

Models of State-Church Relations in Europe and the USA and Their Consequences

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Resume

This paper deals with the interaction between religion and politics at the legal and institutional level, modalities of regulating relations between state and religious organizations in Europe and the USA, and the consequences of those models for religious organizations and religion itself. In contrast to the United States, two main features of those relations on the Old Continent are: plurality of models, with almost complete absence of the liberal / secular one; and preferential treatment of traditional religious organizations, though new religious groups are usually recognized. One may also observe a tendency of state voluntary withdrawal from the doctrinal and administrative affairs of religious organizations. This trend is partly explained by the transformation of religious organizations from organized mass religious movements, potentially threatening to the state's legitimacy, into politically integrated interest groups with a moral agenda but far fewer members. In this connection, researchers have long pointed to the phenomenon of a far more rapid decrease in the numbers of 'church-goers' in the traditional religious organizations in Europe than in the United States. This is, somewhat paradoxically, explained by the privileged status that those organizations have in the European states. The paper ends with a section on the implications for the state-church relations in the Balkan region.

This paper has the humble aim of providing a short survey of the current state of theory and practice of state-church relations in Europe and the United States. More precisely, the topic of this essay is the relationship between two hierarchies, two systems, the religious and the governmental; and not the interaction between religion and politics in general. At the end we will discuss the implications for state-church relations in the Balkans, and in ex-Yugoslav countries especially.

Historically, state-church relations have been a significant source of political conflict. Attention is drawn at this early stage to the significant differences between European and American tradition in this regard. Mainstream Western European tradition is much more in favor of state accommodation of and cooperation with religious organizations, while the American tradition leans towards separation. Both models are essentially different from both theocracy and from the open state antagonism towards religious organizations that was the reality in all Communist countries and still is in North Korea, Cuba and China. There are many, mainly historical and social, reasons for these differences.

The relations between religion and politics in general, and between the state and religious organizations in particular are so complex that they have produced a variety of regulatory mechanisms. This complexity stems from a wide spectrum of vital areas and aspects of social life that feature prominently in the relationship between state and religious organizations. Those, *inter alia*, include: the legitimacy of the state itself, monopoly on truth, administrative autonomy (previously of the state, today of religious organizations), education, financing of religious organizations, religion in the armed forces, religious freedoms and rights, especially of minorities, etc.

In comparison with the Middle Ages, contemporary interaction between religious organizations and the state unfolds in completely new circumstances, which have essentially

¹ This is the author's contribution to the European Muslim Network document on religion in the public sphere.

changed the terms of that dialogue. Those new circumstances lie in the fact that power, which could be (mis)used against other religious organizations, previously lay in the hands of religious groups, while today it rests mainly with secular governments. Exceptions notwithstanding, it has become more likely that political authorities will use force against religious groups than the other way around.² Understandably, in the past the main preoccupation of thinking men was how to secure the state in its development from an aggressive church. Today, in contrast, it is usually the modern state that represents a potential threat to the religious and other rights and freedoms of its citizens and their groups.

Generally speaking, when it comes to the relationship between state and religious organizations there are four clearly differentiated possibilities: 1) complete integration / fusion of the two, 2) a state church, 3) separation with various degrees of strictness or cooperation between state and religious organization, and 4) antagonism. Each of these possibilities has produced a series of modalities both in theory and practice. They are best viewed as a continuum, which spans from the theocratic state on one side to the Erastian state,³ hostile to religion, on the other side. Models in this latter part of the continuum are result of the long secularization process, which – like secularism itself – varies from moderate models (separation) to ‘state fundamentalism’, ‘leftist secular fundamentalism’, an extreme, aggressive and hostile state.⁴ We will briefly address each of these models, their main variations and examples.

I. Theocracy

In short, theocracy is a relationship between state and religious organizations in which one religious institution has supremacy over religious and worldly affairs, where that institution controls the political system. Today in Europe there is one theocracy – the Vatican. Another state that could – with some reservations – be qualified as theocratic is Andorra, since one of its two constitutional rulers is bishop.

II. State Church

A state church exists where the state grants one religious organization or institution a privileged position and monopoly over public religious life. In this arrangement, the church is often a part and parcel of the state administration, and where it is not, the state usually retains a certain level of control over it, especially in the area of finances and highest official appointments. The church, in return, legitimizes the political system, stressing obligations of loyalty and solidarity, as well as the believer’s duty of obedience to the civil authorities. A modified version of ‘state church’ is the ‘established church’ which differs from the previous inasmuch as its privileged status rests upon the fact that majority population belongs to it. Consequently such religious organizations are usually capable of maintaining a higher level of autonomy in their relations to the states than ordinary ‘state churches.’

