COOPERATION BETWEEN CHURCH AND STATE: THE NECESSARY AND FRUITFUL MODEL IN CONTEMPORARY CONSTITUTIONALISM[1]

COOPERAÇÃO ENTRE IGREJA E ESTADO: O MODELO NECESSÁRIO E PROFÍCUO NO CONSTITUCIONALISMO CONTEMPORÂNEO

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Abstract: *This study examines the models of the relationship between Church and State in contemporary constitutionalism. It seeks to answer the following problem: from the perspective of contemporary constitutionalism, what are the models of the relationship between Church and State? This research is divided into three parts, following the study of the models of separation, cooperation and confessionality, verified in the legal systems of the United States of America, Germany and England, respectively. The hypothesis raised, which was confirmed as a conclusion, is that the cooperation model is the one that best protects and promotes fundamental rights and guarantees. The dialectical method is used, together with bibliographical and jurisprudential research based on foreign legal systems.*

Keywords: *contemporary constitutionalism; fundamental rights and guarantees; Church and State; religious freedom; legal models.*

Summary: *1 Introduction; 2 Separation model: the case of the USA; 3 Cooperation model: the case of Germany; 4 Confessional model: the case of England; 5 Conclusions; 6 References.*

1 INTRODUCTION

This study stems from the premise that the religious phenomenon authentically constitutes a defining dimension of human dignity, considering its identity aspect. That is, it is grounded in the relevance of the distinctively human capacity to recognize a relationship between oneself and the transcendent, regardless of religious belief or the lack thereof. Thus, the protection of religiosity, understood

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as the right to religious freedom, is also essential to ensure personal self-determination[4]. Otherwise, the denial of the religious dimension leads to the exclusion of an intrinsically human domain and of personal identity.

From a historical standpoint, the presence of religion has accompanied human civilization since ancient times, with archaeological remains demonstrating its centrality in social organization[5]. More than that, however, the religious phenomenon and its significance are not confined to the past. In reality, they continue to represent an intrinsic element of the individual and society, proving relevant in both private and public spheres[6] [5]. Even in the face of the modern secularist thesis that scientific and technological modernization processes would lead to the disappearance of religion, one observes the continuous importance of the religious phenomenon today, such that its public influence and social relevance are increasingly significant.

Once the relevance of the religious phenomenon for individuals and society—that is, individually and collectively—is established, the protection of religiosity is attained through its understanding as a fundamental right. Thus, in accordance with fundamental rights theory, theoretical references even identify religious freedom as "a primeira expressão da ideia de um direito universal e fundamental da pessoa humana"[7]. Beyond this recognition as a fundamental right, contemporary constitutionalism offers another special contribution to the right to religious freedom: the structural relationship between Church and State.

In this context, the present study aims to examine the models of relationship between Church and State in contemporary constitutionalism[8], adopting, for methodological reasons, the classic definition established in legal doctrine and adopted by the Strasbourg Court into models of separation, cooperation, and confessionality, without disregarding other taxonomies[9]. The first model establishes a complete separation between religious organizations and the State, as seen in the United States of America (USA). The second is characterized by a relationship of

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4 WEINGARTNER NETO, Jayme, Ensino Religioso nas escolas públicas: a tensão do caso brasileiro, *Revista Latinoamericana de Derecho y Religión*, v. 2, 2016, p. 2.

5 ADRAGÃO, Paulo Pulido, *A liberdade religiosa e o Estado*, Coimbra: Almedina, 2002, p. 13.

6 RAMÍREZ, José María Porras, Premisas epistemológicas. La libertad religiosa en las sociedades multiculturales contemporáneas, In: RAMÍREZ, José María Porras (coord.), *Derecho de la libertad religiosa*, 10. ed., Madrid: Tecnos, 2023, p. 11.

7 SARLET, Ingo Wolfgang, Notas acerca da liberdade religiosa na Constituição Federal de 1988, *Revista Direito UFMS*, jan./jun., 2015, p. 88.

8 This study is based on previously developed doctoral research: BOBRZYK, Sandro, *Limites da liberdade religiosa no ambiente acadêmico administrado por organizações confessionais*, Advisors: Prof. Dr. Ingo Wolfgang Sarlet and Prof. Dr. José María Porras Ramírez, 2022, Thesis (Doctorate in Law), Law School of the Pontifical Catholic University of Rio Grande do Sul (PUCRS) and Escuela de Doctorado de Humanidades, Ciencias Sociales y Jurídicas da Universidad de Granada (UGR).

9 RAMÍREZ, José María Porras, La neutralidad del Estado como garantía de la libertad religiosa em la jurisprudencia del Tribunal EDH y del TJUE, In: ALÁEZ CORRAL, Benito; DÍAZ RENDÓN, Sergio (coord.), *Modelos de neutralidad religiosa del Estado: experiencias comparadas*, Ciudad de México: Tirant lo Blanch, 2021, p. 262.

cooperation between the Church and Public Authorities, as occurs in Brazil and, specifically in this case, in Germany. The third is present in legal systems that recognize an official religion, as in England.

