Zeitschrift des Max-Planck-Instituts für europäische Rechtsgeschichte
Journal of the Max Planck Institute for European Legal History

Rechts Rg geschichte

Rechtsgeschichte
Legal History

www.rg.mpg.de

http://www.rg-rechtsgeschichte.de/rg26
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 26 (2018)
http://dx.doi.org/10.12946/rg26/313-324

Rg 26 2018 313 – 324

José María Portillo*

Corpus mysticum and *cuerpo de nación*. Modernity and the End of a Catholic Empire

* Universidad del País Vasco, josemaria.portillo@ehu.eus

Abstract

Traditionally, historiography on the dissolution of the Spanish Empire focused on the transition from monarchy to nations and from empire to independent states. I propose here to consider another aspect of this process that has to do with the transition from a Catholic imperial monarchy to Catholic nations and republics. This essay explores the relevance of the *corpus mysticum* in the public space, and how it to a great extent determined the understanding of the reach of the constituent power of the *cuerpo de nación*.

Keywords: *corpus mysticum*, Catholic liberalism, early constitutionalism, nation, emancipation

José María Portillo

Corpus mysticum and *cuerpo de nación*. Modernity and the End of a Catholic Empire*

Introduction

Compared to other constitutional revolutions, the Hispanic Atlantic revolutionary cycle produced a considerable number of constitutional texts. If we include constitutional projects as well, this number goes into the hundreds. However, the constitutions effectively in force during the period 1810–1824 is relatively small. A detailed study of Daniel Gutierrez shows, for example, that in the territory of the viceroyalty of Nueva Granada there were eighteen different constituent assemblies from 1810 to 1816, but practically none of the constitutions produced by these assemblies came into effective force for more than a few months. The same can be said of the first constitutions of Venezuela, both federal and provincial, and of other fundamental texts like the Mexican constitution of Apatzingan (1814).

Historiography usually presents this constitutional flowering as a symptom of an advanced modernity. This conclusion is not surprising since most of these texts included provisions such as representative assemblies, civil rights and liberties, or separation of powers. That is the reason why some scholars have insisted in placing the »Hispanic revolutions« at the head of modern representative governments in the cycle of the Atlantic revolutions.[1]

Notwithstanding those signs of modernity, in my opinion, the first constitutional experience in the Hispanic world should be also evaluated from a different perspective. While enfranchising a wide range of people, the first Hispanic constitutions also integrated forms of corporate social organization, including *fueros* or special statutes. The majority of the constitutions proclaimed some form of individual rights such as liberty, security, property, and in some cases, even equality, but all of them included, at the same time and with no apparent contradiction, an exclusivity clause for Catholic Roman confession, thus excluding all other forms. Practically all of the fundamental texts also established, as a constitutional principle, the separation of powers, but at the same time, most of the post-revolutionary systems continued to apply a jurisdictional conception of the political power.[2]

As a matter of fact, seen from the end point of the process of imperial dissolution in the 1830s, the constitution in the Hispanic world seemed to be more an ideologized political discourse than an instrument to implement a *vivere civile* embracing the whole of society. The aforementioned aspects present in most of the constitutions from 1810 to 1830 conformed, in fact, to the battleground where different political and ideological branches met. Suppressing or keeping *fueros*, extending or restricting the right to vote, centralizing or federalizing the state, imposing or not imposing a single national confession were the dividing lines that conformed to the main ideologies in Spain and Spanish America. During the 19th century, the constitution was as much the result of civil wars as it was of political and ideological debates, and typically constitutions imposed a political creed on the whole society.

In this essay, I offer an explanation for the peculiarities of early constitutionalism in the Hispanic world. My hypothesis rests on the fact that the transition from empire to nation, in the case of the Spanish Atlantic, was determined by the fact that the empire was a Catholic monarchy and the resulting independent entities were Catholic nations. In order to do so, I propose to consider the transition from empire to nations as determined by a double process of emancipation. The first one

* This essay has been written thanks to the research project Historia Constitucional de España y América, HICOES, financed by the Ministerio de Economía y Competitividad (DER2014-56291-C3-2-P). The title of this essay owes a great deal to Brian Connaughton, with whom I had the opportunity to discuss some of the ideas I develop here. Connaughton (2010).

1 The historian who most strongly insisted on this view is probably Rodríguez/Jaime (2005). A critical discussion of Rodriguez's point of view can be found in Breña (2012).

2 See Alonso (2016); Garriga/Lorente (2007).

referred to the nation and had to do with freeing it from the king's *patria potestas*.[3] The other one referred to individuals and had to do with emancipation from religious obligation.

Intolerant Liberals

Undoubtedly, the principle of a national religious confession was one of the watermarks of Spanish early constitutionalism. As the very first constitution produced in the area (Venezuela, 1811) stated, the Roman Catholic religion was the confession »del Estado y la única y exclusiva de los habitantes de Venezuela«. Months later, the Cadiz constitution (1812) proclaimed Catholicism the »religión de la Nación«. From this point until the 1830s, practically all of the constitutions produced in the region carried similar articles. In some cases, such as in Spain and Ecuador, the shift from this principle to the proclamation of religious liberty did not occur until the 1870s.[4]

It can be said that the dissolution of the imperial Catholic monarchy produced a number of Catholic nations. Catholicism was, indeed, a substantial part of the political culture and of the social conceptions and representations of the Hispanic societies around the Atlantic. Along with the proclamation of the exclusivity of the Catholic religion, there were a number of political and social practices that involved Catholicism as its natural milieu. Elections, the taking up of magistratures, or the opening of representative assemblies were, among others, determined by Catholic rites.[5]

The crucial point here is not whether the Spanish and Spanish American political leaders were more or less liberal because of their insistence in establishing religious intolerance. In fact, most of them never found their »liberal« and their religious creeds to contradict one another. On the contrary, notable republican and liberal reformists on both sides of the Atlantic, like Juan Germán Roscio in Venezuela or Francisco Martínez Marina in Spain, truly believed that the principles of liberalism and constitutionalism were to be principally found in the Holy Scriptures.

