
Teaching Religion in Public Schools in Spain

The Constitutional Principle of Cooperation Makes the Difference

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Abstract

According to the Spanish Constitution (1978) relations between State and religious denominations should be developed within the framework of two constitutional tenets: the principles of the non-confessional State and of Cooperation between the State and religious groups. According to the latter, the Spanish State signed four Cooperation Agreements with the Holy See (1979). One decrees an educational system with the compulsory teaching of Catholicism in all public schools and private schools funded by the State (*concertados*), although it is voluntary for the students. In 1992, Muslims, Protestants, and Jews signed three different, but extremely similar, Cooperation Agreements with the State that were passed as laws in Parliament. Among other special rights enshrined in the Agreements is spiritual guidance in public establishments or the right of parents to demand religious education for their children in public schools. Thus, in the Spanish educational system, composed of three types of schools (public, private, and private with partial funding from the State), not only *concertados* and private schools offer religious education from a dogmatic way, but also public schools. This is a result of the way the principle of cooperation has been implemented. As I demonstrate in this chapter, in order to move towards tolerance and integration, it would be necessary to add further legislation, which would include the following. First, History of Religions, in which religion is taught from a scholarly rather than a theological perspective, would be introduced in all schools. Thus, students would acquire basic knowledge of the main religions rooted in Spanish society. Second, a subject related to citizenship and human rights reflecting core of Spanish cultural values, such as tolerance and living together, would be introduced.

Introduction

I have always believed that number three is a magic number. I really cannot say why. But the more I think about it the more I believe in it. It is like a religious belief: a question of faith. What I believe is that all concepts can be explained under a triangular parameter as if encapsulated in a conceptual triangle. Following this creed, I will present the topic of teaching of religion in public schools in Spain dividing the issue in three parts.

First, we will meditate on legal principles in general because I believe that reflecting on the principles or values of our civilization is a way to counter the radical narrative no matters where fanaticism comes from. I am writing these lines on the same day that the former president of United States of America, Barack Obama, broke the silence about the Donald Trump presidency to condemn his controversial immigration ban in the name of American values. In a short statement, Obama shared his disagreement with discriminating against individuals because of their faith or religion. He said that that kind of resolution was putting American legal principles at stake.¹ That statement connects with our thought: reflecting on values is extremely important to counter radicalization.

I think that there are two types of radical tendencies related to Islam. Both of them share the same narrative. First, the terrorists like the ones who belong to terrorist groups, such as ISIS or al-Qaeda, who use the name of Allah in vain, claiming wrongly that they represent a wider group, Muslims. Second, there are those individuals or associations characterized by his closed-mind prejudices against or deep hatred of Islam and Muslims.² Paradoxically, from this position they are accepting the same narrative maintained by let us say ISIS, as they also want to present all Muslims as potential terrorists. Both narratives are completely wrong. One of the main causes of Islamophobia is ignorance, and the most effective medicine to counter ignorance is knowledge, which we acquire mainly through education. Thus, promoting pedagogy about legal principles and human rights, core values of democracy, is extremely important to foster the proliferation of democracy, human rights, and human dignity.

In the second part of this chapter, I will analyze the specific constitutional principles that regulate relations between public power and denominations. And in doing so, I will attempt to demonstrate how the principle of cooperation between the

1 He made that statement just 10 days after Donald Trump took office.

2 According to Council on American-Islamic Relations (CAIR), an Islamophobe is an individual who holds a closed-minded view of Islam and promotes prejudice against or hatred of Muslims <http://www.islamophobia.org/about.html> accessed 02/01/2017

State and the diverse religions is precisely the principle that “makes the difference”, in other words, it is what makes the Spanish model, and some others like it, such as Italy, appropriate the goal of implementing integration and countering radicalism.

In the third and final part of this study, I will show that the Spanish model of religious education in public school enables the application of the current legislation, which has been implemented under the umbrella of the principle of cooperation.

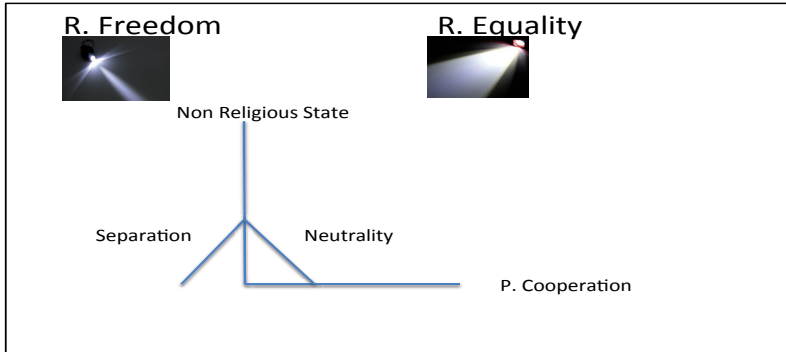
The Importance of Having (and Implementing) Appropriate Legal Principles

We will approach the concept of principles, which is obviously a legal issue, from an anthropological and mathematical perspective. From an anthropological perspective, if we compare a legal system with a human being we find some similarities. For example, when we ask ourselves what defines a human being in general terms, the answer is easy. Obviously, it is the body. If we want to describe to a friend a person, whom we have met some days before, we will refer to his or her physical features. But even if it is a cliché, it is also true that, what really defines who we really are, is deep inside us, what we generally agree to name “the soul”.