Despite the various models, the Strasbourg Court does not recognize any single model as the most appropriate, leaving full autonomy to each legal system. It consistently reiterates its lack of competence to prescribe to States how they should structure their relationships with religious communities within their territories, adopting the theory of the margin of appreciation for the better accommodation of the religious phenomenon. It never aims to standardize any relationship, which allows for the enhancement of each State's constitutional identity and diversity.

The research seeks to answer the following problem: from the perspective of contemporary constitutionalism, what are the models of relationship between Church and State? As specific objectives, it aims to (i) determine, analyze, and classify the models of relationship between Church and State; (ii) understand, through comparative law, the realities of the United States of America, Germany, and England regarding the relationship between the religious phenomenon and Public Power; and (iii) critically evaluate the different models in order to identify the one that potentially best protects and promotes fundamental rights and guarantees in contemporary society.

The hypothesis put forward, which was confirmed in the conclusion, is that the cooperation model—which is not to be confused with those of opposition or identification between these two spheres of human life—is the one that best protects and promotes fundamental rights and guarantees. This also takes into account the effort to overcome the historical invisibility of certain religious denominations, as well as minority groups in their specific protection needs. Methodologically, to achieve the stated objectives, the dialectical method of counterposing arguments is employed, supported by bibliographical and jurisprudential research from foreign legal systems.

2 SEPARATION MODEL: THE CASE OF THE USA

The model of complete separation between Church and State stems from the premise of ignoring the religious phenomenon within the political structure and subjecting it to the national legal order. At once, its main positive aspect relates to the notion of greater equality of religious denominations before the State, thereby avoiding discrimination on religious grounds. According to Winfried Brugger, the separation model guarantees the greatest purity and freedom of religious doctrines against State regulation[10]. This is because, in theory, the sole concern of Public Power is their protection, leaving all other matters to be resolved by the religions themselves.

[10] BRUGGER, Winfried, Separação, igualdade, aproximação. Três modelos da relação Estado-Igreja, *Revista Direitos Fundamentais & Democracia*, v. 7, n. 7, p. 14-32, 2010, p. 22.

In any case, from a practical standpoint, contradictory legal provisions exist on these matters, especially regarding prescriptive provisions[11]. Furthermore, there is an imprecise relationship between the deontology of the State and Law versus religious morality, preventing any institutional agreement or mediation between the two sources responsible for determining ways of life in society. To illustrate the aforementioned model of separation between Church and State in contemporary constitutionalism, the case of the United States of America is addressed.

In the USA, the development of religious freedom relates directly to the diversity of religious groups that contributed to the country's formation, as well as the universalist influence of contractualist natural law[12]. Thus, the goal of separating Church and State took shape in 1631 with Roger Williams, who advocated religious freedom in absolute terms—that is, entirely detached from Public Power and any legislation. In the reasoning of the aforementioned theologian, conflating or joining the two institutions would constitute a perversion comparable to creating a two-headed monster[13]. John Locke, in drafting the Constitution of North Carolina, also defended full religious freedom and freedom of conscience as a right superior to all others[14].

In defense of the ideas of the separation model between Church and State, authors such as Marsilius of Padua stand out, who condemned the theory of *Plenitudo Potestatis*, accompanied by William of Ockham, who likewise rejected the power attributed to popes. According to him, the power attributed to the supreme head of the Church transformed him into an emperor, successor to Augustus rather than Christ, to Charlemagne rather than Peter[15]. This line of reasoning was also followed by Niccolò Machiavelli, Thomas Jefferson, and James Madison. From a critical perspective, it is striking that the rationale used by Roger Williams to support the separation of Church and State was built on theological pillars shaped by his Puritan experience.

Faced with a context of persecution, it was unimaginable at the time to think that, to guarantee religious freedom, the State should be secular[16]. Thus, the primary conflict between Church and State was the existence of an official church, which would harm other religions and cause a terrible abomination before God by confusing the worldly sphere with the spiritual[17]. On the other hand, when Church

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11 ADRAGÃO, Paulo Pulido, *A liberdade religiosa e o Estado*, Coimbra: Almedina, 2002, p. 84.

12 MACHADO, Jónatas, *Liberdade religiosa numa comunidade constitutional inclusiva: dos direitos da verdade aos direitos dos cidadãos*, Coimbra: Coimbra, 1996, p. 311.

13 MARTIN, Diego Blázquez, *Locura de libertad: Roger Williams em la Norteamérica colonial*, Madrid: Centro de Estudios Políticos y Constitucionales, 2006, p. 175.

14 JELLINEK, Georg, *La declaración de los derechos del Hombre y del ciudadano*, Translated by Adolfo Posada, Granada: Comares, 2009, p. 80-83.

15 BONI, Luis Alberto, O não poder do Papa em Guilherme de Ockham, *Veritas* (Porto Alegre), v. 51, n. 3, p. 113-128, 2006, p. 127.

