

## Bijdragen

### ‘The True Spirit of Toleration’\*

#### Edmund Burke on Establishment and Tolerance

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It is commonly taken for granted that the protection of freedom of thought, conscience and religion requires that the State be *neutral*. That means that there is no state religion, and that all religions and beliefs are viewed as equal from the perspective of the State. This approach is epitomized in the separation of state and church, or more broadly, in the separation of politics and religion. Sometimes, the expression ‘secular State’ is used to refer to this regime, for example in Article 1 of the Constitution of the French Republic. The idea of the neutrality of the State is generally seen as the outcome of the developments that transformed the political philosophy of the Enlightenment into constitutional law. Its philosophical roots can be traced back to Locke’s famous ‘A Letter concerning Toleration’, where he stated that ‘it is above all things necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bound that lie between the one and the other.’<sup>1</sup> The liberal defence of the separation of state and church stresses the separation between the private and the public spheres. The more radical varieties of liberal thinking even imply that religion belongs entirely to the private sphere, and should not in any way play a role in public life. This stance might have been a bridge too far for the protestant Locke, no less than for some modern liberals. Indeed, radical interpreters of the liberal principle use the separation thesis as an argument to purge the public sphere of all religious influence. The battles in the US on a display of the Ten Commandments inside or in the vicinity of public buildings are exemplary thereof<sup>2</sup>, but this tendency is also visible in some of the judgments of the European Court of Human Rights, which appears

\* Edmund Burke, *Reflections on the Revolution in France* [1790], New Haven & Londen: Yale University Press 2003, p. 127.

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1 John Locke, *A Letter concerning Toleration* [1689], (red. Mario Montuori), Den Haag: Martinus Nijhoff 1963, p. 15.

2 545 U.S. (2005).

to be rather enthusiastic about the doctrine of secularism.<sup>3</sup> A consequence of this approach is the danger that the rights to political participation of believers are more restricted than those of non-believers. And sometimes the urge for the spread of the Enlightenment ideals of autonomy and equality is not restricted to the political sphere, but tries to force denominational schools or other non-governmental bodies to adapt their religious inspired morality to 'Enlightened' standards, for example in the field of equality and sexuality.<sup>4</sup>

The suggestion that the separation of politics and religion leads to the conception of the State as the neutral mediator between incompatible religious (and other) worldviews and interpretations of what it means to be a human being can therefore be questioned. Is it possible to create a strictly neutral public sphere? Is it not inevitable that the state, by imposing its laws and decrees on its citizens, makes choices that can be appreciated or denigrated from the perspective of a religion? Was not the Enlightenment itself far from neutral in its approach to religion, even though seen (albeit not entirely correctly) as the sole source of religious freedom and toleration? Such was the idea shared by the critics of the political philosophy of the Enlightenment, as manifested in the French Revolution. Some of them provide an alternative to the liberal theory on the defence of religious freedom, that is, a theory that does not exclude the influence of religion in the public sphere, while at the same time preserving religious freedom.

The writings of Edmund Burke, the principal critic of the ideology of the French Revolution, furnish such a theory. He strongly defends the importance of the role of religion in the State. In that connection he favours an established church. Religion is not to be restricted to the private sphere, assuming that it is possible to make a sharp distinction between a public and a private sphere (I doubt that Burke would agree to such a view). At the same time, Burke is also a champion of tolerating those who do not belong to the established church. Burke reminds us of the fact that there cannot be a neutral ground, as far as religion is concerned. Or at least that the Enlightenment, due to its critical attitude towards revealed religion, cannot be trusted as the source of true toleration in the field of religion.

This article focuses on Burke's ideas on the role of religion in society, the established church and the importance of toleration. These ideas were developed during his political career, and more specifically in his confrontation with the Protestant Ascendancy in Ireland and with the 'Atheism by Establishment' emerging from the French Revolution.

3 Compare Matthijs de Blois, 'Two Cities in Conflict', in: M.L.P. Loenen & J.E. Goldschmidt (red.), *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, Antwerpen-Oxford: Intersentia 2007, p. 167-183.

4 See for example Directive 2000/78 of the Council of the EU.

We will first peruse Burke's religious beliefs, which explain his views on religious freedom and the establishment of religion. Secondly, we dwell on his criticism of the revolutionary approach of religion. That brings us to his own view of the establishment of religion in the State. Then we will discuss his ideas on toleration. Finally we will assess the relevance of Burke's ideas for the modern debate on the role of religion in the State.

## 1 **Burke the believer**

Burke was born in Dublin in 1729 or 1730.<sup>5</sup> During his youth Burke became familiar with the three main branches of Christianity prevalent on the British Isles. His father, of Roman Catholic background, had become a member of the established (Anglican) Church of Ireland, which made it possible for him to practice law. His mother, sister and wife belonged to the Church of Rome, and during his whole life Burke was familiar with the severe legal restrictions which were imposed on the Roman-Catholic majority in Ireland under the influence of the Protestant Ascendancy (ruling class) under the British Monarch. Burke's first education bore a Roman Catholic stamp. He subsequently attended the respected boarding school of the Quaker, Abraham Shackleton, which allowed him to familiarize himself with one of the (Protestant) dissenting denominations and to engage in a lifelong friendship with Shackleton's son, Richard. Although himself an Anglican, Burke felt a deep congeniality with his friend. As he wrote him, 'we take different Roads (...) it is a melancholy thing to consider the Diversities of Sects and opinions amongst us... as there is but one God so there is but one faith, and one Baptism.' His university studies at Trinity College (Dublin) and his legal training at Middle Temple (London) brought him again in an Anglican environment.

