

# WIELDING THE TEMPORAL SWORD

AN ANALYSIS OF THE CREATION OF VATICAN CITY STATE  
IN RELATION TO  
THE CATHOLIC PERSPECTIVE ON STATEHOOD  
AND  
CATHOLIC DOCTRINE ON THE RELATION BETWEEN CHURCH AND STATE

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## **Abstract**

The Lateran Treaty of 1929 between Italy and the Roman Catholic Church constitutes the creation of Vatican City State. This thesis gives an account of the negotiations leading up to the signing of the Treaty. The creation of the City State draws our attention to two specific concepts: statehood and the separation of Church and state. The Catholic perspective on these concepts is presented and compared to other dominant theories of the concepts

The Catholic perception of statehood in the early 20<sup>th</sup> century was based on the work of Fr. Taparelli, a Jesuit scholar who was heavily inspired by Thomas Aquinas (1225-1274). The thesis concludes that there is a discrepancy between this theoretical conception of statehood, and the creation of Vatican City State. This can be explained by the fact that obtaining statehood was instrumental to the Holy See's ambition of becoming sovereign.

Catholic doctrine on the relation between Church and state has always rejected the idea of a full separation. Papal teachings have traditionally promoted a differentiation between a spiritual and temporal sphere of power, each supreme in its own domain, but cooperating in harmony. Depending on one's interpretation, the creation of Vatican City is in line with this doctrine.

**Key words:** *Lateran Treaty, Vatican City State, separation of Church and State, statehood, sovereignty*

## Contents

Chapter 1. Introduction.....	5
1.1 The signing of the Lateran Pacts.....	5
1.2. Critique.....	5
1.3. Statehood and Catholic Doctrine.....	6
1.4. Research Question .....	7
Chapter 2. Setting the S(c)e(n)e .....	9
2.1. A Confusing Trinity: Church, Vatican and See.....	9
2.2. The Papal States .....	10
2.2.a. History of the Papal States.....	10
2.2.b. Italian Unification .....	11
2.2.c. Law of Guarantees .....	11
Chapter 3. Negotiating the Lateran Pacts.....	13
3.1. A period of tensions .....	13
3.2. Diplomatic efforts during the time of the Roman Question .....	14
3.3. Details of the Negotiations .....	16
3.3.a. Pacelli & Biggini .....	16
3.3.b. Sovereignty.....	17
3.3.c. Territory .....	18
3.3.d. Citizenship .....	19
3.3.d. Money .....	19
3.3.f. The Concordat .....	20
Chapter 4. On Statehood and Sovereignty .....	22
4.1. Introduction.....	22
4.2. Theories on Statehood: an overview .....	22
4.2.a. The State as sovereignty .....	22
4.2.b. The State as Governance .....	24
4.3. A Closer View.....	25
4.3.a. Aquinas.....	25
4.3.b. Marsilius of Padua .....	27
4.3.c. Jean Bodin.....	28
4.4. Statehood at the time of the Treaty.....	29
4.4.a. international consensus on statehood .....	29
4.4.b. The Catholic perspective on statehood in the 1920s.....	30

Chapter 5: On the relation Church and State .....	32
5.1. Early Roman Era .....	32
5.1.a. Christendom in the Roman Empire.....	33
5.1.b. Papal teachings in the Roman Era .....	35
5.2. Middle Ages.....	36
5.2.a. Christendom in the Middle Ages: Church and Monarchy .....	36
5.2.b. Catholic Doctrine in the Middle Ages .....	38
5.3. Renaissance and Modern era .....	39
5.4. Different perspectives on the Separation of Church and State .....	39
5.4. a. Protestantism: privatization of religion .....	39
5.4.b. Early Enlightenment .....	40
5.4.c. 'French' Enlightenment Thinkers .....	41
5.4.d. Founding Fathers.....	41
5.5. Catholic views of the Concept from 1870 onwards .....	42
5.5.a. Pope Gregory XVI.....	42
5.5.b. Leo XIII.....	43
5.6. Catholic Doctrine on the Separation post-Vatican II.....	47
Chapter 6. Conclusion .....	48
6.1. Negotiating Sovereignty .....	48
6.2. On Statehood .....	48
6.3. On the Separation of Church and State .....	49
6.4. Discussion.....	50
Sources.....	51
Consulted Archives.....	51
Bibliography .....	51
Annex I. Timeline.....	58
Annex II. Gasparri's announcement .....	60
Original-in Italian:.....	60
English Translation by Guido As: .....	60
Annex III. Lateran Pacts .....	61
III.a. Lateran Treaty .....	61
III.b. The Financial Convention .....	67
III.c. The Concordat .....	68

## Chapter 1. Introduction

### 1.1 The signing of the Lateran Pacts

In the early evening of February 6th, 1929, all heads of diplomatic missions accredited to the Holy See received an invitation by courier to a general audience with H.E. Cardinal Gasparri (1852 -1934), the Cardinal Secretary of State, the next morning. Triggered by the sense of urgency, all invitees were present at the meeting, which consisted of nothing more than a short speech by the Cardinal in which it was made clear that the signing of a Concordat and a Treaty between Italy and the Holy See was imminent (Williamson, 1929).

Four days later, a large crowd is gathered at the square in front of the *Palazzo Apostolico Lateranense* in Rome, as a car stops and a short but charismatic man steps out. News of the supposedly secret meeting has leaked, and the people standing in the rain have come to witness a historic moment in the history of their city. The man who briskly walks towards the palace is Benito Mussolini (1883-1945), the Prime Minister of Italy, representing King Victor Emmanuel III (1869-1947). He has come to meet with Cardinal Gasparri, the Cardinal Secretary of State of the Holy See (Considine, 1929; De Tijd, 1929)

The Lateran Palace is located next to the Church of St. John of Lateran, the episcopal See of the bishop of Rome. On the façade it reads: '*Sacrosancta lateranensis ecclesia omnium urbis et orbis ecclesiarum mater et caput*', which translates as 'Most holy Church of Lateran, mother and head of the city and all the world'. In this palace the Catholic Church has held an impressive number of synods and councils. It was here that the Catholic bishops first took side against the Donatists, it was here that simony was rejected and it was here that the concept of *transsubstantiatum* was accepted (Gutschera et al, 2006). This palace was given to the Catholic Church as a donation by Constantine the Great (277-337), the Emperor who paved the way for Catholic rulers to exert temporal power. 1600 Years later, in this exact same location, the temporal power is once again affirmed by the signing of the Lateran Pacts.

The documents were signed in the presence of the members of the *corps diplomatique*, in the Hall of the Popes, on a grand table from the Philippines, one of the many symbols referring to the international character of the event (Considine, 1929). Six people were seated around this table, three clerics representing Pope Pius XI (1857-1939) and three laymen representing the Italian state, all of whom were dressed in full regalia. Pietro Gasparri and Benito Mussolini, two men who have played a substantial role during the negotiations, were seated in the middle. This date, the 11<sup>th</sup> of February, marks the creation of Vatican City State and has remained a national holiday in the Vatican.

The Lateran Pacts consist of two documents, a Concordat and a Treaty. The Concordat was to arrange religious matters in Italy and make new arrangements with regard to the role of Catholic Institutions in Italian public life. The Treaty on the other hand, "ensures that the Holy See receives that which it has always sought, full liberty and independence to govern the universal Church, as given by divine right" (Moore, 1929, p. 38). By creating a state, the Catholic Church chose to adapt itself to the dominant system of international relations, wherein states are the dominant actors. It defines a territory with a population and a sovereign. This means the Treaty meets the prevalent standards of statehood of that time.

### 1.2. Critique

The rather unique position of the Catholic Church in International Relations is frequent subject of debate, both in society and in academic writings. More than once, questions have been raised as to whether or not the Roman Catholic Church should be allowed to participate in the political arena and whether its institutional powers are legitimate. A recurring argument used by its critics, is that the

Church's influence is not legitimate and that it gives the Catholic Church special privileges that create an unfair advantage over other religious actors (Gideon, 2010).

A specific issue that has received much critique, is the Holy See's position of Permanent Observer at the United Nations. An interest group that has garnered media attention on this issue is 'Catholic for Choice'. Their main question is "The Catholic Church at the UN, a religion or a state?" (Catholics for Choice, 2001, p.1). Besides NGOs, politicians have also expressed their discontent over the influence of the Catholic Church. In 2013 Sophie in 't Veld, a Dutch member of the European Parliament, openly questioned the position of the Catholic Church and argued that the diplomatic status of the representatives of the Catholic Church should be retracted (De Wever, 2013).

The main premises underlying these critiques is that a Church should only be a religious actor. Adhering to the value of the 'separation of Church and state', such a religious actor cannot also be a state or have the same means of power as states do. The creation of Vatican City as such, seems to be in stark contrast with the concept of the separation of Church and state, a concept that is considered to be of fundamental importance in western society (e.g. Fish, 1997).

Although there is a significant amount of literature on Catholic influence in the political sphere, there is next to no academic literature on the creation of Vatican City State in light of its political status. Literature on the subject of the separation is usually devoted to national arrangements and the rights and duties of religious groups within a state, focusing on issues such as taxation or education. Academic literature that has been devoted to the Holy See and Vatican City State, is either of a historical nature or legal nature, merely explaining what *is*, while carefully avoiding any normative questions (e.g. Araujo, 2001; Bathon, 2001; Cumbo, 1948; Ireland, 1933; Martens, 2006). Most normative (and critical) literature regarding the Church's influence, stems from the field of gender research. A great example of this is Abdullah (1996), who investigated the role of representatives of the Holy See at UN conferences in the 1990's in Cairo and Beijing on women's rights.

### 1.3. Statehood and Catholic Doctrine

In an article published in 1999, Thomas Grant shows the development in definitions of statehood over the centuries. With regard to the theory of statehood, Grant argues that, even though non-state actors can be considered to be subjects of international law, states are and always have been the most important actors in the international sphere. What is more, states are not only (the most important) subjects of international law, they are also the founders of the judicial order.

Perceptions of what 'statehood' means, have developed over the course of history. Thomas Grant (1999), an expert in international law, proves that the concept of statehood and that of the nation-state are fluid and he shows that the combination of territory, population and sovereignty only becomes dominant in the early twentieth century. Before that, debates on statehood also included different approaches to the concept of the state, wherein both 'objective' and 'subjective' criteria were discussed. Some have underlined the importance of cultures and societies, whereas others have focused on the effectivity exercise of power.

Along with changes in theoretical debates, there have also been significant changes in praxis. Throughout history, governments and heads of state have often adapted to changes in the system of international relations, for example by means of the adaption of the concept of legitimism by Napoleon Bonaparte. The legal definition of the state as accepted by most legal experts, is presented in the Montevideo Conference of 1933. At this conference, four criteria of the state are given: territory, population, internal sovereignty and external sovereignty (Grant, 1999). When analysing the Lateran Treaty, it quickly becomes apparent that efforts have been made to make Vatican City

State abide by all the contemporary criteria of statehood, exactly as they were to be defined in the Conference of Montevideo only a few years later. Following Grant's work, one could make the case that, just like Bonaparte gave himself and his family titles of nobility in order to adhere to dominant norms of international relations, so the Catholic Church has adapted itself to the standards of international relations. It remains unclear however, how this Treaty fitted into the tradition of the Catholic Church. To what extent did the Church have to change her views on statehood, as well as her views on the relation between Church and state, in order to be able to sign this Treaty? At first glance, the position of the Catholic Church in the negotiations leading up to the Lateran Treaty, adapting itself to fit the mould of the nation-state in order to still play a role in international relations, seems like a far cry from the Catholic teachings promoting a differentiation and maybe even a separation between Church and State (Doran, 2013).

#### 1.4. Research Question

The fact that the head of the Catholic Church, together with the King of Italy, created a new state, brings up questions regarding the separation of Church and state. Furthermore, it makes one wonder what it means to create a state. This research will discuss both these matters from the perspective of the Catholic Church. Rather than taking the conventional perspective of the state (e.g. how states ought to deal with religion), this thesis is interested to see what the Catholic Church's view is on these fundamental issues. The first research question concerns the relation between the Catholic Church and the state. The creation of Vatican City State appears to be at odds with the notion of the separation of Church and state, a concept on which most western states pride themselves, and which is generally considered to stem from the Christian tradition. The first research question therefore is:

*1. To what extent was the creation of Vatican City State in line with Catholic Doctrine on the Separation of Church and State?*

In order to answer this question comprehensively, it is important to explain how Catholic Doctrine has developed over time, and how this compares to other prominent theories on the separation of Church and state. The three subquestions, therefore, have been phrased as follows:

*1a. What was Catholic Doctrine on the separation of Church and state at the time of the signing of the Treaty?*

*1b. How has this Doctrine developed over time?*

*1c. How do these teachings compare to other schools of thought on the separation of Church and state?*

The second research question concerns the concept of statehood. The creation of a new state, especially one as unique as Vatican City State, makes one consider what exactly it means to create a state, and what is necessary for there to be a state. Since this research is especially interested in the Catholic Church's perspective, the main research question has been phrased as follows:

*2. What is the Catholic Church's perspective on the concept of the state, and to what extent is this in line with the creation of Vatican City State?*

As with the first research question, the objective is to give as comprehensive an answer as possible. This means that the development of several theories on statehood must be analyzed, in order to better understand the development of the Catholic perspective on statehood. The subquestions for research question 2 have been formulated as follows:

*2a. What is the Catholic Church's view of the concept of the state?*

*2b. How does the Church's view of statehood compare to other theories on statehood?*

### *Method*

If one wishes to truly understand the fundamental concepts that underpin the signing of the Lateran Pacts, it is necessary to first have knowledge of the actual negotiations-process that led to the end of the Roman Question. This information can help us understand the practicalities and motives that played a role during the negotiations. This thesis will therefore start off with a reconstruction of the events that led to the signing of the Pacts in the winter of 1929. This will be done by means of a literature study, in which use will be made of secondary sources (works of historians and political scientists) as well as primary sources (published diaries and archival materials).

The second part of the thesis concerns the fundamental theoretical issues central to the research questions. For an analysis of Catholic Doctrine on the separation of Church and state, use will be made of Papal writings. In order to investigate the most prominent theories on the issue of statehood and the separation of Church and state, a wide range of literature will be consulted. The specific choices for which theories and which scholars are incorporated in the analysis, are defended in the relevant chapters.

The following chapter will start with a brief explanation of the nature of Vatican City, the Holy See, and the Catholic Church, as well as give an account of the history of the Papal States. After having sketched the situation, the third chapter will discuss the period of the Roman Question and the negotiations leading up to the signing of the Lateran Pacts. Having given a comprehensive view of the coming about of the Lateran Treaty, this thesis will move on to examine different concepts of statehood, the notion of sovereignty, and the Catholic Church's perspective on the state. The fifth chapter sets out to answer the first research question. In order to do so, the development of Catholic Doctrine on the separation of Church and state will be analyzed in chronological order, while also giving an account of the historical context in which the teachings were written. The sixth chapter will draw conclusions based on the findings in earlier chapters, answer the main research question and give recommendations for further research.



## Chapter 2. Setting the S(c)e(n)e

### 2.1. A Confusing Trinity: Church, Vatican and See

Before an analysis can be made of the creation of Vatican City, it is necessary to note the difference between Vatican City State, the Holy See and the Roman Catholic Church. For even though many people use them interchangeably, the different terms refer to different entities. On the one hand there is the Holy See which refers to the head of the Catholic Church. The Holy See is the head of an ecclesiastical entity and consists of the Pope, the curia and the College of Cardinals.

The word 'See' refers to the episcopal see of the diocese of Rome. Though all bishops are considered to be equal, the bishop of Rome is considered to be the successor of St. Peter, the *primus inter pares*, the head of the Roman Catholic Church. The concept of the bishop of Rome who is the successor of Peter and consequently the most important of all bishops, is derived from the 'tu es petrus'-principle, which has been developed during the fourth century A.D. (Gutschera et al, 2006). From then on forward, the Holy See has always played a role in international politics. The Holy See is considered a subject of international law, albeit *sui generis*. Diplomatic representatives of the Catholic Church nearly always chose to represent the Holy See.

'Vatican City', on the other hand, refers to the territory owned by the Holy See. The term Vatican City State was first used in 1929 in the Lateran Treaty. Long before that, the Vatican was one of the hills of Rome. The pope as a head of state in central Italy is usually considered to have started around the early ninth century. From the Medieval period onwards, Catholic leaders have started building on the Vatican Hill, creating a secure part of the city where they could retreat. From the fourteenth century, most popes chose to live in the apostolic palace within the Vatican walls. Since 1929, Vatican City State is regarded to be the territory ruled by the Holy See (Martens, 2006).

Even though the distinction between the Vatican (a state) and the Holy See (the governing institute of the Catholic Church) seems quite clear, there is still sufficient grounds for confusion. The first obvious reason being that they are both headed by the same person, the pope, who has a near-absolute power in both entities. Secondly, there is a tendency to link the two entities when convenient, especially by people working in the curia. A good example of this is the budgeting: Vatican City usually has a surplus on its annual budget, while the Holy See regularly has deficits. The presentation of the annual budgets is always combined, and it has been suggested by the Vatican representatives that the two budgets should be viewed simultaneously. In other words, the surplus of one entity is used to fill the deficit of the other (Wooden, 2014).

Thirdly, there is a more fundamental question to the creation of Vatican City State vis-à-vis the Holy See. For though it might seem a technicality, judicial experts do not agree with regard to how the two entities relate to one another. Which entity legitimizes the other? Is the Vatican City State, as Bathon (2001) suggest, merely a means to create a legitimization for the judicial position of the Holy See in international law? Or is the position of the Holy See the reason Vatican City could become a legitimate state? How do these two entities interact with one another? Is there a hierarchy and if so, which is more important? The uniqueness of the Holy See and more notably that of Vatican City State, and their position in International law and its relation to the Holy See, have all been discussed extensively by many scholars of international law (e.g. Araujo, 2001; Bathon, 2001; Cumbo, 1948; Ireland, 1933; Martens, 2006).

## 2.2. The Papal States

### 2.2.a. History of the Papal States

In order to explain the context in which the Lateran Pacts were negotiated, this section will give an account of the history of the Papal States and the instigation of the Roman Question. Ever since the bishops of Rome were considered to be the head of the Catholic Church, they have played a role in international relations – that is, even before they were the head of any kind of state. After the fall of the Roman Empire, the Papacy was protected by the Franks. The Franks' backing of the Catholic Church ensured a popular support for the leaders of the Carolinian dynasty in the predominantly Catholic Gaul (the area where the Franks settled during the period of the Great Migrations). The Franks remained the protectors of Rome for many centuries to come, during which the Popes did not exercise authority over a state (Gutschera et al, 2006).

The role of the pope as the head of a state in central Italy is usually considered to have started in the ninth century (Bathon, 2001). From the eighth century onwards, the popes started acquiring and ruling over territories in the middle of Italy. These states, rather prosaically called the 'Papal States', changed somewhat over centuries – with small battles being fought, sometimes losing, sometimes conquering. As André Géraud (1929) argues: "More often threatened than threatening, more often encroached upon than encroaching, it has frequently been obliged to come to terms with secular states". Nevertheless, the Papal States remained a relatively consistent state and the popes, due to their influence at other courts, were a source of power to be reckoned with throughout the ages.

At the end of the eighteenth century, geopolitical and societal changes on the European continent were volatile, and the times were turbulent, also for the Roman Catholic Church. With the uprising of new ideologies and movements, Catholic lay people and clerics in France suffered greatly. But also in the papal states, the consequences were felt. The papal troops were defeated in 1796 and two years later General Berthier (1753-1815) occupied Rome in the name of the French revolution. Pope Pius VI (1717-1799) was expelled and a Roman republic was created by the French (Williamson, 1929).

What has become clear in the centuries leading up to the Roman Question, is that the European temporal powers all tried to influence or even dominate the Catholic Church. Ivan Scott (1969) magnificently illustrates how the positions of different countries were formed on the European continent vis-à-vis the Papacy. He shows the delicacy as well as the volatility of the positioning of 'the Powers'. Scott proves that the earlier 'Roman Question' from 1848 until 1865, was not just an 'internal' question to be solved by the Pope and the Italian Regime. On the contrary, it would seem that questions revolving the papal power was first and foremost an international affair, with the Great Powers having a keen interest in the matter, trying to protect the pope, conquer the Papal states or trying to broker a deal. Engel-Janosi's elaborate work on the same topic speaks of an *"ancient rivalry between France and Austria for the hegemony of Italy and for influence over the Roman court"* (1941, p.319).

After Napoleon Bonaparte (1769–1821) had become Emperor of France, a decree declared that the Church now had become part of the French Empire. It was not until Napoleon's defeat in 1814, that Pius VII (1742-1823) could return and the restorations could begin. In 1815, the Papal States were fully restored at the Congress of Vienna. This Congress was of great importance to the restoration of the balance between nations in Europe and the Catholic Church managed to win a lot of power during this Congress. Not only was papal rule restored over central Italy at this Congress, the position of the Catholic Church in international relations was confirmed. One specific issue of great symbolical importance was the fact that this Congress decided that the nuncios, the diplomatic representatives

of the Catholic Church, were to be the *doyen* of the diplomatic corps. The *doyen*, or dean, has not so any real power as such, but plays an important role in ceremonies (Martens, 2006).

### 2.2.b. Italian Unification

During the second half of the nineteenth century a revolutionary unrest incites the people on the Italian peninsula. Pope Pius IX (1792-1878) flees Rome from the revolutionary movements in 1849, but this time, French soldiers reinstate him (Williams, 1929). The Papal States remain under French protection from thereon forward. Only a decade later, in the spring of 1860, Garibaldi (1807-1882) leads the first battles in the campaign for the Italian unification. The slogan of this campaign: 'O Roma o morte', (either Rome, or death) (Riall, 2008). Although the pope could count upon the French protection in the beginning, the French-Prussian war that started in 1870, made that the French needed their troops in their battles. After the retreat of the French troops, the survival of the Papal States seemed a lost cause.

Efforts were made from the side of the Risorgimento to strike a deal with the pope in order to avoid bloodshed and difficulties altogether. In the summer of 1870, only a few weeks before the conquering of the papal states, the Marquis Visconti-Venosta (1829-1914) (Moore, 1929), made an offer to the Holy See. The Pontiff would be granted all the prerogatives of a sovereign, and he would have full jurisdiction and sovereignty over an area somewhat larger than the current Vatican City. But even with the enemy at the gates, Pope Pius IX responded with the (in)famous '*non possumus*' – we cannot (Williamson, 1929, p.8). Before the attacks started on September the 18<sup>th</sup> 1870, the Prussian Ambassador to the Holy See is said to have begged the general in charge of the Italian troops (Gen. Cadorna) to wait 24 hours to see if bloodshed could be prevented, but any such attempts were to no avail.

On September 20<sup>th</sup> 1870, the Diplomatic Corps attended the Mass celebrated by the Pope, to gather around the Holy Father in the papal apartments afterwards. The diplomats remained gathered around the pope, whilst the canon fire and the sound of rifles was audible, until the pope decided to capitulate to prevent further bloodshed. Pius IX is supposed to have said: "The pope counts upon no one here below. Remember that the Church is immortal." (Williamson, 1929, p.10). Pius IX was saddened by the loss of lives and blamed the Italian troops, arguing that the use of violence had only aggravated the problem.

In the initial capitulation signed by General Cadorna (1815-1897), representing the Italian troops, and General Kanzler (1822-1888) who led the Papal army, the Leonine City was not included. The Leonine City was a part of Rome west of the Tiber which included, but was considerably larger than Vatican City. At first instance, the Leonine City was not occupied by Cadorna's army. On September 21<sup>st</sup>, however, violent unrest incited in the Leonine city, after which the Pope requested support from general Cadorna to protect the Vatican. The general sent two battalions to "occupy the castles of Sant'Angelo, St. Peter's Square and the approaches to the Vatican" (Williamson, 1929, p. 18).

