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The Fundamental Agreement Between the Holy See and the State of Israel: A Third Anniversary Perspective – Church-State Agreements in Spain

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I. INTRODUCTION

The directors of the symposium, "The Fundamental Agreement Between the Holy See and the State of Israel: A Third Anniversary Perspective," held at the Columbus School of Law in Washington, D.C. in April 1997, arranged a panel concerning comparative law. The goal of this panel was to offer a contrasting point to what constitutes one of the most important church-state agreements of this century, namely the Fundamental Agreement.

In order to provide a contrasting perspective, a comparative law panel must develop an approach in which two legal systems, or two different topics from two or more legal systems, are compared. Obviously, setting forth a comparison requires a common feature or characteristic. One might wonder whether the Israeli system of church-state legal relationships has features or aspects in common with the Spanish one. In fact, the history, origins, and legal traditions of the two systems are different. Only two common features can be found: both signed an agreement with the Holy See and both are currently democracies. These common aspects are enough to offer a useful comparative study. Moreover, nothing more is necessary since the differences between both legal systems, even in sharp contrast, could offer us new ideas and original results to enrich
the legal environment in which we live. This analysis does not intend to provide our own legal systems with "some foreign...‘solution’ which, like a new electrical appliance, can be fitted with an adaptor and plugged into the system back home...The hope is that the experiences of countries at comparable stages of social and economic development will give us insight into our own situation." But, certainly this comparison will help us to understand better the Fundamental Agreement’s significance, extent, and prospects.

Common features aside, religious liberty is another relevant topic that stimulates comparative analysis. Religious liberty is a common struggle for many countries and can be seen today as an expression of the effort to recognize and protect a basic need of human beings. The specific expressions of religious liberty vary from one state to another and between cultures. Behind these differences, however, it is possible to identify a common basic content, which is often proclaimed in international legal declarations. In recent years, religious liberty has become the key point for comparative studies on church-state legal affairs both abroad and in our own legal systems. The practical dimension of the comparative approach to religious freedom is clear: furnishing recent democracies, particularly, but not exclusively, Eastern European countries, with pluralistic societies’ legal experiences in church-state affairs.

From these three starting points—a church-state agreement, democracy, and religious liberty in both countries—I shall analyze the current Spanish legal system on church-state agreements along with short comparative references to the Holy See-Israel Fundamental Agreement. Before beginning the analysis it is necessary to discuss briefly the sociological and historical conditions of the Spanish system.

1. MARY ANN GLENDON ET AL., COMPARATIVE LEGAL TRADITIONS 10 (2d ed. 1994).
3. Religious or church-state agreements can be defined broadly as contracts signed by the political power and religious groups concerning matters of common interest with national or international legal value. For further information about the Spanish system of church-state relations, see generally Iván C. Ibán, State and Church in Spain, in STATE AND CHURCH IN THE EUROPEAN UNION 93 (Gerhard Robbers ed., 1996). The Spanish section of the EUROPEAN JOURNAL FOR CHURCH-STATE RESEARCH (R. Torfs ed.) also might be useful.
II. HISTORICAL, LEGAL, AND SOCIOLOGICAL BACKGROUND

The Spanish State unification began in the fifteenth century. In the unification process, religion was one of the most important underpinnings. Catholic religion defined a part of the new political identity. Consolidating a new kingdom required fortification of the Catholic religion at the expense of other religious groups: the Muslims and Jews. Muslims were expelled from Spain, first as enemies of the Christian kingdoms, and then because the Muslims that converted to Christianity after a rebellion in the south of Spain, converted only nominally.

The matter of Jews was different from that of Muslims. During the Middle Ages, Jews lived in Spanish territories—Christian and Muslim—as a separate community. For a long time Christian kings protected Jews because, among other grounds, the Jewish communities provided the Crown with tax collection funds. However, when the unification process, combined with factors such as popular pressure and hostility from nobility, became stronger, the Jewish people were placed in a dilemma: conversion or expulsion. The Crown struck several bargains to avoid this dilemma. One of the best arrangements was the Taqqanot (ordinances, rulings) of Valladolid of 1432.4 Abraham Bienveniste summoned representatives from the Jewish communities in Valladolid, and together they drafted special regulations concerning the social life of these communities. The regulations were based on Abraham Bienveniste’s serious effort to return to the Sefardim (the Jews who inhabited Sefarad, Spain in Hebrew) religious life and traditions. The Taqqanot was approved by the political power as a law of the Courts of Castilla, and could be regarded as the precedent of modern legal agreements with religious minorities.5

Notwithstanding these efforts, the disastrous final solution put the Jewish communities’ members in the same dilemma: conversion or expulsion. Many of the Sefardim converted to Christianity, some sincerely, others in a nominal way. The latter, despite their conversion, preserved their own religious tradition secretly. Many others departed from their cherished land, Sepharad, homeland of Jewish Diaspora poetry and thought. The Spanish Inquisition added to the effect of these regulations by preserving Catholic religious identity as a pillar of the modern State.6

5. See id.; see also LUIS SUÁREZ FERNÁNDEZ, JUDÍOS ESPAÑOLES EN LA EDAD MEDIA, 242-45 (1980).
6. However, we cannot take the Inquisition as an antisemitic (in a modern sense)
As a result of that unification process, neither Judaism, Islam, nor Protestantism flourished freely in Spain. Even today, Judaism, Islam, and Protestantism are strange to Spanish society. Although there are no official reports on religious affiliation, these religions are real minorities in the whole population.

