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# Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences

Rik Torfs\*

## I. INTRODUCTION

France, Belgium, and the Netherlands are all situated in the westernmost portion of Europe. Due to their proximity and intertwined histories, the church and state institutions of these countries share many traits. However, each country's church-state system is unique in specific ways, and European church-state scholars and lawyers take these differences very seriously. These differences often result in claims that comparing European models of church-state relations is impossible. French sociologist Régis Debray manifested such an opinion when he described his country's system of church and state relations as "*laïcité: une exception française*."<sup>1</sup>

Are the differences actually that striking? Or, contrary to scholarly opinion, can a common pattern among European models be found? Could the real differences be instead found at an unexpected level? I shall discuss these questions in this Article and particularly examine the church-state systems of France, Belgium, and the Netherlands. First, I will describe the historical background of the juridical systems of these three countries. Second, I will provide a short analysis of existing church-state law. Third, I will examine where the actual similarities and dif-

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1. See Régis Debray, *La laïcité: une exception française*, in *GENÈSE ET ENJEUX DE LA LAÏCITÉ* 199 (1990). *Laïcité: une exception française* means "secularism: a French exception."

ferences between the three systems lie. Finally, I will conclude with some general remarks.

## II. HISTORICAL BACKGROUND

Not only are France, Belgium, and the Netherlands located in the same region of western Europe, but they also share a common history, which helps explain the similarities in their current systems of church-state relations. The area which is now Belgium was occupied by the French in 1795, shortly after the French Revolution of 1789. A few years later, in 1810, Napoleon Bonaparte integrated the Netherlands into the French Empire as well. Meanwhile, the French Empire negotiated a concordat with the Holy See in 1801, and as a result, the church, to a large extent, came under state control.<sup>2</sup>

In 1815, when the French Empire perished after Napoleon's military defeat, Belgium and the Netherlands were temporarily united as one country—the Kingdom of the Netherlands (1815-1830). However, the Belgian Revolution of 1830, which was more liberal than nationalistic, marked the end of this short and artificial union. The two countries were never truly unified, due in part to their distinct differences in language and religion: although the northern part of Belgium spoke Dutch and could therefore communicate with their allies in the Netherlands, the southern part of Belgium was entirely French-speaking; and while the clear majority of the Dutch at that time were Protestants, most of the Belgians at that time were Catholic. The shaky Belgium-Netherlands union was doomed to fail from the beginning.

Since 1830, France, Belgium, and the Netherlands have remained separate, independent countries and have developed their own systems of church-state relations. To best understand the church-state relationship in each country, each country's historical and sociological treatment of church-state interaction must be considered.

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2. This concordat, which was completed in 1802, was accompanied by a range of measures taken by Napoleon to ensure its execution.

## A. France

In France, the historical background of church-state relations rests on a few documents and events, which can be divided into four important periods. The first period begins with the French Revolution.<sup>3</sup> The principal documents resulting from this period, at least at an abstract level, are the Declaration of the Rights of Man and of the Citizen of August 26, 1789,<sup>4</sup> which guaranteed the freedom of belief, and the Constitution of 1791,<sup>5</sup> which declared the freedom of religious observance. A key event from this period was the nationalization of the property of the clergy and the establishment of state financial assistance for the church, most notably state maintenance of church ministers, under the decree of November 2, 1789. However, an anticlerical trend in government policy began in May 1793 and led to problems within French society as well as to conflicts with the pope.

The second period began with and revolved around one important document—a concordat between Napoleon and Pope Pius VII which restored religious peace and was signed on July 15, 1801.<sup>6</sup> The Seventy-Seven Organic Articles, unilaterally proclaimed by the French government, completed the rather ambiguous concordat and granted civil authorities a dominant role in church-state interactions. This legal situation survived under political regimes both hostile and favorable toward the church. When the republicans attained power in 1879, they intended to and ultimately did enact anticlerical legislation.<sup>7</sup> To the republi-

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3. For this summary, I have used information gathered by Brigitte Basdevant-Gaudemet, *State and Church in France*, in *STATE AND CHURCH IN THE EUROPEAN UNION* 119, 120-22 (Gerhard Robbers ed., 1996).

4. Reprinted in *CODE ADMINISTRATIF* at 229 (Fr.) (11th ed. 1971). See generally P. Dawson, *Declaration of the Rights of Man and of the Citizen*, in 1 *HISTORICAL DICTIONARY OF THE FRENCH REVOLUTION, 1789-1799*, at 301-03 (Samuel F. Scott & Barry Rothaus eds., 1985) [hereinafter *HISTORICAL DICTIONARY*].

5. *LA CONSTITUTION* tit. I (Fr.); see, e.g., FRANCE: A COMPANION TO FRENCH STUDIES 130-31 (D.G. Charlton ed., 2d ed. 1979) [hereinafter *FRENCH STUDIES*]; ALAN PALMER, *AN ENCYCLOPEDIA OF NAPOLEON'S EUROPE* 94 (1984); P. Dawson, *Constitution of 1791*, in *HISTORICAL DICTIONARY*, *supra* note 4, at 236-38.

6. See, e.g., *FRENCH STUDIES*, *supra* note 5, at 278; PALMER, *supra* note 5, at 91.

7. See, e.g., ROBERT GILDEN, *THE PAST IN FRENCH HISTORY* 214-17 (1994); JUDITH F. STONE, *THE SEARCH FOR SOCIAL PEACE: REFORM LEGISLATION IN FRANCE, 1890-1914*, at 77 (1985); 1 THEODORE ZELDIN, *FRANCE 1848-1945*, at 683-98 (1973). For a discussion of the anticlericism of the government of Waldeck-Rousseau and Combes, see MALCOLM O. PARTIN, *WALDECK-ROUSSEAU, COMBES AND THE CHURCH: THE POLITICS OF ANTICLERICISM, 1899-1905* (1969).

cans, the very existence of their regime was incompatible with the preservation of an influential church.<sup>8</sup>

The Law of December 9, 1905 ushered in the third period by legislating separation of church and state, guaranteeing freedom of public worship, and refusing financial aid to churches.<sup>9</sup> At first, church leaders, such as Pope Pius X in the encyclical *Vehementer nos* of February 11, 1906, criticized this separation. As the attitude of the state became more moderate, however, the church became more accepting of the new system and managed to survive.

No precise date can be cited as the beginning of the fourth period. This period began gradually and has continued throughout the twentieth century. The distinguishing characteristic of the fourth period is that the separation established in 1905 has lost its sharp, anticlerical nature.

