

**THE RELATIONSHIP BETWEEN THE CHURCH AND THE STATE:
THE CASE OF ARGENTINA**

**A Master's Thesis
Submitted to the Department of Political Science
and
Public Administration
of
BILKENT UNIVERSITY**

**In Partial Fulfillment of the Requirements
for the
Degree of Master of Arts
by
Juan Martin SABATINI BARRERO**

ANKARA

September, 1996

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Juan Martín Sabatini Barredo
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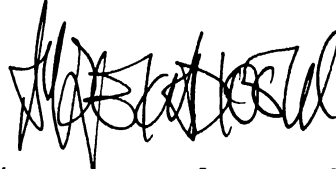
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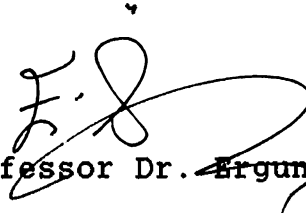
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Professor Dr. Ergun Özbudun

Approved by the Institute of Economics and Social Sciences.



ABSTRACT

The main objective of this study is to explain the interaction between the Roman Catholic Church and the State in the case of the Republic of Argentina. It explores the pervasive influence of the Church at the historical, legal, political and social levels.

The political role of the Catholic Church has varied from nation to nation. In most Western democratic countries, since voters support political parties on grounds that have little to do with religion, the Catholic Church has lost its political salience. The Argentinian case, however, presents a unique scenario. It is a Catholic country with 95% of its population being Catholic. The democratic process which has started since December 1983 reinforces the separation of the spheres of influence of the Church and the state and guarantees individual freedom of worship. Yet, the Church still retains a pervasive and influential role in Argentina, not only in society and community behavior, but also in the political decision making process.

ÖZET

Bu çalışmanın ana hedefi, Arjantin Cumhuriyetindeki Roma Katolik kilisesi ile devlet arasındaki ilişkileri açıklamaktır. Bu çalışma, Arjantinde kilisenin hem tarihsel hem yasal hem de politik ve sosyal alanlarda ne denli etkili olduğunu göstermektedir.

Katolik kilisesinin siyasi rolü ulustan ulusa değişmektedir. Batı demokratik ülkelerinde oy verenlerin, siyasi partileri dinle alakası olmayan konularda desteklemelerinden ötürü kilisenin rolü her geçen gün azalmaktadır. Oysa nüfusunun %95 i katolik olan Arjantin Cumhuriyetinde durum çok farklıdır.. Bu Latin Amerika ülkesi demokratikleşme sürecine 1983 aralık ayında başlamıştır. Demokratik kavramdaki farklı etkiler, insan hakları ve ibadet özgürlüğünün artacağı fikrini verebilir. Bu duruma rağmen kilisenin rolü azalmamakta, tam aksine halen etkili olan rolünü sadece toplumsal davranışlarda değil aynı zamanda politik karar mekanizmasında da göstermektedir.

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INTRODUCTION

If you analyze the institutions of ancient people without thinking about their beliefs, you will find them obscure, strange, and even inexplicable. But, if you place those beliefs in front of such institutions and laws, the facts will acquire, clarity more immediately, and the explanation will turn up spontaneously... From them these institutions have received their principles, rules habits, and magistracies... those ancient beliefs have been modified with them... Religion, Law, and Government, have been mixed up and there was only one thing with three different aspects.

Numa Fustel de Coulanges (1)

The main objective of this study is to explain the interaction between the Roman Catholic Church and the State in the case of the Republic of Argentina. It explores the pervasive influence of the Church at the historical, legal, political and social levels.

Historically speaking, the cultural values and moral principles associated with the Church have played an important role in the juridical make up of the country. This study focusses only on the constitutional dimension with some reference to the role of the Church in international law.

At a political level, up until 1966, the main dynamics characterizing the relationship between the Church and the State was that of confrontation. After the October Agreement of 1966 signed between the Holy See and the Republic of Argentina, there was a mutual recognition of the separate spheres of influence and competence.

At the social level, in spite of the conflict between the Catholic Church and the State, the former has continued

her role in shaping community behavior, values of life and social habits.

The main argument of this study is given by the following paradox. In the Republic of Argentina, the process of democratization which has been undertaken since 1983 has not resulted in diminishing the social and political roles of the Catholic Church.

Theoretical Framework

The analytical framework used in this study acknowledges the contributions of Christendom to the Western philosophy and political thought. In this context, it is oriented by the Christian conceptions of the individual and his morality. The mentioned analytical framework is also conformed by the convergence of three main cultural elements: the Classical Greek philosophy, the Roman concepts of law and government, and the views of Christendom.

The Classical Greek philosophy represents an outstanding turning point in the process of evolution of the human thought, particularly with the contributions of Socrates, Plato, and Aristotle.

The Roman concepts of law and government represent the origins of several institutions in the field of public and private law, public administration, and state affairs, which constitute the main antecedent of the juridical system and legislation of many Western countries.

The views of Christendom complement the analytical and cultural framework of this study, mainly through its conceptions of the individual and his morality. In this sense, the distinction between the temporal and spiritual affairs has been one of the most important contributions of the Christian thought to the development of the political science and political theory in the West.

The philosophical and political tradition which began with Aristotle (384-322) and St. Thomas Aquinas (1225-1274) represent a relevant element of the entire political and social modern European heritage, which was reproduced in Latin America and Argentina through the period of the Spanish colonization.

Last but not the least, this study was written under the conviction that the presence of God, by whatever name He is known, constitutes an ontological element which endows human life with an important understanding of transcendency.

Scope of the Study

This study aims to give a brief picture of the interaction between the Church and the state in the Republic of Argentina. The study consists of five chapters and the introduction whereby an insight to the first approach to this sensitive subject is given. Additionally, the first chapter contains an introduction to the subject of religion and politics and the attempts of preeminence of the two spheres or institutions, spiritual and temporal, where the

individual develops his life. The first chapter concludes with necessary explanations about the meaning of the Church, her hierarchical organization, the Church as a perfect society, the power of the Church, the ecclesiastical legislation, and the temporal jurisdiction of the Church.

The chapters which follow the Introduction and chapter one focus on different parameters concerning the interaction between the Catholic Church and the state in the Republic of Argentina.

Chapter two contains an explanation of the social and historical aspects, in chronological order, that have conformed and characterized the Church-state interaction in the Republic of Argentina.

Chapter three explains the constitutional and institutional aspects of the Church-state interaction, pointing out the constitutional status of preeminence of the Church (confessionalism with secularity type) and the freedom of worship for the other cults.

Chapter four provides new or modern matters that turned up in the 1970s. onwards, related to the interrelationship between the Church and the state.

Finally, chapter five contains conclusions whereby an overall discussion on the basis of the information gathered through this study is made.

NOTES AND REFERENCES

(1) Numa Fustel de Coulanges, The Ancient City (Barcelona: Iberia, 1965), p. 7.

CHAPTER ONE:

RELIGION AND POLITICS

I. GENERAL ASPECTS

Andrew Heywood defines "politics" as:

- a) An activity related to the institution of the state, or "polis", and the machinery of government.
- b) An activity through which a social conflict is expressed and attempts, which are not always successful, to resolve conflict are made. (1)

Taking into account this definition, it would be difficult to overemphasize the effect of religious belief and practice upon politics. Anything so central to human experience as religion, inevitably affects life and human behavior. In a similar fashion, politics, which, as has been mentioned, deals with collective goals and power relationships with groups, and is pervasive wherever there is a human community. In fact, two such important realms of human existence could not fail to influence one another.

Throughout the ages, religious practice and ideas, particularly from the Church, have undoubtedly influenced theoretical-political perspectives and political thought, and political practice as well. That influence, in some cases, has reflected deliberate efforts to build religion into politics and to establish a political system based upon religion. This can be seen, for example, in the attempt by the puritans to establish a "City on a Hill" during the 18th.

century in England. It can also be seen in the actions by some Sikh and Hindu fundamentalists in India, and in the demands of some proponents of "Liberation Theology", primarily in Latin America. It is evident also in revolutionary Iran, which explicitly has sought since the late 1970s. to be a totally fundamentalistic Islamic society.

It is no less present in the political activity of the so called "religious right" in the United States, which since the early 1970s, has been politically active in an attempt to redirect the nation's entire political system to reflect a particular view of fundamental, evangelical, Christianity.

Considerably, more moderate Christian examples might be the Christian Democratic parties that are numerous in Western Europe and Latin America, and various attempts at Christian socialism, such as religion-based peace and pacifist groups. These are only a few of the multitude of possible examples of overt attempts to mix religion and politics.

As Max J. Skidmore has observed:

To ignore the growing politization of religion on the world scene is a dangerous mistake... From the key role played in Tibet by Buddhist monks in protests against China to that in Nicaragua by Roman Catholic prelate, Cardinal Miguel Obando y Bravo, as intermediary in cease-fire talks... the blend of politics and religion is becoming a potent Third World force; it deserves both respect and understanding.
(2)

It is probably even more frequent that religion influences politics unintentionally. In such cases, the influence results from unconscious assumptions that reflect the effects of religion without even an awareness that

religion is involved. Religion is likely to condition outlooks and attitudes to such a degree that may shape even sincere attempts to establish secular systems.

Many of humanity's most fundamental beliefs, its ethical system, its views of right and wrong, and so forth, are religious, or related to religion, and certainly a society's basic beliefs will determine its political attitudes and ideologies. Some such beliefs may well be universal. No society, for example, would or could permit indiscriminate murder. Many other beliefs will not be universal and will relate specifically to religious and ethical views that may be peculiar to that society, such as matters pertaining to marriage and divorce, culturally prescribed gender roles and the like. However universal or particular certain beliefs might be, objectively viewed, the society is likely to assume that they are universal. Thus in permitting them to shape political institutions, the society can be genuinely unaware that it is building its religious orientation into its politics.

There is another manner in which religion may influence political thought and politics. An ideology, for example, may be based upon a reaction against religion in general. Both Lutheranism and Calvinism were reactions against contemporary Roman Catholicism. The political systems that they generated were as much anti-Catholic as they were specifically oriented toward a religion, or toward religion in general, as by economics or politics.

It is believed that throughout the history, the issue of the relationship between the state and religion has been sometimes a sensitive affair which has affected governments and societies. In a world where the political scientists' efforts are sometimes focussed on postmodern and post-structuralist challenges and concentrated on the democratic processes of participation and representation, the mythical rivalry between the Emperor and the Pope appears as an outstanding element that helped to forge the original and current political parameters in the West.

In fact, both the phenomena of "Caesar-papism" and "Pope-caesarism" represent the attempts of preeminence of the two spheres or institutions, spiritual and temporal, in which the individual develops his life.

II. THE CHURCH AND THE STATE

Render to Caesar what is Caesar's
and to God what belongs to God. (3)

This outstanding synthesis of the position of the Church vis-a-vis the state is included within the New Testament in the texts of three of the four Gospels (Mark, John, Matews, and Luque). (3)

What is the Church ?

From the point of view of many Catholic political scientists, such as Juan Rafael Llerena Amadeo and Eduardo

Ventura, the Church perceived as a "perfect society" in the supra-natural order from a theological perspective, has an important role in the field of politics. (4) Consequently, the Church would have an outstanding influence in social affairs through its conceptions of the individual and the value of ethics.

The Church has a social doctrine and its principles have political implications. Both the state and the Church have an interrelationship and these two societies have also specific competences. Therefore, the subjects of the coordination and regulation of such competences is important.

Again from the theological perspective, the Church is the "society of all men (and women), who have been baptized, ruled by the Pope." Consequently, it is a society of those who share the same faith, participate of the sacraments, and respect the same authority.

The word Church (Ecclesia) has its origins in the Classical Greek language and means "Assembly" or convocation. Convocation, because nobody has been born "Christian", but "we are called by God in order to participate in the life of the Church through the sacrament of the baptism." Assembly, because it refers to the people of God joined by the same faith and the same obedience.

The Church is also known as the "Mystic Body of Jesus Christ". As we call every corporation where there are unity of subject and unity of command, "body", the Church, conformed by many members, finds her unity in Christ. St. Paul, in the first Letter to the Corinthians (Gospel),

indicates that all of the members must contribute to the common good of the Church which is the body of Christ. The Apostle adds that "all of us are baptized in the same spirit... the members are many but there is only one body... and you are the corp of Christ."

The Catholic theology explains that the Church includes on the one hand, all the community of the faithful, alive and dead members, and on the other hand, in a more restrictive sense, all of the baptized and living members. All of these people, who believe in the truth revealed by Christ, share the same sacraments, conform a society and accept the same authority, that is the Pope.

The Church is understood as:

- 1) the society of all the rational creatures who know the true God and who are in relation with him through religion;
- 2) the government, established by Jesus in order to maintain the true faith, the unity, the harmony, and the sanctity among human beings.

In this sense, the Church is also perceived as a great family where the father is God, the mother is the Virgin Mary, and the members of the Church are the children. Therefore, the Church according to Monseigneur De Segur, is a society of peace and harmony on earth and in eternity.

This society has, on the one hand, a temporal dimension, as a social body related to the life of the individuals, and, on the other hand, a supra-natural and transcendental dimension.

The constitution of the Church, founded by Jesus, presents it as an organic body where Jesus is the head, the Pope as the vicarious representative, and the community of the believers constitute the rest of the body. Related to this subject and according to theology, it is interesting to mention that when the College of Cardinals chooses the Pope, they only elect an individual, because the power would be transferred directly to the person chosen as Pontiff by God.

Hierarchical Organization

St. Thomas Aquinas (1225-1274), who was one of the earliest Western philosophers and theologians to merge Aristotelian philosophy into the Christian political and philosophical heritage, makes a distinction between two kinds of hierarchy:

- a) the power or hierarchy of order (*potestas ordinis*), which is related to the administration of the sacraments,
- b) the jurisdiction hierarchy or power (*potestas regiminis*), which is related to the government of the Church.

Within the hierarchy of order there are three levels:
1. the diaconship, 2. the priesthood, and 3. the episcopacy. The bishops are the ones who have the power to administer the sacraments of the confirmation and the clerical ordination.

At the beginning, Christ consecrated the Apostles as bishops and priests at the same time. After that, the Apostles were the ones who consecrated the deacons.

The Apostles received the power of jurisdiction from Jesus, but not in the same way, because one of them was considered the primate, Peter. He had not been the first Apostle (St. Andrew), but Jesus told him:

You are Simon, son of John,
you are going to be called Peter,
and upon this stone I shall build my Church.
(Gospel)

The Catholic theologians point out that this event is particularly important, taking into account that, in the biblical tradition, the fact of receiving a new name was directly related with a special mission. Consequently, the image of Peter accompanies Jesus in several crucial moments throughout the Gospel.

The Primate of Peter was promised by Christ before the Crucifixion and given after the Resurrection. Therefore, Peter did not receive only a primate of honour, but he also acquired a primate of jurisdiction and mastery. This primate is universal and it extends to all the members of the Church. The power of jurisdiction, which is considered to have its origins in divine law, is a competence of the Pope and the bishops, but the former has a total preminence among them and is not merely a "primus inter pares".

The Church stated the primate of jurisdiction of Peter through the Council of Florence. This was also confirmed by

the Council Vatican I, together with the infallibility of the Pope in subjects concerning the interpretation of the faith and moral. This primate of jurisdiction is based around three points:

- 1) the Pope is the supreme moderator of the whole organization of the Catholic Church;
- 2) He has an unlimited territorial jurisdiction and at the same time concurrent with each bishop;
- 3) He can exercise one or more faculties within every episcopal province.

The Apostles received the mandate of predicting and teaching the members of the Church from Jesus in order to provide them with the means of sanctification, through the administration of the sacraments. They also received the power of transmitting these functions from Him.

The theologians have developed the theory that authority was given to the Apostles until the end of history and it is transmissible. In this sense, the bishops replaced the Apostles in their pastoral function.

There is a main difference between the power or authority of the Apostles and the bishops. The Apostles, exercised this function in every place, but the bishops have an episcopal province as territorial jurisdiction.

The Pope is considered the successor of the Apostle Peter, while the other bishops are not. In principle, successors of any Apostle in particular, with the exception of the bishops of Constantinople and Jerusalem, are the successors of the Apostles Andrew and James respectively.

Jesus founded the Church and the Papacy, but has left the decision of the way of designating the Pontiffs to the former. Throughout the history of the Church, the way of designating the Pope was by election of the successor by the College of Cardinals, after the death of the previous Pontif.

Nowadays, the process of designation of the new Pope is ruled by the Constitution of Vacancy at the Holy See, passed by Pious XII on December 25th. 1904. These prescriptions were modified by Vatican legislation of 1945 and 1975. All of these modifications ratified the "elective system" of the Pope, but taking again into account that the voting is not the source of power or authority of the Pontiff.

The Church as Perfect Society

The Church is a hierarchical society. It was founded by Christ, who chose twelve of his followers in order to continue his task and, among the twelve, one, Peter, in order to guide or lead them.

From the point of view of F. Fernández de Landa, the Church is perceived as a "perfect society". Having a specific objective, which is to endeavor the salvation of all mankind, the Church has at its disposal all the necessary means for the fulfilment of her own finality. In this sense, she is, in her own scope, a complete and independent society. It does not mean that this considered "perfect society" was absolutely independent from other societies. The theologians

affirm that this independence is related to the Church's own order. (5)

The Church, from the point of view of the Catholic doctrine, has all the spiritual necessary means in order to reach her own objective. These means are the Sacraments. (6) At the same time, Christ has promised to be with the Church "until the end of the centuries", and that "the forces of hell will not prevail."

The Power of the Church.

As a "perfect community", the Church exercises the legislative power to pass disciplinary and moral norms, without the intervention of another society. Consequently, the Church has her own law, which is generally defined as the group of rules established by Christ and the Church.

The fact that the ecclesiastical law had also Christ as a legislator, implies that the Church has not the capacity to modify the fundamental legislation. These laws are perceived as permanent and immutable, because they can not be changed or derogated. This legislative power of the Church goes back to the times of her foundation, and also the Apostles exercised this task in the Council of Jerusalem.

The ecclesiastical or canonical law includes disciplinary and moral norms. In principle, the goal of the disciplinary laws is the common good of the members of the Church. The disciplinary norms are those which rule the liturgical facts (i.e. the administration of the sacraments)

and the government of the Church (i.e. the election of the Pope). The moral laws are related to the faith and habits of the individual members of the Church.

The Church also has an administrative legislation. These norms are those which regulate the functioning, designation, competence and procedures of the organs of the Church.

The Ecclesiastical Legislation.

The Church, as titular of the right to legislate, has the capacity of judging her members and ensuring the correct application of her own laws.

In the origins of the Church, the controversies which arose among Christians were solved within each community. After the persecutions against the Christians, undertaken by the Roman authorities, and with the "Christianization" of the Roman Empire, the controversies on temporal subjects were presented to the civil judges and the spiritual ones to the Church. Consequently, this criterion was adopted by the Roman legislation and the Justinian Code.

Later on, the Code of Canonical Law has established the competence of the Church for the following matters:

- a) controversies related to spiritual affairs,
- b) violation of ecclesiastical law,
- c) matrimonial controversies among Catholics,
- d) determination of ecclesiastical penalties and responsibility in the mixed affairs. (7)

In these special situations of the mixed affairs, with an element or "viculum" with the Church on spiritual matters, the Church has accepted the competence of the civil judges.

