

9-1-2011

Law and Religion in Colombia: Legal Recognition of religious Entities

Vicente Prieto

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [Religion Law Commons](#)

Recommended Citation

Vicente Prieto, *Law and Religion in Colombia: Legal Recognition of religious Entities*, 2011 BYU L. Rev. 691 (2011).
Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2011/iss3/6>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

Law and Religion in Colombia: Legal Recognition of Religious Entities

Vicente Prieto*

I. INTRODUCTION

In 1810 there began in Colombia, as in most Latin American countries, the process leading to independence from Spain.¹ Though this process necessarily and permanently altered relations between Spanish rulers and their former subjects in America, the separation did not bring immediate radical changes in relations between the Catholic Church and the emerging republics. Those changes came about gradually as a result of developments within Colombia in particular and throughout Latin America generally.

Spain determined in the New World that the Catholic Church was the only recognized and established religion. With independence in the nineteenth century, the new authorities maintained the same state-religion model. Moreover, under the system of “royal patronage,”² defined by agreements between the Holy See and the Spanish throne, the colonial authorities had enjoyed considerable powers in ecclesiastical affairs. As the newly independent authorities sought to maintain such

* Professor of Ecclesiastical Law, Law School, Universidad de la Sabana, Bogotá, Columbia. I would like to thank the participants attending BYU Law School’s symposium on the “Emerging Complexities of the Government Speech Doctrine” for their thoughtful comments and suggestions on this Article, as well as Noah Hampson for invaluable research assistance. A summer research grant from the Boston College Law School Fund helped make this project possible.

1. This paper focuses on Hispanic countries. The case of Brazil and its relation with Portugal was similar in many aspects, though there were important differences. See A. Ingoglia, *Tutela della Libertà Religiosa e Concordato, oggi in Brasile* [Protection of Religious Freedom and Concordats in Brazil Today], in LIBERTÀ RELIGIOSA E RECIPROCIÀ 313–26 (José Antonio Araña ed., 2009) (It.); E. X. Gomes, *Los Acuerdos entre la Santa Sede y Brasil* [Agreements Between the Holy See and Brazil], 22 REVISTA GENERAL DE DERECHO CANÓNICO Y DERECHO ECLESIAÍSTICO DEL ESTADO 1 (2010) (Spain); E. C. Callioli, *O estado e o fator religioso no Brasil República* [The State and the Religious Factor in the Republic of Brazil] (2001) (unpublished dissertation, Pontifical University of the Holy Cross) (It.), available at <http://bibliotecanonica.net/docsab/btcabu.htm>.

2. The *Patronato Real*—royal patronage—in force in Spain and its overseas provinces constituted all the rights and powers of the monarchs in connection with ecclesiastical matters, such as the appointment of bishops; the *pase regio*, necessary to implement in the colonies the documents of the Holy See; and the *recurso de fuerza en conocer*, which allowed the submission of ecclesiastical decisions to the Royal Courts.

powers, the *Patronato Real* thus became without interruption the *Patronato Republicano*.

Two hundred years later, there are no more *Patronatos* in Latin America. While in some Latin American countries there are still present, at the constitutional level, references of various kinds to the Catholic Church,³ the trend is toward a model of church-state relations following the European system,⁴ influenced both by international human rights movements⁵ and by the doctrine of the Catholic Church itself, which took in Vatican II an approach to the issue precisely in line with evolving notions of human rights worldwide, underscoring universal recognition of religious freedom in all its dimensions—individual, collective, and institutional.⁶

This Paper explains the genesis and fundamental characteristics of modern Colombian church-state relations by placing them first in their general and then in their more particular contexts.

II. CHURCH-STATE RELATIONS IN LATIN AMERICA

A. Foundational Relations Between the Catholic Church and Latin American States

The modern realities of church-state relations in Colombia may be fully understood only by first considering the various systems that have historically defined such relations in Latin America.⁷ While each country

3. See CONSTITUCIÓN DE LA CONFEDERACIÓN ARGENTINA [CONSTITUTION OF THE ARGENTINE CONFEDERATION], May 1, 1853, art. 2; CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [POLITICAL CONSTITUTION OF THE REPUBLIC OF COSTA RICA], Nov. 7, 1949, art. 75; CONSTITUCIÓN POLÍTICA DE PARAGUAY [POLITICAL CONSTITUTION OF PARAGUAY], art. 24; CONSTITUCIÓN POLÍTICA DEL PERÚ [POLITICAL CONSTITUTION OF PERU], Dec. 29, 1993, art. 50.

4. See Rafael Navarro-Valls, *Los Estados Frente a la Iglesia* [The States Facing the Church], in ESTADO Y RELIGIÓN 315–62 (Rafael Navarro-Valls & Rafael Palomino eds., 2000).

5. See, e.g., Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/index.shtml>; The Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1950, C.E.T.S No. 005.

6. See SECOND VATICAN COUNCIL, *Dignitatis Humanae* (Decl.), Dec. 7, 1965, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

7. For a detailed discussion of historical church-state relations in Latin America, see A. DE LA HERA, *IGLESIA Y CORONA EN LA AMÉRICA ESPAÑOLA* [CHURCH AND CROWN IN SPANISH AMERICA] (1992) (Spain); R. M. MARTÍNEZ DE CODES, *LA IGLESIA CATÓLICA EN LA AMÉRICA INDEPENDIENTE [SIGLO XIX]* [THE CATHOLIC CHURCH IN INDEPENDENT AMERICA [19TH CENTURY]] (1992) (Spain); I. SÁNCHEZ-BELLA, *IGLESIA Y ESTADO EN LA AMÉRICA ESPAÑOLA* [CHURCH AND STATE IN SPANISH AMERICA] (2nd ed. 1991) (Spain); C. Salinas Aranedá, *Las*

has its own characteristics,⁸ the movement in Latin America from strict Catholic confessionality to secular systems has been influenced by a number of common factors.

We may first consider the general persistence throughout Latin America of *Patronato* systems following independence from Spain. This resulted not only from an understandable legislative inertia, or from reasons of simple common sense of holding the previous regime as a default rule until the new legal regime was consolidated. In fact, the continuity of the *Patronato* was a genuine act of sovereignty, that is, the assumption of a prerogative of the public authority to establish a legitimacy it could not enjoy without retaining its accustomed management of Church affairs. In many cases the *Patronato* was defended by local ecclesiastical authorities, unable at the time to understand any need to break free of government control. The state, after all, was as yet “confessional,” and therefore operated to sanction the Church and its activities.

At the same time, the *Patronato Republicano* assumed the characteristics of European liberalism and intended not only to directly influence the Catholic Church but also, as far as possible, to control the Church. Over time, some of these difficulties were corrected in concordats—agreements, essentially treaties—with the Holy See.⁹ However, the tendency of liberalism was always to consider the state over the Church, which became a civil association governed by the laws of the state.

During the pontificate of Pope Gregory XVI (1831–1846), the new republics in Latin America were recognized by the Holy See. Thus began a period in which concordats were signed between the Holy See and various Latin American regimes: Costa Rica (1852), Guatemala (1852), Haiti (1860), Honduras (1861), Nicaragua (1861), San Salvador (1862), Ecuador (1862), Venezuela (1862), and Colombia (1887).¹⁰ The

Relaciones Iglesia-Estado en la América Indiana: Patronato, Vicariato, Regalismo [Church-State Relations in Spanish America: Patronage, Vicarage, Regalism], in ESTADO, DERECHO Y RELIGIÓN EN AMÉRICA LATINA [STATE, LAW AND RELIGION IN LATIN AMERICA] 17 (Marcial Pons ed., 2009) (Arg.).

8. A description of the current situation of each country is found in J. G. NAVARRO FLORIA, ESTADO, DERECHO Y RELIGIÓN EN AMÉRICA LATINA [STATE, LAW AND RELIGION IN LATIN AMERICA] (Marcial Pons ed., 2009) (Arg.). There is also an Italian version of the same volume for which the English translation is being prepared: DIRITTO E RELIGIONE IN AMERICA LATINA (J. G. Navarro Floria & Daniela Milani eds., 2010).

9. That was the case, for example, with the first Colombian concordat with the Holy See in 1887.

10. See ANGELO MERCATI, RACCOLTA DI CONCORDATI: SU MATERIE ECCLESIASTICHE TRA

evolution was not always peaceful, and, under the principle of separation of church and state, secularist regimes emerged that expressed a degree of hostility toward the Catholic Church.

In Colombia, during this time we may trace significant changes in constitutional language. Although the Colombian Constitution of 1830 would declare that the “Catholic, Apostolic, Roman is the religion of the Republic” (Article 6), and that it “is the duty of the Government, in exercise of the ‘Patronato’ of the Colombian Church, to protect and not to tolerate the public worship of any other” (Article 7), twenty years later the Constitution of 1853 would provide for “the free profession of the religion of each one, in public or private, provided that it does not disturb public peace, offend sane morality, nor prevent others the exercise of their religion.”¹¹

As important as this change in language may seem, however, this proclamation cannot be isolated from the context of the time. As we shall see, the 1853 language does not represent “religious freedom” as a twenty-first century reader would conceive of it.¹²

B. Modern Relations Between the Catholic Church and Latin American States

For reasons of historical and cultural harmony, the modern church-state systems of South America have felt the particular influence of the Italian-Spanish model.¹³ The model is well suited to states characterized by predominantly Catholic populations with a varying presence of minorities belonging to other faiths,¹⁴ histories marked by alternating confessional and secularist models,¹⁵ and systems of institutional

LA SANTA SEDE E LA AUTORITA CIVILI (1954). More recently, see JOSÉ TOMÁS MARTÍN DE AGAR Y VALVERDE, *RACCOLTA DI CONCORDATI: 1950–1999* (2000); JOSÉ TOMÁS MARTÍN DE AGAR Y VALVERDE, *I CONCORDATI DAL 2000 AL 2009* (2010).

