The laicity of the State and its challenges

A laicidade do Estado e seus desafios

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Abstract

The definition of the relationship between the State and religions is part of the legal order of the countries, indicating whether the State is laic and must be kept separate from all religions, or if an official religion is attributed to it, or if it is a theocratic State. This article is based on qualitative, historical, bibliographical and documental research. It seeks to offer a contribution to a better understanding of the theme of the laicity of the State. It focuses on the case of Brazil, specifically with regard to the Brazil-Holy See Agreement (or Concordat), signed in November 2008 at the Vatican.

Keywords: Laicity of the State; State and religions; Laic State and Holy See; Concordat; Brazil; Laic public school.

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Resumo

A definição da relação entre Estado e religiões integra o ordenamento jurídico dos países, indicando se o Estado é laico e deve ser mantido separado de todas as religiões, ou se lhe é atribuída uma religião oficial ou, ainda, se é um Estado de tipo teocrático. Este artigo é fundamentado em pesquisa qualitativa, de tipo histórico, bibliográfico e documental. Busca oferecer uma contribuição ao melhor entendimento do tema da laicidade do Estado. Define como foco o caso do Brasil, especificamente no que se refere ao Acordo Brasil – Santa Sé (ou Concordat), assinado em novembro de 2008 no Vaticano.

Palavras-chave: Laicidade do Estado; Estado e religiões; Estado laico e Santa Sé; Concordata; Brasil; Escola pública laica.

1. Introduction

The relationship between the State and religions is a sensitive and controversial topic, particularly nowadays. The fundamental charter of each country defines its regime, wherein it includes whether the State is laic, must be kept separate from all religions, or not, and, in this case, if it is attributed to it an official religion, or if it is the case of a theocratic State. History has witnessed traumatic processes during the transition from one regime to another, such as the French Revolution in 1789, where the State separated from religion, or the Islamic Revolution in Iran in 1979, where the State adopted a theocratic order. The two revolutions, occurring about two hundred years apart and moving in opposite directions, highlight the enduring mobilizing power of religion and its explosive potential when mixed or united to the State power.

Is there a legal regime between the State and religions that can guarantee democracy and foster social peace? The historical dynamics in modernity suggests that the principle of laicity best meets both internal demands for equality and freedom among citizens and provides better prospects for international relations in a complex world. In such a world, religious identities have assumed increasing prominence, while societies, even with religious individuals, have become more secular. That permanent tension has been resulting in several conflicts, on a variety of social and cultural levels, as much as ambiguities, where it is difficult to distinguish the ending of a private religious action and the beginning of State matters.

When specifically referring questions related to the State, it is paramount to have clear juridical definitions of its relations with religions and public attitude that is consequential to that. Indeed, the essence of a laic State lies in

the separation between the State and religions. Regarding the philosophical and methodological dimension of laicity, Lafer (2007-a) states:

> (...) the laic spirit, which characterizes modernity, is a way of thinking that entrusts the fate of the secular sphere of human being to critical reason and debate and not to the impulses of faith and the assertions of revealed truths. This does not mean disregarding the value and relevance of an authentic faith, but it leaves to the individual's free conscience whether or not to adhere to a religion. The laic way of thinking is at the root of the principle of tolerance, the basis of freedom of belief and freedom of opinion and thought.

Particularly from the last decades of the 20th century, depending on the area and the country, the field of studies on State laicity has been growing and presenting diverse and proliferous intellectual production, spread by different countries, having important scholars dealing with it, from different scientific areas, and taking the most different approaches. Just to mention some of them in Europe and Americas: Jean Baubérot; Henry Peña-Ruiz; Guy Coq; Fernando Catroga; Micheline Milot; W. Cole Durham, Jr.; Santiago Castellà; Pedro Salazar Ugarte; Roberto J. Blancarte; Renata Inés Amaya González; Jorge Szeinfeld; Celso Lafer; Roberto Romano; Daniel Sarmento; Luiz Antonio Cunha; Roseli Fischmann; among others.

If it is true that the laicity of the State is a question demanding contributions from Philosophy, Law Studies, Sociology, History, Anthropology, Political Science, Education. Even Economics has its connections when it comes to religious issues and their relationship to the formation of states. For that complexity, the study of the laicity of State demands a multidisciplinary view or even an interdisciplinary approach.

This article aims to offer a contribution to the better understanding of the laicity of the State regarding its educational nature. First, it will present a brief discussion on the relation between secularism and laicity, bringing the characteristics of a laic State and how the presence of concordats throughout the History affected the laicity of any given country. Then, the article focuses on the case of Brazil, specifically with regard to the Brazil-Holy See Agreement (or Concordat), signed in November 2008 at the Vatican. It contextualizes the case through a study of theoretical aspects around the Laic State, also presenting research findings related to the some of the constitutional obstacles of the aforementioned document. To conclude, the article presents reflections based not just in the theoretical studies presented herewith, but also on the results of a program of research that lasts more than thirty years.

2. Secularism, laicity of the State and the concordats

Fernando Catroga, in his book Entre Deuses e Césares, brings a detailed study on secularism, to then introduce the discussion on laicity. Initially, that author takes two chapters to present ideas on the theories and semantics of secularization. Catroga discuss the disenchantment of the society, as proposed by Weber, and the related secularization of the modern world. Also brings the religious use of the Portuguese word "século" to identify temporal matters occurring in the everyday life, in the materiality or profanity of common life, in opposition to spiritual or sacred questions, located in the religious sphere. When changed the understanding of the world, no more explaining just in religious terms, the society, and its organizational changes, also bringing new questions, for instance the need for tolerance in the public space to reach peaceful conviviality among people. Another entire section with three chapters is devoted to discussing the relation between a "civil religion" and the politics of secularization, bringing Rousseau thought on Social Contract, besides the cases of United States of America and France.

The third section of Catroga's book is devoted to laicity and laicism, studying, the "dictionarization" of the terms, as he calls, while deepening the case of French laicity and, as a compound of similarities, the cases of Portugal, Spain, and Italy, then comparing similarities and differences among the four cases. Particularly relevant in Catroga's work, is the distinction between secularity, as presented in society among people and their lives, and laicity, as a character of the organization of the State. That distinction is important to understand why this article uses the term laicity of the State and laic State and not "secularity of the State," or "secular State."

Same distinction is also made by Jean Baubérot and Micheline Milot in their book "Laicité sans frontières." Baubérot is one of the scholars most identified with the theme of State laicity and Milot has developed important and innovative researches on the multicultural religious situation in Quebec, besides cooperative research in France, together with colleagues from that and other countries, all this in face of the principles of laicity that she has been working together with other authors, such as Baubérot himself, the Mexican sociologist Roberto Blancarte, among other scholars.