This model is most often found in the protestant European countries (primarily for doctrinal reasons), although some concordats between the Vatican and predominantly Catholic secular states come close to establishing the Catholic Church as a state church. Such was once the case with France (1801–1905), Spain (1945–1978) and Italy (1848–1984). In Protestant societies it was believed that the state, when legislating, should be guided by Protestant ethics.

² Robert Wuthnow, “Introduction,” in idem, ed., *The Encyclopedia of Politics and Religion*, 2 vols. (London: Routledge, 1988), xxix.

³ Lamin Sanneh, “Separation of church and state: a principle advancing the struggle for human rights,” in Wuthnow, *Encyclopedia of Politics and Religion*, 690.

⁴ Lamin Sanneh, “Separation of church and state: a principle advancing the struggle for human rights,” in Wuthnow, *Encyclopedia of Politics and Religion*, 690.

Membership in the state church was considered to be a civic duty; the ideal was religious monism. In Sweden, for instance, until 1860 it was impossible to leave the church, while the law granted full religious freedom only in 1951. State churches are in principle involved in public administration, especially in keeping of birth and marriage records, supervision of the educational system, and provision of social services. They have been the main expression of 'the sacred position of the secular ruler'

With the advent of the modern age, state churches were not – in most cases – separated from state. However, they did go through a transformation process ending usually as 'established' or – in Scandinavian parlance – 'folk churches'. Thus a church serves as the bearer of national tradition and as a spiritual center towards which a majority of the population gravitates. This status leaves the church with certain privileges and autonomy in its relation with the state. Similar changes could be discerned in countries with a Catholic majority.⁵

A subtype of state church is the Erastian model, in which the state attempts to make the church one of its departments with no autonomy in policy making. This model was characteristic of Protestant German states in the Reformation age and of England during the reign of Henry VIII. In this model, the state must engage, among other things, with the problem of internal religious changes, often expressed in the form of disputes about liturgy and doctrinal issues. In such situations the state can either tolerate differences to some extent, or try to arbitrate. Either way, both the state and the religious organization risk their credibility.⁶

III. Separation of Religious Organizations and State

Separation of state and religious organizations, sometimes called the 'liberal model', denotes detachment of religious organizations from secular authorities in all forms. Although as a theoretical model, it was conceived in Europe, it has been rarely practiced on the European soil. Professor Silvio Ferrari observes that the structures supporting such a separation could not be found in the legal systems of most European countries.⁷ Hence this model is often considered to be an American contribution to liberal political theory and a core value of American political life. However, there are those who think that this is an oversimplification of reality and that it presumes a much clearer understanding of the principle than the one that really exists. It is said that this principle owes its wide acceptance even in the United States to its ambiguousness and multiple meanings. Some of those specific meanings are even contradictory, which in turn has created a series of legal controversies.⁸ Paul J. Weber has identified five forms of separating religious organizations from the state: *structural separation*, *absolute separation*, *trans-valuing separation*, *accommodation*, and *equal separation or neutrality*. Each of these deserves a brief comment.

1. *Structural separation*

Structural separation is a minimalist form of separation with a huge area of overlapping authority or claims to it. For instance, secular rulers almost regularly try to influence the selection of religious leaders and application of religious laws, while clerics do their best to manipulate the appointment / election of secular rulers. This model can even coexist with the model of an

⁵ Ole Riis, "State churches," in Wuthnow, *Encyclopedia of Politics and Religion*, , 714–15.

⁶ John G. Francis, "The Evolving Regulatory Structure of European Church-State Relationships," *Journal of Church and State* 34, no. 4 (Autumn 1992): 781.

⁷ Silvio Ferrari, "Separation of Church and State in Contemporary European Society," *Journal of Church and State* 30 (Autumn 1988): 542.

⁸ Paul J. Weber, "Separation of church and state: a potent, dynamic idea in political theory," in Robert Wuthnow, ed. *The Encyclopedia of Politics and Religion*, 2 vols. (London: Routledge, 1988), 684.

‘established church’ as is the case in England where the monarch is a titular head of the Anglican Church.

Structural separation is the oldest and most important. In theory, this form of separation has its roots in the Biblical dictum: “Render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s” (Matthew 22: 21). As part of Western political culture, structural separation could be considered an outcome of the theory of ‘two swords’ (spiritual and temporal power) formulated by Pope Gelasius I (pope 492–496). A good portion of the western political history developed around the dialogue/conflict of ‘two swords’: the pope and different temporal rulers. However, while the battle for domination as well as cooperation over certain issues – such as fighting non-Christians – went on simultaneously, the structures of religious and state organizations developed independently in such fields as the recruitment and education of professional administrators, legal systems, and property.⁹

2. *Absolute Separation*

Absolute or strict separation evolved as a consequence of strict interpretation of the First Amendment to the US Constitution, which states that Congress “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

One of the advocates of this model, the U.S. Supreme Court justice Hugo L. Black, stated in the 1947 *Everson v. Board of Education* case that:

Neither a state nor the federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever format they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.

