "It was necessary to break the bonds of family, caste, clan, people, race, city, empire, in order to worship God in spirit and in truth".¹⁵⁶ However, what has contributed most decisively to the realization of the centrality of the human person in the whole social order and the supreme duty of social institutions to respect the integrity of personal conscience, have been the

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155. A. Robert Caponigri, in the Introduction to Sturzo's Church and State, p. xiii. [University of Notre Dame Press, 1962.]

156. Don Luigi Sturzo, Church and State, University of Notre Dame Press, 1962, p. 23.

recent painful experiences of world history. These have made plain the disastrous, spiritually-crippling results of totalitarian systems, and the importance for the Church to take a firm stand against them in favor of the individual.

One expression of this concern is the greater sensitiveness which can be observed with regard to the natural rights of personal conscience. These rights - immunity from force or pressure of any sort, the right of personal autonomy, domestic autonomy, free association, the right to propagate belief in God, etc. - are being firmly asserted as inviolable against the State or against any other social institution. Such rights are affirmed as natural rights,¹⁵⁷ that is, as having its source in a level deeper than that on which the State can lay its hand on, in the constitution itself of the world and of human nature, in the intention of God. They are part of Lex naturae. Civil law is, therefore, ^{obliged} in the obligation to recognize them and guarantee them to all citizens.

Not only the State and all other human institutions, but also the supernatural society, the Church, by the very character of its action, is bound to show the greatest possible respect for human conscience. The Church's respect for the rights of

157. J.C. Murray, "Freedom of Religion", in Theological Studies, Vol. VI, pp. 273 ff.

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conscience is by no means incompatible with its resolute as-
 sertation of its divine established authority. On the contrary,
 as the German Catholic theologian, Karl Adam, affirms, "the
 Law of the Church is intended to operate no otherwise than in
and through conscience, and from conscience it gets its pene-
 trating force and comprehensive influence".¹⁵⁸ This affirmation
 has its important implications for the attitude of the Church
 towards the acute problem of religious liberty, as we shall
 see later, because according to the same theologians, "even
 in the case of so vital a matter as belief in Christ, a man
 would act wrongly who should profess this faith against the
 judgment of his (erroneous) conscience".¹⁵⁹

This same emphasis, which modern Catholic theologians
 put on the centrality of human personality and the inviolability
 of personal conscience, shows itself in another aspect more di-
 rectly connected with the problem of Church-State relations.
 That is, the question of the integrity of human personality
 as the final end which must condition the action both of the
 State and of the Church. Because, it is the human person
 which - as Christian and citizen - has solemn duties to the

158. The Spirit of Catholicism, Image Book, New York, 1954,
 p. 210.

159. Ibid., p. 207.

State and to God. Herein, say Catholic theologians, lie^s the basis for the demand that the State, in the exercise of its authority, conform itself to moral law instead of being against it. "The reason is", says Father Murray, "that only thus can the conscience of the citizen be at peace, rejoicing in an inner harmony between the obligation it owes to God and the obligations it owes to the State. When public authority is in conflict with the authority of God the conscience of the citizen is, interiorly, divided. And this is a supremely flagrant violation of the primal right of conscience to its own integrity and peace".¹⁶⁰

The Church is also bound to the same concern for the integrity of personal conscience. Because, it is, in fact, a juridical society which exists, iure divino, however, it does not exist to preserve itself, as juridical society, to save itself, as it were, but men. "The whole of the 'institutional' action of the Church, whether in her mission to souls or in her mission to the temporal order, has no other ultimate focus than the protection, support, and perfecting of the freedom of man to reach his eternal destiny".¹⁶¹

160. Ibid., p. 267 ff.

161. Ibid., p. 237.

As seen from the standpoint of modern Catholic theologians the problem of Church and State, therefore, has at its centre the human person in whose inner conscience the two powers must find harmony lest any juridico-political agreement between the two societies, reached on the institutional level, be found guilty of irrelevant superficiality.

3.1.3 *Religious Liberty*

*. In the third place, modern Catholic tendencies lay a strong emphasis on the belief that nothing less than full religious liberty - limited only by natural laws of morality and by the exigencies of the common good - can claim to be in consonance with Catholic principles on Church-State relations and with Christian doctrine in general. Given the two previous emphases, on the one side, on the realization that the Church-State problematic is, fundamentally, the problem of establishing harmonious relations between the dyarchy Church and Christian citizen, and on the other, the conviction that the integrity of human personality must be the paramount concern of both Church and State, given these two basic beliefs, the third one about religious liberty stands as a natural and logical corollary.

The ever growing number of outstanding Catholic theologians

who maintain this position¹⁶² adduce three set of arguments to establish their claim which they consider to be required by the spiritual exigences of the Gospel and by the best and true tradition of the Church.

3.1.3.1 *Basis on Natural Law*

* Firstly, religious liberty is advocated as a right which has its basis in [the law of nature and which, therefore, has to be recognized and guaranteed by the constitutions of the State as an inalienable human right.¹⁶³ *Say* This is a stand taken on the level of mere philosophical and ethical reasoning and rightly so since "the Church's theory of religious liberty rests initially and fundamentally on a philosophical explanation of the structure of the human conscience and of the State, for whose validity reason itself stands sufficient guarantee".¹⁶⁴ This structure of the human conscience, and of the State, demands that the latter establish by law, and fully guarantee in practice, the natural rights of the former among which stands, prominently, the right and duty to worship God free from force or pressure of any sort. The protection of this fundamental right must take precedence *over* to any other

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162. Cf. Carrillo de Albornoz, Roman Catholicism and Religious Liberty, WCC., Geneva, 1959.

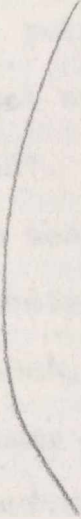
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163. So, for instance, J.C. Murray, "Religious Freedom", in Theological Studies, vol. 6, pp. 85-113; "Freedom of Religion. I - The Ethical Problem", idem., pp. 229-286; Jacques Maritain, Les droits de l'homme et la loi naturelle, New York, Editions de la Maison Francaise, 1942.

164. Murray, ibid., p. 234.

consideration, even to the interests of the community and of social institutions which could be in opposition to the laws of nature. Because,

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"on the level of its relationship to the Absolute", says Maritain,¹⁶⁵ "the human person, being destined by its Creator to a life beyond temporal confines and endowed with the loftiest aspirations of the personality as such, is beyond all temporal communities and superior to them; viewed in this way, with regard that is, to those things concerned with the Absolute in Man, Society itself and its common good are subordinated to the spiritual perfection and eternal aspirations of man, as being a purpose of another order which transcends them. A single human soul is worth more than the whole material universe. Nothing is superior to the human soul, except God. That is why in the sphere of the everlasting worth and absolute dignity of the soul, as it has been created, society exists for and is subordinate to man".

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Having said this, modern Catholic writers take care in pointing out that "the right and duty to worship God according to conscience" is not identical to the claimed right to propagate publicly religious beliefs. Religious liberty, in as much as it has to express itself publicly, by association, speech, press, etc., must, like any other social activity, be subject to the criterion of the common good. In this external aspect, it is argued, religious liberty is no longer a natural right but a civil right to be granted - and demanded - on the basis

165. Op. cit., pp. 26-27.

of the common good.

In saying this, however, Catholic scholars are not granting latitude to totalitarian systems that would be ready to curtail all public freedoms with the excuse of preserving certain cultural or ethnical values that they associate with the "common good". Rather, as we have said before, modern trends in Catholicism tend to ^{absorb?} absorb the fact that in the context of the modern organization of society such freedoms as liberty of association, speech, press, and the use of these for religious purposes, have become a part of the common good. Without them the citizen is deprived of his means to assert the rights of his conscience and to fulfill the duties that are demanded from him by democratic institutions.

All this, however, is said from the standpoint of the law of nature and of reason. That is, on the mere ethical level. Because the question of religious liberty has another dimension which springs from the fact of Revelation. Christ has come, the law of the Gospel has been proclaimed and the Church has been established. In other words, a supernatural order of salvation has been instituted by God, by His own intervention in the world; and this fact has momentous consequences for man and society. Because in the economy of Revelation human reason is not the only guide for human life; personal conscience is not

the only voice of God; and the State is not the only institution with social authority over man. "Consequently", says Father Murray, "the essential part of the problem of religious liberty consists in harmonizing the solution reached on the ethical plane in terms of reason and natural law, with the solution reached in the theological plane in terms of the Church and the law of the Gospel".¹⁶⁶ Nevertheless, the same Catholic theologian insists in his belief that "the process of harmonizing these two solutions into an organic synthesis is not, and cannot, be accomplished at the cost of destroying one of them...". This means, "he concludes, "that the rights of conscience as determined by natural law remain in their full validity under the Christian law".¹⁶⁷

3.1.3.2 *Basis on Historical and Political Experience*

2. Secondly, religious liberty is advocated by modern Catholic scholars on the basis of the recent experience of the Church vis-à-vis various forms of totalitarianism. According to Jacques Leclercq¹⁶⁸ the period which followed the Reformation saw the rise of the "Catholic states" in which it was considered as the "Catholic ideal" or as the "Catholic thesis" a situation in which Catholic religion was accorded the status of "religion

166. Art. "Freedom of Religion", op. cit., p. 278.

167. Idem.

168. "Etat chretien et liberte de l'Eglise", in Vie Intellectuelle, Fevrier, 1949, pp. 99-111.

of the state" whereas all other religious groups were simply tolerated and this under legal restrictions. The idea behind this concept was that "error has not the same rights as truth" and that to grant rights to error is to attempt against the common good. Thereafter, followed a period of preoccupation about situations in which this "thesis" couldn't be applied, a concern which issued into the theory of a Catholic "hypothesis". In consequence, says Canon Leclercq, "there has developed a certain pragmatism or even utilitarianism, which seeks the good of the Church in concrete circumstances, without being greatly embarrassed about theories".¹⁶⁹ Modern Catholic scholars point out that this period has come to an end. A contributing factor has been the rise of secular counterparts ("contrefaçons") of the nineteenth-century Catholic "thesis" which have displayed the greatest possible intolerance and persecution against all people who represent a menace to their dogmatic concepts of "common good" and "national unity". So, for instance, Nazism and Communism. But also, according to Canon Leclercq, régimes like the one represented by Franco in Spain.¹⁷⁰

