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## The Development of Religious Liberty in Chile, 1973-2000

### I. INTRODUCTION

“The principle of religious liberty,” scholar James E. Wood, Jr., observed, “may well lay claim to being the foundation of all civil liberties and a democratic state.”<sup>1</sup> In addition to “legitimat[ing] an indeterminate plurality of religions,”<sup>2</sup> freedom of religion affirms and espouses “the sanctity or intrinsic worth ascribed to the human person,”<sup>3</sup> a principle that forms “the basis of all human freedom[s]”<sup>4</sup> necessary for the establishment and preservation of an open and democratic society.<sup>5</sup> According to religious freedom’s proponents, it is precisely this “final grounding in the nature and sacredness of the human person”<sup>6</sup> that makes religious freedom “the condition and guardian of all true freedom.”<sup>7</sup>

Given that freedom of religion is widely considered a basic human right or civil liberty—if not “the cornerstone of all other civil liberties and all human rights”<sup>8</sup>—it remains both puzzling and alarming that Western society, supposedly the world’s most active champion of democracy and human rights, has developed the “habit of ignoring religious persecution”<sup>9</sup> and religious human rights in gen-

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1. James E. Wood, Jr., *The Relationship of Religious Liberty to Civil Liberty and a Democratic State*, 1998 BYU L. REV. 479, 479.

2. FRANKLIN I. GAMWELL, *THE MEANING OF RELIGIOUS FREEDOM: MODERN POLITICS AND THE DEMOCRATIC RESOLUTION* 153 (1995).

3. Wood, *supra* note 1, at 488.

4. *Id.*

5. *See id.* at 488 (quoting Henry David Thoreau, *Essay on Civil Disobedience*, in 4 THE WRITINGS OF HENRY DAVID THOREAU 356, 387 (1906) (“There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which its own power and authority are derived, and treats him accordingly.”)).

6. *Id.* at 489.

7. *Id.* at 490 (quoting *Statement on Religious Liberty*, in MINUTES AND REPORTS, CENTRAL COMMITTEE OF THE WORLD COUNCIL OF CHURCHES 15 (1949)).

8. *Id.* at 489.

9. Paul Marshall, *Keeping the Faith: Religion, Freedom, and International Affairs, Address at the Hillsdale College Center for Constructive Alternatives Seminar (Fall 1998)*, in IMPRIMIS, Mar. 1999, at 1, 1.

eral.<sup>10</sup> Recently, Paul Marshall, a senior fellow at Freedom House's Center for Religious Freedom in Washington, D.C., related the following account illustrating the extent of the prevailing neglect of religious freedom matters:

At the end of 1997, former *New York Times* executive editor A.M. Rosenthal confessed, "I realized that in decades of reporting, writing, or assigning stories on human rights, I rarely touched on one of the most important. Political human rights, legal, civil, and press rights, emphatically often; but the right to worship where and how God or conscience leads, almost never."<sup>11</sup>

Tragically, Marshall concluded, this type of inattentiveness to, if not disregard for, religious freedom and religious human rights "is all too common in the West."<sup>12</sup>

The neglect of religious persecution and human rights mentioned by Marshall forms a prevalent theme in scholars' examination of human rights developments in Chile since 1973. Numerous works painstakingly examine General Augusto Pinochet's authoritarian regime's violation of political, legal, civil, and press rights<sup>13</sup> or the unfolding of human rights issues following the re-establishment of democratic government in 1990.<sup>14</sup> Such works, however, treat religious

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10. See W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 1 (Johan D. van der Vyver & John Witte, Jr. eds., 1996).

11. Marshall, *supra* note 9, at 1.

12. *Id.*

13. See, e.g., CYNTHIA BROWN, CHILE SINCE THE COUP: TEN YEARS OF REPRESSION (1983); 1-2 CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION, REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION (Phillip E. Berryman trans., 1993) [hereinafter NATIONAL COMMISSION]; REGGIO EMILIA, VIOLACIÓN POR PARTE DE LA JUNTA MILITAR DE LOS PRINCIPIOS ESTABLECIDOS EN LA DECLARACIÓN UNIVERSAL DE LOS DERECHOS HUMANOS EN EL TERRENO DE LA JUVENTUD (1975); COMISIÓN INTERNACIONAL INVESTIGADORA DE LOS CRÍMENES DE LA JUNTA MILITAR EN CHILE, LOS CRÍMENES FASCISTAS DE LA JUNTA MILITAR CHILENA: INFORME DE LA COMISIÓN INTERNACIONAL INVESTIGADORA DE LOS CRÍMENES DE LA JUNTA MILITAR EN CHILE (1976); MARY HELEN SPOONER, SOLDIERS IN A NARROW LAND: THE PINOCHET REGIME IN CHILE (1994); F. Van Hoof, *The Protection of Human Rights and the Impact of Emergency Situations under International Law with Special Reference to the Present Situation in Chile*, 10 DROITS DE L'HOMME 213 (1979).

14. See, e.g., CYNTHIA BROWN, HUMAN RIGHTS AND THE "POLITICS OF AGREEMENTS": CHILE DURING PRESIDENT AYLWIN'S FIRST YEAR (1991); COMISIÓN CHILENA DE DERECHOS HUMANOS, BALANCE DE LA SITUACIÓN DE DERECHOS HUMANOS DURANTE 1990 (1991); LUIS RONIGER & MARIO SZNAJDER, THE LEGACY OF HUMAN-RIGHTS VIOLATIONS IN THE SOUTHERN CONE: ARGENTINA, CHILE, AND URUGUAY (1999);

liberty concerns superficially at best. Discussions of “religious” issues almost exclusively address the Chilean government’s violation of the political, legal, and press rights of those religious organizations that opposed the government’s authoritarian policies and practices<sup>15</sup> or theorize about the socio-political role that religious organizations might play in the future of Chilean democracy.<sup>16</sup> Though such issues constitute a legitimate and important area of study, the present trend

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ELIN SKAAR, HUMAN RIGHTS VIOLATIONS AND THE PARADOX OF DEMOCRATIC TRANSITION: A STUDY OF CHILE AND ARGENTINA (1994).

15. See, e.g., MICHAEL FLEET & BRIAN H. SMITH, THE CATHOLIC CHURCH AND DEMOCRACY IN CHILE AND PERU 59-75, 111-58 (1997); ANOTHONY GILL, RENDERING UNTO CAESAR: THE CATHOLIC CHURCH AND THE STATE IN LATIN AMERICA 121-48 (1998); LA IGLESIA Y LA JUNTA MILITAR DE CHILE (DOCUMENTOS) 53-74 (1975) [hereinafter LA IGLESIA Y LA JUNTA MILITAR]; JEFFREY KLAIBER, IGLESIA, DICTADURAS Y DEMOCRACÍA EN AMÉRICA LATINA 88-100 (1997); BRIAN LOVEMAN, CHILE: THE LEGACY OF HISPANIC CAPITALISM 315-317 (2d ed. 1988); PAMELA LOWDEN, MORAL OPPOSITION TO AUTHORITARIAN RULE IN CHILE, 1973-90 (1996); ORLANDO MELLA, RELIGION AND POLITICS IN CHILE: AN ANALYSIS OF RELIGIOUS MODELS 35-44 (1987); BRIAN H. SMITH, THE CHURCH AND POLITICS IN CHILE: CHALLENGES TO MODERN CATHOLICISM 283-355 (1982); EUGENIO YAÑEZ, LA IGLESIA CHILENA Y EL GOBIERNO MILITAR: ITINERARIO DE UNA DIFÍCIL RELACIÓN (1973-1988) 51-132 (1989); Carolyn Cook Dipboye, *The Roman Catholic Church and the Political Struggle for Human Rights in Latin America, 1968-1980*, in 24 J. CHURCH & STATE 497 (1982); Michael Fleet, *The Chilean Church and the Transition to Democracy*, in ORGANIZED RELIGION IN THE POLITICAL TRANSFORMATION OF LATIN AMERICA 41, 65-95 (Satya R. Pattnayak ed., 1994); Brian Loveman, *Antipolitics in Chile, 1973-94*, in THE POLITICS OF ANTIPOLITICS: THE MILITARY IN LATIN AMERICA 268, 274-276 (Brian Loveman & Thomas M. Davies, Jr. eds., 1997) [hereinafter POLITICS OF ANTIPOLITICS]; Martín Poblete, *Chile from the Patronato to Pinochet*, in RELIGIOUS FREEDOM AND EVANGELIZATION IN LATIN AMERICA: THE CHALLENGE OF RELIGIOUS PLURALISM 220, 220-34 (Paul E. Sigmund ed., 1999) [hereinafter RELIGIOUS FREEDOM AND EVANGELIZATION]; Brian H. Smith, *The Catholic Church and Politics in Chile*, in CHURCH AND POLITICS IN LATIN AMERICA 321, 321-43 (Dermot Keogh ed., 1990) [hereinafter Smith, *Catholic Church*]; Brian H. Smith, *Chile: Deepening the Allegiance of Working-Class Sectors to the Church in the 1970s*, in RELIGION AND POLITICAL CONFLICT IN LATIN AMERICA 156, 156-86 (Daniel H. Levine ed., 1986) [hereinafter Smith, *Chile*]; Brian H. Smith, *Churches and Human Rights in Latin America: Recent Trends on the Subcontinent*, in CHURCHES AND POLITICS IN LATIN AMERICA 155, 155-162 (Daniel H. Levine ed., 1980); Hannah Stewart-Gambino, *Redefining the Changes and Politics in Chile*, in CONFLICT AND COMPETITION: THE LATIN AMERICAN CHURCH IN A CHANGING ENVIRONMENT 21, 21-44 (Edward L. Cleary & Hannah Stewart-Gambino eds., 1992); cf. WILLIAM T. CAVANAUGH, TORTURE AND EUCHARIST: THEOLOGY, POLITICS, AND THE BODY OF CHRIST (1998) (discussing the Pinochet government’s oppression of the Catholic Church in the context of torture, ecclesiology, and Eucharist).

16. See, e.g., VIRGINIA MARIE BOUVIER, ALLIANCE OR COMPLIANCE: IMPLICATIONS OF THE CHILEAN EXPERIENCE FOR THE CATHOLIC CHURCH IN LATIN AMERICA (1983); FLEET & SMITH, *supra* note 15, at 159-94; MARÍA ANTONIETA HUERTA & LUIS PACHECO PASTENE, LA IGLESIA CHILENA Y LOS CAMBIOS SOCIOPOLÍTICOS 293-343 (1988); Stewart-Gambino, *supra* note 15, at 33-41.

leaves larger religious freedom questions and interests essentially unexplored.

The topic of religious freedom in Chile from 1973 to the present warrants serious scholarly attention for several significant reasons. For example, as previously discussed, the principle of religious liberty arguably “is integrally related to all other civil liberties and to the maintenance of a free and democratic state.”<sup>17</sup> Accordingly, the evolution of Chilean democracy between 1973 and the present can be fully understood only upon considering Chile’s treatment of religious freedom issues. Similarly, a comprehensive understanding of Chilean political, legal, and human rights developments during this period depends upon the consideration of all relevant factors, including religion and religious liberty.<sup>18</sup> Lastly, the topic provides valuable case study information regarding the treatment of religious freedom issues by the ideologically similar military regimes that emerged in South America during the 1960s and 1970s;<sup>19</sup> the treatment of religious freedom issues by governments ruling through emergency powers; and the carry-over of civil rights policies and practices from authoritarian military regimes to successor forms of government, especially the “protected democracy.”<sup>20</sup>

In light of these potential benefits, this Comment explores the evolution of religious liberty in Chile between 1973 and the present. To provide an adequate historical background against which to understand post-1973 developments relating to religious freedom, Part II briefly summarizes the evolution of religious liberty in Chile prior to 1973. Part III examines and compares the manner in which religious liberty has evolved under the Pinochet regime and the elected governments that have succeeded it, focusing on three particular factors: the development of Chile’s national juridical framework, the national government’s perception and treatment of religious groups and organizations, and the public’s perception and treatment of reli-

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17. Wood, *supra* note 1, at 488.

18. Cf. Marshall, *supra* note 9, at 5-6 (arguing that “[a]nalyzes [of any political order] that ignore religion should be inherently suspect”).

19. Between the mid-1960s and late 1970s, ideologically similar military regimes emerged in Argentina, Brazil, Chile, Peru, and Uruguay. For a discussion on their views, similarities, and differences, see generally POLITICS OF ANTIPOLITICS, *supra* note 15, at 158-364.

20. BRIAN LOVEMAN, FOR *LA PATRIA*: POLITICS AND THE ARMED FORCES IN LATIN AMERICA 213 (1999). For a discussion of “protected democracy” in Chile, see *infra* notes 71-72, 190 and accompanying text.

gious groups and organizations. A close examination of these factors reveals three significant characteristics of the post-1973 development and status of religious liberty in Chile: (1) the national security policies and concerns that heavily influenced the evolution of religious freedom under the military government did not carry over to the post-Pinochet period, (2) throughout the post-Pinochet period, both questionable government treatment of smaller religious groups and conventional rivalries between different religious groups and beliefs have dominated religious liberty developments, and (3) though the Pinochet regime added several notable provisions to Chile's national juridical framework defining the scope of religious freedom, the consolidation of democracy in the post-Pinochet period has greatly strengthened the country's commitment to protecting freedom of religion. Part IV offers several observations on the course that religious liberty in Chile might follow during the near future, focusing on the potential benefits and problems associated with recent Chilean legislation regarding religious freedom, ecumenism, and the involvement of religious groups in national politics.

## II. HISTORICAL OVERVIEW: FREEDOM OF RELIGION IN CHILE PRIOR TO PINOCHET: 1818-1973

Topics such as freedom of religion cannot be adequately studied or understood in a vacuum. Affected by and intermingled with such factors as politics, church-state relations, and social values and attitudes, religious freedom can only be truly comprehended by also understanding the various factors that determined the context in which it has evolved.

Though a comprehensive examination of all of the historical factors that affected the development of religious liberty in Chile lies beyond the scope of this Comment, this Part provides a concise summary of the development of religious liberty and "religious history" in Chile prior to 1973. In addition to placing post-1973 developments related to religious liberty in historical context, this summary reveals that: (1) the *de jure* establishment of religious freedom as a constitutionally protected right occurred only after more than a century of *de facto* developments and practices favoring religious freedom and confrontation with the Chilean Catholic Church; (2) by 1973, Chile's juridical regime defining religious liberty guar-

anteed the basic freedoms of belief and conscience but remained largely undeveloped; and (3) by 1973, the “social question”<sup>21</sup> had become, with varying success, a central element of some religious organizations’ beliefs and practices and, in many instances, had blurred, if not erased, the line between religious belief and political thought.

A. *The Realization of De Jure and De Facto Religious Freedom: 1818-1925*

For the first century of Chile’s existence as an independent state, the nation’s constitutional regime proscribed religious freedom, making Chile “one of the most [religiously] intolerant of the Catholic governments of South America.”<sup>22</sup> Supported by various “proclamations, provisional statutes, and organic laws” promulgated during the first several decades following independence,<sup>23</sup> each of the five constitutions that governed Chile between 1818 and 1925 established Roman Catholicism as the state religion and severely restricted, if not altogether prohibited, the public exercise of non-Catholic religions.<sup>24</sup> *De jure* religious exclusivity rather than religious

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21. The term “social question” refers to “the continued growth of the urban and industrial proletariat and the intensified struggle between labor and capital” that developed in Chile in the late nineteenth and early twentieth centuries. LOVEMAN, *supra* note 15, at 196. More specifically, the social question involved the working class’s fight for such issues as the right to unionize/organize, the abolishment of child labor, and the establishment of minimum wages and maximum hours of work. *See id.* “Thus [sic] the social question in Chile, as in the rest of the Western world, consisted of political, social, and economic issues derived from the technological and demographic effects of industrialization during the nineteenth and early twentieth centuries.” *Id.*

22. J. LLOYD MECHAM, CHURCH AND STATE IN LATIN AMERICA: A HISTORY OF POLITICO-ECCLESIASTICAL RELATIONS 201 (Rev. ed. 1966).

23. *Id.*

24. As occurred in other Spanish American countries, Chile’s search for political stability in the years following the realization of independence from Spain led to the adoption of multiple constitutions. Promulgated in 1818, 1822, 1823, 1828, and 1833, respectively, these constitutions differed from each other in various ways. *See generally* LOVEMAN, *supra* note 15, at 117-25 (detailing the general ideological and structural differences between Chile’s first five constitutions). All, however, treated the “religious question” similarly by maintaining the supremacy of Catholicism and severely limiting, if not totally proscribing, freedom of religion. Consider the provisions described below.

(1) The Constitution of 1818 declared that “[t]he Roman Catholic Apostolic religion is the sole and exclusive faith of the State of Chile. Its protection, conservation, purity, and inviolability will be one of the duties of the chiefs of society who will never permit another public cult or doctrine contrary to that of Jesus Christ.” MECHAM, *supra* note 22, at 202 (quoting 1 LEYES PROMULGADAS EN CHILE DESDE 1810 HASTA EL 10 DE JUNIO DE 1913, at

53 (Ricardo Anguita ed., 1913) [hereinafter LEYES PROMULGADAS]). Also, the Constitution stipulated that only Chilean citizens who lived in the country could be appointed to ecclesiastical positions, and acknowledged the government's authority to appoint ecclesiastical officials and control Church administrative matters. *See id.* (citing 1 LEYES PROMULGADAS, *supra*, at 55).

Known as the *patronato real* ("royal patronage"), MARK A. BURKHOLDER & LYMAN L. JOHNSON, COLONIAL LATIN AMERICA 84 (2d ed. 1994), the authority granted to the Chilean government over the Church's affairs originated in the early sixteenth century, when the Pope bestowed upon the Spanish monarchy "the right to name religious functionaries in the New World." LOVEMAN, *supra* note 15, at 45. In exchange for this right, the Crown "assumed responsibility to promote the conversion of the Amerindians and to support the colonial Church." BURKHOLDER & JOHNSON, *supra*, at 84. With respect to the latter, the monarchy exercised control over (1) the "tithe income, [a] tax levied on agricultural production and livestock[] [that] sustain[ed] the ecclesiastical hierarchy, its physical facilities, and its activities"; (2) the "founding of churches, convents, and hospitals," *id.*; (3) the payment of clerics; and (4) the ability of ecclesiastics to travel both within the colonies and between Spain and the colonies. *See id.*

Though Chile and the other Spanish American countries claimed the right of the *patronato* as an element of national sovereignty in conjunction with their realization of independence from Spain in the early- to mid-1820s, their individual claims met with mixed success for two principal reasons. First, for several decades following Spanish American independence, "papal policy tended to follow that of Spain . . . by withholding recognition" of the new countries. HAROLD EUGENE DAVIS ET AL., LATIN AMERICAN DIPLOMATIC HISTORY: AN INTRODUCTION 76 (1977). Second, "difficult substantive issues" such as the *patronato* required "the negotiation of a treaty (concordat) recognizing Roman Catholicism as the national religion and regulating Church-state relations. These concordats came much later [than diplomatic recognition usually did], generally after [1850], if at all." *Id.* at 77. Despite receiving official recognition from the Vatican in 1840, Chile never negotiated a concordat that provided it control over the *patronato*. *See id.* at 76, 77 n.14. Consequently, Chile's "pretense to national patronage . . . was without foundation or sanction," making any Chilean exercise of control over the *patronato* an arrangement "only of convenience" on the part of the Church. MECHAM, *supra* note 22, at 212. For more information on the history of the *patronato real* as well as Chile's relations with the Vatican and endeavors to exercise the *patronato*, see generally MECHAM, *supra* note 22, at 61-87, 202-05.

(2) The Constitution of 1822 added to the religious provisions of the Constitution of 1818 the requirement that "[t]he inhabitants of the territory shall pay it (Roman Catholic Church) the greatest respect and veneration, whatever might be their private opinions." MECHAM, *supra* note 22, at 205 (quoting 1 LEYES PROMULGADAS, *supra*, at 102-13). Moreover, the following article of the 1822 constitution classified "[a]ll violations of the preceding article" as "a crime against the fundamental laws of the land." *Id.* (quoting 1 LEYES PROMULGADAS, *supra*, at 113).

(3) The Constitution of 1823 established Catholicism as the state religion, proscribed the public and private exercise of other religious faiths, and granted the president the right of the *patronato*. *See id.* In addition, it required that each national senator "undertake an investigation tour of the provinces to examine the status of religious and moral conditions." *Id.* (citation omitted).

(4) Like its predecessors, the Constitution of 1828 granted the executive the authority to negotiate concordats with the Vatican while limiting its ability to appoint Church officials by requiring that candidates for bishop be presented to the lower house of the National Congress. *See id.* at 206. Unlike the three previous constitutions, however, the Constitu-

freedom thus formed Chile's constitutional standard prior to 1925.

Despite these constitutional restrictions, three interrelated, non-juridical factors worked to render freedom of religion "a *de facto* reality"<sup>25</sup> by the end of the nineteenth century. First, the arrival and growth of non-Catholic religious groups throughout the nineteenth century established the foundations of religious pluralism.<sup>26</sup> Though Chile's non-Catholic population remained small, its presence nonetheless created a demand for religious freedom.

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tion of 1828 permitted the private exercise of non-Catholic religions and protected individuals from persecution based on their private beliefs. *See id.* Though these latest provisions suggested a somewhat more tolerant attitude toward religious liberty, a significant "retrogressive step" occurred later in 1828 with the enactment of a law that criminalized and defined as blasphemy "all published attacks on the dogma of the Roman Catholic Church." *Id.*

The Constitution of 1833 made "[n]o attempt . . . to reduce the severity of Chile's religious policy." *Id.* Accordingly, the Constitution (1) established Catholicism as the state religion and prohibited the public exercise of all other faiths; (2) required the president, in taking the oath of office, to "swear to observe and protect the Catholic religion," *id.*; (3) empowered the president to exercise the *patronato* with the limitation that certain positions be ratified by the Senate; (4) permitted the president to both maintain diplomatic relations and conclude concordats with the Vatican; and (5) created the Council of State, "of which a Church dignitary must be a member, . . . to have cognizance over all matters of ecclesiastical patronage that might be subject to litigation." *Id.*

The five constitutions that governed Chile between 1818 and 1925 thus established *de jure* religious exclusivity that identified Catholicism as the state religion and either prohibited or severely restricted religious liberty.

25. SMITH, *supra* note 15, at 71 (emphasis added).

26. Prior to 1925, the growth of Chile's non-Catholic community stemmed primarily from the arrival of non-Catholic immigrants and workers and the activities of Protestant missionaries. The first Protestant groups arrived in Chile in 1819, when the British and Foreign Bible Society sent representatives to Santiago, *see* IGNACIO VERGARA, EL PROTESTANTISMO EN CHILE 9-13 (1962), and the Anglican Church received special permission to construct two parishes in the port city of Valparaíso. *See* Poblete, *supra* note 15, at 220-22. In the early 1820s, the British and Foreign Bible Society established several schools in Santiago and Valparaíso and was granted confiscated Catholic convents to serve as school facilities. *See* LUIS GALDAMES, A HISTORY OF CHILE 216 (Isaac J. Cox ed. & trans., 1964); MECHAM, *supra* note 22, at 206. Between 1840 and 1870, the arrival of German colonists, British engineers and mine workers, and missionaries of various nationalities introduced the Lutheran and Presbyterian churches to Chile. *See* FLEET & SMITH, *supra* note 15, at 37; SMITH, *supra* note 15, at 71; VERGARA, *supra*, at 31-35, 36-43. Finally, Chile's non-Catholic community increased significantly between 1870 and 1925 with the arrival of additional Protestant denominations (e.g., Methodism, the Christian Alliance and Mission, Seventh Day Adventism, Baptist Protestantism, the Salvation Army), other non-Catholic Christian churches (e.g., Greek Orthodoxy and Catholicism of the Eastern Rite), and both Ashkenazi and Sephardic Judaism. *See* VERGARA, *supra*, at 50-63, 73-75, 79-82, 89-95, 99-100; Gunter Böhm, *Cuatro siglos de Presencia Judía en Chile*, REVISTA CHILENA DE HUMANIDADES, 1983 No. 4, at 93, 102-03.

Second, the fact that “[t]he constitutional exclusion of the public exercise of other [religions] was never completely enforced”<sup>27</sup> fortified religious pluralism and instituted a *de facto* basis for religious freedom. From the early-nineteenth century, religious services held by non-Catholic groups occurred “regularly and openly,”<sup>28</sup> without government interference, because public officials interpreted the constitutional term “public exercise” “as not prohibiting religious worship of non-Catholics *inside* buildings.”<sup>29</sup>

Third, and perhaps most important, Chilean politicians’ implementation of political liberalism and anticlericalism<sup>30</sup> resulted in the enactment of legislation that granted non-Catholics specific legal rights,<sup>31</sup> formally reinterpreted the constitutional language regarding freedom of religion to provide legal protection and permission to worship to all religious denominations,<sup>32</sup> and severely curbed the Catholic Church’s traditional socio-political authority and functions.<sup>33</sup> Though efforts to enact constitutional amendments guaran-

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27. MECHAM, *supra* note 22, at 207.

28. *Id.*

29. *Id.*

30. The term “anticlericalism” refers to the liberal view that “the Catholic [Church] tradition was one of sterility and oppression,” which mandated that the Church’s authority should be restricted “to its strictly religious sphere because it was . . . an obstacle to modern progress.” *Id.* at 417. Anticlericalism, therefore, “was not antireligious, but merely sought to deprive the Church of those means and privileges which enabled it to exercise political power.” *Id.*

31. *See id.* at 207-08 (describing laws allowing non-Catholics to marry according to their own religious rites, conduct religious services in privately-owned facilities, and establish and support private religious schools).

32. *See* FLEET & SMITH, *supra* note 15, at 37; Poblete, *supra* note 15, at 222. Known as the “Interpretive Law” (“*Ley Interpretativa*”), the government’s new construction of Article Five of the Constitution of 1833 stated:

Article 1. It is declared that by Article 5 of the Constitution[,] those who do not profess the Roman Catholic Apostolic religion are permitted to practice their cult inside private buildings.

