

Secularism and Culture

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SECULARISM AND CULTURE

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EDITORIAL NOTE

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NOTA EDITORIAL

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I. EXPLANATION

The brilliant initiative of Pedro Salazar's to elaborate and develop a series of essays grouped as *Cuadernos, Jorge Carpizo* included the proposal that he transmitted to his guests to "take into account relevant cases, problems and dilemmas in the 21st century." I follow the indications of the promoter and coordinator of this series, to present a understudied dilemma: the gradual construction of the secular State in Mexico in the face of some cultural inertia of confessional roots.

To achieve my goal, I will first address the form of how the principle of secularism has been built in our constitutional order, and then I will mention the paradoxes represented by the national symbols: the flag, the anthem and the emblem, and the striking case of the emblem and the motto of the National Autonomous University of Mexico.

II. CONFESSIONALISM AND SECULARISM IN MEXICAN CONSTITUTIONALISM

The first phase of our institutional life is dominated by what could well be called a theocratic state, if by this one is understood, as proposed by Eric Voegelin,¹ not a priestly government but the recognition and imposition by the ruler of a divine truth. Now, since the prevailing concept of theocracy is not that of Voegelin, a conservative thinker, but the tradition, according to which priests head political power, I prefer to use the expression confessionalism, which represents the counterpoint of secularism.

Apart from the studies on the religious phenomenon of Max Weber or the critical position of Karl Marx² regarding the acceptance of a religion by the constitutional order, the most applicable explanation to the Mexican case is that offered by Hans Kelsen when he warns that when a society is shaken by revolutionary movements and intellectual activity is dominated by theological ideologies, there is a tendency to adopt an absolute (religious) and not a relative (legal) justification for the exercise of power.³ This is what happened in Mexico, where the libertarian confrontation involved the invocation of divinity by insurgent and colonial fighters. The rebels and their persecutors appealed equally to the same sources of metaphysical legitimacy, so the religious symbol became the only factor shared by those who fought to change or to preserve the established order.

The route of religious intolerance, a characteristic during the colonial period, appeared in the Constitution of Apatzingan (1814) and in the first supreme norm of independent Mexico (1824). Then, in the progressive construction of Mexican constitutionalism, one can first appreciate a decreasing process of the intensity of confessional institutions, and then another of successive approaches in the adoption of secular institutions, with

¹ *The new science of politics*, Chicago, University of Chicago Press, 1987, p. 85.

² Especially in his critique of Hegel's philosophy of law, where he emphatically argues that "religion is the opium of the people." See *Critique du droit politique Hégélien*, Paris, Éditions Sociales, 1975, p. 198.

³ Kelsen, Hans, *¿Una nueva ciencia de la política?*, Buenos Aires, Katz Editores, 2006, pp. 13 and et seq.

some conjunctural regressions that, until now, have not been enough to reverse the trend.

There is not a single documentary element that can infer that this has been a deliberate strategy of the Mexican State, so it is valid to consider that it is a normative orientation that results from the political and cultural environment. In particular, the constructive presence of liberal thought must be taken into account, of which the reforming attempt led by Valentín Gómez Farías in 1833 offers good proof. Before Congress, the then head of the presidency denounced the provocations of “religious fanaticism” and the “reckless advances” of religious jurisdiction, “prudently contained, without prejudice to the integrity and purity of the ineffable dogmas of our divine religion [because] it is not opposed to the profession of Catholicism to use the prerogatives inherent in the sovereignty of the Nation”.⁴ The strategy of indirect approximation in the construction of secularism would only register a drastic turn later, during the Reformation (1859-1861). The acceleration of the pace implied a civil war.

In some other countries of the hemisphere and in Spain, a similar trend can be seen in a similar situation. In Colombia, Article 5 of the Constitution decreed on May 20, 1853, stated that citizens had the right to the “free profession, public or private, of the religion they have, provided that they do not disturb public peace, do not offend sound morals, or prevent others from exercising their worship.” Soon after, the liberal president, José María Obando, decreed (June 20, 1853) the Law on Civil Marriage and Divorce, the way in which he ratified the separation of the State and the Church.

In Chile, President Manuel Bulnes stopped attending the religious ceremonies of Holy Week in 1850, and therefore got angry reactions from the clergy. Symbolically, it is considered that this was the beginning of the separation of the State and the Church,⁵ which would culminate in the secular laws promulgated between 1883 and 1885. In Venezuela, the Constitution of 1858 followed a similar line to that of Mexico: it suppressed the reference to religion that contained that of the previous year (Article 4).

The Spanish Constitution of 1869 opened a moderate option to the reform of relations between the State and the Church. Article 21 provided:

⁴ *México a través de los informes presidenciales*, Mexico, Secretaría de la Presidencia, 1976, t. I, pp. 29 and et seq.

⁵ Vergara Quiroz, Sergio, “Iglesia y Estado en Chile, 1750-1850”, *Revista de Historia*, nom. 20, Santiago de Chile, Pontificia Universidad Católica de Chile, 1985, p. 362.

The Nation undertakes to maintain the worship and the members of the Catholic religion. The public or private exercise of any other worship is guaranteed to all foreigners residing in Spain, without limitations other than the universal rules of morality and law. If some Spanish people profess another religion than the Catholic one, all the provisions of the previous paragraph are applicable to them.

In this way, the State did not impose a religion, and was only bound by the duty to support the Catholic Church, then freedom of worship was declared for foreigners and, assuming what seemed a remote possibility, opened the door for “some Spanish people” to submit to the same regime of tolerance as foreigners.

1. *Religion as an Obligation of the State*

The Constitution of 1814 imposed the Catholic Apostolic Roman religion as a duty of the State (Article 1),⁶ proscribed the possibility of any other religious creed and conditioned the exercise of other rights by foreigners residing in the country, or in transit, to profess that religion (Articles 14 and 17). As for civil rights, they were also subject to the fulfilment of religious obligations (Articles 69, 76, 85, 89 and 99). Likewise, the performance of public functions depended on the invocation and oath before the divinity recognized by the Church (Articles 155, 209, 236 and 240).

The norm of Apatzingan, so advanced in other aspects, watered in the religious intolerance that was present in the Cadiz Constitution of 1812 (Articles 12, 71, 72, 86, 87, 117, 171, 173, 212, 337) even when it omitted the direct participation of the clergy in the functions of government (Article 232) and the obligation to study religion in schools (Article 366), this Constitution included and that it accepted the provisions on religious intolerance by the Statute of Bayona (Article 1).

2. *Religion as a Perpetual National Obligation*

The first Constitution of independent Mexico was promulgated in the name of God, “author and supreme legislator of society”, adopted Catholicism as a national religion, excluding others, and gave it character of a

⁶ Article 1: “The catholic, apostolic, roman religion is the only one that must be professed in the State”.

perpetual and irrevocable decision (Articles 3 and 171).⁷ Moreover, it reiterated that, in order to occupy the high magistracies of political power, it was imperative to take the oath of obedience to the deity of Catholicism (Articles 101 and 136), in addition to recognizing the ecclesiastical jurisdiction (Article 154).

By 1824, when that Constitution was promulgated, freedom of worship had already entered into force in other countries. In the United States it was part of the first reform, proposed in September 1789, and in force since 1791. It was expressly said that the Congress would not formulate laws imposing or prohibiting any religion. In France, the first Constitution of the Revolution, in 1791, supplemented the Declaration of the Rights of Man and of the Citizen by establishing in its first title (“Fundamental Provisions Guaranteed by the Constitution”) that every person was free to “exercise the religious worship which they wished to profess”. In the countries independent of Spain, however, the intolerance practiced by the metropolis persisted.

Perhaps aware of the excesses to which the constitutional compromise could give rise, when taking a sitting as president of the Republic on October 10, 1824, Guadalupe Victoria said: “Our holy religion will not wear the clothes of superstition”.⁸

3. *Religion as a Personal Obligation*

In 1836, the devotional demand had a discrete nuance. Although the Constitution was promulgated in the name of “Almighty God, Triune and One...”, religion was among the obligations of Mexicans. (First Law, Article 3), but without it being proscribed the possibility of another religion,⁹ and foreigners who were bound by the duty to “respect” the Catholic religion (First Law, Article 12), but were not prohibited from practicing their own. In the political order, this Constitution introduced the controversial figure of *conservative power*, inspired by Benjamin Constant’s ideas about *moderating power*. In the Mexican case, this new organ of power was responsible before God and before the public opinion. In this way, by equating the deity

⁷ Article 3: “The religion of the Mexican nation is and will be perpetually catholic, apostolic, roman. The nation protects it by wise and just laws, and forbids the exercise of any other”.

⁸ *México a través de los informes presidenciales, cit.*, p. 3.

