

Religion, Education and Public Sphere in Brazil¹

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Resumo: O objetivo deste trabalho é apresentar algumas das principais questões ligadas ao tema da Liberdade de crença e de culto no Brasil, tomando aspectos legais como referência, dando particular atenção a questões ligadas à educação e a direitos de minorias.

Palavras chave: Esfera pública e laicidade. Liberdade de religião no Brasil. Educação pública e liberdade de religião.

Abstract: The objective of this work is to present some of the main questions related to the freedom of believe and worship in Brazil, taking legal matters as reference, and giving attention to educational issues and to minority rights.

Keywords: Public sphere and laicité. Freedom of religion in Brazil. Public education and freedom of religion.

Preliminary, I would like to thank to the International Academy for Freedom of Religion and Belief for the invitation to this Symposium, thanking particularly to Professor W. Cole Durham, Jr., as much as to Brigham Young University – BYU, host institution to that relevant event, hosting all of us, having unusual kindness and warm friendship. It is special and valuable opportunity to share such relevant theme with all the respected colleagues coming from all over the world.

Let us begin remembering that the so-called Great Navigations Period, from the XV Century to the XVI, occurred in the context of the Reform and Counter-Reform. In other words, political strategy of conquering and colonizing peoples, lands and their richness were mixed with religious matter. Making it more focused, in Brazil, colonized by Portugal since the year 1500, the absolute union of the State and Roman Apostolic Catholic Church was present in many ways, lasting over after the National Independence proclamation, in 1822, since it was done by the Prince of Portugal, then first Emperor of Brazil, Dom Pedro I.

¹ Originalmente palestra proferida em outubro de 2004, por ocasião de simpósio promovido pela International Academy for Freedom of Religion and Belief, em colaboração com a Brigham Young University. Em que pesem a distância no tempo e no espaço, é documento que demonstra como naquele momento já era possível análise, com base em pesquisas, que previa focos de tensão no tema da liberdade de crença e de culto no Brasil. Foi mantido o tom da apresentação, assim como as citações de textos legais em português, que foram traduzidos livremente, com as devidas contextualizações, no momento da apresentação. Da mesma forma, nos textos legais antigos, manteve-se a grafia original, de época.

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CONSTITUIÇÃO POLITICA DO IMPERIO DO BRAZIL.

EM NOME DA SANTISSIMA TRINDADE.

TITULO 1º

Do Imperio do Brazil, seu Territorio, Governo, Dynastia, e Religião.

Art. 1. O IMPERIO do Brazil é a associação Politica de todos os Cidadãos Brasileiros. Elles formam uma Nação livre, e independente, que não admitte com qualquer outra laço algum de união, ou federação, que se opponha á sua Independencia.

Art. 2. O seu territorio é dividido em Provincias na fórma em que actualmente se acha, as quaes poderão ser subdivididas, como pedir o bem do Estado.

Art. 3. O seu Governo é Monarchico Hereditario, Constitucional, e Representativo.

Art. 4. A Dynastia Imperante é a do Senhor Dom Pedro I actual Imperador, e Defensor Perpetuo do Brazil.

Art. 5. A Religião Catholica Apostolica Romana continuará a ser a Religião do Imperio. Todas as outras Religiões serão permitidas com seu culto domestico, ou particular em casas para isso destinadas, sem fórma alguma exterior do Templo.

Table 1. Political Constitution of the Brazil Empire, 1824 (in Ancient Portuguese)

Therefore, the “Political Constitution of the Brazil Empire” (1822) established that union, including in its preamble the invocation to the Christian Holy Trinity, besides establishing in its Article 5th the basis of the relation of the Empire with the Roman Catholic Church, as presented in the Table 1.

Indeed, the text of the Article 5th is reproduced in the Table 2 for more detailed understanding of its content.

Art. 5th. The Roman Catholic Apostolic Church will keep going to be the Empire Religion. All other Religions will be allowed to do their worship in home practice, or private practice in houses particularly destined to that, being forbidden that those houses have the exterior appearance of a Temple.

Table 2. Political Constitution of the Brazil Empire, 1824, Article 5th (in free translation from Ancient Portuguese).

The situation mentioned above took place until the proclamation of the Republic of United States of Brazil, in 15th November 1889. At that moment, Brazil had the separation between State and the Roman Catholic Church, by means of the “*Decreto 119-A*”, of 7th January 1890, forbidden the intervention of the federal authority and the federated States in religious matter, enshrining the full and complete freedom of worship (...).”