Article 2. Dissidents are permitted to establish and support private schools for the instruction of their children in the doctrine of their religion.

MECHAM, *supra* note 22, at 207-08 n.26 (quoting CONSTITUCIÓN Y LEYES POLÍTICAS DE LA REPÚBLICA DE CHILE VIGENTE EN 1881, at 48 (1881)).

33. *See* GALDAMES, *supra* note 26, at 217 (noting that the founding of Santiago’s first general cemetery clashed with the Church’s policy of interring the dead either inside or near to a church); MECHAM, *supra* note 22, at 204, 211-14 (describing the government’s actions to suppress religious orders and confiscate their property; abolish the state-collected tithe; place the clergy on regular salaries paid by the government, thereby discontinuing the additional wages formerly paid by the dioceses; donate dispossessed convents to Protestant schools; make civil laws compulsory; place all civil records under state control; remove cemeteries from exclu-

teeing religious liberty and achieve the separation of church and state failed,<sup>34</sup> the laws that were enacted successfully provided specific aspects of religious liberty with limited *de jure* protection and advanced *de facto* religious freedom in general by weakening the traditional privileges, authority, and activities of the Catholic Church.<sup>35</sup>

With the establishment of *de facto* religious liberty by the turn of the century, two important developments marked the evolution of religious freedom by 1925. First, religion ceased to be a socially and politically divisive matter due to increasing religious tolerance and indifference.<sup>36</sup> Second, building upon both the nineteenth century's

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sive Church control; and eliminate the ecclesiastical *fuero*, or the right of clergymen to be tried and punished by an ecclesiastical court rather than the national court system). It should be noted that the Church's defensive response to these developments further undermined its socio-political authority. During the late nineteenth century, the Church sought to protect its authority and resources from additional anticlerical restraints by strengthening its affiliation with the Conservative Party. See SMITH, *supra* note 15, at 71. Several bishops became official party members, numerous priests served as party representatives in the national legislature, clergymen became heavily involved in local electoral campaigns, and Church funds occasionally were used to support Conservative candidates in elections. See FLEET & SMITH, *supra* note 15, at 37; SMITH, *supra* note 15, at 71. Not only did these events fail to prevent the erosion of its traditional privileges but they also damaged the Church's moral credibility and generated politically-related divisions between ecclesiastical officials. See SMITH, *supra* note 15, at 71.

34. See MECHAM, *supra* note 22, at 210, 214-15.

35. Though none of the government's initial (pre-1850) anticlerical acts seriously threatened the Church's privileged standing, see *id.* at 206 ("The Church emerged [from these incidents] practically unscathed in fortune and privilege.") (citation omitted), the ecclesiastical reforms of the late-nineteenth century "seriously weakened the Chilean Church; in a formal encounter it had been defeated and humiliated; its prestige was shaken and thereafter it was placed on the defensive." *Id.* at 215.

36. See GALDAMES, *supra* note 26, at 429. Writing in 1911, the Chilean historian Luis Galdames described this phenomenon, affirming that

[a] marked religious evolution . . . is to be noted throughout the country. It is not that the people are leaving the Church; at least three fourths of the national population continue to be as sincerely Catholic as during former times. Nor does [the Church] experience hostility from those who are not Catholic: the Protestants in the republic are almost entirely foreigners, English, North Americans, or Germans, and respectful toward all beliefs; the freethinkers do not constitute a group organized against the Church; they are simply private persons who feel themselves free from the necessity of complying with the precepts of any religion whatsoever. The evolution noted presents other manifestations—religious tolerance and religious indifference.

Today it is not a mark of honor in a believer to hate all other faiths except his own, or the men who support or embody such faiths. In judging an individual, one does not ask what religion he practices or what he believes. It is also obvious that most people do not now pay attention to, or practice with the former diligence, [various religious customs and rites]. . . . Even the political influence of the clergy has diminished. . . . The republic has thus attained religious peace and an absolute

*de facto* and *de jure* developments and the recent rise of religious tolerance and indifference, proponents of political liberalism in 1925 promulgated a new constitution that recognized, for the first time in Chilean history, absolute *de jure* freedom of religion and separation of church and state.<sup>37</sup>

Contrary to the exclusionist nature of its predecessors,<sup>38</sup> the Constitution of 1925 guaranteed the:

[p]ractice of all beliefs, liberty of conscience and the free exercise of all religions not contrary to morality, good usage and public order. Therefore, the respective religious bodies ha[d] the right to erect and maintain houses for worship and accessory property under the conditions of security and hygiene as fixed by the laws and regulations.<sup>39</sup>

In accordance with an agreement between the Chilean government and the Catholic Church,<sup>40</sup> the Constitution also granted religious organizations certain rights with respect to property and facilities:

The churches, creeds and religious institutions of any ritual shall have the rights in respect to their property that the laws now in force stipulate or recognize; but they will be subject, under the guarantees of this Constitution, to the general law in the exercise of ownership of their future-acquired property.

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liberty of worship that is founded in the customs of society and the very soul of the people.

*Id.* at 429-30.

37. See FLEET & SMITH, *supra* note 15, at 38. Unlike previous attempts to create a new constitutional standard recognizing religious freedom and separation of church and state that had failed in part due to opposition from the Catholic Church, the religious liberty-related provisions of the Constitution of 1925 received the Church's active support. See *id.* In particular, the Church agreed to support separation of church and state in return for certain concessions from the government: (1) the Church would be granted continued public legal status and indemnified for confiscated properties, (2) state claims of authority over the appointment of Church officials and administration of internal Church matters would be abolished, (3) public schools would continue to provide religious instruction, and (4) there would be no constitutional recognition of atheism. See *id.* Government officials accepted the Church's terms and ratified the arrangement through a concordat with the Vatican. See *id.*

38. See *supra* note 24 and accompanying text.

39. CHILE CONST. of 1925 art. 10, no. 2 (General Secretariat, Organization of American States trans., 1972).

40. See *supra* note 37.

Churches and accessory property intended for the service of any religious sect are exempt from taxation.<sup>41</sup>

The Constitution of 1925 thus achieved the recognition of a constitutional right to freedom of belief and conscience as well as the free exercise of such beliefs while guaranteeing religious groups and organizations the right to own property and maintain houses of worship.

In addition, the Constitution of 1925 included several additional guarantees that strengthened an individual or organization's ability to manifest belief and disseminate religious information. For example, Article 10 secured the "right of assembly without prior license,"<sup>42</sup> "[t]he right of association without prior license and in conformity with the law,"<sup>43</sup> and various rights derived from, or affiliated with, the freedom of expression.<sup>44</sup> Together, these provisions acted to fortify their sister proviso guaranteeing the free exercise of religion by protecting the ability to meet publicly or privately, form religious associations, and share religious beliefs and information.<sup>45</sup>

41. CHILE CONST. of 1925 art 10, no. 2.

42. *Id.* no. 4.

43. *Id.* no. 5.

44. *See id.* no. 3. Section Three specifically affirmed the [f]reedom to express, without prior censorship, opinions, either orally or in writing, through the press, radio, . . . or any other medium, without prejudice to liability for offenses and abuses that may be committed in the exercise of this liberty in the manner and in the cases as determined by law . . . .

. . . .  
All streams of opinion shall have the right to utilize, under the conditions of equality determined by law, publicity and communications media owned or used by private sources.

Every natural or juridical person . . . shall have the right to organize, found and maintain newspapers, magazines, periodicals and radio transmitting stations, under the conditions established by law. . . .

The importation of and trading in books, printed matter and magazines shall be free without prejudice to the regulations and taxes that the law may impose. It is forbidden to discriminate arbitrarily between newspaper, periodical, magazine and other publishing firms, radio broadcasting . . . stations in matters relating to the sale or supplying, in any form, of paper, ink, machinery or other work materials, or relating to authorizations or permits that may be necessary for such acquisitions within or outside the country.

*Id.*

45. In addition to constitutional guarantees relating to religious freedom, the Constitution of 1925 contained a transitory provision concerning church-state relations. The provision (1) invalidated all laws pertaining to relations between the Church and Chilean government, the *patronato*, and other related topics and (2) obligated the Chilean government to pay the

The Constitution of 1925 thus marked the culmination of approximately eighty-five years of effort to realize *de jure* freedom of religion. By guaranteeing the individual freedoms of belief, association, assembly, and expression, the separation of church and state, and religious groups' rights to possess property and buildings of worship, the Constitution of 1925 achieved a number of firsts in Chilean juridical history. Perhaps more importantly, however, it provided a solid, though relatively undeveloped, base from which religious liberty could continue to develop.

*B. Religious Liberty, Religious Pluralism, and the Politicization of Religious Doctrine and Practice: 1925-1973*

The period 1925-1973 witnessed a dramatic slowing in the evolution of religious liberty in Chile. Chile's juridical regime acknowledged the constitutional guarantees of the Constitution of 1925 and the liberal reforms of the late-nineteenth century,<sup>46</sup> but its scope and depth developed only slightly, even though such religiously linked issues as education provided fertile ground for occasional religious liberty-related conflicts.<sup>47</sup> Nevertheless, the existing regime ranked Chile as "one of the most liberal nations in matters of religion."<sup>48</sup> Also, relations between the Chilean government and the Catholic Church remained amicable throughout the period, allowing the Church's social prominence and authority to increase considerably.<sup>49</sup>

With respect to religious liberty during the Pinochet period, the most significant "religious" developments between 1925 and 1973 involved the growth of religious pluralism and the politicization of

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Church 2,500,000 pesos annually for five years for the purpose of easing the Church's transformation into an independent organization. *See id.* transitory provision No. 1.

46. *See* MECHAM, *supra* note 22, at 220-22.

47. With respect to religious liberty-related battles associated with education, non-Catholics and proponents of religious liberty defeated efforts to require the teaching of Catholic doctrine in public elementary schools in the 1940s. *See Situación de las iglesias evangélicas en Chile*, in LA IGLESIA Y LA JUNTA MILITAR, *supra* note 15, at 111-12. In the early 1970s, the Catholic Church and other nonreligious elements of society (including the military) successfully countered Chile's socialist government's efforts to found "a National Unified School system (ENU) requiring all public and private schools to adopt an ideology of 'socialist humanism' under state supervision." Smith, *Catholic Church*, *supra* note 15, at 326. Based on the Church hierarchy's theological opposition to Marxism, Chile's bishops argued that the ENU failed to provide "sufficient consideration to the 'religious values which are part of the spiritual patrimony of Chile.'" SMITH, *supra* note 15, at 198.

48. MECHAM, *supra* note 22, at 201.

49. *See id.* at 222.

religious belief and practice. Driven by the arrival of Evangelical and Pentecostal Protestantism from North America in the 1950s and 1960s, religious pluralism experienced unprecedented growth in the two decades prior to 1973. Both variants of Protestantism, but especially Pentecostalism, expanded rapidly, and the number of their adherents quickly surpassed those of the historic Protestant churches that had been in Chile since the mid- to late-nineteenth century.<sup>50</sup> More importantly, the spread of Evangelical and Pentecostal Protestantism briskly increased the size of Chile's total Protestant population from 1.4% of the national population in 1930 to 6.2% in 1970.<sup>51</sup>

Second, beginning in the 1930s, a growing tendency to identify the "social question"<sup>52</sup> with religious doctrine and practice led to the growth of "social Christianity." Social Christianity maintained that an important part of Christian doctrine involved using political means to reform societal institutions in a manner that benefited the poor and ensured social equality.<sup>53</sup> Politically, social Christians generally believed that their support for "a pluralist welfare-state democracy as the form of government most faithful to the principles of the Christian gospels" represented a middle way between "liberal individualism and collectivist socialism."<sup>54</sup> The movement's most extreme variation, known generally as "liberation theology," drew on developmental theory and Marxist precepts to call for the "liberation" of the poor by overthrowing the existing socio-political order

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50. See generally WILLIAM R. READ ET AL., *LATIN AMERICAN CHURCH GROWTH* 101-09 (1969) (describing the growth of Protestantism in Chile through 1967).

51. National census statistics placed the percentage of Protestants in the national population at 1.4 % in 1930, 2.3 % in 1940, 4.1 % in 1950, 5.6 % in 1960, and 6.2 % in 1970. See EMILIO WILLEMS, *FOLLOWERS OF THE NEW FAITH: CULTURE CHANGE AND THE RISE OF PROTESTANTISM IN BRAZIL AND CHILE* 265 tbl.VI (1967); Jean-Pierre Bastian, *The Metamorphosis of Latin American Protestant Groups: A Sociohistorical Perspective*, 28 *LATIN AMER. RES. REV.* 33, 41 (1993) (citation omitted). By 1970, approximately eighty percent of Chile's Protestant population belonged to a Pentecostal congregation. See READ ET AL., *supra* note 50, at 102 fig.26.

52. See *supra* note 21.

53. See FLEET & SMITH, *supra* note 15, at 40-41; Paul E. Sigmund, *The Transformation of Catholic Social Thought in Latin America: Christian Democracy, Liberation Theology, and the New Catholic Right*, in *ORGANIZED RELIGION IN THE POLITICAL TRANSFORMATION OF LATIN AMERICA* 41, 43 (Satya R. Pattanayak ed., 1994).

54. Sigmund, *supra* note 53, at 43. This type of "welfare-state liberalism" closely paralleled that of the "reformist liberal and social democratic" parties and governments in Europe, the United States, and the British Commonwealth. *Id.* at 44.

and instituting socialism.<sup>55</sup> In both its general and extreme forms, social Christianity represented a significant fusion of political thought and religious belief.

Social Christianity made its greatest inroads among Catholics, both lay members and clergy. Liberal elements of the historic Protestant churches also adopted versions of social Christian thought;<sup>56</sup> however, most Evangelical and Pentecostal churches rejected social Christianity in favor of more traditional, conservative views.<sup>57</sup> As the social Christian movement progressed between the late 1950s and early 1970s, its adherents formed a variety of socially and politically active groups and associations both within and without existing religious organizations.<sup>58</sup>

By the early 1970s, the extreme ideological polarization that had torn apart Chile's political parties<sup>59</sup> also overwhelmed Chile's religious climate and progressively fragmented social Christians into different groups. Not only did ideological differences increasingly pit different religious groups against one another but they also created severe divisions within religions.<sup>60</sup> The Catholic Church, for example, suffered from cleavages between its socialist clergy and members, moderate Church hierarchy, and conservative upper- and middle-class constituency. In very significant and terrible ways, these "[p]olitical divisions made it impossible for many . . . groups to function as religious communities."<sup>61</sup> As one priest explained, "the

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55. *See generally* ENRIQUE DUSSELL, *HISTORY AND THE THEOLOGY OF LIBERATION: A LATIN AMERICAN PERSPECTIVE* 28-31, 140-43 (John Drury trans., 1976); Sigmund, *supra* note 53, at 51-54.

56. *See* O.E. COSTAS, *THEOLOGY OF THE CROSSROADS IN CONTEMPORARY LATIN AMERICA: MISSIOLOGY IN MAINLINE PROTESTANTISM: 1969-1974*, at 86-90 (1976).

57. *See* DAVID MARTIN, *TONGUES OF FIRE: THE EXPLOSION OF PROTESTANTISM IN LATIN AMERICA* 237-40 (1990).

58. *See generally* FLEET & SMITH, *supra* note 15, at 40-59; LOVEMAN, *supra* note 15, at 273-89; SMITH, *supra* note 15, at 86-280.

59. *See generally* LOVEMAN, *supra* note 15, at 264-306 (describing how ideological polarization radicalized Chilean politics and essentially split Chilean politics into leftist and conservative camps).

60. *See* FLEET & SMITH, *supra* note 15, at 55-59.

61. *Id.* at 56. Regarding the politicization and resultant polarization of religious life, Brian Smith further explained:

In some cases, priests sympathetic to the transition to socialism made explicit efforts to raise the political awareness of their new communities, and demanded of the membership an active commitment to the leftist cause and to the transition to socialism. In other cases, the participants themselves often injected political issues into the small group discussions of these communities, and in religious meetings openly

community was quite political, because the formation it received was intensely Christian. It brought faith and people's lives together, and people's lives were political."<sup>62</sup>

Thus, though the period 1925-1973 did not generate significant developments in the evolution of religious freedom, it did witness two events that had profound implications for the development of religious liberty in the immediate future. As Part III demonstrates, the rise of Evangelical and Pentecostal Protestantism and politicization of religion through the evolution of social Christianity greatly influenced the manner in which religious issues developed and were resolved under and subsequent to the Pinochet regime.

### C. Conclusion

The evolution of freedom of religion in Chile prior to 1973 was, as the preceding discussion indicates, a most interesting saga. For more than 100 years, Chileans did not enjoy a constitutionally protected freedom of belief and conscience, and the Catholic Church remained the established state religion. The evolution of *de facto* and, to a lesser extent, *de jure* religious freedom prior to the adoption of the Constitution of 1925 resulted from a unique combination of pressures generated by increasing religious pluralism fostered by the immigration of non-Catholic persons and the influence of liberal anticlericalism. Moreover, the eventual adoption of constitutional provisions guaranteeing religious freedom and separation of church and state came only as the result of granting the majority religion special legal status.

By 1973, religious freedom in Chile displayed several characteristics. First, there existed a constitutionally guaranteed right to exercise the freedom of belief and conscience, but that right remained contingent upon whether the belief in question was not contrary to such ambiguous concepts as morality, good usage, and public order. Second, there also existed constitutionally guaranteed rights to exercise the freedoms of assembly, association, and expression. Third, though

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clashed with other members who had different political convictions. SMITH, *supra* note 15, at 262 (footnotes omitted). Based on interviews conducted throughout Chile, Smith concluded "that, especially during the latter part of the [Allende] administration, the problem of serious polarization of religious meetings was fairly widespread and, in [the] perspective [of local clergy, religious, and lay leaders], quite disruptive to effective evangelization." Smith, *Chile*, *supra* note 15, at 181 n.6 (citation omitted).

62. FLEET & SMITH, *supra* note 15, at 56 (citation omitted).

the constitutional regime no longer affirmed the union between church and state, Chile's majority religion continued to enjoy special privileges enacted by concordat. Fourth, due largely to the rise of Evangelical and Pentecostal Protestantism, religious pluralism had reached unprecedented levels. Fifth, the extreme politicization of religious belief had resulted in the unification of the political and religious arenas, fragmented religious groups and organizations, and heightened doctrinal differences between some religious groups.

### III. RELIGIOUS LIBERTY IN CHILE, 1973-2000

Part III explores the development of religious liberty in Chile between 1973 and 2000, focusing on the manner in which religious freedom evolved under the Pinochet regime and has developed under the "democratic" civilian administrations that succeeded the military government. Specifically, this Part examines the evolution of religious liberty as revealed by three particular factors: (1) the development of Chile's national juridical framework; (2) the federal government's perception and treatment of religious groups, beliefs, and practices; and (3) the popular perception and treatment of religious groups, beliefs, and practices. Rather than attempting a comprehensive analysis of these factors, the following sections will focus on the Pinochet and post-Pinochet periods, respectively, before engaging in comparative analysis of the developments that occurred during each period.

#### *A. The Evolution of Religious Liberty Under the Pinochet Regime: 1973-1990*

*I love my country. I love the people of Chile. I am proud that Chile is now a country where people are free to speak, free to travel, and free to pursue their political and religious views. We lost all these things for a . . . brief period in the early 1970s. Yes, it took time to bring them back. But I regard it as my greatest achievement that these freedoms did indeed return.<sup>63</sup>*

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63. Augusto Pinochet Ugarte, "My Wife Was in Tears, I Was Hurt and Bewildered," SUNDAY TELEGRAPH, Nov. 8, 1998, at 2 (reprinting General Pinochet's first public statement following his arrest in the United Kingdom in October 1998 in response to the government of Spain's request that he be extradited to Spain to face murder and torture charges stemming from his dictatorship in Chile between 1973 and 1990).

*[General Pinochet instituted] a criminal plot to execute a “systematic plan . . . for political objectives” of illegal detentions, kidnappings, torture, and the deaths and disappearances of thousands of people of different . . . categories . . . defined by leadership roles, religious beliefs, cultural characteristics and . . . professions . . .*<sup>64</sup>

The Pinochet period constituted a conspicuous aberration in the development of religious liberty in Chile. Rather than evolving in response to such traditional forces as classic liberalism and religious pluralism, freedom of religion under the Pinochet regime became almost exclusively a function of the military government's authoritarian, anti-Marxist national security ideology, policies, and concerns. This extreme politicization of religious liberty resulted in the establishment of *de facto* religious intolerance, as individual clergymen and religious organizations both suffered governmental and popular persecution in accordance with their perceived political position. While Chile's juridical regime succeeded in expanding its protection of religious liberty through both the enactment of national legislation and the adoption of international treaties, *de jure* religious freedom fell victim to the regime's political focus. In addition to placing national security-based restrictions on constitutional guarantees affecting the free exercise of religious liberty, the military government suspended many elements of the juridical system by ruling almost exclusively through emergency powers. Freedom of religion under the Pinochet dictatorship was thus characterized by contradictory developments that worked to simultaneously further and restrict religious freedom.

*1. Background: Pinochet and the institutionalization of military antipolitics and “protected democracy,” 1973-1990*

The dictatorial regime of General Augusto Pinochet Ugarte began in dramatic, brutal fashion on September 11, 1973, with a military coup d'état against Chile's constitutionally-elected, Socialist president, Salvador Allende, under whose leadership Chile had experienced extreme political polarization and economic deteriora-

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64. *Home News*, Press Association Newsfile, Nov. 4, 1998, available in LEXIS, Lexis Library, Panews File (summarizing the argument of Mr. Alun Jones QC, of the Crown Prosecution Service, in a hearing held before the United Kingdom's House of Lords to determine whether General Augusto Pinochet Ugarte should be extradited to Spain).

tion.<sup>65</sup> Rather than returning the country to civilian rule, Pinochet established a military government that, for the next seventeen years, labored to “impos[e] a new social and political order upon Chile.”<sup>66</sup> Based upon the ideological tenets of “military antipolitics”<sup>67</sup> and virulent anticommunism, the military government’s actions and policies sought to transform Chile morally, economically, and politically in a manner that would safeguard *la Patria* (“the Fatherland”) from the evils of traditional civilian politics and class conflict, and achieve the “extirpation of Marxism.”<sup>68</sup> Accordingly, the Pinochet regime revamped the national economy according to neo-liberal economic principles;<sup>69</sup> replaced ideological and social pluralism “with the values of conservative Catholicism, class harmony, and above all [sic] Chilean nationalism;”<sup>70</sup> and modified the juridical system to legitimate military rule and create a “protected democracy”<sup>71</sup> under the mili-

65. See generally LOVEMAN, *supra* note 15, at 296-309 (describing the political and economic conditions and events that occurred during President Allende’s administration).

66. *Id.* at 312.

67. Brian Loveman & Thomas M. Davies, Jr., *The Politics of Antipolitics*, in POLITICS OF ANTIPOLITICS, *supra* note 15, at 3. The term “military antipolitics” refers to an ideology held by the Latin American military that blamed “politics,” or the activities of civilian politicians, as the source of the economic underdevelopment, socio-political turmoil, and corruption that existed throughout Latin America. See *id.* Influenced by the United States’ view of national security and counterrevolution agenda following the “fall” of Cuba to communism in 1959, military antipolitics also held politics and its attendant problems responsible for the lack of regional stability and development and international communism’s penetration into the Western Hemisphere. See *id.* at 9-10. In the 1970s, “military antipolitics became a predominant political form in Latin America,” *id.* at 10, maintaining that the military best fulfilled its constitutionally mandated responsibility of safeguarding *la Patria* (“the Fatherland”) by rejecting traditional liberal democracy and employing direct military rule to achieve social order and promote economic development. See *id.* at 10-13. Adhering to this doctrine, the military assumed power in Argentina, Brazil, Chile, Peru, and Uruguay by 1976. See THOMAS C. WRIGHT, *LATIN AMERICA IN THE ERA OF THE CUBAN REVOLUTION* 155-73 (1991).

68. WRIGHT, *supra* note 67, at 164 (quoting General Augusto Pinochet Ugarte, Speech (Sept. 11, 1975), in POLITICS OF ANTIPOLITICS, *supra* note 15, 205).

69. See generally LOVEMAN, *supra* note 15, at 317-21, 326-35 (detailing the Pinochet regime’s economic program).

70. WRIGHT, *supra* note 67, at 164.

71. LOVEMAN, *supra* note 15, at 323 (quoting General Augusto Pinochet Ugarte). The concept of “[p]rotected democracy,” with the military institutions as the guarantors of the political and legal order and, implicitly, the adjudicators of their nations’ common good, permanent interests, and national security requirements, has a long history in Latin America.” LOVEMAN, *supra* note 20, at 213. Professor Brian Loveman defined protected democracy as a political model that sets vague formal limits on the scope of legal political activity and reform, and it is premised on the notion that people must be protected from themselves and from organizations that might subvert the existing political and social order. Such subversion, even when ostensibly legal, must be repressed. Groups

tary's guardianship.<sup>72</sup> To further the government's activities, Pinochet also (1) created a brutal security force responsible for ferreting out Marxists and other subversive elements of society and for silencing opposition to the regime's policies and practices<sup>73</sup> and (2) institutionalized state terrorism.<sup>74</sup>

Though Pinochet initially received much popular support, especially from the upper- and middle-classes, the onset of a severe economic depression in 1981 resulted in popular demand for a return to civilian government and widespread anti-regime demonstrations by the mid-1980s.<sup>75</sup> In October 1988, Pinochet lost a constitutionally mandated plebiscite, allowing for the return of democratic rule in 1990.<sup>76</sup> The Pinochet regime formally ended with the inauguration

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with subversive aims . . . potentially threaten "national values," the "permanent interests of the nation," and, in the Latin American version, "the Western Christian way of life." Thus, . . . society requires guardians to defend these permanent values against internal and external enemies. In Latin America, the armed forces . . . have shouldered this historical mission, by constitutional and legislative prescription and also by self-assignment.

*Id.* For a comprehensive discussion of protected democracy in Latin America, see generally *id.* at 213-21, and Brian Loveman, "Protected Democracies": *Antipolitics and Political Transitions in Latin America, 1978-1994*, in *POLITICS OF ANTIPOLITICS*, *supra* note 15, at 366-97.

