European Nationalism.
Coexistence in a Multi-ethnic and Multi-religious Society

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Introduction

Nationalism and religion. An odd combination? Or an obvious one? Anyhow, one can hardly deny that the link between nationalistic feelings and religion has become more obvious again during the last decade. In this article, I shall first briefly examine why nationalism and religion are so strongly intertwined in today's European society. This analysis can be explained from both a political and a philosophical perspective.

The next chapter will deal with the problem of nationalism at the more concrete level of legal relationships between Church and State. Is it possible, at that level, to reach an equilibrium between the position of a religion with a strong national affiliation and religious freedom as a general principle? And if so, how could such a model be elaborated ?

In a last chapter, we will look at some new trends in society and how these can be brought in connection with the current framework governing Church and State issues. How can it cope with one of the new present-day paradigms, as formulated in the title of this contribution: *coexistence in a multi-ethnic and multi-religious society*?

I. Nationalism and Religion. Some Political and Philosophical Remarks

Interaction between nationalism and religion is not a typically European phenomenon. It exists in many countries in the world[1]. There tends to be a strong reciprocity between national and religious identity.

But of special interest to us is the picture in Europe. Some countries have "always" had a specific, prominent relationship with one religion or another. This is true for countries with a State church, such as Denmark, England, Sweden, Scotland, Finland, Greece..., but also for countries with a dominant religion playing an important part in society, which is the case of catholicism in Ireland and Poland. However, recent eruptions of nationalism closely linked to religion have surprised many observers. The most striking example has been given by ex-Yugoslavia[2].

How can this intimate relationship between nationalism and religion be explained? Scepticism to models offering an easy answer would be a sound approach. But *part of* a possible explanation can be found in the struggle of religion, christianity in Europe, with the ideas of Enlightenment, but also with modernity as a whole. Enlightenment for instance by way of the French revolution, created a clean break with the past. Emancipation, liberal ideas, science all gained force, the past was left behind. An element of the past seemed to be religion, and religion in those days was: christianity. All this lead Chateaubriand, in his *Essai sur les révolutions,* to the famous question: "Quelle sera la religion qui remplacera le christianisme?"[3]

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[1] Cf. e.g. P. van der Veer, *Hindus and Muslims in India*, Berkeley & Los Angeles, University of California Press, 1994, XVI + 247 p. The author demonstrates that in India religious nationalism has a history of its own, which cannot be reduced to the master narrative of European modernity.

[2] The emergence of a distinct Bosnian Muslim identity, for instance, has been described in M. Pinson (ed.), *The Muslims of Bosnia-Herzogovina. Their Historic Development from the Middle Ages to the Dissolution of Yugoslavia*, Cambridge (Mass.), Harvard University Press, 1994, 187 p.

[3] F.R. de Chateaubriand, *Essai historique, politique et moral sur les révolutions anciennes et modernes*, Brussels, Weissenbruch, 1826-1827, 2 vol.

However, not everybody accepted, or was in favour of, a radical break between christianity and the new world. Many valuable attempts were undertaken to connect christianity to modern thinking and the new world, or vice versa.

According to the French philosopher Saint-Simon, religion, in agreement with its ethymological significance, as expressed in the notion *religare*, should be the real link in society. Religion seemed to be the only principle able to create some form of unity[4].

Other examples could be quoted. Lessing, for instance, tries, in the tradition of English deism, to deduce from universal religious belief a natural religion, but with the clear will to safeguard the idea of *revelation* and to reconcile it with *reason*[5]. This leads him to an idea of progressive revelation, which means for mankind what education means for the individual[6].

Also Hegel could be situated in a similar context. He developed the idea of a "heroic" history leading to a final moment of fulfilment, through which the unity between mankind and God is permanently constituted[7].

Ultimately, these and many other attempts were not as effective as one might have hoped. Ever more, modern thinking went its own way, not including any longer christianity in an explicit way, and often even criticising it, although at a deeper level remaining unable to deny its influence entirely. Socialism and communism, for instance, were usually not in favour of christian religions, although they would hardly have been conceivable without underlying christian impulses.

But then attempts to associate modern thinking with christianity were not undertaken by philosophers or political thinkers alone. A lot of people

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[4] Cf. A. Antoine, "Politique et religion dans le XIXe siècle français", in M. Gauchet, P. Manent and P. Rosanvallon (ed.), Situations de la démocratie, Paris, Gallimard/Le Seuil, 1993, 227.

[5] A. Antoine, "Politique..." in M. Gauchet e.a. (ed.), *o.c.*, 235.

[6] G. Lessing, *Essai sur l'éducation du genre humain*, Paris, 1832, 307 (par. 1).

[7] A. Antoine, "Politique..." in M. Gauchet e.a. (ed.), *o.c.*, 236.

from within the Roman Catholic Church for instance had similar intentions, but started from a different angle. Their starting point was from the Churches and their desire to adjust their message to modern society. From this perspective also, a lot of highly interesting ideas were launched. Starting with Lamennais, this *faithful professing heresy* as he was called by Chateaubriand[8], passing through modernism condemned by pope Pius X in his encyclical *Pascendi*[9], ending up into the Second Vatican Council in its most thrilling documents such as the apostolic constitution *Gaudium et spes*[10], a lot of creative Roman Catholic thinking was produced in this respect. Nevertheless, neither from the Churches' angle, was the connection between religion and modernity ever solidly established. For instance, the promises of Vatican II in this regard have not been fulfilled up to this day[11].

As a matter of fact, both attempts as described above failed to live up to their expectations. Eventually, modern political and philosophical thinking were unsuccessful in including christianity or religion in its most exciting and challenging models. And the opposite is equally true: current religious thinking was only very partially affected by modern ideas launched by Enlightenment. Or, in other words, the bridge between Reason and Christianity has never been a solid one. However, as far as I am concerned, this failure is a fact which can be deduced from history, and is by no means a philosophical statement which ontologically cannot be avoided.

But then again, the mere fact that a solid bridge between Enlightenment and christianity never existed, could at least partly explain the strong link between nationalism and religion as it emerged again, more

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[8] F.R. de Chateaubriand, Mémoires d'outre-tombe, livre 44, chap. 6, Paris, Gallimard, Bibl. de la Pleiade, 1964, t. II, 929.

[9] Encyclical *Pascendi*, 8 september 1907, *ASS*, 1907, 593-650.

[10] Pastoral Constitution *Gaudium et Spes*, 7 December 1965, *AAS*, 1966, 1025-1120.

[11] Cf. A. ALBERIGO and J.-P. JOSSUA (ed.), *La réception de Vatican II*, Paris, Cerf, 1985, 465 p.

vividly than ever before, in the Europe of the nineties. Indeed, 1989 was characterised by the *sudden* death, after the long but apparently not perilous disease, of communism. Communism could be seen as a somewhat caricatural exponent of rational thinking, may be to the extent that it was no longer rational. Once it suddenly collapsed, many people, forced by the prevailing system to be "enlightened", by definition and at any price, turned themselves again towards pre-Enlightenment values: to their particular roots, and also to religion in its most mysterious and somewhat irrational dimensions. One should not qualify this as a revenge of God[12], but as a revenge of pre-Enlightenment thinking, in which the old image of religion can play a considerable part.

