

THE CATHOLIC CHURCH AND THE SOCIALIST GOVERNMENT IN SPAIN: IRRECONCILIABLE DIFFERENCES?

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The last general elections in Spain took place on 14 March 2004. The Socialist Party took over power after eight years of José María Aznar's right-wing conservative government. According to some commentators, José Luis Rodríguez Zapatero became the new Prime Minister unexpectedly. We should bear in mind that only three days earlier, on 11 March, horrendous terrorist attacks in Madrid had shocked the international community.

The Spanish Constitution 1978 declares the absence of a State religion and provides for the co-operation of public authorities with the Catholic Church and other confessions.² The model of ecclesiastical law is regarded as hybrid. The Fundamental Law is clear about the lack of a national Church, but at the same time it does not propose a separation between public bodies and religious denominations (like the French system): co-operation is a pivotal feature of Spanish ecclesiastical law. Relations between the Catholic Church and public authorities are regulated by agreements between the Holy See and the Spanish State.³

THE TEACHING OF CATHOLIC RELIGION IN STATE SCHOOLS⁴

According to the agreement of 3 January 1979 between the Spanish State and the Holy See, concerning education and cultural affairs, 'Catholic

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² Spanish Constitution 1978, Art 16: 'There shall be no State religion. The public authorities shall take the religious beliefs of Spanish society into account and shall in consequence maintain appropriate co-operation with the Catholic Church and the other confessions'.

³ Agreement of 28 July 1976, between the Holy See and the Spanish State; Instrument of Ratification, dated 4 December 1979, of the Agreement of 3 January 1979, between the Spanish State and the Holy See concerning legal affairs; Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning educational and cultural affairs; Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning economic affairs; Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning religious attendance of the Armed Forces and the military service of clergymen and members of religious orders.

⁴ The legal framework of religious education in the United Kingdom is very different

religion shall be included in all educational centres, in conditions equal to those of the basic subjects'.⁵ The same article states: 'Out of respect for freedom of conscience, this religious education shall not be obligatory for all students. However, the right to receive is guaranteed'.⁶ In relation to teachers of the Catholic religion, '[...] religious instruction shall be imparted by those persons who, each school year, shall be appointed by the academic authority from among those proposed by the diocesan Ordinary'.⁷ With regard to finance (always controversial), the Agreement declares: '[...] The economic situation of teachers of the Catholic religion at the different educational levels, who are not part of the State's teaching staff, shall be arranged by the central government and the Spanish Episcopal Conference, in order that it be applied when this Agreement takes effect'.⁸

The agreements with the Holy See are treaties of international law and cannot be modified unilaterally by one of the parties. Therefore, at least for the time being, ordinary laws, promoted by any government, cannot violate these agreements, which are hierarchically superior and must be respected. In compliance with these duties, the Spanish government has declared on many occasions its respect for the current framework and its commitment not to promote any legislation in breach of these international provisions. However, the Minister of Justice has recognised that the executive regards as 'desirable' the revision of some aspects of the Agreements, particularly the situation of teachers of religion.⁹

In September 2004, the Minister of Education, María Jesús San Segundo, proposed a reform of *la Ley Orgánica de Calidad de la Enseñanza (LOCE: Organic Law on the Quality of Teaching)*.¹⁰ The key innovation of this recent socialist proposal is that the Catholic religion — studied from a theological perspective — will no longer be examined and graded.

from the Spanish situation. State schools are not bound to offer Catholic religion as an optional subject. In England and Wales, inter-faith religious education must be provided, but this subject is not taught from a denominational perspective. This subject focuses mainly on the sociological and cultural aspects of the religious dimension and even though it must reflect the majority Christian presence in British society, it must also take into account other religious traditions. See the Education Reform Act 1988, ss 2(1), 8(2), (3). The United Kingdom is a pluralistic society, and the legal response is respectful of this. In an increasingly pluralistic Spain, the British solution would certainly afford useful lessons.

⁵ Agreement of 3 January 1979, between the Spanish State and the Holy See, concerning education and cultural affairs, Article II, 1st paragraph.

⁶ *Ibid* Article II, 2nd paragraph.

⁷ *Ibid* Article III, 1st paragraph.

⁸ *Ibid* Article VII.

