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The Unnecessary and Restrictive Constitutional Amendments Concerning Religious Freedom in Mexico

*Javier Saldaña Serrano**

I. INTRODUCTION

One of the most widely publicized constitutional reforms in recent times has been that concerning Articles 24 and 40 of the Mexican Constitution. In Article 24, a number of changes were made that purport to broaden the scope of protection to religious freedom in Mexico.¹ In Article 40, the term “secular” was incorporated as one of the essential characteristics of the Republic.²

It should be noted that Article 24 of the Constitution has not been altered since 1992, the year it underwent important amendments,³ and Article 40 has not changed since 1917; in fact, it came without any modification from the 1857 Constitution.⁴

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1. *See* Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

2. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 40, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.), *available at* http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_205_30nov12.pdf.

3. In 1992, Article 24 underwent various reforms. First, the reference to practicing acts of worship “in temples or in private domiciles” was deleted from the first paragraph. The current second paragraph was also introduced, which did not exist before and prohibits Congress from establishing or prohibiting any religion. Finally, the former second paragraph became the third and was left as we understand it today. To see these changes, compare Constitución Política de los Estados Unidos Mexicanos [C.P.], Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.) with Constitución Política de los Estados Unidos Mexicanos [C.P.], Diario Oficial de la Federación [DO], 28 de Enero de 1992 (Mex.).

4. Article 40 of the Constitution of 1857 said: “It is the will of the Mexican people to be constituted in a representative, democratic, federal republic, comprised of free States, sovereign in all things that concern their internal affairs, but united in a federation established according to the principles of this fundamental law.” FELIPE TENA RAMÍREZ, *LEYES FUNDAMENTALES DE MÉXICO, 1808–1999* at 613 (20th ed. 1997).

The text of Article 24, before the amendment, stated the following:

Every man is free to practice the religious belief that most pleases him and to practice the ceremonies, devotions, or acts of his respective faith, provided they do not constitute a crime or offense punishable by law.

Congress may not make laws that establish or prohibit any religion.

Religious acts of a sect are ordinarily conducted in houses of worship. Those that are extraordinarily conducted outside of these will be subject to the regulation of law.⁵

In turn, Article 40 stated: “It is the will of the Mexican people to be constituted in a representative, democratic, federal republic, comprised of free States, sovereign in all things that concern their internal affairs, but united in a federation established according to the principles of this fundamental law.”⁶

After the constitutional amendments of March 2012, the texts of these articles are as follows. Article 24 now reads:

Every person has the right to freedom of ethical convictions, of conscience, and of religion, and to have or adopt, as is appropriate, those of his choice. This freedom includes the right to participate, individually or collectively, publicly or privately, in the corresponding ceremonies, devotions, or acts of worship, provided they do not constitute a crime or offense punishable by law. No one may use public acts in exercise of this freedom for political purposes, for proselytizing, or for political propaganda.⁷

The last two paragraphs of Article 24 were not modified.

5. Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.). Article 24 was amended in 1992, as articulated in Decreto por el que se Reforman los Artículos 3, 5, 24, 27, 130 y se Adiciona el Artículo Decimoséptimo Transitorio de las Constitución Política de los Estados Unidos Mexicanos [Decree to Reform Articles 3, 5, 24, 27, 130 and to Add Article 17 Provisional of the Political Constitution of the United States of Mexico], Diario Oficial de la Federación [DO], 28 de Enero de 1992 (Mex.), available at http://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_121_28ene92_ima.pdf.

6. Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 40, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.); RAMÍREZ, *supra* note 4.

7. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

In turn, Article 40 reads: “It is the will of the Mexican people to be constituted in a representative, democratic, secular, federal republic, comprised of free States, sovereign in all things that concern their internal affairs, but united in a federation established according to the principles of this fundamental law.”⁸

The sections set forth below will attempt to answer the following questions. Is it true that the amendments to Article 24 extend protections of human rights, specifically protection of religious freedom, as was adamantly indicated at the time?⁹ Was it necessary to incorporate the Republic’s secularism into the Mexican Constitution? Ultimately, what benefits will both constitutional amendments bring to Mexican citizens?

Answers to these questions will be given through ten very specific arguments. From this point onward, this Article’s attention will be fixed primarily on the content of Article 24. Although the Author makes some comments about Article 40, he leaves a more detailed analysis of it for another article.

II. DISCUSSION

A.

The first pertinent observation is that, when examined closely, all of the content in Article 24 before the reform had an essential purpose to establish the right of religious freedom; in other words, any citizen or legal scholar knew perfectly well that this provision protected the fundamental right of religious freedom. Now, after the

8. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 40, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

9. The alleged extension of rights was one of the main arguments that was brandished to pass the amendment. As just one example, then-Senator Melquiades Morales Flores upon taking the floor during the discussion said:

It is certain that our Magna Carta [Constitution] recognizes and protects religious freedom, but it does not contemplate the freedom of ethical convictions or of conscience. This is why it is necessary to elevate these rights to constitutional status, for as we expand the universe of human rights in our legislation, we will be answering and fulfilling the struggles and aspirations of Mexicans to obtain these rights.

Versión estenográfica de la sesión ordinaria del Senado, del miércoles 28 de marzo de 2012, Primera parte [Transcript of the Regular Meeting of the Senate, on Wednesday, March 28, 2012, Part One] (Mex.), available at <http://200.33.232.136/index.php/periodo-ordinario/versiones/3370-version-estenografica-de-la-sesion-ordinaria-del-senado-del-miercoles-28-de-marzo-de-2012.html?start=1>.

constitutional reform, Article 24 contains not only this right, but it has also permanently included (under very questionable legal drafting) two more rights and freedoms: (1) freedom of “ethical convictions,” and (2) freedom of “conscience.” With these changes, there is no longer one right or freedom included in this single normative provision, but three.

Although at first glance this may not raise any problems, and may be considered something superficial, it creates at least two immediate problems, one considerably minor and one of greater magnitude. The first is that in defining the rights in question, it would have been convenient not to include three freedoms in one paragraph, but to recognize each of these in at least three different paragraphs. This might have helped to avoid the problems and errors that will be presented throughout this Article.

The greater problem essentially concerns the exercise, and eventual protection, of the rights in question. Formerly, if Article 24 was invoked for protection, it was known that this concerned the right to religious freedom. Now, if the same provision is pled, is it a request to protect the right to religious freedom or all three rights?¹⁰ At first glance, it could be said that this question can be resolved by focusing on the specific facts of each case, but the solution is not so simple. For example, how does one solve the problem of a manifestation of a civil society that proclaims and defends atheism or secularism? Will this practice be protected by freedom of conscience, freedom of ethical convictions, or freedom of religion?

When the text of Article 24 stated that every man was free to practice the religious belief that most pleased him and to practice the ceremonies, devotions, or acts of his respective faith, it was clear that this referred to religious freedom. However, in the previous example, how would we differentiate this freedom from the other two? Perhaps such demonstrations in favor of atheism or secularism

10. This is the problem that Mendoza Enrique Delgado seems to point out, noting: The project—which refers to the draft that amends Article 24 and which is now being discussed as part of the States of the Republic (JSS)—is confusing, because the good that Article 24 protects is the freedom to adjust one’s own behavior to one’s beliefs, or practice certain acts outwardly; this is what is meant by professing This is now foggy and will require further clarification in the context of human rights recognized by the Constitution itself.

