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SYMPOSIUM: PUBLIC LAW AND THE NEW POPULISM

Mariana Díaz Chalela

Religious Symbols and New Populist Movements in the Colombian Constitutional Court

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RELIGIOUS SYMBOLS AND NEW POPULIST MOVEMENTS IN THE COLOMBIAN CONSTITUTIONAL COURT

Mariana Díaz Chalela¹

Abstract:

The Colombian Constitutional Court, when facing cases regarding the presence of religious symbols in public spaces or the use of public funds for religious celebrations, has followed the European Court of Human Rights and has adopted a distinction between passive and active symbols. This paper will argue that the Court, when defining what it considers as a passive symbol, has followed a new set of right wing religious populist movement. Even though the religious symbolism debate is not the most well-known, it illustrates the impact far-right populism has had in shaping the current constitutional jurisprudence in Colombia. Furthermore, it sheds light on what future debates on the protection of minority rights might look like in the Colombian context.

¹ Managing editor of the Latin American Law Review at Universidad de los Andes.
Contact: m.diaz230@uniandes.edu.co. I benefited from valuable feedback on earlier versions of this paper when it was presented at the ICON/NYU workshop 'Public Law and the New Populism'.

I. Introduction

Defining the relationship between religion and State has been a long-lasting challenge for the Colombian Constitutional Court. Cases regarding the presence of religious symbols on State buildings, and the use of public funds for religious celebrations have recently been important issues for the Court to define the Colombian State as a secular one. With the definition of a secular State came the distinction between religious and secular symbols. This distinction, and especially what is considered as a passive symbol, recently changed the way the Court has understood secularism.

This paper intends to present the most recent cases regarding religious symbols on State buildings and the use of public funds for religious celebrations, in order to argue that the Colombian Constitutional Court has adopted arguments coming from far-right religious populist movements. First, this paper will explore Constitutional Court cases regarding religious symbols and celebrations. Second, it will touch upon far-right religious populist movements in Colombia and their influence within the Constitutional Court jurisprudence. Finally, it will explore how the Court and these new populist movements have aligned themselves on this particular issue.

Religious symbolism has been a long-lasting challenge among secular constitutional democracies. Religion plays an important role in cultural identity; however, secularism has become a landmark among the liberal understanding of a democratic State.² In Colombia the 1991 Constitution, specifically article 19, established freedom of religion and equality among religions and churches. Although article 19 is far from an establishment clause, the Colombian Constitutional Court has understood it as such. According to the Court, the Constitution excludes any kind of religious association to the State, and imposes equal treatment among religions.³ As far as secularism goes, the Court, reviewing the Constitutional Assembly discussions, has determined that the

² For a critical perspective on the relationship between secularism and liberal democracies see: Veit Bader, "Religious Pluralism: Secularism or Priority for Democracy?," *Political Theory* 27, no. 5 (1999): 597–633.

³ The Constitutional Court in this ruling recounts the debates about the preamble that took place during the Constitutional Assembly. Colombian Constitutional Court, C-350/94 (August 4, 1994).

purpose of article 19 is to establish a secular state.⁴ However, during the last few years, the constitutional interpretation of article 19 has changed, bending the strong secularism set forth by the Court in its earlier decisions.

II. The Colombian Constitutional Court and religious symbols

Cases regarding religious symbols come in all shapes and sizes. From 1993 until 2014, the Colombian Constitutional Court decided on cases regarding religious holidays⁵, the commendation of the State to the Sacred Heart of Jesus⁶, and the declaration of different cities as sanctuaries⁷. One of the first debates on this issue was when the Court decided whether it was constitutional for the preamble to call upon God's protection. The issue of God in the preamble was part of the Constitutional Assembly debates, where it was decided to mention God within the preamble but understand it as general call upon any God.⁸ It was a way of signaling a separation from Catholicism (present in the previous constitution), but keep the relationship to God within the constitutional discourse.⁹ The debate about the preamble was just the beginning of a long list of cases that have shaped the meaning of 'secular' within the Colombian constitutional context.

Moreover, the theoretical framework used the Court to decide these cases can be traced back to the European Court of Human Rights (ECHR) and the United States Supreme Court (US Supreme Court). In this section I will do a brief analysis of the European and American jurisprudence on the issue to later see how the Colombian Constitutional Court has integrated this rationale. Finally I will analyze the Colombian

⁴ Colombian Constitutional Court, C-350/94

⁵ Colombian Constitutional Court, C-568/93 (December 9, 1993).

⁶ Colombian Constitutional Court, C-350/94.

⁷ See: Colombian Constitutional Court, C-766/10 (September 22, 2010). and Colombian Constitutional Court, C-817/11 (November 1, 2011).

