DIVERSITY OF STATE-RELIGION RELATIONS AND EUROPEAN UNION UNITY

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There is no single system of state-religion relations within Europe which is equal to another. Each one is distinct. Many countries know a number of different systems within themselves, as does the United Kingdom, Germany or France. The presence of history is strongest perhaps in this field of life. Tradition and truth, emotion and identity flourish in this field. Future law on religion in Europe is best built on strong regional structures. This paper reports on three aspects of state-religion relations in Europe: What is the situation in Germany? What does the United Kingdom look like from the continent? And what about Europe?

I.

Within Germany there are two Churches which are nearly equal in size and importance. Of the German population of about 82.2 million, the Catholic Church has about 26.8 million members, while the Evangelical Church has 26.6 million members. The Evangelical Church consists of numerous separate territorially-based Landeskirchen, each of these Churches being an independent unit. Together they form the Evangelical Church of Germany. There is also a number of smaller Evangelical Churches that have chosen to stay outside this federation; they are known as the Freikirchen (Free Churches). The Evangelical Churches are either Lutheran or Reformed Churches; some follow a unified confession, shaped in various ways from these two creeds. Islam in Germany had, in 1987, approximately 1.65 million members, mostly foreign workers and their families, but also about 100,000 German nationals. It is thought that there are now about 3.5 million Moslems living in Germany. The Jewish communities consist of about 150,000 members after intense Jewish immigration into Germany during the last decade. There are also many smaller religions in Germany, some having a long-established tradition in Germany, others having been in Germany for only a short while. Their membership is estimated at about 2 million persons. There is also an estimated 19 million inhabitants of Germany who profess themselves to be without any confession.[1] This stems in part, although not entirely, from the reunification of Germany, as the political system of the former East Germany took a hostile stance towards the Churches. Furthermore, the

[1] Cf *Statistisches Jahrbuch der Bundesrepublik Deutschland*, 1993, p 68, pp 105; data for 1991/1987.

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confessional viewpoints in Germany tend to change very rapidly as a result of immigration and other social shifts, so that estimates tend to remain uncertain and tentative.

The Basic Law guarantees the freedom of religion in Art 4. Freedom of faith, of conscience, and freedom of creed, religion or ideology, shall be inviolable. The undisturbed practice of religion is guaranteed.

These individual rights guaranteeing the free existence of religion are complemented by and laid out in Art 140 GG. These norms incorporate Arts 136–139 and 141 of the Weimar Constitution of 11 August 1919 into the Basic Law, so that they are fully fledged constitutional rights. Moreover, Art 7, paras 2, 3 of the Basic Law guarantee religious education in State schools. Numerous other regulations, such as the existence of theological faculties at State universities, are contained within the Basic Law and other laws of the Bundesländer (federal states). Large parts of Church-State relations in Germany are assigned to the competence of the Bundesländer.

The Federal Republic of Germany and its Bundesländer have established many concordats and Church-State treaties with the Churches in Germany.[2]

Under the Church-State systems of Europe, Germany takes a middle of the road approach between that of having a State Church and having a strict separation between Church and State. The Basic Law lays down a system under which there is a separation of Church and State while at the same time there is a constitutionally secured form of co-operation between the two institutions. This is done in order to care in co-operation for the needs of the people. The German State-Church legal basis is therefore structured around three basic principles: neutrality, tolerance and parity.

Neutrality requires the State not to be identified with a Church; there is to be no Established Church (Art 137, para 1 WRV in conjunction with Art 140 GG).[3] The State is not allowed to have any special inclination to a particular religious congregation or to judge such a congregation's particular merits or ideologies as true. Neutrality therefore means, more than anything else, non-intervention: the State is not allowed to take decisive action in the affairs of religious communities. This is made particularly clear in Art 137, para. 3 WRV: Every religious community regulates and administers its own affairs independently within the framework of the laws that are valid for all. This right of self-determination is valid, regardless of the legal status of the religious congregation.

[2] Cf Joseph Listl (ed), *Konkordate und Kirchenverträge in der Bundesrepublik Deutschland*, 2 vols, 1987.
[3] Cf also art 136 WRV in conjunction with art 140 GG, art 4, 33, para 3 GG.

The principle of tolerance obliges the State not only to be indifferent as between all the different religious views, but also to maintain a sphere of positive tolerance that makes room for the religious needs of society.

Parity, as the last of the principles, means the obligation to treat equally all religious communities, so that through a constitutional differentiation of legal status a sort of graded parity exists that provides an adequate basis for dealing with the various social phenomena.