Enrique Mendoza Delgado, *Diálogo entre legisladores y sociedad civil*, in REFORMAS AL 24 CONSTITUCIONAL, CUATRO ENFOQUES 26 (2012).

would be expressions of “ceremonies, devotions, or acts of . . . faith” as stated in Article 24.¹¹

Similarly, believing that such a manifestation could be covered by either of the other two freedoms—that is, by ethical convictions or conscience—would entail an even greater problem to religious freedom because no distinctive feature clearly establishes the difference between protecting religious freedom and protecting secularism under freedom of ethical belief or of conscience. This, as is clearly shown, is confusing.

Thus, we can conclude from this first argument that the constitutional reform not only creates confusion by establishing three different freedoms within one normative provision, but, even worse, it blurs the purpose of protecting the right that it purportedly safeguarded. This blurring creates greater difficulty concerning the secondary regulation of this normative provision. What would a future regulatory law concerning Article 24 be called? The Statutory Law of the Freedom of Ethical Convictions, Conscience, and Religion?

B.

In connection with the above problem, part of the amended Article 24 expressly provides, “[t]his freedom includes”¹² In so doing, it literally refers to just one freedom, when it earlier announced that there were three: freedom of (1) ethical convictions, (2) conscience, and (3) religion. The obvious question, then, is whether these constitute just one freedom or three different freedoms. If these are just one freedom—as the constitutional amendment expressly reads today—what was the purpose of previously announcing this freedom in three different ways? Or if they are three different freedoms, why refer to them by the phrase, “[t]his freedom includes”? It is evident that the Mexican legislature did not have a clear idea of what it was protecting because, as the text reads, it is unclear whether it wanted to expand the list of rights and freedoms or just put more emphasis on one of these. This not only reveals inadequate and poor legislative drafting—grievous when on a constitutional level—but it also shows

11. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

12. *Id.*

a lack of even minimal attention to what is being done when drafting a provision of such importance.

We must remember that one of the main tasks of jurisprudence and of legislative drafting is to distinguish with clarity and accuracy the different rights dealt with, indicating their typical or specific characters, their limits, their nature, etc. This is necessary to avoid confusing some rights with others, to not superimpose some rights on others, and to not identify some rights as breeds of others—a confusion that is happening now under the constitutional reform. This requirement is even more important when such rights are set forth in the supreme text of any fairly developed state, like a constitutional government. Therefore, it is necessary to establish that, from the actual wording of Article 24, it is not clear what might be the typical characteristics that could help us clearly differentiate among the freedoms of ethical convictions, conscience, and religion.

It is true that constitutional doctrine, concerning topics like the specialties of human rights and religion law, does not have a universally accepted definition for each of these three freedoms, but a part of constitutional doctrine has been responsible for establishing the typical characteristics of these freedoms, indicating the specific contours of these freedoms and how to understand their uniqueness.¹³ This is not the place to detail such characterization, but beginning such an exercise is well worth doing, even if it is only a general characterization.

Under this doctrine, if we consider that ethical convictions are an expression of freedom of thought (as a portion of Mexican legal doctrine has recognized),¹⁴ this freedom encompasses beliefs (not religious), ideas, or opinions of any kind, and, therefore, its typical

13. See JAVIER HERVADA, *LOS ECLESIASTICISTAS ANTE UN ESPECTADOR* 183–224 (1993) [hereinafter HERVADA, *LOS ECLESIASTICISTAS*]. Before this work, Professor Hervada had also published another article in which he discussed the same topic. See Javier Hervada, *Libertad de conciencia y error sobre la moralidad de una terapéutica*, in *PERSONA Y DERECHO* 11, 13–53 (1984) [hereinafter Hervada, *Libertad de conciencia*], available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0C DUQFjAA&url=http%3A%2F%2Fdspace.unav.es%2Fdspace%2Fbitstream%2F10171%2F12442%2F1%2FFPD_11_01.pdf&ei=Pm81Ufb5IledqQH5r4CQCA&usq=AFQjCNH-OxorUEL9KxFqhdgcRNVtJZmUdw&sig2=q7tr52aiCuzOcXCylqmSjw&bvm=bv.43148975,d.a WM. This earlier work is what we follow in this Article.

14. Jorge Adame Goddard, *El proyecto de reformas del artículo 24 constitucional sobre libertad religiosa*, in *REFORMAS AL 24 CONSTITUCIONAL, CUATRO ENFOQUES* 15 (2012), available at <http://es.catholic.net/sexualidadybioetica/371/942/articulo.php?id=53509>.

characteristic would be intellectual activity in search of truth or the adoption of views relating to philosophy, culture, science, politics, art, recreation, etc.¹⁵

On the other hand, the subject of freedom of conscience is distinct from freedom of ethical convictions, and many theorists who refer to freedom of conscience have maintained this distinction.¹⁶ The freedom of conscience consists of acting according to the dictates or judgments of practical reason, according to the morality of an action that was performed, is being performed, or will be performed.¹⁷ Therefore, its purpose pertains specifically to those moral judgments to which man must conform his actions without being subject to any type of coercion or influence.¹⁸

Finally, freedom of religion can be distinguished from the other two freedoms because its purpose is different. This freedom's purpose is religion, and therefore it embodies the relations that men establish with God in free manner or, in other words, without any type of coercion through various external or public demonstrations, among other things, and where the State is incompetent.¹⁹ The distinctive feature to consider in this characterization is the idea of God as "that transcendent—not human—reality that implies a certain conception and interpretation of all existence and of life itself, so that this conception, transformed into doctrine, also determines one's behavior through the demands of a particular moral."²⁰

15. See Hervada, *Libertad de conciencia*, *supra* note 13, at 35–37.

16. An example of this understanding that freedom of conscience and its purpose are distinct from the freedom of thought and religion can be seen in Jesús Bogarín Díaz, *Contribución a la construcción de un concepto autónomo de libertad de conciencia*, in *EL DERECHO ECLESIASTICO A LAS PUERTAS DEL SIGLO XXI: LIBRO HOMENAJE AL PROFESOR JUAN GOTI ORDEÑANA* 36–38 (2006), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CDUQFjAA&url=http%3A%2F%2Fdialogo.net.unirioja.es%2Fservlet%2Farticulo%3Fcodigo%3D2302947&ei=8nA1UY_rPMeoqG_qICQBg&usq=AFQjCNGpqxCMofQY3c36-UhRe-9JakSIQ&sig2=0hyt0hKLDpYntfgHwAs1xw&bvm=bv.43148975,d.aWM.

17. See Hervada, *Libertad de conciencia*, *supra* note 13, at 41–46.

18. Although ideas with different nuances exist, this is the majority opinion in specialized doctrine concerning the freedom of conscience and is sustained by Jesús Bogarín Díaz. Díaz, *supra* note 16, at 37–49.

