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“The evolution of the secular State in Spain: recent history and current issues”

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The last five years —since the socialist party won the general elections in 2004— have witnessed an increasing tension between the government and religious denominations or, to be more precise, the Catholic Church. A significant part of those conflicts have their origin in the divergences in understanding the consequences of the secular nature of the State and therefore its neutrality towards religions and beliefs. The government’s relationship with religious minorities has been better, but it has not lived up to their expectations, especially with respect to the implementation of the principle of equality.

THE CATHOLIC CHURCH

The main reason of the tension between the government and the major Church in Spain is the Catholic bishops’ perception that the socialist government is decided to: i) undermine the Church’s influence on Spanish society; ii) to inject certain anti-Christian moral values into Spanish society (it is possible to discuss whether that perception corresponds to reality or not but the perception itself is a certain fact).

With regard to the latter aspect, the tension was particularly important during the preparation of, and immediately after, the enactment of the laws introducing same-sex marriages and the so-called “express divorce” in 2005. These laws were understood by the Catholic Church as a serious attack to the traditional notion of family, which in turn is deemed to be essential for a morally healthy society. Those conflicts have been revitalized by the current debate on the projected new legislation on abortion, aimed at introducing free abortion —no more need to allege any particular cause— during the first three months of pregnancy. The reaction of the Catholic bishops has consisted —

among other activities— of frequent statements in media, mobilizations of families once a year (end of December) to organize an open-air mass in Madrid in support of the rights of family.

The foregoing topics, of course, are not directly related to Church-State relations but to general debates about ethics in society. However, they have a Church-State side: the legitimacy of religious authorities' intervention in public debates of general political interest. Curiously enough, religious authorities' statements have been sometimes declared illegitimate by politicians, or well-known journalists, while defending at the same time freedom of expression and the reciprocal autonomy of Church and State in a secular democracy—in a proper secular democracy, the State should be free to organize society independently from any Church's perspective or moral rule, and churches should be free to intervene in the public arena to speak about political issues with a moral dimension and to try to influence public opinion.

With regard to Church-State issues, the main “battlefields” have been the following:

1) Funding of religion

In the past years, there have been discussions about **public funding of religion**, especially of the Catholic Church, which is foreseen in the 1979 Concordat between the Spanish State and the Holy See. The system worked in the last years around the so-called “tax assignment”—tax payers were given the choice to check off a box when filling in the income tax form every year, so that 0.539 % of their income tax was given to the Catholic Church (to be freely administered by the Bishops Conference). However, the money collected through this system never met the expectations of the Church, as materialized in the amount fixed in the State budget in the precedent system. According to the latter, the State budget allocated a certain quantity that was supposed to be sufficient to keep the Church's structures and personnel working. It had been running for a long time—since 1837—and was historically understood as compensation for the State's massive confiscation of a great part of the ecclesiastical properties in Spain along the 19th century (*desamortización*, or confiscation of mortmain property). As the money that went to the Church through the tax assignment

system was less than the money that the Church received in the times of the State budget allocation, the difference was given directly to the Church (including calculations based on inflation indexes).

This anomaly was foreseen by the 1979 Concordat and conceived as a temporary situation. In practice, however, that provisional state of things had experienced a tendency to perpetuate, and neither the Church nor the successive governments wanted to raise the subject, for it was a more or less “comfortable” situation for both of them from a political perspective (although it was clearly irregular from a juridical perspective). During the legislature beginning in 2004, the issue was finally raised as a result of some voices within the socialist party that opposed direct granting of public money to any religious denomination. The problem has been ended by adopting —after an informal agreement between the government and the Bishops Conference— the solution that some legal scholars had been suggesting for years: to eliminate all allocation of money for the Church in the State annual budget while at the same time raising the percentage of income tax that tax payers could give voluntarily to the Church —it has been raised to 0.7 %, approaching the Italian model, which seems to be a more realistic figure.