Another eventual conflictive matter can turn up through the so called "force appeals". In these cases, a verdict or decision of an ecclesiastical court is "appealed" in the framework of a civil or secular court.

The Church, in defense of what is perceived as her own competence, has not accepted the legitimacy of those appeals and punishes those who -directly or indirectly- obstruct the ecclesiastical jurisdiction by excommunication after appealing to a civil court. (8) Catholic jurists have stated that the acceptance of the "force appeals" would imply a recognition of the superiority of the state by the Church. They also add that the force appeals imply a violation of universal principles of juridical procedures, as they call for the intervention of a judge from a strange jurisdiction.

Temporal Jurisdiction of the Church

Apart from the spiritual jurisdiction, the Church has a temporal and political jurisdiction which exercises in the territory of the Vatican state. (9)

This temporal jurisdiction, which is not related to the fulfilment of her spiritual objectives, is considered convenient by the Church for many reasons. The fact of

possessing a country gives the Church and the Pope a greater freedom and facilitates the most complete independence.

Therefore, a territorial principedom is useful for the Church because, the lack of a territorial sovereignty implies the risk of serious troubles and can submit the external sovereignty of the Papacy to the instability of politics.

Before the birth of the Vatican state, the popes were subjected to the authority of the Roman emperor. Later on, the independence of the Holy See of the Byzantine power and the creation of the Pontifical states constituted an advantage for the Church, because her situation was more favorable for the conversion or Christianization of the so called "barbarians".

To sum up, nowadays, the total independence of the Vatican is considered convenient in order to facilitate the fulfilment of its Apostholic mission or task.

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- (1) Andrew Heywood, Political Ideologies. An Introduction (London: Macmillan, 1992), p. 317.
- (2) Max J. Skidmore, Ideologies. Politics into Action (New York: Harcourt Brace College, 1993).
- (3) Mt. 22:21.
Mk. 12:17.
Lq. 20:25.
- (4) Juan Rafael Llerena Amadeo and Eduardo Ventura, El Orden Político. Principios y Cuestiones de Derecho Político (Buenos Aires: AZ, 1994), pp. 639-641.
- (5) F. Fernández De Landa, Las Relaciones entre la Iglesia y el Estado (Buenos Aires: Abeledo: 1958), pp. 29-31.
- (6) From the point of view of the Catholic theology, the Sacraments are sensitive and effective signals of the Grace established by Jesus Christ.
- (7) Affairs were both the temporal and spiritual authority have competence.
- (8) Expulsion of the Catholic Church.
- (9) For further details see Antony Black, Political Thought in Europe 1250-1450 (Cambridge: University Press, 1992), pp. 42-84.

CHAPTER TWO:

HISTORICAL ASPECTS OF THE INTERRELATIONSHIP BETWEEN THE CHURCH AND THE STATE IN ARGENTINA

I. HISTORICAL CONTEXT

The objective of this chapter is to give a necessary historical and social context for the analysis of the interrelationship between the Catholic Church and the state in the Republic of Argentina, particularly in the field of politics, society and community behavior. In this same vein, the main events related to the history of Argentina and to the Church-state interaction will be pointed out and explained in chronological order. In this sense, it has to be taken into account that, from the very beginning of the Spanish enterprise of the discovery and colonization of America, the contemporary presence of both the sword and the Cross, the conqueror and the priest, carried out that epic task together. What is more, it will be shown throughout this historical chapter that Spain transferred its political institutions and legislation to America, including those related to the relationship between the Catholic Church and the state, in particular the exercise of the patronage (royal privilege for the designation of bishops), the Exequatur, etc., during the colonial period between 1493-1810.

In this framework, the revolutionary "junta", on May 25th. 1810, constituted a turning point in the field of the interrelationship between the Church and the state. The

reason for this was that the first autonomous South American governments perceived that they had inherited the Spanish Crown's privilege of the exercise of the patronage, among others, and they were influenced by regalist principles which conceded the temporal authorities the right to interfere in the realm of the spiritual affairs. During the 19th. and part of the 20th. centuries the relationship between the Catholic Church and the Argentinian independent state was a permanent confrontation with regard to the delimitation of the temporal and spiritual spheres. In this context, the national constitution of 1853 did not reach a definitive solution acceptable for both powers, and this situation concluded in October 1966 with the signature of the Agreement between the Holy See and the Republic of Argentina. However, the Church-state confrontation in the field of politics did not affect the relevance of the presence of the Church in society and community behavior, as well as in the Argentinian cultural values of life and moral. The widespread social recognition of the Church was confirmed on the occasion of the overwhelming popular participation in the Eucharistic Congress in 1934.

TABLE 1: MAIN HISTORICAL EVENTS

The Spanish Period: Religious Character of the
 Conquest and Colonization (1492-1810).
 The Independence Period (1810-1830).
 The Constitutional Attempts (1812, 1819, and
 1826).
 The Adapted Memorandum (December 4th. 1833).
 The National Constitution (1853).
 The Relationship with the Holy See (1853-1945).
 The Eucharistic Congress: October 11-12 1934.
 Presidencies of Juan Domingo Perón (1945-1955).
 Convention on the Designation of Military Vicarious
 (1957).
 The Agreement with the Holy See (1966).

II. SOCIAL AND RELIGIOUS STRUCTURE OF THE REPUBLIC OF ARGENTINA

In the first place, the socio-political role of the Catholic Church has varied greatly from nation to nation. In spite of the fact that her role has steadily become less important in most Western democracies, since voters increasingly support political parties on grounds that have little to do with religion, it would not be the case of Argentina. Argentina is seen as a Latin American country where the Catholic Church has developed an important influence in politics, society, and community behavior. This social and sociological structure -including the situation of preminence of the Church in society and community behavior- was not affected by the overwhelming immigratory phenomenon, which came mainly from Spain and Italy, during the period 1870-1930.

In spite of Karl Marx's depreciatory remarks in the sense that "religion is the opium of the peoples", in 1994, the estimated amount of the Catholic population in the whole world was estimated as 1.017.580.000 believers. (1)

Even if the "Anuario Estadístico de la República Argentina", published by the National Institute for Statistics and Census in 1995, does not mention figures related to the composition of the population according to their religious beliefs, there are several situations in which the Argentinian citizens are asked by the civil authorities concerning this sensitive and ontologically

important subject within their lives. (2) Among them, we can mention the periodical census, the records of the Recruitments' Office of the armed forces, and the records and data of the Civil Register Office.

Insofar as the religious point of view, the total population of the Republic of Argentina (35.000.0000 inhabitants in 1996) can be divided in the following way: 95% Roman Catholics, 2% Protestants, 500.000 Jews (3), and some Islamic minorities. (4)

From the very beginning of the history of the Republic of Argentina, the Roman Catholic Church has developed an integrating presence according to a tradition inherited from Spain. This presence has given this young Latin American nation the moral, ethical, and philosophical bases and values in a continuous and uninterrupted way, which has not been altered vis-a-vis the immigratory phenomenon which occurred at the end of the 19th. and the beginning of the 20th. centuries. Related to the origins of the population in Latin America, it has been said that the Mexicans have come from the Aztecs, the Peruvians from the Incas, and the Argentinian people from the ships... (5)

In this sense, the socio-cultural structure of the Republic of Argentina has been enriched by the existence of immigratory movements that, beginning in the second half of the 19th. century, represented a persistent social flux which incorporated to the original population almost 6.000.000 inhabitants between 1870 and 1930. Those immigrants came, mainly from Spain and Italy, but also from Central Europe

(Germany, Austria, Bohemia and Poland), France and Wales. They hoped to avoid the economical difficulties and lack of possibilities in their own countries at that time, and to live in a new land of promise and future with an increasing economical development based on agriculture and cattle raising.

In order to clarify the scope that the cited immigratory phenomenon had reached, Julio Irazusta mentions that, at the beginning of the 20th. century, one out of three inhabitant in the city of Buenos Aires was born in the territory of the Republic of Argentina. (6)

To begin with, according to Gerardo T. Farrell, the interaction process among the Church, the people and the state in the life of Argentina, is represented by the history of five hundred years of Evangelization. (7)

Throughout the history of the Republic of Argentina, the Catholic Church has played an important role in the field of social assistance and aid to the parts of the population with minor economic resources. In this sense, the activities of several Catholic institutions -among them which "CARITAS" can be mentioned- contributed to the education and fight against social and communitary problems such as poverty, alcoholism, prostitution, the consumption of drugs, and the protection of abandoned children, among others. Another important Catholic institution in Argentina is the "Asociación Católica Argentina" (Argentinian Catholic Association), mainly in charge of charity and social activities and religious education programs for the community.

The presence of the Catholic Church in the everyday life in Argentina can also be perceived both from an individual and social perspective. On the one hand, we can observe that Catholicism accompanies the entire life (external or private aspects) of many individuals in Argentina from the moment of birth until the death. In this sense, almost the majority of the population receive the sacrament of the baptism. Many others participate the Mass on Sundays; the ceremony of the religious marriage which constitutes an outstanding event in the framework of familiar and social life. Also, many students develop their educational process at Catholic schools and universities, and most people call for a priest in the last minutes of their lives, and finally, the symbol of the Cross accompanies the tombs at the cemeteries.

On the other hand, the social presence of the Church can also be observed among the interaction between the civil society and the state. The parochial churches develop an important role in the life of the communities that can not be ignored by the municipalities and other civil authorities. The presence of the Church can be perceived when her representatives accompany the state or government in public events too. It can also be seen through the existence of the military vicarage and its competence within the Ministry of Defence and the armed forces.

In brief, the relations between the Roman Catholic Church and the Argentinian state derive from a fact with deep historical significance and important socio-cultural connotations: the most affectionate presence of Catholicism

in the social life of Argentina. The Catholic element, printed profoundly in the Argentinian nationality since its origins and the intimate "vinculum" between the spiritual power and the temporal one -which existed since the colonial period- constitute essential assumptions within the framework of the institutional, constitutional, legal, and political structures currently in force in the country. (8)

In addition, since the first attempts of constitutions (1812, 1819, and 1826), the national constitution in 1853, the conventions of 1860 and the constitutional reform in 1994, there have been no constitutional text which has ignored the reality and the fundamental value of the presence of Catholicism in the social life and community behavior in Argentina.

The current conformation of the interrelationship between the Church and the state in Argentina does not derive from an artificial decision of a representative, and it is not a group of juridical traditions accidentally inherited from the Spanish political and social regime.

On the contrary, it is perceived, according to Santiago de Estrada, as an important element among the ones which conform the Argentine nationality. (9) Obviously, this perception does not mean to deny the existence of non Catholic Argentinian citizens, and it would be fully unjust to consider them with a diminished or affected nationality. However, it is a reality that the overwhelming presence and power of Catholicism in social and political habits, usage, and customs, are shared even by people strange to the

Catholic Church living in Argentina. In this sense, Andrew Heywood affirms that Religion is a major component of nationhood because it expresses common moral values and spiritual beliefs. (10)

There are also some Catholic authors in Argentina who claim that the important presence of Catholicism in the social life of the country implies the existence of a fact which is previous to any other written norm and belongs, according to them, to a sort of Argentinian living non written constitution. This could resist and survive various institutional disorders.

In spite of the significant stroke, which occurred at the end of the 19th. century, represented by the introduction of laicist education at the public schools and the civil legislation in the field of marriages, the religion continued deeply entailed in the social life, and the efforts made in order to reduce her to the internal sphere of the consciences, which were useless. However, the regalist and laicist impacts produced more effects on individuals themselves than in the social life. It is interesting to notice that the efforts that could be, in some cases, effective to dechristianize individual conscience, were found to be extremely difficult to lessen in the value of collective habits and uses.

In addition, one of the main crucial aspects within the contemporary history of the Catholic Church is that the institution of the Church, structured on strict codes and rules which were defined in the society of the "ancien

régime", adapted herself to the increasing mutations and changes imposed by modernity. Thus, this sensitive matter incorporates the analysis of the question of the two principal historical dimensions: the necessity of the authorities of the Catholic Church to clarify their positions about democracy and the social question at the same time.

One final point worth mentioning, in the framework of the description of the historical and social aspects and scope of the interrelation between the Church and the state, is that it was the President of the Nation, Gen. Juan Carlos Onganía, who consecrated, in presence of his cabinet, the Republic of Argentina to the Virgen de Luján (Patroness of the country) in 1967.

III. THE CHURCH AND THE STATE IN ARGENTINA: THE HISTORY

Institutional Duality in History

The relationships between the religious and temporal phenomena have existed since the presence of the human beings on earth. At the same time, history has showed that the religious phenomenon has a natural social dimension and, therefore, it constitutes a social factor.

According to Miguel Angel Dapuetto Ferrari, the Church or "New God's People", founded by Jesus Christ two thousand years ago, at the plenitude of history, is unique in comparison with ancient Israel and other states outside Christendom. Here the temporal and spiritual spheres were

together, such as in the Egyptian and Ottoman empires. In this sense, Christendom has been one of the central factors which characterized the Western civilization. (11)

The mentioned duality was established by Jesus Christ for the structuration of the human social life in history, according to the so called program of salvation of the souls included in the Gospel: "Render to Caesar what is Caesar's and to God what belongs to God." (12)

This original issue was raised by the Christian thought and constituted an exclusive novelty within the framework of the religious and socio-political structures valid at that time. According to Jacques Maritain, this important contribution of Christendom to the political science and political theory, given by the distinction between the spiritual and temporal affairs has implied one of the most relevant revolutions carried out within the political order and a decisive influx of liberty. (13) As a matter of fact, the political religious monism has sometimes shaped a totalitarian power. According to J. Ratzinger when the political power assumes itself the religious attributions or competences, it pretends to monopolize all the human hopes and expectations. (14) On the contrary, Christendom, when it differentiates or separates the religious fact from the political one, has indicated a limit to the competence of power, and has also recognized to the human being the sense of freedom. Consequently, these first natural limits to power and the equivalent freedom, both are related to the fact that the transcendental religious element is something clearly

different and separated from the political realm. In addition, the so called "Christian dualism" has established the basis for the dissolution of a totalitarian power.

In order to understand the cited words of Jesus Christ related to the payment of taxes to the Roman emperor, which have been the central aspect of the Christian doctrine in this field, it has been taken into account that the Church was born in Israel in the historical context of the Roman Empire. The Christian perspective of such words was not to put God and the Caesar as two independent rulers in a situation of equality. Moreover, Christ's answer had a double effect. On the one hand, the negative to the absolute or totalitarian sovereignty of the "Caesar", on the other hand, the negative to a political Messianism (the relationship with God does not imply a concrete political option) and, therefore, also includes the positive duty of obedience to the temporal authorities in their own spheres of competences. The mentioned double exclusion of the absolute imperiousness of the state -only God is the Lord- and of the political character of the religion has always been present in the words of Jesus Christ. In this sense, Jesus "disappointed" the political and messianic hopes which had been deposited related to his message. Jesus rejected the "royal" dignity for himself. He declared that his Kingdom was not on earth. In this understanding temporal matters are within the responsibility of the civil authorities. He stated that it was impossible to serve two lords at the same

time. Jesus also reminded the Roman governor Poncio Pilatus that God was the origin of all human "potestas".

Since that moment and onwards, the relationships between the religious and temporal orders have been expressed, historically, as relationships between the Church and the political power. Consequently, almost all the events and political developments, in the field of the practical and doctrinal spheres, have begun with this outstanding distinction of orders originated by Christendom.

The Apostles followed the message of Jesus and St. Paul, on the one hand, urged the increasing Christian community to recognize the authority of the civil powers, but on the other hand, proclaimed that, in the field of the religious matters God is who had to be obeyed. (15)

Taking into account the formulated principle of the existence of two separated orders -not isolated but indeed different one from each other- we can find out the following consequences:

- a) Taking into account the social nature of the human being, it is possible to have the existence of two different, autonomous, and independent societies in order to fulfil the spiritual and temporal aspects of the human life.
- b) There will be two different, autonomous, and independent centres of power, in order to guide the human being in the development of his political and spiritual life.
- c) In spite of this duality, the human being maintains his integrity and develops his life in this double way.

Consequently, the existence of relationships between these orders, societies and powers, constitutes an exigence of the historical nature of the human being, and when the Christian dualism established a clear distinction between these two orders -vis-a-vis the confusion of the pre-Christian world, that represented an important historical contribution for the development of politics.

The subject of this "vinculum" between the state and the Catholic Church has represented a milestone in the field of political theory and it has been present throughout the history of the Republic of Argentina.

In this tradition, the Catholic Church can also participate in the exercise of the following activities related to her own nature and objectives:

- a) Relationships between the Church and the world, whose principles are formulated by the dogmatical and pastoral ecclesiology and enumerated by the Pastoral Constitution "Gaudium et Spes" from the Council Vatican II. (16)
- b) Relationships between the ecclesiastical community and the political communities, formulated and recorded by the social-ecclesiology. (17)
- c) Relationships between the Catholic Church and the states or between the Church and the civil power, formulated by the Ecclesiastic Public Law.
- d) Relationships between the Holy See (and National Episcopal Conference) and the head of state (or government).

To sum up, we could point out that, among the most important contributions of Christendom to political science,

is the one given by the distinction between the spiritual and temporal affairs.

Church and State: Relevant Western European Historical Facts

Before explaining the interrelationship between the Roman Catholic Church and the state in Argentina, it is important to mention some relevant historical facts borrowed from the Western European experience and socio-political and religious model.

From the very first moments of its history, the Catholic Church insisted on the fundamental separation between the spiritual and temporal spheres.

This Western European experience will help to conform the global historical framework for the confrontation between the Church and the state, which resulted from the separation of powers, between the 4th. and 20th. centuries. After having this necessary approach to the European context, the case of Argentina in particular, which is historically and culturally inserted in, can be focussed on.

May be the first "leading case" was given by the bishop Osio from Córdoba, who opposed the intention of the emperor Constancious (350-361 A.C.) to depose St. Atanasio who was against the Arian heresy.

Later on, many historical events took place in the Roman Empire which helped to increase the prestige of the Papacy, even for the solution of problems related to temporal affairs. When emperor Constantine established his residence

in Constantinople and the Pope remained in Rome, the distance reduced the "vinculum" between them, and the authority of the Caesar was too far to influence the spiritual Pontiff.

At the beginning of the Middle Ages, the people of Rome found their protectors against hunger, misery, pest, heresy and barbarians in the Popes. As a result, the Holy See - intentionally or not- intervened in all of the matters of the city, and the spiritual power of the Pope as Bishop of Rome became also a sort of temporal power. In fact, the Pope was sovereign, but according to the law valid at that time, he was still subjected to the emperor in Constantinople.

Historically, we can find the origins of the Pontifical States during the Papacy of Steven II in 752 A.C. At that time, the Lombards constituted a menace for Rome. They had occupied the center of the Italian peninsula and they required an important tribute from the people of Rome, otherwise they would plunder the city. Then, the Pope asked for the help of the emperor Constantine in Constantinople, who did not answer. Immediately, the Pope also asked for the intervention of the king of the Franks and set up an alliance with him. The Pope consecrated Pipin and his son Charles the Great as kings of the Franks, and he also gave them the title of "Roman Patricians" as protectors of the Church. Pipin decided to demand the Lombards to return the territories that they had conquered to the Pope. Moreover, he gave the Pontiff a special dominion over Rome, Ravenna and other cities. In addition, the keys of these cities and the acts of

donation were deposited in the tomb of St. Peter, signalling that those territories belonged to the Papacy.