These basic principles are also to be seen in the laying out of the freedom of religion according to Art 4 GG. It is here that one finds the requirement of positive tolerance. Freedom of faith is guaranteed in order to give every individual the right to believe what they want. Included is also the freedom of faith in a negative aspect, that is the right not to have a creed and/or not to belong to a particular religious faith. Religious freedom also guarantees the right to act according to one's beliefs.

The State in certain circumstances, in which it has control over a person's surroundings, such as when one is obliged to attend school, is required to provide for the religious needs of those persons put into such a position.[4] This applies equally to the National Defence Force and penal institutions.

Religious institutions may also rely on the freedom of faith, which exists as a collective and as a corporative right.

The religious communities with large memberships in Germany, but also a considerable number of the smaller religious communities, have the status of public corporations. It is the faith communities as such which enjoy legal personality. The idea they represent nothing but individual treaties among the believers is quite alien to German legal tradition. Unlike other public corporations, the religious communities with this status are not integrated in the State's structure. They retain their complete autonomy, even as public corporations. Under this legal norm, no particular identification between the Church and State is meant; quite the contrary, as the State's view accepts such a description as a justification for the religious communities being part of public life. Only a few particular rights are associated with this status. Every religious community, upon application to the responsible federal state, will receive the status of a public corporation, when they can prove through their byelaws and the number of their members that they are indeed a permanent community (art 137, para. 2,2 WRV; art 140 GG).

Other religious communities receive their legal capacity as a result of civil law. They will be at least private registered societies. As a result of the guarantees of the freedom of faith, the peculiarities of a religion must be taken into account; where necessary, the civil law conditions must be adjusted to meet the religious requirements.[5] The Federal Constitutional

[4] Cf BVerfGE 52, p 223.
[5] Cf BVerfGE 83, p 341.

Court has as a result seen it to be a constitutional requirement that the local spiritual advisor of the Bahá'i be registered in the register of societies, even though he is considered not to be independent from other organs of the Bahá'i religious movement contrary to the general civil law requirements.

The right to self-determination according to Art 137, para 3 WRV in conjunction with Art 140 GG, can be considered to be the central reference point for the legal and social existence of religious communities in the Federal Republic of Germany. Every religious community independently regulates and administers its own affairs within the boundaries of the laws that are valid for all. Every religious community can then, regardless of its legal status, independently regulate its own affairs. This right of self-determination covers such things as religious dogma and teaching, making official appointments, religious services, the organisation of charitable activities, matters concerning the important parts of the relationship between employer and employees, and data protection.

Not uncontroversial is the meaning and formulation of the limits of the right of self-determination. It exists only within the boundaries of the laws that are valid for all. Most adequate is a formula created by the Federal Constitutional Court whereby a barrier is raised when the law represents a provision of particular importance to the common weal.[6]

A Church's right of self-determination is not restricted to a narrowly-drawn field of specifically 'ecclesiastical' activities. The idea of freedom of religious practice extends to preserve the right of self-determination in other areas that are also based or founded upon religious objectives, such as the running of hospitals, kindergartens, retirement homes, private schools and universities.

In very substantial ways, the large Churches in Germany provide social services, particularly in the form of the Caritas of the Catholic Church and the Diaconical Works of the Evangelical Church. Without these services, the guarantees of a social State in Art 20, para 1, and Art 28, para 1 GG would be mere empty postulates. All these activities are part of what religious communities and the Church really mean. The right of self-determination therefore is not merely attributed to the Church itself and its legally independent part, but instead it is something common to all institutions which are connected in some way or another with the Church regardless of the legal framing of these links.[7]

The large Churches in the Federal Republic of Germany operate a rather significant number of private schools. The majority of them are recognised as replacing public schools. This means that they offer an equal standard of education to that offered in State schools. As a result, they are made subject to various important regulations that apply to the public

[6] Cf BVerfGE 42, 312/334; 66,1/20.
[7] Cf BVerfGE 70, 138/162 with further references.

schools. The entire school system of Germany exists on the basis of Art 7, para. 1 GG and is thus under the control of the State; compared to the number of State schools, Church or other private schools or educational establishments form a small minority. Concerning the financing of private schools, the Churches, like other organisations running private schools, receive public funding. To a considerable extent, the large Churches operate kindergartens for children between about four to seven years of age.

