

Christian secularism and religious accommodations in republican Brazil

Secularismo cristão e acomodações religiosas no Brasil republicano

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RESUMO

A seguinte monografia pretende traçar as raízes históricas da discriminação do governo Brasileiro aos direitos de Judeus e Sabbatistas Cristãos como exemplificado na aplicação do ENEM em 2009 e 2010. Esta pesquisa defende a tese de que os argumentos constitucionais modernos pela negação de acomodações religiosas em exames nacionais de Sabbatistas por motivos de laicidade, preferência do estado por determinada religião ou igualdade debaixo das leis (isonomia) deriva de uma tradição Brasileira jurídica que é antiliberal. Este artigo argumenta de maneira diacrônica que a tradição de negar isenções religiosas para minorias se desenvolveu a partir da história republicana Brasileira e de seu passado na ditadura a fim de promover um estabelecimento Cristão secularizado. Este artigo começa traçando as raízes históricas dos argumentos legais em negar acomodações religiosas para essas minorias na história Republicana Brasileira. Segue-se uma apresentação histórica de como elites Brasileiras usaram um discurso secularizado Católico positivista na primeira metade do século 20 para reprimir essas minorias religiosas de seus direitos, o que pressupõe uma concepção de Brasil como uma nação distintamente cristã (i.e. Católico Romana). Depois esta pesquisa procede em mostrar como este discurso Católico positivista evoluiu para argumentos mais sutis e “seculares” tais como aqueles de igualdade diante das leis, “isonomia” e a natureza laica do Estado, *laïcité* a partir da década de 1960 em diante. A segunda metade deste artigo intenta mostrar como essa tradição antiliberal encubada de um secularismo Cristão se perpetuou na Constituição social democrática Brasileira pós-1988 nos discursos de isonomia e laicidade. O artigo conclui tentando mostrar como acomodações religiosas não danificam o aparelho estatal e sugerindo maiores formações de parceiras políticas entre religiões de matriz africana e os Sabbatistas. O intuito é mostrar como isso pode beneficiar ambas essas comunidades historicamente marginalizadas a obterem plenamente seus direitos civis e políticos.

Palavras-chave: Brasil, Sabbatistas, laicidade, Católico, isonomia.

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All translations from original sources in Portuguese have been made by the author himself. The translation of all citations into English unless otherwise noted are the authors.

ABSTRACT

The following work attempts to trace the historic roots of the Brazilian government's discrimination towards the religious freedom rights of Jews and Sabbatarian Christians exhibited in the application of the ENEM in 2009 and 2010. This research article defends the thesis that the modern Brazilian Constitutional arguments for denying religious accommodations on national exams for Sabbatarians on grounds of *laïcité*, state preference of religion or equality under the laws derive from an anti-liberal legal Brazilian tradition. This paper diachronically argues that this tradition of denying exemptions for minorities developed as a result of Brazil's republican history and authoritarian dictatorial past in order to promote a particularly secularized Christian establishment. This paper begins by tracing the historical roots of legal arguments for denying religious accommodations for religious minorities in Brazilian republican constitutional history. It then shows how Brazilian elites used a secularized Catholic-positivistic discourse in the first half of the 20th century to suppress minority religious rights presupposing that Brazil was uniquely a Christian (i.e Roman Catholic) nation. The paper will then proceed to show how this Catholic positivistic discourse evolved to a more covert "secular" argument such as those from equality under the laws, "*isonomy*" and the secular nature of the State, "*laïcité*" following the 1960s and thereafter. The second section attempts to show how this covert anti-liberal tradition of secularized Christianity has still been maintained in Brazil's 1988 social democratic constitution by the discourse of *isonomy* and *laïcité*. The article then concludes by attempting to show how religious accommodations do not harm government and suggesting that greater coalition building between African religions and Sabbatarian Christians can benefit both historically marginalized groups to attain their full civil and political liberties.

Keywords: Brazil, Sabbatarians, laicite, Catholic, isonomy.

INTRODUCTION

Entra na sala! Anda logo! On that Saturday morning, I stood in shock as the security guard continued yelling, Get in the classroom! Hurry up! I was one of fifty high school students standing in a dusty, public school courtyard in the historic city of Cachoeira, Bahia. We arrived there to take the *Exame Nacional do Ensino Médio* (national high school exam), which was required for college entrance and only offered once a year. In 2010, the Brazilian government mandated that we take the exam on a Saturday" a holy day of worship for Brazil's one million Seventh-day Adventists. To rectify this impending threat to our religious liberties, our community sought legal protection through the courts. After intense litigation, the Public Affairs and Religious Liberty Department of the South American Division of Seventh-day Adventists settled on a meager compromise with the State. We were detained in public school classrooms for approximately twelve hours without food and forced to wait to take the exam until after sunset.

We entered a damp, dirty classroom. My peers countenances exhibited

anxiety, a shift from their usual peaceful Saturday appearances. I had no other choice but to await my exam that would take place later that evening. Sitting confined for the first two hours without food and just two bottles of water in a small, crowded room, I was outraged. I remember reflecting on the unfair circumstances we faced as a religious minority group. I felt disillusioned and persecuted by my own country.

In the following paper, I attempt to address my own experience and that of countless other Sabbatarians in Brazil. The following paper will attempt to trace the historic roots of the Brazilian government's discrimination towards the religious freedom rights of Jews and Sabbatarian Christians exhibited in the application of the ENEM in 2009 and 2010. It defends the thesis that the modern Brazilian Constitutional arguments for denying religious accommodations on national exams for Sabbatarians on grounds of *laïcité*, state preference of religion or equality under the laws derive from an anti-liberal legal Brazilian tradition. This paper will attempt to show that this tradition of denying exemptions for minorities developed as a result of Brazil's republican history and authoritarian dictatorial past in order to promote a particularly secularized Christian establishment. This paper concludes by proposing that greater coalitions between African religions and Sabbatarian Christians can benefit both historically marginalized groups to attain their full civil and political liberties.

