

LATIN AMERICAN PERSPECTIVE

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INTRODUCTION

There are several issues concerning the actual practise and implementation of Religious Freedom and its actual force, beyond the formal recognition and proclamation of rights and liberties. In this sense, Latin American International Law framework is not complete, at least in two levels.

In terms of its scope, **more specific manifestations of Freedom of Religion and Belief are needed in the International Law framework** –in referring to civil effects of religious marriage, registration practices and discrimination between religions. It also necessary to deepen its scope in terms of effective protection of rights, and to **directly address States and urge them to comply with the rights involved, as a duty of State, abandoning their long-lasting attitude of non-intervention in these fields.**

On the other hand, some problematic issues that the rest of the world is suffering are fortunately alien to our present concerns in Latin America, such as religious extremism leading to violence or terrorism, at least in general. Nor do we suffer, in general terms, from deprivation of the right to life based on religious grounds, while discrimination against women for religious reasons is quite rare –regardless of other kinds of discrimination which are not to be dealt with here-.

Some obstacles to the actual implementation of Religious Freedom in our continent are clear and lacking to be directly addressed. It is clear, for

instance, that Latin American countries lack a thorough protection of Religious Freedom in their legal systems –at least in general-, and moreover, they lack effective means to put Freedom of Religion and Belief principles into full force. **A theoretical foundation to Freedom of Religion and Belief is not clearly provided by our Latin American framework.** Additionally, **an unmistakable message must be sent to authorities, in the sense that legal respect is not enough: positive action must be taken by governments in order to assure effective enjoyment of religious rights, which demands their intervention to promote religious freedom, not only vague State declarations proclaiming its respect.** This would be a huge and revolutionary contribution for Latin American Humanitarian Law.

Some of the flaws in our legal systems have to do with **discriminatory registration procedures** as a means to limit Freedom of Religion or Belief of religious communities and discrimination caused by the recognition of legal distinction at national level between different kinds of religions. Specifically, it is due to **go beyond the idealistically proclaimed rights**, and in doing so, be capable of reversing our “magical realism”. Because, for instance in the topic of discrimination, notwithstanding the fact that the San Salvador Additional Protocol establishes the obligation of non-discrimination, most countries still require religious communities to prove their “historical roots” in society, as a *conditio sine quanon* for obtaining legal personality. Then, there arises the questions of the **absence of religious themes in education**, undermining pluralism –as in Argentine and Uruguay-; the **exclusion of priests from public office** -as occurs in Mexico-; the **persistence of religious marriage as a criminal offence if not succeeded by civil marriage**, in some legal systems –presently in Uruguay and until 1985 in Argentina-. Very recently in Cuba, religious textbooks and material was confiscated from prisoners.

Other violations of Freedom of Religion or Belief are much more subtle and may go unnoticed. It is the case for limitations imposed by the States which challenge the nature of Religious Freedom. We will deal with **cases in which Religious Freedom issues are disguised as other human rights or principles**, in order to raise attention and to be heard, which is a way of denying its own value as a human right. We will deal with cases in which tax exemption to religious communities, contained in Constitutions, are finally granted by the administrative authority under the consideration that they are

educational institutions, in the way that they contribute to culture, and not on behalf of their religious nature. The essence of Religious Freedom is hence ignored. In this perspective, Freedom of Religion or Belief seems not enough. It seems as if one must resort to other rights and principles in order to obtain what was originally granted on behalf of Religious Liberty.

A consideration must be drawn on "tolerance". Well, "**Tolerance is not enough**". This statement stands out as an unquestionable motto. Because you tolerate, that is, bear, endure, and suffer something regarded as negative. But tolerance –an attitude proper of a perished stage in the history of Freedom of Religion or Belief- still constitutes a minimum standard. From this point of view, we must underline that a degree of intolerance between religious communities is detected -a topic we will look into- as well as some **forms of intolerance lead by an erratic understanding of laicism (through denial of the religious fact)**, as well as from a minority school of thought interpreting that the State must assume a **prescinding attitude towards religion in society**. This perspective –still alive and kicking in Latin American school of thought- is no longer acceptable under the Rule of Law. We will even deal with a subtle form of religious hatred and discourse involving discrimination against a particular religion, despite it being a criminal offence.