72. In the mid-1970s, the regime initiated "a new [juridical] institutional order," LOVEMAN, *supra* note 15, at 321, by adopting four "constitutional acts" that "amended or eliminated certain parts of the Constitution of 1925" in accordance with the government's objectives and policies. *Id.* at 313. The government then promulgated a new Constitution in 1980, incorporating the values of antipolitics, anti-Marxism, and the military's socio-economic order. *See id.* at 269-70. The Constitution of 1980 formally established Chile as a protected democracy by restricting popular and civilian political authority while simultaneously expanding the military's political involvement and national security powers. *See id.* at 342.

73. *See id.* at 312; WRIGHT, *supra* note 67, at 167.

74. *See* WRIGHT, *supra* note 67, at 167. Acts of state terrorism included censorship, arbitrary arrest, prolonged detention, "disappearing" (or kidnapping) people, torture, and summary execution and murder. *See id.* at 162. Pinochet justified the use of state terrorism as a necessary protection of human rights, stating that

[t]he greatest possible enforcement and highest respect for Human Rights implies that these must not be exercised by those individuals who spread doctrines or commit acts which in fact seek to abolish them. This makes it necessary to apply restrictions as rigorous as the circumstances may require to those who defy the juridical norms in force.

LOVEMAN, *supra* note 15, at 311 (quoting General Augusto Pinochet Ugarte).

75. *See generally* LOVEMAN, *supra* note 15, at 344-56 (reporting the onset of economic depression and the Chilean public's subsequent lack of support for the Pinochet regime between 1981 and the mid-1980s).

76. *See* Jay A. Sigler et al., *Chile*, in *CONSTITUTIONS OF THE COUNTRIES OF THE WORLD* 15, 33 (Albert P. Blaustein & Gisbert H. Flanz eds., 1991).

of President Patricio Aylwin on March 11, 1990.<sup>77</sup> Pinochet, however, retained a significant amount of political power as he, in accordance with the constitutional regime, served as head of the Armed Forces in the new civilian administration.<sup>78</sup> The end of the Pinochet dictatorship thus marked more of a transition than an end to his involvement in the Chilean government.

*2. Analysis: Freedom of religion under the Pinochet regime*

A brief examination of the three factors mentioned in the introduction to this Section—the development of Chile’s national juridical framework; the Chilean government’s perception and treatment of religious groups, beliefs, and practices; and the popular perception and treatment of religious groups, beliefs, and practices—reveals that the Pinochet period was a contradictory yet important era in the evolution of religious liberty in Chile. On one hand, the nation’s juridical framework made moderate strides in protecting and defining the scope of those religious human rights first guaranteed by the Constitution of 1925. However, the military government’s practice of suspending civil rights and the politicization of both governmental and popular perceptions and treatment of religious beliefs and groups combined to prevent the full enjoyment of those religious liberty-related freedoms and rights established by the national juridical regime. The Pinochet period was thus characterized by contradictory developments that worked to simultaneously further and restrict religious freedom.

*a. Developments in Chile’s national juridical regime.* The religious liberty-related developments that occurred in Chile’s national juridical regime under Pinochet involved three specific sources of national law: *constitutional provisions* outlining the basic freedoms and legal guarantees associated with religious freedom, *legislative and administrative provisions* protecting or defining religious liberty in specific areas of law, and *international legal norms* resulting from Chile’s obligations under international treaties.<sup>79</sup> The developments that transpired within these three sources of law collectively demonstrate that the juridical regime accomplished moderate yet notable

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77. *See id.* at 34.

78. *See id.* at 33-34.

79. This discussion will not examine judicial decisions rendered by the Chilean courts due to the nonprecedential nature of Chilean jurisprudence and lack of relevant cases.

progress in defining the scope of religious liberty between 1973 and 1990.

(1) *Constitutional provisions.* For the first several years following the 1973 military coup, Chile nominally remained governed by the Constitution of 1925. Chilean citizens and religious groups, therefore, ostensibly continued to enjoy the right to freedom of conscience, the free exercise of beliefs that did not violate public morality or order,<sup>80</sup> and all other religious liberty-related rights guaranteed by the Constitution of 1925.<sup>81</sup>

These guarantees, however, were not enforced in practice. Upon assuming power, the military government governed under a continuous state of siege,<sup>82</sup> allowing it to indefinitely suspend all constitutionally enumerated guarantees, freedoms, and civil liberties, including those relating to religion.<sup>83</sup> For its first few years in power, the military government thus possessed the ability to legally punish an individual for holding or manifesting particular religious beliefs that it considered unacceptable or undesirable; infringe on religious organizations' capacity to own and maintain property; and abrogate all other constitutional rights affecting religious freedom.<sup>84</sup>

Between December 1975 and September 1976, the junta enacted a series of "constitutional acts" that "amended or eliminated certain parts of the Constitution of 1925—without fully replacing it."<sup>85</sup> Constitutional Act Number Three,<sup>86</sup> which defined various "constitutional rights and guarantees,"<sup>87</sup> closely paralleled the Constitution of 1925's provisions governing freedom of religion. Article 11 of the Act guaranteed "[f]reedom of conscience and expression of

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80. See *supra* note 39 and accompanying text.

81. See *supra* notes 41-44 and accompanying text.

82. See Sigler et al., *supra* note 76, at 19, 23.

83. See LOVEMAN, *supra* note 15, at 310.

84. For examples of how the Pinochet regime exercised these powers, see *infra* Part III.A.2.b.(1).

85. LOVEMAN, *supra* note 15, at 313; see also Inter-American Commission on Human Rights, *Third Report on the Situation of Human Rights in Chile*, at 10, IACHR OEA/Ser.L/V/II.40 doc. 10 (1977) (discussing several of the changes made by the constitutional acts to the Constitution of 1925).

86. Decreto-Ley No. 1552, Sept. 11, 1976, D.O., 13 de septiembre de 1976, *translated in* Inter-American Commission on Human Rights, *supra* note 85, at 10, 10-16.

87. *Id.* ch. I, *translated in* Inter-American Commission on Human Rights, *supra* note 85, at 10.

all creeds and free exercise of all religions that do not violate moral principles, good behavior or public order, therefore, enabling the

respective religious creeds to erect and maintain temples and out-buildings according to safety and sanitation measures required by law.”<sup>88</sup>

In addition, the Act protected the freedoms of assembly,<sup>89</sup> association,<sup>90</sup> and expression of opinion and information.<sup>91</sup> Through the Act, however, the security-minded regime imposed new restrictions on these freedoms, requiring that associations formed under the constitutional guarantee not be “contrary to moral principles, public order [or] the security of the State,”<sup>92</sup> granting the national courts the authority to limit the freedom of expression if the information circulated affected “moral principles, public order, national security or the private life of individuals,”<sup>93</sup> and prohibiting persons “who may have been at any time convicted of attempting to subvert the institutional order of the Republic” from not only owning, directing, or managing mass communications media, but also participating “in any way. . . in functions connected with the publication or broadcast of opinions or information.”<sup>94</sup>

The Constitutional Act Number Three thus closely paralleled the Constitution of 1925’s provisions governing religious freedom while placing restrictions on associated rights. Unlike those provisions, however, some of the Act’s religious liberty-related guarantees remained enforceable even though the military government continued to rule under emergency powers.<sup>95</sup> Pinochet’s acceptance of the In-

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88. *Id.* art. 1(11), translated in Inter-American Commission on Human Rights, *supra* note 85, at 15.

89. *See id.* art. 7, translated in Inter-American Commission on Human Rights, *supra* note 85, at 14.

90. *See id.* art. 9, translated in Inter-American Commission on Human Rights, *supra* note 85, at 15.

91. *See id.* art. 12, translated in Inter-American Commission on Human Rights, *supra* note 85, at 15.

92. *Id.* art. 9, translated in Inter-American Commission on Human Rights, *supra* note 85, at 14.

93. *Id.* art. 12, translated in Inter-American Commission on Human Rights, *supra* note 85, at 10.

94. *Id.*, translated in Inter-American Commission on Human Rights, *supra* note 85, at 15.

95. *See* Sigler et al., *supra* note 76, at 26-28.

ternational Covenant on Civil and Political Rights (ICCPR)<sup>96</sup> in 1976 rendered nonderogable the right to freedom of belief and conscience and to adopt, maintain, or refuse religious beliefs.<sup>97</sup> The right to manifest one's religion or religious beliefs, however, remained subject to emergency limitations established by Chilean law.<sup>98</sup>

In 1980, the Pinochet regime replaced the Constitution of 1925 and the constitutional acts with a new constitution.<sup>99</sup> Echoing its approach in Constitutional Act Number Three, the government essentially copied into the Constitution of 1980 the provisions of the Constitution of 1925 that dealt with, or related to, religious freedom while adding several additional security-related limitations to the manner in which those freedoms could be exercised. For example, Article 19, Section 6 guaranteed:

Freedom of conscience, manifestation of all creeds and the free exercise of all cults which are not opposed to morals, good customs or public order;

Religious communities may erect and maintain churches and their facilities in accordance with the conditions of safety and hygiene as established by the laws and ordinances.

With respect to assets, the churches and religious communities and institutions representing any cult shall enjoy the rights granted and acknowledged by the laws currently in force. Churches and their facilities assigned exclusively for religious activities shall be exempt from all taxes.<sup>100</sup>

With the exception of the last subparagraph regarding assets, the Section's language closely parallels that of the Constitution of 1925.<sup>101</sup>

Similarly, Article 19, Section 13 approximated the corresponding

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96. See International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR]. The Allende government had ratified the ICCPR in 1972, but it was not until 1976 that General Pinochet promulgated that the Covenant should be acknowledged as national law. See Roland Bersier, *Legal Instruments of Political Repression in Chile*, INT'L. COMMISSION JURISTS REV., June 1985, at 54, 59.

97. See *infra* note 141 and accompanying text.

98. See *infra* note 142 and accompanying text.

99. CHILE CONST. (Constitution of 1980) (official English translation).

100. *Id.* art. 19, no. 6.

101. Compare *id.* with *supra* notes 39, 41 and accompanying text.

language in the Constitution of 1925 by recognizing “[t]he right to assemble peacefully without prior permission.”<sup>102</sup> Section 15, however, followed the Constitutional Act Number Three rather than the Constitution of 1925, limiting the freedom of association in the interest of “morals, public order and Security of the State.”<sup>103</sup> Conversely, Section 12’s recognition of the freedom of expression abandoned the restrictions placed on that particular freedom under the Constitutional Act Number Three and essentially returned to the language used in the Constitution of 1925.<sup>104</sup>

As with Constitutional Act Number Three, the ICCPR guaranteed that the Constitution of 1980’s guarantees regarding the right of freedom of conscience and belief remained enforceable under states of emergency.<sup>105</sup> However, the remainder of the constitutional rights and guarantees related to religious freedom failed to become fully enforceable until after the re-establishment of civilian rule in 1990 due to the Pinochet government’s continued extension of its emergency powers.<sup>106</sup> Therefore, the effectiveness of the Constitution can only be gauged by examining it in the post-Pinochet period.

Regardless of its effectiveness, however, the Constitution of 1980 generally preserved the guarantees, if not the actual language, of the Constitution of 1925’s provisions relating to religious freedom. Indeed, the only major manner in which the Constitution of 1980 deviated from the Constitution of 1925 lay in the imposition of national security-oriented limitations on the freedom to associate.

(2) *Legislative and administrative provisions.* For the first several years of the Pinochet regime, national legislation and administrative decrees were enacted on an *ad hoc* basis to secure the military government’s control over those institutions of Chilean society that it believed to be controlled by, or sympathetic to, Marxism. With respect to religious liberty, such measures included the expulsion of clergy and other religious personnel,<sup>107</sup> occupation and closure of

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102. CHILE CONST. (Constitution of 1980) art. 19, no. 13. *Compare id. with supra* note 42 and accompanying text.

103. CHILE CONST. (Constitution of 1980) art. 19, no. 15. *Compare id. with supra* note 92 and accompanying text.

104. *See* CHILE CONST. (Constitution of 1980) art. 19, no. 12. *Compare id. with supra* note 44 and accompanying text.

105. *See infra* note 142 and accompanying text.

106. *See* Sigler et al., *supra* note 76, at 28-30.

107. For more information on this subject, see *infra* Part III.A.2.b.(1).

private schools and universities owned and operated by religious organizations, elimination of subsidies to privately owned schools, appointment of military rectors over church-owned universities, seizure of mass communications media equipment owned by religious organizations, prohibition against teaching Marxism or similar ideologies in religious schools, and the dismissal of teachers believed to be affiliated with any variant of Marxist thought.<sup>108</sup>

Upon consolidating its power and implementing its socio-political and economic agenda by the mid-1970s, the military government's legislative efforts assumed a more programmed, comprehensive nature and outlook. By the late 1980s, this new focus led the regime to legislate a variety of areas and subjects that directly or indirectly affected the individuals' and religious organizations' ability to maintain, manifest, and disseminate their respective religious beliefs. Consider, for example, the laws dealing with the following subjects.

(i) *Discrimination on the basis of religion.* Though the constitutional regime did not outlaw discrimination on the basis of religion, several laws guaranteed such protection in certain circumstances or to specific groups. For example, the Ministry of Labor and Social Foresight issued several decrees that prohibited employers from conditioning the employment of a prospective or actual employee on his or her religious affiliation or beliefs.<sup>109</sup> Also, the Ministry of the Interior stipulated that nonprofit community organizations must respect the religious convictions of their members.<sup>110</sup>

(ii) *Dissemination of religious information and materials.* Though the Pinochet regime never formally attempted to regulate or limit proselyting in general, one of its earliest laws potentially prevented certain individuals or groups from engaging in proselytism by prohibiting the entry into Chilean territory of persons (either Chilean nationals or foreigners) who promulgated ideas that opposed the country's social order or system of government or who committed acts contrary to national security, public order, or the interest of the

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108. See FLEET & SMITH, *supra* note 15, at 62; Poblete, *supra* note 15, at 228.

109. See Ley No. 18,620, 27 de mayo de 1987, DIARIO OFICIAL [hereinafter D.O.], 6 de julio de 1987, art. 2; Ley No. 18,372, 12 de diciembre de 1984, D.O., 17 de diciembre de 1984, art. 1. All Chilean statutes and administrative decrees cited in this Comment can be located on the Internet by performing a search under the "Buscar Leyes" icon found at <http://www.congreso.cl/biblioteca/biblioteca.html>, the official website of Chile's National Congressional Library (*Biblioteca del Congreso Nacional*).

110. See Ley No. 18,893, 26 de diciembre de 1989, D.O., 30 de diciembre de 1989, art. 3.

country.<sup>111</sup> Also, another series of laws directly limited some individuals' ability to engage in proselyting activities by disallowing members of cooperative societies and nonprofit community organizations from proselyting.<sup>112</sup> The text of this particular law remained unclear as to whether this prohibition was absolute or applied only to the course of a person's involvement in such an organization.<sup>113</sup>

(iii) *Education.* Continuing pre-existing practices and regulations, the military government allowed private religious schools to freely teach their respective doctrines<sup>114</sup> and required public schools to offer general courses on religion and values but did not obligate students to take such classes in order to graduate.<sup>115</sup> As part of the national education curriculum, binding on both public and private schools, the government also mandated that nonreligion courses teach about general religious themes and practices.<sup>116</sup> In both public and private schools, teachers of courses about particular religions or religious beliefs had to be certified by the local ecclesiastical authority of that religion.<sup>117</sup> Also, parents of students attending a private religious school could formally request that their children not be educated according to the beliefs of the sponsoring religion; however, they could not demand that the school provide instruction about a different religious creed.<sup>118</sup>

(iv) *Military service.* Though it did not recognize the right of conscientious objection, the regime allowed ministers and "religious persons" (an undefined term that theoretically included clergymen, monks and nuns, missionaries, and other similar persons) of all religions to receive exemptions from compulsory military service.<sup>119</sup> The granting of such exemptions, however, required that the

111. See Decreto-Ley No. 604, 9 de agosto de 1974, D.O., 10 de agosto de 1974, arts 1-2.

112. See Ley No. 18,893, art. 3; Decreto No. 502, 1 de septiembre de 1978, D.O., 9 de noviembre de 1978.

113. See Ley No. 18,893, art. 3.

114. See Decreto No. 924, 12 de agosto de 1983, D.O., 7 de enero de 1984, art. 5.

115. See *id.*; Decreto No. 76, 7 de mayo de 1985, D.O., 15 de mayo de 1985, art. 2.

116. See, *e.g.*, Decreto No. 43, 19 de marzo de 1984, D.O., 17 de mayo de 1984, art. 3 (requiring courses on plastic arts to teach about the religious use and significance of masks).

117. See Decreto No. 924, art. 9; Decreto No. 1191, 24 de octubre de 1978, D.O., 28 de noviembre de 1978, 28.

118. See Decreto No. 924, art. 5.

119. See Decreto-Ley No. 2306, 2 de agosto de 1978, D.O., 12 de septiembre de 1978, art. 17(6); Decreto No. 244, 1 de marzo de 1979, D.O., 3 de mayo de 1979, art. 43(6).

individual's petition for an exemption be (1) accompanied by an official statement by his or her religious superior confirming the

petitioner's religious status or position and (2) approved by the Director General of the Ministry of National Defense.<sup>120</sup>

(v) *Prisoners' rights*. As part of the government's program for rehabilitating prisoners, incarcerated persons were guaranteed participation in religious activities.<sup>121</sup> The Ministry of Justice's Department of Rehabilitation was assigned the responsibility of providing for and supervising such activities.<sup>122</sup>

(vi) *Taxation*. In addition to the constitutional provisions declaring property and facilities used for religious purposes to be exempt from taxation, the regime enacted several laws that exempted certain religious organizations from having to pay stamp taxes,<sup>123</sup> municipal registration fees and taxes,<sup>124</sup> and various import duties.<sup>125</sup> Also, individuals or other juridical persons who donated funds or other materials to a religious organization or group could receive a tax deduction in accordance with their donation if their donation went to constructing religious edifices on land granted by the government to that particular organization.<sup>126</sup>

(vii) *Terrorism*. One of the most intriguing laws enacted by the Pinochet government involved protecting religious authorities from assassination and the infliction of bodily harm. Included among those acts considered to be "terrorist acts" were attempts to take the life of, or inflict bodily harm upon, religious authorities.<sup>127</sup> Unfortunately, the law did not state the meaning of the term "religious authorities" and was passed after government security forces and non-

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120. See Decreto-Ley No. 2306, art. 17(6); Decreto No. 244, art. 43(6).

121. See Decreto-Ley No. 2859, 12 de septiembre de 1979, D.O., 15 de septiembre de 1979, art. 8(b)(2).

122. See *id.*

123. See Decreto No. 2106, 31 de diciembre de 1974, D.O., 16 de enero de 1975, art. 1(6).

124. See Decreto-Ley No. 3063, 24 de diciembre de 1979, D.O., 29 de diciembre de 1979, art. 27.

125. See Decreto-Ley No. 3475, 29 de agosto de 1980, D.O., 4 de septiembre de 1980, art. 23(9).

126. See Decreto-Ley No. 574, 10 de junio de 1974, D.O., 11 de octubre de 1974, art. 188.

127. See Ley No. 18,314, 16 de mayo de 1984, D.O., 17 de mayo de 1984, art. 1(2).

government paramilitary groups had executed or tortured many Catholic and Protestant clerics.<sup>128</sup>

Though none of these laws individually made an overwhelmingly significant impression on the development of religious liberty in Chile, they collectively added substance and definition to the national juridical regime defining and governing religious freedom. Thanks to such laws, for example, workers enjoyed protection against discrimination on the basis of religion, and prisoners received the guarantee that they would and could engage in religious activities. Moreover, parents received the right to enroll their children in a private school operated by a religious organization while controlling the religious formation that their children received. The military government's legislative provisions thus further defined the manner in which religious belief could be maintained, manifested, and disseminated.

(3) *International legal norms.* Pinochet's government acknowledged as legally binding two international instruments that related to religious liberty: the ICCPR in 1976<sup>129</sup> and the International Covenant on Economic, Social and Cultural Rights ("ICESCR")<sup>130</sup> in 1989 (less than one year prior to the regime's end).<sup>131</sup> It should be recognized, however, that the ICCPR had more significance than the ICESCR during the Pinochet period, because the ICCPR both became obligatory more than a decade earlier and, as the following discussion demonstrates, addressed a greater number of issues associated with religious freedom.

With respect to the development of religious liberty in Chile, the ICCPR's importance stemmed primarily from its institution of various rules and guarantees not recognized in the country's various constitutional or legislative provisions. Examples of such rules and guarantees included: (1) a general prohibition against discrimination on the basis of religion;<sup>132</sup> (2) the right to adopt a religion or belief of one's choice, either individually or with others, and to manifest

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128. For more information regarding the killing and torturing of religious personnel, see *infra* Part III.A.2.b.

129. For information on the Pinochet government's acceptance of the ICCPR, see *supra* note 96.

130. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

131. See *generally* Decreto No. 326, 28 de abril de 1989, D.O., 27 de mayo de 1989.

132. See ICCPR, *supra* note 96, at 173, art. 2(1).

that religion or belief in “worship, observance, practice and teaching”;<sup>133</sup> (3) the prohibition of coercion in an individual’s decision to adopt or refuse to adopt religious beliefs;<sup>134</sup> (4) the prohibition of the advocacy of “religious hatred that constitutes incitement to discrimination, hostility or violence”;<sup>135</sup> (5) the protection of children against discrimination on the basis of religion;<sup>136</sup> (6) the guarantee that the law will not discriminate on the basis of religion;<sup>137</sup> and (7) the right of religious minorities to profess and practice their religion.<sup>138</sup> It should be remembered that the Chilean juridical regime in some fashion already recognized, or would thereafter sanction, several of these rights, including the general freedom of religion, belief, or conscience,<sup>139</sup> and the ability of parents to ensure the religious and moral teaching of their children.<sup>140</sup>

Perhaps the ICCPR’s most significant provision affirmed the inviolability of religious freedom by prohibiting the derogation of the right to exercise the freedom of conscience and belief even in emergency situations.<sup>141</sup> With this provision, the ICCPR constituted the only element of Chile’s juridical framework that, at least after 1976, unconditionally guaranteed the freedom of belief and conscience and right to adopt, maintain, or refuse religious beliefs. The right to manifest one’s religion or religious beliefs, however, remained subject to emergency limitations established by Chilean law.<sup>142</sup>

Ratification of the ICESCR in 1989 bolstered Chile’s obligation to observe two notable provisions of the ICCPR. The ICESCR, like the ICCPR, proscribed all discrimination on the basis of religion<sup>143</sup> and bestowed upon parents the right to “ensure the religious and moral education of their children in conformity with their own convictions.”<sup>144</sup> Chile’s ratification of the ICESCR consequently reinforced its commitment to honor these two provisions of the ICCPR.

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133. *Id.* at 178, art. 18(1).

134. *Id.* at 178, art. 18(2).

135. *See id.* at 178, art. 20(2).

136. *See id.* at 178, art. 24(1).

137. *See id.* at 179, art. 26.

138. *See id.* at 179, art. 27.

139. *See id.* at 173, art. 18(1).

140. *See id.* at 173, art. 18(4).

141. *See id.* at 174, art. 4(1)-(2).

142. *See id.* at 178, art. 18(3).

143. *See ICESCR, supra* note 130, at 5, art. 2(2).

144. *Id.* at 8, art. 13(3).

(4) *Conclusion.* Collectively, the religious freedom-related juridical developments discussed above indicate that during the Pinochet dictatorship Chile's national juridical regime made relative progress in defining and protecting the scope of religious freedom in Chilean society. Though it placed new national security-related limitations on the freedom of association, the Constitution of 1980 maintained the Constitution of 1925's guarantees and limitations regarding the freedoms of belief and conscience, assembly, and expression. Moreover, various legislative provisions enacted by the military government made moderate advances in the application of religious freedom to diverse areas of law and society. Perhaps most importantly, however, the military regime's acceptance of the ICCPR introduced new religious rights and broadened the scope of those recognized by Chile's constitutional or legislative provisions. The Pinochet period thus achieved moderate progress in broadening the meaning and scope of religious freedom in Chile's juridical regime.

*b. Governmental perception and treatment of religious groups, doctrines, and practices.* Throughout Pinochet's dictatorship, the military government viewed religious doctrines and activities in the same manner it viewed the rest of Chilean society—according to the politicized values, goals, and fears associated with the regime's anti-Marxist interpretation of military antipolitics and national security. The Pinochet regime consequently perceived the beliefs and actions of both religious groups and individuals as antagonistic and dangerous if they appeared to sympathize with or defend Marxism or as supportive and beneficial if they coincided with the military's thinking and goals. Not surprisingly, perceived opposition to the government generated harassment, persecution, torture, and even death; perceived support, however, resulted in favoritism and the enjoyment of special privileges.

(1) *Government treatment of opposition groups.* The manner in which the military government treated clergymen and religious groups perceived as supporting Marxism or opposing the government forms the most widely publicized and studied aspect of religious liberty in the Pinochet period.<sup>145</sup> Most scholars who address this theme, however, focus exclusively on the military's violation of press, legal, or human rights,<sup>146</sup> failing to note that the government's

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145. *See supra* note 15 and accompanying text.

146. *See id.*

oppressive treatment of clergymen and religious organizations directly affronted the constitutional right to free exercise of belief and liberty of conscience.

