

AMERICAN IDENTITY CRISIS: ATTACK TO AMERICAN CIVIL RELIGION & TRANS-WESTERNNESS RISK?¹

Antonio Sánchez-Bayón*

antonio_sanchez_bayon@hotmail.com

Abstract: *This is a philosophical & socio-cultural History of American identity configuration and development, by religion (lato sense: traditional religion, civil religion and political or ideological religion), as a connecting thread and social methamer. By this way, the inquiry into the American identity is possible: what is the American being and how does it materialize? What does it relate and link to its realization? How does it interact with others and what is its meaning and scope of the transcendent and sacred? In that sense, it reviews the main native ontologies, epistemologies and axiologies (those filtered by its Americanness), and it places them according to their religious cycles of social awakenings and revitalizations of elites. In this way, an inventory is made of the main and most defining ideas, beliefs and institutions, with their characters and sustaining movements, which have made the United States of America (USA) the country it is (a nation with the soul of a church), singling it out in front of others peoples (from the most western to the leader of the West).*

Keywords: *History, Philosophy, Socio-Cultural Studies, identity, idiosyncratic legacy & mithopoietic matrix, religion, the United States of America (USA/US), Americanness, trans-Westernness.*

Introduction: who is the American? An overview of American development

The meaning of *American* is controversial. It is not just an administrative category for the citizens of the United States of America. It is more than this: it is complex set for a way of life, a dream, a civil religion, etc. Also, according to the Social Science coordinates (space, time and subject), the meaning can change, with several differences (idiomatic, cultural, etc.). May be, in modern English, American word is not so polemic, because it is clearly identified with a genitive meaning: it is related with every person, thing or issue from the United States of America. The principal issue is about the double grammar condition of

¹ Paper based on publications during the doctoral program (Coll & Sánchez-Bayón 2013. Sánchez-Bayón 2014. Sánchez-Bayón, et al. 2017).

* **PhD./SJD in Law (UCM), PhD in Theology (Univ. Murcia), PhD in IIAA (Univ. Valladolid), PhD in Philosophy (UCM), and PhDc in Sociology (UNED). Prof. Social Sciences at ISEMCO (Spain), Univ. Bernardo OHiggins (Chile), and fellow at DePaul & Baylor (USA);**

American: as an adjective and a substantive. In other languages, for example, the romance languages, American supposes a semantic misappropriation, because it is used for people from the United States of America, and at the same time, it includes people from anywhere in the Continent. In Germanic language, there are two words for American: *Amerikanisch* for things and *Amerikaner* for people. In Slavic languages happen a similar difference (also, to distinguish between masculine and feminine). Also, after the *cultural wars* (1960-80's), from the recent Cultural Studies, they pretend to improve some neologist terms, to distinguish the ethnic-cultural background: English-American, Afro-American, Latin-American, etc. The common sense for all those languages is the vocational meaning of American to mix the citizenship of one country and the continental condition of the inhabitants there (as part of the *Federalist project*: it is a kind of intentional metonymy, linked with *tota pro partibus* or wholes for parts).

The origin of this neologism comes from the surname of an Italian explorer and a map-designer: *Americus/Amerigo Vespucci* (1454-1512). His map was popular thanks to two German cartographers at the University of Freiburg: Waldseemüller and Ringmann. They used the denomination of America (*Americi terram*) in their *Universalis Cosmographia* (1507), to distinguish that part of the New World from the Spanish and Portuguese regions in the continent, which called Western Indian territories at that time. By this way, other European people had the chance to occupy new territories, as well done the Crow of England, German Kingdoms, Dutch Republic, etc.

The confirmation of American expression as the gentilism for people in British America came from Reverend Samuel Johnson (1709-1784). Doctor Johnson was a popular writer and editor (with many publications: poets, essays, biographies, and hand-books –specially, about lexicography). Thanks to his position as a notorious tory and Anglican bishop, he was a printed censor, who corrected every other denomination, until the *uniformization* of American as the official gentilism. Such denomination was confirmed during the debates of the Continental Congress. Also, it was the gentilism selected by Hamilton (Washington's close-friend and future Secretary of Treasure), Madison (fourth President of the United States of America) and Jay (diplomat –who negotiated and signed the Treaty of Paris, 1783- and first Chief of Justice) in their *Federalist Papers* (1787). They used American in two ways: in one hand, as a political adjective (i.e. “American republic”, in Federalist nº 51 or 70), and in the other hand, as a geographic issue (i.e. “American lands” – beyond the United State of America's borders: according to the federalist vocation for the whole continent, as it was mentioned before). The

principal confirmation was the Washington's *Farawell Address* (1796), when the first President affirmed: "The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation". It was the confirmation of the American identity and its *Americaness*, which were improved by American civil religion and its heritage, and other resources to build the country and the nation.

The question "who is an American?", it is the more common inquire of foreign visitors, as Tocqueville, Crevecoeur, Chesterton, et al. Also, from the late 19th century, it is the academic mission of the American Cultural Studies (attending to the domestic History, Literature, Politics, etc.). This PhD dissertation pretends to expose and to explain the rich and complex background about it (not just about the legacy, also the review of the mythopoietic matrix), according to the principal lines of thought (from puritans to identity intelligentsia): how the Americans have (re)thought their-selves (own mission, vision and values), along the centuries, until the current identity crisis; also, how to deal with moral hazard and trans-Western risk.

A history of American identity by religious factor: a philosophical, historical & socio-cultural mix approach

This chapter offers a philosophical, historical and cultural global vision (fixing Philosophy, History and Socio-Cultural Studies), all of them applied to the American religious factor and the dimensions of its pioneer identity frameworks (i.e. religious liberty, social cruzades of religious movements, Church-State relations, welfare state & solidarity). With this aim in mind, it begins with a brief notion of the evolution of religious issues, from colonial *Sunday regulation* or the *Blue Laws*, up to current social order, it is based on freedom of religion and non-discrimination. Also, this chapter evaluates the allegedly paradoxical policies and regulations referring to this issue during two previous presidential Administrations, those of Clinton and G.W. Bush.

There are many foreign studies based on several wrong premises about the USA and about its culture and order (*lato sensu* –including political and legal institutions-). The most common mistakes committed by Continental authors are the following:

- a) Prejudice 1: wrongly assuming that most American people are Protestant and, consequently, guide their lives by a professional logic. Weber was the author who spread this explanation in Continental Europe in his popular book *The Protestant Ethic and the Spirit of Capitalism* (1905). According to this premise, education in the USA should mainly be professionally oriented right from the beginning in

order to develop specific work skills. Nevertheless, this is not the case; this is more likely to be an ethnocentric mistake on the part of Continental Europe people, who do indeed educate their future generations in this way. In the USA a personalized education (a broad scope of selection) is predominant (in the academic world). In addition, this system is based on mature knowledge (not memorization), and on critical reflection in order to learn to be resolute and diligent in any social aspect, not only in the professional sense. This evaluation was established due to *Pragmatism*². This pragmatism has favored the broadening of the educative method in the case method, of which some examples will be given in this paper in order to understand how an American Jurist reasons.

- b) Prejudice 2: There is a mystifying presumption that the American model of Church-State Studies, as a pioneer, it is a model of complete independence between Church and State regarding a total freedom of religion, which is an over-simplification of a complex reality. Thanks to this prototypical secularization, in the USA there is a space between religion and policy, in two different social spheres. This, however, does not imply independence, only separation (a definition of competences). Also, this model could be described as an implementation of a multifaceted system of accommodation, based on certain principles, and each generation has to reinterpret those principles and this model to adjust the social order and legal system to its circumstances. In the same way, the freedom of religion is still not total, because public powers have the constitutional commitment to protect and to promote the free exercise of religious liberty and non-discrimination, and other associated rights, and this is a continuous mission. Also, in the last two (Presidential) Administrations (Clinton and G.W. Bush), there are many examples of violations of this freedom and its associated rights and certain positive discrimination measures have been taken at both extremes (*vid. supra case study*).

American identity revelations & the Western road to freedom: from colonial *Blue Laws* to current system of order & justice

Blue Laws or *Sunday Laws* were a kind of regulation of religious aspects during the colonial period (1604-1776) and the beginning of the national period, from the first settlements until the Civil War. It was also necessary to pass the Fourteenth Amendment. It is a diverse System, which includes different regulations (i.e. ordinances, covenants, chapters)

² *Pragmatism* is the most relevant native philosophical current in the USA (Sánchez-Bayón, et al. 2018).

and it covers from confessionalism (Church-State union) to preferentialism (a Church accepted by the majority and tolerant of other denominations). The Fourteenth Amendment standardized the guarantee of religious liberty and the separation of Church and State within the Union, and the Supreme Court became the highest organ of supervision.