The new system has been, until now, accepted by both sides without problem, and only a few voices claim publicly for a complete elimination of any public money going to the Church through whatever system. In this regard, we must keep a variety of factors in mind:

- Tax payers can decide also about the destination of another 0.7 % of their income tax so that it can be given to a variety of NGOs, selected every year by the government on the base of allegedly objective criteria. Therefore, the tax assignment to a church is not the only case in which citizens can decide on the use of the money they pay to the State.
- The 1979 Concordat expressed the wish of the Catholic Church to seek ways that facilitate its appropriate self-financing in the future. Nevertheless, this declared wish does not seem to have ever materialized in concrete substantial initiatives.
- Some other significant religious minorities currently request the adoption of the same system for them (particularly Protestants and Muslims), in

spite of their declared intention—in the 1980s— that they preferred self-financing and were satisfied with State help in the form of merely tax benefits (tax exemptions and tax deductions for donors). The Jewish communities refuse the tax assignment because they do not like any State record through which citizens can be identified, even indirectly, as Jews; but they would welcome any system through which the State provides direct funding to them.

- In Spain, as in many European countries, there are many private activities funded by the State because they are supposed to be of social interest—from theater or cinema to sport or the preservation of ancient local dialects or customs. In this context, many people think that it would be discriminatory to deny religion economic advantages that are available to other social initiatives deemed positive for society.

2) Education and religion

This has been a typical aspect of the State cooperation with religion, and also a source of tensions between some Spanish governments and the Catholic Church. Currently there are two main controversial issues: the dismissal of Catholic religion teachers in public schools and the Catholic Church's opposition to the school subject "Education for citizenship", recently introduced as a mandatory subject in all schools of the country, public as well as private.

With regard to the **dismissal of Catholic religion teachers**, the main problems have been raised in the courts, rather than in the political arena, and refer to the possibility of denying the permit to teach religion to a teacher that publicly observes a conduct deemed immoral by the official Catholic doctrine. This has to be understood within the context of the Spanish system of religious instruction in school, in which—as in other European countries— denominational teaching of a religious doctrine is conceived as a legitimate expression of the State cooperation with religion.

According to the 1979 Concordat, Catholic religious instruction has to be included in the school curricula of all pre-University educational levels and the University Schools for Teachers Training. Catholic instruction cannot be mandatory for

students, but all public schools are obliged to offer it to the students as an option. The teaching of Catholic religion in schools has to be included as a course in conditions equal to the rest of the fundamental courses of the school curricula, including a proportionate assignment of credits to the subject of Catholic religion. In practice, the social demand of Catholic instruction in school is high, although numbers decrease as the students' age increase; the percentage of students that choose classes of Catholic instruction is much higher in elementary and primary education than in secondary education, especially in public schools. In the last years, if we take together the data from the different educative levels and from all educational centers —public, private Catholic, and private secular—, the percentage of Spanish pre-University students taking voluntarily the subject “Catholic Religion and Morals” is between 75 and 80 %. With a slightly different profile, Spanish legislation also foresees the denominational teaching of other religions in public schools, namely Protestantism, Judaism and Islam.

Only the bishops are competent to evaluate whether a person is qualified to be a Catholic religion teacher, to define the contents of religious instruction and to approve the relevant textbooks. Appointments of Catholic religion teachers are for a one-year term, and are automatically renovated every year unless the relevant bishop decides to remove a teacher that is no longer considered appropriate for that function. To be appointed a teacher of Catholic religion it is necessary to have obtained a *declaración eclesiástica de idoneidad*, i.e. a certification of competence, granted by the bishop, which requires a minimum of theological studies. In practice not only clergymen but also many lay people —men and women— are recognized by the Spanish bishops as qualified to teach religion in schools. Although the ecclesiastical hierarchy selects the teachers of Catholic religion, they are hired and paid by the State. When religion teachers are not tenured —i.e. with the typical European stability of a civil servant— they are employed by the State, for the term of an academic year, full-time or part-time, under a regime of labor contract; they then receive a salary equal to that of interim teachers of other subjects, according to the number of teaching hours per week.