Centuries of popular literature created this equation: to be Spanish is to be Catholic. This equation isolated the religious history of Spain from that of the rest of Europe, in which no such formulation existed. In Europe, many countries were devastated by wars of religion. By contrast, in Spain the wars came later, and in a different fashion, because Spanish religious uniformity subtly bore a problem of important dimensions: the competition for domination in public policy and affairs of religious groups against non-religious groups. This problem arose in the nineteenth century, when the King dissolved the Jesuit Order and when the state secularized Church property. Later, open hostility toward religion developed during the Second Spanish Republic (1931-1939).

The Second Republic's hostility toward religion explains, in part, why the military party that won the Civil War (1936-1939) adopted religion as a central pillar of its regime. For example, the Principles of the National Movement Law, one of the fundamental laws of the regime, established that:

device of the Spanish Crown. Rather, it was a Court established against the heresy (a secular crime) of those apparent Christians who preserved their prior religious traditions secretly. An explanation of the Inquisition that reasoned otherwise would be an oversimplification.

7. There is no official data of the number of various religious groups existing in Spain due to a constitutional provision concerning religious liberty that protects citizens from being compelled to disclose their religion. See CONSTITUCIÓN [C.E.] art. 16, para. 2 (1978) (“No one may be obliged to make a declaration on his ideology, religion or beliefs.”).

8. See NATAN LERNER, GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW 75 (1991). Minorities are non-dominative groups, small in number in the context of the whole population, with their own religious, ethnic, or linguistic features that are different from the major part of the population and have a sense of solidarity between their members that serves to preserve their own identities. See id.

9. See Francisco Azcona Sanmartín, El Empuje de un Catolicismo Más Auténtico, ALFA & OMEGA (Madrid), Feb. 22, 1997, at 3. The following data of religious affiliations of the adult Spanish population are from an unofficial poll of Cires: affirms her/his religion is Catholic: 88.1% in 1990, 89.3% in 1991, 91.1% in 1992, 91.5% in 1993, 91.2% in 1994, 90.7% in 1995, 90.3% in 1996; affirms his/her religion is different from Catholic: 1.23% in 1990, 1.09% in 1991, 0.98% in 1992, 1.34% in 1993, 1.36% in 1994, 1.7% in 1995, 1.8% in 1996; declares no religion: 9.73% in 1990, 8.63% in 1991, 7.38% in 1992, 7.11% in 1993, 7.43% in 1994, 7.64% in 1995, 7.83% in 1996. See id.

The Spanish Nation assumes as a touchstone the submission to the Law of God, according to the Doctrine of the Holy Roman, Catholic and Apostolic Church, the Sole true faith undivided from the national conscience, which will inspire the national law.\footnote{Ley de Principios del Movimiento Nacional, 17 de Mayo de 1958 [Law of Principles of the National Movement, May 17, 1958] art. 2, reprinted in \textit{LAS CONSTITUCIONES DE ESPAÑA} 232 (Jorge de Esteban ed., 1981). Translations to English are unofficial. The Spanish language version of this provision is: La Nación española considera como timbre de honor el acatamiento a la Ley de Dios, según la doctrina de la Santa Iglesia Católica, Apostólica y Romana, única verdadera y fe inseparable de la conciencia nacional, que inspirará su legislación. \textit{Id.}}

Such a provision is strange, bearing in mind the historical European context. In fact, post-Second World War European democracies relinquished the religious definition of the state some time ago, and have embraced religious liberty.


In the 1970s, three conflicting movements arose. First, the Church in Spain requested a new system of church-state relations in which the Church would not be so joined to the State. Second, the State demanded a new concordat. In addition, in the public ecclesiastical law (part of the canon law system) some scholars argued that concordats were redundant
in modern democratic states. These three ideas caused a rare environment in church-state relations in the last years of Franco's regime.

At the end of Franco's authoritarian regime, the path to democracy was possible through continuity rather than through rupture. This is what is called transition in Spain, and its landmark was the Law of the Political Reform of 1977.

III. DEMOCRATIC CHURCH-STATE LEGAL SYSTEM AND AGREEMENTS

It is worth noting that adopting transition as the political mechanism or attitude for change implicitly justified the presence of church-state agreements. Transition itself required strong commitments and dialogue between social groups and the government. Social and political pluralism that a democracy embraces calls for the negotiation of legislation concerning a wide range of matters, including church-state affairs. Consequently, the new legal system of church-state relations followed the principles of the political transition: formal continuity through agreements instead of rupture. But these agreements meant something different. They were tokens of religious liberty, in the organizational dimension, instead of privileges bestowed upon a single religious group.