19. See HERVADA, *Libertad de conciencia*, *supra* note 13, at 38–41.

20. Joaquín Mantecón, *La libertad religiosa como derecho humano*, in *TRATADO DE DERECHO ECLESIASTICO* 88 (1994). A very detailed analysis of the different ways of defining "religion" can be found in BRETT G. SCHARFFS & W. COLE DURHAM, *LAW AND RELIGION: NATIONAL, INTERNATIONAL AND COMPARATIVE PERSPECTIVES* 39–48 (2010), available at <http://www.aspenlawschool.com/books/durhamscharffs/default.asp>.

This distinction, or some kind of effort to classify freedom of religion, may have helped to distinguish the original freedom from the new freedoms that were introduced in that constitutional reform,²¹ but this did not happen. Instead, the three referenced freedoms are mentioned after this introduction: “This freedom includes” Is this not patently incongruent?

In light of this second argument, it can be concluded that the constitutional amendment at issue is confusing, because its own writing does not say whether Article 24 protects three different freedoms—as the article initially states—or just one freedom—as it expressly notes later. In accordance with correct legislative drafting and the most basic legal knowledge, these should have been established in different paragraphs, to indicate that they were three different freedoms. Also, they should not have been confusingly referred to later as just one freedom.

C.

In line with what we have discussed, a third observation raises an issue of equal importance. It has to do with the question of whether the freedoms of ethical convictions, conscience, and religion—now included in the Constitution—really are human rights, or whether they are mere inventions drawn from anti-religious legislative ideology (specifically anti-Catholic), legislators’ ignorance, or partisan political convenience of those who voted on the amendment. Thus, it is necessary to investigate whether there is a legal reference that fairly confirms that these are human rights and not an improvisation.

This question could be seen as absurd in this day and age, but it is not, especially because we live in a time characterized by an increasingly frequent and casual tendency to call everything “human rights.” Today more than ever, it is appropriate to pause and refer to positive law and from there to ask what rights exist, and whether the

21. This effort to distinguish has also been made in Mexican doctrine where a differentiation between the freedoms of thought, conscience, and religion is generally accepted. See Eugenia del Carmen Diez Hidalgo, *Desafíos actuales de la libertad religiosa en México a la luz de los derechos humanos*, in UNA PUERTA ABIERTA A LA LIBERTAD RELIGIOSA: (MÉXICO A QUINCE AÑOS DE LAS REFORMAS CONSTITUCIONALES EN MATERIA RELIGIOSA 1992-2007) at 35–136 (2007).

rights to these announced freedoms have been recognized as such in any document.

One answer would be that in the case of the rights to freedom of conscience and religion, we can quickly confirm that these truly are human rights. We can look to any constitution or international treaty that protects these rights to confirm this. However, can we say the same about the freedom of ethical convictions? The answer to this would not be nearly as clear.

Skepticism about whether this freedom, now introduced into the Mexican Constitution, is or is not a human right is based on two arguments. The first is that Mexican constitutional history does not contain a single reference, express or implied, to this right. In other words, none of the constitution's texts has recognized in its list of rights the right of ethical convictions. To clarify, this law has simply never existed in Mexican constitutional history.

This problem can also be confirmed if we move it into the international arena. Here, there is no record that the freedom of ethical convictions has been recognized as a fundamental right in any of the international documents protecting human rights.

If ethical convictions are not found as a right in Mexican constitutional history, and if it has not had place in the long list of international documents protecting human rights, what is the origin of this right? What does this new right mean? Now, if its meaning is unknown, what did the legislature want to protect by including it in the Constitution? It must be clearly recognized that this "new" right to freedom of ethical convictions was invented by the Mexican legislature. No one knows for sure from where the legislature extracted this right.²²

Thus, freedom of ethical convictions is foreign to the national and international culture of human rights. What does an expression so confusing and ambiguous as ethical convictions mean? What is the legal status of this freedom? Has a national or international court spoken concerning this right? Is there any hermeneutic reference that helps us know how to interpret it? If the answer to these

22. Laporta has discussed the problem of including "new" rights, noting that it is quite reasonable to assume "that the more the list of human rights is multiplied, the less force these rights demand, and the more legal or moral power these rights are presumed to have, the more limited ought to be the list of rights that adequately justify this list." Francisco Laporta, *Sobre el concepto de derechos humanos*, in DOXA 4 at 23 (1987), available at <http://www.bioetica.org/cuadernos/bibliografia/laporta.pdf>.

questions is no, reasons for including this right in the constitutional text should have been given, but none are provided. At most, what has been argued is that this freedom “guaranteed the rights of nonbelievers—agnostic and atheists.” But if this were the case, then the situation would become even worse given the ignorance of the Mexican legislature. We all know that if something is characterized by religious freedom—and in general any public freedom—it is precisely because it is primarily a freedom from coercion or, in other words, a freedom from imposing a particular religion or religious belief. The Mexican legislature should study and better understand religious freedom before proposing far-reaching constitutional amendments such as Article 24.

Expanding on the previous point, it should be remembered that while religious freedom protects the relationship that man establishes with God, this includes more than just protecting affirmative acts of adhering to this divinity. It means that every man should be prevented from exercising any kind of pressure on how others worship God or choose not to.²³ With this understanding, if the Mexican legislature intended to protect atheists and agnostics so that religious beliefs were not imposed on them, this safeguard was already included in religious freedom. Therefore, it was unnecessary to invent a new right like ethical convictions to protect those with no religion.

The second argument against the new right of ethical convictions deals with the question of which ethical convictions are protected by the constitutional amendment. Does this include all ethical convictions that are observed in a pluralistic society? If not, which ones will and will not actually be protected? And if some are defended and some are not, what criteria will determine which are and which are not? The author fears that the final answer to these questions will necessarily lead us to confirm that the political powers will give the final say. In other words, the current government will determine what ethical convictions will and will not be covered. But accepting this leaves a wide margin of discretion to political authorities, needlessly risking observance and respect for human rights. History has shown that leaving the door open to the discretion of any political authority places before us a totalitarian

23. See Hervada, *Libertad de conciencia*, *supra* note 13, at 40.

and dictatorial regime, which has occurred more than once in Mexico.

The conclusion of this third argument seems clear. Ethical convictions, which are claimed to be a new human right, have never been recognized as such, not in the long history of the Mexican Constitution nor in any of the existing documents that protect human rights. This justifiably leads to theoretical skepticism, not only because of this phrase's enigmatic meaning but also and especially because of its uncertain legal status.

D.

In the same line of argument as above, there is another comment that should be made concerning the term ethical convictions, which may be more serious and sensitive than those made thus far.

The fact that the Mexican legislature has established in only one article both the freedom of ethical convictions and the freedom of religion, legally integrates both freedoms and, as a result, their respective purposes. In other words, by this inclusion, the Mexican legislature (consciously or not) placed any ethical belief (the purposes of this freedom) on equal footing with religion (the purpose of the right to religious freedom). Frankly, this brings dangerous consequences.

