Religious Governance in the Netherlands: Associative Freedoms and Non-Discrimination After 'Pillarization'. The Example of Faith-Based Schools

Marcel Maussen

RECODE – Responding to Complex Diversity in Europe and Canada

ONLINE WORKING PAPER SERIES

RECODE, a research networking programme financed through the European Science Foundation (ESF), is intended to explore to what extent the processes of transnationalisation, migration, religious mobilisation and cultural differentiation entail a new configuration of social conflict in post-industrial societies - a possible new constellation labelled *complex diversity*.

RECODE brings together scholars from across Europe and Canada in a series of scientific activities. More information about the programme and the working papers series is available via the RECODE websites:

www.recode.fi
www.esf.org/recode

Marcel Maussen
Department of Political Science, University of Amsterdam
m.j.m.maussen@uva.nl

EUROPEAN SCIENCE FOUNDATION
SETTING SCIENCE AGENDAS FOR EUROPE

Standing Committee for the Social Sciences (SCSS)
Standing Committee for the Humanities (SCH)

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination After 'Pillarization'. The Example of Faith-based Schools

Marcel Maussen

Marcel Maussen (PhD) is assistant professor in political science at the University of Amsterdam. He teaches on political theory, social inequality, religious and cultural pluralism and democratic theory. His research interests include issues related to religious diversity, the accommodation of Islam in Western Europe, liberalism and tolerance, and socio-political opposition to immigration and asylum policies. He wrote a PhD on *Constructing mosques. The governance of Islam in France and the Netherlands* (University of Amsterdam, 2009). Recent publications include *Colonial and post-colonial governance of Islam. Continuities and ruptures* (AUP 2011) (edited with Veit Bader and Annelies Moors), "Pillarization and Islam: Church-state traditions and Muslim claims for recognition in the Netherlands" in *Comparative European Politics* (2012).

Abstract

This paper conceptualizes Dutch traditions of religious governance in terms of a model of "principled pluralism" (Monsma and Soper 2009). It approaches church-state traditions in a disaggregate way, meaning it is sensitive to domain specificities and takes notice of the actual constitutional and legal arrangements, (changes in) public policies, and varieties in application of laws and policies. It explores to what extent the legacy of "pillarization" and the relatively strong emphasis on collective freedoms of religious communities may lead to tensions with other liberal values (notably non-discrimination and equality) in contemporary Dutch society. In this part the focus is on the domain of education, in particular contestation around Orthodox religious schools. The paper concludes by arguing that the Dutch regime is undergoing a shift in the conceptualization of religious freedom in relation to liberal equality, which in the longer run may destabilize a tradition of toleration and substantial collective freedoms for orthodox religious groups.

Introduction

In the past decade there has been a renewed interest for "national models" of church-state relations. In the academic field, research on Muslim mobilization, claims making and the institutionalization of Islam, especially in Western Europe, increasingly looks at church-state theory to explain distinctive national patterns of accommodation (Fetzer and Soper 2005, Maussen 2007: 47–52). Historically inclined political scientists have compared contemporary state responses to immigrant religions, notably Islam, with governance of other religious minorities.[1] In a related scholarly field, that of comparative law, there has

---

[1] These include, for example, comparisons between responses to more established Christian groups and Christian migrant churches, but also comparisons between responses to Jews and Muslims (Benbassa 2003). However, as

always been interest for differences between legal regimes of religious government and "constitutional models", such as models of separation, corporatist models and models with an established or state church (Ferrari 2002; Robbers (ed.) 2005; Doe 2011). This type of "modelling" has gained wider resonance by being embedded in neo-institutionalist theories seeking to show how (in a comparative perspective) distinctive societal and institutional patterns and church-state traditions have developed, and how they can be used to explain contemporary forms of government of religious diversity (see Knippenberg 2006; Madeley 2003; Bader 2007a: 50–62). Finally, in normative theory we have seen a spectacular revitalization of reflections on secularism and neutrality, and the ways liberal-democratic states should relate to (organized) religion (Habermas 2006; Laborde 2005; Bader 2003, 2007, 2009).

The renewed interest for church-state models is not restricted to the academic world. Politicians and the general public also debate on how to deal with religion in the public realm. In particular the presence of "new" religious communities of immigrant origin has resulted in discussions about religiously motivated demands and behaviour (the headscarf, ritual slaughtering, men or women refusing to shake hands with members of the opposite sex) or about the creation of institutions such as houses of worship and faith schools. The renewed questioning around the place of religion is also a result of a broader social trend of "secularization", including the growth of a climate of unbelief, decline in membership of religious organizations and decline in (perceived) legitimacy of the presence of organized religion and religious symbols in the public realm. In some countries there now exists powerful "secular voices" that challenge the role of religious institutions and the room for religious manifestations and that occasionally demand that the national church-state model become "more secular". In many countries, national and local governments have responded to these debates by installing expert committees and commissioning reports on church state issues.[2]

Another set of questions concerns *how* to conceptualize, analyze and describe national models and what their explanatory strengths and weaknesses may be (Bader 2007b; Sandberg 2008; Bertossi et al. (eds.) 2012; Michalowski and Finotelli (eds.) 2012). These are more aggregate models identifying some basic institutional patterns, focusing mostly on legal and constitutional texts (e.g. Kuru 2008; Monsma and Soper 2009). There are also more disaggregate approaches, which stress the need to differentiate state/religion interactions according to policy fields (e.g. religion, education, healthcare, labour), different government branches (judiciary, public services) and levels of state organization (national, municipal), different dimensions and goals of regulation (financing, exercising public scrutiny, protecting freedoms, maintaining public order) and different manifestations of religion (beliefs, practices, expressions, claims and demands, organizations and institutions).[3] In a more disaggregate or grounded approach, reciting constitutional

---

my own research has demonstrated, simply assuming that states respond to all religious minorities in similar ways may result in distorted comparisons. The "Muslim exception" in French religious governance, for example, can better be understood in light of the ways French secularism and colonial governance intersected, rather than simply in terms of "the" French church-state model based on *laïcité* (Maussen 2009 and 2010; Davidson 2012).

[2] Famously the Independent Commission of Reflection on the Application of the Principle of Laïcité in the Republic (known as the Stasi Commission) in France (in 2003) and the Commission of Legal Reflection on the relationships between Organized Religions (*cultes*) and Public authorities (known as the Machelon Commission, in place between 2005 and 2006). In the Netherlands several studies on church state relations have been commissioned, for example by the Scientific Council for Government Policy (Van den Donk et al. (eds) 2006), by the Association of Netherlands Municipalities (VNG 2009), and by the Institute for Multicultural Development (FORUM) (Maussen 2006). In Amsterdam the municipal council even produced a policy note (GA 2008) explaining in what ways the city government would interpret the legal framework when dealing with religious organizations, for example in regard to subsidizing activities and establishing contacts. Similar initiatives have been taken in Germany and the UK.

[3] Disaggregate studies may explore modalities of regulation in one country (e.g Nieuwenhuis 2009 on the Netherlands), or compare policy domains across countries (e.g. Beckford et al. 2005 for chaplainries in prisons in

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination
After 'Pillarization'. The Example of Faith-based Schools

3

arrangements and laws will not suffice, and attention is demanded for policies (changing over time), implementation practices, public contestation and bending of rules.

The disaggregate approaches stand a better chance of providing more subtle descriptions of "what governments on all levels actually, and not only legally, have done and do" to religions (adapted from Bader 2007b: 883). But they risk ending up with thick descriptions, whereas some kind of aggregation in terms of national models remains helpful for country-comparisons and for explanatory purposes (i.e. in explaining relevant differences in patterns of accommodation between countries and between time periods). When we are able to conceptualize strategies of governance as national models these can also play a role for citizens in "orientation, legitimization and reconciliation" (as well as contestation) with regard to existing institutions (Rawls 2007: 10). They can provide guideposts for citizens, policy practitioners, religious actors, or judges who are confronted with issues of religious freedom and equality (Koenig 2008; Bader 2007b: 879). It is also reasonable to expect a certain degree of consistency and complementarity between legal arrangements and policy approaches in related fields.[4]

In the remainder of this paper I will analyze the Dutch regime of religious governance from an institutionalist perspective, seeking to identify traditions and "underlying principles" (Monsma and Soper 2009) with particular attention for constitutional arrangements and historical and ideational or ideological legacies. I then proceed to identify some of the main contemporary challenges in Dutch church-state relations. I elaborate these with regard to the domain of education. In the conclusion I reflect upon the wider significance of contemporary challenges and possible shifts in Dutch governance traditions.

