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Leni Franken

Liberal Neutrality and State Support for Religion

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Cover illustration: The “Free at Last” sculpture stands in the midst of Boston University’s Marsh Plaza, and is a memorial to the life and work of BU’s most famous students of philosophy and religion, the Reverend Dr. Martin Luther King, Jr.

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This book is dedicated to my godfather, who stirred up the philosopher inside me; to my parents, Patrick and Guy, who believed in the philosopher inside me; and to my husband and my children, who cherish the philosopher inside me.

Preface

As a result of immigration, religious fundamentalism and increasing religious pluralism, the topic of religion and state neutrality is widely discussed in the academic context. However, even though much has been written on religious symbols and religious arguments in the public sphere, the philosophical literature on financing religions is rather restricted, particularly in Europe. In order to address this lacuna, this research monograph focuses, from a philosophical viewpoint, on the relationship between church and state and particularly on the neutrality of the liberal state with regard to the financing of religions.

The book is divided into three parts: Part I takes a philosophical stance and examines different liberal theories and philosophical views on neutrality. Following an elaboration of the concept of neutrality (Chap. 1), different liberal theories will be outlined and critically examined: Rawls's comprehensive and political antiperfectionism (Chap. 2), Kymlicka's autonomy-based antiperfectionism, Raz's autonomy-based perfectionism, Chan's political perfectionism (Chap. 3), and reformation liberalism as defended by Galston and Kukathas (Chap. 4). Based on these theories, and on the difference between external and internal neutrality, I conclude that autonomy-based, antiperfectionist liberalism is a consistent liberal theory and an adequate framework for the requirement of liberal neutrality.

Before I address the question of whether the government can, from an autonomy-based, antiperfectionist liberal perspective, actively support religions, I will have a closer look at the policy of supporting art in a liberal society. I will focus on this particular case because important parallels can be drawn between (subsidies for) art and (subsidies for) religion and because there is extensive philosophical literature available on this topic. After elaborating on Dworkin's (Chap. 5) and Rawls's argumentation (Chap. 6) with regard to this subject, I will argue that, in autonomy-based liberalism, it is possible to give an antiperfectionist argument for state support for art (and other *perfectionist goods*), but that several criteria must be fulfilled in order to remain neutral (Chap. 7).

In Part II, the three core questions of this book will be discussed: (1) Is state support for (institutionalized) *religion* compatible with liberal neutrality, and if so, under which conditions (Chap. 8)? (2) Is state support for *faith-based schools*

compatible with liberal neutrality, and if so, under which conditions (Chap. 9)? (3) Is state support for *religious education* compatible with liberal neutrality, and if so, under which conditions (Chap. 10)?

Finally (in Part III), several concrete church-state models will be examined and evaluated in light of these conditions. Following a brief sketch of different church-state models and the European and human rights legal framework with regard to church and state (Chap. 11), I will take a closer look at three different state-church models. In Chap. 12, two models of *political secularism* will be examined: the American system of *passive secularism* and the French system of *assertive secularism*. Subsequently, three models of active state support for religion will be discussed in Chap. 13: the Belgian model of *fixed compulsory taxes*, the Italian system of *religiously oriented taxes*, and the German system of *voluntary religious taxes*. Finally, the British and Greek models of an *established church* or a *state church* will be examined in Chap. 14.

The analysis of these different models, in light of the philosophical discussion on liberalism and neutrality, will show that some state-church models (secularism, theocracy, state church or established church) are *principally* not reconcilable with autonomy-based liberalism. In addition, it will become clear that political secularism and active state support can, from a *theoretical* perspective, be in accordance with the idea of liberal neutrality, but that these systems, *in practice*, often do not align with this principle. In particular, the constitutional fixation of many church-state policies, the inability to give objective criteria for recognition, and the (related) unfair distribution of subsidies are recurring problems.

Unfortunately, this book will not provide "final answers" to these problems (even though some recommendations and suggestions will be made), but it will rather serve as a guideline for state support: *if* the state chooses active state support for religion (which is a *possibility*, but not a *necessity* in a liberal state), which conditions should be fulfilled in order to remain as neutral as possible?

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Part I
Liberalism and Neutrality

Chapter 1
Liberalism and Neutrality: A Philosophical Examination

1.1 Introduction

Since the publication of Rawls's *A Theory of Justice* (1971), the principle of neutrality has been a core concept in contemporary political philosophy: in order to treat all citizens as free and equal, the liberal state should be neutral. But what is actually meant by this neutrality? When is neutrality required? Where should the concept be applied? Who has the obligation to be neutral? Is neutrality the same as antiperfectionism? And is there a neutral justification for neutrality, or is that an unrealistic and undesirable aim?

According to John Rawls (2005 [1993], 191), "*the term neutrality is unfortunate*; *some of its connotations are highly misleading*, [*and*] *others suggest altogether impracticable aims*". For this reason, Rawls prefers to use the terms "*priority of the right over the good*" and "*justice as fairness*" as alternatives. Along the same lines, Jeremy Waldron (1993, 145) observes that "*neutrality itself is far from a straightforward concept*" and accordingly, the term is often used in a confusing and incorrect way. Given these complications, it will be useful to make clear *what* liberal philosophers mean when they write about neutrality, *where* the concept should be applied, and *why* it should be used.

1.2 What Kind of Neutrality Do We Want?

Following Rawls, many liberal philosophers defend a neutral state policy. But what exactly does this mean? Does it mean that the state should not base its policy on any comprehensive doctrine (*neutrality of justification*)? Or does neutrality mean that the state should do nothing with the aim of promoting a conception of the good life

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over others (*neutrality of aim*[1])? Should we understand neutrality as *neutrality of effects/neutrality of outcome*,[2] which means that the effects or consequences of a given policy should be neutral? And does neutrality imply that each way of life gets the same opportunities (*neutrality of opportunity*), or are some ways of life disallowed in a liberal society?

In the case of *neutrality of justification*, a given policy is only legitimate if the state can give neutral arguments for it. Political decisions and actions should always be legitimated without any reference to the intrinsic value of particular conceptions of the good life. This kind of neutrality is closely connected with *neutrality of aim* as defined by Rawls (1988, 262): "*the state is not to do anything intended to favor or promote any particular comprehensive doctrine rather than another, or to give greater assistance to those who pursue it*". The state can, for instance, forbid smokers from smoking in public areas in order to guarantee the health of its citizens (which is a neutral argument because all reasonable and rational citizens can agree with it), but it can never prohibit smoking in public areas because the state considers not smoking to be *intrinsically better* than smoking or because it considers smoking to be *intrinsically bad*. Because the relationships between neutrality of aim and of justification are difficult to define (Merrill 2014, 7) and because a distinction between both kinds of neutrality is not required for my further argument, I will take both kinds of neutrality together: neutrality of aim or justification means in this case that the state should not base its policy decisions on any comprehensive doctrine and that it should not aim at promoting one conception of the good life over another.

The reason for this neutrality of aim or justification is quite evident: "*the desire to act justly* [*and thus neutral*] *derives in part from the desire to express most fully what we are or can be, namely free and equal rational beings with a liberty to choose*" (Rawls 1971, 256). Because people differ in their conceptions of the good life and because all reasonable and rational citizens should be able to lead a life according to the values they endorse, the government should not prefer any particular conception of the good life. The reason for having a neutral state policy is thus the treatment of all citizens as *free and equal*.

However, this neutrality of justification or aim is not the only kind of neutrality. The state can also act in a neutral way if the *effects* or *consequences* of its policy are equal for all. In this case, the prohibition of smoking in public areas would not be legitimate because smokers are de facto disadvantaged by such a policy: they can only smoke in places where smoking is allowed, while non-smokers can, for instance, eat chewing gum or drink Coca-Cola (which is, like smoking cigarettes, an individual preference) in public areas. In order to ensure freedom and equality, one could therefore argue that the neutral state should take into consideration the *effects* of its policy. This is, however, unsustainable because it is impossible to take into account *all* the different opinions and preferences people have in a given society:

[1] See for this terminology Kymlicka 1989, 884; Caney 1991, 458; Rawls 1988, 262; 2005 (1993), 190–195; Raz 1986, 113; and Mason 1990, 434.

[2] See for this terminology Waldron 1993, 149; Raz 1986, 113 ff; Mason 1990, 434; Larmore 1987, 43–4; and Galston 1993 [1991], 100.

> […] Neutrality of effect or influence is an impracticable aim. The principles of any reasonable political conception must impose restrictions on permissible comprehensive views, and the basic institutions those principles enjoin inevitably encourage some ways of life and discourage others, or even exclude them altogether. (Rawls 1988, 264; also 2005 [1993], 194)

This brings us to the related idea of *neutrality of opportunity*: every way of life should be given the same opportunities in order to guarantee freedom and equality for all. However, this kind of neutrality is in contrast with the basic idea of liberalism because some ways of life are opposed to the ideas of freedom and equality and/or cause harm to other people. In *On Liberty* (1859), John Stuart Mill already argued that the harm-principle limits our basic freedom, a line taken up by Rawls (1975, 251–252), who argues that "*in justice as fairness*, *the priority of the right implies that the principles of* (*political*) *justice set limits to permissible ways of life*". To return to my example: in order to protect general good health, the state can restrict smoking and thus limit the freedom of a smoker to a certain extent, even if smoking is an aspect of the smoker's good life.

Given the problems outlined concerning neutrality of opportunities and neutrality of effects, it seems that the most acceptable form of neutrality is *neutrality of aim or justification*: in order to guarantee that all citizens can lead a life according to the values they endorse, and in order to treat them as equals, the state should not base its policy on any comprehensive doctrine, but its authorities should be able to give *neutral* arguments for their chosen policy. And this, in turn, means that the state should not aim to do anything to promote any non-neutral conception of the good, or give greater assistance to those who pursue it.

However, notwithstanding the value and importance of neutrality of aim and justification, this kind of neutrality should, to a certain extent, also take into account the *effects* of particular policy decisions: in order to guarantee that all citizens can live according to their ideas of the good life (which is a *neutral* justification), the state should actively intervene when a hands-off policy would de facto not be sufficient for this purpose. In an ideal society, this kind of state action would not be required, but in real societies, in which neutrality of justification does not always lead to de facto equal opportunities, *compensatory neutrality* (see for this term Pierik and van der Burg 2014) is sometimes recommended as a temporal and pragmatic solution. It is, however, important to note that this policy should be the exemption rather than the general rule. Ideally, a fair distribution of primary goods and a fair free-market system should be sufficient to guarantee equal opportunities for all.

1.3 Neutrality: Where, When and Who?

Thus far, I have elaborated on the concept of liberal neutrality and defended neutrality of justification and aim. In order to guarantee equal opportunities for all citizens (to lead a life according to the values they endorse), the state should not favor or

promote any particular comprehensive doctrine, or give greater assistance to those who pursue this doctrine. But what do we mean exactly by "the state"? Is neutrality only required for lawyers and ministers? Or is it also a requirement for politicians and state officials? And what about the neutrality of the citizens? Is it required that they bring neutral arguments to the political forum and use neutral arguments in the democratic debate, or is that too much of a good thing? And should these citizens be allowed to wear a headscarf, a *yarmulke*, a *kirpan*, or a crucifix on a chain in state schools, in their workplace and on the streets? Or are there neutral reasons to restrict (some of) these religious symbols in (some of) these places? Can a liberal state support faith-based schools and hospitals, religious education classes and religious associations? Or should it follow a hands-off policy when it comes to these issues, in order to be truly neutral?

When we address these questions, it is important to notice that liberal neutrality, as defended by Rawls and many other liberal philosophers, only refers to the *arguments used by politicians and lawyers* in order to implement a certain policy. It does not necessarily refer to the decision making process that comes *before* the state's decision to choose a particular policy, nor does it apply to our society and to individual citizens. Erroneously, some people are convinced that society should be neutral as well and, consequently, they ban as much religion as they can from public places: no headscarves in the workplace or in state schools, no subsidies for faith-based schools and hospitals, no crucifixes or other religious symbols on public cemeteries. However, this ideal of a neutral public place is a mistake. In a liberal state, people should be free to lead a life according to the values they endorse, which may mean that they choose to wear a headscarf or to send their children to faith-based schools. As long as policy makers and legislators can give *neutral* arguments to forbid (or allow) these practices is such a policy in line with liberalism.[3] Put differently: the public sphere (the place in society where matters of mutual interest and political action are discussed) should be neutral, but public areas (places that are generally open and accessible to all people in society, e.g. roads, squares, public parks, beaches) should not: citizens are allowed to wear religious symbols in public areas, to display religious posters in their windows, or to sell bibles on a public market.

Rawls thus rightly stresses that the neutrality constraint should only be applied to governments and legislators. Citizens can have different opinions about the good life, but as legislators, these opinions should not influence their policy decisions. This leads us to ask whether neutrality is required for *all political decisions* or only

[3] In Belgium for instance, wearing items "*covering the face fully or largely*" in public places has been prohibited since June 2011. Because the law is formulated in general terms and is not only aimed at the burka, and because the state can give neutral arguments for such a law (the protection of public order, safety and social interaction), this law is in line with the idea of liberal neutrality or neutrality of justification. In 2014, the Grand Chamber of the ECHR ratified this idea when it decided, in *S.A.S. v. France* (Appl. no. 43835/11) that the French ban on the full-face veil (burka) of 2010 "*was not expressly based on the religious connotation of the clothing in question but solely on the fact that it concealed the face*" and that the ruling also "*took into account the state's submission that the face played a significant role in social interaction*".

for decisions concerning "*the basic structure of society*" (Rawls 1971, 8) or the "*constitutional essentials*" and "*questions of basic justice*" (Rawls 2005 [1993], 214). In other words: should the state give only neutral arguments for its protection of basic rights and freedoms (e.g. the freedom of speech; the freedom of association; the right to education), or should political questions that do not concern these fundamental matters (e.g. tax legislation; laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and funding museums and the arts)[4] also be justified in a neutral way?

I agree with Jonathan Quong (2011, Ch. 9) that neutral reasons should be given for *all policy decisions* and not only for those decisions concerning the constitutional essentials and questions of basic justice. There are several reasons for this idea of "broad" or "comprehensive" neutrality.[5] First, it is not always clear what is meant by 'constitutional essentials' and 'questions of basic justice', and consequently it is not clear when the principle of neutrality should (not) be applied: "*People may not always be sure whether an issue they discuss is an aspect of constitutional essentials or basic issues of justice*, *requiring reliance on public reasons*" (Greenawalt 1994, 686). Second, this difficulty is often the result of the relation that frequently exists between constitutional essentials (and questions of basic justice) on one hand, and other issues on the other. Indeed, the liberal state frequently makes policy decisions that are related to, interwoven with, and limited by its Constitution and the freedoms guaranteed in that Constitution (e.g. the choice to legalize abortion, euthanasia or stem cell research; or the choice to subsidize sports, art, and religion). Therefore, the status of constitutional essentials should not be fundamentally different from 'ordinary' political issues when it comes to their justification. Moreover, because *every policy decision* can have an impact on the individual life of citizens, every policy decision should ultimately be justified in neutral terms. Within the liberal tradition, human beings are seen as being capable of making autonomous choices and this capacity should be respected. This requires that "*citizens should not be subject to the exercise of political power on grounds that they cannot reasonably accept*" (Quong 2011, 275). When a rule or law cannot be justified in a neutral or impartial way, and is thus not based on reasons that are mutually acceptable, that rule or law is illegitimate. Whether the rule or law is a constitutional essential or an ordinary legislative measure does not make any difference here.

In sum, the concept of neutrality should be understood as *neutrality of justification* (*and aim*); it is required for *policy makers and legislatives* (as long as they perform their legislative tasks), but not for citizens who do not perform these functions, and the concept of neutrality should be applied to *all policy decisions*, and not only to constitutional essentials and questions of basic justice.

[4] These examples can be found in Rawls 2005 [1993], 214–215.

[5] For this terminology, Wall and Klosko 2003, 6; Quong 2011, 274.

1.4 Neutrality and Antiperfectionism

Several authors have noted that, despite the requirement to be neutral with regard to diverse conceptions about the good life, the liberal state cannot be strictly neutral or value-free, and that every policy is based on a "*core or common morality*" (Larmore 1987, 54 ff). Accordingly, *strict* neutrality is an unattainable aim. Each theory – including the liberal theory of state neutrality – needs to be legitimated, and for this legitimation, taking in a specific normative position is unavoidable.

In this regard, David C. Paris (1987, 911 ff) distinguishes *internal neutrality* – or neutrality *of principle* – on one hand, from *external neutrality* – or neutrality *as a principle*, on the other. Internal neutrality refers to the government's neutral policy, and is comparable with, e.g., the rules used by an umpire at a baseball game – rules that are neutral with regard to the competing teams. External neutrality, by contrast, is related to the *legitimation* of these rules and, according to some philosophers (e.g. Larmore and the later Rawls), this legitimation should also be neutral. However, as Stephen Holmes (1989, 245) rightly remarks, an umpire admittedly should be impartial with regard to the rival teams involved, and should thus apply the rules of the game (e.g. baseball) in a neutral way. But this does not imply that the choice for these particular rules, and not for some other rules (e.g. rules of badminton or golf), should be neutral as well. Similarly, we can argue that the liberal government should act in a neutral way, but that *the legitimation for this neutrality is not necessarily neutral*. Thomas Hurka summarizes this distinction as follows:

> State neutrality is an ideal for public policy: It is realized when government officials do not have as their reason for acting a substantive view about the good. Philosophical neutrality, by contrast, concerns the ultimate standards for judging policies, including a policy of state neutrality. It requires these ultimate standards to be neutral about the good. (Hurka 1993, 162)

The distinction between a neutral *policy* (state neutrality or antiperfectionism) on one hand, and the *legitimation* for this neutral policy (philosophical neutrality) on the other, has been extensively discussed by Jonathan Quong (2011, 15 ff). Based on two research questions, he makes an important distinction between *political antiperfectionism*, *comprehensive antiperfectionism*, *political perfectionism* and *comprehensive perfectionism*.[6] These research questions are as follows:

1. *Must liberal political philosophy be based in some particular ideal of what constitutes a valuable or worthwhile human life, or other metaphysical beliefs?*
2. *Is it permissible for a liberal state to promote or discourage some activities, ideals, or ways of life on grounds relating to their inherent or intrinsic value, or on the basis of other metaphysical claims*?

[6] See also Mulhall and Swift 1996 (1992), 251; Wall 1998, 197–198. In the same vein, Gerald Gaus (2008, 83) makes a distinction between a neutral/antiperfectionist liberal policy – or *first-level neutrality* – on one hand, and the legitimation for this neutral/antiperfectionist policy – or *second-level neutrality* – on the other. First-level neutrality is connected to the idea of an antiperfectionist government, while second-level neutrality is connected to the idea of political liberalism.

Table 1.1 Perfectionism and antiperfectionism; political and comprehensive liberalism

	Comprehensive	Political
Perfectionism	Comprehensive perfectionism (Raz, Wall)	Political perfectionism (Chan? Sher?)
Antiperfectionism	Comprehensive antiperfectionism (Dworkin, Kymlicka)	Political antiperfectionism or Political Liberalism (Larmore, Rawls)

Liberalism without Perfection by Quong (2011), tab. p. 21, by permission of Oxford University Press

When the answer given to the first question is affirmative, liberalism is '*comprehensive*'. According to this model, liberalism is based on a specific conception of the good life – mainly the idea that personal autonomy is valuable and worth aiming for. When a negative answer is given to the first question, liberalism is called '*political*'.

Additionally, Quong distinguishes *perfectionism* (evolving from an affirmative answer to the second question) from *antiperfectionism* (evolving from a negative answer to the second question). According to perfectionists, it is legitimate that the state support valuable activities and conceptions of the good life *because they are valuable*. Similarly, the state can legitimately advise against worthless activities and conceptions *because they are worthless*. Antiperfectionists, by contrast, are convinced that the state should not base its policy on any value-judgment, and that its policy should be neutral. Quong (2011, 21) represents this distinction in the following scheme (Table 1.1).

In the following chapters, I will elaborate on the different positions in Quong's scheme and state my reasons for preferring autonomy-based (or comprehensive) antiperfectionism. After this examination, I will take a closer look at so-called *reformation liberalism*, as defended by William Galston and Chandran Kukathas, and argue that this kind of liberalism is not a valuable alternative to autonomy-based liberalism. My conclusion will be that autonomy-based liberalism is the most consistent liberal theory at hand, and that this kind of comprehensive liberalism is compatible with both *antiperfectionism* (no state support for valuable options) and *multicentered perfectionism* or *democratic perfectionism* (democratically-sustained state support for valuable options).

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Chapter 2
Comprehensive and Political Antiperfectionism

2.1 Introduction

In this chapter, I will focus on John Rawls's political theory, and particularly on his two major works: *A Theory of Justice* (1971) and *Political Liberalism* (2005a [1993]). My reason to start with the works of Rawls is quite evident: with his *Theory of Justice*, a new era in political philosophy started. Rawls proposed a conception of justice – 'justice as fairness' – that is committed to both *individual rights* (cf. classical liberalism), and to an egalitarian ideal of fair distribution (cf. socialist and democratic traditions) – taking into account the rights of our co-citizens as well. With this original theory, Rawls provoked a remarkable renaissance of political philosophy around the world: since the publication of *A Theory of Justice*, many political philosophers are inspired by, give comment to, or try to adjust and/or apply Rawls's work in several ways and domains. I will thus start with the work of this great American philosopher because it is a milestone in political philosophy, to which alternative views are often presented as responses or adjustments.

2.2 Comprehensive Antiperfectionism: *A Theory of Justice*

In *A Theory of Justice* (1971) Rawls argues for a principled reconciliation of liberty and equality, and with this aim he constructs an original theory of distributive justice. Based on the empirical fact that citizens' life-chances are, due to their (lack of) social and natural endowment, not equal, and that all citizens want to lead a life according to the values they endorse, Rawls argues that the liberal state should actively intervene in order to guarantee equal opportunities for all.

This means among other things that the liberal government should legally protect basic rights and freedoms as well as major social institutions, such as the freedom of thought and liberty of conscience, competitive markets, private property in the

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means of production, and the monogamous family. Law and government should act effectively "*to keep markets competitive*, *resources fully employed*, *property and wealth* […] *widely distributed* […] *and to guarantee a reasonable social minimum*" (Rawls 1971, 87). In addition, Rawls favors active state support for education by subsidizing private schools or by establishing a public school system. Only by means of this active state policy can equal opportunities be guaranteed.

According to Rawls, the measures mentioned above can be legitimated in a neutral way. For this neutral justification, he makes use of his famous thought experiment: suppose that we are situated behind a *veil of ignorance* – we are ignorant about our talents, possibilities, interests, limitations and opportunities – and suppose that, from within this *original position*, we should outline the principles of justice. In this imaginary situation, all reasonable and rational people will come to a unanimous agreement about the same principles of justice: the equality principle and the difference principle. These two principles are the "kernel" of political morality (Rawls 1971, 221) and are defined by Rawls as follows:

> First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.
>
> Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (Rawls 1971, 60)

Keeping these two principles of justice in mind, all reasonable and rational human beings will agree that they need the same primary goods, i.e. "*things that every rational man is presumed to want*" or goods that "*normally have a use whatever a person's rational plan of life*" (Rawls 1971, 62). In other words, even though our rational plans of life are different, "*they nevertheless all require for their execution certain primary goods*, *natural and social*. […] *Whatever one's system of ends*, *primary goods are necessary means*" (Rawls 1971, 93).

Rawls (1971, 62; 90–95, 2005a [1993], 181, 308–309) makes a distinction between s*ocial primary goods* (rights and liberties, opportunities and powers, income and wealth, and the bases of self-respect) and *natural primary goods* (e.g. health and vigor, intelligence and imagination). Because all these goods are necessary means to achieve one's ends, the state is neutral when it actively supports their fair distribution. This implies that social primary goods should be redistributed in a fair way, in order to guarantee them for everybody, and that the state should, in addition, make sure that no one is (dis)favored because of his/her (lack of) natural primary goods. Only under these conditions can equal opportunities be guaranteed.

It is important to notice that Rawls does not defend state support for *expensive tastes* or preferences. The Rawlsian concept of justice as fairness is only "*concerned with regulating inequalities that affect people's life-chances*, *not the inequalities that arise from people's life-choices*, *which are the individual's own responsibility*" (Kymlicka 2002, 74). Human beings are not passive carriers of desires, but rather beings with a capacity to assume responsibility for their ends. Consequently, only when *unchosen circumstances* (would) lead to inequality should the government adjust this inequality: if I am unable to work because I am ill or

disabled and if, as a result, I have fewer resources than my co-citizens, then the state should adjust this inequality because it is the result of an unchosen circumstance. If, however, I am unable to work because I prefer snoozing in the garden instead of working, I am not entitled to this kind of state support because the inequality is in this case the result of my own choice – for which I am responsible – and not of an unchosen circumstance.

One of the merits of *A Theory of Justice* is that Rawls gives us a neutral criterion to evaluate the legitimacy of political decisions: if all citizens could, from behind the veil of ignorance, agree with a particular decision, the justification for this decision is neutral and thus legitimate. In *A Theory of Justice*, Rawls thus defends a policy of state neutrality or antiperfectionism: the state should not base its policy on a particular comprehensive doctrine, but the legitimation for policy decisions should always be neutral, which means that all citizens can, from a rational and reasonable viewpoint (original position), agree.

This neutral state policy is in itself not based on a neutral principle, but on autonomy as a normative value. In *A Theory of Justice*, Rawls considers this principle of autonomy to be the ultimate value on which his political theory is based: in order to guarantee that people can lead an autonomous life, or a life according to the values they endorse, a neutral or antiperfectionist state policy is required. Obviously, autonomy is, in *A Theory of Justice*, not only seen as a *political* concept, but also as a *moral* or *metaphysical* concept that should ideally be embraced by every citizen: it is *always in the individual's interest* to choose, to reflect and to pursue one's conceptions about the good. Hence, critics rightly state that Rawls's liberalism is in fact based on a *comprehensive doctrine* and is thus not as neutral as it claims to be. Rawls's *Theory of Justice* is not only *antiperfectionist*, but also *comprehensive*.

This *comprehensive* or *autonomy-based justification* for liberalism is extensively criticized, particularly by the so-called 'communitarian philosophers'. Their criticism is twofold (cf. Kymlicka 2002, 212). On one hand, these philosophers criticize the central place of our capacity for self-determination (autonomy), and on the other, they state that Rawls neglects the social conditions under which that capacity can meaningfully be exercised.

First, as argued by Michael Sandel (1982), Rawlsian liberalism is based on a wrong conception about the individual: the *unencumbered self*. This conception is unattainable because each individual is *embedded* or *situated*: individuals do not appear in a vacuum as autonomous citizens, but they are *embedded* in a particular society, where some values are preferred above other values. Notwithstanding the importance of self-determination or autonomy, it is impossible to separate the individual from these social contexts. According to Sandel, the self is not prior to its aims or choices, but, on the contrary, it is constituted by the aims that are generated by the social context in which the self is situated.

Given the fact that each individual is constituted by the context in which it is embedded, Michael Sandel and Charles Taylor propose a replacement of the Rawlsian antiperfectionist state policy by a *politics of the common good* in which

some valuable goods and practices in society are encouraged or discouraged. This *common good* is connected to the way of life in a particular society, and it forms the basis for a public order for citizens' preferences and for their related opinions about the good life. Different from Rawls's liberalism, communitarianism allows that the state will encourage its citizens to adapt to the way of life and the related convictions about the good life in a particular society. Meaningful choices can only be made if there are different meaningful options to choose among and only a non-neutral politics of the common good can guarantee the presence of such options.

A related criticism is dedicated to the central place of individual autonomy. According to Rawls (1971, 396 ff), his *Theory of Justice* is only based on a *thin theory of the good* (the idea that all reasonable and rational individuals need the same *primary goods* in order to lead a life according to the values they endorse), but critics rightly say that his *Theory of Justice* is in fact based on a *full theory of the good*, and in particular on the idea that a life in which people make autonomous choices is *intrinsically better* than a life in which this does not happen. However, not all communities embrace this idea of individual autonomy, and as a result, they might be disadvantaged in this Rawlsian liberal system. Because individuals are not the sole authors of their life, the Rawlsian idea of self-determination or autonomy should be limited. Given these criticisms, it is not a surprise that Rawls has fine-tuned and adjusted his ideas in his *Political Liberalism*.

2.3 Political Antiperfectionism: *Political Liberalism*

In *Political Liberalism*, Rawls no longer considers autonomy a universal moral value that is good for all citizens, but he only defends autonomy as a *political* value: all citizens should at least *be capable to make autonomous choices* or to form, to revise, and rationally to pursue their conception of the good. Whether citizens choose autonomously for a non-autonomous life (e.g. living in a monastery) or for an autonomous life, does not matter, as long as citizens *can* choose.

With this approach, Rawls takes into account the *embeddedness* of each individual: if an individual is embedded in a non-liberal, conservative, independent community *and* if that individual wants to stay in that community, the liberal state should accept this, as long as there is always a possibility to choose (and to change). To put it differently: in the *political sphere*, the principle of autonomy is still a core principle, but there is no need to subscribe to this value also in the *private sphere*:

> Justice as fairness emphasizes this contrast: it affirms political autonomy for all but leaves the weight of ethical autonomy to be decided by citizens severally in light of their comprehensive doctrines. (Rawls 2005a [1993], 78)
>
> Political liberalism presents, then, a political conception of justice for the main institutions of political and social life, not for the whole life. (Rawls 2005a [1993], 175)

In *A Theory of Justice*, justice as fairness was presented as a comprehensive liberal doctrine in which all the members of a well-ordered society[1] affirm the same idea: making autonomous choices is important for every citizen, whatever his/her further views about the good life may be. In other words, the public justification on fundamental political questions was related to a *comprehensive liberal doctrine* that, according to this earlier argument of Rawls, could be subscribed by every citizen in a *well-ordered society*. Different from a *political conception of justice*, a comprehensive doctrine enters all spheres of our lives "*since it applies to all subjects and its virtues cover all parts of life*" (Rawls 2005a [1993], xxxvi, n.4).

In *Political Liberalism*, Rawls criticizes this (own) comprehensive conception of justice by claiming it contradicts the fact of reasonable pluralism: in our modern (liberal) society, people subscribe to "*reasonable yet incompatible comprehensive doctrines*" (Rawls 2005a [1993], xvi) and for that reason, a fair and just policy cannot be based on such a comprehensive doctrine. Given this fact, and given the need for a shared (political) conception of justice, Rawls's central question in *Political Liberalism* is as follows:

> How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical, and moral doctrines? Put another way: How is it possible that deeply opposed though reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? (Rawls 2005a [1993], xviii)

Because modern Western societies are characterized by reasonable pluralism, the principle of justice as fairness can no longer be sustained as a metaphysical or comprehensive concept. Alternatively, we need a "freestanding" concept of justice as fairness – a concept that is *political* and not *metaphysical* or *comprehensive*. Only such a shared is acceptable in a modern, liberal democracy. Based on this assumption, Rawls states that all reasonable citizens are able to come to an "*overlapping consensus*" about the basic principles of justice:

> Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. (Rawls 2005a [1993], 217)

At this point, the idea of *reciprocity* is important: according to Rawls, political decisions are only legitimate or fair when *each citizen* can, from a reasonable point of view, subscribe to these decisions. Only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification for those actions (cf. original position) is our political power proper or legitimate.

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[1] A well-ordered society is defined by Rawls as follows:

> Now let us say that a society is well-ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. (Rawls 1971, 4–5)

However, the possibility of a reasonable consensus, based on the idea of reciprocity, does not imply such a consensus with regard to *all* issues. In Rawls's words, "*reasonable political conceptions of justice do not always lead to the same conclusion*; *nor do citizens holding the same conception always agree on particular issues*" (Rawls 2005b [1997], 479). Based on reasonable arguments citizens can, e.g., defend state support for religion or for a particular religion, but they can also prohibit this kind of support, referring to other reasonable arguments. Similarly, it is possible to defend a law concerning euthanasia on the basis of reasonable arguments, but it is also possible to forbid such a law on the basis of reasonable arguments. When public reason allows more than one reasonable answer to a particular question, citizens should democratically vote about this issue. Even though the outcome of such a vote will not be desired by all citizens, the forthcoming law will nonetheless be legitimate because it is based on reasonable arguments and on the majority principle.

As in *A Theory of Justice*, Rawls argues in his *Political Liberalism* that it is not allowed for the state to (dis)favor certain theories or practices because of their intrinsic value. Such a policy would not take into account the fact of reasonable pluralism. Hence Rawls's rejection of perfectionism – understood as the view that the state should promote valuable conceptions of the good life *because of their value* – as a political principle. This does, however, not imply that religious (and thus perfectionist) arguments should be fully abandoned from the public sphere.

According to Rawls (2005b [1997], 462–463), religious arguments can, without any limitation, be used in the *informal public sphere* or the *background culture of society*, but when magistrates, policy makers and politicians *publicly* discuss and argue about "*fundamental political questions*" or "*constitutional essentials*" and "*questions of basic justice*", Rawls formulates a *proviso* with regard to these comprehensive arguments. In the public sphere, it should always be possible to translate these arguments into neutral/reasonable concepts that are acceptable for all citizens. Rawls thus allows religious and other comprehensive arguments into political discussion, but only "*provided that in due course*, *we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support*" (Rawls 2005b [1997], 453). As a politician, it is thus allowed to reject slavery or child labor because the Bible forbids these practices, but it should always be possible to legitimate this policy also in reasonable or neutral terms. In a similar way, a Christian political party can defend state support for Christian schools and hospitals because they bring the words and deeds of Jesus into practice, but besides, it should also be possible to give a neutral argument for this kind of support. This Rawlsian *proviso* is required to guarantee *neutrality of justification* in the public sphere or at the level of policy decisions, which is a central idea in Rawls's political theory.

2.4 Is There a Neutral Justification for a Neutral (Antiperfectionist) Policy?

According to the later Rawls, we can give a neutral justification for a neutral (antiperfectionist) state policy. Because every reasonable and rational person (whatever his or her comprehensive doctrine may be) wants to be treated as a free and equal individual and is able to recognize that this requirement should apply to other human beings as well, the state should be neutral. And because this idea of *reciprocity* is not based on any comprehensive doctrine, Rawls considers this justification for state neutrality as political. In other words, liberal principles of justice (including the idea that the state should base its policy decisions on neutral arguments) can be justified on moral grounds (freedom and equality) *to all reasonable and rational persons*, and for this reason, these principles are non-comprehensive or political.

In contrast to his stance in *A Theory of Justice*, in *Political Liberalism* Rawls is no longer convinced that autonomy is a universal normative value and that leading an autonomous life is always better than leading a non-autonomous life. Hence he rejects *enlightenment liberalism*, or liberalism as a comprehensive doctrine based on the value of autonomy. In *Political Liberalism*, Rawls defends the idea that it should at least be *possible* for every individual to choose, to pursue and to revise a conception about the good. But Rawls neither defends nor condemns the comprehensive value of an autonomous life as such. Even though it is necessary to support the principle of autonomy (the capacity to choose, to revise and to pursue one's views about the good life) in the *political* sphere, this is not required in the private sphere.

However, as Kymlicka noticed, this artificial distinction between political and comprehensive autonomy is incoherent. Why would someone accept the ideal of autonomy in political contexts but not in the moral context?

> Accepting the value of autonomy for political purposes inevitably enables its exercise more generally, an implication that will only be favored by those who endorse autonomy as a general value. (Kymlicka 1992, 45–46)

Along the same lines, Andrew Mason (1990, 445 ff) argues that respect for autonomy requires promoting autonomous choice, "*which entails being non-neutral between conceptions of the good that value the proper exercise of rational choice and those that do not*". Even though the later Rawls tries to avoid a comprehensive (autonomy-based) justification for his antiperfectionist policy, he does not entirely succeed in this ambition. As Rawls states, all reasonable citizens are free and equal and they can fulfill their political role because they have two moral capacities, namely: *a capacity for a sense of justice and a capacity for a conception of the good*. The capacity for a sense of justice is "*the capacity to understand*, *to apply*, *and to act from the public conception of justice*", and the capacity for a sense of the good is the possibility "*to form*, *to revise*, *and rationally to pursue a conception of one's rational advantage or good*" (Rawls 2005a [1993], 19), which is in fact *the possibility to make autonomous choices*. Hence, even Rawls's *Political Liberalism*

is in the end based on the comprehensive, and probably controversial, idea that human beings should at least be able to act autonomously, i.e. to choose, to criticize and to change their conceptions of the good (Rawls 2005a [1993], xliv, 19, 30, 72 ff). Rawls's political liberalism is thus, like the liberalism he defended in *A Theory of Justice*, not *political*, but *comprehensive* because his argument "*relies on a tacit appeal to autonomy*" (Colburn 2010, 65).

In this regard, Rawls's comment on the *Wisconsin v. Yoder* Supreme Court case (1972, 406, US. 205) is exemplary. In this famous case, the American Supreme Court decided, referring to the freedom of religion, that Amish-children can be exempted from compulsory education from the age of 14 onwards. However, according to Rawls, the liberal government should make education compulsory for all students until the age of 16 and this compulsory education policy can be justified on neutral grounds – i.e. via public reason arguments. But here is the difficulty: according to Rawls (2005a [1993], 199–200), compulsory education is required in a liberal society because all individuals should at least be able to choose their conceptions about the good and to revise them if they wish to do so. In order to make this possible, some capacities should be developed and hereto, the state should assure good quality education for all. Rawls's plea for compulsory education is thus not based on public or neutral reasons, but on the *comprehensive* idea that every citizen should at least have *the possibility to make autonomous choices* – an idea that is not shared by all citizens, as the *Yoder* case shows.

In conclusion, we can state that Rawls's political liberalism is still based on a *thin comprehensive doctrine*, and that it is, as a result, not neutral. As said by Quong (2011, Ch.5), this is not a problem because Rawls only defends an *internal* conception of liberalism. According to this internal conception of liberalism, political liberalism should not be legitimated towards non-reasonable persons, but it should only be legitimated towards reasonable persons, i.e., those persons who consider society to be a fair system of social cooperation between free and equal citizens. For these reasonable citizens, political liberalism is neutral because this political theory can be shared and accepted by them, whatever their particular conception of the good life may be. Even though political liberalism rests on substantive moral claims about persons – moral claims that may be reasonably disputed – it is not inconsistent or self-defeating because the liberal principle of legitimacy does not apply to its own presuppositions.

Nonetheless, even though the difference between an internal and an external conception of liberalism is not unimportant, why do we actually need a neutral justification for a neutral or antiperfectionist state policy? When we subscribe to the internal conception of liberalism and agree that a liberal policy can and should only be legitimated for those citizens that already subscribe to some basic liberal principles, it seems evident that autonomy can be one of these principles. As said by Brian Barry (1990, 11), "*there is no way in which non-liberals can be sold the principle of neutrality without first injecting a large dose of liberalism into their outlook*". But if this is the case, should it not be more adequate and consistent to justify liberalism and its antiperfectionist policy on the principle of autonomy and not, as the later Rawls proposes, by means of a complicated argument that leads, in the end, also to autonomy as the ultimate liberal value?

> But if the political liberal arrives, at the end of it all, to the point in which he says: "well, these are the normative basics of my theory. Political liberalism stands or falls with them", why not say it about autonomy as well? (Ben-Shemesh 2005, 465)[2]

Because a neutral legitimation for a neutral (antiperfectionist) policy seems impossible, and because even Rawls's neutral principle of reasonable legitimacy is, in the end, based on the idea that citizens should at least be able to form, to revise, and rationally to pursue a conception of their rational advantage or good, an autonomy-based justification for an antiperfectionist policy seems the most consequent justification at hand. As autonomy-based liberalism leaves enough space to lead a life according to the values one endorses and is in accordance with the liberal principles of freedom and equality, I prefer this *autonomy-based*, *comprehensive liberalism* to Rawls's *political liberalism*.

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[2] Peculiarly, Ben-Shemesh (2005, 459–460), who defends the Rawlsian principle of *political legitimacy*, notes that the effects of *political liberalism* and *autonomy-based liberalism* are almost the same because many citizens in modern liberal democracies consider several liberal principles, such as the principle of autonomy, to be *reasonably justifiable*.

Chapter 3
Autonomy-Based Liberalism and Political Perfectionism

3.1 Introduction

Like neutrality, autonomy is a concept that is contested and highly debated. But, when applied in the right way, it can also serve as a useful normative concept in political theory. Because there is so much discussion and confusion about the meaning, scope and aim of autonomy, proponents and opponents of autonomy-based liberalism often see their discussions go awry. For this reason, it will be necessary to pinpoint exactly what is meant by 'autonomy' and 'autonomy-based liberalism'.

After this conceptual elaboration and clarification, I will detail two different kinds of autonomy-based liberalism: Raz's *comprehensive perfectionism*, and Kymlicka's *comprehensive antiperfectionism*. Finally, I will have a look at Chan's *political perfectionism*, which is also reconcilable with the normative value of autonomy.

3.2 What Is Autonomy?

In *Two Concepts of Multiculturalism*, Yael Tamir makes a distinction between *rights-based liberalism* and *autonomy-based liberalism*. The former "*takes the rights of individuals to be paramount without conceiving of those rights as grounded in autonomy-entitlement and choice prerogatives*" (Tamir 1995, 167–168). Autonomy-based liberalism, by contrast, also stresses the importance of individual rights, but only because we should at least have the possibility "*to lead our life from the inside*", and "*to question those beliefs* [*about what gives value to life*]" (Kymlicka 1995, 81). Different from autonomy-based liberalism, rights-based liberalism is not based on the idea that citizens should have the right to choose the life they live, but only on the idea that they should have the right "*to live according to their values*, *traditions and preferences*, *as long as these do not involve harm to others*" (Tamir 1995, 169).

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However, as Galston (2002, 104–105) rightly remarks, this particular right is an empty right if there is no exit-option: if respect for our values, traditions and preferences is paramount, we should also respect the fact that these values, traditions and preferences can change. Hence Galston's defense of exit-rights: communities are free to organize themselves internally according to self-chosen rules and principles, as long as members of these communities have the possibility of leaving the community at any time. Respect for ones values and preferences brings us thus to respect for one's *choices* regarding these values and preferences, and this brings us to autonomy-based liberalism. As Crowder (2007, 128) remarks, "*real freedom of exit seems to involve the capacity to stand back from the group's norms and to assess them critically – that is, the capacity for autonomous judgment*".

The fact that liberalism – Rawls's political liberalism included – is based on the idea that people should at least be capable "*to form, to revise, and rationally to pursue a conception of one's rational advantage or good*" (Rawls 2005 [1993], 19) does not imply that the liberal government would impose on its citizens a particular conception of the good life. Rather the opposite is true: autonomy-based liberalism is not committed to the strong (comprehensive) claim that autonomy is essential for any good life. It only claims that autonomy is a *valuable tool* for living well. For that reason, autonomy-based liberalism does not deny the moral commitments of those people who do not value autonomy, as long as their moral views do not deny and/or oppose the *instrumental* value of autonomy for others. In a liberal society, citizens should thus be able to enter into a monastery or a nunnery (and thus lead a non-autonomous life), as long as they are able to autonomously choose this particular way of life, as long as this way of life does not impede co-citizens to make their own autonomous choices, and as long as they have the real possibility to exit. Autonomy thus only provides *the form* or the *minimal conditions* for the good life, regardless of whatever else that may consist of (cf. Kelly 2002, 8).

In this regard, Mason (1990, 445) makes a distinction between "*a conception of the good and a way of acquiring a conception of the good*": within autonomy-based liberalism, the state should be neutral toward different conceptions of the good life, but it should not be neutral toward choice itself. In line with Brian Barry (1995, 129), we can say that autonomy is a *second order conception of the good* that creates a certain space for diverse *first order conceptions of the good*. Someone who has the possibility to fill in his/her life autonomously has different options and can, in the end, even choose not to live autonomously at all. Autonomy is, in other words, a liberal *right*, not a liberal *duty*:

> The right to autonomy does not imply a duty to liberty: members of illiberal communities have the right to live in an illiberal way. But it does entail the duty to respect the liberty rights of other citizens. Even the most minimal conception of liberal morality conflicts with a view that allows communities to violate liberty rights. (de Jong and Snik 2002, 576)

Autonomy-based liberalism does thus not imply that citizens *are obliged* to make autonomous choices or revise their ends at all times. The government cannot force people to do this because autonomy is, by its own nature, not enforceable: "*One can bring the horse to the water but one cannot make it drink*" (Raz 1986, 407). The

only thing a liberal government can – and should – do is create and/or protect the *conditions* for autonomy. According to Joseph Raz (1986, 372) and Will Kymlicka (1995, 92 ff), there are three such conditions: *negative freedom* or non-interference (no coercion or manipulation), the *development of mental abilities and capacities*, and the *accessibility to a wide range of* '*valuable*' *options*. Particularly with regard to this last condition, liberal philosophers disagree about the role of the state: is it *required* that the liberal state support valuable options in order to make autonomous choices possible, is it only *permitted* to support these options, or is this kind of support not allowed anyway? And in case of support, *who* will decide whether an option is valuable or not? Is this a matter for the state, or should citizens or civil society make decisions here? In other words, does comprehensive or autonomy-based liberalism lead to perfectionism, does it imply an antiperfectionist policy, or are both policies possible?

3.3 Comprehensive Perfectionism: Joseph Raz

Within autonomy-based liberalism, all citizens should have the opportunity to live a life according to the values they endorse and they should be able to revise their conceptions about the good life at all times. As Raz (1986, 190) has stated, "[*t*]*he capacity to be free*, *to decide freely the course of their own lives*, *is what makes a person*. […] *On this view respect for people consists in respecting their interest to enjoy personal autonomy*". Autonomy is thus not just one option among many options, but it is a constitutive and essential part, or a central component of the good life. Particularly in a liberal culture, the value of autonomy is "*a fact of life*", and "*those who live in an autonomy-enhancing culture can prosper only by being autonomous*" (Raz 1986, 394).[1]

According to Joseph Raz, this kind of autonomy is impossible without perfectionism: because autonomy leaves the possibility that citizens do not choose the good life, autonomy is a *necessary*, but not a *sufficient* condition for a *good* or valuable life. Only when autonomy is used *in the right way* is it valuable, and for that reason, the liberal government cannot and should not be neutral, but it should have an active role in creating and maintaining the *accessibility to a wide range of valuable options* to choose among.

Because an autonomous life is only valuable if it is spent in the pursuit of morally acceptable and valuable projects and relationships *and* because these valuable options are not always guaranteed without state support, state support for valuable options is not only permitted, but sometimes also *required* in liberal societies. Similarly, discouraging worthless options is sometimes required in order to enable

[1] At this point, Raz is somewhat ambiguous: sometimes, he seems to suggest that autonomy is, as a *transcendent value*, necessary for a good life, wherever that live is lived. But sometimes he also suggests that autonomy has only a *contextual value* that is mainly of importance in our modern liberal culture. See e.g. McCabe 2000 and Quong 2011, 48, n.12 on this tension.

autonomy: "*the autonomy principle permits and even requires governments to create morally valuable opportunities*, *and to eliminate repugnant ones*" (Raz 1986, 417). The government should not only guarantee our negative freedom (first condition for autonomy) and the development of our mental abilities and capacities (second condition for autonomy),[2] it should also guarantee that we have *real* and *valuable* options to choose among (third condition for autonomy): "[*i*]*f all the choices in a life are like the choice between two identical-looking cherries from a fruit bowl*, *then that life is not autonomous*" (Raz 1986, 398). Unfortunately, a neutral hands-off policy is not always sufficient in order to guarantee a sufficient range of valuable options because such a policy could undermine "*the chances of survival of many cherished aspects of our culture*" (Raz 1986, 162). What we need is an active state policy in which the state makes perfectionist choices and supports valuable options, while it rejects worthless ones.

3.3.1 Perfectionism, Intrinsic Value and Autonomy

Because Raz pleads for active state support for valuable options, it is important to know what it is exactly that makes such options valuable, and who decides what is valuable. Clarifying which choices are valuable, and why this is the case, is in fact the key to making Raz's theory practically useful. Unfortunately, when it comes to this, his theory proves to be inadequate and vague. Nonetheless, even though Raz is not always clear and only provides a few examples of 'valuable goods' (e.g. art and monogamous marriage), in any case he seems to defend the claim that some options are *intrinsically valuable*, and that the state can support them for that reason:

> Consider the value of works of art not to their creator but to the public. […] One view of their value holds it to be intrinsic. Watching and contemplating works of art are valuable activities and a life which includes them is enriched because of them. (Raz 1986, 200–201; also 212–213)

Because some goods are intrinsically valuable *and* because autonomy is only valuable if it is spent "*in the pursuit of acceptable and valuable projects and relationships*" (Raz 1986, 417), state support for these goods is not only allowed, but also *required* in a liberal society.

