

# THE SECULAR STATE IN THE WESTERN TRADITION.<sup>1</sup>

Frans A.M. Alting von Geusau, professor of law (emeritus)

## Introduction

Europe is a construction of the human mind based on ill-defined borders<sup>2</sup>. The Netherlands belong to Europe just as much as Italy, Finland, Romania or Ireland. When we accept T.S. Eliot's saying that "no culture has appeared or developed except together with a religion"<sup>3</sup>, the borders of Europe or the West simply defy definition. They might have to include both America and Russia. In any case within the universal Christian religion, we observe great diversity - already in the European Union - between Orthodox, Greek Catholic, Roman Catholic, Lutheran, Anglican and Reformation Christians. Italy is a Roman Catholic country; church-state relations are primarily concerned with the Roman Catholic Church. In the Netherlands, we Catholics are nationwide a minority - ranging from 1% in the North to over 90% in the south<sup>4</sup>. Christians of the various denominations have reached a high level of mutual respect and cooperation. Church-state relations are primarily concerned with the accelerating process of dechristianization and the problem of dealing with a growing and not integrated Muslim minority.

For the French/Italian term *laïcité/laicità* there is no equivalent in the English language. Neither "the secular state" nor "secularism" has the same meaning. The concept<sup>5</sup> has its origin in the French Revolution and is considered to be the cornerstone of the Republican Pact concluded thereafter. It is said - by the French - to include liberty of conscience, legal equality with respect to one's spiritual and religious options, and neutrality of the political power. Or, to put it less kindly: *laïcité* is the name of a French republican ideology, itself rather close to Jean Jacques Rousseau's idea<sup>6</sup> of a state religion. The ideology reflects a perennial obsession with the (catholic) religion and has little to do with the reality of church-state relations in France. As my reflections include other and more successful formulas for arranging church-state relations, I prefer to avoid the term *laïcité* in this comparative survey. My survey is built around three theses : first that Europe has been decisively formed by the Good News of Jesus Christ; second that separation between religious and temporal power is the outcome of biblical wisdom; and third that the silence about the Christian heritage in the moribund European Constitution was an absurdity and a scandal.

## EUROPE AND JESUS-CHRIST

Europe has been formed profoundly and decisively by the Good News, the Gospel of Jesus-Christ. As our Saviour, He is unique: not the last of the prophets but the first of the risen from the death. As divine reality his coming into this world is a historic reality. He is not only memory but living presence. From a Christian point of view, human history and the history of salvation are intertwined. History has a sense and a direction, advancing towards the end of times. Therefore "Tradition" implies more than just interpretation of the Word of God

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<sup>1</sup> Text based on guestlectures given on 5-7 December 2005 at the University of Bari, the LUMSA (*Liberà università Maria Ss. Assunta*) University and the European University in Rome, Italy.

<sup>2</sup> J.B. Duroselle, *L'Idée d'Europe dans l'histoire*. Paris 1965

<sup>3</sup> T.S. Eliot, *Christianity and Culture*. A Harvest Book 1976.

<sup>4</sup> Nationwide 35 % of 50% of the population indicating church affiliation

<sup>5</sup> Rapport STASI (de la commission de réflexion sur l'application du principe de laïcité) du 11.12.2003

<sup>6</sup> *Du Contrat Social*. Livre IV, Chapitre VIII, De la religion civile.

recorded in the Bible. Europe's conception of man and woman and their fundamental dignity is fundamentally shaped by Jesus-Christ. He himself was fully aware of his mission to complete the Law (the *Torah*) and to bring the faith of Israël to all the nations.

It must be well understood: what make the difference are Christ and His message and not so much we Christians. Europe's history is full of tragedy, conflict, injustice and violence. Like other nations, Europeans are fallen and sinful, blinded by power or egoism or subject to hatred. Formed by Christ does not mean that we Europeans are superior to others, only that abundant Grace has been given to us. Our shortcomings are worse than those of others.

Three themes may underline the decisive importance of Jesus-Christ in the history of Europe and the West. They are: the humanisation of law and the state; the separation between church and state; and the revolt of the human spirit.