169. Ibid., p. 99.

170. An attitude like that assumed by Spanish Catholics who have reaffirmed, under Franco, the old Catholic "thesis" tantamounts, according to Leclercq, "to a sort of agreement in principle with the communists" (Ibid., p. 101). According to the same theologian, the situation reached the climax of confusion "by the disconcerting spectacle

As a consequence of all this the Church has learned a "new principle", which Leclercq believes to find in Leo XIII's Encyclical Libertas, that the liberty of the Church requires its independence, or dissociation, from all political forms.¹⁷¹ That is, its refusal to accept any special political favours from any state, since "hardly a case is known of a state officially Catholic or even simple benevolent towards the Church, which has not made the Church pay for its benevolence by demanding in return an unconditioned support".¹⁷²

From the standpoint of these recent experiences modern Catholic scholars look back, once again, to the history of the Church and make some ^{statements} constatiens which are not altogether in line with the traditional concept of libertas ecclesiastica. In the early Church, says Don Luigi Sturzo, "... freedom was above all a personal achievement, a positive uplifting of the spirit, a complete penetration by the new life of the Gospel, a participation in the divine In the early Christian movement, freedom does not affirm itself as the collective

170 (continued). of Hitler's Germany persecuting religion within its own borders and lending its assistance to the Franco movement which presents itself as a crusade directed at the restoration of Christian principles"! (Ibid., p. 101.)

171. Ibid., p. 102.

172. Ibid., p. 103.

achievement of the Church as a body, but rather as the achievement of the Christian as an individual. It is founded on the vindication of his right to his religion as the light of truth for the regeneration of his soul, reborn with baptism, placed by grace in communication with God, rising again with Christ, living its own life".¹⁷³

The same Catholic writer calls attention to the change which took place in the fourth century. Constantine inaugurates an age in which religious freedom assumes a new aspect, no longer solely individual but social, no longer private but political. This new age is characterized by a process of integration of society into one social unity, similar to the one which had prevailed before Christ - a unification which was to be sought either by the domination or absorption of the spiritual within the temporal (East), or by the domination and integration of the temporal within the spiritual (West). "In this process of integration", says Sturzo, "the idea of toleration and of religious liberty is lost. Instead there was an effort to attain the politico-religious unity of the Empire through the disciplinary religious unity of the Church".¹⁷⁴

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173. Op. cit., p. 28.

174. Op. cit., p. 35.

These are important considerations and they stand behind modern Catholic scholars in their claim that religious liberty is, in fact, the Catholic "thesis" in the matter of Church-State relations. This position gains support also from other Catholic writers who show special concern with the problem of constraint in matters of religion.¹⁷⁵ ^{Sang} The ground for such concern is that, in the words of an outstanding Catholic layman, Kühnelt-Leddihn, "Peter's swordstroke (which cut off the ear of Malchus) remains a permanent temptation for the Church".¹⁷⁶ And this is specially scandalous in a time in which, according to another Catholic scholar, "the whole of civilized mankind is on principle renouncing coercion in spritual, and specially in religious matters, and is tending to class the use of force in this respect with that barbarianism against which the people of the western culture are uniting their resources".¹⁷⁷ This being so, the definitive renunciation to its "right of coercion", to the use of "the secular arm" for the repression of heresy, and to all inquisitorial methods of protecting the purity of the faith, "can bring only blessings on the Church".¹⁷⁸

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175. So, for instance, in Erik von Kühnelt-Leddihn, "Katholische Toleranz?", in Wort und Wahrheit, IV, 1949, pp. 342-53; Max Pribilla, S.J., "dogmatische Intoleranz und bürgerliche Toleranz", in Stimmen der Zeit, CXLIV, April, 1949, pp. 27-40.

176. Op. cit., p. 348.

177. Pribilla, op. cit., p. 35.

178. Idem., p. 37.

3.1.3.3 Theological Bases

3. In the third place, religious liberty is affirmed by modern Catholic theologians on permanently - valid theological grounds connected with the nature of the act of faith.

In fact, the "act of faith", in Catholic theology, although prompted by sufficient and conclusive evidence and demanded by divine authority, is, nevertheless, a free act. "It is a supreme act of self-expression and self-realization which with perfect freedom attains and clings to truth itself".¹⁷⁹ In this sense, "faith is a deliberate human act of choosing to honor God".¹⁸⁰ The very core, and wonder, of the Gospel resides precisely in the fact that God, who could compel men to faith chooses rather to invite them, and leaves them free to respond. The fact that God has so acted is the clearest possible indication of the reality that man is endowed with the power to say "yes" or "no" to God, a fact which is sufficiently attested by the Gospel's records.¹⁸¹

Certainly, man cannot believe in Christ without the help of God, without the gift of grace, "but the gift bestowed

179. George C. Ring, S.J., "Motive and Freedom in the Act of Faith", in Theological Studies, vol. 6, 1945, p. 162.

180. Idem.

181. Cf., for instance, John 3:19-21, quoted by Yves Congar, O.P., "Le Christianisme, doctrine de liberte", in L'Eglise et la liberte, Paris, Flore, 1953, p. 20.

upon him", says Father Congar, O.P., "is that of freedom to fulfill himself. We can lend ourselves to God but we can also refuse ourselves. Of course, this does not mean that God has not the power to make us submit to His Will. But He prefers our liberty to the affirmation of His own sovereignty".¹⁸²

The act of faith, moreover, that leads to total surrender to God, is conceived and born in love. God loves man and expects love in return. Consequently, says Yves de Montcheuil, S.J., "that which does not spring from love has not for him (i.e., for the true Christian) any value, because God does not find there what He demands". Hence, "the very idea of a religious action which could include force appears absurd to him (i.e., to the true Christian), he refuses all forms of coercion, however subtly disguised".¹⁸³ The act of faith, then, by its very nature, is a free act.

Starting from this analysis of the act of faith modern Catholic theologians lay a strong emphasis on the freedom of personal faith and on its politico-moral corollary - "the rights of sincerity" or, "the rights of men of good faith or good will".¹⁸⁴ That is, that within the limits of public

182. Ibid., p. 23.

183. "Integrisme et liberalisme", in L'Eglise et le monde actuel, 1945, pp. 324 ff.

184. Jacques Leclercq, op. cit., pp. 107, 108.

order every man ought to be free to orientate his life according to his conscience. Although modern Catholic scholars point out that this has been in the Catholic Church the traditional counterbalance of the principle of the "rights of truth", it is evident that in modern times there have taken place, in this connection, certain developments. Canon Leclercq, in fact, recognizes that an important shift in viewpoint has taken place. The more metaphysical and social viewpoint, characteristic of the Middle Ages - and maintained beyond them - tended to regard every deviation from prevailing belief as evidence of bad faith, and for that reason, punishable. "In our days more and more account is taken of the fact that the knowledge of truth requires an ensemble of delicate social and psychological conditions; however convinced one may be of the truth of a doctrine, one understands that others may not perceive it".¹⁸⁵

Socially, the traditional desire of the Church has been for conditions within the State and society which are "favorable to the truth". According to Leclercq,¹⁸⁶ it was considered that conditions favorable to the truth were established by guaranteeing ^{to} those who possess the truth the exclusive right

185. Op. cit., p. 108; cf. also R. Aubert, Le Probleme de l'acte de foi, Louvain, 1945, pp. 347 ff.

186. Op. cit., p. 108.

to propagate their beliefs. There was no concern about the danger that adhesion to the truth might become a constrained or mechanical act. Today, however, the concern for sincerity, for the integrity of the personal conscience, and, therefore, the concern for the genuineness of the act of faith, has taken the place of the preoccupation for the political and social rights of "the truth". According to this new intuition "the duty of the State to favor the truth ought to be interpreted in the sense of the formation of social conditions favorable to this end, that the citizens may find the truth."¹⁸⁷ Conversely, "a social order which humiliates certain people and makes life difficult for them, as likewise, an order that bans discussion is not favorable to the spread of the truth, whatever else it may be".¹⁸⁸

Summarizing, therefore, we may say that modern Catholic scholars find important bases for the right of religious liberty ^{on} in the philosophical, or ethical, plane, ^{on} in the practical and political level, and ^{on} in the theological level in connection with the nature of the act of faith.

3.2 Modern Interpretation of the Catholic principles:

Modern Catholic thinkers do not believe that their emphases

187. Op. cit., p. 110.

188. Idem.

are in any way incompatible with the essential Catholic principles on Church-State relations. On the contrary, they assert that their position is the only one which takes seriously both the permanent Catholic principles and the modern developments in the rational political order.

It seems to us, in fact, that their interpretation springs from a greater willingness to obey the Church's "vital law of continual adaptation". This, however, in itself, would not be the most important thing. What is really a challenge to the Church in general is the fact that modern Catholic tendencies recommend themselves as being closer to the spirit of the Gospel and truer to the nature of the Church and to her divine-given mission. This we cannot fail to see in the following interpretation given in the form of conclusions drawn from the classic Catholic principles.

