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## The Evolution of Religious Beliefs in a Constitutional Text

*Alfredo Quispe Correa\**

### I. INTRODUCTION

Imagine yourself in Peru before it was conquered by Spain. Peru is a vast empire, professing a religion that revolves around nature and totemic cults. The ancient Peruvians worship the sun,<sup>1</sup> the moon,<sup>2</sup> ferocious animals,<sup>3</sup> natural phenomena,<sup>4</sup> and the dead.<sup>5</sup> It is a magical world; its existence can be explained through sorcery, human sacrifices, and mysteries.<sup>6</sup> This is the world that the brave Spanish adventurers who have come to take possession of these lands find in the 16th century.<sup>7</sup>

Spain, on the contrary, is a nation entirely identified with the Catholic religion. It organizes crusades to impose its creed and raise the cross as a symbol of conquering in the name of God, single and true.<sup>8</sup> Arriving in Peru, the two cultures collide, two worlds of different beliefs. The stronger of the two, with its weapons and military tactics, inevitably prevails. Spain dominates an already divided Incan Empire; Peru's mighty kingdoms are subdued.<sup>9</sup>

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\* Minister of Justice, Peru.

1. See WILLIAM SULLIVAN, *THE SECRET OF THE INCAS: MYTH, ASTRONOMY, AND THE WAR AGAINST TIME* 291-92 (1996) (explaining the belief that the Incas were descendants of the sun and moon).

2. See *id.*

3. See *id.* at 139-40, 272, 300 (describing the role of animals in various Incan myths).

4. See *id.* at 15-17, 91-92, 138 (explaining floods, fire, and solar eclipses through mythology).

5. See *id.* at 34 (describing the annual Eve of All Soul's Day, when the Incas believed their ancestors returned).

6. See generally *id.* (describing the beliefs of the Incas and how those beliefs explain the universe).

7. See *id.* at 1-2 (describing the arrival of the Spanish forces in the lands of the Incas).

8. See NICHOLAS GRIFFITHS, *THE CROSS AND THE SERPENT: RELIGIOUS REPRESSION AND RESURGENCE IN COLONIAL PERU* 3, 6 (1996).

9. See SULLIVAN, *supra* note 1, at 2-4 (describing the Incan civil war that was

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The culture brought by the Spaniards was founded on Catholicism. It was imposed upon the Incas by various methods with the purpose of eradicating the idolatry of the Quechuas, Aimaraes, and Chancas empires that accepted the coexistence of lesser gods alongside their official gods. Christian culture was thus spread during the Colonial era.

This Catholic influence was maintained with the birth of the Republic.<sup>10</sup> The Independence of 1821 signified the affirmation of a political model taken from the French and the American Revolutions.<sup>11</sup> Yet this liberal model, for imported ideas are liberal, had a limitation when it attempted to undertake freedoms of belief, of opinion, or ideas. Early constitutions identified only a single religion—Roman Catholicism—the so-called national religion, excluding all the rest.<sup>12</sup>

The Constitution of 1812, that some Peruvian authors hold to be the original constitution, provides a prime example of religious rights in Peru that stemmed from a blend of French/American liberalism and the heavy Catholic influence of the time. It established in Article 12: “The religion of the Spanish nation is and will be perpetually the Roman Catholic Apostolic, only true, religion. The Nation shall protect it through its wise and just laws, and shall prohibit the exercise of any other.”<sup>13</sup> This Constitution, known as the Constitution of Cádiz, was a monarchical constitution intended to thwart the independence of those people who were subject to the Crown. The Crown had a considerable advantage during the formation and passage of the Constitution: there were forty-nine representatives from the Colonies who recognized the Spanish Monarchy compared to only nine Peruvians.

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occurring when the Spanish arrived).

10. See PERU CONST. art. 8 (1823) (“The Religion of the Republic is the Roman Catholic Apostolic Religion which excludes the exercise of any other religion.”); KENNETH MILLS, *IDOLATRY AND ITS ENEMIES: COLONIAL ANDEAN RELIGION AND EXTIRPATION, 1640-1750*, at 178 (1997) (describing the spread of Catholicism during the Colonial era).

11. See DAVID M. VALDERRAMA, *LAW AND LEGAL LITERATURE OF PERU: A REVISED GUIDE* 1, 3 (1976) (naming the French and United States charters among those used by legislators in drafting the Constitution of 1823 in Peru).