In the mentioned book, Baubérot and Milot bring one of the most important contemporary contributions on State laicity, among the international references available to researchers and readers in general. For the purposes of this article, it is relevant to consider some points of that work.

As soon as beginning the study, the authors bring into consideration that laicity is not limited to the French case; the authors indeed affirm that it is impossible to establish a "one-size-fits-all" model of laicity. Moreover, they

underline that each country has or will have the laicity that is connected to its own history and the process of laicization that was or will be possible to reach out. Having that as presupposition, along the chapters, they present six ideal types of laicity.

Another point to bring from Baubérot and Milot is referred to the relevance of the differentiation between secularization and laicity. After introducing the plurality in the theme, presenting not just laicity, but laicities as well, they introduce six ideal types of laicity, reminding that the laicity is always a complex reality.

As a vigorous exercise of reflection, comparison and theorization, a bold section of the book discusses critically the "construction of the paradigm of secularization." It is particularly interesting to highlight how Baubérot and Milot approach Peter Berger's sociological work, since he is a reputed author among theologians.

Now bringing this present study to the question on the fundamental principles of laicity, Baubérot and Milot summarize the theoretical and practical approaches in use within the scientific community: the finalities of the laicity are to guarantee the freedom of conscience and the equality among citizens; the means are the separation State – religions and the neutrality or impartiality of the State before the religions. Many scholars focused almost exclusively on the means of laicity, leaving aside the central question of its finalities. However, the finalities are fundamental to be understood and debated, particularly when legal, political, and social controversies arise.

It is about controversies and arguments that the next point of this article is about. The case, involving strong controversy, is related to the agreement between Brazil and the Holy See, signed in November of 2008, in the City of Vatican.

3. The case of Brazil – Holy See Agreement (2008)

Taking into account Baubérot and Milot's perspective, the laicity of any state is closely linked to the historical formation of the country. Therefore, considering the historical aspects of a country is the first step in understanding its State structure as much as its relationship with religions. So, to establish the foundation of the case under study, it is necessary to outline the key historical aspects of the Brazilian context.

Indeed, Brazil was a Colony of the Kingdom of Portugal from the year 1500 to 1822. The History of Brazil attached to the Western Civilization begins in the Great Navigations era, from the 15th to 16th Century, in the context of the Reform and Counter-Reform. Portugal offered, then, to Colonial Brazil,

the absolute union of the State and Roman Apostolic Catholic Church. Since the Brazilian National Independence occurred in 1822, through a proclamation by the Portuguese Prince Dom Pedro, the monarchy remained as the political regime, ensuring the absolute union between the State and the Catholic Church. It was only with the Proclamation of the Republic in 1889 that the situation changed. Although the term "laicity" was not yet in use, emerging "a posteriori" as language and concepts developed, the laicity's finalities and means were already part of the Brazilian Republic ideals in the final decades of the 19th Century.

In fact, the legal regime of separation between the State and religions had effect since the Decree 119-A of January 7th, 1890. The summary of that Decree is clear: "(This Decree) prohibits the intervention of the federal authority and the federated States in religious matters, enshrines the full freedom of cults, extinguishes the Patronage and establishes other measures".

Why the need to specify the extinction of the Patronage, known as "Padroado" in Portugal? The Patronage operated as a privilege granted by the popes to the kings of Portugal, starting on January 8th, 1454, when Pope Nicholas V signed a papal bull aimed at providing guidance for exploratory commercial navigations to the South Hemisphere. In 1483, when King Dom Manuel was elected as the "Grand-Master of the Order of Christ," certain benefits and privileges were incorporated into the Portuguese Crown. Additionally, a new papal bull granted the Crown, for instance, authority over any region or land, even if it was previously unknown.

Besides, as the pope decided that the travels should also have a missionary purpose, the papal bull allowed the Portuguese kings to exercise spiritual jurisdiction within the discovered lands. This included the establishment of dioceses, appointment of bishops, support for religious practices, and responsibility for the diffusion and observation of Christian principles. Thus, the fusion of State and Religion was complete, lasting for approximately four centuries. However, the advent of the republican regime brought about a change. Was it an easy transition? In fact, even in the third decade of the 21st Century, it is still possible to identify echoes of that time. How did this radical change begin? How did it involve other religions?

The Brazilian Republican Provisional Government issued the aforementioned Decree after almost four hundred years of union with the Roman Catholic Apostolic Church. During this time, the Catholic Church held exclusive religious influence within the public sphere, while other religions were only allowed to practice freely within their own premises, which had to remain closed and without temple-like structures. Decree No. 119-A/1890 explicitly stated that "all religious denominations have the right to exercise their worship equally." It also affirmed that "all churches and religious

denominations are recognized in their legal personality" and shall maintain their existing possessions and places of worship. It also affirmed that "all churches and religious confessions are recognized in their legal personality" and shall maintain their existing possessions and places of worship.

Regarding Decree No. 119-A of 1890, it is important to note that its Article 1 contains wording that remains present in the current Federal Constitution of Brazil, promulgated in 1988. This wording was also included in the different constitutional texts throughout the history of the Brazilian Republic (that is 1934, 1937, 1946, 1967/1969). The decree prohibits the State from establishing or maintaining religions or cults. It also prohibits "the creation of differences between the inhabitants of the country based on beliefs, philosophical or religious opinions". Consequently, as its corollary, the separation between the State and religions is accompanied by the principle of citizen equality, which extends to all matters of conscience. This principle has become an integral part of the foundations of democracy in Brazil since the proclamation of the Republic and has remained present in every Brazilian fundamental charter.

However, 110 years later, the agreement between the Holy See and the Brazilian Executive, signed at the Vatican on November 13, 2008, and presented to the Brazilian National Congress on March 13, 2009, was deemed unconstitutional and contrary to republican tradition of Brazil. It was seen as a violation of the fundamental principles of equal citizenship, justice, freedom, and equality. This proposed agreement, if approved, would alter the legal framework established by the Federal Constitution of 1988, thereby changing the separation regime defined in Article 19. Moreover, it is crucial to consider the connection between this article and Article 5, as it would impact the fundamental rights of Brazilian citizens.

That is, it alters what not even a Proposal for a Constitutional Amendment could do, even if the proper procedures are respected. It pertains to one of the few immutable clauses of the Brazilian Constitution, namely individual rights and guarantees, specifically pertaining to freedom of conscience, belief, and worship as stated in Article 5 of the Federal Constitution. In other words, the proposed agreement or concordat, pursued by the Holy See and signed by the Brazilian Executive in November 2008 at the Vatican, dramatically raises the issue of the priority of the Brazilian Constitution over foreign relations.

