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### Constructing mosques : the governance of Islam in France and the Netherlands

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## The governance of religion in France and the Netherlands. Institutional arrangements, traditions and principles

### 2.1. Introduction

National models for the governance of religion are a policy legacy that has grown out of a history of relations between church and state and that has become entrenched in a country's political culture and institutions, including constitutional and legal regulations. National models can be analysed at the level of principles "that work together to create an approach to church-state relations" (Monsma and Soper 1997: 156). In that perspective the French church-state regime can be said to correspond to an ideal-typical model of strict separation and the Dutch regime to one of structural pluralism. However, in the real world national models are not uniform and straightforward. Because they have developed over time and are shaped by the interactions between various traditions, church-state regimes are internally heterogeneous and fairly ambiguous. In addition, religious policies and guiding principles vary between societal spheres and policy domains. Focussing on these observations, the introduction of French and Dutch church-state regimes in this chapter situates foundational principles in the context of several historical traditions and their development over time, and discusses ambiguities that are a part of these national models. The institutional framework for the financing of houses of worship are discussed more elaborately because this aspect of church-state regimes is of particular relevance for public policy responses to mosque creation.

### 2.2. Church-state relations in France: institutional repertoires and principles in their historical context

The French church-state regime is usually described in terms of the principle of *laïcité*, or secularism. I will argue that in actual fact three principles work together, though not necessarily in harmony, to create a distinctively French approach to the governance of religion.<sup>48</sup> Firstly, the French state traditionally, and in varying ways and degrees, regulates and controls organised religion (*le culte*). This "Gallican" element goes back to the tradition of the Gallican Church, but it also underlay the Napoleonic approach and has continued to justify state intervention in the sphere of religion after 1905. The second element is Republicanism, a particular way of thinking about the individual, the state, and society. Republicanism has shaped French ideas about the appropriate place and boundaries of religion in society, including the distinction between organised forms of religion (*le culte*) and private forms of belief and faith (*croissance*) (Bowen 2006: 11-

48. For the discussion of the French church-state regime I draw extensively on the following studies: Baubérot 1998, 2000 and 2004; Le Tourneau 2000; Koenig 2003; Hafiz and Devers 2005; Fetzer and Soper 2005; Bowen 2006 and 2007. See also Boyer 1993; and Baubérot and Mathieu 2002.

20). Third, the idea that principles such as equal treatment, state neutrality and the separation of church and state should be interpreted in a strictly secularist way. Many in France will argue that strict secularism means that religion belongs to the private sphere. A historical reconstruction can help to understand the way these principles work together to create an approach to church-state relations that is distinctively French, without it necessarily being unequivocal (Bowen 2007).

The tradition of state control over organised religion began with the continuous struggles between the French monarchs and the popes in Rome over spiritual and temporal authority, going back at least as far as the reign of Philip Le Bel (1268-1314). The formation of a Gallican or French Church enabled the sovereign king to control the affairs of the church.<sup>49</sup> Another formative experience in the early modern period were the religious wars (1562-1598) resulting from the Reformation and Counter-reformation. These violent reactions to the emergence of religious diversity within European Christendom not only contributed to the failure of the reformation in France, but also hindered the formation of experiences of mutual adaptation and religious toleration as happened elsewhere in Europe.<sup>50</sup>

The revocation of the Edict of Nantes by Louis XIV in 1685 led to a new period of religious violence and the religious dominance of Catholicism was maintained by force until late in the 18<sup>th</sup> century. In the period before the revolution of 1789 there had hardly been any experience with peaceful accommodation of religious pluralism in France. There was also no outspoken French philosophical tradition of defence of religious tolerance.<sup>51</sup> Instead, the French Enlightenment came to be known for its critiques of the church.

The French Revolution greatly affected the subsequent developments of church-state patterns, notably by its individually-oriented understanding of the value of religious freedom, its Republican view of the democratic process, and the view of outwardly expressed religion in the public sphere as a threat to the political order. The *Declaration of the Rights of Man and Citizen* (1789) mentioned religious freedom in article 10, but significantly emphasised individual freedom of conscience and expression: “No one may be troubled on account of his or her opinions, even religious ones, provided that their manifestation does not disturb the public order established by law”.<sup>52</sup> Another important element in the Revolution was the establishment of Republicanism as a political doctrine and the related unsympathetic view of the public role of organised religion. The French republican tradition, strongly indebted to the political philosophy of Jean-Jacques Rousseau, claimed that the state could liberate the citizens from their particularistic – regional, religious, communal – group loyalties and make them into “universal” members of the sovereign nation.<sup>53</sup> Organised religion risked destabilizing the political community because it gave the

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49. The formation of a Galician church was confirmed in the Concordat of 1516 and restated in the Declaration of the Clergy of France in 1682. Rulings of the pope required royal consent in France (Le Tourneau 2000; Bowen 2006: 21ff.).