The Spanish Government and the Catholic Church canceled the old system. However, this cancellation was transitional, since the old Concordat of 1953 was not repealed completely, but revisited with a new agreement in 1976. In this transitional agreement, the State relinquished the presentation privilege to the Bishops. Additionally, the Church renounced exclusive canon law jurisdiction over the clergy.

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It seems to be useful to contrast the 1976 Spanish transitional agreement with the Vatican-Israeli one. The preamble to the 1976 Spanish Agreement proclaimed religious liberty a right that the State must recognize. This assertion is consistent with the right to religious liberty that the Second Vatican Council proclaimed. However, religious freedom is not the main topic of the Agreement. In contrast, the Fundamental Agreement is grounded mainly upon religious freedom that appears in the first Article. This is significant: religious freedom is not only an implicit reason for the Fundamental Agreement, but is a specific part of it. The Fundamental Agreement lists a series of institutional and individual religious rights, generally acknowledged today, albeit not specifically listed in obligatory positive law. In this sense, it is clear that the Fundamental Agreement goes further than the Spanish one and constitutes a great development in the relations between Israel and the Catholic Church, and also in international law. In comparing these agreements,

20. The Holy See and the Spanish government: taking into account the deep transformation process of Spanish society in the last years . . . aware that the Second Vatican Council . . . affirmed religious liberty as a right the law of the society must recognize and taught the liberty of the Church is fundamental principle in Church-Public Power relations . . . deem necessary to regulate through specific Agreements common interests topics which arose before the 1953 Concordat and need new regulations according to the new events.

Id. preamble (translation provided by author). For this and subsequent legal texts, see LEGISLACIÓN ECLESIASTICA (Antonio Molina & María Elena Olmos eds., 8th ed. 1996).

21. The first Article of the Fundamental Agreement provides:

1. The State of Israel, recalling its Declaration of Independence, affirms its continuing commitment to uphold and observe the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is party.

2. The Holy See, recalling the Declaration on Religious Freedom of the Second Vatican Ecumenical Council, 'Dignitatis humanae,' affirms the Catholic Church's commitment to uphold the human right to freedom of religion and conscience, as set forth in the Universal Declaration of Human Rights and in other international instruments to which it is a party. The Holy See wishes to affirm as well the Catholic Church's respect for other religions and their followers as solemnly stated by the Second Vatican Ecumenical Council in its Declaration on the Relation of the Church to Non-Christian Religions, 'Nostra aetate.'


22. See generally Natan Lerner, The Holy See and Israel—Protecting Religious Human Rights by Bilateral Agreements (unpublished manuscript, on file with the Catholic University Law Review) (discussing religious rights listed in the Fundamental Agreement and the failure of other agreements and treaties to adopt these same rights).

it is clear that both the 1976 Spanish Agreement and the Fundamental Agreement could be called "symbolic agreements," that is, texts crafted in broad terms that require further development to achieve real efficiency and meaning.

After the ratification of the 1976 Spanish Agreement, a Constituent Assembly drafted a new Constitution that was submitted to a referendum and approved in 1978. The Spanish Constitution of 1978 established a new system of church-state relationships. Concerning regulation of religious freedom, Article 16 provides:

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.
2. No one may be obliged to make a declaration on his ideology, religion or beliefs.
3. No religion shall have a state character. The public powers shall take into account the religious beliefs of Spanish society and maintain the appropriate relations of cooperation with the Catholic Church and other denominations.

For a broad overview of the constitutional system, this Article must be connected with other constitutional provisions, such as Article 14, Arti-

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24. See Lombardía, supra note 16, at 34.
25. CONSTITUCIÓN [C.E.] art. 16 (1978). The Spanish language text of Article 16 reads as follows:

1. Se garantiza la libertad ideológica, religiosa y de culto de los individuos y las comunidades sin más limitación, en sus manifestaciones, que la necesaria para el mantenimiento del orden público protegido por la ley.
2. Nadie podrá ser obligado a declarar sobre su ideología, religión o creencias.
3. Ninguna confesión tendrá carácter estatal. Los poderes públicos tendrán en cuenta las creencias religiosas de la sociedad española y mantendrán las correspondientes relaciones de cooperación con la Iglesia Católica y las demás confesiones.

Id.

26. "Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion or any other personal or social condition or circumstance." Id. art. 14. The Spanish text of Article 14 reads as follows: "Los españoles son iguales ante la ley, sin que pueda prevalecer discriminación alguna por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social." Id.
The 1978 Constitution sought a middle ground between the separatism proclaimed by the Second Spanish Republic and the Catholic State of Franco's regime, taking into account historical experience. To that aim, the Constitution implicitly embraces four principles which guide church-state legal relations. The Spanish Constitutional Court has defined and recognized these principles. The first principle is the religious liberty

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27. Article 9(2) provides that:

   It is the responsibility of the public powers to promote conditions so that liberty and equality of the individual and the groups he joins will be real and effective; to remove those obstacles which impede or make difficult their full implementation, and to facilitate participation of all citizens in the political, economic, cultural, and social life.

