

debe significar, y el alcance del principio de cooperación entre el Estado y las confesiones religiosas.

Nos resultará difícil olvidar la calidad humana y científica de los discípulos del profesor Casuscelli y más aún si cabe nuestra estancia a las orillas del lago Garda, en la Villa Feltrinelli, que con tanto acierto sus propietarios donaron a la Universidad de Milán y en donde fuimos acogidos con una hospitalidad desbordante.

Pero en honor a la verdad debo decir que esa fue la tónica general. Los profesores González del Valle, Sara Acuña, Amorós, Agustín Motilla e Iván Ibán –sin olvidar a los que con ellos han colaborado estrechamente– han estado a la altura de los mejores anfitriones. Gracias a todos.

No quisiera terminar sin señalar que estos congresos han dado ya su fruto. Han hecho posible que brillantes licenciados se hayan incorporado con enorme entusiasmo –lo van a necesitar– a nuestra disciplina. Consideren estas líneas como mi particular bienvenida y no olviden una frase que a mí me ayuda mucho y que atribuyo a Camilo J. Cela: «En este país quien resiste vence.»

MARÍA JOSÉ VILLA

VV.AA.: *«New Liberties» and Church and State Relationships in Europe. Proceedings of the meeting*, Tilburg, November 17-18, 1995, Milano, Giuffrè, 1998, VIII + 470 p.

In 1989, the *European Consortium for Church and State Research* held its first congress. This organisation, of which a history is to be published by Ivan Ibán in one of the next volumes of the *European Journal for Church-State Research*, was founded ten years ago, in 1989, with the objective to promote the study of Church-State relations in Europe. Every year in autumn, a congress is organised on a Church-State topic. Afterwards, the proceedings are published, usually one year after the meeting. Three years after the Tilburg meeting (1995), the proceedings of this consortium congress are finally published. This has led to a somewhat strange situation: the proceedings of the Luxemburg/Trier meeting (1996) were published before this proceedings. We can only regret this way of publishing and hope that for the future, the proceedings will be published earlier, maintaining in this way their real value.

The consortium meetings usually dealt with classic topics concerning Church-State relations, such as models for financing churches (Milano-Parma 1989), conscientious objection (Brussels/Leuven 1990), marriage and religion (Augsburg 1991), the legal status of religious minorities (Thessaloniki 1993), the constitutional status of religions in the countries of the European Union (Paris 1994) and the status of religions in the European Union (Luxemburg/Trier 1996). Gradually, also other

legal fields became important, e.g. the whole area of labour law (Madrid 1992). Churches were no longer immune for labour law and its applications. New fields of legislation, apparently without relation to church-state matters, became at once the object of study, because this legislation had and has an influence on the legal position of churches and religions. This is also valid for the topic of this meeting: it was not a classic Church-State topic. Recent developments both in technology as well as in medical knowledge, led to new legislation that has also an influence on the legal position of churches, or that can be in contradiction with the teaching of a religion. An example of the first series of developments is the whole area of data protection and the protection of privacy. New legislation has been issued in order to protect data relating to privacy. Religious preferences are very personal and sensitive data. In a society where technological developments create unlimited possibilities, for collecting, handling and using data, legal restrictions are desirable and welcome. But also religions collect data. They have at least a list of the members of their group, in some cases they have also other records. In a way, the general legislation is now also applicable to religious organisations and a certain control is installed. Certainly, this control can be very helpful to protect people against harmful organisations, but on the other hand, the freedom of religion is in a way restricted by this form of control. An example of the second series of developments, is the growth of medical knowledge in the field of life and death. For delicate matters such as abortion, euthanasia, organ donations and medical experiments, new legislation is worked out. This legislation is always a compromise between various opinions and most of the time not identical with the viewpoint of religions. These new topics became, therefore, a part of new Church-State relations. By focusing on these new subjects, the *European Consortium* maintains its relevance and does not fall into endless rehearsing of old themes.

In her introduction, S. van Bijsterveld speaks about «a new dimension in today's Church and State relationships» (p. 1). In preparing the conference, two main areas were determined: *the status of the private individual* with topics such as the physical integrity of the individual and legal developments in the medical-ethical field, and *the organisation of a society as a whole*, with diverse issues such as working hours, mass media law and data protection. In fact, she means with this last expression that within the organisation of a society as a whole, legislation is also applicable to churches and religious organisations. They do not form any longer isolated areas, immune for state laws. The so-called «new liberties» are according to her a claim for a maximum of private choice and personal freedom.