11. CONSTITUCIÓN DE LA REPÚBLICA DE NUEVA GRANADA [CONSTITUTION OF NEW GRANADA] May 20, 1853, available at http://bib.cervantesvirtual.com/servlet/SirveObras/67926281091469673665679/p0000001.htm#I_6.

12. See *infra* Section II.B.

13. See Javier Ferrer, *La Ley Orgánica de Libertad Religiosa de 1980 y su Proyección en Iberoamérica* [The Organic Law on Religious Freedom of 1980 and its Influence in Latin America] 1–44, in *REVISTA GENERAL DE DERECHO CANÓNICO Y DERECHO ECLESIAÍSTICO DEL ESTADO* 24 (2010); see also W. COLE DURHAM, JR., *La importancia de la experiencia española en las relaciones iglesia-estado para los países en transición* [The Importance of the Spanish Experience in Church-State Relations for Countries in Transition], in *ESTADO Y RELIGIÓN EN LA CONSTITUCIÓN ESPAÑOLA Y EN LA CONSTITUCIÓN EUROPEA* 43–68 (Javier Martínez-Torrón ed., 2006).

14. See sources cited *supra* note 13.

15. See sources cited *supra* note 13.

relations with the Catholic Church often reflected in the signing of concordats.

To the foregoing considerations must be added a new sociological reality. Although the vast majority of Latin Americans have been and remain Catholic, minorities belonging to other religions have been historically significant. Such minorities have included not only members of indigenous religions—mainly in Mexico, Central America, the Andean countries, and Brazil—but also Lutherans, Anglicans, Orthodox, and Jews, in the southern part of the continent.¹⁶

It was primarily during the second half of the twentieth century, however, that the rapid growth of evangelical denominations began to make a significant impact on the religious landscape.¹⁷ An active evangelical presence, including a political presence in virtually all Latin American countries, has increasingly sought participation and full “citizenship” in social, political, and legal life, following the traditional pattern of state relations with the Catholic Church.¹⁸

III. HISTORICAL DEVELOPMENT OF COLOMBIAN CHURCH-STATE RELATIONS

In a very general way, the following periods of development in church-state relations in Colombia can be identified: (a) the regime of strict Catholic confessionality and *Patronato Republicano* (1824–1853); (b) the separation, understood in a secular way (1853–1886); (c) the model of protected religion (the Catholic Church, 1886–1991); and (d) the current regime established by the 1991 Constitution, definable by full recognition of religious freedom and the principles of secularity of state, equality, and cooperation.¹⁹

A. Period of Strict Catholic Confessionality and Patronato Republicano (1824–1853)

The first period of church-state interaction in Colombia could be identified by the *Patronato Republicano* Act of July 22, 1824.

16. See Vicente Prieto, *Libertad religiosa y culturas indígenas* [Religious Freedom and Indigenous Cultures], 26 ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO 121–41 (2010) (Spain).

17. See *id.*

18. Vicente Prieto, *La laicidad positiva del Estado colombiano* [The Colombian State's Positive Secularism], 12 PENSAMIENTO Y CULTURA 39, 50–51 (2009).

19. See VICENTE PRIETO, LIBERTAD RELIGIOSA Y CONFESIONES. DERECHO ECLESIASTICO DEL ESTADO COLOMBIANO [RELIGIOUS LIBERTY AND CONFESSIONS. ECCLESIASTICAL LAW OF THE COLOMBIAN STATE] 120–135 (2008) (Colom.).

In 1821, the final message “to the people of Colombia” of the delegates to the Congress of Cúcuta proclaimed:

[W]hat your representatives have always had in view, and what has been the object of their more serious meditations, is that these laws were entirely consistent with the maxims and dogmas of the Catholic, Apostolic, and Roman religion, which we all profess and glory to profess. It has been the religion of our fathers, and it is and will be the State religion; its ministers are the only ones entitled to the free exercise of their functions, and the Government authorizes the necessary contributions for Sacred Worship.²⁰

The Act of July 22, 1824, established in Article 1 that “the Republic of Colombia should continue in the exercise of the right of ‘Patronato’ that Kings of Spain exercised in the metropolitan churches, cathedrals and parishes in this part of America.”²¹ Article 2 ordered the President to conclude a concordat with the Holy See to ensure “forever and irrevocably this prerogative of the Republic.”²²

The 1824 Act detailed how the *Patronato* should be exercised, with the proper distribution of powers.²³ It was a complete regulation of the Church government including boundaries of the ecclesiastical territories, recording and conservation of religious properties, denial to the pass of papal documents, appointment of ecclesiastical judges, and even the reform of the number of seats in the cathedral of Pamplona.²⁴ In short, the Catholic Church was a part of public administration, as it had been in times of colonial rule.²⁵

20. CONSTITUCION DE 1821 [CONSTITUTION OF 1821], Aug. 30, 1821 (Colom.), available at http://bib.cervantesvirtual.com/servlet/SirveObras/01361686446795724200802/p0000001.htm#I_1_. The bank of documents where this Constitution is found is the Miguel de Cervantes Virtual Library website, and this website will be used throughout this paper for quotations from historic constitutional texts. See *Colombia: Constitutiones Generales*, MIGUEL DE CERVANTES VIRTUAL LIBRARY, <http://www.cervantesvirtual.com/portal/constituciones/pais.formato?pais=Colombia&indice=constituciones>.

21. Historical quotes of legislation are taken from 1 GERMÁN CAVELIER, *LAS RELACIONES ENTRE LA SANTA SEDE Y COLOMBIA* [RELATIONS BETWEEN THE HOLY SEE AND COLOMBIA], 390 *passim* (1988) (Colom.); see also M. A. Félix Ballesta, *Aproximación histórica de las relaciones Iglesia-Estado en Colombia* [Historical Approach of Church-State Relations in Colombia], in ANUARIO DE DERECHO ECLESIASTICO DEL ESTADO (XIII), 77–135 (1997).

22. CAVELIER, *supra* note 21.

23. See Prieto, *supra* note 18, at 51.

24. See *id.*

25. See *id.*

The Constitution of 1830 was no less explicit, establishing at a constitutional level what had been part of the Colombian legal system since 1824: “The Catholic, Apostolic, Roman is the religion of the Republic. . . . It is the duty of the Government, in exercise of the ‘Patronato’ of the Colombian Church, to protect and not to tolerate the public worship of any other.”²⁶

In 1832, the “Constitution of the State of New Granada”²⁷—the first constitution after the dissolution of the “Gran Colombia”²⁸—provided that “it is also a duty of the . . . government to protect Granadians [Colombians] in the exercise of the Catholic, Apostolic, and Roman religion.”²⁹ More explicit was the initial proclamation of the delegates to the Convention, in which they claimed “the rigorous duty of the New Granada to protect the holy Catholic, Apostolic, Roman religion, this divine religion, the only true, precious origin of good inherited by Granadians from their parents, which was received from heaven at baptism, and that by the mercy of God we worship, we will retain all intact, pure, and blameless.”³⁰

Article 15 of the Constitution of 1843 stated the same principles³¹ and added in Article 16 a reference to the “Catholic, Apostolic, Roman religion, whose cult is the only one supported and maintained by the Republic.”³²

26. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA [POLITICAL CONSTITUTION OF THE COLOMBIAN REPUBLIC], May 5, 1830, arts. 6–7, available at http://bib.cervantesvirtual.com/servlet/SirveObras/02438310870243941976613/p0000001.htm#I_1_.

27. During colonial times, the name of what we call today Colombia was *Virreinato de la Nueva Granada* [Vice-realm of New Granada]. The name was maintained during the first decades of the republic’s life.

28. The “Gran Colombia” was the great dream of Bolívar. It was constituted by the current territories of Colombia, Venezuela, and Ecuador. It was dissolved with Bolívar’s death in 1830.

29. CONSTITUCIÓN POLÍTICA DEL ESTADO DE NUEVA GRANADA DE 1832 [1832 POLITICAL CONSTITUTION OF THE STATE OF NEW GRANADA], Mar. 1, 1832, art. 15, available at http://bib.cervantesvirtual.com/servlet/SirveObras/68051622439248617422202/p0000001.htm#I_1_.

30. *See id.*

31. CONSTITUCIÓN DE LA REPÚBLICA DE NUEVA GRANADA [CONSTITUTION OF THE REPUBLIC OF NEW GRANADA], May 8, 1843, art. 15, available at http://bib.cervantesvirtual.com/servlet/SirveObras/12615091946708273098435/p0000001.htm#I_1_ (“It is also a duty of the Government to protect Granadians in the exercise of Catholic, Apostolic and Roman religion.”).

32. *See id.*

B. Period of Secularistic Separation of Church and State (1853–1886)

On May 20, 1853, there came into force a new constitution, and the Act of June 15th of that year ended the system of *Patronato* and established separation between church and state.³³ This was not, however, an ultimately positive development. Rather it was an abrupt separation characterized by confrontation and conflict, marked by an intolerant secularism descended from the French Revolution.

The goal in 1853 was not merely to end *Patronato*, which in itself would have been a positive move, but the State additionally eliminated a range of rights that seriously affected the freedom of the Catholic church in handling its own affairs. The separation was intended as a real expulsion of the Church from the social and public life of the country. The stark contrast between the new secularization and centuries of Colombian experience with confessional regimes, both colonial and republican, explains the virulence of church-state conflicts in the following decades.