Burke strongly believed in revealed religion, as opposed to the Deism that had become fashionable in the eighteenth century. In an early, philosophical tract called 'Religion' he submitted that God made Himself known to human beings, and that this knowledge is of some importance to them. To make Himself known, God used men as His instruments, both as writers of the Bible and as a society (Church) to teach God's Word:

'If God has revealed any thing by evident Proof from his Power & that these Proofs of Power are conveyed to us by as high a Degree a Testimony as the thing can bear we ought to believe it. If the thing conveyed be intended to last in the world there must be means taken to make them last, there must be Men appointed to teach them. And

5 F.P. Lock, Edmund Burke, Volume I, 1730-1784, Oxford: Clarendon Press 1998, p. 16-17.

Books written to record. There should be some evident marks of Designation of such Men that all may know, who they are that teach this Doctrine. These Men should be compellable to teach it least the knowledge of these truths might depend on caprice. There must therefore be a Society for this Purpose.<sup>6</sup>

Later, in a speech in the House of Commons, he referred to the Scriptures as containing ‘words of eternal life’ that ‘certainly furnish everything necessary to salvation’.<sup>7</sup>

In his writings he professes his belief in God as the Creator, whose word was ‘sufficient to create the universe from Nothing’,<sup>8</sup> and also his providential care, in history and in his personal life. ‘I may assume that the awful Author of our being is the Author of our place in the order of existence, – and that, having disposed and marshalled us by a divine tactic, not according to our own will but according to His, he has in and by that disposition virtually subjected us to act the part which belongs to the place assigned us.’<sup>9</sup>

At the same time he preserved the free will and man’s responsibility to act in accordance with God’s will. That is not acting ‘in defiance with the rules of prudence, which are formed upon the known march of the ordinary providence of God’.<sup>10</sup> It does not exclude that the disastrous consequences of not heeding this prudence will be prevented by divine intervention, referred to by Burke as ‘unforeseen dispositions, which the all-wise but mysterious Governor of the World sometimes interposes, to snatch nations from ruin’.<sup>11</sup> These tenets – divine providence and free will –, when combined, are in conformity with the classical Christian doctrine, and very far from the deistic, let alone atheistic beliefs of some of his contemporaries.

In contradistinction to these beliefs, Burke also stresses the fallibility of human nature. Not the social structures or institutions criticised by the Enlightened philosophers but human ‘pride, ambition avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appe-

6 Edmund Burke, *Pre-Revolutionary Writings* (red. Ian Harris), Cambridge: Cambridge University Press 1993, p. 87.

7 Edmund Burke, *The Writings and Speeches of Edmund Burke Vol. II* (red. Paul Langford), Oxford: Clarendon Press 1981, p. 362.

8 From a letter to Shackleton, quoted by Joseph L. Pappin III, *The Metaphysics of Edmund Burke*, New York: Fordham University Press 1993, p. 104.

9 Edmund Burke, ‘An Appeal from the New to the Old Whigs’, [1791] (extract) in: Iain Hampsher-Monk, *The Political Philosophy of Edmund Burke*, Londen & New York: Longman 1987, p. 243.

10 Edmund Burke, ‘Letters on a Regicide Peace (1795-1797)’, in: *Selected Works of Edmund Burke Vol. 3*, Indianapolis: Liberty Fund 1999, p. 160 (Letter II).

11 *Ibid.*

tites<sup>12</sup> are the causes of miseries in the world. Therefore human beings have the right to have their passions bridled and subdued.<sup>13</sup> Also, they 'have no right to what is not reasonable, and what is not for their benefit',<sup>14</sup>

Burke applied this view of humankind to himself when he stated in one of his letters: 'I bequeath my Soul to God; hoping for his Mercy thro' the only merits of our Lord and Saviour Jesus Christ.'<sup>15</sup> This personal character of his faith appears in his writings from time to time. One example is his indignation, in the 'Reflections', concerning the profane application by Dr. Price of the words used by the righteous and pious Simeon to greet his Saviour at His presentation in the Temple, to the advent of the French Revolution.<sup>16</sup> Burke has been aptly described by one of his biographers as a 'devout Christian'.<sup>17</sup> Burke's bond was with Christianity as it had developed since the earliest days of the Church, rather than with a specific denomination. Therefore he could see a common cause for all Christians confronted with the threats of the Enlightenment. Nevertheless he described himself 'by choice and Taste as well as by Education', as 'a very attached member of the Established Church of England'.<sup>18</sup> In the 'Reflections' he describes himself as the spokesman of the mainstream of English citizens, declaring that 'we prefer the Protestant [to the Roman system of religion]; not because we think it has less of the Christian religion in it, but because, in our judgment, it has more. We are Protestants, not from indifference, but from zeal'.<sup>19</sup> In the same connection he also refers to the Greek and Armenian systems of religion with respect.