An elementary explanation of *Blue Laws* will be presented below with respect to the main foundational settlements in the USA. The experience of previous settlements has been useful in reaching the current social order and legal & justice system. The areas mentioned are: a) Southern plantations, b) New England, c) middle provinces, and d) social laboratories.

A) Southern plantations and the Anglicanism stamp (official ecclesiastic recognition)

This first area consists of four great administrative groups: the *Colony and Dominion of Virginia* -nowadays, Virginia, West Virginia and Kentucky; the *Province of North Carolina* -currently, North Carolina and Tennessee-; the *Province of South Carolina* and the *Province of Georgia*. These colonies are directly dependent on the British Crown, and therefore have an institutional model of Anglican as the state religion. An attempt at this, for example, is the admission of the Episcopalian and Presbyterian-variants as part of the power elites. Within this core foundation, the reference point is the colony of Virginia, where the first settlement was located (Jamestown, 1607), which branches into the adjoining settlements (North Carolina, 1663, South Carolina, 1670; Georgia, 1732), where changes to the model of freedom are ratified (i.e. art. 16 of *Virginia Declaration of Rights*, 1776). *Virginia*:

a) Its fundamental/constitutional rules (*Grants, Charters, Statutes & Constitutions*)³, as the first (*Royal*) *Charter* of 1606, included the mission of Christianizing and evangelizing the Indians; the second *Charter* of 1609 included a religious requirement (the Oath of Supremacy)⁴ in order to be admitted into the colony. The third *Charter* of 1611 maintained the Oath of Supremacy, although Catholics were exempted from taking it. Eventually, the Declaration of Rights (art. 16), proclaimed Freedom of conscience.

b) Among the precepts regarding religion, it is necessary to highlight the *Death Penalty for Blasphemy* of 1610; the *Sunday Law* of 1610; the

³ See *The First Charter of Virginia* (April 10, 1606), *The Second Charter of Virginia* (May 23, 1609), *The Third Charter of Virginia* (March 12, 1611), *Ordinances for Virginia* (July 24, 1621), *Virginia Declaration of Rights* (June 12, 1776), *The Constitution of Virginia* (June 29, 1776).

⁴ The *Oath of Supremacy* is the requirement to pledge subservience to the Anglican Church, recognizing the British Monarch as its visible head.

Law requiring religious attendance of 1623; the Law about Sunday travel and church attendance of 1661; the Law requiring the christening of children of 1662; the Law against Quakers of 1663, the Law in order to expedite the elimination of blasphemy, the Oath (in vain), substance abuse and no compliance with Sabbath (dominical rest) of 1699⁵; the Law of Lashes for working, travel or non- attendance of Church on Sunday of 1705; etc.

- *North Carolina:*

a) Amongst the fundamental Laws⁶, in the *Charters* of 1663 and 1665, North Carolina is recognized as an Anglican colony (with the maintenance of the confessional religion), though no such officinal denomination is adopted until 1711; finally came the Declaration of Rights of 1776, including Freedom of Conscience;

b) Among the above precepts regarding religion, the most salient is the *Law of the observance of the Lord's sacred name, commonly known as Sunday* of 174, which started a crusade against vice.

- *South Carolina:*

a) Among its Fundamental Laws⁷, once independent of the other Carolina (1729), after the *Border Agreement* of 1735, the Anglican Church was formally established.; finally, the *Constitution* of 1778 declared that Christianity as the official religion.

b) In the *interim* of the segregation of the Carolinas, already enjoying a certain amount of autonomy, its assembly passed the *Sunday Laws* of 1692 and 1712.

- *Georgia:*

a) Among its fundamental Laws⁸, the *Charter* of 1732, declared the

⁵ The *Sabbath* is the day of rest established by the Bible and it must be dedicated to the praise of God. The problem is the controversy generated with the *First Great Awakening* (1740's). Even though it had come from ancient times. Because the *American paradoxology*, protestant confessions suffered a certain grade of *Jewishism* in their pursuit of Orthodoxy, which makes them transfer the traditional day of rest to Saturday. For the purposes of this paper, *Sunday & Sabbath Laws* will be considered as a whole, since the important fact is that eventually a greater secularization was promoted for fundamentalist reasons, given that the calendar was divided into working days and holidays (Sánchez-Bayón 2008-13).

⁶ See *Charter of Carolina* (March 24, 1663), *A Declaration and Proposals of the Lord Proprietor of Carolina* (Aug. 25, 1663), *Concessions and Agreements of the Lords Proprietors of the Province of Carolina* (1665), *Charter of Carolina* (June 30, 1665), *The Fundamental Constitutions of Carolina* (March 1, 1669), *The Mecklenburgh Resolutions* (May 20, 1775), *Constitution of North Carolina* (Dec. 18, 1776).

⁷ See *State Boundery Agreement* (April 1, 1735), *Constitution of South Carolina* (March 26, 1776), *Constitution of South Carolina* (March 19, 1778).

⁸ See *Royal Charter of Georgia* (Jun 9, 1732), *Constitution of Georgia* (Feb. 5, 1777), *Constitution of the State of Georgia* (May 6, 1789).

Anglican Church to be the official one; in the *Constitution* of 1777, it is disestablished.

b) Among its mandates on religion, the most outstanding is the *Law to punish vice, profanations, immorality and to observe the Sacred Name of the Lord, commonly known as Sunday* of 1762, similar to North Carolina.

B) New England and puritanism traces (the *Covenant of Grace*)

This second area is the regional group, which consists of four main territorial divisions, the *Province of Massachusetts Bay* (afterwards Massachusetts), the *Province of New Hampshire* (New Hampshire, plus Maine and Vermont), the *Colony of Connecticut* (Connecticut), and the *Colony of Rhode Island and Providence Plantations* (Rhode Island). In this environment, a Congregationalist Theonomic model of puritan confessions was originally predominant, until its total incorporation into the British Crown, when it then became a semi-institutional model. Although the first migrations are motivated by the search for recognition and tolerance, the genomic excesses (e.g. witch hunts, strict morality) generated a decline in the settlements due to explicit or tacit ostracism, which created the urgent necessity to found new settlements that were more flexible and permeable for local minorities (e.g. Baptists, Quakers)⁹. Massachusetts is the great colonial reference for the region, since it is the place where the first settlements were established (the *Pilgrims* in *New Plymouth* in 1620 and the Puritans in *Massachusetts Bay* in 1629-30 – later combining in 1691). In addition, this colony established the subsequent foundational initiatives, because the *purging of Winthrop*¹⁰, allowing the formation of Connecticut (Rev. T. Hooker in 1635-36), Rhode Island (Rev. R. Williams on 1636); New Hampshire (North-Irish Presbyterians as permanent settlers in the 1630's); Maine (*Nova Scotia*, 1696-1713).

- *Massachusetts*¹¹:

a) In New Plymouth, the *Charter* of 1620 established a Theonomic

⁹ In New England, severe punishment was inflicted on Catholics, Baptists, Jews and Quakers (e.g. seizing assets, imprisonments, forced labours, hidings, and hangings). In the Boston area, after prescriptive reminders (up to three), several families were exiled, and four Quakers that did not comply with exile were eventually hanged (Pfeffer 1953. Wood 1958).

¹⁰ He was elected governor up to twelve consecutive times, between 1631 and 1648, dying several months after his last election. His strict policy is a consequence of the social demands at that moment, since the population was terrified by previous experiences in other less integrated settlements that did not survive. His zeal, however, was so great that his own son had to move to New Hampshire, where he became Governor.