The problems regarding dismissals of religion teachers derive from the hybrid character of their legal status, i.e. from the fact they have a contractual relationship with the State —which hires and pays them— but their appointment, and removal, is controlled by the Catholic hierarchy through the legally required certification of competence. The bishop of the relevant diocese must confirm the appointment of

religion teachers (at least implicitly) every year in every school and, consequently, may remove them at his discretion when he ceases to consider a teacher appropriate to fulfill his/her educative function. The main conflicts have arisen when some religion teachers have been removed not for lack of doctrinal competence or for theological deviations, but rather for behaviors that are deemed contrary to Catholic morals, e.g. for celebrating civil marriage, obtaining a civil divorce from a canonical marriage, extra-matrimonial pregnancy or living with another person without being married.

In 2007 the Constitutional Court held that the Concordat's provisions recognizing the bishops the competence to decide about the qualification of a religion teacher are constitutional, for that competence is part of the churches' right to their autonomy. And, being a denominational teaching of a religious doctrine, the churches may legitimately consider that complying with essential moral standards is a part of the necessary qualification of a religion teacher, because religion cannot be reduced to merely a series of theoretical doctrines but has direct consequences for the conduct and life of the faithful. Therefore, the labor rights of the teachers must yield to the discretionary power of the bishops when they decide about their qualification, which operates as a precondition to be recognized as capable to do their job correctly. The 2007 decision of the Constitutional Court has not been, however, the end of the story. The Supreme Court has held the opposite view in a very recent decision (2009), which will be probably appealed and later decided by the Constitutional Court. There are chances that this issue ends in the hands of the Court of Strasbourg in the future.

The second issue is the Church's **opposition to the newly introduced school subject called "Education for Citizenship"**, which is mandatory in most educational levels of pre-University education. The reason of that opposition is, allegedly, that this subject include some ethical contents that most bishops and many Catholic parents consider contrary to the Catholic doctrine and morals, particularly in the realm of the notion of family, human affectivity and sexuality, and gender ideology. According to the bishops' position, it is not only a matter of opening the door to possible practical abuses (in this regard, it is true that a number of the textbooks approved by the Ministry of Education contain passages with views contrary to the Church's tenets, and sometimes clearly offensive for believers). For the bishops, the presence of some contents, as such, constitutes an indoctrination in secular moral values that may be

contrary to the parents' conviction and therefore in violation of art. 27 of the Spanish Constitution and art. 2 of the Protocol I to the European Convention on Human Rights. In other words, there are certain issues that, because of their moral profile, should be excluded from the school and reserved for the education provided by the parents. Had the "Education for Citizenship" been limited to the explanation of constitutional and civic values —the bishops say— they would not oppose to it. The Vatican has been supportive of this position.

The government, while accepting the possibility of practical abuses in the form of moral indoctrination, rejects that the new subject includes ethical contents other than the moral values implicit in the Constitution, with a special emphasis on those values that are supposed to materialize the principle of equality. Up to some extent this entails —the government adds— a moral teaching, but one that is rooted in constitutional values and therefore constitutes a sort of common secular ethics for the Spanish people that can consequently be part of a mandatory subject in schools to educate the youth. At the Catholic side, some reject the mere idea of a socially shared secular ethics while others accept the idea as reasonable —and realistic— but denounce that the current government, under the cover of that idea, endeavors to indoctrinate students with a partisan view of some controversial issues regarding the notion of human rights.

