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Religious Pluralism

A study on the declining protection of religion in the Netherlands

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Introduction

Research topic

The Netherlands is historically described as a religiously pluralist society (Lijphart 1968, Monsma and Soper 2009, van Bijsterveld 1995). Freedom of religion was already established in the constitutional amendment of 1848, and from then on this time different religions have been treated on equal terms. Traditionally, religion has had a privileged position, in the private sphere as well as in the public sphere. Different religions and denominations are treated equally and the institutional separation between church and state lies mostly in an equal treatment of religion with secular beliefs (Monsma and Soper 1997: 80).

This system of religious pluralism is most significantly exemplified in the tradition of pillarization, the so-called *verzuiling*. The system of pillarization characterized the Netherlands between 1917 and the mid-1960s and divided the Dutch society in groups of Liberals, Catholics, Protestants and Socialists. During these years, people's lives were defined by the pillars they belonged to (Lijphart 1968). From an institutional perspective, the pillars were equal; each pillar played a distinct role in the society and authorities made sure to grant a similar position to each of them. This system of religious pluralism, in which different denominations stand on a par with each other and with other believes, still influences and defines the Dutch system today. The Netherlands is a country of 'principled pluralism' (Monsma and Soper 2009). This Dutch system of principled pluralism holds that there is no neutral government and that both religious and secular believes are life convictions, standing on equal terms with each other (Monsma and Soper 1997: 80-82). Therefore, the state cannot be strictly neutral; the state cannot abstain from a life conviction and the state may not favor any denomination above another, or favor secular – or liberal – ideas above religious ideas (Van Bijsterveld 1995, 1998, 2011). To this relates also the general large role for religion in the public sphere. If there is no state claim on neutrality, there is no justification for limiting religion to the private sphere. Therefore, the Netherlands historically protects the freedom of religion.

However, many scholars argue that tensions related to the protection of the freedom of religion are increasing (Loenen 2006, Vermeulen 2007, Ten Hooven 2006, Van Bijsterveld 2009, Oomen 2010, Oomen 2011). The relation between religious freedom and non-discrimination rights are increasingly discussed, and the role of religion in the public sphere is being increasingly questioned. The prominent role of religion in the public sphere has

attracted increased attention in the media and the political arena. Issues concerning the rights of Muslim women to wear a veil or a burqa, allowing a state registrar to have a conscientious objection to marrying two people of the same sex, circumcision of Muslim and Jewish children, ritual slaughter, and the Dutch Reformed Political Party women's passive voting rights are only some examples of the large number of issues that are contested and discussed in the public debate, media, and in parliament over the last fifteen to twenty years. It seems that in all of these cases, religion is losing its privileged position, or at least its fundamental rights are increasingly questioned and no longer taken for granted.

We can distinguish between two main types of issues; firstly cases where religious rights are at stake and secondly cases where a religious right conflicts with other rights. Examples of the first category are discussing the abolishment of the phrase 'by the grace of God' from motions on new laws,[1] abolishing a law against blasphemy,[2] and abolishing a law making it possible for municipalities to forbid events taking place on Sunday morning.[3] Another example is the discussion about the right of Muslim women to wear a burqa. These cases mostly deal with granting exemptions to religious minorities, without being in conflict with other rights. In other words, these are positive rights for religious groups. The second category includes a large number of cases where the issue exceeds the discussion of positive freedoms. In those cases a specific law on religious rights contradicts and conflicts with other rights; individual rights, equal treatment rights or other laws. This is the case for example with orthodox-Jews' protesting to carrying an ID-card on the Sabbath. Here, the exemption for orthodox-Jews to carry an ID-card on the Sabbath conflicts with the Identification Act. Another example is the circumcision of Muslim and Jewish children which is conflicting with bodily integrity.

The examples above show important cases which have been widely discussed and attracted attention of the judiciary, parliament, the public, and the media. Such extensive attention obviously applies to many other – not religiously related – issues as well. However, what seems to set this discussion apart from other discussions is the large number of cases that are dealt with over the last ten to fifteen years. The role of religion in society, the political and judicial protection of religion, and the relation between important constitutional provisions are much more the focus of debate today than, say, twenty years ago (Loenen 2006, Vermeulen 2007, Ten Hooven 2006, Monsma and Soper 2009: 51-91, Van Bijsterveld

[1] The introduction to Dutch laws and motions reads: 'We Queen Beatrix by the grace of God' ['Wij Koningin Beatrix, bij de gratie Gods'.]
[2] The law on blasphemy [Verbod op Godslastering] was abolished on April 14, 2013.
[3] The Sunday Act [Zondagswet] was abolished on December 20, 2012

2009, Oomen 2010, Oomen 2011). Two constitutional provisions that are important in this context are the non-discrimination act (article 1) and the freedom of religion act (article 6). The third important constitutional provision (article 23) defines state-funding of private – often religious – schools and their special rights. When these constitutional provisions are in conflict with each other, the court and the parliament have to decide which provision prevails; they need to balance these three constitutional provisions. Joppke (2013) suggests that the court and the parliament take a different path in responding to claims from religious minorities: whereas the court easily extends existing religious rights to minority groups, parliament is much more skeptical.

This thesis aims to study a decline in the protection of religion and the way in which the Dutch parliament and the judiciary deal with the protection of religion over the years. Similar to the different way in which parliament and the court deal with minority claims to religious rights (the court being much more receptive to this than parliament) (Joppke 2013), there could also be a division in the trend for these two institutions with regard to the protection of religion in general. This thesis argues that important processes in explaining for the decline in the protection of religion are secularization and the retreat from multiculturalism. Secularization, with Western Europe becoming less religious, people become less understanding of religious claims and there is less room for religion in the public sphere (Joppke 2009: 115). Due to this lower understanding, we can expect that religious freedoms are increasingly questioned. Therefore, society today, being more secular in comparison to twenty years ago, is less willing to accommodate religious group claims on special rights, and as a result religion is losing its privileged position. Related to this and even more important in explaining the decline in the protection of religion in the Dutch case, is the decline of the Christian Democratic Party (CDA). The party traditionally strives for the protection of religious rights. The CDA was important in the Dutch political system, yet it is gradually loosing seats and influence since 1994. In the 2012 elections it was further marginalized and only a small influence of this party on the protection of religious rights is visible today. In this way, religion is increasingly less protected.

The second explanation for the decreasing protection of religion is a retreat from multiculturalism. During the 1960s and 1970s, a large number of Muslim immigrants came to live in the Netherlands. The Dutch society was traditionally open to religious claims; due to the Christian background of the Netherlands, certain rights were traditionally granted to Christians and during the multiculturalist years these rights were also granted to other religions. However, since the mid-1990s the public and political opinion is much more

skeptical about multiculturalism (Loenen 2006: 9, 10, Maussen 2007: 32). Fear for Islamic terrorism further triggered the retreat. The terrorist attacks in New York in 2001, Madrid 2004, London 2005 and the murder of the Dutch politician Pim Fortuyn[4] and Dutch film-maker Theo van Gogh led towards securitization, an increased focus on the prevention of crime and terrorism (De Graaff and Eijkman 2011). These events led to less tolerance for Muslims' claims on special rights (Joppke 2013: 31). The terrorist threat influenced a debate and promoted a stronger focus on liberal values and individual rights as opposed to special group rights (Joppke 2013: 31). Because of the constitutional equality of the different religions, a decreasing response to Muslims' claims on special rights leads to a limitation of religious rights in general (Meijering 2012: 208, Joppke 2009: 122). Thus, due to a retreat from multiculturalism, the public and politics responds less to claims on religious rights and the protection of the freedom of religion decreases.

An example of a case in which tensions on the freedom of religion become clear is the case of a Muslim high-school student who wished to start wearing a veil while attending a Catholic secondary school. The school prohibited this basing itself on its Catholic principles and the fact that it was a private school – a so-called *bijzondere school* – for which the Dutch law makes exemptions to the non-discrimination law and for which even a separate constitutional provision exists; the freedom of education (article 23 of the Dutch constitution). The girl defended her case basing herself on both non-discrimination and freedom of religion. The case was brought before the Netherlands Institute for Human Rights (2011) (then: Commission on Equal Treatment) and in the onset to the court case the issue attracted attention from both parliament and the media.[5] When the case was brought before the Human Rights Institute, the Institute ruled in favor of the student; Article 1 on non-discrimination on the basis of religion made that the school should allow the girl to wear a veil. The school's freedom of education was thus limited by the Equal Treatment Act, which does not allow distinction on the basis of religion. At this point, parliamentary questions were asked to the Minister of Education challenging the ruling of the Institute.[6] Following the Human Rights Institute's ruling, the case was brought before a cantonal court and finally also before the

[4] The multiculturalism-critic List Pim Fortuyn party leader Fortuyn was murdered by a green animal rights activist. The assassination further triggered the debate on multiculturalism.

[5] "Verbod hoofddoekje heeft voor onderwijs geen grote gevolgen" (*Volkskrant* 13 April 2011), "Volendamse wil naar andere school na hoofddoekverbod" (*Volkskrant* 22 September 2011), "Meisje met hoofddoek respecteert katholieke grondslag niet" (*Trouw* 19 August 2011), "Leerlinge stapt naar rechter om hoofddoekverbod" (*NRC* 3 March 2011), "Volendamse school mag hoofddoek verbieden" (*NRC* 4 April 2011).

[6] *Parliamentary Question*, 2010-2011, *number 1364*. "Antwoord op vragen van de leden van Klaveren en Beertema (beiden PVV) van de ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Onderwijs, Cultuur en Wetenschap over het verbieden van een hoofddoek op school. (Ingezonden 11 januari 2011)".

Court of Appeal's, both of which ruled in favor of the school.[7] This then led to a parliamentary debate on the issue.[8] Since the ruling of the Human Rights Institute, the case attracted again large attention from the media. The issue on *bijzondere scholen* and their exemptions to the law is not solved yet and still keeps returning in parliamentary debates.

The issue on the role of religion in society has gained attention from numerous fields. Firstly, philosophy of law and political philosophical literature study religious rights' historical background and the question to what extent we should satisfy minority groups' claims on religious rights (see Barry 2001, Dronkers 2012). Secondly, a judicial literature considers the balance between non-discrimination and freedom of religion laws, and investigates the jurisprudence on the issue (see Loenen 2006). This literature is furthermore concerned with church-state relations (see Van Bijsterveld 1995, Van Bijsterveld 1998, Van Bijsterveld 2009). Thirdly, an anthropological perspective studies the effects some current religious rights' issues have on the members of religious communities. Here it is argued that the Orthodox-Protestants feel increasingly marginalized and discriminated upon (see Oomen 2010, Oomen 2011a, Oomen 2012b). Finally, a political science and sociological literature considers policy proposals and the separation between religion and politics in practice (see Monsma and Soper 2009, Meijering 2012, Norris and Inglehart 2004). This thesis will take a legal and a political-sociological perspective, and will focus on the legal, sociological and political trends and explanations of a decline in the protection of religion.

This research aims to contribute to the discussion on the protection of religion and the perceived deinstitutionalization of the freedom of religion. It aims both to give deeper insights into the trend towards a decreasing protection of religion and seeks to assess how we can explain the trend. Studying those questions will add to our understanding of religious pluralism, church-state relations, and the deinstitutionalization of religion in the Netherlands. Furthermore, as discussed earlier in this section, the tensions related to the freedom of religion are at play not only in the Netherlands, but also in a number of other European countries. Although this thesis inquires into the Dutch case, conclusions drawn on the processes explaining the trend could be used to understand and research a decline in the protection of religion in other countries as well.

[7] LJN BQ0063 and LJN BR6764

[8] *Parliamentary proceedings 2010–2011, 31 289, nr. 103*, "Verslag van een Algemeen Overleg: De brief van de minister van Onderwijs, Cultuur en Wetenschap d.d. 12 april 2011 met een reactie op verzoek van het commissielid Van Dam over de uitspraak inzake het Don Bosco College en de gevolgen van deze uitspraak voor segregatie in het onderwijs", 12 May 2011.

Research Approach

The primary aim of this study is to investigate a decline in the protection of religion; it aims to study a decrease of the privileged position of religion and to study two processes that can explain this trend. The thesis focuses on the decline of the protection of religion in two institutions: the parliament and the court. After having established the characteristics of the decline in the protection of religion for the two institutions, this thesis will study possible explanations for this trend. The proposed research can thus be defined as an explanatory and hypothesis-generating case study (Lijphart 1971: 692). The country in which this study is conducted is the Netherlands, which is selected as a typical case. The Netherlands is often discussed as a typical example of a religious pluralist system (Monsma and Soper 2009) and it is one of the countries among a larger set of countries that experiences a large discussion on the role of religion in the public sphere (Habermas 2006, Wilson 2013). In respect to the explanations that will be studied, secularization processes have been taking place already since the mid-1900s (Becker and De Hart 2006: 93) and Christian-Democracy in Netherlands experienced large fluctuations (Kalyvas and Van Kersbergen 2010, Gerard and Hecke 2004). Furthermore, the Netherlands has been responding fiercely to the threat of Islamic terrorism (De Graaff and Eijkman 2011) and it is one of the countries where a retreat of multiculturalism was particularly pronounced (Joppke 2004, Joppke 2010). Therefore, it is an ideal case for studying evidence for the processes explaining a decline in the protection of religion. Findings based on this study can be used to study and thereby eventually possibly explain a larger number of other cases as well. This can be called the core of a hypothesis-generating case-study (Lijphart 1971: 692).

Different methods will be used to study the research question. Firstly, quantitative analyses will be used to assess the decline in the protection of religion over time. For the way in which the judiciary deals with the protection of religion this part codes information from 48 cases brought before the Netherlands Institute for Human Rights. For the way in which the parliament deals with the protection of religion this part examines parliamentary debates and other parliamentary documents to identify if there is a trend in politics. Different correlation and chi square analyses will be conducted to determine the extent and the significance of the decline. In addition to these quantitative analyses I will conduct four semi-structured interviews with political elites from two smaller confessional parties in the Dutch parliament: the ChristianUnion (ChristenUnie, CU) and the Reformed Political Party (Staatkundig Gereformeerde Partij, SGP). The interviews will be held to gain more insights in the perspective to a change in the protection of religion for those for which the protection of

religion matters most. The interviews mostly concerned the interviewee's opinion on a the protection on religion over time, and explanations for a changing trend. When relevant, references to, and quotes from, these – anonymous – interviewees will be included. Finally, by means of process-tracing, this thesis examines four case-studies. Process-tracing allows gaining insights in trends in the debate (George and Bennett 2004). In this way and in addition to the extent of deinstitutionalization of religion in the Netherlands, we can also study the explanations that account for this trend. Each of the case-studies reflects a different issue where freedom of religion is weighed against liberal or other rights. The first case-study is discussed in chapter 1, and deals with the court cases of a Catholic high school against a Muslim student. Here, it shows that the courts largely protected institutionalized religion, even though they could seemingly have decided otherwise. Chapter 2 includes case-study 2, which deals with state registrars who argue their religious beliefs to clash with marrying homosexual couples. In this case, it seems that the larger focus on civic integration influenced parliament's changing perspective. Chapter 3 discusses case study three and four. The third case-study examines ritual slaughtering where Muslims and Jews are granted exemptions to requirements on stunning before slaughtering. Increasingly, parliamentarians make claims for abolishing this exemption which seems to be due to secularization and a lower number of religious parliamentarians. Case 4 deals with private schools and how their rights are increasingly challenged. The case includes a homosexual teacher being fired from an Orthodox-Protestant primary school. Following this case, parliament discussed important aspects of the law related to the freedom of education.[9]

The time period for which the trend and explanations is studied includes the years from 1980 to 2013. Firstly, this time frame allows for assessing a declining trend in the protection of religion. It allows for a comparative study between the years where a process of a decline in the protection of religion is taking place and the years before. Since the development runs until today, 2013 is taken as the final year. Secondly, this time frame allows for studying the explanations of a decline in the protection of religion. Secularization and a retreat from multiculturalism run through this time period with secularization accelerating since the 1980s, a retreat from multiculturalism starting mostly in the mid-1990s. Both processes run until today.

[9] On 8 May 2013 a motion was submitted which according to defenders of the freedom of education limits this freedom. *Parliamentary Papers 2012-2013, 32476, number 5,* "Voorstel van wet van de leden Bergkamp, Venrooy-van Ark, Yücel, Jasper van Dijk en Klaver tot wijziging van de Algemene wet gelijke behandeling in verband met het annuleren van de enkele-feitconstructie in artikel 5, tweede lid, artikel 6a, tweede lid, en artikel 7, van de Algemene wet gelijke behandeling.

1. Religious pluralism in the Netherlands

In the Netherlands, rights of religious groups have traditionally been accommodated. A system of religious pluralism developed during the 19th and 20th century. This system of principled pluralism came from a belief that strict state neutrality was impossible; a non-religious conviction was considered as biased as a religious conviction (Monsma and Soper 2009). However, this institutional setting is increasingly questioned over the last fifteen to twenty years where the Netherlands has been experiencing a decline in the privileged position of religion. This decline can be mostly found in the parliamentary protection of religion. A judicial perspective shows a more diffuse picture; the judicial cases show no clear declining trend in the protection of religion.

The historical and institutional background of religious pluralism

In the Netherlands, religious pluralism is most importantly exemplified in the tradition of pillarization, the so-called *verzuiling*. This system characterized this country between 1917 and the mid-1960s (Lijphart 1968) and divided the Dutch society in Catholics, Protestants, Socialists and Liberals where each of these groups was to some extent self-governing. In this system where religious background defined most of people's lives, religion traditionally had a privileged position. Religion was granted a predominant role, both in the private and in the public sphere.

The Dutch constitution reflects the religious diversity and protection of religion most importantly in three constitutional provisions: the non-discrimination Act, the freedom of religion, and the freedom of education; a constitutional provision on state-funding of and special rights for private schools. Article 1 of the constitution deals with non-discrimination, it states: "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted".[10] This constitutional law is elaborated in the Equal Treatment Act which was established in 1994. This law establishes the Commission on

[10] The official Dutch text is: "Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan".

Equal Treatment, now the Netherlands Institute for Human Rights, to deal with cases where non-discrimination is at stake.

Article 6 of the Dutch constitution establishes freedom of religion as the freedom to live according to one's religion and beliefs. Article 6 states: "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". Rather than taking a narrow perspective and defining religion as a private issue, this constitutional provision is mostly interpreted as granting the different religions a privileged position in society. The freedom of religion is thus mostly taken in a broad interpretation. It deals with group-rights specifically, when it states that religious rights should be allowed to manifest freely, either individually or *in community with others*. This group-focused interpretation differs from a strict liberal perspective. From a liberal point of view the phrase "in community with others" would be redundant; the mere notification of individual rights would suffice (Monsma and Soper 1997: 64). Thus, exactly this phrasing leads to a broad interpretation of this right. This broad interpretation is also underscored in the parliamentary debates leading to the latest 1983 constitutional amendment. Here, the freedom of religion not only protects the act of being religious and expressing religious opinions, but also the "freedom to act according to that opinion" (Parliamentary Proceedings 1975-1976 in: Van Bijsterveld 1995: 557).

An important other constitutional right related to the freedom of religion is laid down in Article 23. As a result of the early 1900s *schoolstrijd*,[11] private schools and public schools are assigned an equal status before the law. Private schools – which are often based on religious beliefs – are thus treated on par with public schools with regard to state funding: a private school receives as much state funding as a public school, other things being equal.[12] In addition to an equal status on state-funding, the constitution also grants the private schools certain additional rights: one of which is that they are allowed to have a staff and student policy that is in congruence with the religious principles on which the school is based.[13] An example here is that private schools can ask teachers and students to sign an endorsement of the school's religious principles, or demand that staff and students practice a specific religion. The freedom of private schools thus entails much room for the school to give meaning to their

[11] The *schoolstrijd* was a late 19th and early 20th century battle between the liberals and socialists versus the confessionals. It led to a compromise in 1917, leading to universal male suffrage and the freedom of education.
[12] Currently, about 70 percent of the Dutch primary school students attend a private school (Monsma and Soper 2009: 69).
[13] The freedom of education in the Netherlands includes three extra freedoms, being the "freedom to establish schools, freedom of school denomination, and freedom to administer schools" (Van Bijsterveld 1995: 571) which is in Dutch summarized as the freedoms of "stichting, richting, en inrichting" (Van Bijsterveld 1995: 571).

religion. In this way, the freedom of education as laid down in the constitution and as it is interpreted over the years is a pressing example of Dutch religious pluralism (Monsma and Soper 2009: 70).

Yet, freedom of education is not completely unrestricted; it is limited by the aforementioned Equal Treatment Act. This Act was introduced in 1994 and defines the boundaries of the staff policy of private schools. Act 5.2.c states:

> The freedom of a private school to set requirements to the fulfillment of a position, which, taking into account the objective of the school, are necessary to realize its principles, where these requirements should not lead to differentiation on basis of the *single fact* of political opinion, race, sex, nationality, heterosexual or homosexual orientation, or marital status. [14] (italics are the author's)

Selection is thus not allowed on the *single fact* of any of these features. A private school can therefore only use a criterion on any of these features if it can show that there are so-called additional facts, facts that make for a more complicated situation. This single fact construction and related tensions will be more extensively discussed in chapter 3.

Principled pluralism

In a study on church-state relations in five democracies, Monsma and Soper characterize religion and politics in the Netherlands as a case of 'principled pluralism' (1997: 51-86). It is a true example of pluralism – a church-state model which entails that different religious and philosophical spheres within society complement each other and where the government lets none of these spheres preside over another (Monsma and Soper 1997: 11, 12). They show that the Netherlands "seek to attain governmental neutrality in matters of religion, not by a strict church-state separation that sees all aid to religion as a violation of the norm of neutrality, but by a pluralism that welcomes and supports all religious and secular structures of belief on an evenhanded basis" (Monsma and Soper 1997: 80). They define two important principles that underlie this principled pluralism. Firstly, this is the conception that different philosophical and religious spheres are no threat to society as a whole: the existence of these different spheres does not undermine society as such. Second, there is the conviction that there is no

[14] Available at: http://wetten.overheid.nl/BWBR0006502/geldigheidsdatum_03-05-2013 (on May 2nd, 2013). The original Dutch text reads: "de vrijheid van een instelling van bijzonder onderwijs om eisen te stellen over de vervulling van een functie, die, gelet op het doel van de instelling, nodig zijn voor de verwezenlijking van haar grondslag, waarbij deze eisen niet mogen leiden tot onderscheid op grond van het enkele feit van politieke gezindheid, ras, geslacht, nationaliteit, hetero- of homoseksuele gerichtheid of burgerlijke staat"

neutral government. This second idea is important and especially characteristic for the Dutch case. It holds that liberalism is not different from religion, in that liberalism as well as religion is a life conviction, a standpoint from which the world and society is viewed upon (Monsma and Soper 1997: 80, 81). This contrasts with for example the American or French conception, where it is believed that the government can withhold from a life conviction by opting for a secular state.