50. See Martin 1978.

51. Kaplan 2007.

52. Baubérot (2000: 6ff.) observes that the French declaration of 1789 does not mention God as the founder of human rights. This in contrast to the American declaration of independence of 1776 (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights”).

53. Koenig (2003: 98) observes that Republicanism comprises the idea that the individual should “unabhängig von seinen sonstigen zivilgesellschaftlichen Bedingungen in den durch die souveräne Nation legitimierten Staat einbezogen werden”.

people “two codes of legislation, two rulers, and two countries” (Rousseau 1973: 272).<sup>54</sup> The Civil Constitution of the Clergy of 1790 required priests to take a new oath to uphold the constitution. The Revolution also abolished the Christian calendar and introduced a so-called “religion of the Republic” with its own ceremonies, cults and goddess of Reason (Fetzer and Soper 2005: 69).<sup>55</sup> During the period of Terror anti-clerical elements gained in influence: the possessions of the Catholic Churches were disowned, Catholic congregations were outlawed and thousands of priests who refused to plead allegiance were deported or murdered.

The relationships between church and state were altered when Napoleon Bonaparte acceded to power in 1799 (the 18<sup>th</sup> Brumaire) and concluded a Concordat with Pope Pius VII in 1801. In this agreement the French government recognised Catholicism as the “religion of the great majority of French people”. The French government would appoint Catholic bishops, but these would be canonized by the pope. Besides the Catholic Church, the Lutheran and Calvinist religions were also officially recognised as organised religions (*cultes*) in 1802, through articles that Napoleon attached to the text of the Concordat, and Judaism followed in 1808 (Bowen 2006: 23). The state would from now on pay the salaries of the Catholic, Lutheran, Calvinist and Jewish clergy.

In the course of the 19<sup>th</sup> century a series of conflicts around religion pitted supporters of the Catholic Church and the Monarchy to liberal and anti-clerical factions supporting the Republic. The political effects of their disagreements were all the more destabilising because the state itself moved back and forth between republican and monarchical regimes: the July Monarchy (1830-1848) was succeeded by the Second Republic (1848-1851) that in turn gave way to the Second Empire (1851-1871), which finally was replaced by the Third Republic (1871-1940).

The school struggle of the second half of the 19<sup>th</sup> century was crucial for the formation of French ideas about church-state relations, which have remained of great relevance up to the present day. These were also the formative years of the so-called “militant secularism” (*laïcité de combat*) that insisted that the state should uphold a secular, republican ethic and play a role as educator and source of spiritual inspiration. In 1882, one year after the anticlerical factions had formed a government, the Minister of Education, Jules Ferry, introduced legislation to establish a more complete separation of church and state in the sphere of education. Local priests no longer would have the right to inspect education. The idea that religion should be marginalized in the private sphere also underlay a law of 1884 forbidding religious signs in public cemeteries (Bowen 2006: 24).

The 1905 Law on the Separation of Churches and the State put an end to the Concordatarian model based on official recognition of religions.<sup>56</sup> However, this did not signify the end of state regulation of organised religion. The 1905 law set boundaries as to what organised religion could be. For an association to be recognised as religious or cultic (*cultuel*) it was required that “its followers come together in formal ceremonies, that the beliefs contain universal religious

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54. Rosanvallon argues that the image of French political culture as solely consisting of the Republican, centralizing and Jacobin traditions downplays the significance of another French political tradition that emphasises the importance of civil society and civic associations. See Rosanvallon 2004; and Bowen 2006: 28.

55. In 1806 the Gregorian Calendar was re-established.

56. This was with the exception of the departments of Moselle, Bas-Rhin and Haut-Rhin that were under German rule in 1905. I do not include a discussion of the special legal regimes in Alsace-Lorraine and Moselle and in the overseas territories. See the report of the Machelon Commission (2006) and recently Baubérot et al. (eds) 2008.

principles, that the group has a long existence, and its activities do not threaten public order” (Bowen 2006: 18). The various struggles over the consequences and interpretations of the 1905 law throughout the 20<sup>th</sup> century illustrate that underneath the agreement on the centrality of *laïcité* there lies a disagreement between advocates of militant secularism (*laïcité de combat*) and supporters of moderate secularism (*laïcité modéré*) that has continued to influence political arguments on religious issues in France (Baubérot 2000 and 2005; Fetzer and Soper 2005: 73).<sup>57</sup>