### 2.2.c. Law of Guarantees

Directly after the pope's defeat, the Italian state seized most of the property of the Church and suppressed several religious orders (More, 1930, p.64). But when the Holy Father signed the capitulation, he chose not to acknowledge the reign of the King of Savoy over the Catholic Church. The Pope hoped for the support of other states and according to Bernardini (1930), the general feeling amongst people in ecclesiastical circle, was that the occupation would probably be over by

Christmas. Pius X (1835 –1914) chose to live as a ‘prisoner of the Vatican’ and he did not set a foot outside the Vatican until his death. What was more, the Pope made clear that he considered all of Rome to be his lawful territory, and that the Italian State was an illegitimate, occupying force on his territory. Thus the Roman Question was born.

In an attempt to deal with this issue, the Italian government promulgated the Law of Guarantees in 1871. This law was to deal with the Catholic Church and the precarious situation that had arisen. It consisted of two parts, the first part secured the privileges of the Pontiff, the second part was meant to deal with the relations between the Catholic Church and the Italian State (Williamson, 1929). For the larger part, this law ensured that the Church could hold on to several of its privileges. It stated that “the person of the Supreme Pontiff is sacred and inviolable” (Williamson, 1929, p.11). The Law also guaranteed that the supreme pontiff was rendered “sovereign honours within the territory of the Kingdom”, and that the Italian state would “maintain his precedence of honor as recognized by Catholic sovereigns” (Williamson, 1929, p.12). The pope was given an annual income of more than 3 million lire, exempt from taxation. Furthermore, the pontifex could have his own troops for protection, as well as receive and send diplomats. (For the full Law of Guarantees in English, see appendix I).

But although the Law of Guarantees explicitly states that the Pontiff remains a sovereign, it is doubtful what kind of sovereign the Pope would exactly be. A problem that was pointed out by representatives of the Holy See, was the fact that the Law of Guarantees was just that: a law. And although the law states that the pope is a sovereign, the fact that the pontiff is dealt with by this unilaterally imposed law, means that he is also a *subject* to Italian law. Another, more specific, objection to the Law of Guarantees was aimed at article 5, which stated that the Holy Father “was allowed to enjoy the use of the Apostolic palaces” (Williamson, 1929, p.16). This seemingly implied that the Palaces were not in the possession of the Catholic Church. The Church was only allowed to make use of them and was not the sovereign owner of them. This suggested that the Pope was not only both a sovereign and a subject of the Italian government, he was also without any real territory.

As is custom in international relations, however, in order to be a sovereign, one must also have territory. Sovereignty without a territory has a dubious status, to say the least. (this will be further discussed in chapter 4 on statehood). Because of these issues, Pope Pius IX (and his successors) refused to accept the Law of Guarantees, by simply proclaiming to not recognize it. The Italian State on the other hand, did not retract its law, and considered the issue to be dealt with. They had put in place a law that dealt with the relationship between the Italian State and the Catholic Church. A stalemate occurred, during which the Popes lived within the Vatican City. The Vatican was, in the eyes of the Italian State, part of Italian territory which was granted to the Catholic Church. In the eyes of the Catholic Church, the whole of Rome was still papal territory, although they recognized that all but Vatican City and some other palaces, were occupied by the Italian State.

## Chapter 3. Negotiating the Lateran Pacts

### 3.1. A period of tensions

The Roman Question was not solved until 1929. On February 11th 1929, the Lateran Pacts were signed between representatives of pope Pius XI (Cardinal Gasparri, the second man of the *Curia*) and King Vittorio Emanuele III (1869-1947) (Prime Minister Mussolini). The Pacts consist of two parts, a Concordat and a Treaty (with an annex, consisting of the financial arrangement). While the Concordat arranges all matters between Italy and the Catholic Church such as the state religion, the position of priests, the school system and marriages, the Treaty arranges the creation of Vatican City State and the sovereignty of the Pope. The Lateran Pacts, therefore, comprise more than just a well-negotiated solution for the Roman Question. The Treaty, after all, arranged the creation of Vatican City State, a new state, which was also a new kind of state. This chapter will analyze the relation between the Catholic Church and the Italian State during the Roman Question, and the negotiations that lead to the signing of the Pacts.

With the Law of Guarantees in place but not recognized, and the Pope living a secluded life behind the walls of the Vatican, the Roman Question was an uncomfortable situation for both parties. Furthermore, the tensions between the Catholic Church and the Italian State were manifold and appeared not to subdue after the Pope's defeat and the end of the Papal States in September 1870. Anti-Catholic rhetoric from the side of the *Risorgimento* was rife and remnants of this polemic rhetoric can still be found in the streets of Rome today. Poignant examples of the language of this époque can be read on the plaques in the Capitoline museum in Rome, such as "*Dopo secoli di servaggio ricongiuntasi Roma alla liberta*". (After centuries of serfdom, Rome is reunited with freedom) or "*urbs roma antiquissima dominatione squalens in libertatem vindicata est*" (the ancient city of Rome was vindicated from a dirty tyranny into freedom) (Musei Capitolini, 2016).

Camilio Benso Cavour (1810-1861) played an important role in the Italian unification and he even became Italy's first Prime Minister. As one of the leading figures of the *Risorgimento*-movement, it was his dream to have a "free Church in a free state" and to declare the unification of Italy from the steps of St. Peter's Basilica, (Williamson, 1929). This dream never became reality.

As the *Risorgimento*-movement was strongly anti-Catholic, Italian nationalism came to be at odds with Catholicism and vice versa. The polemics came from both sides. Pope Pius IX decreed that all those who entered the Quirinale Palace were automatically excommunicated. A few years later, in 1874, Pius IX published a decree called '*Non Expedit*', which stated that it was unacceptable for Catholics to participate in Italian elections (Duffy, 2014). These tensions between proponents and opponents of the Papacy were by no means new in Italy. In 1848 already, a revolution had broken out in the Papal States. Liberal revolutionaries attempted to murder the Pope, and later made him a prisoner of the Quirinal, after which the Pontiff fled Rome for two years, until he was reinstated by French troops in 1850 (Williamson, 1929).

It can thus be said that even before the Italian unification, there was bad blood between the Catholic Church and the Liberals. With the seizing of the Papal States, the tensions grew even stronger. All sources from the time (Biggini, 1942; Moore, 1929; Pacelli, 1959; Williamson, 1929) speak of the polemic language expressed by both parties, and the (violent) protests sprung up against the Catholic Church in different parts of the countries. This contributed to the fact that it took a long time before the Roman Question was resolved. As mentioned, the pope had hoped for the support of other countries, and other countries were indeed worried about the new situation. Or at least, they appeared to be. Gladstone, the British Chancellor of the Exchequer, was one of the people who concerned themselves with Italian affairs, and the Roman Question in particular (Schreuder, 1970). In

the Houses of Commons, his support did not go beyond the fact that “great interest was taken in all matters relating to a change of residence on the part of the Pope” (Moore, 1929, p.73). But behind the scenes, England was ready to grant Pius IX an asylum. Lord Granville had already made British diplomats aware that a battleship was lying at Civitavecchia at the disposal of the Pope, in case he desired to seek asylum (Moore, 1929).

Shortly after the promulgation of the Law of Guarantees, the French government communicated that the Roman Question was of great concern to them, and that it was their desire to make sure that the head of the Catholic Church was free<sup>1</sup>. A French diplomat stressed the modesty of pope Pius IX's wishes. He is supposed to have said : *“Tout ce que je désire, c'est un petit coin de terre où je serais le maître. Ce n'est pas que si l'on m'offrait mes États, je refuserais...”*. (Moore, 1929, p.76). But despite the debates and conferences that were held (both inside and outside parliament), both in England and France, no concrete action was taken (Moore, 1929).

### 3.2. Diplomatic efforts during the time of the Roman Question

The first attempts towards a reconciliation between the two antagonists started in 1905. According to an article by Luigi Sturzo (1943), the Senate had gradually become more positive towards the Catholic Church at the beginning of the twentieth century. Talks between the two parties came to a standstill at the beginning of the Great War. It is important to stress the activity of the Catholic Church's diplomacy at the time. Before the war, the Catholic Church had become acknowledged as an important diplomatic partner in trying to ensure peace on the continent. Although this had obviously failed, the Holy See's diplomatic mission played an important part in humanitarian efforts that were undertaken by the Catholic Church during the Great War (especially in relation to prisoners of war) (Gagliarducci, 2014; Pollard, 1999).

There were two other important developments at this time with regard to the Holy See's diplomatic activities. First of all, the countries that maintained diplomatic relations with the Holy See, did so via their single embassy in Rome – which was, off course, also the embassy to the Italian State. Thus, when Italy took side against Germany and Austria-Hungary, those countries closed their embassies in Rome. By doing so, diplomatic contact between the Holy See and the Central Powers were hindered considerably, and the Holy See was disappointed that their diplomatic relations apparently did not suffice for the ambassadors to stay in Rome. Secondly, during and directly after the Great War, the number of countries that held diplomatic relations with the Holy See increased considerably (Pollard, 1999). Benedict XV (1854-1922) had made this a key objective, and by the time of his death, only few countries did not have diplomatic relations with the Holy See.

The Papal diplomatic service had wished to participate in the Paris Peace talks, but this was prevented by Italy, who had demanded that papal nuncios would not be allowed to join. Although they were officially being withheld from the peace talks, the pope's most important diplomats were still present in Paris where they took part in negotiations on an informal basis in other locations, such as the *Ritz* (De Rosa, 2000). The Holy See's most important objective was to come to an agreement with the Italian state on the Roman Question, with help and support of the representatives of other countries. One of the people that was involved in the negotiations, was president Wilson of the United States of America.

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<sup>1</sup> Remember that until 1870, French Troops had protected the Papal States from the troops of Vittorio Emanuele. In 1870, the French-German war forced the French to move their troops to protect their own territory.

From the part of the Vatican, Mons. Kelly, Cerretti and Cardinal Gasparri spoke with the Italian Prime Minister Orlando (1862-1952). From the diary of Monsignore Cerretti, it becomes clear how pressing the issue is for both the Catholic Church as well as the Italian State. The (Protestant) Prime Minister Orlando argued that “Parigi val bene una messa: qui si dovrebbe dire il contrario” – (Paris is well worth a Mass, here the contrary should be said) (De Luca, 1971, p.x), referring to Henry IV (1050-1106) who became Catholic in order to become King of France. During the negotiations, secrecy was key, especially for the Italian Prime Minister. Orlando was unsure how to deal with public opinion (for example, when to go public) and stressed that even at the slightest hint of indiscretion, he would forcefully to ever having met the Papal diplomats.

One of the things that was discussed extensively, was the territory that would be assigned to the Pope. Orlando wanted to keep small, in order to prevent unrest or discontent amongst the citizens of Rome. Other discussion topics were the Holy See’s passage to the sea (having a corridor to Civitavecchia), and the Holy See joining the *League of Nations*. The negotiators both seemed keen to come to an agreement. With regard to the Prime Minister’s reasons for reconciliation, he is supposed to have argued: “*Il Papato è la più grande forza morale che esista, è inutile negarlo. E il Papa non può essere suddito di nessun governo*” (The Papacy is the greatest existing moral force, it is futile to ignore it) (Spadolini, 1973, pp. 236). Furthermore, the Italian Prime Minister (a Protestant himself), argued that the Italians, whether he liked it or not, would always remain Catholic. “The Italian is Italian, because he speaks the Italian language: he speaks it badly, and will often speak nonsense, but it is Italian nonetheless. In the same way he is Catholic; he might be Catholic like he speaks Italian, more or less good, but he is Catholic nonetheless.”<sup>2</sup> (Spadolini, 1973, p. 237)

In the end, however, it was the King of Italy who, in accordance with his diplomat Sonnino (1847-1922), decided not to go through with the negotiations. The papal diplomats were not made aware of the King’s negative advice on the matter. The exact reasons why the Italian monarch thought it best not to go through with the deal are not clear, but if the King would have agreed on a Treaty, it would have been difficult to have the Parliament ratify an agreement. The Parliament was generally hostile towards proposals that sought to change the territorial decisions of the Law of Guarantees.

This failed attempt to come to an agreement in Paris was bad news for the Holy See. Because as the Roman Question continued, the position of the Papacy became weaker. The only positive news was that the Holy See’s diplomatic efforts had increased since the beginning of the Roman Question, with the number of countries that maintained diplomatic relations with the Holy See growing considerably (especially during the Great War) (Williamson, 1929). But the longer *il Dissidio* lasted, the more negative the sentiment amongst Catholics. A memo from Tacchi-Venturi (an influential Jesuit with a vast network, including people in the curia, nobility, and the Italian government), found in the Jesuit’s Archives, shows that there is a growing concern regarding the authority of the Pope. According to the memo, the head of the Catholic Church must, by Divine Law, must be and seen to “*libero ed indipendente da qualche potere civile*” (free and independent from any civil power)<sup>3</sup>.

To be Catholic is to be universal, but the situation of the Catholic Church in Rome has become more like that of a national Church. If the Pope becomes subject to a single civil power, he can easily be perceived to become a puppet of that temporal power. According to Tacchi-Venturi, this issue has

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<sup>2</sup> Translated by Guido As, original text in Italian: “*L’italiano è italiano perché parla la lingua italiana: la parlerà male, spesso dirà grossi spropositi, ma è sempre Italiano. Nella stessa maniera è Cattolico; sarà forse Cattolico come parla l’Italiano, più o meno bene, ma è sempre Cattolico.*” (Spadolini, 1973, p. 237)

<sup>3</sup> ARSI, Tacchi-Venturi (P. 27.090). Affari. Fasc. “Questione Romana (...)”. Foglio 21-25.



been openly discussed by Catholics and Protestants alike, raising grave concerns for the future of the Papacy and the Catholic Church (ARSI, Tacch-Venturi, f. 24).

### 3.3. Details of the Negotiations

#### 3.3.a. Pacelli & Biggini

Eventually, it fell upon two other men to negotiate the reconciliation and the end of *il Dissidio*: Mussolini and Pope Pius XI. The signing of the Lateran Pacts on the 29<sup>th</sup> of February, 1929, took the world by surprise, but behind the scenes the negotiations leading up to the signing of the Treaty and the Concordat had already started in the summer of 1926. In 1926, Benito Mussolini took the initiative and approached the Vatican to come to reach an agreement on the Roman Question. Exactly as to why Mussolini made this effort, is subject to speculation. Scholars such as Binchy (1941) and Sturzo (1943) conclude that on balance, the reconciliation was good for Mussolini's popular support.

Furthermore, Mussolini's policy was aimed at creating the image of a strong and unified Italy, and he did not shy away from using great symbols and historical legends to support these objectives. He was fond of resurrecting temples from the Roman Era, and referring to the Emperors of old. Having a divisive quarrel over Rome, not only the capital but also the historical heart of the Roman Empire, bothered him greatly.

The Italian Prime Minister appointed Domenico Barone (1879-1929) to negotiate on behalf of the Italian government and with whom he remained in direct contact during the period of negotiations. Mr. Barone had served both Fascist and liberal governments and was a member of the prestigious Council of State (O'Brien, 1981). Mr. Barone died shortly before the signing of the Treaty. On part of the Vatican, Francesco Pacelli (1864-1935) was the main negotiator. He was a layman, a judicial expert and had good contacts in the Vatican. His brother Eugenio Pacelli (1876-1958) would later become pope Pius XII.

In the analysis of the negotiations leading up to the signing of the Pacts, the main sources used are the works of Francesco Pacelli and of Carlo Alberto Biggini. The 'diary' of Pacelli '*Diario inedito della conciliazione con verbali e appendice di documenti*' (1959) is an impressive and comprehensive piece of work. Unfortunately, it has only been published in Italian and it is only very scarcely available. It gives a day-to-day account of the negotiations as they developed over time from August 1926 until the summer of 1929. From Barone, Pacelli's counterpart, no such written account has been published, and it is unlikely he wrote anything similar because of his quick deathbed and his passing away before the Treaty was signed. The only source that gives an account of the matter from the government's point of view, is a work by Carlo Alberto Biggini, *Storia inedita della conciliazione* (1942). According to O'Brien, who researched the Italian archives, no new matters are to be found that are not already disclosed by Biggini.

What is striking in the works of Biggini and Pacelli, is that the negotiations appeared to go at an amazingly quick pace during the first months. After only two months of negotiations, the first conditions had been established and in late October 1926, a first Treaty and financial annex had been drafted. After this Treaty was largely agreed upon, the negotiations on the Concordat started. But soon after violent tensions broke out in Italy, following an attempted assassination of Mussolini (Biggini, 1942). The growing tensions, from which the Catholic Church suffered considerably, strongly slowed the negotiation process. During the three-year period, Pacelli was briefed several times by the Pope, to inform Barone that talks could only continue if Mussolini publicly denounced attacks on Catholic institutes, and secured order and safety for Catholic groups that were being targeted in riots and attacks (from which not only Catholics, but also Communists in Italy suffered) (1959).



### 3.3.b. Sovereignty

On the first audience Pacelli had with pope Pius XI on August 6<sup>th</sup> 1926, Pacelli asked the pope for his approval to start negotiations with Domenico Barone, to try and reach an agreement to resolve the Roman Question. The pope agreed on this, and immediately mentioned the point of the recognition of his sovereignty. From Pacelli's diary it can be deduced that on the very first meeting between the Pope and his negotiator, the pope had only one comment with regard to the content of the negotiations:

Audience with the Holy Father, who authorizes me to confer (with Barone, red.), placing at its basis, the recognition of the absolute sovereignty of the Pope by other nations, on the territory that will be assigned to him.<sup>4</sup>

Pacelli, 1959, p.3

There are three important elements to be considered in this short quote. Firstly, it is clear that the main objective is to have the absolute sovereignty of the pope affirmed. Secondly, this sovereignty is linked to a specific territory. Thirdly, it is necessary that somewhere in the negotiation process, other states are involved in order to secure the recognition of Papal Sovereignty. In the first weeks of the negotiations, Barone originally agrees to the notion of Papal sovereignty, but for him, the idea of a Papal State proved to be problematic. Mussolini did not want to use the words 'State' for the new territory, no matter how small, nor did he agree to the terms 'temporal power' and 'subjects'. It appeared to Pacelli that Mussolini did not mind the pope being some kind of Sovereign in the Vatican, but he still wanted the pope to be a subject of the Italian state (1959).

At the end of October 1926 there was an attempt to take Mussolini's life after which violence broke out in Italy, targeting Catholic groups and institutions. This put the Holy See in a difficult negotiating position: the Catholic Church depended on Mussolini's goodwill, since he was the only one who could intervene and stop the violent attacks. Mussolini took advantage of this tension (O'Brien, 1981) on several issues – mostly with regard to the agreements in the Concordat – but also in order to reopen discussion on the sovereignty of the Papal State. On this point, however, the Holy See refused to move even an inch. From the outset, the pope had made it clear he would not waver on this matter: "we cannot cede even one line on the full sovereignty on the small territory"<sup>5</sup> (Pacelli, 1959, p.13). As a gesture towards Mussolini, Cardinal Gasparri suggests that the Holy See is willing to commit to a Treaty, wherein Vatican City State promises to be neutral. In the end, articles 2 and 3 of the Treaty, perhaps the most important articles of the Treaty, guarantee the Holy See's sovereignty.

Art. 2. Italy recognizes the sovereignty of the Holy See in the field of international relations as an attribute that pertains to the very nature of the Holy See, in conformity with its traditions and with the demands of its mission in the world.

Art. 3. Italy recognizes full possession and exclusive and absolute power and sovereign jurisdiction of the Holy See over the Vatican, as at present constituted, with all its appurtenances and endowments (...)<sup>6</sup>

Bernardini, 1930, p.20

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<sup>4</sup> Translated by Guido As, original text in Italian: "*Udienza del S. Padre, il quale mi autorizza a conferire, ponendo il caposaldo del riconoscimento, da parte delle altre nazioni, della sovranità assoluta del Papa sul territorio che gli verrà assegnato.*" Pacelli, 1959, p.3

<sup>5</sup> Translated by Guido As, original text in Italian: "*non può cedere di una linea sulla sovranità piena sul piccolo territorio*". (Pacelli, 1959, p.13)

<sup>6</sup> For a complete English translation of the Treaty, see Annex III

### 3.3.c. Territory

Interestingly enough, the actual size of the territory did not matter that much to the Catholic Church. In earlier stages – before the negotiations of 1926 started – it had been mentioned that the Vatican should strive to obtain a larger area– possibly comprising everything west of the Tiber. If not, perhaps a corridor could be considered to the harbor of Civitavecchia, a town north of Rome, to ensure that the Vatican would not be closed off by Italy completely. But in 1926, soon after the negotiations had started, it becomes clear from Pacelli's diary, that the tone had shifted.

He (the Holy Father, red.) tells me of the results of consultations with various Cardinals (Bisleti, Boggiano, Merry del Val, Erhle, Vannutelli etc.), who have all shown to be in favour, also expressing the desire that the territory to assigned to the Holy See, be as small as possible, to avoid embarrassments in governing it.<sup>7</sup>

Pacelli, 1959, p.9

The goal, thus, was to keep the territory small in order to avoid any embarrassments when it came to the governing of the territory. Throughout the negotiation process, however, there are several discussions regarding specific areas and palaces, which Barone and Pacelli visited together when discussing whether or not such a site should be accorded to the Vatican. An example of this is the Villa Pamphili (a villa with vast surrounding grounds on the Janiculum), which was originally planned to become part of the Vatican's extraterritorial grounds. Later, however, Barone came back on this). When Mussolini, via Barone, suggested that perhaps the territory of the Pope in the Vatican should be further limited, in exchange for the extraterritorial territories that were granted to the Holy See, however, Pacelli refuses. From this refusal, we can already see worries that if a territory is limited too much, doubts are raised regarding Papal sovereignty.

The Territory, on which the Holy See asked for full sovereignty and independence, has such limited proportion, that it causes concern that perhaps global public opinion might accuse the Holy See of too much 'submissiveness', it is even further limited and reduced to the walls of Leo IV. Also, it cannot be said that other terrains are reduced in perpetual and irrevocable manner, with the benefits of extraterritoriality, because such a cession, under those conditions, would harm the visibility and independence of the Sovereignty which the Holy See has demanded as a guarantee in his universal mission towards the Catholics all over the world. In fact, if the City of the Vatican is a state that for a quarter belongs in sovereignty to the pope and for three quarters in sovereignty to the Italian State, who can really say that the pope is independent from Italy and he is truly in his own home when he governs the world?<sup>8</sup>

Pacelli, 1959, p.377

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<sup>7</sup> Translated by Guido As, original text in Italian: *"I risultati delle consultazioni di vari Cardinali (Bisleti, Boggiano, Merry del Val, Erhle, Vannutelli ecc.), i quali si sono mostrati tutti favorevoli, esprimendo anche il desiderio che il territorio da assegnare alla S. Sede sia il più piccolo possibile, per non avere imbarazzi nel governo."* (Pacelli, 1959, p.9)

<sup>8</sup> Translated by Guido As, original text in Italian: *"Il Territorio che la Santa Sede domandava in piena sovranità ed indipendenza ed in proporzioni così limitate da far temere che forse l'opinione pubblica mondiale potrebbe accusare la Santa Sede di troppo remissività, è stato ancor più ristretto e ridotto alle mura di Leone IV. Né si dica che altri terreni vengono ceduti in uso perpetuo ed irrevocabile col beneficio della extra territorialità, poiché tale cessione in così fatte condizioni, piuttosto viene a nuocere quella visibilità di indipendenza e sovranità che la Santa Sede ha sempre domandato come garanzia della sua universale Missione di fronte ai cattolici di tutto il mondo. Infatti se la Città del Vaticano è uno Stato che per un quarto appartiene in sovranità al Pontefice e per tre quarti in sovranità allo Stato Italiano; chi potrà dire che il Papa è indipendente dall'Italia e si trova in casa propria quando governa il mondo?"* Pacelli, 1959, p.377

After the signing of the Treaty, the Church strongly defends his choice for a small territory. In Pius XI's words: "we rejoice to see our material cut down to the smallest possible proportions" (Fontenelle, 1929, p. 86). Vatican City State is, after all, "a territory both tiny and grand" (Fontenelle, 1929, p.87.), since it comprises the colonnade of Bernini, the frescoes of Michelangelo and many other priceless highlights.

