

The Agnostic State: a Model for the whole of Europe?

This is an article about the relationship of the state towards religion. It argues that a religiously neutral, secular, or as it is here called politically “agnostic state” is the most viable model to regulate the relations between state and society within the context of contemporary Europe. The article engages also in a critique of competing models of thinking about this subject, in particular multiculturalism. It is also argued that France, the United Kingdom and other European countries may have a different past, but they also have a common future; a common fate, so to say. The article predicts a certain convergence of constitutional systems in Europe. Secularism or political agnosticism is a coherent political philosophy for people living under conditions of secularization, religious diversity and human rights.

Paul Cliteur, Geliijn Molier and Machteld Zee

Agnosticism as a philosophical stance towards the transcendental realm or God is a well-known position. In a broad sense, agnosticism is defined as “a theory according to which things within a specified realm are unknowable”.¹ In a more restricted sense, agnosticism is a position towards God, transcendental matters, *i.e.* it has to do with religion. In that context the meaning is: “the view that we cannot know whether or not God exists”.²

It is possible, of course, to say that you are “agnostic” about whether the train will depart from platform 1 or 5. Or that you are “agnostic” about the political virtues of president Obama. Or that you are “agnostic” about whether smoking causes cancer. But this would be a bit pompous. We better reserve the word “agnosticism” for skepticism in a specifically *religious* context. The term “agnostic” indicates a lack of knowledge about God or gods or what one calls the “transcendental”.

Usually, the agnostic position is something ascribed to *individuals*. So someone who does not have the pretense to “know” (or affirm) that

¹ Mautner, Thomas, *The Penguin Dictionary of Philosophy*, Penguin Books, London 2000 (1996), p. 9.

² Mautner, *Ibid.*, p. 10.

God exists but does not have the pretense to “know” (or affirm) that he *does not exist* either, is called an “agnostic”. But is it necessary to restrict the relevance of the agnostic position to individuals? Perhaps we can also characterize *groups* or even whole *societies* as “agnostic”? Europe for instance, where secularization has advanced further than in other parts of the world, may perhaps be designated an “agnostic continent”. And we may, perhaps, also classify *states* as more or less “agnostic”.

It is especially the agnostic state that is the focus of this essay. An “Agnostic state” could be designated as a state where the official stance towards God or the transcendental realm is neither affirmative nor a denial. In that sense the former Soviet-Union was not an “agnostic state” but an “atheistic state”.³ France, however, is an “agnostic state” in the sense that the official position towards religion of France is neither a denial nor an affirmation.⁴ The official state policy is religiously neutral. The state does not endorse any religious position but it does also not deny any religion either.

The aim of defending agnosticism as a political ideal may be called “political agnosticism” or “secularism”.⁵ And political agnosticism may be contrasted with “political atheism”. While political atheism, *i.e.* defending atheism as a state doctrine, may violate individual rights in an unacceptable manner,⁶ political agnosticism may not only be *acceptable* but even *advisable* to regulate religiously diverse societies in Europe and the western world in general. It is political agnosticism, not political atheism which is the focus of this article.

³ See on this: Froese, Paul, “Forced Secularization in Soviet Russia: Why an Atheistic Monopoly Failed”, in: *Journal for the Scientific Study of Religion*, 43:1 (2004), pp. 35-40; Froese, Paul, *The Plot to Kill God: Findings from the Soviet Experiment on Secularization*, University of California Press, Berkeley, Los Angeles and London 2008; Luehrmann, Sonja, *Secularism Soviet Style: Teaching Atheism and Religion in a Volga Republic*, Indiana University Press, Bloomington and Indianapolis 2011; Marsh, Christopher, *Religion and the State in Russia and China: Suppression, Survival, and Revival*, Continuum, New York 2011.

⁴ See on the genesis of the French political tradition in this respect: Hazareesingh, Sudhir, *Intellectual Founders of the Republic: Five Studies in Nineteenth-Century French Political Thought*, Oxford University Press, Oxford 2005 (2001).

⁵ Secularism being the “separation of the state from any particular religious order”. See: Sen, Amartya, “Secularism and Its Discontents”, in: Amartya Sen, *The Argumentative Indian: Writings on Indian History, Culture and Identity*, Allen Lane, Penguin Books, London 2005, pp. 294-316, p. 295.

⁶ See: Marshall, Paul, ed., *Religious Freedom in the World: A Global Report on Freedom and Persecution*, Freedom House, Nashville, Tennessee 2000, p. 35: “The catastrophic experiment forcibly to impose ‘state atheism’ (*gosateizm*) in the Soviet Union lasted just seventy years”.

The purpose of this article is (i) to explore the notion of the agnostic state, (ii) assess its strength and weakness and (iii) try to establish what is the most likely position to take in this matter in light of the specific situation of people living in Europe. These questions will be tackled in the following order.

First, we give in Part I an idea of the agnostic tradition in Victorian England. In British political thought in the second half of the nineteenth century the term “agnosticism” was coined by a group of thinkers known as “the agnostics”.

Second, we give in Part II an idea of the French agnostic state. Here we try to analyze the notion of “agnosticism” in relation to a state-doctrine: a doctrine about how the state can best deal with religion. It was in nineteenth century France that the most impressive thinking took place in this field. The French, in a sense, developed agnosticism as a state-doctrine.

Third, we try in Part III to analyze European case law in which the ideals of the agnostic state have materialized (or not). Here we deal with two leading cases of the European Court in Strasbourg: (i) Ahmed v. UK (1998) and (ii) the Lautsi case (two cases in fact: one in 2009 and one in 2011).

Fourth, we conclude this essay in Part IV with an assessment about what is the most likely and also the most desirable development in Europe with regard to the relationship with state and religion. It is here we try to show that the French model is not restricted in its relevance to the nation-state France. The idea of a religiously neutral state as the expression of political agnosticism is the most viable model to regulate the living together of citizens with a partly religiously diverse, partly secularized background, living under the rule of law (meaning: a human rights regime).

* * * * *

At the beginning of this essay it is legitimate, perhaps, to say something personal about our inspiration to write this essay. The three of us are connected to the department of jurisprudence of Leiden University, the Netherlands. Coming from a small country, we were struck by the strong national bias in the great traditions of secular thought in France, the

United Kingdom and the United States. Especially the United States and France have developed secular ideas in their constitutional framework, but we were impressed by a great lack of understanding for the political philosophy and background of each other's ideas. As a point of illustration may serve a remark made by the American author Kent Greenawalt. In an article on secularism he writes that France is a secular state, but that the United States is "secular in a very different sense".⁷ Greenawalt compares France to Turkey and both countries to communist countries which were explicitly anti-religious (although he acknowledges that France's and Turkey's approach is a "much milder form"). His bias in favor of American secularism is clear though: "As far as the law is concerned, the United States is secular in a very different sense. The basic idea is that the government is to leave religious practice free and to stay out of religion".⁸ The problem is: this is *also* the pretense of the French. It has escaped the notice Greenawalt perhaps, but also the French think they "leave religious practice free" and they definitely have the ambition to "stay out of religion".⁹ An anti-French bias is even more clearly visible in the work of American philosopher Martha Nussbaum who accuses the French of discrimination and intolerance.¹⁰ Her *The New Religious Intolerance* (2012) is one long diatribe against the French system of secularism but, unfortunately, extremely ill-informed about French political philosophy and French literature about the subject. How is this possible? Do we have the problem of language here (hardly any reference is made in American literature to French sources)? Are, in an age that prides itself on internationalism, the national cultures still more prevalent than we are inclined to acknowledge? These are intriguing questions and perhaps there are no easy answers to this. What we at least

⁷ Greenawalt, Kent, "Secularism, Religion, and Liberal Democracy in the United States", in: *Cardozo Law Review*, Vol. 30, Issue 6 (June 2009), pp. 2383-2400, p. 2384.

⁸ Greenawalt, *Ibid.*, p. 2384.

⁹ This is clearly explained in the most important update of French secularism, *viz.* *Laïcité et République*, Rapport au Président de la République, Commission présidée par Bernard Stasi, La Documentation française, Paris 2004, in English: O'Brien, Robert, *The Stasi Report: The Report of the Committee of Reflection on the Application of the Principle of Secularity in the Republic*, William S. Hein & Co., Inc., Buffalo, New York 2005.

¹⁰ See: Nussbaum, Martha, *Liberty of Conscience: In Defense of America's Tradition of Religious Equality*, Basic Books, New York 2008, but even more vehement in: Nussbaum, Martha, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age*, The Belknap Press of Harvard University Press, Cambridge (Mass.) and London 2012, which is basically a ferocious attack on the French model of secularism as being "intolerant".

hoped to accomplish with our essay though, is some cross-cultural and cross-national understanding between the great political traditions mentioned. As we hope to make clear there is much more common ground in the great secular traditions as is commonly supposed.¹¹

¹¹ And the East although we make only scant references to non-western political thought. See for secularism in the Arabic world: Luizard, Pierre-Jean, *Laïcités autoritaires en terres d'islam*, Librairie Arthème Fayard, Paris 2008. And for secularism in the far-East: Sen, Amartya, *The Argumentative Indian: Writings on Indian History, Culture and Identity*, Allen Lane, Penguin Books, London 2005.

Part I Agnosticism: its history and protagonists

Agnosticism¹² in its contemporary meaning, according to the Norwegian philosopher Finngeir Hiorth (*b.* 1928), is the “theory that it is impossible for man to attain knowledge of a certain subject-matter”.¹³ This general meaning may be more specified as that it is “impossible for man to attain knowledge of God”.¹⁴ The most well-known agnostic from antiquity was the Greek philosopher Protagoras.¹⁵ Modern agnostics are Thomas Henry Huxley (1825-1895) and Leslie Stephen (1832-1904). Although there are many people who consider themselves agnostics, there are not many impressive philosophical defenses, according to Hiorth. He puts it thus: “Even though there are many agnostics today, it is difficult to find any refined defense of agnosticism. Most of what has been written on agnosticism, has been written by theists or atheists”.¹⁶ And further: “Agnosticism ordinarily is taken for granted as a respectable view. It is not defended”.¹⁷ This is right as far as the common people are concerned.

T.H. Huxley: the founding father of agnosticism

Hiorth may be right as far contemporary agnostics are concerned, but for the agnostics of the nineteenth century it was certainly not true they lacked determinacy in the defense of their convictions. The thinker who coined the concept was one of the most pugnacious intellectuals of his

¹² See on agnosticism in general: Cliteur, Paul, “Atheism, Agnosticism, and Theism”, in: Paul Cliteur, *The Secular Outlook: in Defense of Moral and Political Secularism*, Wiley-Blackwell, Chichester 2010, pp. 14-69; LePoivedin, Robin, *Agnosticism: A Very Short Introduction*, Oxford University Press, Oxford 2010; Pyle, Andrew, ed., *Agnosticism: Contemporary Responses to Spencer and Huxley*, Thoemmes Press, Bristol 1995; Stein, Gordon, “The Meaning of Atheism and Agnosticism”, in: Gordon Stein, ed., *An Anthology of Atheism and Rationalism*, Compiled, Edited and with Introductions by Gordon Stein, Prometheus Books, Buffalo, New York 1980, pp. 3-6; Joshi, S.T., “Introduction”, in: S.T. Joshi, ed., *The Agnostic Reader*, Prometheus Books, Amherst, New York 2007, pp. 11-20.

¹³ Hiorth, Finngeir, *Introduction to Atheism*, Indian Secular Society, Pune 1995, p. 38.

¹⁴ Hiorth, *Introduction to Atheism*, p. 38. See on Hiorth: Cooke, Bill, “Finngeir Hiorth”, in: Bill Cooke, *Dictionary of Atheism, Skepticism, & Humanism*, Prometheus Books, Amherst, New York 2006, pp. 242.

¹⁵ Drachmann, A.B., *Atheism in Pagan Antiquity*, Glyndendal, London, Copenhagen, Christiania 1922 (heruitgegeven door: Kessinger Publishing, Whitefish 2005), pp. 39-40.

¹⁶ Hiorth, *Introduction to Atheism*, p. 39.

¹⁷ Hiorth, *Introduction to Atheism*, p. 40.

time, a “smiter of humbug”,¹⁸ the “Gladiator-General for Science”,¹⁹ and – here comes his most well-known nickname – “Darwin’s bulldog”.²⁰

Agnosticism: first use of the term. The term “agnosticism” was coined by Thomas Henry Huxley in the second half of the nineteenth century.²¹ In Huxley’s view, the term should serve as an indication for his own attitude towards knowledge. The concept was further developed in a series of essays, partly in defense of his concept against some ferocious attacks from the side of his Christian contemporaries. In *Agnosticism and Christianity* (1889)²² Huxley tells us that agnostics are being targeted because, in the opinion of agnosticism’s adversaries, the agnostic does not have the courage to defend its basically infidel position. Let’s face it: the agnostic is an *infidel*. Why not openly say this?²³ But according to Huxley this is false, because the infidel is defined in terms of *what he is not*. Huxley considers this *too negative*. Agnosticism in the sense that he wants to introduce the term is a positive doctrine with a stance of its own, a specific message, and not a mere shadow of theism.

In *Agnosticism* (1889) Huxley also elaborates on the historical origin of the term “agnosticism” and his reasons for developing it. He felt attracted to the work of Hume and Kant. But when he had to answer the question whether he considered himself to be a theist, atheist, pantheist, materialist, idealist, or a Christian, he had to admit, he confides to us, that he did not know the answer. What all these positions seemed to

¹⁸ Cooke, Bill, “Thomas Henry Huxley”, in: Bill Cooke, *Dictionary of Atheism, Skepticism, & Humanism*, Prometheus Books, Amherst, New York 2006, p. 247, pp. 273-274, p. 273.

¹⁹ Josh, S.T., “Thomas Henry Huxley: Gladiator-General for Science”, in: *The Unbelievers: the Evolution of Modern Atheism*, Prometheus Books, Amherst New York 2011, pp. 19-41, p. 19.

²⁰ See on Huxley: Desmond, Adrian, *Huxley: From Devil’s Disciple to Evolution’s High Priest*, Helix Books, Perseus Books, Massachusetts 1994; Clark, Ronald W., *The Huxleys*, Heinemann, London 1968; Lyons, Sherrie, “Thomas Henry Huxley”, in: S.T. Joshi, ed., *Icons of Unbelief: Atheists, Agnostics, and Secularists*, Greenwood Press, Westport, Conn. 2008, pp. 153-175; White, Paul, *Making the “Man of Science”*, Cambridge University Press, Cambridge and New York 2003.

²¹ Huxley, Thomas Henry, “Agnosticism”, 1889, in: Thomas Henry Huxley, *Agnosticism and Christianity. And other Essays*, Prometheus Books, Buffalo, New York 1992, pp. 142-167. See also Joshi, S.T., “Introduction”, in: S.T. Joshi, ed., *The Agnostic Reader*, Prometheus Books, Amherst, New York 2007, pp. 11-20.

²² Huxley, Thomas Henry, “Agnosticism and Christianity”, 1889, in: Thomas Henry Huxley, *Agnosticism and Christianity. And other Essays*, Prometheus Books, Buffalo, New York 1992, pp. 193-232.

²³ This was the position of Dawkins’s teacher who thought atheists had at least the courage to defend their position while agnostics were ducking the debate. See: Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006, pp. 69-77.

have in common, is that they claimed to have some knowledge which he, Huxley, clearly had not. The adherents of the positions he presented, all had the pretence that they had solved a certain riddle. He had clearly not that pretense. “I was quite sure I had not, and had a pretty strong conviction that the problem was insoluble.”²⁴ Subsequently, he coined a new concept for that position and this was “agnostic”. Or, as he elucidates: “It came into my head as suggestively antithetic to the ‘Gnostic’ of Church history, who professed to know so much about the very things of which I was ignorant.”²⁵

The moral meaning of agnosticism. This agnostic principle does not only have an intellectual significance but a moral meaning as well, Huxley explains. The content of the principle is this:

That it is wrong for a man to say that he is certain of the objective truth of any proposition unless he can produce evidence which logically justifies that certainty.²⁶

The mirror image of the agnostic is presented by the “gnostic”, the position of all those who claim to know. What the agnostic combats is the principle:

That there are propositions which men ought to believe, without logically satisfactory evidence; and that reprobation ought to attach to the profession of disbelief in such inadequately supported propositions.²⁷

One of the strongest points of the agnostic position seems to be its moral dimension. Andrew Pyle writes that the agnostics succeeded in “seizing the moral high ground”.²⁸ Or, as Huxley himself phrases it: “This doctrine is even more moral than intellectual”.²⁹

²⁴ Huxley, “Agnosticism”, p. 162.

²⁵ Huxley, “Agnosticism”, p. 163.

²⁶ Huxley, “Agnosticism and Christianity”, p. 192.

²⁷ Huxley, “Agnosticism and Christianity”, p. 193.

²⁸ Pyle, Andrew, “Introduction”, in: Pyle, Andrew, ed., *Agnosticism*. Contemporary Responses to Spencer and Huxley, Thoemmes Press, Bristol 1995, pp. ix-xxvi, p. xv.

²⁹ Huxley, “Agnosticism and Christianity”, p. 196.

Other agnostics

Although Huxley was the one who coined the term “agnosticism”, it was not his specific brand that would become the most influential. Other interpretations that were being presented were those of: Herbert Spencer, John Tyndall, Leslie Stephen, William Kingdon Clifford and Samuel Laing.

According to Herbert Spencer (1820-1903) religion had to be considered as the terrain of the “unknowable”, whilst the world around us could be explored by science. What happens when someone tries to gain access to the realm of the unknowable is that one is caught in paradoxes. Spencer was inspired by Immanuel Kant in this respect.³⁰

Leslie Stephen (1832-1904) was an important Victorian intellectual and ordained priest, but he defected from the clergy because he could no longer sincerely believe what he was supposed to believe. In 1870 he left the church and his *An Agnostic's Apology* (1893) may best be considered a plea for intellectual honesty.³¹ Stephen was very influential in making the term agnosticism popular.

A third agnostic next to Huxley was Clifford. W.K. Clifford's (1845-1879) classic essay *The Ethics of Belief* (1877) is similar to Huxley's position.³² But we will discuss Clifford's work separately.

Last but not least: Samuel Laing (1812-1897) presented a kind of agnosticism that was considered to be more open to religion than the other brands we have discussed. Laing also considered a “Christian agnosticism” viable.

This meant that two interpretations of agnosticism came to the fore. On the one hand an interpretation that presented itself as “positive”, in the sense of “open to religion” and even “open to God”.

³⁰ Spencer, Herbert, “The Reconciliation”, in: Andrew Pyle, ed., *Agnosticism: Contemporary Responses to Spencer and Huxley*, Thoemmes Press, Bristol 1995, pp. 1-19.

³¹ Stephen, Leslie, “An Agnostic's Apology”, in: *Forthnightly Review*, Vol. XXV, 1893, pp. 840-860, reprinted in: Andrew Pyle, ed., *Agnosticism: Contemporary Responses to Spencer and Huxley*, Thoemmes Press, Bristol 1995, pp. 48-72. See on Stephen: Annan, Noel, *Leslie Stephen: His Thought & Character in Relation to his Time*, MacGibbon & Kee, London 1951; Joshi, S.T., “Leslie Stephen”, in: S.T. Joshi, ed., *Icons of Unbelief: Atheists, Agnostics, and Secularists*, Greenwood Press, Westport, Conn. 2008, pp. 389-401.

³² Clifford, W.K., “The Ethics of Belief”, in: *Contemporary Review*, 1876/77, pp. 289-309, also in: *Lectures and Essays*, Vol. II, ed. L. Stephen & F. Pollock, Macmillan, London 1879, pp. 177-212.

This kind of agnosticism made it possible to speculate about a world behind this world, a world that may be unknown but which may still be a realm one can speculate about. This proved to be a line followed by Spencer and John Tyndall (1820-1893). As we indicated, this “positive” interpretation of agnosticism would also be compatible with religion, although only in its most liberal form, of course. Tyndall was anti-clerical, but not anti-religious.

On the other hand there was the “negative” interpretation of agnosticism. In the “negative” interpretation, agnosticism was primarily a critical doctrine towards religion as its eternal antithesis. Religion was “gnostic”, after all. Agnosticism is “a-gnostic”, after all. This line was defended by Huxley, Clifford and Stephen. In the pages that follow we will try to make clear why we think in particular this “negative agnosticism” is highly relevant for political philosophy, *viz.* as the philosophical foundation of the modern secular state. Let us now make some comments on the second important agnostic next to Huxley: Stephen.

Leslie Stephen: influential apologist of agnosticism

Leslie Stephen was raised as a fervent evangelical, ordained as a minister but he lost his faith. He was the father of artist Vanessa Bell (1879-1961) and novelist Virginia Woolf (1882-1941).³³ In 1870 he left the church and became an “agnostic”. He was an important propagandist for a secular ethics, in particular with his *Science of Ethics* (1882)³⁴ where he explored the viability of an objective ethics although there was no afterlife as an inducement for good behavior.

Unbelief not negative. Stephen makes an important contribution to the tradition of agnosticism because he lambasts the idea that “belief” is something “positive” while “unbelief” is considered to be “negative”. Belief and unbelief are much more similar than one may think, Stephen

³³ See on Stephen: Annan, Noel, *Leslie Stephen: His Thought & Character in Relation to his Time*, MacGibbon & Kee, London 1951.

³⁴ Stephen, Leslie, *The Science of Ethics*, Smith, Elder, & Co., London 1882.

tells us.³⁵ The reason is clear: whoever believes in position A, does not believe position B when B contradicts A. This insight is highly relevant when it comes to religion. “The believer at Rome is the infidel at Mecca, and conversely.”³⁶ Whoever believes in the truth of the heliocentric system, does not believe in the geocentric system and *vice versa*. “To say, therefore, that belief *qua* belief is better or worse than unbelief is a contradiction in terms.”³⁷

This is an idea that returns time and again with Stephen. He writes: “Faith in the beyond really implies scepticism as to the present, and those who most fervently assert their belief in an omnipotent and perfect Governor of the world are, therefore, those who can speak most bitterly and with the least hopefulness of the world which he governs.”³⁸ We encounter the same approach with Huxley, as we have seen in the previous pages. This is the reason why Huxley did not want to be labelled as “infidel” or “unbeliever”. Those epithets are too negative. They insinuate that the agnostic has no beliefs. Of course he has. But they are different from the beliefs of the Christians and other denominations. Central is though: man always believes something.

Moral autonomy. Stephen also proclaims the principle of moral autonomy when he writes: “are actions right because God wills them, or does God wills them because they are right?”³⁹ If the answer is: “because God will them”, we have to retort: “how do we know what God wills?” And this is something which leads us to an autonomous assessment of morals.⁴⁰ The whole theory of “future rewards and punishments” he

³⁵ Stephen, Leslie, “The Scepticism of Believers”, in: Leslie Stephen, *An Agnostic’s Apology and Other Essays*, Smith, Elder & Co., London 1893 (republished 1969), pp. 42-86.

