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Towards a Recognition and Dialogue Secularism in Europe¹

*Jean-Paul Willaime**

I. INTRODUCTION

In Europe, there are various forms of secular recognition of religions, which combine mutual independence of the state and religion (secularism) and an explicit consideration of the place and role of religions within society (recognition). Exploring the features of religion-state relations in several European countries will allow us to both better identify each country's own logic and avoid the risk of analysing them through the prism of French secularism. In doing so, the latter, recognition, will probably appear in its singularity since European schemes combine both orientations, "secularism" and "recognition," which, from the French point of view, appear not to be easily compatible.

Though Europe has a history of violence associated with religion or its negation,² it also has a history of the pacification of religious and anti-religious violence.³ In other words, there is a history of the emergence of democratic societies who respected freedom of conscience and thought and who gradually *built* religious pluralism.

This historical construction of peace and civil tolerance allows countries to organize themselves as political communities while recognizing that the plurality of religious and philosophical choices

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1. A French version of this paper is published as follows: Jean-Paul Willaime, *La prédominance européenne d'une laïcité de reconnaissance des religions*, RECONFIGURATIONS ET NOUVEAUX DÉFIS 101–22 (Jean Baubérot, Micheline Milot, & Philippe Portier eds., Paris, Editions de la Maison des Sciences de l'Homme 2014). We thank the Publishing House of Human Sciences [Editions de la Maison des Sciences de l'Homme] for authorizing this publication in English.

2. See generally, Caroline Ford, *Violence and the Sacred in Nineteenth-Century France*, 21 FRENCH HISTORICAL STUD. 101 (1998) (which discusses the sixteenth-century religious wars and their effect on France and Europe).

3. See generally, Mario Turchetti, *Religious Concord and Political Tolerance in Sixteenth- and Seventeenth-Century France*, 22 SIXTEENTH CENTURY J. 15 (1991).

of their people was neither built in a day nor without conflict. In several European countries, this historic process is not very old: for example, the democratic transitions of the former communist bloc countries, or Spain and Portugal.⁴ Autonomy of politics and law from religion was an essential element of these developments.⁵ For each country, the philosophical, political, and religious genealogy of this process can be established. For some, this evolution was essentially made against religion in general or against a particular religion; others emphasized the contributions of the religions themselves to these changes.⁶ Be that as it may, thanks to the secularization of politics, religious renunciation of political power and political renunciation of spiritual power became essential features of democracy in Europe.⁷ Because political power has learned to renounce spiritual power and religious power has learned (and continues to learn every day) to give way to temporal power, a recognition of and dialogue about secularism in Europe is possible today. This new sharing of power creates tension and conflict that is not only normal, but essential. Indeed, an absence of tension and conflict would cause an imbalance in favour of either a religious view or, conversely, a secularist view of man and the world. It is a hallmark of democracies to leave these differences to express themselves.⁸

The institutionalization and practices of various forms of secular recognition do not eliminate any conflicting dynamic either between the various religious and philosophical convictions, or between religious normativity and secular normativity.⁹ Many national identities in Europe have been and remain marked by religious dimensions; this is particularly clear in countries where a large majority of the population identifies with a religious tradition that is related to the affirmation of national sentiment (e.g. the Orthodox

4. *See generally* PORTUGAL: A COUNTRY STUDY (Eric Solsten ed., 1993).

5. *See, e.g.*, Javier Martinez-Torron, *Religious Freedom and Democratic Change in Spain*, 2006 BYU L. REV. 777, 784 (2006).

6. *Id.* at 783.

7. RELIGION AND DEMOCRACY IN CONTEMPORARY EUROPE 64 (Gabriel Motzkin & Yochi Fischer eds., 2008).

8. THE FEDERALIST No. 10 (James Madison).

9. For example, see RELIGIOUS AND GENDER NORMS: CHANGES, RESISTANCE, AND TWENTY-FIRST CENTURY RECONFIGURATIONS [NORMES RELIGIEUSES ET GENRE: MUTATIONS, RÉSTANCES ET RECONFIGURATIONS XIXE-XXIE SIÈCLE] (Florence Rochefort & Maria Eleonora Sanna eds., 2013) for issues relating to gender.

Greece, the Lutheran Denmark, and the Catholic Ireland).¹⁰ Even if, in each national society, there is a real religious and philosophical pluralisation of people and acceptance of the convictional options at the individual level, the national and European levels themselves are less secularized than we might think. This lack of secularization was recently demonstrated in the Swiss vote on minarets in 2009¹¹ as well as the *Lautsi* case concerning the presence of crucifixes in classrooms in Italy in 2011.¹²

The state-religion relations, as they were historically constructed in each country, have become significant elements of each state's national identity. The way the states related to their gods, or rather those who claim to represent them, became an essential part of their political identity.¹³ Of course we think of France as a prototypical secularist country,¹⁴ but we also think of the United Kingdom and its two established churches (the Anglican Church in England and the Presbyterian Church in Scotland),¹⁵ Germany with its separation of church and state that incorporates partnering relationships between churches and public authorities,¹⁶ and Poland with its exodus from the communist bloc.¹⁷ The political and religious stories of every European country, and the very ways each of these stories has interfered in the processes of *state-building* and *nation-building*, are national peculiarities that establish the various forms of religion-state

10. *Predominant Religions*, ADHERENTS.COM, http://www.adherents.com/adh_predom.html (last visited July 30, 2015).

11. See Nick Cumming-Bruce & Steven Erlanger, *Swiss Ban Building of Minarets on Mosques*, N.Y. TIMES, Nov. 29, 2009, http://www.nytimes.com/2009/11/30/world/europe/30swiss.html?_r=0.

12. *Lautsi v. Italy*, 2011-III Eur. Ct. H.R. 61, App. No. 30814/06 (2011); see also Grégor Puppink, *The Case of Lautsi v. Italy: A Synthesis*, 2012 BYU L. REV. 873, 875 (2012).

13. Rogers Brubaker, *Religion and Nationalism: Four Approaches*, NATIONALS AND NATIONALISM 2, 6 (2012); see generally Zachary D. Smith, *Commandments, Crosses, & Prayers: The Roberts Court's Approach to Public Religion*, 2015 BYU L. REV. 845, 846 (arguing that the current U.S. Supreme Court's approach to public religion helps build a national identity).

14. 1958 CONST. art. 1 (Fr.) [hereinafter FRENCH CONSTITUTION].

15. *Foster Parent Ban: 'This is a Secular State', say High Court Judges*, THE TELEGRAPH, (Mar. 1, 2011), <http://www.telegraph.co.uk/news/religion/8353527/Foster-parent-ban-this-is-a-secular-state-say-High-Court-judges.html>.

16. *Religious Freedom in Germany*, BERKLEY CENTER FOR RELIGION, PEACE AND WORLD AFFAIRS, <http://berkeleycenter.georgetown.edu/essays/religious-freedom-in-germany> (last visited Aug. 3, 2015).

17. Karol H. Borowski, *The Sociology of Religion in Modern Poland: A Critical Review*, 46 SOC. ANALYSIS 389, 391 (1985).

relationships. This is particularly true in countries where national identity is closely linked to a religion, and in the formally denominational states. This is the case in Greece—whose Constitution of 1975 was enacted “in the name of the Holy and Consubstantial and Indivisible Trinity”;¹⁸ Bulgaria—whose Eastern Orthodox Religion is recognized as the “traditional religion of the Republic”;¹⁹ Denmark—where, according to the Constitution of 1953, “[t]he Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State,” and where “the King shall be a member of the Evangelical Lutheran Church”;²⁰ and Malta—whose Constitution of 1964 states that “[t]he religion of Malta is the Roman Catholic Apostolic Religion” and that “the authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.”²¹

II. “LAÏCITÉ”: A MATTER MORE IMPORTANT THAN THE WORD

This Part starts by addressing the different approaches between Catholic and Protestant countries as seen in the term Laïcité. It then describes how both these religious separationist and partnership countries have started to move closer to one another in a regime of separation-recognition. Finally, it finishes by discussing the two different types of secularism, the implications of those differences, and the ability of any country to adopt the more religiously accepted version of secularism.

Laïcité, as a movement for emancipation of public institutions and people from any religious influence, appears to be a more operative concept in Catholic countries than in countries marked by Protestantism.²² This is not surprising since the term “laïcité” itself is found more often in Latin languages (i.e. Catholic countries) than in Anglo-Saxon, Germanic, and Scandinavian languages (i.e. Protestant, Orthodox, or bi-denominational countries). “Laïcité” appears as an emancipation movement in comparison to the former influence of the Catholic Church in and on some national societies. Comparing

18. 1975 SYNTAGMA [SYN.] [CONSTITUTION] (Greece) (amended 2001).

