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PAPERS

The State, the Church, and Education in Brazil: the history and status of religious education in the Brazil-Vatican Concordat of 2008[1]

Estado, Igreja e Educação no Brasil: histórico e ponto da situação do ensino religioso na Concordata Brasil-Vaticano de 2008

Estado, Iglesia y Educación en Brasil: historia y situación de la enseñanza religiosa en el Concordato Brasil-Vaticano de 2008

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Abstract

The aim of this article is to make use of analytical elements in reference to religious education within the context of the Concordat signed between Brazil and Vatican City in 2008. To do so, the historical development of this controversial subject, involving Church and State, is examined. It is in the framework of this dynamic, already portrayed by History of Education, that the legal foundations of this type of agreement, based on the terms of the Constitution of 1988, are brought to bear. This study identifies etymological aspects of the term "concordat", as well as historical and conceptual aspects, especially due to the distinct features of the Vatican City State. Within the scope of history of education, this agreement has a background that brings the State and Church relationship to the fore, with a focus on questions of secularity and religious education since the time of the *Padroado* (Patronage) arrangement. We have endeavored to set forth the main elements of the terms of the agreement, judged by the *Supremo Tribunal Federal* (Supreme Court of Brazil) in 2017, on behalf of a Direct Action of Unconstitutionality concerning the query related to religious education. In this respect, the question is whether the decision of the *Supremo* observed what is written on religious education expressed in the Constitution and in the Law of Guidelines and Foundations of National Education.

Keywords: Secularity and religious education in Brazil. Religious education and legal decision. Religious education and the Brazil – Vatican City State Concordat.

[1] This is a considerably expanded and revised version of that included on the site of the Observatório da Laicidade do Estado (OLE) of the Centro de Filosofia e Ciências Humana of the Núcleo de Políticas Públicas: Direitos Humanos, published under the title "Do Acordo-Concordata: ambivalência em ação?" in 2010. English version by Lloyd John Friedrich. E-mail: lloydfriedrich@hotmail.com.

Resumo

Esse artigo intenta trazer alguns elementos analíticos referidos ao ensino religioso no contexto da Concordata assinada entre o Brasil e a Cidade do Vaticano em 2008. Para tanto, examina a trajetória histórica dessa disciplina polêmica, envolvendo Igreja e Estado. É no quadro dessa dinâmica, já retratada pela História da Educação, que são trazidas as bases legais desse tipo de acordo, com base nos termos da Constituição de 1988. Identifica aspectos etimológicos do termo "concordata", além de aspectos históricos e conceituais, especialmente devido ao caráter peculiar do Estado da Cidade do Vaticano. No âmbito da história da educação, esse acordo tem um passado que traz à tona a relação Estado e Igreja, tendo como foco a questão da laicidade e do ensino religioso, desde o Padroado. Busca-se trazer os elementos principais dos termos do Acordo, julgado no Supremo Tribunal Federal, em 2017, por conta de uma Ação Direta de Inconstitucionalidade sobre o quesito relativo ao ensino religioso. Nesse sentido, questiona-se se a decisão do Supremo atentou para a redação sobre o ensino religioso, expressa na Constituição e na Lei de Diretrizes e Bases da Educação Nacional.

Palavras-chave: Laicidade e Ensino Religioso no Brasil. Ensino Religioso e Decisão Jurídica. Ensino Religioso e Concordata Brasil-Estado Cidade do Vaticano.

Resumen

El objetivo de este artículo es utilizar elementos analíticos en referencia a la educación religiosa en el contexto del Concordato firmado entre Brasil y la Ciudad del Vaticano en 2008. Para ello, se examina el desarrollo histórico de este controvertido tema, que involucra a la Iglesia y al Estado. Es en el marco de esta dinámica, ya retratada por Historia de la Educación, que se traen a colación los fundamentos jurídicos de este tipo de acuerdo, basados en los términos de la Constitución de 1988. En este estudio se identifican aspectos etimológicos del término "concordato", así como aspectos históricos y conceptuales, especialmente debido a las características propias del Estado de la Ciudad del Vaticano. En el ámbito de la historia de la educación, este concordato tiene un trasfondo que pone en primer plano la relación Estado-Iglesia, centrándose en cuestiones de laicidad y enseñanza religiosa desde la época del Padroado. Nos hemos esforzado por exponer los principales elementos de los términos del acuerdo, juzgados por el Supremo Tribunal Federal (Tribunal Supremo de Brasil) en 2017, en nombre de una Acción Directa de Inconstitucionalidad relativa a la consulta relacionada con la educación religiosa. En este sentido, la cuestión es si la decisión del Supremo observó lo que está escrito sobre la educación religiosa expresada en la Constitución y en la Ley de Directrices y Fundamentos de la Educación Nacional.

Palabras clave: Laicidad y educación religiosa en Brasil. Educación religiosa y decisión judicial. Educación religiosa y el Concordato Brasil - Estado de la Ciudad del Vaticano.

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Introduction

The agreement between the Federative Republic of Brazil and the Vatican City State[2] in relation to the legal standing of the Catholic Church in Brazil, initially concluded on November 13, 2008, has legal, historical, and conceptual aspects, and they require an explanatory approach to be better understood, analyzed, and critiqued. The intent of this paper is a small exploratory study to examine if there is conflict between the terms of that agreement and the legal provisions contained in the Brazilian Constitution and in relation to the Law of Guidelines and Foundations of National Education (Lei de Diretrizes e Bases da Educação Nacional - LDB), especially in the case of religious education. We seek to present not only the legal foundations of international agreements, but also the historical elements that, as antecedents, are important for an understanding and critical analysis of this agreement. Within this framework, it is important to note that the Church/State relationship has remote and near antecedents.

Antecedents

The Church-State relationship emerged in Brazil together with colonialism, with the catechization of indigenous peoples, and, later, with slavery. Here it is important to note that since the time Portugal entered Brazil, within the colonial arrangement, the colonial power already had the Catholic Church as the official religion of the State. At the time of arrival of Portugal in Brazil, in the dynamics of colonization, the Portuguese monarchy was one of the pillars of the Counter-Reformation that proceeded in Europe. In the sphere of this registry, Portugal had already formalized various agreements with the Papacy, including the regime called the *Padroado* (patronage). Through this regime, the popes provided authorization so that the kings of Portugal had a certain degree of interference in religious matters. Specifically, the Padroado bound religious organization and funding of the services of religion to the kings, notably in the colonized areas. Thus, bishops were named, and priests not connected to religious orders and congregations were maintained through what was called the *côngrua*, a type of salary that made parish priests actual employees of the bureaucratic apparatus of the State.

Within this framework, catechesis and religious instruction were means by which the official religion was confirmed among the colonizers and their children, and the aim was to convert indigenous peoples to this creed.

The separation of Brazil from Portugal did not significantly change this situation. The Padroado was confirmed in the Imperial Constitution of 1824 and, consequently, Catholicism remained the official religion of the new State and allowed the observance of other religions only in the domestic sphere. Births and deaths were registered in the sphere of parishes, and many lands as well. The first general law of education, that of October 15, 1827, established the following in Art. 6:

> Teachers shall teach how to read and write, the four operations of arithmetic, the practice of fractions, decimals, and proportions, more general notions of geometry, grammar of the national language, and **the principles of Christian morals and of the doctrine of the Catholic and Roman apostolic religion,** proportionate to the understanding of the children; giving preference to the imperial constitution and to the history of Brazil for readings. (BRASIL, 1827) (emphasis added)

[2] The official name of that which is commonly called the Holy See, set down in the signing of the Lateran Treaty, art. 26, with Italy, is the *Vatican City State (Status Civitae Vaticanae*, in Latin).

This provision was maintained throughout the Empire period and it is recorded in the Couto Ferraz Reform, Decree no. 1331-A of 1854, according to Art. 47.

Decree no. 7247, of 1879, called the Leôncio de Carvalho Reform, according to Art. 4, maintained religious instruction, but in §1, it determined: "§1 The non-Catholic students are not obliged to attend the class of religious instruction, which for that reason, should be carried out on certain days of the week and always before or after the times dedicated to the teaching of the other subject matters." (BRASIL, 1879). For its part, Art. 25 (BRASIL, 1879) made another important distinction:

> Art. 25. The oath of the academic degrees, of the principals, of the lecturers, and of the employees of the schools and faculties, as well as that of the teachers of primary and secondary education, **shall be taken according to the religion of each one,** and replaced by the promise of fulfilling the duties inherent to those degrees and functions in the event that the individual belongs to some sect that prohibits the oath.

This small flexibilization was already a harbinger of what would come to be formalized with the Republic period. One of the first decrees of the provisional government was Decree no. 119-A of January 7, 1890. Through it, the Padroado is terminated, full freedom of worship is confirmed, and the separation of Church and State is established. This Decree, befitting the secularization of the State, was confirmed by the Constitution of the Republic of 1891. The Preamble of this National Constitution is the only one in which the name of God does not appear. In addition, Art. 72 contains the only national **regulation** regarding public education in its §6: "*the education administered in public establishments shall be secular*". (BRASIL, 1891) (our emphasis)

In addition, §7 of Art. 72 determines: "§7 No form of worship or church shall receive official subsidization, nor shall it have relations of dependence or alliance with the federal government or that of the states." (BRASIL, 1891)

The Constitutional Revision of 1925-1926 did not change the content of §6 of Art. 72 of 1891, but it added, in the body of the constitution (as we will see below), the official character of diplomatic representation of Brazil with the Vatican. This addition was a kind of settlement among the constitutional reviewers because of the lack of inclusion of religious education (optional) in public schools.

