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Religion and Law in the Non-Confessional Chilean State

I. PRELIMINARY CONSIDERATIONS

The State of Chile is non-confessional. However, the term "secular," though susceptible of varied interpretations, is not explicitly included in Chilean law, and is scarcely apparent in case law and national legal doctrine. Generally, the term appears in public discourse only when there is concern about possible "interference" by religious groups in legislative debates. However, since March 2014, secularism has repeatedly appeared in the national debate, especially in regards to education. Thus, it is a good time to consider how religious freedom is protected in Chile and how this protection can be tested. In fact, the new Government expressly included those issues in their agenda, backed by the political coalition that currently has the majority. In the government program of President Michelle Bachelet, the following reference is included: "Secular State: the new constitution, together with reaffirming the separation of state and churches, and state neutrality toward religion, with full respect for religious and ethical beliefs of the people, and the practice of religion, will ensure equality among different faiths. They must also be removed from the law and regulations on state powers, reference books, books oaths or any reference to symbols of a religious nature."

For starters, it must be remembered that, as in other Latin American countries, Roman Catholicism ceased to be recognized as the state religion of Chile not due to conflict among religions, but to the rise of liberal attitudes that included heightened anti-clericalism. Moreover, the period of greatest historical religious conflict (1856) was far removed in time from the end of state religion in Chile in 1925. The latter event has captured the interest of both historians and legal scholars, especially the means by which it was accomplished: the legislation was preceded by an oral agreement between the secretary of state of the Holy See and the president of the Republic in exile at the time. It is interesting to note that this mechanism had previously been used and would yet be used at other times in the history of the Republic. This practice, to settle matters by agreement before the State adopts corresponding regulation, has led prominent authors to refer to such norms as "concordat laws."[1]

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1. The *precursor* of this denomination has been Professor Precht [See Jorge Precht Pizarro, *Derecho Eclesiástico del Estado de Chile: Análisis Históricos y Doctrinales* (Santiago: Ediciones Universidad Católica de Chile, 2001), 23-108], who mentions the Law of 24 August 1836 for which the President of the Republic was authorized to lead to Rome the *preces* for the establishment of the Archbishopric of Santiago, and the bishopric of Coquimbo and Chiloe. Also, the author gives other examples of laws promulgated by the civil authority preceded by an exchange and later agreement between the Holy See and the government, as it occurred regarding the Law about the reform of the regulars (1850) or the exchange that came to be with the Law about

But even beyond these considerations, we should remember that the term "secularism" was not included or invoked at the time state religion came to an end or afterwards. The termination of state religion was affected constitutionally in two ways: by not reiterating in the new Constitution the former statements about Catholicism as the official religion and by recognizing freedom of thought, conscience, and free manifestation of all religious beliefs among the list of fundamental guarantees.

Some authors argue that Chile is not a secular State. Professor Precht is clear on this point: "Chile has never been a secular State. Whoever studies the genesis of the separation of Church and State, agreed upon in 1925 between the Chilean State and the Vatican and imposed on the Archbishop of Santiago, Monsignor Crescente Errázuriz, knows that the word secularism is not mentioned and that the spirit of secularism is neither found in texts nor in practices…. The Catholic Church in Chile never understood separation as the creation of a secular State, but rather as the end of regalism or jurisdictionalism, that is, the end of the *patronato* and Church funding at the same time."[2] In any case, since the separation of church and state, there has prevailed a spirit of collaboration between the two.

At the present time in Chile, public manifestation of belief is not hindered, nor are there hostile encounters between religious and state authorities. Moreover, certain public religious traditions have continued since the colonial period, such as the Cristo de Mayo procession, which has taken place uninterrupted since 1647, and many others in honor of the Virgin or of patron saints in various locales.

Nor does an articulate or sustained debate exist in Chilean society on the idea of a secular State (even less about subordinating religion to state regulation) beyond some discussion in newspapers or about the character of public education that should be secular. While it is a subject underlying the discussion of some legal projects, it is at most found in the principles of some NGOs or corresponds to the interests of academic centers.[3]

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the conversion of *Tithe* (15 October 1853) in which the Roman Pontiff designated the Archbishop of Santiago to lead the necessary conversations towards a new system for the sustainment of the clergy on behalf of the Holy See. Thru the apostolic letters**,** finally the conversion of *Tithe* was authorized. The local ecclesiastical authority's posture and that of the Holy Congregation of Extraordinary Ecclesiastical Affairs can be recognized in the documents compiled in Fernando Retamal Fuentes, *Chilensia Pontificia. Monumenta Ecclesiae Chilensis,* vol. 1 (Santiago: Catholic University of Chile, 1998), 490-493 and 852-859. But, beyond doubt, the example that brings up the biggest agreement among the authors as a paradigm of the so called "concordat laws" would have been Law 2.463 of 1910 that creates the Military Vicariat of Chile**.** In any case, the Law about holydays of 1915, also preceded the end of the state confessionalism, whose modality of consensuate state and religious will was only interrupted in this subject towards the end of the 20th century.

2. Jorge Precht Pizarro, "Secular State in Four Latin American Constitutions," *Revista de Estudios Constitucionales* 2 (2006): 709.

3. Among the organizations that directly favor secularism, although without much public relevance, the Secular Institute of Contemporary Studies (http://www.ilec.cl) can be mentioned. It is a not-for-profit private law corporation, whose authorities are linked to the Great Lodge of Chilean and promote a Latin-American association of international secular institutions. Their program points out that the institution "watches over for the absolute abstention of the State in religious matters (…). Fights the privileges and advantages of powerful religious institutions that seek to interfere in faith related matters of citizens in favor of their own ecclesiastical interests." In that same orientation lies the Latin-American Faculty of Social Science (FLACSO), given that from its Equality and Gender Program it is related to other initiatives, as the ibero-american Network for the secular liberties that define "secularism as a process of transition from sacred legitimated forms to democratic or popular will based forms enables us also to comprehend secularism not only in the strict sense of state-church separation. In fact, there exists many states that are not formally secular, but establish public policies that alien to the doctrinal rules of the Churches and sustain its legitimacy more on popular sovereignty that in any form of ecclesiastical reputation" (http://centauro.cmq.edu.mx:8080/Libertades/PagLisSec.jsp? seccion=1). On the other hand, among the academic field, concern has concentrated on efforts to favor the development of ecclesiastic law studies in the country, thru optional classes in diverse universities. Ten years ago, such classes had already started being dictated in the Faculty of Law of the Pontifical Catholic University of Valparaiso and later also in the University of Talca and the Pontifical Catholic University of Chile. Furthermore, the monthly bulletin of the the Religious Freeom Center (Centro de Libertad Religiosa (CELIR) – Derecho UC *Boletín Jurídico*, http://www.celir.cl) serves as a contemporary national legal observatory. The Institute of Religious Studies of the Miguel de Cervantes University (http://www.umcervantes.cl/index.php? modulo=nuestra_religioso.html) contributes to the study of law and religion that promotes minority religious institutions.

II. NORMATIVE CONTEXT[4]

A. Historical Background

Before the Spanish arrived in the lands that now comprise the national territory of Chile, these lands were inhabited by indigenous peoples of various ethnicities who were subject to Inca rule from the extreme north to the Maule River in the south. South of the Maule was Mapuche land until the 19th century, while the Yamanas in the extreme south led a nomadic existence with their canoes in the area of Cape Horn. The beliefs of these native peoples included various worldviews of the south and the extreme south that remained quite isolated from the communities of the north. It would strain definition to consider their structures as monist systems inclusive of political, social, and religious aspects. Such categorization is not adequately descriptive of pre-Columbian reality, for which the lack of written sources impedes exhaustive understanding of the content of original native worldviews. Since the arrival of the Spanish, who introduced the writing system, the greatest difficulty in understanding these worldviews at this time lies in the syncretism of some beliefs and the difficulty of comprehending elements of belief that are no longer practiced today, such as polytheism, human offerings (even of children), or polygamy practiced by some communities to provide enough labor caused by the absence of work and slavery.[5]It is difficult, then, to place indigenous beliefs into categories derived from other systems, even though it cannot be denied that there was a cultural, religious, and political identity shared by members of the same ethnic group.

From the European discovery of the region in 1540 until the mid-19th century, there was no significant presence of non-Catholics in Chile, partly because of restrictions established by the Spanish Crown, based on its right of *patronato* and the imperative missionary duty implied by its presence in these places.[6] With the beginning of the independence process in 1810, successive governments claimed for themselves the rights the Spanish king had enjoyed, with the result that the relationship system between Church and State continued to be based on the right of royal *patronato*, in spite of the fact that the Catholic Church did not officially recognize this right as belonging to the post-royal government.[7]

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4. For a study of constitutional, international and of Law Nº 19.638 regulation text on the establishment of religious organizations, their relationship to canon law, an introduction of religious freedom in Chile and an updated catalog of works dealing with Ecclesiastic Public Law, Ecclesiastic Law of the State, Church State Relations and religious freedom in Chile see René Cortínez Castro, Ana María Celis Brunet, and María Elena Pimstein Scroggie, eds., *Derecho Eclesiástico Chileno: Normas Concordadas y Comentadas* (Santiago: Ediciones Universidad Católica, 2010).

5. Recent research trying to clear certain unknowns can be found for all subjects. For example, in relation to the andean deities, see Victoria Castro, *De Ídolos a Santos Evangelización de la Religión Andina en los Andes del Sur* (Santiago: Ediciones de la Dirección de Bibliotecas, Archivos y Museos, 2009). In recent research with application of new techniques, which aims to look at human sacrifice, see Álvaro Sanhueza, Lizbet Pérez, Jorge Díaz, David Busel, Mario Castro, and Alexander Pierola, "Paleoradiología: Study Imaging of the Child of Cerro El Plomo," *Revista Chilena de Radiology* 11 (2005): 184-190. And to contextualize the practice of polygamy among the Mapuche, it should be recalled that "the Mapuche marriage rules were dominated by war to their society was under conditions." The system of widespread exchange of women tended to make two fundamental issues: high reproduction of the population and the ability to seal military alliances. "This is why the Mapuche advocated polygamy as central to society." (See José Bengoa, *History of the Mapuche People: 19th- 20th Centuries*, 6th ed. corrected (Santiago: LOM Ediciones, 2000), 131.)

6. For a synthesis that ranges from the Indian *patronato* to the missionary State, see Carlos Salinas Araneda, "Las Relaciones Iglesia – Estado en América Indiana: Patronato, Vicariato, Regalismo," in *Estado, Derecho y Religión en América Latina*, ed. Juan Navarro Floria (Buenos Aires: Marcial Pons, 2009), 38-52.