The new constitution did contain, as its best expression, the proclamation of freedom of religion³⁴ previously discussed, which established “the free profession of the religion of each one, in public or private, provided that it does not disturb public peace, offend sane morality, nor prevent others the exercise of their religion.”³⁵

The 1853 proclamation of religious freedom, however, cannot be read in light of the international declarations of human rights issued in the second half of the twentieth century. It must be understood in the context of a time in which the notion of an “only true religion” still operated in the hearts and minds of the majority of the people. “Religious freedom” in this context was seen as a manifestation of religious indifference. The notion that all religions have equal value and that everyone should be allowed to choose any desired belief works against the principle that everyone should seek and embrace only the true religion. In the period under review, therefore, conflicts between the “free profession of the religion of each one” and the Magisterium of the Catholic Church, and therefore the feelings and convictions of the

33. CONSTITUCIÓN DE LA REPÚBLICA DE NUEVA GRANADA [CONSTITUTION OF THE REPUBLIC OF NEW GRANADA], May 20, 1853, *available at* http://bib.cervantesvirtual.com/servlet/SirveObras/67926281091469673665679/p0000001.htm#I_6.

34. *Id.* art. 5, para. 5; *see also supra* text accompanying note 11.

35. *See* CONSTITUCIÓN DE LA REPÚBLICA DE NUEVA GRANADA [CONSTITUTION OF THE REPUBLIC OF NEW GRANADA], May 20, 1853, art. 5, para. 5.

majority of the population, were inevitable.³⁶ The Constitution of the Grenadine Confederation in 1858 followed the same pattern as the Constitution of 1853.³⁷ The confederate states were not permitted to “intervene in matters of religion,” and “all inhabitants and passers-by” were granted the right of “free profession, in public or private, of any religion,” though “[i]t will not be permitted to conduct acts that disturb the public peace, or are classified as punishable under existing laws.”³⁸

The Constitution of the United States of Colombia (1863) established, among individual rights, “[t]he free profession, in public or private, of any religion as long as there are no acts incompatible with national sovereignty, or intended to disturb the public peace” (in Articles 15 and 16). According to Article 23,

To maintain national sovereignty and maintain security and public tranquility, the national Government and the States shall exercise the right of final inspection on religious cults, as determined by law. For expenses of worship . . . taxes will not be permitted. All worship will be held with the free contributions of the faithful.³⁹

36. On this subject and its relationship with the change of perspective assumed by the Second Vatican Council (focused on human dignity and human rights) there are some particularly useful publications: Pedro Lombardía, *Dualismo cristiano y libertad religiosa en el Concilio Vaticano II* [*Christian Dualism and Religious Freedom in the Vatican Council II*], in *IUS CANONICUM* 51, 13–21 (1986) (Spain); ROLAND MINNERATH, *L’ÉGLISE ET LES ÉTATS CONCORDATAIRES: 1846–1981. LA SOUVERAINETÉ SPIRITUELLE* (1983) (Fr.); Luigi Mistò, *Libertà religiosa e libertà della Chiesa. Il fondamento della relazione Chiesa-comunità politica nel quadro del dibattito postconciliare in Italia*, in *DIZIONARIO DI DOTTRINA SOCIALE DELLA CHIESA: SCIENZE SOCIALI E MAGISTERO*, 414–18 (1982) (It.); John Courtney Murray, *Hacia una inteligencia del desarrollo doctrinal de la Iglesia sobre la libertad religiosa* [*Toward an Understanding of the Doctrinal Development of the Church on Religious Freedom*], in *LA LIBERTAD RELIGIOSA* 143–88 (J. Hamer & Y. Congarm eds., 1969) (Spain); L. MUSELLI, *CHIESA CATTOLICA E COMUNITÀ POLITICA (DAL DECLINO DELLA TEORIA DELLA POTESTAS INDIRECTA ALLE NUOVE IMPOSTAZIONI DELLA CANONISTICA POSTCONCILIARE)* (1975) (It.); F. Ocariz, *Sulla libertà religiosa. Continuità del Vaticano II con il magistero precedente* 71–97, in *ANNALES THEOLOGICI* 3 (1989) (It.); CARLOS SOLER, *IGLESIA Y ESTADO EN EL VATICANO II* [*CHURCH AND STATE IN VATICAN II*] (2001) (Spain); Javier Martínez-Torrón, *Religious Freedom and Democratic Change in Spain*, 2006 *BYU L. REV.* 777–809.

37. See CONSTITUCIÓN PARA LA CONFEDERACIÓN GRANADINA [CONSTITUTION FOR THE GRENADINE CONFEDERATION], May 22, 1858, available at http://bib.cervantesvirtual.com/servlet/SirveObras/01477398877125528632268/p0000001.htm#I_1_.

38. *Id.* arts. 11, 56.

39. The argument of “national sovereignty” could not hide the only object of these rules, the Catholic Church, considered a foreign power capable of challenging sovereignty. The Constitution of 1863 (also called the Rionegro Constitution, referring to the place of its signing) was the epilogue to a series of measures that began with the Decree of Cults Control issued by General Tomás Cipriano de Mosquera (1861), which included such measures as requiring the pass or authorization

C. Period of Protected Catholicism (1886–1991)

The era of secularism, which was characterized by great conflict between the Catholic church and the Colombian state, came to an end in 1886. After thirty years of nearly continuous civil wars, in which religious factors played a determinant role, the third period, which we will call the system of “protected religion,” began with the passage of the 1886 Constitution.⁴⁰ This was not a perfect system, but it stabilized the “religious issue” in terms acceptable to the majority of the population. The provisions of the 1886 document would be maintained for more than a century, showing a first (though not only) benefit: they brought religious peace and created a general atmosphere of serenity and stability. Without this “social harmony” (which was precisely what was lacking in the secularism of the second half of the nineteenth century) the system could hardly have endured for so long.⁴¹

Regarding religious freedom, the Constitution of 1886 provided that “no one shall be molested on account of his religious opinions or beliefs, nor compelled to profess beliefs or to observe practices contrary to his conscience.”⁴² At the same time, the constitution allowed “the exercise of all religions that are not contrary to Christian morals or laws.”⁴³ Article 38 referred explicitly to the Catholic Church: “The religion of the Nation is the Catholic, Apostolic and Roman. Public authorities will protect it and will assure it due respect, as an essential element of social

of the government for the religious functions of ministers. Otherwise, “they will be treated as usurpers of the prerogatives of the Union and therefore expelled from the territory” (art. 2). Other measures were the expulsion of the papal legate and of the Jesuits (July 1861), the expropriation of church property in August of that year, dissolution of religious communities in the month of November, and imprisonment and exile of Archbishop Herrán. A new law on confiscation of ecclesiastical property (May 19, 1863) ratified the 1861 measures, extending the scope of expropriation and facilitating sales and auctions for individuals. Shortly before (on April 25) the National Police Act on Cults was issued, which in essence established, or rather developed according to the new constitution, the principle of subjection of the Church to the state under very serious penalties. Even more radical was Act 34 of May 17, 1864. It defined in Article 1 the right of final inspection of religion “to sustain national sovereignty, maintain public security and peace, and to prevent any disturbance of the peace.” Among other provisions, the clergy were forbidden to vote or be elected, or to exercise public employments. Furthermore, it was “not admitted into the country any agent of the Roman Curia, whatever the title given to the mission” (art. 12). On these topics and quotes see CAVELIER, *supra* note 21.

40. See CONSTITUCIÓN DE 1886 [1886 CONSTITUTION], Aug. 5, 1886, available at <http://tinyurl.com/3jfu7dk>.

41. See Prieto, *supra* note 18.

42. See CONSTITUCIÓN DE 1886 [1886 CONSTITUTION], Aug. 5, 1886, art. 39, available at http://bib.cervantesvirtual.com/servlet/SirveObras/680627334393596174_22202/index.htm.

43. See *id.* art. 40.

order. It is understood that the Catholic Church will not be official, and will retain its independence.”⁴⁴ Finally, Article 56 stated that “the Government may conclude Agreements with the Apostolic See in order to settle outstanding issues and to define and establish the relationship between civil and ecclesiastical authority.”⁴⁵

The first of these agreements in Colombian history, the Concordat of 1887, reproduced in Article 1 the constitutional principles: “The Colombian religion is Catholic, Apostolic and Roman. Public authorities recognize it as an essential element of social order, and are compelled to protect it and guarantee it due respect, including respect to its ministers. The Church will have full enjoyment of its rights and prerogatives.”⁴⁶

In 1930, during a period of liberal government in Colombia, several reforms were proposed and passed that dealt with religious freedom issues.⁴⁷ By Legislative Act No. 1 of 1936 (which amended the 1886 Constitution), Article 53 (see Article 13 of the Legislative Act) came to have the following wording:

The State guarantees freedom of conscience. No one shall be molested on account of his religious opinions or beliefs, nor compelled to profess or to observe practices contrary to his conscience. Freedom of all religions is guaranteed, provided [such religions] are not contrary to Christian morals or civil laws. Activities contrary to Christian morals or subversive of public order, that are executed on the occasion or pretext of the exercise of worship, are subject to common law. The Government may conclude with the Holy See Agreements subject to subsequent approval of Congress, to regulate on the basis of mutual deference and mutual respect, the relations between the State and the Catholic Church.⁴⁸

The novelty here in relation to the Constitution of 1886 appears in the explicit recognition of the guarantee of freedom of conscience. At the

44. *See id.* art. 38.

45. *See id.* art. 56.

