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## Religious Freedom in Education: the United States versus Belgium

*Leni Franken*\*

### Abstract

Inspired by a recent article in this journal, I will further elaborate on the tension between the freedom of education and the freedom of religion, with particular focus on state support for faith-based schools and the organization of Religious Education in public schools. I will have a closer look at the American and Belgian policies concerning these items and clarify why both nations have similar problems with regard to faith-based schooling and religious education, while the *causes* for these difficulties are dissimilar: both in Belgium and the US, the *de facto* freedom of religion and education are not maximally guaranteed for all students, but for very different reasons. Similarly, the implementation of non-confessional religious education seems very difficult in both countries, but also for different reasons. Based on these findings, I will give some recommendations in order to guarantee both the freedom of religion and of education in the best way in both nations.

### Keywords

Religious education – faith-based schools – United States of America – Belgium – Freedom of Religion – Freedom of Education

### *Introduction*

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\* Leni Franken (1981) is FWO post-doc research fellow at Centre Pieter Gillis, University of Antwerp (Belgium). Her current research focuses on the deconfessionalization of RE, with special attention for ERC/ECR in Quebec. E-mail: leni.franken@uantwerpen.be

In a recent article<sup>1</sup>, Charles Russo elaborates on the tension between the freedom of education and the freedom of religion and gives some recommendations in order to guarantee both in a satisfying way. Because the author mainly writes about the American context, his examples and recommendations are somewhat one-sided. In order to counterbalance this, it will be interesting to have a look at these themes from a European perspective as well. However, because Europe is so diverse, it is impossible to discuss the religion – education debate in all European nation states here. Since I am most familiar with the Belgian situation and because there are several similarities with other European nations<sup>2</sup>, I will focus on this small but significant European nation or ‘the cockpit of Europe’ as some say, in this article.

This paper is divided in three main parts. First, I will, from a legal perspective, elaborate on the American church-state regime, with particular focus on faith-based schools and religious education. Subsequently, I will do the same for Belgium. In a third part, I will discuss some criticisms of the American and Belgian policies with regard to state support for faith based schools on one hand, and the organization of religious education on the other and I will give some recommendations for improvement in both nations.

## ***Church and State in the United States***

### *General Framework*

Since American independence in 1776, the American church-state regime is characterized by *separation* and *non-establishment* on one hand, and *religious freedom* on the other. According to the *establishment clause* of the First Amendment of the American Constitution (‘Congress shall make no law respecting an establishment of religion’), it is not allowed for the state to establish a (state) religion. For *separationists*, this means that the American state should lead a strict hands-off policy with regard to religion. There should be a ‘wall of separation’ between

church and state, which implies, among other things, that direct state financial support for religions is not allowed. *Accommodationists*, by contrast, are convinced that state financial support for religion and public funding of faith-based schools (and other religious institutions or organizations contributing to the common benefit) are not opposed to the establishment clause, as long as these policies can be legitimated in neutral terms and “*have a secular legislative purpose*” (*Lemon v. Kurtzman* 403 U.S. 602, 1971).<sup>3</sup> Obviously, this different policy of separationists and accommodationists is in fact aimed to the same thing: guaranteeing the freedom of religion – a freedom that is also fixed in the First Amendment and that has become very important in US state-church policy and jurisdiction.

In conformity with the separationist interpretation of the establishment clause, the actual American church-state policy is mainly characterized by *separation*. In order to guarantee the freedom of religion for *all citizens*, religion is not subsidized by the state: churches, religious organizations or associations and their staff, but also faith-based schools and other faith-based institutes, are not subsidized by the state, but they are (financially) independent. Like non-religious organizations, these organizations take care of their buildings, the wages and education of their staff, and the organization of religious activities and classes, in an autonomous and independent way. The state does not give them any direct financial aid.

### *Faith-based Schools in the United States*

The aforementioned policy has its consequences for religion and education. Different from most western-European nations, faith-based schools in the US do not receive direct state subsidies and religious education is not organized (and subsidized) in state (public) schools. This, however, does not imply that (indirect) state support for faith-based schools and for religious activities in public schools would never be allowed. American history clearly shows that both an accommodationist as well as a separationist approach are possible.

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

In 1971, this ‘accommodationist’ approach ended with the Court’s decision in *Lemon v. Kurtzman* (403 U.S. 602, 1971). In this famous case, the Supreme Court decided that state financial aid for teachers of regular courses in faith-based schools was not in accordance with the First Amendment. This decision was not only a precedent in the jurisdiction of the Supreme Court with regard to church and state relations, but it was also the basis of the so-called *Lemon test*, which says that state support for religious organizations is only legitimate under the following conditions: (1) the statute must have a secular legislative purpose; (2) its principal or primary effect must be one that neither advances nor inhibits religion [...] and (3) the statute must not foster “excessive government entanglement with religion”.

Because the Supreme Court considered state support in this particular case not to be in conformity with these principles, it was not allowed. Before the Court developed this famous *Lemon test*, it decided in a similar way in *Engel v. Vitale* (370 U.S. 421, 1962) and in *School District of Abington Township v. Schempp* (374 U.S. 203, 1963) that, respectively, prayer moments and bible study are not allowed in public schools: “*The state cannot prescribe religious exercises as ‘curricular activities of students who are required by law to attend*

school” (*School District of Abington Township v. Schempp*, 224). In *Lee v. Weisman* (505 U.S. 579, 1992), the Court made a comparable decision: when public schools organize prayer moments or bible readings, there is not only discrimination between diverse religions, but in addition religious worldviews are privileged over non-religious worldviews.