⁹ First Law, Article 3: “The following are the obligations of the Mexican: I. Profess the religion of their homeland, observe the Constitution and the laws, obey the authorities; ...”.

and public opinion, which acquired for the first time institutional presence, an incipient secularizing orientation was denoted. On the other hand, although the ecclesiastical jurisdiction was preserved (Fourth Law, Articles 22 and 30, and Fifth Law, Article 12) and the clergy were given participation in the integration of the Council of State (Fourth Law, Article 21), it was also declared that belonging to the religious state represented an impossibility “for the performance of the functions of citizen” (Article 11-VI).

The Constitution of 1836 was inspired by the conservative theses of the unitary republic, but it departed from the rigidity and intransigence in religious matters of the federal Constitution that preceded it. The tensions generated by religious intolerance were constantly felt, to the point that President Anastasio Bustamante had to declare before Congress that the Church was “a constant object of government anxiety”.¹⁰

In 1843, the new Constitution resumed the exclusivity of the Catholic religion (Article 6) but omitted the traditional confessional preamble. In addition, he reiterated the provisions from 1836: the loss of citizenship rights for those who formed part of the religious state (Article 22), and sanctioned attacks on religion, but only in the case in which they represented an “abuse of the freedom of the press” (article 196), so that it left a space to accept what was not considered excessive. This norm admitted what was already happening in normality: the debate about a necessary reform in religious matters. On the other hand, the Organic Bases did not include limitations for the constitutional reform either, nor did they qualify the religious commitment as permanent or immutable.

4. *The Construction of the Secular State*

A. *Absent Religion*

The Constitution of 1857 was promulgated “in the name of God”, and although in the original mandatory part it included references to religion, it forbade the celebration of any kind of contract that had as its object “the loss or irrevocable sacrifice of the freedom of man, whether for work, education or religious voting” (Article 5), thus applying a clear limitation to the cloistered religious orders that would be underlined by the additions of 1873. It also abolished religious jurisdiction (Article 13); it provided for restrictions on the purchase of real estate by ecclesiastical organizations (Ar-

¹⁰ *México a través de los informes presidenciales, cit.*, p. 17.

ticle 27), and empowered the “federal powers” to exercise “in matters of religious worship and external discipline, the intervention designated by law” (Article 123).

That Constitution, which resulted from the Revolution of Ayutla, put an end to the confessional State of Mexico and the next great process began: the construction of the secular state. From that same Revolution resulted the reform legislation, initiated with the Juárez Law in 1855, and continued during the validity of the new supreme norm.

B. *Separation of State and Church*

One of the characteristics of the Constitution of 1857 was to have incorporated a reform procedure that gave it a certain flexibility and a lot of stability. In total it was the subject of 31 properly constitutional reforms, and two more, decreed by Venustiano Carranza in use of extraordinary powers to legislate, which can be considered *extra-constitutional* because the reform procedure established by Article 127¹¹ was not followed.

In 1873, the reforms and additions to the Constitution of 1857 generated confusion from the formal point of view. Even many of those who have studied them from a historical angle have not offered a clear explanation about how they were inserted into the Constitution, alluding only to the fact that the laws of the Reform were incorporated into the supreme norm. These reforms and additions adopted on September 25, 1873 do not expressly indicate that it is a question of incorporating the laws of the Reform. Moreover, these reforms and additions gave rise to their respective law. This Organic Law “of the additions and reforms of September 25, 1873”, promulgated on December 14, 1874, not only systematizes in a single legal body the laws of the Reform, but in some aspects even goes beyond them.

The brief reforms and additions of 1873 read as follows:

Article 1. The State and the Church are independent of each other. Congress cannot make laws establishing or prohibiting any religion.

Article 2. Marriage is a civil contract. This and the other acts of the civil status of the persons are of the exclusive competence of the functionaries and

¹¹ One of these reforms has been overlooked, despite its considerable significance. On January 29, 1915, Venustiano Carranza added Article 73-X to give Congress powers in matters of labor, and thus be able to legislate for “fair remuneration,” the working day, the “protection of women [and] children” and to prevent “the exploitation of the worker.” See *Codificación de los decretos del C. Venustiano Carranza*, Mexico, Secretaría de Gobernación, 1915, pp. 144 et seq. 160 and et seq.

authorities of the civil order, in the terms foreseen by the laws, and will have the force and validity that they attribute to them.

Article 3. No religious institution may acquire real estate or capital imposed on it, with the sole exception set forth in the 27th article of the Constitution.

Article 4. The simple promise to tell the truth and to fulfill the obligations that are contracted, will replace the religious oath with its effects and penalties.

Article 5. No one may be compelled to perform personal work without fair remuneration and without his full consent. The State may not permit the effect of any contract, pact or agreement which has as its object the impairment, loss or irrevocable sacrifice of man's freedom, whether by reason of work, education or religious vows. The law, therefore, does not recognize monastic orders, nor can it allow their establishment, whatever the denomination or object with which they intend to be erected. Nor can it be accepted that a covenant in which man agrees to his proscription or banishment.

While these five articles were “reforms and additions”, they raised practical problems as to how they would appear in the constitutional text. The technique adopted was not very rigorous: Articles 1st and 2nd of the decree were placed at the end of the Constitution, in their capacity as “additions”, while the 3th article. was incorporated to the 27th, the 4th to the 121 and the 5th to its equivalent, in accordance with a new constitutional reform carried out in June 1898.

When President Sebastián Lerdo de Tejada informed the deputies about the significance of the additions and reforms that raised “the basis of the Reform laws to the category of constitutional reforms,” he underlined “the costly sacrifices [with which] the people conquered those great principles.” In another session, he pointed out that the objective of “covering” the Reform with “a constitutional character” was that in the future it could not “be defeated”.¹²

The central aspect of the 1873 reform was the decision that “The State and the Church are independent of each other.” This expression was a mistake that was not made in the Freedom of Worship Act of 1860. The 1st Article said: “...the independence between the State on the one hand and religious beliefs and practices on the other is and will be inviolable...” This precept was to be read as a declaration of the impartiality of the State in the face of the religious phenomenon, and not as a declaration of *independence*

¹² Sessions of May 31 and October 6, 1873, respectively, in *México a través de los informes presidenciales, Derecho constitucional, México, Imprenta en la Calle del Hospicio de San Nicolás, 1875, pp. 377 and et seq.*, pp. 144 et seq.

between the State and the Church. Moreover, in that Law no reference was made to the *Catholic Church*, but defined as a *Church or religious society* to all persons who “have therefore wished to be members of it”, and then referred to the freedom of “each of these societies” to settle their matters of faith. The authors of the Law were very careful not to mention the Catholic Church in particular, and the independence postulated did not have the equivocal meaning attributed to it in the constitutional reform of 1873.

In contrast, the organic law of 1874 went beyond the constitutional reform of the previous year, as it determined that “the State shall exercise authority over all [religions].” This was an excess, because the state could use its powers over ecclesiastical organizations, but not in relation to dogma. In some respects the constitutional amendment and its corresponding law had greater scope than the Reform laws, although this has not always been noticed, and usually only the constitutionalization of those laws is spoken of. The reality was different, while Lerdo de Tejada sponsored the deepening of the secular character of the State and prepared the way for the next step, which would be taken in 1917.

The expression referring to the independence of the State and the Church was transformed by the doctrine as “separation” between both entities, but it raised questions, such as that of Ramón Rodríguez, who immediately criticized the contradictory thesis adopted by the Constitution.¹³ Rodríguez contradicted it with arguments that could be addressed. The first was that it was not defined which Church was being alluded to. At this point the famous nineteenth-century constitutionalist asked whether the reference was to the Presbyterian, Episcopal or Catholic Church. These Churches already existed in the country, despite the intolerant provisions of previous constitutional norms. This is a relevant fact, because it indicates that the current norm had lost positivity, and that normality pointed towards tolerance, despite the fact that the standard was otherwise. That explained Rodríguez’s question, which would have been unfounded if the ban on other religions and their respective Churches would have been observed with punctuality.

The fundamental objection raised by Rodríguez was different: in his opinion it was improper for the Council to postulate the independence of church and state. His position was clear and convincing: it could be understood that if the State emancipated itself from ecclesiastical tutelage, on the other hand, the Church acquired a sovereign status within the State itself as

¹³ *Derecho constitucional*, México, *Imprenta en la Calle del Hospicio de San Nicolás*, 1875, pp. 377 and et seq.

if it were an independent entity. The same author indicated that this expression of *independence* clashed with Article 123, which empowered the State to legislate on worshiping. Without saying it, Rodríguez is already prefiguring the doctrine that would only develop in the twentieth century: the supremacy of the State over the Church.

Although the objection was correct, it was not understood, and to give a nuance to the concept of *independence*, later the doctrine began to speak of *separation* between State and Church, with which the confusion was not overcome, although a social phenomenon and a historical tendency were identified. Admitting that Rodríguez was right and that the semantic subterfuge to dilute the meaning of the 1st Article the addition of 1873 did not resolve the contradiction, the verifiable fact was that the direction of institutional life in Mexico was oriented towards a progressive consolidation of the secularity of the State.