³⁶ Stephen, “The Scepticism of Believers”, p. 45.

³⁷ Stephen, “The Scepticism of Believers”, p. 45.

³⁸ Stephen, “The Scepticism of Believers”, p. 83.

³⁹ Stephen, “The Scepticism of Believers”, p. 75. See on this: Alston, William P., “What Euthyphro Should Have Said”, in: William Lane Craig, *Philosophy of Religion: A Reader and Guide*, Edinburgh University Press, Edinburgh 2002, pp. 283-300; Goldstick, D., “Monotheism’s Euthyphro Problem”, in: *Canadian Journal of Philosophy*, Volume IV, Number 2, December 1974, pp. 585-589; Kretzmann, Norman, “Abraham, Isaac, and Euthyphro: God and the Basis of Morality”, in: Eleonore Stump and Michael J. Murray, eds., *Philosophy of Religion. The Big Questions*, Blackwell, Malden / Oxford 2001 (1999), pp. 417-429.

⁴⁰ This is also the point Dawkins is making when he writes that his purpose has been to demonstrate that we “(and that includes most religious people) as a matter of fact *don’t* get our morals from scripture”. See: Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006, p. 283.

considers as gratuitous. It would be better to acknowledge that we have to develop a morality which is based on a more realistic footing. Continuing to try to base morality on something so unstable as belief in a supreme being is arbitrary: “in that very fact lies the danger of prolonging the association when the belief has become a mere effete shadow.”⁴¹ Or: “Why stand we gazing into heaven when we have but to look round to catch the contagion of noble enthusiasm from men of our own race? The ideal becomes meaningless when it is made supernatural”.⁴²

The dangers of religious ethics. Religious ethics can also be dangerous because it can lead to immoral practices. “A religion may command criminal practices, and even practices inconsistent with the very existence of society.”⁴³ And: “The fact that a god commands an action does not make it moral.”⁴⁴

The theory of the Almighty Chief Justice is, perhaps, too antiquated for serious discussion. If any reference must be made to it, it is because, although the argument is not explicitly stated, its validity is often tacitly assumed.⁴⁵

The theory of a personal god Stephen considers to be a “deity of a low type”.⁴⁶ This god was the product of a society in which justice was mixed up with divine revenge. We are more civilized now. “We have agreed now”, Stephen writes, “that human laws should be reformatory instead of vindictive”.⁴⁷

The whole atmosphere of Stephen’s writings will sound wildly optimistic for a contemporary audience. He clearly believes in moral

⁴¹ Stephen, “Dreams and Realities”, p. 119. Stephen would sides with: Nielsen, Kai, “Ethics without Religion”, in: Michael Peterson, William Hasker, Bruce Reichenbach, David Basinger, eds., *Philosophy of Religion*. Selected Readings, Oxford University Press, New York / Oxford 1996, pp. 536-544.

⁴² Stephen, Leslie, “An Apology for Plainspeaking”, in: Leslie Stephen, *Essays on Freethinking and Plainspeaking*, Longmans, Green, London 1879 (republished 1969), pp. 326-362, p. 246.

⁴³ Stephen, Leslie, “Poisonous Opinions”, in: Leslie Stephen, *An Agnostic’s Apology and Other Essays*, Smith, Elder & Co., London 1893 (repub. 1969), pp. 242-338, p. 280.

⁴⁴ Stephen, “Poisonous Opinions”, p. 280.

⁴⁵ Stephen, Leslie, “Dreams and Realities”, in: Leslie Stephen, *An Agnostic’s Apology and Other Essays*, Smith, Elder & Co., London 1893 (republished 1969), pp. 86-126, p. 120.

⁴⁶ Stephen, “Dreams and Realities”, p. 120.

⁴⁷ Stephen, “Dreams and Realities”, p. 120.

progress.⁴⁸ In Europe and the western world in general we would have to wait for another century to encounter a similar forceful defense of secular ethics and politics. The Victorian agnostics were firm supporters of what in the sociology of religion came to be known as the “secularization thesis”.⁴⁹

Tolerance and science. Stephen also embraces a non-perverted conception of tolerance⁵⁰ when he writes: “Toleration implies that each man must have a right to say what he pleases.”⁵¹ And as many of the Victorian agnostics, Stephen puts his trust in science. “It is science, not theology, which has changed all this; it is the atheists, infidels, and rationalists, as they are kindly called, who have taught us to take fresh interest in our poor fellow denizens of the world, and not to despise them because Almighty benevolence could not be expected to admit them to heaven.”⁵² Is this negative? “Reconstruct, it is said, before you destroy. But you must destroy in order to reconstruct.”⁵³

W.K. Clifford: a genius who made the most vigorous defense

The youthful genius who made a most vigorous defense of the Victorian secularist and agnostic position was William Kingdon Clifford in his essay *The Ethics of Belief* (1877).⁵⁴ Clifford was a mathematician and

⁴⁸ As many Victorians did. See: Bury, J.B., *The Idea of Progress: An Inquiry into its Origin and Growth*, Macmillan, St. Martin's Street, London 1920, pp. 334-349; Taguieff, Pierre-André, *Le sens du progrès: une approche historique et philosophique*, Flammarion, Paris 2004, pp. 191-215; Royce, Josiah, *The Spirit of Modern Philosophy: An Essay in the Form of Lectures*, Dover Publication, Inc., New York 1983 (1892), pp. 265-311. See for a contemporary vindication of the notion of progress: Grayling, A.C., *Towards the Light: The Story of the Struggles for Liberty & Rights that made the Modern West*, Bloomsbury Publishing, London 2007.

⁴⁹ One may argue that Dawkins, Hitchens, Harris and Dennett are in that respect the heirs of the Victorian secularists. See on them: Borer, Michael Ian, “The New Atheism and the Secularization Thesis”, in: Amarnath Amarsingam, ed., *Religion and the New Atheism: A Critical Appraisal*, Brill, Leiden/Boston 2010, pp. 125-137.

⁵⁰ See on this: “Tolerantie als voornaamste deugd in de multiculturele samenleving”, in: Cliteur, Paul, *Moderne Papoea's: Dilemma's van een multiculturele samenleving*, Uitgeverij De Arbeiderspers, Amsterdam/Antwerpen 2002, pp. 137-149.

⁵¹ Stephen, “Poisonous Opinions”, p. 288.

⁵² Stephen, “An Apology for Plainspeaking”, p. 354.

⁵³ Stephen, “An Apology for Plainspeaking”, p. 361.

⁵⁴ Clifford, W.K., “The Ethics of Belief”, 1877, in: W.K. Clifford, *The Ethics of Belief and Other Essays*, Introduction by Timothy J. Madigan, Prometheus Books, Amherst, New York 1999, pp. 70-96.

philosopher, but better, perhaps, it would be to say he was a *Universalgelehrte*. He only became 34 years old, because he died in a shipwreck.

His argument developed in *The Ethics of Belief* starts with a ship-owner who has doubts about the seaworthiness of a ship but nonetheless sends it unto the sea: “He would put his trust in Providence”. Clifford makes perfectly clear the ship-owner was honest in his belief: “he acquired a sincere and comfortable conviction that his vessel was thoroughly safe and seaworthy”.⁵⁵ His question is: how to judge the shipowner? “What shall we say of him?”.

The answer is clear: he is guilty of an enormous crime. Why? Clifford answers: “he had no right to believe on such evidence as was before him.”⁵⁶ He had based his belief on trust, trust not based on his own independent research, but because he had suppressed his doubts by his belief in God.

The rest of the essay is easy to predict. But the great rhetorician which Clifford undoubtedly is, succeeds in creating an enormous tension in the development of his argument. He tells us, first, belief is never something that affects only ourselves. “No man’s belief is in any case a private matter which concerns himself alone”, Clifford writes.⁵⁷ Our lives are intimately connected. Whatever is believed by one person affects the other. “Our words, our phrases, our forms and processes and modes of thought, are common property, fashioned and perfected from ages to ages.”⁵⁸ The totality of our convictions we bequeath from one generation to another. In that sense, our most private beliefs are the heritage of mankind as a whole.

A second point that Clifford elaborates upon, is that we do not only acquire the collective heritage of mankind but we also have the obligation to *develop* this further. And this is only possible when we *subject it to critique*. Criticism is not only a *right* but also a *moral duty*, it is an “awful privilege” and an “awful responsibility” that we all have to work on how

⁵⁵ Clifford, *Ibid.*, p. 70.

⁵⁶ Clifford, *Ibid.*, p. 70.

⁵⁷ Clifford, *Ibid.*, p. 73.

⁵⁸ Clifford, *Ibid.*, p. 73.

the world will be shaped for future generations.⁵⁹ And that brings Clifford to the formulation he became famous for:

It is wrong always, everywhere, and for anyone, to believe anything upon insufficient evidence.⁶⁰

In *The Ethics of Belief*, Clifford made only a few references to particular religions and he seemed to abstain from making Christianity the focal point of his criticism. But in *The Ethics of Religion* (1877), a second essay we have to highlight here, he seems to be more straightforward in his criticism of religion.⁶¹ Here he also addresses institutionalized religion. Clifford affirms that also whole religions have to be judged on their moral value. They have to be judged, tested and possibly rejected. This may all seem fairly obvious but this is more controversial than one might think. Take *e.g.* a commentary by the Canadian philosopher and political thinker Michael Ignatieff who, apparently, allows some room for criticizing particular religious doctrines, but not religions in general. In a contribution to Lisa Appignanesi's *Free Expression is No Offence* (2005) Ignatieff writes:

Two types of insult towards religion need to be distinguished: insulting particular religious tenets or practices; and insulting a religion in general or religions in general. The first would be to criticize a particular doctrine or belief: virgin birth; dietary laws; rules regarding the treatment of women. While criticism of this sort, especially coming from someone outside a faith, might be regarded as insulting, it seems legitimate. What seems less legitimate – *i.e.* actively disrespectful – is to dismiss a religion en bloc or to dismiss religious belief as a whole.⁶²

Applying these “rules of the road” (the title of Ignatieff's article) to the history of western philosophy would condemn the work of Lucretius,

⁵⁹ Clifford, *Ibid.*, p. 74.

⁶⁰ Clifford, *Ibid.*, p. 77.

⁶¹ Clifford, W.K., “The Ethics of Religion”, 1877, in: W.K. Clifford, *The Ethics of Belief and Other Essays*, Introduction by Timothy J. Madigan, Prometheus Books, Amherst, New York 1999, pp. 97-121.

⁶² Ignatieff, Michael, “Respect and the Rules of the Road”, in: Lisa Appignanesi, ed., *Free Expression is No Offence*, Penguin Books, London 2005, pp. 127-136, p. 130.

Diderot, Voltaire, Spinoza, LaMettrie, Freud, Dawkins, Sartre, Russell and many others as “less legitimate”. And what to think of the cultural relativist assumption that criticism is less legitimate when “coming from someone outside a faith”? Only Hindus may criticize the suttee? Only Romans can reject the practice of crucifying law offenders? Only the Dutch may criticize Dutch stinginess? Only the Spanish may have negative opinion about bull fights? Or does Ignatieff want to restrict his cultural relativism (because that is basically what it is, is it not?)⁶³ only with regard to religions? But then: what’s so special about religion, Clifford would undoubtedly ask?

Clifford is well aware that many social codes are against such an attitude. Not only in our time, but *a fortiori* in his time. “If we go to a man and propose to test his own religion by the canons of common-sense morality, he will be, most likely offended, for he will say that this religion is far too sublime and exalted to be affected by considerations of that sort.”⁶⁴ But Clifford thinks this should not be conclusive. Religions, like other thought systems, have to be based on evidence. “Religious beliefs must be founded on evidence; if they are not so founded, it is wrong to hold them.”⁶⁵

Apparently, it is morality which is the basis for religion, not *vice versa*. That cannot come as a surprise because, as we have seen, this was also the stance Stephen and Huxley took.⁶⁶ It is an important element of the repertoire of the Victorian agnostics.⁶⁷ And Clifford does not shy away from the consequences this may have: “If a God is represented as doing that which is clearly wrong, and is still held up to the reverence of men, they will be tempted to think that in doing this wrong thing they

⁶³ See: Donnelly, Jack, “Cultural Relativism and Universal Human Rights”, in: *Human Rights Quarterly*, 6 (1984), pp. 400-419; Gardner, Martin, “Beyond Cultural Relativism”, in: Martin Gardner, *The Night is Large*. Collected Essays 1938-1995, Penguin Books, London 1996, pp. 149-161; Gensler, Harry J., “Cultural Relativism”, in: *Ethics*, Routledge, London & New York 1998, pp. 11-20.

⁶⁴ Clifford, “The Ethics of Religion”, p. 101.

⁶⁵ Clifford, “The Ethics of Religion”, p. 102.

⁶⁶ And Ronald Dworkin in his last book, dedicated to the philosophy of religion. Dworkin writes: “I do not argue that there is no personal god who made the heavens and loves its creatures. I claim only that such a god’s existence cannot in itself make a difference to the truth of any religious values”. See: Dworkin, Ronald, *Religion without God*, Harvard University Press, Cambridge Mass. 2013, p. 25.

⁶⁷ See: Royle, Edward, *Victorian Infidels: The Origins of the British Secular Movement, 1791-1866*, Manchester University Press, Manchester 1974, pp. 145-170.

are not so very wrong after all, but are only following an example which all men respect.”⁶⁸

This is the basis of religious criticism. Religious criticism, so unpopular nowadays,⁶⁹ and also heavily criminalized in many countries in the world,⁷⁰ is an indispensable cultural institution if we want to make any progress in this world.

Secularism

The term “secularism” was coined by the English reformer and journalist George Jacob Holyoake (1817-1906) in 1841. Holyoake is known for being charged with blasphemy and jailed as an atheist. While lecturing at Cheltenham he responded to hostile clerical interrogation by saying that since there was poverty in the land, God could be put on half-pay.⁷¹ His *Logic of Death* (1850) sold sixteen thousand copies within a year, which was a tremendous success for a freethought work.⁷² He also wrote a lengthy two-volume autobiography under the title *Sixty Years of an Agitator's Life* (1892), *English Secularism: A Confession of Belief* (1896),⁷³ and

⁶⁸ Clifford, “The Ethics of Religion”, p. 103.

⁶⁹ See on this: Cliteur, Paul, “The Changing Nature of the Freedom of Speech”, in: T. Barkhuysen, M.L. van Emmerik, & J.P. Loof, red., *Geschakeld recht: verdere studies over Europese grondrechten ter gelegenheid van de 70^{ste} verjaardag van prof. Mr. E.A. Alkema*, Kluwer, Deventer 2009, pp. 97-115.

⁷⁰ See on this: Bielefeldt, Heiner, “Freedom of Religion or Belief – A Human Right under Pressure”, in: *Oxford Journal of Law and Religion*, Vol. 1, No. 1, 2012, pp. 15-35; *Freedom of Thought 2012. A Global Report on Discrimination against Humanists, Atheists and the Nonreligious*, International Humanist and Ethical Union, London 2012.

⁷¹ Quoted in: Cooke, Bill, “George Jacob Holyoake”, in: Bill Cooke, *Dictionary of Atheism, Skepticism, & Humanism*, Prometheus Books, Amherst, New York 2006, p. 247. See also: Royle, Edward, *Victorian Infidels: The Origins of the British Secular Movement, 1791-1866*, Manchester University Press, Manchester 1974, pp. 170-199.

⁷² Cooke, “Holyoake”, in: *Ibid.*, p. 247.

⁷³ Holyoake, George Jacob, *English Secularism: A Confession of Belief*, The Open Court Publishing Company, Chicago 1896.

Bygones Worth Remembering (1905).⁷⁴ *Life and Letters of George Jacob Holyoake* (1908) were published posthumously by Joseph McCabe.⁷⁵

Holyoake was influenced by the anticlerical thinking of Thomas Paine⁷⁶ and the utopian rationalistic tradition of Robert Owen. In 1896 he wrote a book with the title *The Origin and Nature of Secularism* where he defined secularism as a “code of duty pertaining to this life for those who find theology indefinite or inadequate, unreliable or unbelievable”.⁷⁷ As the three essential elements of secularism he presented:

- The improvement of life and human effort;
- That science can have a material part to play in that improvement; and
- That it is good to do good.

Now the problem is: would not almost everyone subscribe to this? Holyoake defined secularism in much broader terms than we are accustomed to do nowadays. At times he defended as secularist rules for human conduct: truth in speech; honesty in transactions; industry in business; equity in reward.⁷⁸ There is one aspect in which he is completely in accordance with modern approaches of secularism (much more restricted than his broad conception of secularism), *viz.* when he stressed that secularism is not necessarily antireligious. His idea was that secularism had to be positioned somewhere in the middle between atheism on the one hand and Christianity on the other. Perhaps it would be the best characterization to say that Holyoake’s “secularism” comes close to what contemporary writers bring under the term “humanism”.⁷⁹

⁷⁴ Holyoake, George, Jacob, *Bygones worth Remembering*, Two volumes, E.P. Dutton & Company, New York 1905.

⁷⁵ Grugel, Lee E., “Holyoake, George Jacob”, in: Gordon Stein, ed., *The Encyclopedia of Unbelief*, Volume One, Prometheus Books, Buffalo, New York 1985, pp. 325-327.

⁷⁶ See his: Paine, Thomas, *The Age of Reason*, 1794, in: Thomas Paine, *Collected Writings*, The Library of America, New York 1995, pp. 665-885.

⁷⁷ Quoted in: Cooke, Bill, “Secularism”, in: Bill Cooke, *Dictionary of Atheism, Skepticism, & Humanism*, Prometheus Books, Amherst, New York 2006, p. 473-475.

⁷⁸ Cooke, Bill, “Secularist rules for human conduct”, in: Bill Cooke, *Dictionary of Atheism, Skepticism, & Humanism*, Prometheus Books, Amherst, New York 2006, p. 474-575, p. 474.

⁷⁹ Here we follow Cooke, “Secularism”, in: *Ibid.*, p. 474. See on humanism: Cave, Peter, *Humanism*, Oneworld, Oxford 2009; Law, Stephen, *Humanism: A Very Short Introduction*, Oxford University Press, Oxford 2011; Grayling, A.C. *The God Argument: The Case against Religion and for Humanism*, Bloomsbury, London 2013; Kurtz, Paul, *Forbidden Fruit: The Ethics of Humanism*, Prometheus Books, Amherst N.Y. 1988.

The essence of *contemporary* secularism (in contrast to Holyoake's conception) is what Cooke calls "the idea of the neutrality and noninvolvement of the government with regard to religion".⁸⁰ Amartya Sen, a contemporary secularist, writes: "Secularism in the political – as opposed to ecclesiastical – sense requires the separation of the state from any particular religious order".⁸¹ He discerns two variants. The first view argues that secularism demands "that the state be equidistant from all religions – refusing to take sides and having a neutral attitude towards them". The second view – characterized as "more severe" by Sen – insists that the state must not have any relation at all with any religion.⁸² What the two interpretations have in common, though, is that both say that secularism goes against giving any religion a privileged position in the activities of the state.⁸³

These definitions of secularism by Cooke and Sen are less broad than the use of the term by Holyoake. But even in secularism in the modern sense we find Holyoake's influence in that secularism is not antireligious or atheistic. You can be an atheist *and* a secularist. And you can be a theist *and* a secularist. Perhaps there is a chance that more atheists have a welcoming attitude towards secularism than theists, but this is not necessarily the case. In the United States of America many people consider themselves committed religious believers and at the same time firm supporters of the First Amendment to the American Constitution, which is, basically, a proclamation of secularism. A secular state is – avoiding both state atheism and theocracy – a state where government, especially in the areas of education and health and public policy, is independent of religion.⁸⁴

Secularism and Atheism: the controversy between Holyoake and Bradlaugh

⁸⁰ Cooke, "Secularism", in: *Ibid.*, p. 474.

⁸¹ Sen, Amartya, "Secularism and Its Discontents", in: Amartya Sen, *The Argumentative Indian: Writings on Indian History, Culture and Identity*, Allen Lane/Penguin Books, London 2005, pp. 294-316, p. 295.

⁸² Sen, *Ibid.*, p. 296.

⁸³ Sen, *Ibid.*, p. 274.

⁸⁴ See: Cooke, "Secularism", in: *Ibid.*, p. 474.

On 10 and 11 March 1870 two spokesmen for the secular outlook in general debated on the meaning of terms like freethought, atheism and secularism: Holyoake and Bradlaugh.

Charles Bradlaugh (1833-1891) was a legendary secularist lecturer and campaigner and founder of the National Secular Society in 1866.⁸⁵ In 1888 he forced through Parliament a Bill giving the right to affirm instead of taking an oath. In the following year he introduced a Bill for the Abolition of the Blasphemy Laws. Bradlaugh also took an interest in freedom struggles outside the United Kingdom. He made a trip to India and his great rhetoric speeches there were influential in the development of Indian rationalism and secularism.⁸⁶

For the purpose of a right assessment of his debate with Holyoake it is essential to know that he preferred the term “atheism” above other epithets that were common in the secularist movement.⁸⁷ He stressed though that atheism – at least in the sense he wanted to use the term – did not have the pretense to know or to prove that God does not exist.

Holyoake coined the word “secularism” to mark a clear contrast with “atheism”, a term Bradlaugh favoured. As Jennifer Michael Hecht writes in *Doubt: a History* (2004), Bradlaugh’s motto was “Thorough” which meant “he was quite an atheist”.⁸⁸ Bradlaugh’s speeches were among the most popular of the era, she writes.⁸⁹ He may be compared with the American Robert Ingersoll.⁹⁰ In the enlightening confrontation between two kindred spirits Holyoake makes clear that the backdrop of his ambition was that the term atheism sounded as “too negative” to

⁸⁵ McCabe, Joseph, “Bradlaugh, Charles”, in: Joseph McCabe, *A Biographical Dictionary of Modern Rationalists*, Watts & Co., London 1920, pp. 102-103, p. 103.

⁸⁶ Cook, Bill, *A Wealth of Insights: Humanist Thought since the Enlightenment*, Prometheus Books, Amherst NY 2009, p. 304.

⁸⁷ Bradlaugh, Charles, “A Plea for Atheism” (1864), in: *Charles Bradlaugh: Champion of Liberty* (London 1933) and republished in: Stein, Gordon, ed., *An Anthology of Atheism and Rationalism*, Prometheus Books, Buffalo, New York 1980, pp. 9-19. See also: Tribe, David, “Charles Bradlaugh”, in: S.T. Joshi, ed., *Icons of Unbelief: Atheists, Agnostics, and Secularists*, Greenwood Press, Westport, Conn. 2008, pp. 9-27.

⁸⁸ Hecht, Jennifer Michael, *Doubt: a History, The Great Doubters and Their Legacy of Innovation from Socrates and Jesus to Thomas Jefferson and Emily Dickinson*, HarperOne, New York 2005, p. 413.