In search of "the" Dutch model

Legal aspects and constitutional regime

The interactions between (organized) religion and the state in the Netherlands are shaped by international, European and nation legislation. The Netherlands has committed itself to respecting article 9 of the ECHR (on freedom of religion) and article 18 of the International Covenant on Civil and Political Rights of 1966. Here I focus on the national legal framework.

The origins of the constitutional system developed in the context of the Dutch Revolt; in part a reaction to religious persecutions and an act of resistance of an increasingly Protestant nation against Spanish, Catholic rule. The Dutch Republic (1588–1795), which protected freedom of conscience to some extent (mainly understood as a ban on the Inquisition) only allowed public exercise of religion for Calvinism, but tolerated Protestant dissenters, Catholics and Jews.

Until the late 18th century the Dutch Reformed Church was the leading or "public" church, which meant that it was recognized and financed by the state and that membership of this church was required for public offices. Between 1814 and 1983 there existed a special chapter in the Dutch constitution "on religion" (*Van den Godsdienst*), which laid down basic rules regarding free exercise of religion, equal treatment of religious denominations, and a state guarantee for salaries and pensions of religious personnel. A series of amendments to this chapter (in 1815, 1848 and 1972) gave witness to a gradual

---

the UK and France) or a combination of both (e.g. Van den Breemer and Maussen 2012 on cemeteries and mosque building in France and the Netherlands).

[4] Of course this needs to be nuanced to some extent. In France, for example, the exclusivist approach to religion in (public) education exists side-by-side with a far more interventionist approach with regard to institutionalization of religious interlocutors and with public financing of upkeep of (some) religious buildings. Especially in country comparisons there is a great risk that the "internal heterogeneity" of national models is overlooked.

development of the constitutional regime towards a further going separation of state and church and more genuine equal treatment of religions (Van Bijsterveld 2005: 289).

Since the mid-19th century, then, the Dutch constitutional model has been one of "non-establishment" (Bader 2003). There had never existed an established state church and only under William I (r. 1815–1840) and William II (r. 1840–1848) a kind of corporatist model existed with a number of officially recognized religions. This regime ended with the new, liberal constitution of 1848 that introduced "separation" of church and state. Some 130 years later the latest general constitutional revision (of 1983) further developed other aspects of separation. First, it ended the remaining forms of direct financial support for core religious activities, notably around the construction and upkeep of religious building and with regard to state financing of salaries and pensions of religious personnel.[5] Second, the special constitutional chapter "on religion" was deleted and the church as an organization is no longer mentioned in the constitution, and a new constitutional article on religious freedom (article 6) was drafted (Van Bijsterveld 2005: 308). Article 6 states that: "everyone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility before the law". These amendments also reflected the need to change the biased conception of equal treatment of religion as it had been understood in a stable and predominantly Christian context. For a long time organized religions could be equated with the existing and well-acquainted communities and religious organizations in the form of church bodies (*kerkgenootschappen*). By excluding a concept such as church body from the constitution, article 6 provides for a more open or "subjective" definition of what counts as religion and religious acts. However, it primarily protects religious acts (not all kinds of religiously motivated behaviour or demands), being "actions that are a part of a religious or ideological practice in a generally known form" (Vermeulen and Aarras 2009: 70, my translation, M.M.). Third, the protection of "non-religious beliefs" was explicitly included in the constitution, and both article 1 (on non-discrimination) and article 6 put secular "philosophies of life" (*levensovertuigingen*) on equal footing with religious ones.

The principle of non-financing of religion is often considered to be one of the defining characteristics of models of separation. However, we need to distinguish between direct (e.g. subsidies) and indirect (e.g. tax exemptions) forms of public financing, and between financing of core religious activities and organizations and the financing of peripheral or faith-based activities and organizations. The Dutch model has effectively evolved towards a regime in which near to all forms of direct financing of core religious institutions and activities have been abolished. Until late in the 20th century the state was responsible for salaries and pensions of religious personnel, but this ended with an agreement with representatives of the churches in 1981.[6] Another major financial connection concerned subsidies for the costs of construction and upkeep of churches. Legal amendments ended existing national and municipal opportunities for direct financing of religious buildings. Especially the withdrawing, in 1975, of the Church Building Subsidy Act of 1962 was important in this respect. At the time, a major issue was how Muslims and (less numerous) Hindus, should be treated in this regard. One could easily argue that as

---

[5] To be precise I should mention that these changes were only effectuated in 1983, but were already included and/or mentioned in the constitutional amendment of 1972. With regard to the financing of the costs of church building the opportunities were ended in 1975 (when the Church Building Subsidy Act was rescinded) and an additional article in the constitution of 1972 mentioned that the state guarantee for salaries and pensions would only be upheld *until* an agreement was made with the churches on how to end these financial relations. Negotiations on such an agreement were successfully completed in 1981 (see below).

[6] The constitutional revision of 1972 abolished article 185 which had formed the legal basis for the financing of religion. A precondition was that an agreement would be reached with representatives of the churches. Interestingly, an advisory commission (Commission of State on Religions) had advised in 1967 to set up a system of state subsidies for all church bodies. That advice was already seen as inappropriate a few years later (Maussen 2009: 52).

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination After 'Pillarization'. The Example of Faith-based Schools

5

"religious newcomers" they were entitled to some financial support to "catch up". The Hirsch Ballin State Committee that investigated the matter concluded in 1988 that the new constitution did not, in a principled way, preclude all financing.[7] Impermanent subsidy schemes could be justified both by invoking the principle of equal treatment (after all Christian groups had greatly profited from subsidies in the past) *and* in view of preventing constitutional rights becoming "illusory" for some individuals or groups in society, for example because of a lack of physical opportunities for religious practice. Nevertheless, this interpretation was not carried forward into legislation. In 1991 the government argued there was no longer a shortage of houses of worship among immigrant communities. Nowadays, most legal scholars conclude, in contrast with the arguments of the Hirsch Ballin State Committee, that the Dutch constitution does *not* insist that religious freedom is a "positive" or "social" right, meaning that there is no obligation for the state to intervene to create genuine opportunities for religious practice (Vermeulen and Aarrass 2009: 72).

It is important to note that with regard to financing of religion the Dutch approach is quite similar to, for example, the French model. Both countries refuse most forms of *direct* financing of core religious institutions and activities, but allow for all kinds of *indirect* financing for these institutions and activities; such as tax exemptions for religious organizations,[8] subsidies for the upkeep of religious buildings (sometimes, but not exclusively, because of their monumental status), paying salaries of chaplainries in prisons, and providing opportunities for religious broadcasting on state sponsored public television. Both countries also allow for direct and indirect financing for peripheral or faith-based organizations and activities, even though there are probably more opportunities to do so out in the open in the Netherlands than in France. These can be subsidies for non-governmental religious schools, subsidies for cultural organizations that have clear religious counterparts, or for non-religious activities set up by religious organizations.

Yet, the fact that the Netherlands should in constitutional terms be classified as a system of "non-establishment" or "separation" does not mean it has a very strict separation model. There is no equivalent of a "wall of separation" doctrine as in the United States, nor is the "secular nature" of the political system inscribed in the constitution, as in France. The less rigorous version of separation that characterizes the Dutch model is visible in the room provided for religious symbols, identities and expressions in public institutions and in the public realm. It is also observable in the way public authorities relate to all kinds of faith-based (not core-religious) activities and organizations.

Religious free exercise rights are also guaranteed by other legal regulations. These include not only constitutional articles, such as the articles on freedom of education and freedoms of association,[9] but also general laws, such as the Public Manifestations Act of 1988 (protecting the right to the church bell ringing, the call to prayer, and Catholic processions for example), and article 44–3 of the Law on Health and Well-being for Animals (protecting the right to ritual slaughtering for Jews and Muslims). The next section discusses some aspects of the ideas and historical developments underlying the Dutch approach.

---

[7] See Hirsch Ballin State Committee (1988) *Overheid, godsdienst en levensovertuiging. Eindrapport criteria voor steunverlening aan kerkgenootschappen en andere genootschappen op geestelijke grondslag.* Den Haag: Ministerie van Binnenlandse Zaken.