C. *Supremacy of the State in Relation to the Church*

The constitutional trend of 1873 deepened in 1917. The most representative example was offered by Article 3, which, in addition to reiterating the freedom of teaching established in 1857, it included its secularism and determined that neither religious corporations nor ministers of worship could establish or direct schools of primary education, inspired by the 4th Article of the Act of 1874, which provided:

Religious teaching and official practices of any worship are prohibited in all establishments of the Federation, of the States and of the Municipalities. Morality will be taught in those who by the nature of their institution allow it, although without any reference to any worship. The violation of this article will be punished with a governmental fine of twenty-five to two hundred pesos, and with dismissal of the culprits in case of recidivism.

The 3rd Article was renovated in 1934. It was a radical modification, because while it included socialism as the guiding principle of education provided by the State, it also decided, in a manner analogous to that carried out in 1874, “to exclude all religious doctrine and combat fanaticism and prejudice”, for which he added that teaching should offer “a rational and exact concept of the universe and social life”. Although it can be argued that the search for this *rational concept* is the engine of science, it is questionable to make it a duty to be. But the central thing, as far

as secularism is concerned, was in the turn adopted by the order, which went from the impartiality of the State in the face of the metaphysical phenomenon, to a militant position adverse to religiosity.

The reform of 1934 is explained by the circumstances of tension that followed the *Cristero* conflict (1926-29), but it represented a leap in the progressive sequence of the construction of the secularism of the Mexican State.

The adverse effects of the reform were diluted in the midst of the intensity of the political life of those years, but at the end of the Second World War it was considered that the reference to socialism was counterproductive to encourage foreign investment in the country, and it was decided to modify the precept again. The underlying objective was to cancel the reference to socialism, but also the incremental rhythm of secularism was resumed, so that in 1946 the expressions that denoted exclusion were replaced by a smoother one: education “will remain completely alien to any religious doctrine”. There was also the reduction of the rotundity of the verb “to combat” replacing it with “to fight” but an amphibological sentence was inserted, postulating that “ignorance and its effects, servitude, fanaticism and prejudice will be fought”. A text written by a writer of the quality of Jaime Torres Bodet must be read with the intention of the person who wrote it. The comma after *effects*, without reiterating the preposition *against*, denotes that servitude, fanaticism and prejudice are the effects of ignorance. This description does not correspond to the object of a norm, but to the logic of the political discourse adopted by the 1946 reform.

The 1946 reform ratified the concept of *freedom of beliefs* that is present in the 24th Article, and which complemented the reform of said Article 29 in 2011. The second paragraph of this provision provides that in no case may “the freedoms of thought, conscience and profess of any religious belief” be restricted or suspended. This distinction implies that the freedom of thought referred to in the 6th Article does not include that of conscience or beliefs. In addition, the amended text of the 29th Article adds freedom of conscience to freedom of belief.

There is a restrictive criterion according to which the freedom of conscience and that of beliefs differ only because the former corresponds to the “faculty to profess any religion without being disturbed by the public authority”, while the second concerns the “right to practice publicly the acts of religion which each one professes”.¹⁴ From this perspective, the freedoms of conscience and belief would only be distinguished by the spheres

¹⁴ *Diccionario de la Lengua Española*.

of intimacy or publicity in which a religion could be cultivated. On the other hand, an extensive way of understanding freedom of conscience has to do with the faculty of knowing, both in the metaphysical sense and in the psychological and epistemological sense. According to this position, there would be the possibility that atheists would be included, but not agnostics, because agnosticism¹⁵ is the philosophical disposition that pronounces itself so that human understanding does not allow access to the knowledge of the divine. In other words, the atheist practices freedom of conscience in a broad sense because they can affirm that there is no evidence to denote the existence of deities beyond a cultural creation,¹⁶ while agnosticism is not a way of knowing, and therefore of having consciousness, but otherwise, for it postulates the impossibility of having consciousness, or knowledge, of issues related to the divinities.

Freedom of work, first included in 1857, plus the Reform laws outlawing the establishment of monastic orders, were the main ones maintained in 1917, but in 1992 this principle was reversed, and the prohibition of monastic orders was abolished. With the general formula of prohibiting contracts, agreements or pacts that had as their object the loss of freedom for “any cause”, it was considered that religious vows were included, without noticing that these vows also impose restrictions on freedom in matters of marriage and filiation. Many Catholic priests deny recognition of their children, based on religious vows. With this they tend to avoid the responsibilities resulting from paternity.¹⁷ The original wording of 1857, respected in 1917, represented a principle of secularism that was repealed in 1992.

In turn, the freedom of thought and expression consecrated in the 6th Article since 1857 could be understood as part of the rights in matters of beliefs and convictions, if one attends to the way in which these freedoms have been built in the Mexican constitutional system. The Constitutions of 1824 and 1836 limited freedom of expression only to political ideas (Articles 161.4, and 2nd, VII, respectively), and that of 1843 allowed freedom of opinion (Article 9th, II), but immediately (Article 9th, III) prevented that “writings on religious dogma or sacred scriptures shall be subject to the pro-

¹⁵ The expression was coined by the Darwinist biologist Thomas H. Huxley, in 1869, to denote that nothing can be known beyond a material experience.

¹⁶ Atheism is not to be confused with antitheism, which combats the convictions of believers and, to this extent, violates freedom of belief.

¹⁷ That is a question which may be examined in the light of the various civil and administrative provisions applicable to concubinage. The religious vow concerning celibacy corresponds to marriage, but ministers of the Catholic Church living in concubinage are subject to the applicable legal provisions in this regard.

visions of the laws in force.” It wasn’t until 1857 when the precept acquired the amplitude that it collected in literal form that of 1917. However, this extensive interpretation of the 6th Article does not correspond to the method of express statements, or significant omissions in relation to previous texts, followed by Mexican constitutionalism.

Another provision in force since 1917 is the 13th Article, which in turn results from the Laws of the Reform and the corresponding constitutional additions carried out in 1873. The decision that “no person or corporation may have jurisdiction” is only the subject of the military exception in the precise terms that the same precept establishes.

In addition to the 3rd Article, the other axis in terms of secularism was the 24th Article. The debate that was originated was brief, but very intense, because a large group of deputies pronounced that the project of Venustiano Carranza, which corresponds to the approved text, should be added two fractions: one, which prohibited the auricular confession and another, that conditioned the exercise of the priesthood to the fact that the ministers of the religions were married. The foundations of this proposal to add to Carranza’s project were that confession puts the Catholic clergy in possession of data on the family’s privacy of their parishioners that facilitate their influence on the personal and even political decisions of the parishioners; with regard to celibacy, the pernicious effects of this obligation were noted in that the children procreated by the clergy lack recognition and support, and in the practices of adultery and seduction of young people of both sexes.

To a certain extent in the Constituent Congress, the serious problem of pederasty was aired, which many decades later has been made public in Mexico and in many other countries. The constituents denounced this fact, already present in Mexican social life at the beginning of the twentieth century and predicted its increase to the detriment of the population and public morals. The issue was so divisive that 93 deputies pronounced themselves for the approval of the precept in the terms proposed by Carranza and 63 did so in favor of the two additions mentioned. Although they did not say it in the tribune, the defenders of the project had to consider that the restrictions on confession and celibacy would have meant a possible invasion of the decisions of the Catholic Church in matters of dogma, and that this would have contradicted the freedom of conscience and religion that was sought to establish, in the line adopted by the Reform.

The 24th Article represented a step forward, because it clearly reiterated the religious freedom in force since 1860 and exceeded the controversial wording of the 1st Article, added in 1873, however, according to that precept, the constitutional margin of freedom was constrained to the choice

of a religion. In other words, it established the freedom to choose between religions, but omitted those who had no religion. Congress cannot impose or ban a religion, but it circumvents agnosticism and atheism, which in a restrictive interpretation could be considered an “attack on morality” under the 6th Article.

The reform proposed in 2012 exceeds this limitation in force since 1917, as can be seen in the following table:

<i>Text from 1917</i>	<i>Text from 2012</i> ¹⁸
<p>Article 24. Every man is free to profess the religious belief that he likes most and to practice the ceremonies, devotions or acts of the respective worship, if they do not constitute a crime or misdemeanor punishable by law.</p> <p>Congress may not dictate laws establishing or prohibiting any religion.</p> <p>Religious acts of public worship shall ordinarily be held in temples. Those that are extraordinarily held outside these will be subject to the regulatory law.</p>	<p>Article 24. Every person has the right to freedom of ethical convictions, conscience, and religion, and to have or adopt, where appropriate, that of his or her liking. This freedom includes the right to participate, individually or collectively, both in public and in private, in the ceremonies, devotions or acts of their respective worship, if it does not constitute a crime or misdemeanor punishable by law.</p> <p>No one may use public acts of expression of this freedom for political, proselytizing, or political propaganda purposes.</p>

In the opening of the first paragraph of the reformed first paragraph, it would have been preferable to say: “Everyone has the right to freedom of ethical, scientific and religious convictions, and to have or adopt, where appropriate, the [religion] of their liking”, in order to avoid that the complement “that of his or her liking” can be understood as related to the general *freedom* of convictions, with science and religion. For a reason of style, by following the syntax of the reformed text and by the haste with which it was drafted, it was overlooked that the precept would have gained in clarity by adding the word *religion* in the place that appears here in square brackets. In any case, the relevant advance is that the concept of freedom of conscience, which already appeared in the 29th Article since 2011, is collected and the freedom of ethical convictions is added,¹⁹ while morality is not exclusive to believers, in the same direction that other secular constitutional systems

¹⁸ By April 2013, the reform had already been approved by 15 state congresses.