During the very first constitutional debates, it is certainly very rare to find any open debate about the necessity of freedom of religion as one of the basic liberties required by a liberal regime. The situation was rather the opposite: liberals sought the inclusion of religion among the rights of the individuals. When the Cortes of Cadiz engaged in a discussion about the rights of the individuals to be protected by the nation, some deputies missed the inclusion of Catholicism among them. However, rather than including religion in the short list of the rights of the Spaniards (»la libertad civil, la propiedad y los demás derechos que les correspondan«), the liberal priest Joaquín Lorenzo Villanueva proposed the use of a similar language for the national protection of Catholicism (»leyes sabias y justas«).[6]

Religion and individual rights were both under national protection. From the records of the constitutional debates in Cadiz and other parts of the Hispanic Atlantic, we can conclude that religion was an unavoidable condition of the members of the national community to be considered at the same level as rights. It was the community – simultaneously political and religious – that was entitled to the right of keeping Catholicism an intrinsic condition of the nation, while the individual remained obliged to follow national religion, just as it had previously been forced to observe the religion of the monarchy. Considered from this point of view, the discussion about freedom of religion was absolutely outside of the political agenda.

The debate about the relationship between tolerance and constitutionalism in the Hispanic Atlantic came later, in the 1820s and 30s, and is probably the constitutional debate that more clearly affected the entire area on both sides of the Atlantic. Texts discussing the convenience of keeping intolerance or, on the contrary, anchoring some kind of individual religious independence

3 Portillo (2016).
4 Alonso (2014).
5 Lorente (1988), Almarza (2016).
6 The final version of Article 12 of the Cadiz Constitution (»The religion of the Spanish nation is, and ever shall be, the Catholic Apostolic Roman and only true faith; the State shall, by wise and just laws, protect it and prevent the exercise of any other«) is very similar to Article 4 (»The nation is obliged, by wise and just laws, to protect the liberty, property and all other legitimate rights, of every individual which composes it.« As Bartolomé Clavero pointed out, »wise and just laws« were only the laws produced by the Cortes National Assembly, Clavero (2007).

within the constitution travelled from Spain to London or Paris as well as to Chile, Argentina, Colombia, or Mexico. Some influential political leaders who supported the constitution as a convenient system of separation of powers and civil liberties argued, however, against the recognition of freedom of religion. They greatly valued the exclusion of any other religion apart from Catholicism from their communities. For them, religion and constitution were two complementary foundations for social happiness.

A great number of sermons were written on the occasion of preaching the constitution from the pulpits that applauded simultaneously the proclamation of the constitution and the preservation of the »true faith«.[7] The Catalan friar Alberto Pujol delivered a sermon in 1821 in the Santa Monica church in Barcelona. He celebrated the restitution of the constitution a year earlier and insisted on the inextricable mixed formed by constitution and religion: »La Religión, obra de aquel Señor que vino a establecer la paz nos obliga a la fraternidad, y la Constitución que hemos felizmente jurado, no conociendo más que un mundo, unos derechos, unos españoles, nos recomienda la unión, la cual se solida más con la sumisión a las autoridades que nuestra misma voluntad ha escogido.«[8]

National religion and, consequently, religious intolerance were not at all attributes of the proabsolutist ideologues. For them, the syntagm »national religion« would have been a contradiction, if not a blasphemy. Catholic liberals were more insistent on the relevance of the benefits of religious uniformity, even accepting philosophically religious tolerance as one of the individual rights. Gregorio de Funes, an Argentinian priest involved from the very first moment in the revolutionary movement, translated in 1822 an essay that had recently been published in France by Pierre Danou on the guaranties of individual rights. From 1808 onwards, Funes had promoted the idea that the Spanish imperial system was obsolete and should be replaced by an independent constitution in the Rio de la Plata viceroyalty. He was not at all a revolutionary in the same sense, for example, as Mariano Moreno was. Like other leaders and ideologues of the May Revolution of 1810 in Buenos Aires, Funes accepted that the moment to break ties with the Spanish imperial monarchy had arrived. However, he distanced himself from revolutionary leaders like Mariano Moreno because of their radicalization. He actually feared that social disorder might result from the political revolution.[9]

In the translation of Daunou's essay, Funes introduced some interesting notes to the original text. One of them referred to chapter five where Daunou treats *de la liberté des consciences*. The French author explained that there were basically three ways to treat religion in the constitutions of the states: some of them permit all religions, with no public support for any specific one; others link religion to public institutions and prohibited all but the official one; and finally, other states simply declare the majority's religion the *religion de l'état* and support it, while permitting different cults as well. When Daunou wrote his essay, the first case could be said to correspond to the United States, the second one to Spain and the new Spanish American republics, and the third one to France. He strongly recommended the third variant for Catholic countries where »un culte professé depuis plusieurs siècles par le plus grand nombre des habitans, put avoir, et par sa propre nature, et par de si longues habitudes, assez de relations avec la morale publique pour mériter qu'on le place au nombre des institutions propres à la maintenir«.[10]

In his notes to Daunou's text, Funes discussed the limits of the idea of state religion. For the Argentinian priest consistently with the principle of a public religion the constitution should limit the freedom of cults and religion: »Resulta, en segundo lugar, que siendo como es el soberano el protector de la religión del estado, entra en el número de sus derechos contener y reprimir a los que intentasen turbarla o destruirla.«[11] In contrast to the French author, Funes still considered religion from a communitarian or national point of view and not merely as an instrument at the state's disposal to generate social cohesion.