This reading of the First amendment is in line with the President Thomas Jefferson’s words from 1802 that the First Amendment (1791) aims to “erect a wall of separation between church and state.” However, this model has never been thoroughly applied even in the United States. The best example of its violation is the Supreme Court’s decision to allow financial support to the elementary and high school of religious background.¹⁰

3. *Transvaluing separation*

Advocates of this form of separation, which is based on the cessation of all religious influence on public education and the nation’s political culture, see religion as a strictly personal, private affair that has no role to play in public affairs of society. In a way, this form of separation was built into the constitution of the Soviet Union, which had an overt atheistic leaning. On the other hand, this kind of separation has little appeal to the American public, for instance. The best-known advocacy group that supports this model in the United States is the American Humanist Association, which sees every attempt on behalf of religious organizations to influence national legislation as violation of the First Amendment. The Supreme Court rejected such an interpretation of the Founding Fathers’ intentions in *Harris v. McRae* (1980), clearly refuting the argument that any religious influence on legislation is unconstitutional.¹¹ This model can easily turn into complete expulsion of religion from public discourse and life.

⁹ Weber, 684.

¹⁰ Weber, 684–85.

¹¹ Weber, 685.

4. *Supportive separation*

A very different model of separation is that of supportive separation or the accommodation principle, which holds that state and religious organizations may support each other as long as state does not give preference to one religious organization over others in administering such a support. Although polls show that many American citizens favor this model, it never gained the support of the majority of Supreme Court justices.

On the European soil, however, everything indicates that this is the model of the future. Although in Europe today religious movements with an antagonistic attitude towards politics and the state generally attract more attention, state and religious organizations today cooperate more than they clash. Accommodation can also take the form of silent understanding as well as agreement behind the scene. Yet the tendency is that state and religious organizations openly recognize their complementary roles.¹²

5. *Equal Separation*

Equal separation is sometimes called the neutrality or nondiscrimination principle. Paul J. Weber summarizes the concept in the following way:

It rejects all political or economic privilege, coercion, or disability based on religious affiliation, belief, or practice, or lack thereof, but guarantees to religiously motivated or affiliated individuals and organizations the same rights and privileges extended to other similarly situated individuals and organizations. ... It treats the right to religious belief and practice as a human right to be protected along with other human rights in an even-handed manner. It protects the right of religiously motivated groups and individuals to participate in the political process and the economic system in the same manner and to the same extent that it protects the rights of other similar groups and individuals to participate.¹³

The father of this theory is American president James Madison. Lately, a number of scholars and judges in the USA have actively worked on building a consensus centered on the neutrality of state and equal treatment more than around strict separation. They are trying to avoid what they see as a trap set up by some liberal advocates, which has it that expulsion of religion from public sphere is neutrality. Thus one of the advocates of this new consensus, professor of law Douglas Laycock, reads the First Amendment to mean that “the religion clauses require government to minimize the extent to which it either encourages or discourages religious belief or disbelief, practice or non-practice, observance or non-observance”. According to this understanding, religious organizations may receive government funds for social services the same way other similar agencies do.¹⁴

It is interesting to note that separation of state and church in the United States was achieved thanks to a most unusual alliance of secularists/rationalists and religious leaders. The paradox lies in the fact that the first group, led by Thomas Jefferson (president 1801–09), wanted separation in order to prevent oppressive and divisive religious tendencies from taking roots in the federal American government, which they wanted ‘clean’ of any religious activity or influence. On the other side, some religious leaders, with Roger Williams (1603–83) being very vocal on the issue, promoted the wall of separation between the ‘garden of belief and the wilderness of the secular world.’ According to him, the separation was supposed to prevent

¹² Wuthnow, “Introduction,” xxx-xxxi.

¹³ Weber, 685.

¹⁴ Weber, 686.

intrusion of the corrupting influence of power into religious affairs and enable religious organizations to freely exercise their mission.¹⁵ So, the first group wanted to protect the state from religion and the second to protect religion from state. Although with different goals in mind, two groups agreed on a common method for achieving them.

IV. Anti-Church Model

The anti-church model is a form of state-church relations in which the state not only wants to control religious organizations, but has a critical and even hostile attitude towards the religious hierarchy and religion in general. The previous East European systems fall under this category, as well as China today or France and Mexico in the early 20th century. State hostility towards religious organizations often expresses itself as prosecution of religious leaders, confiscation of religious property, and prohibition of religious activities.

