The Legal Status of Religious Groups in Argentina: towards a multi-confessional system

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Abstract

The 1853 Argentinian Constitution set up a religious policy based on two main principles: freedom of religion and the privileged status of the Catholic Church. The 1966 Agreement with the Catholic Church eliminated the government's power to interfere in ecclesiastical matters, but maintained the privileged status of Catholicism. The religious configuration of Argentinian society is nowadays very different from that of the 19th century. In a context of increasing religious diversity, some legal changes point to the transformation of the Argentinian regime from that of a nearly confessional State towards that of a multi-confessional (but not egalitarian) one.

Key-words

Argentina, religious freedom, religious groups, Catholic Church.

1 Introduction

The Argentinian Constitution dates back to 1853. The original constitutional text set up a religious policy based on two main principles: freedom of religion and the privileged status of the Catholic Church. Some years later, the special status of the Catholic Church was confirmed by the 1871 Civil Code, which recognised it as a public legal person, while other religious groups were recognised as private legal persons. The two constitutional principles have constituted since 1853 the pillars of any legal regulation of religion in Argentina.

However, the Argentinian society has profoundly changed since then. The religious landscape is nowadays completely different from that of the middle of the 19th century. Catholicism, though still nominally dominant, is far less strong in quantitative terms and has a much weaker capacity to shape individual and social patterns of behaviour. New religious groups have multiplied their presence in the public space, and they have been quite successful in their competition with the Catholic Church for a greater share of the religious market.

In spite of these significant changes, the two principles mentioned at the outset are still the base of the Argentinian constitutional model. Of course, the Constitution has been amended several times since 1853, and many of the amendments affected religious issues. But the two constitutional pillars that shape religious policies remain the same. In section 2 we will show how the changes in the religious landscape are a consequence of, and a challenge for, the Argentinian constitutional model.

Sections 3 and 4 will study the constitutional and legal status of the Catholic Church and other religious groups, respectively. Despite the continuity of the constitutional framework, the legal (infra-constitutional) regulation concerning the status of religious groups is quite different from that of the 19th century. This legal

change is linked to the diversification of the religious landscape. The dominant tendency points to the transformation of the Argentinian almost confessional system into a multi-confessional (but not egalitarian) one. Indeed, while the Catholic Church preserves the core of its constitutional and legal position, other religious groups are granted many (but not all) of the legal privileges of Catholicism. Some recent projects for other legal amendments follow the same pattern.

2 The Constitutional Model and the Changing Religious Landscape

Roman Catholicism has been largely dominant since the Hispanic period in Latin America. The Catholic Church played an important role in the Spanish conquest, promoting the conversion of indigenous people to Catholicism. Indeed, evangelisation was the formal justification for the Spanish colonial expansion in America.[1]

The breakdown of the Spanish colonial order led to a redefinition of the relationship between the political sphere (now represented by a newborn independent State) and the religious sphere. Although it is discussed by historians what the real strength of the anticlerical tendencies in the political elites of that founding moment was,[2] it seems clear that the relation between the political power and the Church was troublesome. The weakness of the Argentine State made evident its need to rely on the consolidated ecclesiastical structures to accelerate the formation of national institutions at a time when, paradoxically, it was imperative to keep the peace with the Church in whose hands remained important social power resources.[3]

After the independence, the new State had to deal with two problems: the extent of religious freedom (if any) and the status of the Catholic Church. In the 1853 Constitutional Assembly, two positions struggled: on the one hand, those who wanted to establish Catholicism as an *official religion* and to forbid any other religion in the territory; on the other hand, the liberals who wanted to guarantee religious freedom even if they accepted some kind of support to the Catholic Church.[4] The latter position eventually prevailed: the Constitution granted the Catholic Church a particular status (as we will see in detail in section 3) and recognised religious freedom.[5]

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[1] See Enrique Dussel, "Historia de la Iglesia en América Latina: una interpretación", 115 *Revista de História* (1983), 61-87.

[2] Compare, for example, Roberto Di Stefano, "Anticlericalismo y secularización en Argentina", 124 *Boletín de la Biblioteca del Congreso de la Nación* (2008), 15-24; and Daniel Omar De Lucía, "Iglesia, Estado y secularización en la Argentina (1800-1890)", 16 *El Catoblepas. Revista Crítica del Presente* (2003). Retrieved 28 November 2017, http://nodulo.org/ec/2003/n016p13.htm.

[3] See Roberto Di Stefano, "La excepción argentina. Construcción del Estado y de la Iglesia en el siglo XIX", 40 *Procesos: revista ecuatoriana de historia* (2014), 91-114.

[4] The proceedings of the 1853 Constitutional Assembly can be found in the classic text of Emilio Ravignani, *Asambleas constituyentes argentinas* (Buenos Aires, Jacobo Peuser, 1937). See also Salvador Dana Montaño, *La Constitución de 1853 y sus autores e inspiradores* (Santa Fe, Editorial de la Universidad Nacional del Litoral, 1943). Ricardo López Göttig, "La cuestión religiosa en la Convención Constituyente de 1853", 41 *Libertas* (2004). Retrieved 1 December 2017, http://www.eseade.edu.ar/wp-content/uploads/2016/08/Lopez-Gottig.pdf.

[5] Argentinian federal Constitution, Article 14 on religious freedom: "Todos los habitantes de la Nación gozan de los siguientes derechos conforme a las leyes que reglamenten su ejercicio; a saber: […] de profesar libremente su culto […]" ("All the inhabitants of the country enjoy the following rights, according to the laws that regulate their exercise; namely: [...] to freely profess their religion"). See also Article 20, which grants the same right to foreigners. Both Articles are still in force. Article 2 on the particular status of the Catholic Church is studied in the next section.

The resulting freedom of religion clause was inspired by Juan Bautista Alberdi's constitutional project. Alberdi, a 19th century Argentinian political theorist, was convinced of the importance of religious freedom to attract European immigration, especially from Protestant countries. For him, it was imperative to colonise the large and unpopulated country with people of European origin, which were perceived as industrious and hard-working.[6]

Indeed, during the 19th and 20th centuries Argentina was extraordinarily successful in attracting European migrants to its territory. Migratory trends were heterogeneous. Most of the immigrants, of Spanish and Italian origin, were Roman Catholics. But many others, as Alberdi had foreseen, contributed to the diversification of the religious landscape. Jews came from Eastern Europe; Muslims and Orthodoxs both from Eastern Europe and the Middle East; and Protestants from Western and Central Europe. In the second half of the 20th century there was a change in the origin of migratory trends. Since then, the large majority of migrants have come from neighbouring (Catholic) countries.[7]

All constitutional amendments (1860, 1866, 1898, 1949, 1957, 1972 and 1994) maintained the protection of religious freedom. The 1994 amendment granted constitutional hierarchy to many international covenants on human rights. The expression *constitutional hierarchy* is used to express that, since then, these covenants have the same normative force as the Constitution.[8] However, due to the fact that religious liberty was already broadly recognised both in the Constitution and in practice, the *constitutionalisation* of international covenants had a limited impact in this field.

Local Constitutions have religious freedom clauses, very similar to the federal one. In fact, as a result of the federal political system, each one of the 23 provinces and the city of Buenos Aires have its own Constitution, approved by the local people. Local freedom of religion clauses only serve as a symbolic reinforcement, as the rights enshrined in the federal Constitution apply directly in the whole territory of the country.[9] Religious freedom has not been ruled by a single legislative code up to the

[6] Among many other texts, Alberdi's ideas are explained in the classical book of Argentinian legal and political thought known as *The Basis*. Juan Bautista Alberdi, *Bases y puntos de partida para la organización política de la República Argentina* (Buenos Aires, Ciudad Argentina, [1852]1998).