CURRENT CONCERNS

- **Most Latin American countries are reluctant to promote the principle of EQUALITY AMONG DIFFERENT religions**
 - **Most countries favour the Roman Catholic Church in their legal system: some Constitutions grant it a special legal status, including several benefits:**
 - Status of a public legal entity, equivalent to that of the State
 - Status of a private legal entity, with automatic recognition
 - Automatic tax exemption

- Education in public schools
- Presence in the public sphere
- Reverence from state officials
- Religious holidays
- Law generally protects conscientious objection to military service in case of priests or seminarians from the Roman Catholic Church, while other religions have to request protection and prove to be worthy of protection.
- Roman Catholic Church represents:
 - The majority
 - Tradition
 - Has historical roots
 - Has contributed to the independence, democratic values, and formation of the culture of Latin American peoples.
- Hence, reluctant to lose its privileged position, some scholars related to the Roman Catholic Church do not appear to be very comfortable with claims for equality, that is, the coexistence of various religions in the continent, acting in free market competition-style. They seem threatened by the emerging religious movements and continue their long lasting struggle with Protestants within the continent.
- Apart from the fact that this perspective is trying to hold a monopolistic position, it tends to believe that equal footing among religions would undermine Latin American culture, because of the key contributions that the Roman Catholic Church has made to Latin American culture and tradition. This stand may be called “Pontifical school of thought”.
- For instance, the Peruvian Bill concerning Freedom of Religion finds strong opposition among scholars related to the Roman Catholic Church, who oppose it on the grounds that it undermines Peruvian national foundations.
- Obviously, religions should not to be compared to companies, in terms of free market competition and rules. That is one thing. But the question is: **How can a religious congregation demand protection in terms of freedom of religion or belief while**

denying those rights –or equal rights- to its fellow religious groups?

- o Another example is the issue of conscientious objection: national law and scholars still deny it legal protection at the key moment when it is put to the test: when the life of a human being is at risk. For example, in Chile, the debate is still under way, and conscientious objection has not yet been granted full legal or court protection. In several countries, Church authorities and scholars who support them, have argued that the right to live outranks the right to conscientious objection, and hence deny it to Jehovah's Witnesses when a life is at risk. Some countries haven't yet made up their minds on this issue and often resort to scholars of this school. Simultaneously, the same Church authorities and jurists who provide academic jurisprudence to this position demand protection from the States –through parliaments, the judiciary or the executive- for individuals, physicians and paramedics, and even hospitals, and sanitary institutions, seeking protection of their right to oppose abortion, euthanasia, and other medical practices of bioethical concern.
- o Another example: in discussing which of two principles prevailed –the right or due not to reveal a religious secret (like in confession) versus the legal obligation to denounce a crime in the case of public officials- the solution should not be based on the sacredness of confession –a notion pertaining to one religion in particular; nor the solution should be provided by civil law concerning the duty that all citizens have –and moreover, public officials- to denounce crimes. In the first case, the answer to a typical Religious Freedom issue would be **provided from within the religious doctrine**, confusing law with morals or religion. In the second case, it would simply ignore Religious Freedom. Well, Freedom of Religion or Belief must have a word in this discussion, and the solution, or at least an attempt to provide and answer to the question, must be elaborated taking Religious Freedom as a human right, as a juridical-rooted and based human right, derived from Natural Law.