#### 3.3.d. Citizenship

In October 1926, the pope insists, again, in his communication to Pacelli that the Treaty must ensure the sovereignty of the Holy See. The pope stresses that not only must the word *sovereignty* be incorporated in the document, those people who reside in the Vatican ought to be referred to as *subjects* (which was not the case in the first draft of the Treaty). There was a back-and-forth on the exact wording, but in the final version, the Treaty refers to those with a permanent residence in the Vatican as *citizens*, who are *subject* to the sovereignty of the Holy See (Article 9 of the Treaty).

This aspect of the Vatican's statehood has received critique from Bathon (2001) and others, on the grounds that the Vatican's population only exists of employees of the Holy See. The idea is that, although the Vatican might have a population, it does not have a *people*. The generally accepted criteria in international law refer to countries as having populations, with the notion that these populations are self-perpetuating. Since the Vatican's population exists mostly of clergyman, it can hardly be argued that that it is self-perpetuating (Bathon, 2001).

#### 3.3.d. Money

A different matter altogether is the issue of money. The topic of money frequently resurfaces, throughout the negotiations. First, it was decided that the newly created state would receive 2 billion Lira as a repayment for the loss of the Papal States. The amount of money, as well as how it should be paid (how many terms, with or without interest, etc.) was repeatedly settled upon, only to be brought up again a few months later by Domenico Barone. In the end it was decided that the Italian State would pay the Holy See 750.000 *Lira*, and 1.000.000 lira worth of Italian Bonds, as compensation for the loss of land and goods of the Papal States (Biggini, 1942)

#### 3.3.e. Recognition

As mentioned, having the sovereignty of the Pope affirmed, was one of the key objectives of the Treaty for the Catholic Church. This is partly to do with the notion of the Pope as a sovereign. This sovereignty is not just a matter of semantics to avoid Italian dominance, rather, the Catholic Church is convinced that the Pope is a sovereign in his own right, and that he has a global Mission. St. Peter simply 'happened' to have been buried in Rome, but otherwise, the Italian Mission is not more important, than that in any other country. It is therefore that the symbols used at the moment of signing, all refer to the universal aspect of the Catholic Church.

Before negotiations had started, Pope Pius XI had already focussed his attention on the acceptance of a possible Treaty by other states. He thus seemed concerned, first and foremost, with what we now call 'external legitimacy'. That is, whether or not one's sovereignty is acknowledged by other actors in the international sphere. Mussolini was willing to cooperate with this demand. *Il Duce* assured the Pope that acquiring the support of other European powers would be easily achieved, specifically mentioning England and France. This issue is not mentioned again until autumn 1928, when the specifics of the signing of the Treaty were discussed. It is then that, once again, Pacelli asks if it is possible for Italy to tactfully try to get other states on board (Pacelli, 1959).

Still, neither Pacelli's diary, nor Biggini's reconstruction of the reconciliation speak of how these discussions actually took place. Both works lack an account of which countries were contacted, and

how this was done. Extensive research in the Vatican Secret Archives (where all communications to and from the *Segreteria di stato* are stored) has not been able to shed any light on the matter. On the contrary, in the Vatican Archives, a note is stored from the *doyen* (dean) of the *corps diplomatique* to the Holy See (the Ambassador of Brazil). The note was written to Pietro Gasparri, Cardinal Secretary of State. The Brazilian Ambassador was frustrated to have heard rumours that a Treaty between the Holy See and Italy was imminent, even though none of the members of the *corps diplomatique* had been informed. The frustration of the Ambassador is phrased most explicitly.<sup>9</sup> This note carries the date of tuesday the 5<sup>th</sup> of February. Two days later, Gasparri holds his speech where he informs the members of the *corps diplomatique* that a solution to the Roman Question was forthcoming.<sup>10</sup>

It is unfortunate that there is no specific information on how the support of other countries was attained, and whether or not this brought about any specific problems. It appears, however, that other countries were indeed content with the resolution to the Roman Question. In the same archives, Telegrams can be found of representatives of numerous countries, congratulating the Holy Father with the signing of the Lateran Pacts. The Brazilian Ambassador congratulates the Holy Father on behalf of all members of the *corps diplomatique*.

### 3.3.f. The Concordat

As mentioned, the Lateran Pacts consist of two documents. The Treaty, by which Vatican City State was created (and the financial compensation was arranged) and the Concordat. Since this thesis is concerned with the fundamental questions regarding the creation of Vatican City State, this chapter will offer a brief explanation of the Concordat, aware that it does not even come close to doing its complexities justice. A Concordat is an agreement between the Holy See and a civil government. Since 'Concordat' is a general term for any kind of agreement between the Holy See and a state, Concordats vary greatly in nature. They are generally used to end a conflict between the Church and government, usually regarding ecclesiastical matters, although it is possible for a Concordat to discuss temporal affairs (Bernardini, 1930). A great many number of Concordats have been agreed upon, and at the moment, around 200 of such Concordats are in force.

The Concordat signed on February 1929 deals with a great many issues concerning the position of the Catholic Church in Italian society. The Concordat is so all-encompassing that from it, Bernardini derives that Mussolini wanted to bring about religious unity in the country. This would help strengthen the political unity in Italy and, by extent, its Fascist leader. Probably because of its extensiveness, however, the Concordat was by far the most difficult to reach an agreement on in the negotiations of the Lateran Pacts. During these difficulties, however, the Pope had been adamant to that in order for the Roman Question to be solved, the two agreements had to be both agreed upon. Without an agreement on the Concordat, there would be no agreement on the Treaty.

Just to give a few examples of its extent, the Concordat covers the taxation of religious institutes, the acceptance of Catholic matrimony (and ecclesiastical nullifications) by the Italian government, the position of chaplains in the army, National and Catholic holidays, the borders of dioceses, and much more. A particularly difficult topic for the negotiators was the practice of religious education, concerning both the acceptance of private Catholic schools, as well as allowing clergy to teach Catholic doctrine at state schools.

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<sup>9</sup> Archivio Segreto Vaticano, anno 1929, rubr. 88, fasc. 1, foglio 107: 76979.

<sup>10</sup> Archivio Segreto Vaticano, anno 1929, rubr. 88, fasc. 1, Foglio 112: 77295. For the full text, see annex II.

After the Pacts were signed, the article of the Concordat that caused most discussion was the one concerning *Azione Cattolica* (Catholic Action), article 43. Catholic Action was (and still is) an association of Catholic Lay People, under control of the Italian bishops. Article 43 recognized *Azione Cattolica* and its auxiliary movements, but demanded that they would remain to be strictly religious movements, acting independent of any political party. Furthermore, the Holy See had to renewed its prohibition for clergy to participate in politics. According to Bernardini, this is widely interpreted as a rather absurd measure from Mussolini's side, who was afraid that some priests in the powerful *Azione Cattolica* could become politically successful, rising up against Fascism (Bernardini, 1930; Biggini, 1942).

## Chapter 4. On Statehood and Sovereignty

### 4.1. Introduction

Now that the main issues of the negotiations on the Lateran Treaty have been discussed, this chapter will discuss the subject matter of statehood. Because in order to discuss Pope Pius XI's choice for negotiating the creation of a new City State, it is necessary to have an understanding of the concept of statehood. Furthermore, the aim is to comprehend the Catholic understanding of statehood, as compared to other perspectives of the state.

The difficulty that arises when one tries to give a definition of the state is that there is no consensus on what it means to be a state. What is more, existing notions of the concept are not static, but have evolved over time. We will therefore look at the development of different theories on 'statehood', trying to do justice to the variety of political theoretical works on the topic. The next section will therefore start off by giving a brief overview of different views of the state as 'sovereign', drawing from Skinner's genealogy of the state. In order, however, to present a comprehensive view of dominant theories, and do justice to the wide range of political theory on the state the second part will briefly outline Michel Foucault's contrasting view of the state: the state as governmentality.

After giving an overview of the most important theories, we will look more closely at the work of three different scholars: Thomas Aquinas (1225-1274), Marsilius of Padua (1275-1342) and Jean Bodin (1530-1596). The reason we focus on Thomas Aquinas' work is because, as Skinner admits, the scholastics (of which Thomas is the most revered) have had a great influence on medieval political philosophy, including thinking on statehood (Skinner, 2010; Ullman, 1958). More importantly, however, Thomas Aquinas was of great inspiration to Luigi Taparelli D'Azeglio (1793-1862), whose work strongly influenced Cardinal Gasparri, who played a central role during the negotiations on the Lateran Treaty.

Jean Bodin will briefly be discussed because of his tremendous influence as a scholar on the topic of sovereignty (only equalled, perhaps, by Thomas Hobbes, whose work has been more influential in the Anglo-Saxon culture). Marsilius of Padua is primarily discussed because of his prominent place in Medieval political thought. Besides that, his view contrasts that of Aquinas and Bodin, in the sense that his view was the only one opposed to that of the Catholic Church, but also in the sense that he considers popular consent to be the basis of authority, both temporal and spiritual. Section 4.4 will try and bridge the presented theories with the Lateran Treaty, by taking a closer look at the state theory dominant in the curia, which is that of Taparelli d'Azeglio.

### 4.2. Theories on Statehood: an overview

#### 4.2.a. The State as sovereignty

If grey is the new black, genealogy is the new history. Rather than being concerned with historical research, scholars are more devoted to the method of genealogy. The idea of genealogy is to trace the roots of currently existing ideas. Not concerned with chronological reconstructions, genealogy offers a critique on existing ideas by reflecting on how they have come about. Two influential scholars have used this method in an attempt to get a grasp of the concept of state authority, Michel Foucault and Quentin Skinner. Whilst Skinner gives a genealogy of the state as sovereign, Foucault gives a genealogy of the state as governance. This section will focus on the notion of the state as a sovereign power, for which Skinner's work (2010) will be the starting point.

Skinner starts off by explaining the semantics of the term 'state'. According to him, this term originates from the Italian *stato* - brought to the fore by Machiavelli (1469–1527), who stressed the importance of being able to '*mantenere lo stato*', which can be translated as both 'maintaining one's

status', or 'the maintenance of the state'. (Skinner, 2010, p.28). One's 'stato' originally referred to one's status or condition. But it appears that somewhere around the sixteenth century, a semantic shift occurred whereby the word 'stato' no longer just referred to oneself, but to one's properties, family, and land. Slowly but surely, the 'stato' of the prince referred just as much to his country as to his personal status.

Skinner distinguishes four different ways of thinking about the state. The first one is what he calls 'absolutism', particularly dominant in the beginning of the seventeenth century. Central to this 'absolutism' is thinking about the sovereignty of the state in terms of a head-body metaphor. Kantorowicz's wrote on this matter in his famous work *The King's Two Bodies* (1957). In it, he suggests that monarchs have two bodies: their own 'natural' body, and the state. Skinner specifically distinguishes two strands of absolutism, one of which was articulated as the "doctrine of the divine right of King s" (Skinner, 2010, p.29), the other one was developed by Jean Bodin (more on him in 4.3.c.).

In protest to the absolutist approach emerges what Skinner calls the 'populist approach'. This approach considers the state to be a union of citizens, united under a government. There is no 'head' to rule 'a body'. For the populist view personal freedom is of utmost importance. The idea is that citizens cannot live freely if they depend on a Prince's arbitrary decision-making. In order to be free, one must rule oneself. In the Republican state, people rule themselves. In a true republic, parliamentarians are mere 'delegates': they are only elected to do exactly as the people tell them. The state, thus, was a civil organization that governs itself. This idea of living in a free state was of great importance to republican writers such as Milton and Harrington, and later also to the Founding Fathers.

In 1651, Thomas Hobbes introduced a completely new view on sovereignty, and the relation between the sovereign and its subjects. Whilst the other theories presumed the presence of a 'society' with a 'people', Hobbes argued that there is no such thing. For Hobbes, life of man in the natural state is solitary, poor, nasty, brutish, and short (Hobbes, 1651, p.78). People live in a constant state of war and are intrinsically anti-social. Since human nature is not social, there is no such thing as a (community of) 'people', let alone a sovereign people. But neither is authority handed down from a higher power. Instead, authority is given by individuals. And because of the state of war and people's distrust of one another, they willingly give the authority to the sovereign, who can bring order. The sovereign, thus, is an authorized representative.

In a response to this 'Hobbesian' view of the state, Bentham introduces what Skinner calls a 'commonsensical' view (Skinner, 2010). Bentham (1748–1832) (as well as other contemporary scholars, such as James Mill and John Austin) rejected any legal fictions, and suggested that when assessing political power, it should be done on its merits. When discussing the concept of the state, one should simply weigh the pains (the restraints that a state puts on an individual) versus the pleasures (liberty, security, etc.). The state is not so much the consequence of a fictive will, but a real will, of real individuals that can express themselves.

In the late nineteenth century, there is a revival of the concept of the state as a fictive person. Drawing from the work of thinkers such as Hegel (who considered the state to be an entity with a will of its own), British thinkers introduced the idea that a corporation of people, too, can be described as a fictive person. According to Skinner, this thinking finds its most extensively worked out in Bossanquet, who argued that the state "possesses its own substantial will" (Skinner, 2010, p.42).

#### 4.2.b. The State as Governance

When giving an account of the genealogy of the state, one cannot but compare it to the work of the scholar who made the method of genealogy famous among social and political scientists, Michel Foucault. Especially because Foucault himself had an elaborate theory on the development of the concept of the state. His approach looks at the other side of the medallion: not the state as sovereignty, but the state as governance. Michel Foucault thought that power is not something one can possess and is thus not held by any sovereign or group of individuals. Rather, power is everywhere, in all relationships. Power is not necessarily negative in the sense that it forbids or sensors, but power is productive and it generates knowledge. In this sense, power is neither good nor bad, it is simply present in all relations. (Foucault, 2005)

Foucault explains the development of governing from the Roman era to the times of the pastoral state, to liberalism, to neoliberalism. Over time, power relations have evolved into different kinds of governing. Foucault stressed the continuity of the governance from the age of Christendom, to the form of governance that developed in the eighteenth century (Huisman, 2012) and “the modern (western) state is the result of a complex combination of “political” and “pastoral” power.” (Lemke 2010, p.34)

##### *Pastoral power*

When most of the European Continent was Christian, Christian institutions aimed to guide individuals on the path to salvation. Foucault calls this the approach of the shepherd-flock relationship, which is institutionalized in the Western world by Christendom, from the second and third century, until the eighteenth century (Foucault, 2007). Central to guiding the flock as a whole, as well as each individual, was the practice of individual confession (introduced in the twelfth century). On the one hand, this practice placed individuals in a position of dependence. On the other hand, it offered them the ability to focus on the self and admit wrong-doing. This way, people were being disciplined whilst at the same time being lead on a path to salvation (i.e. heaven).

##### *Raison d’Etat*

After the Middle Ages, the scientific revolution made that God was no longer considered to rule the universe directly, rather people found that nature has its own ‘laws’. With the focus on reason and rationality, slowly but surely the first objective of the state is no longer to focus on the afterlife, or on guiding’s people’s souls (Huisman, 2012). This period of pastoral power ended in the period from 1580 until 1660 when what Foucault calls “a de-governmentalization of the cosmos” happened (Foucault, 2007, p. 236). No longer was the world ruled by signs and marvels, and no longer was the sovereign’s divine authority over all earthly things the basis of her authority. Rather, the sovereign had one specific task to fulfil: governing. Governing, Foucault explains, is different from (and supplementary to) sovereignty as well as pastoral care. At the end of the sixteenth century, sovereigns become concerned with this changing of their task, and become concerned with the art of government (Foucault, 2007).

The art of government: ‘governmentality’ was of great importance to Foucault who was above all concerned with what it means to govern, and what it means to be governed. The importance of governmentality in relation to development of the state is best seen in his question: “What if the state were nothing more than a way of governing? What if the state were nothing more than a type of governmentality?” (Foucault, 2007, p. 247) Foucault therefore argues that it is in this period in which the art of government was investigated, that the real state comes into existence. That is not to say that before the sixteenth century there was no state structure. But since Foucault was convinced that the state is an instrument of government its origins can, to a certain extent, be found in the first real quest for governmentality.



For Foucault, 'governing' can refer to the governing of oneself (or the soul), a household (economy, from the Greek *oikos*), or a state. According to Foucault, governing a household is true governing. One could say that it is about 'conducting the conduct', steering the conduct of the individual members and considering all the movements in the house, whilst at the same time keeping in mind the larger household.

In the sixteenth century discussion of what this new art of governing should mean exactly, Foucault acknowledges that all literature on governance has always related itself to Machiavelli's *Il Principe* (the statesman). But Foucault himself is not impressed with Machiavelli, because the statesman in his work is only concerned with the preservation of his principality. The statesman in Machiavelli is only concerned with maintaining a territory and ensuring his own safety. But that, for Foucault, is not the reason of the state, that is not the art of government. The art of government is about the security of the population. The art of government is about all things that move, people as well as goods. And the art of government is above all about the relationship between those who govern and those who are being governed (Foucault, 2007; Holden & Elden, 2005; Korvela, 2012).

It is in the period of transition away from pastoral power, that the idea of the *raison deEtat* is coined by Botero. This phrase, which literally translates as 'reason of the state', was highly controversial in the seventeenth century. Drawing on definitions from authors such as Chemnitz, Bacon and Palazzo, Foucault's view is that "the end of *raison d'etat* is the state itself, and if there is something like perfection, happiness, or felicity, it will only ever be the perfection, happiness or felicity of the state itself". (Foucault, 2007, p. 258)

Governing along the lines of this reason of the state was done through policies which were mostly based on statistics. While governing principles in the pastoral era were determined by studying the creation, or a divine order, from the seventeenth century on, governing was based on rational knowledge of the population. This knowledge was produced by the sciences and came in the form of statistics. State and statistics became mutually constitutive, just as power and knowledge. Governing took the form of permanent state interventions via regulations and prescriptions, in which policing played a central role. According to Foucault, in the seventeenth century police came up as a separate entity, next to the judiciary and the military. The police of that time had an incredibly wide range of activities: the regulation of the production of food, as well as controlling for proper education and healthcare. This form of governing, where government statisticians determined (economic) policies, is called mercantilism.

This seventeenth century style of governing, based on the idea of *raison d'Etat*, had many similarities with the governing style of the sovereignty of the pastoral power. The mercantilist approach too was based on a belief that obedience would lead to prosperity. As long as everyone did what was asked of them, the government officials only needed to do the math, and the state would prosper. And just as the pastoral state, the policy of the *raison d'Etat* was based on the concept of truth, albeit in the form of statistics. The more critical Lemke (2010) argues that the statistics were only in place in order to increase the "power and might of the sovereign" (ibid., p.34), which clearly overlaps with the way the sovereigns ruled at the time of pastoral power.

### 4.3. A Closer View

#### 4.3.a. Aquinas

Having briefly outlined several schools of thought on the notion of the state, the next sections will look more closely (and elaborately) to the works of three writers: Thomas Aquinas, Marsilius of Padua and Jean Bodin. Thomas Aquinas (1225- 1274) is one of the most influential thinkers of the Middle Ages. He grew up in a wealthy family in the South of Italy in the early 13<sup>th</sup> century, after which

he joined the Dominican order and went to study theology in Paris, where he met Albertus Magnus, who taught him the Aristotelian philosophy. He wrote a vast number of works, his most famous one probably being the *Summa Theologiae*, which was published in 1273. His views on statehood, however, are explained most thoroughly in his work *On King ship to the King of Cyprus*, published some years before that. He was canonised in 1323, but shortly after his death there were some critiques on his work from within the Catholic Church. Aquinas' work becomes of great importance in the late nineteenth century, especially when pope Leo XIII (1810-1903) recommends everyone to learn and teach the doctrine of Thomas Aquinas in his encyclical *Aeterni patris*. (Aquinas and Dyson, 2002)

Thomas Aquinas is best known for his endeavour to reconcile Aristotelian philosophy, which had only just been discovered in Western Europe, with Catholic teachings. Whereas before Aristotle, Christian thought was based on the idea that (human) nature, and subsequently human ideas and values, were at contrast with the Divine nature and the Divine will. What we find in nature, so it was thought, does not help us in understanding God's will. For that, we need God's mercy. With Aristotle, Thomas finds that humans, by using their ratio, can come to a greater understanding with regard to the nature of things, and that this nature in things does not need to be opposite to the Divine will, but rather, Divine will completes it. Thomas adage was: "*gratia non tollit naturam, sed perficit*" (d'Entreves, 1959, p.21). In other words: God's grace, does not destroy nature, but it perfects it.

It is from this perspective that Thomas develops the concept of natural law, a concept too complex to do justice in this brief section. Natural law is not a decision made by a legislator. Rather, natural law is a 'given'; it is the expression of an ordinance in nature, including human nature, both on the level of the individual and society). This greatly influenced political theory. Before the concept of a natural law, Christian acceptance of temporal rulers was based on the idea that human kind is corrupted and people suffer from the original sin (Adam and Eve eating the forbidden fruit). All these corrupted souls needed to be ruled by someone, who was probably divinely appointed.

In Thomas' line of thinking, however, the state and other political institutions were part of a sensible and rational order. Thomas believes (again, with Aristotle) that human nature is social and political. As a consequence, people live in community with each other. In these communities, people depend on institutions such as the state. The state, and state authority, are part of the order as it was created in nature, by God. Political institutions, thus, are "an aspect of natural morality" (Passerin d'Entreves, 1959, p.23), as are the concepts of authority and government. There a difference, however, between the *natural order*, which humans can understand by means of their ratio, and the *supernatural order*, which can only be revealed through faith with the use of Scripture.

In *On King ship*, however, Thomas Aquinas departs from Aristotle on a crucial level. Aristotle's notion of the human as a ζῷον πολιτικόν (political animal) meant that for Aristotle, "the fulfilment of human nature (...) could be achieved only within the perfect community, the Greek polis" (Canning, 2003, p.136). For Thomas, rather, focused more on the idea of humans as social beings, for which the state played a role, but was not an objective. Nor was the state the means towards fulfilment of life, that was the role of religion.

Still, central to human nature is the social interaction of human beings, of which communities (and subsequently states) are a natural consequence. It is from these communities that the purpose of state authority stems. Governments exist for the purpose of "ordering the common good" (Canning, 2003, p.139). That is the only purpose of government. 'The common good consists of the goods of all individuals, and surpasses it. In surpassing it, however, the individual does not become secondary to

the collective (Thomas strikes a difficult balance here). Note, however, that the concept of Christian duty to authority is maintained by Thomas, on the notion that all authority comes from God.

It is with the 'community' as a given, and the 'common good' as the objective, that Thomas Aquinas judges the authority of the head of state and different forms of government. Thomas favours a Monarchy, for which his strongest argument is one ascribing an instrumental value to the Monarchy. According to St. Thomas, Monarchies are more prone to aid the common good. His perspective on this matter is shaped by his analysis of Northern Italy, as well as the demise of the Roman Empire. Both situations are ones of violent conflict, where the "government of many" fails to serve the common good. These "tyrants" only serve their own interests.