According to Monsma and Soper 'principled pluralism' stems from the historical cooperation between Protestants and Catholics against a liberal government:

> the theories of religious pluralism that were developed by this alliance [i.e. the cooperation between Protestants and Catholics] were much more than a rationalization for the advancement of its members' own causes. It was an ideology to which they were in reality committed. Jews, socialists, and secular humanists were early included within it, and today Muslims and Hindus are as well. It was a genuine, not a sham commitment to pluralism. (Monsma and Soper 1997: 82)

The argument on principled pluralism is underscored by Van Bijsterveld (1995, 1998, 2011). Van Bijsterveld states that to the core of the Dutch church-state separation is the belief that neutrality of the state is impossible. From this impossible neutrality follows that the basis of the division between religion and the state can be found in that the state may not favor one religion or denomination over another religion or denomination. Furthermore, the state may not favor secular beliefs over religious beliefs. For example, the state should treat religious organizations on a par with secular organizations; it may not distinguish between organizations based on the organizations background and it cannot exclude religious organizations solely because it has a religious background. Therefore, as opposed to a strict state-church separation where it is argued that the state can be neutral and should stay away from ideas on life convictions, the Dutch pluralist system defines the state-church separation and the relation between religion and politics as one where the state does not distinguish between the various religions (Van Bijsterveld 1995, 1998, 2011, Monsma and Soper 2009).

Some argue that over the last twenty years the Dutch system of principled religious pluralism has been put to a halt. There are increasing tensions related to the freedom of religion, the role of religion in the public sphere is increasingly questioned and we see a decreasing protection of religious rights. In short, the protection of religion is

deinstitutionalizing. In 1995, Van Bijsterveld stated that not much was changing in church-state relations (Van Bijsterveld 1995: 555, 556). More recently, Monsma and Soper (2009) show in a comparative study on religion and the state in five liberal democracies that compared to four other democracies, the Netherlands has the broadest conception of the freedom of religion and takes an open attitude towards religion in the public sphere (Monsma and Soper 2009: 51-91). However, even though out of the five studied democracies the Netherlands has the most religiously pluralist characteristics, and even though a pluralistic mind-set is still dominant, Monsma and Soper (2009) find that today other opinions matter too: a somewhat different attitude towards principled pluralism and more skeptical arguments on this system are more prevalent.

In line with this, many authors point out that something has changed in the protection of religion. Van Bijsterveld (2009) states that religion in the public sphere and state-church relations attract increasing attention today compared to the 1980s and 1990s. Law-scholar Loenen (2006) also argues that religious issues are increasingly important. Loenen supports her argument by referring to a large number of court cases from the European Commission on Human Rights, the European Court of Justice, the Dutch Supreme Court, cantonal courts, and the Netherlands Institute for Human Rights. She states that today the Netherlands faces an important decision of whether to further pursue policies from its historical religious pluralist background, or to choose a stricter church-state separation modeled after the French *laicité* (Loenen 2006: 16). An argument on political standpoints towards today's role of religion in the public sphere comes from Ten Hooven (2006: 30). He describes how the Dutch Liberal Party (VVD), the social-liberal party (D66) and the Greens (GroenLinks) are moving to adopt a more radical liberal point of view, where they argue that religious group-rights should be suppressed in favor of liberal rights. These parties' ideas thereby also lead to a policy change towards assimilationism with regard to Muslim migrants (Ten Hooven 2006: 30).

Furthermore, religious minority groups themselves experience a similar change. Oomen (2010, 2011) conducted a large survey among Orthodox-Reformed Protestants in the Netherlands and concludes that these groups feel increasingly marginalized and discriminated upon.[15] Orthodox-Reformed Protestants feel that society has a more hostile perspective towards them (Oomen 2010) and a large share of the respondents reported that "the debate on

[15] Oomen held a survey among 6000 Orthodox-Christian Dutch citizens. These 6000 form a representative group of the total number of 250,000 Orthodox-Protestants in the Netherlands, which consists of several smaller denominations, all characterized amongst others by a more literal interpretation of the Bible, the use of the Bible in the translation of 1637, and their segregation from the rest of the Dutch society (Oomen 2011: 183).

Christianity in society at large has become increasingly discriminatory" (Oomen 2011: 185). Furthermore, Oomen states:

> There is a general sense that the debate on Christianity in society at large has become increasingly discriminatory. To this particular group, the Dutch notion of tolerance has become rather one-sided: they feel that they as a group adhere to this principle, and that the majority expect them to do so. At the same time, it is felt that this majority actively infringe upon their freedom; 'the intolerance of the tolerant'. (Oomen et al. 2010: 163)

Oomen concludes that up to 87 percent of the respondents either agrees or strongly agrees with the statement that "there is less tolerance towards the Christian way of life" (Oomen 2011: 185). Politicians of the Orthodox-Protestant Reformed Political Party (*Staatkundig Gereformeerde Partij, SGP*) show similar opinions. This became clear from interviews the author of this thesis held with them, as well as from the magazine of the Reformed Party's scientific bureau[16] and from articles in the Orthodox-Reformed newspaper, the *Reformatorisch Dagblad*.[17] In 2013, one of the party's parliamentarians coined the term 'Christian bashing' (*Christenpesten*), denoting the trend that many issues with a Christian background and mostly highly symbolic issues were challenged by the majority in parliament.[18]

To sum up, scholars, politicians and affected groups note a marginalization of religious groups (Ten Hooven 2006, Loenen 2006, Joppke 2010, Oomen et al. 2010, Oomen 2011). The role of religion in the public sphere has gained increased attention in the public debate and in the political arena. It is argued that this has led to a declining protection of religion. Does a larger-N analysis confirm this trend? The next section puts this to the test.

The protection of religion by the court and in parliament

This section turns to analyze the decline of the Dutch system of principled pluralism. Two important institutions will be studied: first the court's protection of religion, and second the

[16] See for example issues 2009-4, 2011-1 and 2012-3 of the SGP scientific bureau's magazine *Zicht*.
[17] See for example "Laat christenen zich niet terugtrekken in een hoekje" (Reformatorisch Dagblad 13 May 2013), "Analyse: Initiatief schrappen enkelefeitsconstructie kon niet uitblijven" (Reformatorisch Dagblad 8 May 2013), "Laat Christenen niet klagen, maar blijven getuigen" (Reformatorisch Dagblad 7 June 2013).
[18] Daily newspaper *Trouw*, "Sociaal-christelijk erfgoed behouden, daar gaat het om" and "SGP en CU zijn 'christenpesten' door D66 beu" (both published on January 2nd, 2013).

protection of religion by parliament. To what extent do we see a decline in principled pluralism?

The court's protection of religion

In order to study a decline for the courts, rulings on religion by the Netherlands Institute for Human Rights are analyzed. This institute, which was established in 1994 as the Committee on Equal Treatment in the Equal Treatment Act, was set up to provide an easily accessible court for individual discrimination cases. Although the Institute's rulings are not legally binding, its rulings are generally followed by the courts.[19] The Human Rights Institute deals with 120 to 245 cases each year. Of primary concern for the purpose of this analysis are the quantity of Human Rights Institute's cases per year that deal with issues on religion. If the number of cases brought before the Institute is increasing, this indicates that religion is increasingly at stake, or at least increasingly debated. Within the educational system in the Netherlands, religion traditionally has had a privileged position, reflected in the freedom of education. Therefore, for the analysis at hand, I chose to include cases where both education and the freedom of religion play a role.

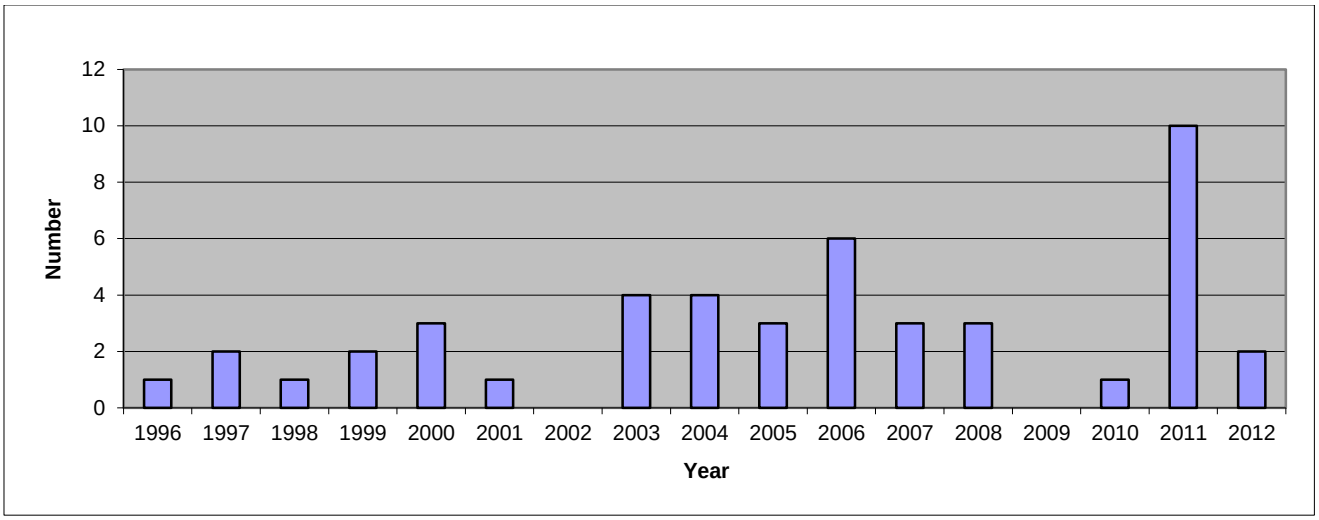
It turns out that between 1996 and 2012, [20] the Human Rights Institute ruled in forty-eight cases on the freedom of religion and schools.[21] Figure 1 below shows the number of Human Rights Institute rulings per year that deal with religion and education. For this calculation, the forty-eight rulings between 1996 and 2012 are included.[22] From the figure, we see that only a small number of cases each year deals with education and religion. The number of cases per year ranges between zero in 2002 and 2009, up to six in 2006 and ten in 2011, which means a relative number between zero and 5 percent. Note that the early years between 1996 and 2002 show a maximum of three cases per year, whereas the years between 2003 and 2008 show a minimum of three cases per year. This could indicate that there is indeed a higher discussion of cases related to education and religion in that period. However, 2009, 2010 and 2012 have only between zero and two cases per year. Furthermore, the

[19] http://www.mensenrechten.nl/ (on May 7th, 2013).
[20] The Human Rights Institute (then: Commission on Equal Treatment) was only established in 1994. Therefore, the first year which this analysis takes into account is the year of the first ruling on the issue of education and freedom of religion – 1996.
[21] Cases were selected on 'religion' ['godsdienst'] or 'belief'/'life conviction' ['levensovertuiging'] as the grounds for the ruling. Further selection was made by entering the keyword 'education' ['onderwijs']. Only cases where the one person stands against another person or institute are included (for example, cases were excluded when it dealt with the introduction of a certain clothing protocol).
[22] See Appendix 1 for the list and coding of the rulings and Appendix 2 for the number of cases per year.

number of cases brought before the Institute experienced a general influx. Irrespective of the kind of cases, in the years between 1996 and 2001 a maximum total number of 150 cases per year dealt with this issue, whereas in the years since 2002 this has been a total number of cases between 160 and 245.[23] Therefore, although there seems to be a slight increase in the number of cases dealing with religion, there is no clear rise in the rulings on religious issues by the institute. Therefore, from this analysis, we see that religion is not increasingly disputed.

Figure 1

Number of HRI rulings on religion and education per year 1996-2012



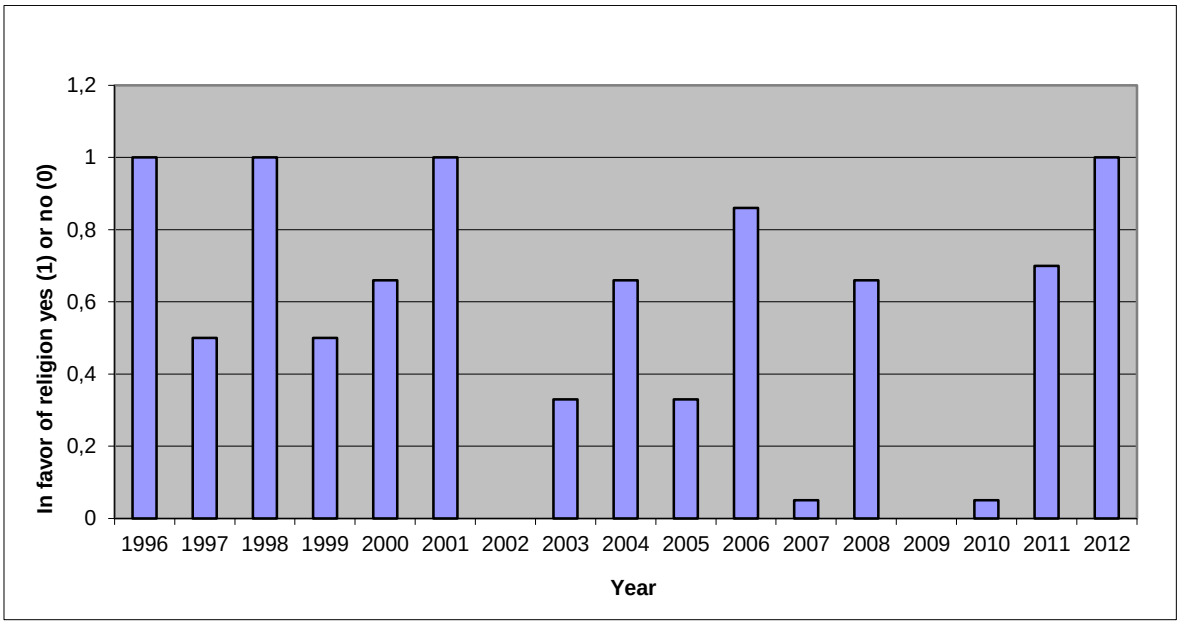
Information on the rulings is collected from Netherlands Institute for Human Rights (2013)

Beyond the pure quantity of rulings, it is important to assess whether there is a trend within the qualitative aspect of these rulings. Do we observe a development from ruling in favor of – institutionalized – religion towards ruling against this? For this purpose, each of the forty-eight cases were coded in favor of religion (1) or against (0).[24] The codings of the cases per year were summed and divided by the number of cases per year. This yields scores ranging between 0 – all rulings contra institutionalized religion – and 1 – all rulings pro institutionalized religion. Thus, the closer a value is to 0, the more the rulings were against religion. The exact values can be found in figure 2 below.

[23] Only in 2009 the Human Rights Institute dealt with less cases.
[24] See Appendix 1 for the list and coding of the Human Rights Institute rulings.

Figure 2

HRI rulings 1996-2012 on religion and education



Note that for the years 2002 and 2009 there were no cases dealing with religion and schools. 2007 and 2010 have score 0 but in order to distinguish these years from 2002 and 2009, they are coded '.05'.

From the bar chart above we see no trend over time. Out of the cases between 2002 and 2012, four score below .5, whereas between the years 1996 and 2001 none of the cases score below this value. This could indicate more rulings against religion since 2002. However, the scores are mixed and there seems to be no clear trend over time. For example, high scores are rated for 1996 and 1998, but 2006 scores as high. Running a correlation analysis between year and ruling in favor or against religion to study whether there is a difference between these years yields no significant results (see Appendix 3). [25] We thus see no significant change in the ruling on the freedom of education over these years; the Human Rights Institute protects the freedom of religion as much today as in the past.

To illustrate the lack of a clear trend in legal reasoning in religion cases, we look at the following example about a Muslim high-school student attending a Catholic school. Tensions between non-discrimination, the freedom of religion and freedom of education became particularly pronounced in this case. Most importantly, the right to equal treatment of the individual girl stood against the institutionalized freedom of education of the school. Even though the Human Rights Institute ruled in favor of the girl, two following court cases ruled

[25] In the analysis the forty-eight coded cases were included. A correlation analysis was then run to examine the relation between 'year' and ruling in favor or against religion.

in favor of the school, and thereby a strong case is made for the court supporting institutionalized religion.

Headscarf at a Catholic school

As demonstrated earlier in this chapter, article 23 of the Dutch constitution establishes the freedom of education. This freedom of education allows for a pluralistic schooling system, and special rights for private schools. The freedom of education and the special rights for private schools, have led to discussions and court cases, most importantly when these rights conflict with other fundamental rights such as non-discrimination and equal treatment. Based on this article 23, state-subsidized private schools can define their student and staff policies according to their religious beliefs. This means, that a private school can ask parents, students, and staff to endorse the principles of the school's denomination, and to behave accordingly. For instance, a *Vrijgemaakt-Gereformeerde* school can ask their staff to be an active member of the *Vrijgemaakt-Gereformeerde* church and furthermore to live according to the rules of this Calvinist denomination. Furthermore, schools can ban expressions of other religions than the school's if they consider this necessary to maintain their denominational identity. However, the room for the private school to define its policies according to its religious beliefs hinges on whether the school unambiguously shows that it tries to uphold the identity itself. For example, if the school is only Protestant, Catholic or Reformed in name and does not have specific policies meant to protect that denomination, banning expressions from other religions is not allowed. Only if the school also shows the denomination in their statutes, in their student policies, and in what they demand from the teachers, in other words, if it can show it is *consistent* in its identity, it can base further claims on their denominational identity.

The student in the case studied here attended a Catholic secondary school in a predominantly Catholic village. She was Muslim and had started wearing a veil. The school opposed this, arguing that it would conflict with the school's Catholic identity. Based on the fact that the school aimed to maintain its Catholic identity it opposed expressions of other religions. Consequently, the school prohibited the student to wear a headscarf. Following the dispute between the student and the school, the case was brought before the Netherlands Institute for Human Rights (2011) (then: Commission on Equal Treatment). Here, the student defended her case basing herself on both non-discrimination and freedom of religion. She claimed that discrimination is not allowed on the basis of religion. Therefore, the headscarf as an important aspect of the Muslim religion could not be a ground for discrimination.

Moreover, the freedom of religion provides her with the right to wear a headscarf, the student argued. As an expression of her religion and as a way of shaping her identity, she argues this right should prevail above the school's right to maintain its Catholic identity. The student doubted the consistency of the school's policy in preserving its identity, since it had allowed expressions of other religions than the Catholic religion before and since there was no official restriction in place so far forbidding to wear a headscarf.

Contrary, the school argued that its Catholic identity has been known by the student before she started her education there. Furthermore, with respect to its consistent carrying out of its identity, the school defended itself by stating that it had until this case never encountered any tensions relating to its identity and had therefore no official restrictions on the wearing of headscarves. Only when being confronted with the student's wish to do so, the school investigated whether expressions of other religions than Catholicism would conflict with carrying out a Catholic identity. With respect to wearing a headscarf, the school concluded that this would be the case.

In the Human Rights Institute's ruling on this, it turned out that the school had in the past in fact allowed students to wear a headscarf. [26] Furthermore, only in a final stage the school defended its headscarf ban by referring to its Catholic identity. Therefore, the school's policies had not been consistent in carrying out its Catholic identity and it did not show a consistent policy in banning expressions of other religions. Based on these inconsistent policies in realizing its Catholic identity, the Human Rights Institute decided in favor of the student where it argued that a call on the freedom of education in this case could not justify discrimination of the student. The school should thus should allow its student to wear a headscarf.[27]

Within a short period of time, the case was brought before a cantonal court.[28] In the period before and after the court case the issue attracted large media attention.[29] At this point also parliamentary questions from the Islam-skeptical Freedom Party were asked to the

[26] The school argued that it had allowed headscarves during the early 2000s. On new year's eve 2001, a cafe fire in the school's village had disastrous consequences, leading to the death of six teenagers, and 178 youngsters with heavy skin burns, many of whom were students of the school. The school stated that in the years following this cafe fire, the school had followed more lenient policies towards any type of headwear by all students. In these years, in fact three Muslim students had also worn a headscarf, and the school had met them with similar lenient policies. The school thus states it had not been inconsistent regarding its policies on headscarves, those early 2000s students wearing a headscarf had been allowed as exceptions.
[27] Human Rights Institute judgment 2011-2.
[28] LJN BQ0063
[29] "Verbod hoofddoekje heeft voor onderwijs geen grote gevolgen" (*Volkskrant* 13 April 2011), "Volendamse wil naar andere school na hoofddoekverbod" (*Volkskrant* 22 September 2011), "Meisje met hoofddoek respecteert katholieke grondslag niet" (*Trouw* 19 August 2011), "Leerlinge stapt naar rechter om hoofddoekverbod" (*NRC* 3 March 2011), "Volendamse school mag hoofddoek verbieden" (*NRC* 4 April 2011).

minister of education challenging the ruling of the Institute.[30] The cantonal court decided contrary to the Human Rights Institute; it ruled in favor of the school. The court argued that the school could have made another choice in dealing with the student's wish to wear a headscarf, yet that the law provides the opportunity for schools to make decisions related to their religious identity. Even though the school had not been entirely consistent in realizing the Catholic identity, the private school's right to place restrictions on expressions of other religions should be the school's consideration, and not that of the judge. Since the school had laid down specific policies now, which clearly forbid the wearing of a headscarf, the court argued there was no ground to rule against the school's decision. In sum, the cantonal court left much room of discretion to the school to decide upon what measures were necessary to maintain its identity.

The cantonal court ruling led to a debate among the members of the parliamentary committee for education and the parliamentary committee for the interior.[31] The debate in the committees mostly concentrated on the general focus of the freedom of education, and how we should deal with this today. The Freedom Party, the Christian Democrats and the small confessional parties argued in favor of this freedom, and in favor of the Catholic school in this specific case. The members of the other political parties were mostly skeptical of the court's protection of the school. Some argued, that if the judicial outcome of a case like this was in favor of the school, the freedom of education should be further discussed and amended, they argued the freedom of education should be restricted.

The student appealed the cantonal judge's ruling, yet the Court of Appeal argued again in favor of the school.[32] Its main argument was in line with the argumentation of the cantonal judge. The Court of Appeal argued in particular that in case of private schools, the court should be very reserved in determining whether the policies a school wants to pursue are necessary in realizing its identity. Private schools are allowed to demand their staff and students to comply with the school's identity, when the school argues these requirements are necessary to fulfill its identity. Only when the school does not pursue a consistent set of policies to protect and maintain its identity, the court can rule against such a school. Since the Court of Appeal argued that the latter is not the case – note that this is different from the

[30] Parliamentary Question 2011Z00252 (2011) "Antwoord op vragen van de leden van Klaveren en Beertema (beiden PVV) van de ministers van Binnenlandse Zaken en Koninkrijksrelaties en van Onderwijs, Cultuur en Wetenschap over het verbieden van een hoofddoek op school. (Ingezonden 11 januari 2011)".
[31] *Parliamentary proceedings 2010–2011, 31 289, nr. 103*, "Verslag van een Algemeen Overleg: De brief van de minister van Onderwijs, Cultuur en Wetenschap d.d. 12 april 2011 met een reactie op verzoek van het commissielid Van Dam over de uitspraak inzake het Don Bosco College en de gevolgen van deze uitspraak voor segregatie in het onderwijs".
[32] LJN BR6764

Human Rights Institute's consideration[33] –, the judge ruled that it should be the school's decision whether or not to restrict wearing headscarves. The Court of Appeal thus ruled in favor of the school and its freedom of education.

