

9-1-2009

# Laity and Laicism: Are These Catholic Categories of Any Use in Analyzing Chilean Church-State Relations?

Jorge Precht Pizarro

Follow this and additional works at: <https://digitalcommons.law.byu.edu/lawreview>

 Part of the [Comparative and Foreign Law Commons](#), [Law and Politics Commons](#), [Religion Commons](#), and the [Religion Law Commons](#)

---

### Recommended Citation

Jorge Precht Pizarro, *Laity and Laicism: Are These Catholic Categories of Any Use in Analyzing Chilean Church-State Relations?*, 2009 BYU L. Rev. 697 (2009).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2009/iss3/9>

This Article is brought to you for free and open access by the Brigham Young University Law Review at BYU Law Digital Commons. It has been accepted for inclusion in BYU Law Review by an authorized editor of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

## Laity and Laicism: Are These Catholic Categories of Any Use in Analyzing Chilean Church-State Relations?

*Jorge Precht Pizarro\**

### I. INTRODUCTION

Is Chile a secular state? An examination of the emergence of secularism in Chile leads to the conclusion that Chile is a country of paradoxes—paradoxes that are the result of a paradigm of church-state relations in flux.<sup>1</sup> For example, in 2005, President Ricardo Lagos, having received a mandate to proclaim a remerged text of the Constitution, through administrative channels eliminated the words “invocation of God Almighty,” which had been included in the preamble to every Chilean constitutional text since 1810.<sup>2</sup> But in contrast with this gesture, which we may characterize as laicism in the French style, on December 27, 2006, President Michelle Bachelet Jeria signed into law a statute declaring that the sixteenth of

---

\* Professor at the Catholic University of Chile.

1. *See, e.g.*, Alan Wolfe, *The Coming Religious Peace*, ATLANTIC MONTHLY, Mar. 2008, at 56 (noting that Chile, once famous for its religious piety, had recently elected “an openly agnostic” president).

2. *Compare* CONST. (1833), pmbl. (Chile) (establishing the government “[e]n el nombre de Dios Todopoderoso, Creador i Supremo Legislador del Universo), *and* CONST. (1925), pmbl. (Chile) (“EL PRESIDENTE DE LA REPUBLICA, por cuanto la VOLUNTAD SOBERANA DE LA NACION, solemnemente manifestada en el plebiscito verificado el 30 de agosto último, ha acordado reformar la Constitución Política promulgada el 25 de mayo de 1833 y sus modificaciones posteriores e INVOCANDO EL NOMBRE DE DIOS TODOPODEROSO, ordeno que se promulgue la siguiente, como la CONSTITUCION POLITICA DE LA REPUBLICA DE CHILE”), *and* CONST. (1980), pmbl. (Chile) (including a preamble nearly identical to that of the 1925 Constitution), *with* CONST. (2005) (Chile) (containing no preamble or invocation of deity). For further discussion of the 2005 constitutional reforms, see *Chile’s Constitutional Reform*, ECONOMIST, Sep. 15, 2005; Larry Rother, *15 Years After Pinochet, Chile Begins to Dismantle His Rule*, N.Y. TIMES, Dec. 19, 2004 (“Chile’s Congress is set to approve a constitutional reform plan that will expand civilian authority and reduce the military’s ability to interfere in governing the country. The package also restores the president’s power to fire military commanders and eliminates appointive Senate seats for former commanders.”); LOIS HECHT OPPENHEIM, POLITICS IN CHILE 241(3d ed. 2007) (“The constitutional reforms, which eliminated virtually all of the remaining nondemocratic features of the 1980 Constitution, were approved overwhelmingly in a joint session of Congress on August 16, 2005.”).