The Pontifical States had to endure and to overcome many difficult situations in the course of history. One of the most serious ones occurred during the Papacy of Pious VII due to the conflicts provoked by the aspirations of Napoleon I. The emperor Napoleon I of France revoked the donation of Pipin by the Decree of Saint-Claud, alledging being the succesor of Charles the Great on April 2nd. 1808. One year later, on May 17th. 1809, Napoleon I incorporated all the Pontifical States to the French Empire. Consequently, the Pope stated the excommunication of Napoleon I and, therefore, the former ordered the imprisonment of Pious VII. After the complete defeat of Napoleon I, the Pontifical States were restored, and the Pope resumed his territorial and temporal jurisdiction.

With the arrival of the phenomenon of nationalism, the so called "Roman Quarrel" arose as a controversy originated due to the ambitions of the adherents of the Italian unification of having this city as capital of Italy. On the other hand, Rome had been for the seat of the Papacy and a sacred place for Christendom for centuries.

In the aftermath of the defeat of Napoleon I, Italy had been divided in several states. On the one hand, the Pontifical States existed, with their capital in Rome and ruled by the Pope and, on the other hand, several kingdoms existed with capitals in Turin, Milan and Naples. In order to reach the goal of the Italian unification, the nationalist

movement was expressed through the groups or secret societies called "Carbonarios" and the "Young Italy", was founded and lead by Mazzini. Taking into account that the pontifical States were protected by France, the oportunity appeared after the defeat of the former in the Franco-Prussian War in 1870. The Pope could only offer a weak resistance and the king Victor Manuel II proclaimed Rome the capital of the kingdom of Italy on September 20th. 1870. As a result, the Pontifs considered themselves "prisoners" in the Vatican and did not accept the unilateral Law of Guarantees passed by the Italian government in March 1871.

In order to finish the mentioned "Roman Quarrel", the Holy See and the government of Italy signed the Letran Treaty on February 11th. 1929. Italy, ruled by Benito Mussolini and his Fascist Party, recognized the Papacy the exclusive jurisdiction over the Vatican city and several cathedrals and palaces in Rome. The text of this treaty states, among other principles, that "the Holy See will be independent for the international affairs and the Vatican city will be considered as neutral and inviolable." The Holy See considered finished the "Roman Quarrel" and accepted Rome as the capital of Italy. As a result of this agreement, the Pope was formally recognized by the Italian government as a subject of international law, with his temporal and territorial jurisdiction, and his spiritual and moral authority.

To sum up, there was a permanent historical situation of Church-state confrontation because of the delineation of the spheres of competences between the temporal and spiritual

authorities in the period between 4th. and 20th. centuries among the Catholic states of Western Europe. In this sense, the Treaty of Letrán in 1929 was a turning point because it showed a possible solution for the Church-state differences through collaboration, tolerance, and mutual respect. This example can have a parallel when the Republic of Argentina signed the agreement with the Holy See in October 1966, which concluded with the historical misunderstanding during the period 1810-1966, in a framework of tolerance, mutual respect, and cooperation too.

The Spanish Period: Religious Character of the Conquest and Colonization (1492-1810)

Any study of the Argentinian antecedents related to the interrelationship between the Church and the state needs at least, a brief reference to the period of the Spanish conquest and colonization in order to understand the essential characteristics of the Argentinian idiosyncrasy during the periods of independence and national organization.

In order to understand the scope of the historical and sociological context of the interrelationship between the Catholic Church and the state in the case of the Republic of Argentina, the observer is invited to take into account this Western European precedent, in particular the special "vinculum" between the Spanish crown and the Church in the wake of the discovery of America.

The Spanish conquest of America had both a political and a religious impact. The objective of the Spanish crown was not only to extend the borders of the empire through commerce, but also to transplant the Christian life to the "Indias" and to convert the indigenous population to the faith of Jesus Christ. (18)

At the time of the discovery of America, the Catholic kings of Spain, Fernando and Isabel, had already finished the war against the Moors. This conflict, which lasted for almost eight centuries and ended with the fall of the kingdom of Granada in 1492, had begun in 711 A.C. when the Arab Al Tariq crossed the strait of Gibraltar and defeated the Visigoth kingdom of Don Rodrigo. It should also be mentioned that the Arabs also crossed the Pyrenean mountains and they could only be stopped by Charles Martel and his Frank army in the battle of Poitiers in 732 A.C. Moreover, the reconquest of Spain from the Islamic dominion impregnated the Spanish soul with an undoubtedly religious connotation and a feeling of taking part of an epic event. The Spanish and universal literature have received these emotions through the epic poem "El Cantar del Mio Cid". (19)

These fundamentally religious characters or perceptions were immediately transferred to the colonization of America.

The Catholic queen Isabel, in her testament, said that the Spanish monarchs required the Pope the concession of those lands in the new world in order to evangelize the aborigins, after the discovery of America by Columbus on October 12th. 1492. Consequently, the Pope Alexander VI,

through the Papal Bull "Inter Caetera", also called Donation Bull, established the borders of the lands corresponding to the crowns of Spain and Portugal on May 4th. 1493 . At the same time, the Pontiff pointed out the religious and spiritual character of the conquest enterprise. The Pope, with the authority that the monarchs in Europe recognized his investiture at that time, donated "all the islands and lands in order to convert the inhabitants to the worship of Jesus Christ and the Catholic faith". Moreover, the Pontif ordered that no other European monarch conquered those islands and lands through the cited Papal Bull, but on the other hand, it established the mandate that it had to be chosen adequate and well trained men in order to undertake the task of indoctrinating the indigenous population.

This papal mandate inspired the whole monumental and courageous Spanish labor of the conquest and colonization of America, and was included and compiled in that admirable legal corp known as the "Leyes de Indias" (India's Legislation), controlled by the Council of Indias.

In addition, other Papal documents, like the Bull "Veritas Ipsa", issued by the Pope Paul III on June 9th. 1537, proclaimed, in a very solemn way, the religious justification of the conquest's task. This labor had to be carried out taking into account the freedom of conscience of the Indians or aborigins. This principle was incorporated to the Legislation of Indias in 1680 according to the following text: "It must not be made war against the indians from any

province in order to receive the Catholic faith, nor for any other subject". (20)

The Independence Period (1810-1830)

In the aftermath of the revolution, which removed the last Spanish viceroy in Buenos Aires from office in May 1810, the first autonomous and local governments perceived that they had inherited some religious rights such as the designation of bishops, the admission of new religious orders in the country, the exequatur, etc. from the Spanish crown. Consequently, the relationship with the Holy See was, since the revolution and onwards, a conflictive one. On the other hand, it must be taken into account that the Holy See was considered as an European court with a good relationship with the former colonial power, the Spanish crown in Madrid.

In that context, the revolution on May 25th. 1810 took place, and the first revolutionary government was established in the capital of the viceroyship of the Río de la Plata (Spanish colonial designation for the future Argentina). Then, the diocese, Church's administrative division or province, of Buenos Aires was headed by the Spanish bishop Benito de Lue y Riega. He participated conspicuously during the "Cabildo Abierto" (Popular Assembly) on May 22nd. 1810 with a position decidedly against the patriots.

However, the rest of the native (creole) clergy was in favor of the revolutionary movement, whose objectives were not against the faith or religion.

In the mentioned "Cabildo Abierto" on May 22nd. 1810, the patriots decided to depose the Spanish viceroi Baltasar Hidalgo de Cisneros, according to the political and philosophical ideas of the Spanish neo-Scholastic school of the 16th. century valid at that time. Then 26 priests participated and, almost the majority of them, voted for the cessation of the colonial government. Among the theoretical and political arguments taken into account in order to justify the cited cessation of the Spanish colonial government, many of them were related to the thoughts of the Spanish priests Francisco Suarez, Francisco de Vittoria, and Juan de Mariana. (21) According to these perspectives, the Spanish king Fernando VII was a prisoner of Napoleon I in France in May 1810, and the provisional authorities in Spain (Council of Regency) had no valid titles to send new colonial vicerois.

In the wake of the revolution of May 1810, Manuel Alberti, priest of the parochial church of San Miguel, in Buenos Aires, integrated the first revolutionary "Junta" of government.

On December 3rd. 1810, the members of the Junta decided that, in the future, the people who had not been born in the country could not get a public post from any corporation or military, or ecclesiastical authority.

On March 23rd. 1813, another decree abolished the "Tribunal of Inquisition", returning their competences (defense of the purity of the faith) to the normal ecclesiastical courts.

Concerning the General Assembly in 1813, twelve priests participated in this congress which abolished the slavery and adopted the National Flag and the National Coat of Arms. The cited General Assembly, during its session on June 4th. 1813, declared that the state of the United Provinces of the Río de la Plata was independent of any other ecclesiastical authority outside its borders. The same assembly stated that the religious communities of the United Provinces of the Río de la Plata remained absolutely independent of any other religious authority located outside the frontiers of the state. The Assembly prohibited the Papal Nuncio in Madrid to exercise any jurisdiction in the territory of the United Provinces of the Río de la Plata. Finally, the Assembly of 1813 authorized the bishops to remain heading their dioceses during the incommunication with the Holy See.

During the meetings of the Congress of Tucumán, which proclaimed the independence of the Republic of Argentina, on July 9th. 1816, there were sixteen priests among the 29 national representatives.

During the first twenty years (1810-1830) there was almost no communication with the Holy See. The Pope did not want to affect his relationship with the Spanish crown showing any kind of sympathy to the Latin American revolutionaries. Moreover, in 1825, the Pope Leon XII condemned the American revolution through a Encyclic. J. Carbia affirms that the Pontif was eager to accept the situation created in America. (22)

On December 21st. 1822, the Junta of Representatives of the Province of Buenos Aires decided to reform the clergy.

To sum up, this first period of autonomous government and independence was characterized, on the one hand, by a conflictive relationship between the new state and the Holy See, because of the lack of agreement on the delimitation of the temporal and spiritual powers and a mutual distrust. On the other hand, many clergymen took part in different governments and they were representative of several assemblies. In this sense, the presence of the Church was not only limited to society and community behavior, but it helped to provide for its well educated members to conform the first autonomous governments.

The Constitutional Attempts (1812, 1819, and 1826)

The constitutional attempts were the antecedents to the national constitution approved in 1853. Among the most important of these constitutional attempts were the ones carried out in 1812, 1819, and 1826. It can be pointed out that, almost the majority of these constitutional attempts were influenced by liberal ideas, which were in favor of the separation between the Church and the state. Their texts were definitely for a clear confessionality for the Argentinian state. (23) In spite of that, such a confessionality was not later on stated in the wording of the national constitution of 1853.

Since the first constitutional draft in 1812, until the

constitution of 1826, the terms and concepts used by the congressmen were very similar.

For example, the constitution of 1819, produced by the same congress that proclaimed the independence of the country in 1816, gave the following name to the section I: Religion of the State. The article 1 stated:

The Roman Catholic Apostholic religion is the religion of the State. The government must give her an efficient an powerful protection; and the inhabitants of the territory all their respect, whatever were their private opinions.

The wording of this section was completed with the article 2:

The infringement of the former article will be considered as a violation of the fundamental laws of the country.

These confessional positions of the national constitutional drafts, were also reflected on the drafts and provincial constitutions, which, in almost the great majority of them, had a similar wording in the field concerning to the confessionality of the state. That means that also the provincial constitutional attempts included a declaration of confessionality of the provincial state in their wordings.

Later on, in the middle of the 19th. century, Juan Bautista Alberdi, in the wording of his national constitutional draft established a more discreet approach. He also introduced a novelty: The freedom of cults, which was only recognized, within the framework of the Argentinian constitutional and legal antecedents, in the case of the Treaty of Friendship, Commerce and Free Navigation, signed between Argentina and England in 1825. Another precedent for

the freedom of cults, but in the provincial sphere, can be found in the Charter of May, originated in the Province of San Juan in 1825.

The freedom of cults was an imperative for Juan Baustista Alberdi, taking into account that the core of his social and political program consisted of changing the social basis of the people of Argentina, by promoting the Anglo-Saxon immigration to the country. In order to reach this objective, the freedom of cults was a "conditio sine qua non". Therefore, in the chapter XV of "Las Bases", Alberdi stated that the dilemma was fatal for Argentina because the country had two main possibilities:

- a) Exclusively Catholic and uninhabited or;
- b) Inhabited and prosperous, and tolerant in the field of religion.

For Alberdi, the possibility of calling the eventual Anglo-Saxon immigrants, as well as from Germany, Sweden and Switzerland, among other countries, without ensuring the freedom of worship represented the same thing as not calling them. He added that:

The exclusion of the disident cults of South America, would also mean the exclusion of the eventual British, American, German or Swiss immigrants, who are not Catholic, but at the same time are the people that this continent need the most.

(24)

In addition, Alberdi's draft stated, in its article 3, that: "The Argentinian Confederation adopts and supports the Catholic cult and guarantees the freedom of the others".

The Adapted Memorandum (December 4th. 1833)

In Argentina, the institution of the patronage, perceived as inherited from the Spanish crown, was envisaged taking into account the following conceptual distinction. For the first Argentinian governments, there was a very clear difference between the Catholic Church, with her religious, spiritual, and lithurgical competences in the territory, and the Court of Rome, which was a foreign power that maintained close ties with the King of Spain.

The Roman Catholic Church, according to this second meaning, was perceived as another sovereign state and her interference in the designation of bishops was considered harmful to the fundamental rights of the country.

On December 4th. 1833, Pedro José Agrelo, Argentina's Attorney-General, presented the so called "Adapted Memorandum" to the Minister of Foreign Affairs, Manuel José García. There, Mr. Agrelo stated that the seriousness of the affairs related to the designation of bishops, the conduct of the Court of Rome, and the transcendence of the jurisdictional affairs, rights, and freedoms, required a solemn publication of these negotiations and discussions in order to inform the public opinion about the nature of the cited subjects. He added that the publication of the "Adapted Memorandum" in order to clarify the facts and principles are required to be ignored or invaded both, inside and outside the country. Thus they were pretending to force the government to renounce its sovereignty and independence. Later on, Dr. Agrelo insisted

on the need of the mentioned publication because of the behaviour of the agents of the Court of Rome who introduced confusion among the public opinion.

The publication of the "Adapted Memnorandum" included four documents:

- a) Designation of Dr. Mariano Medrano, as bishop of Aulon.
- b) Designation of Dr. Mariano Medrano as bishop of Buenos Aires by the Pope.
- c) Designation of Mariano Encalada as new bishop of Aulon.
- d) Procedure of Nullity of sacerdotal vote, Mr. Mariano Martinez. (25)

The right of patronage, conceded to the Spanish Crown, was included in the Legislation of Indias. At the same time, these rights were conceded in a personal level to the Spanish monarchs and not to the nation they ruled. This right was entailed to the defense of the sovereignty, and Charles III of Spain was advised in order not to allow the interference of the clergy in the affairs of the empire.

Santiago de Estrada, argued that the state in Argentina tried to exercise the attributions that the last Spanish Bourbons monarchs perceived as theirs, with all the extralimitations of the regalism.

In 1831, the Minister Manuel de Anchorena, introduced an argument which could modify the traditional position of the government of Argentina and its perceptions of heritage

related to the old Spanish Crown's religious privileges. In fact, he stated that the state could no more follow the Spanish colonial legislation in this subject, and that general principles had to be applied to particular circumstances. Moreover, he also recognized the facts of a different political situation, and that the state "has not the special titles which favoured the Spanish monarchs related to the patronage in the territory of America." (26) As we have already seen, the perceptions of the General-Attorney Grelo and the Minister Anchorena concerning the inheritance of the rights of the patronage were different. As a result, and in order to avoid more conflicts, the government recognized the Papal designation of the bishop Medrano.

On February 27th. 1837 the head of state of the Argentinian Confederation, Brig. Gen. Juan Manuel Ortiz de Rozas, decided that neither civil nor ecclesiastical authority could consider any Pontifical document without the corresponding "exequatur" or pass of the Ministry of Foreign Affairs.

The National Constitution (1853)

The National Constitution of 1853 is different from other Argentinian constitutional precedents, in the sense that it does not recognize, expressly, that the Roman Catholic religion is the one of the Argentinian state.

However, the national constitution of 1853 recognized indeed in its text a historical and social situation of preminence and support for the Roman Catholic Church. At the same time, it conceded the freedom of worship for the other cults recognized by the state.

The national constitution was issued on May 1st. 1853, including important innovations concerning the relationship between the Church and the state. These modifications to the cited traditional position of the confessionality of the state, included in the drafts or attempts of constitutions were not limited to the article 2 (preminence and state support for the Church), but also included other main references to the Church such as article 67 clause 20 (attribution of the National Congress in order to decide the admission of new religious orders) and article 86 clauses 8 and 9 (exercise of the patronage and exequatur).

However, in spite of some resistances, the Catholics accepted the national constitution, which represented the definite accomplishment of the delayed national organization.

The predominant attitude of the Catholics, despite some complaints, was to respect the new norms, pointing out the principles of their religious beliefs.

At the time of the installation of the constitutional authorities, the attitude of the Argentinian Catholicism vis-a-vis the national constitution of 1853 the position adopted by Fray Mamerto Esquiú, member of the Order of San Francisco was very important. Fray Esquiú pronounced two famous speeches at the cathedral of the capital of the province of

Catamarca. The first of them was on the occasion of the act of swearing in the constitution (July 9th. 1853), and the second was when the installation of the constitutional authorities took place on March 28th. 1854. Fray Esquiú recommended the Catholics, in both speeches, to maintain an obedient attitude, and he also compared the situation, for the sake of a better understanding of the audience, with the way the ancient Christians respected the Roman laws, even if these laws sent them to death. The repercussion of both sermons was so important that the national government ordered their printing and distribution on May 2nd. 1854. Juan Casiello mentions that in spite of the enormous prestige of General Justo José Urquiza and his power, there were preparations for military resistance to the constitution, and the peaceful sermons of Fray Esquiú calmed down the spirits and helped to avoid the conflict. This was perceived as the most important service that Fray Mamerto Esquiú, himself a clergyman, could perform in order to facilitate the unity of the Argentinian people. (27)

Peter Bussemeyer explains these moments of the history of the Republic of Argentina represented by the fights for the accomplishment of the national organization, and described them as "the difficult birth of a nation". (28)

Relationship with the Holy See: (1853-1945)

This period (1853-1945) was characterized by the first attempts to re-establish the relationship between the Argentinian state and the Holy See. The matter of the designation of bishops constitutes one of the main points of friction between the Church and the state during this period. This cited situation of confrontation between Church and state became more prominent at the end of the 19th. century because of the approval of two laws by the parliament: the civil marriage law and the laicist education law. The former suppressed the religious education at the public schools.

After the defeat of Brig. Ortiz de Rozas (battle of Caseros in 1852), the national constitution of 1853, and the separation of the state of Buenos Aires from the rest of the Argentinian Confederation, there were some difficulties because some ecclesiastical proceedings had to be done with the participation of the bishop in Buenos Aires. Therefore, Gen. Urquiza, who was the president of the Argentinian Confederation with the capital city in Paraná (province of Entre Ríos) at that time, decided to try to establish diplomatic relations with the Holy See. Urquiza designated Mr. Bonfiglioli, Mr. Jiménez, and Mr. Filipini as confidential agents for religious affairs. Later on, in 1857, he designated Juan Bautista Alberdi as plenipotentiary minister in Rome. Alberdi had, as his principal mission, to try to obtain the creation of the diocese of the littoral of

the Paraná river from the Pope Pious XI, in order not to be dependent, in the field of ecclesiastical administrative affairs, on the bishop of the separated state of Buenos Aires. Therefore, Alberdi expressed the Argentinian desire to sign a concordate.