After writing this paper I came across a different and more complex typology developed by Veit Bader, which is worth noting. Veit Bader discerns five major models: Strong establishment (Serbia, Israel, Greece), weak establishment (England, Scotland, Scandinavian states), plural establishment (Finland), non-constitutional pluralism (Netherlands, Belgium, India, Australia, Austria, and Germany), and non-establishment and private pluralism (allegedly, the USA). He prefers the fourth model on both practical and moral grounds. That model combines constitutional disestablishment with restricted legal pluralism, administrative institutional pluralism, institutional political pluralism, and religio-cultural pluralization of the nation. The author should be commended for drawing our attention to the important but often-neglected difference between constitutional regulation and legal regulation, administrative, political and cultural interference, as well as to the fact that aims of states in relation to religion and religious organizations vary widely.¹⁶

Consequences of different models on religion, religious organization and state

This section aims at exploring possible consequences of state regulation of religious organizations for the state itself, for religious organizations, and for religion in general. As has already been said, Western Europe has never been a very hospitable place for the liberal model of separation of state from religious organizations. The models applied differ from state to state and they are evolving. During last fifty years many churches in Europe have achieved an enviable degree of administrative autonomy, keeping or acquiring at the same time the right to financial support from public funds. Paradoxically, however, the participation of believers in traditional churches in Europe today seems at an all-time record low. At the same time, in the USA where the Supreme Court jealously guards a 'wall of separation' between state and religious organizations, public opinion polls consistently show significantly higher percentages of both self-declared and practicing believers.¹⁷ Similarly, in Eastern Europe, where religion was a victim of state repression for decades, certain religious organizations keep raising the levels of membership. Although there are some other factors that influence religiosity beside state support,

¹⁵ Weber, 685–6.

¹⁶ See his excellent paper "Religions and States: A New Typology and a Plea for Non-Constitutional Pluralism", *Ethical Theory and Moral Practice* 6 (2003): 55-91. The typology is on pp. 67–72.

¹⁷ In 1986 43% of Americans went to church every week while only 36% of Italians, 12% of the French, 21% of Western Germans and 14% of the English did the same. When asked about the importance of religion in one's life, the following percentage of young men and women said that it should be 'very important': 9% in W. Germany and 8% in France and England compared to 47% in the USA. Princeton Religious Research Center, *Emerging Trends* (Princeton, N.J.: Princeton Religious Research Center, 1989); Francis, "Regulatory Structure", 781, 798.

one question poses itself: can it be that state neutrality or hostility towards religious organizations strengthens religion and religious organizations, while state support weakens them?¹⁸ In the following paragraphs we will shed more light on this question.

John G. Francis from Utah University, whose findings we follow here, holds that regulatory regimes developed in Europe after the World War II have motivated European religious organizations to neglect recruitment of members for participation in institutionalized religion and even their mission, and instead focus on their newly acquired social role: education, humanitarian work and political lobbying.¹⁹ He claims that contemporary state regulation influences religious organizations' priorities and activities irrespective of the religiosity of population.²⁰ Religious organizations react to regulatory incentives and inhibitions the same way they react to the political environment. In the same vein, Roger Finke concludes that deregulation of religious organizations in the USA has promoted religious individualism: In order to survive, a religious organization in the USA has to win over believers in the open religious market, by responding to the understanding of religion as individual conversion.²¹

Regulation of religious organizations used to be a result of state intention to impose its beliefs on its subjects, to redistribute social resources, or to prevent a possible challenge by religious organizations to the existing political system. Today, however, much regulation is a result of state reaction to the initiative of religious organizations which try to secure funding for their activities when faced with dwindling numbers of membership. Seeking financial support in exchange for a degree of regulation appears to be a new strategy on the part of religious organizations in Europe.²² This trend certainly represents a considerable departure from the 'liberal tradition of state neutrality.'

There are many factors that motivate religious organizations to actively seek regulation in times when states are losing interest for it. First, a religious organization may conclude that regulation is to its competitive advantage in competition with other religious organizations. This is most often the case in countries where one church enjoys special status for historical reasons or because a majority of the population nominally belongs to it, or where other religious organizations, for various reasons, are not in a position to capitalize on the opportunity to conclude agreements with the state that would grant them the same status.²³ Second, some religious organizations are simply worried about fulfillment of their obligations towards their officers, institutions and educational programs. This concern, combined with decreasing numbers of believing members, understandably pushes those organizations towards the negotiating table with the state.

As a result of this accommodation to different regulatory regimes, churches in different European countries have become identified with different activities. So, for instance, in France, where the church has been separated from state for the better part of the 20th century, the Catholic Church has succeeded in building up a reputation as an institution that provides good education, rather than as a political advocate. According to some observers, the support that schools run by church in France receive from the government stems not from the latter's conviction that those schools are bastions of morality, but from its satisfaction with the quality of secular education

¹⁸ Francis, 775.

¹⁹ Francis, 775.

