

HISTORICAL AND LEGAL COMMENT ON THE CHURCH-STATE RELATIONSHIP IN THE CONSTITUTION OF PANAMA AND THE IMPACT OF THIS ON THE DEBATE OF EQUAL MARRIAGE

BY PUBLIO CORTÉS



The urban legend says that soon, the Supreme Court will rule on the possibility of whether or not that same-sex marriage is or is not protected by the Constitution of Panama. As a result of this information, the public expressions in favor and against the issue has increased these past days.

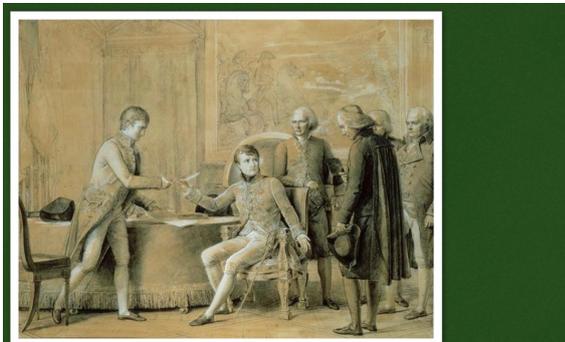
Logically and in full exercise of its right, the Catholic Church of Panama has once again publicly exposed its point of view. Regarding this, I have heard some confused citizens who believe that this point of view has some kind of predominance that must be respected, **just because it comes from the Catholic Church.**

This shows that there could be certain misunderstanding in some sectors about the true status of the Catholic Church in our constitutional system. We are dealing with that topic today. Likewise, at the end of this writing we will present our position on the relationship of the previous issue with the constitutional debate on equal marriage.

It is impossible to talk about the relationship between the Catholic Church and Liberal Democracy, without making reference to History. Ever since the emergence of the Rule of Law and constitutionalism, this is an issue that has generated conflicts, wars, different opinions, in short, historical facts that conditions what the constitutions truly reflect. In fact, constitutions and their practical application thereof, generally project what could have possibly been a military triumph, a political imposition of one side or a consensus.

The reader is warned that we will make a lot of historical reference, as an essential complement to the constitutional legal issue.

France, the Revolution, Napoleon and the Pope^[1]



Firma del concordato entre Francia y la Santa Sede. De izquierda a derecha: José Bonaparte, Napoleón Bonaparte, Jean Portalis, en cardenal Spina, el conde d'Hauterive y Emmanuel Crétet

Let us remember that the Revolution of 1789 was made by the Third State, made up of the bourgeoisie with the support of the common people, against the other two States that were the **nobles** and the **clergy**, both privileged class which, among other things, were exempt from taxes and that they would continue to be so, with respect to the new fiscal burdens that the crown was

trying to impose, to alleviate the financial crisis they were facing. **The clergy remained on the losing side of the Revolution.** For the revolutionaries, the clergy were quite similar to the nobility: one more pillar of those who supported the absolutism of the French Bourbons.

The fall of the monarchy, symbolized by the rise to the scaffold of Louis XVI and Marie Antoinette, also meant the fall from grace of their clergy allies: Prelates, Bishops, religious orders, the Catholic religion itself, became a symbol of the defenestrated old regime. Even the Gregorian calendar, a papal calendar, was replaced by a republican one, with no religious references. Religious festivals were replaced by “republican” parades-processions.

In the initial delirium of the Revolution, the ecclesiastical hierarchy was dismembered, goods and wealth of the Church were expropriated and sold, priests were forced to swear allegiance to the Republic and to be appointed by the Government. Many were executed.

The Revolution followed its known ups and downs, its changing trends. By 1801, we find that the Republic was in the hands of the First Consul, Napoleon Bonaparte, who faced a France with constant revolts, for many reasons; but one of the most predominant was the religious problem because certainly, Catholicism, an ally of the monarchists was still resisting its reduction. That is why the priests were often seen as suspected of conspiring against the regime.

[1] Various sources are used, but mainly: GOUBERT, Pierre, Historia de Francia, Editorial CRÍTICA, Barcelona, 1987.

But Napoleon needed to pacify the country. It was necessary to come to a rearrangement. After months of negotiations, the Concordat of 1801 was signed, where Pius VII basically gave into "saving the furniture."

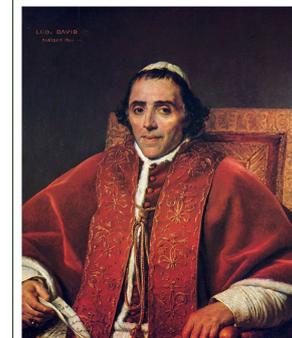
In exchange for the Republic to acknowledge that...

"...the Catholic, Apostolic and Roman religion is the religion of the majority of French citizens..."