⁹ Interview with Juan Fernando López Aguilar, Minister of Justice, 'La Mirada crítica', Telecinco, 23 November 2004.

¹⁰ This law had been approved under the previous government, *el Partido Popular*, but because of the change of government in March 2004, its articles in relation to the teaching of religion have not come into effect. This framework was paralysed by the *Real Decreto 1318/2004, de Nuevo Calendario de Aplicación de la Ley de Calidad*.

Furthermore, it is up to the schools whether or not they want to offer an alternative subject. In principle, the government considers that those students who choose not to study Catholic religion should not be bound to do an alternative subject instead. This has generated a degree of animosity on the part of those parents who would like their children to study the Catholic religion in State schools.

The proposal clearly modifies the current legal framework (*LOCE*), instituted by the conservative government, under which the subject of religion is examined and its grade taken into consideration for the purposes of access to university and to grants. Furthermore, *LOCE* had included a compulsory alternative to the Catholic religion. This subject focused on religion from a non-theological, but interdisciplinary perspective — including sociology and history — and it was equally examined and its grade was taken into consideration for further academic progress.

However, these elements of the *LOCE* never came into effect — because of the change of government in March 2004 — and until the proposals of the government in September 2004 become law the teaching of Catholic religion continues to be regulated by *Real Decreto 2438/1995, BOE 26 January 1995*, which was enacted under Felipe González's Government. According to this royal decree, the compulsory alternative to the Catholic religion is a subject widely defined as 'complementary activities'. At high school level Catholic religion is examined, but its grade is not taken into consideration in order to have access to the university or obtain grants.

Zapatero's government aims to abolish the alternative subject to the Catholic religion, which would not even be examined. This clearly goes beyond the 1995 Socialist government's framework for the Catholic religion. With regard to the *LOCE*, the current government maintains partially the goals of the previous conservative executive and declares that the study of religion from sociological and historical viewpoints should be an important element of disciplines such as history and philosophy.

Needless to say, the socialist plan has been rejected in certain circles. For instance, the *Partido Popular* has defined it as 'secular fundamentalism'.¹¹ Other media have pointed out the damaging effects of the proposal, above all for millions of Catholic families.¹² The ecclesiastical hierarchy, on the other hand, has expressed its firm disapproval of the loss of the significance of religious instruction in the curriculum,¹³ which is far more important to the Church than other controversial issues, such as gay marriage or ecclesiastical finance. According to *La Crónica de Hoy*, the Church has not criticised the State so fiercely since the days when the '*curas rojos*' opposed the dictator Franco.¹⁴

¹¹ ABC, 28 September 2004.

¹² El Mundo, 28 September 2004.

¹³ El Mundo, 24 October 2004.

¹⁴ Left-wing priests, who were very antagonistic towards the dictatorship. They were clearly influenced by the open-minded doctrine of the Vatican Council II.

MARRIAGE OF GAY COUPLES¹⁵

Another area of disagreement between the Catholic Church and the Socialist government has been the government's decision to set up the institution of marriage between same gender partners. The government in its *Consejo de Ministros* (Cabinet) on 30 December 2004 approved *un anteproyecto de ley* (law reform proposal) to modify the Spanish Civil Code concerning the right to marry, which has been discussed by Parliament in the spring of 2005. According to this proposal, on the one hand the concept of marriage is extended – in order to include same gender unions — and on the other, the latter are recognized as having the same rights as heterosexual unions. The main aim is 'to eradicate a long history of discrimination on the grounds of sexual orientation, taking into consideration on the one hand that the social Spanish reality nowadays is richer and more pluralistic and dynamic than society in 1889 — when the Civil Code was enacted — and on the other, that the relationships between same gender persons have been socially recognised and accepted in the last few years, whilst overcoming prejudices and stigmatizations'.¹⁶ In addition to that, the government emphasises the constitutional nature of the law reform proposal, taking into account that the Fundamental Law does not exclude different relationships from the traditional ones.¹⁷ Just a few days earlier, the Secretary of State for Justice, Luis López Guerra, had declared that the government was committed to maintain the 'philosophy' underlying the law reform proposals.¹⁸

More recently, a Research Committee of the *Consejo General del Poder Judicial*, which is the governing body of judges in Spain and which, among other things, fulfils important advisory functions, has approved a report