Those who see the 1905 law as a symbol of the clear choice for strict secularism and separation tend to put the emphasis on the second article, stipulating that from now on the state would “neither recognize nor pay salaries or other expenses for any form of worship [*culte*]” (Fetzer and Soper 2005: 70). They argue that this edict means that there should be no form of direct or indirect financing of religion and that the public sphere and public institutions should be free from religious influence. By contrast, the supporters of moderate secularism tend to put the emphasis on the first article of the 1905 law, which stipulates that the Republic “guarantees freedom of conscience and the free exercise of organised religions (*cultes*)”.<sup>58</sup> They see here a firm commitment of the state to protect effective religious freedom, including the right of religious organisations to establish themselves as autonomous and private associations in civil society. In addition, the principled declaration that the state “does not finance religion” should not be interpreted as preventing all forms of public support of religions. The 1905 law laid down, for example, that the state would finance the costs of religious and spiritual care in public institutions, such as prisons or hospitals. The many forms of indirect state support for the building and maintenance of houses of worship, some of which are the result of modifications of the 1905 law, are also taken to illustrate that the *laïcité* can be combined with a supportive view of religion in civil society. The 1905 law has been and continues to be the crucial legal framework regulating church-state relations in France.

### 2.3. Legal regulations concerning the financing of houses of worship

The Concordatarian system had combined state regulation of organised religions with official recognition and public financing of religion. The will to break with this system lay behind the axiomatic phrasing of the second article of the Law on the Separation of Churches and the State, stipulating that the state will not finance worship (*le culte*). Article 2 laid down that the public religious bodies (*établissements publics du culte*) would cease to exist and were to be replaced by private religious associations. State, departmental and municipal budgets for religious purposes were abolished. However, the state would continue to finance the costs of chaplaincies in public establishments such as schools, asylums, hospices and prisons. One of the most important forms of financial ties between the state and churches concerned real estate and the

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57. Recently the Stasi Commission (report in 2003), the Council of State (report in 2004) and the Machelon Commission (report in 2006) have discussed extensively the meaning of *laïcité* and the 1905 Law of the Separation of Churches and the State. These reports will be discussed in chapter 7.

58. See for example Baubérot 2004; Borne and Willaime (eds) (2007). See also the report of the Machelon Commission (2006).

ownership and maintenance costs of houses of worship and other buildings and premises, such as seminaries and vicarages.<sup>59</sup>

Religions were to reorganise themselves in the form of private cultic associations within one year of the promulgation of the 1905 law. Once these cultic organisations were founded they would, free of charge, become the attributaries of the buildings and premises that until then were owned by the public religious bodies. As private owners, the cultic associations would also have to carry the financial weight of debts and maintenance costs of the buildings. Those premises not claimed before December 1906 would be confiscated by public authorities and were to be used to cater to museums and libraries or given in use to public associations of assistance or *bienfaisance* (article 9). When Calvinist, Lutheran and Jewish cultic associations had been founded these effectively became owners of their respective houses of worship in December 1906. However, the Vatican refused to accept the new law and the unilateral cessation of the Concordat by the French government. In August 1906 Pope Pius X ordered Catholics in France to refrain from creating private cultic associations. Facing the possibility that Catholic worship would become impossible, the French government decided that the buildings in use for Catholic religious activities would be attributed to public authorities – municipalities and the state- and that these would then be given, free of charge, for use by the respective believers.<sup>60</sup>

With respect to the costs of building new houses of worship, the 1905 law established the principle of private financing by the communities of believers (Hafiz and Devers 2005: 111ff.). However, various legal regulations exist that allow for forms of indirect subsidies for the creation of prayer houses, notably via public authorities financing the acquisition of land and building sites. Houses of worship can be built on land that is leased for the market price and governments can give a guarantee for a loan in the form of a mortgage to enable the building of houses of worship. Of greater importance, there is the possibility for municipalities to give long term leases (*bail emphytéotique*), usually for a period of 99 years and for a symbolical amount. This practice is the result of an agreement made in 1936 between Léon Blum and the archbishop of Paris to allow for the building of new churches in the Paris region, hence the phrase the “Cardinal’s building sites” (*Chantiers du Cardinal*). This practice exists in tension with Article 2 of the 1905 law, because it comes down to municipalities financing the costs of acquisition of building plots and cultic associations obtaining the effective ownership of the land. One of the rationalisations for this practice is that religious buildings make a valuable contribution to the municipality’s real estate (*patrimoine immobilier*).<sup>61</sup> The Law on the Separation of Churches and the State introduced an important inequality between religious associations housed in churches built before 1905 and those housed in churches built later. Religious associations that have built houses of worship anew after 1905 have had to finance these themselves.

