



CADERNOS DE DEREITO ACTUAL

www.cadernosdedereitoactual.es

© **Cadernos de Direito Actual** Nº 24. Núm. Ordinário (2024), pp. 205-224
·ISSN 2340-860X - ·ISSNe 2386-5229

The Discussions about Religious Diversity in Contemporary Brazilian Constitutionalism

As Discussões acerca da Diversidade Religiosa no Constitucionalismo Brasileiro Contemporâneo

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Summary: 1. Introduction. 2. The Connections Between the Religious and the Legal. 3. The Challenges of Religions in the Public and Private Spheres. 4. Religious Plurality in the Brazilian Constitutional Sphere. 5. Final Considerations. 6. References.

Abstract:

Through a hypothetical deductive study, based on premises of the hermeneutical analysis for the reading of reality, this article seeks to reflect on religious diversity in the context of contemporary Brazilian constitutionalism, taking into account aspects related to the influence of the Catholic religion in state affairs. It proposes, by extension, a reflection on how followers of different religions have lived through the complex web of relationships in which belonging to a certain religious tradition can lead to mistrust, contempt, prejudice and discrimination. This approach shows that, in Brazil, despite the continuous enunciation of religious freedom in its different constitutions, in general, the use of discrimination and control mechanisms has always been persistent, such as the use of criminal laws through religious arguments cultural and moral. By establishing principles, constitutionalism evokes tradition, history, and doctrines. What is imposed in this perspective, therefore, is the challenge in favor of a dialogical praxis as an indispensable condition for the strengthening of

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Recibido: 10/04/2024

Aceptado: 20/06/2024

DOI: 10.5281/zenodo.11584170

democracy based on consolidated tolerance as a prerogative aligned with human rights.

Keywords: Religion; Diversity; Dialogue; Constitutional Normativeness.

Resumo: Por meio de um estudo hipotético dedutivo, baseado em premissas de análises hermenêuticas para a leitura da realidade, busca-se refletir neste artigo sobre a diversidade religiosa no âmbito do constitucionalismo brasileiro contemporâneo, levando-se em conta aspectos concernentes à influência da religião católica nas questões do Estado. Propõe-se, por extensão, uma reflexão sobre a forma como adeptos de diferentes religiões têm vivido a complexa trama de relações na qual o pertencimento a uma determinada tradição religiosa pode redundar em desconfiança, desprezo, preconceito e discriminação. Esta abordagem demonstra que, no Brasil, a despeito da contínua enunciação da liberdade religiosa nas suas diferentes constituições, em geral, sempre foi persistente a utilização de mecanismos de discriminação e controle, a exemplo da utilização das leis penais por meio de argumentos religiosos, culturais e morais. Ao consignar princípios, o constitucionalismo evoca a tradição, a história e as doutrinas. O que se impõe nesta perspectiva, portanto, é o desafio em favor de uma práxis dialógica como condição indispensável ao fortalecimento da democracia com base na tolerância consolidada como prerrogativa alinhada com os direitos humanos.

Palavras-Chave: Religião; Diversidade; Diálogo; Normatividade Constitucional.

1. INTRODUCTION

If we want to be able to judge widely, of course, we must do so, we need to become able to see widely. And for that, what we have already seen is not enough.³

The hermeneutics and the application of constitutional statements occur through cultural, political, social and religious conditions of the interpreters and also by other laws produced by the State. In the case of Brazil, even though religious freedom has been generally provided for in the country's various constitutions, it is in the comparison of the constitutional statements with those set out in other laws, from different discursive subjects that individuals pass on issues concerning religious diversity.

According to the understanding consolidated by Darcy Ribeiro,⁴ Brazilian history is marked by linguistic, ethnic, racial, social and religious diversity. Diversity, however, does not guarantee the acknowledgment of the differences between subjects, in the meaning detailed by Charles Taylor⁵ or in the dialogism as mentioned by Mikhail Bakhtin.⁶ Differences can even result in conflicts and solutions, consequently, motivate the imposition of hegemonic cultural patterns.⁷ The identities' constitutive plot can be thought of and semiotic terms. Different subjects alternate statements in different discourses, in permanent contact among individuals, groups, and societies. The imposition of cultural patterns and domination occur in a dialectical interaction.

³ GEERTZ, C. *Nova Luz sobre a Antropologia*. Rio de Janeiro: Zahar, 2001, p. 85.

⁴ RIBEIRO, D. *O povo brasileiro: a formação e o sentido do Brasil*. São Paulo: Companhia das Letras, 2006.

⁵ TAYLOR, C. *Multiculturalismo: examinando a política de reconhecimento*. Lisboa: Instituto Piaget, 1994.

⁶ BAKHTIN, M. *Os gêneros do discurso*. São Paulo: Editora 34, 2016, p. 122.

⁷ WEBER, M. *Economia e sociedade: fundamentos de sociologia compreensiva*. Brasília: Universidade de Brasília, v. 1, 2014, p. 141.

The collective behavior is [...] the behavior of individuals. It is the world that presents itself separately to each person, the world based on which they must build their individual lives. The description of any civilization summarized in a few dozen pages must necessarily highlight the group norms and expose individual behavior because it exemplifies the motivations of that culture [...] society and the individual are not antagonists. Culture provides the raw material with which the individual makes their life.⁸

It is, therefore, possible to understand the subjects' identity from the way it is treated in the interweaving of different semiotic systems.⁹ The understanding of the relations between society and individuals refers to concepts and categories constructed from the interweaving of law and religion. Hence the proposal to investigate religion and constitutionalism in its semiotic dimension, which gives rise to a kind of competition between different systems. More than that, within each category, as observation or the analysis field becomes more particularized, new demands emerge.

Constitutionalism, although presented as the normative theory of the politics,¹⁰ is not a single theoretical system. For example, classical constitutionalism, modern constitutionalism and contemporary constitutionalism are different. Liberal constitutionalism, social constitutionalism, and constitutionalism allusive to new rights are also different. Each of these models can be conceived as particular semiotic systems that seek to explain the political community based on specific concepts.¹¹ Likewise, religion is also a term that evokes diverse experiences about the sacred.