With the Revolution of 1930 and consolidation of the Catholic Church as the organized institution of civil society, pressure mounted for the return of religious education, and by means of Decree no. 19941 of April 30, 1931, such teaching (of religion) returned to the public schools, as a mandatory offering of school institutions and of optional enrollment for students. This formulation, with some differences, will prevail in all the other constitutional charters, except for the dictatorial Charter of 1937, which imposes that providing it is also optional. The proclaimed Constitutional Charter of 1934 thus determined in Art. 153:

> Religious education shall be of optional attendance and offered according to the principles of the religious denomination of the student manifested by the parents or those responsible and shall be offered in the school hours in public, primary, secondary, professional, and normal schools. (BRASIL, 1934)

The Constitution of 1946, for its part, established:

> Art. 168: Educational legislation shall adopt the following principles: (...)
> V – Religious education shall be offered in the school hours of the official schools; it is of optional enrollment and shall be offered according to the religious denomination of the student, manifested by him if he is able-minded, or by his legal representative or person responsible. (BRASIL, 1946)

This changes the wording of the Charter of 1934. Instead of discriminating the steps, the *official schools* type designation was indicated.

Under this Constitution, law no. 4.024/1961 is sanctioned, which reads as follows regarding religious education in the General and Transitory Provisions:

> Art. 97. Religious education constitutes a subject matter of the official schools; it is of optional enrollment and shall be provided free of cost for public authorities according to the religious denomination of the student, manifested by him if he is able-minded, or by his legal representative or person responsible.
> §1 The formation of a class for religious education does not depend on a minimum number of students.
> §2 The registration of teachers of religious education shall be performed before the respective religious authority. (BRASIL, 1961)

We see here "free of cost for public authorities" and, unlike the aforementioned Decree of 1931, there will not be a minimum number of students, and there is the responsibility of the religious authority at the time of registration of these teachers.

The Charter of 1967 drafted by Congress, established because of Institutional Act no. 4, determined in Art. 168: "IV – religious education, of optional enrollment, shall be offered in the regular school hours of the official schools of the primary and secondary level." (BRASIL, 1967)

Religious education here does not make reference to the religious denomination, and it is restricted to primary and secondary school.

The Charter of 1967 was considerably altered by the Amendment of the Military Junta of 1969, and in Art.176, it contained the same wording as in 1967 in section V.

Under this Amendment, law no. 4.024/61 with the wording given by law no. 5692/71, religious education was formulated as follows in the single paragraph of Art. 7: "Sole paragraph. Religious education, of optional enrollment, shall be offered in the regular school hours of the official establishments of primary and secondary school." (BRASIL, 1971)

Meanwhile, in Art. 97, it returned to the topic, with an important indication because of the repeal of Art. 97 of the original wording of law no. 4.024/61, which then came to leave it up to federative entities to determine whether or not to financially subsidize the teachers of this subject matter. The current Constitution of the Federative Republic of Brazil of 1988 determines:

> Art. 210. Minimum curricula shall be established for primary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.
> §1 The teaching of religion is optional and shall be offered during the regular school hours of public primary schools. (BRASIL, 1988)

Note that there is a restriction of this teaching to the step of primary school of basic education.

The Law of Guidelines and Foundations of National Education (LDB), sanctioned in 1996 under no. 9394/96, returns to the topic, with the original wording of Art. 33 as follows:

> Religious education, of optional enrollment, shall be offered in the regular school hours of public schools of primary education, and shall be offered without cost to public coffers, according to the preferences manifested by the students or by their representatives, either in:
> I – a denominational manner, according to the religious option of the student or of the person responsible, offered by religious teachers or guides prepared and certified by the respective churches or religious entities; or
> II – an interdenominational manner, resulting from agreement among the diverse religious entities who shall take responsibility for preparation of the respective program. (BRASIL, 1996)

The multiple and new differences from the other redactions stand out: the *without cost to public coffers* appears and it opens the possibility of denominational or interdenominational education (the latter was probably ecumenically inspired) through an agreement. However, this wording was short-lived and, in 1997, through the wording provided by law no. 9.475, the LDB will undergo its first alteration, precisely because of religious education.

> Art. 33. Religious education, of optional enrollment, is an integral part of the basic training of a citizen and is offered in the regular school hours of public schools of primary education, ensuring respect for the religious cultural diversity of Brazil, and any forms of proselytizing are forbidden.
> §1 The educational systems shall regulate the procedures for definition of the content of religious education and shall establish the standards for qualification and admission of teachers.
> §2 The educational systems will consult with a civil entity composed of the different religious denominations for definition of the content of religious education. (BRASIL, 1997)

This wording places religious education as an *integral part of basic training*, along with its optional nature, in primary education. It clearly states respect for diversity and prohibits any and all proselytism. It makes the federative entities responsible for both the content and the standards of qualification and admission of teachers of this subject matter. And it introduces a greater new feature: the content should be the result of an agreement mediated by a multireligious civil society.

The changing direction of this subject matter, always together with intense controversies, will have a new chapter with the Concordat.

In addition, the Charters invoke the name of God in their preambles, except for those of 1891 and 1937, at the same time that they establish the separation of Church and State, with the secularity of the State and the freedom of worship, of conscience, and of religion, together with the possibility of forms of collaboration with a view toward the public interest, in the form of law.[3]

[3] For greater details of this controversy involving religious education and other matters related to secularity see Cury (1993) and Cunha (2017).

It is in this framework of tensions in the relations between the Catholic Church and the State that the agreement between the Federative Republic of Brazil and the Vatican City State comes about in 2008.

Brazil and International Agreements: legal foundations

The introductory *whereas* statements of the agreement affirm that both States are based on their formal documents and, in the case of Brazil, it is said that it is based on its legal order.

Consequently, according to Art. 84 of the Constitution of 1988, section VIII, it is the individual authority of the President of the Republic to: "conclude international treaties, conventions and acts, *ad referendum* of the National Congress." (BRASIL, 1988)

Being subject to a congressional referendum is determined in Art. 49 of the same Constitution, and it states that it is the *exclusive* competence of the National Congress: "I – to decide conclusively on international treaties, agreements or acts which result in charges or commitments that go against the national property." (BRASIL, 1988)

Therefore, upon signing such Agreement, by Art. 20 of the Agreement itself, the terms concluded only come into effect *on the date of exchange of the instruments of ratification*, which can only be done after *conclusive* resolution of the Congress. Thus, signing the Agreement is only complete if there is final ratification, which is an attribution of the National Congress.

The process of this ratification is as follows: after a presidential message sent to Congress with the complete content of the Agreement and statement of reasons, the Agreement is discussed and voted on separately, first in the House of Representatives and, if the terms are approved in that chamber, it continues to the Senate.

It is customary to involve both the Foreign Relations Commission and the Constitution and Justice Commission in the discussion of the Agreement for proper referrals. If both chambers approve, the formalization of the Agreement is concluded by means of a *legislative decree* promulgated by the president of the Senate, coming into effect and validity as soon as it is published in the Official Federal Gazette (Diário Oficial da União - DOU).[4]

This process occurred for the Agreement and it was completed with Legislative Decree no. 689 of October 7, 2009, published the following day in the DOU: "Art. 1 The text of the Agreement between the Federative Republic of Brazil and the Holy See in relation to the Legal Standing of the Catholic Church in Brazil, signed in the Vatican City State on November 13, 2008, is approved."

A traditional practice in Brazil is for agreements that have achieved promulgation from Congress to also be promulgated by decree of the President of the Republic. In this case it was the Decree of the Federal Executive no. 7107, of February 11, 2010. Once this has been published in the DOU, the text of the agreement comes to be part of the national regulatory acquis.

This Agreement was the object of a Direct Action of Unconstitutionality (DAU) no. 4439 sent by the Office of the Attorney General in July 2010 to the Supreme Court of Brazil (Supremo Tribunal Federal - STF).[5]

[4] This publication is not of minor importance. In a Republic, the government not only is derived *from* popular sovereignty, but it also must be *for* the people. And publication is the official vehicle for such. That way, the principle of disclosure of art. 37 of the Constitution is maintained.

[5] Neither laws nor agreements can be contradictory to the Constitution. Thus, one of the functions of the STF is to control the constitutionality of laws. For that reason, it is foreseen in art. 102 of the Constitution, in section I, letter "a": "I – to institute legal proceeding and trial, in the first instance, of a) direct actions of unconstitutionality of a federal or state law or normative act, and declaratory actions of constitutionality of a federal low or normative act." (BRASIL, 1988) Among the legal entities that can take this course of action, the Constitution lists the Office of the Attorney General, in accordance with art. 103, VI.

Regarding this course of action, the site of the STF (www.stf.org.br) displays the following order from Justice Ayres Britto:

> On June 30, 2011: "(...) 2. From examination of the records, I see the relevance of the matter introduced in the present direct action of unconstitutionality, as well as its special significance for the social order and legal certainty. Everything recommends a definitive position from this Federal Supreme Court regarding the contestation which is directed to it." (STF, 2011)

The stance of the STF reveals a long, prudent process, with requests for participation of various subjects interested in the matter without disregarding the manifestation of the Presidency of the Republic.