The same is true with a legal system. We think that what apparently defines any legal system are its laws and norms. But if we reflect further we affirm that what really defines a legal system in a deeper way are its principles. Laws and legal norms, as the physical feature in human beings, are mutable, changeable, and essentially unstable. Meanwhile, legal principles, like the human soul, are, if not immutable (nothing is immutable...or almost nothing...) at least much more constant or fixed.

Let us take another step forward and reflect on the issue of legal principles from a different scientific method, using a mathematic approach. With this target in mind, it would be very helpful to offer a metaphorical image. Let us imagine two spotlights placed on an imaginary roof shine their light downward to a hypothetical Cartesian coordinate system formed by both a coordinate and abscissa axis.

Principles and arithmetic



The two big spotlights on the imaginary roof represent two general principles: freedom and equality, which obviously refer to religion (religious freedom and religious equality). Those two spotlights are lighting up the area where all relations between State and religions should be developed. This area is symbolized by a hypothetical Cartesian system, which represents the specific principles related to relations between State and churches. The coordinate axis will be the principle of Non-Religious State. Two pillars, or principles support this principle. The first is the separation between churches and State and the second is the principle of neutrality of the State before religious matters.

General Principles: Freedom and Equality

Freedom (Religious Freedom)

Religious freedom is both a legal principle and a core human right. Freedom, which includes religious freedom, is recognized as a general principle in articles 1.1³ and

3 Art. 1.1 of Spanish Constitution 1978: Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates freedom, justice, equality and political pluralism as highest values of its legal system.

9.2⁴ of the Spanish Constitution. The principle of religious freedom presents us with a specific character of the State, its way of being before the denominations. The principle refers only to the State just as human rights refer only to people.

Like all constitutions of European countries, the Spanish Constitution of 1978 recognizes the fundamental right of religious freedom, not only for individuals, but also for groups and communities (art. 16).⁵ So, according to the Spanish Constitution, the only limits to manifestations of religious freedom (whether of individuals or groups) are those necessary for the maintenance of public order, which is protected by law. One year later, The Religious Freedom Act 7/1980, July 5th implemented this fundamental right and also further developed the legal concept of public order. When speaking about the boundaries of religious freedom, this Act enshrines two kinds of limits: fundamental rights of others and public order. And as it was developed in the Religious Freedom Act 7/1980, the legal concept of “public order” has three dimensions: public security, public health, and public morality. The Religious Freedom Act protects not only believers, but also the non-believers. Religious freedom is not only the right to believe in any religious creed, but also the right not to hold any religious faith. According to the principle of religious freedom, the law has to protect those two options (believing or not believing) in the same way.

Equality (Religious Equality)

The principle of equality and non-discrimination is both a legal principle and one of the core fundamental rights that are guaranteed in article 14 of the Constitution⁶. Like the principle of freedom, which we referred to above, the principle of equality is also recognized in articles 1.1 and 9.2 of the Spanish Constitution.

In order to avoid misunderstandings, we should not mistake the legal concept of equality with the legal concept of uniformity in the sense of sameness. Uniformity means giving everybody the same thing regardless of his or her particular circumstances or characteristics. For example, if I want to give T-shirts to a group of people

4 Art 9.2: It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

5 Art. 16.1: *1. Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law.*

6 Art. 14: *Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance.*

and I give all of them extra-large (XL), I am acting in the spirit of sameness or uniformity and not in the spirit of equality because equality recognizes differences, as long as those differences are not discriminatory, in other words, as long as they can respond to a specific treatment that can be applied equally to everyone. From this point of view, as our Constitutional Courts have proclaimed several times, laws (or public powers) can establish differences as long as those differences are reasonable, justified, or proportional to their achieved aim⁷. Equality is then reached when laws or public powers give each individual his or her due, treating those who are equal equally and those who are not equal unequally.

Specific Principles

The third paragraph of article 16 is precisely the one that deals with relations between church and State. It presents the character of the State, the State's "personality" in relation to religions. It establishes that relationship between churches and public powers, in the three spheres: the municipalities, autonomous regions, and central government. It should be developed within the framework of two coordinates, which are represented by two principles, the principle of Non-Religious State (also called State Secularism) and the principle of Cooperation.

The Non-Religious State Principle

The principle of Non-Religious State is contained in the first sentence of the third paragraph or art. 16 of the Constitution, which states:

"No religion shall have a State character."

The formula established in the Constitutional draft was even more straightforward: "The State is non-confessional". However, that expression did not succeed, perhaps because it was too close to the formula that had been established in the Constitution of 1932, which had proclaimed the Spanish II Republic, which was affirmed in its article 3: "The State has no official religion" (Ferreiro Galguera, 2005, 62).

