

LENI FRANKEN, PATRICK LOOBUYCK

BARRY AND KUKATHAS AS INSPIRING SOURCES FOR A FAIR
CHURCH-STATE SYSTEM IN BELGIUM

Leni Franken

Centre Pieter Gillis of the University of Antwerp, Belgium.
Email: Leni.Franken@ua.ac.be

Patrick Loobuyck

Centre Pieter Gillis of the University of Antwerp, Belgium
Email: Patrick.Loobuyck@ua.ac.be

Abstract: In this article, we will look at the political philosophical theories of Brian Barry (*Culture and Equality*, 2001) and Chandran Kukathas (*The Liberal Archipelago*, 2003) and see which consequences both theories have for the Belgian model of church and state. For both authors, the liberal state should be *neutral* toward religion but they interpret this neutrality in a different way. According to Kukathas, neutrality implies a hands-off policy and therefore, recognizing and financing religions is out of the question. For Barry on the other hand, the state is *neutral* if equal people have equal opportunities. Consequently, state support for religions and even the recognition of religions is possible, *if* religions are treated in the same way. However, a hands-off policy is also in line with Barry's theory. Both from a pragmatic and from a normative point of view, Barry's *egalitarian liberalism* seems the most interesting theory as an inspiring source for the evolvement and modification of the Belgian system, towards more fairness and equality.

Key Words: Barry, Kukathas, egalitarian liberalism, libertarianism, recognized religions, religious education, church and state policy, Belgium, equality, neutrality

Introduction

In this article, we will apply egalitarian liberalism and libertarianism to the church and state relations in Belgium and we will look at the consequences of both theories for the actual Belgian system. We have chosen for Brian Barry¹ and Chandran Kukathas² because they give much attention – much more than their predecessors (respectively Rawls / Dworkin and Nozick) have done – to the consequences of their liberal theory for diverse cultures and religions. Both authors are of interest because they can be seen as opposites within liberal theory, in particular when they are talking about the role of political government. Undoubtedly, this will also lead to different opinions about the legitimacy of church and state relations.

In a first part of this article, we will elaborate the Belgian church and state relations. Next, both positions of Barry and Kukathas will be explored. In another part, we will see how these positions would deal with the Belgian system where some religions get recognition and active state support. Finally, we will evaluate both theories and see how they could be used within the discussion about the Belgian church and state regime. A verification of the Belgian system to both opposite political philosophical theories may be helpful to choose a position concerning the future Belgian state and church policy. We will conclude with both pragmatic and normative reasons in favour of Barry's theory over Kukathas', for Barry's theory could at least give the opportunity to make the Belgian system fairer, without losing sight of the very specific, historical context.

Church and State in Belgium

In Belgium, the separation between church and state is not explicitly mentioned in the Constitution. The Belgian church and state regime is not characterized by *separationism* or by *radical and assertive secularism*³, but by *moderate secularism*⁴, *favourable neutrality*⁵ or *accommodationism*⁶. The Belgian state has not chosen for a hands-off policy, but for an “actively supported religious pluralism, that results in an effective benefit of the freedom of religious worship”.⁷

The Belgian church and state regime is clearly the product of Belgian history. Since 1825, both liberals and Catholics opposed the protestant King Willem I's meddlesome policy on the subject of religion and education. A monstrous alliance between both parties has led to the Belgian independence in 1830 and formed the basis for one of the most liberal constitutions of that time: in this constitution, freedom of religion, organization and education is explicitly mentioned. In addition, this constitution of 1831 formed the basis for an active support of religion, which was, in that period, almost only Catholicism.

A typical characteristic of the Belgian system is the combination of freedom *and* active support for religions / worldviews. Both article 19 and 20 of the Belgian constitution establish the freedom of religion and in article 21, we can read that “the State does not have the right to intervene either in the nomination or in the installation of ministers of any religion whatsoever [...]”. Additionally, article 24 declares that education is free, which means not only that parents are free in their choice of a particular school, but also that (religious) organizations are free to found their own schools.

For the policy of support, article 181 is of main importance: this article asserts that government must pay the salaries and retirements of the clergy and of moral consultants belonging to recognized non-confessional worldviews. In addition, the state actively supports religious education: according to article 24, public schools are obliged to offer religious education in the recognized religions and in non-confessional ethics. The third paragraph of this same article adds that all pupils of school age have a right to a “moral or religious education at the community’s expense”, which implies that government must also pay religious education in non-public schools – that is in more than 70% of all the schools in Belgium.⁸

When we look at education policy, we can also see a mix of freedom and support. Since 2008, subsidies for non-public (mainly Catholic) and for public schools are equal in Flanders⁹, with the exception of some “objective differences” such as the organization of religious subjects, which is more expensive in official schools, and transport facilities for pupils, to guarantee the free school choice everywhere in Flanders. In order to get recognition and subsidies, non-public schools have to meet an amount of criteria, but apart from that, they are free and have their own didactical approaches and syllabuses.