This paper begins by tracing the historical roots of legal arguments for denying religious accommodations for religious minorities in Brazilian republican constitutional history. It then shows how Brazilian elites used a secularized Catholic-positivistic discourse in the first half of the 20th century to suppress minority religious rights presupposing that Brazil was uniquely a Christian (i.e. Roman Catholic) nation. The paper will then proceed to show how this Catholic positivistic discourse evolved to a more covert "secular" argument such as those from equality under the laws, "*isonomy*" and the secular nature of the State, "*laïcité*" following the 1960s and thereafter. The second section attempts to show how this covert anti-liberal tradition of secularized Christianity has still been maintained in Brazil's 1988 social democratic constitution by the discourse of *isonomy* and *laïcité*. The final section of this paper will conclude by attempting to show how religious accommodations do not harm government and suggesting that greater coalition building minority religions can benefit both historically marginalized communities.

1. A Brief History of the Rise of Secularity as an instrument of Religious Coercion in Republican Brazil (1891–1986)

Understanding the current argument in Brazilian public and legal discourse for denying religious accommodations for minorities in Brazil demands grasping how religious liberty has been conceived in Brazil's republican history. This demands briefly looking at this history (1889–present), since it is during this period when these ideas became crystalized. In this section, this paper argues that Brazilian

discourse on religious liberty underwent two main phases during the twentieth century. The first half was marked by what will be termed a religious positivism (1890-1964) and the second half by what will be called a secularist phase (1964–present). The first half is marked by both secular and religious justifications for denial of religious accommodations for religious minorities on account of Brazil being a distinctly “Christian” nation. The second half is characterized by a discourse that uses secular means to implement religious policies that benefit a religious majority at the expense of minorities.

The Brazilian constitution of 1891 marked a “new conception” in Brazilian political thinking (*cf.* MENDES; BRANCO, 2020, p. 1634). After the dissolution of the Brazilian monarchy in 1889, Brazil’s new republican constitution contained two clauses guaranteeing the separation of church and state and the free exercise of religion.² However, despite the revolutionary nature of these developments, Christianity still held a privileged place (AZEVEDO, 1981, p. 71). Ruy Barbosa, the Brazilian legal scholar responsible for the religion clauses of Brazil’s 1891 Republican Constitution, had been inspired by the privileged place Christianity had in the American constitutional and political system.³ Barbosa believed that like the U.S., Brazilians must “consider the Christian principle as a foundational element of Brazilian law.” (MONTERO, 2006, p. 52). Throughout his life, Barbosa referred constantly to the USA as a model where “Christianity is the *defacto* state religion” (GIUMBELLI, 2002, p. 254). Like the U.S., Barbosa claimed that “Brazil was there before the Republic, and Brazil was born a Christian, raised a Christian, and is still a Christian [nation].” (BARBOSA *apud* SCHMIDT & ENGLER, 2017, p. 383). He called for the “adoption of a christian principle” (GIUMBELLI, 2002, p. 247) in Brazilian law. He justified this on his view that if Brazil were to be a Republic, “the formula for constitutional freedom in the Republic will necessarily be Christian” (BARBOSA *apud* SCHMIDT & ENGLER, 2017, p. 383).

Barbosa’s vision of a secularized Christian republic fit within the broader philosophical positivistic discourse of his time. According to this vision, Brazil was to be molded by a “scientific dictatorship” whose “spiritual foundations” was “science” and philosophical positivism would serve as “a regenerating force for the new times” (DE AZEVEDO, 1981, p. 111). The questions of religious liberty, therefore, centered on how to protect the Catholic church’s liberty and privileges

² For the history behind the drafting of these clauses see: ANGELOZZI, Gilberto Aparecido. *Igreja, Estado e Poder: as Relações Entre a Igreja e o Estado No Brasil*. Jundiaí: Paco Editorial, 2017, p. 39–50.

³ Mendes e Gonet Branco, 133; Bettina E. Schmidt and Steven Engler, “Secularism and Religion in the Public Sphere in Contemporary Brazil,” in *Handbook of Contemporary Religions in Brazil*, ed. by Bettina E. Schmidt and Steven Engler, (Leiden: Brill, 2017), 379–394 at 383. It is important to highlight that in 1890, the U.S. was still heavily influenced by Christianity as a result of numerous public movements to enshrine Christianity into law. It seems that Barbosa may have possibly been influenced by these movements. However, this would be the topic for another study. For more on this phenomenon see Benjamin McArthur, “1893 The Chicago World’s Fair: An Early Test for Adventist Religious Liberty,” *Adventist Heritage*, Vol. 02, No. 2 (Winter 1975), p. 11–25; Warren LeRoi Johns, *Dateline Sunday, U.S.A.: The Saga of Three-and-One-Half Centuries of Sunday Law Battles in America* (La Vergne, TN: Lightning Source, 2012), Kindle edition, loc. 1787/3656.

(*cf.* MONTEIRO, 1981, p. 51-52). The implications of this was that despite the separation of church and state there would be no road blocks between their cooperation (*cf.* GIUMBELLI, 2002, p. 247). It also meant that the State could crack down on particularly African religions without violating the State's guarantee of "religious freedom."

The clearest example of this is Article 157 of the Penal code of 1890 which established one to six months of confinement in prison for magic and spiritualism (*cf.* DANTAS, 2009, p. 99). This targeted directly African religious practices. The discourse of religious suppression was framed along medical lines in order to subject black and brown individuals to Christian morality (*cf.* MONTERO, 2006, p. 51). This gave a legal license to deprive African religions of their rights, since these religions were not under the category of "religion," but considered an abnormality (*cf.* DANTAS, 2009, p. 101). African religious practices were juxtaposed to the supposed superiority of "Christian civilization" (DANTAS, 2009, p. 101).