### B. Belgium

Because Belgium was once a part of France, it shares French church-state history until partially through the second period. It was during the second period, in 1814, that Belgium separated from France. Whether the concordat between Napoleon and Pope Pius VII continued to have effect in Belgium during the short Belgium-Netherlands alliance (1815-1830) has long been discussed, but is today generally answered affirmatively.<sup>10</sup> That question, however, has become irrelevant from a practical viewpoint. Today, the legal basis of Belgian church-state relations is found in the Belgian Constitution of 1831. Though constitutional amendments have been made, the main principles governing church-state relations remain the same today.

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8. See, e.g., GILDEN, *supra* note 7, at 214-17; STONE, *supra* note 7, at 77; ZELDIN, *supra* note 7, at 683-98.

9. For a brief discussion of the Law of December 9, 1905, see JAMES J. COOKE, *FRANCE 1789-1962*, at 158 (1975). The Law of December 9, 1905 does not apply in three *départements* in the east of France: Haut-Rhin, Bas-Rhin, and Moselle. These *départements* were under German rule as a result of the French-German War of 1871. After their return to France in 1871, they maintained their old legislation, which is similar to the Belgian system of recognized *cultes*.

10. Since 1816, after a moment of hesitation, the existence of the concordat in Belgium was recognized by the Dutch king. Cf. Henri Wagnon, *La reconduction du concordat de 1801 dans les provinces belges du Royaume-Uni des Pays-Bas (1814-1817)*, in *SCRINIUM LOVANIENSE* 514, 514 (1961).

The four constitutional articles concerning church-state relations<sup>11</sup> still retain the balance between state and religion that was established after Belgium's independence from the Netherlands in 1830. Those four articles governing church-state relations are an early example of the Belgian political tradition of governing by consensus. Though the bright, young, liberal, and sometimes anticlerical politicians wanted to propagate modern freedoms, they also wanted to retain absolute governmental supervision of the church. Catholic politicians and the Belgian church, however, were unwilling to allow their voices to go unheard. A rather progressive Belgian church was an ambitious partner in the constitutional negotiations; the letter from the Prince de Méan, Archbishop of Mechelen, which was read to the National Congress on December 17, 1830, undoubtedly influenced the final form of the constitutional church-state balance.<sup>12</sup> The final constitutional articles produced an equilibrium which, although not perfect, has remained unchallenged.

### C. *The Netherlands*

The Kingdom of the Netherlands was established in 1815, after Napoleon's defeat.<sup>13</sup> The new country produced a "new Constitution form[ing] a renewed starting point for church and state relationships."<sup>14</sup> An established church clearly was no longer possible in the Netherlands, but the 1814 version of the constitution did not contain all the ingredients for a true separation of religion and the state. The chapter dealing with religion in the 1814 Constitution was concerned with church-state separation but did not address an individual's freedom of religion. The 1814 version of the constitution and, with greater emphasis, its 1815 successor indicated that the state should not interfere with church organization. In practice, however, state intervention continued until the latter part of the century.

The 1848 Constitution adopted various fundamental rights, modernizing the chapter on religion. This important step, taken

11. See discussion *infra* accompanying notes 31-34.

12. 1 ÉMILE HUYTTENS, DISCUSSIONS DU CONGRÈS NATIONAL DE BELGIQUE, 1830-1831, at 525, 525-27 (1844); see also ANDRÉ MAST & JEAN DUJARDIN, OVERZICHT VAN HET BELGISCH GRONDWETTELIJK RECHT 549-50 (1983).

13. See Sophie C. van Bijsterveld, *State and Church in the Netherlands*, in STATE AND CHURCH IN THE EUROPEAN UNION, *supra* note 3, at 209, 210-12.

14. *Id.*

later than Belgium in its 1831 Constitution, prompted the Roman Catholic Church to restore its hierarchy in the Netherlands. The constitution, however, contained an article which restricted religious freedom—a requirement that express permission be given for any religious procession. The current constitution, adopted in 1983, contains a new and simplified formulation of the freedom of religion.

### III. DESCRIPTION OF THE CURRENT LEGAL SITUATION

As a result of their differing historical evolutions, the legal situation regarding church-state relations in France, Belgium, and the Netherlands is quite divergent.

#### A. France

France is traditionally a Catholic country, but religious practice is rather poor. Approximately 90% of French people call themselves Catholics, but only about 15% regularly go to Sunday mass. Other religions in France include Islam, with approximately 1%; Protestantism with 2%; and Judaism with 1%.<sup>15</sup>

The cornerstone of the French system is the so-called *laïcité*,<sup>16</sup> a result of the Law of December 9, 1905 on Separation ("Law of 1905"). The Law of 1905 contains two articles which briefly and clearly articulate the status of churches in France. Article 1 states that the Republic guarantees freedom of conscience as well as the free exercise of *cultes*.<sup>17</sup> The only permissible restrictions are those necessary in the interest of public order. Article 2 stipulates that the Republic does not recognize, pay, or financially support any *culte*. The combination of Articles 1 and 2 results in religious neutrality. Certainly the state does not ignore religion or the religious phenomenon, but it refuses to

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15. See CENTRAL INTELLIGENCE AGENCY, WORLD FACTBOOK 135 (1994) [hereinafter FACTBOOK].

16. The term *laïcité* literally means "secularism."

17. The term *culte* literally means "religion." *Culte* was and is, in France and Belgium, a typical nineteenth-century doctrine which focused more on the external elements of religion. According to a number of nineteenth-century liberals, this was its main significance. Cf. Rik Torfs, *De Belgische grondwet over Kerk en Staat, geloof en maatschappij*, in BEHEER EN BELEID VAN KATHOLIEKE INSTELLINGEN 39, 43 (Rik Torfs ed., 1990).

recognize or support it publicly. The religious fact ceases to be a public fact.<sup>18</sup> Religion is a private option for French citizens.

French church-state experts, including Rivero and Coulombel, assert differing views as to whether this neutrality is negative or positive.<sup>19</sup> Rivero asserts it is negative because, although the Republic accepts all manifestations of thought and rejects no ideology, it makes no positive choice in favor of one set of beliefs. Coulombel, however, asserts that it is positive, because it requires that the free exercise of citizens' *cultes* be guaranteed.<sup>20</sup> This sometimes implies an obligation upon the state to deliver the necessary tools to ensure that the religious norms each individual citizen thinks should be observed can be observed. For instance, the state must provide each citizen with the opportunity to attend the ceremonies of his church and be instructed in the beliefs of his chosen religion.

It goes without saying that this strict equality among religions is hard to reach. Although separation sounds good as a theoretical principle, its practical application in France is questionable. In this regard, Brigitte Basdevant-Gaudemet makes some pertinent remarks.<sup>21</sup> First, the state can enact measures which destroy the so-called equality by favoring one religion over another. Further, the state does not always treat religion as a private matter; sometimes religious activity is treated less advantageously than other private activities. For example, many private activities can receive state subventions, but the Law of 1905 prohibits all financial aid to churches. Moreover, there is no complete and entirely consistent nonrecognition of religions. Religious groups are subject to certain rules. Certainly, no official status is conferred on a religion as a general matter, but some legal rules are applicable to a series of institutions or organizations, or to a grouping essential to the life of a church.