¹⁹ Article 59 of the 2009 Federal District Health Act already recognizes doctors’ “religious beliefs or personal convictions” as justified grounds for conscientious objection in the case of practicing procedures for the termination of pregnancy.

have adopted the concept of philosophical freedoms (*e. g.*, Spain) or ideological (*e.g.*, Portugal). This incorporates, for the first time, the freedom of agnostics and atheists in the Mexican norm.²⁰

This reform is complemented by that of the 40th Article of 2013, according to which the Republic, in addition to being representative, democratic and federal, is also secular. The combination of both reforms will make it possible to overcome one of the options of interpretation of *secularism*, which for the Catholic Church corresponds to a relationship with the hierarchy and belonging to the flock of believers.²¹ The incorporation of *freedom of conviction* in Article 24 and the express reference to the *secular* State in Article 40 confer on the Constitutional Court new instruments of analysis, of interpretation and decision when deciding on dubious cases.

As for article 123 of the Liberal Constitution, it was transferred to paragraph 130 by the Queretano constituent. There, the legislative powers of the Mexican State, regarding worship, were preserved, as well as secularity regarding registration and marital status. Reformed in 1992, it represented an advance in the granting of legal personality of the Churches, which underlines the impartiality of the State in religious matters. However, it also implied a setback, because it adopted “the historical principle of the separation of the State and the Churches” that had been overcome in 1917. It was a conceptual regression that ignored the principle of State supremacy. Despite this, the structure of the precept leaves no room for doubt that there is no legal equality between the State and the Churches, and that this supremacy prevails.

With regard to the patrimonial capacity of the Churches, the original 27th Article followed with punctuality the Reform Laws, by establishing that the Churches could not, “in any case”, acquire, possess or manage real estate. The 1992 reform reversed the criterion for allowing them to have goods “indispensable to their object”. This was a demand supported above all by the Catholic Church since its properties were the subject of the Law of Confiscation of Church Assets and Corporations in 1856. While the conditions of concentration of wealth that motivated the Lerdo Law varied, the 1992 reform is understandable because, in addition, the State

²⁰ Fernando Savater’s very synthetic expression on this subject can be borne in mind: morality “applies to believers and to non-believers and appeals to the capacity of reasoning of any person... Morality pursues a better life and religion seeks something better than life.” *Ética de urgencia*, México, Ariel, 2012, p. 99.

²¹ The analysis of *secularity* and *secularism*, which are polysemic concepts, is not part of this study.

retained the power to impose requirements and limits by law to those economic rights of the Churches.

A very sensitive aspect of secular life in Mexico was the participation of clergy in political life. The Mexican, Latin American and European experience indicates that the Church has always been prone to authoritarian governments. In the Mexican case, in addition, it was an ally of European intervention and Maximilian's empire. Against this background, the Laws of the Reform were emphatic in the proscription of ecclesiastics from political life, and even in the prohibition of officials from participating publicly in acts of worship. This decision was reflected in the 130th Article, in 1917, as well as in other constitutional precepts that prohibited members of the clergy from participating as candidates for deputy, senator and president of the Republic (Articles 55, 58 and 82). Although the same technique of regulatory completeness was not followed in the case of local deputies, governors and members of municipalities, the ninth paragraph of the 130th Article provided that the ministers of the authorities had no active or passive vote. With this single and simple disposition they were excluded from all elected positions. A significant, sensible change was introduced in 1992, under which these ministers are granted active suffrage, but retain the prohibition on passive voting. The latter is also reasonable, to avoid as far as possible the public intervention of the Churches in the electoral processes, as ordered by other fractions of the 130th Article to defend the secularity of the State.

However, in the area of public service there was a gap, which was not integrated until 1992, when the amendment to the 130th Article determined that "under the terms of the regulatory law, ministers of worship may not hold public office". This formula is also not very fortunate, because it leaves to the law the possibility of defining which public offices are susceptible to realization by individuals of the ecclesiastical organizations. If it is taken into account that the Constitution and regulatory laws do not prohibit them from performing jurisdictional or administrative functions, for example, this possibility is open to the ordinary legislator.

Constitutional reforms relevant to the secular state also include those introduced in the 1st Article in 2006 and 2011. The first categorically prohibited discrimination:

Article 1. Any discrimination based on ethnic or national origin, gender, age, disabilities, social conditions, health conditions, religion, opinions, preferences, marital status or any other that violates human dignity and aims to nullify or impair the rights and freedoms of individuals.

With regard to this reform, it should be noted that *opinions* are points of view, but they do not equate to *convictions*. The expression “any other term which violates human dignity and is intended to nullify or impair the rights and freedoms of individuals” could be understood to include the philosophical and ethical convictions of individuals, but we will have to wait for the Supreme Court of Justice of the Nation to rule in some case in that regard. On the other hand, most of the doctrine agrees that the *preferences* to which it is alluded include that of a sexual nature, which also opens a way for the constitutional defense of the rights of homosexual and transsexual people throughout the country. This reform was a significant step forward in terms of secularism.

The second amendment to the 1st Article was introduced in 2011. Although the central objective was to print a new dimension to the fundamental rights, in the conceptual order there was a significant setback, since the positivist conception of constitutional organization, according to which rights emanated from the Constitution, was abandoned to return to the providential criterion that the right is pre-existing to the State, and that the State only recognizes it. Carelessly or deliberately, a step back of considerable magnitude was taken in terms of secularism, because a position prone to the divine origin of society and its organization was resumed.

It can be seen that although there has been a progressive line in terms of secularism, in the last decade of the last century and more accentuated in the first of the current one there have been outbreaks that point in the opposite direction.

As has been seen, the Mexican constitutional system opted for a gradual construction of secularism. The 3rd Article is sometimes invoked as the precept that structures the secular State, but it is not noted that its scope is limited to the educational matter. The mistake results from the very provision including the concept of democracy which, by the form of its wording, does have effects beyond the educational field. The Constitution was building differentiated chapters of educational, labor, jurisdictional, patrimonial, electoral registry, civil and, in the end, cultural secularism, in the sense of also granting rights to agnostics and atheists.

In this process, however, there have also been regressions, such as those noted in terms of the reforms to the 1st Articles (2011), and 5th and 130 (1992), specifically. It remains to be overcome in the future, as well as to specify the scope of the constitutional 4th Article, as far as sexual and reproductive rights are concerned. With these exceptions, the process of building the secular State has been continuous, but it is not concluded.

To facilitate the understanding of the scheme presented in this section, the following table presents the precepts mentioned in this section, and the dates of its origin or of the changes that have been referenced:

<i>Article</i>	<i>Date</i>
1 st	2006, 2011
3 rd	1917, 1934, 1946
4 th	1974
5 th	1917, 1992
6 th	1917
13	1917
24	1917, 2013
27	1917
29	2011
40	2013
55	1917
58	1917
82	1917
130	1917, 1992

III. THE NATIONAL SYMBOLS

The progressive secularism of the norm contrasts with the survival of symbols of origin and even religious content, deeply rooted in Mexican culture. These symbols have so far not hindered secularization of the country, but instead they have resisted before the secular advance. It is necessary to study the implications of this gap between the norm and some expressions of normality to determine whether the symbols are associated with the transgressive behaviors that prevent the adoption of liberal measures in terms of sexual and reproductive rights, and the rights of terminal patients beyond Mexico City.

Resistance to the decriminalization of abortion and marriage of homosexual couples, and to euthanasia, even in its passive expression, continues to be very pronounced in many areas of the country. Empirical research will need to be carried out to identify the extent and magnitude of these confessional manifests.

1. *The Flag*

The patriotic symbols, named after the Law of the National Emblem, Flag and Anthem, have a high religious significance. The colors of the flag were chosen by Agustín de Iturbide to symbolize the triple commitment contained in the Plan of Iguala: The Catholic religion, “without tolerance of any other”, independence, and union under a monarchy. Lucas Alamán²² pointed out:

These were the three guarantees, from which it took the name of the army that supported that plan, and to this, the three colors of the flag that was adopted allude, and which has become the national flag, the purity of religion signified by the white, red signified by the Spanish nation, whose *cucarda* is of that color, and whose individuals were to be considered as Mexicans, and green applied to independence. The sashes of these different colors were at first horizontal, then they were put perpendicular, by decree of the first con-

²² *Historia de Méjico*, Mexico, J. M. Lara, 1852, t. V, p. 108.

gress, so that in the white of the center there was more space to paint the eagle on the nopal, which with the consequent modifications to the variations of form of government, have been since then the weapons of the nation.