However, the idea that the state should support these options because they are *intrinsically valuable* is problematic. According to Jeremy Waldron (1989, 1149 ff), this idea can lead to a restriction of individual autonomy because *the state*, and not the autonomous individual, decides which options are (not) valuable and should therefore (not) be supported with public tax money. Besides, it is not clear *how* the state should decide whether a practice or an option is intrinsically valuable or not. Should it use experts to decide this? And if so, can these experts refer to objective

[2] Hereto, the state should guarantee a qualitative and accessible education system: each citizen should be informed about the options he/she can make and should be able to develop the required capacities for autonomy. Like Rawls, Raz thus defends compulsory education for all.

(or neutral) criteria? Or is the value of a specific option dependent on particular contexts, and on supply and demand?

The least one can say is that state involvement needed to guarantee autonomy is, within Raz's theory, not uncontroversial. Take for instance state support for art – a Razian example that is not undisputed. According to Raz, our individual autonomy is not harmed by this kind of support: even though citizens are forced to pay taxes for art, they are not forced to visit a museum or to attend an opera performance. They are thus always free to live their lives as they see fit and they can, without making excessive costs, choose options considered worthless by the state. State support does not force anyone to make use of the supported options, but it "*merely makes a valuable option more available and easier to choose from valuable motives*" (Hurka 1993, 160). Similarly, taxing worthless or valueless activities or not institutionalizing them, can be non-coercive. When the state taxes hunting, or when it does not institutionalize polygamy, these measures are not coercive: it is still possible for citizens to choose hunting as a leisure activity or to have different sexual partners, even though the cost for this choice is artificially enlarged by the state. Because citizens are still free to choose options the state does not support, their autonomy is still guaranteed.

In addition, Raz (1986, 156) makes a distinction between "*coercion by an ideal liberal state*" and "*coercion from most other sources*". Because citizens in a liberal state have a right to participate in the political process of decision-making, and because individual autonomy is a basic principle in such a liberal state, its coercive measures do not express an insult to individual autonomy. Moreover, these measures are motivated by concern for individual autonomy, and not by lack of respect for it.

This brings us to the crucial connection between autonomy and valuable options. As said by Raz, people can only make autonomous choices if there is a number of valuable options to choose among. Therefore, the state should guarantee these options, and this can be done by means of subsidies or taxes. In other words, even though taxation is coercive, it can be justified inasmuch as it is useful for the promotion and protection of autonomy for all. Taxes that cannot be justified by this argument should not be imposed at all (cf. Raz 1986, 417–418).

Notwithstanding these important remarks, Waldron (1989) has extensively criticized Raz for the fact that even his mild or 'noncoercive' perfectionism leads to a restriction of individual autonomy. According to Waldron, it is manipulative to impose taxes (e.g. for hunting) because they influence an individual's decisions: when, due to these taxes, the cost of hunting is higher than it would be without taxes, some citizens will choose another, less expensive leisure activity. Without taxes, however, they could have chosen hunting without extra cost. In this perfectionist policy, their autonomy is thus restricted (indirectly).

Similarly, subsidizing and/or institutionalizing valuable practices leads to a restriction of individual autonomy: in choosing which activities to encourage through subsidization, the state is making its decision on the merits of those activities, but this is a decision that each person – and not the state – should make. If the government supports and taxes some options because of their (dis)value, this

perfectionist policy leads to an indirect infringement of individual autonomy. Consequently, even moderate or non-coercive forms of perfectionism (such as taxing or encouraging valuable options) are illegitimate. Moreover, state support for valuable options (e.g. museums or national parks) is not needed in order to guarantee autonomy: it is perfectly possible for citizens to lead an autonomous life without visiting a (subsidized) national park or a (subsidized) museum.

Both Raz's and Waldron's arguments are plausible. With Raz, I agree that autonomous choices are only possible if there is a range of valuable options to choose among. But when it comes to the *evaluation* of particular options, Raz's criterion of intrinsic value is unsatisfying because the resulting policy of state perfectionism can, to a certain extent, lead to a restriction of individual autonomy (Waldron). Additionally (and different from Raz), I agree with Waldron when he argues that state support for valuable options is *not required* in a liberal state: in a fair and just society, it should also be possible to make autonomous choices without state financial support for these options. This brings us to the philosophy of Will Kymlicka who defends *autonomy-based* liberalism, but *without perfectionism*.

3.4 Comprehensive Antiperfectionism: Will Kymlicka

Like Raz, Kymlicka defends a liberal theory that is based on the moral value of autonomy:

> [N]o life goes better by being led from the outside according to values the person does not endorse. My life only goes better if I am leading it from the inside, according to my beliefs about value. (Kymlicka 1989a, 12)

Kymlicka's liberal theory is thus autonomy-based or comprehensive: a life wherein individuals can make autonomous choices is better than a life in which this is impossible.

However, this does not imply that autonomy should be a central value in the personal life of every individual citizen, or in each culture in a liberal society. As autonomy is understood as a *formal* conception of the good and not as a *substantial* conception of the good, it is always possible to choose, in an autonomous way, not to live autonomously at all. Nonetheless, people should always have the opportunity "*rationally to assess our conceptions of the good in the light of new information or experiences*, *and to revise them if they are not worthy of our continued allegiance*" (Kymlicka 1995, 81). According to Kymlicka (1995, 213, n.7) this idea of autonomy as "*rational revisability*" is "modest": citizens have an essential interest in identifying and revising their current beliefs about value, but apart from that, they should not embrace autonomy as their preferred conception of the good life.

In order to make autonomous choices (and the revision of these choices) possible, the liberal state should guarantee the social conditions that enhance this capacity. Next to negative freedom, liberal or autonomy-facilitating education is also one of these conditions. Hence Kymlicka's rejection of the US Supreme Court's decision

in the *Wisconsin v. Yoder* case: because autonomy is an essential condition for leading a good life, the government should actively promote compulsory, liberal education during school age.

Furthermore, the liberal state should guarantee "*an adequate range of options*" (Kymlicka 1989b, 195) to choose among. This condition was also mentioned by Raz, but Kymlicka and Raz disagree about its consequences and implications. According to Raz, this condition cannot be fulfilled without a perfectionist policy, in which the state supports morally valuable options and discourages worthless options: an antiperfectionist state is not doing "*as much good as one can*" (Raz 1986, 111). Since autonomy requires a range of valuable options, the liberal state has to support and institutionalize those valuable options and activities, while it must tax and discourage 'bad' options and activities. Without this protection and active state support, valuable options might disappear and accordingly, autonomy would be impossible.

In contrast to Raz, Kymlicka is convinced that an antiperfectionist or neutral policy suffices in order to guarantee these valuable options. Even if the state can, based on research and expertise, prove that, e.g., going to the theater would be better or more valuable than going to a wrestling match, it is not allowed for the state to support the former and to discourage the latter because of this value-judgment. Such a policy would unavoidably lead to "*an illegitimate restriction of self-determination. If there are willing participants and spectators for wrestling, then the anti-wrestling policy is an unjustified restriction on people's freely chosen leisure*" (Kymlicka 2002, 214).

It is not the state's task to decide which options are valuable and need protection or support, and which options are not. The only place where this evaluation process should go on is civil society or the free cultural marketplace. When a liberal government enables this free-market mechanism, valuable options will automatically survive, while worthless options will disappear: "[*u*]*nder conditions of freedom, satisfying and valuable ways of life will tend to drive out those which are worthless and unsatisfying*" (Kymlicka 1989b, 884). Kymlicka thus pleads for *social perfectionism* (or antiperfectionism) and not for state perfectionism: it is *civil society* – and not the state – that decides which options are of value and it is *civil society* – and not the state – that pays the cost of these options. If citizens regard certain options as valuable, they will be prepared to pay the cost. If, however, they are not prepared to do this, these options are no longer valuable enough to survive. State support is not needed here.

3.4.1 Liberal Neutrality and State Support for Societal Cultures

Liberal perfectionists like Raz, Hurka and Wall criticize Kymlicka's *antiperfectionist liberalism* because it optimistically supposes that valuable options will automatically survive in a free market system. Because worthwhile options do not always

drive out worthless ones, and because the free market or voluntary action does not always provide enough support for these worthwhile options, there is a need for the state to take up this perfectionist task if that is more effective. Hence their plea for 'liberal perfectionism'.

However, their criticism is not fully correct. Kymlicka's rejection of state perfectionism does not imply that the liberal state should follow a one-sided hands-off policy with regard to the protection of valuable options. Even though Kymlicka does not allow direct state support for particular options, he admits that the state support "*societal cultures*"[3] as contexts of choice. In line with communitarianism, Kymlicka states that valuable options do not emerge in a vacuum, but that these options get their value within a particular culture: "[*o*]*ur dependence on the cultural structure for worthwhile ways of life is undeniable*" (Kymlicka 1989b, 894). Only when the government supports these societal cultures do citizens have access to a range of meaningful options generated by these cultures.

This is an important point of difference with respect to the so-called 'state perfectionism' defended by Raz: within this state perfectionism, the state can (and should) support *particular valuable options* because they are *intrinsically* valuable. According to Kymlicka, however, the state should only support our societal cultures, from which a range of valuable options emerge. While Raz allows state support for particular options as such, Kymlicka only allows support for the contexts or cultures from which these valuable options emerge.

According to Kymlicka, the evaluation of particular options should be made by the media, intellectuals and other actors in civil society, and not by the state. Consequently, Kymlicka's social perfectionism is compatible with liberal neutrality, according to which the state (and its officers) should be neutral, but its citizens should not:

> The best reason for state neutrality is precisely that social life is nonneutral, that people can and do make discriminations among competing ways of life in their social life, affirming some and rejecting others, without using the state apparatus. (Kymlicka 1989b, 895, n.29)

Of course, this antiperfectionist policy does not imply that all practices citizens consider to be valuable should be allowed by the state. Because many practices are not in line with the basic principles of liberalism, they should not be permitted anyway. As Rawls (1975, 521–252) observes, "*in justice as fairness*, *the priority of the right implies that the principles of* (*political*) *justice set limits to permissible ways of life*. […] *Justice draws that line*, *the good shows the point*". As a result, some

[3] Kymlicka defines a *societal culture* as follows:

> By a societal culture, I mean a territorially concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life (schools, media, law, economy, government, etc.). I call it a *societal* culture to emphasize that it involves a common language and social institutions rather than common religious beliefs, family customs, or personal lifestyles. Societal cultures within a modern liberal democracy are inevitably pluralistic, containing Christians as well as Muslims, Jews, and atheists; heterosexuals as well as gays; urban professionals as well as rural farmers; conservatives as well as socialists. (Kymlicka 2002, 346)

conceptions about the good life (e.g. conceptions degrading persons because of their racial or ethnic grounds), and some practices that are related to these conceptions (discrimination, murder, torture) are principally excluded in a fair liberal society. This is, however, not contrary to the requirement of liberal neutrality, which is involved with the justification (and aim) of a specific policy, and not with the consequences of that policy.

3.5 Political Perfectionism: Joseph Chan

Like Will Kymlicka, Joseph Chan defends a form of perfectionism that is very close to social perfectionism. But different from Kymlicka, he defends perfectionism as a *political*, and not as a comprehensive, theory. Even though I am not convinced of the possibility of this combination, it is nonetheless of interest to have a closer look at Chan's multicentered perfectionism for two reasons. First, the kind of perfectionism he defends is also compatible with autonomy-based liberalism (and not only with political liberalism). Second, Chan discusses to a certain extent *how* a liberal perfectionist policy could actually be implemented in practice – an issue which Kymlicka and Raz are rather silent about.

3.5.1 Political Perfectionism

According to Chan, the liberal state can follow a moderate perfectionist policy and it can defend this policy on *political* (and thus *non-comprehensive*) grounds.[4] In other words, the state can give *neutral* arguments (such as Rawls's principle of *liberal legitimacy*, Gutmann's principle of *democratic majority*, or Nagel's contractual principle of *higher order unanimity*) for its perfectionist (and thus non-neutral) policy.

Mulhall and Swift (1996 [1992], 252) consider this *political perfectionism* to be "*a schizophrenic or masochistic position*" because it supposes that the government can, for perfectionist reasons, support or reject some practices, while the *legitimation* for this perfectionist policy should not be based on any value-judgment or comprehensive doctrine. Because people have different reasonable conceptions about the good life, Chan defends a neutral legitimation for a particular policy, while this liberal policy itself needs not to be neutral. This is, however, a rather ambivalent position. Moreover, as I argued, *every moral/political theory* – political liberalism included – is based on a (set of) particular value(s), and it is therefore impossible to

[4] For a similar position, see Sher 1997, 1:

> In this book, I shall present a view about government and the good life […] that does not seek to ground the state in any particular conception of the good, but nevertheless holds that a government may legitimately promote the good.

give a neutral justification for a particular – perfectionist or antiperfectionist – state policy. Because liberalism is not value-neutral, a *neutral* (political) justification for a perfectionist policy is unattainable. Providentially, Chan admits that a perfectionist policy should not *necessarily* be legitimated in a non-comprehensive or political way, but is also compatible with *comprehensive* or *autonomy-based* liberalism, and for that reason, his *multicentered perfectionism* is definitely worth looking at.

3.5.2 Multicentered Perfectionism

Kymlicka distinguishes social perfectionism (that is in accordance with the ideal of liberal neutrality) from state perfectionism (that is not in accordance with the ideal of liberal neutrality), and rejects the latter: the state should not promote or encourage particular options or practices because that would lead to an infringement of individual autonomy. However, as Joseph Chan claims (2000, 9, 42), a mild form of state perfectionism is "*desirable*, *legitimate and unavoidable*". In order to be liberal, this state perfectionism should be *non-coercive*, *mixed* and *multicentered*.

First, perfectionism should be *non-coercive*: the state can only use *non-coercive* measures to enhance certain valuable ways of life. Examples of non-coercive perfectionism are subsidies, tax reduction and education – all compatible with liberalism. In addition, perfectionism should not be pure, but *mixed*: the good life is not the only intrinsic value the state should support (for that would be a form of pure perfectionism); there are also other values the liberal state should take into account (e.g. peace and harmony, equality and distributive justice, and efficiency), and these may legitimately restrict the perfectionist value of the good life[5]:

> Perfectionists need not be radicals. They may allow the pursuit of the good life to be tempered by other values. Perfectionists insist only that the pursuit of the good life is one important, legitimate task of the state. (Chan 2000, 15)

Finally, perfectionism should not be state-centered, but *multicentered*, which implies that:

> […] voluntary associations […] take the primary and active role in promoting valuable goods and ways of life. The state might either not intervene at all if these groups are effective, or just assist in promoting the good by helping these associations. The state may need to take an active role in those areas where civil society fails. Alternatively, the state may work side by side with civil society. (Chan 2000, 15–16)

This policy of *multicentered perfectionism* strongly resembles Kymlicka's *social perfectionism*. According to Kymlicka, *citizens* (civil society) should play an active role in the promotion and prescription of the good life, which is precisely what Chan defends. In a multicentered perfectionist state, the liberal state cannot decide independently, i.e. without the agreement of civil society, which social practices are of value and therefore need state support:

[5] See in this regard also Caney (1991, 467) on *monistic* and *pluralistic perfectionism*.

> Civil society needs the state to remedy its defects, and the state in turn requires a strong civil society to counterbalance and constrain its enormous power. […] There is no deep distinction between the state and civil society as far as their vulnerability and their impact on people's lives are concerned. And in fact those two require each another in the pursuit of perfectionist goals. (Chan 2000, 30–31)

One of the conditions for state support for particular goods is that the decision procedure is "*as open and fair as possible*" (Chan 2000, 33). This openness can be guaranteed within a rotation system, where the members of commissions responsible for subsidies and policy decisions are elected, e.g., every 3 year. These commissions could be composed by delegates of diverse groups, or individual experts, holding diverse reasonable views. In order to guarantee a fair and just society, these delegates should be elected democratically. The result of such an open system is, according to Chan (2000, 33–34), "*that most*, *if not all*, *major reasonable specific conceptions of goods would have a fair chance to be heard and supported by state funding in the long run*". If this is indeed the case, Chan's multicentered perfectionism, which can also be labeled as '*democratic perfectionism*' (for this term, see Gutmann 1998, 40) is also reconcilable with the principle of autonomy.

3.5.3 Valuable Options, Autonomy and Neutrality: Chan or Kymlicka?

Notwithstanding some remarkable similarities with Kymlicka's theory, there are also some important differences between Chan's *multicentered state perfectionism* on one hand, and Kymlicka's *social perfectionism* on the other. According to Kymlicka, the state should *never* base its policy on any value-judgment, even if this value-judgment emerges from civil society. Only a policy of support for societal cultures as meaningful contexts of choice is legitimate and in line with autonomy-based liberalism. A policy of support for valuable options is not legitimate and not needed. Chan, by contrast, is convinced that the state can promote certain options *because they are valuable*. His perfectionism can thus be labeled as a form of state perfectionism, even though *civil society* (and not the state) decides which options are (not) of value.

Another difference between Chan and Kymlicka is the justification for their multicentered and social perfectionist policy. Why do we need state support for valuable options (Chan) or for societal cultures generating these options (Kymlicka)? Within an autonomy-based conception of liberalism, as defended by Kymlicka, this support can be defended as a necessary tool for guaranteeing an adequate range of valuable options. Only when these options are available can citizens (and future citizens) successfully make autonomous choices. Because Chan does not defend autonomy-based liberalism, we cannot find a similar argument in his theory and this makes his theory rather unconvincing.

However, notwithstanding this important criticism, Chan's multicentered perfectionism should not *necessarily* be legitimated in a non-comprehensive or political

way. As Chan notes (2000, 17), his multicentered perfectionism is also compatible with the principle of autonomy, and thus with *comprehensive* or *autonomy-based* liberalism, as defended by Kymlicka and Raz. According to these philosophers, each person should be able to choose, to revise and to pursue his/her conception of the good, and this supposes that citizens can choose among an adequate range of valuable options. For Kymlicka, it suffices that the state support societal cultures, so that diverse options generated from these cultures can concur with each other in the free cultural marketplace. Autonomy can thus be guaranteed through a social perfectionist or neutral policy.

But there is also another way to guarantee different valuable options: the state can not only choose to support societal cultures as meaningful contexts of choice; it can also support specific options if such support enables a sufficient range of valuable options for all citizens in an efficient way. However, such a policy is only in line with the concept of autonomy insofar as not the state, but rather its citizens (i.e. civil society) decide which options are valuable and need state support, and under the condition that the wishes of the majority, as well as those of different minorities, are taken into account. In sum: as long as *the state* does not make any value judgment and as long as the state encourages or discourages certain options for non-perfectionistic reasons (guaranteeing the conditions for autonomy), Chan's *multicentered* perfectionism can also be in accordance with liberalism and its neutrality constraint.

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Chapter 4
Reformation Liberalism and Liberal Neutrality: Galston and Kukathas

4.1 Introduction

In the previous paragraphs, I defended autonomy-based liberalism as a consistent liberal framework for state neutrality or antiperfectionism. In order to guarantee that citizens can lead a life according to the values they endorse, the state should not base its policy on any comprehensive doctrine, but should be able to give neutral arguments for its policy. This liberal claim of neutrality does, however, not necessarily lead to a hands-off policy with regard to valuable options: both a policy of *multicentered* or *democratic* perfectionism and a hands-off policy with regard to valuable options can be in line with autonomy-based liberalism and its claim of antiperfectionism.

Unfortunately, autonomy-based liberalism is not the only liberal theory that can be in accordance with antiperfectionism. William Galston and Chandran Kukathas, for instance, defend, each in their own way, a 'minimal' (Kukatas) or 'minimal perfectionist' (Galston) form of liberalism, while they reject at the same time the principle of autonomy (autonomy-based liberalism or *enlightenment liberalism*). As an alternative, they defend the idea of tolerance (*reformation liberalism*): the liberal state should guarantee freedom of conscience and freedom of association for all citizens, but this does not imply that these citizens should also be able to make autonomous choices. In the next paragraphs, we will have a closer look at these theories of reformation liberalism and see whether they could also form a solid and coherent basis for an antiperfectionist policy.

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4.2 Non-Autonomy-Based Liberal Pluralism: William Galston

Opposed to many liberal philosophers, William Galston rejects autonomy-based liberalism or *enlightenment liberalism* and defends *reformation liberalism*. In enlightenment liberalism, as put forward by Kant and Mill (and according to Galston, also by Rawls and Kymlicka),[1] autonomy is a fundamental normative concept and the liberal state should promote rational reflection or personal autonomy in an active way. According to Galston, however, this enlightenment liberalism narrows the range of possibilities that is available to citizens in liberal societies. In particular, those ways of life that do not embrace autonomy are said to be threatened when autonomy is placed at the core of liberalism.

Different from enlightenment liberalism, autonomy is not a central concept in Galston's reformation liberalism: "[*t*]*he accommodation of diversity is a better foundation for liberal philosophy than is the promotion of rational reflection or personal autonomy* […]" (Galston 1993 [1991], 154). Diversity and tolerance – and not autonomy – are fundamental liberal principles. Hence, Galston's plea for a "*Diversity State*" (Galston 1995, 524) or a "*policy of maximum feasible accommodation*" (Galston 1993 [1991], 295) in which the state creates as much space as possible for individual and collective differences, "*within a determinate but limited conception of liberal public purposes*" (Galston 1993 [1991], 154). According to Galston, many valuable ways of life do not emerge out of autonomous, critical reflection, but are the result of existing traditions, habits, authority and belief. Because these ways of life are disadvantaged within autonomy-based liberalism, Galston rejects this kind of liberalism and pleads for reformation liberalism. The liberal government can, and should, take measures in order to promote the human good or well-being, but it should not infringe on particular views about the good life. As a result, many illiberal practices (e.g. patriarchal gender relations) should be allowed within a *policy of maximum feasible accommodation*: "[*t*]*hat there are costs to such a policy cannot reasonably be denied*. […]. *But unless liberty – individual and associational – is to be narrowed dramatically*, *these costs must be accepted*" (Galston 2002, 20). Religious and/or cultural groups can thus internally allow some illiberal practices, but only under the condition that these practices do not infringe on the freedom of non-members, and only if real freedom of exit is, among other things by means of compulsory education, guaranteed by the state.

[1] Mistakenly, Galston supposes that Rawls, Kymlicka, Kant and Mill defend *the same* concept of autonomy. This is, however, not the case (see Sect. 4.2.2).

4.2.1 Liberalism, Public Purposes and Minimal Perfectionism

Even though Galston rejects enlightenment liberalism, he does not reject liberalism as such. The state should take into consideration those "*public purposes that guide liberal public policy*, *shape liberal justice*, *require the practice of liberal virtues*, *and rest on a liberal public culture*" (Galston 1993 [1991], 3).[2] Consequently, the liberal state can never be strictly neutral, but "*embraces a view of the human good that favors certain ways of life and tilts against others*" (Galston (1993 [1991], 3). Justifying a policy without a particular view of the human good is impossible:

> Every polity, then, embodies a more than minimal conception of the good that establishes at least a partial rank-order among individual ways of life and competing principles of right conduct. (Galston 1993 [1991], 97)

Because Galston defends a *liberal account of the human good*, his liberalism is "*minimal perfectionist*" (Galston 1993 [1991], 177, 299) and ""*comprehensive*' *rather than* '*political*'" (Galston 2005, 4). Moreover, according to Galston (1993 [1991], 9), his liberal theory is "*more substantive and purposive*" and "*less formal and procedural*" than most common liberal theories.

In the first part of his *Liberal Purposes*, Galston elaborates on this *liberal account of the human good*, which forms a "*shared basis for public policy*" (Galston 1993 [1991], 178). Similar to Rawls, Galston states that each individual who is situated in a liberal, pluralist society, needs the same goods: (1) life, (2) a normal development of basic capacities, (3) reaching aims and interests, (4) freedom, (5) rationality, (6) companionship, and (7) subjective satisfaction. Because *every citizen* in a liberal society is better off with these goods, it is allowed for the liberal state to support them and to discourage their impediment.

In practice, this implies that the government can e.g. invest in education, in discouraging violence, combating diseases and epidemics, and controlling food safety and food supplies. These measures are justified in a liberal state because they are aimed at *the human good* or *well-being*. Even though citizens will not always (to the same extent) use and/or approve the same public purposes and goods, the liberal state can nevertheless require a common (financial) contribution to support them:

> As citizens, we may be asked to contribute to public purposes that we reject for ourselves, and a liberal understanding of the good allows us to act out that rejection. For example, I may be required to contribute to a public health system that prolongs life for elderly citizens even though I do not want my own life to be prolonged and would refuse to make use of the medical procedures and technology developed for that purpose. (Galston 1993 [1991], 178)

The liberal state is obliged to promote liberal purposes – goods that are (like the Rawlsian primary goods) required for the *liberal account of human well-being* – but when individuals choose another concept of well-being, the state should not intervene in this choice, as long as the liberal purposes of our co-citizens are not impeded. If the state has e.g. provided public health facilities for its citizens (through collective

[2] For this reason, Galston (1993 [1991], 4) speaks about "*purposive liberalism*".

taxation), but some citizens will not make use of these facilities, the state should not compel these citizens to do this, as long as this does not lead to an infringement of other citizens' well-being. Coercion (e.g. via taxation) for public purposes is thus different from coercion directed at individual ways of life: the first is allowed, and in many cases also required, while the second is not allowed at all.

Furthermore, and in line with the liberal tradition of Rawls and Dworkin, Galston defends equal opportunities for all. In order to realize this, the liberal state should (1) proportionally divide the goods and services needed for the human good or well-being, and (2) guarantee a fair free market system for these goods that are not required for the human well-being.

With regard to the human good or well-being, a hands-off policy does not suffice: individual contributions (taxes) to pursue the human good are required and the state can – and should – actively promote the liberal account of the human good. But this does not imply that all individuals share the same conception of the good. According to Galston, who defends a form of value pluralism, there is no *summum bonum* or ultimate good for all, but different goods can be valuable for different people. This value pluralism is exactly the reason why Galston (2002, 3) stresses the importance of *expressive liberty*, i.e. the freedom of individuals and groups to lead their lives "*as they see fit*, *within the broad range of legitimate variation*, *in accordance with their own understanding of what gives life meaning and value*".

Because the *summum bonum* is context-dependent and different for each individual, state support for this *summum bonum* is not allowed. In this regard, Galston makes an interesting difference between *state permission*, on one hand, and *support or encouragement*, on the other: in the *diversity state*, there should be as much diversity as possible, but active support or encouragement for individual valuable options is not permitted in order to realize this aim. Therefore, Galston (1995, 530) considers state support for valuable options like art to be "*intellectually invalid as well as politically disastrous*". Active state support is only allowed in order to realize the liberal account of human well-being for all citizens,[3] but when the individual *summum bonum* is at stake, the state should lead a hands-off policy and guarantee a fair free market.

4.2.2 Galston's Liberal Pluralism: Autonomy-Based?

Galston criticizes autonomy-based liberalism because it is based too much on a particular conception of the good life. However, notwithstanding this criticism, some critics also point out that Galston's own reasoning (and particularly his defense of exit-options) does not lead to reformation liberalism, but to enlightenment (and thus autonomy-based) liberalism:

[3] This kind of support is similar to Rawls's support for *primary goods*: it is justified because it contributes to the good life of *all citizens*, notwithstanding their particular conceptions about the good life.

> Crucially, it seems, real freedom of exit seems to involve the capacity to stand back from the group's norms and to assess them critically – that is, the capacity for autonomous judgment. (Crowder 2007, 128)[4]

Given the fact that real exit-options are necessary within a liberal society and that these options can only be guaranteed within an autonomy-stimulating context, Galston's concept of reformation liberalism cannot persist. Paradoxically, Galston admits that exit rights (defended by Galston) are necessarily related to the concept of autonomy (rejected by Galston). On one hand, he thus criticizes autonomy-based liberalism, but on the other, he defends the right to exit, which is a right that can only be fulfilled when citizens are able to make autonomous choices. Even though Galston does not abandon his idea of reformation liberalism, he seems to be aware that real exit is interwoven with the concept of autonomy when he states that "*the protection of meaningful exit* […] *brings us back some distance toward policies more typically associated with autonomy concerns*" (Galston 1995, 534).

As pointed out by Galston in his later work, his ideas in *Liberal Pluralism* were misunderstood on this point: Galston rejects the Socratic/Millian concept of autonomy, "*understood as rational reflection and self-creation*" (i.e. so-called 'hyper-liberalism'[5]), but this does not imply that there is no room for a "*more modest conception of autonomy as freedom of choice*, *secured by internal as well as external conditions*" (Galston 2005, 182). However, this means that Galston has in fact attacked the wrong enemy in his *Liberal Pluralism*: in this early work, he seems to assign the same conception of autonomy to Rawls, Kymlicka, Mill and Kant. However, Kymlicka explicitly stresses that his own concept of autonomy is (like the later Rawlsian concept of autonomy) different from the Kantian concept of autonomy (autonomy is of intrinsic value because it is inherent in our human nature) and from the Millian concept of autonomy (non-conformist, individual choices are intrinsically valuable). According to Kymlicka and the later Rawls, autonomy only refers to the *possibility* to choose, to reflect and to revise one's conceptions about the good life, but not to the good life itself. Accordingly, the state should only guarantee this possibility. Unlike Mill and Kant, Kymlicka (like the later Rawls) does not condemn people who choose a non-autonomous way of life, as long as there is the possibility to choose, and Galston seems to defend exactly the same position. In light of this discussion, autonomy-based liberalism again seems to be the most consistent option – unless we choose a more consequent, but therefore also more demanding form of reformation liberalism. This brings us to the libertarian theory of Chandran Kukathas.

[4] Susan Moller Okin (2002, 226) formulates a similar criticism, in the specific context of women's exit-options.

[5] For this terminology, see Kymlicka 2002, 239.

4.3 Non-Autonomy-based Libertarianism: Chandran Kukathas

Chandran Kukathas has formulated a variation on Galston's reformation liberalism that takes a more far-reaching step. According to Kukathas, society is characterized by diversity and conflict, and as a result "*there is no single*, *common goal that all must share*" (Kukathas 2003, 2). A universal concept of justice, as defended by Rawls, but also by Galston, does not exist. As a result, Kukathas (1998, 696) defends a *limited state*, comparable to Nozick's minimal or night-watchman state. Because opinions about right and wrong differ, and because each individual wants to do the right thing, it is of fundamental importance to protect individual freedom, and in particular the freedom of conscience and the freedom of association.

In order to guarantee these freedoms in a society that is characterized by value pluralism, the liberal state must be *tolerant* – and not autonomy-promoting or autonomy-facilitating: the value of autonomy is not a universal value, but is one of the many possibilities in a liberal society. As a consequence, the value of autonomy cannot be publicly charged by the liberal state: every individual should have the right to shape his/her life in accordance with the values he/she endorses, and autonomy is just one of these many values. Therefore, Kukathas (2003, 39) considers tolerance, and not autonomy, to be the core of liberalism:

> A liberal regime is a regime of toleration. It upholds norms of toleration not because it values autonomy but because it […] respects liberty of conscience. It upholds toleration by protecting freedom of association so people can live as they think they should – as conscience dictates.

4.3.1 Tolerance, Exit and Education

Kukathas (2003, 8) compares the liberal society with a liberal archipelago, situated in "*a sea of mutual toleration*". This liberal archipelago is not characterized by "*an established standpoint of morality*", but by "*a convergence of different moral practices*" (Kukathas 2003, 132) the liberal state must tolerate. Sharing a comprehensive doctrine is thus not a necessary condition for the formation of a political community, and similarly, a shared culture or shared aims (cf. Galston's *liberal purposes*) are not needed. Therefore, Kukathas prefers a *modus vivendi* and not a *modus credendi*: the only – minimal – task for the state is maintaining the peaceful co-existence of communities and guaranteeing the freedom of conscience and the freedom of association.

In line with this, it is not allowed for the state to intervene with ideas and practices of diverse associations, even if these associations reject the liberal principles of freedom and non-violence. According to Kukathas (2009), a liberal society is not a *Union of Liberty* (a society, founded at a shared concept of freedom or autonomy), but a *Federation of Liberty* (a society in which individuals are free to live according

to their conceptions about the good life, even if these conceptions are not based on freedom or autonomy) and associations are free to impose autonomy-restricting rules on their members. In other words, "[*a*] *free society is therefore not a society of free societies or free associations. A free society is a society of many associations, not all of which need be free – indeed, none of which need be free*" (Kukathas 2003, 98–99).

Like Galston, Kukathas is convinced that the right to exit should, as a minimum, always be guaranteed: communities are free to organize themselves internally according to self-chosen rules and principles, *as long as* members of these associations have at least *formally* the possibility of leaving the community at any time. However, according to critics, the opportunity costs in many societies are very excessive and as a result, there is no *real* right to exit if exit is only formally guaranteed. Kukathas's response to this criticism is as clear as day: even if the cost of leaving a particular community is extensively high, individuals are still free to leave that particular community: "[*t*]*he magnitude of the cost does not affect the freedom*" (Kukathas 2003, 107). Different from Galston, Kukathas does not plead for state intervention (e.g. organizing compulsory education) in order to guarantee *real* freedom of exit. A formal right to exit is sufficient.

Consequently, the liberal state should allow, e.g., that parents be allowed to: withdraw their children from education, force their young daughters to marry, and/or refuse (some) medical treatments for their children. Moreover, illiberal and harmful practices such as female circumcision and ritual mutilation can be tolerated, as long as the formal right to exit is guaranteed (for members) and as long as freedom of conscience and freedom of association of co-citizens (non-members) are guaranteed as well.

At this point, Kukathas's position is fundamentally different from Galston's. Even though both authors defend a form of reformation liberalism and stress the importance of the (internal) freedom of association and freedom of conscience, Kukathas's theory is far more libertarian than Galston's. According to Galston, there is a common good and it is the state's task to guarantee this good for all its citizens. Because a qualitative mental and physical development is important for *all* citizens, the state can oblige its citizens to be well-educated and it can forbid corporally mutilating (ritual) actions. According to Kukathas, however, this kind of state intervention is not allowed. As long as the freedom of association and conscience are not impeded, and as long as formal exit-options are guaranteed, the liberal state does what it is supposed to do.

An important consequence of Kukathas's libertarianism or minimal liberalism is that the state should also lead a hands-off policy with regard to education. Because autonomy is not a central value, there is no need for an educational system in which the capacity to act and to think in a critical way is developed. Moreover, because every system of education is based on a specific concept of the good life, and because education is always based on a particular concept of truth, Kukathas rejects all kinds of compulsory education: "[*t*]*he last thing a liberal state should offer its subjects is education – even if that should be a liberal education*" (Kukathas 2001, 323). It is not the state's business to organize education; rather, this task should be

left over to civil society: when some communities consider education to be important or valuable, these communities are free to set up an educational system that is in accordance with their own convictions and principles.

Finally, active state support for, for instance, art, science, or national parks, is not allowed in Kukathas's minimal state. Such an active policy of support would unavoidably be based on a particular conception of the good life, and, as a result, freedom of conscience would be impeded. People should always be free to lead their lives as they see fit and the state should never influence these individual choices.

4.3.2 The Consequences of Kukathas's Minimalist State

Kukathas's libertarian theory is problematic on several points: filling in the state's role in such a minimal way that, e.g., education is not a legitimate authority raises many questions. For example, it implies that, in the name of the parents' (religious or cultural) convictions, children can remain uneducated and/or can be educated within a closed, orthodox system without having contact with basic scientific views, without getting the opportunity of optimizing critical thinking, and without having any alternatives. In this case, youngsters' interests and their future freedom and autonomy are sacrificed in the name of liberty.

Furthermore, Kukathas's theory does not give us any criterion for how to deal with justice. To some extent, this approach can be considered to be as neutral as possible, but the other side of the coin is that many illiberal and even inhuman practices must be tolerated. In this regard, Barry's words resonate clearly: "*Public tolerance is a formula for creating a lot of private hells*" (Barry 2001, 143).

In addition, each liberal theory – Kukathas's libertarianism included – is based on some non-neutral assumptions that are not shared by all citizens (e.g. the minimal state authority; the importance of individual freedom; the central notion of tolerance) and, as a consequence, the impartial, tolerant, neutral state Kukathas favors in fact does not exist. In Justin Cox's words, "*even the establishment of a minimalist libertarian state* […] *would fail to achieve true neutrality*, *since this philosophy must make a number of assumptions that not all cultures would accept*" (Cox 2004, 15).

Another, and more fundamental problem in Kukathas's liberal theory is that the notion of freedom turns into an empty, formal concept because freedom is only meaningful if individuals are de facto capable of doing something with this freedom. In order to do this, some basic conditions should be fulfilled – which is exactly what Galston (in line with several other egalitarian liberals) wants to do. For this reason, Galston's position is, from a normative point of view, better than Kukathas's position, in which the right to exit is problematic. Even though Kukathas (1992, 133) emphasizes that "*the extent to which the individual does enjoy a* substantial[6]

[6] Kukathas's emphasis.

freedom to leave" is of main importance, there is, in his political theory, no room for this *substantial* freedom to leave: a formal exit right seems to be sufficient. However, this formal right does not suffice at all in practice. In many cases, there are excessive costs related to leaving a (cultural or religious) community: economic and psychological costs; the risk of not succeeding in society; a lack on economic resources; etc. When the state does not take some active measures in order to decrease these costs and in order to guarantee real exit options, individual freedom is only formally guaranteed "*on a level with the legendary freedom of the poor to dine at the Ritz*" (Crowder 2007, 127).

We can conclude that Kukathas's reformation liberalism is in fact more consequent than Galston's reformation liberalism, but that it is therefore also more far-reaching and sometimes even problematic from a liberal viewpoint. Galston, by contrast, defends a more acceptable form of reformation liberalism, but apparently, his theory is very close to autonomy-based liberalism as defended by Kymlicka and the later Rawls. For that reason, we can conclude that autonomy-based liberalism is – again – proved to be a solid basis for a neutral or antiperfectionist state policy.

4.4 Provisional Conclusion: Autonomy-Based Liberalism and Liberal Neutrality

In the previous chapters, I defined the principle of liberal neutrality and examined how this principle is shaped in a number of actual liberal theories. I concluded that *external neutrality* (a neutral legitimation for a neutral policy) is impossible, and that *every* liberal theory – Rawls's political liberalism included – is based on a particular comprehensive doctrine or a conception of the good.

One of these conceptions of the good is the idea that autonomy is valuable for all reasonable and rational human beings and that citizens should therefore *at least be able* to choose, to reflect and to revise their conceptions about the good life, and to shape their lives in accordance with these conceptions. In order to enable this, the state should guarantee individual freedom, education, and a number of valuable options to choose among. Particularly with regard to this last condition, perfectionists and antiperfectionists disagree. According to Raz and other liberal perfectionists, the liberal state can – and should – support some intrinsically valuable goods in order to realize this third condition. However, because this kind of state perfectionism can also restrict individual autonomy, I rejected Raz's concept of state perfectionism and opted for Kymlicka's *social perfectionism* and Chan's *multicentered perfectionism*. Whether the state, in practice, chooses to support certain valuable options or not, should be dependent on contextual factors.

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Chapter 5
Ronald Dworkin: Liberal Neutrality and Subsidizing Art

5.1 Introduction

Within contemporary liberalism, the common view exists that the state should not base its policy decisions on a particular conception about the good life. This requirement of neutrality can be implemented in many ways. According to Kukathas (and Nozick), for example, the state should embrace a strong hands-off policy: the only task a liberal government has, is to observe the peaceful co-existence of different groups and individuals in society, and to guarantee the freedom of association and the liberty of conscience. However, such a libertarian approach can, in the name of individual freedom, lead to the end of this freedom, and therefore, this policy is unsustainable.

Besides, neutrality does not necessarily imply a hands-off policy, but rather the opposite. Indeed, many proponents of egalitarian liberalism (e.g. Rawls, Dworkin, Barry and Kymlicka) make a plea for active state support for common goods such as education, public safety and accessible health care, in order to guarantee equal opportunities for all. In addition, most of these liberal authors are also convinced that the state can actively support valuable options such as the arts. Given the anti-perfectionist policy defended by these philosophers, this is not self-evident.

In the next two chapters, I will explore some common arguments for state support for art in a liberal, neutral state. There are several reasons for focusing on this item. First, citizens disagree about the value of art and about the need to support art. Similarly, there is no consensus about the value of religion and about the need for state support. However, despite this lack of consensus, art and religion are often subsidized by the state. There are thus a number of similarities between state policies with regard to religion and with regard to art, which makes their comparison quite interesting. In addition, there is extensive literature about state neutrality and subsidizing the arts, and this literature will be useful as a point of reference when we are dealing with state subsidies for religion.

L. Franken, *Liberal Neutrality and State Support for Religion*, Boston Studies in Philosophy, Religion and Public Life 5, DOI 10.1007/978-3-319-28944-1_5

In contemporary philosophy, the most famous text about state support for art is probably Ronald Dworkin's *Can a Liberal State support Art*? Therefore, I start my examination with an analysis of this text, including its most important criticisms.

5.2 Dworkin's Egalitarian Liberalism

Like Rawls, Dworkin is, as an *egalitarian liberal*, convinced that the state should not base its policy on any comprehensive doctrine. One of his most cited quotes in this regard is the next one:

> […] Political decisions must be, so far as is possible, independent of any particular conception of the good life, or what gives value to life. Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous, or more powerful group. (Dworkin 1978, 127)

In order to develop his moral and political theory, Dworkin starts out (like Rawls) with a thought experiment: if each person were uninformed about his/her natural talents and disadvantages, interests and opportunities, and if each person would have an equal amount of purchasing power (100 clamshells in Dworkin's example), then each person would be better off with an insurance against some possible disadvantages that the person might have (e.g. a physical handicap, unemployment, or illness). Based on this thought experiment, Dworkin provides us with a neutral argument for defending the liberal state, with its coercive tax system and its system of compulsory education for all.

Like Rawls, Dworkin stresses that the liberal state should not compensate for people's *life choices* (or 'expensive tastes'), but that it should only guarantee that people's *life chances* are equal. Hence, Dworkin rejects *equality of welfare*, but defends *equality of resources*: even though one does not *choose* one's own preferences, it is always possible to choose not to comply with them, and for that reason, state support is not required with regard to one's preferences in order to guarantee equal opportunities. For disabled people, things are different: they do not have the possibility *not to comply*, and due to unchosen circumstances and "*brute bad luck*" (Dworkin 1981, 297), they have fewer resources and thus fewer opportunities than people without a disability. Due to this inequality, the state should actively take compensatory measures:

> Someone who is born with a serious handicap faces his life with what we concede to be fewer resources, just on that account, than others do. This justifies compensation, under a scheme devoted to equality of resources […]. But we cannot say that the person whose tastes are expensive, for whatever reason, therefore has fewer resources at his command. For we cannot state (without falling back on some version of equality of welfare) what equality in the distribution of tastes and preferences would be. (Dworkin 1981, 302)

Thus far, Dworkin's theory is clear and acceptable: the state should compensate for inequality with regard to one's life-chances, but not when it comes to one's life choices. Compensation for illness and disabilities (e.g. by means of

subsidized, accessible health-care) or for poor social circumstances (e.g. by means of school subsidies or a social minimum) can be justified in a neutral way (i.e. on the basis of Dworkin's thought experiment), but compensation for expensive tastes (e.g. by means of subsidizing Champaign or luxury resorts) cannot be justified in a neutral way.

In this context, it is surprising that Dworkin also defends state support for art: "*It is when dealing with the issue of whether the state can support the arts that Dworkin seems to violate his own understanding of the sense in which the state should be neutral in operation*" (Mulhall and Swift 1996 [1992], 301). At first sight, one would consider art to be an expensive taste and not something that is required by justice in order to guarantee equal opportunities for all. Apparently it seems that Dworkin thus contradicts his own basic ideas when he rejects state support for expensive preferences, while, at the same time, he is in favor of this kind of support for art. How does Dworkin defend this position?

5.3 Liberal Neutrality and State Subsidies for Art

In *Can a Liberal State support Art*?, Dworkin examines to what extent a liberal, neutral state can support the arts. Generally, there are two positions with regard to this issue, which Dworkin both rejects. On one hand, there is the *economic approach*, according to which goods like the arts should be subjected to the free market mechanism. In this approach, "*the market is the most effective instrument for deciding how much and what kind of culture people want at the necessary price*" (Dworkin 1985, 221). Only when the free market is not influenced by subsidies will it become clear what people really want: if they consider the arts to be important, they will be prepared to pay (more) for these goods. According to the *lofty approach*, by contrast, the free market mechanism is not sufficient and state support for the arts is justified because these things are *intrinsically good or valuable*.

For Dworkin, neither the economic, nor the lofty approach is convincing. While with the economic approach subsidies are excluded beforehand, with a potential loss or decline of art as a result, the lofty approach leads to paternalism and elitism: most people prefer watching a football match on television over looking at a painting in a museum, and therefore, it would not be liberal to support museums, while watching football matches on television will get no state support. According to the principle of neutrality, it is not allowed for the state to base the use of public funds on any value judgment: even if it could be proven that visiting museums is *intrinsically better* (*more valuable*) than watching football matches on television, it is, according to the theory of 'orthodox liberalism', not allowed to subsidize museums on the basis of this value judgment.

As an alternative to both the economic and the lofty approach, Dworkin presents us a new, and, according to him, also neutral justification. Dworkin argues that art is not *intrinsically* valuable, but that it is *extrinsically* valuable: art is a "*valuable tool*" that enables the (re)construction and renewing of our cultural structure, which

is a "*public good*" because it offers citizens a range of opportunities to choose among. Without art, it would be more difficult to enhance our cultural structure, and as a result, it would be more difficult to choose among different possibilities and to lead a life according to our preferences. The aim of state support for art is thus "*to protect the structure of our intellectual culture*" (Dworkin 1985, 232) which we have inherited and which we have to keep intact because, in a liberal democracy, this cultural structure functions as an essential context of choice.

In his plea for support for art, Dworkin tries to avoid the lofty approach. Subsidizing art or "high culture" is not justified because art is intrinsically valuable, but because our culture (which generates different options to choose among) is enriched by art. Preserving the richness of our cultural structure is not an objectionable form of paternalism because the only reason for this policy is the creation of "*grounds for greater choice*, *by supporting an institution that contributes to the development of new cultural dimensions*" (Maris 2000, 99). In Dworkin's view, the liberal state does not endorse or condemn specific options that are identified in advance as good or bad, nor does it force anyone to make particular choices – even if the state supports art in an active way. Indeed, Dworkin does not say that visiting a museum would be intrinsically better than watching television; he only says that it is, in a liberal society, *better to have more than fewer options to choose among*:

> On this argument, the art-supporting state is not judging that a life involving art is better than one which does not, but rather that any life goes better when an individual's decisions about how to live are made against a rich and complex background of options rather than an impoverished one. (Mulhall and Swift 1996 [1992], 302)

With this argumentation, Dworkin comes close to the kind of autonomy-based liberalism as defended by Kymlicka and Raz. According to this kind of liberalism, people should always have the possibility to make autonomous choices, and in order to enable this, it is necessary that there be a range of valuable options to choose among.

As said by Raz, this implies among others that the state should support valuable options such as art *because these options are intrinsically valuable*. But with this argumentation, he defends the kind of paternalistic state perfectionism Dworkin tries to avoid. According to Dworkin, the state should abstain from any value-judgment: it should not support art because of its intrinsic value (which is Raz's argument), but only because it is by means of art that our cultural structures, and thus our options to choose, increase. At this point, his argumentation strongly resembles Kymlicka's argument in favor of the protection of societal cultures and it is thus not a surprise that Kymlicka refers to Dworkin in his plea for cultural minority rights:

> According to Dworkin, we must protect our societal culture from 'structural debasement or decay'. The survival of a culture is not guaranteed, and, where it is threatened with debasement or decay, we must act to protect it. […] His main point is, I think, sound enough. The availability of meaningful options depends on access to a societal culture, and on understanding the history and language of that culture – its 'shared vocabulary of tradition and convention'. (Kymlicka 1995, 83)

The similarities with Dworkin are significant: Dworkin is also convinced that cultural structures (Kymlicka's *societal cultures*) generate valuable options, and

that these options are a necessary condition for making autonomous choices. There is, however, an important distinction between both philosophers: for Dworkin, it seems to be an a priori fact that art enlarges the richness of our cultural structure, while Kymlicka does not make such an a priori assumption. Because the state decides a priori about the (instrumental) value of art, Dworkin is not undeservedly accused of state perfectionism. Kymlicka, by contrast, states that the value of art can only be ascertained *a posteriori*: if art survives without any state support (and thus continues to exist within a free market mechanism), it can be labeled as valuable, but it is not the state's task to decide a priori that art is a valuable option. According to Kymlicka, the state should thus not support any valuable option as such, but it should only guarantee the existence of a social context that generates a range of valuable options. With his plea for *social perfectionism* (citizens, and not the state, decide which options are valuable), Kymlicka avoids the kind of (mild) state perfectionism of which Dworkin is accused.

