During the nineteenth and early twentieth century, the separation of state and church was an issue of great importance for liberal politicians and parties in European politics. Liberals all over Europe tried to encourage the separation of religious institutions and the state. After the Second World War this issue seemed to become more and more irrelevant, as the separation was more or less achieved in some countries, or the existing ties did not lead to major troubles or inequalities. Recently the matter has become relevant again, because of questions raised by integration of immigrants with different ethnical, religious and cultural backgrounds.

The separation of church and state developed, due to historical, cultural, social and political reasons, in very different ways in each of the member states of the European Union. The European Liberal Forum – a network of European liberal think tanks in connection with the European Liberal Party (ELDR) – organised several seminars on the topic of secularism. During these discussions the variety of developments in the relation between state and church showed, and so came the idea to publish a book on this matter. The purpose of the book is to provide evidence and ideas that could be used in the different countries in Europe for reforms clarifying the roles of religious organisations in relation to the state. This is of the utmost importance now that Europe is becoming more multireligious, multi-ethnic and multicultural.

In this volume on the Separation of Church and State in Europe several ELF member organisations wrote an article on the situation in their country. The result is a book with views on the separation of church and state in Sweden, Norway, the Netherlands, Belgium, France, Spain, Italy, Slovenia and Greece. The contributions are preceded by an introductory chapter which deals with the liberal principles of the separation, followed by a short bibliography for further reading. A second introductory chapter focuses on secularism debates within the European Union institutions and clashes between European and national policies.

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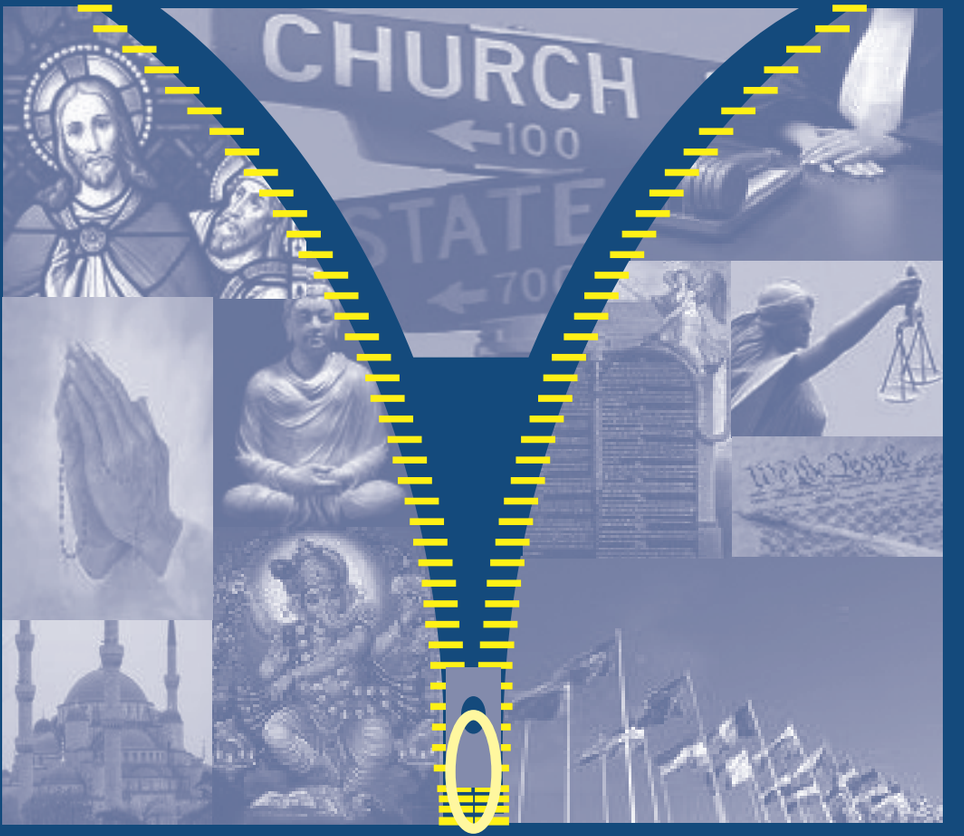
WITH VIEWS ON SWEDEN, NORWAY, THE NETHERLANDS, BELGIUM, FRANCE, SPAIN, ITALY, SLOVENIA AND GREECE

Fleur de Beaufort - Ingemund Hägg - Patrick van Schie (eds.)



European Liberal Forum

Separation of Church and State in Europe

with views on Sweden, Norway, the Netherlands, Belgium, France, Spain, Italy, Slovenia and Greece

Fleur de Beaufort

Ingemund Hägg

Patrick van Schie

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Preface

During the nineteenth and early twentieth century, a battle ground for liberal politicians and parties in European politics has been for the separation of church(es) and the state. Although in some countries more than in others, a secularising stance has been a defining position for liberals in most of Europe. After the Second World War this issue seemed to become increasingly irrelevant but issues of integration of immigrants with different ethnical, religious and cultural backgrounds have reversed this development.

A series of seminars were organised by the European Liberal Forum (ELF) – an umbrella European liberal think tank in connection with the European Liberal Democratic and Reform Party (ELDR): in Bucharest in 2006, in Berlin in 2007 and in Barcelona in 2008. Several liberal think tanks cooperate in the ELF-network. These seminars were part of the programme 'A liberal contribution to a European civic identity', on which a final report can be found at the ELF website.

The idea to make a book on secularism in Europe was launched by the Prof. mr. B.M. Teldersstichting – the Dutch liberal think tank affiliated to the Dutch liberal party VVD – and got positive reactions from other liberal think tanks, being members of the European Liberal Forum. The purpose is to present the situation of relations between religious organisations and the state (political institutions) in different countries in Europe. The assumption is that these relations are quite different, due to historical, cultural, social and political reasons. The policy relevant purpose of the book is to provide evidence and ideas that could be used in the different countries in Europe for reforms clarifying the roles of religious organisations in relation to the state. This is of the utmost importance now that Europe is becoming more multireligious, multi-ethnic and multicultural.

The first chapter of this book deals with the liberal principles of the separation, followed by a short bibliography for further reading. The second introductory chapter focuses on secularism debates within the European Union institutions and clashes between European and national policies. These chapters are followed by presentations of the situations in Sweden, Norway, the Netherlands, Belgium, France, Spain, Italy, Slovenia and Greece (roughly following a route from northern to southern Europe). The choice of countries is partly the result of self-selection. We have invited on a larger scale, and those who have volunteered to participate within a tied time-line have been welcomed.

The editors want to express their thanks to the participating think tanks and authors who have contributed to the writing of this book. Financial support from the European Liberal Forum and from participating think tanks is gratefully acknowledged.

Den Haag/Stockholm, September 2008
Fleur de Beaufort
Ingemund Hägg
Patrick van Schie

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Towards Religious Neutrality of Public Institutions in Europe

Introduction

Giulio Ercolessi and Ingemund Hägg

Introduction

The history of European liberalism has to a large extent coincided with the history of freedom of conscience and religious freedom. Freedom of conscience in the field of religious beliefs has actually been the model for the extension of individual freedom also in other domains of public life in open societies.

In spite of differences in legal frameworks and different political vocabularies, a common liberal position in this field is recognizable throughout European democracies. This is due both to the development of a common set of principles and values that are largely owed to the liberal heritage, and to the success achieved by the liberal tradition of religious neutrality and separation – as large as practically feasible – between religion and political power as a necessary way to attain individual freedom, at the same time achieving social cohesion.

Increased diversity is a consequence of life in free and open societies. This also applies to individual beliefs. We no longer live in religiously homogeneous societies. Secularisation has made religious belief a personal choice, not an ascribed identity given by birth once and for ever. And immigration from countries with different religious traditions has enhanced religious pluralism. Different faiths and non-religious beliefs must be regarded as equally respectable options also by public institutions.

The increased and increasing cultural, philosophical and religious diversity of European societies, far from making separation obsolete, has strengthened the reasons and the soundness of the traditional liberal idea that religious neutrality of public institutions is needed for religious freedom – that is, the freedom to practice or not to practice, to join or to reject any form of religious or non-religious belief. Political religious neutrality is the only possible tool to provide equal respect and equal social dignity for every single citizen, believers and non-believers alike.

It is also the most effective tool to protect the rights of individuals, whose religious freedom could be put at jeopardy by their family or community, or who could be discriminated against for religious reasons because their ascribed identity or personal nature or life-style do not comply with the requirements, the expectations or the demands of religious leaders, neighbours or relatives.

As such, religious neutrality also represents the best possible strategy to cope with one of the most important tasks of our time: integrating our increasingly

diverse fellow citizens in the values and principles of liberal democracy, of individual human rights, of the rule of law. Those coming from different cultural traditions or who are the offspring of the immigration must equally have their freedom of belief guaranteed, irrespective of their ancestral origins.

The birth of the individual

Individual human beings have of course always been different. But the idea that diversity is a value in itself is more recent. In the antiquity and in the early Middle Ages particular individuals (heroes, athletes, military and political leaders, rhetoricians, philosophers, 'probi viri') were considered eminent and deserved particular regard when their personal achievements met the expectation for the highest degree of integration, of normativity; those exemplary men were the personification of common wisdom and communitarian models. With the end of the Middle Ages, imitation in the Western world became just a stage in the formation of individuality, a stage that would lead to immaturity if not overcome.[1]

That slow anthropological transformation was also prompted by political and religious conflicts and divisions that required in many western European countries political and church leaders, and their individual followers, to take side in the centuries long struggle between political and church power.

The very outbreak of cultural creativity that led to what has been called the 'European miracle' of the late Middle Ages[2] that led in turn to a new economic boom and transformed Western arts and literatures had much to do with the birth of the modern European idea of the individual.[3]

Religious dissent, rebellion to uniformity, pluralism of religious and philosophical opinions were an inevitable consequence of that anthropological revolution.

The rise of religious diversity

This process led this part of the world to abandon the medieval aspiration for religious and political uniformity of Christendom. Diversity – religious diversity in particular – became an irreversible and inherent character of the western European identity. With the definitive division of western Christendom caused by schisms and the Reformation, it was a Europe marked by diversities and conflict that competed for the conquest of the world made possible by economical and technological developments.

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1 Colin Morris, *The Discovery of the Individual (1050-1200)*, London, SPCK, 1972 (It. tr. Napoli, Liguori, 1985); Leonid M. Batkin, *L'idea di individualità nel Rinascimento italiano*, Roma-Bari, Laterza, 1992 (Or. ed. Moscow 1986).

2 Eric Jones, *The European Miracle*, Cambridge, Cambridge University Press, 1981 (It. tr. Bologna, Il Mulino, 1984).

3 Ernst Cassirer, *Individuum und Kosmos in der Philosophie der Renaissance*, Leipzig, Teubner, 1927 (It. tr. La Nuova Italia, Firenze, 1935).

In almost every western European country religious intolerance, bloodshed, 'religious cleansing', extermination of religious minorities was the initial way political and religious powers dealt with the end of religious uniformity, tolerance being confined for more than a century to situations where political power had not the strength to suppress 'heresies' and re-enforce religious conformity, or marking just the will of individual states to assert their political independence from the papacy.

The dawn of religious freedom came with the idea of separation between church and state, prompted both by religious dissenting minorities[4], by a new 'fallibilistic' theology (humans being fallible, suppressing a heresy could result in suppressing the Truth[5]) and by individual libertine and sceptical philosophers. First partially de facto achieved in the Netherlands and – for all Protestant denominations and in practise for Jews too – during the English Great Rebellion, freedom of conscience became the focus of the Enlightenment movement.

European liberalism was marked from the beginning by the claim for individual self-determination in the field of individual belief and freedom of conscience, as well as in that of economic freedom and political rights. In most Protestant countries the fight for religious freedom was since the 18th century a progressive hard-won fight against bigotry and prejudice and against the power of established national churches. In Catholic countries it implied a frontal clash with the established national and international consolidated interests of the Catholic Church, its political power and the international network enforced by church hierarchy inside each national state.

Laïcité models

Revolutionary France and early liberal Italy are interesting cases but also give us a basis for the formulation of ideal types or models for comparison between theory and the practical world, and also for comparison with other countries in Europe.

The French '*état laïque*' can be regarded as such an ideal type, as a political and legal model with high degree of separation – based on legal regulation – between religions and political power in order to preserve and enhance individual freedom in the domain of religious and non-religious beliefs.

It has to be recognised that the present shape of French *laïcité* is the result of a long historical evolution and also of that sort of European convergence of political and legal institutions, principles and values we have experienced after the end of World War II, when the Western world was forced to shape a more and more consistent and common democratic and liberal identity, facing the totalitarian

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4 Roland H. Bainton, *The Travail for Religious Liberty*, Philadelphia, The Westminster Press, 1951 (It. tr. Bologna, Il Mulino, 1963).

5 Pietro Adamo, Giulio Giorello, *La 'tolleranza armata'. Politica e religione nella Rivoluzione inglese (1640-1660)*, in: *Modernità, politica e protestantesimo*, ed. by Elena Bein Ricco, Torino, Claudiana, 1994.

threats posed by fascism and communism during the 20th century.

French *laïcité* – a basic and established principle of French political culture and constitutional law – was initially marked by France's Jacobinic revolutionary tradition and its emphasis on the sovereignty of the nation above any sort of religious, cultural or political membership or affiliation of individuals, and on the prominent cultural role of the state. To an extent, it did not include just separation, but also a certain predominance of the state even in some religious affairs (this attitude dated back to the tradition of Gallicanism, long before the French Revolution). Even though the temptation of imposing a strict state regulation to religious associations that would substitute Catholic canon law was rejected when the separation law was introduced in 1905, traces of this tradition are visible.

In the 19th century Italy liberals supported a strict separation of state and religion as a decisive condition of Italy's political and economic modernisation and as a tool to overcome the backwardness of the Italian society, mainly seen as a consequence of the victory of Counterreformation. But Italian *laicismo* – in its more demanding interpretation rather a minority political point of view nowadays – was marked by Italy's *Risorgimento* and liberal tradition. Given its historical emphasis on protection of (positive and negative) religious freedom (traditionally fiercely opposed by the Catholic Church), neutrality is required of institutions, not necessarily of individuals; in France individuals themselves are expected to put aside a considerable part of their personal inclinations as they enter the public space, even as private citizens. The neutrality of public institutions has always been seen by Italian *laicisti* as instrumental to safeguarding religious freedom from (basically Catholic) claims for religious and cultural uniformity; French *laïcité* is often seen (also by French courts) as a limit to the exercise of religious freedom. As we shall discuss in the chapter on recent French developments, this theoretical framework has probably obscured (especially in the eyes of other Europeans) the reasons for recent French controversies on the use of 'religious signs' in public schools, when issues of protection of minors of age from parental and communitarian impositions were probably confused or even camouflaged with the traditional Jacobinic ideological construction.

This does not mean that the Italian idea of *laicità* and French *laïcité* have little in common. Italian liberals as well had sometimes to use a lot of harshness in their fight against clericalism, especially in the 19th century, and both political traditions were instrumental to the emancipation of religious minorities and to the enhancement of individual freedom. To a certain extent, both had substantial links to the cultural heritage of Enlightenment and sponsored the spread of scientific knowledge also as means to counterbalance Catholic influence: but in a quite different measure and with a very different degree of anti-religious emphasis. It should not be underestimated that Italian liberals of the 19th century were as much tributary to the French (and Swiss) as to the British (and later to the American) political philosophy: the latter had much more varied experiences in dealing with different religious faiths

and denominations, not all of them negative as those faced by the first with the Catholic Church. Even if these differences should not be overestimated, they imply slightly different interpretations of what religious neutrality of public institutions should mean, even though these differences are often ignored or underestimated in current political and cultural debates.

The quest for a shared vocabulary

Different national political traditions in the field of state / churches relations have even shaped different national political vocabularies. In French, Italian and Spanish – in three countries with a common Catholic (and a common secularist) tradition, and a common Romance linguistic heritage – there are slightly different meanings for the same term. Yet, in a globalised world, and especially in a part of the world with similar democratic traditions and institutions, bound to face similar problems, a common conventional vocabulary is desirable to avoid possible misunderstandings.

We will use a definition of *laïcité*, *laicità, laicidad* as 'religious neutrality of public institutions'. *Laïcité* should here be assumed as the religious neutrality of public institutions, necessary to assure equal religious freedom and equal social dignity to all citizens: believers and non-believers, believers in the religion of their ancestors and believers in other religions or in no faith. *Laïcisme* or *laicismo* (same spelling in Italian and Spanish) should be interpreted as the political (only political) position of those who want public institutions to be, remain or become, religiously neutral: not the position of those who have a particular, negative or hostile, attitude towards religious beliefs. In the Italian contemporary history, Waldensians, Jews and dissident Catholics usually were among its staunchest advocates. The same can be said of the prevailing traditional position of Protestants and Jews in France. Hopefully, they will be joined by liberal minded Muslims.

There is no precise English (nor indeed German) translation for *laïcité*, *laicità*, *laicidad*, nor for *laïcisme* and *laicismo*. Even though the fight for religious freedom and separation of church and state was as significant to the history of English speaking Western countries as it was to Southern Europeans, *laïcité*, *laicità*, *laicidad*, *laïcisme* and *laicismo* are words that are typical of the national histories of countries where that fight was engaged against Catholic predominance. Yet, they have assumed a much broader meaning throughout the years. So much so, that Catholics themselves, even the most traditionalists, have come to describe their political position not as clerical, but as supporting an 'upright' brand of *laïcité*.

The English 'secular' and 'secularism' are in fact not synonymous for *laïque* and *laïcité* or *laïcisme*. This English vocabulary has probably too much assonance with the process of secularisation of the society and/or with 'secular humanism', a theory that goes beyond the legal and political sphere. Even though secular humanists usually are supporters of religious neutrality, they are not the only ones.

Achieving a more and more secularised society should in fact not be considered the aim of political *laïcité* or *laïcisme*.

Secularisation

Secularisation is indeed a historical, social and cultural phenomenon, related to the process of 'disenchantment of the world' that gave birth to the modern Western society. In Max Weber's first enunciation, *Entzauberung der Welt* strictly meant delimitation and suppression of superstition as technique of salvation.[6] In the broader meaning proposed by Marcel Gauchet[7], who built his theory upon the opposition of 'religion' and 'faith' conceived by the German 'Crisis Theology' of Karl Barth and his followers in the 1930s, *le désenchantement du monde* is nothing less than the most typical contribution of Christianity itself to the outlet of the Western civilisation from 'religion', a contribution of which the unidirectional rather than cyclical idea of time, the incarnation and the divine *kenosis* (abasement) would be the most typical marks.

This reconstruction of an inherent or 'natural' vocation of Christianity to secularisation could perhaps provide some clues to why it was on the continent where Christianity was most rooted that liberalism, political secularism and separation of religion and politics were in the end more successful than in many other parts of the world.

Whatever the relationship between the 'disenchantment of the world' and Christianity, if we adopt the more usual idea of secularisation as the social process of weakening and decline of religious beliefs and practice, this concept has to be kept totally distinct from secularism in the meaning of 'political theory of the separation of religion and politics'. Weakening religions is not the aim of secularism if this term is to be used as the English for 'political theory that supports the implementation of *laïcité*'. Nor indeed we hold that *laïcisme* and *laicismo* should be used, as they often are especially by the Catholic hierarchy, other than as equivalent of the political theory that wants public institutions to be, remain or become *laïque*, which is religiously neutral, not hostile towards any form of belief in the domain of religion.

Secularisation in Europe

Sometimes it is claimed that Europe has become more secular over the years. It has also been claimed that such a trend has come to an end and that an era of post-secularism has started. Reference is mainly made to what people in Europe believe in and to what religious activities they engage. We will here refer to some data from the World Value Surveys. We use answers to the question 'Independently of whether you go to church or not, would you say that you are 1) A religious

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6 This is a leitmotiv in much of Weber's work, its most mature discussion is perhaps included in the 'intermediate considerations' to the Sociology of religion, *Zwischenbetrachtung. Theorie der Stufen und Richtungen religiöser Weltablehnung (1920)*, in *Gesammelte Aufsätze zur Religionssoziologie*, I vol., Tübingen, Mohr, 1988 (It. tr. ed. by Alessandro Ferrara, Roma, Armando, 1995).

7 Marcel Gauchet, *Le désenchantement du monde*, Paris, Gallimard, 1985.

person, 2) Not a religious person, 3) A convinced atheist, 4) Do not know. The results from surveys for 1981 and 1999 indicate that in the EU as a whole about two thirds say that they are religious persons with almost no variation between 1981 and 1999. Individual countries differ quite a lot in relation to this average with percentages ranging from about 85% to 32% in 1981, and with percentages ranging from about 85% to 37% in 1999. The country at the top of the range in 1981, Italy (about 85%), maintained this percentage 1999 while the country coming next in 1981, Belgium (about 80%) decreased to the average for EU in 1999. The country with the lowest percentage in 1981, Sweden (32%), increased its percentage to 37 in 1999.

As far as the countries discussed in this book are concerned, there seems to be an increase in the percentages of persons describing themselves as non-religious in Belgium, France, the Netherlands and Slovenia, while Italy, Norway and Spain show small increases, Sweden being the exception with a small decrease.

Whether these figures indicate a high degree of secularisation or not can of course be discussed. But claiming that Europe has gone secular is debatable, with two thirds of the population of the EU describing themselves as religious persons. And a trend in one or the other direction can not be ascertained over these two decades. Figures from the first decade in the new millennium have not been available to us and can of course show changes.

Indeed, a lack of shared visions and values in our societies and the fall of communism and of other totalitarian ideologies that had ravaged our history in the 20th century have left many with unclear values for finding their ways in their public and private lives. That lack of a shared set of basic values has led to uneasiness and a quest for guidance, especially in the heritage of religions, and sometimes, more directly, in charismatic leaders; and the religious ones have often proved to be, in the eyes of the needy, more reliable and efficient than secular leaders and thinkers.

But how consistent is this alleged return to 'the arms of the old churches widely and compassionately opened', according to the wording of Weber's invitation to those in quest for certitude[8], and how does it play in terms of allegiance to church teaching and to traditional binding religious obligations – a crucial point when church / state relationship has to deal with churches demands for alignment of legal duties with religious obligations? Very different conclusions can often be obtained if the research is not focused on self-description, but on actual statistically recorded behaviours. From this point of view, it is interesting to compare the sharp contrast emerging in the case of Italy, whose mentioned most 'religious' and religiously stable population in terms of self-description appears increasingly secularised from year to year if measured in terms of actual recorded behaviours. A constant drop in each expected and traditionally binding Catholic behaviour is recorded by a yearly survey that now covers more than fifteen years that the

[8] Max Weber, *Politik als Beruf, Wissenschaft als Beruf*, Duncker & Humblot, Berlin (It. tr. ed. by Antonio Giolitti, Torino, Einaudi, 1948).

Critica liberale foundation has been performing: participation in sacraments (unlike simple self-reported Sunday church attendance, which is a widely cited but not recorded data), christening of children, confirmations, ordination of new priests, abandonment of priesthood, marital separations and divorces, religious versus civil marriages and funerals, attendance of optional religious courses in public schools, attendance of private religious schools, birth of children outside marriage, cohabitation without marriage, spread and sales of contraceptive drugs and devices, voluntary financial contributions to churches, optional destination of part of the general income tax, etc.[9]

Secularisation can also take the meaning of degree of separation between state and religion. In the literature on state-church relations you find classifications of countries according to which models of separation can be identified. But we have not found a classification that is valid for all European countries. Factors or criteria that, as we see it, should be taken into account are:

* Degree to which the state 'recognises' religions, taking into account discrimination and privileges to certain religions;
* Degree to which the state gives financial support to religions;
* Degree to which the state intervenes in religious affairs;
* Degree to which religions intervene in affairs of public institutions.

With this background we would like to introduce the following sketch of a classifications system. Outside a system with a state church we identify the ideal model of *laïcité* with complete separation, a model that has no correspondence in the actual world, not even in France. Another category requires state support on an equal basis for all religions. A third category has a dominating religion with different kinds of relations involving state support but where also other religions are recognised and can get state support but not on equal terms. A fourth category has relations and gives support to the dominating religion and ignores other religions. It would be much more difficult to categorise according to possibilities for religions to have power and influence in politics. Including this factor in a classifications scheme is not possible within the framework of this chapter.

A common European civic identity

One very important obstacle, maybe even the most important one, to the development of a common European civic identity is the lack of separation of religion and political institutions in many countries and the misperception of what this should mean in some national political arenas and political cultures.

A common European civic identity cannot be imposed from above. It must grow from within civil society.

[9] The current year's survey is being published while we are passing proofs for printing this book. Last year's survey, that includes a lengthy methodological note, was published in the January-March 2007 issues of the monthly journal Critica liberale, n. 135-137.

The present crisis of the European integration project is also due to the lack of awareness among European citizens and political classes about what constitutes such a common ground upon which a European political subjectivity could be convincingly built. We think that this common identity can be, to a large extent, basically provided by the great heritage of European liberalism. Europe could never be based upon ethnic unity (as 'invented traditions' have successfully pretended in the past for individual countries – but it was in a different, less sophisticated, less demanding and even more violent world), nor upon a homogeneous linguistic heritage, or uniform cultural behaviours that no longer exists even inside our individual countries, increasingly pluralistic as they are growing today. But we share, in our laws, in our constitutions, hopefully even settled down in our customs and cultural anthropology (despite recurring challenges and the surviving regional differences), a common civic character, which is sometimes better perceived looking at liberal and democratic Europe from outside. This civic identity has much to do with the respect for the individual, his or her dignity, freedom of choice and right to pursuit his or her goals in his or her own way

Although we would like these principles and values to be universally shared, although we attach to them a universal vocation, they are deeply rooted in the historical development of the European liberal tradition, and our countries' civic culture is probably still the most demanding in this domain.

More and more, such a common civic identity is proving to be not only the core of our values and principles, but also the only possible basis for more cohesive and fruitful developments inside each of our countries.

Individuals should never be categorised by public power

It is common in the world today to categorise individuals according to one single dimension, often religion. Expressions like the 'Christian world' (the West) and the 'Muslim world' are common. This kind of categorisation implies neglect for all other kinds of identities that an individual can carry. An individual can be a Muslim, a professional, a woman, a British citizen, just to mention a few groups to which an individual can belong. To choose just one implies diminishing the individual to a one-dimensional creature. The popular idea that one has to find out what is one's real identity ignores that individuals can make choices. The world is not deterministic in a liberal perspective, even if the alternatives open to an individual are limited and context-bound. It is frightening that public institutions in some countries recognise religious communities as the main or sole representatives for their supposed individual members. The challenge to a common European identity is that such an identity must build on those diversities and find its place among other identities that an individual might have. A common European civic identity has to build on individual identities and be one of many identities of European inhabitants

Public space and religion

We see that liberals adhere to a conception of *état laïque* which is neutral to all religious (whether believing in one or more gods, whether small or large in number of adherents) and non-religious beliefs (including agnostics and atheists). With freedom for the individual, religion is referred to the private sphere. Sometimes 'private' is interpreted as a demand for individualism, meant in the sense that organised religion in civil society should be rejected. Nothing could be more wrong. Liberalism welcomes people joining together in voluntary organisations for different important issues, like religions. Without a vivid civil society with a large variety of organisations and associations we do not have a liberal society. The issue of what role religion could have in what is sometimes called 'the public space'; sometimes 'the political public space' is controversial and unclear in the debate about *l'état laïque*. We also admit that the concept of the state is unclear and that it is often useful/inevitable to recognise that the state is not a monolith. In a speech on Religion in the Public Space Jürgen Habermas[10] states that 'government has to be placed on non-religious footing'. At the same time he recognises 'an informal public sphere' apart from 'parliament, courts, ministries and administration'. He stresses the need for religious voices 'in the political public sphere' and advocates a 'pre-political' discourse with both religious and non-religious voices. He allocates an important role for the civil society. Cardinal Ratzinger, the future pope, in a small book agrees on the needs for dialogue but probably disagree on how dialogues should be held.[11]

Misunderstandings about secularism and secular institutions

We can identify a number of misunderstandings about the meaning of secularism and of a secular state. In particular we find the following:

1. It is often claimed that Europe has become secular. This obviously depends on what we mean with 'secular'. Established churches have certainly lost much of their traditional strength. State institutions in some countries have become more secular – and in others they have become more clerical due to successful lobbying even if the society was moving in the opposite direction – but whether the civil society has really become everywhere more secular is debatable. Maybe religion has for some decades not been so visible as today but whether religion has ever been in practice marginalised is questionable.

2. Populist politicians and superficial media reporting often seem to suggest that identities of individuals are and should be one-dimensional and based on

[10] Jürgen Habermas, 'Religion and the Public Sphere'. The Kyoto Speech, University of San Diego, March 2005.

[11] Jürgen Habermas and Joseph Ratzinger, *Dialektik der Säkularisierung. Über Vernunft und Religion*. Verlag Herder, Freiburg, 2006.

ethnicity or religion – 'you are a Christian, you are a Muslim'. This implies a view of identity as something assigned to individuals from above, for example from families, communities or religious organisations and in that way collective: it implies a necessary, or at least expected, coincidence, between the individual and the collective, cultural and/or religious, identity. For liberals this is not acceptable. Identities are, for the most important and significant part, individual, chosen by individuals themselves, and not one-dimensional. In the liberal world an individual can say – for example – that she/he is an European, a professional, a Muslim, a golfer and a liberal.

3. It is also claimed that identities are learnt in and given by the communities the individual happens to grow up in. For liberals identity is something you can choose to leave or go into.

There is room, among other components of individual identities, for a common European civic identity: it is made of the principles and values that provide a common framework of freedom in the public European sphere, hopefully experienced by most citizens as a precious good to be enhanced and preserved, that becomes at the same time a part of their own heritage and cultural identity and the guarantee for the respect of all the other several parts of everybody's own multi-fold personal identity.

4. It is claimed that secular states are void of values and norms. This is wrong – states have to stand for human rights and values that are neutral to different religious interpretations and values and norms. Human rights declarations have increasingly acquired paramount importance in secular and liberal societies. Political institutions more and more devote time and effort to live up to the declarations. If in the beginning they were paper products, they are more and more real in the European nations.

5. It is claimed that public institutions should recognise religious movements, enter into dialogue with them and foster them. This would be counterproductive to any form of social cohesion and common identity as it would inevitably favour certain movements in the civil society to the detriment of others and create divisions in the society. Of course a civil society without any relation to political institutions is not possible and not desirable. Relations should not built on the existence of belief and non-belief systems but on the relevance of the activities performed by civil society organisations, be it in social welfare, in sport, in nature preservation or culture.

6. It is claimed that secular institutions imply that religion has to be limited to the private, individual sphere. This is not true, as a secular state is compatible with a civil society where religious and other voluntary organisations can act freely. It is also claimed that privatisation of religion means that religion is put outside

public space, outside the space where societal and political matters are discussed. This is not true as the civil society is the proper arena for developing policies where voluntary organisations also meet political parties. Religious arguments should not enter state institutions like government, parliament, ministries, public administration.

7. Inter-religious dialogue is obviously welcome, but civil society, not public institutions, should be its natural arena. Even participation in such dialogues by public institutions would result in a form of discrimination, as it would imply recognition of some religious movements and not others. Inter-religious dialogue should never be a substitute for integration policies.

Conclusions

Separation of state and religions and religious neutrality of public institutions are nowhere to be found in history or in existing political bodies as a perfectly fulfilled and accomplished reality. Rather the *laïcité* model is a theory that deserves to be seen as a Weberian ideal type, useful for comparing with existing situations and for evaluating reforms and progress. In Max Weber's methodology an ideal type is a mental construct derived from observable reality but deliberately simplified by selecting and accentuating its peculiar elements, which the researcher holds particularly salient.[12]

Although no European state can be described as perfectly fulfilling the model, it is certain that some countries are closer to that fulfilment than others. National histories have obviously deeply marked individual national societies, and it would be impossible to impose the same type of separation in all countries. Where the model was most efficiently enforced that often happened through fierce and painful struggles, sometimes even reaching the verge of civil war. Today any step towards greater freedom and greater equality of rights and social dignity could only be achieved through democratic debate, and that obviously often requires compromise. Where communitarianism has a long tradition, the fight for the respect of the personal rights of refractory individuals will inevitably be more difficult than elsewhere

Rather than trying to propose a uniform model of relationship between religions and public institutions, a liberal policy should face, one by one and step by step, those particular controversial issues where individual rights and equal social dignity of every individual are put at jeopardy by religious or communitarian claims, however portrayed.

One important aspect of state / religion relation is the financial one. In some

[12] Max Weber, *Die 'Objektivität' sozialwissenschaftlicher und sozialpolitiker Erkenntnis*, Archiv für Sozialwissenschaft und Sozialpolitik, XIX, 1904, now in *Gesammelte Aufsätze zur Wissenschaftlehre*, Mohr, ed. by J. Winckelmann, Tübingen, 1922, 1951 (It. tr. ed. by Pietro Rossi, Torino, Einaudi, 1958).

countries it is claimed that religions communities should be financed by public institutions, that is by tax-payers – and many of them may not belong to any such communities. This is a way of providing power and social influence which other organisations in civil society do not get. It is also a way of distorting and unfairly interfering in the public debate. Reasons for state support to organisations in civil society should be the same for all such organisations, thus not based on religion but on other criteria for activities in society.

Public institutions should never imply that one or every religious comprehension of life is worth a higher degree of dignity in the public domain than others or non religious ones. Citizens, electors, tax-payers should never be required to pay a higher respect, or higher tributes, to churches, religious bodies, religious ideas. In controversial ethical issues that are acquiring more and more importance in the face of claims for a 'public role' of religions, and in new controversial issues that emerge as a consequence of new possibilities of choice offered by new technologies, political institutions should stand for individual self-determination as a basic right. Individual life chances must not be limited by reference to traditional cultural heritage nor by respect for immigrants' faiths and traditions. For example, a woman should not be prevented from the use of abortion because of religious resistance. Patients should not be deprived of treatment because of resistance to scientific research on stem-cells. Terminally ill people should have the right to put an end to their lives in spite of reference to statements that life is a gift of God. Children should not be exempted from education in evolution theory due to parental religious resistance. Children's rights to choose their own beliefs or non-beliefs must be upheld.

L´état laïque is not the actual world. Not even in France you can find a real *état laïque* implemented, nor can it be found elsewhere in the world today and it will probably remain an idea in the future. But that should not prevent liberals from trying to engage themselves for reforms in the direction of such a state. Efforts are constantly and continuously needed to approach this 'ideal' state, even if it will never be achieved completely. New problems and challenges will arise and will have to be faced. Some see such efforts as a way to combat fundamentalism. Others – including us – see the need for such efforts irrespective of possible fundamentalist trends.

Freedom to choose one's belief or non-belief system is a fundamental right belonging to the private sphere and to the civil society. Religious and non-belief communities should be free from influence from the state. The state must be neutral.

Without such neutrality Europe runs the risk of developing into a federation of religious ethnicities – to use Amartya Sen's words – that would be impedimental to the development of a common European civic identity.[13]

[13] Amartya Sen, *Identity and Violence. The Illusion of Destiny*, W.W. Norton, 2006.

Further reading

Here we present a list of readings on separation of state and religion and on laïcité. The list contains works in French, illustrating the intensive debate on these issues in France. Some of the works are in English, Italian and Spanish. It can be noted that some of the works also exist in English translations.

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Guy Coq, *La laïcité. Principe universel*, Paris, Félin, 2005.
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Philippe Lazar, *Autrement dit laïque*, Liana Levi, 2003.
Jean Baubérot, *La laïcité, quel héritage? De 1789 à nos jours*, Genève, Labor et fides, 1990.
Paul Airiau, *Cent ans de laïcité française*, Paris, Renaissance, 2005.
Patrick Weil (ed.), *Politiques de la laïcité au XX siècle*, Paris, Puf, 2007.
Émile Poulat*, Notre laïcité publique. 'La France est une République laïque' (Constitutions de 1946 et 1958),* Paris, Berg, 2003.
Alain Renaut, Alain Touraine, *Un débat sur la laïcité*, Stock 2005.
Hubert Bost (ed.), *Genèse et enjeux de la laïcité. Christianismes et laïcité*, Genève, Labor et fides, 1990.
Jean Baubérot, Michel Wieviorka, *De la séparation des Églises et de l'État à l'avenir de la laïcité*, L'aube, 2005.
Claude Dagens, Jean Baubérot, *L'avenir de la laïcité en France*, Parole et Silence, 2005.
Nicolas Sarkozy, *La République, les religions, l'espérance*, Paris, Cerf, 2004.
Paolo Cavana, *I segni della discordia. Laicità e simboli religiosi in Francia*, Torino, Giappichelli, 2004 (a moderately progressive Catholic author).
Paolo Cavana, *Interpretazioni della laicità. Esperienza francese ed esperienza italiana a confronto*, Roma, Ave, 1998.
Philippe Grollet, *Laïcité; utopie et nécessité*, Bruxelles, Labor/Espace de Libertés, 2005.
Marc Mayer, *Les laïcités en francophonie*, Bruxelles, Labor, 2005.
Julián Casanova, *La Iglesia de Franco*, Madrid, Temas de Hoy, 2001.
Pablo Martín de Santa Olalla Saludes, *De la victoria al Concordato. Las relaciones Iglesia-Estado durante el 'primer franquismo' (1939-1953)*, Barcelona, Laertes, 2003.
Javier Otaola, *Laicidad. Una estrategia para la libertad*, Barcelona, Bellaterra, 1999.
Juan Ignacio Ferreras, *Izquierda, laicismo y libertad*, Madrid, Biblioteca nueva, 2002.
Laïcitat i dret a l'espai públic, Barcelona, Lliga per la laïcitat, 2005 (the point of view of Catalan secularism).

Rafael Dí az-Salazar, *El factor católico en la política española. Del nacionalcatolicismo al laicismo*, Madrid, Ppc, 2006.
José M. Martínez, *La España evangélica ayer y hoy. Esbozo de una historia para una reflexión*, Barcelona, Andamio/Clie, 1994.
Dionisio Llamares Fernández, *Derecho de la libertad de conciencia, I, Libertad de conciencia y laicidad*, Madrid, Civitas, 2002.
Danièle Hervieu-Léger et alii, *La religione degli europei. Fede, cultura religiosa e modernità in Francia, Italia, Spagna, Gran Bretagna, Germania e Ungheria*, Torino, Fondazione Giovanni Agnelli, 1982.
Antonela Capelle-Pog cean, Patrick Michel, Enzo Pace, *Religion(s) et identitè(s) en Europe. L'épreuve du pluriel*, Paris, Sciences Po, 2008.
Gilles Kepel, *La revanche de Dieu. Chrétiens, juifs et musulmans à la reconquête du monde*, Seuil, 1991.
Gilles Kepel, *Jihad. Expansion et déclin de l'islamisme*, Gallimard, 2000.
Olivier Roy, *Global Muslim. Le radici occidentali del nuovo Islam*, Milano, Feltrinelli 2003 (or. ed. *L'islam mondialisé*, Seuil, 2002).
Khaled Fouad Allam, *L'Islam globale*, Milano, Rizzoli, 2002.
Jocelyne Cesari, Andrea Pacini (ed.), *Giovani musulmani in Europa. Tipologie di appartenenza religiosa e dinamiche socio-culturali*, Torino, Fondazione Giovanni Agnelli, 2005.
Antoine Sfeir, René Andrau, *Liberté égalité islam. La République face au communitarisme*, Paris, Tallandier, 2005.
Jeanne-Hélène Kaltenbach, Michèle Tribalat, *La République et l'islam entre crainte et aveuglement*, Gallimard, 2002.
Vincent Geisser, Aziz Zemouri, *Marianne et Allah. Les politiques français face à la 'question musulmane'*, Paris, La Découverte, 2007.
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Guy Bedouelle et alii, *Une République, des religions. Pour une laïcité ouverte*, Paris, L'Atelier/Ouvrières, 2003.
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Jonathan Laurence, Justin Vaïsse, *Intégrer l'islam. La France et ses musulmans: enjeux et réussites*, Paris, Odile Jacob, 2007 (or. ed. *Integrating Islam*, Brookings Institution Press, Washington D.C., 2006).
Alain Renaut, *Égalité et discriminations. Un essai de philosophie politique appliquée*, Paris, Seuil, 2007.
Michel Pinton, *Conscience des peuples et laïcité. Réflexions pour un nouveau contrat social*, Paris, Guibert, 2005.
Malek Chebel, *Manifeste pour un islam des Lumières. 27 propositions pour réformer l'islam*, Hachette, 2004.
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E Pluribus Unum? A European Community of Values must remain Secular

Sophie in 't Veld

Religion has become a hot issue in Europe lately, after decades of ongoing secularisation and declining church attendance. The question arises why religion is suddenly back on the political agenda, and more specifically: why has it become a topic of debate within the European Union (EU) institutions?

The European Union institutions and religion

The purpose of the new EU Treaty (not yet in force) is to make decision making in Europe more efficient and democratic. However, one of the most hotly disputed issues was not institutional reforms, but whether the pre-amble should contain a reference to the Judaeo-Christian roots of the European Union, as advocated by the Vatican. The proposal met with strong opposition from member states with a strict separation of church and state, such as France. The European Parliament also rejected the proposal. It was finally agreed to include a more neutral reference, reflecting the diversity of Europe: 'Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law'. The pre-amble goes on to confirm the 'attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law'.

Separation of church and state in European countries

In historic times, church and state were intimately linked. Government would largely draw its legitimation from religion, and in some cases the worldly and ecclesiastical powers would completely converge. In the past two centuries the link has loosened considerably. In some European countries the church has been radically banned from public institutions, whereas in others the link has become largely symbolical.

In Europe, France and Turkey are examples of the strictest formal separation of church and state, although religion still plays an important role in public life. In Great Britain on the other hand, the Queen is officially head of the church and clerics are ex officio members of parliament, but it may be argued that in

practice Britain is a far more secular society than either France or Turkey. It is telling that Tony Blair chose to convert to Catholicism only after his resignation as Prime Minister. In his position a public display of his personal religiosity would be seen with a degree of suspicion (ironically, in the United States the opposite is the case: a declared atheist would be virtually unelectable to the highest office in the country). Scandinavian countries are generally believed to be the most secular and liberal countries in Europe, but few people realise that church and state were separated only as recently as the early years of the 21st century. In many countries government tasks are carried out by churches (such as marrying people or keeping the population records), or public services such as education or health care are provided by churches or denominational organisations. In countries like Italy church and state may be separated, but the Vatican still exercises a huge influence over Italian politics. In the Netherlands, an orthodox Christian party that does not fully endorse the separation of church and state is in government. The Czech Republic is profoundly secular, whereas its former other half Slovakia is deeply Catholic. Spain, once a Catholic stronghold, has radically reduced the role of the church in public institutions. In Poland the Catholic Church, and in particular the radical radio station *Radio Maryja*, have a firm grip on politics, after having been driven underground for nearly half a century.

Shift from technocratic to political project

In contrast to this tradition, the institutions of the European Union however have no historic ties with any church. European integration is firmly rooted in universal human rights and the post World War II international bodies created to safeguard those rights in a free, democratic world. The EU institutions were set up as purely administrative bodies, not representing any particular values or denomination. As long as Europe concerned itself mainly with material, technocratic issues such as agriculture or the single market, its identity in terms of values or denomination was irrelevant. Its tasks were of a largely bureaucratic nature. Politics, conscience and identity did not come into play.

But in recent years the EU has gradually moved into areas where values and identity do play a major role, such as fundamental rights and anti-discrimination policies, immigration and asylum policies, police and justice cooperation, foreign and security policies and notably the fight against terrorism. Some areas are not strictly speaking EU competence, but they are increasingly of a cross-border nature and present the EU with new questions. For example scientific (stem cell) research, sexual and reproductive health rights, and the integration of immigrants. Free movement of persons also presents the EU with issues of family law, such as the recognition of same sex couples and their rights, or the applicable law in cross-border divorce cases. Europeans increasingly have to define their shared values and their common identity in a European context, as a basis for European integration in those new policy areas.

The European Union is playing an ever more active role in protecting and promoting fundamental rights. For a long time fundamental rights were mainly political principles, but there is a rapidly growing body of EU legislation and jurisprudence in this area. Individual freedoms do not always sit easily with religious doctrines, so conflicts concentrate increasingly on the legislative process and jurisprudence. Religious groupings increasingly operate as professional lobbies, trying to influence political decision making.

Islam and the 'Christian Club'

The presence of a growing and increasingly assertive Muslim community in Europe is another trigger for a redefinition of European identity. In the context of integration of Muslim immigrants in Europe, secular and Christian values alternate as the key set of values that newcomers have to adapt to. This often leads to a confused message and double standards. Muslim immigrants are expected to adapt to liberal European values, for example regarding equality of men and women, or attitudes towards homosexuality, but many European political parties are themselves opposed to those values. Christian democrat leaders claim a stronger role for religion in public life in Europe, but on the other hand they support the ultra-secular course for candidate country Turkey and look with deep suspicion at even the slightest tolerance to religion in public life. Many Christian democrats do not want Turkey in the EU at all. One of the (intentional) side effects of a reference to Judaeo-Christian roots in the Preamble of the EU Treaty was that it would virtually exclude EU membership of Muslim countries, in particular Turkey. The candidacy of Turkey forces Europe to answer the question as to its own identity. Is Europe a 'Christian Club', or is it a community based on secular principles and universal human rights?

