

INTRODUCTION TO THE ANTICLERICAL ARTICLES
OF THE FEDERAL CONSTITUTION OF 1917 AND
THEIR HISTORICAL CONSEQUENCES

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INTRODUCTION

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The American philosopher George Santayana (1863–1952) cautioned in *The Life of Reason, Volume I*, that “[t]hose who cannot remember the past are condemned to repeat it.”¹ Mindful of that admonitory aphorism, this Note from the rising scholar Katherine M. Ryan-McIlhon traces the evolution of anti-clerical Constitutional provisions in Mexico from 1857 to 1917. The Mexican experience of constitutional anti-clericalism is being relived to an uncannily similar extent some ninety-five years later, in Hungary, a land that is as linguistically, ethnically, and culturally as different as could be from Mexico, even as Mexico itself comes to revisit the ghosts of nearly a century ago in revising its own Constitution in 2012. Both nations share significant similarities and aspects of political and cultural exchange² that make this comparative paradigm an especially apt one. Both similarly have endured

¹. GEORGE SANTAYANA, *Law of Repetitive Consequences*, I THE LIFE OF REASON (1905–06), *quoted in* JOHN BARTLETT, *FAMILIAR QUOTATIONS* 703 (15th ed.1980).

². Hungary–Mexico relations date back to the short reign of the Emperor Maximilian I of Mexico from 1864–1867; Maximilian I’s brother was Franz Joseph I, Emperor of Austria and King of Hungary. *See, e.g.*, JOAN HASLIP, *THE CROWN OF MEXICO: MAXIMILIAN AND HIS EMPRESS CARLOTA*. (1971)(Formal diplomatic relations with Austria–Hungary were established in 1901, but remained intermittent with the Austro–Hungarian mission withdrawal after World War I). Count László Széchenyi, also head of the Washington D.C. legation resumed relations between Hungary and Mexico in 1925. HUNGARY: MEXICAN RELATIONS, *TIME*, Jun. 1, 1925, retrieved Apr. 16, 2012, <http://www.time.com/time/magazine/article/0,9171,751335,00.html>. Relations were again suspended during World War II, and Mexico did not resume relations with Hungary until May 14, 1974, which continue through the present day. *See* *Relaciones México–Hungría*” (Spanish), Embajada de México, República de

Hungría (undated), retrieved Apr. 16, 2012, *available at* <http://www.mexicodiplomatico.org/embajadas/hungria.pdf>.

foreign intervention and occupation,¹ had monarchical, dictatorial, and other forms of nondemocratic rule,² yet during modern times both have had a strong

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Catholic Church and devout population coexisting alongside other minority faiths.³

As Mrs. Ryan-McIlhon points out, President Álvaro Obregón of Mexico in the 1920s focused his political mandate on Mexican economic growth; Obregón justified enforcing the Constitution's anticlerical articles because he believed that government should be the only institution to control the nation and it was his job to implement the Constitution.⁴⁵ In amplification to what Mrs. Ryan-McIlhon noted about the ensuing revolution,⁶ I have written elsewhere about the self-imposed mandate of then-Mexican President Álvaro

¹ . *See, e.g.*, Hungarian History, Hunmagyar.org (undated), retrieved Apr. 16, 2012, *available at* <http://www.hunmagyar.org/tor/index.html>; *see also*, Michael S. Werner, Concise encyclopedia of Mexico (New York: Taylor and Francis, 2001).

² . *See* HASLIP, *supra* note 2; *see also* Werner, *Id.*

³ . Catholic Encyclopedia: Hungary, Newadvent.org, (2009), retrieved Apr. 16, 2012, *available at* <http://www.newadvent.org/cathen/07547a.htm>; and Catholic Encyclopedia: Mexico, *Id.*, *available at* <http://www.newadvent.org/cathen/10250b.htm>.

Katherine M. Ryan-McIlhon, 1 Ave Maria Int'l L.J. (2012), <http://www.avemarialaw.edu/ilj>.

Id.