12. See, e.g., PERU CONST. art. 8 (1823) (“The Religion of the Republic is the Roman Catholic Apostolic Religion which excludes the exercise of any other religion.”).

13. PERU CONST. art. 12 (1812).

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Yet this attempt to keep the Colonies under the aegis of the Crown came late, and the process of liberating the indigenous peoples was already underway. During this same period, liberalism spread throughout the world, inevitably arriving in Peru. Peru instituted an independence with a unique liberalism, outlining religious freedom in its application and limiting the exercise of Catholicism.<sup>14</sup> This limitation encompassed all of the nineteenth century and has extended into the present century making religious liberties, proposed by its forerunners, a reality.

It should be pointed out, as a brief aside, that liberalism as a political, economic, and social system was difficult to apply in the Latin American countries—especially Peru. The existence of a middle class, semifeudal land ownership, religious limitations, control of the economy, the high percentage of illiteracy, and many other factors reduced the attractive liberal ideals to mere illusions. Today, however, these ideals are becoming reality, like a dream that is coming true decades late.

This Article will not address the causes that prevented liberalism from spreading or establishing itself in Latin American territories sooner. The style of government common in Latin America focused on maintaining the internal situation. In large measure, liberalism was a revolution, which meant change, and those social groups enthroned in power impeded this change. Today these barriers have been overcome; for example, in the case of Peru, liberalism has sparked a revolution which will finally allow the consolidation of democracy through a modern state of law.

But this is not the theme, although democracy is always relevant. This Article's theme, instead, is the evolution of the religious situation in Peruvian constitutional law. The Article also discusses the current religious climate in Peru.

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14. See Paul E. Sigmund, *Religious Human Rights in the World Today: A Report on the 1994 Atlanta Conference: Legal Perspectives on Religious Human Rights: Religious Human Rights in Latin America*, 10 EMORY INT'L L. REV. 173, 174 (1996) (describing the acts of the liberals in reducing church power in nineteenth century Latin America).

## II. THE EVOLUTION OF RELIGIOUS RIGHTS IN PERUVIAN CONSTITUTIONAL LAW

The constitutional evolution that will be discussed began in the early 1800s. With the independence of 1821, a new legal structure was inaugurated and embodied in statute. Article I of this code states:

The Roman Catholic Apostolic Religion is the National Religion: The Government shall recognize as one of its primary duties the maintenance and conservation of the Catholic Religion by all reasonable means. Anyone who attacks its dogmas and principles in public or private will be severely punished, which punishment shall be equal to the severity of the offense.

The Constitution of 1823 similarly stated: "The Religion of the Republic is the Roman Catholic Apostolic Religion which excludes the exercise of any other religion."<sup>15</sup> Article IX of the same Constitution stated: "It is the Nation's duty to protect [Roman Catholicism] constantly, by all means conforming to the spirit of the Gospel, and all habitants of the State must respect it without defaming."<sup>16</sup>

These Constitutions reveal that, from the inception of the Republic, the political understanding was as follows: (1) Roman Catholicism was the official religion of Peru; (2) the official religion would be protected; and (3) the establishment of an official religion excluded the exercise of all other religions. This political understanding, which existed from the dawn of independence well into the 20th century, was based on the assumption that the majority of Peruvians were Catholic.

Some progress was made toward broader religious freedom in the late 1820s, but it was soon lost in the 1830s. The Constitution of 1826 simply stated in Article VI that the religion of Peru was Roman Catholic Apostolic, without stating that the government would protect and maintain the religion and without threatening punishment for questioning its principles.<sup>17</sup> However, the Constitution of 1828, Article III, stated: "Peru's religion is the Roman Catholic Apostolic. The

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15. PERU CONST. art. 8 (1823).

16. *Id.* art. 9.

17. *See* PERU CONST. art. 6 (1826).