²⁰ Francis, 778.

²¹ Roger Finke, "Religious Deregulation: Origins and Consequences," *Journal of Church and State* 32 (Summer 1990): 609–26.

²² Francis, "Regulatory Structure", 779.

²³ For instance, Muslims in Italy, like many other religious organizations, have not yet benefited from the opportunities offered in national laws, because they have not signed an agreement with the state. The reason for that is the failure of Muslims to agree on a body that will represent them in dealings with government.

that they offer. In Germany, religious organizations pay special attention to social services and health care. Both major churches are actively involved in these sectors and receive significant state funds in return. In Eastern Germany, Protestant churches had a pronounced political role due to the absence of alternative political forces. However, with the fall of the Berlin wall the political environment was radically changed; the church is no longer in a position to attract political forces, and therefore is expected to follow the example of churches in Western Germany and focus on social services and health care as well.

The Anglican Church has over time built an image of “official clerical opposition”; an assessor of social conditions and public policy. In Italy, the Catholic Church has been trying for decades to distance itself from the Christian Democratic Party which it helped establish. In Spain, however, the Church receives considerable financial support for the services it provides to Spanish society, even from the Socialist government, which two generations ago advocated an end to its privileged position as an established church.²⁴

The experience of religious organizations with regulatory frameworks in Europe indicates that opportunities created by those frameworks quickly attract religious organizations, which then reorganize their priorities in line with the opportunities at hand. Where they are denied a political role, or where they conclude that their intervention in politics is counterproductive, religious organizations refocus on social work, provision of health services, education or advocacy of specific political measures in selected areas of public policy.

It has also been observed that religious organizations, thanks to previously mentioned factors, have succeeded in achieving a substantial level of administrative autonomy, while maintaining their previously achieved level of state financial support and sometimes even their privileged status *vis a vis* new religious organizations. Thanks to such a course of developments, religious hierarchies have become independent from the support of their believers more than at any earlier time.²⁵

Conclusion

Although strict separation of religious organizations from the state is a model with many advocates on the European soil, it does not capture the reality of the political relationship between them in Europe’s recent history. On the contrary, European states have so far experienced a number of those models. Relations between states and religious organizations there have always been intense. Sometimes they have cooperated and at other times they have clashed, but their relations have never been insignificant. Historical experience and social reality have pushed European states to secure privileged status for traditional, mainly Catholic and Protestant churches until today. In Spain, Greece, Belgium, and Luxemburg, the dominant religious organizations are financed from the government budget. So was the case until recently in Italy, which is now shifting to a system of religious taxes collected through public administration as is the case in Germany, Austria, Switzerland, Denmark, Sweden, and Finland.²⁶ Some religious organizations receive indirect support from the state in France, the United Kingdom, the Netherlands, and Sweden. Free access to TV and radio is another privilege granted to some

²⁴ Robert Graham, *Spain: A Nation Comes of Age* (New York: St. Martin’s Press, 1984), 220–21.

²⁵ Francis, 801–803.

²⁶ Norway falls in neither group. All registered religious communities (not just the dominant) receive roughly the same funds per capita over the government budget. This funding is widely claimed to be “a refund of the church tax” rather than a subsidy, but that claim is wrong. No separate entity called a church tax exists in the government budget; moreover, and the support for other religious communities is determined not as a share of tax returns but according to the budgeted expenses of the state church, whether or not those expenses are covered by tax returns or other state funds. It is not yet clear, but hotly discussed, what funding model will be introduced in Norway if, as is likely, Norway follows Sweden in separating state and church. I would like to thank Christian Moe for this note.

religious organizations in parts of Europe.²⁷ Yet, despite enviable financial security and administrative autonomy, churches in Europe are generally not successful as centers of gravitation in their societies.

Thanks to the ever-increasing number of small non-conformist churches and non-Christians in once monolithic Christian societies, the situation is slowly tilting in favor of the recognition of non-traditional religious organizations as well as Islam. That process is often very slow and incremental in nature. These new organizations in most cases advocate greater distance between religious organizations and the state, although there are examples to the contrary, as is the case with some Muslims in Britain who support the establishment of the Anglican Church. Alternatively, they ask that the privileges of the dominant religious organization be extended to others.²⁸

States are increasingly withdrawing from doctrinal and administrative affairs of religious organizations even when these are closely connected to the state. One reason is the complexity of such intervention. The risk of over-regulation leads to its actual reduction. The explanation for such state behavior could, among other things, be found in the decreasing number of 'church-goers' in the traditional churches, a phenomenon that is partially explained by the privileged status of those churches in European societies.