Already as an independent nation, in November 1821 the Provisional Government Junta decreed that the arms of the empire would be represented by a crowned eagle, supported by a nopal born of a rock, and that the colors of the flag would remain those of the three guarantees in vertical arrangement.²³ Later, in April 1823, congress was consulted by the government about the national pavilion. This was an important issue for ships flagged in Mexico to enter port in other countries. The Congress discussed this issue in the session on the 12th. An important group, headed by Servando Teresa de Mier, was inclined to adopt the colors blue and white used during the War of Independence, to which the deputy José María Fagoaga replied that the replacement of the tricolor flag would result in “the enemies of the representative system that slander the Congress” saying that it was an attempt against independence and religion. This debate was held when barely a month had passed since Agustín de Iturbide left. Fagoaga’s thesis prevailed.²⁴

Colors have the advantage that their symbology can vary according to the criteria you want to apply. For example, during the period of the Reformation, it was stated that green corresponded to hope, white to unity and red to the blood of national heroes, and in the explanatory memorandum of the Law on National Symbols, of March 12, 1968, it was said that the flag expresses “chromatically” Independence, the Reformation and the Revolution.

Although the explanations have varied, the teaching means have been responsible for maintaining the one that corresponds to the Iturbidist motivations, with which in civic culture a confessional symbol remains.

2. *The Emblem*

The symbol of the eagle devouring or tearing up a snake was adopted as a national emblem at the same time as the flag, first by Agustín de Iturbide and then by the Congress of 1823. Over the centuries it has remained, with

²³ Romero Flores, Jesús, *Banderas históricas mexicanas*, Mexico, Costa-Amic Editores, 1994, p. 12.

²⁴ Mateos, Juan A., *Historia parlamentaria de los congresos mexicanos*, México, J. F. Jens, 1878, t. II, pp. 253 and et seq.

variations of style, as the official Mexican emblem. From a plastic perspective, it is a set of great beauty; However, it raises two problems: one of historical authenticity and one of colonial and confessional survival. Of the more than five hundred codices that are preserved,²⁵ in which the eagle only appears in the following: Codex Mendocino of 1540; Codex Ramirez of 1588; Codex Aubin painted and interpreted between 1576-1601, Codex Montealeone 1531-32; Codex Porfirio Díaz from the early sixteenth century, Tira de Tepechpan from the mid-sixteenth century, Atlas by Fray Diego Durán, also known as Codex Durán, from 1581, and Codex Techialoyan from the eighteenth century. As you can see, all the sources were made during the colonial period. Of these eight codices in which the eagle appears, only in three, the Aubin, the Porfirio Díaz and the Atlas by Durán, the snake is also destroyed (not devoured) by the bird.

On the other hand, in the rich series of pre-Hispanic archaeological vestiges that we have left, there is not a single analogous representation, and yes, on the contrary, there are many in which the most represented animal is the snake. This is a striking fact, because if the legend of the founding of the Tenochtitlan had existed before the arrival of the colonizers, it would have left archaeological records. It was not so, for a reason: the legend was built in the Hispanic period of our history. Otherwise, it would be inexplicable that the supposed founding tradition of the largest pre-Hispanic empire in Mesoamerica had not left even an image in the vast monumental, architectural, and sculptural work of the Nahuatl people. Let us now see the reason why that legend was created.

According to the Bible, the serpent ceased to be the most cunning of “all the animals of the field that Jehovah had made,” to become “cursed ...among all the beasts and among all the animals of the field.”²⁶ In most biblical texts the serpent is regarded as a sign of wickedness. This is confirmed by Matthew when alluding to the expressions of Jesus: “generation of vipers, how can you speak well while being evil?”, “Serpents, generation of vipers! How will you avoid the judgment of hell?”²⁷ On the other hand, the eagle is a symbol of rejuvenation,²⁸ and its flight bring it closer to heaven.²⁹ From the Middle Ages the eagle became the symbol of St. John, disciple and relative of Jesus, and the dragon, personification of evil, was

²⁵ León-Portilla, Miguel, *Códices. Los antiguos libros del Nuevo Mundo*, México, Aguilar, 2003, p. 16.

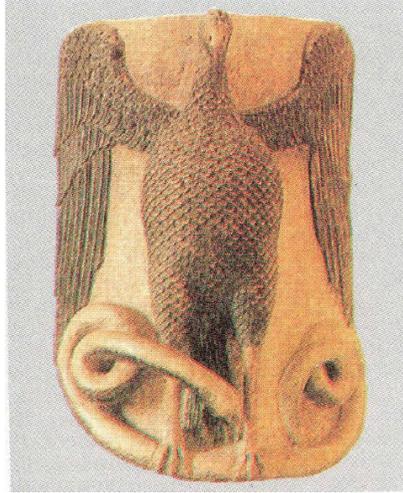
²⁶ Genesis: 3.1 and 3.14.

²⁷ Matthew: 12.34 and 23.33.

²⁸ Psalms: 103.5.

²⁹ Isaiah: 40.31.

defeated by St. George. On the other hand, mithraists worshipped the figure of a wolf wrapped by snakes, as an apparent symbol of time.³⁰ In some cases, during the Middle Ages, John's eagle was depicted holding a serpent, a symbol of evil:



An eagle dominating a serpent, symbol of St. John, s. XIII,
Taken from Hans Bierdermann, *Encyclopedie des symboles*,
Paris, Librairie Général, 1996, p. 13.

Now, if the eagle and the serpent meant that in the Bible, where did those symbols come from? In Egypt there were two deities represented by the serpent: Nehebkau, which appears in inscriptions of the Fifth and Sixth Dynasties (XXIV to XXII centuries B. C.), and Kematef. In addition, the image of *ouroboros*, the reptile that bends on itself to bite its tail and denote unlimited regeneration, appears already in the tomb of Tutankhamun (fourteenth century BC).³¹

Among the Chaldeans the words *serpent* and *life* were synonymous.³² In the oldest legend of Mesopotamia it was said that the serpent stole the plant of eternal life and dashed Gilgamesh's hopes of immortality. According

³⁰ Lurker, Manfred, "Snakes", in Eliade, Mircea (coord.), *The Encyclopedia of Religion*, New York, Simon & Schuster, 1995, vol. 13, p. 373.

³¹ Shaw, Ian and Nicholson, Paul, *Antiguo Egipto*, Madrid, Akal, 2004, pp. 333 et seq.

³² Chevalier, Jean and Gheerbrant, Alain, *Dictionnaire des symboles*, Paris, Robert Laffont, 1982, p. 868.

to the poem, the hero went deep into the waters in search of the plant of eternal life that allowed to overcome the fear of death. After obtaining it, he undertakes its return to Uruk, and on the way, taking a break and refreshing himself by diving into a well, he is surprised by a snake. “Why have my arms become weary, Ur-Sanabi? For what purpose has the blood flowed from my veins? Instead of doing good to myself, all I have achieved is to delight the snake!”³³ This serpent is called the “lion of the earth,” from which it derives what is otherwise called a *chameleon*. It is likely that here the image of the snake will begin to acquire a negative bias with which it will later be identified in Persia.

As far as the eagle and the serpent are concerned as members of a set, among the Greeks it was an augural symbol, as evidenced by the struggle between both animals that Homer refers to, where the victory corresponds to the aspid.³⁴ The same happens in *Antigone*, by Sophocles, since the Thebans considered themselves children of the serpent.

When the Thebans are attacked by Polynice, “like an eagle that cries out shrill cries,” he is defeated by the “invincible serpent”.³⁵ In contrast, in the delightful chapter where Aristotle³⁶ describes the enmity between animals, he explains that eagles and snakes are natural enemies because the former feed on the latter.

It is in Persia that the symbolic antagonism between these animals reached its most transcending expression because it then reached Christianity, and by that way also reached Mexico in the sixteenth century. The symbolic relationship between both animals comes from ancient times but acquires relevant characteristics for our subject from Zoroastrianism. Zoroastrianism, which flourished around the sixth century before our era, and which had a significant influence on the Abrahamic religions, identified the god of light and good in Auramazda, the eagle, and darkness and evil in Ahriman, the serpent. Wittkower has identified multiple archaeological remains (reliefs, vessels, coins) with the image of the eagle tearing or de-

³³ Gilgamesh, Tablet XI, 285-289. See D’Agostino, Franco, *Gilgames o la conquista de la inmortalidad*, Madrid, Trotta, 2007, pp. 187 and et seq.