Some people thought that the formula adopted in the Constitution of 1978 was a shy declaration of secularism. And that shyness was for two basic reasons. Firstly, because the aforementioned statement had not been included in the Preliminary Title, the part of the Constitution where it should be placed, because, by

7 For example in STC 22/1981 (FJ 3º), or STC 188/1994.

definition, Preliminary Title is the part of the *Magna Carta* where the State shows its identity, its ontological features. Instead, it had been placed in the part of the Constitution referred to human rights. Secondly, the above-mentioned expression avoids any specific reference to the State. Precisely, the word “State”, whose way of being before religions is described in that statement, not only does it not stand in the grammatical place of the subject (before the verb), but it is not anywhere in the sentence of article 16.3.

Perhaps that shyness is just the consequence of the Constituent Power’s deliberate attempt to find a middle ground between the position of those MPs who struggled to maintain the religious character of the State and the plan of those who wanted a strict secularism and therefore argued that any mention of the Catholic Church should disappear from the Constitutional text.

Taking into account that some principles are difficult to reconcile, as it is known that the absolute triumph of freedom can distort equality and vice versa, the Constituent Parliament decided to combine State secularism with cooperation, not only in order to avoid a traumatic change of regime, from a religious State in the era of General Franco to a Non-Religious State in the Constitution of 1978, but also to preserve social peace, as the memory of the end of the unfortunate Spanish Republic II seemed to recommend it. It was more the product of a political agreement than a strict legal reasoning (Martínez-Torrón, 1994, 69). Nonetheless, in spite of its eventual shyness, the constitutional expression (“*No religion shall have a State character*”) reflects without any doubt the secularist character of the State. State Secularism (or non-religious State) is a concept sustained by two pillars: Separation between State and Church and Neutrality of public powers before religious affairs.

Separation of Church and State

The basic idea of this legal principle is that religious denominations and State are independent and autonomous entities. The immediate consequence of separation is the principle of no interference in both directions. State should not intervene in the realm of faith and, on the other hand, religious denominations may not intervene in the sphere of the State. Let us explain these general statements in more detail.

Regarding the first statement, public powers cannot interfere in the internal realm of denominations, which have the right to organize themselves freely. As the Spanish Constitutional Court has proclaimed several times, public powers must avoid any interference or confusion between State roles and religious ones. This distortion could occur, for example, if the State would have intervened in the internal organization of Catholic Church, suggesting, for example, how the Catholic Church should organize its dioceses or how religion should be taught in its schools. Of course, public powers can advise denominations, at their request, as we will refer

to later, but they must seriously avoid taking on a paternalistic role or imposing attitudes towards denominations. This does not mean that public powers should not control denominations. Of course, the State must ensure that denominations, as any other groups or individuals, should act and behave according to the law.

The second consequence of the principle of no intervention is that denominations (their representatives, worship ministers...) cannot interfere in the realm of the State, since religious authorities are not political authorities. Therefore, they cannot interfere in the realm of the State by virtue of its non-denominational character. For instance, a church minister has the same rights as any other citizen to participate in public affairs, however, that participation is not due to his religious character, but instead to his citizenship. An imam, a priest, or a rabbi may become a civil servant, like any citizen, if they pass the specific public examinations, which might be inspired by the constitutional principles of equality, merit, and capacity.

In some European countries, there are still reminiscences of formal confusion between church and State. For example, in Denmark the law that regulates Lutheran Church is an Act of the Parliament (Nielsen & Küle, 2011, 176), or in Great Britain the House of Lords still reserves twenty-seven seats for Anglican bishops. In our country, seats are no longer reserved in Parliament for bishops, as it used to be during Franco's regime. This would mean interference of the Church in State issues, and therefore would undermine the principle of separation among Church and State (secularism).

Neutrality of the State Before Religions

The other column that supports the non-confessional principle, in addition to Separation is Neutrality. What does Neutrality mean? Our Constitutional Court has said it very clearly: "The State is not competent in religious affairs." Believing or not believing is the realm of individuals and communities. They are the real holders of this right, the ones who can assess or evaluate if religion is legitimate or not.⁸

Neutrality has certain consequences for the State. First, public authorities, when acting as such, may not declare or defend any faith. That would be the case of a denominational or religious State. Secondly, the State may not proclaim itself

8 "The articulation of a Register (...) does not habilitate the State to undertake an activity of control to determine the legitimacy of religious beliefs (...) but only to verify, deriving to that end a mere act of stating and not rating, that the applicant group is not one of those entities excluded by article 3.2 of the LOLR, and that the activities and behaviours developed for its practice do not threaten the rights of others in the exercise of their fundamental freedoms and rights, nor do they threaten the security, health and morality of the public, as elements that enshrine the public order protected by the law in a democratic society, which are referred to in article 16.1 CE" (STC 46/2001 FJ 8°).

atheist. That would be the case of a State that potentially opposes religion. Lastly, the State would not be able to maintain a secularized (“laicista”) attitude. In this sense, it would be convenient not to mix up the terms Secularization (*laicidad*) and Secularism (*laicismo*), which is regrettably often the case.

A secularist State (*laicista*) is a State, which has bias or prejudices against religious groups. These prejudices might be observed either in State’s administrative performance, in the content of laws or before courts. We offer here two examples: A secularist attitude of the State would be, for example, when law or public powers treat religious groups worse than they treat any other groups or associations with another nature or aim (sportive, cultural, culinary...). The principle of equality obviously allows public authorities to establish differences between people or groups of people. However, these differences should be proportional and reasonable. On the contrary, if differences established by laws or public powers’ attitudes are not reasonable or are based on birth, gender, race, or religion, these would be clearly discriminatory differences.