7. The vast work referred to the Holy See's relations with the Church of Chile and the national governments, contributes to the profundizations of the relationship style between the Catholic Church and the State. See Fernando Retamal Fuentes, *Chilensia Pontificia. Monumenta Ecclesiae Chilensia* (Santiago: Universidad Católica de Chile, 1998 vol. 1 [volumes 1 – 3], 2002 vol. 2 [volumes 1 – 2], 2006 vol. 2 [volumes 3 – 4]). In regards to the constitutional development, it must be kept in mind that the period between the 1810 open *Chapter* until the 1818 independence, bring up a series of constitutional texts. In the 18 September 1810 Minutes, remain the Kings rights, including *Patronato*. The 1812 constitution was more direct establishing that "The Apostholic Catholic religion is and will forever be Chile's religion," but omitting the "roman"

The Constitution of 1833 contemplated a series of laws that rounded out the relationship system between the Catholic Church and the State of Chile. These included a requirement that the president of the Republic swear an oath upon taking office to observe and protect the Catholic religion. The Constitution also alluded to the possibility that the State of Chile would enter into concordats with the Catholic Church. It went on to establish that "the religion of the Republic of Chile is the Catholic, Apostolic and Roman religion, to the exclusion of public exercise by any other (Art. 5)." This particular text became the subject of the interpretive law of 27 July 1865, according to which, "The Constitution allows those who do not profess the Catholic, Apostolic and Roman religion to practice what religion they may within the confines of privately-owned buildings," adding in its Article 2 that non-Catholic foreigners, called dissidents, "could maintain private schools for the teaching of their own children in the doctrine of their religions." However, some objective facts suggest that, notwithstanding the restrictive norms about the public manifestation of non-Catholic beliefs, social reality already included various confessional groups that were not harassed and whose members were not persecuted.[8]

The so-called theological conflicts, whose end came with the promulgation of the secular laws,[9] marked the end in practice of state religion, which acquired legal expression only with the constitutional text of 1925. Although the transition towards a non-confessional State was consolidated normatively at the beginning of the 20th century, the process included a series of laws that tended towards the secularization of Chilean society, among them the Organization and Attributions of the Courts Act, the Cemeteries Act, the Civil Marriage Act and the Civil Registry Act.[10]According to tradition, the secretary of state of the Holy See verbally offered to the president of the Republic, who was in exile at the time, that in order to obtain the Vatican's consent to the separation of Church and State, Chile could not become an atheistic State and freedom of education

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qualification." Then, in virtue of the 1814 Constitution, the power concentrates on the Supreme Director, who should act on some .occasions with the integrated Senate agreement, among others, for being ecclesiastical. In 1818, after the Declaration of Independence, in the provisory Constitution it is declared simultaneously that the catholic religion is the "only and exclusive one of the State of Chile" and that it is not allowed "another cult doctrine against that of Jesus Christ" (art. 2).There is an insistency that the catholic Church-State relations are governed by the regimen of the *Patronato*. That will be highlighted in the in the 1822 Constitution, arts. 97 – 98, as in the1823 Constitution, art. 18 Nº 10 and in that of 1828 (art. 83). The Holy See never recognized the right of *Patronato* of the new governors, and for long time avoided referring to Chile as a "State" or "Republic," preferring terms as "region" or "territory." The first pontiff document in which is named directly Chile, dates from 1840: see Fernando Retamal Sources, *Chilensia Pontificia. Monumenta Ecclesiae Chilensis* (Santiago: Universidad Católica de Chile, 1998), vol. 1, t. 1, 274 – 283. The constitutional text of 1822, goes beyond the narrow link between the Catholic religion and the State duties pointing out that: "Its protection, conservation, pureness and inviolability is one of the first duties of the chief of State, as well as the inhabitants of the territory its greatest respect and veneration, regardless of their private opinions" (art. 10, and the same regulation will be kept in the next Constitution). The State Council conformation according to the 1823 Constitution, must contemplate one ecclesiastic member that intercedes in the draft laws, and in the naming of ministers. The federal laws of 1826-1827, pronounced themselves in some relevant subjects, for example, pointing out that the priest will be chosen in popular vote and proposed for its investiture to the ecclesiastic authority (Law of 29 July 1826). The formula of the 1828 Constitution that established that the religion of Chile is Catholic, Roman Apostolic and excludes the public exercise of any other, will be repeated in the constitutional text of 1833.

8. Occasionally this period is sought to be caricaturized by identifying it as religious prosecution, without contextualizing it with facts that realize the social and regulatory tolerance towards other faiths. For example, since 1842 an attempt was made to make Anglican missions in the Araucanía, whose failure is not attributable to the State *confessionalism* but to the same Mapuche. See André Menard Poupin and Jorge Pávez Ojeda, eds., *Mapuche y Anglicanos, Vestigios Fotográficos de la Misión Araucana de Kepe, 1892-1908* (Santiago: Ocho Libros Editores, Colección de Documentos para la Historia Mapuche, 2007).

9. In subjects of Church-State relations, this period is the most treated by national authors. The dispute, though called "religious struggles," was not marked by disagreements between Catholics and members of other faiths as in Europe. As in other Latin American territories, the debate concentrated among Catholics (religious or political) and anticlerical, being therefore an ideological, rather than a religious, dispute. The original texts between civil and religious authority exchanges are located in: Fernando Retamal Fuentes, *Chilensia Pontificia: Monumenta Ecclesiae Chilensis* (Santiago: Universidad Católica de Chile, 1998), vol. 1, vol. 2, 526 – 586.

10. The first, of 1875, supersedes the ecclesiastical privileges and the use of force. The following will be respectively on 2 August 1883, 16 January 1884, and July of 1884, and thru them shall be secular cemeteries established, civil marriage regulated, and government employees shall be established as ministers of faith of birth, marriage and deaths, instead of Catholic Worship Ministers.

would have to include private education and not include the word "secular." Other terms of the agreement that were probably also expressed would have included the necessity of expressly repealing all regalist abuses of the 1833 Constitution (and so obtain the absolute end of the law of *patronato*); the need to include the concordats, together with other international pacts, to the end that they might be fulfilled; and the need to establish adequate economic compensation for the elimination of Church funding.[11]

This way, without alluding to actual separation, without mentioning the Catholic Church, and without invoking the idea of a secular State, the confessional State came to an end. The text of the Constitution of 1925, in its Article 10 stated that:

> The Constitution ensures to all the inhabitants of the Republic, 2nd:
>
> The manifestation of all beliefs, freedom of conscience and the free exercise of worship that is not contrary to morality, good customs or public order, and therefore, respective confessional faiths can erect and maintain temples [sanctuaries/religious buildings][12] and its dependencies to the conditions of safety and hygiene determined by law and regulations. Churches and religious institutions of any cult will have the rights granted and recognized with respect to property, by the laws currently in force, but are subject in the guarantees of this Constitution to the common law for the exercise of their future goods. The temples and its dependencies, destined for a worship service, shall be exempt from contributions.

Perhaps the fact that this took place far from peak moments of conflict, led it to finally be a peaceful time, and in that sense contributed to the very attitude of the Chilean bishops who expressed that "in Chile the State is split from the Church; but the Church will not detach from the State and will remain ready to serve it; to attend for the good of the people; to ensure the social order; to come to the aid of all, without exempting adversaries, in times of distress in which all often, during major disturbances, remember it and ask help."[13] Even in spite of not favoring the term confessionalism, Pope Pius XI stated that "rather than breaking, it seems a friendly coexistence, which means a state of affairs that the Catholic Church may, as we hope, exercise its mission fully and effectively."[14]

B. At the Constitutional Level

The current Constitution (1980) minimally altered the wording, establishing as a fundamental guarantee in its Article 19 No 6 that:

> The Constitution protects: the freedom of conscience, the free manifestation of all beliefs and the free exercise of all worship that is not contrary to morality, good customs or public order. The religious confessions may erect and

11. This has been a topic of interest of several publications. Among the most recent in the legal sphere, review: Pizarro, supra n. 1 at 83-107; Carlos Salinas Araneda, *Lecciones de Derecho Eclesiástico del Estado de Chile* (Valparaíso: Universitarias de Valparaíso, 2004), 58-64; Alejandro Silva Bascuñán and María Pía Silva Gallinato, *Tratado de Derecho Constitucional*, vol. 11 (Santiago: Jurídica de Chile, 2006), 220–223; María Elena Pimstein Scroggie, "Relaciones Iglesia y Estado: Una Perspectiva Evolutiva desde el Derecho Chileno del Siglo XX," in *V Coloquio del Consorcio Latinoamericano de Libertad Religiosa: Actualidad y Retos del Derecho Eclesiástico del Estado en Latinoamérica* (México, 2005), 75-99. From an historical perspective their background, process, and the scope of the separation between Church and State has been addressed: Sol Serrano, *¿Qué Hacer con Dios en la República? Política y Secularización en Chile (1845 – 1885)* (Mexico: Fondo de Cultura Económica, 2008), 376; and Máximo Pacheco Gómez, *La Separación de la Iglesia y Estado en Chile y la Diplomacia Vaticana* (Santiago: Andrés Bello, 2004), 333.

12. Note that the Spanish word *templos* does not translate into English, strictly speaking, as "temples" but rather has the sense of "church" (building) or sanctuary. Likewise, *cultos*, does not have the pejorative sense of the English "cult" but rather connotes a religion or faith group.

13. Bishops of Chile, "Pastoral Colectiva de los Obispos de Chile sobre la Separación de la Iglesia y el Estado," *La Revista Católica* 25(1925): 491.

14. Quoted in Jorge Precht Pizarro, *Church of the Chilean State Law* (Santiago: Universidad Católica de Chile, 2000), 107.

> maintain temples and their dependencies under conditions of safety and hygiene determined by laws and ordinances. Churches and religious institutions of any cult will have the rights granted and recognized with respect to property, by the laws currently in force. The temples and its dependencies, destined for a worship service, shall be exempt from contributions.[15]

At a constitutional level, usually scholars focus the analysis solely in the historical contextualization of the separation of the State and the Catholic Church in 1925 and the establishment of full recognition of freedom of religion, without deepening, for example, its content and scope in the light of existing international instruments.[16] Chile has pledged that the international instruments that recognize religious freedom, and about fifteen treaties relating to it, even if the value is below constitutional, are in force.

Other fundamental guarantees integrate and make effective the exercise of religious freedom. Among them certainly is included equality before the law and the subsequent elimination of arbitrary discrimination (art. 19 Nº 2); the right to found, edit and maintain newspapers, magazines and newspapers (art. 19 Nº 4 inc. 4th); the right to education (art. 19 Nº 10) and freedom of education (art. 19 Nº 11); the freedom of expression (art. 19 Nº 12) without the State being able to monopolize the media (inc. 2º); the right to assemble peacefully (article 19 Nº 13) and to associate (art. 19 Nº 15); the right to submit petitions to the authority (art. 19 Nº 14); the right to acquire all kinds of goods (art. 19 Nº 23) and property rights (art. 19 Nº 24).

The citizen is able to apply for judicial relief, the *Recurso de Protección* (constitutional action, art. 20), against any arbitrary or illegal acts or omissions of privation, perturbation, or threat in the legitimate exercise of religious freedom. However, there are scarce situations under the decisions of the Courts of Justice, partly because of the national tendency not to legalize conflicts, and maybe also partly due to the caution with which beliefs are treated, almost as if it were a mere devotional matter. The cases that have had greater publicity in the country refer to Jehovah's witnesses seeking judicial review in cases of blood transfusions. This draws attention considering their scarce presence in the country, which according to the 2002 Census, traduces in a total of 119,455 inhabitants of 15 or more years of age.[17] Moreover, it has been of great media

15. Political Constitution of the Republic, art. 19 No 6 (Official Diary, 24 October 1980, last enactment, 20 September 2005).