Another important aspect of the financing of houses of worship involves maintenance and renovation costs. At this point the Law on Separation of Churches and the State also created

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59. For further details on legal arrangements see Boyer 1993; Basdevant-Gaudemet 1996; and Hafiz and Devers 2005.

60. In 1907-1908 new laws were passed turning the church buildings over to town governments, whereas the Cathedrals remained the property of the state (Bowen 2006: 27). The Vatican and the French government finally reached a compromise in 1923-1924 and private Catholic religious associations were created. However, the public ownership of the Catholic churches that had been built before 1905 was maintained.

61. Of the 1,800 churches that were established in France since 1905 almost one quarter have been on land given out in long term lease (Hafiz and Devers 2005: 115).

an important inequality, this time to the benefit of Catholic associations. Cultic organisations that are the proprietors of their houses of worship are also themselves responsible for the costs of maintenance and upkeep of these buildings. However, the maintenance and renovation of Catholic churches built before 1905 is financed by public authorities, because these buildings are owned by the state or municipalities. A law that was issued in 1942 and added to Article 19 of the 1905 law has somewhat attenuated the inequalities with respect to the financing of costs of upkeep of buildings for different religious associations. It stipulates that funds attributed for the reparation costs of buildings catering to public worship are not to be considered as subventions, irrespective of whether the building in question is classified as historically valuable.

There are also other forms of indirect subsidies for religious associations, both those set up as cultic associations under the 1905 law and those set up as cultural associations under the 1901 law.<sup>62</sup> For example, places that are open to the public and are not in use for private purposes are exempt from residential taxation (*taxe d'habitation*). Cultic associations (i.e. 1905 associations) have the additional advantage that the houses of worship that they have in use are exempt from real estate taxes (*taxe foncière*) and that these associations can benefit from a reduced tariff of taxation with regard to private donations. Religious activities are also exempt from professional taxation. Finally, it is possible for associations to receive financial contributions from governments for cultural activities. Usually a cultic association will create a twin cultural association under the 1901 law that can receive these subsidies.

## 2.4. Church-state relations in the Netherlands: institutional repertoires and principles in their historical context

Over the past 40 years Dutch church-state traditions have been altering under the influence of various social and political trends.<sup>63</sup> These trends include accelerated secularisation, individualisation, de-pillarisation, and the emergence of new political cleavages and changes in political culture.<sup>64</sup> The will to introduce more institutional differentiation between churches and the state underlay a change of the constitution in 1983 which ended various forms of direct state subsidies for religion. A lucid conceptualisation of Dutch church-state traditions was developed by two American political scientists, who describe the Dutch approach as a model of structural or principled pluralism (Monsma and Soper 1997). Largely indebted to their interpretation, I posit that the Dutch approach to church-state relations can be understood in light of three principles.<sup>65</sup>

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62. Another exceptional measure was a special regulation created in 1962 to finance the creation of churches for *peïds noirs* communities in the period following the independence of Algeria. See report of the Machelon commission 2006.

63. In recent years, there is also a renewed interest in Dutch church-state relations. See Harinck 2006; Van den Donk et al. (eds) 2006; Van Bijsterveld 2006; Maussen 2006; and Knippenberg 2006b.

64. For an overview of social and political trends in the Netherlands in the 20<sup>th</sup> century see Lijphart 1968; Stuurman 1983; Kennedy 1995; Blom 1996; Te Velde et al. 1999.

65. For my discussion of the Dutch approach I have mainly used the following sources: Den Dekker-Van Bijsterveld 1988 and Van Bijsterveld 1994 and 2005; Knippenberg 1992 and 2006; Van Rooden 1996; Harinck 2006. For a

First, the Dutch approach is based on the idea that principles such as state neutrality, equal treatment of religions and separation of church and state should be interpreted in a non-secularist way. Secularism and liberalism are seen as particular worldviews in themselves and by consequence a state that aims to be truly neutral should not itself embrace a secularist viewpoint. Justice requires the state to act in an even-handed manner with regard to all citizens, whatever the “philosophy of life” (*levensovertuiging*) these citizens adhere to. Second, the Dutch approach is based on the idea that organised religions and other ideology-based associations are constitutive of a robust and independent civil society. In the Dutch tradition it is not legitimate for the state to dominate the public sphere and, unlike in French Republican thought, the public sphere is not seen as a neutral sphere that is created by the state. It is acknowledged that religion inherently has public dimensions, meaning that visible expression of religion is legitimate and that organised religions can play a role in media, education, (health) care and recreational activities. Thirdly, the Dutch model is supportive of religious freedom, both in the sense of negative and positive freedom and in the sense of individual and associational freedoms. Citizens should not be hindered by the state or by others to live according to their philosophy of life and to practice their religion. In addition, citizens should have the effective possibilities to “live out their religious faiths”, i.e. they should also have positive freedom of religion (Monsma and Soper 1997: 8). Religious freedom is also seen as the right to belief and practice in community with others and as including collective freedoms and associational autonomy (Ferrari 2000: 8; Bader 2007a: 130ff.).

