MATERIALS OF PEACE
AND HUMAN RIGHTS, 20

RELIGION AND HUMAN RIGHTS
TOWARDS A CULTURE OF COEXISTENCE

IDHC (ed.)

Generalitat de Catalunya
Departament d'Interior,
Relacions Institucionals i Participació
Oficina de Promoció de la Pau
i dels Drets Humans

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The “Materials of Peace and Human Rights” series brings together working papers aimed at providing a new and original vision of fields, by publishing research carried out by specialised centres and experts.

Generalitat de Catalunya
Departament d’Interior,
Relacions Institucionals i Participació
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INDEX

INSTITUTIONAL PRESENTATION. XAVIER BADIA I CARDÚS 7

PRESENTATION OF THE TASK FORCE ON HUMAN RIGHTS IN THE MEDITERRANEAN AND THEIR OBJECTIVES AND METHODOLOGY INTRODUCTION TO THE DEBATE 8

1. RELIGIONS AND HUMAN RIGHTS: HISTORY OF THE DISPUTE AND CONFLICT. JUAN JOSÉ TAMAYO 10
- 1.1. Immersion in the culture of human rights and the ongoing infringement of human rights 10
- 1.2. Questioning secularisation and the return to religion 11
- 1.3. The return of religion against all odds 11
- 1.4. The problem of the foundation of human rights in religions 13
- 1.5. Conclusion 19

2. UNIVERSALISM AND RELATIVISM: 20
- 2.1. Limits to human rights? Aspects to debate 20
- 2.2. On the foundation of human rights. Josep M. Esquirol 21
- 2.3. Universalism and relativism: limits to human rights? Jordi Bonet 26

3. HUMAN RIGHTS, STATE AND RELIGION: 33
- 3.1. Aspects to debate 33
- 3.2. The State and Religion: What is their Future? Ahmed Rahmani 34
- 3.3. Relationships between Public Authority and Religious Confessions in Spain. Juan Ferreiro 44
- 3.4. Conclusion 48

4. CIVIL SOCIETY, BETWEEN SECULARISM AND THE RELIGIONS: 48
- 4.1. Aspects to debate 48
- 4.2. Secularism and Coexistence. Carme Tolosana 49
- 4.3. Religion and Human Rights in European Christian Tradition. José Ignacio González Faus 52
- 4.4. What is the Muslim Presence in Civil Society? Identity and Feelings of Belonging. Hafid A. Aarab 54
- 4.5. Conclusió 59

5. FINAL CONSIDERATIONS 59
- 5.1. Religions and human rights: historical dispute and troubled relationship 59
- 5.2. Universalism and relativism 60
- 5.3. Human rights, state and religion 63
- 5.4. Civil society: between secularism and religions 65

BIBLIOGRAPHY 65

INSTITUTIONAL PRESENTATION

Xavier Badia
Director of the Office for the Promotion of Peace and Human Rights

In recent years, Catalonia has made intensive developments in its Mediterranean dimension, from the point of view of economic, cultural, human and also political exchange. Its projection as a complex, democratic and modern society has been based on the defence of a model of coexistence that has become the collective task for the different administrations (the Government of Catalonia, town councils, provincial councils, etc.) and civil society, built on a series of principles including respect for diversity and the value of solidarity and a number of objectives, such as social cohesion and a commitment to progressing towards a better world.

We should at this point refer to the complexity of the Mediterranean as a region, where we find cultural, social and religious elements that we have in common and also where the gap between North and South, primarily in terms of the standard of living, is becoming increasingly wider, and where questions such as migratory movements and the existence of unresolved structural conflicts also, unfortunately, foster a distancing between the two shores. Despite the geographical proximity and the existence of numerous interrelations, the mutual perception and knowledge of the other are questions that have yet to be answered in this region. In this sense, we need to find new tools that favour dialogue based on mutual respect and also ask ourselves as a society what the issues for debate are behind these views.

In this context, the Office for the Promotion of Peace and Human Rights, of the Department of the Interior, Institutional Relations and Participation, aware of the government's desire to promote human rights and the peace culture, considered that the time was right to support an event such as the one included in this publication. We should remember that one of the Office's mandates is to strengthen the communal space between institutions and civil society that are committed to promoting human rights by supporting their activities as much as it can.

In this sense, and given the relevance and current importance of the reflection surrounding religions and human rights in Catalonia, the Office promoted the development of a debate between associations into the main questions about the role of religions in the public arena, as well as our collective thinking and our actions, in the certainty that the way in which these debates were presented would strengthen all the elements that contribute to the cohesion of society.

The result of this debate, which took place over six months in 2009 and 2010 in the form of seminars, is the publication you are holding. I am grateful for the editing work undertaken by the Catalan Institute for Human Rights, as well as the dynamisation conducted by the group of associations involved in the project, coordinated by the Catalan Federation of NGOs for Human Rights. Apart from the papers that analyse the topic from different perspectives, the publication brings together the interesting debates to come out of the sessions; questions and answers to help us focus on such important issues as the weight of universalism and relativism in the relationship between religions and human rights, the role of the State and the role of civil society and its evolution.

We hope that this publication will prove useful and that it will serve to show some of the major debates that the reappearance of religions in the public arena are encouraging in the conception of human rights and, in general, in the conception of the society that we want for the future.

PRESENTATION OF THE TASK FORCE ON HUMAN RIGHTS IN THE MEDITERRANEAN, THEIR OBJECTIVES, AND THEIR METHODOLOGY

As a result of the General Assembly of the Euro-Mediterranean Human Rights Network in Barcelona in December of 2008 and thanks to the participation of several Catalan entities, the OPPHR or Office for the Promotion of Peace and of Human Rights (*Oficina de Promoció de la Pau i dels Drets Humans*) launched an initiative creating a task force on human rights in the Mediterranean. The project combines the efforts of several Catalan human rights entities and aims to strengthen the government's human rights discourse in the Mediterranean. This is especially critical now that the Union for the Mediterranean will have its headquarters in Barcelona.

The OPPHR has entrusted the Catalan Institute of Human Rights with the task of providing impetus for the group and Catalan Federation of NGOs with the task of organising it. The call to take part in the group was made by the OPPHR to the participants of the General Assembly of the Euro-Mediterranean Human Rights Network. However, membership in the group remains open and membership has continued to increase while the group continues to maintain its objectives.

The members of the task force over the last two months are as follows, in alphabetical order: ACSUR-Las Segovias, Alliance for Freedom and Dignity, Euro-Arab Centre of Catalonia, Cristianisme i Justícia, Elcàlam, School for a Culture of Peace (Escola de Cultura de Pau), Catalan Federation of Human Rights NGOs, Catalan Institute of Human Rights, Sodepau, Palestine in Heart, and one individual member, Carla Canal.

The group's objectives, as defined by the members of the group in the first meetings are as follows:

- To study and analyse the human right situation in the Mediterranean area.
- To provide support for and information about the principles of human rights in the area and to bring violations of these rights to light.
- To work actively for Euro-Mediterranean relations, especially in terms of the behaviour of the European Union towards its southern neighbours.

In order to achieve these objectives, the members of the group decided to concentrate their efforts on a specific point which was of interest to all of the participants, and which, at the same time, did not overlap with the activities of the members.

The subject chosen was "religion and human rights", i.e. relationships, interactions, limits and conflicts between these two concepts on the two sides of the Mediterranean.

One of the primary conclusions which the members reached was that there is a lack of information on, and awareness of, the subject. This led to a decision to adopt a working methodology that consisted of holding public and internal seminars and debates, and seeking the analysis and reflections of experts, academics, public officials and activists to add theoretical and practical content on this often controversial subject.

This publication is the result of the efforts of this group and from the four seminars held over two months, which are reviewed in detail below.

The first seminar took place on 23 October 2009 and was titled "Religions and Human Rights". **Juan José Tamayo**, Professor of Theology and Modern Religions at University Carlos III in Madrid and Director of the Ignacio Ellacuría Department of Theology and Religious Sciences spoke at the seminar. The seminar began with an internal discussion with the members of the group and Professor Tamayo. Afterwards, the conference hall of the Ministry of the Interior, Participation and Institutional Relations was opened to the public. Fifty people attended the seminar. The objective of the first seminar was to lay the groundwork for the debate by reviewing

the history and current situation of the relationship between religion and human rights. Below is the speech given by the key speaker, Professor Tamayo. The speech provides a refined account of the initial points of the debate set forth by the members of the group, such as the role of the different religions in protecting human rights as well as their direct violation of these rights.

Key points of the debate at this seminar were as follows: the culture of human rights, one that is eminently western and from a Judeo-Christian tradition, one that is universal in its content, founding and development of regulations. However, this universality should be transmissible to mediation on the local level, and the Universal Declaration of Human Rights has clear limitations which must be overcome with integration and by honouring other values such as hope, interdependence and compassion which we find reflected in other religions and cultures.

The world finds itself in a situation in which human rights are continuously violated by our institutions. This is exacerbated by neoliberal thought that only pretends to concede rights to holders of these rights and makes human rights a commodity. In contrast to the classic theory of human rights, based on the dignity of the person, with a strong anthropological basis, neoliberalism is based on ownership and the exclusion of the majority of the people in the world as holders of human rights.

This is why human rights must be put into a temporal context, they must be adapted and reinterpreted in historic context in order to face the dangers of ideological approaches which aim to exclude. In this effort, interculturality and religious pluralism can play an important role.

Tamayo argues that the religions, moreover, the three major monotheistic religions, have seen a return to public life after modernity had cornered them in the private sphere. The return of religion, which has happened in almost all areas (political, social, moral and cultural), has also led to the emergence of fundamentalism, which aims to impose its religious demands on everyone.

An effort must be made to in the arena of human rights, in its regulatory bodies, to block these demands while incorporating other inherent values of different religions which are part of the common denominator of humanity such as compassion, sympathy, solidarity or aiding the poor in way that does not foment wellfarism, but enables them.

Without a doubt, we must punish church actions that go against the basic principles of humanity, and that historically or currently are carried out in a more or less generalised way by churches and religious structures. We must also separate these in this debate from religion as a philosophy or as a way to understand the world and humanity.

The second seminar was held on 17 November 2009 and was titled “Universalism and Relativism: Limits on Human Rights?” **Josep Maria Esquirol**, Professor of Political Philosophy and Contemporary Thought from the University of Barcelona and **Jordi Bonet**, Professor of International Public Right at the University of Barcelona took part in the seminar. As in the first seminar, the meeting had two parts, first there was an internal discussion among the members of the task force and then the seminar at the headquarters of Cristianisme i Justícia (Christianity and Justice) was opened to the public. The event was attended by 20 people. The two keynote speeches are also included in this document, as well as an introductory document on the subjects and questions posed in the debate, and as such, these will not be covered in this presentation.

The third seminar was held at the headquarters of the Catalan Federation of Human Rights NGOs on 15 February 2010 and was titled “Human Rights, State or Religion”. The meeting had the same format as the two previous seminars and the public portion of the seminar was attended by 20 people. **Juan Ferreiro Galguera**, at the time Assistant Director of Coordination and Promotion of Religious Freedom at the Ministry of Justice and **Ahmed Rahmani**, Director of the Institute of Modernity in Paris spoke at the seminar. Both of their speeches, as well as the highlights of the debate are included later in this document.

The fourth and last seminar, which was titled “Civil Society: between Secularism and the Religions” took place at the headquarters of Cristianisme i Justícia (Christianity and Justice) on 8 April 2010.

In contrast with the previous three seminars, there was only one segment, which was attended by 20 people, among them the keynote speakers, **Carme Tolosana**, Professor Emeritus of the Department of Applied Pedagogy at the Autonomous University of Barcelona, **José Ignacio González Faus**, theologian and Jesuit and **Hafid A. Aarab**, Director of the Sants Islamic Cultural Centre. The topics covered in the debate are also included in this publication, as well as the three speeches of the keynote speakers.

Many of the questions and concerns brought up in the beginning, which are discussed in this document, were not resolved univocally, simply because there was no single and true answer. The Mediterranean Human Rights Task Force organised these seminars with the objective of generating an opinion of the members, but also to promote awareness. For this reason the Office for the Promotion of Peace and Human Rights created the text and documents that you now hold in your hands. We hope that they prove useful and you find the subject of the relationship of the religions and human rights as fascinating as we do and that if your personal doubts are not answered, at the least these documents serve to illustrate and to provide material for debate and reflection.

Enjoy!

1. RELIGIONS AND HUMAN RIGHTS: HISTORY OF THE DISPUTE AND CONFLICT

Juan José Tamayo

1.1. Immersion in the culture of human rights and the ongoing infringement of human rights

We live our lives immersed in a culture of human rights, a culture which generally considers these to be universal in their foundation, their content and their regulatory development. It is a culture of consensus with few detractors, although there are critics of its conceptual formulation, its legal regulation and its sometimes selectively exclusive application.

At the same time, we live our lives immersed in a culture that systematically infringes on human rights, not only that of individuals but also – and in a very pronounced way – structurally and institutionally, sometimes with the (complicit?) silence of national, regional and international organisations without whose collaboration this would not be possible and who are charged with ensuring that our human rights are protected. However, most of the time this means protecting the interests of the “empire” and multinationals under the umbrella of neoliberal globalisation. One could say that human rights still seem to be a pending challenge, or, in words of José Saramago, the utopia of the 21st century.

Neoliberalism denies every anthropological foundation of human rights. It deprives them of universality, making them mere rhetoric which serves to hide the defense of certain interests and establishes a purely economic basis and logic for the exercise of these rights, one based on property and the accumulation of purchasing power. In neoliberal culture, human rights tend to decline. Only people who are owners of property, people with economic power, are subjects of these rights.

In order to make these stop being our pending challenge, human rights can not be formulated or constructed abstractly or without the context of time; they must be placed in a concrete timeframe, in accordance with legal-sociological principles on human rights. At the same time, they must be constantly reinterpreted, considering the historic context. Today, the context in which they must be reformulated and interpreted is, on the one hand, a context of neoliberal globalisation of economics

and technology – a globalisation of exclusion – and on the other, a context of social and cultural fragmentation of the citizenry. Interculturalism and religious pluralism are also of key importance. They open horizons and the content of human rights to the different cultural and religious influences, not only those of western culture and Christianity, the most significant religion in this arena.

1.2. Questioning secularisation and the return to religion

The relationship between religion and human rights has always been troubled. Religions have been, and continue to be, very occupied with the defense of divine rights. Only with great difficulty have they given any attention to human rights. Even when they do this, it is to subordinate human rights or contrast them with divine rights. In cases where the two rights conflict, the absolute rights of God generally predominate over the limited rights of mankind, the Truth of God over people, the Word of God over science, reason and human logic. One of the most illustrative cases here is the condemnation of the Inquisition and the methods that were employed in it.

What role do the religions play in the reformulation and redefinition of human rights in the current climate of religious and cultural pluralism?

1.3. The return of religion against all odds

Let us begin by suggesting that the current interest in this relationship – one that is very often troubled – between human rights and religions is motivated by a new phenomenon: the awakening of the religions, the return of the gods or, as Gilles Kepel termed it, "the revenge of God".[1] This is an unforeseen phenomenon that questions the theory of secularisation as the only interpretive category of the evolution of the religious phenomenon, constructed from Comte to today. According to Salvador Giner, almost nobody today holds general and univocal secularisation to be a corollary to the process of modernisation. Highly secularised societies are only relatively so.

The following changes have taken place in little more than thirty years:

- We have gone from religion as a residual phenomenon, one that is marginal and irrelevant with a limited shelf life to religion being a fundamental dimension which shapes the cultural identity of populaces and communities.
- We have gone from a forum for mental peace, from a calmness of conscience in a storm, to religion as a source of conflict, even leading to new religious wars based on doctrine, which in turn lead to fundamentalism stoked by religiously motivated terrorism.
- We have gone from the "invisible religion" which Thomas Luckmann described in the 60s,[2] to political religion, as with Judaism and the key role played by ultra-orthodox Jews in the policy of the State of Israel. In Islam, we have seen an intrinsic linking of religion and policy. From the Catholic leadership in Rome we have seen their program to "re-christianise" and defend the "Christian roots" of Europe as well as their request to the Catholic members of parliament that they defend the Christian view in political policy and lawmaking and oppose laws contrary to the Christian concept of the individual. We see this in the fundamentalist evangelical world of the United States that has played a decisive role in neoconservative policy for a quarter of a century and in the election of the presidents Ronald Reagan, George Bush the father and George W. Bush the son and in their political actions.

1. G. Kepel, *La Revancha de Dios: Cristianos, Judíos y Musulmanes a la Reconquista del Mundo.* (English edition: *The Revenge of God: The Resurgence of Islam, Christianity, and Judaism in the Modern World*). Madrid, Anaya, 1991.
2. T. Luckmann, *La religión invisible: El problema de la religión en la sociedad moderna.* (English edition: *The Invisible Religion: The Transformation of Symbols in Industrial Society*). Salamanca, Sígueme, 1973. (Original version published in 1967)

- We have gone from religion, worship and devotion being confined to the private sphere to the reconquest of the public sphere.
- We have gone from religion as a phenomenon without social meaning (being a believer or not being a believer was irrelevant) to the explicit affirmation, or better, to public affirmation of the beliefs themselves, both on a personal level and a collective one, both in word and deed. An example of this would be the use of the veil by Muslims and the Catholic hierarchy's demand that Catholicism be taught in school.
- We have gone from modernisation of the religions in the middle of the 20th century to religious identity of the states and their institutions starting in the 70s.
- We have gone from the secularisation, desacralisation and privatisation of religion in the 1960s to the desecularisation, reconsecration and deprivatisation of today.[3]

The secularisation of individual moral choices (which are no longer governed by religious criteria) coexists with a sacralisation or "neoreligification" of the public sphere, which is especially present in relationships between right and religion.

Causes for the return of religion

The return of the religions is a very complex subject and does not lend itself easily to a single explanation, rather several factors have come together. Among others, these include:

- The boundless acceleration of scientific advances in all fields – particularly in biogenetics – has raised ethical questions. In this situation is not unusual to turn to religion for ethical criteria to help take stock of advances. For example, behind criticism of the origin, development and control of the bioethics field there is a powerful ethic at work which owes its origins to Christianity.
- The sensation of something missing in the face of the crisis of ideologies and the failure, at least the partial failure, of the great utopias forged by modernity.
- The rapid shift from monocultural and monoreligious societies to societies with multiple cultures and religions creates uncertainty and a wide range of other problems.
- Immigrant groups that feel discriminated against and unprotected in their basic rights tend to appeal to religion to help them to bear frustrations and misunderstandings caused by the lack of social support and to strengthen bases of social cohesion. Both functions can play an important role in the process of reconstruction of identity and integration.[4]

All of these phenomena empirically demonstrate that modernisation can suffer, and as a matter of fact is experiencing regression, and that as a necessary condition for survival, it must incorporate unanticipated elements into the theory of modernisation and its secularizing dimension, such as the possibility of the radicalisation of some sectors of society and the reconversion of some religious trends towards "a relative resacralisation of the hypermodern universe".[5]

Jürgen Habermas believes that an understanding of tolerance in pluralistic societies requires two things: the religious must come to terms with the constant disagreement in their relationship with

3. S. Giner, *Carisma y Razón: la Estructura Moral de la Sociedad Moderna*. (Translation of title: Charisma and Reason: the Moral Structure of Modern Society). Madrid, Alianza, 2003; J. Casanova, *Religiones Públicas en el Mundo Moderno* (English edition: Public Religions in the Modern World). Madrid, PPC, 2000.
4. Various, "Emigrantes y Refugiados: Un Desafío Ético" (Translation of title: Emigrants and Refugees: an Ethical Challenge). *Concilium* 248 (August 1992); Various, "Transgresión de Fronteras: ¿Surgimiento de nuevas identidades?" (Translation of title: Border Infringement: the Emergence of new Identities). *Concilium* 280 (April 1999); R. Aparicio, A. Tornos, J. Labrador, *Inmigrantes, Integración, Religiones.* (Translation of title: Immigrants, Integration, Religions). Madrid, Comillas Pontifical University, 1999; J. Goytisolo, Sami Naïr. *El Peaje de la Vida.* (Translation of title: The Tollbooth of Life) Madrid, Aguilar, 2000; Various, *"Los Retos de las Migraciones"* (Translation of title: The Challenges of Migrations). *Iglesia Viva 2005* (2001).
5. S. Giner, *op.cit.* p. 133.

people of other religious creeds and the non-religious, and the non-religious must do the same with the faithful. Habermas thinks that the neutrality of the state on the subject of worldviews,[6] which guarantees equal ethical freedoms to each citizen, is incompatible with the attempt to have a secularised view of the world be the political standard. Acting as secular citizens people can not in principle deny the potential truth of religious worldviews, nor can they dispute the right of their fellow believers to contribute to public discourse with religious language. Habermas defends the persistence of religion, "Philosophy, even in its postmetaphysical form, will be able neither to replace nor to repress religion as long as religious language is the bearer of semantic content that is insipring and even indispsensible, for this content eludes (for the time being?) the explanatory force of language and continues to resist translation into reasoning discourses".

What is clear is that the subject of secularisation, in spite of being important, does not exhaust sociological analysis of the cultural climates of modernity and of religious phenomenon, nor is it the only hermeneutic category, we must look to other categories: the return of religion, desacralisation, new religious movements, dialogues between religions, fundamentalism, interspirituality, etc.

1.4. The problem of the foundation of human rights in religions

The attitude adopted by religions towards human rights is today one of the criteria for social relevance or irrelevance, for ethical validation or invalidation, and civic recognition or rejection. There are four key factors: the underlying anthropology, the foundation, its recognition and defence in society and practices within the religions.

1. Pessimistic anthropology

The religions generally tend to consider human beings, religious or no, as beings that depend on their maker or creator, who are subject to the plan that divine providence has for humanity. People lack autonomy in how they think and act. Every person, before being an individual with rights and duties, is a sinner in the eyes of God and must seek redemption, but before this they must see the error of their ways and convert. The anthropological position of the religions is generally pessimistic and negative. Agustí d'Hipona takes this pessimism to its extreme in considering that humanity is a *massa damnata* (damned mass), which logically implies the failure of God's plan for creation and salvation.

According to this point of view, human beings are hardly worthy of dignity and rights, rather they have duties and obligations. This is expressed in different legal and moral codes as prohibitions and threats of – not only temporal, but also eternal – punishment.

Once religions recognise individuals as having rights, they must change their anthropological point of view, and therefore, their paradigm. Otherwise, they will continue to hold a position that is diametrically opposite to human rights and systemically opposed to the formulation and exercise of these rights.

2. Foundation: divine right and natural right

Divine right assumes a set of characteristics that differentiate human rights and place divine right above these.[7] The first of these is its *superiority*, since God has given us his revelation and the sources of divine right have precedence in the religious hierarchy over regulations established by humankind. Divine right is considered to constitute the basis and limit of human rights, whose

6. J. Habermas, *Pensamiento Postmetafísico* (English edition: *Postmetaphysical Thinking*). Madrid, Taurus, 1990, p. 62-63
7. S. Ferrari, *El Espíritu de los Derechos Religiosos: Judaísmo, Cristianismo e Islam*. (Translation of title: The Spirit of Religious Rights. Judaism, Christianity, and Islam Compared). Barcelona, Herder, 2004, p. 130.

content is composed by the legislature or human interpretation. The second of these is the *immutability* of divine origin; an immutability that can not be absolute, since divine regimes must adapt to history and to changes in the religious community that obeys their rules.[8] The third of these is *plenitude*, since divine right has all the elements necessary to fulfil achieve its purposes; the duty of human authority is merely to clarify what is contained in divine right and to demonstrate the riches it provides. The fourth is *universality*, which means the universal scope of divine revelation, although in practice it limits itself to persons of a specific religion and in this sense it is a potential universality. The fifth characteristic, in the case of Judaism, Christianity and Islam, is that this is a *revealed right*, since people gain knowledge not on their own account, but through revelation. The initiative, therefore, is God's.

And *natural right*? According to Catholic tradition, which achieves theoretical perfection with Tomàs d'Aquino, divine right is promulgated by God through revelation to different individuals over history; whereas natural right, which also comes from God, is inscribed in creation and in human nature and every individual can access it through reason, without the need for a special revelation. They both agree in terms of their content. In both cases rights are immutable and binding, the natural, for the entirety of humanity; and the divine, for the baptised believers.