[8] In France religious organizations can be set up as "cultic associations" (*associations cultuelles*), a creation of the 1905 Law on Separation of Churches and the State in order to profit from some of these indirect forms of subsidies. In the Netherlands article 2.2 of the Civil Code provides the opportunity for organisations to have the status of "religious body" (*kerkgenootschap*), but organisations that do not register as such can still demand a similar treatment (Van Bijsterveld 2005: 297).

[9] A leading intellectual of the Social Democrat Party, Paul de Beer, suggested in 2007 that there is no need for a special article on religious freedom because other constitutional freedoms provide enough protection for religious expressions and organizations.

Historical and ideational legacies

Describing the genesis of church-state traditions and identifying key thinkers, ideas and events is a complex undertaking. In my view it is useful to distinguish seven aspects of a Dutch tradition, which can be reconstructed in relation to distinctive periods, without thereby suggesting that other moments or periods were not relevant for their development. These aspects are: (1) toleration, (2) Calvinism and separation of church and state, (3) equality of religions, (4) liberal versus neo-Calvinist conceptions of pluralism and neutrality, (5) "parallelism", "subsidiarity" and "pillarization", (6) "depillarizaton", welfare state and civil society, and (7) immigration, secularization and subjectivation. Drawing on some excellent studies on Dutch state-religion history[10], but without having the space and competence to flesh out the historical context myself, these headings are useful to highlight some important formative moments.

Toleration

In the early modern and modern periods – roughly bridging between the Union of Utrecht 1579, the Dutch Republic (1588–1795), the French Period (1785–1814) and the early decentralized unitary state and Monarchy (1814–1848) – the Netherlands did not have a regime respecting religious freedom and guaranteeing equality, but there was also no active persecution of religious minorities. Dissenting protestant groups (Anabaptists, Mennonites, Lutherans), Catholics and Jews were publicly tolerated. An important social practice illustrative of toleration was the clandestine church (*schuilkerk*) which allowed dissenters to worship in spaces demarcated as private, thereby preserving the monopoly of the official church in the public sphere (Kaplan 2007: 176). All groups, including Catholics, would choose a relatively reticent and introvert style of presenting themselves in the public realm. All would share in a puritan public order which disapproved extravagant behaviour (Aerts 2001: 69). There was little open debate and criticism between the different groups. The governing elites of the cities were mainly concerned with maintaining peace and public order in a religiously divided country, motivated in part by the interests of commerce and industry. The practices of pragmatic "toleration" created room for religious diversity and freedom, without the leading role of the Dutch Reformed Church being challenged and without religious minorities (including Catholics) being able to attain equal standing. These practices of "toleration" as a way of regulating conflict and keeping it within bounds have continued to constitute an important aspect of the Dutch tradition, also when the regime shifted towards protecting more genuine freedom, equality and separation of state and church.

Separation and Calvinism

The Reformed Church had been the "leading church", but its privileged position was challenged when the *staatsregeling* of 1798 introduced the notion of "separation of church and state". The constitution of 1814 introduced the idea (modeled after the French Concordat) that the state would have to "recognize" religious bodies (and thereby the related communities) and that this would be the basis of religious freedom. When William I sought to get more grip on the churches, by controlling nominations and internal affairs and by refusing to give recognition to some religious orders and congregations, several groups protested. The specific significance of "separation" that was thus emerging in the Dutch context was the outcome of political developments as well as distinctive ideas cultivated in liberal, Calvinist and Catholic thought. The Dutch Enlightenment had not been fiercely

---

[10] Notably Van Rooden (1996), Harinck (2006), Knippenberg (2006), Kaplan (2007) and Selderhuis (ed.) (2010).

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination After 'Pillarization'. The Example of Faith-based Schools

7

anti-religious and the notion of "separation" did not mean that religion was to be "banned" from the public realm and from public, governmental institutions. Even when the state would not directly control religious organizations, it could still support a "non-sectarian" or "general" Protestant interpretation of the Christian faith and encourage teaching of Christian morality in state schools. Secondly, dissenting and Orthodox protestant movements in the early and mid-19th century, that separated from the Dutch Reformed Church (*de afgescheidenen* around 1834 and the *Dolerenden* in 1886), drew on their reading of Calvinist theology[11] to strongly object to control by the government and any form of "formal recognition" by the state. For neo-Calvinists, such as Abraham Kuyper, "separation" was a way of protecting the free church *from* state influence, rather than the other way around. Catholics could agree with this idea that state interference with internal religious affairs should be resisted, and William I's attempts to meddle with the church was one of the reasons for the secession of Belgium in 1830. In Catholic doctrine secular and religious authority had their own claims to sovereignty (Cesar and Rome). Given their minority position, Catholics in the Netherlands preferred to be shielded from state influence and they could not aspire to gain control over the state (as in France during the restorations in the 19th century for example). All major religious groups thus found reasons to believe that separation meant that the state remained at a distance in order for religions to develop a space for themselves in civil society and in the public realm.

Equality

While toleration and separation may have given room to dissenters, Jews and Catholics, they did not amount to equality. Catholics had to wait until 1848 when the constitution created genuine opportunities for religions to organize independently from the state. The Catholics made use of these freedoms to re-establish the episcopal hierarchy (in 1853) and to begin building new churches in the second half of the 19th century. This constitutional equality did not (yet) signify equal opportunities or equal social standing. Moderate and Orthodox Protestants such as Groen van Prinsterer, continued to see the Netherlands as a protestant nation.[12] Anti-Papism remained an important political sentiment and until late in the 20th (!) century public manifestations and Catholic processions were forbidden in some municipalities. Yet, Catholics, who were concentrated in the Southern provinces and in some cities, such as Amsterdam, were able to emancipate and establish themselves as one of "pillars" in a nation of minorities (Sengers 2004). The same cannot be said for Jews, let alone for more recent religious newcomers such as Hindus, Buddhists and Muslims. As a constitutional principle, equality of religions became a part of the Dutch regime fairly early on, but more equal recognition could only be the outcome of social struggle and emancipation.

Pluralism and neutrality

In Dutch historiography the constitution of 1848 is often said to have created a legal framework for a modern, democratic state, but without the underlying liberal philosophy having a broad support among the population and elites. The constitution was more liberal and modern than Dutch society itself, and in the second half of the 19th century social forces managed to bend the interpretation of the new arrangements away from the ideas of the liberal elites. Confessional groups managed to secure a pluralist conception of the public sphere and of the neutrality of the state that stood in glaring opposition to the ideas of the liberals (Harinck 2006: 113). Whereas liberals had hoped to see the public sphere

---

[11] Harinck writes: "Calvinism thus shaped the significance of the liberal idea of separation of church and state in the sphere of civil society" (2006: 117, my translation, M.M.).

[12] On this aspect see Van Rooden (1996).

becoming more liberal and secular, confessional groups mobilized to secure what they called "real pluralism" in politics, media, education and public services. Both in terms of theories and in terms of practical politics and organization the influence of Abraham Kuyper on the Dutch tradition was tremendous in this period. In his view liberalism was one among many worldviews and the public sphere should leave room for all kinds of denominations to institutionalize and organize themselves. Furthermore, his doctrine of "sphere sovereignty" stipulated that society was made up of different spheres that should operate in relative autonomy from one another, thus allowing for freedom and plurality:

> There is a domain of nature in which the Sovereign exerts power over matter according to fixed laws. There is also a domain of the personal, of the household, of science, of social and ecclesiastical life, each of which obeys to its own laws of life, each subject to its own chief. A realm of thought where only the laws of logic may rule. A realm of conscience where none but the Holy One may give sovereign commands. Finally, a realm of faith where the person alone is sovereign who through that faith consecrates himself in the depths of his being (Kuyper 1998: 467).

These ideas became of significance around the social and political conflicts that marked the second half of the 19th century: the struggle around state financing of public schools, issues around the social protection of workers and about general suffrage. Political developments left their imprints on the liberal constitutional framework and also influenced the meaning of "separation of church and state". In the Dutch context it came to mean that the state should leave room for religious denominations to develop in freedom. An understanding of neutrality of the state developed as the principle stating that the state should not take sides among any of the worldviews, religious or not, and should not privilege any one of them. The "public sphere" and "civil society" were conceptualized as consisting of a variety of institutions and organizations that could represent different worldviews and could constitute a counterweight to a state, necessary because: "every State by its very nature will draw the iron band as tightly around the staves as the crimp of those staves allows. Ultimately, therefore, it depends on the life spheres themselves whether they will flourish in freedom or groan under State coercion" (Kuyper 1998: 473). In the neo-Calvinist doctrine the church should also respect the limits of its sphere and allow independent religious organizations to be set up in education, politics or media. For Catholics, by contrasts, the Church continued to function as the pivot on which faith based associations and institutions turned.