¹¹ See *Massachusetts Constitution* (March 2, 1780).

model, the mandate including the conversion of the Indians, and the requirement of the Oath of Supremacy in order to be admitted into the Colony; among its religious regulation, it is necessary to highlight severe punishment for *Desecration of the Lord's Day* of 1650 and 1699, *The Lack of attendance to Church* of 1651, *the Death Penalty for idolatry, Marital Infidelity and Witchcraft* of 1671, *The Death Penalty for presumption of desecrating the Lord's Day* of 1671, *The requirement of orthodoxy for the free man* of 1672, *The punishment for travelling on the Lord's Day* of 1682.

b) In Massachusetts Bay, the *Charter* of 1629 recognized natural rights, but was subject to the Oath of Supremacy; the *Charter* of 1691, recognized as a general principle that people were free from the Oath of Supremacy, except when holding public office. However, the Christians still discriminated against were those labeled as Papists.

c) In religious regulation, it is important to note: *The regulation of Sabbath* of 1629, *The prosecution on religious grounds* of 1630 (Baker was punished), *The exclusive right to vote for members of the Church* of 1631, *Court Orders to attend Church on Sunday* of 1635, *the Declaration of the Civil administration subject to the Divine Administration* of 1636, *the Death Penalty on religious grounds* of 1641, *the Decree of Church Attendance* in 1646, *the Edict of exile for heresy* of 1646, *the Edict of exile or Death Penalty for Catholic Priests* of 1647, *Edict of exile or Death Penalty for disowning the Bible* of 1651, *Edict of exile or Death Penalty for the Homeless Quakers* of 1658, *Mandate recognizing the right to vote for members of the Church* of 1660, *Edict of death against Quakers, only as a last resort*, of 1661, etc.

- *Connecticut*:

a) Among its constitutional acts¹², such as the *Fundamental Orders of Connecticut* of 1638-39 and the *Government Act of the Colony of New Haven* of 1643, the Oath of Supremacy is imposed (for political representatives and free owners, respectively);

b) The most significant mandates about religion are: the *Law to prevent and punish the profanation of the Sabbath or the Lord's day* of 1721, and the *Law for the implementation of the due observance of the Sabbath or Lord's day* of 1750.

- *New Hampshire*:

a) Among its foundational laws¹³, such as the *Concessions* of 1629 and

¹² See *Fundamental Orders* (Jan. 14, 1639), *Fundamental Agreement, or Original Constitution of the Colony of New Haven* (June 4, 1639), *Government of New Haven Colony* (1643), *Charter of Connecticut* (1662), *Constitution of Connecticut* (Oct. 5, 1818).

¹³ See *Grant of Hampshire to Capt. John Mason* (Nov. 7, 1629), *Grant of Laconia to Sir Ferdinand Gorges and Captain John Mason by the Council for New England* (Nov. 17, 1629), *Grant of the Province of New Hampshire to John Wollaston Esq.* (1635), *Grant of the Province of New Hampshire to Mr. Mason* (April 22, 1635), *Grant of his interest in*

1635, it is not uncommon to observe the requirement of the Oath of Supremacy and Sunday Laws, although they were more flexible than Massachusetts laws in those days.

b) Among the rules regarding religion, it is possible to identify: the *Law for the better implementation and enforcement of the Lord's day of 1700*, as well as the *Prohibition of blasphemy of 1718*.

C) Middle provinces and the reformism influence (social communitarianism)

This third area is the regional bloc which consists of five original territories, the *Province of New York* (previously New Netherlands and, afterwards, New York and Vermont), the *Province of New Jersey* (New Jersey), the *Province of Pennsylvania* (Pennsylvania), *Delaware Colony* (originally, *The Lower Counties on the Delaware River*, today being Delaware), the *Province of Maryland* (Maryland). Among the above-mentioned colonies, the prevailing model was of deist reciprocity, open to various denominations like the Anglican and its derivatives. The continental European reformed and Catholics, while not being persecuted, were minorities in their home countries and went to America seeking both recognition and enrichment. The cardinal colonies in the area are, on one hand, Maryland (1634-36), and on the other, New York (founded as New Netherlands, by the Dutch Reformed Church, from 1614 to 1664, transforming to Anglicanism by annexation after the mid-century Dutch-British Wars). From this last colony, New Jersey broke away (West New Jersey in 1676 and East New Jersey in 1683, united and autonomous in 1702) and then Delaware (founded by the Swedes in 1665, then assimilated by the Dutch and later by the British, and achieving autonomy in 1701).

- *New York*:

a) Among its fundamental laws¹⁴, the *Real Concessions* of 1664 and 1674 established the Anglican Church as the official religion until it was abolished in the Constitution of 1777.

b) Among its mandates about religion, the most outstanding are *Laws against the desecration of the Sabbath and other immoralities* of 1673 and 1695.

New Hampshire by Sir Ferdinand Gorges to Captain John Mason (Sept. 17, 1635), *Agreement of the Settlers at Exeter in New Hampshire* (1639), *The Combinations of the Inhabitants upon the Piscataqua River for Government* (1641), *Commission of John Cott* (1680), *Constitution of New Hampshire* (Jan 5, 1776; June 13, 1784).

¹⁴ See *Notification of the Purchase of Manhattan by the Dutch* (Nov. 5, 1626), *The Constitution of New York* (April 20, 1777).

- *New Jersey*:

a) Its fundamental laws¹⁵ from the very beginning follow a model characterized by tolerance, although with certain preferences (e.g. requirement of the Oath of Supremacy for public officials)¹⁶, as is reflected by the *Concession and Agreement* of 1664, the *Fundamental Constitution for the province of East New Jersey* of 1683.

b) The regulation of religion included the *Sunday Laws or Against the desecration of the Lord's day* of 1683 and 1693, *The law for the suppression of immorality* of 1700, etc.

- *Delaware*:

a) Its primordial laws¹⁷ are very similar to those of New Jersey, with a tolerant approach and certain preferences (although the Oath of Supremacy is compulsory for every citizen), which may be inferred from the *Charter of Delaware* of 1701 and the *Law on the organization of the testimony of government employees and ministers for church affairs* of 1701;

b) Among its most relevant articles, it is possible to highlight the *Decree against Blasphemy of 1739* and the Law to prevent the breach of the Lord's day, commonly known as *Sunday of 1739* –the clarification is owing to the boom in religious awakening and the controversial issue of *Sabbatarianism*.

¹⁵ See *The Duke of York's Release to John Ford Berkeley, and Sir George Carteret* (June 24, 1664), *The Concession and Agreement of the Lords Proprietors of the Province of New Caesarea, or New Jersey, to and with all and every the Adventurers and such as shall settle or plant there* (1664), *A Declaration of the True Intent and Meaning of us the Lords Proprietors, and Explanation of these concessions made to the Adventurers and Planters of New Caesarea or New Jersey* (1672), *His Royal Highness' Grant to the Lords Proprietors, Sir George Carteret* (July 29, 1674), *The Charter of Fundamental Laws, of West New Jersey, Agreed upon* (1676), *Quintipartite deed of revision, between E. and W. Jersey* (July 1, 1676), *Duke of York's Second Grant to William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge, Edmund Warner, and Edward Byllynge, for the soil and Government of West New Jersey* (Aug. 6, 1680), *Duke of York's Confirmation to the twenty four proprietors* (March 14, 1682), *The Fundamental Constitutions for the Province of East New Jersey in America* (1683), *The King's Letter recognizing the Proprietors' Rights to the soil and Government* (1683), *Surrender from the Proprietors of East and West New Jersey, of their pretended right of Government to her Majesty* (1702), *The Queen's acceptance of the surrender of Government* (April 17, 1709), *Constitution of New Jersey* (July 2, 1776).

¹⁶ There are many examples of incipient tolerance, but the most meaningful is the *Yale apostasy*, movement headed by the Presbyterian Reverend and a senior Academic at Yale, T.B. Chandler (Curry 1986).

¹⁷ See *Charter of Delaware* (1701), *Constitution of Delaware* (Aug. 22, 1776), *Constitution of Delaware* (1792).

D) Social laboratories and the deism emergence (*vox populi/publicist*)

What differs from the previous cases is that these colonies do not have a clear physical convergence¹⁸, but are in harmony with a certain state of mind, given that here are found the milestones in the emersion of the modern conception of Tolerance, and together with this, in the subsequent goal of freedom. In the first place, Maryland is a colony founded through a real commitment¹⁹ by an Irish Catholic aristocrat, C. Calvert (*Lord Baltimore*) circa 1629-34, in the east of Virginia, to make room for persecuted Christians. Secondly, Rhode Island is a colony south of Massachusetts established between 1634 and 1636 by the Congregationalist and allegedly Baptist reverend²⁰, R. Williams, in his escape from the Winthrop “purges” (the tolerance pot). Thirdly, Pennsylvania, because a noble debt²¹, is founded to the west of Delaware by Quaker leader, W. Penn, who wanted to house all persecuted Quakers. Overall, the three aforementioned groups show the same firm will of their founders to house those people persecuted for the dictates of their conscience (the holly experiment). This started a process of emancipation of those persecuted people obliged to flee with respect to majority groups, and of Civil law with respect to religious law (the above-mentioned major religions no longer maintain these public stances). Nevertheless, it is necessary to specify that in the case of Maryland, this step is the consolidation of the idea of modern tolerance—predominating the negative burden of resignation. Subsequent situations in Rhode Island and Pennsylvania are an example of a trial and error method of transit to modern tolerance, in its positive sense and characterized by greater respect for others, close to the modern concept of freedom.