In the last decades this strict hands-off policy concerning religion in state schools and financial aid for private schools seems to change a little. The 1983 case *Mueller v. Allen* (463 U.S. 388, 1983) for instance, “marked a substantial advance in aid the Supreme Court was willing to permit.” (Greenawalt 2009, 405). In this case, the Supreme Court decided that parents can get a tax reduction for enrollment in, study materials for, and transport cost to non-public (faith-based) schools. This decision seems to oppose the former decision in *Lemon v. Kurtzman* – apparently, the *Lemon test* has been applied in a new, different way. Even though in two subsequent cases concerning state financial aid for faith-based schools (*School District of Grand Rapids v. Ball* [473 US. 373, 1985] and *Aguilar v. Felton* [473 U.S. 402, 1985]), the Court once again confirmed a *separationist* approach, a more accommodationist approach was made in several other cases. In *Witters v. Washington Department of Services for the Blind* (474 U.S. 481, 1986) and in *Zoberst v. Catalina Foothills School District* (509 U.S. 1, 1993), the Court was more permissive with regard to indirect subsidies for faith-based schools: in *Witters*, subsidies for a blind student who wanted to become a priest were allowed, while subsidies for accommodation for a deaf student in a Roman Catholic school were allowed in *Zoberst*.

In the same spirit, the Supreme Court decided in *Mitchell v. Helms* (530 U.S. 793, 2000) that state subsidies for teaching materials in private (faith-based) schools are not unconstitutional as long as the teaching aims are secular. And for several years, some American states have had a system of school vouchers which can be used for nonpublic schools – faith-

based schools included (cf. *Zelman v. Simmons-Harris*, 536 U.S. 639, 2002; *Bush v. Holmes*, 767 So. 2d 668, 2004; aff'd 919 So.2d 392, 2006).

Notwithstanding this potential evolution to a more “*permissive approach*” (Greenawalt 2009, 405), the American State does not give any *direct* support for faith-based schools: in line with the *Child Benefit Test*, aid can only go to children and not to their religiously affiliated schools. Principally, the main policy of the United States is thus still a *hands-off* policy and not a policy of active support for faith-based schools. This American policy takes the liberal aim of neutrality and the related ideal of equality very seriously into consideration: the state does not subsidize *any* religion, religious organization, or faith-based school in a direct way and as a result, all religions are, at least in theory, treated *equally*.

### *Religious Education in the United States*

As one might expect, the American policy with regard to religious education in public schools is also a hands-off policy: confessional religious education (education *into*) religion is not subsidized by the state, nor is it organized in state schools (see e.g. *McCullum v. Board of Education* [333 U.S. 203], 1948). With regard to the education of religious facts (education *about religion*), things are different. Even though not all American citizens seem to agree with this kind of education, the American Supreme Court confirmed that religious facts can be taught in regular classes as academic, historic and/or cultural facts and that religious texts can, in their literary and historical context, be used in public schools. In *School District of Abington Township v. Schempp* (374 U.S. 203 [1963], 225), the Court even noted that “it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization”. In sum, “teaching religion as *true* is unconstitutional”, while “teaching *about* religion in various forms is constitutional”.<sup>4</sup> However, notwithstanding this constitutional permission, education about religion is (like

education into religion) often absent in public schools and if organized, it is integrated in other subjects and not organized as a separate subject.

Besides, the conscious elimination of regular, scientific items like evolution and/or the teaching of a religious theory like creationism under the guise of a scientific theory, is, like education *into* religion, also unconstitutional and therefore not allowed any longer in public schools (cf. *Epperson v. Arkansas*, 393 U.S. 97, 106, 1968; *Edwards v. Aquillard*, 482 U.S. 578, 1987).

Summarized, we can say that the *general* American policy with regard to subsidies for faith based schools and with regard to religious education is, conform the separationist interpretation of the first Amendment, characterized by a quite rigid hands-off policy. Conform the *accommodationist* approach however, sometimes a more open or permissive approach is possible, but only if this policy does not lead to an ‘establishment of religion’ and if it does not infringe on the freedom of religion. Over the years, lawyers have discussed about the (practical) meaning of these constitutional conditions and this debate is still going on.

## ***Church and State in Belgium***

### *General Framework*

Different from the United States, the separation between church and state is not explicitly mentioned in the Belgian Constitution. The Belgian church-state regime is not characterized by separationism or assertive secularism, but by *moderate secularism*<sup>5</sup>, *accommodationism*<sup>6</sup> or ‘favorable neutrality’: the Belgian state did not choose a hands-off policy, but an active policy of support for religion, resulting in an effective use of the freedom of religion.

Characteristic for the Belgian system is the combination of freedom (and thus also separation) on one hand, and active support for religion on the other. While art. 21 of the Belgian Constitution prohibits the state “*to intervene either in the appointment or in the installation of ministers of any religion whatsoever*”, the positive and negative freedom of religion are respectively fixed in art. 19 and art. 20. In order to guarantee religious freedom not only in a formal, but also in a substantial way, the Belgian state pays “*the salaries and pensions of ministers of religion*” (art.181, §1) and of “*representatives of organizations recognized by the law as providing moral assistance according to a non-denominational philosophical concept*” (art.181, §2).

