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The Spanish System of Church and State

*Gloria M. Morán**

I. A NECESSARY HISTORICAL APPROACH

An understanding of contemporary church-state relations in Spain requires, at least, a brief historical review.

The special relation between the Catholic Church and the Spanish state formally began in A.D. 589 when the visigothic King Recaredus proclaimed the religious (Catholic) and political unity of his kingdom at the Council of Toledo. During the reign of Ferdinand and Isabella in the fifteenth century, the Catholic Church assumed an essential role in Spanish society, culture and law.

The deep bond between Catholicism and political power persisted into the Constitutionalist Era of the nineteenth century; all nineteenth century Spanish constitutions (1812, 1837, 1869 and 1876), including that of the Spanish First Republic, declare the Catholic Church to be the established religion, a surprising result considering French liberal influence on those constitutions.¹

As a result of the Catholic Church's established status, freedom of worship did not exist during the nineteenth century (except under the constitution of 1869) nor during the twentieth century until 1968 (except under the constitution of 1931). Only the Catholic Church was allowed to proselyte. Even among Catholics, religious freedom was limited. Catholics could not contract civil marriages, but were required to marry according to canon law.

Relations between the Catholic Church and the Spanish government were not always easy, however, because the political authorities tried to control the national Church. Between 1835 and 1851, the government outlawed traditional

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1. See VICTOR REINA & ANTONIO REINA, *LECCIONES DE DERECHO ECLESIASTICO ESPAÑOL* 183-244 (1983); IVAN C. IBAN & LUIS PRIETO SANCHIS, *LECCIONES DE DERECHO ECLESIASTICO* 39-51 (1985).

church taxes (*diezmos* and *primicias*) and expropriated ninety percent of the Church's property at a time when the Catholic Church owned one-fifth of the land in Spain. These measures impoverished the Spanish Catholic Church to the point that the Church was unable to support itself. In 1851, the Church and the government signed an agreement (concordat) by which the government committed to provide the Spanish Catholic Church annual financial support from the state budget and a wide variety of tax exemptions.²

During Spain's Second Republic (1931-1936), French republican ideas of antimonarchism and anticlericalism took hold in the law.³ Republican regulations adopted a clear hostility toward Catholicism and mandated radical separation between church and state, but the people—overwhelmingly Catholic—did not readily accept these changes. Indeed, popular dissatisfaction with the government's approach to church-state relations was one of the leading causes of the Spanish Civil War (1936-1939).

Following the Civil War, General Franco's political regime (1939-1975) strongly supported the Catholic Church, restoring it as the official, established church of Spain and using it as a political link among the people in favor of General Franco's regime. Relations between the Catholic Church and the Franco government were regulated principally by a 1953 concordat, which gave the Catholic Church a privileged status as the official state religion and recognized its jurisdiction throughout Spain.⁴

As a result of the church's status and jurisdictional authority, only moderate religious tolerance existed and only limited private, non-Catholic worship was allowed until 1967. In that year the Religious Liberty Declaration of Vatican Council II theoretically established religious liberty, but practically retained the pre-1967 privileged legal status of the Catholic Church.⁵

2. See Vicente Carcel Ortí, *El Liberalismo en el Poder*, in 5 HISTORIA DE LA IGLESIA EN ESPAÑA (1808-1975) 115, 154-158 (Vicente Carcel Ortí ed., 1979) [hereinafter HISTORIA].

3. See bibliography in Ortí, *supra* note 2, at 331-94.

4. See Joaquin Luis Ortega, *La Iglesia Española Desde 1939 hasta 1975*, in HISTORIA, *supra* note 2, at 665, 665-713; see also Isidoro Martin Martinez, *El "nacional-catolicismo" en las relaciones entre la Iglesia y el Estado durante el gobierno del General Franco*, in UBI SOCIETAS PLURALISTICA VIGET: ASPECTOS JURIDICOS DE LO RELIGIOSO EN UNA SOCIEDAD PLURAL 163, 163-92 (1987).

5. See the several approaches in EL FENOMENO RELIGIOSO EN ESPAÑA:

A period of political transition from 1975 to 1978 culminated in the 1978 Constitution, which deeply reformed the Spanish legal system and recognized the fundamental right of religious freedom in a country free of an established church.