16. In general, the recent studies of outstanding constitutionalists refer to the religious freedom guarantee content, without stopping to question beyond the context and scope of the 1925 separation. See José Luis Cea Egaña, *Derecho Constitucional Chileno,* vol. 2 (Santiago: Universidad Católica de Chile, 2004), 200-226; Humberto Nogueira Alcalá, "La Libertad de Conciencia, la Manifestación de Creencias y la Libertad de Culto en el Ordenamiento Jurídico Chileno," *Revista Lus et Praxis* 12 (2006): 13 – 41; Alejandro Silva Bascuñán, *Tratado de Derecho Constitucional,* vol. 11 (Santiago: Jurídica de Chile, 2006), 220-223; Ángela Vivanco Martínez, *Curso de Derecho Constitucional. Aspectos Dogmáticos de la Carta Fundamental de 1980*, vol. 2 (Santiago: Universidad Católica de Chile, 2006), 365-369. This last professor hands out a synthesis of diverse positions about the regulation range of the international treaties in the barely mentioned work (95–105). In any case, regarding the international treaties there were some modifications to the respect of compulsory preventive control and doctor of the Constitutional Court in subjects regarding constitutional organic laws and about the eventual unconstitutionality of one or more of its precepts (see Law Nº 20.381 that modifies Law nº 17.997, *Organic Constitutional law of the Constitutional Court* [Official Diary 28 October 2009], as the decision of the same Court in the exercise of preventive control of the draft law: see Constitutional Court, Ruling Rol 1.288 of 25 August 2009, http://www.tribunalconstitucional.cl/index.php/ sentencias/download/pdf/1214).

17. Among the articles related to the topic, review: Enrique Alcalde Rodríguez, "Derecho a la Vida y Libertad Religiosa: El Caso de los Testigos de Jehová," *Revista Actualidad Jurídica* 2 (2009): 621. The author resorts to a study of cases ocurring between the years 1991 and 2003, analyzed by Avelino Retamales, "Lecciones que Dejan los Pacientes Adultos que Rechazan Transfusiones de Sangre a Partir de la Doctrina de Nuestros Tribunales," *Lus Publicum* 11 (2003): 75-102. See also Ana María Celis Brunet, "Libertad de Conciencia y Derecho Sanitario en Chile" in *Libertad de Conciencia y Derecho Sanitario en España y Latinoamérica*, ed. Isidoro Martín Sánchez (Granada: Comares, 2010), 105-151, and regarding a commentary of jurisprudence, see Ángela Vivanco Martínez, "Negativa de un Menor de Edad y de su Familia a que Este Reciba una Terapia Desproporcionada o con Pocas Garantías de Efectividad. Apelación de Medida de Protección Otorgada por la Jueza de Familia de Valdivia. Sentencia de la I. Corte de Apelaciones de Valdivia, de 14 de Mayo de 2009 [Appeal of the protection measure granted by the Family Judge of Valdivia. Ruling of the I. Court of Appeal of Valdivia, of 14 March 2009]," *Revista Chilena de Derecho,* 36 (2009): 399-400.

coverage, although it does not constitute a real contribution the content of religious freedom, the case in which all national instances denied the possibility of the exhibition of the film, "The Last Temptation of Christ." Such a decision was quashed by the International Court of Human Rights, considering there was no privation or diminish of religious freedom, and finally ordered, besides the exhibition of the film, a reform to the national law in order to eliminate and moderately condemn the State.[18] To this purpose, maybe the most remarkable is what was mentioned by Professor Ruda Santolaria: "Even though the Court resolves there is no violation to religious freedom in this case, it is worthwhile to remark that religious and conscience freedom are conceived as one of the foundations of democratic society (paragraph 79 of the sentence).[19]

Although religious freedom is recognized as a fundamental right, and it is protected with the protection remedy (constitutional action), an explicit reference to the Church-State relationship system is not found in the constitutional text, nor is there any mention of preference or privilege of any religious group or internal rules of some religious entity, nor is there any reference to a so-called neutrality of the State. Not even in the explicit recognition of religious freedom, nor in other rules of the Constitution does it refer to the term "secular" or "secular State", which perhaps explains that only a few national authors relate directly to the topic of secularism, though without further distinctions between positive secularism or healthy secularism and secularism.[20] In this context, Professor Salinas notes as principle informers of the ecclesiastical law of the State of Chile as follows: "i) the religious freedom principle, ii) the non-confessional State principle, called by some scholars, secularism principle; iii) the equality principle, and (iv) the cooperation principle."[21] Anyway, this might change if a Constitutional reform is performed as it has been announced, so it must be considered that secularism and laïcitè is an ongoing issue.

Today the Church - State relationship system corresponds to the so-called neutrality model,[22] even though it also appears inappropriate to understand the relevance that the Chilean State grants to the principle of collaboration, expressed in different laws and specific actions in which it seeks support from religious organizations. If in the name of the so-called neutrality, it were to be tried to relegate the religious to the private sphere, it would be contrasting to the given consideration of the religious entities, of which stands out, the Catholic Church. However, the latter yet has not been held a Concordat with the Holy See, although obviously recognized as a subject of international law. A proof of this can be demonstrated in his performance as a mediator in the bordering conflict with Argentina and the recognition of the Apostolic Nuncio as Dean of the Diplomatic Corps.[23]

But the principle of cooperation and equality and non-arbitrary discrimination with

18. See Interamerican Court of Human Rights, Case "*The Last Temptation of Christ*" *(Olmedo Bustos and others) v. Chile*, ruling of 5 February 2001. The previous national decisions admitted the protection remedy, the decision of the Council affected the right to honor, and not the right of freedom of conscience. See Supreme Court, Ruling Rol Nº 519-97, Sergio García Valdés and other against the Film Qualification Council, of 17 June1997 that confirmed the decision of the Court of Appeal, Ruling Rol. Nº 4079-96, Sergio García Valdés and others against the Film Qualification Council, of 20 January1997.

19. Juan José Ruda Santolaria, "Una Mirada al Tratamiento de la Libertad Religiosa en el Sistema Interamericano de Protección de los Derechos Humanos," in *Estado, Derecho y Religión en América Latina*, ed. Juan G. Navarro Floria (Buenos Aires: Marcial Pons, 2009), 237.

20. Among recent studies that deal directly with the topic of secularism, we find: Humberto Lagos Schuffenger, *Chile o el Mito del Estado Laico* (Santiago: Icthus, 2005), 82ff; Carlos Salinas Araneda, "Estado Confesional y Laicismo," *Revista de Derecho* 15 (2008): 183-202; Jorge Precht Pizarro, "La Laicidad del Estado en Cuatro Constituciones Latinoamericanas," *Revista de Estudios Constitucionales*, 2 (2006): 697-716.

21. Araneda, supra n. at 203–227. The author reiterates this posture in: Carlos Salinas Araneda, "Estado Confesional y Laicismo" *Revista de Derecho* 15 (2008), 183-202.

22. See Marcos González Sánchez and Antonio Sánchez-Bayón, *Derecho Eclesiástico de las Américas. Fundamentos Socio-Jurídicos y Notas Comparadas* (Madrid: Delta Publicaciones, 2008), 34-37. The constitutional framework in which the guarantee of religious freedom develops, comprises a conception of the human person and of society that contributes to its foundations.

23. In fact, a clear expression of the international character consideration of the Holy See has been the Papal Mediation as a special performance of its mission of peace (see Letran Treaty, art. 24).The application for assistance requested by Chile and Argentina concluded with the holding of the Treaty of Peace and Friendship (401 Supreme Decree of 6 May 1985 of the Ministry of Foreign Relations, review at http://www.celir.cl/v2/Otros/tratadochilearg.pdf).

religious institutions has also been demonstrated while turning to methods of national agreements or to rely on his worship ministers.[24]

There are no general or specific explicit norms regulating conscientious objection, though there is no doubt that it is one of the areas that has gradually acquired greater role in the social debate. While legal recognition of the objection is beneficial in terms of legal certainty, it is not an invocation condition. Even before the compulsory military service, there is no exemption for reasons of conscience in Chile, with the relatives of missing political prisoners of the Chilean dictatorship exempt from compulsory service, or in any case, realize it voluntarily.[25] Even the amnesty granted to those who violated the rules on recruitment may have exploited those considered offenders, who are in reality, objectors.[26]

C. At the Legal Level

Norms concerning matters of religious freedom are scattered in national legislation,[27] although in law Nº. 19.638, that settles down rules on the legal constitution of churches and religious organizations,[28] also known as the Religious Entities Act, is included some aspects corresponding more likely to a law framework of religious freedom. Moreover, it is in this legal text where it is incorporated for the first time the term "freedom of religion," subordinated to the established on the Constitution, stating the principle of equality and non-discrimination, and ensuring that freedom at the individual and association level (arts. 1 to 3). The recognition of religious freedom at the individual level is consistent with current national and international regulations and "with the corresponding autonomy and immunity of coercion, means for everyone, at least, the faculties" to:

> (a) Profess the religious belief that they freely choose or not to profess any; express it freely or abstain to do so; or change or abandon that which he/she professed; (b) Practice in public or private, individual or collectively, acts of prayer and worship; commemorate their festivals; celebrate their rites; observe its weekly day of rest; receive a worthy burial upon its death, without discrimination by religious reasons; not to be compelled to engage in acts of

24. In recent times, there has been initiatives of cooperation between state and religious institutions as shown by agreements established by Christian confessions and the National Council for the Control of Narcotic drugs (CONACE) to act together in drug prevention (see *Boletín Jurídico* Year 3, Nº 6, April 2008, 47). But it is especially of relevance to the consideration of Cult Ministers, who were temporarily entrusted with the task to collect information relative to missing political prisoners of the Chilean dictatorship, protected by secrecy (see Law Nº 19.687 in Official Diary on 6 July 2000). The Catholic Church in Chile collaborated for the handing over of firearms and keeping identity reservation of illegal owners (see Law Nº 20.014 that modifies the Law 17.7798 about firearms control, Official Diary 13 May 2005 and Permanent Committee, *Aporte a la paz y al bien social*, 16 mayo 2005).

25. Law Nº 20.045 that modernizes the Mandatory Military Service, on the Official Diary on 10 September 2005, regarding Art. 42 Nº 6 (of the Law Decree Nº 2.306 of 1978 that regulates Mandatory Military Service), concerning the linear and until second degree collateral blood progeny, even of those who were victims of human rights violations or political violence (Law Nº 19.123 that Creates the Reconciliation and Repair National Corporation, that establishes a repair pension and gives other benefits in favor to people mentioned on the Official Diary on 8 February 1992, arts, 18 and 32. However, the draft law that pretended to settle the conscience objection to the Mandatory Military Service as well as the Alternative Citizenship Service that was filed (Bulletin 5042-17) incorporates a new benefit to Law N° 19.992, with the objective that the family of human rights violation victims recognized by Valech Law, choose if they wish or not to do the Military Service. The ethical dispositions relative to doctors that establish that: "The doctor who is requested provision that go against his conscience or clinical conviction, may deny to intervene. In this circumstances, he will see that another colleague continues with the patients" assistance, unless that generates immediate and serious damage to his health (Ethic Code of the Medical School of Chile A.G., of 25 November 2004, art 20).

26. Law Nº 20.163 that grants amnesty to people who have infringed the dispositions on recruitment of Armed Forces on the Official Diary on 10 February 2007.

27. See supra n. 4

28. Published on the Official Diary on 14 October 1999, even though at the beginning of 2010, the President of the Republic sent a draft reform to this regulation, which is still outstanding.

> worship or to receive religious assistance contrary to his/her personal convictions and not be disturbed in the exercise of these rights; (c) Receive religious assistance of his own confession wherever he may find himself. The way and conditions of access to shepherds, priests, and worship ministers, and to provide religious assistance in hospital facilities, jails and detention places and in the facilities of the Armed Forces and Forces of Public Security and Order, will be regulated by standards dictated by the President of the Republic, respectively thru the Ministers of Health, Justice and National Defense. (d) Receive and provide religious education or information by any means they choose for themselves - and parents for not emancipated minors and the keepers for the handicapped under their tuition and care-, the religious and moral education in conformity with their own convictions, and (e) Meet or publicly express themselves with religious purposes and associate to communally develop their religious activities, in accordance with the general legal system and this law.