46. The Concordat of 1887 was approved by Act 35 of 1888. Its text has been published in VICENTE PRIETO, *EL CONCORDATO EN LA JURISPRUDENCIA COLOMBIANA II* [The Concordat in Colombian Jurisprudence] 307–12 (1998).

47. *See* REFORMAS DE LA CONSTITUCIÓN DE 1886 [AMENDMENTS TO THE CONSTITUTION OF 1886], available at <http://bib.cervantesvirtual.com/servlet/SirveObras/12726101947818273098435/index.htm>.

48. 1936 REFORMAS DE LA CONSTITUCIÓN DE 1886 [1936 AMENDMENTS TO THE CONSTITUTION OF 1886], Aug. 5, 1936, art. 13, available at http://bib.cervantesvirtual.com/servlet/SirveObras/12726101947818273098435/p0000001.htm#L_47.

same time this amendment not only permitted but guaranteed “freedom of all religions that are not contrary to Christian morals or civil laws,” it also explicitly abrogated the principle of the nation’s confessionality, though it did maintain the principle of cooperation with the Catholic Church.⁴⁹

Violence and confrontation between liberal and conservative parties led in 1957 to a plebiscite, which sought a new civil and political order. The plebiscite confirmed “in the name of God, the ultimate source of all authority” the Constitution of 1886 (with the reforms until Legislative Act 1 of 1947).⁵⁰ It was accepted that one of the foundations of national unity was the recognition “made by political parties that Catholic, Apostolic and Roman Church is that of the Nation” and public authorities shall protect it and will assure it due respect as an “essential element of social order,” a claim that was already present in Article 38 of the Constitution of 1886.⁵¹

IV. THE CONSTITUTION OF 1991 (1991–PRESENT)

The current ecclesiastical law in Colombia has as its reference point a relatively recent development, the 1991 Constitution.⁵² This document adopted a system which, together with full recognition of religious freedom, assumed the principles of a secular state, equality of all faiths, and an open and positive attitude in relation to the different expressions of religiosity.⁵³

The most important legislation implementing the 1991 constitution’s religious freedom provisions (see Articles 18, 19 and 20), is contained in the *Ley Estatutaria de Libertad Religiosa* (Religious Freedom Act or “RFA”) of May 23, 1994.⁵⁴

49. *See id.* art. 53(4).

50. 1957 REFORMAS DE LA CONSTITUCIÓN DE 1886 [1957 AMENDMENTS TO THE CONSTITUTION OF 1886], Oct. 4, 1957, available at http://bib.cervantesvirtual.com/servlet/SirveObras/12726101947818273098435/p0000001.htm#I_47_.

51. *Id.*

52. A general and systematic treatment of the Colombian legislation on religious matters can be found in VICENTE PRIETO, *LIBERTAD RELIGIOSA Y CONFESIONES. DERECHO ECLESIASTICO DEL ESTADO COLOMBIANO* [RELIGIOUS LIBERTY AND CONFESSIONS. ECCLESIASTICAL LAW OF THE COLOMBIAN STATE] (2008); *see also* ILYVA MIRAM HOYOS, *LA LIBERTAD RELIGIOSA EN LA CONSTITUCIÓN DE 1991* [RELIGIOUS FREEDOM IN THE CONSTITUTION OF 1991] (1993).

53. Religious distribution in Colombia is as follows: Catholic Church, 35 million; Evangelical Christians, 5 million; Adventist Church of the Seventh Day, 261,000; Presbyterian Church, 10,000; Church of England, 10,000; Methodist Church, 1,500; Muslims, 10,000; Jews, 8,000. *See EL TIEMPO*, April 2, 2007, at 1–2.

54. L. 133/94, mayo 23, 1994, *DIARIO OFICIAL* [D.O.] (Colom.), available at

A. Fundamental Principles of Equality, Secularism, and Cooperation

From these sources, the constitution and the RFA, it is possible to identify the principles that inform the modern legal regulation of religion in Colombia. These principles do not appear explicitly in any constitutional or legal text.⁵⁵ Rather, their formulation is a response to the need for a convenient identification of the choices made by the Colombian state and society regarding the “fundamental options” of how they will treat religion. Being “principles” they are the benchmark, the touchstone of the entire system, and they inspire concrete administrative and legal solutions. Therefore, these principles also measure the legitimacy of decisions about religious policy.

To identify these principles, the main reference texts are these:

a) All persons are born free and equal before the law, will receive the same protection and treatment by the authorities and enjoy the same rights, freedoms and opportunities without discrimination based on sex, race, national or family origin, language, religion, political or philosophical opinion. The State shall promote conditions to ensure that equality is real and effective and adopt measures to help disadvantaged or marginalized groups. The State shall provide special protection to persons who by their economic status, or physical or mental condition, are in obviously vulnerable circumstances and shall sanction any abuse or mistreatment committed against them;⁵⁶

http://www.secretariasenado.gov.co/senado/basedoc/ley/1994/ley_0133_1994.html; *see also* an unofficial English translation appended to this paper.

55. The Constitutional Court has repeatedly mentioned these principles, but none are listed as such. Here is a particularly eloquent example: “The 1991 Constitution establishes the character of the social state of law in Colombia, of which religious pluralism is one of the most important components. Similarly, the Constitution precludes any form of established religion and states the full religious freedom and equal treatment of all faiths, since invoking the protection of God, made in the preamble, is general in nature and not related to any church in particular. This implies that in the Colombian Constitution, there is a separation between Church and State because the State is secular. In fact, this strict State neutrality in religious matters is the only way that public authorities have to ensure pluralism and equal co-existence and autonomy of different faiths. Obviously, this does not mean that the State is unable to establish cooperative relationships with various religious denominations, provided that the equality is respected.” Corte Constitucional [C.C.] [Constitutional Court], Sentencia C-350/94, *available at* <http://www.corteconstitucional.gov.co/relatoria/1994/C-350-94.htm>. The Constitutional Court decisions are mainly of two types: the letter “C” indicates decisions of constitutional control, and the letter “T” refers to decisions of guardianship (*tutela*, *amparo*) of fundamental rights. The text of the decisions cited in this paper can be found at <http://www.derechocolombiano.com/> and <http://www.notinet.com.co/>.

56. *See* CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 13, *available at* http://bib.cervantesvirtual.com/servlet/SirveObras/01361686468917724422802/p0000001.htm#I_1.

b) No one shall be molested on account of his convictions or beliefs or compelled to reveal or obliged to act against his conscience;⁵⁷

c) Freedom of worship is guaranteed. Everyone has the right to freely profess his religion and to disseminate it individually and collectively. All faiths and churches are equally free before the Law;⁵⁸

d) It is guaranteed to everyone the freedom to express and disseminate his thoughts and opinions, to transmit and receive truthful and impartial information, and to establish mass communications media. The mass media are free and have social responsibility. The right to rectification under equitable conditions is guaranteed. There will be no censorship;⁵⁹

e) No church or religious denomination is or will be official or established. However, the State is not atheist, agnostic, or indifferent to the religious sentiments of Colombians. The government would protect individuals in their beliefs, as well as churches and religious groups and facilitate their participation in achieving the common good. Similarly, it will maintain harmonious relations and common understanding with the churches and religious entities existing in Colombian society;⁶⁰

f) The State recognizes the diversity of religious beliefs, which do not constitute cause for inequality or discrimination before the Law to nullify or restrict the recognition, or the exercise of fundamental rights. All faiths and churches are equally free before the Law.⁶¹

From the texts quoted, it is possible to conclude that the fundamental right of religious freedom (in the individual, collective, and institutional dimensions⁶²) is expressed in the Colombian system through the principles of the secular state, equality, and cooperation. Obviously, these principles are interconnected. It is not possible, therefore, to deal with the principle of secularism, or equality, without reference to the other principles and, in particular, without considering their dependence on religious freedom.

The principles of secularism, equality, and cooperation are not unique or original to the Colombian system. They correspond in general to choices made by countries whose systems of relation to religion, and

57. *Id.* art. 18.

58. *Id.* art. 19.

59. *Id.* art. 20.

60. *See* L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 2 (Colom.), available at http://www.secretariassenado.gov.co/senado/basedoc/ley/1994/ley_0133_1994.html.

61. *Id.* art. 3.

62. *See id.* arts. 6, 7, 13, 14.

more generally whose legal treatment of religious freedom, are similar to Colombia's.⁶³

1. Principle of equality

"Equality" in matters of religion means that all citizens are equally entitled to the fundamental right of religious freedom.⁶⁴ The immediate consequence of equality is nondiscrimination on religious grounds. The same statement applies to religious freedom in its collective and institutional dimensions (i.e., equality of religious groups and entities).

The jurisprudence of the Constitutional Court of Colombia has stressed that equality does not mean uniformity. Different situations can and sometimes should receive different legal treatment. This is not discrimination, but simply means the recognition of the diversity of situations that may require (in the name of justice) different solutions.⁶⁵ According to Decision C-088/94, "equality in this matter does not mean absolute uniformity, provided there is not discrimination, nor inconvenience caused by religious belief or worship."⁶⁶ In the same way, Decision T-972/99 provides, "As this Court has reiterated, equality means proportionality rather than identity. Hence it is illogical to treat the evident religious majority in the same absolute way as the minorities. This is disproportionate."⁶⁷

The state's commitment to protect the Catholic religion under the 1886 Constitution, though understandable for historical reasons, was not consistent with the principle of equality. More in keeping with this principle is the omission of such an undertaking in the 1991 Constitution. The 1991 Constitution and the Religious Freedom Act proclaim the state's commitment to protect the beliefs of all Colombians.⁶⁸ In fact,

63. This is the case with Spain, Italy, and Germany. For these reasons the similarities between the Colombian and the Spanish system are understandable. See C.E., B.O.E. n7, Dec. 29, 1978 (Spain (Organic Act on Religious Freedom, which is of particular note here).