For quite some time the very notion of natural right has been questioned from the philosophical and theological point of view as well as historically and legally, both within the religions themselves and from an external point of view. If Locke's doctrine represents the culmination of natural modern right, the philosophy of Kant represents the most radical questioning of it. He transforms natural right and law into rational right and law.[9]

Some branches of Judaism view the question of natural right in a way similar to the view taken by classical Christian theory, although with nuanced differences. The Jewish doctrine holds that, before the revelation, humanity was governed by the precepts that God gave first to Adam and later to Noah: to not blaspheme, to not worship false idols, to not kill, to not be sexually immoral, to not eat anything cut from a living animal and to create courts to administer justice. They are precepts that are characterised by being universal, immutable and compulsory for all individuals. On Mount Sinai God revealed himself and gave the Tablets of Law to Moses to govern the Jews. However, we should recognise that the trend of seeing a reflection of natural right in precepts God gave Noah does not have much credence in the Jewish world.

We should not fail to recognise the intense and profound philosophical and theological debate in Islam on the relationships between reason and revelation, especially during the golden age of Muslim thought, which had a very significant influence on Western philosophy and theology. This is the case with Averroes, who defended the reconciliation of philosophy and theology and how reason could be of great service to faith. Today, however, this mediaeval Andalusian philosopher has little influence on Muslim thought. In today's Islam the predominate trend is to absorb reason in revelation, and natural right in divine right. For Muslims the principles of higher law, known as natural laws in the Catholic tradition, are found in the Qur'an. "Everything rests solely and unambiguously on divine will; no room remains for any theory of natural right, and positive human right can not get any significant relief . In general, all of Sharia is fundamentally and essentially divine", comments Anderson.[10]

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8. Pasquale Stanislao Mancini humorously describes this, referring specifically to divine immutability, as the systems of divine right in which "nobody can make a law, because the legislator has died".

9. L. Strauss, *Derecho Natural* (Translation of title: Natural Right). A: D. L. Sills, (dir.). Enciclopedia Internacional de las Ciencias Sociales. (Englsih translation of title: *International Encyclopedia of Social Sciences*). Vol. 3. Madrid, Aguilar, 1979, p. 572-576.
J. Finnis, *Natural Law.* Aldershot, Dartmouth, 1991.

10. S. Ferrari, *op. cit.* p. 166.
Para un Estudio del Pensamiento Islámico (Translation of title: For a Study of Islamic Thought). M. Cruz Hernández, *Historia del Pensamiento Islámico: 1. Desde los Orígenes hasta el Siglo XII en Oriente*. (Translation of title: A History of Islamic Thought: I. From its Origins to the 12th century in the East). 2. *El pensamiento de al-Ándalus (siglos IX-XIV)*. (Englsih edition: *The Thought of Al-andalus Centuries IX-XIV*). Madrid, Alianza, 2000. 2 v.

3. Hierarchisation of individuals based on their beliefs

Religions tend to establish differences between people based on their beliefs, differences that ultimately lead to inequality, discrimination and exclusion. A distinction is made between believers of the religion itself and believers of the other religions. The first are considered to be chosen by God and enjoy all the privileges that divinity has reserved for believers in this life as well as in the next. Members of other religions are held to be inferior and are the object of punishment in this life and in the future. The supposed justification given for this is that divine revelation is meant for a certain populace, community or group. Ultimately it is based on an arbitrary act of the God in which one believes.

The differences are even more marked between believers and the non-religious, going as far as to assert that they are in error and can not be the subjects of rights, according to Augustinian logic, "error has no rights", as Pope Gregory XVI recounts in his encyclical *Mirari Vos* (1832). Here the arbitrariness leads to exclusion.

Another trend of religions is to establish rigid administrative hierarchies, with church authorities who represent God and derive their power from God, and religious believers who must submissively obey and scrupulously practice the guidelines that emanate from above and are transmitted via God's mediators. The first group enjoys all of the rights, the second recieves all the duties. And this is considered to be of divine creation. A good example of this tendency can be found in the Catholic Church, an organisation with a marked divergence between its hierarchy and the faithful, between the clergy and laymen, between the church that leads and that which follows, or, to use a tired cliché from the scriptures, between the shepherd and his sheep. Before the Second Vatican Council (1962-1965), the Popes described the Catholic Church as an *unequal society*. This inequality was not considered a deviation that needed correction, rather one that was part of the very ecclesiastical structure. More importantly, this inequality is the will of God and is related to the founding of the church by Jesus Christ.

As an example, we provide the testimony of two qualified authorities in the ecclesiastical world below. The first is from Pope Leo XIII, who reigned from 1878 to 1903, "'It is established and manifest that there are in the Church two orders by nature distinct: the pastors and the flock, that is to say, the leaders and the people. To the first belongs the function of teaching, governing, of directing people's lives, of imposing rules on them: the other has the duty of being submissive to the former, of obeying, of executing orders and of rendering it honour".[11] The second is from his successor, Pope Pius X, who reigned from 1903 to 1914, and reinforces the same position put forward by Leo XIII: "the Church is the mystical body of Christ, ruled by the *Pastors* and *Doctors*, a society of men containing within its own fold chiefs who have full and perfect powers for ruling, teaching and judging. It follows that the Church is essentially an *unequal* society, that is, a society comprising two categories of persons, the Pastors and the flock, those who occupy a rank in the different degrees of the hierarchy and the multitude of the faithful. So distinct are these categories that with the pastoral body only rests the necessary right and authority for promoting the end of the society and directing all its members towards that end; the one duty of the multitude is to allow themselves to be led, and, like a docile flock, to follow the Pastors".[12]

4. Objections to the theory of human rights

The religions have raised serious objections – some of which are still valid – to adopting the theory of human rights. They are adamantly opposed to it, considering that the formulation and foundation of the theory of human rights is based on legal anthropological precepts and does not have a transcendental basis. Furthermore, religions resist the practice of human rights in society

11. Leo XIII. *Lettre à Monseigneur Meignan, archevê de Tours.* (English tranlsation of title: *Letter to Monsignor Meignan, Tours archive*). [S.l: s.n.], 1888.
12. Pius X. *Vehementer Nos.* [S.l: s.n.], 1906.

and feel more comfortable in dictatorial contexts. They even deny the value of ethics that do not have a transcendental foundation. Mohamed Talbi, former Professor of Islamic history at the University of Tunisia, criticised the declaration of the Second Parliament of the World's Religions held in Chicago in 1993 because, according to his opinion, it "relegates God to silence, conceals him shamefully and expresses it in atheist terms".

Talbi says,"For me as a Muslim, any ethic which does not integrate this vertical relationship, this transcendent dimension of my humanity is untenable. It is limited to the rules of respectability and co-existence in solidarity and peace. That is good, but it is not enough. An ethic stripped of its transcendental dimension is flat; it does not strive upwards, *it has no direction, no aim and no goal.* It is simple well-ordered animality on earth. Human beings are more than that. It is the duty of prophetic and monotheistic religions to say so, to bear witness to the fact. From there, it is necessary to be ready to lend a hand to anyone".[13]

Religious administration generally resists the practice of human rights, alleging that they have to obey the precepts of their respective holy texts that express the will of God, and therefore have no reason to subject themselves to any human declaration of rights, regardless of how universal or consensual they may be. This attitude represents a hurdle for the globalisation of human rights, added to those already present in a world where monetary interest rules over respect for human rights, the market rules over democracy and the economy over policy.

In the scheme of this doctrine the problem often lies in a lack of agreement on the "Will of God" as expressed in the holy texts and in civil legislation approved democratically by representatives of the people, i.e between laws that are "revealed" and positive right.

5. Institutional conflict

In terms of of institutions, there is ongoing conflict between the legislature and religious authorities who believe that there are certain immutable moral principles which, in their opinion, belong to natural law. These religious hierarchies consider themselves to be the sole legitimate interpreters of this law. This is the case, for example, with laws on divorce, voluntary interruption of pregnancy, homosexual marriage and adoption, and embryonic stem cell research, which the Catholic hierarchy opposes. They do not recognise the legitimacy of the representatives of the people to legislate in these matters. In recent years, we have seen numerous examples of this in declarations by the Catholic Church in Spain. These statements have become increasingly radical and critical, accusing the government and the legislators of aggressive secularism, secular fundamentalism (Cardinal Herranz, when he was President of Legislative Texts), coup d'état (Monsignor Burillo, Bishop of Àvila), secular politics and fear of religion by the party in the power, cultural displacement of Christian humanism, fomenting civic and materialist humanism in Europe that conceals its totalitarian origin (Monsignor Río when he was Bishop of Jerez); qualification of homosexual marriages as "viruses" and "fake" (Father Juan Antonio Martínez Camino, General Secretary of the Spanish Episcopal Conference); and comparing the reform of divorce law to reducing marriage to a level beneath that of a contract of sale (Monsignor Sebastián, Archbishop of Pamplona). Alleging, in the words of Mr. Rafael Termes, "You can not be right if it is not in your nature".[14] But these condemnations have not been only verbal, they have also led to calls to Catholic members of parliament encouraging them to not approve laws, and once approved, to judges, mayors and town councilors inviting them to disobey these laws, and to the citizens asking them to organise against them.

13. M. Talbi, "Una Carta de los Deberes y Tareas de Todos los Hombres" (Translation of title: A Charter of Duties and Tasks for all Human Beings). A: H. Küng, (ed.). *Reivindicación de una ética mundial.* (English edition: *In Search of a New World Ethic*). Madrid, Trotta, 2002, p. 199. (The italics are mine).
14. R. Termes, "¿Hay Conflicto entre Cristianismo y Matrimonio Homosexual? Otra respuesta", (Translation of title: Is there Conflict between the Church and Homosexual Marriage? Another Answer). A: *El País*, 28 July (2005) p. 32. The author was responding to my article: "Pluralismo o Intransigencia" (Translation of title: Pluralism or Intransigence). A: *El País*, 19 June (2005), p. 17, in which I tried to demonstrate that Christianity and homosexuality were not incompatible.

6. Infringement of human rights within the religions

The greatest difficulty that religions face in terms of human rights is in their organisational structure, which is not democratic, and is usually pyramidal-hierarchical, to the point where the church constantly infringes on human rights. The Catholic Church alleges that: a) it is a divine institution, b) is deals with spiritual matters, not political ones, and c) the way it operates is not comparable to other public institutions.

7. Religion and religious leaders in defence of human rights

This is only one face of religion. There is another more positive face, one that is more favourable towards human rights. This takes the form of the defence of the rights of the poor and those who have been pushed aside in the wake of neoliberal globalisation, and all the people and groups who are marginalised for reasons of gender, religion, ethnicity, race and culture. It is important to note that many of the leaders throughout the world who work to defend human rights and social justice come from different religious and spiritual traditions and frequently base their work on these same religious beliefs. We also see striking examples of religious leaders who transcend their own religious traditions and become important figures for believers and non-believers alike.

1. Christianity

In the Christian tradition we have Martin Luther King, Desmond Tutu, Monsignor Oscar A. Romero, the theologian Ignacio Ellacuría and Mother Teresa.

The Baptist pastor Martin Luther King (1929-1968) indicated that his ideals were drawn from his Christian education and the methods and actions of Ghandi. His method of non-violent protest against the all-pervading racism pervaded that affected every aspect of the daily lives of black people and communities was based on these two inspirations as was his defence of civil rights. He led the March on Washington on 29 August 1963, where he gave his historic *I Have a Dream* speech which asked people to stand up for justice, for the rights of all people, to work to put and end to the poverty of blacks, and to move from the quicksand of racial injustice to rock of brotherhood, and to thus ensure that justice would be a reality for all of God's children. He said, "There will be neither rest nor tranquility in America until the coloured citizen is granted his citizenship rights". This was based on the principle that that all men are created equal. The next year, he received the Nobel Peace Prize. In 1968 he was assassinated by James Earl Ray.

Desmond Tutu, the Anglican Archbishop of South Africa, based his egalitarianism on the biblical concept that everything belongs to God and that every individual has the same dignity in his eyes. On this foundation he led the fight against apartheid and for equal rights for whites and blacks in South Africa.

Monsignor Romero, Archbishop of San Salvador (El Salvador) from 1977 to 1980, denounced the abuses of the Salvadorian government, which legitimated violence to the point that it became a key foundation for the government, one that kept popular majorities in chronic structural poverty. He condemned the army and the death squads for the repression they brought to bear against political, religious and union defenders of human rights. He advocated for structural change to better distribute wealth and made constant calls for reconciliation between the guerrillas and the army, to be followed by disarmament and the establishment of a fairer society. "In the name of God, in the name of our tormented people whose cries rise up to heaven, I beseech you, I beg you, I command you, stop the repression!" This was a dramatic call to the government and the army in the wake of a massacre carried out against the people. One day later, by order of Major D' Abuisson, he was assassinated as he celebrated mass.[15]

15. M. Maier, *Oscar Romero: Mística y Lucha por la Justicia.* (Translation of title: Oscar Romero: Mystics and the Struggle for Justice). Barcelona, Herder, 2005.

Ignacio Ellacuría was a theologian, philosopher, Rector of the Universidad Centroamericana (El Salvador), one of the primary human rights theoreticians in the theology of liberation and one of its most dedicated defenders in this small country. He advocated for negotiations between the FLNM and the Government to stop the war and establish a society based on justice. He died a martyr as a result of his belief in justice that stems from faith. Ellacuría bases human rights on biological foundations, leading him to give priority to rights related to survival, which are the most threatened: life, health, housing, work, education and food. Only from this perspective can human rights be made universal, they are a thing that every person is owed and they are required for real unity of that which is human, having sufficient rights or lacking them greatly conditions the development of each person. However, making rights universal requires us to set three complementary factors in context: from where, for whom and for what. And the answer could not be clearer: by and for the popular majorities and in the service of their complete liberation.

Ellacuría's ideas on human rights are guided by the method of placing concepts in a historical context, i.e. a radical critique of the ideologised (i.e. in the sense of concealing or falsifying reality) and ahistorical use frequently seen in philosophy. His application of human rights makes this a criterion for practical realisation and verification within these historical processes, and fundamentally for the defence of freedom *from liberation and not from liberalisation* (not from the neoliberalism prevalent today). Putting human rights in a historical context means protecting the rights of the poor, who constitute three fourths of the world's population; it is they who are denied the application of these rights.

2. Islam

There are numerous Islamic movements and leaders who are committed to defending human rights from within the Islamic faith itself. Mohammad Khatami, son of a Shiite priest of the dynasty of the Prophet, representative of moderate, reformist Islam and President of the Islamic Republic of Iran from 1997 to 2005, favoured democracy as well as the theory and practice of human rights. These, he asserted in 2002, "are one of the greatest successes of our world today. Democracy has no meaning without human rights and without recognising that we have a right to determine our destiny. I believe that there are some principles and norms that are acceptable everywhere. We have to consider human rights as something beneficial".[16] An important criterion in measuring the degree of human rights compliance is, according to his opinion, respect for religious and cultural values. As President of Iran, he personally had to overcome stiff resistance in his country from the clergy, who blocked reforms and timid overtures on religious matters. Moreover, he experienced how these same clergymen prohibited whole lists of liberal candidates from running for office.

Fátima Mernissi, a social scientist, and the Iranian judge Shirim Ebadí are two significant figures in the defence of human rights, especially the rights of women. Fátima has published several works and research papers on the causes of misogyny in the Islam of today, going back to misogynist quotes "attributed" to the Prophet. In 2003 she shared the Prince of Asturias Award with Susan Sontag. Shirim Ebadí worked in Iran for the defence of human rights, especially those of children, and for the liberty of women from within the world of Islam, considering the two tasks to be compatible with her Muslim faith. She received the Nobel Peace Prize in 2003.

There are many Muslim leaders and Islamic movements that have struggled and continue to struggle, using their faith in Allah and the guidance of the Prophet against colonialism, for independence and in defence of human rights. Among these are Alí Shariati (1933-1977), who fought against the Shah of Iran and died under suspicious circumstances in London in 1977. He is considered to be a martyr of SAVAK, the secret police of the Shah. The Indian Muslim intellectual Asghar Ali Engineer is another of those who are committed to human rights movements and the effort to seek harmony among the religions.

16.Taken from an interview with the journalist Ángeles Espinosa published in *El País* on 31 October 2003, when Khatami visited Spain.

3. Hinduism

In the Hindu tradition we have Ghandi (1869-1948), who shines with his own expansive light, who defended human rights through active non-violent civil resistance based on his duty to and faith in God. "The true source of rights is duty. If we all discharge our duties rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like a will-o'-the-wisp. The more we pursue rights, the farther they will fly".[17] Obedience to divine law demands resistance to unjust laws. Subjecting oneself to these laws would be a sin, as would the violation of the divine laws. The defence of human rights is, for Ghandi, inseparable from natural rights and those of animals. Ghandi was murdered on 30 January 1948 in Delhi on his way to afternoon prayer. Another important figure was the *Dalit* doctor Bhirmao R. Amdedkar (1859-1951), who was committed to the fight against social exclusion, religious exclusion and political discrimination of the *Dalit* (i.e. the untouchables). He converted to Buddhism, as did many *Dalit*, because Buddhism opposes the caste system.

4. Judaism

There are many figures in Judaism who are struggling for human rights and for internal reform of the religion. Many Jews are leading the fight for women's emancipation in the feminist movement, sometimes motivated by their religion and sometimes by secular reasons.

5. Buddhism

In Buddhism there are movements and schools of thought that are reformulating ethical principles on the forefront of human rights, following the Buddhist tradition that defends the equality of every person and that is opposed to structuring society in castes. A shining example of this, and of new Buddhist practices, is the Vietnamese poet and monk Thich Nhat Hanh who lives in exile in France. Thich Nhat Hanh is the founder of the Order of Interbeing, which looks at the problems of social justice and peace, raising its supporters awarenes of the conscience of brotherhood and reinterpreting the main Buddhist precepts through a new worldview.18 The Dalai Lama provides one of the most emblematic and brilliant examples of the struggle to promote peace and defend human rights today. His approach is based on a two-pronged revolution, the ethical revolution and the spiritual revolution, which harmonically combine compassion towards others and inner transformation. He has done all this while in the uncomfortable position of being unfairly exiled from his home country, an exile that has already lasted more than fifty years. The monks of Myanmar have taken the same direction, challenging the military junta that has ruled the country with an iron fist since the 1960s – almost fifty years. The monks also led massive popular pro-democracy demonstrations and have demonstrated their solidarity with the leader and Nobel Laureate Aung San Suu Kyi, who has been under house arrest for most of the last 20 years.

1.5. Conclusion

There are no universal religions, nor are there universal gods. The idea of universality recognised by some religions and denied by others is an act of religious imperialism that must be overcome. I believe that religions only become universal when they renounce their absolutist and hegemonic

17. M. Gandhi, *La Verdad es Dios: Escritos desde mi experiencia de Dios.* (English title: *An Autobiography: The Story of my Experiments with Truth*). Santander, Sal Terrae, 2005, p. 210. John Dear edition and introduction. This text was written on 8 January 1925.
M. Gandhi, *Mi vida es mi mensaje: Escritos sobre Dios, la verdad y la no violencia.* (Translation of title: My Life is My Message: Writings on God, Truth and Non-Violence). Santander, Sal Terrae, 2003. John Dear edition and introduction.
18. Among his many works: Thich Nhat Hanh. *Buda viviente, Cristo viviente.* (English edition: *Living Buddha, Living Christ*). 2a ed. Barcelona, Kairós, 2002

pretensions and defend the universal causes of humanity, especially the lost causes. This must be done through dialogue, through respect for the freedom of belief and non-belief and through the renunciation of violence as a means to impose ideas. This happens when they immerse themselves in the day-to-day living conditions of this world; when they take up the universal causes of humanity and of the earth: justice, peace, solidarity, equality, protection of the environment, and human and natural rights. And even in this case, they are universal in a relative way, because their horizon is that of religion.

Religions must subordinate their legal texts, the Vedas, the Four Noble Truths, the Tao, the Talmud, the Sermon of the Mount, ecclesiastical laws, the Koran, Sharia law, etc. to the minimum demands of human beings and nature.[19] If this is not done, they become the enemies of humanity and nature in order to preserve the purity of their language, doctrine, beliefs and morality.[20] A fundamentalist reading of the "holy" texts of religions represents the crassest denial of the message they want to transmit. Reading the texts literally leads directly to a distortion of their teachings for today's world. For me it is important to apply the principle of reciprocity shared by the great religious traditions: treat others as you would like them to treat you. Human rights, cultural diversity, protection of nature, justice, solidarity – religious texts must be interpreted through these. And of course we must never forget freedom, as Quixote says, and in remembrance of the four-hundredth anniversary of his publication: "There is no jewel in the world comparable to freedom".

The theory of the practice of human rights must also be open to the creative contributions of religions and their best humanitarian and ecological traditions. And we must not forget that current declarations of human rights have their roots in religious tradition, in Judeo-Christian tradition, which in turn have their roots in Greek and Roman philosophy. They are also formulated in accordance with a cultural tradition, i.e. western-humanist. All of these are traditions which tend to strongly underscore the personal and individual over the societal and community dimensions. They also tend to neglect the ecological dimension. So in my opinion, it seems we must incorporate the values of other religious traditions: Islam, Taoism, Confucianism, Hinduism, Buddhism, the indigenous religions, etc.

UNIVERSALISM AND RELATIVISM

2.1. Limits to human rights? Aspects to debate

In order to be able to squarely face this debate – in a way that is legally correct – on the universality of human rights and cultural or religious relativism we must first clarify some important points.

What is understood legally as the core of the principle of respect for human dignity, as established in numerous international human rights instruments, is: the right to life, the prohibition of torture and slavery and the right to a fair trial. All of these are based on the basic principles of equality and non-discrimination. So, must we broaden this core principle? Does this core principle – firmly established in our laws – fit with the irrevocable rights of all cultures and/or religions?

We can not forget that one of the characteristics of international law to as it applies to human rights is that it is made by the states, and therefore, everything that is set down in international law is a really political agreement.

19. Dalai Lama. *El arte de vivir el nuevo milenio.* (English edition: *Ethics for the New Millenium*). Barcelona, Grijalbo, 2000
20. J. Moltmann, *Dios en Creación: Doctrina ecológica de la creación.* (English edition: *God in Creation*). Salamanca, Sígueme, 1987.
J. Moltmann, *Derechos del Hombre, Derechos de la Humanidad y Derechos de la Naturaleza* (Translation of title: The Rights of Man, the Rights of Humanity and The Rights of Nature). A: *Concilium* 228, p. 311-329.

So when speaking of universalism we must distinguish between the legal world, which Jordi Bonet covered in his speech, and the world of ideas and values, i.e. the perspective taken by Josep Maria Esquirol.

At the same time, from either of these two perspectives, the question put to the debate group was the role of the different cultural idiosyncrasies and the religions in the universal perception of human rights.

In other words, could you see the universalism of human rights as having to coexist with a certain idiosyncrasies represented by the different cultures and/or religions? Are there limits or barriers to this coexistence? Does this mean that we can debate whether a certain kind of cultural and/or religious relativism is compatible with universalism? Put another way, where are the lines in the sand, the irrevocable rights that leave no room for any type of relativism?

So, we must open the debate on values, rights and religions in order to clarify the differences between values and rights and in order to see if there are values shared by all religions.

Moreover, it is also essential to define the foundation of human rights, and differences which could lead us to false relativism. That is, if we consider that the human condition is universal, does this mean that there are some rights that are derived from this that are also universal? Given this, the group debate was not be able to find consensus, which was not the case with the doctrine on the theory of human rights.

Below are the transcripts of the speeches given by **Josep Maria Esquirol** which look at the different foundations of human rights and provide an overview of the different theories which attempt to answer the question "Why human rights?" Below this is the speech given by **Jordi Bonet** which looks at the debate between universalism and relativism from a purely legal point of view.