Among other important measures, the first three articles determined:

Art. 1º E' prohibido á autoridade federal, assim como á dos Estados federados, expedir leis, regulamentos, ou actos administrativos, estabelecendo alguma religião, ou vedando-a, e crear diferenças entre os habitantes do paiz, ou nos serviços sustentados á custa do orçamento, por motivo de crenças, ou opiniões philosophicas ou religiosas.

Art. 2º a todas as confissões religiosas pertence por igual a faculdade de exercerem o seu culto, regerem-se segundo a sua fé e não serem contrariadas nos actos particulares ou publicos, que interessem o exercicio deste decreto.

Art. 3º A liberdade aqui instituida abrange não só os individuos nos actos individuaes, sinão tabem as igrejas, associações e institutos em que se acharem agremiados; cabendo a todos o pleno direito de se constituirem e viverem collectivamente, segundo o seu credo e a sua disciplina, sem intervenção do poder publico.

Table 3. Decreto 119-A”, of 7th January 1890 (in Ancient Portuguese).

As seen in the Table 3, that “Decreto”, as much as the Constitutional determination, in 1891, referred to the complete independence of the State concerning any religion, while at the same time, the State was obliged to respect all them.

Back to the Colonial and the Empire period – which means the Monarchical period of the Brazilian political organization – it is possible to find many different situations in which the intervention of the official religion was made to get also lasting hegemony. For instance, referring to education, the social and cultural activity directed essentially to maintain the society cohesion, as much as to introduce desirable transformations in the public space, many questions could be found. The union of the Portugal Kingdom and the Catholic Church had been manifested by the presence of the Jesuits as the responsables for the public schools, since the early beginning of Brazilian life as a Portuguese colony.

Independently of their merits or demerits, which were not homogeneous or regular along the period of 210 years under the Jesuits’ responsibility from 1549 to 1759, it is necessary to contemplate the question of the origin of the budget. This is particularly important to have right and faithful sources to define whether the schools owned by them were public or not.

A portion of the taxes collected by the Portuguese King in Brazil, under the “*Padroado* Right”, had a permanent destination, in that historic period, to the Company of Jesus, to be applied in the “school of first letters”, or, in other words, the basic schools.

The *Padroado* had included the right to collect the contribution from the believers of their tithe. Therefore, it was a contribution having religious meaning, to be useful to the civil administrator. It was money collected from the people purse, as supposing to be public taxes, generating a kind of public budget.

By the time of Marquise of Pombal, many and intense political and personal conflicts demanded from him against the Jesuits resulted in the expulsion of the Company of Jesus from Portugal and its colonies, being among them Brazil.

Without the Jesuits, just little efforts remained in education, offered by Catholic religious regular orders, while the diocesan priests earned salaries from the State.

The historicist Sérgio Buarque de Holanda, in his classic book “Roots of Brazil”, teaches that those priests were like civil servants to the State, but in the exercise of religious practice. That was just possible because of the legal existence of the regime assuring total union of the State and the Catholic Church. Besides, that possibility collaborated to create a kind of mentality, in a broader cultural sense, within the Brazilian people, as much as within the Catholic Church, particularly regarding that Church expectancies of receiving public funds to the religious activity, even when forbidden by the Constitution.

As mentioned, the proclamation of the Republic changed the picture, separating, loudly (litigiously, said commentaries of that time), the State and the Catholic Church, making possible, finally, the public free manifestation of the right of Religion and Belief.

By one side, finally, it had been possible to understand and to feel as a real experience the principle of “*laïcité*”, as proposed in the French Revolution.

The early influences of the French Revolution had been manifested in the proclamation of the Independence of Brazil, but not in the sense of “*laïcité*”. As a matter of fact, during the Empire, the adepts of religions or denominations different than Catholic Church could not profess neither publicly their faith, nor building temples with exterior appearance of temples, as previously mentioned. For instance, to extend the rationale about the relation between cultural mentality and political principals, that prohibition answers for the fact that the most ancient non-Catholic temples of that time had functioned in houses, or have the exterior shape of residences.

Although, the French influence, through the idea of “*laïcité*” of State, had been combined with the influence of some principles of the North American Independence, gathered as well to the Positivism of Augusto Comte. It was such typical mixing of influences, in terms of historical, political and cultural processes in Brazil, that at the time resulted in the separation of the State and the Catholic Church (which is present in the Brazilian Law until nowadays).