⁸⁹ Hecht, *Ibid.*, p. 413.

⁹⁰ See: Ingersoll, R.G., *Complete Lectures of Col. R.G. Ingersoll*, With a preface by compiler, M.A. Donohue & Company, Chicago, New York 1900 and Jacoby, Susan, *The Great Agnostic: Robert Ingersoll and American Freethought*, Yale University Press, New Haven & London 2013.

many people.⁹¹ Parliament is now, Holyoake explained, occupied with an endeavor to adjust some system of national education. This was not easy though. Why?

Now the greatest impediment in the way of its being made Secular education is the prevalence of the imputation, and as I think the misconception, that Secularism necessarily involves Atheism and Skepticism. I think that is an injurious misconception.⁹²

Holyoake calls atheism “antagonistic” and also “oftentimes ferocious” and therefore it would be necessary to propose a new name for a new form of Freethought. This name would be “secularism”. That does not mean that secularism is not tributary to atheism. Secularism can built on the results of Atheistical societies and Freethinkinking societies. But to avoid misunderstanding, it would be better to use a word that is more “affirmative instead of negative”.⁹³ Holyoake also stated that he did not want to “assail others”, not even “theological systems”. One gets the impression that Holyoake wanted to do his utmost to present the secular outlook, as something positive, not confrontational.

Whether that would make the secular outlook more attractive to outsiders is the question. Perhaps people who feel attracted by the metaphysical temptation will never experience atheism, freethought, secularism or whatever you want to call it as something positive. Apart from the fact that perhaps his attempt to make the secular outlook attractive for the religious believers was not very successful, there was also the additional problem that Holyoake loaded the term secularism with so many paraphernalia that it was far from clear what it would stand for. “If you desire a brief summary”, Holyoake said optimistically, the meaning of the term secularism could be made clear “in a few words”, *i.e.* “1. Secularism maintains the sufficiency of Secular Reason for guidance in human duties. 2. The adequacy of the Utilitarian rule which makes the good of other, the law of duty. 3. That the duty nearest at

⁹¹ Holyoake, George Jacob, en Bradlaugh, Charles, “Is Secularism Atheism?”, in: Gordon Stein, *A Second Anthology of Atheism and Rationalism*, Prometheus Books, Buffalo, New York 1987, pp. 345-369, p. 347.

⁹² Holyoake and Bradlaugh, “Is Secularism Atheism?”, p. 347.

⁹³ Holyoake and Bradlaugh, “Is Secularism Atheism?”, p. 347.

hand and most reliable in results, is the use of material means, tempered by human sympathy, for the attainment of social improvement. 4. The sinlessness of well-informed sincerity. 5. That the sign and condition of such sincerity are – Freethought – expository speech – the practice of personal conviction within the limits of neither outraging nor harming others”.⁹⁴

The problem with this definition (if one may call it one) is that this is too broad. It loads all kinds of contingent ideas on the wagon of secularism apart from being unclear in its essentials. Probably the first point means that morality is autonomous. The second point arbitrarily connects secularism with utilitarianism, which may be advocated, of course, but is not necessary at all.⁹⁵ The third point is somewhat vague and the fourth point makes a confusing reference to religious concepts (“sin”).

Anyhow, that atheism is not the same as secularism is clear. And Holyoake deserves credit for having made that point.

Three testimonials of secularism

That secularism is not antireligious was also emphasized by Sheikh Mujibur Rahman (1920-1975), the founder of the state of Bangladesh. Mujib said in a speech in the Bangladeshi parliament in 1972:

Secularism does not mean absence of religion. The seventy five million people of Bengal will have the right to religion. We do not want to ban religion by law. We have no intention of that kind. Secularism does not mean absence of religion. Muslims will observe their religion and nobody in this state has the power to prevent that. Hindus will observe their religion and nobody has power to prevent that. Buddhists and Christians will observe their

⁹⁴ Holyoake and Bradlaugh, “Is Secularism Atheism?”, p. 348.

⁹⁵ Perhaps this had to do with Holyoake’s personal relationship with the founding father of utilitarianism, John Stuart Mill, who had explained to him – as Holyoake makes clear – the “adequacy of the Utilitarian rule as a guide in all matters of morality”. Holyoake and Bradlaugh, *Ibid.*, p. 348.

respective religions and nobody will be allowed to use religion as a political weapon.⁹⁶

Sheikh Mujib was assassinated, together with his whole family, in August 1975. Bangladesh has since become an “Islamic Republic”.

In American political thought the idea of secularism is intimately connected to the ideal of what is called the separation of church and state. This was formulated by Thomas Jefferson as the “wall of separation between church and state” in his letter to the Danbury Baptist Association in 1802.⁹⁷ Here Jefferson writes “Believing with you that religion is a matter which lies solely between Man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should ‘make no law respecting an establishment of religion, or prohibiting the free exercise thereof’, thus building a wall of separation between Church and State”.

A final manifestation of American secularist thought we want to quote here derives from a letter from another American president, John Tyler. On 10 July 1843 Tyler wrote:

The United States have adventured upon a great and noble experiment, which is believed to have been hazarded in the absence of all previous precedent— that of total separation of Church and State. No religious establishment by law exists among us. The conscience is left free from all restraint and each is permitted to worship his Maker after his own judgment. The offices of the Government are open alike to all. No tithes are levied to support an established Hierarchy, nor is the fallible judgment of man set up as the sure and infallible creed of faith. The Mahomedan, if he will to come among us would have the privilege guaranteed to him by the constitution to worship according to the Koran; and the East Indian might erect a shrine

⁹⁶ Sheikh Mujib as quoted in: Cooke, “Secularism”, in: *Ibid.*, p. 474.

⁹⁷ Jefferson, Thomas, “To Messrs. Nehemiah Dodge and Others, a Committee of the Danbury Baptist Association, in the State of Connecticut”, 1 January 1802, in: Jefferson, Thomas, *Writings*, The Library of America, New York, N.Y. 1984, p. 510.

to Brahma if it so pleased him. Such is the spirit of toleration inculcated by our political Institutions. (...) The Hebrew persecuted and down trodden in other regions takes up his abode among us with none to make him afraid . (...) and the Aegis of the Government is over him to defend and protect him. Such is the great experiment which we have described, and such are the happy fruits which have resulted from it; our system of free government would be imperfect without it.⁹⁸

Secularism and secularization

The eighteenth century and the nineteenth century laid the foundations for a broadspread secularization in the western world. The ideas of nineteenth century agnostics, freethinkers, rationalists and secularists laid the foundations for the twentieth century declarations of human rights, vindicating the *right* to freethought, freedom of conscience and freedom to believe what one may cherish to believe.⁹⁹ In that sense *secularism* or *political agnosticism* made a contribution to *secularization*. Secularization being the sociological process of the separation of society and religion.

There are three important developments where secularization has manifested itself. First, in morals. One may call this *moral secularization*.¹⁰⁰ Second, in politics. One may call this *political secularization*.¹⁰¹ Third, in science. One may call this *scientific secularization*. Moral, political and scientific secularization has not emerged automatically. There were

⁹⁸ Quoted in: Lewis, Bernard, “The Roots of Muslim Rage”, in: *The Atlantic Monthly*, september 1990, reprinted in: Lewis, Bernard, *From Babel to Dragomans: Interpreting the Middle East*, Weidenfeld & Nicolson, London 2004, pp. 319-331, p. 331.

⁹⁹ See on the Victorians in general: Wilson, A.N., *The Victorians*, Hutchinson, London 2002. And on Victorian secular thought: Wilson, A.N., *God's Funeral*, John Murray, London 1999. The influence on human rights thinking is sketched in: Robertson, Geoffrey, *Crimes against Humanity: The Struggle for Global Justice*, Fourth Edition, Penguin Books, London 2012 (1999).

¹⁰⁰ See on this: Cliteur, Paul, *The Secular Outlook: In Defense of Moral and Political Secularism*, Wiley-Blackwell, Chicester 2010, pp. 172-281; Cliteur, Paul, *Moreel Esperanto: naar een autonome ethiek*, De Arbeiderspers, Amsterdam 2007 (In Spanish: Cliteur, Paul, *Esperanto Moral: Por una ética autónoma*, Traducción de Marta Arguilé Bernal, Los Libros del Lince, Barcelona 2009).

¹⁰¹ See on this: Cliteur, *The Secular Outlook*, pp. 172-281. The same vocabulary is used by: Berg, Floris van den, *Philosophy for a better World*, Prometheus Books, Amherst, New York 2013; Berg, Floris van den, *Hoe komen we van religie af? Een ongemakkelijke liberale paradox*, Houtekiet/Atlas, Antwerpen/Amsterdam 2009.

people who advocated the processes described. These people may be called “advocates of secularization” or “secularists”.

Proponents of moral secularization and accordingly moral secularists were: the Socrates of the Euthyphro,¹⁰² Grotius, Spinoza, Holbach, Kant and Nicolai Hartmann.¹⁰³ Proponents of political secularization were Thomas Jefferson and John F. Kennedy.¹⁰⁴ Proponents of scientific secularization and accordingly scientific secularism were: John William Draper,¹⁰⁵ Andrew D. White¹⁰⁶ and Richard Dawkins.¹⁰⁷ So the term “secularization” refers to a societal process; “secularism” refers to an ideology, a normative stance. Whoever believes that secularization is taking place, is not necessarily a secularist but the two can go hand in hand, *i.e.* one can be both a secularist and believer in the secularization thesis. Richard Dawkins¹⁰⁸ is both a believer in secularization and he is in favour of that process. The same is true for A.C. Grayling.¹⁰⁹ Charles Taylor,¹¹⁰ though, claims that secularization is

¹⁰² See on this: Goldstick, D., “Monotheism’s Euthyphro Problem”, in: *Canadian Journal of Philosophy*, Volume IV, Number 2, December 1974, pp. 585-589; Kretzmann, Norman, “Abraham, Isaac, and Euthyphro: God and the Basis of Morality”, in: Eleonore Stump and Michael J. Murray, eds., *Philosophy of Religion. The Big Questions*, Blackwell, Malden / Oxford 2001 (1999), pp. 417-429.

¹⁰³ See: Schneewind, J.B., *The Invention of Autonomy: A History of Modern Moral Philosophy*, Cambridge University Press, Cambridge 1998; Beck, Lewis White, *Six secular Philosophers: Religious Thought of Spinoza, Hume, Kant, Nietzsche, William James and Santayana*, Thoemmes Press, Bristol 1997. See on Hartmann: Cerf, Walter, “Nicolai Hartmann”, in: Paul Edwards, ed., *The Encyclopedia of Philosophy*, Vol. 3, Macmillan & The Free Press, New York, London 1967, pp. 421-426; Hartmann, Nicolai, *Moral Phenomena*, Volume 1 of Ethics, With a new introduction by Andreas A.M. Kinneging, Transaction Publishers, New Brunswick (U.S.A.) and London (U.K.) 2002.

¹⁰⁴ Kennedy, John F., “Speech to the Greater Houston Ministerial Association”, Houston, 12 September 1960, in: *American Speeches: Political Oratory from Abraham Lincoln to Bill Clinton*, The Library of America, New York 2006, pp. 525- 528.

¹⁰⁵ Draper, John William, *History of the Conflict between Religion and Science*, D. Appleton and Company, New York 1897 (1874).

¹⁰⁶ White, A.D., *A History of the Warfare of Science with Theology in Christendom*, Two volumes, Dover Publications, New York 1960 (1896).

¹⁰⁷ Dawkins, Richard, *A Devil’s Chaplain: Selected Essays*, Phoenix 2004; Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006.

¹⁰⁸ Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006.

¹⁰⁹ See: Grayling, A.C. *The God Argument: The Case against Religion and for Humanism*, Bloomsbury, London 2013, pp. 134-138; Grayling, A.C., “Secularism”, in: A.C. Grayling, *Ideas that Matter: A Personal Guide for the 21st Century*, Weidenfeld & Nicholson, London 2009, pp. 334-336.

¹¹⁰ Maclure, Jocelyn, and Taylor, Charles, *Secularism and Freedom of Conscience*, Harvard University Press, Cambridge, Mass. 2011.

taking place, but he seems only a lukewarm defender of this, and perhaps not even that.¹¹¹

A critical assessment of Victorian agnostics

As may be expected, Clifford's criticism of religion elicited many responses. In our time, the theologian and physicist Alistair McGrath gave a reaction to Clifford's critique of uncritical belief. Clifford's argument is fine, McGrath argues, but he accuses the Victorian agnostic of one-sidedness. Perhaps the theological positions cannot be proven, but the same applies to atheism. And atheism "must be demonstrated to be true", McGrath writes in *The Twilight of Atheism* (2004).¹¹² The burden of evidence is divided over two positions, McGrath claimed. "Both could be proposed; both could be defended; neither could be proved."¹¹³

The irony is that McGrath uses a sort of "agnostic" argument against one of the founding fathers of agnosticism. The argument presented is very popular, in the sense that the tenor is widely shared by many people nowadays. It goes like this. Theism claims that God exists. Atheism that God does not exist. Both positions are presumptuous because nothing can be said about the matter with any certainty. Usually the word "dogmatic" is introduced in this context. Both positions – *i.e.* affirming the existence of God *and* denying the existing God – are "dogmatic" if not "fundamentalist". And so we get two classes: "dogmatic believers" *and* "dogmatic unbelievers". The role of "dogmatic unbelievers" is fulfilled by explicit atheists like Dawkins, Harris,

¹¹¹ This seems evident from: Taylor, Charles, "The Rushdie Controversy", in: *Public Culture*, Vol. 2, No. 1 (Fall 1989), pp. 118-122.

¹¹² McGrath, Alistair, *The Twilight of Atheism. The Rise and Fall of Disbelief in the Modern World*, Doubleday, New York etc. 2004, p. 92. It has been said that, in retrospect, this was a most ill-chosen title, because McGrath wanted to prove that atheism has fallen into political, intellectual, and social abeyance. See: McGrath, *Ibid.*, pp. xi-xii. But, as Stephen Bullivant argues, this was the same year Sam Harris's book *The End of Faith* burst upon the scene. Two years later Dennett's *Breaking the Spell* (2006) and Dawkins's *The God Delusion* (2006) were published, followed by Hitchens's *God is not Great* (2007). In 2008 Dawkins's book had sold two million copies worldwide. See: Bullivant, Stephen, "The New Atheism and Sociology: Why Here? Why Now? What Next?", in: Amarnath Amarsingam, ed., *Religion and the New Atheism: A Critical Appraisal*, Brill, Leiden/Boston 2010, pp. 109-124, p. 124.

¹¹³ McGrath, *The Twilight of Atheism*, p. 93.

Hitchens and Dennett, so the popular view goes.¹¹⁴ A “dogmatic believer” is C.S. Lewis.¹¹⁵ Only postmodern relativist fellow travelers of religion (without being believers themselves) don the mantle of the tolerant and up to date.¹¹⁶

Is this a reasonable type of criticism to adopt?

What seems a little unsatisfying in this “we-are-all-believers-and-none-of-us-can-prove-his-claim-argument”, is that all epistemological claims are deemed to be equally persuasive. Is that true? The Irish historian and freethinker J.B. Bury poked fun about this argument when he wrote:

If you were told that in a certain planet revolving round Sirius there is a race of donkeys who talk the English language and spend their time in discussing eugenics, you could not disprove the statement, but would it, on that account, have any claim to be believed?¹¹⁷

The point that Bury raises in 1932 is: are all beliefs equally reasonable? Bury’s argument about English speaking donkeys discussing eugenics is repeated by Bertrand Russell in 1952 with reference to a flying teapot.

Many orthodox people speak as though it were the business of skeptics to disprove received dogmas rather than of dogmatists to prove them. This is, of course, a mistake. If I were to suggest that between the Earth and Mars there is a china teapot revolving about the sun in an elliptical orbit, nobody would be able to disprove my assertion provided I were careful to add that the

¹¹⁴ This is an argument we find with: Hedges, Chris, *I don't believe in atheists*, The Free Press, New York and Sydney 2008; Eagleton, Terry, *Reason, Faith, and Revolution: Reflections on the God Debate*, Yale University Press, New Haven and London 2009; Waal, Frans de, *The Bonobo and the Atheist: In Search of Humanism among the Primates*, W.W. Norton & Company, New York, London 2013.

¹¹⁵ With e.g. his apologetic writings as: Lewis, C.S., *Mere Christianity*, A revised and amplified edition, with a new introduction, Harper, San Francisco, 2001 (1952); Lewis, C.S., *The Abolition of Man. Or Reflections on Education with special Reference to the teaching of English in the Upper Forms of Schools*, Harper, San Francisco 2001 (1944).

¹¹⁶ E.g. Vattimo, Gianni, *Credere di credere*, From the Italian into Dutch under the title *Ik geloof dat ik geloof*, Boom, Meppel Amsterdam 1998; Vattimo, Gianni, *The End of Modernity: Nihilism and Hermeneutics in Post-modern Culture*, Polity Press, Cambridge 1991 (1988). One of the most convincing refutations of moral relativism is still: Stace, W.T., *The Concept of Morals*, Macmillan, London 1937.

¹¹⁷ Bury, J.B., *A History of the Freedom of Thought*, Thornton Butterworth, London 1932 (1913), p. 60.

teapot is too small to be revealed even by our most powerful telescopes. But if I were to go on to say that, since my assertion cannot be disproved, it is intolerable presumption on the part of human reason to doubt it, I should rightly be thought to be talking nonsense. If, however, the existence of such a teapot were affirmed in ancient books, taught as the sacred truth every Sunday, and instilled into the minds of children at school, hesitation to believe in its existence would become a mark of eccentricity and entitle the doubter to the attentions of the psychiatrist in an enlightened age or of the Inquisitor in an earlier time.¹¹⁸

Richard Dawkins, who quotes this passage by Russell, treats the argument in, among others, the context of a paragraph in *The God Delusion*, titled “The poverty of agnosticism”. This is the irony that was referred to before: *contemporary* “agnostics” (in contradistinction to the founding fathers of agnosticism like Huxley, Stephen and Clifford) use the inherent limitations of human knowledge to make room for speculation on the possible existence of English speaking donkeys and flying teapots, while Clifford (and long before him: Kant) use the argument of the limitations of human knowledge to warn against excessive claims.

This tension between what may be called “classic agnosticism” (skeptical and cautious) and “contemporary agnosticism” (unfortunately, also making room for unwarranted belief) already arose when William James formulated his early criticism of Clifford’s thesis in *The Will to Believe* (1897).¹¹⁹

The Freedom of Thought as Human Right

¹¹⁸ Bertrand Russell, “Is there a God” (1952), unpublished at the time, later included in: Bertrand Russell, *Collected Papers*, Vol. 11, ed. J.C. Slater and P. Köllner, Routledge, London 1997, also quoted in: Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006, p. 75.

¹¹⁹ James, William, “The Will to Believe”, 1897, in: William James, *Writings 1878-1899*, The Library of America 1984, pp. 457-479.

Consistent secular thought prior to the eighteenth century was scarce. The reason is obvious: atheism, agnosticism, secularism was *dangerous*.¹²⁰ Blasphemy laws, the Inquisition, oppressive legislation and both political and ecclesiastical dictatorship did not stimulate free-thought – at least not publicly expressed.¹²¹ It was only in the nineteenth century that censorship and punitive measures started to diminish in significance and it is therefore not surprising that as late as the nineteenth century we find a proliferation of dissident voices with regard to religious orthodoxy.¹²² After the atrocities of two world wars the ambition to loosen the ties of orthodox thinking resulted in the ambition to formulate *rights* to freedom of thought.¹²³

In 1948 the United Nations launched the Universal Declaration of Human Rights.¹²⁴ Article 18 declares:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

This provision of 1948, then only a statement of intentions, was later enshrined in real, legally binding, documents as *e.g.* the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), better known as the European Convention on Human Rights and in the International Covenant on Civil and Political Rights (1966).

¹²⁰ Even today. See on this: *Freedom of Thought 2012. A Global Report on Discrimination against Humanists, Atheists and the Nonreligious*, International Humanist and Ethical Union, London 2012.

Freedom of Thought 2013. A Global Report on Discrimination against Humanists, Atheists and the Nonreligious, International Humanist and Ethical Union, London 2013; Cohen, Nick, *You Can't Read This Book: Censorship in an Age of Freedom*, Fourth Estate, London 2012.

¹²¹ Strauss, Leo, "Persecution and the Art of Writing", 1941, republished in: Leo Strauss, *Persecution and the Art of Writing*, The University of Chicago Press, Chicago & London 1988 (1952), pp. 22-38; Bury, J.B., *A History of the Freedom of Thought*, Thornton Butterworth, London 1932 (1913).

¹²² See for a parade of religious dissident thought: McCabe, Joseph, *A Biographical Dictionary of Modern Rationalists*, Watts & Co., London 1920.

¹²³ The idea to use "rights" as an instrument for the extension of freedom was not self-evident. See on this: Burgers, J.H., "The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century", in: *Human Rights Quarterly*, 14 (1992), pp. 447-477.

¹²⁴ See on this history: Laes, Willy, *Mensenrechten in de Verenigde Naties: een verhaal over manipulatie, censuur en hypocrisie*, Garant, Antwerpen-Apeldoorn 2011.

The European Convention on Human Rights comprises Article 9. This Article has two sections, and both are important with regard to the protection of freedom of religion. The first section runs as follows:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance.

A similar pattern we find in Article 18 of the International Covenant on Civil and Political Rights (1966), which originated within the United Nations. Article 18 states:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

In this essay on the agnostic state the focus will be on the freedom of thought. This long introduction was meant to put the freedom of thought into perspective and to highlight what is the tradition from which it derives.

Part II The Agnostic State and the French laïcité

There is danger in focusing too much on the, in itself, interesting question whether we can prove whether God exists or not. We always have to remind ourselves: the nineteenth century agnostics were not only, and perhaps not primarily, concerned with the epistemological claims of theism and nontheism, but with the propagation of the view that everyone should think for himself. They derided the totalitarian or at least dictatorial claims of organized religion and they propagated a more tolerant attitude towards wayward thinkers. As the German critic Fritz Mauthner (1849-1923) wrote in his four volume *Der Atheismus und seine Geschichte im Abendlande* (1920-1923):

Der Aberglaube, worunter man jedes unduldsame, fanatische Religionssystem verstehen mag, ist für die Ruhe der Bürger, für den Frieden im Staate und zwischen den Staaten gefährlicher als die Überzeugung, dass es einen Gott überhaupt nicht gebe.¹²⁵

In that sense agnosticism further developed the tradition of Enlightened toleration¹²⁶ which was, according to some, a particularly “European project”.¹²⁷ The agnostics were critics of religion and they reminded us that criticism of religion is supremely important for a free and healthy society.¹²⁸ It is therefore that the first amendment to the American constitution is such an important text, because this combines freedom of religion, freedom of speech and the religiously neutral state.¹²⁹ These

¹²⁵ Mauthner, Fritz, *Der Atheismus und seine Geschichte im Abendlande*, Vollständige Neuausgabe, Erster Band, Heppenheim 2010 (1920-1923), p. 19.