There are several religions, each with its dogmatic and normative systems and, according to Severino Croatto,¹² presenting different catalogs of doctrines, myths, rites, symbols, and languages. To define what religion is, there are disputes and conflicts. Each religion can be conceived as a particular system. Different subjects live, experiment and transit in these systems producing different statements and discourses. This set of experiences constitutes the subjects' identity.

The persistent denial of acknowledgment and dialogue among different religions' subjects does not prevent contact or the resulting social transformations. The concepts of constitutionalism, religion, and multiculturalism are uncovered in our approach from the historical interaction, in such a way that these systems' elements are observed as phenomena of permanently interaction and change, which promotes relevant implications.

Just as there have been conceptual changes about the meaning of religion, there are also changes in the way religion and law relate to each other. This has generated very significant changes in the scope of subjects' legal and political identity

⁸ BENEDICT, R. *Padrões de cultura*. Petrópolis: Vozes, 2013, p. 171.

⁹ As products of human creation, semiotic systems compete when different subjects, statements, and discourses are put in contact. There is a dispute among subjects over the prevalence of arguments. This interferes in the way of looking at the relationship between society and individuals, because instead of a unifying discourse, what occurs is the coexistence of different subjects and different groups in society, in permanent dispute (BARTHES, Roland. *Elementos de semiologia*. São Paulo: Cultrix, 2012).

¹⁰ CANOTILHO, J. J. G. *Direito constitucional e teoria da constituição*. Coimbra: Edições Almedina, 2003.

¹¹ BARROSO, L. R. *Curso de direito constitucional contemporâneo: conceitos fundamentais e a construção do novo modelo*. São Paulo: Saraiva, 2010.

¹² CROATTO, J. S. *As linguagens da experiência religiosa: uma introdução à fenomenologia da religião*. São Paulo: Paulinas, 2010.

in religious diversity-related issues. Among the movements that have produced political and social tensions, hindering the recognition of religious diversity, religious fundamentalism is more incisive.

Religions today maintain considerable strength, whatever the weakening of dogmas and the retreat of practices within democratic regimes. They are part of the main mobilization forces and are central elements of the symbolic identification of individuals, groups, and communities. It is not around issues of political or economic interest that men generate conflicts that can lead to the fight to the death, but for symbolic values, mainly religious. It is on issues of symbolic order that men's life seems less important to them than their belief.¹³

Religious identities erect borders, underline limits, demand barriers. They influence behaviors, ways of thinking, and ways in which subjects represent their human condition. This affects how subjects relate to the State, how it produces laws and how the agents of the State itself interpret them. Identities and differences are translated into the discursive plane through statements.¹⁴ Also, borders, limits, and barriers have changed throughout history, which can be seen in the way the concept of religion was legally constructed, despite the alleged freedom of religion and worship in the texts of Brazilian constitutions.¹⁵

The purpose of this approach is, therefore, to uncover aspects concerning the concept of religion capable of changing when new actors start to question the hegemonic discourse, especially of Catholic matrix, incorporated into the State discourse through the long period of royal patronage validity, and after, when the scientific discourse rises. In the meantime, we try to understand how adherents of different religions have lived the complex web of power relations in which belonging to a certain religious tradition can result in mistrust, contempt, prejudice, and discrimination.

2. THE CONNECTIONS BETWEEN THE RELIGIOUS AND THE LEGAL

The conditions for successful participation in the common practice of self-determination define the citizen's role in the State: citizens must respect each other as members of their respective political community with equal rights, despite their dissent on issues involving religious convictions and world views.¹⁶

The relationship between the legal and the religious can occur from the legal discourse totalization, when the religious becomes a legal system's element; with the religious discourse totalization, when the legal is inserted into the religious system; with the partial integration of the religious into the legal; with the partial integration of the legal into the religious; with the dispute between the legal and religious system, when the subjects, the statements, and the discourses collide in building barriers between the different systems. Religion and law are normative systems. Each knowledge area is represented by 'referents' according to the terminology explained

¹³ ZARKA, Y. C. *Diffícil Tolerância. A coexistência de culturas em regimes democráticos*. São Leopoldo: Unisinos, 2013, p. 28.

¹⁴ VATTIMO, G. *Depois da Cristandade: por um cristianismo não religioso*. Rio de Janeiro: Record, 2004.

¹⁵ CATROGA, F. *Entre deuses e césores: secularização, laicidade e religião civil: uma perspectiva histórica*. Coimbra: Almedina, 2006.

¹⁶ HABERMAS, J. *Entre naturalismo e religião: estudos filosóficos*. Rio de Janeiro: Tempo Brasileiro, 2007, p. 136.

by the French sociologist Terry Shinn.¹⁷ The 'referents' would be determined by particular forms of knowledge, competence, market and collective identity. Each with its own goals, history and ambitions.

They are distinguished by the diversity of 'stages' or 'dimensions' of experiences, norms, which are socially defined and sanctioned ways of doing, being and thinking, values that diffusely guide the individuals activity by providing them a set of ideal references, and at the same time a variety of identification symbols that help them to situate themselves and others in relation to this ideal.¹⁸

The one who has the competence and the power to define the semiotic system limits exercises a sense of domination. Some constitutional norms are originally and historically based on religious precepts, as was the case with the medieval period's humanist principles. The constitutional elaboration, interpretation, and application are also influenced by the religious imaginary, often needing to go through a "translation" of the religious system and the legal system. By the way, José Reinaldo Lopes clarifies:

The conquest of America poses new problems for jurists and with it unresolved questions [...] about the right of conquest and discovery, the right of possession, the invention, the treasure, the law of the sea [...] and, above all, the otherness and natural freedom. In this last theme, modernity begins to face the tolerance of the different. The Protestant Reform and the religious wars, the end of the Latin Christian *oicúmene* impose new reflection objects: the problem of plurality and the dissident tolerance. Before, tolerance was corporate, now it will be distinct. National States should find a way to treat the religious dissidents [...]. The debate on religious tolerance will anticipate the debate on democracy.¹⁹

By understanding the discourses construction, we can glimpse that the religious diversity acknowledgment acquires political significance when reaching the political practices' field. In addition to giving purpose and meaning to human existence, it also interferes with the social behavior of individuals. *Empowerment*²⁰ refers here to the increase in the political, social and economic strength of groups that suffer from ethnic, religious, sexual, and legal discrimination. This is a critical approach that is not limited to the acknowledgment of diversity at the cognitive level. Hence the approximation of the proposal with the perspectives that address power issues.