According to Art 7, para 3 GG, religious education in public schools, with the exception of non-confessional schools, is to be a standard subject. Notwithstanding the State's right of visitation, religious education is to be conducted in accordance with the guidelines of the religious communities. No teacher is obliged, against his or her will, to teach religious education. The parent or guardian of a child has the right to regulate the participation of their child in religious education; in principle when the child reaches the age of twelve years, the parental decision is not allowed to be in conflict with the child's. Upon reaching fourteen years of age, children may decide for themselves. Religious education, according to the requirements of Art 7, para. 3 GG, is to be a standard subject in public schools, and it is therefore not permissible to put it into the position of simply a minor or an optional subject. The content of the religious education is to be decided by the confessional teachings of the relevant religion. When a minimal number of students of the same confession is reached, normally between six to eight pupils, the public school is obliged to offer corresponding religious education. Children, parents and religious communities have a constitutional right to such educational services. A question often raised today (without a definite answer) is in relation to the religious instruction for Moslem school children; despite a basic standing entitlement to such religious instruction, claims for the service often fail because of the lack of a representative on the part of the Islamic communities.

At numerous public universities there are theological faculties of a specific confession. In a variety of differently fashioned State-Church agreements, the Churches have a more or less determinative influence upon the appointment of professors and in the curriculum and examinations. In this area the Catholic Church enjoys a greater area of control than does the Evangelical Church. The professors of the theological faculties at State universities are State officials; nevertheless at Catholic faculties they need the *missio canonica* from the Catholic Church. If it is withdrawn, the particular professor is not allowed to remain a member of the theological faculty. He will however still retain his rights and duties as a State official and must be given another position within the university. For the vacant theological professorships, the State is obliged to seek for the necessary replacement.

Moreover, the large Churches also have their own theological faculties. The Catholic Church has its own university in Eichstätt, which also has a significant number of non-theological faculties. There is also a large num-

ber of Church-run colleges, that as such offer an education that is more vocationally oriented than that of a university.

It is part of the special position of the Churches that they have in a special way a public mandate. This public mandate is secured by State-Church treaties and has its foundations in the religious freedoms of the Churches. This accordingly allows them to have a say and a right to information in the matters and affairs of public life. On the basis of their public mandate, religious institutions have reserved time-slots on television and radio. They are also, as a result, given a representative position on the supervisory boards of public institutions where a particular societal representation is necessary. The Churches' position is relevant to the broadcasting commissions of public broadcasting corporations such as ZDF, ARD and the Land-based broadcasting corporations, the supervisory commissions for the private television and radio stations, and also appraisal and indication boards in order to identify and restrain scripts and films that are deemed harmful to young viewers and listeners.

The large Churches of the Federal Republic of Germany employ together more than 1,000,000 persons; their important position as an employer is therefore evident.

As public corporations, the large Churches are considered to be entitled to confer public office. This means that they are able to have employees who are considered to be civil servants; reciprocally the Church administrations are structured along the same lines as their State counterpart. The Churches orient their own civil service law along the same lines as the public civil service law, even in respect to salaries and benefits. For priests and ministers, there is in force a separate service law that also copies, so far as possible considering the special context, the public civil service law.

However, for the large majority of the employees in a Church's service, the normal labour laws are in effect. It is nevertheless in many circumstances modified, on the basis of the Church's right of self-determination and its particular religious relationship. Freedom of religion demands that the special conditions which result from the duties of the Churches must be taken into consideration when examining the Churches' labour status.

This is particularly expressed, in that Church employees owe a particular obligation of loyalty to their Church employer. It is the Church itself, which within the constitutional framework of the notion of *ordre public*, good faith and prohibition of arbitrariness, determines the contents of these obligations. The right of self-determination of the religious communities allows the Churches, within the limits of the laws valid for all, to regulate Church work conditions according to their own terms and to make obligatory specific duties of the Church employees. Which basic duties of the Church are important as items of the terms of employment is judged according to the organised Church's own acknowledged standards. In cases of dispute, the labour courts have to respect the standards

of the Church in assessing contractual obligation of loyalty, insofar as the Basic Law recognises the right of the Church to regulate the matter internally. It is thus as a rule left up to the organised Church to decide what is required for the credibility of the Church and its teaching, what specific Church duties are, what are essential principles of the faith and morality, and what is to be considered contrary to these norms. In the case of a violation of such an obligation of loyalty by the employee, the public labour courts are finally to rule whether a termination of employment of a Church employee is justified or not.[8] As a result of their religious mandate, Churches have a right to give notice to an employee, when they in their public way of life or in their publicly expressed opinions act contrary to Church teachings. The Federal Constitutional Court ruled that it was constitutional to give notice of termination to a physician employed at a Catholic hospital who had publicly taken a stance against the Church on television and in a magazine concerning the right of women to have an abortion. This decision was reaffirmed by the European Commission of Human Rights.[9]