Until now, six religions (Roman Catholicism, Protestantism, Christian Orthodoxy, Anglicanism, Islam and Judaism) and the non-confessional union of freethinkers are recognized. Buddhism and the Syrian-Orthodox church are also applying for recognition and the question of scientology to get recognition was rejected some years ago. Besides those recognized religions and worldviews, many religions and worldviews in Belgium (e.g. Mormons, Jehovah Witnesses, Sikhs, Hindus, Jäins) are not recognized. Consequently, they have no right to direct state support, but as non-profit organizations, they can benefit from tax reduction.

Recognition gives religions and worldviews many advantages: the salaries of clergy as well as those of chaplains and moral consultants in hospitals, prisons and in the army are paid by government; religious education in public and non-public schools is financed; and recognized worldviews have a right to broadcasting time on the public radio and television. In addition, recognized worldviews receive subsidies for their material goods and government regulates and finances housing for clergy.

In order to get recognition, worldviews have to meet some criteria: representing a huge amount (“several then thousands”) of adherents, being structured, being settled in Belgium during some time (“several decennia”), representing a social importance, and not being in conflict with social order.¹⁰

Barry and Equal Opportunities

In *Culture and Equality*, Barry defends egalitarian liberalism as an alternative for multiculturalism. His basic assumption is that all people are equal and deserve equal opportunities. However, people are different and therefore, they should not be treated ‘equally’, but ‘as equals’ and we should bear in mind their unchosen, and possibly harmful circumstances. Consequently, government should provide special measures “to help the disabled” and “for providing assistance to members of groups disadvantaged in other ways” (e.g. by low income, lack of a job, poor education, an unhealthy environment) in order to give everybody principally as much equal opportunities as possible.¹¹ However, according to Barry, special accommodations are not legitimate if they are used to adjust or to compensate for cultural and religious preferences.¹² Because Barry does not treat religion as an unchosen circumstance, government should not make exemptions or give special accommodation for religion. To explain this, Barry refers to the problem of *expensive tastes*.¹³ According to egalitarian liberalism, rules of exemption and of compensation should not be made for people who have expensive tastes.¹⁴ The same is true for religion and culture: if government bans the wearing of headscarves in public functions and if it prohibits ritual slaughter, then religious people just have to bear the consequences of this policy.¹⁵ According to liberalism and thus also to Barry, people are always responsible for their opinions, preferences and choices, even when those are related to culture, religions and worldviews.

Nevertheless, people’s worldviews are mainly the result of *unchosen* cultural or (anti-)religious circumstances and Barry does not take into account this critique.

The upshot is, then, that beliefs and preferences are in the same boat: we cannot change our beliefs by an act of will but the same can be said equally of our preferences.¹⁶

In other words, nor religion, nor taste is something we chose out of our free will. However, this does not mean that we are not responsible for those facts, nor does it mean that we should not be free to decide what to do with them. Barry thinks that physical handicaps are fundamentally

different from religious convictions because people can be held responsible for the consequences of their religious convictions, but not for the consequences of their handicap(s). The fact that both are not just 'chosen', does not matter here: not being able to drive a car out of religious convictions is rather different from not being able to do this because you are physically handicapped.¹⁷ In the last case, people are not responsible and, therefore, special treatment is allowed. In the first case, however, people are responsible and therefore, special treatment is not allowed. The main point Barry wants to defend, is that an egalitarian-liberal government guarantees equal opportunities. The fact that people use these opportunities in different ways because their religious and cultural preferences differ, is not unfair. Barry makes here an interesting distinction between the restriction of choice on the one hand and the restriction of opportunities on the other hand: people are responsible for their *choices*, not for their *opportunities*.

In addition, Barry claims that general laws do create sufficient opportunities for everyone and therefore exemption laws are not needed. Nonetheless, if it seems that a certain law causes some problems of (un)equality, it would be better to accommodate the general law, instead of making exemption laws. The same can be said about religious practices:

Usually, though, either the case for the law (or some version of it) is strong enough to rule out exemptions, or the case that can be made for exemptions is strong enough to suggest that there should be no law anyway.¹⁸

As exemptions regarding general laws and duties would lead to inequality, they should be avoided. However, in some cases, exemption rules should be allowed as a *pragmatic solution*: if people are disadvantaged as a result of certain rights or duties and if they cannot function in society (any longer), exemption rules are justified. However, those rules are only permitted "*for as long as the inequality persists*".¹⁹

Furthermore, Barry states that everybody is free to gather in groups and to be a member of a group, as long as this membership is voluntary.²⁰ Adults of a sound mind must decide autonomously whether they would like to stay in a certain group, leave this group or join another group. Therefore, real exit-options are indispensable and in order to guarantee these options, obligatory education is needed to inform people about different alternatives.²¹

Finally, Barry says (against Nancy Fraser and Iris Young) that the defence of equal rights is sufficient and that there is no complementary need for any kind of equal recognition. From a liberal point of view, the question for recognition by government is not legitimate because it always involves a value judgement²² and such a judgement is not in accordance with government's liberal neutrality. Homo- and heterosexuals for

example, should get equal opportunities, but this equality does not say anything about the value judgement people should have about homo- and heterosexual lifestyles. The same is true for religions.²³ It is not the task of liberal government to make claims about the truth or value of religions. The only thing government should do, is guaranteeing the freedom of religion and guaranteeing equal opportunities for people with different worldviews, in order to treat them in a neutral (equal) way. This ‘neutral’ treatment of worldviews can, practically, be fleshed out in different ways. On the one hand, Barry does not exclude financial support for (recognized) religions and for confessional religious education, as long as religions are treated equally and as long as such a policy does not involve any value judgement.²⁴ On the other hand, Barry’s egalitarian liberalism is also compatible with a *hands-off* policy, where government is not involved at all with religions and worldviews.