Article 10 of the Chilean Constitution of 1823 read: »La religión del Estado es la Católica, Apos-

7 Di Stefano (2004).
8 Pujol (1821) 19.
9 Llamosas (2011); Goldman (2016).
10 Daunou (1819) 116.
11 Daunou (1822) 191.

tólica, Romana, con exclusión del culto y ejercicio de cualquiera otra.« This article was decidedly criticized by the London-based newspaper *Variedades o El Mensajero* because of the lack of tolerance in what it deemed a truly liberal text. *Variedades o El Mensajero* was written by José María Blanco-White, by far one of the most influential intellectuals in the Hispanic Atlantic since the crisis of 1808. *Variedades* was the third periodical written by Blanco after *Semanario Patriótico* and the influential *El Español*. Promoted by the publisher Rudolph Ackerman, it was intended to explore the possibilities of a Spanish-American editorial market, and as Fernando Durán asserts, Blanco was the perfect person for the position.[12]

Number 6 (January 1825) included the aforementioned analysis of the Chilean Constitution of 1823, where Blanco criticized the reproduction of a characteristic article among the Hispanic constitutions that excluded all religions other than Catholicism. Since the publication of the Spanish Constitution of 1812, Blanco offered an implacable critique of the proclamation of Catholicism as an exclusive national religion. He knew very well what he was talking about since Blanco was a former Catholic priest, who abandoned the Roman Church and adhered to Anglicanism and later to Unitarianism.

His argument, however, was philosophical and not theological. State protection of the religion of the majority of the population, Blanco said, was one thing, and the prohibition of any other cult is quite another. The first could be understood as a use of religion for the sake of the statee and its purpose of generating social cohesion. The second, on the contrary, constituted a literal reproduction of the *compelle intrare* principle.

The capacity of public authority to force people to observe a specific creed reproduced, in Blanco's opinion, the imposition of one sect (the state's sect) on the whole nation. *Compelle intrare* and liberalism were for Blanco philosophically incompatible: »Desengáñense los hombres que piensan en todos los países hispanos. En tanto no logren convencer al pueblo que la religión Cristiana no obliga a ser intolerante … la libertad civil de aquellos países continuará en una perpetua infancia.«[13]

Whether voluntarily or not, Blanco initiated a debate that went from London to Chile, Peru, Colombia, and Venezuela in a variety of newspapers and brochures.[14] Juan Egaña, a political leader of the Chilean independence movement and the author of the Constitution of 1823, wrote a *Memoria Política* as an answer to Blanco's arguments. In Egaña's view, tolerance should always be considered according to culturally and anthropologically specific conditions and not as a universal principle. Thus, he argued that religious tolerance in Chile, as in other Hispanic societies, »no sería tolerancia« because »aquí no tenemos ni conocemos más culto que el católico«.[15]

The issue was, then, that intolerance was a political prerequisite derived from the social conditions of the Hispanic nations. Without religious uniformity, Chile and other Hispanic societies had to be considered a mere »pueblo de comerciantes« and not a »pueblo de ciudadanos«. Along the same lines, the philological link between the phrasing used for the protection of individual rights and of national religion in Cadiz (»leyes sabias y justas«) already took for granted that the category of *ciudadano* was strictly linked to a community of Catholics. In a society in which »a ningún chileno se le ha ocurrido ser protestante«, the best way to preserve social cohesion was to preserve and defend what Egaña called »un dios nacional«.[16]

Several relevant peculiarities in the manner in which the post-imperial Hispanic world faced modernity derived from their self-perception as communities with a »dios nacional«. By the end of the 18th century, Spanish intellectuals on both sides of the Atlantic were pretty conscious of the religious condition of their societies, where, in contrast to other European and American societies, there was no religious diversity. This characteristic was usually presented as an advantage that historically helped prevent civil confrontation. In the debate discussed above, Egaña and other partici-

12 Durán (2009).

13 *Variedades o el Mensajero de Londres*, VI, enero 1825 22.

14 Collected in *Memoria política sobre si conviene en Chile la libertad de cultos, reimpresa en Lima y Bogotá con una breve apología del art. 8 y 9 de la constitución política del Perú de 1823; y con notas y adiciones en se esclarecen algunos puntos de la Memoria y Apología y en que se responde a los argumentos del Señor Don Jose Maria Blanco a favor de la tolerancia y libertad de cultos en sus consejos a los hispano-americanos y a los discursos de otros tolerantistas*, Caracas, Imprenta de G. F. Devisme, 1829.

15 *Memoria política*, 6.

16 *Memoria política*, 26–27.

pants retook the topic to argue against religious diversity in their societies. From a different point of view, Blanco denounced the incoherence of this argument, for as he tried to demonstrate, religious uniformity was a consequence and not a prerequisite of intolerance.

In this regard it is very illustrative the phrasing used by the Spanish constitution of 1869, the first that included among individual rights freedom of religion: »El ejercicio público o privado de cualquiera otro culto queda garantizado a todos los extranjeros residentes en España, sin más limitaciones que las reglas universales de la moral y del derecho. Si algunos españoles profesaren otra religión que la católica, es aplicable a los mismos todo lo dispuesto en el párrafo anterior.« As late as 1869, it appears as though Spanish democrats and revolutionaries considered it very unusual that any Spaniard could be anything else but Catholic.[17]

Monarchy passed, *corpus mysticum* remained

Historiographically speaking, it is very common to understand the end of the Spanish Empire in terms of a process of political separation of the American territories from the metropolitan matrix. Over the last twenty years, the historiography has treated a number of aspects that affected this process, from regional to global studies and from social to economic or cultural history. Most of these analyses basically consider two historical subjects as the essential characters of this momentous process: the Spanish monarchy and the respective new republic. This is absolutely correct in the sense that by 1826 the visible result of the whole process initiated in 1808 was the existence of a Spanish monarchy (territorially reduced to the European dominions and some islands in the Caribbean and the China Sea) and a number of new republics from Mexico to Chile.