5.4 Dworkin and State Support for Art: Objections

Dworkin tries to give a neutral justification for state support for art, but his argumentation is not always convincing, and some critics argue that his concept of liberal neutrality is not reconcilable with his plea for state support for art. The most fundamental criticism is that there are no convincing arguments that prove that subsidizing art is necessary in order to enable the existence of a rich cultural structure from which a range of valuable options emerges. This criticism is twofold: (1) it is not necessary to *subsidize* art in order to guarantee a meaningful context of choice; and (2) it is not necessary to subsidize *art* in order to guarantee a meaningful context of choice.

First, Harry Brighouse (1995, 54–55) and Noël Carroll (1987, 29) claim that there are no convincing arguments for *state support* for art. They argue it is possible that our cultural structure increases within *the free market mechanism* (economic approach), and if this is the case, there is no reason for the state to support art. However, even though these authors mention an important issue here, their criticism is not necessarily addressed to Dworkin because he only says that it is *possible* (or permitted) for a liberal state to support art. This does not imply that this kind of support is also *required*. With Rawls (1971, 283) we can say that state support for art is only permitted "*where the market mechanism breaks down*".[1] If the free-market system is sufficient, there seems to be no need for the state to support art.

[1] See also a footnote in Dworkin's *Tanner Lectures* on *Equal Freedom*, where Dworkin mentions that state support for art *can* (but *should not*) be allowed:

> […] Nothing in my argument here denies that a state that has fulfilled the requirements of justice *can* properly use public funds to support art that the market will allow to perish, on the substantive ground that art improves the value of lives available in the community. (Dworkin 1998 [1995], 272, n.44 [emphasis mine])

But let us now suppose that the free market does not suffice. Why should the liberal state, in this case, support *art* and nothing else? Surely, the enrichment of our cultural structure is not solely (and not significantly) brought about by the arts, but by a range of human activities (e.g. sports, religions, humanities, politics, technology, etcetera). Therefore, Dworkin's argument not only justifies state support for art, but for a large amount of goods or valuable options.

Another problem is that the state has to judge what kind of art is valuable or important enough to get support, and what kind of art is not. But this is not an easy task. Dworkin (1985, 226) labels this as the problem of *indeterminacy*: based on calculations and experience, experts can, for instance, predict how the defense of a particular nation will contribute to its national safety or decide which measures should be taken in order to decrease environmental pollution. It is, however, impossible to make similar predictions when art is at stake. "*Should the state support two or more opera companies, or enlarge a collection of Renaissance paintings instead*?" (Maris 2000, 98) Why should the state support highbrow art, but not romance novels, karate movies or pornography? As Koppelmann (2006, 580) notices, "*these low cultural forms are not devoid of complexity, and some of that complexity will be lost if the state does not act to preserve it*". Imagine that both opera and roller derby cannot survive without state support, and that the state is, due to financial restrictions, obliged to make a choice. For Dworkin, it seems to be evident that the former contributes more to our cultural structure than the latter, but this is not a value-neutral argument:

> The state is saying, in effect, that opera contributes more to the richness of the cultural structure than does roller derby or that opera provides a distinct opportunity of value whereas roller derby does not. Such judgments clearly are not neutral with respect to different conceptions of cultural excellence. This shows that the implementation of Dworkins strategy must be predicated on accepting the legitimacy of at least a limited range of perfectionist considerations. (Macleod 1997, 537)

Critics have also referred to this problem from another perspective. Within Dworkin's liberalism, it is important that the state guarantee the conditions for making autonomous choices. As said by Dworkin, one of these conditions is the existence of a sufficient range of *real options*, and the state can guarantee this existence without losing its neutral character. According to some critics, however, there is something wrong with Dworkin's argumentation here. Daniel Nathan for instance notices that the mere existence of *real* options is not sufficient. If we should have the possibility to make autonomous choices, we do not only need 'real' options to choose among, but we need *valuable* options to choose among: "[*a*]*utonomy must be understood, not merely as having an array of choices before one, but instead as having among one's choices some that are good*" (Nathan 1994, 149). A choice between a range of worthless or bad options or between one valuable option and a set of bad options is not a real moral choice (cf. Raz 1986, 379–380), and for that reason, the state can take corrective (or perfectionist) measures by encouraging some valuable options and discouraging bad or worthless ones. Actually, Dworkin cannot avoid a similar kind of perfectionism in his plea for state support for art: *if* people should have the possibility to make autonomous choices, which Dworkin

approves, the state should necessarily guarantee an array of *valuable options*, and in this regard, some kind of perfectionism seems to be unavoidable.

Taking this into account, it would probably be better to say, with Chan, that the state can support valuable options such as opera, but not because *the state* is convinced that opera is valuable (or contributes more to the richness of our cultural structure) while roller-derby is not (or contributes less). According to Chan, state support for opera (or art in general) is only permitted when *civil society* is in favor of this kind of support, i.e., when citizens consider opera to be a valuable option. When this option is not accessible for these citizens within the economic approach, state support can be justified. In this case, civil society – and not the state – decides which valuable options the state should (not) support, and as a consequence, the principle of neutrality is kept in touch.

Furthermore, Dworkin is also accused of "*pale perfectionism*" (Maris 2000, 103) and non-neutrality because he supposes that a life that is characterized by complexity and diversity is more valuable than a life that is not characterized by these values. In this criticism however, the fundamental distinction between *internal neutrality* (a particular neutral policy) on one hand, and *external neutrality* (the *justification* for that neutral policy) on the other, is not taken into consideration. In line with *autonomy-based liberalism*, Dworkin says that people should be able to choose autonomously among diverse valuable options. Dworkin's *justification* for active state support for art is thus not neutral, but *comprehensive*: each citizen should at least be able to make autonomous choices and because art contributes to our cultural structure that enlarges these choices, and thus leads to more complexity and diversity, it is allowed for the state to support art.

This, however, does not imply that a policy of support cannot be neutral: when the state develops a system of subsidies in which citizens are involved, and in which they can democratically participate, state support for art can be in accordance with the idea of liberal neutrality. Even though Dworkin does not plead for this kind of *multicentered perfectionism* or *democratic perfectionism*, I assume that this kind of perfectionism is compatible with his liberal philosophy and with his concept of neutrality. This 'modest' perfectionism allows the state to support a range of options citizens consider to be valuable, without losing its neutral character.

In addition, we notice that Dworkin never pleads for *direct* support for the arts. As an alternative, he limits state support to indirect subsidies or tax exemptions:

> In general, aid should be given in the form of indiscriminate subsidies, such as tax exemptions for donations to cultural institutions rather than as specific subsidies to particular institutions, though not when private donation turns out to work against rather than for diversity and innovation. (Dworkin 1985, 233)

When the government does not subsidize *specific* institutions and/or forms of art, but only supports these institutions in an *indirect way*, the liberal state retains its neutral character as much as possible. It does not pass a judgment about specific institutions of art, but it gives these institutions an extra incentive (tax reduction).

Finally, it cannot be avoided that some citizens have the *perception* that the state is not neutral when it supports art. Even when subsidizing the arts is legitimated in

a neutral way, there will always be a number of citizens who have the impression that the government is not neutral in this matter and that it favors a particular way of life:

> Disfavored persons reason as follows: the funding demonstrably and directly supports ways of life other than mine and demonstrably does not support mine; it does not demonstrably bring the benefits for which purpose it is claimed to be in place; so maybe the real intent is to benefit those ways of life it supports and not my own. (Brighouse 1995, 55–56)

However, this assumption is incorrect. Liberal neutrality should not be interpreted as *neutrality of outcome*, but only as *neutrality of aim and justification*. The fact that some ways of life and some conceptions about the good life get support in a liberal state, is characteristic for such a liberal state. When policy makers can give *neutral arguments* for this kind of state support (facilitating a sufficient range of valuable options to choose among), there is in fact no problem when the liberal state supports art.

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Chapter 6
John Rawls: Liberal Neutrality and Subsidizing Art

6.1 Introduction

Like Dworkin, Rawls examines whether a liberal state can support art, but in a rather concise way. Therefore, I will not only focus on the texts in which Rawls explicitly mentions this topic, but I will also analyze some texts in which he pleads for state support for *public goods*. I will particularly examine what these public goods are according to Rawls; the question whether art is such a *public good*; and why and under which conditions Rawls allows state support for art.

As we will see, Rawls uses the concept of public goods in two distinct ways, and this is rather confusing. In order to avoid further confusion, I will, in a final section, make a conceptual distinction between public and nonpublic goods on one hand, and between perfectionist and nonperfectionist goods on the other.

6.2 Rawls on Public Goods

According to Rawls, all citizens should at least be able to form, to revise and to pursue their conception of the good. In order to enable this, it is necessary that the state guarantee several *primary goods*. Because *all citizens* need these goods (behind the veil of ignorance, they can argue for these goods), the liberal state is neutral when it actively supports them.

In order to guarantee primary goods for all citizens, sometimes the state will be required to actively support several *public goods*. Education, for instance, is considered to be a *public good* by most liberal philosophers, which should actively be supported by the state in order to guarantee real chances and opportunities for all citizens (a primary good). Analogously, public health care is a *public good* that is required to guarantee health (a primary good), and national defense is a *public good* that is required to protect many basic rights and liberties (primary goods). Public

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goods are thus in the "*common interest*" (Rawls 1971, 97) or "*to everyone's advantage*" (Rawls 1971, 267): they guarantee the primary goods for all citizens and these primary goods are a necessary condition for the realization of the good life – whatever that may be. This public benefit is the reason why public goods can, and should, be supported by collective tax money.

All public goods are thus characterized by their *publicness*: they are to everyone's (direct or indirect)[1] advantage or in the common interest. In addition, some (but not all) public goods are also characterized by *indivisibility*, the possibility of *free-riding* and *non-excludability* or *externality*. Clean air, for instance, is an *indivisible* public good because it cannot be divided into separate parts. In addition, clean air is *non-excludable*: all citizens get their share, even if some of them do not make any effort to keep the air clean. This brings us to the characteristic of *free-riding*: if some citizens make the effort to leave their car at home as much as they can, while other citizens keep on using their car in an excessive way, the air may turn out cleaner anyway – also for those citizens who did not make any effort to keep the air clean.

As a result of these four characteristics (publicness, indivisibility, non-excludability and free-riding), Rawls considers state intervention necessary when public goods are at stake:

> It follows that arranging for and financing public goods must be taken over by the state and some binding rule requiring payment must be enforced. […] Assuming that the public good is to everyone's advantage, and one that all would agree to arrange for, the use of coercion is perfectly rational from each man's point of view. […] It is evident, then, that the indivisibility and publicness of certain essential goods, and the externalities and temptations to which they give rise, necessitate collective agreements organized and enforced by the state. […] Some collective arrangement is necessary and everyone wants assurance that it will be adhered to if he is willingly to do his part. (Rawls 1971, 267–268)

According to Rawls, it is legitimate for the liberal state to compel citizens to pay taxes in order to guarantee the required public goods. Due to their publicness, indivisibility, non-excludability and the problem of free-riding, state support for public goods is not only permitted, but also *required* by justice.

In addition, Rawls defends state support for public goods that are *not* characterized by indivisibility, non-excludability and free-riding, but are nonetheless to everyone's advantage and thus *public*. Common examples are education and a social minimum. Behind the veil of ignorance, *all reasonable and rational citizens* will agree that state support for these goods is required in order to guarantee justice as fairness.

But state support does not stop here for Rawls. Next to support for public goods that are to everyone's advantage (and probably also characterized by indivisibility, non-excludability and the problem of free-riding), Rawls also allows state support for 'public' goods that are *not* to everyone's advantage, such as arts

[1] For the difference between direct and indirect benefits, see e.g. Feinberg (1994). Dworkin (1985, 224 ff) also mentions that some goods are *directly* to someone's advantage, while other goods are *indirectly* to someone's advantage. Besides, a combination of direct and indirect benefits is also possible. Vaccination programs for instance, are in a *direct* way to the advantage of the vaccinated people, but at the same time, they are also in an *indirect* way to the advantage of non-vaccinated people. In this regard, we can speak about *spillover benefits*.

and humanities.[2] However, given the fact that the Rawlsian liberal state should be neutral or antiperfectionist with regard to different conceptions about the good life, how is it possible to justify such a state policy? And *why* should a liberal state support these goods? Are they, like other public goods, *required* to guarantee justice as fairness, or is state support for arts only *permitted* in a liberal state? And why should a liberal state, for instance, support opera and universities, but not wrestling matches and night-clubs? In other words, *who* decides that the state can support some valuable goods, while other goods do not get any state support?

6.3 Liberal Neutrality and State Support for Art: The Criterion of Unanimity

Let me start with the first question: how can the Rawlsian, antiperfectionist, liberal state justify support for the arts (and humanities) – goods that are not necessary to everyone's advantage, and for which state support could, consequently, not be justified from behind the neutral veil of ignorance? In order to answer this question, we take a closer look at Rawls on this topic:

> […] The principles of justice do not permit subsidizing universities and institutes, or opera and the theatre, on the grounds that these institutions are intrinsically valuable, and that those who engage in them are to be supported even at some significant expenses to others who do not receive compensating benefits. Taxation for these purposes can be justified only as promoting directly or indirectly the social conditions that secure the equal liberties and as advancing in an appropriate way the long-term interests of the least advantaged. (Rawls 1971, 332)

In line with his defense of antiperfectionism, Rawls allows state support for the arts, but not because art is intrinsically valuable – for that would be a perfectionist and thus non-neutral policy. Actually, state support for the arts is only allowed only when: first, the two principles of justice (the equality principle and the difference principle) are implemented in society (and there is thus a fair distribution of primary goods), and second, when this kind of support contributes to equal opportunities and is particularly in the interest of the least advantaged. In order to be liberal, the state should also assure that "*no one is taxed without his consent*" (Rawls 1971, 331), which implies that "*no public expenditures are voted upon unless at the same time the means of covering their costs are agreed upon*, *if not unanimously*, *then approximately so*" (Rawls 1971, 282). In this regard, Rawls refers to Wicksell's *unanimity criterion*, which he summarizes as follows:

> If the public good is an efficient use of social resources, there must be some scheme for distributing the extra taxes among different kinds of taxpayers that will gain unanimous approval. If no such proposal exists, the suggested expenditure is wasteful and should not be undertaken. (Rawls 1971, 282–283)

[2] Rawls frequently mentions arts and humanities all together, but I will only focus on state support for art here.

Like Raz, Rawls argues that the free market mechanism is not always sufficient to assure that all citizens have (equal) access to the goods they consider to be valuable, and therefore state support can be a legitimate possibility. But, unlike Raz, Rawls argues that this support is *not required by justice*, and that it is only legitimate if *citizens* – and not the state as such – are in favor of it:

> It does not follow, however, that citizens should not decide to make further public expenditures. If a sufficiently large number of them find the marginal benefits of public goods[3] greater than that of goods available through the market, it is appropriate that ways should be found for government to provide them. […] Thus the exchange branch works by the principle of efficiency and institutes, in effect, a special trading body that arranges for public goods and services where the market mechanism breaks down. (Rawls 1971, 282–283)

Within the *exchange branch*,[4] citizens can give non-neutral (perfectionist) reasons to tax or support particular goods like arts: "*In this instance*, *there are no restrictions on the reasons citizens may have for imposing on themselves the requisite taxes*" (Rawls 1971, 331). If, for example, there is a consensus among citizens about the value of theatre and dance, and if a hands-off policy (the free-market mechanism) is not sufficient to guarantee equal access to these goods, it is legitimate to support these goods *because citizens consider them to be valuable*.[5]

Rawls thus states that state support for 'public goods' like art is only legitimate (1) if the two principles of justice have been implemented in a system of government activities, (2) if the free market fails to make these goods accessible for all citizens, (3) if there is (approximately) a unanimous consensus about the value of these goods and (4) if there is a consensus about the way in which these goods are supported by the taxpayer.[6] In other words, a "*democratic electorate may devote large resources to grand projects in art and science if it so chooses*" (Rawls 2001, 152). Because we are not dealing with *constitutional essentials and basic matters of justice*, Rawls admits that citizens bring perfectionist arguments to the fore here:

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[3] It is rather confusing that Rawls uses the term 'public goods' here as well, even though art is not necessary to everyone's advantage. In the next section, I will further clarify this concept of public goods and propose an alternative conceptual framework, in order to avoid further confusion.

[4] In *A Theory of Justice* (§43), Rawls distinguishes five branches that are needed in order to guarantee the socio-economic conditions in a just society: the *exchange branch*, *the allocation branch*, *the stabilization branch*, *the transfer branch and the distribution branch*. Different from the last four branches, the exchange branch is not required in order to realize justice as fairness: "[…] *the basis of this scheme is the benefit principle and not the principles of justice*" (Rawls 1971, 283). Accordingly, there is a distinction between "*the exchange budget*" that can be used to support *valuable goods* on one hand, and "*the national budget*" that is used for *public goods* that are *to everyone's advantage* (i.e. public goods characterized by publicness and sometimes also by non-excludability, indivisibility, and the risk of free-riding) on the other. Regarding state subsidies for art, the exchange branch seems to be the only option for Rawls.

[5] As George Klosko (2003, 189 n.44) rightly remarks, the borders between perfectionism and neutrality are very close here.

[6] Wicksel (1967, cited in Johnson 2010, 191) writes: "*It will always be theoretically possible*, *and approximately so in practice*, *to find a distribution of costs such that all parties regard the expenditure as beneficial and may therefore approve it unanimously*".

> For example, a bill may come before the legislature that allots public funds to preserve the beauty of nature in certain places (national parks and wilderness areas). While some arguments in favor may rest on political values, say the benefits of these areas as places of general recreation, political liberalism with its idea of public reason does not rule out as a reason the beauty of nature as such or the good of wildlife achieved by protecting its habitat. With the constitutional essentials all firmly in place, these matters may appropriately be put to a vote. (Rawls 2001, 152 n.26)

When there is a consensus about certain conceptions of the good life, citizens can thus ask the state to support these conceptions and their related practices *because they are valuable for these citizens*. Of course, the principles of justice as fairness should never be harmed with this state support, and citizens should be able to vote in a democratic way about this kind of support. In addition, the state's choice to support these valuable goods should never be based on any value judgment of the state, but it should always be able to justify this policy in a neutral way, i.e., by means of public reason arguments.

6.4 Rawls and State Support for Art: Objections

According to Rawls, the liberal state can support art if there is, within civil society, a (unanimous) consensus about the value of art. But at this point, Rawls's theory is problematic: as Rawls states, modern societies are characterized by reasonable pluralism, and as a result, there would hardly be a consensus about the value of art, or the value of particular forms of art. The supposition that there can be a consensus in society about the value of art (and of other goods) is thus quite optimistic and not realistic.

In fact, the main problem is that Rawls starts from an *ideal situation* – a situation in which there is a unanimous consensus about valuable options like the arts-, but in practice, the situation is rather different, and "*unanimous approval*" (Rawls 1971, 282) about taxing valuable options seems to be far away. Not surprisingly, Rawls (1971, 283) states

> […] that very real difficulties stand in the way of carrying this idea through. Even leaving aside voting strategies and the concealment of preferences, discrepancies in bargaining power, income effects, and the like may prevent an efficient outcome from being reached. Perhaps only a rough and approximate solution is possible.

Subsequently, Rawls (1971, 283) decides to "*leave aside these problems*", but this is rather disappointing. Given the fact that the unanimity criterion is not without any problems, and given the fact that state support for art and other valuable goods is common in many liberal societies, we should not leave aside this important theme, but we should look for more convincing arguments and criterions for such a policy. After a clarification of some important concepts in the discussion, I will, in the next chapter, outline a neutral (or antiperfectionist) justification for state support for valuable goods like art and outline under which conditions this kind of support is allowed.

6.5 Perfectionist Goods, Nonperfectionist Goods, Public Goods and Nonpublic Goods: A Conceptual Clarification

Within the philosophical tradition, public goods are generally called 'public' because they are to everyone's advantage and serve the public good or common interest. Common examples are education, health-care facilities and national defense. They are *required* to give all citizens equal opportunities – whatever their conceptions of the good life may be. However, within literature (and also in Rawls's work), the term 'public goods' is also used for goods that are *not* to everyone's advantage, but that are also supported with public money. Art is a common example of such a public good, but we can also add sports and religion here: even though these goods are not to everyone's advantage, they are often subsidized with public money and categorized as 'public goods' for that reason.

In order to create conceptual clarity, I prefer to no longer label the first kind of goods 'public goods', but I will use the term 'nonperfectionist goods' instead, referring to the nonperfectionist or neutral justification of the general benefit of these goods. If it becomes clear that some goods are to everyone's advantage, the state can decide to support them with public tax money.

However, this *possibility* of state support for nonperfectionist goods does not always lead to the *requirement* of state support. Nonperfectionist goods are *required* in order to guarantee equal opportunities for all, but some of these goods are not supported by the state. This may be because they can be guaranteed without state support, or because they *cannot* be supported by the state in a strict sense. Examples are virtues such as friendship, trust and love.

Next to these nonperfectionist goods, there are also several goods that are considered to be valuable by *some*, but not by *all* citizens. Because these goods are not of interest for *all citizens* (and because there is thus no neutral justification for their general benefit or value), I will call these goods '*perfectionist goods*'. Examples are different kinds of arts, sports, travelling, and having a night out; or more concrete: paintings and theatre; tennis and hockey; a trip to London and a trip to Ibiza; an evening in a restaurant or a night on the dance floor. *Some* citizens consider (some of) these goods to be valuable, but not all citizens agree and these goods are not *required* in order to give citizens equal opportunities. There is thus, at first sight, no reason to support these perfectionist goods with public money.

However, in many liberal societies, these goods *are* subsidized by the state, even though they are not to everyone's advantage. Indeed, in many liberal states, museums, dance- and music schools, drawing lessons, theatre groups, zoos, public parks and sport clubs are subsidized with public money. As a result, *perfectionist* goods can (like non-perfectionist goods) be *public* (subsidized with public money) or *non-public* (subsidized with private money). Schematically, this gives the following overview (Table 6.1).

Based on this conceptual classification and on an autonomy-based liberal approach, an antiperfectionist argument for state support for perfectionist goods will be outlined in the next chapter.

Table 6.1 Perfectionist and nonperfectionist goods; public and nonpublic goods

	Nonperfectionist	Perfectionist
Public	To everyone's advantage and therefore subsidized with public money	Not to everyone's advantage, but subsidized with public money
	E.g. education, health-care facilities	E.g. sports, art
Nonpublic	To everyone's advantage, but not subsidized with public money	Not to everyone's advantage and not subsidized with public money
	E.g. love; friendship; trust	E.g. travelling, visiting a restaurant

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Chapter 7
Autonomy-Based Liberalism and State Support for Art: An Antiperfectionist Justification

7.1 Introduction

Both Rawls and Dworkin argue that state support for valuable options does not necessarily conflict with the idea of liberal neutrality, but the arguments and requirements they put forth for state support are unconvincing. In this concluding chapter of the first part, I will give an alternative antiperfectionist justification for state support for art (and other perfectionist goods) and I will argue that state support for perfectionist goods is only legitimate if several criteria are fulfilled. To conclude, I will distinguish several models of support.

7.2 State Support for Art: An Antiperfectionist Justification

Within our contemporary societies, art is not a nonperfectionist good (it is not to everyone's advantage and thus not *required by justice*), but it is a *perfectionist good*: *some* citizens consider art to be a valuable option, but not all citizens agree. As a result, state support for art is, *as a general principle*, *not required* by justice: different from, e.g., health care, a social minimum and education, citizens do not *need* art in order to pursue their rational plan of life, and equal opportunities can be guaranteed without (subsidized) museums, (subsidized) theatres, (subsidized) drawing schools, etc. Art is thus fundamentally different from primary and nonperfectionist goods, which are in the interest of *all citizens* and are therefore *required* in a fair and just society.[1]

If, however, a substantial number of citizens consider art to be a valuable option (which seems to be the actual case within contemporary liberal societies),

[1] Without a doubt, there can be socio-economic reasons to support art (and other perfectionist goods), but I will not focus on these reasons here. Instead, I will only focus on art as a non-profit good.

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autonomy-based liberalism entails that these citizens should have access to this good (and to other goods they consider valuable). Actually, autonomy does not only entail that citizens have the capacity to decide for themselves what is valuable in life, but they should also have the possibility to shape their lives in accordance with that decision.[2] To put it differently: autonomy should not merely be guaranteed in a *formal* way, but citizens should have a *real* possibility to live a life according to the values they endorse, and this means that they have equal access to a sufficient range of valuable options to choose among – and art can be one of these options. Because all human beings should be treated equally, autonomy-based liberalism must show equal concern for everyone's autonomy, which commits the autonomy-minded liberal to ensuring equal access to autonomy. And this implies, in turn, an egalitarian commitment to broad and equal opportunities for all citizens to live a range of different ways of life:

> […] the autonomy-minded state needs to ensure the presence of (though not necessarily itself directly provide) a broad and equal range of opportunities for different ways of life, and the components thereof: that is, we should prefer (all other things being equal) that people have open to them many careers, leisure pursuits, charitable causes and so on, and we should insist that these things are open to all equally. (Colburn 2010, 98–99)

At this point, the question arises how *a sufficient range of valuable options* can be guaranteed for all citizens, so that they have equal access to autonomy. Here, there are different possibilities.

First, it is possible, and worth aiming for, that a sufficient number of valuable options is guaranteed for all citizens within the free market mechanism: if our nonperfectionist goods are distributed in a fair and equal way, and if there is a fair free market, citizens will have the opportunity to lead a life according to the values they endorse and to choose between a sufficient range of valuable options. This is an ideal situation in a liberal society.

It is, however, also possible (and in practice more realistic) that the free market mechanism is de facto not sufficient. Particularly when there are, within a given society, some (persistent) socio-economic inequalities, the free market will not always be appropriate to generate a sufficient range of valuable options for all.

In order to compensate for this inequality, there are two possibilities. The first, and most appropriate, is a *redistribution of nonperfectionist goods*: if some citizens cannot choose between a sufficient range of options and can thus not be truly autonomous, the liberal state should, as a matter of principle, not support perfectionist goods, but it should redistribute nonperfectionist goods in such a way that this condition for autonomy is fulfilled.

In practice however, this is not always the most efficient and low-cost solution, and for that reason, state support for valuable options can be a worthwhile alternative. Within autonomy-based liberalism, the state can thus give a neutral argument for supporting the arts (and other valuable options): because all citizens should be

[2] Here, I follow Ben Colburn (2010, 19), who defines autonomy in the following way: "autonomy is an ideal of people deciding for themselves what is a valuable life, *and living their lives in accordance with that decision*" (emphasis mine).

able to make autonomous choices, they need a sufficient range of valuable options to choose among.[3] And because state support for valuable options is sometimes more efficient for this purpose than the free market mechanism and a redistribution of primary (nonperfectionist) goods, this kind of support is permitted. Moreover, one could even argue that this kind of support is *required* in this particular situation because the liberal state should favor efficiency over non-efficiency.

Even though there is no unanimous consensus about the value of different options, citizens can reasonably agree with the fact that an adequate range of options is necessary for the possibility of making autonomous choices or for "*effective deliberation about the good*" (Macleod 1997, 541). Also, they can agree that state support is sometimes an efficient means for this purpose. In fact, the *rationale* behind state support for perfectionist goods is thus not much different from that behind state support for nonperfectionist goods: one can expect every citizen to accept state support for some valuable options or perfectionist goods because those goods may as well have been necessary conditions for one's own autonomy. As said by Mills (2012, 143), we are "*subject to a range of autonomy-based duties towards one another*, *which help to create and sustain an adequate range of options and foster a range of inner capacities required for the conduct of an autonomous life*".

At this point, one might ask where the line should be drawn between allowed state support for perfectionist goods and non-allowed state support. Differently put, if perfectionist goods can, to a certain extent, be (re)distributed by the state, what would be the most fair way to do this?

Generally, there are two answers to this question. First, the state can *maximize the number of valuable options*, so that people have more valuable options to choose from. However, because more options do not always lead to more autonomy (we only need a sufficient range of valuable options) and because state support for some options can, to a certain extent, lead to the inability of some citizens to choose other, non-supported options (because their tax money is used to support options they do not support), this is not a good solution. What counts is not the fact that we have *as much options as possible*, but the fact that we are, as autonomous citizens, at least *able to make real choices*. This does not require an infinite amount of valuable options, but only a *sufficient amount of options*. As said by Gerald Dworkin (1988, 81), "[…] [*n*]*either the instrumental*, *nor the noninstrumental value of having*

[3] Besides, the state should be aware that *future generations* should also have the possibility of making autonomous choices:

Consider the preservation of historical artefacts and sites, or of natural wilderness areas. The wear and tear caused by the everyday use of these things would prevent future generations from experiencing them, were it not for state protection. So even if the cultural marketplace can be relied on to ensure that existing people can identify valuable ways of life, it cannot be relied on to ensure that future people have a valuable range of options (Kymlicka 2002, 247).

If the state supports valuable options like art, it should thus not only take into account equal access to autonomy for *this* generation, but also for the next generations. Just as the state should take care of the environment and the availability of resources for future generations, it should also take care of the possibility of making autonomous choices now and in the future, even if that is a very difficult task.

choices supports the view that more are always preferable to fewer. In the realm of choice, *as in all others*, *we must conclude – enough is enough*."

For that reason, it would be better to *maximize equality at the level of making autonomous choices*. In this case, the state does not maximize the number of options, but it supports some valuable options in order to guarantee (more) equality at the level of making autonomous choices. The *bottom line* for state support is thus equality of a sufficient range of options – and not a maximum number of valuable options: when some people do not have the real possibility to make autonomous choices because there are no sufficient options, state support for valuable options is allowed. However, this bottom line is also the *limit* since supporting more than a sufficient range of options can also lead to a restriction on self-determination. In sum, those state actions aiming at more, or less, than the existence of a sufficient range of valuable options are illegitimate.

As a final point, three important remarks should be made. First, state support for valuable options should be rather the exception than the general rule. In a fair and just society, the free market should, as an ideal general principle, generate sufficient options for all citizens. If this is not the case, the state should first and foremost redistribute nonperfectionist goods in order to guarantee equal access to autonomy. Only when state support for perfectionist goods is *more efficient* than such a redistribution of nonperfectionist goods will state support for perfectionist goods be allowed as a pragmatic solution, "*for as long as the inequality persists*" (Barry 2001, 13).

Second, we should also take into account the fact that equal access to sufficient options (or equality of *opportunities for welfare*) is not the same as equal access to individual preferences (or equality of *welfare*). Within autonomy-based liberalism, the state should only guarantee the former, but not the latter. The reason for this is that we are not passive carriers of our desires and preferences, but that we can, as autonomous human beings, make autonomous choices for which we can be held responsible. The fact that we are not *fully autonomous citizens* (because our choices are influenced by our social environment, interests, education, parental preferences, etcetera) and that we do not *choose* our preferences, does not imply that we cannot choose *how to cope with them*, and for that reason, the state should not guarantee *equal access to all our preferences*, but it should only guarantee equal access to *sufficient* options or preferences.[4]

[4] At this point, critics may point at the *paradox of liberal perfectionism*: if our autonomous choices are seriously taken into consideration – which is what autonomy-based liberalism does – then we should also take into account the fact that we are, as authors of our own lives, *responsible* for our choices. But this implies that state support is not required for these choices, which is contrary to what is defended by Raz and other liberal perfectionists.

Even though there is indeed a tension between being responsible for one's autonomous choices on one hand, and receiving state support for the achievement of these choices on the other, I do not think this tension is problematic. In fact, we can admit that we *are* responsible for our choices (and that we act thus in an autonomous way), but this does not imply *full responsibility* (and full autonomy), nor does it imply that citizens should never take into account the choices and preferences of their co-citizens. Because many external and unchosen factors (e.g. origin, culture, education,

Finally, one might ask what we mean by 'sufficiency': how many valuable options do we need to enable us to make autonomous choices? Unfortunately, a straight answer to this question is impossible because the range of sufficient options is always context-dependent. Therefore, we should leave it up to individual citizens to decide about this in the democratic debate.

In conclusion, we can say that the liberal state can subsidize the arts and other perfectionist goods in order to facilitate a sufficient range of valuable options and in order to guarantee equal access to autonomy. However, this kind of state support is only legitimate under certain conditions.

7.3 Neutral State Support for Art: Criteria

In the next paragraphs, I will outline under which conditions state support for art is allowed. I will make a distinction between criteria that must be fulfilled *before* the state can implement a policy of active support for the arts on one hand, and criteria that must be fulfilled *within* a policy of support for the arts on the other. For the first kind of criteria we will use the term *primary criteria*, while the second will be termed *secondary criteria*. Naturally, secondary criteria cannot be fulfilled without the fulfillment of primary criteria. And as long as the primary criteria have not been met, it is not legitimate to support the arts (or any other perfectionist good) anyway.

7.3.1 Primary Criteria

7.3.1.1 Fair Distribution of Nonperfectionist Goods and Failing of the Free Market

Before the liberal state can support art with public money, it should first and foremost try to guarantee equal access to autonomy by means of support for nonperfectionist goods (goods required by justice) and by means of a fair free market system. Only when this policy is in practice less efficient than a system in which perfectionist goods (goods permitted by justice) are also supported, the state can (and should) also choose for this kind of support as a second-best option. There is thus no reason for the state to support art (or any other perfectionist good) if a hands-off system is sufficient to guarantee equal access to this valuable option.

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religion, parental interests) influence our choices and because not all citizens have sufficient means to realize their options or preferences, it is *not unreasonable or illiberal* to take into consideration these unchosen circumstances and to support, to a certain extent, some valuable options or preferences, even if we do not consider them to be valuable for ourselves.

7.3.1.2 Democratic Consensus

The liberal state can support perfectionist goods like art, but only if there is, within civil society, a democratic consensus about this support. Citizens – and not the state – should decide whether an option is valuable or not, so that the principle of autonomy (which is an incentive for this support) is not violated. This is possible within a system of *multicentered perfectionism* in which the state takes into account the choices and preferences of civil society. Amy Gutmann (1998, 40–41) speaks in this regard about *democratic perfectionism*: "*Democratic perfectionism sanctions state subsidy of high culture*, *if*, *but only if*, *it is publicly approved* (*and satisfies the standards of nonrepression and nondiscrimination*)". As we will see below (Sect. 7.4), there are different democratic systems of state support for art (and other perfectionist goods).

7.3.1.3 Principal Openness to Subsidize Different Kinds of Perfectionist Goods

Not all people are interested in art and there are also other perfectionist goods or preferences that some citizens consider to be valuable. It is thus not a surprise that some citizens are in favor of state support for perfectionist goods *other* than art, so that *their* range of valuable options is also guaranteed. Although it is very difficult – if not impossible – to adjust taxes to our individual preferences, it is nonetheless possible to divide taxes to a large extent in a proportional way and to respect the different conceptions of the good life, and the related valuable options, in society.

7.3.1.4 Support > Hands-Off

If the state chooses to support perfectionist goods like art, this is only legitimate if this kind of support leads to more equality of autonomy than a hands-off policy, and as long as no-one is substantially disadvantaged with this policy of support. If a policy of support disadvantages some people because they have to pay taxes for valuable options they do not endorse, but if these people still have the opportunity to make autonomous choices (because there are still sufficient options for them), the benefit of state support should thus be more substantial than the possible disadvantage:

> Public financing of expensive perfections does favour some people over others: Money spent on accelerators is not spent on other goods for other people. But the resulting inequality is less than if the same perfections were pursued using private wealth. (Haksar 1979, 172; see also Caney 1995, 252)

To put it differently, only when an active policy of support for valuable options can, compared with a hands-off system, generate more equality at the level of sufficient options (and thus at the level of individual autonomy), such a policy of support is legitimate.

7.3.2 Secondary Criteria

7.3.2.1 Justice as Fairness

When the state has chosen to support the arts or other perfectionist goods, the principles of justice as fairness should be taken into consideration. If some of these goods or some conceptions about the good life are not in line with the principles of a just society, it is not permitted for the liberal state to support these goods or conceptions anyway:

> Of course, it is neither possible, nor desirable, to enable everyone to advance their final ends no matter what these ends are, for some may desire, for example, the oppression of others as an end in itself. Nevertheless, a sufficiently wide range of ends can be accommodated to secure ways of life fully worthy of human endeavor. (Rawls 1982, 167)

When, within the democratic debate, citizens make clear which *perfectionist goods* or *individual preferences* the state should support, this support is thus only possible if the supported goods are not opposed to the principles of justice as fairness. State support for, e.g., torture materials or racist associations is thus not allowed.

7.3.2.2 Individual Freedom of Choice

No one should be compelled to make use of supported perfectionist goods. When individual citizens prefer options that are not supported by the state, the state should not interfere in these choices, except when they would lead to an infringement of the basic rights and liberties of co-citizens. Notwithstanding state support for museums or theatre, for example, citizens who never visit a museum or a theatre should never be obliged to visit these places.

7.3.2.3 Even-Handedness, Diversification and Proportionality

Another criterion is equality or even-handedness.[5] Within a system of state support for perfectionist goods, different kinds of goods (e.g. the arts, sports, leisure clubs) should have equal chances to get support (or recognition) and the state should also take into account the diversity *within* the diversity: art, for instance, is a perfection-

[5] See Carens 2000 for this terminology.

ist good with many sectors (e.g. opera, theatre, painting, poetry, music) and if the state choses to support art, it should give these different sectors or divisions equal opportunities to get support or recognition.

In addition, subsidies should be given in a proportional way. It is therefore up to civil society, and not to the state, to decide which concrete events or projects should get support. Within such a system, the neutrality of the state will be guaranteed as much as possible and the state will deal with the diversity of art (and other perfectionist goods) in an equal way.

7.3.2.4 General Accessibility

If the state chooses to support art with collective tax money, *each citizen* should be able to make use of this perfectionist good. The reason for this is quite simple: because all citizens have paid their contribution, the good should be accessible for all. In the case of the arts, subsidized museums should principally be accessible for all, all citizens should be able to take subsidized music lessons without excessive cost, nobody should be excluded from subsidized theatre performances or music concerts, etc.

It is, however, also possible that the state opts for a policy of support in which taxes for perfectionist goods are adapted to individual preferences. This can be realized in practice, for example, by giving citizens the opportunity to choose which goods they want to support on a tax form (see Sect. 7.4). In order to prevent free-riding, the state can make entrance to, or the use of, these goods more expensive for those citizens that did not pay their contribution.

7.3.2.5 No Value-Judgments

Finally, state support for art is only legitimate if this policy of support is not based on any value-judgment. Only when the state can give neutral reasons for such a policy (guaranteeing a sufficient range of valuable options in an efficient way, so that all citizens can make autonomous choices), is this policy legitimate. It is, however, not allowed for the state to support art because the state deems this good as valuable. Within an autonomy-based liberal state, it is up to the citizens to decide whether a particular perfectionist good is valuable and whether it can, for that reason, get state support.

7.4 How Should a Liberal State Support Art?

If the state has, at the request of its citizens, chosen for a system of state support, this kind of support can be realized in different ways: first, the state can use collective taxes (1) by means of *indirect subsidies* (e.g. tax reductions or tax-free donations)

or (2) it can subsidize art in a *direct* way. For this last option, we can further distinguish between (2a) a system in which *the state* decides how subsidies are divided and (2b) a system in which *citizens* can choose which kind of art (e.g. opera, theatre, music) they wish to support. Finally (2c), it is also possible to introduce a system of voluntary taxes, which means that only those citizens who are in favor of e.g. opera or paintings, pay extra taxes for these valuable goods.

In the first system (1), the state does not support institutions involved in art in a direct way, but only allows indirect subsidies, e.g. by means of tax reduction. Dworkin (1985, 233) prefers this system of indiscriminate subsidies over a system of specific subsidies to particular institutions. This system is neutral or antiperfectionist because *a diverse range of civil society organizations* (e.g. sport clubs, leisure clubs, social and cultural associations, youth movements, …) can make use of *equal tax benefits* and because the government avoids direct (value) judgments about the organizations in question.

In the second system, the state uses collective tax money to support several valuable options or perfectionist goods in a *direct* way. Here, three possibilities emerge. First (2a), the state can decide how much money it uses for the support of these goods and it also decides which goods will be supported. In order to guarantee the autonomy and individual freedom of its citizens in this case, it will be necessary for citizens and diverse pressure groups to have a say in this matter (cf. Chan's *multi-centered perfectionism*). The choice to subsidize art rather than gaming, for instance, as well as the choice to support particular forms of art, should be based on democratic consensus. Only then are people principally not forced to pay taxes for goods they do not support.

In another system (2b), the role of citizens/civil society becomes more visible and substantial because they – and not the state – choose in a direct way (e.g. on their tax form or by means of vouchers) which perfectionist goods should (not) be supported. All citizens pay the same amount of taxes, but with the possibility to choose for which perfectionist good(s) their money will be used.

Even though both systems are acceptable within a liberal framework, there will always be discussions among citizens about the question which goods the state should support and which goods it should not support. Due to practical reasons and scarce resources, it is impossible to support all perfectionist goods at hand and as a result, some people will feel disadvantaged because they pay for the (expensive) preferences of their co-citizens. This problem is unavoidable and therefore, some people are in favor of a system in which taxes are even more adapted to our individual preferences.

This brings us to a last system (2c), in which citizens pay *voluntary* taxes for their preferred perfectionist goods. Different from the previous system, this kind of support is not compulsory and no one will be forced to support "*other people's pleasures*" (Feinberg 1994, 102). In case of support for art: only those citizens who want to make use of the arts and who will pay for it, pay extra taxes; citizens who do not want to make use of the arts, or do not want to pay, do not pay extra taxes:

> The opera lovers and zoo visitors then could pay 'voluntary taxes' in support of their favorite facilities and also users' fees on the many occasions they actually use those facilities, while other citizens, who are bored by opera and actually offended by zoos, could escape the compulsion that they support other people's pleasures. (Feinberg 1994, 102)

In order to avoid free-riding, museums, music schools, etcetera can require these citizens who did not pay, to pay an (extra) entrance or admission fee.

Appropriately, some authors (Rushton 2000; Black 1992; Macleod 1997) noticed that such a system strongly resembles a hands-off or free market system. In fact, the government is only a helping hand for the collection of taxes, but it is the individual citizen, and not the state, who chooses which valuable options (not) to support. It is thus not necessary that the state makes use of collective tax money in order to support/guarantee these valuable options. Those citizens who want to visit a museum, pay extra taxes; those who don't want to do this, do not pay these extra taxes.

Notwithstanding these remarkable similarities with a hands-off system (a fully privatized system), the system of voluntary taxes has an important advantage: when taxes are in proportion with one's income, all citizens (whatever their income may be) should be able to visit a museum if they paid the required taxes. Different from a free market system, it is not only a small, wealthy part of the population that can invest in art and visit museums, but those citizens with fewer resources can also make use of this nonperfectionist public good if they are prepared to pay taxes. Another advantage of this system is that the amount of money gathered by the state can be used for collective ends, e.g. the building of a museum, the maintenance of theater- and opera buildings, the acquisition of important paintings, etcetera. Consequently, the state guarantees more equality (at the level of choosing valuable options) than in a fully privatized system.

Which system the liberal state chooses will mainly be dependent on the historical, cultural and sociological context of each particular state. If a government has e.g. the required means to support art in an active way with collective tax money, and if such a system is fair and efficient, there is not a reason to question it, nor to stop it. The same is true for a (partly) privatized system: if such a system is efficient and does not lead to inequality, there is no reason to question it. If, however, either a system of collective taxes for art, or a privatized system leads to (more) inequality or to a restriction of our individual freedom or options to choose among, the liberal state is obliged to revise the existing system and to optimize or reform it.

Finally, it is notifiable that *full* state support for perfectionist goods is not recommended. At this point, there is a difference with state support for nonperfectionist goods: because these goods are *required* (and not only permitted) by justice, the state must guarantee their existence anyway. In some cases, this can imply that the state *fully finances* these goods. Education and national defense are typical examples here.

In case of state support for *perfectionist goods*, however, things are different. Given the excessive cost of some perfectionist goods, given their subjective character, and given the fact that we are *responsible* for our choices (even though we are not responsible for our preferences), a combination of individual contributions (user fees) and collective taxes seems a suitable possibility: the aim of state support is not

that valuable options are free of charge for all citizens, but that these options are (more) accessible for citizens who want to use them, so that there is more equality at the level of making autonomous choices. If citizens are not prepared (any longer) to pay a reasonable contribution for a particular perfectionist good and if they only want to use this good when it is free of charge, there can be doubts about the value of that particular good.

7.5 Liberal Neutrality and State Support for Art: Conclusion

In the previous chapters, I examined how Dworkin and Rawls try to reconcile their plea for equal opportunities and liberal neutrality with state support for art. Notwithstanding the fact that both philosophers give us some interesting arguments for state support for art, they cannot avoid several fundamental problems. Dworkin's main problem is that he considers art a priori to be something that is of (intrinsic) value, but he does not give us a convincing argument for this presupposition. Rawls, on the contrary, assumes that a *unanimous consensus* about art is possible among citizens, but this idea is much too utopian.

In addition, Rawls uses his terminology in a rather confusing manner: for instance, he uses the term 'public goods' not only for goods which are to everyone's advantage (and which are sometimes also characterized by indivisibility, non-excludability and free-riding), but also for goods which are not necessarily to everyone's advantage, i.e. goods that are considered valuable by some but not by all citizens and are supported by collective ('public') tax money. In order to create conceptual clarity, I have made a distinction between perfectionist and nonperfectionist goods on one hand, and public and nonpublic goods on the other. The first distinction is related to the general benefit of a particular good, while the second distinction is related to (the lack of) state subsidies for that good.

Subsequently, I argued that a neutral legitimation for state support for art (and other perfectionist goods) is possible within a liberal framework: within autonomy-based liberalism, all citizens should have at least the *possibility* to make autonomous choices, and in order to do this, there should be a sufficient range of valuable options to choose among. With the aim of facilitating these options and thus guaranteeing (more) equality of autonomy, state support can be allowed as a pragmatic solution if this is more efficient than a hands-off policy and/or than a redistribution of nonperfectionist goods. *Which* goods the state supports, should always be dependent on the needs and wishes of individual citizens. At this point, a kind of social perfectionism seems to be unavoidable: when it comes to the choice to support particular options, the state should take into consideration citizens' interests and preferences. In other words, citizens can give perfectionist reasons for state support for a particular good, even though the ultimate justification for this support is, within autonomy-based liberalism, a neutral justification (facilitating a sufficient range of valuable options to choose among).

Finally, I argued that state support for perfectionist goods is only legitimate under some specific conditions, so that the individual autonomy of citizens and the hereto required neutrality (antiperfectionism) of the state are not infringed.

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Part II
Liberal Neutrality and State Support for Religion

Chapter 8
Liberal Neutrality and State Support for Religion

8.1 Introduction

In the next chapters, the core question of this book will be examined: is state support for *religions* (non-religious worldviews included)[1] compatible with liberal neutrality and if so, why and under which conditions?

With regard to art, I have only focused on the question whether it is legitimate for the state to support art (museums, music schools, theatres, …) with public tax money. With regard to religion, there is more at stake: state support is in this case not limited to support for particular religious organizations or groups. In many liberal states, religious institutions contributing to the common benefit (e.g. faith-based schools, hospitals and other care facilities with a religious signature) are (also) supported with public money. In addition, state support for religious education is common in many liberal nations. Therefore, in the next three chapters, I will focus on three related, but different questions:

1. Is state support for *(institutionalized)* religions compatible with liberal neutrality and if so, under which conditions?
2. Is state support for *faith-based schools* compatible with liberal neutrality and if so, under which conditions?
3. Is state support for *religious education* compatible with liberal neutrality and if so, under which conditions?

[1] In line with Ninian Smart (1968, 104), I will interpret the concept of religion in a broad sense, i.e. as a coherent system of beliefs and practices which relates man to a supernatural or transcendent realm, without necessarily believing in a transcendent entity. Whatever else religion may or may not be – whether theistic or non-theistic – all religions possess some of the next elements or dimensions: (1) a doctrine, (2) a myth, (3) a normative ethos, (4) rituals, (5) experience, (6) an institutional or social aspect and (7) a mythological dimension. Accordingly, I will use the term 'religion' not only for religious worldviews, but for all kinds of worldviews, including secular ones. Similarly, faith-based institutions (schools, hospitals) can also be based on a non-religious worldview and religious education can also be non-confessional (e.g. humanistic, atheistic).