He valued the historical continuity of the Church of England, which was preserved after the Reformation, and its Episcopal structure. He was no doubt what has been called a 'High Churchman'<sup>20</sup>, as is also clear from his preference for a rich liturgy. Doctrine should be taught and preserved in the framework of a hierarchical church, and not left to the individual preferences of idiosyncratic interpretations of the Holy Writ.

12 Edmund Burke, *Reflections on the Revolution in France* [1790], (red. Frank M. Turner), New Haven & Londen: Yale University Press 2003, p. 119.

13 Burke 2003, p. 51.

14 Burke 2003, p. 53.

15 Quoted by Pappin, *The Metaphysics of Edmund Burke*, p. 104. This quote disproves McConnell's statement that in Burke's writings a reference to Christ and the atonement and redemption through faith in Him is lacking. See Michael McConnell, *Establishment and toleration in Edmund Burke's 'Constitution of freedom'*, *The Supreme Court Review* 1995, p. 400-401.

16 Burke 2003, p. 56.

17 Conor Cruise O'Brien, *Edmund Burke*, Londen: Vintage 2002, p. 338.

18 Quoted by Pappin, *The Metaphysics of Edmund Burke*, p. 104.

19 Burke 2003, p. 77.

20 Peter J. Stanlis, *Edmund Burke & the Natural Law*, New Brunswick & Londen: Transaction Publishers 2003, p. 182.

That made him more sympathetic of the Roman Catholic beliefs of his wife and family than of the Christian beliefs of the various Protestant Dissenters, although in one of his parliamentary speeches he referred to the typically Roman Catholic doctrine of transubstantiation as an ‘absurd’ Romish doctrine.<sup>21</sup> Whatever his own preferences, we will see that he made efforts to promote the freedom of both Catholics and Dissenters. Finally, his strong emphasis on the theory of classical natural law, which has been so aptly described by Stanlis in his excellent study, can only be explained by his Christian beliefs.<sup>22</sup>

It will be clear that Burke is not at all a ‘neutral’ observer of religion and irreligion in society. His writings show that he writes as a believer, more specifically as a Christian believer who never separates his argumentation from his beliefs.

## 2 Burke against Atheism by Establishment

The foregoing section explained the zeal with which Burke approached the French Revolution, which he viewed as the ultimate expression of the ideas of the Enlightenment, *inter alia* in the field of religion. Burke would undoubtedly have agreed with Kelly’s characterisation of the Enlightenment as a ‘shared mood or temper, or attitude to the world, in which the dominant note was one of profound skepticism towards traditional systems of authority or orthodoxy (especially those of religion), and a strong faith in the power of human reason and intelligence to make unlimited advances in the sciences and conducive to human welfare’.<sup>23</sup> It is commonly assumed that this amounted, in legal and political terms, to the introduction of the freedom of religion. If religion is no longer seen as the basis of human existence, but rather as an impediment to its development, it can certainly no longer be an important concern of the State. There can no longer be a state religion, and as a consequence all religions seem to be free. That was however by no means all that could be said. The purpose of many Enlightenment-thinkers was to purge at least the public sphere from religion, first and foremost from revealed religion, and more specifically from Christianity. Therefore, there are grounds to assume that their real purpose was the introduction of the freedom from religion. In other words: the Enlightenment is not at all neutral as far as religion is concerned.

That, at least, was Burke’s observation in his criticism of the French Revolution. I would submit that religion was his most important concern in

21 Burke 1981, p. 362.

22 Stanlis 2003.

23 J.M. Kelly, *A Short History of Western Legal Theory*, Oxford: Clarendon Press 1992, p. 249-250.

this connection. Burke warns his English reader, in the 'Reflections', of the 'atheists and infidels' who conspired, together with the moneyed interest, to deprive the Church in France of its possessions, and who aimed at the 'destruction of the Christian religion'.<sup>24</sup> Not surprisingly he mentions the names of the atheist and materialist, Helvetius; the critic of Christianity, Voltaire; and the heterodox, Rousseau.<sup>25</sup> He stated that 'atheism is against, not only our reason, but our instincts'. And he predicted 'that it cannot prevail long'.<sup>26</sup>

Burke is known for his conviction that the Revolution threatened the preservation of the stability and the dignity of the State in accordance with the wisdom of the institutions which were developed over the centuries, and that it interfered with the right to property. These concerns are however outweighed by his abhorrence of the *Atheism by Establishment* advocated by the French revolutionaries.