On February 13th. 1858, Dr. Juan José Campillo was appointed as plenipotenciary minister in order to negotiate a concordate with the Holy See. Campillo obtained the recognition of the diocese of Paraná and the designation of the candidate of the Argentinian government, Mons. Segura. Campillo, however, obtained a refusal from the Holy See concerning the concordate, because the church did not want to accept the right of the state to exercise the patronage and the exequatur.

On July 8th. 1858, Campillo presented a protest due to a Papal recognition of the separation of the province of Tarija, in the border with Bolivia.

In 1884, the government of the Republic of Argentina, decided that the public education, supported by the resources of the national treasure, had to be laic. The discussions on the scope of this law at the National Congress provoked a serious incident with the Papal Nuncio, Mons. Matera.

Isidoro Ruiz Moreno mentions that Mons. Matera pretended to oppose that female school teachers from the United States were hired by the state, arguing that they would predict the Protestant religion at the Argentinian public schools. Then, the mentioned Papal Nuncio was later on involved in some demonstrations and political acts of the opposition which

were perceived by the Argentinian government as an unacceptable interference in the internal affairs of the state. Then, the President of the Nation, Gen. Julio A. Roca, required from the Holy See an explanation concerning the considered inadequate behaviour of Mons. Matera. The answer of the Holy See tried, politely, to justify the conduct of her diplomat in Buenos Aires, and stated a complaint about the religious policies of the Argentinian government. As a result of this note, the diplomatic relations between the Holy See and the Argentinian government were interrupted. (29)

The relations between both states were renewed after some negotiations proposed by the Argentinian Minister of Foreign Affairs, Amancio Alcorta. The Pope Leon XIII accepted the Argentinian proposal and, later on, both states sent their representatives. On June 10th. 1899, the Argentinian government sent Dr. Carlos Calvo to Rome, and on May 23rd. 1900, Mons. Sabatucci was recognized by the Argentinian President, Roca, as Papal Nuncio.

Another case of misunderstanding between the state and the Holy See was due to the fact that the Vatican, after the decease of the archbishop of Buenos Aires, Mons. Espinosa in 1923, did not recognize the designation of Mons. Miguel De Andrea by the Argentinian government. The Holy See decided that the candidate was not adequate and rejected the designation. In order to avoid a new conflict between the Holy See and the Argentinian government, Mons. De Andrea renounced to the cited episcopal hierarchy.

In 1924, the Papal Nuncio in Buenos Aires communicated that the Holy See had designated Mons. Juan Agustín Boneo for the archdiocese of Buenos Aires. The Minister of Foreign Affairs, Gallardo, informed him that that appointment would be exercised in the territory of Argentina, therefore, according to the Argentinian constitutional and legal regime valid at that time, the correspondent documentation had to be submitted to the Argentinian government. Later on, the Argentinian Supreme Court of Justice decided that the documentation of the designation of Mons. Boneo did not fulfil the legal requisites and affected the right of the patronage. (30)

With regard to the confrontation between the Argentinian state and the Holy See, a particular event occurred in Argentina. In spite of the unsolved question of the designation of bishops and the laicist legislation in the field of civil marriage and education, during the Eucharistic Congress on October 11th. and 12th. 1934, the people expressed the most important and fundamental adhesion to the Catholic Church that the Argentinian history had ever seen. The city of Buenos Aires and the metropolitan area had almost two million inhabitants at that time, and it was calculated that there were almost 1.2 millions communions administered during both days. Consequently, the congress was an element which the politicians and political parties had to take into account, and it was a complete triumph for the Church. (31)

This congress was considered a turning point in the history of Catholicism in Argentina. In a period when the

national authorities had been influenced by laicist principles, the phenomenon of the existence of an overwhelming presence of the Catholic Church in society and community behavior represented a clear signal of the reality of the social and religious situation of the country. That reality was given by the fact that more of the 90% of the population had been baptized and almost the 70% had got religious marriage.

Presidencies of Juan Perón (1945-1955)

The relationship between the government of the President Gen. Juan Domingo Perón and the Catholic Church has been a subject of great and passionate debates in Argentina.

The majority of scholars who have studied the Peronist governments refer to two main issues. In the first place, they explain that the Catholic Church supported Perón's candidacy in 1946. Secondly, they interpret that the fall of Perón's regime in 1955 was provoked, or at least precipitated, by the existence of a serious conflict with the Catholic Church. (32)

Most scholars, however, agree that the social and institutional changes introduced by Peronism modified the role of the Catholic Church vis-a-vis the state and the society in Argentina.

The relationship between the Catholic Church and Peron's government was important in several ways. Initially, the Church was interested in Perón's support for the so called

social doctrine of the Church, and in his leadership of the most important mass-movement in the history of the Republic of Argentina. (33) Later on, Perón's government adopted forms of authoritarianism and the Catholic Church became a victim of transgressions originated in social and political passions. Perón thought that the Church was against his administration. He adopted several measures such as, the abolition of the Catholic education at the public schools, the adoption of divorce, and prepared the separation between the state and the Church. As a result of that, the Church approached the democratic opposition which originated the revolutionary movement and the fall of the Peronist government in September 1955.

One of the most important aspects which preoccupied the hierarchy of the Catholic Church in the aftermath of the defeat of President Perón was the situation of the labor class in Argentina and the maintenance of its Catholic faith despite the conflict with the former authoritarian Peronist regime.

Convention for the Designation of Military Vicarious (1957)

Two years after the fall of the regime of president Perón, the Convention for the Designation of Military Vicarious was signed between the Argentinian revolutionary government and the Holy See on June 28th. 1957. It was ratified by decree No. 7623/57 and it was also mentioned by the Agreement of 1966. According to this convention, the

Military Vicarious is designated by the Pope with the agreement of the President of the Nation.

The article 13 of this convention states, concerning the fulfilment of the compulsory military service by the priests, that "in times of peace, the clergymen, seminarists, and the novices are excepted from the fulfilment of the military service. In case of general mobilization the priests will serve giving religious assistance." The ecclesiastical hierarchical authorities were excepted by the military service.

The institution of the military vicarious, whose most important task was to give religious assistance to the armed forces, would be very important in the future of the country. In this sense, the military vicarious was, in a way, the natural "vinculum" between the military rulers and the Catholic Church, in the framework of the existence of military dictatorships in Argentina during the periods of 1966-1973 and 1976-1983.

The Agreement with the Holy See (1966)

In 1958, during the presidency of Dr. Arturo Frondizi, the final steps were taken in order to improve and regulate the relationship between the Holy See and the Argentinian state.

Eight years later, the agreement was signed and it "arranged" the matters that the national constitution had unilaterally solved with regalist criteria.

The mentioned approach in 1958 facilitated a flexible "modus vivendi" which helped to eliminate, gradually, the major inconvenients. In 1959, the congressional meetings in order to designate the list of three episcopal candidates began to be secret, and the formula for the administrative decrees related to the support of the cult was modified. President Frondizi also abandoned the formulation of the traditional episcopal oaths. In 1964, during the presidency of Dr. Arturo Illia, these episcopal oaths were officially abolished.

The negotiations for the agreement between the Holy See and the Argentinian state finished at the beginning of June 1966. The signature was foreseen on June 30th. 1966, but the deplorable "coup d'etat" headed by general Juan Carlos Onganía delayed the conclusion of the convention. (34)

The agreement was signed without modifications by the Apostolic Nuncio Mons. Mozzoni and the Argentine Minister of Foreign Affairs and Worship, Dr. Nicanor Costa Mendez, on October 10 1966 in Buenos Aires. The Argentinian president at that time was General Onganía.

The Republic of Argentina ratified the agreement (Law 17.032/66), and the exchange of instruments between the State Secretary Cardenal Amleto Cicognani and the Argentinian Ambassador Pedro J. Frías took place on January 28th. 1967 in Rome. The legal and constitutional aspects of this agreement will be explained in the next chapter of this study.

To conclude, Argentina, is a Roman Catholic country, and the main immigratory character of its mostly European

population has not affected the relevance of the presence and role of the Church in society and community behavior, as well as in cultural social values of life and moral. From the point of view of the relationship between the Church and the state, the recurring pattern in history in the period 1810-1960 was a permanent situation of confrontation and conflict. The schismatic climate was due to a controversy about the delimitation of the spheres of competence which was solved in October 1966 with the Holy See Agreement. The main source of conflict was the perception of Argentinian governments between 1810 and 1966 that the privileges given to the Spanish crown in the field of designation of bishops and other religious matters could be inherited by the Argentinian state after its independence. The main source of consensus was based on the mutual attitude of collaboration and tolerance which resulted in the 1966 Agreement. (35)

NOTES AND REFERENCES

- (1) Der Fischer Welt Almanach. Zahlen, Daten und Fakten 1994, (Frankfurt am Main: Fischer Taschenbuch Verlag, 1995), p. 894.
- (2) Anuario Estadístico de la República Argentina 1994, (Buenos Aires: Instituto Nacional de Estadísticas y Censos, 1994).
- (3) The Jewish community in the Republic of Argentina, according to the figures, is the third in importance in the world, after the cases of Israel and the United States of America.
- (4) Der Fischer Welt Almanach. Zahlen, Daten und Fakten 1994, op. cit., p. 251.
- (5) Many citizens of the Republic of Argentina have the particular self-perception of being "Europeans" in South America.
- (6) Julio Irazusta, Breve Historia de la Argentina (Buenos Aires: Independencia SRL, 1981), p. 245. Insofar as the characteristics of the attitude and treatment that the Argentinian society has developed vis-a-vis such immigration throughout history, we can describe them by mentioning an interesting case. This example can be summed up by the fact that Argentina is a country where the son of an Ottoman immigrant could go to the university and could be elected president of the nation. That was the case of the serving head of state of the Republic of Argentina, Dr. Carlos Saul Menem, who was elected president of the nation in May 1989 and, after a reform on the text of the National Constitution

in 1995, re-elected for another presidential period in May 1996. Carlos Saúl Menem was born in the province of La Rioja in the Republic of Argentina and his parents came from Syria, at that time a province of the Ottoman Empire. It can be also mentioned that there were several immigrants who arrived to Argentina from Syria, Lebanon and other provinces of the empire. They were called "Turcos" by the custom officials because they entered the country with Ottoman passports.

(7) Gerardo T. Farrell, Iglesia y Pueblo en Argentina: Historia de 500 Años de Evangelización (Buenos Aires: Patria Grande, 1992), pp. 28-29.

(8) Santiago De Estrada, Nuestras Relaciones con la Iglesia: Hacia un Concordato entre la Sede Apostólica y el Estado Argentino (Buenos Aires: Theoría, 1963), pp. 55-56.

(9) De Estrada, op. cit., p. 57.

(10) Andrew Heywood, Political Ideologies. An Introduction (London: Macmillan, 1992), p. 143.

(11) Miguel Angel Dapuetto Ferrari, Iglesia y Estados (Buenos Aires: Universitaria, 1986), pp. 46-47.

(12) Mt. 22:21, Mc. 12:17, Lq. 20:25.

(13) Jacques Maritain, Primauté du Spirituel (Paris: 1925).

(14) J. Ratzinger, Iglesia. Ecumenismo y Política (Madrid: 1987), p. 164.

(15) Rom. 13:1-7.

(16) For further details see Vatican II: Gaudium et Spes: Pastoral Constitution about the Church in the current World.

(17) Vatican II: Gaudium et Spes. op. cit., n. 76.

(18) This is the expression used in the early Spanish colonial period in order to refer to the crown's possessions in America. The origins of the term are related to the fact that the first navigators and explorers reached America while they were looking for a route to India.

(19) Rui Díaz de Vivar, El Cantar del Mio Cid (Madrid: Sopena, 1987).

(20) For further information see Recopilación de las Leyes de Indias (Madrid).

(21) Their theories about the nature of sovereignty were known among the patriots and can be summed up in the following way: The sovereignty is originated in God, God concedes this sovereignty to the community, and the community delegates it in the government. In case there was no legitimate government, the sovereignty returns to the community. For further details see George H. Sabine and Thomas L. Thorson, A History of Political Theory (Orlando: Harcourt Brace Jovanovich, 1973), pp. 348-371, and Julio A. Cirino and Florencio F. Hubenak, Historia de la Cultura Occidental (Buenos Aires: A.Z, 1977), pp. 653-654.

(22) See J. Carbia, La Revolución de Mayo y la Iglesia (Buenos Aires: Abeledo), p. 306.

(23) Estatutos, Reglamentos y Constituciones Argentinas (Buenos Aires: Librería Platero, 1972), pp. 7-215.

(24) Juan Bautista Alberdi, Bases y Puntos de Partida para la Organización Política de la República Argentina (Buenos Aires: Platero, 1991), pp. 55-61.

- (25) See Memorial Ajustado (Buenos Aires: Imprenta Argentina, 1834).
- (26) See Boletín Oficial (Buenos Aires: 1831).
- (27) Juan Casiello, Iglesia y Estado en la Argentina. Régimen de sus Relaciones (Buenos Aires: Poblet, 1947), p. 123.
- (28) Peter Bussemeyer, Argentinien -1810 Bis Zur Gegenwart-Geburt und Werden Eines Staates (Buenos Aires, Cosmopolita, 1965), pp. 94-97.
- (29) Isidoro Ruiz Moreno, Historia de las Relaciones Exteriores Argentinas: 1810-1955 (Buenos Aires: Perrot, 1961), pp. 407-410.
- (30) Isidoro Ruiz Moreno, Ibid., pp. 410-415.
- (31) Gerardo T. Farrell, op. cit., pp. 181-182.
- (32) Lila M. Caimari, Perón y la Iglesia Católica: Religión, Estado y Sociedad en la Argentina: 1943-1955 (Buenos Aires: Ariel Historia, 1994), pp. 249-365.
- (33) The social doctrine of the Catholic Apostolic Church began with the Encyclic "Rerum Novarum" in 1891. Forty years later, was completed by another one, the "Quadragesimo Anno" in 1931.
- (34) In Argentinian history, this military movement is known as "Revolución Argentina" (1966-1973). It included the "de facto" presidencies of: Gen. Juan Carlos Onganía, Gen. Roberto Marcelo Levingston, and Gen. Alejandro Agustín Lanusse.
- (35) This agreement is not a concordate because it does not rule the totality of the relationship between the Church and the state.

CHAPTER THREE:

INSTITUTIONAL AND CONSTITUTIONAL ASPECTS OF THE CHURCH-STATE INTERACTION IN ARGENTINA

By taking into account the social and historical aspects that have been discussed in the previous chapter, the objective of this chapter is to explain the constitutional and institutional elements related to the Church-State interaction in the Republic of Argentina. The main argument of this chapter is that the confessionality of the Argentinian state can be described within the pattern of the secularity type. The constitutional secularity formula is defined by the freedom of worship without equality among them, as the Catholic Church has a special status in relation with other confessions and she obtains a preferential recognition.

I. THE CHURCH AND THE POLITICAL POWER

Jacques Maritain and P. Murray establish three principles considered immutable and universal, which must be present at every historical circumstance in the relationship between the Church and the state:

1. The freedom of the Church in order to teach, predict, and adore.
2. The harmony between the two orders where the human being develops his life: ecclesiastical and civil.
3. The necessary cooperation between the powers and

societies. (1)

According to Murray, the last principle is based, on the "nature of the civil society as an expression of the social nature and realm of the human perfection." Consequently, the human being is one and belongs to two societies. In this sense, it would be against his nature to have a disconnection between both societies, because it would mean that the human being must be cut into two pieces. (2)

The Church has always defended its independence vis-a-vis the political or temporal power. This fight has contributed throughout history to the delineation and limitation of the power of the state. At the same time, this conflict has allowed the preservation of one among the most important individual rights: religious freedom.

In the aftermath of the persecutions in the Roman Empire, the Church has tried to persuade the emperors that "the temporal power must not submit to the spiritual authority". In this sense, the words that St. Ambrose used (by quoting Jesus) with the Emperor Valentinian are well known:

Scriptum est: quae Dei, Deo,
quae Caesaris, Caesar.
Ad imperatorem palatia pertinent,
ad sacerdotem ecclesiae.

It is written: render to God what is God's,
and to Caesar's what is Caesar's.
The palace is for the emperor,
and the church for the priest. (3)

The Conciliar Constitution "Gaudium et Spes" states that the Church does not have a specific political, economical or

social mission, but through its religious authority brings light and energy that could be used by the human society for its constitution and consolidation according to the divine law. (4) That is why the competence of the Mastery of the Church lies not only in the dogmatical field, but in the moral and ethical one. The Church, through the activity of the Popes and Councils, has declared that both the Church and the state are perfect societies in their own spheres, and both have their own competence and sovereignty. (5)

According to the "theory of the indirect power of the Church", the Church also has the power in temporal affairs in order to ensure what is perceived as the "salvation of the souls". For Heinrich Rommen, this theory can only be applied to the communities and countries that belong to the Catholic faith. (6)

Moreover, through the so called "guiding power of the Church", the Pope can intervene in order to advise with respect to a subject that could affect the interest of the religion. For example, the Pope Leo XIII exhorted the French Catholic voters not to attack the democratic system and to adhere to the Republic. The same Pope also called the Catholic Germans in order to vote in favor of the end of the anti-Catholic policies known as "Kulturkampf". (7)

Concerning the question of the political, civil, and dogmatic tolerance, we can make the following differences: The Catholic Church is against the dogmatic tolerance because it implies a "religious indifference". This indifference may be represented by the acceptance of all creeds as valid.

The civil tolerance refers to the human dignity and religious freedom, and it prevents any sort of hatred against people of other religions. The Council Vatican II has confirmed the importance of this kind of tolerance.

The political tolerance is the recognition by the positive legislation of the right of the individuals to religious freedom.

II. DIFFERENT POSITIONS OF THE STATE VIS-A-VIS THE RELIGIOUS FACT

There are different perspectives in analyzing the basic positions of comparative constitutional law which regulates the interrelation between the temporal and spiritual powers. The Argentinian constitutionalist German Bidart Campos systematizes them in a particular classification that reduces all the types of legal "status" to three fundamental perspectives: sacrality, secularity, and laicism. (8)

These perceptions about the position that the state can adopt vis-a-vis the spiritual or religious order have been shared by other Argentinian scholars, constitutionalists, and political scientists. (9)

Sacrality

The state assumes intensively important aspects of the community's religious goods or spiritual good within the framework of the temporal common good, until becoming almost

an instrument of the spiritual element. In this case, the state, whose responsibility is the religious affairs, does not displace the religious institution or community (or Church). It only adds all or at least the majority of the ingredients of the spiritual goods to the state common good.

In the West, from where Argentina inherited its religious and cultural values, the idea of the sacral state or sacrality is related to the perceptions of politics, philosophy, and theology of the Middle Ages. During this time, the concept of religious common good was intimately entailed with the principles of the temporal common good. Consequently, the activity of the state assumed the characteristic of being at the service of the religious activity. In fact, the medieval state (or the empire) managed to defend the religious unity, promote the liturgical events, and identify the objectives or targets of the political community with the precepts, virtues and values consecrated by the Roman Catholic Church. Nowadays, there is no Christian state which maintains such sacral characteristics. However, we could affirm that, at the present time, some of these cited characteristics are assumed by the state of Israel and some Islamic countries.