[7] A short synthesis of the history of migrations in Argentina can be found in the website of the International Migrations Report System of the Organisation of American States. OAS International Migrations Report System. 2018. "Argentina: Síntesis histórica de la migración internacional en Argentina". Retrieved 12 September 2018, http://www.migracionoea.org/index.php/es/sicremi-es/17-sicremi/publicacion-2011/paises-es/53-argentina-1-sintesis-historica-de-la-migracion-internacional-en-argentina.html.

[8] Article 75.22 of the Argentinian federal Constitution grants constitutional hierarchy to these international conventions and declarations (in brackets the Articles that are related to religious freedom, if any): American Declaration on the Rights and Duties of Man (Articles III and XXII); Universal Declaration of Human Rights (Articles 18, 2.1, and 26.2); American Convention on Human Rights (Articles 12, 1.1, 13.5, 16.1, 22.8, and 27.1); International Covenant on Economic, Social and Cultural Rights (Articles 2.2, 13.1, and 13.3); International Covenant on Civil and Political Rights (Articles 18, 2.1, 4.1, 20.2, 24.1, 26, and 27), and its Facultative Protocol; Convention on the Prevention and Punishment of the Crime of Genocide (religious groups can be victims of genocide according to article II); International Convention on the Elimination of all Forms of Racial Discrimination (Articles 1 and 5.d.vii); Convention on the Elimination of all Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 1); and Convention on the Rights of the Child (Articles 14, 2.1, 20.3, 29.1, and 30). Later on, the Congress granted constitutional hierarchy to the Inter-American Convention on Forced Disappearance of Persons, the Convention on the non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

[9] Constitution of Buenos Aires, 1994 (Articles 7 and 8); Constitution of Catamarca, 1988 (Article 4); Constitution of Córdoba, 2001 (Articles 5 and 19.5); Constitution of Chaco, 1994 (Article 16);

present.[10] Because of this, the core content of the right has been delimitated by some general legislative acts,[11] case-law,[12] and scholars' doctrine.[13]

Religious freedom has granted an effective and real protection to individuals and groups since the 19th century, in spite of the institutional instability of the Argentinian Republic during many periods. Of course, there have been several cases of violation of constitutional provisions, especially towards some minority groups, but these have generally been isolated cases. This situation has created an atmosphere of tolerance among citizens, which continues today. Indeed, according to international observers, in the first years of the 21st century no strong violations of religious freedom (forced conversions or imprisonment for religious reasons, for example) have been detected; government has promoted religious dialogue; and religious groups have been engaged in the fight against religious discrimination.[14]

Additionally, the equality principle, constitutionally guaranteed,[15] embraces religious matters. People cannot be discriminated either *in* the exercise of religious freedom or *because of* religious causes. There is a federal Act against discrimination,[16] in force in the whole country, which establishes indemnities in case of violation of the constitutional principle of equality. The same Act and the Criminal Code define criminal offences related to discrimination.[17] However, the equality principle as applied

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Constitution of Chubut, 1994 (Article 8); Constitution of Entre Ríos, 2008 (Article 9); Constitution of Formosa, 2003 (Article 31); Constitution of Jujuy, 1986 (Article 30); Constitution of La Pampa, 1994 (Article 22); Constitution of La Rioja, 2008 (Article 33); Constitution of Mendoza, 1997 (Article 6); Constitution of Misiones, 1988 (Article 10); Constitution of Neuquén, 2006 (Article 26); Constitution of Río Negro, 1988 (Article 28); Constitution of Salta, 1998 (Article 11); Constitution of San Juan, 1986 (Article 21); Constitution of San Luis, 2006 (Article 7); Constitution of Santa Fe, 1962 (Articles 3 and 12); Constitution of Santiago del Estero, 2005 (Article 17); Constitution of Tierra del Fuego, 1991 (Article 14); Constitution of Tucumán, 2006 (Article 27); Constitution of the city of Buenos Aires, 1994 (Article 12). The Constitutions of Santa Cruz, 1998, and Corrientes, 2007, do not have a special clause. About the situation in each province, see Juan Cruz Esquivel, "Religión y política en la Argentina. La influencia religiosa en las Constituciones provinciales", 6(2) *Direito da cidade* (2014), 348-368.

[10] Religious freedom in Argentina has been extensively studied in Fernando Arlettaz, "Libertad religiosa y objeción de conciencia en el derecho constitucional argentino", 10(1) *Estudios constitucionales* (2012), 339-372. On the impact of religious freedom as recognised in the Inter-American System of Human Rights, see Fernando Arlettaz, "La libertad religiosa en el sistema interamericano de derechos humanos", 1 *Revista Internacional de Derechos Humanos* (2011), 39-58.

[11] See the Codes and other legislative acts that are mentioned below.

[12] See the judgements mentioned below.

[13] The opinions given before and after the 1994 constitutional amendments are substantially coincident. For pre-1994 opinions, see Germán Bidart Campos, *Tratado elemental de derecho constitucional argentino* (Buenos Aires, EDIAR, 1988), 190 ff. Miguel M. Padilla, *Lecciones sobre derechos humanos y garantías* (Buenos Aires, Abeledo Perrot, 1993), 55 ff. For after-1994 opinions, see Germán Bidart Campos, *Manual de la constitución reformada* (Buenos Aires, EDIAR, 1998), 549 ff. Humberto Quiroga Lavié, Miguel Ángel Benedetti, and María de las Nieves Cenicacelaya, *Derecho constitucional argentino* (Santa Fe, Rubinzal-Culzoni, 2009), volume I, 220 ff. María Angélica Gelli, *Constitución de la Nación Argentina comentada y concordada* (Buenos Aires, La Ley, 2011), 136 ff.

[14] Bureau of Democracy, Human Rights and Labor, United States Department of State, *Argentina, report on religious freedom* (see, for instance, reports from 2001 to 2016). Retrieved 28 November 2017, http://www.state.gov/j/drl/rls/irf/.

[15] Argentinian federal Constitution, Article 16: "La Nación Argentina no admite prerrogativas de sangre, ni de nacimiento: no hay en ella fueros personales ni títulos de nobleza. Todos sus habitantes son iguales ante la ley, y admisibles en los empleos sin otra condición que la idoneidad. La igualdad es la base del impuesto y de las cargas públicas" ("The Argentine Nation does not admit prerogatives of blood, nor of birth: there are no personal privileges or titles of nobility. All its inhabitants are equal before the law, and admissible in employment without any other condition than suitability. Equality is the basis of the tax and public charges").

[16] Act 23592 on Measures against Discrimination (1988).

[17] See, for example, Articles 80.4 and 142.1 of the Criminal Code (Act 11179, 1921).

to religious matters has an important exception concerning the legal status of religious groups. As we have mentioned, the Catholic Church has been granted a particular constitutional status that implies many legal and symbolic privileges.[18]

National census data does not track religious affiliation. All estimates coincide in pointing out that nowadays most of Argentinian people still belong to the Catholic Church, at least in a nominal way. However, the religious landscape is quite different from that of the middle of the 19th century. The European migratory trends between the end of the 19th century and the beginning of the 20th century, and the more recent waves of Pentecostalism which have been very successful in converting a part of Latin America population at the end of the 20th century, have diversified the Argentinian religious configuration.

Statistics based on surveys about religious self-identification indicate that about three quarters of the population define themselves as Catholic. For example, a 2008 survey of the National Council for Scientific Research calculated that Catholics were 75% of the population;[19] and the 2010-2014 wave of the World Values Survey estimated this group at 70% of the population.[20]

It must be emphasised that in both surveys the number of Catholics has been obtained through an auto-identification question. However, the heterogeneity of the Catholic field is very high. Sociology scholars wonder whether self-identified Catholics have *really* anything in common beyond this self-identification.[21] Indeed, a clear line may be drawn between *traditional* Catholics who accept the doctrine and authority of the ecclesiastical hierarchy; and *light* Catholics who formally identify themselves as such but do not follow the Church doctrine and have low levels of practice.[22] According to statistical data, the latter constitute by far the most numerous group.[23]

The fact that many Argentinians still identify themselves as Catholic (even if the number has been steadily diminishing during the last three decades) cannot be completely dissociated of the constitutional and symbolic status of the Catholic Church. As we will show in more detail in the next section, constitutional and legal privileges granted to this Church furthered the idea that *being Argentinian* equalled *being Catholic*. The entanglement between the Catholic Church and the political sphere contributed to produce what a historian called the *myth of the Catholic nation*.[24]

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[18] See *supra* note 5 and *infra* note 37.