64. See Corte Constitucional [C.C.] [Constitutional Court], marzo 5, 1992, Sentencia C-472/92, available at <http://www.corteconstitucional.gov.co/relatoria/1994/C-387-94.htm>.

65. See, for example, the different treatment that the RFA gives to Agreements with religious denominations. L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 15 (Colom.) specifically distinguishes between International Treaties and Internal Public Law Agreements, depending on the subjects involved: international law subjects (i.e., the Holy See) and subjects lacking this qualification. The different status justifies a different legal treatment.

66. See Corte Constitucional [C.C.] [Constitutional Court], marzo 3, 1994, Sentencia C-088/94, available at <http://www.corteconstitucional.gov.co/relatoria/1994/C-088-94.htm>.

67. See Corte Constitucional [C.C.] [Constitutional Court], diciembre 2, 1999, Sentencia T-972/99, available at <http://www.corteconstitucional.gov.co/relatoria/1999/T-972-99.htm>.

68. See CONSTITUCION POLITICA DE COLOMBIA [C.P.] art. 2., available at

there is no mention of any particular denomination, and the legislation that regulates the right of religious freedom is expressed in terms of equality.

2. *Principle of secularism*

The 1991 Constitution contains no explicit reference to the secular state.⁶⁹ The defining expression of this principle is contained in Article 2 of the RFA: “No church or religious denomination is or will be official or established.”⁷⁰

The declaration of secularism is completed with an expression that seeks to explain and somehow to qualify it: “However, the State is not atheist, agnostic, or indifferent to the religious sentiments of Colombians.”⁷¹ In the same vein, the Preamble to the Constitution includes the invocation of God’s protection.⁷²

The second part of the quoted text could be understood as a generic formulation of state commitment to religion, which would go against secularism. However, in spite of what might be called to mind by the adjectives used (the state is not “atheist, agnostic, indifferent”),⁷³ in fact what is emphasized is the positive and friendly attitude of the state in relation to the religious phenomenon, which is not an “indifferent” reality from the point of view of the state. This emphasis is also a guarantee against positions that aim to reduce religion to the realm of conscience and private life, ignoring the social dimensions of the religious phenomenon.

The text cannot be understood, moreover, as a denial of the rights of atheists and agnostics. The Constitutional Court has stated that “religious freedom not only protects the positive manifestations of the religious phenomenon . . . but also the negative ones, such as the option of not belonging to any religion, or to refuse worship acts or religious

http://bib.cervantesvirtual.com/servlet/SirveObras/01361686468917724422802/p0000001.htm#I_1.

69. *See id.*

70. *See* L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] (Colom.) art. 2.

71. *See id.*

72. “The people of Colombia, in exercise of its sovereign power, represented by its delegates to the National Assembly, invoking God’s protection, and to strengthen the unity of the nation and ensure its members life, peaceful coexistence, labor, justice, equality, knowledge, freedom and peace” CONSTITUCION POLITICA DE COLOMBIA [C.P.] pmb1.

73. Religious convictions (or lack of conviction) belong to individual persons, not to the state.

assistance. Consequently, indifferent, agnostic or atheist positions are within the field of the right to religious freedom

... ”⁷⁴

3. Principle of cooperation

The last part of Article 2 of the RFA states: “The Government would protect individuals in their beliefs, as well as churches and religious groups and facilitate their participation in achieving the common good. Similarly, it will maintain harmonious relations and common understanding with the churches and religious entities existing in Colombian society.”⁷⁵

The combination of these two norms allows a first conclusion: the principle of cooperation is a complement to the principle of secularism. Separation between church and state does not mean the state will ignore the presence of churches and religious entities, nor does it mean a lack of communication between religion and government, as if the former were realities completely unrelated to the purpose and activity of the state. The unifying factor is in the common purpose of serving the individual and the common good.

To achieve the common good, it is not enough to recognize a social reality and its importance. The RFA goes a step further by providing, in mandatory terms, that it is a duty of the state to maintain “harmonious relations” with all churches and denominations.

While the state’s mandatory obligation to maintain “harmonious relations” with religious entities is one thing, the legal instruments designed to foster such relations are another. These may be reflected, as will be discussed further, in the signing of agreements or pacts with certain denominations (those who enjoy legal personality and offer guarantee of permanence). Thus, while the obligation to maintain harmonious relations and common understanding extends to all confessions, agreements have an optional character for the state and are limited to confessions that meet the established requirements.⁷⁶

74. See Corte Constiucional [C.C.] [Constitutional Court], septiembre 7, 1999, Sentencia T-662/99, available at <http://www.corteconstitucional.gov.co/relatoria/1999/T-662-99.htm>.

75. L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] (Colom.) art. 2.

76. *Id.* art. 15; see also Decree 782/95, DIARIO OFICIAL [D.O.].

V. LEGAL RECOGNITION OF RELIGIONS ENTITIES UNDER THE 1991 CONSTITUTION

Through analysis of the provisions of the RFA and of the subsequent legislation, it is possible to understand how the Colombian state classifies religious entities for purposes of state legal recognition.

The starting point is Article 9 of RFA:

The Ministry of Internal Affairs recognizes legal personality to churches and religious denominations, federations, and confederations of ministers, who have requested. The Ministry will hold the Public Record of religious entities. The request shall be accompanied by reliable documents in which it shall be indicated the foundation or establishment in Colombia, as well as the name and other identifying information; the statutes, that shall include the religious purposes, functioning system, organization scheme and representative bodies including powers and conditions for valid designation. Paragraph: Churches, denominations and religious denominations, as well as their federations and confederations, may retain or acquire legal private personality according to general provisions contained in civil law.⁷⁷

Under these rules, churches and religious denominations may have two different types of legal personality: that recognized by the Ministry of Internal Affairs and the legal status of private law, which can be retained or acquired according to the general civil law. It seems clear that the specific personality type intended for religious institutions is recognition by the Ministry of Internal Affairs since this recognition is called “special” by both jurisprudence⁷⁸ and legislation.⁷⁹ However, it is an “option” for the respective entity to legitimately prefer private law status or simply to exercise its activities as manifestations of the fundamental rights of association and of freedom of religion.⁸⁰

In any case, the issue raises the need of a proper understanding of the right of religious freedom as it relates to institutions, associations, and

77. See also L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] arts. 10, 11; Decree 782/95, DIARIO OFICIAL [D.O.].

78. See, e.g., Corte Constitucional [C.C.] [Constitutional Court], marzo 3, 1994, Sentencia C-088/94, available at http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/1994/c-088_1994.html (“A special category of legal personality [status] of churches and religious denominations is recognized.”).

79. See Decree 782/95, DIARIO OFICIAL [D.O.] art. 14.

80. According to Article 38 of the Colombian Constitution “[t]he right to free association to develop the activities that people exercise in social life is granted.” CONSTITUCION POLITICA DE COLOMBIA [C.P.] art. 38; see also L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 6(j).

groups with religious purposes. In fact, freedom of religion, in its collective dimension, means that any group of people can develop religious activities, without limitations other than those established by the RFA.⁸¹

Therefore, no particular legal status (public or private) recognized by the state is required for a group to exercise the right of religious freedom. No one can prevent a group from exercising their right to religious freedom—to meet, to practice acts of worship, or to spread their religion—regardless of whether the group has legal personality. A different issue is the desirability for a particular religious group to hold a legal status that will enhance their activities in a more or less institutional way.

The RFA lists a number of implications of the right of religious freedom that do not require any particular legal status.⁸² This applies, for example (and the list is not exhaustive), to the right to practice religion collectively in private or in public, to acts of prayer and worship, to religious feasts,⁸³ to the right to offer spiritual assistance to members,⁸⁴ to the right to meet or assemble in public for religious purposes and the development of religious activities,⁸⁵ to the right to establish places of worship or assembly for religious purposes,⁸⁶ to the ministers' right to freely develop their activities, to the religious entity's right to communicate with allied religious institutions,⁸⁷ to the right to publish religious writings, and to the right to announce and disseminate beliefs.⁸⁸

Despite all of the rights that are not dependent upon legal personality, some activities by their very nature may require support from an entity with legal personality.⁸⁹ This would be the case, for example, with the creation of institutes for education,⁹⁰ or for the development of education and charitable activities.⁹¹ In general, some kind of legal personality could be convenient or even necessary to

81. See L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 4.

82. *Id.* art. 7.

83. *Id.* art. 6(b).

84. *Id.* art. 6(f).

85. *Id.* art. 6(j).

86. *Id.* art. 7(a).

87. *Id.* arts. 7(b)–(c).

88. *Id.* arts. 7(e)–(f).

89. Such personality would not necessarily need to be “special.” Rather, it could be sufficient for an entity to possess legal personality under private law.

90. L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 7(d).

91. *Id.* art. 7(g).

develop religious activities that would require some support from an organization recognized as such by the legal system.