First, it should be noted that when we speak of ethical convictions, this is not just one conviction—or a few ethical currents—but a huge variety of convictions, all of which have different manifestations and foundations. Certainly it can be said that throughout the history of moral philosophy there have been as many moral conceptions as thinkers that have addressed these ethical convictions.²⁴ Of the vast universe of ethical convictions, which are covered under this constitutional amendment?

As just one example, let's consider hedonism, which is a moral theory that consists mainly of the pursuit of happiness through the

24. One of the most important works in Spanish that has been written explaining in detail the different ethical conceptions throughout history is that of Professor Victoria Camps. 1, 2, 3 VICTORIA CAMPS, *HISTORIA DE LA ÉTICA* (1999), available at <http://www.planetadelibros.com/historia-de-la-etica-voliii-libro-17069.html>. Another excellent work is the more recent work edited by Carlos Gómez and Javier Muguerza. *LA AVENTURA DE LA MORALIDAD: PARADIGMAS, FRONTERAS Y PROBLEMAS DE LA ÉTICA* (Javier Muguerza & Carlos Gómez eds., 2007), available at <http://www.casadellibro.com/libro-la-aventura-de-la-moralidad-paradigmas-fronteras-y-problemas-de-la-etica/9788420648729/1159686>.

satisfaction of bodily pleasures, among other means.²⁵ Is bodily joy and pleasure on the same level as a spiritual relationship with God?

Ultimately, what underlies this proposal is identifying any ethical belief—or way of seeing the world—with religion or one's relationship with God. This not only supports giving ethical convictions equal value, but more significantly it brings about an unavoidable consequence: moral and obviously religious relativism. What appears again is the uncompromising and anti-religious spirit of the times. The theoretical and practical consequences of this ideological secularism are particularly serious, and we should be aware of these, not only to avoid confusion, but above all to better protect and safeguard rights. Here are some cases of both consequences.

With regard to the theoretical consequences, it must be said that the foretold equalization raises in the background a renunciation of truth—in this case religious truth. But history has taught us that religion (the subject of religious freedom) always respects truth, not the ideology of any ethical conviction. It is very difficult to think that religions such as Islam, Judaism, or Christianity present themselves as mere ethical convictions, since they consider themselves to be repositories of truth.

In this sense, religious freedom does not mean indifference, as opposed to what is necessary and which is not free. This definition appears to present circular reasoning, when considering that the human intellect is unable to grasp reality as a whole and, therefore, truth on a religious plane. Based on these theoretical reasons, it is not possible to equalize an alleged freedom of ethical convictions with the right to religious freedom.

The practical consequences are equally significant because they concern nothing less than the protection of the rights of the freedom. Placing the freedom of ethical convictions on equal footing with religious freedom would lead to legal absurdities, like equating the refusal to serve in the military on pacifist motives (an ethical conviction) with religious reasons of not killing. Are these exactly the same? In the same sense, does a person who refuses to eat meat due to ethical convictions (naturalism) merit the same consideration

25. "The beginning and the end of human life, that is, happiness consists of bodily pleasure." F. BLÁZQUEZ CARMONA, AGUSTÍN DEVESA DEL PRADO & MARIANO CANO GALINDO, *DICCIONARIO DE TÉRMINOS ÉTICOS* 257 (1999).

as a person such as a Jew or Muslim who does not eat certain species for strictly religious motives? Is it the same to not eat meat for the consideration and love of other animals as for obedience to God? This Article contends that this is not the same, which is the problem that comes from equalizing the two.

As has been shown, equalization between ethical convictions and religious freedom, or rather between the purposes of the two freedoms, brings very significant problems to human rights, but this did not matter in the least to the Mexican legislature, which introduced a new freedom that did not seem sufficiently contemplated.

The concluding reasoning in this fourth argument is obvious: placing the freedom of ethical convictions and religious freedom on an equal plane clearly poses two kinds of problems, some theoretical and others of a practical nature. Concerning the former problems, the idea of renouncing religious truth and promoting moral and religious relativism is presented, in the best case, as a request that would at least initially merit a tremendous rational discussion before being accepted without restriction. The practical problems are also evident, because until now it has been clear that protecting rights for religious reasons is very different from protecting rights based on a particular worldview.

E.

Another consequence derived from this lack of clarity that the term ethical convictions generates is that some authors have considered its inclusion in the Mexican Constitution unnecessary because freedom of ethical convictions relates to freedom of thought, which was already protected by Article 6.²⁶ For example, authors like Jorge Adame argue that “[t]he freedom to manifest these ideas necessarily implies the inner freedom to conceive and assent to these ideas, so that the freedom to have ethical convictions and manifest them publicly was already recognized by the Constitution, and there was no need to include it in Article 24.”²⁷

This point coincides with part of the specialized Spanish doctrine regarding ecclesiastical law, which points out that these convictions

26. Goddard, *supra* note 14, at 15; Gerardo Cruz González, *La libertad religiosa en la Constitución de México a debate*, in REFORMAS AL 24 CONSTITUCIONAL, CUATRO ENFOQUES 36 (2012).

27. Goddard, *supra* note 14, at 15.

are a “system of ideas and judgments that a person forms about things and *that lets him or her act as a rational being in compliance with his or her natural purposes*, whether of a personal nature or of a social nature.”²⁸

Indeed, those that believe this definition are correct. The very meaning of the term “conviction” tells us that this is an idea to which a person strongly adheres.²⁹ However, we must remember that in addition to nonreligious convictions or ideas that are set forth and protected in Article 6 of the Constitution, often people’s deepest convictions are religious in nature (those for which they are capable of performing great personal sacrifices and offering even their own lives). Thus, it seems repetitive and unnecessary to amend Article 24 of the Constitution not only because this right was already found in Article 6 (as noted by the aforementioned authors), but because Article 24 itself already contained it by recognizing one’s religious convictions. Consequently, it was understandably unnecessary to include this “new” right of ethical convictions in the constitutional amendment.³⁰

To avoid this unnecessary repetition, the national legislature should have followed, as it seems was its intent, the typology of various international documents that protect human rights and that contain the three rights of quintessential freedoms, for example, Article 18 of the Universal Declaration of Human Rights of 1948,³¹

28. Hervada, *Libertad de conciencia*, *supra* note 13, at 35; *see also* Mantecón, *supra* note 20, at 110; IVÁN C. IBÁN & LUIS PRIETO SANCHÍS, *LECCIONES DE DERECHO ECLESIASTICO* 141 (2d ed. 1990) (emphasis added).

29. *See* REAL ACADEMIA ESPAÑOLA, *DICCIONARIO DE LA LENGUA ESPAÑOLA* 438 (22nd ed. 2001).

30. In case the above discussion is not sufficient, it should also be noted that apart from the Mexican Constitution, those rights (thought, conscience, and religion) were already recognized in more than one international document signed by Mexico that deals with and protects human rights. Therefore, the amendment was not only unnecessary but also repetitive for yet another reason. We must not forget that in 2011 Mexico amended its Constitution, recognizing greater protection of the fundamental rights set out in international documents that protect human rights. For an analysis of the constitutional amendment to Article I of the Mexican Constitution and the manner in which international documents concerning human rights should be interpreted, *see* Juan Díaz Romero & Juan Nepomuceno Silva Meza, *Comentarios a las reformas constitucionales de 2011 sobre derecho humanos y juicio de amparo*, in 10 *ENSAYOS Y CONFERENCIAS DE LOS FORJADORES DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN* 39 (2012).