Obviously, the description I just gave is completely unable to unravel the strong bond between nationalism and religion. It could only help explain the phenomenon. And it identifies some failures of the past, namely the missed connection between modernity and christianity.

Bearing all this in mind, I would like to tackle another problem. Would it be possible to build a bridge between Enlightenment and Faith at another level, this time *not* at the level of political or philosophical thinking, but at the level of legal relationships between Church and State? Or, to ask the same question in a somewhat different way: can legal Church and State relationships *combine* the rational logic at the bottom of religious freedom with an open eye for the somewhat mystic union between a nation and its dominant religion? Can law, being less fundamental and more pragmatic than real philosophy, achieve what political thinking as a rule failed to accomplish?

II. Nationalism, Religion and Church and State Relationships
A. Arguments Complicating a Compromise Today

The question to examine could indeed be a challenging one: can a real harmony between modernity and christianity, between rational and mystic thinking -I use both notions in a slightly provocative way- which turned

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[12] Cf. G. Kepel, La revanche de Dieu. Chrétiens, juifs et musulmans à la reconquête du monde, Paris, Seuil, 1991, 282 p.

out to be hard to achieve at the level of political philosophy, be brought into practice at the much more pragmatic level of Church and State relationships[13]? Such an enterprise is anything but easy, so it seems.

Moreover, a stumbling block to such a historical compromise could be constituted by the irresistible march to a multi-cultural society. Differences as well as change are for a great number of people difficult to cope with, and things become extra-complicated when a multi-cultural society is being imposed on them as a *fact*, which they are hardly able to bring in in their own lives but which they have to accept and moreover, which they *must* appreciate, whether they like it or not. People are confronted with the multi-cultural society as with a statement containing an ethical component: multi-cultural society is *better* (or call it *richer*) than a mono-cultural society. Besides, raising this topic for rational discussion is virtually impossible and in case it were possible, its outcome would probably be inefficient in holding back the ungoing evolution towards a multi-cultural society, whatever the latter notion may exactly mean. All these elements together create some fear among parts of the European population, especially among the weaker in society, among those whose position, job or status could be endangered by newcomers making society every day a little bit more multi-cultural. A possible answer to this hypothetical or real danger could be *nationalism*, often connected to one particular *religion* linked up with the nation and its history. So one could, for instance, celebrate the value of christian or catholic faith, in order to distinguish oneself from new, multi-cultural trends. In a second, more "secondary" form, nationalism does not lead so much to a preferential option *in favour of* one particular religion, such as the christian one, as to a *negative attitude* towards a religion which is considered to be unfamiliar to the nation and its cultural heritage: instead of being *in favour* of christianity, nationalists can, for instance, be *opposed* to Islam.

A second handicap could be the swing of the pendulum in history. The communist system as it occurred in the former Soviet Union and its sate-

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[13] Attempts to achieve such a compromise are not new. In the late seventeenth and early eighteenth century, Christian Thomasius made efforts in that sense. Cf. I.C. Ibán, L. Prieto Sanchís and A. Motilla de la Calle, Derecho Eclesiástico, Madrid, McGraw-Hill, 1997, 18-19.

llite states is dead. While pretending to be extremely rational, the system just became irrational because it lost touch with reality. While trying to be completely internationalistic it just became locally oriented: borders were closed, if not physically, then at least psychologically. The memories of this somewhat strange experience in history of mankind are still kept alive: being too *rational* or too *internationalistic*, as a result of all these events, still remains to a certain degree a perilous undertaking.

In a nutshell, a combination of both the successful upcoming of multi-culturalism and declining rational internationalistic thinking could make a combination of the rational logic of religious freedom and the thought in favour of typical national developments less obvious. Indeed, the *national*, more *mystic* element seems to be, as a result of the two factors quoted earlier, the more dominant tendency for the time being.

B. Failed Attempts to Reach a Compromise in the Past

In spite of these negative elements, I am convinced that a compromise between rationalism and mystery remains possible and is even urgently required in modern Church and State relationships. Yet the right equilibrium is hard to find. I have the impression that, in the more recent past, during the last hundred years, almost each time such a compromise was aimed at, the rational component ended up to dominate the mystic one. Just two examples in order to illustrate my thesis.

The first example is offered by the Portuguese revolution of 1911. The Republic was proclaimed, which involved the end of a close connection between Church and State. The constitutions of 1826 and 1838 recognised the Roman-Catholic religion as the official state religion. In 1911, the attitude towards the church was rather hostile, especially in certain urban areas. In this particular context, the 1911 constitution came into force. Freedom of religion and conscience were recognised. At the same time, the constitution foresaw the political and civil equality of all religions[14].

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[14] J. Miranda, "église et état au Portugal", Conscience et liberté, 1986, nr. 32, 132-133; J. Miranda, "Confessions religieuses et liberté d'enseignement au Portugal", in European Consortium for Church and State Research (ed.), Church and State in Europe. State Financial Support. Religion and the School, Milan, Giuffrè, 1992, 105-120.

But then equality is felt like a sanction to a religion with a solid tradition of predominance. *Equality* seems to be a reasonable compromise, but actually it is not: it seals the victory of the rational model over the mystic one. And so has been done under the 1911 Constitution of Portugal. *Equality* was interpreted in a rather stringent way. Measures were taken to limit the activities of the religions, and even if there could have been *equality* in applying these restrictions, the Catholic Church obviously was the first victim of this restrictive policy. In other words, under the pretext of equality, the freedom of the nationally dominant religion was more or less subtly curtailed.

The second example I briefly evoke here is a very well-known one: France. The 1905 Separation-law *seems* to be both neutral and reasonable. Who could be against article 1 of the law of 9 december 1905, stating that the Republic guarantees the freedom of conscience as well as the free exercise of *cultes*? And even article 2 could be perceived in a positive way, although it does not exactly sound like that: "La République ne reconnaît, ne salarie ni ne subventionne aucun culte". Actually, one could argue: the decision *not* to pay is at the same time the pinnacle of the complete freedom and personal responsibility of the faithful. Consequently, individual preference can be given its full value within the objective framework offered by the 1905 Law. However, this was not the more or less hidden intention of the legislator: the 1905 Law was only voted after a long and bitter political struggle and can be seen as a victory of the anti-clerical political fraction, in power ever since 1879 until the law was enacted[15]. It is also true that later on during this century, the Law of 1905 slowly obtained a less negative *interpretation*, clearly contrary to the initial intention of the legislator, who probably would have been startled by future developments. As Czech novelist Ivan Klíma writes: "Future is the time that casts doubt on everything preceding it"[16].

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[15] Cf. R.Torfs, "Church and State in France, Belgium and the Netherlands: Unexpected Similarities and Hidden Differences", Brigham Young University Law Review, 1996, 947-948.