³⁴ “For an omen came to those who crossed it longed for / a high-flying eagle, on the left to the people encircling, / a bloody servant carrying in its claws, immense / alive, stirring still, not forgetting the pleasure of the struggle; / for the one who had him bit by the neck in the chest, / twisting backwards, and she far from himself sent her to the ground, / groaning with sorrows, and half a crowd threw her, / and having screamed, she flew away at the breath of the wind”. *Iliada*, rhythmic version by Rubén Bonifaz Nuño, Mexico, UNAM, 2005, pp. 218 and 219.

³⁵ Lines 110 and 125, respectively.

³⁶ *Historia de los animales*, IX.609.4.

vouring a snake.³⁷ From the Christianization of Rome, the symbolic figure of good and evil began to become frequent also in tombs, sarcophagi and triumphal arches, until culminating in the most beautiful of all: the sixth-century mosaic that appears in the main hall of the palace of Justinian in Constantinople, the capital of the empire in the East:



Taken from Jobst, Werner, *The great palace mosaic*,
Istanbul, 1997, p. 42.

The representation of good, identified by the eagle, fighting evil, personified by the aspid, was adopted as a symbolic element of the Christianization of the Roman Empire.

As the Middle Ages progressed, the symbol multiplied and was incorporated into stained glass windows of churches, tombs, and crosses, including those used in processions and to exorcize places believed to be possessed by the devil,³⁸ among which were those where the epidemic outbreaks that gave rise to fear in the West were located, as Jean Delumeau called it. This must be borne in mind, because the encounter of the two worlds occurred with Spain, the part of Europe that resisted leaving the Middle Ages and whose evangelizers in Mexico anathematized the veneration that the indigenous peoples professed for the serpent.

³⁷ Wittkower, Rudolf, "Eagle and serpent", *Journal of the Warburg Institute*, London, vol. 2, nom. 4, April 1939, pp. 293 and et seq.

³⁸ Valadés, José C., *Historia del pueblo de México*, México, Editores Unidos de México, 1967, t. I, pp. 164 and et seq.

The Christian symbol was adopted as the coat of arms of Mexico City since the colonial period, and eventually spread throughout New Spain. Viceroy Juan de Palafox y Mendoza (1642) tried to erase all the elements that recalled the pre-Hispanic world, such as the *tunal* and the serpent, to adopt as an emblem the figure of the Virgin. However, the cultural strength of the eagle and the serpent had already taken root, and their use was re-born “even more strongly”.³⁹

This exhibition is made with the purpose of showing the confessional nature of the symbol that has been officially adopted by the Mexican State. Although for most observers the religious sense goes unnoticed, the real fact is that it is there, and that the millenary symbol of Zoroastrianism and Christianity flies on the flag of a modern and secular nation.

The replacement of the emblem is not feasible, or even desirable; what is necessary is to explain its content as the product of a legend coined to justify an act of domination, which Mexican culture transformed into a plastic representation of its nationality, and that its survival must be the conscious decision that it has only a conventional value and does not suppose an attitude in favor of a religious creed.

3. *The Anthem*

Unlike the national flag and the emblem, the confessionalism of the anthem is not an interpretive or historical matter; it is explicit and current. It is also the symbol that has been the subject of the most legislative changes.⁴⁰ The most important adjustments have been the deletion of the stanzas that referred to Antonio López de Santa Anna (“the immortal warrior of Zempoala”, stanza IV) and Agustín of Iturbide (stanza VII), by laws and decrees of 1909, 1922 and 1942. The lyrics used to date were fixed by the National Emblem, Flag, and Anthem Act in 1983.

To compare what it said in 1853 and what the lyrics of the anthem now say, you can see the following table. It will be noted that out of the ten stanzas of the original version, only four remain, plus the chorus:

³⁹ See García Barragán’s remarkable essay, Elisa, “El escudo nacional: historia plástica de una consolidación”, in Galeana, Patricia (coord.), *México: patria e identidad*, Mexico, Archivo General de la Nación, 1995, pp. 17 and et seq.

⁴⁰ A documented history of the hymns and the changes that have been incorporated into the current anthem can be seen in Velazco, Jorge, “El himno nacional mexicano”, in Galeana, Patricia (coord.), *México: patria e identidad, cit.*, pp. 117 and et seq.

<i>Current text</i>	<i>Suppressed text</i>
<p>A memory for them of glory! For you, a laurel of victory! A tomb for them of honor!</p>	<p>Stanza VII</p> <p>If the warrior horn summons us to the fight against the enemy host, Mexicans, bravely follow the sacred flag of Iturbide. And the faithful bridles may be served by the defeated flags, the laurels of triumph shade the forehead of the brave champion.</p> <p>Stanza VIII</p> <p>The warrior returns haughtily to the homelands to sing his victory, showing the palms of glory that he knew how to conquer in the fight. His bloody laurels will turn into garlands of myrtles and roses, the love of daughters and wives also knows how to reward the brave.</p> <p>Stanza IX</p> <p>And he who to the blow of fiery shrapnel in the sakes of the country succumbs will obtain in reward a tomb where the light of glory shines. And the beloved emblem of Iguala with its linked bloody sword, of immortal laurel crowned, will form a cross from his grave.</p>

NOTE: The bolds, to highlight the verses of confessional content, are mine.

In addition to the strong warmongering tone, the anthem sung by millions of schoolchildren, and which for years has been part of the official protocol, makes senior officials and all Mexicans invoke the archangels and God in every civic ceremony. Even if it is a metaphor, the fact is that believers and non-believers are imposed a single text according to which the destiny of Mexico “was written by the finger of God.” This expression is sung at public events by the political leaders of a secular state.

It is not the only anthem with these characteristics. On the contrary, references to deities are common in numerous anthems, an example is the

British expression *God Save the Queen*, or *the King*, as it corresponds. However, in the United Kingdom it is the case that the supremacy of the State in relation to the Church occurs without there being a formal separation between one and the other.

In general, expressions of confessionalism do not have the same relevance in countries where there has not been such a marked fusion of ecclesiastical power and political power, as in the case of Spain and Mexico. In the United States, currency bills bear the legend *In God We Trust*, but the Constitution of that country never established a state religion, in contrast to the first Constitutions of Spanish and Latin America.

Secularization has been a sometimes-slow process; this despite societies and even the world as a whole retain elements of religious origin. This is the case of the measurement of time, which is still associated with religious criteria. In most of the world, the Christian (Gregorian) calendar is followed, and where it does not apply is due to the Buddhist calendar,⁴¹ the Hebrew calendar, the Islamic calendar or the Indian calendar, all of religious matrix.⁴² The French Revolution attempted the secularization of time, but its calendar was in force less than twelve years (1793 to 1805). Other means of measuring time have had greater fortune, as happened with the appearance of the public clocks from 1335, in Milan. Progressively in Europe, the witness of these clocks, mostly municipal, was spreading, which replaced the ringing of the parish bells as indicators of the time. Pocket watches contributed, since the seventeenth century, to civil rule in this matter.

Culture, therefore, accompanies and sometimes precedes legal and political decisions regarding the secularization of each society. It is possible that many symbols will remain unchanged despite their confessional origins, but their explanation must be oriented in a sense that allow us to understand the context of their origin and that of their new reality.

As for the anthem, Jorge Velazco says: “I don’t think the *Mexican National Anthem* should be changed. It would be so difficult to reach an agreement on the new anthem that we would have to begin again the arduous process of the nineteenth century, already overcome by the course of time and by the roots of the *Anthem* in the national consciousness”.⁴³ In general I share his opinion, but I also consider that if in the past it was possible to suppress the stanzas that compromised the interpretation of history with periods of

⁴¹ Mainly in Cambodia, Burma, Laos, Myanmar, Sri Lanka and Thailand.

⁴² In India the Gregorian is official, but for civil and religious purposes the Vedic calendars are still used.

⁴³ *Op. cit.*, p. 166.

dictatorship, should not be attempted at least to modify the expressions that impose, by law, a theological conception of the national history, which ostensibly contradicts the provisions of Article 40 of the Constitution since 2013?.

In terms of education, it is possible to explain historical processes to students, so that they understand the scope of the expressions and so that they notice that a secular State does not propose the exclusion of anyone, but the reasonable explanation of the norm and normality. The survival of accepted symbols must serve to consolidate the impartiality of the State, even in the face of the past, but it must be done explicitly, to avoid misunderstandings.

IV. THE UNIVERSITY SYMBOL: THE UNAM EMBLEM AND MOTTO

In addition to the national symbols, in the cultural order is very relevant that of the National Autonomous University of Mexico, for the influence that this institution has had and has in the life of the country, including the vigorous defense of secularism.