The book contains two further general contributions, one from N. Treanor, the secretary-general of the Commission of the Bishops' Conferences of the European Communities, and one from E. Hirsch Ballin and S. van Bijsterveld. For every country of the European Union –except for Sweden– there is a rapport about new liberties in each of the member states. Germany has even a rapport for both topics.

Two international contributions – one about the significance of the European Convention on Human Rights for the questions relating to the beginning and the end of human life (first area) and another about the influence of the European Community Law on the second area, especially relating to working hours, data protection and mass media. The general conclusions are written by R. Torfs.

According to N. Treanor, politicians were not immediately interested in the classic topics of Church-State relations, but they now want to know the meaning that the Churches attach to ethical matters and to spiritual dimension of issues facing society. In the present context, it is then of a particular interest to see how the Churches envisage their participation in the processes of policy-making in contemporary pluralist societies. Reflection is needed in four areas: (1) on what grounds and to whom do the Churches address their assertions, (2) in the name of what concept of freedom, (3) in terms of what concept of law in its relationship to morality, and (4) with what kind of discourse, using what methodology. The ground for the assertions of Christian Churches is a common theological motivation. The addressees are in general all levels of society, even if some messages are only explicitly addressed to e.g. political leaders. The concept of freedom is in the Christian view linked to truth, but it does not clarify the problem of identifying the truth in complex ethical questions such as abortion or euthanasia. Treanor only indicates the problem, but he does not give further explanation. In quoting John Courtney Murray («Law seeks to establish and maintain only that minimum of actualised morality that is necessary for the healthy functioning of social order»), he believes that the legislative process must take real and serious account of the well-argued maximalist moral viewpoint in matters of fundamental ethical significance. Churches have tried to use methods that are less rhetorical and more consultative and dialogical. By way of conclusion, Treanor refers to president V. Havel's allusion to «the hidden sphere»: a Christian Church must seek to name and interpret that constitutive element, or sphere of personal and social life. They have to interpret and transmit the meaning of that hidden sphere for the organising of human life and society, so that this organisation promotes the dignity of the human person, justice, peace and truth.

Speaking of «new liberties» entails immediately the question of defining freedom and human rights. An attempt is made by E.M.H. Hirsch Ballin and S.C. van Bijsterveld in their contribution, entitled «New Liberties and Church-State relationships». Their starting point is freedom as a license to act according to one's own insights. The only limit of this acting are the reciprocal claims of others. The political counterpart of this concept of freedom is the idea that all obstacles in the public sphere, including governmental interference in the sphere of personal privacy and moral positions, should be removed, so the largest possible freedom is realised. The main question is the one about the interpretation of fundamental rights and its relation to freedom and liberties. Due to irreversible changes in the modern Western

societies, especially concerning the lifestyle and the social environment, values cannot any longer be legitimised by making an appeal to tradition as such: also traditions require argumentations. Instead of a closed, traditional society we now have life styles in which the unity of time and place of action has been broken. In this context, «the position and task of religious and ideological communities does not merely involve a quiet preservation of spiritual heritage» (p. 19). Also the rights and the position of churches need rational argumentations. In the present day situation of human rights, a distinction is made between classical human rights and social human rights. Although in this framework of human rights, there seems to be only government and individuals, there is however some room for «institutions» supported by the government. In this dichotomy between two series of human rights, two actors play an important role: the government and the citizens. Other institutions, such as churches, play only a secondary role. However another theory about human rights is developed by both authors in order to give more possibilities to these other institutions: a distinction can be made between fundamental rights which structure the legal order and functional fundamental rights, the first affecting the infrastructure of a free society, the latter giving the aims of the state substance in that they describe the fundamental safeguards which make the fulfilment of the various social functions in our society possible. The functional fundamental rights must respect the framework defined by the fundamental rights which structure the legal order. Within this alternative theory of human rights, the role that can be played by intermediate institutions such as churches is not secondary any more. The issue of human rights has also been a topic in church teaching. For several reasons, among them historic events, churches did not make a positive stand on human rights until recently. A biblical justification for the recognition and promotion of human rights by the church was sought. It is in this context of human rights that freedom and human dignity are important notions. The theological meaning of freedom refers to an inner state of mind, while the constitutional meaning reflects both a social and a legal reality. When churches are speaking about human rights, it always raises the question whether they are speaking about human rights as principles or as concrete legal norms. In a brief conclusion –in fact too brief as it does not provide a further explanation– it is said that a concept of human rights based on the government/individual dichotomy does not seem right and that a constructive tension will always remain in areas which are governed by human rights. Such a brief conclusion –although with the promising title «Human Rights and Human Rights – Different Perspectives?» – is somewhat disappointing after such a long elaborated text.

