



Costa Rica: Proposal for the Promotion of Organized Religion

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Religious Freedom in a Pluralistic Age: Trends
Challenges and Practices
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Content



Presentation: Where do these ideas come from?

Church-State Relations: Costa Rica is a Country in Latin America!

Religious in Freedom in CRs Constitution: Freedom of Conscience and Freedom to Worship

Limits of Religious Freedom: Constitutional and Legal

Festering Problems in Confessional States

Religious Freedom CR 2.0: Organizational Facet of Religious Rights

Organized Religion as a Catalyzer of Social Harmony in the 21st Century

The Roman Catholic Reference: Separation of Church and State or Organizational Rights?

Go Small! Focusing on Practical Issues to Promote Legal Change

Proposals for Costa Rica

Where do these ideas come from?

- Who am I and what is my background?
 - Costa Rican
 - Roman Catholic
 - Attorney (Aspirationally Rational)
 - Conservative
 - In private practice and an external counsel for the LDS Church in Costa Rica
 - Interest in Law and Religion



Church-State Relations: Costa Rica is a Country in Latin America!

The Role of the Roman Catholic Church- A Legacy Relationship

- Latin America is an heir of the Continental European tradition of relations between the nation states that colonized it and the Holy See of the Roman Catholic Church
- Throughout Ancient and Middle Ages, the Roman Catholic Church embodied not only the religious organization of most of Continental Europe and Ireland, it was also a political, territorial, economic and military force
- As such, the relationship between the Roman Catholic Church and Continental Europe (including Spain) was one of political powers during within the feudal, polyarchical system of the Middle Ages



Church-State Relations: Costa Rica is a Country in Latin America! (2)

Role of the Roman Catholic Church (part two)

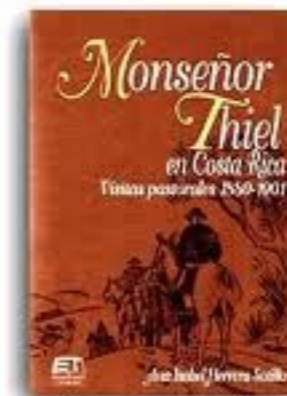
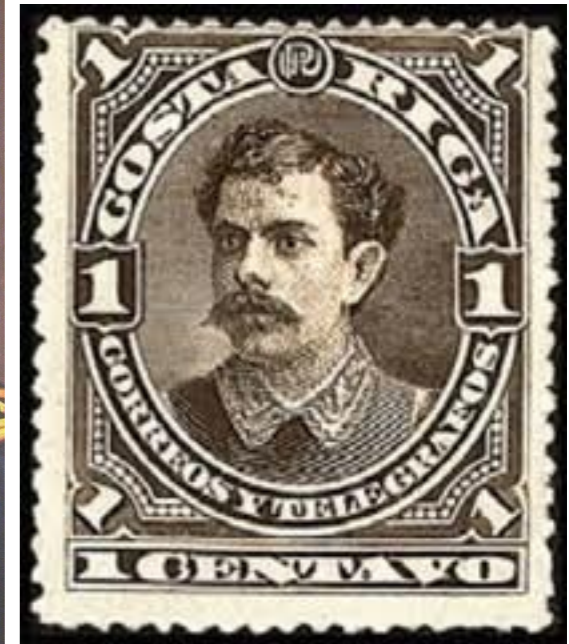
- The Holy See has had a strategic relationship with the Nation States of Continental Europe, and was a strategic ally of Spain and Portugal during the conquest and colonization of Latin America
- Concordata: Costa Rica / 1852 to date
- This historical legacy continues to this date.
- The Roman Catholic Church remains an entity that has certain characteristics of a nation-state, including its own territory



Church-State Relations: Costa Rica is a Country in Latin America! (3)

19th Century Liberalism- The Break that Never Really Was

- The influence of French illuminism and rationalism spawned a strong liberalism movement in all of Latin America
- Costa Rica was vibrantly a part of this trend, marked by the passage of Anti-Clerical Laws in the 1880s
- The Catch: The anticlerical laws were all reversed or not effectively implemented and, eventually, Government subsidies were duplicated in the 1890s
- The real purpose: strengthening of the Government vis-a-vis the Church and Muncipalities (local authorities)



Monseñor Bernardo Augusto Thiel Hoffman
(Elberfeld, Alemania, 1851 - San José, Costa Rica, 1901),
Segundo Obispo de Costa Rica.

Church-State Relations: Costa Rica is a Country in Latin America! (4)

How did all that history reflect in the laws?