19. 1991 CONSTITUTION OF THE REPUBLIC OF BULGARIA, art. 14.

20. 1953 CONSTITUTIONAL ACT OF DENMARK, §§ 4, 6.

21. 1964 CONSTITUTION OF MALTA, art. 2, §§ 1–2.

22. David A. Martin, *Religion and Public Values: A Catholic-Protestant Contrast*, 26 REV. RELIGIOUS RES. 313, 327 (1985).

France and Germany, the philosopher Jean-Marc Ferry noted that “the secularization of French society is not the secularization of German society. These are two different ways of political neutralization of religions: the Catholic or post-Catholic way is carried out in the mode of separation, while the Protestant way proceeds by internalizing or absorbing originally religious elements.”²³ The Enlightenment was modulated differently in different countries and has not maintained the same relationship to religious matter.²⁴ While aiming at the emancipation of individuals and the achievement of a just society, the emphasis, specifies Jean-Marc Ferry, has not been placed on the same levers of development.²⁵ “In practice, the French Enlightenment would rather emphasize the importance of the state and politics; the Scottish Enlightenment, the market and civil society; the Prussian Enlightenment, the University and culture.”²⁶ In other words, all European countries did not enter political agnosticism in the same way or for the same reasons.²⁷

After opposing both the denominational model that prevailed in countries with a protestant and orthodox culture and the separation models that prevailed in predominantly Catholic countries of Europe, Philippe Portier described a crossover movement: “Denominational states have opened to the separatist logic, separatist states to the partnership logic. Hence, we have seen a shared model of secularism emerge in Europe, which meets the criteria of both equality and recognition of memberships, specific to the regime of flexible separation.”²⁸ Indeed, a regime of separation-recognition prevails in Europe, a regime which, while based on the respective autonomy of the state and religions, explicitly recognizes the place and role of religious groups by giving them a specific legal framework.²⁹

23. Jean-Marc Ferry, *Les Lumières: un projet contemporain?* [*The Enlightenment: a contemporary project?*], *ESPRIT [SPIRIT]*, Aug.–Sept. 2009, at 164 (Fr.).

24. *Id.* at 163–64.

25. *Id.* at 164.

26. *Id.*

27. Philippe Portier, *États et Églises en Europe: Vers un modèle commun de laïcité?* [*States and Churches in Europe: Towards a common model of secularism*], 393 *FUTURIBLES* 89, 91 (2013).

28. *Id.* at 98.

29. James Q. Whitman, *Separating Church and State: The Atlantic Divide*, 34 *HIST. REFLECTIONS* 86, 95 (2008).

However, before showing how this separation-recognition is expressed in the various European countries, it is necessary to clarify what is meant by secularism. There are two dimensions of secularism: 1) a general principle for state-religion relationships in pluralist democracies that respect the freedom of conscience, thought, and religion and all that is implied by such freedom (secularity); and 2) a philosophical, free-thinking, and agnostic concept that promotes a secular vision of man and the world as an alternative to religious concepts (secularism).³⁰ How states define secularism impacts their acceptance of the term as applied to their own national identity. In Belgium, for example, secularism is recognized as the concept of being free-thinking, comparable to various religions.³¹ The sociologist Jean Rémy was keen on emphasizing that the Belgian State is pluralistic and non-secular.³² In some respects, however, Belgium is more secular than France, which sometimes allows itself to be penetrated more by a philosophical secularism as a criticism of religion than by a genuine secular neutrality.³³ As emphasized in the *Strasbourg Consortium*, the distinction between *secularity* and *secularism* is fundamental:

There is an important, perhaps critical, distinction between secularity and secularism: One concept is a fundamental component of liberal pluralism and a bastion against religious extremism, and the other is a misguided, even dangerous, ideology that may degenerate into its own dystopian fundamentalism. Secularity is an approach to religion-state relations that avoids identification of the state with any particular religion or ideology (including secularism itself) and that endeavors to provide a neutral framework capable of

30. José Casanova, *The Secular and Secularisms*, 4 SOC. RESEARCH 1049, 1050–51 (2009); see also Iain McLean, *Secularity and Secularism in the United Kingdom: On the Way to the First Amendment*, 2011 BYU L. REV. 637 (2011).

31. Jean-Paul Willaime, *Les laïcités belge et française au défi de la laïcité européenne* [Belgian and French Secularisms Challenge European Secularism], in POLITIQUE ET RELIGION EN FRANCE ET EN BELGIQUE [POLITICS AND RELIGION IN FRANCE AND BELGIUM] 161–77 (François Foret ed., 2009); see also Jean-Paul Willaime, *Religious and Philosophical Diversity as a Challenge for the Secularism: A Belgian-French Comparison*, in RELIGIOUS PLURALISM: FRAMING RELIGIOUS DIVERSITY IN THE CONTEMPORARY WORLD 63–72 (Giuseppe Giordan & Enzo Pace eds., 2014).

32. Christian Maroy, Jean Remy & Luc Van Campenhoudt, *Faith and the Craft: Symbolic Transactions in Christian Institutions* [La Foi et Le Métier: Transactions Symboliques Dans Les Institutions Chrétiennes], 100 INTERNATIONAL SOCIOLOGY PAPERS [100 CAHIERS INTERNATIONAUX DE SOCIOLOGIE] 91, 92 (1996).

33. *Id.*

accommodating a broad range of religions and beliefs. Secularism, in contrast, is an ideological position that is committed to promoting a secular order.³⁴

In other words, secularism is not the secularist state. The secular state, in democratic societies, is a neutral and impartial state regarding the religions and beliefs of its nationals; in other words, a state which, when functioning as a state, does not profess neither a particular religion nor any atheistic philosophy of life. This secular state, which also involves the secular character of public institutions and services (and their agents), does not mean that the society itself is secular. The people who comprise the populous may have very diversified religious affiliations or none at all, and the states may consider this component of civil societies by integrating their contributions to public life. Whether the word “secularism” is employed or not, this principled secularism (corresponding to English “secularity” and the notion of the secular state) is based on the following three elements:

- 1) Freedom of conscience, thought, and religion, which includes the freedom to have or to not have a religion, the freedom to change religion, and the freedom to practice or to not practice the religion of one’s choice (within the limits of law, democracy, and human rights);
- 2) Equality of rights and duties of all citizens regardless of their religious or philosophical identifications, i.e., non-discrimination of persons by the State and public authorities based on their religious or philosophical affiliations;
- 3) The respective autonomy of the State and religions, which means both the freedom of the State in relation to religions and the freedom of religions in relation to the State (while complying with the laws and principles of human rights within a democracy).³⁵

34. *Secularism vs. Secularity in Europe*, STRASBOURG CONSORTIUM, http://www.strasbourgconsortium.org/?blurbId=379&ctable=blurb_fa&pageId=9 (last visited June 15, 2015); see also Neville Rochow, *An Incurable Malaise: Commonwealth v. Australian Capital Territory and Baskin v. Bogan as Symptoms of Early-Onset Dystopia*, 2015 BYU L. REV. 609 (2015).

35. *Id.*

In Europe, compliance with this principled secularism does not appear incompatible with various forms of recognition of religions.³⁶ This is why support for the idea of “secularism of recognition,” even if this expression may mirror church-state separation in France, resonates strangely in French secular ears. Indeed, in France, interference was very prevalent between secularism as a principle of regulating pluralism by a neutral state and as a critical view of religion. In fact, the tradition of an emancipatory state exercising a sort of philosophical magisterium on the population weighed in relation with the religious was often more prevalent, as the “true” freedom was only to be found in the emancipation against religions.³⁷ Thus, as soon as public recognition is manifest with regard to a religious matter, it quickly gives rise to reactions from those who confuse secularism and privatization of religious matters. Despite the weight of this tradition and its reactionary response to Islam, developments have nevertheless taken place.³⁸ Philippe Portier, in a contribution in which he distinguishes different variants of “recognition plans” (“restricted,” “positive,” and “negative”),³⁹ observes that, had France started from a negative recognition regime, it would have evolved towards a recognition and dialogue secularism.⁴⁰ Having developed this thesis in 2005 myself,⁴¹ I note today that the trend predicted then is confirmed now, especially in

36. Whitman, *supra* note 29.

37. Jean-Paul Willaime, *The Paradoxes of Laïcité in France*, in *THE CENTRALITY OF RELIGION IN SOCIAL LIFE: ESSAYS IN HONOUR OF JAMES A. BECKFORD* 41–54 (Eileen Barker ed., 2008).