18. Jacques Robert, *La liberté des cultes, une liberté fondamentale*, ADMINISTRATION, Oct./Dec. 1993, at 80, 81.

19. JEAN-BAPTISTE TROTABAS, LA NOTION DE LAICITÉ DANS LE DROIT DE L'ÉGLISE CATHOLIQUE ET DE L'ÉTAT RÉPUBLICAIN 223 (1960); P. Coulombel, *Le droit privé français devant le fait religieux depuis la séparation des églises et de l'état*, 54 REVUE TRIMESTRIELLE DE DROIT CIVIL 1, 7 (1956); Jean Rivero, *La notion juridique de laïcité*, RECUEIL DALLOZ DE DOCTRINE DE JURISPRUDENCE ET DE LEGISLATION, Chronique 137, (1949).

20. Coulombel, *supra* note 19, at 15-16.

21. Basdevant-Gaudemet, *supra* note 3, at 123.



As the system in France has continued to evolve, the principles of separation and *laïcité* have lost some of their original significance. Attempts at complete separation have largely failed, and the doctrine *laïcité*, in former days highly ideologically colored, has fallen to the respectable position of a legal doctrine.<sup>22</sup> Gradually, a sophisticated network of factual and legal relationships between the religions and civil authorities has been established. It has become clear that religion cannot be limited to private life because it also contains a social dimension. This public facet of religion exhibits itself in at least two ways. First, religious involvement influences one's behavior in society. Second, as faith is experienced collectively, it leads to the establishment of communities to participate in ceremonies, transmit their faith, and erect institutions, which cannot be ignored by civil authorities.<sup>23</sup>

The resulting contacts between religious communities and civil authorities are illustrated by the various forms of indirect assistance to religions, which can be divided into four categories:<sup>24</sup>

1. Certain religious ministers are paid by the state—namely those working in prisons, hospitals, or private schools—if the school has entered into a contractual relationship with the state under the Law of 1959.
2. The state can guarantee sums borrowed by churches to construct new places of worship.
3. Religious associations, including churches, enjoy an extremely favorable tax regime. Enterprises and individual taxpayers can deduct, up to a certain limit, donations to the work of such organizations serving the public interest.
4. The state owns Catholic places of worship built before 1905. As a result, the state finances the upkeep, maintenance, and restoration of many cathedrals. This is an ironic aspect of the Law of 1905, which made all cathedrals state property. The loss of church ownership could have been viewed as a religious defeat, but because the cathedrals could still be used

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22. See, e.g., FRENCH STUDIES, *supra* note 5, at 181.

23. René Rémond, *Le fait religieux dans la société française*, ADMINISTRATION, Oct./Dec. 1993, at 24, 25.

24. See Basdevant-Gaudemet, *supra* note 3, at 139 (making this categorization).

for the *culte*, state ownership became a great benefit to the church. The state assumed all the financial responsibilities tied to ownership, while the church was entitled to free use of the buildings.

Paradoxically, a similar result could only have been achieved by strong and direct support of churches. Not only has the wall of separation between church and state that was erected by the Law of 1905 crumbled, church-state relations in France are no longer clearly governed by religious neutrality. Perhaps because neutrality was too negative or passive, it has given way to the open and multidimensional doctrine of pluralism. For instance, the debate concerning religious broadcasting on public television, formerly governed by the idea of neutrality, was recently resolved with a pluralistic solution: on September 18, 1986, the Constitutional Council decided that public television must broadcast Sunday religious programs reflecting religious tendencies in French society.<sup>25</sup> Thus, a double evolution has altered the separation of church and state since enactment of the Law of 1905. The first change is that separation is no longer accomplished by neutrality; church-state separation is now equated with pluralism. Secondly, separation has been ideologically refined and moderated through various social and legal agreements.

Given this evolution, it is hardly surprising that the behavior of religious authorities towards the doctrine of *laïcité* has radically changed. The hostile reactions of 1905 have disappeared. When the 1946 Constitution,<sup>26</sup> as well as its 1958 version,<sup>27</sup> incorporated the doctrine of *laïcité*, French bishops were supportive. The clerical support of these constitutional provisions could only have been possible if the *laïcité* of 1905 and the *laïcité* of 1958 differed. In an article published in 1993, Jean-Paul Durand, dean of the canon law faculty of the Institut Catholique in Paris, distinguished between *laïcism* and *laïcité*: the first being hostile

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25. Judgment of Sept. 18, 1986, Conseil constitutionnel (Constitutional Council) (Fr.), reprinted in *L'ACTUALITE JURIDIQUE - DROIT ADMINISTRATIF*, Feb. 20, 1987, at 102. In former decisions (e.g., decision of July 27, 1982), the Council seems to have favored the doctrine of pluralism. See Patrick Wachsmann, *Le statut de la communication audiovisuelle et la Constitution*, in *L'ACTUALITE JURIDIQUE - DROIT ADMINISTRATIF*, Feb. 20, 1987, at 111.

26. Reprinted in *CODE ADMINISTRATIF* at 232 (Fr.) (11th ed. 1971).

27. Reprinted in *id.* at 234.

towards religion, the latter being, in a positive sense, a regulation of churches' juridical matters.<sup>28</sup>

Because the doctrine of *laïcité* seems to be cherished today by a certain category of people, namely the religions and their representatives who previously rejected it, it cannot be a complete surprise that an attempt has been made to redefine the old doctrine. Depending on the ideological base and the angle from which one looks at the doctrine of *laïcité*, the viewpoints of new participants attempting to describe the doctrine differ considerably. Generally speaking, there are three ways of characterizing the doctrine of *laïcité*.<sup>29</sup>

### 1. *Laïcité redéfinie*

The first position can be called *laïcité redéfinie*, which is a vision of *laïcité* that aims to redefine the lay character of the state. This position is held by a number of Catholic church administrators as well as members of the general public. Undoubtedly, the hidden idea is to maintain the doctrine of *laïcité*, but to transform it from the inside. A new *laïcité* would allow religion to exist socially and contribute to the definition of values and aims of common existence. *Laïcité redéfinie* attempts to bring France closer to the common European standard of greater financial support of churches. The growing influence of the European Union, although its legislation does not currently address church-state relationships directly, seems to be an ally which might help the *laïcité redéfinie* movement realize its objectives.