31. Article 18 says: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” 1 JAVIER HERVADA & JOSÉ M. ZUMAQUERO, *TEXTOS*

Article 18 of the International Covenant on Civil and Political Rights of 1966,³² or Articles 12 and 13 of the Pact of San José, Costa Rica of 1969.³³ The second document says: “Everyone shall have the right to freedom of thought, conscience and religion.”³⁴

In conclusion, the constitutional amendment was unnecessary as being repetitive because what it added was already in Article 6 of the Constitution and also in Article 24 itself, assuming it dealt with religious convictions. It is also repetitive because these freedoms were already in various international documents that protect human rights.

INTERNACIONALES DE DERECHOS HUMANOS: 1776–1976 at 148 (2d ed. 1992).

32. Article 18 reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171.

33. This pact is also known as the Universal Declaration of Human Rights. Article 12 reads:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one’s religion or beliefs, and freedom to profess or disseminate one’s religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.
3. Freedom to manifest one’s religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

American Convention on Human Rights art. 12, Nov. 22, 1969, 1144 U.N.T.S. 143. Meanwhile, all of Article 13 is dedicated to freedom of thought. *Id.* at art. 13.

34. International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171.

F.

In the context of the discussion concerning international documents that protect human rights, it is worth mentioning that if we compare the constitutional amendment of Article 24 with any of the international documents that protect religious freedom, this reform is clearly restrictive by omission since all of the international texts provide greater protection of the right to religious freedom and, by extension, to other freedoms.³⁵

There are several aspects in which this legal restriction can be observed; however, let us mention only two of these. Article 18 of the Universal Declaration of Human Rights clearly states that the exercise of religious freedom also includes the ability to change one's religion or belief and that no one may be subjected to restrictive measures that impair the freedom to change or maintain one's religion, as is also set forth in the Pact of San José, Costa Rica of 1969.³⁶ However, this very important aspect of religious freedom is not covered by the constitutional amendment. It is true that according to progressive interpretation criteria regarding human rights, when deciding an issue, the document that provides greater protection should be used.³⁷ However, in a legal culture as legalistic as is Mexico's, which has barely begun to have some idea of what human rights are and how to protect them through interpreting them, it would have been more appropriate to also include the freedom to change one's religion in the discussed amendment, but this was not the case. This is another reason why the reform is limited and restrictive.

Another instance where the restrictive spirit of the amendment is demonstrated concerns religious education. If the legislature really

35. For a detailed analysis of the reception that international documents that protect human rights have had on religious freedom, see SCHARFFS & DURHAM, *supra* note 20, at 77–111 (2010); Javier Martínez-Torrón, *La protección internacional de la libertad religiosa*, in *TRATADO DE DERECHO ECLESIASTICO* 141–293 (1994). Information on Javier Martínez-Torrón and his book can be found at http://es.wikipedia.org/wiki/Javier_Mart%C3%ADnez-Torr%C3%B3n.

36. According to Article 12, Clause 2, “No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.” American Convention on Human Rights art. 13, Nov. 22, 1969, 1144 U.N.T.S. 143.

37. Edgar Carpio Marcos, *La interpretación de los derechos fundamentales*, in 1 EDUARDO FERRER MAC-GREGOR, *INTERPRETACIÓN CONSTITUCIONAL* 327 (2005), available at <http://www.juridicas.unam.mx/publica/rev/cconst/cont/14/rb/rb15.htm>. RAMÍREZ GARCÍA, HUGO SAÚL & PALLARES YABUR, PEDRO DE JESÚS: *DERECHOS HUMANOS 72–73* (2011), available at <http://libros-revistas-derecho.vlex.es/vid/ramirez-hugo-saul-pallares-yabur-oxford-388246672>.

intended to enlarge the right of religious freedom, perhaps it would have considered that the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, and also the Pact of San José, Costa Rica of 1969 all establish that parents or legal guardians have the right to ensure that their children receive religious or moral education that is in accordance with their own convictions.³⁸ This point is undoubtedly one of the most significant human rights, specifically as the right to religious freedom is concerned. Many countries recognize this right in their legislation,³⁹ but it was simply not mentioned in the constitutional reform that was brought about in Mexico.

Although the original project did indeed contemplate this right of parents, the final draft and approval simply did not include it, largely due to Jacobean and nineteenth-century ideology that continues to weigh heavily on the Mexican political class and is almost always defended, even over respect for human rights and the commitments that Mexico as a country has acquired through approving and signing international documents. From this point of view, one can seriously argue that in Mexico there is not a real and genuine concern for defending human rights, because when a constitutional amendment is introduced that amplifies them, it must be accompanied with all its consequences. In this case, this means recognizing the right of parents to have their children receive religious education that is consistent with their beliefs.

On this point, one might object by saying that the right of parents or guardians to have their children receive religious and moral education that is in accordance with their convictions has existed in Mexico since the amendment to Article 3 of the Constitution that occurred in 1992, which eliminated the prohibition of this right. However, we must note that this right actually exists, but only for parents and guardians who can send their children to

38. By way of only one example, the International Covenant on Civil and Political Rights of 1966 states in Article 18, paragraph 4: "The States [/] Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171.

39. On this point, see Javier Ferrer Ortiz, *Los derechos educativos de los padres en una sociedad plural*, in *EL DERECHO ECLESIASTICO A LAS PUERTAS DEL SIGLO XXI: LIBRO HOMENAJE AL PROFESOR JUAN GOTI ORDEÑANA 125-46* (2006), *available at* <http://dialnet.unirioja.es/servlet/articulo?codigo=2302954>.

private schools,⁴⁰ which does not take into account those who send their children to public schools. Here, there is clearly religious discrimination that cannot be tolerated in a truly democratic system of law—one in which there are no first- and second-class citizens—but the text of the Mexican Constitution currently establishes such discrimination.⁴¹

Also, the right that parents now have concerning students in private schools was not a right directly enshrined in the Constitution, but rather an omission by the legislature concerning private education: because religious teaching in private or unofficial schools was not prohibited, it was implicitly authorized. As González Schmal said, this was treated, “in a certain sense, as a tolerated freedom and not a proclaimed freedom. It went from prohibition to tolerance, or, if you will, from extralegal tolerance to legal tolerance.”⁴²

In conclusion, the constitutional amendment to Article 24 is highly restrictive, limiting, and discriminatory. First, when compared with other legal documents—in this case international—the other documents recognized a much broader right to religious freedom. Next, the amendment is limiting since it did not go further and expressly establish the rights of parents to have their children receive religious education in accordance with their convictions. And it is highly discriminatory because the Mexican legislature wanted to continue to maintain that the parents or guardians who could enjoy this right were only those whose economic capacity would allow them to send their children to private schools.