Kukathas’ Libertarian Position

Compared to Rawls, Barry and Dworkin, Chandran Kukathas defends a totally different form of liberalism. According to Kukathas, egalitarian liberalism is too much based on a substantial and universal concept of justice, which he rejects. Consequently, government should not strive for an “*established standpoint of morality*”, but it should guarantee a “*convergence of different moral practices*” in the public sphere.²⁵ Government should not aim for a *modus credendi*, but for a *modus vivendi*. Therefore, it should not command a specific view about justice, but it should only guarantee the right to association and maintain tolerance between different groups.

Kukathas defends an open society where everybody can live a life based on (group-specific) views about the good life, as long as these kinds of living will not damage the needs of other associations. Kukathas compares this open society with an archipelago, which is situated in a “sea of mutual toleration”.²⁶ Hence, a free society is not based on a shared doctrine of justice or of the good life. Instead, it is an accumulation of societies and authorities, which recognize people’s individual freedom to gather or associate with or without each other. Coherence is not needed; co-existence suffices.²⁷

Kukathas’ liberalism is not based on a central idea of equality (Barry) or autonomy (Kymlicka), but on the idea of tolerance.²⁸ In other words, Kukathas defends a form of *Reformation Liberalism*²⁹ in a very consequent way. In opposition to *Enlightenment Liberalism*, this kind of liberalism takes diversity seriously and accepts that freedom and autonomy should not be and actually are not shared by everybody. The values of Enlightenment are just “one important possibility”.³⁰ As people have a right to live according to their own chosen values, the values of Enlightenment cannot be supported publicly or politically. Here, Kukathas is more radical than Galston: while Kukathas rejects every form of obligatory state education

because it would damage individual liberty³¹, Galston defends a form of obligatory (non-autonomy based system of) education³², because society needs a minimal form of shared citizenship (mainly based on shared and mutual tolerance).

In *Education and Citizenship in diverse Societies* (2001), Kukathas criticizes Barry's views about the role of government concerning education. In line with J.S. Mill's *On Liberty* (1859), Barry argues that government should make education compulsory in order to meet the interests of children – even if this is not in accordance with the (religious) convictions of their parents. For this purpose, government can set up schools.³³ However, according to Kukathas, Barry is not aware of the fact that government's requirement of compulsory education is based on a certain view on truth.³⁴ Because confessional as well as non-confessional schools are based on a specific view about the good life and because they are, consequently, not neutral, government should favour a hands-off policy with regard to education.

The last thing a liberal state should offer its subjects is education – even if that should be a liberal education.³⁵

Although Kukathas almost never refers to Nozick, it seems that he favours his *minimal state*³⁶. However, Kukathas is less interested in private property and in the legitimacy of redistribution by government. Moreover, his main focus is the (minimal) task of government towards different cultural and religious societies who do – or do not – support their own (liberal or illiberal) views about the good life. The state should and could only guarantee peaceful coexistence of different societies and protect the individual freedom of association and conscience. However, it is not allowed for the state to intervene (even not by means of education) in the ideas and practices of associations, even if they do not subscribe the so called liberal or libertarian principles (freedom and the rejection of violence). As said by Kukathas³⁷, an open society should not be seen as a *Union of Liberty* (a society based on a shared form of liberty), but as a *Federation of Liberty* (a society where people are free to live in accordance with their own views about the good life, even if this view is not based on freedom and autonomy).

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.³⁸

It is of main importance that every individual is free to gather or to leave his association(s). However, Kukathas only defends the right to exit as a negative, formal right that needs neither facilitation, nor any positive support by government (e.g. by organizing education). In line with this,

he does not think that exit costs have an effect on exit rights. "*The magnitude of the cost does not affect the freedom*".³⁹ Kukathas recognizes that exit costs could be very high in some cases, but that does not hinder the individual to leave his society. As long as the right to exit is formally guaranteed, there is no problem at all.

According to Kukathas⁴⁰, there are no good reasons to allow exemption rules: government must give religious associations as much freedom as possible and therefore exemptions are not needed. Religious associations do not ask for state involvement, nor do they ask for exemptions. The only thing they are asking for, is to be left alone.⁴¹ Moreover, in many cases, exemption rules create unwanted forms of inequality. Therefore, it should be better to question – and possibly revise – general rules and laws.⁴² At this point, Kukathas reaches the same conclusion as Barry: within a liberal society, exemption rules and minority rights are unnecessary and they could only be temporary allowed for pragmatic reasons. Nonetheless, both authors give different arguments for this assertion. On the one hand, Barry is convinced that minority rights are superfluous because general laws guarantee equal opportunities, while minority laws and exemptions would lead to unequal treatment. On the other hand, Kukathas sees minority rights as superfluous because different minorities and societies have such an amount of freedom, that government has almost no opportunity to enact laws that impinge on their ways of life. In the liberal archipelago, interpreted as a *Federation of Liberty*, the question for exemption would actually never raise.