2.2. On the foundation of human rights. Josep M. Esquirol

The subject of human rights is a very broad one. I will not directly discuss everything related to the genesis of the first human rights declarations, the problems of the several "generations of human rights", the process of positivisation etc. I will limit myself to the oft-debated topic of the *foundation* of human rights. Obviously, I will not refrain from mentioning the large body of literature on the subject, one which continues to grow. Only in the last decades the number of studies and publications on human rights topics have multiplied spectacularly.

I have no intention to reconcile them here, much less summarise them. I think it would be appropriate, for the clarity of their approaches and for their novelty, to make brief reference to the following authors and schools of thought: the foundation of natural law of the Maritain school, the moral foundation of Tugendhat, the possible foundation in discursive ethics, the rejection of every absolute foundation of Bobbio, and the new perspective proposed by E. Lévinas.

1. Thomist natural law (J. Maritain)

Maritain's anecdote explaining how the 1948 UN Declaration of Human Rights was drafted is very well known, "During one of the meetings of the French National Commission of UNESCO at which the Rights of Man were being discussed, someone was astonished that certain proponents of violently opposed ideologies had agreed on the draft of a list of rights. 'Yes,', they retorted, 'we agree on these rights, providing we are not asked why'. With the «why», the dispute begins".[21] This anecdote shows, on the one hand, the problem with the foundation, and on the other, the need to look at the meaning of this practical *agreement* in terms of a specific list of human rights.

21. J. Maritain. *El hombre y el Estado.* (English edition: *Man and State.*) Madrid, Encuentro, 1983, p. 94.

Maritain understands that the purely *philosophical* problem of human rights is that of its foundation. His particular response to the problem is an example of "traditional natural law" with an Aristotelic-Thomist root. The foundation of human rights is natural law,[22] but not in its modernist version, "The genuine concept of natural law is a heritage of Greek and Christian thought. This takes us back not only to Grocio, who was actually the one who began to distort it, but also to other, earlier authors: to Suarez and Fracisco de Vitoria; and further back to St. Thomas (…) and still further back to St. Augustine and the Church Fathers and St. Paul".[23]

Of course, a key thesis of natural law is the existence of *human nature*, a nature that is evidently the same one for all men, one which has some type of order, purpose or essential arrangement; precisely what is known as "natural law". Maritain explains the concept of natural order with another idea, the "normality of its functioning", i.e. the natural law of all natural beings is the normality of their functioning. However, for man, natural law is a *moral* law because we obey or disobey it freely, not out of necessity.[24] "To sum up, let us say that natural law is something both *ontological* and *ideal.* It is something *ideal*, because it is grounded on the human essence and its unchangable structure and the intelligible necessities it involves. Natural law is something *ontological*, because the human essence is an ontological reality, which moreover does not exist seperately, but in every human being, so that by the same token natural law dwells as an ideal order in the very being of all existing men".[25]

However, what is the content of natural law? Natural law is the set of rules that adhere to its first principle, i.e. they must do good and prevent evil. It should not surprise us then, that the content of the law is enriched to the same degree as the moral conscience of man is developed, i.e. "That progress of moral conscience is indeed the most unquestionable instance of progress in humanity".[26] It is from this that we must try to comprehend the combination of the thesis of natural law and the "historical genesis of right". That which is immutable are the precepts of natural law themselves, they are founded in the nature of things; relativity is more a matter of human knowledge ... ; Maritain accepts, of course, a dynamic historic ineterplay among natural law, the rights of people and positive law.

2. Human rights as moral rights (E. Tugendhat)

At a conference offered by the University of Barcelona in February of 1992, titled "Justice and Human Rights",[27] Tugendhat put forth the thesis that behind human rights lie *moral rights*, "when moral rights are recognized as fundamental rights in the legal system, they are speaking of human rights."[28] So, as Tugendhat points out, the operative term is moral right; the problem of foundation is transferred to the development of a moral theory that upholds moral rights.

Tugendhat looks for a foundation of this moral right that is removed from the argument of positivity, i.e. that allows us to speak about rights that have not been conceded, without having to resort to the idea of absolute values. Of course, he rejects the traditional ionaturalist solution that ultimately would have a theological basis. Tugendhat's "odd" manoeuvre consists of sustaining the strength of that foundation without the traditional foundation. "If this were the only function of this metaphysical concept, we can simply cancel it and keep the simple obligation of respecting every man ..."[29] This means setting aside the concept of absolute values and looking deeper into the idea of a *morality of mutual respect*, which would be what makes us grant moral rights to all men. Based on this

22. Maritain. *op. cit.,* p. 97.
23. Maritain. *op. cit.,* p. 101.
24. Maritain. *op. cit.,* p. 104.
25. Maritain. *op. cit.,* p. 106.
26. Maritain. *op. cit.,* p. 111.
27. Published by the university: E. Tugendhat, *Justicia y Derechos Humanos.* (Translation of title: Justice and Human Rights). Barcelona, Publicaciones de la UB, 1993.
28. Tugendhat. *op. cit.,* p. 13.
29. Tugendhat. *op. cit.,* p. 17.

moral, Tugendhat believes the problem to be solved. “With this, the apparent mystery of the existence of rights that were not conceded is solved in the simplest way, also, these fundamental rights must be granted to their holders, but they are no longer conceded by individual acts or by law, rather we authorise them ourselves by means of a morality of universal respect”.[30]

Human rights are based on moral rights, and these in turn are based on a moral of mutual respect. It is then a matter of researching the foundation of this moral.[31]

3. Discursive ethics and human rights

This is how A. Cortina posed the question and the way to resolve it, “In my opinion, the only way to avoid this trilemma, to get beyond natural law, the ethical foundation in the idea of human dignity and also positivism is to: 1) defend a *dualist* concept of human rights, that not only takes into account the ethical dimension but also that of legal positivism; 2) to look for an ethical basis of human rights in procedural ethics, one that is compatible with pluralism of beliefs, and not substantial ethics; and 3) procedural ethics must make mediation possible between transcendentalism and history”.[32]

We should remember the fundamental principle on which discursive ethics rests. According to Apel, “All beings capable of communication with language have to be recognised as persons, because virtual interlocutors are found in all of their actions and expressions, and unlimited justification of thought can not reject any interlocutor nor any virtual contributions to the discussion”.[33] The basics aspect of this is the recognition as all beings as persons capable of communication.

All virtual participants in a discourse must be granted certain rights (the fact that this is not stated as a fundamental characteristic of human nature, but a condition of a process, makes the objection of the naturalist fallacy irrelevant). On the other hand, “if we could understand these “pragmatic rights” as “human rights”, we could solve the problem of interceding between *transcendentalism and history”.*[34] With this approach Cortina makes us see how the problem of the historicity and the “eternity” of rights might be solved. In effect, it would be necessary to distinguish between two types of rights: firstly, those that are discovered through transcendental reflection because someone who has already recognised them makes a serious argument for them; and secondly, those that have been recognised by specific communities by means of communication passed down through history. While this second type of rights clearly depends on the historical context, the first is founded in the pragmatic suppositions of discourse, and so despite the fact that they must be rights defined by means of fact-based consensus, they must also have a foundation that goes beyond the particular circumstances of the historical context. Cortina identifies these pragmatic rights, interpreted as *exigencies*, as human rights.

Just one final observation, when explaining the meaning of the word “exigencies” as applied to human rights, Cortina appeals to the need to think of the human meaning, i.e. “the satisfaction of these exigencies, the respect given these rights, are conditions of the possibility of being able to speak of “humans” with meaning”.[35] I think that, in effect, herein lies the core of the problem. Later in this paper we defend the premise that the *idea* of human rights can be assimilated with Kantian ideas, that is, conditions of the possibility of the unity of knowledge.

30. Tugendhat. *op. cit.,* p. 18.
31. This is, in part, what is done in: E. Tugendhat. “Retractaciones”. (English translation: Retractions). A: Tugendhat. P*roblemas de Ética.* (Translation of title: Problems of Ethics). Barcelona, Crítica, 1988.
32. A. Cortina *Ética sin Moral.*(Translation of title: Ethics Without Moral). Madrid, Tecnos, 1990, p. 244.
33. K. O. Apel, *La transformación de la filosofía.* (Englsih edition: *Towards a Transformation of Philosophy*). Vol. 2. Madrid, Taurus, 1985, pp. 380-381.
34. Cortina. *op. cit.,* p. 248.
35. Cortina. *op. cit.,* p. 149.

4. Abandoning the foundation and dealing with protection (N. Bobbio)

L'età di diritti (The Rule of Law),[36] the title of Bobbio's book in which he gathers a series of works on the human rights, responds to the following conviction: "from the point of view of the philosophy of history, the increasing debate about human rights, which has finally extended to all the nations of the world, to the point where it has become included in the order of the day in the most authoritative international forums – can be interpreted as a *signum prognosticum* (premonitory sign) of the moral progress of humanity".[37]

This well-known and erudite Italian scholar offers us a good example of the rejection of the theses of natural law and of all positions that try to attain an absolute foundation of human rights. Bobbio understands that the problem of the foundation is poorly posed. In one of the works featured in *L'età dei diritti*, entitled "On the Foundation of Human Rights", he lays out a series of arguments that support his thesis. One of the first consists of recognising that rights contain absolute values. However, Bobbio, echoing Weber, declares, "absolute values, in turn, are not justified; they are assumed".[38] Another argument refers to the genesis and historic dependence of rights. In Bobbio's opinion, there is no absolute foundation of historically related rights. Yet another argument given is the supposed incompatibility among rights, especially between those related to freedoms and those related to social rights.

Bobbio also confesses to another ideological motive of his approach: "The absolute foundation is not only an illusion; sometimes it is also a pretext to defend conservative positions".[39] Thus, we might say that his is a three-pronged proposal: firstly, it is not a matter of looking for an absolute foundation, rather one for each occasion, i.e. the *various possible foundations*; secondly, the ("post-modern") idea that "relativism is nothing to be afraid of",[40] and finally, the main thesis – which is repeated on more than one occasion, "Today, the problem of the foundations of human rights is not so much the act of justifying them as that of protecting them. It is not a philosophical problem; it is a political problem".[41]

5. The rights of the other (E. Lévinas)

Levinas did not systematically treat the topic of human rights, in fact we only find two sections in his works that explicitly include them in the title, "The Rights of Man and the Rights of the Other"[42] and "The Rights of Man and Good Will".[43] However, his collection of works on philosophy can easily be extrapolated for reflection on this subject.

The reason I mention this author here is the novelty of his point of view. While generally every reflection on rights and particularly on human rights presupposes the idea of equality and the relationship of rights and duties, Lévinas considers that there is still something behind the idea of equality and that there is a basic and intrinsic imbalance of rights and duties. In effect, Lévinas, in spite of having great admiration for Greek justice and equality, asserts that the *priority* of your respect for me paradoxically constitutes the foundation of that equality, so that the most radical justice of inequality is based on the justice of equality and proportion. The idea of an *excess of my duties in comparison with my rights* is nothing but an expression of the aforementioned foundation.

Lévinas definitely upholds the *a priori* character of human rights as formulated after the 18th century, "Prior to all *entitlement*: to all tradition, all jurisprudence, all granting of privileges, awards

36. N. Bobbio, *L'età dei Diritti.* (English edition: *The Rule of Law*). Turín, Einaudi, 1990; (Spanish edition: *El Tiempo de los Derechos.* Madrid: Sistema, 1991.)
37. Bobbio. *op. cit.,* p. 100.
38. Bobbio. *op. cit.,* p. 56.
39. Bobbio. *op. cit.,* p. 60.
40. Bobbio. *op. cit.,* p. 57.
41. Bobbio. *op. cit.,* p. 61.
42. Incuded in: Lévinas. *Hors Sujet.* (Outside the Subject). Montpellier, Fata Morgana, 1987.
43. Incuded in: Lévinas. *Entre Nous.* (Between Us). París, Grasset, 1991.

or titles, all consecration by a will abusively claiming the name of reason".[44] This *a priori* character exposes nothing less than "the original coming of God to the mind of man"[45] (which we should not confuse with a theology, rather it is a phenomenology of that which is purely human, where we discover the footprint of transcendency).

Lévinas highlights two aspects of human rights: firstly, the uniqueness and singularity of every person, despite belonging to the human genus; meaning without context. The fact that every man is seen as a unique product of the world is precisely what reveals "the fingerprint of God on us, or more precisely, the point in actuality where the idea of God is put into us".[46]

The second aspect is highlighted in his discussion with Kant. This last point presents right as closely connected to freedom. Rights are necessary because they represents the possibility of exercising one's liberty externally. Because particular freedoms – in their external manifestations – might conflict, only universal right, i.e. rights that open every personal freedom to that which is universal and allows everyone to access truly human freedom, can be the foundation of a union or a community. "An action is in accordance with right (Recht)", says Kant, "when it allows, or when its maxims allow the freedom of the free will of every individual to coexist with the freedom of all in accordance with universal right".[47] The principle of war among multiple wills is solved by just right that is in accordance with universal rights.

Lévinas raises a concern about this point of view: "Thus limited by justice in this manner, does not the fundamental principle of the right of man remain repressed, and does not the peace it inaugurates among men remain uncertain and ever precarious?"[48] What Lévinas rejects is the idea of rights that inevitably require the intervention of politics or policy (of the state) as a guarantor of respect ("a legal appeal to politics"). On the contrary, Lévinas sees it all from another perspective, discovering a different perspective of rights and peace, "a prior peace that is not purely and simply non-aggression, but has, so to speak, its own positivity. Its dis-interestment is suggested by the idea of goodness, a dis-ineterestment emerging from love…"[49]

The aforementioned uniqueness and interchangeability of every person stems from the responsibility inspired by others. Likewise, the Greek concept of equality – which is soundly rejected – shows that it now in turn must be based on sociability, i.e. kindness and responsibility towards others. "Goodness, childhood virtue; but already charity and mercy and responsibility for the other, and already the possibility of sacrifice in which the humanity of man bursts forth, disrupting the general economy of the real and standing in sharp contrast with the perseverance of entities persisting in their being; for a condition in which the other comes before oneself. Lack of interest in goodness (…) Goodness for the first person who happens to come along, a right of man. A right of the other man above all".[50]

This is not the most suitable place to explain why the philosophy of Lévinas *is not only an ethic*. Undoubtedly, as a *first philosophy*, it is not only a basis for personal relationships but also for society; not only is it the dialogue but also justice; not only is it hospitality but also peace. Nor would this be the proper place – but it is noted – to reflect on how the thesis of Lévinas contrasts with the modern theories of the social contract. We wanted only to present an idea in which, phenomenologically, *the rights of man are shown first and foremost as the rights of the other.*

44. Lévinas. *Hors Sujet.* (Outside the Subject) cit., p. 176.
45. Lévinas. *De Dieu qui Vient a l'idée* (English title: Of God Who Comes to Mind). Paris, Vrin, 1982.
46. Lévinas. *Hors sujet.* cit., p. 177.
47. I. Kant. *La Metafísica de las Costumbres: Introducción a la Doctrina del Derecho, Principio Universal del Derecho.* (English title: *The Metaphysics of Morals: Introduction to the Doctrine of Law, the Universal Principle of Law*). Madrid, Tecnos, 1989. p. 39.
48. Lévinas. *Hors Sujet.* (English edition: *Outside the Subject,* p.122). cit., p. 184
49. Lévinas. *Hors Sujet.* (English edition: *Outside the Subject,* p.123-124). cit., p. 185.
50. Lévinas. *Entre Nous.* (English edition: *Between Us,* p. 135). cit., p.234.

2.3. Universalism and relativism: limits to human rights? Jordi Bonet

Moving beyond the explanation of what the foundations of human rights may be, and of the several possible explanations of their origins, a guarantee of human rights must have a legal dimension. Relatively recent breakthroughs in the legal recognition of human rights and guarantees to ensure their efficacy demonstrate the presence of a historical, progressive and unfinished process, i.e. the legal recognition of human rights.

On the other hand, if the question is posed in terms of looking for the keys to the legal recognition of human rights from the perspective of the dilemma of universalism v. relativism, we must then refer to the internationalisation of human rights, and therefore, to the development of the process to create international legal norms within what we usually identify as the international law of human rights. From this perspective the perception of historicity is different, since the creation of human rights law at an international level is still a relatively new phenomenon, and basically, regulatory policy has been developed as a shared social project since the end of World War II.

An analysis of the international legal recognition of human rights must consider at least three essential premises:

- The duty of international law to respect and protect rights derived from the formation of a general principle of international law that contemplates the need to respect human dignity, and therefore, the intangible fundamental rights of individuals in any place and under any circumstance, is imperative and negates the possibility of legal reformulation without a level of general international consensus equal to or greater than the consensus that brought about the initial agreement. Four additional ideas allow us to characterise the special meaning of this general principle in the context of the international society of today: firstly, it constitutes a structural and constitutional principle of contemporary international law; secondly, it defines a universal legal concept of human dignity – fruit of a general consensus among states – in a specific moment in history; thirdly, due to its intrinsic nature as a legal principle the content will evolve and can be expanded on; and lastly, it may inspire the drafting of more demanding international law, since it will also provide a basis for the recognition of a more comprehensive catalogue of human rights, more than merely what is deemed the minimum common denominator – which means that it would be hypothetically feasible to build a new general consensus that elevates the standard of universal human dignity at some later date.

- The creation of an international law of human rights is done through formal channels of international law. This system is characterised in a very particular way by its relativism, i.e. the importance of the will of the states – the vast majority of international legal obligations include commitments to each of the participating states that depend on the individual state's prior willingness, which is expressed through its behaviour and through express manifestations of this will. Thus, while a state is not committed to fulfilling an international treaty if it has not previously given its express consent, the creation of general international laws – intended, in principle, to effect all states – is only feasible in a climate of general consensus. In the end, this does not mean that there is no need for the several different legal, ideological or political points of view on human rights represented in the states or groups of states to be substantially consistent.

- Unfortunately, there is no evidence that would indicate that the principle of respect of human dignity has special status in the international legal order which would place it above other structural or constitutional principles, including the principle of the equality of sovereign states. This is the logic of the international system, even though international law may introduce functional limitations to a state's sovereignty, it is meant to guarantee the survival of the system of states and considers the survival of these territorial entities fundamental.

Based on these considerations, identifying the universal legal content that represents human dignity has a clearly consensual aspect, which theoretically makes it variable over time. To date,

the general consensus has not varied much from the initial terms linked to the process of the internationalisation of human rights, i.e. to avoid any repetition of the horrific events of World War II. The International Covenant on Civil and Political Rights committee (ICCPR) defines this as (as indicated in Human Rights Committee, General Comment 24 (1994) which outlines compulsory norms related to human dignity (paragraph 8): "a State may not reserve the right to engage in slavery, to torture, to subject persons to cruel, inhuman or degrading treatment or punishment, to arbitrarily deprive persons of their lives, to arbitrarily arrest and detain persons, to deny freedom of thought, conscience and religion, to presume a person guilty unless he proves his innocence, to execute pregnant women or children, to permit the advocacy of national, racial or religious hatred, to deny to persons of marriageable age the right to marry, or to deny to minorities the right to enjoy their own culture, profess their own religion, or use their own language".

The opinion of the Committee on Human Rights on the scope of the concept of *human dignity* deserves some brief comments.

- In accordance with legal ramifications of abovementioned section, the need to also include racial discrimination and genocide in list of prohibited practices should be noted as well as the principle of not returning foreigners to other countries if there is reasonable fear that their lives and/or persons may be in danger.
- An essential element in identifying prohibited practices in the majority of these cases (when they occur as part of a general or systematic attack on a civil population and there is knowledge of this attack) is that they constitute a crime against humanity and thus create a duty to punish the responsible party or parties as duly required by international law. Secondly, in the case of behaviours or practices linked to producing these behaviours – when the behaviours are not linked to the kind of practices mentioned above – it is understood from the interpretation of applicable legislation or by the existence of specific international law that there is an international interest in ensuring that these are pursued legally by the states. (See the Convention against Torture and Other Cruel, Inhuman or Degradable Treatment or Punishment)
- The characterisation of a right as not mandatory, as stipulated in Article 4 of the ICCPR, does not automatically imply that it should be made part of a minimum universal standard, since some laws are not considered to be compulsory because it is not necessary to suspend or repeal them in the case of a public emergency, for example, the prohibition of imprisonment for not fulfilling a contractual duty.
- Although initially it may seem clear that economic, social and cultural rights are absent from this category, we must not forget the interrelation of minimum obligations to these rights in terms of civil and political rights, and especially, those that constitute the fundamental elements of human dignity. So, an indirect protection can be inferred in certain cases from social and cultural rights in as much as the violation originates in the denial of basic rights such as, for example, the right to the life.

The question of if this vision entails a restrictive interpretation of the minimum universal standard of human rights as stipulated in the Universal Declaration of Human Rights (UDHR) requires that we understand that the reality of an international society with fragmented ideological beliefs and legal concepts does not allow for a more general consensus of the notion of *human dignity;* however, the legal expansion of this minimum universal standard is not possible beyond the collective expression of the states since the construction of right is dependent on their will.

Here we must consider some elements to allow us to reflect on the political and legal meaning of this, while adding some margin notes on the point of view expressed:

- For the time being, attempts by institutions to progress towards a more advanced and complete definition of the idea of human dignity – under the rubric of identifying *minimum humanitarian norms* or *basic norms of humanity* – have not served to deepen the building of new consensus. This can be seen in the debates and the lack of visible results in the

hearts of the competent organs of the most important international organisation involved in this discussion: the United Nations.

- The UDHR, in spite of having been adopted through a non-binding legal act, is not an instrument without binding legal value. Firstly, by defining the legal obligations of the states to promote respect of human rights in accordance with Article 56 of the Charter of the United Nations; and secondly, and more critically because it is binding as a policy document – which implies that the states have to consider in good faith the prospect of making serious efforts towards compliance. Therefore, the UDHR expresses a common legal conscience and promotes some shared minimum values, such that this *double dimension of an instrument of legal policy and axiological reference* constitutes an element of progress that the states must not ignore. The pertinent issue is then, how far the real international consensus goes in terms of incorporating regulations stipulated in the declaration, since, as stated previously, the declaration's application to international law is through formal constructs.

- The UDHR – in addition to the human rights inclduded in the catalogue delimiting human dignity – may have generated international practices in terms of other rights and freedoms regulated by the declaration which have become accepted custom, and consequently an *erga omnes* obligation for other states – although without the imperative character related to the declaration's relation to the principle of human dignity, since a state could remain opposed the creation of a custom and thus remain free of any legal obligation. Maybe the right to equality could be given as an example, but we must be conscious that a relatively significant number of states continue to have legal elements of inequality, in law or practice. So, there are expressions of a certain relativism in the idea of distinguishing between the reference to the basic dignity and equality of rights and freedoms, for example, Article 1 of the Cairo Declaration on Human Rights in Islam (1990), adopted by the Ministers of Foreign Affairs of the Islamic Conference. We must make two observations here regarding non-discrimination as a legal manifestation of the right to equality. In general, an unequal treatment in the enjoyment of rights and freedoms would not seem admissible if it did not respond to an objective and reasonable purpose (even proportionality); and in particular the enjoyment of inherent rights in terms of human dignity that would not seem to allow any kind of differentiation.

- The extensive commitment of the states with the International Covenant on Civil and Political Rights (ICCPR) (165 parties) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (160 parties) may be indicative of a general acceptance of human rights that recognised by both. However, this also evidences the tensions and limits of the hypothetical consensus as well as the location of the potential discrepancy, for example, the majority of states that are not parties to the ICCPR are in Asia.

- We must not forget that the international law of human rights is a *minimum right,* since it is based on the idea that the states should have a legal system that offers a more expansive formal and real concept of the concept of human dignity, one that accounts for the programmatic and axiological relevance of UDHR as a framework and inspiration for a process to elevate the states to these minimums. The legal consequences of this position are also very important, if no state has to be tolerant of practices expressing some types of relativism as it relates to human rights that question human dignity as it is universally understood, the states also have no reason to accept them when they violate or put their own legal concepts of public order – which have greater protection than human rights – in jeopardy.

- So, the possibility of evolution based on this general conscience and the values that this entails is not precluded.

Regardless of this general explanation of the perception of a minimum universal standard defined by the principle of human dignity, this restriction reaches what we must understand as the social

product of a world with differences that are deep enough to *relativise it*. It is important to consider that what is really more important is the incidence of relativism and the act of questioning the universality of human rights if we look at it from the point of view of applying and interpreting international law on the subject of human rights.