For instance, journal and magazine entries between 1890 and 1920 report numerous instances of police invading and closing down *terreiros* as well as destroying their holy images (*cf.* RODRIGUES, 2010, p. 272). The justification for these violations of religious liberty ranged anywhere from the false allegations that Candomblé were responsible for cases of dementia, sexual deviancy, orgies, witchcraft, public nuisance violations and barbaric crimes against civilization (*cf.* RODRIGUES, 2010). The State essentially justified these crackdowns in the interests of public sanitation (*cf.* DANTAS, 2009, p. 101).

The economic crises of 1929 and the greater religious diversity in the Protestant sphere caused a conservative reaction towards greater usage of an openly religious and nationalistic public discourse against Protestant and non Christian religions⁴. Due to this crisis, more liberally minded anti-clerical forces suffered a severe blow leading to the resurgence of reactionary elements in society throughout Latin America (*cf.* RODOR, 1984, p. 69). This resulted in an alliance between the military classes, national *bourgeoisie* and the working class. This resulted in the end of the secularized positivism and the emergence of government control by more traditional Catholic elements of society (*cf.* DUSSEL, 1978, p. 175-192). In Brazil, this period characterized itself by greater political repression against black religious practices. Non christian religions such as Umbanda and Candomblé were forced to register themselves with the government or otherwise face state suppression (*cf.* MONTERO, 2006, p. 54). Militant christian (i.e. Catholic) groups arose pushing for the union between church and state spearheaded by individuals such as Plínio Salgado, Alvaro Bomilcar, and Arnaldo Damasceno Vieira.

⁴ See: RIBEIRO, Milton. *Liberdade Religiosa: Uma Proposta Para Debate*. São Paulo: Mackenzie, 2002, p. 99–122. For more information on the growth of Umbanda, Candomblé, and Spiritualism as a result of urbanization and the consequent crackdown on those religions by the Brazilian government see: BASTIDE, Roger. *The African Religions of Brazil: toward a Sociology of the Interpenetration of Civilizations*. trans. Helen Sebba. Baltimore: Johns Hopkins University Press, 2007, 304, 310–340.

This culminated with the Revolution of 1932 and the advent of Getulio Vargas' integrationalism. This led to a closer political realignment between the Catholic church and the Brazilian government for the next twenty years. The 1932 penal code maintained the prohibitions on religious medicinal practices of article 157 of the Penal code of 1890 (*cf.* DANTAS, 2009, p. 102). The subsequent revised constitution of 1934 further breached the wall separating religion and state allowing greater collaboration between religion and state such as in the military, medical, and other official public establishments. Religious Liberty was guaranteed to all as long as they did not violate "public order and good customs (*costumes*)" (BRASIL, 1934, Cap. II, Art. 5). Good customs meant here Christian (i.e. Catholic) morality (DE AZEVEDO, 1981, p. 49).

The magazine *Brasileia* summarized the spirit of Brazilian Integralism and its project for a Brazilian Christian nation under the slogan "God above all, Fatherland and Home (*Deus acima de tudo; Pátria e Lar*)" (DE AZEVEDO, 1981, p. 73). Government entities colluding with media and socially conservative sectors of the Roman Catholic church attempted to bring this slogan into fruition. Plínio de Oliveira, for instance, made a concise attempt to alert his parishioners of the dangers of the "new or exotic forms of Protestantism that were emerging in Brazil, such as Pentecostalism and Seventh-day Adventism" (HELGEN, 2020, p. 52). He claimed the former were "nothing more than a mixture of Protestantism and the lowest form of Spiritism" and the latter were subverting the government "by undermining the sanctity of Sunday worship and thereby 'establishing a most pernicious division in [Brazilian] society'" (HELGEN, 2020, p. 54). Another reactionary voice Padre Rossi justified acts of violence against Protestants as self defense against Protestants erosion of Roman Catholic traditional beliefs (*cf.* HELGEN, 2020, p. 54).

The Christian hegemony of the first half of the Brazilian republic, characterized by a greater involvement of Christianity in Brazilian legal discourse, would be challenged in the 1960s onwards. This led to a shift in the tactics that religious conservative groups would take in justifying denying religious accommodations for religious minorities and attempting to turn Brazil into a "Christian Nation". There are numerous reasons for this.

The first reason were changes within Catholicism itself. The Roman Catholic Church especially in Latin America underwent a period of significant changes during 1960s. It was slowly facing the reality that its hegemony was over. Its special status in western society was seen as outdated (*cf.* RODOR, 1984, p. 79). The two main philosophical foundations of Catholic ecclesiology, Augustinianism and Thomism provided insufficient answers to the pressing social problems facing the Latin American church in the late 1960s such as social and economic inequality and poverty (*cf.* RODOR, 1984, p. 109-110). Augustinianism was too closely tied with the legacy of colonialism and Thomism did not address adequately the problems of the poor's social reality (*cf.* RODOR, 1984, p. 123). Vatican II and the subsequent developments in Puebla and Medellin opened new theological

possibilities (*cf.* RODOR, 1984, p. 125)⁵. The practical implications of this was the erosion of the church's political and religious power on Brazilian society. This led to much greater interfaith dialogue between Catholicism and non Christian religions. The discourse of religious confrontation was substituted for that of ecumenism⁶.

The second reason for this discursive shift was the progressive secularization and pluralization of Brazilian society occurring in the 1960s. The cultural and marxist inspired political revolutions challenged ecclesial and political authority leading to the establishment of U.S. backed military regimes (*cf.* ANGELOZZI, 2017, p. 126–129). The military coup of 1964 instilled an authoritarian constitution preserving the religious cooperation between government and religion expressed previously by the constitutions from the Vargas era (*cf.* BRASIL, 1967, Cap. IV, Art. 5-7). In order to address the secularizing cultural shifts taking hold of Brazil, its military junta could no longer solely rely on Catholicism's conservative and hegemonic role in society. They needed new arguments for disguising their religious positions in legal terms⁷. Brazilian generals developed one novel strategy that would be subsequently used by later generations of religious activists to protect Brazil as a “Christian Nation” and suppress religious minorities.