When the Low Countries revolted against the Spanish king Philips II and the Eighty Years War began, a process of state formation began that would take the form of a national revolution that “united internally against an external threat” (Martin 1978: 16 and 49ff.).<sup>66</sup> The founding of the Dutch Republic was a reaction to discontent with the authority of the Habsburgs, notably among the local nobility and urban patricians as well as a result of emerging national sentiments that were organised by Prince William of Orange (Knippenberg 2006: 318). The Dutch Revolt was also a result of the success of the Calvinist Reformation and the repressive reactions of Catholic Spain to the Reformation greatly fuelled anger and unrest in the Northern parts of the Low Countries (cf. Selderhuis (ed.) 2006). In this context the Union of Utrecht (1579) laid down the principle of individual freedom of religion, meaning the freedom to have a religious opinion and a ban on the Inquisition. The United Provinces became a safe haven for Jews, protestants and dissenters fleeing religious wars elsewhere in Europe.

However, the Republic of the United Provinces (1588-1795) did not yet realise the freedom of public exercise of worship and of outward expression of religious dissent. The Dutch nation was a Calvinist nation and the Reformed Church functioned as the leading church that was authorized to be present in a public sphere from which other denominations were excluded. Membership in this church was required for public offices.<sup>67</sup> This period in Dutch church-

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description of the foundational principles of the Dutch church-state model see notably Monsma and Soper 1997; Van Bijsterveld 2006 and Harinck 2007. See also Labuschagne 1995 and Selderhuis (ed.) 2006. I would like to express my gratitude to professor George Harinck for his constructive comments on this part of the chapter. I am responsible for any remaining mistakes and omissions.

66. See Martin 1978; Van Rooden 1996; and Knippenberg 2006.

67. In 1648 the Republic of the United Provinces was officially recognised as a result of the Peace Treaty of Münster (Knippenberg 2006: 318).

state history has been characterised as that of the “Confessional State” (Van Rooden 2002). Importantly in the Netherlands the national revolution set off “beneficent circles of internal compromise” and this helped to avoid attempts of governments and majority groups to establish religious homogeneity by force (Martin 1978). In addition, important European thinkers, such as Locke, Descartes, Spinoza and Bayle, found refuge in the Holland and articulated a more principled defence of religious tolerance. The Dutch Enlightenment that flourished in the mid and late 18<sup>th</sup> century was also not anti-clerical (Harinck 2006: 107).

The Batavian Revolution (1795-1798) introduced liberal and modern views with more force in Dutch politics. The exclusion of Catholics, Jews and Protestants from public office was abolished and the Reformed Church was deprived of some of its privileges. In all, the French Period (1795-1814) resulted in a further development of the legal basis for institutional differentiation of church and state and established some degree of religious pluralism, equality of religions and recognition of various denominations. The government still thought it had the right to intervene in the internal affairs of the churches, in particular those of the Reformed Church. The Constitution of the United Netherlands of 1814 stipulated that the Christian Reformed Religion was the religion of the Sovereign King. The Constitution of 1815 upheld the recognition of religious pluralism developed under French rule, and laid down that all existing religions were entitled to equal protection and public exercise of religion. The government developed administrative and financial relations with existing religions and gave them the task to “augment Christian morals, respect of order and unity, and the education of love for King and Fatherland”.<sup>68</sup> King William I (r.1815-1840) sought to expand interference of the state with church bodies and demanded also that all church bodies had an official internal regulation (*bestuursreglement*) that was approved and signed by the King.<sup>69</sup>

In 1848 the Netherlands developed a constitution that laid the foundations for a modern, liberal state. Drafted by the legal scholar Thorbecke, this constitution introduced a more principled respect for religious freedom and a more complete separation of church and state. State approval for the founding of church bodies (*kerkgenootschappen*) was abolished and article 1 of the Law on Church Bodies (*Wet op kerkgenootschappen*) stipulated that the “state should refrain from interventions in the internal matters” of churches (Hirsch Ballin 1988: 57). In many respects the constitution of 1848 was more liberal than Dutch society at the time and it took some time for that society to adapt itself to the new legal environment. In the domain of religion an important issue was wide-spread anti-Catholic sentiment.