The Human Rights Institute's, the cantonal court's and the Court of Appeal's rulings are thus in line with the findings that for the courts we see no clear trend towards a lower protection of religion. The Human Rights Institute ruled against the school, but the court largely protect the freedom of education. Both the cantonal court and the Court of Appeal argued that much room for decision-making should be left to the school, much to what is necessary in maintaining its identity should be the school's decision. Therefore, the court attaches large value to the freedom of education, and thus to institutionalized religion. In a nutshell, the courts protected institutionalized religion, as exemplified in the freedom of education.

In sum, this section showed that when examining cases from the Netherlands Institute for Human Rights where religion and education were both an issue, there is no significant change over time in the protection of religion. We do neither see a large increase in the frequency in which the Human Rights Institute deals with the freedom of religion and education, nor do we see a qualitative turn in their rulings in favor or against religion. Therefore, in terms of the judiciary, we see no significant decline in the protection of religion over time. The short case-study presented in this section supports this argument. Despite political opposition to the freedom of religion and freedom of education, and despite the high popularity of an anti-Islam party in society – both of which will become clear later in this chapter –, the courts are still protecting religion, and we see no trend towards a lower protection over time. Thus, when it comes to a strong institutionalized form of religion – as is the Dutch education system – the freedom of religion is largely protected and is as much protected in 2012 as in 1995.

Parliament's protection of religion

The former section showed the way in which the judiciary deals with the protection of religion. But what about politics? As one of the interviewees mentioned, he had high trust in

[33] The Court of Appeal, contrary to the Human Rights Institute, argued that the school was consistent in its policy to reject the wearing of a headscarf. The Court of Appeal argued the fact that one of the school's former students had been wearing a headscarf to be irrelevant, since this had been the case up to seven years before. There had been no recent cases in which students were allowed to express other religions than the Catholic one, and therefore the school showed no inconsistency with regard to realizing its Catholic identity.

the court's protection of the freedom of religion, yet was more skeptical on the political discourse on the topic. This section inquires into the way in which the freedom of religion is discussed in parliament. What trend can we identify in parliamentary documents?

A change in the frequency of 'religion' in the parliamentary documents

This section analyzes religion in the parliamentary documents between the parliamentary years 1975-1976 and 2011-2012. The analyses include the frequency of a number of key words which appear in the parliamentary papers. The key words are selected to give an indication of the discussion on religion in the parliament, and this section studies whether there is an increase in the frequency with which the words appear. An increase indicates more debate on the issue, and is thus expected to indicate a higher saliency, and less taken-for-grantedness of the topic.[34] A decrease indicates less debate on the issue, and is thus expected to indicate a lower saliency of the issue and a higher taken-for-grantedness. Key words which are chosen are first 'religion', 'God', 'Christian', 'Islam' and 'Muslim'. A follow-up analysis studies the frequencies of the words 'church and state' and 'freedom of education' in the debates.

As for 'religion', it is expected that when issues concerning religion are increasingly important and discussed – as follows from the theoretical discussion earlier in this section – we will see an increase in the frequency of 'religion' over the years in the parliamentary documents. Although an increasing frequency of 'religion' in the parliamentary documents is no direct indication of a decreasing protection of the role of religion, it shows at least an increasing discussion on the issue. The more religion is discussed, the less it is taken for granted. The same can be expected for 'Islam', 'Muslim', and 'Christian'; if religion is less taken for granted and more openly discussed, Islam and Christianity are the two religions that will be referred to most.[35] Therefore, in the case of 'Islam' and 'Muslim' we expect a rise in the frequency in which these terms are mentioned in the parliamentary debates mostly since

[34] Institutionalization is often understood as being taken for granted. It is stated that: "The degree of institutionalization is […] dependent on the form of taken-for-grantedness. If members of a collectivity take for granted an institution because they are unaware of it and thus do not question it […], the institutional will be decidedly less vulnerable to challenge and intervention, and will be more likely to remain institutionalized" (Jepperson 1991: 152). Thus, an institution will be questioned and debated – i.e. appear more often in the debates – when it is less taken for granted, less institutionalized so to speak. If a specific issue is increasingly debated this could then also indicate a process of deinstitutionalization (Zucker 1991: 105, Jepperson 1991: 152).

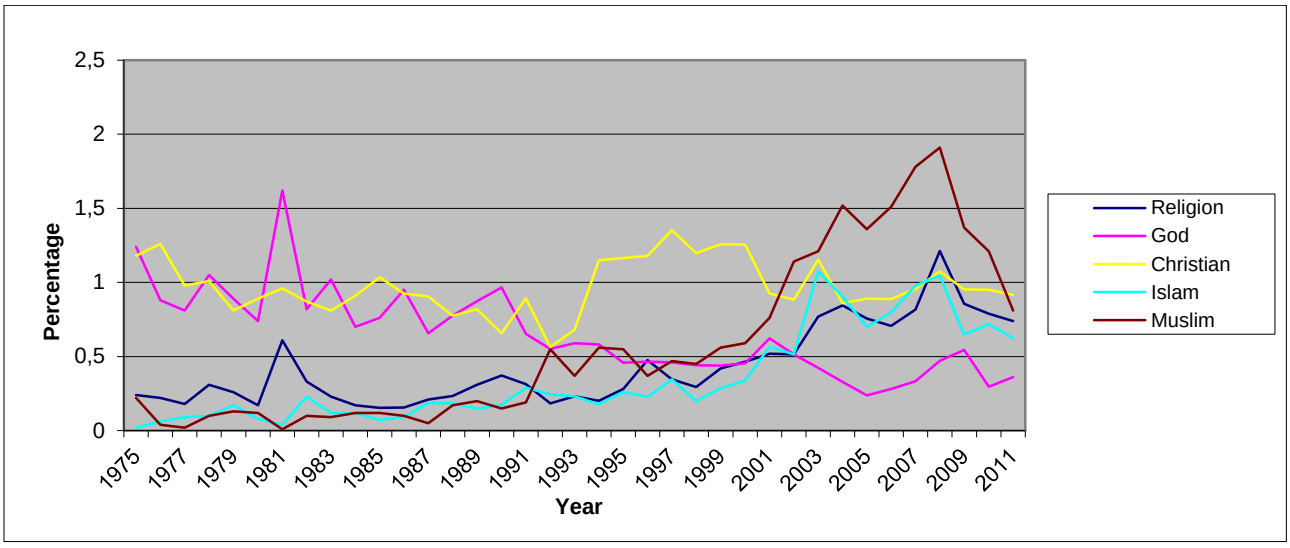
[35] Furthermore, due to immigration patterns 'Islam' and 'Muslim are also expected to be mentioned more often due to an increase of individuals in the Netherlands who adhere to the Muslims religion. This might add to a higher saliency of issues related to Islam, also in connection to Islamic terrorism and the discussion on multiculturalism.

the 2000s – the years in which the discussion on Islamic terrorism and multiculturalism attracted most attention.

In a qualitative study, Meijering (2012) demonstrates how God was decreasing in importance in the parliament. He shows that references to God and the Bible were important aspects in political speeches, parliamentary debates and the Queen's speech during the 20th century. However, over time until the early 21st century, the importance of these theological and religious aspects in politics decreased. Therefore, in the quantitative analysis here, the frequency of mentioning 'God' is expected to be decreasing. Referring to 'God' shows a more personal relationship, as when a parliamentarian emphasizes to place our trust in God or when it is argued that God controls everything. This, as opposed to a more general and outsider reference to religion, where it is more likely that 'religion' or the name of the adherents of the religion – i.e. for example 'Christian' – will be used.

Figure 3

Relative mentioning of five key words in parliamentary documents



In figure 3 above, the horizontal axis represents the parliamentary years 1975-1976 through 2011-2012.[36] The vertical axis represents the number of parliamentary documents in which the key word is mentioned relative to the total number of parliamentary documents of that year (see Appendix 4 for the data on which the graph is based). The colored lines in the graph

[36] In the following, each of these parliamentary years is indicated by the first year. I.e. '1975' on the horizontal axis of the graph indicates the parliamentary year '1975-1976'

each show the frequency with which the key words appear. Studying these lines, we see that 'religion' – in dark-blue – is indeed mentioned more often today compared to the pre-2000 period. This is a strong and significant trend over time.[37] This increase in the frequency in which 'religion' appears is consistent with the expectations. Although there are some ups and downs throughout the years, we see a clear trend towards an increased mentioning of this word. Following from the assumptions, this trend indicates an increased discussion on religion. In other words, religion is less taken-for-granted.

Furthermore consistent with the expectations, the frequency 'Islam' – in turquoise – and 'Muslim' – in brown – appear increasingly in the parliamentary papers as well. This is again a strong and significant trend.[38] In general, we see a sharp increase for both in the first years after the 2001 terrorist attacks in the United States. The trend for 'Islam' largely follows the 'religion' line where it is being mentioned more today compared to before the 2000s. For 'Muslim' – in brown – the same increase applies, yet a large decrease since 2008 is also in place, resulting in the relative mentioning in 2011 at before 2002 levels. The line goes up from about the mid-1980s which reflects the increase of the number of Muslims living in the Netherlands and the steeper increase since the 2000s seems to indicate a larger saliency of the debate on Islam. The sharp increase in the year 2004 is probably related to the assassination of film maker Theo van Gogh and the Madrid terrorist attacks. Since 2009, we see a somewhat lower level of the relative mentioning of 'Islam', indicating that the saliency of the word is lower than right after the terrorist attacks. 'Muslim' largely follows the pattern of 'Islam' and 'religion', but the increase is much steeper and the decline is stronger as well. This seems to indicate a much higher saliency of the issue especially during the years since 2001, and a decreasing saliency over the most recent years.

For 'Christian' – in yellow – the trend is less clear.[39] It is mentioned in about one percent of the parliamentary documents over time yet it is mentioned increasingly less until the parliamentary year 1993-1994. Between 1993-1994 and 2000-2001, the frequency with which 'Christian' appears is again high. This could be related to the Purple cabinet[40] that was

[37] The increase in the mentioning of 'religion' is significant over time, with a strong Pearson correlation coefficient of .782 (see Appendix 5).
[38] There is a significant increase in the mentioning of these key words over time. The Pearson correlation coefficients are .844 and .864 for 'Islam' and 'Muslim' respectively, indicating a strong correlation between these key words and the years from 1975 to 2011 (see Appendix 5).
[39] There is no significant relation between between the years from 1975 to 2011 and the mentioning of the key word 'Christian' (see Appendix 5).
[40] The 'Purple' cabinet which was in place between 1994 and 1998 and 1998 and 2002, was a coalition of three non-Christian, or secular parties: the Liberal VVD, the Labour PvdA and the progressive-Liberal D66. It was the first time in Dutch parliamentary history since 1918 that none of the Christian parties were included in the cabinet is therefore often seen as a break with the past. It introduced a number of important progressive policies

in place during those years, and which has influenced large debates. Since these years, the frequency of 'Christian' is rather steady. This is contrary to our expectations. We had expected an increased mentioning of the issue, and an increasing line since at least the mid-1990s indicating a decreasing taken-for-grantedness of the Christian aspects in society. Yet, although we do see this increase during 1993 and 2000, it is since 2000 again mentioned less. Thus, from this analysis, it seems that the issue has become less important over the last decade.

Finally, 'God' – the purple line – is mentioned increasingly less. This is a significant decline.[41] Although there is no linear relation, we see a clear decline over the years towards less mentioning of 'God'. Whereas in the parliamentary year 1975-1976 'God' was mentioned in twelve out of a thousand parliamentary documents, it is today only mentioned in four out of a thousand parliamentary documents. This trend is largely consistent with the expectations that 'God' would be mentioned increasingly less as a result of less personal connection to a God. It is also in congruence with the study of Meijering (2012) who showed God becomes less important in parliament.

Two other aspects are relevant to study: both concern the relative mentioning of institutionalized religious pluralism. An important aspect of the institutionalized religious pluralism is the freedom of education, as is discussed in the first section of this chapter. When the freedom of religion in its institutionalized form is increasingly questioned, we should see an increase in the discussion on the freedom of education as well. It is thus expected that the relative appearance of 'freedom of education' increases over time. A second important aspect is the church-state relation. By invoking this institutional separation, it is sometimes argued that a broad interpretation of the freedom of religious should be limited to a stricter interpretation of the separation between church and state. A stricter separation is used to argue for a restriction of the freedom of religion.[42] The key words "church and state" are therefore entered. Again, an increase in the appearance of this word is expected.

The graph below shows the relative mentioning of 'church and state' and 'freedom of education' over the years between 1975 and 2011. For 'church and state' we see that the line increases over time. Even though from the graph the increase seems only marginal, it is a significant change over time, with a medium strength of the Pearson correlation of .6 (see

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that probably would not have been possible with a Christian party in the coalition, as the law on euthanasia, the law on homosexual marriage and laws on abortion.

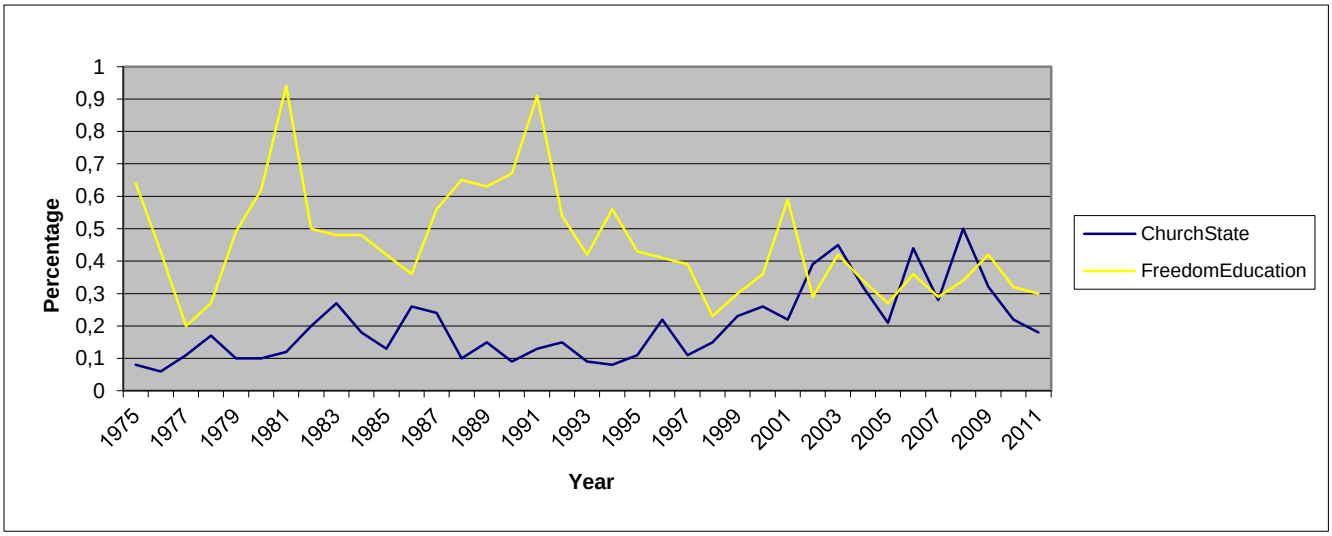
[41] There is a significant relation between the years from 1975 to 2011 and the mentioning of 'God' with a Pearson correlation coefficient as high as -.813 (see Appendix 5).

[42] For an insight into how this should work out, see Cliteur (2012) and Cliteur (2013).

Appendix 5 for the correlation matrix). This increase is in congruence with the expectations; the topic on the separation between church and state is increasingly mentioned in parliament, which relates to a larger discussion – and a lower taken-for-grantedness – of the topic. For 'freedom of education' the trend is less clear, but mostly decreasing. The issue attracted much attention in 1981 and 1991, which the graph shows in the two high peaks of the yellow line. Furthermore, the frequency with which 'freedom of education' was mentioned in 2011, is similar to 1999 and 1978. However, the general trend is a decline. This runs contrary to our expectations. Here, we see that the freedom of education is actually mentioned *less* in the parliamentary debates. A correlation analysis supports this, showing a significant though weak Pearson correlation of -.4 (see Appendix 5 for the correlation matrix). In order to further investigate this, the final part of this section will analyze whether there is a difference in the content of the debates in which the 'freedom of education' is mentioned between 1975 and 2011.

Figure 4

Relative mentioning of ´Freedom of Education´ and ´Church and State´ in parliamentary documents



The nature of a change in 'religion' and 'freedom of education'.

Now, we will examine the quality of these parliamentary debates over time. To what extent are the documents in which 'religion' or 'article 23' are mentioned different today than before? For this analysis the parliamentary proceedings for the House of Representatives are

studied. First, the context in which 'religion' is mentioned is studied for the parliamentary years 1980-1981, 1985-1986, 1995-1996, 2005-2006 and 2010-2011 (see Appendix 6 for an overview of the cases).[43] This allows for a comparison between two more recent versus two older cases, and a control-case in between.

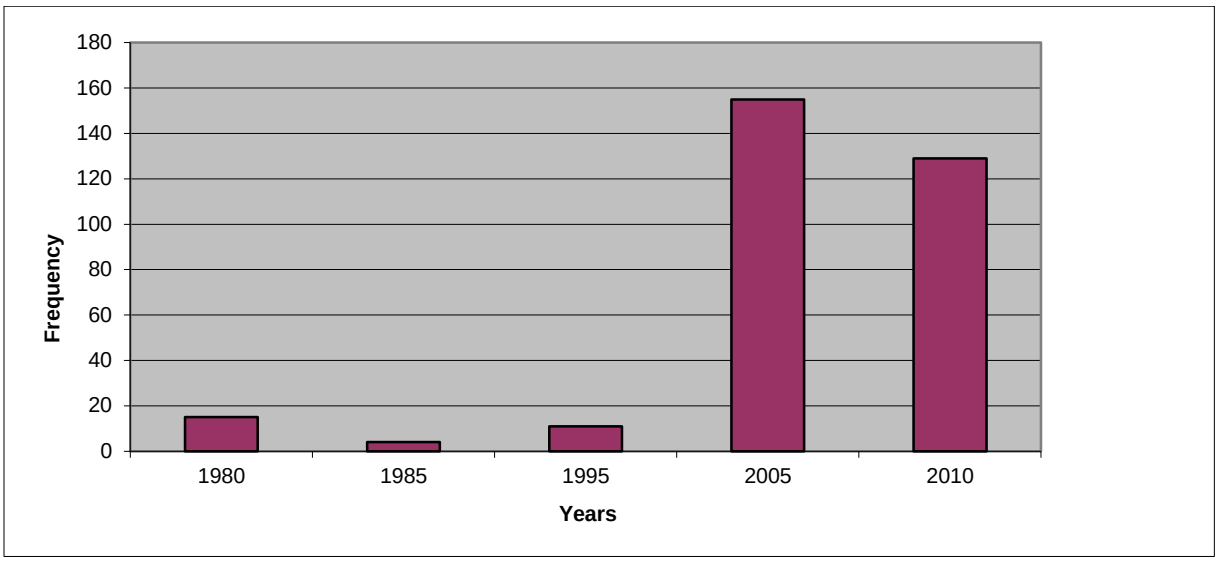
For 1980 and 1985 combined, we see that 'religion' appeared in a total of eight of the parliamentary proceedings. In seven out of these eight proceedings, religion was only mentioned by one party. Only in one debate it seems to play a larger role. This was the case when discussing the Arab-Israeli boycott and the Dutch Royal Airlines registration of their employees' affiliation with Israel. In this context, 'religion' was mentioned seven times, by four different – non-religious – parties.[44] It thus seems that for these two years, the saliency of the issue is rather low. The results for 1995 seem to be similar. Only two debates attracted contributions using 'religion' by more than one party. These debates are on women quotas in school boards where the debate focuses on the implications of such quotas for the freedom of education and on religion in relation to religious and cultural differences and developing countries. In these debates 'religion' appeared three and four times.

The years 2005 and 2010 stand in large contrast to the years before. For these years, 'religion' was mentioned in respectively seventeen and twenty of the debates. Even when taking into account that the total number of parliamentary debates increased, this is still a much larger number than the earlier discussed years. Furthermore, religion was mentioned more often per debate, and more often by different parties. Important debates in 2005 concern a reaction of the parliament to the minister of Justice's argument on a theoretically possible introduction of the sharia-law,[45] a discussion on Sunday working-hours, a discussion on special rights of private schools, a debate on the freedom of expression,[46] more on private schools and the freedom of education, three debates on religion, development and immigration, Turkey and the European Union, religion and terrorism, and Prime-Minister Balkenende's visit to an end of Ramadan celebration. Important debates in 2010 concern a debate on ritual slaughtering,[47] religious based violence against homosexuals, Islam as a religion or political ideology and the freedom of expression and insult on the basis of religion.

[43] These parliamentary years will hereafter be denoted by the first year, e.g. the parliamentary year '1980-1981' will be denoted as '1980'.
[44] These are the Labour *PvdA* and *DS70*, the Liberal *VVD* and the Communist *CPN*.
[45] Minister of Justice Donner argued that if the majority of the Dutch wanted to introduce the Islamic sharia-law, democracy dictates that this should then be accommodated. A large commotion followed.
[46] In this debate, all parties mentioned 'religion', in total up to 91 references were made to 'religion'.
[47] In this debate, all parties mentioned 'religion', in total up to 67 references were made to 'religion'.

Figure 5

The frequency 'religion' appears within debates where 'religion' is mentioned at least once.



The figure above shows the total frequency with which 'religion' is mentioned in the years analyzed. We see that for 1980, 1985 and 1995 the total number of times 'religion' was mentioned during the parliamentary debates was below 20. In sharp contrast again stand the years 2005 and 2010, where 'religion' was mentioned between 130 and 160 times.

Four important aspects become clear: first, today the debates in which religion plays a role are more frequent. Second, in those debates in which religion is mentioned, religion is mentioned more frequently. Third, 'religion' is mentioned by more different parties. From these developments we can argue that the issue of religion is more salient today than before. Finally, the issues that are discussed are controversial and to the core of the freedom of religion, they concern important topics such as the freedom of education, ritual slaughter, the freedom of expression, religious based violence and whether the Islam is a political ideology or a religion. Therefore, religion is more discussed, but also the debates are tougher and more contentious. In short, and in addition to the former analysis on the frequency with which 'religion' and other key words appeared in the parliamentary documents, we see that religious issues have become more discussed over the years since 1980.

What about the freedom of education? Contrary to our expectations, we saw a trend mostly indicating less discussion over time. We saw peaks in the discussion in the early 1980s and early 1990s, and a less frequent mentioning of the term in the 2000s. An analysis of the content of these debates should provide more insights into the discussion on this topic in 1980

compared to 2010. If the issue is less frequently discussed today, do we see a difference in the way in which it is discussed in 1980 compared to 2010? For this analysis the parliamentary proceedings for both years will be analyzed (see Appendix 7).

The first aspect that becomes clear from this analysis is the similarities between the years. For 1980 and 2010 'freedom of education' was discussed in ten and eight parliamentary debates respectively, and in those debates, 'freedom of education' was referred to between one and fifteen times by one to four different parties. For both years, in half of the debates, the freedom of religion seems to play an important role. Finally, for both years at least the Labour PvdA and social-liberal D66 are more critical on the freedom of education, whereas the confessional parties defend this freedom.