⁸ Colombian Constitutional Court, C-350/94

⁹ Jorge González Jácome, "La Ambigua Presencia Del Catolicismo En La Discusión Constitucional Colombiana: Una Relectura de Los 'Logros' de La Asamblea Nacional Constituyente," in *Espacios Secularizados, Espacios Religiosos: Europa e Iberoamérica. Percepciones, Complementaciones y Diferencias*. (Madrid: Tirant lo Blanch, 2017).

case law regarding religious symbols in public spaces and the use of public funds for religious celebrations.

In the European and the American contexts, religious symbols are categorized between passive and active. In Europe, the ECHR has used this distinction in the debate around the prohibition of the headscarf in France, Switzerland, and Turkey; and the presence of crucifixes in public schools in Italy. On the other hand, the US Supreme Court has mostly decided public displays of religious symbols in state buildings.

In the European context, the ECHR has allowed states to ban headscarves in public schools¹⁰, universities¹¹, and hospitals.¹² Despite allowing these prohibitions, the ECHR has been far more lenient on the presence of Christian symbols in public spaces. In *Lautsi vs. Italy* the Court found that crucifixes in Italian public schools did not amount to a breach of article 9 of the European Convention, and did not imply a lack of secularism from the Italian State.¹³ This judgment is especially important since it highlights the passive nature of the crucifix: “a crucifix on a wall is an essentially passive symbol and this point is of importance in the Court's view, particularly having regard to the principle of neutrality [...]. It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities”¹⁴.

Judge Bonello in his concurring opinion, further explained why the crucifixes did not imply a State association with a religion:

Seen in the light of the historical roots of the presence of the crucifix in Italian schools, removing it from where it has quietly and passively been for centuries, would hardly have been a manifestation of neutrality by the State. Its removal would have been a positive and aggressive espousal of agnosticism or of secularism – and consequently anything but neutral. Keeping a symbol where it

¹⁰ See: European Court of Human Rights, *DOGRU v. FRANCE* (December 4, 2008).

¹¹ See: European Court of Human Rights (Grand Chamber), *LEYLA ŞAHİN v. TURKEY* (November 10, 2005).

¹² See: European Court of Human Rights, *EBRAHIMIAN c. FRANCE* (November 26, 2015).

¹³ European Court of Human Rights (Grand Chamber), *LAUTSI AND OTHERS v. ITALY* (March 18, 2011).

¹⁴ European Court of Human Rights (Grand Chamber). *LAUTSI AND OTHERS v. ITALY*

has always been is no act of intolerance by believers or cultural traditionalists. Dislodging it would be an act of intolerance by agnostics and secularists.¹⁵

The ECHR jurisprudence on religious freedom has brought back the debate over Islam vs. Christianity and how secularism and pluralism are perceived according to occidental standards. Some authors have even suggested that Islam has replaced the ghost of communism and has become the post-Cold War enemy:

I tentatively try to suggest, the European court headscarf cases actually owe part of their doctrinal rationale and perhaps their exclusionary implications not to the secularist associations of religious freedom but to the legacy of the religious struggle against communism once feared as secularism incarnate. The Muslim has taken the place of the communist in the contemporary European imagination—and above all in the history of the norm of religious liberty.¹⁶

Most of the European analysis has been around the different arguments used by ECHR and how they correlate to the religion being assessed. This reasoning is similar to the one adopted by Colombian Court when deciding over the catholic holidays and will also be present in the cases regarding religion in public spaces.

The Colombian Court has followed the ECHR, however the underlying conflict isn't the same. In the European context, the conflict is one of assuming a common set of values, stemming from a Christian conception of the European project, and considering Islam as opposed to said set of shared values. In this sense, the European problem became one of majority symbols versus minority ones:

The primary argument for legitimizing the display of majority symbols is that they represent cultural values that are universally shared by the citizenry, despite the presence within it of individuals and groups who do not belong to the majority denomination. Upon closer analysis, however, the imposition of

¹⁵ European Court of Human Rights (Grand Chamber). LAUTSI AND OTHERS v. ITALY

¹⁶ Samuel Moyn, "Religious Freedom and the Fate of Secularism," in *Religion, Secularism, and Constitutional Democracy* (Columbia University Press, 2016), 30, <http://www.jstor.org.ezproxy.uniandes.edu.co:8080/stable/10.7312/cohe16870.4>.

majority symbols, such as the crucifix, in the public sphere is also structured by courts and legislators as a reaction against Islam cast as “the other”.¹⁷

The issue with the conception of ‘the other’ in the European sphere is clear. However, in the Colombian context, where around 92% of the country is Catholic and where all cases have been about catholic symbols, the issue of “the other” is not particularly clear. The idea of fighting “the other” as a way of explaining the protection of Catholic symbols in the Colombian context is explained by orthodox Catholics and Protestants as a backlash to the imposition of a secular State. New religious political movements (which will be discussed further in this paper) have united against the notion of a secular State and consider secularism as an imposition of ‘the liberals’ and the ‘activist’ Constitutional Court.