Barry, Kukathas and the Belgian System of Church and State: Recognizing Religions

Kukathas' theory is at right angles to the Belgian church-state regime, because in this regime, government has a more active role than Kukathas' libertarian system would ever allow. As the Belgian state recognizes, finances and supports worldviews on the basis of criteria that are assumed by government, she is doing too much. Kukathas defends a "passive" government, which is only involved in safeguarding the peaceful coexistence between different associations.⁴³ Recognizing, financing and actively supporting worldviews does not belong to government's tasks and political order can be guaranteed without state interference regarding church, religion and worldviews. Besides, the Belgian system implicates that recognized worldviews are in some matters favoured with regard to non-recognized worldviews and this is in opposition with Kukathas' view as well:

The model of a free society it [Kukathas' position] proposes is one in which there may be many associations, but in which none are 'privileged'.⁴⁴

What is more, the system of recognition can (unintentionally) give the impression that some worldviews are 'better' or 'truer' than other worldviews. However, according to Kukathas, government is not authorized to make assumptions about such facts.

For Kukathas, government should only formally recognize religious freedom and therefore, a *hands-off* policy would suffice. The Belgian system of church and state, which is characterized by active support and favourable neutrality, is not in accordance with this view. Probably, the American system of church and state, which is characterized by a juridical *wall of separation* (Jefferson) and by a *hands-off* policy with regard to worldviews, is one of the best known concrete, existing examples of Kukathas' liberal archipelago. However, the American tradition is very different from the European one⁴⁵, where a *hands-off* policy is almost impossible.⁴⁶ Even the French model of *laïcité* is very different from the American model, although the separation of church and state is constitutionally claimed in almost the same way.⁴⁷

In addition, we should mention that Barry's egalitarian liberalism is also in accordance with a *hands-off* policy. Martha Nussbaum, for example, defends liberal egalitarianism with regard to social-economical redistribution and at the same time, she defends the American (*hands-off*) system of church and state because this system is fair in terms of freedom and equality and because it is very respectful towards religious pluralism.⁴⁸ Nonetheless, Barry's theory is also consistent with a more active government. In fact, recognizing religions does not necessarily treat the principle of neutrality, as long as recognition does not involve a value judgement.⁴⁹ However, within such a system, procedures of recognition should guarantee that different worldviews have *equal opportunities* to get recognition and that the recognized worldviews should be treated *equally*.⁵⁰

Yet, the Belgian system does not meet the wishes of equality. The reason for this inequality is that worldviews who want recognition must meet some criteria that do not support equality. One of these criteria is the requirement to be 'structured' and to have some representatives who can negotiate with government. However, for some unstructured worldviews, it is impossible to fulfil this requirement, which is based on the internal organisation of the Roman Catholic Church. Therefore, it is not surprising that this criterion has led to difficulties for the much diversified protestant cult and for the Buddhists in Belgium. In this respect, the difficulties within the Muslim community in their search for a representative organization (the Muslim Executive) are typical as well. In order to set up such an organization, Muslims were obliged by government to organize elections in 1993, 1998 and 2005. However, state intervention did not stop there: the Belgian state did not only require the foundation of the Muslim Executive; above and beyond, candidates for this

Executive were screened by government and some of them were found unsuitable.⁵¹

But even if worldviews are recognized, equal opportunities and equal treatment are not guaranteed at all. One reason for this is that subsidies for recognized worldviews are divided on an unequal basis. In particular, the budget for the Roman Catholic Church is based on the sum of inhabitants of parishes and not on the amount of baptized or practising people. On the other hand, the amount of adherents or believers is used as a criterion for the other recognized religions. Of course, this leads to a disproportionate division of subsidies, in favour of the Roman Catholic Church.⁵² In sum, 86,4% of the budget for recognized religions is given to this Church. If we also take into account the organization of religious education, we can conclude that more than 450 million euros out of the total sum of 550 million euros is given to the Roman Catholic Church.⁵³ Additionally, this Church – the *primus inter pares* or the first one among equals⁵⁴ – has also acquired a (historically emerged) favourable position in many other domains. From the perspective of *fairness* and equality, we cannot but conclude that the system should be adjusted.

Therefore, a reform of the system seems indispensable. According to my view, more equality should be desirable. [This equality] consists, on the one hand, in equality between religious and philosophical worldviews and the way they are financed, and on the other hand in a better connection between what every worldview receives and the needs of the population.⁵⁵

In line with this, we can read in the report of the Commission of the Wise (Commissie van Wijzen) about the *Federal Financing of the Religious Ministers and the Delegates of the Central Humanist Council*, that the Belgian system of recognition leads to inequalities that are not in accordance with the constitutional principles of equality and non-discrimination.⁵⁶ A system of fiscal allocation or religiously oriented tax, comparable to the Italian and Spanish system, could be inspiring here.⁵⁷

Barry, Kukathas and the Belgian System of Church and State: Organization of (Religious) Education

In Belgium, school is compulsory until pupils are 18 years old and the state subsidizes public and private schools on an equal basis. However, this system seems not in accordance with Kukathas' libertarianism, for Kukathas says that government should not meddle with education. Because the state is not allowed to promote any view about the good life, she should not support public or private education, nor should she make education compulsory. Education is a private matter and it should be up to

the parents to choose whether their children will or will not go to school and which kind of education they prefer.