In my opinion, however, the birth of new republics and nations in the Hispanic Atlantic should also be considered from a complementary perspective. Modern history scholars usually use the expression »Monarquía Católica« to refer to the Spanish monarchy. »Rey Católico« or »Católica Majestad« were, indeed, forms of address commonly used to refer to the Spanish kings, and »monarquía católica«, synonymous with *monarquía de España*, was used to refer the all of the dominions under the Spanish monarchy. Far from being an ornamental or rhetorical way of referring to the monarchy or the sovereign, »monarquía católica« had a constitutional value in and of itself. Joaquín Lorenzo Villanueva, deputy to the Cortes in Cadiz, was responsible for the use of the same expression (»leyes sabias y justas«) in Article 12 of the Constitution (the one excluding any other religion but Catholicism) as it was used in Article 4 regarding individual rights. He considered himself on the side of the liberals in Cadiz – an assessment shared by Fernando VII and the absolutists, who sentenced Villanueva to prison in 1815.[18]

Engaged in a dispute with the revolutionary priest Henry Gregoire in 1798 about the convenience of declaring religious tolerance in Spain and of abolishing the Inquisition, Villanueva argued that the Spanish monarchy was »católica por constitución«. Even though his opinion differed with regard to the obsolescence of the Inquisition during the constitutional debates in Cadiz, the idea that the Spanish nation was intrinsically Catholic remained.[19] Villanueva, like many other Catholic liberals, meant that both political and social order were inextricably mixed with religion. For them, there was only one single universal divine order. This idea was expressed in many of the constitutional preambles, such as the 1823 Chilean Constitution mentioned earlier: »En el nombre de Dios Omnipotente, creador, conservador, remunerador, y Supremo Legislador del universo«. According to this philosophical approach, legislation was more than a political concern and religion could constitute societies as much as the constitution itself.[20]

In other words, we can say that for the majority of the ideologues and political leaders who led the first Hispanic constitutionalism, the constitution should be based on a Catholic anthropology, as

17 Serván (2005).

18 Simal (2012). La Parra (2018) refers to the episode in which Fernando VII, upon his return to Spain in 1814, refused to attend a religious service put on by Villanueva (259).

19 Viejo (2018).

20 Garriga (2010).

Bartolomé Clavero convincingly argued some time ago.[21] Emancipation, thus, has to be historically considered taking into account that the Spanish monarchy was not only based on the adherence to the Spanish king but also to Roman Catholic religion and Church. Between 1808 and 1826, a process of political emancipation from the authority of the Spanish king took place, but the new political entities resulting from this process did not emancipate from the other fundamental pillar of the ancient monarchy and remained attached to the principles of a Catholic anthropology.

There were a number of implications derived from the political discontinuity regarding the monarchy and the religious continuity regarding Catholicism. Politically speaking, by 1830, the Spanish imperial crisis had brought forth several independent political entities. It is difficult to say exactly how many, because it is not easy to determine if, for example, the provinces of Rio de la Plata were independent states or if the five Central American republics actually comprised a federal unity. What is clearly evident, however, is that all of the societies who had already gained independent from the Spanish monarchy remained united under the concept of the *corpus mysticum*, that is, as participants of the *ecclesiae Christi*.

This double condition was not at all new. For centuries, Catholics divided into different forms of sovereignty and into separated nations while all of them formed a single spiritual community. Constitutionalism brought about the novelty of defining another *corpus*, the »cuerpo de nación« that was proclaimed sovereign. The Spanish Atlantic saw a number of these sovereign bodies as the result of the dissolution of the monarchical unity in 1808. Invariably, all of them simultaneously declared that sovereignty resided in the nation and that the nation identified with the religious community.

Each and every new *cuerpo de nación* nevertheless continued to belong to the *corpus mysticum* of the Church of Christ. This fact had two main consequences. First, while Spaniards, Mexicans, Colombians, and others were now nationally separated from Spain, ecclesiastically they remained united. As Brian Connaughton's research has shown in the case of Mexico, the breaking of ties with the Catholic Spanish monarchy generated some ecclesiastical problems, above all related to discipline and owning to Rome's resistance to recognizing the effective dissolution of the Catholic monarchy. After 1836, however, and once Spain had officially recognized the Mexican Republic as an independent state, the Mexican high clergy's public discourse simply substituted Mexico for Spain as the main political reference and continued insisting that Mexicans belonged to the *corpus mysticum* of the Catholic Church.[22]

The other consequence is more relevant for us. As previously stated, all these new *cuerpos de nación* were, according to their constitutions, at the same time sovereigns and Catholics. Articles 3 and 4 of the Mexican *Acta Constitutiva* are archetypical of what had been done in other parts of the former Spanish monarchy: »la soberanía reside radical y esencialmente en la nación …« and »La religión de la nación mexicana es y será perpetuamente la católica …«. In other terms, Hispanic early constitutions considered equally relevant the belonging of their societies to both *cuerpos*.[23]

In my opinion, it is determinant that early Hispanic constitutionalism generated a wide contact zone between the *corpus mysticum* and the *cuerpo de nación*. That was indeed the novelty brought about by constitutionalism in contrast with the Catholic monarchy. Under the monarchical regime, there was no contact zone at all between both *cuerpos* because the Spanish monarchy was characterized by the absence of any *cuerpo del reino*. Specialists in modern history often use the expression *polisinodial* to describe the government of the monarchy under the Habsburg dynasty. This meant, among other things, that the Spanish kings governed their territories separately and according to particular statutes and laws (Castile, Aragon, Navarre, Italy, and Indias). Even after the arrival of the Bourbon to the throne of Spain and the constitutional assimilation of the territories of the Aragonese Crown to Castile after the War of Succession (1701–1713), there was nothing identifiable as a Spanish kingdom or collective body of the realm.[24]

21 Clavero (1984).
22 Connaughton (2001).
23 Connaughton (2010), Alonso (2014).
24 Fernández Albaladejo (2007).

During the 18th century, the *reino* continued to be a collection of privileged Castilian cities with the addition of others from Aragon as a consequence of the decrees of *Nueva Planta* that cancelled the Cortes of Aragon, Valencia, and Catalonia (1707–1716). The *Cortes del Reino* were a mere extension of the Castilian Cortes with a very scarce capacity of representation and a declining relevance. In fact, the *agentes en corte* were the true representatives of corporations of any kind before the royal government.[25] Representation was limited to the local or to other types of corporations but never transcended to the whole *Reino*. As Annick Lempérière's research for the Novohispana Society shows, while very common, representative activity was circumscribed to the social activity of the numerous corporations within the realm without actually reaching the realm itself.[26]

In September 1808, within the context of an unprecedented monarchical and dynastic crisis, the *Reino de España* was convened for the first time as a political representation in Aranjuez. The Junta Central – officially referred to as the *Suprema Junta Central Gubernativa del Reino* – more closely resembled a senate than a congress since two representatives from each *junta provincial* attended. In contrast to the traditional *cortes*, however, the Junta Central was not a reunion of privileged cities but a collective representation of self-constituted provincial governments.