However, there are some important differences between the debates in these years, most importantly in the result of the discussion. For the year 1980 these debates focus on a democratization of schools and the mandatory introduction of parent-teacher associations (PTAs) in primary schools. The PvdA and D66 are largely in favor while the confessional parties and the Liberals (VVD) argue that an implementation of this bill will lead to a restriction of the freedom of education. PTAs might aim to redirect certain principles of the school, thereby changing the specific denominational background. Therefore, if schools are obliged to introduce such PTAs in their schools, this leads to a restriction of the freedom of education, they argue. The confessional parties and the VVD strongly defend the freedom of education and argue for an exception for private schools to this new rule on PTAs. A new law allowing for this exception was eventually implemented, where schools can apply by the ministry of education for an exemption to the law on compulsory PTAs.[48] In short, the 1980 most important discussion focused on a general introduction of PTAs and arguments that this would led to a restriction of the freedom of education lead to the option for private schools to obtain exemptions.

The 2010 discussion is different: it is especially directed at restrictions for private schools. In contrast to 1980, the focus is explicitly on limiting the freedom of education. For 2010 two issues dominate the discussion; first the introduction of open enrollment, second the abolishment of the 'single fact construction'. The issue on open enrollment was initially brought in as a means to combat segregation by ethnic background in primary education. The debate focused on the freedom of private schools that enables them to require parents to endorse their principles. Advocates of a restriction argued that this right was used by private

[48] See: http://overheidsloket.overheid.nl/index.php?p=product&product_id=1862 (on June 10th, 2013).

schools to select on ethnic background, and the freedom of education was thus abused to create 'white' schools versus 'black' schools.[49] Another argument referred to the education system being funded by the state and the fact that the state should therefore be able to force schools to admit all students.[50] The member's bill aims to change the right of schools to oblige parents to *endorse* the school's principles into the right of schools to ask parents to *respect* the principles. This is according to the confessional parties a restriction of the freedom of education.[51] The second issue that returned in the 2010 discussion is the issue on the single fact construction, which is part of the Equal Treatment Act. Here, the topic concerns the freedom of education which allows schools to demand that their teachers endorse the school's principles. The law currently provides the opportunity for schools to base their policies on personal characteristics which the Equal Treatment Act explicitly forbids to discriminate upon but which in case of additional facts can be used to discriminate upon. Abolishing the single fact construction leads to a further balancing between non-discrimination on the one hand and the freedom of religion and the freedom of education on the other hand, in favor of non-discrimination. More on this specific issue is discussed in chapter 3.

Finally, the 1980 issue resulted in an exemption for private schools. Both 2010 issues are still discussed in parliament. The issue on open enrollment has not been discussed since 2010. Regarding the single fact construction, it seems that the large majority of the parties will vote in favor of abolition. In sum, the major difference between the parliamentary debates in 1980 and 2010, is that the 1980 debate focused on the introduction of a general rule for education, which then led to an exemption for private education, while the 2010 debate was not focused on a general rule but specifically dealt with restricting certain rights for private schools. Therefore, although the frequency of discussion on the freedom of education turned out to be declining, the type of issues are less favorable to religion in 2010 compared to 1980.

The results from this chapter are twofold. On the one hand, from the legal side, we see no decline in the protection of religion over time; neither in the total number of cases that are brought before the Institute, nor in qualitative terms when it comes to the content of the rulings in favor or against institutionalized religion. On this basis and in congruence with one of the interviewee's arguments, we thus conclude that the judiciary still protects the freedom

[49] See for example Labour party leader Mariëtte Hamer on: http://www.pvda.nl/berichten/2010/03/Acceptatieplicht+voor+scholen (on June 7th, 2013) and the article in newspaper Trouw on this issue "School moet leerling accepteren" (*Trouw* 11 March 2010).
[50] See the arguments by D66 MP Boris van der Ham on: http://www.borisvanderham.nl/interviews/acceptatieplicht_heel_2010_en_ook_heel_christelijk
[51] *Parliamentary Papers 2010-2011, 32500, number 13*

of religion as much today as before. The parliamentary documents stand in contrast to this finding. Analyzing the parliamentary documents, we see a lower taken-for-grantedness of religion. Religion is mentioned more frequently and debates in which religion plays a role are more contentious and more fundamental in nature.

Therefore, the results of these analyses partly correspond to arguments on a decreasing principled pluralism in the Netherlands. We see a distinction between the parliament and the court in their protection of religion. Whereas parliament becomes increasingly skeptical of religious rights, the trend for the court is less pronounced. In order to analyze what processes have influenced this increased discussion, the next two chapters of this thesis discuss explanations for the increase in the discussion on the role of religion in society.

2. The retreat of multiculturalism

As became clear in chapter 1, there is a decreasing protection of religious rights throughout the years, especially in parliament. We now turn to the explanations behind this decline: what factors influence this trend towards a lower protection of religion? In explaining the increased discussion on the protection of religion, two processes seem to be especially important: secularization and a retreat from multiculturalism.

Van Bijsterveld (1995, 1998),[52] Monsma and Soper (2009) and Oomen et al. (2010) emphasize these processes. Secularization – as a decline in church attendance and church membership – leads to a different perspective to church-state relations (Van Bijsterveld 1995: 555, 1998: 11, 12, 88, 89) and influenced by secularization, de-pillarization alters the traditional organization of the Dutch society into different religious spheres, and changes the political and social stability this entailed, also with respect to religion (Monsma and Soper 2009). Furthermore, the settlement of immigrants with a non-Christian background leads to tensions with minority religion's calls on the freedom of religion, as for example frictions on wearing a headscarf (Van Bijsterveld 1998: 11, 12, 147). Terrorism and the related tense debates on the integration of immigrants from a non-Western background (Monsma and Soper 2009: 60-63) influenced a larger focus on liberal rights and less sympathy for group rights. Following from this, rights for immigrants are restricted at the expense of religious rights in general (Joppke 2010).

The two explanations are discussed in this and in the next chapter. Chapter 3 discusses secularization. This chapter discusses a retreat of multiculturalism. Here, a decline in multiculturalism, the influences of fear for Islamic terrorism, and the consequent focus on civic integration and a restriction of religious rights in general, are discussed.

Failed integration and a threat of Islamic terrorism

Islam as a newly important religion in the Netherlands, plays an important role in the increased questioning of religious rights. The increased visibility of the Muslim population

[52] Van Bijsterveld adds a third aspect that could be of influence, being the constitutional equalization of 'religion' and *levensbeschouwing* ('life conviction', or 'belief). This thesis will not further focus on this third aspect since the constitutional amendment took place early in the time period studied in this thesis, in 1983. Therefore, this amendment will not be a large explanatory variable in explaining the decline in the protection of religion studied here. Furthermore, this constitutional amendment as well as other judicial trends that are identified (Van Bijsterveld 1998: 11, 12, 31-34) is also a *result* of a changing perception towards the protection of religion, rather than a separate, explanatory development since we can expect that as a consequence of a changing attitude towards the protection of religion in society, politics decides to change the law.

and the new practices and customs that are related to this have triggered a debate on a religious pluralist society (Loenen 2006). Muslim immigration has led to feelings of a threat of Islam to the 'traditional' Dutch culture (Dronkers 2012: 76) and it seems that with the presence of immigrants with a different religious background than the traditional Dutch population, religious pluralism is put under increasing pressure (Loenen 2006, Maussen 2007: 32). The general liberal expectation that religion and to religion related issues would become less important over time proved to be false (Wilson 1992).

In the 1990s, the general expectation was that religion would become less important over time (Wilson 1992). In relation to this, two important theses can be identified: the liberal expectancy thesis and the secularization thesis. The liberal expectancy thesis as discussed by Milton Gordon (1975) holds that the characteristics of ethnic groups will become less important over time and that because of institutional change and modernization, as time will pass, the differences between culturally different groups will homogenize. In turn, social class would become the most relevant distinction between groups in society (Glazer and Moynihan 1975: 6-8). However, as Glazer and Moynihan emphasized, ethnicity continued to be an important dividing line in society. Furthermore, states "appear to be especially responsive to ethnic claims" (Glazer and Moynihan 1975: 9). A striking example of this, they argue, is the emergence of redistribution policies in the United States in the 1960s. A paradox was created: whereas the Civil Rights Act had abandoned official registration of ethnic groups in order to prevent discrimination, as a result of the implementation of this Act ethnic background became even more salient. Thus, by aiming to meet the anti-discrimination objective of the Act, ethnicity was even further registered and recognized, thereby strengthening ethnic background (Glazer and Moynihan 1975: 10, 11).

The secularization thesis is different in nature but related in its focus on how modernization leads to an eventual declining saliency of society's dividing lines. The secularization thesis holds that there is a linear relationship between modernization and secularization: as time passes, modernization would lead to a decreasing importance of religion and an eventual down-played role of religion. Ideas on this can already be found in the works of Comte, Durkheim and Weber (Wilson 1992: 45, 46) However, in the 1990s it became clear that the secularization thesis was not a universally applicable theory (Wilson 1992, Norris and Inglehart 2004). The thesis as such was partly motivated by a wish for the relation to be true, and less based on empirical evidence (Wilson 1992, Casanova 1994, Bruce 2004, Norris and Inglehart 2004). Secularization differs between regions, and it has different

features and outcomes in terms of its effects on society. In short, there is no linear relation between modernization and secularization (Norris and Inglehart 2004, Wilson 1992).

In explaining the wider attention for state-church issues today as compared to the past, Van Bijsterveld (2009) stresses the general belief in the secularization thesis. She argues that state-church relations were less discussed in the 1980s and 1990s due to a conviction that religion was losing importance. Therefore, the issue on state-church relations was argued to eventually become less salient. However, as Van Bijsterveld argues, the opposite turned out to be true. As a consequence of the increased importance of religious issues due to Islam, political actors realized that religion was not fading away. Therefore, instead of state-church relations losing their relevance, the issue gained renewed attention. A similar argument is made by Monsma and Soper, who argue that discussions on Muslims and Islam in the Netherlands have influenced other opinions and a somewhat different attitude towards the way in which church-state divisions were traditionally dealt with by means of principled pluralism (Monsma and Soper 2009: 83).

In this discussion on the influence of Islam on principled pluralism, the most important explanation lies in a retreat from multiculturalism, catalyzed by a fear of Islamic terrorism. During the 1980s and early 1990s, the Netherlands was largely committed to policies of multiculturalism (Koopmans 2002, Joppke 2004, Joppke 2007, Entzinger 2006). This included the idea that – mainly Muslim – immigrants constitute a separate pillar; many Dutch politicians believed that due to the strong role of traditional pillarization, they could deal with Islam as just yet another pillar. Special programs specifically directed at immigrants were set up, such as education programs, new laws and agreements and targeted programs to accommodate labor market participation (Vasta 2007: 717). The large commitment to multiculturalism in the Netherlands furthermore included measures such as large subsidies for minority organizations and specific targeted education or participation programs. Other measures included the provision of education in native languages and subsidies for the ethnic and religious minority groups to maintain their own culture; as subsidies for group education, subsidies for media and ethnic broadcasting organizations, and subsidies for religiously based social work organizations and hospitals. Combined, the Dutch subsidies and other support for minority organizations outweighed those of many other countries (Koopmans 2002).

Most countries that were adherents of multiculturalism during the 1980s and early 1990s shifted away from those policies during the later 1990s and 2000s. For instance, Muslim claims on special rights increasingly confronted skeptical views from the courts and politics (Joppke 2009, Joppke 2013). Although some dispute a total retreat of multiculturalism

in the Netherlands (De Zwart and Poppelaars 2007, Koopmans 2009), it is mostly argued that at least at the national level a shifting pattern from multiculturalism to a more assimilationist approach – i.e. a pattern from group rights to a focus upon liberal individual rights – was largely prevalent in the Netherlands (Joppke 2004, Joppke 2010, Entzinger 2006). Observers criticized the multiculturalist society already in 1989 and 1990, but mostly since halfway the 1990s decision-makers started to realize that past multiculturalist policies did not result in integration of ethnic minorities. A large number of immigrants were unemployed, and integration of immigrants into Dutch society was increasingly considered a failure (Entzinger 2006). At this point, instead of multiculturalism, the Netherlands started to pursue different kind of policies with a stronger focus on integration of minority groups. This was reflected for example in the introduction of a civic integration program and in a higher focus on the immigrants' Dutch language knowledge (Joppke 2004: 247-249, Entzinger 2006). Furthermore, integration moved to attain a more obligatory character with this sharper focus on knowledge of the Dutch language and society, and by withholding citizen rights from those who did not pass the civic integration programs and tests (Vasta 2007: 714). Also, immigrants were expected to fully cover the costs of the integration program. In addition, not only new immigrants were obliged to take the integration courses, but also immigrants who had been living in the Netherlands – some of them actually already having obtained Dutch nationality – were required to pass the integration test and the possibility to stay in the country would now depend upon passing of the integration test (Joppke 2007: 250). Finally, in addition to a stronger focus on the integration of immigrants living in the Netherlands, new immigration was made more difficult. Immigration in general was restricted, nationalization policies became stricter and asylum seekers were deterred. This resulted in a higher migration out of the country than immigration into the country in 2004 for the first time in thirty-five years (Entzinger 2006: 9). In sum, new immigration was discouraged and with regard to policies on ethnic minorities the Netherlands turned from a politics of multiculturalism to a politics of civic integration.

Next to the already starting policy changes during the 1990s, other relevant factors for this retreat from multiculturalism were the short-lived anti-immigrant Fortuyn movement and an influential newspaper article written by publicist Scheffer (Entzinger 2006). In 2000, the journalist Scheffer (2000) showed that the education and participation of immigrants in the labor market was falling behind, and that a large segregation in schools was taking place between children from Dutch parents and those of immigrants. Additionally, he argued that there was a demographical segregation with large numbers of immigrants living in the cities,

that there were problems related to immigrants in the health sector, the judiciary and housing, and that in spite of all the problems related to immigration, still more immigrants and asylum seekers were arriving. In sum, Scheffer presented an alarming picture of the effects of Dutch multiculturalism. Arguing along the same lines as Scheffer, popular party leader Fortuyn triggered a further national debate on the issue. However, what seems to have catalyzed the focus on civic integration is the terrorist threat that became apparent since September 11, 2001 (Joppke 2009: 118, Joppke 2010: 73, 93-95). In a short time-span, international and national terrorist events took place: the 9/ 11 New York and Washington terrorist attacks, the Madrid 2004 and London 2005 train bombings internationally, and within the Netherlands the 2002 assassination of anti-immigrant party leader Fortuyn[53] and the 2004 assassination of Islam-critical film-maker Theo van Gogh.

Debates in the wake of these terrorist attacks led to a further questioning of rights for religious groups, and led to an even stronger discussion on multiculturalism. After the terrorist attacks on September 11, 2001, a large number of human rights issues for non-citizens were debated in Britain, the United States and other Western countries where out of safety considerations states now acted against immigrants' civil rights (Joppke 2010: 73, 93-101). Joppke states that the original distinction between civil rights and citizenship rights is fading away; civil rights and social rights are increasingly coupled to citizenship rights. This allows for an increased challenge of the civil and social rights, its process becoming apparent in the Western world especially since the attacks of September 11, 2001. The terrorist attacks which were committed by nineteen hijackers from Middle-Eastern descent led to a strong focus on security. This increased security focus was especially directed at foreigners who, in the wake of the attacks, were seen as potential enemies and as a potential threat to security. This resulted in a denial of civil and social rights to those non-citizens that could even at a distance be suspected of being related to terrorist activities (Joppke 2010: 73-96).

In general, the 9/11 terrorist attacks changed the discourse on minority rights, both in the United States and in Europe. Joppke illustrates this through a comparison between two similar claims on exemptions from schools' sports courses for Muslim girls in different years in Germany. In 1993, this request from the parents was readily accommodated, with the judges arguing that they saw no problem in granting this right. Moreover, they showed to even understand the origins of the parents' request. However, after the 9/11 attacks, the court became less willing to grant such rights, arguing that it was the school's task to educate

[53] The multiculturalism-critic List Pim Fortuyn party leader Fortuyn was murdered by an animal rights activist. The assassination, however, further triggered the debate on multiculturalism.

students to become responsible citizens who participate in the society (Joppke 2013: 21). We thus see a change from more to less response to minority claims. Similar processes are apparent in other countries, as the Netherlands (Joppke 2010: 73-110).

From pluralism, to multiculturalism, to liberalism

Multiculturalism, described by Taylor (1994) as the politics of recognition, is often interpreted to include special rights and exemptions to the law for minority groups that are aimed at helping these groups to maintain their own culture. Exemptions to the law will often relate to religious claims and making such exemptions is therefore based on the recognition of minority rights. For example claims on exemptions to laws on animal welfare for ritual slaughtering are based on the recognition of minority rights. As we saw, the Dutch system of principled pluralism allowed much room for religion in the public sphere. Therefore, multiculturalism seemingly fits within the system of principled pluralism. However, Sartori stresses the opposite where he stresses the inherent differences between pluralism and multiculturalism. Here, he argues that the voluntary group membership and reciprocal recognition of pluralism stand against the mutually exclusive group membership of multiculturalism (Sartori in Joppke 2004: 238).

However, both Dutch principled pluralism and multiculturalism grant rights to religious groups. In multiculturalism, religious groups could make claims on special rights and on exemptions to the law, just as the system of principled pluralism had always allowed for in case of Christian and Jewish claims. New religious groups gained access to the privileges the Netherlands had traditionally granted to established religions, as for example the right to establish state-funded denominational schools. In those respects, pluralism and multiculturalism are related. As a consequence, a retreat from multiculturalism also affects the system of principled pluralism. That is, limiting recognition of claims from religious minority groups consequently influences the room for religious rights per se. Since, in a country where all religious groups are treated equally before the law, one cannot grant rights to the one religious group and withhold similar rights from other religious groups (Meijering 2012: 208, Joppke 2009: 122). It is thus stated that:

> Freedom of religion and creedal neutrality are principles that, in different ways, are respected and institutionalized in all liberal states. As a result, non-Christian religions have to be dealt with in just the same way as established religions; the

> liberal state cannot force the Hindu or the Muslim to give up her religion. Even states that violate the neutrality principle in having a state church or granting public status to the majority religions are not exempt from this logic, and interestingly they often have the better track record of accommodating new religions through simply absorbing them into existing practices. (Joppke 2004: 241)

Therefore, following from the freedom of religion and state neutrality, if the aim is to restrict rights for religious groups, this restriction should not only count for one group but should apply to all. For example, if in the wake of a retreat from multiculturalism and a high focus on civic integration the national parliament aims to restrict the exemptions on stunning before slaughtering for Muslims, the same should apply for Jewish ritual slaughter methods. Or, when a Dutch municipality does not allow home-schooling for Muslim children, it can no longer allow the traditional home-schooling for small groups of Orthodox-Protestants either. Joppke describes this logic quite aptly, when he states that with regard to equality of all religions, we cannot grant Christians and Jews more rights than Muslims and therefore the "alternative to upgrading Islam is the downgrading and loss of privileges of the established religions" (Joppke 2009: 122). He discusses an example of this phenomenon in Germany. A headscarf ban in schools was discussed in court and the argument focused on the neutrality of the state towards expressions of religions in the public space, independent of the religion. It was thus argued that if the headscarf was banned from the schools, this would require the banning of all expressions from any religion. The court's president argued that: "I am in favor of liberty (…) but I am also in favor of treating all religious confessions equally. If the veil is considered a religions confession, an [impermissible] missionary cloth, then this must apply also to the monk's dress (…) or the crucifix" (cited in Joppke 2009: 119, words between brackets in the original). For the Dutch case, a symbolic yet illustrative example is a case in the Dutch parliament in 2013. Here, a parliamentarian from the Islam-skeptical Freedom Party questioned the presence of the Quran on the parliament's clerk's desk, and asked if this could be removed. The chairman of the House argued that she would then remove all unnecessary books from this desk, including the Quran but also the Bible. Only a large commotion coming from the other parliamentarians prevented this from happening.[54]

[54] *Parliamentary Proceedings 2012-2013, 33609, number 19*.

What is then important is that if a liberal state no longer wishes to recognize religion, the only other option it has is to take a distance from religion, and to take a distance from all religions (Joppke 2013: 18, 19). A liberal state should take the same position towards all religions, and therefore, if the state aims to place more emphasis on individual rights, and thereby aims to be more restrictive towards claims from one religion, it has to be as restrictive for other religions as well. In this way, the terrorist attacks and terrorist acts have influenced a stronger focus on liberal values and individual rights, at the expense of recognition of minority rights (Joppke 2009: 118). The idea of Islam as a threat to society has led to public and parliamentary debate on the role Islam should have in a Western society. Related to this we are now confronted with a large discussion on individual liberal rights versus the recognition of minority – group – rights and questions on special rights and exemptions to the law that should or should not be granted to the Muslim minority (Joppke 2013: 31).

A practical example of this logic in the Netherlands becomes clear in one of the court cases on the Reformed Political Party's (*Staatkundig Gereformeerde Party,* SGP) withholding of women's passive voting rights. The SGP's political role of women goes back to the origins of this Orthodox-Protestant party where since the party's establishment it had withheld passive voting rights from women. The public discussion on passive voting rights for women in relation to the SGP dates back to 1982. Several court cases have been dealing with this issue and it has attracted a lot of attention from the media as well (Oomen 2009). A court ruling in 2010 forced the party to abolish their restrictive rules against women on their party list. Here, the court argued that in order to receive state subsidies, the party had to open up its lists for women.[55] Since the adjustment of the SGP's party manifesto in 2012, women are – at least formally – allowed to run for the SGP. Vermeulen (2007) studies one of the court cases, where the SGP's subordination of women was challenged by a feminist group. Vermeulen identifies a number of reasons why the court forced the party to register women as candidates on their lists, and argues that the main reason why the court eventually ruled against the party was a fear of Islam. Vermeulen shows how the judge emphasized that equal treatment was gaining importance at times when future political parties could "assign an inferior position to women on religious grounds" (Vermeulen 2007: 95). With respect to women's democratic participation, non-discrimination and equal treatment, the court states that: "This interest becomes even more important if one considers that it is not inconceivable that in the (near) future other parties emerge which – on religious grounds – ascribe a different political or

[55] LJN BK4547, LJN BK4549

societal role to women, which makes the risk of discrimination lying in wait."[56] This would require preventive action today. With the idea in mind that other – Islamic – future political parties could deny political rights to women, today's judgment on the Reformed Political Party should take this expectation into account. The court's ruling should thus be a sign for future Islamic political parties and therefore the judgment needed to stress equal treatment at the expense of religious freedoms (Vermeulen 2007). Therefore, this court case seems to show how a focus on civic integration – a focus on Muslims to accept the Dutch and Western majority value that men and women are equal and that therefore we do not want a possible future Islamic party to exclude women – leads to the restriction of established rights, in this case even pro-actively.

We can see that the hesitation to granting rights to Muslim minorities leads to restrictions of the freedom of religion per se. The interviewees argued largely along the same lines. Some of the interviewees even stated very strongly that the – orthodox – Christian minorities are a victim of immigration and Islam.[57] Similar to what is laid down above, they argued that changing views of citizens and politicians towards multiculturalism and Muslims led to questioning and challenging religion in general. Influenced by Muslim claims on rights and by terrorism, they argued, people in general got more hesitant towards religion. As a result, Christians feel that their rights are also restricted.