As a result of overall social changes during the last fifty years, most importantly secularization, religious organizations in Europe have come a long way since the time when they represented themselves, and were seen, as the organizational expression of religious movements which saw the state as protector of the religious society and, on that basis, supported or denied the legitimacy of existing states. Rarely, today, do political circles in Western Europe take religious organizations as representatives of comprehensive ideological movements. Religious organizations are more often viewed as interest groups with a moral agenda that, like other interest groups, compete for resources and legal privileges. This does not necessarily mean that religious leaders do not provide independent comment on everyday issues of wider public interest. To the contrary, it could be said that many of them believe that today they enjoy more freedom of expression regarding those issues than ever before. However, those leaders speak as moral authorities, not leaders of mass movements which question or support main tenets of the state.²⁹ The withdrawal of European states from internal affairs of religious organizations could be interpreted as a sign that after this transformation of religious organizations into interest groups, they feel secure enough to let religious organizations alone.

²⁷ Ferrari, "Separation," 533–48.

²⁸ Swedish Institute, "Religion in Sweden," *Fact Sheets on Sweden* (Stockholm; Swedish Institute, 1991).

²⁹ Francis, 803–804.

Appendix

State and Church in the Balkans

Ex-Yugoslav republics shared the same anti-church model from 1945 until 1990. State and church were formally separate, but religious communities were closely monitored and their activities strictly regulated even after relative liberalization of Yugoslav society in the 1970s. In the late 1970s, Yugoslav republics passed more or less similar laws on religious communities regulating their status and activities. Although those laws were fairly flexible compared to Socialist states, their provisions failed to meet international standards of religious freedom on numerous accounts. Those laws were initially taken over by newly established states, sometimes amended and sometimes simply flexibly applied since their strict application was impossible in new circumstances. Today, however, only Slovenia has such a law still in place albeit amended.

Generally speaking ex-Yugoslav republics have been cautious and even slow in enacting new laws regulating the state-church relations and relatively respectful of international standards in this regard. Perhaps, in societies so divided along secular/religious line(s) the process could not be faster. There were anomalies such as the case of the Republic of Srpska, which adopted a constitution whose Article 28 reads in part::

... The Serbian Orthodox Church shall be the church of the Serb people and other people of Orthodox religion. The State shall materially support the Orthodox Church and shall cooperate with it in all fields and, in particular, in preserving, cherishing and developing cultural, traditional and other spiritual values.

The last paragraph, which was not surprising in the constitution of an entity established in a war of attrition against all non-Orthodox peoples of Bosnia, was deleted in 2002 by the decision of the High Representative.³⁰ There was also a draft law on religion, churches, and religious communities in Republic of Srpska, drawn up by the Ministry of religion, which provided for the establishment of Orthodox, Roman Catholic, Islamic and Jewish communities/churches. The law was never passed.³¹ Instead, in January 2004, Bosnia and Herzegovina completely overhauled its legal framework for regulating state-church relations. The basic principles of the new Law on Freedom of Religion and the Legal Position of Churches and Religious Communities in today's Bosnia are:

1. Religious communities and churches are separate from the state;
2. All religious communities are equal in rights and obligations;
3. Religious communities/churches are independent in defining their own internal organization;
4. All religious communities have the status of legal persons, with the continuity of legal personality of historic religious communities being recognized;
5. Religious communities and their organizations are not tax-exempt;
6. The state may provide material assistance for health-care activities, educational, charitable and social services offered by religious communities, on the condition that those services are provided without any discrimination;

³⁰ The website of the President of the Republic of Srpska still keeps the old constitution while the amendments are published in different document in Serbian but not in English. See www.predsjednikrs.net, visited December 8, 2005.

³¹ Emir Kovacevic, "The Legal Position of Churches and Religious Communities in Bosnia and Herzegovina," in Silvo Devetak et al., eds., *Legal Position of Churches and Religious Communities in South-Eastern Europe* (Ljubljana: IDSE, 2004), 63, 67–68.

7. The state has the obligation to regulate the pensions, disability, and health insurance for religious servants by special regulations, etc.

This law was drafted in an unusually wide process of consultation between Bosnian churches and religious communities, public authorities, as well as international experts and organizations.³² The result is a relatively good law that takes into account the highest international standards of religious freedom, although some of its provisions seem to favor registered religious communities and their leadership. For instance, Article 5.f prohibits formation of associations of religious officials or believers without the consent of the relevant church or religious community authorities, while Article 18 requires 300 members for registration of new churches / religious communities. The Law can safely be said to uphold the principle of separation with adjustment and cooperation. Many of the provisions of this law are left intentionally vague. What they mean will be seen when the Ministry of Human Rights and Refugees of Bosnia-Herzegovina issues its long overdue Instruction for the implementation of this law. It would also be interesting to see what will be the future of the Concordat between Bosnia and the Vatican. Reportedly, the reluctance of the Islamic Community and the Serbian Orthodox Church to endorse the signing of the concordat caused a rift between the Catholic Church in Bosnia and these religious communities in early 2004.³³

Religious education is an optional subject in Bosnian elementary schools and in some parts of the country in the first years of the secondary schools. (The issue of religious education in schools has so far been the most publicly debated issue from the state-religion set of issues). Chaplains are present in the army and in some prisons. There is no state law on holidays yet. The law on holidays of the Republic of Srpska adopted in November 2005 clearly prefers Orthodox Christianity by proclaiming Orthodox saints as official holidays of the Republic of Srpska, its police and army units. Bosniak members of the Parliament strongly protested the adoption of the law.