In my opinion, a factor that has contributed to trigger the conflict has been the bishops' perception —which may be not so wrong— that the government wanted to reinforce the idea of a secular ethics totally independent from the religious "tissue" of the Spanish society and allegedly rooted in supposedly "enlightened" values —when those secular values contradict some doctrinal elements of the Church, the conflict is served. In addition, the Spanish bishops have perceived that the government's effort to materialize secular ethics into a compulsory school subject was parallel to the endeavor to diminish the significance of religious instruction in school, and this is something they are not prepared to accept, persuaded, as they are, that teaching religion is far more important than teaching secular ethics and that Catholic instruction in schools is essential to preserve the traditional Catholic character of the Spanish people. Whether these perceptions are right or wrong, the fact is that they have become the emblems of a sort of quarrel between positions that present themselves as secular or religious, thus revitalizing a historical dispute that was absent from —or at least latent in— the Spanish politics in the decades that followed the democratic transition of the late 1970s.

In the last two years, encouraged by the bishops and some Catholic organizations, many parents have alleged conscientious objection to this school subject on behalf of their children and affirmed that they are not prepared to bear that their children are indoctrinated by the State in moral doctrines that they consider wrong. In Spain there is at this moment a remarkable movement of civil resistance purportedly based on conscience grounds. Conscientious objection has been preached from the pulpits but often fought in the schools. There is no atmosphere of dialogue between the Church and the government on this issue. The response of the public authorities has varied according to the diverse regions (competences on education are decentralized in Spain). By and large, the autonomous communities with a conservative government have been tolerant to, and even supportive of, conscientious objectors, while those with a socialist government have been very firm and sometimes have taken disproportionate measures —as, for instance, officially publishing and giving wide publicity to the list of objector children, or even submitting them to strong pressures to give up their attitude, at the limit of harassment sometimes. The way of dialogue and conciliation has been rarely used and often the issue has ended in the courts. There have been contradictory decisions by different Appeal Courts in Spain, recognizing or rejecting, respectively, the right to object. The conflict is now pending before the Supreme Court, which is expected to decide at the end of January 2009.

3) Religious symbols in public places

The issue of religious symbols in public places has two sides: the personal use of symbols by persons that want (or must) show their beliefs in public and the institutional use of symbols.

The former has raised numerous problems in some European countries, especially with regard to the wearing of Islamic headscarves by women in educational or administrative facilities; France, Germany, United Kingdom and Turkey are the most well known cases but not the only ones. In Spain, until now, this problem has been virtually absent. The Spanish policy is based on tolerance of the personal use of all sorts of religious symbols in schools and other public places. Only a few residual problems have emerged and have been easily resolved.

Instead, the presence of Christian religious symbols in public facilities such as classrooms, courtrooms, meeting rooms of local governments, etc. has been challenged by people who think that, in a secular State, the public space should be a “religion-free” environment, without further distinctions.

An occasional issue has been the presence of religious symbols in places where oaths for public service are taken. In Spain we have had a long-standing tradition of State officials and civil servants swearing their allegiance to the nation when taking office. Since 1978, every person is given the option either to swear or to promise allegiance to the Constitution (a frequent practice is that believers choose the oath and non-believers choose the promise). Accordingly, in the room a crucifix or bible for the oath and a Constitution for the promise are normally prepared. However, some people have sporadically claimed that a secular State should not even give the opportunity to take an oath before a religious symbol. This position has not been successful and has not generated a real debate in Spain; in a country that is used to see many Christian figures and symbols in the public square, the idea of preventing someone to voluntarily reinforce his compromise of loyalty to the Constitution with a religious oath seems quite incomprehensible.

The main issue, similarly to what has occurred before in Italy or in Bavaria, has been probably the presence of a crucifix in the classrooms of public schools. Crucifixes have been gradually disappearing from many public schools, either as a matter of custom or by regulation of the regional authorities (as in Andalucía). In some of them, however, they still remain. A first instance court has recently decided in favor of the removal of crucifixes from the classrooms of a public school in Valladolid, attracting the attention of the public opinion (14 November 2008). The removal had been requested by a representative of a local association “pro secular school”, parent of a student of that school, and rejected by the school board. The court, while refusing to accept that the presence of the crucifix pursued a proselytizing aim or had a proselytizing effect, considered that the particular symbol of a religion was against the principle of neutrality as far as some students could “feel” that the State was more or less “close” to them because of religious reasons; in other words, the presence of the crucifix, in the court’s view, could create in some students the persuasion that to be Christian was a way to be “closer” to the State. The decision will be likely appealed.