Many EU countries struggling with immigration issues tend to define immigrants as a religious group, rather than individuals. One of the co-founders of an association of Ex-Muslims in Germany once said that although in her home country Iran she had been an atheist for thirty years, the moment she set foot on German soil she was labelled a Muslim or ex-Muslim at best. Initiatives for the integration of immigrants often focus on religious leaders as interlocutors for a dialogue, thereby defining immigrants exclusively as a religious collective.

The fight against terrorism has also contributed strongly to the religious element in the definition of a European identity. After 9/11 Islam is increasingly (and wrongly) seen as a homogenous worldwide movement. As we tend to define our identity by contrasting it with another group (we feel much more European when in the United States, we are suddenly aware of our national identity when we visit other countries within Europe, we emphasize our regional roots identity vis-à-vis people from other regions, or our urban identity vis-à-vis people from rural areas), the Western world suddenly defined its own identity in terms of Christian values – as opposed to Muslim values – conveniently overlooking the

fact that in Europe the vast majority of people consider themselves non-religious. But at the same time, the identity of the Western world is defined as 'secular'. The notion of the 'clash of civilisations' has steadily gained ground and it has created the myth of two monolithic blocks: the modern, enlightened, secular, liberal democracies of the Western world, against backward, theocratic, tribal, intolerant and misogynist Islamic countries. So the West defines itself both as Christian and as secular, against Islam.

The European Parliament

In July of this year, it was announced that Pope Benedict VI has declined an invitation to address the European Parliament. The official explanation given by the Vatican being that the Holy Father has a very full schedule, and travelling to Strasburg would be too strenuous for a man at his advanced age. As he had just returned from his Australia tour two days earlier, and he announced he would celebrate his 80th birthday in the United States, this argument was not very convincing. The *Times* reported that the Pope does not want to address the European Parliament, because of its 'militant secularism'. [1]

This is a remarkable reproach directed at a parliament which is supposed to represent the people of Europe in all its diversity. The composition of the European Parliament reflects this diversity: Catholics and Protestants, Muslims and Jews, ranging from liberal to orthodox. Believers, non believers, humanists, atheists, agnostics, apostates, and all varieties in between. They are more or less evenly spread over all political groups. In general there is a centre-left majority of liberals, socialists and greens defending secular views, although. The European People's Party is largely Christian democrat, but it also includes parties that have no confessional basis, such as the Swedish and British conservatives. Likewise there are many Catholics (mainly from Southern and Eastern Member States) and Nordic Protestants in the socialist group. The liberal group and the greens are generally the most outspoken defenders of secularism and individual rights.

The invitation to the Pope and other religious leaders had also met with strong criticism from members of the European Parliament, who felt that an address by a religious leader was highly inappropriate. It had been an ardent wish of the President of the European Parliament, Hans-Gert Pöttering, a German Christian democrat, to invite the Pope to address the plenary assembly of the European Parliament in Strasburg. However, he was wary of protests from parliamentarians. An earlier visit of the Pope in 1988 had been noisily interrupted by protests of the Northern-Irish reverend Ian Paisley, a member of the European Parliament at the time, who was dragged out of the plenary room by the security guards, shouting 'Antichrist!' at the Pope. President Pöttering wanted to avoid a repeat of these scenes, so he was careful to put the invitation to the Pope in the context of the

[1] http://www.timesonline.co.uk/tol/comment/faith/article4369313.ece.

European Year of Intercultural Dialogue 2008, inviting other religious leaders as well.

The European Parliament had shown its attachment to strictly secular policies at an earlier occasion in 2004, when parliament had to vote on the appointment of the Italian nominee to the European Commission, Mr Rocco Buttiglione. Buttiglione had been assigned the portfolio of fundamental rights and equal opportunities policies. However, the deeply religious Buttiglione, former speech writer of the Pope, considered that homosexuality was a disease, and the role of women was to have children and stay at home to take care of their husbands. His candid statements caused great outrage in the European Parliament, and eventually he had to withdraw his candidacy. Many reproached the European Parliament for being anti-Catholic or anti-religion. This reproach is completely unfounded. The majority in the European Parliament felt that Buttigliones' personal views were irreconcilable with the principles of equality laid down in the Treaties, which he would be supposed to promote.

In the aftermath of the Buttiglione episode, a cross party working group on the separation of religion and politics was set up in the European Parliament. It soon became one of the most active working groups in Parliament, and it is made up of parliamentarians and NGOs representing secular, humanist and liberal religious organisations. The working group addresses such issues as freedom of expression (the Danish cartoon crisis), the freedom *from* religion (a debate with ex-Muslims from various European countries), EU budget (EU subsidising the Catholic World Youth Days), and the freedom of conscience (notably the implications of a concordat to be signed between Slovakia and the Holy See). There is a considerable overlap, and hence cooperation, with the working groups on gay rights, and the one on sexual and reproductive health rights.

The European Commission

The current President of the European Commission, Jose Barroso, very actively seeks proximity with religions. In the private office of the President of the European Commission, there is a special advisor on relations with churches, religions and humanist organisations. In addition, a special unit (the Bureau of European Policy Advisors) has a high level official in charge of these relations and relations with religions and philosophical organisations are one of three strands of activity of the office. The list of events and meetings[2] leaves no doubt about Barroso's focus: he meets almost exclusively with religious leaders, and usually at his own initiative. Barroso hosts an annual gathering of leaders of various religions, in the context of the EU Treaty article on the dialogue with churches and non-confessional organisations (see below). These meetings have drawn criticism from the working

[2] http://ec.europa.eu/dgs/policy_advisers/activities/dialogues_religions/events_en.htm.

group in the European Parliament, which considers that these meetings are not open and transparent (as required by the Treaties). Unlike meetings with civil society, there are no agendas or minutes, nor are the meetings open to public. The list of participants is hardly representative of the population as a whole, as the participants are exclusively men, from the most conservative schools of thought, and – contrary to what the EU Treaty prescribes – non-confessional organisations are never invited to these gatherings. Non religious organisations, such as the European Humanist Federation, are granted only short private meetings, at their own (repeated) request and without any significant media efforts on the side of the Commission.

In autumn 2006, Barroso defended Pope Benedict XVI against criticism of his controversial remarks on Mohammed. In summer 2008 Barroso dedicated the Great Synagogue for Europe.

The European Commission has an ethics committee, 'European Group on Ethics in Science and New Technologies'. Of its fifteen members, all highly qualified academics, three are professed experts in moral theology, and one in medical ethics in a strongly Catholic hospital. The nomination of an ultra-conservative Catholic was blocked by the European Parliament a few years ago.

Lobbies and Dialogue

Article 17 of the EU Treaties[3] foresees a dialogue with churches and non-confessional organisations:

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations.
3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

Interestingly, the authors of the Treaties have chosen to dedicate a separate clause to the dialogue with churches and non-confessional organisations, in addition to a general clause on the dialogue with civil society in Article 11:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

This way churches and non-confessional organisations were assigned a different status then civil society as a whole.

This distinction was underlined again when in spring 2008 the European

[3] The Treaty on European Union and the Treaty on the functioning of the European Union (OJ C115, 9.5.2008).

Parliament voted about a proposal on transparency rules for lobbyists. An amendment by the ALDE Liberal group proposing for the transparency rules to apply equally to churches and non-confessional organisations triggered sharp criticism by Christian democrats and it failed to get a majority. (Some people ironically noted that this only proves how effective religious lobbies are). Christian democrats voted against, whereas the socialists in majority abstained. The European Commission has set up a voluntary register for lobbyists, but to this very date there is not a single entry in the category 'Religions, churches and communities of conviction'.

Some Eurosceptics consider the EU institutions to be powerless talk shops, but the Roman Catholic Church attaches a lot of importance to the EU decision making process (and with almost twenty centuries of experience, you can trust the Catholic Church to know the power game inside out). Comece, the Bishops conference, is an active and professional lobby, and very present in the Brussels' corridors of power. Most other religious groupings are also represented, but none of them remotely as professional, organised and well funded as the Vatican. This is partly due to the fact that the Roman Catholic Church has a clear, structured hierarchy. There are lobbyists of other religions, but they do not speak on behalf of their religion as a whole. In addition there are lobbies representing dissident voices within the official church, such as Catholics for a Free Choice, a worldwide movement of liberal Catholics. Humanists have a modest representation in Brussels as well.

Like any other lobby, churches and non-confessional organisations seek to influence decision making in the EU institutions. As the EU is moving into areas with a strong ethical dimension, lobbies are stepping up their efforts to get support for their views. How much influence these lobbies have is hard to quantify. Much depends on the political make up of the institutions. In Council the presence of predominantly Catholic countries can be felt, not least because the unanimity requirement gives them the power to block decision making. For this reason a proposal to extend the ban on discrimination to cover all discrimination grounds, including sexual orientation and religion, is likely to fail in Council as it is unacceptable to a few countries.

The influence of religious lobbies in the European Commission is not very straightforward. Traditionally the Commission is composed of representatives of all political parties. The Barroso Commission is the first with a clear political (market liberal) profile on economic issues, but not on other matters. In practice it depends very much on the responsible Commissioner and on the Commission President. Usually Commissioners will not intervene in each others portfolio. Barroso opposed the above mentioned ban on discrimination, so the responsible Commissioner Spidla chose to limit the ban to the less controversial discrimination on grounds of handicap. But then the liberal and some socialist Commissioners insisted that the Commission propose a full ban on discrimination on all grounds. Spidla did so, but the proposal still allows for discrimination by member states on

grounds of family law and public order.

The European Parliament is in the forefront of the debate on values and fundamental rights, and it is not surprising that it is the target of intensive lobbies by churches and religious organisations, as well as by their opponents. On occasion Parliament has quite literally become the battle ground for different lobbies, for example when an ultra-Catholic pro-life group had set up an exhibition in Parliament, comparing abortion to Nazi concentration camps. This triggered strong emotions, to the point where there was a scuffle between the pro-lifers and their opponents. Parliamentary resolutions may be no more than mere political declarations without any formal legal status, but they carry a lot of weight in public debate. In the current term of office the conservative religious votes were a minority. The Christian democrat-conservative group would largely follow the religious lobbies (usually with the exception of Scandinavians and British), but Catholics in the socialist PES group would support the liberal position, despite intense pressure from the Catholic lobby. Parliament's rather progressive liberal stance has often drawn fierce reactions by religious groups, sometimes downright aggressive. The powerful European Bishops Conference Comece stated a resolution against homophobia would 'delegitimize' the European Parliament, and that Parliament should distinguish between 'good and evil'. The Polish Prime Minister at the time warned against 'contamination' of homosexuality, in reaction to the resolution. Although the religious lobbies often argue that many of the ethical issues are not EU competence, by intervening in the debate they have unwittingly contributed to a pan-European debate.

Policies and jurisprudence

The European Union, the Council of Europe and their judicial branches the European Court of Justice in Luxemburg, and the European Court of Human Rights in Strasburg are creating a growing body of legislation, policy instruments and jurisprudence in areas where religious and secular views may clash over issues of conscience and conviction. The division of competences between EU and member states is not as clear-cut anymore as it used to be. It is often argued that moral values and public order are a matter of subsidiarity (ironically a concept from Catholic teaching), or the exclusive domain of the nation state, and that Europe has no powers in this area. Often these arguments serve as a pretext for not applying European rules on fundamental rights and equal opportunities. However, all member states are bound to the principle of equality, and the obligation to combat discrimination on grounds of nationality, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In addition, free movement of persons, one of the four pillars of the internal market, entitles each citizen to equal treatment in all member states. National policies have to comply with EU standards and transpose EU anti-discrimination directives.

A random sample of issues where EU policies and churches have clashed:

Gay rights

Gay rights have become the litmus test of Europe's ability to protect and promote equality and fundamental rights. Opposition against gay pride parades is often led by religious leaders or political leaders of confessional parties. Some stoop to vitriolic homophobic hate speech and even incite hatred. Local authorities have often banned gay prides, invoking public order or security as justification for a ban. They argue that a public display of homosexuality clashes with public morals as defined by the religious majority. They consider that offending religious feelings is a disturbance of public order. In some cases the authorities would harass or threaten the organisers. However, organisers of gay prides have challenged the ban in court, and the Human Rights Court in Strasburg ruled that a ban on pride marches is a violation of freedom of assembly, a basic democratic right. The court even ruled that the authorities are obliged to ensure adequate protection for the marchers. The European Parliament as well has spoken out very firmly against banning gay prides, condemning homophobic hate speech by religious and political leaders. In recent years, incidents during gay prides are in sharp decline, and local authorities have chosen to comply with EU standards.

The Employment Directive

Another instrument, the 'Employment Directive', bans discrimination in the workplace on all grounds, including sexual orientation. Some countries were extremely reluctant to explicitly forbid discrimination on grounds of sexual orientation, and often religious leaders were very active and prominent opponents of such legislation. The parliament of Latvia had to vote on it seven times. But in the end each country is obliged to adopt this legislation. The Commission has recently started infringement procedures against countries that had not properly implemented European anti-discrimination rules. In a case against the Netherlands the Commission considered that freedom of religion was interpreted too widely, leaving too much room to discriminate against for example homosexual teachers. In another case in the Netherlands, the European Commission considered that an orthodox Christian party that bans women from political office violated the Employment Directive. A proposal by the former Polish Minister for Education to fire homosexual teachers who are 'promoting' homosexuality (being openly gay would be considered promotion) had to be withdrawn as the European Commission indicated it would not tolerate legislation that violates EU anti-discrimination laws. The proposal had been advocated by the ultra-Catholic *Radio Maryja*, which had a strong influence on the Polish government at the time.

Family law

Although family law is strictly member state competence, proposals for a European family policy aiming to better reconcile work and family life, are providing a

platform for discussion about the definition of 'family'. The European Conference of Bishops for example issued a position paper explicitly limiting marriage to a man and a woman, and expressing concern about emancipation of women as cause of marriage break ups. Comece calls for an EU programme to assist and counsel married couples in crisis. The definition of 'family' was also hotly debated in the context of asylum and immigration policies, with a view to determining rules for family reunification. Directives aiming to clarify the legal situation of divorce where the partners are from different countries or when they are living in a third country, meet with almost insurmountable difficulties, due to the huge differences between countries, where on one end of the spectrum are liberal countries that have same-sex marriage, whereas on the other end are conservative countries where divorce is not legally possible.

Concordats and national arrangements for church-state relations

Article 17 of the EU Treaties states that the European Union shall respect the national arrangements for relations between church and state. However, it is clear that these arrangements too have to meet certain European criteria. A study requested by the European Parliament on a 'concordat' (treaty) on conscientious objection between the Holy See and the Republic of Slovakia, found a clear breach of European fundamental rights law. Although conscientious objection is in itself a fundamental right, in this case it would severely limit access to (non Catholic) education, medical services (mainly to do with sexual and reproductive health rights), an independent judiciary (judges would be allowed to refuse a divorce) and other basic services. The results of the study sparked a fierce debate in Slovakia, and eventually the government coalition split over the matter.

Sometimes conflicts between EU law and churches emerge in other areas. In Italy and Spain the Catholic Church enjoys a number of tax exemptions, notably on certain commercial activities, on the basis of concordats. In 2007 the European Commission has started an inquiry to establish whether this might constitute illegal state aid. This initiative by the European Commission met with furious reactions in Italy, warning the EU not to be seen as 'anti-church'.

Abortion and Euthanasia

Although abortion is still very much an exclusively national competence, the debate has already moved to the European level. This was illustrated very well by the fact that both the Dutch and the Irish 'no' against Treaty reforms was partly inspired by fears that 'Brussels' would interfere in the national abortion laws, though from opposite positions: the Dutch want to keep their liberal laws, whereas the Irish want to keep their restrictive laws. Poland got an opt-out from the Charter of Fundamental Rights, as it too feared it would have to make its abortion policies less strict, and it would have to recognise gay marriage. It is not very likely that there will be EU abortion and euthanasia laws, but free movement and open borders, and common EU policies on police, justice and public health

have put these issues firmly on the European political agenda. In April 2008 the Council of Europe adopted a resolution calling for minimum rules for a safe and legal abortion in all its member states.

Development aid
The fight against HIV/AIDS and sexual and reproductive health rights is another source of controversy. Under the United States 'global gag rule' NGOs that perform or promote abortion are not eligible for funding. These NGOs count on the support of Europe to be able to carry on their work. But the religious right fiercely opposes this. Both sides are very actively seeking support from the European Parliament. In the European Parliament each reference to sexual and reproductive health rights in the context of the *Millenium Development Goals* is contested by the Christian right.

Various policy issues
Religion pops up in a wide range of policy initiatives. Freedom of speech for example is one of the thorny issues in proposals against recruitment in the EU action plan against terrorism. Some countries want to introduce a ban on blasphemy, a proposal that is strongly contested by secular forces. A European law criminalising racism and xenophobia had to be very carefully worded to distinguish between ethnic groups and religious groups.

The European Year of Intercultural Dialogue 2008 has been criticised for its one-sided interpretation as the year of interreligious dialogue. Against the wishes of the majority of the European Parliament, a 1,75 million euro subsidy was granted to the Catholic Youth Days in Cologne in 2005.

Final remarks
The fierce debates on the place of religion in EU institutions is a clear sign the European Union is coming of age as a political entity and a community of people, on the basis of shared European values. Europe is no longer just a cooperation between national member states each with their own national values. European integration in areas such as fundamental rights, immigration and police and justice cooperation can only succeed if we define a set of common European values underpinning those policies. This requires active civic involvement and public debate. Europe can no longer be left to diplomats, technocrats and civil servants. Citizens will have to shape Europe on the basis of their own values.

Religion plays an important role in the lives of many Europeans, but the European Union can only be successful if it is able to accommodate all individual convictions, beliefs and religions. Europe has emerged from twenty centuries of religious strife. In today's Europe the majority of citizens have no religion, or they don't practise actively. Europe should ensure equality and fundamental rights for each of its citizens. Freedom of religion and belief, and freedom of conscience

are core elements of a free democratic Europe. But these freedoms are individual rights, not rights that can be claimed by any group to be used to restrict the rights of others, or to impose its own values on others. The strength of Europe is its diversity, where no single religion has the monopoly of moral values, but where all citizens can equally rely on universal human rights.

Freedom of religion can only be guaranteed if the EU institutions are strictly secular. Only if the institutions are neutral they can be a platform for debate and exchange between all Europeans. The European project draws its legitimacy not from a divine source, but from its ability to be a place where each individual citizen is free to shape his or her own life and live according to their own convictions and wishes. Liberal and secularist forces are therefore crucial for the future of Europe.

Sweden

Sweden – Secular Population and Non-secular State

Ingemund Hägg

A partial church - state separation 2000

From 1 January 2000 Svenska kyrkan (The Church of Sweden) is no longer part of central and local government in Sweden, it is no longer a public authority. Now the Church of Sweden is a separate legal personality, a religious community in civil society. It is often said that from that date state and church have been separated. That is, however, not entirely correct. There are still important relations and ties between the state and the Church of Sweden. The separation is partial. Much remains to be done to accomplish a real separation – to establish a real 'état laïque' to use the French term which is more appropriate than the English expression 'a secular state'.

In this chapter I will first briefly discuss the historical background to the partial separation 2000. I will then describe and discuss the relations between state and church as they manifest themselves today. I will present legal relations between the state and the Church of Sweden, and legal relations between the state and other belief system organisations. In addition I will briefly bring in economic, political, social and cultural aspects.

Relations in the areas of education, marriage and the impact of the Church of Sweden in daily life in Sweden will be presented. Finally I will identify a number of important challenges for reform in Sweden – with the goal to establish a real 'état laïque'.

Historical background[1]

Christianity started to be established in Sweden in the 9th century and had conquered the traditional religions in the beginning of the 12th century, after mainly rather peaceful processes. In 1104 the town Lund in the south of Sweden was made a diocese for an archbishop for Denmark, Norway and Sweden. The Catholic Church successfully established canonical law in Sweden during the following centuries. A parish system was developed. The church owned land in connection with the church buildings and parish estates and had the right to raise a kind of tax from the population. The power of the church increased as it became one of the richest landowners in the country. It played an important role for health services, taking care of the poor and basic school education.

[1] This section is based on the government committee report SOU 1997:41, Utredningen om trossamfundens rättsliga reglering.

In the beginning of the 16th century European evangelic movements reached Sweden. King Gustavus Vasa wanted to break the power of the church and assume control of its valuable economic resources. The influence of the Reformation increased and the Evangelic-Lutheran Church was established as the national religion in 1593. The king replaced the Pope as the highest authority in church matters. A collaborative relationship between state and church evolved and the unity was formalized in the l634 constitution. Heresy, that is, deviation from the 'right' belief was punishable by law.

Some religious freedom was introduced in the 18th century. In 1781 immigrants with other Christian beliefs were allowed to practice their religions and a year later Jews got some such rights. In the 1809 constitution more religious freedom was introduced. It was, however, limited as Swedes had to adhere to the Evangelic-Lutheran belief system. But they were no longer forced to attend church and could practice religion in their own ways. Not much changed in practice. Only with a legal change in 1860 citizens were allowed to leave the Evangelic-Lutheran religion in order to join another recognised Christian organisation, for example the Catholic Church. And in 1873 it was made possible to create religious communities within such recognised Christian religions.

Until the middle of the 19th century local government entities (villages, towns, and rural communities) included both church and civil affairs. Now these activities were separated into local religious communities (parishes) and local civic entities. This marked an important step in separating religious and political power.

1863 a General Synod[2] was established and charged with the responsibility for church matters, legislative and others, previously handled by the state. The General Synod was convened by the King. A number of legal changes took place during the first half of the 20th century, with organisational and financial implications.

Freedom of religion continued to be a matter of concern in the public debate and in 1908 the obligation for all to pay taxes to the state church was changed so that a reduced rate was introduced for those who belonged to other religious communities. And some public committee work on the right to leave the state church without joining another church was done. The state church supported this development and took initiatives in this direction. A government committee dealt with the issue from 1943 and in 1951 an Act on religious freedom was passed by Parliament[3]. It contained a positive freedom to form and belong to religious communities and a negative freedom not to be member of any such community. Children of members of the state church automatically were members.

The law was based on the principle that the Church of Sweden should not be regarded as a public authority but as a religious community. Still, the church was to perform certain public services such as the national registration of the population.

It became obvious that it was necessary to reconsider the long-term relationship

[2] In Swedish: kyrkomöte.

[3] Religionsfrihetslagen SFS 1951: 680.

between the Church of Sweden and the state. A first parliamentary committee was set up in 1958 and followed by a number of other public committees. A number of legal changes were introduced particularly in the 1980s. Finally, in 1995, a committee with the name Kyrkoberedningen (church commission) provided the basis for a government proposal about the principles of separation of state and church. The reform got broad acceptance from all political parties, the Church of Sweden and other religious communities. Extensive and thorough committee work and collaboration between all interested parties had provided a solid basis for the reform. But, on the other hand, as any compromise it was not clearly coherent and based on clear principles. Some interested parties could identify drawbacks from their respective perspectives.

The Church of Sweden was no longer to be part of the state but to be a separate legal entity, a religious community with the right to enter contracts and own property. It was considered to be no deviation from the principle of religious freedom to give the 'new' Church of Sweden certain specific rights that other religious communities did not get. It was also felt that it was appropriate to legally oblige all members of the Church of Sweden to pay a membership fee that the state would collect within the regular tax system.

Act on religious communities[4]

A new form of legal association 'Registered religious community' was introduced in a special law. But with the special situation of the Church of Sweden with its intimate relations with the state, there was felt to be a need for a separate law for this particular registered religious community (see below).

In paragraph 2 in the Act on religious communities it is stated: 'With religious community is in this law meant a community for religious activities in which divine service is part.' (my translation). There is no definition of what is meant by divine service, even if prayer and meditation can be included.[5] It is up to those religious communities applying to become registered to make their own interpretation. To be accepted a community must have a constitution in which the purpose of the community is expressed and a decision-making structure is defined. If a community has the legal form of company, economic association or foundation it cannot be registered. In such cases a new community form has to be created fulfilling the requirements of the law. The decision to accept a community is taken by the Legal, Financial and Administrative Services Agency[6], a state agency. There are today a large number of registered communities representing different religions and directions of religions. A registered religious community has the right to ask the state for help with collecting membership fees. It can also ask for financial support which is granted by a special committee, the Swedish

4 Lag om trossamfund SFS 1998:1593.
5 SOU 1997:41, pp. 130-131.
6 In Swedish: Kammarkollegiet.

Committee for Government Support to Religious Communities (SST in short).[7] A special law[8] regulates the conditions for such support. The state support 'shall contribute to creating conditions for the registered religious community to practice an active and long-term religious activity in the form of divine service, religious counselling, education and care' (my translation). Further it is required that a community which gets support shall contribute to 'uphold and strengthen the basic values on which the society is built' (my translation). In 2007 about 5 million Euros was distributed. The SST is expected to keep an ongoing dialogue with the religious communities concerned. Again, the Church of Sweden is a special case.

Act on the Church of Sweden[9]

In paragraph 1 it is stated that the church 'is an Evangelic-Lutheran religious community' (my translation) and in paragraph 2 that it 'is an open 'folkkyrka' (popular church), which in cooperation between a democratic organisation and the ministry of the church[10] has activities all over the country' (my translation). In three paragraphs the organisational structure is prescribed with the General Synod as the highest decision-making body. There shall be dioceses led by bishops. Members shall pay a church fee[11] decided by the church and directed to the regional and the local level. This fee is collected by the state in connection with the regular taxes. Thus the state recognizes religious communities that are registered in contrast to those which are not. Further, it is the state that decides what kind of religious community the Church of Sweden shall be. It also decides how the church shall be organised.

The Church of Sweden gets financial support from the state. In order to preserve church buildings of cultural-historical interests it gets about 40 million euros per year (2008 figure). There is yet no decision about the sums for the period after 2010. There are also possibilities for parishes to get financial support for, for example, energy saving in church buildings. The Church of Sweden can, as other voluntary organisations, get financial support for international activities in developing countries.

The Church of Sweden is responsible for the care and maintenance of cemeteries in the country (with the exception for a few municipalities). The costs are covered by a fee levied on all tax-payers. Members of the church have the right to free burial services but all citizens have the right to be buried in a cemetery.

Marriages performed by the Church of Sweden and other registered religious communities which have got permission, are legally valid. That is, such communities have the right to fulfil public functions. Marriages can also be enacted by officials

7 See: www.sst.a.se.
8 Lag om stöd till trossamfund SFS 1999: 932.
9 Lag om Svenska kyrkan SFS 1998:1591.
10 In Swedish: kyrkans ämbete.
11 In Swedish: kyrkoavgift.

in the (civil) municipalities and by citizens who have been licensed by the County Administrative Board.

Relations between the state and religious communities today

Thus the state stipulates what registered religious communities should look like and for the Church of Sweden in detail what should be its religious basis and its organisation. The state also provides different kinds of financial support. Further, it gives religious communities the right to carry out marriages. The Church of Sweden is responsible for the cemetery system in the country, irrespective of membership in the Church of Sweden.

There is a Government council for contact with the registered religious communities. It consists of representatives of such communities and the state and is led by a member of the government. The purpose is to discuss questions of common interest.

The relations between state and religious communities are thus varied and far-reaching. This does not correspond to a clear separation of church and state, nor with a neutral position of the state. Thus the Swedish state (state institutions) cannot be seen as 'laïque' (secular).

The educational system

So called free schools are allowed in Sweden in addition to the public school system. But all schools are financed with public money and no school is allowed to collect fees from the pupils. Anyone can apply for permission to start a school and if it fulfils a number of conditions The Swedish National Agency for Education can give the permission. In 2007 there were 4826 schools on the basic level of which 635 were free schools. Most of them have what is called general direction. Some are Waldorfian. About 10% of the free schools are run by religious communities or other kinds of organisations with religious characteristics, and are called confessional. They have to give non-confessional education equal to the one given by public schools where the subject Christianity knowledge in 1969 was substituted by the subject Knowledge of religions, compulsory for all kinds of schools. All schools must offer an education which in all its parts is consistent with the goals and basic values inherent in the public schools. Confessional (denominational, parochial) schools must accept pupils from whatever religious background. Confessional schools are allowed to give education in their particular religion but this education is not allowed to be mixed with the compulsory common education and has to be voluntary for the pupils.

If breaking-up-day (commencement) is compulsory for all, it is part of the education and thus has to be non-confessional. If such an activity has the emphasis on tradition, solemnity and community it is according The Swedish National Agency for Education acceptable to have it in a church. But, in principle, it should

not be acceptable to have a priest or other religious leader taking active part in ceremonies. In recent years it has been widely debated if schools could have the end-of-year celebration in churches in view of the regulation that education has to be non-confessional. From religious communities it has been stressed that it is important to continue to let school children experience Swedish culture in beautiful church halls, with religious songs etc. I have no objections to the use of church premises no religious ceremonies led by religious leaders should be involved. Religious leaders, if they attend, should only be there as part of the audience. To sing traditional religious songs could in such context do no harm.

In Sweden as in other countries there have been discussions about the wearing of headscarf/veil in schools. The Swedish National Agency for Education has declared that the right of religious freedom in Sweden implies that pupils who for religious reasons want to carry, for example, headscarves should be allowed to do so, if this does not lead to disruption of order or if it makes the pedagogical task of the teachers difficult.

Muslims in Sweden

The number of Muslims in Sweden can at present be estimated to be around 400.000 in a population of 9 million. Many Muslims in Sweden are secular. Religious Muslims come from different Islamic beliefs and there a number of Muslim religious communities, most of them small and having their divine services in private homes, in basement rooms and similar. Separate mosques are still few. Some umbrella communities have become registered religious communities and some are represented in the Government council (see above). The number of schools run by organisations with Islamic connections is few. The issue of education of imams in Sweden is currently being studied by a government committee. There are clear instances of Islamofobia and discrimination of Muslims in Sweden and some mosques have been burnt down. The situation in Sweden is far from one with respect and tolerance.

Liberal views and initiatives

The Swedish Liberal party has long been in favour of the separation of state and church. This view is held by members with a background in various religious communities as well as members from urban-radical environments. Since the partial separation in 2000 there have been discussions in the party about further reforms in the direction of a more definite separation and also some initiatives in parliament from liberal MPs.[12]

[12] Motion 2004/2005: p.113.

Abolishment of privileges of the Church of Sweden

One proposal from liberal MPs from 2004 states that religious freedom is incompatible with the specific regulations for the Church of Sweden in the Act on the Church of Sweden. This act should be abolished and the Church of Sweden be treated like the other religious communities. The Church of Sweden should no longer be responsible for the funeral service system. Financial contributions to religious buildings for cultural-historical reasons should be made on equal conditions for all religious communities. The liberal proposal also finds it unacceptable that the King (or Queen) of Sweden should be required to have the faith of the evangelic confession.

Civil marriage[13]

Recently same sex marriage has become an issue. The liberal view is that such marriages should be accepted. Several religious communities are against this and in the Church of Sweden there are different opinions. For many liberals the solution should be that only civil marriages should have legal consequences and that religious ceremonies could be held completely independently, if so desired. The religious communities not wanting to have ceremonies for same sex couples would not be forced to have them.

Education of imams

Another issue is the education of imams. There are some concerns that imams active in Sweden lack adequate knowledge of the Swedish language and society and some even say that there is a danger of radical and fundamentalist Islam being favoured in some communities where imams have little education or only education from Islamite countries. Some even think that Muslim communities could become the source of terrorism. In order to see what the state can do to improve the situation the liberal minister of higher education has initiated a government study of what can be done to educate imams in Sweden. Imams do not have the same functions as priests in Christian communities and imams in Sweden are often fulfilling their functions on a part time basis and comparisons with the profession of being a priest are misleading.

Over the years the state has in many respects withdrawing from education of Christian priests which traditionally was the task of the theological faculties at universities. Now the religious parts of this education in the beginning and the end of the education is the task of the religious communities concerned but still state money can support these religious parts of the education. A prerequisite for becoming a priest in the Church of Sweden is an academic degree from a theological faculty at a university, a degree which is non-confessional and like other university degrees based on scientific inquiry.

With a principle of separation of state and church the state should respect

[13] Government committee report SOU 2007:17.

Muslim organisations´ independence and freedom to organise the religious education they want to have. It should be up to them to decide, without state interference, what knowledge in the Swedish language and about the Swedish society should be required. It can be expected that – if there is a demand – voluntary organisations will develop appropriate courses. And if a Muslim community would like to have an academic basis there are university courses that could be selected for study.

Reflections on secularisation in Sweden

How religious or secular are people in Sweden? How separated is the state from the religious communities?

A secularised population

Statistics on participation in divine services indicate a continuously decreasing attendance from the beginning of the 1940s. We also find that since the 1960s there is a decreasing frequency of marriage in church, in baptising children and in confirmation of youngsters. The international Values Surveys[14], however, shows that while 32% saw themselves as religious persons in 1982 this figure had increased to 37% in 1999. The corresponding figures for those who saw themselves as non-religious persons were 55 and 52% respectively. Convinced atheists were around 6%. Young people (15-29 years) are less religious than the oldest (50 +). In the EU spectrum it seems as if Sweden has the lowest frequency of people who consider themselves religious.

Even with the increase from 32 to 37% of the Swedish population identifying themselves as religious persons there are also indications of continued secularisation. Internationally, there is an ongoing debate if Europe has or is entering a post-secular period, that secularisation has come to an end and of a return of religion. Jürgen Habermas is putting a question-mark to this statement.[15] He finds that even in secularised societies religious communities have a say. He believes that describing societies as post-secular 'refers to change in consciousness' and that religious communities 'are increasingly assuming the role of communities of interpretation'. In a Swedish context Magnus Hagevi, a political scientist, claims that he has identified important indications of Sweden now being post-secular. In particularly he notes that the frequency of those seeing salvation as important seems to be increasing in younger generations.[16] He finds that for a younger age group the importance has increased from 1986 to 2006 while it has dropped a

[14] www.worldvaluessurvey.org.

[15] Habermas, Jürgen, *'A post-secular' society – what does that mean?*, Paper presented at the Istanbul Seminars organized by Reset Dialogues on Civilizations, Istanbul, 2-3 June, 2008.

[16] Hagevi, Magnus, 'De postsekulära generationerna', in: *Det nya Sverige*, SOM-rapport 2006, ed. Sören Holmberg and Lennart Weibull. 2007, p. 59 ff.

little for the an older age group. The scale runs from 1 (not at all important) to 5 (very important) and as all figures are between 2 and 3, that is, fairly low, to draw a conclusion that they indicate an end to secularisation is shaky.

Almost two thirds of the population of 9 million people are members of the Church of Sweden, that is, the church has more than 6 million members. The number has fallen since the partial separation in 2000. It can be assumed that many of those leaving the Church of Sweden do so for financial reasons – in order to avoid the membership fees collected in the state tax system. Many adhere to religious traditions, like baptism, confirmation and marriage in church and appreciate the church for this reason without seeing themselves as religious persons.

As described above it was not possible to be a Catholic in Sweden after 1593. In the beginning of the 18th century foreigners who were Catholics were tolerated and in the end of the century such foreigners were allowed to form Catholic communities and build churches. In 1873 a dissenter law allowed Swedish citizens to leave the Swedish church in order to join other Christian communities like the Catholic Church. In 1982 Sweden entered into diplomatic relations with the Vatican and in 1989 the pope visited Sweden. The number of members of the Catholic Church in Sweden is about 85.000.

A non-secular state

How separate is the state from the religious communities? The 2000 so called separation is not really a separation. Ties of different kinds are strong between the state and the Church of Sweden and other religious communities. I draw the conclusion that Sweden in this perspective was never really secular. Thus the statement that Sweden is developing into a post-secular society is not meaningful.

Religious and other voluntary organisations

It is interesting to think about why the state chose to invent a new form of legal association for religious organisations. It would have been quite satisfactory to use the already existing form 'voluntary organisation' as the legal basis for religious communities which some of them already had before the reform. The reasons put forward were that the legal form voluntary organisation did not suit all religious communities. An example was the Catholic Church with its hierarchical organisation with the Pope on the top. Different forms of authoritarian elements were also regarded as incompatible with the legal form voluntary organisation.[17] The validity of these arguments can be questioned.[18]

It is impossible – and also not desirable – to imagine a society without relations

[17] SOU 1997: 41, pp. 121 ff.

[18] See Lagerberg, Georg, *Svenska kyrkans rättsliga ställning – offentligt, privat eller någonting annat. En studie av relationsförändringen mellan kyrka och stat*, Masters thesis, School of Business, Economics and Law, Gothenburg University, 2003.

between state and civil society, including its religious communities. Jürgen Habermas has coined the concept pre-political discussion where he opens for religious organisations participating in the public space. Lately he has formulated this in the following way:

'In a constitutional state, all norms that can be legally pushed through must be formulated and publicly justified in a language that all the citizens understand. Yet the state´s neutrality does not preclude the permissibility of religious utterances within the political public sphere as long as the institutionalized decision-making process at the parliamentary, court, governmental and administrative levels remains clearly separated from the informal flows of political communication and opinion formation among the broader public of citizens. The "separation of church and state" calls for a filter between these two spheres – a filter through which only "translated", i.e. secular contributions may pass from the confused din of voices in the public sphere onto the formal agendas of state institutions.'[19] I have sympathy for this view but I realize that it is hard to put fully into real practice.

The issue is thus what kind of relations are compatible with independence and freedom for civil society organisations, including religious communities. Recently a system of dialogue has started to be implemented between the Swedish state (public institutions) and voluntary organisations in the social service area. The state wants to find ways of complementary activities from such organisations in traditionally state social services. It is stated that the dialogue must take into account local and regional conditions. The emphasis is on activities and as I see it supporting religious and other belief communities focussing upon social, cultural and other activities without religious connotations is compatible with a state that is neutral. But if activities are of religious kinds are directly or indirectly involved they should not be part of dialogue with the state. This also leads to questioning the financial support given by SST to religious communities outside the Church of Sweden where conditions for support explicitly can be to practice divine service. I do not think that the best reform is to enlarge the recipients to include non-religious belief organisations, which has been proposed by, among others, a liberal Member of Parliament. Rather SST should in the long run be replaced by new systems for giving financial support to valuable non-religious activities conducted by voluntary organisations, be they religious or not.

Church of Sweden strategies

'We sometimes describe ourselves as Sweden's biggest popular movement.'[20] When representatives of the Church of Sweden participate in public debate they often emphasize the valuable things that religion and in particular Christianity leads to in Sweden, such as tolerance, health, general welfare and even economic growth. It seems to me that the emphasis is more on religion as a means for different good things, rather than on the faith itself. For example: the archbishop of the Church

[19] Habermas, *'A post-secular' society*, 2008.

[20] 2007 Review and financial summary for the Church of Sweden, national level.

of Sweden has entered the debate on climate issues and suggested that religion can be constructive by giving hope and promoting long-term thinking. The Church of Sweden foresees continued talks with the government about relations, for example, on the future contributions from the state for management of church buildings.

Church of Sweden impact on daily life

In many ways the influence of the old state church can be seen in subtle forms. When in the public service radio 6 pm on Saturdays approach the radio announcer simply says Helgsmål (ringing in the church weekend/festival) without reference to the Church of Sweden and that the ringing comes from church X again without indicating it deals with the Church of Sweden. In media you can see reference to 'the archbishop of Sweden' without reference to the fact that Sweden does not have an archbishop, but the Church of Sweden has one. When the Uppsala university invites to great academic festivities it can be written that invited is this and that person from this or that organisation but then just 'archbishop NN' without mentioning that NN comes from the Church of Sweden. These are just examples of how daily life in Sweden not surprisingly is full of traditions and that the change of the Church of Sweden from a state church to a religious community among other communities has hardly yet put its mark.

The leaders of the Church of Sweden are well aware of this and the prestige and reputation the church has and of course wants to preserve this situation. It wants to make use of its competencies in the Swedish society, for example offering its services when it comes to social services, education in schools, and crisis handling. The Church wants to participate and in a visible way. This is fine when it takes place in a civil society with equal rights for all organisations in civil society.

Conclusions

The title of this chapter indicates that I see Sweden as a country with a secular population and with a state that is non-secular. I admit that claiming that the population is secular is questionable. At least one can say that there has been a period of secularisation which has now come to an end and that the population is becoming less secular. Religion has, as I see it, always had a role to play in people's lives even if this role has changed in character over the decades and centuries. And also the form of the Swedish non-secular state has changed over time.

It will take a long time before a real separation between church and state is achieved. The eight years that have passed since the partial separation in 2000 is a very short time. And looking at France where a separation took place in 1905, more than one hundred years ago and realising that France has not experienced a real separation but in the long run some steps forward, followed by steps backward, as not least recent development in France shows.

There is a need for tireless liberal efforts in order to step by step contribute to a real separation. The following reforms seem to be most important in the next

few years:
** Abolishment of the particular Act on the Church of Sweden, letting this religious community instead be governed by the Act on religious communities*

** Introduction of compulsory civil marriage, before religious ceremonies at the will of religious communities*

** A school law only allowing confessional subjects and activities to be held after the ordinary school day is over*

** Reconsidering the state support in collecting membership fees with the long-term goal to abolish this system*

** No state intervention when it comes to education of religious leaders, like priests and imams*

** Reconsidering public tasks that should be taken back to the state, like responsibility for cemeteries*

** Equal treatment of all voluntary organisations, be they religious or non-religious, when it comes to different kinds of state support*

All these measures should be taken in a spirit of acknowledging and guaranteeing the right of religious freedom and the right of religious communities to act freely in civil society. In a liberal society a viable and dynamic civil society is as important as a secular state.

Norway

State Church Moving Toward Dissolution in Norway

Odd Einar Dørum [1]

As this is being written in June, 2008, the Norwegian Parliament – Stortinget – has just considered Report to the Storting nr. 17 (2007-2008) on *The State and the Church of Norway*.[2] It has also passed a new law on marriage granting homosexual and heterosexual couples equal rights, discussed new subject content for religion and life stance in schools, and is set to address new statements of purpose[3] for schools and day-care centres.

All these issues indicate that Norway is moving in a more liberal direction, and signal weakening bonds between the church and the state. The Liberal Party considers this a positive development, as we in principle believe that the state cannot be tied to a confession. But we also believe religion has its place in the public sphere, and that a secular state does not necessarily imply a secular society. The basic liberal viewpoint is respect for every individual's integrity, religion or life stance and, hence, the need to secure a society that provides space for full freedom of expression in these areas. This applies, therefore, both to religious expression and the right to criticize religion. The Liberal Party is currently promoting a proposal for constitutional amendment addressing this principle.

In the debate on religion in the public sphere, certain conservatives – Christian and Muslim alike – have expressed a fear of 'secular extremism'. Though there is hardly a real danger of this in Norway, we take these concerns seriously. To quote editor Harald Stanghelle, who wrote the following in one of our major newspapers, *Aftenposten*, after the new marriage law was approved: 'Our times are characterized by a liberal hegemony. And apart from the fact that any given hegemony has a clammy, we-know-better feel to it, the liberal way is the best way to live' (transl.).

Church and state

The Norwegian Parliament's consideration of the relationship between the church and the state ended in a broad compromise to which all parties agreed. The Liberal Party, among others, wanted a decisive separation between church and

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1 This text is originally written in Norwegian, and translated into English. All quotations that are translated from Norwegian are marked 'transl.'.

2 The state-related Church of Norway is a confessional Lutheran majority church. In the following it will also be referred to as 'the state church' or, simply, as 'the church'.

3 I.e. the 'Christian objects clause,' also discussed below.

state, but was met with stark opposition from two of the three sitting governing parties, the Norwegian Labour Party (Arbeiderpartiet) and the Centre Party (Senterpartiet). The compromise was the best result we were able to achieve this time. The alternative would have been nothing at all. In our view, we are half-way to complete separation. What is most important is the agreement that the Constitution's resolutions that the state is connected to a religion and that the state controls the church, shall be repealed.

Those who are more tradition-bound on this issue do not justify a continued connection between the church and the state as a matter of principle, but more on the basis of given political realities and political power. The largest governing party, the social-democratic Labour Party, has been accustomed to exercising power and control. Until recently, it has wanted political control over the church to be maintained – among other reasons, in order for the government to be in charge of appointing bishops, and attend to what they view as a broad folk church, not dominated by conservatives and pietists.

The Liberal Party shares the desire for a generous and open church, with room for various movements, theological views and degrees of commitment. We consider it untenable, however, that political authorities should exercise control in order to achieve this. We have greater trust in the church's own members, organs and processes, and consider the church as a religious community, not as the religious branch of the government. It is worth noting, also, that the Church of Norway has moved in a culturally open direction regarding social and ethical issues in recent years.

The state's power may have contributed to making the state church more liberal and manifold. But the debate is indeed about principles related to the autonomy of the church and to the state not being tied to a confession. Religious communities belong primarily to civil society, not to the state.

Since 1985, the Liberal Party's platform has included dissolving the state church. Our new 'Principle Platform' (2007) states: 'Faith/religion and life philosophy are deeply personal, and society is to guarantee complete freedom in this area. The State and other public institutions are, in the name of tolerance, to be non-partisan and not connected to a particular religion, but the neutrality of the State in matters of life stance and religion does not mean a secular society. Religion and life philosophy have an obvious place in the public sphere, and the State must contribute to generous financial arrangements for life philosophy/religious communities. The Liberal Party of Norway wants to separate the church from the state and trusts that the church members themselves will develop the Church of Norway as a broad folk church.