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The attentive reader might remark that I do not pay attention to state support for religious symbols in the public sphere. Even though this is an important and highly debated issue, I will not explicitly deal with it in this book. The reason for this choice is quite simple: many authors already have addressed this sometimes overheated topic, while the question of state funding for religions is, compared with the issue of religious symbols in the public sphere, quite underexamined. This is rather astonishing because state funding for religions is common in many liberal societies (even in secularist or laic states such as France, and to a limited extent, also in the US), even though not all citizens agree with this kind of support.

In this chapter, I will only focus on active state support for *institutionalized religions* or religious non-profit organizations, established to practice a particular religion. This kind of support involves, among other things, the payment of salaries and pensions of clergy and moral consultants, the construction and maintenance of churches and other houses of prayer without any historic value; and support for materials used in religious ceremonies and liturgy. In the subsequent chapters, I will focus on state support for faith-based schools (Chap. 9) and for religious education (Chap. 10).

8.2 Institutionalized Religion: Perfectionist or Nonperfectionist Good?

In the nineteenth century, the German philosopher Arthur Schopenhauer called the human being an '*animal metaphysicum*' and notified that both religion and philosophy try to satisfy our 'metaphysical needs'. More recently, Martha Nussbaum (2008, 9) points to our common interest in the meaning of life and states that religion is "*enormously important and precious*". Our common interest in metaphysical questions, and our search for the meaning of life are, without a doubt, indisputable. But does this also imply that (institutionalized) religions are to everyone's advantage?

According to authors like Robert Bellah, Jean-Jacques Rousseau and Alexis De Tocqueville, this is indeed the case: religions have a positive influence on human ethics and behavior, they are catalysts for social cohesion and they are thus at the benefit of the entire society.

For somewhat different reasons, also Tariq Modood (2010, 6) considers religion to be "*a potential public good or national resource* (*not just a private benefit*), *which the state can in some circumstances assist to realize*". As argued by Modood (2010, 12), religion is

> […] a fundamental good and part of our humanity at a personal, social and civilizational level: it is an ethical good and so to be respected as a feature of human character just as we might respect truth-seeking, the cultivation of the intellect or the imagination or artistic creativity or self-discipline not just because of its utility or truth.

Whether we are a believer or not, religion is a good in itself and "*a person*, *a society*, *a country would be poorer without it*" (Modood 2010, 12).

From both perspectives (religions are *extrinsically* good because they lead to social cohesion and ethical responsibility; and religions are, as human phenomena *intrinsically* good), all citizens – believers as well as non-believers – benefit from the existence of religion and religions are thus *nonperfectionist goods*. They are not only in a direct way to the advantage of believers, but they are also – indirectly – to the advantage of non-believers because they lead to more cohesion and ethical responsibility (cf. Bellah, Rousseau and De Tocqueville), or because individuals, cultures, societies, etc. would be poorer without the existence of such a typically human phenomenon (cf. Modood).

However, not all people share this view. Recent developments such as secularization, detraditionalization, religious pluralism and (religious) individualism, but also the actual presence and danger of religious fundamentalism, religious intolerance and religiously inspired terrorism, have not led to a consensus about the value and importance of religion(s) and/or about state support for one or more religions in many Western nations. For that reason, (institutionalized) religions should not be seen as nonperfectionist goods (any longer), but as *perfectionist goods*: for some citizens, religion is still important in their (daily) life, but this is not the case for all citizens.

The fact that institutionalized religions are perfectionist goods, however, does not imply that *religious freedom* should also be seen as a perfectionist good. Most liberal philosophers agree that this freedom is a primary good that should be protected by the state. In order to do this, the freedom of religion is often fixed as a separate constitutional right, even though it is disputable whether this is required in order to guarantee the freedom of religion. According to Eisgruber and Sager (2007, 4) for instance, the constitutional protection of our fundamental rights and freedoms (e.g. the right to association, the right to private property, liberty of conscience and freedom of speech) is sufficient in order to guarantee religious freedom. Religion is not a "*constitutional anomaly*" that should receive extra legal protection and a special, separate right to religious freedom is not needed.

Whether the right to religious freedom should be protected by means of a separate constitutional right, or by means of other fundamental rights, is in fact not important for the rest of my argument, and therefore I will not go further into detail here. The most important thing is *that* the liberal state guarantee freedom – and thus also freedom of religion – for all its citizens. *How* this is realized in practice is less important.

But does this right to (religious) freedom imply that the state has the duty to support (institutionalized) religions? Some argue that this is indeed the case: a hands-off policy with regard to religion would not suffice to guarantee religious freedom for all, and therefore the state must support religion in an active way. However, this is an incorrect assumption. In the United States for instance, where there is a *wall of separation* between church and state, religions are not subsidized by the state, but this does not lead to an infringement of the freedom of religion. Moreover, American citizens seem to be much more involved with religion than European citizens, and America seems to be less secularized than Europe. At first sight, this is quite obvious because state support for religions is common in most European nations, while this is not the case in America.

According to some sociologists, this remarkable difference proves that state support for religion works in a counterproductive way. As an alternative, they plead for an unregulated religious economy, where faiths seek to maximize their efforts to attract and to hold members. Within such a system, those faiths that cannot compete will disappear: "*The more pluralism, the greater the religious mobilization of the population – the more people there are who will be committed to a faith*" (Finke and Stark 1988, 42–43).

In fact, it is thus sufficient, at least from a theoretical perspective, to guarantee religious freedom as a *negative right* and accordingly, there is, from a human-rights perspective, "*no clear-cut right for organized religions to be funded by the state*" (Temperman 2010, 254). An analogy with the freedom of association can clarify this: like the freedom of religion, the freedom of association is a fundamental freedom, but this does not mean that the state is obliged to support associations in order to guarantee this freedom – even though this is a legitimate possibility. Similarly, religious freedom is a basic right, but as a general rule, the state is not *obliged* to support religious organizations or institutions in order to guarantee this right.

The fact that state support for religion is, as a general rule, not required by justice, however, does not imply that this kind of support is never *allowed* in a liberal state. From an autonomy-based perspective, one can argue that state support for religion is permitted in order to facilitate religion as one of the many valuable options to choose from, or in order to guarantee religious freedom in a *positive way* as some say. When a number of citizens consider a particular religion to be a valuable aspect of their lives and when these people have, due to existing socio-economic inequalities, not the *real* opportunity to practice their own religion, state support for religion can be permitted in order to make religions de facto accessible for these citizens and, in a broader sense, to facilitate equal access to autonomy:

> [T]he state should actively protect and support the autonomy of its citizens – also with regard to cultural and religious dimensions of their life. This may mean state support for religious organizations and cultural groups. (Pierik and van der Burg 2014, 507)

It is, however, important to notice that this kind of support is only a second-best option. As a matter of principle, nonperfectionist goods should be distributed in such a fair way that all citizens have equal access to primary goods and to a sufficient range of valuable options (religious options included) – and thus to autonomy. Within such an ideal system, the freedom of religion (understood as the freedom to believe *and* to practice one's religion) is guaranteed without state support. Nonetheless, given the fact that we do not live in an *ideal* society, and that citizens' opportunities are de facto not always equal, state support for religions is permitted, and in fact even required when this policy is more efficient than the free-market mechanism and/or a redistribution of nonperfectionist goods.

Obviously, critics may take issue with the possibility of autonomously choosing for a particular religion. In line with communitarianism, one could argue that a religion is not something we can choose in an autonomous way, but that our religious convictions are mainly the result of unchosen circumstances such as the conviction

of our parents, our background, and the culture we live in. However, even though this is indeed the case, it is nonetheless a fact that people in a liberal society *can* – or should be able to – change their religion or convert to a particular religion. I consider religion thus to be something people can choose autonomously, even if many factors influence this choice. In fact, the same is true for many other choices. Playing a musical instrument, for instance, should be something that citizens can choose autonomously, but without a doubt, external factors like someone's upbringing, parental preferences and social environment, influence this particular choice. Nonetheless, in a liberal state, citizens should always *be able to choose* such activities *and to change them* if they wish to do so. And in order to guarantee this, state support for perfectionist goods – and thus also for religions – is, under certain conditions, a legitimate possibility.

8.3 Active State Support for Institutionalized Religion: Criteria

If the state wants to support religion without losing its neutrality, several criteria must be fulfilled. These criteria are not exactly the same as the criteria for state support for art. The reasons for this difference are twofold. First, when we are dealing with (state support for) religion, we cannot ignore the principles of religious freedom and the separation between church and state – core liberal principles which do not play a (fundamental) role when the state supports art or comparable perfectionist goods (e.g. sports or cultural activities). Second, religions are quite different from art (particularly with regard to internal rules and laws), and, in order to guarantee the freedom of religion and the freedom of association, state interference with internal religious affairs is not always permitted. Therefore, criteria for supporting religion will partly differ from criteria for supporting art.

As in the previous chapter, I will distinguish between primary and secondary criteria. As long as the former have not been met, it is not legitimate to support religions. Once the state has chosen to support religions, the latter should be met, or else this policy of support should be modified or abandoned.

8.3.1 State Support for Institutionalized Religion: Primary Criteria

8.3.1.1 Fair Distribution of Nonperfectionist Goods and Failing of the Free Market

Before the liberal state can support religion or any other perfectionist good with public money, it should first and foremost try to guarantee equal access to autonomy by means of support for nonperfectionist goods (goods required by justice) and by

means of a fair free market system. Only when this policy is in practice less efficient than a system in which some perfectionist goods (goods *permitted by justice*) are also supported, the state can (and should) also choose for this kind of support as a second-best option.

There is thus in fact no reason for the state to support religions if a hands-off system is sufficient to guarantee equal access to diverse religions as valuable options – and thus to guarantee religious freedom in a positive way. As Greenawalt (2009, 57) remarks, "*perhaps religion best flourishes if it is not assisted by government*". If, however, the free market and a fair distribution of nonperfectionist and primary goods are not sufficient to guarantee equal access to autonomy (or de facto freedom of religion) , state support is permitted and in that case even required.

8.3.1.2 Democratic Consensus

State support for religion (and other perfectionist goods) is only allowed when there is a democratic consensus among citizens about the value of religion and about the need for support. If religions are not seen as valuable options, or if there is no request for active support (e.g. because the free market and a fair distribution of nonperfectionist goods suffice), such a policy of support is not legitimate.

Citizens must thus always have the opportunity to participate in the political debate about state support for religions: in order to be non-coercive, the choice to support a particular religion or a number of religions, should be the result of democratic deliberation and consensus.

8.3.1.3 Principal Openness to Subsidize Different Perfectionist Goods

The state should consider religion not to be a special good, but different perfectionist goods should have equal opportunities to get subsidies. If citizens consider, e.g., religion, sports and arts to be valuable goods, and if the state can facilitate accessibility to these goods by means of active financial aid, this policy is only legitimate under the condition that all these valuable goods have equal opportunities to get support.

Even though the government has to make choices due to scarcity, and even though it cannot support all perfectionist goods, the system of support should be as fair as possible. Therefore, diverse religious and non-religious organizations should have the same opportunities to receive state support: criteria for recognition and/or support should be objective, and they should be similar for different kinds of organizations. It is thus important that the state make no difference between religious and non-religious non-profit organizations. This is what Greenawalt calls the *inclusive approach*:

> Although some particular tax benefit limited to religion might be defended as needed for accommodation or because religious groups happen to be the only members of a reasonable

> class of potential beneficiaries, property tax exemptions are easiest to justify if religions fall within a larger category of beneficiaries that includes other nonprofit organizations that are devoted in some expansive sense to public welfare, including museums, universities, charities, and independent groups that promote nonreligious ideas. This inclusive approach fits best […] our modern concern about fairness between religious and other groups. (Greenawalt 2009, 284)

In the same line, Christopher Eisgruber and Larry Sager (2007) reject the idea that religion is a separate, privileged category. For these authors, *equal liberty* is the core of liberalism, and therefore state support for religions is only permitted if similar non-religious associations can also make use of this kind of support. Like cultural associations and sport clubs, religious organizations and institutions are perfectionist goods which can receive state support in order to facilitate autonomy. State support is thus not supplied because of the special religious character of a particular organization, but only because support is also given to other perfectionist goods as an incentive to facilitate a sufficient range of options to choose from.

8.3.1.4 State Support > Hands-Off

Finally, a policy of support for religions with public money is only legitimate if it leads to more equality (at the level of making autonomous choices) than a hands-off policy. Religions can thus only be supported by the state if this policy facilitates a sufficient range of valuable options (and if it facilitates, for some citizens, their religious freedom in a positive way) and if support does not impede the autonomous choices of those people who are not in favor of support.

In this regard, some authors note that too much state intervention can have a reverse effect. Iannacone (1991, 129) for instance, notices that "*governmental regulation of religious cults will tend to reduce rather than increase social welfare*, *by stifling religious innovation*, *narrowing people's range of religious options*, *and placing many forms of religion beyond reach*". Sometimes, subsidizing religion thus narrows (and does not enlarge!) the range of religious opportunities open to citizens. In order to avoid this, the government should examine when state support for different religions creates sufficient opportunities – and is thus productive – and when such a policy is counterproductive. This is, however, not an easy task.

8.3.2 State Support for Institutionalized Religion: Secondary Criteria

8.3.2.1 Justice as Fairness

If the state supports religion, it should be cautious that the supported (but also the non-supported) religions do not infringe on the principles of justice as fairness. If citizens are in favor of active support for a particular religion in which some

practices undermine justice as fairness (e.g. the use of violence, the persecution of non-believers, the suppression of women, genital mutilation), the state should not fulfill this request. Moreover, because certain religious practices and claims are undesirable and unacceptable in a liberal society, the liberal state can and should prohibit these claims and practices. In this regard, John Locke already wrote in his *Letter Concerning Toleration* (1689):

> […] If some congregations should have a mind to sacrifice infants, or (as the primitive Christians were falsely accused) lustfully pollute themselves in promiscuous uncleanness, or practice any other such heinous enormities, is the magistrate obliged to tolerate them, because they are committed in a religious assembly? I answer: No. These things are not lawful in the ordinary course of life, nor in any private house; and therefore neither are they so in the worship of God, or in any religious meeting. (Locke 2002 [1689], 135)

If some practices (e.g. offering cattle) are prohibited by civil law on the basis of neutral arguments, these practices should also be prohibited in a religious context. Similarly, practices that are allowed by civil law (e.g. washing a newborn with water; drinking wine and eating bread) should also be allowed in a religious context (baptism; Eucharist). In Locke's eyes, the magistrate (the state) should only "*take care that the commonwealth receive no prejudice*, *and that there be no injury done to any man*, *either in life or estate*" (Locke 2002 [1689], 135–136). If religious practices conflict with this liberal aim, they should, like any other practice that conflicts with this aim, be forbidden.

At this point, it is notable that several religions do not apply the principles of justice as fairness internally. At first sight, it seems evident that such practices should not be allowed, even if they are religious. However, such a policy would not always be in accordance with the freedom of religion and the freedom of association. Therefore, a liberal government can still allow these religious practices if several conditions are fulfilled: non-members should not be harmed; there should be real exit-options; and citizens should adequately be informed about these exit-options.

No Harm for Non-members If a religion does not embrace the principles of justice as fairness internally, this religion can only be tolerated (and even supported) by the state if justice as fairness is still guaranteed for non-members (non-believers and members of a different religion): even though, e.g., the Catholic Church does not respect the equality of men and women with regard to priesthood, this policy does not affect non-members, and for that reason, it can be allowed. By contrast, religions that incite people to hate, discriminate and prosecute women (or other citizens), cannot be allowed anyway.

Exit Rights Many – if not most – liberal authors agree that the freedom of association should be accompanied by the right to exit: if someone is a member of a particular (religious) community, he/she must be able to leave that community at any time. In the case of religion: religious membership should always be voluntarily. If, however, the right to exit is not guaranteed within a religious association, we cannot expect that a liberal state tolerates, and (financially) supports, such an association, because this can lead to an infringement of individual autonomy.

Right to Correct Information In order for exit not to be just a theoretical chimera, citizens should be well-informed about the diverse options they have, and they must have developed the required capacities to make autonomous choices. Consequently, the liberal state can (and should) oblige its citizens to have a qualitative, liberal education – even if this kind of education is not in accordance with their religious convictions. Hence Rawls's and Kymlicka's rejection of the American Supreme Court's decision in *Wisconsin v. Yoder*: if citizens are not adequately informed about valuable options outside of their own religious tradition, and if they have not developed the required capacities in order to make autonomous choices, these citizens do not have the *real* possibility to lead their lives according to the values they endorse. For that reason, the state should guarantee that all citizens receive an autonomy-facilitating education.[2]

When the criteria above are fulfilled, there are two possibilities with regard to those religions that do not subscribe to the principles of justice as fairness internally: (1) the state can *allow* these religions, but reject financial support; or (2) the state can both *allow* and *financially support* these religions. The fact that they do not implement the principles of justice as fairness internally, is not a problem here: like enterprises and sport clubs, religions can have internal rules and laws that sometimes infringe on the principles of justice as fairness. At this point, there is in fact no substantial difference between the Catholic Church's refusal to ordain female priests on one hand, and the refusal of many football clubs to attain female players on the other. Even though these internal policies are not in conformity with justice as fairness (because women are discriminated on the basis of their gender), liberalism can allow them, as long as non-members are not harmed, there is a real exit option, and citizens are adequately informed about alternative possibilities.

8.3.2.2 Individual Freedom of Religion

Even though the state can impose taxes for religions on its citizens, it can never require that individual citizens make use of the supported religions at hand. In line with the freedom of conscience (and the freedom of religion), citizens cannot be forced to be a member of a particular religion, or to participate in particular religious practices.

To put it differently: subsidizing religion (a non-coercive measure) is allowed and can be in line with autonomy-based liberalism and the freedom of religion, while forcing someone to adhere to or practice a particular religion (a coercive measure) is not allowed because it is opposed to autonomy-based liberalism (and the freedom of religion).

Furthermore, all religious groups should be free to decide whether or not to apply for legal recognition and/or support. Registration or support schemes should thus never be mandatory.

[2] See Sect. 9.3.2.3.

8.3.2.3 Even-Handedness, Diversification and Proportionality

In a liberal state, state support for religions is only allowed when this support is neutral or even-handed:

> Neutrality is, then, a coherent notion that defines the terms of equal treatment for different religions. It is compatible with neutrality, however, that religions should be publicly recognized: the only constraint is, again, that they should be treated equally. […] We can say, then, that such policies are neutral, in the sense that they are even-handed, and that is the only sense that matters. (Barry 2001, 29)[3]

This implies that different religions should be treated in the same way and that they have equal opportunities to get support or recognition. In other words, *all* religions should be able to make use of the system of state support, as long as they respect the principles of *justice as fairness* or, if they do not subscribe to these principles internally, non-members are not harmed, the right to exit is guaranteed, and citizens are well-informed about alternative possibilities.

Once religions receive state subsidies, these subsidies should be divided proportionally: "[*S*]*tate support*, *if granted*, *should as far as possible reflect actual adherence*" (Temperman 2010, 227). This can be realized in different ways.[4]

8.3.2.4 No Value-Judgments

Last, but not least, a liberal regime of state support should not be based on any value judgment: within autonomy-based liberalism, the state can support religions in order to guarantee a sufficient range of valuable options and in order to guarantee equal access to autonomy (and thus also de facto religious freedom).

However, the state can never support religions because religions are valuable, because a particular religion is valuable, or because religious views are better or more valuable than secular views. Only if the state can give neutral reasons for a policy of active support for religions (facilitating sufficient valuable options as a condition for autonomy) and only if citizens have a real voice in the choice for such a policy, is this policy legitimate.

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[3] Martha Nussbaum (2008, 109) defends a similar position and prefers the term *nonpreferentialism* (cf. even-handedness) instead of non-establishment (cf. hands-off). See in this regard also Alan Patten's conception of *neutrality of treatment*:

> To maintain neutrality, when the state pursues a policy that is accommodating (or unaccommodating) of some particular conception of the good, it must adopt an equivalent policy for rival conceptions of the good. Neutrality of treatment means the state's policies must be equally accommodating of rival conceptions of the good. (Patten 2012, 257)

[4] See Sect. 8.5 for different models of proportionality.

8.4 Should a Liberal State Support Religion?

A neutral state and active state support for religions do not necessarily contradict each other. As long as several criteria have been met, it is allowed for the liberal state to support religions in an active way, even though this is, as a *general principle*, not required by justice. As said by Modood (2010, 6), both "*liberal and republican secularism*" (a passive or an assertive hands-off approach with regard to religion) and "*accommodative or moderate secularism*" (a moderate, active policy of support with regard to religion) "*can be justified in liberal*, *egalitarian*, *democratic terms*". Similarly, Cécile Laborde notes that (political) liberalism is *inconclusive* about the public place of, and thus also state support for, religion:

> […] Political liberalism, as a theory of justice, is inconclusive about the public place of religion. Both separation and establishment (or, more plausibly, a combination of the two) can theoretically meet the demands of liberal justice. (Laborde 2013, 67, 76ff)

It is thus not a surprise that the European Court of Human Rights (ECHR) gives the European nation states a wide *margin of appreciation* when it comes to church-state relations and to the way religions are (not) supported by the state. Whether the state chooses to provide financial support for religions, and if so, which kind of support (direct, indirect, voluntary taxes, collective taxes) it favors, is in practice mainly dependent on the socio-cultural context, national history and legal (constitutional) tradition.

However, particularly this last factor (the legal or constitutional tradition) is problematic because fixing church-state regimes in a constitutional (or equivalent) law quite often obstructs democratic debate, and thus improvement and change. As Bonotti (2012, 335) says, the constitutional implementation of state support for religion fixes the place of religion in our society "*in a more permanent way than the measures of ordinary legislative politics do*" and this is not the most appropriate way to cope with religion in a liberal, democratic society that is characterized by reasonable pluralism. If there is a consensus about state support for (some) religions, and if this kind of support is an efficient means in order to guarantee equal access to autonomy and de facto freedom of religion, then state support can, under certain conditions, be allowed. However, such a policy should not be fixed a priori, but should always be the result of a democratic, deliberative process:

> Even when the funding of such faith-based groups (or prohibition thereof) is shown to be consistent with the first principle of justice and justifiable in public reason terms, such measures ought to remain within the realm of ordinary legislative politics rather than being fixed through constitutional or other legal means. (Bonotti 2012, 341)

It is also remarkable that state support for religions is explicitly mentioned in many constitutions, while this is not the case for other perfectionist goods: constitutional laws in which state subsidies for museums, concert halls and dancing schools are required or prohibited do not exist; constitutional laws which require or forbid the state to pay football trainers do not exist. Similarly, constitutional laws should not require the state to support religions. In fact, these constitutional fixations are still the result of history, but they are not in line with autonomy-based

liberalism and particularly with the idea that religion is not a nonperfectionist good.

For the same reasons, the a priori *prohibition* of state support for religions is also irreconcilable with the idea of autonomy-based liberalism and democratic perfectionism: it is not forbidden for the state to abstain from subsidizing perfectionist goods, but in order to be liberal, such a hands-off policy should not be fixed a priori.

8.5 How Should a Liberal State Support Religion?

The previous paragraphs bring us to the next question: *if* a liberal state chooses, at its citizens' request, to support religion, *how* can the state do this in a way that is as fair and neutral as possible?

8.5.1 Different Models of Support

In many countries (countries with a strong hands-off policy concerning religion included), a policy of *indirect support* (tax-reductions or tax-exemptions) is common for non-religious and for religious non-profit organizations. Because the state treats religious and non-religious organizations in a similar way, and because it does not support particular religions in a direct way, this system is probably the most neutral system, one in which the separation of church and state, the (internal) freedom of religion and the freedom of association are maximally guaranteed.

Next to this indirect support for religion, there are several ways to support religious institutions in a *direct* way. In a *first model*, citizens can pay voluntary taxes for recognized religions and the only responsibility of the state is the recognition of these religions and the collection of taxes. In this model, only citizens who want to support a particular religion, pay extra taxes. Citizens who do not want to support any recognized religion do not pay extra taxes. With the aim of avoiding free-riding, religious organizations can oblige that citizens have paid the required taxes if they want to be a member of the community and make use of ritual services. In Germany, for instance, the Catholic bishops have recently proclaimed in a decree the possibility for Catholic priests to refuse sacraments to believers who have left the church administratively (*Kirchenaustritt*) and therefore do not pay church tax (*Kirchensteuer*) anymore.

One of the benefits of this system is that citizens are not obliged to pay taxes for a religion they do not adhere to, and thus individual freedom is maximally guaranteed. Another benefit is that financial support is based on the taxpayer's income and that it is proportionally divided in this system: only citizens who want to pay taxes for their religion do so. In addition, state support is restricted to a(n) (administrative) minimum, and as a result, state involvement in religious affairs is also limited. For this reason, the internal freedom of religion, the freedom of association and the

separation of church and state are largely protected. Finally, one could also argue for this system from the rational choice perspective: if the state supports religion only in an administrative way and leaves the financial aspect open to citizens' individual choices, religions will not become lazy or fossilized, no single religion will be favored by the state in a financial way, and only those religions which citizens consider to be valuable will survive.

In a *second model* of direct taxes, each taxpayer pays a proportional amount of taxes (based on the taxpayer's income) for the recognized religion he/she wants to support. In Italy for instance, each taxpayer can tick on his/her tax form which religion he/she wants to support. This system has the advantage that each taxpayer pays the same proportional amount of taxes, and that citizens can choose which recognized religion they want to support. If different religions get the same opportunities to get recognition, and if there is also a possibility for citizens to opt out (which is the case in Italy), the system is compatible with the liberal idea of neutrality. The system is fair because it takes into account the positive freedom of religion for members of recognized religions, and also the convictions of non-believers, adherents of other faiths and indifferent people (since these people do not have to support a religion they do not adhere to). A probable disadvantage is that it is, due to practical reasons, impossible for the state to support *all* religions. As a result, small religions are to a certain extent disadvantaged because their religious freedom is only guaranteed in a negative way (their religion is, as a valuable option, not actively supported by the state). In order to make a system of direct taxes as *fair* as possible at this point, a system of *vouchers* which can be used for all kinds of religions (and other perfectionist goods), can be a suitable solution.

Finally, there is a *third system of direct taxes*, in which all citizens pay taxes for one or more recognized religions, but without an individual possibility to choose. When such a system is principally open for all religions, and when citizens can, in the democratic debate, decide which religions to support and how subsidies will be divided (cf. Chan's multicentered perfectionism), the state takes into account the diverse religions present in society, and there is no infringement with individual autonomy. However, also this system has the disadvantage that the state cannot support all religions and, as a consequence, smaller religions are, to a certain extent, treated unfairly.

Another problem is that there is not always a possibility to opt out in such a system. In Belgium for instance, all citizens pay taxes for recognized religions, regardless of their own convictions, and there is no possibility to opt out. This lack of a non-religious alternative can be considered to be a shortcoming of the system: according to some critics, the freedom of religion of non-believers and adherents of non-recognized religions is threatened without the possibility to opt out. But is this a true assumption? I do not think so for two reasons.

First, when public tax money is used to subsidize recognized religions, the religious freedom of adherents of non-recognized religions is still guaranteed, even though they have to pay a contribution for recognized religions. In Belgium for instance, a Jain or a Hindu pays taxes for recognized religions, while his/her own

religion does not get any direct support (Jainism and Hinduism are not recognized in Belgium [yet]). But this does not imply that the freedom of religion of these people is threatened: they are still free to be a Jain or a Hindu and to practice their religion – although without any state support. There is thus no infringement of the freedom of religion here.

Second, I consider both art and religion to be perfectionist goods which can, under certain conditions, be supported by the state. When art is at stake, the state usually foresees a specific budget that can be used to support, e.g., museums, theatres, music schools, etcetera, and many citizens contribute involuntarily to this budget. The fact that there is no possibility to opt out does not imply that citizens' individual freedom is restricted in this system, as long as they are still free to live a life according to the values they endorse, as long as support leads to equality of autonomy and as long as citizens can democratically vote about the division of subsidies. In a similar way, and under the same conditions, the freedom of religion is not restricted when all citizens have to pay a contribution for a number of religions.

Nonetheless, in order to make a system of state support for religion as *fair* as possible, state support should at best be organized in a plural, open system, and a possibility to opt out is recommended. Given the fact that contemporary liberal societies are becoming more and more pluralized and secularized, the state should take into account the metaphysical needs of all its citizens, including those citizens who do not adhere to a particular religion, do not believe at all, or are religiously indifferent. This is the case when there is the possibility to opt out of paying taxes for religions. Once again, this possibility is not required in order to guarantee the freedom of religion, but it is an interesting mechanism in order to divide subsidies for religions in a fair (proportional) way and to avoid discrimination and inequality.

8.5.2 Dividing Subsidies

Apart from these different systems, there can also be a difference in the *amount of subsidies* the state uses for religion. When the state chooses to support religions in an active way, there is no requirement to support these religions *entirely*. Given the fact that religions are *perfectionist goods*, and thus not required by justice, they can (but should not) be partly subsidized by the liberal state, and it is not unfair to ask believers also to pay their part. This is in fact a common practice in *each* actual policy of support for religion: in many countries, religions get state support, but in addition, adherents/believers and/or international religious organizations also contribute to particular religious organizations.

This system of public and private subsidies takes into account the fact that we cannot truly *choose* our religious and other preferences (and that state support can therefore, under some strict conditions, be allowed), but that we are nonetheless

responsible for the way we cope with these preferences (and that, accordingly, we have to pay the cost as well).

Again, the parallel with subsidies for art is quite obvious: in most countries, the state subsidizes art in an active way, but this does not imply that e.g. museums, theatres or operas are (or should be) free of charge. In fact, most of these institutions are not accessible for free, but without state support, many of them would become inaccessible for numerous citizens who consider art to be valuable. As a result of state support, they will become more accessible for those people, even though they still have to pay entrance fees (in addition to the taxes they already paid).

For these reasons, a policy of *partial subsidies* is, in case of active state support for religion, recommended as well.

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Chapter 9
Liberal Neutrality and State Support for Faith-Based Schools

9.1 Introduction

In the previous chapter, I have argued that active state support for (institutionalized) religion is a legitimate possibility in a liberal society, on the condition that several criteria have been met. But state financial support for religion is not limited to support for religious groups or organizations: in many countries, other faith-based institutions (e.g. schools, hospitals, homes for the elderly, psychiatric centers) receive state subsidies (as well). Indeed, state support for faith-based institutions contributing to the social benefit seems to be the rule rather than the exception and even in so-called 'secular' or 'laic' nations like the United States and France, this kind of support is not uncommon.

In this chapter I will focus on faith-based schools as a case-study. If we can show that state support for these schools is legitimate, it should be possible to provide similar arguments for state support for other faith-based institutions which contribute to the common good or common interest.

9.2 Faith-Based Schools: Perfectionist or Nonperfectionist Goods?

In autonomy-based liberalism, the state necessarily guarantees a liberal education for all its citizens, so that each person can develop the mental abilities and capacities required to make autonomous choices. As described by Kymlicka (1995, 92), autonomy-based liberalism "*insists that people can stand back and assess moral values and traditional ways of life*, *and should be given not only the legal right to do so*, *but also the social conditions which enhance this capacity* (e.g. *liberal education*)". Education enables citizens to live their own lives independently, to participate in the (future) society and in the labor market, to exercise their liberty, and to

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think in a critical, reflexive way. In line with this argument, Rawls (1971, 87; 275) and Dworkin (1985, 209), argue that the liberal state has an active role in guaranteeing good and accessible education in order to assure equal opportunities.[1] To put it differently,

> [e]ducation is a public and primary good that benefits both the individual and society. Therefore, it is argued, in a liberal democratic society the state should fund schools for compulsory education. (De Jong and Snik 2002, 573)

But does this requirement of funding schools for compulsory education also entail that the liberal state should allow and/or support faith-based schools? If education is a nonperfectionist good that is required by justice and if we take religious freedom seriously into consideration, are faith-based schools then also required by justice?

In order to answer this question, it is important to make a distinction between *education* as a nonperfectionist good on one hand, and *schools* as a means to realize that good on the other. Education is *required by justice*, and for that reason the liberal state must *pay for schooling*, so that accessible education is guaranteed for all citizens. But does this entail that the state should *provide schooling* as well?[2]

Because liberalism is *inconclusive* about church-state models, and thus also about state support for faith-based schools, there are different possibilities here. The state can opt for a system of state schools without financing private schools (cf. United States),[3] but it can also choose to finance both state schools and private schools. Within this last system, private schools can be subsidized substantially, or even entirely (cf. Flanders [Belgium] and the Netherlands), but the state can also give partial subsidies for private schools (e.g. the UK and France). In this case, schools can require parents to pay an additional sum for education.

In theory, a system of private schools without state schools is also possible, but such a system is not recommended because there is, within such a system, not always a neutral or impartial alternative for students and/or parents who do not agree with the different pedagogical (and often also religious) views of private schools. Only when private organizations establish neutral schools as well, and when the number of these schools is representative of the number of parents and/or students choosing these schools, is there in fact no need for additional state schools. In practice, however, most – if not all – private schools are based on particular religious and/or pedagogical views, and they are thus not neutral or impartial. For this reason, it is not sufficient to subsidize private schools without guaranteeing a neutral alternative (state schools), and the state has thus a positive duty to provide for non-denominational education. As said by Temperman (2010, 872), "*the minimum*

[1] This position is profoundly elaborated by Amy Gutmann (1987).

[2] For this distinction, see Brighouse (1996, 459).

[3] In some states, this model recently evolved to a model in which faith-based schools are indirectly supported, for instance by means of a voucher system (cf. Sect. 12.2.3).

standard international human rights law provides is that all persons, whether secular or religious, must be able to have public school education if they so desire".[4]

We can thus conclude that *education* is required by justice, but that faith-based schools are not. For that reason, the liberal state is not obliged to support these schools. This idea is also confirmed in international human rights law:

> The state is under no obligation to fund private, denominational schools. As far as international human rights law is concerned, if sufficient public education is made available and if the state allows parents to send their children to alternative schools, the state has discharged its duties flowing from the international standards on the right to education. (Temperman 2010, 884)

Consistent with the second article of the first ECHR protocol, a system of state schools wherein the parental right to education "*in conformity with their own religions and philosophical convictions*" is guaranteed, can be sufficient for all citizens so that they have at least the possibility to live a life according to the values they endorse. A single system of state schools can thus meet the requirements of autonomy-based liberalism and its related idea of state neutrality.

However, the fact that faith-based schools are not *required* by justice, does not entail that these schools may not be *permitted* by justice. Moreover, from a liberal perspective, one can argue that parental religious freedom extends to the parental right to send one's children to a faith-based school. Because religion might be an all-pervasive part of the believer's life in general, it can be perceived as an inevitable and desirable feature of school life as well. As a result, the liberal state should respect the right of parents to send their children to private educational (faith-based) institutions in order to ensure a religious and moral education in conformity with their own convictions. Hereto, the state should at least *allow* private, faith-based schools. When these schools serve groups of citizens in the community by providing them general education (a nonperfectionist good), they can also be subsidized by the state.

A system in which state *and* private schools are subsidized by the state, unlike a system of state-only schools, positively takes into consideration freedom of religion and freedom of education (i.e. the freedom to establish schools *and* the freedom to choose a particular school). Another (but negative) argument in favor of such support is that failure to fund faith-based schools can lead to inequality: in such a system, wealthy parents can send their children to a non-subsidized faith-based school, while less fortunate parents do not have the means to send them to such a school, despite the fact that also they adhere to that particular faith. This is for instance the case in the UK and the US, where several private (faith-based) schools are in fact

[4] At this point, some readers might object that even state schools are not strictly neutral or impartial, but that they are also based on a specific pedagogical and didactical approach. This is indeed the case, but different from faith-based schools, no single religion or worldview has a priority position in state schools, and all religions (and non-religious convictions) are treated with equal respect. Accordingly, this approach could be accepted by all reasonable and rational citizens, and for this reason state schools, in contrast to most private schools, can be labeled as neutral or impartial.

upper-class schools. In such a situation, equal educational opportunities are de facto threatened. For these two reasons (positive freedom of religion and education; and educational equality), a model in which the state subsidizes state *and* private (faith-based) schools can, in some situations, be preferred – even though it is not required by justice.

9.3 State Support for Faith-Based Schools: Criteria

As one might expect, several criteria must be fulfilled if the state wants to support faith-based schools without losing its neutrality. Because faith-based schools are, as a means to realize education as a nonperfectionist good, different from religious institutions (religious non-profit organizations established to practice a particular religion), which are merely perfectionist goods, these criteria will be different from the criteria for supporting religion.

As in the previous chapters, I will make a distinction between primary and secondary criteria. As long as the former have not been met, it is not allowed to support faith-based schools. Once the state has chosen to support faith-based schools, the latter should be met, or else this policy of support should be modified or abandoned.

9.3.1 State Support for Faith-Based Schools: Primary Criteria

9.3.1.1 Fair Distribution of Nonperfectionist Goods and Failing of the Free Market

Given the fact that education is a *nonperfectionist good* or a priority for the state, *and* given the fact that faith-based schools can be a means to realize that good, there is a fundamental difference between state support for institutionalized religion on one hand, and state support for faith-based schools on the other: in the first case, the state should first and foremost guarantee *nonperfectionist goods* (e.g. education and health-care) as far as possible and only if this kind of support is not sufficient in order to guarantee equal access to autonomy, can the state also support institutionalized religion.

With faith-based schools, things are different because a particular nonperfectionist good (education) is precisely guaranteed *by means of* faith-based schools in this case.[5] When the state chooses to support faith-based schools, it should thus always be aware that these schools contribute to equal educational opportunities for all. If a

[5] The same is e.g. true for faith-based hospitals: they can be subsidized by the state *as a means* to guarantee accessible health-care (a nonperfectionist good) for all citizens.

hands-off system is sufficient to guarantee faith-based schools as a means to education for those parents who want to enroll their children in these kinds of schools, there is in fact no need for state support. If, however, some students have no access to faith-based schools within a free-market system, and if these schools are of great value for these students and/or their parents, state support for faith-based schools is a legitimate possibility.

9.3.1.2 Democratic Consensus

State support for faith-based schools is only allowed if there is a democratic consensus about the value of these schools and about the need for support. If citizens consider faith-based schools not to be valuable, or if there is no request for active support (e.g. because the free market suffices), such a policy of support is neither legitimate, nor is it a priority. Prior to the policy of support, there should thus be a democratic debate about the *desirability* to support faith-based schools.

9.3.1.3 Principal Openness to Subsidize Different Private Schools

Subsidizing private schools should not imply that the state only subsidizes *religious* private schools (since that would be a non-neutral policy). Parents should also be able to establish private schools based on a particular pedagogical view (e.g. Steiner or Freinet schools) or on a non-religious worldview (e.g. secular humanism). If these schools take into account several criteria, the state can also subsidize them:

> […] The government must not play favorites among perspectives on religion – that is, it must not prefer religion over nonreligion (or vice versa), and it must not prefer one religious sect over another. (Eisgruber and Sager 2007, 207)

Diverse religious and non-religious schools must thus have equal opportunities to get subsidies if they "*provide the secular services effectively*; *all who provide the service equally well should be treated the same*" (Greenawalt 2009, 354). If state subsidies are applied to a wide variety of religious and non-religious schools, "*there would be no good reason for anyone to feel resentful or alienated at having to contribute to this system*" (De Marneffe 2002, 239).

This is also confirmed by human rights law. For instance, in the court case *Waldman v. Canada* (694/1996), in which the Human Rights Committee condemned Canada's differential treatment of Roman Catholic religious schools (which, according to the Constitution, were publicly funded as a distinct part of the education system) on one hand, and other types of religious schools on the other – in this case a Jewish school in Ontario (which was not publicly funded). As stated by the Human Rights Committee,

> […] the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, *if a State party chooses to provide public funding to religious schools*, *it should make this funding available without discrimination. This means that*

> *providing funding for the schools of one religious group and not for another must be based on reasonable and objective criteria*. In the instant case, the Committee concludes that the material before it does not show that the differential treatment between the Roman Catholic faith and the author's religious denomination is based on such criteria.[6] [emphasis mine]

9.3.1.4 State Support > Hands-Off

A policy of public support for faith-based schools is only legitimate if it leads to more equality (and particularly to more educational equality) than a hands-off policy. Faith-based schools can thus only be supported by the state if this policy enlarges or facilitates the freedom of education (the freedom to *choose* a particular school without excessive cost) and if support does not impede the autonomous choices (the choice to choose a particular school included) of those people who are not in favor of faith-based schools or of support for these schools.

9.3.2 State Support for Faith-Based Schools: Secondary Criteria

9.3.2.1 Respect for Liberal Values

Given the fact that schooling forms a part of children's entire education, it is not a surprise that parents have some claim to influence this education, and that they are involved with their schooling. As Reich (2007, 717) remarks, "*the existence of state interests in common schooling provides no reason to ignore parental preferences*". However, within a liberal framework, these parental preferences are restricted: just as a liberal state should, for the children's sake, not allow corporal punishment or child labor, and just as the state should, for the children's sake (and for the sake of the entire population), make some vaccinations and/or medical treatments compulsory, the liberal state should also require that autonomy-facilitating education is compulsory.

In order to guarantee this, all regular schools should subscribe to several liberal values: there should be no segregation and indoctrination, students should be treated with respect, and ethical and political educational activities should not oppose the fundamentals of our liberal democracy. In sum, "*the primary culture to be cultivated in denominational schools should be liberal*" (De Jong and Snik 2002, 584) and the school's ethical and political teachings should not be "*at odds with premises of our liberal democracy*" (Greenawalt 2009, 470).

[6] U.N. Doc. CCPR/C/67/D/694/1996 Para. 10.6.

9.3.2.2 Guaranteeing the Freedom of Education and the Freedom of Religion

All schools have a particular identity and a related pedagogical project: they take into consideration certain values and norms, on which their pedagogical approach is based. In order to maintain the freedom of religion, the freedom of association and the freedom of education, the government should respect this value commitment and its related pedagogical project: freedom of education does not only refer to the freedom of parents to choose a school for their child(ren), but it also refers to the freedom of parents and/or particular institutions to establish schools according to their educational wishes. The government should take this right into consideration by respecting the school's pedagogical (probably religiously inspired) project and its particular identity.

This identity is not static or fixed, but dynamic and changeable: what is considered to be the most desirable faith-based school varies from context to context and from time to time. Nonetheless, even though the policy of particular faith-based schools can change over the time, such schools cannot, under the guise of their religious identity, do whatever they want in all circumstances. When the state subsidizes faith-based schools, three issues are of main interest because they can lead to tensions between the school's freedom of religion and/or education on one hand, and students' and parents' religious and educational freedom on the other. These issues are (1) the school's admission policy; (2) the organization of religious activities such as confessional religious education (education *into* religion), prayer, and liturgical celebrations; and (3) the school's religious ethos.[7]

Admission Policy A first disputable topic is the school's admission policy. Is it allowed that subsidized faith-based schools exclude students because of their (non-) religious background or because their way of life is not in line with some religious commandments? Is it e.g. permissible that Catholic schools refuse non-baptized students or students adhering to a different religion? Can these schools, referring to their religious affiliation and their pedagogical project, have a discriminating policy towards homosexuals or pregnant teenagers? Put more generally: given the fact that *education* is a nonperfectionist good that is required by justice, does this also mean that *all regular schools* (i.e. the means to guarantee education as a nonperfectionist good) should be accessible to *all students*?

As long as these schools are *substantially subsidized with public money*, the answer to this last question should be affirmative. Education is, like public health care and national defense, *required by justice* and for that reason, education should be guaranteed for every citizen. Even though *faith-based* schools are not *required*, but only *permitted* by justice, they should nonetheless be accessible for all students when they serve the common interest and get state subsidies for that reason. Indeed, *if* the government (partly) chooses to outsource the organization of education to a

[7] Another disputable topic is the recruitment of staff. However, because of the limited scope of this book, I will only focus on parents' and students' religious and educational rights in this chapter.

number of private (faith-based) schools, these schools should be principally open for all students, whatever their (religious) background may be, exactly *because* they serve a *nonperfectionist good* or a common interest (general education).

At this point, there is a difference between, e.g., subsidized faith-based schools on one hand, and subsidized religions on the other. Because (institutionalized) religion does not serve a public good that is required by justice, the admission policy of religious organizations can, contrary to the admission policy of substantially subsidized schools, be selective and discriminating: being baptized or circumcised can be a condition for membership of a particular religious group – even if that group gets state incentives. With regard to education, things are different: *if* the state chooses to support private schools as a means to educate its citizens, *all* students should be able to make use of these state-supported schools because *education*, organized in public or in private schools, is *required* (and not only permitted) by justice. Consequently, *all* substantially subsidized schools should, as a means to education, be accessible for *all* students, notwithstanding their religious affiliation.[8]

However, at this point, a tension could exist between the requirement of general accessibility on one hand, and respect for the school's particular identity and its religious ethos on the other. In other words, the liberal value of educational freedom (and the freedom of association) of the (religious) school boards involved in education can be in conflict with the liberal value of the educational freedom of students and parents. This brings us to a second debatable topic: the organization of religious activities.

Religious Activities In order to guarantee freedom of education (understood as the right to organize education according to some particular values), faith-based schools should be able to base their education policy on particular religious convictions and activities, e.g., organizing moments of prayer and religious classes. Moreover, some schools consider these religious activities to be an integrated part of their religious identity, and therefore these activities are compulsory for all students. However, as the religious and educational freedom of students and parents should also be taken into consideration, this strict and rigorous education policy cannot, in all circumstances and contexts, be (fully) supported by the state. In general, we can distinguish two possibilities here.

First, it is possible that the state subsidizes faith-based schools and that the number of these schools corresponds to the number of parents and/or students choosing them. If these schools offer autonomy-facilitating education (see Sect. 9.3.2.3) and

[8] In practice, not *all* schools will be accessible for *all* students because e.g. the offered studies, the level of education or the presence of special facilities and/or equipment will not be the same in all schools. However, if schools are not accessible for everybody, there is no problem in a liberal state when the reasons why these schools are not generally accessible are objective, neutral reasons – and not religious or non-neutral reasons. In a liberal society, the state should foresee that schools are, with regard to the studies and facilities they offer, differentiated and geographically diffused, so that students have no problems to find a school that corresponds to their educational needs, at a reasonable distance.

if they are principally open to all students, there is, from a theoretical viewpoint, no reason to diminish subsidies, even if religious activities are compulsory. As long as the number of faith-based schools is representative for the number of students or parents choosing these schools, and as long as parents or students also have the possibility to choose a school that is not based on a particular faith, both the freedom of education and the freedom of religion for parents and students, *and* for the school boards, are guaranteed.

However, it is also possible that faith-based schools are no longer representative of the religious convictions of parents and students. In this case, the state needs to adjust its education policy in order to guarantee both the freedom of religion and the freedom of education for all parents and students. There are several possibilities here.

In an ideal situation (at least from a theoretical viewpoint), this model should evolve into a model in which the number of state schools and private schools is adapted to the citizens' educational and religious needs. The state should thus establish more state (neutral) schools and/or a diversified range of private schools, so that real choice is not only de jure, but also de facto guaranteed. In this regard, the Human Rights Committee criticized Ireland in its 2008 report because the vast majority of primary schools in Ireland are denominational (Catholic) schools with a religious integrated curriculum and because there are not enough secular alternatives:

> The Committee notes with concern that the vast majority of Ireland's primary schools are privately run denominational schools that have adopted a religious integrated curriculum thus depriving many parents and children who so wish to have access to secular primary education (arts. 2, 18, 24, 26).
>
> The State Party should increase its efforts to ensure that non-denominational primary education is widely available in all regions of the State Party, in view of the increasingly diverse and multi-ethnic composition of the population of the State party.[9]

In practice, however, establishing new state schools is not always an optimal and realistic solution. When, due to a long tradition of experience and expertise in education, subsidized faith-based schools provide education of good quality, it can be counterproductive to cancel or diminish state support for these schools immediately. In this particular situation, the state can choose to continue its policy of support for pragmatic reasons and as a transitory policy, but only if substantially supported faith-based schools are not only de jure, but also de facto accessible for students with different religious convictions. In order to realize this, the state can, in return for substantial subsidies, require that the religious identity of these schools is interpreted in a very broad way, that religion is not integrated into the regular curriculum, and that their religious activities (prayer, celebrations, and confessional religious education) are made optional. Under these conditions, students with a different worldview can be enrolled in faith-based schools, without being obliged to participate in religious activities they do not endorse.

[9] Concluding observations of the Human Rights Committee: Ireland (2008).