- All 12 constitutional documents in force in Costa Rica since the Spanish Constitución de Cádiz approved before the country's independence in 1821 reflect an acknowledgment of the Roman Catholic Church as the State Religion
- 1869 marks the first time religious tolerance is enshrined constitutionally
- Anti-Clerical laws of 1880s never repealed the constitutional acknowledgement of the Roman Catholic Church as the State Religion

The Constitution

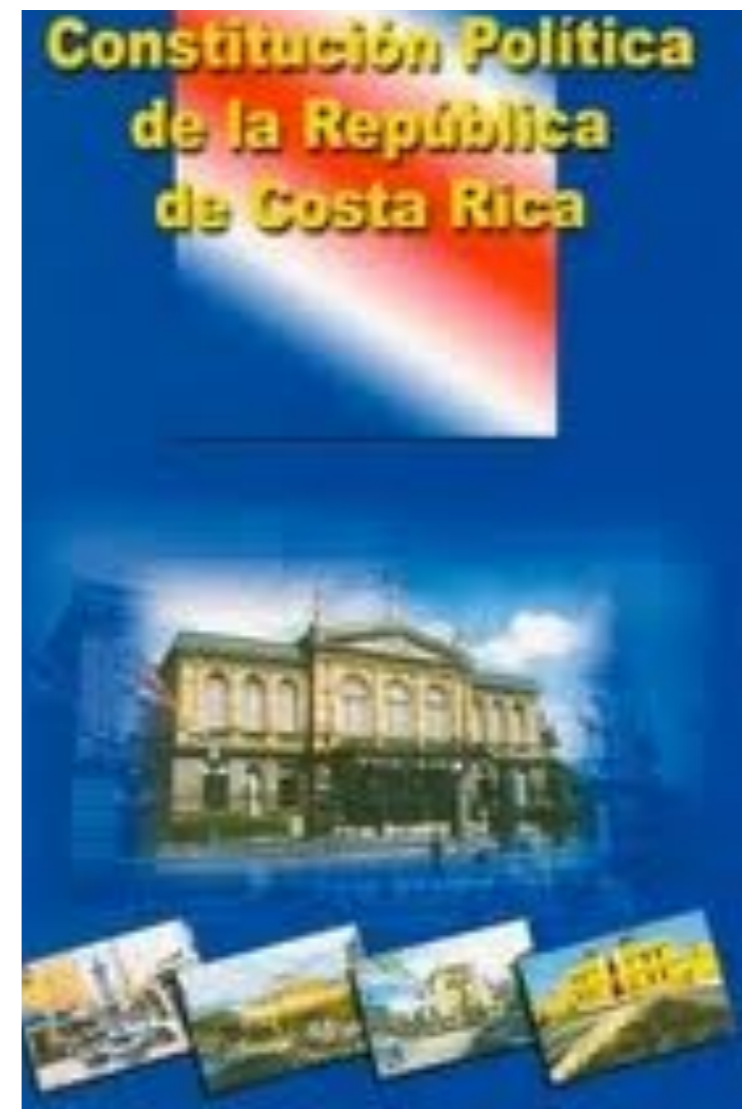
- Current drafting of the Constitution still reflects the legacy of Church State Relations:

The Catholic, Apostolic, Roman Religion is that of the State, which contributes to its maintenance, without impeding thee free exercise of other cults that are not opposed to morals or good customs.

La Religión Católica, Apostólica, Romana, es la del Estado, el cual contribuye a su mantenimiento sin impedir el libre ejercicio en la República de otros cultos que no se opongan a la moral universal ni a las buenas costumbres.



La Junta de Gobierno, en su sesión de don José Figueres, por don Fernando Valverde Vega. Sentados, en el orden usual: Prof. Ubaldo Gómez, Ministro de Educación Pública, Sr. Valverde Vega, Vice Presidente y Ministro de Gobernación, Lic. Daniel Oduber, Secretario General de la Junta y Lic. Alberto Martín Chavarría, Ministro de Hacienda. De pie: don Bruce Masís Divisat, Ministro de Agricultura, don Francisco J. Orlich, Ministro de Obras Públicas, Coronel Edgar Cardona, Ministro de Seguridad Pública y Dr. Raúl Blanco Carreras, Ministro de Salubridad Pública. Falta el Padre Benjamín Núñez, de Trabajo, así como Facio, de Justicia y Benjamín Ocho, de Relaciones Exteriores.