Viewed generally, the regime's treatment of religious authorities and groups that it perceived as adversarial progressed through three distinct periods or phases. First, from 1973 to 1976, the government brutally repressed individual clergymen and religious groups believed to adhere to, or sympathize with, Marxist beliefs.<sup>147</sup> Though the military did not expressly focus on religion as part of its anti-Marxist campaign, neither did it exempt religious issues and activities from its persecution of leftist ideas and groups.<sup>148</sup> Consequently, government forces arrested, detained, expelled, assaulted, tortured, or killed a total of several hundred "religious persons" (including Protestant ministers and missionaries as well as Catholic priests, monks, and nuns) who allegedly belonged to leftist political groups (e.g., Catholics for Socialism, the Chilean Communist Party), provided aid and comfort to alleged Marxists, or actively espoused liberation theology or other liberal variations of social Christianity.<sup>149</sup> Also, in 1974 the govern-

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147. Note that in 1975, a Chilean Jew unsuccessfully attempted to link the detainment and supposed death of his son with anti-Semitism, alleging that "there [was an] anti-Semitic element in [a Chilean government] plot to identify [a] series of bodies [that] turned up . . . in Argentina as those of Chilean extremists." Telegram from U.S. Embassy in Santiago to U.S. Department of State 1 (Aug. 1975) (copy on file with author) [hereinafter Telegram August 1975]. The United States Embassy in Chile, however, rejected the claim as "unlikely." *Id.* The Embassy's conclusion concurred with the findings of a 1974 human rights report authored by the Chicago Commission of Inquiry into the Status of Human Rights in Chile, which visited Chile several months after the coup to investigate human rights conditions. See CHICAGO COMMISSION OF INQUIRY, REPORT OF THE CHICAGO COMMISSION OF INQUIRY INTO THE STATUS OF HUMAN RIGHTS IN CHILE 1-2 (1974) [hereinafter CHICAGO COMMISSION]. In its report, the Commission asserted that "there is no campaign of anti-semitism [sic] by the Junta" due the regime's fear "of projecting a fascist image abroad." *Id.* at 25. Moreover, the Commission noted that General Gustavo Leigh, a member of the *junta*, provided the head of Chile's Jewish community with assurances "that there will be no anti-semitism." *Id.*

148. Indeed, the regime's predisposition to equate political attitudes with religious beliefs remains clearly illustrated by the following statement made by General Pinochet about a Catholic priest who was "disappeared" by security forces: "He is not a priest, he's a Marxist!" "*Solo así Cantan los Marxistas*," NOVEDADES, Feb. 10, 1998, available in LEXIS, Nexis Library, Noveda File ("[E]se no es un cura, es un marxista!").

149. See, e.g., *Human Rights in Chile: Hearings Before the Subcomm. on Int'l. Orgs.*, 94th Cong. 2-3 (1975) (prepared statement of Rev. Daniel A. Panchot, C.S.C.) (detainment, torture, and expulsion of Catholic priest in November 1975) [hereinafter *Hearings*]; SHEILA CASSIDY, AUDACITY TO BELIEVE 165-331 (1977) (government attack on a religious residence; arrest, torture, detainment, and expulsion of physician and prospective Catholic nun for providing medical aid to alleged leftist terrorist); CHICAGO COMMISSION, *supra* note 147, at 4

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ment disbanded two minority religious groups that, in its view, threatened public morality and order.<sup>150</sup>

(“at least three” priests killed, 130 expelled, and “many tortured” between September 1973 and February 1974); TERESA DONOSO LOERO, *LOS CRISTIANOS POR EL SOCIALISMO EN CHILE* 212, 223-24, 237-38, 240, 243, 256, 265-66 (3d ed. 1976) (expulsion of Bishop Helmut Frenz, head of the Lutheran Church in Chile and co-president of COPACHI in 1975 for engaging in “anti-national activities” and endangering Chile’s national security; detainment of various Catholic priests and religious personnel for allegedly participating in leftist terrorist forces and pro-Marxist activities, providing aid to Marxists and terrorists, and stashing weapons); Juan Carlos Garcia, *One Man Who Rejoices in Arrest of Pinochet*, TORONTO STAR, Oct. 24, 1998, available in LEXIS, Nexis Library, Tstar File (arrest and detainment of Bishop Helmut Frenz in 1973 for harboring fugitives); Luis Mendez, *Denuncia Obispo Luterano Persecuciones de Pinochet*, EL NORTE, Feb. 10, 1998, at 12, available in 1998 WL 6411791 (Catholic priest “disappeared” by progovernment forces in 1974); *Pinochet’s Henchman Tortured My Brother to Death but Only Now Can I Tell His Story*, EXPRESS, Feb. 29, 2000, available in 2/29/00 WL BSX-DYEXP (Catholic priest tortured to death in 1973) [hereinafter *Pinochet’s Henchman*]; *Reconoce soldado chileno ser asesino de sacerdote*, REFORMA, Mar. 16, 1998, at 7, available in DIALOG, File No. 749 [hereinafter *Reconoce soldado*] (former Chilean soldier admitted killing Catholic priest in 1973); Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 1-2 (Dec. 1975) (copy on file with author) (release of five Catholic priests detained for aiding leftist terrorists); Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 1-3 (Nov. 1975) (copy on file with author) (several Catholic nuns detained, for aiding members of terrorist organizations); Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 1-2 (Oct. 1975) (copy on file with author) (detainment of two Presbyterian pastors due to affiliation with “subversive organizations”; status as “religious leaders” prompted security forces to take “special care” with them) [hereinafter Telegram October 1975]; Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 1-3 (June 1974) (copy on file with author) (prolonged detainment of Catholic priests who opposed military’s seizure of Catholic-owned school).

It should be noted that in 1991 the Chilean National Truth Commission determined that only three “religious” persons had died as victims of government agents, politically motivated private citizens, or political violence between 1973 and 1990. See NATIONAL COMMISSION, *supra* note 13, at 904 tbl.9. The Commission’s report, however, directly conflicts with other accounts, which collectively indicate that at least five religious persons were killed between 1973 and 1984. See CHICAGO COMMISSION, *supra* note 147, at 4, 10, 12 (at least three priests killed in the first several months following the coup, including Fathers Joan Alsina and Gerardo Poblete); Jackson Diehl, *This Isn’t Just Poland, This is Chile Again*, WASH. POST, Dec. 18, 1986, at A27 (Father Andres Jarland killed by police during September 1984 demonstration); *Pinochet’s Henchmen*, *supra* (Father Michael Woodward tortured to death in 1973); see also *Reconoce Soldado*, *supra* (former Chilean soldier, Nelson Banados, admitted killing Father Joan Alsina in 1973); cf. Tito Drago, *Rights-Chile: Spanish Judge Issues Indictment Against Pinochet*, Global Information Network, Dec. 10, 1998, available in LEXIS, Nexis Library, Inpres File (Spanish judge issued indictment against Pinochet, charging Pinochet with killing and/or torturing approximately 2000 people, including “seven clergy and religious workers”).

150. The expelled groups included (1) the Inner Religion of Siloism, a nontraditional religious group suspected of being “a politically motivated group with connections to” leftist terrorist organizations, Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 1-2 (Mar. 1974) (copy on file with author) [hereinafter Telegram March 1974], and (2) the Divine Light Mission, formed by followers of the guru Maharaj Jigroun, see JUAN GUILLERMO

Second, between 1976 and 1982, the military government attempted to intimidate religious organizations into ceasing their individual and collective efforts to promote a return to civilian rule and provide aid to victims of governmental oppression. This period witnessed two important developments with respect to the government's perception of opposition religious groups. First, various religious organizations, and especially the Catholic Church, issued increasingly harsh criticisms of the regime's human rights practices and called for a return to civilian government.<sup>151</sup> Second, interdenominational efforts to provide assistance to victims of the regime's repression culminated in the creation of the Vicariate of Solidarity. The Vicariate, though, was not the first organization of its kind. As early as 1973, the Catholic Church had joined with several historic and Pentecostal Protestant churches, the Greek Orthodox Church, and several Jewish organizations to form the National Committee to Aid Refugees (CONAR), which assisted leftist immigrants who had arrived in Chile during the Allende years to emigrate from Chile,<sup>152</sup> and the Cooperative Committee for Peace in Chile (COPACHI), which provided legal and other aid to persons who had suffered from the military's repressive activities.<sup>153</sup> However, internal divisions and pressure from the government forced COPACHI to dissolve in November 1975.<sup>154</sup>

In 1976, the Catholic Church joined with a lesser number of non-Catholic organizations to form the Vicariate of Solidarity, which provided a partial umbrella of protection for numerous community

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PRADO O., *SECTAS JUVENILES EN CHILE 90-92* (1984), which the government accused of being a "financial racket[]" and teaching values that opposed public order. Telegram March 1974, *supra*, at 2 (mislabeling The Divine Light Mission as "Luz Blanca").

151. See FLEET & SMITH, *supra* note 15, at 63-65.

152. See SMITH, *supra* note 15, at 313; see also Smith, *Chile*, *supra* note 15, at 163 ("By February 1974, CONAR had helped approximately five thousand foreigners (who had come to Chile during the Allende years as a haven of freedom from repressive regimes in other parts of Latin America) to leave Chile safely.").

153. See FLEET & SMITH, *supra* note 15, at 61-62; LOWDEN, *supra* note 15, at 32-36, 38-51; see also *Hearings*, *supra* note 149, at 1-2; CASSIDY, *supra* note 149, at 126-27.

154. See FLEET & SMITH, *supra* note 15, at 62; LOVEMAN, *supra* note 15, at 317; see also CASSIDY, *supra* note 149, at 128-29 (arrest, prolonged detainment, and torture of three female COPACHI staff members); THOMAS C. WRIGHT & RODY OÑATE, *FLIGHT FROM CHILE: VOICES OF EXILE* 47-48 (Irene B. Hodgson trans., 1998) (comments by volunteer with COPACHI about government's efforts to force COPACHI's dissolution by putting "heavy pressure" on Church hierarchy and making "systematic effort" to denounce individual members).

organizations, research institutes, and human-rights defense groups. . . . The Vicariate also extended material support to the urban and rural poor, provided technical assistance to small farmers, published magazines for popular education, and maintained records on political detainees and “disappeared” persons . . . .<sup>155</sup>

Together, these functions rendered the Vicariate “the single most important source of moral opposition to the dictatorship.”<sup>156</sup>

Perceiving these developments as evidence of disloyalty, subversiveness, and “naive moralis[m],”<sup>157</sup> the Pinochet regime responded by attempting to intimidate the religious organizations involved into ceasing their criticisms and dissolving the Vicariate.<sup>158</sup> Though these

155. LOVEMAN, *supra* note 15, at 317; *see also* FLEET & SMITH, *supra* note 15, at 66-67; Smith, *Chile*, *supra* note 15, at 165-66. For a comprehensive discussion of the Vicariate’s activities through the mid-1980s, *see generally* JUAN IGNACIO GUTIÉRREZ FUENTE, *CHILE: LA VICARÍA DE LA SOLIDARIDAD* (1986), LOWDEN, *supra* note 15, at 53-128.

156. LOVEMAN, *supra* note 15, at 317. It should also be noted that following the dissolution of COPACHI in 1975, the Methodist, Pentecostal, and Orthodox churches—none of which participated in the Vicariate—formed a new ecumenical social institution, the Social Assistance Foundation of the Christian Churches (FASIC). *See Chile: Ecumenical Body Supports Program for Returned Exiles*, Inter Press Service, Jan. 29, 1991, *available in* LEXIS, Nexis Library, Inpres File. Like the Vicariate, FASIC was formed in 1976 and “committed [itself] to the defence [sic] of human rights in a Christian perspective” by providing legal aid, social assistance, and medical treatment to political prisoners and their families. TREVOR BEESON & JENNY PEARCE, *A VISION OF HOPE: THE CHURCHES AND CHANGE IN LATIN AMERICA* 151 (1984). Together with the Chilean government, FASIC also established a prisoner release program that allowed “sentenced political prisoners to commute their sentence to exile, provided another country [was] willing to receive them.” *Id.* Internationally, FASIC worked with the United Nations High Commissioner for Refugees (UNHCR) “in assisting those refugees who . . . decided to return to Chile and [were] legally allowed to return but suffer[ed] considerable difficulties in re-adapting and finding employment.” *Id.* Though FASIC paralleled the Vicariate in its provision of many forms of aid to Chilean society, FASIC’s lack of opposition to the regime and close ties to the Protestant community (which largely supported, and was actively courted by, the regime, *see infra* notes 172-178 and accompanying text) apparently maintained the organization within the military government’s good graces.

157. FLEET & SMITH, *supra* note 15, at 68.

158. *See* SMITH, *supra* note 15, at 319. The government’s chosen methods of intimidation included: (1) expelling religious authorities, *see* PENNY LERNOUX, *CRY OF THE PEOPLE: UNITED STATES INVOLVEMENT IN THE RISE OF FASCISM, TORTURE, AND MURDER AND THE PERSECUTION OF THE CATHOLIC CHURCH IN LATIN AMERICA* 298 (1980) (government’s practice of harassing, detaining, and expelling clergy); SMITH, *supra* note 15, at 332 tbl.9.3 (loss/expulsion of 64 non-Chilean Catholic priests between 1975 and 1979); (2) using its control of the national press to criticize the organizations’ activities and views, *see* LOWDEN, *supra* note 15, at 60-61 (national media criticized the Vicariate and the Catholic Church of conspiring with leftist groups); SMITH, *supra* note 15, at 319 (government-controlled media unleashed “public attacks and harassment” against Vicariate); Smith, *Chile*, *supra* note 15, at 175 (by late 1977, government spokespersons attempted to discredit Vicariate by charging that it “was harboring Marxists and taking money from abroad to support political dissidents in

measures further polarized Catholic-State relations and complicated the Vicariate's work, the religious organizations' criticisms and social

Chile"); *see also* LERNOUX, *supra* at 298 (Pinochet regime attempted to use resources provided by United States Central Intelligence Agency (CIA) to discredit Catholic Church through use of "smear campaigns in the government-controlled media"); (3) conducting police raids on houses of worship and religious residences, *see* Smith, *Catholic Church*, *supra* note 15, at 331-32 ("Various diocesan affiliates of the Vicariate were raided, rectories and convents in low-income areas continued to be closely watched, and local [base communities] working closely with the Vicariate harassed."); Charles A. Krause, *For U.S. Priest in Chile, 'Liberation Theology' Means Bringing Dignity to Poor*, WASH. POST, Feb. 14, 1979, at A16 (security forces searched home of Catholic priest "looking for guns, subversive literature or possibly persons wanted for questioning in connection with labor or political activities"); (4) attempting to cut off foreign funding provided to the Catholic Church (and other Chilean churches as well) by the Inter-American Foundation (IAF), *see* SMITH, *supra* note 15, at 328-29 (attempts to freeze IAF funds entering Chile through Inter-American Development Bank (IDB) failed due to international pressure); and (5) detaining and harassing Church officials and Vicariate employees, volunteers, and facilities. *See* FLEET & SMITH, *supra* note 15, at 62; *see also* PENNY LERNOUX, NOTES ON A REVOLUTIONARY CHURCH: HUMAN RIGHTS IN LATIN AMERICA 17-18 (1978) [hereinafter LERNOUX, NOTES ] (government officials' violent reception of three Catholic bishops, all of whom were critical of regime, upon bishops' return to Chile from visit to Ecuador); LOWDEN, *supra* note 15, at 58-59 (expulsion of attorneys affiliated with the Vicariate); Smith, *Chile*, *supra* note 15, at 175 ("Diocesan affiliates of the [V]icariate in various parts of the country were raided and personnel harassed. . . . Rectories, convents, and base communities experienced similar raids and surveillance, and in 1980 harassment tactics against neighborhood church projects . . . increased for a time once again."); Krause, *supra*, at A19 (arrest of Catholic priest for participating in antigovernment demonstration in 1978); Telegram from U.S. Embassy in Santiago to U.S. Dep't of State 2 (Oct. 1976) (copy on file with author) (detention of Catholic Bishop of Talca's private secretary "another specific example of [government] pressure" against the Church); *cf.* U.S. DEP'T OF STATE, 98TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1982, at 441 (1983) [hereinafter 1982 HUMAN RIGHTS REPORTS] ("Some [Catholic] Church activists and human rights lawyers have during 1982 been anonymously threatened."); U.S. DEP'T OF STATE, 97TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1981, at 376 (1982) [hereinafter 1981 HUMAN RIGHTS REPORTS] ("[Catholic] Church activists and human rights lawyers have been anonymously threatened."); U.S. DEP'T OF STATE, 97TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1980, at 379 (1981) [hereinafter 1980 HUMAN RIGHTS REPORTS] ("In a number of instances, church property has been the target of attacks carried out by assailants who have not been identified."); U.S. DEP'T OF STATE, 96TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1979, at 274-75 (1980) ("[The Catholic Church's defense of human rights] has resulted in occasional tensions with the Government, but sporadic harassment of the Church's social action programs has not spilled over into the area of religious teaching and worship.").

Notably, the Catholic Church occasionally responded to the government's mistreatment of Church officials and personnel by using, or at least considering using, its spiritual authority against those government employees involved. In 1976, for example, the Church excommunicated a government official and several security agents involved in the hostile reception given to three Chilean bishops upon their return to Chile. *See* LERNOUX, NOTES, *supra*, at 18; *cf.* Telegram from U.S. Embassy in Santiago to U.S. Dep't of State 1 (Jan. 1976) (copy on file with author) (reporting that a meeting of the Chilean Episcopal Conference "considered [the] possibility of Church excommunication of people implicated in torture").

services activities continued unabated.<sup>159</sup>

In addition to taking action against vocal opposition groups, the military government also continued its practice of cracking down on “pseudo-religious organizations” that allegedly acted as “servants of international communism.”<sup>160</sup> For example, in July 1976, the government “briefly detained several members of the ‘Light and Love’ mission.”<sup>161</sup> Responding to the regime’s actions, the United States Embassy in Santiago observed that “[w]hile in general the [government of Chile] has not restricted religious freedoms, it apparently views certain sects as not qualifying as full fledged [sic] religious groups and treats them differently.”<sup>162</sup>

The third phase of the government’s treatment of opposition religious organizations occurred between 1982 and the return of democracy in 1990. During this period, the Catholic Church and other religious organizations sought a less confrontational relationship with the regime and, in response to the 1980 plebiscite that ratified continued military rule under the Constitution of 1980, reduced their calls for a return to civilian rule.<sup>163</sup> However, they continued to both support the Vicariate of Solidarity and condemn the regime’s human rights abuses.<sup>164</sup> Also, with the beginning of massive anti-Pinochet political protests in May 1983, individual clergymen increasingly participated in and organized street demonstrations against the regime.<sup>165</sup>

Despite the churches’ efforts to improve relations with Pinochet’s government, the military continued to interpret the Vicariate’s activities, public criticisms of torture and human rights violations, and the participation of clergymen in demonstrations against the regime as “acts of hostility to be answered in kind.”<sup>166</sup> Government forces accordingly continued to denounce the alleged incompetence of religious authorities and to intimidate and harass Vicariate em-

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159. See FLEET & SMITH, *supra* note 15, at 66-67; see also SMITH, *supra* note 15, at 319.

160. Telegram from U.S. Embassy in Santiago to U.S. Dep’t of State 2 (Aug. 1976) (copy on file with author).

161. See *id.*

162. *Id.*

163. See FLEET & SMITH, *supra* note 15, at 115.

164. See *id.*

165. See *id.* at 117-19; LOWDEN, *supra* note 15, at 107.

166. FLEET & SMITH, *supra* note 15, at 117.

ployees and programs.<sup>167</sup> In addition, government forces arrested, assaulted, expelled, or killed an undetermined number of clergymen who participated in and organized demonstrations against the regime and attacked church facilities where demonstrators planned their actions or sought to find refuge.<sup>168</sup> This third phase in the govern-

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167. See *id.* at 116-17, 130; see also LOWDEN, *supra* note 15, at 111 (killing of Vicariate staff member), 112-15 (government accused Catholic Church of inciting violence); Smith, *Chile*, *supra* note 15, at 177 (attacks on Church and its supporters included “the reappearance of charges of subversion against church groups . . . , more expulsions of foreign clergy, and a return to police harassment and arrest of [V]icariate and [local lay] leaders”); Grace Gibson & Ana Pena, *Vicaria (II): La Prueba de la Blancura*, QUÉ PASA, Mar. 2, 1989, at 19-20, available in DIALOG, Info-South File (accusations that Vicariate provided aid to assassin of Chilean policeman, was associated with leftist terrorist groups, and had disreputable financial dealings); Bradley Graham, *Chilean Oppressed Turn to Vicariate*, WASH. POST, May 2, 1987, at G12 (prosecution of lawyer and doctor on Vicariate’s staff for acting as “accomplices after the fact” to killing of policeman by gunman to whom Vicariate personnel provided refuge and medical treatment); cf. U.S. DEP’T OF STATE, 100TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, at 420-21 (1988) [hereinafter 1987 HUMAN RIGHTS REPORTS] (Vicariate investigated by military prosecutor, Vicariate employees threatened, and unidentified parties broke into and/or searched church offices and premises); U.S. DEP’T OF STATE, 100TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1986, at 437 (1987) [hereinafter 1986 HUMAN RIGHTS REPORTS] (anonymous attacks against property and officials of Catholic Church included attempted assassination of two bishops and threats against lay workers); U.S. DEP’T OF STATE, 99TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985, at 457 (1986) [hereinafter 1985 HUMAN RIGHTS REPORTS] (Catholic Church attacked by unidentified groups, which bombed churches, sprayed churches with gunfire, kidnapped and mistreated lay workers, broke into church property and files, and threatened church officials or priests); U.S. DEP’T OF STATE, 99TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1984, at 462, 466 (1985) [hereinafter 1984 HUMAN RIGHTS REPORTS] (“[T]he Government prohibited media coverage of a pastoral statement by the Archbishop of Santiago . . . . Other steps were taken throughout the country to limit the expression of the Catholic church . . . . Some [Catholic] church activists and human rights lawyers have occasionally been threatened anonymously.”); U.S. DEP’T OF STATE, 98TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1983, at 504 (1984) [hereinafter 1983 HUMAN RIGHTS REPORTS] (“Some [Catholic] Church activists and human rights lawyers were anonymously threatened during 1983, but such incidents apparently declined toward the end of 1983.”).

168. See FLEET & SMITH, *supra* note 15, at 117, 121-22, 130; LOWDEN, *supra* note 15, at 108-09; see also 1986 HUMAN RIGHTS REPORTS, *supra* note 167, at 437 (three French priests expelled, other clergymen detained, and two U.S. priests had residence permits limited); 1985 HUMAN RIGHTS REPORTS, *supra* note 167, at 457 (“[S]everal [foreign priests] were detained for short periods for involvement in protest demonstrations against the Government.”); 1984 HUMAN RIGHTS REPORTS, *supra* note 167, at 462-63 (one French national priest shot during demonstration, and one U.S. priest expelled for involvement in anti-torture campaign); *100 Priests and Nuns Arrested in Chile*, TORONTO STAR, Aug. 24, 1986, at B2 (“More than 100 priests, nuns and church workers were arrested after Chilean police broke up a protest march.”); *Chile Tightens Screws Again by Booting 3 French Priests*, CHICAGO TRIB., Sept. 11, 1986, at C5 (expulsion of three French priests for possessing political literature); Jackson Diehl, *Church Leader Assails Chile’s State of Seige*, WASH. POST, Nov. 15, 1984, at A1 (“In the

ment's treatment of perceived opposition from religious groups thus essentially combined the individualized repression of the first phase with the organization-oriented intimidation of the second.

The Pinochet regime's political views and intolerance of dissent thus caused it to perceive the religiously based beliefs and activities of both individual clergymen and religious organizations as adversarial to the regime. The beliefs and activities at issue generally originated from liberation theology and other more moderate variants of social Catholicism that viewed the protection of human rights and democratic government as part of a religion's parochial duty. Viewing such beliefs as byproducts of Marxism, the military engaged in several phases of repression that, at the very least, inhibited the ability of hundreds of clergymen and several religious organizations (especially the Catholic Church) to maintain and manifest their beliefs, contrary to the guarantees provided by the national juridical regime.

(2) *Government treatment of perceived nonopposition groups.*

The Pinochet regime actively worked to cultivate support among those religious groups that it perceived as being supportive of the regime's actions and goals. To be sure, there were many groups, principally among the Pentecostal and historic Protestant churches, but also among conservative Catholics, that strongly believed in and defended the military's actions and policies. For example, shortly after the 1973 coup, a group of thirty-two relatively prominent Protestant and Pentecostal churches published a statement supporting the

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last week, the government has banned from Chile a priest heading the church's human rights organization and has censored [Santiago Archbishop Juan Francisco] Fresno's last two public statements."); Diehl, *supra* note 149, at A27 (Catholic priest killed by police during 1984 demonstration became "militant priest-martyr" in local community); Bradley Graham, *Chile Shifts on Priests' Ouster*, WASH. POST, Sept. 11, 1986, at A29 (government reconsidered order to expel three French priests after Chilean Cardinal "warned that the expulsions would have a disruptive effect on the country"); Tim Johnson, *Charges of Violence Rock Chile Government*, CHRISTIAN SCIENCE MONITOR, Aug. 27, 1985, at 9, 9 ("The Roman Catholic Church asked Chile's Supreme Court last week to name a special prosecuting judge to investigate 72 cases in which unidentified armed squads have kidnapped and wounded opposition and religious activists."); Stephen Kinzer, *Church in Chile Doesn't Just Pray for Reform*, N.Y. TIMES, Nov. 20, 1983, at E3 (progovernment forces responsible for "beatings and arrests of [Catholic] sacristans and chapel custodians" as well as vandalizing two Catholic radio stations); *Pinochet Ignores Church Plea, Orders More Raids on Slums*, CHICAGO TRIB., May 10, 1986, at C9 (police confiscated six videocassettes "for a documentary about everyday life there" from Catholic priest); *Priests Held in Chilean Siege*, CHICAGO TRIB., Sept. 9, 1986, at C14 (security forces raided religious residence and arrested six Catholic priests, including two United States and three French citizens).

military's actions in exterminating Marxism,<sup>169</sup> and several thousand Pentecostals attended a *Te Deum* religious service held for General Pinochet and his government in conjunction with the dedication of a new Pentecostal cathedral in Santiago.<sup>170</sup> Similarly, a conservative Catholic group called the Society for the Defense of Tradition, Family, and Property (TFP) praised the coup and criticized those who opposed military rule.<sup>171</sup>

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169. See Declaración de la Iglesia Evangélica de Chile (Dec. 13, 1974), reprinted in LA IGLESIA Y LA JUNTA MILITAR DE CHILE (DOCUMENTOS), *supra* note 15, at 100-03; see also *Situación de las iglesias evangélicas de Chile*, *supra* note 47, at 107-26 (analyzing and criticizing the statement published by the Pentecostal groups); COSTAS, *supra* note 56, at 145-47 (discussing the origin of the Pentecostal statement and advancing the idea that it resulted from government pressure). In 1987, United States television evangelist Jimmy Swaggart visited Chile and vocally supported Pinochet, asking "his audience in Santiago to 'pray for General Pinochet and his beautiful wife.'" Richard N. Ostling, *Offering the Hope of Heaven*, TIME, Mar. 16, 1987, at 69, 69.