3.2.1 *Independence and Autonomy*

In the first place, from the principle that both the Church and the State are distinct, independent, autonomous societies, it follows that each one has its own responsibilities and rights, independently of the other authority, so that each one is forbidden to intervene in the orbit which by nature, or by divine institution, is under the jurisdiction of the other. This means, in the words of Joseph Lécler, S.J., that "the two sovereignties must mutually recognize

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their relative character". The same theologian proceeds to give the reason for his affirmation: "When, during the Mediaeval period, under the pretext of ensuring Christian unity, certain theologians tended to make of the civil power a simple delegation of the spiritual power, they were laying the foundations of a clerical absolutism which no state worthy of the name could accept. Again, when in the modern period certain doctrinaires in political science refuse to allow that the secular sovereignty is subject to any control, any limit, even to any moral law, they are preparing the way, whether they know it nor not, for religious war and persecution".¹⁸⁹

The principle which is at the stake, therefore, is that of the freedom of the Church in the pursuance of her mission, which by its very nature is a spiritual mission. And this freedom is only preserved when the two powers recognize that, in the words of Leo XIII, "each one of them is supreme in its own field, enclosed within the limits perfectly determined and traced out in conformity with its nature and end, and each one, thus, has a sphere in which its own rights and proper activity find exercise".¹⁹⁰

189. Op. cit., p. 23.

190. Immortale Dei, op. cit., p. 7. Modern Catholic scholars believe that this stress on the strict delimitation of orbits signifies the recovery of the ancient dualistic

This delimitation of spheres does not confine the Church to the sacristies, or to pure mystical reflections, or to mere liturgical worship. Because the realm of the spiritual embraces all that is human. Accordingly, "while we should certainly reject, as unworthy of her, that kind of intervention (in the civil sphere) that puts her more or less on the same footing as the powers of this world, there can be no question of limiting her competence to certain spheres of activity which are materially determined. Her power is spiritual in its object, as in its nature and its end; but it extends, none the less, to all that is human, for it extends to all that is spiritual in every human affair in which it is engaged".¹⁹¹

In the same line of thought, the acknowledgment, by the states, of the kingship of Christ - demanded by Pope Pius XI -¹⁹² means that "heads of State must admit that all their power springs from God, that is to say, from Christ, from whom all sovereignty in this world derives".¹⁹³ It also involves the

190 (continued). conception of St. Gelasius, which had faded away in the midst of the Mediaeval preoccupation for social unity. So, for instance, H. de Lubac, op. cit., pp. 139 ff.; J. Lécler, Ibid., pp. 114 ff.; John C. Murray, "Contemporary Orientations of Catholic Thought on Church and State in the light of History", op.cit., pp. 177 ff.

191. Henri de Lubac, op. cit., p. 144.

192. Encyclicals on Peace, [1922, and on the Kingship of Christ, 1925.

193. Lécler, ibid., p. 28.

duty "to respect in practice the independence of the Church, her character as a "perfect society", and her spiritual predominance".¹⁹⁴ But the acknowledgment of the Kingship of Christ does not mean "that the secular authority is suppressed or absorbed by the supernatural organization", nor that "in its relations with the spiritual power the State is merely an auxiliary charged with material tasks".¹⁹⁵ The state is not an instrument in the service of the Church, and the Church is not an instrument in the service of the state.

3.2.2. — *Difference in order, nature, and End.*
 In the second place, from the difference in order, nature and end of the two societies, it follows ^{as a} the practical consequence that different functions and means are proper to each one of them, so that those that belong to one power cannot attain, and are not proper for, the goal of the other. This is but the practical recognition that the State has no competence in religious matters, a truth constantly taught by the Church. But conversely, this also means that the Church refuses to make use of any temporal weapons, or to resort to pressure of any sort, even if the state were to offer her these possibilities, for the furtherance of her spiritual mission.

194. Idem.

195. Idem. p. 29.

"The competence of the State", wrote Pius XI,¹⁹⁶ "is clearly defined by the purposes of the State. These purposes are not confined to what is physical and material, but they are necessarily included within the limits of what is natural, earthly and temporal". For Father Hartmann, S.J.,¹⁹⁷ this means that the state should not engage either in the propagation or in the suppression of religious opinions. "With regard to the propagation of religious opinions", he says, "which do not constitute an attack upon the natural basis of morals, the state must exercise reserve, because it is not the competent authority to deal with such matters".

The above conclusions obviously mean the abandonment of the Mediaeval idea that the temporal power should be the "secular arm" of the Church, to help her by imposing her faith, punish heretics and try to preserve religious unity. Where the State engages itself in these matters, *the end is the destruction of* ends up in destroying the only conditions in which the spiritual work of the Church can be furthered. It is, says Father Murray,¹⁹⁸ "as if the

196. Non Abbiamo bisogno, AAS., 23, 1937, p. 303.

197. Toleranz und christlicher Glaube, Frankfurt am Main, Verlag Josef Knecht: 1955, pp. 246-247, quoted by Carrillo de Albornoz, op. cit., p. 42.

198. "Governmental Repression of Heresy", Reprinted from The proceedings of the Catholic Theological Society of America, Chicago, 1948, p. 53.

state somehow were to share in her (spiritual) mission, undertaking to coerce - for the State can only coerce - men unto faith and regeneration and into unity and grace". And he adds, "the protection of the religious unity of society, by suppression of error and dissent, is not among the political functions of (civil) government". The same Catholic theologian believes that "religious unity is indeed a value for society", but he goes on to say that the proper way for the state to protect it is by granting "full freedom to the Church so that she may achieve it and maintain it, because it is the Church's mission and in it the secular government has no direct share for in that case it would be acting outside the line of its own finality".

For the same reason it is a grave error, according to Father Lecler, to advocate a "Christian state", in the sense of a confessional state to which are assigned functions and duties which are proper to the Church and to the hierarchy.

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"The civil power", he says, "is not directly concerned with men's conversion, with their instruction in the saving truths, with measures to ensure that they carry out their religious duties However profoundly Christian a nation's representatives may be, it is not for them in their capacity as heads of government to go outside their secular functions".¹⁹⁹

199. Ibid., p. 27.

Therefore, the cooperation which, according to the Catholic doctrine, must prevail between the Church and the State does not imply that the state must put its power of coercion at the disposal of the Church, nor that the Church is entitled to it, or need it, but rather that the State must fulfill its own duties in such a way that the Church may be fully free to carry out her divine-given mission. Among such duties, as we have seen, that of guaranteeing full freedom of conscience and religion to its citizens occupies a prominent place.

3.3.3. *Primacy of the Spiritual*
 In the third place, within the context of what has been called "the great modern fact of the lay democratic state",²⁰⁰ whose basis in the concept of libertas civiles has come to be considered "a postulate of nature, imposed by reason itself", how is the Catholic principle of the primacy of the spiritual revindicated? This is the central problem which confronts today the Catholic theologian who tries to formulate a doctrine of Church-State relations.

In attempting to solve this problem most modern Catholic tendencies²⁰¹ follow the tradition represented by John of Paris

200. Murray, "Contemporary Orientation of Catholic Thought on Church and State", op. cit., p. 192.

201. For instance, J. Lecler, op. cit., pp. 74 ff. ; R.M. Schultes, De Ecclesia, Paris: 1931, pp. 338-339; H. de Lubac, "Le pouvoir de l'Eglise en matiere temporelle", Revue des sciences religieuses, XII, 1932, pp. 211 ff.; J.C. Murray, ibid., pp. 177 ff., et. al.

to whom we have referred before. It was he who, among the theoreticians of the latter Middle Ages "opened the path along which modern theology has sought, if not always found, the theoretical formula of the relations which unite the two powers".²⁰² The "path" opened by John of Paris led towards the realization that the power of the Church is primarily and directly a spiritual power and only indirectly a temporal one. "Indirectly", that is, in so far as the spiritual teaching of the Church is capable *of producing* to produce temporal effects. In following this path modern Catholic theologians are very much aware of the radical changes which have taken place in the secular order from the time of John of Paris to the present day. The Middle Ages' theologian asked himself, "what power does the Church possess in temporalibus and over Princes?" But this question does not make any sense today. In the place of the "Princes" stands today "the citizen", fully armed with "civic liberties". And this is a most important change.

In tackling this same problem modern Catholic scholars are also aware that within the new formulation of the problem the ideal, or goal to be sought, is not that of a social harmony between two "perfect societies", but rather, primarily and foremost, an inner harmony in the conscience of man, who is both a citizen and a Christian. The ideal is, therefore, the integrity

202. J. Riviere, Le probleme de l'Eglise et de l'Etat au temps de Philippe le Bel, Louvain:1926, p. 367.

of the Christian conscience.

Furthermore, modern Catholic theologians are aware that the supreme requirement of the primacy of the spiritual is that the "power and judgment of the Church" should extend to "whatever in human affairs is in any way sacred, whatever pertains to the salvation of souls, or the worship of God, whether a particular thing be such by nature, or understood to be such by reason of the end to which it is related".²⁰³

Now, within the context of these requirements, how does the Church vindicate the primacy of the spiritual over the temporal? How does she exercise her right to intervene in "whatever is sacred or pertains to the salvation of souls?" In other words, how does the Church achieve that her teachings and pronouncements become a decisive force in shaping human actions and institutions in the temporal order?

The answer which imposes itself point to the Christian citizen. He is the channel and agent through whom the Church extends, as it were, her arm into the temporal order. It is in the conscience of the Christian man, opened and obedient to the Church's magisterium, where the supremacy of the spiritual over the material is vindicated, and where the Christian citizen

203. Leo XIII, Immortale Dei, p. 8.

finds the source and orientation for his activities in the temporal order. "The action of the Church on him (on the Christian citizen) terminates at conscience, forming it to a sense of its Christian duties in all their range and implications for the temporal life. The Christian, then, as citizen, in the full panoply of his democratic rights, prolongs, as it were, this action of the Church into the temporal order, in all the matters in which Christian doctrine and law has implications for the life and law and government of society".²⁰⁴ This represents a real power which the Church holds, but it is a power which, in the words of Father Lecler, "only affects the State and its institutions, "indirectly", that is in virtue of the sway which she still holds over the hearts of men, and of the after-effects which spring therefrom".²⁰⁵

204. Murray, Ibid., p. 223.

205. Ibid., p. 63.

4 Conclusions: The Colombian Concordat in the Light of the "new trends" concerning Church-State Relations

We are now in a position ~~which permits us~~ to attempt a general evaluation of the Concordat with Colombia - whose exegesis we did in the ^{first} ~~second~~ chapter - from the standpoint and insights provided to us by modern trends, which are so prominent, in contemporary Roman Catholicism.