Norwegian society is characterized by Christian and humanistic values and traditions. Schools are to have a common subject for life stance, religion and ethics, which provides knowledge on various religions and life philosophies, and an introduction to ethical principles and values. The subject is to be neutral in the area of life stance and religion' (transl.).

Historical development

'Christianity was introduced in Norway through a resolution of law, and has as such always been the national religion', reads the parliamentary report chapter on the history of the state church. The history can be traced back to about 1000 AD when King Olav Haraldson (later known as 'Saint Olav') introduced the Church Law in 1024. The Lutheran Reformation was also a matter of law, when it was introduced by King Christian III of Denmark and Norway through the Church Ordinance of 1537. Church legislation was later revised by King Christian V in his Norwegian Law of 1687.

When Norway secured its Constitution in 1814, there were no fathers of the Constitution who wanted changes made to the state church system of the former absolute monarchy. Continuity is stressed in the Constitution's article 2, which affirms that '[t]he Evangelical-Lutheran religion shall remain the State's official religion.' This article still stands, but will be amended in the next parliamentary period 2009-2013 (see below).

In 1845 Norway got a dissenter law which allowed other Christian communities than the state church to establish themselves in the country under state control, and citizens to leave the state church in order to join such other communities. In 1851 Jews were allowed to live in Norway. In 1891 also non-Christian communities were allowed in the country. For Catholics the last restriction prohibiting Jesuits was abolished only in 1969.

Since World War II several major reports have explored the future of the state church. In this context it is worth noting that in its report to the Storting nr. 40 (1980-1981) *On Church and State,* the government concluded that it saw no basis for a separation between the church and the state, but that it was willing to go as far as possible in considering decentralization and delegation of authority in relation to the church. The settlement on the church that was recently reached between the seven parties represented in the Storting represents a further strengthening and development of such thinking, among other things by the fact that core constitutional articles are to be amended.

Legal foundation and organization

The state church is anchored in seven different articles of the current Constitution. These articles regulate matters such as the appointment of deans and bishops, the role of the King in the church, the issue of church membership of members of the government, etcetera. There are also other articles relevant to the state church system, including an article concerning 'Opplysningsvesenets fond' – a fund that controls significant property in Norway on behalf of the state church. At the turn of the year 2006/2007, the fund's worth was estimated to be 6.3 billion Norwegian crowns.

In addition to the consequences of the afore-mentioned clauses in the Constitution, the Norwegian Parliament has passed a specific church law. The church law regulates, among other things, the organization of the church in dioceses, deaneries and parishes and the balance of responsibilities and authority between the legal bodies (synods and councils) at different levels of the church. This law also constitutes a juridical basis for financing the Church of Norway.

Even though the Church of Norway is constitutionally anchored, it has a relatively complex organizational structure. It is geographically divided into 1278 parishes (members are designated to a given church based on their address of residence), 106 deaneries, and 11 dioceses (each diocese is divided into deaneries). There are further 430 parish councils, approximately one-third of which are related to only one parish.

There is also a national governing body for the church – the General Synod – which was established in 1984. The General Synod meets once a year and has, according to §24 of the church law, a general mandate by delegation from the state to 'direct its attention to issues of a common ecclesiastical character, and otherwise to all that can be done to awaken and nourish Christian life in the congregations, and to promote cooperation within the Church of Norway' (transl.).[4]

These bodies represent jointly the Church of Norway as a folk church. This type of established church has become a central issue in the political debate. The term is discussed comprehensively in the afore-mentioned report to the Storting *On the State and the Church of Norway*, where among other things it is emphasized that there is no clear-cut definition of the term 'folk church'. It is, however, considered clear that the term, which as a long-standing tradition in the Nordic countries**,** reflects the distinctive position the church has had and continues to have in Norwegian society. The term is further connected to particular qualitative and formal distinguishing features. Accordingly, the Church of Norway can indeed be characterized as a folk church, as 1) a majority of the population are members; 2) it is nationwide; 3) baptism is the only formal requirement for membership; and 4) church ceremonies (such as weddings and funerals) are generally supplied free of charge and openly available.

A long path to separation

The debate about the relationship between the current state church and the church as a religious community has been ongoing for many years. Religious and life stance minorities have pointed out that is unreasonable that a state should be connected with a given religion, and that only one religion is to be favoured.

[4] The General Synod chooses representatives for the following three central governing bodies of the church: the Church Council (which prepares the meetings of the General Synod and implements its actions), the Council for Ecumenical and International Relations, and the Sami Church Council.

Changes in the church's practices and views on issues such as female pastors and bishops and the place of homosexual persons in the church have slowly developed – to a large extent due to processes within the church itself, but also as a result of pressure from society at large. It is worth emphasizing that the church itself has been clear in its wish for separation; the church has made clear that it wants to be an autonomous religious community and not the religious branch of the state.

The debate has recently intensified, both as a result of immigration and a greater segment of the great world religions being present in Norway, and through increased breakthroughs for liberal attitudes and principles – within the church as such, and by influence of the strong humanist and non-religious life stance organization, the Norwegian Humanist Association. This organization has worked closely with religious minorities in Norway on the issue of the state church, constituting a solid lobby for greater equality in this area.

Financially, fair shares among the religious communities were introduced in 1969. All registered religious and life stance communities have a right to the same federal support per member as the state church costs per member. There is broad support in favour of maintaining this practice, also reflected in the settlement recently agreed upon by all seven parties in the Storting (see below).

Teaching Christianity in school

The traditional study of Christianity in the school system was replaced in 1997 by the subject 'Christianity, religion and life stance' (the Norwegian acronym is KRL, for 'Kristendom, religion og livssynskunnskap'), which is to instruct, but not preach in this area. For that reason, the former right to exemption from the subject of religious education was lifted, a decision that members of the Norwegian Humanist Association took to the European Court of Human Rights (ECHR) where it was ruled that the right to exemption should still be maintained, since Christianity is still considered to dominate the subject field. Despite several changes to the subject since 1997, the ECHR assessed the subject matter based on its composition in 1997.[5]

The Storting has now resolved to change this subject**'**s curriculum, by among other things giving it a more neutral name: 'Religion, life stance and ethics'. It is emphasized that this is an obligatory subject for everyone. Christianity will quantitatively constitute the greatest part of the curriculum, in accordance with its place in Norwegian history and society, but the subject generally addresses religions and life stances, and should not carry with it religious influence in any way. The summary of the Ministry's proposal reads as follows in Innst. O.nr 72 (2007-2008):

'The Ministry's proposal means that teaching in the subject will provide knowledge of Christianity, other world religions, life stances, and ethics in a qualitatively equal way and contribute to understanding of and respect for

[5] European Court Of Human Rights, *Folgerø and Others v. Norway*, no. 15472/02, 29 June 2007.

different perspectives. It is suggested that the subject name be changed accordingly. Christianity will still quantitatively constitute the greatest part of the curriculum. Various religions and views will, consistent with human rights, be presented in an objective, critical and pluralistic fashion' (transl.).
For the Liberal Party, it has been important to stress that the subject must be changed according to the ECHR verdict, at the same time as we have been concerned that the subject recognize our roots in the Christian and humanistic cultural legacy, and that all religions and life stances be presented on the basis of their distinctive character. This has also been our party position with regard to the government's proposal.

Christian statements of purpose for schools and day-care centres have also been discussed and criticized by several groups, with increasing understanding for this within the Christian majority. This applies in particular to the controversial obligation to provide Christian upbringing, as established in the existing statements. The parliamentary action on the statements of purpose will be forthcoming in the fall of 2008, and everything indicates the statements will be changed according to the recommendations of a broadly composed government-appointed commission. The commission has emphasized the importance of making the statements more universal, while recognizing Norway's Christian and humanistic tradition. Consistent with the position of the Liberal Party regarding the new teaching subject (see above), the party has advanced an independent proposal on new statements of purpose that address these concerns.

Pressure to separate the church from the state has indeed come from both minority groups – who argue with reference to human rights and international conventions that a state religion is discriminating – and, to an increasing extent, from the church itself – which wants autonomy as a religious community, without political interference.

A broad compromise

In the report to the Storting on the church and the state, the Ministry of Culture and Church discussed the relationship between the state church and freedom of religion and life stance. The Constitution of 1814 already ascertained that the people of Norway should have religious freedom. Many people in this country may of course have experienced the pressure of cultural uniformity. But such pressure has diminished significantly in recent years.

The Liberal Party is Norway's oldest party. It was founded in 1884, representing broad popular trends. As such, it has naturally had its own roots in what has been the country's dominant cultural basis. Today's ten Liberal Members of Parliament are all members of the Church of Norway. We have for several years formulated in our platform a foothold in 'Christian and humanistic values'. Based on the church's and Christianity's strong position in Norway, we believe it is natural that the state makes possible a continued broad folk church, despite the fact that it should be separated from the state, not least because it is necessary to maintain

an economic foundation for the church, to protect properties, church democracy, training for service in the church, and so on. At the same time, the principle of equal treatment of all religions and life stances is vitally important.

The government contends in its report to the Storting that neither the state church in its current form, nor another special arrangement for the Church of Norway, contradicts general (liberal) goals for life stance and religious politics or international commitments, e.g. in the area of human rights. This may of course be debatable. A unique position for a dominant folk church need not be problematic, as long as other life stance and religious communities have their rights protected in a comparable way, within the framework of a society with a high level of tolerance and freedom. This involves among other things that all life stance and religious communities in Norway have equally generous financial arrangements. In 2008 the Norwegian church got about 1,3 billion Norwegian Crowns from the state and with about 3,9 million members implies 335 Norwegian Crowns per member. Other recognized religious and life stance communities got the same amount per member.

The settlement between the parties in the Storting means that church democracy will be further developed, and that changes in the Constitution and other laws will be proposed. The settlement shows which problems are the most controversial, with some of the main points being the following[6]:

> *1. Appointment of bishops and deans, democratic reform*
> All the parties agree that a process will be set in motion whereby the parties' common goal is to transfer responsibility for the appointment of bishops and deans from the Council of State[7] to ecclesiastic bodies such as the General Synod or Diocesan Council.
> Democratic reform**,** called for by the Church of Norway itself, will be undertaken in cooperation with the church so that church bodies will acquire a stronger democratic legitimacy and anchoring among church members.
>
> *2. Issues of church order*
> The parties agree that, among other things, the following important elements will be maintained through the state church settlement:
>
> 1) The Church of Norway shall be distinctly anchored in the Constitution, cf. the new article 16.
> 2) The organization and operations of the Church of Norway will

6 The points listed here are translated and abbreviated. The Norwegian full text of the agreement between the seven political parties can be found here: http://www.regjeringen.no/upload/KKD/Vedlegg/PRM35-08_Stat_kirke_Vedlegg_Endelig_avtale.pdf.

7 I.e. the King and the Government in joint session, normally held weekly**.**

continue to be regulated by a special church law, without the church being defined as a legal entity.
3) The state shall continue to pay the salaries and attend to employer obligations for bishops, deans, pastors, and others appointed to church positions of employment in regional and central church bodies; that is to say, they will continue to be civil servants.
4) The regional and central church administration shall continue to be a part of the central government administration.
5) Administrative and public laws shall continue to apply to legally based church bodies.
6) The state shall continue to ensure that the municipalities have a statutory duty to finance local church activity.
7) Municipal representation in local church councils shall continue as is the case today.

3. Constitutional amendments:
When the process under point 1 is completed, the following amendments will be made to the Constitution:

Article 2 will be amended to: 'Our foundational values remain our Christian and humanistic heritage. This Constitution is to guarantee democracy, a state of law, and human rights'.
Article 4 will be amended to: 'The King shall adhere to the Evangelical-Lutheran religion'.
Article 16 will be amended to: 'All inhabitants have the right to freedom of Religion. The Church of Norway, an Evangelical-Lutheran church, is to remain Norway's folk church and as such be supported by the State. Further Resolutions on its arrangement will be laid down by Law. All religious and life stance communities shall be supported financially in a similar way' (transl.).

If I may dwell a moment on the amendment of the so-called 'values clause' (Constitution § 2). A central element in the said article reads: 'The Evangelical-Lutheran religion remains the State's official Religion. Inhabitants who declare their adherence to it are obliged to raise their children accordingly' (transl).

The new constitutional article 2, which the seven parties have joined ranks on, declares that our foundational values shall remain our Christian and humanistic heritage, and that the Constitution is to ensure democracy, a state of law, and human rights. In the new article, the state no longer has an official religion – even if it recognizes foundational values – and the duty related to Christian upbringing is removed (cfr. the discussion above on the statements of purpose of schools and day-care centres).

Another decisive element – and a logical consequence in the light of other amendments – is that the government will no longer appoint deans and bishops. The church will itself have responsibility for this.

As a result of the settlement between the seven parties, several other articles of the Constitution will also be amended. The current financial arrangements for the Church of Norway and other religious and life stance communities will continue. This means among other things that a membership fee will not be introduced in the Church of Norway.

Furthermore, ways will be explored how to establish municipal responsibility for making life stance and religiously neutral ceremonial rooms available for funerals and weddings. The assessment will examine, among others things, the question of financing.

In sum, this settlement – to be implemented in the next parliamentary period, 2009-2013 – will significantly contribute to loosening the ties between church and state. From there we must go further to achieve full separation, and what the Liberal Party believes can be a more vital church, governed by its own members.

Membership in religious and life stance communities

As mentioned the Norwegian church had about 3.871.000 members in 2007. The corresponding (round) figures for other communites were for other Christian communities 225.000, for life stance communites 80.000, for Islamic communities 79.000, for Buddhist communities 11.000 and for other religious communities 9.000.[8]

Is Islam a threat?

Like other European nations, the Norwegian population has over the past years seen an increased proportion of people from other countries and cultures, of which a significant proportion is Muslim.

The Liberal Party firmly believes that immigration is both necessary and enriching for society. We are also clear spokespersons for a humane and decent asylum and refugee policy, where individuals who are in danger can seek and be granted protection.

This does not however mean that we are naive when it comes to challenges that immigration brings with it. To the contrary, we take in hand concrete problems where and as they arise, but without the generalizations or stigmatizations to which populist opponents of immigration so readily resort. In my tenure as Minister of Justice (1999-2000, and 2001-2005), I and others carried out Norway's first plan of action against forced marriage and female genital mutilation, with accompanying judicial resolutions.

In many areas, we make clear what we stand for as a society, and which limits

[8] St.meld.nr.17 (2007-2008) Staten och den norske kirke, table 2.1.

we set. But if these limits are too restrictive and we make a distinction between 'them' and 'us', conflicts will instead be exacerbated, and we will encourage extreme forces that do not accept the framework of a liberal, democratic society. Norway has achieved many objectives with its integration policies, and we have been spared extreme Islamic circles that challenge society's fundamental values**.** Yet many challenges remain.

The previously mentioned newspaper *Aftenposten* arranged a feature article competition in the spring of 2008. The winner was a young Muslim medical student, Muhammad Usman Rana, who described what he called 'secular extremism'.[9] The article led to extensive debate, not only contesting that the liberal *Aftenposten* could crown such a feature article the competition winner, but also addressing the article's content.

In a way one could say it is curious that claims of secular dominance can surface in a society that has a Christian church to which almost 85% of the population belongs. On the other hand, it is clear that the Norwegian public debate is more secular than before, and that strong forces within the church itself assume more liberal views than before, which some may consider secular. One example is the new marriage law (see below). It is worth noting that the two members with Muslim background in the Norwegian Parliament both voted for the law. Most immigrants with Muslim background, furthermore, vote for parties on the left of the political landscape, governmental parties that promoted the law. The picture of a standard Islamic population that follows one Islamic political course is consequently incorrect.

But how does one avoid falling in the opposite trap? All who feel neglected in society and who experience what they consider discriminating or patronizing, easily withdraw in order to cultivate his/her distinctive character more than s/he otherwise would have done, and may, in extreme cases, develop extremist attitudes and actions. Trond Skard Dokka, a Norwegian professor of theology, wrote wise words on this topic in *Aftenposten* in December 2006 under the title 'The Dangers of Anti-religion'[10]: 'Across Western Europe, religion has been met with marginalization in common arenas. Even if Christians have been touched, there is no doubt that Islamic communities are more harshly affected. In addition, these circles also stand out by skin colour, language, culture, often poverty. Religious marginalization in combination with other such factors has reduced the possibilities of access to the general culture to a minimum. The result has become non-integrated sub-cultures where the lack of tolerance in society at large creates distrust in return. Such sub-cultures are the most important hotbeds of fundamentalism' (transl).

Dokka argues against the support expressed by Ralph Dahrendorf for more

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[9] The Norwegian article by Muhammed Usman Rana can be read in full here: http://www.aftenposten.no/meninger/kronikker/article2274868.ece.

[10] The Norwegian article by Trond Skard Dokka can be read in full here: http://www.aftenposten.no/meninger/debatt/article1572780.ece.

radical exclusion of religion from public arenas, and believes this will promote Islamic fundamentalism rather than reduce it. Also with respect to Christianity, such a policy will, he says, 'strengthen sectarian tendencies and weaken the churchliness that feels a responsibility for the whole community. […] It is openness that weakens sub-cultural withdrawal, and lays the foundation for religious forms wherein which responsibility for the common good is universal, including recognition of the rights of others'(transl.).

I share Trond Skard Dokka's view, and it is also the view of the Liberal Party that all types of fundamentalism must be met with commitment to society's fundamental institutions and values, with tolerance, openness, dialogue, and inclusion of moderate religious groups of all faiths. This has to do with the tone of debate in a liberal democracy. It is a common responsibility to cultivate tolerance. It is my opinion that one cannot fight intolerance with exclusion, but through freedom of expression and dialogue, based on being clear and at the same time listening – no matter how difficult it might be. The answer lies in pointing to the value of the individual's free choice, having faith in the potential of development in human beings, religions and cultures. There is a good deal of experience to support such optimism.

Along these lines, allow me to comment on what I experience as a distinctive characteristic of religious life in Norway, namely the many common meeting places that have arisen. We have no less than a Christian Council for all the Christian denominations, an independent Islamic Council, as well common councils for all Norwegian life stance and religious communities. A good example of how these meeting places foster common ground – across religious divisions, both internal and external – is the recent *Joint Declaration* between the Church of Norway (through its Council on Ecumenical and International Relations) and the Islamic Council, Norway, on the universal right to convert from one religion to another.

The liberal dilemma

In his above-mentioned article, Muhammad Usman Rana took up the distinction between USA on the one hand, and France and Turkey on the other, with respect to how a secular state can respond to religious expression. In Norway, the rightist and immigration-sceptical Progress Party (Fremskrittspartiet) has defended a confrontational approach, including prohibition against wearing 'hijab' and a critique of Muslim employees praying during working hours, and so on. The Liberal Party of Norway has a different approach: Individual freedom means that religious garments and symbols must be accepted, and that there is no cause to exclude such expressions from the public. My experience indicates that inclusion and dialogue are far more effective weapons against intolerance than confrontation and trench warfare.

In 1968, the Norwegian philosopher Hans Skjervheim formulated what he called 'the liberal dilemma' more or less like this: 'When liberal principles are laid down as absolute, they transform themselves into absolute illiberalism.' It is

important to recognize this, and to see to it that liberal values do not recoil as a result of us liberals not seeing that we ourselves have become authoritarian. These are critical thoughts to hold onto in the debate on ideological issues of this type.

A conflict of values in Norway?

A different, but related topic in the social debate of recent years is connected to the question of same-sex marriage. Not surprisingly, this has been controversial in Norway, and many Christians were mobilized powerfully after the government earlier this year proposed a new, common marriage law applicable to both homosexual and heterosexual couples. This law has since been adopted by the Storting and will take effect from 1 January 2009. In their arguments against this legislation, opponents have drawn connections between the new marriage law, the changes in the study of religion in school, and the new statement of purpose for schools and day-care centres. They claim that these amendments as a whole involve a 'de-Christianizing of Norway', and that what we are facing is an intensified conflict of values in society.

The Liberal Party was the first party to commit its platform to equal treatment of heterosexuals and homosexuals when it comes to marriage. Over time other parties have followed suit. In our view as a liberal party, it is fundamental that society treat human beings equally, independently of their sexual orientation, and we consider it a value in itself that people are different and make different choices.

In principle, we believe it would be logical if a common juridical marriage contract replaced both today's marriage and the legislation on registered partnership. This means that the state would lay the judicial framework, while the church or other religious communities would perform the blessing for those who so wish. It should be up to the various life stance and religious communities to hold their own marriage ceremonies. We believe of course that neither the Church of Norway nor any other religious community should be obliged to join in marriage two people of the same sex; as liberals, we respect that for many marriage is about a life together between man and woman as created by God.

The new law also allows for lesbians and gay men to have adoption rights. While no one has an innate right to adopt, it is in my view, as member of a liberal party, natural that homosexuals be considered as adoptive parents in the same way as are heterosexuals. It is important to specify that what is best for the children must always have highest priority in adoption assessments, not civil status or sexual orientation.

The question of whether gay and heterosexual couples should have equal rights to assisted insemination also came up in connection with discussions on the new marriage law. The Liberal Party would like to end the current legislation's discrimination of lesbians, and we therefore endorsed equal assessment of lesbian and heterosexual couples in issues of assisted insemination. I would, however, like

to stress that knowing one's origin is a fundamental right; we therefore consider it vital that, from a certain age, the child be given the possibility to acquire information on his/her biological origin. That is why we were against allowing anonymous sperm donations.

The road ahead

The past years have indeed brought about noticeable changes in the tradition-bound relationship between the church and the state. Not least, liberal politicians have contributed to this, but the church itself and minority religious and life stance groups have also made a significant contribution to this process. This spring's broad compromise on the church among the seven parties in the Storting clearly signals that we are on our way to a complete separation between the state and the church within a few years.

the Netherlands

The Separation of Church and State in the Netherlands

Fleur de Beaufort and Patrick van Schie

> 'Yes, religion will fare far better if the civil government does not interfere with it whatsoever, given that all such interference is only bound to have a negative effect on religion.'
>
> Boudewijn van Rees

Teylers Godgeleerd Genootschap – founded in Haarlem by Pieter Teyler van der Hulst in 1778 – organised its traditional annual competition in November 1795. The Theological Society endeavours to ensure that this competition always remains topical, which is why the separation of church and state was selected as the theme in 1795. This issue came under discussion that year following the establishment of the Batavian Republic (between the French Revolution and the rule of Napoleon). Participants had to pen an essay that answered the following question: 'May and should a civil government exert any influence over matters relating to religion?'.[1]

The Theological Society received twelve entries for this competition, four of which eventually won a prize. The jury awarded a gold medal for the essay written by the Remonstrant clergyman and city secretary Boudewijn van Rees (1753-1825) from the city of Leiden.[2] The work was praised due to its comprehensive reflection on the topic as well as the fact that the winning author was responsive to new insights as the study progressed. In his essay Van Rees advocated the complete separation of church and state. Although the other prize-winners were also in favour of separation, their arguments were in no way as far-reaching as his. As a Remonstrant[3] clergyman, Van Rees knew better than anyone else what it was like to constantly stand in the shadow of the public church. His essay not only demonstrated that freedom was a *conditio sine qua non* for the purity of the perception of religion, but that a lack of protection, even persecution, was also far more preferable to the status of a privileged church. He believed that the

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1 S. Vuyk, 'Pleidooi voor de scheiding van kerk en staat. Teylers Godgeleerd Genootschap en de prijsvraag van 1795' in: E. van der Wall and L. Wessels (Ed.), *Een veelzijdige verstandhouding. Religie en Verlichting in Nederland 1650-1850*, Nijmegen 2007, pp. 348-349.

2 Silver medals were awarded to essays submitted by the writer and poet Rhijnvis Feith (1753-1824) from Zwolle, the Mennonite professor Gerrit Hesselink (1755-1811), and Cornelius Rogge (1761-1806), a Remonstrant minister from Leiden.

3 See later on for explication.

government could only promote religion as such. All financial relations between church and state also had to be separated.[4] Today, the proposal put forward by Van Rees would be regarded as *laïcité*.

Realising that the ideas of Van Rees could have far-reaching consequences, the director of Teylers Godgeleerd Genootschap opposed the jury's majority decision and allowed his feelings to be placed on record in no uncertain terms. This caused a commotion in Haarlem.[5] The desirability of the separation of church and state was a topic that still caused great dissension at the end of the eighteenth century.

The principle of separation of church and state

When is a separation between church and state realised?[6] If churches are free to develop without any interference by the state, in exactly the same way that any other non-religious organisation in the Netherlands has been able to do so since the liberal constitution of 1848 by virtue of the right of association. And if the state is in turn free of ecclesiastical influence and observes neutrality. In other words, if it does not show any preference whatsoever for one of the religious denominations, nor for the phenomenon of religion or religiosity. The state is therefore not only obliged to observe neutrality towards worshippers of various gods in all denominations (or worshippers of 'something'), but also towards all of those worshippers together on the one hand as well as atheists and agnostics on the other hand.

Although liberals consider religion a private matter, the above does not imply that the existence of confessional parties – such as those that exist in the Netherlands nowadays in the form of the large Christen-Democratisch Appèl (CDA) and the two small orthodox Protestant parties, namely the ChristenUnie (CU) and the theocratic Staatkundig Gereformeerde Partij (SGP) – already violates the principle of the separation of church and state. Whatever inspires politicians from these parties is a matter that concerns only them, as long as they do not act according to obligatory instructions from spiritual leaders.[7] However, the principle is violated the moment confessional politicians draw up laws or other binding provisions based purely on religious views or writings. If this is indeed the case, a private organisation will 'hijack' the public domain. Religious inspiration must only find its way into the political arena in the form of sound and reasonable arguments.

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4 Vuyk, 'Pleidooi voor de scheiding van kerk en staat', pp. 350-351.

5 Ibidem, p. 349.

6 When referring in general to the relationship between (and the separation of) 'church' and state, we mean all religious organisations that focus on religious perception, and therefore also Jews in synagogues, Muslims in mosques, etc. For the sake of the legibility of our article, the various organisational relationships geared to the perception of religion will not be mentioned separately in the text each time.

7 In the event they do, they are not yet violating the separation of church and state, but are infringing their independence as representatives of the people. This, incidentally, is no different to when a politician follows binding instructions from trade unions, environmental organisations, etc.

The desire to make the state and public life neutral is usually viewed by confessional parties as a desire to outlaw religion. But a neutral state is not anti-religious. A neutral state regards religion as a private matter from which it must distance itself, precisely because religion for individual citizens can be so important. Liberals will be quick to concur, but the following question that arises is how far does the order for non-interference extend? Does this also imply that subsidies are absolutely forbidden whatever the circumstances? Opinions within liberal circles in the Netherlands also differ greatly in this regard. Some people do indeed oppose any form of interference, including subsidy relationships, while others believe that subsidies must be possible provided the state uses objective criteria that organisations from any denomination can also comply with. Although we do not wish to take sides in this discussion at this moment, we do take the standpoint that if a subsidy relationship for liberals is to be reconcilable with the separation of church and state, this can only be the case if that subsidy is equally available to non-religious organisations. A concrete example: if a subsidy is provided for the renovation of church buildings, this must occur on the basis of their monumental value. And in that case, other monuments without a religious function must be entitled to such a subsidy subject to similar terms and conditions and to the same degree. For liberals, a church or any religious organisation also falls under the standard principle of freedom of association: they enjoy complete freedom of association within the limits of the law, but a church does not have greater freedom, additional privileges or fewer obligations in relation to another private association.

In June 2008 the executive council of the city of Amsterdam issued a memorandum distinguishing between 'exclusive neutrality', 'inclusive neutrality' and 'compensatory neutrality'. 'Exclusive neutrality' is based on the French principle of *laïcité* and excludes religion (as a private matter) from public life. 'Inclusive neutrality' requires the state to be impartial 'in the sense that all (recognised) religions and beliefs are treated equally', while 'compensatory neutrality' is based on the notion that exceptional circumstances can be involved – 'historical or structural inequalities' or social arrears of certain religions or ideologies – that may make the state provide 'additional support to groups lagging behind'. The city council has declared that 'inclusive neutrality' is applicable to the Netherlands and wishes to personally complement this with 'compensatory neutrality'.[8]

We believe of course that 'exclusive neutrality' dovetails with the liberal principle of separation of church and state, that 'inclusive neutrality' can only be characterised as liberal if the neutrality also encompasses non-religious organisations as it will otherwise encroach on the separation of church and state, and that 'compensatory neutrality' is a veiled term for granting privileges to certain religions and must therefore be condemned as a gross violation of the separation between church and state.

[8] College van Burgemeesters en Wethouders van Amsterdam, *Notitie scheiding kerk en staat*, Amsterdam, June 2008.

History of the relationship between the church and state in the Netherlands

During the sixteenth century several rebellious and predominantly Protestant provinces in the Netherlands joined forces against the rule of the Catholic Spanish Habsburgs and unified under the Union of Utrecht on 20 January 1579. Officially, the treaty of the Union of Utrecht already included a reference to freedom of religion. Article 13 stipulated that each province possessed legislative power over religious matters, 'provided that every private person shall remain free in religion and that no-one may be persecuted or investigated because of religion.'[9] The leader of the revolt, stadtholder[10] William of Orange, wanted nothing more than to unite the rebellious northern provinces and the predominantly Catholic southern provinces of the Netherlands in a union. He had tried – in vain – for a long time to achieve such a union. Despite the official inclusion of freedom of religion, in reality the Protestant Reformed faith was dominant in the area united under the Union of Utrecht. Other denominations were excluded from public positions and proclamations were issued against them from time to time. In 1581 for example, William of Orange – despite being generally regarded as a moderate – prohibited Catholics from assembling and monks and nuns from wearing their clerical clothing in public.[11]

The first meeting of the rebellious Protestant denominations – the synod – already established a church order in 1574 without any intervention by the state. The battle between various denominations within Protestantism relating to the relationship between the church and state only got underway properly when William of Orange was instructed to draw up several ecclesiastical laws for Protestants in 1576. Strict Calvinists wished to keep the church outside the authority of the state and were opposed by the followers of Zwingli, who wanted the state to be recognised as the highest power within the church. William of Orange's ecclesiastical laws were never implemented due to his sudden death in 1584. A battle broke out instead between the English Earl of Leicester and the States of Holland, led by the province's *landsadvocaat* (chief minister) Johan van Oldenbarnevelt.[12] Leicester initially came off best, with a newly convened synod establishing a church order that fully protected the church from the state's authority, but allowed the church to interfere in affairs of the state. The States of Holland had no choice but to agree, but did so on the condition that Leicester's departure in 1587 would still allow them to rank the state as the highest power

9 R. Fruin and H.T. Colenbrander, *Geschiedenis der staatsinstellingen*, pp. 366 et seq.

10 The stadtholder was originally the deputy of the Spanish monarch during his absence. In the Dutch Republic the stadtholder was in command of the military, with whom the main political power lay.

11 W.H. de Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen in de Republiek der Verenigde Nederlanden 1581-1795*, Utrecht, 1868, p. 48.

12 Queen Elizabeth of England sent the Earl of Leicester to the Republic after it had offered her sovereignty over the region in exchange for assistance in the fight against the Spaniards.

above the church.[13] 'It [the state party] preferred the moderate governance of the state to the tyranny of the church.'[14]

The consequences of a situation in which the church and state are not (adequately) separated are clearly evident in the battle between the Arminians and the Gomarists in the early seventeenth century. This initially involved a theological dispute concerning the doctrine of predestination (whether or not everything is predetermined by God). Jacobus Arminius (1560-1609) was a Reformed theologian who believed that everything was not determined beforehand and tended towards latitudinarianism and tolerance. His followers were referred to as Arminians or Remonstrants. Franciscus Gomarus (1563-1641), by contrast, believed in absolute predestination and was strictly Calvinistic and adamant. His followers were known as Gomarists and as Contra-Remonstrants later on.[15]

The secular authority became embroiled in the religious conflict when the Twelve Years' Truce (1609-1621) with Spain provided it with the time for such issues. Oldenbarnevelt, the *landsadvocaat* of Holland, supported the Remonstrants and was opposed by Prince Maurice of Orange. The latter called on the Provincial States to convene a national synod in an attempt to break the deadlock. But the various provinces refused by invoking article 13 of the treaty of the Union of Utrecht (which stipulated that religious matters had to be dealt with at provincial level and not national level). Remonstrants were rounded up following Prince Maurice's public conversion to Contra-Remonstrantism. Several leading Remonstrants were subsequently executed, including Johan van Oldenbarnevelt. A national synod that was convoked nevertheless banned the dissemination of heretical ideas – in practice this implied everything that was not Contra-Remonstrant – and therefore acted in violation of the union treaty. In effect, the ban entailed a coercion of conscience.[16]

The Contra-Remonstrants, who were firmly in charge thanks to Prince Maurice, now attempted in turn to establish a church order under which supreme power would be assigned to the church. This was opposed by the Provincial States, however, as they believed the Contra-Remonstrants were indebted to them for their position of power and now wanted something in return. In this particular

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13 In his essay, W.H. de Beaufort nevertheless believed that the state party led by Oldenbarnevelt was the most liberal. The churches had no desire to acknowledge a supreme power after all, but did want to interfere in the state at the same time and use it as an 'executioner' in order to persecute those from different denominations who had been condemned by the church. The state party, on the other hand, even wished to guarantee freedom of religion for Catholics through Oldenbarnevelt. Unlike the state, the church could not be expected to exercise tolerance, which is why the coercion of conscience would not be adequately guaranteed.

14 De Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen*, p. 68.

15 For a detailed description of this conflict, see J. I. Israel, *The Dutch Republic. It's Rise, Greatness, and Fall 1477-1806*, Oxford, 1995, pp. 361-398 and 450-477.

16 De Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen,* pp. 87-98.

case, the States wanted – and received – a say in the appointment of clergymen (the so-called right of collation) as well as the retention of patronage rights.[17]

The arrival of stadtholder Frederik Hendrik in 1625 tempered the conflict in the Netherlands to some degree again. Despite being a Remonstrant himself, he generally loathed the coercion of conscience. The Peace of Westphalia in 1648, which included the formal recognition of Dutch independence by Spain, ushered in a period of relative calm in the Netherlands. Although members of other denominations did not receive the same amount of freedom they had hoped for, this era did provide a relatively large amount of room for latitudinarianism. The moment theological disputes resurfaced, the Provincial States subdued them by issuing a ban that prevented them from escalating.[18]

In 1663 the States of Holland positioned itself above the church most emphatically when it issued a decree on public prayer. At the end of their prayers clergymen tended to ask for God's blessing for the States General as their sovereign. Hollands grand pensionary (chief executive) Johan de Witt perceived this as a threat to provincial sovereignty.[19] The States of Holland therefore declared that clergymen had to ask God to bless the Provincial States as the sovereign rulers. After 1747 clergymen were also allowed to pray for the Prince of Orange again, but only after they had asked for the Provincial States to be blessed.[20]

In 1798 the separation of church and state was formalised in the constitution of the Batavian Republic. Article 20 stipulated that 'no civil advantages or disadvantages are attached to the confession of any religious doctrine'.[21] The constitution also declared that churches were responsible for supporting themselves, and that no-one was permitted to appear in public with religious orders or clothing. In addition, the right of collation was abolished. This extreme separation between church and state was primarily due to French influence in the Netherlands in 1798. In 1808, while still under French rule, a regulation by decree concerning state financial support for churches was implemented nevertheless. Napoleon Bonaparte did declare, however, that 'everyone […] has equal claim to the same encouragement, to the same assistance. I sense and acknowledge that the constitution, my feelings and my principles bind me to permit the same privileges and benefits to all clergymen and all members of every faith or community, without distinction.'[22] Following the departure of the French, the separation between church and state was abandoned again.

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17 *Châtelains* or large landowners were entitled to personally control their private chapel and the spiritual servant they had appointed.

18 De Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen*, pp. 124-131.

19 Officially, the different provinces in the Netherlands were the sovereign powers and not the States General in which they were united.

20 De Beaufort, *De verhouding van den staat tot de verschillende kerkgenootschappen,* pp. 144-146 and 156.

21 'Staatregeling van 1798', in: W.J.C. van Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten*, Schoonhoven, 1895, pp. 1-86, 3.

22 Quoted in: S. C. den Dekker-van Bijsterveld, *De verhouding tussen kerk en staat in het licht van de grondrechten*, Zwolle, 1988, p. 33.

The constitution of the Kingdom of the Netherlands enacted in 1814 once again provided the state with complete latitude with regard to religion. Article 139 recognised 'without prejudice to the right and obligation of the Sovereign Ruler to supervise all religious convictions, if deemed to be of benefit to the interests of the state'.[23] This constitution also benefited the Christian Reformed Church again. On the one hand, it was indeed decreed that all existing religions would receive equal protection and that everyone would have the same right to public functions. On the other hand, it was explicitly stipulated that the sovereign ruler had to belong to the Protestant Christian Reformed Church. Moreover, this church also received state financing. The right of collation was therefore restored as well. After all, payments meant that influence could be exerted.[24]

It appeared as if the Reformed Church's privileged position had officially ended when Catholic Belgium became subject to the Kingdom of the Netherlands in 1815. In reality though, Catholics in particular, but also Jews and Protestant splinter groups, were still treated with distrust and inequality for a long time. Provisions violating the separation of church and state were also removed from the constitution, except for financial ties between the church and state. Article 194 stipulated that 'salaries, pensions and other income, of whatever nature, currently received by various denominations or their exponents, will continue to be guaranteed to the same religious persuasions'. Furthermore: 'Exponents who to this date do not receive a salary or a sufficient amount from the state's coffers may be given a salary or the existing salary may be augmented.'[25] In official terms, this meant that religious associations other than those of the Reformed Church were also entitled to state financing.

In 1848 the great liberal leader Johan Rudolf Thorbecke endorsed the extensive constitutional revision that was liberal in nature, but the chapter on religion did not undergo any fundamental changes. At the express request of the House of Representatives – and against Thorbecke's wishes – an explicit condition was added to freedom of religion, namely 'subject to the protection of society and its members against the violation of the penal code'.[26] Thorbecke would have preferred for freedom of religion to have simply been specified in an article stipulating: 'Everyone practices his religious views in complete freedom'. The House of Representatives considered this a revolutionary stipulation that flung the door to insurrection wide open.[27]

For Thorbecke, the separation of church and state implied that the state would

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23 'Grondwet voor de Vereenigde Nederlanden (1814)', in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten,* pp. 148-172, 171.

24 Den Dekker, *De verhouding tussen kerk en staat in het licht van de grondrechten*, pp. 10-14, 28-29.

25 'Grondwet voor het Koningrijk der Nederlanden (1815)', in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten,* pp. 173-217, 209.

26 'Grondwet voor het Koningrijk der Nederlanden (1848)', in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten,* pp. 252-288, 281.

27 Den Dekker, *De verhouding tussen kerk en staat in het licht van de grondrechten*, p. 11.

neither impede churches from developing freely nor have a religious character. Thorbecke vehemently rejected the reproach that he supported a non-religious state. He argued for a 'Christianity above religious differences', which implied that with regard to legislation, government, society and norms and values, the Netherlands had been shaped by the Christian faith itself and not by a single movement within Christianity. 'It is the single light of which the various professions of faith are exceptional beams; it is Christianity above ecclesiastical seclusion, just like mankind is above various peoples and embraces them all […]. Christianity has not remained within the Church; it has become a civil power; the soul of our civilization; and a stream that has flowed into all veins of society.'[28]

This view on the separation of church and state immediately clarifies why Thorbecke favoured a certain degree of government financing for religion, but opposed the Ministries of Worship that existed at the time. On the one hand, social importance justified the liberal politician's allocation of state finance to religion, but close monitoring was constantly required to ensure that the government did not meddle in religious matters. On the other hand, Thorbecke believed that a Ministry of Worship violated the principle of separation of church and state, given that the government was not supposed to interfere with religion while churches were supposed to distance themselves from affairs of the state. There was therefore no need for religious denominations to be represented in government.[29] Thorbecke was able to witness the abolition of Ministries of Worship in 1868.

In 1848 religious denominations were finally given a greater degree of control over their own organisation. A new article stipulated that 'Government intervention is required neither in correspondence with leaders of various religious denominations, nor, except for responsibility in accordance with the law, during the proclamation of ecclesiastical orders.'[30] In Thorbecke's original proposal churches were also free to choose during the appointment of office holders. But this went too far in the opinion of the House of Representatives, partly because it was contrary to prevailing church regulations. In fact, the House succeeded in safeguarding the old right of collation for over another century up until the constitutional revision of 1983.[31]

The constitutional revision of 1983 finally also ensured the financial separation of church and state so coveted by liberals. The establishment of the Van Walsum commission in 1946 marked the first serious step towards a review of constitutional payment obligations.[32] This commission considered religion to

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28 G.G. van der Hoeven, *De onuitgegeven parlementaire redevoeringen van mr. J.R. Thorbecke*, Volume 4, Groningen, 1905, p. 622.

29 W. Verkade, *Overzicht der staatkundige denkbeelden van Johan Rudolf Thorbecke (1798-1872)*, Arnhem, 1935, pp. 298-300.

30 'Grondwet voor het koningrijk der Nederlanden (1848)', p. 282.

31 Den Dekker, *De verhouding tussen kerk en staat in het licht van de grondrechten*, pp. 25-26.

32 The payment obligation was originally a compensation for the 'nationalisation' of spiritual and ecclesiastical funds from which clergymen salaries were provided during the period of the Republic.

be of such value that financial government support was justified as a rule, and proposed an annual donation of 50 million guilders. The government, however, wanted a complete separation and ignored the recommendation. After the Van Schaik commission suggested a one-off surrender of payment obligations in 1954, this recommendation was included as an intention in the partial constitutional revision of 1972 in an additional article of the constitution, and the old article stipulating payment obligations disappeared. In 1983 the government and churches (united in the Interchurch Contact in Government Affairs (CIO)) concluded an agreement that was ratified that same year by a law terminating the financial relationship between the church and state. The government committed itself to a one-off surrender payment of 250 million guilders.[33] The liberal member of parliament Van Rey, speaking on behalf of the Dutch liberal party the VVD, referred to this as 'a historical moment in Dutch history', although he did reiterate that the payment was somewhat generous.[34]

In addition to the payments, the government (often municipalities in practice) frequently provided a financial contribution – on a voluntary basis – for the construction of churches. The Church Construction Contribution Act was enacted in 1962 following a positive recommendation by the Sassen Commission. After the expiration of this Act in 1975, a temporary ministerial subsidy regulation was accepted on two more occasions that provided financial assistance to places of worship for religious minorities in particular. The House of Representatives did indeed pass a motion twice during the same period indicating that such subsidies contravened the separation of church and state. Although various politicians still acknowledged the importance of support for religious minorities – see by way of example the aforementioned proposal concerning 'compensatory neutrality' made by the Amsterdam executive council – financial assistance is practically no longer provided nowadays. However, places of worship can receive support within the framework of neighbourhood rejuvenation projects. Church monuments do receive government subsidies as part of the preservation of monuments and historic buildings. Given that this assistance is provided to all monuments, the principle of equality would be violated if only churches were excluded.[35]

Religious denominations still enjoy certain tax benefits to this day, something which does not go hand in hand with the separation of church and state. Church buildings, for example, are exempted from property tax under a local government law, provided the building is used for religious worship at least 70% of the time. In addition, donations to religious organisations are tax-deductible thanks to a special tax ruling. The Inheritance Tax Act stipulates that churches are either exempt from tax or entitled to pay less inheritance tax.

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33 S.C. van Bijsterveld, *Godsdienstvrijheid in Europees perspectief*, Deventer, 1998, pp. 78-79.

34 *Minutes of the Dutch House of Representatives, 1 September 1983*, p. 5529.

35 Van Bijsterveld, *Godsdienstvrijheid in Europees perspectief*, pp. 81-83.

Violation of the separation by the state itself

Until the government switched to a new system of population administration (the *Gemeentelijke Basisadministratie*; GBA) in 1994, the religious denomination of citizens in addition to other details was also recorded in the population register. Churches were automatically notified via the population register when citizens moved and wrote to new local residents according to their religious denomination. The Dutch Reformed Church, for example, requested a church contribution annually by sending a payment slip to every citizen in the population register.

Since 1994 this information is no longer recorded and churches' right to consult the register was also abolished in the same year. The Foundation for Interdenominational Membership Administration (SILA) was founded with government support. Details from the population register were provided to SILA once-only after citizens were allowed to lodge an objection. Nowadays SILA does receive any changes in the details (relocation, deaths, etc.) of citizens who have not objected, without the government being aware of their religious denomination. This provision of personal details appears to be a final remnant of a religious privilege. Since then, churches have only been able to approach active members from their own municipalities for annual collections, etc.[36]

From 1816 onwards the edge of the guilder coin was inscribed with 'God zij met ons' ('God be with us'). Before the guilder was abolished in 2002, following the introduction of the euro, this inscription appeared on larger denomination coins: the guilder itself, the two-and-a-half guilder coin and the five-guilder coin. This inscription was even retained on the largest Dutch version of the new coin, namely the € 2 coin that features the portrait of Queen Beatrix on the front.