Id. art. 9, para. 2. The Spanish text of this Article reads as follows:

   Corresponde a los poderes públicos promover las condiciones para que la libertad y la igualdad del individuo y de los grupos en que se integra sean reales y efectivas; remover los obstáculos que impidan o dificulten su plenitud y facilitar la participación de todos los ciudadanos en la vida política, económica, cultural y social.

Id.

28. Article 10(2) provides that the fundamental rights and liberties proclaimed by the Constitution may be interpreted according to the Universal Declaration of Human Rights and according to the treaties and international agreements ratified by Spain. See id. art. 10, para. 2. The Spanish version of this provision is: “Las normas relativas a los derechos fundamentales y a las libertades que la Constitución reconoce se interpretarán de conformidad con la Declaración Universal de Derechos Humanos y los tratados y acuerdos internacionales sobre las mismas materias ratificados por España.” Id.

29. See id. art. 27 (concerning educational rights). The Spanish text of Article 27 provides:

   1. Todos tienen el derecho a la educación. Se reconoce la libertad de enseñanza.
   2. La educación tendrá por objeto el pleno desarrollo de la personalidad humana en el respeto a los principios democráticos de convivencia y a los derechos y libertades fundamentales.
   3. Los poderes públicos garantizan el derecho que asiste a los padres para que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones.
   4. La enseñanza básica es obligatoria y gratuita....

Id.

30. See id. art. 32 (dealing with marriage). The Spanish text of this Article reads as follows:

   1. El hombre y la mujer tienen derecho a contraer matrimonio con plena igualdad jurídica.
   2. La ley regulará las formas de matrimonio, la edad y capacidad para contraerlo, los derechos y deberes de los cónyuges, las causas de separación y disolución y sus efectos.

Id.

31. See Lombardía, supra note 16, at 37.

32. See Pedro-Juan Viladrich, Los Principios Informadores del Derecho Eclesiástico
principle. The basic content of this principle is that religious liberty is understood not only as a fundamental freedom proclaimed in the Constitution, but also as the basic attitude of the state toward religion. The State does not intend to treat one particular religious group specially, rather, the Government promotes religion as a freedom of each citizen. According to the religious liberty principle, the best way to protect religious freedom is to avoid the legal establishment of an official religion.

The second principle is the secularity or laicity principle. In accordance with this principle, the state is impartial towards the various individual religious subjects. Professing one's faith is a right which belongs to human beings, and is not a freedom or right the state could exercise. This principle, however, does not promote a system of strict separatism between religion and the state.

The third principle is the equality/non-discrimination principle. According to Article 14 of the Constitution, non-discrimination is a basic human right and should be entirely applied to individuals and in a relative fashion to religious groups. In other words, non-discrimination is employed in relations between religious groups. It is not so clear, however, if the principle is exercised between religious and non-religious groups, because religious bodies constitute a different category under Spanish law.

The last principle is the cooperation principle. The Constitution recognizes implicitly that the state and religious groups or bodies are different entities. According to this principle, the government and religious bodies are viewed as different entities with different goals, and are not subordinate to each other. Churches and the state operate in the same society, and are not isolated from each other, therefore avoiding a strict separatist system, as in France.

State and religious groups have common fields of interest because the state promotes religious freedom and religious groups are institutional or organizational channels of religious liberty. These entities share a cooperative relationship, which is evidenced through the legal dialogue that thwarts possible clashes between secular legislation and religious conduct.

Pondering these four principles as a whole shows that the Spanish church-state system fulfills the characteristics of the European model of church-state relations. This European model could be identified by three main features: (1) state neutrality or impartiality toward religion; (2) a special religious sector that operates in the legal system within the public

Español [Principles on Church-State Legal Affairs], in DERECHO EClesiÁSTICO DEL ESTADO ESPAÑOL 169-261 (Jose M. Gonzalez del Valle et al. eds., 2d ed. 1983).
sector; and (3) narrow intervention of the state in the religious area, and state respect for religious autonomy.\textsuperscript{33}

Along with the aforementioned principles are two other relevant topics essential to understanding the new Spanish system. First, in 1979, Spain entered an international system of regional human rights protection when it signed the European Convention of Human Rights of 1950. The legal framework of the European Convention has provided an effective tool for the protection of individual freedoms in Europe. The deference of both the European Court and the Commission toward state law in religious matters does not prevent a uniform legal understanding of religious liberty.\textsuperscript{34}

It is also meaningful to note the new territorial structure that the Spanish Constitution settled. The Constitution decentralized the State and created regional units, several of them based upon historical nations within Spain. These entities are called “Autonomous Communities,” and they enjoy broad powers on various matters. The legislation that they enact will grow in importance and effect on legal regulation of religious matters.