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nation shall protect it by all means conforming to the spirit of the Gospel; and the exercise of any other religion is prohibited.”<sup>18</sup> The Constitution of 1834 repeated Article III of the 1828 Constitution identically in its Article II. The Constitution of 1839 varied somewhat in wording but maintained the same restrictive spirit in its Article III: “Peru’s religion is the Roman Catholic Apostolic which shall be professed without allowing the exercise of any other form of worship.”<sup>19</sup>

The Constitution of 1856 varied slightly in its wording in Article IV: “The Nation shall profess the Roman Catholic Apostolic Religion. The State shall protect it by all means conforming to the spirit of the Gospel and shall not permit the public exercise of any other religion.”<sup>20</sup> This language obviously does not provide full religious freedom to all faiths; however, the “public exercise” language could be interpreted as allowing the private existence of other denominations. In the Constitution of 1860, still another formula was employed in Article IV: “The Nation shall profess the Roman Catholic Apostolic Religion: The State shall protect it, and shall not permit the public exercise of any other religion.”<sup>21</sup> This eliminated the “spirit of the Gospel” as a source of interpretation of what would be understood by “true” Catholicism. An identical writing can be found in Article III of the Constitution of 1867.<sup>22</sup>

The Constitution of 1920 inaugurated the constitutionalism of the 20th century. In its text was planted a formula more realistic with respect to religion. Article V stated: “The Nation shall profess the Roman Catholic Apostolic Religion. The State shall protect it.”<sup>23</sup> This language no longer excluded other religions. Further, Article XXIII, regarding individual guarantees which today are personal rights, pointed out “[t]hat no one will be persecuted on account of their ideas or their beliefs.”<sup>24</sup> While this text constituted yet another advance, it

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18. PERU CONST. art. 3 (1828).

19. PERU CONST. art. 3 (1839).

20. PERU CONST. art. 4 (1856).

21. PERU CONST. art. 4 (1860).

22. See PERU CONST. art. 3 (1867).

23. PERU CONST. art. 5 (1920).

24. *Id.* art. 23.

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should be noted that well into the 1950s, society maintained a deep prejudice and continued discrimination against the divorced, illegitimate children, and non-Catholics. For example, an illegitimate child or a child of divorced parents could not study in a Catholic school, and the teaching of the Catholic Religion was mandatory.

The Constitution of 1933 made another notable advance. Article 232 pointed out that “[r]especting the sentiments of the national majority, the State protects the Roman Catholic Apostolic religion. All other religions enjoy freedom in exercise of their respective beliefs.”<sup>25</sup> This new language officially recognized for the first time the existence of other religions and the right to freedom of worship.

The Constitution of 1989 featured another important change regarding religious matters, acknowledging the social change taking place in the country. Article 86 stated: “Within an independent and autonomic regimen, the State recognizes the Catholic Church as an important element in the history, culture, and moral formation of Peru. The State shall offer its collaboration. The State may also establish forms of collaboration with other denominations.”<sup>26</sup> The current Constitution of 1993 similarly states: “The State respects other faiths and may determine forms of cooperation with them.”<sup>27</sup>

While the 1993 Constitution permits official cooperation with all religions, currently only the Catholic Church has such an official agreement. Institutional relations between the Catholic Church and the Peruvian State are based on the international covenant commemorated between the Holy See and the Republic of Peru, approved by Decreed Law 23211 in 1980. Similar forms of official institutional collaboration with other denominations have still not been formally established. This does not mean that the government does not cooperate with other faiths at all. Some forms of governmental cooperation with other faiths can be seen in the form of government allowance of faiths to admit educational material and in governmental encouragement of faiths to provide social assistance, health, and food to Peruvian citizens. Still there is

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25. PERU CONST. art. 232 (1933).

26. PERU CONST. art. 86 (1989).

27. PERU CONST. tit. II, ch. 1, art. 50 (1993).

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not an official covenant of cooperation, like the one binding the Catholic Church with the Peruvian State.

The collaboration with the Catholic Church is also reflected in other ways. First, economic allowances are made for Catholic bishops and ecclesiastical personnel, but not for all pastoral agents. Second, taxes, like the property tax, are discharged to the Catholic Church and other religious denominations. An example of this is the exoneration which is extended to other religious denominations for donations which come from the outside.

As can be seen from the foregoing discussion, religious rights in Peru have increased as a result of a series of new constitutions, dating back to the early 1800s. The existence of several different constitutions in Peru has been criticized in light of the existence of only one Constitution in the United States. Admittedly, there have been many constitutions in Peru,<sup>28</sup> however, since the 1970s there has only been, in essence, one real change to the Constitution. It is notable that the United States has indeed had only one constitution in its history. The U.S. Constitution has stood the test of time as the country evolved from a rural period to the economic and technological power that we admire today.