THE EMBLEM AND MOTTO OF UNAM ARE WELL KNOWN



Conceived and proposed by the rector José Vasconcelos, it was adopted by unanimous agreement of the Council of Education on April 27, 1921. The Resolution is as follows:

Considering that the National University is responsible for defining the characteristics of Mexican culture, and taking into account that in the present times a process is operated that tends to modify the system of organization of peoples, replacing the old nationalities, which are daughters of war and politics, with federations constituted on the basis of common blood and language, which goes according to the needs of the spirit, whose predominance is increasing every day in human life, and in order for Mexicans to bear in mind the need to merge their own homeland with the great Spanish-American homeland that will represent a new expression of human destinies, it is

resolved that the emblem of the National University will consist of the map of Latin America with the legend *The Spirt Shall Speak for my Race*; this motto identifies the conviction that our race will elaborate a culture of new trends, of spiritual and free essence. The emblem will be held by an eagle and a condor, all supported by an allegory of volcanoes and the Aztec nopal.

The emblem has hardly had a modification, post-1929, to add at its top the word “autonomous.” Apart from its aesthetic value, which includes the attractive ensemble of an eagle and a condor plus the volcanic landscape and the emblematic presence of a nopal plant, the striking thing is the motto that ornate the map of a Latin America that, only in stylized form, incorporates the images of Cuba, Dominican Republic, and Puerto Rico.

The intention of the emblem was defined and defended as follows by its author: “First, the emblem is a protest against that little longing that knelt the youth in what was called the altar of the Jacobin homeland. Altar without God and without saints”.⁴⁴

The expression “The Spirt Shall Speak for my Race” marks a significant contrast with the cosmopolitan and, above all, secular vocation of the University. Furthermore, at the time, it involved a deliberate divorce from the constitutional Article 3, which since 1917 provided for the secularity of the teaching given “in the official establishments of education”.

The meaning of the motto was explained by its author, who underlined its content of a catholic religious order. When Vasconcelos justified “the motives of the emblem”, he did so publicly and without ambiguity. For him, the National Preparatory School was nothing but “a bad replica of a North American Protestant High School”, to which the harmful ideas of “Spence-rian evolution, the scientism of Justo Sierra and the materialism of Compté” had contributed. In that vein, Vasconcelos argued that “the cradle and goal of every culture [is] the reflection of mankind and his destiny before God. It was indispensable to introduce into the soul of teaching the concept of religion, which is obligatory knowledge of all complete and great thought”.

It was for that reason that he employed the expression *spirit*. He even acknowledged that the use of that word was a *ploy* to mean “the presence of God,” “whose name forbids us to mention, within the official world, the Protestant Reformation, which has not yet been possible to take out of the Constitutions of 57 and 17. I know that there is no other valid spirit than

⁴⁴ For the following texts, see Vasconcelos, José, *En el ocaso de mi vida*, Mexico, Populibros La Prensa, 1957, pp. 123 et seq.

the Holy Spirit; but the word holy is another of the terms forbidden by the official lexicon of the Mexican”.

This thesis is reiterated when it alludes to “the doctrinal confusion of the Reformation” and when he explains that his objective was to underline “everything that we are for the spirit: the greatness of Isabella the Catholic, the Counter-reform of Philip II who saved us from Calvinism”.

The Vasconcelian argument leaves no room for secularism: “I wanted to give young people for goal, instead of the small homeland that liberalism left us, the great homeland of our continental kinships”. So that there was no doubt about his conservative orientation, he affirmed that “our race is expressed in the political doctrine of Lucas Alamán.” In addition, “I knew that a social movement alien to the religious sense of history could produce nothing but misery and tyranny”; “I spoke without reluctance of inspiring social movement in a Christian doctrinarism”; “There is, therefore, no duality between my frankly Christian position of that time, which is recorded in public statements that already at that time tore the partisan conventionalism, and my position now, which supports the need to channel social development within the strict norms of the Gospel interpreted by the Encyclicals”.

These ideas have an additional aspect in *La raza cósmica*, published in Spain in 1925. There, other complementary elements to understand the sense of *race*, appear. “In order not to ever have to deny the fatherland itself, it is necessary that we live according to the high interest of the race, ...internationalism would only serve to complete the triumph of the strongest nations”.⁴⁵ He calls himself Spanish (“we are Spanish by blood or culture”) and is pained by the “puerile satisfaction of creating little nations and sovereignties of principality”. That is why he said that “in the process of our ethnic mission, the war of emancipation means a dangerous crisis”.

On the issue of race, the former Secretary of Public Education affirmed that “the same pure Indians are Spanishized, they are Latinized,” and that “the people called Latin [are] faithful to the divine mission of America”. Regarding black people he pointed out their character “eager for sensual bliss, drunk with dances and unbridled lusts”. He also alluded to the “sickly Muslim sensuality” and the “Judaic stretch marks that hid in the Castilian blood”, he concluded that “misery makes people ugly”, and that in the future “it will look disgusting, it will seem like a crime, the everyday fact that

⁴⁵ For the following texts see Vasconcelos, José, *La raza cósmica*, Barcelona, Agencia Mundial de Librería, 1925, pp. 7 and et seq.

a mediocre couple boasts of having multiplied misery”. He even adds: “It is disgusting to look at those married couples who leave the courts or temples on a daily basis, ugly in a proportion, more or less, of ninety percent of the spouses”, and in this context “we see with deep horror the marriage of a black woman with a white man”.

As for reproduction, he indicates that “it has been done in the manner of the beasts” because “the spirit has not intervened in it”, but he trusts that “the black race, for example, could be redeemed, and little by little, by voluntary extinction, the ugliest lines will give way to the most beautiful. The inferior races, by being educated, would become less prolific”, with which we will reach the “ethnic improvement”.

To all the above, Vasconcelos added: “My scientific hatreds overflowed: I mocked Spencerian Darwinism by judging it as a zoological morality which must be overcome through the gifts of conscience and Christian revelation”.⁴⁶

As can be seen, the motifs of the emblem and the motto of the UNAM are inspired by a racist feeling, by the disdain for the non-Spanish, by the criticism of liberalism and the Reformation, by the adherence to the counter-reformation of the sixteenth century, by the rejection of the protestant presence in Mexico and in Catholic militancy. In other words, by the denial of what secularism implies.

Vasconcelos pointed to the very axis of the incipient secularism of the Mexican State. The Constitution of 1857 abolished the obligatory nature of the Catholic religion, and in Article 3 it was said: “Education must have freedom”. Queretaro’s letter added the idea of secularism. The university rector, then Minister of Education, did not surrender to the “confusion” of the Reformation, and imposed his religious and anti-scientific faith, and his ethnic convictions as the motto of the country’s main academic institution.

When the university motto was adopted in Mexico, as in many other countries, there was a racist discourse. In Germany, anti-Semitism thrived from the economic crisis of the twenties; in the United States unemployment curbed immigration, and in Latin America the Catholic Church objected to the reception of Jews. President Plutarco Elías Calles was enthusiastic about Jewish immigration,⁴⁷ but this policy did not last long either. At the dawn of the next decade, organizations such as the Comité Pro-Raza (1933) and the

⁴⁶ *Ibid.*, p. 179.

⁴⁷ Gleizer, Daniela, *El exilio incómodo. México y los refugiados judíos*, México, El Colegio de México-Universidad Metropolitana, 2012, p. 56.

Anti-Chinese and Anti-Jewish League (1935) appeared, which also forged a “new race” in Mexico.⁴⁸

Today the university motto is decontextualized in the discursive order and in the normative order. The country, its institutions and international treaties have made progress in proscribing discrimination, including ethnic factors, so that the reference to the cosmic race as a unifying element of the University is an anachronism that shows the extent to which a cultural tradition with confessional roots can be consolidated, even within one of the institutions that have most decisively contributed to secularism in the country.

Inertia is an ally of conservatism. In this case, it demonstrates its effectiveness because, in addition, to the validity of a conservative and confessional motto in a liberal and secular University, proposing its replacement would be considered a kind of cultural apostasy. It is not my intention to suggest this unviable change, but I am interested in highlighting the antinomy that is lived in an institution that values secularism so much and that contributes so much to its defense and consolidation in Mexico. Vasconcelos expressed himself determined to “introduce into the soul of teaching the concept of religion”, and he succeeded. In a few years the motto will reach its centenary, and even if the ethnic and religious concerns of the universities do not correspond to the Vasconcelian project, the words continue and are part of the daily life of an egalitarian and secular institution.

⁴⁸ The anti-China movement has been one of the harshest expressions of racism in Mexico in the twentieth century. See Valadés Galeana, Sofia, “China in Mexico. Percepciones encontradas”, *Ocho miradas al pasado*, Mexico, CIDE, 2003, pp. 181 and et seq.

V. CONCLUSION: THE POWER OF SYMBOLS

In the dimension of norms, it is common to confuse nominal changes with cultural changes, but a political decision of legal relevance is usually processed more quickly than a modification of cultural patterns.

The preservation of an intolerant order in Mexico, in 1824, clashed with the tendencies of a society whose intellectual leaders were in contact with the Enlightenment. Conversely, the reformist rupture undertaken by the liberals a few years later met with strong ecclesiastical resistance and religiosity that prevailed in a large sector of that same society.