The US experience offers a more similar context, while maintaining the same theoretical approach. For the US Supreme Court, cases have largely been about Christian symbols in government spaces. In *Salazar v. Buono* the Supreme Court had the opportunity to decide about a crucifix installed in a national park as a veteran memorial.¹⁸ The merits of the case weren’t decided due to procedural and jurisdiction issues, yet the opinions presented by the judges allow for interpretation on what the Court thought was the nature of the crucifix. Judge Kennedy, in the majority opinion, highlights the different meaning a cross can have: “a Latin cross is not merely a reaffirmation of Christian beliefs [but] a symbol often used to honor and respect those whose heroic acts, noble contributions and patient striving help secure an honored place in history for this Nation and its people.”¹⁹ With this consideration, the Court diminishes the significance of the cross as a religious symbol, giving it nation-building significance and a secular understanding.

¹⁷ Susanna Mancini, “The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence,” *Cardozo Law Review* 30, no. 6 (2009): 2664.

¹⁸ United States Supreme Court, *Salazar v. Buono* (April 28, 2010).

¹⁹ United States Supreme Court, 559 U.S. 700.

The US debate on the constitutional interpretation of the *Establishment Clause* is especially concerned on how arguing for a symbol to be considered as secular implies denying said symbol of its religious identity:

Stanley Fish captured this growing concern in a recent New York Times editorial: –It is one of the ironies of the sequence of cases dealing with religious symbols on public land that those who argue for their lawful presence must first deny them the significance that provokes the desire to put them there in the first place. Indeed, in this particular oral argument a visibly angry Justice Scalia scolded Peter Eliasberg for suggesting that the Latin cross is, in fact, a Christian symbol.²⁰

Furthermore, the idea of secularizing religious symbols can also, in the long-term, work against those who argue in favor of religion in the public sphere since all of the symbols that constituted representations of a religious shared identity, have now been judicially deprived of any religious meaning.²¹

Judicial denial of obvious confessional meaning and invention of substitute secular meanings for confessional symbols betrays a cultural schizophrenia: majoritarian religions rail against the secularization of culture and its subversion of belief, yet they insist that their confessional symbols remain at home in this culture.²²

The tension in both the European and the American cases can be translated into the Colombian case law. In 1993 the Colombian Constitutional Court decided whether it was constitutional for certain catholic holidays to be official national holidays. This is the first case where the Court differentiates between passive and active religious symbols. The Court considered that although these holidays had a religious background, with time they became secular holidays intended for workers to rest.²³ With this argument,

²⁰ Ian Bartrum, “Salazar v. Buono: Sacred Symbolism and the Secular State,” *Northwestern University Law Review* 105 (2010): 39.

²¹ Bartrum, 40.

²² Frederick Mark Gedicks and Pasquale Annicchino, “Cross, Crucifix, Culture: An Approach to the Constitutional Meaning of Confessional Symbols,” *First Amendment Law Review* 13 (January 29, 2015): 103.

²³ Colombian Constitutional Court, C-568/93.

the Court states that Catholicism shouldn't have a special status, however it ends up considering these holidays entrenched within the Colombian culture.²⁴

Following the 1993 ruling, the Court decided on the consecration of the State to the Sacred Heart of Jesus. In ruling C-350/94 the Court decided the consecration was unconstitutional. In this ruling, the Court set out the argument for a strong secular State that could not favor any religion and could not have religious symbols associated with it.²⁵ Cases from 1994 to 2014 followed the argument made in the C-350/94 ruling. Within these cases, the Court also consolidated the theoretical division between passive and active symbols. According to the Court, an active symbol has a close connection to a particular religion and cannot be a part of a secular State; in contrast, a passive symbol can be understood in a secular way, which meant it could be associated with the State.

In 2014, the Court implemented the reasoning used to allow catholic holidays when deciding whether a new Colombian saint, Madre Laura, could be honored by the Colombian State, have a national holiday, and be considered a patron saint of the magisterium. The Court decided to allow Madre Laura to be honored by the State and have a national holiday, but not to be considered a patron saint of the magisterium. In the ruling, the Court highlights the secular understanding of Madre Laura, especially (and ironically) with her work in the evangelization of indigenous communities.²⁶ Her work as an educator, albeit a religious one, is a big part of why the Court believed the celebration of Madre Laura could be understood in a secular way, and why her holiday was declared constitutional. However, when it reaches the idea of patron saint, it considers that to be an exclusively catholic expression and declares the patronage unconstitutional. The Madre Laura decision marks a turning point on the Courts' understanding of secularism. The cases and decisions highlighted in the following two sections show how the strong secular understanding of State, a legacy of at least 10 years of constitutional interpretation, has eroded.