The 1978 Constitution opened a new age for church-state relations in Spain, but the historical bond between the Catholic Church and the Spanish state could not be removed simply by law; the bond remains deeply rooted in Spanish culture and society. Sociologically, Spain must be considered a Catholic country (more than ninety percent of the population is Catholic); Catholicism is part of the Spanish identity. Consequently, rather than separate church and state, Spain's contemporary constitution accommodates the country's religious background by establishing a less aggressive system of cooperation.

II. CURRENT CHURCH-STATE REGULATIONS

Church-state law in modern Spain proceeds from two basic sources: the state (constitutional norms and ordinary legislation) and covenants or agreements between the state and churches or religious communities.

A. *The 1978 Constitution*

The 1978 Constitution recognizes the following principles in church-state matters:⁶

ASPECTOS JURÍDICO POLÍTICOS (1972); *see also* GUSTAVO SUAREZ PERTIERRA, *LIBERTAD RELIGIOSA Y CONFESIONALIDAD EN EL ORDENAMIENTO JURÍDICO ESPAÑOL* (1978).

6. Article 16 reads,

1. Se garantiza la libertad ideológica, religiosa y de culto de los individuos y de las comunidades sin más limitación, en sus manifestaciones, que la necesaria para el mantenimiento del orden público protegido por la ley.
2. Nadie podrá ser obligado a declarar sobre su ideología, religión o creencias.
3. Ninguna confesión tendrá carácter estatal. Los poderes públicos tendrán en cuenta las creencias de la sociedad española y mantendrán las consiguientes relaciones de cooperación con la Iglesia Católica y las demás confesiones.

The full constitutional text is included in this footnote, because it is the cornerstone of religious liberty and cooperation between the Spanish state and religious groups.

For all references to laws herein, *see* *LEGISLACIÓN ECLESIASTICA* (Antonio Molina & Elena Olmos eds., 6th ed. 1994). Copy on file with Professor W. Cole Durham, Jr., J. Reuben Clark Law School, Brigham Young University.

1) Fundamental rights of ideological liberty, religious liberty and freedom of worship of individuals and groups;⁷

2) Fundamental right of privacy in not being forced to make statements about ideology, religion or beliefs;⁸

3) Nonestablishment of any belief;⁹

4) Cooperative church-state relations, specifically with the Catholic Church but also with other faiths;¹⁰

5) Equal treatment under the law, affirming that "Spaniards are equal under the law, with no discrimination for reason of birth, sex, religion, opinion or any other personal or social reason, circumstance or condition."¹¹ Moreover "the public powers [are] to promote real and effective conditions for the liberty and the equality among individuals and groups;"¹²

6) Interpretation of all constitutional fundamental rights according to the Universal Declaration of Human Rights and any other international agreements signed and ratified by the Spanish Parliament.¹³

B. Ordinary legislation

The 1980 Religious Liberty Law enumerates the individual and group rights included in the constitutional guarantees of religious liberty and freedom of worship.¹⁴

1. Rights of individuals

Individuals are guaranteed the following religious rights:

1) Free practice of any or no religious belief, right to change religious beliefs and right to express religious beliefs openly;

2) Free religious worship; celebration of religious festivities, marriage rites and funeral rites and religious assistance; (Religious assistance is a common practice in any cooperative

7. La Constitución [C.E.] art. 16, 1 (Spain).

8. C.E. art. 16, 2 (Spain).

9. *Id.*

10. *Id.* The Constitution states, "The public powers will take into account the religious beliefs of the Spanish society and will maintain the consequent relations of cooperation with the Catholic Church and other confessions (churches)."

11. *Id.*

12. *Id.*

13. *Id.*

14. See Ley Organica 7/1980, de 5 de julio, de Libertad Religiosa [hereinafter Religious Liberty Law]. Copy on file with Professor W. Cole Durham, Jr., J. Reuben Clark Law School, Brigham Young University.

church-state system. It consists of the state allowing and facilitating churches' performance of religious functions for their believers in state institutions. In Spain, religious assistance is allowed in schools, the armed forces, prisons, hospitals and beneficence (welfare) facilities;¹⁵

3) Right to instruct or be instructed in religious teachings, free religious information and right to choose religious education according to personal convictions;

4) Right to meet and to join and develop religious activities.