According to Barry, there is nothing wrong with a state offering education.⁵⁸ Moreover, government should keep an eye on and should guarantee good education. Besides, Barry endorses the fact that parents favour confessional over non-confessional schools. With regard to the financial support of these confessional schools, he mentions two possibilities: either they will be financed in a private way, or they will be financed in the same way as public schools.⁵⁹ Nonetheless, in both cases government has the right to impose some criteria about the quality of education. On all these points, the Belgian situation is in accordance with Barry's egalitarian liberalism: education is free, private and public schools are financed in an almost equal way and education is compulsory.

While it is mainly the Catholic Church that made use of the freedom of education (in Flanders, 70% of all the schools are private schools and 99% of these private schools are Catholic schools), this does not imply that the system is unfair. Even though general laws can have a different impact on individual's and group's possibilities, this fact as such is not "inherently unfair"⁶⁰, for state neutrality should not be seen as *neutrality of outcome*. All kinds of policy will favour some persons, groups and views about the good life more than others.⁶¹ However, as long as confessional (private) and non-confessional (public) schools have the *same opportunities* to set up schools, there is no problem. The fact that some people make use of this opportunity, while others do not make use of it, is not in direct conflict with egalitarian liberalism. Consequently, the discord about the foundation of Muslim schools is unjust, even though there can be raised societal objections to the foundation of such schools.⁶²

With regard to religious education, public schools in Belgium are obliged to offer subjects in the recognized religions and in non-confessional ethics and pupils can choose individually which of these subjects they take (Const. art. 24 §1). Starting from Barry's theory, we can question this system in two ways. First, there are pupils who do not belong to one of the recognized religions/worldviews and within the system, they can only take a subject that is not in accordance with their own worldview or get an exemption. However, according to the Constitution (art. 24 § 3), "all pupils of school age have the right to moral or religious education at the community's expense" and within the actual system, this right seems not to be fulfilled for pupils who do not belong to any recognized worldview.

Second, we can expect that Barry interprets the question for confessional religious education as an expensive preference, where state support is not needed. In other words, confessional religious education should not be a part of public schools and should not be financed by the state. Nonetheless, because of the freedom of education, different religious groups are free to set up their own schools, where they can organize

confessional religious education, which could – but should not – be financed by those religious groups. In addition, the religious community and the family can take responsibility as well and do some effort for the religious upbringing of children.

Church and State in Belgium: Barry or Kukathas?

In which direction should the Belgian regime of church and state evolve, seen in the light of both theories? In order to give an answer to this question, we take into account two considerations. First, which theory is normatively the most desirable theory? Second, which theory is realistic from a pragmatic point of view? It seems that Barry's theory is on both points more plausible than Kukathas'.

Kukathas' libertarian theory is on some points very problematic. Firstly, giving government such a restricting role that even the organization of education is not a legal authority, is very radical. One of its consequences is that parents can, in name of (religious / cultural) freedom, decide to leave their kids from school and / or to raise them up in a very orthodox system, where basic scientific knowledge is lacking and unknown, where there is no opportunity to critical reflection and where real alternatives are absent and unknown. The interests and the future freedom and autonomy of young people is sacrificed here on the altar of libertarian freedom. Secondly, Kukathas' interpretation of the right to exit is problematic – particularly because government is not allowed to make education compulsory or to impose some criteria about education. Without any information about alternative views of the good life, there is no *real* exit option. And without this real option, the right to exit is only a formal and empty concept.⁶³

Finally, Kukathas' theory does not give us any criterion about justice and he argues that government has no authority in this matter. However, the other side of the coin is that many illiberal and even inhuman practices such as cruel punishment, enforced marriages and the refusal of specific medical treatments for children, should be tolerated in Kukathas' liberal archipelago.⁶⁴ Once more, human liberty is sacrificed on the altar of libertarian freedom.

In opposition to Kukathas, we are convinced that freedom can only be useful when people are capable to *do* something with their freedom. For this purpose, some basic requirements should be fulfilled and egalitarian liberalism is particularly involved with the fulfilment of these requirements. Therefore, Barry's position is much more interesting in a normative way. Nevertheless, we will make the reader aware of the fact that egalitarianism is also in accordance with a minimal state policy regarding culture and religion. Different from the socio-economic terrain, equal opportunities concerning religion and culture can also be implemented with a *hands-off* policy.⁶⁵ In line with this, Veit Bader⁶⁶ pleas

for a minimal state with regard to the interference with worldviews and religious communities. However, Bader is not that radical as Kukathas. Although the former, just as the latter, stresses the freedom of association (cf. Bader's plea for an "associative democracy"), this freedom should never be used to overrule the "minimal morality".⁶⁷