Although it was enacted fifteen years ago this year, the Act results harmoniously with the preceding legislation and pushed the dictation of regulations concerning religious assistance, although it did not consolidate a systematization of the rules of religious freedom.

In 2012, a law on non-discrimination,[29]which had a long passage through Congress, was given. Its main purpose was to provide a judicial mechanism for those suffering arbitrary discrimination. This, in circumstances in which the current Constitution provides for an injunction to the same effect. That Law, understood as arbitrary discrimination any distinction, exclusion or restriction that lacks reasonable justification … like religion or belief, sex, sexual orientation, gender identity … (art. 2). Nevertheless, be deemed reasonable distinctions, exclusions or restrictions, however be based on any of the above criteria are justified, including Article 19 N° 6 of the Constitution of the Republic – rule which guarantees freedom of conscience and expression of all faiths – among others.

Codicial legislation is extremely wide, and in the civil sphere refers to matters regarding from the home of the "bishops priests and other ecclesiastics (Civil Code, art. 66)," to matters that fund the recognition of special legislation governing the Catholic Church since the time of the confessional State: "Nor the provisions of this title are extended to corporations or foundations of public law as the nation, the Treasury, municipalities, churches, the religious communities and establishments of the treasury: these corporations and foundations are governed by special laws and rules (Civil Code, art. 547, inc. 2º)." The same civil legislation lays down to churches and religious communities, a credit of 4th class against their collectors and administrators (Civil Code, art. 2481 Nº 2).

Although in general, there are no labor standards which constitute a special statute given religious freedom, in any case, the inclusion of religion as an eventual discriminatory act on labor matters (Labor Code, art. 2), must be understood at the light of the principle of equality, differentiating from an egalitarianism which distorts reality. In this regard, the normative isonomy must consider equal treatment among those who are actually equal, considering the various realities and rather emphasizing equal access and opportunities. This therefore implies that while hiring a worker, religious organizations can weigh the suitability of he who postulates to employment (cfr. in particular, article 19 Nº 16 inc. 3º), and even reserve certain offices for those who hold particular qualities, without estimating this to be an arbitrary and discriminatory act.

Criminal legislation contemplates punishment of crimes and simple felonies affecting religious freedom, among which are considered those in which through violence or threat hampered a cult exercise; those who advocate tumult or disorder, to prevent or delay the cult in a place or certain ceremonies, are to be punished; and penalties are laid down for

29. Law Nº 20.609 establishes measures against discrimination, published on the Official Diary on 24 July 2012, art. n° 2.

those who offend against objects of worship or Minister of worship; and in the case of outraging, hitting or injuring Ministers of worship.[30]

In addition, at the procedure level, there exist some rules in the Organic Code of Courts, Code of Civil Procedure, Code of Criminal Procedure and Criminal Procedure Code.[31]

In other standards, religious freedom related issues are regulated in regard to the civil effects of the religious marriage or about the release of the payment of rights, inscriptions, sub-inscriptions, and annotations that should be practiced by a real estate administrator, referred to movable property, transferred to the churches and religious bodies, and established as public law legal persons.[32]

D. At the Administrative Level

At the administrative level, there are rules relating to the content and exercise of religious freedom, such as the 924 Supreme Decree that establishes the regulation of school teaching of religion,[33] or as in animal slaughter. This last case particularly drew attention, due to the consideration of the civil authority of minority beliefs. According to data provided by the last Census 2012, whose results have not been officially published since the methodology has been questioned and subject to review, they represent the 0.1 percent of the believers. Therefore, it appears as a particular sign request to the religious fact that it was to be established that "concerning animal preparations for certain religious communities recognized or established in accordance with the law, the ritual methods accepted by such groups may be used."[34]

Moreover, it must be remarked of the importance of the Regulations that emerged by virtue of Law Nº 19.638: Regulations for the Registry of Religious Entities of Public Law (303 Supreme Decree of the Ministry of Justice, on Official Bulletin, 26 March 2000); Regulation of Religious Assistance in Prison Establishments (703 Supreme Decree of the Ministry of Justice, on Official Bulletin, 7 September 2002); Regulation about Religious Assistance in Hospital Facilities (94 Supreme Decree of the Ministry of Health, on Official Bulletin, 17 September 2008); Regulation about Religious Assistance in the Armed Forces and Forces of Public Security and Order (155 Supreme Decree Regulation of religious assistance to the Armed Forces and Forces of Public Security and Order, of the Ministry of Defense, on Official Bulletin, 26 March 2008).[35]

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30. See Penal Code, arts. 138-140 and 401.

31. See Code Organization of Courts: arts. 50 No. 2, 98 No. 9, 256 No. 8, 304, 332 No. 2 470, 471; Code of Civil Procedure, arts. 62, 360 360 No 1 # 1-3, 363, 389. In the Code of Criminal Procedure, see arts. 147, 158, 191 No 1-3, 201 No. 2, 294, while in the Criminal Procedure Code, see arts. 209 and 303.

32. In matrimonial subjects there are other relevant allusions: see arts. 10, 11, 20, and 77 of the Civil Matrimony Law 19.947 (Official Diary on 17 May 2004), and regarding the extension of wages: see unique art. of Law 20.094 that modifies Law 16.271 concerning the charge of wage by real state administrators (Official Diary on 18 January 2006).

33. Published in the Official Diary on 7 January 1984.

34. Decree of 2008, Ministry of Agriculture to Oficial Diary of 2 June 2009, art. 7 (a) final Inc.

35. In the case of the Regulations of Religious Assistance in Hospitals, it had two previous versions, the first presented problems of constitutionality [René Cortínez Castro S.J., "Regulación de la Libertad Religiosa en el Derecho Eclesiástico Chileno," *Revista de Derecho de la Universidad Católica del Norte* 9 (2002): 177-192] and the second incorporated places of worship destined exclusively to the catholic cult and pointed out that onwards the places of cult would be universal (Supreme Decree 2 of 2006, of the Ministry of Health, on the Official Diary of 9 March 2006). However, there had to be a third text on which there are still some problems, besides adding the Accompanying Spiritual Units as bodies responsible for the coordination of the hospital religious assistance of the various religious entities. In the case of the Regulation on religious assistance in the Armed Forces, this rules over non-catholic entities, since in the case of catholics, assistance is provided through a military bishopric that enjoys legal personality of public law. The Roman Pontiff performs, with the agreement of the President of the Republic, the appointment of the military Bishop which is General Official of the Armed Forces with rank of General Brigadier (Religious Service) of the Army, and National Defense Major State Advisor (see Law Nº 2463, published on the Official Diary of 15 February 1911, which remains valid), 3 April 2009, Chile's Police Department named the National Evangelical Chaplain**,** see *Boletín Jurídico* Year 4, Nº 11, September 2009, 11. See commentary of Professor Jorge Precht Pizarro, "Asistencia Religiosa en Fuerzas Armadas," *Boletín Jurídico* Year 5, Nº 1, October 2009, 83-93.

Beyond the specific rules of each of the Regulations, it should be pointed out that in the case of the Regulation of Religious Assistance in Hospitals, there were two previous versions: the first had issues of constitutionality,[36] and the second incorporated exclusively the places of worship destined to Catholic worship, establishing that onwards the places of worship where to be ecumenical.[37] However, there had to be a third text in which there were still some problems, besides adding the Accompanying Spiritual Units as bodies responsible for the coordination of the hospital religious assistance of the various religious entities. In the case of the Regulation on Religious Assistance in the Armed Forces, this rules over non-Catholic entities, since in the case of Catholics, assistance is provided through a military bishopric which enjoys legal personality of public law.[38] The Roman Pontiff performs, with the agreement of the President of the Republic, the appointment of the military Bishop who is General Official of the Armed Forces with rank of General Brigadier (Religious Service) of the Army, and National Defense Major State Advisor.

III. THE STATE AND RELIGIOUS ORGANIZATIONS

A. Regulation and Autonomy

The parliamentary debate of the Religious Organizations Act lasted seven years,[39] and while it did mean a change, it cannot be sustained that only at that point regulation came into existence. Since 1925, freedom of worship has existed and believers could manifest themselves and associate with the only limit of morality, decency, and public order in regard to common law. According to the national ordering, the constitutional denomination refers to the "churches and religious institutions of any cult", that stated by the art. 4 of Law 19.638 would correspond to "the entities integrated by natural individuals who profess a particular faith" of any cult.[40]

To distinguish their legal status,[41] it is necessary to establish if the State action refers to *constitute* entities, being therefore legal persons under private law that correspond both at a functional communitarian organizations, and those set up by the common law.[42] On the other hand, when it comes to state *recognition*, it is about legal entity under public law and involving religious entities registered according to the Law 19.638, as well as the Catholic Church, which holds that quality by virtue of the Constitution and the Catholic Apostolic Orthodox Church of the Patriarchate of Antioquia be legally recognized.[43]

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36. See Castro, id.

37. Supreme Decree 2 of 2006, of the Ministry of Health, on the Official Diary of 9 March 2006.

38. See Act Nº 2463, published in the Official Diary of 15 February 1911, which remains valid.

39. On *iter* of Law 19.638 about the legal constitution of churches and religious organizations (Official Diary of 14 October 1999), the various positions and the intense debate on that law, see Jorge Precht Pizarro, "La Ambigüedad Legislativa Como Práctica Parlamentaria: La Iglesia Católica y la Ley de Iglesias en su Art. 20," *Revista de Derecho* 10 (2003): 181-198; René Cortínez Castro, "La Personalidad Jurídica de las Iglesias en el Derecho Público Chileno y la Nueva Ley Sobre su Constitución Jurídica," *Il Diritto Eclesiástico* 1(2001): 72-78, 84-89, 92-95. In any case, precariousness and inequality referred by the confessions was more apparent than real, if considered that religious freedom in Chile is guaranteed beyond a specific legal statute.

40. See art. 19 nº 6 of the Political Constitution of the Republic and art. 5 of Law 19.638. The width of the concept explains that to submit the draft reform of Law 19.638, the President of the Republic had the need to better define what is a religious entity, excluding those that are still based on faith, are geared towards social welfare ends, research or physical or spiritual health.

41. See Ana María Celis Brunet, "Reconocimiento Jurídico de las Asociaciones Religiosas o Iglesias y su Relación con el Estado en la República de Chile," in *V Coloquio del Consorcio Latinoamericano de Libertad Religiosa: Actualidad y Retos del Derecho Eclesiástico del Estado en Latinoamérica* (México, 2005), 147-156. For a subject update, see Ana María Celis Brunet, "Reconocimiento Jurídico de las Asociaciones Religiosas o Iglesias y su Relación con el Estado en la República de Chile," *Estado, Derecho y Religión en América Latina*, ed. Juan G. Navarro Floria (Buenos Aires: Marcial Pons, 2009), 133-137.

42. The first are regulated according to the Law Nº 19.418 about town meetings and other communitarian organizations (Official Diary of 20 March 1997, while the second are constituted on regard of the arts. 546 to 564 of the XXXIII Title of the Civil Code.

43. If it is about public legal persons recognized under the Law Nº 19.638, it must be provided by the Regulations for the Registry of Religious Entities of Public Law. In ten years, there have been registered nearly

However the new regulation, both entities, established by the State and constitutionally and legally recognized, have maintained their legal status every time that "the State recognizes the ordering, the legal personality, be it of public or private law, and the full capacity of enjoyment and exercise of churches, confessions and religious institutions which have it at the publication date of this law, entities that will maintain their own legal regime, without being the cause of unequal treatment between these entities and those to be constituted in accordance with this law (Law 19.638, art. 20)."