Firstly, we must make reference to the existence of human rights which are formulated in absolute terms. These do not allow for any type of exceptions or limits. Among these we largely find human rights that include the notion of human dignity, for example, the prohibition of slavery or torture. In these cases, any attempt to find options which might interpret these as being open to *slavery* or *torture* would be nothing more than an attempt to deprive them of their absolute character and an attempt to justify practices that are in opposition to the most elementary international legal regulations. It is clear then, that relativism would have little room in which to develop, there would be no legal relativism on which to found legality, for example, in the case of the excision of the clitoris for cultural reasons or the use of certain torture techniques that are believed to be effective in acquiring information for the fight against terrorism.

Secondly, the majority of human rights are drafted in a way that allows state authorities to establish limits as they see fit. For example, the right to freedom does not mean that a person can not be imprisoned if there is sufficient justification, but deprivation of freedom would run counter to human dignity if the person were imprisoned arbitrarily. This logic of human rights is technically more precise in international treaties and is articulated through exceptions to the enjoyment of human rights – which may be more or less clearly defined and classified – through restrictive clauses which allow the enjoyment of the rights and freedoms to be limited in accordance with certain purposes and interests of a general character. In this discourse, which is open to different interpretations, *relativism* has more room to develop and to face the different views of human rights. A clear example of this, looking at the conceptual framework of the seminar, is precisely the determination of the acceptable limits for the public expression of freedom of thought, conscience and religion – including differentiating between majority and minority options. The limits of relativism are clear in principle, but paradoxically imprecise: firstly, any type of restriction of human rights that would impair essential elements of the powers of concrete subjective rights or that would institute arbitrary or disproportionate limits on the effective enjoyment of those rights would not be not acceptable; and secondly, the restrictions adopted can not be discriminatory, in the sense that there would be no objective and reasonable justification for differentiated treatment.

Thirdly, we must again mention the special nature of the international law of human rights and, in particular, of the international treaties on the subject, i.e. in its conception as a *minimum right*. This concpept, formally stipulated in the vast majority of international human rights treaties (see Article 5.2 of the ICCPR) has a very important consequence; international legality can not be used as an instrument to diminish guarantees for the enjoyment of human rights granted inside a state, i.e. by the state, when these rights go further than rights assumed by the state in international agreements.

Finally, we must introduce another element that reveals the flexibility of international treaties and offers a well-defined field of operations in which to exercise relativism: reservations. Reservations in international treaties allow states that draft them to exclude the application of one or more points of an international treaty and therefore to refuse to recognise or apply guarantees of human rights; and to modify the application of one or more points of the treaty such that the regulation is only applied if the state interprets it to be in accordance with the state's interpretation of that law in the context of its legal and/or ideological perspective. Examples of the former type of reservations can be found, for example, in the formulations employed by states in which the official religion is Islam and/or the majority is Islamic. These require the application of most or some of the points of an international treaty only to the degree that they agree with Islamic law.

Reservations do not have to be authorised in the international treaties themselves, if the treaty says nothing about this, reservations can be drafted whenever they are not contrary to the object and the purpose of the treaty.

The problems posed by reservations are more practical than conceptual. In the former case, it seems clear that it would not be possible to draft reservations in a way that would completely or significantly alter the application of human rights in terms of the international concept of human dignity; at the same time, reservations which detract from the essential content of human rights would be contrary to the law. Certainly, this brings us to the issue of the more practical effects of reservations, and above all, to the effects that do not adapt to the aforementioned parameters of legality; and there is no easy answer.

- The efficacy, or lack of efficacy, of a reservation depends in principle on the position of the other states. They can accept it or reject it. They may even formulate a qualified objection to the reservation which invalidates the effectiveness of the treaty between the states and the state that has created the reservation. In practice, these types of qualified objections to more or less dubious reservations are not common, and states do not generally opt to simply object to reservations, i.e. to oppose mutual application of the treaty with the state that formulated the reservation. So, rejection of a reservation can be shared formally by a group of states – expressing their relativism? – but this does not usually translate to an action involving a large majority of states.
- This immediately raises some questions. Does this mechanism of rejection entail, or not entail, the automatic *per se* elimination of invalid reservations? What effects does an objection have if the human rights treaties create a basic obligation to object, so that each state is responsible for its acts without reciprocity coming first into play? The ICCPR Committee of Human Rights has adopted a universal policy similar to that of the European Court of Human Rights, it evaluates the state as if the reservation had not been formulated when the reservation is not legal in its opinion … but to what degree does this effect the legal and formal elimination of the reservation? In any case, the problem is fundamentally and inherently one of the international law of human rights, i.e. the weakness of the mechanisms which guarantee the fulfillment of legal obligations and reliance on the states to take measures that have a certain degree of constraint – which under any circumstances would not make the adoption of measures easy.

Another aspect to consider, and one based on an objective concept of the *universality of human rights,* is that we must admit that in a subtle and ambiguous way, the Final Declaration of the World Conference on Human Rights (Vienna, 1993), assumed the presence and legitimacy of *relativist particularism* on the subject. Despite the obligation of the state to promote and to protect all fundamental rights and freedoms, the importance of national and regional and national ideosyncracies must be taken into account, as well as historical, cultural and religious heritage (Point 5).

The question, then, is to examine the meaning of the concept of *relativism*.

We should start then with the initial idea that the UDHR and the international law of human rights are an occidental project. Undeniably, this argument has some validity, the UN of the period immediately following World War II is fundamentally an international organisation formed by occidental and neighbouring states. However, it is also a social reality that the progressive enlargement of the number of states that are members of international society and members of the UN has meant that the great majority of them are now participants – by choice or not – in the UDHR project and have acquired voluntary human rights legal obligations.

The project is then undoubtedly a common and shared one and therefore global questioning of the concept of universality is no longer acceptable. But at the same time, even with shared axiological and normative parameters, there is still undeniably some leeway to exercise relativism. However, this leeway is restricted by the structure of international law, greatly reducing the interpretative discretion of the states. Certainly, the *rules of the game* leave the states an ample margin of discretion but they also restrict any pretension of freely interpreting the content of human rights.

This said, it is evident that any position on human rights expresses a certain level of relativism towards universality, even in terms of states that generally come closer to the universal idea of human rights. The origin of a relative view of human rights may stem from religious concepts, but it is also feasible that it has a dimension that is less deeply rooted in these convictions. For example, it can be based on political positions such as exceptionality, designed to deprive "enemies" of the most elementary human rights by virtue of a presumed situation of confrontation that implies the need to disable the provocateur socially and physically. This point of view is implied in the poorly-named *war on terrorism* and in other specific measures that have been articulated by certain states. Furthermore, these practices certainly have not been denounced with sufficient vehemence and bluntness by states with a long track record of adherence to the concept of the universality of human rights.

Relativism has to be considered equally in terms of *political variability.* Purely political relativism primarily involves defending a series of international interests and values, but it has a dimension that is governed by the states' interests which incorporates the demands of political necessity, political complicity and political opportunity. In short, human rights are an issue in which the state acts externally. The states can have and usually do have a *human rights policy* but they also make *policy with human rights (and politicise it).* States can evaluate the actions of other states in different ways depending on their affinities or political interests even though the rights violations are the same. This is a *double standard,* i.e. backing one state but not another when the actions of their insitutions are indentical. This leads to *selective judgment.* States may also act on regulatory initiatives based on political relativism and not on consideration of the relevant values..

The political dimensions of relativism, moreover, favour a multi-sided view of differences on human rights and raise doubts as to the real terms of relativism as it relates to human rights. The example provided by a very recent development may help to clarify things. Since the creation of the Council on Human Rights, a trend has been observed, a trend in which the majority of European initiatives – maybe even western initiatives – are not considered with any kind of urgency by this intergovernmental body, thus, they are rejected by other groups of states represented in the core of the council. On the other hand, a good part of the European member states of the council have not assumed the majority theses on sensitive matters of institutional human rights policy. Among these is the appraisal of the situation in Israel and the occupied territories (before even voting against or abstaining on the vote related to the Goldstone Report). It is important to note that no European member state, with the exception the Russian Federation, voted for Council Resolution S/12–1 of 16 October 2009 which evaluates the abovementioned report and examines appropriate countermeasures. There were 25 votes in favour, 6 against and 11 abstentions.[51] The question then is who plays the key role in the political relativism in this issue – an issue whose gravity clearly is relevant to the efficacy of human rights. Probably, more than points related to drafting texts and condemnations and/or formulating possible courses of action, this could be understood as a demonstration of relativist self-interest on the behalf of other groups of states in terms of the application of international human rights laws.

Finally, if religion is analyzed as hypothetical source of relativism, we must mention that the western perspective has focused on or accentuated particularism stemming from Islam, which has a fairly rational foundation. This central concept must be defined in two ways: firstly, the legal question basically revolves around how and to what degree each of the states where the Islamic religion is present – primarily countries where Islam is the official and/or majority religion – assumes and develops laws related to the postulates that are theoretically derived from religious convictions; secondly, the example of the Jehovah's Witnesses before the European Court of Human Rights demonstrates that the European states have not assumed religious plurality equally, avoiding any sign or measure of differentiated (and potentially discriminatory) treatment.

51. Slovakia, Hungary, Italy, the Netherlands and the Ukraine voted with the United States. Beligium, Bosnia and Norway (and seven more states) abstained. Resolution 64/10 of the General Assembly of the United Nations of 5 November 2009, was adopted with 114 votes in favour, 18 against and 44 abstentions. Only 5 members states of the European Union voted in favour (Cyprus, Ireland, Malta, Partugal and Slovenia).

The analysis of this question from perspective of international law of human rights requires the inclusion of the following parameters.

- Every person has the right to the freedom of thought, conscience and religion; consequently, the right to religious freedom is not regulated from a differentiated perspective in terms of the freedom of an individual to have convictions. Religion at this level is interpreted as a set of convictions based on religious positions (traditional or more modern) or on religious fact. This means it includes both positive and negative convictions, i.e. convictions typical of any religion, including atheism, agnosticism or indifference towards religions.
- One of the main problems in defining international legal obligations in this regard – as demonstrated in the preparation of ICCPR Article 18 and the positions of some Arab states – has been that if an element intrinsically linked to the exercise of this freedom, i.e. the right to change religion, is included, then the answer would clearly seem to be positive, in spite of the evident non–compliance of some states.
- To the extent that every religion establishes a *concept of life,* with socially discernable repercussions in the practices of the group or in the form of accommodation of the group in plural society (especially if we are dealing with a religion that is represented by a large majority in the population), the religion constitutes an axiological reference – and the social values the religion advocates can take the form of political or legal proposals – and provides a springboard for individual or collective actions of its members.
- The social dimension of religious ideas has a positive and negative sense simultaneously: it is a contribution to the axiological construction of the society, and therefore, to progress in human rights. However, this may lead to manifestations in law or practice that can be detrimental to the rights and freedoms of the members of the group themselves as well as non-members. Individuals who are not members of the group may be affected by the social actions of the collective and its legal, social and institutional influence, and their way of understanding society, especially in their right to religious freedom, freedom of opinion and expression, the right to education and other fundamental rights (even human rights related to human dignity). In particular, there may be effects founded in discriminatory treatment based unduly on different religious beliefs. It is obvious that this potential negative effect is not automatic nor inevitable, nor does it seem that would be purely horizontal (existing strictly in relationships between individuals and/or religious groups) and that is would not have the clear backing of state authorities
- Because of this, international human rights law raises the possibility of restricting external manifestations of religious freedom, i.e. in how they influence the general vision of life, which can affect the rights and freedoms of the whole population. The state not only has the obligation to respect human rights but also to protect them. This means constant vigilance for possible religious manifestations that might represent a breach of rights and freedoms.

We should add that evidently it is not easy to objectify nor discern when an action authorised or tolerated by state authorities really stems from religious convictions or if it should be interpreted as having more to do with cultural or social traditions; at the same time it is not easy to separate purely religious convictions from ideological or political convictions or manifestations that look to religion for an air of legitimacy. This intrinsic confusion brings up a second problem, especially in societies where a certain religion has been a factor of social cohesion, i.e. clarifying if a symbol has a dimension that goes beyond the religious ambit and represents a set of social propositions and values. An example of this is found in the European Court of Human Rights recent sentence in *Lautsi vs. Itàlia* (although the sentence may be appelaed). The ruling states that despite the implicit social content, a symbol like the cross has a predominantly religious meaning.

3. HUMAN RIGHTS, STATE AND RELIGION

3.1. Aspectes to debate

In this section we analyse the different bonds that states have with religions. We will begin by describing the different relationships between states and religions, starting with the secular state, moving on to the areligious state, and finally examining the theocratic state.

One area of debate would have to be the difference between the processes of secularisation and secularism in the different states in the Mediterranean area. The role that colonisation has played in the configuration of the quotidian existence of many countries and the imposition (or perception of imposition) of certain "occidental" values, including human rights, has led to a rejection of these values, especially by religious structures, but also by social and political ones. So, we should reflect on the differences between the different processes of separation of state and religion, and its current influence.

Another subject to consider involves an analysis that moves beyond formal relationships and examines the true role and influence of religion on state structures in the formation and planning of public policy. What is the link between the public sphere and the private one? What role do human rights play in this relationship? What does it mean that the state is the guarantor of human rights (both positive and negative obligations)? Does this apply to all states, including the authoritarian ones?

We should also analyze, again looking beyond the formal relationships, the true role and influence of religion on state structures. Although historically we can not deny that the only predominant religion in Spain is Catholicism, which influenced many areas of Spanish culture (education, places of worship, festivals …). Nowadays we find a great deal of cultural diversity in our country that has led to different religions existing alongside one another.

An idea for future examination would be to look at the responsibility of the states in terms of bad practices derived from different religious discourses and actions (for example: the Catholic Church's positions on the prevention AIDS in Africa, the promotion of discrimination against women in parts of Islam …)

We can not say that the Spanish state is secular when public funding is used to subsidise certain religions (some more that others) and when some part of our taxes are earmarked to fund a certain religion.

In the same way that there is a right to religious belief, the right to change religion, or not profess any religion should be also respected. One question for debate in this issue is if religion and secularity are part of the internal sphere of the individual, and therefore beyond the sphere of influence of the state, or if the state should regulate issues related to religion. If this is the case, to what point? Where is the limit?

Thus, we must consider if the influence of the churches in relationships of power in our state is not too great. If religion is a question that belongs in the private sphere of individuals, it seems illogical that the role that religions play in declarations that influence questions of general interest be allowed to condition public policy.

If this is the case, then the state is indeed the guarantor of human rights (both negative and positive obligations) but in religious matters the state should only intervene in comparing in the treatment received by the different religious orders (land, facilities, financial assistance,...) without intervening in questions of content, nor should religion be allowed to intervene in conditioning public policies (education, social assistance...)

In order to treat these and other subjects on the relationships of human rights, the state and the religions, the speech by **Juan Ferreiro** is provided below. He examines Spain's situation and

analyzes in detail the framework of religious coexistence and pluralism that the state has developed, pointing out its limitations and failures. Afterwards **Ahmed Rahmani** explains the relationships between state and religion from the point of view of the Muslim religion.

3.2. The relationship between public authorities and religion in Spain: legal position. Juan Ferreiro

1. Introduction

To understand the legal situation of religion in Spain, we must start with the principles, which according to the Spanish Constitution of 1978 govern relationships between public authorities and religious phenomenon, i.e. the principle of secularity or areligiosity and the principle of cooperation, in accordance with Article 16.3 of the constitution.

This basic framework set forth in the Constitution was developed just a year after the Organic Law of Religious Freedom (hereafter OLRF) went into effect.[52] This regulation, the democracy's first organic law that cultivates a fundamental right, marked, among other things, the path by which the legislature decided to frame the mandate for cooperation that the constitution imposes on public authorities, i.e. the signing of cooperation agreements with religions that due to their sphere of influence and number of believers have achieved wide support in Spain.

While the agreements with the Catholic Church were signed more than a year before the OLRF came into effect (and 5 days after the constitution was enacted), it took 12 years for it to be fulfilled and for the state to sign agreements with the three non-Catholic religions that had significant followings in Spain: Judaism, Evangelism and Islam.

These agreements, as established in the OLRF were validated by corresponding ordinary laws approved by the general courts in 1992, as we will see later.

Since then, the diverse issues they cover have taken the form of several laws of different classifications. Regulations proposed by the legislature or the executive branch working within their areas of competence were administered by common agreement with the different religions in a spirit of compromise (i.e. pactism), or at least, their views were taken into consideration.

One of the objectives of the government in these two last legislatures was to develop cooperation agreements with the first three non-Catholic religions – included in the agreement due to their wide following – in order to ensure that the rights stipulated in the agreements were real and effective and also to remove any type of hindrance (social, cultural, legal or economic) to the full realisation of freedom and religious equality proclaimed and protected by the constitution.

Moving on, we look to the constitutional framework in which the relationship between the state (i.e. in its three branches: executive, legislative and judicial) and the religious groups was defined, i.e. the framework that aims to inspire legislators, civil servants and judges to take action in the religious arena.

2. Constitutional model of the relationship between the state and religious groups

The constitution outlines a concrete model for the relationship between the state and the religions. In addition to recognizing that individuals and religions were the rightful holders of the fundamental right of religious freedom[53] and in order to validate the prohibition of forcing one to state their

52. Law 7/1980 of 5 July on religious freedom (Official Spanish Gazette number 177 of 24 July).
53. Art. 16.1 EC: 1. "Freedom of ideology, religion, and cult of individuals and communities is guaranteed without any limitation in their demonstrations other than that which is necessary for the maintenance of public order protected by law." "Such freedom of worship, conceived originally to pertain individually to each citizen is, likewise and by extension,

beliefs,[54] Article 16 establishes that activities of public authorities as they relate to this issue must be guided by two principles that have a natural tendency to be contradictory, but that by constitutional imperative must coexist, i.e. the principle of the areligiosity or secularity of the state and the principle of cooperation.

A) Principle of secularity or areligiosity of the state

In Article 16.3, the first paragraph states: "*No religion shall have a state character.*"

The formula that was settled on in the preliminary draft of the constitution was more convincing, "The state is not religious". But this version did not survive, perhaps because it was to reminiscent of the one coined in the Constitution of 1932 of the II Republic, which stated, "There is no official state religion".[55]

The formula adopted by the Constitution of 1978 can be interpreted as a declaration of very timid areligiosity or secularity for two reasons. Firstly, the abovementioned declaration does not appear in the preamble, which would be a better position in the constitution where, in principle, the ontological traits of the state are expressed. Instead of placing this in the preamble, the drafters of the constitution decided to insert it in the chapter referring to fundamental rights, specifically, the one that guarantees the individual and community right of religious and ideological freedom and freedom of worship.

The second reason why some people believe that this is a lukewarm expression or one with little resolve is the fact that the sentence in question avoids an express reference to the state. Thus, the word "state", which reflects the article's position on religion, is not only not in the place that would correspond to the subject of the sentence – as it should presumably be – but is omitted from the sentence entirely.

Maybe this timidity is nothing but the result of the attempt by the constitutional authority to search for a happy medium between two extremes, i.e. the theses of those that fought to sustain, even if was in a snide way, the religious character of the state and those that, advocating for strict secularity, wanted any mention of the Catholic Church to disappear from the text of the constitution.

Taking into account that some principles turn out to be difficult to reconcile (given that the absolute triumph of freedom could erode equality or vice versa), maybe the drafters of the constitution decided to adapt the core elements of secularity to the demands of cooperating to help avoid traumatic ruptures between a religious state and a secular state, and to thus preserve social peace (the memory of the end of the II Republic seems to advise this).

However, this cooperation, which took on the role of softening secularity, would later reveal itself with unforeseen potential initially, i.e. the policies developed through cooperation in religious matters, which would show themselves to be effective instruments in contributing towards the integration of immigrants into Spanish society. Religious freedom has become, then, an effective leveraging mechanism for the integration of immigrants. Obviously, when the constitution was ratified, nobody imagined the avalanche of immigration that would take place in our country primarily after 2000.

Returning to the subject at hand, the drafting of the expression in the constitution "No religion shall have state character". Perfectly reflects the secular character of the state despite its timidity or temperance. Secularity is a concept that is based on two conceptual tenets: the separation of the two institutions and the neutrality of public authorities in religious affairs. In the following section we will examine the essential traits of these conceptual tenets.

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applicable to the faiths or communities that groups of individuals may establish to comply collectively with their religious aims, subject to no prior authorisation or enrollment in any public Registry." (Stated Purpose of the Cooperation Agreement Between the Spanish State and the Islamic Commission of Spain)

54. Art. 16.2 "No one may be obliged to make a declaration on his ideology, religion or beliefs".

55. J. Ferreiro Galguera, *Relaciones Iglesia-Estado en la II República Española.* (English edition: *Church Relations, State in the II Spanish Republic*). Barcelona, Atelier, 2005, p. 62.

I. Separation of church and state

The basic idea of this principle is that the religions that exist in society and the public authorities (i.e. the three levels of public authority: central, regional and municipal) are independent and autonomous entities.

This gives us the first consequence, the *principle of non-interference* in both directions, that is, by the state in religious matters and by the religions in state affairs.

With respect to the first point, the constitution forbids the intervention of the state in religious matters. In other words, public authorities can not interfere in the internal operation of the churches, which have the right to organise themselves as they see fit.[56]

As the constitutional court reminds us, public authorities have to avoid any kind of confusion between state and religious functions. This would occur, for example, if the state intervened in the internal operation of the Catholic, Islamic or Spanish Protestant churches.

However, the public authorities can indeed, by virtue of the principle of cooperation (we will focus on this more later) provide counsel to the religions, in instances such as this and in the matters that they deem appropriate, as long as they avoid the temptation to resort to paternalistic and much less interventionalist attitudes.[57]

The inverse consequence of the principle of non-intervention is that the religions (or their ministers of worship) can not interfere in state affairs merely because they are religious in nature. Below are two examples of hypothetical interference related to ministers of religious affairs or the doctrine itself.

a) Obviously, a minister of worship has the same right to participate in public matters as any other citizen, but not because of his or her status as a minister of specific religion, but as a citizen.[58] It is for this reason that, in the courts of Spain, seats are no longer reserved for the representatives of a religion, as was the case during the Franco Regime and the bishops, since this would go against the principle of separation of church and state, and therefore the principle of areligiosity or secularity.

b) No religion can expect that its dogmas or beliefs will be automatically transformed into law. If religious ideas take the form of a civil regulation, it will be because they have been approved of as such in parliament, following the established procedure.

II. Neutrality of the state in religious matters

The state's position on religious matters is neutral. This means that the right, not to instruct, but simply assess the different religious creeds, belongs to individuals and communities (who have the fundamental right of religious freedom), and not to the public authorities.

The state is absolutely not competent then in the spirit of the constitutional court, in acts of faith, and therefore, can not appraise their legitimacy.[59]

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56. As established in Article 6 of the OLRF, one of the effects of the inclusion of the religions in the Official Registry of State Religious Entities is the right to regulatory autonomy, which implies the possibility of not adopting a democratic structure, something which does apply to associations, since Article 2.5 of Organic Law 1/2002 which regulates the rights of associations stipulates that "the internal organsiation and operation of associations must be democratic and fully respect pluralism."

57. This does not mean that the state declines its right to uphold current laws. This means that if a religious entity holds a general assembly or drafts or alters its statutes, and any of these acts is in direct violation of current legislation, the state must act to ensure that there is full compliance with the law either through the executive branch, or in the last case, through the courts.

58. An imam, a rabbi or a priest can act as a public servant, just as any citizen can, as long as they are selected through the standardised competitive state public servant examination, which is based on the principles of equality, merit and ability.