Obregón of Mexico.⁷ After the passage of the 1917 Constitution, Obregón was focusing on the Mexican economy, justifying the application of anticlerical articles of the Constitution because he believed that government should be the only institution to control the nation and it was his job to implement the Constitution. The resulting turmoil was the so-called Cristero War (or La Cristiada) of 1926 to 1929, an uprising and counterrevolution against the Mexican government. This conflict resulted in over 90,000 deaths and the first major emigration of Mexicans to the U.S. in modern history, totaling as much as five percent or more of the Mexican population.⁸

Similarly on January 18, 2012 Hungarian Prime Minister Viktor Orbán dramatically appeared before the European Parliament to defend his country's new constitutional order.⁹ There may well be many salutary, pro-life and/or pro-family effects stemming from newly enacted provisions,¹⁰ making the new Hungarian Constitution "a national reshaping on traditional values."¹¹ At the time of this writing, no modern-day, Cristiada-like, Hungarian Forradalom (revolution)¹² involving violence has broken out, but constitutional challenges of serious political consequences have nonetheless ensued.¹³

What are some bases for comparison and contrast between these two nations and constitutional systems? Unlike Mexico, Hungary has a tradition of relatively frequent constitutional change. After all, Hungary is a relatively young multi-party, parliamentary democracy that in the period of 1989 - 1990 had amended its Constitution nine times since the Act XXXI of 1989 which

⁷ . Kevin Govern, Hungary and Mexico's Constitutional Parallels, JURIST - Forum, Feb. 11, 2012, <http://jurist.org/forum/2012/02/kevin-govern-hungary-constitution.php>.

⁸ . David Rieff, "Nuevos Catholics", *The New York Times Magazine Online*, Dec. 24, 2006, available at http://www.nytimes.com/2006/12/24/magazine/24catholics.t.html?_r=1&oref=slogin.

⁹ . Paul Krugman, *Hungary Misunderstood?*, NEW YORK TIMES, Jan. 21, 2012, available at <http://krugman.blogs.nytimes.com/2012/01/21/hungary-misunderstood/>.

¹⁰ . See, e.g., Grégor Puppink, Ph.D, *The new Hungarian Constitution: a national reshaping on traditional values*, Turtlebayandbeyond.org, May 20, 2011, available at

<http://www.turtlebayandbeyond.org/2011/sovereignty/the-new-hungarian-constitution-anationalreshaping-on-traditional-values/>; see Francis Phillips et. al., *Hungary's cheering pro-life constitution offers a shining example to a comfortable, selfish Britain*, CatholicHerald.co.uk, June 9, 2011, available at <http://www.catholicherald.co.uk/commentandblogs/2011/06/09/hungary%E2%80%99scheering-prolife-constitution-offers-a-shining-example-to-a-comfortable-selfish-britain/>.

¹¹ . *Id.*

¹² . Translations of "Revolution," Translate.Definitions.net Website, last updated 2011, available at <http://translate.definitions.net/revolution>. Note: This translation site uses the following definition with respect to the word in question: "(the act of making) a successful, violent attempt to change or remove a government etc the American Revolution." None of this is to be confused with the *Hungarian Revolution* of 1848, of 1919, or *the Revolution* or Uprising of 1956, all of which involved the use of force by and against established political authorities.

¹³ . See, e.g., Paul Krugman, *Hungary's Constitutional Revolution*, New York Times Online, Dec. 19, 2011, available at <http://krugman.blogs.nytimes.com/2011/12/19/hungarys-constitutional-revolution/>.

provided the constitutional framework for the peaceful change of the regime; now twenty years later it has essentially written yet another new Constitution.¹⁴

History has proved, as Mrs. Ryan-McIlhon points out, that Mexico's new Constitution did not preserve the rights of all; it imperiled the rights of citizens and non-citizens alike, especially with regard to religious freedoms. Will Hungary's new Constitution similarly imperil the rights of citizens and noncitizens? Indeed, much concern has been raised within Hungary and abroad regarding over 300 religious groups and denominations losing "official recognition" in Hungary, while, by way of contrast, "approved" faiths include traditional Catholic, Reformed,

Lutheran and Orthodox congregations, as well as some Jewish groups.¹⁶

Among the religions purportedly denied Hungarian state approval are all versions of Islam, Buddhism, Hinduism, and Baha'i. Roman Catholic orders purportedly decertified include the Benedictines, Marists, Carmelites, and Opus Dei. Also included in the purported decertification are such Protestant denominations as Episcopalians, Jehovah's Witnesses, Seventh Day Adventists, Mormons, Methodists, and all but one evangelical church. As for Judaism, only one each of the orthodox, conservative and liberal synagogues are recognized; all other Jewish congregations are purportedly not recognized.