¹⁸ It is true that there is a convergence in latitude, but geographically, Rhode Island is considered part of the Northeast, Pennsylvania in the center and Maryland in the South.

¹⁹ *Charles I*, being Secretary of State (in 1625), grants to G. Calvert, *Irish House of Lords*, the exploitation of lands in America. But it will be his son who will receive the *Charter* in 1632 that consolidates the first settlement in 1634.

²⁰ Williams and Jefferson (the former a Congregationalist, and the latter an Episcopalian) introduced the metaphor of the *wall of separation* as part of their separatist Church-State speech, which became the basis of current Baptist doctrine. Actually, it seems to be a confusion of interests to legitimize their positions.

²¹ Because the Duke of York's debts to Admiral/Commander Penn, Charles II granted a *Charter* to W. Penn (the Admiral's son and one of the most relevant Quaker leaders) in 1681.

- *Maryland*:

a) Among the basic rules²² clearly passed to fix a system of coexistence and assure social tolerance, what stands out is the *Charter of Maryland* in 1632 and the *Instructions to settlers by Lord Baltimore* in 1633 (in which Lord Baltimore suggests to Catholics that they should not cause offence to their Protestant neighbors);

b) Among the most popular mandates, projected by the Law on religion, the Act of Tolerance (1649), could be highlighted (which only takes into account tolerance among Christians and which includes severe punishments for blasphemy and the lack of compliance with religious holidays), along with the *Law for the observance and sanctification of the Lord's Day, also known as Sunday* in 1696, and the *Law to punish blaspheming, perjury, alcoholics and those not observant of the Sabbath* in 1723, etc.²³.

- *Rhode Island*:

a) Its fundamental laws²⁴ are oriented toward social tolerance and the protection of freedom of conscience (the oath of Supremacy is not required of the citizens), as can be observed in the *Covenant of Providence* in 1636, the *Agreement of the Plantation of Providence* in 1640, the *Agreement of government of Rhode Island* in 1641 and the *Charter of Rhode Island and Plantations of Providence* in 1663.

- *Pennsylvania*:

a) Among its fundamental laws²⁵, such as the *Charter of Pennsylvania* in 1681 and the *Agreement of government of Pennsylvania* in 1682, and despite philosophical tolerance similar to that of Rhode Island, Pennsylvania is stricter regarding formalities and religion, demanding the conversion of all Indians, the oath of supremacy to hold public office and to be a citizen and the observance of the Sabbath; this was probably as a consequence of trying to avoid external controls and trying to guarantee free development for the persecuted Quakers.

b) Among its more outstanding precepts, there are two that are especially representative of the model, the *Great Law* or the *Charter of Penn and the Laws of Pennsylvania* in 1682 (where freedom of conscience is allowed, although an oath of supremacy and the consecration of Sunday

²² See *Charter of Maryland*, (1632), *An Act Concerning Religion/Maryland Tolerance Act* (1649), *Constitution of Maryland* (Nov. 11, 1776), *Amendments to the Maryland Constitution* (1776).

²³ It is also important to underline the special status attributed to the Jesuits- Maryland was the operating center of their subsequent work in the USA, above all in the academic world-, thanks to the letters between the Jesuit Priest T. Copley and Lord Baltimore (Curry 1986).

²⁴ See *Constitution of Rhode Island* (Nov. 5, 1843).

²⁵ See *Constitution of Pennsylvania* (Sept. 28, 1776).

are obligatory), and the *Law of restriction of work the first day of the week* in 1705. Taking into consideration the *First Awakening* and the problematic *Sabbatarianism* for most Protestants, it made the week start on Sunday.

To sum up, the three cases are examples of the trial and error method in the long evolution toward modern religious tolerance. The special feature was that, in the case of Maryland, the emphasis was on the achievement of coexistence, while on the other hand, it was freedom of conscience that was of primary importance in Rhode Island and Pennsylvania. In any case, these three cases have been very useful in driving forward the political process of emancipation of the individual with respect to a group, and of the political and civil community versus the religious and cultural one.

Fundamentals of the official social order and legal & justice system: from Constitutional level to local regulation and study cases

In what sense is the US model peculiar? How could we explain it? In Continental Europe, religion was used as an instrument by the public powers to create national identities and expel dissidents. In contrast, in the new-born USA, it is very clear from the very beginning that it is not a question of preserving the State from religion, as has been argued of late by socialism. To the contrary, religion is popular patrimony and, because of this, religious allegiance cannot be obligatory to hold public office. Thus, art. VI of the U.S. Constitution breaks with the colonial tradition of demanding the Oath of Supremacy²⁶. What is more, to make things even clearer, one year after the Constitution was passed, its writers started to work on a Declaration of Rights with the form of ten constitutional amendments (elaborated in 1789 and passed in 1791). The First Amendment starts with the recognition, protection and promotion of the freedom and Autonomy of religion. This point is so important that it is endowed with a double clause in its regulation: a) the establishment clause, which promotes non-religious “officialization”, thus guaranteeing the autonomy, plurality and popularity of religion; b) free exercise clause, by which, the public powers agree to protect the observance and promotion of religious practice as a way of strengthening interpersonal relations which insure social integration. In a nutshell, there are a wide range of acts, in which the lowest limit is the disestablishment process and the highest, the guarantee of freedom of worship, thus giving each State

²⁶ It is a gesture to demonstrate the overturning of the discriminatory British vestiges of submissiveness in the colonies, due to the Act of Supremacy of Henry VIII (1534) and Isabella I (1559), with their colonial versions of the *Blue Laws*.

great discretion in the regulation of this issue (e.g. if some favor is conceded to any religious confession, it is compulsory to extend it to the rest of the confessions to maintain the condition of Legal Equality. In order to consolidate this model and avoid excessive dispersion, in 1866 The Fourteenth Amendment was passed (entering into effect in 1868), which put an end to ecclesiastic preferentialism. In addition, it established federal supervision of the issue, as a guarantee that all citizens in the USA would enjoy the same rights and freedoms in all the States of the Union.

Thus, at federal level, The Supreme Court of the USA becomes the great supervisor, not only because it has to ensure a proper interpretation of the Constitution (arts. 3 and 6), but because in addition, it has to clarify significant numbers of rulings on this matter (according to the First and the Fourteenth Amendments), there being already over three hundred consolidated rulings, although with a mercurial *ratio decidendi*. Nonetheless, this is not the only federal organism with competence to deal with the development of legislative and regulatory framework in this area, as we will see below.

In summary, any legislative or regulatory development of the above-mentioned constitutional precepts has to be in accordance with the following rules:

- a) Substantially: a1) Establishment clause: it is the formulation of the dis-establishment process, thus the existence of any official religion is forbidden. After the Fourteenth amendment was passed, the existence of a group of official religions was not possible, as was typical in Preferentialism. a2) Free exercise clause: public powers are obliged to remove any obstacles that prevent freedom of worship, and also have the duty to look for formulas to accommodate a sustainable separation. a3) Equal clause: It is essential to guarantee the freedom, equality and autonomy of religion in the whole country, which is a task pertaining to Federal powers. Nonetheless, in their supervision, they will have to respect the rest of the principles, so they may not develop a legislative and regulatory framework that defines religion, the internal operating rules of any denominations and/or try to equate religious organizations with other types of associations, given that this decision can only be made by the American people. a4) Ecclesiastical corporation sole: It recognizes the right of the American People to decide whether they want to inscribe their group as a religious entity or not, and it is simply with respect to the Labor and Taxation Law; in the same way, public powers are compelled to evaluate civil efficacy with regard to the internal rules of confessions, except in the case of fraud, arbitrariness or attack against public order. a5) Checks & balances policy: It consists of a system of limitation of power through the mutual vigilance of

public institutions and the requirement of citizen accountability. This way, Federal powers have to supervise the policies of the rest of powers (both State and Municipal) but, at the same time, Federal powers have to be vigilant of each other.

