DOMINICANA

Vol. XIV SEPTEMBER, 1929 No. 3

CONCORDATS

BRO. THOMAS M. MULVIN, O. P.

AT the Lateran Palace in Rome on February 11th, 1929, the Plenipotentiaries of Pope Pius XI and King Victor Emmanuel III, signed the documents settling the dispute that has lasted for fifty-nine years, over the so-called Roman Question, the problem of the relationship between the Holy See and the Italian Government, which dates from 1870, when the troops of Victor Emmanuel II took possession of Rome in the name of the Kingdom of Italy. This agreement consists of two distinct, but inseparable documents, a Treaty which has an international value, and is of direct interest to the entire world, and a Concordat which treats of national affairs and is concerned with the relations between the Papacy and Italy, in matters common to both. This latter document has been the topic of greater discussion, due perhaps, to the misunderstanding and misinterpretation of its nature by the public press. Thus we consider it opportune to present in this article, a general idea of the true nature of a concordat.

In a concordat we have a specific act of diplomacy, which had its origin in the gradual acknowledgment of the temporal jurisdiction of the Popes. During the first four centuries of the Christian era, the Roman Emperors subjected the religion founded by Christ, to the acid-test of ten cruel persecutions, in a vain endeavor to destroy it; but in the end they were forced to admit that they were dealing with a Divine Power. Finally Constantine had recourse to Christ the Redeemer, and placing his army under the emblem of the Cross he conquered his enemy Maxentius. Out of gratitude for this victory and in acknowledgment of his conversion to Christianity, he immediately issued,

at Milan (313), the famous Edict of Toleration, which marked the beginning of a new era in the Church. Even during the Barbarian Invasion (476-800), Catholicity was tolerated, and in some instances defended by the invaders. And finally by the donation of territory by Pepin (754) the Holy See became a temporal power, with Rome as the capital. However this period of concord could not last forever. The vices of pride, avarice, and jealousy became dominant toward the end of the eleventh century, and it was the settlement of the disputes that arose between the Church and the State, which inaugurated diplomatic negotiations confirmed by concordats. Up to the time of the World War the total number of concordats was one hundred and thirty-three.[1] However only a small number of these remain in force. Since the War seven concordats have been made, *viz.*, with Lettonia, Bavaria, Poland, Lithuania, Czecho-Slovakia, Portugal, and Italy (Concordat and Treaty).[2]

From the beginning, concordats have appeared under different names, namely: *conventiones, tractatus, privilegia, concordiae, pacta,* etc. Nevertheless these names as applied to the different negotiations and settlements between the ecclesiastical and civil authorities invariably express the nature of an agreement. However, of these names there are two that are generally adopted, concordat and convention; the former seems to be the more suitable, expressing, as it does, the idea of an agreement, accord, or harmony, while the latter is nothing more than a formal or stated meeting, of the coming together of the delegates or representatives.

In general a concordat, according to the obvious signification of the word, is "a common understanding of the ecclesiastical authority and the civil authority, by which the relations between the Church and the State are settled concerning some matter about which both powers are concerned."[3]

On the part of the Church, the power to make concordats formerly rested with the bishops, but only concerning matters pertaining to, and within the territory of, their diocese. We have for instance, the concordat between King Diniz and the Bishops of Portugal, begun in 1288, and confirmed by Pope

[1] A. Mercati, *Raccolta di Concordati su Materie Ecclesiastichi* etc., (Rome, 1919);
V. Nussi, *Quinquaginta Conventiones de rebus Ecclesiasticis.* (Rome, 1870).
[2] *Acta Apostolicae Sedis,* Vols. XIV, XVII, XIX, XX, XXI.
[3] F. X. Wernz, S. J., *Ius Decretalium* (Rome, 1898), Tom. Ius, p. 221.