¹⁵ Faiths and sects otherwise excluded from recognition or approval will have the opportunity to apply for recognition in parliament if they have been operating for at least 20 years in Hungary.¹⁶ But what of those faiths and groups that, through emigration or evangelization or other forms of expansion, have a nascent presence in Hungary? Are they doomed to be excluded for two decades before being able to gain recognition?

Mrs. Ryan-McIlhon points out the resistance of common citizens and clergy to the then-new Mexican Constitution.¹⁷ As history has repeated itself in 2011 and 2012, thousands in Hungary have been marching in the streets and accusing the government of violating their rights, while "[w]estern allies, including the United States, are complaining about a constitution that critics

¹⁴ . For research on Hungarian Constitutional law, *see, e.g., History of Hungary: Primary Documents*, Brigham Young University Library's Eurodocs.lib.byu.edu Website, Dec. 28, 2011, retrieved Apr. 16, 2012, available at http://eurodocs.lib.byu.edu/index.php/History_of_Hungary:_Primary_Documents. ¹⁶ . *See, e.g., Major Christian denominations decertified under new Hungarian constitution*, Barnabasfund.org, Jan. 9, 2012, retrieved Apr. 16, 2012, available at <http://barnabasfund.org/US/News/Archives/Major-Christian-denominations-decertified-under-new-Hungarian-constitution.html>.

¹⁵ . *Hungary passes church law despite Clinton protest*, FOCUS NEWS AGENCY, Dec. 30, 2011, retrieved Apr. 16, 2012, <http://www.focus-fen.net/index.php?id=n267519>, cited with authority in *Hungary Again Passes Restrictive Religion Law*, ALLIANCE ALERT, Alliance Defense Fund, Jan. 3, 2012, retrieved Apr. 16, 2012, available at <http://www.alliancealert.org/2012/01/03/hungary-againpasses-restrictive-religionlaw/>.

¹⁶ . *Id.*

¹⁷ . Ryan-McIlhon, *supra* note 6, at 514.

say undercuts fundamental democratic principles.”¹⁸¹⁹ In the words of Ian Kelly, the American Representative to the Organisation for Security and Cooperation in Europe (OSCE), these Hungarian Constitutional changes “have effectively eroded the independence of key government institutions as well as important nongovernmental elements of society and scaled back the checks and balances that are crucial to a democracy and the protection of civil liberties.”²⁰ Kelly added that the legislation had been “rushed” and “should have been the subject of a dialogue with civil society.”²¹

Mrs. Ryan-McIlhon noted that various political groups joined Catholics hoping to overturn the new Mexican Constitution in 1920;²² in

2012, the European Commission launched legal challenges against the Hungarian Constitution for having breached European Union (EU) treaties.²³ Unlike Mexico, which was independent at the time of its infamous constitutional amendments, and not a signatory to regional or international treaties on the preservation and advancement of human rights, Hungary exists as a sovereign nation nonetheless adhering to the subsidiarity principle to the EU (and held the presidency of that body when it made its newest constitution).

²⁴ As such, Hungary ostensibly adheres to two major international conventions regarding human rights. The first is the European Convention on Human Rights,²⁵ under which Hungary and other signatories commit to the premise that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” In Article 9 section 2 of that Convention, the “[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.” Similarly, Article 10 of the European Union Charter on

¹⁸ . Petra Hajdu and Charles McPhedran, *Hungary's new constitution seen as threat to democracy*,

WASHINGTON TIMES, Jan. 17, 2012, available at <http://www.washingtontimes.com/news/jan/17/hungarys-new-constitution-seen-as-threat-to-democr/?page=all>.