[19] Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), *Primera encuesta sobre creencias y actitudes religiosas en Argentina* (2008). Retrieved 28 November 2017, http://www.ceil-conicet.gov.ar/wp-content/uploads/2013/02/encuesta1.pdf.

[20] *World Values Survey* (2010-2014). Retrieved 28 November 2017, http://www.worldvaluessurvey.org/wvs.jsp.

[21] Alejandro Frigerio, "Nuestra elusiva diversidad religiosa: Cuestionando categorías y presupuestos teóricos", 3(2) *Corpus* (2013), 2-6.

[22] Fortunato Mallimaci, "Cuentapropismo religioso: creer sin ataduras. El nuevo mapa religioso en la Argentina urbana", in A. Ameigeiras and J. P. Martín, *Religión, política y sociedad. Pujas y transformaciones en la historia argentina reciente* (Buenos Aires, Prometeo, 2009), 15-43.

[23] According to the 2008 survey, 61% of Argentinians declare that their relation to God is not mediated by any institution (only 23% say that it is mediated by a church); and 76% say that they rarely or never attend religious services. Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), *Primera encuesta sobre creencias y actitudes religiosas en Argentina*, *supra* note 19. A similar conclusion stems from the 2010-2014 wave of the World Values Survey: 64% of Argentinians declare that they attend religious services only on special holydays, once a year, less often, or never. *World Values Survey*, *supra* note 20.

[24] Loris Zanatta, *Perón y el mito de la nación católica. Iglesia y Ejército en los orígenes del peronismo (1943-1946)* (Buenos Aires, Editorial Sudamericana, 1999). Loris Zanatta, *Del Estado liberal a la nación católica. Iglesia y Ejército en los orígenes del peronismo (1930-1943)* (Quilmes, Universidad Nacional de Quilmes, 1996).

Evangelicals are the second religious group in quantitative terms. The evangelical growth dates back to the 1980's. This growth is due mainly to religious conversions and has been parallel to the reduction in the number of Catholics. In this sense, the situation in Argentina is similar to that in Latin America in general.[25] Of course, it cannot be said that Latin America has abandoned Catholicism, but the region is not Catholic in the same way it was at the beginning of the 20th century. Non-evangelical Protestants (Baptists, Lutherans, Methodists, etc.) of migratory (not *conversionist*) origin have a much more reduced weight.[26] The Jewish and Muslim populations, also originated in migratory trends, are even smaller. Other religious traditions, such as Buddhists, Hindus, Mormons, and Jehovah Witnesses, also exist in Argentina.[27]

Finally, religious indifference is more and more usual. Even if the number of atheists is not very high, figures become much more significant if we add the people who doubt or are indifferent about God's existence.[28] Anyway, the most important aspect of the secularisation process in Argentina is not the increase in the number of atheists or religious indifferent people. Secularisation processes mainly imply the dilution of religious commitment and the increasing individualisation of beliefs. Individuals constitute their own systems of beliefs, gathering fragments of different religious traditions. Besides, religious organisations have difficulty determining people's behaviour.[29] These features of Argentinian society go hand in hand with a limited secularisation of the public sphere, as we will show in the next section about the special status of the Catholic Church.

Non-Catholic religious groups question the privileged constitutional position of the Catholic Church.[30] The privileges granted to Catholicism (which will be studied in detail in the next section) are still in force; but they do not correspond to a social imaginary of Argentina as a Catholic country anymore.[31] As some constitutional

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[25] Fortunato Mallimaci and Verónica Giménez Béliveau, "Creencias e increencias en el Cono Sur de América. Entre la religiosidad difusa, la pluralización del campo religioso y las relaciones con lo público y lo privado", 5(9) *Revista Argentina de Sociología* (2007), 44-63. Cristián Parker Gumucio, "¿América Latina ya no es católica? Pluralismo cultural y religioso creciente", 41 *Revista América Latina Hoy* (2005), 35-56.

[26] For statistical data, see the already mentioned surveys. Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), *Primera encuesta sobre creencias y actitudes religiosas en Argentina*, *supra* note 19. *World Values Survey*, *supra* note 20. The protestant field is also very heterogeneous. See Hilario Wynarczyk, "Los evangélicos en la sociedad argentina, la libertad de cultos y la igualdad. Dilemas de una modernidad tardía", in R. Bosca (ed.), *La libertad religiosa en Argentina* (Buenos Aires, Consejo Argentino para la Libertad Religiosa / Konrad-Adenauer-Stiftung, 2003), 135-158.

[27] For statistical data, see the already mentioned surveys. Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), *Primera encuesta sobre creencias y actitudes religiosas en Argentina*, *supra* note 19. *World Values Survey*, *supra* note 20.

[28] For statistical data, see the already mentioned surveys. Consejo Nacional de Investigaciones Científicas y Técnicas (CONICET), *Primera encuesta sobre creencias y actitudes religiosas en Argentina*, *supra* note 17. *World Values Survey*, *supra* note 20.

[29] Fortunato Mallimaci and Verónica Giménez Béliveau, *supra* note 25. Humberto Horacio Cucchetti, "Ofertas religiosas y construcción del sujeto: ¿radicalización democrática vs. recolonización confesional del espacio público?", *II Congreso Interoceánico de Estudios Latinoamericanos* (2003). Retrieved 28 November 2017, http://ffyl.uncu.edu.ar/ifaa/archivo/IIInteroceanico/Sujeto/Enfoques/Cucchetti.doc.

[30] See Waldo Villalpando, "Religión y discriminación en la Argentina", in R. Bosca and J. Navarro Floria (comp.), *La libertad religiosa en el derecho argentino* (Buenos Aires, Consejo Argentino para la Libertad Religiosa / Konrad-Adenauer-Stiftung, 2007), 163-182. Hilario Wynarczyk, *supra* note 26.

[31] For instance, people are strongly opposed to the entanglement between religion and State. The 2010-2014 wave of the World Values Survey has shown that in a scale from 1 to 10 about the right relation between religious leaders and the legal system (1 = democracy implies that religious leaders must

scholars suggest, changes in Argentinian society have not been reflected in the content of the Constitution. The 1853 Constitution responded to a particular context which was very different from that of a 21st century democracy. Contemporary Argentinian society is much more heterogeneous than it was in 1853 and the equality principle requires this diversity to be taken into account.[32]

During the last 20 years, many projects on a Religious Freedom Act have been discussed. The majority of them were very similar in structure and substance: they tried to regulate under a single legislative document different aspects of religious freedom as well as the status of religious groups.[33] Had they been approved, they would have granted non-Catholic groups a very favourable legal status, quite similar (but no identical) to that of the Catholic Church. However, none of the projects has been passed. Sociological studies have suggested that this was due to the internal contradictions of the Evangelical field (by far the most important group among the non-Catholics), the lack of interest of the political elites, and the opposition of the Catholic Church (whose status, however, would have remained unchanged).[34] In 2017, the Executive branch sent to the Congress a new project, developed along the lines of the precedent ones.[35] After the initial impulse, the project, which apparently has the acceptance of the Catholic Church, seems to be stranded in Parliament procedures.[36]

3 The Status of the Catholic Church

The federal Constitution does not establish any official religion, but it compels the federal government to support (in Spanish, *sostener*) the Roman Catholic Church.[37] This constitutional provision dates back to 1853 and has never been amended. Although the

not interpret the law; 10 = democracy implies that religious leaders must interpret the law), the average answer was 3,9. The Argentinean index is near the Spanish (3,44) or the American (3,11) ones. World Values Survey, *supra* note 20.