16 NEFF, Jimmy D., Roger Williams: Pious Puritan and Strict Separationist, *Journal of Church and State*, v. 38, n. 3, p. 529-546, 1996, p. 544.

17 MARTIN, Diego Blázquez, *Locura de libertad: Roger Williams em la Norteamérica colonial*, Madrid: Centro de Estudios Políticos y Constitucionales, 2006, p. 178.

and State were united, many people were persecuted and marginalized. With the Constitution and, above all, the First Amendment, the separation between Church and State was consolidated in American constitutionalism:

> *First Amendment to the US Constitution:*
> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

In light of this, there is a constitutional prohibition against the Government establishing a religion or granting any benefits. In schematic terms, this constitutional landmark recognizes religious freedom through two clauses. The first is the so-called Establishment Clause, which ensures the separation between Church and State. The second is known as the Free Exercise Clause, which prevents Congress from passing laws that prohibit the free exercise of religion, with infringements upon this right being protected by the State.

The consequences of the First Amendment were decisive for the separation between Church and State, having an immediate impact on American jurisprudence through cases such as *Reynolds v. United States*, *Everson v. Board of Education*, and *Engel v. Vitale*[18]. These references demonstrate that religion was to be prevented from dealing with State affairs, whereas the original premise was to prevent the State from influencing religion[19]. This triggered a concept of religious freedom tied to the idea of tolerance, which does not find support in doctrine and case law. However, religious freedom and the relationship between private individuals and the State are far broader than that. Thus, the model adopted by the USA remains unmatched in history, not because of the emblematic wall of separation, but rather due to the collective construction of basic principles between politics and religion.

In reality, this approach is not so simple because it requires a commitment from the State to face often unwanted issues, such as growing hostility among religious denominations, believers, and non-believers[20]. Nevertheless, this process reached maturity in the United States through the efforts of Thomas Jefferson and James Madison, who contributed to drafting the First Amendment and the Virginia Statute for Religious Freedom, safeguarding the country from much of the religious conflict faced by the rest of civilization[21]. Without the efforts undertaken in

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18 For further study on the topic: BOBRZYK, Sandro; FACCHINI NETO, Eugênio, Liberdade religiosa na jurisprudência constitucional norte-americana: entre absolutists e nonpreferentialists, *Revista Direitos Fundamentais & Democracia*, v. 28, n. 3, p. 222-251, 2023.

19 SAMUEL-BURNETT, Sosamma, Religious Freedom as a Foundational Right and its Implications for International Relations and Global Justice, *Trinity Law Review*, v. 22, 2017, p. 10.

20 WEINGARTNER NETO, Jayme, *Liberdade religiosa na Constituição: fundamentalismo, pluralismo, crenças, cultos*, Porto Alegre: Livraria do Advogado, 2007, p. 33.

21 BONVENTRE, Vincent Martin, Religious liberty: Fundamental right or nuisance, *University of St. Thomas Law Journal*, v. 14, n. 3, p. 650-692, 2018.

Virginia, American leadership would have been compromised and subjected to a cycle of violence and religious persecution.

Later, with the Fourteenth Amendment, the doctrine of incorporation emerged, according to which no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States[22]. In American jurisprudence, this was applied in cases such as *Cantwell v. Connecticut* and *Everson v. Board of Education*.

> *Fourteenth Amendment to the US Constitution:*
> *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The American constitutional tradition also highlights the contributions of Thomas Jefferson, who considered religion a natural right and coined the famous expression *"wall of separation between church and State"*. Despite his radical position, being an avid reader of the Holy Bible, he even argued that the separation of Church and State was an idea of Christianity itself, citing the passage where Jesus states that one should render unto Caesar the things that are Caesar's, and unto God the things that are God's[23].

Regarding the phrase attributed to Thomas Jefferson, Derek Davis contests his authorship. In his analysis, the metaphor of the wall of separation was first used by Roger Williams, an earlier and ardent campaigner for the separation of Church and State. In 1644, responding to a critic's accusations regarding his views, he wrote that the Bible taught there was a *"hedge or wall of separation between the garden of the church and the wilderness of the world"*. As can be noted, both believed in a clear boundary between government and religion. Later, when the US Supreme Court used the metaphor of the "wall of separation" in the 1947 *Everson* decision, it was not merely endorsing Jefferson's views on Church-State separation, but affirming a solid foundation of American thought spanning over three hundred years.

Specifically, the originality of the theme of religious freedom in the American legal system lies not in the precedence of constitutional guarantees, much less in the separation between Church and State. The prevailing aspect, in reality, is the free exercise of religion. According to Adragão, although the country is the

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[22] Although linguistic discussions are acknowledged regarding the correct term to refer to situations involving the USA (American, North American, or US-American), this study uses the term "North American" indiscriminately.

