La modernización de las relaciones Iglesia-Estado en México en el curso del siglo XX

The modernisation of relations Church-State in México over the course of the 20th century

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Abstract: Over the past ten years of the 20th century Mexico has updated a relevant aspect of its legal system. The approval by consensus of constitutional reforms concerning religious issues and the enactment of the Law on Religious Associations and Public Worship have given way to a new framework for relations between State and churches in Mexico.

This article tackles those significant principles laid down in the reformed legal precepts, bearing in mind not only the impact of the historic legacy of the liberal secular State in Mexico but also the need to incorporate within their legal system questions which area fundamental to the Rule of Law.

Resumen: En los últimos diez años del siglo XX México ha actualizado un aspecto de su ordenamiento jurídico de gran relevancia. La aprobación por consenso de reformas constitucionales en materia religiosa y la expedición de la Ley de Asociaciones Religiosas y Culto Público han posibilitado un nuevo marco de relaciones entre el Estado y las Iglesias en México.

Este artículo analiza los principios más significados establecidos en los preceptos constitucionales reformados, teniendo en cuenta no solo el impacto del legado histórico del Estado liberal secular en México sino también la necesidad de incorporar a su sistema jurídico cuestiones fundamentales del Estado de Derecho.

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Over the last ten years of the 20th century Mexico took a quantum leap forward in updating a highly relevant aspect of its legal system. I refer to the sphere of religious freedom and, consequently, the establishment of a new framework for relations with the church and religious groups. The approval of the constitutional reforms to articles 3, 5, 24, 27 and 130[1] and the enactment of the Law on Religious Associations and Public Worship[2], on 15th July 1992, without doubt marked out a new stage in the approach to relations between authorities and churches in general, and to the Catholic church in particular, as well as to the legal system which governed these.

The reform of the articles mentioned in the political Constitution of the United Mexican States in January of 1992 culminated a process which the Republic's President, Carlos Salinas de Gortari, had already initiated when, in his speech on taking possession on the 1st of December 1988, the modernisation of relations with the Church was proposed. This implied, firstly, revision of Mexican law on religious freedom to more closely fit the reality of Mexican society as it was; updating internal procedures to meet the provisions of international legislation which Mexico had accepted as binding; and, finally, the need to engender greater respect for the legal system within the civic consciousness of Mexicans, as well as effective practical enforcement of these laws.

Salinas de Gortari recalled that the differences between State and Church had arisen for political and economic reasons, not due to doctrinal disputes over beliefs, so that modernisation in this sphere required bearing in mind not only what should *change* but also what should remain.

Following this approach, in his third government report dated 1st November, 1991, Gortari called for the advancement of a new legal framework for churches, founded on the following principles:

1. Separation of State and Churches;
2. Freedom of religious beliefs;
3. Secular education in public schools.

"For this reason –the President affirmed– *I call for the advancement of the new legal system for churches, founded on the following principles: institutionalising their separation from the State; respecting the freedom of belief of each Mexican, and maintaining secular education in public schools. We*

[1] *Decree which reformed articles 3,5,24, 27, and 130 and added Provisional Article 17 of the Political Constitution of the United Mexican States,* Diario Oficial de la Federación, 28th January, 1992.

[2] *Ley de Asociaciones Religiosas y Culto Público, reglamentaria de la fracción II del artículo 27 Constitucional,* Diario Oficial de la Federación, 15th July, 1992.

shall promote consistency between the Law and the daily behaviour of the Mexican people, taking another step forward towards internal agreement within the framework of modernisation"[3].

This was not the first time in the recent past that it had been proposed to modify the legal framework in religious matters. In the two presidential terms preceding passage of the reform, the Party for National Action *(Partido de Acción Nacional)* and the Party for Democratic Revolution *(Partido de la Revolución Democrática)* had each drafted initiatives for constitutional reform in this area, considered by the lower house of the 15th Legislature[4].

The State's response took as its starting point the initiative of the Institutional Revolutionary Party *(Partido Revolucionario Institucional)*, presented 10th December 1991, which set out its reasons as follows: *"the form in which the Law grants legal personality to the churches and religious groups is thus laid down. For this purpose it shall create the legal entity of Religious Association, registration to constitute them, and the procedures which such groups and churches must satisfy in order to acquire legal personality"*[5].