The different contributions for each country focus on the two main areas of the conference: the status of the private individual, on the one hand, and the organisation of a society as a whole, on the other hand. In the first area, we find subjects such as abortion, euthanasia, palliative care, blood transfusions, the refusal of medical tre-

atment, organ donations, medical experiments on human persons and animals, and ethical committees. For the organisation of the society as a whole, data protection, day of rest, radio and television and electronic media are topics that are dealt with.

The contribution of Jean Duffar deals with the significance of the European Convention on Human Rights (ECHR) for the «new liberties». Speaking of the rights to life, three major moments are important: the beginning of life, the identity and the integrity of the person and the end of life. For the first major moment, two important questions can be raised: is there a right to give life and is there a right to refuse to give life? The first question is closely linked to the right to marry and to family life, but not exclusively and the latter is not subordinated to the possibility, or the desire for procreation. But it can be stated that the right to give life is not without limits. The second question –the right to refuse to give life– is a more delicate one and deals with topics such as sterilisation and in vitro fertilisation. This last topic provokes different issues: the right to life (article 2 ECHR), the right to respect of private and family life (article 8 ECHR), the freedom of expression (article 10 ECHR) and the destiny of embryos and human foetuses. The second major moment –on the identity and the integrity of the person– deals with three topics: medical experiments, organ donations and genetics. The Code of Nuremberg, adopted on August 19, 1947, dominates this whole issue. The third and final major moment –the end of life– deals with two important questions: when and under what conditions and circumstances, can a State authorise euthanasia and under what circumstances is the State responsible for the suicide of certain persons?

The relationship of Church and State-legal developments on the level of the European Union is the second topic on international law dealing with «new liberties» and is discussed by Heidrun Tempel. Her contribution was written when the Amsterdam Treaty was still out of the question (about the Amsterdam Treaty and the declaration concerning the Churches, see e.g. G. Robbers, «Europa und die Kirchen. Die Kirchnerklärung von Amsterdam», *Stimmen der Zeit*, 1998, 147-157), so she could easily state that at that moment, churches and religious communities did not appear in the then current treaties on European integration. At that moment, the only indirect reference was made in article F of the Treaty on the European Union, stating that the Union shall respect the national identities of its Member States as well as the fundamental rights, guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. As commonly known, the concrete application differs from state to state. Although there is an obligation for the Union to respect the freedom of religion, this does not imply a total absence of community legislation concerning churches and religious communities. Some examples, such as the so-called «Television-Directive» (media-law), the Directive on the organisation of working time (protection of Sunday) and the EC-Directive on protection of individuals with regard to processing of personal data, illustrate this influence of EC-legislation on churches and religious communities. Also ethical challenges by new

technologies are covered by EC-legislation. Examples are the labelling of foods derived from biotechnology and the legal protection of biotechnological inventions.

In his synthesis, Rik Torfs summarises the discussion which took place during this annual meeting of the Consortium. He reminds us that we do not live any more in a rural society where there exists a clear hierarchical structure, but we now live in a complex society where one truth is not accepted any more. These changes in society could also be perceived in Church-State relationships where three models were present: the separation model that corresponded with the industrial era and the idea of competition evolved from a model of cooperation between church and state in the welfare state towards a discussion about the position of values and their realisation in today's public debate. During the first discussion session about «new liberties and church and state relationships», three levels were indicated on which the discussion concerning modern church and state problems can take place, namely the level of churches, where a distinction can be made between the churches' public legal position and their public mission, the level of intermediate bodies and the level of individuals. «New liberties and the physical integrity of the individual» was the topic of the second discussion session. Two definitions of «new liberties» are possible, one focusing on the content (new liberties are not different from the old ones, but their context is more sophisticated) and the latter emphasising on the formal aspect (new liberties are opposite to the liberties of others in the society). This last definition led the discussion to the idea of inconsistency and antagonism between ideas that are confronted with each other. Two models of interpretation are then possible: the model of inconsistency between the central ideas in the debate, and the model of the moderate conflict between certain ideas of the discussion. A third and last discussion session dealt with new liberties and tendencies in society and led to the question about a future position of churches in a post-modern system, characterised by a quasi total individualism and a growing privatisation. Two important areas can be distinguished: the area of structures and the area of values. The first one is well known, while the second one is not and is more difficult to control.

We can certainly say that this is an excellent book. The minor aspects –such as the late date of publication and the sometimes very incorrect use of language (a language check by a native speaker would have been very useful)– melt into thin air when compared to the value of the book as a whole and every contribution in it. The survey for every country is very interesting, because they give an idea of the sometimes different approach to the same problems in the various countries. Every contribution is well documented and in this sense a source for further study as well as for more immediate use.