38. *Id.* at 47–49.

39. Philippe Portier, *Introduction: The religious essence of political modernity. Elements for a renewal of secularism theory* [Introduction: *L'essence religieuse de la modernité politique. Éléments pour un renouvellement de la théorie de la laïcité*], in *MODERNITY AGAINST RELIGION? A NEW APPROACH TO SECULARISM* [LA MODERNITÉ CONTRE LA RELIGION? POUR UNE NOUVELLE APPROCHE DE LA LAÏCITÉ] 7, 17 (Jacqueline Lagrée & Philippe Portier eds., 2010).

40. Philippe Portier, *Conclusion: “Plural Modernities?” A longitudinal approach to national regulatory models of belief in Western democracies* [Conclusion: *“Modernités plurielles?” Une approche longitudinale des modèles nationaux de régulation du croire dans les démocraties occidentales*], in *RELIGIOUS PLURALISM AND CITIZENSHIP* [PLURALISME RELIGIEUX ET CITOYENNETÉ] 255–56 (Micheline Milot, Philippe Portier & Jean-Paul Willaime eds., 2010).

41. See Jean-Paul Willaime, *1905 et la pratique d’une laïcité de reconnaissance sociale des religions* [1905 and the Practice of a Secularism of Social Recognition of Religions], 129 *ARCHIVES DE SCIENCES SOCIALES DES RELIGIONS* [ARCHIVES OF SOCIAL SCIENCES OF RELIGIONS] 67 (2005).

certain areas of public action,⁴² even if there are some secularist tensions facing Islam.⁴³ The next Part will develop this idea of “recognition secularism” and then demonstrate its prevalence throughout many major Western and Eastern European countries.

III. THE EUROPEAN PREVALENCE OF A RECOGNITION SECULARISM

Focusing on Europe allows specificity and refinement of the concept of recognition secularism by 1) providing additional elements of empirical validation and 2) showing how this is a suitable phrase to describe the reality of religion-state relations as can be observed in most European countries (although, as mentioned previously,⁴⁴ a few countries are still denominational states). As used in this Paper, the term recognition secularism refers to the social recognition of religious communities. This recognition is certainly reflected in legal terms by specific legal frameworks available to religious groups, but it is the aspect of *social recognition* that I would especially like to emphasize. Legal recognition is only the translation, at the legal level, of a socio-cultural consideration of religions and their contributions to community life. There is a social recognition of religions as specific social and cultural realities—associative groups. Particular associative groups generate specific modes of consideration, including within the legal framework extant in each country. States recognize religions across five dimensions:

- 1) a strictly *legal* dimension when providing specific legal frameworks to carry out religious activities;⁴⁵

42. This is especially true in the prison and military chaplaincies. With regard to the first, the research carried out by Celine Beraud, Claire de Galembert and Corinne Rostaing discusses the consideration of the social utility of religion inside the prison environment in terms of “the religion that appeases.” Religious connections offer opportunities for a spiritual escape from the rigors of confinement. Céline Béraud, De Galembert Claire & Corinne Rostaing, *GODS AND MEN IN PRISON [DES HOMMES ET DES DIEUX EN PRISON]* (2013). The authors characterize the prison secularism as recognition secularity. *Id.* at 34.

43. *Id.* at 166.

44. *See supra* text accompanying note 18–21.

45. Jean-Paul Williame, *La sécularisation: Une exception européenne? Retour sur un concept et sa discussion en sociologie des religions [Secularization: A European Exception? Returning to a concept and its discussion in sociology of religions]*, 47 *REVUE FRANÇAISE DE SOCIOLOGIE [FRENCH REVIEW OF SOCIOLOGY]* 755, 761 (2006). In France, this is true even for religious associations and congregations.

- 2) a strictly *social* dimension when taking into account religious contributions in the areas of social solidarity and education;⁴⁶
- 3) an *ethical* dimension when consulting on issues involving conceptions of the human person;⁴⁷
- 4) a more *political* dimension when States provide for partnership and cooperation with religious groups to work towards common goals;⁴⁸ and
- 5) a more *symbolic* dimension when States mobilize religions, often the majority religion, to celebrate the national communion on particular occasions (e.g., deaths, disasters, etc.).⁴⁹

Consider how that recognition has taken shape in several countries, including those that have recently adopted new state-religion relationships either by abolishing a non-separation scheme,⁵⁰ or, for the countries of the former communist bloc, creating a new scheme within the construction of a democratic system.⁵¹ The fact that these various forms of recognition secularism are recent creations in several countries shows that it is not a scenario resulting from potentially obsolete historical and traditional legacies. No, these recently established religion-state relationships are considered appropriate arrangements for relations with religions in democratic societies that respect human rights.⁵²

Before analyzing four countries of the former communist bloc, let us examine seven countries in Western Europe and their relationship with religion: three predominantly Lutheran Protestant (Sweden, Norway, and Germany) and four predominately Catholic (Portugal, Spain, Belgium, and Austria).

Sweden and Norway⁵³ chose a separation-recognition scheme, far from a separation “the French way.”⁵⁴ In Sweden, after having

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *See, e.g.*, BOLIVIA’S CONSTITUTION OF 2009.

51. Borowski, *supra* note 17, at 391.

52. The information reported on each country is taken from the records of the Eurel website (sociological and legal data on religion in Europe) and is available at the following address: www.eurel.info. We also used the Spain leaflet in the Observatory Pharos data bank on pluralism of cultures and religions: <http://www.observatoirepharos.com/>.

53. Norway recently introduced a state-religion separation, *Church of Norway – A Brief History*, CHURCH OF NORWAY (Feb. 16, 2015), <https://kirken.no/nb-NO/church-of->

introduced a separation between the Lutheran Church and the State in 2000,⁵⁵ religious communities can register and have the acknowledged right to use the state tax system to collect membership fees.⁵⁶ State aid is provided for religious communities who “contribute to maintaining and strengthening the fundamental values upon which society is based” and demonstrate stability.⁵⁷ In Norway, on May 21, 2012, the Parliament almost unanimously approved a Constitutional amendment that made the Norwegian Lutheran Church more independent.⁵⁸ It is remarkable to observe two facts which show that here, too, the separation is far from “French”: 1) the Norwegian Constitution stressed the fact that the country’s “values will remain [their] Christian and humanist heritage”;⁵⁹ 2) the Norwegian Lutheran Church, to which the royal family will have to continue to belong,⁶⁰ was in favour of separation.⁶¹ The Church will continue to collect public funds along with other religious groups.⁶²

On the other hand, Portugal and Spain, two countries of the Iberian Peninsula, redesigned their religion-state relationship following the end of dictatorial regimes and the consecutive building of their democracies.⁶³ The Portuguese law on religious freedom from June 22, 2001 explicitly defines two principles: separation and cooperation.⁶⁴ The Portuguese government must work with the churches and religious communities rooted in Portugal, given their representativeness, in particular to promote human rights, contribute

norway/about/brief-history/; *Swedes End Long Union of Church and State*, N.Y. TIMES, (Dec. 31, 1995), <http://www.nytimes.com/1995/12/31/world/swedes-end-long-union-of-church-and-state.html>.

54. FRENCH CONSTITUTION, *supra* note 14.

55. Carol J. Williams, *Sweden Ends Designation of Lutheranism as Official Religion*, L.A. TIMES, (Jan. 1, 2000), <http://articles.latimes.com/print/2000/jan/01/local/me-49706>.

56. Act on Religious Communities, SFS 1998:1593, Section 16, as amended (Swed.).

57. *Id.*

58. *Church of Norway – A Brief History*, *supra* note 53.

59. Constitution of the Kingdom of Norway (May 17, 1814), art. 2, *available at* <https://www.stortinget.no/globalassets/pdf/constitutionenglish.pdf>.

60. *Id.* at art. 4.

61. Associated Press, *Church-state split is sought in Norway*, DESERET NEWS, Dec. 9 2006, <http://www.deseretnews.com/article/650213367/Church-state-split-is-sought-in-Norway.html?pg=all>.