[23] SORIANO, Aldir Guedes, Thomas Jefferson, a metáfora do muro de separação entre a Igreja e o Estado e a liberdade religiosa, In: LAZARI, Rafael José Nadim de; BERBARDI, Renato; LEAL, Bruno Bianco (org.), *Liberdade religiosa no Estado Democrático de Direito: questões históricas, filosóficas, políticas e jurídicas*, Rio de Janeiro: Lumen Juris, 2014, p. 49-68, p. 60.

historical birthplace of the free exercise of religion, the American legal order, due to said strict separation, established a rather deficient concept of religious freedom in which Public Power cannot support the free exercise of religion[24]. It is not recognized as the homeland of religious freedom, but as the matrix of absolute separation between Church and State.

The observations made regarding religious freedom in the United States of America allow for the conclusion that the separation between Church and State is extremely strict, as is the State's detached stance on religious matters. In this regard, the Supreme Court has ruled numerous times on the issue. From legal doctrine, Manoel Jorge e Silva Neto highlights several prominent cases[25].

Regarding religious freedom and holding public office, the aforementioned author cites the *Torcaso v. Watkins* decision, which held unconstitutional a Maryland state law requiring a religious test to hold public office. In another case involving the same principle, *McDaniel v. Paty*, a law prohibiting clergy from holding public office was ruled unconstitutional. Concerning conscientious objection, in *United States v. Seeger*, it was held that the type of belief or conviction mattered little; what mattered was whether the motive leading the individual to non-compliance was sincere and occupied a significant role in their life. In *United States v. Ballard*, the defendants were acquitted on the same grounds. The ruling stated that religion transcends doctrine and the visible, involving an experience of voices, visions, prayers, and beliefs beyond pragmatism and legislation.

Another controversial issue is the use of public spaces and facilities by religious denominations. The Supreme Court reviewed a case involving the University of Missouri, which allowed students to use its facilities and equipment provided they had no connection to worship or religious instruction. This measure was deemed discriminatory for preventing students from publicly expressing their beliefs, violating the First Amendment. Still regarding public spaces, a question raised by the Ku Klux Klan group, which was prevented from placing a cross in a park in front of the state capitol, made clear that granting permission posed no danger to the community. What is prohibited by case law is the display of religious symbols by public entities. The same treatment was given to Bible Reading in American schools. Cases evaluated by the Court declared unconstitutional state and municipal laws requiring the reading of Biblical passages at the beginning of each school day[26].

Despite national development shaped by diverse religions, US Public Authorities maintain a firm stance of secularity, and the issue of Church-State separation is a constant in American daily life. Currently, there is no religious instruction in public schools, and the State defends the legalization of abortion,

[24] ADRAGÃO, Paulo Pulido, *A liberdade religiosa e o Estado*, Coimbra: Almedina, 2002, p. 162.

[25] SILVA NETO, Manoel Jorge e, *Proteção constitucional à liberdade religiosa*, Rio de Janeiro: Lumen Juris, 2008, p. 54.

[26] SILVA NETO, Manoel Jorge e, *Proteção constitucional à liberdade religiosa*, Rio de Janeiro: Lumen Juris, 2008, p. 59.

sexual and reproductive rights, as well as scientific research where collective interest is verified.

In Jónatas Machado's view, the American legal order highlights the intimate relationship established between religious freedom and the State's confessional neutrality, as well as the applicability of both principles, thereby fostering the vitality of the religious domain. US Supreme Court jurisprudence reveals a constant effort to maintain a healthy separation between Church and State, which may seem paradoxical from a Christian perspective, considering decisions that appear closer to hostility than to peaceful coexistence. At lower jurisdictional levels, this is illustrated by the Ninth Circuit decision prohibiting a simulation test on Islamic culture, and the Second Circuit ruling denying the use of religious symbols by public school educators in New York. In this light, judicialization is even possible regarding the Catholic Church's refusal to ordain women or gay individuals, or to solemnize same-sex marriages[27].

3 COOPERATION MODEL: THE CASE OF GERMANY

Unlike the previous model, the cooperation model between Church and State aims at aligning religion with constitutional deontology[28]. It consists of a reciprocal complementation to maintain structural relations that have thus far proven productive, even if influenced by a given religion or arising from identification or loyalty. The model in question is based on negotiations and bilateral agreements, though it may present as a negative aspect a false protection of minority religions, with unequal, discriminatory treatment and a higher tendency toward improper blurring of boundaries between the entities involved[29]. Today, the cooperation model between Church and State is adopted by various countries, such as Brazil, Mexico, Italy, and, specifically, Germany.

Historically, Prussia stood out as a driving force behind the protection of religious freedom in the local context, as its 1850 Constitution already encompassed the right to public and private religious practice for all denominations. In 1919, with the Weimar Constitution, freedom of faith, practice of religion, freedom of worship, and other binding activities came to be guaranteed. This evolution of religious freedom made it possible to safeguard a positive view of the activities of religious denominations, creating a friendly relationship with the State that materialized in the Bonn Basic Law[30].

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27 RUSSO, Charles, Update on Religious Freedom in the United States, *International Journal for Education Law and Policy*, p. 37-55, 2014.

28 BRUGGER, Winfried, Separação, igualdade, aproximação. Três modelos da relação Estado-Igreja, *Revista Direitos Fundamentais & Democracia*, v. 7, n. 7, p. 14-32, 2010, p. 30.