Another example of a secularist attitude could be the confinement of religious manifestations to the private sphere. Actually, from a legal point of view, the statement “religion has to be out the public sphere” does not mean that they are not allowed to act on the streets. Obviously, religious groups, like other groups, can express themselves in the public sphere, that is, in the street, as long as they observe the rules that apply to the right of demonstration, which is a human right. To relegate religious expression to the private realm, such as the home, would be a secularist or secularizing (*laicista*) attitude, since it would veto the fundamental right to demonstrate. The Spanish State is not a secularizing or secularist (*laicista*) State; it is secular (*laico*) State, that is, a State that is neutral before religious faiths.

In summary, the main consequence of neutrality is that the State cannot assume religious values (as such) as parameters to measure the legitimacy of its performances. Undoubtedly, laws can share values with religious norms: human dignity, solidarity, etc. are also defended by religions. However, these values are not compulsory since they have a religious character; they are obligatory simply because they have been established by the legal and democratic powers, in other words, by their political feature. Neutrality of the State does not mean that the State has prejudices against religions. It means that State is simply neutral before the religious element. Spanish neutrality is not exactly French *laicité*, because France, according to art.2 of Law of 1905, the Republic does not recognize nor fund or subsidize any religion (Portier, 2016).

The Principle of Cooperation: Types of Religions from a Legal Approach

Besides the above-mentioned principle of non-confessional State, which stands on separation and neutrality, the second coordinate that shows the metaphorical area where relations between State and Church should develop in Spanish context is the principle of cooperation. This principle is implicitly reflected in article 9.2 of the Spanish Constitution; but it is enshrined in a more convincing way in the second sentence of article 16.3. In this article, after the mentioned definition of non-confessional State, the Constitution gives two orders to the public powers:

- To take into account the religious beliefs of Spanish society
- To maintain relations of cooperation with the Catholic Church and other religious groups.

From this double mandate, it is possible to extract certain consequences.

- a. Cooperation refers to religious faiths; in other words, it deals with the “faith option”. Although the State can obviously cooperate with non-religious ideological groups, article 16.2 refers to the cooperation of public authorities with the Catholic Church, whose religious character is reflected in the *Magna Carta*, and other religious denominations. Cooperation in this article does not include cooperation with associations that are not considered religious.
- b. Relations of cooperation imply the existence of two different subjects: State and religious groups, two entities, which are independent and autonomous, as we have already stated. In other words, cooperation further strengthens the principle of separation.
- c. The order to cooperate implies that the Spanish Constitution has a positive view of religious phenomena. When the Constitution orders public authorities to cooperate with denominations it recognizes that they are at least esteemed as something potentially positive, otherwise, and out of pure coherence, the Constitution would not order public powers to cooperate with them.
- d. In line with the principle of freedom, cooperation should only take place at the request of the denomination because some denominations might want to hold back from seeking institutional help, and in this case, obviously, the State should not cooperate with them.

Finally, the Constitution presents the obligation for cooperation in terms of future action. (“the authorities will take into account...”), but it does not provide any specific way of enforcing cooperation.

The State proceeded in three following steps.

1. Five days after the Constitution entered into force, in January 3th of 1979, the Holy See signed four Cooperation Agreements with the Spanish State (concerning legal, educational and cultural, and economic affairs, the chaplaincy to the Armed Forces and the military service of clergymen and members of religious orders). Of course, they could not prepare in five days. Negotiations were held in parallel with the Constitution. Those cooperation agreements have the legal status of international treaties. Thus, they have a higher status than ordinary laws and therefore, cannot be changed by an ordinary law.⁹
2. One year after the Cooperation Agreements with Holy See were ratified by Parliament (1980), the Religious Freedom Act was enacted. It states definitively that cooperation is to be implemented by cooperation agreements with denominations. Indeed, article 7.1 assures that the State be able to establish a concrete mechanism for cooperation (Agreements or Pacts) “with the Registered Churches, Denominations and Religious Communities, which by the very nature of their contexts and number of followers, have reached a deeply rooted character (notorio arraigo)¹⁰ in Spain”.
3. Twelve years after the Law 7/1980 of Religious Freedom came into force, the State signed three Cooperation Agreements with 3 denominations that had already obtained the deeply rooted declaration by the Ministry of Justice. The previous negotiations were held with the entities that represent these respective denominations. On behalf of Islam, the Islamic Commission of Spain (Comisión Islámica de España -*CIE*-) was integrated by two federations, the Union of Islamic Communities in Spain (Unión de Comunidades Islámicas de España -*UCIDE*-) and the Spanish Federation of Religious Islamic Entities (Federación Española de Entidades Religiosas Islámicas -*FEERI*). On behalf of the Evangelists, the representative body of Spanish Protestantism is the Federation of Evangelical Religious Entities of Spain (Federación de Entidades Religiosas Evangélicas de España -*FEREDE*-). Regarding Judaism, the Federation of Jewish Communities in Spain (Federación de Comunidades Judías de España -*FCJE*-) represents Spanish Jews.