In his work, *O Pensador Revolucionario*, General Gal Carlos de Meira Mattos, the leading theoretician of Brazilian geopolitics during the military dictatorship, recognized the changes occurring in the Brazilian political sphere. Mattos agreed that the spiritual and moral foundations of Brazilian society should be grounded on “Christian western” (ocidentalista-cristão) values. However, he also recognized that both intellectual circles and Brazilian civil society were coming to the conclusion that arguments from christian morality would not suffice (AZEVEDO, 1981, p. 129). In his mind, when confronting international communism “the western and Christian statesman...cannot base his defense of his politics of national interest only on the belief of moral principles which he attributes to an ideal Christian society” (AZEVEDO, 1981, p. 129). For Mattos, in order to protect “Christian civilization” from its enemies, Brazilian christians would have to fight fire with fire. They would have to use the tools of their enemies against them. That meant using secularity as a tool to both defensively to protect a “Christian establishment,” but also offensively to suppress dissenting opinions.

An example of the new tactics of using secularity offensively and defensively in favor of a Christian establishment is the *Lei do Silêncio*.⁸ Originally drafted as

⁵ Also see: BOFF, Leonardo. *Igreja Carisma e Poder*. Série Religião e Cidadania. São Paulo: Editora Atica, 1981, p. 30.

⁶ On the radical shift in rhetoric which conservative Catholic groups in Brazil took in their stance toward non-Catholic following Vatican II. See: ORTIZ, Renato. *A Morte Branca Do Feiticeiro Negro: Umbanda: Integração Numa Sociedade De Classes*. Petropolis: Vozes, 1978, p. 185–192.

⁷ According to Luis Roberto Barroso this period was characterized by a proceduralist and wooden interpretation of the Constitution without invoking its provisions for individual rights more broadly. See: BARROSO, Luis Roberto. *Curso De Direito Constitucional Contemporâneo: Os Conceitos Fundamentais e a Construção Do Novo Modelo*. São Paulo: Saraiva, 2020, p. 229.

⁸ This is roughly translated as law of silence.

Legislative Decree nº 112 on August 12, 1969, in Rio de Janeiro by Francisco Negrão de Lima, the law's stated "secular" purpose was to "contain in Rio de Janeiro and other state cities of high population density the high levels of noise pollution" (SANTOS, 2009, p. 114). This act was clearly directed at the practices of Afro-Brazilian religions since it conflicted with their hours of worship (*cf.* O FLUMINENSE *apud* SANTOS, 2009, p. 74). Unsurprisingly, the law's Article 3 granted an exemption to Christian churches so long as they served exclusively "to indicate the hours or to perform religious services and worship" (SANTOS, 2009, p. 74).

The Rio de Janeiro police began a systematic campaign of state sanctioned violence to crack down on Umbanda and Candomblé places of worship confiscating musical instruments after 10 P.M. and interrupting religious services, since they were believed to disturb the peace (*cf.* SANTOS, 2019, p. 76). The religious motivation behind the legislation was clear. The Archdiocese of Rio de Janeiro had already initiated a campaign of criminalizing Umbanda and other afro-Brazilian religions. This consisted in the Catholic Church using both the pulpit to propagate a "corrosive discourse" and the police power to suppress non-Christians (*cf.* CORREA, 1998, p. 73). They blamed in particular Dona Cacilda de Assis' Umbanda claiming that it caused increased rates of dementia and that her beliefs were "alienating" and, therefore, liable to government censorship (*cf.* ALVES, 1992, p. 232). These tactics proved successful, since they eventually managed to persuade the Nacional Department of Telecommunications to cancel her TV program on the grounds that it was considered to be of "ill repute" (SANTOS, 2009, p. 72).

The physical and moral repression coupled with the confiscation of propriety from members of the spiritualist congregation of Umbandistas of Brazil (CEUB) eventually led to the formation of political coalitions designed to carve out exemptions from the *Lei do Silêncio* (*cf.* SANTOS, 2009, p. 115). After four years of litigation they managed to succeed in adding a religious exemption for African religious practices (*cf.* SANTOS, 2009, p. 119). Despite this victory, the hurdles that African religionists would have to take to justify their religions show the changes occurring in the Brazilian Constitutional landscape.

The constitutional transformation that occurred during the military dictatorship is significant. Despite the progressive secularization of Brazilian society, conservative sectors of Brazilian society managed to maintain a "Christian establishment" by weaponizing secularity to further their religious aims. Although Brazilian society had become more "secular," the constitutional guarantees of separation of church and state and religious liberty alone did not suffice to protect their religious practices. The Brazilian legal system could be adapted to privilege Christianity.

Boaventura de Sousa Santos (2009) argued that Christianity and secularism have been part of the same colonial package. Looking at the Brazilian context, one must agree with him at least to the extent in Brazil, Christianity and secularism have been "partners in the imposition of a monoculture" which has reframed

indigenous cultures in light of a dominant Catholic culture (*cf.* SANTOS, 2009, p. 2-35). This seems quiet visible in Brazil in the second half of the twentieth century. The Brazilian dictatorship's legacy practice using secularity to suppress religious liberty would continue to have an impact following the re-democratization of Brazil in 1988.

2. Secularity in Current Brazilian Constitutional History (1988–Present)

The 1980s proved to be a period of new constitutional developments. Brazil's military dictatorship ended and it finally adopted a modern democratic constitution. Article 5 paragraph 6 guaranteed that "liberty of conscience is inviolable, being reserved the free exercise of religious worship" (BRASIL, 1988, Art. 5, § 6). Paragraph 7 of the same article stipulated that no one should be deprived of "their religious rights or political and philosophical convictions... unless they refuse to fulfill a religious accommodation (*prestação alternativa*), as stipulated by the law" (BRASIL, 1988, Art. V, § 6). This assumes that the government ought to provide religious accommodations so that the individual can fulfill his or her civil duties. Furthermore, Article IV paragraph 2 states that Brazil will be directed by "the prevalence of human rights" (BRASIL, 1988, Art. IV, § 2). This commits the Brazilian constitution not only to religious liberty which is a human right, but also to other human rights resolution such as UN Resolution 36/55 which establishes the right "to observe days of rest and to celebrate holidays and ceremonies according to the dictates of a religion or belief system" (GENERAL ASSEMBLY RESOLUTION 36/35, 1981)⁹.