What was not noticed was that those tensions between confessionalism and secularism arose as soon as the republic was adopted as a form of government. For several centuries religious argumentation was associated with the legitimization of medieval monarchies, and subsisted during a part of the Modern Age, because the Reformation of the sixteenth century was a movement against the papacy, but not the monarchy. That is why it contributed to the strengthening of this institution and influenced the course of absolutism.

The advent of the republic involved questioning the metaphysical legitimacy of the rulers. This situation had already been experienced by the medieval European republics, and that explains why in one of them, Florence, the doctrine of the modern state emerged, headed by Machiavelli. Something similar happened in the first modern European republics, in Holland and Switzerland, for example, and in the nascent Latin American republics generated a severe distortion of personal power.

While in Latin American republican systems metaphysical legitimacy could not be claimed in favor of presidents, the Catholic Church supported the discourse of *the common good* associated with the peace imposed by dictators. The legitimacy of the dictatorship was no longer based on a divine entrustment, but on the pacifying mission carried out by strong men, with the approval of the Church and with the corollary of religious intolerance. However, this argument could not prevent reforming ideas from gaining strength even under personalist governments.

The concepts of republic and democracy are not complementary. Experience shows the presence of democracy in monarchical systems and dictatorship in republican systems. What is associated with the idea of republic is that power does not depend on metaphysical decisions and, therefore, there is a symbiotic tendency between the republic and secularism.

This is a phenomenon that was recorded since ancient times, as shown by Varro. Although a small part of the prolific work of who was considered by Cicero as one of the sharpest intellects and the most learned character of his time remains,⁴⁹ it is known that one of Varro's contributions was to attribute to men the creation of the gods, and not viceversa.⁵⁰ Consequently, He distinguished human affairs from divine matters, and to give a conceptual explanation of that difference he identified the mythical, natural, and civil theologies.

According to Varro, mythical theology was a mere poetic fiction, and was intended for theater; the natural theology was incumbent upon philosophers to define the origin and functions of the gods, and civil theology concerned priests to decide the times, places, and forms of worship of deities.⁵¹ Because of this kind of argument, Augustine said that Varro was recognized as *secular* by Christians and as a *liberal* by pagans.⁵²

Varro indicated that in the Roman Republic the disastrous days were the fifty-eight annual days in which it was forbidden to exercise the right to form civil legal proceedings.⁵³ Outside that period, what prevailed was civil law. In this way the norms of the State and those derived from religion alternated in time, but they remained separated. This first conventional expression of secularity did not result in a space separation of areas of competence, but in the temporary separation of moments of validity.

The republic can only be secular because, whether democratic or not, the unction of power ceases to correspond to a metaphysical instance. In a republic, the separation between the political and religious orders is inevitable, in the same way that once such a separation occurs, the supremacy of

⁴⁹ *Cit.* by Augustine, *La ciudad de Dios*, VI, 2; in addition, Cicero devotes to Varro an important part of his *Disertaciones académicas* (I, 1 and ff.), in which he alludes to the dazzling culture of Varro. For his part, Quintilian he was not far behind in recognitions, and refers to Varro as a Roman sage (*vir romanorum eruditissimus*). See *Instituciones oratorias*, X, 95.

⁵⁰ Augustine, *op. cit.*, VI. 4.

⁵¹ *Ibid.*, VI. 5.

⁵² *Ibid.*, VI. 2. Textualmente decía: “Qui tametsi minus est suavis eloquio, doctrina tamen atque sententiis ita refertus est, ut in omni eruditione, quam nos saecularem, illi autem liberalem uocant”. The transcription of this text is due to the interest of seeing how in the fifth century *secular* and *liberal* voices were already used as synonyms.

⁵³ *La lengua latina*, VI. 30.

the State is a direct and immediate consequence. By definition, the only possible normative system in a State is that of the State itself, so it cannot even be assumed that once the Church, with its religious dogma, ceases to be part of the structure of power, it can retain some form of *independence* from the State. Not even the appearance of the Vatican State has prevented this relationship of subordination, because although international relations occur between equals, as far as the internal regime of each State is concerned relations with its inhabitants are binding on state law, even if a part of the same order appears in the treaties, since the latter are binding by the sovereign decision of the State that subscribes to them.

However, beyond the order it is possible that there are still cultural expressions associated with the confessionalism. This is inevitable because culture is an assembly of norms, customs, traditions, representations, beliefs, practices, expectations, and aspirations, which are part of the collective and individual life of the members of a State. In this sense, the culture to which I refer is not only a past form, because this would make it static and conservative. In the constitutional dimension, culture is dynamic and constructive; that is why it links ingredients from the past with what each community foresees and desires towards the future.

Language, the measurement of time and many forms of individual and collective relationship are permeated by elements from religions, which cannot be changed by the action of the norm. In these cases what counts is to strip those elements of culture of their religious sense and give them only the conventional and practical relevance they have in a secular stage of institutional and social history.

It is one thing for the confessional elements and symbols to subsist inadvertently and for their semiotic scopes to be projected into collective life, without their effects being noticed because they are not made up of their meaning or that they can continue to encourage the confessional impulses of a social sector. This oversight exposes the regulatory system to suffer falls, such as the one that occurred in Mexico in 2009, with local constitutional reforms adverse to women's sexual and reproductive rights. It is quite another thing to preserve religious symbols, but with full knowledge of their implications and taking steps to explain the new context in which they function.

The French Revolution tried to change the calendar without achieving it. The cultural fact is that today the world measures time from the hypothetical date of Jesus' birth.⁵⁴ The striking thing is that the Catholic Church

⁵⁴ Most experts agree on the historical authenticity of Jesus, but there are discrepancies regarding the year and day of his birth.

itself could not change traditions even older than itself, so that the adoption of December 25 as the conventional date to celebrate the birth of Jesus was a transaction before the previous tradition of Mithraism.⁵⁵

The language is also imbued with the various religious traditions, including those that have fallen into disuse, and many of which are considered pagan by the Catholic Church. *Inaugurate*, for example, is a verb widely used in all Romance languages and in some Anglo-Saxon languages; the word corresponds to a pre-Christian rite celebrated by the augurs to invoke and receive the approval of the gods.⁵⁶

In the cultural order it is not possible to replace certain elements that have been integrated into normality, but it is desirable and possible that some of these data of culture, especially those that have been adopted by the norm and by custom as *symbols*, are the object of explanation and nuances. For this reason, it is important that in educational tasks is considered that the secular State remains impartial in the face of the metaphysical phenomenon, and that the express references to religious symbols must be accompanied by an explanation related to the time when these symbols were built.

The above is particularly relevant as far as the anthem is concerned, for the reasons already given in the corresponding section, since the meaning of the flag can also be explained from a republican and secular perspective, and the case of the emblem can be attributed, as it was, to a colonial legend, and not to a historical fact. The case of the university motto is more complicated, because they confessional and racist elements are interwoven.

In this study I have been interested in emphasizing that the construction of a secular State is a task that commands constant application, and that it is necessary to attend to the norm, but without neglecting normality. In this normality there are many elements that qualify the effects of the rules. The rationality of right coexists with other realities. I do not postulate to give in to these “other realities”, but to take them into account and know that the path that demands their transformation may involve a prolonged effort. In

⁵⁵ The date of Jesus birth has not been established historically. Most calculations place it in the years 7/6 BC, and December 25 was determined in the fifth century for practical reasons given the popularity of Mithraism. See Baldovin, John F., “Christmas”; O’Collins, Gerald, “Jesus”, and Gnoli, Gherardo, “Mithraism”, in Eliade, Mircea (ed.), *The Encyclopedia of Religion*, New York, MacMillan, 1995, vol. 3, pp. 460 et seq.; vol. 8, pp. 15 et seq. and vol. 9, pp. 580 et seq., respectively. Hermann Usener indicates that, in addition to December 25, other dates intended for the worship of ancient deities were used in Catholic sainthood during the Middle Ages. Eliade, Mircea, *op. cit.*, vol. 15, p. 153.

⁵⁶ According to Cicero, The two great legacies of Romulus were the establishment of the senate and the establishment of the auspices through the augurs of each of the original tribes. *Las Leyes*, II, 9.

this process it can be very useful to return to Ernst Cassirer and look in *The Myth of the State* for some of the keys that help us on the journey, especially when he alerts us about the misunderstanding that “while the intellectual, ethical and artistic forces are in fullness, the myth is tamed and subjected, but as soon as they begin to lose their energy, chaos comes again.”

That is why I was interested in presenting the reading of a secularism built in differentiated historical sections, sometimes by own impulse and sometimes as a response to regressions. The most recent case is represented by the constitutional reforms introduced to the Constitutions of eighteen states of the Federation, imposing confessional criteria to restrict the sexual and reproductive rights of women. Faced with this confessional onslaught, there was a new affirmation of secularism with the proposals for reforms to Articles 24 and 40 of the Constitution. It is not, of course, the last stage; is just one more in the construction of secular rationality which characterizes modern constitutional democracy.

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