¹²⁶ See on this : Badinter, Élisabeth, *Les Passions intellectuelles: I. Désirs de gloire (1735-1751)*, Librairie Arthème Fayard, Paris 1999; Badinter, Élisabeth, *Les Passions intellectuelles: II. Exigence de dignité (1751-1762)*, Librairie Arthème Fayard, Paris 2002; Badinter, Élisabeth, *Les Passions intellectuelles, III. Volonté de pouvoir (1762-1778)*, Librairie Arthème Fayard, Paris 2007.

¹²⁷ Geier, Manfred, *Aufklärung: Das Europäische Projekt*, Rowohlt Taschenbuch Verlag, Reinbek bei Hamburg 2013 (2012).

¹²⁸ See on this: Dalferth, Ingolf U., Grosshans, Hans-Peter, hrsg., *Kritik der Religionen: Zur Aktualität einer unerledigten philosophischen und theologischen Aufgabe*, Mohr Siebeck, Tübingen 2006; Fink, Wolfgang, & Malkani, Fabrice, *Critique de la religion dans la pensée allemande de Leibniz à Freud*, Librairie Générale Française, Paris 2011; Levine, George, *Realism, Ethics and Secularism: Essays on Victorian Literature and Science*, Cambridge University Press, Cambridge 2008.

¹²⁹ The French and American tradition show many similarities here, as is emphasized by: Weil, Patrick, “Why the French Laïcité is Liberal”, in: *Cardozo Law Review*, Vol. 30, No. 6, 2009, pp. 2699-2714.

three principles are intricately interrelated. The text of the First Amendment runs thus:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The freedom of speech is here intricately linked with the idea that the state has to be (and remain) neutral towards religious positions people may entertain. The state says (and ought to say): they are all fine to me. The state is supposed not to have a preference for one religion above another. So the state has to safeguard that all citizens can be Christian, Islamic, Jewish, Mormon or Hindu, but can itself never be Christian, Islamic, Jewish, Mormon or Hindu. The American state is not a Christian state, although the citizens of the United States of America are predominantly Christian. But this Christian orientation is something for the individual *citizen*, for *society*, not for the *state*.

Is this principle always consistently worked out in the American constitutional and political system? Certainly not, and this inconsistency is only all the more manifest if we go into the details of practical applications. But that does not alter the principle as developed by the founding fathers as Thomas Jefferson¹³⁰ and James Madison.¹³¹

The French laïcité or political agnosticism

Here the American system is similar to the French. On 3 July 2003, Jacques Chirac held a speech on the occasion of the installation of an important commission charged with the mission to establish what the founding principles of the French constitutional system are, in particular with regard to the matter of the relationship between state and religion.

¹³⁰ Jefferson, Thomas, *Notes on the State of Virginia*, Query XVII, in: Thomas Jefferson, *Writings*, The Library of America, New York, N.Y. 1984, p. 285.

¹³¹ Madison, James, *Memorial and Remonstrance Against Religious Assessments*, 1785, in: Madison, James, *Writings*, The Library of America, New York 1999, pp. 29-39.

This was the so-called commission-Stasi, named after its chairman: Bernard Stasi. Chirac affirmed “France is a secular republic (“République laïque”).¹³² It is based on the idea of the neutrality of the state with regard to religious creeds. Chirac also affirms what is the background of that principle. This is that the republic, composed of citizens, will not be divided by what he called “communities”.¹³³ The leading idea here is a principle which is difficult to translate and which the French call “laïcité”. It comprises:

- The neutrality of the public services (“la neutralité du service public”)
- Respect for pluralism (“le respect du pluralisme”)
- Religious freedom (“la liberté religieuse”)
- Freedom of expression (“la liberté d’expression”)
- Reinforcement of the cohesion and the brotherhood of all citizens (“le renforcement de la cohésion et de la fraternité entre les citoyens ”)¹³⁴

In another discourse on the same subject, a speech held half a year later, on 17 December 2003, the president of the French republic reaffirmed his commitment to the principle of the secular state (“état laïque”).¹³⁵ In the meantime the principle had been the object of a ferocious debate, in particular with regard to wearing religious signs on public schools. Although Chirac in his December speech spoke of the principle of the secular state as something that was deeply anchored in our conscience,¹³⁶ something which was basic for the identity of the French nation, the nation was divided on the question whether French schoolgirls could be forced to lay down their veils in public schools, and which was (and is) seen as a consequence of the principle of the French secular state. The idea is that a religiously neutral or secular or, as it has been called throughout in this treatise, agnostic state guarantees for the young

¹³² Chirac, Jacques, “Lettre de mission”, 3 Juillet 2003, in: *Laïcité et République*, Rapport au Président de la République, Commission présidée par Bernard Stasi, La Documentation française, Paris 2004, pp. 5-7, p. 5.

¹³³ Chirac, Ibid., p. 5.

¹³⁴ Chirac, Ibid., p. 7.

¹³⁵ Chirac, Jacques, “Discours Relatif au Respect du Principe de Laïcité dans la République”, Palais de l’Élysée, 17 décembre 2003, in: *Guide Républicain. L’idée républicaine aujourd’hui*, Délagrave Édition, Paris 2004, pp. 9-19.

¹³⁶ Chirac, Discours Relatif au Respect du Principe de Laïcité dans la République”, p. 10.

children a religiously neutral atmosphere where manifestations of religion are not forced upon the young, impressionable and vulnerable minds.¹³⁷ Not only the *teachers* are supposed to abstain from religious attire and otherwise manifest their religious convictions, but this applies also to the *pupils* themselves. They are required to leave their ostentatious crucifixes, yarmulkes, veils at home – at least not to wear them in the precincts of the school. Here the secularists, supporting the French system, had to deal with a huge and often bitter protest from the side of two groups. First, the children and more often, of course, parents (or organizations claiming to represent those parents) who, invoking “freedom of religion”, want to wear religious attire into the school. Second, the multiculturalists who – although no religious believers themselves, at least not necessarily – think the French system has to be abandoned or amended in such a way as to make the manifestation of your religious conviction possible despite the official secularist orientation of the French constitution.¹³⁸

A secularist manifesto: no Capitulation

This conflict had been simmering in French society for at least fifteen years. It started in 1989. In the National Assembly, Lionel Jospin (*b.* 1937), then Minister of National Education and Sport, declared that those in charge of the educational institutions had to start a discussion with their pupils to convince them to renounce wearing religious symbols (“le port de signes religieux”) in secular educational institutions. Jospin, however, added something that became the focus of wide controversy. He said that if that dialogue would have no success, the child nonetheless had to be received in the public institution. This brought five prominent French intellectuals to defend the policy of

¹³⁷ See on the protection of children: Law, Stephen, *The War for Children's Minds*, Routledge, London and New York 2006.

¹³⁸ Even the French president Nicolas Sarkozy proved to be open to multiculturalist interpretations of the *laïcité* for which he is severely criticized by the French journalist and public commentator Caroline Fourest: “Ce président trahirait ceux qui l'ont élu, s'il s'éloignait de ces marqueurs républicains et de ces valeurs, simples mais partagées, que sont l'égalité – entre hommes et femmes mais aussi entre homosexuels et hétérosexuels – et la *laïcité*”. See: Fourest, Caroline, *Quand la gauche a du courage: chroniques résolument progressistes et républicaines*, Grasset, Paris 2012, p. 8-9.

secularism in an Op-ed. in *Le Nouvel Observateur*.¹³⁹ Elisabeth Badinter, Régis Debray,¹⁴⁰ Alain Finkelkraut,¹⁴¹ Elisabeth Fontenay and Catherine Kintzler¹⁴² slated the French minister for his acceptance of the deterioration of an important French institution: the separation of Church and State, the secular principle. His stance was interpreted as “capitulation” and the five intellectuals proclaimed as their title “Professors, let us not capitulate” (“Profs, ne capitulons pas!”). The capitulation was characterized as “Munich”, referring, of course, to Chamberlain’s politics of appeasement to Hitler.

The somewhat superficial rhetoric of Jospin was mercilessly mocked and lampooned. The minister had said that it was excluded to exclude (“exclu d’exclure”), but, they replied, perhaps it would be permitted not to permit (“permis d’interdire”). If someone clearly violates the rule of the institution, why not exclude him or her? They could also criticize Jospin’s clumsy way of operating: calling for negotiation and at the same time indicating that if no agreement could be reached, the school had to give in to the pupil. What room was there left for negotiation if you, beforehand, announce that you will give in?

The secularist intellectuals feared a slippery slope. Today the pupils say they want to veil themselves in contradiction with the school regulations, tomorrow they will announce that teaching on Rushdie, Spinoza, Voltaire, Rimbaud or Baudelaire is not to their liking. The Five also stressed the importance of *not* being considered to be a member of a specific community (“les élèves aient le plaisir d’oublier leur communauté d’origine”). Not upholding that principle they qualified as a kind of treason to the ideals of the school (“vous trahissez la mission de l’école”).

Jospin was a minister of “national education” and the French have a great tradition of thinking in that field. This goes back to the French

¹³⁹ Badinter, (Elisabeth), Debray, (Régis), Finkelkraut, (Alain), Fontenay, (Elisabeth de), Kintzler, (Catherine), “Profs, ne capitulons pas!”, in: *Le Nouvel Observateur*, 2/8 Novembre 1989.

¹⁴⁰ Debray, Régis, *Ce que nous voile le voile: La République et le sacré*, Gallimard, Paris 2004; Debray, Régis, *La République expliquée à ma fille*, Éditions du Seuil, Paris 1998.

¹⁴¹ Finkelkraut, Alain, *L’identité malheureuse*, Éditions Stock, Paris 2013; Finkelkraut, Alain, & Lévy, Benny, *Le Livre et les Livres: Entretiens sur la laïcité*, Textes réunis et annotés par Gilles Hanus, Verdier, Paris 2006.

¹⁴² Kintzler, Catherine, *Qu’est-ce que la laïcité?*, La librairie philosophique J. Vrin, Paris 2007.

philosophe Condorcet.¹⁴³ The school is there to install a space where authority is founded solely on reason and experience.¹⁴⁴ This is accessible to all of us!¹⁴⁵ It is against that background that the school does not accept signs that are deliberate manifestations of the differences between the people it welcomes. This has nothing to do with a lack of respect for traditions. All traditions are welcome as long they do not contradict human rights (“les droits de l’homme”) and free inquiry (“le principe du libre examen”).¹⁴⁶

The minister speaks about “accepting all children”, the five apologists of the secular state affirm, which is fine, but the school does not automatically has to accept the religion of their parents. There is a significant difference between the *school* and the *house of the parents*. In authorizing the veil the minister gives a implicit approval to the fathers and brothers. In short: accepting the veil is support for patriarchy. It is also a clear lack of solidarity. There are thousands of women who struggle for their freedom and dignity. Why not support *those* women?

There is a lot of talk about “openness”, the Five write, but less precision about *what* openness we are talking about. Openness towards communal pressure and blackmailing is not what we have to support. Neutrality is not passivity, it requires an activist approach (“neutralité n’est pas passivité”). And then the Five formulate an important vision, a vision that is close to the European idea of “militant democracy”, of a democracy that knows it has to defend its principles against its own corrosion.¹⁴⁷

¹⁴³ See: Condorcet, *Cinq Mémoires sur l’instruction publique*, Présentation, notes, bibliographie et chronologie par Charles Coutel et Catherine Kintzler, GF-Flammarion Paris 1994 (1791). Note that the introduction is by Kintzler, one of the signatories of the secularist manifesto. See also: Kintzler, Catherine, *Qu’est-ce que la laïcité?*, La librairie philosophique J. Vrin, Paris 2007.

¹⁴⁴ See also: Pena-Ruiz, Henri, *Qu’est-ce que l’école?*, Gallimard, Paris 2005.

¹⁴⁵ “Une espace où l’autorité se fonde sur la raison et sur l’expérience: cela est accessible à tous”.

¹⁴⁶ This means that the tradition of what in the anglophone world is known as freethought is seen as part of the republican ideal. See on this: Lalouette, Jacqueline, *La libre pensée en France 1848-1940*, préface de Maurice Agulhon, Albin Michel, Paris 2001 (1997); Bayet, Albert, *Histoire de la libre-pensée*, Presses Universitaires de France, Paris 1970 (1959).

¹⁴⁷ See on this: Cliteur, Paul, & Rijpkema, Bastiaan, “The Foundations of Militant Democracy”, in: Afshin Ellian & Geliijn Molier, eds., *The State of Exception and Militant Democracy in a Time of Terror*, Republic of Letters Publishing, Dordrecht 2012, pp. 227-273. In the Netherlands the foundations for the idea of “militant democracy” were developed by Van den Bergh, George, *De democratische Staat en de niet-democratische partijen* (in English: *The democratic State and the non-democratic parties*), De Arbeiderspers, Amsterdam 1936. In the United States by: Loewenstein, Karl, “Militant Democracy and Fundamental Rights”, I, in: *The American Political Science Review*, Vol. 31, No. 3 (June 1937), pp. 417-432, also in:

Secularity is and remains a principle of combat, as are the public school, the Republic and liberty itself.¹⁴⁸

It can only survive if we are prepared to uphold a certain discipline, certain offers and a little bit of courage. The French name of “democracy” is “republic”, the Five explain. And the republic is not a mosaic of ghetto’s where liberty means the strongest may dictate its will upon the weaker members of the state. It is precisely therefore that the destruction of the school is also the destruction of the republic. The Five end their diatribe with some supreme mockery when they say that they “have the honor” to inform the minister that it is the pupils they will continue to welcome and not the religion of their parents.

To underline that their piece was not some white male chauvinist initiative¹⁴⁹ their letter was followed by a manifestation of solidarity written by Mohamed Harbi, Haylham Manna, Homa Nategh, Nasser Pakdaman, Mustaph Merchaoi, Fawzia Ghouzlanh, and Bahman Nirumand, who underlined that it would be a bad idea to let the most fundamentalist muslims define the identity of Islam.¹⁵⁰

The new French legislation

@@@ Here a summary of O’Brien, Robert, *The Stasi Report: The Report of the Committee of Reflection on the Application of the Principle of Secularity in the*

András Sajó, *Militant Democracy*, Eleven, International Publishing, Utrecht 2004, pp. 231-245; Loewenstein, Karl, “Militant Democracy and Fundamental Rights”, II, in: *The American Political Science Review*, Vol 31, No. 4 (August 1937), pp. 638-658, also in: András Sajó, *Militant Democracy*, Eleven, International Publishing, Utrecht 2004, pp. 245-265.

¹⁴⁸ “La laïcité est et demeure par principe une bataille, comme le sont l’école publique, la République et la liberté elle-même”. Badinter a.o., *Ibid*.

¹⁴⁹ An unlikely accusation, of course, when the majority of the signatories were women.

¹⁵⁰ Harbi, a.o., “Ne laissons pas la parole aux fanatiques”, in: *Le Nouvel Observateur*, 2/8 November 1989. The same strategy as was followed in Abdallah, Anouar, e.a., *Pour Rushdie: Cent intellectuels arabes et musulmans pour la liberté d’expression*, La Decouverte, Carréfour des littératures, Colibri, Paris 1993. So not only the western intellectuals as assembled in MacDonogh, Steve, ed., In Association with Article 19, *The Rushdie Letters: Freedom to Speak, Freedom to Write*, Brandon Book Publishers, Kerry, Ireland 1993 defended the cause of freedom of speech – also writers in other parts of the world than the western hemisphere.

Republic, William S. Hein & Co., Inc., Buffalo, New York 2005 has to be included.

Three trends on European soil

Now, there are some reasons why the agnostic state, taking no sides in religion, may be the most appropriate model for Europa in the foreseeable future. In the analysis that follows, we will focus on the *future* of Europe, not on its *past* or on its *traditions*. The leading assumption of the ideas developed in the coming paragraphs is that it is not of primary importance *where we come from* but *where we are heading*. This does not imply any deterministic view about the course of history, of course. History is made by us, humans. But there are some trends we have to take into account if we want to shape history in a responsible and realistic manner. There are three societal trends but also, depending on the personal convictions of the citizens judging them, ideals we have to reckon with. First, Europe is the continent of a far advanced *secularization*. Second, Europe is and probably will be ever more *religiously diverse*. Third, Europe has committed itself to respect for *human rights* as enshrined in the European Convention on Human Rights (1950). Let us make some remarks on each of these three trends.

The first trend: Secularization. Secularization is the reversal of the identification with religious institutions, values and ideas and a movement or development towards a nonreligious attitude. The thesis that secularization is intricately bound up with the process of modernization¹⁵¹ is called “the secularization thesis” (advocated by, among others, Weber, Freud, Durkheim, to name only a few classic thinkers).¹⁵² Measuring the amount of secularization is a daunting task, “fraught with methodological hurdles”, as many scholars have

¹⁵¹ Carroll, Terrance G., “Secularization and States of Modernity”, in: *World Politics*, Vol. 36 No. 3 (April 1984), pp. 362-382.

¹⁵² See: Borer, Michael Ian, “The New Atheism and the Secularization Thesis”, in: Amarnath Amarsingam, ed., *Religion and the New Atheism: A Critical Appraisal*, Brill, Leiden/Boston 2010, pp. 125-137; Bruce, Steven, *Secularization: In Defense of an Unfashionable Theory*, Oxford University Press, Oxford 2011.

emphasized.¹⁵³ The most basic device to measure secularization seems to poll how many people believe in the existence of God. But even then, as Phil Zuckerman indicates, there are difficult problems of interpretation. First: in countries where atheism is taboo or forbidden by the law, people do not give honest answers to the questions posed in this direction. Second: people find it hard to say what they mean by “God”, so they will be indecisive. And these are only the most obvious problems.

Zuckerman summarizes some of the findings of contemporary sociologists of religion. We will focus on three countries in particular Great Britain, France and the Netherlands.¹⁵⁴ Norris and Inglehart (2004) found that 39 percent of those in Britain do not believe in God. According to Bruce (2002), 10 percent of the British self-identify as an “agnostic person” and 8 percent as a “convinced atheist,” with an additional 21 percent choosing “not a religious person”.¹⁵⁵

According to Norris and Inglehart (2004), 44 percent of those in France do not believe in God. According to Greeley (2003), 48 percent of the French do not believe in God, although only 19 percent self-identify as “atheist”.

According to Norris and Inglehart (2004), 42 percent of those in the Netherlands do not believe in God. According to Greeley (2003), 43 percent of the Dutch do not believe in God, although only 17 percent selfidentify as “atheist”.¹⁵⁶

All researches point into the direction that especially Europe (and not the United States) is the most secularized continent, with the only possible exception of Japan where according to Norris and Inglehart 65 percent of the people indicate not to believe in God¹⁵⁷ and Vietnam with a high percentage of atheist/agnostic/nonbelievers of 81 percent.¹⁵⁸ Great Britain (no. 15), France (No. 8) and the Netherlands (No. 14) are

¹⁵³ See: Zuckerman, Phil, “Atheism: Contemporary Numbers and Patterns”, in: Michael Martin, ed., *The Cambridge Companion to Atheism*, Cambridge University Press, Cambridge 2007, pp. 47-65.

¹⁵⁴ We focus on these three European countries because we started with British agnosticism, we elaborate on French secularism and the authors are Dutch and the most familiar with the Dutch discussion on these matters.

¹⁵⁵ Zuckerman, Ibid., p. 49.

¹⁵⁶ Zuckerman, Ibid., p. 50.

¹⁵⁷ Zuckerman, Ibid., p., 53.

¹⁵⁸ Zuckerman, Ibid., p. 56.

in the top fifteen countries containing the largest percentage of people who identify as atheist, agnostic, or nonbeliever in God.¹⁵⁹

The second trend: Religious diversity. Europe is not only the most *secularized* part of the world, but also the most *religiously diverse*. France, for instance, has 64 percent Roman Catholics, but also Muslims, Protestants and Jewish believers on its soil.¹⁶⁰ The Netherlands is an even more religiously diverse country where we find 35 percent Catholics but also 28 percent Protestants and a considerably high number of 30 percent unaffiliated.¹⁶¹ In the United Kingdom we find, next to a 55 percent Anglicans, a significant minority of 16 percent Roman Catholics.¹⁶² Compare this to countries as Serbia (part of Europe, but exceptional for its religious homogeneity) where you have a large majority of the people subscribing to one and the same religion. In Serbia 84 percent of the citizens declare themselves Serbian Orthodox.¹⁶³ In Turkmenistan 90 percent of the people is Muslim.¹⁶⁴ Tunisia is supposed to have 99 percent Sunni Muslims.¹⁶⁵ Thailand to have 94.6 percent Buddhists.¹⁶⁶ It would be false to say that *only* Europe is religiously diverse. Tanzania *e.g.* has 53 percent Christians, 30 percent Muslims, 15 percent ethnoreligionists, and, accordingly, can be qualified as a religiously diverse country.¹⁶⁷ But it is certainly true to maintain that the combination of secularization and religious diversity is something that marks Europe, compared to the rest of the world. And there is a third factor we have to take into consideration.

The third trend: Respect for human rights. European countries subscribe to the European Convention on Human Rights and Fundamental Freedoms (1950). There are two distinct conclusions we have to draw from this.

¹⁵⁹ Zuckerman, *Ibid.*, p. 56.

¹⁶⁰ Marshall, Paul A., ed., *Religious Freedom in the World*, Rowman & Littlefield Publishers, Lanham 2008, p. 174.

¹⁶¹ Marshall, Paul, ed., *Religious Freedom in the World: A Global Report on Freedom and Persecution*, Freedom House, Nashville, Tennessee 2000, p. 234.

¹⁶² Marshall, *Ibid.*, 2000, p. 310.

¹⁶³ Marshall, *Ibid.*, 2008, p. 353.

¹⁶⁴ Marshall, *Ibid.*, 2008, p. 405.

¹⁶⁵ Marshall, *Ibid.*, 2008, p. 397.

¹⁶⁶ Marshall, *Ibid.*, 2008, p. 394.

¹⁶⁷ Marshall, *Ibid.*, 2008, p. 391.

First, this means that if – theoretically – 1 percent of the population is nonreligious or of a different religion than the 99 percent of the rest of the population, this one percent has the same rights with regard to freedom of expression, freedom of religion, freedom of conscience. This is a statement which found a classic formulation in John Stuart Mill's epochal essay *On Liberty* (1859). Mill writes:

If mankind minus one were of one opinion, then mankind is no more justified in silencing the one than the one - if he had the power - would be justified in silencing mankind.¹⁶⁸

It is, basically, the duty of the European Court of Human Rights in Strasbourg to protect that one man or woman against the rest of mankind. And this on the basis that the 99 percent of mankind has, at the moment of ratification of the European Convention, pledged loyalty to something higher than the majority principle in certain moments when principles are involved. The 99 percent of mankind was, in a sense, voting under a veil of ignorance. They gambled, one might speculate, that one day they themselves might be in the position that they would differ from the rest of mankind.