4. A Brief Retrospective on Holy See Agreements or Concordats

The tradition of establishing concordats dates back to ancient times, reflecting outdated expectations that do not align with the characteristics of the modern State. In today's world, States grant citizens a series of rights resulting

from human negotiation, aiming to foster progress in the relationship between the State and its citizens, without invoking supernatural influences. States do not reject the supernatural, but rather understand that matters of faith belong to the private sphere and individual choices of citizens as individual themselves, rather than the public domain.

In fact, in the Western world, the legal framework governing the relationship between the State and religions has a historical context that finds a pivotal moment in the 16th century with Luther's Reformation in Germany and Calvin's Reformation in Switzerland. These religious movements had profound impacts not only within the religious sphere but also on the political order between states, dividing Christianity into three major denominations. The power structures that had long intertwined Catholicism and politics, with the Pope assuming the role of a prominent international figure and the Holy See acting as "an arbiter between sovereigns," (Romano, p.71) began to be challenged during this period. The ensuing Thirty Years' War was eventually concluded by the Westphalian treaties in 1648, which introduced a laic perspective as the foundation for peace, exposing the relevance and complexity of reaching out the religious neutrality in human affairs, when the human condition is the only possible common ground.

In a detailed analysis, Romano emphasizes that the Peace of Westphalia, lacking an international legal or religious authority like the previous role of the Holy See, was conceived as a delicate balance based on mutual friendship and trust between sovereign entities. It is viewed as a civil obligation between sovereigns who simultaneously functioned as judges and parties, as prescribed by Grotius. Romano further argues that, in practice, the Peace of Westphalia carried ethical consequences, such as the proclamation of secular sovereignty above religious power, leading to state-guaranteed tolerance between Churches. Referencing Max Weber's examination of concordats (or similar agreements in other Christian denominations) between the Holy See and secular powers, Romano summarizes the social scientist's position, highlighting the domestication of governance in the exchange of influence between religious powers and the state.

Therefore, the Western framework shaped by Luther's Reformation and Calvinism brought about a new positioning of the Catholic Church within the realms of political, national, and international relations. This triggered the Counter-Reformation movement, which marked the establishment of the Society of Jesus and the ideals that accompanied the Iberian conquerors during the colonization of the Americas. The relationship between royal power and religious power was subsequently formed through the Royal Patronage, as previously mentioned, which represented a complex union between the monarchy and the Catholic Church. This arrangement involved the collection

of taxes through tithes by the king, and in return, the king pledged to support and maintain the Catholic Church, its assets, and religious personnel.

It is necessary to recall that in the complex European political context of the early 20th century, the Lateran Agreements emerged as a collection of three documents—a concordat, a political treaty, and financial provisions—that established the separation between the Italian State and the Catholic Church. Since the signature of these agreements, in 1929, by dictator Benito Mussolini, Italian political life was differentiated from the Catholic religious life, strengthening Italian nationalism during a period of heightened tensions. The agreements also granted the Catholic Church independent legal personality, severing its longstanding connection to the Italian State that had existed since 1870 when Victor Emmanuel II's troops annexed the papal territories. Prior to this, the Pope effectively held dual roles as the head of the Catholic Church and as the temporal sovereign of a State considered then akin to others (Rezek, p. 241).

Furthermore, returning to Romano's analysis, the Lateran Agreements reveal how fascist power sought legitimacy through them, while the Holy See aimed to revert to a pre-Westphalian situation. In Pope Pius XI's document addressed to Cardinal Pedro de Gasparri in 1929, it is stated that the Concordat involved two full sovereignties, each with its own determined order, where the objective dignity of their respective ends necessarily determined the absolute superiority of the Church. According to Romano, this example demonstrates how that institution could position itself ambiguously, aiming to regain a political situation from three centuries earlier. It underscores the significance of the legal regime adopted by a state, resulting from a constituent process, in relation to religions, different of a personal initiative of a dictator, as Mussolini was.

Moreover, by recognizing Vatican City as the property of the Catholic Church, as opposed to conferring mere possession rights as outlined in the Italian "law of guarantees" of 1871, the Lateran Agreements secured significant advantages for the Catholic Church. These advantages included political independence (beyond the papal inviolability established in 1871) and state-like attributes. As a result, the Holy See emerged as the administrative and political center of the Catholic Church, empowered to enter into contracts and agreements, both domestically and internationally. Meanwhile, Vatican City received the designation as a geographical entity within Rome. However, an ambiguous identity persists, particularly when the Catholic Church becomes involved in international political matters.

Is the Holy See, then, a sovereign state? Studies in International Law have continuously referenced the Holy See as a unique case worldwide, without definitively categorizing it as a state. Rezek provides a meticulous analysis of

the legal nature of the Holy See. While it possesses a territory (albeit small, covering approximately forty-four hectares), a population (albeit small, with fewer than a thousand individuals), and an independent government (under the unquestionable leadership of the Pope), two aspects stand out, denying the Holy See the legal status of a state. Firstly, the purposes of the Holy See, as the governing body of the Church, do not align with the objectives of a sovereign state. Additionally, it is crucial to note that the Holy See lacks a personal or national dimension. Its population retains their original national ties, identifying as Poles, Italians, Swiss, and citizens of other nations (Rezek, p. 241).

Therefore, what connects the aforementioned population to the Holy See? As the author mentioned, the bond between these individuals and the State of Vatican City, as it is officially known as an alternative name, is not basedon nationality. It resembles the functional relationship that exists between international organizations and their administrative staff (Rezek, p. 241).

The analysis delves into Rezek's work, which establishes the "historical legacy" attributing legal personality of international law to the Holy See. However, due to teleological reasons, the absence of nationals, and the evident lack of characteristics defining it as an international organization, the Holy See cannot identify itself as a State. This leads the jurist to conclude that it is a unique case of anomalous international personality (Rezek, p. 242). Consequently, the Holy See's affiliation with the United Nations is not as a full member, but rather as an observer.

Moving forward, during the process of presenting and disseminating the text of the concordat, signed at the Vatican in November 2008, as mentioned before, the Catholic communication strategy repeatedly emphasized that there would be no constitutional issues, as that agreement constituted a "legitimate international agreement between two sovereign states." As stated earlier, there is a distinct nature between a state such as Brazil and the Holy See. Furthermore, in the Message forwarding that agreement to the Brazilian National Congress, identified as Proposition MSC 134/2009, and signed by the Secretary-General of the Brazilian Ministry of External Relations, a particular point can be highlighted. In the Secretary-General's attempt to justify the constitutional viability of the agreement, he inadvertently highlights its fragility by stating, "It should be noted that the establishment of an agreement with a religious entity was possible in this case because the Holy See possesses juridical personality of Public International Law."