2. *Rights of churches, confessions and religious communities*

Under the Religious Liberty Law, churches, confessions and religious communities possess the right to set places of worship, to educate and appoint their religious ministers and leaders, to proselytize, and to maintain relations with other churches inside or outside Spanish territory. The Religious Liberty Law recognizes three limits to these rights:

1) Violation of others' fundamental rights and liberties;

2) Public health, security and morality as constituent elements of public order;

3) Any activity related to psychic or parapsychic phenomena and the spread of "humanistic or spiritualist" values or similar purposes foreign to religious values.¹⁶

This third limit is unusual among constitutions of the world. It poses a key question: Can any state law distinguish religious values from spiritualistic values so that the regulation of humanistic or spiritualistic values does not violate the fundamental right to religious liberty?

Spanish legislation lacks a single label for religious groups; instead many terms are used, including *religious association*, *religious community*, *church*, and *confessional church*. The most common label is *religious confession*.¹⁷

But, what is a religious confession according to the law? History and the constitution offer one example: the Catholic Church. But this archetype¹⁸ or paradigm does not provide a

15. Religious Liberty Law, arts. 2, 3.

16. *Id.*

17. See Agustín Motilla, *Aproximación a la categoría de confesión religiosa en el Derecho español*, in 4 ANUARIO DEL DERECHO ECLESIASTICO DEL ESTADO [ADEE], 107-34 (1988).

18. See Alberto Bernardez Cantón, *La mención de la Iglesia Católica en la*

legal definition nor a clear method for achieving legal recognition as a religious confession.

The 1980 Religious Liberty Law similarly does not define a religious confession, but recognizes as religious confessions organizations that can prove specific qualifications, principally a religious purpose.

But what is a *religious purpose*? The 1980 Religious Liberty Law declares what activities, purposes and entities are not religious in Articles 2 and 3: activities, purposes and entities related to psychic or parapsychic phenomena or that spread "humanistic or spiritualist" values or similar purposes strange to religious values. While no positive statutory definition of religious purpose exists, religious purpose seems to be linked to a particular activity: religious worship.

In sum, a religious confession achieves legal recognition when it can prove specific qualifications, particularly religious purposes. And a religious purpose seems to be one that involves religious worship. Thus, what qualifies as a religious confession seems to be indicated by worship, but this fluid definition of religious confession is highly unsatisfactory.

Besides, there remains the more fundamental question: Does the state have the right to evaluate what is, or what is not, a religious purpose? The supreme court responded negatively in a November 2, 1987, decision declaring that the state cannot dictate or evaluate the contents of religious purposes, but can only establish formal requisites and assess whether these have been met. This is the limit of the law according to the court. The supreme court's holding admits only one rational conclusion: that the law should not define religion, or religious beliefs, or religious confessions, or even religious purposes. Many scholars would agree with this conclusion.¹⁹

Another conclusion seems obvious: that the law likely cannot establish specific qualifications for religious confessions and then provide qualifying confessions a special status, because the resulting discrimination against nonqualifying religious groups could violate the guarantee of equal treatment under the law.²⁰

Constitución española, in LAS RELACIONES ENTRE LA IGLESIA Y EL ESTADO: ESTUDIOS EN MEMORIA DEL PROFESOR PEDRO LOMBARDÍA 403, 404-20. (1989) [hereinafter LAS RELACIONES].

19. See JOSE ANTONIO SOUTO PAZ, EL DERECHO ECLESIASTICO DEL ESTADO: EL DERECHO DE LA LIBERTAD DE IDEAS Y CREENCIAS 105-110 (2d ed. 1993).

20. See Robert A. Destro & Gloria Moran, *Libertad religiosa, igualdad y no*

At this point it must be evident that the Spanish Legislature's choice of protecting individual and collective religious liberties through a system of legal statuses available to qualifying religious groups is facing too many difficulties and controversies in its application.

C. Legal Statutes

Four religious groups have been legally recognized, though with differing statuses, in the constitution and statutes:

1) The Catholic Church which is specifically mentioned in the constitution;²¹

2) Churches with "deep radication"²² in Spanish society which may, according to the law, sign agreements with the state;²³

3) Other churches and religious communities without "deep radication" status but which have legal status as religious communities or confessions and which are inscribed in the Religious Entities Registry;²⁴

4) Religious groups which lack legal status as religious associations because they do not satisfy all the requirements of the law, but which may qualify for legal status as private associations; also referred to as sects or new religious movements in the law.²⁵

Each of these groups is afforded varying degrees of religious protection and each enjoys a different relationship with the Spanish state.

discriminación en los sistemas jurídicos norteamericano y español: consideraciones críticas, in LAS RELACIONES supra note 18, at 289, 289-308.