By far the most disturbing report of Protestant support for the regime involved claims by Catholic officials and human rights groups that Chilean security forces established a prison camp and torture center at Colonia Dignidad, an agricultural and religious commune founded in southern Chile during the early 1960s by evangelical minister Paul Schaeffer and 300 of his German immigrant followers. See Joshua Hammer, *Hell on Earth*, NEWSWEEK, June 30, 1997, at 14 (Atlantic ed.), available in LEXIS, Nexis Library, N WEEK File; Charles A. Krause, *Colonia Dignidad: Nobody Comes, Nobody Goes*, WASH. POST, Feb. 11, 1980, at A1. In addition to requiring strict (and apparently forced) religious devotion from his followers, Schaeffer supposedly "developed close ties to Gen. Manuel Contreras, director of the junta's intelligence service, . . . and allegedly turned his colony over to Contreras to detain leftist prisoners." Hammer, *supra*, at 14. Though the government repeatedly denied these claims, "[i]n 1977 a government informant named Juan Muñoz admitted in a church investigation of human-rights abuses that he had helped 'disappear' captives at Colonia Dignidad." *Id.* In return for his support for Pinochet, Schaeffer allegedly received aid from right wing politicians and police as well as a 14-seat Cessna airplane and weapons from the Chilean military. See *id.*

170. See SMITH, *supra* note 15, at 312-13 n.7. Recently, several scholars have emphasized (1) that in the 1960s and 1970s, Pentecostal pastors were much less inclined to discuss social issues in their sermons than were other Protestant pastors, see MARTIN, *supra* note 57, at 237-38 (presenting the findings of researchers Frederick Turner and LaLive D'Epinay), and (2) the difference between Protestant religious *organizations'* support of Pinochet and the pro-Allende sentiments of most Protestant *individuals*, noting that individual Protestants had voted for Allende while most Protestant (primarily Pentecostal) leaders had opposed Allende and backed Pinochet. See *id.* at 238 (discussing Johannes Tennekes "fundamental conclusion . . . that [Pentecostal] pastors held—or struck—much more right-wing attitudes after the coup than was consonant with the views of their flocks prior to the coup"); Edward L. Cleary & Juan Sepúlveda, *Chilean Pentecostalism: Coming of Age*, in POWER, POLITICS, AND PENTECOSTALS IN LATIN AMERICA 104 (Edward L. Cleary & Hannah W. Stewart-Gambino eds., 1997) (summarizing the observations of Renato Poblete, a Jesuit sociologist, regarding Pentecostal attitudes toward Allende). Also, at least two commentators have argued that Protestant churches' support for Pinochet "was not principally because of any alleged political affinity but rather for reasons relating to religious power." *Id.* at 105.

171. See SMITH, *supra* note 15, at 338-39.

To bolster its legitimacy and create a counterbalance to the criticisms of the opposition religious groups, the Pinochet government actively “courted various Protestant sects”<sup>172</sup> and sought to cement its support among “friendly” and noncritical churches by granting them special privileges and rewards. For example, the government “for the first time opened the ranks of the military to non-Catholic evangelization and extended social benefits to Protestant ministers and their families that had been reserved to Catholic personnel in the past.”<sup>173</sup> In the early 1970s, the regime also assisted the Methodist Pentecostal Church, Chile’s most numerous non-Catholic religious group,<sup>174</sup> by providing subsidies for the completion of the church’s new cathedral, attending the cathedral’s dedication, naming the cathedral as the site of the county’s annual thanksgiving (*acción de gracias*) services, and asking the cathedral’s pastor to serve as minister of religion.<sup>175</sup> Similarly, the regime granted the Church of Jesus Christ of Latter-day Saints (“LDS Church” or “Mormons”)—which government officials publicly praised for its nonpolitical focus<sup>176</sup>—a substantial increase in the number of visas given to foreign (primarily American) missionaries beginning in the late 1970s<sup>177</sup> and presented church leaders in 1976 with a special medallion symbolizing the church’s contribution to the “social and spiritual welfare of Chile.”<sup>178</sup>

172. Telegram October 1975, *supra* note 149, at 2.

173. See Stewart-Gambino, *supra* note 15, at 27; see also MARTIN, *supra* note 57, at 242.

174. See Stewart-Gambino, *supra* note 15, at 27.

175. See SMITH, *supra* note 15, at 312-13 n.71 (citation omitted); DAVID STOLL, IS LATIN AMERICA TURNING PROTESTANT? 316 (1990) (citing *Chile’s Junta Courts the Once-Spurned Protestants*, CHRISTIANITY TODAY, Sept. 4, 1981, at 59). Though the cathedral’s pastor declined Pinochet’s invitation to serve as minister of religion, he and other evangelical leaders consented to form a “Council of Pastors,” YAÑEZ, *supra* note 15, at 123 (discussing the creation of the “Consejo de Pastores”), that “administer[ed] an official carnet system, to regulate the access of pastors to government institutions—the kind of system many evangelicals accuse communist regimes of using to persecute the church.” STOLL, *supra*, at 316 (footnote omitted).

176. See FLEET & SMITH, *supra* note 15, at 177.

177. Cf. RODOLFO ACEVEDO A., LOS MORMONES EN CHILE 66 (1989) (stating that between 1977 and 1979 the LDS Church divided two existing missions to create a total of five missions in Chile, producing a need for several hundred additional missionaries).

178. ACEVEDO, *supra* note 177, at 61 n.2 (quoting *Gobierno Honró a Mormones*, REVISTA DEL COBRE, June 26, 1976, at 4) (“bienestar social y espiritual de Chile”). Presentation of the medallion occurred during a visit of Chilean government representatives to the LDS Church’s headquarters. See *id.* During a public speaking tour throughout Latin America in 1977, LDS leaders traveled to Santiago and met with General Pinochet and presented him with copies of the church’s scriptural works and other LDS literature. See Dell Van Ord, *Love, Respect and Emotion End Area Conference Series*, CHURCH NEWS, Mar. 12, 1977, at 3, 13.

The Pinochet regime thus sought to cultivate and maintain good relations with those religious groups that supported it—or at least did not vocally oppose it—by providing them special privileges. Such politically based favoritism violated the government’s constitutional duty to foster religious freedom by treating religious groups equally.

(3) *Conclusion.* As the above subsections demonstrate, the Pinochet regime treated religious groups differently according to the manner in which it perceived their support for the regime’s policies and practices. Those individuals and groups that actively or apparently opposed the government were subjected to varying degrees of persecution, while those that actively supported the regime or refrained from criticizing it received special privileges. By persecuting and favoring individuals and groups because of their religious beliefs, the Pinochet regime abrogated its obligation to respect religious liberty.

*c. Popular perception and treatment of religious groups, doctrines, and practices.* Throughout the Pinochet era, popular perception and treatment of religious groups, doctrines, and practices depended primarily on political rather than religious factors. Like the military government, Chilean society largely based its treatment of different religious groups on the manner in which they apparently supported or opposed the regime’s policies and actions. Conservative elements of society, for example, both criticized the Catholic and historic Protestant churches that opposed the regime and engaged in acts of terrorism (including bombings, assassinations, death threats, assaults, etc.) against individual clergymen who belonged to those religions.<sup>179</sup> Conversely, liberal elements also criticized and engaged in

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179. See FLEET & SMITH, *supra* note 15, at 68-69; *cf.* 1987 HUMAN RIGHTS REPORTS, *supra* note 167, at 420-21 (unidentified parties broke into and/or searched numerous Catholic offices and premises); 1986 HUMAN RIGHTS REPORTS, *supra* note 167, at 437 (anonymous attacks against property and officials of Catholic Church included attempted assassination of two bishops and threats against lay workers); 1985 HUMAN RIGHTS REPORTS, *supra* note 167, at 457 (Catholic Church attacked by unidentified groups that bombed churches, sprayed churches with gunfire, kidnapped and mistreated lay workers, broke into church property and files, and threatened church officials or priests); 1984 HUMAN RIGHTS REPORTS, *supra* note 167, at 446 (“Some [Catholic] church activists and human rights lawyers have occasionally been threatened anonymously.”); 1983 HUMAN RIGHTS REPORTS, *supra* note 167, at 504 (“Some [Catholic] Church activists and human rights lawyers were anonymously threatened during 1983, but such incidents apparently declined toward the end of 1983.”); 1982 HUMAN RIGHTS REPORTS, *supra* note 158, at 441 (“Some [Catholic] Church activists and human rights lawyers have during 1982 been anonymously threatened.”); 1981 HUMAN RIGHTS REPORTS, *supra* note 158, at 376 (“[Catholic] Church activists and human rights lawyers have

acts of terrorism against religious groups that actively supported the regime or appeared to do so due to their silence about the military's practices and policies.<sup>180</sup>

Such ideologically generated perception and treatment of religious groups had several significant consequences on the development of religious liberty. First, it generated and intensified the same sort of intradenominational fragmentation that had plagued various religions (particularly the Catholic Church) prior to 1973.<sup>181</sup> The Catholic Church, for example, remained fragmented along liberal, moderate, and conservative lines.<sup>182</sup> More seriously, the Lutheran Church formally split into two churches, one conservative and pro-military, the other liberal and antimilitary.<sup>183</sup> Second, it created interdenominational tensions between religious groups that opposed and supported the dictatorship, respectively. As mentioned earlier, such tensions caused the dissolution of COPACHI in 1975, as the Baptist and Greek Orthodox churches withdrew from the alliance after several Catholic priests and nuns aided members of a Marxist terrorist group.<sup>184</sup> Third, and most important, it created an intolerant atmosphere that discouraged the free practice and expression of religious belief.

To a much lesser extent, interdenominational tensions also arose in response to doctrinally based disputes and the rapid growth of

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been anonymously threatened.”); 1980 HUMAN RIGHTS REPORTS, *supra* note 158, at 379 (“In a number of instances, church property has been the target of attacks carried out by assailants who have not been identified or apprehended.”).

180. See William R. Long, *Soul Men*, L.A. TIMES MAG., June 20, 1993, at 18, 18 (stating that between the early 1980s and 1993 leftist terrorists set off approximately “300 explosions and fires” at LDS chapels throughout Chile); see also U.S. DEP’T OF STATE, 101ST CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989, at 505 (1990) (“The Mormon Church continued to be a target of leftwing terrorist groups . . . ; Mormon churches were bombed, but there were no reported injuries.”); U.S. DEP’T OF STATE, 101ST CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1988, at 493 (1989) (“The Mormon Church continued to be a target of leftwing terrorist groups.”); 1987 HUMAN RIGHTS REPORTS, *supra* note 167, at 420 (“The Mormon church continued to be a target of leftwing terrorist groups, but with fewer bombings than in 1986.”); 1986 HUMAN RIGHTS REPORTS, *supra* note 167, at 437 (“[T]here were at least 17 bombings against the Mormon Church . . . .”); 1985 HUMAN RIGHTS REPORTS, *supra* note 167, at 457 (“During 1985, there were at least fourteen bomb attacks against the Mormon Church, particularly against church buildings.”).

181. For a discussion of the pre-1973 fragmentation of religions, see *supra* Part II.A.

182. See FLEET & SMITH, *supra* note 15, at 68-69.

183. See *Situación de las Iglesias Evangélicas de Chile*, *supra* note 47, at 107.

184. See SMITH, *supra* note 15, at 318.

such non-Catholic groups as the Pentecostals and the Mormons. In the mid-1980s, for example, there occurred a “notable cooling of relations between Catholics and many Pentecostal churches”<sup>185</sup> due to the rise and success of “sectarian proselytism” by Pentecostal groups.<sup>186</sup> Similarly, in the early 1980s, both Catholic officials and various Protestant churches expressed their alarm at the rapid growth of Mormonism in Chile.<sup>187</sup> A group of Protestant pastors even sent a letter to President Pinochet, accusing the LDS Church of being non-Christian and using its economic resources to attract converts.<sup>188</sup> Though not as publicly divisive as ideological differences, such negative views of other religions contributed to the prevailing atmosphere of intolerance.

### *3. Conclusion: The development of religious liberty under the Pinochet regime*

As demonstrated by the previous discussion of the development of Chile’s national juridical framework under Pinochet, the Pinochet regime’s perception and treatment of religious groups, and popular perceptions and treatment of religious groups, the Pinochet period was a contradictory yet significant era in the evolution of religious liberty in Chile. On one hand, though the constitutional regime regulating religious liberty remained essentially constant, the enactment of national legislation and ratification of international instruments containing provisions relating to specific aspects of religious liberty provided religious freedom with unprecedented scope and depth. However, Chilean society remained unable to fully enjoy its religious rights due to the *de facto* obstacles and spirit of religious intolerance generated by the military government’s practice of using its emergency powers to suspend all nonderogable religious rights and the tendency of both the government and public to judge and mistreat religious groups according to political ideas and criteria.

The Pinochet period was thus characterized by contradictory developments that worked to simultaneously further and restrict reli-

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185. Cleary & Sepúlveda, *supra* note 170, at 113.

186. *Id.* (quoting KATHERINE GILFEATHER O’BRIEN, *EL ROL DE ECUMENISMO PROTESTANTE COMO POSIBLE SOLUCIÓN AL IMPASSE EN LAS RELACIONES ENTRE LA IGLESIA CATÓLICA Y LA COMUNIDAD PENTECOSTAL* (1992)).

187. *See* ACEVEDO, *supra* note 177, at 72.

188. *See id.* (citing *Se Desata Polémica Religiosa*, *LAS ÚLTIMAS NOTICIAS*, May 30, 1982, at 20).

gious freedom. In light of this fact, the true significance of the Pinochet era with respect to religious liberty arguably lies in its development of a national juridical regime that provided more numerous and better defined boundaries outlining the scope of religious liberty. If nothing else, this development would prove to be of much value to the continued evolution of religious liberty in post-Pinochet Chile.

*B. The Evolution of Religious Liberty in the Post-Pinochet Era: 1990-2000*

The consolidation of civilian democracy in the post-Pinochet era has fostered an important process of normalization in the development of religious liberty in Chile. The return of civilian rule eliminated the political tensions responsible for restricting the availability and practice of religious freedom during the Pinochet period and rendered the government more responsive to the needs of minority religions. Moreover, the consolidation of democracy has allowed the *de jure* protections established during the Pinochet regime to expand, resulting most notably in the recent enactment of legislation affirming religious liberty and providing equal juridical standing to all religious organizations. Nevertheless, religious liberty has not flourished in practice due to government discrimination against certain religious groups and the growth of interdenominational rivalries and related popular prejudices. Religious freedom, therefore, has continued to be characterized by contradictory developments that have simultaneously strengthened and weakened it.

*1. Background: The consolidation of protected democracy and the post-Pinochet era*

Since returning to civilian rule in March 1990, Chile has experienced considerable economic and political development and stability.<sup>189</sup> Though subject to the Constitution of 1980's restrictive regi-

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189. See generally FLEET & SMITH, *supra* note 15, at 159; LOIS HECHT OPPENHEIM, *POLITICS IN CHILE: DEMOCRACY, AUTHORITARIANISM, AND THE SEARCH FOR DEVELOPMENT 195-275* (2d ed. 1999). The country's political stability arguably is perhaps best evidenced by the fact that (1) the anti-Pinochet coalition of center-left political parties has won all three presidential elections held since 1989, see Clifford Krauss, *Chilean Socialist Narrowly Elected to the Presidency*, N.Y. TIMES, Jan. 17, 2000, at A1, and (2) the coalition candidate, Ricardo Lagos, who recently won the 1999-2000 presidential election, is a former member of the Chilean Socialist Party. See *id.*

men of protected democracy<sup>190</sup> and General Pinochet's continued involvement in the national government,<sup>191</sup> Chilean democracy has achieved a high degree of consolidation "in all sectors of society except the military."<sup>192</sup> Endeavors to complete full consolidation have failed due to the civilian government's inability to reduce, if not eliminate, the military's political roles, subject the military to civilian control, hold military officials responsible for human rights abuses committed under the Pinochet regime, and remove all of the Constitution of 1980's antidemocratic limitations on civilian democracy.<sup>193</sup> Moreover, such endeavors have generated recurring civil-military conflicts.<sup>194</sup> Though civil-military relations improved during the mid-1990s, British authorities' decision in 1998 to arrest General Pinochet while in the United Kingdom for possible extradition to Spain to face human rights charges rekindled tensions between the military and civilians.<sup>195</sup> "Most observers," however, "[have opined] that only hard-line military elements would welcome a coup at this point, and that they are unlikely to move on their own."<sup>196</sup>

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190. For information on protected democracy and/or the protected democracy-related provisions of the Constitution of 1980, see *supra* notes 71 and 72, respectively.

191. Under the Constitution of 1980, see Sigler et al., *supra* note 76, at 33-34, Pinochet served as head of the armed forces until 1998 and has served since then as a senator-for-life. See Clifford Krauss, *Pinochet, at Home in Chile: A Real Nowhere Man*, N.Y. TIMES, Mar. 5, 2000, at A12.

192. See FLEET & SMITH, *supra* note 15, at 159. For an intriguing discussion of the triumphs and challenges of consolidation of democracy in Chile, see OPPENHEIM, *supra* note 189, at 195-238.

193. See OPPENHEIM, *supra* note 189, at 200-19.

194. See FLEET & SMITH, *supra* note 15, at 166-68; OPPENHEIM, *supra* note 189, at 217-19.

195. See, e.g., Joseph Contreras, *Awaiting Justice*, NEWSWEEK, Oct. 18, 1999, at 36 (Atlantic ed.), available in LEXIS, Nexis Library, N WEEK File; Marc Cooper, *Ballots and Bones*, MOTHER JONES, Mar. 1, 2000, available in LEXIS, Nexis Library, MAGS File; Isabel Hilton, *As Chilean Television Shows the Verdict, Sonia Weeps with Relief: Someone Finally Is Saying "No" to Pinochet*, NEW STATESMAN, Nov. 27, 1998, at 7, 7-8; Brook Larmer, *Undying Memory*, NEWSWEEK, Dec. 18, 1998, at 31 (Atlantic ed.), available in LEXIS, Nexis Library, N WEEK File. Though British authorities initially decided to extradite Pinochet to Spain, see Marjorie Miller, *Pinochet May Be Extradited to Spain to Stand Trial, British Judge Rules*, L.A. TIMES, Oct. 9, 1999, at A8, an appellate body ruled in January 2000 against extradition due to Pinochet's poor health. See Marjorie Miller, *Britain Says Pinochet Sick, Won't Be Tried*, L.A. TIMES, Jan. 12, 2000, at A1.

196. FLEET & SMITH, *supra* note 15, at 159 (footnote omitted).

## 2. *Analysis: Religious liberty in post-Pinochet Chile*

Chile entered the post-Pinochet era with a relatively well-defined juridical regime governing religious freedom, which was limited as a matter of *de facto* reality by governmental and popular attitudes that promoted unequal treatment of religious groups and interdenominational rivalry.<sup>197</sup> An analysis of the same three factors examined in Part III.A.2—the development of Chile’s national juridical framework, the Chilean government’s perception and treatment of religious groups, doctrines, and practices, and the popular perception and treatment of religious groups, doctrines, and practices—reveals that religious liberty has attained an unprecedented level of protection and acceptance in the post-Pinochet period. The return to and consolidation of democracy has allowed Chile to further develop its religious liberty-related juridical protections and provisions, while diffusing the political tensions responsible for restricting the availability and practice of religious freedom during the Pinochet period. At the same time, however, religious liberty has struggled against several factors promoting *de facto* religious intolerance, particularly the government’s continued practice of granting preferential treatment to certain religious groups and the rise of popular prejudices stemming from interdenominational rivalries.

*a. Juridical developments relating to freedom of religion.* Part III.A.2.a demonstrated that upon entering the post-Pinochet period, Chile possessed a solid juridical regime that defined the scope of religious liberty in relation to many areas of the law and society. The consolidation of democracy in the post-Pinochet period has reinforced these protections by extending them to additional areas of the law.

*(1) Constitutional provisions.* The Constitution of 1980 has continued to govern Chile since the re-establishment of civilian rule in 1990. As a result, the constitutional regime has maintained the same guarantees for, and limitations on, religious liberty that existed during the last decade of Pinochet’s dictatorship.<sup>198</sup>

*(2) Legislative and administrative provisions.* As a general rule, the post-Pinochet legislative regime has maintained most of the religious freedom-related provisions enacted by the military govern-

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197. See *supra* Part III.A.2.

198. For a brief discussion of the Constitution of 1980’s provisions regarding religious liberty, see *supra* notes 100-104 and accompanying text.

ment. In some cases, the existing law was left unaltered;<sup>199</sup> in others, a new law reproduced the provisions originally enacted by the Pinochet regime.<sup>200</sup> Chile's juridical regime has thus continued to recognize such provisions as the illegality of conditioning employment on religious belief,<sup>201</sup> the inability of community organizations to discriminate against their members on religious grounds,<sup>202</sup> the illegality of proselyting in community organizations and cooperative societies,<sup>203</sup> the obligation of public schools to teach courses on religion and to treat such courses as electives for graduation purposes,<sup>204</sup> the right of parents of children who attend a private school owned and operated by a religious organization to request that their children not be educated according to the sponsoring religion's beliefs,<sup>205</sup> the right of "religious persons" to receive exemptions from compulsory military service,<sup>206</sup> and the government's obligation to provide prisoners with religious activities.<sup>207</sup>

Under civilian rule, both the national government and local municipalities have enacted laws relating to religious freedom. Though these laws differ in their potential to affect religious liberty's continued development, all further define the scope of protections afforded to and by religious liberty by addressing such issues as discussed below.

(i) *Dissemination of religious belief.* Since the early 1990's, numerous municipalities throughout Chile have passed noise ordinances that potentially limit the ability of religious groups to express their beliefs in public. In relevant part, the ordinances prohibit the use of megaphones to transmit any type of political, commercial, or

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199. See, e.g., Ley No. 18,620, 27 de mayo de 1987, D.O., 6 de julio de 1987; Decreto No. 924, 12 de septiembre de 1983, D.O., 7 de enero de 1984.

200. Compare, e.g., Ley No. 18,893, 26 de diciembre de 1989, D.O., 30 de diciembre de 1989, with Ley No. 19,418, 25 de septiembre de 1995, D.O., 9 de octubre de 1995; see also Decreto No. 58, 9 de enero de 1997, D.O., 20 de marzo de 1997.

201. See Ley No. 18,620, art. 2.

202. See Ley No. 19,418, art. 3; see also Decreto No. 58, art. 3.

203. See Ley No. 19,418, art. 3; see also Decreto No. 58, art. 3.

204. See Decreto No. 76, 7 de mayo de 1985, D.O., 15 de mayo de 1985, art. 2.

205. See Decreto No. 924, art. 5.

206. See Decreto No. 244, 1 de marzo de 1979, D.O., 3 de mayo de 1979, art. 43(6).

207. Compare Decreto-Ley No. 2859, 12 de septiembre de 1979, D.O., 16 de septiembre de 1979, art. 8(2), with Decreto No. 1771, 30 de diciembre de 1992, D.O., 9 de febrero de 1993, art. 9(c); see also Decreto No. 518, 22 de mayo de 1998, D.O., 21 de agosto de 1998, art. 10.

religious message without express authorization from the municipality.<sup>208</sup> Some ordinances also forbid the playing of music of any variety in public streets without proper authorization from the municipality and proscribe the use of amplifiers and production of “any sound that disrupts the tranquility, calmness, or rest of a neighborhood, at any time of day.”<sup>209</sup> Pentecostal groups have protested these ordinances, fearing that they will be enforced to prevent them from engaging in public preaching and musical processions.<sup>210</sup> To date, however, the ordinances have not been enforced in that way.<sup>211</sup>

(ii) *Juridical personality of religious organizations.* By far the most important post-Pinochet development concerning religious liberty involved the enactment of legislation that, in addition to reaffirming the existing juridical regime and guarantees, granted all religious organizations equal juridical standing.<sup>212</sup> The movement to pass such a law began in 1992 with the creation of an Advisory Commission for the Organization and Functioning of Pentecostal Entities, which was charged in part with determining the type of legal standing that should be granted to Chile’s numerous Pentecostal denominations.<sup>213</sup> In 1996, President Aylwin’s administration responded to Pentecostal groups’ “complaints of discrimination” by submitting to Congress a bill “providing for legal equality of all religions.”<sup>214</sup> After passing the House of Deputies, the bill failed in the Senate due to pressure from the Catholic Church,<sup>215</sup> which feared that the bill would “eliminate[] [the Church’s] historic rights and expose[] its statutes to the undulations of politics,”<sup>216</sup> and

208. See, e.g., Decreto No. 194, 7 de julio de 1999, D.O., 11 de agosto de 1999, art. 32; Decreto No. 650, 10 de junio de 1998, D.O., 21 de julio de 1998, art. 35; Decreto No. 1849, 30 de octubre de 1997, D.O., 14 de noviembre de 1997, art. 33; Decreto No. 214, 28 de enero de 1993, D.O., 11 de febrero de 1993, art. 36; Decreto No. 431, 5 de junio de 1991, D.O., 28 de junio de 1991, art. 2(c).

209. Decreto No. 214, art. 36 (“todo sonido que altere la tranquilidad, quietud o reposo del vecindario, a cualquier hora del día”).

210. See U.S. DEP’T OF STATE, 104TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1995, at 358 (1996) [hereinafter 1995 HUMAN RIGHTS REPORTS]; see also Poblete, *supra* note 15, at 233-34.