62. Constitution of the Kingdom of Norway, *supra* note 59 at art. 16.

63. PORTUGAL: A COUNTRY STUDY, *supra* note 4.

64. 2001 Religious Freedom Act (Port.).

to the overall development of each individual and to promote the values of “peace, freedom, solidarity, and tolerance.”⁶⁵ This idea of separation-recognition enables religious groups to fulfil the criteria of explicitly cooperating with the state in the promotion and development of the core values of democracy. The state, in turn, agrees to take into account the contributions of religions to its objectives of common interest.⁶⁶

In Spain, the Constitution of December 27, 1978 put an end to the denominational status of the State.⁶⁷ But, while proclaiming, “there shall be no State religion,”⁶⁸ the Constitution adds: “The public authorities shall take the religious beliefs of Spanish society into account and shall consequently maintain appropriate cooperation with the Catholic Church and the other confessions.”⁶⁹ The law on religious freedom of July 5, 1980 in turn indicates in article 17: “The State, taking account of the religious beliefs of Spanish society, will establish, if necessary, agreements or cooperation conventions with the registered Churches, denominations, and religious communities which, by their importance and number of believers have reached a notable rootedness in Spain.”⁷⁰ In fact, in addition to the Concordat negotiated with the Catholic Church from 1976 to 1979, the Spanish government signed agreements with three religious groups having a “notable rootedness” in Spain in 1992: Jews, Muslims, and Protestants.⁷¹ These agreements provide these groups with some “advantages,” including civil recognition of the marriages they celebrate and the teaching of their religion in public schools.⁷² Even if the subject remains highly confrontational in Spain, especially on the issue of religious education in schools,⁷³ this State practices its own form of a religious recognition type of secularism.

65. *Id.*

66. *Id.*

67. C.E., B.O.E. n. 311, Dec. 29, 1978 (Spain) [hereinafter SPAIN CONSTITUTION].

68. *Id.*

69. *Id.*

70. B.O.E. 1980, 177 (Spain).

71. U.S. STATE DEP'T, INTERNATIONAL RELIGIOUS FREEDOM REPORT: SPAIN (2013).

72. *Id.*

73. See Mar Grier, *Les débats concernant l'enseignement des religions à l'école en Espagne* [The Debates on the Teaching of Religions in School in Spain], in LE DÉFI DE L'ENSEIGNEMENT DES FAITS RELIGIEUX À L'ÉCOLE: RÉPONSES EUROPÉENNES ET QUÉBÉCOISES [THE

Belgium is a country where seven religious groups are recognized by the State: Catholic, Protestant, Orthodox, Anglican, Jewish, Muslim, plus a seventh non-denominational philosophical community.⁷⁴ In contrast to the French State which neither recognizes nor employs any religion,⁷⁵ the Belgian State not only recognizes different religions, but also subsidizes them.⁷⁶ Rik Torfs, of the Katholieke Universiteit Leuven, notes that the Belgian system establishes a clear distinction between the State and religion and dedicates their mutual independence.⁷⁷ He indicates that the Belgian State applies an active neutrality regarding religions by recognizing certain religions and financing them.⁷⁸ While opening a university symposium in Ghent in 2010, the Flemish Minister, Geert Bourgeois, stated that neutrality does not mean that public authorities cannot maintain relations with religious or philosophical organizations. It does not object to aid to churches and religious and philosophical institutions, nor social activities subsidies of Churches and religious or philosophical organizations.⁷⁹ Since June 21, 2002, the Belgian State recognizes and finances the “non-denominational philosophical communities” in addition to the six recognized religions.⁸⁰ In Belgium, the philosophies of this group are referred to by the term “organized secularism.”⁸¹ As a result of this law, the

CHALLENGE OF TEACHING RELIGIOUS FACTS IN SCHOOL: EUROPEAN AND QUÉBÉCOISES RESPONSES] 145–70 (Jean-Paul Willaime ed., 2014).

74. U.S. STATE DEP'T, INTERNATIONAL RELIGIOUS FREEDOM REPORT: BELGIUM (2013).

75. FRENCH CONSTITUTION *supra* note 14.

76. U.S. STATE DEP'T: BELGIUM, *supra* note 74.

77. Rik Torfs, *Église, État et laïcité en Belgique: Remarques introductives* [Church, State, and Secularism in Belgium: Introductory remarks], in LE FINANCEMENT DES CULTES ET DE LA LAÏCITÉ: COMPARAISON INTERNATIONALE ET PERSPECTIVES [FINANCING RELIGIONS AND SECULARISM: INTERNATIONAL COMPARISON AND PERSPECTIVES] 16–17 (Jean-François Husson ed., 2005).

78. *Id.* at 17.

79. Geert Bourgeois, Toespraak bij Europees Congres “Dialogo en overleg tussen de levensbeschouwingen/religies en de publieke overheden in Europa. Uitdagingen en grenzen van nieuwe bestursvormen” [Speech to the European Conference “Dialogue and Reflections between the Religions/Worldviews and the Public Authorities. Challenges and Limits of the New Management”] (Mar. 9 2010) (transcript available at <http://www.geertbourgeois.be/toespraken/toespraak-9-maart-2010-europees-congres-%E2%80%9Cdialogo-en-overleg-tussen-de-levensbeschouwingen>).

80. 1994 CONST. art. 181 (Belg.).

81. Claude Javeau, *La laïcité ecclésialisée: le cas de la Belgique* [Ecclesiastical Secularism: The case of Belgium], in DES MAÎTRES ET DES DIEUX: ÉCOLES ET RELIGIONS EN EUROPE

sociologist Claude Javeau noted that secularism forms the “seventh recognized religion” in Belgium.⁸² Whether in prison or in the army, you can as easily seek the assistance of a Catholic, Protestant, Jewish, or Muslim chaplain as the assistance of a “humanist” chaplain (i.e., layman/secular).⁸³ The Belgian example illustrates that practicing an active neutrality concerning religions and beliefs can be manifest in public funding and supportive religious activities, funding that is not incompatible with state neutrality for religious and philosophical concepts of existence.

Germany and Austria take a different approach. In Germany, although “there is no state church,” the most important religious groups are recognized as corporations under public law and integrated as partners in the public sphere.⁸⁴ Austria distinguishes between three levels of status: 1) religious societies recognized by law and having the status of a legal person in public law (there are thirteen); 2) other religious communities merely “recorded by the State”; and 3) other religious communities that are associations governed by the Associations Act.⁸⁵

Four countries of the former Communist bloc, Latvia, Poland, Slovakia, and Romania, chose various forms of separation-recognition when establishing their democracy.⁸⁶ So Latvia, while proclaiming that “the church shall be separate from the State,”⁸⁷ and stating in the Law on Religious Organizations that the State will privilege no denomination or religion in particular,⁸⁸ recognizes eight religious groups as “traditional churches”: Lutheran, Catholic, Orthodox, Old Believers, Methodists, Baptists, Seventh Day Adventists, and Jews.⁸⁹ This status, established in 2004, allows agreements to be made with the state recognizing the specific role of the Church in the country’s legal system and the value system of

[MASTERS AND GODS: SCHOOLS AND RELIGIONS IN EUROPE] 155 (Jean-Paul Willaime & Séverine Mathieu eds., 2005).

82. *Id.*

83. *Id.* at 155–56.

84. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND (BASIC LAW) art. 137, *translation at* http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0864.

85. U.S. STATE DEP’T, INTERNATIONAL RELIGIOUS FREEDOM REPORT: AUSTRIA (2013).

86. PORTUGAL: A COUNTRY STUDY *supra* note 4.

87. THE CONSTITUTION OF THE REPUBLIC OF LATVIA 1922, art. 99.

88. *See* Law on Religious Organizations, 1995, amended 2002, art. 2 (Lat.).

89. U.S. STATE DEP’T, INTERNATIONAL RELIGIOUS FREEDOM REPORT: LATVIA (2013).

society, as well as its major contribution to moral and socialization processes.⁹⁰

The Constitution of Poland expresses a particularly strong example of separation-recognition: “The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good.”⁹¹ This is an explicit recognition of the contribution of religions to shared values.