Several scholars in the West share the point of view that the sacral state represents a non-repeatable historic form, not easy to re-establish in the framework of sensitive complexities of a modern state. (10)

Put it briefly, the sacrality, regarding its conception of God and the human being, is a consequence of the

traditional Christian philosophy and the projection, in the sphere of politics.

Secularity

According to the Argentinian constitutionalist Carlos María Bidegain, the state admits the reality of one or some religious powers, and it deals with the religious phenomenon by institutionalizing its existence politically. (11) In this case, the regulation of the Church-State relationship is very flexible. This position of the state vis-a-vis the spiritual power also depends on the circumstances of time and place, taking into account, for example, the religious majority or pluralistic composition of the society.

The secularity is related to the post-Renaissance political forms, and to the increasing secularism of culture by the abandonment of the theocentric worldview valid during the Middle Ages. Carlos María Bidegain also argues that in this process, the thought of rationalism, fundamentally agnostic, was an outstanding agent in the reaction against the absolutist theories of Luther and Calvin. (12)

According to Protestantism, the state is a direct consequence of the "original sin", and there would have been no state if the human being had not sinned. Moreover, the Protestantism favored the absolutism, due to the omnipotence of the political organization being useful to stop the perverse and antisocial trends of the individual.

Luther called the human reason "the great prostitute" and affirmed that the only way of knowledge was the divine revelation.

The Catholicism, on the contrary, is persuaded that the state is a result of the natural sociability of the human being. The "original sin" harmed its attributes but did not destroy them. That is why the human being can reach the truth through his reason, and therefore, the Church could develop a social philosophy. (13)

The secularity would be given by those political forms which are interested in the religious phenomenon, but they only favor the cult of the majority of the population, without imposing the unity of worship to all citizens. The secular state can also adopt the religious practice with contemplation through benevolence, but without favoring any special cult. In this sense, the secularity could represent a more attenuated relationship than the sacrality, because the state envisages the religious fact as a right of the human being, and not as a fundamental element of the temporal common good and of the integrity of the political society. In brief, according to Bidegain, we would be in the presence of a secular state when it adopts a religion of the state and favors this worship without interfering the activities of other cults.

Another form of secular state can be given when the state neither adopts nor prefers a religion or a particular form of worship.

Nowadays, the secular state form is the one adopted by almost the majority of the modern constitutions and fundamental laws. This circumstance represents a clear tendency within the current cultural and moral parameters in force in the Western countries, which experiment an accentuated independence with respect to the religious phenomenon. However, this religious, moral, and ethical element is deeply rooted in cultural values of life.

Laicism

The State eliminates "a priori" the spiritual "issue" from the political context without taking into account the religious reality of the social environment. This is done, at least theoretically to adopt an indifferent or agnostic posture that is usually called neutrality. According to Bidegain, laicism can implicate the complete separation between the political and religious orders. In this case, the state, under the proclamation of a religious neutrality, can manifest its eventual hostility or its indifference vis-a-vis the religious fact. Moreover, in some cases the state proceeds to obstruct the worship practiced by the majority of the population of a country. To commit a sort of hostility against the religion or to interfere in the free practice of the worship is a common phenomenon in the case of some Latin Catholic countries. This may have been the case with the Mexican constitution of 1917. After declaring the liberty of cults, which prohibited the functioning of seminars for the

training of priests and the practicing of the worship by foreign clergymen, this led to the condemnation of the existence of Roman Catholicism in that country. (14)

An example of a laicist constitution could be the American one, which through the first Amendment refrains the United States Congress to issue a law related to the establishment of a religion or to prohibit its free exercise. It is interesting to point out that this norm has received two different interpretations in the U.S. jurisprudence. Firstly, it must be established as an "impenetrable wall" between the state and the church, and the neutrality of the state must be absolute to the point that it can not favor one church at the expense of another nor can it support any of them in the same way. The second interpretation of the mentioned first Amendment refers to the fact that its purpose is only that the state does not favor one church, but at the same time it does not prevent the state from stimulating the religious spirit with measures applicable to all churches. The jurisprudence of the U.S. Supreme Court of Justice, concerning the "Zorach" case, the U.S. Supreme Court declared that "We are religious people whose institutions presuppose the existence of God". (15)

According to the conceptions of religion, law, and politics in the Republic of Argentina, the laicist form is not completely adequate in order to fulfil the objectives of justice and common good, which must be the guide for the activity of the state. The fact that the state ignored the most important ontological interrogations in human life,

which gave, in definitive sense to his life, was, in some cases, only a pretext to antagonize the practice of religion and the presence of the spiritual element in social life.

The position of the temporal or civil power vis-a-vis the religion and the Church would be given by the ideology adopted for its political organization and juridical order, according to its worldview and perceptions about morality and the individual.

III. THE CONFESSIONALITY OF THE ARGENTINIAN CONSTITUTION

The Preamble of the Argentinian Constitution

It is usual in the framework of the legislative technique, mainly in the field of the comparative constitutional law, that a body of rules can be preceded by an introductory formula which can also include a statement containing its objectives and targets as well as its reasons and purposes.

This explanatory preamble, which has been more frequent in the countries with an Anglo-Saxon juridical tradition, finds its origins in the federal constitution of the United States of America in 1787 and was later on followed by the Argentinian constitutional essays and practice. (16)

Scholars and specialists in the fields of constitutional law, government, and political science have not already made up their minds concerning the political and juridical importance of the preamble. On the one hand, some of them

consider that the preambles are simply general and historical declarations. On the other hand, there are others who concede the preambles a high value due to the fact that they include the fundamental political decisions or ideology that enlighten and integrate the sense of the whole constitution.

The preamble of the Argentinian National Constitution of 1853 includes as a guideline, among others, the following fundamental decision or perception related to the relationship between the state and the religion: The theist principle, which means the proclamation of the faith in God and the adoption of his guidelines of reason and justice, ("invoking the protection of God, source of all reason and justice"), was, as we can perceive throughout the whole text of the Argentinian National Constitution of 1853, contained in the Gospel, and taught by the Roman Catholic Apostholic Church.

The Constitutional Formula.

The Argentinian constitutional law solves the problem of the relationship between the Catholic Church and the state by assuming a confessional posture. The confessionality of the Argentinian state can be described within the pattern of the secularity type. The secularity formula adopted by the Argentinian National Constitution is defined by "the freedom of worship without equality among them", because there is a Church (Roman Catholic Apostholic) which has an outstanding

or special "status" in relation with other confessions and she obtains a preferential recognition.

As it has been mentioned in the second chapter of this study, it is definitely not by chance that the position of the Argentinian state vis-a-vis the religion and the Church is entailed to a historical, political, and philosophical tradition. This goes back to the origins of the insertion of the Spanish discovering and colonization of America. This is characterized by the "common union" between the sword and the Cross.

The Argentinian state accepts the freedom of worship through articles 14 and 20 of the constitution. However, it does not recognize the equality among different religious groups. For the Argentinian state, the attitude vis-a-vis the religious fact, adopts the character of a fundamental political decision.

The Argentinian National Constitution of 1853 contains, in its first articles, the so called political decisions. After defining (in the first article) the form of the state and government, the Constitution establishes the position of the Argentinian state concerning its relations with the Catholic Church in the second article. The second article specifies the perspective from where the Catholic Church is seen and must be complemented with others in order to clarify its sense.

In the Argentinian National Constitution of 1853 there are three main articles that refer to the confessionality:

2nd. Art.: "The federal government supports the Roman Catholic Apostholic Worship".

67th. Art. clause 15 : It enumerates the faculty of promoting the conversion of the Indian population (aborigins) to Catholicism, among the attributions of the National Congress.

76th. Art.: It establishes that the president and the vice president must belong to the Roman Catholic Apostholic community.

There are many reasons that can explain the adoption of this constitutional posture. On the one hand, there is the Spanish-Indian colonial tradition, the constitutional precedents and legal background, which conform the constitutional "genesis" of the Argentinian state (essays, drafts, constitutions, statutes and provincial constitutions, etc.). On the other hand, there is the acknowledgment of the religious composition and character of the population, taking into account that the majority were Roman Catholic.

Last but by no means the least, the conviction that the Roman Catholicism was the "true faith". We confirm this aspect in the statement made by the representative Mr. Segui to the Constitutional Assembly when he stated, on April 21st. 1853:

The duty of the state in supporting the worship included the declaration that the Roman Catholic religion was the one of the majority or almost of the total of the inhabitants, and he also understood the Constitutional Assembly's belief in the truth of it, because it would be absurd to oblige the federal government to support a worship which symbolized a chimera. (17)

The wording of the mentioned 2nd. article of the Argentinian National Constitution implied, as it has already

been described in the former historical chapter, that there has been a true change with respect to the other national constitutional precedents, which were in that sense more explicit in relation to the formulation of the compromise of the Argentine state vis-a-vis the Church. It is clear that the text of the constitution of 1853 put aside all the other constitutional precedents and did not recognize expressly that the Catholic faith was the religion of the state.

The mentioned 67th. article clause 15 of the constitution, related to the attribution of the National Congress to promote the conversion of the aborigines to Catholicism, means the actual incorporation of them to civilization. Moreover, the authors of the constitution made a positive valoration of Catholicism when they identified "conversion to Catholicism" as a fundamental parameter of the access to the Western civilization.

Two of these three cited constitutional rules could disappear (67th. Art. clause 15 and 76th Art.) from the Argentinian National Constitution without affecting the confessionality of the state. This situation was, in fact, produced due to the constitutional reform of 1994.

However, this formula can be modified in order to express the mutual cooperation between the Catholic Church and the state in a more clear way. Such modification can take place in another eventual constitutional reform in the future. An example of a recent model of mutual cooperation between the state and the Church is the case of the reformed constitution of the Province of Córdoba (Argentina) of 1985.

In chapter three, there will be an indepth analysis of these three "ut supra" mentioned articles of the Argentinian National Constitution related to the aspects of confessionality adopted by the Argentinian state.

For the time being it suffices to note that there is a novel conceptual distinction within the framework of the modern secular state. In this sense, the "confessionality" can be clearly differentiated from the notion of "intolerance". In the past both concepts were together, while at the present time the situation is completely different.

The Status of the Roman Catholic Church

The mentioned group of constitutional rules implies granting the Catholic Church a special constitutional status, and also a special relationship with the state. This status consists of recognising the Catholic Church as a juridical body in the framework of public law (but not part of the state). According to the 33rd.article of the Civil Code the Church is recognized as a public juridical body. (18)

Dalmacio Velez Sarsfield, an Argentinian jurist and author of the Civil Code, defines the relationship between the Catholic Church and the state as a "moral union". This moral union only signifies that between the Catholic Church and the Argentinian state there must be a relationship of cooperation. This involves mutual autonomy in the sphere of the respective competences and with the state acceptance of

the spiritual power that is due to the Church. This was defined in this way in the Agreement between the Holy See and The Republic of Argentina, signed in October 1966.

It can not be affirmed, in the case of the Republic of Argentina and its constitutional and legal system that the Catholic Church was the church of the government. The Roman Catholic faith is not the religion of the state. However, in order to understand the perceptions and values of the representatives of the Constitutional Assembly of 1853, the thought of Dr. Dalmacio Velez Sarsfield, a jurist of their generation is important to mention. The 14th. article clause 1 of his draft of Civil Code stated that the laws of foreign countries which were against the "religion of the state" would be inapplicable in the Republic of Argentina. Velez Sarsfield refers, for example, to foreign legislation that allowed marriages that the Church condemns or were issued against the Catholic Church. (19)

The 2nd. article of the Argentinian National Constitution does not establish that the federal government is obliged to give the Catholic Church an economic subsidy. A part of the Argentinian constitutional doctrine and certain scholars are in favor of an interpretation that reduces the duties originated in the 2nd. article to a mere financial or economical aid in order to solve the expenditures of the worship. The origins of this opinion may be related to the way the Report of the Committee of Constitutional Affairs stated, in 1853 as: "It is a obligation of the federal government to maintain and support the Roman Catholic

Apostholic worship, with funds from the national treasure".
(20)

In the first place, it is not clear why "support" may signify "contribution" or "payment". Secondly, there might be a juridical dispute in the way in which the second article of the constitution is interpreted with regard to financial support. The constitution refers to the conformation of the national treasure two articles later, in the 4th. article. It is believed that the members of the Argentinian constitutional assembly of 1853 did not foresee an expenditure in the constitutional text before regulating the state resources or revenues.

On the contrary, "support" has two meanings which have already been anticipated: one it means the "moral union" between the Catholic Church and the state, and two it refers to recognising the juridical personality of the Catholic Church in the framework of Argentinian public law. (21)

In the case of the Republic of Argentina, the economical contribution of the state to the Roman Catholic Church, through a worship budget, was not an obligation imposed by the national constitution. This financial aid has a very different historical explanation. That is to compensate the Catholic Church, in a precarious way, for the confiscation of goods and properties she suffered during the administration of president Bernardino Rivadavia during the 1820s. Therefore, this contribution could dissapear without being affected the duty of the 2nd. article.

When the 2nd. article states that "the federal government supports..." we interpret that that attribution refers not only to the Argentinian federal state, it also includes the provinces and the provincial governments. The disposition of 2nd. article is characterized as a "constitutional principle" in the context of its text and, in this sense, also obliges provincial governments in accordance with 5th. and 31st. articles.

The jurisprudence of the Argentinian Supreme Court of Justice has established five principles concerning the relationship between the state and the Catholic Church:

1. The Church is not a political power with the faculty of passing laws.
2. The bishops and priests are not officials or civil servants.
3. The National Constitution concedes the Catholic Church a sort of preeminence.
4. The scope of the mentioned 2nd. article of the National Constitution is to establish that the expenditures of the worship would be paid from the national treasure and included in the worship budget.
5. The National Constitution rejected the proposal that the Roman Catholicism would be the religion of the state. (22)

In 1991 and 1992, the cited Argentinian Supreme Court of Justice had two important and outstanding leading cases that updated the jurisprudence of that tribunal.

On October 22nd. 1991 in "Lastra Juan c/Obispado de Venado Tuerto" was concerned about an embargo on an Episcopate's property which was at the same time the seat of the diocese and the house of the bishop and other priests. The Supreme Court of Justice confirmed the impossibility of that measure taking into account, on the one hand, the Agreement of October 1966 between the Holy See and the Republic of Argentina, and on the other hand, the 2345th. article of the Civil Code. (23) In fact, the Supreme Court recognized the free and plain exercise of the worship and its jurisdiction in the framework of its competence, in favour of the Catholic Church, according to the 1st. article of the Agreement of 1966. In this sense, the verdict refers to the canonical law in order to rule the goods of the Church in harmony with Article 2345 of the Civil Code i.e. specifying conditions under which goods belonging to the Church can be sold.

On June 16th. 1992, the Supreme Court, related to a canonical sanction, in a divided verdict, confirmed again that the Catholic Church has the free and plain exercise of its jurisdiction in the framework of its competence, in "Rybar Antonio c/García Rómulo y/u Obispado de Mar del Plata". Therefore, the issue of the mentioned canonical sanction was not up to the civil tribunals.

From both verdicts, it can be inferred that there were areas and issues reserved to the canonical law which, due to their close relationship with the spiritual objectives of the Catholic Church, were kept out of the control of the state.

In these two leading cases, the Argentinian state recognized an exclusively reserved sphere for the Catholic Church, due to an international treaty (the agreement of 1966), taking into account the prescriptions of the ecclesiastic or canonical law.

Two (67 clause 15, and 76) among the mentioned three articles (2, 67 clause 15, and 76) of the Argentinian National Constitution related to the confessionality of the Argentinian state has been recently modified through a constitutional reform in 1994. This subject of the latest reform of the National Constitution in the chapter related to the new or more recent important aspects of the interrelationship between the Catholic Church and the state in the Republic of Argentina will further be developed.

IV. THE RELATIONSHIP BETWEEN THE ARGENTINIAN STATE AND THE CATHOLIC CHURCH UNTIL THE AGREEMENT OF 1966

Regalism and Patronage

According to the political theory and comparative constitutional law, "regalism" and "patronage" are related concepts with different meanings. Regalism refers to the illegitimate interference of the civil or temporal power in the field of the ecclesiastical affairs. Santiago De Estrada, who has been the Dean of the Faculty of Law and Political

Sciences of the Pontifical Argentine Catholic University (UCA) in Buenos Aires for many years, has characterized the regalism as an "administrative heresy". (24)

The regalism, according to Juan Rafael Llerena Amadeo and Eduardo Ventura, is laicist and totalitarian, because it pretends to transform the Church in a simple religious political sub-structure. (25)

According to Catholic perspectives, the civil or temporal power includes the following rights of the Church in the 18th. century:

- a) Exequatur or placet from the monarch on Pontifical documents which would be implemented in the territory of the country.
- b) "Ius exclusivivae" or veto on the designations decided by the Pope in Rome.
- c) "Ius circa temporalia officii" or right to sequester the patrimonial revenues of the ecclesiastical service.
- d) "Ius inspectionis" or right to control the ecclesiastical activities in the territory of the state.
- e) "Ius apellationis" or force appeal: faculty of the monarch to review the resolutions and verdicts of the ecclesiastical courts.
- f) "Ius protectionis" or rights of protection and tutelage.
- g) "Ius reformandi" or right to protect the moral and discipline in the field of the religious affairs. (26)

The regalist argument had its influence in the legal regime. De Estrada mentioned that the exigency of the

exequatur, maintained during the post-revolutionary governments in 1810 and onwards, was incorporated into the national constitution of 1853. The "Ius inspectionis" was also incorporated as a faculty of the National Congress related to the admission of the new religious orders. The "Ius exclusivivae" was no more in force since the colonial period. The "Ius temporalia" was applied during the confiscations of ecclesiastical properties by governor Rivadavia in the 1820s.

Therefore, the force of regalism has diminished in the political and constitutional regime of the Republic of Argentina.

The patronage, implies what is known in law as "Ius nominationis", the right to designate or introduce the diocesan bishops. The Catholic Church has perceived that the mentioned right is a clear example of a privilege, taking into account the characteristics of this legal institute. According to that, it signifies an exception, its application is restrictive, and essentially revocable. The rights of patronage can only be given by the Popes and it is done "intuitu personae" (only for the beneficiary), taking into account his special conditions and qualities. That is why the Catholic Church understands that the conditions of place, time, and facts play a fundamental role in the continuity of this privilege. At the same time, the Church has the point of view that the patronage is not a right originated in the realm of the territorial sovereignty.

The regime of the patronage in the Republic of Argentina, although it is not among the institutions of ecclesiastical public law in force at the present time is going to be explained in particular. One thing worth mentioning is that the last Pope who made concessions in this field was Pious IX.

Regime of the Patronage in Argentina.

This section will explain the institutional, constitutional, and historical aspects of the regime of the patronage in the Republic of Argentina. The patronage is a juridical institute which refers to the right advocated by the kings in order to participate in the designation of bishops or archbishops. Throughout the history the Catholic Church has rejected and resisted to this trend, claiming that it was an inadmissible interference in the fulfilment of her spiritual and temporal fields of influence.