'I call it Atheism by Establishment, when any State, as such, shall not acknowledge the existence of God as moral Governor of the World; when it shall offer to Him no religious or moral worship: when it shall abolish the Christian religion by a regular decree; when it shall persecute with a cold unrelenting, steady cruelty, by every mode of confiscation, imprisonment, exile, and death all it's ministers (...)'<sup>27</sup>

The aim of the revolutionaries was the 'utter extirpation of religion'.<sup>28</sup> According to Burke there can be no neutrality towards religion. 'They who do not love religion, hate it.'<sup>29</sup> This reminds us of the word of Jesus: 'He that is not with me is against me.'<sup>30</sup> The hatred of the revolutionaries, as Burke sees it, is directed against God. Because they are unable to take revenge on Him, they degrade and torture His image in man. The anti-religious, or more specifically anti-Christian, drive of this hatred became increasingly apparent during the Revolution, in the years that followed the 'Reflections'. This was the case even though Article 10 of the *Déclaration des Droits de l'Homme et du Citoyen* of August 1789 recognized religious freedom as a species of freedom of opinion in general.<sup>31</sup> This Article did not provide for a guarantee of the freedom of religious institutions, as became clear soon after its adop-

24 Burke 2003, p. 76, 90-94.

25 Burke 2003, p. 73.

26 Burke 2003, p. 77.

27 Burke 1999 (Letter I), p. 125.

28 Burke 1999 (Letter II), p. 170.

29 Ibid.

30 St. Luke 11:23, King James Version.

31 'Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établie par la Loi.'

tion. The confiscation of church property in November 1789 was quickly followed, in July 1790, by the civil constitution of the clergy, which forced them to take an oath of allegiance to the new revolutionary constitutional system. Those who refused found themselves serving an underground church. The replacement of the Christian era on September 22, 1792, by a new revolutionary era (1 Vendémiaire I), and the abolition of the seven day week, with its evocation of Creation, and the enactment of a ten-day week, underlined the determination to do away with the Judeo-Christian past. The introduction of the Cult of Reason in Year II (1793) may be seen as the *nadir* of this development. Its replacement under the influence of Robespierre by a Cult of the Supreme Being did not at all mean a return to Christianity.

The revolution 'in sentiments, manners and moral opinions'<sup>32</sup> was also reflected in a new 'correspondent system of manners'.<sup>33</sup> In Burke's view the revolutionaries '[a]vowedly and systematically (...) have given the upper hand to all the vicious and degenerate part of human nature'.<sup>34</sup> He noted that the number of brothels and gaming houses in Paris had been increased.<sup>35</sup> Burke also refers to the case of marriage, which he qualified as the origin of all relations, and which wise legislators have endeavoured to render sacred. Marriage, in his view, is directly linked to the Christian religion, which 'by confining it to the pairs, and by rendering that relation indissoluble has (...) done more towards the peace, happiness settlement and civilization of the world, than (...) any other part in his whole scheme of Divine Wisdom'.<sup>36</sup> The French Constituent Assembly degraded marriage to an ordinary civil contract; the successors of the Assembly introduced legislation authorizing divorce at either party's request, with a month's notice. Burke's message is clear: corrupted manners lead to relaxation of the laws. The revolutionaries in turning the whole order of state and society upside down in fact showed their defiance of the God-given structures.

Finally, he added, their toleration had no value of its own. It despised religion, it did not respect it. 'That those persons should tolerate all opinions, who think none to be of estimation, is a matter of small merit. Equal neglect is not impartial kindness. The species of benevolence, which arises from contempt, is no true charity.'<sup>37</sup>

32 Burke 2003, p. 69.

33 Burke 1999 (Letter I), p. 126.

34 Burke 1999 (Letter IV), p. 353.

35 Burke 1999 (Letter IV), p. 388.

36 Burke 1999 (Letter I), p. 128.

37 Burke 2003, p. 127.

### 3 Burke on Establishment

It was not by chance that Burke qualified the approach of the French revolutionaries as 'Atheism by *Establishment*'. He purposely used this latter term, which was also used by him and others to refer to the legal position of the Church of England in the first place, but also, and more in general, to the constitutional role of the (Christian) religion. This role, in his view, was vital for the well-being of society. Therefore religion could not be restricted to the private sphere. Such a restriction would only mean that the public sphere was pervaded by principles that ruin human society.

According to Burke, religion is 'the basis of civil society, and the source of all good and all comfort'.<sup>38</sup> This fits the Burkean view of the 'social' contract. Burke does not view this contract as a purely human affair, whereas common contract theories do. Social contract does not only include the human generations ('those who are living, those who are dead, and those who are to be born'); it also encompasses 'the visible and the invisible world'<sup>39</sup>. Moreover, it is not based on (human) choice but on necessity. There is, in other words, no question of opting out. Contract is here the equivalent of God's order of creation. That is also clear from Burke's view that God willed the State as the necessary instrument to bring about the perfection of the virtues of the citizens.<sup>40</sup> This implies a certain degree of perfectionism. In the State, God's will is the 'law of laws, and the sovereign of sovereigns'.<sup>41</sup> The church establishment is the expression of the consecration of the commonwealth.