According to Michaela Moravcikova, “the Slovak Republic acknowledges [the churches’] social and legal status as public and legal institutions sui generic, and co-operates with them according to the principles of partnership co-operation”⁹² In fact, there is a concordat (an agreement or treaty) with the Vatican as well as agreements with other religious communities.⁹³ According to Michaela Moravcikova, the churches are “a significant part of cultural and social life of the State, and an important factor in the creation of a spiritual and moral consciousness in society.”⁹⁴ Hence, the church-state relationship provides for registration of churches and religious communities in the Ministry of Culture of the Republic if they have at least 20,000 members.⁹⁵ However, among the twenty or so churches and religious communities registered in 2007, some have fewer than 20,000 members because their existence prior to the 192/1992 law on registration was taken into account.⁹⁶

In 2006, Romania adopted a law on religious freedom and the general status of religions.⁹⁷ After asserting that “[t]he Romanian State observes and guarantees the fundamental right to freedom of

90. *Id.*

91. THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 2ND APRIL 1997, art. 25, para. 3.

92. Michaela Moravcikova, *Legal Status of Churches and Religious Communities*, EUREL: SOCIOLOGICAL AND LEGAL DATA ON RELIGIONS IN EUROPE, <http://www.eurel.info/spip.php?rubrique504&lang=en> (last visited June 17, 2015).

93. Treaty between the Slovak Republic and the Holy See about Catholic upbringing and education, Holy See, Slovak Republic, May 13, 2004, no. 394/2004 Z. z (available at <http://www.concordatwatch.eu/kb-1225.834>).

94. Moravcikova, *supra* note 92.

95. *Id.*

96. *Id.*

97. Freedom of Religion and the General Status of Denominations (Law 489/2006) (Rom.).

thought, conscience and religion for any individual on the territory of Romania,”⁹⁸ the law states:

- (1) The Romanian State recognizes the denominations’ spiritual, educational, social-charitable, cultural and social partnership role, as well their status as factors of social peace.
- (2) The Romanian State recognizes the important role of the Romanian Orthodox Church and that of other churches and denominations as recognized by the national history of Romania and in the life of Romanian society.⁹⁹

While proclaiming that “[t]here is no State Religion in Romania”¹⁰⁰ and that “the State is neutral toward any religious persuasion or atheistic ideology,”¹⁰¹ the Romanian state grants the status of recognized denominations to the religious associations “that, through their activities and number of worshipers, provide guarantees of sustainability, stability and public interest.”¹⁰² Article 18 specifies the three criteria required to qualify for the category of “recognized religion”:

- 1) have been operating without interruption as a religious organization in Romania for at least twelve years;
- 2) present a list proving that at least 0.1% of the population of Romania is a member the organization;
- 3) present the declaration of faith and bylaws for the organization and operation.¹⁰³

According to these standards, eighteen religious organizations were registered as “recognized religions” by the Romanian state in 2006.¹⁰⁴ In addition to the Romanian Orthodox Church (and two other Orthodox Churches), the Roman Catholic Church, the United Romanian Church, the Greco-Roman Catholic Church, nine Protestant churches (Reformed, two Lutheran, Baptist, Pentecostal, two Evangelical, Seventh-Day Adventist, and Unitarian), the Armenian Church, the Federation of Jewish Communities in

98. *Id.* at art. 1, para. 1.

99. *Id.* at art. 7.

100. *Id.* at art. 9, para. 1.

101. *Id.*

102. *Id.* at art. 17, para. 1.

103. *Id.* at art. 18.

104. *Id.* at app.

Romania, the Muslim religion, and the Jehovah's Witnesses.¹⁰⁵ These churches were recognized on the understanding that the State may decide to “withdraw the status of recognized denomination when that denomination's activity seriously threatens public safety, order, health, morality or the fundamental human rights and liberties”¹⁰⁶ that the status of being a recognized denomination allows them. These include the ability to:

- cooperate “in domains of common interests” in partnerships with public authorities;¹⁰⁷
- receive, on request, state support for the remuneration of the clerical and secular staff “based on the number of their worshipers who are Romanian citizens and based on their genuine needs of subsistence and activity”;¹⁰⁸
- benefit from the exemption from military service for the clerical and monastic staff;¹⁰⁹
- guarantee religious education in public and private schools;¹¹⁰
- have, within the public education system, theological training centres for teacher training;¹¹¹ and
- establish, at the local level, denominational cemeteries.¹¹²

Religious organizations that do not meet the criteria to be recognized as “religions” or who do not wish to benefit from this status, are offered two possibilities: “religious association” or “religious group.”¹¹³ A religious association is defined as a legal entity of private law composed of at least 300 people and is included in the “Registry of religious associations.”¹¹⁴ These religious associations also benefit from tax incentives¹¹⁵ and may eventually

105. *Id.*

106. *Id.* at art. 21.

107. *Id.* at art. 9.

108. *Id.* at art. 10.

109. *Id.* at art. 25.

110. *Id.* at art. 32.

111. *Id.* at art. 4.

112. *Id.* at art. 28.

113. *Id.* at art. 5 para. 2.

114. *Id.* at art. 40.

115. *Id.* at art. 44.

become a recognized religion.¹¹⁶ A religious group is a form of association without legal personality, in other words, a de facto association.¹¹⁷

As can be seen in both Western and Eastern Europe, forms of recognition secularism have been deployed by articulating the reciprocal independence of the state and of religions on the one hand, with the explicit acknowledgement of the place and role of religions in the collective life on the other hand. Part IV further analyses the assumptions and the impact of such a posture with respect to the social and cultural phenomenon of religion.

IV. A SOCIAL AND CIVIC AWARENESS OF RELIGIONS

The features of religion-state relationships in European countries reject ostracism with regard to religion.¹¹⁸ These states consider that the religious dimension of these associations is not in itself an obstacle to their social, cultural, educational, ethical, and civic contributions for collective life, an awareness that may even go as far as providing funding to these organizations.¹¹⁹ This attitude includes both a trivialization of the religious phenomenon and an awareness of its specific features. On the one hand, the attitude is trivializing in the sense that without special attention to the religious dimension of these organizations, they are considered to be like other social organizations. Although based on a conviction of beliefs, these organizations are also similar to others that perform various social functions and whose contributions may be of interest to the state (like sports and arts organizations for example).¹²⁰ On the other hand, taking into account the specific features of the religious phenomenon as a social and cultural fact, they are given specific legal frameworks in which their organization is respected insofar as the operation of authority and the internal implementation of their own standards are concerned.¹²¹

116. *Id.*

117. *Id.* at art. 1.

118. *Religious Freedom in Germany*, *supra* note 16.

119. *Id.*

120. In some respects, one might consider that this trivialization represents a radicalization of secularism: getting away from any scheme of criticism of religion, religions are approached as social and cultural facts that deploy their activities and their contributions are positively accepted in the rules of law, human rights, and pluralist democracy.

121. *See supra* Part III.

This awareness may, for example, go as far as recognizing the right of a religious organization to dismiss one of its employees if the employee, by his/her behaviour, contradicts the core values of the group in which he/she freely chooses to work. In the *Obst v. Germany* case concerning an official of The Church of Jesus Christ of Latter-day Saints (Mormon church) who was summarily dismissed by the authorities of the church for adultery, the European Court of Human Rights did not find that there had been an abuse of power by the authorities of the church because of the importance of the principle of marital fidelity to the church.¹²² The employment contract implies respect for the group's "high moral principles."¹²³ On July 9, 2013, this same Court validated the refusal of the Romanian Orthodox Church to register a trade union of employees, considering that not doing so would have come back to an illegitimate interference in the internal organization of a religious group.¹²⁴ Taking into account the specific features of religious groups is also manifest in the fact that public authorities explicitly integrate their contributions in the field of education, particularly with regard to moral education, and in the field of ethics at the level of society as a whole.¹²⁵ In doing so, states recognize religious groups as providers of guidance and as resources in the conduct of life and the search for a good life.

These regimes of recognition secularism ultimately reflect a sociological understanding of religious phenomena by demonstrating a deep understanding, though often implicit, of these religious issues. Indeed, these devices show that public authorities have generally understood that religious phenomena should not be reduced either to their private and individual dimensions, or to their dimensions of beliefs and ritual practices. The public authorities have both implicitly and explicitly incorporated the notion that religious associations are not like other associations into their laws and policies.¹²⁶ They recognize that these are associations that deeply

122. *Obst v. Germany*, App. No. 425/03, 2010 Eur. Ct. H.R. 688, available at <http://hudoc.echr.coe.int/eng?i=001-100463>.

123. *Id.* at ¶ 50.

124. *Sindicatul "Păstorul cel Bun" v. Romania*, App. No. 2330/09, 2013 Eur. Ct. H.R. 688, available at [http://hudoc.echr.coe.int/eng?i=001-122763#\[{"itemid":\["001-122763"\]}\]](http://hudoc.echr.coe.int/eng?i=001-122763#[{).