From the start, two general principles were laid down: neither the churches nor its religious ministers should interfere in political affairs, nor should they amass property.

The objective of the reform was to modify only aspects which would lead to creating a new legal status for the churches and its ministers, i.e. the relationship of the churches with society and the rights of the former, always following the principle of the State's secular nature, and its strict separation from religious confessions.

In effect, the reform consisted of adapting the provisions of articles 3, 5, 24, 27 and 130 of the *Carta Magna* to the new times. These articles had remained practically unaltered since 1917. These provisions, along with their laws on religious affairs, formed part of the legal order which had been in force since the beginning of the 20th century, but which had suffered from a lack of effective enforcement, since the Constitution was being systematically violated. This situation of mere simulation was not consistent with the image of a country which sought to reinforce its international prestige as a democratic nation. Moreover, its internal procedures concerning religious affairs were out of sync with the international legislation which Mexico had

[3] J. L. LAMADRID SAUZA, *La larga marcha a la modernidad en materia religiosa,* México, 1994, p. 199-200.

[4] *15th Legislature, Crónicas de las Reformas a los Artículos 3º, 5º, 25, 27 and 130 of the Political Constitution of the United Mexican States*, General Archive of the Nation. Chamber of Deputies, Mexico, 1992.

[5] Ibid.

ratified. Updating the legal and political system of the country in this sphere, therefore, became a national priority[6].

The Report on the Draft Decree, which modified a large number of provisions, gained wide acceptance in both the lower and upper house (Congreso de la Unión and Cámara de Senadores) and in state-level parliaments[7]. The press of the time interpreted the vote as a historic consensus between legislators, thus promoting the transparency desired by many Mexicans. Some months later, on 29th January 1992, the new constitutional provisions came into force in the whole country, modifying the legal position of the churches, its ministers and public religious services.

This modernisation of the system of relations between State and churches in Mexico was based upon five principles, laid down in the reformed legal precepts:

1. Separation of State and Churches;
2. Freedom of religious beliefs;
3. The secular nature of the State;
4. Equality of religious associations;
5. Autonomy of religious associations.

Article 130, the backbone of the constitutional reform, refers expressly to the *"historic principle of the separation of state and Churches"* as a guideline which orientates the other provisions. With this new draft, which up to that point had used the term "Church" in singular, in reference to the Catholic Church, the aim was to signify that this separation between State and Churches was a *historic* principle, in so far as it had existed before the current reform and, above all –as was made explicit in the debates in Congress– because it was considered the founding and sustaining principle of the Mexican state. This principle was first set down implicitly in the Constitution of 1857, then later in the reform Laws, and was finally incorporated within the Constitution text of 1873, under the following formula: *"the State and the Church are independent from each other. The Congress cannot pass laws founding or prohibiting any religion"*[8].

The historical context of the mid 19th century brought in a system of separation between State and Church, with recognition of the legal personality of

[6] J. MOCTEZUMA BARRAGÁN, "Balance de la Ley de Asociaciones Religiosas y Culto Público a diez años de su expedición", in *Foro Internacional sobre libertad religiosa*, Secretaría de Gobernación, Mexico, 2003, p. 7.

[7] With the exception of the *Partido Popular Socialista* all the other parties voted in favour. In the Congress, the nominal vote was 460 votes in favour and 22 against. In the Senate the bill was passed by 57 votes in favour. See *LV Legislatura. Crónicas de las Reformas,* cit.

[8] Art. 1 of the Act of 25th September, 1873.

the Catholic Church. This was typically characteristic of the liberal regimes of the 19th century and was founded upon Mexico's reformist legislation. Liberal thought was guided by the need for demarcation of the Church's economic and political power, in order to consolidate the power of the State: there should be no greater power, either internal or external. Thus, the formula which best responded to this aim was the strict separation of the State and the Catholic Church.

Years later, when the legislators of the Constituent Congress of Querétaro (1916-1917) presented a draft for reforms to the 1857 Constitution, they expressed a clear anti-clericalism, founded on supremacy of the State over the churches and their subordination to it:

"It corresponds to the Federal Authorities to exercise its powers in questions of religious services and external discipline. Intervention shall be stipulated by the law. The remaining authorities shall function as auxiliaries to the Federation"[9].