[16] I. KLÍMA, *Wachten op het donker, wachten op het licht*, Amsterdam, Wereldbibliotheek, 1996, 5.

Both examples -the Portuguese constitution of 1911 and the French separation law of 1905- show that a combination of both a rational approach and a large free zone open for local flavour and colour of religion, threatens to fail. In both these cases, the rational approach completely absorbed the more local, more mystic way of dealing with religion. Moreover, this absorption took place in a creeping, almost clandestine way. A respectable notion such as *equality* turned out to be governed by a hidden agenda. Its consequences could hardly be summed up at a glance.

Therefore, the *compromise* between "rational" and "mystic" thinking failed twice.

Obviously, during the same period, an equilibrium also failed to be reached in countries when no real compromise was clearly aimed for. This could be the case for legal Church and State relationships in many European countries, where a radical attempt to introduce rational separation ideas clearly lacked: countries such as Greece, for instance, where the orthodox church still remained the official religion of the Greek State in the 1975 constitution[17]. Or, other examples, the Scandinavian countries, England and Scotland with their state or established churches. Even Germany, with a prominent public law position of some churches can hardly be seen as a country which has made great efforts to concretise the separation ideas of the Age of Reason, although enlightened kings such as Frederic II of Prussia made some reasonable attempts in the past. But altogether, here again the *compromise* between "rational" and "mystic" thinking has never fully been reached, at least not officially: no real dialogue ever took place. Perhaps local flavour of Church and State relationships was much more something to maintain in silence than to discuss at length. It was not *Salonfähig* anymore for intellectual discussions, and yet nobody wanted to renounce it. Consequently, local Church and State relationships have only indirectly been influenced by the ideas of the Enlightenment. Frontal confrontations did not occur. The non-deliberate character of these situations makes them look more vulnerable than it might be the case.

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[17] Ch. K. Papastathis, "State and Church in Greece", in G. Robbers (ed.), State and Church in the European Union, Baden-Baden, Nomos, 1996, 87.

To summarise, one could state that a *compromise* between *rational* and *mystic* thinking in legal Church and State relationships is not an easy goal to work towards. This last century, some apparent attempts ended up in the victory of the rational model (Portugal 1911; France 1905). Some other more organic compromises were maybe of a higher standard (Greece, Scandinavia, England and Scotland), but very often were not the result of a deliberate dialogue with the ideas of Enlightenment, in search of a compromise. These approaches starting from local flavour are perhaps older as they often date from the period of Enlightenment itself. But then again maybe the time has come to make another attempt to find the "golden" compromise between the *rational* and the *mystic* approach. Given the rise of multi-ethnic and multi-religious society in many European countries, the need for such a compromise could be more important than ever before.

C. A Possible Compromise Proposal Between a Rational and a Mystic Approach.

A possible compromise proposal beween a rational and a mystic approach, should, first of all, fully take into account the two difficulties described above, namely elements complicating a balanced compromise *today* as well as the lessons of *the past*, showing that real compromises, those offering a healthy equilibrium, are difficult to achieve.

In striving for such a compromise, one should avoid intermingling both ingredients, the rational and the mystic one, in probably an impossible attempt to bring them together in one magical formula. Instead, I have more confidence in a more limpid *compromise* which clearly gives an equally different as respectable place to both components of the compromise, namely the *rational* and the *mystic* one. Consequently, the compromise encompasses two different levels, which are well separated from each other. At the first level, rational thinking prevails, at the second level mystic flavour dominates, although not unrestrictedly.

At the basic level, LEVEL A, the rational principle of basic religious freedom is achieved. This religious freedom has to be complete: it includes the freedom to become a member or not a member of a religion or church, the freedom to leave it or to change religions as well as the free-

dom of internal organisation of religions and churches. Of course, this freedom is not boundless, but its limits should remain very broad, should be the generally admitted ones, for instance those proposed by art. 9 §2 of the European Convention on Human Rights[18]. Even then, of course, an important role has to be fulfilled by jurisprudence, called to clarify *hic et nunc* some abstract notions such as, for instance, public order, public safety, or health[19]. But then again it is clear that, in any case, this basic protection has to be very solid. Anxiety may not be regarded as the cornerstone on which possible limitations should be built. For instance, not accepting a person as a civil servant because of his membership of the Scientology Church is fully unacceptable[20]. Prohibiting or seriously limiting proselytism as well[21]. In spite of all this, LEVEL A only guarantees religious freedom. It can, by no means, guarantee complete equality among all religious denominations. As a matter of fact, precisely this equality would disturb the equilibrium between the rational and the mystic element and thus would destroy any possible compromise.

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[18] Art. 9, § 2 European Convention on Human Rights and Fundamental Freedoms, art. 9, §2: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

[19] Limitations should be limited. Cf. F. MARGIOTTA BROGLIO, "Il fenomeno religioso nel sistema giuridico dell' Unione Europea", in F. MARGIOTTA BROGLIO, C. MIRABELLI and F. ONIDA, *Religioni e sistemi giuridici*, Bologna, il Mulino, 1997, 142-145.

[20] Cf. on this subject W. CREMER and T. KELM, "Mitgliedschaft in sog. 'Neuen Religions- Weltanschauungsgemeinschaften' und Zugang zum öffentlichen Dienst", *NJW*, 1997, 832-837.

[21] Discussion about the exact limits remains possible and necessary. Cf. Kokkinakis vs. Greece, 25 May 1993, 260-A Eur.Ct.H.R. (ser. A), 1993. For a critical analysis, cf. T.J. GUNN, "Adjudicating Rights of Conscience Under the European Convention on Human Rights", in J.D. VAN DER VYVER and J. WITTE, Jr. (ed.), *Religious Human Rights in Global Perspective. Legal Perspectives,* The Hague/Boston/London, 1996, 305-330.

At the upper level, LEVEL B, basic religious freedom is supposed to be guaranteed[22]. LEVEL A takes care of it. That is why one can talk about an upper level. Here, some forms of privileged treatment, some positive measures taken in favour of only *certain* religious movements or churches are quite conceivable[23]. For instance, there is no reason why the orthodox church in Russia should not enjoy a privileged position, as long as basic religious freedom is fully and adequately guaranteed to all churches and to all religious movements. In other words: privileges are only permissible if they favorise certain religions, which is as a matter of fact the real sense of the notion *privilege*. Positive treatment of some religions, on the

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[22] So, Level A precedes Level B. There is a clear preference and no interaction. In this sense, the system as proposed is this article is quite different from the interaction between fundamental rights and customary law, as it is discussed today in the new South Africa. Cf. T.W. Bennett, Human Rights and African Customary Law, Cape Town, Juta & Co, 1995, vii: "This book is based on an assumption that South Africa is now bound to respect the cultural tradition of those of its people who live according to an African way of life. Such respect implies that state courts must recognize and apply customary law, the legal regime associated with African culture. Once this obligation is acknowledged, conflicts with the fundamental rights contained in ch. 3 of the 1993 Constitution are bound to arise, for the values encoded in customary law, on the one hand, and the Constitution, on the other, frequently contradict one another.