In doing so it is necessary that we try to identify ourselves, as much as possible, with the mind of modern Catholic scholars, while, at the same time, being true to the spirit and meaning of the Concordat *itself*.

1. A close look at the Colombian Concordat from the announced perspective shows that the document establishes a type of Church-State relations that takes for granted, and tends to preserve, a political organization of society that no longer exists. In its preamble, for instance, the Concordat says:

"In the name of the most Holy and undivided Trinity, His Holiness the Supreme Pontiff Leo XIII and the President of Colombia, excellency Sr. Rafael Nunez have agreed what follows"

It leaps to the eye that the Concordat's universe of discourse is not that of today's world, but that of the Middle Ages. Both powers, Church and State are talked of as different "ministries"

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within the Church (in Ecclesia). On this basis both powers can come to an agreement "in the Name of the Most Holy and undivided Trinity"! Today, the president of a democratic nation does not sign an international agreement "in the Name of the Holy Trinity" but of the people of his country. A process of secularization has taken place. The "de-Christianization" of society, in the sense of the dissolution of the social synthesis constituted by the Mediaeval Corpus Christianum, has become a fact. And this fact, although accompanied by regrettable aspects, has recovered something genuinely "Christian", since "the novelty of Christianity from the sociological standpoint, as compared with other religions, lay in breaking down all imperative relationship between religion and the family, clan, nation or empire"²⁰⁶

A further remarkable change has taken place. "No longer does the Church in the Western world confront the temporal powers in the hands of a few princes with whom an arrangement must be made in interest of the Gospel. Today, political power is widely diffused in democratic states and the citizens, secure in the institutions of popular rule, and in the theory of popular sovereignty, wield true power in the res publica".²⁰⁷

206. Don Luigi Sturzo, op. cit., p. 21.

207. J.C. Murray, "Church and State" op. cit., p. 223.

The Concordat with Colombia, however, does not take these new facts ("secularization of society", "citizens", "democratic institutions") into account. It gives the impression to ~~shun~~ ^{of shunning} them. And this impression is corroborated by its Art. 31 where it is "agreed" that future Conventions between the Holy See and the Colombian government, for the expansion of Catholic missions among indian tribes, "do not require the approval of Congress"!

2. In the second place, the Concordat with Colombia attempts to solve the problem of Church and State at the ^{political} ~~social~~ level, by achieving agreement between two institutions, without taking into account the human person, the individual, who is at the same time citizen and Christian. Because of this wrong approach it fails to tackle the real problem involved in the Church-State question as it is posed today, that is, the problem of the liberty of conscience to worship God and to hear and obey His voice, ^{as preached by the} ~~through the~~ Church's magisterium, free from external coercion or pressure of any sort.

Article 15 is a good illustration of the Concordat's approach to the question.²⁰⁸ Its purpose is "to maintain harmony (pax et concordia) between the Church and State". To

208. See text on page 152. *Apendix A*

this end, the president recognizes the rights of the Church (i.e., "the right to appoint bishops"); and for his part the Pontiff grants to the President certain privileges in Ecclesia (i.e., the faculty to recommend candidates to the episcopal dignity, to object "on grounds of civil or political character" to the designations made by the Pontiff, etc.). In this way, pax et concordia is achieved.

The problem is seen and approached in impersonal terms. The Concordat aims at establishing harmony, or at least, at avoiding conflict, between "the rights and prerogatives" and the "duties" and responsibilities of two juridical institutions, the Church and the State. Accordingly, the conflict is foreseen in terms of "Canon Law" and "Civil law", ^{between} State functionaries and "Ecclesiastical Ordinaries". The human person, civis idem et christianus, in whose inner conscience rages the conflict between the interests represented by the Church and those represented by the State, does not have a place in the Concordat. The protection of the "rights of conscience", recognized by modern Catholic theologians as being the proper goal and duty both of the State and of the Church, is not the purpose of the Concordat. Nor is its goal to guarantee to the citizen its full religious liberty so that, free from coercion or pressure of any kind, ^{he might} ~~may~~ hear and obey the voice of God through the Church.²⁰⁹ Rather, the Concordat

209. An indication of this major failure is the fact that the

has for its purpose the maintenance of the proper equilibrium necessary for the coexistence of two independent, sovereign societies. The Document, therefore, although important for the security of the religious institution - the Roman Catholic Church -, is nevertheless irrelevant to ^{The} people and to the ^{inner} conflict of their conscience.

To the situation displayed by the Concordat with Colombia the words of Don Sturzo, directed at the confessional state of the Post-Reformation period - are applicable: "In this embarrassing union of Church and State a connecting link is wanting to bind the peoples to the absolute and religious power. The Church is now no mediatrix between the people and the absolute power, nor does the State mediate between people and Church".²¹⁰ Sturzo points out that today the Church, as a whole, has surpassed this "embarrassing" stage. "It took the experience of laicism", he says, "to bring out the moral character of the relations between Church and State and to show how sociologically the

209 (continued). only individuals referred to in the Concordat, whose rights it seeks to protect, are "the clerics", clerici. To the definition and safeguard of their rights and privileges (Foro ecclesiastico) Art. 7 of the Concordat and fourteen other articles of the Additional Convention (1892), are devoted.

210. Op. cit., p. 404. *Fucini*

dyarchy Church-State has its roots set at a deeper level than that of a legal co-partnership in society".²¹¹ Father Murray S.J., makes clear which is this "deeper level". "The net result of the whole development has been", he explains, "the resolution of the ancient dyarchy into a new, concrete, operative form, on the ^{one} hand is the Church, in the fullness of her spiritual liberty; on the other is the citizen-Christian, in the fullness of his civil liberty".²¹²

It is, however, in the superficial level of a "legal co-partnership" between two institutions that the relations between Church and State are regulated in the Colombian Concordat.

3. Finally, ^{taking into account} ~~from~~ the standpoint of modern Catholic scholars, we have to conclude that the Concordat with Colombia establishes a type of Church-State relations which is contrary to essential Roman Catholic principles as these have come to be understood by the Church in modern times. The reason is that the ^{treaty} ~~agreement~~ not only favours, and even makes inevitable, the intermingling of functions, means and ends of the two societies, the civil and the ecclesiastical, thus blurring the "distinction" and necessary autonomy of each one of them, but also, on account

211. Op. cit., p. 548.

212. "Church and State", op. cit., p. 225.

of this confusion, the Concordat is detrimental to the very nature and mission of the Church.

There are two bases in the Concordat, as we have seen, for such a confusion. One is the State's commitment to protect and enforce respect for the Catholic Church and for its ministers, as well as to guarantee to her the full enjoyment of her rights and prerogatives, (Art. 1). The exact terms of this broad duty that the State takes upon itself are not fully defined, so that its scope is left, to a great extent, opened. To the extension that this duty is defined in the Concordat it includes the "solemn respect" (honore et reverentia) of Canon Law (Art. 3) and the use of the State's coercive power to enforce it at several points (religious education, marriage, execution of ecclesiastical sentences, etc.). It also includes, as we have seen, the restriction of freedom of conscience and religion of non-Catholic groups and persons to the private exercise of their worship. In this obvious way the State oversteps the limits of its own competence and takes upon itself ecclesiastical duties.

The second ground for confusion arises from the Church's demand to be recognized as "an essential element of the social order" (Art. 1). The meaning of this affirmation does not leap to the eye and it is not defined in the Concordat.²¹³ According

213. Does it mean, for instance, that the Church is "an essential

to the most common interpretation given by Catholic writers, being "an essential element of the social order" means that "there is no more effective means to preserve "harmony between the citizens and the State authorities", than the Catholic Church! This being the case, the Church assumes^a strictly political function, and the confusion is inevitable. This interpretation, however, is ~~given~~^{taken} for granted by the authorities of both institutions in their frequent pronouncements about the importance of the Catholic Church to preserve "the unity of the country".²¹⁴

Now, it is this interlocking of the two societies that modern Catholic writers firmly resist because of believing that this pattern of relations ~~raises~~^{raises} grave problems, both of practical and doctrinal character, for the Catholic Church.

The first set of problems has to do with the major premise that underlies the Concordat with Colombia, i.e., the concept

213 (continued). element of the social moral order?" In this case it would imply that a pagan state, where the Catholic Church is not an element of [the social order, cannot, for that reason, be moral, a concept that is against Catholic teaching (cf. St. Thomas, 2.2, q. 12, a. 2c; and 2. 2, q. 147, a. 3c). Or else, does it mean that the Church is "an essential element" for the preservation of peace and order in society? In this case a serious confusion arises because such is also the natural end of the State.

214. Cf. Addresses delivered by the President Alberto Lleras Camargo and Cardinal Crisanto Luque, August, 1958, in Eguren, op. cit., pp. 109-112.

that "the full enjoyment" by the Church of "all its rights and prerogatives" (libertas ecclesiastica), is properly safeguard only when the State takes the Church under its "protection" and undertakes to put legal restrictions upon non-Catholic citizens and religious groups, namely, the prohibition to make public manifestation of their faith and to propagate their religious convictions. In other words, the premise is that libertas ecclesiastica, the freedom of the Church, is incompatible with a democratic organization of society, based on the principle of libertas civilis. That this, exactly, is the problem is Father Murray's contention. He explains:

"In the so-called democratic concept of civil liberty, the idea of religious liberty has the same amplitude as the idea of civil liberty itself. As it declares the civic equality of all citizens before the law, so it likewise declares the civic equality of all churches and religious professions before the law. As it recognizes equal liberty for the public expression of any political idea, even though it be contrary to the common civic beliefs, so it recognizes equal liberty for the public expression of any religious idea, again even though it be contrary to common religious beliefs".²¹⁵

Because of their belief that full religious liberty is not only ~~in~~ compatible with, but even essential to, Christian

215. Murray, op. cit., p. 227.

doctrine, modern Catholic theologians reject any premise that may seem to imply that libertas ecclesiastica and libertas civilis are two irreconcilable concepts.