Also in the sphere of collective labour rights, the Churches as a result of the notion of freedom of religion and consequently the right of self-determination, are in a special position. Their structures are not subject to the public co-determination laws.[10] The State is in principle not allowed to intervene with the inner organisational structures and set-up of the Churches.[11] The Churches in this area have developed the so-called third way. They understand their vocation, especially in the area of charity, as part of one undivided, religiously-based commitment. This in principle does make it impossible for them to accept a legal structure in labour relations which is based on the idea of a fundamental opposition between employer and employee. The Catholic Church along with most of the Protestant Churches therefore rejects the conclusion of agreements through collective bargaining with labour unions.[12] Within the Church structure there exists no right to strike, just as there is by way of internal Church decision no possibility to lock out employees. The Churches have created their own system of employees' representation and co-determination. It confers, to quite a considerable extent, more extensive rights on their employees than does the public co-determination system.

As a result of repeated secularisation of Church property in the past, the Churches in Germany have only a small amount of property. As compensation for the secularisation following the Reichsdeputationshauptschluß of 1803, a series of government benefits were to guarantee funds for the Churches. They are guaranteed by Art 138, para. 1 WRV in conjunction with Art 140 GG. This provision also envisages the ending of those pay-

[8] Cf BVerfGE 70, p 138.
[9] Cf BVerfGE 70, p 138; EKMR, 12242/86, decision of 06.09.1989.
[10] § 118 BetrVerfG; § 1 IV MitbestG.
[11] Cf BVerfGE 53, pp 366/400.
[12] Some Evangelical Landeskirchen (Nordelbien, Berlin-Brandenburg) have instead concluded collective bargaining agreements for their employees.

ments which are necessarily linked to the payment of compensation; this so far has not been pursued on grounds of impracticality. Also other subsidies granted by the State are often related to long-standing claims of the Churches; an important example is the fact that the local authorities must discharge the public duty to contribute to the upkeep of Church buildings. Likewise, on the basis of contractual terms, there are some obligatory contributions to be made by the State to the Church, such as subsidies to the salaries of Church officials.

Approximately 80 per cent of the entire Church budget, however, is covered by the Church tax; guaranteed by Art 137, para 6 WRV in conjunction with Art 140 GG. On the basis of the civil tax lists, in accordance with the law of the Länder, the religious communities that are public corporations are allowed to levy taxes. The large Churches have made ample use of this opportunity but also smaller religious communities with the status of public corporation have done likewise, such as the Jewish communities. Only members of the particular Church justified in levying the Church tax are obliged to pay. The Church tax was instituted at the beginning of the nineteenth century in order to relieve the national budget of its obligations to the Churches, which were based in turn on the secularisation of Church property.

Those desiring to be free of the tax may achieve that result by leaving the Church with civil legal results. The withdrawal from the Church is done by de-registering with the proper State officials and simply means that one has, according to the State classification, officially ended one's membership with the particular Church in question. However, most Evangelical Churches see the withdrawal as a withdrawal from their particular Church as well. The Catholic Church, as a general rule, views the withdrawal as a serious violation of one's obligations to the Church, without bringing one's theological Church membership as such into question. The rate of the Church tax is between 8 and 9 per cent of one's wage and income tax liability. Other tax standards may also be used. Although this concept is not a requirement, in most cases, the Church tax, as a result of an arrangement with the State, is collected by the State tax authorities for the larger Churches. For this service, the Churches pay in compensation between 3 and 5 per cent of the tax yield to the State.

Churches also receive a certain number of tax exemptions. The Church tax and charitable donations to the Church may be deducted from income tax, as applies equally to donations to non-profit organisations. Churches are also not required to pay certain taxes and duties.