This affirmation raises the question: why is there a need for this specific mention? This is where the core of the unconstitutionality of that agreement becomes evident. In fact, the statement sought to justify the unjustifiable, which is why a single religion received precedence in having an agreement with the

Brazilian State, thereby being privileged over all other religious groups, as well as agnostics and atheists, when the Brazilian Federal Constitution affirms the equality of all citizens and prohibits the State from signing agreements with religions, regardless of their nature.

5. Aspects of International Acts in Relation to the Brazilian Constitutional Order

To better understand the complexity of the Brazil-Holy See Agreement (2008), it is now necessary to briefly analyze how bilateral agreements operate in Brazil, the majority of which are of a commercial nature.

The following is part of a summary of the proceedings and the final decision made by the Brazilian Supreme Federal Court, known as the Supremo Tribunal Federal (STF), delivered by Justice Celso de Mello regarding ADIN n. 1480-3. This case pertains to the ratification and promulgation of Convention 158 of the International Labor Organization (ILO), which addresses the termination of employment relationships initiated by the employer and the protection of employment relationships. The summary encapsulates the important debate presented in the document regarding the normative subordination of international treaties to the Constitution of the Republic in Brazil.

> In the Brazilian legal system, international treaties or conventions are hierarchically subordinated to the normative authority of the Constitution of the Republic. Consequently, if international treaties, upon incorporation into the domestic legal system, contravene the text of the Federal Constitution, they have no legal value.

The exercise of treaty-making power by the Brazilian State, despite the contentious Article 46 of the Vienna Convention on the Law of Treaties, is subject to the necessary observance of the legal limitations imposed by the constitutional text.

While presenting the academic and legal debate between conflicting approaches regarding the relationship between the international order and the national order, Justice Celso de Mello concludes:

> Therefore, beyond the doctrinal controversy between monists and dualists, it is crucial to acknowledge that within our normative system, the Constitution of the Republic provides the ultimate solution for the issue of incorporating international acts into the Brazilian domestic order. As the fundamental law of the Republic, it is the ultimate source par excellence - with its embodied prescriptions - for determining the state's procedure concerning the moment

> when the norms contained in international treaties become effective and enforceable within the national legal system.

Consequently, an agreement that transcends the national legal order cannot be approved since its ratification would alter a crucial provision of the Constitution. In this particular case, the issue concerns the legal regime governing the relationship between the State and religions, a topic intricately linked to the fundamental clause of the Brazilian Constitution found in Article 60 § 4º- IV, which This clause addresses individual rights and guarantees, including particularly the freedom of conscience, belief, and worship. It is not a constituent process, nor is the aforementioned agreement subject to the rigorous procedures of a Proposal for a Constitutional Amendment. One might question whether, even unintentionally, this would be a form of usurpation of the constituent power, which exclusively belongs to the people.

To delve further into the analysis, it is imperative to examine the resources within the Federal Constitution that can shed light on the potential implications of approving and ratifying this agreement. Specifically, it is necessary redirect the attention to the provisions affected in Article 19:

> Article 19. The Union, the states, the Federal District, and the municipalities are forbidden to:
> I – establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law;
> II – refuse to honour public documents;
> III – create distinctions between Brazilians or preferences favouring some.

As noted, Article 19 of the 1988 Brazilian Constitution, directly rooted in the republican tradition that originated from aforementioned Decree No. 119-A/1890, encompasses items I and III, which would be directly impacted by the agreement if approved by the National Congress and ratified by the President of the Republic, who ultimately holds responsibility for such action.

Even the rapporteur for the Brazilian Federal Chamber of Representatives, Deputy Bonifácio Andrada himself, classified the agreement as a "type of juridical-religious alliance" (Andrada, p. 23), explicitly identifying its nature. However, despite this clear identification, the honorable rapporteur should have reached a different conclusion—one of rejecting the proposal instead of approving it. The rapporteur's own analysis indicates that if and when approved, the agreement would become precisely what the Constitution prohibits, thereby violating the legal framework established by the Brazilian Federal Constitution. This violation would deny the 120-year-old tradition of protecting all religions and individuals, regardless of their beliefs or lack thereof. Furthermore, it

would undermine the very structure of the 1988 Constitution by challenging one of its fundamental pillars.

It is important to highlight the political pressure for the fastest possible approval, primarily driven by the repeated requests of the National Conference of Bishops of Brazil (the Catholic Brazilian "CNBB"). Despite its guise as an international bilateral agreement, the matter is inherently national in nature and distinctly religious in its objectives. Numerous manifestations, including those by parliamentarians (Brazilian Federal Chamber of Deputies, or Câmara dos Deputados), suggested that the agreement is geared towards evangelization. The pressure was openly exerted during personal visits by Cardinal Geraldo Lyrio, President of CNBB, to Deputy Severiano Alves, President of CREDN (as informed by the Agência Câmara website), and a few weeks later, by the Secretary-General of CNBB to Deputy Michel Temer, President of the Federal Chamber of Deputies. Additionally, bishops extended invitations to the Deputies individually or in groups, in their respective states, for clarification meetings on the agreement and urged the adoption of an urgent voting regime. The request for an urgent voting regime was approved by a vote of 302 to 49 on June 30, 2009. During a public hearing on July 14, 2009, Deputy André Zacharow (Câmara-b, p. 37) addressed the representative diplomat of the Ministry of Foreign Affairs present in that occasion, stating:

> I would like to have the two years that Itamaraty[2] had, with complete freedom, and not only consult eleven Ministries but all currents of thought in this Nation, so that we can, not in an urgent regime, as we are pressured here because today or tomorrow we will have to vote... (...) So, I leave my protest and a request to Mrs. Ambassador: release the President of the Republic from this act, which is unconstitutional and discretionary. Ask Itamaraty to withdraw this discussion from this House for the good of our Nation.

A closer analysis requires highlighting certain points. Firstly, the claim presented - both in the Executive Message, as mentioned earlier, and extensively in articles and statements by the National Conference of Brazilian Bishops (CNBB) and supporters of the agreement - asserts that the agreement is authorized because it is international and also because it is established with the Holy See, a State (as they repeatedly emphasize), and not with the Catholic Church as a religion.

However, beyond the technical aspect regarding the Holy See not precisely being a sovereign state, but, without undermining its dignity, an anomalous legal personality under international law, it is important to consider that Article 19 of the Constitution prohibits "relationships of dependence or alliance" with "religious cults or churches," further complemented by "or

[2] The Ministry of External Relations is historically known as Itamaraty.

their representatives." Undoubtedly, despite the ambiguity and ambivalence generated by the multiple identities through which the millennial Christian denomination manifests itself, it cannot be denied that the Holy See represents the Catholic Church. Similarly, it cannot be denied that the Brazilian Federal Constitution does not limit the representatives of "religious cults or churches" to being "national."