²⁴ González Jácome, "La Ambigua Presencia Del Catolicismo En La Discusión Constitucional Colombiana: Una Relectura de Los 'Logros' de La Asamblea Nacional Constituyente."

²⁵ Colombian Constitutional Court, C-350/94.

²⁶ Colombian Constitutional Court, C-948/14 (December 3, 2015).

The issue of religious symbols in public spaces

The debate over crucifixes in government buildings has been a personal one to the Constitutional Court. There isn't an actual case decided by the Court, however in 2016, the Court received a letter of inquiry from one of its employees requesting for the crucifix placed on the Grand Chamber room to be removed. According to the petitioner, the crucifix interfered with the rights of the employees who professed a religion different from Catholicism.²⁷ The issue gained a considerable amount of public support, with small protesters gathering outside of the Court in order to support the petition.²⁸ Although the response given by the Court isn't a ruling, there was a Grand Chamber meeting and vote in order to decide on the fate of the crucifix. With six votes in favor of keeping the crucifix and three against, the Court decided to keep the crucifix arguing that maintaining it was a defense of pluralism.²⁹

The official response wasn't particularly illuminating on how the Court viewed the crucifix, nevertheless within a week of the decision, the President of the Court Justice Calle, gave an interview explaining the reasoning behind the majority vote. According to Justice Calle, the crucifix is placed on a private room (only certain employees are allowed in the Grand Chamber room) and not in a public space. Furthermore, she argued that the crucifix had an historic and cultural value since it had been there since the first session of the Court and was commissioned from a local artisan.³⁰ Moreover, according to Justice Calle, the crucifix did not imply that the Court had affiliated itself with a particular religion and even invited Justices of different faiths to suggest other symbols to be installed in the room.³¹

²⁷ El Espectador, "La Corte Constitucional y Su Crucifijo," *ELESPECTADOR.COM*, May 20, 2016, <http://www.elespectador.com/opinion/editorial/corte-constitucional-y-su-crucifijo-articulo-633422>.

²⁸ RCN, "Manifestaciones Ante La Corte Constitucional Para Quitar El Crucifijo En Sala Plena," *RCN Radio*, June 30, 2016, <http://www.rcnradio.com/nacional/manifestaciones-ante-la-corte-constitucional-quitar-crucifijo-sala-plena/>.

²⁹ El Espectador, "Corte Constitucional Negó Petición Para Retirar Cristo En La Sala Plena," *ELESPECTADOR.COM*, May 19, 2016, <http://www.elespectador.com/noticias/judicial/corte-constitucional-nego-peticion-retirar-cristo-sala-articulo-633130>.

³⁰ El Espectador, "Cristo En La Sala Plena de La Corte Constitucional 'Tiene Un Valor Histórico,'" *ELESPECTADOR.COM*, May 23, 2016, <http://www.elespectador.com/noticias/judicial/cristo-sala-plena-de-corte-constitucional-tiene-un-valor-articulo-633868>.

³¹ El Espectador. "Cristo En La Sala Plena de la Corte Constitucional 'Tiene un valor histórico'"

Although there hasn't been a ruling on the issue, the inquiry over the crucifix in the Grand Chamber gave the Court the opportunity to weigh in on the understanding of the crucifix as a religious symbol. The result is to consider the crucifix as a historical and cultural manifestation of the Courts' identity and interpret it as secular symbol. The reasoning used by the Court closely resembles the one used by ECHR in the *Lautsi* case.

Using public funds for religious celebrations

The most recent debate on the issue of religion and the Colombian State has been the use of public funds for religious celebrations. This debate has mostly been around the Holy Week. While the Holy Week isn't the same kind of symbol as the crucifix, it still represents a particular religion and has been subject to a similar reasoning as religious images. There have been three cases regarding this issue: the Holy Weeks of Pamplona, Tunja, and Popayán. All of these towns are well known for their catholic affiliation and in all three cases there was law declaring the Holy Week cultural heritage and allowing local governments to assign public funds to their celebration.

The first case to reach the Court was regarding the Holy Week of Pamplona. Law 1645 of 2013 allowed the local government to assign funds to promote and protect the Holy Week celebrations. The Court established that although the Law had a legitimate purpose, mainly to promote tourism, it had a religious content that contradicted article 19 of the Colombian Constitution since it favored an exclusively catholic ritual.³² Justices Calle and Mendonza had a dissenting opinion: they considered the majority of the Court did not value the secular and cultural aim of the law, which was in accordance with article 19.

Following this case, a claim was brought to the Court regarding Law 1767 of 2015 which declared the celebrations of the Holy Week in Tunja part of the Colombian cultural heritage. The content of this Law is almost identical to the one regarding the

³² Colombian Constitutional Court, C-224/16 (May 4, 2016).