By understanding the objectives and the contemporary Brazilian constitutionalism theoretical bases, we glimpse a multicultural conception of the nation and a perspective in which the religious identities' diversity are interrelated. By verifying on which theoretical conceptions the Brazilian nation came to be consolidated and on which assumptions constitutionalism received these demands, it

¹⁷ SHINN, T. Desencantamento da modernidade e da pós-modernidade: diferenciação, fragmentação e a matriz de entrelaçamento. *Scientiae Studia*. São Paulo: USP, Vol. 6, n. 1, Jan-Mar. 2008, p. 64.

¹⁸ BOURRICAUD, F. & BOUDON, R. *Dicionário crítico de sociologia*. São Paulo: Ática, 2001, p. 394.

¹⁹ LOPES, J. R. L. *O direito na história: lições introdutórias*. São Paulo: Atlas, 2014, p. 167.

²⁰ BAQUERO, R. Empoderamento: questões conceituais e metodológicas. *Redes*, Santa Cruz do Sul, v. 11, n. 2, maio-ago, 2006, pp. 77-93.

is possible to see how Christian hegemony has always impacted on cultural and identity constructions.²¹

To the extent that the diversity of religious identities tends to reproduce political, social and economic inequalities, a constitutional re-reading from a multicultural perspective is proposed. This path is suggested for its ability to add to the concept of the secular State a discourse of greater protagonism of minorities and vulnerable groups in a dialogical space of world construction and a decolonization process.

In sociological literature, the word minority has often been used in two senses. It means, first, more broadly, a group of people who, in some way and some sector of social relations, find themselves in a situation of dependence or disadvantage concerning another group, "majority", both integrating a wider society. In this sense, for example, a small religious community of faith divergent from the faith professed by the majority of the population is a minority and may suffer various problems in the field of religious relations; or the opposition in a "little democratic" country, occupying a subordinate place in the political structure, having little chance of action. Secondly, it expresses so-called "national minorities", racial or ethnic groups which, as a minority, live together with the majority in a given State.²²

The subjects' representation as brought in by Stuart Hall²³ in his reflection on the birth and death of the modern subject, shows how the religious was progressively detached from matter, the human body and the material world. In the same way, it ended up producing consequences in the relationship between the legal and the religious from an approach beyond an ontological sense. Marxism²⁴, Freud's contributions²⁵, Saussure's linguistic signs²⁶, Foucault's disciplinary power²⁷ are examples that show the identities' transformations. In this direction, it is necessary to emphasize that the religious and the political, with their discourses and

²¹ CUNHA, L. A. *Educação, Estado e Democracia no Brasil*. São Paulo: Cortez, 2005.

²² CHAVES, L. G. M. *Minorias e seu estudo no Brasil*. *Revista de Ciências Sociais*. Universidade Federal do Ceará: Fortaleza. Vol. 1, nº 1, 1970, p. 149.

²³ HALL, S. *A identidade cultural na pós-modernidade*. Rio de Janeiro: Lamparina, 2015, p. 20.

²⁴ Marx noted that it was not the State that formed the basis of civil society, but the society that represented the State's basis. For him, like all other forms of ideology - legal, political, aesthetic, philosophical - religion would be an illusory and legitimizing reflection of class-domination relations. It would not have a substance of its own. It would be the result of the social conditions manufactured by individuals (MARX, K. & ENGELS, F. *Sobre a Religião*. Lisboa: Edições 70, 1975).

²⁵ For Freud, identities would be linked to identification mechanisms in a society incapable of rescuing the human sense of social relations. Individuals, instead of identifying with each other, would tend to seek some social totality. Thus, the culture and society of which individuals are part have used compulsive strategies to create bonds among their members, given the decline in the spontaneous formation of these bonds (ADORNO, T. W. *Margem esquerda: ensaios marxistas*. São Paulo: Boitempo Editorial, 2006, pp. 164-189).

²⁶ For this author, the language portrays something that can be thought, at the same time, as a common fact, shared by people, and also systematically and scientifically. For Saussure the language is multiform, detailed by different domains, physical, physiological, psychic and belonging to the individual and social domain. It is not allowed to be classified into categories of human facts, because it does not fulfill a unit (SAUSSURE, F. *Curso de linguística geral*. São Paulo: Cultrix, 2006, p. 27).

²⁷ According to Foucault, there would be a doctrine capable of linking individuals to certain types of statements. In this sense, there would be prohibitions, but, on the other hand, types of statements to link individuals among each other and differentiate them from others. The disciplinary power contained in the doctrine would carry out a double subjection: of the subjects who speak to the discourses and of the discourses to the group (FOUCAULT, M. *A ordem do discurso*. São Paulo: Edições Loyola, 1996, p. 42).

enunciations, especially in their hegemonic dimension, have always been challenging to the emergence of new identities.

Whether personal or collective, identity presupposes meaning; but it also presupposes the constant process of recapitulation and reinterpretation [...]. Identity is the creation of constancy through time, the true union of the past with an anticipated future. In all societies, the maintenance of personal identity, and its connection to broader social identities is a primary requirement for ontological security.²⁸

The religious, in exercising its interference in the legal sphere, obeys a discursive structure. In the tension between the public and private spheres, limits and relations between the religious and the legal are being uncovered. Sometimes the religious is integrated into the legal issue, becoming the object of its statements. It is in this way that the religious ends up figuring in several laws, some indirect allusion, others in a more veiled way, for example, about religious symbols in public offices, religious holidays, especially those linked to the Catholic tradition, tax immunity for religious organizations, religious confessional teaching in public schools, sexual citizenship.²⁹

Other forms of legitimation and justification refer to the separation of law and morals. In this way, from the legal point of view, the religious, from the modern States on, starts to discern about ethical and moral issues, which in turn can be placed in the scope of the law legitimacy, in the scope of the contents and norms, or in any other aspect in which different particular moral systems compete among themselves.³⁰

In the contemporary society in which the figure of the decentralized subject predominates³¹ it is perhaps not so important to talk about the religious in its stricter relationship with the legal insofar as there is a reproduction of disciplinary effects in the formation of identities. More pertinent, therefore, is to observe the relationship between the religious and the legal in a plurality of places and permanent flux. This makes it possible to observe that the religious, by not limiting itself only to the ontological sphere, competes with other semiotic systems.