In this session of the Full Court, on July 29, 2017, the demand was typified as *groundless* by most of the Justices. And there are the various votes of the Justices of the Supreme Court from the session of October 20, 2017, in which DAU no. 4439 was on the agenda. And this occurred through the Office of the Attorney General of the Republic in July 2010 then represented by Attorney Raquel Dodge, summoning the Presidency of the Republic. Some points of this position are noteworthy.[6]

The first point, made clear in the vote of Justice Celso de Mello in reference to the terms of the Agreement regarding religious education in the Federal Supreme Court, states:

> The Constitution **qualifies** as the fundamental statute of the Republic. **Under that condition,** all the domestic laws and treaties concluded by Brazil **are subordinated** to the hierarchical-normative authority of this basic instrument which is our Political Charter. Therefore, the act of public international law that, incorporated in our internal normative system, formally or materially **violates** the text of the Constitution of the Republic will have **no** legal value, considering the position of eminence of the Fundamental Law... (author's emphasis) (STF, 2017a)

The result then, according to the same Justice:

> Therefore, **there is no doubt that it is possible to contest** "in abstracto", **before** the Federal Supreme Court, **the constitutional legitimacy** of regulatory acts of public international law, provided – to be emphasized – **they are already incorporated** in Brazilian internal positive law. (STF, 2017a) (author's emphasis)[7]

Therefore, according to this pronouncement, this Agreement *could* be contested *in abstracto*, since it was already incorporated in national positive law by decrees of both the legislative and executive powers.

[6] For a deeper examination of this case, see Ranieri (2022).

[7] This part of the vote of the Judge engages with the fact that the session debated ADIN 4439 regarding religious education as determined in art. 210 of the Constitution and art. 33 of the LDB confronted with the terms of the Agreement regarding the matter. Retrieved from: http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADI4439mCM.pdf. Accessed on: 20 Nov. 2017; and http://www.stf.jus.br/portal/geral/verPdfPaginado.asp?id=635016&tipo=TP&descricao=ADI%2F4439. Accessed on: 21 Nov. 2017.

The Reporting Judge of the DAU was Judge Roberto Barroso and the Reporting Judge of the Court Decision was Judge Alexandre de Moraes, and the latter thus registered the Court decision:

> Having seen, reported, and discussed these court records, the Justices of the Federal Supreme Court, in full session, under the Presidency of Judge CÁRMEN LÚCIA, in accordance with the minutes of the decision and the written notes, by majority vote, agree in **judging groundless** the direct action of unconstitutionality, the Judges Roberto Barroso (Reporting Judge), Rosa Weber, Luiz Fux, Marco Aurélio, and Celso de Mello not prevailing. The Federal Constitution ensures students, that expressly and voluntarily enroll, the full exercise of their subjective right to religious education offered in the regular school hours of public schools of primary education, provided according to the principles of their religious denomination and based on the dogmas of faith, distinct from other branches of scientific knowledge, such as history, philosophy, or religious studies. 6. The binomial expression secularity of the state / establishment of religious freedom is present since the constitutional text (a) expressly ensures the voluntary nature of enrollment in religious education, even establishing the duty of the State of absolute respect for agnostics and atheists; (b) implicitly impedes Public Authority from artificially creating its own religious education, with a determined state-mandated content for the subject matter; and it prohibits the favoring or hierarchical classification of biblical or religious interpretations of one or more groups in detriment to the others. 7. Direct action judged groundless, declaring the constitutionality of Articles 33, main section and §§ 1 and 2 of Law 9.394/1996, and of Art. 11, §1 of the Agreement between the Government of the Federative Republic of Brazil and the Holy See in relation to the legal standing of the Catholic Church in Brazil, and affirming the constitutionality of denominational religious education as an optional subject matter within the regular school hours of the public schools of primary education. (STF, 2017b) (author's emphasis)
>
> DECISION Having seen, reported, and discussed these court records, the Judges of the Federal Supreme Court, in full session, under the Presidency of Judge CÁRMEN LÚCIA, in accordance with the minutes of the decision and the written notes, by majority vote, agree in judging groundless the direct action of unconstitutionality, the judges DF Barroso (Reporting Judge), Rosa Weber, Luiz Fux, Marco Aurélio, and Celso de Mello not prevailing. Judge Dias Toffoli, justifiably absent, previously issued a vote. Writer of the Decision – Judge Alexandre de Moraes.[8] (STF, 2017b)

There was (narrow) approval of the invalidity of DAU 4439 by a majority of the STF of 6 × 5.

[8] Retrieved from: https://portal.stf.jus.br/processos/downloadPeca.asp?id=314650271&ext=.pdf. The entire Decision has 294 pages, with the designation of all who participated in the proceedings, whether as *amici curiae*, those summoned (National Congress and Brazilian National Bishops Conference), or attorneys. Among the notable *amici curiae* are Salomão Barros Ximenes and others, the Fórum Nacional do Ensino Religioso (FONAPER), the Associação Brasileira de Agnósticos e Ateus, and the União de Juristas Católicos de São Paulo, among many others. Regarding the same topic, see Cunha (2009).

The second point refers to paragraph 4 of Art. 5 of our Constitution. It states that "the provisions defining fundamental rights and guarantees are immediately applicable". And section LXXI of this same article states that "a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty, and citizenship." (BRASIL, 1988)

These rights, according to Art. 60 of the Constitution, cannot be the objects of constitutional amendment and the Constitution itself foresees, among the functions of the Public Prosecutor's Office, the defense of legal order, of the democratic system, and of the inalienable social and individual interests. (Art. 127)

Up to approval of Constitutional Amendment no. 45/2004, international treaties were incorporated into the legal order of the country in the sphere of infra-constitutional legislation. However, after that amendment, Art. 5 of the Constitution of 1988 gained a paragraph written as follows: "§3 International human rights treaties and conventions which are approved in each House of the National Congress, in two rounds of voting, by three-fifths of the votes of the respective members shall be equivalent to constitutional amendments." (BRASIL, 1988)

Thus, the treaties and conventions after December 2004 dealing with human rights will have the character of constitutionality and provided with constitutional effectiveness.[9]

But the previous treaties and conventions, when approved and ratified, should continue with the infra-constitutional nature. And those that do not deal with human rights should continue with the previous system already indicated. [10]

It is this last case that should be observed for the Agreement we are concerned with here. The very systematic used in the votes regarding the Agreement indicate that.

Evidently, in the case of this Agreement in regard to human rights in general, Art. 5 of the Constitution already covers them, specifically section VI concerning the inviolability of conscience and of belief. In regard to the specific aspects and in the case of special aspects that the Agreement encompasses in reference to the Catholic Church, they are not universal, since they are directed to a targeted religious segment.

In any event, religious education, in public schools of primary education, is *teaching of optional enrollment*, according to §1 of Art. 210 of the Constitution. Therefore, the optional nature *(the voluntary aspect of enrollment*, in the terms of the Decision) presupposes the ability to act or to not act, as characteristics of a right. Thus, the optional nature implies that it is not a provision *erga omnes* and that carries with it a binding effect for all. It is therefore an ability that may or may not be activated within the school units in which the adolescents are enrolled.[11]

In addition, Art. 19 of the same agreement states that possible differences "in the application or interpretation of the agreement will be resolved by direct diplomatic negotiations, respecting" the interpretation of the Supreme Court in relation to possible formal or material violations of the Constitution.

With this introduction regarding the initial legal aspects, some concepts surrounding the term Agreement may be necessary.

Concordat and Agreement

[9] This is the case of Decree no. 6949/2009 that ratified the International Convention on the Rights of Persons with Disabilities. **This is not the case of the Decision on the Concordat.**

[10] In the Senate, the reporter of the material was Fernando Collor de Mello who, when President, revoked Decree no. 119-A of 1890, that of separation of Church and State, by Decree no. 11/1991. Decree 119-A was reinstated by Decree no. 4.496/2002.

[11] The Justices who voted in favor of the constitutionality of the Concordat based themselves on its optional nature. This constitutional provision would merit an Opinion from the National Board of Education, making a clear difference between requirement and optional participation, so as to direct educational systems.

Although a Concordat is spoken of, since it is an expression common to relations of the Vatican with other States, it is an Agreement. According to Rezek (2000, p.15):

> the expressions *agreement* and *settlement* are alternatives – or, for those who prefer, they are legally synonymous – of the expression *treaty*, and as this last expression, they lend themselves to the free designation of any formal agreement concluded between subjects of international law and aimed at producing legal effects.

And the author asserts that *before* the formal ratification foreseen in legislation: "[...] there is no international treaty, only a completed project, and it is subject to a variety of incidents that may cast it, within the historical archives of international relations, into the vast gallery of projects that did not take hold." (RESEK, 2000, p.17)

Terms such as agreement, act, convention, pact, and protocol are variants of the same type that, to be such, must rely on the "*animus contrahendi*, that is, on the will to create authentic bonds of obligation between the parties" (RESEK, 2000, p.18).

Meanwhile, this same author makes a reservation regarding the particular nature of the term *Concordat*:

> In international law, only the term concordat[12] has a singular meaning: this noun is strictly reserved for the bilateral treaty in which one of the parties is the Holy See and which has the purpose of organization of worship, ecclesiastical discipline, apostolic missions, and relations between the local Catholic Church and the other State party to the agreement. (RESEK, 2000, p.16)[13]

This definition is near that of Jasonni (1986, p.215):

> Concordat is the term that habitually defines, in technical-juridical language, the bilateral convention between the Holy See and States, with a view to regulating the ecclesiastical activities conducted in them and to resolving conflicts that may arise between ecclesiastical authority and civil authority.