Currently, six religions and one non-confessional worldview are recognized: Roman Catholicism, Protestantism, Judaism, Anglicanism, Islam, Orthodox Christianity, and the non-confessional freethinkers. Once recognized, religions (non-religious worldviews included) get many privileges: the state pays the salaries and retirements of the clergy and of chaplains and nonconfessional moral consultants in hospitals and in the army; religious courses in state schools and in recognized private schools are financed by the state; and material goods and housing for clergy are subsidized by the state.

### *Faith-based Schools in Belgium*

The Belgian state does not only guarantee the freedom of religion in a substantial way, but the freedom of education, understood as (1) parental freedom to choose a school and (2) freedom for parents/organizations/religions to establish schools according to their (religious) convictions, is also positively taken into consideration: when private schools meet several objective criteria and are principally accessible for all students, they can get an extensive amount of state subsidies.

Due to historic circumstances, Catholic institutions in particular made use of this freedom of education, and as a result, 42.5% of all primary and 61% of all secondary schools in the French Community are ‘private’ (mainly Catholic) subsidized schools. In the Flemish Community, these numbers are even higher: in this region, 62% of all primary and 75% of all secondary schools are private – mainly Catholic – subsidized schools, with a similar percentage of students.<sup>7</sup>

Since 2008, all recognized Flemish schools (state schools and private schools)<sup>8</sup> are funded by the Flemish Community on an equal basis, except for some objective differences like transport for students and the organization of religious education, which is more expensive in state schools. Accordingly, both in state and in private schools, staff is fully paid by the state and working costs are also paid by the state. Also in the French and German Communities, subsidies for staff in state and private schools are equal (100%) and working costs are extensively subsidized there as well.

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

### *Religious Education in Belgium*

In Belgium, the right to education is constitutionally fixed in art. 24 and with regard to religious education, the first and third paragraphs of this article are particularly relevant:

BELG. CONST., art. 24 [emphasis mine]

§ 1. Education is free; any preventative measure is forbidden; law or decree only governs the repression of offences.

The Community offers free choice to parents.

The Community organizes neutral education. Neutrality implies notably the respect of the philosophical, ideological or religious conceptions of parents and students.

*The schools organized by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognized religions and non-confessional moral teaching.*

...

§ 3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education.

*All students of school age have the right to a moral or religious upbringing at the Community's expense.*

The Belgian Constitution requires that all state schools ('schools organized by the public authorities) offer education in the recognized religions and in non-confessional ethics. As a result, students in state schools can choose now between Roman Catholicism, Protestantism, Orthodox Christianity, Anglicanism<sup>9</sup>, Islam, Judaism, and non-confessional ethics. All these religious subjects are autonomously organized and controlled by the religious instances, which means that they, and not the state, are responsible for the training and delegation of teachers and for the syllabuses. Even though some religious subjects (particularly Roman Catholicism and non-confessional ethics) take into account the fact of religious diversity in the classroom and pay attention to other religions and worldviews, religious education is still organized as *education into religion*. In Flanders, non-confessional ethics is organized by the non-confessional organization of freethinkers and is thus also a non-neutral subject. In the French

and German Communities, this subject is organized by the state, but also there it is influenced by the humanists and accordingly, it has also a non-neutral character that was very recently confirmed by the Constitutional Court.<sup>10</sup> Due to the non-neutral character of non-confessional ethics, pupils can get exemption of RE (at request) in Flemish state schools, and from September 2015 onwards, this is also the case in the French Community. In private schools, there is a legal possibility of exemption, but in practice, religious education (which is mainly Roman Catholic religious education) is compulsory for all students attending these schools.

Finally, the third paragraph of art. 24 states that all students of school age have *the right to a moral or religious upbringing at the Community's expense*. From the beginning, connections have been made between this paragraph and the first paragraph, and thus it was seen as a justification for state financial support for religious education (education into religion) in state schools *and* private schools. Since almost all private schools in Belgium are Catholic, they almost all offer Roman Catholicism as a compulsory subject. As a result, 82% of all Flemish students in secondary schools take Roman Catholicism: 74.5% in private schools<sup>11</sup> and 7.5% in state schools. In primary schools, we observe similar tendencies. Given the fact that the Belgian population is more and more secularized, this is an impressive number.

### ***Freedom of Religion and Education in the United States and in Belgium: Similar Problems – Dissimilar Causes***

#### *Faith-based Schools*

At first sight, the American wall of separation between church and state seems to be more neutral than the Belgian policy of active support: since the American state does not support any religion, all religions are treated equally and *individual religious freedom* is guaranteed in an

equal way for all citizens. Besides, such a *hands-off* policy maximally guarantees the internal *freedom of religious associations* and thus also of faith-based schools:

Under the euphemism of “control follows the dollar”, educational officials in confessional schools in Europe and elsewhere tend to have less freedom to direct their curricular content than religiously affiliated nonpublic schools in the United States because they depend on the state, rather than tuition, for operating revenues. For this reason, leaders in many religious schools in the United States refuse to accept public funding so that they can preserve curricular control and doctrinal purity.<sup>12</sup>

Even though the freedom of association is indeed important, it is nonetheless questionable whether this freedom is always a blessing. Because faith-based schools in the United States are not subsidized by the state, the state has no control over their curricula. As a result, the teaching of, e.g., creationism as a scientific theory is common in a number of these schools, and the state has no right to interfere here. Accordingly, not all students get correct (scientific) information at school (i.e. the most well-founded and verified knowledge at hand) and in some private schools, the ability to reflect in a critical and autonomous way, which is a necessary skill in a liberal society, is not encouraged. Given the fact that education should prepare *all* students for a life as autonomous citizens in the future society<sup>13</sup>, this lack of basic education can be disastrous.