¹⁹ . *American representative to OSCE expresses concern over Hungarian constitution*, Politics.hu, Jan. 22, 2012, retrieved Apr. 16, 2012, available at <http://www.politics.hu/20120122/americanrepresentative-toosce-expresses-concern-over-hungarian-constitution/>.

²⁰ . *Id.*

²¹ . Ryan-McIlhon, *supra* note 6, at 515.

²² . *Unlawful Constitution—EU Takes Legal Action Against Hungary*, DER SPIEGEL, Jan. 17, 2012, available at <http://www.spiegel.de/international/europe/0,1518,809669,00.html>.

²³ . *Hungary at the head of the Council of the EU - 03/01/2011*, European Commission Website, last updated Jan. 31, 2012, retrieved Apr. 16, 2012, available at http://ec.europa.eu/news/eu_explained/110103_en.htm.

²⁴ . THE EUROPEAN CONVENTION ON HUMAN RIGHTS, ROME 4 NOV. 1950, AND ITS FIVE PROTOCOLS, retrieved Apr. 16, 2012, available at <http://www.hri.org/docs/ECHR50.html>.

Fundamental Rights²⁶ preserves, promotes and protects freedom of thought, conscience, and religion,²⁸ but makes no such provision for abrogating those freedoms under the “necessities of a democratic society.”²⁷

Since the time Mrs. Ryan-McIlhonn’s wrote her note, dramatic constitutional changes have taken place in Mexico, because of (or in spite of) a recent Papal visit, and more is known about the Hungarian Constitution’s repercussions in the European and world political arena. In the wake of His Holiness Benedict XVI’s Spring 2012 visit to Mexico, that nation’s Senate approved a constitutional reform in April 2012 that “could pave the way for religious education in the country’s public schools,” and “ease restrictions that currently ban faith groups from owning media outlets, or participating in politics.”²⁸ How much the Government of Mexico was influenced by this much-anticipated visit is speculation, but what is known that after stepping on Mexican soil, Benedict said nothing directly about the controversial constitutional reform, instead, saying that religious freedom was a “fundamental part” of a person’s dignity and integrity.²⁹ That statement of natural law is consistent with what is currently present in Article 24 of Mexico’s Constitution that grants the right to pick and exercise the religion of their choice.³⁰ Under the most recent changes, the Mexican Constitution will also grant people the right to “uphold their ethical convictions, freedom of conscience and religion,” and changes Article 40 so that it describes Mexico as a “secular nation respecting the separation of Church and State in Mexico.”³¹ By contrast to the pronounced secularism, supporters of the bill, led by the right-wing National Action Party (PAN), immediately began discussing further legislation that would be possible under the constitutional change, including religion taught in public schools and church ownership of mass media.³⁴ While Mexico’s Senate approved constitutional reform by the barely requisite two-thirds majority necessary – a 72-35 vote – at least half of Mexico’s 31 state legislatures must still approve the changes to Articles 24 and 40 of the Mexican

²⁶ . EUROPEAN UNION CHARTER ON FUNDAMENTAL RIGHTS, NICE DEC. 7, 2000, retrieved Apr. 16, 2012, available at http://www.europarl.europa.eu/charter/default_en.htm. ²⁸ . *Id.*, at Art. 10.

²⁷ . EUROPEAN CONVENTION, *supra*, note 26.

²⁸ . *See, e.g.*, Constitutional Reform Expands Role Of Catholic Church, Mexico Solidarity Network Website, Apr. 3, 2012, available at <http://www.mexicosolidarity.org/post/2012/april/mexiconewsandanalysis/march26april12012>.

²⁹ . Manuel Rueda, *Mexico: Pope avoids controversy during his first day in the country, focuses on issues of faith*, UNIVISION News Website, Mar. 24, 2012, available at <http://univisionnews.tumblr.com/post/19851734026/mexico-pope-avoids-controversy-during-his-first-day>.