Given the foregoing, it is possible to propose the following classification scheme of religious groups or entities, depending on their recognition by the state:

a) *Groups with religious activities that do not have any specific legal status.* These groups result simply from exercising the right of association and religious freedom in its collective dimension.

b) *Religious entities with legal personality under private law.* A religious entity can choose personality under the regime of private entities without requesting the specific personality recognized by the Ministry of Internal Affairs. The private law status most consistent with religious activities is the legal regime established for nonprofit entities. NGOs have legal personality under this regime.⁹² To obtain legal personality under the legal regime established for nonprofit entities is relatively simple: the entity should be created by public document or private recognized document, and registered in the chamber of commerce of the city in which the entity intends to develop its main activities.⁹³

c) *Special legal status* (according to Articles 9 and 10 of the RFA). This is the type of personality specifically provided under Colombian law for non-Catholic religious bodies. As previously noted, such special classification must be requested, accompanied by appropriate documentation, from the Ministry of Internal Affairs.

d) *Legal status for Catholic entities* (see Article 11 of the RFA). According to Article IV of the current concordat between the Holy See and the Colombian state, entities with canon law personality are automatically recognized by civil law.⁹⁴ In each case, the ecclesiastical authority certifies the existence and personality of the religious entity.⁹⁵

92. See Decree 2150/95, diciembre 5, 1995, DIARIO OFICIAL [D.O.] art. 40.

93. See *id.* arts. 40–43.

94. L. 20/74, enero 14, 1975, DIARIO OFICIAL [D.O.] art. 4.

95. Art. IV of the concordat:

The State recognizes true and proper legal status to the Catholic Church. Similarly to the

The RFA expressly requires legal personality—the legal recognition described above in c) and d)—in matters listed in Articles 14, 15, and 16. In particular, according to Article 15, legal personality is required for a religious entity to subscribe to the State International Treaties or Internal Public Law Agreements.⁹⁶ The Act expressly mentions that among the possible matters covered in these Agreements are the recognition of civil effects for religious marriages,⁹⁷ the teaching of religion in public schools,⁹⁸ and organized religious assistance in schools, military facilities, hospitals, and prisons.⁹⁹ Legal personality is also required for recognition of diplomas issued by religious educational institutions (see Article 7 (d) of the RFA)¹⁰⁰ and in the situation indicated in Article 6(c)(2) (religious services in cemeteries)

Both legislation and jurisprudence after 1994 describe other situations in which special legal status is required. For example, to receive exemption from military service, ministers must belong to churches and religious denominations “legally recognized by the Colombian State.”¹⁰¹

Likewise, state contracts for educational services may be made only with religious entities with legal status.¹⁰²

Dioceses, religious communities, and other Church entities to which canon law grants legal status, represented by their legitimate authority. Equal recognition will be granted to the ecclesiastical entities who have received legal status by an act of the legitimate authority, in accordance with canon law. For civil recognition of the latter to be effective, it is enough to prove existence by canonical certification.

See also L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 7; Decree. 782/95, mayo 12, 1995, DIARIO OFICIAL [D.O.] art. 7; Decree. 1396/97, mayo 28, 1997, DIARIO OFICIAL [D.O.] art. 2.

96. *See also* Decree. 782/95, mayo 12, 1995, DIARIO OFICIAL [D.O.] art. 14 (“For religious entities to be able to subscribe Public Law Agreements, special legal status or public ecclesiastical law status is required. The State will consider the convenience of the subscription of Agreements . . . considering the statutes, the number of its members, its roots, and its history.”).

97. *See* L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] arts. 6(d), 15; *see also* L. 25/92, diciembre 18, 1992, DIARIO OFICIAL [D.O.] art. 1.

98. *See* L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] arts. 6(g), 15.

99. *See id.* arts. 8, 15; Decree. 782/95, mayo 12, 1995, DIARIO OFICIAL [D.O.] art. 13.

100. According to Decision C-088/94, the same condition (special legal personality or public ecclesiastical law personality) is necessary to receive tax benefits, as stated in RFA, art. 7. Corte Constitucional [C.C.] [Constitutional Court], marzo 3, 1994, Sentencia C-088/94, *available at* http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/1994/c-088_1994.html; *see also* Decree. 354/98, febrero 25, 1998, DIARIO OFICIAL [D.O.].

101. Corte Constitucional [C.C.] [Constitutional Court], julio 7, 1999, Sentencia C-478/99, *available at* http://www.secretariassenado.gov.co/senado/basedoc/cc_sc_nf/1999/c-478_1999.html; *see also* L. 48/93, marzo 4, 1993, DIARIO OFICIAL [D.O.] arts. 28–29.

102. *See* L. 115/94, febrero 8, 1994, DIARIO OFICIAL [D.O.] art. 200 (“The State could subscribe contracts with churches and religious denominations which have legal personality, to

In brief, it is possible to conclude the following:

- a) Without prejudice to the exercise of religious freedom by associations, groups, etc., the RFA provides a specific type of personality for non-Catholic religious entities, upon request, with the conditions set forth in the Act and in subsequent regulations. This status is usually the most appropriate for religious entities wishing to be clearly identified as such in social life. The status enables institutional and public development of the entity's religious activities.
- b) In relation to these entities, the Colombian state assumes a position that differs markedly from what may occur in relation to private entities. Actually, the reference to "harmonious relations" and the "common good"¹⁰³ indicates that such entities deserve special recognition for their contribution to the good of society.
- c) Relations with churches and religious groups acquire a higher degree of recognition when the entities sign formal agreements with the Colombian government. Such an agreement is designed for an institution that, by "the number of its members, its roots and its history,"¹⁰⁴ offers a "warranty of permanence."¹⁰⁵ Such an entity is able, according to the Colombian legislation, to engage with public authorities in a particular type of relationship whose content is fixed by agreement between the parties.

These agreements are not only instruments to delineate responsibilities and resolve conflicts, but they also reflect the desire to cooperate in seeking the common good. The state believes that religious entities are a positive element of social life, and therefore they could become "partners" in achieving the State's goals, within their own sphere of competences. It is easy to think, for instance, of cooperation in social and educational matters.

All of this leads to the conclusion that in the implementation and development of the principles governing relations between the state and

establish educational services in schools . . ."); *see also* Decree. 2355/09, junio 24, 2009, DIARIO OFICIAL [D.O.] art. 19.

103. *See* L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 2.

104. Decree. 782/95, mayo 12, 1995, DIARIO OFICIAL [D.O.] art. 14.

105. L. 133/94, mayo 23, 1994, DIARIO OFICIAL [D.O.] art. 15.

religious entities, Colombian legislation assumes a special regime very close to categories of public law. This was confirmed by the Constitutional Court in a decision upholding the constitutionality of the RFA.¹⁰⁶ This decision noted that there is in Colombia a “special regime, different from the rest of the regimes governing other civil liberties, associations and other legal persons that highlights the undeniable importance of religion in contemporary societies.”¹⁰⁷

The recognition of a “special category of legal personality to churches and religious entities who voluntarily request” has its origin in the fact that “it is not a subjective and private issue. Their consequences and social dynamics have a collective dimension.”¹⁰⁸ As a result, the Court qualifies the agreements with such entities as public law since they “are committed to the public interest.”¹⁰⁹

The terms of these agreements are qualified as “matters of public concern” and “public interest.”¹¹⁰ For example, according to the Court, among the matters of public interest are the marital status of individuals and the civil recognition of decisions issued by religious courts; formation of religious ministries for diffusion, propagation, proselytism and religious education; public record of religious entities; and tax benefits.¹¹¹

Consequently, through the agreements both the Catholic Church and other denominations are involved with the state in determining their specific legal status. The state considers this legal situation as the most appropriate to the public interest. Specifically for the Catholic Church, the concordat with the Holy See, which is recognized as an international treaty, was signed in 1973 and approved by Act 20 of 1974.¹¹² For other denominations (see Article 15 of the RFA), the Internal Public Law Agreement was signed in 1997.¹¹³

106. Corte Constitucional [C.C.] [Constitutional Court], marzo 3, 1994, Sentencia C-088/94, available at http://www.secretariasenado.gov.co/senado/basedoc/cc_sc_nf/1994/c-088_1994.html.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. L. 20/74, enero 14, 1975, DIARIO OFICIAL [D.O.] art. 4. In Latin America, there are eleven agreements of different types between the state and the Holy See. The most recent is the Brazilian Concordat, subscribed on November 13, 2008 and ratified on October 7, 2009.

113. Decree. 354/98, febrero 25, DIARIO OFICIAL [D.O.]. In other countries in the area there are not agreements with minority religions. Colombia’s 1997 agreement closely follows the scheme and many of the matters contained in the concordat with the Holy See. The religious entities who subscribed to the Agreement are: Concilio de las Asambleas de Dios de Colombia, Iglesia

VI. CONCLUDING REMARKS: ASSESSMENT OF THE ARTICULATION OF
THE CURRENT REGIME OF CHURCH-STATE INTERACTION WITH
FUNDAMENTAL PRINCIPLES OF EQUALITY, SECULARISM AND
COOPERATION

The influence of Catholicism in Colombian life has been notorious for historical and sociological reasons. This can be seen in areas as diverse as cultural heritage, holidays, symbols that govern private and public activities, and ceremonies (civil and military) in which society is in any way represented. It is impossible that this reality, which in its various aspects has been the “mirror” of a predominantly Catholic country, should not have been reflected in the legal system.

The failure to understand this fact may lead to a distorted and unrealistic judgment of many legal institutions which are not “aseptic.” Such institutions depend largely on the beliefs of the majority, and they are inseparable from the social and cultural environment in which the religious factor has always played a key role. Without this substrate, legal rules can come into crisis, can be broken or modified, or may simply disappear. By the same token, the state cannot ignore the fact that the vast majority of Colombian citizens are believers, and that their religious convictions inspire fundamental aspects of their behavior that necessarily affect social life.

The confessional state, for example, present in different periods of Colombian history, cannot be understood apart from the fact that a majority of the population was Catholic. In fact, the most intensely secularist period of Colombian history (1853–1886) fell into crisis in the midst of civil wars precisely for this reason: the lack of harmony of the state with the Catholic sentiments of nearly all of the inhabitants of the country.