21. C.E. art. 16, 3 (Spain); see also *supra* text accompanying note 9; Fernando Garrido Falla, *La situación de la Iglesia en España como institución, y su correlativo a su reflejo en el Derecho constitucional español*, in CONSTITUCIÓN Y RELACIONES IGLESIA-ESTADO EN LA ACTUALIDAD 11, 11-22 (1978); Daniel Tirapu Martínez, *Notas sobre la posición jurídica de la Iglesia católica y de las Confesiones en el Derecho español*, in LAS RELACIONES, *supra* note 18, at 391, 391-402.

22. See María José Villa Robledo, *Reflexiones en torno al concepto de "notorio arraigo" en el art. 7 de la Ley Organica de Libertad religiosa*, in 1 ADEE 143, 143-184 (1985).

23. Religious Liberty Law, art. 7.

24. *Id.* art. 5; E. Olmos Ortega, EL REGISTRO DE ENTIDADES RELIGIOSAS, in REVISTA ESPAÑOLA DE DERECHO CANONICO [REDC] 87-121 (1988); Isabel Aldanondo, *El Registro de Entidades religiosas*, in 7 ADEE 13, 13-48 (1991).

25. C.E. art. 22. See for a general approach AGUSTÍN MOTILLA, SECTAS Y DERECHO EN ESPAÑA (1990); see also I. Iban, *Grupos confesionales atípicos en el Derecho Eclesiástico vigente*, in LAS RELACIONES, *supra* note 18, at 271-304.

1. *The Catholic Church*

Though clearly privileged, the relation between the Spanish state and the Catholic Church—with its centuries old tradition as the only established church and the official religion of the state—is the most difficult and often tense relation the state maintains with a religious confession. The relation has been governed by several agreements since 1976 when the 1953 Concordat²⁶ was revoked.²⁷

These agreements differ from the agreements made with other churches. The agreements with the Catholic Church are considered international treaties, governed by the rules of international law, because Spain recognizes the international legal status of the Catholic Church.²⁸ By contrast, agreements with other religious confessions are ordinary state laws.

In addition, the regulations governing the Catholic Church differ from those applicable to other religious confessions, as is evident simply from reading the regulations. While the unique treatment of the Catholic Church may be justified by the Church's role in Spanish society and culture, this privileged treatment illustrates that equal treatment of religious confessions, though possibly a goal, is not a reality in Spain.

It is impossible in this short report to explain all differences in treatment between the Catholic Church and other minority churches. Consequently, this article will focus on the basic matters regulated by the Catholic Church's agreements with the state.

Agreements between the Catholic Church and the Spanish government cover four main issues:²⁹

a. Juridical matters. The state recognizes that each Catholic entity and institution is a legal organization; that Catholic places of worship are inviolable; that Catholic assistance is permitted in prisons, hospitals, and similar public institutions; that Sundays, holidays and other Catholic festivals

26. See *supra* text accompanying note 4.

27. See Carmelo de Diego-Lora, *Hacia la plena vigencia de los Acuerdos del Estado Español con la Santa Sede*, 7 ADEE 189 (1991).

28. See documents on file with Professor W. Cole Durham, Jr., J. Reuben Clark Law School, Brigham Young University. Each Agreement signed with the Catholic Church uses an international tool: the Instrument of Ratification by the Spanish Parliament. Compare other Agreements with Religious Minorities, which are published just as ordinary state laws.