The patronage has its antecedent in the ancient Roman law, and through this institute an influent citizen could be designated protector or "patronus" of another citizen of an inferior condition. (27)

The Canonical Law Code defines the patronage, in its canon 1448, as the: "...group of privileges, with some obligations that, due to a concession of the Church, are conceded to the Catholic founders of a church, chapel or benefit". (28) This sort of patronage is called private law patronage.

In general, the public law patronage is the one related to the attributions of the state in relation to the affairs and government of the Church. This patronage of public law had its origins in the wake of the Edict of Milan issued by the Roman emperor Constantine in 313 A.C.. At the same time as the civil or temporal power conceded protection and favors to the ecclesiastical authority reclaimed, by means of retribution, participation and interference on the government and affairs of the Church. The excessive claims or privileges required by the monarchs originated in what they called the "investitures' quarrel" in France.

The Spanish Crown remained out of this dispute concerning the designation of bishops. However, in the wake of the Council of Toledo in 681 A.C., the king's right to designate bishops together with the archbishop of Toledo was recognized. This privilege had its origins in the so called "reconquest title", which means the right to designate bishops in the vacant episcopal seats in the Iberic retaken regions during the reconquest war against the Arabs or Moors.

During the Spanish colonial period, the viceroys exercised the vicepatronage in Latin America. Consequently, in the viceroyship of the Rio de la Plata the viceroys exercised the vicepatronage from their seat in Buenos Aires, the capital. (29) The first indigenous Argentinian governments, the "Juntas", starting from 1810 and the independent government in 1816, considered that they had inherited the right to exercise this patronage from the Spanish crown and they behaved accordingly, with their

posterior sequel of misunderstandings and troubles with the Catholic Church and the Holy See in Rome. In this sense, in 1822, the administration of the governor Martín Rodríguez abolished the ecclesiastical tithes and undertook several confiscatory measures that affected the properties and activities of the Catholic Church. The state remained in charge of budget for worship. This assault from the regalism provoked an inversion in the procedures related to the exercise of the patronage. In the past, the king or the viceroy introduced a candidate to the ecclesiastical authority. After 1823, when the state assumed the maintenance of the worship, the ecclesiastical authority required the civil authority the administrative designation. In this way, the Spanish Royal Cedula of 1609, which regulated the regime for the designation of ecclesiastical dignities, was abandoned. Thus, the ecclesiastical authorities, who received their incomes from the national budget, were considered as civil servants. Moreover, they were subjected to the regime of designations, remotions, licences, transfers, and retirements, valid for the public administration. Then, the Church perceived that this situation affected her freedom and the dignity of her hierarchy.

The Argentinian National Constitution of 1853 established the regime of the patronage among the competences of the National Congress.

The 67th. article clause 19 states the faculty of the Congress of arranging the exercise of the patronage. It can be clarified that when it is read "arrange" in the same

article, that means the existence of a multilateral issue that the state is not able to solve alone, like international borders, foreign debt, post and mail, or patronage. In this sense, it can be inferred that, without the "previous arrangement" required by the National Constitution, the exercise of the patronage is forbidden for the National Congress.

Ramiro de Lafuente considers that all the constitutional rules related to patronage would be perceived as "hypothetical and conditional" until the moment of the celebration of the agreement with the Holy See. (30)

Therefore, in spite of the fact that the exercise of the patronage had to be "arranged" with the Holy See, the Argentinian state exercised its rules, in at least an ambiguous way, for more than 100 years until the agreement in October 1966.

The patronage survived only in a formal way in the written constitution, because there was no constitutional reform that had suppressed it. Through the Agreement of 1966 with the Holy See, the patronage subsisted in the formal National Constitution but it does not function anymore.

German Bidart Campos defined this particular juridical situation as a "constitutional mutation due to subtraction". (31) The same scholar affirmed that the patronage only subsisted in a formal way in the written constitution of 1853 and, after the agreement with the Holy See, it does not actually function.

In brief, the 86th. article clause 8 of the National Constitution, among the attributions of the executive power, states that the president "exercises the national patronage's rights for the presentation of bishops for the cathedrals, within a three candidates proposed by the Senate". According to this text, "bishops for the cathedrals" means bishops who would head a diocese (Catholic Church's province).

Until the signature of the agreement with the Holy See in October 1966, this constitutional rule functioned in the following way:

- a) The National Senate conformed a list of three candidates in order to be designated bishop of a diocese in Argentina.
- b) The President of the Nation communicated the Pope in Rome the proposal choosing one of those three candidates.
- c) Normally, the Pope designated the mentioned chosen candidate, but without invoking the presentation or proposal of the Argentinian government. In this way, the Holy See wanted to show that the bishops designation was carried out "motu proprio" (by itself). In case the Holy See did not designate the chosen candidate the episcopal seat remained vacant.
- d) The Papal Bull containing the episcopal nomination or appointment was subjected to the pass or approval of the Argentinian government. (32)

It has been mentioned that the Argentinian regime of patronage was foreseen in the text of the National

Constitution in order to provide "bishops for the cathedral churches" (Article 86 clause 8). Pedro J. Frías gives his perceptions concerning the scope of the application of this norm:

In the first place, this rule was applied to the designation of bishops for dioceses in Argentina. We have already seen that the dioceses are territorial divisions for the ecclesiastical government of the Catholic Church. Secondly, this rule later was also applied for the designation of assistant bishops with succession rights. In the third place, the Argentinian government perceived that the apostholic administrators had to be subjected to the regime of patronage as well. Fourth, the regime of the patronage has not been applicable for designation of titular bishops. That means for those without residence or who lack a diocese ecclesiastical government in the territory of the Republic of Argentina. (33)

At the same time the Argentinian government issued recognition decrees, with approvative character, in the following cases:

- a) An episcopal seat was vacant and the pertinent ecclesiastical authority chose a capitular vicary for the government of this vacant seat.
- b) A bishop was temporarily absent of his diocese and an ecclesiastical governor was designated.

Although the National Constitution of 1853 does not refer to this matter, the Argentinian state also intervened in the creation of dioceses within its territory. In this

way, the scope of the national regime of the patronage was extended also to the creation of ecclesiastical jurisdictions in the Republic of Argentina, as far as it was thought that a bishop could not be designated for a diocese not yet recognised by the state.

Despite the regime of the patronage and the formulas which the executive power could use for their designation, the bishops were not and are not state officials or civil servants in Argentina. However, throughout the history of the country the executive power acted as if it had the authority to dismiss bishops. This sensitive situation took place during the presidencies of General Julio Roca in the 1880s. and General Juan Domingo Peron in the 1950s. (34)

The constitutional praxis progressively evolved from a primitive and strong regalism to the signature of the Special Agreement in October 1966. According to this:

a) The wording of the executive power decrees, as in the case of the designation of bishops, was attenuated, the formula of those decree's text was limited to express the designated bishop, he would be included in the budget for worship in order to receive his income from the state.

b) Concerning the procedure of creation of dioceses, gradually the respective legislation allowed the executive power to undertake itself the civil proceedings, and to make the necessary steps with the Holy See related to the canonical procedures for the erection of dioceses in the territory of the Republic of Argentina.

c) In 1960, the procedure of the pass was eliminated for the cases of those Papal Bulls which designated the candidate proposed by the Argentinian government as bishop.

d) The letters signed by the presidents presenting the candidates for the episcopal seats were abolished and, in their place, decrees with a formule asking the Holy See the designation of the candidate were issued.

e) In 1964, the oath pronounced by the bishops at the beginning of their government, which implicated the episcopal recognition of the Argentinian national patronage in their dioceses, was abolished. (35)

The Argentinian Supreme Court of Justice and the jurisprudence were also flexible, and the requisite of the list of the three candidates proposed by the National Senate was not always required for the designation of bishops.

In this sense, German Bidart Campos points out that there were long periods of time in which the National Congress was dissolved by military governments and, in those cases, the condition of the three candidates' list proposed by the National Senate would have been difficult to fulfil. (36)

The Exequatur or Pass

The exequatur or pass is the subjection of the decisions of the ecclesiastical authority to the consent of the civilian or national authority.

The legal institution of the exequatur is equivalent to the approval conceded by the temporal or civil authority in order to allow the execution of the ecclesiastical acts contained in the territory of the state.

The 86th. article clause 9 of the National Constitution states that: "The President of the Republic concedes the pass (exequatur) or retains the decrees of the councils and the papal bulls with the agreement of the supreme court".

The exequatur was also required in those cases for the designation of some bishops in which the Argentinian government did not present the candidate. In this sense, even the Papal Bull with the designation needed a pass as well.

The institute of the exequatur was perceived as a discriminatory limitation to the free communication between the Church and the Catholic community in Argentina. At the same time, it put the Church in an inferior position with respect to other cults, in spite of her "status" of preeminence. In addition, this norm constituted an anacronism, due to the fact that the modern communication and information systems can transmit the news with complete independence from state channels.

In the 1960s., and before the agreement of 1966, the exequatur which designated the same candidates presented by the Argentinian government as bishops was no more applicable for the Papal Bulls. The perception was that if the ecclesiastical documents or decisions did not produce civil effects which could affect the Argentinian juridical order,

then the state was not interested in the contents of those decisions or documents.

The Admission of Religious Orders.

The 67th. article clause 20 of the Argentinian National Constitution states that the National Congress has the faculty of admitting other religious orders in the territory, apart from the ones which already existed.

At the same time, the 108th. article of the constitution does not concede this faculty to the provinces.

The origins of this norm go back to the Spanish colonial law (Leyes de Indias), where the authorization of the monarch was an indispensable prerequisite for the foundation of a convent, a monastery or a religious order. (37) The reason for this permission was given by the fact that the establishment of a convent, a monastery or a religious order in a region also implied certain privileges and financial concessions for them. The idea of avoiding abuses motivated the origins of such kind of controls.

In 1853, when the constitution was promulgated, the main religious orders which worked in Argentina were: the Dominican friars, the Franciscans, the Mercedars, the Augustinian monks and nuns, and the Carmelites.

Carlos María Bidegain argues that after 1853, the religious orders and the congregations which arrived to Argentina did not require this recognition from the state. (38) This was perceived as harmful for the liberty of the

Church. Moreover, in order to acquire rights and obligations these congregations and religious orders applied the juridical personality within the civil code.

The majority of the Argentinian constitutional doctrine accepts that the cited article 67, clause 20 must be interpreted in a restricted way with the following scope:

a) It is valid only for the religious orders recognized as "orders" by the canonical law, and would not be the case for mere communities, religious congregations or ecclesiastical associations of laics.

b) It is valid only in case of the religious order being asked for the state of recognition of the "status" of order and not necessary for its civil law effects.

Therefore, according to these rules, the admission of the National Congress is not necessary:

a) When the institution is not a religious order.

b) When the institution is a religious order which requires only juridical personality regulated by civil law. (39)

V. THE RELATIONSHIP BETWEEN THE ARGENTINIAN STATE ANTE THE CATHOLIC CHURCH STARTING WITH THE AGREEMENT OF 1966

Juridical Nature of the Concordates.

The concordates are agreements between a state and the Holy See in order to rule, characterize, and organize their interrelations, jurisdictions, and competences.

There are three main different ways of celebrating for these agreements:

- a) Both the state and the Church, issue two different documents stating mutual rights and obligations.
- b) The Holy See issues a Papal Bull which is incorporated to the positive legislation of the state.
- c) A bilateral treaty is signed by both parties at the same time.

Fundamentally, a concordates's contents relate to the so called "mixed affairs" or aspects, and the essential rights of the Church.

Laureano Perez Mier affirmed that there are three main doctrines concerning the historical and juridical nature of the concordates:

Firstly, the concordate is only a law that the state passes under the form of an agreement. These kind of theories are used in order to deny the nature of the Church.

Secondly, the concordate is only an ecclesiastical law that the state must accept.

Thirdly, the majority of the doctrine, laicist and Catholics, share the perspective that the concordates (40) are real bilateral agreements of international law which establish mutual obligations for the state and the Church.

(41)

The Agreement with the Holy See.

On October 10th. 1966, the Agreement between the Holy See and the Republic of Argentina was signed. This agreement constituted a turning point in the historically conflictive interrelationship between the state and the Catholic Church during the period 1810-1960. In this sense, it paved the way for the collaboration, tolerance, mutual respect, and cooperation between the state and the Church. In this respect, the 1966 Agreement ended the historical misunderstanding between the temporal and spiritual authorities in the Republic of Argentina.

According to Miguel Angel Zavala Ortiz, who was at that time the Argentinian Minister of Foreign Affairs and Worship in charge of the negotiations, this treaty can be considered as a "concordate", but with the "minimum" characteristics related to this particular kind of agreements. (42)

It was approved by Law No. 17.032/66 on November 23rd. 1966, and ratified on January 28th. 1967. (43)

However, it must also be pointed out that both parts of the treaty did not mention the canonical law's specific term "concordate", and gave to the cited bilateral instrument the name of "agreement" or "convention".

Traditionally, the Holy See is considered as a "sui generis", that is as an independent state from the point of view of the international law. The treaties signed with the Vatican state receive the name of "concordates". However, the

Holy See reserves this denomination only for those agreements which regulate the totality of the so called "mixed questions", i.e. such as those related to marriage, education, and social habits. Therefore, this document was named "agreement" or "convention".

According to Reinaldo A. Vanossi the terminology of the constitution of 1853 uses the expression "concordates" in a more general way referring to all kind of agreements with the Holy See, for the sake of a better understanding. (44)

The rules of this agreement modified the constitutional dispositions in this field. It is not the case that an international treaty modified the National Constitution, because the constitution had foreseen the need of the "arrangement" of the issue of the patronage with the Holy See.

After the ratification of the agreement, the Argentinian government could not exercise the authority that the constitution of 1853 had allowed it in the realms of patronage, the exequatur, and the admission of Religious Orders.

The first article of the agreement concerns to freedom of worship through which the Argentinian state recognizes and grants the Catholic Church the free and plain exercise of its spiritual power, the free and public exercise of the worship and its jurisdiction in the framework of its competence concerning its specific objectives.

The 3rd. article -designation of bishops- states that the designation of bishops and archbishops is within the

authority of the Holy See. But the Holy See would inform the Argentinian government, in advance, in order to know if there would be political objections related to the person chosen as candidate. The Argentinian government has thirty days in order to give its answer to the Holy See. After this period, silence from the side of the Argentine government would be understood as a confirmation for the designation of the bishop. The candidate must be an Argentinian citizen and the proceedings are carried out in secret. These dispositions have abolished the mentioned faculty of the National Senate in order to propose a list of three candidates.

The 2nd. article -creation of dioceses- states that the Holy See can create new dioceses or modify the ones that have already existed in the territory of the Republic of Argentina. But before creating a new diocese for its pastoral or spiritual needs, the Holy See would inform, confidentially, the Argentinian state in order to know if there were some valid or legitimate objections. This article modifies the former faculties of the Argentinian executive power and National Congress in order to intervene in the processes of creation and modification of ecclesiastical jurisdictions.

The 4th. article -supression of the pass- abolishes the exequatur or pass, and concedes the right of the Holy See to publish the dispositions concerning the goverment and administration of the Catholic Church in the Republic of Argentina. At the same time, it ensures a free communication between the Holy See, the bishops, other ecclesiastical

authorities, and the local Roman Catholic community. This disposition eliminates the cited participation of the National Congress, executive power and Supreme Court of Justice in the procedures related to the exequatur or pass.

The 5th. article -freedom for the religious orders- states that the Argentinian episcopacy can call upon the religious orders, other religious congregations or priests (male and female), considered useful for the improvement of the spiritual assistance and Christian education of the people to the country. This norm abolished the former faculty of the National Congress of admitting new religious orders in the territory of Argentina.

The 6th. article -interpretation and application of the agreement- refers to procedural aspects and states that both parts will solve their differences in the interpretation and application of the convention through a friendly manner. (45)

VI. THE PROVINCIAL CONSTITUTIONS AND THE CATHOLIC CHURCH

After 1957, some Argentinian provincial constitutions modified the traditional public law policy in the field of the relationship with the Catholic Church. The province of Neuquén proclaimed a laicist state and it can not take any measure to support or restrain any worship. The new constitutions of the provinces of Chaco and Misiones state that they do not protect any religion, worship, nor do they support them. The constitution of the province of Río Negro

of 1988 also states that its government does not support or prohibit any particular worship.

In general, these mentioned provincial constitutions in Argentina adopt and represent the position of laicism and not confessionality. However, we have to take into account the 2nd. article of the Argentinian National Constitution which establishes a basic and fundamental guideline by giving the Catholic Church some preminence. On the other hand, the 5th. article of the National Constitution establishes that the provincial constitutions must respect the principles included in its text. In that sense, the texts of the provincial constitutions which were against this principle (preminence of the Catholic Church) could be considered unconstitutional.

The text of the new constitution of the province of Córdoba of 1987 recognizes and guarantees the Roman Catholic Apostholic Church the free and public exercise of its worship, according to its cultural tradition. Consequently, the relationship between Church and the provincial state are based on the principles of autonomy and mutual cooperation. At the same time, it guarantees other worships their free and public exercise, with the only limitations given by moral, good behavior and public order.

VII. THE RELIGIOUS FREEDOM

To begin with, the religious freedom gives the institutional framework where the Church-state interaction is carried out in Argentina. According to the Declaration

"Dignitates Humanae" of the Council Vatican II, the religious freedom constitutes a civil right common to all men within the state.

Juan Llerena Amadeo argues that the recognition of this right implies the need of being immune to any sort of coercion from particular human beings, social groups, or any other human power or dominion. This concept also means that in the field of religion or faith nobody can be obliged to act against his conscience or religious principles. (46)

There are two main aspects related to the religious freedom or worship freedom:

Firstly, there is the freedom of conscience, that is the right that a human being has, vis-a-vis the state and the other people, in order not to be personally interfered in his conscience worship. This would be an internal or intimate perspective. The freedom of conscience brought to the external realm is transformed in freedom of worship.

Secondly, there is the cited Council Vatican II which also declared that the civil authority has to recognize the religious life of the citizens. This liberty must be exercised by taking into account the moral and social responsibilities and the common good of the society.

In the field of the external perspective, the Argentinian constitutional order recognizes the religious freedom.

The 14th article of Argentinian National Constitution admits the fundamental right to free worship by taking into account the internal and external aspects of its exercise. This freedom does not mean equality of worships. As was noted

earlier, the National Constitution gives preminence to the Roman Catholic Church.

In the particular case of the Republic of Argentina, the right to religious freedom has a very concrete reason in the National Constitution following the thought of Juan Bautista Alberdi in "Las Bases". (47) In the second half of the 19th. century, religion was considered a fundamental and preponderant factor of culture and civilization. Moreover, the Republic of Argentina at that time promoted European immigration in order to colonize a vast and in some marginal areas almost uninhabited country. Consequently, it was perceived that the Christian but non Catholic European immigrants needed religious freedom.

Alberdi, the founding father of the Argentinian constitution, argued that religion was an important element for future immigrants. Alberdi proposed a "non neutral" worship freedom formula. He was in favor of a practical attempt in order to prevent atheism and an indifferent attitude toward religion. In addition, he proposed a conciliation between the principle of the freedom of worship (free public exercise for other Christian worships) and the Roman Catholicism as the cult of the state. (48)

The freedom of worship must be interpreted not only in relation with the internal aspect or privacy (19th. article) but with all the rights connected with a religious aim which protect all the people without allowing a worship discrimination. The only valid limits to these rights are:

a) the status of the Catholic Church,

- b) the public moral,
- c) the public order,
- d) the rights of thirds.