In addition, some faith-based schools can still make religious activities compulsory if they wish so, but the state can decide to diminish or to abolish subsidies for these schools and to use them for other, 'open' schools, so that real freedom of education is guaranteed for all students. In other words, private schools should be free to defend a strict interpretation of loyalty to their pedagogical project, but when this policy leads to a de facto treatment of religious and educational freedom, subsidies can be restricted or even cancelled. As Brighouse (2002, 251) remarks, "*religious schools* […] *have the choice to opt out. They are simply being presented with a new option*: *more financial security in return for fulfilling a secular function*, *or refusing that security and refusing the secular function*".

From a theoretical viewpoint, different models can thus be consistent with autonomy-based liberalism and can guarantee equal educational opportunities. In practice, however, contextual factors should always be decisive for the chosen policy. If, due to sociological changes, a particular model evolves into a less liberal model, this model should be adapted in order to guarantee real freedom of education for all. As long as the chosen policy guarantees equal educational opportunities, and as long as our basic freedoms – particularly the freedom of education and the freedom of religion – are guaranteed, the selected policy can be maintained.[10]

Religious Ethos Even though religious education and specific religious activities can be important elements of faith-based schooling, it would be a mistake to think that only these activities contribute to the religious character of faith-based schools. Generally, the common discourse or ethos of a faith-based school and its related pedagogical approach are also religiously inspired. In this regard, the following questions arise: can and/or should there be limits to the religious ethos of a subsidized faith-based school? And if so, should there be a difference between substantially and partially financed schools?

With regard to these questions, I propose following a similar policy as in the case of the organization of religious activities: if the number of subsidized faith-based schools corresponds to the number of parents and students who choose these kinds of schools and if they offer autonomy-facilitating education and are principally open to all students, there is in fact no reason for decreasing subsidies. This can be the case even if these schools' ethos is strictly religious, which could imply, for instance, that special attention is given to particular religious views on ethical themes such as abortion, homosexuality and euthanasia; or that the history of a particular religion receives special attention in history classes. Also teaching creationism should be allowed, but only if this theory is taught next to evolution (a non-religious, scientific view) and if it is not taught as a true scientific theory. Only

[10] In addition, we notice that freedom of education and the related general accessibility in subsidized schools is not only dependent on someone's religious convictions. Publicly financed schools (state as well as private schools) should not be discriminating anyway because they contribute to the nonperfectionist good of education. Consequently, they must be accessible for all students, notwithstanding their social class or national origin.

by doing this are students correctly informed, can critical reflection be encouraged and can students become aware of different opinions (and options) in society.

As long as the number of faith-based schools is representative for the number of believers and/or students and parents who choose these schools, and as long as there are enough alternatives for parents and students who do not choose a faith-based school with a strictly religious ethos, both the freedom of education and the freedom of religion for parents and students *and* for religious school boards are guaranteed.

It can, however, also be possible that the faith-based schools are not or no longer representative for the religious convictions of parents and students or that parents and students prefer other (state or private) schools. In this context, I have mentioned two possibilities: establishing more state schools and/or a range of private schools; or continuing a policy of substantial support, under the condition that substantially supported schools are not only de jure, but also de facto accessible to students with different religious convictions. Analogous to the proposed policy concerning religious activities in this situation, the state can require that the religious ethos of substantially subsidized faith-based schools be interpreted very broadly, so that students with a different worldview can be enrolled in such faith-based schools without being offended by the difference in religious convictions:

> The state might prohibit such [religious] schools from discriminating against applicants on the basis of religion, or it might require them to teach certain subjects (such as sex education), or it might demand that they give participating students the right to opt out for theology classes or religious rituals. Such conditions are permissible so long as they serve legitimate public interests and do not discriminate against religion or amongst religions. (Eisgruber and Sager 2007, 220)

In sum, we can conclude that the amount of subsidies for faith-based schools should be dependent on the de facto *accessibility* of these schools. This accessibility is dependent on the proportion of believers (or parents and students who consciously choose these schools) on one hand, and the number of faith-based schools on the other. If there are more faith-based schools than students or parents who *prefer* such a faith-based school, the state can try to reach a proportional balance by funding more state schools, or it can encourage faith-based schools to make their religious activities optional and preserve an open religious ethos, in exchange for (full) subsidies.

At this point, some readers might object that the proposed system is not neutral or impartial because parents who choose a rigorously religious school will be disadvantaged: if the state chooses not to support rigorously faith-based schools, there will be a financial difference, and thus a form of inequality, between these schools and other schools (state schools and faith-based schools with a less rigorously religious ethos and voluntary religious activities). However, given the fact that state neutrality should not be interpreted as neutrality of effects, but as neutrality of aims and justification, this disadvantage is not different from, for instance, the disadvantage a speed merchant might feel when he wants to drive at a speed of 70 MPH in build-up area. As long as the state can give neutral arguments (guaranteeing *all* students de facto education) in favor of financial support for some faith-based schools, but not for other faith-based schools, there is not a problem – even if some

(non-)believers might feel disadvantaged. As said by Greenawalt (2009, 61), "[*a*]*sking a government not to aim to promote or discourage any religion is a realistic political ambition*; […]. *Asking the government to see that the effects of its actions are wholly neutral on various religious groups is to indulge in fantasy*".

9.3.2.3 Criteria of Quality

Subsidized faith-based schools have to follow a basic curriculum, approved by the state, in order to fulfill the general aims of education. Within *autonomy-based* liberalism, attention should particularly be given at the formation of students as autonomous persons with equal opportunities to develop themselves in the liberal society. "[*E*]*ach child should be provided with realistic opportunities to become an autonomous person*, *regardless of the values or ways of life of his parents*" (Brighouse 1996, 464). The liberal state should not (and cannot) force people to lead an autonomous life, but it should at least protect the freedom of those people who wish to do so. Therefore, the state must guarantee *autonomy-facilitating* education for all. Different from *autonomy-promoting education*, this kind of education is neutral toward different conceptions of the good, but it is not neutral toward the "*way of acquiring a conception of the good*" (cf. Mason 1990, 445). Autonomy-facilitating education is aimed at *enabling* students to live autonomously should they wish so, without trying to ensure that they do so. Autonomy has to be facilitated, but it does not have to be promoted.[11]

In order to realize this autonomy-facilitating education, schools should provide their students with the best knowledge at hand: with the purpose of making autonomous choices a genuine possibility, students should be well-educated and they should be correctly informed about the different options in their society (and about their actual cost). This implies that the conscious elimination of the best knowledge at hand (e.g. the theory of evolution; correct information about contraception) from the curriculum is unacceptable, and that citizenship education and education about the diversity of religions and worldviews should be part of the regular curriculum. Appropriately, students will be well prepared for a life in a religiously diversified society. As De Jong and Snik (2002, 584) state, "*in denominational schools alternative views should be brought to the fore*, *children should not be shielded from diversity*, *and debate must be tolerated and even encouraged*".

As long as faith-based schools enable youngsters to think in a critical and reflexive way, to shape their lives in an autonomous way, and to guarantee equal opportunities, the liberal state should allow these schools, and can also subsidize them as institutions contributing to the common good. If, however, faith-based schools do not fulfill these basic requirements, it is, from an autonomy-based liberal perspective, not legitimate to subsidize them as providers of general basic education:

[11] See in this regard also the aforementioned difference between *autonomy as a first order principle* and *autonomy as a second order principle* (Sect. 3.2).

> A state could justifiably refuse on educational grounds to provide public funds to schools which fail to respect the freedom of students to develop into autonomous agents. It is simply inconsistent with the character of a liberal democratic polity to allow public funds be directed to support forms of schooling which may serve to subvert, thwart or frustrate the achievement of human autonomy. (Williams 1998, 36)

Moreover, when parents do not foster autonomy-facilitating education for their children, the liberal state should take action so that all youngsters can be educated to fully developed citizens, with the capacities and skills they need in a liberal democracy. This implies that the government can require students to follow at least the curriculum approved by the state, and that schools which refuse to teach this curriculum (e.g. strict Orthodox Jewish schools, orthodox Evangelical schools, Quran schools) cannot be recognized by the state as regular schools. Unfortunately, some (religious) groups will not agree with this kind of autonomy-facilitating education because it conflicts with their own religious convictions. However, in a *liberal* society, autonomy-facilitating education is required in order to prepare young people for the society in which they will live as future citizens, and for that reason, the state can require all students to learn some basic skills, whatever their religious background may be. Once again, "*parental liberty – in education as in other matters – in some cases may require restriction so that the best interests of children are served*" (Merry and Karsten 2010, 499).

In sum, the liberal state can and should make sure that high-quality, autonomy-facilitating education, wherein the best knowledge at hand is taught, is guaranteed. In order to do this, it can formulate quality requirements and impose general educational aims which each regular school should take into consideration. Schools which fail to meet these requirements should not receive any state support as a regular school.[12]

At this point, some critics might argue that this approach is too liberal and threatens the singularity of faith-based schools. Because not all religious groups subscribe to the principles of autonomy-based liberalism, there can be doubts about the need for autonomy-facilitating education and its accordance with religious freedom. In addition, many scientific views are opposed to some basic religious convictions and it seems difficult, if not impossible, to teach these scientific views in some faith-based schools without infringing the internal freedom of religion and the freedom of conscience. Again, I point at the distinction between neutrality of justification and neutrality of effects. If some religious groups/schools cannot meet the *minimal* requirements of a liberal democracy, they have to bear the consequences:

> […] No policy can be neutral among religions, and the fact that some religions fare worse under a particular plan is not even a prima facie basis for believing that the plan might be unconstitutional. (Eisgruber and Sager 2007, 219)

Besides, the mere fact that the state does not support some faith-based schools does not necessarily imply that these schools should be prohibited. Only when some

[12] As Reich (2007, 721) remarks, public, private, religious *and even homeschools* can be successful in achieving the right ethos and common educational vision. Whether or not they do so in practice is an empirical question and it is the liberal state's task to control and regulate all these forms of schooling, so that common educational aims are met.

basic liberal rights are threatened in these schools can the state decide to forbid them. A faith-based school is thus always free to support a rigorously religious ethos, as long as the basic freedoms of all citizens (particularly of staff, parents and students) are guaranteed. Whether the state also subsidizes these schools should depend upon the fulfillment of the required criteria, the democratic need for these schools, the means at hand for support and – last but not least – the de facto realization of equal educational opportunities.

9.3.2.4 Even-Handedness, Diversification and Proportionality

When the state chooses to support faith-based schools, schools from different religious affiliations should be treated equally or even-handedly. If, e.g., Catholic schools get financial support, this support should also be given to other faith-based schools (e.g. Protestant, Jewish, and Muslim schools) if they meet the required criteria. In addition, private schools which are *not* affiliated with a specific religion (nonconfessional schools, humanistic schools, but also Steiner or Freinet schools) should be able to get state financial support as well.

In order to make the educational system as fair as possible, and in order to guarantee to parents and students both the freedom of religion and the freedom of education, the number of faith-based schools should also be proportionate to the number of students and parents choosing these particular schools.

9.3.2.5 Individual Freedom of Choice

When the state subsidizes faith-based schools, students and/or parents should always have the possibility to choose a secular school. In this regard, the Supreme Court of the United States confirmed, in the case *Zelman v. Simmons-Harris* (536 U.S. 639, 2002), the importance of the presence of non-confessional schools when the government also supports faith-based schools. In the same line, Eisgruber and Sager (2007, 215) say that "*the existence of a genuine secular alternative is the heart of the issue*" when the government wants to guarantee "*equal liberty*". The absence of a *sufficient range of secular alternatives* can lead to a situation in which citizens are de facto forced to make use of faith-based schools, even if they do not belong to that particular faith, and this should be avoided. Accordingly, Temperman (2010, 868) argues that, from a human rights perspective, "*the international standard on the right to education implies that the state is under a positive obligation that* sufficient public schools *with* appropriate curricula *are available at all times*". Obviously, these schools should be truly neutral, which implies among other things that religious symbols are not displayed in these schools and that religious activities and confessional religious education are not part of the regular curriculum (see Sect. 10.3.2.3).

9.3.2.6 No Value-Judgments

Finally, the government should always be able to give neutral arguments for its policy of financing faith-based schools. The only reason for support is their contribution to education as a nonperfectionist good, not their religious identity. As Brighouse (2002, 249) remarks, "[*t*]*he subsidy is subsidy for schools*, *not for churches*". When the state chooses to support faith-based schools, the reason for this support should thus never be their religious character, but their efficient provision of education as a nonperfectionist good:

> A second argument for funding religious groups is that they are often the most effective providers, or among the most effective providers; it would be counterproductive to direct money elsewhere if the best investment is in church groups. Whatever aspect of public benefits is involved, funding authorities should care about who provides a service most effectively. (Greenawalt 2009, 355)

As long as the government can give neutral arguments (the contribution to education as a nonperfectionist good) for financial support for these schools, its neutral character will be maintained, even if the effects of a particular policy are not equal for all religions.

9.4 State Schools or a Mixed System?

A liberal government can guarantee good and accessible education in different ways: a system of state (non-confessional) schooling, as well as a mixed system of state schooling *and* subsidized private (faith-based) schooling, can be in accordance with autonomy-based liberalism and its aim of neutrality as long as several criteria have been met. In practice, contextual factors should be decisive for the chosen policy and particularly the fairness of the educational system will be a crucial factor. Both a uniform system of state schools and a mixed system have their advantages and disadvantages.

Within a mixed system, the government positively takes into account the freedom of education and the freedom of religion: different groups can take initiatives to establish schools with a particular identity, they can choose how they bring this identity into practice, and parents are free to decide whether they want to send their child(ren) to a state school or a private school. When state and private schools are subsidized in an equal way, educational equality can be guaranteed as well because parents do not have to pay more for private (faith-based) education. In an ideal mixed system, faith-based schools (and other private schools) and state schools are so diversified that they proportionally correspond with the number of believers and non-believers, and with the different religious affiliations in society. In this scenario, each individual would be free to choose a school that is in accordance with his/her conviction. In practice, however, it will not be easy to adjust the number of faith-based schools to the continuously changing society.

Besides, we should also guarantee that a mixed system does not lead to segregation, and that it does not undermine equality, religious and educational freedom, and social cohesion. Particularly in a society that is characterized by increasing plurality and religious diversity, and in which students should be prepared for a working-life in that diversified society, concerns about separate schooling are not undeserved. For these and other *pragmatic* reasons, a mixed school system can sometimes be rejected. However, even though it is possible that a mixed system leads to more (religious) segregation than a uniform system of state schools, it would not be *liberal* to ban these schools and/or to reject subsidies *in advance*.

Unfortunately, we cannot a priori decide which system guarantees most educational opportunities (without leading to an undesirable form of segregation) and should therefore be chosen. As with state financial support for institutionalized religions, state support for faith-based schools should therefore not be fixed in constitutional or equivalent laws, but citizens should, in the democratic debate, decide whether and how subsidies for faith-based schools should be divided. In the Netherlands for instance, §7 of the Constitution states that "*private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools*". Such a policy of equal support for public and private schools is not opposite to autonomy-based liberalism and neutrality, but because private (faith-based) schools are *not required by justice*, this policy should be a matter of democratic debate, and should not be implemented in the Constitution. Similarly, a constitutional *rejection* of state-subsidies for faith-based schools is also problematic. Both the choice to support faith-based schools and the choice to reject (full or partial) state subsidies for these schools should be dependent on social, cultural and educational contexts and on the efficiency and fairness of the system – and not on constitutional obligations or prohibitions. As long as the educational system in question leads to *equal educational opportunities* and to the *development of students towards autonomous citizens*, it is in accordance with egalitarian, autonomy-based liberalism. Whether these aims are realized in *state schools* or in a mixed system of *state* and *private schools*, is in fact less important.

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Chapter 10
Liberal Neutrality and State Support for Religious Education

10.1 Introduction

In the previous chapter, I assumed that in a liberal state it is allowed, but not required, for the state to finance faith-based schools. In most of these schools, religious education and other religious activities are organized, and they are usually compulsory for all students. In many countries, education into religion is organized in state schools as well, and quite often it is also financed by the state. In Belgium for instance state schools organize courses in all the recognized religions and in non-confessional ethics; in Italy, Catholicism is offered in state schools; and in Spanish state schools, students can choose between Roman Catholicism or other confessions that have signed agreements with the state (Protestantism, Judaism and Islam), they can follow a course on the history and culture of religions (in secondary schools), or engage in alternative activities and courses (in primary and secondary schools). Similarly, Roman Catholicism, Protestantism and a non-confessional subject are offered in many German and Dutch state schools. Usually, the *state* pays the wages and salaries of the teachers, while the religious instances are responsible for teacher training, the syllabuses, inspection, and the appointment of teachers. The non-confessional subject is normally (but not always) organized and financed by the state.

In addition, some nations (or regions) organize non-confessional religious education or education *about* religion in their state schools (and sometimes also in subsidized faith-based schools). This is for instance the case in most Scandinavian countries, in Brandenburg (Germany), and in the UK. In these nations and regions, the state is both responsible for the organization of the subject (even though there can be a form of co-operation between the state and some religious instances) and for financial support for teachers.

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In this chapter, I will examine whether and how both kinds of religious education (education *into* and education *about* religion)[1] can be in accordance with the idea of liberal neutrality.

10.2 Education into Religion: Perfectionist or Nonperfectionist Good?

Within autonomy-based liberalism, education is considered to be a *nonperfectionist good*, or a good that is required by justice. Therefore, the liberal state has an active role in guaranteeing good and accessible education for all.

The fact that *education* is a nonperfectionist good, however, does not imply that *religious education*[2] is also a nonperfectionist good. Religious instances (and religious people) often consider education into religion to be a good that is required by justice: they often stress the need for, and right of all citizens to be educated in their own religious tradition, and/or the public benefit of confessional religious education with regard to the awareness of ethical and moral values. However, I do not share this view. The reason for this is quite simple: the basic aim of education is that students receive correct information and develop the skills that are necessary in order to be able to lead an autonomous life in future society. And this is an aim which can be realized without confessional religious education classes.

The fact that education into religion is not required by justice, however, does not necessarily imply that this kind of education is not *permitted* by justice, nor does it imply that state support for this kind of education is not allowed. In a liberal state, parents have the right to educate their children within a particular religious tradition. Confessional religious education – like the choice for a faith-based school, participation in (local) faith communities, and the emphasis on some religious values, norms and traditions in the children's upbringing – can be a valuable tool to realize this right. For that reason, the liberal state should at least *allow* education into religion.

But does this also mean that education into religion should be supported with public money? Given the fact that there is, in contemporary liberal democracies, no unanimous consensus about the value of religious education, nor about state support for this kind of education, I suggest a similar policy as with regard to art and institutionalized religion: the state *can* support these goods, but only if some citizens are fundamentally disadvantaged without support because they have no access to religious education as a valuable option and because, as a result, equal access to autonomy is not guaranteed.

[1] For the difference between education *into*, *about* and *from* religion, see Grimmit 2000.

[2] In the next paragraphs, *religious education* is interpreted as *confessional* religious education or education *into* religion.

10.3 State Support for Education into Religion: Criteria

As in the case of the criteria for state support for art and for institutionalized religion, I will again distinguish primary criteria from secondary criteria when it comes to subsidizing religious education. As long as the former criteria have not been met, it is not legitimate to support confessional religious education. Once the state has chosen for a policy of support, the latter criteria should be met, or else this policy should be modified or abandoned.

10.3.1 State Support for Education into Religion: Primary Criteria

10.3.1.1 Fair Distribution of Nonperfectionist Goods and Failing of the Free Market

Before the state can support education into religion, the nonperfectionist goods *required by justice* should be guaranteed as far as possible and the state should also guarantee a fair free market system. In ideal circumstances, these measures will be sufficient in order to guarantee religious education as an accessible valuable option. Only when this policy is in practice less efficient than a system in which religious education is also supported, the state can, in order to guarantee equal access to autonomy, also choose for this kind of support. However, this should only be a second-best option and not a general principle.

State support for religious education is thus not required by justice, and it is perfectly possible that religious instances organize and finance this kind of education without any state support. Nonetheless, given the fact that we do not live in an *ideal* world, and that some people will, even in a fair and just society, have fewer resources than other people, state support should not a priori be excluded.

10.3.1.2 Democratic Consensus

State support for education into religion is only legitimate if there is a democratic consensus for this kind of support. The chosen policy with regard to religious education should thus never be fixed, but it should always be possible to change the policy where needed. In this regard, we observe an important paradigm shift at the beginning of the twenty-first century (cf. Franken and Loobuyck 2011). In some countries (e.g. the UK, Denmark, Sweden, Norway) education *into* religion has been replaced by education *about* religion, and where the former subject is still organized, it often has become more pluralistic and no longer strictly catechetical (e.g. in Belgium and in the Netherlands). In a liberal democracy, it is important to take into account such paradigm shifts and the (decline of) social consensus about

confessional religious education: if citizens consider education into religion not to be valuable (any longer), state support is no longer legitimate. If, however, there is a democratic consensus about the value of education into religion and about state support, and if this support leads to more equality of autonomy, this kind of support is definitely a legitimate possibility.

10.3.1.3 Principal Openness to Subsidize Different Kinds of 'Perfectionist Education'

The previous criterion entails that the state should be prepared to support different kinds of 'perfectionist education'. If citizens are, for instance, in favor of state support for (extra) drawing lessons, for (extra) music lessons and for education into religion, which are educational branches that are in fact not required in order to prepare young people for an autonomous life in future society (even though the value of their contribution to our general knowledge and development cannot be denied), the state should take into consideration all these educational preferences.

Due to scarcity, the state cannot subsidize each and every kind of perfectionist education, but, in a plural society, it would be unfair to support only one educational branch (e.g. religious education), while the needs of citizens are diverse and they may prefer support for different kinds of education. In this regard, a state that supports, at request, music education, art education, and education into religion, is more neutral (and autonomy-facilitating) than a state that supports only one of these perfectionist educational branches.

10.3.1.4 Supporting Religious Education > Hands-Off

When the state supports education into religion, this support is only legitimate if no one is worse off with this system than without it. A system of state support for education into religion is thus only legitimate if it generates *more* opportunities (to make autonomous choices) for a particular group of citizens, while at the same time opportunities for other citizens are not diminished. If, however, a part of the population is worse off (at the level of making autonomous choices) with a policy of state support than without such a policy, the state should definitely choose the latter. And *if* a policy of support disfavors some citizens (e.g. because they have to pay taxes for religious education) without infringing their basic rights and their opportunity to make autonomous choices, the benefit of state support (equal access to autonomy) should always be more substantial than the suffered harm (paying taxes for religious education).

10.3.2 State Support for Education into Religion: Secondary Criteria

10.3.2.1 Justice as Fairness

The principles of justice as fairness (and in particular the freedom of religion) should not be harmed if the state supports education into religion. This is, however, not so evident, and in practice the state should always get the balance right between the freedom of association and the related collective freedom of religion (religious autonomy) on one hand, and the principles of our liberal democracy on the other.

In order to guarantee the freedom of association and the collective (institutional) freedom of religion, the separation between church and state should be respected. This implies for instance that religious education is organized by the religious instances, and that these instances have the responsibility for teacher training and inspection, and for the content of the syllabuses.

It is, however, not opportune to refuse *any* kind of state interference, because the formation of youngsters into autonomous, critical citizens is at stake. As long as education into religion enables youngsters to think in a critical and reflexive way and to shape their (religious) ways of life autonomously, there is, from a liberal perspective, no problem. If, however, these opportunities are taken away as a result of the religious education these youngsters receive, this kind of education is no longer legitimate. Accordingly, a minimal form of state control with regard to religious education is required, particularly when this kind of education is subsidized by the state.

Furthermore, the promulgation of ideas which incite to discrimination, hate, and violence should not be tolerated because this opposes the (liberal) idea that education aims at the formation of students into autonomous, critical citizens, and because it opposes the rights and freedoms of co-citizens. The state should guarantee that the content of the religious subjects does not oppose the basic rights and the fundamentals of our liberal democracy and does not inhibit the ability of a student to reflect in a critical, autonomous way.

In sum, if the principles of justice as fairness are not respected in religious classes and/or if some religious organizations refuse to work together with the state at this point, the state can cancel subsidies. If the content of religious education subjects also incites to violence, hate and discrimination, the liberal state should even forbid them in order to guarantee justice and fairness for all.

10.3.2.2 Criteria of Quality

If the state supports education into religion, teachers of religious subjects should meet several conditions. First, they should, like all other teachers, teach in the official language. In addition, they should have adequate knowledge of different religious and philosophical traditions, and they should have the required pedagogical

skills. Only teachers with a recognized certificate should be allowed to teach state-supported education into religion. *Where* they teach (e.g. in state schools, in faith-based schools or in faith-schools[3]), is not important here: as long as the state supports religious education, some basic pedagogical requirements should be taken into consideration.

Realizing these requirements is, however, not easy, and many countries struggle with the incompetence and underqualification of religious education teachers. Particularly the deficient education of Islamic teachers is an actual problem in Europe because the demand for these teachers increases in many nations, while their training is not well organized yet. In order to solve this important problem, the state should, when it chooses to support education into religion, also support and establish the required teacher training programs. In order to do this, the state should work together in a constructive way with the religious organizations at hand.

10.3.2.3 Individual Freedom of Choice

If the state supports confessional religious education in state schools, this subject should always be *optional* in order to guarantee individual freedom of choice. This optional character of confessional religious education in state schools has been discussed in several juridical cases (e.g. *Sluijs* I and II[4] in Belgium, *Vermeersch*[5] and *Davison*[6] in the Flemish Community and *de Pascale*[7] in the French Community), and was asserted in 2007 by the European Court of Human Rights in *Hassan and Eylem Engin v. Turkey* (Appl. no. 1448/04). Very recently, this optional character has been reconfirmed by the ECHR in *Mansur Yalçın & Ors v. Turkey* (Appl. no. 21163/11). In several nations (e.g. Spain, Italy, Greece, Belgium), where confessional religious education in state schools is still the general rule, exemptions are allowed in order to guarantee religious freedom for all students. In order to avoid stigmatization, it is also recommended to offer an alternative subject for these exempted students. As said by Evans (2008, 469), exemption schemes "*work best when* […] *a meaningful class is available to substitute for the one that is being missed*".

However, this right to exemption should not be overestimated, because there is an important difference between (a) a state that considers education into religion to be a *regular subject* and considers exemption an anomaly; and (b) a state that allows (and subsidizes) education into religion in state schools, but only *if students or parents ask for this kind of religious education*.

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[3] Different from faith-based schools, faith-schools do not teach the *regular* curriculum, but they only organize religious classes. Examples are Sunday schools, Talmud schools or Quran schools.

[4] RvS (Council of State), *Sluijs*, nr. 25.326, 1985-05-14.

[5] RvS (Council of State), *Vermeersch*, nr. 35.442, 1990-07-10.

[6] RvS (Council of State), *Davison*, nr. 35.834, 1991-11-13.

[7] RvS (Council of State), *de Pascale* nr. 5885, 2015-03-12.

In the first case, the state is not neutral: it considers education into religion to be a nonperfectionist good and thus a regular subject of the curriculum. Consequently, opting out often has a negative, stigmatizing impact on those children who are exempted. As said by Temperman (2010, 279), "*though opt out classes may remedy the compulsion element*, *such safeguards cannot prevent possible ostracization of those children that avail of these exemption schemes*".

If, however, the state only allows education into religion *at request*, it principally assumes that education into religion is a perfectionist good, and should therefore not be organized as a regular subject in state schools. This policy is recommended because it is based on *neutral* arguments and because it treats all students (believers and non-believers) as equals.

In the Netherlands and in Brandenburg (Germany) for instance, state schools *can* organize confessional religious education, but only if students or parents are in favor of this kind of education. If the state organizes religious education in this way, it is more neutral than in e.g. Belgium, Spain, Italy and Greece, where the state decides a priori that religious education must be organized and subsidized in state schools – apart from the *a posteriori* sociological situation and needs and wishes of citizens.

Apart from the discussion about the place of religious education in *state schools*, there are also different possibilities in *private schools*. If the state does not subsidize these schools (substantially), they are free to organize confessional religious education, they can choose how they fill in this education, and they can make this subject compulsory for all students.

But the state can also choose to support private (faith-based) schools where education into religion is a compulsory subject. However, in order to guarantee real freedom of education in this case, this policy is only legitimate if the number of these faith-based schools is in accordance with the number of students and/or parents choosing these particular schools. In this situation, Catholics can go to Catholic schools where they take Roman Catholicism; Protestants can go to Protestant schools where they take Protestantism; Muslims can go to Muslim schools where they take Islam; and non-believers or adherents of other faiths can go to a non-confessional private school or to a state school where religious education should never be organized as a compulsory subject.

Finally, it is also possible that the number of subsidized faith-based schools is not (any longer) in accordance with the number of parents and/or students choosing these particular faith-based schools. In this situation (which is actually the case in Belgium and Ireland, but also in some parts of the Netherlands and Germany), the state can, for pragmatic reasons and as a transitory policy, choose to diminish subsidies if religious education is compulsory, and thus incite these schools to make their religious education classes voluntary. Of course, such a policy is only useful if religion is not integrated into the general curriculum.

Summarized: it is, in a liberal state, *allowed* by justice that state schools and/or private schools organize confessional religious education classes, and it is *allowed* that the state subsidize these classes. Because religious education is a perfectionist good, the state is, however, not *required* to do this. If the state chooses to support education into religion, the freedom of religion of students and parents should

always be guaranteed, which means that students should never be compelled to take classes into a particular religion. This means at least that state schools should only organize education into religion by request, and as a non-regular subject, and that in particular situations, state subsidies for faith-based schools can be diminished or cancelled if there is no possibility to opt out from religious education classes.

10.3.2.4 Even-Handedness, Diversification and Proportionality

State support for religious education is only legitimate if diverse religions have *equal opportunities* to make use of state subsidies, and if subsidies are divided equally.

In order to realize this, the state should develop *neutral* criteria for organizing and subsidizing religious education, namely: citizens must ask, in the democratic debate, for a particular religious subject; the organized subject must meet some criteria of quality; the teachers at hand must dispose the required pedagogical degree. Also, there should not only be room for *religious* education, but non-religious or non-confessional organizations (e.g. humanists, Buddhists, anthroposophists) should also be able to organize their own 'religious' subject if they meet the required criteria.

Once a particular religion is approved to organize a religious subject, the principle of equality should also be respected: religions get the same amount of subsidies per student; teachers are paid in an equal way; and subsidized teaching hours per religion are equal. In order to guarantee equality or even-handedness, schools offering *different* religious subjects should get more subsidies than schools where only one religious subject is organized. As long as the state can give neutral arguments for this unequal number of subsidies, this difference is justified.

However, due to scarcity and practical reasons, it is impossible for the state to support education in *all* the religions present in society. As a consequence, there will always be a minimal form of inequality when the state allocates subsidies for confessional religious education: some students will have the opportunity to take subsidized lessons in their own (recognized) religious tradition, while other students will not because they belong to a smaller (and/or non-recognized) religion.

Is this inequality problematic? I assumed that education into religion can contribute to the right to a religious upbringing in a positive way, but that this kind of education is not *required* in order to guarantee this right. If the state chooses e.g. to support education into Catholicism, Islam and Buddhism, while other religious education subjects are allowed, but not supported by the state, the right to religious education is not only guaranteed for Catholics, Muslims and Buddhists, but also for adherents of other faiths – be it *without* state support. The fact that e.g. Hindus and Sikhs in Belgium have to pay taxes for confessional religious education in other faiths than their own, does not lead to an infringement of their religious freedom because they are not obliged to take lessons in any of the recognized religions and because they are still free to organize their own – non-subsidized – religious education classes within their community.

However, in order to make the system as *fair* as possible, it is recommended to adapt the system to citizens' needs, which means that the religious education offered should maximally be in accordance with the religious convictions or interests of students and/or their parents. In order to guarantee such a fair or proportional division of subsidies, there are different possibilities (see below 10.4).

10.3.2.5 General Accessibility?

In order to guarantee the (institutional) freedom of religion and the freedom of association, the religious organizations responsible for religious education can require some relevant criteria for students to participate in religious classes. As a result, not all religious classes will be accessible for all students.

In state schools, where religious education should always be optional, there is in fact no problem if some students are, due to their religious background, not allowed in some religious classes. In subsidized private (faith-based) schools, things are different. As long as these schools are representative for the number of students who adhere to the religion of these schools, there seems to be no problem if religious education classes are compulsory, and if they are only accessible for adherents of that particular religion. If, however, the number of subsidized faith-based schools in a given society is not in proportion with the number of students or parents who adhere to that particular faith, and if these schools make religious activities compulsory, some basic educational and religious rights are infringed upon. In order to avoid this, these schools should, for pragmatic reasons, either make their religious classes voluntary, or they should deconfessionalize these classes if they are compulsory, so that they are de facto accessible for all students. In this last case, however, we do not speak of education *into* religion any longer, but of education *about* religion.

10.3.2.6 No Value-Judgments

If the state chooses to support education into religion, this support should never be based on a value-judgment. Citizens can be convinced that confessional religious education is valuable, and that the state should therefore support this kind of education. Nonetheless, this value of religious education should never be the reason for the *state* to support religious education.

The only reason for the state to support religious education should be a *neutral* reason: equalizing autonomy by facilitating religious education as a valuable option. If it appears that parents and students consider education into religion to be valuable, and if state support for religious education is an efficient means in order to guarantee equal access to this valuable option (and thus to autonomy), this kind of support can be legitimate. Within such a policy, parents can give their children the religious education they prefer, without excessive cost. When the system is open and differentiated, state neutrality is also guaranteed.

10.4 Education into Religion and Liberal Neutrality: Different Models

Given the fact that the liberal state can guarantee qualitative and accessible education for its citizens in different ways, there are also different models of organizing religious education. In the subsequent paragraphs, I distinguish different models of *subsidizing* religious education, but I will also pay attention to the different *places* where religious education can be organized: in faith-schools, in faith-based schools or in state schools.

First, religious education can be organized in private faith-schools. Different from faith-based schools, these schools do not teach the *regular* curriculum, but they only organize religious classes. Examples are Sunday schools, Talmud schools and Quran schools.

Second, religious education can be organized in faith-based schools, where this subject is often considered to be a part of the school's religious ethos and of its regular curriculum. Usually, religious classes are compulsory in these schools, but they can also be facultative, particularly when the state subsidizes faith-based schools in a substantial amount. This is for instance the case in the UK and in France.

Finally, religious education can be organized in state schools. In order to guarantee the freedom of religion in this system, religious subjects should never be organized as a regular and compulsory subject. Hence the right to exemption for religious education and/or the possibility to choose another, non-confessional or impartial subject in most state schools.

Evidently, these different models of organizing religious education can be combined: in many liberal states, state schools offer religious education, but besides, (subsidized) faith-based schools organize religious education as well. In addition, religious instances are also free to organize religious classes in faith-schools. In other states, religious education is only organized in faith-based schools and in faith-schools.

Furthermore, there is also a distinction in the division of subsidies for religious education. Because this kind of education is not *required*, but only *permitted* by justice, it is allowed for the liberal state to maintain a hands-off policy: if parents consider education into religion to be important for the religious upbringing of their child(ren), they can send their child(ren) to a faith-school or a faith-based school where religious education is organized, but the state is not obliged to support religious education in these schools. Education into religion can thus be left to the free market (religious organizations) and there is no obligation for state financial support when this free market is efficient. This hands-off system is common in France (except for the region Alsace-Lorraine) and in the US.

Another possibility is that the state gives schools an amount of money that can be used for the realization of their pedagogical project. Faith-based schools can use this money for the organization of religious activities and confessional religious education. In order to guarantee equality or even-handedness, other schools (state schools and regular, non-confessional private schools) should get an equivalent

amount of money to realize *their* pedagogical ethos. For some schools, this money will thus be used for religious activities, while other schools will use it for other activities (e.g. sport facilities; didactical projects; *extra-muros* activities).

Another option is that the state subsidize institutionalized religions, and that these religions use (a part of) their state subsidies for the organization of confessional religious education in state schools (at parental request), in faith-based schools and/or in faith-schools.

A final possibility is a *voucher-system*. Within such a system, each student receives a voucher that can be used for religious education. Dependent on the chosen policy, the voucher can be used for religious education in state schools, in faith-based schools and/or in faith-schools.

Finally, it is important that the state should not necessarily offer *full* support for religious education. Because education into religion is not required by justice, it is not unfair to ask citizens to pay an additional part of the cost. The amount of this cost will be dependent on other priorities for the state, and the (in)efficiency of the free market system with regard to religious education.

10.5 Education About Religion: Perfectionist or Nonperfectionist Good?

In the next paragraphs, I will examine whether and how education *about* religion can be supported by the liberal state. Should the same criteria be fulfilled as with regard to education into religion, or are the criteria different here? In order to answer this question in an adequate way, it is important to make clear what kind of good is education *about* religion or nonconfessional religious education.

In contemporary liberal, pluralist nations, education into religion is not (any longer) considered to be a nonperfectionist good or a good required by justice and not all citizens agree about the value of this kind of education (and about the need for state support). With regard to education about religion, things are different. As Tim Jensen (2011, 134) remarks, religion is "*a social and historical fact*, *a human and a social phenomenon*" and as a result, we cannot deny the importance of *religious literacy* as an aspect of our basic knowledge. Because education about religion is a part of our '*Allgemeine Bildung*' (Jensen 2011, 137), this kind of education contributes to the education and upbringing of youngsters and can therefore be considered to be a *nonperfectionist good* that should be guaranteed by the state.

In general, this can be done in two ways. First, the state can choose to integrate education about religion in other school subjects (e.g. history, geography, literature), as is the actual case in France and in some American state schools. Another possibility is the organization of a separate and obligatory subject about religions in the basic curriculum. If the state chooses for this last option (which is, given the importance of religion in our society, preferable), several criteria must be fulfilled, so that the organization of this subject is truly neutral.

10.6 State Support for Education About Religion: Criteria

Because education about religion is substantially different from education into religion (the former is a *nonperfectionist good* and thus *required by justice*, while the latter is a *perfectionist good* and thus only *permitted by justice*), the criteria for the organization of this subject are substantially different from the previous criteria and I will make no difference here between primary and secondary criteria.

10.6.1 Education About Religion: The State's Responsibility

Different from education into religion, education about religion is not religiously engaged, but it is a religiously neutral or impartial subject. Based on a scientific attitude of principal openness toward all religious and philosophical traditions (the *religious studies approach*), the main aim of education about religion is the provision of objective, scientific, and thus religiously neutral, knowledge about religions:

> A first, basic prerequisite is that the Religious Education in question is not confessional. It cannot be religious religious education, i.e. religious instruction. It must be neutral teaching about religion and about religions, i.e. not just about the religion or confession of the majority, e.g. the majority state- or established religion. […] Religion Education must be over and above any religion, including the religions taught. It must be as neutral and impartial as at all possible, it must, to use a slightly different set of words, be methodically 'a- or transreligious' in its overall approach to the subject matter. All religions must be approached in the same manner, and a general analytical terminology must be developed and used for analysis and understanding of the religions and the religious phenomena, for analysis and understanding of differences and similarities between the religions. (Jensen 2011, 141)

This implies that the *state*, and not one or more (recognized) religious organizations, is responsible for the organization and implementation of the subject and that a cooperation between church and state is not needed. Education about religion should not be organized by the (recognized) religious organizations or institutions, but by the state: the Ministry of Education, and not the religious institutions, should be responsible for the teaching materials and syllabuses, the teaching aims and curricula, the organization of teacher training programs, and the supervision or inspection of the subject.

10.6.2 Teacher-Training and the Religious Studies Approach

If the state organizes education about religion, it is not only responsible for the organization and inspection of the subject, but the state should also be aware of the quality of the teacher training programs:

> […] The only way to secure a Religion Education that is 'objective, critical and pluralistic' is to educate the teachers at the mentioned Religious Studies departments, and thus make Religious Studies the scientific, academic, university basis of the Religion Education. (Jensen 2011, 142)

For several decades now, some European universities organize teacher training programs in which the religious studies approach and its related methodology are a central aim. This religious studies approach is different from the theological approach, which is still the main approach in most European universities when it comes to religious education (education into religion). In the religious studies approach, religions are not studied, examined or criticized from an insider's perspective, but religion, *as a phenomenon* (and not as 'a true phenomenon'), is studied in a scientific and objective manner (phenomenological approach):

> […] In contrast to 'theologies' (be they Christian, Muslim, Buddhist etc.), which study religion from an 'insider's perspective', the academic Study of Religions seeks to provide a 'critical, analytical and cross-cultural study of religion, past and present', not being a forum for 'confessional, apologetical, or other similar concerns'. […] Theologies and religious approaches can be part of the subject matter of obligatory integrative religious education, but they cannot be used as its general framework. (Alberts 2011, 112)

10.6.3 Education About Religion as a Neutral or Impartial Subject

When the liberal state organizes and supports education about religion as a separate subject, this subject should be compulsory for all students, notwithstanding their own religious affiliation. This is only possible if the state is responsible for the subject, if its content and methodology are in conformity with the religious studies approach and if the subject is taught "*in an objective*, *critical and pluralistic manner*". (Kjeldsen, Busk Madsen and Pedersen v. Denmark, Appl. no. 5095/71; 5920/72; 5926/72).

This is, however, not an easy task, as is shown by the 2007 court case *Folgerø and others v. Norway* (Appl. no. 15472/02). In this case, several parents of Norwegian students turned to the United Nations Human Rights Committee in 2004, and in 2007 they brought their case before the European Court of Human Rights. According to the parents, the mandatory character of the subject *kristendomskunsskap med religions- og livssynsorientering* (*KRL*), was not in conformity with art. 18 of the International Covenant on Civil and Political Rights and it was also inconsistent with the second article of the first protocol and art. 9 of the European Convention on Human Rights. Although KRL had been intended to be a nonconfessional, independent subject *about*, and not into, religion, according to the parents, it focused too much on the Christian tradition and its values. Moreover, the subject was taught from a Christian perspective – and therefore not from a neutral, scientific or objective perspective – which the parents experienced as a violation of their religious freedom. Another problem was that some (facultative) religious

practices were also part of the subject, which (again) was not in conformity with its (intended) neutral character. In 2004, the Human Rights Committee agreed with the parents' complaints:

> The Human Rights Committee finds that KRL, with its relation to the object clause of the Education Act, privileges Christianity over other religions and is not neutral and objective. Furthermore, it includes religious practice. It notes that the legal framework for KRL includes 'internal tensions or even contradictions'. (HRC 2004, §14.5)

Even though there was a possibility to get exemption from a part of the subject (i.e. the religious exercises or practices), the Human Rights Committee judged that this possibility was not feasible in practice. As said by the Committee, the subject "*does not ensure that education of religious knowledge and religious practice are separated in a way that makes the exemption scheme practicable*" (HRC 2004, §14.5).

After this judgment of the HRC, the Norwegian government adapted the clause for exemption, but this was not sufficient. In 2007, the ECHR criticized, in the case *Folgerø and others v. Norway*, the way KRL was organized. According to the European Court, the organization of this subject was not in accordance with the second article of the first protocol of the ECHR, in which the parental right to their children's education in conformity with their (the parents') own religious and philosophical convictions, is claimed. In addition, the Court criticized the qualitative, and not only the quantitative, priority position of Christianity in the subject. Finally, there was still a problem with the regulation for partial exemption because this regulation would lead to an infringement of the right to privacy. Summarized, we can say that KRL, a subject that was intended to educate about religions and non-religious worldviews in a critical, objective and pluralistic way and that aimed to stimulate tolerance and mutual respect, could not realize its own ambitions.

If the liberal state wants to organize an independent subject about religion, it should be aware of the *Folgerø* case and similar cases and it should guarantee that the required criteria for such a subject are always fulfilled. In the 2009 case *Appel-Irrgang and others v. Germany* (Appl. no. 45216/07) for instance, where protestant parents complained about a compulsory subject ethics in Berlin for students of grade 7–10 (Berlin School Act), the ECHR decided the case as inadmissible, arguing that according to the relevant provisions of the Berlin School Act, the ethics classes' aim was to examine fundamental questions of ethics independently of students' cultural, ethnic and religious origins and that the classes were therefore in conformity with the principles of pluralism and objectivity established by Article 2 of Protocol No. 1. This German case proves that impartial education about ethical and religious issues is not impossible, but that it is a very complicated and difficult – but therefore not less important – task.

10.7 Conclusion: State Support for Education About and into Religion?

Both education into and education about religion can be supported by the liberal state, as long as a number of criteria have been met. As regards education about religion, the organization of a separate subject, in which attention is not only given to religion, but also to philosophy, ethics and citizenship, is recommended in our contemporary liberal democracies, but an integrated approach, in which religious knowledge is integrated in other subjects, can also be defended, as long as the required aims can be realized.

With regard to education into religion, things are different. Because this kind of education is not *required*, but only *permitted* by justice, the state should, as a matter of principle, not be obliged to organize or to finance this kind of education. State support for confessional religious education is only permitted at citizens' request, and as long as several criteria have been met.

Finally, we notice that education about religion should not necessarily replace education into religion (which was the case in Denmark, Norway and Sweden), but that both forms of education can also co-exist. In Brandenburg (Germany) for instance, LER (*Lebensgestaltung-Ethik-Religionskunde*, a subject about religion and ethics) is organized, but next to this subject, students can also take confessional religious subjects (e.g. Protestantism and Catholicism).[8] Education into religion can thus, as a perfectionist good, be supported by the state, *in addition to* a subject about religion:

> […] Introducing religion education as recommended here does not prevent any religious group or institution and parent from providing their children with confessional religious education, i.e. religious instruction in their own religion. Neither does it prevent the state from also supporting, financially and structurally, such instruction. (Jensen 2011, 146)[9]

In practice, individual nations should, after democratic deliberation (and thus not by constitutional law), decide whether education into religion should be organized and/or supported by the state and if so, where the lessons should take place (in state schools, in faith-based schools and/or in faith-schools). The choice for a particular system should always be dependent on the social an historical tradition, the financial means of the nation, and – last but not least – the needs of the population for this kind of state-supported religious education.

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[8] Unfortunately, students can be exempted for *LER* and they can thus in theory take only confessional RE if they wish to do so (even though this seems not to be the usual case in practice).

[9] Different from Jensen (2011, 146), I do not agree that education into religion should *necessarily* take place outside the state school, e.g. "*in Sunday Schools*, *in Quranic schools*, *in private schools*, *at home etc.*". As long as students are not obliged to take confessional religious education, as long as this kind of religious education is only organized at parental request, and as long as it is not considered to be a regular subject, it can be organized in state schools as well.

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Part III
Church-State Models and Liberal Neutrality

Chapter 11
Church and State: Legal Framework and Typology

11.1 Introduction

A neutral state policy and active state support for religion is not a contradiction in terms. As long as several criteria have been met, a liberal state can (financially) support institutionalized religions, faith-based schools (and other faith-based organizations with a social benefit) and religious education classes.

In this part, I will have a close look at some particular church-state models to see whether they are in accordance with the liberal idea of neutrality and with the required criteria. After an elaboration of the international and European legal framework with regard to religion, a typology of different church-state models will be outlined in this chapter. Subsequently, a number of different church-state models will be examined in the next chapters: the system of *political secularism* in America and in France (Chap. 12); the Belgian, Italian and German systems of *active state support for religion* (Chap. 13); and the *established or state churches* in Greece and the UK (Chap. 14).

11.2 Freedom of Religion in an International Context: Human Rights Law and the European Convention on Human Rights (ECHR)

In a liberal, democratic state, the principles of freedom and equality are fundamental. In order to realize these principles, a certain separation between church and state is required. This separation has a double, reciprocal function: on one hand, the state is protected from illegitimate religious interference, and on the other, religions and religious people are protected against undesired state interference. Even though the separation between church and state seems evident in a liberal democracy, there is no consensus about the political and legal implementation of this principle: each

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nation has its own, particular church-state system that is characterized by contextual, national and historical features.

In some nations, like the United States, France and Turkey, there is a *strict* separation between church and state. But notwithstanding this similarity, this separation has different practical implications in these three nations. Other nations, like the UK, Greece and Denmark, still have a state church or an established church, but with different practical implementations. Finally, many European nations (e.g. Belgium, Austria, Italy, Spain, Germany) have a system of state financial support for one or several recognized religions, but none of these systems is similar. A uniform model of financial support for religion does not exist. As said by Temperman (2010, 1), "*one could readily claim that there are as many different systems in this respect as there are states*".