The construction of identities makes use of the raw material provided by history, geography, biology, productive and reproductive institutions, by the collective memory and personal fantasies, power apparatuses, and religious revelations. However, all these materials are processed by individuals, social groups and societies, which reorganize their meaning according to social trends and cultural projects rooted in their social structure, as well as in their vision of time and space.³²

In a perspective such as that referred to by the Spanish philosopher Beatriz Preciado³³ the religious may not only represent a difference but, in a certain way, an infinity of transversalities in power relations, a diversity of life powers. One can think

²⁸ GIDDENS, A. *Modernidade e identidade*. Rio de Janeiro: Jorge Zahar, 2002, p. 100.

²⁹ FISCHMANN, R. *Estado Laico*. São Paulo: Fundação Memorial da América Latina, 2008.

³⁰ GELLNER, E. *Pós-Modernismo, Razão e Religião*. Lisboa: Instituto Piaget, 1994.

³¹ DERRIDA, J. *A escritura e a diferença*. São Paulo: Perspectiva, 2002.

³² CASTELLS, M. *O poder da Identidade*. Vol. 2. São Paulo: Paz e Terra, 2001, p. 23.

³³ PRECIADO, B. Multidões queer: notas para uma política dos "anormais". *Revista Estudos Feministas*, Florianópolis, v. 19 (1), n. 312, jan./abr. 2011, p. 18.

of the religious as a system that provokes criticism and permanent reflections on the very identification of what is religious and its place in its relationship with the legal.

3. THE CHALLENGES OF RELIGIONS IN THE PUBLIC AND PRIVATE SPHERES

The constitution of the Brazilian State had, essentially, religious roots. The country was structured on the basis of a Catholic Christianity always concerned with the expansion of other faiths. The premise of a doctrine understood to be superior to other religious denominations was recurrent. This condition was presented both in the understanding of the sacred scriptures, permeated by the theology of Thomas Aquino's,³⁴ articulator of Western thought and the Catholic orders that docked here until the Church's action and behavior in its connivance with the colonial logic.³⁵

Although the religious factor was not the only one to structure segregation, it was consolidated through a bias that had deep roots in the formation of modern society and remained in it ordinarily. The argument that religion and its practices have an effect on genesis in the numerous fundamental categories of modernity is observed by the Italian philosopher Giorgio Agamben³⁶ when describing the divine office's archaeology. He demonstrates how the liturgical mystery is the key to understanding the extent to which modernity has forged ethics, ontology, and politics. "Mystery means the intimate essence of sacred action, that is, the redemptive work coming from the Lord from sacred rites instituted by him, and liturgy indicates the Church's action in union with Christ's work".³⁷

In this sense, the action of the Church and its consequences affect the construction of the modernity's social parameters. Corroborating this argument, US sociologist Immanuel Wallerstein³⁸ states that the action and discourse produced by the Church during the European colonization peak years elaborated on the legitimizing ideas' structure of the system we live today, causing a significant impact on social relations.

The prerogatives of domination and segregation used in the name of Christian expansion during that period are reproduced in the present institutions even though, gradually, there has been remodeling in the incidence of the Roman Catholic Church. With the Republic advent, the initial effort and enthusiasm to establish a secular regime, following Western patterns in a very religious society, reveals, meanwhile, the composition of a structure that has gradually adapted itself to the values present in the society's daily life.

During imperial Brazil, the union between the State and the Catholic Church would be determinant to legitimize the monarchic regime, influencing citizenship and the daily life of society. Catholicism was one of the great sustainers of the political, social, economic and cultural structures of the Brazilian society in the period. Thus, an eventual crisis of the Catholic religion would imply, naturally, the shaking of the main foundation of the monarchy.³⁹

³⁴ AQUINO, T. *Suma Teológica*. São Paulo: Loyola, 2003.

³⁵ FAORO, R. *Os Donos do Poder*. Formação do patronato político brasileiro. São Paulo: Globo, 2012.

³⁶ AGAMBEN, G. *Opus Dei: Arqueologia do Ofício*. São Paulo: Boitempo, 2013, pp. 41-43.

³⁷ AGAMBEN, G. *Opus Dei (...)*, Ob. cit., p. 44.

³⁸ WALLERSTEIN, I. *O Universalismo Europeu: a retórica do poder*. São Paulo: Boitempo, 2007.

³⁹ FAÇANHA, J. L. Edições fac-similar e semi-diplomática do "Livro de registro da correspondência oficial da Presidência da província com a repartição eclesiástica: 1887-1889".

This so-called right to religious freedom was conditioned by a cherishing of the Catholic tradition. Although the Imperial Charter of 1824 referred to the fact that no one could be persecuted for religious reasons, there was also a clear demand that public morals should not be offended. Respect for the Catholic religion and, by extension, for this morality, was a condition for following other religious creeds. Religions other than Catholicism were simply tolerated by the State as long as they did not violate certain moral principles that were important to the sociability of the time. It was not by chance that Catholicism was strengthened by the Christianization of countless believers.

The State did not stay immune to religious influence and did not stop interfering in religious matters. The implementation of republican values remained fragmented when the colonial reality continued. At the beginning of the republican period, there was a commitment by the State to implement republican parameters on the perspective of the universalization of rights, secularism, equality, and freedom. However, Brazilian society continued to mature and even rethink its republican values.⁴⁰ It is likely that not even the elites excited by the possibility of living in a political regime, following the European example, have become accustomed to the idea that the "Republic proclaims the supremacy of the common good over any particular desire, (...) and, moreover, aims to answer exactly the questions about the difficulties that exist when the same ones who command must obey".⁴¹

The place of religions in a democratic state is found in at least two directions: first, in the sense that in a positivist constitutional order there is a need for religion or some other supporting power that guarantees a basis⁴² and when one observes a system involved by the secularization parameters in which modernity is built from certain theological influences and foundations; and, secondly, in the formation of a guideline wherein society is anchored on a religious consciousness parameter harmonized with an increasingly secularized space, where there is the assimilation of responsibility and the potential of religion within a State model.⁴³

The understanding of democracy has broadened over the last few decades, in a way that it has not been understood only by the demands and the universal suffrage, but in a broader way, in what John Rawls calls 'the exercise of public reason'. "Public reason is the characteristic of a democratic⁴⁴ people: it is the reason of its citizens, of those who share the equal citizenship status". The change in the understanding of democracy has been provoked precisely by the elaboration of new aspects arising from the liberal model, such as participatory democracy and deliberative democracy.⁴⁵

The search for space, both in the political sphere and in any other context, uncovers a character of dispute that, in the context of the many demands, makes it

Aspectos Ortográficos. *Dissertação* (Mestrado em Estudos Linguísticos) - Instituto de Linguagens. Universidade Federal de Mato Grosso, Cuiabá, 2012, p. 140.