29 For further reading on the topic: FERNÁNDEZ, María Roca, La neutralidad religiosa del Estado en la República Federal de Alemania, In: ALÁEZ CORRAL, Benito; DÍAZ RENDÓN, Sergio (coord.), *Modelos de neutralidad religiosa del Estado: experiencias comparadas*, Ciudad de México: Tirant lo Blanch, 2021, p. 331-395.

30 STARCK, Christian, Raíces históricas de la libertad religiosa moderna, *Revista Española de Derecho Constitucional*, año 16, n. 47, 1996, p. 9-21.

Currently, the regulation of the fundamental right to religious freedom is provided under Article 4 of the Basic Law, which establishes the inviolability of freedom of belief and conscience, as well as freedom of religious and ideological profession, in addition to ensuring the free exercise of religion. The limits imposed on religious freedom derive from the Basic Law itself, and any restrictive measure must be firmly grounded in the defense of life, dignity, and liberty; the means used are justifiable only if necessary, suitable, and proportional, under penalty of infringing upon the essential core[31]. In certain circumstances, limitations may be justified on grounds of public order, such as threats to public health.

> *Article 4 [Freedom of faith and conscience]*
>
> *(1) Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.*
>
> *(2) The undisturbed practice of religion is guaranteed.*
>
> *(3) No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.*

In general terms, decisions brought before the Federal Constitutional Court have been extremely favorable to religious denominations, primarily due to the State's positive experiences with major Churches in charitable, social, and educational dimensions. However, from a critical perspective, such an expansive interpretation might also be claimed by new religious phenomena, such as sects and mass ideological movements, potentially jeopardizing the national legal order.

In the constitutional realm, the relationship with the religious phenomenon is also highlighted in Article 7, which establishes religious instruction as part of the curriculum in public schools, except for non-denominational schools. It is a State guarantee with full efficacy in accordance with the principles of the religious community. This regulation is also present in the constitutional texts of countries such as Italy, Spain, and Portugal, among others. That is, religious instruction is guaranteed, but the State does not define its content. Therefore, in public schools, the State's religious neutrality is not understood as imparting a secular, irreligious, or anti-religious worldview to students. That would not constitute neutrality, as true neutrality lies in openness toward existing religions. The State's role is merely to supervise and ensure peaceful coexistence[32].

> *Article 7 [School system]*
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> *(1) The entire school system shall be under the supervision of the State.*
>
> *(2) Parents and guardians shall have the right to decide whether children shall receive religious instruction.*

[31] BAS, Ignacio Zabalza, La libertad religiosa en la República Federal de Alemania, *Anuario de Derecho Eclesiástico del Estado*, n. 4, p. 609-638, 1988.

[32] STARCK, Christian, Raíces históricas de la libertad religiosa moderna, *Revista Española de Derecho Constitucional*, año 16, n. 47, 1996, p. 1-13.

> *(3) Religious instruction shall form part of the regular curriculum in public schools, with the exception of non-denominational schools. Without prejudice to the State's right of supervision, religious instruction shall be given in accordance with the tenets of the religious communities concerned. No teacher may be obliged against his will to give religious instruction.*

In this sense, a confluence between Church and State is evident. The State does not view the Church as a threat to sovereignty, but as a partner at the service of citizens[33]. Based on this premise, the choice was made for friendly and sensible cooperation, given their shared and complementary objectives. On the other hand, there is recognition that the fundamental values underlying State regulation originated in Christianity, which is why allowing the Church to exist reinforces the preservation of the Public Power's official values. Historically, not even the reunification of Germany provided a reason to break with the cooperation model, which possesses unprecedented originality within a pluralist democracy, representing a stable relationship[34] derived from a framework of agreements and common purposes meant to endure even amidst constitutional changes[35].

In the cooperation model, therefore, the State does not grant special treatment to a dominant Church, but establishes a close relationship of cooperation. In this regard, Germany represents a pertinent expression of this model. It is a neutral State that does not remove itself from denominational matters, as all denominations are subject to the same laws applicable to other citizens and institutions[36]. Furthermore, it provides financial support for programs, the maintenance of clergy, and buildings. Indeed, in some cases, the cooperation system was necessary to consolidate democratic transition, as in Eastern Europe where, following the communist regime, illegally confiscated properties were returned to the Church. In this line of reasoning, regarding the German reality, Ingo Sarlet and Arnaldo Godoy state:

> *Assim, resulta fácil perceber, não apenas o quanto a liberdade religiosa é importante na arquitetura constitucional alemã, mas também que, no campo das relações entre o fenômeno religioso e da institucionalidade eclesiástica, os 'pais' da LF projetaram um modelo muito distante de um laicismo mais radical, como se dá no caso da França e em diversos países comunistas, adotando, pelo contrário, sem prejuízo da afirmação da neutralidade estatal nessa seara, uma postura amiga da religião, permitindo que a religião possa se expressar no espaço público por meio de seus ritos*[37].