Apparently, human rights law does not favor or condemn particular church-state models, as long as our fundamental rights and freedoms (and particularly the right to freedom of thought, conscience and religion) are guaranteed. As stated in art. 18 of the UN International Covenant on Civil and Political Rights (ICCPR)[1]:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

How this right to freedom of thought, conscience and religion is guaranteed in practice – by means of a hands-off system, a system of active support for religion, or even by means of a state church or an established church – is, from a human rights perspective, less relevant. What is of importance is that our fundamental rights and freedoms (as established in the ICCPR) are respected. In this regard, the *General Comment No.22* of the Human Rights Committee (HRC)[2] is quite clear:

> The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles

[1] The ICCPR is the principal universal (UN) human rights covenant dealing with civil and political rights, including the right to freedom of religion or belief and fundamental non-discrimination norms and principles.

[2] The Human Rights Committee (HRC) was established to monitor member states' compliance with the ICCPR.

> 18 and 27,[3] nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26.[4]

Even though an established church or a state church is not absolutely condemned in the General Comments, it is clear that such a state entanglement with religion does raise concerns with respect to human rights compliance. Not surprisingly, the HRC has criticized several nations with a state church or an established church (and several other church-state policies as well) because they are not always (fully) in line with the principles of equality, religious freedom and non-discrimination. Nonetheless, as long as these regimes *are* in line with these principles and with other fundamental rights and freedoms, they can be allowed from a human rights perspective.

In a comparable way, the European Court of Human Rights (ECHR) gives each particular European nation a wide *margin of appreciation* when it comes to the freedom of religion. The Court is aware of the diversity and singularity of the various European nations and tries to reconcile this particularity with the universality of human rights. As said by the Court, "*there is no common European standard governing the financing of churches or religions*, *such questions being closely related to the history and traditions of each country*" (*Spampinato v. Italy*, Appl. no. 23123/04, 2007).

This wide margin of appreciation can lead to dissimilar decisions by the Court, as several cases have shown. In the 2005 European Court Case *Leyla Sahin v. Turkey* (Appl. no. 44774/98), for instance, the Court allowed the prohibition of Muslim women from wearing the headscarf in Turkish state universities: given the real danger of (political) Muslim fundamentalism, and given the Turkish strict separation of church and state, such a rule could be legitimated. This, however, does not imply that such a rule would in all nations and in all circumstances be legitimate. As the 2011 *Lautsi and others v. Italy* case (Appl. no. 30814/06) has shown, the existence of some religious symbols in the public sphere (here: state schools) can be legitimate in some contexts (even though the *Lautsi* case was, and is, quite contested). As long as national practices do not infringe on basic rights and freedoms, as guaranteed

[3] Art. 27 of the ICCPR reads:

> *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

[4] Art. 26 of the ICCPR reads:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

in the European Convention on Human Rights, and in particular with the principles of equality, non-discrimination and religious freedom, European nations can choose independently how they implement their church-state relations. As regards church-state policies, the next ECHR articles (and protocols) are thus fundamental:

ECHR, art. 9 (Freedom of thought, conscience and religion):

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

ECHR, art. 14 (Prohibition of discrimination)

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.

ECHR, art. 2, Protocol 1 (Right to education):

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Individual European nations are free to shape the relations between church and state in their own way, as long as this is always in line with European legislation (and thus also with human rights law). The fact that (some) religions are financially supported in some nations, while this is not the case in other nations, is in fact not a problem. As European and international human rights law and jurisprudence show, the separation of church and state is not the fundamental principle that should be safeguarded in a liberal democracy. This separation is only a *means* (and thus not an end in itself) to guarantee the freedom of religion for all citizens in a fair society that is characterized by reasonable pluralism. *Freedom and equality*, and not the separation of church and state, are the normative principles of a liberal state. What matters is thus not separation, state support or establishment as such, but the extent to which these policies advance other ideals, such as state neutrality, equality, fairness, autonomy and liberty. *How* these principles are effectively guaranteed – within a system of strict separation, a state or established church, or a policy of active state support for religion – seems from a legal perspective less relevant.

11.3 Church-State Models: Typology

In practice, each nation has its own, unique church-state model, and therefore it is impossible to make a typology that covers all church-state models in a perfect way. Nonetheless, based on several remarkable similarities and differences, we can try to construct a basic typology of different church-state models[5]:

Political or Totalitarian Atheism Atheism is the official state doctrine. The state is explicitly opposed to religion, and in particular to the idea that God exists. The state is not neutral or a-religious, but *anti*-religious. As a result, the freedom of religion is not guaranteed. Examples of political atheist nations are the former Soviet-Union, China, North Korea, and the French Jacobin regime after the French Revolution.

Political Secularism or a Strict Separation Between Church and State The principal idea of political secularism is that church and state are strictly separated. On one hand, there is no interference from the state in religious affairs, and on the other, there is no interference from religions in state affairs. At the financial level, this leads to a hands-off policy. Ahmed Kuru distinguishes two forms of political secularism:

Passive Secularism In this system, the state does not interfere with religion and vice versa, even though religion can have an important role in the public sphere and in *civil society*. With regard to financial aid, religions are left to the free market: "*Passive secularism demands that the state play a 'passive' role by allowing the public visibility of religion*" (Kuru 2009, 11). This model can be found in the United States.

Assertive Secularism In this system, the state does not interfere with religion and vice versa. Religions are excluded from the public sphere and hereto, the state implements an active anticlerical policy. "*Assertive secularism requires the state to play an 'assertive' role to exclude religion from the public sphere and confine it to the private domain*" (Kuru 2009, 11). Examples of assertive secularist nations are France and Turkey.

Active State Support for Religion In this system, the state does not only guarantee the freedom of religion in a passive way, but also in an active way, in particular by means of active state support for religion. In this model, we can broadly distinguish three different systems:

– a system of *fixed compulsory taxes*, in which public taxes are used for several (recognized) religions (e.g. Belgium)

[5] This typology is mainly based on Kuru (2009). For similar typologies and a profound analysis of different church-state models, see also Temperman (2010), Chaps. 1–6, and Ahdar and Leigh (2013), Chap. 4.

- a system of *mandatory religiously-oriented taxes* for one or more (recognized) religion(s) (e.g. Italy, Spain)
- a system of *voluntary religious taxes* for several (recognized) religions (e.g. Germany, Sweden since 2000)

State Church and Established Church In this model, there are close official bonds between the church and the state and the church has several privileges. These privileges can be merely symbolic (e.g. in the UK) or they can be financial and symbolic (e.g. in Greece, Finland and Denmark).

Religious State or Theocracy In a theocracy, a particular religion has a monopoly position and there is no separation between church and state. The state is ruled by religious law and religions different from the official religious state doctrine are forbidden and/or suppressed. The state is not neutral or a-religious, but *religious*. Actual examples of a theocracy or a system of 'full establishment' are Iran, Saudi-Arabia and Vatican City.

Because the freedom of religion is *ipso facto* not guaranteed in the first and the last system (totalitarian atheism and theocracy) and because these systems are not in accordance with the liberal principles of freedom, equality and neutrality, I will only focus on the three other models. However, as we will see, a *state church* or an *established church* is in fact also irreconcilable with the principles of equality and neutrality. But different from totalitarian and theocratic states, states with an established or a state church do not necessarily infringe on the principle of *religious freedom*. Accordingly, these regimes are *as such* not condemned by the ECHR or by human rights law (even though they are often blamed because different religions are not treated equally) and they still exist in several European (and non-European) nations. For that reason, I will also pay attention to this model.

In the next chapters, I will thus examine whether and how, respectively, the policies of political secularism (the US and France), active state support for religion (Belgium, Italy and Germany), and an established church or a state church (Greece and the UK) can be in accordance with the liberal idea of state neutrality.

The complexity of these church-state systems sometimes makes a brief discussion very difficult. Unfortunately, it will be impossible to discuss *all* the benefits and problems that exist in these church-state systems. Because of the limited scope of this book, I will not always be able to go into detail. Nonetheless, the items which I do discuss will give the reader a representative impression of the actual situation in the examined nations and church-state models.

In order to improve the situation where needed, I will give some recommendations. However, given the fact that these recommendations are mainly based on theoretical assumptions, they are merely provisional. In order to guarantee a reliable, efficient and realistic improvement of the church-state systems discussed, more empirical research, and in particular more sociological and economic research, is required.

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Chapter 12
Political Secularism: Passive and Assertive

12.1 Introduction

Notwithstanding some similarities between political secularism and political atheism, both models are fundamentally different. In the latter model, *atheism* (the conviction that God does not exist) is the state's official doctrine. This implies that the state is not neutral. In political secularism, by contrast, the state is (or is supposed to be) *indifferent* with regard to religion and this policy of indifference aims to guarantee the freedom of religion – a freedom that is not guaranteed in a system of political atheism. Contrary to political atheism, political secularism is thus not *anti*-religious, but *a*-religious: religious groups are not treated differently than their secular counterparts, but they are treated equally (even-handedly), i.e. via a hands-off policy.

The practical implication of this hands-off policy can vary. The most well-known examples of political secularism are the United States, France and Turkey, but there are many important differences between these three nations, and in particular between France and Turkey on one hand (assertive secularism), and the United States on the other (passive secularism).

Even though my focus in this book is mainly European, I will also have a look at the American church-state model. The reason for this is twofold. First, a focus on the United States in comparison with France can demonstrate significant differences between passive secularism on one hand, and assertive secularism on the other. Second, the American church-state model shows that a hands-off policy with regard to religion does not lead to an infringement of religious freedom and/or to a ban of religions in the public sphere. In the United States, religions are not financially supported by the state, but this does not lead to an infringement or restriction of religious freedom, but rather the opposite: it is precisely *because* religious freedom is essential, that the state is not allowed to interfere with religion, neither in a financial way, nor in a symbolic way. This leads to a very open policy, in which religious diversity is seen as a positive fact and in which religions can, and do, play an important role in the public sphere and in public areas.

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Such a policy is different from most church-state policies in Europe: in a number of European nations, we can observe an assertive, sometimes even an aggressive policy with regard to religious symbols (particularly with regard to the veil and other Islamic symbols) in the public sphere, and even in the public domain,[1] while these same nations quite often have a policy of active state financial support for one or more religions. On one hand, religions are thus actively supported by the state in order to guarantee the freedom of religion in a positive way, but on the other, the state acts in an assertive way with regard to religious symbols in the public sphere, which means that this same freedom of religion is not always guaranteed. In the United States, the situation is different, and so it is not surprising that the American church-state policy is often used as a point of reference in discussions about church-state policy in Europe.

12.2 Passive Secularism: The United States

12.2.1 Institutionalized Religion in the United States

When it comes to religion and state support for religion, there is in fact only one important legal clause in the American jurisdiction, and that is the First Amendment of the American Constitution[2]:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. (Am. Const., Am.i)

According to the *establishment clause* ('Congress shall make no law respecting an establishment of religion'), it is not allowed for the state to establish a (state) religion. For *separationists*, this means that the American state should lead a strict hands-off policy with regard to religion. Even though religions manifest themselves prominently in American civil society ('civil religion'), there should be a 'wall of separation' between church and state, which implies, among other things, that direct state financial support for religions is not allowed. *Accommodationists*, on the other hand, are convinced that state financial support for religion and public funding of faith-based schools are not opposed to the establishment clause, as long as these policies can be legitimated in neutral terms and "*have a secular legislative purpose*" (*Lemon v. Kurtzman 403 U.S. 602, 1971*). Until today, separationists and accommodationists still debate about the interpretation and implementation of the establishment clause.

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[1] Examples are the French ban on ostentatious religious symbols in state schools (2004) and a comparable ban in schools of the Flemish Community in Belgium (2013); the Swiss referendum against the construction of minarets (2009); the ban of religious symbols for teachers, lawyers and state-officials in some European countries/towns/municipalities; etc.

[2] The elaboration of the American model is mainly based on Eisgruber and Sager (2007), Nussbaum (2008), Greenawalt 2009a, b, Kuru (2009), 41–102, and Koppelman (2013).

Equally important as the establishment clause is the *free exercise clause* ('Congress shall make no law […] prohibiting the free exercise [of religion]'). According to this clause, the state should guarantee the freedom of religion for all citizens. Unlike in the ECHR (art. 9 §2), in the US Constitution there are no explicit constitutional restrictions on the freedom of religion. A comparison between American and European jurisprudence illustrates that, in cases where this right is in conflict with other fundamental rights and freedoms, the freedom of religion is often given more weight in the United States than it is in Europe.

In conformity with the separationist interpretation of the establishment clause, the actual American church-state policy is mainly characterized by *separation*: religious organizations or associations, faith-based schools and other faith-based institutes are not subsidized by the state, but they are financially independent. Like non-religious organizations, they take care of their buildings, the wages and education of their staff, and the organization of religious classes, in an autonomous and independent way. The state does not give them any direct financial support. Consequently, citizens do not have to pay taxes for a religion they do not adhere to and religious freedom is merely guaranteed in a *negative* and not in a positive, way:

> […] La liberté religieuse est toujours comprise comme une liberté négative. Elle n'impose à l'Etat que des obligations de ne pas faire, non des obligations de faire; elle pose des interdits, mais elle n'exige pas de prestations. Par là, elle se démarque de la tradition européenne, qui tend à mettre à la charge de l'Etat des devoirs pour garantir l'exercice effectif des libertés. (Zoller 2006, 32)

This American hands-off policy with regard to religion takes the liberal aim of neutrality very seriously into consideration. The state does not subsidize *any* religion directly[3] and as a result, all religions are treated *equally*. However, the fact that religion's entanglement with the state (and vice versa) is seen as unhealthy, does not mean that religion per se is seen as unhealthy. Indeed, it is remarkable that the American hands-off policy is not harmful for the vivacity of religion and for the existence of religious organizations in American society. With its extensive number of denominations, American society seems even much more religious than European society. In this regard, Zoller (2006, 21) appropriately speaks about "*neutralité de l'Etat et religiosité de la société*".

The American church-state model shows that religions are not disadvantaged and/or marginalized without state support, but rather the opposite: the freedom of religion can be maintained without financial aid. In addition, it is also remarkable that this hands-off policy does not lead to *indifference* with regard to religion. Particularly when it comes to religious accommodation in the working place, the maintenance of religious practices, and the wearing of religious symbols in the public sphere, the American church and state policy is in general quite open, inclusive, and admissible (see e.g. the accommodation of turbans in police and army uniforms in various states; the permission to use *peyote* and other illegal drugs in religious

[3] The only exception to this general rule is state financial support for chaplains in the army and in prisons. The rationale behind this policy is that religious freedom of prisoners, soldiers, officers, etc., is in practice not guaranteed without state support.

ceremonies in some states; the 1963 Supreme Court case *Sherbert v. Verner* [374 U.S. 398]; the US Supreme Court case *Wisconsin v. Yoder* [406 U.S. 205] of 1972; the *Religious Freedom Restauration Act* of 1993; and the *Religious Land Use and Institutionalized Persons Act* of 2000).

12.2.2 Institutionalized Religion in the United States: Evaluation

The American church-state system is not without any difficulties. The fact that religion (and religious freedom) is often exalted is sometimes problematic. The principles of religious freedom and non-establishment often sound as though they are considered to be almost *absolute*, and state control with regard to religious activities and religious affairs is almost impossible. Hence, we see, for example, excessive and unlawful activities in sectarian organizations, ongoing problems with the teaching of creationism in state (!) and private schools, and the famous case *Wisconsin v. Yoder*, in which members of the old order Amish community were exempted from general education from the age of 14 onwards.

Given the fact that almost all kinds of financing of religious organizations are unlawful, interference with internal religious affairs is nearly impossible in the United States. However, notwithstanding the importance of religious freedom, other rights and freedoms, e.g. the right to education and the freedom to choose how to live your own life, should also be protected by the state. But this protection seems to be the weak part of the American hands-off policy, as has been illustrated in justice William O. Douglas's dissenting opinion in *Wisconsin v. Yoder*:

> While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. It is the future of the students, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny.

12.2.3 Religion and Education in the United States

12.2.3.1 Faith-Based Schools

In Supreme Court decisions concerning faith-based schooling, we can observe the influence of both *separationists* and *accommodationists*. Accordingly, the Court considered quite different policy models as constitutional.

In *Everson v. Board of Education* (330 U.S. 1 [1947]) and in*Board of Education v. Allen* (392 U.S. 236 [1968]), the Court considered respectively the reimbursement for bus transport to private schools, and the free use of textbooks in private schools to be not unconstitutional because (1) the primary purpose of the statutes was to advance education in general, not to advance religious education in particular; (2) faith-based schools also perform the task of secular education, and so helping them does not automatically help religion; (3) there was no evidence of unconstitutional state involvement with religion; (4) there was no evidence of anyone being coerced into the practice of religion; (5) financial aid (by means of reimbursement or free lend of books) was offered to all students regardless of religion; and (6) the payments were made to parents and not to any religious institution.

This accommodationist approach ended in 1971 with the Court's decision in *Lemon v. Kurtzman* (403 U.S. 602, 1971). In this case, the Supreme Court decided that state financial support for teachers of regular courses in faith-based schools (representing 10 % of all schools in the United States) was not in accordance with the First Amendment. This decision was not only a precedent in the jurisdiction of the Supreme Court with regard to church and state relations, but it was also the basis of the so-called *Lemon test*, which says that state support for religious organizations is only legitimate under the following conditions:

> First, the statute must have a secular legislative purpose;
>
> Second, its principal or primary effect must be one that neither advances nor inhibits religion […]
>
> Finally, the statute must not foster "excessive government entanglement with religion".
>
> (Lemon v. Kurtzman, 403 U.S. 602, 1971)

Because the Supreme Court considered state support in this particular case not to be in conformity with these three principles, state support was not allowed. Before the Court developed this famous Lemon test, it decided in a similar way in *Engel v. Vitale* (370 U.S. 421, 1962) and in (374 U.S. 203, 1963) that, respectively, prayer moments and bible study are not allowed in state schools: "*The state cannot prescribe religious exercises as* '*curricular activities of students who are required by law to attend school*'" (*School District of Abington Township v. Schempp*, 224). In *Lee v. Weisman* (505 U.S. 579, 1992), the Court made a comparable decision: when state schools organize prayer moments or bible readings, there is not only discrimination between diverse religions, but in addition religious worldviews are privileged over non-religious worldviews.

In the last decades this strict hands-off policy has seemed to change a little. In*Mueller v. Allen* (463 U.S. 388, 1983) for instance, the Supreme Court decided that parents can get a tax reduction for enrollment in, study materials for, and transport cost to private (faith-based) schools. This decision seems to oppose the former decision in *Lemon v. Kurzmann* – apparently, the *Lemon test* has been applied in a new, different way. Even though in two subsequent cases concerning aid for faith-based schools (*School District of Grand Rapids v. Ball* [473 US. 373] and *Aguilar v. Felton* [473 U.S. 402]) in 1985 the Court confirmed – again – a *separationist* approach, a more accommodationist approach was made in several other cases such

as *Witters v. Washington Department of Services for the Blind* (474 U.S. 481, 1986) and *Zoberst v. Catalina Foothills School District* (509 U.S. 1, 1993). In *Witters*, subsidies for a blind student who wanted to become a priest were allowed, while subsidies for accommodation for a deaf student in a Roman Catholic school were allowed in *Zoberst*.

In the same spirit, the Supreme Court decided in *Mitchell v. Helms* (530 U.S. 793, 2000) that state subsidies for teaching materials in private (faith-based) schools are not unconstitutional as long as the teaching aims are secular. And for several years, some American states have had a system of school vouchers which can be used for private schools, faith-based schools included (cf. *Zelman v. Simmons-Harris*, 536 U.S. 639, 2002; *Bush v. Holmes*, 767 So. 2d 668, 2004, aff'd 919 So.2d 392, 2006). In some recent laws/provisions (*Charitable Choice*), financial aid for other faith-based institutes is also allowed under certain conditions, such as individual freedom of choice and the (therefore required) presence of sufficient secular alternatives.

12.2.3.2 Faith-Based Schools: Evaluation

Notwithstanding some recent evolutions with regard to indirect state support for faith-based schools, the general policy in the United States is in fact a hands-off policy: similar to institutionalized religion, faith-based schools, hospitals and other faith-based institutes are not subsidized by the state, even though they might contribute to the general benefit.

Unfortunately, this self-sufficiency of religious institutes often leads to social segregation: quite often, only wealthy citizens can pay for better (independent) hospitals or schools, which have mainly a religious signature. Even though a hands-off system seems *in theory* preferable because all religions (and non-religious worldviews) are treated equally, and because the religious freedom of all citizens is *de jure* guaranteed, the principles of freedom and equality are de facto not always guaranteed.

In this context, in some specific cases, an improvement can be found in a "*permissive approach*" (Greenawalt 2009b, 405) to a more open policy with regard to state support for faith-based schools and other faith-based institutions, because subsidizing faith-based schools (and other institutions) can enlarge the opportunities of all citizens (believers and non-believers). As long as this is indeed the case, and as long as non-believers are not worse off with such a permissive policy, we should welcome this system.

A second reason to welcome the American 'permissive approach' is that it meets the requirement of state neutrality because subsidies are mainly given to *citizens*, and not to particular religious organizations. As mentioned in *Witters*,

> […] a State may issue a paycheck to one of its employees, who may then donate all or part of that paycheck to a religious institution, all without constitutional barrier; and the State may do so even knowing that the employee so intends to dispose of his salary. (*Witters v. Washington Department of Services for the Blind*, 474 U.S. 481, 1986)

Once parents receive subsidies (or vouchers), they can use them for ends they choose themselves: a blind student can get subsidies to accommodate his blindness, and whether he chooses to become a priest or an engineer, is not the state's business. Similarly, parents with a low income can get school vouchers, and once they received these vouchers, they can either choose a state school or a private school. It is not the state's business to interrupt here.

Third, only 10 % of all American schools are private (mainly faith-based) schools, while 90 % are state schools. With this large number of state schools, there are enough secular alternatives for non-believers or believers of other faiths, and as a consequence the freedom of religion (and of education) can be guaranteed for all citizens.

Fourth, state support for faith-based schools can lead to a certain amount of state control of these schools. Today, private schools in the United States are not subsidized, and the state has no control over their curricula. As a result, the teaching of, e.g., creationism as a scientific theory is common in a number of these schools, and the state has no right to interfere here. In order to guarantee that all students get correct information and are prepared to a life as autonomous citizens, more state control – which is more easy if the state also subsidizes schools[4] – is required.

Finally, the American policy with regard to subsidies for faith-based schools seems to be quite fair or democratic because the state only supports faith-based schools indirectly and *at its citizens*' *request*. Different from e.g. the Dutch Constitution, and in conformity with the idea that faith-based schools are *permitted*, but not *required* by justice, the American Constitution does not prescribe whether or how private (faith-based) schools should be supported. Such a policy is in line with the idea of autonomy-based liberalism and its aim of state neutrality: it is up to citizens, and not to the state, to make democratic decisions about particular church-state policies. When a hands-off policy with regard to faith-based schools leads to de facto equal educational opportunities, such a policy can be maintained. If, however, such a hands-off policy leads to social segregation (because only wealthy parents can pay for faith-based schools) and to a related de facto privilege of the freedom of education and the positive freedom of religion of some (upper-class) parents or students, there is in fact no problem with active state support for faith-based schools as long as this support meets the required criteria.

Erroneously, the establishment clause was and is often used by separationists to defend a strict hands-off policy or a 'wall of separation' between church and state, and to forbid all kinds of state subsidies for faith-based schools (and other faith-based institutions). In fact, however, this clause does not forbid subsidies for faith-based schools (and other religious institutions), as long as the free exercise of religion is guaranteed, and as long as there is no establishment of religion (cf. *Lemon test*). The Constitution thus guarantees the freedom of religion, but it remains

[4] Unfortunately, we should not overestimate the possibility of state control. In some American states, where evangelicals are a dominant religious group with much political power, it is common for this religion to have an impact on the policy of education in state schools as well (and therefore also on the curriculum in these schools).

silent about *how* this freedom should be guaranteed in practice. This is, again, compatible with autonomy-based liberalism and state neutrality.

12.2.3.3 Religious Education

As one might expect, the American policy with regard to religious education in state schools is also a hands-off policy: education *into* religion is not subsidized, nor allowed in state schools. Religious facts can be taught in regular classes as academic, historic and/or cultural facts and it is also permitted to use religious texts in their literary and historical context (cf. *School District of Abington Township v. Schempp*, 374 U.S. 203 [1963], 225), but education into religion is not allowed in state schools.

Furthermore, the conscious elimination of regular, scientific items like evolution and/or the teaching of a religious theory like creationism under the guise of a scientific theory, is officially not allowed (any longer) in state schools (cf. *Epperson v. Arkansas*, 393 U.S. 97, 106, 1968; *Edwards v. Aquillard*, 482 U.S. 578, 1987). In other words, "teaching religion as *true* is unconstitutional", while "teaching *about* religion in various forms is constitutional" (Greenawalt 2009b, 134).

Given the importance of religious literacy, the education of facts about religion is not only 'constitutional', or permitted but it is in fact also required in our contemporary society. Therefore, it is praiseworthy that several American schools pay attention to religion as a phenomenon. However, in order to improve the religious literacy of all students, all regular American schools should pay attention to this kind of education, and this is particularly not the case for an important number of very conservative (mainly Evangelical) faith-based schools.

12.3 Assertive Secularism: France

12.3.1 Institutionalized Religion in France

Together with Turkey, France is the only European nation that is, in its Constitution, described as a 'secular' (laique) nation:[5]

> Const. Fr., Art. 1
>
> La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances. Son organisation est décentralisée.[6]

[5] The elaboration of the French model is mainly based on Basdevant-Gaudemet (2005) and Kuru (2009, 103–160).

[6] In the Turkish Constitution, we read:

> The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting

There are a lot of interpretations and translations of the word 'laïque' and many scholars, politicians and lawyers disagree about the meaning of this word.[7] For some of them, *laïcité* means that the state should ban religions from the public sphere as much as possible, so that this public sphere can be neutral: it is not allowed for the state to support faith-based schools; religious symbols are prohibited for state officers and for students in state schools; education into religion should not be subsidized by the state and/or organized in state schools. In this regard, Ahmed Kuru (2009, 106) meaningfully speaks about 'assertive secularism' or '*laïcité de combat*'. 'Passive secularists,' on the other hand, are convinced that religion should not be banned from the public sphere, and that laïcité should be understood as 'open secularism' ('*une laïcité ouverte*') or inclusive secularism ('*une laïcité inclusive*') (Beaubérot 2008). According to these passive secularists, the current French system of assertive secularism is not *a*-religious, but *anti*-religious, and we need '*une laïcisation de la laïcité*' (Jean-Paul Willaime, cited in Kuru 2009, 118) in order to make the French church-state model truly neutral.

The French model of *laïcité* is indebted to the French Enlightenment, and since 1905 the idea of *laïcité* is fixed in the *Loi du 9 décembre 1905 concernant la séparation des Eglises et de l'Etat*. In the first article of this law, the freedom of conscience and the freedom of religion ('*le libre exercise des cultes*') are fixed, but in the subsequent article, these freedoms are limited immediately:

> Loi 1905, art. 2, §1
>
> La République ne reconnaît, ne salarie ni ne subventionne aucun culte. En conséquence, à partir du 1er janvier qui suivra la promulgation de la présente loi, seront supprimées des budgets de l'Etat, des départements et des communes, toutes dépenses relatives à l'exercice des cultes. […]

Both the state's recognition of religion and direct state support for religion are prohibited in France. Even though religious groups that are registered as a *culte* can get tax reductions, the main earnings for religions are gifts and payments from believers. With regard to *direct* subsidies for institutionalized religions, the French policy is thus a hands-off policy. In the French system, religions are not privileged by the state, and for that reason the French hands-off policy can be labeled as neutral.

This hands-off policy is, however, not common in the region Alsace-Moselle and in the French transoceanic territories. For historical reasons, the region Alsace-Moselle is still regulated by the concordat of 1801 and its organic laws of 1802–1808. Consequently, there are four recognized religions in this region (Catholicism, Lutheranism, Calvinism and Judaism) and the state pays the wages of the Ministers of these religions. In state schools, education into religion is organized in the recognized religions, and the teachers for these subjects are paid by the state. Similarly, the French transoceanic territories are not governed by the French secular law of 1905.

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human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble. (Const. Rep. Turk., art. 2)

[7] For a detailed analysis of this concept, see e.g. Prelot (2006), Chélini-Pont (2006) and Beaubérot (2008).

In addition to these exceptions, it is remarkable that the Law of 1905 (art. 2, §2) allows subsidies for chaplains:

> Loi 1905, art. 2, §2
> […] Pourront toutefois être inscrites auxdits budgets les dépenses relatives à des services d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics tels que lycées, collèges, écoles, hospices, asiles et prisons. […].

The French state pays chaplains in prisons, hospitals, state schools, asylums and in the army, and in addition, it also pays the wages of some religious teachers in private schools (those who are not dependent on the *contrat simple* of *the Loi Debré* [1959]). Furthermore, the state pays for the restoration and maintenance of buildings used for religious liturgy and built before 1905, and finances the construction of new buildings for religious cults. In addition, registered '*associations cultuelles et diocésaines*' get several attractive tax benefits. Finally, private (mainly Catholic) schools are subsidized by the state if they meet several criteria and if they allow students of all religious traditions. The same regulations are used for faith-based hospitals and other care institutes with a religious signature. When these institutes with a public benefit meet several criteria of quality, they can get state subsidies on the basis of their public benefit or '*utilité publique*' (Basdevant-Gaudemet 2005, 168). Notwithstanding the explicit secular character of the French state, the French policy toward religion is thus not exclusively assertive, and a substantial amount of (indirect) state support is given for numerous religious institutes and organizations.

12.3.2 Institutionalized Religion in France: Evaluation

At first sight, indirect state subsidies for religious associations (*associations cultuelles*) seem quite fair, but if we look closer at the system, we observe several difficulties and inequalities. An important problem is that only *registered religious associations* can get indirect state support (tax reduction), but the criteria for recognition are not transparent: "*In practice*, *it is the judge* (*the Conseil d'Etat or the Cour de Cassation*) *which decides*, *case by case and avoiding giving a general definition which could be prayed in aid in other cases*" (Basdevant-Gaudemet 2005, 161–162). This is a problematic approach that needs improvement.

In addition, the French state wants to control (some) religions in a very authoritative way, which means that the principles of neutrality, freedom of religion and freedom of association, are not always guaranteed. Particularly the policy with regard to Islam is rather a policy of interference and control, in which the (institutional) freedom of religion is sometimes threatened. In 2002, the *Conseil Français du Culte Musulman* (CFCM) was, under state pressure, established as a mediator between the French state and diverse Islamic associations. This CFCM mediates, among other things, the construction of mosques and Islamic graveyards, ritual slaughter, halal-food, the appointment of Islamic chaplains, and the training of imams. With regard to this last item, the *Fondation pour les Oeuvres de l'Islam en*

France was also established at the state's request. This organization is responsible for the financing of mosques in France, and the French state hopes to diminish influence from abroad (particularly from Saoudi-Arabia and its Wahabism) with the establishment of this organization.

Since 1998, there is also a commission responsible for the observation of sects in France. Since then, 173 religious organizations (e.g. Jehovah Witnesses and scientology) are labeled as potentially dangerous, and state interference is, again, a current phenomenon, in spite of the strict separation of church and state and the secular character of France.

In line with these forms of state control, and after a long and controversial discussion, the French Lower House (National Assembly) voted by a large majority in support of a ban on ostentatious religious symbols in state schools. The resulting law (*Loi 2004*, *228 du 15 Mars 2004 concernant*, *en application du principe de laïcité*, *le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles*, *collèges et lycées publics*) forbids all ostentatious religious symbols in state schools, but the immediate reason for this law was the wearing of the veil, and it is clear that particularly female Muslim students are victimized with this rule. Even though there was a lot of protest against and controversy about this law, the French State did not have any problem with such a restrictive prohibition in which the freedom of religion is a contested issue.

12.3.3 Religion and Education in France

12.3.3.1 Faith-Based Schools

The freedom of education was explicitly mentioned in the French Constitution of 1848 (art. 9),[8] but in the revised Constitution of 1946 and the present Constitution of 1958, this freedom of education is not explicitly mentioned.[9] However, in two important cases, the Constitutional Court (*Conseil Constitutionnel*) judged that the

[8] This was the previous article (art. 9):

> L'enseignement est libre. La liberté d'enseignement s'exerce selon les conditions de capacité et de moralité déterminées par les lois, et sous la surveillance de l'Etat. Cette surveillance s'étend à tous les établissements d'éducation et d'enseignement, sans aucune exception.

[9] The preamble of 1946 reads:

> La Nation garantit l'égal accès de l'enfant et de l'adulte à l'instruction, à la formation professionnelle et à la culture. L'organisation de l'enseignement public gratuit et laïque à tous les degrés est un devoir de l'État.

The actual article 8 (Const. 1958) concerning education sounds as follows:

> L'éducation et la formation à l'environnement doivent contribuer à l'exercice des droits et devoirs définis par la présente Charte.

freedom of education is "*one of the fundamental principles*, *recognised by the laws of the Republic*" (Basdevant-Gaudemet 2005, 170).

As a result of this freedom of education, there are not only state schools in France, but there is also an important number of (subsidized) private schools – a number that counts for 13.5 % of all the schools and 17 % of the total number of students. Most of these private schools (about 90 %) are Catholic, but other religions also have the right to establish their own schools. Due to this even-handedness, there are also a number of Protestant, Jewish, Islamic, and non-confessional schools. Almost all these schools (97.9 % in September 2009) signed an agreement with the state (*contrat d'association* or *contrat simple*), which implies that the state pays the teachers in these schools if they have the required qualification, if these schools fulfill the official criteria and directives for education and if all students can attend them.

Furthermore, there are several faith-based schools without a state agreement. For these schools, the state only pays partial subsidies if they are in conformity with some basic, minimal conditions. State control and interference are limited here and admission policy can be discriminating on a religious basis.

Given the fact that all religions can establish their own schools, that substantially subsidized schools are accessible for all students, while partly subsidized schools can restrict access and be more rigorous, and given the fact that there are enough state schools as secular alternatives, we can conclude that the general French policy with regard to faith-based schools meets the required criteria of neutrality.

12.3.3.2 Religious Education

All French private schools are free to place confessional religious education on their curriculum. In schools with a *contrat d'association* or a *contrat simple*, this kind of education should never be compulsory and both adherents of other faiths and non-believers should always be admitted in these schools. Only in schools without a state contract can education into religion be organized as a regular and obligatory subject, and students can be refused there because of their religious convictions. This is in conformity with the criteria formulated above: all students should principally be able to be enrolled in subsidized faith-based schools, and in order to guarantee de facto freedom of education and freedom of religion, it is recommended (and in some situations even required) that education into religion is not an obligatory subject. Because most French schools are state schools, where religious education is not organized (with the region Alsace-Moselle as an important exemption), parents are free to choose a 'neutral' (nonreligious) school and both the freedom of religion and the freedom of education are guaranteed.

In state schools, all students get civic and moral education, organized by the state. In primary schools, students have free time on Wednesday, and parents can choose to enroll their children at that time in religious classes outside the school (cf. *Loi Ferry*, 28-03-1882). Similarly, religious education is not organized in secondary state schools, but students are free on Wednesday afternoon, having the time to take

religious classes outside the school if they or their parents wish to do so. This system is in line with the principle of liberal neutrality and the idea of democratic perfectionism: parents or students can choose to take religious lessons outside the school (or in faith-based schools), but they are not obliged to do this. Alternatively, they can also choose e.g. to take music lessons or drawing lessons (and thus other kinds of 'perfectionist education'), according to their preferences.

Finally, there have been for a few years, diverse initiatives to *teach about religion* in state schools. Several reports *(Rapport* Joutard 2001; *Rapport* Debray 2002) proved that the religious literacy of French students is quite low, while religion is a very important social phenomenon that cannot be ignored at school. In the aftermath of these reports, there has been a recent integration of religious topics in several regular subjects (e.g. history, geography and literature). As long as teachers deal with religion in an objective and pluralistic manner, the idea of liberal neutrality is guaranteed here. Moreover, given the importance of religion in our contemporary society, one can even argue that teaching about religion in regular schools is not only permitted, but also required by justice.

12.4 Political Secularism: Passive or Assertive?

Neither the French, nor the American Constitution fixes concrete measures with regard to state support for religion. Hence the ongoing debate between separationists and accommodationists in the United States, and between defenders of *laïcité ouverte* versus *laïcité de combat* in France. This constitutional openness is praiseworthy, but politicians, lawyers and other state officials should always be aware that both the (internal) freedom of religion of the majority and of minorities are equally protected. Particularly in France, where the state sometimes aims to control internal religious affairs and sometimes favors an anti-religious (and not an a-religious) public sphere, the principle of neutrality is not always taken into consideration.

In the United States, the current situation is different: the American state does not give financial aid to religion, and in line with this, it also leads a hands-off policy with regard to internal religious affairs, and with regard to religion in the public sphere. Accordingly, most Americans do not understand the French controversy about headscarves and other religious symbols in state schools or the prohibition for French state officials to wear religious symbols. In order to guarantee the freedom of religion, America is much more permissive with regard to the manifestation of these symbols or with regard to the maintenance of religious practices. To put it differently,

> […] whereas the attitude in the USA is that religion is a good thing but it is simply not the business of government, in France there is a tendency to actively and perhaps militantly maintain secularism. In France, religion is seen as a potential threat to the state and civil order […]. (Fox 2008, 138)

In theory, both the American and the French church-state systems are in accordance with autonomy-based liberalism and the idea of democratic perfectionism. In practice, however, the freedom of religion is not always protected in France, while this freedom is sometimes overprotected in the United States. Accordingly, the actual implementation of both church-state policies could be improved.

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Chapter 13
Active State Support for Religion

13.1 Introduction

In this chapter, several church-state systems in which the state actively subsidizes one or more religions will be examined. This support can be implemented in several ways: (1) the state can choose to spend a part of the general taxes to one or several (recognized) religions (e.g. Belgium); (2) citizens can pay religiously-oriented taxes for a recognized religion they prefer (e.g. Italy); or (3) citizens can pay voluntary taxes for a recognized religion they prefer (e.g. Germany).[1] In the next paragraphs, these three models of state support will be scrutinized.

13.2 Fixed Compulsory Taxes: Belgium

13.2.1 Institutionalized Religion in Belgium

Different from France and the United States, the separation between church and state is not explicitly mentioned in the Belgian Constitution.[2] The Belgian church-state regime is not characterized by *separationism* or *assertive secularism*, but by moderate secularism (Modood 2010, 5), accommodationism (Kuru 2009, 44) or "*active*, *supporting religious pluralism*, *resulting in an effective use of the freedom of religion*" (Mortier and Rigaux 2005–2006, 9).

Characteristic for the Belgian system is the combination of freedom and active support for religion. While art. 21 of the Belgian Constitution prohibits the state "*to*

[1] Besides, state support for religions is also common in most (but not all) countries with an established church or with a state church. This model will be elaborated in the next chapter.

[2] The elaboration of the Belgian church-state model is mainly based on Husson (2009) and Torfs (2005).

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intervene either in the appointment or in the installation of ministers of any religion whatsoever",[3] the positive and negative freedom of religion are respectively fixed in art. 19 and art. 20:

> Belg. Const., art. 19
>
> Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.
>
> Belg. Const., art. 20
>
> No one can be obliged to contribute in any way whatsoever to the acts and ceremonies of a religion or to observe its days of rest.

In order to guarantee this religious freedom, the Belgian state has chosen an active policy of support that is constitutionally fixed in art. 181:

> Belg. Const., art. 181
>
> § 1. The salaries and pensions of ministers of religion are paid for by the State; the amounts required are charged annually to the budget.
>
> § 2. The salaries and pensions of representatives of organizations recognized by the law as providing moral assistance according to a non-denominational philosophical concept are paid for by the State; the amounts required are charged annually to the budget.

Currently, six religions and one non-confessional worldview are recognized in Belgium: Roman Catholicism, Protestantism, Judaism, Anglicanism, Islam, Orthodox Christianity, and the non-confessional freethinkers. In order to be recognized, which is a condition for direct state support, five criteria must be fulfilled: (1) bringing together a relatively large number ("several tens of thousands") of adherents, (2) being structured in such a way that there is a representative body that can represent the religion in question in its relation with civil authorities, (3) having been present in the country for a fairly long period ("several decennia"), (4) presenting some level of social benefit, and (5) not encompassing any activity that is contrary to public order.[4]

Once recognized, religions (non-religious worldviews included) in Belgium get many privileges: the state pays the salaries and retirements of the clergy and of chaplains and nonconfessional moral consultants in hospitals and in the army; religious courses in state and private schools are financed by the state; recognized religions and worldviews get free broadcasting time on radio and television (in the French Community); and material goods and housing for the clergy are subsidized by the state.[5]

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[3] In full, article 21 reads:

> *The State does not have the right to intervene either in the appointment or in the installation of ministers of any religion whatsoever or to forbid these ministers from corresponding with their superiors, from publishing the acts of these superiors, but, in this latter case, normal responsibilities as regards the press and publishing apply.*
>
> *A civil wedding should always precede the blessing of the marriage, apart from the exceptions to be established by the law if needed.*

[4] Currently, these criteria are not formally written down, but they can be derived from some parliamentary questions on this issue and from existing legal practice.

[5] For recent financial statistics, see Sägesser and Schreiber 2010.

13.2.2 The Belgian Policy of Support: Evaluation

13.2.2.1 Benefits of the Belgian Policy of Support

Probably one of the main benefits of the Belgian church-state model is that it takes the freedom of religion into consideration in a positive way: with a system of active support, the state facilitates religious practice in a more substantial way than with a hands-off policy. Explained in more philosophical terms: by means of a policy of active state support, the number of religions as valuable options is facilitated, which means that the possibility to choose a particular religion (and to practice that religion) is guaranteed in a more substantial way than without such a system.

It is also noteworthy that the Belgian system of recognition is an open system where new recognitions are possible when some criteria have been met. As Husson (2009, 102) remarks, "*toute culte et toute communauté philosophique non confessionnelle peut demander sa reconnaissance*". Since the first Belgian Constitution in 1831, different worldviews have been recognized due to this open policy. Roman Catholicism, Protestantism and Judaism had already been recognized when Belgium became an independent nation (1830) and in 1835, the Anglican Church was also recognized. More than a hundred years later, the Belgian state recognized Islam in 1974, Orthodox Christianity in 1985, and the non-confessional free-thinkers in 1981/1993/2002 (gradual recognition). Recently, the Buddhists, a union of several Hindu associations, and the Syrian Orthodox Church have also requested recognition. Presently, the procedure for the recognition of Buddhism is in an advanced stage.

13.2.2.2 Objections to the Belgian Policy of Support

Notwithstanding the benefits of the Belgian church-state policy, there are also several objections to this policy. Some objections are directed to problems*within* the system, while other objections are more *fundamental* because they are addressed to the system itself.

Fundamental Objections One of the reasons for financing religions in Belgium is that they contribute to the social benefit and are thus to everyone's advantage.[6] In 1831, when the Belgian Constitution was created, this was probably the case, but it is not for granted that religions still have the same benefits as two centuries ago. In 2005/2006 and in 2009, a 'Commission of Wise Men' and a group of experts following up this Commission were asked by the government to evaluate the Belgian system of financing religions, but the presupposition that religions contribute to the social benefit was not questioned at all. Even though the Belgian religious landscape

[6] Another, historical, reason for state support is 'compensation' for the confiscated goods of the Catholic Church during the French pre-Napoleontic regime (1795–1799). Presently, the 'positive freedom' of religion and the possibility of state control over religions are also mentioned as justifications for state support.

changed a lot in the last decades, and even though religion has, unfortunately, shown its potential danger of fundamentalism and intolerance, the makers of these reports seemed to agree that religion still has a social benefit and that state subsidies are allowed *for that reason* (Mortier and Rigaux 2005–2006, 9; Magits et al. 2010, 17).[7]

This is, however, a false presupposition. In contemporary liberal societies, and thus also in Belgium, it seems that religion is not a *nonperfectionist good*, but a *perfectionist good* that is not to everyone's advantage and therefore not required by justice. Therefore, it is not up to the state to decide a priori that religion should be supported with collective tax money. Rather, citizens should democratically decide whether religions are valuable goods, and *if* they do, experts should decide whether state support is an efficient mechanism in order to guarantee equal access to this good and thus to autonomy.

This brings me to another, and related problem: the Belgian Constitution is very explicit when it comes to state support for religion, but this constitutional fixation is problematic. As Bonotti (2012) rightly argued, a constitution must regulate *fundamental matters* or *basic matters of justice*, like the fair distribution of primary goods. Because religion is not such a primary good, funding religions should not be a constitutional matter, but a matter of democratic deliberation.

My criticism to the Belgian system of church-financing is thus primarily a criticism to the false presupposition of this system (religion is to everyone's advantage) and to its constitutional fixation (the state is by constitutional law obliged to finance recognized religions). Therefore, a substantial revision (or elimination) of art. 181 of the Belgian Constitution, in which state support for religion is wrongly fixed as a constitutional issue, is recommended.

However, such an adaptation or elimination of art. 181 would not imply that state support for religion is no longer possible: *if* citizens consider religion to be a valuable option, and if state support is an efficient means in order to guarantee equal access to that option, this kind of support is still a legitimate possibility. If, however, citizens do not consider religion to be a valuable option, or if the free market mechanism and a fair distribution of nonperfectionist goods are sufficient in order to guarantee equal access to religion (and thus to autonomy), state support is no longer needed. Prior to the policy of support, there should be a democratic debate about the value of religion and a profound analysis about the efficiency of state support.

In 2013, a survey (Billiet et al. 2013) proved that 20 % of all Belgian citizens are indifferent about the issue of state support for religion, while 26 % are not in favor of support. A small majority of the Belgian population is still in favor of a system of state support, but mainly under the condition that subsidies are distributed in a fairer way: 15 % plead for an adaptation of the actual system, in line with the number of adherents of different beliefs (cf. Italian system) and in addition, 26 % prefer a system in which citizens can choose individually which religion/worldview they want to support (cf. German system). Only 13 % of the Belgian population defend a sta-

[7] Another noteworthy, but very pragmatic reason the Commission of Wise Men mentions for support, is the State's possibility *to control* recognized religions (cf. Mortier and Rigaux 2005–2006, 21).

tus quo of the actual system. This survey shows that an improvement of the system is necessary.

Let us now suppose, for the sake of the argument, that many Belgian citizens are in favor of state support for religion, and that state support is an efficient means in order to guarantee equal access to autonomy. Is the actual Belgian policy, under these circumstances, in accordance with the idea of liberal neutrality? Is it fair and just? Or is improvement required?

Actual Problems *Within* the Belgian Policy of Support Some citizens complain about the Belgian system because it would lead to an infringement of their religious freedom. However, a system of compulsory taxes does not necessarily lead to an infringement of the freedom of religion: as long as citizens still have the opportunity to adhere to a non-recognized religion and to practice that religion, there is, from a liberal perspective, no problem. The fact that for instance Sikhs and Jehovah's Witnesses are not recognized in Belgium does not imply that their freedom of religion would be infringed. Nonetheless, in order to make the system *fairer*, it is recommended to give citizens a *real voice* in the division of subsidies per religion, and/or to recognize more religions.

Some people also blame the Belgian system because recognized and non-recognized religions are not treated equally or even-handedly. Given the fact that only recognized worldviews get direct state support, this is indeed the case, but as long as every worldview has *equal opportunities* to get recognition and as long as subsidies are divided proportionally, the government does not violate the liberal principle of neutrality when it gives (more) privileges to recognized worldviews.

However, particularly with regard to these points, the Belgian system fails. First, guaranteeing equal opportunities for recognition seems difficult in Belgium because the actual criteria for recognition are not transparent and objective. As a consequence, de facto recognition is often a result of political lobby and ad hoc decisions. As mentioned in the Belgian reports concerning state funding for religion, criteria for recognition are not transparent enough: what is meant by "several tens of thousands"? Are 10,000 adherents enough to get recognition, or do we need more adherents? And is it reasonable to ask such high numerical requirements? According to Temperman (2010, 256) for instance, this is not the case:

> If a domestic law on civil associations allows, say, a minimum of two persons to establish a non-profit association, it might be considered unreasonable if religious organizations must meet higher minimum membership criteria. (Temperman 2010, 255)

And how should we interpret "several decennia"? Can a religion receive recognition when it has been present in the country for 10 years, or would 50 years be a better standard? Again, one could argue that such a criterion is unreasonable because it will automatically disadvantage newly established religions:

> Registration criteria that require the religion in question to exist in a state for a certain number of years are equally illegitimate. The Human Rights Committee has clarified that traditional and newly founded religions should be treated equally. (Temperman 2010, 258)

Given these unclear and unfair regulations, the criteria for recognition should be adapted. Not surprisingly, the Commission of Wise Men and its following-up Committee proposed more transparent criteria.