¹⁵ In the United Kingdom, with regard to same-sex partnership rights, the Civil Partnership Act 2004 received Royal Assent on 18 November 2004, and the first same-sex civil registrations are expected to take place by the end of 2005. Nowadays, gay and lesbian couples can have secure pension rights, will be exempted from inheritance tax and will be recognised as their partner's next of kin. The process had begun in June 2003 when the government published a consultation document, 'Civil Partnership — a framework for the legal recognition of same-sex couples' in England and Wales. On 30 September 2003, the Scottish Executive published a consultation paper on the devolved aspects of a civil partnership registration scheme for same-sex couples. On 31 March 2004 the government published the Civil Partnership Bill. There is no doubt that the plans of the Spanish government go far beyond the British model. In the United Kingdom, gay marriages simply do not exist. It is fair to highlight that many authors or politicians who oppose homosexual marriages in Spain are not against the legal recognition of same gender relationships and would welcome the British formula.

¹⁶ *Anteproyecto de Ley de Modificación del Código Civil en material de derecho a contraer matrimonio*. 30 December 2004.

¹⁷ Fundamental Law, Article 32: '1. Men and women are entitled to marry on a basis of full legal equality. 2. The law shall regulate the forms of marriage, the age at which it may be entered into and the required capacity therefor, the rights and duties of the spouses, the grounds for separation and dissolution, and the consequences thereof'.

¹⁸ Europa Press, 18 December 2004.

which challenges the *anteproyecto de ley* of the government.¹⁹ According to the majority decision of this committee, expressed by its spokesman, José Luis Reguero, the institution of marriage, recognised by the Constitution, would lose its meaning if gay marriages were accepted.

The Archbishop of Toledo, Antonio Cañizares, has firmly rejected homosexual marriages because they are 'against nature', and the Bishop of Alcalá de Henares, Jesús Catalá, has defined the homosexual tendency as 'a psychological anomaly'.²⁰ The President of the Episcopal Conference and Archbishop of Madrid, Antonio María Rouco Varela, has been persistently critical of this decision of the executive and, having accused the government of attacking the faith, has equally offered his collaboration and willingness to sustain an unconditional dialogue.²¹

Very recently, the late Holy Father, in his annual conference about the world situation, pointed out the dangers of legal recognition of gay marriages. He considered these initiatives 'restrictive and against nature'. In another meeting with Spanish bishops, the Pope attacked the social policies of Mr Zapatero on the grounds of extending a mentality inspired by secular principles, which may lead to a lack of respect for or ignorance of the social dimension of religion.²² Only three days later, the government consulted the *Nuncio*,²³ Antonio Monteiro, 'as a matter of courtesy'. In this meeting the former stated that some of the statements of the Holy Father towards 'possible restrictions of religious freedom in Spain' had bewildered the executive. The meeting was 'extremely productive and relaxed'. The willingness to talk with the Church was also highlighted by the Foreign Office.²⁴

The fierce objection of the Church to gay marriages has also attracted criticisms from other social sectors. Members of minority political parties such as Aralar have regarded the statements of the Spanish Episcopal Conference about these unions as xenophobic and antidemocratic.²⁵ In any case, the government is aware of the lack of unanimity in this field. In fact, the second largest political party, the *Partido Popular*, which held power until March 2004, is against this law reform proposal, and its President, Mariano Rajoy, close collaborator of the ex-Prime Minister, José María Aznar, whilst emphasising its historical dimension, has pointed out that marriage is a heterosexual institution. The leader of the shadow government has criticised Rodríguez Zapatero because of his obsession with appearing as 'ultra modern'. In his opinion, homosexual marriage is

¹⁹ Periodistadigital.com, 19 January 2005.

²⁰ La Crónica de Hoy, 20 January 2005.

²¹ El Mundo, 23 November 2004.

²² El País, 24 January 2005.

²³ Representative and Highest Diplomat of the Holy See in Spain.

²⁴ El País, 27 January 2005.