125. Liam Gearon, *European Religious Education and European Civil Religion*, 60 BRITISH J. EDUC. STUD. 151, 152 (2012).

126. Moravcikova, *supra* note 92.

mobilize people, involving emotional and militant dimensions and creating sustainable identities, in constant evolution beyond the variety and intensity level of practices and beliefs to each other.¹²⁷ These associations constitute, for the persons who adhere to them, identity and ethical resources; they articulate the individual and the collective, the local and the global.¹²⁸ Above all, they provide “sense” in the three meanings of the word: the meaning of life and death, happiness and unhappiness; the direction of life by ethical standards that guide behaviour; and sensations, or ways of feeling individually and collectively, the individual and collective emotions.¹²⁹ Therefore, it is indeed a matter of social realities *sui generis*, even if from one era to another, from one culture to another; these realities are changing and take many different forms. Religious phenomena are symbolic infrastructure through which human beings attempt to symbolically master their existence, to be part of space and time, in a synchrony and a diachrony.¹³⁰ It is, therefore, a social and cultural phenomenon that requires the implementation of a symbolic intelligence secularism in which human beings also function within the three above-mentioned dimensions.

Another dimension also emerged: the recognition by public authorities of the historical and cultural importance that one or several specific religious traditions have had in a given country.¹³¹ The particular roles of Lutheranism in Sweden, Orthodoxy in Romania, and Catholicism in Spain are obvious in these countries.¹³² Trying to promote a sense of equality by putting all religions on the same level—for example, Buddhism and Catholicism in Spain¹³³—seems like an attempt to apply an abstract scheme that denies history and reality. Merely considering the individual aspects of religious and philosophical attitudes fails to account for the cultural strata of

127. See Borowski, *supra* note 17, at 390.

128. See *id.*

129. Gilat Levy & Ronny Razin, *Religious Beliefs, Religious Participation, and Cooperation*, 4 AM. ECON. J.: MICROECONOMICS 121, 121–22 (2012).

130. Jean-Paul Willaime, *L'approche sociologique des religions. Une réduction de son objet ou une compréhension objectivante de celui-ci?* [The Sociological Approach of Religions. A Reduction of the Issue or an Objective Understanding of It?], in *L'EXPÉRIENCE RELIGIEUSE. APPROCHES EMPIRIQUES. ENJEUX PHILOSOPHIQUES* [THE RELIGIOUS EXPERIENCE: EMPIRICAL APPROACHES PHILOSOPHICAL ISSUES] 197–216 (Anthony Feneuil ed. 2012).

131. Act on Religious Communities, *supra* note 56.

132. *Id.*; Moravcikova, *supra* note 92; FRENCH CONSTITUTION, *supra* note 14.

133. FRENCH CONSTITUTION, *supra* note 14.

societies, the fact that particular religious dimensions have played a more significant role in the history of the societies and in their configuration as state-national communities. This is particularly identifiable in their national calendars¹³⁴ and the architectural landscape of religious buildings.¹³⁵ Because of this, offering to certain religious groups a legal framework recognizing specific rights and some protection for facilities according to certain criteria would in itself constitute a violation of Article 9 of the European Convention on Human Rights (ECHR).¹³⁶ This article guarantees, in addition to the freedom of religion and belief, the protection against discrimination of a religious or convictional group in comparison with others—in other words, equal treatment for all of them.¹³⁷ It should be noted that any discrimination is prohibited by the *ECHR* under Article 14: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”¹³⁸

This does not prevent the Strasbourg Court (i.e. European Court of Human Rights) from considering the various recognition systems practiced by the states that come within the margin of appreciation of these states, which, given the special role of certain religions in the collective life of their country, grant them certain privileges.¹³⁹ The control of the Court is exercised only in ensuring that the recognition system be open to any religious group that meets the required criteria.¹⁴⁰ Thus, the Court held that Austria had

134. Ted Purinton & Vicki Gunther, *Closing School for the Holidays – Whose Holidays?*, 93 *PHI DELTA KAPPAN* 33, 33 (2011).

135. Hewitt B. Vinnedge, *Popular Church Building in Medieval France*, 16 *CATHOLIC HIST. REV.* 44 (1930).

136. *EUR. CONV. ON H.R.* art. 9.

137. *Id.*

138. *Id.* at art. 14.

139. *See* *Savez Crkava v. Croatia*, App. No. 7798/08, 2010 *Eur. Ct. H.R.* § 85; *Religionsgemeinschaft der Zeugen Jehovas v. Austria*, App. No. 40825/98, 2008 *Eur. Ct. H.R.* § 96. *See also* *Schalk & Kopf v. Austria*, App. No. 30141/04, 2010 *Eur. Ct. H.R.* §§ 96–98; *Handyside v. The United Kingdom*, App. No. 5493/72, 1976 *Eur. Ct. H.R.* §§ 47–49; *see also* Vanja-Ivan Savić, *Still Fighting God in the Public Arena: Does Europe Pursue the Separation of Religion and State Too Devoutly or Is It Saying It Does Without Really Meaning It?*, 2015 *BYU L. REV.* 679 (2015) (discussing the importance and application of the “margin of appreciation” doctrine in Europe).

140. *Zuegen Jehovas*, 2008 *Eur. Ct. H.R.* § 92.

violated Article 9 of the Convention by multiplying the obstacles.¹⁴¹ This was especially evidenced by a ten-year waiting period that prevented Jehovah's Witnesses from being granted the status of "religious society" (*Religionsgemeinschaft*), the highest degree of recognition of a religious group in Austria, which includes the right to teach religion in public schools.¹⁴² In its judgement, the Court stated:

In view of these substantive privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain requires therefore that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.¹⁴³

In a decision concerning Croatia and the applications submitted by several Protestant communities, the Court found that the Croatian state's refusal to sign agreements with the Protestant communities constituted discrimination in exercising the right to freedom of religion; although the conclusion of special agreements with the state and some religious communities to establish a specific legal regime for them, was not in itself contrary to Articles 9 and 14 of the Convention.¹⁴⁴ On this occasion, the Court stated:

The Court reiterates that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. However, the Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment In particular, the conclusion of agreements between the State and a particular religious community establishing a special regime in favour of the latter does not, in principle, contravene the

141. *Id.* at §§ 66–69.

142. *Id.* at §§ 91–92; *see also* Act of 20 May 1874 on the Legal Recognition of Religious Societies, RGrBl. n. 68/1874, Sec. 2 [Austria], *available at* <http://www.legirel.cnrs.fr/spip.php?article42>; FEDERAL PRESS SERVICE, RELIGIONS IN AUSTRIA 9 (Walter Reichel & Thomas Eder eds., Maria Bennett trans., 2011) *available at* <https://www.bka.gv.at/DocView.axd?CobId=37670>.

143. *Id.* at § 92.

144. *Savez Crkava*, 2010 Eur. Ct. H.R. §§ 91–93.

requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.¹⁴⁵

The court confirmed that “the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs.”¹⁴⁶

Beyond establishing different levels of legal recognition that allow each religion to choose the status it prefers and allow the state to take into account the historical and cultural significance of certain religions in the concerned country religious organizations in many European societies are considered useful, cultural auxiliaries that participate in the training of people in pluralistic democracies.¹⁴⁷ Across Europe, secularism does not necessarily mean a lack of cooperation between public authorities and religions, as the majority of the European countries that have implemented various religious recognition systems incorporate a number of public interest missions.¹⁴⁸ In other words, religion does not appear in Europe as an effective foil against which the state and society should struggle for autonomy, but as a training vector and tool for the development of individuals that makes a useful contribution to the education of young people in learning their future responsibilities as citizens.¹⁴⁹ Far from any “religious political excommunication,”¹⁵⁰ several European countries are developing public policies to integrate religion into the overall governance of the society, including in the field of education.¹⁵¹

In Europe, religions are symbolic resources that can hardly be ignored by political leadership. In fact, in some European countries, starting with Germany, the defense of freedoms and the protection against the dangers of dictatorship and nationalism went hand in

145. *Id.* at § 85 (citations omitted).

146. *Id.* at § 88.