<u>"Parallelism", "subsidiarity" and "pillarization"</u>

Kuyper's doctrine of "sphere sovereignty" intersected with his view of societal pluralism and his doctrine of "parallelism", by which he meant the "right and freedom of differing religious and philosophical perspectives and movements to develop freely on separate, parallel tracks, neither hindered nor helped by the government" (Monsma and Soper 2009: 59). Kuyper's neo-Calvinist views had an equivalent in the Catholic doctrine of "subsidiarity" that stipulated that the government should only "supply" (lit. subsidy) what Catholics could not organize for themselves (Harinck and Winkeler 2008: 716). The impact of these ideas and doctrines on Dutch church-state traditions, political institutions and political culture was greatly influenced by the "pillarization". The latter should not be understood as a philosophical "model" but as a "societal configuration" resulting from specific historical and political processes, which were legitimized by ideas about pluralism, politics, emancipation and nationhood.[13] The forming of denominational organizations in

---

[13] It is important to keep in mind the different theoretical explanations of "pillarization" that have been developed in historical and sociological studies. Marxist interpretations have emphasized how (denominational) elites managed to control the emancipation of workers within "pillars" thus appeasing a potential for a united class-

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination
After 'Pillarization'. The Example of Faith-based Schools

9

all kinds of spheres (education, media, sports and leisure, universities, unions, political parties) and the major political conflicts that were settled with the "Great Compromise" or the Pacification of 1917 contributed to the emergence of a "pillarized" society. This was a society in which subcultural groups were institutionalized into a tightly knit web of institutions and organizations, covering a broad range of societal domains, including a political mass party, and holding a near monopoly over the forms of associational life of the members of the respective subculture (Hellemans 2006; Maussen 2012: 342). With regard to church state traditions, pillarization greatly contributed to the idea that faith-based civil society organizations are an important aspect of a "free society", that society is inherently pluralistic and that liberal or secular organization should not be privileged or disadvantaged over religious ones, and finally that "neutrality" of the state implies the government acting in an even-handed way toward all different denominations.

"Depillarizaton", secularization, welfare state and civil society

During the period of pillarization, roughly from the first decades of the 20th century until the late 1960s, ideological differences between groups ran deep, they were institutionalized across a wide range of societal spheres and they allowed members of the different pillar communities to live "parallel lives" to some extent.[14] Elite based government, the willingness of political elites to make compromises and of the authorities to respect evenhandedness, and the relative tameness of the population allowed for stability. Finally it is important to recall that it was very common that religion formed the basis for social and political organization in all kinds of societal spheres. A great deal of "public tasks" were performed by pillar organizations that were subsidized. The public role of religions was commonly seen as fully legitimate. Many aspects of the church-state regime corresponded very well with this type of social-political constellation: the state could redistribute financial resources to faith-based and religious organizations, as long as it would respect evenhandedness (and also subsidize non-religious organizations or create secular public institutions where needed), the different religious bodies (*kerkgenootschappen*) and their leadership could constitute natural interlocutors for the state and it seemed safe to assume authorities could thereby claim to reach all believers, and the omnipresence of religion in the public realm legitimized that the state was open to religion, not unreceptive to it. These social foundations began to disintegrate when a process of "de-pillarization" set in, fuelled by individualization, the remarkable rise in the standard of living in the three decades following the Second World War, growing social mobility, revolt against elites, renewed political polarization in the 1960s and 1970s, the emergence of new political cleavages (women's, Marxist' and students' movement) and new political parties, new media (television) and decline in church membership and religious practice. Another major change was the expansion of the welfare state and the idea that the state should guarantee social rights and set up adequate public services, which to some extent undercut the role of civil society (faith based) service provision.

These societal changes would gradually impact on church state relations, even though at first revisions of the legal framework were being prepared and discussed on a parallel track. In the decade following World War II two Commissions were installed to advise on the (financial) relations between the state and church bodies: the Commission of

---

struggle (Stuurman 1983), others have emphasized the dimension of "emancipation" of socialist, Orthodox Protestant and Catholic groups who were disadvantaged compared to mainstream Protestants and liberals, others have emphasized the role "top down government" and elite-based "rules of the game" in a deeply divided society (Lijphart 1968), and still others have argued that "pillarization" emerged out of the intersections between denominational pluralism and the forces of "modernization". See Blom (1983) and Hellemans (2006).

[14] However, in more recent historical studies the accuracy of this interpretation of social life in the late 19th and early 20th century has been challenged. Dutch society was far more dynamic and there were more interactions across denominational differences than the metaphors "pillar" and "pillarized" suggest (see Van Dam 2011).

State on Religions (*Staatscommissie voor de zaken van de Erediensten*), installed in 1946 but only issuing a report in 1967, and the Commission Sassen that advised on a national regulation for the financing of church building (that published its report in 1957).[15] Whereas the advice of these commissions were very much in line with continuing the "pillarized model", the government decided in favour of a different direction, which resulted in the constitutional revisions of 1972 already referred to above. The 1983 constitution in a way completed a turn away from "pillarization", at least with regard to the understanding of societal and religious pluralism, the relations between the state and organized religions (*kerkgenootschappen*), and the financing of core religious activities (see section 2 above). However, the constitutional amendments were also already responses to profound social changes other than those commonly associated with "de-pillarization".

Subjectivation, immigration, and liberalization

The changes Dutch society went through over the past 30 years are to some extent a continuation of transformations that set in earlier, related to growing social and geographical mobility, individualization and profound changes in the way religion plays a role in individual lives and identities ("subjectivation" and "secularization"), more dynamic social and political identities ("volatility", "light communities") and further emancipation of women and gays. However, there were also two major societal changes that were relatively new compared to the period of "de-pillarization" (i.e. between the late 1960s and late 1970s).

First, post-war immigration introduced new forms of ethnic and religious diversity and especially a growing importance of Islam. The "diversification" of the religious landscape was further strengthened with the growing popularity of other Christian churches (such as Evangelicals) and religious movements (for example Scientology) among the native population. Migration and diversification presented a threefold challenge to existing church-state traditions: (1) it raised the issue of equality and equal treatment of all religions (including newcomers), (2) it destabilized existing concepts of what religion was (including organizational forms, rituals, symbols, demands) and how it should be dealt with, and, finally (3) it created a potential for conflict because, generally speaking, immigrant groups tended to be more strongly religious than the secularizing host populations, especially in the bigger cities.

Second, the period of extension of the welfare state, roughly unto the late 1970s, undermined the social basis and structural need for many pillar organizations, for example with regard to networks of social support, service provision and care. In the 1980s a period of welfare state retraction began, and neo-liberal reforms over the past 20 years have resulted in the privatization and commercialization of many public tasks and public services. Commercial organizations allegedly were able to outperform state institutions as well as the more "old-fashioned" pillar institution, especially in the context of a dynamic and individualized society in which "tailor made" and "high quality" services were asked for (Van Bijsterveld 2011). But, it is also in other societal domains such as media, sports, higher education, funeral and burial,[16] and health and mental care that we witness a growing professionalization, commercialization and diversification of services and activities. These trends have ensured that the role of faith-based organizations and institutions differs radically from the role they played in Dutch society before.

With respect to religious freedom and free exercise rights, these major societal transformations have by and large been accommodated within the existing constitutional and legal framework. It is to these more contemporary discussions that I now turn.

---

[15] This commission advised to set up a national regulation for subsidies, which became the Church Building Subsidy Act *Wet Premie Kerkenbouw* (1962–1982, but already rescinded in 1975). See Verplanke (1963).

[16] On changes in the sphere of funeral and burial services see Van den Breemer and Maussen (2012).