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33 MUCKEL, Stefan, El Estado y la Iglesia en Alemania, *Revista Catalana de Dret Públic*, n. 33, p. 5-6, 2006.

34 ADRAGÃO, Paulo Pulido, *A liberdade religiosa e o Estado*, Coimbra: Almedina, 2002, p. 207.

35 TETTINGER, Peter, Libertad religiosa y cooperación con las confesiones: el modelo alemán, *Persona y Derecho*, v. 53, p. 293-325, 2005, p. 304.

36 FERNÁNDEZ, María Roca, La neutralidad religiosa del Estado en la República Federal de Alemania, In: ALÁEZ CORRAL, Benito; DÍAZ RENDÓN, Sergio (coord.), *Modelos de neutralidad religiosa del Estado: experiencias comparadas*, Ciudad de México: Tirant lo Blanch, 2021, p. 335.

37 SARLET, Ingo Wolfgang; GODOY, Arnaldo Sampaio de Moraes, *História Constitucional da Alemanha: da Constituição da Igreja de São Paulo à Lei Fundamental*, Porto Alegre: Fundação Fênix, 2021, p. 322.

From the perspective of contemporary constitutionalism, the cooperation model presents itself as a necessary and fruitful alternative for the Church-State relationship. On the one hand, the cooperation model is necessary due to the impossibility of ignoring the religious phenomenon in society. Provided for as a fundamental right, religious freedom also entails understanding beliefs as objects of protection. This distances the cooperation model from a strictly secularist view (*laicista*), which adopts an aggressive stance toward religions and even prohibits religious practices. Instead, the cooperation model, linked to secularity (*laicidade*), commits the State to two modes of conduct: first, a negative duty not to assume religious ends[38]; and second, a positive duty to maintain separation between the spheres of politics and religion, while recognizing the autonomy of each[39].

On the other hand, the cooperation model is fruitful because it both recognizes common aspects between the religious phenomenon and the State, and enables collaboration instruments between Church and Public Power. It safeguards the function played by religion in contemporary constitutionalism, considering its efforts in favor of fundamental rights and guarantees, minority inclusion, and better living conditions. Moreover, it accounts for the fact that many principles adopted by today's secularized world originated in the religious realm, such as notions of justice, duty, responsibility, dignity, and solidarity.

Otherwise, a hostile detachment between Church and State, as advocated in the separation model, adds no value to humanity's future—politically, legally, or epistemologically[40]. Thus, the cooperation model represents a meeting point that guarantees the autonomy, nature, and purpose of both institutions. In recognizing religious organizations as distinct institutions and collective subjects of rights, the State sets itself apart from the religious phenomenon. On the other hand, there is a communicability of purpose because both serve individuals and the common good[41]. At the same time, it distances itself from the confessional model, which enhances prerogatives for certain traditional or majority religious denominations to the detriment of minority religions in their specific needs for protection[42].

4 CONFESSIONAL MODEL: THE CASE OF ENGLAND

The third model of the relationship between Church and State is characterized by confessionality. Among other expressions, such as Norway and Greece, the

[38] SANTOS, M. dos; ARAÚJO, M., Liberdade religiosa e direitos humanos, *Revista Internacional Consinter de Direito*, Paraná, Brasil, v. 4, n. 7, p. 69-82, 2018, p. 72.

[39] OLIVEIRA, Elton Somensi de, Laicidade, laicismo e secularização, In: DIP, Ricardo; FERNANDES, André Gonçalves (org.), *Laicismo e laicidade no Direito*, São Paulo: Quartier Latin, 2017, p. 16.

[40] NAVARRO-VALLS, Rafael, Neutralidad activa y laicidad positiva, (Observaciones a "Para una interpretación laica de la Constitución", del profesor A. Ruiz Miguel), *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, n. 18, 2008, p. 16.

[41] ORTIZ, Javier Ferrer, *Derecho eclesiástico del Estado Español*, Pamplona: Universidad de Navarra, 2012, p. 107.

[42] MARCHERI, P. L., Antissemitismo digital: o paradigma tecnológico nas modulações de discriminação dos judeus, *Revista Internacional Consinter de Direito*, Paraná, Brasil, v. 7, n. 12, p. 55-71, 2021, p. 62.

reality of England stands out, where a specific legal approach within the European Union is experienced, featuring an established church—unlike Northern Ireland and Wales, where the Church is separate from the State, and Scotland, which, despite having an official creed, differs from the English system[43].

The Church of England enjoys a unique and distinct position within its own legal system. The Church's own regulations are part of English Law. Its main regulatory instruments—*measures* and *canons*—are recognized in the legal order as primary and secondary legislation, as their drafting and enactment are subject to intervention by the branches of government, whether Parliament or the Royal Crown. And the Sovereign, under the *Canons of the Church of England*, is its supreme authority[44]. The case law of Ecclesiastical Courts itself is conceived as an integral part of Law and, reviewed by State jurisdictional institutions, produces civil effects.