### The Humanisation of Law and the State.

The humanization of law over the centuries is the first theme giving evidence of such decisive importance. Ancient and traditional customs are known to be harsh and cruel. Some of them are described in the Book of Genesis, like the treatment of Joseph by his half-brothers (Jacob had several wives) or the response of the brothers to the dishonouring of their sister Dinah.

From the Ten Commandments in the Book of Exodus to the Sermon on the Mount in St. Mathew's Gospel, the Bible narrates of God's effort to humanise men's cruel laws – an effort continuing through Tradition. The first commandment behind this effort is to “love the Lord your God with all your heart, with all your soul, with all your mind and with all your strength. The second is this: You must love your neighbour as yourself. There is now commandment greater than these.”(Mk.12,30-31). There can be no true justice without such charity<sup>7</sup>. In the legal history of the West, the process of humanisation can be followed through the formation of Roman law, Canon Law and the codification of law in continental European countries.

Some examples may clarify the extent of this influence. When asked about the right of a husband to divorce his wife (Mt. 19,1-9), Jesus makes clear that no man should separate what God has joined. What he means is marriage as a union between one man and one woman. We also learn that Moses still accepted divorce, because of the people's stubbornness. Monogamy is the cornerstone of Western family law. The marriage vow is given special protection, although recent changes in secular law have made divorce easier. Such protection is bound to be undermined by recent developments giving unions between two persons of the same sex the same rights and status. Done in the name of the principle of equal treatment, it shows the extent of philosophical and moral confusion now pervading modern secular society.

Another example concerns the power of a father over his wife and children. Traditional custom gave him power over their life and death. Western law has gradually abolished that power. A death sentence can be pronounced only by a competent and independent court under strict rules of criminal law and procedure. Revenge killing or honour killing have been outlawed. Under the European Human Rights Convention, the death penalty itself has been abolished (Protocol nr. 6).

So how do we deal with the case of a young Turkish woman in a European City, who was killed by her 12 year old brother? <sup>8</sup>. The case was widely discussed in the local Turkish community and the boy found substantial support for what was considered an act to protect

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<sup>7</sup> Armand Abécassis, 'Droit et religion dans la société hébraïque'. *Archives de Philosophie du Droit*. Tome 38,1993.

<sup>8</sup> There were at least six such cases in 2005 in one major city. To protect the persons concerned, this case combines elements of some of them.

the honour of her family, permitted under *Shari'a* or Islamic Law. Under existing criminal law in Europe (but also in modern Turkey) honour killing is a forbidden by law. The practice according to reports from the UN, however, is still widespread in Islamic countries and growing in Europe and not always prosecuted. Legal authorities can and do react variably. The Public Prosecutor can decide not to do anything as the killing has not been reported to him, he can indict the boy only, or the father as accomplice, or both son and father for deliberate murder. The Judge, similarly, has a variety of options at his disposal: from a light sentence for the boy and acquittal of the father to life sentence for both for murder. Seen in perspective, the answer appears to be quite clear. What is claimed to be *shari'a* is in reality accepted ancient custom. No such "religious" claim can be accepted against current criminal law as the outcome of a long process of its humanisation. Father and son ought to be condemned for premeditated murder.

Another example with a long history is the abolition of slavery. Already in the *Corpus Iuris Civilis* we can read that slavery is contrary to natural law. It took the West until the nineteenth century until slavery was abolished by law. Still, the theory that customs must yield to natural law is one of the greatest achievements of the humanisation of law and of the canonists in particular.<sup>9</sup>

A final example concerns the issue of war under international law. Essentially, we are faced with a very sad history and an unsolved issue. Still from St. Augustine and Thomas Aquinas onwards, efforts have been made to restrain warfare, the latest step being the prohibition to use force in the UN Charter. Just war theory is not meant to help President Bush in his effort to justify the invasion of Iraq (2003), but to limit war between states.

The humanisation of law is closely related to the separation between church and state – to be discussed later – and has often been the outcome of the revolt of the human spirit against cruelty and abuse of power – to which we shall now turn.