Aquinas discusses the notion of tyrants extensively. The authority of the tyrant does not come from God. This can be for two reasons: a) because of how a tyrant came to power (violently) or b) because of how a tyrant rules (serving his own good). Aquinas discusses the killing of Julius Caesar (a 'tyrant') by people who do this as a service for their country. Thomas stresses that these people have been praised and rewarded for their actions. This would suggest that Thomas Aquinas is supportive of tyrannicide. Canning (2003) however, remains doubtful whether or not Aquinas' description of the killing of Caesar, should be read as an approval of the action.

#### 4.3.b. Marsilius of Padua

A scholar of political theory who dared to challenge dominant views on statehood, is Marsilius dei Mainardini, better known as Marsilius of Padua (c.1277-1342 or 1343). Born and raised in the Northern-Italian city, he studied in Paris to return to Italy to work for noble families. During his life he published several works, of which the most important are *Defensor Pacis* and, to a lesser extent, *Defensor Minor*. Both works are a critique on the power of the Papacy. In *Defensor Pacis* (Defender of the Peace), Marsilius discusses the issue of peace, or better said, lack thereof in Europe, including the Appenine peninsula. According to Marsilius, the violent conflicts and strife, particularly in Northern Italy, were caused by the Pope's desire for power (Canning, 1996).

Since Marsilius was convinced that the papal power was a hindrance to peace, it is no surprise that his work aims to subvert the underpinning of the pope's claim to power. According to Marsilius, no member of the clergy should be concerned with any form of temporal power, but only be concerned with fulfilling their (and others') spiritual needs. Referring to the works of Church Fathers, as well as the Gospel (Mt. 28), Marsilius argues that Christ himself had his apostles concern themselves with matters of temporal powers. Therefore, the successors of the apostles, from bishop to priest, should do likewise.

Marsilius' most famous work *Defensor Pacis* consists of three discourses of which the first two are the most interesting ones (the third one is more a conclusion of the first two discourses). The first two discourses can be read separately, and the difference between the two parts is striking. In Discourse I, Marsilius's reasoning is a comprehensive, philosophical approach to citizen life, communities and the political arrangements within those communities. Discourse II, on the other hand, is more of a 'theological' text, mostly concerned with exegesis (interpreting Scripture). It is in this second Discourse that Marsilius gives us his view on the relation between the spiritual and the temporal power.

The difference between the two texts, however, creates some confusion as to the position of Marsilius. As Canning (1996) argues, based on the first discourse, one could make the case that Marsilius is a republican but others might call him an imperialist when reading from the second Discourse. According to Brett (2005) suggestions have been made that Discourse I is influenced by his Italian roots, whereas Discourse II is inspired by the time he lived in France.

Discourse I presents “the particular causes by which civil peace or tranquillity is preserved and exists” (Brett, 2005, p.xvii). In it, Marsilius talks of cities as political communities, wherein people come together to advance their own interests and live virtuous lives. Religion has a role to play in society (helping people deal with expectations, hopes, and frustrations), but only to the extent in which the community wants it to, and under control of the temporal power. In order for there to be harmony in a community, there needs to be law. For there to be law, there is need of a law-maker. In order for the law to be respected, the lawmaker needs to have coercive powers.

According to Marsilius, this lawmaker is the ‘*universitas*’ (the collective, or ‘cooperation’) of citizens in a community. The community of citizens, thus, has the final authority. This radical choice (especially for that time) is based on three ground. Firstly, Marsilius is convinced that wisdom is cumulative. The community of people have more understanding than a selection of people. Secondly, the law should serve a ‘common advantage’, and if only a select group of people were to make the law they would use it only to their own advantage. Thirdly, Marsilius argues that this system best guarantees everybody’s *individual* freedom. The exact relationship between individual freedom of each citizen and having the authority as a community is not further explained (Canning, 1996). For Marsilius it is not necessary that the community of citizens as a whole arrange everything. Rather, Marsilius prefers to have a system wherein a ruler (or multiple rulers) are *elected*. These lawmakers are free to delegate as they please. Just as they can be elected, they can also be deposed.

#### *One authority, one set of laws*

As we have seen, for Marsilius, there is just one authority: the community of citizens. In order to ensure the unity of this community, there should only be one body holds coercive powers. Because there is only one authority who decides on its own laws, there is no room for a second set of laws. Marsilius therefore does away with the notion of *divine law*. He might not get rid of *divine law* altogether, but he does suggest that on earth, divine law should not be coerced. Divine law is coerced by God, when it is time for Him to judges over us. Until that time, there cannot be two sets of laws here on earth, because that would imply having two authorities.

Marsilius lived before Jean Bodin coined the phrase ‘sovereignty’ and uses, as a consequence, different language than that of later thinkers on power, but he can certainly be considered as the precursor of the great thinkers on sovereignty such as Bodin and Hobbes. Instead, he spoke of ‘*Merum Imperium*’, which is translated by Brett as ‘unmixed command’ (2005, p.170). According to the translator’s footnote, this ‘unmixed command’ is comparable to what today might be called ‘absolute sovereignty’. The term ‘*merum imperium*’ means that there is no mixed command and for Marsilius, this ‘*Merum Imperium*’ is. This is in line with Marsilius view of the community as one ‘unity’, a single actor, having one authority. Consequently, for Marsilius, the Church does not have any authority. And because it does not have any authority, it should not have any coercive power. Marsilius instantly became infamous for his denunciation of Church authority, as well as his rejection of canon law.

#### 4.3.c. Jean Bodin

Jean Bodin was a Frenchman, who lived from 1530-1596. He was a scholar, dedicated to a wide variety studies, inter alia economy and history, but he is best known as a jurist. His writings have had a great influence on political thought, especially in Europe. He is best known for his thought on the modern state. He had strong ties to the court and even received the title of Counsel to the King . Bodin lived in France at a time of great political turmoil, under constant threat of civil war (Dunning, 1896), and with strong conflicts between religions. Although he was a Carmelite Novice for a brief period of time at a young age, his beliefs are uncertain.

His most famous work is *Le Six Livres de la République* (translated as *The Six Books of the Republic* or, *the Six Books of the Commonwealth*). The six books form a vast amount of work in the field of “political science”, a phrase he himself had invented. In these books, he gives an elaborate explanation of the concept of sovereignty (a phrase coined by him as well), and different forms of government and state.

For Bodin, the term sovereignty referred to both the domestic situation in a country (having the power to rule the subjects in a country) as well as the international situation (being able to wage war or have diplomatic relations), but the main focus is on the domestic aspect of sovereignty. For Bodin, to be sovereign means to have the “absolute and perpetual power of a Commonwealth” (Lipping, 2010, p.10). Sovereignty is *always* absolute. If sovereignty is not absolute, it is meaningless.

A sovereign has the exclusive right to make laws, but does not need to abide by them. Because of the absolute character of sovereignty, one’s power cannot be limited by law, or by other persons. Using Aquinas’ different types of Laws, Bodin argues that a sovereign is only bound by *natural laws* and *Divine laws* (and not to laws made by legislators). Lastly, for Bodin, absolute sovereignty means a sovereignty that cannot be divided or shared. (Franklin, 1995)

Bodin makes a stark division between forms of the state, and forms of government. “The form of the state is determined by the number of those in whom the sovereignty is vested” (Dunning, 1896, p.98). Sovereignty can be vested in one person (monarchy), a few (aristocracy) or a majority (democracy). Government, on the other hand, is something different. A form of government is the way in which the will of the sovereign (either of those three forms) is handled, the way its administration is arranged (King, 2013).

#### 4.4. Statehood at the time of the Treaty

##### 4.4.a. international consensus on statehood

The previous sections of this chapter have given accounts of different theories of statehood and sovereignty. In this last section, a closer look will be taken at which notions of statehood were present at the time of the signing of the Lateran Treaty. From the works of Grant (1999) and Bathon (2001), we can deduce that there was a strong international consensus on the criteria of statehood. The consensus was so strong, in fact, that the authors of the Montevideo Convention (the main international document in which these criteria were captured), did not bother to defend or elaborate on these criteria. The four criteria are a) a clearly defined territory, b) a population c) internal sovereignty, that is to say, having the ability to rule effectively on said territory and d) external sovereignty, that is, to be recognized by other countries and to be able to maintain diplomatic relations.

Grant’s article shows how important international norms on statehood and governance are and have been in the past. Throughout the centuries, heads of state have adapted to international conventions on statehood, whether explicitly formulated or not. An example of this behaviour is that of Napoleon Bonaparte. In an attempt to be fully recognized by other monarchs, he adapted to the legitimist tradition of the *ancient regime*, by crowning himself Emperor and giving relatives regal titles such as King ‘ and Duke (Grant, 1999).

What Bathon and Grant show, is how over time, the importance of *external sovereignty* has increased. While almost irrelevant in the eighteenth century, recognition of a state by other states and the ability to maintain diplomatic relations, became a key criterion for determining statehood. The point of external sovereignty, is what Bathon (2001) calls, a ‘declarative sovereignty’. Bathon stresses that this criterion is quite a relative concept. A sovereign that abides to the first three criteria (i.e., he rules over a territory with a population and he is internally sovereign), but is not

recognized as such, can still function perfectly well, whilst at the same time, countries that do not fully abide by these criteria can still be accepted by others as sovereigns.

#### 4.4.b. The Catholic perspective on statehood in the 1920s

As we have seen, the international community seemed to be in agreement on its perspective of the state. It might not have had a comprehensive theory, but the criteria for statehood were considered to be straightforward. The interest of this research however, is specifically the Church's view of the state. Francesco Pacelli's diary gives an insight in the Catholic perception of statehood at the time. In a memo annexed to Pacelli's diary, the Cardinal makes some comments on the first draft of the Lateran Treaty, one of which was the following:

Speaking of state, sovereignty, etc., it is opportune to follow the logical or chronological order of the ideas. The property is not necessary to the idea as such, but we have added it ourselves, because it is necessary for us. Territory, lived on by families, independent jurisprudence, that is the state and who commands this state, is the sovereign. Taparelli explains these concepts well.<sup>11</sup>

Pacelli, 1959, p. 216

The Cardinal, who played a key role in determining the Holy See's position during the negotiations, appeared there was a clear view on statehood. There must be a territory, inhabited by families, with an independent jurisprudence. He refers to Taparelli, almost as if to give authority to his argument. It is impossible to know for sure who exactly the Cardinal referred to, and it does not help that the name 'Taparelli' does not occur elsewhere in the negotiations. It is most likely, however, that he referred to Luigi Taparelli D'Azeglio (1793–1862). Taparelli D'Azeglio, in writing always referred to as 'Taparelli' (e.g. Behr, 2003; Gemelli, 1919), was a Jesuit and a scholar who taught political and social sciences. And although Taparelli passed away 64 years before the negotiations on the Lateran Treaty started, it is highly likely that his works still had a great influence on the clergy in Rome.

Taparelli became famous for his work *Saggio Teoretico di Diritto Naturale Appoggiato sul Fatto* (hereafter referred to as *Saggio*), translated as *Theoretical Treatise on Natural Right Based on Fact* (Behr, 2003). After the publication of his work, Taparelli was greatly respected amongst Catholic scholars. He had Vincenzo Pecci as one of his students (who would later become pope Leo XIII, 1810-1903) and pope Pius IX explicitly endorsed him by stating that anyone who studies the works of Thomas Aquinas, should also read the works of Taparelli. Taparelli was also one of the founders of the *Civiltà Cattolica*, the influential scientific journal of the Jesuits. Considering Taparelli D'Azeglio's great influence on Catholic political thought in the nineteenth century, it is highly likely that this is the Taparelli referred to by Cardinal Gasparri.

The main work of the Jesuit, *Saggio*, was initially published as 5 separate volumes. Combined, it is a 700-page treatise, in which a great variety of issues is discussed such as liberty, morality, human needs and economy. More importantly, Taparelli also presents his view on matters of authority, sovereignty and statehood. In this discussion of sovereignty, Taparelli posits himself between two 'extremes'. According to the Jesuit scholar, there are two schools of thought regarding the notion of sovereignty. On one end of the spectrum, there are theorists such as Karl-Ludwig von Haller who

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<sup>11</sup> Translated by Guido As, original text in Italian: "Parlando di Stato, Sovranità, ecc. è opportuno seguire l'ordine logico o cronologico delle idee. La proprietà non è necessaria alla idea di tanto, ma l'abbiamo aggiunta noi, perché a noi è necessaria. Territorio, abitato da famiglie, giurisdizione indipendente, ecco lo Stato e chi comanda questo Stato, è Sovrano. Taparelli spiega bene questi concetti." (Pacelli, 1959, p.216)

proclaim absolute sovereignty. According to this approach, sovereigns are completely independent and the specifics of government are more of an accessory (Von Haller is an *absolutist* thinker on sovereignty, like Bodin).

On the other end of the spectrum, Taparelli posits the Protestants and Enlightenment-thinkers, who base sovereignty on the romantic fantasy of a social contract. Taparelli (1851) aims to present another, third approach, based on the concept of natural law. At its core, this theory is quite similar to that of Thomas Aquinas. According to Taparelli, there are many kinds of authority in society: within a family, between an employer and employee, and so on. Authority is part of human nature. Like a father, as head of the family, has a natural authority over his children and his servants, so the sovereign has a natural authority over his subjects. The sovereign is an individual in a specific society, equipped with the central authority. The need for such an authority springs from the fact that humans come together to form societies. This forming of societies is a crucial aspect of human nature.

Taparelli defines a state as an independent political society, which is not part of a larger society, with a sovereign person who gives laws to this society. Exactly how the 'sovereign' is chosen, is by '*fortuna*' (*luck*), and the Providence (Taparelli, 1851, Capo VIII). The difference between sovereignty and any other form of authority, is that a sovereign is independent. Since there are different degrees of independence, however, there are also different degrees of sovereignty. The laws which the sovereign implements must be aimed at serving the common good. With regard to the international sphere, Taparelli argues that international relations are the relations between one sovereign and the other, between one society and another.



## Chapter 5: On the relation Church and State

The previous chapter set out to discuss the contents of the second research question, regarding the Catholic perception of the concept of the state. Moving on, this fifth chapter will focus on the first research question: to what extent is the creation of Vatican City State in line with Catholic teachings on the separation of Church and State? In order to answer this question, this chapter will analyze the development of Catholic doctrine on this matter, starting from the Roman Era, leading up to the signing of the Lateran Pacts.

In order to do this comprehensively, the subsequent sections aim to do two things. First of all, it tries to sketch the historical context wherein the different thoughts on the separation of Church and state have arisen. The second objective is to briefly yet clearly explain other prominent theories on the separation of Church and state. The theories discussed are those belonging to the schools of Protestantism, the French Enlightenment thinkers, and the Founding Fathers of the United States, all of which have developed in early modern history.

### 5.1. Early Roman Era

If the saying ‘success has many fathers’ is anything to go by, the concept of the separation of Church and state has been highly successful. There are many different claims to the true origins of this concept. Carter (2002) argues that it was the Protestants who initiated the separation of Church and State. Others refer to the Founding Fathers of the United States or the philosophers of the Enlightenment. The era of the Roman Empire and the first Christian leaders also proves to be a prevalent reference point for authors who discuss the first developments of differentiating Church and state (Hamburger, 2009).

It is likely that different views on the origin and definition of the separation of Church and state depend on differences in one’s cultural or academic background. This is because the concept of the separation is deeply engraved in most societies. The use of the concept has become such commonplace, in different contexts and by different people, that it has led to confusion about what exactly is meant by it. As Carter suggests, “When we use the phrase ‘separation of Church and state,’ I suspect that few of us can really guess what the other is talking about.” (Carter, 2002, p.293). It is of no help that since a few years there is a new word *en vogue*: secularism, a word that is also thrown in the discussion, seemingly referring to the same concept. As Scherer (2013) shows however, secularism is something different from a separation of Church and state and the two should not be confused.

In order to analyze the Catholic perception of the relation between Church and State at the time of the Lateran Pacts, we will trace back its developments to the early centuries of the Roman Era, looking specifically at Papal writings. Special prominence is given to the work of Pope Gelasius I (year of birth unknown–496) because his texts have determined Catholic teachings on Church-state relations for many centuries to come, at least for the Middle Ages (Gomes, 2009; Ziegler, 1942), until this doctrine is re-phrased by Pope Boniface (1294–1303) (Gutschera et al, 2006).

The other texts we will look at are far more recent, such as the encyclical of Pope Gregory XVI (1831–1846) named *Mirari Vos* (published in 1832). The largest part of our analysis will be on the only encyclical in modern times that is completely devoted to the relation of Church and state: *Immortale Dei*. This encyclical, written by Pope Leo XIII (1810–1903), was published in 1885, when the struggle between Church and State was a major source of conflict in Europe (Hill, 2008). More importantly, this encyclical was written in the middle of the Roman Question. Other encyclicals that will briefly be touched upon are *Au Milieu des Sollicitudes* (1892) and *Vehementer Nos* (1906) written by respectively Pope Leo XIII and Pius X on the situation in France.



### 5.1.a. Christendom in the Roman Empire

In the early centuries of the Roman Empire, there was one Roman State religion and the head of the State (the Emperor) was worshipped as though he were a god. At this time, there was no separation between Church and State. This worshipping of the Emperor was problematic for several religious minorities living in the Roman Empire. As the group of Christians in Rome steadily grew in number, Christians slowly became more influential. The relation between Christianity and the Romans proved to be a difficult one (Hill, 2008).

This was partly related to the religious practices of the Romans. The polytheistic Roman religion was considered to be very tolerant. Each could pray to the god(s) of his or her choosing. Christians did not approve this practice, arguing that there was only God to which people should pray. But what was more, Christians were not willing to conform to several common practices in the Roman Empire. For example, Christians disapproved of the games at the circus, which played an important role in Roman social life. Also, Christians were pacifists, whilst the military was greatly revered in the Roman Empire and necessary for the political stability of the empire and the position of the Emperors (Jones, 1962).

It is therefore striking to see that it was a Roman Emperor Constantine the Great (272-337) who converted to Christianity. The reasons for his conversion are, to this day, subject to much speculation. On the one hand, there is reason to believe it was the move of an opportunist, especially because he switched religion a fair amount of times, seemingly opting for the religion he thought would best suit his political needs. He has consecutively worshipped Hercules, Apollo and the sun-God ('sol invictus') and only converted to Christianity at a late stage of his life (Gutschera et al, 2006). His conversion, however, was not necessarily the best strategic choice, since Christianity was only a minority of the Roman population, and Christian values were contrary to the Roman practices, which the Emperors used to enhance their power (Jones, 1962).

Still, Constantine converted to Christianity, which led to an improvement of the position of Christians in the Roman Empire. Specifically, his Edict of Milan gave the Christians back the belongings and buildings that were stolen from them during persecutions suffered under his predecessors. Christians were given the same rights as people who adhered to the state religions (without, initially, granting any privileges). Slowly but surely, Christians were given more influential posts at the court of Constantine. Constantine is usually portrayed as the 'first Christian Emperor' and as such is considered to be both a 'liberator' and a 'tempter' of the Church – liberating it from the oppression, but tempting it to eat of the fruit of temporal power (Gutschera et al, 2006; Hill, 2008; Martens, 2006).

#### *Ambrose of Milan*

One of the first Christian leaders of whom there are records of dealing with the relation between Church and state is Ambrose (337-397), bishop of Milan. Ambrose was bishop of Milan during the reign of Emperors Theodosius (347-395) and Gratian (359-383) (both were baptized Christian). During this time, relations between Church and State were complex, and very close. For example, Emperors occasionally summoned councils of bishops, to help determine orthodoxy and thus avoid religious divisions (Hill, 2008).

Ambrose's approach to the relations between Church and state approach had two aspects. On the one hand, St. Ambrose stressed the distinction between the clerics and laymen/laywomen. Clerics were the only ones who had a say in Church affairs. According to Ambrose, those who are not clerics are lay people, and therefore have no authority in the Church. This includes temporal rulers, including the Emperor himself. Ambrose put in a lot of effort to ensure that temporal rulers could have no say in religious matters. By doing so, the bishop of Milan limited the authority of the

Emperor. A concrete example of this differentiation between clerics and temporal rulers, is the fact that Emperor Gratianus no longer used the title of 'Pontifex Maximus', after having been pressured to do so by Ambrose (Gutschera et al, 2006).

When the tables were turned, however, he did manage to influence policies of the Emperors. Ambrose was a strong opponent of the freedom of cults, and had arguments with temporal rulers on the rights of people from other religions, such as the Jews. Ambrose advised Gratian to have the *Victoria altar* removed from the *curia* (on the basis of it not being a Christian altar) and, above all else, managed to have the Edict of Tolerance (granting certain rights and security to people of all religions) revoked (McLynn, 1994).

#### *Augustine of Hippo*

It is at this time when bishops of the Catholic Church have a significant influence in politics, that Aurelius Augustine, better known as Augustine of Hippo (354-430) made his contributions to Catholic teachings on a wide range of topics. Augustine converted to Catholicism at a relatively late age, and has been influenced by other religions before his baptism (by Ambrose of Milan), most notably the Manicheism and neo-Platonic thinkers (Dobell, 2009).

As a distinguished professor, he was placed at positions of great political influence at the court in Milan, which gave him the knowledge of the political struggles of the temporal rulers of his day, next to his theological expertise he had acquired before becoming bishop of Hippo. One of his best known works is '*The City of God*', a work that has also greatly influenced Christian thought on the place of religion in the world. This work was written at a time when the Roman Empire was in decline, and hit by several crises (such as the sacking of Rome by the Goths), for which some people blamed the Christian faith.

In this work, Augustine uses a metaphor of two cities to explain the course of history. The bishop makes a difference between the earthly city (the 'City of Man') and the divine city (the 'City of God'). The two are each other's opposites, and there is strife between the two. In the city of man, people live according to their own desires, and people fall for the temptations of the devil. In the City of God live those who are destined for salvation, people who abide by God's teachings, and aspire to fulfill God's will. People can only create a 'City of Man', they need God in order to live in the blissful city of God. According to Augustine, God and His divine teachings are to be found in the Catholic Church. In this image of having two opposites, 'good versus evil', one can clearly trace the Manicheist influence in Augustine's life ).

But even though any human effort to build a just society, will not lead to a City of God, Augustine argues that people must still contribute to society here on earth. Because the occasions in which there is an actual wall between the two cities are rare (for example, in the case of the monastic life). In general, people have a "dual citizenship" until the final judgement, when God separates those who are saved from those who are doomed. On earth, then, people must accept and listen to the earthly authorities. In this regard, Augustine refers to the letters of St. Paul, where Paul considers the authority of heads of state as 'God-given'. At the same time, all people on this earth, both servants and Kings, eventually have to embrace the teachings of Jesus Christ, in order to get to a more just world. (Witte, 2006) Since on earth, only very few people can truly understand and convey Christ's teachings, people should be bound to the teachings of the Church. In this regard, Augustine has been strongly influenced by the works of Plato, specifically his view on the position of the philosopher-king. (Dobell, 2009)

### 5.1.b. Papal teachings in the Roman Era

At the end of the fifth century, Pope Gelasius I (year of birth unknown- 496) was the head of the Roman Catholic Church for only a brief period of time (from 492 to 496). Still, his works have greatly influenced Catholic teachings and praxis for many centuries. He influenced teaching because of his writings on Canon Law, his area of expertise, already before becoming pope. His legacy on how to practice these teachings comes from the publication of many of his letters, which, for example, showed how he dealt with heresies and related issues such as Pelagianism, and the 'heathen' celebration of *Lupercalia* (.