In the second half of the 19<sup>th</sup> century Dutch society was deeply transformed, politically, demographically, culturally and also economically, even though the Industrial Revolution in the Netherlands began relatively late and developed slowly. Liberal and conservative elites had managed to take a leading role in government affairs and politics, but in the second half of the 19<sup>th</sup>

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68. [“de bevordering van christelijke zeden, de bewaring van orde en eendragt, en de aankweeking van liefde voor Koning en Vaderland”] (cited in Harinck 2006: 107, the English translation is mine, M.M.).

69. Such regulations were established for the Reformed Church (1816) and for some of the Lutheran Churches, which had been split during the French Period. The Consistory that was signed by the King in 1814 had a similar function for the Jewish community. The Roman Catholic Church remained opposed to the attempts of the government to gain more direct influence on the internal affairs of religious bodies and the founding of congregations. The efforts of King William I to intervene in the education of Roman Catholics would play an important role in the conflict leading to the segregation of Belgium in 1830 (Harinck 2006: 108ff.).

century they were challenged in that position by socialist and confessional groups. The fact that two denominational groups, the Roman Catholics and the orthodox Protestants, would more or less simultaneously challenge the dominant position of liberals would have great consequences for the subsequent development of a pillarised society. Ideological and denominational differences deepened and they became intimately linked to emerging political parties. This resulted in clearer boundaries between the various confessional groups. Under the leadership of Abraham Kuyper orthodox Protestants developed their own institutions, including the Anti-Revolutionary Party (ARP) (founded in 1879), the Orthodox Reformed Churches (*Gereformeerde Kerken*) (formed in 1892) and the Free University (founded in 1880).<sup>70</sup> Additionally, confessional groups would come to be united in opposition to liberal factions, notably around the issue of education. The 1857 school law had secured the freedom of parents to establish their own schools, but in 1878 the liberal Kappeyne van de Coppello introduced a school law which mandated higher standards for all schools but proposed only to finance subsidies for public schools to pay for these improvements. Protest against this law would bring confessional factions together in opposition to liberal factions and resulted in an alliance of orthodox Reformed groups and Catholics (Monsma and Soper 1997: 57; Koch 2007). The confessional factions would a decade later, in 1889, succeed in adapting this law, which was seen as unfair towards confessional schools, and government subsidies for confessional schools were introduced. This further legitimised the idea that various groups in society were entitled to create their own institutions (Harinck 2006).

The second half of the 19<sup>th</sup> century was also a period in which some of the foundational ideas of the Dutch approach to church-state relations were being theorised. Intellectuals and politicians such as Groen van Prinsteren, Herman Schaepman but above all Abraham Kuyper challenged the idea that the liberal worldview was neutral and that it alone should form the basis of government and shape public institutions. Religious communities also had as much right as the liberals to educate and socialize their members in their own institutions. Kuyper grounded his political doctrine firmly in Calvinist theology and argued that democratic thought and practice was very much indebted to Calvinism.<sup>71</sup> Kuyper developed the idea of “sphere sovereignty”, meaning that the state should intervene as little as possible in societal spheres and institutions that could function independently, such as schools and churches. He also defended the existence of a “free Church, in a free State” and “parallelism”, meaning the “right and freedom of differing religious and philosophical perspectives and movements to develop freely on separate, parallel tracks, neither hindered nor helped by the government” (Monsma and Soper 1997: 60; Harinck 2006: 111).

The emancipation of Catholics and orthodox Protestants and the growth of socialist movements would create the social and political pre-conditions for emergence of a pillarised society in the first decades of the 20<sup>th</sup> century. The social imagery of the Dutch nation had also been changing in the process. The Protestant or Calvinist nation had now become a nation composed of people belonging to different groups and “alliance to the nation could only be expressed by means of the membership of these groups” (Van Rooden 2002). This situation informed specific

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70. Already in 1834 several orthodox ministers had left the Dutch Reformed Church and created new local churches. This was known as the separation (*Afscheiding*).

71. See on Kuyper also Harinck 2006 and Koch 2007.

ideas about state neutrality, which was understood as the state governing on an even-handedness basis and respecting the different religious and secular worldviews.

The Constitution of 1917 further established pluralistic principles, by introducing general suffrage and proportional representation and by guaranteeing the equal funding of all schools, which was elaborated in the 1920 Primary School Act. The ideas of “parallelism” legitimised the further development of dense networks of denominational organisations and institutions, including labour unions, modern political parties, associational life, the broadcasting agencies, newspapers and other media. Between 1900 and 1967 Dutch society was pillarized, meaning that most citizens lived a fair share of their social life in their respective Catholic, Protestant, Socialist or Liberal pillar institutions and spheres.