- The concept of ethnocentrism, that is, the perspective of some cultures that regard themselves as model or stereotype of how things should be, may be transferred to religions. Under this conception, the dominant religion –or some of its supporting scholars- tends to consider itself as owner of the truth –which of course, encompasses the idea of embracing a faith, and hence is in its nature and right-. But the problem is that, from a juridical point of view, it may imply depriving the others from their right to hold a truth for themselves. In regarding themselves as the model according to which all other forms of religious organizations should operate, this perspective intends to establish restrictions to others’ rights under their model, and demand that the authorities carry out this task. This reminds us of past stages in history, when religion and State were confused. Jehovah’s Witnesses, under this conception, wouldn’t be protected in their attempt to refuse blood transfusions when a life is at risk, while Roman Catholics would still request the exemption from practising abortions or euthanasia –in those countries which have legalised these practises- on the basis of their religious or conscientious motives.
- In the other example, civil law compelling public officials to denounce crimes should surrender to religious secret, not on the basis of Human Rights, but on the basis of religious doctrine, as the dominant religion holds this value as sacred.
- Well, the answer might lie in Religious Freedom as a Human Right derived from Natural Law, notwithstanding and without disregarding every religion’s dogma, and not infringing civil or national or positive law –provided that civil law doesn’t oppose human dignity.

- **TWO MAJOR TRENDS ARE CLEARLY IDENTIFIABLE, LEADING TO RIVALRY INSTEAD OF EMPATHY:**

- Those striving exclusively towards the defence of their group’s own interest - their “chacra” (farm or territory), we say, referring to a particular platform or set of beliefs-:

- **Pontifical:** defending Freedom of Religion from within the Church and its dogma, and doing so only as long as this defence is successful in achieving a solid acknowledgment of the rights of the Roman Catholic Church, and provided it maintains the privileges already granted to the Roman Catholic Church, or even reconquer the recently lost ground.
- **Other Christian churches, protestants, as well as other faiths** may be assimilated to this position, when they tend to defend exclusively what concerns their foundations, are not open to “what is due” (what’s right’s right), but eager to gain ground in the “struggle to attain goals” dear to their particular main set of beliefs. Now, one of their main goals being to win a position in society, or a greater recognition, which would allow them to grow, they tend to identify the accomplishment of this goal with overthrowing the Roman Catholic Church’s dominant position. Therefore, the question turns out to be not so much to grow in the public sphere, but to question in every opportunity available the ground recognized to the Roman Catholic Church. From this point of view, they defend Freedom of Religion or Belief from within their own congregation, to the extent their agendas admit, satisfied when obtaining recognition for themselves, not so interested in defending Human Rights as valuable in themselves.
 - For example, the presence of religious symbols and monuments in public places –regarded as a victory by the pertaining religion- receives more opposition from other “competing religions” than from atheists.
 - As a result, the religious freedom scenario is occupied by different groups, each striving to pursue their own sectarian goals, as a “tug of war”, instead of uniting their strengths towards a common goal, which they fail to see as favourable to all. Hence, when one of these groups is successful in achieving its given goal, **it rests its case**, ceasing its attempts to gain wider protection for further rights. Victories conquered by

a religious group are often seen as a lost opportunity for the other groups, or as an injustice, and therefore questioned by its peers (who see themselves more as counterparts than as parties who share a common interest). This explains why in our parts of the world, **the main opposition to a religious group's accomplishments comes from the other religious groups.**

- o Obviously, this is a very generalized observation, which may be contradicted by the existence of several organizations which gather groups of different beliefs and origins, uniting their strengths in the pursue of common objectives, forwarding **dialogue between religions.** But the outlined reality, regrettable as it may seem, is still a fact in our hemisphere.
- o So, we need to **strengthen interreligious dialogue, compromising the States in this appraisable task.**