59. "The creation of a registry (...) does not authorise the state to carry out controls of the legitimacy of religious beliefs (...), it only authorises it to verify – only as an act of confirmation and not one of qualification – that the applicant is not an

This is why the term "sect", due to its negative connotations, is not a legal but sociological term. The state can not differentiate between the religious heterodoxy or orthodoxy of a specific group. Religious communities have official status for public authorities once they have been authenticated through an act of verification (not of qualification) that complies with the stipulations of current regulations, and they have been listed in the Registry of Religious Entities (hereafter RRE) of the Ministry of Justice.[60] These requirements are formal, as well as the denomination, address, the type of operation and the representative organs. The most controversial requirement is the declaration of religious purpose. In the spirit of secularity, the state must require this declaration. But if the religious purposes are well defined, the state must make an "act of faith", as the expression goes, since the Human Rights Commission – in its interpretation of Article 18 of Human Rights Declaration – recognises that "the right to the freedom of thought, conscience and religion" establishes that the terms "belief" or "religion" must be interpreted in their broader sense, i.e. including theistic, non-theistic and atheist beliefs, as well as the right not to profess any belief or religion.[61]

This does not mean that the RRE does not have control mechanisms. When a religious group registers in the RRE, the laws in effect act as a double filter, i.e. constitutional and legislative; these are not applied preventively.

In terms of the constitution, Article 22.2 proclaims that associations (of any nature, including religious) that *pursue goals or use means typified as criminal* may not register and are to be considered illegal and open to prosecution.

On the other hand, Article 3.1 of the OLRF establishes two limitations on the exercise of religious freedom:

- if they violate the fundamental rights of others
- if they violate any of the three forms of public order: public safety, health and morality

The controversial Section 2 of Article 3 establishes that "activities, aims and entities related to study and research psychic or para-psychological phenomena or humanistic or spiritualistic values or other analogous ends foreign to the religious world" are to be considered beyond the scope of the OLRF and may not be registered in the RRE.

A milestone ruling of the constitutional court (Judgement of the Spanish Constitutional Court 46/2001) declares that the state has the authority to answer two questions:

a) that religious groups which request to be registered are not excluded by Article 3.2 of the OLRF

b) that the activities of the aforementioned group do not violate the fundamental rights of others and that they do not violate public order

Regarding the first point, we believe that the first paragraph is poorly drafted since it excludes entities characterised by certain characteristics (such as those that aim to "spread humanistic values", and "research psychic or parapsychological phenomena", i.e. purposes that are essentially typical of religions) from the scope of application of the law of religious freedom. So, for example, nobody fails to recognise that prayer or miracles, which are integral to so many

entity that is excluded in Article 3.2 of the OLRF. Furthermore, any actions or behaviors that are involved in the practice of this belief may not violate others' rights to exercise fundamental freedoms and rights; nor public safety, health or morality; nor that stipulated and protected by law in democratic society as stipulated in Article 16.1 of the Constitution of Spain" (Judgement of the Spanish Constitutional Court 46/2001 Opinion 8).

60. Royal Decree 142/1981 of 9 January, on the organasation and operation of registered religious entities (Official Spanish Gazette number 27 of 31 January).

61. General Observatory of the United Nations Human Rights Council (Observatori General del Comitè de Drets de l'Home de les Nacions Unides) Number 22 (48) of 20 July 1993. We should take the Stipulations of Article 10.2 of the Spanish Constitution into account, "The norms relative to basic rights (…) shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain."

religions, can be qualified as “psychic or parapsychological phenomena”, or that “the diffusion of humanistic values” can be preached by all religious groups.

In other words, in Article 3.2 the law applies criteria to exclude some groups that have the same inherent characteristics of other groups that are included. This paragraph has never been the object either of an appeal or of a question of unconstitutionality, but we understand that is undoubtedly and clearly contradictory. Hopefully, this article will be omitted in the new organic law regulating the subject.

In terms of acts contrary to fundamental rights or public order, this same sentence recognises that control must be based on verification (and not qualification). In other words, violation of fundamental rights or the public order that is supposedly done by religious entities does not have to be interpreted with a preventive character in terms of possible risks. Using the public order clause as a limit to the exercise of religious freedom does not have to be done on the basis of mere presumptions, rather as the fruit of verification that takes place when the aforementioned activities deserve condemnation with firm sentences.

In the words of the constitutional court, “only when the legal existence of a certain danger to the public safety, health or morality as they are understood in democratic society has been accredited is it advisable to invoke the public order as a limit to the exercise of right to religious freedom and freedom of worship”. (Court opinion 11)

However, if the RRE, in spite of not having proof, finds that there are indications that an applicant group is carrying out activities contrary to the public order, then the registrar must cancel the application and report it to the public prosecutors office so it can take whatever actions it deems prudent.[62]

The neutrality of the state has certain consequences: public authorities can not declare adherence to any religion (that would be a religious state), or proclaim the state to be atheist (i.e. a state that oppresses religion), or maintain a position of secularism.

It follows that the terms and secularity and secularism should **not be confused**, which regrettably occurs very often. Secularism is a system that has prejudices towards religious matters or groups. These prejudices can manifest themselves in the actions of the administration as well as in legislative or judicial matters.

Here are two examples: a position of secularism (secularism and secularity are obviously positions of the state, not of society) would treat religious groups worse than groups of another nature (athletic, cultural or culinary) without there being any justification for this difference. Obviously the principle of equality allows the public authorities (legislative, judicial and executive) to establish differences between individuals and groups, but these differences have to be reasonable and proportional the purpose that they serve. Thus, if the differences are not reasonable or they are based on factors such as place of birth, sex, race or the religion, they would be considered discriminatory.

Another example of the attitude of secularism could be confining religious practices to the private sphere, i.e. the privacy of the home. The oft-repeated term “separation of church and state” has both a “secularist” and a “secularism” interpretation. From a constitutional point of view, when the constitution says that that religion must remain separate from the public sphere, it is referring to religion not having representatives in or being part of the institutions of public authority, and not the public itself. That is, public civil servants, as representatives of the government, can not defend or hold one religion above another, or hold atheism above religion. The same is true of public buildings, which must not display religious symbols so that the neutrality of the state is not compromised.[63]

62. This is what is established for associations in Organic Law 1/2002 governing the rights of associations (Articles 30. 3 and 4). D. Pelayo, *Las comunidades ideológicas y religiosas, la personalidad jurídica y la actividad registral* (Translation of title: Ideological and Religious Communities: Legal Personality and Registries). Madrid, [s. n.], 2007, p. 313.

63. The removal of moveable religious symbols (such as crucifixes) should not cause any problem. This is not the case for religious symbols that are inlaid in coats of arms or in cases in which removal may cause damage to buildings of artistic or historic value. In deciding which of these symbols to keep – if not for their religious value then for their artistic or

Relegating religious expressions to the private arena, understood as the home, would come under the rubric of "secularism" because this would deny the fundamental right of expression, and our state is not based on secularism, rather it is secular, i.e. neutral in religious matters.

In short, the main consequence of secularity is that the state can not employ religious values as parameters to measure the legitimacy or illegitimacy of its actions.[64] Specifically, neutrality prohibits confusing religious matters and state functions.

B) Principle of cooperation

This principle is implicitly reflected in Article 9.2 of the Spanish Constitution[65] and, more robustly, in Article 16.366, where the Constitution adds two mandates to the timid declaration of non-denominationalism aimed at the public authorities:

- Take into account the religious beliefs of Spaniards.
- Maintain the subsequent relationships of cooperation with the Catholic Church and other denominations.

We can extract a number of consequences from this dual mandate.

Firstly, that cooperation refers to religious denominations, i.e. the option of faith. Even though, evidently, the State can also cooperate with ideological groups outside religions, Article 16.2 refers to the cooperation by the public authorities with the Catholic Church, the religious nature of which is represented in the Constitution, and with other denominations.

Secondly, the relationships of cooperation imply the existence of two different subjects: the public authorities (be they central, autonomous or municipal) and the religious group; two entities that, as we have stressed, are independent and autonomous. In other words, cooperation strengthens the principle of separation.

Thirdly, the order to cooperate by the Constituent Power implies a positive valuation of the religious phenomenon. If the Constitution orders the public authorities to cooperate with the denominations, it means that it values them at least as something potentially positive, as if this were not the case, it would hold back the imperative order to cooperate.

The Constitution does not say how the relationships of cooperation should be developed. However, in line with the principle of freedom, cooperation must occur only at the request of the denomination, i.e. if the denomination asks for it, as by virtue of their autonomy, some denominations may want to remain outside institutional aid.

The express mention of the Catholic Church has not been a peaceful issue. For some, it signified a sort of sly denominationalism, for others, the mere recognition of the historic roots that the Catholic Church has in Spain. In the debates of the Constituent Assembly, those who pronounced against the mention claimed that it contradicted the non-denominationalism professed in the previous sentence. Despite this, it prevailed in the end.

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historical value, i.e. symbols that are, for example, in or on public buildings – common sense should trump mere adhesion to regulation. This will ensure that the neutrality of the state is not compromised, and that artistic heritage is not lost. But obviously religious groups, like any collective, can express themselves in the public arena, i.e. on the street, as long as they observe the regulations of public expression and pertinent norms.

64. However, it is clear that the state can share values with the religions such as human dignity, solidarity, etc. but the state must adopts these values as political and social values, not as religious ones.

65. "The public authorities are responsible for promoting the conditions whereby the freedom and the equality of the individual and of the groups of which they are a part are real and effective; removing the obstacles that impede or hinder their fullness and enabling the participation of all citizens in political, economic, cultural and social life."

66. Article 16.3: "No denomination will be state in nature. The public authorities will take into account the religious beliefs of Spanish society and will maintain the subsequent relationships of cooperation with the Catholic Church and other denominations."

Some of its defenders argued that although mentioning the Catholic Church in the Constitution was a legally questionable issue, it was reasonable from the political point of view when we consider that at that time (the Spanish political transition), what was sought was for the transition from the denominational state (of the previous regime) to the non-denominational or secular state to come about without any traumas and without any upheaval.

In this sense, the attitude of the representative of the Communist Party in the Constituent Assembly, Santiago Carrillo, was telling, as he advocated expressly mentioning the Catholic Church, even if it was to prevent those who had supported "*The Crusade"* after the Second Republic from supporting the reactionary forces at that time who were opposed to democracy.[67]

3. The mandate of cooperation in the 1980 Constitutional Religious Freedom Act

One possible way of channelling relationships of cooperation with the denominations is the one set out in the Constitutional Religious Freedom Act (LOLR): Cooperation Agreements. But it is not the only one. From the constitutional point of view, the existence of the Cooperation Agreements is not mandatory and neither are they the entirety of the constitutional mandate. It is a political decision. However, even though it appeared that the Constitution offered Parliament a broad path, the State began on the back foot because five days after the Constitution came into effect it signed four Cooperation Agreements with the Holy See.

In fact, they were five Agreements: a framework agreement signed on 28/6/1976 (and therefore prior to the Constitution), whereby the Church and the State renounced historic privileges (the State renounced the privilege of presenting bishops and the Church gave up the exemptions of clerics and members of religious orders), and four sectorial agreements signed on 3 January 1979, five days after the Constitution came into effect:

- Agreement between the Spanish State and the Holy See on legal matters.
- Agreement between the Spanish State and the Holy See on economic matters.
- Agreement between the Spanish State and the Holy See on cultural matters.
- Agreement between the Spanish State and the Holy See on religious assistance to the Armed Forces and military service of clerics and members of religious orders.

These Cooperation Agreements, which replace the Concordat of 1953 (signed by Franco and Pius XII) have the legal rank of an international treaty and therefore, in accordance with Article 96 of the Constitution, "their provisions may only be revoked, amended or suspended in the manner set out in the treaties themselves or in accordance with the general rules of International Law". They cannot, therefore, be revoked by a simple internal law.

Whereas the Constitution put forward the obligation of cooperation in future terms ("*the public authorities will take into account...*"), the LOLR assumes the mandate by using a gerund, which shows that by promulgating this law, the State is integrating it into its own mandate.

Article 7.1 of the LOLR ensures that, "*taking into account* the religious beliefs that exist in Spanish society", the State may initiate a specific mechanism of cooperation (Agreements or Covenants) "with the Churches, Denominations and Religious Communities inscribed in the Register which, due to their extent and number of believers, have attained recognised establishment in Spain...".

Parliament, then, chose to establish a specific channel of cooperation: the Cooperation Agreements or Covenants offered to the denominations that requested them and that fulfilled these three requirements:

67. Gazette of Sessions of the Congress of Deputies. Year 1978, No. 106. Plenary Session. p. 3994.

1. To be **inscribed in the Register** of Religious Organisations of the Ministry of Justice (Directorate General of Religious Affairs). Royal Decree 142/1981 indicates that four groups of organisations are liable to be registered:

- "Churches, denominations and religious communities".

- the Federations that these form.

- the "religious orders, congregations and institutes", which logically have to belong to one of the denominations (evidently, they were thinking of the Catholic Church).

- the religious associations that have been constituted as such according to the rules of the denomination to which they belong. For these last ones, to accredit the religious aims, as well as the declaration, they were required to attach a certificate endorsing them that was issued by the supreme body in Spain of the Church to which they belonged.[68]

2. To have obtained the recognition of **recognised establishment** in Spain:

This was a new legal concept. The law only offered two terminological supports for determining recognised establishment: the extent (of the denomination) and the number of believers.

The Administration then had the chance to develop the concept of "recognised establishment" through a regulatory rule that objectivised it, so curtailing the temptations of discretionality, but it did not do so.[69] Instead, it limited itself to proposing that, due to the ambiguity of the term, its scope would have to be evaluated case by case, even though it handed out orientative interpretative criteria (without seeking to be exhaustive) related to the legal terms of "extent" and "number of believers".[70]

Consequently, the concept of "extent" not only refers to the worshippers being sufficiently and significantly widespread throughout all or a large part of Spain, but also to such aspects as the historical roots of the denomination in question in the country, the importance of its social, pastoral and cultural activities, the number of places of worship and the proportion of ministers in relation to the total number of its members.

Even though there is no express legal reference to this effect, the administrative body that de facto grants recognised establishment is the Religious Freedom Advisory Committee (hereafter, the CALR), a consultative body attached to the Ministry of Justice whose mission, according to the LOLR, is to carry out studies, reports and proposals with regard to all the questions relating to the application of this Constitutional Law and, specifically and mandatorily, the preparation and issuing of the Cooperation Agreements or Covenants.[71]

Part of the Ministry of Justice, the CALR is equally and stably comprised of representatives from the State Administration, the Churches, denominations or religious communities or federations of them, in which will be, in any event, the ones with recognised establishment in Spain, and people of recognised ability, the advice of whom is considered to be of interest to the subjects relating to this Law.[72]

68. By virtue of Royal Decree 589/1984, of 8 February 1984 (Spanish State Gazette no. 85, of 28 March 1984) the religious foundations of the Catholic Church could also register (to date no Royal Decree has been developed that allows the registration of foundations from other denominations with a Cooperation Agreement, as would be advisable to reinforce equality).

69. During a paper given to the Advisory Committee, held on 23 June 1982, the idea was put forward of specifying these objectivity requirements in an administrative rule, but it was rejected. On the one hand, some felt that this function called for a rule of legal rank. On the other, it was also felt that, should such a rule be approved, the Administration, and specifically the Religious Freedom Advisory Committee, would lose the margin of discretionality that it had.

70. A. Fernandez-Coronado, *Estado y confesiones religiosas: Un nuevo modelo de relación (los pactos con las confesiones: leyes 24, 25 y 26 de 1992)*. Madrid, Civitas, 1995, pp. 45-47.

71. Art. 8.2 LOLR.

72. Within this Committee, there is a Permanent Committee, which will also have an equal composition.

In my opinion, it would be appropriate if both the concept of recognised establishment and the composition of the Religious Freedom Advisory Committee were revised by the new constitutional religious freedom act.

3. *The above Cooperation Agreements are approved* **by Law in** *the Spanish Parliament*

The State signed the Cooperation Agreements with the three bodies that represented the respective denominations, which today are the three State liaisons. They are as follows:

For **Islam**: The Islamic Commission of Spain (CIE), which comprises, in turn, two federations: The Union of Islamic Communities of Spain (UCIDE) and the Spanish Federation of Islamic Religious Institutions (FEERI).

For **evangelists**: the representative body of Spanish Protestantism is the Federation of Evangelical Religious Institutions of Spain (FEREDE).

For **Jews**: the body that represents this group is the Federation of Jewish Communities of Spain (FCJE).

Finally, as set out in Article 7 of the LOLR, the Congress approved the agreements in Laws 24, 25 and 26 of 10 November 1992,[73] which tackle subjects such as the legal protection of places of worship, the statute of religious ministers, their inclusion in the General Social Security System, the attribution of civil effects on matrimonies held according to Jewish, evangelical and Muslim ceremonies, religious attendance at public centres or establishments, religious teaching in schools and the tax benefits applied to certain assets and activities of FEREDE, CIE and FCJE as signatories of the agreement.

4. A new way of cooperation: the Pluralism and Coexistence Foundation

The 1992 agreements with Muslims, Jews and Protestants posed two problems. The first has its origin in the actual text: none of the Cooperation Agreements foresaw a direct financing mechanism similar to the one offered in the economic matters agreement of 3 January 1979 with the Holy See, whereby, and for successive regulatory developments, the Catholic Church receives 0.7% of the Personal Income Tax liability of taxpayers who wish to do so. Through the Episcopal Conference, the Catholic Church has the freedom to invest this money, which last year came to 241 million euros. There is no restriction on these funds being used in acts of worship; in fact, a large part of them (some 80%) are used to pay priests and bishops.

By contrast, the 1992 agreements did consider tax benefits similar to those of the 1979 agreements offered to the Catholic Church.[74] Despite this, they did not foresee a direct financing system linked to personal income tax, as the agreement with the Holy See did.

During the negotiation process of the 1992 agreements, the evangelical representatives at least requested the inclusion of this form of direct financing, but they backed down when the government assured them that the direct financing established for the Church was purely temporary because, as set out in the 1979 economic matters agreement, the final aim was for the Catholic Church to become self-financing. The years have gone by and, as set out in the relevant additional provisions of the budgetary laws, the tax allocation is indefinite in nature. In these terms, the most appropriate in terms of the principle of equality would be for the signatory denominations of the 1992 agreements to be offered the possibility of including this clause (all or none).

73. Laws 24, 25 and 26, of 10 November 1992, approving the Cooperation Agreements entered into between the State and the Federation of Evangelical Religious Institutions of Spain (FEREDE), the Federation of Israeli Communities of Spain (FCIE) and the Islamic Commission of Spain (CIE). (Spanish State Gazette no. 272, of 12 November 1992).
74. In all cases, these tax benefits or indirect financing have been expanded both for the Catholic Church and for the denominations with Cooperation Agreement (1992) by the patronage law. *Vid.* Additional Provisions Eight and Nine of Law 49/2002, of 23 December 2002, relating to the fiscal system of non profit-making institutions and tax incentives for patronage, (Spanish State Gazette. 307, of 24 December 2002).

Another problem that persists with time is the lack of regulatory development of the articles of the 1992 agreements, which makes them if not dead texts, then dying ones.

In any event, in the spirit of approaching the principle of equality, but also with the intention of using religious freedom as a lever for integration, the government decided to create a public foundation to promote aid (direct financing) between the denominations of recognised establishment, albeit with a restriction that is consistent with secularism although not so much with equality: the aim of the foundation should be to contribute to the running of cultural, educational or social integration projects carried out by the non-Catholic religious institutions with a Cooperation Agreement with the Spanish State or with recognised establishment. This formula excluded, albeit indirectly, the possibility of these denominations being able to use this aid for religious purposes (cultural purposes), a restriction that, as we have seen, is not in the "direct financing" granted to the Catholic Church through the 0.7% of the Personal Income Tax liability.

To meet this objective, the foundations route was considered. The right to create foundations is set out in Article 34 of the Spanish Constitution, which recognises and guarantees "the right of foundation for purposes of general interest and in accordance with the law". This precept is developed in the Foundations Act 50/2002,[75] of which Article 2 reflects the two essential elements of these organisations: not having a profit-making sphere and devoting its equity, lastingly and on the wishes of its creators, to the realisation of a purpose of general interest. In any event, for the reasons stated, which come together in the aim of promoting the conditions so that the religious freedom and equality of minority denominations is more effective, on 15 October 2004 the Cabinet adopted the decision to create a public foundation: the Pluralism and Coexistence Foundation.

The founding equity of the foundation was provided by the Ministry of Justice. As regards the economic contribution, two months after the decision to create the foundation by the Cabinet, Additional Provision Thirteen of the 2005 General State Budgets Law 62/2004, of 27 December 2004, approved a regulatory subsidy of 3,000,000 euros so that the Pluralism and Coexistence Foundation could start walking.[76] In 2010 it is predicted that the foundation's budget will reach 5 million euros.

The principal aim of the foundation is to offer the religious communities that come under the umbrella of the 1992 agreements the possibility of presenting educational, cultural and social integration projects, but it also devotes funds to strengthening the federations and various activities related to the promotion of religious freedom and the normalisation of religious pluralism: conducting studies, conferences, awareness, etc.[77]

The peculiarity of the foundation is the possibility of relying on the religious communities and their federations so that, in addition to celebrating their religious activities (which are not subsidised by this foundation), they help the public authorities to carry out integration tasks in the Spanish style. Our model is not based either on the French assimilation or the multiculturalism typical of Great Britain. Ours is a model of belonging and participation.

When I have to speak about the foundation on foreign forums, I always have problems in translating the Spanish word "convivencia", because in Spanish it is rather more than the English "*coexistence*" or the French "*cohabitation*". The Spanish word "convivivir" means more than "*live with*". That is what our model is based on. What is important is not the religion or the beliefs that are professed,

75. Spanish State Gazette no. 310, of 27 December 2002.

76. Law 62/2004: Additional Provision Thirteen. Provision of funds for cultural, educational and social integration projects of minority denominations.

"For 2005, and temporarily until the complete self-financing of all the religious denominations in Spain is achieved, an allocation is made of up to 3,000,000 euros intended for the financing of projects that contribute to the better social and cultural integration of religious minorities in Spain, presented by the non-Catholic denominations with a Cooperation Agreement with the State or with recognised establishment."

The management of the allocation referred to in the previous paragraph will be carried out by a state public sector Foundation created for this purpose, in the manner set out in Article 45 of the Foundations Act 50/2005, of 26 December 2005.

77. www.fundacionpluralismoyconvivencia.es

but the fact that they are citizens and residents, and as such they have rights, one of which is the sacred right to choose between professing religious or ideological beliefs or professing none. What is important is that this religious freedom can be used as a lever towards an integration that goes beyond coexistence, beyond cohabitation, beyond even the mere recognition of housing, health, work and education: integration based on belonging and participation. Living with, and from this living together sharing the same belonging and assuming the same challenges of cultural, social, economic and, how else not, also political participation.

3.3. The State and Religion: what future do they have? Ahmed Rahmani

Secularisation is, without a doubt, one of the most important human attainments of recent centuries. No one can deny the positive effects that it has had on contemporary societies: coexistence, social peace and justice, freedom of thought, etc. This secularisation, which is the culmination of a long process that has been carried out differently from one country to another, and sometimes even disputedly, is now an indisputable social and political reality. Why, then, should we be looking at the relationship between the state and religion when, under no circumstances, is it such an important and decisive attainment for our modern societies? If we pause to analyse the present situation, I don't believe that we should take long to realise that this model needs a revision and a correction, as the expression used by editors goes. Two fundamental facts justify a reform that should entail the reinvention of the secularised state:

> 1) The growing tension that characterises the debate surrounding issues that more closely or distantly have a bearing on the role or relationship of religion with society, such as marriage, abortion, euthanasia, the presence of Islam in Europe, etc. The debates are taking on an increasingly more ideological slant; there are protagonists on both sides who have no doubts about perniciously invoking or unsheathing the hatchet of war. It may be that this turn of events causes the weakening of the foundations of the separation of temporality and spirituality and aids the implanting of extremist ideas.
>
> 2) The increasingly more evident inability of the secularised state in its present form to face the most important challenges that the globalised world has engendered: the environmental challenge, repeated financial crises, genetic and digital revolutions, etc.

Consequently, reform is a historical need even though, for the present, it is only a future perspective. The two facts that I have just mentioned pose numerous questions that are asked of us and that place us at the starting line of a long enterprise. If we want to turn all of these unknowns into a large issue of foundation of this capital reform, we could formulate it as follows: in what way can we draw the reflection and debate about the relationship between state and religion out of the ideological logjam in which it now finds itself in order for it to be a construction that looks decisively towards the future and so opens up a new era, in which the state continues to undertake the missions that are pertinent to it based on secularisation and that at the same time make the most of the symbolic force generated by the spirituality of religions to be able to face the numerous challenges imposed by our age on it.