Some of these "religious rights" mentioned by the scholars can be stated as:

- a) The right of the parents to choose the spiritual orientation and religion of their young children.
- b) The right of the churches to have properties and to exercise the rights that the constitution recognizes.
- c) The right of every human being not to participate in a worship ceremony or events against his conscience.
- d) The right of every human being not to be obliged to received an education against his own religion.
- e) The right to be able to participate in one's own worship ceremonies, and not to be obliged to work in activities against his own beliefs.
- f) The right not to be discriminated because of religious considerations.
- g) The right to celebrate marriages according to his own religion.
- h) The right of the recognized churches or worships to give assistance everywhere, including in prisons, military garrisons, hospitals, etc.
- i) The right of the recognized churches or worships to train and educate their ministers or priests, and to communicate with their authorities within and outside the country. (49)

Amongst these religious rights, the religious freedom of the family has been taken into account by the Council Vatican II and, more recently, by Pope John Paul II.

Nowadays, the matters of the family, education and politics represent a permanent preoccupation of the Church. The point of view of the Church concerning the religious freedom and the education of the children can be summed up in the following way: "Every family, as society has the right of a free determination of its domestic religious life, under the guidance of the parents". (50)

Some Catholic authors feel strongly that the civil authority must recognize the right of parents to choose the schools or other means of education according to their beliefs. What is more, the rights of the parents would be violated if the civil authority obliged the children to take part in lessons at school not according to the religious faith of the parents. These Catholic authors considered that the parents' rights are also violated if the state imposed a unique education system which excluded religious education.

(51) On September 1st. 1980, Pope John Paul II sent a private message to several heads of state and government with the title "The Freedom of Conscience and Religion". Through this message, the Pope reaffirmed the traditional position of the Catholic Church related to the freedom of the parents to educate their children.

Another important element within the framework of the institutional, political and constitutional aspects of the religious freedom in the Republic of Argentina is given by

the state's admission of the objection of conscience without affecting the rights of others. In addition, the subject of the objection of conscience acquires great importance in the field of the military duties. The jurisprudence of the Argentinian Supreme Court of Justice in the case "Portillo, Alfredo", on April 18th. 1989, admitted the objection of conscience related to the fulfillment of the military service (former article 21 of the National Constitution of 1853). However, this recognition was only partial, because in another verdict it was decided that the objector of conscientious had to comply his constitutional military obligations without the use of weapons.

Concerning the situation of the religious freedom in the Republic of Argentina, German Bidart Campos has proposed, in order to reach a plain satisfaction, that the state could establish the following:

- a) A pluralist regime, in the field of matrimony, recognizing both parties in the engagement to have the right of marriage according to their worship, and providing those marriages civil effects.
- b) A civil marriage regime for those who do not practice any worship.
- c) An educational system which facilitates and subsidises the confessional training and educational institutions at different levels. (52)

The religious liberty, being fundamentally a personal right related to the notion of citizenship, can also be extended to groups, communities or churches. In this sense,

this personal right of the human being would be affected if an association originated by the exercise of this right was not recognized as a collective institution. The legal formalities of inscription and registration must not affect the principles of freedom of worship and religion.

In the case of the Republic of Argentina, there is a State Secretary Office for Affairs of Worship, within the framework of the Ministry of Foreign Affairs, International Commerce, and Worship, which has the competence, among others, for the inscription and registration of cults. This cited Office of Worship is constituted by two main departments:

- a) Direction of Catholic Affairs: This department is in charge of the relationship with the Catholic Church in Argentina, the Pope in Rome, and with the Vatican as sovereign state.
- b) Direction of Non-Catholic Affairs: This department is in charge of the registration and inscription of other cults and subjects associated with other religions, spiritual communities, and churches.

The American Convention of San José of Costa Rica about Human Rights states in its 12th. article that:

1. Every human being has the right of freedom to worship and the conservation or modification of his religion.
2. Nobody can be subjected to restrictive measures which could harm his religious freedom or beliefs.
3. The freedom of worship is only subjected to the

limitations established by law in order to protect the security, order, health, public moral, or the rights of others.

4. The parents or tutors have the rights to have their children receive a moral and religious education according to their own beliefs.

The International Pact of Civil and Political Rights states in its 18th. article similar norms concerning the right of worship and religious freedom.

The International Convention about the Rights of the Children also recognizes the freedom of conscience and religion in its 14th. article. (53)

In conclusion, according to the analysis undertaken by the Argentinian scholars in the field of constitutional law, such as Ricardo Zorzoaquin Becú, Germán Bidart Campos, Carlos Bidegain, and Liniers De Estrada, the following points are important:

First, the Argentinian national constitution of 1853 has not followed the previous constitutional attempts of 1812, 1819, and 1826, whose wording was clearly confessional, and its text has adopted a softened approach to confessionalism. Therefore, the confessionalism of the Argentinian state can be described with the pattern of the secularity type. The constitutional secularity formula is defined by the freedom of worship without equality amongst them, as the Catholic Church has a special status in relation to other confessions, and she obtains a preferential recognition.

Second, the national constitution, continuing with the tradition of the first autonomous governments in 1810 and onwards, included in its text the institute of the patronage and other institutions, such as the permission for new religious orders and the exequatur, which were perceived as interferences in the religious affairs of the Church.

Third, the agreement with the Holy See in October 1966 has represented a turning point in the field of the institutional aspects of the Church-state interaction.

The reason for this was that an acceptable solution was reached on many subjects in a framework of respect, tolerance, and mutual cooperation, after a period of controversy from 1810 to the 1960s.

Since the 1970s., several novel situations have turned up which constituted new or modern matters in the framework of the interaction or interrelationship between the Catholic Church and the state in the Republic of Argentina. These subjects will be dealt with in the next chapter.

NOTES AND REFERENCES

- (1) Jacques Maritain, L' Homme et l' Etat (Paris, 1953), p. 143.
- (2) P. Murray, "The Problem of the Religion of the State," Rev. The American Eccl. (No. 124 1951), p. 330.
- (3) Mt., The Gospel (22:21).
 Mk., The Gospel (12:17).
 Lq, The Gospel (20:25).
- "Render to Caesar what is Caesar's, and to God what belongs to God."
- (4) Council Vatican II, GS, 42.
- (5) From a theological point of view, the Church is perceived as a "perfect society" in the supra-natural order. For further theological details see Catecismo de la Iglesia Católica, (Madrid: Claretiana, 1993).
- (6) Heinrich Rommen, The State in the Catholic Thought, (Heidelberg), p. 268.
- (7) From German. It means "Cultural fight."
- (8) Germán J. Bidart Campos, Derecho Constitucional Argentino, vol. 1 (Buenos Aires: Ediar, 1994), pp. 280-282.
- (9) Carlos María Bidegain, El Estado Argentino y la Organización del Poder (Buenos Aires: Abeledo-Perrot, 1991), pp. 71-75.
- (10) Antony Black, Political Thought in Europe 1250-1450, (Cambridge: Cambridge University Press, 1992), pp. 123-124.
- (11) Bidegain, op. cit., p. 72.
- (12) Bidegain, op. cit., p. 73.

- (13) The so called "Social Doctrine" of the Catholic Church had its origins in the Enciclic "Rerum Novarum" in 1891.
- (14) The Mexican constitution (February 5th. 1917) through its articles 24, 27, 50, and 130, is one of the most strict constitutions currently in force in the fields of religious freedom and freedom of worship.
- (15) Bidegain, op. cit. p. 75.
- (16) Juan Bautista Alberdi, founding father of the draft of the Argentine national constitution of 1853, was inspired by the U.S. federal constitution of 1787.
- (17) Diario de Sesiones (San Nicolás: April 21 1853).
- (18) The Civil Code of the Republic of Argentina was written by Dr. Dalmacio Velez Sarsfield in 1869 (Law No. 340/1869).
- (19) Bidart Campos, op. cit., p. 283.
- (20) See Informe del Comité de Asuntos Constitucionales (San Nicolás: 1853), p. 55.
- (21) Bidart Campos, op. cit. p. 284.
- (22) Bidart Campos, op. cit. p. 285.
- (23) The article 2345 of the Argentine Civil Code states that the temples and other sacred goods can be sold, according to the regulations of the Catholic Church concerning those temples and goods.
- (24) De Estrada, Nuestras Relaciones con la Iglesia. Hacia un Concordato entre la Sede Apostólica y el Estado Argentino (Buenos Aires: Theoría, 1963), p. 76.
- (25) Juan Rafael Llerena Amadeo and Eduardo Ventura, El Orden Político. Principios y Cuestiones de Derecho Político (Buenos Aires: AZ, 1994), pp. 672-673.

- (26) Santiago de Estrada, op. cit., pp. 37-38.
- (27) From Latin words "pater" and "onus", that means father of charges.
- (28) See Canonical Law Code (Canon 1448).
- (29) The viceroyship of the Río de la Plata was founded in 1776 by the Spanish general D. Pedro de Ceballos and it was conformed by the territories of the current Argentina, Uruguay, Paraguay, Bolivia, and part of Brazil and Chile. It is considered as the direct institutional precedent of the Republic of Argentina.
- (30) Ramiro Ricardo De La Fuente, La Situación Concordataria Argentina (Salamanca: Consejo Superior de Investigaciones Científicas del Instituto San Raimundo de Penafort, 1971), pp.12-13.
- (31) Bidart Campos, op. cit., p. 286.
- (32) Bidart Campos, op. cit., p. 287.
- (33) Pedro J. Frías, Iglesia y Estado: El Patronato Argentino (Córdoba: Universidad Católica, 1972), p. 9.
- (34) For further details see Lila M. Caimari, Perón y la Iglesia Católica: Religión, Estado y Sociedad en la Argentina (1943-1955) (Buenos Aires: Ariel Historia, 1995), pp. 111-249.
- (35) Bidart Campos, op. cit., p. 287.
- (36) Bidart Campos, op. cit., pp. 287-288.
- (37) The "Leyes de Indias" were the compilations of colonial law that the Houses of Austria and Borbon developed for its colonies in America, and controled by the "Consejo de Indias".

- (38) Bidegain, op. cit., p. 90.
- (39) De La Fuente, op. cit., p. 14.
- (40) Juan Rafael Llerena Amadeo, Las Relaciones Iglesia-Estado a la luz de la Política (Buenos Aires: Abeledo Perrot, 1990), pp. 13-75.
- (41) Liniers De Estrada, Historia del Derecho Argentino (Buenos Aires: Abeledo Perrot, 1978), pp. 71-81.
- (42) Miguel Angel Zavala Ortiz, Negociaciones para el Acuerdo entre la Santa Sede y la República Argentina (Buenos Aires: Guadalupe, 1966), p. 7.
- (43) De Estrada, op. cit., pp. 121-199.
- (44) Reinaldo A. Vanossi, Régimen Constitucional de los Tratados (Buenos Aires: 1969), p. 272.
- (45) In spite of the relevance of this agreement, it can be mentioned that there are some scholars, for example Daniel Villa, who recognized some misstatements, such as the lack of reference to the religious public education or the regime for the properties of the Church in the country. For further information see Daniel Villa, Educación, Iglesia y Estado (Buenos Aires: Ciudad Argentina, 1995), pp. 99-169.
- (46) Juan Rafael Llerena Amadeo, op. cit., pp. 1-78.
- (47) Las Bases was the most important constitutional precedent for the redaction of the National Constitution of the Republic of Argentina of 1853.
- (48) It seems interesting to point out that the Argentinian journal "Clarín" mentioned, in an article related to the phenomenon of the immigration to Argentina that, between 1857

and 1924, 5.481.276 immigrants arrived to the port of Buenos Aires. These figures, represented by the total amount of immigrants who entered the country, were only exceeded by the case of the United States of America. See Clarín international edition XXII N. 1123 (June 18-24 1996), 3.

(49) See Carlos Santiago Nino, Ética y Derechos Humanos (Mexico: Fondo de Cultura Económica, 1984), p. 244.

(50) See Concilio Vaticano II. Declaración sobre la Libertad Religiosa (Madrid: Ed. B.A.C., 1966), pp. 690-691.

(51) Nestor Daniel Villa, op. cit., p. 150.

(52) Bidart Campos, op. cit., pp. 292-294.

(53) The Republic of Argentina is a member state of The American Convention of San José of Costa Rica, of The International Pact of Civil and Political Rights, and of The International Convention about the Rights of the Children.

CHAPTER FOUR:

STATE AND CHURCH IN ARGENTINA: NEW ASPECTS OF THE INTERRELATIONSHIP

The objective of this chapter is to explain briefly the modern matters within the interaction between the Church and the state in the Republic of Argentina, since the early 1970s. The main focus will be on such issues as human rights, democracy, and international law.

This chapter also takes into account that new and diverse social phenomena have turned up in the framework of the relationship between the Church and the state in the whole world.

I. THE CHURCH, THE HUMAN RIGHTS AND THE MILITARY GOVERNMENTS

At the beginning of the 1970s, the authorities of the Roman Catholic Church in the Republic of Argentina considered that the Argentinian people would be able to support the fundamental objectives and values, as a result of evangelization, which have taken roots since the origins of the nationality and was reaffirmed by the national experience. Among these cited objectives and values, the Argentinian Episcopal Conference (COEPAL) -the meeting of all the bishops of the country- pointed out the issues as being important:

1. The transcendental sense of life.
2. The recognition of the equality among men and the positive value of his nature as human being.

3. The ideal of justice as fundamental principle of the nation.

4. The human solidarity as substance of the social fact of living together. (1)

Having defined the worldview of her historic perspective of the human being and mankind, in 1972 the authorities of the Catholic Church in Argentina assumed a basic popular pastoral with the following guidelines:

a) The identification with the people and their historical dynamism, knowing their joys, hopes, afflictions, pains, needs, values, and the recognition of what must be corrected and purified.

b) The rejection of a model of progress characterized only by the parameter of a quantitative economical growth, similar to the one that some Western societies and others have developed.

c) The rejection of a model of progress characterized only by a rational and scientific explanation which imprisons the human being in his own rationality, and empties the men from his internal life and transcendancy, denying the people the opportunity of improvement through the development of their historical and political vocation.

d) The affirmation that the true human progress implicates the development of the moral conscience, which will guide the human being to the ethics of social solidarity and to God. (2)

These guidelines indicated an important process of rapprochement with the people. In accordance with the Gospel, the Catholic Church in Argentina decided to give priority to the poor.

In this respect, the priority of the Catholic Church to protect the poor coincided with a conjuncture of political upheaval. The most important developments included two military dictatorships in 1966-1973 and 1976-1983, the insurgence of an organized marxist guerrilla movement, political repression and the Falkland War, which in Argentina is known as the Malvinas case. (3)

The 1970s was considered a deplorable period in Argentinian history, which raised the questions of respect for human rights, the morality of the state, and ethical values concerning the dignity of human life. This period was also accompanied by serious economic crisis. In this context, the military government attempted to undertake an economic transformation, inspired by the thoughts of the "Chicago School of Economics", but the results were the disarticulation and dismantling of the productive forces and the national industry.

It is difficult to explain the reasons why several Argentinian young people joined the marxist guerrilla movement, which started as early as the 1960s. (4) The fact of the matter is during the 1970s, the Argentinian society was torn between the guerrilla movement, which wanted to control the state by imposing the dictatorship of the

proletariat, and the military retaliation through the unlawful exercise of state terrorism, which was legitimized as the preservation of Christian and Western values and principles. In a press release on September 30th. 1977, Gen. Oscar Viola, the de facto Argentinian president announced the existence of 8.000 people under arrest or killed. (5)

From the very beginning of this moral crisis, the Catholic Church intended to persuade both sides that the exercise of violence was not the way to achieve a more just social order. What is more, the Argentinian Episcopal Committee stated, in 1970, that the criminal facts and serious disturbances (due to the first attempts of the guerrillas) represented more injustices and did not help to reach a better and reformed society. At the same time, the bishops also expressed their repudiation of violence and reaffirmed the value and dignity of the human being, as a supreme basis of peace in order to build a "more just and human society". (6) In the meantime the bishops urged priests and clergymen to avoid any gestures which could be related to hatred, violence, and the disintegration within the Argentinian community.

In 1972, Argentinian bishops condemned all acts of terrorism and torture. In their words,

Torture in order to obtain information or confessions, homicide, kidnapping, the use of explosives and any other sort of physical violence carried out by individuals or private organizations...are all against the law. (7)
We urge the Public Authorities to behave with mercy, because it is a Christian virtue, and we remind those who exercise violence that such a behavior is not up to Christians. (8)

In 1974, the Argentinian episcopacy published a complete document about the phenomenon of violence. (9)

After two months of the military coup on March 24th. 1976, the Argentinian Episcopal Conference, being aware of the immoral method chosen by the government on its fight against the guerrillas, stated that: "the common good and the human rights are inalienable and permanent and they are valid for any concrete situation of time and space, and there is no emergency which can authorize to ignore them. (10) The Church also condemned the state's method of arresting those "missing people". (11)

In addressing the members of the military junta in November 1976 representatives of the bishops claimed that "the Church can not be manipulated by political campaigns on the question of human rights." (12)

According to Gerardo T. Farrell, the Argentinian Episcopacy choose the method of personal negotiation with the military concerning the defense of human rights and avoided any public confrontation. This option was more viable because there was a general belief among the society that the "missing people" were still alive in detention camps in 1978. The other reason for personal reconciliation was because state terrorism also targeted religious authorities. The state in order to prevent any sort of activity which could persuade several Catholic military officers to abandon the repressive methods they have used against Marxism ended up killing a number of priests. (13)

Given the hierarchical composition of the Church in Argentina, priests in this period were politicized in a way where both the state and the guerrillas were supported from different ranks of the Church. In other words, during the 1970s the Catholic Church did not have a monolithic position on these explosive political issues. There was a general feeling of doubt in the society that the Church (from 1975 to 1983) did not deal with the question of human rights effectively. (14)

In December 1983 with the election of President Raúl Alfonsín, from the "Unión Cívica Radical" party (UCR), the re-establishment of the democratic and constitutional system in Argentina took place. In 1989, Dr. Carlos Saúl Menem, from the Peronist Party, was elected as president and re-elected in 1995. During his administration, the armed forces (army, navy, and air force) carried out a sort of declaration of "mea culpa" admitting, the mistakes made in the past, in the field of the fight against terrorism and the violation of human rights. This initiative was perceived as an important step in order to erase some historical differences or rivalries between the civilian and military components of the Argentinian society, accentuated during the military regime.

Consequently, in April 1996, the Catholic Church, through a document signed by almost 80 bishops, undertook a revision of the mistakes made during the last military dictatorship recognizing that: "Everything that has been done was not enough in order to avoid such horror". (15)

After six days of discussions, the bishops regretted the participation of the sons of the Church in the violation of human rights. The document was divulged by the President of the Argentinian Episcopacy, Antonio Cardinal Quarracino. However, the bishops did not admit a direct responsibility of the Church in the facts of violence, but they recognized the participation of Catholics in the guerrilla movements and the armed and security forces. Moreover, the Charter did not refer to individual attitudes carried out by bishops, and only analyzed, reflexively, the framework where the violence had grown up.