Likewise, there is nothing in the Federal Constitution that establishes that the prohibited "relationships of dependence or alliance" are restricted to the national sphere, raising concerns about the rapporteur's assertion that the agreement represents a juridical-religious alliance. One aspect debated by the congresspeople during the two public hearings of the Foreign Affairs Committee[3] referred to the question: is an agreement truly an alliance?

According to studies by Bobbio, Rezek, Amaral-Júnior, Pradines, among others, an alliance between two countries, when duly established on common grounds, is formalized, signed, and thus expressed in an agreement or treaty, or in the case of the Holy See, an instrument that, only when established with the Holy See, receives the designation of a concordat. Alliance is a term within the vocabulary of strategic politics, which can be used in cases of war (between countries), electoral alliances (between political parties), and between individuals. The formalization of an alliance, putting it in writing and signing it, makes the alliance solemn and enduring. In the international arena, it is called a bilateral agreement, while at the national level, between federated entities or institutions, it may be called a convention, a technical cooperation program, and others. An agreement can also arise from a search for clarification on points of disagreement and conflict, as in cases of war.

Furthermore, according to the Juridical Vocabulary (De Plácido e Silva, p. 93):

> In Civil Law terminology, alliance has the same meaning as affinity. In International Law, it is an agreement signed between two or more governments for mutual defense or to ensure reciprocal advantages for the allied nations. In such cases, the alliance results from a treaty and corresponds to the situation created by it.

Thus, it becomes impossible to deny that the bilateral agreement is a type of alliance, as prohibited by the Federal Constitution, which does not distinguish between national and international for the relationships of dependence or alliance it forbids, particularly because the agreement deals with religion,

[3] This Author was invited to be the unique scholar (and unique citizen) invited to address to the Congressmen in those public hearings, for the Author's research and public recognition of expertise on the matter.

whether in the recognition of canon law or in the set of articles referring to religious aspects, creating ambiguities in the application of the Brazilian legal system itself due to interference. For example, during a public hearing, Deputy Dr. Rosinha (CÂMARA-a, p. 28) raised the following question:

> The Paragraph 1 of Article 12 states that the approval of ecclesiastical judgments in matrimonial matters - both marriage and separation - confirmed by the superior control body of the Holy See - I got married, and the Holy See confirmed it - will be conducted according to Brazilian legislation the recognition of foreign judgments. I am a doctor, not a lawyer, and I got married in the [Catholic] Church. Now, when I want to get a divorce, either me or my spouse decides to appeal to the Holy See because one of us is against our separation. And here is what the article's heading says: Canon Law governs the marriage right. What kind of legal entanglement does this create? Is it because of an international agreement? It is a step backward.

6. A Religious and Exclusively Catholic Identity for the Nation?

The prevailing nature of the proposed agreement with the Holy See, prioritizing external relations over internal requirements, not only violates the letter of the law, as previously demonstrated regarding Article 19, Item I, but also disregards the principle of equality, enshrined in Article 19, Item III.

The proposed agreement, particularly in Article 11, reflects a particular view of the role of the Catholic Church, which is also evident in the opinion presented to CREDN (the Committee of Foreign Relations and National Defense), advocating for the approval of MSC 134/2009. The language used, such as "religious education, Catholic and of other religious denominations," implies a division of religious possibilities into "Catholic" and "others." Furthermore, statements by the representatives of the National Conference of Brazilian Bishops (CNBB) and some congresspeople, emphasize an interpretation of a "Catholic Brazil" that holds primacy over "other" Christian denominations, other religions, agnostics, or atheists. In this view, the Catholic Church represents the "Self" of the nation, while all other beliefs, or lack thereof, are considered a singular and homogeneous alterity, excluded from the identity of the Brazilian nation. Addressing this issue, Deputy Arlindo Chinaglia raised a question during a public hearing:

> "Considering that Article 11, Paragraph 1, mentions Catholic religious education and that of other religious denominations, my first question arises. Is it the role of the Brazilian State, in a bilateral agreement, to allow just one denomination to speak on behalf of others? Since it is a bilateral agreement, I

> am uncertain whether individuals belonging to other religious denominations would feel comfortable with a single denomination, even one as significant and important as the Catholic Church, signing on their behalf."

Undoubtedly, the pressure from various religious groups, particularly evangelical Christians, as well as an organization representing atheists, influenced the rapporteur to attempt to demonstrate the unprovable notion that Article 19, Section III, and the principle of equality contained therein were being supposedly upheld. This was done by falsely attributing to the agreement with the Holy See a greater authority than even that possessed by the national legal system itself, thereby supposedly granting unprecedented rights to all religions. Indeed, that is what the rapporteur's statement implies, although not faithful to the truth:

> It should be noted that this Agreement not only includes legal provisions of interest to the Catholic Church but also to all other religious denominations. This assertion is evident in the text of the Agreement, as many of its provisions refer to other religious confessions, granting them the same rights and privileges as those mentioned for the Catholic Church. (Andrada, p. 21)

The use of the term "others" in this context reduces the vast and diverse religious, philosophical, and ideological plurality present in Brazil to a homogenous entity. It also ignores the dynamic and ever-changing nature of this plurality in terms of numerical representation, as evidenced by population censuses. This perspective implies a privileging of a specific religious choice, Catholicism, under the assumption that it represents the majority. The rapporteur further states in his final report:

> Therefore, it can be concluded that the constitutionalism of our country over the years has demonstrated an unequivocal commitment to fostering relationships with various religious options and, logically, with the Catholic Church, which represents the predominant religious spirit in our country. (Andrada, p.13)

Following this line of argument, the rapporteur even challenges the constitutional principle of laicity enshrined in Article 19, disregarding the required neutrality and impartiality of the laic State by citing in his report (p.16) the pronouncement of a Catholic bishop, holding authority position within the Vatican:

> Bishop Lorenzo Baldisseri, when commenting on the Brazil-Holy See Agreement, quoted President Nicolas Sarkozy, the Head of the French State, who, in a historic statement, emphasized that the modern concept of laicity should be positive, preserving freedom of thought and recognizing religion as a help to the state government powers. (Andrada, p. 16).)

In addition to the unwarranted expectation that religion should be seen as "a help to the state government powers," blurring the boundaries and instrumentalizing something as fundamental as freedom of conscience, belief, and worship, the use of the adjective "positive" alongside laicity, alters the meaning of the principle itself. It brings to mind the terminology adopted during the initial stages of Nazism, referring only to Christian denominations that supported the regime as "positive Christianity." However, this did not prevent them from later being persecuted, along with religious minorities, including millions of Jews, Romany, Black people, disabled individuals, political dissidents, and followers of different religions, not forgetting to mention the horrors of the Shoah.