The Republic of Croatia adopted the Law on the Legal position of Religious Communities in 2002.³⁴ Pursuant to Article 9 of the Law, during 2002 and 2003 the Croatian government made contracts on issues of mutual interest with most religious communities in the country including the Serbian Orthodox Church and the Islamic Community. Before that, from 1996 to 1998, Croatia concluded four treaties with the Holy See on spiritual instruction in Croatian army and police, cooperation in education and culture, legal issues and economic issues. It has already been observed that this way of regulation has produced legal pluralism with several classes of religious communities in Croatia; by virtue of Concordats signed before the law was adopted, the Catholic Church is a religious community *sui generis*. The Treaty on cooperation in Education and Culture gives preferential status to the religion of the majority – Christianity. It states that “the system of upbringing and education in public upbringing institutions... shall be respectful of Christian values.”³⁵ Based on these treaties and contracts, the Croatian government gives a substantial

³² Emir Kovacevic, “The Legal Position of Churches and religious Communities in Bosnia and Herzegovina,” in Silvo Devetak et al., eds., *Religion and Democracy in Moldova* (Maribor-Chisinau: ISCOMET and ASER, 2005), 286.

³³ U.S. Department of State, “International Religious Freedom Report 2005: Bosnia and Herzegovina,” available at <http://www.state.gov/g/drl/rls/irf/2005/51544.htm>, visited on December 12, 2005.

³⁴ Zakon o pravnom položaju vjerskih zajednica, *Narodne novine* 83/02.

³⁵ Ivan Padjen, “The Status of Minor Religious Communities in Croatia: A Revival of Legal Pluralism,” in Devetak et al., *Legal Position*, 93–106. In another place, Padjen claims that “the treaties of the Republic of Croatia with the Holy See on the status of the Catholic Church in Croatia, ..., are superior to other Croatian laws and hence violate Article 41 of the Constitution, which guarantees equality of all religious communities before the law.” Padjen,

amount of money to the Catholic Church (ca. 0.4% of the state annual budget).³⁶ However, this practice has not provoked a reaction from other religious communities because the government has under contracts concluded with them - recognized them the rights that surpass the rights granted by the Law on religious communities. Those rights include a substantial financial support for those communities as well.

In Serbia the issue of state-church relations has not yet been regulated by law. The old law passed in 1977 was abolished in 1993. The Charter on Human and Minority Rights and Civil Freedoms, which is an integral part of the Constitutional Charter of the State Community of Serbia and Montenegro, regulates the matter to some extent. The remaining task was to be done by the new law which so far has not been passed. The draft that was prepared after the fall of Milošević in 2000 especially mentions the historical role of the Serbian Orthodox Church in the development of national identity. Reportedly, however, the SOC has lately advocated the idea that this law is unnecessary and that the state and religious communities should enter into separate contracts, where the Orthodox Church would have the best negotiating position of all the communities.³⁷ The Constitution of Serbia states that religious communities are equal and separate from the state. However, despite the lack of new law on this issue, religious education was introduced in 2002 after a joint effort of Orthodox Church and other churches and communities, including the Islamic Community. The Constitution of the Republic of Montenegro (Art. 11) also proclaims that religious communities are equal, separate and independent from the state.

Macedonian constitution also stipulates that religious communities are separate from the state and equal before the law (art. 19). A Law on religious Communities and Religious Groups was adopted in 1997. Later, in 1998, the Constitutional Court of the Republic of Macedonia struck down several of its provisions conditioning the exercise of the freedom of religion on the registration of religious group with authorities (art. 3), requiring 50 members for the registration of a new religious community (art. 10 and 11, par. 2), and requiring concrete authorization from a government organ in several cases (art. 13, 14, and 22, par. 2). Religious holidays of the major religions are public holidays (Law on holidays), while religious education is allowed neither in the elementary nor in the secondary schools (laws on elementary and secondary education).

The Slovenian constitution, too, stipulates that religious communities are equal and separate from the state (Art. 7). The Republic of Slovenia has not adopted an entirely new law on religious communities, but rather amended the Law on Legal Status of Religious Communities in the Socialist Republic of Slovenia (from 1976) in 1991. Slovenia has concluded bilateral agreements with the Catholic Church, the Evangelical Church of the Augsburg Confession, and the Holy See. The government has prepared a draft law on religious groups, but it has not been passed yet. It provides for the registration of religious groups of at least 100 adult members, as well as financial support from the Republic.