As it is a grandiose ambition that is only just beginning to take tentative steps, we will need to wait quite some time before it becomes a political and social reality, as there are huge and numerous reticences.

It should be said straight away that debate and reflection should not just be the domain of intellectuals. Organisations such as yours, which bring together the cultural know-how and the in-depth knowledge of the reality, must become an active part of this enterprise. So, I congratulate your initiative and I thank you for having allowed me to make a small contribution to such an important debate for our societies. A contribution that I will break down into three points that, to my way of thinking, constitute genuine references indicating the main cores of work:

- State/religion: from conflict to collaboration.
- Ethical renewal: an advantage for the new challenges.
- Man before religion and the state: for full and complete freedom.
- I will devote a fourth point to the presence of Islam in Europe, since, as we all know, this presence gives rise to the most lively, and often unfortunately the least constructive, debates.

1. State/religion: from conflict to collaboration

Before, I considered the complementarity between the state and religion as a future project, not because it is an invention waiting to be made, but because it is a reality that has been present since the first act of secularisation that later fell into oblivion, partly due to the conflictive nature that the separation between Church and State has acquired in certain countries and partly also because of the rigour, not to mention exaggeration, of the first theoreticians of the secularised state, such as Hobbes and Spinoza, from whom the vast majority of Enlightenment philosophers would later pick up the baton. Consequently, we need to re-establish the separation in essence, simply stipulating that the disassociation of the powers means conceiving their collaboration. On 2 November 2006, at a meeting with Italian president Berlusconi, the Pope declared: "Despite being different, the Church and the State are called, according to their respective missions and with the aims and the means that pertain to them, to serve man, who is both the recipient and the participant of the saving mission of the Church and the citizen mission of the State; it is within man that these two societies converge and collaborate to promote the integral good with greater guarantees". Even though it is a general declaration, from the highest Catholic authority, it symbolises this ever more palpable will of tending towards a new era of positive cooperation. Nowadays, as stated by G. Bedouelle, H. J. Gagey, J. Rousse Lacordaire and J. L. Souletie, the authors of *Une république, des religions. Pour une laïcité ouverte* (One Republic, Religions. Towards an Open Secularism), we see that the denominational agents aspire to acting legitimately in the public arena, as agents of civil society with a recognised specificity, and they do not want to be reduced to the cultural arena.

There are bound to be, and there will be, those who oppose any public dimension of religion, which means in-depth work to iron out the tensions and, especially, to make the relationship between the two parts enter into a positive and constructive dynamic in which religion can contribute to providing credibility to the political instance in charge of regulating the common good, according to justice and the law. This is what Paul Valadier strongly proposes in his book *Détresse du politique et force du religieux* (Sorrow of Politics and Force of Religion), from which I quote: "It is legitimate to ask oneself whether, instead of distrusting theology, the state couldn't do with a little spiritual supplement, not to submit to the yoke of the religious authorities, but simply to know its own tasks a little better or a little less badly. Wouldn't it be a good idea, from now on, to destroy the distrust that has marked the last centuries so that politics can recover its health a little?"

2. Ethical renewal: an advantage for the new challenges

The ethical question is the first serious test of the complementarity between the state and religion and we have just sketched the outline in the first point. However, to get the best perspective and be able to look to the future, I believe that we have to go beyond the endless polemic that surrounds the question of moral order. What should be concerning us these days is not knowing who issues the rule or who establishes the value, but knowing how to get the values that ensure the adhesion of the majority and that are therefore the true mainstays for the challenges lying in wait for our societies. The memory of an indisputable historical reality will be a good starting point for our objective: secularisation has never decreed the elimination of the moral reference from the public

arena. It has simply rejected the dogmatic imposition of the moral and behavioural rules from above and for all. The establishment of a group ethic, which is created and negotiated by the members of the society, has always been one of its essential aims. This leads us to the obvious conclusion that ethics have never been a body of principles that we have to keep away from the world and save for the private sphere, but exactly the opposite: they are the references with which we try to live consistently in both the public and the private life. Consequently, ethics are of paramount importance in the collective reason for being and, as morals are subjective, social ties disappear. Values, then, are a common and vital asset for society.

All of this leads us to the crucial question that we are duty-bound to ask without beating about the bush: can the legal rule be the sole source of values? The awareness of the historic moment and of the nature of the challenges will deter us from edgy answers, such as that of President Jacques Chirac to Pope John Paul II: "No to a moral law that prevails over civil law". I think the time has come to accept that our values have other sources than just those guaranteed by positive law.

The financial world can offer us more arguments to show the vital need for an evolution such as this. When the last crisis occurred in 2009, after having saved the banks from crashing thanks to billions from public funds, some leaders of major countries began announcing to all and sundry that they had won the first battle and that they were going on to the second with the promise of moralising financial capitalism and instituting world governance. One doesn't have to be a financial expert to see that they were empty words. The simplest observation of the reality shows that democracy no longer has any power over this tentacled machine that has spun a spider's web over the whole of our world. These talented orators should start, for example, by disarming the real casinos installed in the heart of the banks, which are the ones that have supposedly financed the creation of riches of use to the whole of society. Yet no one will dare touch these temples. One of the few politicians who has spoken of one of the paths that would lead to a real solution is former French prime minister, Michel Rocard. In effect, he says that "the role of religions is to contribute to an ethic of money in light of the rampant capitalism." He defends an ethic based on internal values and to which should be given, for example, the chance of expressing oneself in the financial world. One example of this are ethical funds. However, the long-term answer will doubtless be the eradication of this virus called "ever more" that modernity has inserted into the very marrow of our subconscious.

I will end this point with a lovely quote from the remarkable book by Christian Arnsperger, *Critique de l'existence capitaliste pour une éthique existentielle de l'économie* (Critique of the Capitalist Existence for an Existential Ethic of Economics), in which he perfectly sums up what I have been trying to develop: "Some people that we have known throughout our academic journeys [...] in very different places house a sensitivity that could, in itself, cause a sort of internal revolution. These people could spontaneously mobilise what we had called the ethical desire and the critical desire, two desires without which no kind of rational argument or philosophical analysis, no matter how many there are, will change anything in practice".

3. Man before religion and the state: for full and complete freedom

Allow me to introduce this third point with a quote by Léo Strauss: "Everything happens as though the critique of religion that was made at the start of the Enlightenment led to the disjunction between the return to orthodoxy or atheism, without there being any intermediate path between reason and revelation. Did the Enlightenment destroy what it enlightened? Moderate lights represented the possibility of a reconciliation between reason and faith, but they were surpassed by the radical lights, who would separate religion from knowledge and who would make a criterion of objectivity out of the distinction between facts and values. [...] The decomposition of metaphysics, the disenchantment of reason and the exclusion, beyond the political field, of any question about what a proper life is have developed a particular rationality marked by the reign of the technical and the progressive dehumanisation of an atomised society in which the individuals do not truly participate in political life and are deprived of a bond with the transcendence that only acts on a

purely subjective experience" (free translation of the text taken from the book by Corine Pelluchon *Léo Strauss, une autre raison, d'atures lumières* –Léo Strauss, Another Reason, Other Lights).

Léo Strauss is one of the great thinkers of the last century, who is neither religious nor traditionalist and who describes with relevance and rigour the development of a civilisation that has taken as its great founding principle the centrality of man equipped with reason and free of all forms of alienation. No one can deny, as I stressed in the introduction, that at an initial historic moment of this civilisation, man freed himself from the mediaeval yoke. However, after decades and centuries, the emancipating philosophy became transformed into a rationalist religion that has led man to new forms of alienation and has reduced the plurality of rules and values to a single element: profit and efficiency. "The modern world is a conspiracy between any form of internal life", said the eternal rebel Bernanos.

It is not our aim to question modernity, but to ask ourselves these questions that are so important for the future of our societies, such as that of getting man out of this situation. All of this begs the aid of the religious institutions, the political bodies and all the people who count as living forces of society, and according to my way of seeing it, the change of situation must go through two stages:

- The total abstaining by the state of favouring a specific conception of the humanity and sociality of man: it has to play the role of simple political and legal system. This way, the cultural pluralism needed for the affirmation of the supreme individualism will be re-established.
- This pluralism is the first step for man to re-establish himself in his full and real sovereignty; nothing will be imposed on him. Man will be the one to verify all beliefs and it will not be through any reference to a transcendence captured by the religious or political institution.

The Organisation of the Rights of Man, which has not undergone any conflict and that defends no ideology, will no doubt play a very important role in the commitment to this way.

4. European Islam: towards a great spiritual family

A great many observers consider that the debate surrounding European Islam is monopolised by a mix of extremist, simplistic and dishonest ideas. There are trends that have turned the spectre surrounding Islam into a real source of trade. Clever politicians use the debate for electoral aims or to have fun and so make everyone forget the real problems. Among Muslims, there are those who consider their presence in Europe as an accidental fact, forced to live among the infidels in a land at war. This stance leads them, in the best cases, to live Islam as an identifying refuge and, in the worst, it becomes a land nourished by the darkest ideas that have, sadly, sent many young people into the arms of the most abject extremism. There are other Muslims who, echoing the desire of some politicians, propose an almost invisible Islam reduced to purely exotic vestiges. This way, we now have the complete sinister set-up and the verdict will not take long to be heard: Islam is incompatible with modern secular societies. Fortunately, these ill-fated agents are not the only ones on the public scene, although there is a lot of work to be done to put them out of the game: it is a long task that consists of destroying all the stances and all the lies.

For the time being, let us return to the question that has a direct bearing on today's subject: what place does Islam have as a religion in a secular setting? By way of an answer, I will let you know my own personal conviction: Islam can integrate, live and develop perfectly in a secular setting. This conviction is far from being an idealised vision of the circumstances but the exact opposite. It is a certainty founded on three essential elements: personal experience, presence on the ground of over 25 years and active research for a long time. From an intellectual point of view, this conviction has its roots in the two elements that constitute the very essence of Islam: this religion is, in the first place, a profession of faith that involves an initiate journey to moral and spiritual completeness. It is a flame that is lit by divine grace, and if there is human intervention, such as that of the prophets for example, it is solely with the intention of helping souls to awaken. This

journey is not taken far from the real world, but quite the opposite. This search for completeness has to be translated into the tangible world, through the adherence to values that ensure coexistence on this earth, and on this point, the Muslim discovers that there are others who share the same values as he does even though they do not have the same inner motivations as his, as God decreed plurality and diversity as universal and immutable laws.

I ask myself what obstacle will remain to overcome in the path so that European Muslims become a great spiritual family that participates fully in the construction of a better future for their societies, far from prejudices and their own inability to read their system of references well. There is a lot of work to be done but I am very optimistic. This way, coexistence for a Muslim will find these roots in their heart of hearts, a coexistence in a recognised and non-imposed regulatory setting.

3.4. Conclusion

I hope that this brief summary of such a complex issue has at least allowed us to highlight the enormity of what is at stake and the logical consequence derived from it: the imperative need to put ideological disputes to one side and work for a new era of the relationship between the state and religion. The lighthouse that will guide this task should be none other than the dignity of man, his integrity and his freedom.

4. CIVIL SOCIETY: BETWEEN SECULARISM AND RELIGIONS

4.1. Aspects for debate

After putting forward the relations between religions, state and human rights, one of the aspects that gave rise to most debate and reflection in the working group was the role of civil society, specifically of human rights organisations towards the religions, and in this sense the role of secularism as a framework for coexistence.

We should first of all stress that secularism does not pronounce against the fact of religion but against churches, the religious structures, and that, therefore, secularism and religions are compatible. Secularism is, in fact, a necessary condition for religious freedom and should be promoted by the public authorities.

However, doubts arise when we consider the role of eminently religious associations. What happens when the associating bond is religion? Does religious civil society fill a void that secular civil society cannot or does not want to cover? In other words, do religious associations exist to preserve a certain religious identity or do they have a role that goes beyond their religious character?

The debate on secularism has changed in recent years, and the arrival of immigration questions some of the agreements reached previously, which forces us to consider the nature of our system and the practical and theoretical tools that we use to tackle problems of coexistence.

Talking of integration seems to awaken reticence in some sectors, especially when we talk of interculturality as one of the characteristics of our society, when we should really be talking of multiculturality.

Finally, another of the aspects that was put forward in the working group debate was the independence of civil society and the need to strengthen it through the non-acceptance of mandatory commands due to the fact of receiving public subsidies.

All of these questions were tackled by the group and are compiled in the papers reproduced as follows. First, **Carme Tolosana** puts forward the concept of secularism and imbues it with all its historical and philosophical charge. She also analyses the importance of education and training, of school in other words, in the construction of societies of coexistence where civil society plays a very relevant role. Besides this, **José Ignacio González Faus** calls for the mysticism of secularism in order to overcome mechanicist approaches, in such a way that both secular and non-secular civil society has a philosophical and spiritual support on which to support itself. Finally, from the practical point of view, **Hafid A. Aarab** explains the vision of his Muslim association and the role that they feel they have as a civil society.

4.2. Secularism and coexistence. Carme Tolosana

"(…) no private person has any right in any manner to prejudice another person in his civil enjoyments because he is of another church or religion. All the rights and franchises that belong to him as a man, or as a denizen, are inviolably to be preserved to him. These are not the business of religion (…)

What I say concerning the mutual toleration of private persons differing from one another in religion, I understand also of particular churches (…) nor has any one of them any manner of jurisdiction over any other.

(…) For the civil government can give no new right to the church, nor the church to the civil government"

J. Locke (1689) *A Letter Concerning Toleration*

"Secular thought is committed to reason over revelation, to agreements and covenants over dogmas, to the satisfaction of the body over the penitence of the soul, to the relative and probable over the absolute and unseen"

F. Savater

Quoted by J-F Pont (2002) in *Second Secular Conference in Spain.*

"Revolutions carried out for the general perfection of the human species must lead it without doubt to reason and happiness. But with how many passing misfortunes must it pay the price?

Condorcet (1792) *Five Memoirs on Public Instruction and Other Essays"*

Secularism. A brief conceptual and historical approach

To begin with, I would like to clarify one thing: why I use *secularism* instead of *laicism.* González Barón (2001)[78] explains why the term secularism is now preferred:

"(…)

- Because its use has become widespread in Europe
- Because it fills a lexical and semantic vacuum in our language
- Because it seems "gentler", seeking to shed itself of the anti-religious and anti-clerical connotations of laicism

Personally I favour the use and generalisation of the term "secularism" (…) due to the first two reasons and as a safeguard against anyone defending the third, which, in my opinion, is used as an alibi to promote a model of supposed "state neutrality", which in no way advocates a strict separation with regard to churches and leads in practice to a form of pluri-denominationalism". The length of the quote is justified because I share the option and I believe that it explains some of the current trends rather well, which, under the shelter of the increasingly more present

78. J.F. González Barón in the article "Laicismo, laicidad y anticlericalismo" on the website: http://www.audinex.es/dariogon/LAICO8.htm

multiculturalism in European societies, attempts to replace the "inequality" of civil rights of newcomers with the "equality of religions". An equality that is impossible in Spain where the privileges of the Catholic Church, formulated as agreements between states, prevents it.

Secularism has not overlooked the importance of the religious fact but the independence it calls for is more focused on the "ecclesiastic" and this is why it has so often manifested itself as anti-clericalism and against the existence of an official religion . What it seeks is the separation of the two power structures, the Church and the State, and the freedom of individual consciences.

Secularism is a political concept that is bound to the crisis of the Ancien Regime and the appearance of modern states and which, faced with the previous situation where political power emanated from the divine - the king is so through the grace of God - and therefore it proclaimed and defended one true religion, entails a substantial change: power comes from the citizens, who are no longer subjects, and the state does not give privileges to any religious denomination.

This defence of the separation of the Church and State has occurred preferably in countries with a Catholic tradition, where the church as an organisation is experienced as a hindrance to the modernisation of society due to its conservative nature and the defence it makes of its privileges as state religion. This for Champion (1998) would be the logic of the *laicisation* of traditionally Catholic countries such as France, Spain and Italy. Where church and society have evolved towards liberalisation in parallel, we should speak of secularisation.[79]

For some authors, including Otalola (1999)[80] secularism is "a legal concept, practical and non-doctrinal in nature", where the idea of separation is consubstantial but where a distinction needs to be made of the separativity more closely linked to the idea of French republican secularism that we mentioned above. It is a practical functional separation because it is impossible to separate the different spheres of what is human.

In light of the theologies of the market, of individualism and of the consecration of forms, where democracy and secularism are accepted solely as rules of the game, we believe that secularism, which was born with modernity as a doctrine - and therefore as an articulation of ideas - that defends the **separation of the ecclesiastical and civil powers,** to give individuals **the autonomy of conscience and to free them from any alienation,** should be understood today as an inseparable part of the democratic system, and just as this is not limited to the formal aspects (no matter how fundamental the rules of the game are), secularism has to provide an answer to all the possible obstacles that impede it: the Catholic Church and other churches - never resolved in the case of Spanish society - but also to other dogmas.[81] I would dare to say that the new dogmas include that of the market.

Secularism is not simply the religious neutrality of the state. No, secularism means being active / combative with all the beliefs or ways of thinking contrary to democratically passed laws. It is an active way of understanding peaceful coexistence between equals.

We should add, however, that a vision of secularism closely linked to the nation states (assuring towards "its" citizens, which leaves in limbo those that are not but who live in its territory, and without any approach with regard to everyone else, we should not forget that the birth of the colonial empires occurred with the consolidation of the modern states), from the point of view of values and human rights, means an approach that is scarcely compatible with a globalised world.

79. For Beauberot (1990), in certain contexts, a certain predecessor of laicism can be seen in Protestantism. In *Vers un nouveau pacte laïque.* Paris, Seuil.
80. J. Otaola, (1999) *Laicidad. Una estrategia para la libertad.* Barcelona, Edicions Bellaterra.
81. As explained very well by J-F. Pont in his paper "Living secularly" at the *Second Secular Conference in Spain 2002*, "The secular person, if they are atheist, does not convert their atheism into religion, much less into a state religion that is one, true and compulsory. The Soviet Marxism-Leninism was deeply anti-secular because it meant the complete annihilation of the autonomy and free will of human beings."

What does a secular society mean?

In Spanish society, there are changes that stimulate the debate on secularism, certainly with greater intensity than in the constitutional debate, where they centred on the non-denominationalism of the state, a battle apparently won in the theoretical formulation but also strongly conditioned by the privileged situation of the Catholic Church.

But what are these changes that call for new approaches? Firstly, as we have just said, the installation of a democratic system (just 30 years!) and the passing of the Constitution that sanctions the state as non-denominational… with an evident limitation: the signing in 1979 of the Agreements between the Spanish State and the Holy See, which give highly singular characteristics to the Church-State relations in our country.

Secondly, a greater complexity with the appearance in Spanish society of new communities of a highly diverse cultural and religious origin, and very especially, with regard to this matter, of Islamic communities.

Thirdly, the greater visibility of atheist, free-thinking, rationalist and agnostic people and groups who seek to be considered and have an active role in a society that professes its respect for human rights, which are rights that go beyond the recognition of religious freedom.

We should add that in recent years we have seen a resurgence of traditional religious manifestations**:** processions, various celebrations and the beatification processes promoted by the Roman Catholic church, with the "official" presence of representatives of the Spanish state, and even the appearance of religious symbols - Catholic, evidently - when taking possession of public posts. In other words, an invasion of the particularisms, in this case religious, of the public arena.

Events reproduced in the public and private media ad nauseam. The **formality** of Spanish religiousness that Gómez Llorente spoke of is being disseminated.

As gathered in the motion proposed by various civic organisations:

"Secularism preserves the public arena from the interference of any ideological, philosophical or religious belief that has a monopolist and exclusive vocation. Secularism defends the democratic society from its fragmentation into opposing communities and preserves the unity of the public arena, to which everyone belongs.

"Secularism is an active principle that imbues society and people and that promotes the right to belong to a religion and the right not to have a religion. Secularism is the humanism derived from the democratic values that make all men and all women radically equal in the public arena in order to guarantee their right to be different in the private arena."

Secularism, citizenship and school

If secularism demands the freedom of conscience of every citizen, it has to fight against ignorance. The free citizen must be someone instructed in reason and scientific knowledge. For this reason, the most egalitarian and powerful educational instrument, the state school, is associated with secular society, with coexistence in a plural and actively tolerant society.

How do we place Article 18.4. of the International Covenant on Civil and Political Rights, "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions" in a democratic, and therefore plural, society that has to educate citizens equal in rights and duties and in respect for the established rules?

Religious education in school is not necessarily gleaned from this right of parents but it does pose substantive questions in terms of the school curriculum. For example, does this "respect" for

convictions include not teaching the theory of evolution or directly teaching creationism to those who want it? Do we have to avoid “conflicts” and walk on tiptoe through equal rights for men and women?

Precisely at the heart of the secular option is the right to think autonomously, we would almost say the obligation to think. No gods, no clerics, no leaders “think” either for the whole of society or for any single individual, adult or child. Rights are not delegated, they are exercised: neither is the right to think:

Secularism - a necessary although not sufficient condition for the enjoyment of the freedom of conscience, and therefore of religious freedom - is absent from democracy, among other things, due to the permanence of religious education in state schools, to date Catholic but with the progressive inclusion of other denominations. As we have said on other occasions, the secular nature of the school, which should be an expression of plurality that teaches how to live as a community, becomes a separating multi-denominationalism that leads to tribalisation.

And if I may be allowed to offer this reflection once again:[82] If faith is hope, private life and community participation, what sense is there in reducing it to an extracurricular activity and putting it on an equal footing with sports, for example, or a subject that is assessed, i.e. that you pass or fail, and that introduces elements of segregation in schools?

4.3. Religion and human rights in the European Christian tradition. José Ignacio González-Faus

It has always been believed in the West that the human rights that were generated there were a truth of universal reason and that their validity was absolute around the world.

The journalists of the modern age already pointed out the improbability of this statement. It may be that there is a universal dialogue, it may be that this was real in the beginning, but the westernisation of these rights has made it impossible to apply them. This answer is not a new one, and it also occurs in Western thought. In the NINETEENTH century, in the history of Western thought, the French Revolution believed that the rights of man were universal, and fifty years later another Westerner, Karl Marx, indicated that these rights were the rights of the alienated man.

When tackling this question, there is a prior stage to the use of reason that has to be taken into account when speaking of the universal nature of human rights. The value of man, the meaning of life, are questions that have much more to do with commitment than a simple rational deduction. Reason cannot provide a single answer to this question, but has to assume it on the basis of a number of postulates.

The rational value of human rights depends on a prior question that reason cannot answer: what sense does history have? What is history for? Does it mark out anywhere? Does it have to lead anywhere? Multiple answers can be given to this question. In Judeo-Christian tradition, the milestone of history is progress, the growth of man and society, and in this progress, human rights play a fundamental role.

However, throughout the course of humanity, this answer has not been equally accepted. There are diverse conceptions of history among human beings. There are those who believed that history was governed by the master, the destination, a superior force not led by anyone. Nowadays, there are also some who profess themselves a believer but who really believe in destiny. From more oriental, more Hindu, visions, history is an appearance, a trick, that the human beings assumes as real. In this context, man has to get rid of the mirage of history to reach other levels. This perspective favours, for example, some justifying the existence of pariahs in India as an inevitable fact and hinders the attempts to convince that it is not like that. There is, on the other

82. C. TOLOSANA, (1997) in “ Educació en democràcia i la religió (catòlica) com a assignatura” *Perspectiva Escolar,* no. 212

hand, the vision of the eternal return, the Big Bang theory, which justifies that everything is cyclical and that what expands contracts. There are those who believe that history is an immense sea where the events take place, ebb, flow...

With these points of view, it is impossible to weave a rational universal nature of rights. All of these visions suppose prior commitments to reason, they suppose an option and therefore do not allow the defence of the universal nature of human rights.

Judeo-Christian and Western tradition incorporate a progressive sense of history, even though the institutions housing this tradition have sometimes not been progressive. For centuries, various thinkers have indicated that God created man to grow and progress, which extends the idea of individual and social progress.