9 As Holy See is legally considered a State, these Cooperation Agreements have the legal form of international treaties. So, according to the Constitution, their provisions cannot be repealed, amended or suspended by internal laws, but only “in the manner provided for in the treaties themselves or in accordance with the general rules of international law” (art. 96.1). (Jimenez García, 2006, 32)

10 This legal concept was implemented by Royal Decree 593/2015, of July 3.

Those three Agreements were finally passed by three Acts of the Parliament, Laws 24, 25 and 26 on the 10th of November 1992.¹¹ It deals with issues such as the legal protection of places of worship, the statute of ministers of worship, the inclusion of the minister of cult (pastors, rabbis, and imams) in the General Regime of Social Security, the civil effects of marriages celebrated according to Jewish, Evangelical and Muslim rites, religious chaplaincy in centers or public establishments, religious education in teaching centers, and tax benefits applied to specific goods and activities belonging to the FEREDE, CIE, or FCJE as signatories of the Agreement.

According to the above, we can distinguish among four types of religions from a legal perspective (Ivan, 2016). In other words, denominations in Spain can adopt one of four legal forms:

1. Non-registered religious entities:

Religious entities need not register in order to be entitled to religious freedom. The Constitution guarantees the fundamental right of religious freedom to all religious communities, whatever legal form they adopt, without limitation other than respect for fundamental rights of others and public order. Article two of the Religious Freedom Act refers to several manifestations of the religious freedom of individuals and communities. Among others¹² is religious groups' right to impart religious teaching.

Registering in the Register of Religious Entities (RRE) is not the only way for a religious group to become a legal entity (Pelayo, 2007, 395). Another possibility is opting to constitute an association under the Law of associations.¹³ If a group opts to become a civil association, it can enrol in the National Registry of Associations in the Ministry of Interior (if their sphere of activity encompasses the entire country) or in any of the registers of associations existing in each of the 17 Autonomous Commu-

11 ²¹ Laws 24, 25 and 26 of 10th November 1992 approving Cooperation Agreements subscribed between the State and the Federación de Entidades Religiosas Evangélicas de España (FEREDE), the Federación de Comunidades Israelitas de España (FCIE) and the Comisión Islámica de España (CIE) (BOE no. 272, 12th November).

12 Other manifestations expressly enshrined in art. 2 of the Religious Freedom Act include: the holding of worship celebrations, commemoration of feast days, celebration of marriage rites, establishment of places of worship, appointment and training of ministers of cult, spreading the group's creed, maintaining relations with their own organizations and with other religious denominations, and providing religious assistance in public institutions (the army, prisons, hospitals, etc.).

13 In this case, the requirements would be to submit an agreement between at least three individuals and also a charter (in a public or private document) approving the organization and operation of the association Organic Law 1/2002, March 22th, on the right of Association.

nities in Spain, as long as the domain of the association's activity is located only within one of those Autonomous Communities. In any case, intervention or approval by a public authority is not necessary for a group to be entitled to the fundamental right of religious freedom.

2. Religious Entities enrolled in the Register of Religious Entities (hereinafter RRE). As we have just said, to be entitled to religious freedom, religious groups do not need to adopt any special legal form. Nevertheless, they do have the option to join a special nation-wide register: Register of Religious Entities (RRE), which is under the responsibility of the Ministry of Justice. Once they are registered there, religious groups are guaranteed legal representation as religious entities.

Registration must be made by a written request sent by anyone representing that religious entity. This application must be accompanied by a reliable document containing notice of the foundation or establishment of the organization in Spain, as well as the following information: a) Entity name (which appropriately distinguishes it from any other religious group) and its address; b) Declaration of religious purposes which cannot go beyond the limits established in the Religious Freedom Act, including respect for fundamental rights of others and the public order; c) Rules of procedure for the organization and their representative bodies, including their powers and requisites for a valid designation thereof.

Religious entities can enrol in that Register, provided they fulfil the requirements described above, once verified by the public authority (General Department of International Cooperation and Relations with denominations). The most controversial of those requirements is the declaration of religious purposes. According to our Constitutional Court, the Administration should not assess religious purposes. Thus, registration can only be refused if the religious group does not meet the aforementioned requirements or if it is legally proven (for example a by a legal sentence) that these groups engages in illegal activities, uses illegal methods, or pursues illegal targets or goals.

The immediate effects of registry in the RRE are: (a) Registered entities enjoy fully legal personalities as religious groups, (b) They can organize themselves with complete autonomy (a democratic organization is not compulsory for religious entities, as it is in regular associations),¹⁴ (c) They are able to include clauses safeguarding religious identity, which is particularly important in matters of labor relations, and

14 Article 2.5 of the Organic Law 1/2002, March 22nd, on the right of Association: "Internal organization and functioning process of associations must be democratic, fully respecting pluralism..."

exemption for ministers of cult from the requirement to have a residence permit in order to reside in Spain.¹⁵

3. Religious groups registered in the RRE that have been classified as “deeply or firmly rooted” according to their domain and followers.