Also, the specific criterion of "being structured in such a way that there is a representative body that can represent the religion in question in its relation with civil authorities" is problematic. This criterion is based on the internal structure and the hierarchical organization of the Roman Catholic Church, for which the bishops are the traditional representatives. It is, however, impossible to export this structure to all the religions and worldviews in Belgium because many of them are less structured, or even unstructured. With this policy, the state damages the neutrality and equality principle because it favors a specific (i.e. Roman Catholic) organizational structure:

> If a state's predominant religion or church is automatically granted financial support yet other religious groups are to go through arduous procedures to reach that same level of legal recognition, the policy of allocation of financial benefits can hardly be considered to be 'based on objective criteria'. The same holds true, a fortiori, if religious association laws lay out illegitimate registration criteria that non-dominant or non-traditional religious communities can never meet. (Temperman 2010, 227)

It is thus not a surprise that the Belgian criteria for recognition, and particularly the criterion of being structured, caused difficulties for the Protestants, the Muslims and the Buddhists. The Muslim community for instance, was obliged by the Belgian government to create a representative structure (the Belgian Muslim Executive), and in order to do this, the government organized elections in 1998, and 2005. Even though some Muslim leaders opposed this idea of compulsory elections, and even though the participation and involvement of Muslims was meager, state intervention did not stop there: the Ministry of Justice did not only oblige diverse Muslim communities to organize themselves in a central assembly, but it also screened the elected candidates and decided that some of them were inconvenient. With this organization of elections and the screening of candidates, the state did not pay enough attention to the (weak) separation of church and state and to the principle of state neutrality: "*In setting up a procedure with a view to the institutionalisation of Islam in Belgium, the State authorities have undeniably played a decisive – and all but neutral – role*" (Foblets and Overbeeke 2002, 123).[8]

In addition, there is the problem that some religions are internally different, but that they are nevertheless recognized as one single religion. Sunna as well as Shi'a, for example, are both part of the recognized religion called Islam, although these two Islamic groups differ fundamentally. The same is true for many other Islamic traditions (e.g. Twelvers, Ismailis, Zaidis) and for Muslims with different ethnic

[8] Additionally, there were many other problems with state support for Islam. Even though Islam was recognized in 1974, there was no broadcasting time for this religion before 2011, the subject 'Islam' was (despite constitutional requirements) not (formally) introduced in state schools before 1978, and the first inspectors of this subject were not appointed before 2005. In addition, the recognition of Islamic communities does not go smoothly and many imams are not paid by the state (yet). (See e.g. Foblets and Overbeeke 2004 on this issue)

backgrounds. On the other hand, differences between several Christian denominations are clearly made: Roman Catholicism, Protestantism, Anglicanism, and Orthodox Christianity are recognized as separate religions. But even in this case, difficulties remain. The Protestant communities for instance, have been unified since 2003 in the Administrative Assembly of the Protestant Evangelical Religion (ARPEE), to which both the Belgian Union of the Protestant Church (VPKB) and the Federal Synod (FS) belong. However, since the different protestant churches within the Assembly are very diverse, this unification was not evident and some Protestant communities do not (want to) belong to the Administrative Assembly. In addition, several protestants do not agree with the way Protestantism is taught in state schools.[9]

Another problem is that the policy of support is not neutral once religions are recognized. Let me illustrate this with some examples. First, the wages of religious employeesare dependent on the worldview to which they belong, and not on objective criteria. A moral consultant belonging to nonconfessional humanism, for instance, earns more money than a Roman Catholic priest.

Second, subsidies for recognized worldviews are divided unfairly because they are based on artificially unequal criteria: the budget of the Roman Catholic Church is based on the number of inhabitants in each parish (and thus on the entire Belgian population) and not on the number of baptized or practicing people, while state subsidies for other worldviews are based on the number of adherents and other criteria. This difference leads to an unequal allocation of the budget, which is in favor of the Roman Catholic Church. Even though in the last decades the budget for the Roman Catholic Church has decreased, this particular Church still receives the largest share (85.8 % of the total budget for religions in 2008).

This expanded budget for Roman Catholicism no longer reflects sociological reality: in the last decades, the number of Catholic believers has decreased enormously, and far less than 10 % of the Belgian population are active Catholic churchgoers. We can conclude that, from a sociological perspective, it is no longer fair that the Catholic Church gets a favorable position as the *primus inter pares* or the "*first among equals*" (Torfs 2005, 15, 32). It is thus not a surprise that the United Nations Human Rights Committee condemned the Belgian church and state regime in 1998 because the principles of nondiscrimination, freedom of religion, and equality were not adequately fulfilled:

> The Committee notes that the procedures for recognizing religions and the rules for public funding of recognized religions raise problems under articles 18, 26 and 27 of the Covenant. (Concluding Observations of the Human Rights Committee, Belgium, U.N. Doc. CCPR/C/79/Add.99 [1998], nr.25)

[9] It is in this regard not a surprise that the first juridical claim to receive an exemption from religious education was made by Protestant parents. In the Sluijs-arrest (RVS nr. 25.326, May, 14, 1985), the Council of State decided that a certain student was to be exempted from religious education because his parents did not support any of the subjects offered, including Protestantism and nonconfessional ethics.

Additionally, the Commission of Wise Men (2005–2006) and the follow-up study group (2010) pleaded for more equality, objectivity, and transparency in the Belgian church-state system.

13.2.3 Religion and Education in Belgium

Because Belgium is a federal state, education is independently organized by the Flemish, the French and German Communities, and apparently, there are some differences between these Communities. In the subsequent paragraphs, I will mainly focus on Flanders, which is the largest Community in Belgium.

13.2.3.1 Faith-Based Schools

The Belgian state does not only guarantee the freedom of religion in a positive way, but the freedom of education, understood as parental freedom to choose a school and to establish schools according to their (religious) convictions, is also positively taken into consideration: when schools meet several criteria and follow a curriculum approved by the state, they can get state subsidies.

Due to historic circumstances, Catholic institutions in particular made use of the constitutional freedom of education, and as a result, 62 % of all primary and 75 % of all secondary schools in the Flemish Community are private – mainly Catholic – subsidized schools, with a similar percentage of students. In the French Community, there are 42.5 % primary and 61 % secondary private (mainly Catholic) schools.

Since 2008, all regular Flemish schools – state (or 'official') schools and private schools – are funded by the Flemish Community on an equal basis, except for some objective differences like transport for students and the organization of confessional religious education, which is more expensive in state schools (see Sect. 13.2.3.3). In the French and German Communities, private schools are also substantially subsidized by the state.

Since 2002, all Flemish subsidized schools (faith-based schools included) must be accessible for all students, whatever their religious conviction may be (*Flemish Decree on Equal Educational Opportunities*). Similarly, recognized schools (state and private) in the French and German Communities may not refuse students because of their religious affiliation.

13.2.3.2 De facto Versus De jure Freedom of Education

One of the benefits of the Belgian system is that there is no gap between rich or upper-class private schools on one hand, and poor private schools and/or state schools on the other. All schools – state as well as private – get substantial state support if they meet the required criteria, and in this regard the Belgian system of education is fair and even-handed.

However, given the large number of Catholic schools, and the recent tendencies of secularization and immigration, the freedom of religion and education are de facto not always guaranteed for all students. Even though a majority of the students in Catholic schools still confirm that they "are raised with Catholicism or Christianity", only 25 % affirm to believe, and 86 % admit that they seldom or never go to church (Pollefeyt et al. 2004, 258–9). Particularly the post 1960 generation (born between 1970 and 1984) and the youngest generation (born after 1984) are more and more secularized and 69 % of the youngest generation identify as non-religious or atheist (Dobbelaere et al. 2011). As a result of the large number of Catholic schools, many of these secularized students are enrolled in these faith-based schools, which are often chosen for practical reasons such as (perceived) quality of education, school climate, neighborhood, offered studies and image of the school.[10] Accordingly, the Catholic identity is for many parents, and even more for their children, not important any longer:

> Even within Catholic schools many of the students do not consider themselves Catholic anymore, even if they are baptized Catholics. Practicing students belong to the absolute minority even within their own schools. (Derroitte et al. 2014, 47–48)

These tendencies on one hand, and the large number of Catholic schools on the other, make that there are de facto no sufficient alternatives for those parents who do not want to send their child(ren) to a Catholic school, where Roman-Catholic education is a compulsory school subject. Even though the state provides transport for students to state schools in order to guarantee the freedom of education, it is not for granted that this is still sufficient today.

In the large cities, there is also the problem that many Muslims go to Catholic schools. In some of these schools, they even form a majority, but all these Muslims – like their non-religious co-students – have to take Roman Catholicism because Catholic schools do not allow exemptions for religious education.

As a response to these processes of religious diversification and secularization, the previous curriculum of Roman Catholicism was transformed in 1999. Since then, more attention is given to the reality of religious diversity, (the dialogue with) non-Christian traditions and inter-religious learning, and the Roman Catholic religion has been taught since then in a 'communicative' way. However, Catholic religious education is still denominational religous education, Christianity still has a 'priority position', the religious education teachers are still appointed by the Catholic Church, and other religious traditions are always seen through, and confronted with, the 'own' Catholic tradition. This (semi-)confessional and compulsory character of Roman Catholicism would be no problem if the number of Catholic schools were in proportion to the number of Catholic parents and/or students. In

[10] In 1997, the Flemish Government organized a small survey on this issue (*Voor elk wat wils*: *Schoolkeuze in basis-en secundair onderwijs*. (*Whatever you want*: *School Choice in Primary and Secondary Education*); Summary at http://www.ond.vlaanderen.be/obpwo/projecten/1997/9702/default.htm [accessed February, 26, 2015]). However, in order to get a more representative and actual view, a new, large scale survey is required.

Belgium, at the beginning of the twenty-first century, this is not the case, and therefore changes will be necessary.

In order to adjust the situation, the state should establish more state schools and/or a diversified range of private schools, so that real choice is not only de jure, but also de facto guaranteed. Ideally, the Belgian model should evolve into a model in which the number of state schools and private schools is adapted to the citizens' educational and religious needs.

In practice, however, this is not the most realistic solution. Particularly in Belgium, where Catholic schools have a lot of experience and expertise in education, most of these schools provide education of good quality. Besides, these schools are *principally* accessible for all students (notwithstanding their religious affiliation) and as a result, it can be counterproductive to cancel or diminish state support here.

In order to guarantee *real* freedom of education here (without an infringement of the parents' or students' freedom of religion), the government could decide to continue its policy of support, but only if supported private (Catholic) schools are not only de jure, but also de facto accessible for students with different religious convictions. Hereto, the state could require that the religious identity of these schools is interpreted in a very broad way (which is in fact already the case)[11] and that their religious activities (prayer, celebrations, and confessional religious education) are made optional.[12] Under these conditions, students with a different worldview can be enrolled in faith-based (Catholic) schools, without being obliged to participate in religious activities they do not endorse.

Additionally, Catholic schools can still make religious activities compulsory if they wish to, but the state should have the possibility to diminish or to abolish subsidies for these schools (and to use these subsidies for other, 'open' schools), in order to guarantee real freedom of education for all students. In other words, private schools should be free to defend a strict interpretation of loyalty to their pedagogical project if they wish to do so, but when this policy leads to a de facto undermining of religious and educational freedom (which is the actual situation in Belgium, particularly in large cities), subsidies could be restricted or even cancelled.

[11] Recently (2014), Catholic schools were by official instances labeled as 'dialogical schools', i.e. schools 'recognizing and valuing the religious diversity of its students, but at the same time giving the Christian identity a priority position'.

[12] Presently, liturgical activities such as prayer, celebrations, days of reflection and messes are no longer compulsory in *all* Catholic schools, even though they are still compulsory in several of these schools. Religious education, by contrast, is a compulsory subject in *all* Catholic schools and exemptions are not allowed.

13.2.3.3 Religious Education

In Belgium, both the right to education *and* to religious education are constitutionally fixed in art. 24. For our purposes, the first and third paragraphs of this article are particularly relevant:

> Belg. Const., art. 24
>
> § 1. Education is free; any preventative measure is forbidden; law or decree only governs the repression of offences.
>
> The Community offers free choice to parents.
>
> The Community organizes neutral education. Neutrality implies notably the respect of the philosophical, ideological or religious conceptions of parents and students.
>
> The schools organized by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognized religions and non-confessional moral teaching.
>
> § 3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education.
>
> All students of school age have the right to a moral or religious upbringing at the Community's expense.

The Belgian Constitution requires that all state schools offer education in the recognized religions and in non-confessional ethics. As a result, students in state schools can choose now between Roman Catholicism, Protestantism, Orthodox Christianity, Anglicanism,[13] Islam, Judaism, and non-confessional ethics.

All the religious subjects are autonomously organized and controlled by the religious instances, which means that they, and not the state, are responsible for the training and delegation of teachers and for the syllabuses. Even though some religious subjects (particularly Roman Catholicism and non-confessional ethics) take into account the fact of religious diversity in the classroom and pay attention to other religions and worldviews, religious education is still organized as *education into religion*.

In Flanders, non-confessional ethics is organized by the non-confessional organization of freethinkers and is thus also a non-neutral subject. Due to this non-neutral character, exemption for religious education and for non-confessional ethics is possible in Flanders. In the French and German Communities, where non-confessional ethics is organized by the state, exemption was, until very recently, not allowed. However, in a recent constitutional court case (*de Pascale*, 12-03-2015), this lack of exemption was criticized and from September 2015 onwards, exemptions in state schools are allowed in the French Community as well. In private schools, there is a legal possibility of exemption, but in practice¸ religious education (which is mainly Roman Catholic) is compulsory for all students attending these schools. This has important implications for the de facto freedom of education.

Finally, the third paragraph of art. 24 states that all students of school age have *the right to a moral or religious upbringing at the Community's expense*. From the beginning, connections have been made between this paragraph and the first paragraph, and thus it was seen as a justification for state financial support for religious

[13] Anglicanism is only offered in Flanders; not in the French and German speaking Communities.

education (education into religion) in state schools *and* private schools. In Flanders for instance, the decrees concerning education require that all schools must offer at least 2 h of religious education in their curriculum. Private schools are free to offer one or more recognized religions, non-confessional ethics and/or a subject called 'cultural views'. While most of these schools are Catholic, they almost all offer Roman Catholicism as a compulsory subject. As a result, 82 % of all Flemish students in secondary schools take Roman Catholicism: 74.5 % in private schools[14] and 7.5 % in state schools. In primary schools, we observe similar tendencies. Given the fact that the Belgian population (and particularly the youngest generation) is more and more secularized, this is an impressive number.

13.2.3.4 Religious Education in Belgium: Evaluation

Fundamental Objections The Belgian Constitution is very detailed when it comes to religion and education. Particularly the first paragraph of art. 24, in which the organization of recognized religions in state schools is fixed in a very detailed way, is problematic. This paragraph *requires* (and thus not only *permits*) that education into religion is organized in state schools ("schools organized by the public authorities") as a regular subject. This is not in line with the principles of neutrality and with the aims of a liberal democracy. Actually, the organization and funding of religious education should not be a constitutional matter, but it should be a matter of democratic debate: if citizens are in favor of religious education and of state support for religious education, and if support is an efficient means in order to guarantee equal access to this perfectionist good (and thus also to autonomy), it can be allowed (and even required). If this is not the case, there is no need for organizing and/or supporting religious education anyway. Belgian citizens probably were not opposed to education into religion in 1958, when the '*Schoolpact*' (this is an agreement between Catholics and Liberals in which recognition and state support for state schools *and* private [mainly Catholic] schools was guaranteed and in which state support for religious education classes was assured)[15] was signed, but to date there is no consensus about the value of education into religion (any longer). And even if there *would be* a consensus, the regulation of religious education should not be outlined in the Constitution, but should be a matter of democratic debate.

Furthermore, the third paragraph of art. 24 is additionally problematic because it states that all students of school age have a right to a moral or religious upbringing *at the Community's expense*. Again, such a specific (financial) measure should not be fixed in a Constitution, but should be the result of democratic debate and consensus: if citizens agree on state support for students' moral or religious upbringing,

[14] Because almost all secondary private schools in Flanders are Catholic, almost all students in these schools take Roman Catholicism.

[15] In 1988, the principles of the *Schoolpact* were implemented in the revised Belgian Constitution (art. 24).

and if support is an efficient means for guaranteeing this religious upbringing as a valuable option, a policy of support is allowed. If, however, the free market sufficiently guarantees a religious upbringing to parents or students who favor this, or if citizens consider confessional religious education not to be a valuable option (any longer), then there is no reason for support anyway.

Actual Problems *Within* the System Let us now suppose, for the sake of the argument, that there is a democratic consensus about the organization of religious education in state schools and in private schools and about state subsidies for this kind of confessional education. Would the Belgian system, in that case, be in line with the liberal principles of freedom and equality?

Following art. 24, §1, state schools must offer classes in all the recognized religions and in non-confessional ethics, but exemption is possible. At first sight, this seems a neutral policy: students who do not belong to a recognized religion and/or do not agree with the subject of non-confessional ethics, can be exempted. The religious freedom of all students is thus at least de jure guaranteed. De facto however, there are several problems.

First, exemption from religious education in state schools is only possible *at request*. The general rule, which is still a result of the *Schoolpact* of 1958, is that religious education is a regular subject, and that exemption is thus rather an *exception*. As a result, students with exemption are often seen as outsiders who are separated when other students get religious education. With such a policy, the state is not neutral, but favors religion (and non-confessional humanism) over non-religion. In order to solve this problem, religious education in state schools should be made facultative in an *explicit* way. As a minimum, religious subjects should be scheduled there at the beginning or at the end of the day, so that exempted students are not injured, but it would be better to offer an alternative subject for exemted students (this is what the French Community will do in the near future).

Another problem is that religious education is only organized in the *recognized* worldviews in state schools, and not in non-recognized religions or worldviews. This leads to another kind of inequality: even though more students adhere, e.g., to Buddhism than to Anglicanism, only Anglicanism is, as a recognized religion, organized in state schools and subsidized by the state.[16] Because adherents of non-recognized worldviews cannot make use of the constitutional right to moral/religious education at the community's expense in an active way, a form of unfairness and inequality appears here.

In order to solve this problem, and in order to solve the problem of exemption, some people plead for the introduction of a neutral subject about religion/philosophy/ethics in addition to the other religious subjects in state schools. In 2003, this proposal was discussed by the Flemish Council for Education (*Vlaamse*

[16] In 2009–2010, for example, only three students in Flemish secondary schools were enrolled in Anglicanism, which is a recognized religion state schools must offer, even if only one student or parent asks for this subject.

Onderwijsraad), but there was not enough support for it.[17] Another solution to improve the system is an expansion of the religious subjects. However, due to practical difficulties, it would be better in this case to opt for a system of school vouchers that can be used for religious education in state schools, in faith-based schools or in faith-schools. Within such a system, parents/students will receive vouchers which can be used for education in recognized or in non-recognized religions. Because there is no a priori exclusion of non-recognized religions within such a system, it guarantees more equality than the actual system.

A final problem is the far-going autonomy of religious instances with regard to religious education. As a result of this autonomy, teachers sometimes promulgate issues which oppose the principles of our liberal democracy, or teach religious theories (e.g. creationism) as a true scientific theory. More state control and interference is necessary if the state chooses to continue its support for education into religion.[18]

In addition, teachers of religious classes should get an adequate teacher-training that is controlled by the state. Particularly teachers of Islam should get extra attention here because their number increases while many of them do not speak the national languages and do not have the required pedagogical and didactical skills. Even though neither the Report Mortier and Rigaux, nor the Report Magits mentioned this problem, the last report pleaded for state-recognized schools in Islamic theology, where imams (and we can add here teachers in Islam as well) can get decent, adequate training.

13.3 Religiously-Oriented Taxes: Italy

13.3.1 Institutionalized Religion in Italy

The history of Italian church-state models is characterized by separation, state sovereignty and (internal) freedom of religion on one hand (liberal phase before Italy's union: 1860–1922); and a strong bond between church and state by means of

[17] See Verstegen 2002–2003.

[18] In this regard, it is noteworthy to mention the "Interreligiuos Competences" (Interlevensbeschouwelijke competenties). In 2010, the recognized worldviews took a common initiative for more co-operation, in order to stimulate interreligious dialogue and interreligious competences. In 2012, a draft text was signed by the religious organizations and in 2016, a new agreement of engagement was signed by the recognized religions and the general secretaries of the different state schools (Community schools; provincial, urban, and communal schools). Notwithstanding this initiative, the interreligious competences are still embedded in a segregated, pillarized RE model and it seems to be the case that this cooperation is mainly a strategy in order to keep the religious autonomy intact, and in order to counterbalance a general, state-organized subject *about* religion.

concordats on the other (fascist period: 1922–1943).[19] In the actual policy, which is fixed in the 1947 Constitution, the influence of both periods is visible:

> It. Const., art. 7
>
> §1 State and Catholic Church are, each within their own reign, independent and sovereign.
>
> §2 Their relationship is regulated by the Lateran pacts. Amendments to these pacts which are accepted by both parties do not require the procedure of constitutional amendments.
>
> It. Const., art. 8
>
> §1 Religious denominations are equally free before the law.
>
> §2 Denominations other than Catholicism have the right to organize themselves according to their own by-laws, provided they do not conflict with the Italian legal system.
>
> §3 Their relationship with the state is regulated by law, based on agreements with their representatives.

Until a few decades ago, the Italian church-state policy was governed by the Lateran Pacts of 1929, but in 1984, an Agreement between the State and the Catholic Church (*Accordi di Villa Madama*) was reached. With this Agreement and a number of subsequent special agreements, a number of outdated Lateran rules were eliminated and amended. The Catholic Church was no longer to be perceived as the State Church of Italy, even though this church still retains a priority position in the Italian church-state policy.

Today, the Italian state guarantees two kinds of subsidies for churches: on one hand there is *indirect* state support in the form of tax reductions for donating to religious organizations; and on the other, the state provides *direct* support for several recognized religions. This is the so-called system of *mandatory religiously-oriented taxes*: each citizen can choose to give 8‰ (*otto pro mile*) of his/her taxes on wages to (a) the Catholic Church, (b) other religious organizations which signed an agreement (*intesa*) with the Italian state, or (c) social state initiatives. In order to guarantee the citizens' privacy, this choice is made on the individual tax form.

The total amount of indirect taxes (i.e. taxes of citizens who have made no explicit choice on their tax form) is proportionally divided between the recognized religions[20] and social benefits. Because most citizens make no explicit choice on their tax form, the state earns more money from these implicit subsidies than from explicit (or chosen) subsidies.

In a former stadium, citizens could only choose between (a) the Catholic Church and (b) social benefits. Not surprisingly, other religious organizations also claimed their right to get direct state support and hereto, they signed an *intesa* or a bilateral contract between the state and representatives of religious organizations. Today, religions with such an *intesa* are: the Waldensians and Methodists (since 1984), the Italian Seventh Day Adventists (since 1986), the Italian Assemblies of God (since 1986), the Union of Jewish Communities (since 1987), the baptists and the

[19] The elaboration of the Italian system is mainly based on Ferrari (2005), Ventura (2006), Ercolessi (2008), and Astorri (2009).

[20] With the exception of the Italian Assemblies of God and the Waldensians, who do only accept direct support.

Lutheran-Evangelical Church of Italy (since 1995), the Italian Buddhist Union (since 2012), the Italian Hindu Union (since 2012), the Mormon Church (since 2012), the Italian Apostolic Church (since 2012) and the Orthodox Church (since 2012).

Recognized religions with an *intesa* have several other benefits in addition to the religiously-oriented taxes or *otto pro mile*: chaplains are designated in hospitals, prisons and the army; religious marriages are recognized and registered by civil law; and there are special arrangements for religious funerals. In addition, students belonging to a recognized religion can have a day-off on their main religious feasts.

Next to the religions with an *intesa*, several other religions are recognized by the state on the basis of unilateral laws. These religions receive certain indirect tax benefits, but they cannot claim the *otto pro mile*. Finally, there are also religions that are not recognized and do not receive any state support whatsoever.

13.3.2 The Italian Policy of Support: Evaluation

13.3.2.1 Benefits of the Italian System of Support

Like the Belgian system, the Italian church-state system takes the freedom of religion *actively* into account by financing a number of religions. Because citizens (and not the state) decide which religion to support, means are divided in a proportional way, and in this regard, the Italian church-state system is in accordance with autonomy-based liberalism, and in particular with the idea of democratic perfectionism.

Furthermore, citizens are *not obliged* to support any religion, but they can also choose to support the state or social benefit. This possibility to opt out is in accordance with the idea that religion is not a *nonperfectionist*, but a *perfectionist* good: different from the Belgian state, the Italian state does not consider religion to be a valuable option for *all* its citizens, but citizens are also able to opt out and support social benefits.

Another positive aspect is that religious diversity is positively taken into account, and that the system evolved to a more open system: in the previous Italian system, only the Catholic Church was subsidized, while in the current system diverse religions can sign an *intesa*. Very recently (in 2012), five new religions were officially recognized. Without a doubt, this is "*a step forward compared with the situation in Italy before 1984*" (Ferrari 2005, 223). The Italian system is thus, like the Belgian system, principally an open system that allows recognition of different religions over the years.

13.3.2.2 Objections to the Italian System of Support

Fundamental Objections The Italian church-state regime is legally fixed in the Italian Constitution and in the amended Lateran pacts. Whereas there is no constitutional amendment needed when both parties accept modifications to these pacts,

such a constitutional amendment is required when both parties disagree. Church-state affairs are thus not seen as ordinary legislative affairs, but as (quasi-)constitutional affairs. Even though amendments of the system are possible (the system was amended in 1984), the procedure for improvement and change should be more open and democratic.

Actual Problems *Within* the System Equally important are the problems that exist *within* the actual system. First, recognition often takes a very long time because religious groups do not have a say in the procedure to sign an *intesa*. This decision is made by the state. In 2007, the Jehovah's Witnesses, the Union of Buddhists, the Mormons ('Latter-Day Saints'), the Apostolic Church, the Orthodox Church of Constantinople, and the Hindus signed *intese*, but these were only ratified by the Italian Parliament in 2012, with exemption for the Jehovah's Witnesses, who are still waiting for this ratification. Also Soka Gakkai (Japanese Budhism) signed an intesa (in 2015), but this is not ratified yet. At this point, a more efficient system is required, so that recognition is at any time adapted to the needs of citizens and the religious groups to which they belong.

Another problem is the lack of transparency of the criteria for recognition. In the current system, there are no objective criteria for the state to decide what is considered to be a religion and what is not. As a result, many denominations

> […] are excluded from all forms of state funding, either because they cannot or do not want to come to such an agreement, or because their application has been rejected by the State which […] enjoys a large disactionary power freedom in the making of this decision. (Ferrari 2005, 224)

Due to a lack of clear criteria, recognition is often dependent on political lobby, and governmental abuse is not unusual.

A related problem is that each religion wanting to sign an *intesa* must be represented by *one single community*. Similar to the Belgian case, this is problematic for many religions, particularly for Islam, "*since the existence and the legal status of a single Islamic community is at present ambiguous*" (Musselli 2002, 31). In addition, the importance of stability and credibility of religious groups is often invoked by politicians as a condition for an *intesa*. Because this is a problem for the Muslim community, there is still no *intesa* between the Italian state and Islam. Given the important number of Muslims in Italy today *and* their wish to sign an *intesa*, this is problematic.

Another problem is that only *religious* groups can sign *intese*. Non-religious groups do not have a right to do this, and are thus not treated even-handedly. In 1997, the state refused to sign an *intesa* with the Union of Agnostic Atheists and Rationalists because this is not a religious organization. But this is unfair and not neutral: *if* the state chooses for an active policy of support for religions, it should take into account the religious convictions of all citizens, believers as well as non-believers, theists as well as atheists, Catholics as well as humanists, and the state should not favor religion over non-religion.

Finally, some citizens complain that they *have to pay* for a religion with an *intesa* or for the social benefit, even if they belong to a non-recognized religion. My answer to this objection is that such a system can be fair as long as the criteria for recognition are neutral, as long as citizens – and not the state – decide which religions (and other perfectionist goods) to recognize and to support, and as long as citizens are still free to adhere to and practice their own (non-recognized) religion. If citizens also have the possibility to opt out (to choose a non-religious organization) – which is actually the case in Italy – there is in fact no problem. It is thus not a surprise that the European Court of Human Rights declared the Italian system of church tax to be in conformity with the ECHR, and particularly with art. 9 and art. 14 (*Spampinato v. Italy*, 2007).

13.3.3 Religion and Education in Italy

13.3.3.1 Faith-Based Schools

In article 33, §3–4 of the Italian Constitution, the freedom of education is guaranteed, but this freedom does not necessarily involve state support for private schools:

> It. Const., art. 33:
>
> §3: Public and private bodies have the right to establish schools and educational institutes without financial obligations to the state.
>
> §4: The law defining rights and obligations of those private schools requesting recognition has to guarantee full liberty to them and equal treatment with students of public schools.

According to this article, the state is *not obliged* to subsidize private schools, even though this is a legitimate possibility. This is in conformity with the liberal idea that faith-based schools are *permitted*, but not required by justice. In Italy, private schools form a small minority and many of them are financially self-dependent. The reason why this number of (subsidized) faith-based schools is small no doubt lies in the organization of Roman Catholicism in state schools: the majority of Italians belong to the Catholic Church,[21] and they can receive a Roman Catholic education in the state schools. As a result, state-funded Catholic schools are not needed in order to satisfy the parental wish to educate their children in their own, Catholic tradition.

In this regard, the *Lautsi*-case (*Lautsi and others v. Italy*, Appl. No. 30814/06) is also significant: given the fact that a majority of Italians belong to the Catholic Church, Roman Catholicism is mainly seen as a cultural phenomenon. Hence the lawmaker's decision to allow crucifixes in state schools, as

[21] Even though only 30 % of the Italian population regularly takes part in Sunday mass, the majority is still baptized, most people (70 %) still marry in the Catholic Church and almost all funerals take place in the Catholic Church.

> […] a historical and cultural symbol, possessing on that account an 'identity-linked value' for the Italian people, in that it 'represent[ed] in a way the historical and cultural development characteristic of [Italy] and in general of the whole of Europe. (*Lautsi v. Italy*, §15)

This brings us to an important objection to the Italian system of church and state. As the *Lautsi* case shows, the Catholic Church still has a (symbolic) priority position within the Italian church-state system. In *Lautsi*, the Great Chamber argued that neither the right to a religious upbringing, nor the right to religious freedom and to freedom of conscience are threatened with the presence of crucifixes in state schools. However, as I argued, state schools should be open for *all* students, and this accessibility requires a neutral setting, without religious symbols in the classroom. As said by Temperman (2010, 282), "[*t*]*he state is arguably* […] *under an obligation to ensure that public schools uphold their public* (*non-denominational*) *character so that all who wish to attend may do so without obstacles or scruples*". Like many opponents of the judgment of the Great Chamber, I consider the crucifix not merely a cultural symbol, but a religious, and thus a non-neutral, symbol. The fact that a crucifix can be offensive for non-Christians is thus not the most important reason to forbid such a symbol in state schools. Rather, the main reason for such a prohibition is that the liberal state should be neutral with regard to all comprehensive doctrines, so that all citizens are treated equally.

13.3.3.2 Religious Education

In Article 9 of the 1985 convention between the Italian state and the Catholic Church, state support for Catholic religious education in state schools (universities excluded) is guaranteed. Because most Italians still adhere to Catholicism, it is not a surprise that this religion is organized in these schools. As long as citizens are in favor of this policy, and as long as non-believers have a real possibility to opt out, organizing Roman-Catholic education in state schools can be justified in order to guarantee equal access to this kind of education.

Nowadays, 90 % of all the students at state schools take part in Catholic religious education classes, which can be seen as an indication of a social consensus about the importance of this kind of education. In 1991, the Constitutional Court judged that religious education should be scheduled at the beginning or at the end of the day so that students can easily be exempted from these courses, without any practical problems (*Corte Const.*, *11-01-1991*, *n. 13*). This is also in line with the idea of liberal neutrality and democratic perfectionism, even though it would be better to consider confessional religious education principally not to be a regular subject in state schools.

In addition, all religions with an *intesa* can in principle organize religious classes in state schools if students, parents, or schools ask for these classes. At this point, all religions with an *intesa* are treated equally. There is, however, a kind of inequality when we look at state subsidies for religious education because they are only given to the Catholic Church and not to other religions with an *intesa*. Another

problem is that religions without an *intesa* cannot organize religious education in state schools. Despite the large number of Muslims in some schools, Islamic classes cannot (yet) be organized in state schools, while e.g. Seventh Day Advents (a smaller minority than the Muslim minority) are able to do this.

In order to make the system fairer, the Italian state should make the criteria for an *intesa* more objective, so that more religions can organize religious education in state schools. Another possibility is the disconnection of religious education from the *intesa* and from the official state school curriculum. In this case, *all* religions will be able to organize confessional education if they wish to do so and, under certain conditions, the state can also support this kind of education.

13.4 Voluntary Religious Taxes: Germany

13.4.1 Institutionalized Religion in Germany

The German Constitution does not handle explicitly the church-state relationship, but art. 140 of the actual German Constitution explicitly states that "the provisions of Articles 136, 137, 138, 139 and 141 of the German Constitution of 11 August 1919 [The Weimar Constitution] shall be an integral part of this Basic Law".[22] In art. 136 of this Weimar Constitution, the freedom of religion and the right to privacy with regard to religious convictions are claimed. Article 139 secures Sundays and recognized holidays as official days off, and art. 141 guarantees religious services and pastoral work in the army, in hospitals, in prisons, or in other public institutions, to the extent that a need exists for these services.

With regard to direct subsidies for institutionalized religion, art. 137–138 of the Weimar Constitution are of main importance. In art. 137, a state church is rejected, while the freedom of religious organizations is explicitly guaranteed in the same article:

> Weimar Const., art. 137, §1–3:
>
> Es besteht keine Staatskirche.
>
> Die Freiheit der Vereinigung zu Religionsgesellschaften wird gewährleistet. Der Zusammenschluss von Religionsgesellschaften innerhalb des Reichsgebiets unterliegt keinen Beschränkungen.
>
> Jede Religionsgesellschaft ordnet und verwaltet ihre Angelegenheiten selbständig innerhalb der Schranken des für alle geltenden Gesetzes. Sie verleiht ihre Ämter ohne Mitwirkung des Staates oder der bürgerlichen Gemeinde.

In this same article, the statute of religious organizations as legal public organizations ('*Körperschaft des öffentlichen Rechtes*') is fixed, and the criteria for recognition as a *Körperschaft des öffentlichen Rechtes* are explicated: in order to get this status, religious organizations must be durable in their statute and their number of

[22] The elaboration of the German system is mainly based on Robbers (2005, 2009) and Barker 2000.

adherents,[23] they must explicate a common religious conscience and a homogenous membership, and they must be loyal to the state. The seventh paragraph explicitly adds that non-confessional organizations are equated with religious (confessional) organizations:

> Weimar Const., art. 137 §7:
> Den Religionsgesellschaften werden die Vereinigungen gleichgestellt, die sich die gemeinschaftliche Pflege einer Weltanschauung zur Aufgabe machen.

In the previous paragraph, the German system of *Kirchensteuer* is fixed:

> Weimar Const., art. 137, §6:
> Die Religionsgesellschaften, welche Körperschaften des öffentlichen Rechtes sind, sind berechtigt, auf Grund der bürgerlichen Steuerlisten nach Maßgabe der landesrechtlichen Bestimmungen Steuern zu erheben.

Differing from the Italian system, *Kirchensteuer* is not a compulsory, but a voluntary tax. Only citizens belonging to a *Körperschaft des öffentlichen Rechtes* or a public law corporation have to pay *Kirchensteuer* – a tax of 8–9 % of taxes on personal income (wages and other sources of income) – for this particular religion. Citizens belonging to a religious organization that is no *Körperschaft des öffentlichen Rechtes*, or citizens who do not want to pay *Kirchensteuer*, are officially not members of that particular religious organization. In other words, only members of a particular religious community authorized to levy church tax are obliged to pay. Those desiring to be exempted of the tax may achieve that result by leaving that particular religious community.

The Roman Catholic Church and the Protestant Churches in Germany are the main *Körperschaften des öffentlichen Rechtes*, and about 80 % of their income comes from the *Kirchensteuer*. In addition, several smaller religious communities (e.g. the Jewish community, the Old-Catholic Community, the Greek and Russian Orthodox Churches) and a few 'philosophical' communities (e.g. *der Bund für Geistesfreiheit Bayern* and die *Freireligiöse Landesgemeinde Pfalz*) also make use of the system of *Kirchensteuer*. Some *Bundesländer* have also recognized as public law corporations some non-mainstream religions, including Christian Scientists, Jehovah's Witnesses, and the New Apostolic Church. In 2013, Hessen was the first *Bundesland* that recognized an Islamic community (the *Ahmadiyya Muslim Jamaat*) as a *Körperschaft des öffentlichen Rechtes*, but apart from that, there is no Islamic community recognized as a *Körperschaft des öffentlichen Rechtes*. As a result, most Muslim communities cannot make use of the system of *Kirchensteuer* (yet).

Next to *Kirchensteuer*, some religious communities (e.g. the Jewish, Protestant and Catholic community), also receive other forms of state support. This support (e.g. for their religious buildings) is given for historical (and not for religious) reasons and can thus be justified in a neutral way. Similarly, chaplains and moral consultants in prisons, the army and hospitals are subsidized by the state in order to

[23] This number of adherents is different in the diverse *Bundesländer*. In Nordrhein-Westfalen for example, a religious organization must have at least 40,000 adherents in order to be recognized as a *Körperschaft des öffentlichen Rechtes*.

guarantee citizens' de facto freedom of religion in these particular institutions. In addition, diverse *Religionsgemeinschaften* can get tax reductions, and the individual contribution for *Kirchensteuer* can be withheld from personal income taxes. Finally, several religious organizations have their own (gainful) enterprises (e.g. banks, restaurants, breweries), some local churches ask their members to pay (sometimes in addition to the *Kirchensteuer*) a financial contribution or '*Kirchgeld*' and most religious organizations also receive an important amount of gifts.

13.4.2 The German System of Support: Evaluation

13.4.2.1 Benefits of the German System of Support

In Germany, religion is considered to be a *perfectionist good* that should not be supported with collective money, but only with money of citizens who *choose* to pay. In fact, churches are thus to a large extent financially independent (like in the United States) and the state merely plays a formal, administrative role. Given the fact that this system does not lead to an actual decrease in the freedom of religion, and that the state treats all religions financially in the same way (at least when it comes to direct subsidies), the rationale behind this system is fair.

Notwithstanding this fairness, several problems arise. Apart from the *fundamental objection* that the actual church-state system (and thus also the system of *Kirchensteuer*) should not be fixed a priori in the Constitution (or in equivalent laws), several problems exist *within the system* itself.

13.4.2.2 Objections to the German System of Support

The main problem within the German system of church and state is, as in the Belgian and Italian systems, that the criteria for recognition as a *Körperschaft des öffentlichen Rechtes* are not objective. The criterion of a common religious conscience and a homogenous membership, for instance, takes its point of departure in the Protestant model of belief, and so is particularly difficult to obtain for Muslims. Similarly, the proof of durability is also tricky to provide. It requires proof of a stable and transparent organizational structure, but as the Belgian commotion about the Muslim executive, and several German court cases have shown, this is an almost impossible requirement for Muslims. As Jonker (2002, 40) remarks,

> [p]ressing Muslim community life in the mold of a democratically organized bureaucracy with boards, directors and expert committees cannot but produce severe changes in the traditional forms of bonding, which provokes uneasiness and withdrawal on the part of believers. The idea of a religious organization with a central representation is simply foreign to the majority of Muslims.

If the German system of *Kirchensteuer* wants to be principally open to all religions (and not only to some privileged religions as is now the case), there should be new, objective and transparent criteria for recognition.

But there is more. Muslims do not only struggle with their recognition as *Körperschaft des öffentlichen Rechtes*, but it is also very difficult for the Muslim community to get recognition as a *Religionsgemeinschaft*. This recognition is, however, important for Muslims (and for other religious groups) because it is a requirement for several tax reductions and for the organization of religious education as a regular subject. If the state wants to treat diverse religious organizations *equally*, which is a requirement in a neutral state, both the criteria for recognition as a *Körperschaft des öffentlichen Rechtes* and for recognition as a *Religionsgemeinschaft* should be more transparent and objective.

13.4.3 Religion and Education in Germany

As in Belgium, education in Germany is a regional responsibility. There is a federal Ministry of Education and Research, but besides, each *Bundesland* has its own Minister of Education. As a result, there are some regional educational differences, such as the organization of religious education and the number of faith-based schools. Therefore, it is not possible to speak about the German system as such, even though there are some important similarities between several German *Länder*.

13.4.3.1 Faith-Based Schools

Like many European nations, Germany has an important number of private (mainly faith-based) schools. When these schools fulfill several criteria, and when the quality of their education is at least as good as the quality of education in state schools, these schools get official state recognition and subsidies.[24] As the German Constitution states:

> German Const., art. 7, §4:
>
> Das Recht zur Errichtung von privaten Schulen wird gewährleistet. Private Schulen als Ersatz für öffentliche Schulen bedürfen der Genehmigung des Staates und unterstehen den Landesgesetzen. Die Genehmigung ist zu erteilen, wenn die privaten Schulen in ihren Lehrzielen und Einrichtungen sowie in der wissenschaftlichen Ausbildung ihrer Lehrkräfte

[24] There are extra criteria for private primary schools: these schools are only approved by the state when they contribute to "specific pedagogical needs" or when they are, at parental request, based on a particular religious or a non-religious worldview and when such a school does not exist yet in the municipality at hand:

> Eine private Volksschule ist nur zuzulassen, wenn die Unterrichtsverwaltung ein besonderes pädagogisches Interesse anerkennt oder, auf Antrag von Erziehungsberechtigten, wenn sie als Gemeinschaftsschule, als Bekenntnis- oder Weltanschauungsschule errichtet werden soll und eine öffentliche Volksschule dieser Art in der Gemeinde nicht besteht. (German Const., art. 7, §5)

> nicht hinter den öffentlichen Schulen zurückstehen und eine Sonderung der Schüler nach den Besitzverhältnissen der Eltern nicht gefördert wird. Die Genehmigung ist zu versagen, wenn die wirtschaftliche und rechtliche Stellung der Lehrkräfte nicht genügend gesichert ist.

In Germany, private (faith-based) schools form a minority and their number differs from *Bundesland* to *Bundesland*. Most of these schools are Catholic or Protestant, but there are also several Jewish, Islamic and Hindu schools. When the state subsidizes these schools, they must be principally accessible for all students.

Like state schools, private schools can offer religious education as a regular course. In practice, education into the particular faith of the faith-based school is compulsory for all students, and there are no exemptions. Similarly, participation in other religious activities (celebrations, liturgy, advent, prayer) is obligatory in many faith-based schools. In addition to these subsidized faith-based schools, there are also several non-subsidized faith-based schools in Germany, where state control is limited.

13.4.3.2 De facto Versus De jure Freedom of Education

At first sight, the compulsory character of faith-based activities and confessional religious education in faith-based schools does not seem to be a problem because these schools form a minority in Germany. If the number of faith-based schools is not higher than the number of students and/or parents who are in favor of this kind of faith-based schools, the freedom of education is not only de jure, but also de facto guaranteed. This is, however, not the case in all the German *Länder*. In Nordrhein-Westfalen for instance, 30 % of the primary schools are faith-based (mainly Catholic) schools, but this is not always in accordance with the number of Catholics in this region – particularly in large cities. As a result, more than 40 % of the students in Catholic schools in Nordrhein-Westfalen do not belong to the Catholic Church (any longer). Many students belong to another faith (mainly Islam), but Roman Catholicism is still a compulsory subject in these schools. In 75 cities and towns, a faith-based school is the only option because there is no neutral alternative.

In 2013, the father of a Muslim student went to the Court of Paderborn because he wanted to get his son, who was enrolled in a Catholic faith-based school, exempted from religious lessons. Even though the Court (*Verwaltungsgericht NRW* in Paderborn/Minden) decided in September 2013 in favor of the school, the judge concluded that denominational schools (*Bekenntnisschulen*) cannot dismiss students of another faith if there is no state school at a "reasonable distance" of the student's residence (maximum 2 h of traveling back and forth). In the Paderborn case, there was indeed a state school at a 'reasonable distance' (even though we can wonder how reasonable a total travel time of 2 h per day is for a young student) and for that reason, the court argued in favor of the school. If, however, there were no

state school at a reasonable distance, then the student's dismissal would probably have been deemed unjustified.[25]

This particular case shows that the actual situation needs improvement in some German regions. Here, I refer to the suggestions I made for the Belgian system: ideally, the number of faith-based schools should be in accordance with the number of students of that particular faith (and choosing these particular schools). For pragmatic reasons and as a transitory policy, faith-based schools can also make their religious subjects and religious activities optional and choose not to integrate religion into their regular curriculum. In that case, de facto freedom of education and of religion are still guaranteed. As said by the Muslim father in Paderborn:

> Wir könnten mit einer toleranten Bekenntnisschule sehr gut leben … einer Schule, an der Kinder zwar nach den Grundsätzen des katholischen Glaubens erzogen und unterrichtet werden, an der aber die religiöse Identität andersgläubiger und konfessionsloser Schüler geachtet wird. Diese Schüler sollten aber nicht ausgegrenzt und zu einem fremden Religionsunterricht gezwungen werden. (Der Spiegel online, 19-08-2013)[26]

Finally, it is remarkable that some religious activities (e.g. liturgy at Christmas or Easter) also take place in state schools, albeit as facultative activities. Even though state schools are officially neutral, the organization of Protestant and Catholic education in these schools and the organization of some religious activities of these particular faiths, threatens the neutrality constraint. At this point, there is in fact no difference between the presence of crucifixes in Italian state schools on one hand, and the organization of Protestant or Catholic activities (and no other religious or non-religious activities or celebrations) in German state schools on the other. In order to be as neutral as possible, state schools should not favor any religion, and religious worldviews should not be privileged above non-religious worldviews. At this point, the German system needs improvement.

13.4.3.3 Religious Education

According to the German Constitution, religious education in state schools is a regular subject (*ordentliches Lehrfach*)[27]:

> German Const., art. 7, § 2–3:
>
> Die Erziehungsberechtigten haben das Recht, über die Teilnahme des Kindes am Religionsunterricht zu bestimmen. Der Religionsunterricht ist in den öffentlichen Schulen mit Ausnahme der bekenntnisfreien Schulen ordentliches Lehrfach. Unbeschadet des staatlichen Aufsichtsrechtes wird der Religionsunterricht in Übereinstimmung mit den Grundsätzen der Religionsgemeinschaften erteilt. Kein Lehrer darf gegen seinen Willen verpflichtet werden, Religionsunterricht zu erteilen.

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[25] See *Urteil Verwaltungsgericht Minden*, *8 K 1719/13*, available at http://www.justiz.nrw.de/nrwe/ovgs/vg_minden/j2014/8_K_1719_13_Urteil_20140228.html (accessed 20-01-2015).

[26] http://www.spiegel.de/schulspiegel/bekenntnisschulen-muslimischer-junge-zum-religionsunterricht-a-917352.html (accessed 20-01-2015).

[27] Except for secular state schools, but they are exceptional (Avenarius 2006, 145).

The *content* of religious education subjects is very diverse. In most *Länder*, this is confessional religious education, mainly in the Protestant or the Catholic religion. Teachers of these subjects are paid and appointed by the state, but they need the religious authority's approval (*Beauftragung durch die Kirche*, or the *Missio canonica*) to teach a religious subject. The same religious authorities are responsible for syllabuses and curricular achievements. However, this responsibility does not entail full autonomy for religious education. Because the state allows and supports religious education in state schools, the state has also its say in this matter. Religious education is thus a *res mixta*: religious instances are responsible for the *content* of subjects, while the state is responsible for *formal* issues, like the requirement to use the official German language.

Legally, state schools are obliged to offer diverse religious courses when a minimal number (between six to eight students) of the same confession is reached. Children, parents and religious communities have "*a constitutional right to such educational services*" (Robbers 2005, 85). Accordingly, some state schools offer Jewish religious education, and in 2003, Buddhism was also introduced in several state schools.

Because Islam is in most *Länder* not recognized as a religious community (*Religionsgemeinschaft*), it is very difficult for Muslims to organize Islamic education as a regular subject or *ordentliches Lehrfach*. Not surprisingly, several *Länder* (e.g. Mecklenburg-Vorpommern, Thüringen, Sachsen-Anhalt and Sachsen) do not offer Islamic courses at all. Very recently, however, some initiatives have been taken by some *Länder* and as a result, Islamic education (*Islamischen Religionsunterricht*) is now offered in a number of state schools. In some *Länder* (e.g. Berlin, Nordrhein-Westfalen and Niedersachsen), Islam is offered in state schools as a *regular* course, while other *Länder* (e.g. Baden-Württemberg, Bayern, Hessen, Rheinland-Pfalz, Saarland) organize Islam as pilot projects and trials at individual schools.