In this regard, the Belgian system is better: when Catholic schools meet several objective criteria of (curricular) quality and are principally accessible for all students, they are officially recognized and extensively subsidized by the state. Hence all Belgian students attending Catholic schools get adequate education and accordingly, they are well-prepared for a life in the liberal society. Notwithstanding this far-going state control in subsidized faith-

based schools, the freedom of religion and the freedom of education are not harmed because schools are not *obliged* to meet these quality standards, which are only a condition for state financial aid. As said by Harry Brighouse, “*religious schools [...] have the choice to opt out. They are simply being presented with a new option: more financial security in return for fulfilling a secular function, or refusing that security and refusing the secular function*”.<sup>14</sup>

Another important difficulty in the United States is the problem of segregation and inequality. As said by Russo,

imposing the wall of separation in the United States often results in inequities for families who must make a draconian choice between enrolling their children in tax-supported public schools or essentially paying twice by having also bear the cost of tuition when sending their children to religiously affiliated nonpublic schools, particularly in localities where public schools are ineffective.<sup>15</sup>

Quite often, only ‘wealthy’ parents can pay for ‘better’ (nonpublic) schools, which have mainly a religious signature. Accordingly, faith-based schooling is *de facto* not always accessible for all students and parents and educational choice is thus not maximized. Because this is not in line with the principles of religious and educational equality, sometimes a more *permissive approach* with regard to state funding of faith-based schools is recommended, but only when this policy leads to more educational equality and if it does not lead to (more) segregation on basis of religion, class or ethnicity.

In Belgium (and in several other European states), a policy of substantial state support for faith-based schools is common<sup>16</sup> and one of the benefits of this system is that there is no gap between ‘rich’ or upper-class private schools on one hand, and state schools on the other. All schools – state as well as private – get substantial state support if they meet the required

criteria and if they welcome all students (whatever their religious background may be), and in this regard the Belgian system of education is, at least from a theoretical viewpoint, fair and even-handed.

As a result of recent sociological changes (secularization, religious pluralism and mental depillarization<sup>17</sup>) however, a significant problem occurred in Belgium: actually, the number of state-financed Catholic schools in Belgium is no longer in accordance with the number of parents/pupils who adhere to Catholicism. As a consequence, the *de facto* freedom of religion and education is, like in the United States not always guaranteed for all citizens: given the substantial number of faith-based schools, the only *real* option is often a religious one and accordingly, people are sometimes obliged to participate into religious activities.

According to recent sociological research<sup>18</sup>, only 2% of the youngest generation (born after 1984) attend the Catholic Church at least once a month and most of these people never visit a Church. Since 54% of the youngest generation identify as non-religious and 15% identify even as convinced atheists, this is not a surprise. However, in spite of this secularization among young people, most of these people still attend Catholic schools because there are, as a result of the large number of Catholic schools, often no real alternatives. This is problematic in the light of the freedom of religion and education. As said by Temperman, “*the minimum standard international human rights law provides is that all persons, whether secular or religious, must be able to have public school education if they so desire*”<sup>19</sup>, but this is *de facto* not always the case in Belgium, where only a minority of the schools (32% in Flanders) are state schools.<sup>20</sup> Also Andrew Koppelman points at this problem:

Such funding of religious entities, particularly when those entities are relied on to provide public services such as education, aid to the homeless, prison rehabilitation, or drug treatment,

can easily lead to a situation where the only option is a religious one, and people are bullied into religious activities.<sup>21</sup>

With the aim of improving the situation in Belgium, Catholic schools have very recently discussed their identity. In order to avoid further eroding of the Christian identity, without ‘reconfessionalizing’ (Catholic schools are schools from and for Catholics), the Flemish Catholic umbrella organization of education has chosen for a ‘*Catholic school of dialogue*’: a school wherein students are challenged *to think about their own identity and to dialogue about this identity with co-students*, whatever their religious affiliation may be.

However, notwithstanding this openness and respect for diversity, a Catholic school is in official documents still labeled as a school that is “build on the person of Jesus Christ” and as “a society of work and life in which people experience the Christian faith every day in community [...]” (*Mission Statement of Catholic Education in Flanders*). In order to facilitate this, the Catholic school does not only organize lessons in Roman-Catholicism, but also moments of prayer and sacramental liturgies. Even though most of these activities are no longer compulsory in all schools, Roman Catholicism is still a compulsory 2 hours a week subject in all Catholic schools and exemption is not possible. Given the non-Catholic background of many students in Catholic schools, this can lead to a *de facto* infringing on the freedom of religion and therefore, changes will be necessary.