- b) Procedurally: b1) Outdated regulation: They are precepts of a limited temporal nature, given their relation to public policies being enforced. They really depend on the holder of office and his/her institutional agenda, as well as the duration of the legislature and/or administration in office. b2) Dependent regulation: They are precepts that require the support of other bodies. In the case of the *Acts* and *Bills*, they only enter into force completely when they are quoted in a judicial proceeding. On the other hand, the Proclamations and Regulations are administrative acts and are not of a regulatory nature completely until Congress²⁷ endorses them; once this occurs, specific precepts become general rules and are applicable in similar cases. In the same way, the intention of the Courts is revealed. b3) Regulation of welfare: Most of the rules passed regarding religions are a consequence of the Social Gospel, and thus are pragmatically conceived in a secularized way as a Public and health welfare issue (42nd Title of U.S. Code), and are subject to tax control (26th Title, regarding Internal Revenue Code).

So far, it has been the common features of governing principles and legislative and regulatory development that have been highlighted, but there are also many differences among them. Needless to say, these are evident in sources, formalities and goals and are clearly affected by diverse areas of activity that guide the regulation:

- a) Domestic management: It has been a rich source of legislative output regarding the religious factor in the last few years: Church Arson Prevention Act of 1996²⁸; The Defense of Marriage of 1996²⁹; Bankruptcy-Religious Liberty and Charitable Donation Protection Act of 1998³⁰;

²⁷ Remember that “Act” comes from the saying “act before the monarch”, and in the USA, it means “act before the Congress”, and this is the correct way to introduce the Institutional agenda, giving it legal force, and converting it into Statutory Law.

²⁸ See PL [Public Law] 104-155, July 3, 1996, 110 Stat. 1392 UNITED STATES PUBLIC LAWS 104th Congress - Second Session Convening January 3, 1996 PL 104-155 (HR 3525) CHURCH ARSON PREVENTION ACT OF 1996.

²⁹ See PL 104-199, Sept. 21, 1996, 100 Stat. 2419 UNITED STATES PUBLIC LAWS 104th Congress - Second Session Convening January 3, 1996 PL 104-199 (HR 3396) THE DEFENSE OF MARRIAGE ACT OF 1996.

³⁰ See PL 105-183, June 19, 1998, 112 Stat 517 UNITED STATES PUBLIC LAWS 105th Congress - Second Session Convening January 27, 1998 PL 105-183 (S 1244) BANKRUPTCY-RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT OF 1998.

Religious Land Use and Institutionalized Persons Act of 2000³¹; Religious Workers Act of 2000³². However, among all these Acts, undoubtedly the most outstanding is the Religious Freedom Restoration Act of 1993. It was passed by the Clinton Administration and many of its articles were derogated by the Supreme Court in 1997.

b) Foreign management: The same as domestic management, it is generous in normative production: Extension of Immigration Deadlines for Religious Workers, Charitable Service Workers, and Paperwork Changes in Employer Sanctions of 1997³³; International Religious Freedom Act of 1998³⁴; International Religious Freedom Act Amendments of 1999³⁵; Global Anti-Semitism Review Act of 2004³⁶, which is surprising, especially taking into account that the Clinton Administration was its driving force, while at the same time promoting a greater participation of the USA in International Organizations. How is it possible to ratify the *International Covenant on Civil and Political Rights* (ICCPR), with its report mechanism (i.e. Report of freedom of Religion), and at the same time, constitute your own service, like the one established with the *International Religious Freedom Act of 1998*, which justified International interventions?

The key to understanding this atypical situation, and its apparent infringement of the above-mentioned governing principles and common features, lies in the 90's and the public policies of the Clinton Administration. These were absolutely dichotomous -paradoxical speeches and garbage-can policy- and where there is a notable change before and after the sexual scandal. The culmination of the confusion comes with the

³¹ See PL 106-274, September 22, 2000, 114 Stat 803 UNITED STATES PUBLIC LAWS 106th Congress - Second Session Convening January 24, 2000 PL 106-274 (S 2869) RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000.

³² See PL 106-409, November 1, 2000, 114 Stat 1787 UNITED STATES PUBLIC LAWS 106th Congress - Second Session Convening January 24, 2000 PL 106-409 (HR 4068) RELIGIOUS WORKERS ACT OF 2000).

³³ See PL 105-54, October 6, 1997, 111 Stat 1175 UNITED STATES PUBLIC LAWS 105th Congress - First Session Convening January 7, 1997 PL 105-54 (S 1198) EXTENSION OF IMMIGRATION DEADLINES FOR RELIGIOUS WORKERS, CHARITABLE SERVICE WORKERS, AND PAPERWORK CHANGES IN EMPLOYER SANCTIONS OF 1997.

³⁴ See PL 105-292, October 27, 1998, 112 Stat 2787 UNITED STATES PUBLIC LAWS 105th Congress - Second Session Convening January 27, 1998 PL 105-292 (HR 2431) INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998.

³⁵ See PL 106-55, August 17, 1999, 113 Stat 401 UNITED STATES PUBLIC LAWS 106th Congress - First Session Convening January 27, 1999 PL 106-55 (S 1546) INTERNATIONAL RELIGIOUS FREEDOM ACT AMENDMENTS, 1999.

³⁶ See PL 108-332, October 16, 118 Stat 1282 UNITED STATES PUBLIC LAWS 108th Congress - Second Session Convening January 20 (S 2292) PL GLOBAL ANTI-SEMITISM REVIEW ACT OF 2004.

subsequent interpretation of these previous policies by the G.W. Bush Administration which reformulated them according to their neoconservative approach and their own interests. Again, the “rules of the game” are not respected.

It is a common error to identify *American Common Law* with Case Law, but the latter is only one source and branch of Law. There are others equally important, such as *Executive Law* (with its regulations) or *Statutory Law* (and its laws). Such exaltation comes from the Langdell method and casebooks (*vid. supra*). Nevertheless, there is a very deep relationship between these concepts. It is commonly noted that in order for Executive law to reach true fruition, for example, it needs to be quoted in several judicial proceedings; thus Case Law is used to foster and spread a great part of Executive Law (*vid. infra*).

In honor of the aforementioned American pragmatism, there is below a synthesized and systematic list of the most outstanding cases that have created the interpretative tendency on issues related to religious factors in the USA, such as: the implementation of freedom of religion and religious autonomy (of natural and juridical persons, as well as of denominations), and also the tutelage of non-discrimination on religious grounds (*idem*), and other related issues. Everything is related to legal grounds and the comparative analysis is carried out while studying the following judicial decisions (nearly three hundred case studies of Case Law, systematized by date and issue)³⁷.

The headings of the cases from 2005 have been omitted (those after the reelection of G.W. Bush), since explanations about the new topics and tendencies are developed in the following case study below because there are currently more than three hundred and fifty cases involved.

The USA is a country considered as the New World or New Regime, as it is specified in one of its national mottos (“*novus ordo seclorum*”). But this does not mean that there is a lack of knowledge with respect to Western tradition, both sacred (Judean-Christian) and profane (Greek-Roman), as is evident in its national motto which is translated into Latin. The Framers of the constitution were well acquainted with the Greco-Roman culture, as well as the importance of the art of questioning through different methods, such as the *epoché* or the *maieutic*. Thus, the Socratic Method was introduced in university studies which began to be standardized nearly one century afterwards, using as a reference the native

³⁷ Purportedly, the first regional cases were *Van Hornes Lessee v. Dorrance* (2 Dallas 304, 1795) and *Calder v. Bull* (2 Dallas 386, 1798); and especially *People v. Phillips* (New York City of General Sessions, 1813), where religious autonomy and religious communications were judged, when instructing the jury about the Seal of Confession of a Catholic priest (Sánchez-Bayón 2012 & 2015).

adaptation of Dean Langdell, as explained below.