There is a second conclusion we may safely draw from the fact that Europe is committed to the European Convention on Human Rights. This is that the religious pluralism we have tried to sketch before is *probably here to stay*. Or rather: religious pluralism is likely to increase.

One might object this is a speculative statement. And it's hard to prophesize, especially about the future. Theoretically it is possible that one specific religion may gain the upper hand. All religions hope, of course, that they will gain more adherents. Religions are no different from political ideologies in that respect. They hope their arguments are better than the arguments of their fellow religionists on the market of belief. An observant Christian hopes he can convince a Muslim that Jesus Christ is more than an ordinary and minor prophet (as an observant Muslim will hope to convince a Christian that God, or the Son

¹⁶⁸ Mill, John Stuart, *On Liberty*, 1859, With *The Subjection of Women* and *Chapters on Socialism*, Edited by Stefan Collini, Cambridge University Press, Cambridge 1989, p. 20.

of God, has not been crucified like an ordinary criminal).¹⁶⁹ The whole idea of “mission” is based on this assumption. Postmodern relativists may like to believe that all religions are equally true (or equally false), but this has never been the official stance of the belief-systems themselves.¹⁷⁰

Theoretically it might be possible that Christians will convince Muslims¹⁷¹ or Muslims convince Christians. And yet, everyone will agree that the chances are slim that believers change alliances in large numbers. How do we get homogenous societies with 99 percent of the people voting for the same religion? The answer is the same as in a situation where you have 99 percent of the citizenry voting for the same president: by force. This fact of life has some heuristic significance. In politics the situation is: when you have 99 percent of the population voting for the same president, you can make a safe bet that this is not a free and democratic system. The same applies to religion. If you have a country where 99 percent of the population indicates to vote for the same religion, you may safely assume there is no freedom of religion in that country. *Freedom* to choose has an inherent tendency that people choose different things indeed, also different religions.

In the Arabic world we see a tendency to more homogenous religious belief. But, again, this is not because people spontaneously vote for one and the same specific religion, apparently convinced by the strong arguments of the religious propagandists of that one specific religion, but because religious freedom is in decline or has never been realized.¹⁷²

What this all means, is that if Europe is and will remain committed to human rights (and there is no reason to doubt this), we may safely assume that religious diversity will be maintained and even increase. In other words, if Italy commits itself to human rights, the

¹⁶⁹ See on the similarities and differences between Jesus and Mohammed: Peters, F.E., *Jesus & Mohammad: Parallel Tracks, Parallel Lives*, Oxford University Press, Oxford, New York 2011.

¹⁷⁰ Prothero, Stephen, *God Is Not One: The Eight Rival Religions That Run the World – and Why Their Differences Matter*, HarperOne, New York 2010.

¹⁷¹ Not without danger because of the heavy penalties inflicted on apostatic Muslims. See: Marshall, Paul, and Shea, Nina, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide*, Oxford University Press, Oxford 2011;

Marshall, Paul, ed., *Radical Islam's Rules: The Worldwide Spread of Extreme Shari'a Law*, Rowman & Littlefield Publishers, Inc., Lanham etc. 2005.

¹⁷² See for some information on this: Shortt, Rupert, *Christianophobia: A Faith under Attack*, Rider, London 2012.

relatively high percentage of Catholics in Italy will decrease and religious diversity will become more and more visible, so also in European countries where historically the population was relatively religiously homogenous things will change.

Now these three trends (*i.e.* (i) secularization, (ii) religious diversity, (iii) respect for human rights) taken together imply that European constitutions and the application of the principles of the European Convention on Human Rights is a daunting task. To manage these three trends in a principled manner will be one of the most challenging responsibilities of contemporary politicians, but also of social policy makers and judges in constitutional courts, both nationally and on an international level. It is the combination of the three trends diagnosed which make the finding of a constitutional model to deal with the questions so challenging. If *e.g.* you do not have to respect human rights, things would be much easier. In such a situation the sovereign can choose for the one and only religion that has to be the bond for national and social unity of the country (like Henry VIII did with the Anglican religion). If you do *not* have to respect individual human rights (*e.g.* because you are a Nero, Djengis Khan, Hitler, Stalin, Constantine the Great or Ayatollah Khomeini) you can also let the majority choose for the official state religion and marginalize other religions (or endow them a less privileged position). But if you respect human rights, as Mill proclaimed in the quotation about the 1 percent who has rights against the 99 percent, you do not have that freedom and you are more or less constrained to “logic” and “consistency” in the application of your principles. The *laïcité* or the agnostic state seems a convincing model for such consistency under the conditions we are living. It tries to manage diversity in a fair and consistent manner, as we hope to make clear throughout this article.

Part III European Case Law

The idea of a religiously neutral state, a secular state or, as we have called it in this article, agnostic state, was developed in French political thought. We have also seen how the notion of “agnosticism” was used by Victorian intellectuals and scholars in the second half of the nineteenth century to designate a position according to which one does not take a stance towards God. The agnostic neither affirms nor denies the existence of God.

In Victorian philosophical thought this position was considered to be a wise strategy for the human individual. It was the human *individual* who was advised to adopt a “agnostic” attitude towards God. In the French tradition this attitude was elaborated into the direction of a political philosophy, *i.e.* a *collective* affair. Whatever one may say about the human individual (and here there are some fierce critics of agnosticism)¹⁷³ for *the state* agnosticism would be a wise device to adopt. In that way British agnosticism and French laïcist thought were complementary.

In the pages which follow we want to analyze some European case law on this matter. The reason is that developing a consistent political philosophy on the way people can live harmoniously together under conditions of (i) secularization, (ii) religious diversity and (iii) a human rights regime is one thing, applying this political philosophy in the practice of everyday life is quite another thing.

The practical application is in Europe entrusted to the courts. There are the ordinary courts in the different national jurisdictions, but there is also the European Court in Strasbourg. Both the national courts and the European Court in Strasbourg apply the European Convention on Human Rights and Fundamental Freedoms. There is a myriad of cases which have to do with religious neutrality of the state, the separation of church and state, secularism and similar topics but here we

¹⁷³ Especially “atheists” think it is impossible not to take a stance towards God. In your practical behavior you either affirm or you deny the existence of God. So the middle road between theism and atheist is a theoretical construction that is impossible to live by. See: Nagel, Ernest, “A Defense of Atheism”, in: Paul Edwards and Arthur Pap, eds., *A Modern Introduction to Philosophy*, Revised Edition, The Free Press, Collier-Macmillan, New York/London 1967 (1957), pp. 460-473; Cliteur, Paul, “Atheism, Agnosticism, and Theism”, in: Paul Cliteur, *The Secular Outlook: in Defense of Moral and Political Secularism*, Wiley-Blackwell, Chichester 2010, pp. 14-69.

will focus on two cases in particular. The first case, *Ahmed v. United Kingdom* (1998) affirms the idea of religious (and political) neutrality when it comes to state institutions. The second case, (*Lautsi*) first (in the Chamber in 2009) affirms the principle expounded in *Ahmed*, but subsequently (in the Grand Chamber in 2011) does *not* support this. As we will try to argue for in the subsequent pages, *Lautsi II* (basically a rejection of agnosticism on the state level) is inconsistent with the idea of an adequate human rights protection. But first 1998.

Good practices: Ahmed v. United Kingdom (1998)

We find the principles developed by the Victorian agnostics and the French political tradition acknowledged in European case-law in *Ahmed v. United Kingdom* (1998).¹⁷⁴ *Ahmed* is therefore one of the central cases in European case law, based on a consistent political philosophy, supporting the ideals of the agnostic state. The case is about the relationship between the political leaders in a democracy (ministers) and the civil servants.¹⁷⁵

The case is about Mr Mobin Ahmed, Mr Dennis Perrin, Mr Ray Bently and Mr David Brough, all British citizens and involved in positions which can be considered part of the civil service.¹⁷⁶ At the same time they wanted to be politically active. Mr. Ahmed wanted to be Labour candidate for election to the London Borough of Enfield in 1990. Mr Perrin assisted Labour candidates in Exeter City Council elections, including his wife, who was a candidate in May 1990 and May 1991. Mr Brough wanted to act as Parliamentary Chairman of his party in Harrow East. Now the Secretaries of State for the Environment, for Scotland and for Wales, were concerned about an increasing politicization of local government. On 5 February 1985 they appointed a committee (the “Widdicombe Committee”) to inquire into the respective

¹⁷⁴ Case of *Ahmed and others v. the United Kingdom* (65/1997/849/1056).

¹⁷⁵ See on this also: Finer, Herman, *The British civil service*, Fabian Society, London 1937; Finer, Herman, *Theory and Practice of Modern Government*, Revised Edition, Methuen & Co., London 1950 (1949); Weber, Max, *Politik als Beruf*, Siebente Auflage, Duncker & Humblot, Berlin 1982 (1919), in English: Weber, Max, *The Profession and Vocation of Politics*, in: Max Weber, *Political Writings*, ed. Peter Lassman and Ronald Speirs, Cambridge University Press, Cambridge 1994, pp. 309-370.

¹⁷⁶ *Ahmed*, para 6.

roles of elected members and officers of local government authorities.¹⁷⁷ On 9 May 1986 the Widdicombe Committee submitted its report. It firmly endorsed “the continuation of the tradition of politically impartial local government officers having regard in particular to the roles of senior officers as managers, advisers and arbitrators in the day-to-day functioning of local government”.¹⁷⁸

There are a few things we like to emphasize here. First: apparently, the Widdicombe committee wants to *continue* a position of political neutrality of the civil servants. The idea is not a newly invented idea; it’s based on an a tradition of democratic thinking about the relationship between elected politicians and assigned civil servants which developed in the second half of the nineteenth century in Great-Britain and other countries. In the Netherlands and in Great-Britain that tradition made it possible to harmonize the past with the present: the idea of a hereditary monarchy with the central features of popular government. The balance of power shifted from the hereditary king to the democratically legitimized ministers. In Article 42.1 of the Dutch constitution the central idea is that the king is “inviolable” and the ministers “responsible”, *i.e.* accountable for their policies towards the representative. The position of the king is not essentially different from the position of the civil servants in this system, *viz.* subjected to the authority of the ministers. The whole purpose of the system is: making the *hereditary* kings and *appointed* civil servants hierarchically subservient to the “chosen” functionaries in the state.¹⁷⁹ And this system demands a completely different outlook on the position between the government or state (ministers) with regard to the citizens as we are accustomed to with regard to the relationship between state and citizens. A civil servant is *not* a citizen. And a civil servant is not a politician. First, we have to keep in mind the difference between a politician and a bureaucrat. The first category is from the nature of the case politically profiled; the second category is not, *i.e.* one has to maintain a low or rather non-existent political profile. Second: the Widdicombe committee makes a distinction between different categories of civil servants: the senior civil servants

¹⁷⁷ Ahmed, para 8.

¹⁷⁸ Ahmed, para 9.

¹⁷⁹ See for a clear exposition of this system: Haersolte, R.A.V. van, *Inleiding to het Nederlandse staatsrecht*, negende druk, W.E.J. Tjeenk Willink, Zwolle 1988, pp. 56-61.

have to be more politically neutral than the lower strata in the hierarchy. This has all to do with a view in which “the public service tradition of a permanent corps of politically impartial officers should be retained”.¹⁸⁰ Or, in other words:

Public service in the United Kingdom is founded on a tradition of a permanent corps of politically neutral officers serving with equal commitment whatever party may be in political control.¹⁸¹

But, as the words indicate, this was all based on a *tradition*. There was no clear legislation about the issue. The Widdicombe committee advised to change that situation and its report recommended that:

the legislation should be amended so that persons who are councillors or who are standing for election as councilors, or who have been councilors within the last year, may not be employed to another authority at the rank of principal officer or above.¹⁸²

Following the publication of the recommendations of the Widdicombe Committee, on 16 November 1989, the House of Commons passed the Local Government and Housing Act 1989, which empowered the Secretary of State for the Environment to make regulations to restrict the political activities of certain categories of local government officers.

Mr Ahmed, Mr Perrin, Mr Bently and Mr Brough were affected by those regulations and they complained about a violation of their rights under the Convention. In particular their rights to freedom of expression (Article 10 of the Convention) and of assembly (Article 11) and their rights to participate fully in the electoral process (Article 3 of Protocol No. 1) had been violated, they claimed.¹⁸³

On 2 September 1998 the European Court judged that there was no violation of the rights mentioned. As Judge Jan de Meyer (from Belgium who was a member of the Court between 1986-1998)¹⁸⁴ said in a

¹⁸⁰ Widdicombe committee as quoted in Ahmed, para 9.

¹⁸¹ Widdicombe committee as quoted in Ahmed, para 9.

¹⁸² Widdicombe committee as quoted in Ahmed, para 10.

¹⁸³ Ahmed, para 35.

¹⁸⁴ See: http://www.echr.coe.int/Documents/CP_Belgium_ENG.pdf

concurring opinion: “It is not only legitimate, but also necessary, especially in a democratic society, to ensure as far as possible the loyalty of officers in public service towards the authority to which they are accountable and at the same time the freedom of the electorate in its choice of representatives”. Apparently, the ideal of the non-political nature of the civil service has something to do with the ideals of democracy. It is also pertinent to underline the words “as far as possible”. De Meyer is aware that this is an ideal that can never be completely guaranteed. Nevertheless, as an *ideal* it has a guiding function.

The Belgium judge also spelled out the reasons for this system: “the people are entitled to count on the objectiveness, impartiality and political neutrality of their servants, those being essential requirements of a position of trust”. This is something that restricts the officers in public service in their freedom, to be sure. Members of the public service are not allowed to be members of assemblies elected by the people or to stand as candidates for such assemblies. He says: “Common sense dictates that such interests are incompatible with the public service”.

That reference to common sense is interesting. The first sentence of Descartes’s *Discourse on Method* (1637), published in Holland (Leiden), without the name of the author, is:

Good sense is the most evenly shared thing in the world, for each of us thinks he is so well endowed with it that even those who are the hardest to please in all other respects are not in the habit of wanting more than they have.¹⁸⁵

The same may be said of common sense. And yet, common sense is deeply divided on the issue we discuss here. Many people, *pave* judge De Meyer, insist that political neutrality is an unfair demand to make to the members of the civil service. They think this violates the rights of the civil servant. De Meyer disagrees and writes: “People who wish to work in public service must renounce ‘politics’, that being a restriction on their

¹⁸⁵ Descartes, René, *Discourse on Method and the Meditations*, Translated with an Introduction by F.E. Suttcliffe, Penguin Books, Harmondsworth 1968, p. 17. In French: “Le bon sens est la chose du monde la mieux partagée: car chacun pense en être si bien pourvu, que eux même qui sont les plus difficiles à contenter en tout autre chose n’ont point coutume d’en désirer plus qu’ils en ont”. Descartes, René, *Discours de la méthode*, 1637, in: René Descartes, *Œuvres et Lettres*, Textes présentés par André Bridoux, Éditions Gallimard, Paris 1953, pp. 126-179, p. 126.

freedom of expression, freedom of association and electoral rights that is inherent in their position”. Common sense for some perhaps, but in an age of “identity politics”¹⁸⁶ no longer considered to be self-evident. The rights of the civil servant to express his own opinion, to affirm this own personality, is seen as something which has to be taken into consideration by the state.

From politics to religion

Now we have to take an important step: the step from politics to religion. The system as expounded in *Ahmed v. United Kingdom* is basically the “Weberian model” of the relationship between elected politicians and assigned civil servants (a model defended by Herman Finer in the Anglo-Saxon world).¹⁸⁷ The idea that civil servants are subservient to the political powers which, in their turn, are controlled by the citizenry, was developed by the great German sociologist Max Weber in his essay *Politics as Vocation* (1919).¹⁸⁸ Although developed in a German context, and in a time which was basically pre-democratic, the way of thinking Weber introduced here matched perfectly with the model of a parliamentary democracy where the ministers are fully responsible for the acts and also the expressions of the non-democratically legitimized forces in the state, *viz.* the monarchy and the civil service.¹⁸⁹ What De Meyer writes in his concurring opinion in *Ahmed* is basically a very succinct summary of the Weberian position. It may be tersely formulated as: democracy has priority over bureaucracy (as democracy also has

¹⁸⁶ Meyer, Thomas, *Identitätspolitik: Vom Missbrauch kultureller Unterschiede*, Suhrkamp Verlag, Frankfurt am Main 2002; Appiah, Kwame Anthony, *The Ethics of Identity*, Princeton University Press, Princeton and Oxford 2005 ; Baumann, Gerd, *The Multicultural Riddle: Rethinking National, Ethnic, and Religious Identities*, Routledge, New York and London 1999; Leicht, Imke, *Multikulturalismus auf dem Prüfstand: Kultur, Identität und Differenz in modernen Einwanderungsgesellschaften*, Metropolis, Marburg 2009.

¹⁸⁷ See on him: Finer, S.E., “Herman Finer”, in: Bogdanor, Vernon, ed., *The Blackwell Encyclopedia of Political Science*, Blackwell, Oxford 1991 (1987), pp. 234-235.

¹⁸⁸ Weber, Max, *Politik als Beruf*, Siebente Auflage, Duncker & Humblot, Berlin 1982 (1919). In translation: Weber, Max, *The Profession and Vocation of Politics*, in: Max Weber, *Political Writings*, ed. Peter Lassman and Ronald Speirs, Cambridge University Press, Cambridge 1994, pp. 309-370.

¹⁸⁹ In the anglophone literature this was expounded in: Finer, Herman, “The Case for Subservience”, in: John C. Koritansky, ed., *Public Administration in the United States*, Focus Publishing, R. Pullins & Company, Newburport 1999, pp. 80-84; Finer, Herman, *The British civil service*, Fabian Society, London 1937.

priority over monarchy, but we will not digress on this element in this article because this is less relevant for the problems we discuss here). The civil service has to be politically neutral. And this makes it not unfair or unreasonable to expect from civil servants that they do not manifest their political allegiances.

Does this mean that they *have no* political allegiances? Of course not. And no one will deny them the right to vote or to privately discuss their political ideas. The only thing that is required of them, is that they do not *manifest* their political ideas too loud *in public*. They are demanded to exercise a kind of self-restraint when it comes to the ventilation of their ideas. Weber expressed this “discipline” with flowery rhetoric in his essay on the vocation of politicians which is also about the vocation of civil servants.¹⁹⁰

But now let us suppose Mr Ahmed, Mr Perrin, Mr Bently and Mr Brough were not involved in local politics, but they were working for religious organizations and religious groups. Suppose one of the civil servants was working for a Islamist group trying to change the attitude of mainstream society towards his religion. Another was working for the revitalization of the British state-religion: the Anglican Church. Yet another civil servant was involved in wicca or witchcraft.¹⁹¹ Would the norm of neutrality of the civil service be unreasonable to maintain because now it is about *religion*? Is “religion”, perhaps, more serious than “politics”? Or is a *religious conviction* more serious, more important, more inviolable perhaps than a *political conviction*? Or is religion more “sacred” than the ordinary political ideas people cherish? Would it, accordingly, be more unreasonable to restrict people in the expression of their religious conviction than their political ideas?

The answer from the Weberian model would be: not a bit. Exactly the same considerations which are valid to restrict political speech are applicable in the situation of religious speech. Making a distinction here would even be “discriminatory” towards the secularized part of the population.

¹⁹⁰ It would be the “honor” of the civil servant to faithfully execute the orders of his superiors. Without this selfdenial (“im höchsten Sinn sittliche Disziplin und Selbstverleugnung”) the whole system would collapse (“zerfiel der ganze Apparat”). Weber, Max, *Politik als Beruf*, Siebente Auflage, Duncker & Humblot, Berlin 1982 (1919), p. 28.

¹⁹¹ See on this: Hunt, Stephen J., *Alternative Religions: A Sociological Introduction*, Ashgate, Aldershot 2003, pp. 150-153.

Everything what De Meyer writes about the *political* neutrality of the civil service also applies to the *religious* neutrality of the civil service. For the same reasons a civil servant may not betray his *political* position, he may also not betray his *religious* position. What De Meyer here formulates is an ideal that is not only inherent in the British civil service but also in the French system of the *laïcité*.

Lautsi I: Religious neutrality in public education guaranteed

Part of the ideal of the religiously neutral state is also that the state guarantees public education without religious bias. Children are supposed to get education in an atmosphere where their school itself does not take a position to advance a certain religion, nor deny a certain religion. The school does not take a stance which religion is the most important or “true”.

In some interpretations of this ideal¹⁹² this implies that the teachers do not wear religious insignia nor are there other indications that the school betrays a bias towards a certain religious adherence. In France the interpretation of the secularist ideal means that also the *pupils* are supposed not to manifest their religious lineage. In other countries the secularist ideal is interpreted in a less categorical manner (but one may also say: less consistent manner) and one maintains the norm of religious neutrality only for the persons who are placed in an authoritative position.

Now the question is: what to do when religious signs are to be found that may be interpreted as supportive of a certain religion *in the classroom*? What if not a *pupil* is wearing a religious sign (veil, yarmulke, crucifix), but this religious sign is hanging on the wall of the classroom?

This brings us to the crucifix *on the wall of a classroom in a secular school*. This was the case in Italy and the subject became the source of a fierce conflict which raged between 2009 and 2011, and which is still not resolved (although decided upon the matter in 2011), as we hope to make clear in the pages that follow.

¹⁹² Greenawalt, Kent, “Secularism, Religion, and Liberal Democracy in the United States”, in: *Cardozo Law Review*, Vol. 30, Issue 6 (June 2009), pp. 2383-2400, p. 2383 discerns “varieties of secularism”, *viz.*: on the one hand the Turkish and French model and on the other the American.

The controversy started in 2006. Ms Soile Lautsi lodged a complaint against the Italian Republic on 27 July 2006 on behalf of her two children Dataico and Sami Albertin. The two boys, Dataico aged eleven and Sami Albertin aged thirteen, attended a state-school in Albano Terme: the Istituto comprensivo statale Vittorino da Feltre.¹⁹³ It was there they found a crucifix on the wall of the school.

The applicant, Ms Lautsi, lodged her complaint on the basis of several claims. We distinguish four items.

First, the display of the sign of the cross in the classrooms of the Italian state-school constituted an interference incompatible with the freedom of belief and religion.¹⁹⁴

Second, the display of the crucifix was an interference incompatible with the right to education and teaching in conformity with her religious and philosophical convictions.¹⁹⁵

Third, the display of the crucifix was incompatible with the principle of secularism and the principle of the secular basis of the Italian state.¹⁹⁶

Fourth, the display of the crucifix “favoured the Christian religion to the detriment of other religions” and was therefore also a manifestation of the unequal treatment of religions before the law.