Despite the intention of the legislator to match minority religious institutions to the Catholic Church, it is debatable whether the new legal entities created by law 19.638 are properly legal persons of public law because apart from the need of register, its dissolution is provided by various modes apart from the law.[44] During these almost fifteen years, about three thousand entities have been registered, without an exact registry of them all, given that the law does not require giving notice to the administrative authority of the statement publication, nor any eventual amendments, nor even the dissolution in accordance with their statutes. In the end, the registration work of the State is limited to the verification of certain requirements and upon its refusal, to register an action claim is granted, which must be brought before the Santiago's Court of Appeal and which may be appealed at the Supreme Court.[45] The Special Registry of Institutions is dependent on the Ministry of Justice and a Historical Dossier was opened for legal persons of public law that do not require registration (Catholic Church and Catholic Apostolic Orthodox Church of the Patriarchate of Antioquia).

Since 2007, there is a government body under the Ministry General Secretariat of the Presidency, responsible for institutional relations with religious institutions. The National Office of Religious Affairs (http://servicios.minsegpres.cl/onar/) has a simple structure with a multidisciplinary team, which has sought to settle also at the municipal level. Their activities have focused on the study and analysis of draft laws that in any way impact religious entities and especially what is relative to the reform of the Law 19.638, which they have named "Cult Equality Law." Their work is aimed preferably at Christian and minority entities, favoring their association with Government departments that deal with relevant materials for the entities.

In regards to autonomy, besides the explicit recognition, there has effectively been an advance in various areas, from the cult practice to that fundamental which enables them to provide themselves their own organization and hierarchy (art. 7). But in particular, the possibility to create legal persons in accordance with the legislation in force reflects even greater autonomy (art. 8).Also, according to their own legislation provided, they do not have profit ends (art. 9), as it is recognized for canonical legal persons erected by the Catholic Church.

An aspect that has not been investigated by the dispersion of entities refers to those constituted at a municipality level that afterwards are those who principally request the recognition in accordance to the Law 19.638. In fact, the law about town meetings and

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2,000 entities, preferably Evangelical Pentecostal. In the case of the Catholic Church, the doctrine considers that the legal nature of legal entity of public law has not changed after the separation of Church and State in 1925, nor has been affected by Law Nº 19.638 [see Jorge Precht Pizarro, "El Ámbito de lo Público y la Presencia de la Iglesia Católica en Chile: de la Ley 19.638 a la Ley 19.947," in *Anales Derecho UC: Actas del IV Coloquio del Consorcio Latinoamericano de Libertad Religiosa* (Colombia: Legis, 2005), 101-121]. In the case of the Orthodox Church, it is recognized by Law Nº 17.725 (Official Diary 25 September 1972). This classification tends to simplify other more complex ones (see Araneda, supra n. 11 at 280).

44. Doctrinally, the legal nature of the legal persons registered in accordance with the Law 19.638, has been questioned by holding that legally there has been created a new category of legal persons of public law exclusive for religious entities. See Araneda, supra n. 11 at 291.

45. See Article 11 of Law Nº 19.638. This action is similar to the protection remedy (constitutional act) of the art. 20th of the Political Constitution of the Republic and the most known legal decisions are those that fell over the file complaint by the international organization known as the Holy Ghost Association for the Unification of Christianity, known as the church or cult a Moon [for a synthesis of the case, see Ana María Celis Brunet, "Reconocimiento Jurídico de las Asociaciones Religiosas o Iglesias y su Relación con el Estado en la República de Chile," in *V Coloquio del Consorcio Latinoamericano de Libertad Religiosa: Actualidad y Retos del Derecho Eclesiástico del Estado en Latinoamérica* (México, 2005), 142-147] .

other communitarian organizations[46] has sheltered religious organizations that because of a scarce number of members, limited territorial presence, or of scarce patrimony have adopted this route as a step towards recognition as public law legal persons. These refer to institutions of poor structures in regards to status, goods, and especially, their ending. The dispersion and absence of a unique registry hampers the knowledge of the criterions of the municipal authorities to proceed with their constitution and in particular, to harmonize them with the allusions of the law while referring that religious freedom of their members must be respected, inhibiting proselytism (art. 3). In any case, it is possible to foresee the appearance of difficulties in this area every time the Comptrollership has pronounced itself regarding religious and political proselytizing activities by the neighbor seeds.[47]

B. Funding

There is no model of public funding of religious organizations in Chile, nor has there been an adequate systematization at either an institutional or doctrinal level that would distinguish between direct and indirect funding.[48] The funding of religious organizations in Chile is similar to other not-for-profit institutions present in the country.

In relation to the State, it may go without saying that there exists an absence at an international or national level of clarity as to this matter, and to the implausibility of collecting taxes and targeting them to religious entities. And from the perspective of religious organizations recognized according to Law 19.638, they must be not-for-profit and must self-fund themselves even through fundraising among their congregation,[49] existing for these effects equal tax treatment for public law legal persons. According to current regulations, there exists some sporadic money contribution[50] or the cession of fiscal land for such effect.[51] On other occasions, the contribution manifests in support of religious symbols, such as the construction of monuments, in which case, the fiscal collaboration may consist on direct money delivery or instead on legal authorization to perform collects for that purpose benefit. It is also possible to receive State support in the event that individuals play certain services paid with tax funds such as religious assistance, religion teaching, or when religious institutions collaborate with activities that receive funding or State subsidies.

Certainly, the greatest possibility of funding for religious organizations comes from the possibilities of tax exemptions.[52] Some benefits relate to the places of worship and

46. Law 19.418 published in the Official Diary on 20 March 1997 as rewritten text.

47. See General Comptroller of the Republic, 19 June 2009, ruling 32.289 of 19 June 2009 that prohibits the execution of political activities in Town Meetings (in *Boletín Jurídico* Year 4, Nº 11, September 2009, 48).

48. See Ana María Celis Brunet, "Funding of Religious Organizations in Chile," in *Il Diritto Ecclesiastico*, (Milano: Giuffrè, 2007), 309-334. In any case, Professor Salinas has been a precursor to such attempts in a chapter dedicated to the "tax regime of confessions and religious entities in the Chilean State law" [Carlos Salinas Araneda, *Church of the Chilean State Right Lessons* (Valparaíso, 2004), 329-380]. Even "a possible Chilean model (378-380) 'pose' strengthens the situation of economic cooperation for the State that already exists in Chile (378)."

49. Religious entities may apply for and receive any donations and voluntary contributions, from private or public institutions and organize fundraising among their congregation for their cult, the sustainment of their Ministers or other purposes specific to their duties (art. 15). Offerings provided by its members to the religious organization are not considered income (art. 16).

50. Professor Salinas alludes to an emblematic example which occurred in 1972: the State contribution to the reconstruction of a church in the village of Putaendo, whose funds the ecclesiastical authority should pay to the account of the General Comptroller of the Republic (see Araneda, supra n. 11 at 372).

51. Such power, given to the President of the Republic, is provided in Decree Law Nº 574 (Official Bulletin 11 October 1974). In the case of municipal property, authorization of cession of land was used by special laws, as in the case of Law Nº 16.650 (Official Bulletin 12 August 1967), without damage to coexist with the possibility of free transfer to not-for-profit legal persons (Decree Law Nº 1939 of 5 October 1977, art. 88).

52. With regard to worship places, territorial taxes and those related to assignments by cause of death and donations should be considered. The 1980 Constitution established an exemption of all kinds of contributions for both temples and their dependencies that are aimed exclusively at the service of a cult (art. 19 nº 6). Law 19.738 fixed the refunded and updated text about territorial tax (Official Bulletin of 16 December 1998, Annex Table Nº 1) that includes among others places of worship but also cemeteries, schools, colleges, seminars, and orphanages. The Law can be used in advantage of inheritance, maps, and donations tax if the contribution is left

others to the purpose of worship. In addition, Chilean law provides that the President of the Republic can determine the exemption from the income tax for not-for-profit institutions and that according to their own statutes, have as their main objective material aid and other assistance to people of limited economic resources.[53] If in this case there was the desire to support a generic exemption for religious organizations, it would be necessary to ask if their "line of business" corresponds primarily to a charity institution, which in most cases conform only as one aspect of its activity.

On March 31, a tax reform bill was presented. It is not known how it can affect directly or indirectly religious denominations.

In regards to goods, beyond the particular statutes of each entity, the acquisition and property of all kinds of goods is allowed by virtue of constitutional guarantee (art. 19 nn. 23 and 24). Particularly in relation to goods devoted to the divine cult, it is set that things established to divine worship are governed by Canon law and the use and enjoyment of chapels and cemeteries is regulated.[54] There are special rules for the raid of such sites[55] and for the eventual opposition to their entrance and registration.[56] There is even a punishment for he who in wartimes attacks or destroys temples.[57]

IV. SOCIETY AND RELIGION

A. Citizens and Faith

Despite the fact that there is some uncertainty about the statistics and the new methodology of the last Census (2012), it does provide some preliminary information. The total population amount is 16,341,929. Religious issues are asked to people above 15 years old, represented by 12,817,258 individuals.

It is not easy to make any comparisons between the information provided by each Census because the issues about religion change every time. In all, 87.46 percent are believers, among those 1,607,389 (12.54 percent) who have no religion (1,471,173) or ignore it (136,216). Catholics still make up the largest amount of believers (66.6 percent). Believers had 13 possibilities of religions to choose from, of which: Bahá'i, Buddhist, Indigenous Spirituality could be chosen for the first time. There is some tiny representation of diverse minorities of Muslims, Orthodox, and Buddhist. Each has no more than the 0.1 percent. Jews, Mormons, and Jehovah Witnesses do not reach 1 percent of the total. Protestants and Evangelicals represent 16.5 percent. There are two main associations of Christians that have almost 3,000 organizations recognized and registered by the State. The main branch of Evangelical believers seems to be Pentecostal according to the registered organizations, but since there is no specification in official Statistics, it is hard to figure the composition among them.

It is interesting that there are 1,743,858 inhabitants who declare their belonging to some of the nine groups of native peoples, of which just 14,260 declare to belong to Indigenous Spirituality (0.11 percent). Nevertheless, there are some questions regarding health care in public hospitals according to ancestral practices, following the path of the Anglicans missionaries in the Araucanía by the end of the XIX century. Also, there are some judicial questions about logging of native forest or the continuation of mining projects where Indigenous Spirituality has been invoked. Further, new studies have stated some conclusions about Chilean beliefs such as: (a) even if there are less people that belong nowadays to particular religious groups (movements), religion is still the main belonging group compared to any other kind of organization (18 percent); (b) half of

for the construction or repair of temples for a cult or for the maintenance of the same worship service (Law No. 16.271, art. 18 Nº 4 in the Official Diary of 10 July 1965).

53. This possibility is provided in the article 40th Nº 4 of the so-called Income Act (Decree Law Nº 824 of the Ministry of Finance, in the Official Diary of 31 December 1974).

54. See arts. 586 and 587 of the Civil Code.

55. See art. 155 of the Criminal Code.

56. See art. 98 No 9 of the Organic Code of Courts.

57. See Article 261 of the Code of Military Justice.

Chileans pray on a daily basis; (c) among Catholics, even if they strongly believe that Christian values must be taken into account in society (totally agree 71 percent), just a few think that the Catholic Church has to be considered more in public decision making (32 percent); and (d) although there is 19 percent who claim to be atheist and agnostic, amazingly 83 percent do believe in God without a doubt.