The current Colombian system of relationships with churches and religious entities begins with full recognition of religious freedom (in its individual, collective, and institutional dimensions) and is configured according to the principles of equality, secularism, and cooperation. But from the standpoint of institutional relations with religious

Comunidad Cristiana Manantial de Vida Eterna, Iglesia Cruzada Cristiana, Iglesia Cristiana Cuadrangular, Iglesia de Dios en Colombia, Casa sobre la Roca-Iglesia Cristiana Integral, Iglesia Pentecostal Unida de Colombia, Denominación Misión Panamericana de Colombia, Iglesia de Dios Pentecostal Movimiento Internacional en Colombia, Iglesia Adventista del Séptimo Día de Colombia, Iglesia Wesleyana, Iglesia Cristiana de Puente Largo, and Federación Consejo Evangélico de Colombia (Cedecol). All of them have special legal personality, recognized by the Ministry of Internal Affairs.

denominations, the weight of history cannot be ignored. In fact, the only model of such relationships in Colombia has been the relationship of the state with the Catholic Church, reflected in two concordats (1887 and 1973, the latter currently in force).

As a consequence, and despite the new sociological situation of religious plurality, the concordatary system inspired in Colombia the model of relations between the state and non-Catholic Churches. Specifically, the concordat tradition has helped to strengthen the idea that relations with religious groups have a unique character distinct from the state's relations with private institutions and facilitated the recognition of other religious denominations in terms similar to those accorded the Catholic Church, including the possibility of signing public law agreements. This is what is known in the doctrine (which is particularly Italian) as the principle of bilateralism.¹¹⁴

This approach can be criticized as an eminently pragmatic solution or as a simple imitation and/or extension of the known institutional relations with the Catholic Church. It is also possible to discern the will of the minority religions to receive the same treatment and regard as the Catholic Church. This desire raises concerns from the standpoint of equality, understood, as seen above, in terms of identity and not of proportion. Such difficulties are present in the only agreement signed to date with non-Catholic denominations in which the desire to “give the same” ends up creating problems of a different order resulting from the very different structure and organization of religious denominations. I cite two examples.

The Agreement of 1997 extends to non-Catholic denominations the recognition of civil effects of marriage.¹¹⁵ It was not taken into account, however, that these denominations do not have a legal marriage system,

114. See C. CARDIA, “LAICITÀ DELLO STATO E NUOVA LEGISLAZIONE ECCLESIASTICA,” ATTI DEL CONVEGNO NAZIONALE DI STUDIO SU IL NUOVO ACCORDO TRA ITALIA E SANTA SEDE 135–51 (1987). In a subsequent publication the same author states:

The third paragraph of Article 8 of the [Italian] Constitution extended the principle of bilateralism to faiths other than Catholicism, provided that the State's relations with them were regulated by law on the basis of Agreements (*Intese*) with the respective representatives. From being an exception, the Pact system has become the general rule . . . It is the governing instrument of all relations between Church and State. The political reason of the constitutional provision is the desire to bring the status of the Church of Rome closer to non-Catholics through the Agreements, as far as possible.

C. CARDIA, *MANUALE DI DIRITTO ECCLESIASTICO* 213 (1996).

115. Decree. 354/98, febrero 25, 1998, *DIARIO OFICIAL [D.O.]*.

as does the Catholic Church. The result is that these non-Catholic marriages end up being civil marriages celebrated in a religious form.¹¹⁶

For a second example I may point to the situation in which spiritual assistance of the type provided by the Catholic Military Ordinariate should be extended to all members of the armed forces, regardless of denomination. In practice, it is impossible, for reasons of organization, number of worshipers, and so forth, to extend such service in the same way and with the same characteristics used for centuries by the Catholic Church.¹¹⁷

Nevertheless, the “mirror” of the Catholic Church has served positively to consolidate the model of cooperation in terms of public law, which implies the recognition that the existence and activity of religious denominations is directly related to the common good and deserves, therefore, a “special” legal recognition, with corresponding benefits in agreements that could be signed. Furthermore, in the years after 1991, many of the provisions of the concordat have become general rules or have spread easily to non-Catholic denominations.¹¹⁸ This evolution has been an essential element in the development of a common ecclesiastical law for all religious denominations, completed with the specific provisions contained in the two agreements concluded so far: the concordat and the Agreement of 1997 with non-Catholic denominations.

In sum, the Colombian system seeks to balance the common law with a “particularized” relationship with each denomination. Thus it has avoided the danger of uniformity, and respect for differences is granted. However, the point is not only the recognition of the specific character of each religious entity in a unilateral way: the Agreement implies the active participation of both sides in determining what is more consistent with the nature of the entity involved in the Agreement. The system of agreements signed at the highest level, properly applied, is also a guarantee of secularism: it contributes to a genuine respect, with the appropriate legal certainty, of the powers of state and religious denominations, helping to avoid undue interferences.

116. See Vicente Prieto, *Los efectos civiles de los matrimonios religiosos en el sistema matrimonial colombiano* [The Civil Effects of Religious Marriages in the Colombian Matrimonial System], 17 DIKAION 265, 265–96 (2008).

117. See Vicente Prieto, *Asistencia religiosa de las Fuerzas Armadas en Colombia* [Religious Attendance of the Armed Forces in Colombia], 21 IUS ECCLESIAE, 375, 375–392 (2009). Of course, this does not mean that religious assistance is not ever granted.

118. See Vicente Prieto, *El Concordato de 1973 y la evolución del Derecho Eclesiástico colombiano* [The Concordat of 1973 and the Evolution of Colombian Ecclesiastical Law], 22 REVISTA GENERAL DE DERECHO CANÓNICO Y DERECHO ECLESIASTICO DEL ESTADO 1, 1–50 (2010).

The most obvious limitation of the agreement system appears precisely in relation to entities that do not fit the legal requirements. Such entities may find limitations on the exercise of their religious activity, particularly in its collective and institutional aspects. In this regard it may be said, first, that the signature of Agreements is not mandatory. Each denomination has the free decision to initiate the proceedings for the signing of an agreement with the state. It may happen that the entity, depending on its nature, purpose, or organization, considers that an Agreement is not the most appropriate path, preferring instead to remain within the broad framework of the Constitution and the RFA.

In fact, the degree of “institutionalization” of denominations is, in practice, quite varied. Some have clearly identified hierarchical structure; some do not. Some are characterized by a strong and consistent law system; some are not. Hence the cautions evident in the legal rules for imposing conditions for the recognition of legal personality and, above all, for the signing of agreements with the state.

Actually, for entities seeking to become part of the Colombian agreement system, a number of reasonable requirements have been established. The evaluation of these requirements belongs to the government authorities, and they are subject to a broad range of interpretation. In fact, it is noteworthy that since 1994 (the date of the RFA), the government has concluded only one agreement with a non-Catholic denomination.

It belongs to judges to resolve possible conflicts created by decisions that can be considered arbitrary. At the same time, jurisprudence can contribute to a more flexible interpretation of the rules when circumstances require.

A recent example appears in a decision of the Constitutional Court of Colombia (2007) that extended to all denominations the case dealt with the provision contained in Article 23 of the 1997 Agreement, which states that the Seventh-day Adventist Church, as part of the Agreement, is entitled to respect for its belief that the Sabbath is not a working day.¹¹⁹ Furthermore, students belonging to the Adventist Church are excused from attending classes and taking exams on the Sabbath. The Court extended the same right to all denominations recognized by the state, with or without agreement: “Especially in public educational institutions but also in private ones [authorities] are bound to seek an agreement with the students who, because of their religious beliefs,

119. Decree. 354/98, febrero 25, 1998, DIARIO OFICIAL [D.O.] art. 23.

cannot meet regular academic calendar or other obligations . . .” The request of the student shall be presented in due time, demonstrating he is “an active member of a church or religious denomination previously recognized by the Colombian State.”¹²⁰

In conclusion, it could be said that the Colombian system is obviously, in practice, inseparable from the work of civil authorities, judges, and courts. However, even the most perfect system (and the Colombian is certainly not perfect) would be unable to foresee all of the circumstances in which religious freedom is at stake, both for individuals and for institutions. Developing a solution for particular cases is precisely the mission of judges and jurisprudence. This is one of the areas in which civil law countries, such as Colombia, can learn more from the common law experience and system.

120. Corte Constitucional [C.C.] [Constitutional Court], mayo 31, 2007, Sentencia T-448/07, available at <http://www.corteconstitucional.gov.co/relatoria/2007/t-448-07.htm>.

APPENDIX

ANNEX. RELIGIOUS FREEDOM ACT (ACT 133 OF 1994)

(SEE *DIARIO OFICIAL*, MAY 26, 1994, YEAR CXXX, NO. 41.36.9.)

THE CONGRESS DECREES

CHAPTER I

THE RIGHT TO RELIGIOUS FREEDOM

Article 1. The State guarantees the fundamental right to freedom of religion and cults, as recognized by Article 19 of the Constitution.

This right shall be interpreted in accordance with International Human Rights treaties ratified by the Republic.

Article 2. No church or religious denomination is or will be official or established. However, the State is not atheist, agnostic or indifferent to the religious sentiments of Colombians.

The government will protect individuals, as well as churches and religious groups, in their beliefs, and will facilitate their participation in achieving the common good. Similarly, the government will maintain harmonious relations and common understanding with the churches and religious entities existing in Colombian society.

Article 3. The State recognizes the diversity of religious beliefs, which shall not constitute a cause for inequality or discrimination before the law that could invalidate or restrict the recognition or exercise of fundamental rights.