40. Section VI of Article 3 of the Mexican Constitution says: “Individual schools may provide education in all its types and means. In the terms that the law establishes, the State will grant and withdraw official recognition of studies conducted in particular facilities. In the case of primary, secondary, and post-secondary education” *Constitución Política de los Estados Unidos Mexicanos [C.P.]*, as amended, art. 3, sec. VI, *Diario Oficial de la Federación [DO]*, 5 de Febrero de 1917 (Mex.).

41. On this point, see ALBERTO PATIÑO, *LIBERTAD RELIGIOSA Y PRINCIPIO DE COOPERACIÓN EN HISPANOAMÉRICA* 102–03 (2011).

42. RAÚL GONZÁLEZ SCHMAL, *DERECHO ECLESIASTICO MEXICANO: UN MARCO PARA LA LIBERTAD RELIGIOSA* 221 (1997). On the same subject of the right of parents, see Sandra Cecilia García Aguirre, *La libertad de enseñanza*, in ANTONIO MOLINA MELIÁ, *LAS LIBERTADES RELIGIOSAS: DERECHO ECLESIASTICO MEXICANO* 213–18 (1997).

G.

Another very important issue that the Mexican doctrine has often stressed, related to the amendment's restrictive effect,⁴³ is the reductionist spirit of the announced amendment. After careful observation, it can be noted that the exercise of religious freedom is reduced to only one of its manifestations: *expression* of worship.

After establishing that everyone has the right to freedom of religion (a misnomer because it should have been that of religious freedom), the relevant part of Article 24 states: "This freedom includes the right to participate, individually or collectively, publicly or privately, in the corresponding ceremonies, devotions, or acts of worship" ⁴⁴

With this language, the Mexican legislature reduced the right to religious freedom to only freedom of worship, but it must be remembered that this expression does not just concern a singular manner of living and expressing religious beliefs. In fact, there are other ways by which one can express the right to religious freedom. Among these we can mention religious professions, religious education, religious outreach, etc. Why reduce religious freedom to a single manifestation when there are many more ways to express this freedom?

Concerning this point, one of the most prominent Mexican theorists on religious freedom said: "It appears that the problem and the need of those who promoted the amendment was not to recognize the right of religious freedom in its many facets, but only one in particular—religious worship—as if it was not already contained in the often-cited article 24 of the Constitution." ⁴⁵

Thus, the problem is that for the national legislature, religious freedom is reduced solely to religious worship. This poses particularly serious problems because it restricts protection of a very broad right to one of its facets: worship, whether in public or private. The Mexican legislature missed an opportunity to expand governmental respect for and recognition of religious freedom and to make it inclusive of important issues such as religious proselytism,

43. González, *supra* note 26, at 36–37.

44. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

45. Raúl González Schmal, *Comentarios sobre la reforma al artículo 24 constitucional*, in REFORMAS AL 24 CONSTITUCIONAL, CUATRO ENFOQUES 9 (2012).

religious marriage, spiritual aid, health, etc., through which the right to religious freedom is manifested.

The conclusion to this seventh argument seems clear. The right to religious freedom and the way in which this freedom is manifested is broader and therefore much richer than the mere expression of it through worship. Using this expression-based description exhibited the legislature's missed opportunity to extend the scope of protection of this right. Consequently, it can be said that this is a reductionist amendment.

H.

There is another aspect that national doctrine has often stressed and that was unfortunately not sufficiently contemplated in the amendment of Article 24. This has to do with the broad discretion that public authorities have, which could restrict the right of religious freedom.

In relevant part, the amendment states that the freedom of ethical convictions, conscience, and religion includes the right to participate, either individually or collectively, in public or private, in ceremonies, devotions, and acts of worship, "provided they do not constitute a crime or offense punishable by law."⁴⁶ And it then establishes that "[n]o one may use public acts of exercise of this freedom for political purposes, for proselytizing, or for political propaganda."⁴⁷

It may be useful to point out an important distinction about when we face a crime and when we face an offense and, most importantly, what is the attitude of the authority concerning both acts. Obviously, if an action is characterized as a crime in the respective penal code, authorities only have authority to punish the offender or offenders, whether or not (1) they were motivated by their religious beliefs and/or (2) they were expressing a religious conviction. Such application of the law leaves little uncertainty, but will the result be so clear when the text of the Article refers to not only crimes but also to offenses? It appears that it will not because, among other reasons, this term is not very clear in national legislation, thus opening the possibility for authorities—mainly

46. Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 24, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

47. *Id.*

administrative authorities—to establish any kind of punishment for what it deems to be an offense.

Concerning this, Jorge Adame wrote:

There is no doubt that the act of worship cannot be a crime under the law (assuming the legislature classifies as crimes those that actually are crimes, since it has in the past classified certain acts as crimes, simply due to hatred of religion, acts of worship that in no way offend common good), but it is too much to say that persons cannot perform acts of worship involv[ing] an administrative “offense,” which opens the doors for the government to restrict the observance of acts of worship. So, the defect that the current article already had is not overcome; rather, the project reiterates it.⁴⁸

More serious consequences come from the latter part of the constitutional reform; it left to the respective authorities’ free will to, for example, assess any demonstration that may have the appearance of being expressed with political purposes by any religious representative. It was obvious that the target of this part of the constitutional reform is the Catholic Church and some of its representatives, who clearly have opposed legislation that threatens not only their religious ideology, but also the most basic human rights. Is this the way that the rights of religious freedom in a pluralistic society are properly protected? We must state things clearly and free ourselves of hypocrisy. In a state of law, religious faiths have complete authority to express their views on social issues, including, of course, political issues such as pro-choice or pro-euthanasia laws, especially since implementing those laws threatens human rights.

But limitations on and violations of the right to religious freedom do not end here, but extend and intensify due to this reform. Given that the freedom at issue includes the freedom of ethical convictions, conscience, and religion, all these freedoms and their eventual manifestations should be careful to avoid political issues and campaigning for or against any propaganda. This would further open the doors to the already broad and arbitrary power that authorities have to punish any religious organization or any of its representatives.

Do not think that these concerns are unfounded or that they view reality inaccurately. There have been cases where authorities

48. Goddard, *supra* note 14, at 17–18.

have voided political elections simply because the candidate of a party, in his capacity as a parishioner (as could any citizen), attended Mass to start his campaign. Is this an “offense” severe enough to have voided the respective elections? According to the respective authorities, it proved to be a more than sufficient reason to nullify the respective election and take the victory from the winning candidate.⁴⁹

Other examples also demonstrate the danger of the broad and arbitrary discretion of the respective authorities. Serious prejudices were suffered by priests in any State of the Republic who read in their respective masses a pastoral document sent by their bishop that asked the congregation to carefully consider which candidate to vote for in the elections that Sunday. The document reminded them that as Catholics, they should be in favor of the right to life, but it did not specifically mention the political party that had used this as its campaign slogan.⁵⁰

In the same sense, we must not forget the strong financial penalty imposed on a candidate for governor of a state for campaign meetings that were held with evangelical groups, or for the act of simply invoking God, saying, “I will win with the support of the will of the people and of God.”⁵¹ Is this the religious freedom that the exclaimed constitutional amendment seeks to expand and protect?