This same author, upon making a historical review of the Concordats, asserts: "[...] that only at the end of the eighteenth century, with the activity of the modern State in Western Europe, is when the Concordat truly takes on the legal form of 'bilateral convention' or of 'transactional affair'." (JASONNI, 1986, p. 216)

From the perspective of a chronological sequence, the first Concordat was concluded between Pope Callixtus II and Henry V of Germania, in Worms; in 1753, concluded with Spain;

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[12] Concordat has various meanings. Etymologically it means two or more *hearts* (from Latin, the preposition *cum = with*, meaning a concurrence, and *cor, cordis = heart)* that draw near. In general, it means the things that were *cordially* settled upon. One of these meanings is in Commercial Law as an amicable arrangement or even legal arrangement for the expansion of time for the insolvent debtor of good faith before the lender in relation to the obligations taken on, even with a certain reduction in credits owed. There is a common expression: "company X requested a concordat."

[13] The Vatican signed Conventions, such as that of Vienna 1961-1963, regarding diplomatic relations without them being called concordats. And there are various Agreements signed by the Vatican with Israel, Morocco, Tunisia, Kazakhstan, and countries of Eastern Europe (Poland, for example) and of Latin America (Argentina, for example) that are not called Concordats.

in 1801, worked out between Pope Pius VII and Napoleon I of France; a new Concordat between the Papacy and Spain in 1851; in 1855 with Austria between Pius IX and Franz Joseph; in 1925, the Concordat with Poland and the Holy See; in 1929, the aforementioned Lateran Treaty between Italy and the Holy See; in 1933, the Concordat with Germany; between Portugal and the Holy See in 1940; in 1953, another with Spain; and in 2004, also with Portugal. And thus, we arrive at Brazil in 2008.

Only sovereign States – legal entities of public international law – and international organizations recognized as such, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) or the International Labour Organization (ILO), for example, can conclude such acts.

And a formal agreement between States, according to Resek (2000, p.18), "is a legal act that produces a norm, and that, precisely by producing it, brings about legal effects, generates obligations and prerogatives". Resek (2000, p.18-19) states that sovereign States "are on equal footing with the Holy See".

The Holy See (as the name states) is the episcopal *seat* of the Catholic *religion* of the city of Rome in the spiritual dimension. But *Vatican City* is also the *seat of government* of the State of the Vatican, with an area of 0.44 km^2. It is an international entity. It is recognized as a sovereign City State and thus has the right to legations, embassies, common and diplomatic passports, and other characteristics of international sovereignty. However, a civil personality does not correspond to the international legal personality of the Vatican, since the purposes of such a State do not harmonize with those of other sovereign states. The Vatican does not have national citizens and it cannot be said that it is a country. It is a City State, but not a country.[14] It is, as stated by Rezek (2000), an *anomalous international personality*.

Such an anomaly does not arise from certain characteristics of this State, such as a small territory, a tiny population, or a particular independence of government. There are other National States whose territorial size is small, such as Monaco, San Marino, Luxemburg, and others.

The anomaly is derived from the absence of characteristics common to States and to the non-existence of nationals, that is, of a people, and the presence of a unique teleology. As Resek (2000, p.234) states:

> The purposes to which the Holy See is directed as government of the Church are not within the mold of the standard objectives of every Sovereign State. In addition, it is important to remember that the Holy See does not have a people dimension, it does not have nationals... When it comes to stating, in light of the teleological element and the lack of nationals, that the Holy See is not a State, one can conclude...that here we have a unique case of an anomalous international personality.

This analysis of Resek (2000) is similar to that of Jasonni (1986, p.216):

> It is therefore in recent times that civil authority and the Holy See reconcile the respective competencies and enter in agreement regarding the respective fields of action; both are equal in sovereignty, equal in the condition of primary legal systems, both were originally bestowed with independence and autonomy. Thus, a situation was created that refers to the frameworks of international law, but which, however, preserves such

[14] If there is a birth in the Vatican (which has no maternity facilities), the child inherits the nationality of the parents. The Vatican passport is issued for the Pope and for the Cardinals.

> essential particularities that numerous masters felt authorized to speak of a 'special concordat order'".

However, it is worth considering positions that contrast with Resek's position, as is the case of Ranieri (2018, p.144), for whom the Vatican cannot be considered a State:

> Recognition of the sovereignty of the Holy See over the territory of Vatican City, by the Lateran Treaties of 1929, gave rise to the elaboration of statist and non-state theses about the nature of what was conventionally called the "Vatican State".
> Among the statists, one line of argument states that the Holy See would be the sovereign entity over Vatican City; in others, the Holy See is intended to be a State and Vatican City its territory. In international law, however, no notion prevails since they do not identify themselves, either with regard to the Holy See or with regard to Vatican City, or people, or nationality, regardless of their territory.
> In addition, the Holy See only exists for the purpose of propagating the Catholic faith, and it does not represent or govern the "people of the Vatican".
> In view of the "purpose" element, there is no way to consider the Vatican a State.

Ranieri's position is in line with Decree no. 1570, of April 13, 1937, by which Brazil signed the Treaty of Montevideo, which, along with many other countries, takes the following position in Art. 1:

> The State as a person of International Law must meet the following requirements.
> I. Permanent population.
> II. Determinate territory.
> III. Government.
> IV. Ability to enter into relations with other States. (BRASIL, 1937b)

Given these positions, the Vatican City State has a Fundamental Law[15], a kind of Constitution of a monarchical - theocratic - religious State and makes sense for religious relations with its hierarchies spread out around the world (cardinals, archbishops, bishops, religious) and with its faithful. The Code of Canon Law is a kind of Constitution of the Catholic Church.[16]

According to Souza (2005), the Lateran Agreement has 3 documents, namely, a Treaty, a Concordat, and a financial Convention:

> Through the Treaty, the Italian State recognized the independence and sovereignty of the Holy See in territory, even though very small, called

[15] The current Fundamental Law of Vatican City dates from the year 2000 and replaces that of 1929, at the time of the Lateran Treaty.

[16] This Code establishes, through its canons (norms, rights, and duties), the general internal regulation regarding religious and faithful, including a set of possible sanctions when a rule is broken. Although Canon Law has a long tradition in the Catholic Church, its first codification was in 1917. As Rocher (1988, p.109) states: "L´*archétype occidental de l´ordre juridique ecclésiastique est sans doute celui de l´Église catholique.*"

> the Vatican City State. The sovereignty of the new State was, however, so complete that even the ability of having representatives of States was recognized for it, even in the case that these were at war with the Italian State. The Holy See, in turn, considered the Roman Question completely closed and recognized the Italian State governed by the Savoy dynasty and within the existing territorial limits. An exchange of the respective diplomats should sanction such agreements. (SOUZA, 2005, p. 305-306)

> the Lateran Treaty, which, in its Preamble, recognizes the Vatican City State as that specific territory over which the Holy See enjoys absolute political independence internally and, above all, in the international field, necessary for carrying out its mission of evangelization in the world. (SOUZA, 2005, p.306)

This State is recognized by more than 170 countries, and is a neutral State. In relation to the United Nations, it has the status of observer. Its artistic and architectonic complex is a cultural heritage of humanity, assigned by UNESCO.

The Decision has a past in Brazil

The Concordat signed by Brazil and the Holy See (alternative and habitual name to designate Vatican City) in 2008 expresses both a significant relationship between Church and State and the very ambiguity of this relationship in our history.

The ambiguity occurs since such a diplomatic agreement takes place between a national power of a secular State (in this case: Brazil) and a theocratic State (Vatican / Holy See) in order to establish guiding principles for the exercise of worship in our country, appropriate to the legal order[17] of the Holy See as the seat of a concentrated spiritual power. But it is also an agreement between the relations of a national power (Brazil) and Vatican City as the seat of a sovereign state. The Pope is a state authority (Vatican City) and head of a spiritual power (Holy See) at the same time.

Precisely because of this ambivalence, this State (anomalous, in Rezek's terms), seat of a sovereign power and seat of a highly institutionalized religious power, can sign such acts. This results in a marked *distinction* and a *difference* in relation to other poles of non-Catholic religious power (which are not a State) and their internal legal orders in relation to the National States.

However, in our country, this ambivalence has deeper historical roots, both in Western history and in the historical evolution of countries colonized by the powers of the Iberian Peninsula, such as Brazil.

Brazil, as a colony, was dominated by a colonizing power of that time (Portugal) and was catechized (see the activity of the Society of Jesus, among others, during the colony period) by a counter-reformist country in which the king should be Catholic and have close ties with the Catholic Church that then held the Papal States. In addition, there was the institution of the Padroado, which guaranteed rights and privileges exchanged between the altar and the throne.[18]

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[17] According to Rocher (p. 104, 1988): "*...un ordre juridique se reconnaît* (as) *un ensemble de règles, de normes* (qui*) sont acceptées comme au moins théoriquement contraingnantes par les membres d´une unité sociale particulière, qu´il s´agisse d´une nation, d´une societé, d´une organisation, d´un groupe.*" And futher on, he states: "*Mais toutes sociétés – les sociétés modernes comprises – comportent un grand nombre d´autres ordres juridiques non étatiques*" (p.108, 1988).

[18] The Padroado (from Latin: *Ius Patroatus*) is the condition of those who are subject to the great father, that is, to a *patron*. In the Ordinances of the Portuguese Kingdom, it was an institute of the Crown by which a series of prerogatives in relation to the Catholic Church belonged to the King, such as, for example, appointing bishops

On the occasion of Independence, when the Constitution was granted in 1824, its text established, in its Preamble, that Dom Pedro I was constitutional emperor of Brazil "by the grace of God and unanimous acclamation of the peoples" (BRASIL, 1824). And the Constitution was opened "in the name of the Holy Trinity". Article 5 said that "The Roman Catholic Apostolic religion will continue to be the religion of the Empire" (BRASIL, 1824). Article 102 of the Constitution established the Emperor with powers to "appoint bishops and provide ecclesiastical benefits" (BRASIL, 1824) among many other prerogatives provided by the Padroado. Article 102 also determined that the Emperor, upon being acclaimed as such, should swear an oath of allegiance to the Catholic Church. In addition, Article 5 states: "All other Religions will be permitted with their domestic or private worship in houses designated for that purpose, without any external form of Temple." (BRASIL, 1824)

In addition to the domestic worship of non-Catholic religions, it was only in 1881, through the direct intervention of Dom Pedro II, that followers of other religions or denominations, national or naturalized, could be represented in elections and in legislative assemblies, according to Decree no. 3029 of January 9, 1881.