From 1808 to 1810, the Junta Central evolved into a national congress called *Cortes Generales y Extraordinarias de la Nación Española*. Two relevant novelties came along with this process of transition from *Reino* to *Nación*. On the one hand, the Junta Central declared the American territories essential parts of the monarchy in January 1809 and, consequently, parts of the nation in 1810 as well. On the other hand, the Spanish nation – the reunion of Spaniards from both hemispheres – declared itself sovereign in 1810.

From this moment onward, *cuerpo de nación* and *corpus mysticum* shared an ample zone of contact and identity. For one thing, given that no distinction was drawn between being a Spaniard (or Mexican, Peruvian, etc.) and being a Catholic, both *cuerpos* shared the same subjects c. In a radical sense, the first article of the first constitution approved in the Hispanic world in Caracas in 1811 stated that even all the inhabitants in the new nation belonging to the *corpus mysticum*: »La Religión, Católica, Apostólica, Romana, es también la del Estado y la única y exclusiva de los habitantes de Venezuela«.

Something similar happened months later in Cádiz. Constituents in Spain also worked on the supposition that being a Spaniard or a Spanish citizen also implied being a Catholic. In 1813, the Spanish parliament regulated the process to obtain Spanish nationality (*naturaleza*) and citizenship. Even if the constitution did not mention explicitly the requisite of religion, the *cortes* took it for granted as implicit in the charter. The applicant should address the *cortes*, the exclusive issuing institution of nationality and citizenship, in the following terms: »Don N.N., natural de tal pueblo, provincia de tal, en el reino de tal, en solicitud de Carta de Naturaleza, y habiendo hecho constar ser Católico, Apostólico, Romano y concurrir en él las circunstancias y calidades que le pueden hacer merecedor …«.[27]

Similar legislation can be found all throughout the Hispanic world. As late as the third decade of the 19th century, the constitutional identity between nationality, citizenship, and Catholicism was defended, as we have already seen, in Chile, Peru, Colombia, and Venezuela. A decade later, in 1837, a new constitution was discussed and approved in Spain. While the text delivered by the commission charged with the first draft included an article not quite so determinant as Article 12 of the 1812 Constitution, it still declared Catholicism the religion »professed by the Spaniards«. Some deputies showed their surprise for the inclusion of religion in the constitution, and the Minister of Justice, José Landero, asked the commission to substitute it with an explicit declaration of religious freedom and tolerance. The liberal government, Landero said, preferred »que se consignara el derecho que tienen los españoles de no ser inquietados, molestados ni perseguidos por opiniones religiosas.«[28]

25 Lorenzana (2013).
26 Lempérière (2008).
27 Decree CCLI April, 13, 1813 [I am citing from the digital edition in www.cervantesvirtual.com].
28 *Diario de Sesiones del congreso de los Diputados* (DSC), 4/04/1837 p. 2479. [edición electrónica en www.congreso.es].

However, the article remained unaltered in the final text of the constitution, and no freedom of religion was granted to Spaniards. In defense of the article, Agustín de Argüelles – an old liberal that led the constitutional turn of 1812 – said that it contained no traces of Article 12 of the former constitution. For Argüelles, Article 11 of the 1837 Constitution (»La Nación se obliga a mantener el culto y los ministros de la Religión Católica que profesan los españoles«) was not an intolerant article (as was the case with Article 12 of the Cadiz Constitution) since it simply portrayed Spanish society as it actually was: »que la religión católica en España es un hecho inexcusable, notorio, que consta porque aquí no hay individuo que no la profese.«[29]

The old liberal also argued that the constitution was not the appropriate place to legislate for tolerance. In the future to come, he said, the *cortes* should produce civil legislation to regulate religious tolerance. In contrast with constitutional legislation, civil legislation referred to regular laws and, above all, to the projected civil code. Such an approach to freedom of religion is very interesting for several reasons. First, it was almost unique in contemporary European constitutionalism. During the debate of this article referring to the French Constitution of 1830 and other European constitutions, Vicente Sancho, another progressive liberal, stated that it was very common in European constitutionalism to mention and finance the religion of the majority of the nationals.[30]

However, there were some interesting differences between those other constitutional examples and Article 11 of the Spanish Constitution of 1837. Article 5 of the French Constitution of 1830, contrary to what Sancho and other supporters of the project said, in fact introduced the kind of freedom of religion demanded by the Spanish Minister of Justice José Landero: »Chacun professe sa religion avec une égale liberté, et obtain pour son cult la même protection.« It is true that the following article alluded to Catholicism as the religion of the majority of the French to justify the support to Roman Catholic Church, but it also included »des autres cultes chrétiens«. The Belgian Constitution of 1831, often cited as a source of constitutional knowledge for other purposes, was more determinant in terms of religious liberties: »La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toute matière, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés« (art. 14). The following article prohibited forcing people to observe rites and cults of any religion and articles 16 and 17 separated the government from the provision of religious authorities and affirmed the prevalence of civil over religious marriage.