147. Moravcikova, *supra* note 92.

148. Levy & Razin, *supra* note 129.

149. *Id.*

150. See Jean-Marc Ferry, THE LIGHTS OF RELIGION: INTERVIEW WITH ÉLODIE MAUROT [LES LUMIÈRES DE LA RELIGION: ENTRETIEN AVEC ÉLODIE MAUROT] 9–10 (2013). Ferry asserts that the exclusion of religious beliefs out of the public sphere is impoverishing for the citizen and democracy, a political excommunication of the religious. *Id.*

151. Levy & Razin, *supra* note 129.

hand with the consolidation of the institutional position of the churches and of their moral authority.¹⁵² While proclaiming that “there is no state church,” Jacques Zylberberg notes, the German State gives part of the public space to religious institutions arising from historical religious institutions.”¹⁵³ Thus, the government recognizes religious institutions as political institutions participating in the common good.

This model, which, far from reducing public action to only the actions of the state and local authorities, recognizes that religious groups can cooperate in public interest missions and help ensure and legitimize democracy, particularly through their educational endeavours that permeate both Western and Eastern Europe.¹⁵⁴ Ultimately, this type of secularism that dominates in Europe differs from the French secularism. European countries have eventually understood that the liberal state has indeed an interest in giving free reign to religious voices in the public, political sphere and that religious organizations are taking part in public life. As such, the state cannot discourage believers and religious communities from politically expressing themselves because it cannot know if in doing so, it might restrict the secular society from accessing important resources for the foundation of the society.¹⁵⁵

V. WHAT ABOUT FRANCE?

While France puts off an appearance of a completely secular state in contrast to these other European countries, this Part will show that developments over time have led it to a recognition secularism.

In France, the tradition of an emancipatory state exercising a kind of philosophical authority over the population has resulted in the belief that “true” freedom is only to be found in emancipation from religion.¹⁵⁶ Thus, once a public recognition is manifest with

152. Jacques Zylberberg, *Secularism Not Known: Germany, Canada, USA, UK [Laïcité, connais pas: Allemagne, Canada, États-Unis, Royaume-Uni]*, 75 *POWERS [POUVOIRS]* 37, 39 (1995).

153. *Id.*

154. Levy & Razin, *supra* note 129.

155. Jürgen Habermas, *ENTRE NATURALISME ET RELIGION: LES DÉFIS DE LA DÉMOCRATIE [BETWEEN NATURALISM AND RELIGION: THE CHALLENGES OF DEMOCRACY]*, 190 (Christian Bouchindhomme & Alexandre Dupeyrix trans., 2008).

156. Jean-Paul Willaime, *The Paradoxes of Laïcité in France*, in *THE CENTRALITY OF RELIGION IN SOCIAL LIFE: ESSAYS IN HONOUR OF JAMES A. BECKFORD* 41, 45–49 (Eileen Barker ed., Allyn Hardyc trans., 2008).

regard to the religious, this quickly gives rise to negative reactions from those who confuse secularism and privatization of religious matter.¹⁵⁷ President Jacques Chirac officially recognized the Masonic organizations in 2003 for the 275th anniversary of the foundation of the masonry.¹⁵⁸ What would people have said if he had honoured religions in similar circumstances? Yet, the meeting between President Nicolas Sarkozy and Pope Benedict XVI at the Elysée Palace on September 12, 2008, was a fine example of a republican secularism of recognition and dialogue.¹⁵⁹

The status of secularism in France has also evolved over the past fifty years. Two indices are used to demonstrate the change. The first concerns the financing of church activities. The French Republic subsidizes the private education sector through contracts established by the Debré Act in 1959.¹⁶⁰ Catholic schools were the first affected by this “school concordat,”¹⁶¹ but Jewish schools were also affected,¹⁶² and, since 2000, a few Muslim schools have felt the effects as well.¹⁶³ It also applies to associations specifically dedicated to sporting, cultural, or social matters related to different faiths.¹⁶⁴ The religious activities themselves, which were particularly targeted by the prohibition of 1905, are now supported.¹⁶⁵ Various measures of tax exemption have been adopted which allow religious associations to benefit from indirect subsidies.¹⁶⁶ Various aids in

157. *Id.* at 47.

158. M. Jacques Chirac, President of France, Address on the Occasion of the 275th Anniversary of the Masonic Order in France (June 23, 2003), *available at* http://www.cesnur.org/2003/fr_chirac_1.htm.

159. Robert Marquand, *With Pope's Visit, Sarkozy Challenges French Secularism*, CHRISTIAN SCI. MONITOR (Sept. 15, 2008), *available at* <http://www.csmonitor.com/layout/set/print/World/Europe/2008/0915/p01s01-woeu.html>.

160. Frances C. Fowler, *School Choice Policy in France: Success and Limitations*, 6 EDUC. POL'Y 429, 429–30 (1992).

161. *Id.*

162. Zehavit Gross, *Power, Identity, and Organizational Structure as Reflected in Schools for Minority Groups: A Case Study of Jewish Schools in Paris, Brussels, and Geneva*, 50 COMP. EDUC. REV. 603 (2006).

163. Harry Judge, *The Muslim Headscarf and French Schools*, 111 AM. J. EDUC. 1, 7 (2004).

164. Service Public Association [Public Service Association], *Subventions versées aux associations* [Grants to Associations], SERVICE-PUBLIC.FR (Jan. 1, 2015), <https://www.service-public.fr/associations/vosdroits/F3180>.

165. *Id.*

166. *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, 2014 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE (2014)

support of constructing places of worship were also added, in the form of provision of sites, loan guarantees, and even direct support, as in Rennes or Evry during the 1980s.¹⁶⁷ The Council of State was petitioned to rule on the legality of such measures, and validated the principle of assembly in five judgments delivered on July 19, 2011.¹⁶⁸

The second indication concerns acceptance of religious affiliations as can be seen in the school environment. Though there is a ban on wearing “patent” religious signs,¹⁶⁹ regulations now grant students the ability to obtain a leave of absence for religious obligations, and the benefit of chaplaincies, not only as provided for by the law of December 9, 1905 in boarding schools,¹⁷⁰ but also in high school and college day schools. The introduction of teaching about religions in school curriculum since 1990-2000 also marks a qualitative leap.¹⁷¹ Built around the study of religious facts through existing disciplines without introducing either a special subject, or specific teaching staff,¹⁷² the French model indeed constitutes a unique model in Europe. The theme of “recognition” is central however: by specifying that religious knowledge is essential to the constitution of a “tolerant society,” the Department of Education rediscovers, away from the abstract concept of secularism, the importance of the religious factor in the construction of individual and collective identities.

(“Although not tax-exempt, a cultural association may engage in profit-making activity and receive government subsidies for its cultural and educational operations.”) *available at* <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2014&dldid=238380>.

167. Cf. Portier, *supra* note 27, at 102.

168. CE, Commune of Trélazé [Commune de Trélazé], 19 July 2011, n. 308544 (Fr.); CE, Federation of the free thinking and social action of the Rhône [Fédération de la libre pensée et de l'action sociale du Rhône], M.P., 19 July 2011, n. 308817 (Fr.); CE, Urban Community of Le Mans, Le Mans City [Communauté urbaine du Mans, Le Mans métropole], 19 July 2011, n. 309161 (Fr.); CE, Commune of Montpellier [Commune de Montpellier], 19 July 2011, n. 313518 (Fr.); CE, Mme V, 19 July 2011, n. 320796 (Fr.).

169. Code de l'éducation [Code Educ.] art. L141-5-1 (Fr.) (“In schools , colleges and public high schools , the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited.”), *available at* http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=708182A56C05C72B347822E5F11231D7.tpdila07v_1?cidTexte=LEGITEXT000006071191&idArticle=LEGIARTI000006524456&dateTexte=20151023&categorieLien=id#LEGIARTI000006524456.

170. Service Public Association, *supra* note 164.

171. Jean-Paul Willaime, *Comparer l'incomparable* [Comparing the Incomparable], in LE DÉFI DE L'ENSEIGNEMENT DES FAITS RELIGIEUX À L'ÉCOLE: RÉPONSES EUROPÉENNES ET QUÉBÉCOISES [THE CHALLENGE OF TEACHING RELIGIOUS FACTS IN SCHOOL: EUROPEAN AND QUÉBÉCOISES RESPONSES] 7, 17 (Jean-Paul Willaime ed., 2014).