Since this is not clear, absurd results could ensue from thinking that neither the freedom of ethical convictions (in the event that we considered it a right), nor the freedom of conscience, much less religious freedom, can be expressed with political ends, when it is part of the nature of these freedoms to express one’s self on political or social issues of all kinds (except those that have to do with partisan propaganda directly). Under this belief, not only can priests and parishioners of religious associations not express themselves for political purposes, but neither can any citizen who, protected by the freedom of conscience or ethical convictions, wants to do so.⁵² Is

49. See Javier Saldaña Serrano, *Estándares internacionales en materia de libertad religiosa y resoluciones del Poder Judicial de la Federación (México)*, in SENTENCIAS DE LA SUPREMA CORTE DE JUSTICIA DE LA NACIÓN DESDE EL ANÁLISIS DE LOS DERECHOS HUMANOS 415–17 (2011), available at http://www.hchr.org.mx/files/doctos/Libros/Sentencias_dela_SCJN_desdeel_an%C3%A1lisis_delos_DH.pdf.

50. See *id.* at 417–18.

51. *Id.* at 418–20.

52. Concerning this, D. Raúl González Schmal said:

there not a wide margin of discretion for authorities to punish religious persons or organizations?

Thus, we can conclude that this reform grants an enormous amount of discretion to authorities to determine when to punish a religious association or its representatives, upon determining that it has committed an offense or has carried out manifestations for political ends. In the author's opinion, these instruments add to the long list that the Mexican legislature established to limit the right to religious freedom.

I.

Another issue that is seen in the reform in question is the inclusion of a relatively new term in the Mexican constitutional culture of human rights: the recognition of the "freedom of conscience."

Obviously, this freedom is much more familiar to us than that of ethical convictions; it is often mentioned in international human rights documents alongside the freedoms of thought and religion.⁵³ However, there are some critical issues that should be discussed concerning its inclusion in the Constitution. First, what does the freedom of conscience mean as a human right? And, above all, what did the Mexican legislature understand freedom of conscience to mean when it included it in the Constitution? We have already said

This prohibition seriously violates, prejudicing the public, not only the right of religious freedom enshrined in the terms of Article 24, which was intended to be reformed, but also the right to freedom of expression, oral and written information, and assembly, rights enshrined in Articles 6, 7, and 9 respectively of the Basic Law. And, even more, following the same purpose of the uncompromising minority of the lawmakers to exploit the reform to minimize the right of religious freedom, the discussed paragraph is more restrictive than Article 130 of the Constitution, which deals with political rights. In effect, a subsection of Article 130 says that ministers of religion cannot, among other things, "preach in favor of or against any political candidate, party, or association." It also adds, "Neither may they oppose the laws of the country or its institutions, nor insult patriotic symbols in any form, in public meetings, acts of the sect, or religious literature."

Now, in the initiated reform of 24, this prohibition is included, not only to ministers but to all citizens who use "public acts of exercise of this freedom with political purposes, for proselytizing, or for political propaganda."

Schmal, *supra* note 45, at 10.

53. *See, e.g.*, International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171 ("Everyone shall have the right to freedom of thought, conscience and religion.").

something concerning this when we discussed the issue of characterizing these rights,⁵⁴ but now we develop this point a little more.

In the doctrinal context of human rights, freedom of conscience refers to the judgments of reason about the good or bad of human acts through which the conscience is formed. Thus, for example, Professor Javier Hervada states the following:

Conscience is the opinion or judgment of practical reason of the person about the morality of an action that will be made, is being made, or has been made. It deals with, therefore, a judgment about the morality of singular and concrete actions that are presented as a possibility, something being done, or something already done.⁵⁵

Thus, that which is protected by the freedom of conscience is “acting in good conscience; that is, it is a double freedom to act according to the dictates of conscience and not be forced or compelled to act against conscience.”⁵⁶

Accordingly, it is clear that the formation of such judgments of practical reason—that is, of one’s conscience—applies to individuals and to nobody else. Did the Mexican legislature understand this in this way? Hopefully, yes. It would be problematic to incorporate the freedom of conscience as a form by which political powers could influence the formation of the consciousness of the people; the situation would become sensitive because that power cannot dictate how we do or do not form our conscience, but can simply prevent wrongful acts.

This interpretation, that for some could be a windmill⁵⁷ or, in other words, something unreal at this point when reflecting on the human rights in the world, is not so unreal when we review our

54. See *supra* Part II.

55. Hervada, *Libertad de conciencia*, *supra* note 13, at 43.

56. HERVADA, LOS ECLESIASTICISTAS, *supra* note 13, at 222. It must also be said that there is a whole school of thought that believes that freedom of conscience means an ideological freedom, that is, the possibility of having a particular worldview. See, e.g., P. Talavera, *Conscientious Health Objection in the Prison Environment*, 12 REV ESP SANID PENIT 27, 29 (2010), available at http://scielo.isciii.es/pdf/sanipe/v12n1/en_05_especial1.pdf (quoting a Spanish Constitutional Court Sentence that said “given the fact that freedom of conscience is, in turn, a specification of ideological freedom . . . it can be said that conscientious objection is a right acknowledged both in an explicit and implicit way by Spanish Constitutional Legislation”).

57. Miguel de Cervantes famously wrote about Don Quixote who attacked windmills that he believed to be ferocious giants. MIGUEL DE CERVANTES SAAVEDRA, DON QUIJOTE 60–61 (Edith Grossman trans., HarperCollins Publishers Inc. 2003) (1605, 1615).

national history. One need only recall the imposition of an ideological approach like that of the “secularism” in the education provided by the State—far removed from any fanaticism and prejudice and currently set forth in the Constitution itself—to help us realize that this is not so unreal. This is reminiscent of the imposition of socialist education that Lazaro Cardenas promoted and that characterized the education imparted by the State for a long time.⁵⁸

Now, if the meaning of freedom of conscience is identified along with freedom of religion, and the latter is understood as a kind of ideological freedom (as is understood by some parts of the doctrine),⁵⁹ this would result in unnecessary repetition because the ideology of a person and the ability to express this ideology is already covered by the freedom of thought in Article 6 of the Constitution, as previously explained.

In line with what has previously been discussed, the obvious question then is: which of the two meanings is the one that the Mexican Constitution now protects? If the answer is that the meaning of freedom of conscience refers to the formation of personal conscience by political powers, then we would be before a paternalism that today nobody supports and is absolutely rejected. Now, if the answer relates to the second meaning, which is that the freedom of conscience is a kind of ideological freedom, then this is repetitive. Which is the correct definition?