This changing attitude towards religion in general, influenced by a focus on civic integration, seems to have influenced the position of the confessional parties on Islam. Traditionally, they are in favor of the protection of religion. Yet especially the smaller Christian parties have been mostly skeptical towards Islam. However, it seems that their position changed into the protection of religion in general, including Islam. Noteworthy is the position of the Reformed Political Party. Whereas they voted against exemptions on slaughter methods in the 1950s, they vote in favor of these exemptions today. Confronted with this, one

[56] Case number HA ZA 03/3396 (2005, AU2088). Translation is the author's. The original tekst states: "Het betoog van de Staat dat de vordering van eiseressen niet strekt tot bescherming van gelijksoortige belangen van andere personen, verwerpt de rechtbank. Het gaat, zoals overwogen, in deze immers niet om het belang van de SGP-vrouw om lid te kunnen worden van de SGP, maar om het belang van een ieder, in het bijzonder van vrouwen, om in een democratische maatschappij te leven waarin discriminatie op grond van geslacht - met als gevolg uitsluiting van het passieve kiesrecht - niet getolereerd wordt en waarin door de Staat handhavend opgetreden wordt. Dit belang krijgt een zwaardere lading als men bedenkt dat het niet denkbeeldig is dat in de (nabije) toekomst ook andere partijen opstaan die vrouwen - op godsdienstige motieven - een andere politieke en/of maatschappelijke rol toebedelen dan mannen, waardoor het gevaar van discriminatie wederom op de loer ligt. De Staat kan hierin een sturende rol spelen."

[57] Noteworthy is the political cartoon one of the interviewees showed me from newspaper *Trouw*. The cartoon shows a background with a flat landscape with windmills and in front numerous people in traditional Muslim clothing. In the middle, there is one orthodox-Protestant saying 'do *you* understand why they're suddenly against us?' According to the interviewee, the cartoon aptly pictured what was happening.

of the party's interviewees explained that on this issue they made a conscious pragmatic turn. The party used to be a strong defender of the Dutch Calvinist tradition, and thereby opposed influences of any other religion than the Dutch Calvinist. Related to this, they opposed ritual slaughtering in the 1950s. However, today they recognize that the field of force has changed; the Calvinist tradition plays an increasingly minor role, and other religions have come into play as well. The party thus realizes that claiming rights just based on the Calvinist tradition will not provide sufficient ground for future support for religious rights. Because of this change, and in order to maintain religious rights for Christian groups, the party argues in defense of religious freedoms in general. The same pragmatic turn influenced the attitude towards ritual slaughtering and the party's opposition against a ban on Islamic women wearing burqas in the public sphere.

A different path for the courts and parliament

A remark needs to be made with respect to the differences between the courts and the parliament. The parliament's and courts' role in the discussion on the protection of religious rights seems to differ, with the political side having a largely skeptical view towards religious claims, and the courts having a more receptive attitude (Joppke 2013: 15-21). In a discussion on Muslim immigration and integration in Europe, Joppke (2013) discusses the elasticity of the courts with regard to claims by Muslim migrants on exemptions to the law.[58] Joppke argues here that mostly in light of human rights the courts are very receptive to claims for special rights of religious groups. Furthermore, as soon as there is a Jewish precedent similar to the Muslim demand, the courts will easily extend these exemptions to the law to Muslims as well. Examples in which this was the case are ritual slaughter, kosher and halal food in public canteens, and religious holidays (Joppke 2013: 15). Thus by referring to human rights and by treating religions equally before the law, the courts are traditionally open to grant certain rights to Muslims. Therefore, if the issue was left to the courts, Muslim claims on rights and exemptions to the law have mostly been met.

However, in the institutionalization of Islam two different paths can be distinguished: an individual rights path and a "corporate recognition" path (Joppke 2013: 16). The courts mostly deal with the individual rights and by referring to human rights they are mostly

[58] Note that Joppke discusses this process for Europe as a whole, instead of for one specific country. Although he recognizes that there are important differences between the European states, he argues that these national differences are secondary" and that the European states share an "overall inclusive stance of liberal state institutions toward Islam" (Joppke 2013: 16). A similar argument is made by Dassetto, Ferrari and Maréchal (2007).

supportive of extending those rights to Muslims. Yet, politics is in charge of the corporate recognition part, which relates to the state's dealing with the religion as an official and organized religion. This corporate recognition process develops much slower, and furthermore, political actors are much more skeptical of granting additional rights to Muslims. Yet, the dynamics between politics and law mutually influence each other. Influenced by a skeptical view from politics and the public opinion, courts take a less absolute interpretation of the freedom of religion. Reversed, influenced by the positive view of the courts, governments are forced to work on the corporate recognition part (Joppke 2013). Therefore, in cases where there is no precedent of another religion, that is Muslims make a claim on a 'new' right, accommodating claims on religious rights is less straight-forward. In those cases, a religious right is less easily obtained than when there is another religion's precedent which the courts can extend to Muslim claims (Joppke 2013).

It thus seems that the focus on civic integration is mostly found within politics, and that the retreat from multiculturalism is less apparent for the courts. We see a process in which the courts are generally supportive of religious claims and of the protection of the freedom of religion. Empirical evidence for this claim was found in the first chapter of this thesis, where we saw that there was no change in the way in which the Human Rights Institute dealt with cases on religion. Studying cases in which the freedom of religion was discussed, we neither saw a significant increase in the number of cases dealt with, nor did we see a decreasing protection of religion. The remark by one of the interviewees who mentioned he held the courts' protection of religion in high regard, but was more negative on the parliament's protection of these rights, underscored these findings as well.

Thus, parliament is increasingly skeptical of Muslim's religious rights. Earlier in this section, we discussed the court case on the Reformed Political Party and the opening of its lists for women. In this case, the court's ruling against the party was motivated by the aim to prevent future parties to exclude women. Another pressing example of a case in which a fear of Islam led to a restriction of religious rights in general, is the discussion on state registrars who have a conscientious objection to solemnizing same sex marriages. In the case on the conscientious objecting state registrar, parliament changed from a pragmatic, to a stricter liberally principled approach. Influenced by an increased focus on civic integration, parliament became more critical of religious rights. This trend is most pronounced for parliament. For the court there is a less clear trend.

State registrar to same sex marriage

The Netherlands recognizes same-sex marriage since April 1st, 2001. Since this date, about 1250 homosexual couples marry each year, making for about 1.9% of the total number of marriages.[59] The legalization of gay marriage was one of the accomplishments of the Purple government,[60] and it was widely opposed by the Christian parties and part of the Christian public who argue that the Bible forbids marriage between two persons of the same sex. In this issue equal treatment took precedence over religious claims. However, one point is still unresolved today: the so-called '*weigerambtenaren'*: state registrars who refuse to marry homosexual couples because their religion forbids it.[61]

Before 2001, this topic was already discussed in the parliamentary debates on the introduction of same-sex marriage. The representatives of the smaller Christian fractions asked attention for state registrars with a 'conscientious objection' against solemnizing same-sex marriages.[62] Parliamentarians asked for a clause, which would lay down an exemption for state registrars. In order to get a large share of the parties behind the proposed amendment opening marriage for same-sex couples, junior minister of Justice Cohen stressed that the conscientious objection issue requires a pragmatic solution. This would entail a pragmatic approach with the possibility for homosexuals to marry in any municipality as the main goal. This pragmatic approach would not force every individual state registrar to actually solemnize these marriages; individual state registrars could refuse to solemnize same-sex marriage as long as another state registrar would be prepared to perform the task. If all of the state registrars within one single municipality would object, it would be possible to request a state registrar from outside of the municipality to solemnize the marriage. Cohen argued this pragmatic approach would suffice, and it would be unnecessary to codify.[63]

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[59] COC (2006) "Aantal homohuwelijken stabiliseert". On: http://www.coc.nl/jouw-belangen/aantal-homohuwelijken-stabiliseert (On May 30th, 2013), Statline (2013) "Huwelijken en partnerschapsregistraties; kerncijfers", *Centraal Bureau voor de Statistiek*. At: http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=37772ned&D1=a&D2=0,10,20,30,40,50,(l-1)-l&HD=130530-1041&HDR=G1&STB=T (On May 30th, 2013).

[60] Two Purple governments, existing of a coalition between the Social-Democrats, the Liberals and the Social-Liberals, were in place between 1994 and 2002.

[61] As opposed to countries where there is religious marriage and civil marriage, both of which are officially recognized, The Netherlands only officially recognizes civil marriage. Religious marriage may be performed in addition to civil marriage, but only after civil marriage has taken place (Van Bijsterveld 1995: 573).

[62] *Parliamentary Proceedings 1999-2000, 26672, number 97*. See the contributions of MP Van der Staaij (SGP) and Schutte (RPF/GPV).

[63] "In iedere gemeente behoren krachtens de wet ten minste twee ambtenaren van de burgerlijke stand te zijn. Heeft de een gewetensbezwaren, dan kan de ander inspringen. Dat kan onderling besproken worden. Het lijkt mij niet dat er daartoe verordeningen gemaakt moeten worden. Als er in een gemeente niet meer dan twee ambtenaren van de burgerlijke stand zijn, die beiden ernstige gewetensbezwaren hebben tegen de voltrekking van een huwelijk van personen van hetzelfde geslacht, bestaat de mogelijkheid dat een ambtenaar van de burgerlijke stand van elders wordt ingeschakeld. Ook dat is een praktische oplossing waarvoor een verordening

The room for the conscientious objecting state registrar was also the basis of three rulings by the Human Rights Institute on this issue.[64] One of these dealt with a state registrar in the municipality of Leeuwarden, where the state registrar was dismissed due to her refusal to solemnize same sex marriages. The Human Rights Institute stated that the municipality's argument that all state registrars should solemnize all marriages was legitimate. However, the argument was not compelling since the municipality employed several state registrars and because of the limited number of same sex marriages each year. The dismissal was thus unjustified for its unnecessarily strong impact on religious state registrars.[65] The dismissal and the following Human Rights Institute case were discussed in several media.[66] Another case dealt with an applicant for a vacant state registrar position in yet another municipality. When the applicant mentioned her objection against same sex marriage, the selection committee replied that applying would be no use. In this case, the Human Rights Institute again ruled that this was not justified because of the low saliency of the issue.[67] In short, the applicant should be allowed to apply for a job as a state registrar, even though she would refuse to solemnize same sex marriages.

In congruence with the conclusions in the debate on the introduction of same sex marriage and in congruence with the rulings by the Human Rights Institute, the coalition agreement of 2007 – Labor Party, Christian Democrats and ChristianUnion – laid down that the government would leave room for the conscientious objecting state registrar. It further stated that the appointment of new state registrars who have a conscientious objection against same sex marriage would remain possible, as long as same sex marriage was ensured to be possible in each municipality.[68] This was in line with what was agreed in 2001, and with what junior minister Cohen had stated at the time regarding these state registrars. However, in 2008, the Human Rights Institute ruled against a conscientious objecting state registrar.[69] In this case, the Institute judged that the municipality's claim on not allowing its state registrars

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niet nodig is. Het lijkt mij dat daarmee adequaat ingesprongen kan worden op concrete problemen, waarbij ik mij overigens afvraag of in de gemeenten waar dit alles zich zou kunnen voordoen het probleem ook werkelijk groot is. Daar gaat het natuurlijk niet om in hoofdzaak. Het gaat erom dat op een praktische manier tegemoetgekomen kan worden" (Junior Minister Cohen in *Parliamentary Proceedings 1999-2000, 26672*, *number 97*)

[64] Netherlands Institute for Human Rights ruling 2002-24, 2002-25 and 2002-26. Available at: www.mensenrechten.nl/publicaties/oordelen.

[65] Netherlands Institute for Human Rights ruling 2002-25.

[66] E.g. "Homohuwelijk principezaak in Leeuwarden" (*NRC* 23 June 2001), "Nynke Eringa wacht geduldig af" (*Reformatorisch Dagblad* 18 January 2002), "De week van ex-trouwambtenaar Nynke Eringa" (*Friesch Dagblad* 23 March 2002), "Ontslag wegens niet huwen homo's" (*Trouw* 16 Juni 2001), "Nynke Eringa weer trouwambtenaar in Leeuwarden" (*Nederlands Dagblad* 24 June 2003).

[67] Netherlands Institute for Human Rights ruling 2002-26.

[68] Coalition Agreement "Samen werken, samen leven", 7 February 2007.

[69] Netherlands Institute for Human Rights ruling 2008-40.

to discriminate on the basis of hetero or homosexuality was justified. The right for homosexuals on non-discrimination outweighed the fact that the state registrar himself would now be discriminated upon based on his religion. In this case, the Institute prioritized equal treatment of homosexual couples above the state registrar being discriminated based on his religion. This was thus contrary to earlier cases. A 2008 published document by the Human Rights Institute explains their changed perspective on the issue towards a focus on non-discrimination, where the municipality can demand from both incumbent and new state registrars to solemnize same sex marriages. According to the Institute, a pragmatic approach was most important for their rulings on this issue before 2008 yet from now on state registrars should no longer be allowed to distinguish between hetero and homosexual couples. The Institute argued that more value should be attached to municipalities' implementation of non-discrimination; the municipality should set the example and should not allow its civil servants to discriminate against citizens (Netherlands Institute for Human Rights 2008). Furthermore, it stressed the argument of the municipality that played a role in the 2008 case. Here, the municipality had argued that responding to a request from the state registrar to object to same-sex marriages, would set an undesired precedent for future cases which could have "even more unexpected discriminatory attitudes, inspired by religion, or not" (Netherlands Institute for Human Rights 2008: 4, translation by the author).[70] Therefore, the Institute changed its pragmatic approach to a more strict approach with a high focus on non-discrimination, and less room for the freedom of religion.

The discussion that followed influenced a call to the government to respond to the Human Rights Institute's advice to restrict the possibilities for the conscientious objecting state registrars. Parliament adopted a motion to legally restrict this was. In response to this, the Dutch Council of State argued against restrictive laws on these state registrars, and suggested that the phenomenon would disappear over time: already employed state registrars should be allowed to stay whereas for future state registrars a criterion is set on solemnizing all marriages.[71]

[70] It was stated that: "*In de procedure die heeft geleid tot oordeel 2008-40 beriep de gemeente zich erop dat het inwilligen van een verzoek om te worden uitgezonderd een ongewenst precedent zou kunnen scheppen voor andere, nu wellicht nog onvoorziene discriminerende opvattingen, al of niet godsdienstig geïnspireerd. De door de Commissie beschreven lijn biedt de overheid houvast om tegen te houden dat ambtenaren zich in de uitoefening van hun functie laten leiden door een politieke-, godsdienstige- of levensovertuiging die schending van het discriminatieverbod tot gevolg heeft*." (Netherlands Institute for Human Rights 2008: 4).

[71] *Parliamentary Papers 2011-2012, 32550, number 35*.

Parliamentary questions led two parliamentarians to draft a member's bill. They argued that the issue is important enough to require formal legislation.[72] In an explanatory memorandum to this bill, the parliamentarians laid down that there was a trade-off to be made between the rights of homosexuals not to be discriminated upon, and the right of the individual state registrar to act according to his beliefs. For these two social-liberal D66 parliamentarians the non-discrimination of homosexuals and the fact that state registrars should be able to carry out the law outweighed other factors. Moreover, they questioned the severity of the conscientious objection, by pointing at other possible tensions between religion and being a state registrar which seemingly do not play a role. Since there are no such other conscientious objecting state registrars, the parliamentarians argued that the state registrars conscientious objection is apparently only limited. To restrict the room for a conscientious objection is therefore no drastic measure.[73]

The parliamentarians point out that there is a Dutch tradition of tolerance towards religious ideas where there has historically been room for a conscientious objection. Yet, they stress that certain religious developments within the Dutch society are at odds with this tradition. They present examples of troubles with Islamic youth towards Jews and homosexuals who feel threatened and forced to move out of their neighborhood. The parliamentarians stress that therefore politics should take a strictly principled position, as opposed to a pragmatic approach, to issues where non-discrimination is at stake.[74]

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[72] *Parliamentary Papers 2012-2013, 33344, number 6.*

[73] The parliamentarians argue that for example there are no state registrars refusing to solemnize a marriage where one of the partners has been divorced, even though this can also be called unbiblical and therefore should then bring in a conscientious objection as well. They state that: "Dagelijks trouwen in Nederlandse gemeenten personen van wie een eerder huwelijk door echtscheiding is ontbonden. Sommige kerkgenoot-schappen – deels dezelfde die geen ruimte zien voor huwelijken tussen personen van gelijk geslacht – bieden niet of nauwelijks ruimte voor echtscheiding. («Wat God verbonden heeft, dat zal de mens niet scheiden». Mt 19:5–6). Wordt na een burgerlijke echtscheiding toch burgerlijk hertrouwd, dan brengt dat – godsdienstig bezien – structureel overspel met zich mee (Lk 16:18). Opmerkelijk is, dat nog nooit iets vernomen is over ambtenaren die weigeren zo'n volgend huwelijk te voltrekken op grond van godsdienstige gewetensbezwaren. Dat doet de vraag rijzen waarom dat in geval van huwelijken tussen personen van gelijk geslacht anders ligt". (*Parliamentary Papers 2012-2013, 33344, number 6, page 5*)

[74] "Dit alles neemt niet weg, dat ruimte geven aan gewetensbezwaren in zijn algemeenheid past in de Nederlandse traditie van tolerantie ten opzichte van verschillende godsdienstige opvattingen. Maar helaas zijn er in de Nederlandse samenleving ook ontwikkelingen, die haaks staan op deze traditie. De achtergrond daarvan is vaak een godsdienstige. Het probleem is, dat godsdiensten niet altijd even tolerant zijn. In sommige gemeenten ondervinden joodse burgers, die als zodanig herkenbaar zijn door het dragen van een keppeltje, overlast van jongeren met een islamitische achtergrond. Er zijn ook gemeenten waar getrouwde of samenwonende homoseksuelen zózeer worden gepest, dat zij geen andere uitweg zien dan hun wijk of gemeente te verlaten. Van gemeentebesturen wordt verwacht dat zij dit voorkómen en er hard tegen optreden. Wanneer in zo'n gemeente, vanuit een traditie van tolerantie ten opzichte van verschillende godsdienstige opvattingen, wordt toegestaan dat ambtenaren met gewetensbezwaren geen huwelijken tussen homoseksuelen voltrekken – òf als gevolg van de Awbg geen maatregelen tegen weigerambtenaren genomen kunnen worden – levert dat uiteraard nog geen legitimatie op voor het wegpesten van homoseksuele stellen. Maar het helpt het voorkómen daarvan óók niet.

With the May 2013 bill submitted (but not yet decided) which proposes to render it impossible for a municipality to hire a state registrar who refuses to solemnize same-sex marriages, it remains a discussion until today. The bill on restricting the conscientious objecting state registrar will be discussed and voted for in parliament in June 2013. The results remain to be seen, but since a majority of the parliament supported the motion one can expect a vote in favor of restriction of the state registrar's right to refuse solemnizing same sex marriages. Therefore, a larger focus on civic integration seems to explain why the conscientious objecting state registrar was met with increasingly less response. Specific references were made to problems with Muslim integration which would demand a stronger focus on non-discrimination, even when this is at the expense of religious rights. We thus see that parliament became in this case largely more skeptical of religious rights over time. Again we see the same pattern: an in increased negative attitude towards religious conscientious objections from parliament and a less clear trend in the courts.[75]

In sum, this section showed how a retreat of multiculturalism and a larger focus on civic integration led to a discussion of religious rights in general. Policy-makers already realized in the 1990s that the approach of multiculturalism did not result in integration and full participation of immigrants in the Dutch society and as a consequence, a departure from the multiculturalist approach was taken as a resulting measure. In the 2000s domestic and international terrorist attacks evoked further critique of the policy and led to a retreat from multiculturalism in which no longer recognition of minority rights was the primary focus, but instead integration into the Dutch society emerged as a political priority. Important in this respect is that the freedom of religion entailed an equal status of the religions before the law; this means that restricting rights of one religion automatically results in a restriction of rights of the other religions as well. Due to these dynamics, some argued that Christians are victims of the retreat from multiculturalism. The next chapter will study another explanation for the decreasing protection of religion: secularization and a decline of the Christian Democratic party.

Wat in een klimaat van intolerantie wèl kan helpen, is het niet louter zoeken van «pragmatische oplossingen» voor de gevolgen van die intolerantie, maar het consequent handhaven van het verbod van discriminatie. En dat zo nodig zwaarder laten wegen dan de bescherming van godsdienstige opvattingen". (*Parliamentary Papers, 2012-2013, 33344, number 6, page 5,6*)

[75] However, the courts are not totally remote from the political discussions over time. The Human Rights Institute ruled in favor of the state registrars until 2007, but in 2008 they ruled against the state registrar and published a report advising to decrease the room for conscientious objecting state registrars. As the Human Rights Institute's argument in the advisory report shows, they now place more emphasis on liberal rights at the expense of religious rights.

3. Secularization, de-pillarization and a decline of the CDA

The former chapter introduced the retreat from multiculturalism as an explanation for the decline in the protection of religion. Yet is this the only explanation there is? According to the interviewees, there was more to what they call a 'crusade against religion'[76], 'Christian-bashing'[77] or 'religion-stress'.[78] The interviewees emphasized how another process influences the decline: secularization. Here, it is mostly argued that when a decreasing share of society is religious and when a decreasing number of parliamentarians is religious, religious rights become less salient. As a consequence the protection of religion declines. Related to secularization but more specific to the Dutch case is the process of de-pillarization. During this process, which started in the 1960s and is according to some still taking place, the traditional separate spheres of the Dutch society declined, as became prevalent in the decline of the Christian Democratic party, the *Christen-Democratisch Appel* (CDA). The CDA and its forerunners[79] used to be important parties, both in seat-share and in governing coalitions. However, over the years since 1994, the party is in decline. This is due both to less religious voters per se and to a less direct link between being religious and voting for a Christian party. Furthermore, the close links between the one specific sphere – liberal, socialist, Calvinist, Dutch-Reformed and Catholic – and for example a specific newspaper, schools, labor union and political party declined. With the decreased direct link between social background and voting for a specific party, it was possible for the confessional parties to lose importance. This chapter studies the influence of a declining importance of religion in people's lives on the influence religion has in society. Does an increasingly secular majority in the country and in parliament result in a corrosion of the privileged position of religion? This chapter discusses the processes that could account for this explanation – secularization, de-pillarization and the decline of the CDA.