The establishment affects both the government and the citizens. It reminds those in power that they exercise their functions in the government of man as God's representatives. This is reflected in the worthiness of their position. It makes them aware of their eternal destiny. Above all, it shows that they 'ought to be strongly and awfully impressed with an idea that they act in trust: and that they are to account for their conduct in that trust to the one great Master, Author and Founder of society'.<sup>42</sup> Clearly, this can only be realised in practice if statesmen not only render lip service to religion, but are sincerely committed to it. They, more than anyone else, are in need of religious instruction, because of the temptations to which they are exposed, the consequences of their faults, the importance of their example and their pride and ambition that have to be transformed into moderation

38 Burke 2003, p. 77.

39 Burke 2003, p. 82.

40 Burke 2003, p. 83.

41 Burke 2003, p. 83.

42 Burke 2003, p. 79.

and virtue.<sup>43</sup> Also, and perhaps foremost, those called to serve in the government should be aware of the dark side of their own personalities. As Burke asserted, '[T]he true lawgiver ought (...) to fear himself'.<sup>44</sup> He has to be aware of his own nature and his inclination to seek his own interest rather than that of the community.

Religion is the only means by which the people can empty themselves of 'all the lust of selfish will'.<sup>45</sup> This corresponds to Burke's rather pessimistic view of human nature. Human beings cannot by themselves control the negative desires of their will. Their evil inclinations and passions can only be subjected 'by a power out of themselves'.<sup>46</sup> That power is of course rendered manifest when the State imposes its sanctions in the event of a transgression of the law. But that power is even more effective if human beings give heed to the teaching of the Church and commit themselves to God, in the conviction that they must refrain from wrongdoing. This holds also for those in public office, if they are convinced that they act *coram Deo*.

Liberals tend to see the religious foundation of the power of the state as a licence to arbitrariness. They are inclined to look upon religious commitment with suspicion. Burke, on the contrary, appreciates it as a guarantee against fraud, violence, injustice and tyranny. Religion reminds the governmental authorities, whether kings or assemblies, that their will is not the standard of right and wrong. On the contrary: this standard should be found in the 'eternal, immutable law, in which will and reason are the same'.<sup>47</sup> Religious principles are therefore fundamental to the contents of the law. For example, during a debate on the law of divorce Burke referred to the indissolubility of marriage, together with the freedom of the female sex, as a fundamental precept of Christian religion and as a foundation of order, tranquillity and civilization. By the same token, he supported a bill that purported to reduce the attractiveness of divorce.<sup>48</sup>

The establishment is not only vital for the functioning of the government. It is important for the citizens, as well. Establishment is there to 'operate with a wholesome awe upon free citizens'.<sup>49</sup> They will be aware that they have to obey the government as God's servant.

The positive influence of religion is not only restricted to a proper understanding of the power to command and the duty to obey. Also in a more general sense it contributes to the development of virtue in society. In that

43 Burke 2003, p. 86.

44 Burke 2003, p. 143.

45 Burke 2003, p. 80.

46 Burke 2003, p. 51.

47 Burke 2003, p. 80.

48 Burke 1981, p. 357.

49 Burke 2003, p. 79.

connection Burke refers to the fact that education at all levels is seen as a task for the clergy. Church institutions are seen furthermore as favourable to morality and discipline.

The foregoing will have shown that in Burke's view it is not possible 'to distinguish exactly the business of civil government from that of religion'<sup>50</sup>. They are intertwined, without however losing their distinctive roles. Burke agrees with Locke that the care of souls is not the task of the magistrate. Burke is also against 'politics from the pulpit'. He strongly condemned Dr. Price for using a sermon to make political statements. 'No sound ought to be heard in the church but the healing voice of Christian charity. The cause of civil liberty and civil government gains as little as that of religion by this confusion of duties.'<sup>51</sup>

The Establishment does not mean that the Church is subjected to the authority of the government as far as its internal affairs are concerned. The independence of the Church should be respected. Burke's Established Church is not a 'State' Church; a clergyman is not a civil servant. The Church should not be dependant on the resources of the State. Therefore the preservation of church property is of vital importance.<sup>52</sup> The Established Church is a pillar of the Constitution, next to the State, hence more than just one of the institutions belonging to the fabric of the State.

The Establishment requires that the Church may request from its clergy compliance with its doctrines. As a Member of Parliament Burke voted against a petition to abolish the obligation of church officials to subscribe to the doctrinal tenets of the Church of England in the Thirty Nine Articles. Deviations from the official doctrine, the religion of the State, at least when they are preached from the pulpit, are not to be tolerated. A mere acceptance of the authority of the Scripture, as suggested by the petitioners, was not sufficient, having regard to the differences of opinion on the canonical status of some Bible books, as well as the various interpretations of its text. Subscribing to the Articles of Faith is 'necessary for the sake of order, and decorum and public peace'.<sup>53</sup>

#### 4 Burke on Toleration

One might be inclined to doubt, in the light of Burke's strong defences of the Established Church in the preceding passage, whether it is possible to associate him with toleration. Nevertheless both in his political practice and in his writings we find many examples of his strong commitment to the cause

<sup>50</sup> Lock 1998, p. 15.

<sup>51</sup> Burke 2003, p. 10.

<sup>52</sup> Burke 2003, p. 85-86.