It is important to remember, having in mind this selected audience of people, scholars and authorities from all over the world, to whom our reality is not familiar, that Brazil have been having different Federal Constitutions along its Republican history. Besides the first Republican Constitution, in 1891, Brazil had different Constitutions in: 1934; 1937 (sanctioned, implanting the “Estado Novo”, or “New State”, with authoritarian conduction by Getulio Vargas); 1946; 1967. In 1969, a Military Joint, which was exceptionally in charge of the Presidency of Republic, decided for the edition of a so-called “Constitutional Amendment Number 1”. However, that “amendment” changed all the constitutional order and even the name of Brazil³.

In all those Constitutions, it was maintained the regime of separation of the State and religions in Brazil, being that separation, in juridical terms, attenuated. That classification is given by Professor Anna Cândida da Cunha Ferraz, professor at the Universidade de São Paulo Law School, in juridical opinion prepared to the Brazilian Government, as I asked her to do, when I was a member of the Special Commission for Religious Education in Public Schools of the State of São Paulo.

³ Previously, since 1891, United States of Brazil, changing then to Federative Republic of Brazil.

Presently, the Constitution of Brazil brings two main and founding determinations related to the freedom of religion, that is, the Article 5th (some of its items) and the Article 19, as seen in Table 4 and Table 5.

Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms:

(...)

VI - freedom of conscience and of belief is inviolable, the free exercise of religious cults being ensured and, under the terms of the law, the protection of places of worship and their rites being guaranteed;

VII - under the terms of the law, the rendering of religious assistance in civil and military establishments of collective confinement is ensured;

VIII - no one shall be deprived of any rights by reason of religious belief or philosophical or political conviction, unless he invokes it to exempt himself from a legal obligation required of all and refuses to perform an alternative obligation established by law;

(...)

Table 4 – Federal Constitution of Brazil, 1988. Article 5th.

Article 19. The Union, the States, the Federal District and the municipalities are forbidden to:

I - establish religious sects or churches, subsidize them, hinder their activities, or maintain relationships of dependence or alliance with them or their representatives, without prejudice to collaboration in the public interest in the manner set forth by law;

II - refuse to honour public documents;

III - create distinctions between Brazilians or preferences favouring some.

Table 5 – Federal Constitution of Brazil, 1988. Article 19.

Even the relation between private and confessional schools and public schools, in all levels, is a particular matter, with consequences for the economics of education and public policies and financing in all level of the educational system. For instance, beyond the possibility of deeper analysis in this lecture, but important at least to mention, because it is relevant to Brazil, some programs such as the program “Universidade para Todos” (University for All). That program proposed by the Federal Government in 2003, could bring a situation partially compared to the system of “vouchers” in United States, having in mind the offer of educational opportunities for all.

Let us synthesize in search of attending the theme of this International Symposium, even under risk of simplifying, since we all have just a limited time to present, having in mind the possibility of getting in touch with other realities different than ours, as much as diverse reflections. So, what are the main aspects claiming for attention in Brazil, in the relation of State, public sphere and religions?

1. The attenuated character of State – Religions separation in Brazil manifests itself in the possibilities of cooperation without interference, particularly in the field of public finances. It is a matter of State conceding to the religious institutions exemption of taxes, when having activities in areas allowed to getting a “certificate of philanthropy” and as “non-profit organization”. Particularly in serving in the areas of education, health, social promotion and assistance, as much as for the temples. This has been meaning, in Brazil, that such measure – the exemption of taxes – should be a way of promoting freedom of religion and belief and, particularly in the case of temples, or exercise of freedom of worship.

Nevertheless, even that measure were in 2003 in the center of denounces resulting in canceling those certificates for many institutions, particularly in those offering educational services. The Federal Government did allegations, in taking such measure, that such religious institutions had been holding schools that had indeed profit goals (even undeclared) or had not accomplishing their commitments in terms of offering grants to the students, mainly those belonging to families of low income.

Besides, the Brazilian Civil Code, after many decades of reforming, finally had been approved in 2003, bringing many questions in the field of religious associations, particularly, but not exclusively, in the field of philanthropy. This is a structural theme regarding religions in public sphere in Brazil.

2. The public awareness related to freedom of religion and worship is relatively recent. While members of religious minorities were certain of that referred civil right, the same was not true regarding the most of population. Some facts brought up to the public debate such matter, being particularly stressed the debate on religious education in public schools. Given the extent and aims of this lecture, it is not possible to analyze in-depth that theme, but it is important to mention it as one of the most sensitive themes on the question of the religions in public sphere in Brazil nowadays.