29. For a general approach, see AGUSTÍN MOTILLA, *LOS ACUERDOS ENTRE EL ESTADO Y LAS CONFESIONES RELIGIOSAS EN EL DERECHO ESPAÑOL* (1985).

are also state holidays and festivals; that Catholic matrimony has civil effect; that ecclesiastical court opinions have civil effect when affirmed by a civil court through a summary process;³⁰ and that the state and church will resolve interpretive differences over their agreements through resort to a mixed board.

b. *Education and cultural affairs.*³¹ The state agrees to respect Catholic values in public schools; allow the teaching of the Catholic religion as a main subject in any school (though students are not required to attend these classes); afford civil effect to ecclesiastical academic degrees; and ensure special protection and funds for Catholic historical and artistic patrimony.

c. *Financial issues.*³² The state guarantees financial support to the Catholic Church in three stages: from 1979 to 1982 (extended till 1987), full support from the annual state budget; from 1988 to 1991, 0.5% of the income tax from taxpayers who so elect plus any additional amount from the state budget needed to ensure the 1987 level of support; after 1991, 0.5% of the income tax from electing taxpayers. In addition, the state provides the church expansive income tax exemptions, exemption from taxes on goods and properties used for worship, and fiscal benefits similar to those afforded nonprofit organizations.

d. *Religious assistance to the armed forces.*³³ The state agrees to enact regulations creating a Religious Assistance Service³⁴ for members of all churches in the armed forces, terminating the Catholic Church's monopoly over religious assistance

30. Instrumento de ratificación de 4 de diciembre de 1979 del Acuerdo de 3 de enero de 1979, entre el Estado español y la Santa Sede, sobre asuntos jurídicos.

31. Instrumento de ratificación de 4 de diciembre de 1979 del Acuerdo de 3 de enero de 1979, entre el Estado español y la Santa Sede, sobre Enseñanza y Asuntos Culturales.

32. Instrumento de ratificación de 4 de diciembre de 1979 del acuerdo de 3 de enero de 1979 sobre Asuntos Económicos.

33. Instrumento de ratificación de 4 de diciembre de 1979 del acuerdo de 3 de enero de 1979, entre el Estado español y la Santa Sede, sobre la asistencia religiosa a las Fuerzas Armadas y Servicio Militar de Clerigos y Religiosos.

34. Real Decreto 1145/1990, de 7 de septiembre, por el que se crea el Servicio de Asistencia Religiosa en las Fuerzas Armadas y se dictan normas sobre su funcionamiento; see Gloria Morán, *Evolución, análisis y consideraciones jurídicas sobre la asistencia religiosa a las Fuerzas Armadas: de una tradición multiseccular a su regulación vigente*, 58 REVISTA ESPAÑOLA DE DERECHO MILITAR 101, 101-139 (1991).

in the armed forces, and denying military rank to chaplains providing religious assistance in the military.

2. *Minority churches*³⁵ with "deep radication"

According to the 1980 Religious Liberty Law, art. 7, 1, some religious confessions—those with "deep radication"—qualify for a special status that allows them to make covenants with the state. But what constitutes "deep radication"?

The law speaks only of "Churches, Confessions and religious Communities recorded in the Register that by reason of the ambit and number of believers have reached notorious radication in Spain," so the threshold of "deep radication" remains undetermined. What is the requisite ambit? How many believers are required? Ten thousand? A million? How must the number of believers be proved? What authorizes the state to determine unilaterally whether religious groups have achieved notorious radication? The answers to these questions should appear in the jurisprudence of the courts.³⁶

Currently three religious communities enjoy deep radication status: the Evangelic, Jewish and Moslem communities. Through the Federation of Evangelic Communities of Spain (FEREDE), the Federation of Israelite Communities of Spain (FCI) and the Islamic Commission of Spain (CIE), all three communities signed agreements with the state which were approved November 10, 1992.³⁷

The preamble to each of these agreements explains some of the legal reasons for the agreement. The preambles state that the fundamental rights of equal treatment and religious liberty, "originally born as individual rights of the citizens, also attain, by derivation, to the Communities or Confessions." Thus, these agreements show that Spanish law recognizes the right of equal treatment among religious confessions.

35. For an approach in English about Religious Minorities in Spain, see Gloria Morán, *The Legal Status of Religious Minorities in Spain*, 36 J. CHURCH & STATE 577, 577-595 (1994).

36. See Robledo, *supra* note 22.

37. See Leyes 24/ 25 y 26 /1992 de 10 de noviembre por las que se aprueban los Acuerdos de Cooperación con la Federación de Entidades Religiosas Evangelicas de España, con la Federación de Comunidades Israelitas de España y con la Comision Islámica de España. Copies on file with Professor W. Cole Durham, Jr., J. Reuben Clark Law School, Brigham Young University.