211. See Poblete, *supra* note 15, at 234.

212. See Ley No. 19638, 1 de octubre de 1999, D.O., 14 de octubre de 1999. For a comprehensive analysis of the law, see *infra* Part IV.A. Also, see Appendix for the full text of the law in Spanish and English.

213. See Decreto No. 332, 1 de junio de 1992, D.O., 6 de junio de 1992, art. 2.

214. Poblete, *supra* note 15, at 233.

215. See Pedro C. Moreno, *Evangelical Churches, in* RELIGIOUS FREEDOM AND EVANGELIZATION, *supra* note 15, at 53.

expose[] its statutes to the undulations of politics,”<sup>216</sup> and “provide a legal base for demands from Evangelical and Protestant faiths to participate in official public acts . . . [and] be given positions within Chile’s armed services to minister to the needs of their faithful.”<sup>217</sup> In October 1999, however, the government succeeded in passing the law (commonly called the Law of Worship, or *ley de cultos*),<sup>218</sup> overcoming Catholic objections by altering it so as to “respect[] Catholic Church canon [sic] law.”<sup>219</sup>

(iii) *Prisoners’ rights*. In addition to reaffirming previous provisions requiring penal institutions to provide religious assistance and activities,<sup>220</sup> two decrees specifically guaranteed inmates’ freedom

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216. *Parlamento Aprobó Ley que Establece Igualdad Jurídica de Iglesias*, Spanish Newswire Services, July 16, 1999, available in LEXIS, Nexis Library, Efenew File [hereinafter *Parlamento Aprobó*] (“eliminaba sus derechos históricos y exponía sus estatutos a los vaivenes de la política”). In a more comprehensive discussion regarding the bill, the Catholic Church stated that it opposed the bill because: (1) although the Church would retain public legal standing, the law granting such standing would remain exposed to future modifications; (2) the bill failed to recognize that the Church’s statutes are the product of international agreements between Chile and the Vatican; (3) the bill failed to address Church canon law, thereby subjugating canon law to any noncanonical law and complicating the Church’s ministry; (4) under the bill, the Church would lose the benefit of 150 years worth of judicial and administrative jurisprudence; and (5) the bill would permit special judicial proceedings to dissolve a religious organization. See *Puntos de Discordia*, LA TERCERA, July 7, 1998 (visited May 19, 2000) <<http://www.tercera.cl/diario/1998/07/07/2.html>>; see also *Arzobispo Errázuriz Define Postura en la Ley de Culto*, LA TERCERA, July 6, 1999 (visited May 11, 2000) <<http://www.tercera.cl/diario/1999/07/06/06.03.3a.POL.IGLESIA.html>>; *Reparo de Católicos Hacia Ley Cultos*, LA TERCERA, July 7, 1998 (visited May 11, 2000) <<http://www.tercera.cl/diario/1998/07/07/2.html>>.

217. *Current Events Briefs*, CHIPS, July 8, 1999, available in 1999 WL 10738842. Pentecostals, however, believed that the Church’s opposition to the law arose principally from a fear of losing political power. See Javier Ortega, *Héctor Darío Olivares: “Sabe que Perderá Poder Político,”* LA TERCERA, Nov. 3, 1997 (visited May 19, 2000) <<http://www.tercera.cl/diario/1997/11/03/index.html>>.

218. See Poblete, *supra* note 15, at 233.

219. See *Current Events Briefs*, CHIPS, July 10, 1999, available in 1999 WL 10738853; see also *Parlamento Aprobó*, *supra* note 216; Gabriela de la Maza, *Las Movidas que Evitaron la “Guerra Santa,”* LA TERCERA, July 8, 1999 (visited May 11, 2000) <<http://www.tercera.cl/diario/07/08/08.10.3a.CRO.GUERRA.SANTA.html>>. Even with the proposed law’s recognition of canon law, however, some Catholic opposition to the project remained. Archbishop Francisco Javier Errázuriz, for example, desired that the new law be amended “so that satanic groups and other sects can’t take advantage of [it] . . .” See *Current Events Briefs*, *supra*. Similarly, Catholic spokesman Enrique Palet classified the law as “the responsibility of the legislators and does not count with the official support of Catholic Church authorities.” *Current Events Briefs*, *supra* note 217.

220. See *supra* note 207 and accompanying text.

of religion.<sup>221</sup> The later of the two decrees also stipulated that all norms established by that regulation should be applied impartially without differentiating between inmates due to religious belief.<sup>222</sup>

Together, these laws have added significant breadth and boundaries to Chile's juridical regime governing religious liberty, particularly with respect to the juridical personality of religious organizations and the protection of prisoners' rights. The 1999 Law of Worship, however, ranks as the most significant, promising, and potentially far-reaching law that has been enacted to date. At the very least, the Law of Worship may be considered the most significant development in Chile's legal regime since the Constitution of 1925 first guaranteed the freedom of religion and separation of church and state.

(3) *International legal norms.* During the first year of civilian rule, Chile ratified the American Convention on Human Rights (ACHR),<sup>223</sup> an international instrument containing several provisions that concern religious liberty. In many respects, the pertinent ACHR terms closely mirror those established in the ICCPR and ICESCR, both of which became binding on Chile under the Pinochet regime.<sup>224</sup> All three instruments, for example, prohibit discrimination on the basis of religion<sup>225</sup> and permit parents to provide for the moral and religious education of their children.<sup>226</sup> Also, numerous other ACHR provisions establish the same rights and freedoms provided in the ICCPR, including the right to freedom of conscience and religion,<sup>227</sup> the freedom to maintain and change belief,<sup>228</sup> the freedom to manifest belief subject to constraints imposed by law,<sup>229</sup>

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221. See Decreto No. 518, 22 de mayo de 1998, D.O., 21 de agosto de 1998, art. 6; Decreto No. 1171, 30 de diciembre de 1992, D.O., 9 de febrero de 1993, art. 6.

222. See Decreto No. 518 art. 5.

223. See Decreto No. 873, 23 de agosto de 1990, D.O., 5 de enero de 1991.

224. See *supra* Part III.A.2.a.(3).

225. See American Convention on Human Rights, *opened for signature* Nov. 22, 1969, art. 1(1), 1144 U.N.T.S. 143, 145 (*entered into force* July 18, 1978) [hereinafter ACHR]; ICCPR, *supra* note 96, at 173, art. 2(1).

226. See ACHR, *supra* note 225, at 148, art. 12(4); ICCPR, *supra* note 96, at 178, art. 18(4); ICESCR, *supra* note 130, at 8, art. 13(3).

227. Compare ACHR, *supra* note 225, at 148, art. 12(1), with ICCPR, *supra* note 96, at 178, art. 18(1).

228. Compare ACHR, *supra* note 225, at 148, art. 12(2), with ICCPR, *supra* note 96, at 178, art. 18(2).

229. Compare ACHR, *supra* note 225, at 148, art. 12(3), with ICCPR, *supra* note 96, at 178, art. 18(3).

the freedom of thought and expression,<sup>230</sup> the right of assembly,<sup>231</sup> the freedom of association,<sup>232</sup> and prohibitions on governmental ability to suspend the freedom of religion and conscience, even in emergency situations.<sup>233</sup>

Chile's ratification of the ACHR thus reinforced its commitment to honor the religious freedom obligations that it agreed to follow upon adopting the ICCPR and the ICESCR during the Pinochet era. Accordingly, the country's international obligations have continued to form a central element of the national juridical regime governing the scope of religious freedom.

*(4) Conclusion: Juridical developments in the post-Pinochet era.*

In addition to achieving a general consolidation of civilian democracy, the post-Pinochet period has affirmed and expanded Chile's religious human rights obligations and related juridical regime. Affirmation has occurred as existing constitutional guarantees, numerous legislative provisions, and national obligations under international law have continued to recognize many of the religious liberty-related rights and norms established during the Pinochet regime. Expansion has taken place as new legislative provisions, including the 1999 Law of Worship, have broadened the scope of religious freedom. Though recently enacted, the Law of Worship promises to accomplish much in Chile's endeavors to better protect religious human rights.

*b. Government perception and treatment of religious organizations, doctrines, and practices.* As might be expected, the ideologically based repression and favoritism that characterized the Pinochet regime's perception and treatment of religious groups and beliefs has not carried over into the post-Pinochet period. Throughout the 1990s, therefore, human rights observers have reported that "[a]ll denominations practice their faiths without restriction"<sup>234</sup> or that

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230. Compare ACHR, *supra* note 225, at 148-49, art. 13, with ICCPR, *supra* note 96, at 178, art. 19.

231. Compare ACHR, *supra* note 225, at 149, art. 15, with ICCPR, *supra* note 96, at 178, art. 21.

232. Compare ACHR, *supra* note 225, at 149, art. 16, with ICCPR, *supra* note 96, at 178, art. 22.

233. Compare ACHR, *supra* note 225, at 152, art. 27, with ICCPR, *supra* note 96, at 174, art. 4.

234. U.S. DEP'T OF STATE, 106TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1999 (2000) (visited May 20, 2000) <[http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/chile.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/chile.html)> [hereinafter 1999 HUMAN RIGHTS REPORTS]; see also U.S. DEP'T OF STATE, 106TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS

most religious groups have affirmed being free of government interference in practicing their respective faiths.<sup>235</sup> Also, the civilian government's efforts to consolidate its power has made it responsive to minority religious groups' needs, as evidenced by its efforts to create the Advisory Commission for the Organization and Functioning of Pentecostal Entities<sup>236</sup> and bestow equal juridical standing on all religious groups.<sup>237</sup>

At the same time, however, the government undeniably has treated religious groups differently. For example, the United States State Department has affirmed consistently since 1995 (unfortunately, without providing much proof) that the "the Catholic Church enjoys a privileged position among religions"<sup>238</sup> and "receives preferential official treatment."<sup>239</sup> Chile's Protestant population recently complained about the Catholic Church's privileged position and charged the government with engaging in discriminatory

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PRACTICES FOR 1998, at 540 (1999) [hereinafter 1998 HUMAN RIGHTS REPORTS]; U.S. DEP'T OF STATE, 105TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1997, at 447 (1998) [hereinafter 1997 HUMAN RIGHTS REPORTS]; U.S. DEP'T OF STATE, 105TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1996, at 385 (1997) [hereinafter 1996 HUMAN RIGHTS REPORTS]; 1995 HUMAN RIGHTS REPORTS, *supra* note 210, at 358; U.S. DEP'T OF STATE, 104TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, at 346 (1995) [hereinafter 1994 HUMAN RIGHTS REPORTS]; U.S. DEP'T OF STATE, 103D CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1993, at 388 (1994) [hereinafter 1993 HUMAN RIGHTS REPORTS]; U.S. DEP'T OF STATE, 103D CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1992, at 356 (1993) [hereinafter 1992 HUMAN RIGHTS REPORTS]; U.S. DEP'T OF STATE, 102D CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1991, at 529 (1992) [hereinafter 1991 HUMAN RIGHTS REPORTS].

235. See U.S. DEP'T OF STATE, 102D CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1990, at 542 (Comm. Print 1991) [hereinafter 1990 HUMAN RIGHTS REPORTS].

236. See *supra* note 213 and accompanying text.

237. See *supra* note 214 and accompanying text.

238. U.S. DEP'T OF STATE, 106TH CONG., ANN. REP. ON INT'L FREEDOM FOR 1999: CHILE (Comm. Print 1999) (visited May 23, 2000) <[http://www.state.gov/www/global/human\\_rights/irf/irf\\_rpt/1999/irf\\_chile99.html](http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_chile99.html)> [hereinafter 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT].

239. *Id.*; see also 1999 HUMAN RIGHTS REPORTS, *supra* note 234; 1998 HUMAN RIGHTS REPORTS, *supra* note 234, at 540; 1997 HUMAN RIGHTS REPORTS, *supra* note 234, at 447; 1996 HUMAN RIGHTS REPORTS, *supra* note 234, at 385; 1995 HUMAN RIGHTS REPORTS, *supra* note 210, at 358. The State Department's general statements appear to be supported by the fact that in 1998 the Chilean government contributed more than \$3 million (USD) to the Catholic Church to cover costs incurred by a Church-sponsored conference attended by 500,000 youth from the Western Hemisphere. See 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238.

conduct in multiple ways. As the State Department reported in 1999,

[t]he country's Protestants assert that the Government discriminates against them, based upon differing legal status afforded to non-Catholics. They cite the absence of Protestant armed forces chaplains (all chaplains are Catholic), difficulties for pastors to visit military hospitals, and the predominantly Catholic religious education in public schools. Military recruits, whatever their religion, often have to attend Catholic events involving their unit, and being a Catholic is considered beneficial to one's military career.<sup>240</sup>

With respect to Protestant claims of discrimination in attaining legal personality, it is interesting to note that during the early and mid-1990s the Ministry of Justice denied at least two Pentecostal groups' petitions for legal personality because the groups allegedly were religious sects whose "practices seriously violate human dignity."<sup>241</sup> Soon thereafter, however, the Ministry reversed its decision with respect to one of the groups due to pressure from numerous Pentecostal churches and organizations.<sup>242</sup> The Ministry's reversal suggests that its original decision rested on grounds of an arbitrary, if not discriminatory, nature.<sup>243</sup>

Since 1997, numerous other incidents have occurred that raise questions about the government's support of religious liberty, particularly with respect to religious minorities and smaller religious groups. For example, the United States State Department reported in January 1997 that Chile's "small Jewish population is free to practice its religion but faces some discrimination in public life."<sup>244</sup> This comment referred to a series of incidents during which a cabinet minister and subcabinet member made anti-Semitic remarks.<sup>245</sup> Though neither official took discriminatory action against any Jewish

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240. 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238.

241. Decreto No. 528, 29 de mayo de 1995, D.O., 4 de junio de 1995, preamble ("sus prácticas violenta gravamente la dignidad humana"); *see also* Decreto No. 1126, 10 de noviembre de 1995, D.O., 9 de enero de 1996 (noting that the Universal Church of the Kingdom of God's original petition had been denied).

242. *See* Decreto No. 1126, preamble.

243. *But see* 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238 ("Government refusal to register a religious group . . . is rare . . .").

244. 1996 HUMAN RIGHTS REPORTS, *supra* note 234, at 385.

245. *See id.*

organizations, their comments fostered a severe feeling of intolerance that affected the entire Jewish community.<sup>246</sup>

Similarly, in late 1997, the Ministry of the Interior refused to renew the visas of seven Brazilian pastors belonging to the Universal Church of the Kingdom of God, stating suspicions that the group's followers might be forced to make donations.<sup>247</sup> The Brazilian pastors' attorneys accused the government of acting arbitrarily and failing to respect religious freedom, arguing that the pastors did not violate Chile's immigration laws prohibiting persons possessing a tourist visa from participating in "activities with remuneration," even though the pastors subsisted on donations made by church members.<sup>248</sup> The pastors lost their appeal to the local courts and were ordered to leave the country.<sup>249</sup>

Likewise, the Chilean government expelled a Hindu religious leader in 1998 for committing a crime against the country's "morals and good customs."<sup>250</sup> Media reports alleged that the expulsion

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246. I was in Santiago shortly after these events occurred as part of a research project concerning the history of Chile's Jewish community and noticed the high degree of agitation and uncertainty created within the Jewish community by the government officials' comments. Indeed, members of the Jewish community, and even of the community's principal organizations, remained so fearful of opening up to "outsiders" that they declined to assist me with my research.

In February 1999, a similar problem arose when the government named as Vice Minister of the Interior an individual who allegedly made an anti-Semitic remark while serving as Vice Minister of Public Works in 1996. See 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238. The official denied the accusation, stating that his comments "had been purely political." *Id.* Unlike the 1997 incident, the situation with the Vice Minister resolved itself peacefully after Jewish representatives accepted his declarations "that he was not an anti-Semite." *Id.*

247. See *Apelan Lideres de Secta Religiosa por Negativa de Visa*, NOTIMEX, Nov. 10, 1997, available in LEXIS, Nexis Library, Notcia File [hereinafter *Apelan Lideres*]. The same charges had been made against the group's founder in Brazil. See *id.*

248. Claudio Centro T., *Abogado Fidel Reyes: "No se Respeto la Libertad de Cultos"*, LA TERCERA, Mar. 18, 1998 (copy on file with author) ("ejercer actividades con remuneración"); cf. *Apelan Lideres*, *supra* note 247 (quoting attorney Pedro Canihuete's statement that the church has been persecuted since its establishment). Catholic church leaders declined to comment extensively on the situation, saying only that "[t]he Brazilians' problem is not of freedom of worship, which is guaranteed in the Constitution, but of administrative reasons adopted by the authority." *Iglesia Católica: "No nos Opinar"*, LA TERCERA, Mar. 18, 1998 (copy on file with author) ("El problema de los brasileños no es de libertad de culto, el cual está garantizado en la Constitución, sino de razones administrativas adoptadas por la autoridad.").

249. See *Ordena Gobierno Chileno Explotión Contra Misioneros Brasileños*, NOTIMEX (Feb. 19, 1998), available in LEXIS, Nexis Library, Notcia File.

250. *Guru Hace su Show*, EL NORTE, Sep. 7, 1998, at 9, available at 1998 WL 13029661 ("la moral y las buenas costumbres").

stemmed from the guru's "scandalous sex life"—in accordance with his religious beliefs, the guru had six wives.<sup>251</sup>

Moreover, in October 1999, a medical clinic in Antofagasta obtained a court order "to provide a blood transfusion to a critically ill" Jehovah's Witness, even though the patient had "brought papers with her [to the clinic] testifying to the fact that she didn't want blood transfusions because she is a Jehovah's Witness."<sup>252</sup> The clinic noted that it had obtained similar assistance from the courts on four other occasions.<sup>253</sup>

Finally, throughout the late 1990s, the Chilean government has carried out at least eight police raids on Colonia Dignidad,<sup>254</sup> a religious colony that was stripped of its legal status in 1991 for alleged financial crimes<sup>255</sup> and has been accused of having served in part as a detention and torture center during the Pinochet period.<sup>256</sup> In addition to attempting to arrest the group's presently fugitive leader on sexual abuse charges,<sup>257</sup> police searched the commune's facilities for weapons, explosives, and drugs.<sup>258</sup> Members of the colony denounced the government's actions, believing that the government's "ultimate goal" is to "split up or liquidate[...]"<sup>259</sup> the group. "We have nothing to hide. They say we are a sect of fanatically religious people, but that is wrong. All our people are Christians, . . . but our main aim is to create a spirit of family in the community."<sup>260</sup>

Thus, despite the fact that the politically based repression and favoritism that characterized the Pinochet regime's perception and

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251. *Id.* ("escandalosa vida sexual"). The media's speculations apparently also resulted from the fact that after being expelled from Chile, guru Badani hosted a television program in Peru about eroticism. *See id.*

252. *Current News Briefs*, CHIPS, Oct. 12, 1999, available in 1999 WL 10739144.

253. *See id.*

254. *See* Hugh Davies, *German Settlers Under Siege in Chile: Are they Nazi Brainwashers and Child Abusers, or Guardians of Family Values?*, DAILY TELEGRAPH, July 9, 1997, at 18, available in LEXIS, Nexis Library, Telegr File. For a brief discussion of claims regarding Colonia Dignidad's involvement with the Pinochet regime, see *supra* note 169.

255. *See Chile: Decision to Dissolve Secret German Colony Ratified*, Inter Press Service, June 19, 1991, available in LEXIS, Nexis Library, Inpres File (stating that President Patricio Aylwin revoked Colonia Dignidad's legal status for "charges of tax evasion, violation of non-profit status and other financial aberrations").

256. *See supra* note 173.

257. *See* Hammer, *supra* note 169, at 14.

258. *See* Davies, *supra* note 254, at 18.

259. *Id.* (quoting Dr. Harmutt Hopp).

260. *Id.* (quoting Wolfgang Muller).

treatment of religious groups and beliefs has not carried over into the post-Pinochet period and that the civilian government has made efforts to respond to minority religious groups' needs, an element of preferential treatment and discrimination in the government's treatment of religious groups has continued to exist. Though government acts of discriminatory treatment have not risen to the level of persecution, they nevertheless have fostered, at the very least, an atmosphere of religious intolerance that hinders the growth of religious liberty.<sup>261</sup>

*c. Popular perception and treatment of religious organizations, doctrines, and practices.* Popular perceptions and treatment of religious organizations, doctrines, and practices have influenced the development of religious freedom in several ways during the post-Pinochet era. First, in the early 1990s, lingering ideological perceptions identifying the LDS Church as either a supporter of the Pinochet regime or agent of United States imperialism prompted leftist guerrilla groups to continue their attacks on, and bombings of, LDS chapels throughout Chile.<sup>262</sup> Though these actions remained politically motivated and did not formally affect the church's ability to exercise its right to freely assemble and manifest its beliefs,<sup>263</sup> they

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261. Developments in Chile's last two presidential elections provide perhaps the best evidence of this atmosphere of intolerance and suspicion. In 1993, presidential candidate Eduardo Frei Ruiz-Tagle confronted rumors that he, if elected, would oppress Pentecostal churches. See Benigno Ramos, *Frei Desmintió Persecución a Iglesias Evangélicas*, LA TERCERA, Nov. 8, 1993, at 10, available in DIALOG, Info-South File. Similarly, in 1999, presidential candidate Ricardo Lagos disputed rumors that, if elected, he would prohibit Pentecostals from preaching publicly. See J.A.Q., *Lagos Desmiente Rumores a Evangélicos*, LA TERCERA, Apr. 22, 1999 (visited May 11, 2000) <<http://www.tercera.cl/diario/1999/04/22/22.04.3a.POL.LAGOS.html>>.

262. See 1993 HUMAN RIGHTS REPORTS, *supra* note 234, at 390 (reporting 15 bombings of LDS chapels and two instances of confrontations between terrorists and worshippers); 1992 HUMAN RIGHTS REPORTS, *supra* note 234, at 356 ("The Mormon Church continued to be a target of leftwing terrorist groups . . . , apparently for political rather than religious reasons."); 1991 HUMAN RIGHTS REPORTS, *supra* note 234, at 525 (reporting "more than 30 [politically motivated] bombings of Mormon churches"); 1990 HUMAN RIGHTS REPORTS, *supra* note 235, at 537, 542 (reporting more than 53 politically motivated acts of terrorism by leftist guerrillas, including bombings of LDS chapels, and one politically-motivated physical attack on a missionary from the United States).

263. As an LDS missionary in Santiago between 1991 and 1993, I witnessed the Church's response to such acts of terrorism. Though fixing the damaged buildings inconvenienced members and cost the Church a good deal of money, the bombings never prevented local congregations from holding their normal worship services and failed to influence the Church to ever even consider dissolving its local congregations or modifying its local activities.

nonetheless added an element of religious intolerance to Chilean society.

Second, although Chileans “generally are tolerant of religious differences, . . . some discrimination occurs” that favors the Catholic Church.<sup>264</sup> For example, “[n]on-Catholic clergymen sometimes have difficulties gaining access to prisons and public hospitals” where admittance “is at the discretion of administrators.”<sup>265</sup> Unlike their non-Catholic counterparts, however, “Catholic priests usually do not face such difficulties.”<sup>266</sup>

Third, popular stereotypes of religious groups have established widespread notions of the inferiority of certain (generally non-Catholic) churches and their followers. In 1997, for example, Juan Alberty Rabat, a representative of the Committee of Evangelical Organizations, stated that “[t]he marginalization [of Pentecostals] is a concrete fact. For a long time[,] Pentecostals belonged to the lowest sectors of the population[,] and prejudice is born from that: we are considered second category persons. People forget the tremendous contribution that our church has made to the country.”<sup>267</sup> Proof of such prejudice and marginalization, Rabat asserted, lays in the fact that people are surprised to learn that “successful” people (like himself) belong to the religion.<sup>268</sup>

Fourth, popular religious-based prejudices have increased during the past decade in response to intensifying interdenominational rivalries and tensions arising from the success of non-Catholic missionary endeavors among Catholics.<sup>269</sup> The rise of such popular prejudices generally has coincided with religious groups’ increasingly antagonistic confrontations with, and attitudes toward, one another. In 1999, for example, various Pentecostal groups opposed the enactment of the Law of Worship because it provided equal juridical status and re-

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264. 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238.

265. *Id.*

266. *Id.*

267. Patricia Schüller, “Somos Considerados Personas de Segunda Categoría”, LA TERCERA, May 31, 1997, (copy on file with author) (“La marginación hacia nosotros es un hecho concreto. Durante mucho tiempo los evangélicos pertenecieron a los sectores más bajos de la población y de allí nace el prejuicio: somos considerados personas de segunda categoría. La gente se olvida del tremendo aporte que ha hecho al país nuestra iglesia.”).

268. *See id.*

269. *See* FLEET & SMITH, *supra* note 15, at 177-79; *see also* Edward L. Cleary, *The Catholic Church*, in RELIGIOUS FREEDOM AND EVANGELIZATION, *supra* note 15, at 24-25; Moreno, *supra* note 215, at 56.

ligious rights to the LDS Church and Jehovah's Witnesses.<sup>270</sup> Similarly, Catholic officials disapproved of the law in part because it apparently extended its benefits and protections to "satanic groups and other sects."<sup>271</sup> Also, negative discussions in the national press about the allegedly violent and illegal activities of small religious groups operating in Chile have resulted in calls for legislation banning such "religious sects."<sup>272</sup>

Most importantly, since 1999, the Catholic Church's relations with non-Catholic groups have been strained due to the Church's increasingly combative attitude toward non-Catholic proselytizing activities.<sup>273</sup> In addition to promoting "active competition" with non-Catholic groups,<sup>274</sup> the Catholic hierarchy has harshly criticized non-Catholic groups, especially the LDS Church.<sup>275</sup> Not surprisingly, many non-Catholic groups have reciprocated similar harsh feelings and opinions about Catholicism and its perceived flaws and dangers.<sup>276</sup>

Though human rights observers to date have not identified these and other similar progressively antagonistic interdenominational attitudes as obstacles to religious freedom in Chile,<sup>277</sup> it is indisputable

270. See *Protecting the Right to Convert*, CHRISTIANITY TODAY, Mar. 1, 1999, at 28, 28.

271. See *Current Events Briefs*, *supra* note 219.

272. See Enrique Mujica, *Ante Hechos Conflictivos: Piden Leyes Contra Sectas Religiosas que Operan en el Pais*, EL MERCURIO, Sep. 16, 1992, at 1A, available in DIALOG, Info-South File (discussing endeavors to legislate against religious cults in Chile and noting such cult practices as kidnapping minors and sending them abroad, arms trafficking, and compelling cult followers to participate in sexual activities with each other).