Let us now consider specifically the role of agreements in this new system—whether it is compulsory for the state to conclude these arrangements, and what the criteria are for signing agreements with religious groups. According to the Constitution, the state is not required to facilitate church-state agreements. Article 16 of the Constitution mandates cooperation with religious groups. Indeed, cooperation could be achieved through different devices. The Religious Liberty Law of 1980\textsuperscript{35} developed the constitutional provisions concerning religious liberty. This law contains different tools to achieve cooperation between the State and religious entities.

The first of these legal devices for cooperation is the Religious Entities Register Book.\textsuperscript{36} Registration in this special book, after compliance with

\begin{itemize}
\item \textsuperscript{33} See Silvio Ferrari, \textit{The New Wine and the Old Cask: Tolerance, Religion and the Law in Contemporary Europe}, 10 RATIO JURIS 75, 77-78 (1997).
\item \textsuperscript{35} Ley Orgánica 7/1980, de 5 de julio, de Libertad Religiosa (B.O.E., 1980, 177).
\item \textsuperscript{36} See id. art. 5; see also Real Decreto 142/1981, de 9 de enero, Sobre Organización y Funcionamiento del Registro de Entidades Religiosas (B.O.E., 1981, 27).
\end{itemize}
several conditions, endows religious groups with a special legal rank or position in the Spanish legal system—the category of religious confession. The second tool is the Commission of Advisors on Religious Liberty, which comprises representatives of religious groups, of the state, and experts on religious liberty. The aim of the Commission is counseling the government on religious legal matters. The third tool is the agreements with the Spanish government. Legal agreements convey special meaning concerning cooperation with religious groups and accommodation of religious needs, though these agreements are not necessarily special privileges.

Scholars still discuss the legal nature of agreements, that is, whether they belong to an intermediate law situated between the internal state law and religious norms, or whether they belong to the internal state law. The controversy is not meaningless because the nature of agreements determines the legitimacy of unilateral governmental changes made in them.

To perform these agreements, two conditions are required. The first condition is registration in the Religious Entities Register Book. The second condition is "notorious settlement" in Spain. This "notorious settlement" is an obscure clause with no clear meaning. Scholars have thoroughly studied this clause, and have contrasted it with similar clauses from the Italian and German agreements systems. This attempt has proven futile because the government has interpreted the clause with

37. See Ley Orgánica 7/1980, supra note 35, art. 8; see also Real Decreto 1890/1981, de 19 de junio, Sobre Constitución de la Comisión Asesora de Libertad Religiosa en el Departamento (B.O.E., 1981, 213).

38. See Ley Orgánica 7/1980, supra note 35, art. 7.

39. For further details concerning the nature of the agreements, see Agustín Motilla, Algunas Consideraciones en Torno a la Naturaleza Jurídica y Eficacia Normativa de los Acuerdos Aprobados Según el Artículo 7 de la Ley Orgánica de Libertad Religiosa [Notes on the Spanish Agreements Nature and Value], in 10 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 345 (1994).

40. According to Article 7(1) of the Religious Liberty Law:

El Estado, teniendo en cuenta las creencias religiosas existentes en la sociedad española, establecerá, en su caso, Acuerdos o Convenios de cooperación con las Iglesias, Confesiones y Comunidades religiosas inscritas en el Registro que por su ámbito y número de creyentes hayan alcanzado notorio arraigo en España. En todo caso, estos Acuerdos se aprobarán por Ley de las Cortes Generales.

Translated, this Article reads:

The State, taking into consideration the existing religious beliefs of Spanish society, will conclude treaties and agreements concerning cooperation with the registered churches, denominations and religious communities which having regard to their area of influence and size of their membership are notoriously settled in Spain. In each case, the Cortes Generales must agree to these treaties.

discretion. In fact, the government has not chosen a numerical interpretation of "notorious settlement," but rather a historical interpretation. This explains why Spain has signed agreements with Muslims and with Jews. However, it has not even signed any agreement with Jehovah’s Witnesses, who are more numerous in Spain. The Catholic Church is a different case concerning the "notorious settlement" clause, as it is supposed to be implicit (Article 16(3)) in the constitutional text of the Spanish Constitution.

According to the Constitution, but prior to the Religious Liberty Law of 1980, the Catholic Church entered into four agreements. The concordatary system, a system in which a single legal agreement collects all the topics of common interest, was relinquished and partial agreements on specific matters were established instead.\(^4\) This split method can be justified as a way of efficient negotiation. Additionally, it is also the consequence of the concordat crisis mentioned above. The agreements signed in 1979 deal with four main issues. The first of these agreements of 1979 covers legal matters, including marriage, legal personality recognition according to canon law, protection of religious sites and religious archives, and observance of religious days.\(^4\) The second agreement covers financial matters, such as tax exemptions and governmental funds.\(^4\) The third agreement deals with religion and culture, including religious education in public schools, Church-monitored education facilities, and ecclesiastical properties with cultural or historical value.\(^4\) Finally, the fourth agreement deals with chaplaincy and military service of the clergy and members of religious orders.\(^4\)

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41. For many scholars, however, the four 1979 agreements, along with the 1976 agreement, could be understood as a whole concordat. See Pedro Lombardía & Juan Fornés, Las Fuentes del Derecho Eclesiástico Español [Sources of Church-State Law], in TRATADO DE DERECHO ECLESIÁSTICO, supra note 13, at 350.