... the Pope accepted many of the changes brought about by the Revolution, including:

- (1) The free exercise of Catholicism was subject to the government's police regulations to maintain the peace.
- (2) A new division of the dioceses of France, "in agreement with the government."
- (3) The First Consul (Napoleon) assigns the constituencies to Bishops and Archbishops and appoints the vacancies.
- (4) Bishops must swear obedience to the Government according to the Constitution, promise not to participate in meetings or maintain contrary relationships to public order and to proceed to inform the Government, if they found out that there is a plot in their Diocese or anywhere else against the State.
- (5) His Holiness "for the sake of peace and the happy restoration of the Catholic religion" declares that they will not harass the buyers of property alienated from the Church and will respect the new owners.
- (6) At the end of the divine office of all the Catholic churches of France, the

following prayer formula was to be recited: *"Domine, Salvam fac Rempublicam. Domine salvos fac Consules"*. (Lord save our Republic. Lord save our Consul.)



Pío VII

Now in all, the Catholic Church also had its gains. As a consequence of it being recognized as *"the religion of the majority of French citizens"* Napoleon granted them:

- (1) The right to exercise the Catholic religion in France freely, in public worship.
- (2) Although approved by the Government of France, the Holy See would reorganize the dioceses of France and coordinate with the Government the appointments of Bishops and Prelates, which would officially be appointed by the Government. This implied a formalization of the Catholic Church after the Revolution questioned its continuity.
- (3) It was guaranteed that all the churches not alienated by the Revolution would be at the order of the Bishops for religious use.
- (4) The Government would guarantee a suitable treatment to the Bishops and Pastors of the new circumscriptions.
- (5) The Government would take the necessary measurements to enable French Catholics to establish foundations for churches.

Clearly, the 1801 Concordat between the Republican France and the Pope is a recognition that the Church was no longer going to have the same status as before, it was not the only religion of the State, nor did the clergy have the privileges of the power that it had enjoyed before the Revolution. It had a certain relationship with the State, but mostly as a form of supervision and control. The Church was gaining its official and formal reestablishment in France, under the new regime.

The fact that it was no longer the religion of the State is confirmed whereas, as PIERRE GOUBERT has written: "*later the Protestants and Israelites were acknowledged and protected, atheism continued to be tolerated, and the Bonaparte family infiltrated Freemasonry.*"

That Concordat of 1801, formally governed the relations between France and the Catholic Church until 1905, when the France of the Third Republic approved a more radical Law of separation between the Church and the State that broke in fact with the agreement.

Let us pause on the previous French reference. It will become useful later on.

The Independence of Panama from Spain and the coupling and uncoupling of the Panama wagon, with respect to the Colombian train^[2]

Panama willingly became independent from Spain, in November 1821, taking advantage of a "power gap" that arose, within the implosion that meant the disintegration of the Spanish Empire in America.

There was no military confrontation, but for fear that there might be, through a possible reconquest from Cuba that would be difficult to resist, Panama voluntarily joins Colombia, although the options of joining Mexico, Peru or becoming an English protectorate were also taken into consideration.

In the same act of independence, the idea of joining Colombia triumphed, betting on the Liberator's protective saber, which was an immediate good idea, not only for Panama, but also for the fight that was being waged against the forces of the Viceroy of Lima. There were 3 years left for Ayacucho and the independence cause was thus able to hinder the passage of possible reinforcements for the royalist side from the Caribbean, through Panama.

The vast majority of the Spanish

[2] Various sources are used. The main ones are: CASTILLERO CALVO, Alfredo, *Despegue comercial pre independencia y La independencia de 1821*, in HISTORIA GENERAL DE PANAMÁ, a collective work directed by Alfredo Castillero Calvo with the collaboration of Fernando Aparicio, National Committee of the Centennial, Panama 2004; QUINTERO, César, *Evolución constitucional de Panamá*, in ESTUDIOS DE DERECHO CONSTITUCIONAL PANAMEÑO, collective work coordinated by Jorge Fábrega P., Panameña Legal Editor, Panama, 1987; FIGUEROA NAVARRO, Alfredo, *Dominio y sociedad en el Panamá colombiano (1821-1903)*, Ed. Universitaria, 1982; PÉREZ LÓPEZ-PORTILLO, Raúl, *La España de Riego*, SÍLEX Ediciones, Madrid, 2005; RAMÍREZ, Pedro J., *La desventura de la Libertad (José María Calatrava y la caída del régimen constitucional español en 1823)*, La Esfera de los Libros, Madrid, 2014; CABALLERO, Lucas, *Memorias de la guerra de los mil días*, Punto de Lectura, Bogotá, 2006; RICORD, Humberto E., *November 3, 1903 seen from the centenary (La separación de Panamá de Colombia)*, Editora Sibauste, Panama, 2003

colonies in America began their independence movements around 1810, as a consequence of the destabilization caused by the imprisonment of the King of Spain CARLOS IV and his son FERNANDO VII, in the hands of Napoleon and the consequent French invasion of Spain. As in the peninsula, Government Boards ("Juntas") were formed in America against the French and loyal to the Spanish King for when he returned. In America the matter evolved, and those same boards declared themselves independent from Spain.

Panama does not follow that known pattern, but rather remains nominally loyal to Spain. In fact, the pro-free trade oligarchy of Panama City, took advantage of the opportunity to do business, in the midst of the anarchy in which the Spanish order found itself.