172. *Id.*

Public authorities, both locally and centrally, are more and more willing to call on religious organizations to participate in various policy networks and in different forums for reflection where the collective standard is being developed. The institutionalization of the relationship between the government and the Roman Catholic Church in 2002,¹⁷³ and the creation of the French Council of the Muslim faith in 2003,¹⁷⁴ indicate, among other elements, this strong trend of French political life. Yet, after a year marked by difficult relations with major denominations (due to the passage of the law opening marriage to same-sex couples), President François Hollande himself, initially reluctant and counter to his predecessor, granted a public dimension for the religious and justified the practice of cooperation with holy orders during the ceremony of the vows with religious authorities in January, 2014.¹⁷⁵ President Hollande stated:

I want to address you with this message, over and beyond my vows: we can expect much from this dialogue between the State and religions. We also feel that there is a need for spirituality in our country. We cannot merely reduce the material considerations, even if they are essential. Because there is a crisis, there is also the need to have a conscience, to understand the meaning and contribute to it.”¹⁷⁶

Even in France then, behind the official neutrality of abstention and non-recognition of religious groups, a certain form of recognition-secularity is actually practiced.¹⁷⁷ Therefore, we can say that in terms of state-religion relations, France is less singular and more European than has been imagined. While maintaining forbearance and neutrality rhetoric, ministries of the Republic maintain regular contact with qualified representatives of different religions, representatives who are also received at the Elysée at the traditional New Year reception of vows.¹⁷⁸ The establishment, in 2002, of an annual meeting between the government and the

173. U.S. STATE DEP'T, INTERNATIONAL RELIGIOUS FREEDOM REPORT: FRANCE (2005).

174. *Id.*

175. *President Hollande Vows to Clamp Down on Religious Intolerance*, FRANCE IN THE UNITED KINGDOM (Jan 7, 2014), ambafrance-uk.org/President-Hollande-vows-to-clamp.

176. *Id.*

177. See Willaime, *supra* note 41, at 67–82.

178. *France's President Sarkozy delivers New Year address to religious representatives at the Elysee Palace in Paris*, TOWNHALL.COM (Jan. 7, 2011), http://townhall.com/photos/2011/01/07/frances_president_sarkozy_delivers_new_year_address_to_religious_representatives_at_the_elysee_palace_in_paris.

Catholic Church¹⁷⁹ as well as the creation in 2003 of the French Council of the Muslim faith¹⁸⁰ testify, alongside other events, of a regular practice of dialogue and consultation between public authorities and religious authorities.¹⁸¹

The consideration of religious dimensions by the Ministry of Foreign and European Affairs' Analysis and Prospective Center¹⁸² shows that French diplomacy, just like American diplomacy,¹⁸³ understands that religious facts cannot be ignored in the context of international relations. Laurent Fabius, current Minister at the French Foreign Ministry, explained recently at a symposium that a number of current international crises remain unintelligible and beyond insoluble when the religious factor is not taken into account. The analysis of developments in religious matters is an important tool in understanding the world. Religion, because it influences individual and collective behaviour, changes our mission of knowledge of realities, or of knowledge of the field. The attention we must pay it encompasses a wide variety of problems: balance within states, bilateral relations, transnational issues, security issues, international standards, and challenges of development.¹⁸⁴ He concluded that religion can and must be a cultural factor of dialogue and peace. In this area, France has a valuable experience to assert without arrogance. It endeavours and will endeavour to do so.¹⁸⁵

All these findings contradict a secularist perception of French secularism that ignores the religious dimensions and conveys a unilaterally negative approach to them. It is true that discrepancies between the speech of secularism and the practices to which they

179. *Id.*

180. *Id.*

181. Eglise Catholique en France [Catholic Church in France], *10ème rencontre de l'Instance Matignon* [10th meeting of the Matignon Forum], EGLISE.CATHOLIQUE.FR (Sept. 12, 2014), <http://www.eglise.catholique.fr/Actualites/382316-10eme-rencontre-linstance-matignon/>.

182. Corine Lesnes, *Justin Vaïsse, le stratège du Quai d'Orsay* [*Justin Vaïsse, Foreign Ministry Strategist*], LE MONDE GIO ET POLITIQUE [THE WORLD AND POLICY] (Feb. 22, 2013), http://www.lemonde.fr/international/article/2013/02/22/le-strategie-du-quai-d-orsay_1837320_3210.html.

183. *Id.*

184. Laurent Fabius, *Religions et politique étrangère* [*Religion and Foreign Policy*], in LA DIPLOMATIE AU DÉFI DES RELIGIONS. TENSIONS, GUERRES, MÉDIATIONS [DIPLOMACY CHALLENGE OF RELIGIONS, TENSIONS, WARS, MEDIATIONS] 13 (Denis Lacorne, Justin Vaïsse & Jean-Paul Willaime eds., 2014).

185. *Id.* at 21.

give rise are particularly clear in France. Throughout Europe, what is especially notable are various forms of recognition secularism which combine mutual independence of the state and religion with an explicit inclusion of religion's place and role in society. After opposing the denominational model that prevailed in countries having a Protestant or Orthodox culture¹⁸⁶ and the separation models which prevailed in the predominantly Catholic countries of Europe,¹⁸⁷ Philippe Portier describes a crossover movement where denominational states have opened themselves to a separative logic, separatist states to a partnership logic. Hence, we have seen, on a European level, the emergence of a shared model of secularism while meeting the criteria of both equality and recognition of memberships, specific to a flexible separation scheme.¹⁸⁸ This is indeed a system of separation-recognition prevailing in Europe. In other words, a regime which, while based on the respective autonomy of states and religions, explicitly recognizes the place and role of religious groups by granting them a specific legal framework within which to function.

VI. CONCLUSION

This implementation of the social recognition of religions in many secular countries of Europe is also reflected on the same scale in the European Union itself. The Lisbon Treaty Preamble states that it “dr[ew] inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law.”¹⁸⁹ In adopting this, the European Union asserts that, among the diverse heritage that inspire it, there are also religious heritages. The wording, by asserting that it is from this heritage that the universal values cherished by Europe have developed, goes further in recognizing that religious heritages, among others, have also contributed to the development of these values. The Preamble thus clearly differs from the Preamble of the Charter of European Union Fundamental

186. Portier, *supra* note 27.

187. *Id.*

188. *Id.* at 98.

189. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Preamble, Dec. 13, 2007, 2702 U.N.T.S. 3.

Rights,¹⁹⁰ which had been controversial, particularly in France, because of the reference to the religious heritage of Europe. Not only are religious heritages explicitly mentioned in the Lisbon treaty, but by using the phrase “drawing inspiration from” in the treaty to replace the word “conscious” in the Preamble to the Charter of Fundamental Rights, the Lisbon Treaty recognizes that religious heritages are also legacies that alongside others have promulgated the democratic values upon which European states and the European Union itself are based. This is official recognition in a secular and non-secular pluralistic spirit, of the role of religions in the formation of a democratic Europe.

A second element of the Lisbon Treaty recognizes the presence of religions in the public space and explicitly agrees to take into account their various contributions to community life without sacrificing the independence of the state and public authorities with regard to any religion or philosophies. The Treaty states the following:

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.
2. The Union equally respects the status under national law of philosophical and non-confessional organisations [sic].
3. Recognising [sic] their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations [sic].¹⁹¹

In other words, while clearly asserting that the state-religion relationships are derived from national law and not from community law, the Treaty declares that the national mechanisms built into its twenty-eight state-members will be respected, and the European Union explicitly recognizes the identity and specific contribution of religious and philosophical groups (atheistic humanisms) and wishes to maintain an “open, transparent and regular” dialogue with them.¹⁹² In doing so, the European Union, as are Member States, establishes that it is not secularist, but secular.

190. Charter of Fundamental Rights of the European Union, 2007 O.J. (C 303) 1.

191. Consolidated Version of the Treaty of the Functioning of the European Union, 2012 O.J. (C 326) 49, art. 17.

192. *Id.*

Beyond the diversity of Church-State relationships in the various European countries, there is a trend towards a secular recognition of religions. This trend combines mutual independence of the state and religion with an explicit consideration of the role of religion within society. The European Union and its Member states are secular and no religion determines the politics of the States or of the E.U. As Ronan McCrea argues: “The approaches of Member States to religion are characterized by Europe’s common heritage of Christianity and by humanist and secular influences that have emerged from European history and have limited religious influence over law and politics in Europe to a greater degree than elsewhere.”¹⁹³ Secularism is thus an important part of the European identity. But this fundamental secularism does not prevent taking into account religions’ contributions to society. This idea is why I speak of a secularism of recognition: a secularism that involves a practice of regular dialogues between public authorities and representatives of religion, instead of the government ignoring religions.

193. RONAN MCCREA, RELIGION AND THE PUBLIC ORDER OF THE EUROPEAN UNION 16 (2010).