Following the severance of ties between England and Rome in 1533 through the *Act in Restraint of Appeals* and the emergence of the Anglican Church, Church and State were united under the Crown. Archbishops and bishops even gained seats in the House of Lords[45]. The State then began determining all matters of worship and orthodoxy, compiling prayer books and requiring citizens to attend church on Sundays and holy days under penalty of fines. From the seventeenth century onward, Crown power was delegated to Parliament, but this did not alter the link with religion, as this intimate relationship was seen as necessary for the well-being of Church and State, consolidating State control over Church administration and property.

In education, for example, schools receive tax benefits, and the religious instruction component is that of the Anglican Church, except for students who claim conscientious objection. There are state-controlled schools, where the State assumes all financial obligations, and assisted schools, where expenses are shared with the Church. In Higher Education, until 1856, Oxford was open only to members of the Church. Nevertheless, in England, everyone has the right to religious freedom, as guaranteed by Article 18 of the Universal Declaration of Human Rights. Furthermore, the State Church no longer possesses the actual advantages enjoyed since its creation, and many seek changes.

This impacts the protection of religious freedom, which has not been compromised in its essential core by the formally confessional regime. The secularization process of recent decades and social evolution itself no longer tolerate privileges for the official religion, which today holds a residual and symbolic

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43 OLIVA, Javier García, Consideraciones sobre la iglesia de Inglaterra y su relación con el Estado, *Anuario de Derecho Eclesiástico*, p. 311-372, 2001.

44 SABAU, José Ramón Polo, El principio de neutralidad religiosa de las instituciones públicas en el Reino Unido, In: ALÁEZ CORRAL, Benito; DÍAZ RENDÓN, Sergio (coord.), *Modelos de neutralidad religiosa del Estado: experiencias comparadas*, Ciudad de México: Tirant lo Blanch, 2021, p. 295-296.

45 OGILVIE, M. H., What is a Church by law established?, *Osgoode Hall Law Journal*, v. 28, n. 1, p. 179-236, 1990.

character coexisting with broad recognition of religious pluralism[46]. Despite guarantees of free religious expression in England, its historical confessionality, and broad cultural religious pluralism, the European Court of Human Rights was called upon regarding alleged violations of Articles 9 and 14 of the European Convention on Human Rights, as in the *Eweida* case involving the use of religious symbols at work.

Nadia Eweida, an employee of British Airways, wore a crucifix on a chain, which was prohibited under company uniform policy[47]. All attempts to resolve the impasse failed, and the company suspended her without pay. The matter went to court in 2006, but during litigation, despite corporate policy changes, the company refused to compensate her for the suspension period. In 2013, the European Court of Human Rights ordered the airline to pay damages for violating Article 9 of the European Convention on Human Rights.

In a similar case involving nurse Shirley Chaplin, who was dismissed in 2010 for refusing to remove her crucifix while working, the decision favored the employers, who argued that the practice heightened contagion risks and health hazards for patients. The Court concluded that no violation of religious freedom occurred and that the imposed requirement was not disproportionate. Some judicial rulings have emphasized that beliefs and faith cannot justify violating other constitutionally protected rights. In this regard, the UK Supreme Court held that hotel owners Hazelmary and Peter Bull violated British law by refusing a double room to a gay couple, ruling the company's policy discriminatory.

Another aspect generating discussion is religious attire. UK Supreme Court Justice Lady Hale, addressing the topic, pointed to dilemmas such as identifying a defendant appearing in court wearing a burqa and whether she should remain uncovered during jury trial. The issue was addressed by Judge Peter Murphy, who allowed the wearing of the garment with the proviso that, if removal became necessary, any dissemination of images was strictly prohibited. The topic is paradoxical and highlights two forms of discrimination combatting by the Equality Act 2010 in England: direct and indirect discrimination. Direct discrimination occurs when a person is treated less favorably because of their religion or belief. Indirect discrimination occurs when an organization applies a rule across the board that puts specific religious groups at a disadvantage. This was the case in *Mandla v. Dowell Lee*, where a private school rejected a student unless he removed his turban and cut his hair. The challenge, according to the aforementioned judge, is ensuring reasonable accommodation.

In normative terms, until the incorporation of the European Convention into English law, English statutes had not clearly articulated a principle in defense of

[46] SABAU, José Ramón Polo, El principio de neutralidad religiosa de las instituciones públicas en el Reino Unido, In: ALÁEZ CORRAL, Benito; DÍAZ RENDÓN, Sergio (coord.), *Modelos de neutralidad religiosa del Estado: experiencias comparadas*, Ciudad de México: Tirant lo Blanch, 2021, p. 307.

[47] LOZANO, Rafael Palomino, Sentencia del Tribunal Europeo de Derechos Humanos (Sección 4.a), de 15 enero de 2013, asunto Eweida y otros contra Reino Unido, *Ars Iuris Salmanticensis*, v. 1, p. 227-293, 2013.

religious freedom, unlike the United States, which possesses the milestone of the First Amendment. Historically, the Church of England held a dominant role, but various movements arose to force tolerance toward other religious denominations, allowing for a gradual accommodation of reality even without explicit statutory protections. Given the sparse statutory framework, the Human Rights Act served the purpose of ensuring fundamental rights protection, standing as the first document to explicitly recognize the right to religious freedom.