Now, it is important to consider the insights of Bobbio, Bovero, and Lafer, who have raised important concerns regarding the limitations of "majority rule" in the democratic game. According to contemporary political theory, one of the "universal procedures" of democracies, as highlighted by Bobbio and others, is that no decision taken by the majority should infringe upon the rights of the minority, particularly the right to become a majority on equal terms (Bobbio, p. 327).

As for the other two limits to majority rule, Lafer (2007) explains that they stem from the concept of constitutionalism established in Article 16 of the French Declaration of the Rights of Man and of the Citizen of 1789: "Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution." International declarations, in line with this perspective, protect fundamental rights to ensure the well-being of those who are not in power and are the most vulnerable. The separation of powers, as explained by Lafer (2007), safeguards the principles of legality and impartiality while preventing the abuse of power, which is a perpetual temptation in governance.

When it comes to the limitation of majority rule in safeguarding rights, Bovero emphasizes that mere imposition of the majority's will does not equate to democracy; instead, it can easily degenerate into autocracy. He argues that democracy is not a mere "algebraic sum of individual wills" (of citizens and/or their representatives, whoever they are), but requires transparency, public deliberation, and the weighing of opinions accessible to all citizens. It is not permissible to "reinterpret" the concept of democracy to cater to the will of a ruler or a group, as that could lead to labeling governments that persecute and violate fundamental rights as democratic. Bovero further states:

> "The organs of democratic power, in a Constitutional State of Law, are not omnipotent; (constitutional) democracy does not imply the omnipotence of the majority (nor even the unanimous totality of citizens' and/or their representatives'). If, for example, a law violates a civil or social right established

> in the constitution as fundamental, that law is unquestionably illegitimate in its content, as stated by Ferrajoli, in its 'substance'." (Bovero, p. 32)

Accordingly, Bovero argues that if a parliament succeeds in passing a substantially anti-democratic law that violates fundamental rights (which function as an external control mechanism for democracy in general or, in the case of Brazil, as constitutional clauses, or the stony clauses), and it does so while adhering to the formal rules of democracy, it can be deemed, according to Bovero (p. 32), an "illegitimate democratic decision" that must be invalidated.

Upon closer examination, Article 20 of the Brazil-Holy See Agreement (2008) deserves careful attention due to the choice of words it contains, which carries significant implications. In fact, these words suggest a sense of superiority held by one particular religious denomination over others, encompassing diverse belief systems or even non-belief. The Article 20 grants itself the authority to retroactively validate documents and regularize de facto situations that existed beyond the confines of the law. Unfortunately, such actions come at the expense of the entire citizenry, disregarding the principles of the Brazilian State, the Brazilian Federal Constitution, and, one could argue, even History itself. This validation process has spanned over a century, starting with Decree 114-A of 1890 and extending to the Brazil-Holy See Agreement of 1989.

During the deliberation process of the proposal, the Agreement between Brazil and the Holy See, signed in 1989 by José Sarney, in his presidential term, emerged as a crucial aspect regarding the constitutionality and legitimacy of the 2008 Agreement. The wording of Article 20, when approved, implicitly validated the 1989 Agreement. This particular issue is extremely sensitive as it is linked to National Defense and, consequently, part of the essence of national sovereignty. Acknowledging the significance of this matter, Deputy André Zacharow, in a separate vote, submitted a request seeking clarification from the Ministry of Foreign Affairs regarding the 1989 Agreement.

Upon questioning the Legislative Consultancy of the Federal Chamber of Deputies, Congressman Zacharow made a significant discovery. It was revealed that the aforementioned agreement had never undergone the mandatory process of approval by the National Congress. Consequently, the 1989 Agreement was not to be considered legally valid. However, despite this crucial fact, the Agreement was implemented for over two decades, with public funds allocated towards its execution and the implementation of other associated measures. All of this public money was expended to serve an agreement that had not even been ratified by the competent and constitutionally obligatory state bodies.

The Deputy's consultation demonstrated that the inclusion of the 1989 Agreement in Article 20 of the 2008 Agreement, was indeed an adjustment to meet the constitutional requirement of approval by the National Congress.

However, in that document, the Minister of Foreign Affairs affirmed that the 1989's Agreement "does not mention the need for instruments of ratification to be exchanged for it to come into force." The Minister stated that it could be so considered an agreement of a "simplified nature," as it did not establish new obligations or impose burdensome commitments on national resources. Additionally, the Minister stated that the 1989 agreement would be aligned with pre-existing Brazilian legislation on the subject.

Furthermore, the response from the Ministry of Foreign Affairs highlighted that the agreement followed the procedural requirements for international acts in Brazil and was published in the Brazil Official Daily Journal of the Union, ensuring broad publicity. Despite its irregularity and the constitutional demands binding to the 1988 Federal Constitution of Brazil, the unratified agreement remained in effect for twenty years without any objections. However, this raised unanswered doubts as to whether these procedural requirements could override the provisions established in the Federal Constitution, particularly considering that the promulgation of that Fundamental Charter had been recently enacted at the time of signing the 1989 Agreement. Additionally, if the situation of the 1989 Agreement was regular in terms of the Brazilian juridical order, as stated by the Ministry of External Relations, it is worth questioning the rationale behind the need to validate it as part of the 2008 Agreement, which discussion in this article.

The positioning, then, of Deputy Zacharow, the author of the inquiry, was unequivocal. He argued that the 2008 Agreement sought to validate the 1989 Agreement, because it was not yet regular in 2008. The 1989 Agreement refers to religious assistance in the Armed Forces, establishing the Military Ordinariate within the Armed Forces. That congressperson asserted that this agreement had not been submitted to National Congress, contravening constitutional principles. The argument that it does not generate expenses is irrelevant, since it was already in force and, as already said, it had been in effect for two decades.

The argument that the 1989 Agreement does not generate additional expenses is considered irrelevant, as it had already been in effect for two decades. However, it is crucial to note that the 1989 Agreement, having never been publicly debated, contains several points that are deemed unconstitutional. For example, the military archbishop, designated as the "Ordinariado Militar" (Military Ordinariate), is nominated by the Pope, and officially appointed to office by Brazilian authorities. It operates from the premises of the Brazilian Ministry of Defense, travels extensively across Brazil using public funds, holds a seat on the General Staff of the Armed Forces, carries the rank of a divisional general, and is received by military authorities in all military units nationwide.

All these activities were funded by the Brazilian government, thereby undermining the principle of equality enshrined in Constitution. No other religious or denominational group enjoys equivalent privileges, making it an issue of "different rights" rather than "same rights" in light of the 1988 Federal Constitution of Brazil.