Religious Governance in the Netherlands: Associative Freedoms and Non-discrimination
After 'Pillarization'. The Example of Faith-based Schools

11

Crisis of the model? Challenges to church-state traditions in the domain of education

A broad and diverse set of issues has been discussed over the past 15–20 years in relation to church state relations in the Netherlands. Whereas there was initially (1980s and early 1990s) much debate on the need to provide more equal opportunities for religious newcomers, the issues that are now on the agenda are an illustration of the increased visibility of secular voices that advocate ending the alleged "privileges" that have been granted to religions and to religious people in the past. Political parties that associate themselves with secularism (or that at least distance themselves from confessional politics), notably the Socialist Party (SP) and the Liberal Democrats (D66), sometimes with support of the Social Democrat Party (PvdA), the Liberal Party (VVD), the Freedom Party (PVV), the Green Party (GroenLinks) and the Animal Rights Party (Dierenpartij) and intellectuals such as August Hans den Boef (Den Boef 2003) and Paul Cliteur (Cliteur 2010) demand more "strict separation" of state and church and more strict neutrality and equal treatment of citizens. Proposals have been drafted to change laws and policies: to end the financing of faith-based broadcasting organizations, to stop subsidizing an Orthodox religious political party that refuses women to hold management positions (the Political Reformed Party (SGP), see Schuster 2009), to end opportunities for ritual slaughtering without pre-stunning, no longer considering religious speech as "protected speech" (in the case of homophobic speech, or in the context of incitement to terrorism) and no longer treating "blasphemy" as criminalized speech, no longer allowing schools to select pupils and staff on the basis of religious affiliation, excluding religious symbols and religiously motivated behaviour from specific (institutional) settings (courts, schools, universities) (Hertogh 2009), no longer allowing discrimination on the basis of gender and/or sexual orientation (for example in religious rituals, but also in religious schools), not allowing schools to teach about "creationism" as if it were a scientific view on the origin of life, obliging schools to teach on sexuality and "sexual diversity", etcetera. When taken together these demands can be seen as asking to end privileges for religion or, from the point of view of confessional parties, as reducing the opportunities for religion. Three main issues seem to be at stake, namely the need: (1) to end positive privileges for religion and for religious people, acts (speech, behaviour) and organizations; (2) to give priority to liberal non-discrimination or equal treatment in all kinds of organizations, domains and spheres of life, including religious ones; and (3) to limit opportunities for voluntary self-separation on the basis of religion (and ethnicity) in view of combatting (involuntary) segregation, unequal treatment and unequal opportunities (notably of women and gays) for members of religious groups and communities. I briefly explore how these issues are raised in regard to non-governmental religious schools and whether they may result in more profound changes of "the" Dutch model.[17]

Faith-based schools: freedom of education and liberal non-discrimination

---

[17] In this context my presentation of the Dutch model cannot be entirely non-partisan. Authors who are more critical of the Dutch approach have spoken of an outdated model of "pillarization" (Statham et al. 2005), a version of "multiculturalism" applied to religion (Cliteur) or a model in which church and state are not really separated (De Beer 2007). Authors who sympathize with the Dutch tradition and believe it is well suited to cope with contemporary challenges, will present it as a model of "moderate separation" or as based on pragmatic "toleration" (see respectively Van Bijsterveld 2005; Harinck 2006). The American scholars Monsma and Soper (2009: 82–83) have coined the term "principled pluralism", seeing it as a model based on two basic beliefs: a pluralistic view of society that welcomes religious and philosophical movements in the public life of the nation and the idea that nonreligious, "neutral" organizations and movements are not truly neutral but are yet another *richting* or direction. Even though I have tried to give a fair perspective on both the legal arrangements and the history of the Dutch model, by taking up the label "principled pluralism" I emphasize the strengths of the Dutch tradition, rather than presenting it as outdated and misguided.

Education of children and young adults is one of the spheres of society deemed most important to parents, religious communities and the state, who all have their stakes and ideas when it comes to raising and socializing new generations. Not surprisingly, education and the room for religion in the education system are among the most controversial issues in church-state relations. The very idea that there should be some room for religion in education can be grounded in two basic freedoms: the freedom of religion and the freedom of education. The freedom of religion entails, among other things, the right to manifest ones religion "in public and in private" and "in worship, teaching, practice and observance" (article 9 ECHR). Schools can be seen as the institutional context in which the "freedom to transmit and implant religious views in the next generation" (Galanter in Bader 2007a: 131) is materializing, but also as falling within the scope of the "associational or organizational freedoms of religion" (i.e. the liberty to administer religious and faith based institutions) and as a place in which religious expression and freedom of conscience need to be respected. The freedom of education, on the other hand, entails both the right of groups or individuals to "establish and operate state-independent primary and secondary schools according to their own religious, philosophical, or pedagogical principles" *and* the freedom of parents "to choose the school they want their children to attend" (Vermeulen 2004: 31).

In the Dutch context it makes sense to discuss the values and limits of associational freedoms of religion in the domain of education primarily under the heading of "freedom of education", and notably in relation to article 23 of the constitution. Besides freedom of education this article guarantees "statutory equality" of governmental or public (*openbare*) and non-governmental or denominational (*bijzondere*) schools and both are funded according to identical and equivalent criteria (Vermeulen 2004: 34). Of all primary schools about 68% is non-governmental and of all secondary schools this percentage is 70% (Versteegt and Maussen 2011: 6). More specifically the associational freedoms associated with freedom of education comprise (1) the freedom to found a school (*vrijheid van stichting*) which is *entitled to be financed if* the founders of a school can demonstrate that the school represents a "philosophy" (lit. "direction" (*richting*)) corresponding to a particular religious or ideological worldview *that also is of relevance in other societal domains,*[18] and that the school will be able to attract sufficient pupils and that there is no similar school within three kilometers of the proposed area. (2) The freedom of direction (*vrijheid van richting*) entails the freedom to express the fundamental orientation of the school, related to its particular philosophy, for example in selecting staff and pupils, in choosing how to teach on specific (sensitive) topics, and in deciding on specific behavioural or dress codes in the school. (3) The freedom of "internal organization" (*inrichting*) protects pedagogical and organizational autonomy, allowing both governmental and non-governmental schools to select a specific pedagogical approach (Montessori, Dalton) and allowing schools to make decisions on teaching materials, buildings, and how to set up the internal administration (in case of non-governmental schools, for example dividing the authority between school board that usually includes representatives of denominational organizations and parents, and the school management (director and staff)).

A lot has been said about the freedom of education in the Netherlands in relation to issues such as socio-economic and ethno-cultural segregation, the under-performance of some schools (notably Islamic schools and also public schools with a great number of "disadvantaged" pupils) and the role all schools should play in teaching "good citizenship" and civic education (*burgerschapskunde*) (see Versteegt and Maussen 2011). However,

---

[18] As the Council for Education explains (2012a: 19) we need to be precise here because, on the one hand, the freedom to found schools is broader and also includes the freedom to create private schools, so the key issue is whether there is an obligation for (equal) funding of these schools. On the other hand, not all (sub-) cultural identities or worldviews can be drawn upon to demand respect for this constitutional right, which is reserved to more established collective, denominational identities that are "comprehensive" and present in different societal spheres. This understanding of what a "direction" (*richting*) is, thereby is said to be biased in favour of more established, religious denominations (see below).

because my focus here is on how the debate on freedom of education intersects with the debate on religious freedom, church–state relations, neutrality and non-discrimination I limit myself to the debates that are directly relevant to these issues. Still, one needs to understand how the more general societal changes that were mentioned above ("secularization", "individualization", "social mobility", "liberalization", new models of public management) have affected education in the Netherlands in such a way that revisions of both the understanding of freedom of education and of church-state relations seem in place.