But above all, Gelasius is known for his contribution to Catholic doctrine with regard to the relation between Church and State. He best explained his views in letters that were written to temporal rulers in the tumultuous and complex aftermath of the Council of Chalcedon. One of these is a letter to Emperor Zeno, signed by Pope Felix II, but which is believed by historians to have been written by Gelasius (see Ziegler, 1942). In it he already makes clear that when it comes to God's command and sacred things, the Emperor is to listen to and learn from the Church, rather than to teach. In doing this, he distinguishes the two different spheres: the profane one, and the sacred one. To tread upon the field of spiritual power, is an offense against God (Enßlin, 1955)

Once he became a pope himself, he reiterated these teachings more clearly in his letter to Anastasius I (Emperor of Rome). The Emperor was known for his piety, but he was a firm believer in the monophysite<sup>12</sup> nature of Jesus. This belief was against the findings of the Council of Chalcedon, which was fiercely defended by pope Gelasius I. His monophysite view had already made him somewhat of a heretic in the eyes of the Church. Still, Anastasius had, even though he was no cleric and held heretic beliefs in the eyes of the Church, preached in religious meetings in Constantinople, to the religious community from the *pulpitum* (pulpit). In his writing to the Emperor, Gelasius sets out to protect the Church from what he called *symphonia*: the tendency of temporal rulers to start meddling in Church affairs, subjecting the authority of the Pope.

There are two powers, August Emperor, by which this world is chiefly governed. The two powers are: *auctoritas sacrata pontificum* et *regalis potestas*. Of the two, the charge of the priests is heavier, in that they have to render an account in the Divine judgment for even the Kings of men. For you know, most gracious son, that, though you preside over humankind by virtue of your office, you bow your neck piously to those who are in charge of things divine and from them you ask the things of your salvation; and hence you realize that in receiving the heavenly mysteries and making the proper arrangement for them, you must in the order of religion submit yourself rather than control, and that in these matters you are dependent on their judgment and do not desire them to be subject to your will.

Ziegler, 1942, pp. 430-431.

Gelasius expands on this in *Tomus de anathematis vincula*, in which he explains that pagan rulers, before Christ, were both Emperors and *pontifices maximi*. This all changed after Christ. "He so divided the duties of the two powers that the Christian Emperors would need the pontiffs for their eternal salvation and the pontiffs would use the imperial orderings for the course of temporal things." (Ziegler, 1942, p. 434).

This declaration of Gelasius was the first time that a pope made such a clear distinction between different types of power over different areas. Gelasius' teaching assumes that there are two types of power that govern the world. First of all, there is the *regalis potestas*, the power of the temporal

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<sup>12</sup> Monophysitism is the belief that Christ had only one nature (a Divine one), rather than two (both a human and a Divine one). Monophysitism was rejected as heresy at the Council of Chalcedon. (Hill, 2008, p. 536)

rulers, who rule over the 'profane' or 'earthly' matters. Secondly, there is the *auctoritas sacrata*, the sacred authority of the Church, which reigns over the 'sacerdotium'. The two powers are distinct, each supreme in its own sphere, and subject to the other in the other sphere. In the end, however, all power comes from God, and it is the Church leaders who must defend their choices directly to the Divine.

This doctrine of two powers was very much in line with the works of other Christian thinkers at the time, most notably that of St. Augustine. In his text, Gelasius I stays close to the dualist approach that can be found in the earlier work of St. Augustine of Hippo. Furthermore, Gelasius' text leaves no doubt as to where the Church stands: separate from, but also above the temporal powers. All power (including temporal power) comes from God.

Besides being theoretically congruent with other Christian thinkers of his era, the Church had a practical need to stretch the authority of the Church, and to ensure that temporal leaders would not interfere with Church matters. The doctrine of the two swords was a direct means to end the practice of 'caeseropapism'. Caeseropapism is the notion that a head of state is both the secular and religious authority. This practice was common long before Christianity, for example in the Roman state religion) and was a way for temporal leaders to keep religious authorities in check and increase one's own position. The behavior of the Roman Emperors at the time had led some to believe that this Caeseropapism was a real threat to the Church. As Gomes argues, the main purpose of the Gelasius' approach was to secure the "defense of the Petrine primacy and the protection of the Church from the interference of imperial authority in matters of faith" (2009, p.202).

## 5.2. Middle Ages

### 5.2.a. Christendom in the Middle Ages: Church and Monarchy

Although the dualist doctrine of pope Gelasius is never denounced, the separation of the temporal and the spiritual power has practically disappeared at the time of Charlemagne. After the fall of the Western Roman Empire, the Roman Catholic Church was in search of a protector. At the same time, the Franks migrated to the predominantly Catholic Gaul in northern France during the Migration Period. In order to ensure a prosperous relation between the Franks and the Gauls, as well as to increase his own legitimacy, Clovis (466-511), the ruler of the Franks was baptized a Catholic in the fifth century. By this very act, the Catholic Church helped give legitimacy to Clovis' rule in the Catholic Gaul area and in return the Franks protected the Pope against peoples in Italy that posed a threat to the Catholic leaders. This 'alliance' with the Franks helped consolidate the position of the Catholic

Church in Europe for many centuries to come (Gutschera, Maier en Thierfelder 2006).

During the centuries that followed, popes played a role in many important political events in Europe. For example, when Pope Zachary decided on the position of the Carolingian dynasty in relation to that of the Merovingian dynasty. Pope Zachary's (679-952) coronation of Pepin the Short (714-768) and Leo III's (unknown-816) coronation of Charlemagne (768-814), were not merely ceremonial acts. Rather, in doing so, these heads of the Catholic Church participated actively in the political sphere. These are just two examples of a long history, wherein the Catholic Church was very much involved in both trivial as well as fundamental developments, such as the creation of empires and heads of state. (Hill, 2008)

At the turn of the ninth century, Charlemagne had the desire to create one Christian Empire, where there was one head of both the spiritual and the temporal. As Gomes puts it "It was a society in which human beings were simultaneously *civis* and *fidelis*" (2009, p. 203). Gomes calls it "*res publica*

Christiana”, Rommen calls it the “Mundus Christianus” (1945, p. 542). But whatever terminology historians prefer choose to use, there is clearly a consensus on the notion that temporal and religious affairs were intertwined, as were the temporal and spiritual authority. Dissension from orthodoxy (heresy) also meant diverging from the religion of the empire, which caused a direct threat to the ruler. Believers and citizens were one and the same and legal texts and political decision were both based on Scripture and theological arguments.

#### *Libertas Ecclesiae*

During this time (around the ninth century), the practice of the *Eigenkirche* (proprietary Churches) develops. A proprietary Church is a Church or chapel, built by a landowner (usually a Lord) on his own territory (a practice common in central Europe in the early Middle Ages). The Lord on whose ground the Church was built, had the final say over all dealings regarding the Church. An issue regular subject of the debate was whether or not the Lord himself was allowed to appoint priests in his own Churches. In the Roman Catholic tradition, as arranged by pope Gelasius I, only bishops could appoint priests. In the following centuries, this practice of propriety Churches develops further, to the extent that rulers started appointing bishops in their own cities. The issue of temporal rulers appointing bishops reveals more than just a practical issue. It shows how they perceived the dioceses (and the Church as such) as an extension of their own property (and power) (Wood, 2006).

This also had to do with the fact that since the tenth century (since Otto the Great), bishops were given titles and lands by the empire. The reason why temporal rulers preferred to have bishops at their court was their vow of celibacy. Since bishops could produce no legal offspring, all titles and lands given to the bishop would go back to the Emperor after his death, rather than handed down to family members. This meant that the Emperor would have much more control over the people in power.

A different but related issue that was discussed at this time, was whether or not the temporal powers should be involved in Papal Elections. In the tenth century, it was customary to consult nobility and temporal rulers in the process. This, too, shows how the Church was considered to be an extension of the power of the temporal rulers. In the eleventh century, pope Gregory VII (c.1020-1085) takes it upon himself to reform the Church, also dealing with the relation between Church leaders and the temporal powers. These changes are implemented by Papal Bulls and decrees and are referred to by historians as ‘the Gregorian reforms’. One of the most famous bulls that deals with the freedom from the Church from the Temporal powers, is titled *Libertas Ecclesiae* (‘freedom of the Church’). Since then, this phrase has been used frequently, when making the case that the Church should be left free from the pressures of temporal powers, and should not be involved in temporal wars or power struggles (see for a recent example, George Weigel’s discussion of Catholic civil society (2008).

#### *Investiture Controversy*

The debate whether or not Lords should be allowed to appoint priests on ‘their’ grounds, grew into a much larger issue several centuries later, when Kings wanted to appoint bishops in ‘their’ cities. The conflict over this issue between the Papacy and the heads of state was intense and lasted for several decades, from the middle of the eleventh century until 1122 (the ‘investiture controversy’). Although this controversy caused conflicts between the Papacy and several European monarchs (including the English and French), the controversy is best known for the ongoing conflict between the Catholic Church and the monarchs of the Holy Roman Empire, specifically with King Henry III, Henry IV and Henry V (Blumenthal, 1995).

Pope Gregory VII excommunicated King Henry IV for insisting on the right of investiture and appointing his own bishops. This excommunication deals a great blow to the legitimacy to the position of the King and this causes in his own order to be forgiven for his sins and end the excommunication, Henry IV makes his famous 'walk to Canossa'. Walking barefoot on snowy grounds, clad in a hair shirt, he met the pope who was (much to his discontent, presumably) forced to forgive the King. This conflict between the monarchs and the popes, however, remained problematic until the Concordat of Worms in 1122 solved the investiture controversy.

#### 5.2.b. Catholic Doctrine in the Middle Ages

With regard to the official teachings of the Catholic Church in the Middle Ages, it was Gelasius' 'two powers' passage that dominated. His teachings were referred to by Pope Gregory VII when defending his reforms and in his conflicts with temporal rulers. Gelasius' text remains the main text on the relation between the temporal and spiritual authority. One of the great influencers on Catholic thinking on the separation of Church and state in the Middle Ages was the Frenchman Bernard of Clairvaux (1090-1153). Bernard was an abbot in the Cistercian order who became known for his conflict with the famous monastery of Cluny and his reform of the Cistercians order. Clairvaux became an influential person in the Catholic Church, and many of his writings were published (Gutschera et al, 2006). Thomas of Aquinas interpreted Bernardus' writings as follows. There are two swords, a spiritual sword and a temporal sword. Both swords are held by the Pope. It is up to him to decide who wields the sword of the temporal.

In the thirteenth century, Pope Boniface VIII (1230 –1303) reformulates the Gelasian theory, using the terminology of Bernard of Clairvaux. Content-wise, Boniface's writings are the exact same as those of Pope Gelasius, but he refers to the two powers as the 'two swords':

We are taught by the words of the Gospel that in this Church and in its power there are two swords, a spiritual, to wit, and a temporal. . . [B]oth are in the power of the Church, namely the spiritual and [temporal] swords; the one, indeed, to be wielded for the Church, the other by the Church; the former by the priest, the latter by the hand of Kings and knights, but at the will and sufferance of the priest. For it is necessary that one sword should be under another and that the temporal authority should be subjected to the spiritual... If, therefore, the earthly power err, it shall be judged by the spiritual power; if the lesser spiritual power err, it shall be judged by the higher, competent spiritual power; but if the supreme spiritual power [i.e., the pope] err, it could be judged solely by God, not by man.

Pope Boniface VIII in Witte, 2006, pp. 20-21

The content is the same as Gelasius' approach in his letter to Anastasius, although Boniface's language might be clearer on the notion that all power comes from God, not only the spiritual but also the temporal one (as argued by Aquinas). The authority of the Church is the greater of the two. Not only is the spiritual sword the most important of the two swords, the temporal sword is handed down to the temporal rulers by the Church.



### 5.3. Renaissance and Modern era

#### England

The history of Church-state relations differs strongly per region. Differences per country become more salient moving forward from the late Middle Ages. As is well known, England embarked upon a distinct path after the Catholic Church excommunicated Henry VIII (1491-1547). This happened after a dispute regarding the nullification of his marriage with Catharine of Aragorn (a nullification that Henry desired, but was not granted to him). After his excommunication, King Henry decided not to accept Papal sovereignty and create the Church of England, separate from the Church of Rome in the first half of the sixteenth century (Gutschera et al, 2006).

#### France: Ultramontanism, vs. Galicanism

The position of the Catholic Church in France, and its relations with society as well as the temporal rulers, changed considerably after the Middle Ages. Since the aforementioned baptism of Clovis, France used to be a 'safe haven' for the Catholic Church, a place where the Church was constantly growing, and received much support from the people as well as the rulers. France was, for example, the place where monasteries first became of great importance. The cloisters of Cluny and Clairveaux had garnered many riches and political influence in France. And for the larger part of the fourteenth century, Avignon had replaced Rome as the residence of the Popes (Blumenthal, 1995).

The powerful position of the Church of France had led to the belief that national Church was just as important as (or, indeed, even more important than) the Church of Rome. On the one hand, there were those who preferred a 'national Church', known as the Gallicanists. On the other hand, there were those who accepted the authority of the Pope, the Ultramontanists (*ultra montane*: over the mountains, from the French perspective). This was more than just a theological discourse, but had concrete effects. According to most Gallicanists, the monarch should be allowed to exert more influence on ecclesiastical matters such as the governing of dioceses, as well as have the final say regarding excommunications or implementation of papal decrees. This conflict between Gallicanists and Ultramontanists started around seventeenth century, but the terminology remained in place until the nineteenth century (Parsons, 2004).

### 5.4. Different perspectives on the Separation of Church and State

#### 5.4. a. Protestantism: privatization of religion

After the Middle Ages, there was a development in the thinking on the relation between Church and state. According to Carter (2002) it was the Protestants who initiated the concept of the separation of Church and state. Still, each Protestant denomination had its own views on Church-state relations. Gomes (2009), distinguishes four different approaches. The Anabaptists tried to form their own communities, living together in small, walled villages, having their own laws. There was a wall of separation between those who belonged to the Church, and those who did not. They literally had a wall of separation between them and the state, of which they believed was falling apart (Witte, 2006; Hamburger, 2009)<sup>13</sup>.

Martin Luther (1483-1546), having been an Augustinian Monk, based his theory on Augustine's work *The City of God*, wherein Augustine comes up with the idea of two Kingdoms, an earthly and a heavenly one. These realms are distinct, but they interact. For Luther, people should live according to the Gospel, but follow their own conscience in doing so. On earth, people are to follow the laws of

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<sup>13</sup> Hamburger speaks of the Anabaptists as 'withdrawing' from the world, by distancing themselves and withdrawing from civic life. Witte, however, speaks of a wall to separate the Anabaptists from other communities (for more on this see Witte, 2006, pp. 21-22).

the land. The Church should have no say in what these laws are, and should have no legal authority. The Calvinist approach stayed closer to the idea of having two powers (in theory, at least): state and Church are separate, but they 'coordinate' their power in one Christian commonwealth. In Geneva, where Calvin lived, there was an elected consistory consisting of both civil and religious officials, with a shared jurisdiction on matters such as the family and morality. This particular practice in Geneva, however, is considered to be one of theocracy by some (Cranmer and Oliva, 2003).

The Anglican tradition. According to Gomes (2009), the Anglican tradition also stayed close to the two-swords model only now, the higher sword was that of the monarch. According to Danforth (2015), Protestants considered the English scenario to be a victory for the separation of Church and state. This was mainly due to the fact that for Protestants, the Separation of 'Church' and state was fuelled by discontent over the temporal power of the pope. Any separation between a state and the Church of Rome, therefore, was considered to be a separation of Church and state.

#### 5.4.b. Early Enlightenment

John Locke's (1632-1704) work regarding the relation between state and religious groups has been of great influence, especially for works on the topic of the separation of Church and State in the Anglo-Saxon world. His *Letter Concerning Toleration* (Locke, 1689), had a great impact on how the founding fathers dealt with religion (Fish, 1997). Locke set out to determine the boundaries of civil government and religion. For John Locke, the Church ought to be separated from the commonwealth.

He considers religious groups to be "a voluntary society of men" (Witte, 2006), people are free to join and leave. The Church cannot use force; the use of force is only allowed by the 'civil magistrate'. States cannot use force on religion. Locke's key argument is that "every Church is orthodox to itself" (Fish, 1998, p. 2258). When someone believes something to be true, he will also believe that those who believe differently are in the wrong. This results in conflict. And with regard to those matters that concern the supernatural, or the 'inward', there is not one answer that we can decide upon, "either at Constantinople, or elsewhere" (Fish, 1998, p. 2258). The only one to answer questions regarding doctrines and worship is the Supreme Judge.

Locke furthermore makes a distinction between a person's 'inward lives' and 'outward lives'. Outward force cannot touch the inward mind or persuade it, and its force in religion is thus undesired. (Witte, 2006) It simply is no use-to-use force to change someone's beliefs. Locke's reasoning starts off with the realization that there is a plurality of Churches, all of which are all orthodox in themselves. Because all Churches are orthodox in themselves, it is impossible to judge the controversies between Churches. What is more, people cannot be persuaded by means of physical force. Consequently, the best option for the state is to take a distance from Churches, and be tolerant of Churches. Now off course, if tolerance is the standard policy in relation to all religion, all sorts of behaviour should be tolerated if people claim that they are religiously founded. Locke's answer to this is that those doctrines that "manifestly undermine the foundations of society, and are therefore condemned by the judgment of all mankind" should not be tolerated. The obvious problems this causes are further discussed by Stanley Fish (1997).

James Burgh (1714-1775) was a Scottish Enlightenment thinker who had a considerable influence on James Madison and other Founding Fathers. Burgh, too, made a plea for separating Church and state. His argumentation is somewhat dissimilar from that of Locke in the sense that he did not make a fundamental case for tolerance (Hamburger, 2009). He was more concerned with the practical elements of having the sacred and the profane mixed up, arguing that it would be better for both Church and State to be separated, noting specifically that a mingling of Church and State can do



injustice to the sacred. With regard to phrasing, Burgh writes: “Build an impenetrable wall of separation between sacred and civil” (Witte, 2006, p.27).

#### 5.4.c. ‘French’ Enlightenment Thinkers

While Burgh, and Lock especially was very tolerant of and positive towards religion, a number of French revolutionary thinkers were more critical. They focused on France’s negative experiences of religious conflict, and the influential position of members of the Church. Their key objective was to protect the state from religions and specifically the Catholic Church. One of those people was Marquis de Condorcet (1743-1794), wanted to make the state free from religion, in the sense that the Catholic Church was allowed to have their rites or ecclesiastical tasks in private, but that nothing done by a Church should not have any civil effect, such as marriage or birth certificates (Witte, 2006).

Although not a Frenchman himself, Thomas Paine (1737-1809), an American who lived in Paris, was considerably more influential in making the same argument as Condorcet. According to him, too, there should be a strong separation between Church and State. In his *Age of Reason* (published in 1794), he rejected all religions, and spoke forcefully against the behaviour of clergy and the establishment. He saw the connections between spiritual and temporal powers as a way in which Churches managed to use the temporal powers in order to ensure that any doubts concerning religious teachings or beliefs, are suppressed. Paine called this “the adulterous connection” (Hamburger, 2009, p.61).

#### 5.4.d. Founding Fathers

For the Founding Fathers, the objective of the separation of Church and state was, first and foremost, to protect religion, that is to say, to protect all religions and Churches from state interference. The first migrants to the United States in the seventeenth century, were largely people who moved there because they were discriminated against because of their religious beliefs in Europe. For the Americans, freedom of religion is therefore the most important freedom, it their first freedom, the freedom from which other freedoms flow. (Woodhead, 2015)

Both Thomas Jefferson (1743-1826) and James Madison (1751-1836) are well-known for their contributions to the separation of Church and State. Jefferson is renowned for his use of the phrase “wall of separation”:

I contemplate with sovereign reverence that act of the whole American people which declared that *their* legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof,’ thus building a wall of separation between Church & State.

Thomas Jefferson in Hamburger, 2009, p.1

This phrase was later used Justice Black in a famous Supreme Court Case (*the Everson case*) and has since then become ingrained in American culture (Carter, 2002). This quote of Thomas Jefferson was part of a short letter from Mr. Jefferson to the Danbury Baptists Association in Connecticut (Hamburger, 2009). In this letter to the Church, he argues that religion is a matter between the individual and God, and that the state should not interfere in this relationship. In this line of reasoning, it appears as though Thomas Jefferson is mainly concerned with protecting individuals from state interference on matters of religion, thereby also protecting religious groups and Churches. It is not hard to see the resemblance with the Early Enlightenment Thinkers. The link with Burgh is most obvious. Not just because of the exact choice of words, but also because of the strong focus on religion as an *individual* affair, between the individual as God, which Burgh, too, professed. Off course, this reasoning is similar to that of Locke, but not exactly the same. For Jefferson does not chose the rhetoric of a more distant politician, who preaches tolerance towards all religions.

Thomas Jefferson's opinion on the separation of Church and state (which, on a side note, was a rather radical interpretation of the first Amendment) does not mean, however, that all Founding Fathers were tolerant of all religions. John Adams fulminated in his dissertation (1774) against the medieval Catholic Church (and some Protestant Churches), which were seen as guilty of cooperating with tyrannical regimes in the European Middle Ages (Witte, 2006). In an attempt to ensure a separation of Church and state, numerous politicians wanted to deny ministers and clergy the option to hold office. Ministers could 'force' their parishioners to go along with their political convictions, so it was thought. People should be free to follow their conscience in any Church, and they should not be forced in either direction, by Church or state. Lastly, the "separation" was not only a means to protect religious groups from the state, or individuals from being hampered in following their conscience, it was also meant to protect Churches from each other. As Hamburger formulated it: "The separation of Church and state in the federal constitution of the United States was not originally intended to disconnect Christianity and public life; it was a device to prevent the supremacy of one sect over another" (Hamburger, 2009, p.9).

An interesting side note in this regard is that in a period of 'Catholic bashing', Protestants used the argument that Catholics were against the separation of Church and state. Although this was untrue with regard to the attitude of both Catholic clergy and laymen in the United States, it did not help that Gregory XVI and Pius IX wrote strongly anti-Protestant and anti-liberal encyclicals such as *Mirari Vos* and the *Syllabus of Errors* (Witte, 2006).

Until this day, there appears to be a bias in the literature on the separation, since the focus is mainly on arrangements in the United States (e.g. Bader, 2003). This is largely because on the one hand, separation has been defended very strongly here, but also because this is one of the least secularized countries, and discussions regarding religion often dominate politics, and regularly appear before the Supreme Court of the United States. The Separation of Church and State is probably best known as a concept in the United States of America. In American iconography, it is "right up there, with mom, baseball and apple pie" (Bradley, 1988, p.1057). Although not explicitly mentioned in the Bill of Rights, (archives, 1789), it does flow from the first amendment that indeed, the state cannot influence religious groups – neither by favouring one, nor by somehow limiting one's freedom of religion.

## 5.5. Catholic views of the Concept from 1870 onwards

### 5.5.a. Pope Gregory XVI

The next Papal writing that touches upon the issue of Church and State is much later, written by Pope Gregory XVI, in 1832. In the nineteenth century, the Catholic Church was very much concerned with its fight against modernity. What was more, Pope Gregory XVI had personally experienced the consequences of a bad relation between Church and state. As a monk he had to flee Rome at the time of the French invasion in the Papal States during the reign of Pius VII. *Mirari Vos* was Gregory's first encyclical. In this letter, he discusses a wide range of topics, one of which is the authority of the Church and the relation of the Church with temporal rulers.

A claim that is repeatedly made in *Mirari Vos*, is that the Catholic Church is being denied its rights. The Church, according to the pope, has a legitimate claim to power, but this power is taken away from the Church by temporal rulers:

The divine authority of the Church is opposed and her rights shorn off. She is subjected to human reason and with the greatest injustice exposed to the hatred of the people and reduced to vile servitude. The obedience due bishops is denied and their rights are trampled underfoot. (...) So the restraints of religion are thrown off, by which alone King doms stand.

