

# Separation of church and state in Europe

With views on Sweden, Norway, United Kingdom  
& Ireland, The Netherlands, France, Portugal,  
Italy and Slovenia

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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 relevant and issues of integration of immigrants with different ethnical, religious and cultural backgrounds has strengthened this development.

A series of seminars were organised by the European Liberal Forum (ELF) – 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.

In 2008 the idea to make a book on secularism in Europe took shape. The purpose was 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 edition of this book was published in 2008 by the European Liberal Forum as their first publication. Four years later the issue of separation of church and state is still rather topical to liberals as well as to politics in general. In fact new threats are posed to this liberal achievement by the growing presence of Islam in the Western world. With this book we want to contribute to the ongoing discussion on the neutrality of the state and the position of religion in the public domain. After the publication of the first edition, now a new edition is compiled. Some contributions are added, others were up-dated by the authors.

The first two chapters of this book deal with the liberal principles of the separation. These chapters are followed by presentations of the situations in Sweden, Norway, United Kingdom and Ireland, the Netherlands, France, Portugal, Italy, Slovenia (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.

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Den Haag, December 2012  
Fleur de Beaufort  
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# Introduction

## Liberalism and the Neutral State

*Fleur de Beaufort and Patrick van Schie*

One of the earliest expressions of (proto) liberalism was striving to make religion a private matter. In the High Middle Ages secular rulers in Europe had already declared war on the Roman Catholic Church to minimize the papal influence on state affairs. However they sought anything but a separation of church and state – on the contrary; the Investiture Controversy in the 11<sup>th</sup> and 12<sup>th</sup> century concentrated on the attempt of various rulers to gain grip on the church through control of appointments – or Investitures – of church officials such as bishops and abbots. In addition a lot of European rulers interfered rather actively with the religious convictions of their subjects.

After the Reformation this increased a great deal. In 1555 rulers in the German speaking states and the Holy Roman Emperor Charles V agreed on the *cuius regio, eius religio* – ‘whose realm, his religion’ – principle, meaning that the religion of the ruler in future would dictate the religion of the ruled. A different religious opinion could at best be confessed in secret or in the worst case had to be paid for with torture and/or execution.

Even for preachers of more religious freedom at that time there were limits to tolerance. As soon as the cracks arose in the Christian unity the Dutch philosopher Desiderius Erasmus (1466-1536) immediately advocated tolerance between Catholics and Protestants, but his conciliatory words were not intended for Jews and Muslims. Half a century later, at the end of the 17<sup>th</sup> century, the English philosopher John Locke (1632-1704) published his well-known *Letter Concerning Toleration* but his forbearance did not even involve all Christians.

According to Locke only Protestants in their growing diversity had to be respected and were to respect each other’s beliefs. Forbearance towards Catholics was absolutely out of question to him.

One of the first principle defenders of religious freedom for every believer, regardless of the faith he professed, was the Dutch Arminian theologian Simon Episcopius in the twenties of the seventeenth century. Because everyone has equal access to God’s truth, he thought that no one could claim that his religious insights should be considered better than the insights of others. Yet it would be very long before this view became commonplace. Even within the *relatively* tolerant Republic of the United Netherlands, where the regents the fanaticism of the dominant orthodox Calvinist ministers, whose church established itself as a state church, often shared and often wherever possible ignored, were Arminians, Lutherans, Catholics, Jews and other religious minorities to 1798 second-class citi-

zens who could not profess their faith openly because of their faith and example were excluded. fulfillment of public office

Religious freedom was an early form of the more general freedom of speech that liberals stand for. In the sixteenth and seventeenth centuries, when no liberal political movement existed, faith was the issue that touched people and societies. Hence religion was also the first area where the more general freedom of speech was fought for. Liberals would later seek segregation of what they identified as being private property and the public domain. In the private domain, the state has no business according to liberals. The state should therefore not interfere with what someone thinks or believes. Furthermore it belongs to the private domain what citizens choose to do in private with other citizens. From this follows the freedom of association and assembly, and the more specific form thereof: religious practice. The state in turn had to be free from the grip of special interests, whether it were economic interests (such as guilds) or the power of a church.

In between, in public space is a twilight zone, which liberals themselves most often disagree when it comes to the separation of church and state. Is religious expression in public space lawful? Can the Roman Catholic Church, for example go on with processions in the streets? Can a Muslim woman be allowed to walk on the road with her whole face covered by a burqa? Can a strictly orthodox Protestant school with reference to the Bible demand from its female pupils that they wear a skirt (or prohibit the wearing of trousers), as happens in the Netherlands? May the same school teach that God created the world and therefore withhold its pupils the theory of evolution? Is state subsidy for private schools on religious basis anyway compatible with the separation of church and state? Can a crucifix hang in the class room of a public school? Is it permissible for an officer of civil status or a police officer to carry a visible sign of his or her religious affiliation? It is these and related questions that keep European societies today engaged. Even liberals are divided and do not provide a conclusive answer in these matters.

Some of these issues are present in all European countries, others are specific to a few countries. In some European countries there is still a state church – the Anglican church in England is a known case – and although that it is clearly contrary to the liberal principle of separation of church and state, liberals in such countries have not always made a battle point to change this situation in their country. In the Netherlands in recent years, the question of the ‘officials refuse’ – wedding officials employed by the municipality refuse on religious grounds to execute a same-sex marriage, although the law in the Netherlands allows this kind of marriages – which is now made a liberal matter of principle by VVD and D66.

But why did the Dutch liberals used to allow that young men diverted from their military service relying on conscientious objection (Jehovah’s witnessed even in advance of this duty relieved)? And why is it that the vaccination requirement against polio applies for everyone except some orthodox Protestants (parents refused in the Netherlands for a long time on religious grounds vaccination of their child, although this practice periodically caused victims)?

Europe is now the most secularized continent, although there are great differences among the European countries (see the following contribution by Giulio Ercolessi and Ingemund Hägg). Gradually issues around the separation of church and state lost in importance in the course the twentieth century. The sharp edges of the remaining interconnectedness of church and state would naturally be worn away, so thought – or hoped – some people probably. Teaching in religious schools for example, was now often less dogmatic than before, also views other than those of the ‘own church’ came to the schools increasingly addressed in a serious manner. And that the Queen is still head of the Anglican Church seemed part of British folklore and is acceptable as rather strong tourism trademark in Great Britain.

It is above all through the growing presence of a for Europe ‘foreign religion’ that issues surrounding the separation of church and state are in the middle of the public debate again. Particularly because this ‘foreign religion’ manifests itself considerable less modernized than Christianity or Judaism. Relying on or with reference to Islam, even the freedom of expression was questioned more than once in recent decades. Opponents claim that this freedom should not be a license to express opinions that Muslims could possibly experience as offensive. The fatwa of the Ayatollahs in 1989 against the writer Salman Rushdie for his book *The Satanic Verses*, brought a number of European governments to stammer about the freedom of press. Only the British government stood upright for this freedom and offered Rushdie protection. Several European governments made rather embarrassing excuses for the cartoons by the cartoonist Kurt Westergaard, published in the Danish newspaper *Jyllands-Posten* in 2006. More recently the social democratic president of the European Parliament Martin Schulz actually managed to proclaim in response on a film with critical comments on Islam that: ‘We agree that this kind of blasphemous films must be condemned. I strongly condemn not only the content but also the spread of such a film, which is hugely embarrassing for many people around the world.’

The presence of Islam in Europe and the fear of angry reactions from Muslim extremists brings many politicians to strike at the roots of the liberal rule of law – freedom of speech – instead of passionately defending one of the most fundamental achievements of liberalism. Not only the separation of church and state has not yet been completed in all respects, the fight must be waged for keeping neutrality of the state and the public space of fundamentalist Islamic commandments and prohibitions and even for monitoring to the core again of the private domain of those who proclaim opinions or transactions that Muslim extremists are displeasing. In fact the separation of church and state is more valuable than ever, in a time where new threats are posed.

As described above, the issue is currently playing in Europe again, but it includes other aspects in different countries sometimes or get a different effect. To understand this diversity, more understanding and in the agreements, and to gain more knowledge about how liberals in some European countries related to the separation of church and state issues are handled, we have compiled this collection.



# Towards Religious Neutrality of Public Institutions in Europe

*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 does 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.<sup>1</sup>

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<sup>2</sup> 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.<sup>3</sup>

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 Christianity. 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.

In almost every Western European country religious intolerance, bloodshed,

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<sup>1</sup> 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).

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

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

‘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<sup>4</sup>, by a new ‘fallibilistic’ theology (humans being fallible, suppressing a heresy could result in suppressing the Truth<sup>5</sup>) 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 eighteenth 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 threats posed by fascisms and communism during the twentieth century.

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

<sup>5</sup> 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.

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 nineteenth century Italian 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 nineteenth 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 nineteenth 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 nega-



tive as those faced by the first with the Catholic Church.<sup>6</sup> 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, Spanish and Portuguese – in four 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*, *laicidade* 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, Spanish and Portuguese) should be interpreted as the political (merely 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*, *laicidade*, 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*, *laicidade*, *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 ‘up-right’ brand of *laïcité*.

The English ‘secular’ and ‘secularism’ are in fact not synonymous for *laïque*

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<sup>6</sup> John Witte, J, *The Reformation of Rights. Law, Religion, and Human Rights in Early Modern Calvinism*, Cambridge University Press, 2007.

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<sup>7</sup>. In the broader meaning proposed by Marcel Gauchet<sup>8</sup>, 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* (abatement) 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 in 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, even though it has to be taken into account that the phenomenon only concerned Western Christianity, whereas in the Orthodox and Byzantine part of Europe this was mostly the consequence of a deliberate transplant of Western European ideas and practices.

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

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<sup>7</sup> 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).

<sup>8</sup> Marcel Gauchet, *Le désenchantement du monde*, Paris, Gallimard, 1985.

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 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 33% around 2005. The country at the top of the range in 1981, Italy (about 85%), maintained this percentage in 2005. The country with the lowest percentage in 1981, Sweden (32%), maintained this level (33%) in 2006.

Claiming that Europe has gone secular is debatable, with two thirds of the population of the EU describing themselves as religious persons. A trend in one or the other direction cannot be ascertained over this period.

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 twentieth 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,<sup>9</sup> 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

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<sup>9</sup> Max Weber, *Politik als Beruf, Wissenschaft als Beruf*, Duncker & Humblot, Berlin (It. tr. ed. by Antonio Giolitti, Torino, Einaudi, 1948).

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 nineteen years that the *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.<sup>10</sup>

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. Jonathan Fox has provided the most elaborate classification for empirical studies that we have identified.<sup>11</sup> In his impressive work he presents previous classifications and goes himself deeper into detailed aspects than earlier studies have done. His dataset includes 62 variables and covers 175 governments for the period 1990-2002. For our purpose we need less detail. 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 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. (A fifth one – the compulsory state atheism that was typical of former communist countries – is a kind of compulsory uniformity in the domain of religious beliefs that fortunately no longer exists in today’s Europe). It would be much more dif-

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<sup>10</sup> Last year’s survey, that includes the historical series and a lengthy methodological note, was published in the November-December 2011 issue of the monthly journal *Critica liberale*, n. 193-194.

<sup>11</sup> Jonathan Fox, *A world survey of religion and the state*, Cambridge University Press, Cambridge, 2008.

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 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.

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 pursue 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 must be respectful of individuals' multifaceted diversities and not impose, privilege or favour the views of the most influential or traditional communities over all the others and over individuals' diversities.

### **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 or even inevitable to recognise that the state is not a monolith. In his speech *Religion in the Public Space* Jürgen Habermas<sup>12</sup> states that 'government has to be placed on non-religious footing'. He thus recognises 'an informal public sphere', which he locates to civil society, 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 disagrees on how dialogues should be held.<sup>13</sup> In 2009 Habermas writes 'all citizens should be free to decide whether they want to use religious language in the public sphere. Were they to do so, they would, however have to accept that the potential truth contents of religious utterances must be translated into

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<sup>12</sup> Jürgen Habermas, 'Religion and the Public Sphere'. The Kyoto Speech, University of San Diego, March 2005.

<sup>13</sup> Jürgen Habermas and Joseph Ratzinger, *Dialektik der Säkularisierung. Über Vernunft und Religion*. Verlag Herder, Freiburg, 2006.

a generally accessible language before they can find their way onto the agendas of parliaments, courts or administrative bodies' and 'an institutional filter should be established between informal communication in the public arena and formal deliberations of political bodies.'<sup>14</sup> Charles Taylor has criticised Habermas suggestion of translation of religious ideas into secular reason language, to which Habermas responds 'the task of translating not from a religious discourse but from presentations in a religious language to a public language, which allows us to arrive at reasons that are more general than the ones in the original language.'<sup>15</sup> Taylor is sceptical to the existence of a neutral public language when he identifies such a language as the existing secular language, thus not neutral. We agree with Taylor that the term translation can be misleading in this context where the issue is going from one kind of presentation to another. Further, Taylor's scepticism about a neutral language cannot be dismissed. It is not clear what should be expected by non-religious citizens developing their secular language. Habermas writes that there is a demand on the secular side to reflect 'on the limits of a secular and postmetaphysical kind of reasoning. The insights that vibrant world religions may be bearers of "truth contents", in the sense of suppressed or untapped moral intuitions.'<sup>16</sup> Our conclusion is, however, that Habermas could be right in his reasoning even if there are difficulties – difficulties to overcome – in adapting his principles in the real world with 'translations' into a 'neutral' language. We believe that the philosophical and/or religious motivations pushing individual citizens to take side and participate in the public political debate should always be their own personal motivations. Either the outcome of those motivations can translate into actions and proposals that can be shared also by those citizens that are motivated differently, or the risk is there of a new form of 'ethical state', that would not be consistent with a free and open political system and society.

### **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

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<sup>14</sup> Jürgen Habermas, *The power of religion in the public sphere* (eds E. Medietta and J. Vanantwerpen) Columbia University Press 2011, p. 25-26.

<sup>15</sup> Ibidem, p. 111-114.

<sup>16</sup> Ibidem, p. 27.

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 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 a 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, even if such changes might imply demanding processes for the individual.

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 be 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.<sup>17</sup>

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

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<sup>17</sup> Max Weber, *Die 'Objektivität' sozialwissenschaftlicher und sozialpolitischer Erkenntnis*, Archiv für Sozialwissenschaft und Sozialpolitik, XIX, 1904, now in *Gesammelte Aufsätze zur Wissenschaftslehre*, Mohr, ed. by J. Winckelmann, Tübingen, 1922, 1951 (It. tr. ed. by Pietro Rossi, Torino, Einaudi, 1958).

step, those particular controversial issues where individual rights and equal social dignity of every individual are put at jeopardy by religious or communitarian claim, however portrayed.

One important aspect of state-religion relation is the financial one. In some 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-religious communities and beliefs 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<sup>18</sup> – that would not only be impedimental to the development of a common European civic identity, but also risky for any kind of future cooperation.

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<sup>18</sup> Amartya Sen, *Identity and Violence. The Illusion of Destiny*, W.W. Norton, 2006.



# 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 Swedish version of *'l'état laïque'*.

## **Historical background<sup>1</sup>**

Christianity started to be established in Sweden in the ninth century and had conquered the traditional religions in the beginning of the twelfth 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

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<sup>1</sup> This section is based on the government committee report SOU 1997:41, Utredningen om trossamfundens rättsliga reglering (The committee on legal regulation of religious communities).

for health services, taking care of the poor and basic school education.

In the beginning of the sixteenth 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 1634 constitution. Heresy, that is, deviation from the 'right' belief was punishable by law.

Some religious freedom was introduced in the eighteenth century. In 1781 immigrants with other Christian beliefs were allowed to practice their religions and a year later Jews got such rights. In the 1809 Swedish 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 but 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, i.e. the Catholic Church. In 1873 it was made possible to create religious communities within such recognised Christian religions.

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

In 1863 a General Synod<sup>2</sup> 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 twentieth 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.<sup>3</sup> 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

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<sup>2</sup> In Swedish: kyrkomöte.