Nicholas IV in 1289 by the Bull "Nobis vero."[4] Bishops have the authority to make such contracts because of their legislative power, but since their jurisdiction is subject to the Pope, he is at liberty to confirm or reject the concordats. In the past bishops have exercised this right, and there were many such concordats made by Bishops; but since the advent of the new Code of Canon Law, this right has been reserved to the Pope alone, because these concordats contain exceptions to Canon Law, which concessions can be made only by the Pope.[5] Another reason for reserving this right to the Pope is that the more recent concordats deal with questions which effect the Church more or less universally, and the Holy Father is the only one who possesses universal jurisdiction.[6]

On the part of the State, those competent to make concordats are the supreme rulers, supreme legislators, or chief magistrates—king, emperor, or president,—acting alone when they have plenary powers, or in the case of representative government, acting with the consent of the representative body, when such consent is necessary for legislation. On the part of both the Church and State, the supreme authorities ordinarily make use of delegates or plenipotentiaries in the negotiations, reserving the power of ratifying the pact in its ultimate and legitimate form.

The form of the concordats, differ according to the solemnity of the occasion, the matter treated, or the form of government with which it is made. There are various ways in effecting the solemnity of these acts. For instance, there are given, either on the part of one or both parties, the exchange of special declarations; or after each party has bound himself to the agreement, each single act of the agreement is confirmed, on the part of the Holy See by a papal bull, and on the part of the State by its regular process of law.

Concordats entered into after a war, as was the case with many, partake of the species of a treaty. They are prefaced with a general description giving the names of the contracting powers, relating briefly concerning the delegates or plenipotentiaries endowed with the power of discussing and approving the matter, which is presented in single articles of the document, followed by a general treatise of the various distinct articles.

[4] A. Mercati, *op. cit.*, pp. 89-111.
[5] *Codex Iuris Canonici* (Rome, 1919), cc. 3; 225; 263, 1o.
[6] F. X. Wernz, S. J., *op. cit.*, No. 166.

The document is written either in the Latin tongue or the vernacular of the nation making the pact, or it is composed of a twofold text, namely, Latin and the national idiom. It is concluded by a final clause, and the signatures of the plenipotentiaries, which is prefaced by the designation of the place, the day, and the year. In every inscription of the names precedence is given to the Holy See. This form has sometimes been confirmed by the promulgation of a particular pontifical bull making the matter treated in the previous concordat, a solemn act of faith or a law. Examples of such concordats are: *Concordata Principium*, so called because it was drawn up between the Princes of Germany and Pope Eugene IV; the *Concordat of Vienna*, contracted by Pope Nicholas V and Frederic III.[7]

The twofold declaration is a form first found in the Concordat of Worms. The first part consists of two documents; one by the Emperor, *Scriptum Imperatoris*, and the other by the Holy Pontiff, *Scriptum Pontificis*, contain the counter promises of both parties about the matter under dispute. The second part of the concordat contains the documents enumerating the privileges granted by both parties, and these like the first two are titled: *Privilegium Imperatoris* and *Privilegium Pontificis*. The formality employed in this procedure is similar to that of diplomatic negotiations. It is an exchange or barter, because both parties state their sides of the question, and by making concessions they arrive at an agreement.

A third form was employed when certain non-Catholic rulers were over-solicitous in regard to their dignity, and were unwilling to concede precedence to the Holy Father, either in the title of the concordat, or in each article. Because of this the convention was made less solemnly through diplomatic signatory notes or *Litteras Reversales*, that is, through the mutual acceptance of the promises given by both parties. The single articles were then promulgated by a special constitution or by the Roman Pontiff, and on the part of the State the same articles were ratified by the issue of a royal edict.

From the terms and expressions employed in the majority of the concordats it is evident that they were intended to heal the wounds of the Church inflicted through hatred and envy; for the history of the concordats, is the history of the sorrows of the Church. Through the guarantees of a concordat, the

[7] A. Mercati, *op. cit.*, pp. 168-177; 177-185.
V. Nussi, *op. cit.*

State, on its part, is freed from the fear of pastoral rule, or interference in politics; the Church, too, is assured of the freedom of its spiritual rule and unhampered exercise of its cult, and the enjoyment of its just rights; and finally it permits both societies to proceed in amiable accord in determining the sphere of activity in regard to mixed matters.