This presentation of the critique of Ms Lautsi in the form of the four distinctive claims mentioned above brings a little more systematization into the presentation of their argument as was actually manifest. That hanging crucifixes in public schools is a manifestation of unequal treatment, as we mentioned under the fourth point, was not made explicit by the claimants themselves. Ms Lautsi only speaks of favoring the Christian religion to the detriment of the other religions. In that fact, however, it is implicit that there is unequal treatment and we think this is important to note. Another *caveat* we have to make, is that her claim that the display of the crucifix was incompatible with the principle of secularism is not presented as separate from the claim that there was an infringement of her freedom of religion (and those of their sons). Nevertheless, for analytical reasons we think it is illuminating to

¹⁹³ ECtHR, “Lautsi v. Italy”, 3 November 2009 (Lautsi I), para 6.

¹⁹⁴ Lautsi I, para 1.

¹⁹⁵ Lautsi I, para 7.

¹⁹⁶ Lautsi I, para 7.

present these points as *four* distinctive claims. Claims which are intricately related, to be sure, but still possible to distinguish.

Symbols of national identity

On 14 January 2004 and 17 March 2005 the Veneto Regional Administrative Court ruled on the matter. In the last judgment it proclaimed “that the crucifix was both the symbol of Italian history and culture, and therefore of Italian identity, and the symbol of the principles of equality, freedom and tolerance and of the State’s secular basis”.¹⁹⁷

Neither in Lautsi I (2009), nor in the ruling by the Administrative Court, nor in the later ruling by the European Court in Lautsi II (2011) we find a thorough analysis and reflection on the question what symbols may function as legitimate “identity markers” of the Italian state. All the rulings by the courts mentioned raise a host of questions:

- (a) Is it true that the crucifix is the symbol of Italian history and culture?
- (b) How to decide on such a question?
- (c) What does the word “identity” mean in this context?
- (d) Is “identity” something that you can establish in a purely factual manner *e.g.* by referring to the *history* of a country or is there some normative judgment involved?
- (e) And if such a normative judgment is involved, is it ethically correct to choose a symbol that is linked to only *one segment* of the Italian citizenry?

The Italian Administrative Court – unfortunately not substantially contradicted by the European Court in Lautsi II – does not take a stance on those questions, or rather: they make an implicit, unreflective stance, especially violating the is/ought-distinction. They deal with the matter of “identity” as a historian would do: as a question that you can establish as a historical fact. Arguably, according to sound constitutional and legal scholarship this was naïve. One may raise the question that what should function as the identity of the state in a legal context is a normative question and had to be treated as such. If the historical identity of the

¹⁹⁷ Lautsi I, para 13.

state is exclusionary, discriminatory, violating the rule of rule and human rights such a historical identity cannot find legal recognition. But the host of problems this whole matter raises was not even hinted at in the court rulings mentioned before.

Perhaps the academic literature is also deficient here, so the courts do not have much to rely upon. The question is: are states free to adopt any “identity” they choose as part of their constitutional order?

Let us try to highlight this with an example. During the opening ceremony of the Beijing Summer Olympics in 2008 a giant LED screen was unrolled on which were projected aspects of China’s cultural history. The Chinese authorities pointed out that paper, the compass, gunpowder and printing were all Chinese inventions.¹⁹⁸ Four years earlier Athens had presented itself as having developed democracy and the Games themselves. A country’s history is a vital part of national self-identification, as one may understand. But the question is: can *every* self-identification be acknowledged by the courts as legitimate? If a country wants to present itself as committed to democracy and the rule of law, this is all fine. But what if a country starts glorifying its past as one of successful slave-owners? Or what if a country wants to see its identity in *rejecting* the rule of law and glorifying authoritarian rule?¹⁹⁹ Do the courts in such a case have to say: “Well, apparently that’s the way a country wants to present itself to the world and we’ll be neutral and take these historical identities as equally admissible?”

Giving an affirmative answer to that question would be clearly contradictory to the European ideals of a common institutional framework. But now let us address the tricky question of religion. Sooner or later the question will come up: how to deal with a European country that wants to identify with one specific religion as official state policy?

Usually, this is presented as something we have to take for granted. It is presented as a historical fact, as something we have to take for granted. But is that legitimate? Perpetuating a particular religious

¹⁹⁸ Furtado, Peter, ed., *Histories of Nations: How Their Identities Were Forged*, Thames & Hudson, London 2012, p. 10.

¹⁹⁹ That “democracy” is not the dream of every nation is made clear by: Kagan, Robert, *The Return of History and the End of Dreams*, Vintage Books, A Division of Random House, New York 2009 (2008); Kagan, Robert, *Of Paradise and Power: America and Europe in the New World Order*, Vintage Books, A Division of Random House, New York 2004 (2003).

identity into the future in *religiously pluralist* societies, is far from self-evident perhaps. Members of the religious group which was privileged in the past (by enjoying the status of state religion) usually do not protest against perpetuating these advantages in the future, but why should we consider this to be legitimate? Suppose a certain country has had a state-religion “A” for the past hundred years and the majority of the citizens in this country proposes to perpetuate this state-religion “A” into the distant future. Would it not be a reasonable demand to say: “Now, let’s take *another* religion as state-religion for the next hundred years, for instance religion ‘B’, to compensate for the past hundred years of privileges to religion ‘A’?”

Would that not be more reasonable? As we said, instead of philosophical reflection some are inclined to engage in a historical exposé on the origin of the crucifix in the public classroom and simply accept the religious identity of the state as a matter of course. Fortunately (and to its credit) the Chamber in *Lautsi I* did not do this. It reaffirms the secular nature of the state and accordingly rules that the existence of crucifixes in the classroom jeopardizes this neutrality. But in *Lautsi II* the Grand Chamber returned to the old system of state religions or dominant religious traditions.

Bad practices: Lautsi II (2011)

@@@ Here we have to include more about *Lautsi I*.

Lautsi II took a different course from *Lautsi I*. On 3 November 2009 the Chamber, consisting of seven judges, declared the application by Ms *Lautsi* admissible and held unanimously that there had been a violation of Article 2 of Protocol No. 1, taken together with Article 9 of the Convention.²⁰⁰ According to the Chamber it was not necessary to examine the complaint under Article 14 of the Convention.

²⁰⁰ *Lautsi II*, para 4.

Lautsi II is based on multiculturalism. But we have to remind ourselves it is not based on a multiculturalism in the sense of all religious denominations having equal access to state institutions to make their religious symbols visible, but on a kind of multiculturalism which divides Europe into several countries where the majority of each country may decide about the official religious identity of the state. Lautsi II inaugurates, or rather reestablishes, the principle *cuius regio, eius religio*. The only difference is, now it is not the sovereign (like *e.g.* Henry VIII when he broke with the Catholic Church) who decides about the religious identity of the state but it is the majority of the religious believers. So Italy is presumed to be a “Catholic country” (which it is not, at least, not anymore, according to some researches)²⁰¹ and accordingly the Catholics are placed in a position where they may maintain their religious symbols into the classroom. France, on the other hand, has a tradition of secular thought and practice (*laïcité*), so France will not be forced probably (an object of serious concern for the multiculturalists who want to enforce multiculturalism in the whole of Europe under the pretext of “diversity”)²⁰² to accept religious signs into the heart of state activity (although the pressure on the *état laïque* will be exerted by those who want to change the system for the years to come).

Lautsi II basically inaugurates religious discrimination towards nonchristian religious denominations. And, what is all the more surprising, it does this not only by condoning Christian symbols in a (supposedly) secular school, but also by providing a reasoning that is deeply offensive to nonchristian creeds.

Let us explain.

²⁰¹ Marshall, Paul A., ed., *Religious Freedom in the World*, Rowman & Littlefield Publishers, Lanham 2008, p. 222 presents Italy as a rather homogenous country with 87 percent Catholics, 2 percent Muslims, 1 percent Orthodox and 10 percent “Other” (Jehovah’s Witness, Assemblies of God, Buddhist, atheist, agnostic, Jewish, Lutheral, Methodist, Waldensian, Mormon, Baha’i). In Zuckerman’s list of the top fifty countries containing the largest percentage of people who identify as atheist, agnostic, or nonbeliever in God Italy takes place 34 with 6-15 percent unbelievers. Zuckerman, Phil, “Atheism: Contemporary Numbers and Patterns”, in: Michael Martin, ed., *The Cambridge Companion to Atheism*, Cambridge University Press, Cambridge 2007, pp. 47-65, p. 56.

²⁰² This is certainly the case with Scott, Joan Wallach, *The Politics of the Veil*, Princeton University Press, Princeton and Oxford 2007, whose opinion on the French system is similar to that of Nussbaum in: Nussbaum, Martha, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age*, The Belknap Press of Harvard University Press, Cambridge (Mass.) and London 2012.

The meaning of the crucifix in Catholic doctrine

Now what is the meaning of the crucifix? What does it stand for? Does it stand for anything? Or do we have to say that here the meaning is all in the eye of the beholder?

Although there is an enormous concern with the historical identity of the state of Italy in this discussion, there is hardly any attention for the historical meaning of the crucifix. The crucifix is stripped from all its historical meaning as a religious symbol and made into a kind of “Rorschach test” where everyone may project his own associations as “the” meaning of the symbol. It was especially the Italian Administrative Court (quoted by the European Court) that made the most fantastic claims around the symbols of Christ dying on the cross. According to the Administrative Court the crucifix is a “symbol of a value system”. The Administrative reads into the crucifix the values of the separation of church and state, the Enlightenment, liberty, equality, human dignity, religious toleration and “ultimately” even the “modern secular state”.²⁰³ Occasionally the Administrative Court acknowledges that “it is still possible today to give various interpretations of the sign of the cross” and it also mentions the inquisition, the crusades and anti-Semitism as things which have been associated with the cross, but this is done only to reject these without further argument as peripheral.

Now this is all based on a distortion of history which one could be indifferent about, were it not that these *historical* misconceptions²⁰⁴ are the point of departure for a wholly misguided statement about *constitutional* rights. So it is a misconceived or mythical conception of constitutional history which informs a deformed idea about the rights of European citizens. It would be more honest to say that the crucifix is a symbol with a historical meaning and this is *religious*. The crucifix is a

²⁰³ Lautsi II, para 15.

²⁰⁴ See for a historical view, different from the one the Italian Administrative Court adopts: White, A.D., *A History of the Warfare of Science with Theology in Christendom*, Two volumes, Dover Publications, New York 1960 (1896); Draper, John William, *History of the Conflict between Religion and Science*, D. Appleton and Company, New York 1897 (1874); Levy, Leonard W., *Blasphemy: Verbal Offense against the Sacred from Moses to Salman Rushdie*, The University of North Carolina Press, Chapel Hill and London 1993; Bury, J.B., *History of the Papacy in the 19th Century*, Edited, with a Memoir, McMillan and Co. Limited, London 1930.

depiction of Jesus Christ, considered to be the Son of God, on a cross. The cross was a Roman torture instrument, leading a victim to a slow death after having been sentenced to this cruel way of ending the life of the victim.²⁰⁵

Why are there crucifixes hanging on the walls of houses of Christian families or in the public buildings of states where Christianity is on historical grounds an important religion or the state religion? A reasonable answer seems to be this: it is because the crucifix is supposed to send a message to the anyone who beholds the symbol. It is a symbol for the suffering of Christ, which was necessary to redeem mankind from its sins.

From the traditional perspective of Christianity, the crucifix is a sign of God's love for mankind. This love has two aspects.

First, there is the *love of God*, the Father, who was prepared to sacrifice his one and only son for the sake of mankind. This is, of course, an enormous sacrifice – the greatest sacrifice a father can make.²⁰⁶ Sacrificing your son or your daughter for the sake of others is an enormous sacrifice, as no one will deny who gives the matter some deeper thought. But there is another aspect to the crucifix.

Second, there is the *love of Christ*, the son, for mankind. Christ did not protest to bringing this sacrifice, apart from some doubts in the final hour, frequently discussed in the theological literature, as one might expect.²⁰⁷ So the whole meaning of the crucifix is the love of God *and* Christ for mankind.

Now that brings us to the question of whether someone who does not believe in the story of Christianity can be required to accept to receive his or her teaching under the cross.

This question rises time and again and has not been adequately dealt with by European institutions. Not only in the context of teaching

²⁰⁵ Morton, H.V., *In the Steps of the Master*, Methuen, London 1988 (1934), pp. 370-372.

²⁰⁶ Like Abraham was prepared to make in the story described in both the Bible and the Quran. See on this: Delaney, Carol, *Abraham on Trial: The Social Legacy of Biblical Myth*, Princeton University Press, Princeton 1998, p. 5; Kuschel, Karl-Josef, *Streit um Abraham. Was Juden, Christen und Muslime trennt und was sie eint* [The Dispute about Abraham. What Divides Jews, Christians and Muslims and What Unites Them], Patmos 2001; Feiler, Bruce, *Abraham. A Journey to the Heart of Three Faiths*, William Morrow 2002.

²⁰⁷ Mark 15:34 (New Revised Standard Version): "At three o'clock Jesus cried out with a loud voice, 'Eloi, Eloi, lema sabachthani?' which means, 'My God, my God, why have you forsaken me?'".

the matter arises, but also in that of making politics, the context of adjudication *et cetera*. And not only in Europe, but everywhere in the world where the state officially proclaims religious neutrality the question of symbols linked to one particular religion come to the fore. On the wall of the Quebec National Assembly in Quebec City, for instance, there is a crucifix right over the Speaker's chair. This was installed there in the 1930s by the Duplessis government of the time, with the aim of consecrating its alliance with the Catholic Church.²⁰⁸ This all depends on the moral meaning of this symbol. Can one, with any degree of reasonableness, object to the sort of message that the crucifix exudes? Can one, in other words, have objections to the act of God, sacrificing his son for the sake of mankind? Here we have to distinguish between God and Jesus Christ. Let us first refer to the act of God.

God's sacrifice. God sacrificed his son to redeem mankind from its sins. Whether this is seen as a morally defensible act depends on the situation, but also on the philosophical meta-ethical perspective one adopts. Suppose we would take the *utilitarian* position.²⁰⁹ In that case one tries to maximize human well-being or happiness or decrease human suffering. In such a situation it might be conceivable to sacrifice the well-being of one specific human being in order to save the rest of mankind. From a *deontological* perspective, however, the situation is different.²¹⁰ Here the sacrifice of one person for even a great number of other people cannot always be allowed.

Jesus Christ's willing acceptance of the sacrifice. In the case of Christ the sacrifice is from a traditional perspective more easy to justify. Christ was, after all, offering *his own life*, while his father was making decisions *for someone else*. From the perspective of secular and individualist ethics this is a crucial difference. But even then: is it always morally justified to end your own life for a supposed greater good for the rest of humanity? Again, Christ's self-sacrifice is easier to justify, but it is not *completely* unproblematic.

²⁰⁸ Rand, David, "Why a secular charter is good for Quebec", in: *The Globe and Mail*, 10 September 2013.

²⁰⁹ See on this: Mill, John Stuart, *Utilitarianism*, 1863, in: John Stuart Mill, *On Liberty and Utilitarianism*, Everyman's Library, Alfred A. Knopf, New York 1992, pp. 113-172.

²¹⁰ See for a clear exposition of the different positions: Pojman, Louis P., *Ethics: Discovering Right and Wrong*, Second Edition, Wadsworth, Belmont, California 1995.

One of the most surprising factors in Lautsi II is that official religious doctrine with regard to the crucifix is not mentioned at all. The ECtHR profusely quotes the Italian Administrative Court in a ruling of 17 March 2005 which elaborates on the meaning of the crucifix without ever mentioning the *Catechism of the Catholic Church*. Now this is clearly absurd. It is as if one writes about the swastika (for instance without ever mentioning what this symbol meant in the German Third Reich. The greatest concession to an open and fair discussion on the meaning of the crucifix in Lautsi I and II seems to be that it is mentioned this is a “religious” symbol which the Court acknowledges. The problem is, though, it is not so much a “religious” symbol as a specifically *Christian* symbol. It expresses the core of the Christian faith. It expresses what the Christian faith discerns from other religious faiths. What the Christian faith distinguishes from other faiths is not that Christians believe in God (this they have in common with Jews, Muslims and many other believers), but that they believe that God or the Son of God died on the cross to redeem mankind from its sins.

The Italian Administrative Court on the crucifix

According to the Administrative Court the crucifix is a kind of general symbol linked to “the right to liberty of the person” and even connected to “the key elements in the Enlightenment”.²¹¹ The Administrative Court even makes the claim that the crucifix and “the Christian revolution of two thousand years ago” is connected to “the declaration of the rights of man, and ultimately the modern secular state”.²¹² Everything that is basic and foundational for the development of modern liberal democracy is by the Administrative Court connected to the tradition of Christianity with the crucifix as symbol. And the Administrative Court clearly has no qualms in accepting a Christian symbol as the crucifix as a symbol of the “identity of our people”.²¹³ Curiously, sometimes the Administrative Court shows some understanding for the plurality of influences within Italian and European culture in general. That is when it says that “the

²¹¹ Lautsi II, para 15.

²¹² Lautsi II, para 15.

²¹³ Lautsi II, para 15, 11.9 of the AC.

constitutional principles of freedom have many roots”.²¹⁴ Now one would expect the Administrative Court to digress on the Jewish, Islamic, humanist and otherwise secular contributions to Italian and European constitutional tradition. It does no such thing. After having made this concession the Administrative Court immediately continues with the claim that because Christianity is *one of those influences* it would be a paradox “to exclude a Christian sign from a public institution in the name of secularism”. So suddenly Christianity, given priority in the classroom with its symbols, is made into a victim status. “Secularism” is made the great aggressor and Christianity has to be protected from “exclusion”.

The Administrative Court does not see that its argument would not lead to the inauguration of *one* tradition made visible into the classroom but *all* traditions which have been influential to our present secular state. The whole of the wall would have to be filled with Jewish (the forerunner of Christianity, after all), Muslim (second largest religion in Italy), humanist (French Revolution, Enlightenment) and other symbols.

At times the Administrative Court presents some material that point into a different direction, such as when it mentions the inquisition, anti-Semitism and the crusades as part of the Christian tradition and history.²¹⁵ The Administrative Court also bluntly affirms that “the logical mechanism of exclusion of the unbeliever is inherent in any religious conviction”, but, surprisingly, this proves – adding insult to injury – only instrumental to the claim: “the sole exception being Christianity”.²¹⁶ This exceptional status of Christianity is not based on the behavior of Christians, the Administrative Court modestly affirms, but on the fact that when Christians engage in uncivilized and immoral behavior this is because Christianity is not “properly understood”.²¹⁷

The Administrative Court makes many dogmatic theological assertions which have no basis whatsoever in the official teaching of the Church, the Church fathers or even ordinary common sense when it says: “In Christianity even the faith in an omniscient god is secondary in

²¹⁴ Lautsi II, para 15, 11.9 of the AC.

²¹⁵ Lautsi II, para 15, 11.6 of AC.

²¹⁶ Lautsi II, para 15, 13.3 of AC.

²¹⁷ Lautsi II, para 15, 13.3 of AC.

relation to charity, meaning respect for one's fellow human beings".²¹⁸ It is a mystery why this clearly blasphemous contention has not been severely criticized by the official authorities of the Catholic Church. How can you ever relativize the idea of "omniscience" as an element of the divine essence without raising a cry from the pulpit? Cynical observers may answer: because it does not matter *what* the judge says as long as this is instrumental to the final result of maintaining the presence of exclusively Christian symbols in the classroom of public schools, thereby maintaining the Constantine position of Christianity as the state-religion – even if only in a symbolically visible manner – while society has drifted towards secularization and religious pluralism.

Christ's redemptive death on the cross in the Catholic Catechism

Needless to say, this is all completely at odds with the teachings of the Church. Jesus's violent death, as the Catechism explains, was not the result of chance in a unfortunate coincidence of circumstances. It was part of the mystery of God's plan.²¹⁹ The Scriptures had foretold this divine plan of salvation through putting to death the "righteous one, my Servant".²²⁰ Also St. Paul professes that Christ died for our sins in accordance with the scripture.²²¹ As the Catechism explains: "By sending his own Son in the form of a slave, in the form of a fallen humanity, on account of sin, God 'made him to be sin who knew no sin, so that in him we might become the righteousness of God'".²²² The moral meaning of this sacrifice the Catechism makes clear by citing the words from Paul's letter to the Romans that God "did not spare his own Son but gave him up for us all", so that we might be "reconciled to God by the death of his son".²²³ As the Catechism says: "God takes the initiative of

²¹⁸ Lautsi II, para 15, 13.3 of AC. See on this: "Part Three: The Divine Attributes", in: Michael Peterson, William Hasker, Bruce Reichenbach, David Basinger, eds., *Philosophy of Religion: Selected Readings*, Oxford University Press, New York, Oxford 1996, pp. 97-145; Morris, T.V., "Omnipotence and Omniscience", in: Charles Taliaferro and Paul J., Griffiths, eds., *Philosophy of Religion: An Anthology*, Blackwell Publishers, Malden, Oxford and Melbourne 2003, pp. 58-73.

²¹⁹ Catechism of the Catholic Church, 599.

²²⁰ Isaiah 53:11.

²²¹ 1 Corinthians 15:3.

²²² Catechism of the Catholic Church, 602.

²²³ Romans 8:32; 5:10. See: Catechism of the Catholic Church, 603.

universal redeeming love”.²²⁴ By giving up his own Son for our sins, God manifests that his plan for us is one of benevolent love, prior to any merit on our part. Or, to quote 1 John 10:4,

In this is love, not that we loved God but that he loved us and sent his Son to be the atoning sacrifice for our sins.²²⁵

Jesus’s mission

Now what is the meaning of the death of the cross from the perspective of Jesus Christ himself? The sacrifice of Jesus for the sins of the whole world expresses his loving communion with the Father, the Catechism says.²²⁶ There is a heavy stress on Jesus’s love for his father in the Catechism (as in the Bible). Jesus is quoted saying that his Father loves him, because he lays down his life. He does as his Father has commanded him. “So that the world may know” that he loves his Father.²²⁷ The desire to embrace his Father’s plan, the Catechism continues, inspired Jesus’s whole life. His redemptive passion was the very reason for his Incarnation. But occasionally, the Catechism uses words which make clear that Jesus also died for mankind. Christ’s whole life expresses his mission, the Catechism says: “to serve and to give his life as a ransom for many”.²²⁸ Greater love has no man than this “that a man lay down his life for his friends”.²²⁹ The Catechism says:

In suffering and death his humanity became the free and perfect instrument of his divine love for his Father and for men, whom the Father wants so save, Jesus freely accepted his Passion and death: “No one takes (my life) from me, but I lay it down on my own accord” (John 10:18).²³⁰

²²⁴ Catechism of the Catholic Church, 604.

²²⁵ Catechism of the Catholic Church, 604.

²²⁶ Catechism of the Catholic Church, 606.