### 2. *Laïcité modernisée*

The second position favors a *laïcité modernisée*, a modern lay state. One proponent of this view, a French lay organization called *La Ligue de l'Enseignement*, composed *Laïcité 2000* which summarizes *laïcité modernisée*. *Laïcité 2000* explains that the original *laïcité* generated public discussion and debate which previously had been impossible under Roman Catholic domination. Later, *laïcité* became convoluted by discussions of legal implications. According to *Laïcité 2000*, however, true *laïcité* in-

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28. Jean-Paul Durand, *La laïcité française dans un Etat de droit ouvert*, ADMINISTRATION, Oct./Dec. 1993, at 119, 119.

29. See Jean Baubérot, *La laïcité française entre histoire et devenir*, ADMINISTRATION, Oct./Dec. 1993, at 104, 104-05.

volves more than just juridical questions; it is a way of living together in society. Modern *laïcité* extends beyond mere religious freedom and separation. *Laïcité modernisée* seeks after a universalistic lay thinking, not to impose uniformity on all cultures, but to discover in all cultures their "universal aspect."

### 3. *Grand Orient de France et de certains philosophes*

The third position is expressed by a group called *Grand Orient de France et de certains philosophes*, which fears that *laïcité* has become too inoffensive. *Grand Orient de France et de certains philosophes* views *laïcité* as a permanent struggle, *un combat permanent*. They oppose (1) the Catholic church's search for an official position in society and (2) other religious groups, such as Muslims, who may, in the *Grand Orient's* view, be even more dangerous, because such religious groups are not only looking for a better place in the system but are also challenging the system. A clear philosophy guides this third approach, which sees France as distinct from other Western democracies. This is evidenced by the great importance of the state, *l'Etat*, which refuses to recognize intermediate institutions such as religions or social classes. According to the *Grand Orient de France et de certains philosophes*, the state should only recognize and protect the individual and his well-being—individuals should be emancipated from all power exercised over them by intermediate organizations such as religions.

These three views of *laïcité* indicate three significant things. First, the idea of *laïcité* remains important and influential. Second, *laïcité* has lost at least part of its former content, becoming more moderate and, in practice, closer to European thinking in general. And finally, the actual content of *laïcité* lacks clarity, permitting a debate among groups who can try to impose their interpretation of the traditional doctrine on society.

### B. *Belgium*

Belgium, like France, is a country with a large Catholic majority. Approximately 75% of Belgians have been baptized into the Catholic church,<sup>30</sup> though the percentage of those baptized is decreasing among the younger generations. Due to immigration

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30. FACTBOOK, *supra* note 15, at 40.

in the 1960s, the next largest religion in Belgium is Islam, with roughly 2% of the population. Approximately 1% of Belgian citizens are Protestants and 0.3% are Jews.

Church-state relations in Belgium are primarily governed by articles 19, 20, 21, and 181 of the Constitution of 1831. Freedom of worship is guaranteed by article 19 of the constitution, but an exception is provided to allow the punishment of criminal offenses committed in exercising this freedom.<sup>31</sup> The negative counterpart to article 19 is article 20, which states that no person can be forced to participate in acts of worship or rites of any religion or required to respect days of rest.<sup>32</sup> Article 21 stresses that the state cannot interfere with the appointment or induction of the ministers of any *culte*, forbid correspondence with their church authorities, or prevent the publishing of the acts of church authorities. These rights are subject to the ordinary rules of liability concerning the use of the press and publications, however.<sup>33</sup> Article 21 is generally interpreted as an affirmation of the freedom of internal ecclesiastical organization but contains an exception to this principle by requiring that civil marriage precede a religious marriage ceremony, except in specific cases established by law. Finally, article 181 says that the salaries and pensions of the ministers of a *culte* should be borne by the state budget.<sup>34</sup>

The content of articles 19, 20 and 21, as outlined above, is quite unexceptional. The only striking concept in the four articles addressing church-state relations is the provision in article 181 for state payment of ministers of a *culte*, a practice which also exists in a few other countries, namely Luxembourg and the eastern part of France (Alsace-Moselle). Although article 181 appears to make no restrictions in its payment of salaries and pensions of ministers, not all ministers of all *cultes* receive funds from the state. Only a limited number of ministers whose *cultes* have obtained official recognition receive a salary or a pension.<sup>35</sup>

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31. BELG. CONST. art. 19.

32. *Id.* art. 20.

33. *Id.* art. 21.

34. *Id.* art. 181; see also Rik Torfs, *State and Church in Belgium*, in *STATE AND CHURCH IN THE EUROPEAN UNION*, *supra* note 3, at 15, 16-17. The Law of June 26, 1992, reprinted in *MONITEUR BELGE*, June 30, 1992, at 147, 148, raises the salary for a parish priest by 9.71% to 496,925 Belgian francs.

35. BELG. CONST. art. 181.

The basis for such recognition is not religious content—such a basis would directly violate religious freedom—but a religion's social value as a service to the population. Currently, six denominations enjoy this status: the Roman Catholic Church, Protestantism, Judaism, Anglicanism,<sup>36</sup> Islam,<sup>37</sup> and the Greek and Russian Orthodox churches.<sup>38</sup>

In addition to modest salaries, recognition by the state provides other benefits for those religions.<sup>39</sup> For example, status as a legal entity is granted to the ecclesiastical administrations responsible for the temporal needs of a church; churches and church structures themselves do not enjoy any legal status. Another benefit is that any debt incurred by ecclesiastical administrations for temporal goods must be paid by municipalities. Such debt assumption does not always encourage proper responsibility on the part of administrators.<sup>40</sup> Another advantage is that state-recognized churches may request state subsidies for the construction or renovation of their buildings.<sup>41</sup> Additionally, pastors and bishops must be given appropriate housing, and any expenditure for this purpose is chargeable to the municipalities or provinces. Furthermore, recognized religions get free public radio and television broadcasting time. Finally, religions may appoint army and prison chaplains, whose salaries are included in the state budget.

36. Though the Law of March 4, 1870 formally conveyed the official recognition of Roman Catholicism, Protestantism, Judaism, and Anglicanism, they have been officially recognized in Belgium since Belgian independence. See Law of March 4, 1870, reprinted in *MONITEUR BELGE*, Mar. 9, 1970, at 905.

37. The Law of July 19, 1974 granted Islam official recognition, amending the Law of 1870.

38. The Law of April 17, 1985, also amending the Law of 1870, granted the Greek and Russian Orthodox churches official recognition.

39. The legal basis for these benefits, collectively termed *kerkfabrieken* or *fabriques d'églises*, is the Imperial Decree of December 30, 1809, 14 *PASINOMIE* 437 (1836), and the Law of March 4, 1870, reprinted in *MONITEUR BELGE*, Mar. 9, 1970, at 905.