<sup>3</sup> Religionsfrihetslagen SFS 1951: 680.



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 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 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<sup>4</sup>**

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.

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.<sup>5</sup> 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<sup>6</sup>, a state agency. There are today a large number of registered communities representing different religions

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<sup>4</sup> Lag om trossamfund SFS 1998:1593.

<sup>5</sup> SOU 1997:41, pp. 130-131.

<sup>6</sup> In Swedish: Kammarkollegiet.

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 Committee for Government Support to Religious Communities (SST in short)<sup>7</sup>. A special law<sup>8</sup> 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 counseling, 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 2011 about 6 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<sup>9</sup>**

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<sup>10</sup> 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<sup>11</sup> 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 50 million euros per year (2011 figure). 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 income 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.

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<sup>7</sup> See: [www.sst.a.se](http://www.sst.a.se).

<sup>8</sup> Lag om stöd till trossamfund SFS 1999: 932.

<sup>9</sup> Lag om Svenska kyrkan SFS 1998:1591.

<sup>10</sup> In Swedish: kyrkans ämbete.

<sup>11</sup> In Swedish: kyrkoavgift.

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 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 or 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 2011 there were 4616 schools on the basic level of which 674 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. It should not be acceptable to have a priest or other religious leader taking active part with religious 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 find no objections to the use of church premises but 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 is 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 for contact with the registered religious communities.. The number of schools run by organisations with Islamic connections is very small. The issue of education of imams in Sweden has been studied by a government committee which came to the conclusion that the state should not be involved in such education. There are clear instances of Islamophobia 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 initiatives in parliament from liberal MPs.

*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.<sup>12</sup> 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<sup>13</sup>*

Since 2009 same sex marriage is allowed. For many liberals a further step 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*

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. 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. A government committee came to the conclusion that the state should not be involved in education of imams.

Over the years the state has in many respects withdrawn 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 or a university college, 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 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

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<sup>12</sup> Motion 2004/05:K287 by liberal MPs

<sup>13</sup> Government committee report SOU 2007:17. Cf. motion 2010/11:C288 by liberal MPs proposing compulsory civil marriage.

should be required. It can be expected that – if there is a demand – voluntary organisations will develop appropriate courses. 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<sup>14</sup>, however, shows that 32% saw themselves as religious persons in 1982 and 33% in 2006. The corresponding figures for those who saw themselves as non-religious persons were 55 and 48% respectively. The percentage of convinced atheists increased from about 6% to 17%. 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.

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.<sup>15</sup> 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’. Almost two third of the population of 9 million people is member 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 eighteenth 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

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<sup>14</sup> [www.worldvaluessurvey.org](http://www.worldvaluessurvey.org).

<sup>15</sup> 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.

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 the Swedish society 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.<sup>16</sup> The validity of these arguments can be questioned.<sup>17</sup>

It is impossible – and also not desirable – to imagine a society without relations 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. 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', for example secular contributions may pass from the confused din of voices in the public sphere onto the formal agendas of state institutions'.<sup>18</sup> I have

<sup>16</sup> SOU 1997: 41, pp. 121ff.

<sup>17</sup> 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.

<sup>18</sup> Habermas, *'A post-secular' society*.

sympathy for this view but I realize that it is hard to put fully into practice.

The issue is thus what kind of relations are compatible with independence and freedom for civil society organisations, including religious communities. There exists a system of dialogue 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 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.’<sup>19</sup> 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 of Sweden has entered the debate on climate issues and suggested that religion can be constructive by giving hope and promoting long-term thinking.

#### *Church of Sweden impact in daily life*

In many ways the influence of the old state church can be seen in subtle forms. In the public service radio at 6 pm on Saturdays 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. 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

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<sup>19</sup> 2007 Review and financial summary for the Church of Sweden, national level.



and reputation the church has, and of course want 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 I find quite acceptable 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. The term secular is in this context also problematic. Maybe a population which is non-practicing – even with membership in religious communities – would be a more accurate description. 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. 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 twelve 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 developments in France show.

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

*\* Abolishment of the Act on the Church of Sweden, letting this religious community instead be governed by the Act on religious communities*

*\* The head of state (king or queen) should not be forced to adhere to the faith of the evangelic confession*

*\* Introduction of compulsory civil marriage, before religious ceremonies if desired by the married couple*

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

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

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

*\* Reconsidering public tasks that should be transferred 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*<sup>1</sup>

In June 2008, the Norwegian Parliament – Stortinget – has considered Report to the Storting nr. 17 (2007-2008) on *The State and the Church of Norway*.<sup>2</sup> 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<sup>3</sup> 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 state, but was met with stark opposition from two of the three sitting governing parties, the Norwegian Labour Party (Arbeiderpartiet) and the Centre Party (Senterpar-

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

<sup>2</sup> 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'.

<sup>3</sup> I.e. the 'Christian objects clause,' also discussed below.

tiet). 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.).<sup>4</sup>

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 it is unreasonable that a state should be connected with a given religion, and that only one religion is to be favoured. 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

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<sup>4</sup> 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.



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.<sup>5</sup>

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 different perspectives. It is suggested that the subject name be changed accordingly. Christianity

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<sup>5</sup> European Court Of Human Rights, *Folgero and Others v. Norway*, no. 15472/02, 29 June 2007.

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<sup>6</sup>:

*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<sup>7</sup> 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 Constitu-

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<sup>6</sup> 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.regjerin-gen.no/upload/KKD/Vedlegg/PRM35-08\\_Stat\\_kirke\\_Vedlegg\\_Endelig\\_avtale.pdf](http://www.regjerin-gen.no/upload/KKD/Vedlegg/PRM35-08_Stat_kirke_Vedlegg_Endelig_avtale.pdf).

<sup>7</sup> I.e. the King and the Government in joint session, normally held weekly.

tion, cf. the new article 16.

2) The organization and operations of the Church of Norway will 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 3871000 members in 2007. The corresponding (round) figures for other communities were for other Christian communities 225000, for life stance communities 80000, for Islamic communities 79000, for Buddhist communities 11000 and for other religious communities 9000.<sup>8</sup>

### **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

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<sup>8</sup> St.meld.nr.17 (2007-2008) Staten och den norske kirke, table 2.1.

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 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'.<sup>9</sup> 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'<sup>10</sup>: '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 subcultures where the lack of tolerance in society at large creates distrust in return.

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

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

Such sub-cultures are the most important hotbeds of fundamentalism' (transl).

Dokka argues against the support expressed by Ralph Dahrendorf for more 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 treats 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.<sup>11</sup>

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<sup>11</sup> "This broad compromise has been formalized in changes in the church law in 2012 (See Proposisjon till Stortinget 71 L, Endringer i kirkeloven m.m.)"



**United Kingdom  
&  
Republic of Ireland**



# Separation of Church and State in the United Kingdom and the Republic of Ireland

*Mark van de Velde*

In February 2012 there was some commotion in the British House of Commons when a group of MPs refused to participate in the prayer conducted by the chaplain prior to each meeting of Parliament. One of the rebels was Liberal Democrat Jo Swinson. What bothered her about the prayer was not only its exclusively Christian character, but also the fact that MPs who wish to attend the meeting following the prayer are practically forced to be present at this ritual,<sup>1</sup> as there are only 427 seats available for (currently) 650 MPs and whoever enters the House of Commons after the prayer has finished, will most likely be forced to remain standing.

This was by no means the first time that a heated discussion arose in the British Parliament about the prayer and about the political dimension of religion in general and the political position of the Church of England in particular. In 2010 it was the position of chaplain in itself that gave rise to a debate. Very much against the wishes of the Dean of Westminster Abbey, the Speaker of the House of Commons John Bercow chose a black female, Rev. Rose Hudson-Wilkin of Jamaican origin, as chaplain. This marked the end of the old custom of the chaplain in Parliament also being the right hand of the Dean of Westminster Abbey, as he refused to agree with a woman in that position.<sup>2</sup>

In each European country there are other topics demanding attention where the relationship between the church and the state is concerned. In the case of the United Kingdom, the spotlights are almost inevitably pointing to British Parliament and the monarchy, which are intertwined with the history and the future of the (Anglican) Church of England in so many ways. After all, the Church of England is the established church in England, something liberals on the continent, who consider England the birthplace of modern liberalism, are easily amazed at.<sup>3</sup>

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<sup>1</sup> *Mail on Sunday*, 12 February 2012.

<sup>2</sup> *The Sunday Telegraph*, 5 February 2012.

<sup>3</sup> We do not go into the exact content of the terms 'established church', 'state church' and 'national church' here. Much can be said for the statement that the Church of England, an established church, is not a national church, nor a state church, but the subtle distinction between the concepts is sometimes lost in translations. Although in theory a chapter on the United Kingdom would not be complete without an outline of the situation in Scotland and Wales, in large part we will leave these two countries aside and concentrate on the particular relationship between the Church of England and the United Kingdom or England.

The complexity of the history of the British Isles justifies the choice to also include the developments in Ireland in this field. Although in the case of Ireland a separation of church and state (*disestablishment*) was enforced in 1871, Ireland was still part of the United Kingdom at the time. Moreover, the emancipation of Catholics and other religious minorities in Great Britain may hardly be considered separate from the Irish conflict that dominated the political agenda of the British House of Commons in the last quarter of the nineteenth century.

In 1922 the 26 southern, predominantly Catholic counties (which together would form the Republic of Ireland) abandoned the United Kingdom, but the unique circumstances in Ireland, which at the time was a country with a homogeneous, deeply religious population whose national identity was strongly influenced by Catholicism, make it worthwhile to scrutinize a number of characteristics of the relationship between church and state since Irish independence. Unlike in the United Kingdom, the relationship between church and state in Ireland is viewed through a moral-ethical lens, all of which has to do with the considerable influence the Catholic Church has on legislation regarding divorce and abortion, for example.

### **1. A 'national' church in a multinational and multireligious united kingdom**

The history of the Church of England as state church dates back to 1534, when the pope refused to dissolve the marriage between the English King Henry VIII and Catherine of Aragon. This caused Henry VIII to wrest himself free from the ecclesiastical hierarchy of Rome. He let himself be pronounced *supreme head* of the Church of England. In a dogmatic sense, the breach with Rome was a lot less radical, because the process of transition to Protestantism would take considerable time.

In the seventeenth century, Parliament took over the ecclesiastical role of the monarch, but the nature of the pact between church and state would not undergo any essential changes, despite an unremitting flood of pamphlets and treaties from more or less famous defenders of religious liberty and the separation of church and state. One pioneer was Thomas Helwys (ca. 1575-ca. 1616), a Baptist who fled to Amsterdam, where he wrote *A Short Declaration on the Mystery of Iniquity*, supposedly the first English work advocating freedom of religion. Unlike John Locke (1632-1704), who gained much more fame and in his *A Letter Concerning Toleration* (1689) did not grant Catholics and atheists any freedom of conscience, Helwys was much more radical in his defence of religious tolerance: 'For our lord the king is but an earthly king, and he has no authority as a king but in earthly causes. And if the king's people be obedient and true subjects, obeying all human laws made by the king, our lord the king can require no more. For men's religion to God is between God and themselves. The king shall not answer for it. Neither may the king be judge between God and man. Let them be heretics, Turks, Jews, or whatsoever, it appertains not to the earthly power to punish them in the least

measure.<sup>4</sup> Helwys had the courage to send a copy of his book to King James I, who did not concern himself very much with the plea of the sender. Helwys was taken prisoner and died in a dungeon in 1616.

An important step on the way to religious liberty was the adoption of the Act of Toleration in England (1689) and Ireland (1719). This was the first time religious groups were acknowledged beside the national church and initially these were exclusively Protestant groups such as Baptists, Quakers and Presbyterians, often referred to as Dissenters or Nonconformists. They were granted the right to practice their beliefs, contrary to the Catholics, who had to wait until 1791 before they were allowed to do so. However, Dissenters and Catholics up until 1828 remained limited in their freedom to participate in public life, because a series of seventeenth century laws – the English Test and Corporation Acts – designed to exclude Protestant Dissidents and Catholics from public service, remained in force.<sup>5</sup> Those who wished to be eligible for public office were required to renounce the principles of transubstantiation (the change from bread and wine into the body and blood of Christ during the celebration of the Eucharist, rather than the purely symbolic meaning of bread and wine during the Protestant Holy Communion) – a demand Catholics could not possibly accede to. Other signs of suitability for the office were the celebration of the Lord's Supper and taking the Oath of Supremacy, by which the subject swore allegiance to the monarch as Supreme Governor of the Church of England.

Viewed from the present, laws perpetuating religious intolerance are hard to accept, but in the eyes of contemporaries, England was a beacon of tolerance. Around 1733, the philosopher Voltaire, who lived in England for a couple of years, wrote: 'Though the Episcopal and Presbyterian sects are the two prevailing ones in Great Britain, yet all others are very welcome to come and settle in it, and live very sociably together, though most of their preachers hate one another almost as cordially as a Jansenist damns a Jesuit. [...] If one religion only were allowed in England, the Government would very possibly become arbitrary; if there were but two, the people would cut one another's throats; but as there are such a multitude, they all live happy and in peace.'<sup>6</sup>

The dominance of the 'Episcopal and Presbyterian sects' not only referred to the number of followers, but also to the constitutional position of both the churches. Just as the Anglican Church in England and Wales was (and is) the established church, such was the Presbyterian Church in Scotland. However, the position of the Church of Scotland differed from that of the established Church of England and Ireland in many respects. Not only the ecclesiastical organisation, which we will leave aside here, was different, but also the relationship between the

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<sup>4</sup> Thomas Helwys, *A short declaration of the mystery of iniquity (1611/1612)* [edited and introduced by Richard Groves], Macon (GA), 1998, p. 53.

<sup>5</sup> Mark Goldie and Robert Wokler (eds), *The Cambridge History of Eighteenth-Century Political Thought*, Cambridge/New York, 2006, p. 94.

<sup>6</sup> Voltaire, *Letters on England*, Rockville (MD), 2008, p. 32.

church and the state: the British monarch was not the head of the Scottish Church and the Scottish bishops had no seats in the British House of Lords, whereas bishops of the English and Irish Anglican Church did – and in the English case, still do. The Anglican Church also played a key role in the judicial system: approximately one quarter of the judges originated from the clergy.<sup>7</sup>

A foreigner, unfamiliar with the complex historical relations between England and Ireland may wonder at the sign ‘Church of Ireland’, attached to the walls of the most splendid churches in Ireland, while Ireland is known to be a Catholic country. The Church of Ireland in so many respects resembled the English sister church that it was often referred to as the Church of England in Ireland. After 1800 both merged into the United Church of England and Ireland. Just as in England, also the Irish clergy played a prominent role in the legal system and the monarch was head of the Church. The crucial difference between these two Anglican Churches obviously was that the Church of England could somewhat legitimately claim to be a national church. In 1780, probably over 90% of the English and Welsh population considered themselves followers of the Anglican Church.<sup>8</sup> The situation was completely different in Ireland: a mere 15% considered themselves to be of the Church of Ireland, 75% were Roman Catholics and the remainder were Presbyterians. The privileged position of the Anglican Church in a country with a predominantly Catholic population caused a lot of friction. For example, the Catholic Irish farmers, who were not quite among the richest in Europe, were obliged to surrender their tithes for the benefit of the parish church they never attended themselves.

### **Financial revival**

In the period 1780-1815, the dominance of the Anglican Church was on the decline, among other things, due to the increasing popularity of the Evangelical movement that came across from the United States. The large majority of the population still called themselves Anglicans, but their numbers dropped from 90 to 70%. This trend is mirrored in the explosive growth of dissident religious groups, who, under the Toleration Act, were obliged to register their buildings. In Ireland, the Anglicans had always been a minority and because of the rapid growth of the Irish (Catholic) population, their share was reduced from 15 to 10%.