July would be recognized as the feast of the Virgin of Mount Carmel, and would be a national holiday in the tradition of a regime in which Church and State are united.<sup>3</sup> Actuated by a similar attitude, President Ricardo Lagos Escobar issued a presidential decree that created a National Day of all the Evangelical Christian and protestant churches in Chile—this decree was then ratified by Congress.<sup>4</sup> These actions do not coincide with the paradigm of a purely secular state, and we have not even spoken about the chaplains attached to the Presidential Palace.<sup>5</sup>

### *II. A Brief History of Constitutional Laicism in Chile*

Just like all Latin-American nations, Chile's constitutional development was greatly influenced by liberal tendencies.<sup>6</sup> For example, as early as 1884, the law making civil marriage compulsory was proclaimed.<sup>7</sup> It is a curious law, we might say, as it defines marriage in canonical terms and does not allow for divorce, though it is also true that after the law's passage, religious marriage ceremonies no longer had civil effects.<sup>8</sup> That same year there was an aborted attempt to separate Church from State.<sup>9</sup> Though constitutional reform was approved by one legislative body, it had to be ratified by the succeeding one, and the succeeding legislative body never did so.<sup>10</sup>

Not until 1925 was there a reformation of the 1833 constitution—which was, in essence, an entirely new constitution. This Constitution came to light as part of a friendly agreement

---

3. Diario Oficial de la Republica de Chile, Ley No. 20.148, art. 1 (2006). This law replaced a prior statute proclaiming the sixteenth of July to be “el día de la fiesta Corpus Christi.” Diario Oficial de la Republica de Chile, Ley No. 19.668 (2000).

4. See Diario Oficial de la Republica de Chile, Ley No. 20.299, art. 1 (2006). For a discussion of the legislative history of this decree and law, see <http://www.bcn.cl/histley/lfs/hdl-20299/HL20299.pdf>.

5. *Lagos Nombró al Primer Capellán Evangélico de La Moneda*, LA SEGUNDA ONLINE, Thursday, Dec. 13, 2001, <http://www.lasegunda.com/ediciononline/cronica/detalle/index.asp?idnoticia=54620>.

6. See generally SIMON COLLIER & WILLIAM SLATER, A HISTORY OF CHILE, 1808–1994, at 104–20 (2d ed. 2004).

7. JORGE ENRIQUE PRECHT PIZARRO, 15 ESTUDIOS SOBRE LIBERTAD RELIGIOSA EN CHILE 187–89 (2006) [hereinafter PRECHT PIZARRO, LIBERTAD RELIGIOSA].

8. *Id.*

9. See MAXIMO PACHECO GOMEZ, LA SEPARACION DE LA IGLESIA Y EL ESTADO EN CHILE Y LA DIPLOMACIA VATICANA 305–26 (2004).

10. *Id.*

reached with the Holy See, and promulgated a separation of church and state that was clearly advantageous for the Catholic Church. There was an end to jurisdictionalism,<sup>11</sup> but also to a budget for worship.<sup>12</sup> While the Roman Catholic Church kept its status as a legal entity within public law, the non-Catholic churches were reduced to the status of legal entities within private law,<sup>13</sup> not recognized but “conceded” by an administrative act, and therefore always at risk of being dissolved by decree.<sup>14</sup> While the Catholic Church kept an ample “*ius statuendi*,” the same privilege right was denied to the other confessions.<sup>15</sup> While the Catholic Church was exempted from any kind of registration, the non-Catholic churches could not operate unless they inscribed in the Ministry of Justice.<sup>16</sup> By means of another agreement, 1911 saw the creation of the Armed Forces Vicariate—only the Catholic Church had the right of worship and spiritual aid for the armed forces and the police.<sup>17</sup> The access of non-Catholic pastors to jails and hospitals depended solely on the benevolence of the current government.<sup>18</sup> The same happens today within the Armed Forces and the police.<sup>19</sup>

Not until the passage of the law of religious freedom on October 14, 1999, did some of the aforementioned problems begin to diminish.<sup>20</sup> The text of the 1925 Constitution declared the liberty of conscience and worship, but not necessarily religious equality.<sup>21</sup> Neither was this last matter broached in the 1999 law, which outlawed many forms of religious discrimination, but allowed the

---

11. I.e., an end to confrontations regarding the relationship between political and ecclesiastical powers in Chile. See 2 PHILIPPE LEVILLAIN, *DICTIONNAIRE HISTORIQUE DE LA PAPAUTÉ* 888 (2002).