According to article 7 of Religious Freedom Act of 1980, the State may establish Cooperation Agreements with those registered religious entities, which, due to their domain or number of followers, have obtained the classification of a “deeply rooted” (*notorio arraigo*) denomination. If the Advisory Commission for Religious Freedoms grants a registered religious group the “deeply rooted” declaration, they get further legal benefits such as the right to celebrate religious marriages with legal consequences, the right to have a representative in the Advisory Commission of Religious Freedom, and the possibility of reaching a Cooperation Agreement with the State.¹⁶ Islam received the classification of a “deeply rooted” denomination by the Advisory Commission for Religious Freedoms back in 1989.

4. Registered “deeply rooted” entities that have signed a Cooperation Agreements with the State¹⁷

Only deeply rooted entities have the possibility of signing Cooperation Agreements with the State. At this point, we may distinguish between the four cooperation agreements signed by the State with Catholic Church, on the one hand, and three cooperation agreements signed by the State with the official bodies of Protestants, Jews, and Muslims, on the other. As stated above, the Holy See reached four specific Cooperation Agreements with the Spanish State in 1979, even before the Religious Freedom Act of 1980 was projected. These Agreements, which have the legal status of International Treaties, contain more privileges than those reached by Protestants, Muslims, and Jews in 1992.

Regarding Islam, Judaism, and Protestantism, once the respective Federations that represent Muslims, Jews, and Protestants had received their “deeply rooted” status from the Advising Council for Religious Freedom, those three denominations negotiated three different, but extremely similar Cooperation Agreements with the State. Once the Agreements were reached, they were passed as laws in the

15 Article 117 Real Decreto 557/2011, de 20 de abril, por el que se aprueba el reglamento de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009.

16 Royal Decree 593/2015 of July 3.

17 Since 1992, four other denominations have obtained the “deeply rooted” legal status: the Church of Jesus Christ of Latter Day Saints (Mormons) in 2003, Jehovah’s Witnesses in 2006, Buddhism in 2007, and the Orthodox Churches in 2010. But, so far these groups have not signed a Cooperation Agreement with the State.

Parliament (Law 24, 25 and 26 of November 10th 1992).¹⁸ Among other special rights enshrined in the Cooperation Agreements, we can mention legal effects of religious marriages, tax benefits, spiritual guidance in public establishments, and the right of parents to demand religious education for their children in public schools. The benefits of the Agreements only apply to those religious communities belonging to the representative bodies that have signed those Agreements with the State.

Teaching of Religion in Public Schools

In Spain we have religion in the curricula in public schools. This is not established in the Constitution, which, regarding this subject, only recognizes “the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions” (art. 17.3). But it does not say where that right should be implemented. Therefore, parents can exercise this right at home or in the place of worship. The current rule on the teaching of religion in public schools was established by the main legal instrument that was developed under the principle of cooperation: the Cooperation Agreements signed by the State, first with the Catholic Church (1979), and thirteen years later with Muslims, Protestants, and Jewish (1992).

As we have said, the first ones provide the Catholic Church with some added privileges that the others three do not have. Regarding education, the Agreement on Educational and Cultural Affairs signed in 1979 with Catholic Church foresees an educational system in which it is compulsory for schools to teach Catholicism, although it is optional for the students. Article II of that Agreement states that educational plans at the levels of preschool, elementary school, high school, and technical colleges for students of the corresponding ages, must include the teaching of the Catholicism in all educational centers, under similar circumstances to those of other basic subjects. Nevertheless, out of respect for freedom of conscience, religious education may not be compulsory for the students. However, the right to receive it is guaranteed.

Being optional for the student means that there should be an alternative for those who do not choose religion. The alternative is not mentioned in the Cooperation Agreement, it only says that the choice to take religion classes or not should not

18 As those denomination are not organized as a State, like the Catholic Church, the Cooperation Agreements they have signed with the State do not have the legal status of international treaties, but rather of ordinary laws, which, according to art. 96 of the Constitution, can be repealed, suspended, or amended by subsequent ordinary laws.

have discriminatory effects.¹⁹ Teachers of religion will be appointed by State among those first chosen by the Bishop.²⁰ That means that teachers of religion in public schools have two patrons: the formal one, the State, and the real one, the Catholic Church, which is the one that decides who will teach Catholicism, even though his or her salary will be paid by the State under conditions accorded by the State and the Catholic Church.²¹ The Church Hierarchy decides which content, materials, and books will be used in the religion courses. And once they have decided on the content, the Ministry of Education examines and approves it by passing governmental decrees. Additional religious activities can take place in public schools if there is an agreement between the political and Catholic authorities.²²

Regarding Muslims, Jews, and Protestants, Article 10 their Cooperation Agreements of 1992, which are signed by the State grants pupils the right, requested by them or their parents to receive religious education at the preschool, primary and secondary level. The only difference between the Agreement with Catholic Church and those of Muslims, Jews, Protestants is that, while Catholicism must be offered in all schools, schools are only required to offer Islam, Judaism, and Protestantism only at the request of the students or of their parents. If nobody demands it, they will not be offered. The other difference is that only public schools are required to teach Catholicism, as is stated in the law agreed upon by the Holy See. The agreements include also state subsidized private schools (*concertados*), but only if “this is not a contradiction with the ideological nature of the private school in question,” which means that the right to receive instruction in a religion that is different from the one supported by faith schools will not be honored in those private schools, even if they are state subsidized (*concertados*). According to the 1992 Agreements, churches or religious

19 Art II: “Academic authorities shall adopt the necessary means so that receiving or not receiving religious instruction shall not suppose any discrimination at the school”.