### The Revolt of the human spirit.

Jesus Christ was neither a warrior nor a political revolutionary. His kingdom was not of this world, but in the world He was a sign of contradiction. His message is addressed to the conscience of every human being, to our inner sanctuary where we must decide between the good to do and the evil to avoid. In conscience we may decide to disobey a law and the ruler. "The principle of civil disobedience was in fact inherent in the experience of the early church, since Christian worship was itself illegal."<sup>10</sup> The principle found its way into the laws of Europe and the West. The right or even the duty to disobey the law is not limited to tyrannical laws. As we can read in the Encyclical *Evangelium Vitae* of Pope John-Paul II: "Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; *instead there is a grave and clear obligation to oppose them by conscientious objection.*"<sup>11</sup>

Throughout our history, courageous men and women revolted in the name of their conscience and thereby changed the course of history. We owe the principle of freedom of conscience and religion to those who, most concretely, objected to the death penalty for heresy in the name of tolerance.<sup>12</sup> Tolerance, ever since, is a duty for state authorities.

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<sup>9</sup> Harold J. Berman, *LAW and REVOLUTION. The Formation of the Western Legal Tradition*. Harvard University Press 1983. p. 145.

<sup>10</sup> Harold J. Berman, *op.cit.* p. 167.

<sup>11</sup> Encyclical of John-Paul II. Par. 73.

<sup>12</sup> Stefan Zweig, *Castellio gegen Calvin oder Ein Gewissen gegen die Gewalt*. Fischer Taschenbuch 2003. Voltaire, *Traité sur la Tolérance*. Flammarion Paris 1989.

In our time, we owe Europe's peaceful unification to those who opted for reconciliation with instead of revenge against Germany. In Washington D.C. George Marshall and Dean Acheson decided to offer Marshall Aid also to Germany (1947). From Paris Robert Schuman launched his proposal for reconciliation and European unity with Germany (1950). The plan was drafted by Jean Monnet and strongly supported by Alcide de Gasperi in Rome and Konrad Adenauer in Bonn. These men changed the course of European and Western history, acting from the depth of their faith as Christians. Robert Schuman was fully aware of being an instrument of Providence, Who used him to achieve what goes beyond our human capacity.<sup>13</sup>

More recently we have experienced how the revolt of civil society in Poland, Czechoslovakia and Hungary peacefully brought down communist repression and the Soviet system. The "Spirit of 1989"<sup>14</sup> overcame the post-war division of Europe and created the conditions for the peaceful enlargement of the European Union. The Spirit of 1989 found its source in the Christian faith. When Pope John-Paul II visited Poland in 1979, he asked his fellow-Poles: "What are you in favour of? Of conformist consent to totalitarian coercion or of the inviolable right in God's and man's order of things for human beings to live in freedom and dignity?"<sup>15</sup> The answer came within a year with solidarity strikes at the Gdansk Shipyard and the creation of *Solidarnosc*, the first free trade union behind the Iron Curtain. The peaceful collapse of the communist system did not come by chance, it was so intended. The "Spirit of Solidarity" sought revolution as an event in the spiritual sphere and not a violent revolution based on the principle of revenge. Solidarity means to carry the burden of another person and so fulfil God's law, it is a virtue born of itself from the heart. The key to our cause is faith in the Son of Man.<sup>16</sup> This faith was the key to the Spirit of 1989 and to the peaceful re-unification of Europe. It is time to remind our laicist and secularist fellow Europeans that we owe our peaceful and enlarged European Union to those who acted in fidelity to their faith, after the Second World War and in the 1980's.

## **SEPARATION BETWEEN CHURCHES AND STATE.**

The separation between spiritual and temporal power, between faith and politics, between church and state is not an invention of the era of Enlightenment, as most of us have been taught. The concept has its origin in the Gospel itself, where Jesus in reply to a question by some Pharisees and some Herodians, says: "Pay Caesar what belongs to Caesar – and God what belongs to God."<sup>17</sup> History provides ample evidence of the wisdom of this concept. One of man's greatest temptations is the abuse of power over men. The best remedy is the separation of powers. The separation between spiritual and temporal or political power opens the road to a system of checks and balances we call democracy. In Robert Schuman's view, democracy owes its existence to Christendom. It was born the day man was called to realise in daily life the dignity of the human person; and to do so in individual liberty, in respect for the rights of everyone; and to practise fraternal charity to all. Never before Christ have such ideas been formulated.<sup>18</sup>

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<sup>13</sup> René Lejeune, *Robert Schuman. Père de l'Europe 1886 – 1963*. Fayard 2000. p. 15.