[32] Horacio Ricardo Bermúdez, "Libertad religiosa e igualdad ante la ley", *Congreso Internacional La libertad religiosa en el siglo XXI. Religión, Estado y Sociedad* (2014), 8-12. Retrieved 30 November 2017, http://www.calir.org.ar/congreso2014/Ponencias/BERMUDEZ.LibertadReligiosaeigualdad.pdf.

[33] Among these projects: 2001 draft project on a Freedom of Religion Act (prepared by the Council of Religious Freedom, an organ of the Secretary of Religions); 2006 draft project on a Religious Organisations Act (prepared by the Secretary of Religions); 2009 draft project on a Freedom of Religion and Register of Religious Organisations Act (prepared by the Secretary of Religions); 2010 project on a Freedom of Religion Act (prepared by representative Hotton); 2017 project on a Freedom of Religion Act (prepared by the Secretary of Religions). The 2012 project on Freedom of Conscience and Institutional Equity (prepared by representative Merchan), on the contrary, has as more secular tone and supresses the public status of the Catholic Church. The projects can be found in the website of the Argentinian Council for Religious Freedom. Retrieved 13 September 2018, http://www.calir.org.ar/proyecto.htm.

[34] Marcos Carbonelli and Daniel Eduardo Jones, "Igualdad religiosa y reconocimiento estatal: instituciones y líderes evangélicos en los debates sobre la regulación de las actividades religiosas en Argentina", 225 *Revista Mexicana de Ciencias Políticas y Sociales* (2015), 139-168.

[35] 2017 project on a Freedom of Religion Act (prepared in 2016 by the Secretary of Religions and sent to the Congress by the Executive branch in 2017). The project can be found in the website of the Argentinian Council for Religious Freedom. Retrieved 13 September 2018, http://www.calir.org.ar/proyecto.htm.

[36] The 2017 project has been analysed in Fernando Arlettaz, "Las organizaciones religiosas en el proyecto de ley de libertad religiosa de 2017: una perspectiva comparada", *La Ley*, 27 December 2017.

[37] Argentinian federal Constitution, Article 2: "El Gobierno federal sostiene el culto católico apostólico romano" ("The federal Government supports the Roman Catholic religion").

clause is different from those in previous constitutional texts which explicitly defined the Catholic Church as the official one,[38] it confers a privileged position to Catholicism.

Before the independence, Catholicism was the only permitted religion. The Catholic Church was intimately linked to the political structure of the Spanish empire, and colonial authorities exercised a series of strong prerogatives in its government. These prerogatives constituted an institution known as *Regio Patronato Indiano*. The independent Argentinian State claimed a right to these same prerogatives. For this reason, the 1853 Constitution included many dispositions that granted the federal government a right of interference in ecclesiastical affairs (nomination of bishops, installation of new religious orders, publication of canon rules, etc.).[39] These dispositions formed an institution named *Patronato Nacional*, the successor of the *Regio Patronato Indiano*.[40]

As a result, Catholicism was in an ambivalent position: it was directly favoured by political power (as the only permitted religion in colonial times and as a prefered religion after the 1853 Constitution), but its internal organisation was deeply intertwined with and dependent on secular authorities. This position was in line with the social role of Catholicism during the colonial period and the first independent decades. Indeed, in Argentina, as in Latin America in general, the Spanish monarchy imposed a symbolic and moral order whose features were transposed to the social representation of the nation-State. The maintenance of this *Catholic order* after the independence was a proof of the Church's capacity to create patterns of moral and social behaviour.[41]

Moreover, political elites had in the Church an ally that allowed them to expand and maintain State power in a vast territory that they would have been otherwise unable to control.[42] State support for Catholicism not only served the interests of the Church, but also of the State itself. It was somehow a marriage of convenience for both parties. The dominant position that the Church had in Argentina for almost two centuries produced a phenomenon that was described as a *complementarity of functions and legitimacies* between State and religion.[43] The educational system, the military service

[38] See 1819 Argentinian Constitution (*Constitución de las Provincias Unidas de Sudamérica*), Article I; 1826 Argentinian Constitution, Article 3.

[39] See Argentinian federal Constitution, former Article 76 (numbering according to the original 1853-1860 text) / Article 89 (numbering according to the 1994 amendments) which required the President and the Vice-President to be Catholic; former Article 80 (numbering according to the original 1853-1860 text) / Article 93 (numbering according to the 1994 amendments) which included a religious oath for the President and the Vice-President; former Article 86.8 (numbering according to the original 1853-1860 text, suppressed in 1994) on the President's right to present candidates for bishops (from a previous list of three people voted by the Senate); former Article 86.9 (numbering according to the original 1853-1860 text, suppressed in 1994) on the President's right to authorise canon laws to be applicable in the country (with the agreement of the Supreme Court or the Congress); former Article 67.19 (numbering according to the original 1853-1860 text, suppressed in 1994) on the Congress' right to arrange the exercise of the *Patronato Nacional*; former Article 67.20 (numbering according to the original 1853-1860 text, suppressed in 1994) on the Congress' right to admit new religious orders; former Article 67.15 (numbering according to the original 1853-1860 text) / Article 75.17 (numbering according to the 1994 amendments) on the conversion of indigenous peoples to Catholicism.

[40] The functioning of the *Patronato Nacional* has been explained in some classical texts of legal doctrine. See Ramiro de Lafuente, *Patronato y concordato en la Argentina* (Buenos Aires, Editorial R. L., 1957). Faustino Legón, *Doctrina y ejercicio del Patronato Nacional* (Buenos Aires, Lajouane, 1928). Cesáreo Chacaltana, *Patronato nacional argentino* (Buenos Aires, Imprenta de la Penitenciaría, 1885).

[41] See an explanation of these tendencies in Jean-Pierre Bastian, "Pluralisation religieuse, pouvoir politique et société en Amérique latine", 98 *Pouvoirs* (2001), 135-146. See also Jean-Piere Bastian (ed.), *La modernité religieuse en perspective comparée. Europe latine-Amérique Latine* (Paris, Karthala, 2001).

[42] Roberto Di Stefano, *supra* note 3, 102.

[43] Juan Cruz Esquivel, "Laicidad, secularización y cultura política: las encrucijadas de las políticas públicas en Argentina", 8 *Laicidad y libertades: escritos jurídicos* (2008), 69-102.

and a patriotic liturgy that encompassed a religious (Catholic) symbolism were the pillars of the construction of the Argentinian cultural citizenship.[44] At end of the 19th century, the liberal elites tried a certain secularisation of the public sphere. The Catholic Church had to face reforms that affected normative fields traditionally influenced by it. However, the secularisation of the political institutions was partial and was not parallel to a secularisation of society.

Since the 1920's, the dominance of the liberal tendencies gave way to nationalist political perspectives, of Catholic and Hispanic inspiration. The Catholic Church opposed the anticlerical secularism of the liberals with a strong public mobilisation and an alliance with authoritarian political actors. The idea of a *Catholic Argentina* was a mobilising myth which served to fight both liberal and communist tendencies. This alliance reached its peak in the 1930's and the 1940's when the *myth of the Catholic nation*, which we have mentioned in the previous section, became stronger.[45]

Indeed, many personalities of the Catholic nationalism played an important role in the 1943 coup d'état and in the subsequent military government. A Catholic fundamentalist vision that identified Catholicism and nationality was then consolidated.[46] This Catholic traditionalism promoted the *catholicisation* of the State, the armed forces, the political parties and Argentinian society in general.[47]

Between 1853 and 1994 various unsuccessful constitutional reforms were attempted. Félix Frías, a conservative political leader, tried to restore the official state religion during the 1860 reform Assembly. On the contrary, Juan B. Justo and Mario Bravo, two socialist members of the Congress linked to a scientific-positivist approach, promoted a project to completely separate church and state in 1925. Tesorieri, a member of the Congress, presented another project of separation in 1955. The Council for the Consolidation of Democracy (in Spanish, *Consejo para la Consolidación de la Democracia*), an institution created after the end of the last military dictatorship to propose constitutional reforms in order to reinforce the democratic system, also suggested the separation.[48]

The *Patronato Nacional* was *de facto* eliminated by the 1966 Agreement between Argentina and the Holy See.[49] Nevertheless, the constitutional clauses that established it

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[44] Roberto Di Stefano, *supra* note 3, 101.