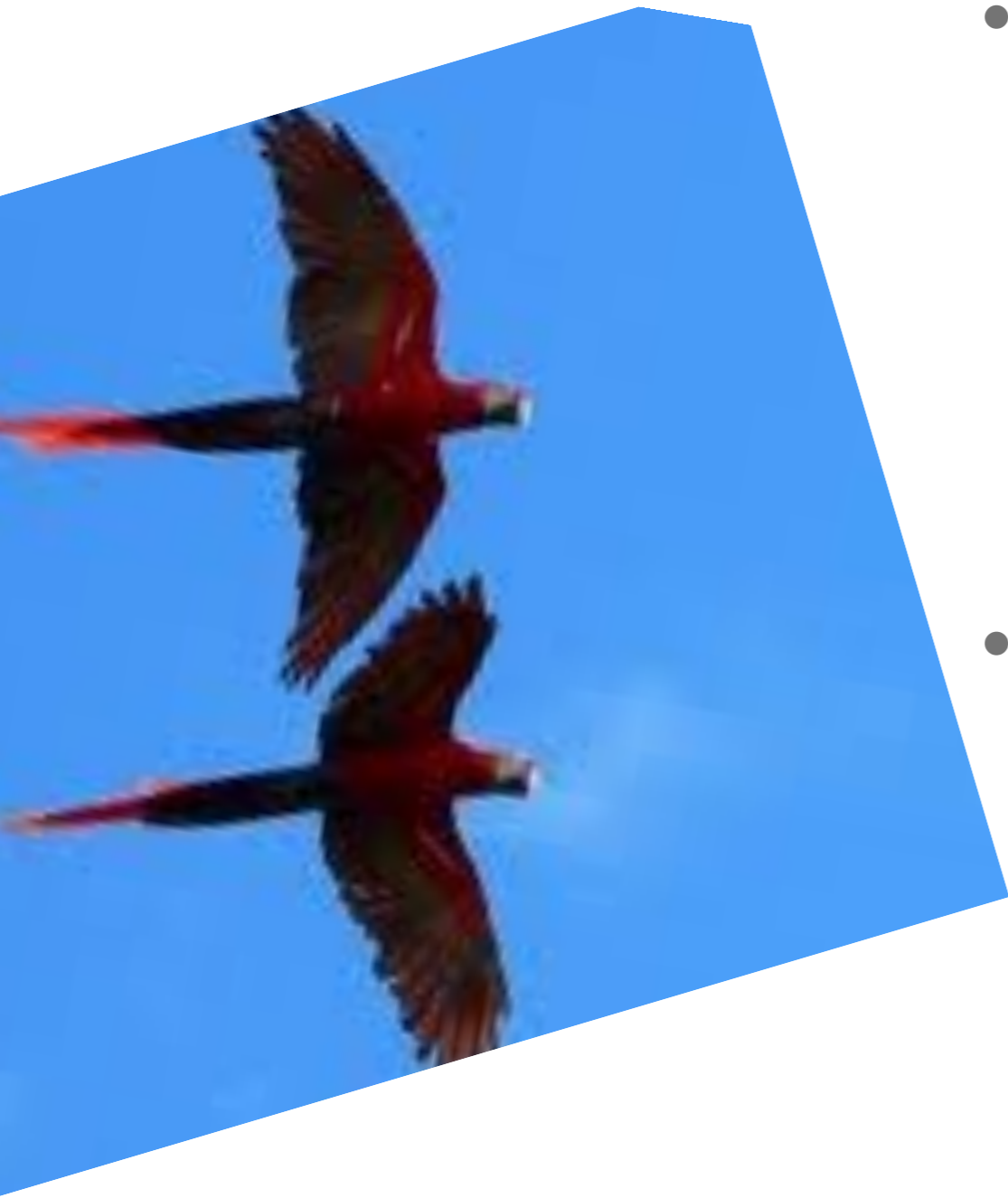


Festering Problems in Confessional States

- Lack of Equality in of Religious Organizations
- Use of public funds in a disproportionate manner
- Intrusion of religion in public education
- Costa Rica: Application of Section 33 (ie, principle of non-discrimination) of the Constitution is hindered by the existence of Section 75 and the acknowledgment of the Roman Catholic religion

How to resolve this problem?
Interplay between politics and legal reform

Religious Freedom: Freedom of Conscience and Freedom to Worship



- Freedom of conscience is not specifically addressed by the Costa Rican Constitution

Merely a theoretical discussion?

Conscientious objection: a key issue treated sparingly (Decision 3012-02)

- Freedom to Worship is articulated in further detail as the embodiment of other fundamental freedoms (Decision 3173-93)

Privacy of domicile (Section 23)

Freedom of Association (Section 25)

Freedom to Meet (Section 26)

Freedom of Expression (Sections 28 and 29)