<sup>14</sup> Frans A.M. Alting von Geusau, *The Spirit of 1989: Europe on the Threshold to a New Era?* The Fourteenth Corbishley Memorial Lecture. 7 June 1990.

<sup>15</sup> As quote on p. 156 in my : *European Unification in the Twentieth Century*. Vidya Publishers Nijmegen 1998.

<sup>16</sup> Józef Tischner, *The Spirit of Solidarity*. Harper and Row 1982. p. 2ff.

<sup>17</sup> This story appears in Mathew, Mark and Luke.

<sup>18</sup> René Lejeune, *op.cit.* p.220.

## Spiritual and secular power in Western history.

We should not forget that the symbiosis between spiritual and political power has been the custom in human history. Such was the case in the Roman Empire of the 4<sup>th</sup>. Century and in Byzantium thereafter. It was the case in the countries of the Reformation, according to the principle *cuius regio eius religio*. It was the case in the countries with an Orthodox majority and seems to be returning to Russia. It was the case in the Islamic world and today in Iran in particular. The symbiosis easily leads to repression and seldom or never to democracy.

The major exception to the custom of symbiosis is the Roman Catholic Church – before Emperor Theodosius in 380 and after Italian unification in 1870. Whatever were the motives behind the conquest and annexation of the Ecclesiastical States, the outcome has been a blessing (in disguise) for the spiritual mission of the Holy See. The history of Europe and the West has been deeply marked by the turbulent relationship between Popes and Emperors of the Holy Roman Empire, from 800 (Charles the Great) to 1806 (the end of the Empire). It often was a violent relationship, not always edifying but surely fascinating. In this history three eras must be remembered in particular.

The first one is the era following the Great Schism of 1054 between East and West. The Papal Revolution (Gregory VII) against the political power of the Emperor dominated Europe for over two centuries. It began as an effort to free the Pope from imperial oversight. It was the era of the great crusades against the Turks and Byzantium. More positive was the creation of Europe's first modern universities. Bologna devoted itself to law, Paris to theology. The former was instrumental in the creation of the first Western system of law, the canon law. The latter, through such great saints and teachers as Albertus Magnus and Thomas Aquinas, helped revive philosophy, *fides et ratio*. The era came to an end with the failed effort (Boniface VIII) to assert papal supremacy over the king of France.

The second one is the era of Reformation and religious wars, from Luther to the Peace of Westphalia in 1648 – also the era of the great discoveries. While the America's were discovered and colonised, Europe (the West at the time) fell apart. The Peace of Westphalia sanctioned a new system of sovereign states, whose princes accepted no higher authority than their own and no other law than that promulgated under their own authority.

The third one is the era of Enlightenment and the revolutions in America and France. French Enlightenment and Revolution were distinctly irreligious and anti-catholic Church. The Pilgrim Fathers, who fled religious persecution in England and sailed (after 11 years in Holland) to North America, were most religious. They sought full freedom for practising their own version of Protestantism. The American Colonies in 1776, revolted against the King of Great Britain because of his usurpation of power. Inspired by the writings of John Locke, their new Republic was built on Christian foundations. Freedom of religion was one of its fundamental principles. After the Second World War, the West and Europe embarked on their new course of Atlantic cooperation and European unification. The American model of a state founded on freedom of religion, rather than the French one founded on the *laïcité* of the republic prevailed – also in the Declaration *Dignitatis Humanae* of the Second Vatican Council!<sup>19</sup>

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<sup>19</sup> The chief intellectual architect of the Declaration was the U.S. Jesuit theologian John Courtney Murray. George Weigel, *Freedom and Its Discontents. Catholicism Confronts Modernity*. Ethics and Public Policy Center 1991. At p.37.

## A Variety of solutions to the relations between Church and State.

The United States of America is the only Western country in which freedom of conscience and religion was a founding principle from the beginning. The European states moved from the situation of a dominant Church to accepting freedom of conscience and religion – in some of them not until after the Second World War.