[45] Fortunato Mallimaci, "Nacionalismo católico y cultura laica en Argentina", in R. Blancarte, *Los retos de la laicidad y la secularización en el mundo contemporáneo* (México, El Colegio de México, 2008), 239-262.

[46] Fortunato Mallimaci, Luis Donatello, Humberto Cucchetti, "Religión y política: discursos sobre el trabajo en la Argentina del siglo XX", 24(2) *Estudios sociológicos* (2006), 423-449. Loris Zanatta (1999), *supra* note 24. Loris Zanatta (1996), *supra* note 24.

[47] Fortunato Mallimaci and Juan Cruz Esquivel, "La tríada Estado, instituciones religiosas y sociedad civil en la Argentina contemporánea", 8 *Amerika. Mémoires, identités, territoires* (2013). Retrieved 30 November 2017, http://amerika.revues.org/3853. Catholic groups never created autonomous political parties. Instead, they infiltrated existing political options. See Luis Miguel Donatello, "Catolicismo liberacionista y política en la Argentina: de la política insurreccional en los setenta a la resistencia al neoliberalismo en los noventa", 41 *América Latina Hoy* (2009), 77-97, 78.

[48] See Fernando Arlettaz, "Religiones y Estado en Argentina, entre la Constitución y el Derecho Internacional", 4 *Revista Derecho, Estado y religión* (2017).

[49] Agreement of 10 October 1966 ratified by Act 17032. See Juan Manuel Gramajo, "Los acuerdos celebrados entre la República Argentina y la Santa Sede", in R. Bosca and J. Navarro Floria, *La libertad religiosa en el derecho argentino* (Buenos Aires, Consejo Argentino para la Libertad Religiosa / Konrad-Adenauer-Stiftung, 2007), 63-73. The federal Argentinian Constitution explicitly mentions the possibility of a Concordat (Articles 75.22 and 99.11, former Articles 67.19 and 86.14 according to the 1853-1860 Constitution that was in force in 1966).

remained formally in force up to the 1994 constitutional amendments.[50] Before and after the signature of the Agreement, specialists on Constitutional Law discussed if it was legitimate to introduce such a reform, which had not followed the procedure provided by the Constitution itself.[51]

The 1966 Agreement regulates the relationship between the federal government and the Catholic Church. The Argentinian State recognises in favour of the Catholic Church the right to the free exercise of its spiritual power, worship and jurisdiction within its competence (Article I). The Holy See can publish in the country any disposition related to the ruling of the Church, and can freely communicate with bishops, priests, and the faithful; it can also establish religious orders and religious congregations and make come to the country any necessary priests (Articles IV and V).

However, even if almost all the rights and duties related to the *Patronato Nacional* were eliminated in 1966, the federal government still has a limited right of interference in ecclesiastical affairs. According to the Agreement, the Catholic Church can establish new ecclesiastical circonscriptions, or modify the limits of the existing ones, but must notify the federal government, which can oppose to them for legitimate objections (in Spanish, *objeciones legítimas*) (Article II). Bishops and arch-bishops are nominated by the Holy See, but the name of the proposed persons must be communicated to the government, which can present objections of a general political nature (in Spanish, *objeciones de carácter político general*) against those candidatures (Article III). The General Direction for the Catholic Church (which depends on the Secretary of Religions) is the administrative authority in charge of the application of the Agreement.

The interpretation of the constitutional clauses related to the *Patronato Nacional* had provoked strong disputes among legal scholars. After their suppression (*de facto* in 1966 and formally in 1994), only a discussion about the general situation of the Catholic Church in the constitutional scheme remains, that is, a debate about the kind of *support* that the federal government must provide according to Article 2 of the Constitution. The dominant opinion among constitutional scholars is that Article 2 only requires the federal government to give an *economic* support to the Catholic Church.[52] Others say that it also demands a *moral* support to the Church and the obligation of the State to

[50] The 1994 amendments included the suppression of the religious requirement to be elected president or vice-president; the suppression of the Congress faculty to promote the conversion of the indigenous peoples to Catholicism; and the suppression of the attributions derived from the *Patronato Nacional*.

[51] For a classic defence of the 1966 Agreement see Jorge R. Vanossi, *El derecho constitucional de los tratados* (Buenos Aires, El Coloquio, 1969). For a recent defence of the legitimacy of the Agreement, see Jorge Reinaldo Vanossi, "La trascendencia constitucional del Concordato o Acuerdo con la Santa Sede y su significado", *Congreso Internacional La Libertad Religiosa en el Siglo XXI. Religión, Estado y Sociedad* (2014). Retrieved 28 November 2017, www.calir.org.ar. Against this point of view, Humberto Quiroga Lavié, Miguel Ángel Benedetti, and María de las Nieves Cenicacelaya, *supra* note 11, volume II, 950. The subject has been considered in Arlettaz (2017), *supra* note 48.

[52] Carlos R. Baeza, *Exégesis de la Constitución Argentina* (Buenos Aires, Abaco, 1998), 100-101. Alberto Dalla Via, *Manual de Derecho Constitucional* (Buenos Aires, Lexis Nexis, 2004), 121. Susana Cayuso, *Constitución de la Nación Argentina* (Buenos Aires, La Ley, 2007), 39-40. Humberto Quiroga Lavié, Miguel Bendetti y María de las N. Cenicacelaya, *supra* note 13, volumen II, 949. Horacio Rosatti, *Tratado de Derecho Constitucional* (Buenos Aires, Rubinzal, 2010), 236. María Angélica Gelli, *Constitución de la Nación Argentina comentada y concordada* (Buenos Aires, La Ley, 2011), 36-37. For an even stricter interpretation of Article 2 see Marcelo Alegre, "Igualdad y preferencia en materia religiosa. El caso argentino", 45 *Isonomía. Revista de Teoría y Filosofía del Derecho* (2016), 83-112.

cooperate with it and to grant it a public status.[53] An isolated but strong opinion, since it was held by a very influential specialist on Constitutional Law, is that Article 2 demands a *moral* support, but not an *economic* one, by the federal government.[54]

The Supreme Court seems to prefer the strict interpretation in some classical judgements. Indeed, it has established that the Catholic Church is not a branch of the government,[55] and that it must be only granted the privileges *strictly* established in legal or constitutional norms.[56] In a recent judgement about religious education in public schools, the Supreme Court insisted on the non-confessional character of the State.[57] However, the Supreme Court has admitted that some issues are ruled by canon law and are in consequence beyond State power (for example, it has affirmed that some goods are not subject to seizure according to the clause of the former Civil Code that subordinated this matter to canon law,[58] and that the Catholic Church can refuse to pay a promissory note signed in violation of the rules of canon law).[59] Also, the Supreme Court has said that canon punishments cannot be revised by state judges.[60]

The relationship between local governments and religious organisations is ruled by local Constitutions, which hold different standards. One Constitution establishes Catholicism as an *official religion*.[61] Eight Constitutions require local government to *support*, to *protect* or to *cooperate* with the Catholic Church.[62] Three provinces recognise the *Catholic cultural tradition* or the *rights of the Catholic Church*.[63] Two establish a *cooperation system* with all religious groups.[64] Finally, the other ten local Constitutions explicitly separate churches and State, or do not say anything (and so tacitly separate churches and State).[65]

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[53] Jorge H. Gentile, "Por qué una ley de libertad religiosa", in N. Bosca, *La libertad religiosa en Argentina* (Buenos Aires, CALIR, 2003), 47-82, 52. Gregorio Badeni, *Tratado de Derecho Constitucional* (Buenos Aires, La Ley, 2006), 534.