Despite the democratic revolution which occurred in the 1980s, the authoritarian legacy of "Christian secularism" has maintained deep roots in the Brazilian legal establishment. Despite the radical achievements in 1988, as Milton Ribeiro has pointed out, "in practical terms, the State has found ways to go around this [religious] liberty by means of legislation...and, in some cases, via hermeneutical jurisprudence" (RIBEIRO, 2002, 126). However, the secular justification for denying religious exemptions developed during the Brazilian dictatorship would continue after the ratification of the constitution of 1988.

The reason for the usage of the renewed usage of secular discourse to justify denial of minority religion's rights following the constitution of 1988 can be seen as a conservative reaction to these constitutional developments. The new constitutional revolution and the expansive guarantee that it gave to minority communities created greater cultural pluralization during the early years of the post 1988 republic. The constitution allowed especially for greater political participation from other minority groups such as from LGBTQ+ community, Afro Brazilian religions, indigenous peoples and culminated with the implementation of the Brazilian labor party's policy of affirmative action (*cf.* BURITY, 2020, p. 83-

⁹ For a thorough defense of this argument see CALDEIRA, Tulio Santos. *A Liberdade Religiosa Para Todos [Os Dias]*. Curitiba: Appris Editora, 2016, p. 88, 91.

107).

In light of this, more conservative Christian groups felt threatened by what they believed to be “left-wing advance” that they argued challenged and restrained their religious freedom rights (*cf.* BURITY, 2020, p. 21). The rise of the Brazilian Labor Party (PT) in the early 2002 triggered activism on the part of conservative Protestant and Catholic political establishment and coalition building between these groups. Christian politicians and public officials began to “produce defenses of their priority interests in the name of tradition and/or majorities” (*cf.* BURITY, 2020, p. 89). By 2010, the weakening of Roman Catholicism and the political and religious ascension of evangelicals led to the formation of “conservative” coalitions between conservative evangelicals and Catholics to oppose what they claimed was a progressive, secular, and communist agenda (*cf.* BURITY, 2020, p. 26)¹⁰. Evangelicals realigned themselves with conservative Roman Catholics in a social politics that advocated against abortion, euthanasia and gender ideology (*cf.* CARRANZA; CUNHA, 2018, 493).

This political syncretism resulted in the strategy of demonizing pluralism and minority religions while affirming what these advocates believed to be Brazil’s “Christian identity” and its “Judeo-Christian tradition” (BURITY, 2020, p. 26). This culminated with the impeachment of Dilma Rousseff in 2016 and the election of Jair Messias Bolsonaro an evangelical backed candidate who ran under the slogan, “Brazil above everything, God above everyone” (Brasil acima de tudo, Deus acima de Todos). Ironically, this is almost the exact same slogan used by conservative Catholic groups in the 1940s to suppress evangelicals.

3. Religious Accommodations in Current Brazilian Constitutional History (1986–2019)

In order to achieve their vision of a Christian State, these conservative Christian groups needed to use secularism to articulate their claims. Secularism became the official language in re-democratized Brazil through which religious majorities suppressed minorities’ rights in order to establish a “Christianized” Brazilian State (*cf.* BURITY, 2020, p. 101). The courts became their ally in preserving Brazil’s Christian character at the expense of minorities. A brief look at the major cases of religious accommodation for Sabbatarians illustrate that the legal arguments for denying such accommodations reflect the legacy of Brazil’s dictatorial past. In the same way that judges during the Brazilian dictatorship used secularity to deny African religionists their rights, secular Brazilian judges have upheld similar court precedents disenfranchising Jews and Sabbatarian Christians.

For instance, in 1986, the Brazilian government denied a member of the

¹⁰ On the growth of evangelicalism see BRENDA, Carranza; CUNHA, Christina Vital da. Conservative Religious Activism in the Brazilian Congress: Sexual Agendas in Focus. *Social Compass*. v. 65, n. 4, 2018, p. 486–502.

Israelite community's petition for a religious exemption to vote on the Brazilian presidential elections on a day other than Saturday, his religious holy day of worship. The national elections would be held on the petitioner's Sabbath. Brazilian attorney general Sepulveda Pertence offered the State's argument for the unconstitutionality of the religious exemption (FERNANDES, 2006, p. 29).

Writing on behalf of the Court, Justice Rafael Mayer essentially adopted Sepulveda's exact argument ruling that "reserving...for Sabbatarians a different day to exercise their right to vote [would obligate] the State, which is secular and separate from religion— to discriminate in favor of those who hold this religious conviction" (FERNANDES, 2006, p. 29). Essentially, the Court argued that allowing Jews and other Sabbatarian Christians to vote on a different day than Saturday cost the State more than disenfranchising an entire religious ethnic community. The Court relied on a false understanding of secularity that privileged Christians at the expense of other minorities.

The Brazilian Supreme Court's statist tactic of using a supposed *isonomy* or *laïcité* to justify denying religious exemptions for Jews and Sabbatarian Christian would be especially common with national state exams for high school students and tests for civil servant positions. In 2003, the state of Rio Grande do Sul proposed Law n. 11.830/200236 granting alternative testing days for government service exams on account of religious conscience. The law was subject to a Direct Act of Unconstitutionality (ADI) n. 2.806-5 by the state governor (*cf.* FERNANDES, 2006, p. 31). The Supreme Court upheld the Direct Act of Unconstitutionality. Now a Justice of the Supreme Court, Sepulveda Pertence wrote the following concurring opinion:

I agree [with the court], but I believe that the law has wider implications than simply procedural issues. Let me ask the following question, "would it be constitutional for a law originating from the Executive Power which regulated the procedures of public administration along the 'holy religious days' of worship? Would it be reasonable...for a believer in a religious faith which worships on Monday afternoon to have the right to not work on Monday and request another day to work? The conclusion is obvious, but I also consider that, in this case, there are truly violations of substantive principle of 'due process' central to the secular [*laico*] character of the Republic. (FERNANDES, 2006, p. 31, brackets mine).