Quoting St. Paul's letter to the Romans, he argues that all authority comes to God, and that to resist his authority, is to resist God's will. It is necessary for both spheres of power to respect each other's authority. The early Christians already "distinguished the eternal Lord from the temporal lord, but were also subject to the temporal lord for the sake of the eternal Lord." (Gregory XVIII, 1832b, §18, quoting St. Augustine in psalm 124, n.7.) The problem is, according to Gregory, that under the guise of 'liberty', people do not accept any authority anymore. Respecting the authority of the princes, however, is a crucial element of the Christian religion. In those days, freedom from dominion was considered to be true liberty, but according to the pope it was only to be exchanged by a new servitude, to lust and passion. (Gregory XVI, 1832b, §19)

In a passage about the relation between Church and State, the pope clearly rejects the notion of separation:

Nor can We predict happier times for religion and government from the plans of those who desire vehemently to separate the Church from the state, and to break the mutual concord between temporal authority and the priesthood. It is certain that that concord which always was favourable and beneficial for the sacred and the civil order is feared by the shameless lovers of liberty.

Gregory XVI, 1832b, §20

What is more, when torn between the authority of the State and the authority of the Church, the latter should be prioritized:

May Our dear sons in Christ, the princes, support these Our desires for the welfare of Church and State with their resources and authority. May they understand that they received their authority not only for the government of the world, but especially for the defense (sic!) of the Church. They should diligently consider that whatever work they do for the welfare of the Church accrues to their rule and peace. Indeed let them persuade themselves that they owe more to the cause of the faith than to their King dom. Let them consider it something very great for themselves as We say with Pope St. Leo, "if in addition to their royal diadem the crown of faith may be added." Placed as if they were parents and teachers of the people, they will bring them true peace and tranquility (sic!), if they take special care that religion and piety remain safe. God, after all, calls Himself "King of King s and Lord of lords.

Gregory XVI, 1832b, §23

#### 5.5.b. Leo XIII

A little over half a century after *Mirari Vos*, the situation for the Catholic Church had deteriorated. In France and Germany, the tensions between Catholics and non-Catholics had increased considerably, and the Holy See had lost its papal states. The bishop of Rome now lived as a 'prisoner of the Vatican'. It is at this time (1885) that pope Leo XIII wrote an encyclical on matters of Church and state, called *Immortale Dei*. The topic seems fitting for the pope who is known for his contributions on issues regarding the organization of society.

#### *On Authority*

The encyclical starts off by discussing the notion of authority. It is clear from the letter that the pope is worried about the trend in societies, that people do not accept any authority other than their own. In Catholic doctrine, authority is necessary, and is given to humankind by God:

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<sup>14</sup>The source (Gregory XVI, 1832a) is an unofficial translation of the encyclical. For the original Italian texts, see Gregory XVI, 1832a.

But, as no society can hold together unless some one be over all, directing all to strive earnestly for the common good, every body politic must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its Author. Hence, it follows that all public power must proceed from God. For God alone is the true and supreme Lord of the world. Everything, without exception, must be subject to Him, and must serve him, so that whosoever holds the right to govern holds it from one sole and single source, namely, God, the sovereign Ruler of all. There is no power but from God.

Leo XIII, 1885, §3

In line with this view on authority, the pope argues that Catholic doctrine does not support the concept of a 'sovereignty of the people', without reference to God. "The origin of Public Power is to be sought for in God himself, and not in the multitude" (ID, p.35).

#### *On the two powers*

With regard to the relation between the two powers, the letter is a continuation of the earlier cited doctrine:

The Almighty (...)has given the charge of the human race to two powers, the ecclesiastical and the civil, the one being set over divine, and the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right.

But, inasmuch as each of these two powers has authority over the same subjects, and as it might come to pass that one and the same thing-related differently, but still remaining one and the same thing-might belong to the jurisdiction and determination of both, therefore God, who foresees all things, and who is the author of these two powers, has marked out the course of each in right correlation to the other.

Leo XIII, 1885, §13

So both the state and Church are supreme in their own right. This does not mean, however, that there should be a separation between these two powers. Rather, "*There must (...) exist between these two powers a certain orderly connection, which may be compared to the union of the soul and body in man.*" (Leo XIII, 1885, §14). Further on in the encyclical, Pope Leo looks back on the times when States were governed by the philosophy of the Gospel: "Church and State were happily united in concord and friendly interchange of good offices" (Leo XIII, 1885, §21).

Pope Leo XIII extensively sings the praises of how much religion was able to contribute to society in those days, and how much the States flourished. Such a union, an agreement between Church and state is by far the favoured option. "When King dom and priesthood are at one, in complete accord, the world is well ruled, and the Church flourishes, and brings forth abundant fruit. But when they are at variance, not only smaller interests prosper not, but even things of greatest moment fall into deplorable decay" (Leo XIII, 1885, §22).

Indeed, according to the pope, civil society, created for the welfare of everyone, should help everyone reach his or her highest goals. And it is precisely the task of the Church, not the state, to guide people to heaven. An acknowledgement of religion thus helps individuals reach their goal and become happy (Leo XIII, 1885, §11). The Catholic Church plays a supportive role in society, not only for subjects, but also for the rulers. Like the Church teaches parents to love their children, it teaches King s to look after the interest of its people, while it teaches people to be loyal to their King s.

### How to govern

Leo XIII goes on to say that, although all power comes from God, it is not up to the Church to decide how governments should govern. Governments have to a) strive towards the common good, b) rule with a fatherly kindness and c) be aware that their authority is not theirs but comes from God. It is because of this latest point that people willingly serve their rulers.

Yet, the way in which a state is governed does not matter in the sense that the Church does not necessarily have a preference for a monarchy or a republic. In general, Catholics are stimulated by the Pope to participate in national politics, as well as working for the municipality. Institutions can be used by Catholics to advance truth and righteousness, as well as to ensure that morality is taught to the youth. That being said, those who govern must keep in mind that the state also has a responsibility towards religion:

(It is) a sin for the State not to have care for religion as something beyond its scope, or as of no practical benefit; or out of many forms of religion to adopt that one which chimes in with the fancy; for we are bound absolutely to worship God in that way which He has shown to be His will. All who rule, therefore, would hold in honour the holy name of God, and one of their chief duties must be to favour religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety.

Leo XIII, 1885, §6

The pope sees however, that modern states feel that all religion is due to private judgement. All opinions, no matter how extreme, are equal and should all be subject to the same laws. But this would mean that the Church must strive to live in harmony with all sorts of doctrine, rather than that it is allowed for which she believes it is created: the teaching of nations. This means that Church laws will not be respected, which leads to a clash between the State and the Church, after which the State curtails the Church's rights, take away its possession, makes marriages a state affair, and redraw support for the Papal States.

The pope is worried about the new theories in society regarding religion. The next fragment makes it clear that the Catholic Church at this point in time, still sees for itself a special place in society.

And it is a part of this theory that all questions that concern religion are to be referred to private judgment; that every one is to be free to follow whatever religion he prefers, or none at all if he disapprove of all. From this the following consequences logically flow: that the judgment of each one's conscience is independent of all law; that the most unrestrained opinions may be openly expressed as to the practice or omission of divine worship; and that every one has unbounded license to think whatever he chooses and to publish abroad whatever he thinks.

Leo XIII, 1885, §26

### Au Milieu des Sollicitudes

*Mirari Vos* and *Immortale Dei* are, above all, rather theoretical and distant documents, explaining the doctrine of state-Church relations. It is therefore interesting to see how these teachings, according to the Popes, ought to be used in practice. In order to do so, we will look at two examples of Papal writings which were specific responses to situations wherein the influence of the Catholic Church in society was reduced. The first situation is that of France at the turn of the nineteenth to the twentieth century. During the French Revolution, the position of the Catholic Church in France had changed drastically. Its power diminished, and properties were seized. In 1790, the Church was considered to be a part of the (secular) state and all clergy, for example, were now employed by the state. In 1801, the Holy See signed a Concordat with France, in which a compromise was made. The Church was allowed some property, and the French state was allowed to nominate bishops.

During the nineteenth century, the position of the Catholic Church was complicated. Formally, the Catholic Church was granted a favourable situation in France. Initially, at the creation of the Third Republic, Catholicism was considered to be the state religion. Still, in the late nineteenth century, the tensions between the Catholics and the republicans increased. With the republicans gaining political power, laws are put in place to which Catholics respond in offense (e.g. the prohibition of education by Catholic institutions).

In order to keep the peace, Leo XIII writes his encyclical, *Au Milieu des Sollicitudes*. The pope urges all Catholics, and all good people of France, to accept and come to terms with the fact that France is now a republic:

Now We deem it opportune, nay, even necessary, once again to raise Our voice entreating still more earnestly, We shall not say Catholics only, but all upright and intelligent Frenchmen, utterly to disregard all germs of political strife in order to devote their efforts solely to the pacification of their country.

Leo XIII, 1892, §4

This means that, in line with previous teachings, the authority of the state has to be respected. The Pope's choice to back the Republican government does not mean that he agrees with everything the Republic does. The Pope still demands that the Church should not be subject to common law. However, the letter explains that Catholics should not rebel, should not revolt and should not undermine the temporal authority, even if it acts in a deplorable way. People should combat legislation that is hurtful to the Church, but only by lawful means.

It is unclear to what extent the pope's letter is written from a strategic motive. Firstly, it is doubtful whether rebellion in France, would have done the Catholic Church any good, both in France and in Italy. Rebellion in France would likely create ever stronger divisions in the already split Catholic population. Secondly, it is doubtful whether a rebellion would actually have any effect in the sense that the government would change its policies for the better.

On a more important (third) note, the Catholic Church was already involved in an incredibly delicate situation in Rome. It was only two decades after its territories had been seized, tensions in Italy between Catholics and the Risorgimento were still strong. The Holy See did not have any official ties with Italian government, or even Italian politicians. On the one hand, this made that the Pope understood the difficulty of being in a position of rebellion. On a more strategic note, the Pope's relations with the Italian government were non-existent and the relation with the German government was difficult as well (Engel-Janosi, 1941). It could be argued, therefore, that the Holy Father deemed it best not to pick a fight with the French government, at least for the time being.

#### *Vehementer Nos*

When in the second half of the eighteenth century the tensions between Catholics and republicans in France unfold, the Holy See opts for a policy of appeasement (a policy of which *Au Milieu des Sollicitudes* was only a part). But this policy of appeasements sorts no effect. In the early 1900s, the French government promulgates laws that are contrary to the Concordat, effectively terminating the bilateral agreement. This high point was reached with the acceptance of the *Loi Concernant la Séparation des Eglises et de l'État* in December 1905 (Engel-Janosi, 1941).

It was this law on the separation of Church and State that was a new low in the relations between France and the Holy See. Pius X reacted to this law in his encyclical exceptionally clear on this matter: "That the State must be separated from the Church is a thesis absolutely false, a most pernicious

error” (Pius X, 1906, §3). According to the Pope, the separation was an insult to God, because the state did not recognize God’s Church, nor did it acknowledge that its own authority came from God. In line with this argument, according to pope Pius X, this separation was a negation of supernatural order. On the practical side, the Pope foresaw that if the Church was not allowed to fulfil the role it had taken up so far, this would limit pursuit of public prosperity (referring, for example, to the work of the Church in education and charity). Lastly, the pope argued, the Church does not only help increase public prosperity, it helps individuals strive towards eternal happiness. This is something that the state cannot fulfil, and therefore, the state should work in accordance with the Church, rather than be separated from it.

## 5.6. Catholic Doctrine on the Separation post-Vatican II

The Papal teachings presented above give a clear idea of Catholic Doctrine at the time of the signing of the Lateran Treaty. Catholic Doctrine was against a separation of Church and State. What is more, there is great consistency on this issue in Papal writings from the fifth until the twentieth century. In the Modern Era, however, there is a slight change of tone. Before then, Papal writings never explicitly *rejected* a separation, not only because there were no influential separationist movements to respond to, but also because the Papal teachings were more nuanced. Gelasius I did envision, after all, two separate spheres of power in which only the relevant authority is supreme. This is reiterated by Leo XIII, who also mentions that it is not up to the Church to decide on how to govern.

It is important to point out that in all Papal writings presented in the sections above, there is an implicit notion of truth present. All analysed teachings hold the premise that there is one truth, and that this truth can only be found with help of the Church. Moreover, it is necessary for all people to find and live by this truth, because it is the only way to salvation. This notion, which was at the very heart of Catholic Doctrine, was the main reason to promote a harmony between the clergy and the temporal rulers. Of course temporal rulers can rule as they please, but that does not mean he or his subjects can live without the Church. Instead, the Church ought to guide everyone. This guidance is for the people’s own good, even if they might not be aware of it themselves. This conviction appears most prominent in the encyclical of Pius X, *Iam dudum* (1885).

Precisely this concept has changed in Catholic teachings during the Vatican II. The Conciliar Document *Nostra Aetate* argues that indeed, the Church holds the truth, but that does not mean that parts of truth cannot also be found outside of the Church, for example in other religions (1965b). This view, in combination with an appreciation of the conscience of the individual, led to a more nuanced approach in several aspects of Catholic thought, including Catholic Doctrine on the relation between Church and state. That being said, earlier teachings have not been rejected, and whether or not the Church now accepts the separation of Church and state is remains topic of a (sometimes polemic) debate (Trabbic, 2015).



## Chapter 6. Conclusion

### 6.1. Negotiating Sovereignty

This thesis set out to investigate the fundamental questions raised by the creation of Vatican City State. Drawing from the previous chapters, this chapter will try to answer the research questions as clearly as possible, whilst also pinpointing the nuances and complexities. The last section of this chapter will discuss the weaknesses of this research, and give recommendations for further research.

Chapter two and three of this thesis give an account of the events until February 1929. The second chapter explains the basic concepts and gives an account of the historical developments until the start of the Roman Question, whereas the third chapter presents the details of the (attempted) negotiations between Italy and the Holy See. This chapter explains how the continuing of the Roman Question led to a weakening of the position of the Papacy. Because even though the Holy See was increasingly involved in international relations, behind the scenes, questions were being raised about the position and the authority of the Papacy, by Catholics and Protestants alike.

It makes sense, therefore, that at the start of the negotiations, Pope Pius XI was concerned with one thing in particular: the consolidation of Papal sovereignty. In order to ensure that the sovereignty of the Pope was accepted and recognized, the Holy See wanted to have a specific territory assigned, on which it had complete and independent jurisprudence. The Holy See's main objective was that of sovereignty, and in order to achieve this, they had to create a state.

To an extent, this is merely a 'legalization' of the situation. That is to say, the *de facto* situation was made *de jure*. Still, it is striking to see how the Holy See aims to have a specific terminology (congruent to that of states) incorporated. The Catholic Church clearly adapted to existing norms on statehood, when they asked for the Treaty to speak of *Vatican State*, with *full sovereignty* over a *specific territory*, of which the residents were its *subjects*.

### 6.2. On Statehood

The fourth chapter discusses the second research question, of which the subquestions were phrased:

2a. *What is the Catholic Church's view of the concept of the state?*

2b. *How does the Church's view of statehood compare to other theories on statehood?*

As elaborately explained in the fourth chapter, the Catholic Church's concept of the state, at least with regards to Cardinal Gasparri, the Cardinal Secretary of State, is that of Giuseppe Taparelli d'Azeglio. Taparelli's work is grounded in the texts of Thomas Aquinas and presents a theory of the state as that of an independent political society, ruled by a sovereign who makes laws to advance the common good. This political society is the natural consequence of human nature, a view based on the notion of natural law. Taparelli's view of the state can be seen as a 'middle way' between theorists who advocate 'absolute sovereignty' and those who view the state as a social contract.

Now to the main second research question: *What is the Catholic Church's perspective on the concept of the state, and to what extent is this in line with the creation of Vatican City State?* It has become obvious that the Church's view of the state as a natural society with a 'natural sovereign', is far removed from the reality of Vatican City State. The City State, after all, is more of an artificial society rather than a natural one, forming a society of *employees* of the Holy See, who have all been granted citizenship. In this case, it is clear that by adapting to the minimal criteria of statehood prevalent at the time, the Church's practice was inconsistent with her own views on statehood.

Without detracting from this conclusion, it must be added that the Pope was in a position where he had to prioritize which aspect of Catholic thought were most important. Because the concept of



Papal authority, too, has been a consistent aspect of Catholic thought. Moreover, the notion of Papal authority (later called Papal sovereignty), has much more *gravitas* in the Catholic Church. If Pius XI had decided on another way to end the Roman Question, or to leave the situation as it was, the consequences for Papal sovereignty, as Tacchi-Venturi's memo describes, could have been tremendous.

### 6.3. On the Separation of Church and State

The first research question formulated in the introductory chapter asks to what extent the creation of Vatican City State is in line with Catholic Doctrine on the separation of Church and state. As chapter five clearly shows, Catholic doctrine was very much against a separation of Church and State at the time of the signing of the Lateran Pacts. The creation of a Church-state, therefore, did not necessarily pose any contradictions. Two nuances must be made, however. The first nuance concerns the presented Catholic Doctrine. As the fifth chapter showed, Papal teachings are not black and white. No matter how strong the anti-separation rhetoric of Pius X, papal teachings still held high the principle that there are two spheres of power. There are some differences between popes as to how harmonious the relation between those two spheres should be, but the differentiation between 'state' and 'church' remained present.

The second nuance regards the creation of Vatican City State itself. The creation of this Church-state can be interpreted in three different ways. First of all, it can be understood as a Church which has been given a state. A spiritual power that becomes a temporal power, with all the characteristics that have been discussed: a territory, subjects, recognition by other states. In this regard, it seems like the two spheres of power have fused for good. Second of all, one can appreciate the creation of a clear separation between Church and state. The creation of Vatican City State made that the walls of the Vatican became true walls of separation. In a way, the call of Protestant and Enlightenment thinkers such as Burgh and Jefferson to build a wall between Church and State, is exactly what happened. The walls surrounding the Vatican had already been built off course, but the signing of the Lateran Treaty gave new meaning to those walls. From then on forward, no matter if and how the arrangements between the Church and civil governments are made or rearranged, there is a wall of separation, which grants that the Pope is completely independent and autonomous in his sphere of justice, while the Italian government is completely autonomous and independent on its own territory. What is more, from now on, the Pope can act as equals in the international sphere, as one sovereignty to another.

A third way to interpret the creation of Vatican City State, is as a 'Gelasian' approach to Church-State relations. One could argue that although there is a clear demarcation of where one is and is not sovereign, this does not mean that the wall separates the two authorities completely. Rather, the two spheres of justice enable each authority to be supreme in its own sphere, but also to engage with the other sphere. Although this last interpretation is most likely the easiest to maintain under pressure, a strong case could be made for each of those interpretations. In 2008, Pope Benedict XVI made his Gelasian interpretation perfectly clear when he visited the Quirinale Palace. At this Palace, which Catholic heads of state could not visit during the Roman Question (for which the penalty was excommunication), the Pope now reflected on the reconciliation: "Today it can truly be said with pleasure that the Italian State and the Apostolic See coexist peacefully and collaborate fruitfully in the city of Rome."

#### 6.4. Discussion

This research was originally meant to give a normative analysis of the Creation of Vatican City State. It focussed specifically on two major issues: the notion of the creation of a state, as well as the concept of the separation of Church and state. Writing this thesis, it has become obvious that trying to discuss these two elaborate issues has its disadvantages. The most fundamental disadvantage is running the risk of not doing either of the two issues any justice. This risk is all the greater because both issues are vast and complex, and because, although they are related, they are also very different issues. This means that one must find a balance between being complete, and being concise, between covering enough, whilst not overdoing it. I have tried to defend the choices for which theories and which authors to incorporate, but painful omissions (from the decent explanation of contract theories to the Weberian view of the state) remain.

There are two issues which this thesis consciously has decided not to research. The first one of these is the fundamental notion of Papal authority. This omission might seem strange, because the concept of Papal authority was the very reason why the Pope wanted to become a sovereign in the first place. As a political scientist, however, it is necessary to know one's limits. Critically reading Marsilius' view of the State authority, falls within those limits, but assessing Marsilius' (or anyone else's) theological arguments, is beyond those limits, and best left to a theologian.

Another stone left unturned is a discussion of the plenitude of current issues of Church-state dilemmas involving the Catholic Church. When discussing the issue of the separation of Church and State, one does not necessarily need to give a historical account, one can also assess dilemmas of the current day and age. Although this critique is perfectly legitimate, it cannot be done both. The choice for a historical-theoretical approach was based on personal preference, as well as the fact that on this topic, this research has hardly been done, which made that by taking this approach, an effective contribution was made to academic literature on Vatican City State.

Although a contribution to academic literature on Vatican City State was indeed the first and foremost objective of this thesis, this research more than just any academic exercise. Because the fundamental issues here discussed, especially regarding the separation of Church and state, is now as relevant as ever, also in the public debate. Because we live in times where the idea of a Christian, Western culture is opposed to the Muslim culture. Violent Muslim terrorist attacks are portrayed (rightly or not) as an attack on our way of life (FD, 2016), and there is a sharp increase in the divisive language is increasing.

One of those characteristics of the Christian culture, so it is being suggested, is one of separation of Church and state. This is being contrasted with the Islamic culture, where, according to some, religion does not allow for this separation (Danforth, 2015; Lilla, 2007). The conclusions of this research can help nuance that debate by explaining that, perhaps contrary to convention, the Christian tradition has its own complex history with the separation of Church and state. It is, after all, no more than 150 years ago that Pope Pius X fulminated against the idea of separating Church and State. Experts on the historical relations between Church in Islamic culture, might use this thesis to draw comparisons and gain new insights.

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## Annex I. Timeline.

The most important people and events mentioned in the thesis, in chronological order.

Year	Person or <b>Event</b>	Note
272-337	Constantine the Great	Edict of Milan
337-397	Ambrose of Milan	Church Father
354-430	Augustine of Hippo	Church Father. <i>City of God</i>
476	<b>End of the (West-)Roman Empire</b>	
Unknown-496	Pope Gelasius I	Developed the 'two-powers'-doctrine
496	Baptism of Clovis. The Franks became Catholic.	
714-768	Pepin the Short	Came to power because of Papal interference
768-814	Charlemagne	Crowned Emperor by Pope Leo III
1015-1085	Pope Gregory VII	Investiture Controversy
1050-1106	Henry IV, Holy Roman Emp.	Investiture Controversy. Walked to Canossa.
<b>1077</b>	<b>Road to Canossa</b>	
1225-1274	Thomas Aquinas	Thomism, Scholasticism
1275-1342	Marsilius of Padua	Criticised Papal Sovereignty. Excommunicated
1483-1546	Martin Luther	95 theses on Church door. Excommunicated
1491 –1547	Henry VIII of England	Broke with Rome. Anglican Church.
1530-1596	Jean Bodin	Coined 'political science' and sovereignty
1632- 1704	John Locke	Enlightenment: <i>A Letter Concerning Toleration</i> .
1714–1775	James Burgh	Enlightenment. 'Wall of separation'
1737-1809	Thomas Paine	<i>The Age of Reason</i>
1743-1826	Thomas Jefferson	US President. 'Wall of separation'
1743-1794	Marquis de Condorcet	French Enlightenment
1717-1799	Pope Pius VI	Lost the Papal States to France in 1798. Dies a prisoner in France.
1742-1823	Pope Pius VII	Lost the Papal States to France in 1805
1753-1815	General Berthier (under Napoleon Bonaparte)	Invaded the Papal States and captured Pope Pius VI
1743-1826	Thomas Jefferson	US President. 'Wall of Separation'.
1751-1836	James Madison	US President.
1765-1846	Pope Gregory XVI	<i>Mirari Vos</i>
1769–1821	Napoleon Bonaparte	Conflict with Holy See. Conquers Papal States
<b>1789</b>	<b>France invades Papal States</b>	
1792 –1878	Pope Pius IX	Lost the Papal States to Italy in 1870. <i>Syllabus of Errors</i>
1793-1862	Luigi Taparelli d'Azeglio	<i>Saggio</i>
<b>1805</b>	<b>France invades Papal States</b>	
1810 –1903	Pope Leo XIII	Pope during the Roman Question. <i>Immortale Dei</i> <i>Au Milieu des Sollicitudes</i>
<b>1813</b>	<b>Concordat is signed between France and Holy See. Papal States again under Papal rule.</b>	
1807-1882	Garibaldi	Red shirts. <i>Risorgimento</i>
1810-1861	Camilio Benso Cavour	Italian constitution, first Italian Prime Minister
1815 –1897	General Raffaele Cadorna	Invaded Rome in September 1870.
1822-1888	General Herman Kanzler	Led the Papal army in 1870. Signed capitulation.
1829 –1914	Marquis Visconti-Venosta	Jurist. Negotiated on behalf of Italy.