[54] Germán Bidart Campos (1998), *supra* note 13. Germán Bidart Campos, *Manual de la Constitución Reformada* (Buenos Aires, Ediar, 2006), 542.

[55] Argentinian Federal Supreme Court (hereinafter, CSJN according to its Spanish acronym), *Correa* (1893, Fallos 53:188).

[56] CSJN, *Didier Desparats* (1928, Fallos 151:403).

[57] CSJN, *Castillo, Carina Viviana y otros c/Provincia de Salta – Ministerio de Educación de la Provincia de Salta* (2017, CSJ 1870/2014/CS1).

[58] CSJN, *Lastra, Juan c/Obispado de Venado Tuerto* (1991, Fallos 314:1324)

[59] CSJN, *Peluffo* (2013, P. 9. XLVI. REX).

[60] CSJN, *Rybar, Antonio c/García, Rómulo y/u Obispado de Mar del Plata* (1992, Fallos 315:1294).

[61] Constitution of Santa Fe (Article 3).

[62] Constitution of Buenos Aires (Article 9), Constitution of Catamarca (Article 4); Constitution of Córdoba (Article 6); Constitution of La Rioja (Article 11); Constitution of Salta (Article 11); Constitution of San Luis (Article 7); Constitution of Santiago del Estero (Article 17); and Constitution of Tucumán (Article 26).

[63] Constitution of Río Negro (Article 28); Constitution of Santa Cruz (Article 4); and Constitution of Tierra del Fuego (Article 60).

[64] Constitution of Formosa (Article 31); and Constitution of Jujuy (Article 30).

[65] Constitution of Corrientes; Constitution of Chaco (Article 16); Constitution of Chubut; Constitution of Entre Ríos (Article 9); Constitution of La Pampa; Constitution of Mendoza; Constitution of Misiones (Article 10); Constitution of Neuquén (Articles 3 and 25); Constitution of San Juan; and Constitution of the city of Buenos Aires. Local Constitutions have been studied, from the point of view of legal sociology, in Juan Cruz Esquivel, "Religión y política en Argentina. La influencia religiosa en las Constituciones provinciales", *XXVII Congreso de la Asociación Latinoamericana de Sociología / VIII Jornadas de Sociología de la Universidad de Buenos Aires* (2009). Retrieved 29 November 2017, http://www.aacademica.org/000-062/1701.

The former Civil Code (adopted by the federal government and in force within the whole Argentinian territory since 1871) granted the Catholic Church a public status.[66] In 2014, a new Civil and Commercial Code was adopted. It has been in force since 2015. In the new Code, the public status of the Catholic Church has been maintained.[67] It seems that this solution is just a consequence of the inertia of the previous regime. In fact, the explanatory statement that accompanied the preliminary draft of the new Code declared that the inclusion of some public persons in a private law code was only due to the Argentinian legal tradition.[68] According to the restrictive interpretation of Article 2 of the Constitution, which is the dominant one in the doctrine and in the courts' case-law, there is no constitutional requirement to grant the Catholic Church public personality.

The support to the Catholic Church that the federal Constitution and some local Constitutions impose on the respective governments results in many material and symbolic advantages. The federal government provides direct economic aid to this Church (bishops' wages, aids to seminars, etc.), although this aid is not very significant from a quantitative point of view.[69] Indirect aids (like tax exemptions and financial assistance to Catholic schools) are much more important. Indirect aids also come from some local governments.

The Catholic Church enjoys a symbolic preference, both in the federal and in some local jurisdictions. Sometimes this preference emerges from legal prescription (for example, official passports issued to cardinals, arch-bishops and bishops),[70] but some other times it emerges only from custom (for example the catholic *Tedeum* – thanksgiving service– during public holidays).

Institutional preference to the Catholic Church also results in the exhibition of religious symbols in some public offices and public schools, at both the federal and provincial levels. Moreover, Catholic chaplains are provided to hospitals, prisons and the army. Military chaplains are subject to a particular juridical regime, integrated in a special treaty.[71]

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[66] Article 33, according to the amendment introduced by Act 17711 (1968). The original Civil Code used the expression *necessary legal person* instead of *public legal person*, but with a similar meaning. See Fernando Arlettaz, "Problemas teóricos en torno del estatuto legal de las comunidades religiosas en Argentina", 45 *Sociedad y religión* (2016), 13-43.

[67] Article 146. About the regime of the new Civil and Commercial Code on this matter, see Juan G. Navarro Floria, "La personalidad jurídica de iglesias, confesiones y comunidades religiosas", 2 *Revista de Derecho Privado y Comunitario* (2015). It has traditionally been admitted that each diocese, personal jurisdiction, parish and legal person of canon law, as well as each institute of consecrated life and society of apostolic life, is also a public legal person in civil law. See Juan G. Navarro Floria, "La libertad religiosa en el Derecho Privado", in R. Bosca and J. Navarro Floria, *La libertad religiosa en el derecho argentino* (Buenos Aires, Consejo Argentino para la Libertad Religiosa / Konrad-Adenauer-Stiftung, 2007), 243-264. Institutes of consecrated life and societies of apostolic life are also explicitly recognised as public legal persons by Act 24483 (1995). Other Catholic minor entities can be constituted as civil associations or simple associations. The new Civil Code has left this possibility unchanged. About the new Civil Code, see Fernando Arlettaz, *supra* note 66.

[68] *Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación*, 42. Retrieved 13 September 2018, http://www.nuevocodigocivil.com/textos-oficiales-2/.

[69] Among others: Acts 21540 (1977), 21950 (1979), 22162 (1980), 22430 (1981), 22552 (1982), and 22950 (1983) on different financial aids to the Catholic clergy and to Catholic seminaries. Act 24483 (1995) on institutes of consecrated life and societies of apostolic life.

[70] Decrees 1233/98 (1998) and 1636/01 (2001) on identification of religious ministers and official passports for cardinals, arch-bishops and bishops.

[71] Agreement of 28 June 1957 on the Military Jurisdiction and the Religious Assistance to the Army ratified by Legislative Decree 7.623/57, modified by exchange of notes in 1992. See Marta Hanna, "Obispado Castrense para las FF.AA. y de seguridad en la República Argentina", in R. Bosca and J.

The Catholic social preeminent *locus* started to change in the 1980's, after the end of the last military dictatorship. Religious diversity created a competitive scenario, pushing the Catholic Church to adapt its strategies and discourses. Catholicism lost its quasi-monopoly in terms of societal and individual behaviour control, and it was no longer possible to automatically link it with national identity. The capacity of Catholicism to create and maintain a public imaginary was broken.[72]

However, recent legal reforms do not seem to have acknowledged these changes. The 2009 Act on Audio-visual Media, for example, establishes that media enterprises can be public ones, profit private ones, or non-profit private ones (Article 21). Consequently, a substantial difference arises between the Catholic Church and any other religious group. Public legal persons can run a media enterprise with a government *authorisation*, while private legal persons and natural persons need a *licence* (Articles 22 and 23). Licences are granted through a public request for offers. Authorisations, on the contrary, are granted directly and on demand. The Catholic Church is explicitly mentioned among public legal persons that can benefit from an authorisation (Article 37).[73]

Likewise, as we have said, the new Civil Code (in force since 2015) maintains the public character of the Catholic Church. Almost all the projects on a Freedom of Religion Act, which exclude the Catholic Church from the rules on registration of religious groups, also preserve this public status.[74] Many constitutional scholars have suggested that Article 2 of the Constitution should be amended,[75] but a constitutional reform does not seem likely in the near future.