²²⁷ Catechism of the Catholic Church, 606.

²²⁸ Mark 10:45. See: Catechism of the Catholic Church, 608.

²²⁹ John 13:1, Catechism of the Catholic Church, 609.

²³⁰ Catechism of the Catholic Church, 609.

So, the Catechism says, summarizing “in brief” what is the essence of this: “Jesus freely offered himself for our salvation”.²³¹

Now, it is these passages that make clear what is the meaning of the crucifix. The crucifix is the *most specific Christian* symbol that one can imagine. The crucifix is what distinguishes Christianity from the two other monotheistic faiths.

The crucifix in relation to Islam, Judaism and Humanism

Now, let us see whether the crucifix can be seen as a kind of “general” symbol, as the ECtHR (following the Administrative Court) wants to see it, from the perspective of other creeds than Christianity. Is this in any way convincing? Here the Court is hard to follow. From a Islamic perspective the figure of Jesus Christ is no more than a prophet. In that sense he is important, but he does not have the place and significance he is presumed to have in Christian doctrine. The problem, however, goes deeper than that. Islamic doctrine is intimately connected with the idea of *tawheed*: the unity of God.²³² As J.W. Draper wrote in 1897: “By his solitary meditations in the grotto Mohammed was drawn to the conclusion that, through the cloud of dogmas and disputations around him, one great truth might be discerned – the unity of God”.²³³ The idea of God having a Son is deeply repugnant to the Islamic creed. As Mangasar Mangasarian writes:

The Mohammedan god has no son. They cannot both be the same god. The God of the Christian demands the atoning blood of his son before he will make terms with man. The Mohammedan god repudiates such an idea.²³⁴

²³¹ Catechism of the Catholic Church, 621.

²³² Or the act of unifying things. See on this: Akhtar, Shabir, *The Quran and the Secular Mind: A Philosophy of Islam*, Routledge, London and New York 2008, p. 264. Tawheed carries with it “the concept of bringing all of life into submission under that one God”. See: Sookhdeo, Patrick, *A Christian’s Pocket Guide to Islam*, Mass Market Paperback, Revised edition, Christian Focus 2010, p. 110.

²³³ Draper, John William, *History of the Conflict between Religion and Science*, D. Appleton and Company, New York 1897 (1874), p. 81.

²³⁴ Mangasarian, Mangasar M., “Morality Without God”, in: Gordon Stein, ed., *A Second Anthology of Atheism and Rationalism*, Prometheus Books, Buffalo, New York 1987, pp. 401-417, p. 404.

This Son of God, dying on the cross like an ordinary criminal is even worse. The crucifix is a deeply blasphemous symbol. Adherents of Italy's second-biggest religion would be grossly violated in their fundamental rights if forced to get education under the cross.²³⁵

For Jews the situation is no different. For Jews the Messiah has still to come.²³⁶ In the Christian crucifix, however, it is symbolized that the Messiah died at the cross. How can this ever be accepted by Jews?²³⁷ So on Italian public schools, allegedly secular, Jewish children are inculcated with religious ideas which are deeply alien to the central elements of their belief.

And finally the humanists.²³⁸ Humanists believe in individual responsibility. This means the human individual is responsible for his own (and *only* his own) actions. In the heart of the symbol of the crucifix (and of the central core of the Christian creed) is something that humanists must abhor. According to official Christian doctrine, men are supposed to be responsible for something their forefathers (real or imagined) have done (Adam and Eve). According to the doctrine of individual responsibility this is impossible. But the story goes further: according to Christian doctrine this responsibility can be absolved because *someone else* (Jesus Christ) died at the cross for *our* sins. This does not only make no sense for a humanist, it is deeply offensive and misguided. If *this* is all according to the will of the Christian God certainly *this god* does not deserve to be praised, let alone that His perspective deserves to be the official point of departure as an official

²³⁵ Momigliano, Anna, "In Italy, religious minorities struggle (vainly) for official recognition", in: *The Daily Beast*, 14 November 2013: "Italy has 1.5 millions of Muslim residents, making Islam *de facto* the second-biggest religion in this predominantly Catholic country".

²³⁶ And, as one may expect, sometimes claims are made in that direction, such as Sabbatai Zevi (1626-1676), claiming to be the long-awaited Jewish Messiah. As Armstrong writes: "Throughout Jewish history, there had been many Messianic claimants". See: Armstrong, Karen, *A History of God: From Abraham to the Present: the 4000-Year Quest for God*, Vintage books, London 1999 (1993), p. 384.

²³⁷ We speak of "observant Jews", of course. See on this: Haag, Ernest van den, *The Jewish Mystique*, Stein and Day, New York 1969.

²³⁸ See on humanism: Cave, Peter, *Humanism*, Oneworld, Oxford 2009; Law, Stephen, *Humanism: A Very Short Introduction*, Oxford University Press, Oxford 2011; Grayling, A.C. *The God Argument: The Case against Religion and for Humanism*, Bloomsbury, London 2013. A history of humanist thought is: Cooke, Bill, *A Wealth of Insights: Humanist Thought since the Enlightenment*, Prometheus, Amherst, New York 2011. See for the application of humanist principles to moral quandaries: Berg, Floris van den, *Philosophy for a better World*, Prometheus Books, Amherst, New York 2013.

creed of the state (with crucifixes hanging in public schools and national assemblies). Few authors have summarized these complaints more forcefully than the late Christopher Hitchens in his book *God is not Great* (2007). He writes:

religion is scapegoating writ large. I can pay your debt, my love, if you have been imprudent, and if I were a hero like Sidney Carton in *A Tale of Two Cities* I could even serve your term in prison or take your place on the scaffold. Greater love hath no man. But I cannot absolve you of your responsibilities. It would be immoral of me to offer, and immoral of you to accept. And if the same offer is made from another time and another world, through the mediation of middlemen and accompanied by inducements, it loses all its grandeur and becomes debased into wish-thinking or, worse, a combination of blackmailing with bribery.²³⁹

It is common to object that Hitchens was an “atheist” and a “radical”, or a “militant” atheist at that. One is presumed not to take him very seriously and explain his digressions as “deliberately provocative”.²⁴⁰ Is it really? Is not the point he is making here a very elementary and far from provoking point of view (if not self-evident nowadays), *viz.* that man is responsible for his *own* actions?²⁴¹ Is not this the basis of our whole penal system?²⁴¹ Our shared ethics?²⁴² Has this not been the central message of

²³⁹ Hitchens, Christopher, *God is not Great: How Religion Poisons Everything*, Twelve, New York, Boston 2007, p. 211. A critical approach is also: Dawkins, Richard, *The God Delusion*, Paperback edition, Black Swan, Transworld Publishers, London 2006, pp. 286-287. See for a defense of the Christian theology of atonement: Plantinga, Richard J., Thompson, Thomas R., Lundberg, Matthew D., *An Introduction to Christian Theology*, Cambridge University Press, Cambridge UK 2010, pp. 265-266.

²⁴⁰ Which is the reaction to the New Atheism by: Eagleton, Terry, *Reason, Faith, and Revolution: Reflections on the God Debate*, Yale University Press, New Haven and London 2009; Gray, John, “Evangelical atheism, secular Christianity”, in: John Gray, *Gray’s Anatomy: Selected Writings*, Allan Lane, Penguin Books, London 2009, pp. 292-307; Dalrymple, Theodore, “What the New Atheists Don’t See: To regret Religion is to regret Western Civilization”, in: *City Journal*, Autumn 2007, pp. 1-7. She for a sympathetic overview of the ideas of the new atheists: Stenger, Victor J., *The New Atheism: Taking a Stand for Science and Reason*, Prometheus Books, Amherst N.Y. 2009. See for an anthology of writings on the New Atheism: Amarasingam, Amarnath, ed., *Religion and the New Atheism: A Critical Appraisal*, Brill, Leiden 2010.

²⁴¹ See e.g.: Hart, H.L.A., *Punishment and Responsibility*. Essays in the Philosophy of Law, Clarendon Press, Oxford 1968; Zoethout, C.M., “The Rule of Law and the Idea of Human Responsibilities: Towards a New Ethics of Constitutional Law?”, in: D.J. Elzinga, F.A.N.J. Goudappel, H.R.B.M.

western ethicists from Plato to Kant and Hartmann?²⁴³ What can be more common than that?

Jeremy Waldron seems to be on firmer ground than the Italian Administrative Court and the European Court in Strasbourg, when in 1989 he makes the assertion that religions make *rival claims* about the world. He says:

The religions of the world make *rival* claims about the nature or being of God and the meaning of human life. It is not possible for me to avoid criticizing the tenets of your faith without stifling my own. So mutual respect cannot possibly require us to refrain from criticism, if only because criticism of other sects is implicit already in the affirmation of any creed.²⁴⁴

This idea of religions making *rival claims* about the world is much more realistic than the futile attempts of the Italian Administrative Court to make one specific Christian (more in particular Roman Catholic) symbol into something “universal”. Claiming that the crucifix is a universal symbol is as vacuous as claiming that the Prophet Mohammed is there “for all of us”. The British poet Algernon Charles Swinburne is one who definitely takes offense by the image of the crucifix. In “Before a Crucifix” he writes:

O hidden face of man, wherever
The years have woven a viewless veil,
If thou wast verily man’s lover,
What did thy love or blood avail?

Kummeling (eds.), *Constitutionalism, Universalism and Democracy*, The Dutch View, University Press 1999, p. 119-133.

²⁴² Rawls, John, “The Idea of an Overlapping Consensus”, 1987, in: John Rawls, *Collected Papers*, edited by Samuel Freeman, Harvard University Press, Cambridge, Mass., London, England 1999, pp. 421-449; Outka, Gene, and Reeder, John P., jr., eds., *Prospects for a Common Morality*, Princeton University Press, Princeton, New Jersey 1993.

²⁴³ See for a historical perspective: Schneewind, J.B., *The Invention of Autonomy: A History of Modern Moral Philosophy*, Cambridge University Press, Cambridge 1998.

²⁴⁴ Waldron, Jeremy, “Rushdie and Religion”, first published under the title “Too important for Tact” in: *The Times Literary Supplement*, 10 March 1989, pp. 248 and 260, and reprinted in: Jeremy Waldron, *Liberal Rights: Collected Papers 1981-1991*, Cambridge University Press, Cambridge/New York 1993, pp. 134-143, p. 138.

Thy blood the priests make poison of,
An in god shekels coin thy love.

Swinburne speaks of the “poison of the crucifix” and he concludes his poem with:

Come down, be done with, cease, give o’ever,
Hide thyself, strive not, be not more.

Now one may object that Swinburne’s feelings are exaggerated or perverse or whatever one may wish to call it. But from the context of his work it is plainly clear that they are motivated by a serious humanist creed. His Hymn to Man testifies of this. So what one has to defend it that – somehow – *his* feelings do not count under the European human rights protection, only the feelings of those whose feelings have been respected for a long period of time.

What the agnostic state takes as its point of departure is, in accordance with what Waldron writes, that religions make *rival* claims, that everyone is perfectly free to take heed to one of these claims, but that only the rules of the road to facilitate the peaceful coexistence of these religions, are truly universal.

This insight into the futility and also dangerousness of any attempt to identify one specific religious tradition as more primary and encompassing than all the others, was essential for the development of tolerance as it has grown in the European and Western tradition.²⁴⁵ Therefore it was essential to acknowledge that people have different ideas on the good life,²⁴⁶ on the one and only god, and that people can live together peacefully as long as they pledge allegiance to the rules of the road for peaceful coexistence.²⁴⁷ What we see in Lautsi II, is the

²⁴⁵ Blackford, Russell, *Freedom of Religion & The Secular State*, Wiley-Blackwell, Chicester 2012; Ruffini, Francesco, *Religious Liberty*, Translated by J. Parker Heyes, With a preface by J.B. Bury, Williams and Norgate, London, New York 1912; Lecler, Joseph, *Histoire de la tolérance au siècle de la réforme*, 2 volumes, Aubier, Éditions Montaigne, Paris 1955; Zagorin, Perez, *How the Idea of Religious Toleration Came to the West*, Princeton University Press, Princeton and Oxford 2003.

²⁴⁶ As proclaimed by among others: Berlin, Isaiah, *Four Essays on Liberty*, Oxford University Press, Oxford etc. 1975 (1969).

²⁴⁷ Rawls, John, “Justice as Fairness: Political not Metaphysical”, in: *Philosophy and Public Affairs*, 14 (1985); Rawls, John, “The Idea of Public Reason Revisited”, in: *University of Chicago Law Review*, 64

Administrative Court sliding backwards into a tradition of thinking largely abandoned in the seventeenth and eighteenth century in Europe by thinkers as Voltaire, Locke, Bayle and many others²⁴⁸ to identify the religion which was universal for the rest of mankind. We see here the Administrative Court (partly followed by the European Court) playing with the idea that the “crucifix”, interpreted as a symbol of some sort of Enlightened Christianity, can be presented as a symbol for the rest of mankind. This is surely to arouse anger and frustration among non-Christian groups and in the long run this will not serve the peace. People will feel that by some judicial sleight of hand they are attributed a second class citizenship.

(Summer 1997), pp. 765-807, also in: John Rawls, *Collected Papers*, Edited by Samuel Freeman, Harvard University Press, Cambridge (Mass.) and London 1999, pp. 573-615.

²⁴⁸ Schulman, Alex, *The Secular Contract: The Politics of Enlightenment*, Bloomsbury, London 2011; Geier, Manfred, *Aufklärung: Das Europäische Projekt*, Rowohlt Taschenbuch Verlag, Reinbek bei Hamburg 2013 (2012).

Part IV A glance at the future

So Lautsi II cannot be the final word. Lautsi II is in fact such an unprincipled decision that the chances are slim or even negligible this will be the end of the discussion. Perhaps Lautsi II marks a kind of truce or moratorium of constitutional thinking with regard to the proper relationship between state and religion. At this moment in time, Europe's leaders lack a sense of direction, perhaps, the situation is too tense, opinions differ too much, there simply is no political will to discuss the matter thoroughly. But one does not have to be a clairvoyant to see that if the *removal* of the crucifix is not a live option at the moment, the request to hang your own religious symbol next to the crucifix is a highly reasonable demand (even on the basis of the guidelines the courts themselves present in judgments in the Lautsi cases).²⁴⁹ The Italian state can in fact not refuse this. At least, not in a principled way. So next to the crucifix we will get (or at least ought to get) Jewish, Muslim and Mormon symbols. And why not the signs of Scientology? Or the broom of witches? Is the "Harry Potter religion" so much more unreasonably or less serious than traditional Christianity with a God who let *his* son suffer on the cross for *our* sins? Traditional believers will find this remark not serious, perhaps, and maybe even offensive. But it may be realistic as well.

In *Campbell and Cosans v. United Kingdom* (1982) the European Court of Human Rights indicated that for Article 9 to apply mere ideas or opinions will not be sufficient. These ideas must attain "a level of cogency, seriousness, cohesion and importance". In the case *Pretty v. United Kingdom* (2002) the Court rejected Diane Pretty's argument that the threatened prosecution of her husband for assisting suicide was an interference with her ability to manifest her belief in the notion of assisted suicide for herself.²⁵⁰ What has been accepted by the Court as religions are: several Christian denominations (including Jehovah's Witnesses), Judaism, Islam, Hinduism, Sikhism and Buddhism, but also

²⁴⁹ With "courts" (plural) I mean the Chamber (2009) and Grand Chamber (2011) of the European Court and the Administrative Court.

²⁵⁰ Jacobs & White, *The European Convention of Human Rights*, Fourth Edition, edited by Clare Ovey and Robin White, Oxford University Press, Oxford 2006, p. 303.

atheism, Druidism, the Church of Scientology, and the Divine Light Zentrum.²⁵¹ The general tendency seems to be an ever widening acceptance of “religious” ideas and practices. This may be interpreted as “respect” for religion, but it also trivializes the notion.

Anyone who seriously engages in studying the bewildering variety of religious ideas prevalent in the contemporary world simply cannot but be impressed by the diversity of religious beliefs.²⁵²

It is this diversity we have to regulate. And here we have to focus on the future, not on our past. Perhaps a quick note on this orientation on the past may be useful. What we see in much of the reasoning in the Lautsi cases is a preoccupation with national identity. And to explore this national identity, reference is made to the *history* of the nation state. In Italy this history is determined by one religion in particular: Christianity. This is, subsequently, seen as a reason to attribute to Christianity a privileged position in the symbolism of the state.

This is legitimized by referring to the historical fact that Christianity in its Roman Catholic form has so much influenced Italian history. This may be true. But a way to stimulate reflexion on this issue is perhaps to refer to the equally incontrovertible historical fact that Italian history is also determined by fascism. Fascism is still prevalent in countless ways in contemporary Italy. The fasces are to be found on public fountains, in Italian art, *et cetera*. Now, one may open a discussion on the question where these remnants of the past deserve to be maintained, where to be cultivated and where not. There is no easy solution to this problem. It would clearly be absurd to defend a kind of iconoclasm and every time the regime changes to destroy works of art, purge churches from the symbols of competing religion *et cetera*. And the Notre Dame is and will remain a public building to be uphold by even the most secularist regime. But that does not mean it is legitimate to remain artistically and culturally unimportant religious symbols in a

²⁵¹ See for the sources: Jacobs & White, *Ibid.*, p. 303.

²⁵² See *e.g.*: Bakas, Adjiedj, & Buwalda, Minne, *The Future of Faith: Ethics, Religion and Spirituality in the New World Order*, with a foreword by Ashok Bhanaut, Scriptum Publishers, Schiedam 2010; Hunt, Stephen J., *Alternative Religions: A Sociological Introduction*, Ashgate, Aldershot 2003.

context where this does not reflect anymore the situation in which most people are living. And it would be ludicrous to maintain references to fascist symbolism *only because they are part of Italian history*. In the official symbolism of the state we always have the opportunity to accentuate some things and let other things simply “fade away”.

These remarks are not meant, of course, to suggest that Christianity is in any way similar to fascism. The reason to make this comparison is to underline, by means of an example, that both Christianity and fascism (although both elements of the Italian historical tradition) are equally unsuitable to function as the rallying points for a future Italian identity. The future identity of the country (if at least we want to adhere to individual human rights of all citizens of the nation state on an equal footing) has to be found in normative principles (not historical realities) for *all* citizens or at least the greatest number of citizens can associate with. This seems to be one of the stern demands of human rights politics. Identity politics should not overrule that. Identity politics as it was taken for granted as a point of departure in Lautsi II also clearly violates the principle of equal treatment before the law. One may put it this way: equality before the law means also equality before the state. State religions violate that principle. And the reintroduction of dominant religions under the guise of identity politics does not make it more acceptable.

The three multiculturalisms

How did this all come about? A few years ago there arose a widespread preoccupation with the plural. It became fashionable not to speak of “the Enlightenment” but of “Enlightenments”.²⁵³ It also became fashionable to think in terms of “modernities”.²⁵⁴ And if there are different “modernities”, why not different “antiquities”?²⁵⁵ Now

²⁵³ Himmelfarb, Gertrude, *The Roads to Modernity: the British, French, and American Enlightenments*, Vintage Books, Random House, New York 2005.

²⁵⁴ Eisenstadt, Shmuel, ed., *Multiple Modernities*, Transaction Publishers, New Brunswick (USA) and London (UK) 2002; Rosati, Massimo, & Stoeckl, Kristina, eds., *Multiple Modernities and Postsecular Societies*, Ashgate, Farnham 2012.

²⁵⁵ Gecser, Otto, & Klaniczay, Gabor, & Werner, Michael, *Multiple Antiquities – Multiple Modernities: Ancient Histories in Nineteenth Century European Cultures*, Campus Verlag, Frankfurt / New York 2011.

whatever may be the case of “modernities”, this diversity discourse has to be considered with a certain caution. We should never fail to ask ourselves where it is appropriate and where not. Introducing diversity discourse in mathematics or physics would be clearly absurd. Saying that “truth is in the eye of the beholder” may be innocuous or even healthy in poetry and art, it does not apply in a context where the search for universal truth is common and wholesome.

What has gone wrong in Lautsi II is that a kind of diversity thinking is applied in a context where it would leave us with disastrous results. We should never forget that the primary ambition of the human rights tradition was and is to formulate certain individual universal rights, *i.e.* rights that pertain to the human individual, irrespective of race or ethnic background, gender, religion and nationality. One of the more unfortunate consequences of multiculturalism and diversity rhetoric is that this ideal is lost sight of. It may be illuminating to distinguish between three “multiculturalisms”.

Communal multiculturalism. There is, first, the traditional multiculturalism as it came to the fore in the nineteen seventies and eighties of the previous century.²⁵⁶ This multiculturalism inaugurates religious communities as the ultimate source of meaning and authority in social life.²⁵⁷ According to this communal multiculturalism the world is not primarily divided into states or individuals, but groups, more in particular religious groups. The integrity of the group is primarily important, has to be protected, and – most importantly – has its own “cultural rights” to effectuate this.²⁵⁸ This leads in practice to a

²⁵⁶ See: Gutman, Amy, ed., *Multiculturalism: Examining the Politics of Recognition*, Princeton University Press, Princeton, New Jersey 1994. For a trenchant criticism: Hasan, Romy, *Multiculturalism: Some Inconvenient Truths*, Politico’s Publishing Ltd 2010.

²⁵⁷ This is the type of multiculturalism defended by some thinker, in particular Charles Taylor, is: Gutman, Amy, ed., *Multiculturalism: Examining the Politics of Recognition*, Princeton University Press, Princeton, New Jersey 1994 and criticized by: Moller Okin, Susan, “Feminism and Multiculturalism: Some Tensions”, in: *Ethics*, July 1998 (108), pp. 661-684; Moller Okin, Susan, *Is Multiculturalism Bad for Women?* With Respondents, edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, Princeton University Press, Princeton, New Jersey 1999; West, Patrick, *The Poverty of Multiculturalism*, Introduction by Kenneth Minogue, Civitas: Institute for the Study of Civil Society, London 2005; Nazir-Ali, *Triple Jeopardy for the West: Aggressive Secularism, Radical Islamism and Multiculturalism*, Bloomsbury, London 2012.

²⁵⁸ See on this: Stapleton, Julia, ed., *Group Rights: Perspectives since 1900*, Thoemmes Press, Bristol 1995; Kukathas, Chandran, *The Liberal Archipelago: A Theory of Diversity and Freedom*, Oxford University Press, Oxford 2003.

reinforcement of the position of the heads of the family and community leaders such as brothers, fathers, religious leaders (imams and rabbis).²⁵⁹ Sometimes this perspective also adopts a beneficent attitude towards communities settling their own affairs with their own jurisdiction, such as in sharia courts or sharia councils.²⁶⁰

Diversity rhetoric. A second form of multiculturalism to be discerned is what may be called “diversity rhetoric”. We say “rhetoric”. This may seem harsh, but we think it is justified. Here there is no clear perspective apart from the fact that the people who seem enthralled by this perspective repeatedly state that they are in favor of “diversity” or “pluralism”. They fail to indicate, however, how and where they want to effectuate this.²⁶¹ Diversity sounds fine, but – to be sure – not in the sense that we think a society with interlopers, white supremacists and racists is such a good idea, is it? Such a suggestion the apologists of diversity would reject right out of hand. Usually the audience is expected to understand this implicitly. The diversity thinkers are not forced to be more specific about their plans. But *what kind* of “diversity” is it that they favor? You are expected to understand that implicitly. It goes without saying. It’s a society where all people think well about religious and ethnic minorities, homosexuals, lesbo’s, and some other “minorities” (excluding minorities of the wrong type, as we indicated).