Therefore the most important result of a concordat is a better mutual understanding. The rights of the Church are assured, as is the tranquillity of the State, for nothing is more devastating than religious dissension. Nor does the State lessen in any manner its dignity and authority, for instead of acknowledging a superior power, it merely concedes and obtains certain privileges. Nor does it treat with a subordinate or with a foreign power concerning internal matters, but with a perfect society, not external to the Republic, of matters not exclusively pertaining to the State's rights but to both societies.

However the theory of the absolute necessity of concordats, for the regulating of the relations between the Church and the State, cannot be admitted. For such necessity may in no way be asserted, if between the Church and the State there exists a perfect equality or coordination. Also from the end of both societies, subordination of the Church to the State comprises a manifest absurdity and a dogmatic error, and consequently can in no manner be sustained. Hence it is clear that a concordat is not absolutely necessary according to a certain and indubitable theory concerning the indirect superiority of the Church. On the other hand however, some supporters of the State held the contrary opinion, and, from the legitimate consequences of their theory, were led to deny the necessity of concordats for the State; nevertheless the argument that the Church was not a perfect society and thereby subject to the State, could not be proved, and their proposition was condemned as false.[8]

In regard to things merely ecclesiastical or merely civil, when one power must obtain a concession from the other, a strict bilateral contract is not necessary. For the Church may grant certain favors after the manner of a mere privilege, without any form, pact, or concordat; and similarly the State can licitly turn over to the Church things subject to its jurisdiction without a pact.

The cause of concordats may be considered under a twofold

[8] F. X. Wernz, S. J., *op. cit.*, No. 170; Pope Pius IX Encyl: *Quanta cura*. . . . Dec. 8th, 1864; Pope Leo XIII, Encyl: *Immortale Dei* Nov. 1st. 1885.

aspect, juridically and historically. Juridically their immediate cause is the expressed wills or desires of the contracting parties, coming to an amicable agreement on the matter discussed in a formal convention. Both parties are moved by grave motives to seek this means of restoring friendly relations, and on the part of the Church at least, a special law is constituted which more or less revokes the preexisting common law.

In seeking the historical or radical cause of concordatory legislation, we find it to be the diminution or utter collapse of that submission and devotion in which the nations, by an act of fidelity, were united with the Church. But in time they openly opposed religious duty, and the Church with her laws was feared and regarded with suspicion. Since this is the attitude of the governments and nations, the Church, while condemning error, likewise seeks or welcomes such an opportunity to restore peace and concord among men, as is offered by a concordat. So the Holy Father by granting concessions and forfeiting lawful rights, hopes to win back the souls of the wayward and obstinate; or at least to obtain some liberty and juridical recognition, publicly and solemnly, from the State.

The concessions, which are customarily made in a concordat, may be as many as there are demands under discussion, and in so far as one or the other prevails, the special nature of the convention is somehow designated. However there are three distinct causes of concordats. (1) After a quarrel or controversy, a concordat is made to settle the question, to confirm the peace already restored, or to destroy any agitation that may exist in the minds of the people. This species is called *Concordata Pacis* (A Concordat of Peace). (2) When the parties are friendly, the document is drawn up to strengthen the existing union—*Concordata Amicitiae* (A Concordat of Friendship). (3) In the case of dissension or an imminent breach, the Church makes concessions, to avoid greater evils which would follow open hostility. Such a concordat may be called "A Defence of the Rights and Liberties of the Church."