Thus, schemes were broken, and our merchants began to mediate the purchase and sale of goods between the cities that were loyal to Spain and the neutral cities that could not be supplied from the metropolis. They took advantage of the turn in Spain's new relationship with Wellington's England, now allied against France, to buy English goods in Jamaica to sell wherever they could.

By 1819 the party was over. Fernando VII was in his absolutist power in Spain, denying "La Pepa". In America the advance of the independence forces was enormous, breaking the business circuits of the oligarchy of Panama City.



By 1821, in the middle of the Liberal Triennium of RIEGO in Spain that had begun in 1820, and after the boost by the uprisings in the populations of the provinces of Panama, the ruling class of Panama City declared its independence from Spain on 28 November and joins Colombia. The second signatory of the act was JOSÉ HIGINIO, Bishop of the city. The decision was taken at a time when the vast majority of the troops with firepower in the square had left to reinforce the royalist side in Peru.

The oligarchy of Panama City leads the country that is entering the Republic of Colombia and with it, the Liberator's Army takes possession. However, that elite always had in mind an autonomist vision with respect to the rest of the territory of Colombia and favorable to the free market, which would allow it in some way to control the businesses that they knew how to do perfectly, in order to take the best possible advantage of the geographical position of the Isthmus. Therefore, in general terms, they mostly gravitated in the Liberal orbit within the Colombian political maelstrom of the 19th century. Liberalism was clearly the political current least close to the Catholic Church.

In virtue of the foregoing, it is not by chance that during the 82 years that Panama was part of Colombia, Panama separated from Colombia on 3 occasions and in another it managed to obtain the status of "Federal State". It is also not by chance that the Panamanian JUSTO AROSEMENA QUESADA was the President of the Constitutional Convention of Río Negro of 1863, of a Liberal court, which produced the most radically federal organization in the State, called: United States of Colombia.

The separation of Panama from Colombia in 1903, after a 3-year Colombian Civil War, the same that GARCÍA MÁRQUEZ evokes in his fictions, where Panamanians put many deaths and great material sacrifices, was nothing more than a predictable outcome, before the economic bankruptcy of the Isthmus.

Catholic Church and State in the Constitutions of Colombian Panama ^[3]

The debate on the role of the Church and the State was crucial in all the conflicts that occurred in Colombia's eventful 19th century. As in everything, there were nuances, but the most general pattern was that the Liberals had more anti-clerical tendencies while the Conservatives were clerical.

There was a similar discussion to that of the Revolutionary France in 1801, with the peculiarity that we had just been part of Spain, a regime much closer to the Church of Rome. For example: still in 1816 the Inquisition Court of Cartagena was acting, persecuting the dances of the blacks and it was not abolished until 1821, when the forces of independence definitively liberated the city.

Between civil wars, coups, betrayals of all kinds, the politics of conflicts between Liberals and Conservatives, produced pendulum swings in the constitutional handling of the relations of the Church with the State.

CÉSAR QUINTERO tells us that, during the 82 years of Panama's pertinance to Colombia, 22 overall Constitutions ruled in Panama, between the national and regional. Obviously, we will not review (nor do we have) all those documents, which are rather evidence of the lack of political and institutional stability that prevailed in Colombia. It is better to have a quick view of the oscillations of the pendulum, using as a reference the global observation of LUIS CARLOS

[3] Several citations used in footnote2, above.

SÁCHICA. [4]

First swing of the pendulum, towards the clerical side: Constitutions of 1811, 1812, 1821, 1830, 1832 and 1843. They use different languages, but in the end, they make it clear that the Catholic religion is that of the State, the only one whose cult supports the Republic.

Second swing of the pendulum, towards the separation of Church and State: Constitutions of 1853, 1858 and 1863 (that of Río Negro, whose convention was chaired by JUSTO AROSEMENA QUESADA).

About them, SÁCHICA tells us:

"The change occurs in the statutes of 1853 and 1858, by establishing that the principle that governs this matter is "the free professing of any religion, public or private, ..." which creates a climate of religious warfare. The prelates require the authorization of the government for their exercise and in some states the indirect prohibition of public ceremonies is reached. In the constitutions of 1853 and 1863, the invocation of God in the preamble is omitted for the first time, to replace it with the enunciation of popular sovereignty as an indirect source of power".

Third swing of the pendulum, back to the clerical side: Constitution of the Conservative Regeneration of 1886. This chart remained in force in Colombia until many years after the separation of Panama. In its religious aspect only came to be reformed until 1936 under the Liberal Presidency of Alfonso

López Pumarejo, with the opposition of the Church and with a debate on the impact of the reforms on the Concordat that Colombia had with the Holy See.

In light of the above, it is very important to mention that after the historical evolution to this day, Colombia has an advanced Constitutional regime in general and especially in this matter, which can be validated by reviewing the Preamble and Articles 3, 19, 67 and 68 of the 1991 Constitution. In the same way, the Constitutional Jurisprudence is a leader in our region. Today's Panama has a lot to learn from this system.