In so far as the need for religious services and religious assistance in the armed forces, hospitals, penal institutions or other public institutions is concerned, the various religious institutions are permitted to undertake such activities. They have a right to conduct religious assistance in hospitals and for prisoners. The religious activities within the police and the military forces are particularly regulated by contracts. The military chap-

lains are sent from the Churches for a specific time. They are for the time of their service given the status of State officials. Their top superior in matters of their State position is the head of the Federal Defence Ministry. The German military chaplains have the status of a normal civilian State official without a uniform or a military rank. As part of the State administration, there is for the Protestant military chaplains an Evangelical Church office for the Defence Forces and for the Catholics a Catholic military bishop's office. Their sphere of duties is considered to be a part of both the Church and State administration. In Church matters they are subordinate to their respective military bishop, who is responsible for his Church, though only in matters of public administration to the Federal Defence Minister.

II.

The European Union knows a law on religion. There is a corpus of norms related to religion, a corpus proper to the European Union. This corpus has developed silently, step by step, according to needs, by that very process being a mirror to the fact that man cannot do without religion.

Let aside the common constitutional traditions of the Member States concerning their laws on religion and let aside the numerous decisions of the European Court of Justice directly concerned with religious matters that corpus amounts to more than forty pages densely printed in small letters. This European law on Religion knows norms of constitutional quality: freedom of religion, freedom of religious education, religious non-discrimination, and others. This European law on Religion knows norms of other standing, spread through regulations and directives: respecting church self-determination in church institutions, protecting religious feelings in media directives. This European law on Religion knows declarations on the status of Mount Athos and on respecting the legal status of Churches, religious and philosophical communities in the Member States. It is a broad and ever growing European law on Religion.

Grown step by step, pragmatically, nevertheless we can identify basic features of this European law on Religion: regionality, neutrality, equality.

First regionality: the European Union respects and does not prejudice the legal status of Churches and religious and philosophical communities which they enjoy under the law of a Member State.

The Church Declaration of Amsterdam is one expression of that respect for the regional needs of today and tomorrow. The protocol on protection and welfare of animals is another one, giving regard to religious rites and regional heritage.

That respect for regional features, going alongside with the principle of subsidiarity, belongs to the common constitutional traditions of the Member States. We do not only have very different systems within the European Union on the level of the Member States. Certainly, we know

the traditional set of separation models like in France or Ireland, state Churches like in England, Denmark or Greece, we know models of co-operation like in Italy, Spain, Austria or Germany. Yet, these categories have lost most of their former legal meaning. And certainly, these distinctions have lost all social and practical relevance. The status of national or state Church for the Orthodox Church in Greece does mean something completely different from the status of the Greek Orthodox Church as the state Church in Finland. Separation in Ireland is completely different from separation in France. The question today here is, whether or not religious freedom and the needs of individuals and institutions living their religion are adequately met.

But also within the Member States themselves there is a great variety of systems. For example: the United Kingdom. People in Germany usually see the beauty of England and her Church. They know Canterbury Cathedral and see in the evening news on television the new Archbishop knocking on the front door. They know the Anglican Church as the High Church of England. And they would identify this with the whole of the Kingdom and beyond. They would not be aware of the fact that the United Kingdom knows in its very territory various relations between state and religions. The Anglican Church as the state Church in England, the Established Church, disestablished in Wales. People in Germany are intrigued to learn that in Scotland, the state Church is the Kirk of Scotland, a Calvinist church. And they always take it with a sort of laughter when they are told that the Queen, being secular head of the Anglican Church, at the same time is an ordinary member of the Kirk of Scotland, Calvinist. In Northern Ireland, in Wales, the situation again is different, let alone the Bailiwicks of Guernsey and Jersey or the Isle of Man, those not being a part of the United Kingdom. Greece to name another example of multitude within one Member State, Greece knows the special status of Mount Athos. In Germany we see numerous characteristics in the various Länder.

And France in fact knows seven different systems of state Church relation. We find special structures in Alsace-Moselle, special ones in Guyana, special ones on the island of Mayotte. In Alsace-Moselle the Catholic bishops of Strasbourg and Metz are installed by the President of the Republic not by the Pope, we find acknowledged religious communities, and priests being paid by state entities. In Guyana the Catholic clerics—only those—are without distinction paid as civil servants of the 'département', on Mayotte the Muslim Mufti as the highest ranking religious authority is being installed by state.

Here, we find something significant: if the Member States themselves host without any problems different systems compatible to the unity of the Member State then it should be well possible on the level of European Union law to keep different systems. The very example of the Member States shows: it is not necessary to install just one system—and it would not be wise. We can keep variety.