The foregoing Socratic method consisted in the combination of the *epoché* or suspension of judgment (which means taking nothing for granted), and the *maieutic* or questioning of the reason why (in order to analyze in more depth, until reaching the primary reason). Nonetheless, we could wonder: how did this method become universally accepted in US Schools of Law? It occurred in the late 1870s, when Europe implanted its public universities (i.e. Spain and the background of the Gamazo's Plan, Sánchez-Bayón 2010), and when the standardization of studies came about. All these changes provoked the transformation of traditional faculties, as the School of Cannons and Laws, into the Law Schools were called (afterwards) Jurisprudence Schools, where all the efforts of professors were concentrated on teaching the new Public Law, mainly characterized by its codified nature. So, although US Law was comparable to Common Law in its roots, it became something extraordinary, because USA Law is the most open to the influences of Civil or Continental Law. So much so, that amongst the flourishing universities of New England –the foundation of the Ivy League (or club of universities, which imitate the European style) – Harvard University begins to stand out in its attempt to become a reference in the standardization of Law studies. It is important to take into account that the influence of English Law, where the prevailing method was the Inn Court where only the mere rudiments were learned. This meant that the most important learning experience was actually acquired afterwards by working as an articled clerk in Law firms or with judges. However, the Dean of the Faculty of Law, Prof. Langdell, started to put into practice a method of Socratic inspiration, though very formalist (related to the exegetical and analytical studies which had been previously undertaken in such referential works as the Blackstone commentaries or Austin's Jurisprudence). It was a three- pronged study: a) *read the cases* b) *distill the rule*; c) *apply the rule to future cases*. It is curious that the method did not achieve its goals, not because of a lack of quality, but because of the publicity generated by the personal competition between the two greatest jurists of the time: Langdell v. Holmes- a rivalry comparable to that had existed one century before between Hamilton and Jefferson-. Since Langdell was the Dean of the Harvard Law School, Holmes also attempted to reach the same position, but he only achieved professor status; for this reason, he opted for the legal practice, acquiring the category of Judge of the Supreme Court. While Langdell promoted legal formalism, Holmes sponsored the appearance of Legal Realism (it would be necessary to wait until after World War I); etc. The fact is that HOLMES provoked an effect that was just the opposite of what he intended through the Law Review he edited (*American Law Review*) and

it's well known book *The Common Law* (1881). At the end, he afforded undue attention to Langdell; Holmes criticized him so harshly, that Langdell become famous thanks to Holmes. This great rivalry also originated the competition between the Schools of Law, such as Harvard (which would continue to maintain Langdell on a pedestal for several years) and Yale (who's incontrovertible reference was Holmes). The fact is that, in the same way that new legal operators are trained, so is Law transformed in its theory and practice. Needless to say, the influence that these two universities have held and continue to hold in the USA today is tremendous; among their students there are a great number of senior government officials (e.g. Presidents, Supreme Court Judges, Secretaries of State, Senators, Congressmen), as well as extremely important business men.

Although the law and its study have changed, the Langdell stamp has survived to the present, since he was the first to offer a native version of the Socratic Method, presenting an example to improve, change, criticize and propose alternatives in his method. Other proposals and materials have emerged from the this method, such as the casebook (it is a type of textbook used mainly by students Which, rather than simply laying out the legal doctrine, contains excerpts from legal cases in which the law is applied). The latest successful version of this method was the *Problem method*, because the opposition to the Langdell method and the casebooks, which were said to be a mere excuse for trivializing Classes. Courses became competitions where students had to learn by heart-preordained answers. Afterwards, in order to revitalize the study of Law, the Problem method was chosen, in which a fictitious or real case is set up, with several legal implications that students have to resolve, usually in groups, and simulating a judicial proceeding supervised by their professors.

Therefore, although the Langdell method and casebooks have been useful to standardize US Law, they are also the origin of a reductionist method that attempted to teach the law through the Case Law or rulings, when there are other sources and branches of the Legal System, as we will clarify below.

The topics chosen, the network of interlaced questions, have an interdisciplinary character and a great complexity, which is the reason behind the use of the holistic way of studying cases. It consists of combining the *epoché* and *maieutic*, together with political analysis and critical culture, until it reaches the problem method, without ignoring the legal priority approach (according to the legal grounds that guide the rest of the argumentation of a specific case).

Finally, it deals with the role of religion in the USA because it's more secular conception. It is the key to achieve salvation in the world, which

definitely contributes to boost a Welfare State with a special foundation or *social gospel* –where social assistance is mainly provided by local religious associations. This is how a great deal of information was collected in Title 42 of the *U.S. Code*, which is headed by the Public Health and Welfare Department. Thus it is possible to understand the list of more than one hundred activities that are being developed by the clergy, religious organizations and the churches and their agencies. Among these activities, it would be necessary to highlight: a) activities and services (adoption services, orphans, children's shelters, assistance to single mothers, programs to support retired people, youth recreation centers, senior recreation centers, spiritual retreat centers, health clinics, services to assist immigrants, charitable funds, sanctuaries, programs of rehabilitation, programs of psychological support, programs of feeding the homeless); b) organizations and sponsored activities (nursery schools, elementary schools, high schools, Bible schools, theological seminaries, universities, educational foundations, convention centers, home study courses, public seminars, meditation centers, book stores, archives, libraries, publishing companies (religious and educative books); c) goods and products offered by churches (books, magazines, documentaries, radio shows, TV shows); d) leisure and social activities (theatre groups, men's clubs, women's clubs, youth centers, senior centers, summer camps, picnic areas, playgrounds, bazaars, social clubs, single clubs); e) affiliated organizations (farms, religious stores, convents, monasteries, cemeteries, inspection services and food stamp certification (*kosher*), programs of mutual societies); etc.

Thus, the great weight of the denominations in the local implementation of social policies, it can be understood why the next two examples have been chosen, though both come from the Federal Executive. They seem to carry out a reverse interpretation of the classic clauses of the first Amendment regarding the Freedom of religion (free exercise and (non)establishment), thus provoking some degree of discrimination, as well as a growing gap in the much-publicized “wall of separation”.

Single cases: from correctness to neoconservative issues

A) Faith-based and Community Organizations

- a) Preliminary considerations: The social policy of the G.W. Bush Administration – as will be explained below- inherits the federal interventionist boom of programs designed by the Clinton Administration (i.e. *Charitable choice*, *International Religious Freedom Monitoring*, *No child left behind*, etc.)³⁸, but characterized by

³⁸ As has been mentioned previously, the origin of the programs of *faith-based*

a neoconservative bias. More specifically, this fact explains the clear *paradoxology* involved in the public policies of G.W. Bush Administration; he is a republican and converse evangelist while his federal programs of communitarian intervention, in fact, are ways of financing *Faith-based & Community Organization/Initiatives* (FBOs). This euphemistic denomination refers to organizations and religious initiatives, and specifically those types developed under the *Last Great Awakening* (before *well-established*)³⁹, and whose devotees made up a great part of the electoral base of G.W. Bush. Now that some relevant clarifications have been made, we will continue to summarily describe the FBOs, focusing mainly on two questions: a) what are they and how are they related to the White House? b) What are their norms? c) Controversial Issues and *aporeias*)

- b) Meaning and scope: FBOs constitute a group of social intervention programs, described by the President himself as “one of my most important initiatives (...) to extol great American compassion, through the USA with heart, soul, and conscious at the same time” (VV.AA. 2001). Starting with the reform of the Welfare State, initiated by Clinton with the group of *charitable choice* programs, G.W. Bush redirected the planned aids, incrementing the funds and donating to local organizations based on the faith and the municipal service, with the excuse of drawing the Administration closer to the citizenship, without any intermediaries, avoiding excessive “red tape” and the lack of immediate financing. In order to organize the system, president G.W. Bush, in 2001, designated J. Towey the Director of the White House office for FBOs (substituted in 2006 by J.F. Hein, who, in addition, held the post of Deputy Secretary of the President) to act as a link with one hundred and fifty programs underway in other departments (i.e. Agriculture, Trade, Education, Health and Social Services, Housing and Land development, Justice, Work, Veterans affairs, Small business management), and to manage the designation

organizations of G.W. Bush lies in the *Welfare Reform* of the Clinton Administration, through *Charitable Choice* (introduced by Acts as *The Personal Responsibility and Work Opportunity Reconciliation Act of 1996* and programs such as *Temporary Assistance to Needy Families*, *Community Services Block Grant*, etc.) The difference is that the initial goal of the first stage of Clinton’s public policies of was to give public funds to NGOs -in exclusive competition with churches-, whereas G.W. Bush removes the traditional restrictions to faith-based organizations that carry out community promotion activities, allowing them access to public funds (Davis & Hankins 1999. Edwards 2007).