In order to prevent further erosion, British Parliament released large funds for the established churches at a time when the United Kingdom was involved in a war with Napoleonic France. This financial aid was also intended as a means to

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<sup>7</sup> Steward J. Brown, ‘The Reform and Extension of Established Churches in the United Kingdom, 1780-1870’, in: Keith Robbins (ed.), *Political and Legal Perspectives* (volume 1 of *The Dynamics of Religious Reform in Northern Europe, 1780-1920*), Leuven, 2010, pp. 37-68, p. 40.

<sup>8</sup> *Ibidem*, pp. 40-41.



combat some tendencies considered dangerous.<sup>9</sup> The Industrial Revolution was well under way and threatened to create a socio-economically and religiously uprooted working class. Some decades earlier, revolutions had taken place in France and the young United States of America, which, in the eyes of British conservatives, might also undermine the socio-political stability in the United Kingdom. If the church succeeded in stirring the working class into a religious renaissance, workers would hopefully shift their focus from their daily troubles to a better life in the hereafter. The hope of Tory-governments ruling the United Kingdom in those years, was that burgeoning anti-monarchist, democratic and sectarian sentiments could thus be assuaged. In relative terms, never before had such large sums of money been set aside as between 1808 and 1824. Millions of pounds found their way to the churches in England, Ireland and Scotland, supplemented with enormous private gifts.

A second reason for the mass investments in the churches lay in the fresh existence of the United Kingdom. The Act of Union from 1800 had united the predominantly Catholic Kingdom of Ireland with the Protestant Kingdom of Great Britain. A quarter of the population of the new United Kingdom of Great Britain and Ireland were Catholics, who soon became disappointed in the new union, which was not quite based on equality. A resolute Protestant Church with sufficient financial resources, however, should be able to win over part of the Catholic population and thus reinforce the union's political foundation.

This hope proved to be in vain. A committee instated by Parliament in 1853, which published the results of the first official investigation into church attendance of the British population, wrote that '[f]rom many valid causes, there will always be a considerable number of persons absent from public worship.'<sup>10</sup> One might think of children, the sick and those who cared for them. Apart from this, there was a category of absentees of unknown proportions who had obligations on Sundays, such as those workers employed by the railroads, steamships or inland shipping. And if people failed to attend church, might not the reason for this lie in the lack of accommodation? After all, the population of the United Kingdom grew at an unprecedented rate.

The investigation, however, showed that lack of space could not possibly be a valid reason to fail to appear on Sunday, as many churches were only half full. A majority of the British failed to attend church on Sunday, mostly for invalid rea-

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<sup>9</sup> Ibidem, pp. 43-47.

<sup>10</sup> *Census of Great Britain, 1851: Religious Worship. England and Wales. Report and Tables*, London, 1853, p. cxx.

sons.<sup>11</sup> A fact that was considered shocking was that of the English who bothered to go to church, merely a little more than half went to the established church, of the churchgoing Scots this was less than a third and in Wales only a quarter.<sup>12</sup> One hundred years earlier, the numbers were dramatically different. In 1750, less than 90% of the churchgoing public were accommodated by the established churches in Great Britain.<sup>13</sup> For the supporters of the state church, this shocking development called a halt to the availability of public means to satisfy the Anglican building appetite. Subsequently, the Church called on the upper class to assume their Christian responsibility – and not without success. Between 1841 and 1876, no less than 3,199 new churches and chapels arose in England and Wales – an approximate 25% increase in building stock.<sup>14</sup>

### Catholic emancipation

Those who review the seventeenth-century Catholic community solely in terms of the numbers, will have difficulty imagining the British fears of the Popish danger. On a population of approximately 5.5 million, England only counted an estimated 60,000 Catholics and their share in Scotland was about 2%.<sup>15</sup> Historian Jim Smyth points out a number of reasons why a religious group as marginal as this, nevertheless managed to instil such fear into the Protestant British. In the first place, the Catholics were living geographically concentrated, creating an ‘optical illusion of numerical strength’. Also, the high aristocracy – a manifest and esteemed segment of the nation – consisted of a disproportionate number of Catholics. The memory of Catholic atrocities was kept alive by Protestant books of martyrs that left little to the imagination. Finally, as little in number British Catholics may have been, to many Protestants they were the fifth column of an aggressive power block on the European continent, aiming for their island.

Through the course of the eighteenth century, the Catholic community in Great Britain began to grow in size and its composition started to change.<sup>16</sup> The migration of Irish Catholics commenced, although on a modest scale compared to the massive influx caused by the Great Famine in the middle of the nineteenth

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<sup>11</sup> Among churchgoers, there were many who attended a service twice or more. If these persons (according to estimates) would be filtered out, only 24% of the population would have attended a service on that particular Sunday. Peter Brierley, ‘Measuring Religious Behaviour’, in: Martin Bulmer, Julie Gibbs and Laura Hyman (eds), *Social Measurement through Social Surveys: An Applied Approach*, Farnham/Burlington, 2010, pp. 69-88, p. 74.

<sup>12</sup> Brown, ‘The Reform and Extension of Established Churches’, p. 58.

<sup>13</sup> David Hempton, *Religion and Political Culture in Britain and Ireland: From the Glorious Revolution to the Decline of Empire*, Cambridge, 1996, p. 2.

<sup>14</sup> Brown, ‘The Reform and Extension of Established Churches’, p. 64.

<sup>15</sup> Jim Smyth, *The Making of the United Kingdom, 1660-1800: State, Religion and Identity in Britain and Ireland*, Harlow, 2001, pp. 62-63.

<sup>16</sup> Hempton, *Religion and Political Culture in Britain and Ireland*, p. 19.

century. Another factor was that the British Catholics mostly lived in regions where the socio-economic characteristics were rapidly changing by the up and coming industrialisation, resulting in below average employment in agriculture. Altogether, in about eighty years, the number of Catholics increased tenfold, to three-quarters of a million in 1850.<sup>17</sup>

Irish Catholics, representing some 81% of the population according to an 1835 census, initially supported the Act of Union, because they expected that Ireland's accession to the new United Kingdom would be a first step towards being granted equal religious and political rights. That hope proved to be unfounded. In 1809, the Archbishop of Dublin, John Troy, phrased his profound disappointment over the fact that Ireland was now governed 'by a state and people notoriously prejudiced against our religion and particularly hostile to Irish Catholics'.<sup>18</sup> Since the 1793 Relief Act, Catholics were in fact allowed to vote, but they were not yet allowed a seat in Parliament. The one hundred thousand Catholic voters therefore usually gave their votes to Protestant liberals.

The twenties of the nineteenth century were dominated by the Irish or Catholic issue. At the forefront of Catholic political emancipation was Daniel O'Connell (1775-1847), a flamboyant Irish politician who was the first one to see that the sheer number of Catholics could be made into a means to apply political pressure. With great organisational talent and a gift for rhetoric, through his Catholic Association he managed to unite the Irish Catholic clergy and the Irish farmers in the struggle for Catholic emancipation, which reached its provisional peak in 1829 with the Catholic Relief Act.<sup>19</sup> More so out of fear for a civil war in Ireland than stemming from conviction, the restrictions for Catholics to take up their seats in Parliament were lifted. The Act received little support from the population and the monarchy in England. The Tories, having been in power for nearly forty years, paid the political price. The Irish farmers, who had expected the Relief Act would release them from the hated tithes, were disappointed. In 1831 they refused to make the payments, which cost them dearly. The army was deployed to collect the tithes, which resulted in bloody confrontations and the support for disestablishment in Ireland was only strengthened.

### **Jews and atheists in Westminster**

Elsewhere in the United Kingdom, the violence in Ireland was part of the cause of growing aversion against the privileged position granted the Anglican Church by the state. A group of Scottish Dissenters embarked on a 'Voluntary campaign'

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<sup>17</sup> Richard Brown, *Church and State in Modern Britain, 1700-1850*, London, 1991, p. 463.

<sup>18</sup> Quoted in: Sean McGraw and Kevin Whelan, 'Daniel O'Connell in Comparative Perspective, 1800-50', *Éire-Ireland* 40 (1-2), 2005, pp. 60-89, p. 65.

<sup>19</sup> McGraw and Whelan, 'Daniel O'Connell in Comparative Perspective'; Brown, 'The Reform and Extension of Established Churches', pp. 48-50.

which put voluntariness in religious matters first. In 1844, the Voluntaries founded the British Anti-State Church Association, which was rechristened the Liberation Society in 1853. They devoted themselves to the withdrawal of the state from the religious domain and for this, they sometimes borrowed the vocabulary used by the supporters of free trade: 'indeed, the movement became linked to liberal calls for free trade and the removal of state interference from the marketplace'.<sup>20</sup> What's more, the well-known Anti-Corn Law League was one of the driving forces behind the movement for disestablishment. The Leaguers resisted economic conservatism of established interests and all sorts of practices interfering with competition, often originating from Medieval times. They opposed anything monopolistic, also in the realm of religion: 'Through the spectacles of free trade it was possible, then, for Leaguers to see elements of monopoly in facets of life, such as religion, which seemed at first to be far removed from economic affairs or trade policy. [...] To members of the League the monopoly in religion was held by the very same landed aristocrats and gentry who enjoyed a monopoly in trade of corn.'<sup>21</sup> The moral dimension of the corn laws also played a part. According to the Leaguers, the laws were hardest on the weak of society and were therefore in violation of the religious prescription to tend to the poor.

Not all Dissenters went as far as the Voluntaries. To some of them, it was not so much about the formal, constitutional position of the Church as it was about its role in practical matters, like weddings having to be blessed by the Church of England, births and deaths that were registered by parish churches and the universities of Oxford and Cambridge being closed bastions for Dissenters.<sup>22</sup> In 1836, British Parliament complied with most these demands and in the future, the registration of marriages, deaths and births was also allowed outside the established church. The yoke of the Irish farmers was eased as well. Instead of the tithes, landowners were required to pay land tax. Although all this resulted in a (temporary) end to the violence in Ireland, the Church of Ireland was and still remained a symbol of English oppression for most Irish.

The Jewish community was gradually granted more rights as well, be it not without a struggle. No less than thirteen motions for the emancipation of Jews were rejected by Parliament. Jewish banker Lionel de Rothschild was elected in a London constituency in four successive elections, but since he would only be allowed his seat upon taking the oath with the words 'upon the true faith of a Christian', he could not take his seat in Parliament.<sup>23</sup> His London supporters persistently continued to re-elect him, causing members of the House of Commons to realise that it was no more than fair to drop this phrasing. In 1858, when

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<sup>20</sup> Brown, 'The Reform and Extension of Established Churches', p. 50.

<sup>21</sup> Richard Francis Spall (Jr.), 'The Anti-Corn-Law League's Opposition to English Church Establishment', *Journal of Church and State* 32 (1), 1990, pp. 97-123, pp. 99-100.

<sup>22</sup> Brown, 'The Reform and Extension of Established Churches', p. 51.

<sup>23</sup> *Ibidem*, pp. 59-60.

Rothschild was elected for the fourth time, he became the first Jew in British parliamentary history to take a seat in the House of Commons.

It took more time before Parliament was willing to accept a member with no religious denomination whatsoever. The overtly atheist Charles Bradlaugh (1833-1891) was founder of the National Secular Society, which still exists. As part of his desired separation of church and state, he applied himself to the removal of the 26 unelected Anglican bishops (the Lords Spiritual) from the House of Lords.<sup>24</sup> He was first elected to the Commons (constituency Northampton) in 1880, but despite several re-elections, he was not allowed to take his seat. First Bradlaugh wanted to take a vow (affirmation), rather than pronouncing the Christian oath, but this met with legal resistance. At long last, when he said he would pronounce the oath, this was initially refused, because what would be the value of a Christian oath for an atheist?

### **British liberals and (dis)establishment**

The paradox of the United Kingdom is that the Protestants and Catholics have opposite opinions regarding the relationship between church and state compared to their fellow believers of Continental Europe. The Catholics in southern Europe applied the same fervour in their defence of the need for a national (Catholic) church as the Anglicans did on the British Isles. British and Irish Catholics on the other hand, insisted on political, religious and civil equality – liberal themes that met with little mercy from most Catholics on the Continent.<sup>25</sup> This may partly be explained by the fact that the British Protestants were not convinced of the liberal disposition of their Catholic compatriots. They secretly suspected that equal treatment would be abused by the Catholics in the long run. It is typical that while ‘many continental liberals marvelled at the apparent liberalism of Catholic Ireland [...] most English statesmen feared Irish Catholicism as an illiberal, backward and intolerant creed’.<sup>26</sup>

It is therefore ironic that it was precisely with the help of an English liberal who had dedicated himself to the Irish cause, William Gladstone, that the Anglican Church managed to maintain its exceptional constitutional position. The disestablishment of the Church of Ireland was resolved during the first liberal government of Gladstone (1868-1874). Added to earlier granting of religious and political rights to Catholics and other religious minorities, this strengthened many non-conformists in their belief that the formal separation of (Anglican) church and state was forthcoming. ‘Yesterday we asked for toleration, today we ask for

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<sup>24</sup> Dennis Grube, ‘Religion, Power and Parliament: Rothschild and Bradlaugh Revisited’, *History* 92 (305), 2007, pp. 21-38.

<sup>25</sup> Keith Robbins, ‘Church Establishment, Disestablishment and Democracy in the United Kingdom of Great Britain and Ireland, 1870-1920’, in: Robbins (ed.), *Political and Legal Perspectives*, pp. 69-92.

<sup>26</sup> Hempton, *Religion and Political Culture in Britain and Ireland*, p. 83.

religious equality; tomorrow we shall demand the disestablishment of the Church of England', was an optimistic remark heard on a meeting of non-conformists.<sup>27</sup>

That was not an unfounded expectation, but in 2013 we may conclude that it has yet to come about. Why has it not? The time appeared ripe: the last quarter of the nineteenth century was a highly successful period for the Liberal Party and, outside the Anglican Church, the call for disestablishment resonated louder than ever. As a matter of fact, also within the Church of England there was increasing doubt about whether it was so desirable for British Parliament, with all its religious diversity, to exercise supervision over the Church. Disestablishment also seemed to find support in a series of expansions of the male electoral suffrage. The Reform Acts from 1867-1868 awarded suffrage to approximately one-third of the male population and less than twenty years later one half (Ireland) to two-thirds (England) of the male population were entitled to vote.<sup>28</sup> The aforementioned Liberation Society collaborated a lot with organisations that attempted to improve the economic circumstances of the newly enfranchised – mostly labourers and agricultural workers. At some moment, the parliamentary balance of forces would reflect the new social relations, with disestablishment as future outcome. With the exception of the eccentric left-wing liberal imperialist Joseph Chamberlain, who for many years had been the right-hand man of liberal prime minister William Gladstone, the leadership of the Liberal Party had not clearly pronounced to be in favour of disestablishment, but most liberal candidates for Parliament were dedicated to the cause. Although neither the Liberal Party nor the Tories manifested themselves emphatically as spokesperson of any ecclesiastical denomination – as both considered themselves a national party – in general, the liberals were favourably disposed towards the needs of the Dissenters, while the Tories identified themselves more closely with the Church of England.<sup>29</sup> The opposite is also true: so-called *poll books* reveal that the Anglican clergy predominantly voted for the Tories, while Catholic priests and non-conformist ministers of religion supported the Whigs, Radicals or the Liberal Party.<sup>30</sup>

That disestablishment of the Anglican Church did not succeed, was in large part because of the actions of liberal leader and many times prime minister William Gladstone (1809-1898). Although responsible for disestablishment of the Church of Ireland, he never fought to separate church and state in England. In 1885, when the movement for disestablishment was at the peak of its strength, Gladstone aimed all his arrows on the matter of Irish Home Rule, of which in liberal ranks there were many varying views.<sup>31</sup> The Irish issue led to a huge divide

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<sup>27</sup> Quoted in: Noel J. Richards, 'Disestablishment of the Anglican Church in England in the Late Nineteenth Century: Reasons for Failure', *Journal of Church and State* 12 (2), 1970, pp. 193-211, p. 193.