Other statistics point towards a waning in the Catholic faith while non-believers have increased. It is also possible to compare and contextualize collected information with other realities.[58] There exists a high regard for religious support in the community (79.4 percent), although ethical behavior is not identified with religion because it is considered possible to carry out a morally good life although one does not believe in God (75.3 percent). It is worth noting that religious support is a personal choice, and 80.7 percent would prefer that their "children decide for themselves what their religious beliefs are and not try to influence them too much in this respect." There are a few particularities that should be mentioned as well. For example, a third of Catholics believe in witchcraft, a fourth of non-Catholics believe in the Virgin Mary, and 69.5 percent of those without any religion believe in God![59] However, there do not appear to be any very impressive statistics regarding the transition between one religious confession to another, and, in any case, this is produced principally (and without any special intervention or event) from the Catholic religion to the Evangelical religion or to increase the number of atheists or agnostics.[60]

With reference to nationality, this is not normally a requisite for exercising religious freedom, except in the case of those who give religious assistance to the Armed Forces. In effect, the Regulation demands the accreditation of a person's Chilean Nationality to those who give religious assistance to the Armed Forces and those of Order and Public Security. Only those with prior authorization of the maximum authority in those institutions can authorize the admittance of foreigners to carry out this service.[61]

Among all citizens and believers, ministers of worship have a particular statute, although "Chile does not have any central legal statute that systematically regulates all rights and duties that should apply to ministers of religion. One must turn to distinct and wide-ranging normative texts to approach a correct understanding of the law on this question. It is also decidedly difficult to find jurisprudence that, in some manner, allows one to gauge where the major points of legal friction exist concerning these ministers."[62]

The same concept of a minister of worship is not defined by the legislation and not even this determines its rights or duties. In this way it is possible to find particularities regarding their inability to accept responsibilities or exercise certain functions[63]: they cannot be judges, they are exempt from military service for as long as the ministers remain in office, they cannot receive an inheritance or any legal bequest (not even as a fiduciary executor) if the minister has confessed the defunct on his or her death bed or habitually over the last two years before making his or her will, and can excuse themselves from being guardians or caregivers.[64] They also have two different types of secrecy obligations cases: "first, cases where a minister has the right to refrain from testifying at trial in order to maintain the obligation of secrecy which accompanies a confession; and second, cases where, even though ministers may be obligated to testify,

58. Since 2006, the National Bicentennial Census UC has periodically been carried out and contains a survey of aspects of national identity. In addition to investigating about the religion that they profess to have, the content of their beliefs (2006), their religious practice (2007), popular religion and the Marians (2008), and religious transitions (2009) are detailed. See Pontificia Universidad Católica – Adimark GfK, *Encuesta Nacional Bicentenario*, 2006 (32-44), 2007 (27-49), 2008 (80-101), 2009 (71-81), available at http://www.uc.cl/sociologia.

59. Id.

60. Pontiff Catholic University – Adimark GfK, *Bicentennial National Census*, August 2009, 71-81.

61. Supreme Decree 155 Regulation of Religious Assistance in the Armed Forces and in Public Security and Order of the Ministry of National Defense and the Sub-secretary of War (Official Diary 26 May 2008).

62. See María Elena Pimstein Scroggie, "Ministers of Religion in Chilean Law," 2008 *BYU Law Review* 898.

63. Particularly in this field, there are some differences between Catholic and non-Catholic ministers, although for this article's purposes, there will be not make any distinction. To study this field, see id. at 904-909.

64. Besides, all individuals cannot have a different faith than the child (or ward): id. at 907.

ministers do not take the witness stand, but instead are allowed to fulfill this obligation in a different manner."[65] However, the Chilean legislature has recently created an exception to a ministers' right to refrain from going to court in Family Court Law and the newly enacted Criminal Process Law. Ministers of religion have been strongly punished by Criminal Law, as well as have had special offences established for when a victim is a minister of religion.[66]

In the work place, labor norms are applied in proportion to the configuration of a work relationship in accordance with Article 7 of the Labor Code, and on the contrary, the relationship belongs to another order and therefore is not applicable to the labor legislation.[67] In addition, the exclusion or preference for religious reasons as an act of discrimination (art. 2, inc 4º) are included. However, in light of the constitutional guarantee with respect to work freedom, "Any kind of discrimination that is not based on capacity or personal qualifications is prohibited, that the law can demand Chilean nationality or limit to age in determinate cases without detriment" (Constitution, art. 19 nº 16 inc. 3º). Therefore, *qualifications* are criteria that serve in the performance of certain jobs, as happens in the case of religious teachers, who, in order to teach classes should "be in the possession of a certificate of qualification granted by the corresponding authorities and whose validity will last while it is not revoked and to accredit as well the studies realized for said position."[68] This corresponds then to the religious authority to certify the qualifications of the teacher and to this authority the educational establishments should go in order to contract religious teachers (art. 9, paragraphs 2º- 3º).

In view of a protective resource for the revocation of a certificate of qualification in order to teach religious courses at a school level, it was resolved that the religion teacher (understood as such, of any religious creed), should have a certificate of qualification granted by the corresponding authorities and "whose validity will last while it is not revoked." In other words, the proper applicable legislation of the sort, authorizes the corresponding religious organism to grant and revoke the authorization that has been conceded in accordance with their particular religious principles, morals and philosophies, a situation that will depend only on each one of them not having any managerial aspect, not the State or any particular position that the faculty rests on their own creed that has an ample leeway to establish their norms and principles.[69]

V. CIVIL LEGAL EFFECTS OF RELIGIOUS ACTS

By including the latest constitutional reforms, it was normal practice that the enactment of the Constitution was done in the name of God, although in 2005, the President of the Republic only called on his faculties and concentrated on the

65. Id. at 909.

66. There are some special types if the ministers remove entrusted documents or celebrate marriages prohibited by law. The prescribed punishment will not be imposed in the lowest grade if they commit a first degree rape, statutory rape, or another sexual crime (see id. at 912-916).

67. In this way, the Director of Work resolved it through service (Ord. Nº 649/22, 9 September 2005) that "in these circumstances, one cannot finish without concluding, to judge the subscribed, that the link that unites the Evangelical and Protestant Churches ruled by Law N° 19.638 that detain the charges of pastors and bishops from them, cannot be qualified as a work relationship to nature ruled by the Work Code and their complementary laws, not giving them rights but resulting in the concession of the benefits and advantages that belong to this."

68. Supreme Decree 924 establishes the religious classes in educational establishments in the Official Diary 7 January 1984, art. 9 paragraph 1º. See the report elaborated by Jorge Precht Pizarro, "The Qualifications of the Religious Professors," *Boletín Jurídico* Year 2, Nº 8, July 2007, 26-43.

69. See I. Court of Appeals, San Miguel, Sentenced 27 November 2007 on Protective Resource presented by religion teacher Mrs. Sandra Pavez. *Pavez v. the Vicar for the Education of Bishops in San Bernardo*, Rol. Nº 238-2000, considering eighth. Said resolution was confirmed by the Supreme Court. See *Boletín Jurídico* Year 3, Nº 2, November 2007, 18-24. See also, instructions about religious classes and about who can teach them, people that can grant qualification certificates, and other associated themes (Ordinance n° 07/1785, n° 2173 from the Minister of Education), in *Boletín Jurídico* Year 3, Nº 3, December 2007, 25.

constitutional text without invoking the name of God.[70]

From the first civil codification, the possibility of accrediting the civil state before third parties and testing them through the respective entries of marriage, death, birth or baptism was recognized (Civil Code, art. 305 paragraph 1º).

In this way people can also accredit themselves or prove their age or death (paragraph 3º), although in any case, such documents "bear witness to the declaration made by the bride and groom in marriage, by the parents, godparents or other people in the respective cases, but do not guarantee the truth of this declaration in any of its parts. They could, of course, contest this, making a statement that the declaration was false on the point that they were making (art. 308)." The validity of such norms present difficulties with the clandestine immigrants of the extreme north of the country who ask for the sacrament and then, at the point of taking it, pretend to use the ecclesiastical documentation before the State.

In matrimonial matters, until the first law of civil marriage in 1884, effects of the celebrated marriage before the Catholic Church were recognized. Therefore, as an expression of resistance before the secularization of marriage, it went from 17,882 marriages in the country to only 5,200 in the year when the new law was introduced. With the objective of obligating people to get married civilly, in 1930, the obligatory precedent of civil marriage was introduced.[71]

In 2004, a new Civil Marriage Law was dictated with respect to the celebration and innovated in three matters. New requisites of the validity of marriage were established, extracted from the Canonical norm.[72] Preparatory courses of a facultative nature for marriage were incorporated which had, as an objective, the promotion of freedom and the seriousness of the commitment that one was assuming. The dictation of the courses could be carried out by the Civil Registry & Identification Service, religious entities with legal entities of public law institutions of public or private education with recognition of the State, or legal entities of charitable organizations whose statutes include activities for the promotion of the well-being of the family (arts. 10-11). The third innovation consisted of giving civil recognition to the marriages celebrated before religious entities that had good legal entities of public law.

However, in order to achieve that, a series of previous legal requisites needed to be completed, as well as an inscription before an official of the Civil Registry within eight days from the start of the celebration. At the moment of the inscription, one must confirm the consent given before the respective minister of worship, and in the case of not being done within the respective date, the religious celebration will not be recognized as legal.[73] This last requirement does not have a precedent in comparative law and has discouraged religious marriage celebrations with civil effects. Since its validity in November 2004, almost all of the marriages celebrated with conformity to Article 20 have been before the

70. Supreme Decree Nº 1.150 from the Ministry of the Interior, through which the Political Constitution of the Republic was promulgated (Official Diary October 1980). The text was presented after invoking "the name of God Almighty." On the contrary, the Supreme Decree Nº 100, from the Minister Secretary General of the Presidency (Official Diary 20 September 2005), did not maintain this formula. See Jorge Precht Pizarro, *Fifteen Studies about Religious Freedom in Chile* (Santiago: Catholic University of Chile, 2006), 43-52.

71. Art. 103 of the first edition of the Civil Code recognized religious marriage and the competence of the ecclesiastical authority about its validity. This was reformed by the Civil Marriage Law (Official Diary 10 January 1884) that became valid the following year. Afterwards, the civil marriage ceremony became obligatory and established (Reform to the Civil Registry Law in Official Diary 10 February 1930). For a synthesis of the history of marriage in Chile before the reform of 2004, see Ana María Celis Brunet, *The Canonical Relevance of Civil Marriage in Light of the General Theory of the Legal Act*: *Theoretical Contribution of the Chilean Legal Experience* (Rome: Editrice Pontificia Università Gregorian, 2002), 232-250.

72. Law Nº 19.947 establishes the new Civil Marriage Law (published in the Official Diary 17 May 2004, became valid 6 months later), art. 5: "You cannot get married: … Nº 3. Those that they find who have no sense of reason and those that have a mental disorder or psychic anomaly, reliably diagnosed, will be completely incapable of forming the partnership that a marriage implies. Nº 4 those that lack sufficient judgment or discernment in order to understand and commit themselves with the rights and essential duties of marriage." It is paradoxical that at the same time divorce was incorporated (arts. 42 nº4, 54 y 55).

73. Law Nº 19.947, art. 20; Law of Civil Registry, art. 40 bis; Regulation of Civil Marriage Law. Nº 19.638, art. 20.

Catholic Church and represent close to 3 percent of all marriages celebrated.