40. In Wallonia, the municipalities spend 1.2% of their average expenses for *cultes*. See Raphaël Collinet, *A propos des fabriques d'églises, des secours communaux et de quelques subsides*, in *LE SEMEUR SORTIT POUR SEMER* 391, 407 (1992).

41. Here again, the legal basis is the Law of March 4, 1870, reprinted in *MONITEUR BELGE*, Mar. 9, 1870, at 905. Additional financing possibilities are offered by the Law on Monuments of August 7, 1931, reprinted in *MONITEUR BELGE*, Sept. 5, 1931, at 5068. One must not forget, however, that Belgium has only a little more than 9000 protected monuments, landscapes, and entities. The City of Amsterdam itself has a total of 40,000.

Of the six recognized religions, Roman Catholicism is the most prominent. Although on the surface it appears that Catholicism's prominence has not resulted in a privileged legal position, this is not entirely true. One cannot dispute that state treatment of religion is patterned after the structure and function of the Roman Catholic Church. For example, to claim state payment for religious ministers, a religious community must be hierarchically structured and work on a territorial basis. For Christian churches, this is not a problem, but the Islamic faith is structured differently. Despite official recognition of Islam, Islamic ministers are still not paid by the state because their religious communities cannot reach a consensus on a representative to conduct discussions with the government.

Another indication that the Roman Catholic Church enjoys a privileged position is the visibility of its influence at state events. For instance, the military has formed a line and performed affirmations of respect at the playing of a Te Deum on the national day.<sup>42</sup> Likewise, the Catholic church played a prominent role at the funeral of King Baudouin on August 7, 1993. In summary, it may be said that there are six recognized religions, among which Roman Catholicism is *primus inter pares*.

In addition to the six recognized religions, there are a range of unrecognized religions. The Jehovah's Witnesses are the largest unrecognized religion with approximately 20,000 members, followed by The Church of Jesus Christ of Latter-day Saints, which has close to 3000 believers. Numerous other groups have memberships approaching, or well into, the hundreds.

Nonrecognized religions or religious groups generally have more difficulty operating within the established state order. For example, until the abolition of compulsory military service, the problems the Jehovah's Witnesses encountered were well known. Not only do the Jehovah's Witnesses refuse to serve in the military, they also refuse alternative civil service. Until the abolition of compulsory service, article 46 of the military penal statutes classified nonservers, like the Jehovah's Witnesses, as deserters. Such deserters were usually sentenced to two years in prison.<sup>43</sup>

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42. According to the Judgment of June 18, 1923, Cour de Cassation (Supreme Court) 1923 Pasirisie Belge 375 (Belg.), this was not contrary to art. 20 of the current constitution and the negative religious freedom expressed by this article.

43. Cf. Rik Torfs, *L'objection de conscience en Belgique*, in EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, CONSCIENTIOUS OBJECTION IN THE EC COUNTRIES 211, 217

In summary, there are three categories of religions in Belgium: (1) the Catholic Church, which enjoys a privileged position among the legally recognized churches; (2) the five other legally recognized, but minor religions; and (3) unrecognized religious groups.

The phrase "separation of church and state" is often used to describe the Belgian church-state system as a whole, but, unlike in France, this is rarely associated with the term *laïcité*.<sup>44</sup> Even the use of "separation" is probably a poor choice of terminology. Much depends, of course, on what exactly is understood by "separation." If this term connotes that churches and the state have absolutely nothing to do with each other, then it is not adequate. The article 181 provision for state payment of ministerial wages could not be reconciled with such a description of the Belgian church-state system. But if the description "separation" does not imply an absence of all contact between church and state, that description may be appropriate.

However, another phrase may more precisely capture the Belgian church-state system. A number of writers speak of Belgian's "mutual independence" of church and state.<sup>45</sup> This phrase emphasizes the freedom which exists as well as the mutual consideration which demands, at the very least, the acceptance of each other's existence. The Belgian state is neutral, but not neutral in a way that requires state disbelief of religious phenomena.<sup>46</sup> The government bestows support and protection to churches and nonconfessional organizations, illustrating religion's importance to society. The state positively promotes the development of religious and institutional activities without interfering with their independence. In that sense, one might de-

(1992).

44. There are exceptions to this claim, however. See Jean-Paul Martin, *Laïcité française, laïcité belge: regards croisés*, in *PLURALISME RELIGIEUX ET LAICITES DANS L'UNION EUROPEENNE* 71 (Alain Dierkens ed., 1994). But the doctrine *laïcité* is used here to describe the movements of free-thinkers and is not intended to characterize church-state relationships as a whole.

45. See, e.g., Jan De Groof, *De bescherming van ideologische en filosofische strekkingen—Een inleiding*, in *ZEVEN KNELPUNTEN NA ZEVEN JAAR STAATSHERVORMING* 239, 310 n.233 (André Alen & Louis-Paul Suetens eds., 1988); Geert van Haegendoren, *Religious and Ideological Accommodation in Belgium*, in *PLURAL SOCIETIES* 17, 18 (1987).

46. See PHILLIPE BRAUD, *LA NOTION DE LIBERTÉ PUBLIQUE EN DROIT FRANÇAIS* 383 (1968); De Groof, *supra* note 45, at 311.



scribe the Belgian church-state relationship as "positive neutrality."<sup>47</sup>

### C. *The Netherlands*

The Netherlands has a total population of 15 million people.<sup>48</sup> Approximately one-third are Catholic,<sup>49</sup> a fourth belong to the various Protestant churches,<sup>50</sup> and roughly three percent are Islamic.<sup>51</sup> The number of nonbelievers is steadily increasing.

The Dutch Constitution was revised in 1983 to incorporate new fundamental rights, in addition to the already protected social rights. Its treatment of religion, however, is quite brief. The 1983 Constitution contains only one article addressing religion, article 6.<sup>52</sup> Section 1 of article 6 declares: "Everyone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law."<sup>53</sup> The second section of the article, more or less in the style of the European Convention on Human Rights, enumerates possible limitations on this freedom of worship: "Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders."<sup>54</sup>

In the first section, the clause "without prejudice to his responsibility under the law" means that only national legislation can restrict the guaranteed right to manifest religion or belief,<sup>55</sup> but it remains unclear whether there are limits to any restrictions imposed by national legislation. The second section seems to allow delegation by the national legislature of the power to restrict the guaranteed right in particular cases, namely when it concerns the exercise of religious freedom other than in buildings and enclosed places, but only for the purposes mentioned.<sup>56</sup>

47. De Groof, *supra* note 45, at 312.

48. FACTBOOK, *supra* note 15, at 280.

49. *Id.*

50. *Id.*

51. *Id.*

52. STATUUT VOOR HET KONINKRIJK DER NEDERLANDEN [Constitution] [STATUUT NED.] art. 6 (Neth.).

53. *Id.* art. 6, § 1.