Does this mean that recognition of customary law is superseded by the fundamental rights, or conversely that the fundamental rights should be restricted by customary law? South Africa's Constitution gives no direct answer to this question. The search for a solution begins with a premise that no right, whether a right to culture or one of the other basic human rights, is absolute. This being so, compromise between our newly adopted national value system and African cultural heritage becomes possible."

[23] This would be impossible under the American *No-Preference-Doctrine*, although this theory is less radical than many Europeans think. Cf. A. VON CAMPENHAUSEN, "Das bundesdeutsche Modell des Verhältnisses von Staat Und Kirche - Trennung and Kooperation", *Zeitschrift für evangelisches Kirchenrecht*, 1997, 176, note 10: "Die No-Preference-Doctrine erklärt nicht jede Förderung für unzulässig, sondern nur die Bevorzugung einer Religionsgemeinschaft vor den anderen."

other hand, is not acceptable when they go hand in hand with a negative treatment of others, who consequently might lose ground and end up under the basic minimum of LEVEL A.

Another prerequisite for legitimately granting the privileges of LEVEL B is that preferential treatment should be based on *objective* criteria. What are objective criteria? The most objective criterium certainly is the number of the faithful, but even then more elusive criteria should not be rejected, among them the presence and tradition of a certain religion in the country. For instance in Belgium, the Anglican cult is among the six recognised religions although it counts only very few adherents. The historical reason for its recognition is easy to explain. The first king of Belgium, Leopold I, who reigned between 1831 and 1865, happened to be an anglican. In my eyes, there is no urgent reason why this historically explicable positive discrimination should be sneered at. However, some other possible criteria seem to be highly debatable or even unacceptable. Chiefly, the decision to grant positive support cannot depend on the *content* of the faith, unless it endangers public order or democratic values in the state.

In conclusion I wish to remark that advantages to certain churches and religious movements can be granted at LEVEL B, if (a) positive discrimination does not endanger anybody's basic freedom, which always should remain guaranteed at LEVEL A; (b) positive discrimination is based on objective criteria, such as the number of faithful or historical presence of a certain religion in society; (c) positive discrimination does not take into account the content of the faith unless, from a merely negative perspective, the latter could endanger public order or democratic values.

The construction as presented above, built around the existence of a LEVEL A and a LEVEL B, *to some extent* rules out, or at least circumscribes, the principle of equality among religions. *To some extent*: the *criteria* which may lead to positive discrimination are not all completely elusive. *Objective* criteria are as present and as visible as possible, although some room is left for historically grown situations hard to explain by rational arguments alone. In this regard, LEVEL A fully stands for the *rational* approach, whereas LEVEL B gives some opportunities to the *mystic* approach, but not without any form of rational control. But there can be no two

ways about it, both rational and mystic thinking have their area in which they are the prevailing component.

Just to somewhat clarify underlying ideas, I would like to draw a humble comparison, in full conscience of and in full approval with the Latin adagium *Omnis comparatio claudicat*. Let us take *Europe* as an example. On the old Continent -as everywhere else in the world- the basic needs of the population should be fulfilled. This implies at least enough food and drink, decent housing etc. for all people living on the continent, including of course the British Isles. This minimum could be compared to LEVEL A as described above, the level of basic religious freedom. Once this minimum is solidly guaranteed, including a radical elimination of all paltry excuses for not reaching standards, some room for the upper level, for the equivalent of LEVEL B, can be considered. Maybe the crucial minimum should not be elaborated in exactly the same way in all different European countries. This would only lead to dull and boring uniformity, to gloomy shopping streets with at each corner emerging *C&A* or *Hunkemöller* or *Pizza Hut* again and again, whether one is walking around in Budapest or in Antwerp. Some form of positive discrimination, including the necessary financial stimuli to make it real, seems to be perfectly acceptable so as to maintain wooden balconies with flowers in the Black Forest, pavement café's in the shade under planetrees in the South of France, as well as English pubs full of hospitality, not artificial ones at airports, but those in the Wiltshire countryside. Of course, food and drink and mere survival remain the basis. It should be guaranteed in any case. But once the minimum is safe, the fact that the location is an English pub adds another dimension to it.

As I said: *omnis comparatio claudicat*. For instance, my example might be too romantic. Especially within a legal context, Romanticism is dangerous because it may not be entirely tolerant. Furthermore, the comparison is not completely adequate because it does not substantially take into account possible changes. Should wooden balconies enjoy eternal protection at any price? Even if nobody believes in them anymore? Moreover, the model lacks "objective" criteria for certain forms of positive discrimination which, on the other hand, were clearly present among the prerequisites for putting into practice LEVEL B.

But then what the example really *does* illustrate, is that a combination of *rational* arguments (enough food, drink, decent housing) and mystic ones (wooden balconies, planetrees, English pubs) is possible as long as the basis, which is the rational minimum, continues to be unconditionally guaranteed. Once this LEVEL A is safely reached, a generous place accorded to the *mystic* element should, as far as I can see, not only be just tolerated. It can also entail two fully different but equally positive consequences:

(1) *An improvement in the quality of life*. This improvement is reached through a firm opposition to gloomy uniformity, which may be the result of applying rational Enlightenment principles in a consistent way, even in those fields where they are of no positive help.

(2) *An increasing understanding for multi-cultural and multi-religious society*. This is only too true for those being afraid of the upcoming phenomenon or viewing it with some scepticism. The acceptance of tolerance does not and should not go hand in hand with a loss of one's own identity. On the contrary, being aware of one's identity could increase tolerance.

In this regard, one could argue that a healthy interaction between LEVEL A and LEVEL B is the best guarantee for living peacefully together in a multi-ethnic society which is neither colour- nor flavourness.

A renewed interest for some privileges of old majority churches or historically important religious movements can be combined with an absolute guarantee of basic religious freedom for everyone, with particular attention on religions that are newcomers in society.

To a certain extent, analogies with the attitude of enlightened kings and emperors of the past, such as Joseph II of Austria or Frederic the Great of Prussia could be discovered. They too combined their commitment to majority religion with tolerance to adherents of religious minorities. However, essential differences from the two-level method described above can be situated at both levels involved. At LEVEL A, much more is guaranteed than just tolerance. The freedom has to be real and with only traditionally recognised limits. A measure such as the one Joseph II took on 12 November 1781, namely that Protestantism was allowed but that Protestant churches should not be distinguishable as such and could not

have a bell tower[24], would be fully unacceptable in today's context, as well as in the context of LEVEL A. At LEVEL B, also more openness should be achieved: this level is not exclusively meant for one majority religion, but might privilege, on a basis as objective as possible, more than one church or religious movement. Eventually, it should be ready to privilege religious movements only recently introduced into the country.