~~But~~, moreover, they reject the aforestated premise even on another grounds. For them, ^{Such a premise} ~~it~~ implies that a "constitutional situation" like that of Spain, "wherein ~~is~~ is enshrined the concept of religion of the state"²¹⁶ is the only constitutional situation which is "theologically necessary, permanently valid, unalterably ideal realization of Catholic principles on Church-State relationships, in such wise that any constitutional situation which deviates from it can be the object only of "toleration", not of approval in principle - a concession to the exigences of ~~the~~ "hypothesis", prompted by expediency, and not the embodiment of a "thesis", warranted by theological and political doctrine".²¹⁷ And this is an intolerable implication because it implies the "denial of that 'vital law of continual adaptation' which is the law of the Church's thought and action; and the contradiction of Pius XII's affirmation that the Church must follow 'the providential path of history and circumstances'".²¹⁸ By their

216. Idem., p. 229.

217. Idem..

218. Murray, op. cit., pp. 229, 230.

refusal to follow this path the advocates of the "Catholic state" deny, in practice, the universality and unity of the Church.

The truth is that the freedom of the Church - libertas ecclesiastica - in its essential content, as defined by ~~modern~~ ^{recent} popes, and fully in line with the ancient Gelasian formula, is fully guaranteed when "first, there is a 'just freedom of action' for the Church herself - a positive freedom to deploy in full her spiritual power towards the preservation of her unity and the development of the supernatural life in each of her members. Secondly, when there is 'for the faithful the enjoyment of the right to live in civil society according to the precepts of reason and conscience. That is, the right to be a citizen, and a Christian - and one whole man, in whom prevails a harmony of his dual obedience".²¹⁹

The second set of problems which arises from the type of Church-State relations established in the Concordat with Colombia is set forth by Don Luigi Sturzo in his reference to

219. Pius XI, Encyclical to the Mexican Bishops, Firmissiman Constantiam, March 28, 1937, quoted by Murray, op. cit., pp. 233, 234. Cf. also Encyclical Rerum Ecclesiae: "The Church claims for the servants of the gospel only the elemental rights of security and freedom", quoted by H. de Lubac, op. cit., p. 144.

the "politico-religious dyarchy of the organisational type" which prevailed in the Latin West after Constantine. Sturzo lists the results of such a type of relation, as follows:²²⁰

"The political power tends to favour and make use of the Church, for its own consolidation, for the maintenance of the established order, for shoring up the interests of dominant classes and families and to protect the castes, races or peoples superior to others coexisting in the same State"

The Church does this,

"For the sake of security for her established order, of the maintenance of religious influence in the social fabric, of preventing the introduction of hostile innovations, heresies, or schisms into the State, and of obtaining their eventual repression by law"

These are, indeed, very high motives. But they are "invariably mingled" with less noble ones,

"the caste spirit of the ecclesiastic, the impulse to ensure the predominance of the clergy, respect of its privileges, defense of its wealth and the positions it had established for itself"

A by-product of this intermingling of religious interests with economic-political interests is the production of certain "elements of caesaro-papism", and

220. Op. cit., pp. 47-48.

"This tends to make the Church coincide with the boundaries of the State or nation, whether political boundaries or zones of influence. And it naturally follows that once the political head has been invested with a higher form of religious authority, even though external, the Church (in the concrete, a given church), ceases to have any real authority over peoples politically alien, if not hostile to the State".

For our part we tend to believe that Sturzo, a consummate religious sociologist, is very right in his analysis because according to our experience all these results have taken place, now and then, in Colombia, specially in periods when the Concordat has been faithfully enforced by particularly "Catholic" governments. When such has been the case it has become evident that the first thing to be lost is, precisely, that which the Concordat tends to preserve, namely, "the national unity"!

The gravest fact, however, about the type of Church-State relations consecrated by the Concordat with Colombia, is that, again in Sturzo's words, "even against the will of the ecclesiastical heads" it constitutes, implicitly, "a practical denial of the universality of the Church or of her unity".²²¹ This conclusion seems to us evident not only in the sense that the Church, in the minds of the people, coincides with the boundaries, interests and influence, good or bad, of the country. But also

221. Op. cit., p. 48.

in that the universality of the Church is reduced to the organisational level while it fades away in the mystical plane, in its inner power to recommend and impose itself, by the force of its truth, to men's conscience. Also the unity of the Church, in such circumstances, shrinks into mere ecclesiastical unity instead of being the unity of the faithful "in spirit and truth". They, on the contrary, become more and more diffident ^{to} of the Church, the actual Church as they know it, and take refuge in an ideal, abstract, type of Church, stripped and purified of all those aspects which appear to make her a part of the political organization of the country. One indication of this, in Colombia, is the all too common expression: "I am a Catholic, BUT"

We can sum up our conclusions saying that modern Catholic theologians believe in, cherish and preach, a conception of the Church, of her nature and mission, and of the manner that is proper for her to exercise her ministry and vindicate her rights vis-a-vis the secular ^{powers.} which is a noble, spiritual and legitimate conception. Their conception, however, stands in full contrast with the one consecrated by the Concordat of the Holy See with the Republic of Colombia. In this agreement, the Church stands as a powerful juridical institution, fully conscious of "her rights and prerogatives", demanding, as a "right", special privileges from the civil powers, its

"solemn respect" for Canon Law and its coercive force to "execute the ecclesiastical sentences". Modern Catholic theologians see the Church differently, they see her full of that spiritual strength which needs no force or protection from temporal powers. ^{Samy} "Even when Christian nations are concerned", they say,²²² "the Church does not make use of any kind of temporal sovereignty or political altum dominium; so that today there is no longer any occasion to mistake her for a this-worldly power. To all those who have eyes to see she appears in the noble simplicity of her spiritual authority".

222. Henri de Lubac, The Splendour of the Church, New York: Sheed and Ward, p. 144.

In Appendix

Do not put names
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Signature names in all caps

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A P P E N D I X A

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Appendix "A":

~~THE CONCORDAT~~ THE CONCORDAT

() between
POPE LEO XIII AND DR. RAFAEL NUNEZ^Z, PRESIDENT OF COLOMBIA

(Signed December 31, 1887)

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The English translation of the concordat herewith presented was made by the CEDEC Office of Information and Public Relations from the text in Raccolta di Concordati su Materie Ecclesiastiche tra la Santa Sede e la Autorita Civili (Vatican City: Tipografia Poliglotta Vaticana, 1954), II, pp. 1051-1061. The official Vatican text of the document is found in Acta Sanctae Sedis (Rome: Typographia Polyglotta, 1888), XXI, pp. 7-12.

← *In the name of the Most Holy and Indivisible Trinity, His Holiness the Supreme Pontiff Leo XIII and the President of the Republic of Colombia, His Excellency Senor Rafael Nunez, have named as Plenipotentiaries, respectively:

← *His Holiness, the most eminent Signor Mariano Rampolla del Tindaro, Cardinal presbyter of the Holy Roman Church, of the Title of Santa Cecilia, and his Secretary of State; and

← *The President of the Republic, His Excellency Senor Joaquin Fernando Velez, Envoy Extraordinary and Minister Plenipotentiary before the Holy See:

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"Who, after presenting their corresponding credentials, have agreed to the following:

"Article 1. The Roman Catholic Apostolic Religion is the religion of Colombia; the Public Powers recognize it as an essential element of the social order, and they are bound to protect and enforce respect for it and its ministers, leaving to it at the same time the full enjoyment of its rights and prerogatives.

"Article 2. - The Catholic Church will enjoy complete liberty and independence of the civil power, and consequently there shall be no intervention of this power in the free exercise of its spiritual authority and ecclesiastical jurisdiction, its government and administration conforming to its own laws.

"Article 3. - Canonical legislation is independent of the civil law, and forms no part of it; but it will be solemnly respected by the authorities of the Republic.

"Article 4. - The State recognizes in the Church, represented by its legitimate hierarchical authority, true and proper juridical personality, and capacity to enjoy and exercise the rights that appertain to it.

"Article 5. - The Church has the right to acquire by legal title, and possess and freely administer movable and immovable

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property in the manner established by the common law, and its properties and foundations will be no less inviolable than those of citizens of the Republic.

"Article 6. - Ecclesiastical properties can be taxed in the same manner and to the same extent as private property; buildings destined for the use of the cult, conciliar seminaries, and episcopal and parish residences are excepted, however, and can never be burdened with contributions nor occupied or used for other purposes.

"Article 7. - The members of the secular and regular clergy cannot be obligated to perform public duties incompatible with their ministry and profession, and, furthermore, they will always be exempt from military service.

"Article 8. - The Government is obliged to incorporate in its laws of criminal procedure provisions to safeguard the sacerdotal dignity, wherever, for any reason, a minister of the Church figures in a process.

"Article 9. - The diocesan Ordinaries and the Parish Priests can collect from the faithful emoluments and ecclesiastical rents (proventus ecclesiasticos) canonically and equitably established and based on either immemorial custom in each Diocese or the performance of religious services; and,

in order that temporal authority shall lend its aid, the Ordinaries will act in agreement with the Government.

"Article 10. - Religious orders and associations of both sexes may be freely constituted and established in Colombia, always provided that their canonical foundation is authorized by the competent ecclesiastical authority. These will be governed by their own constitutions; and, in order to enjoy juridic personality and be under the protection of the laws, they shall submit to the Civil Power the canonical authorization granted by the respective superior ecclesiastical authority.

"Article 11. - The Holy See will accord its aid and cooperation to the Government in establishing in Colombia religious institutions dedicated particularly to the exercise of charity, missions, education of the young, education in general, and other works of public welfare and beneficence.

"Article 12. - In the Universities and in the secondary schools, and other centers of learning, education and public instruction will be organized and directed in conformity with the dogmas and morals of the Catholic Religion. Religious instruction will be obligatory in such centers, and the pious practices of the Catholic Religion will be observed in them.