⁴⁰ SERBIN, K. P. *Padres, Celibato e Conflito Social: uma história da Igreja católica no Brasil*. São Paulo: Companhia das Letras, 2008.

⁴¹ RIBEIRO, R. J. Democracia Versus República: a questão do desejo nas lutas sociais. In: BIGNOTTO, Newton (Org.). *Pensar a República*. Belo Horizonte: UFMG, 2008, p. 18.

⁴² HABERMAS, J. & RATZINGER, J. *Dialética da Secularização: sobre razão e religião*. São Paulo: Ideias e Letras, 2007, p. 31.

⁴³ ASAD, T. *Formations of the Secular*. California: Stanford University Press, 2003.

⁴⁴ RAWLS, J. *Liberalismo Político*. São Paulo: Ática, 2000, p. 261.

⁴⁵ SANTOS, B. S. *Democratizar a Democracia: os caminhos da democracia participativa*. Rio de Janeiro: Civilização Brasileira, 2002.

possible to identify an articulating discourse of common objectives, as well as differences that become part of a purpose for the achievement of the common good. Discursive practices create this common goal through articulation. In this sense, it is that one glimpses a relationship capable of agglutinating and systematizing different aspects.

The existence of power relations and the need to transform them, while renouncing the illusion that we could completely free ourselves from power (...) if we accept that power relations are constitutive of the social, then the democratic politics' main question is not how to eliminate power, but how to constitute forms of power compatible with democratic values.⁴⁶

Instead of identifying modern democracy with a powerless place, the author reinforces the distinction between two fundamental aspects: on the one hand, democracy as a form of government and as a principle of the people sovereignty; and on the other, the symbolic profile in which democratic rules are exercised in a plural manner. Modern democracy would have a plural character that is established in the realization of individual freedom and also in the affirmation of freedom underlined by equality for individuals through the legitimation of differences. "This democracy's experience consists of recognizing the existence of contradictory and antagonistic logic, as well as the need for their articulation".⁴⁷

The understanding of what it means, therefore, to separate the Church and the State, in most cases, tends to be compromised by the misrepresentation of an alleged equivalence between politics and religion, between the public and the private. The first aspect ends up highlighting the exercise of power and its power of persuasion, while the second, would not be by itself, related to the question of power. "The consequence of this is that the separation of Church and State is seen as implying the exclusion of all religious forms from the public sphere".⁴⁸ The acknowledgment of different religious expressions as legitimate protagonists within the public sphere provides help for "the crucial role played by passions, values, beliefs and all forms of collective identification in political action".⁴⁹

In a special way, in Brazil, the expressions of Christian religiosity have permeated the different meanderings of a national identity constitution starting from the construction of certain heroes in the image of Jesus Christ.⁵⁰ Different iconographies and episodes of history reverberated certain apology to biblical elements, such as the image of the Holy Virgin as a female figure of great prominence for the Republic and the establishment of holidays for religious reasons, and the change of the patron saint of the Empire (St. Peter) to the image of the patron saint of Brazil, Our Lady Aparecida. The Republican imaginary has always known how to reflect this harmony with the Christian faith.⁵¹

Another relevant aspect in the construction of democracy was the remarkable and incisive experience of slavery that, to a large extent, the Church had in its favor

⁴⁶ MOUFFE, C. Democracia, cidadania e a questão do pluralismo. *Política e Sociedade: Revista de sociologia política*. Nº 3, Out. 2003, p. 14.

⁴⁷ MOUFFE, 2003, *Política e Sociedade (...)*, Ob. cit., p. 18.

⁴⁸ MOUFFE, 2003, *Política e Sociedade (...)*, Ob. cit., p. 25.

⁴⁹ MOUFFE, 2003, *Política e Sociedade (...)*, Ob. cit., p. 26.

⁵⁰ FONSECA, A. B. *Relações e Privilégios: Estado, secularização e pluralismo religioso no Brasil*. Rio de Janeiro: Novos Diálogos, 2011.

⁵¹ CARVALHO, J. M. de. *Os Bestializados: O Rio de Janeiro e a República que não foi*. São Paulo: Companhia das Letras, 1987.

by producing and legitimizing the theological defense of servitude⁵², shaping society and, in fact, denying fundamental rights of freedom and equality. This legacy that persists in Brazilian society also represents many limits to the ideals of citizenship. Perhaps, due to this condition, there has always been a greater emphasis on the notion of social rights to the detriment of political and civil rights.⁵³

Without the guarantee of civil rights in a society that is organized collectively and that is configured as a politically organized civil society, rights are formally “emptied of content and serve to justify governments rather than to represent citizens”.⁵⁴ It is from the exercise of civil rights and individual freedoms, especially with regard to freedom of association and opinion, that an ideal is consolidated beyond what is formally evidenced. As remarked by José Casanova, the religious groups

[...] they are entering the public sphere and the scene of public controversy not only to defend their traditional territory, as they have done in the past, but also to participate in the same struggles to define and establish the modern boundaries between the public and private spheres, between the system and contemporary life, between legality and morality, between the individual, society and the State [...].⁵⁵

What is possible to perceive when expanding the horizon of this understanding is that there are articulations of a politically conservative discourse on citizenship capable of portraying certain distinctions between those who are seen as included, and others, considered as excluded. There is also, by extension, a possibility of delimitation of a ‘we’ that is affirmed by discrimination or persecution of others seen as ‘impure’, ‘unfaithful’, ‘immoral’, ‘unworthy’. Thus, the notion of ‘citizenship’ can authorize the violation of rights, certain intolerances and even racism.⁵⁶

From this perspective, an important element that needs to be taken into account has to do with the place of religions of African and indigenous matrix in the Brazilian context. Historically they have always been targets of attacks of the most diverse forms. Their cults have been persecuted and their religious practices criminalized, largely result of a slave regime that maintains its roots to this day. It is a journey of struggle for existence marked by prejudice and discrimination and by the non-acceptance of what is different and of the culture of these populations. The Catholicism that was imposed in Brazil brought an ingrained indisposition towards everything that was unknown to it.⁵⁷

Marginalized and criminalized for their practices, these religious traditions continue to be the target of intolerant actions, even though freedom of belief and exercise of worship are guaranteed by the Federal Constitution of 1988. If before the main repressor was the Catholic Church, today what we see is an aggressive and

⁵² BOTELHO, A. & SCHWARCZ, L. M. (Org.). *Cidadania, um projeto em construção*: minorias, justiça e direitos. São Paulo: Claro Enigma, 2012, pp. 10-13.