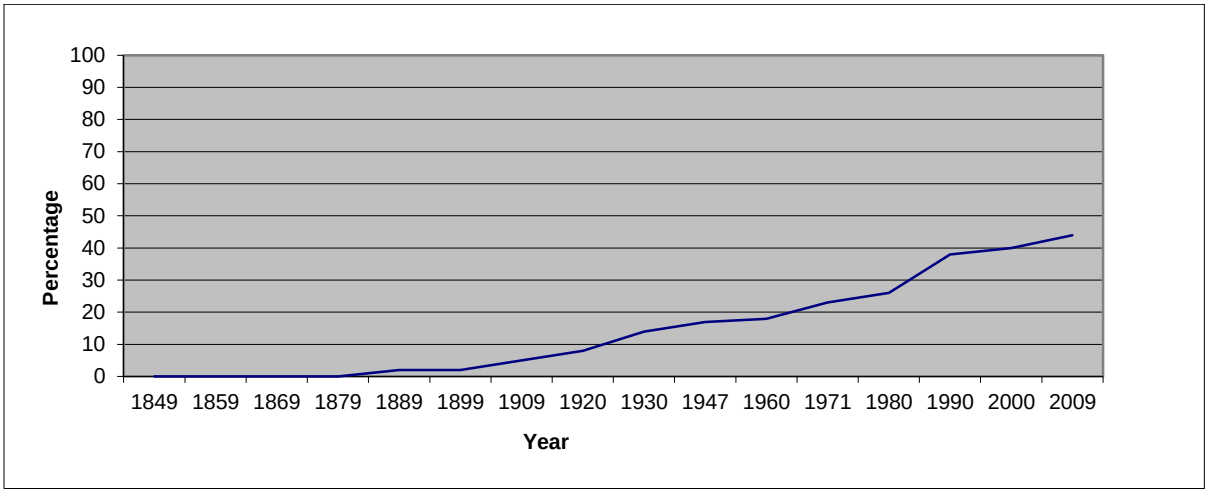
[76] "Voert de politiek een kruistocht tegen gelovigen?" (*Trouw* 3 november 2011)
[77] "Sociaal-christelijk erfgoed behouden, daar gaat het om" and "SGP en CU zijn 'christenpesten' door D66 beu" (both published in daily newspaper *Trouw* on January 2nd, 2013).
[78] 'Religion-stress' was the title of a book on religion in the public sphere ('Religiestress: hoe je te bevrijden van deze eigentijdse kwelgeest', Mikkers 2012). It was nominated for the 'word of the year 2012'.
[79] In 1980, the reformed CHU, the Calvinist ARP, and the Catholic KVP merged into the newly formed Christian Democratic Appeal.

Secularization

First, let us consider the influence of secularization. Over the last half a century, Western-Europe's population became increasingly less religious (Norris and Inglehart 2004, Bruce 2002, Byrnes and Katzenstein 2006: 256, Becker and De Hart 2006). In the Netherlands, this process of secularization is prevalent as well. Whereas during the 1950s and 1960s the largest share of the population was a church member and attended religious services regularly, today this counts for only a minority and a small minority respectively (Becker and De Hart 2006: 93, Dekker and De Hart 2006, Arts 2009). Since the late 1990s, the frequency of attending religious services and membership of a religious denomination is still declining for some parts of the country, but has come to a halt for others (Arts 2009: 41, 42).

Figure 6

Not a member of a religious denomination between 1948 and 2009



This graph is based on citizen's information from the CBS (2013)[80]

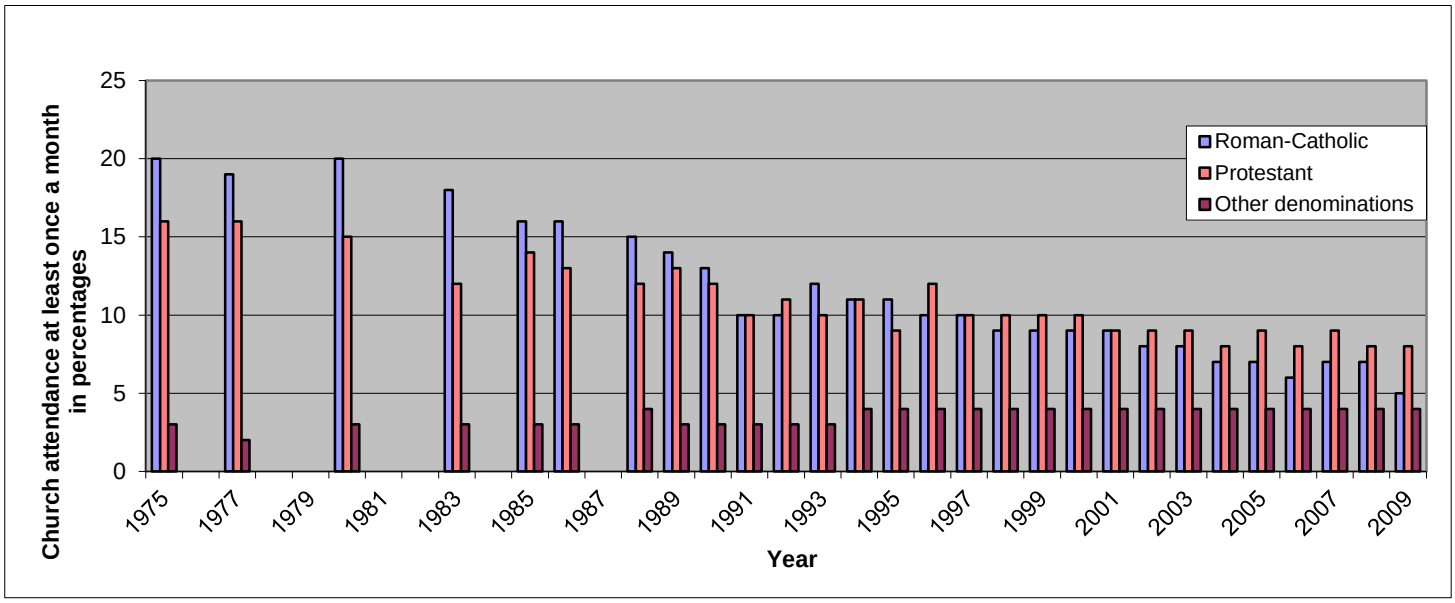
From the graph above we see this over time trend between 1849 and 2009. Over the years, the number of citizens belonging to a denomination decreases. In 2009, the number of citizens that belong to a denomination – categories included are Roman-Catholic, Dutch-Reformed, Calvinist, Protestant Church of the Netherlands, and 'other denomination' – lied at 56 percent. Therefore, although the number of people that are still member of a denomination is declining, still the majority of the population belongs to one of the denominations. However, this image of the majority of the population being religious changes when assessing church

[80] Information was only available for a selection of the years since 1948. Some years were excluded in this graph, in order to come closest to a consistent accumulation of the years on the horizontal axis.

attendance. The bar chart below pictures the attendance of religious services. Here we see a somewhat different picture. The chart shows those that visit religious services at least once a month as a percentage of those citizens that belong to a denomination. Here, we see that a declining number of church members attends church monthly. In 2009, only between 4 to 8 percent of those that belong to a denomination attend religious services at least once a month.

Figure 7

Attendance of religious services between 1975 and 2009



This graph is based on information from the CBS (2013)

We thus see that a process of secularization is taking place: a decreasing number of citizens belong to a religious denomination, and out of those that belong to a religious denomination, a decreasing number attends religious services regularly. However, what are the effects of this secularization process for religious rights in the public sphere? On the one hand, some have argued that secularization can lead to an increased proliferation of religion in the public sphere; in this way it can lead to a deprivatization of religion (Casanova 1994, Jenkins 2007). Secularization can change the way in which religious groups deal with their religious inheritance once they become a small minority; they increasingly profile themselves as religious and aim to practice their religion in the public sphere. Jenkins presents a striking example in the position of Jews in a London neighborhood. Their numbers declined since the early 1900s but in the same period, the prevalence of Judaism became much more important

(Jenkins 2007).[81] On the other hand, the process of an increasingly secular population could also lead to a higher questioning of religious freedoms. Whereas the religious minority might increasingly aim to practice their religion in the public sphere, the secular majority might be increasingly less inclined to tolerate this. When the largest share of the population is no longer religious, a broad interpretation of the freedom of religion attracts less support in favor of a more narrowly conceived understanding of this freedom. In this view, there is less room for religion and religious acts in the public sphere due to a lower saliency of religion now as opposed to thirty or forty years ago (Joppke 2009: 115). In this way, secularization could play a role in the corrosion of the Dutch principled pluralism.

Joppke (2009) argues that a more secular society is one of the reasons why the issue on immigration and immigrants' rights is a more salient issue in Europe compared to the United States (US). Whereas the US is still largely a religious society, Europe is much less so. This makes claims on religious freedoms less alien for Americans than for Europeans; it is easier for an American to understand religious claims and a demand for religious rights also from other religions because he himself calls on these rights as well. In this view, the European secular society will be less willing to grant rights to religious minorities today than some decades ago and eventually this leads to less religious special rights and a smaller role for religion in the public sphere.

The argument on secularization is largely emphasized by the affected groups themselves as well. As one of the interviewees stressed, until recently many people had at least some religious background. From this background, they could somewhat understand the origins of religious claims on rights. This was the case for the majority in society and for many parliamentarians; for a large majority of the parliamentarians from confessional parties as well as for parliamentarians from other parties. According to the interviewees this change in the background of many of the politicians leads to less understanding for religious claims. Marking religion as old-fashioned and unimportant makes it easier for non-confessional political parties to deny religious rights and to challenge a perceived privileged position of religion. This argument and related arguments can be found in the confessional media as well.

[81] Jenkins here shows an example on Jews who need some kind of boundary surrounding their neighborhood or city. Historically, on the Sabbath this so-called eruv allows them to also engage in activities outside of their homes. One would expect that the prevalence of these eruvs is large in more religious societies, whereas it is lower in more secular societies. However, the exact opposite developed in the case of London. In the early 1900s when a large number of Jews came into the city, there was no eruv and neither was an eruv set up fifty years later when Judaism flourished. The eruv was only set up much later when de Jewish community was small and secularized. This thus shows a case in which only when a certain religious group feels marginalized or threatened, they aim to profile their religious heritage or background (Jenkins 2007: 56, 57).

They closely follow the political debate on religious rights[82] and mention a 'crusade' against religion,[83] 'religion stress',[84] or 'Christian bashing'.[85] This latter term denoted a trend that many mainly symbolic issues with a Christian background were challenged by the secular majority in parliament. Today's secular government, they argue, pursues anti-religious policies, and tries to limit rights for religious groups.[86]

Religiosity in parliament

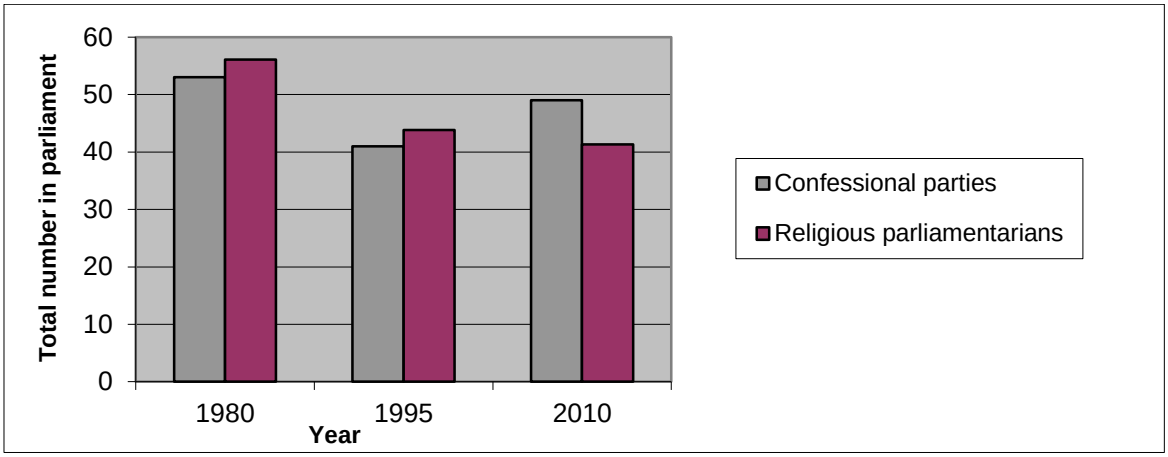
The background of parliamentarians could thus play a role in their responsiveness to religious claims as such. Once this parliamentarian is less personally familiar with religion, we would expect him to be less responsive to religion as well. Therefore, the following analyses assess the extent to which there is a change in the religious background of parliamentarians over the years. Corresponding to the secularization process shown above, is there a trend towards a lower number of parliamentarians with a religious background? To study this, the religious backgrounds of parliamentarians were coded and a comparison has been made between the religious background of parliamentarians in 1980, 1995 and 2010.[87] The bar chart below shows the results of this analysis. The most important is the purple-colored bar, which shows the number of religious parliamentarians as a share of the total number of parliamentarians. We see a significant decline from 56 percent, to 43.8, to 41.3.[88] Especially the decline between 1980 and 1995 is important here, where we see that a majority of the parliamentarians with a religious background becomes a minority. The step from 1995 to 2010 seems less important. However, note that the seat-share of the confessional parties –

[82] See for example "Voert de politiek een kruistocht tegen gelovigen?" (*Trouw* 3 november 2011) and "SGP worstelt met constructieve houding tegenover kabinet" (*Reformatorisch Dagblad* 25 mei 2013).
[83] "Voert de politiek een kruistocht tegen gelovigen?" (*Trouw* 3 november 2011)
[84] 'Religion stress' was the title of a book on religion in the public sphere ('Religiestress: hoe je te bevrijden van deze eigentijdse kwelgeest', Mikkers 2012). It was nominated for the Dutch 'word of the year 2012'.
[85] "Sociaal-christelijk erfgoed behouden, daar gaat het om" and "SGP en CU zijn 'christenpesten' door D66 beu" (both published in *Trouw* on January 2nd, 2013).
[86] See for example "Laat christenen zich niet terugtrekken in een hoekje" (*Reformatorisch Dagblad* 13 May 2013), "Analyse: Initiatief schrappen enkelefeitsconstructie kon niet uitblijven" (*Reformatorisch Dagblad* 8 May 2013), "Laat Christenen niet klagen, maar blijven getuigen" (*Reformatorisch Dagblad* 7 June 2013).
[87] Parliamentarians that were in office on January first in 1980, 1995 and 2010 were included. Each was coded 0 – no religion – or 1 – having a religion or being raised religiously. The information on personal and professional backgrounds is collected by the institute "Parlement & Politiek". Information on religious backgrounds is retrieved from different sources – amongst others parliamentarians themselves – but is not included if the parliamentarian specifically asks not to. A significant number of parliamentarians' biographies from this institute show therefore no information on religious background. Since it is expected that this will foremost be the case if the parliamentarian considers religious background unimportant or a personal conviction, those cases were coded as 'no religion'.
[88] A chi-square analysis was run to test for these differences. The results of this analysis show significant deviations from the expected and the actual count of religious parliamentarians per year (see appendix 9 for the results of this analysis).

represented by the grey bars – is larger in 2010 than in 1995. This shows that even though the seat-share of the confessional parties is larger in 2010 than in 1995, the percentage of religious politicians in parliament declines.

Figure 8

Religiosity in parliament



This chart is based on information from Parlement & Politiek (2013)

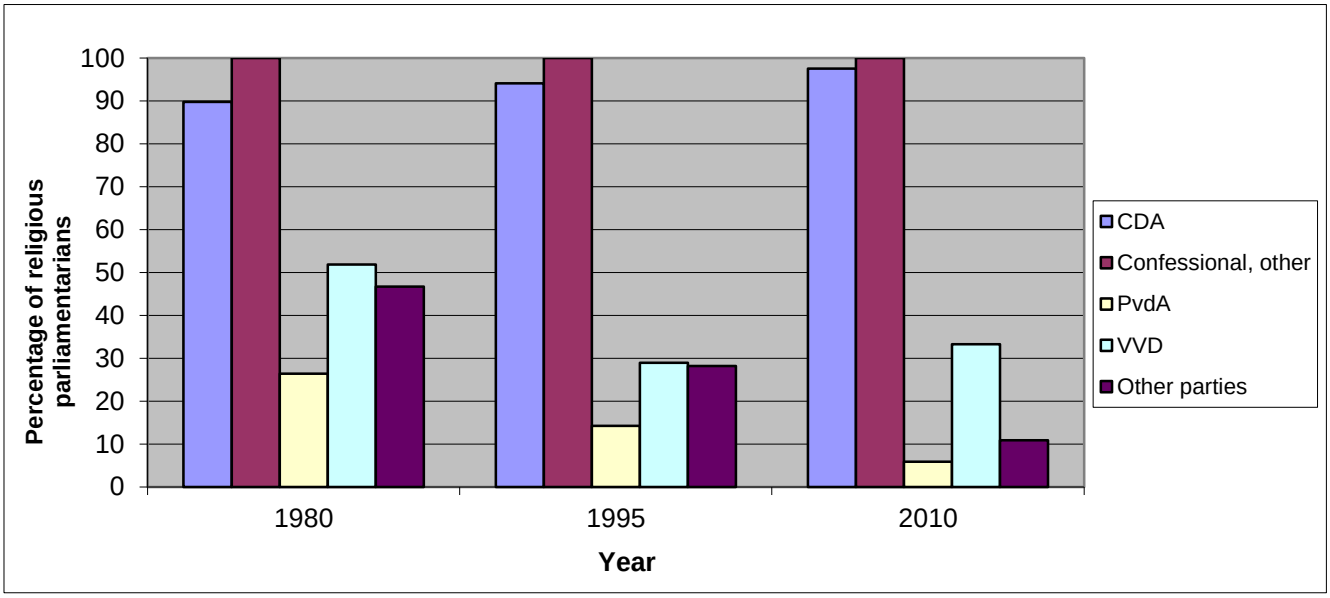
We would expect at least the parliamentarians from the confessional parties to have a religious background, the results from the analysis above imply that especially religiosity among the parliamentarians from non-confessional parties is declining. The bar chart below shows religiosity by distinguishing between parties and supports this idea. In the bar chart, we see bars for the three important political parties – Christian Democratic CDA, Labour PvdA and Liberal VVD – and two grouped categories – a category that combines the confessional parties and a remaining category for the other parties. The bars show the number of parliamentarians with a religious background from the total number of parliamentarians for this party or category.

As expected, from the bar chart below we see that for the CDA and the other confessional parties the relative number of religious parliamentarians is high: 90 to 100 percent of the parliamentarians of these parties are religious. The results for the other parties are striking. As expected, over the years we see a decrease in the number of religious parliamentarians. For the Labor Party's parliamentarians, we see a number of 26, 14, and 6 per cent for 1980, 1995 and 2010 respectively. For the Liberal Party, in 1980, 1995 and 2010 respectively 52, 29 and 33 percent of the parliamentarians had a religious background. Finally, the remaining category which includes all of the other parties showed 46, 28 and 11

percent for these years. The decrease in the number of religious parliamentarians is therefore most notable for the Labour Party and for other non-confessional parties, excluding the Liberal party. The liberal party, although it has some more religious parliamentarians in 2010 compared to 1995, shows a large difference between 1995 and 2010 compared to 1980.

Figure 9

Religious parliamentarians per party



This chart is based on information from Parlement & Politiek (2013)

These findings thus show evidence for the idea that a decreasing share of the parliamentarians from the non-confessional parties is religious. As I argued earlier in this section, it is more likely for someone to be responsive to religious claims once that person is religious himself, since having a religious background leads to a better understanding of the religious claims. Rephrased for the parliamentarians, it could be more likely for the parliament as such to protect religion if parliamentarians are religious themselves, than to protect religion if only a small part of the parliamentarians has a religious background. Therefore, if a decreasing share of the parliamentarians is religious, religion could be less protected.

An interesting issue with respect to parliamentarians and the way parliament deals with religious rights is the case of ritual slaughter. With respect to the parliamentary debates on exemptions on the animal welfare law for ritual slaughter, a ChristianUnion representative states: “When we voted for this, I thought this was *unbelievable*. That the Parliament no longer feels what it means for people if you infringe on their freedom of religion. That this is

really downplayed".[89] According to a representative of one of the confessional parties, the political discourse on this topic was exemplary for the change in the parliamentarians' background:

> Take for example the case on ritual slaughtering. The MPs have all just forgotten how our country used to be … they have forgotten that we've always been a pluralist country … having rights for all different groups. The collective memory of the parliament is just really limited … this made it possible to vote for this ban on ritual slaughtering. But in the Senate the arguments were more balanced. They know our history … [90]

Ritual slaughter

According to these representatives, the case on ritual slaughter is a specifically pressing example of a secularized society and parliament. Ritual slaughter according to Muslim and Jewish rites is granted exemptions to laws on animal rights and laws on slaughter methods, the most important exemption being on stunning the animal before the slaughter. In the Netherlands, questions on ritual slaughtering were first raised in 1922, and it has been a topic of parliamentary debates ever since. In 1922, the first national slaughtering law was introduced. This law set a general national guideline and required slaughter houses to stun cattle before the slaughter. The law made an exemption to this general requirement for slaughtering according to the Jewish rite, which requires slaughter without prior stunning of the animal (Havinga 2010: 246). When Muslim immigrants asked for similar exemptions in the 1960s, these exemptions were granted only locally until 1977, when similar exemptions were made for Muslims as well as for Jews (Dronkers 2012: 151). Since 2006, the issue attracted high attention in parliamentary debates and from the media. Based on different grounds, various claims are made in favor of abolishing this exemption. According to defenders of the exemption, an abolition of the exemption for ritual slaughtering means that there is no possibility to slaughter animals according to the Jewish or Muslim rite, and thus abolishment will limit religious freedoms.

Ritual slaughtering has been subject to debate since 1930 and gained attention in parliament from the 1960s to mid-1990s (Dronkers 2012: 151, footnote 10). During these

[89] "Dijkgraaf (SGP) en Schouten (CU) over wat hen vaak bindt en soms scheidt (*Reformatorisch Dagblad* 8 July 2013) (translation is the author's).
[90] Representative of a confessional party interviewed in May 2013 (translation is the author's).

years, the most discussed topic is the supposed cruel character of these slaughter methods (Dronkers 2012: 151). A large discussion in 1983 and 1984 concerned a European Union (EU) Directive that in order to reduce animal suffering required the immobilization of cows in case of ritual slaughter. At this point, the Dutch Labor Party and the Christian Democrats argued in their contributions to the debate that the costs for meat produced by immobilization should be limited in order for Muslims to remain able to buy and consume halal produced meat (Dronkers 2012: 152). This is in line with the argument put forward in the 1983 "Minderhedennota" [91] (*Minorities Policies*) where the government of Liberals and Christian Democrats allowed ritual slaughter because it is important for the freedom of religion of Muslims (Dronkers 2012: 152). However, not all parliamentarians agreed with the necessity of granting these rights, as becomes clear in the debate on the EU Directive on immobilization, when immigration-skeptical Centrumpartij party leader Janmaat argued against ritual slaughter. Ritual slaughter, he stated, was a medieval act and a threat to Dutch traditions (Dronkers 2012: 152). The years after this debate during the 1990s and early 2000s, the issue on ritual slaughtering was discussed a number of times in parliament, yet it did not trigger large debates.