54. *Id.* art. 6, § 2.

55. *Id.* art. 6, § 1.

56. *Id.* art. 6, § 2; see also van Bijsterveld, *supra* note 13, at 213.

Article 6 is neutral and brief. Its neutrality and brevity are more apparent when compared with the detailed church-state section of the 1848 Constitution, which article 6 replaced. One aspect of the 1848 Constitution indicating that it was not neutral in its treatment of church-state relations was that it allowed religious processions only if express permission had been granted. This permission was rarely given, resulting in a de facto ban on processions. The 1848 article restricting religious processions evidenced a tension in church-state relations and particularly disfavored the Catholic church, since Catholics tended to organize such processions. These tensions have decreased over time, as the more neutral 1983 Constitution reflects.

While neutrality has increased in the Netherlands, separation has become more stringent through small amendments to the constitution in 1972. These small changes enabled the government to shrug off its traditional obligations with respect to the salaries and pensions of church ministers. State financial support of the clergy, which had always been much more limited than the financial support provided in Belgium, officially ended in 1983.<sup>57</sup> Although the Netherlands no longer provides general financial support to churches, state money is given for specialized services such as religious care in the military and in penal institutions. Additionally, general legislation offers churches benefits such as tax exemptions for donations and public subsidies for the repair and maintenance of historic church buildings.

The increased separation of church and state in the Netherlands has not prohibited churches from participating in public life. In the Netherlands, churches are legal entities of civil law. They are recognized by the civil code as legal entities *sui generis*, distinct from other entities like foundations or associations, but still able to participate.

Although the legal standing of churches under Dutch law is stable and seldom generates discussion, the influence of and public participation in all intermediary institutions, including political parties, associations, unions and churches, have lately been discussed quite regularly. In Dutch society, the emphasis on new liberties and individual independence has resulted in a high degree of individualism and a decay of intermediary institutions. As common moral standards seem to vanish, authorities in

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57. van Bijsterveld, *supra* note 13, at 211.

the Netherlands are attempting to stimulate intermediate bodies and their activities, hoping that a renewed participation in intermediary institutions will increase social awareness and provide a shared vision. This concern about the decrease in intermediate bodies is not exclusive to the Netherlands; the annual meeting of the European Consortium for Church-State Research on November 17-18, 1995 included a discussion about the influence and necessity of intermediary institutions.

#### IV. DIFFERENCES AND SIMILARITIES

The church-state systems of France, Belgium, and the Netherlands can be compared either at the formal level, or with a greater focus on the systems' content. When using a formal approach to compare the church-state systems of the three countries, some clear differences between their systems emerge. The French characterize their system as a system of separation dictated by the principle of *laïcité*. Belgians are less enthusiastic in formally describing their church-state system, but "mutual independence" seems a more precise description than "separation." The Dutch view their system as a system of separation, but the principle of separation has never been codified in their constitution or in any legislation.

However, a real analysis of each country's church-state relations requires skepticism toward long-existing terminology. Each country's church-state system is not always apparent from the terminology selected to describe it. For instance, Jean-Paul Martin, after analyzing and comparing French and Belgian *laïcité*, concluded that *laïcité* in France is a doctrine with great institutional significance but little philosophical precision. On the other hand, he determined that Belgian *laïcité* was a direct reversal of the French version; though a minority trend in Belgian society, its meaning in Belgium is more precisely defined than it is in France.<sup>58</sup> Under a formal analysis using undefined terms such as *laïcité*, each country can be considered to have the church-state system it professes to adopt.<sup>59</sup> The questions to be asked when analyzing a country's church-state relations are: What is the meaning behind the traditional church-state terminology? What is the content of each country's church-state system?

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58. Martin, *supra* note 44, at 77.

59. ÉMILE POULAT, *LIBERTÉ-LAÏCITÉ* 148 (1987).

An analysis of the content of church-state relations in France, Belgium, and the Netherlands reveals fewer differences than are commonly assumed. There are obvious similarities among the countries' church-state systems, such as:

1. For a time, all three countries were politically united, and their church-state systems have been influenced by a common political and social history.
2. All three countries recognize religious liberty at an individual and collective level.
3. Religious groups are free to organize themselves in all three countries.

At a deeper level of comparison, additional similarities are uncovered. For instance:

1. Although the Belgian system of state religious aid, including state support of church ministers, appears unique, it is not as distinct as it first appears. Churches in France and the Netherlands, though more dependent on gifts by the faithful than the Belgian churches, still receive significant indirect state financing.
2. In none of the three countries does separation mean strict separation. All three countries allow regular and numerous contacts between church and state.
3. Despite legislation more explicit in France and the Netherlands than in Belgium requiring equality among religions, the diminishing separation between church and state in France and the Netherlands has allowed some religions to exert unequal influence in public affairs.

These similarities in content of the church-state systems of France, Belgium, and the Netherlands confirm a common pattern Silvio Ferrari has identified in Western European church-state relations. Ferrari posits that similarities in church-state systems can be found at three levels:

1. At the individual level, there is a neutral and impartial attitude of the state towards individual religious participants who are free to profess the religion they prefer.

2. At the collective level, the public sector gives various religious participants preferential treatment as compared to nonreligious subjects.
3. At both the individual and the collective levels, the state's right to interfere with religious participants is confined to making the rules of the game, or in other words to drawing the boundaries.<sup>60</sup>

In summary, church-state relations in France, Belgium, and the Netherlands contain a high number of similarities. A deeper analysis, however, also reveals hidden differences beyond those identified at the formal level. Finding those hidden differences requires a closer look at some of the terms used in describing the church-state relations in those countries, particularly *sécularisation* and *laïcité*, and their meaning in contemporary thought.

#### V. HIDDEN DIFFERENCES AND THE COOPERATIVE PARADIGM

In an article written in 1994, Jean Baubérot proposed a new way of viewing church-state systems, a paradigm tied to the relationship between the *laïcisation* and *sécularisation* of the society.<sup>61</sup> Baubérot defines *laïcisation* as a reduction in the legal and political position and influence of religion. Various degrees of *laïcisation* are possible. According to Baubérot, France reached a first degree of *laïcisation* when the Catholic church did not become the prominent civil religion in the new nation following the French Revolution. A second degree of *laïcisation* came after the defeat in the French-German War of 1870-1871, when religion in France was relegated to the private sphere.<sup>62</sup>

*Sécularisation* is a completely different doctrine than *laïcisation*. While *laïcisation* concerns the official legal position of religion, *sécularisation* means the gradual and relative loss of social importance of the religious element in society; *laïcisation* addresses the relationship between the political and the religious element, and *sécularisation* addresses the sociological posi-

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60. Silvio Ferrari, *Church and State in Europe: Common Pattern and Challenges*, 2 EUR. J. FOR CHURCH & ST. RES. 149, 150 (1995).