<sup>53</sup> Burke 1981, p. 359-364.

of toleration. This flows from his efforts to improve the situation of the Roman-Catholics in Ireland. In his 'Tract on the Popery Laws' he defended the abolishment of this discriminatory legislation, which, as a matter of fact, also affected his own family.

Furthermore he was in favour of the extension of the rights of Dissenters. This became manifest in the course of his contribution to the debates to grant dissenting preachers and schoolmasters more freedom than they enjoyed under the Toleration Act of 1689, which obliged them to subscribe to the Articles of Faith of the Anglican Church, with some exceptions as to church government and baptism. Burke voted in favour of legislation to lift the obligation for Dissenters to adhere to any of these Articles.

Burke's main concerns in the field of toleration were Roman Catholics and Dissenters. He was also in favour, however, of freedom of worship for Jews and Muslims. In a letter written in 1775 he remarked:

'I would give a full civil protection, in which I include an immunity, from all disturbance of their public, religious worship, and a power of teaching in schools, as well as Temples, to Jews, Mahometans and even Pagans (...).'<sup>54</sup>

He stood up for the protection of Jews, when he attacked an Admiral for seizing the properties of a Jew in the West-Indies, and held that the British authorities were persecuting a people 'whom of all others it ought to be the care and the wish of human nations to protect, the Jews, having no fixed settlement in any part of the world (...)'.<sup>55</sup> In his 'Reflections' he referred to the 'ancient religion'.<sup>56</sup> Regrettably, on the other hand, one has to conclude that Burke was not free from anti-Jewish sentiments, as appears from some expressions in the 'Reflections'.<sup>57</sup> It may have been common in his days, but that of course does not justify this sentiment. More discernment could have been expected from a man who was never afraid of disagreeing with majority views.

What did Burke mean when he referred to toleration? In a parliamentary speech on the Toleration Bill in 1772 Burke characterized it as follows: 'the very principle of toleration is that you will tolerate not those who agree with you in opinion, but those whose religious notions are totally different'.<sup>58</sup>

54 Quoted by Frans De Bruyn, 'Anti-Semitism, Millenarianism, and Radical Dissent in Edmund Burke's Reflections on the Revolution in France', in: *Eighteenth-Century Studies*, 2001/4 (34), p. 578.

55 De Bruyn 2001, p. 579

56 Burke 2003, p. 72.

57 Compare De Bruyn 2001.

58 Burke 1981, p. 369.

A speech on the same subject in the House of Commons almost a year later, on March 17<sup>th</sup>, 1773, is the most important text as far as his arguments for toleration are concerned. Some of these bring him close to Locke's 'A Letter concerning Toleration'. Taking issue with the view of toleration as an attack on Christianity he defends toleration 'as a part of Establishment; as a principle favourable to Christianity and as a part of Christianity'.<sup>59</sup> He even qualified it as 'the best part of Christianity'.<sup>60</sup> This argument comes close to Locke's statement that 'toleration is the chief characteristic mark of the true church'.<sup>61</sup> Burke sees toleration as the best and surest support of Christianity. He refers in this respect to the early days of the Church, when there was no Establishment, and not even toleration. The defender of the Establishment has to admit that Christianity denied its own principles when it changed the Establishment into tyranny. I assume that Burke is referring here to the abuse of political power to impose Christianity by force, which marked a part of its history since Theodosius I declared Christianity to be the religion of the State in 380.

Burke's second argument for toleration also reminds us of Locke's 'Letter'. Burke defends toleration by stressing the limited powers of the magistrate. He can only restrict religious freedom on the ground that the person dis-sents in order to raise a faction in the State.

('... [I]f there is any one thing within the competency of a magistrate with regard to religion, it is this, that he has a right to direct the external ceremonies of religion, that whilst the interior is within the Jurisdiction of God alone (...)'<sup>62</sup>

Locke held that the care of souls was outside the realm of the magistrate, who could only exert outward force.<sup>63</sup> In his 'Tract on the Popery Laws' Burke wrote that it is not

'in a man's moral power to change his religion whenever his convenience requires it. If he be beforehand satisfied that your opinion is better than his, he will voluntarily come over to you, and without compulsion, (...) but if he is not so convinced, he must know it is his duty in this point to sacrifice his interest here to his opinion of his eternal happiness, else he could have in reality no religion at all.'<sup>64</sup>

59 Burke 1981, p. 383.

60 Burke 1981, p. 385.

61 Locke 1963, p. 7.

62 Burke 1981, p. 385

63 Locke 1963, p. 19.

64 Quoted by McConnell 1995, p. 437.

To his principled argument he added a pragmatic notion about the effect, or better, the lack of effect, of the Anti-Popery laws in Ireland: 'Ireland, after almost a century of persecution, is at this hour full of penalties and full of Papists.'<sup>65</sup> It is apparently impossible to force people into a religion.