20 Art. III: “At the educational levels referred to in the previous article, religious instruction shall be imparted by those persons who, each school year, shall be appointed by the academic authority from among those proposed by the diocesan Ordinary. With sufficient advance notice, the diocesan Ordinary shall make known the names of those teachers and persons considered competent for said education”. In public preschools, elementary schools and technical colleges, the designation, as previously described, shall preferably fall to those elementary school teachers who have requested it.

21 Art. VII. “The economic situation of teachers of the Catholic religion at the different educational levels, who are not part of the State’s teaching staff, shall be arranged by the central government and the Spanish Episcopal Conference, in order that it be applied when this Agreement takes effect”.

22 Art II: “At the teaching levels previously named, the corresponding academic authorities shall allow the Ecclesiastical Hierarchy to establish, under the specific conditions agreed upon, other complementary activities of training and religious attendance”.

communities should appoint teachers of Islam, Judaism, and Protestantism, with the acquiescence of the respective national federation or commission. The Agreement does not say anything about their salary, which was negotiated later between the State and representatives of Islam and Protestantism, not with Judaism. Jews renounced the right to have their religion taught in public schools. So, in accordance with the principle of cooperation, the result of the negotiations about the economic situation of the teachers was as Government Resolutions in 1996. The main point is that, although their religious authorities appoint the teachers, the State pays their salary as long as they have ten or more students in class. If they do not get that minimum of students, they can offer the classes, but they will not be paid by the State. The number of teachers paid by the State is high. While there are more than 15,000 teachers of Catholicism in public schools, there are only 217 teachers of Evangelism and 48 of Islam.²³ The respective communities determine the content of the Evangelical and Islamic classes and corresponding textbooks, with the agreement of the Islamic Commission of Spain and the Federation of Evangelical Religious Entities of Spain, which are transformed into governmental decrees, in accordance with the principle of cooperation.

Educational Acts

The legal situation in Spain regarding education is far from stable. We need a National Pact in order to create an enduring Act. Since the beginning of democracy, which started with the Constitution of 1978, we have had a total of seven laws on education. They have all referred to religious education in public school. But, according to the constitutional principle of cooperation, these laws follow the content that have been regulated in the Cooperation Agreements first with the Catholic church in 1979, which is an international treaty, and then with Muslims, Jews, and Protestants, which were issued as ordinary Laws in 1992.

The seven laws, found in article 27 of the Constitution, that have attempted to develop freedom of education, in reference to religious education, follow the core issues established in the Cooperation Agreements, but with the addition of some

23 Annual reports on the status of religious freedom in Spain: 2015 http://www.mjjusticia.gob.es/cs/Satellite/Portal/1292428107492?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DInforme_anual_sobre_la_situacion_de_la_libertad_religiosa_en_Espana_2015_Ingles.PDF&blobheadervalue2=Docs_Llibertad+religiosa.

issues not mentioned in those Agreements, namely how to evaluate religious education, what subjects should be offered as alternatives to religious education, and whether the alternative subject should be evaluated or not, or if the time slot could simply be used as free time.

The law in force now is the Organic Law to Improve Educational Quality (LOMCE²⁴). According to this law, students can choose between Catholicism, Evangelism, and Islam, and for those who choose not to take religion class, the alternative is social and civic values in primary education (six courses, normally from 6 to 12 years of age). In secondary (four years, normally from 12 to 16) students can choose between religion and the alternative, which is “ethical values”. In the last segment of schooling, called Bachillerato (two years, normally from 16 to 18 years of age), students can choose religion from among many others optional subjects, so no specific alternative is offered.

Religion courses (Islam, Catholicism, or Protestantism) are evaluated in the same way as other subjects and so are the correspondent alternatives in primary and secondary phases, in Bachillerato there are not alternatives, as religion is itself an alternative. The law (LOMCE) foresees that students must pass a final exam after compulsory secondary education (Educación Secundaria Obligatoria-ESO) and after the two year of Bachillerato, but it is prescribed that, in those exams, neither religion nor their alternatives will be evaluated. In this context, religion is at the same level as other courses like for example gymnastics, which are not evaluated in these exams. The previous Organic Law of Education 2006 (Ley Orgánica de Educación-LOE), issued by the socialist government,²⁵ included two proposals that were unfortunately, in my opinion, rejected. Both would have been beneficial, as they focused on developing tolerance, respect for human rights, and integration. One of the subjects, which would have been mandatory at the primary and secondary level, was Citizenship and Human Rights Education. This subject resulted from a recommendation of the Council of Europe that emphasized the necessity of citizenship education to promote civic and human values. Some groups in Spain opposed this subject, especially the Catholic Church. Some of the outstanding leaders of the Catholic Church labelled that law totalitarian,²⁶ claiming that schools