61. Jean Baubérot, *Laïcité, laïcisation, sécularisation*, in PLURALISME RELIGIEUX ET LAÏCITES DANS L'UNION EUROPEENE, *supra* note 44, at 9-17.

62. *Id.* at 13.

tion of religion in culture and society. The degree of *laïcisation* does not necessarily correspond to the degree of *sécularisation* in a society. For example, Denmark has achieved a high degree of *sécularisation* that is not completely reflected at the institutional level; *sécularisation* has occurred without comparable *laïcisation*.

Nonetheless, according to Baubérot, a strong connection between *sécularisation* and *laïcisation* implicitly remains. Baubérot did not say that complete dissociation of *laïcisation* and *sécularisation* is possible; he said that *relative* dissociation is possible.<sup>63</sup> Baubérot stressed that *sécularisation* and *laïcisation* generally exist simultaneously, both distancing the laity from the confessional state. Three theories offer conceivable explanations for their coexistence: (1) structural *laïcisation* stimulates society's evolution from a confessional state to a secularized society; (2) only after *sécularisation* exists are the legal and political institutions affected by *laïcisation*; or (3) a gradual evolution toward greater *sécularisation* is accompanied by an increasing institutional *laïcisation*. These theories can also be schematically portrayed:

1. Confessional state → *laïcisation* → *sécularisation*

2. Confessional state → *sécularisation* → *laïcisation*

3. Confessional state  $\begin{cases} \nearrow \textit{laïcisation} \\ \searrow \textit{sécularisation} \end{cases}$

Viewing church-state relations in terms of a country's *sécularisation* and *laïcisation* is a departure from the old paradigm of the confrontation model. Under the confrontation model, church and state are competitors, each desiring as much power as possible. This power struggle often results in merciless political confrontation, particularly when both the church and the state seek control over the same social institution. For instance, the nineteenth-century battle over administrative control of mar-

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63. *Id.* at 15.

riage led to stipulations requiring civil marriages to precede church marriages.

However, as Silvio Ferrari states, the confrontation paradigm has lost some of its viability.<sup>64</sup> Complete confrontation is over now. The twentieth-century welfare state instead invites cooperation between the church and the state.

[T]he state has abandoned the liberal dream of giving religion a private status implicit in separation of church and state and has instead moved in the opposite direction towards a renewed though weaker public status for religion, which, admittedly, can create delicate problems with regard to the equality between believers and non-believers.<sup>65</sup>

Such cooperation between church and state leads to two results:

1. Church and state are no longer rivals. Churches implicitly agree to function within the framework of the state, as long as they are guaranteed that the legal formulation of religious liberty will allow them to function freely.
2. Governments recognize that churches are useful to them and might help them realize their political goals. In many states, the medieval idea that a reasonable existence in society is only possible with some degree of an established order still survives.<sup>66</sup> Churches can provide such meaning and structure to life, help establish a common morality, and prevent social problems stemming from an atomic society and loneliness.

While church-state cooperation has increased, however, so has *sécularisation*. In terms of *sécularisation*, Belgium, France, and the Netherlands are headed in the same direction. A European values poll in 1990 indicated that these three countries lead the European Union in citizens who declare themselves to be without religion. In Belgium, 32% of the population, among them many baptized Catholics, declare that they are without religion. The percentage in France is 38%, and in the Netherlands it is 49%. The United Kingdom is the only member of the

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64. Silvio Ferrari, *Separation of Church and State in Contemporary European Society*, 30 J. CHURCH & ST. 533 (1988).

65. *Id.* at 540.

66. PIET LEUPEN, *GODS STAD OP AARDE: EENHEID VAN KERK EN STAAT IN HET MILLENNIUM NA CHRISTUS 11* (1996).

European Union with a comparable *sécularisation*, with 42% of citizens declaring themselves to be without religion.<sup>67</sup>

Since church-state relations have evolved from confrontation to cooperation at the same time that *sécularisation* has increased, Baubérot's link between *laïcisation* and *sécularisation* has arguably weakened. Under a confrontation model in a secularized society, the rivalry between church and state will usually lead to a higher degree of *laïcisation*; the state will increase the legal and political restrictions on religion. On the other hand, if the state is trying to cooperate with the church, *laïcisation* will decrease. Since cooperation in church-state relations has increased, thereby decreasing *laïcisation* at the same time *sécularisation* has grown, it is clear that there is no firm connection between *laïcisation* and *sécularisation*.

States' attempts to collaborate with religion, weakening *laïcisation* rather than strengthening it, confirm the paradigm of cooperation between church and state. States' willingness to cooperate may well be an attempt to restore one of the forms of consent in society, namely, consent based on religious belief, which has been ended through *sécularisation*. States might find it politically useful to strengthen religious movements and thus weaken *laïcisation* because structured religions might increase the solidarity and identity of society.

The new paradigm of cooperation exists to varying degrees in countries in the European Union. Of the three countries analyzed in this Article, it is most evident in France and the Netherlands but has little influence in Belgium. In the Netherlands, cooperation between church and state is visible. One example is the symposium "Citizenship and Philosophy of Life" organized by the former Minister of Justice Ernst Hirsch Ballin in Amsterdam on February 26, 1992. The Minister invited churches and philosophical organizations to contribute to a discussion of the social dimension of faith in everyday life.<sup>68</sup> According to the Minister, the churches could help the state by creating internal inhibitions against asocial or criminal behavior. Not all state officials shared the Minister's opinion, but the symposium

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67. See SHEENA ASHFORD & NOEL TIMMS, WHAT EUROPE THINKS: A STUDY OF WESTERN EUROPEAN VALUES 46 (1992) (the sum of "Unchurched I" and "Unchurched II" in Table 4.8 leads to this result).

68. See Hirsch Ballin, *Kerken moeten koudwaterreces voor zedenmeesterij overwinnen*, EEN-TWEE-EEN, Mar. 6, 1992, at 14.



manifests a cooperative tendency that might have even greater institutional consequences in the Netherlands.