The pillarised system survived the Second World War intact. In 1946 a Commission of State on Religions (*Staatscommissie van de Erediensten*) was installed to advise on the future regulation of financial relations between the state and church bodies, the so-called Commission Van Walsum. This commission only issued a report twenty years later, in 1967, and proposed a general regulation of state subsidies for all church bodies. However, by this time ideas about the relations between church and state had already begun to change. Accelerated secularisation had rapidly undercut the basis of the confessional pillars. Modern mass media created new opportunities to share interests, sympathies and entertainment with members of other groups. Individualisation, social mobility and the expansion of the welfare state further eroded existing cleavages.

One of the effects of de-pillarisation was a reconsideration of church-state relations and traditions. Traditionally, religious freedom had been understood as the state respecting the autonomy of religious communities and refraining from intervening in the internal affairs of church bodies. Increasingly, however, religious freedom was also seen as the right of the individual to be free from the tutelage and authority of religious elites and oppressive communities. Moreover, the many existing direct financial relationships between the state and churches were increasingly perceived as inappropriate. A constitutional revision in 1972 abolished article 185, which had formed the legal basis for the financing of religion. A precondition for the actual ending of financing was that an agreement would have to be reached with representatives of the churches, which occurred in 1981.

The Constitution of 1983 now forms the basis of church-state relations in the Netherlands. Article 6 on religious freedom states that “everyone shall have the right to manifest freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law” (Van Bijsterveld 2005: 371). Other articles lay down the principle of equal treatment and non-discrimination (article 1) and the freedom of education and equal funding of denominational schools (article 23). The principle of separation of church and state does not figure in the 1983 Constitution. It does, however, have clear significance for organisational independence of religious organisations and for financial relationships between churches and the state (Van Bijsterveld 2005: 374).

## 2.5. Legal regulations concerning the financing of houses of worship

The Constitution of 1815 had guaranteed the public exercise of religion to all existing churches. King William I not only sought to further regulate the internal organisation of church bodies, he also thought the state should play a leading role in the creation of church buildings, believing this would increase the obedience of church bodies to the government (Bakker 2000: 56). A Royal Decision of 1824 stipulated that Royal approval was required for the building and refurbishment of church buildings. The boards of local church organisations (*kerkbesturen*) should deal with civil servants of the Ministry of Public Works (*Rijkswaterstaat*)<sup>72</sup> to carry out their building plans. Thus, a great number of churches were built under the aegis of civil engineers of this ministry, that came to be known as the “Ministry of Public Work’s churches” (*waterstaatskerken*).<sup>73</sup> The state provided subsidies for the building of these churches. In 1868 the Royal Decision of 1824 was revoked and thus ended the period of the building of churches under the supervision of the Ministry of Public Works.<sup>74</sup>

However, governmental support for the building and refurbishing of churches remained important. Since 1884 the budget of the Ministry of Finance included a special entry called “subsidies for the building and renovation of churches, church buildings and vicarages” (Den Dekker van Bijsterveld 1988: 40). In the early 20<sup>th</sup> century the budget of the State Mining Company (*Staatsmijnbedrijf*) became another source of government subsidies for church building. Church communities in the rapidly industrialising mining region in the Southern Province of Limburg were confronted with rising costs. As owner of the state mining company, the state acted as an employer and subsidies for church building were seen as a normal way for employers to provide for some of the costs for spiritual care for their workers. Another form of direct state subsidies for the creation of churches concerned the churches that were built in the new IJsselmeerpolders.<sup>75</sup>

Another important source of public support for the creation and maintenance of houses of worship were the municipalities. These municipal subsidies continued in the 20<sup>th</sup> century and between 1946 and 1960 municipal contributions for the founding of churches rose to no less than 19 million guilders (Hirsch Ballin 1988: 30). However, in the 1950s discussion arose because of important differences between municipalities. In 1957 a special commission was created to advise on a possible national regulation for the financing of church building, known as the commission Sassen. This commission advised the creation of a general subsidy regulation

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72. When notice is taken of the various responsibilities of this Ministry its name can also be translated as the Department for Maintenance of dikes, roads, bridges and the navigability of canals.