Colombian Constitution of Nuñez and Caro of 1886, Separation of Panama from Colombia and the first Constitution of Panama of 1904

The Colombian Constitution of 1886, in addition to its ultra-centralist and ideologically very traditional character, represented a very serious affront against the elite of Panama. So much so that several authors in Panama consider that this deception was the real immediate cause of the separation of Panama in 1903.

The total ignorance on the part of the conservative ruling class of Bogotá at the end of the 19th century, including the Church of Colombia, of the traditional autonomist aspirations of the Panamanian elite, was reflected in two main aspects of the Constitution of Regeneration:

(1) This Constitution was drafted by 18 delegates appointed by hand by

[4] SÁCHICA, Luis Carlos, Constitucionalismo Colombiano, TEMIS Publisher, Bogotá, 1991.



MIGUEL ANTONIO CARO

President RAFAEL NÚÑEZ. None were Liberal. The theoretician of it all was the ultra-rightist, clericalist and fatal MIGUEL ANTONIO CARO. Panama was “represented” by two illustrious Bogotá citizens: CARO himself and FELIPE PAÚL, who had never been to Panama in their entire lives. Panama had an elite that had been very active in Bogotá politics. The Panamanians JOSÉ DOMINGO DE OBALDÍA and TOMÁS HERRERA became Presidents in Charge of Colombia, JUSTO AROSEMENA QUESADA, in addition to Senator, had been Colombian Ambassador to England, France and the United States. Many others had stood out. But they were all ignored, and no Panamanians were at the convention.

(2) Not only did the Panamanian elite receive a blow in the drafting of the Constitution, but also an express message was sent within the Constitution itself, since Article 201 said: *“The Department of Panama is subject to direct authority of the Government and will be administered in accordance with the special laws”*. Panama was tied to a very short rope, as if it were a colony

of Bogotá elite from the late 19th century. This is how the Conservative Regeneration punished those unruly and autonomist Panamanians. **All this with the very strong and enthusiastic support of the Catholic Church of Colombia at that time, the ideological arm of the regime.**

From that moment on, the Panamanian oligarchy, whether Liberal or Conservative, began to seriously think about separating from Colombia. However, it strongly bet on the wars started by the Liberal Party, to try to regain its autonomy. Behind the red banner of the Liberal Party in the Thousand Days War (1899-1902), Panamanians saw autonomy.

Unlike the rest of Colombia, in the territory of Panama the Liberals won, but the imperial power of the United States, who was militarily present on the Isthmus with ships and artillery pointing to the trans-isthmian railroad (a concession that Colombia had granted to the United States since 1846), managed to impose the triumph of the Conservative Government on the Isthmus.

The war did not end on the Neerlandía farm, near Aracataca. That peace agreement was the beginning of the end for the Liberals. The war truly ended with the signature of the peace treaty by the two factions aboard the battleship Wisconsin of the United States Navy in Panama Bay, on November 21, 1902.

For 3 years, Panamanians fought in a war that at that time was of great dimensions, taking into account the

small population and the territory. Many died, the cattle ranches were decimated, for the most part the Department embraced the Liberal cause as a last hope of forging the much-desired autonomy from the oppression of Bogotá at the beginning of the 20th century. At that point, the matter was not only a cause of the elites.

If the reader is Panamanian, and you have been brainwashed into thinking that Panamanians had never gambled and that our country is only but the creation of Wall Street, I highly recommend that you read the History of that war on the Isthmus and the biography of all the brave Liberals who managed to win it in Panama and whose defeat was imposed by the United States in favor of the clerical, class and centralist tyranny of Bogotá at the beginning of the 20th century. Due to the end of that war JERÓNIMO DE LA OSSA wrote those verses of the National Anthem that say: "On your floor covered with flowers, ... roars of war ended up."



THE THOUSAND DAYS WAR IN PANAMA

Panamanians such as BELISARIO PORRAS BARAHONA, VICTORIANO LORENZO, CARLOS ALBERTO MENDOZA, DOMINGO DÍAZ DE OBALDÍA, EUSEBIO A. MORALES, MANUEL QUINTERO

VILLARREAL and many others, fought on the battlefield in favor of the Liberal Party, they tried to achieve the autonomy of Panama within Colombia and with their own means. But they didn't let them.

Within the year following the peace agreement of November 1902, when the Colombian Congress rejects the treaty with the United States for the Canal, the United States withdraws its support from the Conservative Government and gives it to the autonomist^[5] Panamanians, who, in desperation and with a country devastated by war, yellow fever, and a failed French channel, they grant the canal treaty that the United States wanted, in exchange for support for the separation of Colombia. It is easy to question them now, because we did not have to go through that moment.

As shown hereinabove, this separation was now made a reality by the coincidence of the historical interests of the Panamanian autonomist and mostly Liberal oligarchy, now backed by the people, with the policy of the new empire that John Hay and Teddy Roosevelt were building.

Going back to 1886. The enthusiasm of MIGUEL ANTONIO CARO and the Church of Colombia, generated the following clerical catechism in the Constitution of 1886:^[6]

(1) In the Preamble the first thing that is said is that the Delegates act "*In the name of God, supreme source of all*

[5] WEISTEIN, Allen, RUBEL, David, *The story of America (Freedom and crisis from settlement to superpower)*, DK Publishing Inc., New York, 2002

[6] CONSTITUCIÓN DE LA REPÚBLICA DE COLOMBIA, Official Edition, BOGOTÁ, Vapor de Zalamea HS. printer, 1886.

authority."