The second reason for the relevance of the argument exhibited by Argüelles rests in the consequences of transferring the regulation of religious tolerance to civil legislation, above all because such a legislation was never produced by Spanish legislatures until the end of the century. Immediately after the approval of the 1837 Constitution, progressive liberals unsuccessfully tried to pass a law recognizing tolerance as a private exercise of religious believes and cults, thereby preserving public spaces and financial support exclusively for Catholicism.[31] In turn, moderates liberals – who governed for the majority of the century – tended to recover the identification between the Spanish nation and Catholic religion. Once in power, after the defeat of Espartero's regime in 1843, moderates pushed for a change of the Spanish Constitution of 1837, resulting in the text of 1845. Article 11 was purposely modified: »La Religión de la Nación española es la Católica, Apostólica, Romana. El Estado se obliga a mantener el culto y sus Ministros.« At the same time, some relevant moderate political thinkers developed a renewed conception of Catholicism as the true social compact of the Hispanic societies.[32]

Two main pieces of legislation from mid-19th century Spain demonstrate that the main constitutional current was moving toward a renewal of the exclusivity of Catholicism as a sort of state religion. The Penal Code of 1848 and, above all, the Concordat of 1851, signed by the Pope, effectively reintroduced the conception of religious intoler-

29 *DSC*, ibid. p. 2484.
30 *DSC*, 5/04/1837 p. 2498.
31 González Manso (2014); Suárez (2014).
32 Pellistrandi (2002).

ance and the exclusivity of the Catholic religion in the Spanish liberal state. The Penal Code included a specific title for »Delitos contra la Religión« that considered any attempt to change the religion of the Spaniards, the performance of non-Catholic public cults and rites, the publication of ideas considered dogmatically wrong by ecclesiastical authorities or the apostasy a crime. It is very significant that for most of these crimes banishment was the preferred sentence, that is, a separation from the community of nationals. Accordingly, three years later, in 1851, the Concordat sanctioned the complete reintegration of the language of religious intolerance: »La religión católica, apostólica, romana, que con exclusión de cualquier otro culto sigue siendo la única de la Nación española, se conservará siempre en los dominios de S. M. Católica, con todos los derechos y prerrogativas de que debe gozar según la ley de Dios y lo dispuesto por los sagrados cánones«.[33]

Thus, Argüelles was absolutely wrong in thinking that ordinary legislation would bring forth religious tolerance in Spain.[34] During the constitutional debates in 1837, however, he detected a historical change that is worth emphasizing here. Addressing the deputies who wanted an explicit declaration of religious tolerance, he said that the image of a minister of the Spanish Crown publicly demanding toleration, as Minister Landero had done, was in itself a sign that times had already changed.

Argüelles had, indeed, pointed out one of the keys to understanding the Spain and the Hispanic world in the 19th century. Contemporarily to the completion of the independence of the American republics, the consensus on the identity between *corpus mysticum* and *cuerpo de nación* became problematic. As we have already seen, by the 1820s the debate on the relationship between both spaces was very active throughout the Hispanic Atlantic, and it was reproduced in Spain in the 1830s. Right after independence had been completed, some liberals started to view sovereignty not only as an attribute of nations in the sphere of *ius gentium* but also as an individual matter related to one's religious beliefs and should be regulated by the constitution.[35]

Starting in the early 1820s, Vicente Rocafuerte developed a liberal and tolerant line of thought that conceived independence in terms of a dual process. The independence of the *cuerpo de nación*, achieved in the field of *ius gentium*, was only one of the faces of the complex process of emancipation. To enjoy true freedom, however, the process has to be completed: »Después de haber sacudido el yugo de los españoles hemos cesado de ser esclavos, y no hemos aprendido aún a ser libres, ni podemos serlo sin virtudes y buenas costumbres … Considero la tolerancia religiosa como el medio más eficaz de llegar a tan importante resultado …«.[36] Four years later, Rocafuerte became the second president of the Republic of Ecuador. At the beginning of his term of office, Ecuador approved a new constitution in which, contrary to the principles exposed in his *Ensayo*, tolerance was expressly excluded: »La religión de la República del Ecuador es la Católica, Apostólica Romana, con exclusión de cualquiera otra. Los poderes políticos están obligados a protegerla y hacerla respetar.«

However, it can be said that Rocafuerte conducted a reformist policy based on the idea of disciplining the ecclesiastical republic, as he claimed in his essay published in Mexico.[37] It was probably in Mexico where the limits of the cohabitation of the two *cuerpos* (*mysticum* and national) were more visible. As Brian Connaughton suggests, after independence, one of the questions to be solved by Mexican liberals affected the way they conceived of the implementation of a *república católica*. Hoping to achieve an ideal solution, several liberals proposed to keep Catholicism as an essential part of the new republic's identity, while religious matters were to be strictly separated from politics. This cohabitation of ideas not only proved impossible but also opened a debate that gave expression to the republican experience until the *Leyes de Reforma* and the Constitution of 1857.[38]

Benito Juárez and Sebastián Lerdo de Tejada, the principal leaders of reformist liberalism in Mexico during the crucial mid-19th century, thought

33 Suárez (2014) 46.
34 García (2000).
35 Some examples in Sanders (2014).
36 Rocafuerte (1831) 4.
37 Fernández (2006).
38 Connaughton (2010).

that the definitive (and pending) emergence of a liberal nation implied not only a strict separation between church and state but also the substitution of Catholic anthropology by a liberal citizen-centered one. The set of *Leyes de Reforma* (1855–1863) – several of which were later integrated into the constitution – represented the most significant effort to substitute a state discipline for ecclesiastical social control in the Hispanic Atlantic. *Desamortización* (seizure) of the Church lands, state control of civil registration, marriage and cemeteries, dissolution of religious communities, abolition of the legal privileges (fuero) of the clergy were among the measures adopted by Mexican reformists.[39]

The intention was to suppress the contact zone between *corpus mysticum* and *cuerpo nacional* by making religion a private – not public – matter. Within the public sphere, as proposed by Juárez and others, the only visible Mexican identity should be the civil-national one. Brian Hamnett concludes that after the *Reforma* period, the constitution sufficed as the main national symbol, without the support of the Catholic religion.[40]

Mexico is an excellent example of a radical solution to the problem generated in the transition from the imperial Catholic monarchy to the republican nation. For the majority of the Hispanic world, however, the contact zone between *corpus mysticum* and *cuerpo de nación* remained intact. It had notable effects in the way liberal modernity developed in the area, above all with regard to the conception of the capacity and extent of the constituent power of the nation.