Next to these normative arguments, we can also give some *pragmatic* arguments to the detriment of Kukathas' position as an inspiring source for the Belgian church and state regime. The main reason here is that implying a *hands-off* policy, would entail a full reconstruction of the actual system and we are not sure about the possibility and the desirability of such a radical change. As in many other countries, the Belgian church and state policy is the result of a particular, historical, sociological and cultural progress. For that reason, it can be a surplus value if there could be a fair system of church and state, that takes into account this historical background. The contextual approach in political philosophy has shown that universal principles about freedom and equality can be implemented in different ways, dependent on the context.⁶⁸ In line with this, religious freedom and the separation of church and state can be concretized in a contextual way. Here, Bader speaks about *contextualising secularism*.⁶⁹ This contextual approach is also in line with the use of the *margin of appreciation* in the jurisdiction of the European Court of Human Rights. The Court leaves the European nation states free to organize their state and church policy in their own way, taking into account their particular historical, sociological and political context. The Court does not impose a uniform model, but leaves individual countries free to decide how they reconcile universality with particularity.⁷⁰

For this reasons, it is not desirable to deconstruct the Belgian system and to reconstruct the system in a very different way. Moreover, it seems much more interesting to modify and equalize the system on some points, taking into account the specific context. Barry's egalitarian liberalism could be a source of inspiration here. Although this liberalism is not hostile towards a *hands-off* policy, the theory is also in accordance with positive support, which is typically for the Belgian church and state regime. Nonetheless, this support should not harm the principles of equal opportunities and equal treatment and we have shown that the Belgian situation is not always in accordance with those principles.

Conclusion

In 1998, the VN *Human Rights Committee* rapped the Belgian church and state regime's knuckles because the principles of non-discrimination, freedom of religion and equality were not 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.⁷¹

In this contribution, we have tested the Belgian system by two schools of thought in political philosophy: egalitarian liberalism (Barry) and libertarianism (Kukathas). Both from a pragmatic and from a normative point of view, Barry's *egalitarian liberalism* seems the most interesting theory as an inspiring source for the evolvement and modification of the Belgian system. According to Barry, giving equal opportunities and actively supporting worldviews is not necessary a contradiction. However, in the Belgian case, we should look for a fairer system of redistribution and for better criteria with regard to equal opportunities.

Notes:

¹ Brian Barry, *Culture & Equality* (Harvard: Harvard University Press, 2001).

² Chandran Kukathas, *The Liberal Archipelago. A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003).

³ Ahmet Kuru, *Secularism and State Policies toward Religion. The United States, France, and Turkey* (Cambridge: Cambridge University Press, 2009).

⁴ Tariq Modood, *Multiculturalism* (Cambridge: Polity Press, 2007), 78.

⁵ Louis-Léon Christians, "Financiering van de erediensten: kritische elementen van vergelijkende rechtswetenschap", *Nieuw tijdschrift voor politiek* 4/5 (1999): 83.

⁶ Kuru, 44.

⁷ Freddy Mortier and Marie-Françoise Rigaux, De federale financiering van de bedienaren der erediensten en de afgevaardigden van de Centrale Vrijzinnige Raad. Verslag van de Commissie der Wijzen (Brussel, 2005-2006): 9.

⁸ Ludo Veny, "Onderwijs en grondwet. De nieuwe grondwetsbepalingen inzake onderwijs", *Tijdschrift voor bestuurswetenschappen en publiekrecht* (1988): 588; Adriaan Overbeeke, "Levensovertuiging en onderwijs in de Belgische Grondwet," in *Liber Amicorum discipulorum Karel Rimanque*, ed. Bruno Peeters (Antwerpen: Intersentia, 2007): 299-351.

⁹ Since the revised Constitution of 1988, education in Belgium is not a federal, but a communal matter. As a result, the Flemish and Walloon Government are responsible for education in each Community.

¹⁰ Patrick De Pooter, *De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij* (Brussel: Larcier, 2002): 135.

¹¹ Barry, "Culture and Equality", 114.

¹² Barry, "Culture and Equality", 34ff.

¹³ Barry, "Culture and Equality", 34 ff.

¹⁴ John Rawls, "Fairness to Goodness", *The Philosophical Review* 84 (1975): 553; "Social Unity and Primary Goods," in *Utilitarianism and Beyond*, ed. Amartya Sen and Bernard Williams (Cambridge: Cambridge University Press, 1982): 169; Dworkin, "Sovereign Virtue", 80 ff.

¹⁵ Barry, "Culture and Equality", 34.

¹⁶ Barry, "Culture and Equality", 36.

¹⁷ Barry, "Culture and Equality", 37.