Certain conflicts over religious freedom did not go unnoticed in England's legal system, with *Sunday Closing Laws* being one such issue. Commercial activity on Sundays was banned in England in the fifteenth century and remains restricted today. Another issue concerns the use of religious items, such as Druid followers who carry a sword as a religious symbol. Adherents of this religion were permitted to carry the item publicly despite its nature. In any case, within the English legal framework, religious freedom still navigates unclear territory, readily detectable by the absence of assertive legislation and the existence of a confessional relationship between Church and State.

This Church-State relationship has major impacts on social organization, despite presenting itself as a modern, pluralistic, and liberal democracy. It requires students to participate in a daily act of collective worship, for instance, and maintains Anglican bishops in the House of Lords, in apparent privilege to the dominant religion. Indeed, until recently, minority religious groups found legal protection mainly under legislation governing ethnic groups, as religious and belief-related issues remained outside statutory provisions. From a critical viewpoint, the dominance of Anglicanism may represent an obstacle to the full realization of rights and guarantees for all social groups.

The UK Supreme Court has also insisted on reasonable accommodation of religious freedom whenever possible, respecting the principle of legality and third-party rights, requiring firm decisions from the State when religious groups attempt to operate beyond positive law[48]. Unquestionably, the British legal order elevates religion as a general principle. At the same time, it pursues a genuine and sincere balance between conflicting rights and interests, despite centuries of an official religion[49]. It continues to play an important role and, despite secularism, is deeply intertwined with political movements, with no prospect of future separation.

5 CONCLUSIONS

Having fulfilled the objective indicated above of examining the models of relationship between Church and State in contemporary constitutionalism, adopting the classification into models of separation, cooperation, and confessionality, the

[48] MARTÍNEZ-TORRÓN, Javier; ARRIBAS, Santiago Cañamares, *Libertad religiosa, neutralidad del Estado y educación, Una perspectiva europea y latinoamericana*, Pamplona: Thomson Reuters Aranzadi, 2019, p. 194.

[49] DURHAM, Martin, "God Wants Us to be in Different Parties": Religion and Politics in Britain Today, *Parliamentary Affairs*, v. 50, n. 2, 1997, p. 212-222.

following primary results are set forth as expressions of the conclusions reached in this study:

1. *Taking as an investigative paradigm the definition established in legal doctrine and adopted by the Strasbourg Court, there are three models of the Church-State relationship in contemporary constitutionalism, without prejudice to other taxonomies: separation, cooperation, and confessionality.*
2. *In searching for contemporary legal orders that represent these models, the realities of the USA, Germany, and England are identified, corresponding respectively to the models of separation, cooperation, and confessionality in the Church-State relationship.*
3. *The separation model ignores the religious phenomenon within political structures, arguing positively for the equality of religious denominations before the State and restricting Public Power's concern to protecting religions. At the same time, it prevents any institutional mediation between Church and State, disregarding their shared responsibility in defining societal ways of life.*
4. *From the American reality, the establishment of a deficient concept of religious freedom is recognized, wherein Public Power is prohibited from effectively supporting the free exercise of religion. In practice, this leads to an indifferent or detached stance by the State regarding religious matters, in addition to fostering hostile judicial decisions on Church-State relations.*
5. *The cooperation model seeks alignment between religion and constitutional deontology, striving for reciprocal complementation between Church and State to maintain productive structural relations. In terms of effectiveness, it relies on bilateral negotiations and agreements between institutions.*
6. *From the German reality, a confluence between Church and State is identified, in that Public Power does not view religious organizations as a threat to its sovereignty, but as partners serving citizens. Thus, a paradigm of friendly and sensible cooperation has been established that recognizes common and complementary objectives.*
7. *The confessional model guarantees a singular and distinct position for a specific religious denomination within the legal system, integrating the Church's internal norms into national law. Thus, depending on the democratic development of the society in which it is adopted, it may create obstacles for contemporary constitutionalism and the diversity encompassed by religious freedom.*
8. *From the English reality, it is understood that the subject of religious freedom still traverses unclear paths, given the absence of assertive legislation on the matter and the confessional bond between the Anglican Church and the State. Furthermore, critically speaking, Anglican dominance may represent an impediment to the full attainment of fundamental rights and guarantees for all social groups.*

In this sense, through critical evaluation of the different models, the cooperation model is understood as that which best protects and promotes fundamental rights and guarantees in contemporary society. As demonstrated, it represents a necessary and fruitful alternative for the Church-State relationship because it both recognizes the religious phenomenon in society—understanding beliefs as objects of legal protection—and assimilates the common aspects shared by

religions and Public Authorities, enabling, through collaboration instruments, combined efforts in favor of fundamental rights and guarantees, minority social inclusion, and improved living conditions.

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