(2) It is provided in article 38 that *"The Catholic, Apostolic, Roman Religion is that of the Nation; the Public Powers will protect it and will ensure that it is respected as an essential element of social order."* And he adds that: *"It is understood that the Catholic Church is not and will not be official and will retain its independence."*

(3) Article 39 states: *"No one shall be bothered by reason of his religious opinions, nor compelled by the authorities to profess beliefs or to observe practices contrary to his conscience."*

(4) Then article 40 said: *"The exercising of all cults that are not contrary to Christian morality or laws are allowed". And it adds: "Acts contrary to Christian morality or subversive of public order, which are carried out on the occasion or pretext of the exercise of a cult, are subject to common law."*

(5) Article 41 said: *"Public education will be organized and directed in accordance with the Catholic Religion."*

(6) Article 53 provided: *"The Catholic Church may freely administer its internal affairs in Colombia and exercise acts of spiritual authority and ecclesiastical jurisdiction, without the need for authorization from the Civil Power."* And later on, it is recognized as a legal entity: *"and as a legal person, represented in each Diocese by the respective legitimate Prelate, it may also exercise civil acts, by its own right that this Constitution recognizes."*

(7) In 54 it took care of priests: *"The priestly ministry is incompatible with the performance of public office. However, Catholic priests may be employed in public education or charity".*

(8) In 55 the properties of the Church

are ensured: *"The buildings destined for Catholic worship, the conciliar seminaries and the episcopal and parish houses, may not be taxed with contributions or occupied to apply them to other services."*

(9) Finally, the bases of a possible Concordat with the Vatican are established in article 56: *"The Government may enter into agreements with the Holy Apostolic See in order to settle pending issues and define and establish the relationships between the civil power and the ecclesiastical. "*

In this Constitution the Catholic Church of Colombia got everything that Pius VII could not get from Napoleon. The base was even laid down to continue achieving more, by way of the Concordats.

Although it is said that *"the exercise of all cults is allowed"* and that *"no one will be bothered by their religious opinions"*, it is clear that the Religion of Colombia is Catholic Christianity and that the Church manages itself, without any intervention from the Government. But on the contrary: The Catholic Church can intervene in the Government, because the Government has to respect said Church, which dictates the guidelines of public education. It is sufficient for the Police to classify a religious act of another cult as *"subversive of public order"* for it to have problems.

Panama was still mourning the dead of the Thousand Days War, when the Provisional Government of Panama that emerged in November 1903 called elections for the Constituent Assembly. The stars lined up and those elected were half the Liberal Party and half the

Conservative Party. The convention met from January to February 1904.

Several authors have said that the Panamanian oligarchy was only Liberal for their interests. It is mentioned as proof, that at the time of drafting the Constitution of 1904, Panama's first Constitution, they did not use the model of the Liberal constitutions of Colombia, but were based on the much criticized, Constitution of NUÑEZ and CARO of 1886. It is also alleged that they were autonomists against Colombia, but when they drafted the rules of Panama, they approved a unitary and centralized State in the Capital City of the Republic.

The above is partially true. Because they did not take that attitude on all aspects. For example, the universal male vote was restored to Panama, when in Colombia only men with a certain economic level could vote. On the religious issue they also clearly showed a more Liberal tendency, due to the strong Liberal roots of the population and, I dare to speculate, also because the port society of the Transit Zone of Panama and Colón, was much more cosmopolitan and diverse of what Bogotá could be, isolated from the world on its cold plateau, when there was no air communication.

QUINTERO explains (and I have verified it) that, if we compare the Individual Rights of the Panamanian Constitution of 1904, in many of them, we find a copy of the wording of those found in TITLE III called "*Of civil rights and social guarantees*" of the Conservative Constitution of 1886. However, when we

get to the religious issue, almost all of the above-mentioned content of the Colombian Constitution of 1886 was eliminated in the Panamanian Constitution of 1904 (articles 38 to 41 and 53 to 56). That was no accident.

Regarding religion, the first Constitution of Panama says: ^[7]

(1) In the Preamble it is clear that the members of the Convention act as "*Representatives of the people of Panama ... with the purpose of establishing the Nation.*" In other words, the sovereignty of power emanates from the people, a clearly Liberal concept. At the end they mention that the action they carry out is carried out by "*invoking God's protection.*" God is no longer the source of authority as he was in 1886, but rather a protector of this human creation that is the Panamanian State which is generated by the decision of the people, through their representatives.

(2) The Colombian Constitution of 1886 had a whole Title IV called: "*On the relations between the Church and the State*" (articles 53 to 56). In the Panamanian Constitution of 1904, there is no section on this topic. The Constituent Assembly also speaks with silence.