²⁵ Europa Press 15 January 2005.

alien to our tradition,²⁶ it has not even been requested by gay people and it is marginal in Europe, where only the Netherlands, Belgium and Denmark have recognised it.²⁷

CONCLUSIONS

Even though it is clear that 'there shall be no State religion',²⁸ the Catholic faith is mentioned by the same constitutional article on sociological and historical grounds and its influence in Spanish society is unquestionable. There are certainly many reasons which discourage a conflict with the majority denomination in Spain. The socialist Minister of Defence, José Bono, a committed Catholic himself, has emphasised this idea. Other well-known socialists, such as the mayor of A Coruña, Francisco Vázquez, have expressed their concern about 'an unnecessary and unproductive tension with the Catholic Church'.²⁹

Outside the socialist circle, other commentators have wondered whether the government may be putting itself unnecessarily in jeopardy. The Constitution recognises the non-confessional nature of the State, but it respects religion and it requires collaboration with religious denominations. It might be counter-productive for the government to be perceived as opposed to co-operation with the most influential faith community in society.

The Spanish model of ecclesiastical law is a system which declares the lack of an official faith and which promotes co-operation with the Catholic Church and other religious denominations. The constitutional reference to this faith responds to its sociological and historical reality. Furthermore, religious freedom and equality amongst denominations must take place in Spain. The former is not perceived as an exclusively individual reality. It also has a crucial social dimension.

The Catholic Church, like any other denomination or social group, is entitled to speak out and give its opinion on different matters. It is undeniable that the teaching of Catholic religion in State schools is fundamental to the Church. Therefore, its voice should be heard by the government. In fact, it is heard. Irrespective of whether or not religion — from a theological perspective — should be studied in State schools, and despite the fact that a British solution in an increasingly pluralistic society would be desirable, for the time being we are bound to respect the provisions of the Agreement on Education and Cultural Affairs.

²⁶ Prof Javier Martínez Torrón, at the Universidad Complutense de Madrid has written a very thorough article on this issue: 'Matrimonios entre homosexuales: imitando a Procastro', *La Razón*, December 2004.

²⁷ See C McCafferty, 'Gays, transsexuals and the right to marry', (2002) 32 *Family Law*, pp 362 - 366; F Benion, 'Spouses, partners and parenting', (1999) 149 *New Law Journal*, pp 1701 - 1703.

²⁸ Spanish Constitution 1978, Article 16.3.

²⁹ ABC 28 November 2004

Regardless of the entitlement of the Catholic denomination to criticize the law reform proposal which will end up recognising gay marriages, this decision will take place exclusively in the secular jurisdiction, and it does not affect canonical marriages. Undoubtedly, the abolition of discriminations of citizens on the grounds of sexual orientation is a commendable aim of our democracies. Whether or not this legal recognition is through a civil partnership — such as the British mechanism — or a marriage, is an arguable choice, but the State is the institution entitled to make it.

The Catholic Church is a key body in Spain. Its historical and social contribution is unquestionable and therefore frictions with the government should be avoided as much as possible. Whether, for example, the legal framework of euthanasia and abortion will generate further conflicts, remains to be seen.

POSTSCRIPT

Since this article was written there have been further developments concerning the teaching of the Catholic faith in State schools and the marriage of same sex couples.

With regard to the former, *un anteproyecto* (law reform proposal) *de Ley Orgánica de Educación* was approved on 30 March 2005. According to this law reform proposal, the teaching of Catholic or any other religion shall not focus on theological issues, but on general moral values. Furthermore, in compliance with the proposal of reform of *la Ley Orgánica de Calidad de la Enseñanza* (September 2004), the Catholic religion will no longer be examined or graded, and no alternative subject shall be requested. The Spanish Episcopal Conference has subsequently asserted that the *Ley Orgánica de Calidad* breaches the agreement between the Spanish State and the Holy See, under which ‘Catholic religion shall be included in all educational centres, in conditions equal to those of the basic subjects’. In order to address these matters, a meeting between representatives of the Ministry of Education and Science and the Spanish Episcopal Conference was held in June 2005.

In relation to the marriage of gay couples, recent developments include the approval of the Socialist Government’s bill by the *Congreso de los Diputados* (the Spanish Lower House) in April 2005. Moreover, in June 2005 the law reform proposal is due to be studied by *el Senado* (the Upper House). The legislative procedure is taking place whilst public demonstrations in favour of and against the new law clearly show the controversial and almost revolutionary nature of the Socialist reform.