### III. PERU'S CURRENT RELIGIOUS LANDSCAPE

Today the Catholic religion is extremely widespread in the country, yet it must be noted that Evangelist groups are very active. Whereas in the dawning age of the Republic, the technical means to verify such an assertion did not exist, such means exist today. Information gathered by the Office of Registry of Lima and Callao (an integral institution of the department of Justice) shows that as of September 23, 1997, Peru had legally recognized the following groupings of religion: Evangelist groupings, 258; Catholic groupings, 200; other groupings, 34; making a total of 492 registered religious groupings.<sup>29</sup> With regard to the number of churches and

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28. See GRAHAM H. STUART, *THE GOVERNMENTAL SYSTEM OF PERU* 3-18 (1925) (discussing the constitutional development of Peru).

29. It should be noted that the registration in the Public Record is done to allow legal representation, thus permitting religious organizations to contract or pursue civil or commercial rights.



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members, a Peruvian publication<sup>30</sup> estimates the following data:

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30. See RICHARD WEBB & GRACIELA FERNANDEZ BACA, PERU '96 IN NUMBERS, ANNUAL STATISTICS.

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Table 1  
Profile of the Religions in Peru, 1995

RELIGION	NUMBER OF CHURCHES	NUMBER OF MEMBERS
Catholic	5,008	19,530,000
Incan Union of the Seventh Day Adventist Church	2,971	352,500
Evangelical Association of the Israeli Mission of the New Universal Pact	505	350,000
Association of Free Evangelical Churches	3	250,000
The Church of Jesus Christ of Latter-Day Saints	416	290,000
Jehovah's Witnesses	1,206	53,5000
Methodist Church of Peru	105	7,000
Peruvian Association of the International Soka Gak Kai	4	5,700
Assembly of God	2,035	115,100
Angelican Episcopalian Church of Peru	11	400
Christian Missionary Alliance Church	100	21,300
Baptist Church	1,000	105,000
Evangelical Presbyterian Church of Peru	405	15,700

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It is also interesting to note the data contained in the Census of 1993.<sup>31</sup>

Table 2  
Peru: Population by Professed Religion,  
according to State (1993)

STATE	TOTAL	RELIGION (Relative Distribution)			
		Cath.	Evang.	Other	None
Total	21,980,304	88.9	7.2	2.5	1.4
Amazonas	335,745	75.5	16.3	5.5	2.7
Ancash	952,218	90.4	7.0	1.4	1.2
Apurimac	380,579	90.3	7.9	1.2	0.6
Arequipa	914,497	92.4	3.4	3.0	1.2
Ayacucho	490,331	88.5	10.2	0.6	0.7
Cajamarca	1,255,780	86.4	10.2	1.8	1.6
Callao	638,467	92.0	4.3	2.5	1.2
Cusco	1,024,583	89.8	6.6	2.6	1.0
Huanacavelica	383,619	83.4	15.4	0.4	0.8
Huanuco	651,593	82.0	15.5	1.7	0.8
Ica	564,406	94.0	3.4	1.7	0.9
Junin	1,031,848	87.7	9.6	1.5	1.2
La Libertad	1,267,461	86.0	10.2	2.0	1.8
Lambayeque	917,545	91.4	5.8	1.6	1.2
Lima	6,374,545	91.3	4.6	2.6	1.5
Loreto	684,378	83.5	11.6	3.5	1.4
Madre de Dios	66,780	86.0	8.0	3.6	2.4
Moquegua	128,333	91.0	3.8	3.7	1.5
Pasco	225,239	81.2	15.4	2.3	1.1
Piura	1,318,679	94.3	4.0	1.2	0.5
Puno	1,074,855	85.6	6.1	6.4	1.9
San Martin	549,938	78.9	12.0	4.9	4.2
Tacna	217,756	87.8	5.0	5.2	2.0
Tumbes	154,385	93.1	4.5	1.4	1.0
Ucayali	313,744	77.0	15.4	4.3	3.3
Metropolitan Lima	6,334,668	91.3	4.5	2.7	1.5

31. INEI (NATIONAL INSTITUTE OF STATISTICS AND INFORMATION), NATIONAL CENSUS OF 1993. It should be noted that the registration in the Public Record is done to allow legal representation, thus permitting the ability to contract or to pursue civil or commercial rights.