Holy Week of Pamplona, but the Court reached a completely opposite decision. It considered: (i) that the Holy Week was an important part of the history of the municipality; (ii) that the aim of the Law was not to favor a specific religion but to strengthen and protect cultural and social practices; and (iii) that the Law explicitly referred to the promotion of tourism as its main purpose.³³ Justices Palacio and Rojas made dissenting opinions since they considered the Law implied that the Colombian State was associating itself with a particular religion, and that the Court had also established a line of reasoning when ruling over the Pamplona Holy week and had no reason to change course.

Finally, the Court received a claim against Law 891 of 2004, which declared the celebration of the Holy Week in Popayán a part of the Colombian cultural heritage. Holy Week celebrations in this city are probably the biggest in the country and vary from processions to religious music festivals. In order to decide this case, the Court held a public hearing where the government, constitutional experts, and religious associations had the opportunity to express their opinions on the issue.³⁴ For example, the representative of the Junta Permanente Pro Semana Santa (the entity receiving the public funds to plan the celebrations) argued that during this week the municipality gained around 9 million USD while the State only gave 100,000 USD to fund the celebrations. He also highlighted the community involvement as well as the participation of public servants in the processions.³⁵ For this organization, the involvement of the Mayor and the Police within the celebrations are an expression of how a religious practice has become entrenched in the town's culture.

During the hearing, some experts argued that it was impossible for the Court to draw the line among the secular and the religious. For them, symbols that were now

³³ Colombian Constitutional Court, C-441/16 (August 17, 2016).

³⁴ Colombian Constitutional Court, A-397/16 (August 31, 2016).

³⁵ Felipe Velasco Melo also highlighted that the celebrations were intended for the entire population regardless of the religion they practiced. This was expressed during the public hearing that took place September 26, 2016 at the Colombian Constitutional Court.

considered secular, such as the Christmas tree, would have to be reevaluated if the Court refused to understand cultural entrenchment as secularizing practice.³⁶

The Court followed the line of the Tunja ruling and declared Popayán's Holy Week celebrations constitutional. For the Court, Law 891 of 2004 had the secular purpose of protecting a celebration that was part of Popayán's cultural identity and that has clearly secular elements such as the religious music festival.³⁷ According to the Court, the Law had a direct impact on a particular religion, Catholicism, however said impact isn't the main aim of the legislation. For the Court, the main impact of the Law was the protection of a cultural heritage, which no longer had a religious nature. Furthermore, in the Court's understanding, the remote historical religious origins of the celebrations had no bearing on their current cultural understanding.³⁸

During the past year, the Court has decided several more cases regarding the use of public funds for religious celebrations, reaching the same decision as the Popayán Holy Week case. In a case deciding the constitutionality of a law allowing State funding for the 'Saint Peter's Festival', the Court declared the constitutionality of the provision following the guidelines of the Popayán case. It also argued that the only religious part of the law was the 'coincidence' of the festival's name and the name of a Catholic saint. For the Court, it was also a 'coincidence' that the festival took place on the same day as the Catholic celebration of Saint Peter.³⁹ This reasoning was also followed by decision C-111/17 that decided on the constitutionality of the Saint Francis festivities in Quibdó, Chocó. The Court noted that these celebrations had a positive economic impact on vulnerable populations. Furthermore, it considered that these funding could be given to other religious celebrations, as well as non-religious cultural celebrations, which meant that it did not constitute a State association with a particular religion.⁴⁰

³⁶ This was expressed by Professor Gustavo Wilches Chaux during the public hearing that took place September 26, 2016 at the Colombian Constitutional Court.

³⁷ Colombian Constitutional Court, C-567/16 (October 19, 2016).

³⁸ Colombian Constitutional Court., C-567/16

³⁹ Colombian Constitutional Court, C-288/17 (May 3, 2017).

⁴⁰ Colombian Constitutional Court, C-111/17 (February 22, 2017).

Even though the cases mentioned here do not constitute the entire case law on religious freedom in Colombia, they do show the tension between a strong secularism and a presence of religion in public spaces. Although this debate might not be the most well known, it does illustrate a clash of political interests that has slowly reached the Court. My argument is that, the way the Court has integrated religious symbols into public life in Colombia is by integrating the political discourse of a new far right wave of populism.

III. The argument from the far-right populist movements

Right-wing populism in Colombia hasn't been the subject of extensive academic research. Most of what has been done has revolved around Alvaro Uribe and whether his political project is a populist one. Some authors have argued that Uribe's political movement united social sectors around a strong military platform against the FARC guerrilla.⁴¹ According to these authors, Uribe's followers rally behind a competent military leader that promises an end to guerrilla violence.⁴² On the other side of the spectrum, some authors have argued that Uribe's success was not a part of a neopopulist project but a combination of different political strategies that have been a part of Colombian politics since the 1950s.⁴³ Some have even questioned his ability to cultivate the support of the 'masses'.⁴⁴ It is worth noting that most of this research was done before Uribe completed his 8 years as president, became a senator and started his own political party, which now holds 39 seats in Congress.