(3) Although with a running wording, Article 26 of the Constitution of Panama of 1904 has 3 clearly distinguishable paragraphs. The first says: "*The profession of all religions is free, as well as the exercise of all cults, with no other limitation than respect for Christian morality and public order.*" With this initial wording, the 1904 Constitution places the emphasis on Religious

[7] CONSTITUCIÓN DE LA REPÚBLICA DE PANAMÁ, Official Edition, Panama, National Printer, 1937

Freedom, slightly nuanced with the issue of respect for "*Christian morality*", however, there is no doubt that the outstanding note of the subsection is the freedom to profess any religion, as to implement all cults.

(4) The second paragraph says: "*It is acknowledged that the Catholic Religion is that of the majority of the inhabitants of the Republic.*" This clause is nothing more than an incorporation into the Constitution of Panama of the transactional formula of the Napoleonic Concordat of 1801 with the Catholic Church that, as we saw, said: "*...the Catholic, Apostolic and Roman religion is the religion of the majority of French citizens...*". In my opinion this means that the Catholic Religion is treated with respect, but that does not give it a degree of superiority over all other religions, nor does it make it a State religion, because the State is secular.

(5) The last paragraph of article 26 says: "*...the Law will provide that [the Catholic Church] be assisted to found a Conciliar Seminary in the Capital, and for missions to the indigenous tribes.*" This subsection shows a concession to the Catholic Church. This concession follows the same transactional logic of the aforementioned Concordat of 1801, that is: although it is not the religion of the State, because the State is secular, since it is accepted that the Catholic Church represents the religion "*of the majority of the inhabitants of the Republic*", consequently some type of special treatment is recognized. However, unlike the wide range of privileges that the Colombian Constitution of 1886 gave to the Catholic Church, what Panama acknowledges in 1904, is nothing more than a simple gesture of goodwill: to provide resources for a

conciliar seminary (only one) and for missions in indigenous areas, the latter work that in 1904 is almost certain that only the Catholic Church would actually do.

(6) The title of the General Dispositions of the Panamanian Constitution of 1904 has two rules that also say a lot about the Liberal vision of the handling of the religious issue. The first is article 133 which speaks of compulsory primary instruction and free public education and that "*There will be schools of Arts and Crafts, and secondary and professional educational establishments run by the Nation.*" In other words, nothing to do with public education in accordance with the Catholic religion, as it existed in Colombia at the same time.

(7) The other one is Article 135. Whereas, as we have already mentioned, the Constitution of Colombia of 1886 established that: "*The priestly ministry is incompatible with the performance of public office. However, Catholic priests may be employed in public education or charity*"; The Panamanian Constitution of 1904 under its article 135, with a similar wording, says the same thing, but it refers to the "*Ministers of religious cults*", that is, it does not only deal with "*Catholic priests*", but also level of equality to all religions.

(8) The Constitution of Panama of 1904 says nothing about the existence of any religion of the Nation or about self-government of the Catholic Church.



Zero comments on tax exemptions or guarantees for not occupying the properties of the Church, even less on Concordats with the Holy See. When the Panamanian State was born, no one in Panama thought they had any "pending issue" with the Pope.

Constitutions of Panama of 1941^[8] and 1946^[9]. The Catholic Church recovers slightly ground

Perhaps because the resentments of the very particular circumstance of 1904 had already passed and with a much more consolidated State, in the constitutions of 1941 and 1946, the status of the Catholic Church was slightly improved. **This proves that the clerical tendency to seek spaces of power and presence in the State is an issue that must be monitored over time.**

The one of 1941 had a short Preamble where the National Assembly elected by the people acts and, as in 1904, it invokes the protection of God. Then in article 38 it says:

"The profession of all religions is free, as well as the exercise of all cults, with no other limitation than respect for Christian morality and public order. It is acknowledged that the Catholic Religion is that of the majority of the inhabitants of the Republic. It will be taught in public schools, but its learning will not be compulsory for students when requested by their parents and guardians. The Law shall dispense the aid that should be given to said Religion and may entrust missions to its Ministers in the indigenous tribes."

Here the Church obtained two new advantages, compared to the Constitution of 1904. Although it is not the religion of the State, because the State is secular, however it is accepted that the Catholic Church represents the religion "of the majority of the inhabitants of the Republic", the following is granted:

- (1) The Catholic religion will be taught in public schools, subject to parental or guardian veto.
- (2) The financial aid that this religion could receive in 1904 was limited to a Conciliar Seminary and to missions in the indigenous areas. However, in 1941 a clause was introduced allowing the laws to determine which aid can be given, which greatly increases the possibilities of the Church to receive resources from the State.



1946 Constituent Assambly

The 1946 Constitution had a very similar treatment in the Preamble. Although with a different wording and in two articles, the ground obtained in 1941 remains. The articles are as follows:

"Article 35. -The professing of all religions is free, as well as the exercise of all cults, with no other limitation than respect for Christian morality and public order.

Article 36. — It is acknowledged that the Catholic religion is that of the majority of

[8] Edition of IMPRENTA NACIONAL, Panama, 1941.

[9] Edition published by FÁBREGA P., Jorge, EDITORA PANAMEÑA, S.A., 1965..