42. See Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Asuntos Jurídicos, de 3 de enero de 1979 (B.O.E., 1979, 300).

43. See Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Sobre Asuntos Económicos, de 3 de enero de 1979 (B.O.E., 1979, 300).

44. See Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Enseñanza y Asuntos Culturales de 3 de enero de 1979 (B.O.E., 1979, 300).

45. See Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Asistencia Religiosa a las Fuerzas Armadas y Servicio Militar de Clérigos y Religiosos de 3 de enero de 1979 (B.O.E., 1979, 300).
In addition, in 1992 Spain entered into Agreements with three other religious groups: the Evangelic entities, the Jewish communities, and the Muslim Commission. These agreements work in the legal system as ordinary laws, and contain provisions similar to those in the agreements with the Catholic Church, including more specific norms concerning dietary religious rules and places of burial. These three agreements marked the real end of the Catholic State. With them, Spain canceled its debt with the religious minorities proscribed and expelled from Spain long ago.

The agreement system operates both between the Spanish State and religious groups as single entities established in the country and at different levels. For instance, the regional units, called "Autonomous Communities," are able to sign agreements. In fact, these entities have signed agreements with the Catholic Bishops concerning religious places, lands, and goods with artistic significance. In 1995, the Evangelical Church also signed the "Collaboration Agreement between the Community of Madrid and the Evangelical Council of Madrid." This agreement is configured as a framework to be used in future agreements by various sectors. It stresses collaboration in the areas of culture and social work with the hope of building an institutional relationship between the two participants. Consequently, Spain follows the model of regional church-state agreements already well established in Germany and Italy.

Another example of this model of regional church-state agreements is reflected in those signed between the Spanish Government or governmental agencies and representatives of religious groups concerning matters of common interest. One of these special agreements provides the State with posts in institutions run by the Catholic Church in which conscientious objectors to military service could perform their civil service.

46. See Ley 24/1992, de 10 de noviembre, por la que se Aprueba el Acuerdo de Cooperación del Estado con la Federación de Entidades Religiosas Evangélicas de España (B.O.E., 1992, 272).
47. See Ley 25/1992, de 10 de noviembre, por la que se Aprueba el Acuerdo de Cooperación del Estado con la Federación de Comunidades Israelitas de España (B.O.E., 1992, 272).
49. See Agustín Motilla, Fuentes Pacticias del Derecho Eclesiástico Español [Covenanted Sources of Church-State Law], 3 Anuario de Derecho Eclesiástico del Estado 175, 188 (1987).
50. Acuerdo de cooperación entre la Iglesia y el Estado Español, en materia de prestación social de los objetores de conciencia, firmado el 17 de enero de 1994. This Agreement is reported in Legislación Eclesiástica, supra note 20, at 669.
There are also agreements on chaplaincy assistance in prisons and public hospitals.\textsuperscript{51} From the agreements described, we can foresee a legal system in which different types of pacts exist, namely, agreements between churches or religious groups and the state, between churches or religious regional groups and Autonomous Communities, and between special religious representatives and the state or Autonomous Communities. This is a complex but practical system, close to the legal system prevailing in other areas; for example, labor law, tax law, and environmental law. In these legal areas, the dialogue between the state and the representatives of social groups makes the law more efficient and real.\textsuperscript{52}

Turning to a comparison of the Fundamental Agreement with the Spanish model of church and state agreements, two topics should be noted—first, the agreements system in general, and second, agreements with the Catholic Church. From a global perspective, it is clear that Israel has not reached a full legal development of agreements as a system of church-state legal relations. Furthermore, this specific legal mechanism is not mandatory in the Israeli legal system. Precedents of accommodation of religious personal law and jurisdiction in religious-related matters already exist.\textsuperscript{53} However, this accommodation is derived from the Ottoman legal tradition, rather than the right to religious freedom pattern. In this sense, Israel is still in the beginning of modern church-state relations. Israel lacks a written constitutional text from which basic principles of the church-state legal relationship can be drawn. Moreover, the Human Dignity and Liberty Law of 1994\textsuperscript{54} does not explicitly include the right to religious freedom. Notwithstanding this, the Declaration of Independence of 1948, as an interpretatory guiding principle,\textsuperscript{55} shows the

\textsuperscript{51} Orden de 24 de noviembre de 1993 por la que se Dispone la Publicación del Acuerdo Sobre Asistencia Religiosa Católica en los Establecimientos Penitenciarios (B.O.E., 1993, 298); Orden de 20 de diciembre de 1985 por la que se Dispone la Publicación del Acuerdo Sobre Asistencia Religiosa Católica en Centros Hospitalarios Públicos (B.O.E., 1985, 305).