Another characteristic of the model described above, with LEVEL A and LEVEL B as its main characteristics, could be that it is not centered on religion. Obviously, it refuses to take a stance on the value of its doctrine or the content of faith. But there is more: the model does not inasmuch focus on the relationship between certain nations and certain religions, but rather on the positive character of cultural diversity as such, and as it can find expression in religion. Right in a way, not only the content of the model, but also the model in itself expounds both the *rational* and the *mystic* approach. It expresses the rational, traditional religious freedom approach, insomuch it is fully in favour of complete religious liberty. Yet on the other hand it also conceals a clear underlying preference for diversity, which in itself is not a rational option. There is no objective reason which argues in favour of wooden balconies. On account of both elements quoted above, namely a deep respect for religious freedom as well as the idea that religious freedom is not the only component of Church and State relationships which should be taken into consideration, even though it just may be the only rational one, the model as proposed here could be typically European. It combines rational protection with elusive dreams or with some remains of the past ready to become dangerous when simply ignored.

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[24] Cf. P. Verhaegen (ed.), Recueil des Ordonnances des Pays-Bas Autrichiens. Troisième Série 1700-1794. Tome douzième, Brussels, Devroye, 1910, 89-90. In the Décret des gouverneurs généraux adressé aux conseils de justice, touchant la tolérance civile, à l'égard des protestants, one can read in art. 3: "En conséquence, il est permis au protestans de bâtir des églises dans les emplacemens, au choix desquels les magistrats ou gens de loi du lieu auront donné leur approbation, à condition néanmoins que ces édifices n'aient aucune apparence extérieure d'église, soit du côté de la porte ou autrement, et qu'il n'y ait ni clocher, ni choches, ni sonnerie en manière quelconque."

III. New Perspectives For a New Model?
A. Changes in the Relationships Between Church and State

In general, one could argue that the model as described above, already covers the current situation in many European countries. But to be useful, it should offer more than a mere description. It should also be able to be a workable tool for the future. The central question in this respect is: can the model be applicable to most ongoing developments in the sphere of legal Church and State relationships? Among the many trends appearing today, I shall analyse two, both closely connected to the title of this contribution, which refers to multi-religious as well as to multi-ethnic society.

I shall first analyse the possible influence of a new perception of Church and State relationships -focusing much more on cooperation than on separation- on a multi-religious society. Does for instance, this cooperation paradigm urge churches and religious movements to work together?

After that, I shall briefly discuss some influences which ongoing political evolutions could have over Church and State relationships. Traditional nations tend to lose power as well as fields of competence, to both the supra-national European Union and the infra-national regions. How does, how can this political and social evolution be transposed to Church and State relationships?

B. The Paradigm of Cooperation in a Multi-Religious Society

Nineteenth-century ideas on Church and State relationships, including the debate up to World War II, was dominated by the discussion on *separation* between Church and State and all problems connected with this central question[25]. The discussion underpinning this problem, of course, is a struggle for power between both parties involved[26]. They rival each other, in the field of macro-structures as well as regards the possible

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[25] S. Ferrari, "Separation of Church and State in Contemporary European Society", *Journal of Church and State*, 1988, 533-547.

[26] R. TORFS, "Stati e Chiese nella Comunità europea", *Quaderni di diritto e politica ecclesiastica*, 1993, 12-19.

influence over people. A good illustration of this nineteenth century deba-
te is the question whether or not a civil marriage should always precede a
religious one. This is far from being a debate on courtesy and politesse. It
concentrates on information and data banks, ultimately on power and its
operating instructions, how to get it, how to keep it.

During this century, this power game at the level of state structures
gradually weakened. The twentieth-century welfare state instead invites
cooperation between the church and the state. The Church no longer
affirms itself as a rival of the State. The *cooperation* paradigm replaces the
separation paradigm[27]. Churches, instead of being the State's rivals, beca-
me helpful partners in governing society by agreement, in trying to reach
consent on topics affecting people's lifes and dreams. The medieval idea
that a reasonable existence in society is only possible with some degree of
an established order still survives[28].

It is not a hazardous undertaking to build a bridge between this coo-
peration-paradigm and LEVEL B of the model as proposed in this article.
While LEVEL A remains untouched, whether the separation paradigm or
the cooperation paradigm dominates the scene, LEVEL B could obtain an
extra, renewed dimension in an atmosphere of cooperation. One could
speak about a tailor-made LEVEL B, as a result of mutual agreement bet-
ween Church and State.

Advantages and privileges, in a cooperation context, are no longer
exclusively the result of a unilateral act imposed by the government, or
kindly granted by it, but can also be the outcome of negotiations between
Church and State. In order to carry on these negotiations successfully, it
could be useful and tactically recommendable for religions and churches
to work together: together they represent more people. Their voice will
more easily be identified as the voice of a large part or even of almost the
entire population.

In many European countries, this collaboration between churches and
religious movements is highly developed. For instance, in The

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[27] S. Ferrari, o.c., 540.

[28] P. LEUPEN, *Gods stad op aarde. Eenheid van kerk en staat in het millennium
na Christus*, Amsterdam, Wereldbibliotheek, 1996, 11.

Netherlands, the *Raad van Kerken* (Council of Churches) reunites most important churches and plays an important part, not only as a common voice of the churches involved as far as their relationship with the State is concerned, but also acts as a moral authority, regarding problems in society. However, neither doctrinal problems or their implications are dealt with in this setting.

In Germany, the Roman Catholic Church and the *Evangelische Kirche in Deutschland* (EKD), have a long tradition of common action and activities[29].

More examples could be cited, showing churches and religious movements working more or less closely together in various fields touching LEVEL B of the proposed model.

However, this colloboration is mostly centring around christian churches, these churches with also a long established presence in society. Common lobbying of Christians and Muslims in search of a better structural position of all churches and religious movements in society seems to be unusual. Collaboration becomes even more exceptional -also among christians- when it does not focus on the common *defence of interests* but on the *content* of faith and its consequences.

This is understandable, because the second form of collaboration definitely goes one step further than the first one.

(a) The *first form of collaboration* focuses on the defence of interests and on an improved formal position of churches in state legislation and administration. Religious doctrine and its practical consequenses are not at stake.

(b) The *second form of collaboration* goes beyond that level and enters into cooperation in the field, *sur le terrain*, including mutual discussions concerning the consequences of one's belief and thus probabely also the content of the faith supporting it.

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[29] Cf. e.g. *Gemeinsame Überlegungen. Stellungnahme zum Vorschlag für eine EG-Verordnung über das Statut des Europäischen Vereins, erarbeitet von einer Arbeitsgruppe der EKD und des Diakonischen Werks in Zusammenarbeit mit Vertretern des Kommissariats d. Deutschen Bischöfe sowie des Deutschen Caritasverbandes* v.2.7.1992. Another joined document was published on European unification in 1995.