4 Status of Other Religious Groups

Apart from the preference given to the Catholic Church, other religious groups have an equal status under the legal system. However, the regime on the legal personality of non-Catholic groups is currently in a phase of transformation. According to the former Civil Code, non-Catholic groups could obtain legal personality through the constitution of a civil association, i.e., they had to be organised just as any other non-lucrative group (such as a sport club or a cultural association).[76]

Navarro Floria, *La libertad religiosa en el derecho argentino* (Buenos Aires, Consejo Argentino para la Libertad Religiosa / Konrad-Adenauer-Stiftung, 2007), 211-242.

[72] Fortunato Mallimaci and Verónica Giménez Béliveau, *supra* note 25. Jean-Pierre Bastian, *supra* note 41.

[73] Act 26522 on Audio-visual Media (2009).

[74] 2001 draft project on a Freedom of Religion Act (Article 32); 2006 draft project on a Religious Organisations Act (Article 22); 2009 draft project on a Freedom of Religion and Register of Religious Organisations Act (Article 36); 2010 project on a Freedom of Religion Act (Article 7.1); 2017 project on a Freedom of Religion Act (Article 24). The 2012 project on Freedom of Conscience and Institutional Equity, on the contrary, supresses the public status of the Catholic Church (Article 30).

[75] See, Horacio Ricardo Bermúdez, *supra* note 32. The author suggests replacing the privileges granted to the Catholic Church with a system of cooperation between churches and State. A particular mention should be made, however, of the importance of Catholicism in Argentinian history. For a more secular proposal, aiming at a complete separation of churches and the State, see Marcelo Alegre (2016), *supra* note 52. A similar proposal, but associated to the idea that minorities should be given particular guarantees to access the public debate, in Roberto P. Saba, "Neutralidad del Estado, igualdad de trato y tolerancia en materia religiosa", 5(1) *Revista Jurídica de la Universidad de Palermo* (2000).

[76] Non-Catholic groups had to constitute a civil association under Article 33 of the former Civil Code.

Nevertheless, since the 1940's and because of the desire to reinforce State control over non-Catholic groups, many norms imposed on these groups a special duty to register before administrative authorities. The norm currently in force is the Act on the National Register of Religions (federal law in force within the whole country).[77] According to it, registration in the National Register of Religions is compulsory for every religious group that wants to develop its activities in the country: not only *civil* activities (such as acquiring property or hiring employees) but also strictly *religious* activities (such as holding a religious meeting). This regime dates back to the last military dictatorship and is inserted in a tradition aiming at disciplining minority groups.[78]

This heavy system of compulsory registration is probably not compatible with constitutional principles and it has been strongly criticised, since it (theoretically) requires registration even for the simplest forms of collective exercise of religious freedom. Fortunately, the application of legal rules by government agencies is done in a liberal and soft way, and registration of groups is not rigorously controlled.

As a result of the interplay between civil and administrative rules, to be granted legal personality, religious groups should constitute as a civil association (and be registered as such in the ordinary registers of associations) and they should *also* ask for registration in the National Register of Religions. However, practice is much more chaotic. Some organisations have obtained the double registration (registration in the National Register of Religions and registration as a civil association). But many others are registered in the Register of Religions and have never asked for civil recognition (so they are not civil associations, but *simple* associations, according to the classification of the former Civil Code and the current Civil and Commercial Code). Others are civil associations (or even civil foundations) registered as such, without having been registered in the Register of Religions. Finally, there are many organisations set up abroad, with or without registration in the country.[79]

As a consequence, *in fact*, non-Catholic groups can exercise religious freedom without being registered. Legal personality is not an *actual* requirement for groups to exercise their religious activities. However, pursuant to some local regulations, registration is sometimes effectively required in order to conduct activities in public spaces (for example, city authorities may require groups to obtain permits to use public parks or to open a place for public worship, and they may establish that registration is a condition to receive the permit). Moreover, legal personality is effectively required for civil purposes (to register as owner of their premises, for example) or to benefit from tax exemptions.

In order to register, religious groups are required to have a place of worship, an organisational charter, and an ordained clergy, among other conditions. Once an organisation is registered, it must report any significant changes or decisions made regarding its leadership, governing structure, number of members, headquarters address, or any other relevant information. The relationship between non-Catholic religious groups and the federal government is managed by the Direction of the Register of Religions (within the Secretary of Religions).[80]

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[77] Act 21745 (1978), completed by decree 2037/79 (1979), and resolutions 3307/00 and 2092/05 of the Secretary of Religions.

[78] See Fernando Arlettaz, *supra* note 66.

[79] See Juan G. Navarro Floria (2007), *supra* note 67.

[80] One province (San Luis) has created a Provincial Register of Religions; it is doubtful if this initiative is compatible with constitutional principles. See Juan G. Navarro Floria, "Algunas cuestiones actuales de derecho eclesiástico argentino", 21 *Anuario de derecho eclesiástico del Estado* (2005), 301-325.

The *double registration* system was changed by the new Civil and Commercial Code. According to the new Code, "churches, confessions, religious communities and religious entities" should be granted a particular *religious* type of legal personality, and not the common legal personality granted to any association (Article 148.e).[81] Only one registration before administrative authorities would suffice to gain legal personality. However, the new Code only included the general principle about the legal personality of religious groups, and the Act containing the specific dispositions has not been adopted yet. As a consequence, the new Code, though formally in force, cannot be applied and for the moment the old system of double registration continues to be (theoretically) applied.

Case-law on religious minorities has been erratic. In the 1970's, the Supreme Court validated the dissolution of two religious groups decreed by the federal government. The government had based its decision on the argument that the groups were completely dissociated of Argentinian traditions and they represented a danger to the State's interests.[82] The two judgements were delivered during the last military dictatorship which saw the activities of some non-Catholic minorities as dangerous for Argentinian (Catholic) identity. Therefore, they must be seen as representative of a certain period of Argentinian history. The jurisprudence developed after the reestablishment of the democratic system in 1983 is inspired by quite a different approach.

Indeed, recent case-law adopts a more pluralistic outlook and, in some fields, minority groups' rights tend to equal the Catholic Church's. For instance, some tribunals have recognised a *reserved domain* to minority religious groups, which is not under State tribunals' control.[83] They have also admitted that some goods of minority groups are not subject to seizure by creditors.[84] In fact, the new Civil Code establishes that the goods of any religious community that are directly affected to religious activities are not subject to seizure by creditors (Article 74.d).

The preference given to Catholicism is also partially balanced with some policies orientated to minority groups developed in some legislative acts. For instance, the

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[81] About the regime of the new Civil and Commercial Code on this matter, see Juan G. Navarro Floria (2015), *supra* note 67.

[82] The Supreme Court affirmed that the dissolution of the two religious groups (that is, the cancelation of their legal personality) and the prohibition of their activities were not *manifestly arbitrary* since the groups were not registered in the National Register of Religions (the judgements were dictated in the transition period between the former regime of the Decree 1127/59 and the Act 21745; the former Decree, however, was substantially similar to the Act 21745). Because of the rules governing the particular procedure, the Court could not establish if it was *illegitimate*, from a constitutional point of view, to forbid the action of non-registered groups. It had to restrain itself to decide if that interdiction was *manifestly arbitrary*. CSJN, *Watch Tower Bible and Tract Society (Testigos de Jehová) c/Estado Nacional s/amparo* (1977). CSJN, *La Misión de la Luz Divina* (1978, Fallos 300:1263). Accordingly, these judgements cannot be interpreted as the approval, on a constitutional basis, of the system which requires registration as a necessary condition for the exercise of religious freedom.

[83] Cámara Nacional Civil (Appeal Tribunal for Civil Affairs), Section C, *C.A. c/ C.H. s/ fijación de plazo*, 9 December 2004. Cámara Nacional Civil (Appeal Tribunal for Civil Affairs), Section I, *Chami, Elisa c/Casabe, David s/incumplimiento de contrato*, 8 July 1999. Cámara Nacional Civil (Appeal Tribunal for Civil Affairs), Section B, *Iglesia Mesiánica Mundial c/Matsumoto s/daños*, 29 October 1997.