Unlike clerics belonging to religious orders and congregations, secular clergy priests, active in parishes, belonged to the bureaucracy of the state apparatus and received, as income, the so-called *côngrua*.[19] Extended for one year after the Republic, it also fell with Decree no. 119-A of 1890.

If the ties between the Empire and the Catholic Church were very strong, the Padroado regime brought with it several problems, such as belonging to Freemasonry, liberalism, and Protestantism, leading to the famous "religious question" at the waning of the Empire, including the arrest of bishops.[20]

After the proclamation of the Republic, Decree no. 119-A of January 7, 1890, known as the secularity decree or decree of separation of Church and State, established in Art. 1 that

> the federal authority and the federated States are prohibited from issuing laws, regulations, or administrative acts establishing or prohibiting any religion and defining differences among the inhabitants of the country or in the services sustained by the budget on the grounds of beliefs or philosophical or religious opinions. (BRASIL, 1890)

Articles 2 and 3 established the full freedom of worship, Article 4 ended the Padroado, and Article 6 recognized the *legal personality* of all churches and religious denominations to acquire and manage assets. Through Art. 7, the government would continue to subsidize the côngrua for 1 year, and it could continue with the new states.[21]

A more emphatic reaction was expected from the Catholic hierarchy, since this Decree consummated the official separation of Church and State, an old aspiration of parties, organizations and currents of thought, such as positivism, liberalism, and currents of opinion. Such a strong reaction was expected that one of the manifest justifications for creating the State

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and parish priests. By papal bull, the Padroado continued to exist throughout the time of the Brazilian Empire. It ceases with Decree n.119-A of 1890. See Almeida (1858), Azzi (2008), Sánchez (2009a; 2009b).

[19] The côngrua (in Latin it is an adjective that means a *decent* thing) was a kind of pension owed to diocesan parish priests for their support. The côngrua had the purpose of supplying possible insufficiencies of earnings and, that way, justice was postulated for the proposed objective: that the priest, a representative of the official religion of the Colonial Power/Empire, could live and dedicate himself with *decency* to his religious role. We know the terms *congruence*, *congruent*. The côngrua did not include priests of religious orders or congregations.

[20] See Mendonça (1990) and Vieira (1990).

[21] Regarding secularity at that time, see Cury (2001); regarding the Empire period, see Cunha (2017).

Secretariat for Public Instruction, Post and Telegraphs, created by Decree no. 346 of April 19, 1890, was exactly the problems that secularism in teaching could bring about.

But the reaction from the Catholic hierarchy was not as strong as might have been expected. The Decree, in Art. 6, allowed the states to continue to provide the côngrua that, at the federal level, would continue for only 1 year, and the Church intended to gain some ground, now free of the tethers of the Padroado.[22]

In this sense, the Bishops' Pastoral Letter of 1890 asks that there be a *union between the two powers* through *agreements and understandings*. One of the reasons given by the Pastoral for this was that most Brazilian citizens were Catholic.

The evangelical churches, in turn, deposited a great deal of positive expectations regarding the possibilities that secularism would bring to the country and to the development of forms of worship under religious freedom.

However, though the Provisional Government established and maintained the secularization of cemeteries, civil marriage, the new profile of holidays, civil records, and secular education, maintained in the Constitution of 1891, the Catholic Church began to enjoy, by Decree n. 119–A, a number of freedoms such as it had never had in the time of the Empire.[23]

The Constitutional Assembly, endowed with originating power, worked a great deal on the issue of secularism, especially in Art. 72, and §3 reads that "all individuals and religious denominations may publicly and freely exercise their form of worship, gathering together for that purpose and acquiring assets, subject to the provisions of common law." (BRASIL, 1891) §6 is clear: "the education given in public establishments shall be secular" (BRASIL, 1891). Finally, §7 provides: "no form of worship or church shall enjoy official subsidy, nor shall it have relations of dependence or alliance with the federal government or that of the states." (BRASIL, 1891)

The theme of secularism permeated the entire Old Republic. The first major attempt to change this statute took place during the Constitutional Revision of 1925-1926.[24] There was an amendment in the full session that proposed the recognition of the Catholic religion as that of the majority of the Brazilian population. That amendment was rejected, as well as that which proposed optional religious education in public schools.[25] However, the substitute amendment referring to the original wording of §7 of Art. 72 was approved, and it remained like this with the addition: "No form of worship or church will enjoy official subsidy, nor will it have relations of dependence or alliance with the federal government or that of the states. The diplomatic

[22] In the aforementioned vote of Justice Celso de Mello, in the session regarding DAU no. 4439, he related this information:

"When Campos Salles, under his condition as President-elect of Brazil visited the Holy see in August 1898, he had a formal meeting with Pope Leo XIII. As TOBIAS MONTEIRO reports ('President Campos Salles in Europe', p. 144, Itatiaia/EDUSP), the Roman pontiff, directing his words to Campos Salles, 'emphasized the advantages it [the Catholic Church] had gained among us after the Proclamation of the Republic', in a clear (and diplomatic) reference to the serious conflict that had erupted, a little over a quarter of a century ago, between the Empire of Brazil and the Roman Catholic Apostolic Church."

[23] The Holy See recognized the new form of government in Brazil on October 23, 1890, after the publication of Decree 914-A of October 23, 1890, a decree that confers the "Constitution of the United States of Brazil". Regarding this same issue, this Decree alters Decree no. 510 of June 22, 1890, that contained restrictions on the Catholic Church.

[24] Regarding this review, see Cury (2003).

[25] For a historical study on religious education in Brazil, see Cury (1993). Regarding the legally optional character of this education, see Cunha (1993).

representation of Brazil before the Holy See does not imply a violation of this principle."[26] (BRASIL, 1926)

For the authors of the proposal, the reference to the Holy See in 1926 represented a kind of explicit recognition of a sovereign State that was (still) in conflict with the Italian State in order to be recognized as a State.

The Lateran Treaty was consummated only in 1929 between Italy and the Vatican. This Treaty recognized the Vatican as a sovereign and neutral State, assuring compensation for Italy for the loss of papal territories. The Treaty recognized Catholicism as the official religion of Italy, established compulsory religious education in public schools, gave civil effects to religious marriage, and abolished divorce. This Treaty was incorporated into the Italian Constitution in 1947.

A first reform of this Treaty, in 1978, removed Catholicism as the official religion from the Italian Constitution, and the Italian State became secular. Italian law, in turn, reintroduced divorce in 1970. In 1978, law no. 194 of Italy decriminalized abortion, which generated a strong reaction from the Vatican. In 1984, the obligation of religious education in public schools was dropped, making it optional, upon request from parents.

These references to Italy are also significant for understanding the repeated demands of the Catholic Church in Brazil and its assertion that our country had a Catholic majority and that this reality could not be ignored by legislation.

After the Revolution of 1930, the Catholic Church in Brazil, then highly organized, first exerted pressure for a Concordat. As this proposition was abandoned, in view of a certain unrealism it contained, the Church decided to pressure the executive branch, and this pressure resulted in Decree no. 19941, of April 30, 1931, which made "the teaching of religion optional in primary, secondary, and normal education establishments" (BRASIL, 1931). As for its demands regarding the future Constitutional Assembly, the Church, from its foundations in civil society, organized, for example, the League of Catholic Voters (Liga Eleitoral Católica - LEC).[27]

The Constitution of 1934, regarding points of international relations, says in its Art. 40, that it is the exclusive competence of the legislative branch "to definitively decide on treaties and conventions with foreign nations, entered into by the President of the Republic, including those related to peace." (BRASIL, 1934). Art. 176, in turn, determines: "The diplomatic representation before the Holy See is maintained" (BRASIL, 1934), just as had been recorded in the Constitutional Revision.

From the mobilization brought about by the LEC, several amendments (called *religious* amendments) were approved, including the name of God in the Constitution, the prohibition of divorce, and religious education. Religious education in public schools was allowed under the condition of being of optional enrollment.[28]

This relationship between Brazil and the Vatican gained symbolic value when Cardinal Eugênio Pacelli, the future Pope Pius XII, visited Brazil on October 20, 1934. On that occasion, Getúlio Vargas (1938), having become President through the Constitution, elected by the Constituent Assembly, in a speech greeting the papal emissary, after calling Pope Pius XI the *greatest moral force in the contemporary world*, thus stated:

> The relations of unalterable friendship between Brazil and the Holy See constitute one of the most cherished traditions of our diplomacy.

[26] Thus the (amended) Constitution came to recognize, in its permanent body, the legal character of the Vatican. However, Brazil had always maintained an embassy with the Vatican. In fact, this is implicit in this addendum to Article 72 of the (amended) Constitution of 1891.

[27] Regarding the LEC, see the term "Liga Eleitoral Católica", by Kornis and Flaksman (1984, p.1818-1820).

[28] Regarding this matter, see Cury (1978).