The second form of collaboration seems to be tremendously difficult to achieve, especially in a truly multi-religious society where religions have a clearly different doctrine[30]. The question basically could be formulated as follows: How can one enter into such forms of cooperation without giving up too much of his or her identity[31]? A delicate question which remains unsolved. Yet in spite of these problems, some daring examples could be quoted, not only of inter-church, but also of interreligious collaboration. In the middle-town of Ede in the Netherlands, there is a Muslim-Christian school, in which children, parents and staff of both religions are working together[32]. Anyway, in this particular case, the courageous attempt to collaborate does not lead to an improved structural position of both religions at LEVEL B. Indeed, the Dutch constitution states that every kind of school education is not only free but also has to be financed by the state[33].

To sum up, it may be said that the new paradigm of cooperation opens the concrete implementation of LEVEL B for negotiation between Church and State, which could be the more successful in case different Churches

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[30] In spite of these difficulties, important attempts to build bridges have been made. Cf. *the periodical Encounter. Documents for Muslim-Christian Understanding, published by the Pontificio Istituto di Studi Arabi e d'Islamistica*, Viale de Trastevere, 89, 00153 Rome.

[31] This dilemma, however, is not necessarily without any solution. Cf., for instance, M. DHAVAMONY, "The Kingdom of God and Religious Pluralism", *Studia Missionalia*, 1997, 227-249.

[32] H. SCHULTZE, "Inter-denominational Co-operation for and in the field of Religious Education in European Countries", in *Panorama. International Journal of Comparative Religious Education and Values*, 1996, nr. 1, 25.

[33] Art. 23 of the Dutch Constitution deals with education. Cf. S.C.VAN BIJSTERVELD, "The Constitutional Status of Religion in the Netherlands", in European Consortium for Church-State Research (ed.), *The Constitutional Status of Churches in the European Union Countries*, Milan/Paris, Giuffrè/Litec, 1995, 208: "Article 23 guarantees freedom of (denominational) education. For private primary education full public funding is prescribed, under the conditions laid down by Act of Parliament. (...). For categories other than primary education similar arrangements have been adopted in respective Acts of Parliament."

and religions join their efforts and start defending their common interests together. However, collaboration in the field affects Church and State relationships to a lesser degree. Moreover, in practice, relationships of that kind turn out to be more difficult.

C. Supra-National and Infra-National Aspects of Church and State Relationships

Supra-national aspects of Church and State relationships are not new. The Universal Declaration of Human Rights (U.N.O.) and the European Convention on Human Rights (Council of Europe) resulted in supra-national elements becoming a common topic. In the member states of the European Union, at least for several years and even decades, there is a slowly ongoing tendency to no longer deal with Church and State relationships *exclusively* at the national level, with only marginal help of a few supra-national treaties. Two new possible levels seem to reveal themselves, namely (a) the level of the European Union itself and (b) the level of regions, acquiring more and more legal and economic powers within the legal structure of various member states. As a result of all this, the national level is converted into still a very important *intermediate level* between the European Union level and the merely regional one.

The protracted development of three levels instead of one does not necessarily imply that at all three levels "something" has been stipulated with reference to Church and State relationships. It implies even less that these three levels will end up being rivals, eager to gain control over Church and State relationships. A first, rather superficial, glance might confirm the competence of the national State as regards Church and State relationships. But then again this impression is only partly correct. Partly: the level of the European Union as well as the regional level show at least some interest in connection with Church and State relationships.

At the *level of the European Union*, it is clear that the Union, as a result of the principle of subsidiarity and as consensus on this point seems to continue between member states, is in principle not competent for Church and State matters.

Nonetheless, the Amsterdam Summit of June 1997 led to a *Declaration to the Final Act* which is as follows: "The Union will respect

and does not prejudice the status under national law of churches and religious associations or communities in Member States. The Union will equally respect the status of philosophical and non confessional organisations."

Although the Union seems to restrain itself from intervening in this field, it nevertheless intervenes by announcing its non-intervention and by promising not to prejudice the status of churches and religious organisations in the future. It also respects the status of philosophical and non-confessional organisations. This last notion has been taken over from Belgian law, where curiously the Constitution uses the notion *non-confessional* at two different places with two different meanings. In one article, *non-confessional* means *neutral*, another time it stands for *free thinking without a belief in the existence of a God*[34].

In the meantime, it is still going to be quite a job for the European Union to avoid any intervention in the religious area while legislating on social matters such as days of rest or working conditions, covering data protection, or while one day maybe even levying taxes etcetera. Modern society is complex, each topic is interrelated to many others. Consequently, it is more difficult than ever before to make a lucid distinction between Church and State questions and other problems or domains.

At the *regional level* as well, Church and State questions may emerge in a more notable way than ever before. German *Länder* have always had a fair competency in this field. But today, the phenomenon is more generalised. Regional trends are becoming increasingly important almost everywhere. During the campaign for the elections of 1 May 1997, in the

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[34] Art. 181 deals with the payment of salaries and pensions of ministers of the cult. Here, non- confessional philosophical concepts stand for theories excluding any reference to God. However, in art. 24, describing freedom of education, *non-confessional* should be understood as completely neutral. Cf. R. TORFS, "Le régime constitutionnel des cultes en Belgique", in European Consortium for Church-State Research (ed.), *The Constitutional Status of Churches in the European Union*, Milan/Paris, Giuffrè/Litec, 1995, 78-79.

U.K., one of the main political parties offered as a major point of its pro-
gramme the preservation of the Union: something inconceivable as a pos-
sibly relevant topic only a few decades ago. In some other countries, such
as Spain or Belgium, regionalism developed a lot during recent years.
Others may follow, Italy for instance, although the high days of Padania
seem to have evaporated.

Does this trend affect Church and State relationships? I think it does,
both directly and indirectly.

An example of *direct* influence is Spain, where agreements can be
concluded between religions and local authorities[35].

Indirect influence takes place in Belgium. In spite of the farreaching
regionalisation which may still continue to develop, Church and State
matters basically remain national. But then other topics, such as educa-
tion, having a serious impact on the position of churches and religion at
school, have been handed over to the regions in 1993. Since that date, the
problem of religious classes at school is, very slowly but probably irre-
versibly, evolving into distinct directions both in Flanders and in
Wallonia[36].

The examples quoted above clearly demonstrate that, while the natio-
nal level remains the cornerstone of Church and State relationships, and

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[35] Cf. A. MOTILLA, "Church and State in Spain 1995", *European Journal for
Church and State Research*, 1996, 37-38: "Because of the decentralisation
of the State and the creation of regional units ("Autonomous Communities")
which enjoy wide powers on various matters, the legislation which they will
enact will grow in importance for knowing how religious matters are regu-
lated. The Catholic Church has signed many agreements with the regional
governments in areas such as historical and artistic patrimony, religious
chaplaincy, festivities, etc. For the first time a confession other than
Catholic, the Evangelical Church, has covenanted an agreement with a
region, namely, the "Collaboration Agreement between the Community of
Madrid and the Evangelical Council of Madrid"."