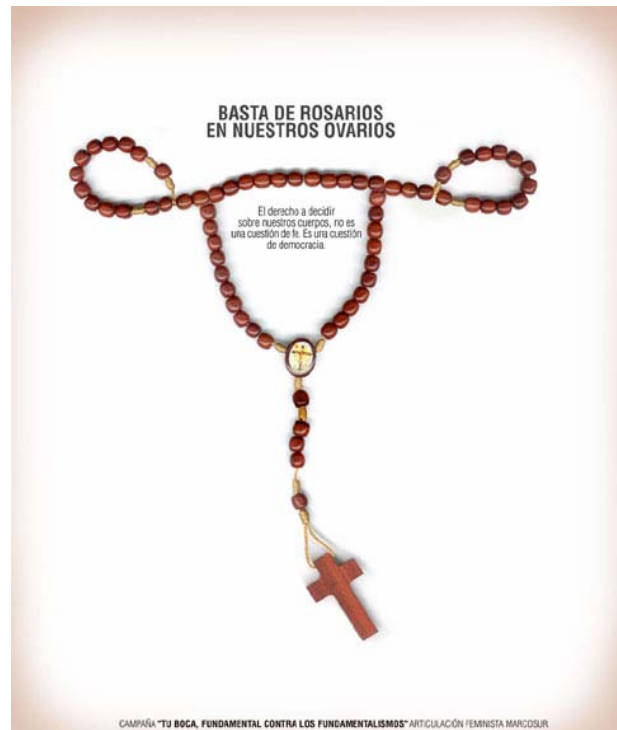
A DISTORTION OF THE NATURE OF FREEDOM OF RELIGION OR BELIEF AS A FUNDAMENTAL HUMAN RIGHT:

- Frequently the **issues dear to Religious Freedom are addressed through alternative means,** and as a result, cases which undoubtedly involve Religious Freedom end up being dealt with under topics or "labels" familiar to Religious Liberty, but not essentially "religious", like non-discrimination of minorities, cultural, social and even political pluralism, racism, laicism and state neutrality, thus **undermining the attribute of religious freedom as a human right for itself.**
- This might be considered a kind of **defamation of religion.** It is certainly a **misunderstanding of the nature of Freedom of Religion or Belief.**
- For example, some religious minorities have resorted to political parties in their aim to seek protection.
- In other cases, tax exemptions originally established to subsidize religious organizations, on the basis of religion, are actually granted by the tax authority because of the cultural contributions made by churches, not because they are churches. **It seems as though being**

a religious group is not enough, and tax exemptions require other kind of justifications which appear more commendable.

- It is kind of **embarrassing** to pose religious concerns as Freedom of Religion or Belief issues. The claim is hence **disguised** –deliberately or inadvertently- as a **more politically acceptable claim**: racial discrimination, minority protection, political diversity, democratic coexistence.
- As a regrettable conclusion, we are compelled to understand that **arguments based on the right of freedom of religion for itself are despised. They are not worthy of respect for themselves, and therefore, must seek assimilation to other topics in order to make themselves heard.**

- **As a consequence of this falace**, agendas holding challenging proposals for bio-ethics (e.g. legalization of abortion) take advantage of religious communities' shame of raising issues on Religious Freedom grounds, and hence **disqualify religiously-based arguments** in their platforms. E.g. feminist campaign pro-legalization of abortion: "No more rosaries in our ovaries. The right to decide upon our bodies is not a question of



faith. It is a question of democracy", as if **faith was opposed to democracy, as if democracy was not also about being able to defend one's principles on religious grounds, as well as on other foundations equally entitled to protection.**

- Again, this kind of disdain towards religion –notwithstanding it being a criminal offence- is a **clear case of defamation of religion. Religiously-based arguments are disqualified and proscribed from public**

discussion. Religion is presented as restricting freedom, conducting to slavery, an obstacle to progress and even to democracy.

- This way of thinking, characteristic of our embryonic stage of development in the areas of Freedom of Religion or Belief, consumes our energies and definitely holds us back from fulfilling major achievements in the field of Religious Freedom. And it certainly distracts us from the real focus on Freedom of Religion or Belief, which stands out as our main duty.