VI. Religion in the Public Arena

In Chile, there is no significant presence of believers that identify with certain clothing and there have not been any cases presented before the Law Tribunals in this respect, which contributes to the better understanding of the little legal attention relative to the dynamic symbols. However, the elaboration of instructions that follow the recommendations of the Organization of International Civil Aeronautics (OACI) is in the process, with the objective of identifying the face of people in their identity documents and passports. The situation has become a reality due to the validity of the Agreement 169 of the OIT in Indigenous Peoples,[74] just like the demands on transsexuals. Meanwhile, a memo is applied that establishes that "the photograph should be taken in street clothes, according to the gender that is noted in our registries, without hats or clothing that could hide the hair totally or partially, except if this article forms part of the person's condition, such as the religious veil or the *trarilonco* of the Mapuche women (…) and keeping in mind that the dimensions be reasonable and do not alter the appearance, aspect or create confusion with respect to the sex of the person."[75]

If, with respect to personal identification, the situation is carried out respectfully and with little conflict, appealing to good treatment and without discrimination, at an institutional level there is no special norm with respect to the use of clothing and symbols in public places. In fact, the use of symbols in state dependencies, from administrative offices to tribunals or hospitals, has not had conflict at the legal level (nor at the normative level and even less in doctrine). There are no obligatory dispositions about the presence of a crucifix, but they also do not appear to be prohibited. They remain at the discretion of the same authorities and employees. Clearly at Christmas time many adornments that refer to Christian elements can be seen, as well as representations of the Sacred Family in the manger of Bethlehem, in administrative dependencies and all over the streets.

However, the actual dynamism in these matters, many times emulating what happened in Spain, makes one see that this is a latent theme. For the moment it is not a legal topic, but it is possible to observe an incipient and small seed of social conflict.

For example, with regard to the installation of the Pope John Paul II statue in the Central Square, it is possible to make out positions of aesthetic and economic importance, as well as the considerations about its significance, to the separation between the Church and State without respecting actual religious diversity. Although it had communal authorization and financing, the unanimous decision of the members of the National Monument Council was to not authorize it, principally following the arguments of their technical commissions. It was noted that although it was adequate to commemorate Saint John Paul II, it was important to do so in a representative place, as a mediating role for the country, not in another that did not have a religious significance since the branch of the Law Faculty of the State University established it there.[76]

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74. Agreement 169 of the International Work Organization on Indigenous Communities and Tribes in Independent Countries that was ratified by Chile 15 September 2008, and became valid 15 September 2009.

75. Circulation DN Nº13, 29 October 2001, of the National Directory of Civil Registry and Identification Service, referring to the recent Memorandum SDO Nº 000723, 1 September 2009, of the Sub-Director of Operations of the Civil Registry and Identification Service.

76. See Extract of the Act of the Ordinary Session on 11 November 2009 from the National Monuments Council, in, *Boletín Jurídico* Year 5, Nº 4, January 2010, 72-80. In order to contextualize what happened, it is important to realize that habitually law projects are admitted in order to erect monuments in different places in honor of Pope Juan Pablo II, the first Chilean Saint, or of an outstanding Evangelical Pastor, with which the collection of funds is authorized for such a cause. In fact, during the year 2009, two laws authorized the erection of monuments in honor of Pope Juan Pablo II in different areas of the country. (See Law Nº 20.350 that authorizes to build a monument to His Holiness Juan Pablo II in Official Diary 2 June 2009, and Law Nº 20. 364 that authorizes to build a monument in the community of Puyehue in homage to His Holiness Juan Pablo II, in Official Diary 25 July 2009.)

This decision is of germinal significance to the secular tendency in Chilean society. It could be observed that almost simultaneously, the same organism authorized another monument, this time in honor of Brother Camilo Henríquez, considered to be the *father* of the national press.[77]

Catholic sanctuaries are usually declared as national monuments in different regions of the country.[78]

In addition, institutional manifestations simultaneously co-exist that recognize Christian symbols, as happened with significant decorations to the images of the Virgin Mary made by the Chilean Army.[79] At a municipal level, the recognition of the festival of the Virgin of Candelaria (in San Pedro de la Paz) was decreed, the order of the religious festivals of the community of Andacollo was approved, as well as the festival of cultural heritage and religion in Petorca.[80]

In accordance with valid norms, the religious fact becomes protected by sanctioning it with fines with respect to publications or transmissions that promote hate or hostility with respect to people or gatherings, among them being, religion.[81] Certain suppositions could become an invasion of rights, of which the following is not exempt: "personal appreciation that is formulated in specialized commentaries of political, literary, historical, artistic, scientific, technical or athletic criticism except if the tenor put in the manifest the purpose of insulting, as well as criticizing."[82]

This was affirmed by the National Television Council when they rejected the complaint against the distributing television cable companies for airing the series, "Popetown," indicating that "the Catholic Church is, as any other public institution, subject to criticism carried out through freedom of expression that our Fundamental Order guarantees to all people."[83] On the other hand, a fine was applied for the airing of a program that was considered degrading to the Evangelical minister and creatively crossed the line with respect to a person's fundamental rights.[84]

In relation to the written press, some periodic titles are ironic, especially with relation to specific Christian figures and also towards Catholics (for the use of the images of Mary). This happened at the beginning of 2009 at a fashion show called "Virgins," to which a resource of protection was admitted and then rejected, stating that it was about artistic creation (immune in the constitutional guarantee 19 nº 25). The Court ministers held that, "in any case, it does not indicate that the inappropriate and inconvenient images that make up the work could affect the freedom of conscience of those in attendance nor

77. See National Monuments Council, Act of the Ordinary Session on 9 December 2009, 41.

78. For example, see *Boletín Jurídico* Year 9, Nº 4, January-February 2014, at http://www.celir.cl/v2/Boletines/bjenefebIX.pdf.

79. See Decoration Resolution President of the Republic to the image of the Virgin located in the National Sanctuary of Maipu (7 January 2008), in *Boletín Jurídico* Year 4, Nº 10, August 2009, 51-52. See also Decoration Resolution with the "Victoria Cross" reserved for Chief Commanders to the image of the Virgin Carmen at the Military School at the 50th Year Anniversary (13 August 2009), in *Boletín Jurídico* Year 4, Nº 10, August 2009, 53.

80. See, respectively, in *Boletín Jurídico* Year 4, Nº 7, May 2009, 28; Year 4, Nº 11, September 2009, 9-10; Year 5, Nº 1, October 2009, 98.

81. Law Nº 19.733 about freedom of opinion and information and exercise of journalism, art. 31 (Official Diary 18 May 2001).

82. Law Nº 19.733 about freedom of opinion and information and exercise of journalism, art. 29 final paragraph (Official Diary 18 May 2001).

83. Act of Ordinary Session of the National Council of Television that rejected the accusation presented against the distributing television cable companies with respect to the series, "Popetown," in *Boletín Jurídico* Year 2, Nº 6, May 2007, considering twelfth. To the decision it was added that "in the series, the object of criticism in the satire does not appear to be directed at articles of the Catholic faith but to certain aspects of the institutionalized Catholic Church referring to seasonal order (…) the entire series is found to be structured with such an obvious break from reality that it is not possible to recognize in it behaviour that is attributed to the members of the Catholic Church (considering tenth)." However, afterwards and without any prior accusation, the cartoon series where the President of the Republic was characterized was taken off the air by Sony Entertainment TV.

84. Extract from the Act in the extraordinary session from the National Council of Television that applied sanctions to the state television for damaging the dignity of an Evangelical Pastor can be found in *Boletín Jurídico* Year 2, Nº 6, May 2007, 27-32.

does the representation have the sufficient importance and aptitude to influence the religious conviction of the citizens."[85]

The majority of other religious manifestations at a social level, referring to holidays, as well as every Sunday of the year, correspond to religious celebrations. For example: Good Friday and Saturday (according to the Catholic Church), San Pedro and San Pablo (flexible), July 16 as Virgin del Carmen, August 15 as Assumption of the Virgin, October 30 for the Evangelical and Protestant Churches, All Saints Day on November 1, Immaculate Conception on December 8, and Christmas on December 25. Of all these, only Christmas is inalienable.

Religion also manifests itself socially in different meetings, such as the peregrinations. An unthinkable repercussion of the human flu in Chile was that important religious ceremonies were cancelled. The authorities created the argument that it was necessary to adopt measures to prevent the human flu from spreading with consideration to the crowds that are produced on these days and the difficulty in controlling sanitary conditions. It is important to note, however, that only these types of gatherings have been suspended and not other events (athletic or cultural). It is understandable that these measures may not have been effective due to lack of hygiene or increase in the population. Certainly this type of holiday continues to attract crowds that are not observed at other events and that it also lacks the prolongation of those meetings where religious dances are important in honoring the Virgin or a saint. And even when the religious freedom of the majority confession in the country was extraordinarily limited, the ecclesiastical authorities and the peregrines collaborated with the sanitary authorities.[86]

VII. EDUCATION AND RELIGIOUS TEACHING

The interpretive law of 1865, in addition to permitting private teaching, authorized foreigners to have private schools where they could transmit their religious ideas. The participation of the diverse religious confessions in educative matters continued towards the 20th century and the construction of churches and schools contributed to identity, common life, and future projects in the areas where they were installed. "In some way, the school was a favorable place where each community of immigrants thought and implemented strategies for conserving the identity of origin or to project itself in the future. Two fundamental factors justified the implementation of self-educative projects: language and religion."[87]

In reality, the right to an education and the special obligation of parents in the education of their children is constitutionally recognized (art. 19 nº 10). In addition, "The freedom of teaching includes the right to open, organize, and maintain educational establishments. The freedom of teaching does not have other limitations than those of morality, good customs, public order and national security. Officially recognized

85. Court of Appeals Santiago, rol. 357-2009, 2 June 2009 that rejects the resource of protection considering 7º (see *Boletín Jurídico* Year 4, Nº 7, May 2009, 22-24).

86. Supreme Decree nº 2.155 of 2009, from the Health Minister in the Official Diary 8 July 2009, adopted preventative measures in order to prevent the spread of the human flu during the festival of the Tirana during the period between July 4 until July 21 in the communities of Pozo Almonte, Tirana, Huayco, Pica, Matilla and the surrounding areas, at the religious festivals pertinent to the 16 of July, Tirana Festival. In addition, the Supreme Decree nº 2.395 de 2009, Health Minister in Official Diary of 31 July 2009, adopted preventative measures in order to prevent the spread of the human flu during the festival of San Lorenzo in Tarapacá from August 1 to 16 in the community of San Lorenzo in Tarapacá, at the religious festival pertinent to the 10th of August. Both festivals prohibited camping, tents, or other similar dwellings in both the public and private places in the said localities, as well as the installation of any type of commercial stand. In addition, the administrative measures restricted the municipal transitory premises of installing temporary establishments or areas and restricted the special transport authorities to take passengers to these places; impeding this with the collaboration of Chilean Police, the entrance of non-resident vehicles or those that were not fiscal, municipal or of an emergency nature.

87. José Manuel Zavala Cepeda, "The Colonists and the School in the Araucania: The European Immigrants and the Emergence of Private, Secular and Protestant Education in the Region of the Araucania (1887-1915)" in *Universum Magazine* vol. 1, no.23 (Talca: University of Talca, 2008), 284.

education cannot orient itself to spread any particular political tendencies.[88] Parents have the right to choose where their children are educated (art. 19 nº 11)."