Since 2006 the issue has attracted renewed attention. In 2006 a parliamentary question was asked on halal food in supermarkets and the Islam-skeptical Freedom Party and animal welfare defending Animal Party submitted a motion for a ban on ritual slaughtering (Dronkers 2012: 154, 155). The parties brought forward different arguments for this ban. On the one hand, the Freedom Party argued against ritual slaughter, stating that ritual slaughter is a feature of the negative effects of Islam in society. It framed the discussion on ritual slaughtering as a struggle against the Islamification of Dutch society (Dronkers 2012: 157).[92] On the other hand, the Animal Party emphasized animal welfare and the cruel character of ritual slaughter; they argued slaughtering without prior stunning to be inhumane. Even though these two parties were in favor of a ban against ritual slaughtering, the motion got only little support from the other parties and was rejected in parliament. This made the Animal Party in 2008 draft a bill itself proposing to render the act of ritual slaughter impossible.[93] The parliamentary debates on this bill were fierce. Strong arguments were made in favor of a necessary protection of animal welfare and thus in favor of a ban on ritual slaughter methods. Other parliamentarians agreed with the problems ritual slaughter yields for animal welfare,

[91] *Parliamentary documents 1982-1983, 16102, number 20-21*. Most importantly pages 111 and 186.
[92] See for example the contribution of Freedom Party party leader Wilders in *Parliamentary Proceedings 2006-2007, 30800 VI, number 115*.
[93] *Parliamentary Proceedings 2007-2008, 31517, number 1, 2, 3* .

yet emphasized the large impact a ban would have on the Muslim and Jewish community. Important advocates of this latter line of argumentation were the Christian fractions. Most importantly and to the core of their argument, they stressed that a ban on ritual slaughtering would be a too large infringement on the freedom of religion. Slaughtering according to their religious rites was important for these religious groups, and a ban on ritual slaughtering would prevent Jews and Muslims from consumption of Dutch produced meat at all. Eventually, it became clear that the majority of the parties were in favor of the bill.[94] In June 2011, the bill was passed in parliament by a large majority where the larger parties voted mostly unanimously in favor of the ban, and only the Christian Democrats, the Christian Union, the Reformed Political Party and a small number of parliamentarians from other parties voted against the ban.[95]

The topic attracted wide attention from the public, the media,[96] and interest groups.[97] Furthermore, two Dutch-Israeli organizations took the University of Wageningen to court. [98] The university had published two reports of which the conclusions mainly stated that ritual slaughter led to unnecessary animal suffering. The reports were therefore used by proponents of the ban to underline their position against ritual slaughter. The Dutch-Israeli organizations argued that the reports were both unscientific and led to a violation of the freedom of religion. The court ruled in favor of the university: it argued that there was no evidence that the reports were unscientific. Furthermore, the court stated that although the scientific reports could be used in the discussion against the freedom of religion, by the reports itself the freedom of religion was not directly at stake; even though the reports could be used to infringe upon the freedom of religion, they played only an indirect role.

The fact that the majority in parliament voted in favor of the ban did not mark the end of the debate. In the Netherlands, each law that passes parliament also needs a majority in the Senate, which reviews the soundness of the law and the consistency with other laws. In the Senate, the debate on the ban on ritual slaughter methods re-opened. Here, a number of

[94] Parliamentary debate on "Voorstel van wet van het lid Thieme tot wijziging van de Gezondheids- en welzijnswet voor dieren in verband met het invoeren van een verplichte voorafgaande bedwelming bij ritueel slachten", *Parliamentary Proceedings 2010-2011, 31571.*
[95] *Parliamentary Proceedings 2010-2011, 31571, number 98.*
[96] See for example "Rituele slacht weer ter discussie" (*NRC Handelsblad* 5 October 2012), "Nederland 'ongeschikt voor Orthdoxe Joden'" (*NRC Handelsblad* 17 October 2012), "Operrabijn stuurt boze brief aan Wilders" (*Volkskrant* 29 August 2012), "Kortenoeven, PVV stelt Joodse aanhang teleur" (*Volkskrant* 21 August 2012), "Senaat verwerpt verbod rituele slacht" (*Volkskrant* 19 June 2012).
[97] See for example http://www.nik.nl/2012/07/interreligieuze-samenwerking-rond-een-halszaak/ which discusses how representatives of the Israeli and Jewish community are cooperating with representatives of the Muslim community against a ban on ritual slaughtering.
[98] LJN BR0659.

fractions that had voted in favor of the ban in the parliament, argued against the ban in the Senate, mostly arguing that the ban was a too large restriction of the rights of minority groups and an unjustifiable large limitation of the freedom of religion.[99] Following this debate, the bill was rejected by the Senate with 51 votes against, and 21 votes in favor of the ban.[100]

From this case we thus see the trend over time towards less protection of religion by parliament, at least from the House of Representatives. The exemption on ritual slaughter was established as early as in 1922 and was questioned throughout the years, but never led to large debates. Only since 2006 a large debate emerged which eventually led to large support in the House of Representatives for the Animal Party's bill to abolish the exemption. The increased focus on civic integration triggered the discussion. The Freedom Party's arguments focused on the barbaric acts of ritual slaughtering methods, and pointed out that in a civilized country such acts should be banned. It is interesting to note that the Freedom Party which held until this point pro-Israel attitudes, challenged with the ban on ritual slaughtering the Jewish communities as well. This is because a ban on ritual slaughter according to the Muslim rite would by definition also lead to a ban on slaughtering according to the Jewish rite. Jewish organizations raised those issues, yet this did not change the Freedom Party's view. Thus, it seems that the discussion on Islam allowed for a skeptical stance towards exemptions to the law for all religious groups. Based on this, it seems that a focus on assimilation of Muslim explains part of why the issue of ritual slaughter attracted large attention between 2006 and 2011. However, what seems even more important in explaining this interest in the issue is the extended focus on animal welfare. Over the last twenty years, awareness on animal welfare largely increased (Webster 2008). The bill in parliament on a ban for ritual slaughtering was drawn by the representative of the Animal Party – which itself can be seen as a result of this increased focus on animal welfare –, and most of the discussion in parliament focused on the effects of ritual slaughter on animal welfare. Furthermore, the parties – except for the Freedom Party – supported the bill arguing that animal welfare had gained increased attention in society and that therefore abolishing the exemption for ritual slaughter was necessary. Thus, the discussion mostly focused on whether the ban would justify the restriction of the freedom of religion it implied. Therefore, the increased awareness on animal rights explains most of the support for the bill.

[99] "Voorstel van wet van het lid Thieme tot wijziging van de Gezondheids- en welzijnswet voor dieren in verband met het invoeren van een verplichte voorafgaande bedwelming bij ritueel slachten", *Proceedings of the Senate 2011-2012, 31571, number 12.*

[100] "Stemmingen in verband met het voorstel van wet van het lid Thieme tot wijziging van de Gezondheids- en welzijnswet voor dieren in verband met het invoeren van een verplichte voorafgaande bedwelming bij ritueel slachten", *Proceedings of the Senate 2011-2012, 31571, number 33.*

In the discussion in the House of Representatives, most parliamentarians stated that indeed animal welfare justifies this restriction. However, as stated above, the Senate did not follow this balancing of rights in the same way as the House of Representatives. Instead, it argued a restriction of the freedom of religion was certainly not justified by a small increase in animal welfare. Most of the arguments did not focus on how the right of ritual slaughter was a feature of Islam or Islamization. Instead, they dealt with the weighing of the freedom of religion against other rights, as here animal welfare, with religious rights in general. In the House of Representatives, the majority supported the bill emphasizing animal welfare, and only the confessional parties argued against it. On the other hand, in the Senate, in addition to the senators from the confessional parties, a large number of the senators from non-confessional parties voted against the bill as well. Therefore, it seems that a retreat of multiculturalism and an increased focus on civic integration explains why the debate was triggered and got initial support. However, a changing perspective of the parliamentarians explains the largest share of this change towards less room for religious rights.

Again, in this case, we see how parliament – at least the House of Representatives – attached more value to other rights, at the expense of religious rights. Despite a long tradition of exemptions for ritual slaughter, the majority in the House of Representatives voted against it. In this case, the role of the court was less pronounced. Only at one point they were included, where the role of the court could be interpreted somewhat opposed to, but is certainly not clearly against religion. It becomes clear that parliamentarians play a large role in the protection of religion. We can recall from earlier in this chapter, that we can expect that the protection of religion will mostly depend upon the confessional parties, since a decreasing number of the parliamentarians from the non-confessional parties have a religious background. This became also clear in the case-studies on the conscientious objecting state registrar and on ritual slaughter respectively: the confessional parties tend to protect religion, while the non-confessional parties do not. In this respect, it will be important to study the role of the confessional parties in parliament. Their position in politics over time seems to be especially relevant in explaining a declining protection of religion. This is the topic of the next section.

De-pillarization and a decline of the Christian Democratics

The argument presented above emphasizes the position of parliamentarians: a majority in parliament which does not have a religious background is argued to be less responsive to the

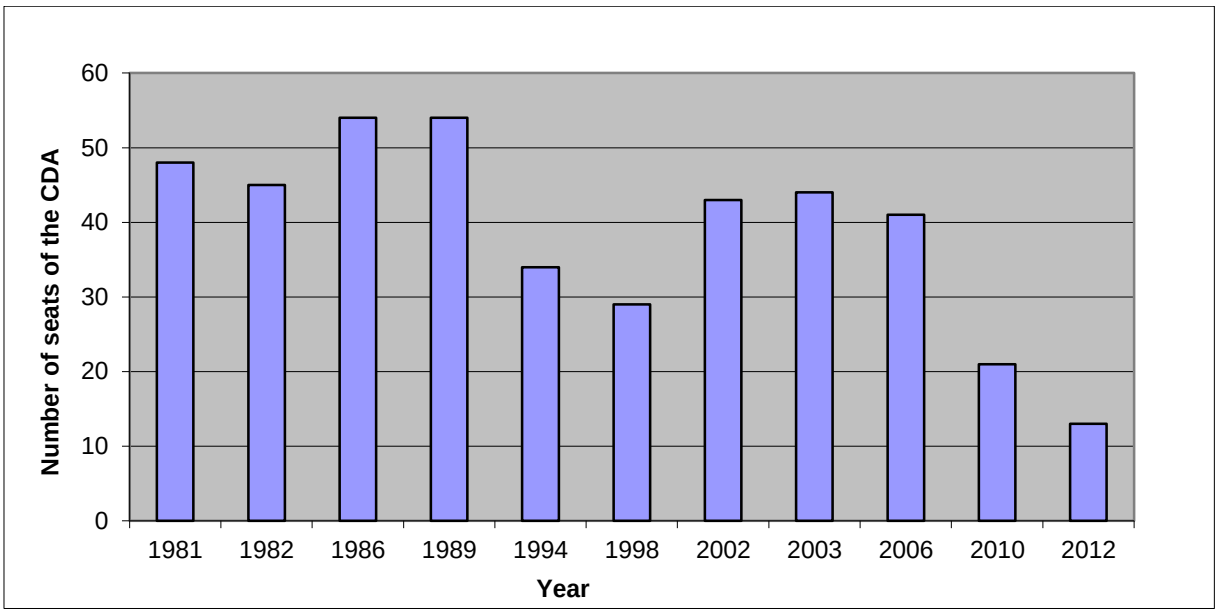
rights of religious groups. In the former section we saw that the parliamentarians from the non-confessional parties are less religious today compared to 1995, and were less religious in 1995 compared to 1980. The protection of religion will thus for a large part depend upon the influence of the confessional parties, both in seat-share and in their participation in governing coalitions. However, the position of the confessional parties in parliament is no longer ensured: they can less directly count on a stable vote-share, since the direct link between being religious and voting for a religious party has declined (Norris and Inglehart 2004: 196-212).

In the Dutch case it is also important to point out the process of de-pillarization. This process started in the 1960s, became most prevalent during the 1970s and 1980s, and is according to some still taking place (Monsma and Soper 2009: 59-63). We can recall from the first chapter that the Dutch era of pillarization included a separation of society into different spheres: a liberal, socialist, Calvinist, Dutch-Reformed and Catholic pillar, and that the lives of the people were largely organized within these pillars. As a result of secularization and other societal developments such as education and the introduction of modern media, pillarization started to break down. The traditionally separated spheres of Dutch society declined, and the close links between the aspects of one specific sphere and a specific newspaper, schools, labor union and political party, declined. In sum, a process of de-pillarization in all aspects of society took place. This resulted in a less direct relation between a voter's social background and the party he would vote for. Whereas during times of pillarization people largely voted for the same party throughout their lives, there is more voter volatility today. This also became apparent for the confessional parties, where in the Netherlands "voting by religion has fallen precipitously" (Monsma and Soper 2009: 60). Today, only 44 percent of those that consider themselves religious vote for a confessional party (Coumans 2009: 93, 94). Thus, the process of de-pillarization created a less automatic share of the votes for the political parties in general, but more specifically also for the confessional parties. This became prevalent in the decline of the largest confessional party, the Christian Democratic CDA. The CDA and its forerunners[101] were important parties, both in seat-share and in their participation in governing coalitions. However, over the years since 1994, the party's role has become less significant, as is shown in the bar chart below.

[101] In 1980, the reformed CHU, the Calvinist ARP, and the Catholic KVP merged into the newly formed CDA.

Figure 10

Seat-share of the CDA in parliament between 1981 and 2012



The total number of seats in parliament is 150 (see Appendix 10 for the table on which this chart is based).

From the bar chart above, we see fluctuating bars but a general trend towards a lower number of seats. We see a sharp decline in 1994 and 1998, an increasing trend until 2003 and again a sharp decline since 2006. In terms of the seat-share in parliament, the processes of secularization and de-pillarization during the 1960s to 1980s did not seem to affect the CDA (Lucardie 2004: 160, 161). Eventually in 1994, the influences of de-pillarization and secularization became apparent (Lucardie 2004: 176), when the party lost 20 seats in parliament[102] – out of 150 – and again in 2010 and 2012 when it moved from 41 to 21 to 13 seats. Furthermore, whereas coalitions before 1994 always included the CDA, in 1994, the CDA was excluded from the coalition. As a result, and for the first time in Dutch parliamentary history since 1918, there was no confessional party included in the coalition. Instead, a 'Purple' government of Social-Democrats and Liberals formed (Lucardie 2004). The exclusion of the CDA was generally seen as a large shock, and a threat to confessional politics in the Netherlands.[103] Between 2002 and 2010 the party was again included in the coalition, but in 2012 a marginalized CDA has been excluded once again

[102] At this time, the Reformed Political Party firmly stated that "secularization was taking its toll" (Van der Vlies in Meijering 2012: 201).

[103] The 'Purple' cabinet which was in place between 1994 and 1998 and 1998 and 2002, was a coalition of three non-confessional parties: the Liberal VVD, the Labour PvdA and the progressive-Liberal D66. It was the first time in Dutch parliamentary history since 1918 that none of the Christian parties was included in the cabinet and it is therefore often seen as a break with the past. It introduced a number of important progressive policies that

The fact that the CDA plays a smaller role in parliament can be partly explained by the process of secularization; we see that the general trend of secularization corresponds to the general decline of the CDA. However, this comparison cannot explain why there were less votes for the CDA in 1994 and 1998, and again an increased number of votes between 2002 and 2006. Although secularization explains parts of the decline of Christian-Democracy, there is no linear relation (Van Kersbergen 2008: 275). If we assume that secularization is a larger process behind the decline of the CDA, what can explain the ambiguous trend over time? Meijering emphasizes the background of the party over the years. He notes that the drop in seat-share of the CDA in 1994 and 1998 and the coming into power of the Purple government indicated no radical break with the past. Rather, it was part of rather a longer-term development in which the CDA was no longer a specific Christian party and in which voters no longer voted for the party because of religious reasons (Meijering 2012: 203). Van Kersbergen (2008) shows that the recovery of the party between 2002 and 2006 is mostly explained by the party's strategy with respect to the multiculturalist discontent where its non-critical approach to the popular anti-immigration party and the assassination of said party's party leader Fortuyn in 2002, led to a large number of votes for the CDA. This is underscored by Meijering, who argues that the revival of the CDA between these years is not explained by its Christian background, but by other political developments (2012: 207).

Thus, whereas during times of pillarization – religious – parties could count on a steady share of the votes, this is much less the case today. Even though there is no distinctly direct relation between secularization, de-pillarization and the decline of the CDA, the automatic vote-share for the party has become at least less clear and less certain. How does this relate to the protection of religion? The answer to this question mostly lies in the way in which the CDA is connected to the protection of religion. In this respect, the newspapers (see footnotes 80 to 84) and an interviewee stressed how the Purple cabinets were a threat to the protection of religion. Furthermore, he argued that today's political atmosphere is similar to that during the Purple cabinets; again, the secular coalitions challenged a large number of religious freedoms. Thus, in a coalition in which none of the confessional parties are included, the protection of religion is less secured. Consequently, even though the CDA attracted its votes in 2002, 2003 and 2006 for other reasons than its Christian background, its higher seat-share still protected the rights of religious groups. A decline of the CDA thus results in a lower protection of religion.

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probably would not have been possible with a Christian party in the coalition, as the law on euthanasia, the law on homosexual marriage and laws on abortion.

The decline of the CDA can further explain the case on the conscientious objecting state registrar. As was discussed in chapter 2, the restriction of this state registrar's freedom was explained by a stronger focus on non-discrimination and equality. Yet, it was only possible to pass a law restricting the room for conscientious objecting state registrars when the confessional parties no longer played an important role in politics. Only with the CDA having lost most of its voters and with a secular government in place, there was the opportunity for those aiming to restrict the freedom of the state registrar to refuse solemnizing same-sex marriages. The importance of the position of the confessional parties is illustrated in the discussion on the Equal Treatment Act, and the increased emphasis which parliament seems to place on equal treatment, at the expense of the freedom of education.[104] An increased focus on Equal Treatment at the expense of the freedom of religion and education was already apparent earlier in the 1990s but it was only possible to codify when the role of the confessional parties was further diminished. The parliamentary discussion on this topic followed the case of a homosexual teacher and a primary school with an Orthodox-Protestant denomination. In this case, parliament again showed to be mostly skeptical of religious rights. The court, although arguing against religion in this specific case, seems to leave some more room open for a decision in favor of religion.

This case is even more important because of the importance of the freedom of education for religious groups. The representatives of the confessional parties interviewed for this thesis stressed the high value of freedom of education. They argue that restricting freedom of education has a huge impact on their right to give expression to their lives according to their belief. Moreover, passing on convictions, beliefs, and traditions to the next generation through the schools is considered to be very important. One of the interviewees even considered this specific right to be more important than almost any other issue dealing with the freedom of religion. Therefore, it will be interesting to look at the protection of the freedom of education over time.

An orthodox-Protestant primary school and the single fact of homosexuality

The Orthodox-Protestant school in this case wanted to dismiss a homosexual teacher. The school considered the choices of the teacher to be incompatible with the school's religious principles and argued that the teacher was no longer able to carry out the school's religious ideology and identity. The mere fact of one's homosexuality can be no ground for selection.

[104] The single fact construction is a specification of the Equal Treatment Act. See chapter 1.

The school has to show that there are other facts that make that the teacher can no longer carry out the school's identity. Accordingly, the school argued that there were such additional facts which could legally justify the dismissal. The teacher was homosexual and had also divorced his wife, moreover, he had started living together with a man and had widely disseminated his case in the media. The school argued these facts to be enough grounds for dismissing the teacher. However, the teacher thought of his dismissal as conflicting with the Equal Treatment Act. He argued that his homosexuality and living together with a male partner does not prevent him from complying with and adhering to the school's principles. Furthermore, he states that divorcing his wife and living together with a man are part of the mere fact of being homosexual. Since being homosexual is in itself not enough reason to be dismissed, he argued that there were not enough grounds for the school to dismiss him.[105]

The court ruled in favor of the teacher where it mainly argued that the single fact of homosexuality is no justification for dismissal. It recognizes that additional facts and a more complicated situation can provide legal grounds for dismissal, yet rules that neither a rejection of the school's principles is present in this case, nor are there other additional facts that render it impossible for the teacher to adhere to the strict Reformed ideology. Although the court recognizes the exemption the law provides for private schools, it argues that this case falls within the scope of the single fact construction and therefore judges against the dismissal of the teacher. Thus, the court argued that a dismissal cannot be justified and states that the school should rehire the teacher. However, the court leaves some space open, since it argues that at the time of the court case, no dialogue had been taken place between the teacher and the school. Such a conversation could have clarified if there were indeed additional facts that would render it impossible for the teacher to genuinely disseminate the school's ideology and it could have given more insights if it was in fact impossible for the teacher to return to the school.

The court's ruling in this case of the homosexual teacher drew attention of parliament[106] and in the media.[107] The case raised discussions from within the orthodox-

[105] LJN BU3104

[106] Parliamentary Questions by MP Marcouch (PvdA) to the minister of Education, Culture and Science on the impending dismissal of a homosexual teacher on a Reformed school (30 September 2011).

[107] Amongst others, "Homoseksuele leraar vecht ontslag aan" (*Nieuwsuur 29 september 2011*), "Homoleraar vecht zijn ontslag aan" (*Volkskrant* 30 September 2011), "Homoleraar vertrekt alsnog bij gereformeerde school" (*Volkskrant* 14 December 2012), "Basisschool mag homo niet ontslaan" (*NRC Handelsblad* 3 November 2011), "Niet afschaffen, wel inperken" (*NRC Handelsblad* 23 December 2011), "Schilderschool mag homo niet ontslaan" (*Nederlands Dagblad* 2 November 2011).

Protestant community who claimed that religious rights were violated.[108] They, and as a part of this community also the school, argue that when a teacher does not live according to the Bible and according to the rules and norms this type of Protestantism proclaims, he cannot reasonably be disseminating the school's ideology any more. For them, homosexuality can be no reason to select on, however, the teacher's act of divorcing his wife, 'practicing' the homosexuality by living together with a man and the fact that he sought wide media attention are clear additional facts. According to the school, these led to a legal justification for dismissing the teacher. However, all these aspects that the school deemed additional facts fell according to the court within this 'single fact' of homosexuality. In a response, the Reformed Political Party's party leader stated that "apparently a large number of facts fall within the single fact construction".[109] The spokespeople in the newspaper argue that it is curious that the court argues all these aspects to fall within the single fact of being homosexual.

In sum, from this case it becomes clear that the 'single fact construction' is open to multiple interpretations. It led to discussions on what exactly falls within this single fact. Finally, the court's decision seems somewhat ambiguous as well, when it argues that a further dialogue between the school and the teacher should yield more insight in whether the teacher actually cannot disseminate the school's conviction any more. It seems that such a dialogue could have led to the additional facts. Yet, since the case ends here, a definite answer does not become clear from this case.

Whereas the court seems to leave room for a future different ruling, the political discourse on this topic suggests a different development. The case on this specific homosexual teacher led to parliamentary questions but was not further discussed in parliament. However, highly relevant here is the debate on the 'single fact construction', as part of the Equal Treatment Act. Already with the parliamentary discussion on the introduction of the Equal Treatment Act in 1994, representatives of the Christian community were skeptical of this law; they were critical on what the introduction of this Act would mean for religious freedoms.[110] The main arguments from the smaller Christian parties in the parliamentary debate focused on the limitation and restriction the Equal Treatment Act would mean for the freedom of religion and the freedom of education. However, proponents of the

[108] "Advocaat over homozaak: Ruimte voor identiteitsbeleid seksuele moraal heel beperkt" (*Reformatorisch Dagblad* 2 November 2011), "Zorgen na vonnis homodocent Oegstgeest" (*Reformatorisch Dagblad* 3 November 2011).
[109] "Zorgen na vonnis homodocent Oegstgeest" (*Reformatorisch Dagblad* 3 November 2011).
[110] For example MP Leerling (Reformed Political Federation) argues that the "… Equal Treatment Act further restricts the freedom of religion", *parliamentary debate,1993-1994, 22 September 1993*. Parliamentary discussion on the implementation of the Equal Treatment Act. Also contributions to the parliamentary debate of *9 February 1993*, Parliamentary discussion on the implementation of the Equal Treatment Act.

new law argued that it provided a better protection of individual rights, that it would help to go against discrimination, and that it would render a necessary balancing of the constitutional provisions of non-discrimination and the freedom of religion and the freedom of education.