In a recent advisory report on the future of article 23, the Council of Education discussed important trends that affect the understanding of freedom of education (Onderwijsraad 2012a and Huisman et al. 2011). Two need to be mentioned. First, in an increasingly globalized and competitive economy and knowledge-society, parents, especially higher educated parents, are very aware of the importance of good schools for their children. They are also increasingly sensitive to variation between schools in terms of pedagogical approach and school performance, and many parents are not primarily interested in the denominational identity of the school (for example they will send their children to a Catholic school because it has a good reputation and uses Montessori as a pedagogical approach). Parents are less inclined to themselves participate in school boards, further strengthening a trend in which schools have become larger, professionalized and bureaucratic organizations and school boards are increasingly occupied by "professionals". In such a context a logic of "offer and demand" will shape freedom of education with regard to the selection of a school, and parents will be more inclined to "vote with their feet" (i.e. leave a school) than to be founders of new schools or to demand a say in school policy. In this context, two important aspects of the understanding of freedom of education may require new interpretations. On the one hand, it should be more clear who is the main "carrier" (*drager*) of this freedom or these rights: the actors who *de facto* run the school *or* the parents (in the interest of children)? Historically and in its phrasing, article 23 was mostly interpreted as protecting the "interests of institutions, notably of non-governmental (*bijzondere*) schools" (Onderwijsraad 2012a: 85). In the new context, the balance may shift towards the need for schools to respond to demands of parents (and children) who are seen as carriers of a "right to education", rather than a school board or school management exercising its organizational autonomy resulting from the "freedom of direction" of which the school (as opposed to the parents and children) considers itself to be the main carrier. As the Council of Education observes, such an interpretation of the freedom of education is also visible in the ECHR that is more "individual oriented" and that stresses that children and parents have a right to education that corresponds to their religious and philosophical convictions (article 2) (Onderwijsraad 2012a: 80). On the other hand, there may be good reasons to re-consider the concept of "philosophy of life" (*levensovertuiging*) or "direction" (*richting*) in the context of education. The fact that to qualify as a "direction" that can form the basis for the "right to found a school" an ideology or doctrine should be "comprehensive" and should be visible if not institutionalized in different societal spheres, creates a bias in favour of religious worldviews (especially those of more established religious communities) and in favour of some secular "worldviews" that are more comprehensive in their expression (such as Humanism). In upholding this understanding of what constitutes a "worldview" the state is insufficient neutral, given the new meanings identity and ideology have for different groups in present-day Dutch society. In our times, the state should more evenhandedly accommodate all kinds of "viable and socially articulated views" (*levensvatbare, maatschappelijk gearticuleerde opvattingen*) (Onderwijsraad 2012a: 45). Furthermore, especially in the domain of education, for parents the pedagogical philosophy and style of schools may matter more than their broader (religious) "worldview". In that light, it seems plausible to argue that it should become easier to found a new school on the basis of a recognizable *educational* identity, because

this would now be more essential in view of protecting the freedom of education.[19] Of course, there is also the risk of a further "subjectivizing" or "relativizing" of the very notion of "philosophy" or "doctrine", meaning that any individual, group or subculture could demand constitutional protection and the right to set up schools and have them financed. The Council of Education has advised to use a more "open" notion of the concept "direction" (*richting*), to distinguish more precisely in what ways the concepts relates to different aspects of legislation and fundamental freedoms in education, and to diversify the interpretations of the ways in which "denominational identity" and "associational freedoms" relate to other legal or constitutional requirements (such as non-discrimination). For example, it should not be possible for a denominational school to discriminate against pupils on the basis of its "pedagogical identity", whereas this should remain possible for schools founded on the basis of a religious identity (e.g. for a Jewish schools to select only Jewish pupils) (Onderwijsraad 2012a: 51; Vermeulen 2004: 37).

Secondly, the meaning of freedom of education has also changed because of new management philosophies and ideas about the way public services, education among them, can best be provided. In view of accommodating the demand for greater diversity in the provision of education (in terms of approaches and styles, as well as in terms of tracks and specialization) and in view of (allegedly) improving efficiency, quality and creating "economies of scale", successive governments have opted for a kind of "market-model" in which schools have more autonomy in terms of running their administration and deciding on their curriculum. The state should act primarily as a monitoring and standard setting actor, and it should seek to strictly uphold objective criteria of quality and only be a facilitator to help alternative, autonomous ways to reach the requested outputs (Onderwijsraad 2012a: 60). With regard to the associational freedoms of (religious) schools two possible consequences of this management model need to be mentioned. Firstly, monitoring of output and performance and checking whether (minimal) standards are respected may demand a fairly extensive apparatus of control and inspection. In short, giving more "autonomy to schools" in term of "internal management" does not automatically go with lower levels of public scrutiny, and especially in fairly centralized education systems such as in the Netherlands institutions such as the Inspectorate of Education may actually have more opportunities to interfere with school policies. Especially when "softer" goals (as opposed to cognitive requirements), such as teaching good citizenship and tolerance, become a part of standard requirements, this provides opportunities for the state to interfere with the freedom of (religious) schools.[20] Secondly, the fact that schools are given more "autonomy" is motivated in this context by a "management philosophy", rather than in view of protecting basic freedoms and room for cultural and religious diversity. There is no reason to assume that the type of autonomy granted to schools can substitute or strengthen the type of associational freedoms that are protected via the constitution and other key legal texts.

Challenges for Orthodox religious schools

In the above I discussed the ways societal changes and changing ideas about the role of the state affect interpretations of freedom of education and religious freedom. Besides these more general trends and the will to correct unwanted bias in the Dutch model in favour of religious worldviews, there are also issues on the agenda that more directly concern

---

[19] At present the choice for a particular method and pedagogy (e.g Jenaplan, Montessori, Dalton) does not in itself constitute sufficient ground to found a new school (Huisman et al. 2011).

[20] See below on the issue of making "attention for sexuality and sexual diversity" an educational requirement. Another case in point is the way in which poor performance in "citizenship education" (*burgerschapskunde*) has been used as an argument to justify closing down an Islamic school in Amsterdam.

tensions between religious freedom (in education) and other principles, notably liberal non-discrimination. The tone in public and political debate is often set around incidents involving more orthodox religious schools, notably Reformed schools and occasionally Jewish schools, and Islamic schools. They involve all kinds of cases; on a Catholic school banning the Islamic headscarf, on whether or not a university of applied sciences (hbo) was entitled to lay off a Muslim teacher refusing to shake hands with women, on Islamic schools making use of teaching materials provided by an organization based in Saudi-Arabia, on anti-gay speech by directors of Reformed or Islamic schools, etcetera (see Versteegt and Maussen 2011: 14–17). Here I focus on three proposals that figure on the political agenda these days.[21]

In the first place, religious schools have the right to select and admit pupils based on the school's religious identity (Onderwijsraad 2010). Schools can demand that pupils and their parents support the mission of the school. At present there is a political debate ongoing about a proposal to introduce a so-called "duty to accept" (*acceptatieplicht*) on non-governmental schools. Whereas at present schools may demand that parents subscribe (*onderschrijven*) to the foundations of the school, in the future the school may only demand that parents agree to "respect" (*respecteren*) the foundations of the school. Whereas in the former situation a school could justify not accepting a pupil by arguing that by their behaviour or statements parents demonstrated they did not (truly) subscribe to the foundation of the school (e.g. by being member of another church, or by being divorced), in the new situation parents would only have to agree to respect the foundations, for example by agreeing to follow the rules set by the school. One of the motives behind this proposal was to strengthen the freedom of parents to have their child accepted in a particular school. Another motive is to prevent that denominational schools make strategic use of their admission rules to refuse weaker pupils. Some religious schools with good educational performance are said to refuse pupils with an immigrant background in order to remain "white" schools.

In the second place, there is the freedom to select and recruit personnel. Religious affiliation can be a reason for selecting (or refusing to select) a specific teacher. Other selection criteria, which are severely contested in public debate, are related to gender norms or sexual orientation. Some religious schools do not want to hire teachers that are divorced or who are homosexual and some schools demand that teachers are not explicit about their homosexuality. An important legal-political debate in this respect is on the so-called "the sole grounds construction" (*enkele feit constructie*), a special provision in the Equal Treatment Act (Algemene wet gelijke behandeling, AWGB) of 1994. This provision says that it is illegal to discriminate on the basis of "the sole grounds" of gender, sexual orientation or civil status, but that religious organizations and religious schools may nevertheless refuse to employ people if they have "additional reasons" justifying why the lifestyle of a person prevents him or her to subscribe to the identity of the school.