[36] R. TORFS, "L'enseignement religieux en Belgique", in F. MESSNER and J.-M.
WOEHRLING (ed.), *Les statuts de l'enseignement religieux*, Paris,
Dalloz/Cerf, 1996, 125-143.

will probably keep this position also in the future, the supra-national and the infra-national level also become a party to the discussion. This development is not without interest. For instance, it tacitly criticises the principle of subsidiarity, at least when perceived in too monolithic a way. In its traditional understanding, the principle of subsidiarity presupposes that responsibilities and competencies for one's own development lie with the person or with the associations which are closest to each person. Only when it is really necessary, when the needs are beyond the capacities of the individual person or the smaller association, must a larger association help out. The latter has a "second responsibility"[37]. This definition sounds nice, but is, at least in my opinion, in two ways dramatically simplistic:

1. It presupposes an easy or at least a feasible demarcation line between topics one can deal with at a local level and topics which should be handed over to larger entities. In practice, problems are seldom *pure* and *one-dimensional* nor do they belong to one category to easily isolate from other fields and domains.

2. It presupposes that a larger association can always help a smaller one. This idea seems to ignore that in some cases the opposite might be equally true[38]. Some associations may be too large to solve problems which on the contrary can successfully be dealt with at a lower level. For instance, it is probably easier to solve discussions on muslim schoolgirls wearing a headscarf as a possible problem for the neutrality of the school at the lower level of the school itself than at the higher level of the minister of education[39].

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[37] A. LEYS, *Ecclesiological Impacts of the Principle of Subsidiarity*, Kampen, Kok, 1995, 208.

[38] The same underlying idea is present in a recent definition by J.-B. d'Onorio: "En vertu de ce principe, il revient à chaque degré d'autorité d'exercer toutes les attributions qui lui sont propres sans avoir besoin de recourir à une autorité de plus grande envergure". Cf. J.-B. D'ONORIO (ed.), *La subsidiarité. De la théologie à la pratique. Actes du XIIe colloque national de la Confédération des Juristes Catholiques de France*, Paris, Pierre Téqui, 1995, 182 p.

[39] R. TORFS, "Lo stato giuridico dell'Islam in Belgio", *Quaderni di diritto e politica ecclesiastica*, 1996, 228-229.
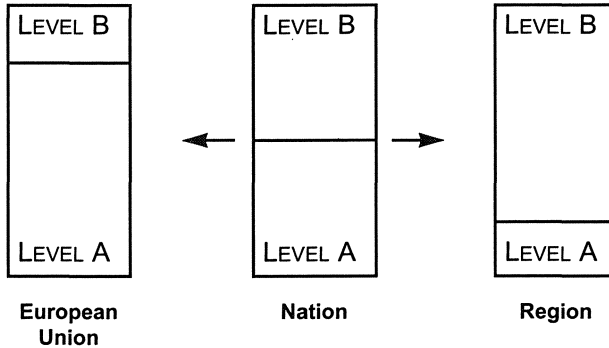
However, supposing *subsidiarity* is refined to *fruitful interaction*, it can be quite useful. Especially such a refined principle could be brought into connection with the model for a multi-ethnic and multi-religious Europe as described earlier. Both at LEVEL A and at LEVEL B, all three authorities involved, namely the European Union, the Nation and the Region can play a part, but the parts they play are different and complement each other.

Eventually, the *European Union* will remain competent for safeguarding the minimum standard situated at LEVEL A, even though for the time being the Council of Europe may be a more relevant forum in this respect. Yet also at a European level, LEVEL B is not fully absent either. For instance, it could be possible that some common European measures may informally begin to take shape, in issues such as Islam or new religious movements. Besides, in a much more formal way, the E.U. has already recognised the status of churches and religions in national law, and just by doing so it indirectly penetrates to LEVEL B.

The national state remains the forum *par excellence* where LEVEL A and LEVEL B are more or less equally present. It is a crossroads. Here again, at LEVEL A, the minimal standards of religious freedom have to be solidly established. Sometimes however, a nation may require something more than that which the European Union as a whole already does, the Union allowing for instance the existence of state churches and monarchs obliged to belong to it. It is perfectly possible that, according to some states, this obligation is not compatible with the standards of LEVEL A as they see it. So they may raise these standards a little beyond the European level which is only a vital minimum. In the meantime, the national state also covers the legal aspect of national flavour including positive discrimination in favour of certain religions or of all religions, for instance by introducing the principle of *Kirchensteuer*, or by paying salaries to *ministers of the cult* or just by exempting clerics from military service.

Finally, the regions could decide to go one step further at LEVEL B, perhaps by concluding agreements with some religions. Meanwhile, it is not fully excluded, although rather unlikely, that even at LEVEL A, regions are prepared to offer extra guarantees for basic religious freedom, possibly in an indirect way. For instance, building regulations could be less restrictive at a regional level, so as to facilitate the construction of places of worship in one region in comparison to another.

It is possible to represent the preceding ideas in a diagram.

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┌──────────┐         ┌──────────┐         ┌──────────┐
│ LEVEL B  │         │ LEVEL B  │         │ LEVEL B  │
│          │         │          │         │          │
│          │  ◄───── │          │ ─────►  │          │
│          │         │          │         │          │
│ LEVEL A  │         │ LEVEL A  │         │ LEVEL A  │
└──────────┘         └──────────┘         └──────────┘
 European               Nation              Region
  Union
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The region offers more or less the mirror image of the European Union. The nation takes up a middle position, a position of equilibrium. The diagram clearly shows a re-interpreted notion of *subsidiarity* which comes closer to *fruitful interaction*. What is left of the original notion of subsidiarity, is the idea that some issues are better dealt with at a European level (LEVEL A), and that others should be solved by regions (LEVEL B). But the overall picture is not without nuance and includes exceptions, which means that (a) a demarcation between fields of competence is not always either easy or feasible and (b) there may be situations in which smaller entities should also help larger ones, and not just the other way around.

Finally, the diagram illustrates how the two level model as presented in this article, fits very well with new developments in Church and State thinking, including both the increasing role of the European Union and upcoming nationalistic feelings as well as legal structures at a regional level.

The conclusion of this chapter is that the model as developed in chapter II, including an attempt to succesfully combine the rational and the mystic approach of Church and State relationships, offers more than enough possibilities to tackle modern Church and State problems connected with the ongoing development of a multi-religious and multi-ethnic society. It offers useful tools for cooperation between religions, without

forcing them to anything. It fits perfectly well with a more complex appro-ach of legal Church and State relationships, in which the national level remains the dominant one, without denying the quickly developing part of both the supra-national and the regional level.

Summary and Concluding Remarks

European nationalism. Co-existence in a multi-ethnic and multi-reli-gious society. That was the problem we had to tackle in this contribution.