³⁰ . Constitution of Mexico, art. 24, available at http://www.oas.org/juridico/mla/en/mex/en_mexint-textconst.pdf

³¹ . Manuel Rueda, *Mexico: New constitutional reform could allow for religious education in public schools*, UNIVISION News Website, Mar. 29, 2012, available at <http://univisionnews.tumblr.com/post/20127084750/constitution-reform-mexico-religion-publicschools> 34. Constitutional Reform, *supra* note 30.

Has the Vatican fully considered the implications of the new Hungarian Constitution? We can only surmise its supportive stance, most notably, based upon an interview granted in January 2012 on Vatican Radio with the Auxiliary Bishop of the Archdiocese of Esztergom-Budapest, Monsignor János Székely:

Hungary's new Constitution approved in 2011, which begins with the name of God in the introduction, states that human life must be defended starting from its conception, and declares that Hungary defends the institution of the family, which is an alliance of life between a man and a woman. The Constitution also states that the family is the foundation for the survival of the people, and that when setting taxes, the cost of raising children must be taken into consideration.³³

Readers may still wonder about the significance of religious disenfranchisement mentioned above, let alone negative reactions from other international bodies, namely from the secretary-general of the United Nations, the undersecretary of the German ministry of foreign affairs, or the European Parliament,³⁴ just to name three notable critics.

Do the admirable ends of pro-life initiatives justify all means of implementing a constitution? Specifically, would those initiatives outweigh a lack of political transparency, so critical to advancing and maintaining rule of law? The political norm of transparency promises a solution to the problem of government secrecy.³⁵ By providing legal certainty, transparency serves as an *anchor for democracy*. It lays open the values and goals to an *accountability* of actors as an essential element for (re)building confidence in a political system and its cornerstone documents. The Venice Commission, the constitutional law advisory body of the Council of Europe, has criticized the Hungarian Constitution for “a lack of transparency of the [drafting] process” and for how it limits the Constitutional Court's rights to review legislation.³⁶

Please consider as you read Mrs. Ryan-McIlhon's Note how similar current events are in Hungary to what occurred in Mexico in the past. Appreciate, too, how much leaders in Mexico in 2012 would be welladvised to consider what she says about the need to remediate constitutionally impaired religious

³². *Id.*

³³. Alessandro Speciale, *Hungary, the Church praises the new Constitution*, LaStampa.it Website, Jan. 14, 2012, available at <http://vaticaninsider.lastampa.it/en/homepage/world-news/detail/articolo/ungheriahungary-hungria-chiesa-church-iglesia-11668/>.

³⁴. Margit Feher, *Hungary Passes New Constitution Amid Concerns*, Wall Street Journal-Europe Website, Apr 18, 2012, available at <http://blogs.wsj.com/emergingurope/2011/04/18/hungary-passesnewconstitution-amid-concerns/>.

³⁵. See, e.g., Mark Fenster. 2011. “The Transparency Fix: Advocating Legal Rights and Their Alternatives in the Pursuit of a Visible State” ExpressO, available at http://works.bepress.com/mark_fenster/13.

³⁶. Opinion no. 621 / 2011, European Commission For Democracy Through Law (Venice Commission) Opinion on the New Constitution of Hungary, Adopted by the Venice Commission at its 87th Plenary

liberties in 2012. Pope Benedict XVI deliberately went to the heart of *La Cristiada* on his Spring 2012 trip to Mexico, and to the last bastion of Marxism in Cuba to advance of freedom of religion, and renouncement of its restriction in Cuba.³⁹ Challenging failed ideologies which “no longer corresponded to reality,” the Pope called for “new models” to be found, and made it clear that “the Church is always on the side of freedom of thought and of religion.”⁴⁰

With this brief exploration of past as prologue, we can better appreciate Mrs. Ryan-McIlhon’s splendid historical examination of law, politics, culture and religion regarding the anticlerical articles in the Federal Constitution of 1917 and its historical consequences in Mexico.

Session, Strasbourg, 20 June 2011, at 4, 28, *available at* <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-E.pdf>

³⁹ . Mexico crowds welcome Pope Benedict on historic visit, BBC.co.uk Website, Mar. 24, 2012, *available at* <http://m.bbc.co.uk/news/world-latin-america-17491807>

⁴⁰ . *Id.*