- **ANOTHER CURRENT OF OPINION**

- There is another perspective in Latin American school of thought: **a Human Rights embedded one.**
- From a **universal**, unselfish point of view, **on the basis of the respect due to human dignity**, this position attempts to address and defend Religious Freedom from a Human Rights perspective, **without disregarding Catholic, Christian, Jew or other beliefs embraced.**
- It is from this perspective that it is possible to establish a **basis for fruitful debate and dialogue.** This discourse provides a **goal and principles common to all**, believers and non-believers, even to atheists or agnostics with a humanist concern.
- This human-rooted view holds and covers the whole universe of beliefs and ideas derived from these beliefs, with the only proviso that they share a minimum of respect towards the human being in his dignity. In this way, a human-rooted view is able to encompass the defence of all humanity, whereas a narrow, self-centred (or religion-centred, "religioncentric") view of the world will only (hopefully) reach –temporarily– a determined group.
- The above arguments are nothing but an expression of the **core concept of Justice**, that is, *to give –in tomistic terms– to everyone what is due to him.*

- Regarding the issue of why Religious Freedom should be taken seriously by “neutrals”, this view might be the only correct answer or, at least, one of the few ones.
- **Addressing Religious Freedom from a Human Rights perspective may not be substantially different –in terms of what is vindicated- from the particular, religious-centred views. But it certainly establishes a common language and is due to earn – in the present statu quo- the respect of courts, as opposed to “church lady” kind of talk.**

CURRENT STATUS OF LAW AND RELIGION IN LATIN AMERICA

Notwithstanding the severe observations made above, **Law and Religion is in fact evolving in a steady process of self-awareness and incorporation of new rights and guarantees**, both at the legislative and judicial levels.

Several **bills are under consideration** of parliaments right now. For example, Peru is analysing a Freedom of Religion Bill which includes advanced ideas regarding this subject. The “pontifical” trend outlined above has reacted critically towards it, not only because it considers the bill as challenging its privileged position, but also on the grounds of the **need to systematize and harmonize the novelties introduced by reforms with the legal statu quo**, which goes back to the “ancien régime”, in order to **avoid legal inconsistency**.

Others point out the lack of creativity of parliaments, which tend to copy alien laws and import them to their legal system, without proper adjustment, despite the fact that the rights and guarantees introduced are praiseworthy.

In some countries such as Colombia and Argentina, the “other perspective”, the human rights embedded trend, is currently developing and acquiring strength. Several bills containing interesting contributions to Religious Freedom are being rekindled or reconsidered in Parliaments, after having been forgotten or left aside.

Besides conservative trends from different origins –pontifical or protestant- **the main obstacle to Religious Freedom’s fulfilment comes from a militant form of laicism.** In denying the place of religion in the public sphere, and even in society, it becomes another battlefield.

So, as a conclusion regarding the current status of Law and Religion in Latin America, we may say that, despite the outlined difficulties, it is encouraging to witness the firm development that Latin America is undergoing in terms of Law and Religion, contributing to the creation and formation of **a particular “Latin American” perspective** on the subject. With our flaws and failures, with our characteristic slowness and inconsistencies, but with the firm intention of achieving valuable goals, we are actually building our own **“Latin American Law and Religion”** as a means of furthering Freedom of Religion or Belief to achieve its full force.

What we are lacking in our Latin American International Law framework, is a **set of effective means to compromise States actively in this duty, as a duty of State.** That is, **to count on an instrument that would actually command governments to actively promote Freedom of Religion or Belief and tolerance through effective means, awakening them from their long-term lethargy.**

But also, individuals, communities and societies are in need of powerful tools to compel States to comply with this mandate, that is, to be -more than entitled with the right, which they already are- to be guaranteed with the right to **directly invoke this duty of State before States and before international courts of justice.**

The Inter-American Court of Human Rights, created by the American Convention of Human Rights –for so long forgotten as an effective resort for matters of Religious Freedom- is there, available as an effective means to rule Freedom of Religion or Belief cases.

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