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Taken together, this information shows that Evangelist groups are indeed very active, especially in marginal zones (zones of extreme poverty) and periphery zones of the territory.<sup>32</sup>

A couple of additional aspects of Peru's religious landscape should be discussed here. One such aspect is that of private schooling, which has spread throughout the country. The majority of these private schools are under the charge of Catholic institutions. The quality of their teaching is publicly recognized and considered by some to be superior to the public schools.<sup>33</sup> Until public schools can match this perceived quality, other faiths will be at a disadvantage in terms of influence over Peruvian citizens. On the other hand, although the spread of Catholic ideals does not conflict with the general politics of the State, there are a few minority religious groupings that reject national symbols, such as the flag, and national authority, or they object on grounds of religious conscience to defending their country in case of violations of its sovereignty.<sup>34</sup>

Further, it is interesting to note the mixture of the Catholic religion, seen in the diverse peoples that assimilate Catholic teachings into their way of life. There is, for example, a Revered Black Virgin in a locality of Cañete, a province of Lima about 135 kilometers from the capital, inhabited primarily by blacks.<sup>35</sup> In Catacaos, Piura, about 1,044 kilometers from Lima, they worship the Good Thief (Dimas) and the Bad Thief (Gestas).<sup>36</sup> Dimas is asked with sweet, tender words to do good

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32. To the extent that illiteracy reflects poverty levels, Peru's 1993 Census shows that Evangelical activity is highest in those states with the highest levels of illiteracy. See OFICINA DE IMPRESIONES DE LA SECRETARÍA GENERAL DEL INSTITUTO NACIONAL DE ESTADÍSTICA E INFORMÁTICA, *EL ANALFABETISMO EN EL PERU* 24-25 (1995).

33. See MILAGROS PEÑA, *THEOLOGIES AND LIBERATION IN PERU* 4, 48-50 (1995) (describing the Catholic education and schools as "prestigious").

34. Typical of such groups are the Jehovah's Witnesses. See generally M. JAMES PENTON, *APOCALYPSE DELAYED: THE STORY OF JEHOVAH'S WITNESSES* 138-45 (2d ed. 1997) (discussing the Jehovah's Witnesses' refusal to salute the flag, stand for the national anthem, and participate in military service).

35. See MIGUEL PINTO & ALEJANDRO SALINAS, *GEOGRAFIA DE LA COSTA: SIGLO XIX* 14-17 (1995) (discussing Cañete and the predominantly black racial composition of this area).

36. See JACOBO CRUZ VILLEGAS, *CATAC CCAOS: ORIGEN Y EVOLUCION HISTORICA DE CATACAO* 502-03 (1982) (discussing the religious rituals of Catacaos, particularly as they relate to Dimas and Gestas).

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to or for someone; Gestas, on the other hand, is insulted so that he will do evil to a rival.<sup>37</sup>

Jesus, the Virgin Mary, and the three wise men not only adopt different names according to the place where they are worshiped, but they are also dressed with the typical clothing of that place. There is also a mix of paganism, such as when a procession organized in an Andean village ends with alcoholic libation and moral abandon.<sup>38</sup> There are Catholic religion cults that end their worship with the sacrifice of animals to get the attention of the parish. The "steward" is an Andean custom: a person is named and is placed in charge of a religious activity in homage of the saint of the locality, which also includes financing the activity. These festivities include alcohol, bullfights, cockfights, bands, and result in a furor of regional dances, for days or weeks, such as the parties of Santiago that take place in Huancayo during the month of August.

In the near future there may appear an even more simple formula that will extend freedom to ideas and beliefs without referring to any specific religion and without offering economic support to a particular religion. This would abandon the previous constitutional provisions that inherently harmed other religions. In a world of free competition, beliefs will also have to promote and spread themselves in order to maintain and gain followers, using, as a base, free acceptance and free cooperation. State resources should, then, orient themselves to other objectives, such as education.

#### IV. CONCLUSION

In conclusion, it should be noted that there is no modern conflict between the majority of religious groups existing in Peru and the philosophy of the State. There is, on the contrary, in this diversity of beliefs, rites, and devotions, an outline of an identity that is on the point of emerging from this multicultural and multilingual society.

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37. *See id.*

38. *See generally* ROBERT J. SMITH, *THE ART OF THE FESTIVAL* 111-14, 122 (1975) (discussing how alcohol and sex are an integral part of the processions).