This variety at the same time develops. The systems see an evolution. This evolution is an evolution of convergence. The systems of state religion relations in Europe converge. We can see a dissolution of the relations between the state and the Lutheran Church in Sweden. Sweden has abolished the Lutheran Church as being state Church from the beginning of the year 2000. One can even see a weakening of the close relations between the Anglican Established Church and the state in England. In Germany we witness certain evolutions as to religious instruction and public schools, the competence of state courts in religious matters or the status of Churches as public law co-operations. Also, structures formerly antagonistic have shown their openness for co-operation. On the other hand, formerly close links weaken. We witness a European convergence towards autonomy and self-determination of religion, a convergence towards a benevolent co-operation between state and religions.

We should not forget the differences between the Member States, and we have to respect them. On the other hand, we have to see what is in common.

Second: the other fundamental principle of European Union Law on religion: neutrality. Or is it *laïcité*? In fact what is the difference?

The European Union does not certainly have, and should not have, a state Church. The variety of Protestantism, the Catholic Church and Orthodoxy from the very beginning make it hardly feasible to have one of those Churches a Church of the Union—those are questions of the past. But, to look ahead, one has to see more clearly than before the common structures of the Member States. For example, contrary to what is often said, the French law of *laïcité* is not so different from the German system of co-operation. Let me just ask a number of questions: The French *laïcité*, doesn't it know the political clause when nominating a Catholic bishop?— the government can reject a candidate on political reasons. *Laïcité* knows military chaplaincy? The public schools leave space for religious instruction. The special status of the '*associations culturelles*' and '*associations diocésaines*' is quite striking. We find the state being the owner of Catholic Church buildings constructed before 1905. We find state financial aid for cultural buildings of religions. There is no doubt: Laïque France gives by far more public funds to religious communities than England to its established Church. The Anglican Church in England almost completely depends on her own fortune—she never has been secularised.

What about this—and relevant to the somewhat puzzling discussion on the preamble of the European Charter of Fundamental Rights: Doesn't the French constitution know and speak of the 'supreme being'—explicitly referred to in the preamble of the Declaration of Human Rights of 1789, forming part of the present constitution.

Germany, in her very constitution, speaks of the 'responsibility before

God'—not so very far from the 'supreme being'. The religious instruction in public schools in Germany is a clear expression of separation between state and Church. The distinction between state and Church is in Germany, furthermore, stressed by the status of numerous religious entities as co-operations under public law—the great Churches, but also the Jewish communities, the Mormons, the Adventists, and a great number of other religions, denominations and *Weltanschauungsgemeinschaften*. European Union law should refer to what we have in common.

The legal notion of *laïcité* is freedom of conscience, separation of state and Church, interdiction of direct financing of religion by the state. These seem to be the constitutional fundamentals of French *laïcité*. It is the *laïcité nouvelle*, the *laïcité positive*, *laïcité neutre*. That *laïcité* makes co-operations between state and religions well possible.

And further: just open a textbook on constitutional law in Germany—you will find almost the very same ideas for the German system: freedom of conscience, separation between state and Church, no direct financing of religion by the state (the latter certainly knows some special trades).

We have to see the common structures. All over Europe there are similar needs. Needs of democratic participation. Needs of self-determination of religious communities. Needs in relation of Moslem immigration. Needs in relation to new religions. Needs of those who do not believe. Needs of those who do believe.

Yet, let me ask a question decisive for the future of European Union law on religion beyond the work in the convention of a Constitutional Treaty. *Laïcité*, doesn't this word carry a latent meaning? A significance, a meaning of historic evolvement and importance? This latent character of *laïcité*, seen from abroad, carries a sceptic notion towards religion, sometimes almost entire religion in the field of public life. These sceptic notions, this latent antagonism against religion is alien to other systems of state Church relations in Europe.

This question touches the social spirit, the public opinion, not so much the law proper. But the social spirit is also important. It would, for that very reason, be very difficult, no, impossible, to speak of a *laïcité* of the European Union. It would mean to impose not only certain legal concept grown in one Member State onto other Member States. It would also mean to impose a historic experience which others did not have onto them. It would mean to impose a social spirit. Do not impose a notion that deep and broad, that alien and antagonistic. It would be dangerous for European integration.

Better, we should speak of a religious neutrality of the European Union, well in line with a *laïcité neutre*, a *laïcité positive*. And better, let us speak of a religious openness of the European Union and its law.

Third, and finally: equality as a fundamental principle of European Union Law on religion. All religions must find their needs met in European Union law as far as that can ever be legitimate. Freedom cannot do without equality. Equality treating equal what is equal. Treating different what is different according to the difference.