Finally, it must be noted, as Jorge Adame pointed out, that if the recognition of freedom of conscience was approved in the given terms, a right that accompanies that freedom should have been incorporated, such as the freedom of conscientious objection, which does not appear anywhere.⁶⁰ A right as fundamental as the freedom of conscience needs to be protected in all its dimensions, the main

58. For a description of Cardenas’ socialist education policies, see Mary Kay Vaughan, *The Educational Project of the Mexican Revolution: The Response of Local Societies*, in *MOLDING THEIR HEARTS AND MINDS: EDUCATION, COMMUNICATIONS, AND SOCIAL CHANGE IN LATIN AMERICA* 105, 108–09 (John A. Britton ed., 1997).

59. See Javier Saldaña Serrano, Carbonell, Miguel, *La libertad religiosa en la Constitución mexicana (artículos 24 y 130)*, Documento de Trabajo, in 12 CUESTIONES CONSTITUCIONALES 319 (2005), available at <http://ojs.unam.mx/index.php/cuc/article/download/2138/1700>; see also DIONISIO LLAMAZARES FERNÁNDEZ, *DERECHO DE LA LIBERTAD DE CONCIENCIA* (5th ed. 2004), available at <http://www.casadellibro.com/libro-derecho-eclesiastico-del-estado-5-ed/9788434430754/984132>.

60. Goddard, *supra* note 14, at 16.

dimension being that there is the possibility that people may reject a claim imposed by law when it goes against their deepest values or most deeply rooted convictions.⁶¹ This right simply does not appear in the constitutional reform, which confirms that the Mexican legislature was not interested in broadening the right of freedom of conscience.

Thus, one can conclude that while recognizing the good of including freedom of conscience, this was not entirely spelled out nor sufficiently protected. Issues such as conscientious objection simply were not introduced, thus implying a half-finished reform.

J.

A final comment must be made, which deals specifically with the inclusion of the term “secular,” by which the Mexican Republic must qualify and identify itself, in Article 40 of the Constitution.⁶²

It must first be established that within the most specialized doctrine exists a perfectly clear differentiation between the principles of “separation” of church and state and “secularism” (each with its own characteristics).⁶³ Nevertheless, according to the Mexican mentality—especially according to the Freemason-Jacobin mentality—secularism has always been understood, in the best of cases, as the absolute separation between political powers and the churches and, in the worst of cases, as the State’s ability to pursue and attack any form of religious expression in society, mainly that which comes from the Catholic Church. The first understanding does not even encompass the term “positive secularism,”⁶⁴ and is purely and simply separation of state. The second is a negative

61. For more on this subject, see DORA MARÍA SIERRA MADERO, *LA OBJECCIÓN DE CONCIENCIA EN MÉXICO: BASES PARA UN ADECUADO MARCO JURÍDICO* (2012), available at <http://biblio.juridicas.unam.mx/libros/7/3083/pl3083.htm>.

62. See Constitución Política de los Estados Unidos Mexicanos [C.P.], as amended, art. 40, *Diario Oficial de la Federación* [DO], 5 de Febrero de 1917 (Mex.).

63. See Pedro Juan Viladrich, *Los principios informadores del derecho eclesiástico español*, in *DERECHO ECLESIASTICO DEL ESTADO ESPAÑOL* 169–260 (2nd ed. 1983); Joaquín Calvo-Álvarez, *La presencia de los principios informadores del derecho eclesiástico español en las sentencias del Tribunal Constitucional*, in *TRATADO DE DERECHO ECLESIASTICO* 243–318 (1994).

64. For an analysis of positive secularism, see Isidoro Martín Sánchez, *La laicidad positiva y su reflejo en los estados miembros de la Unión Europea*, in *EL DERECHO ECLESIASTICO A LAS PUERTAS DEL SIGLO XXI: LIBRO HOMENAJE AL PROFESOR JUAN GOTI ORDEÑANA* 273 (2006), available at <http://dialnet.unirioja.es/servlet/articulo?codigo=2379096>.

secularism, typical of dictatorial regimes that violate human rights.⁶⁵ Which is the real meaning that was intended in the constitutional reform by the expression “secular”? The Mexican experience allows us to believe that the second meaning is the one that the Mexican legislature seems to have had in mind when it included this term in the Constitution.

There are plenty of arguments that lead one to believe that this is true, if we consider the meaning of secularism to be one of separation. Moreover, persecution was already established in Article 130 of the Constitution, which begins: “The historic principle of separation of the State and the churches guides the standards presented in the present article. Churches and other religious organizations shall be organized under the law.”⁶⁶ The next sentence reads: “It is the exclusive responsibility of the Congress of the Union to legislate in matters of public denominations, churches, and religious organizations.”⁶⁷

Now, if what was intended was to emphasize the criterion of secularism of the Republic, it would have been desirable for the legislators to return to see what they themselves approved at the time in the Law on Religious Associations and Public Worship, in which Article 3 expressly states: “The Mexican State is *secular*. The same shall exercise authority over all religious activity, individual or collective.”⁶⁸ What purpose then was there in putting this in the Constitution? None. It was an unnecessary, repetitive, and superficial inclusion that can only be understood from the imposition of a nineteenth-century, regressive, and persecutory ideology, typical of those who do not want to understand what is a true State of law, respectful of human rights and particularly the right to religious freedom.

Moreover, it may be useful to draw attention to what the text of Article 3 of the Law states, since it is the State and not the Republic who is defined as secular, as is expressly stated in the current Article

65. See ANDRÉS OLLERO TASSARA, LAICIDAD Y LAICISMO 93–124 (2010), available at <http://www.fcjs.urjc.es/departamentos/areas/profesores/p3.asp?id=rzvyxtwx>.

66. Constitución Política de los Estados Unidos Mexicanos [C.P.], *as amended*, art. 130, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Mex.).

67. *Id.*

68. Ley de Asociaciones Religiosas y Culto Público [Law on Religious Associations and Public Worship], art. 3, Diario Oficial de la Federación [DO], 15 de Julio de 1992 (Mex.) (emphasis added), available at <http://www.diputados.gob.mx/LeyesBiblio/pdf/24.pdf>.

40 of the Federal Constitution.⁶⁹ This obviously reflects the low technical level of the Mexican political class who does not know how to distinguish between a form of a socio-political organization and a form of government.

III. CONCLUSION

Having identified various conclusions at the end of each respective argument that was presented, we refer the reader to these respective sections.

However, the author would like to finish with what D. Raúl González Schmal stressed, concerning the “enthusiastic” participation of our legislators in the constitutional reform. The less-than-lively turnout deserves to be highlighted. In the Chamber of Deputies, only 260 of the 500 deputies were present, from which 199 voted in favor, 58 voted against, and 3 abstained.⁷⁰ This shows the low standard of the Mexican legislators and the little interest that such a fundamental right like religious freedom arouses in them.

69. In this regard Gerardo Cruz González says, “But the adjective ‘secular’ is not a form of government but a secondary feature like others: multi-ethnic, inclusive, supportive, multi-religious, pacifist, non-discriminatory, etc. ‘Secular’ is not a form of government, nor is it a legal principle, but religious.” González, *supra* note 26, at 38.

70. Raúl González Schmal, *Comentarios sobre la reforma al artículo 24 constitucional, in REFORMAS AL 24 CONSTITUCIONAL, CUATRO ENFOQUES* 9 (2012).