The claim that the 1989 Agreement is part of pre-existing norms in Brazilian legislation on the subject resembles the argument repeatedly asserted about the 2008 Agreement introducing nothing new. Nonetheless, both agreements share a fundamental flaw: they violate Article 19 of the 1988 Federal Constitution, which prohibits maintaining alliances with religious cults, churches, or their representatives. This violation also extends to the principle of equality, as the preferential relationship with one church undermines others.

If the application of the 1989 Agreement, which was never considered by the National Congress but was submitted for validation as part of the 2008 Brazil – Holy See Agreement, has generated situations outside the boundaries of the law, it is insufficient to simply adopt the law without analyzing the existing circumstances under this historical framework. The incorporation of the past into the national legal system cannot be a straightforward process. Delicate situations arise daily, as revealed in interviews conducted during the field study, that violate constitutional equality in the relationship between religions. This places all chaplains, regardless of their faith, in a de facto subordinate position to the Catholic Military Archbishop due to the privileged position bestowed upon him by the aforementioned 1989 Agreement. The agreement is categorized as an international agreement aimed at evading the constitutional limitations imposed by the aforementioned Article 19 of the Federal Constitution of Brazil and for the end of bestowing official legitimacy before the juridical order.

This breach of equality affects different citizenship groups in varying ways. It remains evident that Agnostics or Atheists are not considered at all. Indigenous peoples are still viewed as objects of mission by the majority of Christian denominations, subjected to conversion and evangelization attempts that disregard their original spiritualities and imply that they have no connection to such public measures, which are clearly aimed at furthering the religious goals of some while prejudicing others.

Furthermore, during the processing of the 2008 Agreement in the Chamber of Deputies, there was no record of any chaplain belonging to any of the religions of African Matrix. This highlights the inequality experienced by the African-descendant population, which is intertwined with the pervasive issue of cultural racism in Brazil (Sodré, 2023).

Christian churches of Evangelical or Protestant denominations that already had military chaplains in the various Brazilian military forces at the time felt belittled and humiliated. They were officially placed in a situation of

inferiority, compelled to offer obedience to an authority of a different religion through a legal instrument. Notably, only the Catholic archbishop holds the rank of divisional general, while Protestant and Evangelical chaplains have limited military ranks in terms of both degree and number.

It is important to highlight that, although allowed by ordinary law, there are currently no military chaplains representing religions other than Christianity. Even within Christianity, only the mentioned segments are included. Additionally, besides the de facto privileged treatment, it is worth mentioning the absence of mechanisms representing different religious denominations before the Ministry of Defense, unlike the Roman Catholic Church, which enjoys such representation.

Even evangelical denominations, represented by the associative entity known as ACMEB - "Associação Pró-Capelania Militar Evangélica do Brasil" (Association for the Evangelical Military Chaplaincy of Brazil), lack physical or institutional space within the Ministry of Defense, unlike the Military Ordinary (Catholic), who has dedicated rooms, staff, and various resources at their disposal.

The situation where a religious figure, as a civilian citizen without a military background, receives the designation of military (military archbishop) and assumes a position also considered military ("Military Ordinariate")within the Ministry of Defense, has generated dissatisfaction among military chaplains and the military in general. This further exacerbates the aforementioned breach of equality because the position is reserved for a specific religious denomination based on an international bilateral agreement. While formally appointed by the President of the Republic, the appointment is contingent upon approval by the Pope. This arrangement reveals that the 1989 Agreement is essentially a concordat, as it establishes an alliance between the Brazilian State and a specific religious denomination, which is prohibited by the Constitution, as previously mentioned. Bovero, citing Ferrajoli, distinguishes between "vigor" (force, existence) and "validity" to illustrate the difference between illegitimate and legitimate actions concerning democratic procedures that must consider fundamental rights and exceptions to the "majority rule." Following this line of thought, even if defensible in terms of the procedural aspect, if an action lacks validity and legitimacy, it should be annulled. In the case of the 1989 Agreement, the absence of validation renders its twenty years of application without congressional approval effectively invalid.

Now, when a particular religious denomination already benefits from certain advantages due to being the majority in the population, and the State further grants it special and exclusive privileges, even if those privileges are not legitimate and attempts are made to justify them legally, it can lead to feelings of marginalization and diminishment among other religious groups and non-

believers. Drawing from Sarmento's analysis of hate speech (Sarmento, p. 239), where harm and humiliation are intertwined, the victims may react with rare instances of violence (due to the power asymmetry) or by retreating into silence. Feeling oppressed, humiliated, and abandoned by a State that refuses to protect them, they withdraw and disengage from the public sphere. Since the signing of the agreement in November 2008, it is accurate to state that the "most minority" minorities have been silenced and humiliated.

It can be argued that the most marginalized minority groups have conspicuously remained silent since the signing of the agreement in November 2008, which does not necessarily imply their consent. These groups, along with individuals who do not align themselves with any particular group, are integral components of the nation's collective identity - a diverse, multifaceted entity, as elucidated by Bobbio. The suppression of their consciences, beliefs, and fundamental rights from the public sphere cannot be considered democratic or constitutional in any sense.

This article serves as a sample of an ongoing research project aimed at contributing to a better understanding of the laic nature of the State in the contemporary world. The global context has highlighted the utmost relevance of this theme. In Brazil, the consequences of the 2008 Brazil – Holy See Agreement, which was ultimately approved by both houses of the National Congress of Brazil, have had an impact on the legal order as well as the cultural, social, and political life of the country.

7. To be continued…

In previous studies, the author of this article examined the impact of religious questions on Brazilian public schools, which have been caught in a continuous controversy regarding the interpretation and implementation of a constitutional provision concerning religious education in public schools for fundamental education. This provision presents a complex duality: religious education is mandatory for public schools of fundamental education, and facultative for children aged 5 to 14. In 2010, a direct action of unconstitutionality (ADI) was filed with the Federal Supreme Court shortly after the publication of the Decree related to the 2008 Agreement, which focused on this educational matter as approached in that agreement. Despite social mobilization and the efforts of the Justices of the Federal Supreme Court (STF), the voting results in 2017 indicated the need for a careful reassessment of the issue.

However, an aspect that is often overlooked is the fact that the unconstitutional approval process of the 2008 Agreement paved the way for the kind of ideological influence exerted by far-right and ultra-conservative

groups, personified by former President Jair Bolsonaro. This influence has been characterized by hatred and intolerance, exploiting and misusing the power of the State, with the support and involvement of Evangelical groups who saw in Bolsonaro's government an opportunity for their identities to be recognized, albeit in an inappropriate and regrettable manner. As mentioned earlier, the abandonment of the majority of religious groups to their own fate, while favoring a group that already held the majority, meant that the signing of the 2008 Agreement promoted the hegemony of that majority group, within the State. Paradoxically, the same government that signed the agreement, Lula's government, was the one that most promoted the democratization of opportunities at all levels of education, health, and employment, precisely by empowering historically excluded groups and populations.