However, this *continuum* of thought was interrupted by the eighteenth century, when what was supposed to be the guardian of this vision of history forgot it, and, by contrast, through the direct influx of Christian texts and influences, modernity, with authors such as Hegel, rediscovered history as progress. It rediscovered an idea that was probably of Christian origin but it discovered it against Christianity. This was done not without a certain reason, as Christianity had forgotten that its vision of history was this; in the sixteenth century, certain fundamentalisms in this sense emerged, as everyone who did not believe in the imposed concept of God had to die.

It discovered it, and it would be from this point when human rights were developed. However, this approach has a fault, and one that is probably linked to the fact that this conception of history as progress does not come directly from the Christian mould. The mistake that is made is the belief in progress as an infallible law of history, when in fact it is a call for the responsibility of everyone.

In the growing modernity, it was taken as fact that history progressed by itself, and this is a characteristic trait both of the French Revolution and of Marx's approach; it is seen to be a mechanism that will always go forward. In that age, a current of influence of thought emerged that assured that technical progress would put an end to hate among men and make any absolute power disappear. What would those theoreticians think today if they could see what is going on now?

This conception derives from a mechanicist vision of history and progress. Marx also assumes this perspective when he speaks of the dialectic force of matter as the force that by itself resolves contradictions and advances. This is why Marxism was confronted at a specific moment by whether it had to let the facts resolve themselves on their own or if they had to be related to ethics and responsibility. The great defender of this second perspective was Rosa Luxembourg, which is why, in short, she was assassinated.

There are, therefore, two visions: that of modernity, that of history as infallible progress where it is possible to assume everything that happens, and that of the Christian tradition, that of history as an offer of progress and growth, which is at the same time a call for the responsibility of man. In this latter case, we should add that besides the Universal Declaration of Human Rights, which stands as fundamental, we need a declaration of human duties, as Simone Weil upheld.

The non-existence of these duties means losing sight of the fact that human rights are, above all, a responsibility of everyone. If there is no approach such as this, we may fall into the temptation that everyone demands their own rights because they are part of human rights but without heeding the fact that prior to this there needs to be a responsibility towards the rights of others.

An understanding of human rights purely and simply as own rights supports the creation of a new dictatorship, a new fascism that evades responsibility on a world scale, as shown by the actions of sectors such as the North American extreme right with the word *liberty*. In the name of liberty, dictatorships in Chile and Argentina have been sustained, allowing a model of economic growth to be implemented that disregarded and even dramatically annulled the rights of workers.

Secularism should also assume false gods, and one of these is the market: neo-liberalism maintains that the market is governed by infallible laws that permit events such as what happened

in Iraq to happen, where there was a mass sale of state companies to private North American companies. This is a real danger and has an enormous influence.

The main lesson that should be taken from these facts is that not taking human duties into account leads towards this danger. It is important to point out that societies are plural but states are secular, at least with regard to the religious question, although in other matters of an ethical nature, the relationship may be different. If secularism does not understand that the gods of the economy are nothing more than yet one more element in society together with Muslims, Jews, etc., the tendency is the domination of a world fascism, not imminent, but the threat of which should not be excluded.

In this context, we need to lay the basis, inspire and communicate a mystique of secularism from a believer or religious perspective. Secularism arises out of an obligation of coexistence. If in the past, religious wars were fought for distant, diverse territories and peoples with different beliefs, today the situation has changed. Religions and secularism are around us and we need to assume the differences of our surroundings, assume coexistence. It is a need founded on faith, a profound option for which the coexistence of us all, the understanding, the fraternity has to become the first common value that can embrace everyone.

4.4. What is the Muslim presence in civil society? Identity and feeling of belonging. Hafid A. Aarab

Civil society is undoubtedly one of the most outstanding features of our age, to such an extent that it has nowadays become an unavoidable actor in international relations. Even though it is difficult to illustrate this new reality, because a problem is posed of definition and demarcation, no one doubts that it occupies a leading place in how contemporary societies work. Owing to the magnitude and the characteristics that the global matters of contemporary societies have, they require the integrated action of the various actors: civil society, the state and the private sector. In the words of former President Cardoso:

"We live in a new world; the current world order is more open, complex, diverse, interconnected and dangerous than ever. Increasingly more, the contemporary world order is the result of multiple standards of reciprocal transnational interactions, forged by state and non-state agents. [...] There are critical problems that transcend national territorial jurisdictions and that the various civic associations debate in an increasingly broader public arena. [...] In the world context, not only are assets and capitals exchanged, but also information, values, symbols and ideas. The financial markets and flows are not the only ones that are becoming ever more integrated: there are flexible alliances and networks of cooperation, which also strengthen the ability of civic associations and social movements to participate and exert their influence".[83]

This field, called *civil society* and classed by some as a *new old* phenomenon, is a meeting place for different actors, of which two in particular stand out: religions and secularism, which different visions, gratuitously, interestedly or ingenuously, place in the sphere of confrontation (shock of civilisations),[84] that of association (alliance of civilisations)[85] or at the halfway point between the two.

An example of this is the case of those who see Islam as a cultural question, through a language and a culture of origin; it is a redrafting of what is religious outside the traditional field and on modern bases. We observe a generation split and an individualisation of decision-taking. Asking ourselves if it is possible for Islam and secularism to coexist is an incorrect question because,

83. Fernando Enrique Cardoso, *La sociedad civil y la gobernanza mundial.* Background document drafted by the president of the high-level group which was debated at its first meeting, in New York on 2 and 3 June. It includes the comments and suggestions of the group members.
84. Samuel. P. Huntington, *El xoc de civilitzacions i la reconfiguració de l'ordre mundial,* Barcelona, Paidos, 1997.
85. Name by which the proposal of Spanish Prime Minister J. L. Rodríguez Zapatero is known, at the 51st UN Assembly General, on 21 September 2009.

according to Olivier Roy,[86] political practice and history have always made religions compatible with the political and social organisation of Western societies.

1. The Islamic Cultural Centre of Sants: tools and criteria for action in the intercultural sphere

Aware of the feasibility of cohabitation and convinced that in the place where we live and share it is not just a case of feeling integrated, accepted, appreciated or even loved, the first founding act of our essence and identity is to be respected. No more nor less. Consequently, we need to start by making ourselves respected, but perhaps we are little respected because we do not know how to make ourselves respected or, more serious still, because there is little to respect. Yet, how does one achieve the respect of others?

For me, participation constitute the central thread of a process that has to lead to our being respected, but this respect starts with being recognised for what we are: citizens with personal and common traits:

- A spirituality: faith is a stimulus to generate an inner peace, a spirituality that gives meaning and value to our everyday life.
- An ethic of responsibility: it is clear that we have to understand the need to participate in the social dynamics and the politics of our society, and we have to become real citizens. There is no contradiction between being Muslim and Spanish, but the contrary; identity radiates over citizenship, it takes root there more every day, and it imposes seriousness and honesty on it.
- Independence: this is the principle that must accompany us always and entails questioning our intentions and sincerely determining what motivates our initiatives, the loss of the autonomy of action and of decision-taking. So, to achieve this, we must reject alienation, affinity to any government or external incursion,[87] reject subsidies or donations that compromise independence, reject blindly belonging to a thought and reject associative sectarianism. This means subjecting ourselves to the truth, respecting opinions, living in diversity, consulting, deliberating and choosing conscience, driven by an inalienable independence. Our conscience must start by rejecting all kinds of dependence to defend justice better.
- Justice: our faith, ethics, participation and independence have to have a sense of justice. For all human beings, both for men and women, for all religions, for all humanisms, for all, for everyone, we have to bear witness to justice. And this way we can bear witness to our faith before humanity. The vision that we have is based on the promotion of justice, through word and gesture, and everywhere. We are the friends of everyone who works for the fair treatment of children, women, men, the elderly and any person in general. We are friends of anyone who respects the creation, the animals, the plants and the environment, and we have to contribute in all these spheres, because our identity is established and takes root in a presence nourished by these qualities of actions and of resistance. We need to have the courage to denounce what should be denounced, praise the praiseworthy, participate in and promote fair initiatives, no matter to whom they belong, because justice is justice and we are fervent defenders of it.
- Visibility: this is a peculiar trait, insofar as it normally affects groups that constitute a minority in society. Really living our Muslim identity cannot consist of isolating ourselves and developing an attitude of rejection, which sometimes happens. Quite the opposite, in fact, everything starts with the necessary understanding of the society in which we live; the

86. Olivier Roy, *El islam en Europa,* Madrid, Editorial Complutense, 2006.
87. We could point out the incursion of some foreign governments, for different reasons, in the internal matters of some emigrant groups resident in the host countries.

history, the culture and the institutions. It is a compulsory stage if we want to have an up-to-date and more appropriate reading of our sources. Consequently, we understand that the degree of responsibility of associations is not the same, such that if each body and each member took the exact measure of the demands of the commitment, they would soon come to the conclusion that collaborating with the other forces on the ground is compulsory and urgent. In fact, the non-awareness of the real challenges that we have to face is what leads certain associations to work alone, to isolate themselves to end up drowning in their own super-activity, and this way they do not know and forget that collaboration with other partners enriches the human value of commitment and work. Unfortunately, there are those who forget that the association to which they belong is a means, an instrument of action at the service of the community and not the aim of the commitment. Our community needs people who belong to it sincerely and who have understood that they are at its service; it does not need partisans or for the sole objective to be to use "the community" for their own interests.

2. The action model in the intercultural sphere of the Islamic Cultural Centre of Sants

The Islamic Cultural Centre of Sants (CCIS) is an organisation attached to the Secretariat of Institutions of the Sants-Montjuïc district (Barcelona City Council), which groups together approximately 400 institutions between associations and cultural centres of different cultural, ideological, spiritual and religious trends that work to establish the foundations of a real common social and intercultural arena. The main aims of the CCIS are defined in the verbs *coexist*, *discuss*, *respect*, *integrate* and *participate*. Despite this, the path of shared work has come up against sporadic episodes, attitudes and feelings of rejection which, fortunately, have been roundly condemned and neutralised by all the members of the Secretariat.

To change the incorrect conception that some groups have of this concept, we should stress that when we use the name *Islamic Cultural Centre of Sants*, it is not simply a mosque as a place exclusively of worship but more a place where a range of activities are pursued: language classes, cultures workshops, meetings, celebrations, talks, library. In addition, the various organisations and people who want to can go there thanks to the framework of collaboration and common action in the pursuance of its activities.

Owing to certain difficulties in being able to carry out some of the organisation's activities, both due to external reasons and due to a lack of space, the Islamic Cultural Centre of Sants signed a collaboration agreement with the Sants-Montjuïc district (Barcelona City Council) and the management of the CEIP Perú school, whereby the CCIS can use the spaces of this primary school in exchange for a symbolic consideration.

The areas of action of the CCIS are diverse and the range of activities is very extensive:

Educational activities*:*

- Extra tuition for children to offset learning difficulties and assist them in the process of adapting to school.
- Regular talks to explain the importance of studying for a worthy future and to be able to enter the different professional fields.
- Culture and language classes, both of the country of origin and of the host country. This is not just limited to explaining the value of the most notable festivities, such as Sant Jordi or human castles, but for them to participate actively in them.
- Meeting space between parents and children to foster communication channels.
- Workshops to enhance the communication channels between the students' parents and the schools. These workshops invite parents to establish and create communication links

with the teachers and the school in order to involve them in their children's schooling and to prevent and raise awareness of the repercussions of absenteeism and school failure.

Sociocultural activities:

- Offering accompaniment and mitigation workshops. These are monthly meetings that offer newcomers a space in which to meet people who have gone through the same situation of sorrow and to be able to share experiences and feelings that they have inside that are very difficult to get out in everyday circumstances.
- Raising the subject of social and economic exclusion and marginalisation, preventing the culturisation or Islamisation of the social or economic problems suffered by the group; strengthening the feeling of belonging, feeling at home whatever the social and economic problems of everyday life are, and raising awareness of shared responsibility and equal rights. In short, the egalitarian application of the law and of equal rights should not be reduced to a question of cultural and religious integration.
- Participating with a number of associations in the district in organising joint cultural activities to create a space in which to know one another, build human castles, establish an open doors policy and invite residents to celebrations held at the centre.

Civic and citizenship activities:

Conferences, get-togethers and talks are held, where emphasis is placed on:

- The compatibility of religious faith with human values. The feeling of belonging and civic sense is nourished and strengthened through telling stories and experiences of fully integrated people who are, in fact, true citizens.
- The responsibility of the individual on the basis of shared citizenship. In this sense, the feeling of Muslim people of being members of democratic societies is promoted, from the civil point of view, and for them to participate in and respect the values.
- The adoption of an ethic of citizenship that rejects the attitude of victimism (victim mentality).

Sports and leisure activities*:*

Shared organisation of sports and leisure activities, such as football matches, excursions, etc.

As well as these fields of action, it should be remembered that there are quite a few members of our community who enter a range of civil society organisations - trades unions, NGOs and human rights defence agencies - because they are aware of the great work that they do in disseminating human rights and fighting against social injustice.

3. The challenges of civil society

The constitution of a strong and effective civil society means overcoming a series of challenges that seriously compromise its essence. In order to strengthen the foundations of civil society, it is imperative that we create a sincere and constructive space for dialogue that constitutes a solid, independent and plural civil society in which differences are recognised and diversity is respected beyond the simple fact of wanting and accepting. Besides this, if there is pluralism without dialogue, it is not pluralism but sectarianism, segregation; if there are people who live separated in the same society, it would be the end of our society.

Similarly, we need to foster active collaboration between the different organisations to create common and suitable spaces that collaborate in favour of society and for human rights. We have to re-establish this dialogue and this collaboration, and we have to propose this exchange to our partners and companions in civil society and to all the social and political actors. There are people who have already understood this, and there are people who will understand it if we strive to say clearly what we want, mapping out as best we can the horizon of demands and hopes.

Unfortunately, we should mention that in our community the role that Muslim women should have is still not in tune with the circumstances and the lack of leadership of Muslim is women is evident due to their scant active and collective participation. However, a current of change can be discerned, primarily thanks to three basic cores: the change of vision of the conception of women by women themselves; the emergence of a new discourse of the woman (woman who studies, who expresses herself, women teachers, etc.), and the entry of women in the various public and private spheres, such as universities, mosques, seminars, conferences, official agencies, etc.

Another of the great challenges that has to be overcome is that of visibility and the media, where the different treatment given to our community is evident. It is believed that for Muslims to consider themselves *integrated* in Europe, they have to reduce the visibility of the practice of their religion. It seems that the practice, the visibility, and inevitably the associative commitment, are not politically correct. Here, the suspicion prevails that has been hurled at certain social agents and that has been maintained day after day in the name of security. It seems they are not fellow citizens but potential suspects who threaten the balance of the nation. At heart, unfortunately, there are two types of citizen: the real ones, who are respected, and the *dubious*, who need a new oath of loyalty imposed on them.

Despite this, the great challenge facing civil society is to prevent domestication, because sometimes the commitment of civil society does not result in visible attainments due to the dependence on subsidies. For this reason, we need to avoid subsidies that compromise the very independence of civil society.

4. The risks of civil society

The great malady that can hinder the proper working of civil society are extremisms, no matter what kind they are, and the fact is that the people who think they are better because they do not believe in anything can be as dangerous as those who believe in something. Dogmatics are a problem. I don't think that religions seek to give old answers to the meaning. Kant said that at a given moment, there was a point where science ended and faith began, i.e. it went from the question *how does it work?* to the question *why does it work?* The scientific question is *how?* while the philosophical question is *why?*

4.5. Conclusion

Building and achieving a better world is a question of being consistent. Someone might have the best principles in the world, but if they betray them, the consequences are unpredictable. Research is good, humility is essential, the answers are important, but above all else the world will be better if we all act according to the values that we preach and in all spheres: justice, environment, respect for human beings. We can talk of human rights, we have been celebrating human rights for 61 years, which is all very nice, but many people are still treated without any dignity. Is the world better 61 years after the Declaration of Human Rights if we do not treat people with dignity? The world would be better if we treated people according to the principles of human rights.

5. FINAL CONSIDERATIONS

To end this publication, without any intention of reaching any type of conclusion beyond that of having sought to analyse and discuss an issue, namely that of religions and human rights, open and susceptible to finding a multitude of opposing approaches, we can highlight the following final considerations with the aim of finding topics for debate (Universalism and Relativism; Human Rights, State and Religion; and Civil Society: between secularism and religions) that, with a view to a short- and medium-term future, must necessarily be assumed by any civil society that is guided by democratic parameters:

5.1. Religions and human rights: historical dispute and troubled relationship

A. To begin with, we can say that it is not at all daring to state that we live immersed in the culture of human rights, a culture that is usually considered to be universal both in its foundation and its content and in its statutory development. It is a culture of consensus in which it is hard to find detractors, although there are critics of its conceptual formulation, its legal regulations and its sometimes selectively exclusive application. For them to cease to be this matter pending, human rights cannot be formulated or constructed as abstract and out of time, but they have to be placed in a specific time, as predicated by the sociological-legal conception of human rights.

B. The relationship between religions and human rights has always been troubled. Occupied as religions have been, and continue to be, in the defence of divine rights, they could scarcely pay any attention to human rights, and when they did, it was to subordinate them and even oppose them to divine rights. In the event of a conflict between the two rights, it was generally the absolute rights of God that prevailed over the limited rights of human beings; the Truth of God over that of men; the Word of God above science, reason, human logic. One of the most illustrative cases were the sentences of the Inquisition and the methods that were used.

C. The current interest in the relationship, troubled most of the time, between human rights and religions is especially motivated by a new phenomenon: the awakening of religions. It is a phenomenon that goes against predictions that questions the theory of secularisation as a unique hermeneutic category of the evolution of the religious phenomenon. The secularisation of the individual moral options (which are no longer governed by religious criteria) coexist with a consecration or neo-denominationalisation of the public spheres, which is especially seen in the relationships between right and religion.

D. The return of religions acquires special complexity and does not allow for a single-cause explanation, but that various factors may have come together. All of these phenomena empirically show that modernisation may suffer, and indeed it is suffering, regressions and that as a necessary condition for its survival, it is necessary to add unforeseen elements to the theory of modernisation and its secularising dimension, such as that of the possibility of fanaticisation of some sectors of society and the reconversion of some religious trends along the path of “a relative reconsecration of the hyper-modern universe”. What seems clear is that, despite being important, the category of secularisation does not exhaust the sociological analysis of modernity and the religious phenomenon, nor does it constitute its unique explanatory hermeneutic category, but it is necessary to resort to other categories: return of religion, deconsecration, new religious movements, inter-religious dialogue, fundamentalisms, inter-spirituality, etc.

E. The attitude that religions adopt towards human rights is today one of the criteria of social relevance or irrelevance, of ethical validation or invalidation, and of recognition or

rejection at civic level. This is on four levels: that of the underlying anthropology, that of the foundation, that of their recognition and defence of society and that of their practice within religions. Religions have posed serious objections - some are still in effect - to assuming the theory of human rights, and they even oppose it frontally by considering that their formulation and foundation operate in the anthropological-legal sphere and have no transcendental basis.

F. In the institutional sphere, permanent conflicts arise between the legislative power and the religious authorities because the latter regard certain moral principles as immutable as, in their view, they belong to the natural law, of which the religious hierarchies consider themselves to be the sole legitimate interpreters. The greatest difficulty that religions have towards human rights in general lies in their own organisation, which is not democratic and is usually pyramidal-hierarchical to the point of constantly breaching human rights, stating, in the case of the Catholic Church: a) that it is of divine institution, b) that it moves in the spiritual and not the political sphere, and c) that its operation is not comparable to that of other civil institutions. However, this is only one side of religions. There is another more positive and favourable side towards human rights, which translates into the defence of the rights of the poor and excluded due to neo-liberal globalisation and of all the people and groups that are marginalised for reasons of gender, religion, ethnicity, race and culture. It should be stated in this regard that quite a few of the leaders who work in defence of human rights and social justice in the world belong to different religious and spiritual traditions and frequently base their fight on the religious beliefs that they profess.

G. This way, we can say that universal religions do not exist, and neither do universal gods. The consideration of universality recognised in some religions and denied to others is an act of religious imperialism that needs to be overcome. Religions only become universal when they renounce their absolutist and hegemonic aims and defend the universal causes of humanity, especially lost causes, through dialogue, respect for the freedom of beliefs and non-beliefs and the renunciation of violence for imposing their ideas. This occurs when they integrate in the living conditions of this world; when they assume the universal causes of humanity and the earth: justice, peace, solidarity, equality, environmental protection, human rights and the rights of nature. And even in this case, they are relatively universal because their horizon is that of religion. In turn, the theory and practice of human rights must be open to the creative contributions of religions on the basis of their best humanitarian and ecological traditions. It should not be forgotten that the present declarations of human rights arise on the horizon of a religious tradition, Judeo-Christian, which have their roots in Greek and Roman philosophies and that are drafted according to a cultural tradition, the Western-humanist one. All of these traditions tend to stress the personal and individual dimension with greater intensity than the social and community dimension, and they usually forget the ecological dimension. For this reason, it seems necessary to incorporate the values of the other religious traditions: Islam, Taoism, Confucianism, Hinduism, Buddhism, indigenous religions, etc.

5.2. Universalism and relativism

A. In order to find the foundation of human rights from a philosophical perspective, we need to make a small reference to the following authors and schools of thought: the scholastic jusnaturalist foundation of Maritan; the moral foundation of Tugendhat; the possible foundation in discursive ethics; the rejection of any absolute foundation sustained by Bobbio; and the new perspective proposed by E. Lévinas.

B. Consequently, the jusnaturalism of Tomist tradition (J. Maritain) understands that the *philosophical* problem relating to human rights is that of its foundation. Its particular

response to the problem constitutes an example of the "traditional jusnaturalism" of Aristotelian-Tomist roots. In this tradition, the natural law is both *ontological* and *ideal*. It is *ideal* because both its immutable structure and the intelligible needs it encompasses are founded on the human essence, and it is *ontological* because the human essence is an ontological reality that, on the basis of this, does not exist separately but is in every human being, which indicates that the natural law resides as an ideal order in the very being of all men existing.

C. Besides this, by considering human rights as moral rights, Tugendhat sustained the thesis that the backdrop to human rights are *moral rights*: "when moral rights are recognised as fundamental rights in the legal system, we are speaking of human rights". In this way, the decisive term is that of moral right, so the problem of foundation is shifted towards the development of a moral theory that sustains the so-called moral rights. Human rights have their basis in moral rights and these, in turn, are sustained on a moral of mutual respect. The question, then is to investigate the foundation of this moral right.

D. In another sense, we are facing the approach of discursive ethics and human rights. In this theory, the only possibility of avoiding the trilemma, overcoming the jusnaturalism, the ethical foundation of human dignity and also positivism, would consist of: 1) defending a *dualist* concept of human rights, that not only takes into account the ethical sphere of these but also that of legal positivisation; 2) searching for an ethical basis of human rights in procedural ethics, compatible with the pluralism of beliefs, and not substantial ethics; 3) these procedural ethics must enable mediation between transcendentalism and history. This way, when explaining the meaning of the term "demand" applied to human rights, we will have to appeal to the need to think with meaning what is human: "the satisfaction of these demands, respect towards these rights, are conditions of possibility to be able to speak of «men» with meaning.

E. Despite the above taking into account the previous approaches, it appears that this recourse to foundation may already be overcome and be currently facing the need to abandon foundation and concern itself with protection. In this sense, Bobbio understands that the problem of the fundament is badly posed. In this author's opinion, an absolute fundament of historically relative rights cannot be found. A further reason is the supposed incompatibility between rights, especially those relating to freedoms and those referring to social rights. Consequently, we could say that its proposal is triple: firstly, it is not a question of searching for the absolute fundament but, for each occasion, the *various possible fundaments;* secondly, the ("postmodern") idea that "there is no need to be afraid of relativism"; and finally, its principal thesis — which it will repeat on more than one occasion: "Nowadays, the background problem relating to human rights is not so much the fact of *justifying them* as that of *protecting them*. It is not a philosophical problem, but a political one".