First of all, in chapter I, the somewhat singular relationship between nationalism and religion was briefly examined. A possible explanation for the success this combination enjoys today, might be rooted in the ideas of Enlightenment. They brought about the breakthrough of rational thinking as well as of modernity. A possible reconciliation between this new flow of ideas and christianity, including its underlying presuppositions, was not easy to comply with. Many thinkers tried to build the bridge: Saint-Simon, Lessing, Hegel. Also from the churches' side, attempts were made often courageously, not to reject modernity but to establish a workable compro-mise with it, without abandoning in the meantime the aspiration of dealing with the truth. From Lamennais to the Second Vatican Council, more than one valuable attempt could be quoted as an example. But finally, a truly satisfactory, sustained combination between Enlightenment and Christianity has probably never been achieved. And when communism died its sudden death in 1989, taking some dreams of rational Enlightenment with it to the grave, the swing of the pendulum clearly went into the other direction. Emotional thinking instead of rational thin-king... Nationalism instead of internationalism.... Religion fit perfectly into this new approach, into a picture showing the erupting revenge of oppressed feelings and dreams. Man is not a machine. Internationalism is too far away to be loved. Dreams are never fully rational. Nor is religion. Especially not after its somewhat failed engagement to the ideas of the Age of Reason.

The preceding analysis may, to some extent, *explain the existence* of the problem. It makes plausible that religion and nationalism often go hand in hand, that they are not only able to support, but also generate, strongly emotional feelings, which are a possible threat to peace in various

European countries. And also just break peace, as happened in ex-Yugoslavia. But it does not *solve* the problem of nationalism and religion. Yet, can the problem be solved anyway? Can the magical combination of "rational" and "mystic" thinking which failed to impose itself on a political and on a philosophical level, ultimately be achieved at the less glorious, but in practice far from irrelevant, level of legal relationships between Church and State? This question was examined in chapter II.

Before making a real attempt to offer such a model, to build the bridge, to go in search of the ultimate compromise, one should be aware of elements possibly hampering this ambitious undertaking. Two strings of elements should be taken into account.

(a) Both the rise of a multi-cultural society including the fear it entails with some people, and the bankrupcy of rational-inernationalistic political systems make that "mystic" dimensions of life could be, at this moment, much stronger than "rational" ones. This circumstance complicates a fair compromise.

(b) In history of Church and State relationships, the balance between "rational" and "mystic" thinking always has been hard to achieve. Often, especially this century, the rational component absorbed the mystic one (France 1905; Portugal 1911). Elsewhere Church and State relationships evolved rather successfully and in practice managed to combine both components, but then again often without any fundamental debate. Relationships developed in an organic way.

In spite of these two strings of difficulties, a compromise between a *rational* and a *mystic* approach remains thoroughly necessary. This compromise should result into a real balanced equilibrium, without any of both components suffocating the other. They both should have a clear position in the system as suggested. This goal could be attained by organising legal Church and State relationships at two different levels.

LEVEL A, the basic level, and at the same time the absolute *conditio sine qua non*, guarantees basic religious freedom to everyone. Not without limits: one can think of traditional limits such as those expressed in article 9 §2 ECHR. But no artificial barriers should be put up. The basic freedom needs to be very large and equally applicable to all religions. So, LEVEL A is closely connected with the *rational approach* of legal Church

and State-relationships.

LEVEL B stands for the upper level and could offer, to some or to all religions, eventually also to non-confessional organisations, some preferential treatment, for instance by granting financial advantages or a good position to religious education at school. In this respect, as also local flavour can be stimulated, one could say that LEVEL B privileges the *mystic approach*. But there are limits: while granting preferential treatment to certain religions, the state has to base itself on objective criteria such as the number of the faithful of a certain religion or its historical presence in society. Yet religious doctrine cannot be a criterium. So, at LEVEL B, the *mystic approach* prevails, but then again by requiring objective criteria for preferential treatment, there is also a *rational correction*.

Of course, the construction described in broad outline is far from being *pure*. It is a compromise. And it differs a lot from, for instance, the American model, which is probably the best thinkable one for the United States, but where circumstances can scarcely be compared to the European ones. In the U.S. all religions are minority religions. And while not financing churches and religions in the U.S. is only neutral, it might be interpreted by many in Europe as just being hostile, since the state tends to finance nearly everything in the "Old Continent", from schools and universities over theatre companies to sporting clubs.

What are the *advantages* of the proposed model? I listed two of them.

(1) The model improves the quality of life by avoiding grey uniformity. This argument is in itself already a mystic and not a rational one, but it is an argument anyway.

(2) The model could entail among the population a growing understanding for the multi-cultural and multi-religious society, without imposing total equality among religions. Such an approach is often felt by the local population as being unfair. Equality could be seen as a form of discrimination[40].

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[40] Cf. the reaction on the *Kruzifixurteil* in Germany, BVerfG, 16 May 1995. See A. STOCK, "Das Kruzifixurteil. Eine symboldidactische Nachlese", *Religionspädagogische Beiträge*, 1996, 61-81.

In chapter III, *New Perspectives for a New Model*, the question was asked whether the proposed model can cope with contemporary Church and State problems, especially with those problems intertwined with a multi-religious and multi-ethnic society. By asking this question, chapter III could be seen as a test: is the model more than some scant consolation offered by a theoretical framework?

In two considerably different fields, the model has been put to trial. Firstly, how does the model fit with the new paradigm of today's Church and State relationships, which is no longer focusing on possible conflicts and separation, but on cooperation between Church and State? It fits. Cooperation can lead to a lot of improvement of the churches' position at LEVEL B. Moreover, if churches and religions work together as well, they could, once more at LEVEL B, achieve a globally improved position for churches as a whole.

Secondly, the model was tested in connection with the spreading of legal Church and State relationships over various potentially competent instances, thus challenging the former quasi-monopoly the national state enjoyed in this respect. Today, both the European Union and the regions, both supra-national and infra-national levels, try to be a party to legal Church and State relationships. As the above analysis demonstrates, the model fits remarkably well with this ongoing evolution. At the stage of the European Union, LEVEL A prevails and LEVEL B is only shyly present. Furthermore, the national state offers an equilibrium between LEVEL A and LEVEL B, whereas the regions show the complete mirror image of the European Union. In other words: the two level-model could probably be seen as being characteristic for Europe. At any possible stage (supra-national, national, infra-national), both LEVEL A and LEVEL B are concerned at least to some extent.

One could qualify the two level method which finds its application at the three different stages as being a somewhat sophisticated model of subsidiarity. It includes the awareness of the impossibility to strictly separate these domains, as well as the idea that subsidiarity should not be elaborated only *one way*, and that sometimes problems should not be solved at a higher, but on the contrary at a lower level.

At first glance, one could argue that the described model seems to work. It builds a bridge between *rational* and *mystic* thinking. It offers a compromise. It limits extreme forms of nationalism connected with religion, by not ignoring the phenomenon as such and by granting a fair legal place to local flavour without endangering full religious liberty. The latter remains the first condition and absolute cornerstone of the system.

But of course, pretending that the two level-method is the one and only solution to legal Church and State problems in contemporary Europe, would be equally presumptuous as tragically naïve. Legal Church and State models should stimulate the debate, but then there is nothing more to be said. Theoretical models do not have a sneaking desire to become a new religion on their own. Thank God.