Since the origins of constitutionalism, it was assumed that the constituent power referred to the field of politics, that is, to the frame of government and to the guarantees of the nationals before the public authorities. The official title of the Spanish Constitution of 1812 reflected this character: *Constitución Política de la Monarquía Española*, which assumed that there were other fields apart from politics that required different kind of regulations. Most of the first Hispanic constitutions took for granted that the new political system would be useful to better govern existing societies, not to change them. Some of these early constitutions explicitly recreated specific jurisdictional fields for specific types of persons. In fact, early constitutionalism – and not just Hispanic – assumed that there were inalienable rights of individuals *and*, at the same time, different kind of persons.[41] What is specific to Hispanic constitutionalism is the conviction that some relevant aspects of the social order were beyond the reach of politics and consequently constituent power.

That is the reason why the concept of *fuero* as a specific legislation for a specific kind of person (military, clergy, territories, administration) remained in many Hispanic countries. The Mexican Constitution of 1814, for example, assumed the coexistence of different jurisdictions when it came to their own magistrates and laws: »El Supremo Gobierno nombrará jueces eclesiásticos, que en las demarcaciones que respectivamente les señale con aprobación del Congreso, conozcan en primera instancia de las causas temporales, así criminales como civiles de los eclesiásticos« (Art. 209). As with other constitutional experiments, the Apatzingan Constitution in reality assumed that the public sphere and, consequently, the public authority comprised a complex of »militares, políticas y eclesiásticas« authorities.

Symptomatic of this assumption is the fact that even though practically every single constitution in the Hispanic world proclaimed the necessity of a unified civil code, following the example of France, this goal was only first realized during the second half of the century. The Chilean Code of 1856 served as the prototype followed in the majority of the countries of the former Spanish monarchy. This code was practically the result of the work and diligence of Andrés Bello, a philologist who strove to fix the rules, the code, of the Spanish language as well.[42]

Having introduced the publication of Bello's draft of the Civil Code in 1888, Miguel Luis Amunátegui said that the delay in producing it during the 19th century had to do with the lack of jurisprudential instruction for students of law in the Hispanic societies. They achieved, Amunátegui said, the required knowledge for litigating and for forensic purposes, but they were not philosophically, philologically, and grammatically prepared

39 Bautista (2012) cap. I; Villegas (1997).
40 Hamnett (2013).
41 For a discussion of this point, see Clavero (2016).
42 Jaksic (2001).

to elaborate a systematic *corpus* of laws to regulate civil life.[43] We could historiographically interpret the situation described by Amunátegui as the verification of the permanence of a legal educational system intended to serve in a jurisprudential rather than in a State law based system.

In part, it had to do with the permanence of the *corpus mysticum* in the same public space as the *cuerpo de nación*. As long as this was the case, there would always be several social spaces immune to civil legislation. We can see this in the Chilean code adopted, as previously mentioned, by several Spanish American republics.[44] Let us focus on, for example, the regulation of marriage, one area where civil *potestas* ceded to ecclesiastical: »Toca a la autoridad eclesiástica decidir sobre la validez del matrimonio que se trata de contraer o se ha contraído« (Art. 103). According to the code, ecclesiastical non-civil laws should determine the causes that define legal and illegal marriage, and ecclesiastical authorities were also competent to grant legal dispensations.

Thanks to Bello's notes to the draft of the code, we know that he took this article from the civil code of the Kingdom of the Two Sicilies (1848), where Article 67 declared: »Il matrimonio nel regno Delle Due Sicilie non si può legittimamente cellebrare che in faccia della Chiesa, secondo le forme prescrite dal Concilio di Trento.« However, the Sicilian code gave a notable relevance to the state-controlled civil registration and to the civil legislation that regulated the marriage. In fact, years later in the unified kingdom of Italy, the *Codice Civile del Regno D'Italia* (1865) cancelled every reference to canon law regarding marriage. In his notes and his answers to Chilean ecclesiastical authorities, Bello strongly insisted that the prospective code designed a proper space for civil legislation but did not at all dispute the space regulated by the authorities of the *corpus mysticum*: »¿Qué necesidad hay de decir que la ley civil no reconoce como verdadero el matrimonio de que en el artículo propuesto [art. 103 already quoted] se trata después que, por punto general, está declarado que toca a la autoridad eclesiástica decidir sobre la validez de todo matrimonio?«[45]

Bello referred to the »independence« that the code somehow conceded to the Catholic Church, and this was the crucial point for interpreting the consequences of the cohabitation of the *corpus mysticum* and the *cuerpo de nación* after the dissolution of the imperial Catholic monarchy. Title XXXII, book I regulated the statute of the corporate legal persons, the way these persons are constituted, how they owned, and the extent of their responsibilities. Industrial corporations were excluded because they should be specifically regulated in the Commerce Code. But it also included also a particularly interesting exception: »Tampoco se extienden las disposiciones de este título a las corporaciones o fundaciones de derecho público como la nación, el fisco, las municipalidades, las iglesias, las comunidades religiosas y los establecimientos que se costean con fondos del erario: estas corporaciones y fundaciones se rigen por leyes y reglamentos especiales« (Art. 547).

We can conclusively state that the 19th-century Hispanic world possessed several not insignificant characteristics derived from the transition from a Catholic imperial monarchy to states and republics, where the nation and Catholicism shared the public sphere. Catholic and national corporations (the nation itself among them) were on the same level, preserving then the contact zone between *corpus mysticum* and *cuerpo de nación*. Consequently, civil law, according to this interpretation of modernity, could only regulate society in a limited way, leaving essential aspects of social life and, above all, individual consciousness beyond the reach of civil regulations and liberties. Title IV, book I of the belated Spanish Civil Code (1889) permitted marriage, both civil and religious, to fall under the auspices of Catholicism and regulated not by the code but by »disposiciones de la Iglesia católica y del Santo Concilio de Trento, admitidas como leyes del Reino«). By the end of the 19th century, at the time of the publication of the first Spanish Civil Code, *Leyes del Reino*, public law, were, regarding civil law, a complex composed by *fueros*, canon law, and civil code.