It is also important to note that there are three important exceptions to the organization of confessional religious education in state schools: in Brandenburg, religious education is no longer confessional, but since 1996, a neutral course on life, ethics and religion (*LER*: *Lebensgestaltung – Ethik – Religionskunde*) is organized in state schools. In addition, the *Länder* Bremen and Hamburg organize semi-confessional, pluralistic, integrative religious education.[28] Even though this course is open and pluralistic and intended for students of different religious traditions, it is taught by Christian teachers who have been educated in theologian faculties (and thus not in faculties where religious studies are offered). Additionally, the Protestant Church has still a large say in the content of this course.

13.4.3.4 Religious Education in Germany: Evaluation

Fundamental Objections As in Belgium and Italy, the German state supports religious (confessional) education in state schools and in this way, the parental freedom to a religious upbringing is – at least when parents are in favor of this kind of educa-

[28] See Alberts 2007, 328–343 for a profound analysis.

tion – positively taken into account. However, the fact that religious education is, *by constitutional law*, a regular subject in state schools, is problematic. Education into religion is not *required by justice* and should not be protected in the Constitution, nor should it be organized in state schools without parental request. The Constitution should guarantee basic rights and freedoms, like the freedom of religion and the right to education. But *how* these rights and freedoms are protected and *how* education programs are developed, should always be dependent on the social, cultural and historical context of a particular nation.

Even though most German students are enrolled in Christian religious education classes, a survey of the University of Jena has shown that the majority of the German political parties (the CDU/SCU is the exception) wish to abolish religious classes in state schools.[29] At least this is an indication that there is no social consensus about the value or importance of religious education. Further sociological research is needed here, so that it can become clear whether German citizens are still in favor of state support for religious education or not. Based on this research – and not on archaic constitutional laws – the policy of religious education should be modified.

Problems *Within* the System Next to the aforementioned critics, there are several problems *within* the system of organizing religious education in Germany. First, religious education (*Religionsunterricht*) is in general not understood as a "*neutral presentation of religion*(*s*), *not a lecture in morals and ethics*, *but bound by a specific denominational creed*" (Avenarius 2006, 145). Due to this confessional character, parents (and students from the age of 13 onwards) can also choose to be exempted from religious education, and in several schools, they can also to take a neutral subject in ethics or philosophy. Because only 3 % of all the students ask for an exemption, some people argue that most German citizens are still in favor of confessional religious education in state schools. This is, however, an impetuous conclusion. The problem seems to be that not all schools offer a neutral course for exempted students. As a result, exempted students in these schools are often seen as outsiders (during the religious education classes they are set aside in a separate room or another classroom) and therefore they often 'choose' to take religious education, even if this is not in accordance with their own faith. At this point, there are remarkable similarities to the Flemish situation, and in Germany improvement also is needed.

Another problem is the de facto inequality of the system, particularly when the organization of Islamic classes is concerned: since the 1970s, several attempts have been undertaken to organize Islam as an *ordentliches Lehrfach* in state schools, but in spite of the constitutional right to organize this course and despite substantial social support for it, the course remains a disputed issue. Even though several *Länder* currently organize *Islamischen Religionsunterricht* as a regular subject in

[29] See in this regard: *Religionsunterricht*: *Nur bei CDU/CSU Rückhalt*, http://hpd.de/node/11767 (accessed 20-01-2015) and *Wissensportal zum deutschen Einigungsprozess*, *Projekt A3*: *Parlamentarische Eliten*, http://www.sfb580.uni-jena.de/typo3/287.0.html?&L=1&style=2 (accessed 04-06-2012).

state schools, this is not the case in all *Länder* and the organization does not always go smoothly.

The organization of *Islamischen Religionsunterricht* brings us to another problem, namely the lack of well-educated Islamic teachers. In order to solve this problem, a number of initiatives have been taken over the last years. In the 2000s, for instance, several chairs in Islamic theology were founded at diverse universities, and, in addition, there have been initiatives for lessons in didactics for Islam. When the state actively supports education into religion, these initiatives are indispensable.

Next to these problems with regard to *confessional* religious education, some problems concerning *non-confessional* religious education (education about religion) occur as well. In Bremen and Hamburg, for instance, religious education is no longer strictly confessional, but it has become a semi-confessional and integrative subject, which means that it is open to all students, whatever their religious affiliation may be. This is, however, an ambiguous situation: the subject is (like the subject Roman Catholicism in Belgium) neither strictly confessional, nor non-confessional, but something in between. Because the Protestant Church governs these integrative religious subjects, and because they are thus not neutral or impartial, exemptions are allowed. This is, however, not satisfying: if the state considers education *about* religion to be an important subject, this subject should be obligatory for all students, but this is only possible if the state organizes the subject and the required teacher training, without interference of religious organizations.

This is for instance the case in Brandenburg, where the state is responsible for the organization and content of the subject 'LER' (*Lebensgestaltung-Ethik-Religionskunde*). However, despite this impartial approach, the subject is not compulsory and confessional religious education is still possible for parents and/or students who are in favor of education into a particular religion. Without a doubt, this optional character of education into religion at parental request is in accordance with the idea of liberal neutrality and democratic perfectionism. But in our contemporary plural societies, it is also recommended to make education *about* religion compulsory in all schools, faith-based schools included. Education about religion is, as a subject that contributes to our personal development, "a must for a secular state" (Jensen 2008) and therefore, it should be obligatory in all schools, be it as a separate subject, or as a subject that is integrated in other subjects.

13.5 Liberal Neutrality and Active State Support for Religion: Evaluation

13.5.1 State Support for Institutionalized Religion

In order to facilitate religions as valuable options, and thus in order to guarantee equal access to autonomy, the state can, at request of its citizens, decide to support organized or institutionalized religions. This is possible in a system of fixed compulsory taxes, a system of religiously-oriented taxes, or a system of voluntary taxes

for religions. When the state wishes to maximally guarantee its citizens' freedom and equality, we recommend installing a system that takes into account the number of believers in a proportional way, and in which there is also the possibility to opt out and to support a non-religious purpose. Because the state can give neutral arguments for a policy of active state support for religions (facilitating religions as valuable options), active state support for religions and state neutrality are not necessarily a contradiction in terms: "*The crucial point is that the state can be actively involved in culture and religion without making judgments about their respective value*" (Pierik and van der Burg 2014, 508).

It appears, however, that in most cases of active state support the arrangement is in practice not truly neutral. One of the main reasons is that it is very difficult to create objective criteria for recognition and to organize mutual negotiation and cooperation between the state and religious organizations without imposing a particular organizational structure to these religious organizations. The Belgian, Italian and German governments have difficulties with the criteria for recognition, and particularly Muslims are injured by this lack of objective, transparent criteria. This results in an objectionable form of unfairness.

In addition, there is the problem of the special constitutional status of religion: today, in many states where religious institutions and/or organizations get financial support, religion is considered to be something special that needs state support for that reason. But this is a false presupposition. Moreover, if the state considers religion to be a constitutional anomaly, and if it grants religious organizations tax exemptions and financial support *because they are religious*, the state is not neutral because it favors religion over non-religion. Furthermore, state support is, as a general principle, not *required* in order to guarantee religious freedom. For this reason, this kind of support should not a priori be fixed in the Constitution.

Finally, there is the problem that, within a system of active support, the state must be able to decide whether a particular organization and/or praxis is religious or not, but this is very difficult, if not impossible:

> Legislation often includes the understandable attempt to define 'religion' or related terms ('sects', 'cults', 'traditional religion', etc.). There is no generally accepted definition for such terms in international law, and many states have had difficulty defining these terms. (Office for Democratic Institutions and Human Rights/Organization for Security and Co-operation in Europe, 2004, 4)

Similarly, Veit Bader (2007, 226) notes that "[*n*]*o liberal state can avoid* '*recognising*' *religions administratively and/or in legal or jurisprudential practice to a certain degree*", but this recognition seems to be very difficult in practice.[30]

In order to avoid these difficulties, the state should give religious and non-religious non-profit organizations the same legal status. Accordingly, religious institutions do not get state support *because they are religious*, but because they are 'valuable', non-profit organizations, comparable with other non-profit organizations. In this regard, Eisgruber and Sager (2007) speak about "equal liberty" and

[30] See for this problem also Ahdar and Leigh (2013, 139–155) and Greenawalt (2009a, 124–156) (Chap. 8: *What Counts as Religious*?).

Greenawalt (2009a, b) speaks about the "inclusive approach". In order to guarantee as much diversity and proportionality as possible, religious and non-religious non-profit organizations can be recognized on a more local level (and not necessarily on a national level), as suggested by Veit Bader (2007) in his "associative democracy".

13.5.2 Religion and Education

State support for institutionalized religion is often combined with state support for faith-based schools (and other faith-based institutes) and for religious education. When there is a democratic consensus about these kinds of support, and when support is an efficient means in order to guarantee equal access to autonomy and equal educational opportunities, these policies can be legitimate. Moreover, in certain circumstances, state support for faith-based schools (and for religious education) can facilitate de facto freedom of religion and of education, and it can even lead to more educational equality.

In practice, however, there are some important problems. In a large part of Belgium and in some German regions for instance, the number of Catholic schools is not in accordance with the number of students adhering to Catholicism (any longer). As a result, many students are enrolled in Catholic schools, even if this is not in accordance with their own religious convictions. Because (semi-)confessional religious education is often a regular and compulsory subject in these schools, the de facto freedom of education and freedom of religion are sometimes threatened.

In addition, the organization of religious activities (Germany), the organization of religious education as a *regular* subject (Belgium, Italy, Germany) and the display of religious symbols in state schools (Italy) prove that these schools are not always truly neutral. In order to improve this situation, religious symbols should not be exposed in state schools[31] and religious activities (prayer, liturgy, religious education) should be no part of the regular curriculum. At parental request, state schools can organize these activities, but only as *optional* activities, and only if opting out is a real possibility without exit cost. Nonetheless, in order to be as neutral as possible, it would be better to disconnect religious activities from state schools.

Under certain conditions, the state can decide to facilitate (and to subsidize) religious education, but again, some problems occur in practice. Most apparent are the state's refusal to recognize and subsidize courses in Islam (Germany, Italy), and the lack of well-educated teachers for such courses (Belgium, Germany).

[31] Here I refer to the *exposure* to religious symbols in state schools, as in the *Lautsi* case. This, however, does not necessarily imply that *wearing* religious symbols should not be allowed in state schools. As long as wearing these symbols does not lead to oppression, segregation or discrimination, students wearing them in fact present no problem. The situation for teachers, who have a particular pedagogical function in a neutral school, is more complex, as the ECHR case *Dahlab v. Switzerland* (Appl. no. 42393/98) shows.

13.5.3 Conclusion

In conclusion, we can say that a model of active state support for institutionalized religion, for religious education and for faith-based schools can be in accordance with autonomy-based liberalism, and particularly with the concept of democratic perfectionism. In practice, however, several problems and difficulties occur, and improvement is required in order to make the systems in the aforementioned nations truly fair and neutral.

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Chapter 14
State Church or Established Church

14.1 Introduction

In nations with a state church or an established church, official bonds between church and state are a priori fixed in constitutional or equivalent laws. For this reason, such a system is *intrinsically* not in conformity with the principles of autonomy-based liberalism and democratic or multicentered perfectionism: because (state support for) religion is not required by justice, the relationship between church and state should not be fixed in advance, but citizens should, in a democratic process, decide how church and state are (not) connected to each other, and whether or not the state subsidizes religion.

Notwithstanding this fundamental criticism at the address of countries with a state church, this policy can be found in a number of liberal democracies: Greece, Finland, Norway, Iceland, Denmark and the UK are European nations which currently have a state church or an established church, and, until very recently (2000), Sweden had a state church as well. In spite of the false theoretical presuppositions of this model, some scholars (e.g. Ahdar and Leigh 2005, Ch. 5) argue that 'weak' or 'mild' forms of establishment are not necessarily opposed to liberalism because they do not infringe on the principle of religious freedom. And this also seems to be the reason why these church-state policies are allowed by the UN Human Rights Committee, as long as they

> […] shall not result in any impairment of the enjoyment of any of the rights under the [International] Covenant [on Civil and Political Rights], including [the right to freedom of thought, conscience, and religion and the rights of members of ethnic, religious and linguistic minorities], nor in any discrimination against adherents to other religions or non-believers. (International Covenant on Civil and Political Rights, Comment nr.22, §9)

Similarly, the ECHR does not forbid a state church or an established church, as long as our basic rights and freedoms – particularly the freedom of religion – are not injured within such a system:

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> A State Church system cannot in itself be considered to violate Article 9 of the Convention. In fact, such a system exists in several Contracting States and existed already when the Convention was drafted and when they became parties to it. However, a State Church system must, in order to satisfy the requirements of Article 9, include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church. (*Darby vs. Sweden*, Appl. no. 11581/85, §45 [1990])

In the next paragraphs, two divergent models of a state church will be examined: the Greek model, where the Greek Orthodox Church has symbolic and financial privileges; and the British model, characterized by mere symbolic bonds between the Church of England (and of Scotland) and the state.

14.2 State Church with a Symbolic and a Financial Monopoly: Greece

14.2.1 Institutionalized Religion in Greece

According to the Greek Constitution (art. 3), the Eastern Orthodox Church is the *prevailing religion* in Greece[1]. This Church is autonomous or autocephalous, and it is not allowed to translate the text of the Holy Scripture into any language, without the Church's official permission:

> Gr. Const., art. 3:
>
> §1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.
>
> §2. The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.
>
> §3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople, is prohibited.

The 'prevailing' character of the Eastern Orthodox Church is visible in several symbolic aspects: the president and members of Parliament must take a religious oath, and the Greek national flag shows a cross on it. Furthermore, the Greek

[1] The elaboration of the Greek church-state model is mainly based on Papageorgiu and Papastathis (2006) and Papastathis (2005, 2009).

Orthodox Church has the legal status of a public person,[2] which implies that the Church and its non-governmental organizations do not only receive indirect state support (tax reduction), but also direct state support: churches and monasteries are subsidized; the state pays the wages and retirements of clergy, chaplains and teachers of religious education; theological faculties are subsidized; and the state is responsible for the health care and social welfare of the clergy.

Next to the 'prevailing' Greek Orthodox Church, there are many 'known' religions in Greece as well. These religions are defined as 'religions without a secret doctrine or cult', and they are recognized as organizations or associations under civil law. The most important known religions are the Real Orthodox Christians or the Adherents of the Old Calendar, Judaism, Islam, Catholicism, the Evangelical-Protestant Church, the Armenian Church and the Jehovah's Witnesses. As a known religion, they get indirect state support (tax benefit), but no direct state support. The religious freedom of these religions and of other (non-recognized) religions is guaranteed in the first paragraphs of the 13th article of the Greek Constitution:

> Gr. Const., art. 13:
> §1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.
> §2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited.
> […]

Even though the Greek Orthodox Church has, as the prevailing church, a privileged position, this should never lead to an infringement of the freedom of religion:

> Gr. Const., art. 5, §2:
> All persons living within the Greek territory shall enjoy full protection of their life, honor and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.

Besides, public "*offence against the Christian or any other known religion*" is prohibited, and the state can seizure newspapers if they contravene this law (Gr. Const., art. 14, §3a).

In Western Thrace, where Muslims form a substantial minority, Islam has a special status. In this region, Muslims have specific minority rights: sharia is recognized (but not required) as a legal system, state schools organize bi-lingual education (Greek and Turkish) and Islamic religious education is organized in these schools. Hereto, the Greek state appoints Islamic religious education teachers and Muftis and pays their wages.

[2] The Jewish communities and *ekaf* associations (three Islamic Muftis) in Western Thrace are also recognized as a legal public person.

14.2.2 The State Church in Greece: Evaluation

14.2.2.1 Benefits of the Greek State Church

Like the Belgian and the Italian church-state systems, the Greek system takes into account the freedom of religion in a positive way: the Greek Orthodox Church, to which the majority of Greek citizens belong, gets direct state support and diverse privileges, which means that Orthodox Christianity is accessible without excessive cost. In addition, Islam has several benefits in Western Thrace, where it is an important minority religion.

At first sight, this system seems to be in proportion with the sociological reality, and with the importance of the Greek Orthodox Church in society: today, the majority of Greek citizens (about 90 %) belong to the Greek Orthodox Church. Not surprisingly, this Church expresses traditional rites and functions as a symbol for national values and the Greek identity. Because the Greek Orthodox Church strengthens stability and cohesion in Greek society and is a valuable good for the majority of Greek citizens, state support for this Church can, from a liberal perspective, be legitimated. If members of the Greek Orthodox Church are, at the level of choosing between valuable options and thus at the level of autonomy, better off with a system of state support than without such a system, while at the same time non-members are not worse off, such a system of support can be preferred above a hands-off policy. It is therefore not a surprise "*that in the last three revisions of the Constitution* (*1985*, *2000*, *2007*), *the questions of church-state relations were not discussed in any way*" (Katakos 2008, 180).

The fact that the state uses *general taxes* to support the Greek Orthodox Church (and Islam), and that *all citizens* pay their contribution, does not lead to a violation of religious freedom, as long as citizens still have the opportunity to belong to and practice another religion, which is protected in art. 13, and as long as other religions can also get state support. However, particularly this last condition is problematic as we will see below.

14.2.2.2 Objections to the Greek State Church

Fundamental Objections Despite the benefits mentioned above, there are many problems within the Greek church-state model. The main problem is that this model, and particularly the priority position of the Greek Orthodox Church, is a priori fixed in the Constitution: the Orthodox Church of Greece, with "*our Lord Jesus Christ as its head*" is the "*prevailing religion*". In addition, some specific ecclesiastical and theological matters (e.g. the administration of the Orthodox Church of Greece; the prohibition to translate the Holy Scripture "*without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ in Constantinople*") are part of the Greek Constitution, but as a principle, they should not belong to a liberal Constitution which should only aim at guaranteeing citizens' basic rights and

liberties: even though the majority of Greek citizens belong to the Greek Orthodox Church and even though state support for this Church can, based on this social consensus, be justified, it is not *liberal* to fix these measures a priori. Given the fact that there is no *unanimous consensus* about the value of religion in general (religion is not *required* by justice) and of Greek Orthodox Christianity in particular, it is not allowed for a liberal state to fix support for this religion (or for any other religion) in advance. *If* citizens are in favor of support, and if support can facilitate equal access to autonomy in an efficient way, support is a legitimate possibility. But if support is not efficient in guaranteeing equal access to autonomy, or if there is no democratic consensus about state support for and/or about the value of the Greek Orthodox Church, it should be able to adapt the system in an easy way. Given the constitutional legislation, this is not the case now.

Problems Within the Actual System Let us now, forthe sake of the argument, suppose that support for religion is an efficient means in order to guarantee equal access to autonomy, and that there is a democratic consensus about this support. Is the current system in this case in accordance with the principles of neutrality, fairness and equality?

Because the majority of Greek citizens still belong to the Greek Orthodox Church, it is in fact not unfair that this Church (and in Western Thrace Islam as well) has a priority position when it comes to state support. However, such a system is only fair as long as this priority position, and the unequal division of subsidies, are based on objective criteria, and not on any value judgment of the state. In this regard, the Greek system fails because it is not neutral: by saying that the Greek Orthodox Church is the "*prevailing religion*", the state considers the Greek-Orthodox Church a priori to be special and thus better or more valuable than other religions. From a liberal perspective, this is problematic, and the Constitution needs to be revised here.

In addition, it is a pity that the Greek Orthodox Church is the only 'prevailing religion' and that there is *no principal openness* for other religions (with some Jewish communities and Islam in Western Thrace as an exemption) to get recognition and/or state support. As said by Fox (2008, 117), "[*a*]*lthough Article 13 of the constitution guarantees religious freedom*, *minority religions clearly have an inferior status in Greece*". The majority of Greek citizens still belong to the Greek Orthodox Church, but in addition, there are an important number of adherents of other faiths (about 10 % of the population), mainly Christians of the Old Calendar, Muslims, Protestants, Jehovah Witnesses, Catholics and Jews. Notwithstanding their religious affiliation, these citizens have to pay taxes for the Greek Orthodox Church, and there is no possibility to opt out or to contribute to their own religion (Muslims in Western Thrace are the only important exception). This *lack of a principal openness* to support diverse religions makes the Greek system unfair. Therefore, an adjustment of the Greek church-state model towards a more open system is required.

14.2.3 Religion and Education in Greece

A large majority of Greek schools are state schools. There are also several private (also faith-based) schools, but their number is very low. In order to get official recognition and state support, these schools are controlled by the Ministry of Culture, Education and Religious Affairs, which exercises a supervisory mandate over these private schools.[3]

More important in the Greek educational system however, are the state schools, in which the prevailing position of the Greek Orthodox Church is visible again. According to art. 16 §2 of the Greek Constitution,

> (e)ducation constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.

In order to develop the 'religious consciousness' of Greek students, state schools organize Greek Orthodox religious education. This is in line with an 'orthodox' or classic interpretation of art. 16. According to this interpretation, which is still used in the Greek jurisprudence, art. 16 must be read together with art. 3, in which the Greek Orthodox Church is established as the prevailing Church of Greece. In other words, education in Greek Orthodox Christianity is necessary for the development of students' religious conscience. Even though attention is also given to philosophical reflection and education about other religions and worldviews in the last years of secondary education, religious education in Greece is confessional and even catechetical.

There is, however, also another 'laic' interpretation of article 16 §2. According to this 'secular' interpretation, the state is responsible for the religious and moral upbringing of its students (cf. art. 24 §3 of the Belgian Constitution), but this does not necessarily imply that the state must organize Greek Orthodox religious education in state schools. As stated by Fortsakis and Velegrakis (2006, 245),

> [l]'article 16 par.2 de la Constitution devrait être considéré comme imposant soit un simple cours de présentation des religions ou des dogmes principaux ou encore des théories athées, pour permettre de choisir parmi eux, soit une instruction religieuse purement facultative.

According to this interpretation, a subject *about* religions and/or non-religious worldviews is also in accordance with the Greek Constitution.

[3] In the Constitution, we read: "*The conditions and terms for granting a license for the establishment and operation of schools not owned by the State*, *the supervision of such and the professional status of teaching personnel therein shall be specified by law*". (Gr. Const., *art. 16* §*8*).

14.2.4 Religion and Education in Greece: Evaluation

Until today, art. 16 is interpreted in an orthodox way and as a result, Greek state schools organize a one hour a week subject in confessional, Greek Orthodox religious education. This subject is a regular subject, but it is not compulsory for all students: students who do not belong to the Greek Orthodox Church can be exempted. This exemption is, however, not possible for the morning prayer in state schools. In order to guarantee silence and discipline at the beginning of the day, all students and teachers, whatever their religious affiliation may be, are obliged to participate in the Greek Orthodox morning prayer. Given the fact that state schools should be neutral and accessible for *all* students without an infringement of their freedom of religion, this is problematic.

As a principle, religious activities (including religious education) should not be organized as curricular/regular activities in state schools. But when a substantial number of students or parents is in favor of such activities (which can be expected in Greece because most parents and students belong to the Greek Orthodox Church), they can be organized in state schools. However, this should only be done at parental request, and as long as these activities are not part of the regular, compulsory school activities. In this case, students are not discriminated or hindered if they do not wish to participate. If there is enough social support for religious education in state schools, this kind of education can thus be organized in these schools, but the course in question should, at least, be scheduled at the beginning or at the end of the day, so that non-believers will not be hindered. In addition, other religions should also have the possibility to organize religious education (and other activities) in state schools if enough students or parents request this. Only in that case are diverse religions treated even-handedly.

This brings us to the concept of *multicultural* state schools in Greece. Since 1996 there have been several multicultural state schools where Greek Orthodoxy is not the prevailing religion: religious activities and education are adapted to the cultural and religious diversity of the students, which implies that, e.g., Islamic education or Jewish education can be organized (as an alternative for, or in addition to Orthodox Christianity), and that bilingual education is also possible. In order to establish such schools, a minimum amount of parents should request this, which is merely the case in some large cities. The choice for a system of *multicultural* state schools is more in line with justice as fairness than a system of *Orthodox* state schools because multicultural schools do not favor a particular religion. Due to this neutrality, multicultural schools are not only *de jure*, but also de facto open for all students.

In Western Thrace, where many (Turkish) Muslims live, the situation is different and more in line with the ideals of religious freedom and democratic perfectionism: in this region, Muslims can establish their own state schools, where Islam is taught and where subjects are taught in Greek and in Turkish.

Finally, it is noteworthy that the Greek state subsidizes Greek Orthodox theological faculties and training programs for Orthodox clergy. The Greek state also supports the '*Special School of Education for Muslims*', which is a state-founded institute that offers an official training for imams. If there is a democratic consensus about education in one or more particular religions (which seems to be the case in Greece), state support for these institutes is indeed highly recommended.

14.3 State Church with a Symbolic Privilege: United Kingdom

14.3.1 Institutionalized Religion in the UK

In the United Kingdom, there is no written constitution, but several documents, acts and traditions (e.g. Bill of Rights; Magna Charta; Human Rights Act) form the basis of British law.[4] According to this law, the Church of England is the official (established) Church of England, while the Church of Scotland is the national Church in Scotland: the English King or Queen must, as 'Supreme Governor of the Church of England' (*First Act of Supremacy* 1534 and *Second Act of Supremacy* 1559) be a Protestant or a member of the Anglican Church (*Act of Settlement* 1701); the Church of England and the Church of Scotland are the established official churches for state ceremonies of a religious nature; and the English head of the state is responsible for the appointment of Archbishops and Diocese bishops (since 1977, the Queen or King can only choose between bishops that are nominated by the Church, which proves that this ritual is merely symbolic). In addition, 26 of the 731 seats of the House of Lords (the upper house of the UK Parliament) are reserved for representatives of the Anglican Church.

In Northern Ireland and Wales, the Anglican Church was officially disestablished in 1871 and 1920, respectively, even though the Church in Wales maintains some essential characteristics of an established church and can therefore be labeled as semi-established.

Even though the Church of England and the Church of Scotland are established official churches, these churches do not obtain any special financial advantages from the state. Therefore, Hill (2009, 335) labels the British church-state model as a model of "*even-handed state neutrality*": all religions, the Churches of England and of Scotland included, are treated equally and are financially independent. In the UK, there is no system of direct state subsidies for religions, nor is there a system of religiously-oriented taxes or of *Kirchensteuer*.

Almost all religious organizations – the official churches included – are registered as charity organizations. Like non-religious charity organizations, they have a right to tax reduction and special tax benefits. Next to this tax exemption for charity

[4] The elaboration of the English church-state model is mainly based on McClean (2005) and Hill (2009).

organizations, the English state subsidizes religious buildings with an historical or architectural value. The justification for support is neutral because support is not given for a particular religion, but for the *historical or architectural value* of religious buildings.

In fact, there is only one kind of direct support for religion in the UK, and that is financial support for chaplains and moral consultants in hospitals, prisons and the army. As in many nations, the state pays the wages and retirements of these employees and state support can be legitimated here as a means to guarantee the de facto freedom of religion and worship in these particular institutions.

14.3.2 The State Church in the UK: Evaluation

Given the low financial impact of the State Church in the UK, many people do not complain about the system: the freedom of religion is guaranteed for all religions and citizens are not forced to pay for a religion they do not endorse. Even though the Anglican Church and the Church of Scotland have a *symbolic* privileged position, the freedom of religion and individual freedom of choice are guaranteed in the British church-state model, and there are in fact no substantial inequalities between members of the Anglican (and Scottish) Church and other citizens:

> […] Anglican establishment in England and Wales does not entail more than 'venial departures' from the principle of fair treatment of all citizens: members of the established church are not substantively advantaged over other citizens. (Laborde 2013, 80–81)

As a result, "[…] *institutional change – such as disestablishing the Church of England for example – is very low on the political agenda*" (Hill 2009, 336). The church-state model is at the financial level an example of even-handedness, and this is in line with the principles of justice as fairness and the freedom of religion.

However, at some points, the system is not wholly even-handed. For instance, in order to be recognized as a charity organization and get indirect subsidies via tax exemptions, (religious) organizations must be able to prove that they contribute to the social benefit (*public benefit test*) and meet several criteria. But when we look at the criteria for this recognition, we observe that criteria for religious organizations are different from those for nonreligious organizations. Therefore, the system is in the end not wholly even-handed, and it is thus not a surprise that the *British Humanist Association* pleads for the same *charity laws* for religious and non-religious organizations.

More important is the inequality at the symbolic level. The symbolic priority position of the Church of England and Scotland is in fact not in conformity with the principles of liberal neutrality because it makes these Churches more important (or more valuable) for the law than other religions. This privileged position is the result of history, but today, it is an anachronism that should be abandoned in order to make the church-state policy as neutral as possible. Hereto, the British state should abstain from some outdated laws and traditions and leave it up to citizens to decide how the freedom of religion should be guaranteed in practice.

14.3.3 Religion and Education in the UK (England)

The four regions of the UK (England, Wales, Scotland and Northern Ireland) have different arrangements for education, including religious education.[5] In the subsequent paragraphs, I will mainly focus on England, which is the biggest part of the UK, and has the highest population rate. In Scotland and Wales, we can observe quite similar practices and evolutions with regard to religion and education. In Northern Ireland, the churches' power and influence on religious education and on faith-based schools is, due to historical and political evolutions, quite stronger.

14.3.3.1 Faith-Based Schools

In England, there are many kinds of schools, and as a result, the educational system is complex and diversified: *community* (*county*) *schools* are established and fully subsidized by the state and are not based on any religious tradition, while *voluntary* and *foundation schools* are mainly faith-based. These schools are partly subsidized by the state if they follow the national curriculum.[6]

In theory, schools of diverse religious traditions can, as *voluntary schools*, make use of state subsidies. In practice, however, mainly the Anglican and the Catholic Churches established subsidized voluntary schools. Besides, there are also a few Jewish and Methodist voluntary schools. Diverse Muslim organizations have also claimed state subsidies for their own voluntary schools, but until some years ago, the state tactically refused this. As a result, there were in 2009 more than 120 Muslim schools in the UK, but only 8 of them were subsidized by the state. This is a very small number, particularly when we compare it with the figure for other subsidized faith-based schools: in 2004, the English state subsidized 4,716 Anglican schools, 2110 Catholic schools, 32 Jewish schools and 28 Methodist schools. In addition, several small religious groups also received subsidies for their own schools (e.g. Seventh Day Adventists, Sikhs, Greek Orthodox Christians) and there are a number of subsidized *joint-faith schools* as well.

14.3.3.2 Faith-Based Schools: Evaluation

In the UK, about 25 % of all the schools are private, mainly Anglican and Catholic, schools. Most of them are partially subsidized by the state, but there is also an important number of independent, non-subsidized schools, which are attended by approximately 7 % of all students in the UK and which often have a selective admission policy.

[5] The next paragraphs are mainly based on Jackson and O'Grady (2007) and Cush (2011).

[6] The amount of state subsidies is different for voluntary controlled schools, voluntary aided schools and foundation schools.

From a theoretical perspective, this is all in conformity with the principles of justice as fairness and liberal neutrality: faith-based schools can get subsidies if they want this, and if they meet several criteria, but they can also refuse subsidies, refuse students, and defend a more rigid religious ethos. In order to guarantee the freedom of religion and the freedom of education for all, subsidized faith-based schools are principally accessible for all students and in addition, there are enough secular alternatives.

However, when we take a closer look at the English educational system, some important problems occur. First, several faith-based schools are in practice upper-class (Christian) schools. Because the state does not substantially subsidize these schools, or because it does not subsidize them at all, only wealthy parents can pay for these schools, which leads in practice to social segregation. In order to change things here, the quality of community schools should at least be the same as the quality of faith-based schools, but this is, in practice, not easy to realize.

Another problem is the small number of state subsidized Islamic schools. Due to this small number, less than 0.5 % of Muslim students are enrolled in a subsidized Islamic school. Compared with adherents of other faiths (particularly Anglicans and Catholics), this is a very small number, and in order to make the system fairer, the number of subsidized faith-based schools should be adjusted to the number of adherents of that particular faith.

Because only a small number of Muslim schools are subsidized, most Muslim schools are *independent*. As a result, they are not bound by the national curriculum and they are also free in the organization of their religious education classes. Eighty percent of all independent schools (which are mainly Muslim schools and evangelical schools) are controlled by the *Independent Schools Council* (ISC),[7] which is an organization that co-operates with the state. However, there are also many independent schools that do not work with the ISC, but are *fully independent*. They have their own, uncontrolled curriculum, raising the possibility that the offered education would not contribute to the development of students into critical, autonomous citizens. In addition, these schools are controversial because they are often considered to be sources of segregation and religious fundamentalism. This is also a reason for giving more state subsidies to Islamic schools, at least if they meet the required criteria. In the last few years, the English government seems to be more permissive with regard to subsidies for Muslim schools, but the future policy remains a question.

Unfortunately, the fact that some students do not receive an adequate and qualitative formation cannot only be blamed on the independent Muslim schools. An even more important number of independent schools are the very conservative evangelical schools where, e.g., Darwinism is replaced by creationism; the Bible is uncritically read and studied; ethical and social issues like euthanasia, abortion and homosexuality are only approached from very conservative and dogmatic perspectives; and critical thought is not encouraged in students. In short, these schools do not prepare youngsters for a future life in our liberal society, and for that reason, they should not be allowed by the state as providers of *regular education*. By refusing subsidies, the

[7] http://www.isc.co.uk/ (accessed 20-01-2015).

English state does show its disapproval of these schools, but this is in fact not sufficient. Regrettably, it seems very difficult for the state to prepare *all* youngsters to a minimal extent for a future life in society without infringing upon parental rights, children's rights, the freedom of religion and the freedom of education.

14.3.3.3 Religious Education and Religious Activities

Religious Education The organization of religious education in England and Wales is mainly fixed in the 1988 *Education Reform Act* (the revised 1944 *Education Act*). In this Act, a national curriculum was developed, with an exemption for *multifaith religious education*, which is still organized and controlled by local authorities. After ongoing debates about the format and content of this subject, a compromise was reached,

> […] giving some emphasis to Christianity while nonetheless containing a sufficient degree of flexibility to meet the interests of other faiths and religious groups, particularly in schools where a substantial number of students came from ethnic minority backgrounds (Meredith 2006, 160).

This means, in practice, that the syllabuses for religious education in state schools and in substantially subsidized faith-based schools "*reflect the fact that the religious traditions of Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Britain*" (*Education Reform Act*, 1988, s.8[3]). This emphasis on Christianity is the main reason why exemptions for multifaith religious education are allowed.

In 1998 and 2002, the clauses of the *Education Reform Act* were mainly adapted in the *School Standards and Framework Act* (*1998*) and in the new *Education Reform Act* (*2002*). Religious education is still considered to be a regular subject, but its content is controlled and determined by the LEAs or *Local EducationAuthorities*. Members of these LEAs are teachers, representatives of the *Church of England*, representatives of other denominations, and local politicians. As a result, the syllabuses for *religious education* (the name '*religious instruction*' was consciously adapted into '*religious education*') are developed at a local level, which implies that the specific ethnic and cultural complexity of certain regions can be taken into account.

In state schools (*community schools*) and in most subsidized faith-based schools (*foundation* and *voluntary controlled schools*), religious education is organized in accordance with the LEA's agreed syllabus. In *foundation and volutary controlled* schools, students/parents can also ask for confessional religious education, but in practice, this almost never happens, and most of these schools follow the aforementioned agreed syllabus. Religious education is thus in general *non-confessional multifaith religious education*, even though Christianity still has a priority position. Dependent on the ethnic and religious background of the school population, the religious education syllabuses can differ on a local level. In all schools where multifaith religious education is organized, exemptions are possible at request of students or parents.

In *voluntary aided schools* the situation different. Because these schools receive less state subsidies, they have more autonomy. Among other things, this implies that they are free to offer religious education in conformity with the agreed syllabus *or*religious education into a particular faith. Exemptions at request are possible.

Religious Activities Today, many schools in the UK still have a moment of collective prayer. In *community schools* and in *foundation schools* without a particular religious identity, this prayer is "*wholly or mainly of a broadly Christian character*" (*Schools Standards Framework Act*, *1998*, s.20, §3 [2]), but local authorities can also decide to organize prayers of another faith. As a general rule, students are required to participate in these moments of collective prayer, but exemption at parental request is possible.

In *foundation schools* with a religious identity and in *voluntary schools*, prayer is in accordance with the school's particular faith, but principally, exemptions at request are possible there as well.

14.3.3.4 Religious Education and Religious Activities: Evaluation

Religious Education Since 1988, education into religion evolved in most English schools into education about religion or multifaith religious education. In order to educate teachers in multifaith religious education, the English Government established several institutes where teachers are educated according to the religious studies approach. In these training institutes, attention is not only given to correct information about diverse religious (and non-religious) traditions, but there is also attention for pedagogical and didactical skills. This state-controlled teacher training program is a requirement for the success of multifaith religious education or education about religion, and therefore it can only be welcomed.

However, notwithstanding this important evolution, multifaith religious education is not as neutral as it is supposed to be: due to the local (and not national) organization of religious education, the influence of the Church of England is still apparent. Because representatives of the Church of England form a separate group of representatives in the *LEA*s, they have more to say than the representatives of 'other' denominations (which form one singular group). This favored position of the Church of England is not in accordance with the idea of a non-confessional, neutral subject *about* religion. Therefore, it would be better if multifaith religious education became a truly neutral subject, organized by the state (and thus not by LEAs), like all other regular subjects. In this case, exemptions would not be allowed any longer, and multifaith religious education could become a regular, compulsory subject for all students in all schools, which is in fact a must in a religiously diversified society.

Obviously, students cannot only be exempted for multifaith religious education, but exemption for religious instruction or education *into* religion is also possible: in *all subsidized schools*, and thus also in subsidized faith-based schools, exemption

for religious education is possible. Accordingly, parents can enroll their child in a faith-based school of a denomination to which they do not belong without being obliged to take religious education classes. With this regulation, the freedom of education and the freedom of religion are not only *de jure*, but also de facto guaranteed – at least if religion is not integrated in the regular curriculum of these schools.

Religious Activities In order to make the English system of education more neutral, moments of collective prayer should not belong to the regular activities of state schools: if these schools consider prayer to be a regular activity, the state favors religion above non-religion, and this is not neutral. Besides, the 'mainly Christian character' of the prayer favors Christianity above other religions, which is – again – not neutral.[8] Not surprisingly,

> the very existence in state maintained schools of a requirement for the provision of religious education and a daily act of collective worship – albeit with an absolute right of parental withdrawal – is itself a matter of considerable controversy. (Meredith 2006, 163–164)

In order to improve the situation here, it would be better to organize moments of prayer *only at students*' or *parents*' *request*, and thus as an *optional* instead of a *regular* activity. In addition, prayer should not a priori be of a mainly Christian character, but it should be in accordance with the faith of students or parents asking for prayer in schools.

14.4 Liberal Neutrality and Church Establishment: Evaluation

In nations with a state church or an established church, the freedom of religion is, at first sight, positively taken into account: by giving a particular religion substantial and/or symbolic privileges, the state facilitates this religion in a positive way. The main problem is, however, that the close bonds between church and state are always fixed a priori in constitutional or equivalent laws, and that the priority position of a particular church is thus not based on democratic consensus. In fact, religion (or one single religion) is considered to be a good that is required by justice and that is deserving of state support for that reason. However, because state support for religion is, as a matter of principle, not *required*, but only *permitted* by justice, each system of a state church is, from a theoretical point of view, undemocratic and not in accordance with autonomy-based liberalism.

Besides, a state church or established church leads unavoidably to forms of inequality and de facto most, if not all, of the states that are officially entangled with a single religion fail to *fully* comply with the principles of equality and non-discrimination. As said by De Jong (2000, 740):

[8] In fact, it is possible for local authorities to organize collective worship of another faith, but the *norm* imposed by the state is that collective worship is 'mainly of a *Christian* character' (emphasis mine).

> A particularly sensitive issue is the existence of an established Church: it is often maintained that this does not affect a State's policies as such, for they can still be entirely non-discriminatory. I disagree with this point of view: firstly, in practice it may be difficult for other religions or beliefs to obtain precisely the same rights as an established Church; secondly, the very existence of an established Church has the effect of singling out one particular religion or belief as being official. If one belongs to another religion or belief, there is automatically some distance between the believer and the State. This in itself can be regarded as discriminatory State behavior […].

This "singling out" of one particular religion becomes also visible in state schools: particularly the idea that education into religion (Greece) and collective moments of prayer (Greece, the UK) belong to the *regular* (and sometimes also compulsory) activities of state schools is problematic because such measures undermine the idea of state neutrality.

Even though a state church or an established church does not necessarily infringe on the freedom of religion, we have seen that many problems arise in this system. From a *theoretical* viewpoint, the a priori constitutional establishment of a particular church is problematic and not in line with autonomy-based liberalism and democratic perfectionism. Additionally, we have observed on a *practical* level that this particular church state model is not always reconcilable with the principles of neutrality, equality and non-discrimination.

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Liberal Neutrality and State Support for Religion: A Contradiction in Terms?

In contemporary discussions about the place of religion in the public sphere, the concept of state neutrality and the separation between church and state are often considered to be equivalent. However, the separation between church and state is not identical to state neutrality, and it is not the most fundamental principle of a liberal state. What makes a liberal state are the core principles of equality, freedom and autonomy . In order to realize these core principles, the liberal state should be neutral, but this does not necessarily imply that church and state are strictly separated.

It is thus not a surprise that this book began with an elaboration of the concept of neutrality: Why should a liberal state be neutral? Who should be neutral? Where should the concept of neutrality be applied? A-nd what exactly is meant by neutrality? These research questions have revealed that a significant difference exists between perfectionism and antiperfectionism on one hand, and political liberalism and comprehensive liberalism on the other. A profound analysis of various theories in contemporary political philosophy has led to the conclusion that autonomy-based liberalism is a very consistent (but comprehensive) liberal theory, and that this kind of liberalism is connected to the idea of antiperfectionism or state neutrality: in order to guarantee that citizens can lead their lives according to the values they endorse, the liberal state should not base its policy decisions on any comprehensive doctrine, but should give neutral arguments for these decisions, i.e. arguments which can be supported by all reasonable and rational individuals. Although, therefore, external neutrality is not possible, internal neutrality is not only possible, but even required in a liberal state.

However, such a neutral or antiperfectionist state policy does not necessarily lead to a hands-off policy with regard to valuable options or perfectionist goods. A hands-off policy is a legitimate possibility in a liberal state, but it is also possible for such a state to support valuable options, as long as the state can give a neutral (antiperfectionist) reason for this kind of support. Inspired by liberal perfectionism, I have argued that in autonomy-based liberalism such a neutral legitimation is possible: in order to guarantee a sufficient range of valuable options to choose from

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(which is one of the conditions for autonomy) and in order to guarantee equal access to autonomy, in some circumstances the state is allowed to support valuable options, and religion can be one of these options.

In an *ideal world*, where nonperfectionist goods are distributed fairly and where all citizens have equal access to primary goods, and thus also to a sufficient range of options, support for perfectionist goods such as religion is not needed. In *real life*, however, nonperfectionist goods are not always distributed in the fairest way, and as a result of existing socio-economic inequalities, citizens do not always have equal access to a sufficient range of valuable options. When a redistribution of nonperfectionist goods cannot solve this inequality, and when state support for perfectionist goods or valuable options is more efficient in guaranteeing equal access to these options (and thus to autonomy), state support for these perfectionist goods is legitimate and can be allowed (and even required) as a second-best option.

In order to be neutral, several criteria must be fulfilled, and support for valuable options is only allowed if the *citizens* (and not the state) consider these options to be valuable. Thus, the question whether a particular state chooses active state support or not and, if so, how and for which religious goods it should do this (institutionalized religion, religious education and faith-based schools, but also faith-based hospitals, faith-based charity organizations, chaplains, religious buildings …), should always depend on the concrete needs and wishes of society: only if a democratic consensus exists about state support for one or more religions, and when support for these perfectionist goods is more efficient than a redistribution of nonperfectionist goods, can this kind of support be legitimate.

Accordingly, the (quasi-)constitutional fixation of church-state relations is in fact undemocratic and illiberal. The main task of Constitutional Law is to guarantee our fundamental rights and liberties (e.g. the right to, and freedom of, education, the freedom of religion, the freedom of speech, the freedom of association, the right to political participation), but the question how these rights and freedoms should be implemented in practice is less relevant. Moreover, because there is no *unanimous consensus* about the value of religion, and because religion is not required by justice, concrete measures concerning religion should be left out of the Constitution. From a human rights perspective, Temperman arrives at a similar conclusion:

> It must be born in mind that Constitutions outline the most fundamental characteristics of the state and as such reflect a shared ethos of a nation. In that context, it would be preferable if a Constitution would hint at achievements (independence, democracy, fundamental rights, etc.), feats, characteristics, etc., that unite rather than divide people. As religious belief is as a rule not among the uniting factors in a society, it is, arguably, best left out of the Constitution altogether (apart from a codification of the right to freedom of religion or belief, naturally). (Temperman 2010, 167–168)

Unfortunately, many if not most countries still struggle with their (historically embedded) constitutions concerning this point, and improvement is needed. As regards theocratic and secularist regimes, many liberal philosophers will agree that, from a liberal perspective, they cannot be allowed at all because they cannot guarantee religious freedom and equality.

But what about state churches and established churches? Some liberal philosophers (e.g. Ahdar and Leigh 2005, Ch.5) argue that 'weak' forms of establishment do not contradict liberalism (and the freedom of religion), and accordingly these state-church models are not prohibited in European and human rights law. From an autonomy-based philosophical perspective, however, even these weak forms of establishment are problematic. Even though these church-state models do not necessarily infringe on the principle of religious freedom, they are, from a *theoretical* point of view, not reconcilable with autonomy-based liberalism and its related idea of democratic perfectionism. Additionally, these systems are *in practice* not in accordance with the liberal ideas of neutrality, equality and non-discrimination. For these reasons, I consider an established church or a state church not to be a truly *liberal* church-state model.

Accordingly, only a hands-off policy and a system of active state support for religion can, under strict conditions, be in accordance with autonomy-based liberalism. However, as long as these particular state policies remain constitutionally fixed, and as long as there is no true space for democratic debate, even these particular state-church policies remain problematic.

It is also remarkable that in these 'liberal' state-church policies, the principles of liberty, equality and state neutrality are not always guaranteed in practice. In a *hands-off* system, for instance, the danger always remains that the system slides off to assertive secularism (France) or to an overprotection of religious freedom, at the cost of other fundamental rights and freedoms (USA). Similarly, different problems occur in a system of *active support* for (recognized) religions. Particularly, the state's inability to define religion and religious practices as well as the inability to define neutral or objective criteria for the recognition of religion, and the (related) unequal division of subsidies, create recurring problems.

In order to solve these (and other) problems, Veit Bader's idea of an *Associative Democracy* can be inspiring: in an Associative Democracy, diverse religious groups and organizations can, on a local level, be recognized and supported by the state if they are reconcilable with the liberal concept of a minimal morality. Because religions are, in this model, organized and recognized on a local level and are no longer related to one central organizational structure, a large number of diverse religions (including very small religions) can be recognized, different religions can be treated even-handedly, and both the internal religious freedom and the freedom of association can be guaranteed. In order to receive recognition, there is no need for a specific organizational structure, which is the cause of many problems and inequalities in many actual systems of active support. Alternatively, religious citizens, and not their representatives, have the opportunity to participate in the democratic debate and to ask for recognition and/or state support:

> Peoples themselves, and not only their representatives, should have opportunities to participate wherever their interests are relevantly affected by collective decisions in all societal fields and on all levels of decision-making. (Bader 2007, 217)

In order to make such a system as neutral as possible, religious and non-religious groups should be treated equally: because *equal liberty* is fundamental in a liberal

state, religions should, as perfectionist goods, not have any privileges, and religious associations should not be treated differently from non-religious associations. State support for religions is thus only permitted if similar non-religious associations can also make use of this kind of support. Only in this case is state support for religion reconcilable with the liberal idea of state neutrality.

From a theoretical perspective, liberal neutrality and state support for religion thus do not necessarily present a contradiction in terms. In practice, however, where church-state relationships are mainly based on historical contexts, cultural traditions, pragmatic solutions and political compromises, it seems very difficult to reconcile state support for religion with this idea. Nonetheless, in a liberal state, where all citizens should be able to lead their lives according to the values they endorse, and where all citizens should be treated in a fair and equal manner, the idea of neutrality is certainly worth aiming for.

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