12. For a discussion of the legal status of the Catholic Church in Chile subsequent to the adoption of the 1925 Constitution, see JORGE ENRIQUE PRECHT PIZARRO, *DERECHO ECCLESIASTICO DEL ESTADO DE CHILE: ANALISIS HISTORICOS Y DOCTRINALES* 133-98 (2000).

13. *Id.* at 139.

14. *Id.* at 198-225.

15. *Id.*

16. *Id.*

17. PRECHT PIZARRO, *LIBERTAD RELIGIOSA supra* note 7, at 149-63.

18. Though non-Catholic pastors have reported that such access is improving. See U.S. State Dep't, 2008 Report on Int'l Religious Freedom - Chile, Sept. 19, 2008, available at <http://www.unhcr.org/refworld/docid/48d5cbff2a.html>.

19. *Id.*

20. Diario Oficial de la Republica de Chile, Ley No. 19.638 (1999).

21. CONST. (1925) art. 10, § 2 (Chile).

Catholic Church to retain a privileged place in Chile's constitutional order and compelled the evangelical leaders seeking equal treatment under the law to appeal to the spirit of the law, because the letter does not favor them.<sup>22</sup> Thus, religious equality in Chile remains an aspiration which lacks a legal or constitutional basis. This situation, with such marked differences in the legal and constitutional treatment of religions, prevents us from declaring that the Chilean State is completely neutral where religious matters are concerned.

### *III. Laicism and Education Reform in Chile*

Turning our examination to a particularly sensitive point within the principle of secularism, that of education, it is a fact that education in Chile has never officially been declared secular, nor has public education ever been, in practice, secular.<sup>23</sup> Public education has been progressively weakened by the different governments since 1925, diminishing both in quality and in quantity.<sup>24</sup> Since the educational reforms of 1980, the role of the state in education has been subordinated to parental rights to educate their children, which have been advanced by permitting, among other things, parents to select the school of their choice for their child's education.<sup>25</sup>

Already, in 2002, the number of students registered at pre-school and secondary levels represented 15% of the total of students inscribed nationwide. At post-school level, there are fifteen Catholic institutions (eleven universities and four professional institutes) with a total of 21.9% of the country's students inscribed in them. If we compare the 2002 percentages of Catholic education with the totality of private education, 31.9% of children who attend private schools do so in Catholic ones, and Catholic institutions of higher learning are educating 34% of the students who choose private

---

22. U.S. State Dep't, *supra* note 18 ("The 1999 law on religion includes a clause that prohibits religious discrimination; however, the Catholic Church enjoys a privileged status and occasionally receives preferential treatment.").

23. ROBERT ALSTON, *THE STATE LITERACY AND POPULAR EDUCATION IN CHILE, 1964-1990*, at 10-11 (2003).

24. COLLIER & SLATER, *supra* note 6, at 290-91.

25. The enhancement of parental rights in education has been accomplished by a sweeping school voucher plan adopted in 1980 and by the transfer of school administration from the national to the municipal level. See Martin Carnoy & Patrick J. McEwan, *Does Privatization Improve Education? The Case of Chile's National Voucher Plan*, in *CHOOSING CHOICE: SCHOOL CHOICE IN INTERNATIONAL PERSPECTIVE* 24 (David N. Plank & Gary Sykes eds., 2003).

institutions.<sup>26</sup> All these figures indicate that the policy of placing education in private hands has tended to increase the educational role of the Catholic Church, which is by far the principal provider of private education in the country.

An attempt made in 1973 during President Salvador Allende's government to create a Nationwide Unified School met with failure due to undisguised opposition by the Catholic Church.<sup>27</sup> A new project, presented during 2006 and 2007 by Michelle Bachelet's government, which seeks to strengthen public education and permit a more state-controlled education, also seems destined to fail.<sup>28</sup> In addition, all advances made in what concerns the laicism of the State have been through agreements arrived at with the Catholic Church. The same can be said about advances in religious freedom.