The Constitution Committee of 1916-1917, on establishing the marked supremacy of civil power over religious organisations, eliminated from the Mexican legal system the principle of the state's independence from the Church, understanding that under this principle the legal personality of the Church had formerly been recognised. This was therefore no longer justified. Consequently, article 130 of the Constitution of 1917 expressly recorded that *"The law does not recognise any personality for the religious groups termed as churches"*. In this way the danger of a moral personality was avoided since, if not eliminated by the Reform laws, it could otherwise continue to hinder the functioning of Mexican institutions.

The last constitutional reform of January 1992 updates the principle of separating State and Church in a twofold sense. From the political point of view this principle is identified with the principle of state secularity, and with a politico-religious system of State-Church separation enjoying true religious freedom, while from the legal viewpoint, separation is opposed to legal monism, avoiding identification or merging of legislation and legal structures. State and churches each maintained their own sphere of competence and their own organisation and functioning.

With respect to freedom of beliefs laid down in article 24, the initiative of constitutional reform presented by the PRI-ism legislators fully preserves the format of this paragraph:

"All men are free to profess the religious belief they prefer and to practice ceremonies, hold prayers or respective acts of worship, provided this does

[9] Art. 130 of the Political Constitution of the United Mexican States, enacted in 1917.

not constitute a crime or offence punishable by law"[10].

In addition, as guarantee of the quoted freedom, it indicates later the non-competence of the Federal Congress in passing regulations which would set up or prohibit any religion. Further on, the question of the secular nature of the State was defended by the legislators of the Partido Revolucionario Institucional in the following terms: *"the secular nature of the State is incompatible not only with the preference for a particular Church or any type of religious beliefs but also maintains a neutral position with regard to holding or not any confession or belief. For that reason, promoting beliefs in or affiliations to any church do not form part of the State programme*[11].

In the opinion of the reformers, the Mexican state, in so far as it guarantees freedom of religion and worship to each and every confession, without establishing a system of privileges for –or control over– any of these, protects not only the autonomy of civil power from religious power, but also equally protects the autonomy of religious associations from secular power, which cannot, under any circumstances, impose any particular confession upon the public.

Consequently, the religious confessions, whether majority or minority, find precisely in the secular state the sole guarantee for the exercise of their religious freedom. A secular State with full neutrality in religious matters is the only guarantee of the individual's freedom of belief.

Another of the inspiring principles of the constitutional reforms, the most decisive in the opinion of some analysts[12], was that of equality of religious associations.

It should be remembered that, given the insufficiency of the formula of separation adopted by the Reform's laws, the Constituent Congress of 1916-17 had proceeded to deny the legal personality of churches and religious groups, eliminating them from the public arena and placing them in a strictly individual sphere. This did not prevent the Catholic Church, over the course of the seventy five years between 1917 and the constitutional reform of 1992, from continuing to demand recognition of their legal system, which had pre-existed the very identity of the Mexican state in legal terms.

The response of the Mexican State to the Catholic Church's demands for

[10] This last paragraph added was found in Art. 130 and was moved, since it was considered more appropriate in the chapter on individual guarantees, specifically in Art. 24, which stipulates the guarantees of freedom of belief.

[11] See "Initiative of the legislators of the Partido Revolucionario Institucional for the reform of articles 3, 5, 24, 27 and 130 in the Political Constitution of the United Mexican States, presented on 10th December, 1991 in *LV Legislatura, Crónicas de las Reformas*, cit.

[12] J. L. SOBERANES, "Reflections upon the reform of constitutional art. 130" in *Reformas constitucionales y modernidad nacional*, compiled by L. PÉREZ NIETO, Mexico, 1990.

recognition was precisely to avoid this problem –with everything this implied– and grant a legal personality to churches and religious groups, which were now registered as "religious associations". Up to the constitutional reform of 1992, both churches and religious groups constituted entities of a sociological nature with no formal repercussions for the State's legal order. The different *Initiatives* for Constitutional reforms, presented by the Partido de Acción Nacional, the Partido de la Revolución Democrática and the Partido Revolucionario Institucional, disagreed with each other over whether or not the correct thing was to "recognise or "grant" personality to churches and religious groups[13].

Finally, it became clear that the Mexican State recognised the existence of the churches and religious groups as entities of a sociological nature, albeit requiring that they be set up as religious associations, to be holders of rights and obligations, and thus obtain legal personality. It is up to the State to grant this personality, in so far as it is the responsibility of the State to protect and guarantee their religious aims, on the understanding that these groups are of interest to society.