24 Ley Orgánica 8/2013 de Mejora de la Calidad Educativa:

25 The President of the government was Jose Luis Rodriguez Zapatero, in office from 2004–2011.

26 <http://www.libertaddigital.com/sociedad/monsenor-canizares-denuncia-que-educacion-para-la-ciudadania-llevara-a-la-sociedad-cuesta-abajo-hacia-el-totalitarismo-1276303988/>

that implemented that mandatory subject would be promoting evil.²⁷ There was also political opposition. The conservative People's Party (PP) and some associations opposed the introduction of this subject, arguing that it was a government tool to indoctrinate students morally and politically. They also claimed that it was undermining the expression of the fundamental right to education: parents' right to educate their children according to their own convictions.²⁸

However, other Catholic groups and parents associations, such as CEAPA (Spanish Confederation of Student's Parents) did not disapprove of citizenship education, understanding that the curriculum proposed by the government did not obstruct the right of parents to educate their children according to their own beliefs. After it came into force, the Catholic hierarchy, alongside many parents, organized demonstrations against the course. Some parents even voiced their objections to the new subject based on conscience.²⁹ The Ministry of Education rejected the objections based on conscience, as did the the Supreme Court. In January of 2009, the Spanish Supreme Court ruled that attendance of the citizenship education course would be mandatory for all students. The appeal before the Constitutional Court in 2014 was also rejected.³⁰

In the previous educational Law (LOE), there was also the subject history of religions. It was offered only at the secondary level as an alternative to the optional religious education class. The goal of that subject was to offer elementary knowledge or the basics about the main religions that exist in our political, social and cultural context, how they emerged, how they developed, and their links to the trajectory of the different populations that have lived in our territory. In 2011, when the Popular Party controlled the government, they reformed the LOE and issued the LOMCE, which suppressed that subject. In accordance with the Preamble of the Law, human rights education was deemed a cross curricular subject. The history of religions course, which was taught not from a doctrinal, but from a cultural perspective, is also suppressed in the current law, LOMECE, according to which, religion class should focus on doctrine, but, of course, only students who accept that method take the course.

27 http://sociedad.elpais.com/sociedad/2007/06/26/actualidad/1182808804_850215.html

28 Spanish Constitution: art. 27.3: The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions.

29 http://elpais.com/diario/2007/04/19/madrid/1176981862_850215.html

30 STC 28/2014; STC 41/2014; STC 57/2014

Conclusions

The main conclusion is that, in the context of radicalism that we are living in Europe and elsewhere, the optional religion courses in public schools or other courses presenting religion from a cultural perspective are definitively positive. We are living in a time when the European Union, which is legally based on respect of human rights, human dignity, and pluralism, is threatened by radicalism of different types, not only religious fanaticism, but also political and cultural exclusivism. We have witnessed in recent years how religious radicals, those who perpetuate violence in the name of God, such as terrorists who claim to belong to the pseudo-Islamic State in Iraq and Syria (ISIS) and who have carried out attacks in Belgium, France, and Germany. But there are also anti-religious radicals. Within such groups we can observe not only those who are intolerant to religion, in other words, those who reject religion and want to impose atheism, as happened under the regimes in some communist countries such as the former Soviet Union, but also those who present themselves as anti-religious, but who are racist, exclusivist, or simply against immigrants out of fear of the unknown.

For those reasons, I think that the presence of religion in public schools is positive and extremely important on two levels. First, teaching about religion, which means teaching about the religious phenomenon, not from a faith approach, but instead from a cultural or scientific point of view. Knowing the basics about at least the denominations that are present in one's own community and country, physically or historically, is a way to enrich one's general knowledge and culture and therefore foster pluralism and tolerance in society. Teaching about religions in school is also offers students a forum where they can expand their understanding and express their opinions not only about religious issues but also about the cultural traditions on which they are based. It is a way for them to also question the parts they dislike or do not understand about their own or others religions.

Secondly, I think that teaching about religion in public schools is positive, not only from a cultural or scientific point of view, but also from a faith approach, from a doctrinal perspective, in order to honor the right of parents to educate their children in their faith. Of course, this right can be implemented at home or in places of worship, but also at a public school. In this case, according to the constitutional principles of the non-confessional State and cooperation, the State does not protect any particular religion or the absence of religion. Its duty is to foster religious freedom as a human right. So religion in public schools in either of the two forms we discussed is, from a legal point of view, not only good for promoting knowledge, tolerance, and religious freedom among students, but also a way to support the right

of parents to educate their children in their own faith, even though the Spanish Constitution does not state that this right must be implemented in public school.

Nevertheless, according to the Spanish Constitutional Principles, teaching religion in public schools could be implemented in three ways. First, the one, which is now in practice: teaching religion for the students who want to take that subject and offering the others students alternative courses. Secondly, the possibility of teaching religion in public school facilities, but outside of the curriculum and offered by teachers chosen by their denominations. In this way, public school would just lend religions their facilities, so that they could teach religion there, after official school hours, with teachers and books chosen by the religious hierarchies. The school should control the doctrine they teach in order to ensure that it is not against human rights, human dignity, or legality in general.

The third option would be to give students free time during school hours so that they can attend religious services or classes in places of worship or wherever the representatives of their religion choose. Although this option might not be as good for exercising freedom of expression, as it is possible that in some places of worship students might not be as free to voice their opinions as they might be in a neutral space, such as public schools where human rights and therefore freedom of speech should be not only guaranteed but also promoted.

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