A widely debated court-case in this respect was related to a teacher of a Reformed school, who was no longer allowed to teach at his school after he told the school principal in the year 2009 that he was in a homosexual relationship (Oomen et al. 2009). Despite the fact that the teacher did not press charges against the school and came to a personal agreement about the situation, there was an appeal at the Commission for Equal Treatment, which was initiated by the COC, the Dutch organization for homosexual emancipation. The Council of Europe and the European Commission have argued that the Netherlands have

---

not adequately implemented European guidelines regarding the protection of rights of homosexual employees within religious schools into national laws (Oomen et al 2009: 26). In the context of increasing political pressure some Reformed schools are trying to redefine their practice in this regard (Versteegt and Maussen 2011). The Union for Reformed Education, (VGS, Vereniging voor Gereformeerd Schoolonderwijs), which represents the majority of Reformed schools, wrote a document on homosexuality in 2008. They suggested that homosexuals should not be banned from Reformed schools (there should be "a place for staff or students with a homosexual orientation") and said that schools should help pupils and staff who are "struggling" with homosexual feelings "through the mercy of The Lord fight against all sinful desires" and with God's help choose a life without homosexual praxis and relationships (Oomen et al 2009: 66). Other spokesmen of the Reformed communities have said that Gay teachers cannot work at Reformed schools because "the behaviour and choices of teachers should not violate what they communicate to the youth". More recently, the Minister of Education, Van Bijsterveld, said the Reformed schools no longer obliged teachers to sign a document saying they would subscribe to Biblical principles with regard to marriage.[22]

Thirdly, there is the freedom of religious schools to shape their own curriculum and to select teaching aids in accordance with religious principles. Schools have to follow general guidelines (e.g. minimum number of lessons or hours), meet specific educational standards and examination guidelines, and they are not allowed to practice indoctrination that serves commercial, political, or religious agendas (Vedder 2006: 45). Yet, religious schools can make choices, with regard to teaching evolution theory or teaching about sexuality or gender norms. Reformed schools usually have special text books for history, biology or literature, and at present their own teaching method for music. Associational freedoms with respect to curriculum may become an issue when governments (or civil society associations) want schools to teach certain messages that religious schools object to. One issue in this regard are programs to enhance tolerance of homosexuals and teaching material related to sexual identity that are being developed with the support of the Ministry of Education and that some religious schools may refuse to use.

More recently, in 2010, two members of Parliament, Mr. Pechtold and Mr. Van der Ham both representatives of the Liberal Democrats (D66) successfully filed a parliamentary motion demanding a change of the formulation of the "attainment targets" (*kerndoelen*) concerning the teaching about pluralism in Dutch society, both in primary schools (article 38) and in secondary schools (article 43). These articles specify that pupils learn about the diversity of "life convictions", "differences in culture and philosophies of life" and learning to see the importance of "respecting one another's views and life styles". Both articles should be changed to include the phrase: "with attention thereby for sexuality and sexual diversity". In its advice the Council for Education questioned whether the measure would be effective given the goal pursued, namely creating more respect and a safer environment for homosexual, bisexual and transgender pupils and staff in schools. Violence and discrimination for reasons of sexual orientation are an important fact of life in many schools in the Netherlands, and the Council argued that changing the (cognitive) "attainment targets" was not a plausible strategy to create a "safer climate" within schools (Onderwijsraad 2012b: 4). One of the reasons for the MP's to demand this change of "attainment targets" was the assumption that in some schools (read: in orthodox religious schools and in Islamic schools) there was hardly any attention for "sexual diversity" and/or homosexuality was being represented as wrong and sinful. Indeed, studies have shown that this kind of message in Muslim and Reformed communities contribute to creating an unsafe climate, which should be addressed rather than encouraged within the school. However, the Council pointed to the more principled issue that by changing "attainment targets" the

---

[22] See "Refoschool werkt niet langer met verklaring tegen homoseksualiteit" in *Reformatorisch Dagblad* April 13th, 2011.

freedom of schools to give more precise content to these goals was at stake. The existing text of article 38 and 43 mentions the need to teach about and make pupils aware of pluralism and differences of background and culture, or more generally a diversity of "opinions, philosophies of life and ways-of-being" (Onderwijsraad 2012b: 5). In the law this is a general goal and there is no mention of the need to teach about cultural, or religious or linguistic diversity in particular. Therefore, demanding that all schools specifically teach about sexuality would demand a more fundamental change of the law, going against the more basic idea that this type of "attainment targets" should remain relatively unspecified to allow for autonomy of schools.

Conclusion

When deciding whether or not it is plausible to speak of a more fundamental reorientation of church-state traditions in the Netherlands we need to grasp both the key elements of this "tradition" (its history, leading ideas and crucial constitutional and legal arrangements) and how they interact with major societal transformations. Church-state institutions also interact with institutions and forms of governance in specific societal domains, for example those in education. The nature and boundaries of religious freedoms and of state neutrality may well be changing in relation to major institutional transformations in those domains (such as the marketization of care arrangements). We can distinguish institutional changes triggered "bottom up" by changing societal configurations and all kinds of social and political processes, institutional changes that work "side-ways" when specific management styles come to affect different domains of government one after the other, and "top-down" when institutional and legal regimes at a European level impact on existing national arrangements (also Koenig 2007).

It has become clear that the type of church-state arrangements that was strongly associated with "pillarization" has been challenged "bottom-up" by a broad range of social changes related to secularization, individualization, increased mobility, liberalization, immigration, which themselves are connected to all kinds of technological changes (e.g. in media, communication) and processes such as globalization. They have undermined the relatively stable position of more established denominational "minorities" and the "pillar organizations". Structural state subsidies for core religious organizations seemed inappropriate and a more individualized conceptualization of religious freedom was inscribed into the constitution in 1983, which also no longer privileged religious over secular worldviews. However, it has become clear that societal changes continue to build up pressure and questions are being raised as to whether arrangements are sufficiently even-handed (towards non-religious groups and individuals as well as towards newcomers), whether there remain unwanted biases towards more stable, established forms of identity and belonging and "life-convictions" as opposed to more fluid and less comprehensive forms, and especially how to balance the principle of non-discrimination with other values, such as collective and organizational freedoms.

In a general sense it appears that to many people liberal non-discrimination is increasingly understood as the foundational value. As a principle it can also build on institutional support given its importance in EU policy directives, but it also has great support among politicians and citizens. It seems increasingly implausible to allow "religion" to be a basis for discrimination on the basis of gender or sexual orientation.

Another major change appears to be a shift away from the collective understanding of (religious) freedom, which was part of the neo-Calvinist conception of state-society relations. Ideas about "sphere sovereignty" and "parallelism" entailed a model for handling deep pluralism in society. It combined the virtues of "toleration" and of an even-handed state, with ideas that are far less plausible these days, such as a pro-Christian bias, privileging associational over individual freedoms, and assuming stable denominational

identities stretching out over all sphere of life. However, the institutional and social room that allowed "minorities to be different" now has strong constitutional guarantees and is also supported by key advisory bodies, such as the Council of Education and the Council of State, that are extremely reluctant to support legal amendments and policies that violate fundamental freedoms. Institutionally, tolerance and toleration are quite robust in the Netherlands, and they provide a check on some of the more drastic proposals of "muscular liberals" who want to do away with religious freedom and drastically curtail the autonomy of (religious) associations, as well as those by the populist Freedom Party (PVV) of Geert Wilders that has repeatedly demanded to exclude Islam from fundamental constitutional rights and freedoms.[23] The analysis of the history and underlying ideas of the Dutch approach to religious governance may lead us to conclude that less drastic changes are needed to cope with contemporary challenges.

References

Bader, V. 2003. "Religious diversity and democratic institutional pluralism." *Political Theory*, 31(2): 265–294.

Bader, V. 2007a *Secularism or Democracy? Associational governance of religious diversity*. Amsterdam: Amsterdam University Press.

Bader, V. 2007b. "The governance of Islam in Europe: The perils of modelling." *Journal of Ethnic and Migration Studies,* 33(6): 871–886.

Beckford, J.A., Joly, D., Khosrokhavar, F. 2005. *Muslims in prison: Challenge and change in Britain and France*. Hampshire: Palgrave.

Beer, P. de. 2007. "Waarom vrijheid van godsdienst uit de grondwet kan". *Socialisme en Democratie*, 64(10): 18–24.

Benbassa, B. 2003. *La République face à ses minorités. Les Juifs hier, les Musulmans aujourd'hui*. Paris : Mille et une nuits.

Bertossi, C. and Duyvendak, J,.W. 2012. "National models of immigrant integration: The costs for comparative research." *Comparative European Politics*, 10(3): 237–247.

Bijsterveld, S.C. van. 2005. "State and church in the Netherlands" Pp. 367–390 in *State and church in the European Union*, edited by C.Robbers. Baden-Baden: Nomos.