Moreover, God's help is nearly always invoked during the throne speech, which outlines the yearly government's plans. This speech is read out loud by the monarch every year on the third Tuesday of September during a ceremonious session involving both Houses of Parliament. From 1830 until 1973, the throne speech invariably concluded with a reference to the 'Almighty', 'Supreme Power' or 'God'. In 1973 a predominantly leftist (socialist) government that had just assumed power omitted the reference for the first time because the nation was 'ideologically divided'. The following question therefore had to be posed: 'May we force God upon people who do not acknowledge Him?' Furthermore, associating God with trivial matters such as tax increases and the like was deemed inappropriate.[37]

As expected, members of parliament from confessional parties were disappointed. Remarkably, the leaders of the VVD (Liberal Party) and D66 (then a 'pragmatic' party that since 1998 has proclaimed itself to be a social liberal party)

[36] Van Bijsterveld, *Godsdienstvrijheid in Europees perspectief,* p. 58.

[37] These words were spoken by the deputy Prime Minister at the time, remarkably enough the Catholic Christian democrat Van Agt.

also joined the protest. Opposition leader Wiegel believed that scrapping the supplication would aggrieve many citizens while Terlouw, from the government coalition party D66, felt that the cabinet should have taken into account the feelings of the religious head of state (Queen Juliana). The subsequent CDA and VVD cabinet restored the prayer in 1978 with the following toned-down formula: 'I sincerely hope that you will discharge your responsible duties with dedication and commitment, in the confidence that many people join me in wishing you wisdom and in praying that you will be blessed.' As Prime Minister of a coalition involving the same parties, the Christian democrat Ruud Lubbers reinstated the full supplication. The 'purple cabinets' in office between 1994 and 2002 (the first coalition governments in the Netherlands after 1918 that did not include the Christian democrats) reverted to the formula from 1978 (they evidently did not dare scrap it altogether), while Prime Minister Balkenende asked for 'God's blessing' in 2002.[38]

For a long time it was self-evident to invoke God's help during the appointment of officials, who were required to utter 'So help me God' when taking an oath. Up until 1915 every citizen who assumed office had to swear an oath; since the Batavian period, only Mennonites were expected to oppose this as a group and therefore did not have to take the oath. But objections by others were not recognised for a long time. In 1915 they were allowed to lodge an objection and make a promise instead of an oath ('That I promise'). Nowadays, the oath is no longer the norm and the promise an exception; every individual is free to choose either an oath or a promise.

As indicated earlier, the constitution of 1798 officially signalled the end of privileges for the Reformed Church. The state also stopped discriminating against members of other churches (such as Catholics, Mennonites, Remonstrants and Jews). Although the legal obstacles that prevented citizens from a religious minority from occupying government office have since been removed, the position of various religious denominations was not equal as a matter of fact. The Minister for Roman Catholic Worship was the only Catholic in the cabinet during a significant part of the nineteenth century. This was partly due to the fact that Catholics in the Netherlands, an oppressed group historically, were reluctant to appear in the political arena, but also partly because the dominant Protestant part of the nation (and the Reformed group that separated from it later on) considered itself the

[38] Peter Bootsma and Peter van Griensven, 'Scrupules rond de bede. Hoe God de troonrede van 1978 niet haalde', *Jaarboek Parlementaire Geschiedenis 2004*, pp. 96-104. In 2002 the formulation was: 'May your personal convictions be a source of strength and inspiration in discharging your responsible task. God's blessing be on your work'; in 2007: 'In discharging your duties, you may draw succour from the knowledge that many are wishing you wisdom and join me in praying for strength and God's blessing upon you.' With this formulation, the Calvinist Balkenende essentially restored the old triumvirate of God/The Netherlands/House of Orange.

'backbone' of the Dutch nation. Many Protestants believed that the country could not be entrusted to the Catholics. Many people – including liberals – were fearful when a Catholic was appointed Minister of Justice in 1888 for the first time.

As already mentioned, no legal obstacles prevented a Catholic from becoming Prime Minister, but there were many emotional ones up until the twentieth century. However, it appeared that this could no longer be avoided when the Roman Catholic Political Party (RKSP) became the largest party during the House of Representatives elections of 1918 following the introduction of proportional representation and universal suffrage in 1917. Nevertheless, it was precisely Kuyper – the former leader of the largest Protestant party who had forged an alliance with the Catholics a few decades earlier and forced the antithesis as the main contrast within Dutch politics, i.e. placing Christian (both Protestant and Catholic) parties opposite non-Christian parties as the main dividing line in Dutch politics – who endeavoured to thwart it behind the scenes by encouraging a coalition of Protestant parties involving his old foes the liberals. But Kuyper's fellow party members appeared to have learned his antithetical lessons so well that they did indeed form a confessional cabinet led by a Catholic Prime Minister. The Catholic party exercised caution: its leader Nolens personally relinquished the Prime Ministership because the appointment of a priest (which was what he was) would cause too much commotion. Seventeen years earlier, Kuyper had not thought along the same lines when he – a preacher – became Prime Minister.

The taboo against a Catholic prime minister was broken from 1918 onwards. However, it still remains to be seen whether this also applies to the taboo against a Catholic monarch. For centuries the Calvinist community in the Netherlands has assumed that an indissoluble bond exists between (its) God, the Netherlands and the House of Orange. Although the founding father of the dynasty, William of Orange – the seventeenth-century leader of the Dutch revolt against the Spanish – switched between Catholicism and Calvinism a few times, those who succeeded him as stadtholder and King/Queen were all Protestant (the largest denomination in Dutch Calvinism). In a country where the separation of church and state has been achieved, the religious persuasion of the monarch is also a private matter in principle, as long as he or she does not profess this in public. But between 1814 and 1815 in the Netherlands, the monarch was obliged to be a member of the Dutch Reformed Church and it was inconceivable thereafter that he or she would belong to a different denomination. A crisis erupted some 150 years later when Princess Irene, second in line to the throne after Crown Princess Beatrix at that moment, announced in 1964 that she intended to marry Prince Carlos of Spain and would convert to Catholicism. Princess Irene had to relinquish her right to the throne due to Carlos's claim of succession to the Spanish throne, which would bring him in conflict with Juan Carlos from the House of Bourbon, and the announcement that Irene would live abroad with her husband. For many Protestants though, the idea of a Catholic monarch was unacceptable.

It emerged that this was still a factor when the current Crown Prince of the

Netherlands, Willem-Alexander, got engaged to the Catholic Maxima Zorreguieta from Argentina in 2001. Willem-Alexander felt obliged to declare that he was a practising member of the Dutch Reformed Church and that any children resulting from the marriage, which occurred a year later, would also be raised as members of the Reformed Church. This helped dispel any (Calvinist) opposition, although members of parliament from the ultra-orthodox Protestant SGP did not approve the marriage because Maxima remained Catholic. Surveys revealed that the majority of the Dutch population would not have any difficulty accepting a Catholic King or Queen. As long as this has not been put to the test, it is uncertain how great the commotion would be if a Catholic were to actually ascend the throne, let alone a professed atheist. But at the moment the obstacle appears to lie within the House of Orange itself rather than among the population as a whole.

Penalisation of blasphemy

Blasphemy was no longer an offence in the Netherlands when the French Penal Code was implemented in 1811. During discussions about a new draft Penal Code in 1881, the liberal Minister of Justice A.E.J. Modderman opposed the reintroduction of this offence. 'I thought it had been firmly established long ago that God personally knows how to enforce His laws; no human laws are required to this end; this is not the duty of the penal legislator.'[39] The early twentieth century saw the re-emergence of the discussion whether blasphemy ought to be punished, especially within orthodox Protestant circles. A number of publications penned by freethinkers and communists that appeared around 1930 ensured that the discussion would continue within parliament.

In 1932 the House of Representatives debated a motion to reintroduce this article. Speaking on behalf of the liberals, member of parliament B.D. Eerdmans expressed his opposition to the legislative proposal since he believed parliament was not the appropriate place to take decisions of a religious nature. Moreover, the government should have smothered blasphemous utterances since its interest 'stimulates his [the legislator's] mind from which these utterances emanate to find new methods for the same purpose, as he will then create the belief that the Government is fearful of such attacks on religion'.[40] But a confessional parliamentary majority voted for the introduction of the prohibition of blasphemy, and since 1932 blasphemy has been forbidden under article 147 of the Penal Code.

Making blasphemy a punishable offence causes a problem: legal inequality. Believers arm themselves with freedom of speech and disarm their opponents by prohibiting blasphemy. Article 147 of the Penal Code provides religious people with additional protection from the state at the expense of freedom of speech for

[39] *Minutes of the Dutch House of Representatives, 12th session, 28-10-1880*, p. 163.
[40] *Minutes of the Dutch House of Representatives, 86th session, 26-05-1932*, p. 2584.

non-believers. The Dutch penal code contains an article that makes it an offence to deliberately insult (groups of) people because of their race, religion or ideology, their sexual orientation or any handicap. This article provides believers with just as much protection as non-believers against deliberate insults for whatever reason. The state should not afford additional protection to God, believers or their religious feelings at the expense of citizens who do not believe.

In 2004 the discussion about the penalisation of blasphemy flared up again. Piet Hein Donner, Minister of Justice at the time, proposed that the article be reviewed after the murder of Theo van Gogh.[41] Under the leadership of the D66 Member of Parliament Lousewies van der Laan, opponents of the article tabled a motion requesting the government to revise the article. Although the liberals unanimously voted in favour of this motion, in 2004 there was no parliamentary majority that supported the abolition of article 147 of the Penal Code. Consequently, the legal inequality in this matter still persists for the time being.

Sunday rest

Sunday is a special day for Christians. According to the Bible, after spending six days creating heaven and earth, God rested on the seventh day. Christians believe that people should also observe this day of rest and preferably spend it honouring God's work. The Netherlands has almost always been an entirely Christian country and long considered Sunday a collective day of rest. This was entrenched in a separate Sunday Observance Act during the establishment of the Kingdom of the Netherlands in 1815. Sunday morning in particular had to be protected from unnecessary noise and 'amusement', especially if this prevented a peaceful church service. Nowadays, the prevention of unnecessary noise can be regarded as part of the Nuisance Act, which should not be restricted to Sundays incidentally. But Churches do enjoy a privilege now given that the ringing of church bells to summon worshippers to a mass or service is a form of noise that is explicitly permitted. Furthermore, forbidding amusement is indicative of a Christian tendency to patronize others. The power that the law provided and provides to municipal councils to ban any amusement even after 1:00 p.m. is often used within predominantly orthodox Protestant municipalities to keep swimming pools closed on Sundays, for example.

The economy continued functioning as normal on Sundays during the nineteenth century. Since many citizens personally chose to observe Sunday as a day of rest, it was indeed put on the backburner on this day. However, there were no legal impediments that prevented them from engaging in economic activities. This changed with the emergence of the confessional parties. Retailers were increasingly forced to close their doors on Sunday (as well as during evening

[41] The film director Theo van Gogh (also known for the film *Submission* that he made together with Ayaan Hirsi Ali, a member of the VVD at the time) was stabbed to death by a radical Muslim due in part to his comments about Islam.

hours on other days), initially via municipal bye-laws.[42] In 1930 a confessional government even managed to introduce a national Trading Hours Act. This act did allow Jewish retailers to submit a request in order to move the day of closure from Sunday to Saturday (the Sabbath), but they were not allowed to remain open for more than four hours on Sunday. Others had no possibility to apply for dispensation.

The first government to govern the country since 1918 without confessional parties – a cabinet comprising the PvdA (Labour Party), VVD and D66 – eased the Trading Hours Act of 1996, but Sunday closure remained the point of departure. A municipal council may now designate twelve days a year on which stores are allowed to remain open and can grant additional dispensation for tourism-related reasons or if a border municipality is involved. Many municipalities have seized the tourism-related solution to increase the number of Sundays on which stores are allowed to open. The present Christian socialist government (CDA, PvdA and CU) has announced it will clamp down on this.

In 1930 the liberals condemned enforced closure as an excessive encroachment on individual freedom. However, their objection revolved more around the fact that a *single* day was designated on which stores had to remain closed rather than that Sunday was designated specifically for that purpose. The liberal spokesman did point out though that farmers and their wives who lived in Catholic areas were particularly disadvantaged as they were accustomed to doing their shopping on Sunday immediately after church.[43] During the 1990s the VVD and D66 were in support of extending shopping hours extensively, but these parties had to accept a compromise with the social-democratic PvdA, which wanted stores to open on no more than twelve Sundays a year. In a draft programme for the parliamentary elections of 2006, the VVD did not include a passage about shopping hours, but a majority of members present at a general meeting voted for an amendment that would allow retailers to personally determine store opening hours.

After the First World War, regulations with restrictive clauses were imposed not only for stores but also for people in employment. In 1919 a confessional government submitted a legislative proposal to parliament concerning a labour law that would prohibit juveniles from working on Sunday and allow it to be extended to include adult citizens as well.[44] It is remarkable that the spokesman of the largest liberal party in the House of Representatives had no objection whatsoever to these clauses, while the spokesman of the smaller classical liberal party did object to a 45-hour working week (he argued in favour of a statutory maximum of 48 hours) on the grounds of competitiveness, but evidently did not

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42 In 1930 less than 10% of smaller municipalities (up until 10.000 inhabitants) had a bye-law prohibiting shops from opening on Sundays.

43 According to the liberal member of parliament Van Rappard on 6 March 1930, in: *Minutens of the Dutch House of Representatives, 1929-1930*, pp. 1604-1606.

44 In this case as well, Jewish citizens could request that the weekly day of rest be moved to Saturday.

oppose the designation of Sunday as a day of rest applicable to every employee in principle.

And therein, of course, lies the concealed influence of religion to this very day. It is comprehensible that limits are imposed on the maximum number of hours per day and per week that someone is actively employed on social grounds. However, the fact that Sunday is automatically designated for this purpose instead of allowing the employer and employee the freedom to decide this themselves (in an individual employment contract) can only be explained by the circumstance that special day for Christians should apparently be perceived as special by everyone.

Exemptions from statutory obligation for believers

Every citizen is equal before the law in a constitutional state. No citizen should be above the law; one of the historical achievements of liberalism is that the monarch also has to obey the law (in principle). The Netherlands nevertheless has a number of laws that do not apply to believers with 'conscientious objections'. Some of these privileges are already conferred to certain believers by law while in other cases the believer can submit a request to be relieved of a statutory duty.

Religious institutions in the Netherlands still have an advantage as far as labour legislation is concerned. By way of example, the Equal Treatment Act – which prohibits direct or indirect distinction among people based on religion, ideology, political persuasion, race, gender, nationality, sexual orientation or civil status – does not apply to legal relationships within religious denominations. This enables churches to make a direct distinction during the appointment of employees. Strict members of the Dutch Reformed Church and the Catholic Church can therefore make a distinction between male or female or discriminate according to sexual inclination when appointing an office holder without being punished.

A religious institution also has so much organisational freedom that the director of the employment office, unlike every other employer, does not require a permit to terminate a contract of employment because such a contract does not fall under civil law.[45] Catholic churches may therefore dismiss priests without mercy the moment they marry, given that the employee is violating the rules of celibacy – an absolute condition for priesthood.

A small number of strict members of the Dutch Reformed Church object to vaccinations against diseases and insurance policies. Both are regarded as an attempt by man to evade divine providence. If someone falls ill, according to this belief, God must have an intention that transcends the understanding of insignificant man. The same reasoning applies to cases where someone has no

[45] Van Bijsterveld, *Godsdienstvrijheid in Europees perspectief*, pp. 51-53.

more income (temporarily) due to an accident, illness or the loss of a job. Man may not thwart God's intention by taking measures that counter the effects of the incident.

During the nineteenth and twentieth century in the Netherlands – as was the case in many countries – laws were enacted that made it obligatory to have vaccinations against specific infectious diseases and to participate in group insurance schemes against a loss of income due to accidents, illness and unemployment. However, believers with the eccentric views outlined above were allowed to avoid statutory obligations.

In the early nineteenth century the Netherlands initiated vaccination campaigns to eradicate smallpox. In 1823 children starting school for the first time were obliged to hand over a vaccination certificate proving that they had been inoculated against the disease. Parents were not required to have their children inoculated against smallpox since education was not yet compulsory back then, but this changed when compulsory education was introduced in 1901. However, in 1928 a confessional government made an exception for parents with 'conscientious objections'. The existence of these objections among a small group of believers even resulted in the abolition of compulsory vaccinations in 1976; smallpox had been completely eradicated worldwide. Since the 1950s and 1960s, however, children in the Netherlands have been inoculated against many more diseases than smallpox alone, such as diphtheria, whooping cough, tetanus and polio. Nowadays practically all parents have their children vaccinated, but the abolition of the obligation means that a number of small communities made up of strict members of the Dutch Reformed Church can refrain from doing likewise. Since the introduction of the polio vaccination in the 1960s, strict Dutch Reformed villages or areas have suffered epidemics in 1971, 1978 and 1992. A total of 220 children were afflicted by the disease during these years, and were therefore the victims of the political decision to acknowledge the 'conscientious objections' of their religious parents.

It was also a confessional government that was the first to allow citizens to refrain from participating in a compulsory insurance scheme in 1920 on the grounds of 'conscientious objections'. This was later extended to include other compulsory insurance schemes. A general exemption is not applicable in this case, but individual conscientious objections may be put forward. If these are recognised, the 'conscientious objector' is exempt from social insurance contributions. It goes without saying that the individual will not be entitled to benefit payments if afflicted by an incident covered by the insurance.

During most of the twentieth century in the Netherlands there was still one important area where certain believers could avoid a statutory obligation, namely compulsory military service. Those who held 'a spiritual or a religious/humanitarian office' or participated in a study programme for such an office were legally exempt from military service. This therefore applied to pastors, priests, rabbis and the like as well as theological students. Others could put forward

individual 'conscientious objections', arguing that they would not be able to reconcile it with their conscience if they were to become involved in or participate in a situation that caused the death of another person or persons. However, non-religious grounds could be – and also were – put forward to this end (Jehovah's Witnesses were exempted as a group from compulsory military service). The privilege actually lost its significance when compulsory attendance was abolished in 1996 (in connection with the transition to a professional/voluntary army).

State subsidy for education on a religious basis

In accordance with the Primary Education Act of 1806, (public) education also encompassed the upbringing of children in all 'Christian and social virtues'. In practice, religious instruction was provided at schools in an enlightened Protestant spirit. Dissident religious minorities objected to this. But an amendment to the act in 1842 stipulating that religious education was to be provided in accordance with the conviction dominant in a region helped remove the obstacle for many Catholics – the largest minority strongly concentrated in the southern and some eastern areas of the Netherlands.

Orthodox Protestants, however, increasingly opposed the nature of religious education, claiming that it was too enlightened. In the mid-nineteenth century they established 'schools with the Bible' that taught a stricter form of Calvinism to children. Special Catholic schools were also created when bishops informed their congregations in the 1860s that they should not send their children to public schools if possible. Brothers and sisters from various monastic orders also started teaching. The increase in the number of denominational schools also intensified the demand for state subsidies. The confessionals, for whom this became the first point of political conflict, believed it was wrong that parents who sent their children to denominational schools were actually paying twice as much for education: once via taxes for public schools and once via fees for denominational schools.[46] An overwhelming majority of liberals rejected the demand for state subsidies. They believed that children should not be taught in one single faith considered to be the absolute truth, but should learn to think for themselves above all else, and that this would also allow them to make a conscious choice about various ideologies later on in life. Furthermore, education based on all kinds of denominations would hide children away in 'sectarian schools'. If children from various denominations no longer came into contact with one another, the unity of the nation would be undermined in the end.

When confessional parties secured a parliamentary majority for the first time in 1888, within the space of a year they introduced a law that allowed denominational schools to cover certain costs with a subsidy from the state. Had

[46] However, they did *not* raise the same objection for unmarried people or married couples without children, even though these categories also paid for education via taxes, without any personal benefit.

the liberals continued acting as a single block, they could have used the majority they still enjoyed in the Senate to block the law. However, a liberal minority wanted to accommodate the confessional parties to a degree and approved the amendment to the act. In 1917 a 'Pacification' of political wishes was adopted that required a constitutional revision. These topics therefore required a two-thirds majority in parliament so that the confessional camp could always block the demands of the non-confessional camp, and vice-versa. Under a major exchange, liberals and social democrats were given universal suffrage and proportional representation, while the confessional parties received complete financial equality within denominational education. The latter meant that every guilder spent on public education – which now had to be neutral and respect various religious feelings – also had to go to denominational education via state subsidies.[47]

The introduction of the ultimately equal state subsidy for denominational schools along with the pressure exerted by pastors and priests meant that denominational (religious) schools became the standard form of education. The percentage of children attending a denominational (religious) school rose from 24% in 1875 to 62% in 1930.[48] The regulation has never been reviewed since 1917, even though many Catholic and Protestant Christian schools have little to do with their religious foundations and are often barely distinguishable from public schools with regard to how they handle religion. On the contrary, the regulation was extended to secondary and higher education (up to and including universities, resulting in Reformed and Catholic institutions).

During the last quarter of the twentieth century new denominational schools emerged from two orthodox religious denominations, which were entitled to tax revenues by virtue of the regulation from 1917. Strict members of the Dutch Reformed Church founded their own 'reformational' schools, where a stern Calvinistic interpretation of the Bible (the 'infallible word of God') is taught not only during religious lessons but also integrated in other subjects and where girls are obliged to wear skirts. Fundamentalist Muslims then established Islamic schools, of which there are already almost 50 in the Netherlands. The Koran serves as the basis for all education and girls have to wear headscarves. The emergence of Islamic schools in particular has rekindled the debate about the regulation from 1917. On the one hand, this is due to the concern that the norms and values passed onto pupils at these schools are fundamentally in conflict with the principles of the Dutch constitutional state (such as the equality of men and women) while on the other, because many people regard separate Islamic education as a hindrance to the integration of the Muslim minority (originally from other countries) within

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47 Patrick van Schie, *Vrijheidsstreven in verdrukking. Liberale partijpolitiek in Nederland 1901-1940,* Amsterdam, 2005, pp. 179-192.

48 P.Th.F.M. Boekholt and E.P. de Booy, *Geschiedenis van de school in Nederland vanaf de Middeleeuwen tot aan de huidige tijd,* Assen and Maastricht, 1987, p. 221. Remarkably enough, Jewish parents sent their children to their own Jewish schools during the nineteenth century. However, they attended public schools en masse when public education actually became neutral.

Dutch society.[49]

At present over two-thirds of all primary school pupils attend a denominational school, approximately 6% go to a neutral school – based on an educational philosophy that differs from regular education, such as the Montessori or Dalton concept – and less than 30% attend a public school. Many parents, however, opt for a denominational religious school for reasons that have nothing to do with the school's principles: its proximity, rules of conduct that are less lenient or a smaller percentage of immigrant pupils. The state subsidy for a denominational school can be viewed as a typical Dutch interpretation of the notion of 'inclusive neutrality', but which favours religious people above non-religious people. After all, a denominational school may indeed be founded on an educational philosophy without a religious background and with an entitlement to a state subsidy, but this is not possible on the basis of a non-religious ideology.

Conclusion

To this very day Teylers Godgeleerd Genootschap still holds a competition nearly every year that often features a topical subject – as was the case in 1795. In 2006 the Society organised a competition revolving around blasphemy in the Netherlands since the Second World War. As already mentioned above, the Netherlands still has a penal statute that prohibits blasphemy. In 2004 a political majority still supported the retention of this article. The penalisation of blasphemy is – as we have seen – just one example out of many of the as yet incomplete separation of church and state in the Netherlands.

As early as 1795, contestants in the competition argued for a separation of church and state that was certainly far-reaching in those days. The winner even wanted the separation to go further than the present-day situation in the Netherlands. Perhaps a following competition organised by Teylers Godgeleerd Genootschap will focus once again on the separation of church and state by asking participants to identify those areas in which this separation has not yet been completed in the Netherlands and how this can be accomplished as quickly as possible.

[49] J.G.C. Wiebenga, W.P.S. Bierens e.a., *De grenzen van de open samenleving. Migratie- en integratiebeleid in liberaal perspectief*, Teldersstichting; The Hague, 2005, pp. 141-147 and 154-156; Patrick van Schie, 'Artikel 23 is niet liberaal', *Trouw*, 3 December 2005; for a brief overview of the ongoing discussion during the past few years: 'Geen politicus pakt kiezers hun school af', *de Volkskrant*, 7 August 2008.

The Separation between State and Church; Beware of the Legislator?

Remco Nehmelman

Introduction

With the attack on the Twin Towers in New York on the 11th of September 2001 a new era began. In my point of view also a new era began on the topic of the separation between state and church in Western democracies. New questions were posed such as: what was the reason of fundamentalist Muslims for the horrible deeds in New York, London and Madrid? Also, is the Islam a threat for the established Western democracies, not only due to the terrorist attacks, but will the Islam be a dominant phenomenon in the political landscape? And will this lead to a different approach of the separation between state and church?[1]

The last question can only be answered if one has an idea of what that approach is and has been the last decades on the issue on the separation of state and church in the different western democracies. In Greece, for instance the Greek Orthodox Church plays not only an important role in daily life, but also in the educational and the political system. A totally different system may be found in France and Turkey.[2] In both countries there is a strict doctrine on the separation of state and church which also deeply effects in the educational and political system. Between those two systems, there are countries that have a less outspoken vision on the separation between state and church. The Netherlands for example does not have a clear vision on this topic.[3] A good illustration for the Dutch diffuse system can be found in the fact that since 1917 public schools as well as schools based on a specific religion are financed by the government.

Nevertheless, I still have not mentioned what in my view the separation of state and church means. In short it means that in the relation between church and state there can and may not be an institutional control over one and other and a

1 Arend Soeteman, 'Over de betekenis van vrijheid van godsdienst en de scheiding van kerk/moskee en staat', in: *Pedagogiek*, 2008, no. 1, pp. 26-39.

2 See more detailed B.P. Vermeulen, 'Een schets en evaluatie van de kritiek op de overheidsfinanciering van het bijzonder onderwijs', in: W.B.H.J. van de Donk, A.P. Jonkers, G.J. Kronjee and R.J.J.M. Plum (ed.), *Geloven in het publieke domein*, Wetenschappelijke Raad voor het Regeringsbeleid (Scientific Council of the (Dutch) Government), 2006, p. 354.

3 Sophie van Bijsterveld, 'Scheiding van Kerk en Staat: een klassieke norm in een moderne tijd' in: Van de Donk (ed.), *Geloven in het publieke domein*, pp. 226-258. See also Aernout J. Nieuwenhuis, 'Godsdienstvrijheid en Bijdragen aan het Maatschappelijk Debat', in: *Nederlands Juristen Comite Mensenrechten Bulletin,* 2004 pp. 154-156.

direct influence is also not possible.[4] So the church cannot directly influence the state and vice versa. But is this really a principle which holds true? In the next few pages I will discuss a number of cases from the recent past, which show there is no direct influence by the church in its relationship with the state, yet Christian based political parties performed the job the church could not. In paragraph 3, I will clarify some issues which are related to the upcoming Islam and go into the question whether this religion at this moment forms a real threat to the principle of the separation between state and church. I will end in paragraph 4 with some final remarks.

Case law: from past to present

Blasphemy versus freedom of speech

One of the most famous cases in Dutch case law[5] is the so-called Donkey-judgement.[6] Gerard Reve, a famous Dutch author, in 1965 wrote an article in a magazine for homosexuals[7] on the issue of the return of God in modern society. Reve wrote that God would return as a donkey who only could pronounce the sounds a donkey makes, and Reve wrote further that he wanted to make love to God in his appearance as a donkey. In very artistic but also very explicit words Reve described his vision of his lovemaking with God. After his publication a member of the Dutch Second Chamber, C.N. van Dis, a party member of the Staatkundig Gereformeerde Partij (a fundamentalist Christian based political party) asked parliamentary questions to the Dutch Minister of Justice[8] on the Reve issue. Van Dis main question was if Reve would be prosecuted by the Dutch public prosecutor. The Minister answered that Reve would indeed be prosecuted for blasphemy.[9] The case went all the way up to the Dutch High Court which acquitted Reve for blasphemy. Blasphemy is still prohibited in the Netherlands although no one has been prosecuted since the Donkey-judgement.

The discussion on blasphemy arose again shortly after the murder of the famous Dutch director Theo van Gogh. It was the then sitting Minister of Justice, Piet Hein Donner (Christen Democratisch Appèl (CDA), the biggest Christian based political party in the Netherlands) who pleaded for a revival of article 147

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4 Van Bijsterveld, 'Scheiding van Kerk en Staat', p. 249.

5 Hoge Raad (High Court) 2nd of April 1968, Nederlandse Jurisprudentie (Dutch Jurisprudence) 1968/373.

6 See more detailed on te Donkey-case: Gerrit Arie Lindeboom, *God en ezel. Van het Reve's ezelgod in het oordeel van enige Gereformeerde theologen: een protest*, Franeker, 1967.

7 The magazine was called *Dialoog* (Dialogue). Reve himself was the editor of the magazine.

8 Also the Minister of Culture, Recreation and Civil Society had to answer the questions.

9 Blasphemy is still forbidden in the Netherlands, see article 147 Dutch Penal Code.

Dutch Penal Code in which is laid down that blasphemy is prohibited in the Netherlands. Theo van Gogh frequently insulted the prophet Mohammed which probably led to his murder on the 2nd of November 2004. After the remarks of Donner a strong counter reaction came from a few famous Dutch artists such as the comic Hans Teeuwen. They pleaded strongly in favour of the freedom of speech and would like to see that blasphemy was deleted from the Dutch Penal Code.

Very recent is the case of the Dutch cartoonist Gregorius Nekschot.[10] Nekschot was arrested and interrogated by Dutch police because some of his cartoons, which were published in magazines and on the internet, were very explicit. For instance he made and published a cartoon in which the prophet Mohammed was making love with Anne Frank. A number of opposition parties, including the Volkspartij voor Vrijheid en Democratie (VVD; Liberal party) and the Democraten 66 (D66; a pragmatic party that since 1998 has proclaimed itself to be a social liberal party) were discontented with the arrest and interrogation of the Dutch cartoonist and they required further information and the view of the Minister of Justice, Ernst Hirsch Ballin (CDA). He declared in parliament that he had no influence on the Public Prosecutor in the Nekschot-case and moreover that he was also displeased with the duration of the detention of the cartoonist.[11]

These three cases are in one way or another related to the controversial article 147 in the Dutch Penal Code. Especially the Dutch liberal politicians have pleaded for the abolition of this article. Because the article is still in force, every person in the Netherlands can be prosecuted by the public prosecutor, who is, something which may not be forgotten, a division of the Dutch state. In this perspective the question is raised if a prosecution or an eventual conviction[12] is a threat of the separation of state and church. One has to realise of course that article 147 Dutch Penal Code has been made by the Dutch legislator and it is he who decides if blasphemy remains prohibited.

Abortion

Another topic in which the relationship between the state and the church is visible is abortion. Although Dutch legislation on abortion has been very progressive since the 1970s, abortion still is a very controversial subject due to the fact that Christian based political parties had and have a great influence in the Dutch politics. A severe conflict arose in the middle of the seventies of the twentieth century. Dries van Agt (CDA)[13], a conservative politician and practising Catholic,

10 See more on: http://www.nrc.nl/opinie/article1094606.ece/Gregorius_Nekschot_past_in_onze_traditie_van_lompheid.

11 http://www.justitie.nl/actueel/nieuwsberichten/archief-2008/80617nekschot.aspx.

12 Dutch courts and judges are institutions/servants of the State as well.

13 See for a recent book on Van Agt (in which also the Bloemenhove case is discussed): J. van Merriënboer, P. Bootsma and P. van Griensven, *Van Agt biografie: Tour de force*, Amsterdam, 2008.

was Minister of Justice in that period. In his view abortion should be legalised more strictly and it was a thorn in his eye that some abortion clinics did not comply with the 'first 12 weeks period of conception'-rule in which abortion was legal. Especially the so-called Bloemenhove clinic disturbed Van Agt. This clinic also aborted pregnancies after the first 12 weeks of conception. Different courts in the Netherlands frustrated the plans of the Minister to close the Bloemenhove clinic. After a complaint in 1976 by a woman who had been treated wrongfully in the Bloemenhove clinic, Van Agt ordered the Dutch police to shut down the clinic. The next day a number of political parties, including the VVD, questioned the decision of the Minister of Justice. They wanted that the Court should decide on the Bloemenhove case and not the government. After a long and difficult political struggle Van Agt lost the case, the Court ordered to return to the Bloemenhove clinic back all the medical instruments. In 1984 the Dutch legislator made a definitive law on the issue of abortion.

Nevertheless, more recently a subject linked with abortion led to a political conflict. The State Secretary of Public Health, Jet Bussemaker (member of the Social Democratic PvdA), wrote in a letter to parliament in May 2008 that she had given permission to Dutch medicines to select embryos which genetically carried a severe type of breast cancer. The Vice-prime minister André Rouvoet, a member of the ChristenUnie (a very conservative Christian based political party) was alarmed by the plan of Bussemaker and demanded a withdrawal of the letter which she had sent to parliament.[14] The subject was discussed in the Dutch Council of Ministers after which was decided that embryo selection only is allowed after permission of a special commission.

Abortion, even in an embryonic phase, is still controversial in Dutch politics. The difficult issue of abortion shows, that although the Netherlands often is seen as a country where the principle of a separation between state and church is acknowledged, the influence of Christian based political parties can be very dominating. Although the relationship with the church was in the past much stronger then nowadays there are still remaining issues, especially on moral subjects, in which these political parties do have a strong voice. This influence is of course even greater if a Christian political party has a seat in government. One can ask if this is a threat or even a breach of the principle of the separation of church and state. In a strict definition of the separation between church and state, there is no breach. The church does not have a direct influence in politics. Nevertheless as we have seen, Christian based political parties can have such an influence, and they carry out the same message the church does. This is inevitable because it comes with the system of democracy in which every person can gain political power.

[14] The case has been published on the internet site of the Dutch newspaper the *Volkskrant:* http://www.volkskrant.nl/binnenland/article542993.ece/Rouvoet_eist_intrekken_brief_over_selectie_van_embryo_s.

New religious issues

Up to now only Christian based political parties have gained seats in Dutch Parliament. Although some members of parliament are Muslims, the parties they are related to, have no link to Islam. In this perspective the sitting Christian based political parties are more a threat to a possible breach of the separation of state and church than the Islam is. Nevertheless there are other spheres in which the Islam has been a minor threat to the principle of the separation of state and church. Two subjects I would like to discuss in this point of view. Firstly the case of a Muslim female clerk of the Court, who wanted to wear a headscarf in Court. Secondly, a more recent case, of a teacher on a public school who was no longer willing to shake hands. Other cases that can also be perceived as possibly infringing the separation between state and church, such as the admission to the Netherlands of imams and the foundation of Islamic schools will not be dealt with.[15] The last two topics can be viewed top down (State action) as the first two subjects are bottom up (Individual action). In the previous paragraphs a top down approach has been taken because no Muslim party ever has been in power in Dutch parliament, and so there is no developed case law on the mentioned topics.

Wearing a headscarf?

In 2001 the Commissie Gelijke Behandeling (Commission on Equal Treatment, a commission that gives views on possible breaches on the Law on Equal Treatment)[16] gave a view on the rejection of an applicant for the position of clerk of the Court by the District Court of Zwolle on the basis of her wearing a headscarf.[17] The Commission views that there is no direct discrimination. However, by having legal instructions on clothing for civil servants of the Court, mainly the wearing of headscarves on religious grounds is effected. According to the Commission, these legal clothing instructions lead to indirect discrimination.[18]

An obligation to shake hands?

The teacher of a public school informs her colleagues on the first day after the summer break that due to her religious conviction she will no longer shake

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15 See also the difficult opinions on banning the Bhurka in the Netherlands: C.A.J.M. Kortmann, 'Een bijzonder schrijven: gelaatsbedekkende kleding', in: *Nederlands Juristenblad* (Dutch magazine for Legal Scholars), 2008, no. 9. Also a commission gave an opinion on a possible Bhurka ban to the Dutch Minister of Integration Affairs, Mrs. Verdonk, *Overwegingen bij een boerka verbod, Zienswijze van de deskundigen inzake een verbod op gesichtsbedekkende kleiding*, 3rd of November 2006, http://www.justitie.nl/images/rapport%20Overwegingen%20bij%20een%20boerka%20verbod_6651_tcm34-28821.pdf.

16 www.cgb.nl.

17 Commissie Gelijke Behandeling, 22nd june 2001, Administratiefrechtelijke Beslissingen (Jurisprudence on Administrative Case Law), 2001/308, with annotation of Ben P. Vermeulen.

18 The case and view has been published on the internet site of the Commissie Gelijke Behandeling: http://www.cgb.nl/opinion-full.php?id=453054834.

hands with men. The school dismisses her. This in short is the case that came before the District Court of Utrecht in 2007.[19] The Court argued that there had been a breach of confidence between the school and the teacher and therefore the school was allowed to dismiss the civil servant. Previously the Commission on Equal Treatment (in 2006) had decided – on the same case – that there had been an infringement of the law on equal treatment. The Court decides that the legal norms they have to apply differ from those of the Commission on Equal Treatment. According to the Court there are no principles of law, like the freedom of religion or equal treatment, at stake.

A similar case arose before the District Court of Rotterdam in 2008.[20] Can an applicant be rejected by its potential employer because he refuses to give a hand to women (later on also man)? Yes, the District Court in Rotterdam finds. Previously the Commission on Equal Treatment (in 2007) had decided – in the same case – that there had been no infringement of the law on equal treatment. The Commission judged that the company has proved that not the religion of the applicant was the reason not to hire him, but that the non-cooperative way in which he has presented himself in the application procedure.

The same Muslim also aroused Dutch society, when he, being a lawyer, refused to stand up for the magistrates. The District Court of Rotterdam decided that he no longer had to stand up for the judges who come into the courtroom. The Court has issued a recommendation according to which lawyers stand up for the judges 'in principle'. The lawyer is allowed to stay seated 'as deep religious convictions oblige him to do so'. The Dutch Minister of Justice, Ernst Hirsch Ballin, declared that he refused this point of view of the Court. Lawyers must always stand up for Dutch Magistrates when they are entering the courtroom.[21]

The mayor of Amsterdam, Cohen, also found himself entangled in this difficult situation. He said that so-called 'Slotervaart street coaches' (since 2006 street coaches have been used in Amsterdam to tackle the problems caused by young people) do not have to shake hands with women if their religious conviction tells them so. Members of his party (the PvdA) disagreed with the mayor and introduced a motion in the city council to dismiss the unwilling street coaches. Three-quarter of the council rejected the motion.[22]

The four just above mentioned cases illustrate the position of civil servants in relation to their constitutional guaranteed freedoms. One has to keep in mind

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19 Rechtbank Utrecht, 30 augustus 2007, AB 2007/307, with annotation Lisanne C. Groen and Ben P. Vermeulen.

20 Rechtbank Rotterdam, see for more details of the case: www.ad.nl.

21 www.nrc.nl/binnenland/article1977607.ece/Hirsch_Ballin_advocaat_moet_respect_tonen.

22 www.elsevier.nl/web/10159244/Nieuws/Nederland/Cohen-heeft-gelijk,-hand-schudden-hoeft-niet.htm.

when it comes to acting as a civil servant it is the servant who acts as such on behalf of the state and as such does not act as an individual. Therefore this individual has to allow limitations to this guaranteed constitutional freedoms. This individual as a civil servant has no belief or conviction. In private he is entitled to all those freedoms.[23] The state has the obligation to make a neutral representation and also civil servants who represent the state have this obligation not to express their private convictions. Therefore it may be required that they can not wear religious visible signs or act in a way contrary to societal norms such as handshaking. Both cases also illustrate a tension between the separation of state and church.

Some final remarks

From the past times it follows that the *main* threat to liberal freedoms seem to emerge from the dominant Christian convictions, and not (yet?) from Muslim convictions. As long as law is made by parliament, and it is the Courts that have to abide by the law, there is a small influence of Christianity in case law. That is because the law, as such, is influenced by the convictions of the member of parliament and the government. In parliament the voice of the Muslim is only vaguely heard. So there influence on the law-making process is also limited. This also influences the case law. It is inherent to democracy to hear all voices, and the voice of the majority is the loudest. The state has the obligation to respect and protect all fundamental freedoms, that includes the freedoms of Christians, Catholics, Muslims, atheists, Jews, Buddhists, and all alike. The state as such cannot and may not express those freedoms.

[23] Although that may depend on the type of civil servant.

Belgium

Is Belgium a *laïque* state?

Hervé Hasquin

On 23rd April 2007, the Belgian deputy Olivier Maingain submitted a proposed amendment (No. 6) to the Commission of the Chamber of Deputies, which was studying a draft Declaration of the Revised Constitution; the amendment aimed to include in the list of articles to be revised 'Article 1 of the Constitution, with a view to including within it the principle of *laïcité* of the federal state'. The justification for this proposed amendment highlighted the need to distinguish 'that which pertains to morality from that which pertains to the law'. It was inspired by the work of John Rawls, a series of whose articles were collected in the book *Justice and Democracy*.[1] The proposal also took into account the example of *laïcité* of the French state. Let us not forget that this was the fruit of a long process of secularisation of the state, beginning in the late 18th century, even before the 1789 Revolution.

On this subject, the 20th century in France was marked by several key dates. The 'Law of Separation of Church and State' adopted by the French parliament, which had been brought to the Chamber by Aristide Briand, was enacted on 9 December 1905. Further progress was made at the initiative of the Catholic De Gaulle. Article 1 of the 1946 Constitution explicitly refers to the notion of *laïcité*[2]; its wording was reiterated and supplemented in the 4 October 1958 Constitution which founded the Fifth Republic.[3] The aim was therefore to ensure the religious neutrality of the state in all places and under all circumstances.

In the end, the deputy withdrew his proposed amendment from the Commission, but the issue, which had already been raised in other circumstances, will undoubtedly arise again in the future.

Two questions come to mind. Is the example of France, so often put forward by Belgium's French-speaking *laïques* (obviously in large part because of the linguistic and cultural similarities), relevant? Can a state be *laïque* without including the notion of *laïcité* within its Constitution?

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1 J. Rawls, *Justice et démocratie*, Paris, Seuil, 1993.

2 'La France est une République indivisible, laïque, démocratique et sociale'.

3 'La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race, ou de religion. Elle respecte toutes les croyances.' See: *1905, la séparation des Eglises et de l'État. Les textes fondateurs*, Paris, Perrin, 2004; J. Boussinesq, *La Laïcité française*, Paris, Seuil, 1994; J. Baudouin, Ph. Portier, *La laïcité, une valeur d'aujourd'hui? Contestations et renégociations du modèle français*, Presse Univ. de Rennes, 2001; J. Baubérot, 'Histoire de la laïcité en France', Paris, P.U.F., Que sais-je?, 2e éd. 2003; see also: Actes du Colloque, réunissant les meilleurs spécialistes français, organisé par le Sénat: *La laïcité: des débats, une histoire, un avenir (1789-2005)*, Paris, Palais du Luxembourg, 2005.

The Belgian context in 1830

The regions making up Belgium in 1830 had been French from 1794 to 1814/15 and Dutch from 1814/15 to 1830. They had therefore been subject to two successive forms of caesaropapism – firstly that of Napoleon, and secondly that of William I, King of the Netherlands. Prior to 1794, some of these regions had even experienced 'Josephinism'. At the time of the Austrian Netherlands, the reigns of Marie-Therese (1740-1780) and Joseph II (1780-1790), especially from the 1770s onwards, had been renowned for their desire for total subjection of the Catholic Church to the monarchy. Transforming the church of the Austrian Netherlands into a nationalised 'Belgian Church' with the loosest possible ties to Rome was the supreme ambition of the Habsburgs and their Chancellor, Kaunitz. The same policy was implemented throughout the Empire.[4] Their fingers burnt, after being annexed to the Republic, Catholic clergy and opinion had to suffer a wave of anti-religious feeling and the sale of national assets. The Concordat and the rebirth of a few female congregations – more often tolerated than authorised – restored trust. However, opposition was revived by the Imperial Catechism and the virtual deification of the Emperor; the 'war' between Napoleon and the Pope from 1808 onwards precipitated the rupture, especially with the increasing number of bishops and priests who were arrested. The fall of the imperial regime was therefore interpreted as deliverance by a church and its devotees who were infuriated by the continual intrusions and authoritarianism of the civilian authorities.[5]

In 1814, the church entertained hopes of winning back its former freedom, and even of regaining the right to collect tithes: there was no better way to escape financial dependency on the government. These illusions did not last long; in fact, they vanished as early as 1817. The Calvinist King William I was to clash with an increasingly ultramontane clergy. As Joseph II had done, the autocratic sovereign took charge of priests' training: in 1825, he closed a string of episcopal seminaries and established a state-controlled Philosophical College intended to cast all future priests in the same mould. The renewal of the Concordat in 1827 did not substantially lessen animosity.[6]

From 1828 onwards, the regime's absolutist nature ended up uniting both Catholic and liberal opinion against it. Unquestionably, as shrewdly perceived by Belgian historian F. van Kalken, for several decades, 'in spite of unprecedented upheavals, groups of middle-class citizens with the same training and culture,

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4 H. Hasquin, *Joseph II (1741-1790). Catholique anticlérical et Réformateur impatient,* Brussels, Racine, 2007; F.A.J. Szabo, *Kaunitz and enlightened absolutism. 1753-1780*, Cambridge University Press, 1994, pp. 209-257.