This is all perfectly fine,²⁶² but such a society does not arise spontaneously. Nor can it exist unregulated. You have to think about the guidelines of such a society, about the rules of the road. In a free country

²⁵⁹ This perspective is well analyzed by: Malik, Kenan, *From Fatwa to Jihad: The Rusbdie Affair and Its Legacy*, Atlantic Books, London 2009. See also: Hasan, Rummy, “We need a 21st century Voltaire to fight the growing power of censorship around the world”, in: *The Independent*, 23 October 2012; Hasan, Rummy, *Multiculturalism: Some Inconvenient Truths*, Politico’s Publishing Ltd 2010 Cliteur, Paul, “Multiculturalism: Some inconvenient truths”, Review of Rummy Hasan, in: *Journal of Contemporary Religion*, 2012, 27:2, pp. 331-333.

²⁶⁰ See on this: Musa, Shirin, & Zee, Machteld, “Verborgen vrouwen zijn niet dom”, in: *Trouw*, 22 September 2012; Zee, Machteld, “Sharia: Scheiden voor Allah”, in: *Vrij Nederland*, 21 september 2013, pp. 44-49; Mirza, Munira, Senthilkumaran, Abi, Ja’far, Zein, *Living Apart Together: British Muslims and the Paradox of Multiculturalism*, Policy Exchange, London 2007.

²⁶¹ Severe criticism is exerted by: Gellner, Ernest, *Postmodernism, Reason, and Religion*, Routledge, London and New York 1992.

²⁶² Although it places us for some intricate balancing as some authors tend to forget. See for an intriguing analysis of some of the difficulties around the application of human rights standards: Sévillia, Jean, *Historiquement incorrect*, Fayard, Paris 2011; Sévillia, Jean, *Historiquement Correct: Pour en finir avec le passé unique*, Perrin, Paris 2003; Sévillia, Jean, *Le terrorisme intellectuel de 1945 à nos jours*, Perrin, Paris 2004 (2000).

you can drive in the direction you like, but you cannot consider the traffic lights as no more than embellishments on the road and give your own idiosyncratic interpretation to “green” and “red”. Postmodern relativists can proclaim that the connection between “red” and “the obligation to stop” is arbitrary. This is certainly true. It’s based on convention, on an *in itself* arbitrary agreement. But sticking to the rules once made, is essential to uphold the safety and freedom of society. This is something diversity thinkers usually tend to overlook. They tend to think this is only a matter of good will. If everybody adopts an open attitude towards “diversity”, all will be fine. This is false.

State multiculturalism. The third kind of multiculturalism we want to distinguish is *de facto* introduced by Lautsi II (or reconfirmed by Lautsi II)²⁶³ as European policy when it comes to accommodating diversity. While Lautsi I adopted secularism and the idea of a religiously neutral state as the logical concomitant of a European human rights regime, Lautsi II explicitly *rejects* secularism and adopts a kind of multiculturalism. But *what kind* of multiculturalism? Although there is much rhetoric from the second sort (“diversity discourse”) and multiculturalism originally was developed as a doctrine to empower non-state ethnic and religious groups (the majority of the members in an ethnic and religious group taking binding decisions for the identity of the group as a whole), the ruling in Lautsi II ends up in a new type of multiculturalism which we will – for lack of a better term – call *state multiculturalism*.

With “state multiculturalism” we mean that the state or the majority of the population in the state is empowered to identify one religious tradition as the leading identity of the state. State multiculturalism empowers the *national* community or state. It makes it possible for national majorities to overrule minorities and individuals.

This type of multiculturalism is relatively new in the sense that the more common form of multiculturalism empowers religious and ethnic communities. The type of multiculturalism inaugurated by theoreticians as Bikhu Parekh²⁶⁴ and Charles Taylor²⁶⁵ aimed to endow religious and

²⁶³ We mean: the road to Lautsi II is, of course, something that has been prepared for several decades, in particular by the ideology expounded in reports and books on communal multiculturalism (our first concept of multiculturalism).

²⁶⁴ Parekh, Bhikhu, *A New Politics of Identity: Political Principles for an Interdependent World*, Palgrave Macmillan, Houndmills 2008; Parekh, Bhikhu, *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Macmillan Press, Houndmills/London 2000.

ethnic communities with special power and rights towards the national state, *e.g.* to organize their own legal disputes. Multiculturalists of the second type are in favor of special Jewish and Islamic courts to settle the disputes of the members of the religious communities.²⁶⁶ And the state or the national community is supposed not to interfere with inter-communal affairs. But “state multiculturalism” empowers the national community or the state. Within the context of state multiculturalism, “Europe” (*i.e.* the European Court of Human Rights in Strasbourg) is supposed to adopt the same attitude towards the national state as the state is supposed to adopt toward the religious communities in the more common Bhikhu Parekh type of multiculturalism.

This “state multiculturalism” does not necessarily have to favor a specific religion. State multiculturalism favors *history* and *tradition* or the *status quo*, whatever that history or tradition may be. So if in France there are no crucifixes on the walls of public schools, state multiculturalism would proclaim this to be the historical tradition of France and also support that.

What the judgment of the Grand Chamber in *Lautsi II* amounts to was succinctly presented by one of the third-party interveners, *viz.* the government of the principality of Monaco. The government of Monaco indicated that it supported the arguments of the respondent Government (Italy). It said that a crucifix was found on the coats of arms and flags of many states and in the instant case reflected a national identity rooted in history.²⁶⁷ Subsequently the government of Monaco sets itself to the task to formulate what in its view the principle of “State neutrality” (which it endorses, apparently) means. This meant that the authorities had to:

²⁶⁵ Taylor, Charles, “The Politics of Recognition”, in: Taylor, Charles, *Multiculturalism: Examining the Politics of Recognition*, Edited and introduced by Amy Gutman, Princeton University Press, Princeton, New Jersey 1994, pp. 25-75.

²⁶⁶ See: Zee, Machteld, “Sharia: scheiden na een huwelijk”, in: *Vrij Nederland*, 21 september 2013, pp. 44-49.

²⁶⁷ *Lautsi II*, para 48. We note, by the way, that the claim that a crucifix was found on the coats of arms and flags of many states is not true. What is to be found on the flags of many states is a cross (so without the figure of the dying Christ on it), which is crucially (!) different.

refrain from imposing a religious symbol where there had never been one and from withdrawing one that had always been there.²⁶⁸

It could not have been said more clearly. And this terse formulation is exactly what the judgment of *Lautsi II* amounts to: wherever religious symbols were allowed in the past they have to be allowed in the future. And wherever they have been forbidden in the past, you are allowed as a state to forbid them in the future. This judgment freezes the *status quo*, either in the sense of:

- (i) secularism (properly understood, *i.e.* the French model),
- (ii) or in the sense of anti-secularism and religious *Leitkultur* (as in Italy).

If the fifteen judges who voted for *Lautsi II* are consistent (especially judge Bonello who wrote a long and vehement concurring opinion in *Lautsi II*)²⁶⁹ they could not be against French secularism as being part of the French tradition and culture. We may distinguish the possible relations between state and religion into five modes: (1) State atheism, (2) Secularism, (3) Multiculturalism, (4) State Church, (5) Theocracy.²⁷⁰ Five and One are not compatible with a European human rights approach, according to *Lautsi II*, but the three models in between are.²⁷¹ According to *Lautsi I* model Two is the best. *Lautsi II* makes *Europe as a whole* multicultural. And that implies that several national traditions of homogeneity may be maintained, even if they are not exactly compatible with individual human rights. The problem with multiculturalist and diversity rhetoric is that it does not solve the problems we have to judge. The evocation of the ideal “diversity” does not settle the matter where diversity has to give in to human rights. And there are certainly situations where “diversity” and human rights conflict.

²⁶⁸ *Lautsi II*, para 48.

²⁶⁹ *Lautsi II*, pp. 38-43. We consider the word “vehement” appropriate because the language of judge Bonello very different from what one might expect in legal opinions. It’s very rhetoric and opinionated.

²⁷⁰ See on this: Cliteur, Paul, “State and religion against the backdrop of religious radicalism”, in: *International Journal of Constitutional Law*, Vol. 10, No. 1, 2012, pp. 127-152; Cliteur, Paul, “Nationale soevereiniteit in een multiculturele en multireligieuze samenleving”, in: *Ethische Perspectieven*, 23 (2013) 4, pp. 328-355.

²⁷¹ See on the five models also: Vermeulen, B.P., *Vrijheid, gelijkheid, burgerschap: over verschuivende fundamente van het Nederlandse minderbedenrecht en – beleid: immigratie, integratie, onderwijs en religie*, SdU Uitgever, Den Haag 2007.

Winners and losers

In distinguishing the three kinds of multiculturalism above, we always have to remind ourselves that no form of multiculturalism is “diverse” in every aspect of life. And there are always winners and losers in the game. The situation where “all have won” only happens in Wonderland, not in the real world where we are living.²⁷²

In the first type of multiculturalism (the classical conception as developed by the founding fathers of the ideology, as Charles Taylor) the losers are women,²⁷³ homosexuals and unbelievers,²⁷⁴ because the community elders, the fathers and brothers are empowered to suppress individualist revolt of the daughters (and sisters).²⁷⁵

In the second type of multiculturalism it is difficult to say who are the losers because of the inherent vagueness and ambiguity of the message. As Christopher Hitchens says of some theories: “not even wrong”.

Scientists have an expression for hypotheses that are utterly useless even for learning from mistakes. They refer to them as

²⁷² “First [the Dodo] marked out a racecourse, in a sort of circle (‘the exact shape doesn’t matter’, it said), and then all the party were placed along the course here and there. There was no ‘One, two, three, and away!’ but they began running when they liked, and left off when they liked, so that it was not easy to know when the race was over”. See: “The Dodo’s Dance”, in: *Time Magazine*, 17 October 1955.

²⁷³ This is forcefully argued by: Moller Okin, Susan, “Feminism and Multiculturalism: Some Tensions”, in: *Ethics*, July 1998 (108), pp. 661-684; Moller Okin, Susan, *Is Multiculturalism Bad for Women?* With Respondents, edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, Princeton University Press, Princeton, New Jersey 1999. In that same tradition: Hirsi Ali, Ayaan, *The Caged Virgin: An Emancipation Proclamation for Women and Islam*, The Free Press, New York and Sydney 2006; Hirsi Ali, Ayaan, *Infidel: My Life*, The Free Press, London 2007; Hirsi Ali, Ayaan, *Nomad: From Islam to America, A Personal Journey through the Clash of Civilizations*, The Free Press, London 2010.

²⁷⁴ Benson, Ophelia, Stangroom, Jeremy, *Does God Hate Women?*, Continuum, London/New York 2009.

²⁷⁵ See on this: Malik, Kenan, “Enemies of free speech”, in: *Index on Censorship*, nr. 41, 2012, pp. 40-53; Malik, Kenan, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy*, Atlantic Books, London 2009.

being “not even wrong”. Most so-called spiritual discourse is of this type.²⁷⁶

The same can be said about diversity discourse: too vague to be even wrong. But although diversity thinking has no clear theoretical foundation, it certainly has a *practice*: anything goes. In practice, it often means that religious and ethnic minorities are licensed as free riders of the system. If the system is a religiously neutral state (so no religious signs by civil servants), diversity thinkers get nervous as soon as this affects the groups with a supposed or real victim status (those who wear yarmulkes and veils). Then they want to change the system and start – often ad random – making proposals about taking the rules less seriously. Not seldom this is done in a highly rhetorical manner. Often with changing the meaning of central concepts. Secularism *e.g.* is subdivided into what is called “strict secularism”²⁷⁷ and a more “open” variant of it (meaning the abolition of secularism, basically).²⁷⁸ A more aggressive approach is attacking secularism as an inherent racist or xenophobic notion.²⁷⁹

The third type of multiculturalism is the sort inaugurated with Lautsi II and which means that the nation states themselves are considered to be the ultimate unity of identity. So here the majority religion within the nation state gets special privileges which are not attributed to other creeds. Under the auspices of the “margin of appreciation” this means that there is a return to the old principle of *cuius regio, eius religio*.

What we have tried to make clear in this article is that this tendency is inimical to the whole ambition of the human rights project as institutionalized in the European Convention on Human Rights and the

²⁷⁶ Hitchens, Christopher, *God is not Great: How Religion Poisons Everything*, Twelve, New York, Boston 2007, p. 202.

²⁷⁷ Some authors even speak of “aggressive secularism” although it’s only secularism *tout court*. See: Nazir-Ali, *Triple Jeopardy for the West: Aggressive Secularism, Radical Islamism and Multiculturalism*, Bloomsbury, London 2012.

²⁷⁸ This is done in: Maclure, Jocelyn, and Taylor, Charles, *Secularism and Freedom of Conscience*, Harvard University Press, Cambridge, Mass. 2011, a translation of: Maclure, Jocelyn, Taylor, Charles, *Laïcité et liberté de conscience*, La Découverte, Paris 2010.

²⁷⁹ This is done in: Scott, Joan Wallach, *The Politics of the Veil*, Princeton University Press, Princeton and Oxford 2007. For a convincing response, see: Weil, Patrick, “Why the French Laïcité is Liberal”, in: *Cardozo Law Review*, Vol. 30, No. 6, 2009, pp. 2699-2714. Less

European Court of Human Rights. This system is based on the idea that there are certain individual rights which the state and community may not violate. The European Court is there to protect the human individual against the state and society. Under the guidance of multiculturalist rhetoric this system is undermined by the idea of a kind of “European diversity” or “European pluralism”, meaning that in different countries there are different customs and traditions and that the individual has to adapt to the customs and traditions of his country where he or she is living. So the Lautsi’s cannot enforce their individual rights on freedom of religion and freedom *from* religion because this is trumped by a collective right of the Italian people to enforce a majority religion (in this case: Catholicism) on the individual citizen. This violation of individual rights is mitigated by the Court with the argument that the crucifix is a “passive symbol” and not an instrument of “indoctrination”. The paradoxical situation arises that here, again, multiculturalism is a cloak for the suppression of individual rights and needs. This was already one of the points of criticism exerted towards communal criticism: the group enforces a collective identity over the human individual.²⁸⁰ With state multiculturalism this state of affairs returns but now on the state-level.

Why secularism is universal, not connected to national traditions

To conclude this essay we want to return to the Victorian critics of religion at the beginning of the article. From a certain perspective, it may seem strange that we started with Huxley, Stephen and Clifford as the founding fathers of agnosticism while we further developed our argument with the French *laïcité*. Surely, it was not the group of Victorian agnostics who laid the foundation of the French agnostic state, was it?²⁸¹ French laïcist thought was influenced by Émile Littré, Charles Dupont-

²⁸⁰ With regard to the position of individual women this point was emphasized by: Moller Okin, Susan, “Feminism and Multiculturalism: Some Tensions”, in: *Ethics*, July 1998 (108), pp. 661-684; Moller Okin, Susan, *Is Multiculturalism Bad for Women?* With Respondents, edited by Joshua Cohen, Matthew Howard, and Martha Nussbaum, Princeton University Press, Princeton, New Jersey 1999.

²⁸¹ See on the group as a whole: Levine, George, *Realism, Ethics and Secularism: Essays on Victorian Literature and Science*, Cambridge University Press, Cambridge 2008. A lively portrayal of their Christian counterparts is: Larsen, Timothy, *A People of One Book: The Bible and the Victorians*, Oxford University Press, Oxford 2011. See also: Wilson, A.N., *God’s Funeral*, John Murray, London 1999.

White, Eugène Pelletan,²⁸² Ernest Renan,²⁸³ the French *philosophes*.²⁸⁴ Could not Jacques Chirac claim on solid grounds that the “laïcité” was an *exception Française* compared to other countries in the world?²⁸⁵

We beg to disagree. We deliberately substantiated the idea of the religiously neutral or agnostic state with *British* (and not French) philosophical underpinnings because we think that the agnostic state is not necessarily connected to any national tradition in particular. The connection between France and the laïcité is historical and contingent. The model of the agnostic state is a good model for every situation where – as we have spelled out in the previous pages – we find that peculiar combination of (i) secularization, (ii) religious diversity and (iii) respect for human rights. And as we have argued before, this is the situation in Europe. Not in all European countries in the same amount, but certainly, as we have argued, there are good grounds to believe this is the *future* of Europe. Therefore, the agnosticism of Huxley, Stephen and Clifford may have been developed by British intellectuals but it is as “British” as the law of gravitation is because formulated by Newton. And the French religiously neutral state (“laïcité”) is *French* in the sense that some important developments in this area have been developed in France. “The French Republic is organized around the principle of secularity” (“La République française s’est construite autour de la laïcité”), according to the Stasi-committee.²⁸⁶ But with an increasing secularization and religious diversity, this may be the future for the rest of Europe as well.

²⁸² See on these relatively unknown thinkers: Hazareesingh, Sudhir, *Intellectual Founders of the Republic: Five Studies in Nineteenth-Century French Political Thought*, Oxford University Press, Oxford 2005 (2001).

²⁸³ Bierer, Dora, “Renan and His Interpreters: A Study in French Intellectual Warfare”, in: *The Journal of Modern History*, Vol. 25, No. 4 (Dec., 1953), pp. 375-389; Blanshard, Brand, “Ernest Renan”, in: *Four Reasonable Men: Marcus Aurelius, John Stuart Mill, Ernest Renan, Henry Sidgwick*, Wesleyan University Press, Middletown, Connecticut 1984, pp. 103-179; Renan, Ernest, *Qu’est qu’une nation? Et autres essais politiques*, Textes choisis et présentés par Joël Roman, Presses Pocket, Paris 1992.

²⁸⁴ Badinter, Élisabeth, *Les Passions intellectuelles: I. Désirs de gloire (1735-1751)*, Librairie Arthème Fayard, Paris 1999; Badinter, Élisabeth, *Les Passions intellectuelles: II. Exigence de dignité (1751-1762)*, Librairie Arthème Fayard, Paris 2002; Badinter, Élisabeth, *Les Passions intellectuelles, III. Volonté de pouvoir (1762-1778)*, Librairie Arthème Fayard, Paris 2007.

²⁸⁵ See on this: Chirac, Jacques, “Discours Relatif au Respect du Principe de Laïcité dans la République”, Palais de l’Élysée, 17 décembre 2003, in: *Guide Républicain. L’idée républicaine aujourd’hui*, Délagrave Édition, Paris 2004, pp. 9-19; Duclert, Vincent, *La France, Une identité démocratique: Les textes fondateurs*, Éditions du Seuil, Paris 2008.

²⁸⁶ *Laïcité et République*, Rapport au Président de la République, Commission présidée par Bernard Stasi, La Documentation française, Paris 2004, p. 21.

In fact, there is no important or essential (in distinction to historically contingent) “national” element as we have seen in this whole discussion.²⁸⁷ The reason is that the way a parliamentary democracy functions is much more universal than most people think. As the nature of human rights is much more universal than most people think. We may also claim: the *history* of the European nations states may differ, their *future* looks very similar. And with that common future it is to be expected that the constitutional models that prove successful in one national tradition will be copied in another.

The problem is, though, that the political reality is that the Court cannot completely ignore public opinion in the member states.²⁸⁸ Apparently, there was a great revulsion against removing the crucifixes from the walls of public schools. It may have been the case that European governments committed themselves to a European human rights regime in the Fifties of the previous century, not all the consequences of doing this were clearly envisioned. Now national majorities seem to get into the grip of identity politics as well. They say: “Roots Too”.²⁸⁹ The political elite, almost desperately, tries to intimidate the population with wild accusations of the xenophobic and racist character of this new kind of multiculturalism from the side of national majorities, but apparently, without much avail. So-called “populist leaders” gained a remarkable adherence and significance in the latter half of the twentieth century, a development that not seems to abate. So one may claim (as we do) that removing the crucifixes was pertinent on the basis of a consistent application of the principles which the European human rights community had committed itself to by adopting the European Convention on Human Rights, but nonetheless the anger and frustration proved insurmountable. Contradictory as this may seem from

²⁸⁷ Think also of the *German* sociologist Max Weber formulating the principles for the relationship between elected politicians and assigned civil servants. Again: not a specifically *German* law of political thought.

²⁸⁸ As Gelijs Molier notes in a discussion on the legitimacy of the European Court in Leuven at 18 April 2013: “If the Court in Strasbourg would continually would make statements that would go against the ideas of the populations of the member states the legitimacy of the Court would evaporate”. See Molier in; Cliteur, Paul, Storme, Matthias, & Rummens, Stefan, “Wetenschap & Ethiek”, in: *Ethische Perspectieven*, 23 (2013) 4, pp. 421-436, p. 431.

²⁸⁹ Jacobson, Matthew Frye, *Roots Too: White Ethnic Revival in Post-Civil Rights America*, Harvard University Press, Cambridge, Mass, London, England 2006.

the perspective of a consistent political philosophy, it was a political reality nonetheless. What to do?

Under those circumstances it has become customary that the European Court takes the trump card of the “margin of appreciation”. The European Court declares a certain matter as part of the discretionary latitude of interpretation of the national legislatures. This is a practical solution to avoid turmoil. On the other hand (as we said): it is not quite satisfactory from a human rights perspective. Having crucifixes on the walls of public schools is so manifestly contradictory to the ideals of a religiously neutral state that it is compromising, if not humiliating, that the Court has to engage in the language of the “margin of appreciation” to hide this fact. Would it not be better if the Court tried to avoid the Scylla of a loss of political legitimacy and at the same time the Charybdis of being unfaithful to its own foundational ideals?

Probably, but how?

This is, perhaps, possible by following the procedure of a “declaration of incompatibility”, as Carla Zoethout suggests. The Court openly states that a certain course of action is violating the principles of the *European* Convention but at the same time it leaves it to the *national* authorities to provide a solution for the problem.²⁹⁰

Whatever may be the case, however, it is likely that in the end secularism and its most prominent institution, the agnostic state, will prevail. Not as the triumph of atheist indoctrination, but as the common denominator which is acceptable for all parties in a religiously diverse society.

²⁹⁰ See on this: Zoethout, Carla M., “Margin of appreciation, violation and (in)compatibility: Why the ECtHR might consider using an alternative mode of adjudication”, in: *European Public Law*, May 2014 (forthcoming).