<sup>28</sup> Robbins, 'Church Establishment, Disestablishment and Democracy', p. 80.

<sup>29</sup> *Ibidem*, p. 81.

<sup>30</sup> Brown, *Church and State in Modern Britain, 1700-1850*, p. 471.

<sup>31</sup> Richards, 'Disestablishment of the Anglican Church', p. 201 et seq.

within the Liberal Party (the so-called Liberal Unionists, Chamberlain among them, eventually joined forces with the Tories) and in the elections of the following year, the liberals came off worst. In the run-up to those elections, Gladstone had once again explicitly distanced himself from the supporters of a separation of church and state: 'disestablishment of the Church of England is utterly remote from the prospects, and the work, and the possibilities of the Parliament which we are about to see elected'.<sup>32</sup> That prediction came true, if only because he personally placed an even bigger bone of contention (Irish Home Rule) atop the political agenda.

### Confessional remnants

Remarkably so, in the twentieth century, the debate about disestablishment was never as intensive as it had been in the nineteenth century, despite the secularisation of British society. Even in the 2010 elections, the relationship between the Anglican Church and the British State was no topic for debate. Neither of the three major parties even so much as mentioned the word '(dis)establishment' or 'church' in their hefty electoral programmes.<sup>33</sup> This may be explained by the fact that this is not a topic that interests the British people. Research conducted in the spring of 2011 proved that 54% of the respondents were (very much) in favour of the statement 'The Church of England should keep its status as the official established church in England.' Only 16% was (very much) against this.<sup>34</sup> It is no coincidence that support for the status quo was lowest (31%) in Scotland and largest in England (56%). It comes as no surprise either, that 69% of Conservative Party supporters wishes to hang on to establishment, while a little less than half the Labour and Liberal Democrats share this sentiment. The largest group of opponents (although no more than a quarter) of establishment could be found among the Liberal Democrats. The results were not broken down in terms of ecclesiastical background.

Today, disestablishment seems more like a theme for discussion within the Anglican Church itself. What is overlooked sometimes, is that establishment not only means that a Church has a privileged position within the polity, but also that political decision-making may greatly affect whatever goes on within the Church. One infamous example is *The Book of Common Prayer*. Revisions of this prayer book of the Anglican Church must be agreed upon by Parliament. Much to the dismay of the Church, the MPs, most of whom were not even members of the An-

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<sup>32</sup> Quoted in: Richards, 'Disestablishment of the Anglican Church', p. 206.

<sup>33</sup> The Conservative Party only refers, with approval, to 'churches' as a location for solar panels in Germany.

<sup>34</sup> Data from the British Election Study (BES) AV Referendum Study, used by British Religion in Numbers (BRIN), connected to the University of Manchester. Ben Clements, 'Attitudes towards the Disestablishment of the Church of England', May 2012 ([www.brin.ac.uk](http://www.brin.ac.uk)).

glican Church, dismissed a revised version twice in 1927 and 1928. So formally, the 1662 edition is still in force. Later on, the Church was granted consent to produce alternative prayer books without Parliament's involvement.<sup>35</sup>

The 'Prayer Book Crisis' has become a good illustration of the fact that at times establishment is a mixed blessing for the Church, a conclusion substantiated by the reaction from the Anglican Church to recent proposals for the introduction of gay marriage. Since the Anglican Church is a state church, residents of a parish, regardless of their religious convictions, have the right to be wedded in the local church. Such ecclesiastical marriages are legally binding.<sup>36</sup> In July 2012, David Cameron confirmed yet again that his government coalition aims to introduce gay marriage before the 2015 elections, despite opposition from the Church of England and from the ranks of his party.<sup>37</sup> The proposal concerns only civil marriages and religious organisations will not be obliged to conclude gay marriages within their walls. However, the Church of England is not at ease about this and fears the European Court of Human Rights will force the Church to conclude gay marriages in the future. Many legal experts believe this fear to be unfounded; the chief executive of Stonewall, a British interest group for lesbians, homosexuals and bisexuals, referred to the threat of disestablishment as 'melodramatic scaremongering'.<sup>38</sup> One commentator for *The Daily Telegraph* called the Anglican fear for the consequences of gay marriage 'deeply ironic' considering that the Church owes its existence to a marriage (of Henry VIII) which was carried through against the explicit wishes of the ecclesiastical authorities at the time.<sup>39</sup>

### *Monarchy*

Whether the introduction of gay marriage will bring about a separation between church and state remains to be seen, but also without this recent controversy about the marriage supporters of a neutral state can point out a number of topics where the United Kingdom, as a state, maintains too close ties with the Anglican Church. It has been aptly remarked that although 'it is true that church establishment is not incompatible with religious freedom, it is not at all compatible with religious equality'.<sup>40</sup> The first example of this is the British head of state, bearing the title of 'Supreme Governor of the Church'. On the advice of the prime minister to whom the names are brought from the Crown Nominations Commission, she appoints the bishops and archbishops of the Anglican Church. Apart from this, it is customary

<sup>35</sup> Colin Buchanan, *The A to Z of Anglicanism* ('Alternative Services'), Plymouth, 2006, p. 10.

<sup>36</sup> Javier Garcia Oliva, 'Church, State and Establishment in the United Kingdom in the 21st Century: Anachronism or Idiosyncrasy?', *Public Law*, 2010, pp. 482-504.

<sup>37</sup> *The Daily Telegraph*, 31 July 2012.

<sup>38</sup> BBC News, 'Church of England warning on gay marriage', 12 June 2012 ([www.bbc.co.uk/news/uk-18405318](http://www.bbc.co.uk/news/uk-18405318)).

<sup>39</sup> *The Daily Telegraph*, 17 June 2012.

<sup>40</sup> Bob Morris, 'The Future of "High" Establishment', *Ecclesiastical Law Journal* 13 (3), 2011, pp. 260-273, p. 263.



for her to open the annual General Synod of the Church of England.

In order to be allowed to ascend the throne, the next head of state will be required to undergo a number of religious tests.<sup>41</sup> The first requirement is that neither the pretender to the throne, nor his or her spouse may be Catholic (Act of Settlement). Besides this, the head of state is required to be 'in communion' with the Church of England, which does not necessarily mean he must be an acknowledged member of the Church, but he must belong to a Protestant denomination endorsing the Holy Trinity.<sup>42</sup> It is obvious that merely to undo the discrimination against any Roman Catholic successors to the throne is not satisfactory. Because if only the Act of Settlement were to be dropped, the peculiar possibility arises of a Catholic head of state who is also the Supreme Governor of the Anglican Church. Moreover, in the Thirty-Nine Articles of Religion, the defining statements of doctrine of the Church of England, the monarch is described as 'Defender of the Faith', though it should be borne in mind that this title originally was granted Henry VIII by the Pope in 1521.<sup>43</sup> Prins Charles stated that as monarch he would want to be 'Defender of Faith' to do justice to the multi-religious character of the United Kingdom, although the constitutional intertwining between (a) religion and a head of state remains problematic for secular liberals.

#### *House of Lords*

The United Kingdom is the only democracy where delegates from the state church automatically have the right to representation in Parliament. In the current 765-member House of Lords, a maximum 26 clergymen are seated: the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, plus 21 longest serving English bishops. Strictly speaking, the presence of the Lords Spiritual is unrelated to the status of the Anglican Church as established church, because long before the Reformation it already was customary for the clergy to be represented in Parliament.<sup>44</sup>

The Anglican Church – and only the Anglican Church – having (unelected) representatives in the House of Lords is hard to reconcile with the multireligious or secular character of British society. To a certain extent, the fate of the Lords Spiritual is connected to the plans that are every so often thought up for reform of the House of Lords. The coalition government of the Conservative Party and the Liberal Democrats appeared firmly set to effect radical reform, right until prime minister Cameron gave in to the opposition within his own Conservative Party and swept the proposal off the table in the summer of 2012. This plan, which

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<sup>41</sup> Bob Morris, 'The Future of Church Establishment', *Ecclesiastical Law Journal* 12 (2), 2010, pp. 214-218.

<sup>42</sup> Frank Cranmer, John Lucas and Bob Morris, *Church and State: A Mapping Exercise*, London, 2006, p. 13.

<sup>43</sup> Garcia Oliva, 'Church, State and Establishment in the United Kingdom in the 21st Century', p. 486.

<sup>44</sup> *Ibidem*, p. 492.

was halted, would not have removed the bishops from the House of Lords, but it would have gradually reduced their numbers from 26 to 12 – which would not have been a very principal change.<sup>45</sup> Moreover, there would have been little change in their relative influence if these reform proposals had been adopted, since the future House of Lords would consist of somewhere between 300 and 450 members. Finally, the Lords Spiritual, as exclusive English Lords having a seat in a legislative body for the whole United Kingdom, remains questionable from a democratic point of view. An alternative proposal is to also offer other religious denominations a seat in the House of Lords.<sup>46</sup> From a liberal standpoint, this may hardly be called an improvement, because in a truly neutral state, believers of whatever denomination and non-believers have the same political rights.

## 2. Church and state in the Republic of Ireland

In nineteenth-century England, the Anglican Church was gradually losing its position as national church, even though up until this day the political and constitutional consequences thereof have not yet been fully drawn. In the same period, the Roman Catholic Church in Ireland was growing into a de facto national church and Catholicism became an integrated part of Irish identity. Here too, this development can be recognised only partially in the formal position of the Church, which at first glance is an encouraging observation for supporters of *laïcité*. However things are seldom what they seem: the Republic of Ireland is an excellent example of a country that did not require a state church in order to warrant a pervasive social and political influence of the Catholic Church. This influence could manifest itself stronger because of the high degree of religious homogeneity. The first census of independent Ireland took place in 1926 and the results showed that 2.75 million Catholics and 164,000 members of the (Anglican) Church of Ireland lived there. The total number of non-Catholics was a mere 211,000 people.<sup>47</sup>

Over the past twenty years, Ireland has undergone unrecognisable socio-economic and demographic changes. The country developed into a magnet for economic migrants – from eastern Europe in particular – giving it a more mixed appearance. Also, the opinions of the Irish about the proper relationship between church and state, about the role of the Church in their personal lives and about the ethics of good and evil have shifted. However, the Irish state is still anything but secular. It is normal, of course, for social changes to just slowly make their way to legislation and regulations, especially in a country like Ireland, which, by European standards, is a conservative nation with no liberal tradition to speak of.

In Ireland, however, there is an additional reason why the Irish state does not yet observe the principles of neutrality, as liberals would prefer to see. That

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<sup>45</sup> House of Lords Reform Bill 2012-13 ([www.parliament.uk/bills](http://www.parliament.uk/bills)).

<sup>46</sup> Cranmer, Lucas and Morris, *Church and State*, p. 48.

<sup>47</sup> Dermot Keogh, 'The Catholic Church and the Irish Free State 1923-1932', *History Ireland* 2 (1), 1994, pp. 47-51.

reason is to be found in the constitution. The Irish debate about the relationship between church and state revolving around the constitution has everything to do with the fact that the constitution was, and to a certain extent still is, permeated with catholic social teaching: Catholic doctrines in the field of socio-economics and moral-ethics. The second reason why the constitution takes centre stage is that every amendment to this constitution must be put before the Irish public in a binding referendum. Consequentially, topics like divorce and abortion, which in Ireland are regulated by the constitution, have major political and constitutional connotations. For those who wished to bring about amendments to such topics, a parliamentary majority would not suffice, but they would be required to face the electorate and many social organisations, among which the all important Catholic Church. So it is no surprise that studies into the relationship between church and state in Ireland extensively look into the large number of national referendums.

### **God in the constitution**

It is difficult to overrate the importance of good personal relationships between the Catholic clergy and the Irish political elite. For example, William T. Cosgrave, the first prime minister, was a good friend of Edward Byrne, the Archbishop of Dublin. Cosgrave even toyed with the idea of an Irish House of Lords where bishops would have a seat, a 'theological senate' as Irish historian Dermot Keogh put it.<sup>48</sup> Such a senate was never realised, but the Church amply succeeded in imposing its moral visions on many laws that were meant to protect Ireland against foreign – often British – types of lawlessness: radio, cinema, dance, provocative fashion, etc. Politicians required no convincing of the degenerating effect of such pleasures, as the political elite and the Church shared a conservative moral agenda. Film censorship was applied since 1923 and in 1929 the Censorship of Publications Act was adopted after the Committee of Enquiry on Evil Literature had looked into the problematic nature of bad literature. Distribution and sale of 'indecent' or 'obscene' literature was banned, as was material propagating 'the unnatural prevention of conception or miscarriage, or any method, treatment or appliance to be used for such prevention or procurement'.<sup>49</sup> Based on the Act, a censorship committee was established, chaired by a Catholic priest and further composed of three Catholic laymen and a Protestant.<sup>50</sup> One problem related to censorship concerned the appointment of personnel that was professionally involved with books or medication. The appointment of a young Protestant woman as county librarian in Mayo in 1930 kicked up a row as the local government and the library board,

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<sup>48</sup> Keogh, 'The Catholic Church and the Irish Free State 1923-1932', p. 47.

<sup>49</sup> Quoted in: Diarmaid Ferriter, *The Transformation of Ireland: 1900-2000*, London, 2005, p. 341.

<sup>50</sup> G.W. Hogan, 'Law and Religion: Church-State Relations in Ireland from Independence to the Present Day', *The American Journal of Comparative Law* 35 (1), 1987, pp. 47-96, p. 51.

eventually to no avail, put up a fierce resistance against an alumnus from Trinity, a Protestant bastion. Was it possible to entrust working with books in combination with young Catholic children to a non-Catholic? And what to think of Protestant pharmacy personnel? Would the rigid Catholic regulations regarding contraception be maintained by people with more lax sexual morals?

In 1932, Fianna Fáil rose to power for the first time and this highly successful, dominant conservative political force was to rule Ireland almost single-handedly in the twentieth century. The informal yet close ties between church and state (also between Fianna Fáil kingpins and high members of the clergy) are embedded in the 1937 constitution.<sup>51</sup> The future Archbishop of Dublin, John Charles McQuaid, was very closely involved in drafting this. Not only did he present prime minister Éamon de Valera with countless documents regarding family, marriage, property relations, education, etc., he also dealt with formulating various articles of the constitution. He put a lot of effort in a draft article about religion, but had to settle for a version that did not take matters as far. The Catholic Church did not become state church, but: ‘The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens’ (art. 44.1.2.).<sup>52</sup> In the next paragraph, the state also recognised several other religious denominations (the Church of Ireland, Presbyterians, Methodists, etc.), which, however, enjoyed no ‘special position’.

Although the special position of the Catholic Church was not specified any further, this vague formulation was not without legal consequences. In 1951, the Supreme Court granted custody of children from a failed mixed marriage to the Catholic mother, rather than to the Protestant father, despite it being custom to award custody of the children to the father in those days. In the grounds for its decision, the Supreme Court referred to article 44.1.2 and to the preamble where God and the Holy Trinity are explicitly mentioned.<sup>53</sup> The first paragraph of article 44 also leaves no room for doubt about religion in the Irish state: ‘The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.’

From the viewpoint of religious freedom and state neutrality, the new constitution was a step back in respect of the constitution of the Irish Free State (1922-1937), which guaranteed religious equality, without mentioning any religious denomination by name (article 8): ‘Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen, and no law may be made either directly or indirectly to endow any religion, or prohibit or restrict the free exercise thereof or give any preference, or

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<sup>51</sup> Dermot Keogh, ‘The Catholic Church and the Writing of the 1937 Constitution’, *History Ireland* 13 (3), 2005, pp. 36-41.

<sup>52</sup> ‘Constitution of Ireland (original text)’ ([www.en.wikisource.org](http://www.en.wikisource.org)).