However, it is possible at least to bring the Constitutional article on it, as much as the mention of the issue in the Law 9394/96, the Guidelines and Basis of National Education Law, as seen in the Table 6 and Table 7, respectively.

Article 210. Minimum curricula shall be established for elementary schools in order to ensure a common basic education and respect for national and regional cultural and artistic values.

Paragraph 1 - The teaching of religion is optional to the student and shall be offered during the regular school hours of public elementary schools.

Paragraph 2 - Regular elementary education shall be given in the Portuguese language and Indian communities shall also be ensured the use of their native tongues and their own learning methods.

Table 6. Federal Constitution of Brazil, 1988. Article 210.

Art. 33. O ensino religioso, de matrícula facultativa, é parte integrante da formação básica do cidadão e constitui disciplina dos horários normais das escolas públicas de ensino fundamental, assegurado o respeito à diversidade cultural religiosa do Brasil, vedadas quaisquer formas de proselitismo.

§ 1º Os sistemas de ensino regulamentarão os procedimentos para a definição dos conteúdos do ensino religioso e estabelecerão as normas para a habilitação e admissão dos professores.

§ 2º Os sistemas de ensino ouvirão entidade civil, constituída pelas diferentes denominações religiosas, para a definição dos conteúdos do ensino religioso.

Table 7. Lei de Diretrizes e Bases da Educação Nacional, Lei nº 9394/96.

3. The debate on religious prejudice and discrimination has been growing, gathering visibility than ever. It is possible to say that in Brazil, discussing religious has always been a source of a kind of fear, given the Brazilian tradition mentioned by the historian Sergio Buarque de Holanda called “the (Brazilian) cordial man”.

The difficult of distinguishing between being “impolite” and being “assertive”, combined with a History of effective persecution to religions different of Catholic, brought such situation, with repercussion in the population census. An example of the lack of public interest for the theme is revealed in the census in the year 2000, in which just 1 in each 100 interviewers were asked about his or her religious choice. In other words, the possibility of minority religions disappearing of statistic records were made possible by that, but even so the responsible for collecting the data were not worried about that.

In the theme of religious discrimination, it is important to stress that a recent great conquer was the condemnations of an editor of revisionist books to the Holocaust, anti-Semitist books as well. The Brazilian Supreme Court considered as crime of racism, so imprescriptibly, felony, no-bailable crime, under the Federal Constitution.

4. The notable growing of the Evangelical Churches has been mobilizing reactions from Catholic Church and from political sectors that traditionally composed forces with the Catholic hierarchy. Such increasing is presented as well in public manifestations, by the concession of radio and television broadcasting, bringing new and not studied role to those churches. There is also an expansion of economical activities attached to those religious denominations, such as clothing, besides the “exportation” of such faith systems, in search of achieving Brazilian migrants – and the region of New England and Florida are good examples in US - , or to attend countries speaking Portuguese, as in Africa (Angola, Mozambique, for example).

That expansion has been surrounded by tension, for the fight for political power, by elective posts. The case of Rio de Janeiro is an example where the Governor – and in the previous mandate, her husband, Governor at that time are Evangelical. For instance, the question for religious teaching in public schools has been receiving such anger reactions, in a recent public polemic on the question of teaching creationism versus evolutionism, than ever. There is even a judicial action of unconstitutionality proposed by institutions which were not worrying about the same issue, when belonging to the Catholic Church, pushing to the adoption of a kind of “ecumenism”, as we see a threaten to the right of freedom of belief.

5. The recent and gradual recognition of the right to the religious assistance in the Army, hospitals and prisons for the adepts of all religions, having repercussions to questions of employment.

6. The public recognition of the African and African-Brazilian traditions, with all the inherent rights to that *status*. As we mentioned before, the Brazilian public sphere had suffered a sort of “blindness” for the religious diversity, but this statement is particularly true to the African tradition, even in the XX Century. Those traditions were considered as crime and forbidden their practice. So, their recognition and the possibility of identity affirmation in the public space is a victory to the democracy.

We could discuss many other aspects or make them depth, but we hope we presented a possible first understanding of the situation of religions in the public sphere in Brazil, waiting for your questions.

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Recebido para publicação em 03-10-14; aceito em 05-11-14