It is interesting to see here that Justice Sepulveda used both an appeal to due process and the "secular nature of the State" to deny a religious exemption to over a million Sabbatarians granting them a chance to compete to participate in the Brazilian government. Ironically, due process in the United States was used to grant religious liberty to Jehovahs Witnesses, as well as Seventh-day Adventists and Jews whose liberties Sepulveda was slowly chipping away¹¹. Sepulveda's

¹¹ Steven G. Calabresi and Abe Salander, "Religion and the Equal Protection Clause," *SSRN Electronic Journal* (2012), 66, 75; For an early treatment on how religious minorities were already

interpretation amounted to a flat earth understanding of the U.S. 14th amendment¹². Unfortunately, it would be amply quoted and adopted as precedent in future Brazilian Supreme Court cases of Sabbatarians such as with the ENEM.

The question of the date on which the ENEM would be held has been a constant issue troubling Jews and Seventh-day Adventists¹³. The establishment of this national exam imposed a severe undue religious burden on Sabbatarians given that the exam would originally be held on a Saturday morning¹⁴. The Jewish Educational Center in São Paulo and the Public Affairs and Religious Liberty Department of the Seventh-day Adventist Church in conjunction with other organizations of civil society organized to challenge this mandate¹⁵. The Jewish Educational Center filed a petition to request an accommodation to take the exam on a day other than Friday sundown until Saturday sundown, their holy day of worship¹⁶. The São Paulo lower court blocked the request on the procedural grounds that an accommodation violated the “principle of *isonomy*”. The petitioners appealed to the Brazilian Supreme Court for a summary judgement.

In the Court’s summary judgement, Justice Gilmar Mendes ruled that Jewish students could not be allowed to take the exam on another day than Saturday. In order to avoid disenfranchising this population, Justice Mendes legislated his own compromise which he pulled out of his head rather than basing it on sound principles of constitutional interpretation. This compromise consisted in detaining Sabbatarians in public school classrooms for approximately twelve hours without food to await to take the exam until after the sun had set. This consisted in Justice Mende’s understanding of *isonomy*¹⁷.

using the Due Process Clause against the states see also Alonzo T. Jones, “Due Process of Law and the Divine Right of Dissent,” (New York: The National Religious Liberty Association, 1892), 5–6. On the cases that incorporated these clauses see *Everson v. Board of Education*, 330 U.S. 1 (1947) and *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

¹² For a thorough understanding of the Fourteenth Amendment and its incorporation against the states after 1868 see AMAR, Akhil Reed. *America’s Unwritten Constitution: the Precedents and Principles We Live By*. New York: Basic Books, 2015, p. 118–120; 123; 156–157; 161; 164; 169; 171; 215–216; AMAR, Akhil Reed. *The Law of the Land: A Grand Tour of Our Constitutional Republic*. New York: Basic Books, 2015, p. 114–115.

¹³ ENEM stands for National High-school Exam and is the equivalent to the American ACT or SAT exam. It is a standardized test which was taken on Saturday usually between October and November.

¹⁴ Anonymous, “Suspensa Decisão que alterava data do ENEM para estudantes Judeus” *Notcias STF :: STF - Supremo Tribunal Federal*, November 23, 2009, accessed November 23, 2020, <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=116416>.

¹⁵ Luiza Tenente, “Sabatistas Comemoram Que Enem Seja Em Dois Domingos: ‘Era Muito Cansativo’,” October 10, 2017, <https://g1.globo.com/educacao/enem/2017/noticia/sabatistas-comemoram-que-enem-seja-em-dois-domingos-era-muito-cansativo.ghtml>.

¹⁶ *Suspensão de Tutela Antecipada*, 1 STA 389 (São Paulo 2009).

¹⁷ Wagner Wille Nascimento Vaz has rightly noted that confining students for hours without food violates the principle of *isonomy* since “whoever submits to hours of waiting and physical and psychological exhaustion...in order to begin the exam only after sunset, will most definitely not take the test under equal conditions that allow the examining committee to select the most qualified candidates.” In VAZ, Wagner Wille Nascimento. “A guarda do Sábado e a isonomia nos

Justice Mendes argued that making Sabbatarians test under these conditions was necessary and reasonable, since to do otherwise would be to make every person a law unto her/himself since “there are other religious confessions who possess holy days different from the petitioners” (VAZ, 2013, p. 3) Gilmar argued that granting religious exemptions would trigger a “multiplication effect” (efeito multiplicador) since “if the rest of the religious groups in our country were to seek such exemptions, it would be impossible the realization of any public service exams, text or national exam, due to the multiplicity of claims which would lead to the multiplicity of exams” (VAZ, 2013, p. 3).

Justice Mendes concluded his decision by stating that “allowing religious accommodations for a specific religious group would, in a summary judgement, violate the principles of *isonomy* and state neutrality before the religious phenomenon” (VAZ, 2013, p. 3). He then went on a long dicta promoting his particular political theory of the State. He cited Sepulveda Pertence’s decision noted previously where Pertence ruled that it would not be “reasonable” to grant religious exemptions for religious minorities (FERNANDES, 2006, p. 31). Justice Mendes also parroted Sepulveda’s completely ill-founded argument that granting religious exemptions to Sabbatarians would violate the “principle of due process” which are “central to the secular (laico) character of the Republic” (BRASIL, 2009a, parenthesis mine).