5 A. Thion, 'La pacification et la restauration religieuses', in: H. Hasquin (ed.), *La Belgique française. 1792 – 1815*, Brussels, Crédit communal, 1993, pp. 173-197; F. Antoine, *La vente des biens nationaux dans le département de la Dyle*, Brussels, Archives générales du Royaume, 1997. Sur le département des Forêts et les violences subies, *A l'épreuve de la Révolution. L'Eglise en Luxembourg de 1795 à 1802*, Bastogne, 1996.

6 M. Chappin, *Pie VII et les Pays-Bas. Tensions religieuses et tolérance civile. 1814-1817*, Rome, 1984.

recruited from the same circles, had been forming in our provinces to defend the caesaropapist, secularist policies of three successive monarchs'.[7] Voltaire's adage, expressed so many times since 1768, 'the church is in the state, and not the state in the church', was still for many people a hobby horse that they were unwilling to give up. They were tormented by the fear of a return to the *Ancien Régime*, with the excesses of a church that was ever ready to condemn freedom of conscience and of religion – the bishops had once again demonstrated as much in their Doctrinal Judgement condemning the Basic Law (Grondwet). After all, the French example of the Restoration and its excesses demonstrated that these apprehensions were not in vain. Perhaps judgement was clouded by anti-clericalism, but taking everything into account, wasn't 'enlightened despotism' the best defence against fanaticism and obscurantism? At the end of the Dutch regime, both William's authoritarianism and 'Belgian' recriminations toward the Dutch favoured a change of course. Both the new generation of liberals – with their admiration for Benjamin Constant – and numerous Catholics seduced by Lamennais's anti-Gallicanism united to promote freedom in the key areas of politics, opinion, religion and education. Convinced by this convergence between liberal Catholics and liberals, after 1829 the French abbot even became a propagandist for the Belgian example as he broke away from Ultramontanism.

This new alliance built around freedom which came to light in the 'Belgian' provinces of the Kingdom of the Netherlands sealed a union which enabled the Revolution to be consolidated in October 1830 and a new Constitution to be drawn up in very short order: it was passed by the National Congress, elected in October, on 7 February 1831.[8]

These preliminaries are vital to an understanding of the ingredients which made up the backbone of the Belgian Constitution. As the Canon Simon so aptly summarised: '[...] Belgian liberal Catholicism was a tendency among Catholics who, in favour of modern freedoms for their own sake or as a means of apostolate, wanted to participate in the political management of a liberal state. Their doctrine, if they had one, was that Catholic truth needed only freedom – or at least Belgian constitutional freedom – to ensure its triumph'.[9]

A regime of mutual independence

The Constitution adopted by the young independent state in 1831 explicitly refers neither to the *laïcité* of the state – the expression did not yet exist – nor to the separation of church and state. However, several articles lay the foundations

7 F. van Kalken, *Les sources réelles du libéralisme belge*, Le Flambeau, 1 march 1928.

8 H. Haag, *Les origines du catholicisme libéral en Belgique (1789 – 1839)*, Louvain, 1950.

9 A. Simon, 'Propos sur le catholicisme libéral belge', in: *Chiesa e Stato nell'Ottocento*, Padova, 1962, p. 675. In the same article he specifies: 'Une des caractéristiques des catholiques libéraux fut leur anti-cléricalisme. Il faut évidemment entendre par ce mot l'opposition à tout privilège civil accordé au clergé' (p. 674).

for a politically *laïque* state, and from the mid 19th century gave the Belgian state an original status among burgeoning parliamentary, pluralist and democratic regimes in terms of its relationships with churches and religious communities. The Constitution guaranteed the major democratic freedoms and separation of powers. It made the 'King of the Belgians' an inviolable personality without responsibility, who's every act, had to be countersigned by a Minister.

Three articles of the Constitution establish a number of principles considered to be essential:

- Article 19 guarantees freedom of religion, its public exercise and freedom of expression.
- Article 20 stipulates that 'no-one may be compelled to take part in any way in the acts and ceremonies of a religion, nor to observe its days of rest'.
- Article 21 denies the state the slightest right to monitor the life of the church, but stipulates that 'a civil wedding must always precede a nuptial blessing'.

In spite of six major constitutional revisions and other minor adjustments to the 1831 text, these three articles share a common characteristic that denotes their importance in the political equilibrium that developed: they have never been subjected to the slightest amendment.

The constitutional provision of 24 December 1970 clarified the notion of equality of all Belgian citizens under the law (Article 10) by the addition of Article 11, which guarantees the 'rights and freedoms recognised to all Belgians' to 'ideological and philosophical minorities'.

The regime set up in Belgium was therefore neither:

- A 'concordat' regime stipulating reciprocal rights and obligations; independent Belgium has never signed a Concordat

  NOR

- A regime of absorption of the church into the state, since there is no subordination of the former to the latter.

Neither is the Belgian system a regime of separation stricto sensu, for at least two reasons:

1. The matter of the precedence of civil marriage over religious marriage goes against the principle of radical separation. Debates in the National Congress provide sufficient indication that members of the Constituent Assembly were aware that they were interfering in religious weddings – a religious act if ever there was one – by subjecting them to a prior condition. The argument which would tip the decision was the fear of family disorders. In support of the precedence of civil marriage, several speakers referred to the abuses reported to have been suffered by women and children between October 1814 and January 1817, a period during which

Napoleon's legislation had been held in abeyance. A few also feared the 'overthrow of paternal power'. In short, this provision was the only concession to the arguments of those who defended the pre-eminence of temporal power.

2. The state has the role of partly funding recognised religions. In this respect, Article 181 of the Constitution stipulates that 'the salaries and pensions of ministers of religion are the responsibility of the state; the amounts required to cover them are included each year in the budget'.[10]

As early as 1831, controversy arose over the interpretation that should be given to the state's financial involvement. Was it simply a salary – i.e. remuneration paid in exchange for a social service provided to the population? There was a broad consensus, including among those parliamentarians claiming to be liberals, that the practice of religion was a benefit for the population. Or was it, on the other hand, a salary with the value of compensation? This was the argument of those who defended the Catholic religion, who considered financial intervention by the public authorities to be fair compensation for the nationalisation of church assets that had occurred under the French regime and deprived the church of huge resources. According to this point of view, the constitutional provision merely perpetuated the spirit of the 1801 Concordat signed by Napoleon Bonaparte and Pius VII, which had been applied in Belgium under the French regime and whose effects had lasted through the Dutch regime between 1815 and 1830.

These interpretations have not changed as time has passed. The Justice Minister, who has responsibility for religious affairs, expressed himself as follows in 1994 on the matter of the legitimacy of Article 181: 'I should like to remind us of a few basic principles. The funding of religions and the payment of salaries to Catholic ministers are founded on two essential principles, namely that of compensation – i.e. reparation for the despoilment of church assets for the benefit of the nation which occurred at the end of the 18th century – and that of the social service carried out by ministers of religion in society, which was also recognised for other religions and for secularism.' 'This dual principle prevailed when the 1801 Concordat was drawn up and when the National Congress discussed [...] the Constitution.' 'The salaries allocated to ministers of other recognised religions are founded on the principle of the social service carried out in society, since these religions did not suffer confiscation of their assets.' 'These principles [...] of the Constitution entail for the state an obligation to pay salaries and pensions to the ministers of recognised religions. Consequently, these salaries must correspond to the needs of life and the necessities inherent to the social position of ministers of religion.' 'The amount of salaries is determined by law on the proposal of the

[10] See H. Wagnon, *Le Congrès national belge de 1830 – 31 a-t-il établi la séparation de l'Eglise et de l'Etat?*, Etudes de droit canonique dédiées à Gabriel Le Bras, Paris, 1965, t. I, pp. 753-781; idem, 'La condition juridique de l'Eglise catholique en Belgique', in: *L'année canonique*, 1966, t. X, pp. 185-211.

Federal Government, after prior consultation with representative bodies of the various recognised religions. The criteria used in setting these amounts take into account the needs related to the exercise of each religion, the historical context and the extent to which each religion is represented across the territory of Belgium'.[11]

As far as the members of the Constituent Assembly were concerned, there is definitely no room for doubt: they established a regime of separation, even though they were aware of having instituted a dispensatory system. So what happened? As Jules Bara, the eminent jurist and future Justice Minister, explained in 1859: '[...] salaries for ministers of religion are an exception with no influence on the constitutional system. They may not give rise to any special rights of the state over those ministers, since the state's rights are independent from salaries, and the equality of religions, affirmed by our basic law, would break down if greater power were exercised over salaried ministers than over unsalaried ministers. However, since the payment of salaries does not place any special obligations on the clergy vis-à-vis the state, neither may it be argued that privileges or favours should be accorded to ministers of religion'.

Bara goes on to add: 'In Belgium, the payment of ministers of religion is merely accidental. It was a financial combination that appeared to be useful and which, moreover, was required by circumstances; it was about conserving a state of affairs which, it was believed, it would be dangerous to change'.[12]

It should, moreover, be emphasised that the freedom recognised for religions goes further than that recognised for religious associations 'in the context of the common law of a state separate from the church'; thus the legal authorities cannot control the actions of the religious authorities, actions which 'produce an indirect effect on the civil order'. A bishop or priest who has been dismissed by his superiors loses all rights on the salary paid by the state, without the matter being referred to the civil courts.[13]

In 1999, the Court of Cassation confirmed this state of affairs and provided a rigorous interpretation of Article 21 of the Constitution. The Court clearly inferred three principles:

1. The appointment and dismissal of ministers of a given religion can only be decided by the competent religious authority, in accordance with the rules of that religion.
2. Church discipline and jurisdiction may only be exercised over ministers of religion by that same authority and in accordance with those same rules.
3. Article 21 does not enable a judge to order that a minister be kept in post, even if such an order is based on the general principle of respect for the rights of the defence, Article 6-1 of the Convention

[11] Sénat de Belgique. Annales parlementaires session ordinaire 1993 – 94. Réponse du ministre Wathelet au sénateur H. Hasquin, séance du 3 mars 1994.

[12] J. Bara, *Essai sur les rapports de l'Etat et des Religions*, Tournai, 1859, p. 63.

[13] R. Aubert, *L'Eglise et l'Etat en Belgique au XIX^e siècle*, Res publica, t. X, 1968, p. 10.

for the Protection of Human Rights and Fundamental Freedoms and certain rules of canonical law.[14]

This being the case, what type of state is the Belgian state? It is neutral; the laws of the church do not apply to it and no longer have any civil effect; it is tolerant, even granting help and protection to churches by punishing those who offend their ministers and objects of worship. Financial help, however, is only due to recognised religions. In concrete terms, the first religions to be recognised and to benefit from the liberalities provided for by the Constitution were those to which benefits had already been accorded prior to 1830; in practice, these were the religions that were recognised at the time the 'Belgian' territories were annexed to the French Republic and the French Empire: Catholicism and Protestantism (18 Germinal year X/18 April 1802 Act)[15]; Judaism, organised by three decrees dated 17 March 1806.

Independent Belgium would apply a fairly broad interpretation to Article 181 of the Constitution. Three other religions were recognised: Anglicanism (royal decrees of 18 and 24 April 1835); Islam (19 July 1947 Act); The Orthodox religion (17 April 1985 Act).

When is a religion recognised and, consequently, when is it accepted for funding by the state? In fact, the choice is made by sovereign decision of Parliament – the Chamber of Deputies and the Senate – without any rules having been decreed on the matter. However, it would obviously be difficult to insist on not subsidising a religion with a large number of followers. It would be foolish to deny that political considerations are also taken into consideration. Recognition of the Anglican religion was not unconnected with the fact that England played a defining role as a Power guaranteeing Belgian independence; that of Islam was contemporaneous with the first oil shock and that of the Orthodox religion accompanied Greece's entrance into the EEC. The question could arise in the near future with respect to the Belgian Union of Buddhists and the Hindu Communities; China, Japan, India. How can Asia's popularity be ignored at the beginning of this 21st century?

Taking as a foundation various parliamentary reports and declarations by the Justice Minister, one might identify five objective criteria for a religion to be recognised:

- Bringing together a relatively large number of followers (several tens of thousands)
- Being in structured in such a way that there is a representative body that can represent the religion in question in its relations with the civil authorities
- Having been established in the country for a fairly long period

[14] Cour de Cassation, Chambres réunies, C. 98.0081, 3 juin 1999.
[15] A royal decree of 20 april 1888 recognized the liberal protestant church.

- Presenting some level of social benefit
- Not encompassing any activity that is contrary to public order[16]

In the event that there are no authorised representative bodies or religious leaders, a long period can sometimes elapse between legal recognition and the full enjoyment of the ensuing benefits. The case of Islam is a particularly good example: although recognised in 1974, it was not until the royal decree of 3 May 1999 'recognising the Executive of Belgian Muslims' that the first subsidies were included in the Justice Ministry's budget with effect from 2000.

There is no such thing as complete equality between recognised religions. While the basic clergy (priests and vicars, auxiliary pastors, Orthodox archpriests, officiating Jewish ministers, Islamic imams) receive the same salary, there are, on the other hand, significant disparities among the high clergy, with a considerable advantage being given to Catholicism. Furthermore, while state protocol grants the Cardinal Archbishop of Malines the same rank as a prince of royal blood, the President of the Synod, for example, ranked only 91st in the February 1994 protocol, still in effect at the beginning of the 21st century.[17]

Recognition of *laïcité*

Other than an identical vocabulary and analogous institutions (*Ligue de l'Enseignement* - League for Education, *Libre pensée* – Freedom of Thought, etcetera), there are significant differences between Belgium[18] and France. *Laïcité* in France essentially imposed itself as a principle of public law, organising the state whose absolute neutrality it guarantees: 'what *laïcité* has lost in philosophical precision, it seems to have gained in institutional extension'. *Laïcité* in Belgium, on the other hand, has become increasingly confused with a philosophical spiritual family, among other things, and has gradually become part of the constitutional context relating to religions. '*Laïcité* in Belgium continues to be a minority component of society', but 'seems to have greater social visibility than in France'.[19]

Similar concerns and commitments in the mid 19th century have therefore led to different results by reason of historical and political experiences specific to each country. Prior to 1880, Belgium had often even been ahead of France: the League for Education (*Ligue de l'Enseignement*) was founded in 1864, the

16 R. Torfs, 'La position juridique des cultes en Belgique', in: *Conscience et Liberté*, nr. 60, 2000, pp. 110-113.

17 'Tenir son rang', article de l'hebdomadaire *Le Vif – L'Express*, 11 August 2000.

18 H. Hasquin (ed.), *Histoire de la laïcité en Belgique*, Brussels, 3e éd., 1994, éd Univ. Brussels; J. Bartier, *Laïcité et Franc-maçonnerie*, Brussels, ed. de l'Université, 1981; A. Miroir, *Laïcité et classes sociales. 1788 – 1945*, Brussels, Editions du Centre d'Action laïque, 1992; *1789 – 1989. 200 ans de Libre pensée en Belgique*, Charleroi, Centre d'Action Laïque, 1989; J. Tyssens and E. Witte, *De vrijzinnige traditie in België*, Brussels, Vubpress, 1996.

19 J-P. Martin, 'Laïcité française, laïcité belge: regards croisés', in: *Pluralisme religieux et laïcités dans l'Union Européenne, Problèmes d'histoire des religions,* t. 5, 1994, p. 77.

statutes of the Grand Lodge of Belgium were amended in 1871-72 to remove all references to the Great Architect and immortality of the soul, and primary education was secularised in 1879, though the experiment was aborted in 1884 when the Catholics returned to power, maintaining an absolute majority through to the First World War.[20]

One event – the Schools Pact (*Pacte scolaire*), signed by the major political groupings on 20 November 1958 and put into practice by the 29 May 1959 Act – substantially changed the scope of *laïcité*. Indeed, the Pact was the result of a desire for ideological peace in the area of schooling. From then on, Belgium's various education networks were subsidised by the public authorities based on largely identical standards; this was particularly true of the payment of salaries for teaching staff. The Pact prompted the Belgian *laïque* movement to widen the scope of its concerns considerably and to diversify its areas of interest: moral assistance in prisons (1965), in hospitals (1970), for immigrants (1972), in airports (1977), etcetera.[21]

The 23 January 1981 Act initiated a process of recognition of this *laïcité*, awarding grants out of the Justice Minister's budget to 'Non-denominational philosophical communities' to enable them to take on administrative assistants. This measure was a logical step in the organisation of *laïcité* in Belgium. The *Centre d'Action Laïque* in Brussels and Wallonia and the *Unie Vrijzinnige Verenigingen* in Flanders successively came into existence in 1969 and 1971 respectively, with the self-ascribed goal of uniting and coordinating the activities of French- and Dutch-speaking *laïque* associations. Shortly afterwards, the entire Belgian *laïcité* movement equipped itself with a coordination committee known in short as the *Conseil central laïc* / *Centrale Vrijzinnige Raad*. It is to this committee that the grants were awarded; in 1992, they amounted to € 2 million, and were mainly used to pay staff in the 'centres for *laïcité*' ('*maisons de la laïcité*') that had been opened in several major cities.

A further turning point came in 1992-93. A proposed revision of Article 181 of the Constitution was submitted to Parliament. Introduced by parliamentarians close to the *laïcité* movement, it aimed to add a second paragraph to Article 181, worded as follows: 'Salaries and pensions for the officers of organisations recognised by the law which offer moral assistance according to a non-denominational philosophical conception are the responsibility of the state; the amounts required to cover them are included each year in the budget'.

This provision, if passed by the Senate and the Chamber of Deputies, would open up the way in particular for the remuneration of advisers who, up until that point, had voluntarily provided moral assistance in prisons, hospitals, the army etc.,

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[20] See on Belgians early role: P. Alvarez Lazaro, 'Istituzionalizzazione del Libero Pensiero in Europa', in: *Stato, Chiesa e societa in Italia, Francia, Belgio et Spagna nei secoli XIX – XX* (a cura di A.A. Mola), Bastogi, 1993, pp. 229-249.

[21] H. Hasquin, 'La Laïcita dello Stato Belga (1830-1992)', in: *Stato, Chiesa e societa in Italia, Francia, Belgio et Spagna,* pp. 47-56.

in the name of secular humanism. The 21 June 2002 Act recognised the Central Council of Belgian non-denominational philosophical communities, known as the Conseil Central Laïc, as representing 'the non-denominational philosophical communities which belong to it, in their relationships with civil authorities'; it has a coordinating role of 'regulating the exercise of its representatives' functions'. In short, mutatis mutandis, the Conseil Central Laïc is the equivalent of the supreme religious body for recognised religions![22]

This situation may appear surprising. However, for the handful of senators who signed the proposed constitutional revision – including myself – it was a stopgap solution whose only positive aspect was that it put an end to the discrimination inflicted on those involved in *laïque* organisations.

The acceleration in the secularisation of society that began just over a quarter of a century ago, together with the noticeable decline in religious practice, could have led to a system based on a much more marked separation between state and church, for example by withdrawing the church's financial benefits. In reality, no such thing happened, although many Belgian proponents of *laïcité* were favourable to the establishment of a system comparable to the German *Kirschensteuer*.

The growing influence of *laïque* associations has clearly been insufficient to counterbalance that of the Catholic Church. It is true that the latter still benefits indirectly from the existence in Belgian society of a support base made up of organisations and services (trade unions, mutualist organisations, schools, insurance companies, hospitals, buying cooperatives, etc.) which still refer to themselves as 'Catholic' or 'Christian', even though, over time, their ties with church structure have weakened. In any case, their recruitment has not suffered from the decline in religious practice – far from it. For want of being able to challenge the financial privileges granted to Catholicism, all that remained was for the proponents of *laïcité* to demand a form of reciprocity for their associations, comparable to that which had been granted to religions competing with Catholicism. This is the path which was first embarked upon in the early sixties, but this system of consensus, which avoids striking a blow at the benefits previously granted to the historically dominant religion, has proven very costly.

It is intriguing to note that the term *laïque* is not used in any of the constitutional and legal provisions contributing to the 'recognition' of *laïcité* in Belgium. This was a deliberate choice on the part of the initiators of this 'recognition', while socio-Christian parliamentarians, after some hesitation, were open to including references to *laïcité* in the texts. The reason for this omission is simple: it has to do with the ambiguity of the word *laïque*. This word is used to denote both members of the Catholic Church (as distinct from members of the clergy) and

[22] For more detailed information, see C. Sägesser and J-F. Husson, 'La reconnaissance et le financement de la laïcité', in: *Courrier hebdomadaire du Centre de recherche et d'information socio-politiques* (CRISP), 2002, nr. 1756 and 1760; C. Javeau, 'La laïcité ecclésialisée: le cas de la Belgique', in: J-P. Willaime and S. Mathieu, *Des maîtres et des dieux. Ecoles et religions en Europe*, Paris, Belin, 2005, pp. 157-164.

those who, from the mid 19th century onwards, committed themselves to the fight against clericalism and for secularisation of the state, freedom of thought and state schooling ('official education'). The goal of partly reducing the discrepancies between the benefits granted to religions – and in particular Catholicism – and the proponents of *laïcité* would have been annihilated: had the term *laïque* been used, this would have been a pretext for Catholics to ask for additional funding, in particular for lay persons involved in catechesis due to a shortage of priests.

Public funding awarded to religions and *laïque* organisations

By virtue of the Constitution and the legacy of the Concordat, the 'Belgian system' has proven very generous towards religions.[23] By virtue of its extensive predominance, Catholicism has, of course, been the major beneficiary of this generosity. As Canon Aubert so aptly emphasised, the prevailing atmosphere in the years following the Revolution – one which favoured an alliance between liberals and Catholics (known as 'Unionism') – further contributed to strengthening the influence and benefits accorded to the church within the country's institutions: there was a broad consensus among the ruling elite that religion was necessary for the smooth running of society. This resulted in various measures: 'a royal decree dated 30 December 1833 organising the military chaplaincy; the 30 March and 30 April 1836 municipal and provincial Acts reiterating obligations in favour of administrative church councils ('*fabriques d'églises*'), episcopal palaces and seminaries; the 15 May 1838 Act exempting ministers of religion from jury service; a royal decree dated 3 April 1839 excusing theology students from military service; a ministerial circular dated 1 October 1840 declaring that the decree dated 24 Messidor year XII was still in effect, ordering military honours to be given at the Holy Sacrament, etcetera'[24]

In the area of funding, the 1801 Concordat, renewed in 1827, continued to affect independent Belgium in multiple ways. The Concordat was not merely a matter of pay. In its wake came a series of imperial decrees in 1806 and 1809 relating to administrative church councils, accommodation for Protestant ministers and maintenance of Protestant churches and consistories.

These decrees still applied after 1830. The 4 March 1870 Act on the temporal assets of religions stipulated the mechanisms for approval of the budgets and accounts of all categories of administrative church councils by municipal and provincial Councils. These provisions were later applied in favour of other recognised religions and *laïcité*.

In summary, and without going into all the subtleties of funding brought about by the country's federalisation, the nature of public involvement may be summed up as follows: 1. Funding for central representative bodies and salaries for

[23] See the remarkable dossier: *Le financement des cultes et de la laïcité: comparaison internationale et perspectives*, Namur, Les éditions namuroises, 2005.

[24] R. Aubert, *L'Eglise et l'Etat en Belgique au XIXe siècle*, pp. 23-24.

base communities are paid out of the federal Justice budget; 2. Accommodation for ministers of religion, or compensation in lieu thereof, any deficit of religious institutions or moral assistance organisations, and repairs to religious buildings and those belonging to *laïque* institutions are paid for by either municipal or provincial councils, depending on the nature of the buildings; 3. Finally, there are subsidies for work carried out on places of worship, *laïque* institutions and centres for *laïcité* (*maisons de la laïcité*) paid for out of the Regions' budgets. In his summary essay, J-F Husson provides a fairly accurate assessment of the amounts included in the 2004-2005 budgets, as follows:

In millions of euros:

(I) Religion	Catholicism	Protestantism	Judaism	Anglicanism	Islam	Orthodox	Organised *laïcité*
	185.5 (85.1%)	4.5 (2.1%)	0.7 (0.3%)	0.4 (0.2%)	6.3 (2.9%)	1.5 (0.7%)	19.0 (8.7%)
218.0							
(II) Pensions	34.8	0.5	0.1				
(III) Assets	16.7						
TOTAL I + II + III							
269.5							

Though it has been declining in recent years, it can be seen that the proportion allocated to Catholicism is overwhelming. Taking into account (federal) pensions and asset expenditure on the restoration of listed places of worship (under the responsibility of the Regions, the Federal budget or the German-speaking Community depending on each individual case), the total amount of public funding increased from € 218 to € 269,5 million, and the proportion allocated to Catholicism from 85,1% to 87,95%.[25]

Recognising religions also has other consequences. One is funding for religious and philosophical radio and television programmes; only Anglicanism and Islam do not currently benefit from this system. However, the key consequence is that the public authorities pay for two hours of 'philosophy lessons' each week in 'official' schools for all children of statutory school age, covering recognised religions and

[25] J-F. Husson, 'Le financement des cultes et de la laïcité organisée en Belgique', in: *Le financement des cultes et de la laïcité: comparaison internationale et perspectives*, pp. 23-49.

non-denominational ethics.

It would appear that the system's beneficiaries are very happy with it. In his summer 2007 Report to the King, the mediator Didier Reynders explains: 'Nothing is done (or at least there is no desire to do anything) to challenge the relationship between the state on the one hand and recognised religions and philosophies on the other hand. Neutrality of the state should apply to all, rather than having an explicit form of *laïcité*. A tax dedicated to religions (as in the German system) is not being sought as an alternative to the current system of funding.

In relation to funding, everyone agrees that the system must guarantee a minimum subsistence amount to those with few followers while guaranteeing decent pay to those with more. However, there are also those who support the *statu quo*, and others who feel that allocation criteria should be made more objective'. Clearly, a revolution in the funding of religions in Belgium is not likely to happen any time soon.

Secularisation: the 1959 change

In this neutral and non-denominational state of Belgium, the Catholic culture which dominated during the early decades of independence therefore contributed to Catholicism being granted a highly privileged position. Although a powerful *laïque* movement would develop from the second half of the 19th century, it was not until 1959, however, that those in favour of *laïcité* would gradually obtain with respect to several fundamental issues:

1. The 1958 Schools Pact and the 1959 Act finally gave credence to the claims of proponents of *laïcité* by placing ethics lessons on an equal footing with religion lessons in the state education system. From then on, all pupils in state secondary schools had to be given a choice each week between two hours of ethics or two hours of religion on one of the recognised religions.[26]

2. The 27 May 1974 Act 'amending the form of the oath and of solemn declarations in legal and administrative matters' removed the reference to divinity ('so help me God' and 'may God so help me').

3. The royal decree dated 10 July 1974 repealed section II of the Messidor year XII decree relating to honours given at the Holy Sacrament, as well as those given inside churches during the Te Deum.

4. The 23 January 1981 Act put in place initial subsidisation of the *laïcité* movement (see above).

5. The 3 April 1990 Act considerably liberalised legislation relating to abortion. This Act put an end to heated controversies which had mostly begun in 1973 following the arrest of a medical practitioner, Dr. W. Peers, charged with practising abortions in a teaching hospital at the *Université Libre de Bruxelles* ('Brussels Free University'). The 'Peers affair' and the debate it triggered – to avoid abortion,

[26] E. Witte, J. de Groof and J. Tyssens, *Het schoolpact van 1958. Le pacte scolaire de 1958*, Brussels, Garant-Vubpress, 1999.

people should be better informed about family planning and the distribution of contraceptives should be allowed – resulted in an initial amendment to the 20 June 1923 Act severely condemning anyone who disclosed, propagated or recommended the use of birth control methods 'or of any means of causing a woman to abort'. The 9 July 1973 Act repealed the provisions in the Penal Code relating to advertising for contraceptives.[27]

6. The 18 February 1991 Act created a framework for the existence of moral advisers to the Armed Forces, belonging to the Belgian Non-denominational Community. These are paid moral advisers whose role is to 'provide spiritual and moral assistance' to military personnel, as well as to civil personnel of the national Ministry of Defence.

7. Since 15 November 2001 ('Dynasty Day'), the Te Deum has become a private ceremony on invitation of the Catholic Church only. In the afternoon of the same day, an official public ceremony is organised at the Parliament in the presence of the Royal Family, with speeches by the Presidents of the Chambers and the Prime Minister.

These are only a few examples. The list might also have included the 15 May 1987 Act – in repeal of an Act dated 11-21 germinal year XI – enabling children's forenames to be freely chosen, or the 20 May 1987 Act decriminalising adultery, etcetera.

More recently, we have seen the enactment of the 22 May 2002 Act relative to euthanasia and the 13 February 2003 Act 'opening up marriage to persons of the same gender'.

Furthermore, the desire to respect philosophical and ideological tendencies, and thereby minorities, led to the signing of a Cultural Pact between the major political groupings (24 February 1972) and the adoption of the 16 July 1973 Act; its scope includes cultural policy and international cooperation as decided by public authorities.[28]

Conclusions

1. The members of the Constituent Assembly in 1830 were as keen to protect the independence of civil power from any ecclesiastical oversight as they were to shelter the Catholic Church from caesaropapist temptations; this is what was meant by the term separation in debates in the National Congress where the new Constitution was drawn up. The result was a state which was theoretically neutral, but which was heavily impregnated in its morals, and even in its laws, by the mark of Catholicism. As specialists in religious sociology were still writing in 1985: 'In Belgium, Catholicism clearly occupies a numerically dominant position

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[27] H. Hasquin, *Les milieux catholiques belges, la contraception et l'avortement principalement depuis Humanae Vitae*, Problèmes d'histoire du Christianisme, t. 4, 1973/74, pp. 57-117.

[28] H. Dumont, *Le pluralisme idéologique et l'autonomie culturelle en droit public belge,* Brussels, Fac. Univ. Saint-Louis, 2 vol., 1996.

and has a virtual de facto monopoly; in particular, this is seen in the events of public life, a fact which is often somewhat irritating for the members of other religious groups as well as for non-religious people, both of which groups often consider Catholicism to operate in Belgium as a de facto state religion, despite its not having the official status thereof'.[29]

Belgium had already made considerable progress by the time these issues were being voiced. This transformation only accelerated. Fifteen years later, L. Christians' diagnosis described the acceleration of this phenomenon in a few lines. Belgium, he observed, is 'caught between a process of secularisation, which is only evident with respect to Catholicism, and increasingly marked religious diversification. This phenomenon of secularisation appears to be related less to any abandonment of religion that to a tendency towards its individualisation and de-institutionalisation.'[30]

Surveys and analyses point in the same direction. In 2000, around 65% of Belgians still claimed to be Catholic, even though their beliefs and adherence to the precepts they entailed had been greatly diluted. Church attendance is in free-fall: 26,70% in 1980, and only 11,20% in 1998. At the same time, faith has become more of an individual matter. More and more believers of a Christian persuasion are concocting for themselves an 'à la carte' religion and engage in highly heterogeneous 'religious shopping'; moreover, this phenomenon is spilling over into humanist and *libre-exaministe*[31] milieux which are being seduced by new forms of spirituality.[32]

2. Can this state, which has cultivated neutrality and pluralism over decades, be termed *laïque*? The answer is positive subject to two conditions: viewing *laïcité* in terms of values and extricating oneself from a constitutional model whose sole referent is the case of France – a *laïque* Republic – which, incidentally, we know increasingly to have diverged relative to stricto sensu standards of separation. The Republic left the Muslim religion to one side from the outset, since special

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29 L. Voye, K. Dobbelaere, J. Remy and J. Billiet (eds.), *La Belgique et ses Dieux. Eglises, mouvements religieux et laïques*, Louvain-la-Neuve, Cabay, 1985, pp. 394-395.

30 L-L. Christians, 'Religion et citoyenneté en Belgique. Un double lien à l'épreuve de la sécularisation et de la mondialisation', in: *Citizens and Believers in the countries of the European Union*, Milan, 1999, p. 107. R. Torfs, 'Nouvelles libertés et relations Eglises – Etat en Belgique', in: *'New Liberties' and Church and State relationships in Europe*, Milan, 1998, pp. 39-81.

31 Translator's note: the term '*libre-exaministe*' is unique to Belgian French and denotes a particular form of rationalism which places the emphasis on drawing conclusions from the 'free examination' of facts without any interference from pre-conceived ideas, opinions, beliefs etc.

32 *Le Soir*, 2/3 October 2004 and 18 April 2005. L. Voye, B. Bawin, J. Kerkhofs, K. Dobbelaere, *Belges, heureux et satisfaits. Les valeurs des Belges dans les années 90*, Brussels, 1992; G. Ringlet (ed.), *Chemins de spiritualité. Jeunes en quête de sens*, Brussels/Paris, 2002; *L'Etat de la Belgique 1989-2004. Quinze années à la charnière du siècle*, Brussels, 2004.

arrangements were planned for North Africa and the Asian territories, as well as for religious schools in all overseas colonies and territories. In practice, right through until decolonisation, the *laïque* Republic was quite happy to rely on the massive involvement of nuns and 'Fathers' to organise education outside mainland France. Finally, the return to France just after the First World War of the three *départements* of Alsace-Lorraine (Haut-Rhin, Bas-Rhin and Moselle), which were part of Germany from 1871 to 1919, did not alter relations between church and state in these regions. These three departments, which had not yet returned to French ownership in 1905, have kept the Concordat system inherited from Napoleon until today. There are, after all, republican monarchies and monarchist republics. Belgium, in whose territory Clovis was born, did not deem it appropriate to celebrate with grand pomp the 1.500th anniversary of his baptism.

Let us add two further considerations. The 1905 Act transferred ownership of existing religious buildings (cathedrals, churches, presbyteries, protestant churches, synagogues, seminaries, etc.) to the French state. On this basis, the state therefore bears the associated costs. Even though, apart from in exceptional cases, the state has no longer been involved in the construction of new religious buildings since the law of separation, the cost to the public purse is high. Taking into account the restoration of places of worship, contracts put in place under the 'Debré' Act, and fiscal measures which contribute to the indirect subsidisation of religious associations in the form of tax exemptions, specialists estimate that the amount paid to churches in 2005 was over € 9 billion!

Finally, over time, this Act has given rise to profound inequalities. It was enacted at a time when Islam was virtually non-existent in mainland France. This religion has now become the second largest by number of followers. Thousands of mosques have sprung up with no help from the state, *départements* or local councils, while properties nationalised in 1905 have been made available free of charge to religious associations. The law of separation unintentionally locked in place a situation which appears to have been increasingly favourable to the traditional religions that were well established at the turn of the 20th century. The French state and French society are therefore faced with a genuine problem if they wish to put an end to this situation of inequality.

3. Let us come back to the polysemy of the word *laïcité*. 'Belgian *laïcité*' is surprising to those who only know 'French *laïcité*'. What, then, can be said of 'Turkish *laïcité*'? Is it even reasonable to use the word in relation to Turkey? The most appropriate comparison with Western history would instead lead us to describe a form of caesaropapism where the state has absolute control over Islam, which has the de facto status of a state religion. Can a state where the armed forces guarantee that relationships are maintained between the public powers and the Muslim religion be said to be *laïque*?

As well as this polysemy, there is the added difficulty of the fact that it is impossible to translate the word into other languages, whether it is English, Dutch

or German: *secularism*, *vrijzinnigheid* and *weltlichkeit*, often used as equivalents, do not have the same meaning. While *laicita* is currently in common use in Italy, the same is not true of *laicidad* in Spanish-speaking countries: this term is still a neologism in Spain, and is very poorly understood and little used in Latin America, as I had the opportunity to find out in Chilean and Peruvian university circles.

This being the case, it is easier to understand the extent to which the hope entertained by some of introducing the concept of *laïcité* into the draft European Constitution was in vain.

4. An interesting development is currently underway in France within the very world of religious historians and sociologists, as shown in a very recent study by F. Champion dedicated mainly to England – a symbolic case if ever there was one, given the Anglican Church's status as an established church.[33] The work of sociologist Grace Davie, a professor at the University of Exeter, had already shown how great a difference there was between the number of declared believers in the United Kingdom and the smaller number of practising believers; it revealed a 'strong' tendency which has been observed on the content in the most highly secularised countries.[34]

'*Laïcité* cannot be reduced to its French model alone.' This phrase, undoubtedly commonplace for many Belgians, is just beginning to be make an impact in France only among a narrow circle of specialists; these include in particular Jean Baubérot – Director of the *Ecole Pratique des Hautes Etudes* at the Sorbonne until 2007, for fifteen years or so he worked with the *Institute for the Study of Religions and Laïcité* of the *Université Libre de Bruxelles*. The referendum debate in relation to the draft European Constitution demonstrated the extent to which French opinion was focused on what the French delight in calling the '*exception française*' and on an equation considered rather simplistic by many foreigners: 'Republic' equals '*laïcité*' and vice versa.[35] Now, a simple comparative analysis of legislation in the various countries of the European Union shows, among other things, that there is no relationship between the status of churches in a given state on the one hand, and the means by which religions are funded on the other hand; each country is a unique case.[36]

In this context, F. Champion's conclusions are all the more interesting. Over the last few years, European democracies have, she writes, seen the emergence

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33 F. Champion, *Les laïcités européennes au miroir du cas britannique. XVI^e^-XXI^e^ siècle*, Rennes, Presses Universitaires, 2006.

34 G. Davie, 'Believing without belonging. Is this the future of religion in Britain?', in: *Social Compass*, 1990, nr. 37, pp. 456-469.

35 G. Coq, *Laïcité et République. Le lien nécessaire*, Paris, ed. du Félin, 1995.

36 J. Baubérot, *Religions et laïcité dans l'Europe des Douze*, Paris, Syros, 1994; 'Pluralisme religieux et laïcités dans l'Union européenne', in: A. Dierkens (ed.), *Problèmes d'histoire des religions*, t.5, 1994; Y. Robbers (ed.), *State and Church in the European Union*, Baden-Baden, 1996; K. Michalski and N. Zu Fürstenberg, *Europa laïca e puzzle religioso*, Venezia, Marsilio Editori, 2005.

of a type of '*laïcité*-secularity' which puts the case of France considerably into perspective. The book's title is in part misleading. Admittedly, the spotlight is occasionally thrown on Germany, Denmark, the Netherlands, Belgium, and of course an analysis of the situation in France; however, 90% of the text is dedicated to England and, secondarily, Scotland and Ireland. This journey deep into British society consists of a detailed history of relationships between politics and the church from the 16th century through to the speeches and religious preoccupations of Margaret Thatcher and Tony Blair.

It is this England which, at first sight, has so little in common with '*laïque* France', that has nevertheless often set the tone with regard to 'tearing away from the world of traditional religion'. Nothing could be more surprising from a country with an established Anglican Church linked to the state which, keen to cement its national cohesion and Christian identity, introduced 'non-denominational' religious education as early as 1870 in order to transcend the various Christian denominations. In Queen Victoria's England, a kind of 'civil religion' imposed itself. However, it was in this country that received wisdom was turned upside down by the 'Christianity's loss of influence over peoples' consciences'. Wasn't it the Anglican Church that legitimised the use of contraception as early as the 1930s, and then in the 1950s, the use of the pill? The big change came in 1960, the oft-quoted date when censorship was lifted from the famous book Lady Chatterley's Lover. Then in 1967 came legislation on abortion. The moral and sexual revolution has continued to fulfil its ambitions, with the legalisation of homosexual marriage in September 2001, and in November 2002, acceptance by the House of Lords of the adoption of children by unmarried couples. As Champion writes, this is 'the end of religion in the human biological social institution'. How, then, is this English society different from the rest of Europe? It isn't. It has become a post-Christian, post-religious society and therefore a secular society, which does not for all that imply the disappearance of religion.

5. It seems to me that four conditions are necessary for a state to be *laïque*:
    1. *Independence of the state relative to churches*
    2. *Non-intervention of the state in the affairs of churches*
    3. *The laws of the church are not the laws of the state, nor do they in any way replace them*
    4. *Enshrinement in the Constitution of fundamental freedoms, including the freedom to believe or simply to be irreligious*

However, this type of *laïcité*, essential to the neutrality of the state, may take on a more or less positive or negative complexion with regard to churches and traditions. Three criteria should be considered:

1. *The extent to which religions are directly or indirectly funded*
2. *The degree of detachment from traditions inherited from the dominant religion*

3. The degree of recognition or support given to the educational and health activities of churches in particular.[37]

Belgium fits perfectly into this framework. The relationships with the Universal Declaration on *Laïcité* in the 21st Century, behind which Jean Baubérot, Mrs M. Milot (Canada) and R. Blancarte (Mexico) were the driving force, are obvious. Its presentation address was delivered under my chairmanship at the French Senate on 9 December 2005. It had a symbolic title: '*Laïcité* is not only French'. Rather than favouring a legal definition which would by its very nature is simplistic, preference was given to those values which confer on a state its *laïque* character: the independence of politics, respect for fundamental freedoms and non-discrimination.[38]

This *laïcité* of values, shared by the countries of the European Union, was highlighted in a recent work sponsored by the Robert Schuman Foundation.[39] Firstly, it is interesting to note that the author, Olivier Dord, is French and is a senior qualified professor of public law at Paris X University in Nanterre, while the preface is written by none other than former Minister Bernard Stasi, who chaired the 'Higher Authority against Discrimination and in support of Equality'. While Dord reminds us that the case of France is unique to the extent that no other country in the European Union applies such strict separation – at least in theory – between the state and churches, he also highlights the extent to which European Treaties and the European Convention on Human Rights, while not enshrining the French form of *laïcité*, are necessary to its development. The last few lines of the book's conclusion deserve to be quoted: 'While the French form of *laïcité* is foreign to most of the Union's member states, many of them could no doubt rally round the requirement for open neutrality that runs through it. Above and beyond the diversity of relationships established between churches and states, there is a community of values which are shared by European countries (freedom of belief, freedom of religion, religious pluralism) and which, incidentally, are favoured by the advanced secularisation of these societies. Moreover, this neutrality is advocated by the European Convention on Human Rights, particularly in the case of multi-denominational states. Finally, it inspires the institutions of the European Union in their approach to issues with denominational aspects. Promoting this type of friendly neutrality, however, represents a challenge for some of the Union's new member states (Poland and Lithuania). It may also enable France to make progress on certain sensitive subjects such as ensuring equal treatment between Islam and other religions by revising the 9 December 1905 Act, or favouring religious education in schools. More than ever, 'French *laïcité*' must continue to be a model

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37 H. Hasquin, 'L'Union Européenne, les Eglises et la laïcité', in: A. Castro Jover (ed.), *Iglesias, confesiones y comunidades religiosas en la Unión Europea*, Bilbao, Univ. del País Vasco, 1999, pp. 113-116.

38 *Le Monde*, 10 December 2005.

39 O. Dord, *Laïcité: le modèle français sous influence européenne*, Fondation Robert Schuman. L'Europe en actions, septembre 2004 (www.robert-schuman.org).

that is open to the rest of Europe and that listens to others' (p. 87).

This does not change the fact that the democratic, secularised Europe of which Belgium is a part is faced with a significant challenge. Must this secular, *laïque* society redefine the place and role of religion in public life faced with the religious assertions of populations of immigrants who have become full citizens of the states where they live? And if so, how? This question opens up the debate of choosing between a *laïcité* of coexistence, with its danger of creating isolated communities, and a *laïcité* of integration, which does not reject religious and faith-specific problems but subjects them to critical discussion and contradiction.[40] The die-hard *laïcité* of assimilation, closed to any form of cultural otherness, is no longer in season in either Belgium or France. Questions of schooling have served to reveal changing attitudes. The failure of pluralist education in Belgium, a more or less unavowed attempt in the 1980s to create a single education system, and that of the Savary Act in France in 1984[41], were major symptoms of changing views with regard to private education.[42]

[40] G. Haarscher, *La Laïcité*, Paris, P.U.F., Que sais-je?, 3e éd., 2004.

[41] Le projet de loi d'Alain Savary prévoyait la création d'un 'Service Public Unifié et laïque de l'Education Nationale ' regroupant les enseignements public et privé.

[42] Further reading: C. Sägesser and V. de Coorebyter, *Cultes et laïcité en Belgique*, Brussels, Dossiers du CRISP, 2000; J.Ph. Schreiber, *Politique et religion. Le consistoire central israélite de Belgique au XIXe siècle*, Brussels, Ed. Univ. De Brussels, 1995; M. Dandoy (ed.), *Protestantisme*, Brussels, Racine, 2005.

France

A Note on Recent Developments in France[1]

Giulio Ercolessi and Ingemund Hägg

In the last few years in France, one century after the separation law of 1905, the issue of *laïcité* and separation has acquired a new central position in the political and cultural debate, especially as a consequence of the ever stronger Muslim presence, which is now also in France, and by far, the second largest religion, much stronger than both native religious minorities (Jewish and Protestant, both of which, too, have traditionally been much more robust in France's contemporary history than in other countries of mainly Catholic tradition, such as Italy, Spain and Portugal).

Laïcité as a legal principle

Let us first recall the main stipulations in the separation law of 1905.[2] Articles 1 and 2 are worth quoting in French: article 1er 'La République assure la liberté de conscience. Elle garantit le libre exercice des cultes sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public.' The first part of Article 2 reads 'La République ne reconnaît, ne salarie ni ne subventionne aucun culte.' In English: 'The republic safeguards freedom of conscience.' 'The republic neither recognises, nor pays salaries, nor subsidises any religious denomination.'