⁵³ CHAUI, M. *Cultura e Democracia*: O discurso competente e outras falas. São Paulo: Cortez, 2011.

⁵⁴ CARVALHO, J. M. de. *Cidadania no Brasil*: o longo caminho. Rio de Janeiro: Civilização Brasileira, 2008, p. 10.

⁵⁵ CASANOVA, J. *Religiones públicas en el Uruguay moderno*. Madrid: PPC, 1994, pp. 18-19.

⁵⁶ LAMOUNIER, B. *Tribunos, Profetas e Sacerdotes*: intelectuais e ideologias no século XX. São Paulo: Companhia das Letras, 2014.

⁵⁷ SILVA, V. G. da. *Candomblé e umbanda*: caminhos da devoção brasileira. São Paulo: Selo negro, 2005.

"demonizing" speech of a part of the Neopentecostalism, in the services, in the media, and by some of its leaders. There are also manifestations of religious intolerance with depredations of terreiros, prayer houses, and religious symbols. These are bellicose actions that converge to physical aggression and symbolic violence.⁵⁸

A key aspect regarding the legacy beyond Catholic ideals has to do with the Protestant incidence. It is a contribution underlined by initiatives of revival and continuation of a culture capable of understanding the religious in the many life aspects and, above all, by its process of massification in the political interests. It is instrumentalized in a direct relationship with the times of the military dictatorship and with the strong impacts on politicization and the re-democratization processes; A reality that pointed out to an expansion of the religion's influence and recognition of the political strength of religious institutions by the State.⁵⁹

In the period of re-democratization, therefore, the activities of the Pentecostal groups take place more markedly in the public sphere. It is important to highlight that this intervention and visibility achieved certain notoriety with the formation of a bench that was present in the negotiations for a new Magna Carta, as well as during the electoral campaign in the first direct presidential elections after the dictatorial period. The articulations reached new perspectives and defined new challenges.⁶⁰

This movement greatly influenced the migration of the faithful to the point of transferring "the public from a traditional religiosity, accustomed to the dynamics of promises to a religiosity that continued this logic adding more intensity and agonism".⁶¹ Through a discourse of greater incidence and reach of the public using the different media, television programs, radio, Internet, phonographic and editorial market, besides large temples and an alleged sanctity of leaders, there was a strategic recognition by the State.⁶²

Undeniably, nowadays, the public sphere and political exercise represent inseparable dimensions in the Pentecostal and Neo-charismatic identity. It is the Neo-charismatic denominations, for example, that exercise massive participation, both from their understanding of what the public space is and also by its use.⁶³ There is an expansion of values through a discourse that opens space for inclusion, the articulation of different protagonists and associations that give rise to great mobilization and participation.⁶⁴

Although most of the historical Protestant churches tend to the exemption and the Brazilian State is constitutionally a secular democracy, the elections and discussions on various moral issues, especially in relation to abortion and the rights of sexual minorities, involving faith in the current political scenario, show the strength

⁵⁸ SANTOS, I.; NASCIMENTO, M. G.; CAVALCANTI, J.; GINO, M.; ALMEIDA, V. (Org.). *Intolerância Religiosa no Brasil. Relatório e balanço*. Edição bilíngue. Rio de Janeiro: Klíne: CEAP, 2016.

⁵⁹ BIRMAN, P. (Org.). *Religião e Espaço Público*. São Paulo: Attar Editorial, 2003.

⁶⁰ MACHADO, M. D. C. *Religião, Cultura e Política. Religião e Sociedade*. Vol. 32, nº2, 2012, pp. 29-56.

⁶¹ MAFRA, C. *Os Evangélicos*. Rio de Janeiro: Zahar, 2001, p. 38.

⁶² BURITY, J. A. *Religião, política e cultura. Tempo Social: Revista de Sociologia da USP: Dossiê - Sociologia da Religião, São Paulo, v. 20, n. 2, nov. 2008, pp. 83-113.*

⁶³ WREGGE, R. S. *As Igrejas Neopentecostais: Educação e Doutrinação*. Tese de Doutorado em Educação. UNICAMP: Campinas, 2001.

⁶⁴ PINTO, C. R. *Teorias da Democracia: diferenças e identidades na contemporaneidade*. Porto Alegre: EDIPUCRS, 2004.

of religion and how it has advanced over the Brazilian public space to the point of, meanwhile, confusing the public with the private dimension of belief.

In theory, Brazilian religiosity is marked by an undeniable plurality, by inequalities and also by paradoxes. It is a religious identity in a country in which society is organized under the auspices of a state incapable of guaranteeing equality. Where religious manifestations can gather crowds and certain religious sectors tend to behave in a conservative and exclusionary manner, promoting dialogues or clashes in the field of social and religious plurality.

4. RELIGIOUS PLURALITY IN THE BRAZILIAN CONSTITUTIONAL SPHERE

The individual or group are not subjects when they hover above the practical conducts. The subject is stronger and more aware of them selves when they self-defend against attacks that threaten their autonomy and ability to self-perceive in order to recognize and be recognized as such.⁶⁵

In Brazil, freedom of worship and religious freedom, despite its variations, have always been present in the constitutions' canon. However, in the validity period of each one of them, the meaning of "religion" has changed, in its interrelationship with different codes of language. The changes are directly in line with the strength of the agents who exercise the control of discourses, in the sense explained by Michael Foucault⁶⁶ as a consequence of the condition change of the actors who control the power and the right to build and impose meanings.