Although Uribe might be the closest example of right-wing populism in the twenty-first century in Colombia, I would like to argue there is a new set of far-right populist

⁴¹ Cristina de la Torre, *Álvaro Uribe o el neopopulismo en Colombia* (La Carreta, 2005).

⁴² Luis Guillermo Patiño and Porfirio Cardona, "El Neopopulismo: Una Aproximación Al Caso Colombiano y Venezolano," *Estudios Políticos*, no. 34 (2009).

⁴³ Carolina Galindo Hernández, "Neopopulismo En Colombia: El Caso Del Gobierno de Álvaro Uribe Vélez," *Iconos. Revista de Ciencias Sociales*, no. 27 (2007).

⁴⁴ "Uribe's method of winning the presidency did not constitute a significant departure from previous practice in Colombia's system of fragmented political parties. His personality lacks a strong charismatic aura. More significantly, Uribe made no concerted effort to cultivate political support among the masses." John C. Dugas, "The Emergence of Neopopulism in Colombia? The Case of Alvaro Uribe," *Third World Quarterly* 24, no. 6 (2003): 1117–36, <https://doi.org/10.1080/01436590310001630099>.

movements who are just beginning to play a part in the political spectrum. For the purpose of this paper I will understand populism as

[A]n anti-status quo discourse that simplifies the political space by symbolically dividing society between 'the people' (as the 'underdogs') and its '*other*'. Needless to say, the identity of both 'the people' and '*the other*' are political constructs, symbolically constituted through the relation of antagonism, rather than sociological categories.⁴⁵

Furthermore, contemporary right wing populism in Colombia has the special characteristic of rejecting liberal values that were thought to be part of the 1991 constitutional consensus. In this sense, right-wing populist movements also argue for the exclusive moral representation of 'the people'.⁴⁶ For authors like Chantal Mouffe, the idea that there was a complete consensus on liberal ideology and values is partially to blame for the rise of antagonist right-wing populist movements.⁴⁷ According to Mouffe, there is

A void which is currently occupied by right-wing populist demagogues who, by articulating a diversity of fears and resentments, have been able to constitute a new form of us/them opposition through a populist discourse in which 'the people' is constituted on the basis of a chain of equivalences between all those who are, in one way or another, presented as being oppressed by the 'power bloc' constituted by the political elites, the bureaucracy and the intelligentsia.⁴⁸

I would like to argue that there is a religious far-right populist movement, slowly growing in Colombia, head by strong, religious leaders. These movements rally behind a political project that vindicates a certain relationship between religion and State. Although their project might not be around an official affiliation to certain religion, they

⁴⁵ Francisco Panizza, "Populism and the Mirror of Democracy: Introduction," in *Populism and the Mirror of Democracy*, ed. Francisco Panizza (London ; New York, NY: Verso, 2005), 3.

⁴⁶ For more on the populist claims of moral representation see: Jan-Werner Müller, *What Is Populism?* (Philadelphia: University of Pennsylvania Press, 2016).

⁴⁷ Chantal Mouffe, "The 'End of Politics' and the Challenge of Right-Wing Populism," in *Populism and the Mirror of Democracy*, ed. Francisco Panizza (London ; New York, NY: Verso, 2005), 51.

⁴⁸ Mouffe, 69.

do believe in certain moral and Christian values that should guide State action.⁴⁹ These groups vary in religious affiliation, ranging from orthodox Catholics to Evangelicals, but have aligned themselves around the revival of Christian values, especially regarding family and gender issues. Moreover, these new populist groups have now a strong presence in Congress, have won regional elections, and are a strong electorate for the 2018 presidential race.⁵⁰

Although leadership in these movements is diffuse, on the Catholic side, one of its main leaders is Alejandro Ordóñez. Ordóñez was the head of the Office of the Inspector General⁵¹ from 2009 until 2016, when the highest administrative Court, the State Council (Consejo de Estado) removed him from office. According to the ruling, the senators who elected him were not allowed to vote since Ordóñez had elected their family members to the Inspector General's Office.⁵²

Even though he was removed from Office, Ordóñez is still a prominent political leader and is now running for the 2018 presidential elections. He is also separating himself from the traditional conservative party, and running a nonpartisan popular campaign.⁵³ Furthermore, an interesting feature of what I would like to call the new far-right religious populist movement is the alliance between Catholic and Protestant political movements. With a platform around family values, distrust for the peace agreement reached with the FARC, the failure of partisan politics, and a return to moral values through a Constitutional Assembly, Ordóñez and the religious political right are calling upon Protestant conservatives that don't identify themselves with traditional

⁴⁹ For a case study on the growth of these religious movements in Bogotá, see: Rolando Andrés López, "Análisis sobre el movimiento político-religioso MIRA y su crecimiento en Bogotá" (Pontificia Universidad Javeriana, 2011).