Religious education started early in the country and until recently, public establishments were obligated to provide it and parents could enroll their children if they wished. The state authority is in charge of approving the programs in religion classes (previously presented by the religious confessions) that are given two times per week, without having them influence the final evaluation of the student.[89] The possibility of giving religious classes is recognized in more than ten religious organizations: Catholic, Adventist, Bautista, Anglican, Lutheran, Methodist, Evangelical Churches and corporations, Jewish religion, Orthodox, Baha'i faith, and Presbyterian.

In relation to school systems, they should be in the hands of a school manager. They can be a natural or legal entity (single spin entity) public or private, or even receive subsidies from the State (voucher system). If no specific restrictions appear in the religious organizations, they can be constituted religious voucher schools. This occurs with respect to some districts of the Catholic Church and in some parishes or institutes of consecrated life, just like how other religious organizations can participate in educative activities through the direct management of some educational establishments, such as the creation of foundations and corporations for the said purpose.[90]

With respect to university education, since 1980 a double modification was produced that allowed the private property of such establishments and ended with the regional branches of the universities that existed then.[91] In relation to the university system in Chile, there are two types of universities: traditional and non-traditional. The distinction has to do with historical reasons associated with direct state contributions. Historically, this was not dependent on their private or public property, but students with high marks in the selection process nationwide.

Since 1954, the Council of Rectors of Chilean Universities, composed of the rectors of the twenty-five traditional universities has coordinated university work. Among these universities, two Pontifical and four Catholic universities receive state funds.

There are thirty non-traditional universities, some of which are accredited. Among these, a minority have ties to religious institutions: there is an Adventist college, a Catholic college, and some who call themselves "secular".

Confessional universities –whether or not traditional establishments- offer theological courses. For the students, it is mandatory to meet a minimum credit of such materials as part of the comprehensive training offered.

Notwithstanding the above, it is perceived to be a time of change. The government that took office in March 2014 announced an educational reform, the content of which is not yet released. However, in that notice, authorities have insisted that the state-university be a recipient of public funds, separating it from the universities that have historically been understood as public and as having made significant contributions to the common

88. Law 20.370 establishes the General Education Law in Official Diary 12 September 2009. This norm regulates those matters related to pre-school, elementary and high school education and is pending new regulation by the Universities. Within the students' rights it is mentioned that freedom of consciousness, religious conviction, ideology, and personal identity should be respected without detriment to the rights and duties that establish laws and should conform to the internal regulation of the establishment (art. 10). In addition, it was established that when new students are incorporated they cannot be discriminated against according to the religion of their parents (art. 12).

89. See arts. 6 and 7 Supreme Decree 924 regulates religion classes in educational establishments in the Official Diary 7 January 1974. To go deeper in the judicial framework: see Carmen Domínguez Hidalgo, "Freedom in Matters of Religious Teachings in Chile: General Notes with Special Reference to Themes of Civil Responsibility," in *V Coloquio del Consorcio Latinoamericano de Libertad Religiosa: Actualidad y Retos del Derecho Eclesiástico del Estado en Latinoamérica* (México, 2005), 1-21.

90. The organization of Adventist Education in Chile has existed in the country since 1906, operates in dependence with the Seventh-day Adventist Church, and supports the educational establishments for elementary and high school. Even the Adventist University in Chile has had autonomy since the year 2002.

91. See Law Decree Nº 3.541. The suppression of the regional branches produced a significant change in the maximum national organism for superior education: the Council of Rectors (Law Nº 11.575 in Official Diary 14 August 1954). It passed from eight original members to the 25 Universities that gave the order for the modification.

good between the latter's confessional universities. The fact that they are what has been part of the argument to question the contribution received by the state, ignoring its contribution to research and development.

VIII. SITUATION OF THE ABORIGINAL PEOPLE

In reality, there subsist cultural elements of diverse ethnic groups which are manifest in the practice of rites, traditions, and customs that coexist with their belonging to religious confessions, preferentially Christian.

The preliminary report of the 2012 Census states that 11.11 percent of the population reported belonging to an indigenous group (1,714,677). Of this, 84.11 percent belong to the Mapuche people, equivalent to 1,442,214 inhabitants. The North native peoples (Aymara Likan Antai, Quechua and Colla diaguitas) add up to 10.62 percent with 182,098. Indigenous Rapa Nui is 0.46 percent with 7,888 people.

Above and beyond tendencies that are neoindigenous, that stray from the appreciation and care of original beliefs yet pretend to have political claims, the truth is that the worldview of the original people are expressed in different areas such as health, education, places, or sacred things.

Since the 1990's, the Health Program and Indigenous Peoples has been progressively implemented[92] as a way of incorporating some health practices in these groups. In a diversity of hospital services, attention is offered according to traditional Mapuche medicine. In pregnancy check-ups and at the moment of birth, one can choose according to the worldview of the Aymara or Mapuche people, in hospitals in the north of the country as well as those in the south.[93] As well, in the south of the country, construction was initiated for the Intercultural Hospital of New Imperial (since February 2009), that, respecting the original cosmology, has their principal access facing the east, where the sun rises. This initiative was started at the Hospital Makewe – Pelale (Cañete, IX Region), under the charge of the Indigenous Association for Health Makewe – Pelale. This hospital is part of what used to originally be a dispensary for the Anglican Missionaries (1895), but was then converted into the area hospital (1925).

In educational matters, the indigenous language has been incorporated into the learning sector during the elementary years (1º to 8º grade), including oral and written communication. The establishments can choose to incorporate it as an option for the student and his/her family, but if there are more than 20 percent of students with indigenous background, it should be offered obligatorily.[94]

A recent legal decision, principally for the application of the Agreement 169 OIT and national legislation, accepted a protective resource for the cutting of native forests close to streams. Even if freedom of consciousness was not invoked, they were looking to protect the beliefs regarding sacred forests near streams, even though the land did not belong to indigenous communities.[95] Indigenous communities have participated in the environmental impact assessments of projects and have opposed projects affecting ceremonial sites, cemeteries, and ancient sites. The application of Convention 169 has been criticized both by environmental groups and other affected communities. This is because the national law

92. Ministry of Health – FONASA – Health Program and Indigenous Communities, *Politics of Health and Indigenous Communities* (Santiago, 2003). See also Maria Soledad Pérez Moscoso and Claudia Dides Castillo, *Health, Sexuality and Reproduction. Systemization of theInvestigations and Experiences in Indigenous Communities in Chile, 1990-2004* (Santiago: Arancibia Hnos. and Cía Ltd., 2005).

93. See Ana María Celis Brunet, "Freedom of Consciousness and Health Rights in Chile," in *Freedom of Consciousness and Health Rights in Spain and Latin America*, ed. Isidoro Martín Sánchez (Granada: Editorial Comares, 2009).

94. See Supreme Decree 280, Ministry of Education, Sub-Secretary of Education, Santiago, 20 July 2009, that modifies Supreme Decree 40 of 1996, which establishes fundamental objectives and minimal obligatory contents for early education and fixes general norms for its application in the Official Diary, 25 September 2009.

95. See Sentencing of first and second instances of repeated behavior about the protective resources interposed by a *machi* mapuche, for the illegal cutting of native trees and bushes, *Boletín Jurídico* Year 5, Nº 2, November 2009, 60-77.

does not seem to fit the requirements of by request, in good faith, and informed, while some add that it should be binding.

IX. Religious Cultural Heritage

In this matter, abundant normative dispersion is observed, where regulations coexist, not always harmonious, at a constitutional and international level, legal and regulatory. [96]Among the applicable legislation, the following examples can be found: National Monument Law, Law of Urbanism and Construction, Law about General Levels in the Environment, Law of Cultural Donations, Constitutional Organic Law of the Government and Regional Administration, Indigenous Law, Law of National Council of Culture and Arts, and National Fund for Cultural Development and Arts. In addition, at a regulatory level, one should consider at least the General Order of Urbanism and Construction and the Regulation of the Evaluation of Environmental Impact. As well, diverse public organisms exist and a considerable amount of private institutions in charge of conserving national heritage.

In any case, national cultural heritage is constituted by many places of worship, preferentially Catholics. They extend from the churches in the high plains to the churches in Chile (that are considered Cultural Heritage of Humanity UNESCO) and also religious dances that portray the age of discovery (16th century).

With respect to cemeteries and in accordance with the General Regulation of Cemeteries,[97] "they are private cemeteries, of determined religious worship such as Catholics and others, from foreigner's colonies, religious communities, indigenous, and from corporations or beneficial foundations, etc. (art. 15)." And during the last decade, the Fiscal has returned the indigenous cemeteries that were in his power back to those indigenous communities.

However, without a doubt, it is necessary to favor the systematic treatment of religious cultural heritage, which is a challenge contributing to its study and analysis.

X. Final Considerations

Talking about religious freedom in Chile is not easy. Many do not know what it is, nor are they aware that it is a fundamental right. Many also do not understand its contents, nor what situations can affect it if it is not properly protected.

In Chile, there are still not any sufficient systematic studies of religious freedom. Some manifestations of it are the absence of a professorship of Ecclesiastical Law in the studies of Law Degrees or the scarcity of national doctrinal works relative to this matter.

It is a time of great dynamism which is especially noticeable in a loss of confidence in institutions. The streets have become channels for the expression of ideas. It is also noticeable how the national identity on which basic consensus was constructed has broken. Among these, the contribution of religious organizations are questioned or minimized, especially the Catholic Church, present throughout the history of Chile. In this context, it is a time where religious freedom can be questioned, especially in educational matters. Through the pretension of the secular state, in fact the new government as of March 2014, has raised the flag of secularism. We must be attentive and follow what is going on.

It would be interesting to dig deeper into the identifiable criteria in our history that contributed to resolving conflicts in an original and coherent way, without remitting themselves to a precise importation of categories or principles that are not adequate enough to satisfy a solution for national matters. In some way, this corresponds to an

96. See María Elena Pimstein Scroggie, "Protección Jurídica del Patrimonio Cultural en Chile," in *Derecho y Religión* 5, ed. Isabel Aldanondo and Juan G. Navarro Floria (Madrid: Delta Publicaciones, 2010), 115-145.

97. Decree 357l from the Ministry of Health, in Official Diary 18 June 1970, whose last modification is by Decree 54, 15 May 2004.

invitation set forth by Professor Precht: "The traditional Catholic categories laity and laicism, must be revised by the thought of Chilean Universities in order to face the new social challenges presented by the twenty-first century."[98]

Among us, the indifference towards the norms of Ecclesiastical Law and the amateur creation of them lives harmonically and alternatively. In addition, in some social debates, the support for religious organizations has stopped, based on the separation between the Church and the State in 1925. In particular, this has occurred with respect to the themes that have been stereotyped as *valuable debates*, such as those related to the satisfaction of the family, the right to life and health, and those that express the demands of sexual minorities in virtue of the principle of equality. Even still, in Chile there is a tendency not to litigate conflict, but to resolve them whilst appealing to tolerance and respect in social coexistence with the help of agreements and negotiations. Among the favored elements for a positive and collaborative consideration between the State and religious confessions, there is reference to the absence of a worsening of conflicts as happened in Europe due to religious symbols. In part, this is based on the recognition towards the religious entities for their contribution to the common well-being and peace throughout national history.

The situation in the country corresponds to an anti-confessional State, but not indifferent to religion in general. Although recent manifestations are contrary to the religious feelings of the population, they point to evidence that there is still a lack of appreciation towards religious freedom as a fundamental right and not just a simple sociological fact.

98. Jorge Precht Pizarro, "Laity and Laicism: Are These Catholic Categories of Any Use in Analyzing Chilean Church-State Relations?" 2009 *BYU Law Review* 3, 704.