On May 14, 2010, the Brazilian Supreme Court finally issued an official decision. Writing for the court majority, Gilmar Mendes reiterated the same decision made in the summary decision of 2009 (*cf.* BRASIL, 2010, p. 9). However, in the Court’s decision he elaborated further on his theory of the Brazilian state and his vision of separation of church and state. This is particularly notable since his views reflect a synthesis of Ruy Barbosa’s positivism and the Vargas era’s conception of Brazil as a “Christian” nation and the military dictatorship’s statist and secularized Christian conception of the State. He writes the following:

In this sense, Justice [Hugo] Black of the U.S. Supreme Court conclusion in the famous case *Everson v. Board of Education* would not be applicable to the Brazilian reality, according to which the disestablishment of religion of the U.S. Constitution’s First Amendment would not only preclude “any State and the Federal Government from founding a church,” but also both from approving any laws that favor one religion or help all.” According to Thomas Jefferson, the respective clause should be understood as building a “wall” between Church and State (BRASIL, 2010, p. 9).

This dicta from Justice Mendes is significant, since in order to deny religious accommodations for religious minorities, he justified this on the grounds that there is no sharp distinction separating church and state. Although a seeming contradiction, reading this decision in light of Brazilian republican constitutional

vestibulares e concursos públicos: liberdade religiosa e igualdade.” Trabalho de Conclusão de Concurso (TCC). University of Brasilia, 2013, 3, (39-40).

history illuminates Mendes understanding. Justice Mendes opinion reflected the historical understanding of religious liberty in Brazil. Religious liberty was the product of a dominant majority. The benchmark for equal treatment was Christianity in its Catholic and Protestant forms. Religious minorities ought to accommodate themselves to the majority's religious traditions and *laïcité* must be understood in a distinctly Christian form.

Gilmar Mendes' opinion denying Sabbatarians their constitutionally protected rights reflects a legal tradition of using secular discourse to privilege a dominant religious *milieu*. Other countries have also used the same discourse of *isonomy* which Justice Mendes used in his opinion to deprive minority religions of their constitutional rights. In the U.S., an opinion from the U.S. Supreme Court made the same exact argument as Mendes stating that granting religious accommodations for a Native American constituted a privilege making "each conscience a law unto itself" and violated the equality of democracy¹⁸. In Japan, the Japanese Supreme Court made a similar argument when it denied a Christian widow's religious liberty claim to not have her husband enshrined in Japan's Yasukuni Shrine. The widow believed that the enshrinement violated her religious conscience since it was conducted in a Shinto ritual (FIELD, 1993, p. 142). The Court reasoned that to comply with the widow's claim violated the principle of equality by granting the widow a special privilege placing her at an advantage compared to other religions (i.e. Shinto) (*cf.* NAKAYA, 1996, p. 503).

A brief comparison of Justice Mendel's decision in the ENEM cases with these international court decisions reveal that, in all three cases, the discourse of *isonomy*, democracy, and in Brazil particularly *laïcité* have been weaponized to disregard the religious liberty rights of religious minorities at the expense of a dominant religious majority. In the Brazilian context in particular, one sees that the usage of secular arguments has been a tactic developed in the Brazilian dictatorship in order to preserve a predominantly Christian establishment at the expense of religious minorities. The precedents which such individuals as Sepulveda Pertence have made prior to Brazilian re-democratization have continued to endure in the Brazilian Supreme Court's jurisprudence. The new political coalitions formed between Catholic and Protestants against the perceived threat of "cultural marxism" have generated a greater push to use secular discourse to privilege a secularized Christian establishment¹⁹.

The words of French Political scientist Dennis Lacorne commenting on French church and state relations summarize well the current state of Brazil with regards to religious liberty. Lacorne says "[A]lthough only 50% of the French identify as Catholic," he says, "we basically have kept Catholic reflexes and some

¹⁸ Employment *Division Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990) at 878 and 885 (J. Scalia Majority).

¹⁹ For specific information on the current state of violations of church and state relations in Brazil see Veronica Giménez Béliveau, "Los retos de la laicidad y la secularización en el mundo contemporáneo," in *Los retos de la laicidad y la secularización en el mundo contemporáneo*, ed. Roberto J. Blancarte, 193-218, (London, UK: Routledge, 2020), at 196, 203, 210, 215.

have argued that our secularism is really a Catho-secularism that privileges the Catholic church and is more reluctant to help other religions” (LACORNE, 2013, youtube).

These words summarize well the current state of religious freedom in Brazil. Although most Brazilians might deem themselves nominally Catholic, these “Catholic” reflexes have influenced the highest echelons of power in Brazilian society. The communities adversely effected by this exercise of power have been Jews, Sabbatarian Christians, Candomblé, Umbanda practitioners as well as other non Christian dissenting minorities.

4. Towards a Decolonial Shift in Brazilian Church State Relations Christian (2020–Present)

On November 27, 2020, after an eleven year struggle, the Brazilian Supreme Court finally ruled on a narrow decision granting an alternate test date for public service exams on account of religious belief so long as this did not violate the principle of *isonomy* (cf. LEMOS, 2020). Despite this revolutionary decision, Sabbatarians continue to face challenges obtaining religious accommodations for non-civil service exams and obtaining full access to education (cf. MARTEL, 2007, p. 11-57). African Brazilian religionists continue to suffer similar challenges albeit on an even more intense scale²⁰.

This paper has attempted to show that the arguments for denying religious exemptions and/or accommodations for these individuals reflect a tradition developed as a result of Brazil’s republican history and authoritarian dictatorial past in order to promote a particularly secularized Christian establishment. This raises the question of “how can minority communities challenge these historic systems of oppression?”.

One potential action plan for the current challenge facing Sabbatarians and African religious minorities may lie in greater political participation between both Sabbatarians and African Brazilian religionists. This has both a discursive and practical component. On the discursive plane, this means developing a decolonial epistemology that is humble and aware of the power relationships in its surrounding (cf. MADURO, 2015). This decoloniality, as Raimundo Barreto points out “advances a liberating and imaginative indigenous agenda which fosters local agency and recovers suppressed memories and world views” (BARRETO, 2019, p. 56). This means respecting the rights of each other to exist in the public square.