The terms of these three agreements are very similar. The agreements provide:

- a) That places of worship and burial are inviolable;
- b) That the Holy Sabbath is a day of rest and may be celebrated on a day other than Sunday if there is agreement between the employer and the employees;
- c) That all Moslem and Jewish traditional religious festivals may be observed on days other than national Catholic holidays if the employer and the employees so agree;
- d) That for the Moslem and Jewish communities, special accommodations are made for food requirements and fast time;
- e) That religious leaders qualify for legal status within the Social Security Service;
- f) That members of the armed forces may receive religious assistance, including participation in rites and religious activities, and attend places of worship outside armed service facilities in order to fulfill religious duties, when these activities are compatible with the needs of the armed service;
- g) That religious assistance is guaranteed to inmates of prisons, hospitals and similar institutions and that religious ministers have free and unscheduled access to these institutions, but that the cost of this religious assistance will be charged to the religious community;
- h) That religious marriages will be given civil effect if they are evidenced by a civil certificate of capacity that is recorded in the Civil Registry;
- i) That Evangelic, Jewish and Moslem education is guaranteed in public schools and in private schools where it does not contradict the religious ideological frame of the private school, and that these communities may establish and run schools of primary and secondary education;
- j) That the state will effectively collaborate with the Jewish and Moslem communities to foster and promote trusteeships and endowments to preserve Jewish and Moslem historical, cultural and artistic heritage;
- k) That the communities may organize public fundraisers and receive offerings without taxation as well as distribute gratuitous religious literature and provide religious education to ministers or religious leaders in their communities tax free;
- l) That the communities will enjoy other tax exemptions similar to those provided the Catholic Church (FEREDE, FCI and CIE refused to accept any financial aid from their

believers' income tax, so such an arrangement does not appear in their agreements with the state); and

m) That a commission composed of members of the government and of the respective religious communities (FEREDE, FCI and CIE) will be formed to collectively administer and track the development of the communities' agreements.

3. *Minority churches without agreement*

Minority faiths without deep radication that are recognized and recorded in the Religious Entities Registry cannot, according to Article 5, 1 of the 1980 Religious Liberty Law, make covenants or agreements of cooperation with the state. Consequently, the basic regulations governing these groups are those set out in Articles 5 and 6 of the 1980 Religious Liberty Law. Article 5 provides that registered churches, confessions and religious communities will have legal capacity and all the formal requisites necessary to reach this capacity. As explained above, the most ambiguous requisite is the religious purpose, which can be a remarkable source of discrimination among religious minorities. Article 6 guarantees that registered churches, confessions and religious communities will enjoy autonomy and freedom in establishing organizational rules that will allow them to achieve their purposes.

Because religious groups that qualify for registration have legal status, they can claim all the religious rights listed in Article 2 of the 1980 Religious Liberty Law.³⁸ Most of these registered faiths are also regulated by individual ordinary laws in matters such as education, religious assistance, marriage, festivities, ministers' status, tax benefits, and mass media.

4. *Religious groups without registered status*

As explained above, in order to access the protection of Spain's religious liberty regulations, a group must prove a religious purpose which is most reliably indicated by worship activities and which clearly does not include activities, purposes, and entities related to psychic or parapsychic phenomena; the spread of humanist or spiritualist values; or similar purposes. Groups that cannot prove a religious purpose are legally considered nonreligious and therefore receive no religious protection. For these groups the only legal organizational alterna-

38. See *supra* text accompanying note 16.

tives (alternatives made available under the right of ideological freedom) are to obtain the status of a private association (regulated by art. 22, 1978 Constitution and 1964 Associations Law) or to simply exercise the citizens' rights of assembly and free speech without securing a group legal status.

Every day Spanish society faces an increasing number of groups that cannot prove a religious purpose. Some of these groups, those identified as "destructive sects," encourage delictual behaviors such as prostitution, homosexuality, masochism, free sex, use of drugs, violence, brainwashing among followers, suicide, and financial fraud—activities that cause public alarm and social awareness because they all too often appear on the front pages of the newspapers.