273. See FLEET & SMITH, *supra* note 15, at 177-79.

274. *Id.* at 178.

275. See *id.* at 177. Professors Fleet and Smith further noted that

[in an official pastoral publication, the Catholic bishops] were particularly critical of the [Mormons], whom they saw as posing a danger for democratic society because of their "doctrinal demagoguery," their "theocratic, vertical and totalitarian structures," their insistence on possessing the "absolute truth," their control of information, their "total rejection of society and its institutions," their "suppression of individual liberties" of their adherents, their insistence that new members "break all former social ties upon entrance into the cult," and their attitude that "all those outside the group" were enemies.

*Id.* (quoting CONFERENCIA EPISCOPAL DE CHILE, EVANGÉLICOS Y SECTAS: PROPUESTAS PASTORALES 28 (1992)).

276. See Moreno, *supra* note 215, at 57-58.

277. See, e.g., 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238; 1999 HUMAN RIGHTS REPORTS, *supra* note 234; 1998 HUMAN RIGHTS REPORTS, *supra* note 234, at 540; 1997 HUMAN RIGHTS REPORTS, *supra* note 234, at 447; 1996 HUMAN RIGHTS REPORTS, *supra* note 234, at 385; 1995 HUMAN RIGHTS REPORTS, *supra* note 210, at 358;

that they have resulted in “some discrimination” against religious organizations and their followers.<sup>278</sup> Further development of such sentiments could pose a serious problem. Not only would such attitudes likely restrict individuals’ and religious groups’ abilities to freely exercise their religious human rights but they could also discourage different religious groups’ ability and willingness to work together for the benefit of Chilean society.

Even as the situation currently stands, however, popular prejudices have engendered instances of religious-based discrimination. In mid-1999, for example, parents of fourteen students expelled by a small private school in Santiago for alleged behavioral problems and involvement with illegal drugs claimed that the students’ expulsion resulted from religious discrimination.<sup>279</sup> Specifically, the parents claimed that the school discriminated against the children because they belonged to “the strict Casa del Señor . . . sect” (a “fundamentalist religious group that originated in the United States”) and had “distanced themselves from normal school goings on.”<sup>280</sup>

Thus, though politically motivated persecution influenced popular treatment of religious groups in the early 1990s, interdenominational rivalry and prejudices have become the most powerful factors affecting popular perceptions and treatment of religious groups in the post-Pinochet era. Such prejudices have not yet noticeably affected the development of religious liberty on a widespread basis, but their current mode and rate of evolution suggests that they could easily become a significant obstacle to *de facto* religious freedom.

*d. Conclusion: The development of religious liberty in the post-Pinochet era.* As demonstrated by the above analysis of (1) the development of Chile’s national juridical framework; (2) the civilian government’s perception and treatment of religious groups, beliefs, and practices; and (3) popular perceptions and treatment of religious groups, doctrines, and practices, the development of religious liberty in the post-Pinochet era has generally paralleled the course it followed during the Pinochet period. On one hand, the national juridical regime has continued to define the scope of *de jure* protection

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1994 HUMAN RIGHTS REPORTS, *supra* note 234, at 346; 1993 HUMAN RIGHTS REPORTS, *supra* note 234, at 388; 1992 HUMAN RIGHTS REPORTS, *supra* note 235; 1991 HUMAN RIGHTS REPORTS, *supra* note 235; 1990 HUMAN RIGHTS REPORTS, *supra* note 235.

278. 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238.

279. See *Current Events Briefs*, CHIPS, July 1, 1999, available in 1999 WL 10738804.

280. *Id.*

provided to and by religious liberty. Similarly, on the other hand, both the government's unequal treatment of different religious groups and popular perception and treatment of religious groups have continued to obstruct *de facto* religious liberty, despite the fact that the government and public have acted according to different motivations and in different ways than during the Pinochet period. The post-Pinochet development of religious liberty, therefore, has continued to be characterized by contradictory developments that have worked to simultaneously further and restrict religious freedom.

At the same time, however, the post-Pinochet period has expanded *de jure* protection of religious freedom to an unprecedented level, especially through the enactment of the 1999 Law of Worship. For reasons explained in Part IV.A, the Law of Worship constitutes the most significant achievement in the development of religious liberty since the Pinochet regime's adoption of the ICCPR, and arguably since the Constitution of 1925 first guaranteed the freedom of religion and separation of church and state.

*C. Conclusion: The Development of Religious Liberty in Chile During the Pinochet and Post-Pinochet Periods*

The saga of religious liberty in Chile has traveled an interesting and unique path since 1973. Despite being guaranteed as a matter of constitutional law since 1925, it was only during the past twenty-five years, from the Pinochet period on, that religious liberty began to take on more definite characteristics and juridical applications.

During the Pinochet regime, religious freedom's most significant advances occurred with the Pinochet government's acceptance of the ICCPR, which obliged Chile to apply religious freedom principles to circumstances not addressed in Chilean national law. These juridical gains, however, failed to make a noticeable impact on Chilean society due to the politically motivated repression of religious groups and clergy by both the Pinochet regime and the public at large.

In the post-Pinochet period, the development of Chile's juridical system has continued to extend religious liberty guarantees and rights to new heights, particularly through the recent enactment of the 1999 Law of Worship that established the legal equality of all religious organizations. These juridically-based gains, however, have been undermined by the government's continued practice of discriminating against religious organizations, especially minority

groups, and the evolution of increasingly antagonistic interdenominational rivalries.

Compared against one another, the religious liberty-related developments that occurred in the Pinochet and post-Pinochet period reveal several important facts about the evolution and current status of religious freedom in Chile. First, as demonstrated by the previous discussions on government and popular perceptions and treatment of religious beliefs and groups, the national security policies and concerns that heavily influenced the exercise of religious freedom under the Pinochet regime did not carry over to the post-Pinochet period. While political ideology played a small role in promoting persecution of the LDS Church in the early 1990s, interdenominational tensions and rivalries have replaced politics as the primary factor affecting the popular perception and treatment of religious groups. Moreover, the civilian government's attempts to consolidate democracy have induced it to eschew purely political confrontations and to be somewhat more responsive to the needs of minority religions.

Second, though the Pinochet regime added several notable provisions to Chile's national juridical framework defining the scope of religious freedom, the consolidation of democracy in the post-Pinochet period has greatly strengthened the country's commitment to protecting freedom of religion. Also, the Law of Worship has extended juridical protection of religious freedom to new areas of the law and society and potentially gives the Chilean State a greater capacity to legally ensure that all religions enjoy the right to freely exercise their respective beliefs.

#### IV. THE FUTURE OF RELIGIOUS LIBERTY IN CHILE: POTENTIAL DEVELOPMENTS AND PROBLEMS

In light of the development of religious liberty in Chile to date, it appears that Chile currently stands at a crossroads with respect to the evolution of religious liberty. On one hand, the 1999 Law of Worship promises a new and exciting era in the continued development and practice of religious freedom. On the other hand, government and popular pressures that restrict the full enjoyment of religious rights threaten to potentially hamper the rights and privileges enshrined in the Law of Worship from reaching their full potential.

The situation thus begs the question: what course(s) will religious liberty follow in the near future in Chile? Will the Law of Worship strengthen Chile's *de jure* obligations to religious freedom to

the degree of overpowering, or at least overshadowing, those forces that impose *de facto* limits on society's ability to freely exercise religious belief? Will such factors as government favoritism, popular religion-based prejudices, and interdenominational rivalry advance *de facto* religious intolerance so as to render the Law of Worship insignificant? Or will religious liberty merely continue upon the course it has followed since 1925, undulating in the tension generated by competing *de jure* and *de facto* influences?

Though the answer to these and other similar questions presently remains unascertainable, three particular factors possess the potential to influence the course of religious freedom in Chile's near future: the Law of Worship, ecumenism, and the increasing participation of Protestant groups in Chilean socio-political matters. Each, however, could affect the development of religious freedom in various unique ways.

*A. The 1999 Law of Worship and Chile's De Jure Commitment to Religious Freedom*

A close examination of the Law of Worship ("the Law") indicates that it merits its classification as "an historic victory"<sup>281</sup> in the quest to "reaffirm the freedom of worship"<sup>282</sup> and "help guarantee that all faiths and creeds are given equal treatment by the state of Chile."<sup>283</sup> The Law accomplishes these two objectives by (1) consolidating and synthesizing the various constitutional, legislative, and international legal provisions that Chile has adopted since the commencement of the Pinochet period; (2) adding several significant provisions not previously incorporated into Chile's juridical regime; and (3) orchestrating the processes by which religious organizations are formed and dissolved in such a way that removes much of the potential for arbitrariness and discrimination on the part of government officials. The law thus marks a significant juridical advance in the evolution of Chile's *de jure* commitment to religious freedom and could potentially reduce, if not eliminate, the Chilean government's capacity to act in ways that place *de facto* restrictions on religious liberty. At the same time, however, structural defects within the Law

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281. *Current Events Briefs*, *supra* note 217.

282. *Parlamento Aprobó*, *supra* note 216.

283. *Current Events Briefs*, *supra* note 217.

could just as easily continue many arbitrary and discriminatory government practices.

*1. The Law of Worship's primary provisions*

The Law of Worship is divided into five chapters covering: (1) general rules relating to religious freedom; (2) specific norms governing the freedom of religion and worship; (3) procedural rules regulating the attainment of public legal standing as a religious organization; (4) assets and tax exemptions; and (5) procedural rules directing the dissolution of religious organizations. Following is a brief examination of these chapters' main provisions.<sup>284</sup>

*a. General norms.* The first chapter of the Law affirms three central elements of Chile's juridical regime relating to religious freedom. Specifically, the Law (1) requires the national government to guarantee the freedom of religion as set forth in the Constitution, (2) proscribes discrimination on the basis of religious belief, and (3) obligates the national government to guarantee the free exercise of religious belief by both individuals and religious groups.<sup>285</sup>

*b. Freedom of religion and worship.* This chapter accomplishes two functions. First, it consolidates the primary religious liberty-related norms that have become part of Chile's juridical regime during the past twenty-five years, including (1) the freedom of conscience and belief;<sup>286</sup> (2) the right to freely exercise religious belief;<sup>287</sup> (3) the freedom of expression;<sup>288</sup> (4) the right of parents to control their child's religious education;<sup>289</sup> and (5) the freedom of assembly.<sup>290</sup> Second, the chapter adds two new religious rights to Chile's juridical regime: (1) an individual's right to religious assistance from his or her own religion, subject to any limitations of access imposed by the

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284. For the complete text of the Law in both Spanish and English, see Appendix.

285. See Ley No. 19,638, 1 de octubre de 1999, D.O., 14 de octubre de 1999, arts. 1-3.

286. Compare *id.* art. 6(a), with CHILE CONST. (Constitution of 1980) art. 19, no. 6, and ICCPR, *supra* note 96, at 178, art. 18(1)-(2).

287. Compare Ley No. 19,638 art. 6(a)-(b), with CHILE CONST. (Constitution of 1980) art. 19, no. 6, and ICCPR, *supra* note 96, at 178, art. 18(3).

288. Compare Ley No. 19,638 art. 6(d), with CHILE CONST. (Constitution of 1980) art. 19, no. 6, and ICCPR, *supra* note 96, at 178, art. 19(2).

289. Compare Ley No. 19,638 art. 6(d), with Decreto No. 924, 12 de septiembre de 1983, D.O., 7 de enero de 1984, and ICCPR, *supra* note 96, at 178, art. 18(4).

290. Compare Ley No. 19,638 art. 6(e), with CHILE CONST. (Constitution of 1980) art. 19, no. 13, and ICCPR, *supra* note 96, at 178, art. 22(1)-(2).

responsible government ministry<sup>291</sup> and (2) the right of religious organizations to exercise absolute autonomy over their internal organization and selection and training of clergy.<sup>292</sup>

*c. Public legal standing.* The most significant provision set forth in this chapter involves the granting of public legal personality to all religious organizations that complete the pertinent procedural requirements.<sup>293</sup> With respect to those requirements, the most significant (1) allow the formation of religious legal persons as nonprofit corporations, foundations, and associations; (2) require prospective religious organizations to register with the Ministry of Justice; and (3) prohibit the Ministry of Justice from denying a petition for legal standing, with the exception that petitions may be rejected if they contain errors or lack required information.<sup>294</sup>

*d. Assets and tax exemptions.* Closely paralleling norms established by the juridical regime during the Pinochet era,<sup>295</sup> this chapter (1) allows religious organizations to purchase, sell, and administer all forms of property; (2) permits religious entities to solicit and receive donations and tithes from their members and public and private institutions; (3) exempts from taxation those donations given to religious organizations with legal standing; (4) grants all religious entities the same rights, exemptions, and tax benefits; and (5) allows religious juridical persons formed under the Law to regularize their ownership of property registered publicly or in the name of natural or juridical persons.<sup>296</sup> Of necessity, this chapter treats tax exemptions in a much more general manner than does the existing juridical regime.<sup>297</sup>

*e. Dissolution.* Making a fundamental change from previous laws governing the dissolution of religious organizations,<sup>298</sup> this chapter abolishes the government's ability to dissolve religious entities via an administrative decree. The new procedure requires dissolution to occur (1) in accordance with a religious juridical person's statutes of incorporation or (2) through a complaint filed in court by the Council

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291. See Ley No. 19,638 art. 6(c).

292. See *id.* art. 7.

293. See *id.* art. 9.

294. See *id.* arts. 10-13.

295. See *supra* notes 123-126 and accompanying text.

296. See Ley No. 19,638 arts. 15-18.

297. Compare *id.* with notes 123-126 and accompanying text

298. See, e.g., Decreto No. 110, 17 de enero de 1979, D.O., 20 de marzo de 1979.

for the Defense of the State (CDE), the agency charged with defending the State's legal interests in the national courts.<sup>299</sup>

### *2. The 1999 Law of Worship and Chile's juridical regime*

The above sketch of the Law's provisions reveals that the Law adds several noteworthy norms to Chile's juridical framework governing religious liberty. For example, the Law (1) establishes an individual's right to receive religious assistance from his or her own religious group, subject to any limitations of access to public institutions imposed by the responsible government ministry;<sup>300</sup> (2) guarantees religious organizations' right to exercise absolute autonomy over their internal organization and selection and training of clergy;<sup>301</sup> (3) recognizes an individual's right to receive a proper burial, without religious discrimination;<sup>302</sup> (4) grants public legal personality to all incorporated religious organizations;<sup>303</sup> (5) prohibits the Ministry of Justice from denying religious organizations' petitions for legal standing unless flawed by errors or missing information;<sup>304</sup> and (6) outlines new requirements and procedures for dissolving religious organizations.<sup>305</sup>

### *3. The 1999 Law of Worship and the future development of religious liberty in Chile*

In light of the above discussions about the Law of Worship's primary provisions and relation to Chile's existing juridical regime, it remains apparent that the Law completes its principal objectives of "reaffirm[ing] the freedom of worship"<sup>306</sup> and "help[ing] guarantee that all faiths and creeds are given equal treatment by the state of Chile"<sup>307</sup> in several ways. First, the Law reaffirms the spectrum of rights and guarantees previously associated with religious liberty by synthesizing many of them into its provisions and treating them

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299. See Ley No. 19,638 art. 19.

300. See *supra* note 291 and accompanying text.

301. See *supra* note 292 and accompanying text.

302. See Ley No. 19,638 art. 6(b).

303. See *supra* note 293 and accompanying text.

304. See Ley No. 19,638 art. 11.

305. See *supra* note 299 and accompanying text.

306. *Parlamento Aprobó*, *supra* note 216.

307. *Current Events Briefs*, *supra* note 217.

comprehensively. Second, the Law also reaffirms the freedom of religion by identifying additional rights that fall within religious liberty's scope. Third, the Law helps guarantee the equal treatment of religious organizations by the State by granting religious entities equal juridical standing and altering the processes of incorporation and dissolution. Rather than placing decision-making authority in administrative officials, the Law requires the approbation of incorporation once a religious organization's petition includes the pertinent, correct information. Also, the Law removes the dissolution process from the potentially arbitrary administrative agencies and vests it in the courts.

The 1999 Law of Worship thus attempts to provide Chile with a fresh, condensed view and understanding of religious liberty in a way that reaffirms the country's *de jure* guarantees and obligations and lessens the possibility of government discrimination and partiality. Despite these efforts, however, the Law fails to fully remove the potential for unequal treatment and discrimination for several reasons. First, though the Law affirms general principles of religious liberty and appears to encompass both organized and unorganized religious groups, the Law's focus on such matters as autonomy over ecclesiastical affairs, juridical personality, assets, and dissolution seems to cater specially to organized, incorporated religious groups. The absence of similar guarantees for nonincorporated or nontraditional religious groups at the very least demonstrates a potential bias against such groups in Chile's legislative and juridical system. Moreover, it seems to favor traditional, organized groups' interests in a manner that discriminates against nontraditional, nonincorporated groups.

Second, by requiring the State to guarantee freedom of religion according to the terms set forth in the Constitution, the Law subjects religious freedom to the amorphous requirement that the maintenance or manifestation of religious belief not oppose "morals, good customs or public order."<sup>308</sup> By reaffirming such a vague limit and failing to delineate its scope or meaning, the Law essentially grants the Chilean government, and ultimately the judiciary, an unregulated capacity to interpret which religious beliefs and practices violate the constitutional regime.

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308. CHILE CONST. (Constitution of 1980) art. 19, no. 6.

Third, in its provisions regarding dissolution, the Law fails both to recognize a cause of action that the CDE must assert to initiate dissolution proceedings and to establish the legal standard for the courts to employ in determining whether a religious organization should be dissolved. By failing to include these elements and leaving them to potentially be determined by future legislation, the Law exposes its dissolution provisions to the ever-unpredictable forces of politics. Furthermore, the Law risks the possibility that the courts will adopt as their decision-making standard—or even the CDE’s cause of action—the malleable constitutional “not opposed to morals, good customs or public order” language.<sup>309</sup>

Therefore, the precise effect that the Law of Worship will have on the future development of religious liberty in Chile remains uncertain. Though the Law contains many provisions that strengthen Chile’s *de jure* commitment to, and protection of, freedom of religion in a manner that potentially lessens the importance of government practices on *de facto* religious liberty, its failure to fully and adequately define the juridical limitations on religious liberty may weaken the *de jure* regime, or at least allow government discrimination and partiality to continue to exert great influence on *de facto* religious liberty. Consequently, the Law’s ultimate impact on the future of religious liberty may depend on future legislative acts or the manner in which the courts interpret it.

*B. Ecumenism, Protestants and Politics, and De Facto Religious  
Tolerance/Intolerance*

*1. The impotency of ecumenism*

Since the early 1990s, interdenominational rivalry and related popular prejudices concerning religious groups have emerged as two of the major sources of *de facto* religious intolerance in post-Pinochet Chile.<sup>310</sup> In a society with many diverse religious groups and beliefs, it may be that, at least to some degree, interdenominational rivalry constitutes an inescapable element of reality. However, from a theoretical standpoint, ecumenism, an inclination or movement seeking greater unity among religious groups through increased cooperation

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309. *Id.*

310. *See supra* Part III.B.2.c.

and improved understanding, could serve as a potent counterweight to popular religious intolerance by fostering goodwill and awareness among religious groups.

Since 1973, ecumenism has experienced some notable accomplishments in Chile. In the early to mid-1970s, for example, various religious groups formed four separate institutions—CONAR, COPACHI, the Vicariate of Solidarity, and FASIC—that provided needed social services to victims of the Pinochet regime and their families.<sup>311</sup> The cooperation involved in establishing these institutions not only achieved an unprecedented level of ecumenical collaboration but also demonstrated the manner in which ideologically and doctrinally diverse religious groups could put aside their differences and work together for the common good.

Similarly, since the early 1990s, different Protestant groups, including the Evangelicals and Pentecostals, have increased their ecumenical involvement with one another. In early 1991, a body called the Committee of Evangelical Coordination began “meeting with some regularity.”<sup>312</sup> This group included representatives from various Protestant and Pentecostal organizations, including the Christian Fraternity of Churches, the Council of Pastors, and other churches that remained politically neutral during the Pinochet period, such as the Baptists and Anglicans.<sup>313</sup> Also, in 1995, the Third General Assembly of the Latin American Council of Churches (CLAI) met in Concepción, Chile, bringing together an unprecedented combination of historic Protestant and Pentecostal groups.<sup>314</sup>

More recently, religious leaders from several Catholic, Protestant, and Jewish institutions supported the creation of, and participated in, a “human rights round table” involving representatives from the Chilean military and various human rights organizations.<sup>315</sup> In addition, “a network of Catholic lay workers, priests and nuns as well as Protestant bishops and pastors” encouraged Chileans to vote

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311. *See supra* notes 152-153, 155-156 and accompanying text.

312. Cleary & Sepúlveda, *supra* note 170, at 121 n.107.

313. *See id.*

314. *See* Eugene L. Stockwell, *Open and Closed*, CHRISTIAN CENTURY, Mar. 22, 1995, at 317, 317; *see also* *Pentecostalism Tops Agenda*, ANGLICAN J., Mar. 1995, at 8. The only non-Protestant group in attendance was the Chilean Orthodox Church. *See id.*

315. *Human Rights Dialogue Gets Underway: Shaky Start to Groundbreaking Initiative*, CHIPS, Aug. 23, 1999, available in 1999 WL 10738992; *see also* *Relatives of Disappeared Decline to Sit Down with Army Officers*, EFE News Service, Aug. 8, 1999, available in WL 8/8/99 EFE News Serv.

in the 1999 presidential election and “distribut[ed] letters in their churches and communities calling on Christians to vote ‘in conscience’ for the candidate who ‘best represents the values of a just society.’”<sup>316</sup> Also, in March 2000, representatives of Chile’s Jewish, Muslim, and Christian communities held a three-day-long symposium on spiritual traditions relating to peace, seeking to “create instances of reflection between the representatives” of the three groups.<sup>317</sup>

Despite these successful ecumenical meetings and endeavors, however, ecumenism has yet to exert a significant or long-term influence on interdenominational relations in Chile. Consequently, ecumenism presently lacks the capacity to combat much of the interdenominational rivalry and popular prejudice that has fostered an atmosphere of *de facto* religious intolerance since the early 1990s.

Three principal reasons explain ecumenism’s failure to make deeper inroads in Chile’s interdenominational arena. First, as illustrated by the dissolution of COPACHI in late 1975, because of ideological differences,<sup>318</sup> ecumenical endeavors depend on some degree of philosophical agreement, making them vulnerable to internal rifts as well as external pressures. Though the type of political polarization that doomed COPACHI no longer exists in Chile, differences of opinion as to social or political policy, or even the appropriateness of religious organizations’ participation in politics, have limited religious organizations’ ability to achieve the necessary consensus to engage in ecumenical collaboration. Thus, while “[e]cumenical groups exist [in Chile], . . . they often are formed on an *ad hoc* basis, depending on the issue involved.”<sup>319</sup>

Second, to date, ecumenical efforts have involved only a relatively small number of religious groups: Catholics, Jewish organizations, historic Protestants, and some, but not all, Pentecostals and Evangelicals. Literature addressing ecumenism fails to mention whether such groups as the Jehovah’s Witnesses, the Mormons, and other smaller minority religions have participated—or even been in-

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316. *Rights Lawyers and Religious Leaders Endorse Lagos as Wives Take Center Stage in Campaign*, CHIPS, Dec. 21, 1999, available in 1999 WL 10739356.

317. *Cumbre Judeo-Cristiana-Musulmana por la Paz en Desierto Atacama*, Spanish Newswire Services, Sept. 2, 1999, available in LEXIS, Nexis Library, Efenew File.

318. See *supra* note 154 and accompanying text.

319. 1999 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 238 (emphasis added).

vited to participate—in ecumenical activities. To be fully effective in combating religious intolerance, ecumenism must incorporate as many religious groups as possible instead of focusing on several traditional or numerically superior groups.

Third, and perhaps most seriously, the Catholic Church and Pentecostal groups (the vast majority of Chilean Protestants) generally have been either unable or unwilling to form ecumenical relationships. As two commentators observed,

[a]n impasse in interchurch relations [between the Catholic Church and Pentecostal churches] exists at the institutional level, but a larger field exists that resembles the variety of human groupings in Santiago's Parque Florestal in late afternoon. At one extreme are groups reaching out to others: the Centro Ecuménico Diego de Medellín, the Instituto Pedro de Córdoba, the smaller Pentecostal churches that joined the ecumenically minded World Council of Churches (the first Pentecostal groups anywhere to do so), the Fundación de Ayuda Social de las Iglesias Cristianas, and the National Catholic Commission on Ecumenism under Francisco Sampetro Nieto. At the other extreme are the Pentecostal churches that do not cooperate even with other Protestant groups, much less with Catholics. In between, a great many Catholics and Pentecostals pass one another by, without conflict, adjusting to differences in gait.<sup>320</sup>

Recent studies have attributed the absence of ecumenism between Catholics and Pentecostals to Pentecostal unwillingness; though “many Catholic priests [are] well disposed to seek dialogue and cooperation with Pentecostals,” sixty-eight percent of Pentecostals surveyed “rejected the idea of dialogue with Catholics.”<sup>321</sup>

In light of Chile's uneven and limited successes with ecumenism, it appears unlikely that, at least for the near future, ecumenical collaboration will be able to act as a widely effective countermeasure to the *de facto* intolerant effects of interdenominational rivalry and related popular religion-based prejudices. Ecumenism's influence on the development of religious liberty could increase, however, to the extent that Chilean religious groups employ it on a regular basis, in-

320. Cleary & Sepúlveda, *supra* note 170, at 113 (footnotes omitted).

321. *Id.* One scholar concluded that Pentecostals' general refusal to engage in dialogue with Catholics resulted from Pentecostal pastors' lack of an “intellectual basis for ecumenism.” *Id.* (discussing Katherine Gilfeather O'Brien's theories on Pentecostal attitudes toward ecumenical relations with the Catholic Church).

volve a greater number of minority religions, and overcome the current impasse separating the Catholic and Pentecostal churches.