> [...]
> The Republic, in its first Constitution of 1891, proclaimed separation, in the intention of those who elaborated the Magna Carta, in the sensible practice of those who executed it, it was not a divorce nor was it based on impious feelings.
> [...]
> It is from this indispensable action that Brazil always continues to anticipate the invaluable cooperation (of the Church) in the construction of its future. It is on the solid Christian formation of consciences, it is on the conservation and defense of the highest spiritual values of a people that rest the safest guarantees of its social structure... (VARGAS, 1938, p.305-306)[29]

The Constitution of 1937, granted by the Estado Novo dictatorship, declared, in its Art. 15, I, that it is the individual authority of the Federal Government "to maintain relations with foreign States, appoint members of the Diplomatic and Consular Corps, conclude international treaties and conventions" (BRASIL, 1937a). Art. 37, letter b, prohibited public authorities from "establishing, subsidizing, or hindering the exercise of religious worship" (BRASIL, 1937a)[30]. Art. 74, letters "c" and "d", in turn, stated that it was under the individual authority of the President of the Republic to maintain "relations with foreign States and conclude international conventions and treaties *ad referendum* of the legislative power" (BRASIL, 1937a). Finally, Art. 122, section 4, should be noted; we quote: "All individuals and religious denominations may publicly and freely exercise their form of worship, gathering for that purpose and acquiring assets, subject to the provisions of common law, the requirements of public order, and good customs." (BRASIL, 1937a)[31]

In that Constitution, there is no reference to the diplomatic representation of Brazil before the Holy See. Jair dos Santos (2022) shows that there was diplomatic interaction between Brazil and the Vatican, specifically in the case of Jewish refugees. The apostolic nuncio in Brazil was Cardinal Benedetto Aloisi Masella. And, from 1944 to 1948, the ambassador of Brazil to the Vatican was Maurício Nabuco de Araújo.

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[29] In the aforementioned vote of Judge Celso de Mello, at the time of DAU 4439, he made the following historical report:

"It is interesting to observe, at this point, for the purpose of mere historical record, that the Brazilian State has concluded, until today, 3 (three) Diplomatic Agreements with the Holy See: the first of them, formalized on October 28, 1862, during the Second Empire when Pope Pius IX was Roman Pontiff, referring to the Exchange of Letters between the Imperial Government of Brazil and the Pontifical Government regarding the sending, organization, and direction of apostolic missions to the "Indigenous Tribes of the Empire of Brazil"; the second, concluded on October 23, 1989, in the Pontificate of John Paul II, called "Bilateral Agreement" on religious assistance to the Brazilian Armed Forces; and, finally, the third agreed upon in the Pontificate of Benedict XVI, entitled "Agreement between the Federative Republic of Brazil and the Holy See concerning the Legal Status of the Catholic Church in Brazil", which was subject to congressional approval (Legislative Decree No. 698/2009), presidential ratification and, subsequently, promulgation by issuing Decree no. 7.107/2010."

[30] Benjamin and Moreira (1984, p.1798) refer to the Estado Novo period as follows: "shortly afterwards, the Cardinal (Leme) warned the ecclesiastical hierarchy to avoid any type of manifestation capable of affecting relations between the Church and the State and harming the rights already achieved by Catholics. Getúlio Vargas, for his part, continued the policy of deepening relations with the Church, though the Constitution promulgated (sic!) by the new regime was less clear than that of 1934 regarding the role of Catholicism in Brazilian society and in the State."

[31] This Constitution, in Art. 133, accepts religious education in public schools as an optional subject matter with optional attendance.

The Constitution of 1946 prohibits public authorities from "establishing, subsidizing religious forms of worship, or hindering their exercise (and) prohibits a relationship of alliance or dependence with any worship community or church, without harming reciprocal collaboration in favor of the collective interest" (BRASIL, 1946), according to Art. 31. Art. 196 repeats, *ipsis litteris*, the terms of Art. 176 of 1934, in view of the relationship with the Holy See.[32] Art. 87 says that it is individually incumbent upon the President of the Republic to "conclude international treaties and conventions *ad referendum* of the National Congress." (BRASIL, 1946)

The Constitution of 1967, convened by Institutional Act no. 4 of the civil-military dictatorship of 1964, no longer mentions the Holy See, and determines:

> Art. 8 – The Federal Government shall:
> I - Maintain relations with foreign States and conclude treaties and conventions with them; join international organizations; (BRASIL, 1967)

At the same time, this Constitution, in its Art. 9 II, determines prohibition to:

> Establish religious forms of worship or churches; subsidize them; hinder their exercise; or maintain relations of dependence or alliance with them or their representatives, with the exception of collaboration in the public interest, notably in the educational, public welfare, and hospital sectors.[33] (BRASIL, 1967)

It will be during the military regime, under a Lutheran president, that divorce will be established in Brazil by Law 6.515 of December 26, 1977, arising from the emergence of Constitutional Amendment no. 9 of June 28, 1977, altering §1 of Art. 175 of the Constitutional Amendment of 1969.

With the exception of the Constitution of 1891, in which the term *secular* appears (in the sense of non-religious, as Luiz Antônio explains in his production on the subject), *secular* will disappear in all the others. In contrast, in the Preamble of these others, except for the one granted in 1937, the name of God is invoked, as in the current Constitution (1988), which places the Constitution under the protection of God. The question always remains: how can one reconcile the theme of secularism, set out in Art. 19, and this preambular enthronement?[34] Meanwhile, the current Constitution, in its Art. 5, VI and VIII, imposes that

> Freedom of conscience and of belief is inviolable; the free exercise of

[32] In the case of religious education, in view of ADIN 4439, Judge Celso de Mello's vote compares the 1946 text with that of 1988. The former authorized that "religious education would be offered according to the religious denomination of the student", according to Art. 168, V. Such reference to denomination does not appear in the current Constitution. And the Judge concludes: "In a word, the assumption of the formal separation between Church and State does not allow Public Authority, in the case of official schools, to assume, if it proves licit to recognize the possibility of denominational teaching, the condition of instrument for propagation of religious ideas or of means of execution in the process of religious formation of students in public primary schools."

[33] See the wording of this article given by the Amendment of the Junta Military of 1969: "Establish religious forms of worship or churches; subsidize them; hinder their exercise; or maintain relations of dependence or alliance with them or their representatives, with the exception of collaboration in the public interest, in the form and within the limits of federal law, notably in the educational, public welfare, and hospital sectors." (our emphases)

[34] According to Moraes (2005, p. 655), the inclusion of the name of God is explained as follows: "Observe, however, that the fact of being a secular Federation does not confuse it with atheist States..." See Nobrega (1998). In Denmark, the king must be Lutheran; in Greece, there is an official religion, the Orthodox. Algeria adheres to Islam as the official religion.

> religious worship is ensured; and under the terms of law, the protection of places of worship and their rites are guaranteed,
> [...]
> No one shall be deprived of rights by reason of religious belief or of philosophical or political conviction, unless they are invoked to exempt one from a legal obligation required of all and to refuse to perform an alternative service established by law. (BRASIL, 1988)

Regarding the secularity of the State[35], there is no doubt upon reading Art. 19 of the Constitution:

> The Federal Government, the states, the Federal District and the municipalities are forbidden from:
> I – Establishing religious forms of worship or churches, subsidizing them, hindering their operation, or maintaining relationships of dependence or alliance with them or their representatives, with the exception of collaboration in the public interest in the manner set forth by law; (BRASIL, 1988)

However, Decree no. 119.A of 1890 was repealed by Decree no. 11 of January 18, 1991, signed by Fernando Collor, in its Annex IV. And, by Decree no. 4.496 of December 4, 2002, Decree no. 119.A was excluded from Annex IV of Decree no. 11/91. Consequently, Decree 119-A once more came into effect by the Decree of 2002, from its previous repeal in 1991. This means that from 1991 to 2002, there was a vacuum in the regulation foreseen by Decree n. 119-A of secularism.[36]

Even during this vacuum, there was no repeal of secularism, since it continued to be part of the 1988 constitutional statute of 1988. Evidently, in this regulation at the beginning of the Republic, it was no longer possible to return to religious education, which had also become optional in public primary schools. Even less would there be justification for payment of the côngruas, since such a provision had already expired a year after the edition of the 1890 Decree. This Decree was established as an existing legal reference for possible negotiation between the parties for other dimensions, such as cultural, architectural, and land assets, or to indicate and make it clear that, according to its abstract, federal and state intervention in religious matters is prohibited, and it confirms full freedom of worship, extinguishes the Padroado, and makes other provisions.

Ecclesiastical authorities complained about obscure aspects of a hundred-year-old decree. That is why they called for its updating for greater clarity regarding the term *legal personality*.

Regarding the Agreement

[35] The secular State takes distance from both the religious denominational State and from the atheist State, which makes it possible for someone to profess to be an atheist, an agnostic, or believer in a creed.

[36] Law no. 9.982, of July 14, 2000, provides for the provision of religious assistance in public and private hospital entities, as well as in civil and military prisons. Cf. previous laws on this subject: Law no. 6.923 of 1981, and Law no. 7.672 of 1988.

As States, Brazil can establish diplomatic relations with the Vatican. As Silva expresses (1989, p. 223), "because that is a relationship under international law between two sovereign States, not one of dependence or alliance, which cannot be established."

The current Agreement aims to rewrite Decree no. 119.A/1890 in order to regulate a number of situations that have arisen over the years.[37] The Agreement would be an substituition *in the form of the law* of Art. 19, which has not yet been drafted. At the same time, an identification of interests with other churches and forms of worship can be a manner of self-legitimation. But it also does not fail to present a hierarchical cleavage in relation to other denominations.