In sum, we can conclude that both in Belgium and in the US the *de facto freedom of religion and the freedom of education* are not always guaranteed. Curiously, the reason for this shortcoming is in both countries very different: in the USA, there may be *not enough* support for faith-based schools and this can lead to *de facto* segregation, inequality and a limitation of the freedom of religion and education for some (unwealthy) citizens. In Belgium, by contrast,

there is *too much* support for faith-based schools and also there, the freedom of religion and education are *de facto* not always maximally guaranteed for all students. As said by Russo “*a major challenge for educators and their lawyers in a world where there is growth among individuals who identify as atheists is accommodating the religious needs, or lack thereof, of students, [...].*”<sup>22</sup> In the United States, this can require state financial aid for private (faith-based), so that the religious and educational needs of *religious* students are maximally taken into consideration; in Belgium by contrast, this requires less subsidies for faith-based schools, so that similar needs for *non-religious* students are also taken fully into consideration.

### *Religious Education*

Conform the American legal tradition, religious education is not allowed in American public schools, but it is considered to be a private matter. If parents/students are in favor of religious education in a particular religious tradition, they can go to a Sunday school, a Talmud school, a Quran school, etc. It is not the state’s business to interfere here, neither is it its task to organize and to support classes in religious education.

In fact, there is much to say for such a hands-off policy with regard to confessional religious education (education *into* religion) in public schools. First, the state must not decide which religions it should offer, since no religion is offered at all. Without a doubt, this is a very neutral and equal policy in which students/parents are not disadvantaged on the basis of their religious (and non-religious) convictions. Besides, the autonomy of the religious instances can be maintained: when the state does not control religious education courses, religious education teachers are free to fill in their content. Only when there is a treatment of national order, or when teachers incite to hate, discrimination and violence against ‘other’ people in the society, is state interference allowed and even required. Finally, citizens do not have to pay for religious

education classes they do not want, which is also conform to the ideas of justice, (religious) equality and state neutrality.

However, since this principle of state neutrality is in the United States often connected with a far-going separation between church and state, sometimes even education *about* religion seems to be problematic in the American context:

The wall of separation also has the effect of largely removing instruction and discussions about religion from the market place of ideas in public elementary and secondary schools, an outcome that is something of a mixed blessing.<sup>23</sup>

Since American lawyers and policy makers are often afraid that the introduction of education *about* religion will slide off into, and/or open the door to, education *into* religion, they are very careful with religious texts, information, discussions, etc. in public schools. Accordingly, also education *from* religion<sup>24</sup>, understood as the student's formation of a personal worldview, based on one particular religion or worldview<sup>25</sup> or on knowledge about several organized worldviews, is absent in public schools in the United States. It is therefore not a surprise that the 2010 U.S. Religious Knowledge Survey, released by the Pew Forum, found out "*that large numbers of Americans are uninformed about the tenets, practices, history and leading figures of major faith traditions – including their own.*"<sup>26</sup>

However, because independent thinking and critical reflection on one's own worldview are, like the promotion of social justice and religious tolerance, knowledge about religions, and interreligious dialogue, "*a must for an open society and a secular state*" (Jensen 2008, 123-150; 2011, 131), a total ban of religious education from the regular curriculum is not recommended. Given the importance of education about and from religion, also in a multicultural and multi-*religious* society like the United States, *all students* should get correct

and adequate information about the diverse religions and non-confessional worldviews in society. Apparently, the United States are not only suspicious of education *into* religion, but also of education *about* religion. The main concern is that this kind of education is still *too religious* and will therefore infringe on the freedom of religion.

In Belgium, by contrast, stakeholders and policy makers (in particular the Catholic Church and the humanist association) are also suspicious of education about religion, but there, the reason for suspicion is that such a subject is *not religious enough*.<sup>27</sup> For several years, a debate is going on in Belgium (in the Flemish as well as in the French Community) about the introduction of a state-organized, compulsory school subject about religion, non-religious worldviews, ethics, philosophy and citizenship – both in public and in subsidized private schools. However, as said by several critics<sup>28</sup>, such an impartial subject is not only impossible, but it is also worse for students, who are better off with a confessional (or semi-confessional) religious subject, organized by the religious authorities and subsidized by the state. Even though most students in Catholic schools do not identify with Catholicism (any longer), critics of a subject *about* religion are convinced that religious education can only succeed if it is taught from an *insider's perspective* and that learning *from* religion is impossible without learning *into* religion. Therefore, education *into religion* should still be the rule. An additional subject about religion is not needed.

Once more, we can see significant parallels and differences between Belgium and the United States. In both countries, stakeholders and policy makers seem to be afraid of a general subject *about* religion (non-religious worldviews included), but for different reasons. In the United States, policy makers are somewhat afraid of a subject about religion in public schools because such a subject can, in practice, be too religious if it is not well-organized (see for instance the case *Folgerø and others v. Norway* [ECHR, Appl. no. 15472/02, 2007]). Given the far-going influence of religious pressure groups in some American states and given their

(historical) impact on public school curricula and policy<sup>29</sup>, this is not a surprise. In Belgium, by contrast, stakeholders are mainly opposed to a subject about religion because it is *not religious enough*. As an alternative, they defend the status-quo (education *into* religion), but today, this is no longer in line with the religious convictions of most of the students. In order to guarantee *real* freedom of religion and education, a change is therefore needed. Since both the United States and Belgium evolved from mainly Christian nations, into nations that are more and more pluralist and secularized (even though Christianity still has an important cultural, historical and social function), a compulsory subject *about religion* in all regular schools is highly recommended in both nations.