"Article 13. - Consequently, in said centers of learning,

the respective diocesan Ordinaries, by themselves, or by special delegates, will exercise the right, respecting religion and morals, of inspection and review of textbooks. The Archbishop of Bogota will designate the books which are to serve as texts for Religion and morals in the universities; and to the end of assuring uniformity of instruction in the indicated matters, this Prelate, in agreement with the other diocesan Ordinaries, will select the texts for the other public schools. The Government will prevent, in the conduct of literary and scientific courses, and, in general, in all branches of instruction, the spreading of ideas contrary to Catholic dogma and to the respect and veneration due the Church.

"Article 14. - In the event that the instruction in Religion and morals, in spite of the orders and preventive measures of the Government, does not conform to Catholic doctrine, the respective diocesan Ordinary may deny such professors or teachers the authority to teach such material.

"Article 15. - The right of appointment to vacant Archbishoprics and Bishoprics belongs to the Holy See. The Holy Father, nevertheless, as proof of special deference, and with the intention of preserving harmonious relations between Church and State, agrees that, in the filling of archiepiscopal and episcopal sees, the wishes of the President of the Republic take precedence.

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Consequently, for each vacancy he will recommend directly to the Holy See the ecclesiastics who in his opinion possess the necessary gifts and qualifications for the episcopal dignity. The Holy See, on its part, before making appointments will always reveal the names of the candidates it wishes to promote so that it may learn whether the President has reasons of a civil or political character to consider the said candidates as undesirable. Diocesan vacancies will be filled as soon as possible, and will not last longer than six months.

"Article 16. - The Holy See can establish new Dioceses and alter the territorial limits of those now existing when it regards this useful and advantageous for spiritual welfare, consulting the Government previously and receiving any opinions from it that are just and advisable.

"Article 17. - The marriage of those who profess the Catholic Religion will produce civil effects with respect to the persons and property of the contracting parties and their descendents only when it is celebrated according to the provisions of the Council of Trent. The act of the ceremony will be witnessed by the functionary determined by law for the sole object of verifying the entry of the marriage in the civil register, providing it is not a marriage in articulo mortis, in which case this formality may be dispensed with, if it is not practical

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to carry it out, and replaced with supplementary evidence. It is the duty of the contracting parties to fulfill the requirements relative to the intervention of the civil functionary of the register, the duty of the parish Priest being limited to notifying them of the obligation which the civil law imposes on them.

"Article 18. - Concerning marriages celebrated any time in conformity with the provisions of the Council of Trent, and which should produce civil effects, the supplementary evidence of ecclesiastical origin should be admitted with preference.

"Article 19. - Causes affecting the bond of matrimony and the cohabitation of husband and wife, as well as those relating to the validity of betrothals, will be under the exclusive jurisdiction of the ecclesiastical authorities. The civil effects of matrimony will be regulated by the civil powers.

"Article 20. - The armies of the Republic will enjoy the exemptions and favors known as military privileges, which will be determined by the Holy Father in a separate agreement.

"Article 21. - After the Divine Offices the following prayer will be recited in all the churches of the Republic: Domine salvam fac Rempublicam: Domine salvum fac Praesidem eius et

supremas eius auctoritates.

"Article 22. - The Government of the Republic recognizes in perpetuity in the nature of a consolidated debt the value of redeemed mortgages (censos redimidos) in its treasury and of disentailed properties belonging to churches, cofradias, patronatos, capellanias, and institutions of instruction and beneficence controlled by the Church, which have been at any time entered into the public debt of the Nation. This recognized debt will earn without diminution the annual liquid interest of four and one-half per cent, payable semi-annually.

"Article 23. - The income from patronatos, capellanias, cofradias, and other private foundations will be recognized and paid directly to whoever, according to the foundations, has the right to receive it, or to their legally constituted representatives. Payment will be made without diminution, as in the preceding article, and will start after the next year of 1888. In the event of some of the indicated entities being extinguished by prior agreement between the competent ecclesiastical authorities and the Government, the income will be applied to pious and beneficent uses without violating in any way the will of the founders.

"Article 24. - The Holy See, in recognition of the condition

of the National Treasury of Colombia and of the benefit which the Church derives from this Agreement, grants to the Republic the following concessions: (a) the disentailed property belonging in its major part to convents and religious associations already extinguished and not included in the preceding article, is not to be recognized as part of the capital amount; (b) it is granted exemption from obligations for rents or interests due, or for any other cause, on disentailed ecclesiastical properties up to the 31st of December of 1887.

"Article 25. - In return for this concession the Government of Colombia pledges itself to assign in perpetuity an annual liquid sum, which at present is fixed at one hundred thousand Colombian pesos, and which will equitably increased when the Treasury situation improves. This money will be proportionally assigned in the terms agreed upon by the two Supreme Powers for the support of dioceses, chapters, seminaries, missions and other proper works of the civilizing action of the Church.

"Article 26. - The surviving members of the extinguished religious communities will continue to enjoy the income which the preceding provisions have assigned to them for their maintenance and other necessities.

"Article 27. - In like manner, the income or distributions

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previously established for the maintenance of the cult in churches, chapels and other religious places not included in article 22 will continue. If regarding this point there should be any doubts or difficulties the Government will confer with the competent ecclesiastical authority with the object of establishing procedure.

"Article 28. - The Government will return to the religious entities the disentailed properties belonging to them and which have no assigned use; and in the event that the owner does not appear or has no mission to perform, the proceeds of the sale of such property or its administration will be applied to analogous beneficences and pious works according to the most pressing necessities of each diocese, following the advice of the competent ecclesiastical authority.

"Article 29. - The Holy See, with the object of contributing to the public tranquillity, declares, on its part, that the persons in Colombia who, during the past vicissitudes have purchased disentailed property or redeemed mortgages in the National Treasury according to the provisions of the civil laws in force at that time, will not be molested at any time nor in any manner by the ecclesiastical authorities; this dispensation extends not only to those who executed such acts, but to those who have taken part in them as first buyers or as legitimate successors

and those who have redeemed mortgages. They will enjoy securely and peacefully possession in these properties, emoluments, and returns; it being understood, nevertheless, that similar abusive alienations will not be repeated in the future.

"Article 30. - The Government of the Republic will arrange with the respective diocesan Ordinaries all matters concerning cemeteries, endeavoring to reconcile the legitimate exigencies of civil and sanitary character with the veneration due these sacred places and the ecclesiastical prescriptions; and in case of disagreement this matter will be the subject of a special agreement between the Holy See and the Government of Colombia.

"Article 31. - Agreements between the Holy See and the Government of Colombia for the encouragement of Catholic missions among the barbarian tribes will not require the subsequent approval of Congress.

"Article 32. - By this present Agreement those parts of any laws, orders, or decrees, promulgated in any way or time, which contradict or oppose this Agreement, which will have in the future the full force of law, are derogated and abrogated.

"Article 33. - The ratification and exchange of this Agreement will take place within six months of the date of signature, or sooner if possible.

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"In pledge of which the indicated Plenipotentiaries
have put their signature and seal on this Agreement.

"Done in Rome on the 31st day of December of 1887.

A vertical line on the left side of the page has two arrows pointing to the right. The top arrow points to the signature "M. Cardinal Rampolla." and the bottom arrow points to the signature "Joaquin F. Velez." Below the vertical line, there are two downward-pointing arrows. The first arrow is next to the number "6" and the second arrow is next to the number "4".

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"M. Cardinal Rampolla.

"Joaquin F. Velez."

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idem Appendix A

Appendix "C":

THE CONVENTION ON MISSIONS
between
POPE PIUS XII AND ROBERTO URDANETA-ARBELAEZ, ARBELAEZ
ACTING PRESIDENT OF COLOMBIA

The English translation of the Convention herewith presented was made by the CEDEC Office of Information and Public Relations from the Vatican text found in Raccolta de Concordati su Materie Ecclesiastiche tra la Santa Sede e le Autorita Civili (Vatican City: Tipografia Poliglotta Vaticana, 1954), II, pp. 79-83.

← ↓ 6
TREATY ON MISSIONS

BETWEEN POPE PIUS XII AND THE ACTING PRESIDENT OF COLOMBIA

↓ 4
"His Holiness the Supreme Pontiff Pope Pius XII and the Acting President of the Republic of Colombia, His Excellency Dr. Roberto Urdaneta Arbelaez,

"Desirous of arriving at a new Agreement on Missions which will replace that signed in Bogota on the fifth (5) of May of nineteen hundred twenty-eight (1928) by His Excellency the Most Reverend Monsignor Paolo Giobbe, Titular Archbishop of Tolemaida, Apostolic Nuncio in Colombia, and his Excellency Senor don Carlos Uribe, Minister of Foreign Affairs of Colombia,

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"Have Designated their Plenipotentiaries, as follows:

"His Holiness Pope Pius XII, His Excellency the Most Reverend Monsignor Antonio Samore, Titular Archbishop of Tirnovo, Apostolic Nuncio in Colombia, and

"His Excellency, the Acting President of Colombia, His Excellency Senor Dr. Juan Uribe Holguin, Minister of Foreign Affairs of Colombia;

"Who, after having exchanged their credentials and found them in good and proper order, have agreed to the following:

"Article 1. - The Holy See and the Government of Colombia accept with gratitude the offer which, through their respective Superiors, the various religious Orders and Congregations have made or might make to continue with the Missions which they presently have, or to take charge of those which might be assigned to them, providing the personnel which the maintenance and development of said Missions require.

"The Government of Colombia will draw up a special document of identification for the Missionaries established in the country, or who might come as such, which will entitle them to the best transportation facilities and to preferential attention on the part of the Colombian civil and military authorities.