1835 –1914	Pope Pius X	<i>Iamdudum Vehementer Nos</i>
1847-1922	Sidney Sonnino	Diplomat, advised the King on 1919 negotiations.
<b>1849</b>	<b>Liberal Revolution. Pius IX flees Rome to be reinstated by French Troops two years later.</b>	
1852 -1934	Cardinal Pietro Gasparri	Cardinal Secretary of State. Signed the Lateran Pacts on behalf of Pius XI
1854 –1922	Pope Benedict XV	Failed negotiation attempt at Paris Peace Talks
1857-1939	Pope Pius XI	Successful negotiation of the Lateran Pacts.
<b>1860</b>	<b>Unification process of Italy Begins. Bourbons deposed.</b>	
1862-1952	Vittorio E. Orlando	Prime Minister Italy. Involved in 1919 negotiations between Italy and the Holy See.
1864-1935	Francesco Pacelli	Negotiated the Lateran Pacts on behalf of the Holy See.
1869-1947	King Vittorio Emmanuele III.	King during negotiations and signing of Lateran Pacts.
<b>September 1870</b>	<b>Troops of Piedmont invade Papal States.</b>	
<b>May 1871</b>	<b>Promulgation of the Law of Guarantees</b>	
1879 –1929	Domenico Barone	Negotiated the Lateran Pacts on behalf of Italy.
1883-1945	Benito Mussolini	Prime Minister of Italy during negotiations Lateran Pacts. <i>Il Duce</i> .
<b>1914-1918</b>	<b>First World War</b>	
<b>1919</b>	<b>Paris Peace Talks &amp; Negotiations between Holy See and Italy in Paris</b>	
<b>1926</b>	<b>Start Negotiations Lateran Pacts</b>	
<b>February 11<sup>th</sup> 1929</b>	<b>Signing of the Lateran Pacts</b>	
<b>June 7<sup>th</sup> 1929</b>	<b>Ratification of the Lateran Pacts by the Italian Parliament.</b>	

## Annex II. Gasparri's announcement

Note containing Cardinal Gasparri's speech to the *corps diplomatique* to announce imminent signing of the Lateran Pacts. Date: Thursday the 7<sup>th</sup> of February, 1929

### Original text in Italian

Oggi Giovedì comunicherò Corpo Diplomatico quanto segue.

Due anni fa governo italiano esprime confidenzialmente desiderio comporre questione Romana. Santo Padre interrogo tutti Cardinali che dissero non doversi respingere tale desiderio conforme nota risposta Leone XIII. Conferenze private per condizione espressa Sua Santità tendevano stipulazione non solo Trattato ma anche Concordato per sistemazione religiosa Italia. Entrambi Convenzioni inseparabili firma imminente. Trattato assicura essenzialmente Santa sede situazione sempre voluta diritto divino piena libertà indipendenza reale manifesta governo Chiesa universale. Concordato provvede sufficientemente condizione religiosa Italia V.S. resti sede.

Card. Gasparri.<sup>15</sup>

### English Translation by Guido As

Today, Thursday, I communicate the following to the *corps diplomatique*:

Two years ago, the Italian government confidentially expressed the desire to end the Roman Question. The Holy Father questioned all the Cardinals, who informed him that they saw no need to reject such a desire, which was in accordance with the known response of Leo XIII. Private conferences have been held, abiding by the stipulation of conditions as expressed by His Holiness. Not just a Treaty, but also a Concordat for the religious arrangements in Italy. The signing of both, inseparable conventions, is imminent. The Treaty ensures the essential situation as always desired by the Holy See, in accordance with divine right, full liberty and independence, a real and manifest government of the Universal Church. The Concordat provides sufficient conditions for religion in Italy. His Holiness remains.

Card. Gasparri.

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<sup>15</sup> Source: Archivio Segreto Vaticano, anno 1929, rubr. 88, fasc. 1, Foglio 112: 77295.

## Annex III. Lateran Pacts

### III.a. Lateran Treaty

In the name of the Most Holy Trinity.

Whereas the Holy See and Italy have recognized the desirability of eliminating every reason for dissension existing between them and arriving at a final settlement of their reciprocal relations which shall be consistent with justice and with the dignity of both High Contracting Parties, and which by permanently assuring to the Holy See a position *de facto* and *de jure* which shall guarantee absolute independence for the fulfillment of its exalted mission in the world, permits the Holy See to consider as finally and irrevocably settled the Roman Question which arose in 1870 by the annexation of Rome to the Kingdom of Italy, under the Dynasty of the House of Savoy;

And whereas it was obligatory, for the purpose of assuring the absolute and visible independence of the Holy See, likewise to guarantee its indisputable sovereignty in international matters, it has been found necessary to create under special conditions the Vatican City, recognizing the full ownership, exclusive and absolute dominion and sovereign jurisdiction of the Holy See over that City;

His Holiness the Supreme Pontiff Pius XI and His Majesty Victor Emmanuel III, King of Italy, have agreed to conclude a Treaty, appointing for that purpose two Plenipotentiaries, being on behalf of His Holiness, His Secretary of State, viz. His Most Reverend Eminence the Lord Cardinal Pietro Gasparri, and on behalf of his Majesty, His Excellency the Cav. Benito Mussolini, Prime Minister and Head of the Government; who, having exchanged their respective full powers, which were found to be in due and proper form, have hereby agreed to the following articles:

#### Article 1

Italy recognizes and reaffirms the principle established in the first Article of the Italian Constitution dated March 4, 1848, according to which the Catholic Apostolic Roman religion is the only State religion.

#### Article 2

Italy recognizes the sovereignty of the Holy See in international matters as an inherent attribute in conformity with its traditions and the requirements of its mission to the world.

#### Article 3

Italy recognizes the full ownership, exclusive dominion, and sovereign authority and jurisdiction of the Holy See over the Vatican as at present constituted, together with all its appurtenances and endowments, thus creating the Vatican City, for the special purposes and under the conditions hereinafter referred to.

The boundaries of the said City are set forth in the map called Annex I of the present Treaty, of which it forms an integral part.

It is furthermore agreed that, although forming part of the Vatican City, St. Peter's Square shall continue to be normally open to the public and shall be subject to supervision by the Italian police authorities, which powers shall cease to operate at the foot of the steps leading to the Basilica, although the latter shall continue to be used for public worship. The said authorities shall, therefore, abstain from mounting the steps and entering the said Basilica, unless and except they are requested to do so by the proper authorities.

Should the Holy See consider it necessary, for the purpose of special ceremonies, temporarily to prohibit the public from free access to St. Peter's Square, the Italian authorities shall (unless specially requested to do otherwise) withdraw to beyond the outer lines of Bernini's Colonnade and the extension thereof.

#### Article 4

The sovereignty and exclusive jurisdiction over the Vatican City, which Italy recognizes as appertaining to the Holy See, forbid any intervention therein on the part of the Italian Government, or that any authority other than that of the Holy See shall be there acknowledged.

#### Article 5

For the purpose of the execution of the provisions of the preceding Article before the present Treaty comes into force, the Italian Government shall see to it that the territory forming the Vatican City shall remain free from any charge and from possible occupants. The Holy See shall arrange to enclose the access thereto, enclosing such parts thereof as remain open, except St. Peter's Square.

It is furthermore agreed that, in respect of the buildings there existing and belonging to religious institutions or bodies, the Holy See shall settle relations with the latter direct, the Italian Government having no part in such arrangements.

#### Article 6

The Lateran Treaty says that "Italy will see to it...that an adequate supply of the water in its possession is fully assured to Vatican City." (Art. 6) This is interpreted to mean that Italy pays for the five million cubic metres of water used each year by the Vatican. In 2010 this tiny enclave installed its 100th fountain. Why not?

Italy shall provide, by means of suitable agreements entered into with the interested parties, that an adequate water supply be fully assured to the Vatican City. Italy shall furthermore provide for connection with the State railways by constructing a railway station within the Vatican City on the spot shown on the annexed map, and by permitting the circulation of railway carriages belonging to the Vatican on the Italian railways. It shall further provide for direct connection with other States by means of telegraph, telephone, wireless, broadcasting, and postal services in the Vatican City. It shall equally also provide for the coordination of all other public services.

All expenses connected with the arrangements above mentioned shall be defrayed by the Italian State, within the period of one year from the entry into force of the present Treaty.

The Holy See shall, at its own expense, arrange the existing means of access to the Vatican, and those others which it may consider it necessary to make in the future.

Agreements shall be subsequently concluded between the Holy See and Italy concerning the circulation, on and over Italian territory, of land vehicles and aircraft belonging to the Vatican City.

#### Article 7

The Italian Government undertakes to prohibit the construction within the territory surrounding the Vatican City, of any new buildings which might overlook the latter, and shall for a like purpose provide for the partial demolition of similar buildings already standing near the Porta Cavalleggeri and along the Via Aurelia and the Viale Vaticano.

In accordance with the provisions of International Law, it shall be forbidden for aircraft of any kind whatsoever to fly over Vatican territory.

On the Piazza Rusticucci, and in the areas adjoining the Colonnade, over which the extra-territoriality referred to in Article 15 hereof does not extend, all structural alterations or street construction shall only be effected by mutual assent.

#### Article 8

Considering the person of the Supreme Pontiff to be sacred and inviolable, Italy declares any attempt against His person or any incitement to commit such attempt to be punishable by the same penalties as all similar attempts and incitements to commit the same against the person of the King .

All offences or public insults committed within Italian territory against the person of the Supreme Pontiff, whether by means of speeches, acts, or writings, shall be punished in the same manner as offences and insults against the person of the King .

#### Article 9

In accordance with the provisions of International Law, all persons having a permanent residence within the Vatican City shall be subject to the sovereignty of the Holy See. Such residence shall not be forfeited by reason of the mere fact of temporary residence elsewhere, unaccompanied by the loss of habitation in the said City or other circumstances proving that such residence has been abandoned.

On ceasing to be subject to the sovereignty of the Holy See, the persons referred to in the preceding paragraph, who, according to the provisions of Italian law (independently of the de facto circumstances considered above) shall not be regarded as possessing any other citizenship, shall be regarded in Italy as Italian nationals.

Notwithstanding that all such persons are subject to the sovereignty of the Holy See, the provisions of Italian law shall be applicable to them within the territory of the Kingdom of Italy, even in such matters wherein the personal law must be observed (when they are not covered by the regulations emanating from the Holy See) and, in the case of persons of foreign nationality, the legal provisions of the State to which they belong.

#### Article 10

Such dignitaries of the Church and persons belonging to the Papal Court as shall be indicated in a Schedule to be approved by the High Contracting Parties, shall always and in every case, even when not citizens of the Vatican, be exempt from military service as far as Italy is concerned, jury service, and any other service of a personal nature.

This provision shall also apply to regular officials whose services are considered indispensable by the Holy See, if permanently employed by the latter and earning a fixed salary, or employed in the Departments or Offices mentioned in Articles 13, 14, 15, and 16 hereof and residing without the Vatican City. The names of such officials shall be set forth in another Schedule to be drawn up and approved as above mentioned, and which shall be brought up to date each year by the Holy See.

The ecclesiastics whose duty it shall be to participate, without the Vatican City, in the execution of enactments emanating from the Holy See, shall not, on that account, be subject to any hindrance, investigation, or molestation on the part of the Italian authorities.

All foreigners in official ecclesiastical employment in Rome shall enjoy the personal guarantees appertaining to Italian citizens, in accordance with the laws of the Kingdom of Italy.

#### Article 11

All central bodies of the Catholic Church shall be exempt from any interference on the part of the Italian State (save and except as provided by Italian law in regard to the acquisition of property made by *corpi morali*, [recognized public bodies] and with regard to the conversion of real estate.)

#### Article 12

Italy recognizes the right of the Holy See to passive and active Legation, according to the general rules of International Law. Officials accredited by foreign Governments to the Holy See shall continue to enjoy, within the Kingdom of Italy, all the prerogatives of immunity enjoyed by diplomatic agents under International Law, and their headquarters may continue to be within Italian territory whilst enjoying the immunity due to them under International Law, even in the event of their State not having diplomatic relations with Italy.

It is understood that Italy undertakes in all cases to allow the freedom of correspondence for all States, including belligerents, to and from the Holy See, as well as free access to the Apostolic See by Bishops from all over the world.

The High Contracting Parties undertake to establish normal diplomatic relations between each other, by accrediting an Italian Ambassador to the Holy See and a Papal Nuncio to Italy, who shall be the doyen of the Diplomatic Corps, in accordance with the ordinary practice recognized by the Congress of Vienna by the Act of June 9, 1815, in consequence of the sovereignty hereby recognized and without prejudice to the provisions of Article 19 hereof, the diplomats accredited by the Holy See and the diplomatic couriers dispatched in the name of the Supreme Pontiff, shall enjoy within Italian territory, even in time of war, the same treatment as that enjoyed by diplomatic personages and couriers of other foreign Governments, according to the provisions of International Law.

#### Article 13

Italy recognizes the full ownership of the Holy See over the patriarchal Basilicas of St. John Lateran, Sta. Maria Maggiore, and St. Paul, with their annexed buildings.

The State transfers to the Holy See the free management and administration of the said Basilica of St. Paul and its dependent Monastery, also paying over to the Holy See all monies representing the sums set aside annually for that church in the budget of the Ministry of Education.

It is also understood that the Holy See shall remain the absolute owner of the edifice of S. Callisto, adjoining Sta. Maria in Trastevere.

#### Article 14

Italy recognizes the full ownership by the Holy See of the Papal Palace of Castel Gandolfo, together with all endowments, appurtenances, and dependencies thereof, which are now already in the possession of the Holy See, and Italy also undertakes to hand over, within six months after the coming into force of the present Treaty, the Villa Barberini in Castel Gandolfo, together with all endowments, appurtenances, and dependencies thereof.

In order to round off the property situated on the northern side of the Janiculum Hill, belonging to the Sacred Congregation of Propaganda Fide and to other ecclesiastical institutions, which property faces the Vatican Palaces, the State undertakes to transfer to the Holy See or other bodies appointed by it for such purpose, all real estate belonging to the State or to third parties existing in that area. The properties belonging to the said Congregation and to other institutions and those to be transferred being marked on the annexed map.

Finally, Italy shall transfer to the Holy See, as its full and absolute property, the Convent buildings in Rome attached to the Basilica of the Twelve Holy Apostles and to the churches of San Andrea della Valle and S. Carlo ai Catinari, with all annexes and dependencies thereof, and shall hand them over within one year after the entry into force of the present Treaty, free of all occupants.

#### Article 15

The property indicated in Article 13 hereof and in paragraphs (1) and (2) of Article 14, as well as the Palaces of the Dataria, of the Cancellaria, of the Sacred Congregation of Propaganda Fide in the Piazza di Spagna of the S. Offizio with its annexes, and those of the Convertendi (now the Congregation of the Eastern Church) in Piazza Scossacavelli, the Vicariato, and all other edifices in which the Holy See shall subsequently desire to establish other offices and departments although such edifices form part of the territory belonging to the Italian State, shall enjoy the immunity granted by International Law to the headquarters of the diplomatic agents of foreign States. Similar immunity shall also apply with regard to any other churches (even if situated outside Rome) during such time as, without such churches being open to the public, the Supreme Pontiff shall take part in religious ceremonies celebrated therein.

#### Article 16

The property mentioned in the three preceding Articles, as also that used as headquarters of the following Papal institutions - the Gregorian University, the Biblical, Oriental, and Archaeological Institutes, the Russian Seminary, the Lombard College, the two Palaces of St. Apollinaris, and the Home of the Retreat of the Clergy



dedicated to St. John and St. Paul - shall never be subject to charges or to expropriation for reasons of public utility, save by previous agreement with the Holy See, and shall be exempt from any contribution or tax, whether ordinary or extraordinary and payable to the State or to any other body.

It shall be permissible for the Holy See to deal with all buildings above mentioned or referred to in the three preceding Articles as it may deem fit, without obtaining the authorization or consent of the Italian governmental, provincial, or communal authority, which authorities may in this regard rely entirely on the high artistic traditions of the Catholic Church.

#### Article 17

As from January 1, 1929, salaries of whatsoever nature payable by the Holy See, or by other central bodies of the Catholic Church and by bodies administered directly by the Holy See whether within or without Rome to dignitaries employed and salaried (whether permanently or not, shall be exempt from any contribution or tax whether payable to the State or to any other body.

#### Article 18

The artistic and scientific treasures existing within the Vatican City and the Lateran Palace shall remain open to scholars and visitors, although the Holy See shall be free to regulate the admission of the public thereto.

#### Article 19

Diplomats and envoys of the Holy See, as well as diplomats and envoys of foreign Governments accredited to the Holy See, and the dignitaries of the Church arriving from abroad and traveling to the Vatican City, provided with passports of the States whence they come duly furnished with the visa of the Papal representative abroad, shall be allowed free access to the Vatican City over Italian territory without formalities.

#### Article 20

Goods arriving from abroad for destinations within the Vatican City, or without its boundaries for institutions or offices of the Holy See, shall invariably be allowed transit over Italian territory (from any part of the Italian boundary as also from any seaport of the Kingdom) free of payment of any customs or octroi dues.

#### Article 21

All Cardinals shall enjoy, in Italy, the honours due to Princes of the Blood. Those Cardinals who may reside in Rome without the Vatican City shall, for all purposes, be considered citizens thereof.

In the event of the office of the Holy See falling vacant, Italy shall make special arrangements for the free transit and access of Cardinals over Italian territory to the Vatican, and shall provide that their personal liberty is not impeded or limited.

Italy shall also take all measures, within her territory surrounding the Vatican City, necessary to prevent the commission of any act which may in any way disturb the meetings of the Conclave.

The same provisions shall apply to Conclave held beyond the boundaries of the Vatican City and to Councils presided over by the Supreme Pontiff or his Legates, and with regard to all Bishops summoned to attend them.

#### Article 22

At the request of the Holy See, or by its delegate who may be appointed in single cases or permanently, Italy shall provide within her for the punishment of offences committed within the Vatican City, save and except when the author of the offence shall have taken refuge in Italian territory, in which event he shall immediately be proceeded against according to the provisions of the Italian laws.

The Holy See shall hand over to the Italian State all persons who may have taken refuge within the Vatican City, when accused of acts committed within Italian territory which are considered to be criminal by the law of both States.

The same provisions shall apply in regard to persons accused of offences who may have taken refuge within the buildings enjoying immunity in accordance with the provisions of Article 15 hereof, save and except if the persons having authority within such buildings prefer to request members of the Italian police force to enter and arrest such persons.

#### Article 23

The regulations provided by International Law shall apply for the execution, within the Kingdom of Italy, of sentences pronounced by the Courts of the Vatican City.

All sentences and measures emanating from ecclesiastical authorities and officially communicated to the civil authorities, in regard to ecclesiastical or religious persons and concerning spiritual or disciplinary matters, shall without other formality have legal effect in Italy even for all civil purposes.

#### Article 24

In regard to the sovereignty appertaining to it also in international matters, the Holy See declares that it desires to take, and shall take, no part in any temporal rivalries between other States, nor in any international congresses called to settle such matters, save and except in the event of such parties making a mutual appeal to the pacific mission of the Holy See, the latter reserving in any event the right of exercising its moral and spiritual power.

The Vatican City shall, therefore, be invariably and in every event considered as neutral and inviolable territory.

#### Article 25

By a special Convention written below and united to the present Treaty, which constitutes the IV codicil to the same and forms an integral part thereof, provision shall be made for the liquidation of the credit of the Holy See towards Italy.

#### Article 26

The Holy See considers that the agreements signed to-day offer an adequate guarantee for assuring to it, together with the requisite liberty and independence, the pastoral administration of the Roman Diocese and the Catholic Church throughout Italy and the entire world, and it declares the Roman Question to be definitely and irrevocably settled and therefore eliminated, and recognizes the Kingdom of Italy under the Dynasty of the House of Savoy, with Rome as the capital of the Italian State.

Italy, on her part, recognizes the State of the Vatican City under the sovereignty of the Supreme Pontiff.

The law dated May 13, 1871 (No. 214) and any other dispositions contrary to the present Treaty, are hereby abrogated.

#### Article 27

Within four months after the signature thereof, the present Treaty shall be submitted for ratification by the Supreme Pontiff and the King of Italy, and shall enter into force as soon as ratifications are exchanged.

Dated in Rome this 11th day of February, 1929.

(Signed) Pietro Cardinal Gasparri

Benito Mussolini

### III.b. The Financial Convention

The Holy See and Italy having, in consequence of the stipulations of the Treaty which has definitely composed “the Roman Question”, held it necessary to regulate with a distinct convention, forming an integral part of the same, their financial relations;

The supreme Pontiff considering on the one hand the immense damage sustained by the Apostolic See through the loss of the patrimony of S. Peter constituted by the ancient Pontifical States, and of the Ecclesiastical property, and on the other side, the ever-increasing needs of the Church in the City of Rome alone, and taking into consideration the present financial condition of the State and the economic condition of the Italian people, especially after the war, has deemed it well to restrict the request for indemnity to the barest necessity; asking for a sum partly in cash and partly in bonds which is much inferior in value to the which the State to-day should disperse towards the Holy See if only in execution of the obligation assumed by the law of May 13, 1871.

The Italian State appreciating the paternal sentiments of the Supreme Pontiff has felt bound to adhere to the request for the payment of the said sum.

#### Article 1

Italy, on the exchange of ratifications of the Treaty, shall pay to the Holy See the sum of Italian lire 750,000,000 (seven hundred and fifty millions) and at the same time consign Italian 5 per cent bonds (with coupons, June 30) of the nominal value of Italian lire 1,000,000.

#### Article 2

The Holy See declares that it accepts the above as a definite systemization of the financial relations with Italy in consequence of the events of 1870.

#### Article 3

All the acts necessary for the execution of the Treaty with regard to the present Convention and of the Concordat shall be exempt from every form of taxation.

Rome, eleventh February, one thousand nine hundred and twenty-nine.

Pietro Card. Gasparri

Benito Mussolini

### III.c. The Concordat

In the name of the Most Holy Trinity.

Seeing that from the beginning of the negotiations between the Holy See and Italy for the solution of “the Roman Question” the Holy See itself has proposed that the Treaty relating to the said question should be accompanied, as its necessary complement, by a Concordat to regulate the conditions of religion and the Church in Italy.

Seeing that to-day a Treaty has been concluded and signed for the solution of “the Roman Question”.

His Holiness the Supreme Pontiff Pius XI and His Majesty Vittorio Emanuele III, King of Italy, have resolved to make a Concordat and to that end have nominated the same Plenipotentiaries delegated for the stipulation of the Treaty, that is: on the part of His Holiness, His Eminence the Most Reverend Lord Cardinal Pietro Gasparri, his Secretary of State; and on the part of His Majesty, His Excellency Cav. Benito Mussolini, Prime Minister and head of the Government, who having exchanged their full powers and found them to be in good and due form, have agreed upon the following articles:

Art. 1. Italy, in the sense of Art. I of the Treaty, assures the Catholic Church of the free exercise of her spiritual power, the free and public exercise of worship, and of jurisdiction in Ecclesiastical matters in conformity with the norm of the present Concordat, and when it occurs, accords to Ecclesiastics for the ads of their spiritual ministry defence on the part of its authority.