A third argument Burke marshalled is that toleration serves the purpose of combining forces against the common enemy of religion. McConnell has remarked that the speech which included this argument was held after Burke's visit to France, where he was appalled by the atheism in the French *salons*.<sup>66</sup> Burke fears that atheism, which also appears to include Deism, is a threat to the revealed religion, shared by Anglicans, Roman Catholics and the Dissenters. He refers with sympathy to a well-known book written by a Dissenter that criticises Deism. The mutual hatred of Christian congregations has driven people to infidelity. Toleration is required to 'form an alliance offensive and defensive against those great ministers of darkness in the world who are endeavouring to shake all the works of God established in order and beauty'.<sup>67</sup> He repeated this when refuting the sympathies of English Protestants for the French Revolution. The English Protestants compared the French revolutionary zeal against the Roman Catholic Church to the struggle of the Protestant Reformers with that Church in their days. By contrast, Burke explains the fundamental difference between how the Protestant Reformers purified the Church and the rejection of all religion by the former, in the name of toleration. In Burke's view the frontline has changed since the time of the Reformation. In that connection Burke refers to the 'true spirit of toleration', that is, toleration, not because of disdain for opinions, but out of respect for justice. All religions should be protected out of love and veneration for 'the great principle upon which they all agree, and the great object to which they are all directed'.<sup>68</sup> It appears from the context that Burke refers here to the different Christian denominations. Toleration is needed because in the Revolution the Christian religion as such is at stake: 'we all have a common cause, as against a common enemy'.<sup>69</sup> In a letter written in 1795 he made the following remark about the French revolutionaries:

'the first, last, and middle object of their hostility is religion. With that they are at inexorable war. They make no distinction of sects. A Christian, as such, is to them an enemy. What, then, is left to a real Christian (Christian as a believer and as a statesman) but to make a

65 Quoted by McConnell 1995, p. 403.

66 McConnell 1995, p. 409.

67 Burke 1981, p. 389.

68 Burke 2003, p. 127.

69 Ibid.

league between all the grand divisions of that name, to protect and to cherish them all, and by no means to proscribe in any manner, more or less, any member of our common party?<sup>70</sup>

In his principled defence of the toleration in the House of Commons in 1773 Burke noted that toleration could not be restricted to those who remain within certain doctrinal boundaries, as was proposed by some of the Dis-senters, who themselves were tolerated in their rejection of some of the Articles of the Established Church. 'Toleration is good for all or it is good for none.'<sup>71</sup>

Nevertheless, as the foregoing shows, Burke's toleration is not unlimited. Also in that respect his views can be compared to Locke's. In the speech from which we quoted he also asserted that 'the most horrid and cruel blow that was ever offered to civil society is through atheism'. It is therefore not surprising that 'infidels (...) are outlaws of the constitution; not of this country but of the human race' and are 'never to be tolerated'<sup>72</sup>. Locke's exclusion of atheists is a similar case in point. Burke of course disagrees with Locke, to the extent that the latter also excluded Roman-Catholics from his scheme of toleration.

Burke also had problems with Unitarians, a group of anti-Trinitarian dis-senters who combined a rational approach to theology with an active political interest. The (in)famous Dr. Price, whose sermon on the blessings of the French Revolution was an important target of Burke's 'Reflections', belonged to this sect. Burke opposed the Unitarians' request to abrogate the Test and Corporations Acts which required conformity with the Church of England for political office. That was not so much because of their theological tenets, but rather on account of their political ambitions. In a speech in the Commons in 1792 he made a distinction between the Unitarians, on the one hand, and Catholics, Presbyterians, Anabaptists, Independents and Quakers, on the other. The Unitarians were considered a political faction, which aimed at the abolition of the Established Church and, by Burke's lights, that meant overturning the constitution.

He contrasted their theological tenets, far removed from the Established Church, with the Quakers, familiar to him from his boyhood.

'Quakerism is strict, methodical, in its nature highly aristocratical, and so regular that it has brought the whole community to the

70 Edmund Burke, 'Letter to William Smith Esq. in Ireland on Catholic Emancipation [29 January 1795]', in: Peek J. Stanlis, *Edmund Burke Selected Writings and Speeches*, Washington DC: Gateway Editions/Regnery Publishing Inc. 1997, p. 331.

71 Burke 1981, p. 384.

72 Burke 1981, p. 388.

condition of one family; *but it does not actually interfere with the government.*<sup>73</sup>

His preoccupation with the French Revolution undoubtedly influenced this diversion from his general attitude towards toleration. The fact that Burke's defence of toleration is not absolute is by no means unique. Many defenders of toleration draw lines, sometimes by excluding certain (religious) views, like Burke or Locke, or sometimes by limiting the scope of the religiously inspired activities in society, such as several modern liberal defenders of toleration do.