\textsuperscript{52} See Rafael Navarro-Valls, Los Estados Frente a la Iglesia [The Governments in Front of the Church], 9 ANUARIO DE DERECHO ECLESIÁSTICO DEL ESTADO 17, 43-51 (1993).

\textsuperscript{53} See Asher Maoz, Religious Human Rights in the State of Israel, in RELIGIOUS HUMAN RIGHTS, supra note 2, at 349, 354-57 (discussing these accommodations prior to and after the creation of the State of Israel).


Israeli commitment to religious freedom. This is a sound basis for con-
sidering these covenants as legal instruments to develop special aspects
of religious freedom.

It is neither feasible nor reasonable to transpose the framework of the
Fundamental Agreement into other religious groups as long as basic pre-
requisites for signing a treaty, such as international legal personality and
complete legal structure of the religious body, are not available for many
religious groups. It is important to note that the agreements system
serves to recognize religious identity as it is defined by the religious
group itself.\textsuperscript{56} Recognizing religious identity purports to recognize the
religious freedom of groups and individuals.

Comparing the Spanish system with the Fundamental Agreement, it is
clear that the Fundamental Agreement contains the basis of a full legal
structure of church-state relations in its initial stage—financial matters,
legal personality, educational matters, mass media, and church prop-
erty—and that it is similar to the Spanish system. Even the topics the
Fundamental Agreement contains must be fully developed. To achieve
this progress, the Fundamental Agreement provides bilateral sub-
commissions of work in Article 3(2)\textsuperscript{57} and Article 10(2)(b).\textsuperscript{58} These
commissions are not permanent entities of cooperation and coordination
like those supplied in the Spanish legal system by the different agree-
ments and legal texts,\textsuperscript{59} but rather they are the first step of real imple-
mentation.

IV. SOME RELEVANT ASPECTS

To depict briefly some significant aspects of the Spanish agreement
system, I have selected those that can serve as a useful foreign sample for
the development of the Fundamental Agreement: legal personality rec-

\textsuperscript{56} See ANTONIO VITALE, CORSO DI DIRITTO ECCLESIASTICO: ORDINAMENTO
GIURIDICO E INTERESSE RELIGIOSI [Church and State Law Course: Legal System and

\textsuperscript{57} Fundamental Agreement, \textit{supra} note 21, art. 3, para. 3, at 155 (“Concerning
Catholic legal personality at canon law the Holy See and the State of Israel will negotiate
on giving it full effect in Israeli law, following a report from a joint subcommission of ex-

\textsuperscript{58} See id. art. 10, para. 2(b), at 157 (“For the purpose of the said negotiations, the
Permanent Bilateral Working Commission will appoint one or more bilateral subcommissions
of experts to study the issues and make proposals.”).

\textsuperscript{59} Indeed, the Fundamental Agreement is itself a result of the Permanent Bilateral
Working Commission created on July 29, 1992. See id. at 154; Rafael Palomino, \textit{El
Acuerdo Fundamental entre la Santa Sede y el Estado de Israel} [The Agreement Between
the Holy See and the State of Israel], 11 ANUARIO DE DERECHO ECCLESIASTICO DEL
ognition and financial matters. In this section, references to the agreements system will be circumscribed as much as possible to the legal treatment accorded the Catholic Church.

The Spanish legal system provides special legal personality to religious groups. This special personality is called "religious confession." Religious groups obtain this categorization from inscription in the Religious Entities Register Book. "Religious confessions" enjoy full organizational autonomy, freedom to enact internal rules, and the ability to sign agreements with the State. Thus, "religious confession" is the basic and specific organizational category in the Spanish church-state system. However, not every religious group is automatically classified as "religious confession." According to the Religious Liberty Law, admission to the Register Book has formal requisites: foundations in Spain, identification details, representatives, and a substantial condition as well. The substantial condition is a religious purpose, a word that is not defined in the Religious Liberty Law. Instead, the Law declares what are not religious purposes. Article 3(2) states that groups without a religious purpose are those with activities, purposes, and entities that are related to psychic or parapsychic phenomena which are not similar to religious values. This indirect control over religious character has been strongly criticized because it indirectly encourages a three-tier church-state legal system, that is, religious confessions with agreement, religious confessions without agreement, and religious groups without registration, as in Italy. In fact, the problems arising from the formulation of a legal concept of religion is common to other legal systems because a legal concept of religion arbitrarily discriminates between religion and other phenomena. In order to obtain the advantages that the law grants to religious

60. Ley Orgánica 7/1980, supra note 35, art. 5, para. 2. This section provides:

La inscripción se practicará en virtud de solicitud, acompañada de documento fehaciente en el que consten su fundación o establecimiento en España, expresión de sus fines religiosos, denominación y demás datos de identificación, régimen de funcionamiento y órganos representativos, con expresión de sus facultades y de los requisitos para su válida designación.