- ¹⁸ Barry, "Culture and Equality", 39 ff.
- ¹⁹ Barry, "Culture and Equality", 13.
- ²⁰ Barry, "Culture and Equality", 148-154.
- ²¹ Barry, "Culture and Equality", 238-245.
- ²² Barry, "Culture and Equality", 273 ff.
- ²³ Barry, "Culture and Equality", 278.
- ²⁴ Barry, "Culture and Equality", 29.
- ²⁵ Kukathas, "The Liberal Archipelago", 131-132.
- ²⁶ Kukathas, "The Liberal Archipelago", 8.
- ²⁷ Kukathas, "The Liberal Archipelago", 19.
- ²⁸ Kukathas, "The Liberal Archipelago", 39.
- ²⁹ William Galston, "Two Concepts of Liberalism", *Ethics* 105 (1995): 516-534.
- ³⁰ Galston, 526.
- ³¹ Chandran Kukathas, "Are there any Cultural Rights?" *Political Theory* 20/1 (1992a): 117; "Education and Citizenship in diverse Societies", *International Journal of Educational Research* 35 (2001): 319-330.
- ³² Galston, 528.
- ³³ Barry, "Culture and Equality", 209 ff.
- ³⁴ Kukathas, "Education and Citizenship in diverse Societies", 324-325.
- ³⁵ Kukathas, "Education and Citizenship in diverse Societies", 323.
- ³⁶ Robert Nozick, *Anarchy, State and Utopia* (Oxford: Blackwell, 1974).
- ³⁷ Chandran Kukathas, "Two Constructions of Libertarianism", *Libertarian Papers* 1/11 (2009): 1-13.
- ³⁸ Kukathas, "The Liberal Archipelago", 98; "Two Constructions of Libertarianism", 4.
- ³⁹ Kukathas, "The Liberal Archipelago", 107.
- ⁴⁰ Kukathas, "Are there any Cultural Rights?"; "Cultural Rights Again", *Political Theory* 20/4 (1992b): 674-680; *The Liberal Archipelago*: 244-245.
- ⁴¹ Kukathas, "Are there any Cultural Rights?", 122.
- ⁴² Kukathas, *The Liberal Archipelago*, 244.
- ⁴³ Kukathas, *The Liberal Archipelago*, 254.
- ⁴⁴ Kukathas, *The Liberal Archipelago*, 5.
- ⁴⁵ Peter Berger, Grace Davie and Effie Fokas, *Religious America, Secular Europe? A Theme and Variations* (London: Ashgate, 2008).
- ⁴⁶ Gerhard Robbers, trans. *State and Church in the European Union* (Baden-Baden: Nomos, 2005).
- ⁴⁷ Kuru, ch. 2-5.
- ⁴⁸ Martha Nussbaum, *Liberty of Conscience. In Defence of America's Tradition of Religious Equality* (New York: Basic Books, 2008).
- ⁴⁹ Barry, "Culture and Equality", 278.
- ⁵⁰ Barry, "Culture and Equality", 29.
- ⁵¹ Marie-Claire Foblets and Adriaan Overbeeke, "A State Intervention in the Institutionalization of Islam," in *Religious Freedom and the Neutrality of the State: The Position of Islam in the European Union*, ed. Wasif Shadid and Sjoerd Van Koningsveld (Leuven: Peeters, 2002): 113-128.
- ⁵² Liliane Voyé and Karel Dobbelaere, "La gestion publique de la diversité religieuse en Belgique. Pluralisme religieux et pratiques d'accommodement," in *La nouvelle question religieuse. Régulation ou ingérence de l'Etat ?*, ed. Pauline Côté and Jeremy Gunn (Brussel : Peter Lang, 2006): 177.

⁵³ Jean-François Husson, "Le Financement public des cultes et de la laïcité" *Politique : revue de débats* 52 (2007): 14-17.

⁵⁴ Rik Torfs, "State and Church in Belgium," in *State and Church in the European Union*, ed. Gerhard Robbers (Baden-Baden: Nomos, 2005): 15, 32.

⁵⁵ Husson, 17.

⁵⁶ Mortier and Rigaux, 1.

⁵⁷ Christians, "Financiering van de erediensten", 38-44.

⁵⁸ Barry, "Culture and Equality", 209ff.

⁵⁹ Barry, "Culture and Equality", 206.

⁶⁰ Barry, "Culture and Equality", 34, 38.

⁶¹ Will Kymlicka, "Liberal Individualism and Liberal Neutrality", *Ethics* 99/4 (1989): 883-905; John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 193.

⁶² Philippe Van Parijs, "Welk rechtvaardig schoolpact voor de XXIste eeuw?" *T.O.R.B.* 10/1-2 (2009): 40-43.

⁶³ George Crowder, "Two Concepts of Liberal Pluralism", *Political Theory* 35 (2007): 127; Barry, "Culture and Equality", 240.

⁶⁴ Kukathas, "The Liberal Archipelago", 134; "Two Constructions of Libertarianism", 8-13.

⁶⁵ Cf. Nussbaum; Barry, "Culture and Equality".

⁶⁶ Veit Bader, *Secularism or Democracy? Association Governance of Religious Diversity* (Amsterdam: University Press, 2007).

⁶⁷ Bader, 72.

⁶⁸ Bader, 89ff, 229.

⁶⁹ Bader, 95ff.

⁷⁰ Eva Brems, "Is er ruimte voor actief pluralisme in de rechtspraak van het EHRM?," in *Scheiding van kerk en staat of actief pluralisme?* ed. Paul de Hert and Karin Meerschaut (Antwerpen: Intersentia, 2007), 25-26.