⁵⁰ *Semana*, "La Apretada Disputa Por Los Votos Creyentes," *Semana.com*, July 14, 2017, <http://www.semana.com/nacion/articulo/elecciones-2018-el-urbismo-ordonez-y-viviane-morales-se-pelean-los-votos-cristianos/532611>.

⁵¹ In Colombia, the Inspector General is in charge of disciplinary actions against public servants, the protection of human rights and of public interest through the participation criminal and constitutional proceedings.

⁵² Consejo de Estado (Sala Plena de lo Contencioso Administrativo), Rad. 11001-03-28-000-2013-00011-00 (September 7, 2016).

⁵³ *El Espectador*, "El Exprocurador Inscribió El Comité Ciudadano Que Respaldará Su Candidatura Presidencial. El Pastor David Name Orozco Será Su Vicepresidente.," *ELESPECTADOR.COM*, June 22, 2017, <http://www.semana.com/nacion/articulo/ordones-se-lanza-a-la-presidencia/529475>.

conservative elites (mostly composed of Catholics). His pick for vice-president is even a Protestant pastor. He strongly rejects the liberal values he considers were imposed by the 1991 Constitution and believe they don't represent the popular will.

This political platform has received a considerable amount of popular support. During 2016, Ordóñez championed several protests against what he calls "gender ideology". On the one hand, while he was the Inspector General, he spoke strongly against a policy implemented by the Ministry of Education that included gender-based sexual education in primary and secondary school.⁵⁴ He also campaigned against gender-based approaches included in the peace agreement, an issue that many believe was crucial in the popular rejection of the peace process.⁵⁵

Ordóñez as a leader might not evoke the same militancy that Uribe does, however, his political capital is growing and while the religious political alliance is acquiring all the traits of a populist movement. There are even talks about an alliance between Uribe and Ordóñez for the 2018 presidential race. Ordóñez has also praised Trump's ability to fulfill his promises and his anti-establishment rhetoric.⁵⁶

The question now is, who is the 'we' within this new religious populism? Following Panizza, "we can only name the people by naming its 'other'". The 'other' in this religious alliance movement is presented as diverse: the political elites, the supporters of the peace process, the liberals with no 'moral compass', etc.⁵⁷ However, I would like to argue that the source of this conception of 'other' is the liberal legacy of the 1991 Constitutional Assembly process alongside the Constitutional Court activism of the following years.

⁵⁴ El Espectador, "Se Pretende Adoctrinar a La Niñez En La Ideología de Género': Procurador General," *ELESPECTADOR.COM*, August 3, 2016, <http://www.elespectador.com/noticias/judicial/se-pretende-adoctrinar-ninez-ideologia-de-genero-procur-articulo-647088>.

⁵⁵ El Tiempo, "Ordóñez Habla de Ideología de Género En Acuerdos de Paz," *El Tiempo*, October 12, 2016, <http://www.eltiempo.com/politica/proceso-de-paz/ordonez-habla-de-ideologia-de-genero-en-acuerdos-de-paz-31246>.

⁵⁶ Semana, "Voy a Hacer Una Campaña Políticamente Incorrecta': Ordóñez," *Semana.Com*, June 14, 2017, <http://www.semana.com/nacion/articulo/elecciones-2018-entrevista-a-alejandro-ordonez/528617>.

⁵⁷ Semana.

Although Ordóñez does not encompass the entire religious populist movement in Colombia, his campaign and his incidence in the Court during his term as Inspector General do show how this new wave of populism has been forming, and how it has affected the interpretation of the 1991 Constitution. Ordóñez, his blooming political career, and the Colombian religious right wing populist movement definitely deserve their own research. However, for the purpose of this paper I will argue that the jurisprudence on religious symbolism isn't as far from Ordóñez as some, including him, might think. Furthermore, on the issue of religious symbolism, the Court has even adopted some of the concepts Ordóñez rendered during his term at the Inspector General's Office.

IV. Where the Court and new populism align themselves

The Colombian Constitutional Court, especially during the 1990s, has been regarded as the example of judicial activism on the protection of liberal values as well as on the protection of social rights.⁵⁸ For some, the Court has had a populist agenda around “the idea of *estado social de derecho* (ESD), which required an inclusive political agenda to seek redress for structural injustices that allegedly fueled violence. The tribunal argued that (constitutional) judges had to be the leaders of this nation-building project”⁵⁹. Along the same path, the Colombian Court has also had a powerful response against excesses of political power, such as Uribe's attempt to amend the Constitution to allow a third consecutive presidential term.⁶⁰

However, its position on secularism differs from the traditional understanding of the Court's role. On one side, the Court integrated some of the liberal democratic arguments for a more clear understanding of secularism, including the removal of religious symbols

⁵⁸ David Landau, “The Reality of Social Rights Enforcement,” *Harvard International Law Journal* 53 (2012): 189.