³⁹ *Faith groups* are those most recent and informal varieties of religious groups, which emerged in the *Last Great Awakening* during the 1960’s. The aforementioned terminology is adopted, as opposed to the *well-established religious denominations*, the rest of the religious organizations.

of more than one thousand programs of grants and scholarships (with a one hundred million dollar budget). All these aids are open to any organization carrying out activities of social promotion and general welfare (e.g. charity, education, health, and help for handicapped people). There are no exclusive funds for organizations based on the faith. With the exception of small and specific programs, such as *Compassion Capital Fund*, all the aids are open to any organization and/or initiatives with a calling for helping others and to serve the common good. The monitoring of all the aids granted is carried out through a five-step process: (1) Step 1: Financial records: the completion of *Standard Form 269* is required, which assures that these organizations are up-to-date in their tax payments and have an appropriate financial situation. (2) Step 2, Co-sponsorship: it is not a mandatory requirement for all aids, but it is quite common. It consists of asking for information about the other organizations that contribute to the project. (3) Step 3, Storage of documents: the recipient of the aid is asked to keep the documents submitted, as well as receipts and bills of expenses, during an approximate period of three years (e.g. if the help is granted from 2003 to 2006, it will be necessary to keep all the documentation until 2009) (4) Step 4, Periodic notification: while the organization is benefitting from the grant, it is obliged to report information with details on the project's evolution, expenses, outcomes, etc. in the prescribed periods for each notification, (5) Step 5, Audit: because of the reception of public funds, the Administration reserves the right to audit. Usually, in the case of funds under USD 500,000, a system of self-auditing is possible for the organizations that receive the aid; if funds are over USD 500,000, organizations are usually required to hire an external auditor; in case of greater amounts, the administration itself audits the organization.

- c) Regulation: this is a regulation at various levels, since it is comprised of Executive Orders passed by the President, Public Acts/Bills enacted by Parliament and Final Rules passed by the Departments, and even Orders of autonomous agencies: (1) *Executive Orders* (E.O.): E.O. 13397, to create a new center for FBOs in US department homeland Security (March 7th 2006); E.O. 13280, to require equal protection for FBOs (December 12th 2002); E.O. 13199, to create the White House office for FBOs (January 29th 2001); E.O. 13198, to create five centers for FBOs (January 29th 2001) ; etc. (2) *Public Acts/Bills*: *Charity Aid, Recovery, and Empowerment Act of 2002*, *Savings for Working Families Act of 2002*; etc. (3) *Final Rules* (F.R.): a) F.R. of Department of Education: *Participation in Education Department Programs by Religious Organizations*; *Providing for Equal Treatment of All*

Education Program Participants (June 4th 2004); b) F.R. Department of Veteran Affairs: *Homeless Providers Grant and Per Diem Program; religious organizations* (June 8th 2004); c) F.R. Department of Agriculture: Equal opportunity for religious organizations (July 9th 2004); etc.

- d) Controversial Issues: the constitutionality of the use of the granted funds could be called into question: activities are close to proselytism (e.g. campaigns for salvation of souls and sexual abstention); there is a religious establishment (e.g. worship for general welfare); etc. These funds have even been used to finance the contracting of civil liability insurances for ministers and church worship. How do these things affect the interpretation of the aforementioned clauses of the First Amendment about Freedom of Religion? Does a conflict exist in the study of the second case?

B) *The First Freedom Project*

- a) Preliminary considerations: In February 20th, 2007, the US Attorney General, A.R. Gonzales revealed to the media one of the key initiatives in his term of office, *The First Freedom Project*. In his own words, he called it “an initiative to preserve the freedom of religion, which requires a great commitment in order to protect the most basic freedom of people of all faiths”.
- b) Meaning and scope: among the initial measures to include in the framework of this project, the Attorney General drew attention to the following: a) the submission of a report about the increased support, to favor the compliance of the Acts protecting the freedom of religion (activity of the public prosecutor, between 2001 and 2006), in which it is established that, in spite of the strong commitment demonstrated, it is necessary to provide more resources; b) the establishment of a dependent Department is proposed, whose director would be the assistant to the Attorney General for the Division on Civil Rights; c) several initial complementary actions to foment awareness are formulated, such as: regional seminars, establishment of a consulting service about religious discrimination, etc.; d) the goals: the main topics to enhance freedom of religion and fight against discrimination through synergies are: 1) educational discrimination; 2) labor discrimination, 3) intra-household discrimination; 4) credit discrimination; 5) public assistance discrimination; 6) religious discrimination in the educational sector (in the Division on Civil rights, the Educational Opportunities section, pursuant to Titles IV and IX of the Civil Rights Act of 1964, is in charge of filing court cases

in order to avoid discrimination in public classes on the grounds of race, color, religion, sex or national origin). The most typical disputes and their most recent examples (there are no notes of registry as of yet as for the rest of the cases included) are:

(1) *Harassment*: cases of religious harassment are supervised, especially harassment of students by professors (e.g. In *Delaware School District*, in March 2005, it was necessary to protect Muslim students in the fourth grade).

(2) *Student Religious Expression*: Discrimination as a consequence of the initiative of students themselves is also supervised (a group of students in a high school in Massachusetts were suspended for distributing candy with religious messages); and those discriminatory acts sponsored by the educational centers themselves (e.g. in a competition of young musical talents in a School in New Jersey, one song was censored for being Christian).

(3) *Religious dress*: any discrimination is forbidden, for example, the use of Muslim headscarves (e.g. *Muskogee Public School District* was sued because it did not allow a Muslim student to attend classes with a headscarf).

(4) *Equal access*: Public centers must allow religious groups to develop extracurricular activities with equal opportunities (e.g. *Good News Clubs* are student associations that develop charitable activities to improve society, but their work is not taken into consideration because of their religious background and thus they have no space to hold their meetings, and they receive no funding, etc.).

(5) *Exclusion from Higher Educational Opportunities Based on Belief*: idem (e.g. *Texas Tech University*, a biology professor refused to write letters of recommendation for medical schools if students had not previously sworn that they firmly believed in the theory of evolution).

(6) *Religious Holidays*: holidays must be observed, especially in cases with parental authorization (e.g. in Indiana, a boy was suspended from school because he did not attend class several times as a consequence of religious celebrations, and his mother was sued for negligence by local authorities).

(7) *Religious discrimination in employment*: By the same token, in the Civil Rights Division, there is a Commission promoting equal employment opportunities, pursuant to title VII of the Civil Rights Act of 1964, which is in charge of filing lawsuits against the discrimination of employees in public institutions or in religious centers. Among the most recent disputes in which the commission has intervened (financial year 2005-06 finds many of them already in

the courts), we could point out two cases: a) *U.S. v. Los Angeles County Metropolitan Transit Authority*, because the Transit Authority demanded full-time availability in the employment application form, without allowing for the Sabbath rest of Jewish People and the Sunday rest of Christians, etc.; b) *U.S. v. State of Ohio*, where the agency of environmental protection refused to recruit workers based on religious motivation, alleging conscientious objection so as to not to pay mandatory fees to trade unions (because the trade unions were in favor of abortion, homosexual marriage, etc.).

(8) *Religious discrimination in housing*: Another entity in the Civil Rights Division, the Housing and Civil Promotion Section (in compliance with the *Fair Housing Act*– a competence shared with the Housing and Urban Development Department) is in charge of filing lawsuits against religious discrimination in the purchase of a house. In the same way, among the most recent disputes which have quoted this section, we could highlight three cases where the people affected did not manage to buy houses, or their houses were attacked because of their faith, or race: a) *U.S. v. Hillman Housing Corporation*, in New York; b) *U.S. v. Altmayer*, in Chicago; c) *U.S. v. San Francisco Housing Authority*, in San Francisco.

(9) *Religious discrimination in granting credits*: the Housing and Civil Promotion section is also in charge of enforcing the *Equal Credit Opportunity Act*, a shared competence with other agencies such as the *Internal Revenue Service*, that files lawsuits to prevent religious discrimination in the granting or return of credits (e.g. common circumstances in practice are: the refusal to grant credit, incorporation of unfair terms, etc.)⁴⁰.

(10) *Religious discrimination in Public services*: Again, it is a duty pertaining to the Housing and Civil Promotion Section, pursuant to Title II of the Civil Rights Act of 1964, whose main task is enforcing the observance of religious respect in public places, like restaurants, cinemas, etc. One of the latest cases to employ this section was the discrimination suffered by a *Sikh* in a restaurant in Virginia, where he was obliged to remove his turban to gain admission to a restaurant.