#### *IV. Laicism and the Shifting Demographics of Chilean Religious Belief*

There are two additional religious phenomena which stand out in today's Chile: the progressive deterioration of Catholicism and the strong increase in the number of Evangelical and Pentecostal groups. The census of 2002 showed that religious affiliation in Chile was made up of 70% Catholics and 18% Evangelical Christians, the figures for other denominations being practically nonexistent.<sup>29</sup> For example, Muslims constituted only 0.1%.<sup>30</sup> New public-opinion polls taken in March 2006 showed that Catholics had continued to decrease, then constituting 67% of the population; Evangelicals had also dropped to 14%. However, there is new data which shows that over 15% of the population has no religious beliefs whatsoever.<sup>31</sup> This is very possibly due to the effects of Chile's outright secularization, driven by Chile's rapid globalization, which in turn is driven by its desire to export its products. If this is so, Chile's society

---

26. Conferencia Episcopal de Chile, *Estadísticas Educacion Catolica de Chile 2002*, Area de Educacion para la Pastoral.

27. For discussion of the Catholic opposition to the National Unified School proposal, see JOSEPH P. FARRELL, *THE NATIONAL UNIFIED SCHOOLS IN ALLENDE'S CHILE: THE ROLE OF EDUCATION IN THE DESTRUCTION OF A REVOLUTION 192-97*, 216-17 (1986).

28. *Diario Oficial de la Republica de Chile*, Ley No. 20.129 (2006).

29. National Commission of the 17th Census, *2002 Census Synthesis of Results (Chile)*, available at <http://www.ine.cl/cd2002/sintesisensal.pdf>.

30. *Id.*

31. *Encuesta Nacionale Bicentenario*, UC Adimark (Pontificia Universidad Catolica de Chile 2006), available at [http://www.emol.com/noticias/documentos/pdfs/encuesta\\_bicentenario211006.jpg2.pdf](http://www.emol.com/noticias/documentos/pdfs/encuesta_bicentenario211006.jpg2.pdf).

would be nearing that of Uruguay, an increasingly secularized one, though still in transition.

*V. Laicism and Catholic Civic Involvement*

Now then, just as we have observed that in Chile laicism has assumed a mild form, we can also say that the Catholic Church has not always used its privileges towards its own ends. In very significant moments of Chile's history, the Catholic Church has contributed greatly to the cause of the country's democracy and human rights. For example, according to the original 1925 Constitution, if the first round of voting gave no candidate an absolute majority, the outcome had to be decided by both the upper and lower Houses of Congress voting as one body.<sup>32</sup> In 1938 a secular majority, the Popular Front, narrowly outnumbered the Right in votes, though no candidate had attained a super majority.<sup>33</sup> The Archbishop of Santiago, José María Caro Rodríguez, before both houses of Congress had reached a decision, made a public intervention to the effect that the first majority, even without an absolute majority, should always be ratified.<sup>34</sup> Thus, as a consequence of the non-secular intervention of a Catholic Archbishop, later to become Chile's first Cardinal, Chile was governed for twelve years by radical-socialist-communist coalitions<sup>35</sup>—with clear Masonic roots.<sup>36</sup> In 1970, the same situation came up when Doctor Salvador Allende was chosen with a little over 36% of the votes.<sup>37</sup> The "Caro" doctrine was invoked by the Cardinal, then Archbishop, Raúl Silva Henríquez who made a public visit to Allende before both houses of Congress had met together to make their decision.<sup>38</sup> For the second time, a non-religious leftist government came to power with the influence of an Archbishop of Santiago. The "Caro" doctrine remained in force without exceptions from 1940 to 1973.

32. CONST. (1925) art. 63–64 (Chile).

33. COLLIER & SLATER, *supra* note 6, at 232–34.

34. SALVATORE BIZZARRO, HISTORICAL DICTIONARY OF CHILE 113 (2d ed. 1987).

35. *Id.*

36. LESLIE BETHEL, CHILE SINCE INDEPENDENCE 103 (1993) ("Largely representing the middle class, the Masonic lodges also helped to weld the Popular Front together. Eminent leaders of the Radicals, Socialists and Communists found common ground through their membership in the Masons, whose grand master promoted prudent reform coalitions as an antidote to revolutionary or reactionary dangers.").