This formula preserved the twofold principle of equality before the law and respect for the peculiarities of religious confessions, closing the way to privileges and possible discrimination which recognition could encourage: *"The Law or the State does not recognise or is unaware of... churches and other religious groups as such... in contrast, it simply stipulates that if these groups wish to have legal personality within the Mexican legal system, they must register as religious associations, a category newly created by law. It is not that they are obligated to do so, or that not doing so would be an offence or crime, but rather that, we repeat, if they wish the Mexican State to grant them legal personality and to enjoy the benefits stipulated by Law, they must register their specific legal personality in the records provided for this purpose"*[14].

Consequently, and in accordance with Mexican law, all religious associations must have gone through the same formalities for their establishment; they will have complied with the same requirements and will have no years of seniority before 1992. From the legal viewpoint, there is no difference between any of them in terms of either doctrine, number of worshippers, or structure or number of ministers.

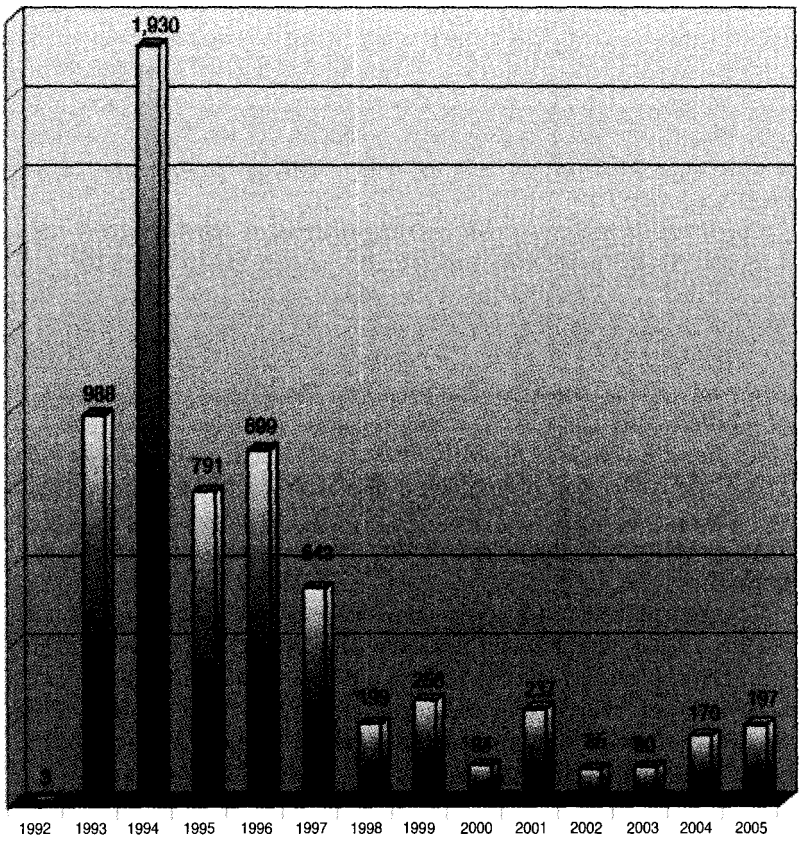
In line with these objectives of the reform, constitutional article 130 was

[13] GONZALEZ FERNANDEZ, José Antonio (et.al), *Derecho Eclesiástico Mexicano*, Instituto de Investigaciones Jurídicas, UNAM, Mexico, 1992, p. 139.

[14] J. L. SOBERANES, "La nueva ley reglamentaria", Derecho Eclesiástico Mexicano, Porrúa-UNAM, Mexico, 1992.

redrafted: *"Churches and religious groups shall have legal personality as religious associations, after having obtained their corresponding registration. The Law shall regulate these associations and shall determine the conditions and requirements for their registration"*[15].

Dirección General de Asociaciones Religiosas
Registros constitutivos entregados por año
Total= 6,484
Actualizado a 15 de febrero de 2006



[15] *Decree which reformed articles 3,5,24, 27, and 130 and added Provisional Article 17 of the Political Constitution of the United Mexican States,* Diario Oficial de la Federación, 28th January, 1992.

The Mexican State thus created an even playing field from the situation prior to the registration of religious associations and granted exactly the same assistance and opportunities to all organisations wishing to set themselves up as religious groups. Six months later, the *Law on Religious Associations and Public Religious Services* regulated the requirements to be met by those applying for registration under article 7[16].