Likewise, collaboration between church and state has increased in France since enactment of the Law of 1905. For instance, in January 1996, two religious services took place at the funeral of former president François Mitterrand—one in François Mitterrand's birthplace and another at the cathedral of Notre Dame de Paris. After the funeral, commentators, such as Robert Solé in *Le Monde*, declared that *laïcisation* had decreased and cooperation between the church and the state had increased in France.<sup>69</sup> Solé warned that the increased church-state cooperation did not necessarily mean a return of the Christian faith, but may simply mean a return of the religious element, the symbolic acts. Solé suggested that the less religious a society, the more it feels the need to be surrounded by the sacred.<sup>70</sup> The funeral did not mean that French society is becoming more Catholic. It could, on the contrary, mean that less attention is paid to the religiosity of the acts. The state, too poor in rituals and faith to bury its president, can make use of what religion has to offer in this regard. Robert Solé's analysis suggests that the collaboration paradigm may not only apply to larger societal decisions, but also to symbolic acts.

Belgium does not have the spirit of church-state cooperation evident in France and the Netherlands. Unlike the Netherlands, the Belgian state has not invited churches to participate with it in social discussions. The state and the church each have their own separate playing fields. Even the Christian Democratic party tries to be as pluralistic as possible, referring very generally to Christian values. Why are Belgian church-state relations still best understood from a confrontation paradigm, while the church-state systems in the Netherlands and France are becoming more cooperative?

Maybe the new cooperative paradigm has not replaced the former confrontation paradigm in Belgium because church-state confrontation in Belgium never escalated. Perhaps the new paradigm of cooperation can only be completely adopted after a period of church-state separation, or at least a period in which sep-

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69. Robert Solé, *La République à Notre-Dame*, LE MONDE, Jan. 13, 1996, at 1.

70. *Id.* at 14 ("Moins une société est croyante, plus elle a besoin de s'entourer du sacré.").

aration is seriously attempted.<sup>71</sup> In France, *laïcisation* and separation were regularly increased, and, in the Netherlands, an almost equally divided population of Catholics and Protestants kept church-state separation strong. In Belgium, on the other hand, discussion about church and state relationships reached its zenith in 1831. At that time, a workable equilibrium was established; occasional discussions between believers and free-thinkers reappeared, but church-state relations remained stable. Few attempts were undertaken to separate the church and state more thoroughly, and the Catholic influence in Belgian political life became an almost obvious cornerstone of the Belgian system. Membership in the Catholic church arguably was not a personal option; it was a part of being Belgian. Any formal church-state system was limited, but the informal ties between the Catholic church and the state long remained. When *sécularisation* occurred and the church lost its social influence, few Belgians could see a reason to replace the former informal church-state connections with more institutional connections.

In summary, the formally different church-state systems of Belgium, France, and the Netherlands share unexpected similarities in their general approach to religious freedom or separation. Hidden differences divide them, however, when their systems are examined from the perspective of the cooperationist and confrontational paradigms. This changes the debate from separation to church-state cooperation in a modern society. With this perspective, France and the Netherlands engage in more cooperation than Belgium.

## VI. CONCLUSION

Because of their intertwined histories, France, Belgium and the Netherlands have much in common. Nevertheless, each country has its own church-state system with its own characteristics. France claims that its church-state system involves *laïcisation* and separation, but these concepts have changed considerably since they were first adopted through the Law of 1905, and are now difficult to define. In the past, Belgium has had more interaction between the church and the state in a church-

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71. If this is the case, it will be interesting to observe how, in coming years, traditionally Catholic countries such as Ireland and Poland will cope with rising *sécularisation*.

state system that could be characterized as one of "mutual independence." The Netherlands, like France, has a system of separation, but began with a less hostile attitude toward religion than France.

On a formal, definitional level, the three church-state systems appear distinct. But when the true content of the church-state systems are compared—when the meaning behind each country's technical description of its church-state relationship is analyzed—many similarities are found. For example, the church-state systems of France, Belgium, and the Netherlands are all influenced by a shared political and social history, they all recognize religious liberty at an individual as well as a collective level, and they all allow religions to organize themselves freely.

Despite the similarities in content, the differences between the church-state systems deter the European Union from any attempts at unifying legislation addressing church-state relations. Each country's church-state situation is, at least formally, so different that an agreement among member states would never be reached. However, will those differences survive in the long run?

Arguably, the increase in uniform European legislation on topics which, unlike church and state, can be dealt with by the European Union might indirectly affect churches and slowly lead to a higher degree of standardization of church-state systems. Indeed, because church-state relations are not addressed by the European Union, the effect of an item of European legislation on church-state systems may be completely overlooked. Consideration of legislation's effect on church-state relations is vital because church-state problems are implicated in many areas of legislation ranging from tax law to labor law and from data protection to mass-media law. The consequences on church and state relationships are indirect, but nonetheless very real.<sup>72</sup>

Although the European Union and its legislation might, in certain fields, bring the church-state systems of the member states closer to each other, this centripetal element is corrected by a centrifugal element which has been developed in this Arti-

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72. Rik Torfs, *Which Relationships Between Churches and the European Union? Analysis, Choices, Arguments*, in *WHICH RELATIONSHIPS BETWEEN CHURCHES AND THE EUROPEAN UNION? THOUGHTS FOR THE FUTURE* 77-88 (Hans-Joachim Kiderlen et al. eds., 1995).

cle. This element is made up of the varying ways in which individual states, here France, Belgium, and the Netherlands, embrace the new paradigm of cooperation. The common European pattern described by Silvio Ferrari is in fact the outcome of the varying discussions on separation in all European countries. The common pattern is a synthesis, a portrait of what remains of the discussion when passion is over and a way to live together has been found.

Maybe, at this moment, a new centrifugal movement is slowly starting, not with the paradigm of separation, but with the paradigm of cooperation at the center of the debate. The ongoing discussion will be less vigorous than the previous discussion, because the discussion is not dealing with power (state versus church), but "only" with quality of life (intermediary institutions, happiness, the meaning of human existence), which makes people less angry and less aggressively involved in endless discussions. This Article has demonstrated that, in the field of cooperation, differences between France, Belgium, and the Netherlands should not be neglected, although they still are relatively small for the moment. In any case, they will keep alive certain differences in European church-state relations, notwithstanding the common pattern. Although it seems probable that a common European pattern will one day be found for the paradigm of cooperation, differences between church-state relations in the various member states of the European Union will remain. Just as the politicized form of a united Europe must take different languages seriously and avoid "rational" attempts to harmonize varying cultural patterns, so too must it accept the diverse attempts to resolve church-state relations.

Europe is at its best when it appears complex and different, a bit irrational and unreasonable, and multilingual, with a fair amount of confusion. Behind this "official" picture, however, European countries have much in common, among which is a love for double meaning and the anxiety for a too-simple truth. In this regard, church-state relations are a symbol of Europe because of the formal differences, unexpected similarities, common patterns, hidden differences, centripetal tendencies, and yet new centrifugal trends waiting for another attempt to synthesize them. A comparison of church-state relations in Belgium, France and, the Netherlands illustrates the above as clearly as a European can stand it.