In consideration of the sacred character of the Eternal City, the Episcopal See of the Sovereign Pontiff, centre of the Catholic world and place of pilgrimage, the Italian Government will take care to impede in Rome whatsoever may be in opposition with its said character.

Art. 2. The Holy See shall communicate and correspond freely with the Bishops and clergy of the whole Catholic world without any interference on the part of the Italian Government.

Equally in everything that concerns their pastoral ministry the Bishops shall communicate and correspond freely with their clergy and all the faithful. Like the Holy See the Bishops can freely publish and affix within and to the external doors of buildings destined for public worship or for the offices of their ministry, instructions, ordinances, pastoral letters, diocesan bulletins and other ads concerning the spiritual government of the faithful which they see fit to issue in the sphere of their competence.

Such publications and affixions and in general all the acts and documents relative to the spiritual government of the faithful shall not be subject to any taxation.

Such publications as regards the Holy See may be made in any language, those of the Bishops in Italian or Latin, but besides the Italian text the Ecclesiastical Authority can adjoin translations into other languages.

The Ecclesiastical Authorities can, without any interference on the part of the Civil Authorities, make collections within and at the doors of the churches and buildings belonging to them.

Art. 3. Theological students in the last two years of their theological course devoted to the priesthood, and novices of religious institutions can, at their request, put off from year to year until the twenty-sixth year of their age the fulfilment of the obligation of military service.

Clerics ordained 'in sacris' and religious who have made their vows are exempt from military service, saving the case of a general mobilization. In such case the priests pass into the armed forces of the State, but conserve their ecclesiastical habits in order to exercise amongst the troops their sacred ministry under the ecclesiastical Jurisdiction of the military ordinary in the sense of Art. 14. The other clerics and religious of preference shall be destined to military service.

Nevertheless, even in the case of a general mobilization, those priests are dispensed from the call to present themselves who have cure of souls. As such are considered ordinaries, parish priests, vice-parish priests and coadjutors, vicars and priests permanently appointed to rectories and churches open to the public.

Art. 4. Ecclesiastics and religious are exempt from serving on juries.

Art. 5. No Ecclesiastic may be employed or remain in the employment of an office of the Italian State or any public entity depending from the same without the *nihil obstat* of the Diocesan ordinary.

The revocation of the *nihil obstat* deprives the Ecclesiastic of the capacity of continuing to exercise the employment or office which he has assumed.

In any case, apostate priests, or those subject to censure, cannot be appointed or continued as teachers, or hold office or be employed as clerks where they are in immediate contact with the public.

Art. 6. The stipends and the other assignments which Ecclesiastics enjoy by reason of their office are open to mortgages in the same measure as the stipends and assignments of clerks in the offices of the State.<sup>16</sup>

Art. 7. Ecclesiastics cannot be required by magistrates or other authorities to give information concerning persons or matters which have come to their knowledge by reason of their sacred ministry.

Art. 8. In case of an Ecclesiastic or religious being brought before a magistrate for some crime, the Procurator of the King must immediately inform the ordinary of the diocese in the territory of which he exercises jurisdiction, and ought carefully to transmit to the office of the same the instructional decrees, and where necessary the definitive sentence of the judgment both in the first grade and also on appeal.

In case of the arrest of an Ecclesiastic or religious he shall be treated with the regard due to his hierarchical grade.

In the case of the condemnation of an Ecclesiastic or religious the punishment shall be performed in a place separate from that for lay people, unless the competent ordinary shall have already reduced the condemned person to the lay state.

Art. 9. Regularly buildings open for public worship shall be exempt from requisitions and occupation.

If in consequence of a grave public necessity it is necessary to occupy a building open for worship, the authority which proceeds to the occupation should have come to a previous accord with the

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<sup>16</sup> Stipendiaries of the State are allowed to mortgage one-fifth of their salaries.

ordinary, unless the reasons are of such absolute urgency as to prevent it. In such a case the authority should immediately proceed to inform the same (i.e. the ordinary).

Saving cases of urgent necessity, the public forces shall not in the exercise of their functions enter any building open for worship, without giving previous notice to the Ecclesiastical Authority.

Art. 10. For no cause whatsoever is it possible to proceed to the demolition of a building open for worship without previous accord with the competent Ecclesiastical Authority.

Art. 11. The State recognizes the Feast-days established by the Church, which are the following:

All Sundays.

The first day of the year.

The Epiphany (January 6).

The Feast of S. Joseph (March 19).

The Ascension.

The Feast of Corpus Domini.

The Feast of SS. Peter and Paul (June 29).

The Assumption of the B.V. Mary (August 15).

All Saints' Day (November 1).

The Feast of the Immaculate Conception (December 8).

Christmas Day (December 25).

Art. 12. On Sundays and feasts of precept in churches which have a chapter, the celebrant shall sing at the Conventual Mass according to the norm of the Sacred Liturgy a prayer for the prosperity of the King of Italy and for the Italian State.

Art. 13. The Italian Government shall give to the Holy See a table of the Ecclesiastics enrolled in the work of spiritual assistance to the military forces of the State as soon as they are approved in the mode of law.

The designation of the Ecclesiastics to whom is committed the high direction of the service of spiritual assistance (the military ordinary, the Vicar-General and the inspectors) shall be made confidentially by the Holy See to the Italian Government. Whenever the Italian Government has reason to oppose such designation, it shall communicate the fact to the Holy See, which shall proceed to another designation.

The military ordinary shall have Archiepiscopal rank.

The nomination of the military chaplains shall be made by the competent authority of the Italian state upon the designation of the military ordinary.

Art. 14. The Italian troops by land, sea and air shall enjoy in regard to their religious duties the privileges and exemptions sanctioned by Canon Law.

The military chaplains in regard to the said troops have parochial authority. They shall exercise their sacred ministry under the jurisdiction of the military ordinary assisted by his proper curia.

The military ordinary has jurisdiction also over the religious, both masculine and feminine, engaged as workers in the military hospitals.

Art. 15. The military Archiepiscopal ordinary is Provost of the Chapter of the Church of the Pantheon in Rome, constituted by his clergy, to whom is entrusted the religious service of the said Basilica. Such clergy are authorized to provide for all the religious functions, even outside Rome, which in conformity with the Canon Law are required by the State or by the Royal House.

The Holy See consents to confer on all the canons composing the Chapter of the Pantheon the dignity of Protonotaries *ad instar durante munere*. Their nomination shall be made by the Cardinal Vicar of Rome after presentation by the King of Italy, a confidential indication being given previous to presentation.

The Holy See reserves to itself the right to transfer the Diaconia to another church.

Art. 16. The High Contracting Parties shall proceed to an accord by means of a mixed commission for the revision of the boundaries of the dioceses for the purpose of rendering them more in agreement with those of the provinces of the State.

Moreover the Holy See shall erect the diocese of Zara, and no part of the territory subject to the Sovereignty of the King dom of Italy shall be subject to a bishop whose seat is found in territory subject to the Sovereignty of another State, and no Diocese of the King dom shall include territory subject to the Sovereignty of another State.

The same principle shall be observed for all the existing parishes as for those to be constituted in the territory near the confines of the State.

The modifications which after the enquiry shall be deemed necessary to arrange the boundaries of the dioceses, shall be disposed by the Holy See in previous accord with the Italian Government, and in observance of the direction expressed above, saving small rectifications of territory required for the good of souls.

Art. 17. The reduction of dioceses that may result from the application of the preceding Article, shall be brought into force as the said dioceses become vacant.

The said reduction shall not import the suppression of the titles of the dioceses, nor their Chapters, which shall be conserved when regrouping the dioceses in such a mode that the chief place therein shall correspond with that of the province.

The said reductions shall leave the economic resources of the dioceses and of the Ecclesiastical entities existing in the same unchanged, including the assignments from the Italian State.

Art. 18. By disposition of the Ecclesiastical Authority the parishes shall be regrouped provisionally or definitively, entrusting them to one parish priest assisted by one or more curates uniting in one presbytery several priests. The State shall maintain unaltered the economic treatment of the said parishes.

Art. 19. The choice of Archbishops and Bishops belongs to the Holy See.

First before proceeding to the nomination of an Archbishop, a Diocesan Bishop or a coadjutor with right of succession, the Holy See shall communicate the name of the person chosen to the Italian



Government so as to be assured by the same that it has no reason of a political character to offer against the nomination.

The relative practice shall be performed with the greatest possible care and with every reserve so that the name of the person chosen shall remain secret.

Art. 20. Bishops before taking possession of their dioceses shall take an oath of fidelity to the head of the State according to the following formula:

Before God and his Holy Gospels I swear and promise on becoming a Bishop fidelity to the Italian State. I swear and promise to respect and make respected by my clergy the King and the Government established according to the constitutional laws of the State. I swear and promise moreover that I shall not participate in any agreement or any counsel that can damage the Italian State and the public order and I shall not allow to my clergy such participation. I shall concern myself with the well-being and interests of the Italian State and endeavour to avert any danger that can possibly menace it.

Art. 21. The provision of Ecclesiastical benefices belongs to the Ecclesiastical Authority.

The nomination of those invested with parochial benefices shall be communicated under reserve by the competent Ecclesiastical Authority to the Italian Government, and cannot have effect until thirty days from the date of the communication.

Within this period the Italian Government shall where grave reasons are opposed to the nomination manifest them under reserve to the Ecclesiastical Authority, and if the dissent continues shall bring the case before the Holy See.

When Grave reasons arise which render the continuance of an Ecclesiastic in a determined parochial benefice injurious, the Italian Government shall communicate such reasons to the ordinary who in accord with the Government shall take the appropriate measures within three months thereof.

In case of divergences between the ordinary and the Government, the Holy See shall entrust the solution of the question to two Ecclesiastics chosen by it, who in accord with two delegates of the Italian Government shall take a definitive decision.

Art. 22. Ecclesiastics who are not Italian citizens cannot be invested with the existing benefices in Italy. Those in charge of dioceses or parishes must speak the Italian language.

Where necessary they shall have helpers assigned to them who, besides Italian, understand and speak the language locally in use, for the purpose of giving religious assistance in that language to the faithful according to the rules of the Church.

Art. 23. The dispositions of Articles 16, 17, 19, 20, 21 and 22 do not apply to Rome and the suburban dioceses.

But the Holy See shall proceed to a new arrangement of the said dioceses, the assignments at present being made by the Italian State both of their revenues and of the other Ecclesiastical Institutions shall remain unchanged.

Art. 24. The exequatur and the Royal placet are abolished, and any Cæsarean or Royal nomination in the matter of the appointment to any Ecclesiastical benefices or offices throughout Italy, saving the exceptions made by Art. 29, letter (g).

Art. 25. The Italian State renounces the sovereign prerogative of the Royal patronage of benefices both major and minor.

Likewise the *regalia*<sup>17</sup> over major or minor benefices and the *terzo pensionabile*<sup>18</sup> in the provinces of the Kingdom of the two Sicilies is abolished. The relative burdens cease to be chargeable to the State and to the dependent administrations.

Art. 26. The nomination to the possession of the major or minor benefices and of the temporary representative of the vacant See or benefice has the effect of the said Ecclesiastical provision, in which the Government officially participates.

The administration and enjoyment of the revenues during the vacancy shall be arranged according to the norm of Canon Law.

In the case of bad management the Italian State in accord with the Ecclesiastical Authority shall proceed to the sequestration of the temporalities [worldly goods] of the benefice, devoting the net revenues in favour of the possessor, or in his absence to the advantage of the benefice.

Art. 27. The Basilicas of the Holy House at Loreto, of S. Francis at Assisi and of S. Antony at Padua, with the buildings and works annexed, except those of a purely lay character, shall be ceded to the Holy See and their administration shall belong to the same. They shall be free from every interference by the State and from the conversion of other entities of whatsoever nature under the management of the Holy See, even the Missionary Colleges. In any case the Italian law regarding the acquisitions of moral corporations remains in force.

With regard to the property now belonging to the said sanctuaries, a mixed commission shall proceed to deal with their distribution, having regard to the rights of third parties and to the necessary endowment of the said works of a lay character. For the other sanctuaries in which a lay administration exists, these shall be replaced by the management of the Ecclesiastical Authority, saving the case of the distribution of the property according to the norm of the preceding paragraph.

Art. 28. For the tranquillization of consciences the Holy See accords a full condonation to all those who in consequence of the Italian laws changing the Ecclesiastical patrimony, are found in possession of Ecclesiastical property.

For such purpose the Holy See shall give the ordinaries the opportune instructions.

Art. 29. The Italian State shall revise its legislation in so far as it concerns Ecclesiastical matters, reforming and reintegrating them in order to bring them into harmony with the direction which inspires the Treaty with the Holy See and the present Concordat.

It remains now for the two High Contracting Parties to agree the following :

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<sup>17</sup> Regalia. The right on the part of the Crown to appropriate to itself the income of Ecclesiastical benefices during the period they remain vacant.

<sup>18</sup> Terzo pensionabile. The right of the State to apply a third part of the income of a benefice in favour of persons designated by itself. Such rights were in force in the provinces of the former Kingdom of the Two Sicilies.

(a) The personality of the Ecclesiastical entities already recognised by the Italian law (the Holy See, Dioceses, Chapters, Seminaries, parishes, etc.) shall remain unchanged. Such personality shall be recognized also in churches open to public worship which at present do not enjoy it, composing those that formerly belonged to Ecclesiastical entities now suppressed, with the assignment in regard to these last of the revenue actually destined to each one from the Fund of Public Worship. Saving what is settled in the previous Art. 27, the council of administration wheresoever existing, and even if wholly or in part composed of lay persons, shall not interfere in the service of public worship, and the nomination of those composing the administration shall be made in agreement with the Ecclesiastical Authority.

(b) The juridical personality of those religious congregations shall be recognized, with or without votes, approved by the Holy See, which have their principal house within the Kingdom, and are there represented juridically and in fact by persons who are of Italian citizenship and are domiciled in Italy.

The juridical personality shall also be recognized of the Italian religious provinces of those associations having their principal house abroad within the limits of the State and its colonies when the same conditions concur.

The Juridical personality of houses, when the particular rules of each order attributes to them the right of acquisition and possession, shall likewise be recognized.

Finally shall be recognized the houses of the Generals, and the procurators of religious associations, including those abroad. The religious houses and associations which at present enjoy juridical personality shall conserve the same.

The acts relating to the transfer of the property to which the associations now come into possession from the present owners to the association shall be exempt from any taxation.

(c) The confraternities exclusively or principally devoted to worship and which are not subject to ulterior transformation as regards their purpose, depend on the Ecclesiastical Authority for what concerns their functioning and administration.

(d) The foundation of religious worship of any kind is permitted provided that it responds to the needs of the people, and imposes no financial burden on the State. These dispositions apply to such as are already in existence.

(e) In the civil administration of Ecclesiastical patrimony resulting from the aversive laws half the council of administration shall be composed of members designated by the Ecclesiastical Authority, and likewise for the religious funds of the new provinces.

(f) The acts computed up to the present by Ecclesiastical or religious entities, without the observance of the civil law, shall be recognized and regularized by the Italian State at the request of the ordinary if presented within three years from the entry into force of this Concordat.

(g) The Italian State renounces the exemption from Ecclesiastical jurisdiction of the palatine clergy in all Italy (saving for those belonging to the Church of the Santa Sindone of Turin di Superga, and of the Sudario of Rome and the chapels annexed to the palaces which are occupied by the Sovereign and the Royal princes) entering all the nominations and provisions of benefices and offices under the norm of the preceding Articles. An appropriate

commission shall provide for the assignment to any basilica or palatine Church of a suitable endowment according to the criteria indicated for the property of the sanctuaries in Art. 27.

(h) The tributary facilities already established by Italian law in forms of Ecclesiastical entities at present existing shall remain in force; the scope of worship and religion is for all tributary effects made equal to the scope of beneficence and education.

The extraordinary tax of 30 per cent imposed by Art. 18 of the law of August 15, 1867, n. 2848, the quota of concourse of which see Art. 31 of the law of July 7, 1866, n. 3036, and Article 20 of the law of August 15, 1867, n. 3848, are abolished; also the tax on the passage of interest of property constituting the endowment of benefices and other Ecclesiastical entities established by Art. I of the Royal Decree, December 30, 1923, n. 3270, and for the future the institution of any special tribute charged on the property of the Church. Neither shall there be applied to ministers of worship in the exercise of their sacerdotal ministry any professional tax or licensing tax instituted by Royal Decree, November 18, 1923, n. 2538, in place of the suppressed tax of trade and resale, or any other tax of that nature.

(i) The use of the Ecclesiastical and religious habit on the part of seculars as on the part of Ecclesiastics or religious who have been forbidden to wear it by definitive provision of the competent Ecclesiastical Authority, which should be officially communicated to the Italian Government, is forbidden: and shall be punished with same sanctions and pains with which is forbidden and punished the unlawful use of the military uniform.

Art. 30. The ordinary and extraordinary administration of property belonging to any Ecclesiastical Institute or religious association shall be under the direction and control of the competent authority of the Church, every intervention on the part of the Italian State being excluded, and without the obligation to submit the conversion of real estate.

The Italian State recognizes in Ecclesiastical Institutes and religious associations the capacity to acquire property, saving the dispositions of the civil law concerning the acquisition of moral corporations.

The Italian State by the new accords, unless established otherwise, shall continue to supply the deficiencies in the income of Ecclesiastical benefices with assignments that shall correspond to a measure not inferior to that established by the laws actually in force, in consideration of which the administration of the patrimony of the said benefices as far as it concerns acts and contracts which exceed simple administration shall take place with the intervention of the Italian State, and in the case of a vacancy the assignment of the property shall be made in the presence of a representative of the Government expressed by an appropriate document.

The Episcopal income of the suburban dioceses, and the patrimonies of the chapter and parishes of Rome and the said dioceses, is not subject to the said intervention.

For the purpose of a congruous supplement, the amount of the said incomes and patrimony corresponding to the benefices shall result from a declaration rendered annually under the proper responsibility of the Bishop for the suburban dioceses and of the Cardinal Vicar for Rome.

Art. 31. The erection of new Ecclesiastical entities or religion associations shall be made by the Ecclesiastical Authority according to the norm of Canon Law; their recognition as regards civil effects shall be made by the civil authority.

Art. 32. The recognitions and the authorizations foreseen in the provisions of the present Concordat and of the Treaty shall take place through a norm established by the civil law which shall be put into harmony with the dispositions of the said Concordat and Treaty.

Art. 33. The disposition of the existing Catacombs in Rome and other parts of the territory of the Kingdom are reserved to the Holy See, with the consequent honour of keeping, maintaining and conserving them. The Holy See can, with the observance of the law of the State and saving the eventual rights of third parties, proceed to future excavations and the transfer of the bodies of the saints.

Art. 34. The Italian State, wishing to restore to the institution of matrimony, which is the foundation of the family, that dignity which is conformable with the Catholic traditions of its people, recognizes the civil effects of the Sacrament of matrimony regulated by Canon Law.

The publication of matrimony as above shall be effected in the parish, and also in the communal hall.

Immediately after the celebration of matrimony, the parish priest shall explain to the newly wedded pair the civil effects of matrimony, reading to them the Articles in the civil code regarding the rights and duties of married persons, and commit the act of matrimony to writing, of which within five days he shall send an exact copy to the Commune, in order that it may be transcribed in the registers of the civil State.

Causes concerning nullity of matrimony and dispensations from matrimony ratified but not consummated are reserved to the competence of the Ecclesiastical Tribunals and their departments.

The provisions and the relative sentences when they have become definitive shall be carried to the supreme tribunal of the *Signatura* [the highest Papal court], which shall control them and see that the norm of the Canon Law relative to the competence of the judge, the citations, the legitimate representation and the contumacy of the parties, has been observed.

The said provisions and definitive sentences with the relative decree of the supreme tribunal of the *Signatura* shall be transmitted to the Court of Appeal of the State competent for the territory, which shall, by an order of chamber of Council, render effective the civil effects and order the same to be annotated in the margin of the Act of Matrimony of the civil State.

As to causes of personal separation the Holy See agrees that these shall be judged by the ordinary civil authority.

Art. 35. For secondary (*scuola media*) schools of instruction carried on by Ecclesiastical or religious associations the examination by the State with effective parity of conditions for candidates of the Government schools and candidates of the said schools shall remain in force.

Art. 36. Italy, considering the teaching of Christian doctrine according to the form received by Catholic tradition as the foundation and the crown of public instruction, agrees that religious instruction imparted in the public elementary schools shall have a further development in the secondary schools according to a programme to be established by an accord between the Holy See and the State.

Such teaching shall be given by means of masters and professors, priests and religious approved by the Ecclesiastical Authority, and subsidiaries by means of lay masters and professors, who for this end shall be furnished with a certificate of fitness to be issued by the ordinary of the diocese.

The revocation of the certificate on the part of the ordinary deprives the teachers of the capacity to teach.

For the said religious teaching there shall only be used in the public schools the text-books approved by the Ecclesiastical Authority.

Art. 37. The director of the State Association of physical culture for pre-military instruction, of the *Avanguardisti* and *Balilla* [Fascist Youth], in order to render possible the religious instruction of the youth entrusted to them, shall dispose the hours in such a way as shall not impede on Sundays and days of precept the fulfilment of their religious duties.

The same applies to the directors of public schools for gatherings of their pupils on the said feast days.

Art. 38. The nomination of the professors of the Catholic University of the Sacred Heart and the dependent institute of Mary Immaculate are subject to the nihil obstat on the part of the Holy See directed to secure that nothing shall be wanting from the moral and religious point of view.

Art. 39. The Universities, the greater and lesser Seminaries, diocesan, inter-diocesan or regional, the academies, the colleges and other Catholic Institutes for Ecclesiastical formation and culture shall continue to depend solely from the Holy See without any interference on the part of the scholastic authority of the King dom.

Art. 40. The doctorate in Sacred Theology bestowed by the Faculty approved by the Holy See shall be recognized by the Italian State ; likewise shall be recognized the diplomas which shall be given in the schools of palæography, archives and diplomatic documents erected near the Library and the Archives in the City of the Vatican.

Art. 41. Italy recognizes the use in the King dom and its colonies of the Pontifical honours of knighthood by means of a register of briefs of the nominations through the presentation of the brief by the person interested and the request for its inscription therein.

Art. 42. Italy shall admit the recognition by a Royal decree of titles of nobility conferred by the Supreme Pontiff, even after 1870, and of those that shall be conferred in the future.

It shall also be established that the said recognition in Italy shall not be subject to taxation.

Art. 43. The Italian State recognizes the organizations dependent from the Italian Catholic Action in so far as the Holy See has disposed that they carry out their activity outside any political party and under the immediate dependence of the Hierarchy of the Church for the diffusion and exercise of Catholic principles.

The Holy See takes the occasion of the stipulation of the present Concordat to renew to all Ecclesiastics and religious of Italy the prohibition of belonging to and fighting for any political party whatsoever.

Art. 44. If any difficulty shall arise in the future concerning the interpretation of the present Concordat, the Holy See and Italy shall proceed by a common examination to a friendly solution.

Art. 45. The present Concordat shall come into force by exchange of the ratifications at the same time as the Treaty between the two High Parties for the elimination of the "Roman Question".

With the entry into force of the present Concordat, the Concordat with the former Italian States shall cease to be operative. The Austrian law, the laws and decrees of the Italian State actually in force, in

so far as they are opposed to the depositions of the present Concordat, shall be abrogated by the entry into force of the same.

To prepare for the execution of the present Concordat, a commission shall be nominated immediately after the signing thereof, comprised of persons to be designated by the two High Parties.

Rome, eleventh February, one thousand nine hundred and twenty-nine.

PIETRO CARD. GASPARRI.

BENITO MUSSOLINI.