<sup>53</sup> Bill Kissane, ‘The Illusion of State Neutrality in a Secularising Ireland’, *West European Politics* 26 (1), 2003, pp. 73-94, p. 77.

impose any disability on account of religious belief or religious status [...]'.<sup>54</sup>

The special constitutional position of the Roman Catholic Church came to an end in 1973. An overwhelming 84% majority voted for the removal of article 44.1.2. In fact, this move was more politically motivated than a result of an intrinsic desire for religious equality. After all, elsewhere in the constitution (until 1999) it read: 'The national territory consists of the whole island of Ireland, its islands and the territorial seas'. The southern Irish felt that the constitutional guarantee of religious equality in the Republic of Ireland removed an argument against territorial union of the whole island from the northern Irish Protestants.

### **Catholic social teaching and constitutional law**

The constitutional mention of God is rather unusual, but up until late in the twentieth century, Ireland was a rather unusual country. As recently as the 1960s, almost the whole population would attend mass and criticism of the entanglement of church and state came either from Northern Ireland or from the United States, or else from Great Britain.<sup>55</sup> In the Republic of Ireland, secularisation of the state simply was not much of a topic for discussion, if at all.

Partly due to the good personal relations between the Irish clergy and the political elite, the Irish constitution has been influenced by catholic social teaching. Article 41 ('The Family') is a strong illustration of this.<sup>56</sup> The first and second paragraphs of this article read:

- 1.1 The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
- 1.2 The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.
  - 1.1. In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
  - 1.2. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home. The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

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<sup>54</sup> Constitution of the Irish Free State (Saorstát Eireann) Act, 1922 ([www.irishstatutebook.ie](http://www.irishstatutebook.ie)).

<sup>55</sup> In the mid-1970s, still 91% of the Catholics attended church at least once a week. Brian Girvin, 'Church, State, and Society in Ireland since 1960', *Éire-Ireland* 43 (1-2), 2008, pp. 74-98.

<sup>56</sup> The All-Party Oireachtas Committee on The Constitution ([www.constitution.ie](http://www.constitution.ie)).

Although there is no explicit reference to the Christian faith here, it is obvious for everyone that this article is permeated with the Christian vision on the role of the woman, marriage and family. According to liberals, here the state explicitly meddles with matters that belong in the private domain, and, what's more, it does so in the constitution. In whichever way the spouses divide the pros and cons of paid and unpaid work among themselves, is a matter that should be decided by the parties involved themselves and not by the government.

The third paragraph initially read that 'No law shall be enacted providing for the grant of a dissolution of marriage'. The media and some politicians suggested to liberalise the ban on divorce (and contraception) somewhat, but this idea found no favour with the Church. In 1971, the Archbishop of Dublin said that 'civil divorce is evil and contraception is evil. There cannot be [...] a right to what is evil'.<sup>57</sup> A two-thirds majority of the population agreed with this in 1986, when rejecting the possibility of the dissolution of marriage (subject to certain conditions) in a referendum. In only six of the 41 constituencies, all of which were located in the Dublin area, more people voted in favour of the amendment, rather than against.<sup>58</sup> Ten years later, when a new vote on divorce was held, the ratios proved to have shifted a bit. The possibility of divorce was adopted with a very minor majority of 50.28%, but the gap between rural regions and the cities still existed. It is no exaggeration to conclude that had it not rained as hard as it did in the (agricultural) west of Ireland, it might as yet be impossible for the Irish to file for divorce.<sup>59</sup>

Homosexual activities were banned under regular legislation, so in 1993, after decades of struggle, the political minds were ready for decriminalisation of homosexuality without the requirement of a referendum.<sup>60</sup>

On the contrary, attempts to legalise abortion were never successful. The Irish took to the polls no less than six times to vent their opinion on abortion. Initially, there was no mention of abortion in the constitution, but for fear of the Supreme Court interpreting the privacy rights within the marriage too broadly, the protection of unborn life was included in the constitution, following a heated electoral battle in 1983. Those submitting the proposal wanted to prevent what happened with contraception from also happening with abortion. The ban on the sale and import of contraceptives had been included in penal law, but the Supreme Court had ruled that ban to be in violation of the constitutional right to (marital) pri-

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<sup>57</sup> Quoted in: R.F. Foster, *Luck and the Irish: A Brief History of Change from 1970*, New York, 2008, p. 42.

<sup>58</sup> Department of the Environment, Community and Local Government, *Referendum Results 1937–2012* (www.environ.ie).

<sup>59</sup> Kissane, 'The Illusion of State Neutrality', p. 84.

<sup>60</sup> R.F. Foster, *Luck and the Irish*, pp. 49-50.

vacy.<sup>61</sup> For the time being, 2002 was the last time abortion was the topic of a referendum. A proposal to add to the existing ban that threat of suicide by the mother would not constitute a ground for abortion was rejected by the Irish by the narrowest of margins (approximately 11,000 votes difference). The existing article in the constitution may well protect the unborn life, but 'with due regard to the equal right to life of the mother'. Earlier, in a notorious rape case of an underage girl, the Supreme Court had hinted that if there would be a threat of the mother committing suicide, because of a pregnancy, this might be ground for abortion.<sup>62</sup> A coalition of Fianna Fáil and the Catholic Church wanted to prevent this through the constitution, but was narrowly defeated.

At the end of 2012, the socio-political debate about the topic of abortion broke out with great vehemence, and precisely for the reason of a mother's right to live. A 31-year old woman died of blood poisoning, presumably as a result of pregnancy, of which it was known that it would end in a miscarriage. The woman and her husband did not want to wait for the miscarriage and requested an abortion, which was denied because the heart of the fetus would still have been beating. According to the woman's next of kin, they had been told: 'this is a Catholic country'.<sup>63</sup> Many Irish blame the death of the young woman on the refusal of consecutive Irish governments to set clear regulations for circumstances when and when not to allow abortion and demand from the incumbent government that they finally provide clarity.

### **Liberalism in Ireland**

Earlier in this essay we pointed out that in the nineteenth century there was a notable difference between British liberalism on the one hand and continental liberalism on the other as far as the relationship between church and state is concerned. Remarkable also, was that the mindset of British and Irish Catholics on this topic was more in keeping with liberalism on the European mainland. However, this was not to last.

From a party-political point of view, the Irish and William Gladstone's Liberal party began drifting apart after the liberals won the elections in 1868, the year when, owing to an expansion of the suffrage, many British and Irish were allowed to go to the polls for the first time. Many Irish voters, as well as Irish MPs who had been candidates for the Liberal Party, were disappointed after the elections, when reforms failed to materialise. The 1874 elections marked the beginning of the end for the Liberal Party in Ireland, when it lost almost all its seats to the Irish Home

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<sup>61</sup> Hogan, 'Law and Religion: Church-State Relations in Ireland', pp. 67-69. The matter was taken to court by a woman whose (British) contraceptives were confiscated by Irish customs at the border. She was at risk of paralysis or death as a result of a potential pregnancy.

<sup>62</sup> Girvin, 'Church, State, and Society in Ireland since 1960', pp. 89, 96-97.

<sup>63</sup> *Irish Times*, 14 November 2012.

Rule Party, which aspired to Irish self-government. Another factor that helps explain the massive success of the Irish nationalists in 1874, was the fact that this were the first elections by secret ballot, so Irish tenant farmers were able to vote without being observed by their (often pro-British) landlords.<sup>64</sup> Anti-Catholic British and Northern Irish fueled the opposition against Irish self-government with the slogan that Home Rule would end up as Rome Rule. In hindsight, that fear was not entirely unjustified, as there was only one point that all political parties in independent Ireland agreed upon: the guiding role of the Catholic Church. In the previous pages we have seen that to this day Ireland struggles with illiberal social legislation as a result of this.

No liberal party ever managed to get a firm foothold in independent Ireland. The only nominal correlation between European liberalism and Irish politics is Fianna Fáil's fresh membership of the European Liberal Democrats and Reform Party (ELDR), the liberal group in European Parliament. The fact that Fianna Fáil of all parties took up membership of ELDR is even more peculiar because, until the end of the 1980s, this party was furthest away from liberalism in terms of ethics – and in fact, also in terms of economics. Until 2009, Fianna Fáil was a member of the Union for Europe of the Nations (UEN), a mixed lot of conservative-nationalist and outspoken anti-liberal parties, among which the Italian Lega Nord and the League of Polish Families. It was rather the questionable nature of some UEN members that drove Fianna Fáil into the arms of the ELDR than its love for liberalism. It is significant that the move to the ELDR was made against the wishes of Brian Crowley, the leader of the Fianna Fáil-group in the European Parliament. He felt that many viewpoints of the ELDR did not fit with the Fianna Fáil programme, among other things the European Common Agricultural Policy and abortion.<sup>65</sup>

The two other parties, the Labour Party and Fine Gael, until very recently had always been in Fianna Fáil's shadow. From time to time they would show less affection for the Catholic Church, but never assumed an anti-clerical attitude. The Irish Labour Party, hardly ever a factor in Irish politics, for that reason always seemed like the odd one out among its European sister parties.

The only party that was more in line with liberalism, ethically and economically, were the Progressive Democrats. After contraceptives had become available under strict conditions during the Fianna Fáil government, the subsequent coalition of Fine Gael and Labour wanted to drop the obligatory doctor's prescription. Fianna Fáil ordered the members of its parliamentary party not to vote in favour of liberalisation and expelled the dissident Desmond O'Malley. In 1985, O'Malley together with a number of sympathisers, formed the Progressive Demo-

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<sup>64</sup> Lawrence J. McCaffrey, 'Home Rule and the general election of 1874 in Ireland', *Irish Historical Studies* 9 (34), 1954, pp. 190-212.

<sup>65</sup> *Sunday Business Post*, 15 March 2009. At its 33rd annual congress (November 2012, in Dublin of all places) the ELDR was renamed Alliance of Liberals and Democrats for Europe Party (ALDE Party).



crats, who wanted to free Ireland from the grip of economic and moral conservatism. The party has ceased to exist, but much of its economic liberalism is now common coin of the other parties. Despite modest parliamentary proportions, the Progressive Democrats played a key role in the transformation of an Ireland plagued by economic problems into the Celtic tiger. Political scientist Michael Gallagher therefore observed that ‘never before has a party that averaged just 5.6% of the votes in the six elections that it contested made such an impact on government policy.’<sup>66</sup>

### **Growing distance between church and state**

The fact that the political guiding role of the Catholic Church has lost significance in the last decades has many fortunate and less fortunate causes. The Irish population eventually was not immune to the secularisation trend which had been going on for much longer across the Irish Sea. The strict censorship, the ban on contraceptives and divorce and other moral prescriptions gradually found less response from the people. Recent figures show that between 2005 and 2011, with the exception of Vietnam, nowhere in the world the number of non-religious people grew so fast as in Ireland, from 25 to 44%. Besides this, Ireland is in a shared eighth position in terms of the percentage of ‘convinced atheists’.<sup>67</sup>

It will be hard to substantiate a one-on-one connection, but there is no doubt that the alienation between the Irish population and the state on the one hand and Catholic Church on the other, also has to do with the countless sex scandals within the Irish Catholic Church. In the 1990s, the lid came off that can of worms and what followed was a series of shocking investigative reports about child abuse by priests. The trust many people had in the Church as an institute and in its judgment over good and evil, has been heavily damaged. How heavy becomes apparent from a notorious speech by prime minister Enda Kenny as a result of the Cloyne report, which described how the Vatican, the church and the state had (not) taken action against countless priests that were suspected of abuse. In 2011, the *taoiseach*, over the heads of the Irish MPs, addressed the Vatican in terms unheard of by Irish standards: ‘The revelations of the Cloyne report have brought the Government, Irish Catholics, and the Vatican to an unprecedented juncture. It is fair to say that [...] Ireland is, perhaps, unshockable when it comes to the abuse of children. But Cloyne has proved to be of a different order because, for the first time in this country, a report into child sexual abuse exposes an at-

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<sup>66</sup> Michael Gallagher, ‘The Earthquake that Never Happened: Analysis of the Results’, in: Michael Gallagher and Michael Marsh (eds), *How Ireland Voted 2007: the Full Story of Ireland’s General Election*, pp. 87-104, p. 91.

<sup>67</sup> WIN-Gallup International, *Global Index of Religiosity and Atheism – 2012* (www.redcresearch.ie). The census from 2011 nonetheless showed that 84% of the Irish call themselves Catholic, which led to discussions about the content of the concepts ‘Catholic’ and ‘religious’ for the average Irish person.



# **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?’<sup>1</sup>

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.<sup>2</sup> 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<sup>3</sup> 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 demon-

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> See later on for explication.

stated 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 government could only promote religion as such. All financial relations between church and state also had to be separated.<sup>4</sup> 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.<sup>5</sup> 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?<sup>6</sup> 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 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.<sup>7</sup> However, the principle is violated the moment confessional politicians draw up laws or other binding provisions

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

<sup>5</sup> Ibidem, p. 349.

<sup>6</sup> 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.

<sup>7</sup> 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.

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.

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’.<sup>8</sup>

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 ‘com-

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<sup>8</sup> College van Burgemeesters en Wethouders van Amsterdam, *Notitie scheiding kerk en staat*, Amsterdam, June 2008.

pensatory 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.

### **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.'<sup>9</sup> The leader of the revolt, stadtholder<sup>10</sup> 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.<sup>11</sup>

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 Oldenbarn-

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

<sup>10</sup> 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.

<sup>11</sup> 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.



evelt.<sup>12</sup> 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 above the church.<sup>13</sup> 'It [the state party] preferred the moderate governance of the state to the tyranny of the church.'<sup>14</sup>

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.<sup>15</sup>

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 grand pensionary 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-Remon-

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

<sup>13</sup> 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.

<sup>14</sup> De Beaufort, *De verhouding van den staat tot de verschillende kerkegenootschappen*, p. 68.

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

strant – and therefore acted in violation of the union treaty. In effect, the ban entailed a coercion of conscience.<sup>16</sup>

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 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.<sup>17</sup>

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.<sup>18</sup>

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. Grand pensionary Johan de Witt perceived this as a threat to provincial sovereignty.<sup>19</sup> 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.<sup>20</sup>

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'.<sup>21</sup> 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

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

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

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

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

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

<sup>21</sup> 'Staatregeling van 1798', in: W.J.C. van Hasselt, *Verzameling van Nederlandsche Staat-regelingen en Grondwetten*, Schoonhoven, 1895, pp. 1-86, 3.

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.’<sup>22</sup> Following the departure of the French, the separation between church and state was abandoned again.

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’.<sup>23</sup> 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.<sup>24</sup>

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.’<sup>25</sup> 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

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

<sup>23</sup> ‘Grondwet voor de Vereenigde Nederlanden (1814)’, in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten*, pp. 148-172, 171.

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

<sup>25</sup> ‘Grondwet voor het Koninkrijk der Nederlanden (1815)’, in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten*, pp. 173-217, 209.

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’.<sup>26</sup> 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.<sup>27</sup>

For Thorbecke, the separation of church and state implied that the state would 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.’<sup>28</sup>

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.<sup>29</sup> 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.’<sup>30</sup> In Thorbecke’s original proposal churches

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<sup>26</sup> ‘Grondwet voor het Koninkrijk der Nederlanden (1848)’, in: Hasselt, *Verzameling van Nederlandsche Staatsregelingen en Grondwetten*, pp. 252-288, 281.

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

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

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

<sup>30</sup> ‘Grondwet voor het koninkrijk der Nederlanden (1848)’, p. 282.

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.<sup>31</sup>

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.<sup>32</sup> This commission considered religion to 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.<sup>33</sup> 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.<sup>34</sup>

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

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

<sup>32</sup> 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.

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

<sup>34</sup> *Minutes of the Dutch House of Representatives, 1 September 1983*, p. 5529.

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.<sup>35</sup>

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.

### **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.<sup>36</sup>

From 1816 onwards the edge of the guilder coin was inscribed with 'God zij met ons' ('God be with us'). When 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.

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<sup>35</sup> Van Bijsterveld, *Godsdienstvrijheid in Europees perspectief*, pp. 81-83.

<sup>36</sup> *Ididem*, p 58.