This is a very clear and strong stipulation, expressing the implications of a separation between churches[3] and the state. The phrase *ne reconnaît* (does not recognise) needs a comment. This means that the state does not point out any particular religious organisation for special relations. The republic respects every religion. The phrase *ne salarie* (does not pay salaries) means that officials or employees in religious organisations do not get any payments from the state, and finally, *ne subventionne* (does not pay subsidies) means that the state does not contribute financially to, for example, building of churches, renting premises for services and similar.

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1 The European Liberal Forum has no French member organisation. The authors of this chapter are not French and this chapter should be considered as an outsiders' presentation. In contrast to the other presentations of the situation of individual European countries in this volume, we have limited ourselves to some aspects of recent developments. The bibliography on France is given in the section further reading in Chapter 1.

2 *Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État*.

3 Churches (Églises) is the general definition, given in the title of the 1905 French law, which includes all kinds of religious organizations, including Jews and Muslims, that strictly speaking cannot be defined as 'churches'.

Furthermore, the principle of *laïcité* was included in the very first paragraph of the 1958 Fifth Republic Constitution[4]: 'La France est une République indivisible, laïque, démocratique et sociale […] Elle respecte toutes les croyances', that is: the republic is *laïque* (secular) and all beliefs are respected (but as mentioned above: not recognised in a formal way). The question is then whether and how all these very strict stipulations have worked and do work today in practice. As it could be expected, infringements and exceptions to the rule inevitably occur.

Today infringements and exceptions are mostly, although not exclusively, due to the new situation given by the massive presence of the Muslim religion in France. The distinction between the very numerous Christian church buildings already existing before the 1905 law – property of the state and local administrations and therefore maintained with public funds – and those built in the following decades would be severely discriminatory against Muslims, given that most of them came to France later: hence, for example, the usual practise of financing 'cultural organisations', 'cultural centres', etc. by municipalities – that usually ends up in financing the construction of new mosques. And, in the last few years, the French state has promoted the creation of the *Conseil Français du Culte Musulman* (French Council of the Muslim Cult), an elected body – hardly representative of all French religious Muslims – that deals with issues such as the construction of new mosques, the creation of Muslim sectors in local cemeteries, ritual and food prescriptions, Muslim chaplainships in the armed forces prisons and colleges, and the training of imams: all this is basically done not only in order to counterbalance the factual although unintentional discrimination that would be the result of the strict enforcement of the 1905 law, but to a larger extent in order to prevent Islamists from gaining influence on French Islam.

It is quite obvious that these provisions, however probably unavoidable, constitute a serious breach to the French idea of separation, as briefly described in chapter 1 of this book: the French state can no longer afford being always and totally 'religion blind' and utterly indifferent to the religious affiliation of its citizens as it happily used to be. In 1905 the separation law was passed in order to liberate France and French citizens from the almost compulsory identification with the Catholic faith; the problem today is integrating Muslim citizens in the republican values and principles, rather than alienating them; and doing this without surrendering the most precious achievements of French democracy.

Local exceptions, such as Alsace-Moselle (where the Napoleonic concordat is still implemented) or overseas departments, will not be discussed in this note. Instead, we will only focus on recent developments, which are in our opinion very meaningful for the entire European Union.

[4] *Constitution du 4 Octobre 1958*.

France in a European context

In the wake of thirty years of *revanche de Dieu*, of which the Islamic renaissance is a major and perhaps the most important element, the matter of church and state must reckon with the multicultural, multiethnic, and multireligious character of contemporary European societies, as well as with integration policies.

No one has a miracle recipe. Both rival models of integration – the French republican model, based on individual integration and strict *laïcité* of the public sphere, and the Anglo-Dutch communitarian model, based on 'recognition' and autonomy of ethnic groups, enabling de facto 'separate development' – seem to have worn thin. This was evident in the riots in the French *banlieues*, on the one hand, and in the growth in Great Britain and in the Netherlands not just of fundamentalism, but also of Islamist networks, sometimes openly subversive, even to the point of supporting or engaging in terrorism, on the other. In immigrant communities the Islamic revival develops in ways completely detached from the living traditions of Muslim countries. It is therefore precisely in Western countries that it is even more exposed to the danger of being channelled into extreme forms incompatible with the basic values of liberal democracy – activism by fundamentalism militants (of whom jihadists are but a small minority), antagonism among adolescent peer groups, and proliferation of fundamentalist sites on the internet and satellite TV: the technology of globalization and the lack of *mixité* allow young European Muslims who suffer sharp discrimination to achieve full immersion in a cultural universe hostile to the culture, society, and polity in which they were born.

The fact that no one has a miracle recipe for integration does not make all policies equal. One should consider the advantages and disadvantages of each approach. In most other European countries politics seems much more inclined to waver between scarcely veiled racism and do-gooder naïveté.

The French integrationist, lay, universalistic model is often discarded *a priori* as an expression of foolish, stubborn secularism, the inadequacy and untimeliness of which have been allegedly exposed by the riots in the *banlieues*. The sinister aspects of the Anglo-Dutch communitarian model are often underestimated by those who emphasise its superficial, and deceptive, 'tolerant' appearance; tolerant, that is, towards communities, and much less towards individuals even though that system has shown itself unable to prevent support and sympathy for the *fatwa* against Rushdie, the murder of Van Gogh, and the London bombings. Yet the riots in the *banlieues* have been blamed glibly entirely on the incomprehensible French defence of republican *laïcité* despite the new and different situation. That assignment of blame is as little insightful as the prediction that the law prohibiting display of religious signs would exacerbate the crisis over the 'Islamic veil'.

The veil issue

This is not to claim that the so-called law on the veil does not raise important

questions about protection of speech. The use of the French *laïcité* paradigm to address the matter of the veil, which had been agonizing the French for fifteen years, perhaps prevented Muslims from being stigmatized. In the French public sphere, neutrality is indeed not only a character of public institutions (no state religion, no religious signs on the wall, no religious teaching in public schools, no religious ceremonies, etc.): it is required not only of public servants but also to some extent of individual citizens entering public institutions.

The Islamic veil worn by adolescent or very young girls, sometimes children, can be an imposition, be it explicit or the result of parental, social or communitarian pressure: the younger the age, the more likely not a free choice. Unlike other religious signs, it can convey a message largely incompatible with the ethical-political values of a free society. Among its social and not merely religious meanings is to signal a woman's state of lesser dignity and social status, as her body must be removed from the view of men extraneous to the family to which she exclusively 'belongs.' And this belonging of which the veil is the symbol, and the imputation of immorality to any woman who does not subject herself to her family's dominion, cannot be accepted in a free society based on the rule of law and equal social dignity of individuals. In this sense, the veil can be seen not as a religious symbol, but as an analogue of display of totalitarian political ideological symbols – regardless of what one thinks of the delicate problem of freedom of expression in this field, tolerance towards the intolerant being a theme that torments European liberal thought since its dawn in the English 17th century.

During the hearings of the Stasi Commission (the French presidential commission of inquiry on the subject)[5], what came to light was a widespread social reality of intimidation and violence against girls unwilling to submit to such impositions from their communities in neighbourhoods marked by strong Islamist influence. Although in many cases it certainly was a voluntary choice to wear the veil, and sometimes even an expression of adolescent rebellion against one's family for being perceived as too docile in integrating into French society, in many other cases it was the result of a generalized psychological and physical violence, against which the state had an obligation to protect female students who were minors. Thus – but this essential detail is usually entirely ignored in the superficial debates often heard on the French debate abroad – the prohibition against wearing the veil was imposed in schools, but not in universities, where female students, who are not minors, are free, if they wish, to wear it. A decision to wear the veil at university would not be merely due to resignation to a custom imposed in adolescence, much harder to abandon if that means a break with one's

[5] The official report of the Stasi Commission is published on the Internet: http://lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf. Perhaps even more interesting than the final report itself were the hearings, largely broadcasted live by the free-to-air TV channel of the French Senate, *Public Sénat*. A list of the hearings held by the Commission at http://www.elysee.fr/elysee/elysee.fr/francais_archives/actualites/a_l_elysee/2003/decembre/rapport_de_la_commission_stasi_sur_la_laicite-auditions_publiques.6710.html.

'own' past, and when the veil has probably already become a part of one's own bodily identity: renouncing the veil after years of uninterrupted compulsory use would be a personal experience probably similar to the practice of nudism in a normal social context for an ordinary individual. The different treatments of high-school and university are, however, also a clue to the reasons for the prohibition, and reveal a certain hypocrisy of motivations.

If it had been just a matter of preserving a perfect, unrealistic aseptic neutrality of the public sphere, then the prohibition would have been extended at least to university classrooms. Instead the prohibition of the veil in public schools was a measure in defence of freedom of conscience for female students against parental and communitarian impositions: incidentally, a goal consistent with the obligations deriving from the 1989 international convention on the rights of children. But, if that was the rationale, it was inconsistent to have extended the prohibition to other religious symbols (Christian, Jewish, Sikh, and naturally also Islamic), the display of which, unlike the veil, is less likely to be the result of an imposition and does not conflict with any fundamental or constitutional principle of civic life in a democratic society, such as the principle of equal social dignity of individuals regardless of gender; incidentally, the extension of the prohibition to all the religious signs should be considered a violation of the 1989 convention. If anything, the veil, because it discriminates on the basis of gender, should be grouped not with other religious signs, but with totalitarian ideological symbols of any origin. But this comparison could not have been useful in France, where all political signs – not only those of totalitarian political ideologies – are prohibited by the dress code for students, at least in theory, by a directive issued in the 1930s by the Popular Front government as a law-and-order measure, intended to prevent political disorders among students belonging to rival groups. This directive has never since been repealed. (A mere executive power directive in the domain of religious signs would not be legitimate, as article 9.2 of the European Convention on Human Rights requires that any limitation to the freedom to manifest one's religion, if proven necessary, be prescribed with a formal law).

It is very difficult to find the right balance between defence of freedom of conscience for those who spontaneously wish to wear the veil (whatever one might think of its obscurantist meanings – or even of its disputed character of koranic prescription) and the defence of minors who would not want to wear the veil from a totalitarian coercion by family or community. Indeed the choice was a very serious and dramatic one in a free society: either prohibiting wearing the veil to girls who would freely choose to wear it if they were given the choice, or accepting its imposition on girls who would never freely decide to wear it.

The *banlieues*

The matter of the veil, which is certainly paradigmatic, has great symbolic meaning, but actually concerned a relatively small number of cases, which the new law has

succeeded in reducing further to a minimum. Instead, the riots in the *banlieues* demonstrate, paradoxically, that the model of secular, republican integration still functions overall in terms of symbols, ideology, values – in terms of relations between state and citizens. Obstacles are not in the laws or in the constitutional principles, but in the unfortunately widespread racism in French society, together with the mistakes that have accumulated for decades in social policies.

The disadvantaged youths who rioted acted not in the name of Islamic fundamentalism, but in the name of the principles of republican equality, principles fully assimilated, 'taken seriously' precisely by the disadvantaged youths of the *banlieues*, negated in practice by the majority's behaviour. In a sense the riots exploded in the name of republican values negated by diffuse racism; and they played out in ways that placed them in perfect lineage with the many other popular uprisings that have marked the history of France for two centuries.

To have a typically Maghreb name, to reside in a 'sensitive' neighbourhood, to be a non-native French citizen means, all else being equal, to suffer discrimination in labour and housing markets and in administrative dealings; in a word, civic inequality. And this does not depend so much on laws (although there is a lively debate in France about the advisability of introducing affirmative action legislation) as on diffuse racism that has never been overcome (as surprising as the explosion of the Dreyfus Affair a century after the Declaration of the Rights of Man); racism that the events since 11 September 2001 have freshly stoked in a perverse game of reactions and rejoinders; racism that opens up more space for fundamentalist preachers, who in turn foment antisemitic racism.

Sarkozy's new controversial recipe

Rather than building on the traditional and rather successful republican integration strategy and on the civic values of the secular heritage, the recipe proposed by President Nicolas Sarkozy, after vaguely hinting with little success at the possibility of a formal modification of the 1905 separation law, appears now to consist of its 'evolutive interpretation': '*On peut faire évoluer le texte*' he said literally.[6] So far this proposal has met applause from the Catholic Church and opposition from much of the French society and from the establishment: not only from the left, but also from the centre – including a Catholic supporter of separation like François Bayrou[7] – and from other supporters of traditional *laïcité*. The proposed less strict interpretation of the principle of *laïcité* is called by the French President *laïcité positive*.

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6 Nicolas Sarkozy, *La République, les religions, l'espérance*, entretiens avec Thibaud Collin et Philippe Verdin, Paris, Cerf, 2004, p.122. See also the speech given by President Sarkozy in Rome Lateran Palace on December 20th 2007, during his visit to the Holy See, in acceptance of the title of Honorary Canon of the Lateran basilica.

7 Bayrou: 'Je défends la laïcité comme citoyen, mais aussi comme croyant', *La Croix*, April 12th 2007, interview by Dominique Gerbaud.

'Positive *laïcité*' could be interpreted as an effort to adapt to failure repeatedly occurred in the strict implementation of the principle of *laïcité* in the past. But it seems that in Sarkozy's perspective it is rather a turning point towards a quite new direction in the state/religion relation – quite new, at least, for France. The way President Sarkozy uses the new formula suggests such interpretation. He claims that France cannot cut off relations with its Christian origins. Religion should have a more active role in the public space. At the same time Sarkozy denies plans to change the basic 1905 separation law. But, most importantly, the President thinks that religion, every established religion, and religion alone, can provide hope, a sense to human existence, and the most effective binding force to build a cohesive society in the post-modern era; and that religion, and religion alone, can best provide the necessary framework for the formation of every individual's moral personality. This would be a total reversal in the history of the French educational system. At least since the Third Republic took roots in the last quarter of the XIX century, the French state supported the secular education provided by the *instituteur* not just because he was considered a more modern and up-to-date teacher, but also a better moral guide, an incarnation of the enlightened values of the Republic, more reliable, steadfast, and trustworthy than the old *curé*, who had had the exclusive control of education under the *Ancien Régime*. This reversal has a rather sinister echo in French and European cultural history: illiberal thinkers, believers and non-believers, from François Mauriac to Giovanni Gentile, had tried to reassign to confessional education the instrumental function of assuring social order and social control. Arguing that Muslim imams should provide the same service in the troubled *banlieues* does nor appear the best way to promote integration, development, *mixité* and social mobility.

Opponents have complained that the implementation of 'positive *laïcité*' is already giving churches a privileged position that they have not had since 1905. As a compromise point of view, the formula of *laïcité de dialogue* has been proposed.[8] Dialogue would not give priorities but be an expression of respect from the churches to the state and from the state to the churches. Unfortunately, fear appears to be the most powerful force behind these new interpretations – fear of Islamist development in France's Muslim communities, and a growing lack of confidence in the values and principles of liberal democracy, modernity, and the Enlightenment.

In any case, what supporters of new, 'open' or 'positive' *laïcité,* or of a new 'public role' of religion, should explain is very simple – and usually untold: what public resources, what superior social dignity, what greater role, what power of influence should be given to groups qualified or recognised as 'religious', and denied, taken away or refused to all the others. Answering this question would make things more clear.

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[8] Alain Christernacht, *Le Monde*, 12 September 2008.

Spain

Between Religion and Politics: *Laicism* in Spain

Àlex Seglers Gómez-Quintero

Introduction

Our aim of this essay is to put forward, in a brief, objective manner, the legal concept of *laicism* according to the doctrine of the Constitutional Court. This court, 'the supreme interpreter of the Spanish Constitution', is unique of its kind and its jurisdiction extends throughout the whole of Spain.[1] For this reason, its rulings are essential to ensure a complete understanding of the meaning of the term *laicism*.

We have divided this essay into four parts. In the first, we consider the main case law of the Constitutional Court; in the second, we focus on the concept of *positive laicism*, theorised in recent years; in the third, we explain the need for thorough consideration of a space of neutrality with regard to relationships of cooperation between the state and the churches, as neutrality is one of the most important elements of laicism, yet one of the most difficult to achieve; in the fourth, we approach the conflicts between religion and politics in Spain. Finally, we appeal for compatibility between religion and politics through Recommendation 1396 (1999) of the Parliamentary Assembly of the Council of Europe, as we believe it to be one of the texts that best synthesises the conflicts and solutions of bringing together or integrating religion and democracy.

The case law principal

Article 16.3 of the Spanish Constitution states that 'No denomination shall be state in nature. The public authorities shall take into account the religious beliefs of Spanish society and shall maintain the resulting relations of cooperation with the Catholic Church and other denominations.' To this end, case law has provided a series of criteria that clarify the concept of non-denominationality (or laicism) as a necessary principle for the separation of denominations and the public authorities.

Consequently, in Ruling 24/1982, of 13 May 1982, the Constitutional Court stated that laicism prevents 'religious values or interests from being established in parameters for measuring the legitimacy or justice of the rules and acts of the public authorities. At the same time [laicism] avoids any kind of confusion between religious functions and state functions. [In such a way that] the state also

[1] Article 1 of Constitutional law 2/1979, of 3 October 1979, of the Constitutional Court.

prohibits any concurrence, together with the people, in terms of the subject of acts or attitudes of a religious nature'.

Shortly afterwards, in Act 617/1984, of 31 October 1984, the Constitutional Court maintained that 'by its pluralist, adenominational nature, the state is under no obligation to transfer to the legal-civil sphere the religious principles or values that ingrain the conscience of certain faithful believers and integrate into the intra-ecclesiastical order'. Even though it qualifies that 'the adenominationality of the state does not mean total non-communication between it and the various denominations, in particular Catholicism'. However, in other decisions, the Constitutional Court has referred to prohibition by the state of setting apart and protecting one denomination to the detriment of the rest.[2]

Certainly, the three most appropriate axes upon which to construct the meaning of laicism continue to be *pluralism*, *separation* between denominations and the public authorities and the *neutrality* of the latter. Ruling 340/1993, of 16 November 1993, is a good example: after recognising the religious pluralism at the heart of Spanish society[3], it maintains that 'religious denominations cannot, under any circumstances, transcend their own ends and be considered equal to the state, occupying the same legal position'. This way, therefore, denominations cannot be a type of public corporation, institutionally situated on the same level as the state. And, with regard to the neutrality of the public authorities, the Constitutional Court stresses 'the mandate of neutrality in religious matters [which] prohibits all kinds of confusion between religious and state functions [and], therefore, becomes a presupposition for peaceful coexistence among the many religious faiths that exist in a plural and democratic society'.[4]

There is no doubt that the principle of laicism is the way that the Spanish state has of configuring it as such. Laicism, which implies maximum neutrality and mutual separation between public authorities and denominations, is a political formula at the service of the freedom and equality of churches, different from exclusive or anticlerical laicism. With laicism, denominations remain free from the state, in example, they cannot become *of-the-state*; and also vice versa: the state is free from any church that tries to *denominationalise it*.

So-called 'positive laicism'[5]

In Spain, laicism has been linked to the controversial adjective *positive*, but this does not mean that the Constitutional Court has identified *democracy* with the

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2 For example, Rulings 70/1985, of 31 May 1985, and 180/1986, of 21 February, in reiterating 'that there should be no special protection for a specific denomination'.

3 'First of all, we must bear in mind that the terms used by the initial clause of Article 16.3 [of the Spanish Constitution] express the non-denominational nature of the State with regard to the pluralism of beliefs in Spanish society.'

4 Ruling 177/1996, of 11 November 1996, of the Constitutional Court.

5 Here, I am following my book, *Laicism and its Nuances*, ed. Comares, Granada, 2005, written in collaboration with Professor Josep M. Martinell.

supposed *ethical relativism*. If this were the case, it would mean accepting that the 'neutrality of the state takes on a negative, moral and politically reprehensible weight under the same democratic terms and, ultimately, would cease to be neutral'.[6] Laicism would inevitably undergo shared research of what the German philosopher Habermas called a 'commonly accepted foundation of impartial reasons'.[7]

In this respect, Ruling 154/2002, of 18 July 2002, only maintained that religious freedom 'involves a dual requirement, referred to in Article 16.3 of the Constitution: on the one hand, the neutrality of the public authorities, implicit in the adenominational nature of the state; on the other, public authorities maintaining relationships of cooperation with the different churches. In this vein, [...], Article 16.3 of the Constitution [...] considers the religious component to be perceptible in Spanish society and orders the public authorities to maintain "the resulting relationships of cooperation with the Catholic Church and other denominations", so introducing an idea of adenominationality or positive laicism'.

From this reasoning, one can deduce that the two clauses (that of laicism and that of cooperation) have both been conceived as a further dimension of religious freedom.[8] In its analysis, when the Constitutional Court described laicism as 'positive', it is not doing so to assess the ethical-moral content of the *cives-fideles*, or because it believes that the supposed procedural relativism of the democratic system creates a dangerous axiological draining of the non-believing society.

In Spain, if laicism is accompanied by the adjective *positive*, this is simply because both clauses do not exclude one from the other, and therefore relationships of cooperation can be maintained between the public administrations and the churches or religious communities. The state, therefore, cannot use laicism to grant privileges to a specific stable heritage of religious dogmas to the detriment of others, as this would destroy its neutrality. The fact of taking into account religious beliefs – as stated in Article 16.3 – means that denominations, as creators of values, also enjoy the freedom to inform the public ethics of the people, so enriching the democratic system itself and coexistence with teaching or social welfare.

In this sense, when secular interests are complemented with religious interests, but the institutional separation between church and state is maintained, what Derek

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6 G. Suárez-Pertierra, 'La recuperación del modelo constitucional. La cuestión religiosa a los veinticinco años de la Constitución', in: *Laicidad y Libertades. Escritos Jurídicos*, no. 1, December 2001, p. 337.

7 J. Habermas, 'De la tolerancia religiosa a los derechos culturales', in: *Claves de razón práctica*, no. 129, 2003, p. 7.

8 As we know, Article 16.3 of the Constitution includes the two decisive phrases: the first states that 'No denomination will be state in nature', and the second that 'The public authorities will take into account the religious beliefs of Spanish society and will maintain the ensuing relationships of cooperation with the Catholic Church and other denominations.'

H. Davis calls the 'integration of religion and politics'[9] then occurs. Integration is a natural phenomenon in democracies. And for Bikhu Parekh, there are 'sincerely religious people who wish to live by their beliefs, and who do not see this as simply an individual or personal thing. In the United States, 90% of the members of Congress stated that before voting on important matters they consulted their religious beliefs; a phenomenon that also occurs in other societies.'[10]

Integration does not affect laicism, as both governments and denominations remain separate in their own spheres of autonomous action, and at the service of the people as the citizens that they are.

However, the real balance between the two magnitudes (the religious and the political) is intricate and often difficult: recent international events – with political speeches that call constantly to God – or certain political pressures demonstrate the difficulties in drawing a line of separation. Despite this, Derek H. Davis stresses that America is a democracy founded on many visions and not a theocracy of just a few[11], and that the right of churches and other religious actors to move into political preferences has never been questioned during the course of the history of the United States.[12] This writer, however, concludes by recalling the *Lemon v. Kurtzman*[13] ruling, which confirmed that denominational interests are outside the interests of governments; the task of governments, therefore, lies in achieving objectives of a secular and not of a religious nature.[14]

Difficult neutrality

There are times when neutrality has ended up being undervalued. A subtle example is when legal operators allow themselves to be influenced by the more commonplace accusations brought against new religious movements, creating, thus, a social image of mistrust towards the rest of the population. The following are a few Spanish examples which affect some churches that are only socially recognised to a certain extent.

In the ruling of 27 March 1990, a Jehovah's Witness was found guilty of murder for preventing a blood transfusion to another member of this denomination. After considering the facts, the Supreme Court assessed the beliefs of the Jehovah's Witnesses as follows: '[...] the dogma and strictness of the moral schema, in the

9 D.H. Davis, 'Separation, Integration, and Accommodation: Religion and State in America in a Nutshell', in: *Journal of Church and State*, vol. 43, no. 1, 2001, p. 8.

10 B. Parekh, 'When religion meets politics', in: *Demos*, 11/1997, p. 5.

11 D.H. Davis, 'Separation, Integration, and Accommodation', cit, p.10.

12 Ibidem, p. 9.

13 403 U.S. 602 (1971).

14 The criteria of this ruling are: *a*) Secular aim of civil law; *b*) Regulations can neither favour nor restrict religion; and *c*) The institutional separation between denominations and governments must be ensured. For a full study, see: J. Martínez-Torrón, 'La objeción de conciencia en la jurisprudencia del Tribunal Supremo Norteamericano', *Anuario de Derecho Eclesiástico del Estado*, vol. I, 1985, p. 443.

religious option cited, that give an absolute value to permission, with the pre-eminence of freedom of conscience over the right to life, and a fervent and radical altruism, comprised of the above beliefs, which authorises putting at risk or sacrificing the life of believers for transcendent reasons that come from a particular exegesis of the Sacred Texts, may lead, and do in fact lead, to an obfuscation of reasoning and the loss of complete control of free will, to a passionate state characterised by psychological disturbance derived from the order of values referred to, which diminish or reduce the capacity of guilt of the subject.' However, it is not only Jehovah's Witnesses who have been affected. Other minority religious groups have also suffered the subjective opinions of the courts.

With regard to followers of Hare Krishna, the Court of First Instance of Guadalajara maintained that they are 'a pseudo-religious sect inspired by erroneous principles [...] with a lifestyle characterised by a lack of physiological sleep, a diet extremely low in proteins [...], very strict customs and sexual relations that lead believers to a situation of permanent stress, prohibiting mental speculation, in other words, thought, as the Guru or spiritual master thinks or mediates for them'.[15]

Equally, but in connection with the Church of Scientology, the decision of 13 October 1992, of the Court of First Instance No. 28 of Madrid, described it as a 'sectarian organisation subject to a criminal investigation [...] accused of manipulative behaviour, attitudes which, although not proven, the simple suspicion of concurrence makes one fear for the balance [of believers], and may have a notable effect on their personality'. And, with regard to the Human and Universal Energy Association, the Court of First Instance of Ejea de los Caballeros cryptically stated that this group has 'the nature of a sect [characterised by an] emotional situation of searching, without establishing prior values and consequently not developing them'.[16]

This set of pejorative assessments goes against the neutrality that the courts must observe in their role of judging. On the one hand, they damage the principle of laicism and democratic values, as they are accusations that are not applied to traditional churches, and, on the other, it has been said that 'they constitute a prejudice that attacks the impartiality implicit in the task of judging and the prohibition of the courts, as organs of a lay state, to assess beliefs or doctrines.'[17]

The possible conflicts between religion and politics in Spain

Article 16 of the Spanish Constitution reached a consensus thanks to a *calculated ambiguity*: on the one hand it has recognized the religious freedom and the non-denominationality of the state; on the other hand, we have already stated that a

[15] Ruling of 13 October 1982.
[16] Ruling of 27 December 1995.
[17] A. Motilla de la Calle, 'Proselitismo y libertad religiosa en el Derecho español', in: *Anuario de Derecho Eclesiástico del Estado*, vol. XVII, 2001, p. 189.

number of religious beliefs were to be taken into account, and the correlated relations of cooperation between the Catholic Church and the other denominations, had also to be maintained. Religious freedom is assured to individuals as well as to communities and churches – as the Constitutional Court would state later on –, with no other limitation in its external manifestations, than necessary to maintain the public order protected by law.

This ambiguity was immediately reflected in the constitutional doctrine and in its jurisprudence, resorting to a marked nominalism coming from a wide variety of terms and definitions, adopted by the principle of non-denominationality[18] ('deconfessionalization', 'attenuated denominationality', 'non-explicit denominationality', 'non-denominationality', 'neutrality', etc.). Nevertheless, if we were to synthesize the jurisprudential features of the Spanish laicism, we would not hesitate to highlight the following: Laicism springs from the separated characters of the two powers: the civil and the religious one. That is to say – on the one hand – that the churches should never transcend their specific aims, and thus, they should not make themselves equal to the state, occupying an equal juridical institutional position, since the commandment of neutrality forbids any sort of mixing between the religious functions and those from the state, while it becomes a motive to reach a pacific coexistence between the various denominations and religious beliefs.

On the other hand, the separation of the two powers will prevent the setting up of the denominational values or interests into parameters to measure the legitimacy or justice of the regulations and public authorities' acts; furthermore, due to its plural and non-denominational character, the state cannot be forced to transfer the religious principles or values affecting the believers' conscience to the juridical and civil fields. That does not mean that the believers – intended as citizens in specific –, do not inform the public ethics and public values with their political and social commitment. What are the main hues affecting the principle of laicism? Let us analyse them.

Religious symbols

The presence of religious symbols – either static or personal – in the government schools, has become a spotlight in various states. In this respect, they have adopted different solutions, for laicism is not an immutable concept: its juridical consequences may differ from one country to another, since everything depends on social, cultural and political factors.

In the Spanish juridical experience, abstract or Manichean solutions – such as the one adopted by France with March 15th 2004 Law[19], which forbids ostentatious religious symbols, since they promote proselytism –, have been avoided. Instead, in Spain prevails an eminently practical sense in resolving conflicts. The peculiar

[18] Mª. T. Areces, *El principio de laicidad en las jurisprudencias española y francesa*, Universitat de Lleida, 2003, p. 54.

[19] http://www.legifrance.gouv.fr.

characteristics surrounding each dispute have been analyzed. As a result, any hint of laicism has ended up by accommodating to benefit religious freedom in order to reach a fair balance of the interests at stake. Thus, maintaining a static religious symbol (as on the shield of a public university) becomes possible due to the consideration imbued all along its history and tradition. Therefore, this fact will not prevent the jurisprudence from considering more adequate to the logic of a laic or neutral state, the usage of a shield without any religious meanings.

In relation to the personal or dynamic religious symbols, the administrative *praxis* has ended up by considering that the veil does not obstruct the identification of a person through photographic documents. A different matter – that has not been stated yet – would appear if the type of veil would entirely cover the face of the woman, as it happens with *burkas*, for instance. Within the scope of professional relationships, we consider as exemplary Ruling of September 9th 2002, of the Superior Court of Justice of the Balearic Islands. In their Ruling, the Judges maintain that the decisions of a businessman cannot go against the dignity, the honour or the fundamental rights of their employees, which include the showing of religious self-convictions through clothing. Just as a reminder, this case was related to a bus driver who used to wear the classical Jewish kipa. The judges stated that what had to be weighted up was up to what point the behaviour of an employee who feels compelled by their religious beliefs turns out to be innocuous for the interests of the enterprise or, on the contrary, incompatible with them. From that analysis, the judges decided that the use of the kipa by the worker did not cause any damage or discredit to the image of the company, nor caused any other incident or disorder during the execution of the service.

The legal control of the religious objectives of the denominations

Another issue that affects laicism is the legal control of the 'religious aims', control that is incumbent on the public administration. After adducing that its legal content does not appear clearly in any regulation – since we speak of a juridical undetermined concept –, the Main directorate of Religious Subjects stressed the existence of some features of a classical nature, by virtue of which the denominations had to publicly certify a number of dogmas and moral norms related to the transcendence of a Superior Being or divinity; a number of acts of worship as an external expression of their members and, logically, the existence of some places devoted to the cult. The lack of any of those elements has been enough not to legalize new religious movements, such as the Church of the Scientology or the Unification Church of Moon (the Moonies).

Nevertheless, Ruling 46/2001, of February 15th 2001, definitely assisted the last mentioned church, when the Constitutional Court stated that the public Spanish administration should not have judged the religious component of the mentioned church. The administration should only 'check out that from its bylaws, objectives and goals, it is clear that we are not dealing with an organization excluded by article 3.2 of the Organic Law of Religious Freedom. [And] in

resolution of December 22nd 1992, the administration proceeded in the opposite way, establishing a number of criteria to contrast the religious objectives of the Unification Church.'[20]

Nonetheless, the reasoning of the Constitutional Court certainly incur in a contradiction. On the one hand, they affirm that a formal control is necessary, since no one should assume the function of judging the religious component of an organization, and on the other hand, they point out that the state has to make sure that the bylaws and objectives of the petitioner organization are not the ones of article 3.2 of the Organic Law of Religious Freedom. To sum it up, that is exactly where the contradiction lies in, for it is impossible to verify this commandment without using a *value judgement* about the religiousness, or the lack of it, of the applicant New Movement, thereby establishing *de facto* a material control. From the very moment that article 3.2 has to be taken into account (that is to say, to analyze weather the aims of an organization are the study, the experimentation of the psychic or parapsychological phenomena, and weather it spreads out humanistic and spiritualist values alien or analogous to the religious ones), the administration is already using – even when it does it in a negative form – criteria or a preconception of what it understands should be a group with religious aims, instead of a religious new movement.[21]

The catholic religious attendance in the armed forces

Within the model of the *organic integration* of the religious attendance, the entity that assumes the duty to give religious and cult attendance is the state, because such an attendance appears as a part of real public service. In other words, the public authorities are liable for material and financial means, while the religious ministers work as public officials or are hired as employees of the public administration.

We are talking about a typical model of denominational states or of state churches, but at the same time, it is opposite to laicism. However, the Constitutional Court, in its Ruling 24/1982, of May 13th 1982, omitted declaring the incompatibility of the military Chaplains of the army with the principle of laicism, in spite of having declared that 'the state forbids itself, in its capacity as a subject of acts or attitudes of a religious sign, any concurrency, along with its citizens'.[22] That is why, the military catholic chaplains continue to give religious attendance to the members of the Spanish army.

More recently, the Constitutional Court avoided making a clear statement about the bond between the national police and the Sacramental Brotherhood of Our Father Jesús el Rico from Málaga.[23] In this case, the Constitutional centred

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[20] Legal Foundation 10.

[21] A. Motilla de la Calle, 'Religious Pluralism in Spain: Striking the Balance between Religious Freedom and Constitutional Rights', in: *Brigham Young University Law Review*, volume 2004, number 2.

[22] Legal Foundation 1.

[23] Ruling 101/2004, of June 2nd 2004.

its attention on the right of the claimants not to make part of the religious acts organized by the national police. And all this, through an eloquent reason, such as that nobody can be forced to participate in worship acts or to receive religious attendance against their own personal convictions.

Confessional religious education

The reasoning in favour of religion as an academic subject find its justification in article 27.3 of the Spanish Constitution, which guarantees the right of the parents to choose what they consider the more appropriate religious education for their children. And, to make this effective, and in the same conditions than the rest of subjects, an institutionalized presence in the education centres as well as an alternative subject is required, both evaluable and part of the curriculum. In the same way, they insist on stating that confessional education is both cultural and formatively beneficial, with its content of anthropological, historical, intercultural and pedagogical perspectives as a full development of the student.

Instead, another sector considers that article 27.3 is not configured as an educational right that requires the compulsory offer of religious education by the public authorities. They persist on the thought that religion as a subject is contrary to the principle of laicism, since it establishes public channels and resources to the service of a kind of education with the aim of a moral and religious formation, characterized by its lack of objectivity and critical cogitation.

But, beside the two tendencies, that show a very strong ideological character, we consider that both of them may be defended by the jurisprudence, although it is also true that the Supreme Court, in its latest decisions, did not support the fundamental consideration of religious education. This way, the reasoning for the curricular establishment of the alternative subject[24], have been weakened. At the moment, the religious education is being politically discussed.

Regarding the selection of the teachers of religion, we must add that teaching this subject from a secular, laic, cultural perspective has one meaning, since the competence in that case, lies on the state. But the denominational education of the religion, meaning transmission of the own doctrine guaranteed by the religious freedom, has absolutely another meaning. Nobody, other than the denominations and churches, can legitimately work as teachers of particular religions. This is why, in those cases, the *venia docendi* springs up from the self-government of the churches. Doing it any other way would break the "rights of brand", or cause "misleading publicity". It would be the same than authorizing an enterprise to sell a liquid under the name of Coca-Cola without being so, nor being this product recognized by Coca-Cola as its own – just as a matter of example.

Financial cooperation

The financial cooperation with the Catholic Church is rather a matter derived from

[24] À. Seglers Gómez-Quintero, 'Religious Education in the Spanish School System', in: *Journal of Church and State*, Vol. 46, summer 2004, pp. 561-573.

the principle of cooperation than from the principle of laicism. Nevertheless, the direct financing from the General State Budget darkens both principles, because it creates bonds of practical dependence with one single denomination (the Catholic Church), diminishing the neutrality that public authorities should keep.

Ideally a system of self-financing should be reached, as prescribed in article II.5 of the Agreement on Economic Subjects undersigned with the Holy See. In this agreement, the Catholic Church declared its intention to attain by itself the sufficient resources to fulfil its needs.

Nonetheless, the roots of the problem lie on considering that rule as a simple declaration of intentions or, on the contrary, it is the final step of a gradual system directed to the self-financiation. It is an open matter for discussion.

Religious ceremonies in institutional acts of the civil power

We can apply what has been said by the Constitutional Court to the religious ceremonies in institutional acts of the civil power, when it stated that 'the appearance of juridical conflicts related to the religious beliefs, should not be surprising in a society that claims for freedom of beliefs and of worship of its individuals and communities as well as the laicism and the neutrality of the state'.

Laicism in a state prevents the public authorities – as such – from professing a religion, but the political leaders and the chief of the state have a recognized right to exert religious freedom. The participation of public authorities in religious ceremonies of institutional relevance has not been regulated yet, and it certainly does not jeopardize the laicism of the state. On the contrary, the active proselitism of the public authorities in religious ceremonies of institutional character does jeopardize the principle of laicism, since in such cases the political protagonists take advantage of their privileged situation.

We have already seen that, on the one hand, the Constitutional Court has reinforced the principle of wilfulness in participating in institutional religious ceremonies, but on the other hand, it has given support to the refusal of those who do not profess the majority religion. This way, the right to the conscientious objection has been respected – not only in religious cases – for the soldiers or members of various forces of security who, appealing to their agnosticism or atheism, abstained themselves from participating in catholic religious acts.

Political Islam and laicism

The emergence of Islam in social structures of the states of the European Union creates plenty of unanswered questions. And Spain is not an exception. We can take as an example the Prosperity Party, which defended in their platform the application of the Islamic law.[25] Should they have governed, it would have meant establishing a *multi-juridical* system, dividing the Turkish citizenship after their own religious attachements. The *shari'ah* is antithetical with democracy, since it

[25] *Refah Partisi v. Turkey*, 31-7-2001, European Court of Human Rights.

rests upon dogmatic arguments contrary to the demo-liberal conceptions of the personal autonomy. Should their more radical version prosper, Turkey could see some kind of religious communitarism established, incompatible with human rights, gender parity (man-woman) and the value of laicism.

By definition, a *democratic society* is the one capable of consolidating within itself tolerance, pluralism, spirit of openness and freedom to express any ideas, including the religious ones.[26] Therefore, a democratic society cannot be theocratic. And that is where the dilemma lies: the Islamic law represents both a religious and a political monism that, in its essence, overflows laicism, taken in its negative sense, that is to say, not as the militant laicism, but as a *contention wall* to avoid – at last – the imposition of ostracizing and discriminatory politics from Islamist parties.

Towards compatibility between religion and democracy

We would not want to end this essay without referring to Recommendation 1396 (1999) of the Parliamentary Assembly of the Council of Europe.[27] As we wrote at the start, we feel that it is one of the texts that best synthesises the conflicts and solutions of integration between religion and democracy.

In its diagnosis, the Assembly is aware of the existence of tensions in democratic societies between political power and religious manifestations. There is a religious side to many problems facing society, such as the fundamentalist movements, acts of terrorism, racism, xenophobia and sexual inequality in religion. For the Assembly, 'extremism is not the religion itself, but a distortion or perversion of it. None of the great religions preaches violence. Extremism is an invention of mankind that diverts religion from its humanist course, transforming it into an instrument of power.'

However, the text points out that taking decisions on religious issues does not depend on politicians, in the same way that it is not for religions to take the place of democracy or assume political power; because 'religions must respect the concept of human rights contained in the European Convention on Human Rights and the Rule of Law'.

The following is an important statement: 'Religion and Democracy are not incompatible. Quite the contrary. Democracy has proved to be the best structure for the freedom of conscience, the exercising of beliefs and religious pluralism. For its part, religion – through its moral and ethical task, the values that it promotes, its critical focus and its cultural expression – is a valid companion of the democratic society.'

Democratic states – be they secular or denominational – must allow all religions that comply with the conditions established in the European Convention on

[26] *Handsyde v. United Kingdom,* 7-12-1976, European Court of Human Rights.

[27] 'Religión i Democracia', text approved by the Assembly on 27 January 1999 (V Sessió). www.stars.coe.fr.

Human Rights to develop under the same conditions, and must help them find their right place in society. This is because 'problems arise when the authorities try to use religion for their own ends, or when religions try to abuse the state to achieve their own aims.'

At other times, conflicts arise from mutual ignorance, stereotypes, clichés and rejection. Therefore, in a democratic system, politicians must foresee that the general concept of religion – Christian, Islamic, Jewish, etc. – is not associated with consummate (terrorist) actions carried out by fanatical religious minorities.

In effect, religious extremism, which fosters intolerance, discrimination and violence, is also a symptom of an ill society and endangers democratic society. Insofar as it compromises public order, it must be fought with all the means of the rule of law, and as it is the expression of a social disease, it can only be confronted if the authorities tackle the real problems of the group. In this sense, 'education is the key path along which to fight ignorance and stereotypes. School and university syllabuses must be revised urgently to foster a greater understanding of the different religions; [and] religious leaders can make a significant contribution to combat prejudice through they way they express themselves in public and the way they influence believers [...] The fight against prejudice also requires the development of ecumenism and inter-religious dialogue.'

Having explained the diagnosis, the Assembly then goes on to propose a series of measures.

Firstly, the Governments of the member states must ensure the freedom of conscience and religious manifestation, and in particular:
a) Safeguard religious pluralism, allowing all religions to develop under identical conditions;
b) Allow for religious customs and rites regarding marriage, dress, festivals – with a certain margin for the modification of work absenteeism – and military service;
c) Denounce any attempt to encourage conflicts within religious groups or between religious groups for partisan (or political) aims;
d) Ensure the freedom and equality of educational rights for all citizens, irrespective of their religious beliefs, customs or rites;
e) Ensure equal access for all religions to the social media.

Secondly, education about religion should be fostered and, in particular:
a) Strengthen the teaching of religions as a system of values in which young people can develop a critical focus within the structure of education in ethics and democratic citizenship;
b) Foster the teaching in schools of the comparative history of different religions, highlighting their origins, the similarities they share in some of their values and their diverse customs, traditions and festivals;
c) Foster the study of the history and philosophy of religions and research these

areas at university, together with theological studies;
d) Cooperate with religious schools and colleges to include or strengthen, in the syllabuses, aspects relating to human rights, history, philosophy and science;
e) Avoid any kind of conflict between state education in terms of religion and the religious beliefs of families in order to respect the free decisions made by families regarding this delicate question.

Thirdly, better relations with and between religions should be fostered and, in particular:
a) Channel a more methodical dialogue with religious and humanist leaders about the main problems facing society and make it possible for the religious and cultural points of view of the population to be taken into account before any political decisions are taken and involve religious communities and organisations in the task of supporting democratic values and promoting innovative ideas;
b) Encourage dialogue between religions, creating opportunities of expression and discussion, as well as meetings between representatives of the different religions;
c) Foster everyday dialogue between theologians, philosophers and historians, as well as the meeting of experts from other fields of knowledge;
d) Expand and strengthen associative meetings with religious communities and organisations, particularly with those that have deep-seated cultural and ethical roots among the local population in social, charity, cultural, educational and missionary activities.

Finally, the cultural and social expression of religion should also be fostered and, in particular:
a) Ensure the equality of conditions with regard to the maintenance and conservation of religious buildings and the property of all religions as an integral part of the national and European heritage;
b) Ensure that all disused religious buildings are renovated, as far as possible, to conditions that are compatible with the original reasons for their construction;
c) Safeguard the cultural traditions and festivals of the different religions;
d) Foster social and charitable works promoted by religious groups and their organisations.

Italy

Italy: born as a Secular State in the XIX Century, back to a Clerical Future in the XXI Century?

Giulio Ercolessi

In order to appreciate the weight of religion and churches in today's Italian public life, and the scope of the problems arising from the new religious diversity of the Italian society due to the secularisation process and to the recent immigration waves, a short excursus into the historical roots of the present situation is probably necessary.

The issue of state/church relationship played a crucial role in the formation of the Italian state in the 19th century and in shaping an important part of the national liberal heritage. After the destruction of the French-established Napoleonic regional republics (and especially after the bloody repression against a large part of the intellectual class of Southern Italy in 1799 in Naples, following the collapse of the 'Parthenopean Republic'), the divide between the Catholic Church and liberal-minded milieus became increasingly deep. The Enlightenment movement's heritage combined with the prevailing interpretation of Italian history provided by the Romantic movement: the *History of the Italian Republics in the Middle Ages* by Swiss Protestant historian Sismondi had a great influence in convincing the new-born liberal public opinion that the triumph of the Counterreformation had been one of the main causes of the civic and political backwardness of the Italian society after the end of the Renaissance in the16th century.

Indeed, if a political starting point of the Italian *Risorgimento* (i.e. the process of unification and political and civil modernisation of the Italian nation) were to be fixed, it could be identified with the recognition of equal civil and political rights of Jews and Waldensians (Protestants) in Piedmont in February 1848, after

centuries of harsh persecution[1]; and the event that concluded the process was the taking of Rome in September 1870, which put an end to the existence of the state of the church and to the temporary power of the Pope.