What is observed in the text of the Agreement is the reiteration that there is respect for national legislation and, for that reason, there is the reproduction of articles already included in it. This is the case of the principle of religious freedom. The document of the reporter for the matter in the Senate, Collor de Mello (BRASIL, 2009), summarizes the main points of the Agreement in its passage through the Senate:

> The present Agreement between the Holy See and the Federative Republic of Brazil contains the following main points:
> It reaffirms the legal personality of the Catholic Church and its institutions (Bishops' Conference, Dioceses, Parishes, religious institutes, etc.);
> It recognizes taxation and pension treatment for religious charity institutions equal to that enjoyed by similar civil entities;
> It establishes collaboration between the Church and the State in protection of the country's cultural heritage, preserving the primary purpose of temples and objects of worship;
> It reaffirms the Church's commitment to religious assistance to people who apply for it and who are in extraordinary situations, in the family environment, in hospitals, or in prisons;
> It addresses Catholic religious education in public primary education institutions and also ensures teaching from other religious denominations in these establishments;
> It confirms the attribution of civil effects to religious marriage and symmetrically and consistently provides for the effectiveness of ecclesiastical sentences in this sector[38];
> It establishes the principle of respect for religious space in urban planning instruments;

[37] Cf. position of Sánchez (2009a; 2009b) in defense of the Agreement.

[38] The Civil Code of 1916 did not deal with this matter due to the principle of secularism. It only recognized the legal existence of *religious societies* as *legal persons under private law*. As for the current Civil Code, Law no. 10.406/02 did not mention religious societies. That is why Law no. 10.825 reintroduces, in Article 44, the existence of such societies. With regard to the recognition of the civil effects of religious marriage, there was Art. 146 of the Constitution of 1934, which was demanded by the LEC. In January 1937, that provision was regulated by Law no. 379, listing the conditions for that to take place. That law was amended by Decree-Law no. 3200 of 1941, in the New State regime. The constitutionalization of this provision reappears in the Constitution of 1946 through Art. 163, paragraphs 1 and 2. The regulation of this recognition, under the then Constitution, was established by Law no. 1110/1950 during the Presidency of Eurico Gaspar Dutra. The current Constitution maintains this possibility in art. 226, paragraph 2. The current Civil Code deals with this matter in Articles 1515 and 1516. However, for civil effects to be recognized, it must satisfy the requirements of civil law. Therefore, religious ministers are not legal or competent authorities for the celebration of civil marriage.

> It codifies the consolidated jurisprudence in Brazil on the non-existence of an employment relationship of ordained ministers and consecrated faithful through vows with dioceses and equivalent religious institutes;
> It establishes the right of bishops to request entry visas for foreign religious and lay people whom they invite to work in Brazil; and
> It indicates that the National Conference of Bishops of Brazil (CNBB) may agree to the rights and obligations set forth in the Agreement authorized by the Holy See in each case.

In the same document, the then ambassador of Brazil to the Vatican, Samuel Pinheiro Guimarães Neto, justifying the terms of the Agreement, describes the process for the back-and-forth movement of the text and summarizes the Agreement in legal terms:

> Art. 1 addresses the diplomatic representation of Brazil and of the Holy See in terms of the Vienna Convention regarding Diplomatic Relations;
> Art. 2 Brazil recognizes the right of the Catholic Church to carry out its apostolic mission;
> Art. 3 Brazil recognizes the legal personality of Ecclesiastical Institutions through registration in the act of creation, in the terms of Brazilian legislation;
> Art. 4 the Holy See ensures that the seat of the bishoprics will always be in Brazilian territory;
> Art. 5 provides that the rights, immunities, exemptions, and benefits of ecclesiastical legal entities that also provide social assistance services will be equal to those of entities with similar purposes, as foreseen in the Brazilian legal order;
> Art. 6 and 7 address the historical and cultural heritage of the Catholic Church in Brazil, ensuring protection of worship places and cooperation between Church and State with a view to safeguarding and valuing this heritage (including documents in archives and libraries), as well as to facilitating access to all who wish to know and study it;
> Art. 8 Brazil ensures the provision of spiritual assistance by the Church to the faithful admitted to health or prison establishments that request it, observing the norms of the respective institutions;
> Art. 9, 10, and 11 address themes related to education: guarantees the Church the right to constitute and manage seminaries and other ecclesiastical institutes; stipulates that the reciprocal recognition of titles and qualifications at the undergraduate and graduate level will be subject to the respective legislative provisions and norms; and makes provisions regarding religious education of optional enrollment in public primary education schools, without discriminating the different religious denomination practices in Brazil;
> Art. 12 establishes that the homologation of ecclesiastical sentences in matrimonial matters will be carried out in accordance with Brazilian legislation on the matter;
> Art. 13 assurances are made to the bishops of the Catholic Church to maintain the secrecy of the priestly office;
> Art. 14 Brazil declares its commitment to designating spaces for religious purposes in urban planning in the context of the master plan of cities;

> Art. 15 discusses the recognition by Brazil of tax immunity related to the taxes of ecclesiastical legal entities and guarantees the same benefits to legal entities of the Church that carry out non-profit social and educational activities;
> Art. 16 deals with the religious character of relations between ordained ministers and consecrated faithful and the dioceses or religious institutes which, observing the provisions in Brazilian labor legislation, do not generate a bond of employment, unless the misrepresentation of the religious function of the institution is proven;
> Art. 17 deals with the granting of a permanent or temporary visa to priests, members of religious institutes, and laypersons who come to exercise pastoral activity in Brazil in the terms of Brazilian legislation on the matter. (BRASIL, 2009)

But what remains prominent within the articles is an indication of the *distinction* placed on the uniqueness of the presence of the Catholic Church in Brazil, on its relationship with the State, and on its presence in society.

This distinction, as historical evolution shows, has always been sought by the Church with a certain tenacity and with a high degree of organization.

Distinction, as sociologist Pierre Bourdieu (1979) warns us, has no interest in eliminating diversity. On the contrary, the visibility of diversity and the recognition of its value are conditions for its manifestation and for taste for the distinction. Distinction, however, according to this author, confers a touch of a particular type of difference, attributing symbolic superiority to the one who proposes it as a value, to the subject who thus enunciates it. In other words, the diversity of some is a reference *a contrario* to highlight the condition of the ordained dominance of the distinction in question. Such a distinction, then, would legitimize access to a position of prominence given by a previous cultural history, among other factors.[39]

What is in the Agreement, then, is a *differentiated and positive distinction* of the Catholic Church vis-à-vis other creeds. This is the case of articles 11, 16, and 18.

But before looking more closely at Art. 11, it is worth knowing how the Reporter of the matter in the Senate, Senator Fernando Collor, in the aforementioned document, explains some points of the Agreement through questions and answers, and the answers are intended to justify its terms. One of these, which is also the longest, is art. 11:

> 12. DOES POSITING THE RIGHT TO RELIGIOUS EDUCATION IN THE AGREEMENT UNDERMINE THE FEDERAL CONSTITUTION?
> The answer is surely negative. Religious education is already foreseen in the Brazilian Constitution, in its Art. 210. There it is determined that "religious education, of optional enrollment, will be a subject matter of the regular hours of public primary schools". The Constitution, therefore, provides that public schools must offer religious instruction. It determines that this must happen where the State provides primary education. Discipline, however, should not be imposed on the student, who will choose it by his own will or by the manifestation of his legal representative (in the case of minors). Enrollment in the discipline is optional, but offering it is a duty of the State.

[39] A clarifying entry regarding *distinction* in Bourdieu, see Cattani et alii (2017, p. 146-148). See also Nogueira and Nogueira (2004, p. 80-82).

> 13. WHAT KIND OF RELIGIOUS EDUCATION DOES THE CONSTITUTIONAL ORDER CONSIDER?
> The State undertakes the commitment, through its Constitution, to teach the fundamentals of the religion of the believer who requests it. The Constitution does not speak of a right to receive classes on sociology of religions, nor of a right to be instructed in comparative theory of religions. The promise of this component is in the sense that religious education will be taught – and not critical comparative teaching of religions. There is no generic, non-denominational religion. Religious education must necessarily be the teaching of a given religion, its dogmas and precepts – of the religion adopted by the student who requests instruction in its minutiae and foundations.
> 14., WHEN DEALING WITH RELIGIOUS EDUCATION, DOES THE AGREEMENT BENEFIT THE CATHOLIC RELIGION OVER OTHER RELIGIOUS DENOMINATIONS?
> No. The Agreement is consonant with the vision of the right to religious education adopted by the Brazilian Constitution in 1988. It considers religious education as the teaching of a religion. The Agreement, however, does not intend to reduce religious education only to the ministry of the Catholic religion. In compliance with the Catholic Church's vocation of maximum respect for the religious freedom of every human being, the Agreement also ensures rights for other religions in Brazil. The Agreement promotes a model of "multi-denominational religious education". Therefore, its Art. 11 reiterates the ideal of the Brazilian Constitution of "respect for the importance of religious education aiming at integral formation of the person". The Agreement guarantees that adherents of other religions may also request and receive from the Brazilian State the religious instruction of their denomination. The norm could not be more in tune with ideals of legal equality between religions and less averse to particular privileges.
> 15. DOES PROVISION OF RELIGIOUS EDUCATION HURT THE FREEDOM OF NON-BELIEVERS OR AGNOSTICS?
> No, because religious education is not imposed, but only provided to those who are interested in it. (BRASIL, 2009)

§1 of Art. 11 deserves consideration of its own. It states:

> Religious education, Catholic and of other religious denominations, with optional enrollment, constitutes a subject matter of the regular hours of public primary schools, ensuring respect for the religious cultural diversity of Brazil, in accordance with the Constitution and other laws in force, without any form of discrimination. (BRASIL, 2010)

As the article refers to the Brazilian Constitution, it, in turn, in its §1 of Art. 210 determines that "religious education, with optional enrollment, shall be a subject matter in the regular hours of public primary schools" (BRASIL, 1988). This provision reappears in the LDB in its Art. 33, altered[40] by Law no. 9.475/97: (BRASIL, 1997)

[40] Regarding this alteration, see Cunha (2016). From the same author, a noteworthy article is "O veto transverso de FHC à LDB: o ensino religioso nas escolas públicas", Educação e Pesquisa (São Paulo), v.43, n.3, p.681-696, jul/set 2016.