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.<sup>37</sup>

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) 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.<sup>38</sup>

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

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<sup>37</sup> These words were spoken by the deputy prime minister at the time, remarkably enough the Catholic Christian Democrat Van Agt.

<sup>38</sup> 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.

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 '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 former 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.'<sup>39</sup> 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

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<sup>39</sup> *Minutes of the Dutch House of Representatives, 12<sup>th</sup> session, 28-10-1880*, p. 163.

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'.<sup>40</sup> 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 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.<sup>41</sup> 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.

Since November 2012 there is a coalition without the confessional parties, comprising of PvdA (Labour Party) and the liberal VVD, which made it possible to renew the discussion on the penalisation of blasphemy. A majority in the Second Chamber already accepted the abolishment of article 147 of the Penal Code. Now the First Chamber has to vote on the penalisation of blasphemy, but there is a good chance that the legal inequality in this matter will disappear in the near future.

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<sup>40</sup> *Minutes of the Dutch House of Representatives, 86<sup>th</sup> session, 26-05-1932*, p. 2584.

<sup>41</sup> 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.

### 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 hours on other days), initially via municipal bye-laws.<sup>42</sup> 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

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<sup>42</sup> In 1930 less than 10% of smaller municipalities (up until 10,000 inhabitants) had a bye-law prohibiting shops from opening on Sundays.

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.<sup>43</sup> 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. It is expected that from 2013 it will be up to the local authorities to decide whether the shops in their municipality are allowed to open at Sunday and how many times a year this allowances will be granted.

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.<sup>44</sup> 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 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

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

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

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.<sup>45</sup> 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 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 almost been completely eradicated worldwide. Since the 1950s and 1960s,

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<sup>45</sup> Van Bijsterveld, *Godsdienstvrijheid in Europees perspectief*, pp. 51-53.

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.<sup>46</sup> 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 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.<sup>47</sup>

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%

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<sup>46</sup> 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.

<sup>47</sup> Patrick van Schie, *Vrijheidsstreven in verdrukking. Liberale partijpolitiek in Nederland 1901-1940* (Amsterdam, 2005) pp. 179-192.

in 1875 to 62% in 1930.<sup>48</sup> 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. 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 Dutch society.<sup>49</sup>

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.

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<sup>48</sup> P.T.H.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.

<sup>49</sup> 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.



**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.



# France



# Recent Developments in France concerning the *Laïcité*

*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.<sup>1</sup> 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<sup>2</sup> 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.

Furthermore, the principle of *laïcité* was included in the very first paragraph of the 1958 Fifth Republic Constitution<sup>3</sup>: 'La France est une République indivisible, laïque, démocratique et sociale [...] Elle respecte toutes les croyances', that is: the

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<sup>1</sup> *Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État.*

<sup>2</sup> 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'.

<sup>3</sup> *Constitution du 4 Octobre 1958.*

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 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 2 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 meaningful for the entire European Union.

### **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 traditionally Anglo-Dutch communitarian model, based on ‘recognition’ and autonomy of ethnic groups, enabling de facto ‘separate development’ – seem to have worn thin. This appears evident in the recurring public disorders and even riots in 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 fundamentalist 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 disorders and riots in the *banlieues* have been blamed glibly entirely on the incomprehensible French defence of republican *laïcité* despite the 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 about twenty 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 the European liberal thought since its dawn in the English seventeenth century.

During the hearings of the Stasi Commission (the French presidential commission of inquiry on the subject)<sup>4</sup>, 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 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 to wear it if they so wish. 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 '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. 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, neutrality of the pub-

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<sup>4</sup> The official report of the Stasi Commission is published on the Internet: <http://les-rapports.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\\_publicques.6710.html](http://www.elysee.fr/elysee/elysee.fr/francais_archives/actualites/a_l_elysee/2003/decembre/rapport_de_la_commission_stasi_sur_la_laicite-auditions_publicques.6710.html).



lic 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 and the defence of minors who would not want to wear the veil from coercion by family or community. Indeed the choice was a 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.

So much about the normal veil (*hijab*), often euphemistically called 'scarf' in English. More recently the even more intractable issue of the integral veil (*burqa* or *niqab*) came into question, both in France and in other European countries, and a general ban on hiding one's face in public space was enforced in France in 2010, almost unanimously (but with many abstentions), by the National Assembly: thus this time not for minors alone and not just in public schools. The Belgian Parliament had already adopted a similar law, with just one vote against and two abstentions. There obviously are practical public order concerns (similar concerns motivate some countries to prohibit walking in the street wearing an integral motorcycle helmet) but the main problem is that individuals in the public sphere should be made individually responsible for their acts, and that requires that they are individually recognisable.

One could argue that religious freedom and respect for ethnic identity should

suggest a more ‘open-minded’ attitude. But the veil is not only a religious sign. On the contrary, as a religious sign, the Koranic foundation of the prescription of the veil – of whatever kind of veil, but especially the integral ones – is disputed by non fundamentalist Islamic scholars. And if the veil has been a traditional sign of patriarchal subjugation of women, in the balance between the two ethical and fundamental constitutional values – equality and equal social dignity of women on the one hand and respect for religious and communitarian identity on the other – why is it that the second should prevail? It is true that today the integral veil is used by a tiny minority in most European countries. But failing to regulate it now could make it difficult to regulate it if and when many more women would decide or could be forced to wear the integral veil. In such situations, refusing to wear any form of veil could become ‘more and more difficult by the day’.<sup>5</sup>

### **The *banlieues***<sup>6</sup>

The issue of the veil in public schools, 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 recurring disorders and even 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 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 and disorders 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 mean, all else being equal, to suffer discrimination in the labour and housing markets and in administrative dealings; in a word, civic

<sup>5</sup> Élisabeth Badinter September 9<sup>th</sup>, 2009 hearing at the French National Assembly.

<sup>6</sup> Gilles Kepel has returned to Seine-Saint-Denis in his new book *Quatre-vingt-treize* (Gallimard 2012). 25 years ago he studied Islam in that area. Now he identifies different phases where today the issue of *halal* has appeared as a focus and that the issue of the veil is no longer so important. Other new problems are arising in the area of healthcare, where ‘intransigent and inflexible religious practices’ are sometimes imposed by different religious fundamentalist groups, even in contrast with healthcare organisation, objecting doctors and nurses gender, claiming the infringement of hospital hygiene protocols, privacy and security regulations: Isabelle Lévy, *Menaces religieuses sur l’hôpital*, Paris, Presses de la Renaissance, 2011.

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 – formally not based on ethnicity, but on the almost coinciding requirement of residence), 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 anti-Semitic racism.

### **Sarkozy's 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 enacted by former president Nicolas Sarkozy, after vaguely hinting with little success at the possibility of a formal modification of the 1905 separation law, consisted of its 'evolutive interpretation': '*On peut faire évoluer le texte*' he said literally.<sup>7</sup> His proposal 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<sup>8</sup> – 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*.

'Positive *laïcité*' could have been interpreted as an effort to adapt to failure repeatedly occurred in the strict implementation of the principle of *laïcité* in the past. Rather, it resulted in a turning point towards a quite new direction in the state/religion relation – quite new, at least, for France. The way President Sarkozy used the new formula suggests such interpretation. He claimed 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 denied plans to change the basic 1905 separation law. But, most importantly, he thought 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

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<sup>7</sup> 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 20<sup>th</sup> 2007, during his visit to the Holy See, in acceptance of the title of Honorary Canon of the Lateran basilica.

<sup>8</sup> Bayrou, 'Je défends la laïcité comme citoyen, mais aussi comme croyant', *La Croix*, April 12<sup>th</sup> 2007, interview by Dominique Gerbaud.

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 not 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.<sup>9</sup> 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 October 2011 the government published a 500-page book with all legal texts, with extensive comments, related to *laïcité* and religious freedom – the two phenomena seen as closely related.<sup>10</sup> Even the term ‘code’ is given as a description of the collection of texts. The minister of interior hoped to make an end to the intensive debate on *laïcité* and religious freedom having taken place in 2011. And no new legal regulation would be necessary, he stressed. Two hopes that we think will not be fulfilled.

This presidential attitude had gradually been changing the nature and the tune of the debate on the French model of *laïcité*. UMP, Sarkozy’s party, strongly linked the ‘debate on *laïcité*’ to that on ‘national identity’. Step by step, all this allowed the Front National, under the new leadership of Marine Le Pen, much more modern and updated than her father’s, to come to the point of turning *laïcité* into a principle apparently more cherished by the extreme right than by the mainstream political establishment – obviously, they were using it just as an argument against the Muslim presence in the French society, against immigration and even as a surrogate for open racism. Yet this time *laïcité*, more than the traditional defence of the old-fashioned French Catholic and traditionalist issues linked to legitimist and pre-revolutionary themes, has been one of the leading motives of Marine Le Pen’s electoral rallies, for the first time in 2012.<sup>11</sup>

<sup>9</sup> Alain Christernacht, *Le Monde*, 12 September 2008.

<sup>10</sup> *Laïcité et liberté religieuse. Recueil de textes et de jurisprudence*. Les éditions des Journaux Officiels. Première édition, Octobre 2011.

<sup>11</sup> Jean Baubérot, ‘N’utilisons pas la *laïcité* contre l’islam’, *La Croix*, 10 February 2012, interview by Élodie Mauro.

Things appear on the point of changing positively a great deal since Sarkozy's defeat in the 2012 presidential election. In his campaign, the new president François Hollande proposed to include the basic principles of the 1905 separation law in an amendment to the French constitution. 'We will no longer leave the concept of *laïcité* to Marine Le Pen', said feminist philosopher and writer Élisabeth Badinter<sup>12</sup>, one of the staunchest advocates of a strict implementation of the principle throughout the public debates of the last twenty years.

The move could also reopen frictions with the Catholic establishment, as the constitutionalisation of the separation law of 1905 could also have obvious consequences on the special status of Alsace-Moselle, where the Napoleonic concordat is still enforced, unless a derogative clause is also constitutionalised (and that would be highly controversial). At the same time, and for the first time in decades, in August 2012 the French Bishops' Conference chose to intervene quite directly in the political debate, calling a public prayer against the new government proposal of introducing gay marriage legislation: a move signalling a new militant attitude by the French Catholic hierarchy.

So the game is open again, after five years when the President of France was one of the politicians least in tune with the French tradition of *laïcité*, that is still considered by most French citizens a cornerstone of their civic identity. But the debate is obviously not over. In our opinion, 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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<sup>12</sup> 'Avec cette idée, on ne laisse plus la laïcité à Mme Le Pen', Propos recueillis par Nicolas Truong, *Le Monde*, 26 January 2012.



# Portugal





# Secularism and Secularization in Portugal

*Ricardo Alves*

## **Secularism in theory and practice**

*Secularism* is the body of ideas and policies that aim to organize the state and its relation with the citizens in such a way as to make it possible for all and each one of us to freely choose to follow one religion or the other, or no religion at all, while enjoying full equality with the citizens who have made a different religious choice. It implies that the state has no business concerning religion, besides the role of guaranteeing the civil liberties necessary to implement the freedom and equality of all, including obviously the free exercise of religion and freedom of speech, while safeguarding civic harmony.

Secularism means much more than separation between the state and the religious communities. It means, more broadly, separation between the public domain (meaning the state, public services, public schools and state-owned media) and the private domain (meaning voluntary associations, the churches, private schools and private media). The public domain must be secular, in the sense that it cannot privilege or discriminate on religious grounds. In the public domain, the state does not impose religion, does not embarrass religion and guarantees pluralism and freedom of speech. The private domain is where religion and other options in cultural and religious matters are exercised, through the freedom of speech and association guaranteed by the state.

In my view, we can talk of three different models of State and church relations.

- 1) Secularism ('laicidade' in Portuguese and 'laïcité' in French or 'laicità' in Italian): organised religion has become part of the civil society fabric and nothing more, the State does not know the religion of individual citizens. France and, in particular, the USA, are close to this model.
- 2) State church or State religion: the state is not separate from the church, it governs the church and supports the religious cult of the established church, which has a status of privilege. The most perfect example in Europe is Greece, albeit the United Kingdom or Denmark still fit in this model.
- 3) Communitarianism: the state supports some religious communities, which tend to be given equal rights (as communities), including segregated schools for each religious community. One of those communities may be an atheist, humanist or secular group. Countries like Belgium, the Netherlands or Luxembourg are the ones that fall into this model. For instance, on a truly secular state, public schools do not have classes on religion, on a state with a State Church those classes exist and may

even be difficult not to attend, and in a communitarist state public schools offer classes on different religions, perhaps including humanist or secular ethics.

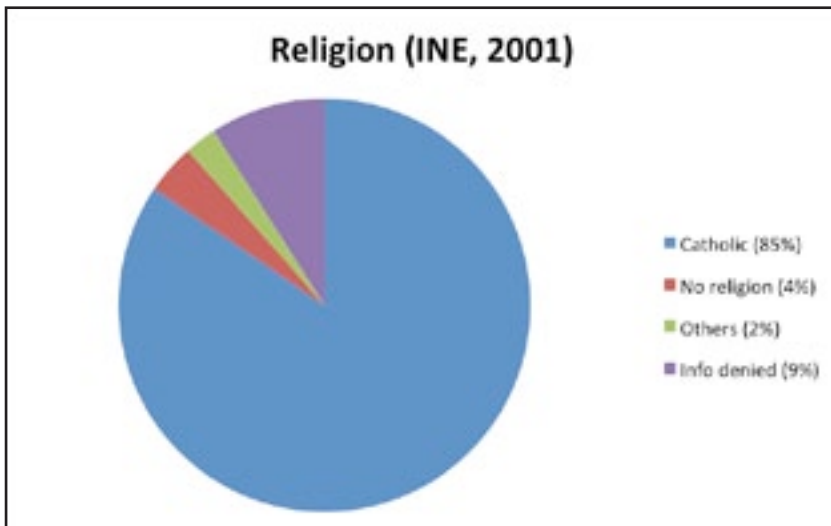
I use the word *Secularization* to refer to the process by which religion becomes less important in the daily lives of individuals, by their own free choice. Clear signs of secularization are a lowering number of people attending mass, as well as a lowering number of people being baptized, getting married in the church or having religious funerals, or following less and less the core values of the traditional religion.

In the following section, I will give a brief assessment of the secularization of the Portuguese society.

### **Secularization in Portugal: what does it mean to be catholic?**

Portugal is perceived, by nearly everybody who looks from the outside, and by many who live there, as a traditional catholic society. Whether that is still true, not anymore, or in the process of changing, is something that I will try to answer with the data that follow.

#### a) **Religious identity (national census, 2001)**

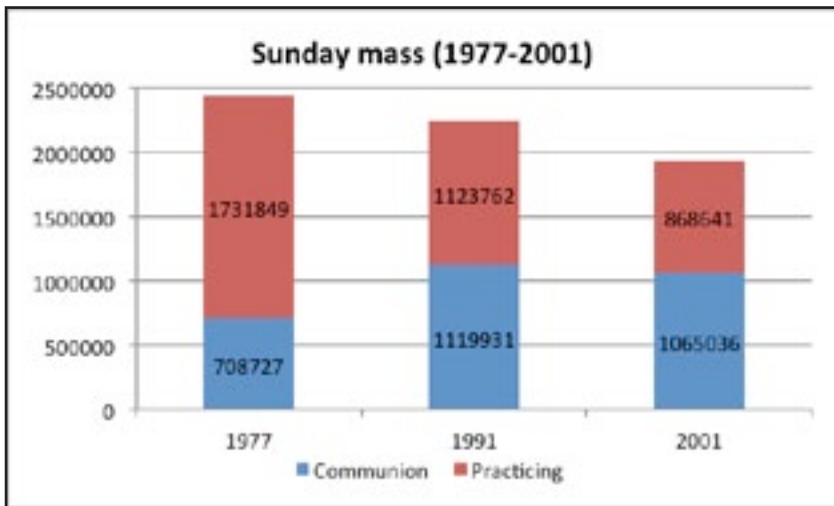


In the national census of 2001, the vast majority of the population, 85%, really did identify itself as 'catholic'; only 2% of the population did claim to

identify with other religions<sup>1</sup>, 4% declared ‘no religion’ and 9% refused to answer the question (a right guaranteed by article 41 of the Constitution).<sup>2</sup> The major change from the 1991 census was the decrease in the percentage of people refusing to answer the question (down from 18% in 1991).<sup>3</sup> The other groups increased, but not dramatically.