II. THE CHURCH AND INTERNATIONAL CONFLICTS

During the last military government (1976-1983), the Republic of Argentina had two main international conflicts, and, in both of them, the Catholic Church developed a very important role in maintaining peace.

Only a couple of hours before an eventual war against the Republic of Chile, the head of the Argentinian military junta, Gen. Jorge Rafael Videla, asked the intervention of the hierarchy of the Catholic Church in Buenos Aires to try to obtain a Papal mediation which could solve the border conflict between both Latin American countries, on the Beagle channel in the island of Tierra del Fuego. Cardinal Samoré was designed as mediator by the Pope John Paul II and he, successfully, obtained the signature of the Act of Montevideo

by both countries in 1979. (16) Later on, the Argentinian Episcopacy tried to obtain the support to the treaty from the social and political sectors through the activity of Mons. Justo Laguna. The political parties, with the exception of the peronist party, and the trade unions declared their support to the signature of the treaty with the Republic of Chile. In addition, a non-entailed plebiscite, called by the constitutional government of President Alfonsín, was undertaken on November 25th. 1984, and the majority of the population of the country could support the cited international agreement.

In the case of the cited colonial war in the South Atlantic in 1982 (Islas Malvinas), it is worth mentioning that, the Pope John Paul II, who at that time had an arranged trip to the United Kingdom, decided, immediately after it, to carry out a visit to the Republic of Argentina in order to console and accompany the afflictions of the population. During the visit of the Pope John Paul II to Buenos Aires, the Argentinian garrison which was deployed at the capital of the Islas Malvinas surrendered to the colonial British "task force" on May 15th. 1982. (17)

III. THE CONSTITUTIONAL REFORM OF 1994 AND THE CHURCH

At the beginning of the 1990s, the government of President Carlos Saúl Menem, and the Peronist party decided to propose a constitutional reform in accordance with the article 30 of the Argentinian constitution. (18)

At the end of 1993, President Menem and the Peronist party obtained the agreement of the major opposition party in the National Congress. At that time, the Unión Cívica Radical (UCR) headed by the former president of the nation Raúl Alfonsín, and both political leaders signed the so called "Pacto de Olivos" at the city of Olivos near Buenos Aires at the presidential residence. The institutional importance of this agreement is given by the fact that, on the one hand, the government accepted some Radical party demands concerning the conformation or membership of the Supreme Court of Justice. On the other hand, President Menem obtained the green light, through this pact, to reform the national constitution in order to allow him the possibility of being re-elected. This matter had been banned by the constitutional text of 1853.

Consequently, at the beginning of 1994, the Constituent Assembly began its activities and reformed some articles of the national constitution of 1853, which included a couple of articles related to the relationship with the Catholic Church.

The three articles that have already been mentioned "ut supra" and related to the relationship with the Church were the 67th. article clause 15 (conversion of the aborigins to Catholicism) and 76th. article (requisite of confessionality for the president and vice-president), and 86th. article clauses 8 and 9 (exercise of the patronage).

To begin with, concerning the wording of the old 67th. article clause 15, which was related to the obligation of the

government in order to promote the conversion of the aborigines to Roman Catholicism, the members of the Constituent Assembly considered that it was inadequate and it did not represent the reality of the country. However, the text of 1853 was written taking into account the existing cultural border with the Indians at that time, but they were not perceived as hostile groups or treated as enemies. On the contrary, the founding fathers of the young Republic of Argentina had stated in 1853 that the aborigines were an element, not yet fully incorporated to a culture (i.e. the Argentinian state) but still in a geographical expansion.

The Constituent Assembly also suppressed the old 76th. article of the constitutional text related to the conditions of eligibility, in particular, the requisite of Roman Catholic Apostolic confessionality for the president and vice-president. This modification is also related to the reform of the 93rd. article and the way of pronouncing the presidential oath. In this sense, the new text of the 93rd. article suppressed the old formulation for the presidential oath "God and Holy Gospel" and introduced the principle that it would be formulated "respecting the religious beliefs of the president and vice-president."

Concerning the 86th. article clauses 8 and 9 (exercise of the patronage), it has already been explained that these clauses had been suppressed, in fact, by the dispositions of the Agreement between the Republic of Argentina and the Holy See in October 1966. In this case, the Constituent Assembly only gave a legal framework for a "de facto" suppression of

the regime of the patronage from the constitutional text, carried out with the signature of the mentioned agreement.

The significance of the constitutional reform of 1994 was to update and to modernize the text of the national constitution in regulating the interactions between the Church and the state.

The issues concerning the conversion of the aborigines to Catholicism, and the exercise of a "de facto" abolished regime of the patronage were ineffective because on the one hand there were not very many aborigines to be converted, on the other hand the 1966 Agreement had already dealt with the question of the patronage. Moreover, the Church had to accept the reality of the suppression of the requisite of Roman Catholic confessionality for the president and vice-president within the framework of the general process of democratization and secularization of a modern society. However, this former example has not represented itself as a sign of an eventual declining influence of the Church in politics in Argentina.

IV. THE CHURCH AND THE FINANCIAL AID FROM THE STATE

It has already been explained "ut supra" the nature, the different interpretations, and the scope of the article 2 of the text of the national constitution which refers to the "support" of the Argentinian state to the Catholic Church. At the same time, the historical origins of the financial aid

given to the Catholic Church by the Argentinian state has also been described.

However, in January 1996, the hierarchy of the Catholic Church in Argentina, decided to renounce the economical subsidy from the state in an unexpected political gesture. In addition, the annual total amount that the Catholic Church received from the state was a little bit more than U\$S 8.000.000 in 1995. Moreover, the bishops also agreed that the cited decision would be implemented once the necessary alternative financing had been defined. This attitude of the Church in Argentina, which was adopted by the bishops in a very reserved and discreet way, has the objective of a gradual but complete situation of self-sustenance. (19)

Although the cited amount of money had a relative weight in the framework of the public finance and budget, it was undoubtedly that the gesture had a strong political salience. In addition, the interpretation of the decision of the Church could be related to the desire of demonstrating and consolidating an image of independence vis-a-vis the different governments or administrations. The Church also wanted to demolish the argument that she has not been critical of governments in order not to lose that cited financial aid.

Among the different alternatives analyzed by the bishops in order to replace the state financial aid, there were eight or ten under study, mainly based on the free and periodical contribution of the believers.

However, the mentioned renunciation of the Church has not included the economical support which the Catholic schools receive from the federal Ministry of Education, because it was considered as part of the financial aid which receive the schools of all cults in the Republic of Argentina.

At the present moment, the hierarchy of the Catholic Church in Argentina is analyzing the alternatives to the elimination of the financial aid from the state, and the solution will be reached in the long run. This initial decision was perceived by the Argentinian society as a positive political gesture from the Church.

V. THE CHURCH: CURRENT PARTICIPATION IN PUBLIC LIFE AND DEMOCRACY

From the Catholic doctrine or point of view, the right to an active participation in the realm of the public life constitutes a "natural right" of the human being. According to José María Bidegain, there are different ways of participation in the framework of a democratic system, which can be, among others, individual or through intermediate social groups. (20) As a result, the Catholic Church can be placed among the intermediate social groups. The Church has always paid special attention to the action of the state and, within the framework of her Mastery, has always managed to orientate the public opinion and the government to what she

perceives as the most adequate solutions. At the same time, through her doctrine and testimony, the Church has respected and promoted the political freedom and the responsibility of the citizens. The intervention of the Catholic Church in politics has, generally, been carried out through statements or declarations of the hierarchy. The Church does not support specific political parties, but on a number of social issues such as abortion and birth control, the Church makes her standpoint clear.

Consequently, with the return of the functioning of the democratic and republican institutions in Argentina in December 1983, the Church entered into a new phase. During President Raúl Alfonsín's administration two matters mobilized the interests of the Church.

First, in 1984, the National Congress approved a law that established the institution of the divorce. In this sense, Argentina abandoned the group of four countries that had not recognized the divorce up to that moment. Those countries were: Ireland, San Marino and Paraguay. During the negotiations and discussions related to the wording and regulation for this law, the hierarchy of the Church clarified her position against that legal development in the country, but at the same time, she accepted the "fait accompli" of the new civil legislation.

Second, the Catholic Church also showed an interest in the issue of hyperinflation of 1988-1989. The Church through her hierarchy warned the national authorities about the social dangers that such an economic situation could provoke.

In 1989, Dr. Carlos Saúl Menem, from the Peronist party, was elected president of the Republic of Argentina. From the very beginning of his administration, he openly declared an excellent predisposition and relationship with the hierarchy of the Church and their points of view through his speeches, statements, interviews, and opinions. (21)

President Menem appointed a Ph.D. graduate of the Harvard University, Dr. Domingo Cavallo, as Minister of Economics, who initiated a successful program of transformations by the application of free market policies in the country. Several economical and financial measures were undertaken such as: Decisive fight against inflation, (22) Reform in the tax system regime, Privatization of several state-run enterprises, (23) Reform in the state structures and their reorganization, and Banking reform.

At the very beginning, the economical adjustments of the program of Minister Cavallo were welcomed inside and outside of Argentina, and the so called "social free market policies" produced a significant "turning point" in the history of the country. However, the severity of the cited economical adjustments affected the poor sectors of the society in an adverse way.

The Catholic Church in Argentina urged national authorities to consider some social justice and humanity in the field of economics. The current Church-state interaction on economic justice implies going back to the historical pattern of confrontation.

The main claims which have been raised by the Argentinian bishops against state authorities concern high unemployment and underemployment rates, poverty, seriousness of the economical crisis, social exclusion of the poor by liberal policies, and lack of adequate government assistance and social programs.

The concerns of the Church have not only been limited to the social and economical affairs but also included a reconsideration of such political matters such as ongoing cases of corruption, the existence of a moral crisis, and the "importance of being honest", and "not to transform the country into a factory". The Church has made a bid to actively take part in the resolution of these political issues.

In the field of the global politics, the United Nations has envisaged novel and urgent problems which affect the entire mankind. These include the following UN Conferences on: The Protection of the Environment (Río de Janeiro, 1992), Population and Development (Cairo, 1994), Social Development (Copenhagen, 1995), The Role of Women (Beiging, 1995), and The Human Settlements (Istanbul, 1996).

All of these cited points implied a defined ontological perception of the nature and objectives of the human being and his role vis-a-vis the society and the environment. All things considered, it can be mentioned that, in almost the majority of the above mentioned conferences, the Delegations of the Republic of Argentina have clearly accompanied the

positions and perceptions of the Holy See, mainly in those related to values of life, to the rejection of abortion, the defense of the family rights, and to a moral conception of the human being in his role in society. (24)

NOTES AND REFERENCES

(1) Gerardo Farrell, Iglesia y Pueblo en Argentina. Historia de 500 Años de Evangelización, (Buenos Aires: Patria Grande, 1992), pp. 228-229.

(2) Conferencia Episcopal Argentina, Declaración del Episcopado Argentino, (San Miguel: 1969) VI Pastoral Popular, 1.

(3) Prof. Ergun Özbudun, in the Republic of Turkey, prefers to use the expression "military interventions" when he refers to relatively similar abrupt and violent interruptions of the democratic, constitutional, and republican political processes in his own country. See Ergun Özbudun, ed., Perspectives on Democracy in Turkey (Ankara: Turkish Political Science Association, 1988). In our view, and taking into account the differences between the Turkish and Argentinian experiences, we would rather use in the case of Argentina the term "military dictatorships", in order to refer to what was sometimes called "non-constitucional" or simply "military governments". For an explanation of the guerrilla movement see Jimmy Burns, The Land that lost his Heroes: Argentina, the Falklands and Alfonsín (London: Bloomsbury, 1987), pp. 68-226. For further details of these political events see Max Hastings and Simon Jenkins, The Battle for the Falklands (London: W.W. Norton and Company, 1983) pp.114-285, and Laurio H. Destefani, The Malvinas, the South Georgias and the South Sandwich Islands: The Conflict with Britain (Buenos Aires: Edipress SA, 1982), pp. 73-119.

(4) Argentinian security forces recognized the existence of 1.022 terrorist acts between 1958 and 1961. For further information see Farrell, op. cit., pp. 226-251.

(5) Testimony given by Adriana Calvo de Laborde, Revista Acción (25 Aniversario, 1966-1981).

(6) Comisión Episcopal Argentina (Buenos Aires: Comisión Ejecutiva, June 10 1970).

(7) Comisión Episcopal Argentina (Buenos Aires: Comisión Ejecutiva, March 3 1972).

(8) Comisión Episcopal Argentina (Buenos Aires: Comisión Ejecutiva, March 29 1972).

(9) There, they stated that there was somebody missing in Argentina...and that was God...: "It is indubitable that neither the force nor the terror could legitimately impose a political option or ensure any kind of order." For further information see Reflexión del Episcopado Argentino sobre la Violencia (Buenos Aires: Conferencia Episcopal Argentina, May 24 1974).

(10) Carta Pastoral Colectiva (Buenos Aires: May 15th. 1976).

(11) President of the Comisión Episcopal Argentina to Minister of Interior, Gen. Juan Albano Harguindguy, letter, June 14th. 1976.

(12) Farrel, op. cit., pp. 237-238.

(13) Farrell, op. cit., pp. 242-243.

(14) Jorge Reinaldo Vanossi, La Constitución Nacional y los Derechos Humanos (Buenos Aires: Eudeba, 1986), pp. 45-53.

(15) Caminando Hacia El Tercer Milenio: Carta Pastoral de la Conferencia Episcopal Argentina para preparar la Celebración

de los 2000 Años del Nacimiento de Jesucristo (Buenos Aires: Conferencia Episcopal Argentina, 1996), pp. 15-20.

(16) Secretaría de Información Pública (República Argentina). Diferendo Austral: Texto del Tratado presentado por la Oficina de la Mediación Papal y rubricado por las delegaciones de Argentina y Chile, que será presentado a Consulta Popular (Vatican State: State Secretariate, October 18 1984).

(17) The Argentinian designation for the capital of the Islas Malvinas (Falkland Islands) is Puerto Argentino, while the British one is Port Stanley.

(18) Article 30: "The constitution can be reformed in its totality or in some of its parts. The necessity of the reform must be declared by the Congress with the vote of two thirds, at least of its members; but it will only take place through a specially convoked Assembly."

(19) "La Iglesia decidió prescindir del Subsidio Económico del Estado Argentino," Clarín (January 23-29 1996), p. 3.

(20) José María Bidegain, Curso de Derecho Constitucional Argentino (Buenos Aires: Abeledo-Perrot, 1991), pp. 142-145.

(21) Carlos Menem y Roberto Dromi, Reforma del Estado y Transformación Nacional (Buenos Aires: Ciencias de la Administración SRL, 1990), pp. 9-12.

(22) According to the figures of the Instituto Nacional de Estadística y Censos, the economical situation was modified from a level of "hyperinflation" in 1988, to a 3% anual in 1995, and 0.1% between April and June 1996.

(23) The privatizations began with the national air carrier "Aerolíneas Argentinas" in 1990, and continued with others in the fields of services, such as: telecommunications, electricity, natural gas, ports, railways, national maritime carrier (ELMA), etc. The current program has also foreseen the privatization of the nuclear power plants and airports.

(24) See Ministerio de Relaciones Exteriores, Comercio Internacional y Culto de la República Argentina. Memoria Anual (Buenos Aires: 1992, 1994, and 1995).

CHAPTER FIVE:

CONCLUSION

In analyzing the relationship between the Catholic Church and the State there are two key points which characterize the Western political tradition. On the one hand, there is the contribution of Christendom to political science in distinguishing between spiritual and temporal affairs. On the other hand, there is the separation of the realm of influences of the Church and the State. The ideal model of interaction envisages a harmonious and tolerant relationship between the two.

In the case of the Republic of Argentina, with the 95% of the population being Catholic, the principles of Christendom are inserted in the transcendental values of life and culture. These cultural values and moral principles associated with the Church have played an important role in the political and juridical make up of the country. During the period of 1810-1960, the Church-state relationship was characterized by confrontation and conflict. The Agreement with the Holy See in 1966 was a turning point and created a climate of tolerance, collaboration, and mutual respect.

The softened approach to confessionalism adopted by the Argentinian state can be described with the pattern of the secularity type. The Argentinian constitutional secularity formula is defined by the freedom of worship without equality among them, as the Catholic Church has a special status in

relation to other confessions and she obtains a preferential recognition.

The crucial dimensions of the Church-State relationship stems from the fact the Catholic Church as an institution is structured by strict codes and rules defined in the society of the "ancien régime". Yet, she had shown flexibility in responding to modern changes. In this respect, the Catholic Church has to make her position clear with respect to social issues and challenges posed by democracy. In doing so the Church finds herself in a delicate act of balancing. On the one hand, the own dynamics of the ecclesiastical world requires a clear definition of the structure of the religious camp and the clerical power. On the other hand, the insertion of the Church in the society represents an important element to consider. In this sense, the socio-political changes can constitute a relevant source of explanation of the eventual modifications of its orientations. The reflections of this problem introduce the subject of an undeniable permeability between both universes. Moreover, a mechanic explanation of the evolution of the Church can be dangerous and incomplete. The own weight of this twice millenarian institution, loaded with her traditions, whose "élites" seldom lose the long run perspective, cannot be underestimated.

By taking into account the historical, social, and juridical aspects of the Church-state interaction in Argentina, the most crucial dynamic lies in the interpretation of the following paradox. The political role of the Catholic Church has varied from nation to nation. The

role of the Church has steadily become less important in most Western democracies, since voters increasingly support political parties on grounds that have little to do with religion. In Argentina, however, the Church continues to be an influential social and political force. The separated spheres of influence in a democratic context implies the reinforcement of individual rights and freedom of worship. In this context, the Church still retains a pervasive and influential role, not only in society and community behavior, but also has an important impact on the political decision making process. This current influence of the Church in the field of politics is not limited to the traditional sphere of the internal domestic affairs. In the framework of foreign policy, and particularly following the United Nations (UN) Conferences on environment (Rio de Janeiro, 1992), population and development (Cairo, 1994), social development (Copenhagen, 1995), the role of woman (Beijing, 1995), and human settlements (Istanbul, 1996), one can say that the positions adopted by the Argentinian Government and the statements and speeches made by the Argentinian Delegates were similar to the ones of the Holy See. In these conferences, the Republic of Argentina has supported the Vatican positions and points of view on the subjects of rights of the individual, defense of the family, opposition to abortion, population policy, human settlements, social development, environment, the role of woman, environment, and poverty. In this context, one of the unique features of the Argentinian case is that the adoption of the Vatican

positions on the above mentioned issues imply a partial abandonment of the decisive and declared Argentinian commitment or alignment with the United States and the West in the field of world politics. The scope of the relevance and influence of the Church in these matters, can be pointed out to the extent that the Argentinian Government left aside, this commitment with the West, partially, which has been considered a milestone in the context of its internal and foreign affairs.

In Argentina one can also observe that the current Church-state interaction may adopt a pattern of a softened confrontation, whose main reasons can be found on the claims of the Church, against the civil authorities, in the fields of the lack of social justice, unemployment and underemployment, and poverty.

All things considered, in the Republic of Argentina the process of democratization and secularization go hand in hand with the pervasive influence of the Catholic Church. Given these two outstanding historical actors -the Church and the State- which have left their trademark in the social and political panorama of Argentina, this study aimed to provide a better understanding of the relationship between the two.

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