73. See Von der Dunk 1992; Bakker 2000; and Endedijk and Vree (eds) 2002.

74. See also Selderhuis (ed.) 2006.

75. Subsidies for church building had been included in the budget of the Zuiderzee Fund since 1928, and in 1955 a special regulation saw to the financing of churches in the Noordoostpolder. In 1962 a general regulation was created for the other polders, called the Regulation Financing Church Building in the IJsselmeerpolders (*Regeling financiering kerkenbouw in de IJsselmeerpolders*). Finally, two additional special post-war regulations need to be mentioned. These are the Regulation for War-damage of Church buildings (*Oorlogsschaderegeling kerkelijke gebouwen*) that was created in 1949 and that provided up to 75% subsidies for the cost of damage to church buildings caused by the war. In 1953 the Law on the Damage of the Flooding (*Wet op de Watersnoodschade*) guaranteed financial support for the rebuilding and renovation of churches that had been damaged or destroyed in the flooding in Zeeland and South-Holland that year (Verplanke 1963; Hirsch-Ballin 1988).

that would provide substantial resources to church communities, without however weakening the “independence of churches”. The commission justified such a regulation by arguing that the Dutch population believed that church going and attendance of divine services (*een sterk kerkelijk leven*) were of public interest. The advise of the commission Sassen led to the creation of the Church Building Subsidy Act (*Wet Premie Kerkenbouw*) in 1962. This was a temporary regulation to subsidize 30% of the costs of church creation.<sup>76</sup>

Both the Commission Sassen and the Commission of State on Religions, that issued a report in 1967 (the Commission Van Walsum, see above), argued in favour of direct state support for religion. Both commissions emphasised the importance of effective freedom of religion, the general value of religious life and the need for the state to finance religion without infringing on the autonomy and internal organisation of church bodies. In this respect both reports were based on the kind of understanding of church-state relations which had existed during the period of pillarisation. However, as argued before, in the course of the 1960s societal changes had begun to erode prevailing ideas about church-state relations and about financial support for religion. The government decided not to comply with the advise of the Commission Van Walsum and, instead, to seek to end remaining direct financial relationships between churches and the state. These relationships included notably the salaries and pensions of ministers of the Dutch Reformed Church, on which an agreement was made in 1981, and the financing of church buildings. The Church Building Subsidy Act of 1962 was suspended in 1975, only to be formally abolished in 1982.

In the Netherlands this re-conceptualisation of the possibilities, outer limits and justifications for financial support for church building took place in a period in which new immigrant-origin religions, including Islam, had only just begun to be formed.<sup>77</sup> Based on the above, there were good reasons to expect that the Dutch government would think about possible ways of financing the houses of worship of religious newcomers. Subsidy schemes had existed since the early 19<sup>th</sup> century and at several occasions in the early and mid 20<sup>th</sup> century generous financial regulations had been created because of “special circumstances”. The Church Building Subsidy Act had, true to the spirit of principled pluralism, laid down that subsidies were available for all religions and denominations, including secular ones and, interestingly, also for the “Mohammedan religion”. In the 1980s special commissions were installed to investigate whether there were reasons to subsidise the costs of housing of immigrant religious groups. One of these commissions, the Hirsch-Ballin State Committee, argued in 1988 that the Constitution of 1983 did not preclude that authorities gave support to religions, including direct financial support if this was necessary to protect the effective religious freedom of specific groups (Rath et al. 2001: 51). Whether or not a subsidy scheme was developed for the building of mosques will be discussed later on in this thesis.

Besides these legal regulations allowing for direct financial support for church building, most of which had been abolished by the mid 1970s, there are also possibilities for indirect support. The Dutch state finances some of the costs of maintenance of houses of worship that are classified as “monumental” under the Monuments Act (Den Dekker van Bijsterveld 1988: 283-

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76. See extensively Verplanke 1963.

77. Representatives of Islam and Hinduism were invited to participate in discussions on the disentanglement of financial relations between church and state in the early 1980s (Vermeulen and Penninx 2000: 27).

285). In addition, religious organisations and other ideological associations can be exempted from real estate taxes since 1971. Municipalities also have a fair amount of discretion to decide on possibilities to lease out land to allow for the building of prayer houses, and religious communities can benefit from similar regulations as other secular or private actors when they need to be relocated. The principles of non-discrimination and even-handedness oblige government not to exclude religious organisations when subsidies are allocated for a specific type of activities. Also in this respect religion and non-religious denominations should be treated equally (Monsma and Soper 1997: 64; Den Dekker van Bijsterveld 1988: 287ff.).

## **2.6. Conclusion**

In this chapter I have introduced French and Dutch church-state regimes in a historical perspective. It is clear that the respective national models comprise several principles that work together to create a distinctive approach, but that they are also evolving institutional arrangements that have changed in light of historical circumstances. The ways France and the Netherlands have dealt with the financing of houses of worship in the past has been discussed, as well as the existing legal regulations for direct and indirect financing of the founding and functioning of prayer houses. The remainder of this thesis will explore in what ways these institutional arrangements for the government of religion have interconnected with regimes of incorporation of Muslim immigrant populations in shaping strategies of accommodation of Islam, in particular with regard to the formation of public policy responses to mosque creation.