Hence, I fully agree with Russo<sup>30</sup> and Rogers<sup>31</sup> when they plead for common courses *about* religion, while at the same time teaching *into* religion should be avoided in public schools. In the academic and the educational field as well as in many national and European governmental and policy documents, the aims of religious education are, as a result of the changing religious landscape, no longer formulated in a confessional way. It has been stressed that religious education should stimulate the intercultural attitudes of pupils, that it should prepare them for participation as future citizens in our secularized, multicultural society, and more attention is given now to religious literacy and knowledge about religion(s) as a human phenomenon.<sup>32</sup> Within this context, it is an anomaly that in Belgium, only *confessional* religious education classes are organized, while in public schools in the United States both *confessional and non-confessional* religious education classes are absent from the curriculum. As said by Tim Jensen, religious studies based education about religion is “*a must for an open society and a secular state*”<sup>33</sup> and it should therefore be a part of every regular school curriculum in all state run public and publicly funded private schools. Both in Belgium and in the United States, the state should take initiatives here and the idea of integrative religious

education<sup>34</sup>, combined with ethics, philosophy and citizenship education opens a lot of opportunities.<sup>35</sup>

### ***Conclusion***

As stated in the ECHR (art.2, 1<sup>st</sup> protocol), the right to education implies that “the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. Also in the UDHR (art.26) we read that “Parents have a prior right to choose the kind of education that shall be given to their children.”

In order to realize this right, without infringing on the freedom of religion (and other basic rights and liberties), different church-state models are possible and accordingly, there are different legal models of education and religious education. It is thus not a surprise that the ECHR gives each particular European nation state a wide margin of appreciation when it comes to the freedom of religion. The Court is aware of the diversity and singularity of the various European nation-states and tries to reconcile this particularity with the universality of human rights. A system of active support for faith based schools and religious education, like in Belgium, is thus a legitimate possibility, as long as citizens’ basic rights and liberties (and in particular the freedom of education and of religion) are guaranteed. In a similar way, a system in which faith-based schools do not get state subsidies and/or in which religious education is not organized in public schools (this for instance the case in France, with the exemption of the region Alsace-Moselle) can be compatible with the ECHR and thus with the basic principles of a liberal democracy. Also the American system, in which faith-based schools do not receive direct state subsidies and in which religious education is not organized in public schools, can be in line with the basic principles of a liberal democracy: freedom and equality.

However, in order to guarantee these principles at best, sometimes a shift in the system is required, so that the freedom of religion and education are not only guaranteed in a formal way, but also in practice. In Russo's words: "*The trick [...] is to maintain a healthy separation between government and religion. This balance should allow individuals to practice their faiths freely wherever they live.*"<sup>36</sup> A comparison between the United States and Belgium has shown that in the United States, policy makers are often afraid that a shift in the educational policy will slide off to a policy that is *too religious*, while in Belgium, policy makers are often convinced that a shift in educational policy will slide off to a policy that is *not religious enough*. In fact, both a policy of support for faith-based schools and religious education, as well as a hands-off policy with regard to these things are possible. What counts is not whether faith-based schools and religious education classes are recognized and/or subsidized, but whether the freedom of education and the freedom of religion are *de facto* realized by means of these particular policies. If we take this as a guiding principle, both Belgium and the United States have still some work to do.

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<sup>1</sup> Charles J. Russo, "Religious Freedom in Education: a Fundamental Human Right," *Religion and Education* 42(1) (2015): 17-33.

<sup>2</sup> For an overview of religious education in Europe see for instance Robert Jackson, Siebren Miedema, Wolfram Weisse and Jean-Paul Willaime, eds., *Religion and education in Europe. Developments, Contexts and Debates* (Münster: Waxmann, 2007); Martin Jaggel, Martin Rothgangel and Thomas Schlag, eds., *Religious Education at Schools in Europe: Part 1: Central Europe (Wiener Forum Fur Theologie Und Religionswissenschaft)* (Vienna: Vienna University Press, 2015); Robert Jackson, Martin Jaggel & Martin Rothgangel, eds., *Religious Education at Schools in Europe: Part 2: Western Europe (Wiener Forum Fur Theologie Und Religionswissenschaft)* (Vienna: Vienna University Press, 2014); and Martin Jaggel, Martin

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Rothgangel and Geir Skeie, eds., *Religious Education at Schools in Europe: Part 3: Northern Europe* (*Wiener Forum Fur Theologie Und Religionswissenschaft*) (Vienna: Vienna University Press, 2014).

<sup>3</sup> The difference between *separationists* and *accommodationists* is based on Ahmet Kuru, *Secularism and State Policies toward Religion. The United States, France, and Turkey* (Cambridge: Cambridge University Press, 2009), 41-102. Andrew Koppelman labels these groups as “*radical secularists*” and “*religious traditionalists*” (Andrew Koppelman, *Defending American Religious Neutrality* [Cambridge: Harvard University Press, 2013]).