In different degrees and measure, all liberals, both moderate (embodied by Piedmont statesman Camillo Benso count of Cavour) and more radical (such as the Milan 1848 anti-Austrian revolt republican leader Carlo Cattaneo), shared a common favour for a strict separation of state and religion as a decisive condition of Italy's political and economic modernisation.

An overview of historical developments in Italy

The post-Risorgimento liberal period

After the taking of Rome by the new-born Italian state in 1870, and its establishment as the new capital, a liberal law was passed (the so-called *legge delle guarentigie*, i.e. 'statute of the guarantees') to grant the inviolability, the independence and also the diplomatic status of the Holy See and its officials, but it was never accepted by the Pope, who declared himself 'prisoner' in the Vatican and ordered committed Catholics not to take part in the Italian political life (*Non expedit* policy).

Although Catholicism was considered the 'official religion of the state' by the 1848 Piedmont non-rigid constitution that had become the basic constitutional law of the new state (the so-called *Statuto Albertino*, so named after king Charles Albert of Savoy who conceded it), a regime of separation and equality before the law was enforced (initially with limitations to minorities' freedom of proselytism, but a lot of foreign – especially British – Protestant missions had the opportunity of establishing in many regions in the following decades, leading to the presence of small Protestant minorities also outside the centuries-old historical Waldensian territory, confined to some Alpine valleys of Piedmont).

Cavour's separation formula, '*libera Chiesa in libero Stato*' (free church in a free state), a motto he had borrowed from the liberal Swiss Protestant theologian

[1] As mentioned in chapter 1, a typical mark of Italian *laicismo* throughout its history has been the stress on both positive and negative religious freedom for individuals and on religious minorities' rights, traditionally opposed by the Catholic Church, rather than on the competition between church and state for cultural hegemony like in France. A typical example of this different and long lasting approach could be observed when the Jewish festivity of Yom Kippur happened to coincide with general elections. This concurrency of events occurred recently in two different years both in France and in Italy. Orthodox and observant Jews believe they are not allowed to vote before sunset on Yom Kippur. In France it was said that was their own business: separation of state and religion compelled the state not to take in any account the private problem of conscience of a minority of individuals. In Italy the initiative to ask for a modification of the electoral law that would extend voting time for a few hours that year, in order to allow orthodox observant Jews to vote after sunset, was taken by intellectuals and politicians who were known as staunch advocates of the Italian brand of *laicità*; such a law was then passed unanimously by Parliament. This more liberal and less state-centred idea of *laicità* introduces a notion of neutrality that does not imply indifference on issues concerning individuals' freedom of conscience.

Alexandre Vinet, slowly became the effective rule of the land.

The extension of the number of citizens entitled to take part in general elections led to an increasingly less strict application of the *non expedit* policy by the Vatican, and to local electoral agreements, since 1913, between the Catholics and the politicians more inclined to take into consideration the Catholic agenda, especially in the field of religious schools, religious teaching in public primary schools, and in the field of family law (so that divorce was never introduced during the monarchic period). A Catholic party (*Partito popolare*) took part in the general elections of 1919 after World War I, the first to be held with universal male suffrage.

Clerical revenge, due to fascism

Also following the revolutionary unrest of 1920, two members of *Partito popolare* became members of the first Mussolini cabinet in 1922, but, after the assassination of social-democrat leader Giacomo Matteotti in 1924 and the establishment of the dictatorship in January 1925, the party leader Luigi Sturzo became a cornerstone of the antifascist opposition.

The Mussolini government, despite what had been a strong anticlerical attitude of the future dictator in his radical socialist youth, reversed decades of liberal policy in state/church relations, seeking the support of the Catholic Church: it reintroduced religious symbols in public schools and offices and signed in February 1929 a treaty, a concordat and a financial settlement with the Holy See (the three agreements are known together as *Patti lateranensi*, having been signed in the Lateran Palace in Rome) that established the State of the Vatican City on a small part of the territory of the city of Rome, gave the Catholic Church an important role, especially in public schools and in family law (ecclesiastical annulments became the only possibility of achieving a de facto divorce for well-off couples until 1970) and provided huge public funds for its activities. In exchange, the Vatican had put an end to the existence of *Partito popolare* and forced Sturzo into exile; despite some controversies on the status of Catholic youth organisations in the following years, and protests against the discriminations introduced in 1938 against Catholics converted from Judaism (not against anti-Jewish discriminations in general, which they basically supported) the Catholic Church became a decisive pillar of the regime.

After the fall of the fascist regime, the situation of state/church relations remained unchanged until the approval of the new constitution. A very telling story throws much light on the extreme anti-liberal role of the Catholic church until a few decades ago, on its influence on Italian politics and on the consequently inevitable anti-clerical attitude of many Italian liberals: a story totally removed for decades from the awareness of the Italian public (even of its most learned part) and that deserves being reported. It concerns what happened to the anti-Jewish racial legislation introduced in 1938, after the fall of the fascist regime on July 25th 1943. Mussolini was arrested and in the following days the new monarchic government

dismantled most of the fascist legislation: the fascist party, the party militia, the unions, and the non-elective parliament were dissolved, political prisoners were freed, political parties reconstituted, etc. Strangely enough, the only piece of typically fascist legislation that was not immediately abrogated were the racial laws, that had never been popular, not even when the fascist regime enjoyed widespread consensus. The reason for that incredible omission was diplomatic pressure by the Vatican. After consulting with Pope Pius XII, the Vatican secretary of state, Cardinal Luigi Maglione, entrusted father Pietro Tacchi Venturi, one of the most prominent Jesuits of the time, to intervene on the new Italian government to demand that the fascist anti-Jewish laws be mostly upheld. For the Catholic Church of 1943, equal civil and political rights for individuals belonging to religious minorities, introduced in Italy in 1848, were still a mistake, rightfully corrected by Mussolini's regime; if persecution of Jews was deplorable, discrimination was good and justified. The only change in the anti-Jewish laws asked by the Vatican concerned the discrimination of Jews converted to Catholicism, who should be considered as 'Aryans', and the validity of their marriages with Catholic spouses: for the Vatican, discrimination in civil and political rights based upon race was wrong but discrimination based upon religion was good. On August 29th father Tacchi Venturi wrote in a letter to cardinal Maglione that, despite entreaties received by terrorised Jews still hiding and fearing persecution, and according to the written instructions received by the cardinal on August 18th, in his meeting with the new Italian authorities he 'had forborne from even mentioning the possibility of a total abrogation of a law that, according to the principles and traditions of the Catholic Church, contains parts that deserve to be abrogated, but also others that deserve being confirmed'. Unlike the long-lasting controversy on Pius XII's attitude towards nazism, this horrible widely unknown story is not disputed even by militant Catholic historians. It was due to that Vatican intervention that the anti-Jewish fascist racial laws of 1938 were not abrogated immediately after the fall of the fascist regime by an autonomous act of the new Italian government, but only in execution of a clause of the September 8th armistice, imposed upon Italy by the Anglo-American allies.[2]

Transition to democracy

After the collapse of the fascist regime a heir party to *Partito popolare* was formed, *Democrazia cristiana*, that became the largest party since the 1946 election of the Constituent Assembly. The Christian democrats and the communists jointly voted for an ambiguous reference to *Patti lateranensi* in article 7 of the new republican Constitution. The text of article 7 states that 'The state and the Catholic Church

[2] Giovanni Miccoli, *I dilemmi e i silenzi di Pio XII. Vaticano, Seconda guerra mondiale e Shoah*, Milano, Rizzoli, 2000; Ruggero Taradel and Barbara Raggi, *La segregazione amichevole. 'La Civiltà Cattolica' e la questione ebraica 1850-1945*, Roma, Editori Riuniti, 2000; David I. Kertzer, *The Popes Against the Jews. The Vatican's Role in the Rise of Modern Anti-Semitism*, New York, Knopf, 2001, It. tr. Milano, Rizzoli, 2001.

are, each within its own order, independent and sovereign. Their relations are regulated by *Patti lateranensi*. Amendments to these pacts which are accepted by both parties do not require the procedure of constitutional amendment.'[3] It was unclear whether this wording implied that *Patti lateranensi* were thus given constitutional rank.

A strong opposition was led by the socialist parties, together with the small centre-left liberal parties (*Partito repubblicano* and *Partito d'Azione*) and some of the deputies of the small and more moderate *Partito Liberale* (according to the advice of prominent antifascist philosopher and historian Benedetto Croce, who, as a senator appointed in the pre-fascist period, had made one of the very few opposition speeches of the fascist era against their ratification in the Senate in 1929 – throughout the monarchic period senators were appointed by King); but they were largely defeated.

Article 7 was initially prevalently interpreted as stating the constitutionalisation of *Patti lateranensi*, thus implying a number of exceptions to many basic constitutional principles.

Moreover, when *Patti lateranensi* had been signed in 1929, the Catholic Church received all the related benefits in exchange for abstaining from every political activity and supporting the regime: now that the Catholic hierarchy obviously enjoyed all the constitutional rights that every citizen was entitled to enjoy, and nobody expected priests to abide by fascist authoritarian rules, those privileges were bestowed free of any charge.

However, the proposal to include a reference to God in the new Constitution was withdrawn after a short debate in the Constituent Assembly.

Modernisation and secularisation

The process of secularisation of the Italian society that followed the restoration of democracy and the 'economic miracle' of the fifties and sixties had obviously important consequences on the legislation. Contraception propaganda, previously forbidden by a survived fascist law as a criminal offence, became free in 1970 (following not a Parliament decision, but a Constitutional Court sentence). Discrimination against smaller Evangelical denominations, still illegally enforced thanks to other survived fascist laws by local police authorities, especially in small southern towns throughout the first fifteen years of democratic rule, was finally outlawed. Divorce and abortion laws were passed and confirmed in two general referenda held in 1974 and 1981, which resulted into two historical defeats of the Catholic Church that had indirectly organised and strongly supported both. Family law was reformed in 1975 introducing equality for married men and women (after years of Catholic resistance). Witnesses in courts were no longer forced to take the oath with a formula that included a necessary reference to

[3] 'Lo Stato e la Chiesa cattolica sono, ciascuno nel proprio ordine, indipendenti e sovrani. I loro rapporti sono regolati dai Patti Lateranensi. Le modificazioni dei Patti accettate dalle due parti non richiedono procedimento di revisione costituzionale.'

God (once again, only thanks to a Constitutional Court decision and not to a parliamentary vote). Courts established some minimal protection for unmarried couples and other kinds of de facto families. Catholic ecclesiastical tribunals can still decide, if seized by one of the spouses, on the legal nullity of religiously-celebrated marriages (as a consequence, no post-divorce alimony duties); however, a certain degree of control on those decisions, similar to that necessary to give legal effect in Italy to foreign sentences, was introduced since the seventies by the Italian courts in order to exclude previously usual abuses.

In the seventies, the Constitutional Court came to the conclusion that the Constitution as a whole had established a general rule of *laicità* as a 'supreme principle', such that it could not even be modified by an amendment to the Constitution, because, like the modification of other basic 'supreme principles' (democracy, the republican character of the state, human rights), its result would be a substitution, rather than a modification, of the Constitution itself.

A new concordat

In 1984 a new concordat was signed between the Catholic Church and the government of socialist Prime Minister Bettino Craxi: it obviously abolished the embarrassing references to the monarchy and to the fascist regime still included in the 1929 concordat, regulated only the basic principles of state/church relations, leaving much of the controversial (or financially relevant) issues for successive more detailed agreements, and increased rather than solve the doubts on its own constitutional status and rank.

Schools

Today, the state provides, and pays, church-appointed teachers of Catholic religion in public schools (students or parents have to declare at the beginning of the school-year whether they want to attend or not religion courses).

The withdrawal of the license by the local bishop prevents a teacher of Catholic religion from continuing to carry on his/her job. This can happen both because his/her teaching is no longer considered orthodox by the bishop or for reasons pertaining to the teacher's private 'moral life'. Until 2003 the revocation of the ecclesiastical license implied the immediate dismissal of the teacher by the state. A scandal happened when a teacher was thus dismissed for becoming pregnant out of marriage: the single mother suddenly became jobless just for having sex outside marriage. In order to prevent similar embarrassments to the Catholic hierarchy, a new decree was adopted that year by the Berlusconi government. It states that the teacher whose ecclesiastical authorisation to teach Catholic religion is withdrawn by the local bishop is automatically engaged as teacher of another secular subject, for which he/she is allegedly suitable (arguably, most often history and/or philosophy), without having passed and won any competitive examination with other candidates, and even getting ahead of the winners of competitions

already carried out[4]. In this way, bishops are much freer to sack religion teachers they dislike, and have one more chance to extend Catholic influence on public schools.

Catholic schools have in recent years been granted public funds for the first time (in open violation of a specific prohibition stated in article 33 of the Constitution: 'Private bodies and individuals have the right to establish schools and educational institutes without financial burden to the state'[5]).

A flood of public subsidies

A large number of Catholic television and radio programmes are daily or weekly broadcast by all the channels of the Italian state television and radio service (Rai) and by the private (i.e. Berlusconi owned) television networks at no cost for the church. Protestants and Jews have just a fortnightly TV programme each, broadcast at about 2 a.m. and Protestants have a Sunday radio service at 7.30 a.m. There is no 'secularist' TV programme of any kind and the secularist point of view on controversial ethical issues has been constantly reduced year by year: most often statements on such issues by Catholic leaders are given huge relevance by TV journals, whereas the opposite point of view is totally ignored. Instead, debates between Catholic and Muslim clergies have become rather frequent.

Probably more than eight billion Euros are allocated yearly, for different reasons, to the Catholic Church or to its organisations by the state, regions and local administrations; but it is impossible to ascertain the exact amount.

That amount of money is much more than what formally agreed upon with the 1984 renovation of the concordat, when it was said that the public financial support to the Catholic Church, including priests' salaries, would be yearly decided from then on by tax-payers themselves through their personal choices: according to the concordat provision, every tax-payer can indicate every year whether 0,8% of the entire national revenue collected through the personal general income tax (Irpef: imposta sul reddito delle persone fisiche) should go to the Catholic Church or to the state, or to the smaller denominations that have stipulated a similar agreement with the state. About 40% of tax-payers actually make a choice, about 80% of them usually in favour of the Catholic Church. Unlike churches, the state never makes any advertising campaign asking for a choice in favour of the Treasury, nor does it explain in advance what kind of social or charitable projects would benefit from such a choice: and most tax-payers think that, if no choice is made, the money does not go to any church. As a consequence, only 10% of tax-payers make an explicit choice for the state. But almost everybody in Italy ignores that the total amount of the 0,8% of the national revenue of the Irpef tax is not allocated to churches on the basis of the number of preferences they receive, but on the basis of the percentage of the choices that were actually expressed.

[4] Law 186, 18/07/2003, that converted the governmental decree 2480/2003.

[5] 'Enti e privati hanno il diritto di istituire scuole ed istituti di educazione, senza oneri per lo Stato.'

Therefore, if 80% of the 40% tax-payers who expressed their choice signed for the Catholic Church, it will receive 80% of the total. Even though it had actually been chosen by only 32% of tax-payers.

Moreover, this mechanism is only a minor part of the total amount of tax-payers' money that is yearly given to the Catholic Church by the state, the regions, the local administrations and other public or publicly owned bodies for an astonishingly diverse number of reasons.

Minority faiths

Only since the mid-eighties, as already mentioned, smaller scale agreements have been signed with religious minorities, as provided for by the Constitution. These agreements have been given the name of *intese* (lit. 'understandings') by article 8 of the Constitution, in order to stress that their rank is lower than the concordat, but are in fact formal agreements between the government and a religious minority, that have to be ratified by Parliament with a formal law. Unlike the concordat, they were never recognised to have the power of derogating from constitutional principles. So far, *intese* have been stipulated and ratified with some Protestant and Evangelical denominations and with the Jews; a financial arrangement identical to that provided with the 1984 concordat was offered to all of them, but some did not accept to receive a percentage of the total *Irpef* revenue higher than the actual number of preferences they get (although many are now reconsidering this refusal); Baptists, in the name of the principle of separation of church and state, voluntarily and entirely waived this entitlement, but no other minority did the same.

Two *intese*, with Buddhists and Jehovah's Witnesses, already signed by the centre-left governments of the years 1996-2001, were not ratified by the subsequent Berlusconi parliamentary majority, were reintroduced as government bills in 2006, but failed to be passed before the early dissolution of Parliament in February 2008.

A general law on religious freedom has not yet been approved, following the controversies on the status of Muslims after 9/11. An *intesa* with them has not even been proposed, due to the absence of any unitary body representing Muslims resident in Italy, most of them, by the way, still foreign citizens (see below).

Renewed clerical militantism

In 2005 a proposal to amend in a general referendum a very restrictive law approved by the previous Berlusconi parliamentary majority on stem-cells research and artificial insemination was defeated, despite very favourable polls: since the participation of 50% of the electors is required for the validity of a referendum, the Catholic Church openly and very strongly required Catholics (and Catholic politicians) to abstain rather than vote against the proposal, thus 'enlisting' 40% of usual referenda non voters in the ranks of those against the modification of the law.

This open intervention of the Catholic hierarchy in Italian politics was the most determined, forceful and direct in decades, the previous ones having always been performed through formally independent Catholic citizens' political or social organisations. This new attitude was a consequence of the dissolution of the Christian democrats following the anti-corruption investigations, rallies and trials of the early nineties and the reshaping of the Italian political system, that is now composed of two coalitions, both competing to win the Catholic vote: a vote that is largely overestimated by politicians as a consequence of its (incorrect but recurrent) identification with centrist or undecided electors. However, the result of the stem-cells research referendum seems to have been much more the consequence of a growing anti-scientific and anti-technological attitude, rather than of a reversal or a slowing down of the secularisation process: as shown by a very comprehensive data collecting study by our foundation, the actual behaviours of Italians continue to show a growth, not a reversal, in the secularisation of the Italian society.[6] But the Catholic hierarchy was rather successful in portraying that result as the registration of a new power balance in the society: possibly a first step in the direction of a reform of the abortion law.

An attempt to make consensual divorce easier and less expensive was defeated in Parliament in 2006. With the exception of a few and very minor regional laws, no general statute for the protection of de facto families (unmarried couples) exists, nor any form of legal recognition of gay families. Even succession laws are very limitative of the testator's freedom to dispose of his/her estate at the expenses of the legal family. A very moderate government bill on the legal recognition of gay couples, which was the result of an exhausting negotiation between the two competent ministers (a former communist and a former christian democrat, both now members of the newly formed 'Democratic party', the largest and mainstream party of the centre-left coalition) was abandoned, due to controversies inside the 'centre-left' tiny parliamentary majority that supported the Prodi government. Together with Ireland and Austria, Italy is at present the only remaining Western European country, and the largest one, that does not recognise gay couples any right.

Euthanasia is strictly forbidden (despite a usually largely lenient attitude of courts and a large and long-lasting public opinion favour according to opinion polls). Living will is also not yet recognised or regulated by law, and the Catholic Church strongly opposes any recognition, which, they claim, could 'open the gate' to undeclared euthanasia; however some courts and judges have recently recognised the relevance of patients' attitude towards health treatments expressed before they became incapable to articulate their will.

In recent years, a lot of municipalities, especially in central and north-western

[6] The current year's survey is being published while we are passing proofs for printing this book. Last year's survey, that includes a lengthy methodological note, was published in the January-March 2007 issues of the monthly journal Critica liberale, n. 135-137.

Italy, have provided more decent and dignified premises for civil marriage ceremonies and funerals; others have stubbornly refused any such move: civil marriages often still take place in municipal registry offices and in some north-eastern municipalities in the Veneto region, and in much of the south, civilian funerals have to take place in the open air even in winter and with bad weather. The number of religious and civil marriages and funerals appears to be largely dependent on practical arrangements made or omitted by municipalities.

Catholic religious symbols continue to be (controversially) displayed in schools, courts and public offices. Thanks to the influence of the new clerical political establishment, controversies on this issue led Catholic lawyers to a considerable success in downsizing the scope of the 'supreme principle' of *laicità* established in the seventies by the Constitutional Court: the Council of State (*Consiglio di Stato*), i.e. the highest administrative law court, recently upheld the provocative decision of a regional administrative tribunal in Veneto, according to which Catholic religious symbols, and especially the crucifix, are symbols of *laicità*. As a consequence of this decision, many local administrations have decided to provide (often enormous) crucifixes in public buildings where they were previously absent.

The new multireligious society: 'religious dialogue' as a substitute for an Italian integration strategy

A new pluralistic society

The entire issue of state/churches relationship and the state of the debate were profoundly transformed in recent years, following the totally new situation due to the much more diverse religious composition of the Italian society as a consequence of immigration from non-Catholic countries. (Internal religious pluralism has also been growing in the last fifteen years, due to active proselytism by 'popular' Evangelicals, especially Pentecostals, and Jehovah Witnesses, not to mention minor groups: although both movements are nowadays far more numerous than the historical Protestant Churches, probably both groups amounting to about 350.000 members each, this phenomenon does not appear to pose any major political problem so far as these movements do not appear to have any claim of political nature nor a relevant presence in any kind of public debate).

Immigration is a recent phenomenon: Italy had been for a century, particularly in some areas (not only in the south) a land of emigration (both internal and to other countries). Like other countries in the same situation (i.e. Ireland or Portugal), Italians considered themselves as 'naturally' non racist. The memory of the fascist racist laws against the Jews had been rapidly erased or the responsibility exclusively attributed to the dictator (not without some reasons, although the lack of rejection by the Italian society had been striking); throughout the years of the civil rights struggles in the US or at the time of the apartheid regime in South

Africa, the Italian media in particular often showed a sense of superiority and considered their Catholic and/or humanistic heritage a sort of insurance against every possible racist virus in their own ranks. The illusion faded away as soon as the Italian society became more diverse.

General census take place in Italy every ten years, the latest one occurred in 2001. According to the Istituto Geografico De Agostini, foreigners legally resident in Italy in 2006 were about 3.000.000 (3.690.000 according to a more recent estimate by the Catholic charity 'Caritas Migrantes'). Together with the estimated 800.000 illegal immigrants, that amounts to about 5,2% of the population: one of the lowest percentages in Western Europe, but about twice their number in 2001; and with a much higher birth-rate than the native population (Italy has one of the lowest birth-rates in the world).

Muslims are (arbitrarily, for the reasons given below) mostly estimated to be around one million, only 3% of them Italian citizens; Italian converts are estimated to be fewer than 10.000, mostly women who converted in order to marry a Muslim man. Moreover, a considerable part of immigrants from traditionally Muslim areas are from Albania and others from Bosnia, two eastern European, largely secularised areas until a few years ago, only the latter having suffered a partial religious revival as a consequence of the ethnic war of the last decade. The other main region of origin of immigrants from traditionally Muslim territories in Italy is Maghreb, especially Morocco.

So far, becoming Italian citizens has been extremely difficult for immigrants, except through marriage (hence, the obvious temptation of sham marriages). A bill was introduced by the centre-left Prodi government elected in spring 2006, that seemed aimed at tackling for the first time the subject of individual integration, on the basis of a voluntary acceptance of basic civic and constitutional principles. It was not clear, however, whether double citizenship would have been indiscriminately allowed (which, if requiring an allegiance to systems based on conflicting basic political values, seems inconsistent with a civic rather than ethnic idea of nationality). The bill failed however to be passed before the early dissolution of Parliament in February 2008.

Religious pluralism: communitarian versus liberal ways to integration

This new situation has led to a broad but superficial consensus among politicians for the need 'to get beyond' the traditional conception of *laicità* in public institutions and to give the Catholic Church and (to a much lesser extent) other denominations a more emphatic 'public role' (whatever that might mean). There is nothing really new in this idea. Italian liberal supporters of separation and 'secularism' have been hearing this argument for decades, since 1929: fascists, Christian democrats, communists, all claiming that our idea of *laicità* was a thing of the past.

Although there is not much reason for hope, the social consequences of immigration on the cohesiveness of the Italian society could be at the moment

less important than in other European countries, paradoxically thanks in part to past inertia and inefficiency of Italian politics and government, which at least partly spared the country some urban development monstrosities that held sway in previous decades. Given that in Italy the French-style *banlieues* were little built to provide housing for the previous internal immigration, they could not become the mass ghettoes for foreign immigrants when upward mobility seems blocked everywhere. Thus, at least for the moment, Italy could enjoy a greater degree of *mixité* than France, although the main reason for this is the markedly lesser diversity – for the moment – of Italian society in comparison with European countries that experienced decolonisation in the post-war period and immigration from poorer countries several decades before.

What might bring disaster, unless Italy learns from others' experience is on the one hand the incredibly mean populist brand of nasty xenophobia unfortunately exploited by a very large part of the present right-wing governmental majority and on the other the entire political establishment's inability to understand that only strict separation of church and state can make integration possible without creating rival, conflicting communitarianisms. Socio-economic problems might be much worsened by political incompetence and irresponsibility.

Dreaming that religions, all religions despite occasional deviations, always naturally promote peace and tolerance (and even human rights – as even leading non-Catholic intellectuals recently wrote without any cultural embarrassment, but with an appalling capacity for cancelling centuries of history, challenging the core notions of every citizen who attended public school), the Italian political establishment seems to be putting its hopes for integration essentially into 'interreligious dialogue'. While only a very small minority of immigrants in Italy from countries of Muslim tradition attend mosque, it is precisely to the mosques, and to the dialogue between their representatives and the Catholic clergy, that much of the Italian political establishment seems willing to entrust the task of integration. (Most of the rest of the political establishment simply aiming to gain votes through racist and xenophobic demagogy or pathetically promising to stem new waves of migration without any change in the economic gap between the two shores of the Mediterranean and between global north and south).

And it is precisely by means of a body created on the bases of religious affiliation and expertise in the sociology of religion – the 'Advisory Council for Italian Islam' of the Ministry of the Interior – that the Italian state has started to tackle the issue of integration; and not simply, as might have been understandable, the specific issues related to the needs deriving from mere religious observances (as already done in the *intesa* with the Jews).

An intesa with Muslims

Hence the priority given by the (relatively) better part of the political establishment to reaching an *intesa* with the present Italian Islam, by applying to that religion, too, the possibility of regulation provided for by article 8 of the Constitution:

an *intesa* that (unlike those reached with the various Protestant denominations) must be reached, they insist, with a 'unitary' delegation, not with the smaller and more liberal groups. In the eyes of most of the political establishment, regulations introduced by an *intesa* and based upon (alleged) religious affiliation should be the real vehicle of the integration in the Italian society of immigrants from countries of Islamic tradition. Better said, this will be the substitute for any policy of integration.

As a matter of principle concordats and also agreements with other denominations have always been seen by the Italian *laicisti* as violations of the principles of religious neutrality, equality before the law and equal dignity of citizens. However, given the regime of the concordat, the *intese* that have been reached with religious minorities have seemed to many of us a lesser evil, a way to at least attenuate inequalities; so far, the already stipulated *intese* have generally not granted unjustifiable privileges.

But we do not even know how many immigrants from countries of Muslim tradition moved here not only to better their economic lot, but also and perhaps above all to fulfil their aspiration to live in a less authoritarian society: and in societies that on paper recognise full freedom of religion and of conscience, making assumptions about religious affiliation on ethnic or racial bases is intolerable – as if any Italian, upon moving, say, to Sweden, could or should be automatically labelled, treated, and considered a Catholic by the country's authorities, merely because he/she comes from a country of Catholic tradition; even worse, as if he/she were given Catholic priests as representatives. This is a violence that, although involuntary, is particularly execrable, because it is directed against individuals who would not even really be free openly to express their own apostasy, if they had one, given that where they may live there can also be fundamentalists who believe that apostasy deserves to be punished by death.

The fact is that a fundamentalist organisation related to the 'Muslim Brotherhood' (*Ucoii, Unione delle comunità islamiche in Italia*) operates the majority of Italian mosques. It is essentially with them that any 'unitary' *intesa* that might be reached would be signed. Such *intesa*, obviously, would have to include the possibility of granting to the signatories the revenue from the 0,8% *Irpef* tax, as is already the case for the religious minorities that have signed the existing *intese*. And obviously they would also benefit by the perverse multiplier mechanism described above. It is also quite predictable that many Italian citizens who are not Muslim, but who are generically anti-Western or pro-Third World, would indicate the Muslim religion as beneficiary of the 0,8% Irpef tax share as a sympathy measure, disinterested and uninformed about details.

The most likely outcome of such an *intesa* with a 'unitary' delegation of current Italian Islam would be the definitive foreclosure of any possibility of success by a future progressive or liberal Islam in Italy.

The contact with Western secularised society has two different effects on individuals. Some adopt a rigid identity and invent (in the sense described by

Hobsbawm) ever more obscurantist traditions. Others embody ferments of renewal and reform and adopt modes of argument, techniques of exegesis, interactions and contaminations with principles and values typical of democratic, liberal, egalitarian modernity. But such developments need time to mature. In France, Germany, and the Western English speaking countries they are just now beginning to emerge with strength, as the children and grandchildren of the first immigration start to achieve success in academia and in the intellectual world. And many of these Western Muslim intellectuals think that a renewal of Islam, if not a full-fledged reform, should it ever occur, will probably spring precisely from the immigration in the West, and may have enormous consequences for the entire global Islamic world.

If instead a 'unitary' *intesa* is reached with current Italian Islam, it would very likely exclude Italian Islam from these possible developments and would assure that a quite fundamentalist brand of Islam, which is currently the large majority, would have all the means necessary to block progressive developments, if only by directly occupying every available space.

The strategy of a constitutional *intesa* with the 'unitary' delegation is a decisive step by Italy towards integration on the communitarian model, which in the Netherlands fostered the birth of completely separate societies, within which developed the most obscurantist, illiberal, and totalitarian tendencies, on the one hand, and (even in that traditionally tolerant and liberal society) the most xenophobic and racist tendencies, on the other.

The communitarian model of integration entails inevitable discrimination to the detriment of the weakest minorities. Where will we stop in the politics of 'recognition'? Who will establish the difference between a religion and a 'sect'? It also entails discrimination to the detriment of the already largely secularised majority. Why must those who are not believers subsidise or give hypocritical deference to every sort of religious faith, even if they oppose a faith's political demands or deem superstition every form of religious faith?

The Islamic presence provides new chances for the old Catholic clericalism

Moreover, a strategy of integration based upon 'inter-religious dialogue' could easily lead to new limitations of individual freedom and to renewed forms of discrimination, as the Catholic Church (which is at the moment uncertain on what is the best strategy in dealing with Islam) and other minorities with a political traditionalist agenda could be tempted to seize the opportunity of trying to re-establish old prohibitions and discriminations with the help of the less secularised newcomers and with the excuse of mutual security and religious or multiethnic correctness.

And if the Catholic hierarchy and Islamic fundamentalists are able to continue, or to begin, to make us submit in the public sphere to their religious symbols, degraded to symbols of dominion – or condominium – then should we perhaps invent for ourselves pathetic and contrived symbols of our civic or philosophical

beliefs, in order not to resign ourselves to becoming second-class citizens?

What is worse, the communitarian way to integration dramatically weakens protection of the rights of individuals who are requested to act as members of communities that do not recognise some fundamental human rights (that is the situation of apostates, minors, women, homosexuals).

Founding every attempt at integration upon interreligious dialogue (in practice, among representatives of the two largest religions) is the first step towards future political settlements at the expense of the individual freedoms of those who are not represented.

Or it might be the premise of sinister developments of Bosnian or Lebanese flavours. Those politicians who chose to subtract resources from secular public school and transfer them to the non free school, i.e., to confessional (Catholic) school, will find it hard to deny for long the same treatment to Islamic religious schools which the most fundamentalist families will not delay in demanding in order to block the integration of their children into the values of secular democracy.

Unfortunately, beyond the rhetoric, Italian politics continues not to understand that the strict religious neutrality of institutions and the secularity of school are more than ever the only possible guarantee of equal social dignity of all citizens, and therefore also the best possible means for integration. Neutrality does not harm anybody: the only but insuperable limitation to cultural pluralism should be the full acceptance of individual human rights (with no discrimination based on religion, gender, sexual orientation or age) and of liberal democracy that constitute our common European constitutional heritage.

P.S. Just while passing proofs for printing this book, the news has come that for the first time in 137 years, on September 20th 2008, the new clerical, 'post-fascist'-led municipal government in Rome has celebrated the anniversary of the taking of the city and the end of the temporary power of the Pope commemorating not that historical Italian and liberal accomplishment, but the casualties suffered by the papal army.

Slovenia

The Slovenes and the Catholic Church. The Reflections of a Historian

Jože Pirjevec

The tolerant relationship between the religious and lay intelligentsia that characterised the cultural and political awakening of the Slovenes in the first half of the 19th century, began to crumble in the second half, when an ideological differentiation began to take place under the influence of the ever greater stratification of the society. Within the national camp, which had been fighting for the affirmation of a Slovene national entity within the Habsburg Empire since the introduction of constitutional rights in the early 1860s, a 'partition of souls' occurred in the decade that followed, a split between liberals and Catholics which from the very beginning was uncompromising. This was largely due to the efforts of Anton Mahnič, a clergyman who in 1888 founded the tellingly titled *Rimski Katolik* (The Roman Catholic) in Gorizia, on the extreme western border of Slovene ethnic territory. In this newspaper he rejected all forms of ideological pluralism and claimed that the only true Slovene was one who built his own *Weltanschauung* in accordance with the directives of the ecclesiastical hierarchy and in harmony with the dogmas of the Catholic Church. This integralism also led to the creation of the Slovene People's Party (*Slovenska ljudska stranka*, SLS), which established itself strongly among the rural population at the same time as the right of suffrage was spreading to ever broader strata of the population. In the cities, particularly Ljubljana and Trieste, they were opposed by the liberals. Owing, however, to the numerical weakness of the urban middle class, they were incapable of becoming a serious rival. Although a third political force – a social democratic party – appeared towards the end of the century and found a response among the emerging proletariat in industrial centres, this too was unable to counter the influence of the 'clericals'. It should be pointed out that the latter were not only involved in the defence of the national rights of the Slovenes, they were also increasingly aware of their social hardships. Towards the end of the century this led to the creation of a powerful Christian social movement modelled on similar movements in Germany and Austria. Under the leadership of the capable priest Janez Evangelist Krek, a series of cooperatives and savings banks appeared, contributing greatly to raising the material and even cultural wellbeing of the Slovene peasant.

This relatively 'orderly' world was shattered by the First World War. With the collapse of the Habsburg Empire in 1918, the Slovenes found themselves utterly

exposed in the international arena, since they had no historical borders to which to appeal. On the other hand they had a dangerous neighbour – Italy – which appeared at the Paris Peace Conference with the secret Treaty of London in its pocket. This pact, signed with the Triple Entente in April 1915, promised Italy a third of Slovene ethnic territory. Despite the fact that the United States President Woodrow Wilson repudiated the secret diplomatic talks and proclaimed himself the protector of the small nations that needed 'rescuing from the Habsburg prison', the government in Rome, after a lengthy diplomatic dispute with Belgrade, obtained everything it wanted, with the exception of Dalmatia. Under the Treaty of Rapallo, signed in early November 1920, Italy annexed the whole of Primorska (the Littoral) and Istria, areas with a population of approximately 350.000 Slovenes and 150.000 Croats. After the First World War other parts of the Slovene nation remained in Austria and Hungary, which meant that the Slovenes were divided among four different states, only one of which – Yugoslavia – did not tend programmatically towards their more or less forcible assimilation.

The loss of Primorska and Trieste was a disaster for the Slovenes, not only from the ethnic point of view but in an ideological sense too. The socially and politically most advanced section of the population, consisting of a strong and self-confident urban middle class and proletariat, was now under Italian rule. The part of the Slovene nation that remained in Yugoslavia was largely made up of the peasant class, which increasingly identified with the SLS or the Catholic Church, because of their opposition to Serbian (Orthodox) centralism. In such conditions the Catholic hierarchy and the political elite of the SLS – the party was led by a priest – saw themselves as the supporters of the nation's interests and the defenders of its autonomy. The situation came to a head on 6 January 1929 when King Alexander I dissolved the parliament, abolished the constitution, banned all political parties and introduced a personal dictatorship designed to rescue Yugoslavia from the chaotic situation in which it found itself as a result of unresolved national issues, particularly between the Serbs and the Croats. As regards the Slovene part of the kingdom – united into a single administrative entity, the Drava Banovina – the sovereign relied on the liberals, who were supporters of Yugoslav centralism, in establishing his new 'order'. Over the next five years the SLS was banned and the church found itself at the mercy of hostile forces which were trying to expel it from public life and which even intended to destroy it financially. They had begun to put into effect an agrarian reform which, if realised, would deprive the church of its great estates. In the Slovene context this policy led to even more pronounced divisions and caused enormous ideological tension which would not ease until the SLS returned to power following the assassination of King Alexander (organised by Croat nationalists) on 9 October 1934.

In the situation that emerged after 1935, the church obtained practically all power in the Drava Banovina, where, following the teachings of the conservative and authoritative Pope Pius XI, it introduced an emphatically Catholic regime whose targets were not only liberals but communists too. Despite the fact that

they were banned, the latter attained considerable influence among the proletariat and students towards the end of the 1930s. The church attempted to neutralise this influence by means of a capillary network of societies – beginning with Catholic Action – designed to convert the Slovene nation into a solid phalanx opposing 'godless Bolshevism'. This political engagement was particularly strong in the Diocese of Ljubljana, which was led by Monsignor Gregorij Rožman. The latter even entertained the idea of founding a 'Christ the King' movement in the Slovene capital, to become the focus of the world struggle against the Communist International. This orientation was of course strongly conditioned by the Spanish Civil War, which caused a serious split within the Catholic Church in Slovenia. While most of the church sympathised with Franco's Falangists, a group of intellectuals headed by the poet and thinker Edvard Kocbek came out in favour of the Republic. Naturally enough, this current of 'Christian socialists' were banished from the media under the control of the church.

When Germany, Italy, Hungary and Bulgaria attacked Yugoslavia on 6 April 1941, it soon became apparent how rotten the edifice of the state actually was. The Yugoslav army surrendered after just ten days, and King Peter II and his government fled the country. Hitler and Mussolini divided the Drava Banovina into three parts: the Third Reich occupied the northern parts of the country and Mussolini took the south, including Ljubljana. The two dictators left the extreme north-eastern part along the river Mura to the Hungarians. '*Il Duce*' converted his share of the territory into the Province of Ljubljana (*Provincia di Lubiana*) and annexed it to Italy in the belief that he could subdue the Slovene nation with a carrot-and-stick policy. The opposite occurred: on 27 April 1941 the Liberation Front was formed, at the initiative of the communists, the Christian socialists and the left-wing liberals, for the purpose of resisting the occupying forces. When Hitler attacked the Soviet Union on 22 June 1941, the founders of the Liberation Front decided that the time was right to begin armed resistance. A partisan movement was set in motion, connected, via the communists, with the rest of the Yugoslav resistance. Over the course of the next four years it developed into a powerful guerrilla army.

This course of events was not to the liking of conservative circles in the Province of Ljubljana. Bishop Rožman, their ideological leader, appealed to the 1936 papal encyclical *Divini Redemptoris*, which prohibited Catholics from collaborating with communists and resolutely condemned the Liberation Front, despite the fact that many believers had joined it. He even went as far as to support the founding of 'village guards', whose function was to offer resistance to Liberation Front units, and he blessed their collaboration with the Italians. After September 1943, when the Italians were compelled to sign an armistice with the Allies (in the weeks that followed the Province of Ljubljana was occupied by the *Wehrmacht*), Rožman sponsored the establishment of an auxiliary army or home guard whose members (*domobranci*) placed themselves at the service of the Third Reich in the fight against the 'godless communists'. The result of this, in the Diocese of Ljubljana,

was a fratricidal conflict of a kind not seen in the other regions of Slovenia. In Štajerska, which had been under German control since the start of the war, the Bishop of Maribor refused to follow Rožman's model; and in Primorska the great majority of the clergy had been actively supporting the popular resistance to the fascist regime since the 1920s.

When the war ended, a period of reckoning began. Bishop Rožman and the *domobranci* fled to Carinthia hoping to find protection under the British, who had occupied southern Austria. The latter offered sanctuary to the prelate and to the leaders of the quisling units, but the majority of the *domobranci* were sent back to their homeland, where the new authorities (the leaders of the Communist Party) dealt harshly with them. Around 12.000 of them were executed. In the years that followed, a communist regime installed itself in the Republic of Slovenia, part of federal Yugoslavia, and attempted to shape the country according to the Soviet model. The Catholic Church was the only institution that the new authorities were unable to dominate completely, which meant that it soon found itself under attack. It was not until the late 1950s that conditions began to change, in line with the development of Tito's regime, which in 1948 was expelled from the Cominform (the family of the most important European communist parties). Despite this dramatic decision on the part of Stalin, who was dissatisfied with the foreign policy of the Yugoslav leaders, socialist Yugoslavia 'stayed afloat'. The government in Washington soon realised how important it was to have a 'heretical' state, at loggerheads with the Soviet Union, on the Adriatic. The Americans therefore helped it to survive, and this was naturally not without consequences for the subsequent development of Yugoslav communism, which distanced itself from the Soviet model and began seeking its own route into socialism. The result was the introduction of the self-management system, the aim of which, in the view of the leaders of the Communist Party of Yugoslavia, was the construction of a new society based on European socialist traditions. In foreign policy too, Yugoslavia began a new course in the mid-1950s. It formed ties with the former colonial countries of Africa and Asia and, rejecting the division of the world into two opposing blocs, advocated a policy of non-alignment.

In the context of these changes, which opened the Yugoslav federation to the world, there was also an improvement in relations with the Catholic Church. Diplomatic relations between Belgrade and the Vatican were restored in the mid-1960s, and in 1971 President Tito became the first communist head of state to visit Pope Paul VI. In the years that followed, relations between Yugoslavia and the Holy See improved to such an extent – especially with regard to their common commitment in the international field – that the latter even supported Tito's candidacy for the Nobel Peace Prize. Within Yugoslavia, the Catholic Church was able to function undisturbed, although it remained strictly separated from the state, and believers were still discriminated against in public organisations if they failed to keep a low profile. When Yugoslavia was plunged into crisis on Tito's death, a strong dissident movement began to form in Slovenia, calling for the

restoration of democracy and the inclusion of the republic in European integration movements. The church stood to one side during this process, although it was more or less clear that it supported the Slovenian 'spring' that began to flourish in the 1980s. When multi-party politics was reintroduced in 1990, Christians entered the political arena and proceeded to occupy leading positions. In December of the same year, when a referendum was called in which citizens were asked to say whether or not they wanted an independent Slovenia, the church's more or less explicit support played a significant part in persuading the vast majority of voters to choose independence.

Even before this, on 8 July 1990, a reconciliation ceremony had taken place at which the archbishop of Ljubljana, Alojzij Šuštar, and President Milan Kučan shook hands at one of the graves containing the remains of *domobranci* executed after the war. It appeared that in the years following independence (25 June 1991), the church was going to operate a policy of national reconciliation and forgiveness. Instead, it commenced a revanchist campaign the aims of which were not only the restitution of confiscated property but also the ideological rehabilitation of the *domobranci*. And in particular of Bishop Gregorij Rožman. In this sense it achieved an important success last year when, at the church's prompting, the Supreme Court of the Republic of Slovenia reversed, on formal grounds, Bishop Rožman's 1946 conviction *in absentia* on charges of collaborating with the enemy, which carried a lengthy prison sentence. The church has interpreted the overturning of this conviction as a total moral rehabilitation and has even celebrated it with a life-size portrait of Monsignor Rožman: in it the prelate is depicted in all the splendour of his office, in scarlet and ermine robes. It is an eloquently programmatic statement which announces that the Catholic Church in Slovenia today does not only want religious authority but also temporal power.

The Slovenes and the Catholic Church. The Reflections of a Sociologist

Marjan Smrke

The historical events outlined by Jože Pirjevec fit nicely, in sociological terms, into the theory developed three decades ago in relation to secularisation and Western civilisation by the British sociologist David Martin (1978). He observed several religio-cultural patterns as relatively permanent religio-cultural characteristics of Western societies. The patterns are determined above all by the religious structure of the society (mono-confessional, dual or plural) and the character of the majority church or religion, if there is one. If we differentiate between American, British, Lutheran-Scandinavian, mixed (or dual), Orthodox and Latin (Catholic) religio-cultural patters, then there is no doubt that historically Slovenia falls into the last of these categories, typified by the predominance of the Roman Catholic Church (RCC).

In Martin's view a particular feature of the Latin pattern from the times of the historical Enlightenment onwards is a clear social polarisation into pro-clerical and anti-clerical social forces. The polarisation and its intensity (among other things) are significantly determined by the 'character' of the RCC, into which falls the tendency towards integrism – where the church controls all aspects of the life of society – and the (connected) postponement of secularisation at the societal level. In suitable historical circumstances polarisation might intensify into a confrontation of vicious circles, the outcome of which may be a strengthened right-wing pro-church authoritarian regime (a regime of organicist reaction) or a left-wing anti-clerical authoritarian regime. The Spanish Civil War and its outcome on the one hand (pro-church authoritarian Francoism), and political conclusion of the Second World War in Slovenia on the other (anti-clerical authoritarian socialism) would appear to be appropriate illustrations of the two possibilities.