"Article 2. - The Missions to which the present Agreement refers include the following territories of the Republic:

"(a) Eleven ¹¹ (~~12~~) territories established as Vicariates Apostolic, namely: Caqueta (Vicariate of Florencia), Casanare (Vicariate of Casanare), Guajira (Vicariate of Rioacha), Pacifico (Vicariate of Buenaventura), Putumayo (Vicariate of Sibundoy), Rio Atrato (Vicariate of Quibdo), Rio Cesar (Vicariate of Valledupar), Rio Magdalena (Vicariate of Barrancabermeja), Rios Meta y Vichada (Vicariate of Villavicencio), Rio San Jorge (Vicariate of San Jorge) and Rio San Juan (Vicariate of Istmina).

"(b) Seven (7) territories established as Prefectures Apostolic, namely: Arauca (Prefecture of Arauca), Labateca (Prefecture of Labateca), Rio Amazonas (Prefecture of Leticia), Rios Mira y Patia (Prefecture of Tumaco), San Andres y Providencia (Prefecture of San Andres y Providencia), Tierradentro (Prefecture of Tierradentro) and Vaupes (Prefecture of Mitu).

"The Holy See may freely establish other Vicariates and Prefectures Apostolic, just as it may divide or separate those which now exist, giving prior notice to the Government of Colombia, whose acquiescence will be necessary in order that the provisions contained in Articles Five, Six, Seven, Nine, Eleven and Sixteen of this Agreement extend to the Vicariates and Prefectures

created, in whole or in part, with territory not included within those specified in ordinals (a) and (b) of this Article.

"Article 5. - The Government of Colombia, as a just compensation for the sacrifice which the Missionaries make in evangelizing the Indians has the obligation of providing the Missions of which this Agreement treats with the financial assistance determined in Articles Six and Seven.

"Article 6. - The Government of Colombia will contribute annually the sum of thirty thousand pesos (\$30,000.00) for each one of the Vicariates and Prefectures Apostolic mentioned in ordinals (a) and (b) of the Second Article of this Agreement. Furthermore, it will contribute annually the sum of three hundred sixty thousand pesos (\$360,000.00), to provide for the extraordinary needs which the Missions may have.

"The payments here stipulated will be made semiannually in advance by the Government of Colombia, within sixty (60) days of the respective half-year period. Consequently, the total will be met in two (2) semiannual installments, which will be paid to the Holy See through the Apostolic Nunciature in Bogata.

"Article 7. - The Government of Colombia, without prejudice to the contributions indicated in the previous Article, will help with resources from its ordinary budget, as far as possible,

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with the construction of orphanages, schools, dispensaries, health centers and other public welfare establishments in the Mission territories. At the same time, the Government of Colombia will seek ways of increasing the departmental and municipal assistance for education and public welfare in the same territories.

"As a stimulus for the training of Colombian Indian clergy, according to the desires of the Holy See, the Government of Colombia will give effective help, to the extent of its possibilities, in the construction of Seminaries in Mission territories and towards the maintenance of some scholarships in the Seminaries already established in the future.

"Article 9. - With the object of orienting education in Mission territories within the spirit and in accordance with the teachings of the Roman Catholic Apostolic Church, the Government of Colombia gives to the Chief Prelates of the Missions the following attributes of direction and vigilance in education:

"(a) To create and move public primary, secondary, vocational-agricultural and normal schools, in accordance with the stands of this Agreement.

"(b) To appoint, promote, and dismiss teachers for said primary, secondary, vocational-agricultural and normal schools,

and to fix their salaries, all in accordance with the standards of this Agreement.

"(c) To inspect and oversee the instruction in the educational centers of the respective Mission territories, including private institutions, to the end that it is oriented in conformity with Articles Twelve, Thirteen and Fourteen of the Concordat in force. In cases where, for reason of Colombian legal procedure now in effect or which shall be established in the future, a license is required from some Colombian authority for the opening or functioning of private educational institutions, the respective Colombian authority will consult with the corresponding Chief Prelate of the Mission before reaching a decision. Nothing established in this ordinal will hold for private institutions established exclusively for the education of children of non-Catholic foreigners.

"(d) To distribute utensils and to organize school restaurants for primary schools, according to the standards of this Agreement.

"Paragraph Two. The founding or moving of schools and the appointments, promotions and dismissals dealt with in this Article, as also the fixing of salaries, must be approved by the respective Colombian authority within the three (3) months following the date on which the corresponding Office receives the copy of the notification in which such measures are mentioned.

"Paragraph Three. Disapproval will have the effect of suspending the [carrying out of the measure of the Chief Prelate of the Mission until an agreement is reached between the respective Colombian authority and the corresponding Prelate.

"Paragraph Four. The moving of schools referred to in ordinal (a) of this Article and the dismissal of teachers referred to in ordinal (b), cannot be disapproved by the corresponding Colombian authority when they are based on motives of a religious or moral order, but in such cases the copy of the respective notification will be accompanied at least by an explicit declaration by the Prelate that there exists one or the other motive, or both.

"Article 11. - The Government of Colombia pledges itself to give, wherever required, and for the period of the duration of this Agreement, such lands from the public domain as may be required, in the opinion of said Government, for the service of the Missions, which lands shall be used for orchards, crops, pasture, etc. The concession of these lands shall have priority over any other concession except that destined for the construction of public roads or the exploitation of the subsoil, and will be made in conformity with the laws in effect at the time of granting.

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"The Government of Colombia will solicit the opinion of the respective Chief of Mission regarding the adjudication of public lands and the sub-division of reservations, in order to obtain better information regarding the rights acquired by the Indians.

"Article 12. - In order to avoid any danger of oppression of the Indians and persecution of the Missions, the Government of Colombia pledges itself to promote good understanding between its agents and the respective Chiefs of Missions, and to prevent by every means possible any disturbance. Civil functionaries for Mission territories will be appointed from among those who can be recommended from every point of view and who are known to be favorable to the Missions and Missionary religious. To the supreme authorities of the High Contracting Parties is reserved the solution of disputes which may arise between the civil authority and the Chief of each Mission because of measures taken by the latter in safeguarding the spiritual welfare and material interests of the Indians, or in exercise of the special functions assigned by Article Thirteen of this Agreement, and the complaint of the Head of a Mission shall be sufficient cause for the dismissal of employees of the Government, if the facts are proved.

"Article 13. - In order to stimulate the Indians to gather

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first of all in families and then to group themselves in reductions, and with the object of facilitating at the same time the performance of functions incumbent upon the civil authority, the Chief of the respective Mission will combine with the primary purpose of his charge, which is that of Christian civilization, that of promoting the material prosperity of the territory and of the Indians established in it. He will be careful, therefore, to study diligently the products of the region in his care, and will send reports to the Government of Colombia proposing adequate methods to derive greater benefits from these products. He will be careful, also, to spread among the Indians the most desirable industries. The Government of Colombia, for its part, pledges itself to help the Heads of the Missions in the development of agriculture and industry and effectively to support as much as possible the properties of the Indians.

"Article 14. - The Ordinaries of the Mission territories will enjoy in Colombia the same privileges as the other diocesan Ordinaries in relation to the law (fuero judicial), in accord with the additional Agreement to the Concordat promulgated by the Colombian Law Thirty-Four (34) of eighteen hundred ninety-two (1892).

"Article 16. - The present Agreement, whatever the number of Vicariates and Prefectures Apostolic that exist during the

period in which it is in effect, will remain in effect from the date of its signature until the first (1) day of January of nineteen hundred seventy-eight (1978), but for merely fiscal purposes it will be considered to run from the first (1) of the present month.

"In pledge of which the indicated Plenipotentiaries sign, in two copies, this Agreement and seal it with their respective seals, in Bogota, the twenty-ninth (29) day of January of nineteen hundred fifty-three (1953).

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← "JUAN URIBE HOLGUIN"
2 ↓ Minister of Foreign Affairs

← ANTONIO SAMORE
Apostolic Nuncio ←

↓ 4
A P P E

Appendix "D":

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← THE CIVIL POWERS ENFORCE CANON LAW

~~(Two cases)~~

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Case one: CIVIL MARRIAGE AND EDUCATION

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BOGOTA, D.E. -- The Senora Isabel de Siciliani, a Protestant Christian with 38 years' teaching experience, has been refused a Teachers Certificate by the Ministry of Education. The Ministry says that the Sra. de Siciliani is "morally unqualified" to teach children because she was married by the civil ceremony and thus lives in "concubinage". The Ministry's decision is contained in the following Resolution, which is quoted in its entirety:

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← MINISTRY OF NATIONAL EDUCATION

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← National Board of Teachers' Registry, Primary Education

3 ↓

← RESOLUTION NUMBER 097 OF 1959 (August 20, 1959)

4 ↓

(August 20, 1959)

By which inscription in the National Primary Teachers' Registry is denied to a teacher of Atlantico Department, in accordance with Decree 1135 of 1952 and Law 97 of 1945.

← THE NATIONAL BOARD OF PRIMARY TEACHERS' REGISTRY,

A SECTION OF THE MINISTRY OF NATIONAL EDUCATION

ACCORDING TO DECREE LAW 2242 of 1941,

"CONSIDERING, that the Sra. Isabel Orozco de Siciliani has submitted documents to the National Board of Primary Teachers' Registry, requesting that her name be inscribed in the proper category; and,

"CONSIDERING, that a study of the documents reveals that:

"(a) The religious situation of the Senora de Siciliani, according to canon 2314 of the Code of Canon Law, deprives her of the moral authority necessary for the educational mission, according to Article 35 of Decree 1135 of 1952; and,

"(b) According to canon 1099 of the Code of Canon Law, the Senora is guilty of the offense mentioned in paragraph (e) (concubinage), which Article 37 of the above-mentioned Decree establishes as sufficient grounds for the exclusion from the National Primary Teachers' Registry of those persons already enrolled, and also for the denial of inscription to others;

"BE IT RESOLVED:

"ARTICLE ONE. Inscription in the National Primary Teachers'

Registry is hereby denied to ^{Isabelle} Orozco de Siciliani because her religious condition deprives her of the moral authority necessary for the educational mission, in accordance with Articles 35 of Decree 1135 of 1952; and,

"ARTICLE TWO. A certified copy of this present Resolution will be sent to the Office of Public Education of the Department of Atlantico for its information.