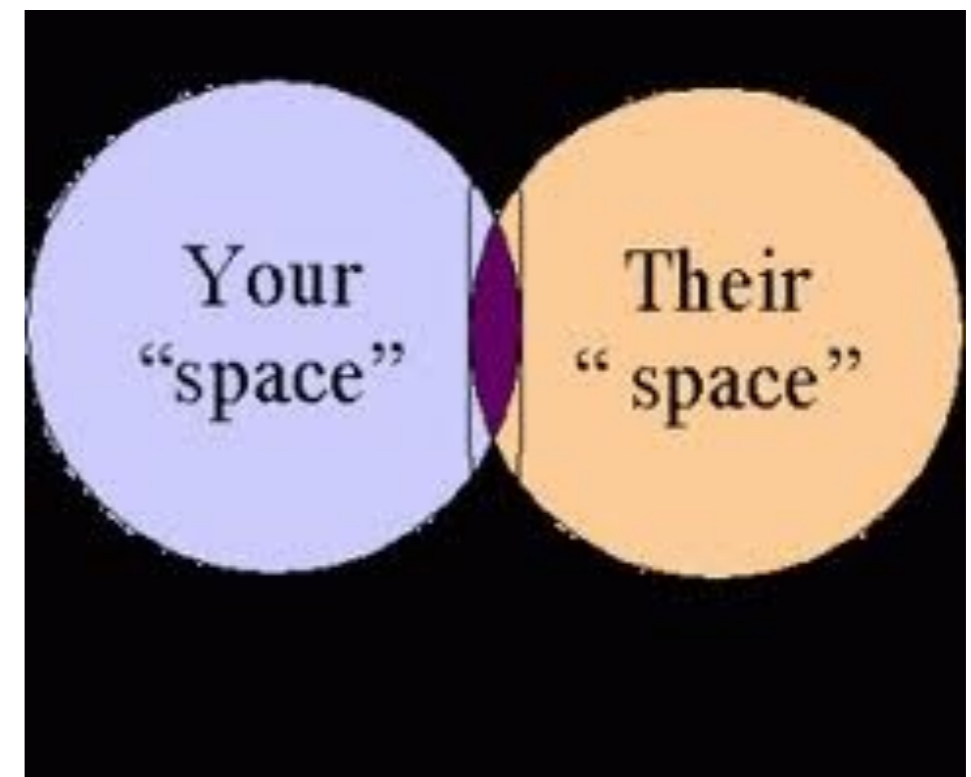
Limits of Religious Freedom: Constitutional and Legal

- Constitution Section 28, *in fine*:

It shall not be possible, however, for clerics or seculars to perform political propaganda invoking religious motifs or availing themselves of religious beliefs as a means.

No se podrá, sin embargo, hacer en forma alguna propaganda política por clérigos o seculares invocando motivos de religión o valiéndose, como medio, de creencias religiosas.

- Decision 2001-01866: Limits set for the basic freedom of expression
 - the law,
 - public order,
 - universal moral and
 - good customs.



Organized Religion as a Catalyzer of Social Harmony

- Many Western democracies (eg, Costa Rica) frame religious freedom and have a tradition of enforcement
- Emphasis of enforcement is based on the individual's freedom
- Lack of emphasis in organized religion is a lost opportunity
- Organized religions that transcend time tend to emphasize positive social values which lubricate social interaction
- An exclusive focus on individual rights gives only partial solutions after painful exercises of balance between constitutional freedoms
- Central America: Potential to address social inequality through the actions of organized religion

Religious Freedom 2.0: The Organizational Facet

The Roman Catholic Reference

- Inclusion of the Roman Catholic religion is a result of the special, historical relationship between Church and State
- Costa Rica's relationship is also framed by its Concordat of 1852 with the Holy See
- **Although its motivation is the result of the historic relations amongst both institutions, the reference is a constitutional acknowledgment of the importance of organized religion**



The Roman Catholic Reference (2)

- Some issues addressed in the Concordat that would be of importance to any religious organization

Administrative and ecclesiastical independence of the Church and acknowledgement of its authorities (Pax Wormitensis)

Legal capacity to conduct business and acquire assets

Right to proselytize

Acknowledgment and facilitation of the presence of Catholic missionaries



Going Small in Costa Rica!

- In lieu of Concordat-like solutions, States and Churches are better served in searching for solutions for specific problems

The American Convention of Human Rights and Decisions of the Costa Rican Supreme Court provide broad, philosophical basis

Solutions to these problems are not simple, but may be significantly less politically traumatic than grand solutions (eg, constitutional reforms and anti-Concordat movements)



Proposals for Costa Rica

Organizational Need

Possible Implementation

Administrative and Ecclesiastical Independence of Religious Organizations

Rules that acknowledge religious organizations and their freedom to appoint their authorities

Legal Capacity to Conduct Business

Rules that acknowledge independence of religious rules regarding designation of authorities

Right to Proselytize

Rules that Design the Scope of the Application of Section 28 of the Constitution

Presence of Missionaries

Rules that Create Frameworks that Allow Religious Missionaries Access for Limited Periods of Time

Thank you for your attention.

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