Panamanians. It will be taught in public schools, but its learning and attendance at acts of its worship will not be compulsory for students, when their parents and guardians request it. The Law will provide the aid that should be provided to said religion for missions to indigenous tribes and for other similar purposes."

In this set of rules from 1946, as we said, the same treatments remain as in that of 1941 for the Catholic Church, although with some clarifications.

It seems important for us to highlight that the division into two articles strengthens our interpretation, regarding the privileges granted to the Catholic religion, as a consequence of the fact that it is acknowledged as the religion "of the majority of the inhabitants of the Republic", although the secular State is maintained, where the right to profess all religions is respected.

Original^[10] 1972 Panama Constitution: The Catholic Church takes a step back

In 1968 the Panama National Guard, commanded by BORIS MARTINEZ, overthrew the legitimately elected President of the Republic ARNULFO ARIAS MADRID. In the following months, Colonel OMAR TORRIJOS HERRERA takes control of the military regime. The dictatorship lasts 21 years. In 1972, a Constituent Assembly was held, under a new body called the "Assembly of Township Representatives" (Asamblea de Representantes de Corregimiento) and the original text of the 1972 Constitution emerged.

In the Preamble, the Township Representatives mention that they were "chosen by the people" and, as has been done since 1904, they invoke "God's protection". They also include something new in the Constitutions of Panama: they say that the Constitution they approve "...enshrines the principles ...inspiring of the Panamanian Revolution."

Bearing in mind this peculiar framework, we go on to cite the three main articles on religion included in that Constitution:

"ARTICLE 34. — *The profession of all religions is free, as well as the exercise of all cults, without any other limitation than respect for Christian morality and public order. It is acknowledged that the Catholic religion is that of the majority of Panamanians.*"

"ARTICLE 41. — *The ministers of cults and members of religious orders may not exercise public office, even if it is popularly elected, with the exception of those related to social assistance, public education or scientific research. The dignitaries of the Catholic Church of Panama such as Bishops, Vicars General, Episcopal Vicars, Apostolic Administrators and Nullius Prelates, must be Panamanians by birth, as well as ministers of other religions with powers or jurisdictions equivalent to those of the aforementioned Catholic dignitaries.*"

"ARTICLE 101. — *The Catholic religion will be taught in public schools, but its learning and attendance at acts of religious worship will not be compulsory for students when requested by their parents or guardians.*"

[10] See Official Gazette o17.210 dated October 24, 1972.

In our opinion, the joint reading of these rules allows us to conclude as follows:

(1) Under the original 1972 Constitution, respect for the freedom to profess any religion remained.

(2) Although the acknowledgement that Catholicism is the religion of "*the majority of Panamanians*" was maintained, the constitutional privilege that consequently is granted to said religion is reduced to one, that is, the right to teach such religion in public schools, subject to veto rights of parents or guardians. There's nothing more.

(3) There is a direct nationalist interference of the State in the hierarchy of the Catholic Church in particular and of all religions in general, imposing that its prelates must be of Panamanian nationality.

**Panama Constitution IN FORCE:^[11]
The Catholic Church substantially
maintains the same limited status as
of 1972**

As a result of the democratization of Panama, the 1972 Constitution was amended in 1978, 1983, 1992, 1994 and 2004. That is the current Constitution.

The reformed Preamble is clearly of Social Liberalism and maintains the traditional invocation to the "*protection of God.*"

The three main articles on religion included in this Constitution are:

"ARTICLE 35. The profession of all religions is free as well as the exercise of all cults, with no other limitation than respect for Christian morality and public order. It is

is acknowledged that the Catholic religion is that of the majority of Panamanians."

"ARTICLE 45. The Ministers of religious cults, in addition to the functions inherent to their mission, may only hold public positions that are related to social assistance, education or scientific research."

"ARTICLE 107. — The Catholic religion will be taught in public schools, but its learning and attendance at religious services will not be compulsory when requested by their parents or guardians."

In our opinion, a global reading of these articles allows us to conclude on the following:

(1) Under the current Constitution there is total respect for the freedom to profess any religion. There is no State religion in Panama.

(2) There is an acknowledgement that Catholicism is the religion "*of the majority of Panamanians*", however, the constitutional privilege that consequently is granted to said religion is kept very limited, that is, the right to be taught such religion in public schools, subject to the veto right of parents or guardians. There's nothing more. In sum: the transactional language of the Concordat of Napoleon with Pius VII of 1801, brought into the positive Constitutional Law of Panama today, has been basically reduced to an honorable mention for the Catholic religion.

On the other hand, in the present

[11] Edition of the Crime Accusatory Procedure of the GENERAL ATTORNEYS OFFICE (PROCURADURÍA GENERAL DE LA NACIÓN), Panama, 2016.

scenario and due to the consolidated jurisprudence of the Supreme Court of Justice of Panama, on the Constitutionality Block, Freedom in religious matters in our constitutional framework, must also be read in accordance with the American Convention of Human Rights (Pact of San José) that is fully applied in Panama and that establishes:

"Article 12 Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and religion. This right implies the freedom to preserve your religion or beliefs or to change your religion or beliefs, as well as the freedom to profess and disclose your religion or beliefs, individually or collectively, both in public and in private.
2. No one may be subjected to restrictive measures that may impair the freedom to preserve their religion or beliefs or to change their religion or beliefs.
3. The freedom to manifest one's religion and beliefs is subject only to the limitations prescribed by law and necessary to protect public safety, order, health or morals or the rights or freedoms of others.
4. Parents, and, where appropriate,



guardians; have the right that their children or wards receive religious and moral education that is in accordance with their own convictions."