So, it seems that a very strong majority of the portuguese population does indeed retain (or at least did retain in 2001), a subjective sense of being catholic. Whether or not that is important in the everyday life of Portuguese individuals is addressed in the following.

b) **Attendance at Sunday mass (2001)**



The Sunday prior to the national census, the Portuguese catholic church did a counting of the people present at Sunday mass. The total number was 1.9 million, for a population exceeding, for the first time, 10 million people. It is interesting to compare this number with previous results (the population remained essentially stable in this period). Two trends can be detected.

- a) A decreasing number of practicing catholics: more than half a million less since 1977, such that while 26% of the total population was at Sunday mass in 1977, 23% were there in 1991 and only 19% in 2001.

<sup>1</sup> 2.2% choosed to identify as ‘other christian’, ‘protestant’ or ‘orthodox’; 0.3% as ‘other non christian’, ‘muslim’ or ‘jewish’.

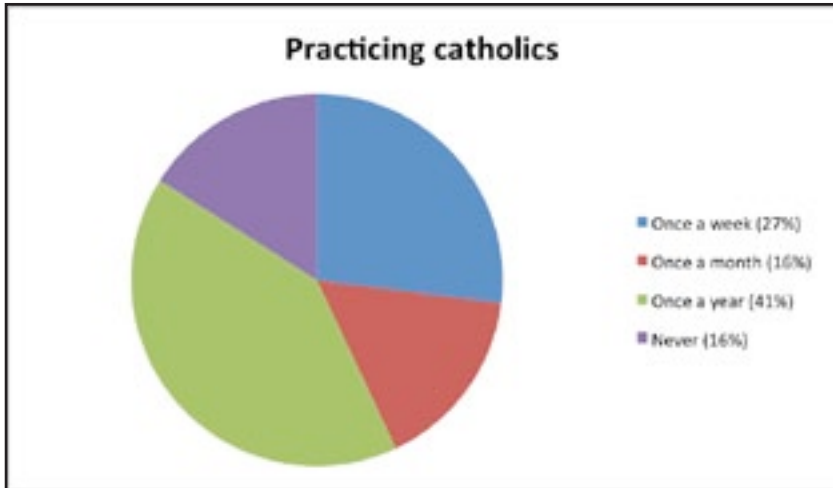
<sup>2</sup> *‘Ninguém pode ser perguntado por qualquer autoridade acerca das suas convicções ou prática religiosa, salvo para recolha de dados estatísticos não individualmente identificáveis, nem ser prejudicado por se recusar a responder.’* (Article 41, nº3, Constitution of the Portuguese Republic).

<sup>3</sup> Instituto Nacional de Estatística, Censo Nacional de 2001.

b) The rising proportion of those taking communion amongst the remaining practicing catholics, to the point that a majority of the people present at mass now take communion.

c) **Practicing catholics according to the ICS survey (1998)**

According to a survey done in 1998<sup>4</sup>, 27% claimed to go to catholic mass at least once a week, 16% less than once a week but at least once a month, 41% at least once a year, and 16% never.



These results may seem to contradict the counting done by the catholic church three years later, but even so, it is a contradiction which says something about the social attitude towards going to church.

Now, let us look at how the catholicism of the Portuguese people translates in the choices concerning birth and marriage.

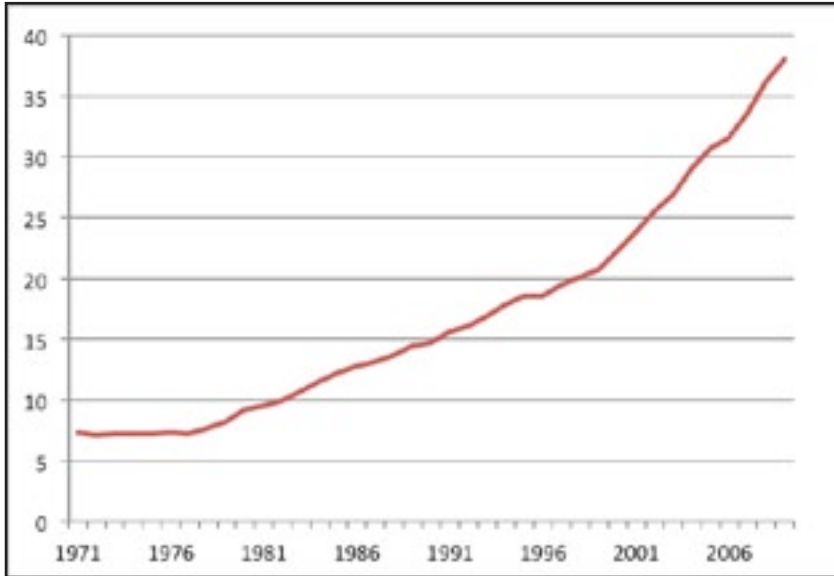
d) **Children born outside marriage (1971-2009)**

It is a fact that in Portugal, nowadays, a sizeable proportion of the young couples do not marry prior to having children. In fact, in 2009 already 38% of the children born in Portugal were born outside marriage, from parents mostly living together but unmarried (as of 2009, 62% of the children are born from married couples, 30% from couples united but unmarried, and 8% from parents who do not live together). Moreover, the percentage of children born outside marriage has been growing steadily since after the Revolution of April 25, 1974, and may reach 50% by 2020.<sup>5</sup>

<sup>4</sup> Manuel Villaverde Cabral and Instituto de Ciências Sociais, quoted from José Machado Pais, Manuel Villaverde Cabral and Jorge Vala (2001).

<sup>5</sup> Data from Instituto Nacional de Estatística.

**Children born outside marriage (%)**



e) **Marriage: catholic and civil**

Civil marriage became, in 2007 and for the first time since the first republic, the form of marriage chosen by a majority. As of 2009, 57% of the marriages were civil. This fact may look less impressive if we consider that 25% of the marriages are now second marriages. Nevertheless, the fact remains that the number of catholic marriages has fallen from 46 thousand to 17 thousand since 1999, while the number of civil marriages has stayed stable at around 23 thousand in the same period (marriages from other religions are less than two hundred every year).<sup>6</sup> However, it must be said that civil marriage remains in the minority (albeit presumably not for long) for men and women under 35 years, but even there with an average of only 53% in this age group marrying inside the church (in 2009).<sup>7</sup>

<sup>6</sup> Marriages in other religions: 12 (2006), 88 (2007), 162 (2008) and 123 (2009).

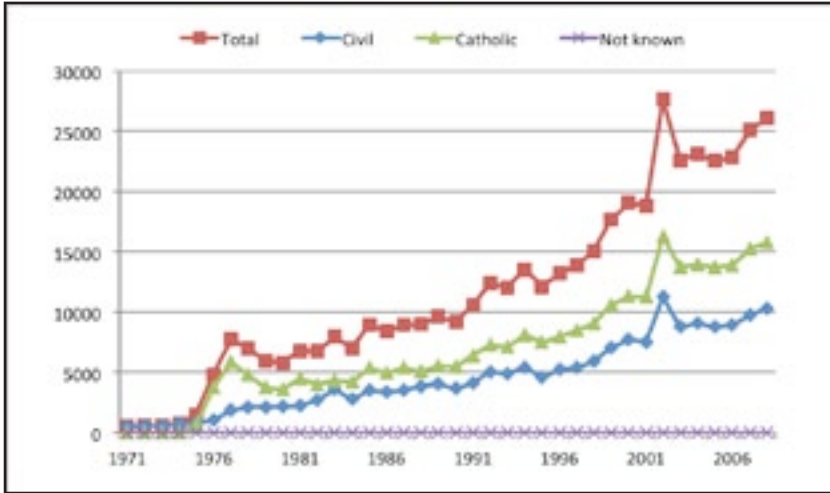
<sup>7</sup> Data from Instituto Nacional de Estatística.

**Civil marriage (%)**f) **Divorce**

The number of divorces was residual prior to the revision of the Concordat in 1975. However, in the 35 years since the additional protocol to the Concordat (enabling divorce for couples married in the catholic church), divorce has become a fact of life, stepping over 20 thousand divorces each year since 2002. As the number of marriages has decreased, the proportion of divorces as compared to marriages has increased dramatically, to the point that, in 2009, there were 65 divorces for every 100 new marriages. It is also clear that the number of divorces from catholic marriages is very similar.<sup>8</sup>

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<sup>8</sup> Data from Instituto Nacional de Estatística.



### Conclusions

From this data, Portugal can be defined as a society that still sees itself as catholic, while going through a fast process of secularization, with mass attendance decreasing, and more than a third of the new families starting unmarried, while another third chooses a civil marriage, and a final third marries in the catholic church.

### The legacy of the first Republic and its aftermath

On the 5<sup>th</sup> of October 1910, the republican Revolution triumphed in Portugal. Secularism (or *anticlericalism*) was an important part of the Portuguese Republican Party political program.

During the days and months that followed, the Provisional Government decreed a series of measures towards a secular state. On October 8<sup>th</sup>, the Jesuits and other religious orders were expelled. On the 18<sup>th</sup> of October, religious oaths were banished<sup>9</sup> (before, they were obligatory for many public offices, in court and even to get a degree from the single existing university, the one in Coimbra). On the 22<sup>nd</sup> of October, schools were secularized.<sup>10</sup> On the 3<sup>rd</sup> of November, divorce became legal.<sup>11</sup> On the 25<sup>th</sup> of December, a new family law, based on the equality between husband and wife and improving the status of those born outside marriage, was published. Most important, on the 18<sup>th</sup> of February 1911 the law on civil registry was passed. The register of births, marriages and deaths

<sup>9</sup> <http://www.laicidade.org/documentacao/legislacao-portuguesa/portugal/republica-1910-1926/juramentos/>.

<sup>10</sup> <http://www.laicidade.org/documentacao/legislacao-portuguesa/portugal/republica-1910-1926/decreto-1910/>.

<sup>11</sup> <http://www.laicidade.org/documentacao/legislacao-portuguesa/portugal/republica-1910-1926/divorcio/>.

thus became strictly a function of the state.

Finally, on the 20<sup>th</sup> of April 1911, the Law on Separation of Church and State<sup>12</sup> was published, laying the final cornerstone of a Lay State.<sup>13</sup> With full freedom of conscience as its fundamental value, the law stated that Catholicism would be no longer the religion of the State, that priests ceased to be public servants, and that all religions were allowed to exist and freely organize. The Constitution, voted by an elected assembly the same year, established the equality of all religious cults<sup>14</sup> and confirmed the essential tenets of the Provisional Government decrees.

The majority of the population was catholic and many, specially in the rural north, resented the consequences of the Provisional Government decrees. So, although a strong free-thinking movement existed, and despite the fact that religious freedom became a reality for the first time in five centuries, thus allowing protestants and jews to practice their religion in the open, the free-thinking movement was not really independent from the Portuguese Republican Party, and the minority religious communities were indeed very small. Thus, the constituency supporting the secularist measures was small.

Many of the secularist decrees, including the Law on Church and State Separation and the Civil Registry law, were the work of the Minister of Justice of the Provisional Government, Afonso Costa, a man who would become the leader of the Democratic faction of the republican movement, three times Prime Minister and the symbol of the anticlerical policies of the first republic. He is considered by

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<sup>12</sup> <http://www.laicidade.org/documentacao/legislacao-portuguesa/portugal/republica-1910-1926/lei-da-separacao-da-igreja-do-estado/>.

<sup>13</sup> 'Artigo 1º

*A República reconhece e garante a plena liberdade de consciência a todos os cidadãos portugueses e ainda aos estrangeiros que habitarem o território português.*

Artigo 2º

*A partir da publicação do presente decreto, com força de lei, a religião católica apostólica romana deixa de ser a religião do Estado e todas as igrejas ou confissões religiosas são igualmente autorizadas, como legítimas agremiações particulares, desde que não ofendam a moral pública nem os princípios do direito político português.*

Artigo 3º

*Dentro do território da República ninguém pode ser perseguido por motivos de religião, nem perguntado por autoridade alguma acerca da religião que professa.*

Artigo 4º

*A República não reconhece, não sustenta, nem subsidia culto algum; e por isso, a partir do dia 1 de Julho próximo futuro, serão suprimidas nos orçamentos do estado, dos corpos administrativos locais e de quaisquer estabelecimentos públicos todas as despesas relativas ao exercício dos cultos. (...)* (Beginning of the Law on Separation of Church and State, April 20th 1911).

<sup>14</sup> 'O Estado reconhece a igualdade política e civil de todos os cultos e garante o seu exercício nos limites compatíveis com a ordem pública, as leis e os bons costumes, desde que não ofendam os princípios do direito público português.' (Article 5th of the Constitution of the Portuguese Republic, 1911).



every clerical person in Portugal, to this very day, as the devil incarnated.

The first republic lasted from 1910 to 1926, a period of troubles, with a world war, its aftermath, and much internal strife, including monarchist guerillas and attempted coups d'état.

### **The backlash**

In May 1917, three little shepherds reported that they had seen a 'Lady' in the fields near their small village, near Fátima, while they were guarding their parent's sheep. Portugal had many soldiers fighting in the trenches of France, there was civil unrest, shortage of food and supplies. The war was very unpopular. The news of the sightings, which according to the children happened on the 13<sup>th</sup> day of every month, spread quickly, and in October there were thousands of people in Fátima, watching in the sun what many, even today, believe was 'a miraculous dance'. The gathering, being religious and happening in a public place, was in defiance of the Law on Church and State Separation. The shrine in Fátima has, since then, become the symbol of portuguese Catholicism.

The Republic fell to a military coup in May 28, 1926. From then on, it starts a period during which much of the secularist conquests of the 1<sup>st</sup> Republic were abandoned, or even reversed. It must be said that the regime was, from the beginning, an alliance between political catholics, outright fascists and some republicans gone conservative. Albeit the Presidency was always retained by the military, the strong man of the regime was Salazar, who entered the government in 1928 and became Prime Minister in 1932. The following year, a new Constitution was voted in a plebiscite. It maintained separation, now between 'the State and the Catholic Church', but it was inspired by the Social Doctrine of the Church and it placed the family, not the individual, as the basic unit in society. Nevertheless, the civil registry stayed secular.

From 1936, public education was placed, by law, under the spell of the '*principles of the Christian doctrine and moral*'. It became obligatory, for every public school in the country, to have a catholic cross '*behind and above the chair of the teacher*'.

Furthermore, in 1940 a Concordat was signed with the Holy See. Catholic marriage became again recognized by the state, and divorce became all but impossible for those married in the catholic church.

### **After 1974: a secular constitution and cautious politicians**

After the Revolution of April 25<sup>th</sup> 1974, Portugal became a democracy and a secular Republic. The 1976 Constitution states that the state is separated from 'the churches and other religious communities', guarantees the equality of all citizens regardless of their religious beliefs, the right not to answer questions regarding one's religion, and states that public schools shall not be religious. Moreover, separation of church and state cannot be changed by any constitutional revision.

The word 'catholic' is nowhere to be found in the Constitution.

In 1975, the Concordat was revised, making divorce possible for couples married in the catholic church. Religious classes in public schools became optional.

However, since the revolution, all political parties have been very cautious about confronting the catholic church. Not many consequences were drawn from the secularism of the constitution.

For instance, no order was ever issued to remove crosses from classrooms. Where parents or teachers protest, the crosses can be taken out... or not. Associação República e Laicidade has been campaigning for the secularism of public schools since 2005, and we have witnessed the government abstaining from taking a secularist stand on this issue (as well as on many others). Crosses are now taken out on request from individual parents, but with different degrees of resistance from the local school authorities from place to place.