For an understanding of the religious in the legal field in structural terms, one must keep in mind the diachronicity of ideas from the prerogatives inherent to juridical positivism. As noted by Gomes Canotilho,⁶⁷ constitutionalism "raises the principle of limited government indispensable to guarantee rights in a structural dimension of the community's political-social organization". This premise refers to various assumptions, including the distribution of powers, the normativity of human and fundamental rights, democracy, obligation, generality, and abstraction of laws.⁶⁸

Both the religious dimension and the legal perspective may give rise to discursive tensions involving symbolic boundaries of the public, private and social spheres. Studies like Joanildo Burity's⁶⁹ show how different religious protagonists end up moving and bringing to the public "their language, their language, their *ethos*, their demands". They also show how religious identities have become an important element of subjects' identification, whether in the "[...] aspect of one totally another",⁷⁰ or in the form of efforts to build actions in defense of common themes to humanity such as peace, justice and solidarity.

Synthesizing the various forms of the religious emergence in contemporary times. Burity⁷¹ relates questions about religious violence at the global level, questions about the body, gender, sexuality, human reproduction, genetic manipulation, use of natural resources, public policies, parliamentary representation, use of the media

⁶⁵ TOURAINE, A. *Um novo paradigma: para compreender o mundo de hoje*. Petrópolis: Vozes, 2006, p. 113.

⁶⁶ FOUCAULT, 1996, *A Ordem do Discurso (...)*, Ob. cit., p. 42.

⁶⁷ CANOTILHO, 2003, *Direito constitucional (...)*, Ob. cit., p. 51.

⁶⁸ ZIZEK, S. *O amor impiedoso (ou: Sobre a crença)*. Belo Horizonte: Autêntica Editora, 2012.

⁶⁹ BURITY, 2008, *Religião, política e cultura (...)*, Ob. cit., p. 84.

⁷⁰ BURITY, 2008, *Religião, política e cultura (...)*, Ob. cit., p. 85.

⁷¹ BURITY, 2008, *Religião, política e cultura (...)*, Ob. cit., p. 86.

through radio and television channel concessions, popularity of religious themes in their expression through books, especially with biographies of religious leaders.

In terms of religious diversity recognition, Brazilian constitutionalism synthesizes how the principle of government indispensable to the guarantee of rights contributed to the construction of the religion's representation, the image of subjects, as well as the corresponding semiotic and discursive systems.⁷² Recognition can be engaged when diversity becomes part of the government's agenda, making the structuring dimension of political and social organization references in which subjects can transit, without infringing any established order.

We should keep in mind, when we "morally" appreciate a positive legal order, when we value it as good or bad, fair or unfair, that the criterion is a relative criterion, that a different valuation based on another moral system is not excluded, that when a legal order is considered unfair if it is assessed based on the criterion provided by one moral system, it may be regarded as fair if it is judged by the measure or criterion provided by another moral system.⁷³

As a process of construction, the religious issue integrates the Brazilian juridical-political reality in terms of an acknowledgment of different religious expressions. Responding to the actions of the insurgent movements, the State has been incorporating and re-signifying its statement arsenal through terms such as "freedom of worship", "religious freedom", "heresy", "magic", "sorcery", "witchcraft", "charlatanism", "faith healing".⁷⁴ Moreover, it is worth highlighting, for example, the decision of the Federal Supreme Court to allow the sacrifice of animals in the cults of religions of African matrix, especially when taken into account the absence of cruelty and the cultural and religious multiplicity of Brazil. By endorsing, the practice of animal sacrifice in rituals does not offend constitutional rights and principles suggested the reaffirmation of religious freedom and the parameters that guide the principle of secularism.⁷⁵

It is important to point out that some terms were suppressed in their normative support and others ended up being adapted to different linguistic codes. Within polarized schemes involving important referents such as sacred x profane, civilization x barbarism, healing x disease, development x delay, new approaches, new understandings, new meanings have occurred.⁷⁶ The radicalization of a methodological perspective concerning the functional division among law, religion, morality, and politics does not suppress the other normative systems but results in an alleged totalization of the legal discourse.

Besides the legal norms, there are religious precepts, moral, social and customary rules, rules of that lesser ethic that is the etiquette, rules of a good education, etc. Besides the social norms, that regulate the individual's life when they coexist with other individuals, there are norms that regulate the relations of the man with the divinity, or still of the man with himself. Every individual belongs to different social groups: to the Church, the State, family, associations that have

⁷² CUNHA, C. V. da, & LOPES, P. V. L. *Religião e Política: Uma Análise da Atuação de Parlamentares Evangélicos sobre Direitos das Mulheres e de LGBTs no Brasil*. Rio de Janeiro: Fundação Heinrich Böll, 2013.

⁷³ KELSEN, H. *Teoria pura do direito*. São Paulo: WMF Martins Fontes, 2009, p. 76.

⁷⁴ LEMOS, C. T. *Religião, Gênero e Sexualidade*. Goiânia: UCG, 2005.

⁷⁵ COSTA, B. S. & RABELO, F. A. A (In)Constitucionalidade da Lei que Permite o Sacrifício de Animais em Cultos Religiosos de Matriz Africana: Análise do Recurso Extraordinário nº 494.601/2019. *Revista Brasileira de Direito Animal*. Salvador: Bahia. Vol. 16, n.2, 2021, pp. 19-32.

⁷⁶ LEITE, F. C. *Estado e Religião. A Liberdade Religiosa no Brasil*. Curitiba: Juruá, 2014.

economic, cultural, political or simply recreational purposes. Each of these associations is formed and developed through an ordered set of conduct rules. Each individual, moreover, [...] formulates for the direction of the own life individual programs of action.⁷⁷

Religious plurality in a country like Brazil requires a constitutional approach that does not disregard multicultural nuances. This aspect is paramount so that the interpreters of the constitution and laws be able to analyze disputes beyond hegemonic cultural patterns, as well as the theoretical framework that supports the legal and constitutional imagery in its precepts.⁷⁸ The Brazilian conjuncture reality shows that each individual is part of a complex network of conflicts and tensions in which there are various disputes and articulations.