Granting legal personality to religious associations enabled them to enjoy independent organisation i.e. it gave them autonomous competence for their internal actions. From henceforth the rules they adopted, their setup processes, sanctions, procedures, and degree of centralisation or decentralisation would not involve any organ of the State.

On this basis, article 130 of the Constitution clearly established the non-competence of the civil authorities in intervening in the internal life of religious associations, and referred to Mexican Law in matters concerning the requirements for functioning and registration: *"The religious associations shall be directed internally by their own statutes, which shall lay down the fundamental bases of their doctrine, or body of religious beliefs, and shall determine both their representatives and, if applicable, the representatives of their organisations and internal divisions they contain"*[17].

The reform, moreover, introduced new sensitivity with regard to the treatment of religious ministers. The Constitution of 1917 enacted one of the provisions which caused most friction between the Catholic Church and the State. I refer to the faculty which transferred the determination of the number ministers needed in each state over to local government.

By virtue of the principle of autonomy for religious associations, today churches have full freedom to assess the spiritual needs of the population, as well as determining their strategies for expansion and conversion to their faith. It is therefore up to their internal structure to determine both the number and location of their ministers.

The reforms of January 1992 also removed limitations on Mexicans, due

[16] In the Chamber of Deputies four bills were presented: the Ley de Asociaciones Religiosas y Culto Público (PRI), the Iniciativa de Ley de Libertades y Asociaciones Religiosas (PAN), the Iniciativa de Ley Reglamentaria del artículo 130 constitucional (PRD) and the Iniciativa de Ley Federal de Cultos (PARM). The Commission for Governance and Constitutional Affairs agreed to take as reference the PRI-ism initiative and supplement it with the contributions from the other parties for drafting the corresponding report. This report was approved by the Commission on 7th July, 1992 and the Assembly, in turn, passed it in general assembly with 364 votes in favour, 36 against and 2 abstentions. On the report see, "Las relaciones entre las iglesias y el Estado mexicano", in J. A. GONZÁLEZ FERNÁNDEZ, *Derecho Eclesiástico Mexicano...* cit.

[17] See, Art. 6-10 of the *Ley de Asociaciones Religiosas y Culto Público, reglamentaria de la fracción II del artículo 27 Constitucional,* Diario Oficial de la Federación, 15th July, 1992.

to naturalisation and on foreigners to practising the ministry of any faith. From henceforth, both nationals and foreigners could preach any faith, although in the latter case they were bound to comply with migratory regulations relating to their admission and permanence in the country, in order to carry out their religious activities without any restriction other than their condition of being foreigners.

Religious ministers recovered the right to suffrage in all elections; i.e. to vote and be voted for popularly elected posts. However, the Law on Religious Associations did limit the right to passive voting by religious ministers, applying to them the same incompatibilities as to other public posts: *"(They) cannot be voted for popularly elected posts, non can they hold high level public posts, unless they have been formally, materially and definitively separate from their ministry for at least five years in the first case and three in the second on the day of election in question, or the acceptance of the respective post. As regards other posts, six months shall be sufficient"*[18].

The exclusion of religious ministers from the passive vote has been interpreted in some circles as a limitation to the system of religious liberties; a limitation which, from the legislator's perspective, does not concern religious liberty –since this is an individual freedom– but rather political freedoms and the regulation of electoral processes in which one attempts to protect the influence which may be exercised by ministers in the case of popular election, whether for their own benefit or the benefit of third parties. Consequently, ministers cannot associate for political purposes, nor can they preach in favour or against any candidate or political party.

An objective and carefully considered analysis of the new legal framework on religious affair clearly highlights the ability of the Mexican state in religious matters in incorporating within their legal system questions which are fundamental to the Rule of Law. First, was the recognition of rights and freedoms in the religious sphere which had remained restricted since 1917; second, was the opening of channels of dialogue with the churches and religious groups, through the newly created figure of religious association, which involved recognition of its legal personality and equality before the Law; and lastly, the legal configuration of the fundamental right to religious freedom.

[18] See, Art. 14 of the *Ley de Asociaciones y Culto Público* and VV. AA., *Foro Iberoamericano sobre libertad religiosa,* Spanish Ministry of Justice, Madrid, 2001, p. 230-231.