Id.

61. See id. art. 3, para. 2 ("Quedan fuera del ámbito de protección de la presente Ley las actividades, finalidades y Entidades relacionadas con el estudio y experimentación de los fenómenos psíquicos o parapsicológicos o la difusión de valores humanísticos . . . ajenos a los religiosos.").


63. See Silvio Ferrari, State and Church in Italy, in STATE AND CHURCH IN THE EUROPEAN UNION, supra note 3, at 169, 173 (discussing the Italian system).

64. See Kent Greenawalt, Religion as a Concept in Constitutional Law, 72 CALIF. L.
confessions, religious entities and religious associations must be registered in the Religious Entities Register Book.

The Spanish legal system respects the highly complex legal personality of the Catholic Church, and recognizes the Holy See. In fact, the Constitution recognizes the Catholic Church explicitly. The 1979 Agreement on Legal Matters acknowledges the territorial divisions of the Catholic Church in Spain: dioceses and parishes. Article 1(2) of this agreement provides that legal recognition of these territorial entities is achieved by providing the state with notification of the entity’s existence. The reason for the notification recognition system, rather than new registration of a religious entity inside a religious confession, rests in the structural and organic character of dioceses and parishes, which represent the inward legal dimension of the Church.

The Catholic Church’s presence in a land, territory, or nation is inconceivable without these or similar entities. It should be noted that the Spanish Assembly of Catholic Bishops is recognized automatically in the Agreement on Legal Matters. For the legal recognition of other entities of the Catholic Church, registration is required. In order to determine the faculty of acquiring, renting, purchasing, or performing other legal acts, canon law operates as a special rule to determine the legal capacity.

The Fundamental Agreement between the State of Israel and the Holy See demands full legal recognition of the Catholic Church’s legal personality in Israeli law. This is the first step for enhancing the legal relationship, just as it was necessary for the Catholic Church to recognize the State of Israel. The acknowledgment of a complex entity, foreign to the Israeli legal system, and respecting its own identity, is the next great challenge facing Israel and the Catholic Church.

On financial matters, the Spanish legal system provides for direct and indirect financial aid to the Catholic Church. Concerning indirect aid,
the Church is under the regulation of non-profit corporations. The Church also enjoys tax free status for religious activities, such as collections, religious literature distribution, and religious education for clergy. The Church is exempt from real estate taxes on Church properties such as churches, places of worship and their annexed facilities used as offices, clergy residence, seminaries, as well as transfer tax on goods destined for worship or charity.

According to the Agreement on Financial Matters, direct aid consists of a special assignment in the state budget (that diminishes) and an income tax return assignment that follows the Italian pattern. In addition, the Agreement on Financial Matters provides that the Catholic Church will discontinue using direct aid as soon as it achieves self-sufficiency.68

Article 10 of the Fundamental Agreement provides the basic platform for solving the difficult issue of tax exemptions.69 This question concerns not only the Catholic Church, but also other Christian denominations. No legal basis for exemption exists in the Israeli legal system because none existed in the Ottoman tradition. Exemptions, however, are essential to the economic survival of many Christian entities in Israel.

V. CONCLUSION

In fewer than twenty years, the Spanish legal system has evolved from a Catholic State to a system grounded on religious liberty. Furnished with a new sense, agreements serve to develop the institutional dimension of religious liberty: promoting religious liberty respecting religious identity of the groups. Spanish legal background and experience cannot be applied as a whole to the Israeli legal system. However, the Israeli legal system can discern from the Spanish experience that agreements on religious matters are more than a tool for establishing mutual relationships with a religious group.

It is important to stress that the Fundamental Agreement embraces religious liberty as an essential element of the common commitment between its signatory entities. Religious liberty is not the only reason or

68. See Instrumento de Ratificación, supra note 43, art. II, para. 5. This section provides:

La Iglesia Católica declara su propósito de lograr por sí misma los recursos suficientes para la atención de sus necesidades. Cuando fuera conseguido este propósito, ambas partes se pondrán de acuerdo para sustituir los sistemas de colaboración financiera expresados en los párrafos anteriores de este artículo, por otros campos y formas de colaboración económica entre la Iglesia y el Estado.

Id.

69. See Maoz, supra note 53, at 372-73 (noting the problems arising from these exemptions and Article 10).
motive for this Agreement; it is the core of it. Religious liberty and the Fundamental Agreement run together. As an Israeli scholar recently pointed out, the future development of religious human rights in Israel will be influenced by, among other things, the Agreement signed between the Holy See and the State of Israel. 70

Furthering the Fundamental Agreement means promoting religious freedom in Israel because the development of the Agreement means the recognition of religious identity and religious needs. All the efforts to complete the success of the Fundamental Agreement will be efforts to ensure a first human freedom—religious freedom.

70. See id. at 385.