## 5 Concluding remarks

To conclude, it will have become clear, first, that the defence of toleration is not a monopoly of liberalism, understood as the political philosophy of the Enlightenment, although the contribution of liberal thinkers in this respect is impressive. I earlier defended the thesis that the Reformation, more than the Enlightenment, can be seen as the source of religious freedom and toleration.<sup>74</sup> The objective of this article was to underline that also a Christian conservative thinker like Burke has contributed to the development of the protection of the freedom of thought, conscience and religion in the modern law of human rights. It is important to notice that Burke's defence of toleration stems from a positive attitude towards religion and its contribution to society, rather than from scepticism, as is the case in many Enlightened defences of toleration. The true spirit of toleration, which is inspired by a positive attitude towards religion, is even more inclined to respect religions in their manifestations in society than toleration based on indifference. It is important to note, in this connection, that not all Western political parties represented in national parliaments have their roots in liberalism. Some of them are heirs of the strong conservative movements that emerged in the 19<sup>th</sup> and 20<sup>th</sup> centuries as a reaction to the French revolution and its aftermath. They should not be ashamed of deriving their commitment to toleration from their own ideological sources instead of paying lip-service to a liberal tradition that sprang from different roots.

Second, the assumption that the protection of this right requires a strict separation of church and state can be criticised, having regard to Burke's writings. That is important in the light of the various regimes governing the relationship between church and state, or more in general, religion and

73 Edmund Burke, Speech on the Petition of the Unitarians [May 11, 1792]. Italics added MdB.

74 Matthijs de Blois, 'Freedom of Religion as the Fruit of the Radical Reformation', Law and Religion/Current Legal Issues 2001 (Vol. 4), p. 163-183.

politics in Western states.<sup>75</sup> One of the models, that of an Established Church, as we know it today in for example England, Scotland and Denmark, fits Burke's ideal. He combines it with a stance in favour of toleration, having regard to the positive contribution of religion to both the individual and society. In the abovementioned countries we see that it is also possible in practice to combine an Established Church with a strong tradition of toleration. Other systems do recognize the positive contribution of religion to society, by allowing religious bodies to fulfil all kinds of societal tasks, such as education, health care and social work. They have no Established Church, nor an explicit secular state. The positive role of religion in society, which Burke ascribed to the Established Church, can in this approach be played by non-governmental organizations that derive their inspiration from their religious foundations. This role can be reinforced by State subventions. An example is the Dutch system, which allows for the establishment of religious organizations which can assume social responsibilities. A case in point is a constitutionally entrenched guarantee according to which private schools of any religious (or non religious) denomination are completely funded by the State and in accordance with the same standards applicable to public schools.

A third model is that of a strict secularism, seen by some but not all liberals as the ideal translation of the liberal principles. An example is the French Constitution, which qualifies the State as being '*laïque*', which means secular. In this it is a true heir of the ideals of the French Revolution, as analysed by Burke in 1790. Its objective is to restrict the role of religion to the private sphere, and it tends to suppress religious expressions in public, such as recently demonstrated by French legislation that prohibits the display of conspicuous religious signs in public schools. It goes without saying that this approach is at loggerheads with the ideas of Burke.

The three models are of course no more than ideal types; the real world deploys all kinds of variations of these models.

A very important contribution made by Burke's ideas is to help unmask the myth of the neutrality of the State. Burke suggests that it is impossible to be neutral towards religion and its impact on society. First, Burke's defence of both establishment and toleration cannot be separated from his own Christian beliefs, as is clear from his writings. He is not looking for some artificial 'agnostic' point of view in order to defend his position. His conservatism cannot be separated from his beliefs. His beliefs provided for the inspira-

75 Compare Sophie van Bijsterveld, 'Equal Treatment of Religions? An International and Comparative Perspective', in: M.L.P. Loenen & J.E. Goldschmidt (ed.), *Religious Pluralism and Human Rights in Europe: Where to Draw the Line?*, Antwerpen-Oxford: Intersentia 2007, p. 103-117.

tion behind his plea both for the Establishment and for the true spirit of toleration.

Neither Burke nor the Enlightened thinkers that inspired the French Revolution, and who were the butt of the former's criticism, were neutral towards religion. Burke is very explicit in making this point. I submit that there is much to be said for this view. The Enlightenment is, first and foremost, critical towards revealed religion. It fabricated a separation between a public and a private sphere that accommodated a sense of disgust concerning the influence of traditional Christianity on society. But there is not necessarily a common ground that is acceptable to believers of all varieties and to unbelievers. Accordingly, liberalism, as the political philosophy of the Enlightenment, is the expression of a secular humanistic worldview that is by definition ill at ease with orthodox varieties of religion. We must understand that in modern discussions on toleration, the differences of opinion hide a different appreciation of religion in general, or some religions in particular. That does not mean however that all modern liberal thinkers or politicians share the abhorrence of religion that characterized the adherents of the French revolution, according to Burke. It is nevertheless an illusion to assume without further ado that the prevailing liberal interpretations of human rights law can provide us with some sort of neutral or independent set of norms that can accommodate different worldviews.

## Summary

Liberalism, the political philosophy of the Enlightenment, is not the only force behind the development the freedom of thought, conscience and religion in modern law. A Christian conservative thinker like Edmund Burke also defended the idea of toleration. His defence stems from a positive attitude towards religion and its contribution to society, rather than from scepticism. Burke also criticised the assumption that the protection of this right requires a strict separation of church and state. He finally helps us to unmask the myth of the neutrality of the State. It is impossible to be neutral towards religion and its impact on society.