As another example, in 1990 the European Commission started proceedings against Portugal (and Spain) because the VAT was not being levied on the economical activities of the catholic church (including construction works on catholic temples and so on). The government solved this problem by passing a law stating that the VAT would be taxed, but that the catholic church would get in return, every year, a subsidy on the same amount as the VAT taxed.

So, it is fair to say that all governments since 1974 have been very cautious about doing anything that might upset the catholic church.

In 2001, the status of religious minorities started being debated, when the Parliament passed the first Law on Religious Freedom of the democratic period. It is a law that does not apply to the catholic church and, as a consequence, creates a hierarchy of statuses for the organized religious communities in Portugal. The law created the Commission on Religious Liberty, where two seats belong to the catholic church, three to representatives of religious communities appointed by the government, and five more to specialists. This Commission rules on which religious communities can be considered to be 'rooted' in Portugal, a status that confers legal effects to religious marriages and various exemptions concerning taxes, as well as the right to negotiate agreements with government. The religious communities which are deemed 'recognised' but not 'rooted' can still apply to teach religious classes in public schools or to have some time on public TV.

The laws on religious assistance have also been changed, in the summer of 2009. Every hospital, prison or armed forces headquarters has its chaplains that may be called to assist a particular person. However, catholic chaplains remain the only ones that are paid by the state. Moreover, the chapels inside hospitals will carry on being run by the local catholic chaplain.

On another development, in 2006 it was noted that after the new President had sworn office, the fifth person in line to salute him was the Cardinal of Lisbon. This was, all of a sudden, considered inadequate, and a new protocol law was passed, giving the cardinal a much more modest place in the protocol. However, despite the Constitution, the Religious Freedom Law and the law on protocol, the

Government insists on inviting catholic priests to bless new buildings, and even to perform a ceremony at the beginning of the school year.

Finally, let me say a few words concerning political issues with ethical relevance. There was a referendum about the legalization of abortion in 1998. The 'no' won by a tiny margin (under peculiar circumstances that I will not describe here), and it would be only in 2007 that abortion on demand would become legal, through another referendum, this one won by the 'yes' with a wide margin., As to marriage between people of the same sex, it became legal in 2010, in June, and no referendum was held.

Today, we may say that Portugal faces a two-sided paradox. Portugal is a society going through a fast secularization process overlooked by the authorities and by the civil society at large. And it is a Republic with a secular Constitution that is not honored by the political class.



**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 nineteenth 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 Counter-reformation had been one of the main causes of the civic and political backwardness of the Italian society after the end of the Renaissance in the sixteenth century.

Indeed, if a political starting point of the Italian *Risorgimento* (i.e. the process of unification and political and civic 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<sup>1</sup>; 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 guarenzie*, 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

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<sup>1</sup> As mentioned in chapter 2, 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.



territory, confined to some Alpine valleys of Piedmont). Waldensians themselves also took the opportunity of establishing their own internal missions in other parts of Italy.

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 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 re-introduced 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 25<sup>th</sup> 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 29<sup>th</sup> 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 18<sup>th</sup>, 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 8<sup>th</sup> armistice, imposed upon Italy by the Anglo-American allies.<sup>2</sup>

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<sup>2</sup> 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.

### *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 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’.<sup>3</sup> 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 50s and 60s 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.

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<sup>3</sup> ‘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.’

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 and nearly equal rights for legitimate and illegitimate children (after years of Catholic resistance). Full equality was enforced years later by a series of Constitutional Court decisions. Witnesses in courts were no longer forced to take the oath with a formula that included a necessary reference to 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 religion courses or not).

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.<sup>4</sup> 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'<sup>5</sup>).

#### *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.

Since 2010 the *Critica liberale* foundation edits a yearly survey on the time delivered by TV information to religious issues, personalities and events. The survey was extended in its second year to the overall presence of all religious entities on TV, including talk-shows, fiction, religious services, etc. The study, which is commissioned and funded by the Waldensian Church, shows that, with the almost unique exception of the above mentioned Jewish and Protestant late night fortnightly programmes, the only actual religious information delivered by the Italian TV (public and private) concerns the Roman Catholic Church. Protestants are simply ignored, Muslims usually hit the headlines only in the frame of immigration or geopolitical issues, and Jews are only mentioned either for similar geopolitical reasons or because they are victims of antisemitic attacks or offences. Atheist or agnostic positions are non-existing. It appears that for the Italian TV Italy is still a religiously non plural society.<sup>6</sup>

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<sup>4</sup> Law 186, 18/07/2003, that converted the governmental decree 2480/2003.

<sup>5</sup> 'Enti e privati hanno il diritto di istituire scuole ed istituti di educazione, senza oneri per lo Stato.'

<sup>6</sup> Last year's survey, that includes a methodological note, was published in the November-December 2011 issue of the monthly journal *Critica liberale*, n. 193-194.

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. 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.

When the renovated concordat was signed, a joint commission was set up, that should have periodically verified whether the total amount of these 'voluntary' contributions could be reduced to less than 0.8%, after it reached the sum required to cover all priests' salaries. Even though that has actually been the situation for years, the joint commission never proposed any such reduction. Not surprisingly, if one considers that one of its two members on the Italian side – not on the Vatican side – is a regular contributor to the bishops' daily paper *Avvenire*.

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 minor-

ity, 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, and a couple of the existing *intese* have already been modified); 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: the influential Finance minister Giulio Tremonti claimed that *intese* with minorities not belonging to the 'Judeo-Christian tradition' were more problematic than the others. These *intese* were reintroduced as government bills in 2006, but failed to be passed before the early dissolution of Parliament in February 2008. They have still not been ratified by the current Parliament. Yet, three new *intese* were significantly much more swiftly passed by Parliament in August 2012, concerning Christian Orthodoxes (probably around one million, due to recent years' immigration), the Mormons and a Pentecostal evangelical denomination.

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 90s 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 recur-

rent) 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.<sup>7</sup> 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. However no bills were introduced in Parliament to that proposal, given the steady majority shown by opinion polls in favour of the existing law. Rather, the abortion law is increasingly being boycotted, especially at regional level, through the encouragement of conscientious objection by medical professionals (objecting has thus become quite useful for medical careers in the public healthcare system, that is run by the regional governments) and through the admittance of anti-abortion pressure groups inside public hospitals, where they are allowed to offer quite intrusive forms of counselling.

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. Public registers of de facto families – including the homosexual ones – have been established, after harsh debates, by a number of local municipalities, entitling registered couples to a very limited number of merely local and usually minor welfare benefits. Even succession laws are very limitative of the testator's freedom to dispose of his/her estate at the expenses of the legal family. In 2007 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) had been abandoned, due to controversies inside the 'centre-left' tiny parliamentary majority that supported the Prodi government. With the only exception of Malta (and the principality of Monaco), Italy is at present the only remaining Western European country 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

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<sup>7</sup> The latest survey includes the historical series and a lengthy methodological note. It was published in the same, already mentioned, November-December 2011 issue of the monthly journal *Critica liberale*, n. 193-194, in which the yearly survey on TV coverage of religious entities is also published. A description of this yearly study in English, in Silvia Sansonetti, *Social Indicators of Secularization in Italy*, in *Secularization, Women and the State*, edited by Barry A. Kosmin and Ariela Keysar, Institute for the Study of Secularization in Society and Culture, Trinity College, Hartford, CT, 2009.



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, on the grounds of general constitutional principles. Precisely in order to avoid a legal enforcement of living wills by courts, attempts have been made by the Berlusconi majority elected in 2008 to introduce new legislation that would basically deny them any legal value; after the fall of the Berlusconi government in November 2011 and the constitution of the so-called ‘technical’ Monti government, supported by all the major parliamentary groups, these attempts have been set aside as divisive at the request of the new Healthcare Minister.

In recent years, a lot of municipalities, especially in Central and North-western 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 controversy was submitted by the plaintiff – the Finnish born mother of a schoolboy – to the European Court of Human Rights, that decided in 2009 that the imposition of religious signs in public buildings was an infringement of religious freedom. The Berlusconi government appealed to the Grand Chamber of the ECHR, that unexpectedly overturned that decision in March 2011. ‘Great satisfaction’ for the Grand Chamber decision was expressed not just by the Berlusconi government and majority, but also by prominent leaders of the Democratic Party (namely, by the former communist deputy speaker of the Senate Vannino Chiti), that had quite openly taken part in a coordinated lobbying effort aimed at achieving that result.

#### *Historical revisionism*

A wave of historical revisionism was fostered by a large part of the political establishment in the last few years, that culminated with the celebrations for the 150<sup>th</sup> anniversary of the birth of the Italian state in 2011. According to these thesis, the

original defect of the Italian unification process in the XIX century was its liberal and secularist imprinting, that led to the open clash with the Roman Church and coincided with the extinction of the temporary power of Popes. Hence the alleged intrinsic weakness of the Italian national self-conscience, the irremediably elitist origin of the nation and the persistent cleavage between the North and the South, that according to this new revisionist view could all be healed only by re-thinking the entire fabric of the Italian nation-state, recognising its original secularist defect, reinforcing the cooperation between state and church for the 'common good', rather than separation and equal social dignity for believers and non-believers.

The entire heritage of Enlightenment and political liberalism has been brought into dispute through a number of controversial political decisions. In Arezzo a central square was given by a local Berlusconi coalition the name of the 'Viva Maria' movement, an anti-Napoleonic popular revolt that had led to a pogrom and the extermination of the Jewish community in Sienna: only after long hesitation, the name was revoked by an incoming centre-left coalition. The regional government in Lombardy, whose president for four consecutive mandates, a member of Berlusconi's party, has been a prominent leader of the 'Comunione e Liberazione' ecclesial movement, has consistently been funding anti-Risorgimento books and pamphlets. For the first time ever, on September 20<sup>th</sup> 2008, the new 'post-fascist'-led municipal government in Rome has celebrated the anniversary of the taking of the city from papal rule commemorating the casualties suffered by the papal army. The official celebrations for the 150<sup>th</sup> anniversary of Italy were opened with a seminar held in the Pontifical Gregorian University in Rome (more or less like celebrating the 4<sup>th</sup> of July at Buckingham Palace) and ended with an exhibition in the premises of the Senate that celebrated together the 150 years of the Italian state and of the Holy See daily paper 'L'Osservatore Romano'. However, the main exhibitions were held in Turin, Italy's first capital, where the local regional and municipal governments showed a much more sensible, balanced and less politicised approach to history, largely supported by the Presidency of the Republic.

### **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 2009 were about 3.900.000 (4.570.000 according to a more recent and probably less formalistic estimate by the Catholic charity 'Caritas Migrantes'<sup>8</sup>). Together with the estimated 800.000 illegal immigrants, that amounts to about 6.5% of the population: still one of the lowest percentages in Western Europe, but about three times 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 between one and 1.5 million; the estimation of the number of Italian converts has become so controversial in the last few years that it is impossible to mention any reliable evaluation, even though the past estimation of about 10.000 appears to be far from updated; but the large majority still appears to be composed of 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 or other parts of former Yugoslavia, 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

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<sup>8</sup> Dossier statistico immigrazione Caritas Migrantes 2011.

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 ghettos 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 'inter-religious 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 demagoguery 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.





# Slovenia



# The Slovenes and the Catholic Church.

## The reflections of a historian

*Dr. 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 Habsbourg 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 Pri-

morska 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

*Dr. 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 patterns, 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.<sup>1</sup> When anti-clericals busy them-

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<sup>1</sup> M. Kerševan, 'Ambivalence of Religious Revitalization in Post-socialist Societies', in: *Social Compass*, 40;1, 1993, pp. 123-133.

selves 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 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.<sup>2</sup>

### **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.<sup>3</sup>

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 il-

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<sup>2</sup> 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.

<sup>3</sup> D. Martin, *Tongues of Fire. The Explosion of Protestantism in Latin America*, Oxford, 1990.

lustrated by numerous statistics. If in 1931 97% of Slovenes still considered themselves Catholics, and 82,8% defined themselves as Catholics in the 1953 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, premarital sex, abortion, etc.). According to Toš<sup>4</sup>, such 'orthodox' believers account for just 18,7% of Slovenes, while Flere claims that the faith of Slovene Catholics is even characterised by 'emptiness',<sup>5</sup> as a heightened version of the wider European phenomenon of 'belonging, not believing'.<sup>7</sup>

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.<sup>6</sup> 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.<sup>7</sup> Various New Age phenomena have been embraced by a considerable number of the nominally Catholic population, includ-

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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> See the website of the government's Office for Religious Communities: [http://www.uvs.gov.si/en/religious\\_communities/](http://www.uvs.gov.si/en/religious_communities/)

<sup>7</sup> A. Črnič and G. Lesjak, 'Religious Freedom and Control in Independent Slovenia' in: *Sociology of Religion*, 64;3, 2003, pp. 349-366.

ing various opinion leaders and other influential figures.<sup>8</sup> 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,<sup>9</sup> 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 subse-

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<sup>8</sup> 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.

<sup>9</sup> 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.

quently the return of religious holidays (Christmas) to public life.<sup>10</sup>

### **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 integritism, 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 Srdan Vrcan observed.<sup>11</sup> 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

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<sup>10</sup> 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.

<sup>11</sup> S. Vrcan, *Vjera u vrtložima tranzicije*, Split, 2001.

revision of the history of the period of the war<sup>12</sup>, when part of the RCC evidently compromised itself by collaborating with the Italian and German occupying forces.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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’.<sup>16</sup>

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,<sup>17</sup> 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

<sup>12</sup> 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.

<sup>13</sup> 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!’

<sup>14</sup> 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.

<sup>15</sup> 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.

<sup>16</sup> *Izberi življenje*, 2002, p. 159.

<sup>17</sup> 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 %.

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 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.<sup>18</sup> 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<sup>19</sup> or compromise decisions.<sup>20</sup> On the other hand some

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<sup>18</sup> See: <http://www.dz-rs.si/?id=150&docid=28&showdoc=1>

<sup>19</sup> 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.

<sup>20</sup> 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.

important decisions were not taken.<sup>21</sup>

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 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.<sup>22</sup> Such instruction still takes place 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.<sup>23</sup> 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.<sup>24</sup> And a source of anger: ‘We shall destroy this school by democratic means as soon as this is possible!’ threatened Archbishop Rode.<sup>25</sup> 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.<sup>26</sup>

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 na-

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<sup>21</sup> 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.

<sup>22</sup> 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. Kuburić and Ch. Moe (eds.), *Religion and Pluralism in Education. Comparative Approaches in the Western Balkans*, Novi Sad, 2006, pp. 9-38.

<sup>23</sup> Three of the church secondary schools - which were awarded concessions prior to the adoption of the new law (Organization and financing of education act) in 1996 - are fully financed by the state, the fourth secondary school receives less public funding (85 %). The first church primary school will be fully (100 %) financed by the state for the first three years.

<sup>24</sup> *Izberi življenje*, 2002, pp. 149-150.

<sup>25</sup> F. Rode, *Cerkev na pragu tretjega tisočletja*. Lecture in the bishopric hall in Maribor, March 16, 2000.

<sup>26</sup> 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.



tionalised 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 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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)

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<sup>27</sup> 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.

<sup>28</sup> 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>.

<sup>29</sup> 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.

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 to the historical differences in size between churches, the result of the Catholicist centuries, these benefits mainly affect the RCC.<sup>30</sup> It is mainly Catholic priests for whom the state pays social and health insurance<sup>31</sup> and who now appear in the role of state functionaries in numerous situations.<sup>32</sup> The state also greatly finances the renovation of church's real-estate. In 2007 the Ministry of Culture gave 69,5 % of its resources, intended 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

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<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 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.

to obtain/return certain privileges and benefits.<sup>33</sup> 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.

### 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.<sup>34</sup>

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<sup>33</sup> 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.

<sup>34</sup> Suggestion for further reading: D. Martin, *A General Theory of Secularization*, New York, Harper & Row, 1978.



# Contributors

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