■

43 Bello (1888), Introducción by Miguel Luis Amunátegui XI–XII.
44 Hinestrosa (2005).
45 Amunátegui (1888) 41.

Bibliography

- Almarza Ángel (2016), Los inicios del gobierno representativo en la república de Colombia, 1818–1821, Madrid
- Alonso, Gregorio (2014), La nación en capilla. Ciudadanía católica y cuestión religiosa en España, 1793–1874, Granada
- Alonso, Gregorio (2016), Corporations, subjects, and citizens: the peculiar modernity of early Hispanic liberalism, in: Journal of Iberian and Latin American Studies, 22,1, 7–22
- Amunátegui, Miguel Luis (1888), Don Andrés Bello y el Código Civil, Santiago de Chile
- Bello, Andrés (1888), Obras completas, vol. XII: Proyecto de Código Civil, Santiago de Chile
- Bautista, Cecilia (2012), Las disyuntivas del Estado y de la Iglesia en la consolidación del orden liberal. México 1856–1910, Ciudad de México
- Breña, Roberto (2012), El imperio de las circunstancias. Las independencias hispanoamericanas y la revolución liberal española, Madrid
- Clavero, Bartolomé (1984), Evolución histórica del constitucionalismo español, Madrid
- Clavero, Bartolomé (2007), El orden de los poderes. Historias constituyentes de la Trinidad Constitucional, Madrid
- Clavero, Bartolomé (2016), Constitucionalismo colonial: Oeconomía de Europa, Constitución de Cádiz y más acá, Madrid
- Connaughton, Brian (2001), Dimensiones de la identidad patriótica. Religión, política y regiones en México, siglo XIX, Ciudad de México
- Connaughton, Brian (2010), Entre la voz de dios y el llamado de la patria Religión, identidad y ciudadanía en México, siglo XIX, Ciudad de México
- Connaughton, Brian (2011), México durante la guerra de reforma, Veracruz
- Daunou, Pierre (1819), Essai sur les garanties individuelles, Paris
- Daunou, Pierre (1822), Ensayo sobre las garantías individuales, Buenos Aires
- Di Stefano, Roberto (2004), El púlpito y la plaza. Clero, sociedad y política de la monarquía católica a la república rosista, Buenos Aires
- Durán, Fernando (2009), Blanco White aconseja a los americanos: Variedades o el mensajero de Londres, in: Cascales, Antonio (ed.), Blanco White, el rebelde ilustrado, Cádiz, 53–92
- Fernández, Mariano (2006), El pensamiento religioso de Vicente Rocafuerte, in: Anuario de Estudios Americanos 63,2, 151–169
- Fernández Albaladejo, Pablo (2007), Materia de España. Cultura política e identidad en la España moderna, Madrid
- García García, Ricardo (2000), Constitucionalismo español y legislación sobre el factor religioso durante la primera mitad del siglo XIX (1808–1845), Valencia
- Garriga, Carlos, Marta Lorente (2007), Cádiz 1812, la constitución jurisdiccional, Madrid
- Garriga, Carlos (2010), Historia y constitución. Trayectos del constitucionalismo hispano, Ciudad de México
- Goldman, Noemí (2016), Mariano Moreno. De reformista a insurgente, Buenos Aires
- González Manso, Isabel (2014), Tolerancia religiosa y modelo de iglesia en España en la primera mitad del siglo XIX, in: Historia Constitucional 15, 113–156
- Hamnett, Brian (2013), El liberalismo en la reforma mexicana, 1855–1876. Características y consecuencias, in: Blancarte, Roberto (ed.), Las leyes de reforma y el estado laico. Importancia histórica y validez contemporánea, Ciudad de México, 35–67
- Hinestrosa, Fernando (2005), El Código Civil de Bello en Colombia, in: Revista de Derecho Privado 9, 5–27
- Jaksic, Ivan (2001), Andrés Bello: la pasión por el orden, Santiago de Chile
- La Parra López, Emilio (2018), Fernando VII, un rey deseado y detestado, Barcelona
- Lempérière, Annick (2013), Entre dios y el rey la república. La ciudad de México de los siglos XVI al XIX, Ciudad de México
- Llamosas, Esteban (2011), Revolución en religión: Historiografía e Ilustración en tiempos convulsos. El deán Funes y los temores al desorden social, in: Res Gesta 49
- Lorente, Marta (1988), Las infracciones a la Constitución de 1812. Un mecanismo de defensa de la constitución, Madrid
- Lorenzana de la Puente, Felipe (2013), La representación política en el antiguo régimen. Las cortes de Castilla, 1655–1834, Madrid
- Pani, Erika (2009), Conservadurismo y derechas en la historia de México, Ciudad de México
- Pellistrandi, Benoît (2002), Catolicismo e identidad en España en el siglo XIX. Un discurso histórico de Donoso Cortés a Menéndez Pelayo, in: Aubert, Paul (ed.), Religión y sociedad en España (siglos XIX y XX), Madrid, 125–154
- Portillo, José M. (2016), Historia mínima del constitucionalismo en América Latina, Ciudad de México
- Pujol, Alberto (1821), Las ventajas que resultan a la nación española de prohibir su constitución el ejercicio de cualquiera otra …, Barcelona
- Rocafuerte, Vicente (1831), Ensayo sobre la libertad religiosa, Ciudad de México
- Rodríguez, O., E. Jaime (2005), The divine charter. Constitutionalism and liberalism in nineteenth-century México, Lanham
- Sanders, James E. (2014), The Vanguard of the Atlantic World. Creating Modernity, Nation and Democracy in Nineteenth-Century Latin America, Durham
- Serván Reyes, Carmen (2005), Laboratorio constitucional en España: El individuo y el ordenamiento. 1868–1873, Madrid
- Simal, Juan Luis (2012), Emigrados. España y el exilio internacional, 1814–1834, Madrid
- Suárez Cortina, Manuel (2014), Entre cirios y garrotes. Política y religión en la España contemporánea, 1808–1936, Santander
- Viejo, Julián (2018, forthcoming), El agente más poderoso de la vida humana. Amor propio y sociedad comercial en la monarquía hispánica a finales del siglo XVIII, Bilbao
- Villegas, Silvestre (1997), El liberalismo moderado en México, 1852–1864, Ciudad de México