When the matter's interpreting is finished, putting the Pact of San José on the stage, it is impossible even to suppose that the point of view of any religion must have some kind of privilege, just because it is a particular religion.

FINAL COMMENT: What is the relationship between the current status of the Church in the Constitution of Panama and the debate on equal marriage?

What happens is that **unofficial** voices have been heard, from the Catholic sector, which opposes equal marriage, who have wanted to use the honorific mention made by the current Constitution, the one that says that "it is acknowledged that the Catholic religion is that of the majority of Panamanians", as a pseudo-legal argument to affirm that the point of view of the Catholic Church on the subject should have some kind of prevalence, simply because it comes from the Catholic Church.

This approach is far from our current constitutional reality. The cited phrase only has a consequence at the constitutional level, that is, that religion will be taught in public schools, subject to the veto of parents and guardians. That's it. The aforementioned honorific mention cannot be extrapolated to make the Catholic Church the State religion in a disguised way, granting its

points of view a supposed degree of superior authority.

Defenders of Freedom of Thought, including those of us who are Catholics, cannot lose sight of the fact that Panama is a secular State where the point of view of no religion has a degree of superiority. As Panamanians, we must never forget that this precious value is not only what is coldly included in today's Constitution, but it represents one of the essential Liberal criteria on which the Republic of Panama was founded at the beginning of the last century.

On the other hand, those who confuse the issue, thinking that the aforementioned phrase gives some kind of prevalence to the Catholic Church, are unaware that Liberal Democracy also represents respect for the rights of minorities. Our political system is not conceived as a dictatorship of the majorities.

Additionally, it is also a fact that this issue already deserves a reform. To affirm at the constitutional level that "*it is acknowledged that the Catholic religion is that of the majority of Panamanians*" is something outside of any legal technique, because it aims to freeze in time a statistical reality that can change. This formula had its origin in very specific political and historical moments that have already been overcome, such as revolutionary France in 1801 or the traumatic emergence of Panama as an independent State.

Another element that we must remove from the Constitution is that limitation of freedom of worship, subject to "Christian morality", which is something that simply should not be. How do we measure other non-Christian religions with the yardstick of "Christian morality"? That is a totally antique and outdated issue of the reality of Panama today.



Liberty Leading the People by Eugène Delacroix (1830)



On the other hand: there are many Christian religions. It's not just about the Catholic Religion. For example, the heirs of the Eastern Roman Empire are Christians: Greek, Russian, Serbian Orthodox Churches and so on. So are the Protestant Lutherans, Calvinists, Church of England. The Evangelical Churches are also Christians. In short, it is worth asking: Do all these churches define "Christian morality" in the same way today? Truly, in the XXI century, this debate is anachronistic.

As one more evidence of the evolution of History, in today's reality the current Colombian constitutionalism can teach us, Panamanians, a thing or two. We have fallen behind. We would had avoided this whole discussion, if by now we had a constitutional rule as clear and simple as Article 19 of the 1991^[12] Constitution of Colombia, which I think also perfectly reflects the state of current society in Panama. This standard establishes:

"Article 19. Freedom of worship is guaranteed. Everyone has the right to freely profess their religion and to spread it, be it individually or collectively. All religious denominations and churches are equally free before the law."

If we accept the preeminence of the point of view of the Catholic Church on this issue of equal marriage, for the simple fact that it is the point of view of the Catholic Church, we would be going back to historical stages already out of date.

I am convinced that the Catholic Church of Panama does not officially have those intentions, however, clarification is necessary in front of some fellow citizens who live confused.

Panama is a secular state. **No religion can impose its point of view on the community, as an act of faith.** This applies to the issue of equal marriage, but also to any issue that is debated in our democratic society.



[12] Special edition prepared by the Constitutional Court, Superior Council of the Judiciary, Updated with the Legislative Acts to 2016, Bogotá, 2016

It is clear: all religions, be it the Catholic, the Evangelical Churches, the Hebrews, the Muslims or any other of the religious manifestations that contribute to the beautiful plural Panama that we enjoy today, have the right to express their points of view and try to convince everyone else with arguments, on any subject. This is an intrinsic element of the constitutional guarantee of Freedom of Expression, which religions and cults of all kinds also enjoy.

Panamanian society is mature enough to generate a new Constitution. I have already established my position on this issue, and I call out on all currents of opinion that defend the freedom of thought to organize ourselves to defend the secular State that we want. The ideas of the Enlightenment, improved over time, are already a part of the way the world is being seen by Panamanians and especially by youth. Let no one now pretend to put the genie back into the bottle.

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