⁵⁹ Jorge González Jácome, “In Defense of Judicial Populism: Lessons from Colombia,” *Verfassungsblog* (blog), May 3, 2017, <http://verfassungsblog.de/in-defense-of-judicial-populism-lessons-from-colombia/>.

⁶⁰ Samuel Issacharoff, “Constitutional Courts and Consolidated Power,” *American Journal of Comparative Law* 62, no. 3 (2014).

from public spaces. On the other side, and more recently, the Court has turned to catholic and protestant political movements who argue for a bigger presence of religion in public spaces. My argument here is that the Court, since 2014, has interpreted religious symbolism and especially passive symbols, in a way that has ultimately brought the Court closer to the political agenda of this new religious populism. This is especially evident in the cases regarding the use of public funds for the celebration of the Holy Week. Within these cases, the Court has even adopted some of the opinions given by Ordóñez during his term as Inspector General.

During a proceeding concerning a 'sanctuary' city, Ordóñez gave his opinion as Inspector General on the constitutionality of the declaration. According to Ordóñez, the secular conception of the Colombian State is a creation of the Constitutional Court and not a proper constitutional mandate.⁶¹ For Ordóñez, the Colombian State had only the duty of guaranteeing freedom to practice any religion, not to the duty to be neutral or agnostic.⁶² Furthermore, he emphasized the close cultural connection of Catholicism because of its majoritarian practice. He believed the majority religion status of Catholicism allowed the State to associate itself with catholic symbols since they were the manifestation of a culturally predominant practice.

In 2011 the Court strongly rejected Ordóñez claim, even referencing debates such as LGBT rights and 'non-conventional' families.

It also clear that the patriarchal family and the promotion of heterosexuality are also practices that some consider 'traditional' [...], however, this cannot be used as a reason for the constitutional State to forget the protection of minorities. [...] By recognizing these traditional practices as legitimate, their rights [minorities] would be void and would only be protected insofar as they agree with the majoritarian understanding of society.⁶³

⁶¹ Colombian Constitutional Court, C-817/11.

⁶² Colombian Constitutional Court, C-817/11

⁶³ Colombian Constitutional Court, C-817/11

This reasoning drastically changed from 2014 onwards when the Court started recognizing the cultural value of religious symbols as criteria for their association with the State. In two of the Holy Week cases, the Court determined that these celebrations were so entrenched within the Colombian culture that their religious meaning was diminished. However, what the Court considers as cultural association is in the end a majority claim. These celebrations are only culturally relevant since a considerable (and majoritarian) part of the population practices them. In that sense, only Catholic manifestations fall within the Court's scope of cultural. Minority symbols and celebrations will never be granted such constitutional protection since they are not 'representative enough' of the Colombian culture.

The historical and cultural connection made by the Constitutional Court only works for majority symbolism and has, in the end, given Catholicism and Catholic symbols a special status within the Colombian constitutional order. This was Ordóñez goal during his 2011 intervention, and today is part of his political platform. Although Ordóñez has been a strong critic of the Court's activism, his arguments on the status of religion in the current constitutional understanding have permeated the Court's jurisprudence. Although the Court has not dismissed the secularist claim of the 1991 project, its interpretation of religious symbols has created a Christian understanding of such secularism. In these new terms, secularism allows for a State association with religious practices as long as those practices correspond to cultural practices. Nevertheless, in cases of religious celebrations, the Court has understood cultural practices based on whether or not they're practiced by a significant part of the population.

V. Conclusion

The definition of a secular State played an important role in the formation of the 1991 Constitution. In the early years of the Constitutional Court's existence, their constitutional interpretation allowed for a strong separation of religion and State, especially among the understanding of religious symbols. From 1994 until 2014 the Colombian Constitutional Court advocated for a strong secular State, in which religious

symbols could not belong in public spaces. However, from 2014 onwards, this rationality changed. The Court started to allow certain religious symbols in public buildings (including a crucifix in the Court's Grand Chamber), and the use of public funds for religious celebrations. There is probably a multiplicity of factors that can account for such changes in the Court's understanding of secularism. However, this change also reflects an integration of religious arguments that have been a part of the political project of a new political and religious alliance.

Although the alignment between the Court and these new populist movement might not be deliberate, issues of religious freedom play a huge role both on the definition of the far right populist movements and on the interpretation of the 1991 core constitutional values. Furthermore, the religious freedom debate is still a big part of the constitutional discourse surrounding issues such as LGBT rights and gender. With the Constitutional Court turning to the right on religious symbolism debates and with these new religious far-right movements gaining political weight, the secular legacy of the 1991 Constitution is facing one of its biggest challenges.

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