It is not enough, therefore, to enunciate religious freedom, because the interpretation and the way people experience it and live it derives from a dialectical process of interiorizing, objectification, and exteriorization that refers to a structuring framework. Insufficient incorporation of concepts into everyday experiences can produce significant consequences in the context of individualities.

To continue to exist, a society depends on both transformation and continuity. This is the paradox of every living society. The more it changes, the more it needs to refer to the past and the more the past appears in the present, the more it is necessary to place it as a point of reference.⁷⁹

It is possible to affirm that the enunciation of religious freedom in a punctual manner does not lead to the acknowledgment of religious diversity to the extent that semiotic systems make use of a code that does not support the promotion of diversity. In this sense, even if a legal statement provides for religious freedom, this freedom is thought of through a code of language that has as its references a certain context, marked, in general, by issues related to a religious hegemony.⁸⁰ In this direction, an emblematic example is the idea of God's protection in the preamble of our last Magna Carta. The point is to observe to what extent the preamble has normative force. The STF has consolidated the understanding that invoking the name of God has no legal relevance, but rather is a matter of political ideology.⁸¹

Human relations are crossed by questions of power, hierarchized and demanded by prejudices and discriminations regarding certain groups. Semiotic systems, discourses, statements, and subjects can be labeled, evaluated, situated within a web of conflicts involving power issues.⁸² Unable to produce an analytic or objective discourse, agents that violate human rights reinforce the representation

⁷⁷ BOBBIO, N. *Teoria da norma jurídica*. Bauru: EDIPRO, 1999, pp. 25-26.

⁷⁸ WEINGARTNER, J. N. *Liberdade Religiosa na Constituição: fundamentalismo, pluralismo, crenças, cultos*. Porto Alegre: Livraria do Advogado, 2007.

⁷⁹ BARREIRA, D. P. R. *Tradição, transmissão e emoção religiosa-sociologia do protestantismo contemporâneo na América Latina*. São Paulo: Olho D'Água, 2001, p. 45.

⁸⁰ MARTELLI, S. *A religião na sociedade pós-moderna: entre secularização e dessecularização*. São Paulo: Paulinas, 1995.

⁸¹ VIEIRA, T. "Sob a Proteção de Deus: Natureza Jurídica do Preâmbulo Constitucional". In: *O Direito de Liberdade Religiosa no Brasil e no Mundo*. SANTANA, U; MORENO, J; TAMELINI, R. (Org.). São Paulo: ANAJURE, 2014, pp. 109-120.

⁸² PANNENBERG, W. *Was ist der Mensch? Die Anthropologie der Gegenwart im Lichte der Theologie*. Göttingen: Vandenhoeck & Ruprecht, 1962.

and image of polarization.⁸³ It is, therefore, an approach that does not contribute to the understanding of the problems and that feeds the logic of otherness denial, making it impossible to build paths that raise appropriate means to situate the religious and the legal fields in the contemporary world.

What is possible to perceive when broadening the horizon of the issues covered here is that there are multiple articulations in the Brazilian reality. Our social, political and religious complexity, through the institutions of the State itself, has difficulties in supporting a more accurate sense of citizenship. Not by chance, the population has been living with violations of rights, intolerance, and racism. Offensives against certain civilizing ideals and achievements engendered by the Enlightenment, modernity, political liberalism, constitutionalism, democracy and the welfare state, fundamental and human rights, allied to the principles of equality, freedom, and fraternity, are frequent.

5. FINAL CONSIDERATIONS

It is in the dialectic tension between languages and religious and legal structures that a diachronic perspective becomes explicit. Changes will be always imbricated in the intersections of secularism and pluralism's processes, triggering transformations in the political, social, cultural and religious arrangements through the emergence of new subjects, new statements, and new discourses. In Brazil, although religious freedom has been uncovered by the constitutional texts, there have always been mechanisms of discrimination and control based on religious, cultural, and moral arguments. Like in a game among the actors who find themselves in asymmetric positions, those who exercise the domain use the different structural and ideological devices to affirm their condition, maintaining their supremacy.

One must reflect on the space occupied by the religions and by the religious agents in the civil society and the structure itself of the State. This aspect has led to tensions between republicanism and secularism, liberal principles and an alleged facticity. It is important to highlight that the religious diversity challenges the action of the State in the acknowledgment vindication processes. Considering that the human relationships are crossed by power matters, it is paramount to analyze in a criterion manner the religious actors' acting in the public space. This implies saying that the dialectical processes of exteriorization, objectification, and interiorizing need changes in the statements but also in the subjects' behaviors.

The constitutional norms, as legal principles, dialogue with the infra-constitutional law texts, marking the limits of a possible statement. The acknowledgment emerges from the constitutional statements themselves when thought of in normativity terms. By enshrining principles, constitutionalism evokes the tradition, history, and doctrine in the law scope, in a practice that often refers to events in continuity among the facts thought of in terms of representation. There is recognition to the extent that the various communities incorporate into their language systems manifestations of religious diversity.

Knowledge of religious experiences and different semiotic systems can ensure that we have actions that are not only in line with dogmatic references, but that are not open to dialogue and the acknowledgment of diversity. In a world in which fewer and fewer subjects are willing to listen to what their peers are leading, dialogical

⁸³ GABATZ, C. Religião, laicidade e direitos sexuais e reprodutivos: a presença de grupos religiosos conservadores nos espaços públicos da contemporaneidade. *Revista Estudos de Religião*. Vol. 31, n. 1, UMEP: São Paulo, 2017, pp. 10-18.

praxis is imposed as an indispensable condition for strengthening democracy based on consolidated tolerance as a prerogative aligned with human rights.

The democratic scene continues to be responsible for an opening that allows dialogue, as it provides spaces for actors (both political and religious) and discourses that, together with the State, raise religion on the stage of decisions. The State's interest in religion exists as a result of its power to legitimize discourse, the power of faith that moves the masses and wins votes, the agglutinating character, and strategic articulation, and the transforming profile of the social sphere.

The State, largely influenced by religion, builds narratives that perpetuate certain practices and the parties, in turn, function as supports, adopting a position of preservation of certain ethical or moral values, aiming at the strength that the churches have in electoral contests. By making use of religious principles, Brazilian political culture outlines means for the maintenance of a coexistence paradigm. There is a constant call of religion from a patrimonialist and clientelist spectrum, as well as in the conquest for new adhesions.

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