"FOR COMMUNICATION, NOTIFICATION AND PUBLICATION.

"Given in Bogota, D.E., the 20th day of August of 1959.

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"President of the National Board:

"Secretary:

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(Signed) LUIS ALEJANDRO GUERRA.

(Signed) FELIX M. CLAROS ROJAS.

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"APPROVED: The Minister of National Education:

4 ↓

(signed) ABEL NARANJO VILLEGAS."

4 ↓

Decree 1135 of 1952, cited by the Resolution, regulates the four categories of the National Primary Teachers' Registry, Its Article 35 lists the reasons for which teachers may be excluded from the Registry, including "bad conduct". Article 37 defines examples of bad conduct, including sub-paragraph (e), "Concubinage."

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Appendix "D": Case two.

**EVANGELICAL CONFEDERATION OF COLOMBIA
(CEDEC)**

POLICE ABDUCT 3 CHILDREN FROM PROTESTANT SCHOOL;

TURN THEM OVER TO THEIR ROMAN CATHOLIC UNCLE

Archbishop of Medellin ordered their seizure. Juvenile

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Court Judge who issued warrant, refuses to permit father to recover custody.

Jorge, Absalom and Miguel, minor children of Sr. Juan Osorio, were seized by police while attending classes in the "Colon Primary School" of the Presbyterian Church in Medellin, April 4, 1960. They were taken to the home of their Roman Catholic uncle where they have been held in confinement ever since.

Archbishop orders the seizure. Msgr. Tulio Botero, Roman Catholic Archbishop of Medellin, ordered the children taken from their father's care. On April 4th, Father Francisco Duque of the Archdiocesan Tribunal, acting on express orders of the Archbishop, sent the following decree to Sr. Arturo Tobon, Judge of the Juvenile Court of Medellin:

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"Let the children Maria, Jorge, Absalom, and Miguel Osorio be confined in the house of Sr. Rodolfo Osorio and under his care. Any objection to this order must be resolved by the Ecclesiastical Tribunal of Medellin. The civil authorities are requested to collaborate in the execution of this decree."

Sr. Osorio, accompanied by his Pastor, the Rev. Antonio Welthy, went at once to the Juvenile Court. The Judge, Sr. Arturo Tobon, ordered Sr. Osorio to produce his marriage certificate and the

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baptismal certificates of the children.

Later, when Sr. Osorio handed the Judge the Catholic baptismal certificates, Sr. Tobon informed him that the detention had been ordered by the Catholic Church, and that there was nothing he could do about it.

On Friday, April 8th, Sr. Osorio again saw the Judge, this time accompanied by his lawyer. Sr. Tobon told them that he had ordered the children seized and turned over to their uncle on orders of the Curia of the Archdiocese of Medellin.

Police aid refused. The Inspector of Police refuses to help the father recover his children. "This is a delicate matter," he said. "The Church is behind it."

Fifty-six year old Juan Osorio, a widower, was converted three years ago. He attends the Presbyterian Church of Medellin, where he has his children enrolled in Sunday School. The uncle, Sr. Rodolfo Osorio, is a practicing Roman Catholic who has bitterly opposed his brother's conversion. - End.

17.
Appendix "D": Case two (continued)

← EVANGELICAL CONFEDERATION OF COLOMBIA
(CEDEC)

SEIZURE OF THE OSORIO CHILDREN

EXPLAINED BY THE ARCHDIOCESE OF MEDELLIN

"THE CHURCH MAY TAKE CHILDREN AWAY FROM PARENTS
WHO DO NOT EDUCATE THEM IN THE CATHOLIC FAITH"

Action of Pope Pius IX cited as historical antecedent

MEDELLIN (ANTIOQUIA DEPARTMENT). — In an "official explanation" the Archdiocese of Medellin defends its seizure of Jorge, Absalom and Miguel, minor children of Sr. Juan Osorio, last month. As related in CEDEC Bulletin 61, Sr. Osorio had his children baptized by the Catholic Church in their infancy. Three years ago he was converted and became a Protestant Christian. He attends the Presbyterian Church of Medellin, where he has his children enrolled in Sunday School.

The statement by the Archdiocese was forwarded to the Evangelical Confederation by the Roman Catholic Bishops' Council, or Episcopacy. It is signed by Father Francisco A Duque, the ecclesiastical judge who ordered the Osorio children captured and turned over to their uncle. In his 8-point defense, dated

April 22nd, Father Duque says:

"....."

... The ecclesiastical judge based his decision to seize and confine the children on the following points:

"1) The children Jorge Absalom and Miguel Osorio, received the sacrament of baptism at the direct request of their father, before he abandoned the Catholic faith and committed the crime of heresy by joining a Protestant sect, ...

"2) The Church does not force anyone to receive the Sacrament of Baptism nor to embrace the Catholic faith against his will ...; but if (baptism) is asked for voluntarily for oneself or for the persons under one's care, it is administered with the consequences which the act involves, among which the principal one is the Catholic education of the one baptized.

"No one forceably obliged Sr. Juan de Jesus Osorio to have his children baptized. He did it of his own free will, thus fulfilling one of his duties as a Catholic, and acquiring at the same time the most serious obligation of giving a Catholic education to his children.

"3) Furthermore, by baptism man is constituted a member of the Church of Christm with all the rights and obligations

of a Christian,

"This means that the above-mentioned children are subjects of the Catholic Church and are under its jurisdiction in everything related to their moral and religious education.

"4) The defection of the father from the Catholic faith and his acceptance of a heretical Protestant sect does not in the least modify the promise made by him before his crime, nor does it nullify the jurisdiction which the Church has over his children.

"In a matter so serious as the Catholic education of children, in which nothing less than eternal salvation is at stake, responsibility may not be evaded by the capricious will of parents. The responsibility binds them still; and if they do not wish to fulfill it, then the Church, by virtue of the jurisdiction which she has over both them and their children, may take them from their care and turn them over to such persons as will give them a Catholic education. By this action misfortune may be avoided and the influence which the apostate parent might exert over his children may be counteracted.

no
no

"In a matter so serious evidence shows that Sr. Juan de Jesus Osorio perverted his children, instructing them in a non-Catholic

* Italics not in the original. *OK*

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religion.

"5) The educational right of the family is inviolable, but not despotic. On the one hand is the natural which parents have to educate their children and to have them with them, while on the other hand is the supernatural right which the Church has over its subjects (baptized persons) in order to preserve their true faith, to protect them from the danger of perversion, and to keep them from falling into false faith or heresy. Which of the two rights is to prevail? Clearly, the supernatural right of the Church. *right*

"His Holiness Pope Pius XI expressed himself in favor of this view in his encyclical "Divini Illius Magistri":

"... It does not follow from this that the educational right of parents is absolute or despotic. It is inseparably subordinate to the ultimate end and to natural and divine law, as Leo XIII declared in one of his memorable encyclicals, "The Principal Duties of Christian Citizens", where he sets forth thus in resume the rights and duties of parents: "By nature parents have the right to bring up their children, but with this duty understood: that the education and instruction of the child contribute to the end for which, by the grace of God, they have received

the offspring ..."

"6) The Church cannot renounce this jurisdiction; it carries it out by divine right, because only to her and not to others was it said in the person of the Apostles: "Go and teach all nations" (Matthew 28:19). She has exercised it since her foundation, in all times and places, in spite of the persecution of which she has been the object, whether by her unfaithful sons, or by secular powers.

"To pretend that the Church should not defend the Catholic Faith, that she should cease from exercising her spiritual and supernatural jurisdiction over her subjects, that she should look unmoved upon their perversion, would be the same as demanding that she stop being the Church (Encyclical above cited).

"7) Rights granted by the Concordat. Though it is true that the educational right of the Church is not conditioned by the Concordat's provisions, nevertheless, in the Concordat, signed between the Holy See and our Republic of Colombia, it was desired to make explicit recognition of such rights:

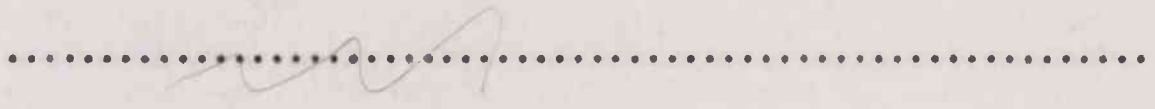
"Art. 1) The Roman Catholic Apostolic Religion is the religion of Colombia; the Public Powers recognized it as an essential element of the social power, and they are bound to protect and enforce respect

for it and its ministers, leaving to it at the same time the full enjoyment of its rights and prerogatives.

"Art. 2) The Catholic Church will enjoy complete liberty and independence of the civil power, and consequently there shall be no intervention of this power in the free exercise of its spiritual authority and ecclesiastical jurisdiction, its government and administration conforming to its own laws.

"Art. 3) Canonical legislation is independent of the civil law, and forms no part of it; but it will be solemnly respected by the authorities of the Republic.

"Art. 10 of the Additional Agreement to the Concordat) to all sentences of competent ecclesiastical courts the civil authority will grant its aid and support, so that the (ecclesiastical) Judges may enforce and execute the penalties and sentences pronounced by them in the sphere of their competence.



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"8) An argument from history During the pontificate of Pope Pius IX a child of Jewish parents was sick unto death. He was secretly baptized by a Christian servant of the parents. The child did not die, but recovered completely, and the matter was made known to the competent ecclesiastical authority. When the truth of the fact was established, Pope Pius IX, in order that this baptized child might not be perverted but educated in the Catholic faith, took him under his care, not permitting him to live with his parents, but educating him in a catechetical school which he had in Rome. In spite of the attacks of the enemies of the Church, the Holy Father upheld the educational right of the Church (Carras, Histoire de l'Eglise, Vol. 41, p. 532, "L'Affaire Mortara")."

- End -