(11) *Religious discrimination in public assistance*: Without a specific unit, the Civil Rights Division, pursuant to Title III of the *Civil Rights Act of 1964*, may deal with all the cases related to a lack of equality in obtaining access to government benefits. An illustrative case in this matter is *Blanch Springs* (Texas), where a municipal ordinance

⁴⁰ After the mortgage crisis, this measure has become somewhat blurred.

prohibited all religious activities in Senior Leisure Centers, which meant that the elderly could no longer bless the table, sing bible hymns etc.

- c) Regulation: *vid.* Legal grounds summoned in paragraph b).
- d) Controversial issues: It is true that Public Authority has the duty of promoting free exercise, while not admitting a proselytizing attitude in religious issues. Is there any evidence of discretion and/or judicial activism?

Balance beyond the globalization and its crisis

In the USA, freedom of religion is widely enjoyed, not only as a foundational milestone, but as a colonial freedom for those who were prosecuted for their religion, and also during the great wars and mass exterminations of the XX century (i.e. Jewish People, Armenians, Baha'is). This is such a key issue that it is the very first of the liberties recognized, and even in a double doubly fashion (with two protective clauses). What is more, a great part of US doctrine considers that it is the cornerstone through which the rest of civil freedoms have been construed, as has been observed in the cases studied. Therefore, Freedom of religion is deeply acknowledged, protected and furthered in the USA, and in its relations with other countries (*idem*). Nonetheless, the last administrations (Clinton and G.W. Bush) have prompted a crisis due to post-modern contagion. There has been a manipulation of meanings in the traditional scope of words, and language has been used politically and selfishly in order to legitimize public policies. What then has happened to the much-quoted "wall of separation"?

It is crucial to draw a clear separation between Church and State: the Church is an institution pertaining to the religious sphere, and the State is the political sphere, so each one has its own competences. Although both have an impact on society, they are not mutually exclusive. It is so important to highlight this notion because otherwise the result could be: a) identification, like in Middle East regimes (confessionalism), or b) exclusion, like in continental European countries (secularism/*laicite*). Politics and religion have their own social spheres, but they overlap in areas like social assistance. That is the reason why it is so urgent in the West to recover an accommodating separation model to lead to a rational system of checks and balances.

Regarding the final assessment of the U.S. legal system and its treatment of the religious factor, such regulation ranges from basic rules (Constitution and jurisprudence), to auxiliary ones (Executive Law, Statutory and International Treaties, especially in human rights). Traditionally, in the first third of the XX century, the weight of

organization was in the hands of the law, but statutory law took on more prominence beginning in the interwar period, and it has been the instrument chosen to implement the welfare state. However, with the onset of globalization, Executive Law has become particularly relevant, although its short expiration and rather discursive load are serious problems. The question now is how to articulate the Ordinance, which is the current major factor to regulate this issue.

The religious factor in the U.S. is crucial, because as mentioned before, it has been considered a cornerstone of identity, cultural background, social power, and solidarity. The U.S. model has been a reference point for other Western countries, until its current identity crisis and the *trans-Western risk* (see chapter 8).

Conclusion: “American” as a new kind of religion (a mix for traditional, civil & political identity)

In the last great review of American identity (before the cultural wars), the American Cultural Studies got a consensus about it: the USA is exceptional, not just for the territory (almost a continent), the people (a melting pot), and the institutions (the pioneer as a democratic government), also for the immunity against the ideologies (i.e. socialism), and the accepted reason was: the religion.

In the USA, there are many kind of religions:

- a) The traditional religion: It is a big set, which includes the positive religions (from animism to monotheism). They are related with each different community, what is articulated thanks to the religion. In the USA, for example, just for a variety of Christian denominations, there are more than a half million of evangelical sects registered by the IRS. Thanks to the pioneer model of relation between Church and State, and the social order based in religious freedom and the pro-active religious movements for welfare state development (see before), the USA has built the identity (*a novus ordo seclorum*, see *Great seal*), and it has been a reference of tolerance and freedom thought and practice for other countries.
- b) The civil religion (also civic religion): it is a modern way, beyond the tolerance, to mix the communitarian traditional religions (see before), and to get a common civic religion for the citizens. By this way, it is articulated a social system of identity for the whole country, with own symbols, rituals, beliefs, etc. (i.e. sacred days and places for the citizens to commemorate the Union). This social methamer is working from the middle of the 18th century; it is before than the “nation”, linked to the State, as it is happened in the continental Europe of 19th century. This variety of religion is improved by social movement and

their cruzades and it helps to renew the power elites (specially, Statemen).

- c) The political religion (also State-ideologies): it is about that kind of ideologies which pretend to conquest the power and to build the modern States according to a particular project of collective dominion and a cult of a Supreme Being (i.g. nationalism, socialism). It comes from the hibrydation of State religion (regalism in Catholic countries and Church of State in Reformed countries), and the official beliefs system in the hands of the Crow (*cuius region, eius religion*). Currently, there is not more political religions in the way of the strong ideologies of the 19th century; after the cultural wars, there is a patchwork of confuse Post-Modern veils, in the way of a wick-thought buffet (it is opening up to the interpretation, but just for cualificated heuristics or new ministers of political cult; at the same time, it pretends the unique thought, by emotional communication, which deals with cognitive dissonances, spiral of silence, etc.). In that sense, the Post-Modern ideology or political religion in the USA, which affects the identity issue, it comes from affirmative action to identity politics (see supra).

This paper has pretended to analyze this complex religious system (the way to link a Modern society, by a shared mission, vision and values), which has impacted in the development of American identity and the thought about it (to support it).

REFERENCES

Coll, A., Sánchez-Bayón, A., (2013), "The Federal Legal Framework for Religion: freedom of religion and church-state relations in the United States" (p. 253-280), *Derecho y Religión* (vol. VIII).

Curry, T.J., (1986), *The First Freedoms. Church and State in America to the passage of the First Amendment*, New York: Oxford University Press.

Davis, D., Hankins, B., (1999), *Welfare reform & Faith-based organizations*, Baylor University Press, Waco.

Edwards, G.C., (2007), *Governing by campaigning. The politics of the Bush Presidency*, New York: Pearson.

Pfeffer, L., (1953), *Church, State and Freedom*, Beacon Press, Boston.

Sánchez-Bayón, A., (2008-13), *La Modernidad sin prejuicios* (3 vols.), Madrid: Delta.

Sánchez-Bayón, A., (2010), *Estudios de cultura político-jurídica*, Madrid: Delta.

Sánchez-Bayón, A., (2012), *Estado y religión de acuerdo con EE.UU.*, Saarbrücken: EAE.

Sánchez-Bayón, A., (2014), “Glocal Politics and Law: why scholars do not understand each other and what are the veils of confusion” (Chapter 2 p. 25-53), Manzanero, D., et al. (edits.): *Philosophical Changes of Plurality in a Global World*, Cambridge: Cambridge Scholars Publishing.

Sánchez-Bayón, A., (2014), “Freedom of religion at large in American Common Law: a critical review and new topics” (pp. 35-72), *Journal for the Study of Religions and Ideologies*, Univ. Babeş-Bolyai-Rumanía (vol. 13, issue 37).

Sánchez-Bayón, A., (2015), *Universidad, ciencia y religión en EE.UU.*, Porto: Síndéresis.

Sánchez-Bayón, A., et al., (2017), “A History of American Religious Factor according to the US Cultural Studies: a sociological & cultural approach from colonies to globalization” (p. 84-117), *Journal of Sociology and Theory of Religion-JSTR Loyola Univ. & Univ. Valladolid* (vol. 6).

Sánchez-Bayón, A., et al., (2018), “Una historia filosófica de la identidad estadounidense: Balance de propuestas y su crisis actual”, *Bajo Palabra (II Época)*, nº 18, p. 209-36.

VV.AA., (2001), *Guidance to Faith-based and Community Organizations on Partnering with the Federal Government*, Washington: White House.

Wood, J.E., (1958), *Church and State in Scripture History and Constitutional Law*, Waco: Baylor University Press.

© 2019. This work is published under <https://creativecommons.org/licenses/by-nc-nd/4.0/>(the “License”). Notwithstanding the ProQuest Terms and Conditions, you may use this content in accordance with the terms of the License.