F. Another innovative approach consists of the proposal by Lévinas in focusing his analysis on the rights of the other man. Whereas, in general, any reflection on right and, in particular, on human rights, presupposes the idea of equality and correspondence between rights and duties, this author considers that there is still something behind the idea of equality and that there is an *original* disproportion between rights and duties. Consequently, he especially highlights two aspects of human rights: first, the unique nature and singularity of every person, despite their belonging to humankind; meaning without context. Without doubt, as a *first philosophy*, it lays the foundation not only of the personal relationship but also the city; not only dialogue but also justice; not only hospitality but also peace. In this tradition of thought, the rights of man are shown primarily as rights of the other man. The non-existence of these duties means losing sight of the fact that human rights are, above all, a responsibility of everyone. If there is no approach such as this, we may fall into the temptation that everyone demands their own rights because they are part of human rights but without heeding the fact that prior to this there needs to be a responsibility towards the rights of others.

G. Beyond the dilucidation of what the fundament of human rights is and of the diverse possible explanations of their origins, the guarantee of human rights necessarily has a legal dimension: the legal recognition of human rights and appropriate guarantees to make them effective; the relatively modern progress in this sense shows us the presence of a process - that of the legal recognition of human rights - historic, progressive and unfinished.

H. If the question is posed in terms of searching for the keys to legal recognition of human rights from the perspective of the *Universalism v. Relativism* dilemma, we need then to refer to the internationalisation of human rights and, therefore, to the development of the process of creation of international legal rules included in what is usually identified as international human rights law. From this perspective, the perception of historicity is different as the legal construction of human rights at an international level is still a later reality and is developed basically as a project of socially shared regulatory policy after the end of the Second World War. In another order of things, and based on the objective statement of the *universality of human rights*, it must be admitted that subtly and rather ambiguously, the Final Declaration of the World Conference on Human Rights (Vienna, 1993) assumed the presence and legitimacy of *relativist particularisms* in the matter: despite the obligation of the state to promote and protect all the fundamental rights and freedoms, the importance has to be taken into account of the national and regional particularities and the various historical, cultural and religious heritages (Point 5).

I. If we analyse religion as a hypothetical source of relativism, it should be mentioned that from the Western perspective, the stress has been placed or focused on the particularism that is derived from the Islamic religion; whether it has a more or less rational foundation, this centrality should be clarified in a dual sense: first, at heart, the legal question lies in how and to what point each of the states where the Islamic religion is present, and especially those countries where it is the official and/or majority religions, assumes and develops in legal terms the postulates that are theoretically derived from religious convictions; and second, the example of the Jehovah's Witnesses at the European Court of Human Rights shows that not all the European states either have undertaken religious plurality in the same way, avoiding any sign or dose of differentiated (and potentially discriminatory) treatment.

J. The analysis of this question from international human rights law goes through different parameters. In the first place, everyone has the right to freedom of thought, conscience and religion; consequently, the right to religious freedom is not regulated from a different perspective with regard to the freedom of the human to have their own convictions. On this level, religion is interpreted as a set of convictions based on religious positions (traditional or more modern) or on the religious fact; this means that it includes positive and negative convictions: convictions pertaining to any religion, atheism, agnosticism or indifference to religions. In the second place, one of the main problems in specifying the international legal obligations in this regard – as shown by the preparatory work of Article 18 of the PIDCP and the position of some Arab states – has been whether an element so intrinsically bound to the exercise of this freedom – the right to change freedom – forms part of it; it seems evident that the answer is positive, despite the evident incompliances of some states. In the third place, insofar as every religion projects a *concept of life* – with socially perceptible repercussions in the practices of the group or in the way of accommodating the group to a plural social reality (especially if it is a very much majority religion among the population) – the religion constitutes an axiological reference – the proposed social values can become political and legal proposals – and a starting point of the individual or collective actions of its members. In the fourth place, the social dimension of religious ideas has both a positive and a negative effect: it is a contribution to the axiological construction of society, and therefore to progress in relation to human rights, however, it may derive in de facto and de iuris manifestations that may

breach the rights and freedoms of the members of the group and/or the non-members. In relation to the non-members of the group, the social action of the group and the legal, social and institutional projection of its way of understanding society may lead to the right to religious freedom, the right of opinion and of expression, the right to education and other fundamental rights (including the human rights linked to human dignity) being affected; in particular, there may be an effect founded on a discriminatory treatment based unduly on the different religious beliefs. And finally, due to this, international human rights law puts forward the possibility of restricting the external manifestations of religious freedom: in which they represent the projection of the conception of life and may affect the rights and freedoms of the whole of the population. The state not only has the obligation to respect human rights but to protect them, for which reason it must maintain an active stance in light of possible religious manifestations that entail a breach of rights and freedoms.

5.3. Human rights, state and religion

A.To find out the legal situation of religious denominations in Spain, we first need to start from the principles that, according to the Spanish Constitution of 1978, should preside over the relations between the public authorities and the religious phenomenon: the principle of secularism or non-denominationalism and the principle of cooperation, both found in Article 16.3 of the Constitution, which states that: "*No denomination will be state in nature"*. Despite its timidity or temperance, this wording perfectly reflects the secular or non-denominational nature of the state. Secularism is a concept that is sustained on two other conceptual columns: the separation between the two institutions and the neutrality of the public authorities in religious matters.

B. In this sense, it can be affirmed that the state is neutral in light of the religious phenomenon. This means that the right, not to profess but simply to value the different religious credos, belongs to the individuals and the communities (which are the holders of the fundamental right of religious freedom) and not to the public authorities. In this sense, it is worth remembering not to confuse, as sadly often occurs, the terms secularism and laicism. A laicist state is one that has prejudices towards religious matters or groups. These prejudices can be manifested both in their administrative action and in their legislative or judicial occupations. Therefore, it can be stated that our state is not laicist but secular, i.e. neutral in light of the religious dilemma.

C. Together with neutrality, the Spanish legal system also reflects the principle of cooperation. In this sense, we should highlight and not forget that apart from the agreements signed with the Holy See, the Spanish state signed Cooperation Agreements with the three organisations that represented the respective denominations that are today the three liaisons with the state: For Islam, the Islamic Commission of Spain (CIE), which comprises, in turn, two federations: the Union of Islamic Communities of Spain (UCIDE) and the Spanish Federation of Islamic Religious Institutions (FEERI); For the Evangelists, the representative body of Spanish Protestantism is the Federation of Evangelical Religious Institutions of Spain (FEREDE); and for Jews, the body that represents this group is the Federation of Jewish Communities of Spain (FCJE).

D. In this sense, it was highlighted that a new channel of cooperation has been determined by the Pluralism and Coexistence Foundation. The principal aim of the foundation is to offer the religious communities that come under the umbrella of the cooperation agreements the possibility of presenting educational, cultural and social integration projects, but it also devotes funds to strengthening the federations and various activities related to the promotion of religious freedom and the normalisation of religious pluralism: conducting studies, conferences, awareness, etc. The peculiarity of the foundation is the

possibility of relying on the religious communities and their federations so that, in addition to celebrating their religious activities (which are not subsidised by this foundation), they help the public authorities to carry out integration tasks in the Spanish style. It is a question of attempting to create a model of belonging and participation. What is important is not the religion or the beliefs that are professed, but the fact that they are citizens and residents, and as such they have rights, one of which is the sacred right to choose between professing religious or ideological beliefs or professing none. What is important is that this religious freedom can be used as a lever towards an integration that goes beyond coexistence, beyond cohabitation, beyond even the mere recognition of housing, health, work and education: integration based on belonging and participation. Living with, and from this living together sharing the same belonging and assuming the same challenges of cultural, social, economic and, how else not, also political participation.

E. If we want to look more in-depth at the relationship between the state and religions, we can see that secularisation is, without a doubt, one of the most important human achievements of recent centuries. No one can deny the positive effects that it has had on contemporary societies: coexistence, social peace and justice, freedom of thought, etc. This secularisation, which is the culmination of a long process that has been carried out differently from one country to another, and sometimes even disputedly, is now an indisputable social and political reality. If we stop to analyse the present situation, two fundamental facts justify a reform that should entail the reinvention of the secularised state: 1) The complementarity between the state and religion as a project for the future; not because it is an invention still to come, but because it is a reality that has been present since the first act of secularisation which later fell into oblivion partly due to the troubled nature that the separation of Church and State had acquired in some countries and partly also because of rigour. There are bound to be, and there will be, those who oppose any public dimension of religion, which means in-depth work to iron out the tensions and, especially, to make the relationship between the two parts enter into a positive and constructive dynamic in which religion can contribute to providing credibility to the political instance in charge of regulating the common good, according to justice and the law; and 2) The ethical question is the first serious test of the complementarity between the state and religion. What should be concerning us these days is not knowing who issues the rule or who establishes the value, but knowing how to get the values that ensure the adhesion of the majority and that are therefore the true mainstays for the challenges lying in wait for our societies. The memory of an indisputable historical reality will be a good starting point for our objective: secularisation has never decreed the elimination of the moral reference from the public arena. It has simply rejected the dogmatic imposition of the moral and behavioural rules from above and for all. The establishment of a group ethic, which is created and negotiated by the members of the society, has always been one of its essential aims. This leads to the obvious conclusion that ethics have never been a body of principles that we have to keep away from the world and save for the private sphere, but exactly the opposite: they are the references with which we try to live consistently in both the public and the private life. Consequently, ethics are of paramount importance in the collective reason for being and, as morals are subjective, social ties disappear. Values, then, are a common and vital asset for society.

F. Possibly, the change of situation will necessarily have to go through two stages: 1) The total abstaining by the state of favouring a specific conception of humanity; and 2) The sociality of man: it has to play the role of simple political and legal system. This way, the cultural pluralism needed for the affirmation of the supreme individualism will be re-established. This pluralism is the first step for man to re-establish himself in his full and real sovereignty; nothing will be imposed on him. Man will be the one to verify all beliefs and it will not be through any reference to a transcendence captured by the religious or political institution.

G. This will allow us to understand that a great many observers consider that the debate surrounding European Islam is monopolised by a mix of extremist, simplistic and dishonest ideas. There are trends that have turned the spectre surrounding Islam into a real source of trade. Clever politicians use the debate for electoral aims or to have fun and so make everyone forget the real problems. Among Muslims, there are those who consider their presence in Europe as an accidental fact, forced to live among the infidels in a land at war. This stance leads them, in the best cases, to live Islam as an identifying refuge and, in the worst, it becomes a land nourished by the darkest ideas that have, sadly, sent many young people into the arms of the most abject extremism. There are other Muslims who, echoing the desire of some politicians, propose an almost invisible Islam reduced to purely exotic vestiges. This way, we now have the complete sinister set-up and the verdict will not take long to be heard: Islam is incompatible with modern secular societies. Fortunately, these ill-fated agents are not the only ones on the public scene, although there is a lot of work to be done to put them out of the game: it is a long task that consists of destroying all the stances and all the lies.

5.4. Civil society: between secularism and religions

A. There are some of the current trends that, under the shelter of the increasingly more present multiculturalism in European societies, attempt to replace the “inequality” of civil rights of newcomers with the “equality of religions”. An equality that is impossible in Spain where the privileges of the Catholic Church, formulated as agreements between states, prevents it. Secularism has not overlooked the importance of the religious fact but the independence it calls for is more focused on the “ecclesiastic” and this is why it has so often manifested itself as anti-clericalism and against the existence of an official religion . What it seeks is the separation of the two power structures, the Church and the State, and the freedom of individual consciences.

B. Secularism is a political concept that is bound to the crisis of the Ancien Regime and the appearance of modern states and which, faced with the previous situation where political power emanated from the divine - the king is so through the grace of God - and therefore it proclaimed and defended one true religion, entails a substantial change: power comes from the citizens, who are no longer subjects, and the state does not give privileges to any religious denomination.

C. In light of the theologies of the market, of individualism and of the consecration of forms, where democracy and secularism are accepted solely as rules of the game, we may believe that secularism, which was born with modernity as a doctrine - and therefore as an articulation of ideas - that defends the separation of the ecclesiastical and civil powers, to give individuals the autonomy of conscience and to free them from any alienation, should be understood today as an inseparable part of the democratic system, and just as this is not limited to the formal aspects (no matter how fundamental the rules of the game are) secularism has to provide an answer to all the possible obstacles that impede it: the Catholic Church and other churches - never resolved in the case of Spanish society - but also to other dogmas. The new dogmas would include that of the market.

D. Secularism is not simply the religious neutrality of the state. Secularism means being active/combative with all the beliefs or ways of thinking contrary to democratically passed laws. It is an active way of understanding peaceful coexistence between equals. Secularism is an active principle that imbues society and people and that promotes the right to belong to a religion and the right not to have a religion. Secularism is the humanism derived from the democratic values that make all men and all women radically equal in the public arena in order to guarantee their right to be different in the private

arena. As regards *civil society* - classed by some as a *new old* phenomenon - we could say that it is a meeting place for different actors, of which two in particular stand out: religions and secularism, which different visions, gratuitously, interestedly or ingenuously, place in the sphere of confrontation (shock of civilisations), that of association (alliance of civilisations) or at the halfway point between the two.

E. If secularism demands the freedom of conscience of every citizen, it has to fight against ignorance. The free citizen must be someone instructed in reason and scientific knowledge. For this reason, the most egalitarian and powerful educational instrument, the state school, is associated with secular society, with coexistence in a plural and actively tolerant society.

F. In this context, from the European Christian tradition, we need to lay the basis, inspire and communicate a mystique of secularism from a believer or religious perspective. Secularism arises out of an obligation of coexistence. If in the past, religious wars were fought for distant, diverse territories and peoples with different beliefs, today the situation has changed. Religions and secularism are around us and we need to assume the differences of our surroundings, assume coexistence. It is a need founded on faith, a profound option for which the coexistence of us all, the understanding, the fraternity has to become the first common value that can embrace everyone.

G. From the sphere of Islam, there are those who see it as a cultural question, through a language and a culture of origin; it is a redrafting of what is religious outside the traditional field and on modern bases. We observe a generation split and an individualisation of decision-taking. Asking ourselves if it is possible for Islam and secularism to coexist is an incorrect question because political practice and history have always made religions compatible with the political and social organisation of Western societies.

H. This entails a series of challenges for civil society. The constitution of a strong and effective civil society means overcoming a series of challenges that seriously compromise its essence. In order to strengthen the foundations of civil society, it is imperative that we create a sincere and constructive space for dialogue that constitutes a solid, independent and plural civil society in which differences are recognised and diversity is respected beyond the simple fact of wanting and accepting. Besides this, if there is pluralism without dialogue, it is not pluralism but sectarianism, segregation; if there are people who live separated in the same society, it would be the end of our society. Similarly, we need to foster active collaboration between the different organisations to create common and suitable spaces that collaborate in favour of society and for human rights. This dialogue and this collaboration have to be re-established, and this exchange among the partners and companions in civil society and to all the social and political actors has to be proposed.

I.- Another of the great challenges that has to be overcome is that of visibility and the media, where the different treatment given to the Muslim community is evident. It is believed that for Muslims to consider themselves *integrated* in Europe, they have to reduce the visibility of the practice of their religion. The great malady that can hinder the proper working of civil society are extremisms, no matter what kind they are, and the fact is that the people who think they are better because they do not believe in anything can be as dangerous as those who believe in something. Dogmatics are a problem. Building and achieving a better world is a question of being consistent. Someone might have the best principles in the world, but if they betray them, the consequences are unpredictable. Research is good, humility is essential, the answers are important, but above all else the world will be better if we all act according to the values that we preach and in all spheres: justice, environment, respect for human beings.

A you will have seen, throughout this publication and in these final considerations, we do not offer any absolute truth but reflections from an open debate that needs to be faced, without fear,

without dogmatic ideas and with an open mentality and a spirit of fostering coexistence between cultures, between religions, with complete respect for the parameters that are universal in matters of human rights. We hope that these reflections are a good starting point to strengthen our social bonds.

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SAHAGÚN LUCAS, J. de. *Interpretación del hecho religioso: filosofía y fenomenología de la religión*. Salamanca: ed. Sígueme, 1990. 2nd edition. A study into the religious subject from two perspectives, the phenomenological and the philosophical, offering information and reflection to those involved in these areas. The aim of the book is to reveal the depth of religious meaning, moving towards confirmation of its rational coherence.

SAID, E. W.: *Orientalisme: identitat, negació i violència*. Vic: ed. Eumo, 1991.
The author of the book seeks to demonstrate what the imposition of European and United States cultural imperialism in the East means to him. To achieve this, Edward W. Said explains the genesis and functioning of this western imperialism in the cultural sphere and on relations between nations, which has led eastern countries to an archetypal form of state: orientalism.

SMART, N. *Las religiones del mundo*. Madrid: ed. Akal, 2000. A general and historical work on the world of religions and the development of belief systems. It is divided into two parts: the first follows the development of the different religions as they emerged in the ancient world and the second provides a detailed analysis of faith and cultures that emerged during the Renaissance and the voyages of discovery and conquest.

TELLO, A., PALACIO, J.-P.; and COMA-CROS. D. *Atles bàsic de les religions*. Barcelona: Parramón, 2004. An easy-to-understand atlas which offers a view of the spiritual history of humanity. The atlas reveals the importance of religions for the history of humanity.

TORRADEFLOT, F. (ed.) *Diàleg entre religions: textos fonamentals*. Madrid: Ed Trotta, 2002. Booked aimed at those who wish to learn about the different religious traditions, mutual relations, the role of these in the societies where they enjoy a significant presence and how they help build a community of people at peace. It is also aimed at people interested in the ethical renewal and guidance offered by religious traditions. It is, therefore, a defence of the culture of peace, of individual identity and of diversity.

VILANOVA, E. [*et al*.]: *Religiones y experiencia de Dios*. Madrid: ed. Promoción Popular Cristiana, 2001. This work offers an approximation to the experience of God in Judaism, Hinduism, Buddhism, Sufism and Christianity. All these traditions have a common element: they all confirm the vital reality of searching for God beyond sociological behaviour.

WAARDENBURG, J. *Significados religiosos: una introducción sistemática a la ciencia de las religiones*. Bilbao: ed. Desclée de Brouwer, 2001. This book seeks to establish a series of steps to help conduct a reasoned study into the religious phenomenon. Using the outline of the main lines of research and through specific examples, it aims to discuss the question of the phenomenology of religion from a thorough, serious scientific perspective written in language that is easy to understand and that is appropriate.

WELTE, B. *¿Qué es creer?* Barcelona: ed. Herder, 1984. In this book, Bernhard Welte looks for the appropriate answers to the question as to what believing means from the guidelines provided by the phenomenology of religion and in a transversal sense through all religious

tradition. He poses the question as to the meaning of religion, delineating even the intellectual paths that lead to the mystery of God open to those who follow a denomination of faith.

Widengren, G. *Fenomenología de la religión.* Madrid: ed. Cristiandad, 1976. A reference work on the study of the religious phenomenon. In the book, the author provides an in-depth, yet straightforward and clear approach to the universality of the religious fact, religious language, the distinction between the sacred and the profane, the sacred space, sacred time, the hierophant and the expression of the sacred. The book is a good manual for students of the religious fact in particular and of religious sciences in general.

Secularism and Religions

Blas Zabaleta, P. de [coord.]. *Laicidad, educación y democracia*. Madrid: ed. Biblioteca Nueva, 2005. This book confirms the resurgence of the secularism-denominational polemic in the Spanish education system at a time when growing numbers of students from other countries are attending state schools as are followers of different religious traditions, other than Catholic Christianity.

Comte-Sponville, André: *L'ànima de l'ateisme. Introducció a una espiritualitat sense déu.* Barcelona: Paidós, 2007. The French philosopher presents a book in which he asks whether humanity can live without religion and argues the reasons for being atheist. He questions the existence of God from a philosophical point of view and concludes that being atheist does not mean being spiritually impoverished.

Corbí, M.: *La religió que ve: la gran transformació de la religió en la societat científico-tècnica.* Barcelona, ed. Claret, 1991. In this book, the author reveals the consequences of the arrival of the innovation societies on the religious forms and structures known to date and states the need for a clear transformation in the religious sphere which requires a new take on religious and cultural traditions, leaving to one side the old ways of life or belief systems.

Corbí, M. *Religión sin religión.* Madrid, ed. PPC, 1996. Marià Corbí sees the concept of religion as a way of encapsulating a series of thought and emotional processes and how we lived our lives in past societies. He believes that we should now renew these approaches in order to adapt this concept to the ever-changing reality that we observe, without undervaluing the past and looking to the present and the future. It is a question of changing our approach, but maintaining a large part of the content.

Council of Europe. *Committee of ministers: Dimension of religions and non-religious convictions within intercultural education: Recommendation CM/Rec(2008)12 and explanatory memorandum.* Strasbourg: Council of Europe, 2009. (Legal issues).
Practical recommendation for government action which explains the perspective of intercultural education from where religions and non-religious convictions should be discussed and a series of teaching and learning principles, objectives and methods obtained. The recommendation was adopted by the Council of Europe Committee of Ministers on 10 December 2008.

Ferrarotti, F: *Una fe sin dogmas*. Barcelona: ed. Península, 1993. In this book, the author focuses on the distinction between the sacred and the religious. The dean of Italian sociology, Franco Ferrarotti, considers the subject from the perspective of the persistence of the sacred outside the bounds of "church religions". In doing so, he recovers the "secular religion" and "theology for atheists" from previous works. He takes his underlying argument from Rousseau's Social Contract and the work of Durkheim is revised in depth. The author dreams of the end to "Constantine Christianity" and defends a religion without dogma or structures.

Fierro, A. *El hecho religioso en la educación secundaria: una educación laica para la tolerancia.* Barcelona, ICE-Horsori, 1997. Aimed at teachers, this book looks at the educational presence and treatment of the religious fact in the school during adolescence. Within the framework of

an education and religious theory, the book sides with the educational value of rituals, sacred accounts and religious figures cultivated by the different religions, which have to a certain extent marked the different cultures of humanity.

García-Santesmases A. *Laicismo, agnosticismo y fundamentalismo*. Madrid: ed. Biblioteca Nueva, 2007. In this book, García-Santesmases defends the concept of secularism, which often tries to associate itself with the concepts of totalitarianism and relativism. Secularism proposes a model of social relationships that avoids confrontation between civilisations and groups of humans caused by religious belonging. The secularism installed in society prevents the occurrence of religious extremes. In this sense, the book sides with the values of the Enlightenment, but without overlooking everything that took place in the twentieth century.

González Faus, José Ignacio: *La difícil laïcitat*. Barcelona: ed Cristianisme i Justícia, 2005. A publication which brings together the main questions to be debated on the path of a society such as ours towards secularism, with reference to the importance of agreements and the medium- and long-term vision which overcomes the cultural elements attached to religion.

Rodriguez García, J. A.: *Urbanismo y confesiones religiosas.* Madrid: Ed. Montecorvo, 2003. Unpublished book on the relationship between urban planning and different religious denominations. It begins with a look at the history of urban planning law in Spain and an approximation of current urban planning law. It then examines the principles of secularism and cooperation with religious denominations within Spanish urban planning law.

Onfray, M. *Tractat d'ateologia.* Barcelona: Edicions de 1984, 2005. From a philosophical point of view, Onfray analyses the validity of atheism and defends this through a sufficiently in-depth analysis of how monotheistic religions have functioned, their sacred texts and their involvement in everyday life during the course of history.

Tamayo, J.J.: *La Teología de la Liberación. El nuevo escenario político y religioso.* Valencia: ed. Tirant lo Blanch, 2009. This book takes a complete journey through the different stages of the new paradigm of Liberation Theology, one of the most creative movements in the history of Christianity. It does this from its origins in Latin America in the mid-1960s until its implementation in the different continents which comprise the so-called Third World.

Tamayo, J.J. *Para comprender la crisis de Dios hoy*. Estella: ed. Verbo Divino, 2000. 2nd edition. An historical-philosophical study into the complex relationship of modern philosophy with the question surrounding the idea of God. It discusses the research into the God-reason binome with Descartes and Leibniz, and agnosticism, theism and atheism, dialecticism and the death of God, the paradox of faith in Kierkegaard, the humanist critique of God in Feuerbach, Marxism and religion, God as nostalgia for the father-figure in Freud and the moral judgement of victims before God.

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