It is evident from the very nature of a concordat, that it should never be the cause of a disagreement or dissension. If at any time, there should arise a question over some particular part of the document, it is the duty of the contracting parties to gather in convention and come to some agreement on the subject, and to give a clear interpretation of the matter in question. Often such precaution has been taken by the contracting parties

to secure the permanence of the peace established, as the insertion of a final clause in the concordat, to this effect: "If any difficulty should arise in the future, His Holiness, and the Ruler will consult together to reach an amicable agreement."[9] This however, does not hold in the interpretation of the single articles or particular laws. For the lawful interpreter of a law is the author of the law. Thus if the particular law under question is solely a spiritual matter, then it is the right of the Holy See to give the lawful interpretation; if solely civil it is the right of the State. In regard to spiritual matters, that is, those that are classed as mixed, and which ordinarily consitute the essential element of a concordat, the Church retains the supreme legislative power. For just as the Church is unable to change her constitution, so also is she unable to limit or transfer her right over spiritual or mixed matters, because the Church has this right by divine institution; and thus she retains the supreme power of interpreting such laws.

There are other juridical procedures in regard to particular articles of concordats, which have the force of laws. These are governed by the laws of contracts,[10] as they partake of the nature of gratuitous contracts rather than those termed onerous. The onerous contract is the one commonly used in buying or selling, while the gratuitous contract, is that grant or concession on the part of one or the other of two parties. The juridical term "derogation," is nothing more than the partial revocation of a particular article of a concordat. Abrogation is the total revocation of the particular law or article, and such action can be taken only by a competent authority. The reason and right for such action on the part of the legislators of the Church and State vary according to the matter under discussion, and it is beyond the scope of this article to discuss these rights in detail. Finally with concordats, as with other laws, they cease through the revocation made by a legitimate superior, through the cessation of the end for which they were made, and by contrary custom.

Summarily, then, it is evident that concordats are specific acts of diplomacy employed by the Church and the State to settle an obscure and uncertain condition of affairs. The various forms more or less partake of diplomatic negotiations with each of the

[9] F. X. Wernz, S. J., *op. cit.*, No. 174.

[10] D. M. Prummer, O. P., *Manuale Theologiae Moralis* (5th ed., Friburgi Brugoviae 1928), II, p. 210 ff.

parties stating in unequivocal terms their side of the question, after which in a spirit of compromise they reach an agreement. Finally in most of the concordats, as in the concordat settling the so-called Roman Question, there is an evident desire to rectify and to repair injustices, which of course is essential to permanent peace, for St. James says: "And the fruit of justice is sown in peace, to them that make peace."[11]

[11] St. James, iii, 18.

BIBLIOGRAPHY

Angelo Mercati, *Raccolta di Concordati su Materie Ecclesiastichi tra la Santa Sede e le Autorita Civili.* (Rome, 1919).

Conventiones de rebus Ecclesiasticis inter Sanctam Sedem et Civilem Potestatem variis formis initae ex collectione Romana a Vincentio Nussi, Praesule Domestico, Protonotario Apostolico, Canonico Liberano Digesta. (Rome, 1870.)

Acta Apostolicae Sedis, Vols. XIV, XVII, XIX, XX, XXI.

F. X. Wernz, S. J., *Ius Decretalium* (Rome, 1898), *Tom. Ius.*

Codex Iuris Canonici, (Rome, 1919).

Encyclical *Quanta Cura,* Dec. 8th, 1864.

Encyclical *Immortale Dei,* Nov. 1st, 1885.

D. M. Prummer, O. P., *Manuale Theologiae Moralis* (5th ed., Friburgi Brugoviae 1928), Vol. II.

Filippo Bernardini, *Is the Pope a King?* New York, 1929).

The Catholic Encyclopedia, "Concordat."

Vermeersch-Creusen, *Epitome Iuris Canonici,* (Mechliniae, 1927).

I SHALL NOT FEAR THE NIGHT

BRO. BEDE SULLIVAN, O. P.

This going out of soul I do not fear,
While yet I cannot touch what lies beyond;
The day and night are of the closest bond,
That I should cringe when darkness shall appear.
This is my valor while the light is here,
Untrespassed by the faintest cloud of doubt,
Nor vainly shall I long to look about,
When Death shall drape my sun and night is near.

O Soul! content with each half sense of things,
That clothes thy faith with costly certitude;
O Soul! enslaved to flesh since you were born
To share in all its sin and sundry stings,
Complain not in thy last black interlude,
An orphan night awakes on timeless morn.