<sup>4</sup> Kent Greenawalt, *Religion and the Constitution. Volume 2: Establishment and Fairness* (Princeton: Princeton University Press, 2009), 134.

<sup>5</sup> Tariq Modood, “Moderate Secularism, Religion as Identity and Respect for Religion,” *The Political Quarterly* 81(1) (2010): 4-14, 5.

<sup>6</sup> Kuru, *Secularism and State Policies toward Religion*, 44.

<sup>7</sup> Because Belgium is a federal state, education is independently organized by the Flemish, the French and German Communities, and apparently, there are some differences between these Communities. In the subsequent paragraphs, I will mainly focus on Flanders, which is the region with the highest population rate in Belgium.

<sup>8</sup> State schools are run by the state and we distinguish here between schools run by the Flemish/French/German Community (Community Schools) on one hand, and schools run by municipalities, cities and provinces on the other. Private schools are run by a private-law legal person, which is in Belgium mainly the Catholic Church.

<sup>9</sup> Anglicanism is in practice only offered in Flanders; not in the French and German speaking Communities.

<sup>10</sup> Constitutional Court, arrest *De Pascale*, nr. 34/2015 (2015-03-12).

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<sup>11</sup> Because more than 95% of all secondary private schools in Flanders are Catholic, almost all students in these schools take Roman Catholicism.

<sup>12</sup> Russo, *Religious Freedom in Education*, 18-19.

<sup>13</sup> See for instance Harry Brighouse, "Egalitarian Liberals and School Choice," *Politics Society* 24(4) (1996): 457-486; and Harry Brighouse, School Vouchers, Separation of Church and State, and Personal Autonomy, in *Moral and Political Education*, ed. Stephen Macedo & Yael Tamir (New York: New York University Press, 2002), 244-274.

<sup>14</sup> Brighouse, *School Vouchers, Separation of Church and State, and Personal Autonomy*, 251.

<sup>15</sup> Russo, *Religious Freedom in Education*, 19

<sup>16</sup> For an overview of state support for faith-based schools in Europe see for instance Gerhard Robbers, ed., *State and Church in the European Union* (Baden-Baden: Nomos, 2005); Norman Doe, *Law and Religion in Europe. A Comparative Introduction* (Oxford: Oxford University Press, 2011), 199-203; Jackson et al., *Religion and education in Europe*; Jaggle et al., *Religious Education at Schools in Europe: Part 1: Central Europe*; Jackson et al., *Religious Education at Schools in Europe: Part 2: Western Europe*; and Jaggle et al., *Religious Education at Schools in Europe: Part 3: Northern Europe*.

<sup>17</sup> Mental depillarization refers to the fact that many organizations and institutions (schools, syndicates, hospitals, youth movements...) are officially still based on a particular worldview (in Belgium this is mainly Catholicism), while they evolved in practice to more or less secular organizations, embracing people with diverse religious backgrounds. See on this social phenomenon: Luc Huyse, *De verzuiling voorbij* [Beyond pillarization] (Leuven: Kritak, 1987); and Karel Dobbelaere and Liliane Voyé, "From pillar to postmodernity. The changing situation

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of religion in Belgium”, *Sociological Analysis* 51 (Special Presidential Issue: Sociology of Religion: International Perspectives) (1990): 1–13.

<sup>18</sup> Karel Dobbelaere, Jaak Billiet, and Liliane Voyé, “Religie en kerkbetrokkenheid: naar een sociaal gemarginaliseerde kerk?”, in *Nieuwe Tijden Nieuwe Mensen – Belgen over arbeid, gezin, ethiek, religie en politiek*, ed. Koen Abts, Karel Dobbelaere and Liliane Voyé (Louvain: Lannoo Campus, 2011), 143-172.

<sup>19</sup> Jeroen Temperman, “State Neutrality in Public School Education: An Analysis of the Interplay Between the Neutrality Principle, the Right to Adequate Education, Children’s Right to Freedom of Religion or Belief, Parental Liberties, and the Position of Teachers,” *Human Rights Quarterly* 32 (2010): 865-897, 872.

<sup>20</sup> At this point, some readers might object that even state schools are not strictly neutral or impartial, but that they are also based on a specific pedagogical and didactical approach. This is indeed the case, but different from faith-based schools, no single religion or worldview has a priority position in state schools, and all religions (and non-religious convictions) are treated with equal respect. Accordingly, this approach could be accepted by all reasonable and rational citizens, and for this reason state schools, in contrast to most private schools, can be labeled as neutral or impartial.

<sup>21</sup> Koppelman, *Defending American Religious Neutrality*, 3.

<sup>22</sup> Russo, *Religious Freedom in Education*, 24.

<sup>23</sup> *Ibid.*, 19.