It is important to note that this analitical criticism is not extended to many sectors of the Catholic Church or its believers, who have historically demonstrated dedication, sometimes even at the cost of their lives, in the pursuit of justice for the oppressed and the nurturing of spirituality for those who choose it fundamented by their free will. Indeed, what is at stake is Democracy and the Rule of Law, which have been hard-won in Brazil after 21 years of dictatorship, highlighting that laicity in Brazil is inalienable part of Democracy.

The 2008 Agreement not only reinforced the existing trend of religious groups promoting their religious identities through associations within public bodies (such as the so-called "Bancada Evangélica", Evangelical Bench), but it also raised new and complex questions. These include its impact on national and local elections, as well as the dynamics within and among the three branches of the Republic: the Executive, Legislative, and Judiciary. The Agreement not only generates discord within the State itself but also incites conflicts among religions and denominations, disregards minorities, and misuses the concept of "majority rule," thereby undermining the democratic process. It opens the door to violations of fundamental rights and creates ambiguities, contradictions, and conflicts that did not previously exist within the realm of citizenship. These developments resulted in losses and damages to democracy that cannot be resolved through rhetoric alone.

By upholding the guarantee of freedom of conscience and equality for all citizens, the laic nature of the State possesses educational power: it promotes the practice of mutual respect, demands ongoing dialogue, and encourages efforts in favor of the collective good. Only by continuing research, sharing new articles, and discussing the situation will be possible to scholars effectively contribute to fulfilling this educational potential, far from the current situation, damaged by hatred and competition.

Bibliography:

Amaral-Júnior, Alberto do. *Introdução ao Direito Internacional Público*. São Paulo: Atlas, 2008.

Andrada Bonifácio. Parecer apresentado à Comissão de Relações Exteriores e Defesa Nacional. *Proposição MSC 134 de 12 de março de 2009*. Câmara dos Deputados. CREDN. Brasília. 11 jun. 2009.

Baubérot, Jean; Millot, Micheline. Laicités sans frontiéres. Paris: Éditions du Seuil, 2011.

Blancarte. Roberto J. *Para entender: El Estado Laico*. México, D.F.: Nostra Ediciones, 2008.

Bobbio, Norberto; Matteucci, Nicola; Pasquino, Gianfranco. *Dicionário be política*. Volume 1. 13ª ed., reimpr. Brasília : Editora Universidade de Brasília, 2008.

Bovero, Michelangelo. *Democracia y derechos fundamentales*. Isonomia n. 16, Abril 2002, p.21-38.

Brasil. *Decreto 119-A* de 7 de janeiro de 1890.

Brasil. *Lei n. 9394*, de 20 de dezembro de 1996. Lei de Diretrizes e Bases da Educação Nacional.

Brasil. Câmara dos Deputados. Detaq, *Notas taquigráficas. Comissão de Relações Exteriores e de Defesa Nacional. Número: 0991/09*. Data: 07/07/2009, p. 46-47.

Brasil. Câmara dos Deputados. Detaq, *Notas taquigráficas. Comissão de Relações Exteriores e de Defesa Nacional. Número: 1046/09*. Data: 14/07/2009, p. 46-47.

Brasil. STF. *Ação Direta de Inconstitucionalidade (Med. Liminar) 1480-3*. Relator Ministro Celso de Melo. Brasília. 17 jul. 1996.

Brasil. STF. *Ação Direta de Inconstitucionalidade. 2076-5 AC*. Relator Ministro Carlos Velloso. Brasília. 15 ago. 2002.

Brasil. The Federal Senate. *Constitution of the Federative Republic of Brazil*. Brasil, 2013. Retrieved from: https://www2.senado.leg.br/bdsf/bitstream/handle/id/243334/Constitution_2013.pdf.

Catroga, Fernando. *Entre Deuses e Césares: secularização, laicidade e religião civil*. Coimbra: Edições Almedina, 2006.

Coq, Guy. *La laicité príncipe universel*. Paris: Le Félin, 2005.

De-Plácido e Silva. *Vocabulário Jurídico*. 27ª ed. Revista e atualizada por Nagib Slaibi Filho e Gláucia Carvalho. Rio de Janeiro: Forense, 2008.

Ferraz, Anna Cândida da Cunha. *Registro histórico documental: Parecer jurídico apresentado ao Governador do Estado de São Paulo* (a questão do ensino religioso nas escolas públicas). In Ensino religioso em escolas públicas : Impactos sobre o Estado laico. São Paulo: Fafe/Feusp/Prosare/ MacArthur Foundation, Factash, 2008.

Fischmann, Roseli. *Escritos e vividos: educação, pluralidade e laicidade do estado*. Open books. Universidade de São Paulo. Faculdade de Educação, 2023. DOI: doi.org/10.11606/9786587047461

Lafer, Celso. *Estado laico*. O Estado de S. Paulo, 20 mai. 2007, p. A-1.

Lafer, Celso. *Democracia e Constituição*. O Estado de S. Paulo, 16 set. 2007, p. A-1.

Le Goff, Jacques. Por un autre Moyan Age. Paris: Gallimard, 1977.

Pena-Ruiz, Henri. *Histoire de la Laicité: Genèse d'un idéal*. Paris: Gallimard, 2005.

Ramos, Elival da Silva. Notas sobre a liberdade de religião no Brasil e nos Estados Unidos. *Revista da Procuradoria Geral do Estado de São Paulo*, n. 27-28, jan/dez, 1987, p. 199-246.

Rezek, Francisco. *Direito internacional públic*o. 11ª ed., rev. e atual. São Paulo: Saraiva, 2008.

Romano, Roberto. *Paz da Westfália* (1648). In História da paz: Os tratados que desenharam o planeta. Demétrio Magnoli (org.). São Paulo: Contexto, 2008, p. 69-91.

Sarmento, Daniel. *Livres e iguais: Estudos de direito constitucional*. Rio de Janeiro: Lumen Juris, 2006.

Silva, José Afonso da. *Curso de direito constitucional positivo*. 16ª ed. rev. atual. São Paulo: Malheiros, 1999.

Sodré, Muniz. *O fascismo da cor: uma radiografia do racismo nacional*. Petropólis: Vozes, 2023.

Vaticano. *Constituição Apostólica Spirituali Militum Curae*, do Papa João Paulo II - Com a qual se dá uma nova regulamentação à Assistência Espiritual aos Militares, de 21 de abril de 1986.