Outside ex-Yugoslavia, in the Balkans only Bulgaria has passed a new law on religious communities, in December 2002. Only the 'official' Bulgarian Orthodox Church has been satisfied with this law. Other religious communities fiercely opposed it. This law seems to be a good example of how not to regulate the relations between state and church and status of religious communities in general. The aim of the state was to resolve the problem of two

"Legal Position of Minority Churches in Croatia: Enforcement of Morality," in Devetak et al., *Moldova*, 249, footnote 6.

³⁶ Nikola Škalabrin, "Upravljanje dobrima," *BS* 75, no. 1 (2005): 353.

³⁷ Thomas Bremer, "Relations between the Church and the State: The Case of the Serbian Orthodox Church," in Devetak et al., *Moldova*, 88; Goran Bašić, "Status of Churches and Religious Communities in Serbia," in Devetak et al., *Legal Position*, 143-157.

Bulgarian Orthodox Churches, which severely affected the solutions adopted. The law was prepared and passed without sufficient consultation with religious communities or international organizations that strongly criticized the law as favoring the Bulgarian Orthodox Church and allowing the Directorate for Religious Communities to interfere in the internal affairs of religious communities, and to punish them and their leaders. What is more, the critique from the Muslim community has led to a new wave of Islamophobia in the country.³⁸

The Republic of Albania has regulated state-church relations by the constitution, which provides for agreements between the government and religious communities. So far only the Catholic Church has reached an agreement with the Albanian state, through a Concordat of 23 March 2002. The Constitution stipulates that there is no official religion; that state is neutral on questions of belief or conscience; that religious communities are equal and independent from the state and vice versa (Art. 10); that religious freedom is guaranteed.³⁹

From this brief survey it is clear that Balkan countries are currently at different stages of regulating state-church relations, with Croatia being almost at the end of the process. The most controversial developments have been in the Serb-dominated part of Bosnia and in Bulgaria. It is quite obvious that all the states want at least to appear to respect international human rights standards, while also attempting to please most of the local religious communities, especially the dominant ones – a practice that sometimes borders on discrimination. Given the heavy heritage of state-religion relations in the region, states are careful not to antagonize religious communities or very strong secular circles. Separation in its various forms is the general rule, with strict separation being almost absent. Despite the numerous similarities between the situations in these states, differences are still significant. Most of the states have one predominant church with a number of smaller ones; others have to regulate real religious pluralism. Some states are well off enough to be able to provide financial support to all communities and thus appease them, as is obviously happening in Croatia; others do not have the necessary resources. It is encouraging news that the process of overt discrimination of one church/community was stopped soon after its initiation in the Republic of Srpska, BiH.

Given the pluralistic nature of the region, the communist past, and the contemporary trends in this area of Europe, it seems that the model that suits these countries best is the model of non-constitutional pluralism or separation with cooperation between state and religious communities. The established church model is outdated, while strict separation would in many states recall bad memories of the Communist era, and alienate many religious people. The challenge, of course, is to meet the expectations of big religious communities and their members, while not infringing on the rights of others, including atheists. The recipe for success in this endeavor – at least on the legal plane – seems to be to have a wide consultative process in designing and drafting legislative and other solutions. The Bosnian and Bulgarian cases are illustrative in this regard. In Bosnia, although still working under the memories of war, four traditional religious communities have been able to take a common stand on most of the issues at hand, though not on all, as the concordat issue shows. However, what has been achieved is commendable when compared to the Bulgarian case, where one would expect much more cooperation between the relevant parties. Given the richness of the European and American experience in regulating these issues, it can safely be claimed that if there is enough will on the part of the state, religious communities, and civil society, there will be a way that will be acceptable to all. The problems most often seem to lie in unrealistic demands of religious communities (with regard to religious education and financing, for instance), on the one side, and

³⁸ Marko Hajdinjak, "Inter-religious Relations in Bulgaria in the Context of the New Legislation" in Devetak et al., *Moldova*, 381–95.

³⁹ Gjergj Sinani, "Historical and Legal Aspects of Religion in Albania," in Devetak et al., *Legal Position*, 52-53.

in ignorance and prejudice towards any significant presence of religion in public life, on the other side. Finally, it should be noted that religious rights are most often not specifically targeted for violation. They simply partake in the destiny of other human rights in a region with weak administration, weak judicial systems, and a weak tradition of tolerance, although the situation is obviously not the same everywhere, and has been improving under international pressure which will be essential for maintaining the achieved level of religious freedom and other human rights protection in the years to come.

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