⁷¹ United Nations, International Covenant on Civil and Political Rights (1998), nr. 25.

References:

Bader, Veit. *Secularism or Democracy? Association Governance of Religious Diversity*. Amsterdam: University Press, 2007.

Barry, Brian. *Culture and Equality*. Harvard: Harvard University Press, 2001.

Berger, Peter, Davie, Grace and Fokas, Effie. *Religious America, secular Europe? A theme and variations*. London: Ashgate, 2008.

Brems, Eva, "Is er ruimte voor actief pluralisme in de rechtspraak van het EHRM?," In: *Scheiding van kerk en staat of actief pluralisme?*. edited by Paul De Hert and Karin Meerschaut. 21-29. Antwerpen: Intersentia, 2007.

Christians, Louis-Léon. "Le financement des cultes en droit belge: bilan et perspectives". In : *Quaderna di diritto e politica ecclesiastica*. 14/1 (2006): 83-106.

Christians, Louis-Léon. "Financiering van de erediensten: kritische elementen van vergelijkende rechtswetenschap." In: *Nieuw tijdschrift voor politiek*. 4/5 (1999): 38-44.

Crowder, George. "Two Concepts of Liberal Pluralism." In: *Political Theory*. 35 (2007): 121-146.

De Pooter, Patrick. *De rechtspositie van erkende erediensten en levensbeschouwingen in Staat en maatschappij*. Brussel: Larcier, 2002.

Dworkin, Ronald. *Sovereign Virtue. The Theory and Practice of Equality*. Cambridge: Harvard University Press, 2000.

Foblets, Marie-Claire and Overbeeke, Adriaan. "A State Intervention in the Institutionalisation of Islam." In: *Religious Freedom and the Neutrality of the State: the Position of Islam in the European Union*, edited by Wasif Shadid and Sjoerd Van Koningsveld. 113-128. Leuven: Peeters, 2002.

Galston, William. "Two concepts of Liberalism." In: *Ethics*. 105 (1995): 516-34.

Husson, Jean-François. "Le Financement public des cultes et de la laïcité." In: *Politique: revue de débats*. 52 (2007): 14-17.

Kukathas, Chandran. "Are there any cultural Rights?." In: *Political Theory*. 20/1 (1992a): 105-139.

Kukathas, Chandran. "Cultural Rights Again." In: *Political Theory*. 20/4 (1992b): 674-680.

Kukathas, Chandran. "Education and Citizenship in diverse Societies." In: *International Journal of Educational Research*. 35 (2001): 319-330.

Kukathas, Chandran. "Two Constructions of Libertarianism." In: *Libertarian Papers*. 1/11 (2009): 1-13.

Kukathas, Chandran. *The Liberal Archipelago. A Theory of Diversity and Freedom*. Oxford: Oxford University Press, 2003.

Kuru, Ahmet. *Secularism and state policies toward religion. The United States, France, and Turkey*. Cambridge: Cambridge University Press, 2009.

Kymlicka, Will. "Liberal individualism and liberal neutrality." In: *Ethics*. 99/4 (1989): 883-905.

Modood, Tariq. *Multiculturalism*. Cambridge: Polity Press, 2007.

Mortier, Freddy and Rigaux, Marie-Françoise. *De federale financiering van de bedienaren der erediensten en de afgevaardigden van de Centrale Vrijzinnige raad. Verslag van de Commissie der Wijzen*. Brussel: 2005-2006.

Nozick, Robert. *Anarchy, State and Utopia*. Oxford, Blackwell, 1974.

Nussbaum, Martha. *Liberty of Conscience. In Defence of America's Tradition of Religious Equality*. New York: Basic Books, 2008.

Overbeeke, Adriaan. "Levensovertuiging en onderwijs in de Belgische Grondwet." In: *Liber Amicorum discipulorum Karel Rimanque*. edited by Bruno Peeters. 299-351. Antwerpen: Intersentia, 2007.

Rawls, John. "Fairness to Goodness." In: *The Philosophical Review*. 84 (1975): 536-554.

Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993 (1996).

Robbers, Gerhard. ed. *State and Church in the European Union*. Baden-Baden: Nomos, 2005.

Torfs, Rik. "State and Church in Belgium." In: *State and Church in the European Union*. edited by Gerhard Robbers. 9-33. Baden-Baden: Nomos, 2005.

United Nations. *International Covenant on Civil and Political Rights*. (1998).

Van Parijs, Philippe. "Welk rechtvaardig schoolpact voor de XXIste eeuw?" In: *T.O.R.B.* 10/1-2 (2009): 40-43.

Veny, Ludo. "Onderwijs en grondwet. De nieuwe grondwetsbepalingen inzake onderwijs." In: *Tijdschrift voor Bestuurswetenschappen en Publiekrecht*. (1988): 573-601.

Voyé, Liliane & Dobbelaere, Karel. "La gestion publique de la diversité religieuse en Belgique. Pluralisme religieux et pratiques d'accommodement." In: *La nouvelle question religieuse. Régulation ou ingérence de l'Etat?*. edited by Pauline Côté and Jeremy Gunn. 163-183. Brussel: Peter Lang, 2006.