In Spain the debate raised by these new groups³⁹ focuses on four sets of questions: a) What should these "religious" groups be named and what is their legal status?; b) Is the *Dirección General de Asuntos Religiosos* (the state authority that approves the registration of religious communities in the Religious Registry) being too restrictive in approving registration of these groups and thereby exceeding its authority?; c) Should these "religious" groups be governed by a special statute that prevents possible delictual activities or by the general (common) law?; d) May the law use forcible deprogramming or faith-breaking techniques in response to manipulation by a "religious" group?

a. *What should these "religious" groups be named and what is their legal status?* Spanish scholars have proposed two names for these new "religious" groups: *sects* and *new religious movements*. Max Weber originally used the terms *sects* to distinguish these new religious groups from established churches. While the term is still preferred by some scholars, it has a pejorative connotation in society. No matter which term is used by scholars, neither sects nor new religious movements are recognized by law, so neither has a legal label.⁴⁰

b. *Is the Dirección General de Asuntos Religiosos being too restrictive in approving registration of these groups and thereby exceeding its authority?* Few of the new "religious" groups are

39. For a general overview and different scholars' approaches, see ASPECTOS SOCIO-JURÍDICOS DE LAS SECTAS DESDE UNA PERSPECTIVA COMPARADA (Juan Goti Ordeñana ed., 1991) [hereinafter ASPECTOS].

40. See M. L. Jordan, *Aproximación al tema de las sectas pseudo-religiosas en España*, in *DIMENSIONES JURÍDICAS DEL FACTOR RELIGIOSO* 255-266 (nd).

registered as religious communities. Occasionally when registration has been rejected by the *Dirección General de Asuntos Religiosos*, the courts have reversed the *Dirección's* restrictive application of the requirements and have mandated registration. Nevertheless, most applications for registration have been rejected both by the *Dirección* and by the courts. Some of the new groups have not even applied for registration, however, because they do not want legal status.

With few of the new groups qualifying for or obtaining registered legal status, the question arises, is there an effective protection of religious liberty and equality under Spanish law? Or does Spain's system of regulation hide some kind of religiously based discrimination? These questions remain unanswered. Experience will tell.

c. *Should the new "religious" groups be governed by a special statute that prevents possible delictual activities or by the general (common) law?* Most Spanish scholars favor the common law as the means for governing the new "religious" groups.⁴¹ They consider a special statute unnecessary and even a potentially dangerous tool for discrimination. And they generally agree that Spanish criminal law provides sufficient protection against possible delictual activities by these "religious" groups, though some scholars favor a specific protection against psychological manipulation.

d. *May the law use forcible deprogramming or faith-breaking techniques in response to manipulation by a "religious" group?* Whether the law may use forcible religious deprogramming and faith-breaking techniques is the most controversial problem posed by the new "religious" groups. Strong arguments may be made both for and against the legality of such authority.⁴² While the danger of psychological manipulation by religious as well as political leaders is readily apparent, the risks of physically and psychologically coercive deprogramming techniques and their violation of the fundamental rights of individual internal freedom and freedom of conscience are also apparent.

41. See *supra* note 27.

42. See María Angeles Felix Ballesta, *Mecanismos psicologicos de vinculación a las sectas*, in ASPECTOS *supra* note 39, at 117, 117-30. For an approach from Spanish criminal law, see Joseph M. Tamarit Sumalla, *Las sectas y el Derecho penal*, in ASPECTOS *supra* note 39, at 277, 291-98.

I believe that such legal control is an overt form of religious persecution and a serious handicap for religious freedom. The government's use of deprogramming techniques blatantly infringes on the religious freedom of the faiths against whom the techniques are employed. Furthermore, the use of such techniques supposes that the government, not the individual, should determine which ideas are manipulative and which are religious. If individual religious freedom means anything, however, it means that the individual should be allowed to decide which ideas to consider religious.

III. CONCLUSION

Contemporary Spain in its 1978 Constitution recognized religious freedom as a fundamental right and chose cooperation with churches, religious communities and religious groups, rather than separation. This cooperation was achieved through a system of legal statuses which attempt to both accommodate the religious needs of society and avoid religious discrimination. This dual goal in practice, as highlighted by this paper, is difficult to achieve. Because Spain's system may be adequate, however, for historical and sociological reasons, but can also be the source of an invidious discrimination, the public powers must be alert to maintaining the proper balance between cooperation and nonestablishment, securing a real and effective protection of religious liberty and equal treatment under the law.

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