<sup>24</sup> Peter Schreiner defines education *from* religion as follows: “Learning *from* religion gives pupils the opportunity to consider different answers to major religious and moral issues, so that they may develop their own views in a reflective way. This approach puts the experience of the pupils in the centre of the teaching. [...] The principle objective of this kind of RE is making a contribution to the pupils' moral and spiritual development.” (Peter Schreiner, “Models of

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Religious Education in schools in Europe. How Can Existing Models contribute to tolerance and non-discrimination with regard to freedom of religion and belief?” *Statement for the Strategy Development Seminar of the Oslo Coalition on Freedom of Religion or Belief*, Oslo, 7 – 9 December 2002 [<http://folk.uio.no/leirvik/OsloCoalition/Schreiner1202.doc>, accessed 04-12-2015]). For a further elaboration on the meaning of education *into*, *about* and *from* religion and for its pedagogical aims, see Michael Grimmit (ed.), *Pedagogies of religious education: Case studies in the research and development of good pedagogic practice in RE* (Essex/Great Wakering: McCrimmons, 2000).

<sup>25</sup> For the different meaning of the concept ‘worldview’ and ‘religion’ and their impact on religious education, see Jacobijn C. van der Kooij, Doret J. de Ruyter, and Siebren Miedema, “‘Worldview’: The Meaning of the Concept and the Impact on Religious Education,” *Religious Education*, 108 (2) (2013), 210-228. doi: 10.1080/00344087.2013.767685.

<sup>26</sup> Pew Research Center – Religion & Public Life, *US religious knowledge Survey (Summary)* (2010), accessible at <http://www.pewforum.org/2010/09/28/u-s-religious-knowledge-survey/> (24-11-2015).

<sup>27</sup> It is remarkable that in Belgium, and particularly in Flanders, also many humanist freethinkers are against education *about* religion and are in favor of *education into religion*. This is not a surprise because in Flanders, the humanists have also their ‘religious’ subject (non-confessional ethics) and a subject *about religion* might subvert the need for this subject. In the French and German Communities, the official humanist freethinkers are not responsible for non-confessional ethics, which is one of the reasons why they are less opposed to education about religion than their Flemish counterparts.

<sup>28</sup> See for instance Lieven Boeve, “Religious Education in a Post-secular and Post-Christian Context,” *Journal of Beliefs and Values: Studies in Religion & Education* 33(2) (2012): 143-156.

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<sup>29</sup> See for instance *Scopes v. Tennessee* [The Monkey Trial] in 1925; *Murray v. Curlett*, 228 Md. 239, 179 A. 2d 698 (Md. 1962); *Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Edwards v. Aguillard*, 482 U.S. 578 (1987); *Lee v. Weisman*, 505 U.S. 577 (1992); *Tammy Kitzmiller, et al. v. Dover Area School District, et al.*, 400 F. Supp. 2d 707, Docket no. 4cv2688 (2005).

<sup>30</sup> Russo, *Religious Freedom in Education*, 29

<sup>31</sup> Melissa Rogers, "Teaching about Religion in Public Schools: Where do we go from here?," *Religion and Education* 38(1) (2011): 38-47.

<sup>32</sup> See for instance Andrew Wright, Religious literacy and democratic citizenship, in *The fourth R for the third millennium. Education in religion and values for the global future*, ed. Lesley J., Francis, J., Astley, and M. Robbins (Dublin: Lindisfarne Books, 2001), 201–219; John Keast (ed.), *Religious diversity and intercultural education: A reference book for schools* (Strasbourg: Council of Europe Publishing, 2007); OSCE (Organisation for Security and Co-operation in Europe), *The Toledo guiding principles on teaching about religion or belief* (Warsaw: Office for Democratic Institutions and Human Rights [ODIHR], 2007); Council of Europe, *Draft recommendation on the religious dimension of intercultural education: Principles, objectives and teaching approaches* (Strasbourg: Council of Europe, 2007); Jackson et al., *Religion and education in Europe*; GRER (Groupe de Recherche "Education et Religions"), *Religion et education citoyenne* [Religion and citizenship education] (Brussels: Lumen Vitae, 2011).

<sup>33</sup> Tim Jensen, "RS Based RE in Public Schools: A Must for a Secular State," *Numen* 55 (2008): 123-150 ; *Ibid.*, Why Religion Education, as a Matter of Course, ought to be Part of the Public School Curriculum, in *Religious Education in a Plural, Secularised Society*, ed. Leni Franken and Patrick Loobuyck (Münster: Waxmann, 2011), 131-149, 131.

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<sup>34</sup> Wanda Alberts, *Integrative Religious Education in Europe. A Study-of-Religions Approach* (Berlin: Walter de Gruyter, 2007).

<sup>35</sup> For a defense of a general subject about religion, ethics, philosophy and citizenship in Belgian state and private schools, see for instance Patrick Loobuyck & Leni Franken, “Toward integrative religious education in Belgium and Flanders. Challenges and opportunities,” *British Journal for Religious Education* 33(1) (2011): 17-30; Leni Franken & Patrick Loobuyck, “The Future of Religious Education on the Flemish School Curriculum: A Plea for Integrative Religious Education for All,” *Religious Education* 108/5 (2013): 482-498; Leni Franken, “Religious and Citizenship Education in Belgium/Flanders: Suggestions for the Future,” *Education, Citizenship and Social Justice* 9/3 (2014): 255-267. For a defense of education about religion in the United States, see for instance Warren A. Nord, *Does God make a Difference? Taking Religion seriously in our Schools and Universities* (Oxford: Oxford University Press, 2010); and Stephen Prothero, *Religious Literacy. What every American needs to know – and doesn't* (New York: Harper Collins Publishers, 2008).

<sup>36</sup> Russo, *Religious Freedom in Education*, 19-20.