## 2. *Problems with Protestants in politics*

Throughout the 1990s, many Protestant organizations and individual Protestants have become increasingly active in socio-political activities. In addition to gaining recognition as a significant sector of the national electorate,<sup>322</sup> for example, the Pentecostal community sponsored its first presidential candidate, pastor Salvador Pino, in the 1999 election.<sup>323</sup> Similarly, in 1994, Bishop Javier Vásquez Valencia, president of Chile's Pentecostal Methodist church, accepted Chilean President Eduardo Frei Ruiz-Tagle's invitation to form part of the National Commission for Overcoming Poverty and actively involved the Pentecostal community in the national fight against poverty.<sup>324</sup> Furthermore, the Committee of Evangelical Organizations announced its intention in 1998 to collect information, in complete confidentiality, about the fate of Chileans who "disappeared" by security forces and paramilitary groups under Pinochet.<sup>325</sup>

Though necessary to promote and protect the interests of the Protestant community, the increased participation of Protestant organizations in politics and social issues possesses a strong potential to exacerbate existing intra- and interdenominational rivalries that have fomented religious intolerance in Chilean society. Consider, for example, the following three scenarios. First, Pentecostal leaders have remained divided throughout the 1990s over the appropriateness of Pentecostal religious organizations' involvement in political affairs. As seen above, Bishop Vásquez Valencia has actively promoted such

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322. See *Javier Vásquez Valencia*, LA TERCERA, Mar. 1-7, 1997 (copy on file with author).

323. See *Current Events Briefs*, CHIPS, Aug. 17, 1999, available in 1999 WL 10738979. Ten days after declaring his candidacy, however, Pino was "rejected by the Electoral Service" for failing "to present the 35,232 signatures required by law to register as an independent candidate." *Current News Briefs*, CHIPS, Aug. 26, 1999, available in 1999 WL 10739008. About 10 % of the more than 37,000 signatures secured by Pino "were invalid because they belonged to voters already registered in a political party." *Id.*

324. See Carmen L. Ibarra, *Los Evangélicos se Unen al Gobierno Contra la Pobreza*, LA TERCERA, Mar. 21, 1994, at 9, available at DIALOG, Info-South File; *Valencia*, *supra* note 322.

325. See F. de Ruyt & J. Ortega, *Evangélicos Abrieron Templos para Recabar Datos Sobre Desaparecidos*, LA TERCERA, Sept. 14, 1998 (visited May 19, 2000) <<http://www.tercera.cl/diario/09/14/2.html>>.

involvement in several instances. On other occasions, however, Vásquez and other Pentecostal leaders have asserted that churches and clergy should stay out of politics.<sup>326</sup> Such contradictory attitudes towards religious organizations' and leaders' participation in politics could cause intradenominational rifts between Pentecostal leaders and members, in addition to interdenominational conflict between Pentecostals and religious groups of the opposite opinion.

Second, in the 1999 presidential election, Protestant leaders and religious organizations endorsed different candidates for varying religion-based reasons. "Leaders of the Pentecostal, Methodist, Baptist and other Protestant churches publicly endorsed [the coalition] candidate Ricardo Lagos," stating that they did "not trust [the Conservative] candidate Joaquin Lavín" because he belonged to the Catholic congregation Opus Dei, "the most anti-Evangelical group known in the countries where it exists."<sup>327</sup> However, pastor and former presidential candidate Salvador Pino supported Lavín, arguing that Lavín "puts principles and values into play above all else."<sup>328</sup> This type of division of support for political candidates among Protestant leaders and groups for religiously based reasons could generate intradenominational conflict between Protestant leaders and church members and different Protestant organizations.

Third, and most important, Protestant political support for such morally divisive issues as divorce would place many Protestant organizations against the political agenda of the Catholic Church. Notably, Chile remains "the only country in the world where divorce is illegal."<sup>329</sup> A 1994 report stated that most Protestant churches in Chile favor the enactment of a divorce law.<sup>330</sup> The Catholic Church, however, has strongly objected to such a law and actively worked to

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326. See *id.*; Jorge Silva, *Cuenta con 1.802.000 fieles: Iglesia Evangélica Creció Seis Por Ciento en 1993*, LA TERCERA, Mar. 7, 1994, at 8, available in DIALOG, Info-South File; *Two Dead, Eight Injured in Pinochet Coup Anniversary in Chile*, AGENCE FRANCE PRESSE, Sept. 12, 1999, available in LEXIS, Nexis Library, AFP File.

327. *Current News Briefs*, CHIPS, Jan. 7, 2000, available in 2000 WL 7221563.

328. *Current News Briefs*, CHIPS, Sept. 27, 1999, available in 1999 WL 10739099.

329. *Till Death Do Us Part: Chile Debates Legalizing Divorce*, CHIPS, Sept. 7, 1998, available in 1998 WL 8627532 [hereinafter *Till Death Do Us Part*]. Chile, however, allows the annulment of marriages on technical grounds, a practice that has been criticized for favoring the rich who can afford the required annulment fee, promoting illegitimacy, and leaving women "without the right to property or child support." FLEET & SMITH, *supra* note 15, at 174; see also *Till Death Do Us Part*, *supra*.

330. See Benigno Ramos, *Evangélicos, a Favor de Una Ley Sobre Divorcio*, LA TERCERA, May 12, 1994, at 9, available in DIALOG, Info-South File.

defeat efforts to pass a divorce law in the early and mid-1990s.<sup>331</sup> In opposing the proposed law, Catholic officials “denied wanting to oppose Catholic doctrine on non-Catholics, and praised religious freedom as a positive good. But they added that they had an evangelical mission to fulfill, and that it would be a mistake . . . to allow individual churches . . . to establish their own doctrines in these matters.”<sup>332</sup> Protestant leaders’ and organizations’ support for a divorce law would thus plunge them in a battle with the Catholic Church, assuredly adding to the strained relations and interdenominational strife that presently exists between the two groups.

In light of the above scenarios, it remains apparent that increased political involvement by Protestant organizations and leaders presents a difficult issue. Protestant organizations and leaders should be free to pursue those measures that, in their respective judgment, best further their community’s interests. However, such participation could create and exacerbate both intra- and interdenominational discord similar to that which has promoted religious intolerance throughout the past decade. This would be particularly true in the event that Protestant organizations challenged the Catholic Church’s opposition to such moral issues as divorce.

#### V. CONCLUSION

The development of religious liberty in Chile has followed a unique course between 1973 and 2000. In comparison with the periods 1925-1973 and 1990-2000, religious liberty between 1973 and 1990, under the regime headed by General Pinochet, evolved in an abnormal manner. Rather than emerging in response to such traditional issues as classic liberalism and religious pluralism, freedom of religion under the Pinochet regime became almost exclusively a function of the military government’s authoritarian, anti-Marxist national security ideology, policies, and concerns. This extreme politicization of religious liberty resulted in the establishment of *de facto* religious intolerance, as individual clergymen and religious organizations both suffered governmental and popular persecution in accordance with their perceived political position. Simultaneously, Chile’s juridical regime succeeded in expanding its protection of religious liberty through both the enactment of national legislation and adop-

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331. See FLEET & SMITH, *supra* note 15, at 174-75.

332. *Id.*

tion of international treaties. These *de jure* measures regarding religious freedom also fell victim to the regime's political focus, however, as the military government suspended many elements of the juridical system through the use emergency powers. Freedom of religion under the Pinochet dictatorship was thus characterized by contradictory developments that worked to simultaneously further and restrict its development.

In the post-Pinochet period, the development of Chile's juridical system has continued to extend *de jure* religious liberty guarantees and rights to new areas of the law, particularly through the recent enactment of the 1999 Law of Worship that established the legal equality of all religious organizations. These *de jure* gains, however, have been undermined as a matter of *de facto* reality by the government's continued practice of discriminating against minority religious groups and the evolution of increasingly antagonistic interdenominational rivalries.

Compared against one another, the religious liberty-related developments that occurred in the Pinochet and post-Pinochet period reveal several important facts about the evolution and current status of religious freedom in Chile. First, as demonstrated by the previous discussions on governmental and popular perceptions and treatment of religious beliefs and groups, the national security policies and concerns that heavily influenced the exercise of religious freedom under the Pinochet regime did not carry over to the post-Pinochet period. Government practices, however, have continued to promote *de facto* religious intolerance. Second, though the Pinochet regime added several notable provisions to Chile's national juridical framework defining the scope of religious freedom, the consolidation of democracy in the post-Pinochet period has greatly strengthened the country's commitment to protecting freedom of religion. In particular, the Law of Worship, which extended juridical protection of religious freedom to new areas of the law and society, potentially gives the Chilean state a greater capacity to legally ensure that all religions enjoy the right to freely exercise their respective beliefs.

The precise impact that the Law of Worship and nonjuridical factors such as interdenominational rivalry, ecumenism, and the involvement of religious organizations in politics will have on the future development of religious liberty in Chile currently remains unknown. What remains certain, however, is that religious liberty in Chile potentially stands at the threshold of a new era. Free of the *de*

*facto* limitations imposed upon it by the Pinochet regime, religious liberty could develop along numerous lines. For the present, however, religious liberty in Chile will apparently continue to follow the course it has traveled since 1973, undulating in the tension generated by competing *de jure* and *de facto* influences.

*Patrick J. Thurston\**

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## Appendix

### THE 1999 LAW OF WORSHIP

#### Original Spanish Text

#### English Version (translated by this author)

#### Capítulo I Normas generales

#### Chapter I General Rules

**Art. 1°.** El Estado garantiza la libertad religiosa y de culto en los términos de la Constitución Política de la República.

**Art. 1.** The State guarantees the freedom of religion and worship under the terms of the Political Constitution of the Republic.

**Art. 2°.** Ninguna persona podrá ser discriminada en virtud de sus creencias religiosas, ni tampoco podrán éstas invocarse como motivo para suprimir, restringir o afectar la igualdad consagrada en la Constitución y la ley.

**Art. 2.** No person can be subjected to discrimination due to his or her religious beliefs; neither can one's religious beliefs be invoked as a reason to abolish, restrict, or affect the equality granted in the Constitution and the law.

**Art. 3°.** El Estado garantiza que las personas desarrollen libremente sus actividades religiosas y la libertad de las iglesias, confesiones y entidades religiosas.

**Art. 3.** The State guarantees that people may freely develop and exercise their religious activities; and the State guarantees the freedom of churches, confessions, and religious entities.

**Art. 4°.** Para los efectos de esta ley, se entiende por iglesias, confesiones o instituciones religiosas a las entidades integradas por personas

**Art. 4.** For the purposes of the present law, it is understood that the terms "churches," "confessions" or "religious institutions" refer to

naturales que profesen una determinada fe.

**Art. 5°.** Cada vez que esta ley emplea el término “entidad religiosa”, se entenderá que se refiere a las iglesias, confesiones e instituciones religiosas de cualquier culto.

## **Capítulo II Libertad religiosa y de culto**

**Art. 6°.** La libertad religiosa y de culto, con la correspondiente autonomía e inmunidad de coacción, significan para toda persona, a lo menos, las facultades de:

(a) Profesar la creencia religiosa que libremente elija o no profesar ninguna; manifestarla libremente o abstenerse de hacerlo; o cambiar o abandonar la que profesaba;

(b) Practicar en público o en privado, individual o colectivamente, actos de oración o de culto; conmemorar sus festividades; celebrar sus ritos; observar su día de descanso semanal; recibir a

entities composed of natural persons who profess a particular faith.

**Art. 5.** Each time that this law uses the term “religious entity,” it will be understood to refer to the churches, confessions, and religious institutions of any faith.

## **Chapter II Freedom of Religion and Worship**

**Art. 6.** The freedom of religion and worship, with its corresponding autonomy and immunity from coercion, signifies for all people, at the least, the right to:

(a) Profess the religious belief that they freely choose, or to profess no belief; to freely manifest such belief, or to abstain from doing so; or to change or abandon the religious belief that they used to profess;

(b) Practice in public or private, individually or collectively, acts of prayer or of worship; commemorate their festivals; celebrate their rites; observe their weekly day of rest; receive a

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su muerte una sepultura digna, sin discriminación por razones religiosas; no ser obligada a practicar actos de culto o a recibir asistencia religiosa contraria a sus convicciones personales y no ser perturbada en el ejercicio de estos derechos;

(c) Recibir asistencia religiosa de su propia confesión donde quiera que se encuentre. La forma y condiciones del acceso de pastores, sacerdotes y ministros de culto, para otorgar asistencia religiosa en recintos hospitalarios, cárceles y lugares de detención y en los establecimientos de las Fuerzas Armadas y de las de Orden y Seguridad, serán reguladas mediante reglamentos que dictará el Presidente de la República, a través de los Ministros de Salud, de Justicia y de la Defensa Nacional, respectivamente;

(d) Recibir e impartir enseñanza o información religiosa por cualquier medio; elegir para sí—y los padres para sus menores no emancipados y los guardadores para los

deserving burial, without discrimination for religious reasons; not be obligated to practice acts of worship or to receive religious assistance contrary to their personal convictions, and not be disturbed in exercising these rights;

(c) Receive religious assistance from their own religion wherever they may be. The form and conditions of access of pastors, priests, and ministers of religion to provide religious assistance in hospitals, jails and places of detention, and the facilities of the Armed Forces and the forces of Order and Security will be regulated by regulations that the President of the Republic will issue through the Ministers of Health, Justice, and National Defense, respectively;

(d) Receive and impart religious teachings or information by whatever means; to choose for themselves—and parents on behalf of their minor children, and guardians on

incapaces bajo su tuición y cuidado— la educación religiosa y moral que esté de acuerdo con sus propias convicciones, y

(e) Reunirse o manifestarse públicamente con fines religiosos y asociarse para desarrollar comunitariamente sus actividades religiosas, de conformidad con el ordenamiento jurídico general y con esta ley.

**Art. 7°.** En virtud de la libertad religiosa y de culto, se reconoce a las entidades religiosas plena autonomía para el desarrollo de sus fines propios y, entre otras, las siguientes facultades:

(a) Ejercer libremente su propio ministerio, practicar el culto, celebrar reuniones de carácter religioso y fundar y mantener lugares para esos fines;

(b) Establecer su propia organización interna y jerarquía; capacitar, nombrar, elegir y designar en cargos y jerarquías a las personas que correspondan y determinar sus denominaciones, y

behalf of their wards—the moral and religious education that is in harmony with their own convictions; and

(e) Meet or manifest themselves publicly for religious purposes and associate in order to carry out their religious activities as a community, in accordance with general legal norms and the present law.

**Art. 7.** By virtue of the freedom of religion and worship, it is recognized that religious entities have full autonomy for the development of their own ends and, among others, the following rights:

(a) To freely exercise their own ministry, practice acts of worship, celebrate meetings of religious nature, and found and maintain facilities for these ends;

(b) To establish their own internal organization and hierarchy; to train, appoint, elect, and designate individuals to positions and hierarchies, and to determine their titles; and

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(c) Enunciar, comunicar y difundir, de palabra, por escrito o por cualquier medio, su propio credo y manifestar su doctrina.

(c) To declare, communicate, and express, by word, writing, or any other means, their own creed and to manifest their doctrine.

**Capítulo III**  
**Personalidad jurídica y estatutos**

**Chapter III**  
**Juridical Personality and Bylaws**

**Art. 8°.** Las entidades religiosas podrán crear personas jurídicas de conformidad con la legislación vigente. En especial, podrán:

**Art. 8.** Religious entities will be able to create juridical persons in conformity with prevailing legislation. In particular, they may:

(a) Fundar, mantener y dirigir en forma autónoma institutos de formación y de estudios teológicos o doctrinales, instituciones educacionales, de beneficencia o humanitarias, y

(a) Autonomously found, maintain, and direct institutes of formation and of theological or doctrinal studies, [and] educational, charitable, or humanitarian institutions, and

(b) Crear, participar, patrocinar y fomentar asociaciones, corporaciones y fundaciones, para la realización de sus fines.

(b) Create, participate in, sponsor, and develop associations, corporations, and foundations for the realization of their objectives.

**Art. 9°.** Las asociaciones, corporaciones, fundaciones y otros organismos creados por una iglesia, confesión o institución religiosa, que conforme a sus normas jurídicas propias gocen de personalidad jurídica religiosa, son

**Art. 9.** Those associations, corporations, foundations, and other organizations created by a church, confession, or religious institution that, according to their own juridical norms, enjoy religious juridical personality, are

reconocidas como tales. Acreditará su existencia la autoridad religiosa que los haya erigido o instituido. Las entidades religiosas, así como las personas jurídicas que ellas constituyan en conformidad a esta ley, no podrán tener fines de lucro.

**Art. 10°.** Para constituir personas jurídicas que se organicen de conformidad con esta ley, las entidades religiosas deberán seguir el procedimiento que se indica a continuación:

(a) Inscripción en el registro público que llevará el Ministerio de Justicia de la escritura pública en que consten el acta de constitución y sus estatutos;

(b) Transcurso del plazo de noventa días desde la fecha de inscripción en el registro, sin que el Ministerio de Justicia hubiere formulado objeción; o, si habiéndose deducido objeción, ésta hubiera sido subsanada por la entidad religiosa o rechazada por la justicia, y

(c) Publicación en el *Diario Oficial* de un extracto del

recognized as such. The religious authority that created or instituted them will prove their existence. Religious organizations, like the juridical persons that they establish in conformity with this law, cannot be for profit.

**Art. 10.** To establish juridical persons that are organized in conformity with this law, religious entities should follow the process indicated hereafter:

(a) Registration in the public registry, managed by the Ministry of Justice, of a notarized document in which are recorded the articles of incorporation and its bylaws;

(b) Passage of ninety days since the date of registration in the public registry, without the Ministry of Justice having formulated an objection; or, if there has been an objection, it has been repaired by the religious entity or rejected by the judiciary; and

(c) Publication in the *Diario Oficial* of an extract

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acta de constitución, que incluya el número de registro o inscripción asignado.

of the articles of incorporation that includes the assigned registry or registration number.

Desde que quede firme la inscripción en el registro público, la respectiva entidad gozará de personalidad jurídica de derecho público por el solo ministerio de la ley.

Upon finalizing registration in the public registry, the respective entity will enjoy public law juridical personality for the ministry of the law.

**Art. 11°.** El Ministerio de Justicia no podrá denegar el registro. Sin embargo, dentro del plazo de noventa días contado desde la fecha de ese acto, mediante resolución fundada, podrá objetar la constitución si faltare algún requisito. La entidad religiosa afectada, dentro del plazo de sesenta días, contado desde la notificación de las objeciones, deberá subsanar los defectos de constitución o adecuar sus estatutos a las observaciones formuladas. De la resolución que objete la constitución podrán reclamar los interesados ante cualquiera de las Cortes de Apelaciones de la región en que la entidad religiosa tuviere su domicilio, siguiendo el procedimiento y plazos establecidos para el recurso de protección.

**Art. 11.** The Ministry of Justice will not be able to deny registration. However, within the period of ninety days (counted from the date of registration), through a wellfounded decision, the Ministry will be able to object to the constitution if it breaches some requirement. The affected religious entity, with a period of sixty days of notification of the [Ministry's] objections, should repair the defects to the constitution or make adequate its bylaws to the [Ministry's] filed observations. Interested parties can appeal the [Ministry's] decision objecting to the constitution before any Court of Appeals of the region in which the religious entity is domiciled, following the procedure and time period established for an appeal for protection.

**Art. 12°.** En los estatutos o normas propias de cada persona jurídica que se constituya en conformidad a las disposiciones de esta ley deberán contenerse aquellos elementos esenciales que la caracterizan y los órganos a través de los cuales actúa en el ámbito jurídico y que la representan frente a terceros.

El acta constitutiva contendrá, como mínimo, la individualización de los constituyentes, el nombre de la persona jurídica, sus domicilios y la constancia de haberse aprobado los estatutos.

Las personas condenadas por delito que merezca pena aflictiva no podrán suscribir el acta de constitución de la persona jurídica.

**Art. 13°.** Los ministros de culto de una iglesia, confesión o institución religiosa acreditarán su calidad de tales mediante certificación expedida por su entidad religiosa, a través de la respectiva persona jurídica, y les serán aplicables las normas de los artículos 360, N°. 1°.; 361, N°.s. 1° y 3°, y 362 del Código de Procedimiento Civil, así como lo establecido en el artículo

**Art. 12.** The bylaws or own rules of each juridical person established in conformity with the requirements of this law should contain those essential elements that characterize the person, and the agencies [or organs] through which the person acts in the legal arena and that represents the person to third parties.

The articles of incorporation will contain, at minimum, an individualized list of constituents, the name of the juridical person, its domiciles, and records of having approved the bylaws.

Individuals convicted of a crime that merits afflictive punishment cannot sign the juridical person's articles of incorporation.

**Art. 13.** Ministers of worship of a church, confession, or religious institution will prove their status as such by way of certification issued through the respective juridical person of their religious entity, and to them will apply, the norms found in 360(1), 361(1),(3), and 362 of the Code of Civil Procedure, and article 201(2) of the Code of Criminal Procedure.

201, N°. 2°, del Código de Procedimiento Penal.

**Capítulo IV  
Patrimonio y exenciones**

**Art. 14°.** La adquisición, enajenación y administración de los bienes necesarios para las actividades de las personas jurídicas constituidas conforme a esta ley estarán sometidas a la legislación común.

Sin perjuicio de lo anterior, las normas jurídicas propias de cada una de ellas forman parte de los requisitos de validez para la adquisición, enajenación y administración de sus bienes.

**Art. 15°.** Las entidades religiosas podrán solicitar y recibir toda clase de donaciones y contribuciones voluntarias, de particulares e instituciones públicas o privadas y organizar colectas entre sus fieles, para el culto, la sustentación de sus ministros u otros fines propios de su misión.

Ni aún en caso de disolución los bienes de las personas jurídicas religiosas podrán pasar a dominio de alguno de sus integrantes.

**Chapter IV  
Wealth and Exemptions**

**Art. 14.** The acquisition, alienation, and administration of those assets necessary for the activities of juridical persons established in conformity with this law will be subject to general legislation.

Without prejudice of the above, the legal rules of each juridical person form part of the enforceability requirements for the acquisition, alienation, and administration of its assets.

**Art. 15.** Religious entities are able to solicit and receive all classes of donations and voluntary contributions from members of the public, and public and private institutions, and to organize collections from their members, for the religion, the support of their ministers, or other purposes of their mission.

Not even in the case of dissolution will the assets of religious juridical persons be able to pass to the possession of any of its members.

**Art. 16°.** Las donaciones que reciban las personas jurídicas a que se refiere esta ley, estarán exentas del trámite de insinuación, cuando su valor no exceda de veinticinco unidades tributarias mensuales.

**Art. 17°.** Las personas jurídicas de entidades religiosas regidas por esta ley tendrán los mismos derechos, exenciones y beneficios tributarios que la Constitución Política de la República, las leyes y reglamentos vigentes otorguen y reconozcan a otras iglesias, confesiones e instituciones religiosas existentes en el país.

**Art. 18°.** Las personas jurídicas religiosas que a la época de su inscripción en el registro público, hubieran declarado ser propietarias de inmuebles u otros bienes sujetos a registro público, cuyo dominio aparezca a nombre de personas naturales o jurídicas distintas de ellas podrán, en el plazo de un año contado desde la constitución, regularizar la situación usando los procedimientos de la legislación común, hasta obtener la inscripción correspondiente a su nombre.

**Art. 16.** The donations received by those juridical persons referred to by this law will be exempt from taxation when the donations' value does not exceed monthly tax units.

**Art. 17.** The juridical persons of religious entities governed by this law will have the same rights, exemptions, and tax benefits that the Political Constitution of the Republic, the laws, and existing regulations grant and recognize to other churches, confessions, and religious institutions existing in the country.

**Art. 18.** Those religious juridical persons that, at the time of their inscription in the public registry, have declared to be proprietors of real estate or other assets subject to public registry that are registered in the name of natural or juridical persons who are distinct from them will be able to, within one year of their establishment, regularize the situation using the procedures instituted by general legislation, until they have obtained the corresponding registration in their name.

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Si optaren por la donación, estarán exentas del trámite de insinuación.

If the religious juridical persons choose to donate such assets or property, they will be exempt from taxation.

### **Capítulo V Disolución**

### **Chapter V Dissolution**

**Art. 19°.** La disolución de una persona jurídica constituida conforme a esta ley podrá llevarse a cabo de conformidad con sus estatutos, o en cumplimiento de una sentencia judicial firme, recaída en juicio incoado a requerimiento del Consejo de Defensa de Estado, el que podrá accionar de oficio o a petición de parte, en los casos que así corresponda.

**Art. 19.** The dissolution of a juridical person established in conformity with this law can occur in conformity with the juridical person's bylaws, or in conjunction with a wellfounded judicial decision commenced by the requirement of the Council of Defense of the State, which can act on its own or at a party's petition in those cases that correspond to the Council.

Disuelta la persona jurídica, se procederá a eliminarla del registro a que se refiere el artículo 10°.

Upon dissolution of the juridical person, it will be removed from the registry referred to in Article 10.

### **Disposición Final**

### **Final Disposition**

**Art. 20°.** El Estado reconoce el ordenamiento, la personalidad jurídica, sea ésta de derecho público o de derecho privado, y la plena capacidad de goce y ejercicio de las iglesias, confesiones e instituciones religiosas que los tengan a la fecha de publicación de esta ley, entidades que mantendrán el

**Art. 20.** The State recognizes the law, the juridical personality (be it of public law or private law), and the full capacity of pleasure and exercise possessed by the churches, confessions, and religious institutions at the date of publication of this law; these entities will maintain the

régimen jurídico que les es propio, sin que ello sea causa de trato desigual entre dichas entidades y las que se constituyan en conformidad a esta ley.

juridical regime that belongs to them, without having it being the cause of unequal treatment between such entities and those that are established in conformity with this law.