A strict regime of separation between Churches and State prevails in the United States and France. Problematic in France as we saw already, it is working well in the United States. It enabled full freedom for the churches. The relationship is the subject of continuous and lively discussion. Many cases have come before the Supreme Court for judgment. Strict separation also prevailed in the former Soviet Union, but in a devious variant. The Soviet and other communist constitutions separated the state from the church and the church from education. That is to say: the State abused education to impose atheism and the church was kept out of the educational system.

At the other end of the spectrum are England, the Nordic states, Greece and several Swiss cantons with the regime of an established church. Under the influence of post-war developments towards freedom of religion and equality of treatment, the regime of a state church is little more than a formality.

In between one finds religiously pluralist countries like Germany and the Netherlands in which a mixed system of cooperation and separation prevails. In Germany churches have a special status. They receive their income through the system of *Kirchensteuer*. In the Netherlands religious and state schools and universities are equally financed.

In between one also finds countries like Belgium, Ireland, Italy, Poland, Portugal and Spain – all in majority Catholic. A system of separation based on freedom of religion and equality of treatment is in force. In fact the Catholic Church still is the more equal one, by its size, by its organisation and in a number of these countries by the fact that its rights are enshrined in a Concordat with the Holy See.

Especially since the Second World War, the regimes for the separation between Churches and States tend to converge. This is partly due to the attractive model presented by the United States but also to the European Human Rights Convention, giving prime of place in its article 9 to freedom of conscience and religion. Access to the Supreme Court of Justice in Washington for U.S. citizens and to the European Court for Human Rights in Strasbourg for citizens of more than 40 European countries enables just and pacific settlement of religious conflicts. This development in itself underlines the importance of the separation between religious and political power for the humanisation of law and the state. Two things, however, must be kept in mind. The European Human Rights Convention – like the Schuman Plan – was a response to the massive violation of human rights in war and by the totalitarian regimes. The variety of solutions reflected a variety of Christian denominations. It may be that these solutions are no longer adequate for our current problems. Among them are the dechristianization of our societies and the growing presence of Muslim minorities.

## **THE CHRISTOPHOBIA OF THE (MORIBUND) EUROPEAN CONSTITUTION**

Following the rejection of the Constitution for Europe by large popular majorities in France and the Netherlands, one should be allowed to conclude (in Dickens' words) that it is dead, as dead as a doornail. I shed no tears over this European misadventure. The book of some 500 pages was no Constitution. It was a mixture of useful compilations, empty slogans, suicidal formulas and political illusions. The Convention established for the purpose was no Convention and failed to act like one. It did not even vote on the draft-articles, but just ended

their deliberations with an adoption by consensus (diplomatic formula for too much disagreement to even try).

Still, the silence about Europe's Christian heritage in the Preamble is a disgrace, an absurdity and a scandal – not to be repeated in a new effort to draft a true Constitution of no more than 20 articles. “Europe shall be Christian or it shall not be”, wrote Romano Guardini in 1946. “What will be left of Europe when it abandons its Christian core is no longer of any significance.”<sup>20</sup> Even the Russian Orthodox Church protested (in 2004) against the disgrace of imposing the ideology of the French Revolution on a Constitution for Europe. As my own survey has made clear, it was an absurdity to deny our Christian heritage; a case of repression to be treated by a psychiatrist.

The scandal, however, lies not with the *laicistes* who tried to impose their ideology, but with the Christians who kept silent, who accepted to be marginalised or who had locked themselves up in their ghettos.<sup>21</sup>

Today we Christians have been given another chance. Time has come for a revolt of the Christian spirit against the tyranny of aggressive secularism, an event in the spiritual sphere. We must stand up and be counted as advocates for a European Union firmly rooted in its Christian heritage, that is : a Constitution making Europe's Christian core – the Schuman Plan – the fundamental law of the European Union.

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<sup>20</sup> Romano Guardini, *Der Heilbringer in Mythos, Offenbarung und Politik*. Published separately by Topos Taschenbücher and in : *Unterscheidung des Christlichen. Band II*. Topos 1994.

<sup>21</sup> Cf. from the highly interesting book by Joseph H.H.Weiler, *Un'Europa cristiana. Un saggio esplorativo*. Rizzoli, Milano 2003.