[84] Cámara Nacional del Trabajo (Appeal Tribunal for Labour Affairs), 3rd Section, *Balbuena, Julio César Milcíades c/Asociación Consejo Administrativo Ortodoxo s/despido*, 28 May 2001, ED 197- 131. Cámara Nacional del Trabajo (Appeal Tribunal for Labour Affairs), 3rd Section, *Edelman, Claudia E. c/ Asociación Israelita Tel Aviv*, 16 October 2002.

recent Act on Audio-visual Media declares that religious pluralism is one of its core values (although it confers the Catholic Church a preeminent position).[85]

Projects about religious freedom proposed a transformation of the registration system to harmonise it with constitutional guarantees.[86] Moreover, had they been approved, these projects would have created a special system of legal personality, moving religious groups away from the common regime of associations. As we have said, neither of these projects has been passed. The new Civil and Commercial Code, however, has established the same principle (that religious groups should be recognised a specially tailored religious legal personality). Therefore, if the most recent project on freedom of religion (the 2017 project) was approved, it would develop the general principle of the Civil and Commercial Code and allow its enforcement.

The pre-eminent position of Catholicism is still strong in Argentinian law, as it is clear from what we have explained in section 3. However, it is possible to affirm that a transformation from an almost-confessional system towards a multi-confessional but not egalitarian one is in progress. In the former, the Catholic Church was not formally an official religion but in fact performed some of the roles of it. In the latter, other religious groups are granted some, but not all, the legal advantages granted to the Catholic Church.

The situation of indigenous groups calls for a particular consideration. Since the last amendments in 1994, the federal Constitution contains a bill of indigenous rights. The respect to their identity (which obviously includes their spiritual identity) is guaranteed, as well as the right to a bilingual and inter-cultural education. Likewise, the possession and propriety of their lands (which play an important role in their beliefs) is recognised. Attributions in this matter are shared between federal and local governments.[87] These indigenous rights are a typical element of multi-cultural policies and they stick to the multi-confessional tendency described above.

Yet, there has not been a real development of those constitutional clauses. Many departments of the federal and local governments deal with indigenous affairs, but they are generally focused on social welfare. The new Civil and Commercial Code includes a mention to the right of communitarian land property by indigenous groups. However, the particular features of the legal regime must be detailed in another act, which has not been passed yet.[88] There have been some steps forward in this field (concession of

[85] Act 26522 on Audio-visual Media (2009). See Article 1 and its note; Article 70; Article 121.b, among others. In a highly controversial clause, the Act establishes that advertisements must not offend moral and religious convictions (Article 81.i).

[86] See, *supra* note 33.

[87] Article 75.17 of the federal Constitution: "Corresponde al Congreso: […] Reconocer la preexistencia étnica y cultural de los pueblos indígenas argentinos. Garantizar el respeto a su identidad y el derecho a una educación bilingüe e intercultural; reconocer la personería jurídica de sus comunidades, y la posesión y propiedad comunitarias de las tierras que tradicionalmente ocupan; y regular la entrega de otras aptas y suficientes para el desarrollo humano; ninguna de ellas será enajenable, transmisible, ni susceptible de gravámenes o embargos. Asegurar su participación en la gestión referida a sus recursos naturales y a los demás intereses que los afectan. Las provincias pueden ejercer concurrentemente estas atribuciones" ("The Congress shall have power to: […] Recognise the ethnic and cultural pre-existence of the Argentine indigenous peoples. Guarantee respect for their identity and the right to a bilingual and intercultural education; recognise the legal status of their communities, and the community possession and ownership of the lands they traditionally occupy; and regulate the delivery of other lands suitable and sufficient for their human development; those lands will not be alienable or transferable, nor susceptible to encumbrances or seizure. Ensure their participation in the management of their natural resources and other interests that may affect them. The provinces can exercise these powers concurrently").

[88] According to the new Civil Code, recognised aboriginal communities have a right to the communitarian property of their lands. Article 18: "Las comunidades indígenas reconocidas tienen derecho a la posesión y propiedad comunitaria de las tierras que tradicionalmente ocupan y de aquellas

public lands to aboriginal groups and creation of the Council of Indigenous Participation), but we are still far from a real multi-cultural State.[89]

5 Conclusions

In the middle of the 19th century, when the Argentinian State was created, Argentinian society was a homogeneous Catholic one. The new-born Argentinian State needed to keep the peace with the Catholic Church, whose bureaucracy and territorial extension would be very useful to reinforce the recent and still weak political institutions. Furthermore, the Spanish colonial times had left a heritage of strong entanglement between religion and politics, in both symbolic and material terms, and neither the ecclesiastical authorities nor the political elites were ready to break it.

The 1853 Constitution struck a balance between liberal and conservative tendencies: religious freedom was recognised, but the Catholic Church received a special status. This constitutional compromise must be considered under the light of its political and religious context. Religious freedom was indispensable to attract migrants to an under-populated country; the pre-eminence of the Catholic Church was a consequence of the *Patronato Nacional* claimed by Argentinian elites who did not want to lose the right of interference in ecclesiastical matters. The *Patronato Nacional*, as a continuation of the *Regio Patronato Indiano*, even if it was never formally accepted by Rome, assured the new State some degree of control on ecclesiastical matters.

This scheme was amended in 1966 by an Agreement which practically eliminated any interference of Argentinian authorities in ecclesiastical matters. But the Catholic pre-eminence introduced by the 1853 Constitution remained in force. At the beginning of the 21st century, the balance established by the 1853 agreement has been broken for, at least, two reasons. On the one hand, in 1966 the Catholic Church was (almost) completely liberated from State interference, but it retained all its symbolic and material advantages. The 1966 Agreement was indeed a great deal for the Catholic Church, which was freed from the charges, but retained the advantages, of the 1853 compromise.

On the other hand, and more generally, the 1853 agreement does not strike a fair balance between the political needs of the State and the liberal ideal of equality anymore. The former hegemonic Catholic presence has been substituted by an important diversification of the Argentinian religious landscape, due first to the migratory trends of the 19th and 20th centuries and then to the *conversionist* waves of Evangelical Christianism. The current state of the law is consequently criticised not only by secular intellectuals but also by other (non-Catholic) religious groups which either seek a stricter separation between State and religion or, alternatively, want to benefit from the same advantages from which the Catholic Church does.

Recent legal transformations show that the groups which aim not at a stricter separation but at being on an equal foot with the Catholic Church may have obtained

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otras aptas y suficientes para el desarrollo humano según lo establezca la ley, de conformidad con lo dispuesto por el artículo 75 inciso 17 de la Constitución Nacional" ("Recognised indigenous communities have the right to community possession and ownership of the lands they traditionally occupy and of those that are suitable and sufficient for their human development as established by law, in accordance with the provisions of article 75, subsection 17 of the Federal Constitution"). The Act that approved the new Code included a transitory disposition according to which this right must be regulated by a special act. This special act has not been passed yet.

[89] See Verónica Huilipán and Patricia Borraz, "Pueblos indígenas en Argentina: participando para construir un Estado plurinacional", 29 *Revista Pueblos* (2007), http://www.revistapueblos.org/spip.php?article721.

some of the advantages they search. Some legislative reforms (such as the new Civil and Commercial Code) and some contemporary case-law trends (concerning for example the normative autonomy of religious groups) have enhanced the legal position of non-Catholic groups, notwithstanding the privileged status of Catholicism. The current legal tendency seems to be a transformation of the Argentinian system from an (almost) confessional scheme towards a multi-confessional (but not egalitarian) one. Nearly all the projects for an Act on Freedom of Religion can be placed under this logic. They would create a special legal personality for religious groups (which consequently should not be subject to the common rules on associations) and would grant them many legal advantages, but would not change the status of the Catholic Church.