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**Church – State Relations in
European Law Systems**

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Introduction

The question of church and state is not the same in every case. Failure to make this distinction results in confusion. Furthermore, we should be prepared to deal with complexities, ambiguities, religious and ethical convictions. In the 2000's, the issue of church-state relations, regime of cults and religious identity is still cautious and its initiative reflectes a fundamental rethinking of national interests, political identity and ideology.

For the European Union, the religious freedom's advantage, its flexibility and tolerance for change, does not ensure that the integration of the new democracies (former communist countries) will be short and satisfying. These questions complicate an already complex transition, adding a new difficulty to reform program: the spiritual integration and the protection of freedoms. In this context, there is in fact a common perception of political transition: a growing sense of vulnerability and fear, dreams of new European religious policy. In such a volatile atmosphere, events and possible scenarios for the coming years could go in any number of directions.

The subsequent analysis is the result of the post-doctoral scholarship program entitled "Religious liberty and regime of cults in European law systems. Political and juridical consequences of a European Code of Law and Religion ECLR)".

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This monography on law and religion contains eight papers describing three complementary perspectives along the three years of post-doctoral research: 1. firstly, the goal of the book is to analyse the evolution of structural, functional and methodological components of church-state relations in European law systems focusing on new democracies; 2. secondly, the book guides the research on the aspects of cultural, national and social emancipation. The achievement of a “personalist model of church–state relations” is expressed by various initiatives of religious communities, groups and religious organizations. In this sense, contemporary Europe becomes a common historical and political space for all Christians which increased the peaceful coexistence as a real crossroad of traditions, attitudes and values; 3. thirdly, the book highlights the exchange of themes, constitutional developments or other juridical provisions, social or political trends and opinions engaging to answer the great challenge of religious pluralism in the European society.

The paper focuses on the theme of the new democracies religious arena and its multi-conditional environment. Furthermore, the theme of church-state relations in the context of the dynamic evolution of the contemporary Europe is analysed in the diverging opinions concerning the Church’s position and the analysis of the incitements and threats against the religious pluralism in the Balkans in the recent years.

Here, the initial problem resides in the new democracies particular complexity, specific to transitory societies, in which the internal and external factors are combined in an often regional perspective requiring the involvement of some political myth-making typical to the incipient democracies.

In the new context of religion and geopolitics, religious pluralism has an evolution and a destiny which generates in the context of European integration a real challenge equally for the states and the religious factor. Furthermore, the book argues that European

spiritual integration represents an element that mustn't be ignored in the process of interpretation and comprehension of the geopolitics of religion in the new democracies.

The working hypothesis starts from the observation attributing to the historical, social, cultural and political practices an interdisciplinary inquiry. In this situation, the book allows a detailed exposition of the theoretical and methodological elements of the evolution and role of church-state relations in forming a collective identity (see the index of personalities with major contributions in the same research area).

As to the structural dimension of the book, the analysis converges towards the acceptance of the following components: religious freedom, regime of cults, national ideologies, media coverage of religious factor, political influence, constitutional provisions and other legal developments.

Furthermore, the present book defines the new balance of the relations between the state and religious organizations, communities or groups presenting the constitutional provisions affecting religion, religious liberty, freedom of thought, conscience and religion in twelve new EU member states.

All common constitutional provisions suggest a homogeneous European approach due to historical, political, social and cultural factors needed to accommodate religious pluralism in countries with Orthodox majority. Needless to argue, all new democracies unified their own legislation through common compliance with EU legal framework noting that there is little to distinguish between Orthodox European countries in terms of "the core elements": the understanding of religion, separation of church and state, freedom of religion, conscience and thought, education and finance.

Recently, a great deal of specialized literature, namely legal and political periodicals, has debated over the constitutional

dispositions of law and religion in majority Catholic countries of the European Union. Even so, these studies reflected just a “cross-fertilized” political, social, and cultural research. In this connection, the present research attempts to articulate the “arena” of ideas and concepts within the context of historical experience, public discourse, media coverage and political scene illustrating a complex understanding of church, media and politics in the context of the European integration.

The increasing number of legal, theological and political studies and publications on “law and religion” in recent years reveals a new academic interest in Central and Eastern Europe after the fall of communism.

In contrast to many other Western academic studies, the comparative study on law and religion and related concepts (items) in former communist countries focuses on the religious and democratic rebirth of the region.

The present book distinguishes between both sides of the regulation of law and religion: the constitutional developments of the church-state relation and the status of state commitments towards the respect of freedom of religion.

CHAPTER 1

Circulation of Church-State Models in Europe: The Emergence of a European Model of State-Church Relations

From *consensus ecclesiae* ...

The present paper displays the main factors that will be considered in the research of the church-state models in Europe. The basic argument of this paper is that religious and legal foundations of modern Europe lead to the formation of a *European Personalist Model of Church-State relations*. As this model is based on what the literature distinguishes in particular in the medieval terms, during the modern times, the same model enters into equation only when the state is significantly examined as *counter-cases* considering the following backgrounds:

1. the historical, legal and political legacies of the past centuries, more particularly the role of the Church in creating a *European Personalist Model*;
2. the particular place occupied by religion in Europeans' lives as a reaction to the modern assumption "*believing equals belonging*" (nevertheless, a common "thread"

can be discovered in each domain: education, family, social activities etc.);

3. an observable change in the church-citizen relation which operates on a *model of ecclesiastical choice* or an *obligation choice* rather than a *model of social choice*.

Futhermore, the present paper tends to assess the different influences and it includes, selectively, ongoing controversies concerning the term “model of church-state relations” (the disquiet in some Western countries in relation to new social and religious movements, the tensioned discussion about the consequences of the Reform and the references surrounding the acts of the papal government). Quite apart from the debates surrounding the religious situation, the specialized literature remarked a noticeable rise in tension in the Church-citizen relation;

4. the *pattern of a modern secular elite* considered to be a “unique case” in general terms – that is not the same at the global level.

Such a structure has an important methodological approach. In order to understand this complex searching, we will need to appropriate theological writings to historical events and political or social transformations. In this direction, Olsen attempts to deal with historical roots, principles and concepts in a subsequent association with state. Accordingly, the author claims that “the history of Christendom is to a large degree a story of constant interaction, counteraction, or collision between church and state”¹.

Markoff and Regan explicate why the themes of the religious expression present a range of variation including the same scenes, the same players and the same rational-legal legitimacy. The extended formula of “rational-legal (or bureaucratic) legitimacy” regards an “overall pattern of