Certainly, the rationale of the Valladolid district court does not seem very convincing—if it is just a matter of “feelings” of vicinity to the State, the same argument could justify that a State that removes long-standing religious symbols from the school could appear to the Catholic students—which were the vast majority—as “closer” to the atheists and “more distant” from the Christians. From my perspective, the issue of the institutional use of religious symbols is as significant as difficult, and not susceptible of being resolved through simplistic reasoning. It deserves a serious consideration, including—among other elements—some distinctions between the different nature of diverse types of public places (e.g. courtrooms or parliaments are not the same that classrooms or hospitals) as well as a search for the precise meaning of the State neutrality, its relationship with the cultural and religious roots of the relevant society and the rights of religious or belief minorities.

4) Apostasy and ecclesiastical archives

A recent issue regarding the notion of a secular State has emerged as a consequence of the desire of some people to be recognized by the Catholic Church as apostates, publicly spread through the media—normally in the context of activism in favor of a “more secular State” in Spain. Arguing upon the base of the Spanish legislation on personal data protection, these persons have requested that the Agency for Data Protection order the Catholic Church to cancel, or even erase, their register of baptism.

Typically, the Church has refused, alleging, inter alia:

- The inviolability of ecclesiastical archives and records, explicitly recognized by the 1979 Concordat with the Holy See.
- The autonomy of churches to govern their own internal affairs, which is an integral part of the right to religious freedom. The register of baptism has no civil effects whatsoever and is a strictly internal record of the Church.
- The specific nature of the register of baptism. Baptism books are merely a record of historical facts and do not contain properly data regarding the belief of a person; indeed, many baptized people have given up their belief in Catholicism and do not consider themselves

Catholics anymore. To cancel or erase a record because of a change in beliefs would be equivalent to falsify or manipulate historical facts.

In 2006, a decision of the Agency for Data Protection, in response to one of the above-mentioned requests from apostates, recognized that baptism registries are not files containing a list of the members of the Church. However, the Agency remarked that personal data must be accurate and updated, and consequently ordered the Church officials not to cancel the applicant's baptism record but to perform an apparently simple activity: they had to give the applicant a certification stating that he had exercised his right to cancel his personal data and that his request had been noted on his baptism record (or alternatively, if that was not possible, to provide the relevant justification for their refusal to do so).

The Church appealed the decision —this may seem surprising, considering that the highest interpretative body in canon law (the Vatican's Pontifical Council for the Interpretation of Legislative Texts) has stipulated that acts of apostasy must be recorded in the baptism registry by the competent ecclesiastical authority (communication of 13 March 2006). The Supreme Court (decision of 19 September 2008), after emphasizing that baptism registries are not “files” in the sense of the law on data protection, accepted the entire reasoning of the Church —the ecclesiastical authority is obliged neither to cancel a baptism record nor to communicate to the apostates that their request for cancellation has been registered.

RELIGIOUS MINORITIES

There has been a lack of political will to engage into serious, and much needed, legal reform to implement the equality principle enshrined in art. 16 of the Constitution. Until now, the socialist government —as the previous ones— has been satisfied with creating a public foundation that provides some funding to the main religious minorities through direct allotment —those who signed a cooperation agreement with the Spanish State in 1992: Protestants, Jews and Muslims.

However, some inequalities subsist between the status of the Catholic Church and that of the main religious minorities (legal status of religious foundations, religious assistance in public centers, some tax benefits). And many inequalities exist between

the status of the religious denominations with cooperation agreement and that of “ordinary” religious denominations: in the realm, especially, of tax benefits, economic cooperation, religious education in public schools, civil effects of religious marriage.