All faiths and churches are equally free before the Law.

Article 4. The exercise of rights deriving from freedom of religion and cults is limited only by protection of the rights of others to exercise their public liberties and fundamental rights, as well as the safeguarding of security, health, and public morality, which are constituent elements of public order protected by law in a democratic society.

The right to protection recognized in this statute will be exercised in accordance with current laws.

Article 5. There are not included within the scope of this Act activities focused on study and experimentation with psychic

phenomena, including Satanism; magical, superstitious or spiritist practices; and other similar practices outside the scope of religion.

CHAPTER II
THE SCOPE OF THE RIGHT TO RELIGIOUS FREEDOM

Article 6. Freedom of religion and cults guaranteed by the Constitution covers, with the consequent legal autonomy and immunity from coercion, among others, the rights of any person:

- a) to profess freely chosen religious beliefs or not to profess any; to change or abandon beliefs; to freely express religion or religious beliefs or the lack of them, or not to declare them;
- b) to practice, individually or collectively, in private or in public, acts of prayer and worship; to commemorate holidays; and not be disturbed in the exercise of these rights;
- c) to receive decent burial and to observe the precepts and rites of the deceased in all matters relating to the burial customs as expressed by the deceased in life, or in case of default, by his family. To this end, the procedure will be as follows:
 - 1. Rites of any church of religious denomination may be celebrated in civil or private cemeteries.
 - 2. In cemeteries which are property of churches and religious denominations with legal personality will be observed the precepts and rituals determined by the church or religious denomination.
 - 3. The specific designation of existing places of worship in cemeteries (public or private) will be retained, without prejudice to new facilities of other churches or religious denominations.
- d) to contract and celebrate marriage and to establish a family according to religious beliefs and according to the rules of the church or religious denomination. To this end, religious marriages and nullity decisions issued by religious authorities will have civil effects, without prejudice of the State's power to regulate them;
- e) not to be compelled to perform acts of worship or to receive

religious assistance, if it is contrary to personal convictions;

f) to receive religious assistance from their own church in any place, mainly in health care public facilities, and in military and penitentiary facilities;

g) to receive and impart religious education and information, either orally or in writing or otherwise, to whomever wishes to receive it; to receive such education and information or to refuse it;

h) to choose religious and moral education for themselves, and parents for pupils, within and outside schools, according to their own convictions. To this effect, schools will offer religious and moral education in accordance with the religion to which the students belong, without prejudice, not being compelled to receive it. The desire not to receive religious or moral education could be expressed in the act of registration by the adult student or by parents or guardians of pupils;

i) not for religious reasons to be prevented access to any work or civil activity, or to hold office or participate in public functions. In the case of admission, promotion, or permanence in chaplaincies or as religion teachers, certification of fitness issued by the church or religious denomination to which the teachings belong should be required;

j) to meet or assemble in public with religious purposes and to associate for religious activities, according to what stated in this Act and in the general legal system.

Article 7. The right to freedom of religion and cults also includes, inter alia, the following rights of churches and religious denominations:

- a) to establish places of worship or assembly with religious purposes, with due respect to their religious ends and specific religious nature;
- b) to exercise freely ministerial activities, to confer religious orders, to make pastoral appointments, to communicate and maintain relationships, in the country or abroad, with the faithful, with other churches or religious denominations, and with their own organizations;
- c) to establish their own hierarchy, to appoint or freely elect ministers with due respect to particular forms of attachment and permanence according to religious rules;
- d) to have and run independently theological institutions of formation and education, in which candidates to religious ministry could be freely admitted, according to the judgment of the religious authorities. The civil recognition of diplomas issued by these institutes will be the object of Agreement between the State and the church or religious denomination or, failing that, by legal regulations;
- e) to write, publish, receive, and freely use books and other publications on religious matters;
- f) to advertise, communicate, and disseminate to any person their own beliefs, orally and in writing, without prejudice of the right recognized in subparagraph g) of article 6, and to freely express the particular values of their own doctrine in social matters and in the ordering of human activities;
- g) to accomplish activities of education, welfare, and assistance in order to practice moral teachings in the social dimension of each religious denomination;

Paragraph. Municipal councils may grant local tax exemptions to religious institutions on an equal basis for all churches and religious denominations.

Article 8. For the real and effective application of these rights, the authorities will take the necessary measures to ensure the religious assistance offered by churches and religious denominations to its

members, when they are in public schools, military facilities, hospitals, and penitentiary facilities.

This care may be offered by chaplaincies or by similar institutions, organized with full autonomy by the respective church or religious denomination.

CHAPTER III LEGAL PERSONALITY OF CHURCHES AND RELIGIOUS DENOMINATIONS

Article 9. The Ministry of Internal Affairs recognizes the legal status of Churches, creeds and religious denominations, their federations and the confederations and associations of ministers, as they may request. Likewise, said Ministry shall maintain the Public Registry of religious entities.

The application shall be accompanied by trustworthy documents that attest to the religious entity's foundation or establishment in Colombia, as well as its name and other identifying information, the articles of association in which are indicated its religious purposes, operating regimen, organizational scheme and representative entities, with an indication of their powers and qualifications for their valid designation.

Paragraph. Churches, denominations, and religious denominations, as well as their federations and confederations, may retain or acquire legal private personality according to general provisions contained in civil law.

Article 10. The Ministry of Internal Affairs will automatically perform registration in the Public Record of Religious Entities when the recognition of legal personality for churches or religious denominations or its federations or confederations is done.

Legal personality will be recognized when the requirements are duly credited, and it does not violate any of the provisions of this Act.

Article 11. The State continues to recognize public ecclesiastical legal personality to the Catholic Church and the institutions erected or to be erected in accordance with what is established in paragraph 1 of Article IV of the Concordat, approved by Act 20, 1974.

For the registration of these in the Public Record of Religious Entities the decree of canonical erection or approval will be notified to the Ministry of Internal Affairs.

Article 12. The Ministry of Internal Affairs has the administrative power to recognize legal personality, to perform registration in the Public Record of Religious Entities, as well as to negotiate and develop the Public Law Internal Agreements.

CHAPTER IV
THE AUTONOMY OF CHURCHES AND RELIGIOUS
DENOMINATIONS

Article 13. Churches and religious denominations have, in their religious affairs, full autonomy and freedom. They can establish their own rules of organization, internal rules, and dispositions for members.

In these rules, as well as in those governing the institutions created by churches and religious denominations for their own ends, could be included provisions for safeguard of their religious identity and their own nature, as well as of due respect for their beliefs, without prejudice of the rights and duties recognized by the Constitution (especially those of freedom, equality, and non-discrimination).

Paragraph. The State recognizes the exclusive jurisdiction of the ecclesiastical courts to decide the validity of acts or religious ceremonies that affect or may affect the civil status of persons.

Article 14. Churches and religious denominations with legal personality will have, among others rights, the following:

- a) to create and foster associations, foundations, and institutions to carry out their purposes in accordance with the provisions of the legal system;
- b) to acquire, sell and manage freely movable and immovable property as deemed necessary to carry out their activities; to own artistic and cultural heritage they have created or acquired with their own funds, or by legal possession, as it is guaranteed by the legal system;
- c) to request and receive financial donations from natural or legal persons and to organize collections among the faithful for purposes of worship, sustentation of ministers, and other purposes relating to their mission;
- d) to have secured their rights to honor and rectification when churches, religious denominations, their beliefs, or their ministers are affected by defamation, affront, or wrong or

inaccurate information.

Article 15. The State may conclude International Treaties or Internal Public Law Agreements with churches, religious denominations, their federations, confederations and associations of ministers, especially to regulate what is stated in paragraphs d) and g) of Article 6 of this Act, in second paragraph of Article 8, and in Article 1 of Act 25 of 1992. Entities should enjoy legal personality. Their statutes and number of members should give a guarantee of enduring.

The Internal Public Law Agreements are subject to prior legal control by the Advisory Board of Civil Service of State Council and will be effective once they were subscribed by the President of the Republic.

Article 16. The status of minister of cult will be certified by document issued by the competent authority of the church or religious denomination with legal personality to which the minister belongs. The exercise of ministerial religious functions will be guaranteed by the State.

CHAPTER V FINAL AND TRANSITIONAL PROVISIONS

Article 17. In all municipalities there will be a public cemetery. Municipal authorities will take the necessary measures to accomplish this provision in locations that lack a civil cemetery within one year since the enactment of this Act.

Paragraph. Until the first part of this article is fulfilled, in municipalities where there is only one cemetery owned by a church or religious denomination, a separate section will be provided to give a decent burial in the same conditions as in cemeteries depending from civil authorities.

Article 18. The registration of entities already established according to Article 12 shall be conducted within three years following the enactment of this Act.

Article 19. This Act is effective from the date of enactment and derogates all provisions that are contrary.

The Honorable President of the Senate of the Republic
JORGE RAMON ELIAS NADER

The General Secretary of the Honorable Senate
PEDRO PUMAREJO VEGA
The President of the Honorable House of Representatives
FRANCISCO JOSÉ JATTIN SAFAR
The General Secretary of the Honorable House of Representatives
DIEGO VIVAS TAFUR

NATIONAL GOVERNMENT OF THE REPUBLIC OF COLOMBIA

PUBLISHED AND EXECUTED.
SIGNED IN SANTAFÉ DE BOGOTÁ, DC, ON MAY 23, 1994.

César Gaviria Trujillo (PRESIDENT)
Fabio Villegas Ramirez, MINISTER OF INTERNAL AFFAIRS
Maruja Pachón de Villamizar, MINISTER OF NATIONAL EDUCATION