Such a decolonial epistemology happens in community, is contextual and

²⁰ For more on the historical state preference for Christian religions at the expense of African religions and the current challenges that African Brazilian religions face see MARIANO, Ricardo. Pentecostais em Ação: A Demonização dos Cultos Afro-brasileiros. In.: GONÇALVES, Vagner (org.). *A Intolerância Religiosa: Impactos Do Neopentecostalismo No Campo Religioso Afro-Brasileiro*. São Paulo: EDUSP, 2015, 119–149.

constantly self-examines itself. (*cf.* BARRETO, 2019, p. 88). This requires challenging “the reality of colonial oppression of and violence against the colonized; that is, the reality of coloniality” (GANDOLFO, 2019, p. 248-249). It also requires embracing our universal human condition in such a way that it leads to the respect of different epistemic traditions (*cf.* VAN KLINKEN, 2020, p. 149). It is ultimately a commitment to identifying, contesting, and challenging systemic religious oppression (*cf.* VAN KLINKEN, 2020, p. 248-249). This means that both Sabbatarians and African minority religions must break beyond monolithic interpretations that privilege certain traditions (*cf.* RIBEIRO, 2014, p. 38). It means seeing the equal value inherent in all religions to participate in the public and political sphere (*cf.* RIBEIRO, 2014, p. 55). This requires a mutual commitment to furthering the cause of justice.

On the practical level, we also believe that both Sabbatarians and African religionists must move beyond the discursive plane towards the development of active political coalitions. This can be done through greater partnerships between both Sabbatarians and African religionists to develop laws that grant religious accommodations for the religious practices of vulnerable populations. We believe that greater participation and coalition building between Sabbatarians and other religious minorities such as Candomblé and Umbanda can function as a counterweight to the current Brazilian Christian majority. We also believe that religious exemptions do not harm but enrich Brazilian plurality vital for a functioning democracy (*cf.* GRIM, 2009; 2013).

Experience has shown that exemptions for African religionists has not detracted from the functioning of the government. Through grassroots mobilization in Porto Alegre and with the support of progressive politicians, African Religionists have managed to overturn zoning regulations limiting “sound pollution”. These laws targeted the hours of religious worship. They also effected Sabbatarian business since they limited noise during Sunday hours for Catholic and Protestant worship services. Through grassroots mobilization with organizations such as Movimento Negro Unificado and other feminist organizations, African religionists have benefited themselves and indirectly Sabbatarians (*cf.* AVILA, 2009, p. 100-126).

A similar case can be witnessed with exemptions for Sabbatarians. A case study conducted with accommodations for Jew and Sabbatarian Christians have revealed similar results. On the day that Justice Gilmar Mendes made his pronouncement denying religious accommodations for Sabbatarians, seven Brazilian states had already adopted laws which granted accommodations for public service exams on account of religious belief (*cf.* CALDEIRA, ANO, p. 126). These Brazilian states were Paraná, Brasília (Federal District), Rondônia, Mato Grosso do Sul, Pará, and Rio de Janeiro. All of them have adopted laws which granted accommodations for public service exams on account of religious belief (*cf.* CALDEIRA, ANO, p. 126). With the exception of Pará and Rondônia, four of the states are on the top eight states with the highest human development indexes with Distrito Federal occupying the first place, São Paulo third, Rio de Janeiro

fourth and Mato Grosso do Sul eight (*cf.* FRANCISCO, 2020). Relative to Northern Brazil, a historically poor area of this country, Rondônia ranks third and Pará fifth in human development. As of November of 2020, none of these states have experienced “any damage in their public service or in their educational system” as Mendes feared²¹. This experience has seen similar results in other parts of the world (*cf.* GRIM, 2009).

Therefore, this research article concludes that building coalitions between diverse elements of Brazilian society can have positive results. São Paulo state congresswoman Damares Moura Kuo has been pioneering some of these efforts (*cf.* TORRES, 2020). These coalitions have shown significant results (*cf.* AVILA, 2009, p. 125-152). Together these minorities can provide a valuable counterweight to the Brazilian secularized Protestant and Catholic majority. This in turn, may lead to the possibility of these marginalized communities participating fully in the public sphere.

Conclusion

This paper has attempted to show that the arguments for denial of religious accommodation for Sabbath observers in national government exams in Brazil derive from an anti-liberal tradition historically prevalent in Brazil’s republican history. This tradition has disenfranchised minority religions such as African religions and Sabbatarians while privileging Christianity in its Catholic and later Protestant forms. As a result of the Brazilian dictatorship, this tradition has been “secularized” and remained intact following Brazilian re-democratization both via the new wave of a syncretistic Catholicized Protestant political theology and through Brazilian Supreme Court precedent which sees Christian tradition and moral family values as a necessary component for the State. This paper has concluded that greater political and social participation on the part of both Jews, Sabbatarian Christians and African religionists can be a starting point for granting greater freedoms and victories for these minorities. By themselves, both Candomblé and Sabbatarians despite their numbers have managed to make significant strides in obtaining equal rights in the Brazilian public sphere. Imagine what they can achieve together advocating for the human rights of religious minorities.

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²¹ The seven states where laws n 11.662/1997 and 16.653/2010 of Paraná, n. 1.784/1997 of Brasília, 2.104/2000 of Mato Grosso do Sul, 6.140/1997 of Pará, 1.631/2006 of Rondônia, 12.142/2005 of São Paulo and law. n 2.874/1997 of Rio de Janeiro which addresses, in particular, the treatment towards Jews on religious days of worship. In CALDEIRA, Tulio Santos. *A Liberdade Religiosa Para Todos [Os Dias]*. Curitiba, PR: Appris Editora, 2016, p., 127.

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