37. BENJAMIN KEEN & KEITH HAYNES, A HISTORY OF LATIN AMERICA 436 (2008).

38. MARK FALCOFF, MODERN CHILE, 1970–1989: A CRITICAL HISTORY 297 (1989).

Once the military coupe had taken place in 1973, Silva Henriquez began to champion the cause of all those persecuted for their political beliefs, and of the disappeared, tortured, exiled, etc., and their families. In 1974 he created the Vicariate of Solidarity, a legal entity of public law derived from the privilege of “*ius statuendi*,” a right exclusive to Catholics until 1999.<sup>39</sup> The Vicariate carried out its functions for fifteen out of the seventeen years of the duration of the military government,<sup>40</sup> and its archives have been essential for the work of the Committees of Truth and Justice formed after the return to democracy.<sup>41</sup>

### VI. Conclusion

By way of conclusion, I wish to state the following four propositions regarding the state of laicism in Chile. First, Chile has never experienced any type of religious war or any serious instance of religious strife.

Second, Chile has had a short eleven-year period of irreligious rule by the Popular Front whose political ascendancy may be attributed, at least in part, not simply to laicism, but to a policy of the Holy See in the naming of bishops—bishops who ultimately sought to further Chile’s democratic processes, even when contrary to the Church’s interests. Though Catholicism is apparently tolerant of ceding ecclesiastical authority through jurisdictionalism when the government is conservative, and intolerant of the same when the government is liberal, it is also true that until the constitutional reforms of 1925, which made express the right of Chileans’ to liberty of conscience and the separation between church and state,<sup>42</sup> Chilean liberals accepted freedom of religious practice, but preferred to continue with the traditional Catholic church-state paradigm in Latin America—referred to as the patronato.<sup>43</sup>

Third, since 1850 there has prevailed within the Catholic Church a strong ultramontinism,<sup>44</sup> and during a period of 130 years there

---

39. IAIN S. MACLEAN, RECONCILIATION, NATIONS AND CHURCHES IN LATIN AMERICA 13 (2006).

40. *Id.*

41. HECHT OPPENHEIM, *supra* note 2, at 215.

42. *See* CONST. (1925), pmb. (Chile).

43. ENRIQUE DUSSEL, A HISTORY OF THE CHURCH IN LATIN AMERICA 80–86 (1981).

44. I.e., a belief in the primacy of the Holy See in matters both temporal and spiritual. *See* KLAUS SCHATZ, PAPAL PRIMACY 147–55 (1996).

exists a Catholicism that Emile Poulat has described as “integral Catholicism” or as “Catholic intransigence.”<sup>45</sup>

In spite of this growing Catholic intransigence, Catholicism in Chile has been very socially-minded—as exemplified by the actions of Archbishops José María Caro Rodríguez and Raúl Silva Henríquez discussed above—and has been able, in the presence of an open and tolerant laicism, to establish a social order of ample tolerance and collaboration. It does not seem as if this situation will change in the future, but it may be continually necessary to calibrate this social arrangement so that it corresponds to the twenty-first century, that is to a new, more secularized, multicultural and religiously diverse society.

Finally, these considerations make me doubt whether the traditional French or European categories of laicism are useful when analyzing the Chilean situation. Whatever its weaknesses and deficiencies, laicism is a valuable social arrangement (regardless of any geographic modifier). Chilean laicism has not been an intrinsically profane movement, but a historical praxis in the growing application of secular values. Chilean laicism could not be further removed from the laicism prevalent since 1946 among the European intelligentsia and among Catholic intellectuals. For this reason, my position is that the traditional Catholic categories laity and laicism, must be revised by the thought of Chilean Universities in order to face the new social challenges presented by the twenty-first century.

---

45. GERD-RAINER HORN & EMMANUEL GERARD, *LEFT CATHOLICISM* 112–17 (2001).