> Art. 33. Religious education, of optional enrollment, is an integral part of the basic training of a citizen and is a subject matter of the regular hours of public primary schools, ensuring respect for Brazil's religious cultural diversity, with any form of proselytism prohibited.
> §1 The educational systems shall regulate the procedures for defining the contents of religious education and will establish the norms for the qualification and admission of teachers.
> §2 Educational systems will consult with a civil entity, made up of different religious denominations, to define the contents of religious education.

The difference is clear. Art. 11, §1 of the Agreement repeats neither the terms of the Constitution nor those of the LDB, as there is a specific addition in which *religious education* came to be qualified by an adjective structure of a *denominational nature* through the addition of *other religious denominations*.

One can even hypothesize whether such an addition - *Catholic and of other religious denominations* - would not be an alleged neutrality precisely to cover up the distinction indicated. This first change in an LDB article due to the pressure exerted by the CNBB, generating the amended Art. 33, does not name any creed, form of worship, or religion, that is, it does not carry with it a *distinction* of the denominational type. On the contrary, the LDB enacts into law a *civil* entity whose existence was one of the biggest points of refusal by the Catholic Church in 1905 in France, especially regarding the controversy of religious education and of the secular state.

This is not the case of §1 of Art. 11 of the Agreement that qualifies religious education as - *Catholic and of other religious denominations* - which brings back, in a specific way, section I of Art. 33 (original) of the LDB, cited above, and modified by pressure from the Catholic Church.[41]

Now, with the creation of a legal uncertainty in the interpretation of the Constitution, an interpretation formally undone by the decision of the Federal Supreme Court (STF) in accepting the constitutionality of denominational teaching in the Supreme Law, what remains is the confrontation of this decision with the (amended) Article 33 of the 1997 law and the legislative decree of 2009.[42] Everything indicates that such a decision of the STF, there is no other possible interpretation than that of the lack of obligation of the denomination as the only alternative for religious education. In that sense, there seems to be a possibility of a formulation between the original wording of Art. 33 with the interpretation of the STF that does not abolish the alternatives of the 1997 wording. As Ranieri points out (2022, p. 100):

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[41] Regarding the provision, consult Opinion (Parecer) no. CNE/CEB 5/97.

[42] The Letter to Teachers of Religious Education, issued by the Permanent National Forum on Religious Education (FONAPER) on its website (www.fonaper.com.br) on October 15, 2009, is unusual. Upon defending religious education "as an area of universal knowledge and not as a space for doctrine from one or more religious denominations, which is a task restricted to the family and the religious community, it proposes that that subject matter be based on the sciences of religion and education, aiming to provide knowledge of the basic elements that make up the religious phenomenon..." In that sense, that Letter clearly shows its opposition to a perspective that "connotes the denominational approach in this subject matter, and with that, one enters into disagreement with art. 19 and the following items of the Federal Constitution of 1988..." In a stronger statement, the Letter indicates that denominational teaching, even if it does not discriminate against other creeds, leads to a practice of proselytism.

> In the STF decision, there is no mention of the BNCC [in Portuguese "Base Nacional Comum Curricular" or Common National Curriculum]; and the CNE [Brazilian National Education Council] Resolution 02/2017 makes no reference to the STF decision, although the legal decision precedes it (published in the Official Gazette of the Court on Sept. 29, 2017, and in the Official Federal Gazette on Oct. 02, 2017). Since then, the CNE has not commented on the content of religious education or on the BNCC in this regard. There is no doubt that the STF decision on DAU 4439 must be complied with by educational systems. Religious education is a unique subject, it is not part of the curriculum and is not subject to the BNCC. The decision of the STF, however, does not prohibit or prevent other approaches to religious education, including those based on the parameters foreseen in the Common National Curriculum.

And, it will not be of minor importance to consider the loss of faithful by the Catholic Church and the relationship of that to this Agreement. After all, if in 1950, more than 90% of Brazilians that were registered declared themselves Catholics, in 2010, this proportion, on a national level, was 65%. Therefore, it is an Agreement that involves many more areas than only religious education.

After all, returning once more to the sociologist Pierre Bourdieu, religiosity is also a field disputed among religious institutions. Making use of a *distinction* within this field under dispute is no small thing, especially when one of the parties of the Agreement is the State.

For the non-Catholics that in the Agreement did not deserve the specificity of this *distinction*, the result may be a discriminatory mark of an inferior belief system. For that reason, Jasonni (1986, p. 218) draws a conclusion in the entry *Concordata Eclesiástica,* after analyzing changes in the Catholic Church itself coming from Vatican Council II: "In the future, this old institute moderating convergences and divergences of temporal and spiritual power will only be able to continue to exist, we believe, if it undergoes a complete and total restructuring."

However, beyond this pursuit of distinction, squeezed into an *old institute*, even opposed to official documents of the Catholic Church, the secret nature under which the negotiations were shrouded prior to congressional proceedings and signing between heads of State should be emphasized. In this case, there is no *reason of State* to determine such a procedure. Disclosure of the acts of government is a constitutional principle laid down in Art. 37 of the Constitution of the Republic.

Conclusion

Political philosophers in the seventeenth century said that a tyrant's strength lies in secrecy. Holding information about the other, and merely someone holding it, makes that someone capable of turning that information against the other or in favor of the other, in any case something in relation to the other. In this sense, holding it in secret is having the other, in this case society, under my control. Would that be a republican principle? Would we, Brazilians, have to go through the embarrassment of learning about these negotiations at the behest of representatives and senators or of acquiring one or another piece of information via foreign newspapers? The hallmark of what is public is transparency, and a feature of it is to provide disclosure. Would not giving it only *ex post*, even if the Agreement passed through Congress, be placing the good of a particular legal order above the discussion about whether its content is in accordance with the common good? As Bobbio (2015, p. 74-75) teaches:

> Naturally, what is valid in the public affairs of a democratic regime, in which publicity is the rule and secrecy is the exception, is not valid in private matters, that is, when a private interest is at stake. In fact, in private relationships, exactly the opposite is true: secrecy is the rule against public invasion of privacy, and publicity is the exception. Precisely because democracy presupposes the maximum freedom of individuals considered individually, they must be protected from excessive control by public authorities over their private sphere; and precisely because democracy is the regime that envisions maximum control of public authorities by individuals, this control is only possible if public authorities act with maximum transparency.

In that sense, the decision of the STF, on September 27, 2017, by a majority of 6 votes to 5, on the constitutional lawfulness of the presence of religious denominational education, interpreting Art. 210 of the Constitution is strange.

The ambivalence can indeed be seen in several dimensions: the Vatican as a State and Institutional Seat of a Religious Denomination, the two wordings of Art. 33 of the LDB, the directives in opposite directions in relation to the same subject on the docket in the Federal Supreme Court, with a tied score to be decided by the vote of the President of the Body.

Another point that shows the ambivalence is the coming and going of the presence of this subject matter in the debates on the Common National Curriculum (BNCC), even in the official versions that circulated between the Ministry of Education (MEC) and the National Education Council (CNE). According to the BNCC (2017), it: "[...] defines the organic and progressive set of essential learning that all students must develop throughout the stages and modalities of basic education [...]" (p. 7). According to Valle (2022, p. 54):

> In the case of Religious Education, these knowledge objectives were organized into three thematic units. The first, **Identities and Alterities**, was stipulated only for the early years of primary school. Basically, this unit was concerned with seeking to strengthen respect for others, taking into account their specificities and similarities. The second unit, **Religious Manifestations**, was essentially characterized by the search for recognition, appreciation, and respect for the various religious manifestations and experiences. Finally, the last thematic unit, **Religious Beliefs and Life Philosophies**, dealt with structuring aspects present in the various religious traditions/movements and in the philosophies of life, which especially took into account myths, idea(s) of divinity(ies), religious beliefs and doctrines, oral and written traditions, ideas of immortality, and ethical principles and values (BNCC, 2017).

Another sign is the shuffling list of teachers, their training, and their certification. The interpretation of the National Education Council, through opinions of the full council, prohibits such a subject matter as the object of a degree for the federal system, but leaves it open for state public institutions of higher education. And this is without considering the optional status of the subject.

What can be drawn from this whole process is that the subject matter of religious education, either because of its course through national education or because of more recent phenomena such as this Agreement, contains in itself a potential that causes tension in its presence within the curricular structure of public education. This tension is derived from opposing matrixes, whose roots are found in the convergence or divergence of values and

interests that come from the social subjects involved in the matter and in the bigger game of a society that has become more complex, pluralized in its process of secularization along with the secularity of the State.

In this broad framework, typical of Modernity, religion was ceding ground for the State to assume the condition of authority and the position of exercise of power and, under tensions and contradictions, it was moving to the field of civil and private liberties. The State, in the exercise of power, became secular, that is to say, it gradually became neutral and equidistant from religious forms of worship, respecting them in their freedom of expression, worship, and conscience in the proper spaces of civil society.

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