Martin makes the point, and this also seems important for an understanding of Slovene secularism, that the anti-clerical pole can in many ways assume some of the characteristics of the opposite pole. Particularly if anti-clericalism is tied to a single ideology, e.g. Marxism, it can take on the character of a secular religion. The conflict model of social secularisation, which is a typical possibility of 'Catholic' societies, thus potentially leads to such a secularisation (at the societal level) which, as Kerševan underlines, is ambivalent[1]. When anti-clericals busy themselves with the abolishing of the various historical privileges of the RCC, they are affirming their own ideological monopoly (integrism), justified according to their own range

[1] M. Kerševan, 'Ambivalence of Religious Revitalization in Post-socialist Societies', in: *Social Compass*, 40;1, 1993, pp. 123-133.

of sanctified values. In this regard it is not surprising that a number of Slovene and Yugoslav authors have been able to draw certain convincing parallels between pre-war 'black' clericalism and post-war 'red' clericalism: both 'churches' or 'parties' justified the fight against 'heretics' and censorship by appealing to something sacred.[2]

From Latin to post-Latin religio-cultural pattern

Like other patterns, the Latin pattern also has its own evolution. Important changes took place in the 1960s and 1970s. These were such (1) changes at the level of religious structure and (2) changes in the character of the RCC or of the mainstays of anti-clerical ideologies that in the majority of European countries of the basic Latin pattern we identify the formation of more or less clear conditions of a post-Latin pattern. The post-Latin pattern no longer gives rise to (pro-) clerical/anti-clerical tensions (antagonisms) of the intensity that was characteristic of the (basic) Latin pattern.[3]

The key structural changes which in our opinion define the post-Latin pattern are: (1) a fall in the numerical predominance of formal members of the RCC – either as a result of secularisation or as a result of conversions or the appearance of other religions – and (2) the internal diversification of nominal Catholics; in the (post-)Vatican II period, the latter are divided increasingly recognisably into a smaller number of 'orthodox' believers and an increasing number of more or less selective or autonomous believers.

They key ideological changes are tied to the Second Vatican Council and – in the case of socialist countries of the (post-)Latin pattern – to changes in the attitudes of communist parties to religion or the church. If, with Vatican II, the RCC finally implicitly recognised the separation of state and church, or in other words the autonomous nature of 'temporal realities', this does not only mean momentous changes in the mentality of this institution, it also means an important contribution to the 'détente' in relations between the proponents of religious and secular ideologies, since it was precisely the RCC's persistence with integrism that led the latter into anti-clericalism. It is difficult to imagine the meeting between Pope Paul VI and President Tito (1 March 1971) taking place if corresponding ideological changes had not previously occurred on both sides – in relation to socialist regimes and Marxism, and in relation to religion.

The post-Latin nature of conditions in Slovenia at the structural level can be illustrated by numerous statistics. If in 1931 97% of Slovenes still considered themselves Catholics, and 82,8% defined themselves as Catholics in the 1953

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[2] S. Hribar, '(Proti)totalitarni sindrom in demokracija v Sloveniji', in: M. Murko Drčar (ed.), *Pet minut demokracije; podoba Slovenije po letu 2004*, Ljubljana, 2008, pp. 27-36.

[3] D. Martin, *Tongues of Fire. The Explosion of Protestantism in Latin America*, Oxford, 1990.

census, by the transition period majority Catholicism is already becoming questionable at this level. While the first transition-period census in 1991 still defined 71,6% as Catholics, that figure had fallen to 57,8% by the 2002 census. In urban settlements the share of Catholics has already fallen to below half (46,9%). The public opinion survey *Slovensko javno mnenje*, which has a tradition dating back forty years and has included religious variables since it was founded in 1968, allows us to make a reliable estimate of the situation as regards the deeper dimensions of beliefs. Although we can identify numerous fluctuations in the movements of statistics, and an entire period of desecularisation (at the consciousness level) from 1978 to the early 1990s, it cannot be denied that today only a minority of self-professed Catholics are devout in the manner prescribed by their church. Belief in a range of fundamental Christian dogmas (a personal God, the Resurrection, Hell, Heaven, life after death) is only professed by around a third of nominal Catholics in Slovenia. The majority of these also express disagreement with a range of behavioural norms imposed on them by the church (the ban on contraception, pre-marital sex, abortion, etc.). According to Toš[4], such 'orthodox' believers account for just 18,7% of Slovenes, while Flere claims that the faith of Slovene Catholics is even characterised by 'emptiness',[5] as a heightened version of the wider European phenomenon of 'belonging, not believing'.

Parallel with the fall in the share of self-professed Catholics and the relative growth in the selectiveness or autonomous nature of their faith, there has been a growth in the number of new religious communities in recent decades. Before the Second World War these could be counted on the fingers of one hand. In the 1970s there were nine religious communities in Slovenia, while at the end of the 1980s the number was around 15. Today, the government's Office for Religious Communities lists 43 different religious communities.[6] Although as a rule they are small, their very existence is making an important contribution to the growing awareness of religion as a choice. There are also a few dozen groups which are not registered as 'religious communities' but which by sociological criteria are at least partially religious phenomena.[7] Various New Age phenomena have been embraced by a considerable number of the nominally Catholic population, including

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4 N. Toš, '(Ne)religioznost Slovencev v primerjavi z drugimi srednje- in vzhodnoevropskimi narodi', in: N. Toš (ed.), *Podobe o cerkvi in religiji na Slovenskem v 90-ih*, Ljubljana, 1999, pp. 11-80.

5 S. Flere and R. Klanjšek, 'Ali je votlost značilnost vernosti na Slovenskem?' in: *Družboslovne razprave*, 23;56, 2007, pp. 7-20. Flere states that in comparison to other environments around the world, a sizeable number of Slovene Catholics are not prepared to sacrifice very much for their faith.

6 See the website of the government's Office for Religious Communities: http://www.uvs.gov.si/en/religious_communities/.

7 A. črnič and G. Lesjak, 'Religious Freedom and Control in Independent Slovenia' in: *Sociology of Religion*, 64;3, 2003, pp. 349-366.

various opinion leaders and other influential figures.[8] Unlike the centuries-old tradition of Catholic mono-confessionalism, which was only interrupted by the cultural fruitful but violently suppressed period of the (Lutheran) Reformation,[9] Slovenes today live in conditions which are religiously relatively plural, where, in our opinion, the internal heterogeneity of the Catholics themselves is particularly important from the sociological point of view. Harangues along the lines of 'one nation – one religion – one church', which are still (or again) to be heard from the mouths of certain RCC speakers, are in this light not only unconvincing but a sign of ignorance of the age we live in.

At the (ideological) substantive level, numerous changes could be observed in the period of transition to conditions of a post-Latin pattern in the RCC in Slovenia. Although signs of stagnation soon appeared, the spirit of the Second Vatican Council had its effects. We can illustrate this – and we have special grounds for doing so – with the thought expressed in 1979 at the Faculty of Theology in Ljubljana by the theologian France Rode in connection with the church property nationalised (secularised) in 1945. 'Before the war our church was too rich. The parish priest was often also a man of note in the economic sense, monasteries were generally too rich, and bishops spent their holidays in castles. The church had property which was not necessary for the fulfilment of its mission; property deriving from the feudal era. It should have renounced its possessions itself and given them to the poor. But how many times has this happened in the history of the church? Not very often. And so God intervenes in order to unburden and purify His Church. Those who carried out this operation were certainly not thinking about the purification of the church, but even so they were a tool in God's hands and unwittingly carried out His divine plan. And so we became poorer and perhaps less proud.'

Contemporary changes on the secular side were evident in the abandonment of the dogmatic and restrictive attitude of the Communist Party or the League of Communists towards religion. The early 1980s saw the abandonment of the view that a member of the League of Communists must not be religious, and subsequently the return of religious holidays (Christmas) to public life.[10]

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[8] Here we need only mention Dr Janez Drnovšek, the former president of Slovenia who died earlier this year. In the last years of his life President Drnovšek wrote a number of best-selling books that were New Age in spirit. See: A. črnič, 'Predsednik za novo dobo: religiološka analiza Drnovškovega obrata', in: *Družboslovne razprave*, 23;56, 2007, pp. 21-37.

[9] This year we are celebrating the fifth centenary of the birth of Primož Trubar, the central figure of the Reformation in Slovenia. Interestingly, in the *SJM 95/2* opinion survey Slovenes rated the Protestant Trubar as the most important Slovene historical figure.

[10] The change in the attitude towards religious holidays, particular Christmas, was debated by Slovenia's Communists in 1985. In 1986 – provoking a great variety of reactions in the Yugoslav context – the president of the Socialist League of Working People (SZDL) gave a public Christmas greeting and the archbishop of Ljubljana gave a Christmas radio broadcast.

The fall of socialism and the revival of re-Catholicising tendencies

We do consider, however, that in the post-socialist or transition countries, of which Slovenia is one, in addition to – or within – the post-Latin phase we can also identify a further phase in the evolution of the Latin pattern, which we shall call the transition/re-Catholicising pattern. This is connected with the church's understanding of the fall of the socialist regime. The fall of the regime, which was secularist – and according to our concept in many ways a kind of historical counterweight to the centuries-old Catholicist/clericalist past – was understood by the RCC in Slovenia as a great historical victory, and as an opportunity to return to the old times. After 1991 a rise in a pre-Council spirit could be noted, in the sense of a revival of Catholic integrism, or in the sense of a revival of those attitudes of the RCC towards the world which the pre-war generations had known. The 'figures' of the triumphant, militant and immutable church (*ecclesiae triumphans*, *ecclesiae militans*, *ecclesiale semper eadem*) appeared, as the Croatian sociologist Srđan Vrcan observed.[11] We are not claiming here that this is a clear and generalised tendency, but rather that there has been a perceptible increase in tendencies of this kind. Particularly during the archiepiscopate of Dr. Rode (1997–2004), a number of demands were expressed under the banner of re-evangelisation which could be understood as a tendency towards the re-Catholicisation of society or its desecularisation at the societal level. Culture, education, science, economy need to be 'imbued with the gospel', it was said and written. The view of the past changed radically in many ways. Let us consider: that which in the 1970s was interpreted as God's will (as can be seen from the above quotation about the secularisation of the church's estates), now became an expression of intolerable communist violence the consequences of which needed to be eliminated without delay. The ownership of 32,000 hectares of land – among other things a considerable part of today's Triglav National Park – is no longer a sign of pride which the church should have rid itself of long ago, but something sacred which must be returned as soon as possible.

According to the conception of some of the ideologues of the RCC in Slovenia, the fall of communism did not only mean a victory over a secularist or atheist ideology, but also a victory over the victors of the Second World War in Slovenia. In this sense, some historians claim, there have been strongly expressed calls for a revision of the history of the period of the war[12], when part of the RCC evidently compromised itself by collaborating with the Italian and German

[11] S. Vrcan, *Vjera u vrtlozima tranzicije*, Split, 2001.

[12] J. Pirjevec and B. Repe, 'O reviziji zgodovine', in: M. Murko Drčar (ed.), *Pet minut demokracije; podoba Slovenije po letu 2004*, Ljubljana, 2008, pp. 37-54.

occupying forces.[13] According to the interpretation of the most active church speakers/historians, the essence of the partisan movement (and Tito, its leader), which placed Yugoslavia and thus Slovenia among the victors of the Second World War, was a criminal act, since it ended in the mass execution of its opponents after the war.[14] It is evident that the RCC is unable to find words of praise even for those members of the resistance movement who were Catholics – and there was no small number of them.[15] This is of course no surprise, since even the image of Jesus that the church wishes to establish among the Slovenes is that of a 'virginal, poor, docile man'.[16]

It should be emphasised that the expression of such views immediately met with a negative response from public opinion. Religious statistics, in which we note the greatest change in the 1990s, show a fall in trust in the church and the clergy,[17] an expression of dissatisfaction with the church's excessive role in society, and a rejection of church interference in the political decisions of citizens.

When the RCC made its mental/ideological partial return to old times, one of the key (substantive) factors of 'Latin' polarisation was reactivated in the structural conditions of the post-Latin pattern. In past years, this has marked the transitional re-ordering of relations between the state and religion.

From the separation of state and church to state and church as bedfellows?

The re-ordering of relations between the state and religion/churches at the time of Slovenia's transition can be divided into two periods: (1) the period from 1992 to 2004, which is defined above all by the government of the Liberal Democracy of Slovenia (LDS) or its coalitions, and (2) the period beginning in 2004 when

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13 One of the most compromising acts of the RCC in the so-called Province of Ljubljana was the oath of the *domobranci* – quisling military groups supported by and partly organised by the Church. It took place on Hitler's birthday, on 30 April 1944, at Ljubljana's central stadium in the presence of the German army of occupation. The oath read as follows: 'I swear by Almighty God to be loyal, brave and obedient to my superiors, and that alongside the German armed forces under the command of all-powerful Germany, SS troops and the police, in the joint struggle against bandits and Communism and its allies, I shall conscientiously do my duty for my Slovene homeland as part of a free Europe. For this struggle I am prepared to sacrifice my life. So help me God!'

14 In the summer of 1945, Yugoslav military forces in Slovenia executed without trial tens of thousands of members of various military formations, including around 11,000 Slovene *domobranci*. Here again there were parallels with the Spanish Civil War, following which around 50,000 opponents of Francoism were executed without trial.

15 Here, too, an interesting comparison with Spain can be highlighted. In the same way that, some years ago, the RCC beatified only those who were on the anti-Republican side at the time of the civil war, so the local church in Slovenia is looking for candidates for beatification on the anti-partisan side alone.

16 *Izberi življenje*, 2002, p. 159.

17 Between 1991 and 1998 the share of Slovenes who have total or considerable trust in the Church and the clergy fell from 36.9% to 11.2 %.

the LDS lost the elections to the Slovenian Democratic Party (SDS), which formed a right-wing (or centre-right) coalition. We should emphasise here that the relationship between the state and the RCC was in the foreground throughout this re-ordering, and that other religious actors were in a secondary role.

The LDS advocated relatively consistently the separation of the state and religious communities, which is a provision of Article 7 of the Constitution of the Republic of Slovenia.[18] During its government it did away with various restrictions on the activity of churches introduced by the socialist regime, while on the other hand it did not permit, in general, regulation which would, in its opinion, undermine the principle of the separation of state and religion. Politically it was able to rely above all on the United List of Social Democrats (ZLSD), today known as the Social Democrats (SD) and – on certain issues – the Slovenian National Party (SNS). It could also rely on public opinion, which showed resistance to the re-Catholicising tendencies. The LDS did not follow here the model of partial separation or semi-separation applied in a sizeable number of European states which are still not entirely deconfessionalised, but rather the models of separation used in France and the USA. This also means that Slovenia did not follow the route of most post-socialist countries, which in the name of eliminating communist heritage introduced hasty reforms that, from the point of view of the usual understanding of the separation of church and religion, are controversial or unacceptable, since in many ways they restored conditions of a (semi-)state church. The expectations and demands of the RCC were much greater. It appealed to the examples of not yet fully deconfessionalised states such as Germany and Austria. It is probable that the constant complaints and demands of some of the more pro-church coalition partners caused the various governments led by the LDS to adopt a number of superfluous[19] or compromise decisions.[20] On the other hand some important decisions were not taken.[21]

One of the most controversial areas was (and is) education. While the RCC wished to enter the public school system with confessional religious instruction, the LDS – or rather the governing coalition – succeeded in passing education

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18 See: http://www.dz-rs.si/?id=150&docid=28&showdoc=1.

19 Here we can include the 'Vatican Treaty', an agreement between the Republic of Slovenia and the Holy See which has caused considerable uneasiness. The Constitutional Court has reviewed its constitutionality and in 2003 decided that it is not contrary to the constitution, in so far as it is understood that the Catholic Church will respect the laws of the Republic of Slovenia in its activities.

20 The sociologist Srečo Dragoš even believes that it is possible to count the naïveté of the LDS, expressed in certain concessions to the RCC, as one of the key factors for the ever smaller actual separation of State and Church after since 2004. S. Dragoš, 'Religijska slika Slovenije – kdo je kriv?', in: M. Murko Drčar (ed.), *Pet minut demokracije; podoba Slovenije po letu 2004*, Ljubljana: Liberalna akademija, 2008, pp. 279-300.

21 We believe that one of the main omissions is the failure to adopt a new Religious Communities Act. Although it would seem to be sensible not to rush such an Act, since it involves issues over which it is necessary to take time, the delay has without a doubt been too long.

legislation which defends the autonomy and ideological neutrality of the public school system: Article 72 of the relevant Act from 1996 prohibits confessional religious instruction in public schools.[22] Such instruction still takes places where it has taken place since 1953 (after being excluded from the public school system in 1952) – in presbyteries. Religion is also a compulsory subject in the four church secondary schools founded by the RCC in the transition period, and will also be compulsory in the first Catholic primary school, which will open its doors in the 2008/09 academic year.[23] Thus, in accordance with education legislation, the instruction on religions and ethics that is currently imparted in a small number of public primary schools is non-confessional. Confessional instruction thus remains an unfulfilled ambition of the RCC.[24] And a source of anger: 'We shall destroy this school by democratic means as soon as this is possible!' threatened Archbishop Rode.[25] Even in more recent political circumstances, however, this does not appear to be a realistic goal. First and foremost because a Constitutional Court decision in 2002 confirmed the constitutionality of the ban on confession-based activity in public schools, and then because the greater part of the public is averse to religious instruction.[26]

The second controversial area is the funding of the church, or the property of the RCC. In November 1991 (before the LDS came to power), the Denationalisation Act was rapidly adopted. This Act regulated the restitution of property nationalised during the socialist period. Property of feudal origin was excluded from denationalisation. Was this supposed to mean that the RCC could not be entitled to 32,000 hectares of forest and land? After numerous discussions, most of which centred on the suspicious manner in which the RCC came by this property immediately before the Second World War, and following a moratorium of several years on the restitution of property, the Constitutional Court decided, through the Act amending the Denationalisation Act (1998), that the church was entitled, as an 'institution serving the public good', to the disputed estates, even if these were of feudal origin. When delays then occurred in the restitution of

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22 The article may also be consulted at: http://kotor-network.info/research/joint/2005/RelPlurEdu.pdf. More on this in: M. Smrke and T. Rakar, 'Religious education in Slovenia', in: Z. Kuburic and Ch. Moe (eds.), *Religion and Pluralism in Education. Comparative Approaches in the Western Balkans*, Novi Sad, 2006, pp. 9-38.

23 Three of the church secondary schools - which were awarded concessions prior to the adopition of the new law (Organization and financing of education act) in 1996 - are fully financed by the state, the forth secondary school receive less public funding (85 %). The first church primary school will be fully (100 %) financed by the state for first three years.

24 *Izberi življenje*, 2002, pp. 149–150.

25 F. Rode, *Cerkev na pragu tretjega tisočletja.* Lecture in the bishopric hal in Maribor, March 16, 2000.

26 In public opinion surveys the notion of 'religious education in schools' has proved to be very unpopular. In 2003 it was rated 'positive' or 'very positive' by just 20.4 % of Slovenes. S. Kurdija, 'Vrednotne delitve v luči političnih izbir', in: B. Malnar and I. Bernik (eds.), *S Slovenkami in Slovenci na štiri oči*, Ljubljana, Fakulteta za družbene vede, IDV – CJMMK, 2004, pp. 111-130, 124.

property, the church, like the most conscientious capitalist, claimed compensation for lost income. In the meantime it has succeeded in establishing itself as an important economic player. In banking, the timber industry, catering and the media it is strengthening its presence and doing business with everyone – even with five pornographic television channels. We could cite numerous opinions of Slovenes who have been greatly disappointed by the RCC during the transition period.[27] They consider it an institution whose highest god is mammon.

The second period is defined by the government of the Slovenian Democratic Party (SDS). As regards the relations between the state and religion, the period is marked by the adoption of a new law (2007) called the Religious Freedom Act.[28] Originally two new Bills were formulated. The first was drawn up by a group led by Aleš Gulič, an MP of the LDS. The second was elaborated by the new Minister of Justice, a member of the (Catholic) Knights of Malta, Dr Lovro Šturm and the director of the government's Office for Religious Communities, Dr Drago čepar, an active Catholic.[29] The first Bill to be submitted, 'Gulič's Bill', defined the strict separation of the state and religion. Religious communities would fund themselves and compete on an open religious market free from state intervention. Although the Bill was in our opinion very well written and modern, the parliamentary internal affairs committee (on which government parties have a majority) refused it as 'not worthy of parliamentary debate'. As a result, only the second, government-sponsored Bill was debated, and was then adopted with a parliamentary majority of a single vote (46/90). We should emphasise here that the critical opinions of the opposition and experts were utterly ignored.

The new Act begins by expressing the principle of the neutrality of the state in religious matters (Article 4), but in the same breath, [the state] defines religious communities as organisations serving the public good (Article 5). From this derive numerous forms of state funding of religious activities, in the first place in 'closed' institutions (in prisons, police, army, hospitals). This is supposed to be in accordance with the 'friendly separation' of the state and religion. Owing

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[27] For example the statement of the Slovene philosopher Alenka Goljevšček, who at the end of the previous regime was, along with her husband, initially enthusiastic about the RCC, and then rapidly distanced herself from it: 'Then after a painful period of searching we turned to Christianity and the Catholic Church. Because we didn't know any better – we are both from liberal families – we believed its words about love, forgiveness, humility, and so on. With enthusiasm and great inner joy we surrendered ourselves to the message of the Gospels. But after 1990 the Catholic Church in Slovenia pushed them away, changed the record and turned into a greedy dictator, and we ran away from it as fast as our legs would carry us – would that we had never entered such a Church!'. A. Goljevšček, 'Vse življenje za eno ljubezen. Intervju' in: *Ona*, 10;20, 2008, pp. 10-14, 12.

[28] The Act was adopted on 2 February 2007 and entered into force on 3 March 2007. See: http://www.uradni-list.si/1/objava.jsp?urlid=200714&stevilka=599.

[29] It seems important to emphasise this in order to understand what follows. The pro-Church activity and bias of Dr čepar is also evident in the fact that he was recently personally involved in bringing prosecutions against an artistic duo who were alleged to have offended the religious sentiments of Catholics.

to the historical differences in size between churches, the result of the Catholicist centuries, these benefits mainly affect the RCC.[30] It is mainly Catholic priests for whom the state pays social and health insurance[31] and who now appear in the role of state functionaries in numerous situations.[32] The state also greatly finances the renovation of church's real-estate. In 2007 the Ministry of Culture gave 69,5 % of its resources, intented for 'real-estate of cultural heritage', to the Roman Catholic Church. Article 29 sets out additional possibilities of state funding of religious communities, without defining special conditions or limitations. As before, religious communities are exempted from the payment of taxes.

The conditions defined by the new Act for the registration of religious communities appear significant and indicative. They are more restrictive than the criteria set out by Gulič's rejected liberal proposal, and even than the criteria set out by the old 'socialist' law (1976). A religious community which wishes to register itself must have been operating in Slovenia for at least ten years and must have at least 100 members. It has been established that under these criteria more than half of the currently registered religious communities would not have met these conditions at the time they were registered. We might also mention, with a touch of irony, that not even Jesus Christ would have been able to register under these criteria, if we take into the fact that he was active for a total of three years and had just 12 disciples.

In short, the impression is that the adopted Act, which puts into effect a regulated religious market in which the former monopolist (the RCC) has managed to obtain/return certain privileges and benefits.[33] In our opinion the Act would not have passed the basic tests of conformity with the principle of separation of church and state that are applied in the USA, the country with the longest tradition of separation. At the time of writing, we are however still waiting for the decision of the Constitutional Court on the conformity of the Act with the Constitution.

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30 The Act provides that various financial benefits (social and health insurance) only to a religious community or church in which one priest serves at least 1000 believers.

31 The state paid a portion of social insurance for priests even during the socialist period, and then while the LDS was in power. Now this share is increasing, and no ceiling has been set for it.

32 It is evident that the RCC increasingly sees the bodies of law and order – the police and the army – as environments in which to carry on its proselytising activity. It currently distributes prayer books and baptises the children of functionaries.

33 Here we must observe that the new order has been put into effect in part as the result of the votes of some converts – some former Communists, now members of the ruling SDS, who in the sense of social mimicry have in recent times begun to publicly display their Catholicism. See M. Smrke, *Družbena mimikrija*, Ljubljana: Fakulteta za družbene vede, 2007.

Conclusion

When considering Slovenia's past and present we can identify three main periods in relations between the state and religion: (1) A centuries-long Catholicist period during which – in various national political contexts – the RCC was clearly privileged. Secularisation did not appear at the societal level because the church was an advocate of integrism. Religious difference or secularity could only be expressed within very strictly defined limits. These limits were at their loosest in the context of pre-war Yugoslavia, which was a religiously heterogeneous state. This period was followed by (2) a 45-year period of secularist socialism/communism, which came into effect when, in the conditions of the Second World War, the traditional clerical/anti-clerical polarisation intensified into civil conflict. Societal secularisation overstepped the borders of the usual separation of the state and religion, since churches were pushed to the margins of society, and a secularist ideology with some secular-religious or civil-religious characteristics was favoured and privileged. In this context a number of secularisation processes took place at the consciousness level. (3) The fall of the single-party regime or the beginning of the transition meant an opportunity for a regulation of relations between the state and churches that would give privileges to no-one and discriminate against no-one. In the first period Slovenia successfully did away with the restrictions placed on religions by the previous regime – without succumbing to the re-Catholicising or socially desecularising tendencies that were appearing. Since 2004, however, and in particular with the Act adopted in 2007, the equality of religions, the equality of religious and non-religious citizens, and the separation of the state and religion have, in our opinion, been open to question, since the RCC is rapidly making its way into state institutions.[34]

[34] Suggestion for further reading: D. Martin, *A General Theory of Secularization,* New York, Harper & Row, 1978.

Greece

State and Church in Greece. A Greek Paradox

Stratis Katakos

Introduction

We maintain and will try to substantiate, that in Greece a fully fledged secular state does not exist. The official Orthodox Church drastically influences through a set of formal and informal institutions, most sectors of both social and political life.[1] The diachronic impact of the church on the Greek nation's history has dictated political choices that have led Greece to the present state of affairs. These views bear the characteristics of conservatism, introversion, fear of novelty opposition to change, racist phenomena, oppression of minorities and discrimination against groups and individuals.[2] The impact of the church – although also strong at the level of institutions, education and policy – is mainly expressed at the micro-social level (family, small social groups), thus shaping the behavior of persons and ultimately of society as a whole. The present status in the relations between state and church in Greece has a particular history behind it that explains to a certain degree the peculiarity and anachronism of the current state of affairs in this field.

Although human rights, a state of law, the acceptance of differences and multiculturalism are at the centre of attention worldwide and especially in Europe, Greece displays a lack of interest and resistance to change in these fields. The problems that are created are often of a serious character and constitute an obstacle in the opening of Greek society to the world.[3] The liberal voices are actually a minority and they cannot as yet influence the way the state is run and society thinks, as a whole.

During the last 15 years in particular, the phenomenon of immigration and the small – but important – change of religious and ethnic composition of the population in a society that up till recently was rather homogeneous, created problems that could become explosive. The close relation of the state with the official church makes the acceptance and incorporation of anything that differs very difficult indeed.

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1 Report on the proposed law on the separation of church and state, submitted by the "Union for the rights of person and citizen" to the Greek Parliament in Athens 2005.

2 All public opinion research in Greece over the past decade shows an increasing tendency towards conservatism and xenophobia. In many cases racism is displayed both by the authorities and the citizens.

3 Opinions, even minority ones to the effect that the secular West is not the natural space for Greece, do exist and have a disproportionately large effect on Greek society.

Historical background

The basic current 'Greek paradox' is made up of thousands of small paradoxes and contradictions that have developed over the centuries, in this troubled and complex region of the Balkans and the Eastern Mediterranean.[4] Any effort to record the historical path that the relations between church and state have taken over the centuries can only be schematic and simplified, since the background that lies behind developments has its own meaning in its own historical context.

The story is in effect much more about ecclesiastical policy as such where backstage manoeuvers and intrigue constitute its basic ingredients. Terms like 'Byzantinism' and 'Byzantine intrigue' describe this behind-the-scenes character of ecclesiastical policy during its most dynamic period, the period of Byzantium. The more important dates and the relevant facts related to the relations between the church and the modern Greek state as well as with the administrative structures in the wider geographic area that preceded its creation are the following:

- 40 AD. Foundation, by the apostle Pavlos (Paul), of the first Christian church on European territory in the old city of Philippoi in northern Greece.
- 320 AD. Separation of the Roman Empire into a Western branch with Rome as its capital and an Eastern branch (Byzantium) with as its capital Constantinople (Konstantinoupolis in Greek and now Istanbul in Turkish). Continuous frictions over their respective spheres of influence followed the administrative division of church into a western and an eastern part.
- 400-1400 AD. Growth and influence of the Eastern Church. Close relations were forged with the emperor, holder of the secular power of the Eastern Roman Empire, to give it its proper name. The term Byzantium was coined much later after the fall of the Empire. Persecutions of all kinds against the old religions and destruction of ancient temples and cults by the Christians in Delphi and other places became frequent.
- 1054. The Schism of churches that happened that year determined the independence and separate course of the Eastern Orthodox Church. Serious dogmatic and liturgical differences with the Western Church and the Pope's power and prerogatives emerged as the Orthodox Church started developing in its own way.[5]
- 1450-1800. Fall of the Byzantine Empire to the Ottomans and creation of the Ottoman Empire. The Patriarch is appointed as the religious and political leader of the enslaved Greeks while the role of the church is radically upgraded. The attitude of the Eastern, Orthodox Church towards the Sultan was ambiguous to start with.

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[4] The main paradox is that the Eastern Orthodox Church developed during the Byzantine era times on a multinational base and in opposition to the ancient Greek philosophy and culture but in our times, in Modern Greece, it forged the strongest possible links with the Greek nation and ancient Greek culture.

[5] Just before the fall of Constantinople to the Turks and despite the fact that help was expected from the West, Notaras one of the Byzantine elite said that he preferred to see in "Polis" Turkish "fessi" (hat) than the 'Catholic tiara'.

As it happened the church ended up by opting in favor of the subjugation to the Sultan and collaboration with the Muslim regime while playing the role of the governor of the conquered Greeks. The church did not opt for conflict with the Turks and neither with the collaboration with the western Catholic Church
- 1821. Year of the Greek Revolution that ended in the creation of a Greek state. The role of the church was once again a complex one. During the years of Ottoman rule the church saved the Greek language in which Christianity's basic texts are written, as well as part of Greece's ancient traditions. It has also helped preserve the intellectual autonomy of the conquered Greeks. At the same time the church played an important part in the multicultural Ottoman Empire. When the Revolution was launched the Patriarchate condemned it and excommunicated its leaders while the lower clergy participated in it.
- 19th and 20th century. The Greek church becomes autonomous from the Patriarchate in Istanbul. As the need arose for the new Greek state, born as one of the nation-states created in Europe, to articulate its own myth the concept of Greek Orthodox culture, the racial continuity of the ancient and modern Greeks and the synthesis of elements of ancient Greek culture and Christianity were given pride of place. Constitutive elements of the policy followed by the Greek church today are its anti-Western and anti-Enlightenment attitudes.

The turning-point in modern Greek history, which entrenched the Greek church in its conservative attitude, has been the dictatorship of the colonels (1968-1974) and developments during 1990s. During the dictatorship the fabricated theory of the supremacy of Greek Orthodox culture reaches its maximum. During the 1990s, in a new local and international environment, the church under the guidance of an extremist hierarch, claims to play an active political role and promotes aggressively its conservative opinions on subjects of religious freedom and diversity.[6]

Present situation

The historical path that has already been described has led to two main results. On the one hand the people's mentality is influenced – directly and indirectly – to a significant degree by the church towards a conservative direction. On the other hand, the Constitution and the laws of Greece impose a close link between the state and the Orthodox Church and do not allow the complete segregation of powers and competences.

The Greek Constitution in particular, contains provisions and restrictions, in favor of the church that are unique in Europe.[7] The most basic of these are:

[6] During the largest part of the 20th century, the church kept a low profile and did not involve itself in politics. Very recently, after the death of archbishop Christodoulos who embodied the aggressive Orthodox stance on every issue the policy of promoting a low profile church seems to be returning.

[7] www.anatheorisi.org.

the definition of Orthodoxy as the 'prevailing religion' in the realm; the multiple support of the Orthodox Church by the state (clergymen's salaries paid directly by the state, exemption from taxation etc.); the major role of the Orthodox Church in the educational system; the obstacles that are erected against other religions; the definition of the aim of education as the 'obligation of the state to shape the national and religious conscience of citizens'.

It is characteristic that in the last three revisions of the Constitution (1985, 2000 and 2007), the questions of state-church relations were not discussed in any way. There is thus a grid of laws that strengthens the links between state and church whose main points are the following:

* Administrative and legal activity competences. In the religious marriage and the giving of the baby's name (christening)[8], the church is responsible for the administrative processes and informs the government of the services it provided to the citizens in this field.
* The clergymen are civil servants in every sense of the term.
* There are tax exemptions for the church on its possessions of assets, and buildings and special tax exemptions when ecclesiastical bodies are founded.
* An active role is recognized to the church in the realm of education. There is an obligatory course in the form of catechism in the fields of primary and secondary education.[9]
* It is obligatory for witnesses to take a religious oath in court, as well as for Members of Parliament, ministers and even for the President of the Republic.
* There is no provision for non-religious funerals and no facilities for cremation as the Orthodox Church is against this practice. A decisive role is recognized to the Orthodox Church on issues relating to the recognition and rules of operation of other religions or sects as well as the erections of temples for their faithful to congregate.
* There are strict laws prohibiting the free expression and propagation of different religious doctrines (total prohibition of proselytism).

Beyond the above explicit provisions, a number of informal rules exist that promote the official religion and erect barriers to other doctrines (even Christian ones).[10]

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[8] The case of marriage is characteristic of the indirect influence of the church both on the macro and the micro level. At first, the church succeeded (by putting pressure on the state) to avert the civil marriage becoming obligatory. Later, the church succeeded in creating a negative climate for the civil marriage that resulted in only a few young couples choosing it.

[9] It is characteristic that the Ministry of Education is called 'Ministry of National Education and Religious Affairs'.

[10] http://www.hlhr.gr/index-en.htm.

In the past few years Greece experienced a conflict about whether a person's religion ought to be recorded on his/her identity card. In 2000, when the socialist, modernizing government tried to adapt the Greek legislation to the European Community's precepts on the issue of identity cards, the church reacted dynamically, organized rallies, and collected signatures demanding that a person's religion be recorded on his/her identity card. The church failed to get its way, so every new identity card issued since does not require the holder's religion to be mentioned on it.

Another current – though clearly political – subject in which the church participates actively is the question of the name by means of which the neighboring state with Skopje as its capital is to be recognized by Greece. The state insists on being called Macedonia. During the last 15 years the church plays a leading part in close cooperation with Greece's more nationalistic elements, to stop this happening.

The liberal viewpoint

Liberal views are nowadays a minority within Greek society but they have a rich tradition in Greek history. Already before the Greek revolution, the liberal ideas of the Enlightenment played a decisive role[11] in the way it was prepared and carried out. Two liberal thinkers amongst the revolutionaries, Rigas Feraios and Adamantios Korais, were influential at the time.

In the 20th century, Eleftherios Venizelos, one of the main Greek statesmen, held extremely controversial liberal opinions, particularly in the field of state and church relations. In the second half of the 20th century, the liberal opinions got trapped between a political left wing – that may have lost a civil war, but not its ideological dynamism – and a conservative right wing.[12] Left and right never succeeded in completely abandoning their ties with the official church. Indeed in the past few years there exists an unholy (so to speak) alliance – another Greek paradox – between the official church, fractions of the right and fractions of the left having as a common xenophobic base their opposition to globalization and the influence of the West.[13]

In the past few years, liberal opinions were better articulated in Greece. This happened for two reasons. First, Greece is now an active member of the European Union and is influenced by the working of its institutions and to some degree by its ideas. Secondly, the church has expressed during the last ten years some extremely conservative opinions that set the democratic Greek citizens thinking.

The main sources of liberal thinking on the relations of church and state are to be found within groups of citizens who deal actively with human rights and

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11 The liberal ideas of Enlightenment and the principles of the French Revolution helped launch the Greek Revolution.

12 Mark Dragoumis, 'Greek Liberalism', in: *The road to liberalism*, Athens, 1992.

13 Certain liberals name this disparate alliance 'red-black' front.

within the traditional liberal political space, which is, however, under-represented in Greece. More specifically, a former liberal political party named 'The Bulls' had included in its program the demand for the separation of church and state. Also, some liberal politicians[14] have frequently argued both in public and in Parliament in favor of such a separation. Finally, more recently a new liberal party, the Liberal Alliance, formulated, in its detailed political program, a proposal for the complete secularization of the Greek state and the total respect of religious freedoms. There has also been a call to separate church and state by a minor group with liberal views belonging to the left and also by the modernizing section of the Socialist Party. This party tried during their governance (1996-2004) und pressure from the European Union to loosen the ties between church and state. Last but not least the case for secularizing the state has been made by a number of personalities and intellectuals.

The fullest formulation of a liberal proposal to this end is to be found in the program of the Liberal Alliance as well as in the bill that this party tabled as part of the 'Union for Human Rights' together with liberal Members of Parliament and a number of deputies of the left, in 2005.

The central tenets of these liberal proposals are the following: Building of a modern democratic society based on the respect of religious freedoms and on the creation of a church that will be administratively and institutionally autonomous completely free of any interventions by the state, capable to face successfully the challenges of the future. The Liberal Alliance proposes the complete emancipation of the church from any interference by the state and its transformation into a truly independent organization. The religious bodies each with its own doctrine and method of worship should henceforth be self-governing so that they may focus unhindered on their intellectual and social role, free of the stifling embrace by the state and the role confusion that this creates. The Liberal Alliance, recognizing the individuals' right to freedom of expression, proposes the complete segregation of state and religious bodies argues that the state laws must have exclusively secular aims, be totally neutral toward the various religions, and never lead to an entanglement between state and church. The state has the duty not just to respect but also to protect the freedom of citizens to express their religious convictions both in public and in private. The Liberal Alliance supports the vision of European Liberals (ELDR) that modern societies should, without exclusions, 'separate policy from religion' and that 'the civic society contributes significantly to the relaxation of the intensity of frictions between the religions and to the promotion of tolerance and understanding between persons that belong to different faiths'.

The main points of these views are as follows:

* The simplification of processes for founding religious organizations as private organizations.

[14] Stefanos Manos and Andreas Andrianopoulos.

* The incomes of religious bodies from any source will be taxed on the basis of the legislation applying to the incomes of non-profit-organizations or persons of private law.
* The charitable institutions ('bakoufia') of the Muslim minority will become self-managed without any intervention by the Greek state.
* Clergymen will be employees whose salaries will be paid by the religious organization that employs them and will be taxed as any other Greek citizens. They will be covered by the system of social welfare and will belong to a pension scheme as all Greek citizens.
* All the administrative and juridical competences that have been granted to religious institutions will be withdrawn from them.
* The obligatory character of the religious oath will be abolished and where this is now in force it will be replaced by a more political promise.
* Religious faith is personal to each individual citizen and will therefore not be entered into any public document.
* The law against proselytism will be abolished.
* The processes necessary for the cremation of the dead are simplified. Each citizen that has left a will asking for cremation will be cremated, no matter what their religious conviction was during lifetime.
* There will no longer be any special treatment for the clergy, no longer any religious services in the ministries, while the Ministry of Education and Religious Affairs will be renamed as Ministry of Education.
* The church will have the right as every other institution or private individual to establish private educational institutions on any subject it wishes, according to the legislation that will regulate such issues.
* The essential changes in the Constitution must be effected so that the completely secular character of state is ensured.[15]

Points of interest

As was described before, the relations between the church and the state present two sides. One is the institutional side with its constitutional provisions and the network of laws needed for the purpose that was described before. The other is the informal side concerning the way in which the Orthodox Church has significantly influenced Greek society. Obviously, these two sides are connected and one feeds the other. However, the subject of the liberal approach concerns the formal,

[15] All the supporters of segregation of state of church agree that the larger part of the segregation process can be achieved without any further delay, with the introduction and implementation of the necessary laws, without the need to revise the Constitution. This is important because constitutional revision in Greece is a complicated process that requires 6-8 years and the wider consent of political parties as the majority needed for this purpose is very large. The constitutional revision can thus come as the crowning of the process, the completion and consolidation of the secular character of the state.

institutional part. The main points discussed so far with regard to the state-church relations, concern the anachronistic laws that influence directly or indirectly the religious freedoms and the rights of the individual in Greece.

Some of these laws are completely contradictory to the European institutional frame and do indeed create major problems. A significant number of cases are pending before the European Court of Human Rights. The main charges against the Greek state concern its treatment of other Christian doctrines whose believers are impeded in various ways from expressing and exercising their religious freedoms. The cases of the Evangelic Church[16] and the Jehovah Witnesses[17] are characteristic of such impediments to religious freedom. In these cases the European Court vindicated the claimants and asked the Greek state to respect the religious rights of all Greek citizens.

In the subject of other religions and mainly the Muslim one, official complaints do not exist at the moment, because the issue has only been present for a few years in Greece while obviously the immigrants that suffer from it have other problems and priorities. An exception is the Muslim minority in Thrace in northern Greece.[18] This however does not mean that there aren't any problems with the free expression of religious freedoms of other religions in Greece, as we will try to show in the paragraph that follows.

New challenges: immigration, multiculturalism and other religions

During the last 15 years Greece witnessed a big surge of immigration. The number of immigrants that came to Greece is calculated roughly to be as high as 1.500.000 persons. Most of these immigrants came from Albania and other neighboring Balkan countries. A smaller but still important part comes from Asian countries, such as Pakistan, India, Philippines and Iran. Immigrants from these countries are almost without exception Muslim. This is something unusual in Greece where – according to the latest official statistics – above 98% of the citizens belong to the Greek Orthodox Church.

This overwhelming majority has always been used as the main argument by those supporting the need to recognize Orthodoxy as the 'prevailing religion' and the need to mention this in the Constitution as well as the existence of specific

[16] See affair C-381/89 of Evangelic Citizens against Greek state and the corresponding European Court decision of 24/03/1992.

[17] See affairs of Jehovah witnesses in European Court of Human Rights, Strasburg, 1993, 1996, 1997, 1998, 1999.

[18] This is a 'sensitive' case of a recognized minority. This minority has multiple characteristics (Muslims with different national origins). In this specific case and in this specific time period (based on the relevant treaties – Lausanne 1923) Greece prefers to support the religious character of this minority (Moslem) instead of discussing the issue of their ethnic origin.

legislation in favor of the Orthodox Church. This argument is weak.[19] The label 'Christian Orthodox' is automatically given to babies on the occasion of their christening so that it retains only a formal character during the adult life of the citizen. If, for example, one counts how many attend church on a regular basis or how many participate in religious activities, one will find much smaller figures. However, beyond the interpretation of the figures as such, two fundamental issues emerge. First, the percentage itself has changed since 10% of the population is now made up of immigrants with a different religion. Second, religious freedom is one of the human rights, as registrated in the *Declaration of Human Rights*. This freedom must be respected, no matter the number of worshippers.

At the initial stage, after the massive entry of immigrants, a strange situation prevailed in Greece, particularly regarding religious issues. It was a 'taboo-situation' where no one mentioned the new reality while official policy continued as if nothing had changed. In the past few years the phenomenon of Muslims gathering in open spaces to perform certain religious rites has been frequently observed. It is also known that a number of religious meetings take place in houses, that are transformed for the occasion into temples. The immigrants themselves and certain of their governments of origin, have raised demands for the creation of proper Muslim places of worship.

The Greek church practically denies permission for the foundation of places of worship for other religions. This it can do because, as mentioned, it is so officially authorized to do. This attitude is part of a more general conservative fear of various national and religious dangers allegedly due to the surge of immigrants and their incorporation into Greek society.

The other issue – that has also appeared in other European countries – is the acceptance of elements of worship or religious behavior of 'infidels' in the school. This concerns elements of appearance of the students, their wearing of religious symbols, prayers, as well as their attendance of special events and activities and religious courses at school. In this field acute problems do not exist in Greece given that the immigrants' primary focus concerns their economic survival and not their religion or their culture.

However, if the simultaneous interventions described above do not take place at the institutional and social level now, it is certain that when the citizens of other religions decide to practice fully their religious rights, there will be a strong reaction from a conservative majority. Something similar happened with economic immigrants, in cases where serious problems seemed to emerge out of nowhere i.e.

[19] Public Opinion researches have shown over the past years that over 50% of Greek citizens – no matter what their own religion – think that the state and the church ought to have clearly separate roles.

surface (football matches, school parades etc).[20]

Synopsis

The main point of this analysis is that in Greece there exists a serious delay in the implementation of a secular state. There are many fields that should be the prerogative of the state in which the church is involved. The separation of the church from the state has not made any significant progress during the last years. The processes needed for Greece to adjust to the new realities that have been created by a variety of economic and political developments and are also now imposed by international law simply do not exist. The role of liberals is particularly important in this situation. They must act as catalysts that will help the acceptance by Greek society of the obvious democratic and liberal principles now prevailing in the world of Western nations to which Greece belongs.

[20] A big controversy broke out in Greece for a period of time concerning the issue whether alien students could lead school parades and hold the Greek flag. Also in certain cases after football games, foreigners that celebrated for the victory of their team against a Greek team were subjected to violence by a wild crowd of Greek fans.

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