Bijsterveld, S.C. van 2011. *Burger tussen religie, staat en markt*. Inaugural lecture. Tilburg: Tilburg University Press.

Boef, A.H. den. 2003. *Nederland seculier!* Amsterdam: Van Gennep.

Bos, E. 2009. *Souvereiniteit en religie. Godsdienstvrijheid onder de eerste Oranjevorsten*. Hilversum: Uitgeverij Verloren.

Bowen, J.R. 2007. "A view from France on the internal complexity of national models." *Journal of Ethnic and Migration Studies,* 33(6): 1003–1016.

Breemer, R. van den and Maussen, M. 2012. "On the viability of state-church models: Muslim burial and mosque building in France and the Netherlands." *Journal of Immigrant and Refugee Studies* 10: 279–298.

Burg, van den W. 2009. *Het ideaal van de neutrale staat. Inclusieve, exclusieve en compenserende visies op godsdienst en cultuur*. Inaugural lecture. Rotterdam: Boom Juridische Uitgevers.

Cliteur, P. 2011. *The Secular Outlook. In defense of moral and political secularism*. London: Wiley-Blackwell.

---

[23] In January 2013, for example, the party launched a website to help prevent the building of mosques in the Netherlands.

Dam, van P. 2011. *Staat van verzuiling. Over een Nederlandse mythe*. Amsterdam: Wereldbibliotheek.

Davidson, N. 2012. *Only Muslim. Embodying Islam in Twentieth Century France*. Ithaca and London: Cornell University Press.

Doe, N. 2011. *Law and religion in Europe. A comparative introduction*. Oxford: Oxford University Press.

Donk, van den J., Jonkers, A.P., Kronjee, G.J., and Plum, R.J. (eds) *Geloven in het publieke domein*. WRR-verkenningen. Amsterdam: Amsterdam University Press.

Ferrari, S. 2002. "Islam and the Western European model of church state relations." Pp. 6–19 in *Religious freedom and the neutrality of the State: Responses to the presence of Islam in the European Union*, edited by in S.W. Shadid and P.S. van Koningsveld, Leuven: Peeters, 6–19.

Fetzer, J.S., and Soper, C.J. 2005. *Muslims and the state in Britain, France, and Germany*. Cambridge: Cambridge University Press.

Finotelli, C and Michalowski, I. 2012. "The heuristic potential of models of citizenship and immigrant integration reviewed." *Comparative European Politics*, 10(3): 231–240.

Gemeente Amsterdam (GA). 2008. *Notitie scheiding kerk en staat*. Amsterdam: Gemeente Amsterdam.

Habermas, J. 2006. "Religion in the public sphere." *European Journal of Philosophy*, 14(1): 1–25.

Harinck, G. 2006. "Een leefbare oplossing. Katholieke en protestantse tradities en de scheiding van kerk en staat." Pp. 106–130 in *Ongewenste goden: De publieke rol van religie in Nederland*, edited by M. ten Hooven and T. de Wit, Amsterdam: SUN.

Hellemans, S. 2006. "Zuilen en verzuiling in Europa." Pp. 239–266 in *Politicologie: basisthema's en Nederlandse politiek*, edited by U. Becker and P. van Praag, Amsterdam: Het Spinhuis.

Hertogh, M. 2009. "What's in a handshake? Legal equality and legal consciousness in the Netherlands." *Social and Legal Studies*, 18: 221–240.

Huisman, P.W.A et al. 2011. *Vrijheid van stichting. Over de mogelijkheden en consequenties van een moderne interpretatie van de vrijheid van richting bij de stichting van bijzondere scholen*. Den Haag: Ministerie van Onderwijs, Cultuur en Wetenschap.

Kaplan, B.J. 2007. *Divided by faith. Religious conflict and the practice of toleration in early modern Europe*. Cambridge: Harvard University Press.

Knippenberg, H. 2006. "The changing relationship between state and church/religion in the Netherlands." *GeoJournal,* 67(4): 317–330.

Koenig, M. 2008. Governing Islam in Europe. A commentary on IMISCOE working paper No. 16.

Kuru, A.T. 2008. "Secularism, state policies, and Muslims in Europe." *Comparative Politics*, 41(1), 1–20.

Kuyper, A. 1998. "Sphere Sovereignty." Pp.461–490 in *Abraham Kuyper. A centennial reader*, edited by J.A. Bratt, Carlisle, UK: The Paternoster Press.

Laborde, C. 2005. "Secular philosophy and Muslim headscarves in schools." *The Journal of Political Philosophy*, 13(3): 305–329.

Lijphart, A. 1968. *The politics of accommodation. Pluralism and democracy in the Netherlands*. Berkeley, CA: University of California Press.

Maussen, M. 2007. *The governance of Islam in Western Europe: A State of the Art*. Amsterdam: IMISCOE.

Maussen, M. 2009. Constructing Mosques. The governance of Islam in France and the Netherlands. PhD dissertation. Amsterdam: University of Amsterdam.

Maussen, M. 2011. "The governance of Islam in France. Church-state traditions and colonial legacies" Pp.131–154 in *Religious newcomers and the nation state*, edited by E. Sengers and T. Sunier, Delft: Eburon.

Maussen, M. 2012. "Pillarization and Islam: Church-state traditions and Muslim claims for recognition in the Netherlands." *Comparative European Politics*, 10(3): 337–353.

Monsma, S. and Soper, C. 2009. *The challenge of pluralism. Church and state in five democracies*. Second Edition. Lanham: Rowman&Littlefield Publishers.

Nieuwenhuis, A.J. 2009. "Rechtsstaat en religie: Meer dan één dimensie [Constitutional state and religion: More than one dimension.]" Pp. 31–58 in *Rechtsstaat en religie. Staatsrechtsconferentie 2008*, edited by A.J. Nieuwenhuis and C. Zoethout, Nijmegen: Wolf Legal Publishers.

Onderwijsraad. 2010. *Het recht op toelating nogmaals bezien. Advies bij het initiatiefwetsvoorstel regeling toelatingsrecht (scholen)*. Den Haag: Onderwijsraad.

Onderwijsraad. 2012a. *Artikel 23 grondwet in maatschappelijk perspectief*. Den Haag: Onderwijsraad.

Onderwijsraad. 2012b. *Advies aanpassing kerndoelen*. Den Haag: Onderwijsraad.

Oomen, B. et al. 2009. Recht op verschil? Percepties en effecten van de implementatie van gelijke behandeling wetgeving onder orthodox-protestanten in Nederland. Middelburg: Roosevelt Academy.

Rawls, J. 2007. "Remarks on political philosophy." Pp. 1–20 in *Lectures on the History of Political Philosophy*. Cambridge: Harvard University Press.

Rooden, P.T. van. 1996. *Religieuze regimes: Over godsdienst en maatschappij in Nederland, 1570–1990*. Amsterdam: Bakker.

Sandberg, R. 2008. "Church-state relations in Europe: From legal models to an interdisciplinary approach." *Journal of Religion in Europe*, pp.329–352.

Selderhuis, H.J. 2010. (Ed.)*Handboek Nederlandse Kerkgeschiedenis*. Kampen: Uitgeverij Kok.

Stiphout, M. 2011. *Scheiding van kerk en staat en de ontwikkeling van de kerk tot een zelfstandige geloofsgemeenschap. Studies over de rooms-katholieke kerk vanuit juridisch perspectief (1790–1965)*. University of Groningen.

Stuurman, S. 1983. *Verzuiling, kapitalisme en patriarchaat*. Nijmegen: SUN.

Vermeulen, B. P. and Aarrass, B. 2009. "De reikwijdte van de vrijheid van godsdienst in een pluriforme samenleving." Pp. 59–87 in *Rechtsstaat en religie. Staatsrechtsconferentie 2008*, edited by A.J. Nieuwenhuis and C. Zoethout, Nijmegen: Wolf Legal Publishers.

Verplanke, C.J. 1963. *Subsidiëring van de kerkenbouw*. Arnhem: Vuga-boekerij.

VNG 2009 *Tweeluik religie en publiek domein. Handvatten voor gemeenten*. Den Haag: VNG.

Versteegt, I. and Maussen, M. 2011. "The Netherlands: Challenging diversity in education and school life". ACCEPT-Pluralism, Working paper 11/2011.