The non-confessional parties advocated an Equal Treatment Act prohibiting any type of discrimination on the basis of political opinion, race, sex, nationality, heterosexual or homosexual orientation, or marital status. However, the Act was further specified with adding a clause that this was only prohibited on the *single fact* of these features. As becomes clear from the parliamentary debates, this further specification of the Equal Treatment Act with non-discrimination on the 'single fact' was then actually a concession to the Christian parties, to make the law more acceptable to them and to provide a way for the private schools to still be able to have their staff and student policy in accordance with their religious principles. [111] Since then, stating that the Act would prohibit discrimination on the single fact of these features, allowed discrimination on *additional facts*. In adding the clause on the single fact, the Equal Treatment Act was more lenient towards claims by the Christian parties on the freedom of religion and of education. Thus, although the specification of constitutional provision on non-discrimination in the Equal Treatment Act was a restriction of the freedom of religion and the freedom of education, the elaboration of this Act with the single fact construction allowed somewhat more room for religion than would have been the case without the construction.

The single fact construction was widely discussed already during the parliamentary debates on the implementation of the Equal Treatment Act. For the time being, it provided somewhat room for religion. However, almost twenty years since the implementation of the Equal Treatment Act, a bill was proposed to abolish the single fact-construction.[112] Although at the time of writing of this thesis no parliamentary debate has been held on this bill, it seems that a majority of the parliament will vote in favor of the abolition of this part of the Equal Treatment Act.

What are the implications of this amendment for the freedom of religion and the freedom of education; in other words, what does this mean for the room society leaves for religion? Most importantly, and as is also argued by the Council of State, it means that the

[111] P*arliamentary debate,1993-1994, 22 September 1993*. Parliamentary discussion on the implementation of the Equal Treatment Act. Also contributions to the parliamentary debate of *9 February 1993*, Parliamentary discussion on the implementation of the Equal Treatment Act.

[112] Voorstel van wet van de leden Bergkamp, Venrooy-Van Ark, Yücel, Jasper van Dijk en Klaver tot wijziging van de Algemene wet gelijke behandeling in verband met het annuleren van de enkele-feitconstructie in de Algemene wet gelijke behandeling

freedom of religion is restricted, in favor of non-discrimination.[113] The balancing of the different constitutional provisions is decided more in favor of non-discrimination, at the expense of the freedom of religion and freedom of education. However, to what extent this will be different in practice from today, is open for debate. Remarkable here are the words of the Reformed Political Party's party leader Van Der Staaij, when he argues in response to the court ruling on the homosexual teacher that considering that the court does not see a number of important issues as 'additional facts',[114] the single fact construction is already irrelevant.[115] This would indicate that the single fact construction as a part of the Equal Treatment Act in 1994 was only included to respond to religious claims. Today, with the confessional parties in parliament further marginalized, it would be possible to abolish the single fact construction and codify the Equal Treatment Act in the way the non-confessional parties aimed to introduce the Act in the first place. The freedom of education was restricted in 1994, and is likely to be further restricted today. In 1994, the Equal Treatment Act was opposed by the smaller Christian parties, yet supported by the other parties, including the larger Christian Democrats. Those opposing argued that the Act restricted the freedom of religion. The same will probably be the argument and the distribution of the parties when voting for the amendment of the Equal Treatment Act in abolishing the single fact construction. Although it remains to be seen what the position of the Christian Democrats is in this debate, the percentage of seats shared by the Christian parties including the Christian Democrats is marginalized and their vote will therefore not be expected to be of much importance.

The most promising explanation for a restriction on the freedom of education as becomes apparent in the court's interpretation of the single fact, and as becomes clear from the discussion in parliament on abolishing this single fact construction, seems to be the lower relevance of the confessional parties. In the debates on the Equal Treatment Act, the CDA's opposition and the contributions from the smaller Christian parties which emphasized the large impact the Equal Treatment Act would have on the freedom of education and on the freedoms of other religious organizations, led to the inclusion of the single fact construction in the Equal Treatment Act. The Equal Treatment Act was finally implemented in 1994, when

[113] See "Advies van de Raad van State en reactie van de indieners", *Parliamentary Papers 2012-2013, 32476, number 5*, "Voorstel van wet van de leden Bergkamp, Venrooy-van Ark, Yücel, Jasper van Dijk en Klaver tot wijziging van de Algemene wet gelijke behandeling in verband met het annuleren van de enkele-feitconstructie in artikel 5, tweede lid, artikel 6a, tweede lid, en artikel 7, van de Algemene wet gelijke behandeling.
[114] Van der Staaij argued that the teacher was not only homosexual, but also divorced his wife and had started to live together with a man. The teacher furthermore disseminated his case in the media.
[115] "Zorgen na vonnis homodocent Oegstgeest" (*Reformatorisch Dagblad* 3 November 2011).

the non-confessional parties had a historic first time majority in parliament and when the CDA – or its fore-runners – was for the first time since 1918 no part of the coalition.

In sum, secularization, a declining number of parliamentarians with a religious background, and the decline of the CDA seem to be important variables in explaining the increased discussion of principled pluralism. On the one hand, secularization as such could be important. When only a minority of the people and of the parliamentarians is religious, parliamentarians can feel less receptive to religious claims. In this respect, an important development occurred in parliament; whereas a large share of the parliamentarians from non-confessional parties used to have some religious background, this is less so today. This could make the protection of religion a strictly confessional party's issue. Consequently, with the decline in seat-share by the CDA – due to secularization and de-pillarization but also to other political developments –, religious rights are less protected.

Conclusion

The Dutch system of principled pluralism is in decline. We see a trend towards a lower protection of religion over time: whereas religion used to be largely protected, this is much less the case today. This decline is pronounced the most in parliament. The parliamentary discussions on religion are largely different today compared to before, both with respect to the frequency with which religion was discussed, as well as with respect to the nature of the discussions. Religion is much more discussed in the 2000s, compared to the 1980s and 1990s, and more parties take part in debates on religious issues. Furthermore, the nature of the discussions changed where the parliamentary discussion in the 2000s dealt with much more contentious topics, which were more fundamental in nature. In addition, debates in the 2000s were most often about a restriction of religion, whereas debates in the 1980s mostly dealt with extending additional rights to religion. These findings support existing arguments in the literature on the supposed decline of the Dutch system of principled pluralism.

Contrary to existing research, this thesis found that for the courts this trend towards a lower protection of religion was much less clear. Analyses of the Human Rights Institute showed that the court decided against and in favor of the protection of religion today, as much as before. There is thus a sharp division between the declining trend for parliament, and a path for the court which remains unchanged. The case-studies conducted for this thesis also provide grounds for these different trends. For parliament, time and again, we saw an attack on the system of principled pluralism. In all cases, parliamentarians showed to be critical of the religious freedoms. This became clear in the parliamentary questions or discussions within parliamentary committees (e.g. the case of the Catholic school), by parliamentary debates (e.g. the conscientious objecting state registrar, the single fact construction), or by a – widely supported – motion (e.g. ritual slaughter). On the other hands, for the court this trend was less clear. Whereas the court decided in favor of religion in some cases (e.g. in case of the Muslim girl attending a Catholic school), it decided against religion in other cases (e.g. in case of the Reformed Political Party and its withholding of women's passive voting rights). The protection of institutionalized religion by the court was most exemplary illustrated in the case of a Muslim student with a headscarf who attended a Catholic school. In this case, at first the Human Rights Institute decided in favor of the student. Eventually, the court, even though it seemingly could have decided otherwise, decided in favor of the school, and thereby in favor of the freedom of education.

Focusing on the trend for parliament, two main important processes could explain the decline in the Netherlands as a system of principled pluralism. The first explanation deals with a retreat from multiculturalism. The retreat from multiculturalism led to an emphasis on liberal values and civic integration, and to a focus on assimilation of immigrants, as opposed to recognition of special religious rights. As a result of this increased focus on civic integration for Muslims, the rights of religion in general are challenged. If society aims to restrict rights for one specific group, similar restrictions should apply to other religious groups. This led some of the interviewees to argue that Christians and Jews are the – unintended – victims of the retreat of multiculturalism. Cases which illustrate this are the court case on the Dutch Orthodox-Protestant political party where the party was forced to admit women to run for the party, and the case on the conscientious objecting state registrar. These findings correspond to what is argued by Joppke (2009) that as a result of the retreat of multiculturalism, religious rights in general are questioned.

The second explanation lies in how processes of secularization, de-pillarization and the related demise of the Christian-Democratic CDA explain why parliamentarians today are in general less receptive to religious claims on special rights. We saw that there is a decreasing number of religious parliamentarians for the non-confessional parties. The protection of religion therefore becomes almost solely the confessional parties' undertaking. However, secularization and de-pillarization led to a less steady vote-share for the largest confessional party, the CDA. The decreasing importance of the Christian Democrats explains why there is a political opportunity to actually challenge religious freedoms in parliament. In the wake of a declining role of the Christian Democrats in the Dutch political system, we therefore see a decline in the protection of religion. The parliamentary debates on the single fact construction illustrated this. At a time when the Christian Democrats had lost most of their influence, it was possible for other parties to gain sufficient support to abolish this construction, therefore leading to a restriction of the freedom of education. These findings are a more specific elaboration of how secularization leads to a decline in the protection of religion and they thereby add to the theories that argued more generally that secularization leads to a lower protection of religion.

Both processes explain different aspects of the decline in the protection of religion, and both are therefore important in explaining the trend towards a lower protection of religion. In one case, the case on ritual slaughtering, we saw influences of both processes at work: whereas a retreat from multiculturalism triggered a critical discussion on ritual slaughtering practices, the decrease in the number of parliamentarians that are familiar with

religion and with religious pluralism led to the eventual large support for a ban on ritual slaughtering in the House of Representatives. In the case of the conscientious objecting state registrar we saw a similar process, where the wish to take measures against this state registrar was motivated by a larger focus on liberal values, but where marginalization of the CDA led to the opportunity to codify a law forbidding state registrars to discriminate upon sexual orientation.

In sum, the conviction in the Netherlands that there is no neutral government and that therefore religious ideas should be protected as much as secular ideas, seems to be losing ground to a system where liberal ideas are the point of departure. This leads to a system where equal treatment and non-discrimination are gaining importance, at the expense of the freedom of religion. It can be concluded that most importantly in explaining this trend, which is particularly pronounced for parliament, are the retreat of multiculturalism, secularization and the demise of the CDA.

The discussion on the general trend towards a lower protection of religion for parliament and the equivocal development for the court is based on a large number of parliamentary debates and court cases. Information on this trend from these quantitative analyses was widely supported by information from the case-studies included in this thesis. The processes accounting for these developments were studied by larger-N analyses and process-tracing of a number of case-studies again largely illustrated these developments. Nevertheless, there is more information that could have been studied in order to present an even clearer picture of the protection of religion. In case of the trend for the court, the inclusion of court cases in addition to cases from the Human Rights Institute would allow for a more extensive study. In this way, the analyses could include more than the 48 cases now. Furthermore, this would allow the inclusion of older cases, and would therefore allow for studying the rulings before 1996. Including earlier years will give a more conclusive answer to whether indeed there is no trend for the court towards a lower protection of religion. Secondly, future research could continue the study of the two explanations for the decline in the protection of religion, in order to determine the exact influence of each of them. This could yield more insights into whether in general an increased focus on civic integration is the moving force behind the discussion on an issue, and the demise of the confessional parties provides the opportunity to actually pass new legislation on the topic, restricting the room for religion. Finally, similar trends and explanations could very well explain trends on the protection of religion in other European countries. Processes of secularization, a changing status of Christian democracy and a retreat from multiculturalism are similarly at work in

other Western-European countries: and these could therefore also influence the protection of religion in these countries. The same could be the case for the distinct role between parliament and the court. To what extent this is the case, should be the emphasis of future research.

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Appendices

Appendix 1 Overview of cases by the Human Rights Institute dealing with religion

Case	In favor of religion[116]? (0=no, 1=yes)	Year	Case-number	Details
Christian school vs. applicant	1	2013	2013-36	
Barber school vs. student with headscarf	1	2012	2012-133	
CHE vs. RK docent	1	2012	2012-126	In favor of school, not RC-teacher
Catholic school vs. public school	0	2011	2011-211	
School vs. non-hand shaking teacher	1	2011	2011-139	
Barber school vs. student with headscarf	1	2011	2011-130	
Christian school vs. applicant	0	2011	2011-102	
School vs. headscarf student	1	2011	2011-95	
Christian schools vs. Muslim applicant	1	2011	2011-74	In favor of school, not teacher
School vs. headscarf student	1	2011	2011-39	
School vs. non hand shaking student	1	2011	2011-7	
School vs. Muslim applicant	1	2011	2011-6	
Muslim girl vs. Catholic school	0	2011	2011-2	In favor of student, not school
Headscarf student vs. school	0	2010	2010-78	
Applicant vs. RC school	1	2008	2008-121	
RC school vs. future student	0	2008	2008-112	
Jewish student vs. university	1	2008	2008-4	
School vs. intern	0	2007	2007-153	
Student vs. school	0	2007	2007-53	
Headscarf teacher vs. school	0	2007	2007-39	too little information
Shaking hand vs. public school	1	2006	2006-221	
Shaking hand vs. public school	1	2006	2006-220	
School vs. headscarf student	1	2006	2006-144	
School vs. applicant	1	2006	2006-128	
Christian school vs. Muslim teacher	0	2006	2006-93	In favor of teacher, not school
School vs. headscarf student	1	2006	2006-70	
School vs. handshaking	1	2006	2006-51	
Muslim school vs. non-headscarf wearing teacher	0	2005	2005-222	
Barber school vs. headscarf student	1	2005	2005-104	
Christian school vs. employee	0	2005	2005-102	
Reformed school vs. teacher	1	2004	2004-168	
School vs. teacher	1	2004	2004-160	
School vs. mother with headscarf	1	2004	2004-95	
School vs. headscarf teacher	0	2004	2004-87	
Christian school vs. teacher	0	2003	2003-114	
School vs. student dancing lessons	0	2003	2003-80	too little information

[116] In cases where both parties rely on the freedom of religion, 'in favor of religion' is understood as institutionalized religion. This means that for cases in which a student bases himself on religious grounds stands against a private school, the case is coded '1' when the Institute ruled in favor of the school and '0' if the Institute ruled in favor of the student

School vs. students with niqaab	0	2003	2003-40	
School vs. student	1	2003	2003-38	
RC school vs. Muslim teacher	1	2001	2001-116	in favor of school, not teacher
School and Muslim student internship	1	2000	2000-75	
Reformed school vs. teacher	1	2000	2000-67	
Muslim students vs. public school	0	2000	2000-51	
Muslim student vs. school	0	1999	1999-106	
School vs. Muslim students	1	1999	1999-76	
Muslim student vs. school	1	1998	1998-79	
Catholic university vs. homosexual students	0	1997	1997-135	
Employer vs. Jehovah's witness	1	1997	1997-46	
Reformed school vs. teacher	1	1996	1996-39	

Appendix 2 Number of rulings on religion of the Human Rights Institute per year

Year	Number of cases	In favor of religion (1=all, 0=none)	Total number of rulings HRI
1996	1	1	119
1997	2	0.5	149
1998	1	1	152
1999	2	0.5	112
2000	3	0.66	101
2001	1	1	150
2002	0	0	204
2003	4	0.33	166
2004	4	0.66	179
2005	3	0.33	245
2006	6	0.86	261
2007	3	0.1	224
2008	3	0.66	160
2009	0	0	129
2010	1	0.1	197
2011	10	0.7	215
2012	2	1	204

Appendix 3 Correlation analysis between year and Human Rights Institute ruling in favor or against religion

Pearson correlation between year and cases in favor of religion

		FavorReligion	Year
FavorReligion	Pearson Correlation	1	.054
	Significance		.716
Year	Pearson Correlation	.054	1
	Significance	.716	

Appendix 4 Overview of key words in parliamentary documents

Times in which key words appear in parliamentary proceedings per year: frequencies in absolute numbers

Year	Religion'	God'	Christelijk'	Islam'	Muslim'	church and state'	Freedom of education'	Parliamentary Proceedings total
1975-1976	14	74	70	1	13	5	38	5950
1976-1977	11	45	64	3	2	3	22	5099
1977-1978	10	45	54	5	1	6	11	5538
1978-1979	22	74	71	7	7	12	19	7052
1979-1980	22	74	67	14	11	8	41	8321
1980-1981	13	58	69	6	9	8	48	7795
1981-1982	46	123	73	3	1	9	71	7570
1982-1983	26	64	68	18	8	16	39	7851
1983-1984	21	92	73	11	8	24	43	9051
1984-1985	16	67	87	11	11	17	46	9543
1985-1986	13	64	87	6	10	11	35	8412
1986-1987	12	73	71	7	8	20	28	7685
1987-1988	17	53	73	15	4	19	45	8061
1988-1989	19	63	63	15	14	8	53	8114
1989-1990	23	65	61	11	15	11	47	7447
1990-1991	30	78	53	14	12	7	54	8069
1991-1992	25	52	71	23	15	10	72	7954
1992-1993	15	45	46	20	45	12	44	8163
1993-1994	18	46	53	18	29	7	33	7791
1994-1995	16	46	91	14	44	6	44	7914
1995-1996	27	44	112	25	53	11	41	9613
1996-1997	48	47	119	23	37	22	41	10094
1997-1998	36	48	141	36	49	11	41	10422
1998-1999	28	42	114	19	43	14	22	9531
1999-2000	44	46	132	30	59	24	31	10492
2000-2001	48	47	130	35	61	27	37	10351
2001-2002	55	66	98	60	80	23	62	10589
2002-2003	50	50	86	50	111	38	28	9732
2003-2004	100	55	150	140	157	58	55	13010
2004-2005	118	46	120	126	212	45	47	13965
2005-2006	108	34	127	100	194	30	38	14265
2006-2007	93	37	117	105	199	58	47	13172
2007-2008	142	58	166	170	309	49	50	17374
2008-2009	219	85	194	189	344	90	62	18055
2009-2010	140	89	156	106	224	52	68	16351
2010-2011	136	51	164	124	208	38	56	17247
2011-2012	139	68	172	117	153	33	56	18791

Times in which key words appear in parliamentary proceedings per year: frequencies in percentages

Year	Religion	God	Christian	Islam	Muslim	Church and state	Freedom of education
1975-1976	0.24	1.24	1.18	0.02	0.22	0.08	0.64
1976-1977	0.22	0.88	1.26	0.06	0.04	0.06	0.43
1977-1978	0.18	0.81	0.98	0.09	0.02	0.11	0.2
1978-1979	0.31	1.05	1.01	0.1	0.1	0.17	0.27
1979-1980	0.26	0.89	0.81	0.17	0.13	0.1	0.49
1980-1981	0.17	0.74	0.89	0.08	0.12	0.1	0.62
1981-1982	0.61	1.62	0.96	0.04	0.01	0.12	0.94
1982-1983	0.33	0.82	0.87	0.23	0.1	0.2	0.5
1983-1984	0.23	1.02	0.81	0.12	0.09	0.27	0.48
1984-1985	0.17	0.7	0.91	0.12	0.12	0.18	0.48
1985-1986	0.15	0.76	1.03	0.07	0.12	0.13	0.42
1986-1987	0.16	0.95	0.92	0.09	0.1	0.26	0.36
1987-1988	0.21	0.66	0.91	0.19	0.05	0.24	0.56
1988-1989	0.23	0.78	0.78	0.18	0.17	0.1	0.65
1989-1990	0.31	0.87	0.82	0.15	0.2	0.15	0.63
1990-1991	0.37	0.97	0.66	0.17	0.15	0.09	0.67
1991-1992	0.31	0.65	0.89	0.29	0.19	0.13	0.91
1992-1993	0.18	0.55	0.56	0.25	0.55	0.15	0.54
1993-1994	0.23	0.59	0.68	0.23	0.37	0.09	0.42
1994-1995	0.2	0.58	1.15	0.18	0.56	0.08	0.56
1995-1996	0.28	0.46	1.17	0.26	0.55	0.11	0.43
1996-1997	0.48	0.47	1.18	0.23	0.37	0.22	0.41
1997-1998	0.35	0.46	1.35	0.35	0.47	0.11	0.39
1998-1999	0.29	0.44	1.2	0.2	0.45	0.15	0.23
1999-2000	0.42	0.44	1.26	0.29	0.56	0.23	0.3
2000-2001	0.46	0.45	1.26	0.34	0.59	0.26	0.36
2001-2002	0.52	0.62	0.93	0.57	0.76	0.22	0.59
2002-2003	0.51	0.51	0.88	0.51	1.14	0.39	0.29
2003-2004	0.77	0.42	1.15	1.08	1.21	0.45	0.42
2004-2005	0.84	0.33	0.86	0.9	1.52	0.32	0.34
2005-2006	0.76	0.24	0.89	0.7	1.36	0.21	0.27
2006-2007	0.71	0.28	0.89	0.8	1.51	0.44	0.36
2007-2008	0.82	0.33	0.96	0.98	1.78	0.28	0.29
2008-2009	1.21	0.47	1.07	1.05	1.91	0.5	0.34
2009-2010	0.86	0.54	0.95	0.65	1.37	0.32	0.42
2010-2011	0.79	0.3	0.95	0.72	1.21	0.22	0.32
2011-2012	0.74	0.36	0.92	0.62	0.81	0.18	0.3

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[117] Until the parliamentary year 1994-1995 numbers are retrieved from http://www.statengeneraaldigitaal.nl. Since the parliamentary year 1994-1995 numbers are retrieved from https://zoek.officielebekendmakingen.nl/zoeken/parlementaire_documenten. For 1994-1995 number from both databases are added. There is searched for all kinds of parliamentary documents (parliamentary papers, parliamentary proceedings, parliamentary questions) and for both the senate and the parliament.

Appendix 5 Correlation matrixes between key words and year

Correlation matrix

	Year
Year	1
Religion	.782*
God	-0.813*
Christlijk	.081
Islam	.844*
Muslim	.864*
ChurchState	.615*
FreedomofEducation	-.307

**. Correlation is significant at the 0.01 level (2-tailed).

N=37

Appendix 6 Parliamentary proceedings in which 'religion' is mentioned

Parliamentary year	Issue[118]	Times religion mentioned	Which party
1980-1981	Christian holidays as days-off	3	VVD
(N=6)	Arab boycot and KLM non-Israel affiliation employee form	7	DS70, PvdA, VVD, CPN
	Short reference to religion in Afghanistan in relation to debate on the Olympics	1	DS70
	Debate on decentralization, democratization vs religious groups and organizations' exemptions to the law	1	PSP
	Debate on abortion	2	VVD
	Received document on freedom of religion	1	x
1985-1986	RPF MP asking if the authorities are still placed under God	3	RPF
(N=2)	VVD responds to private television being called a religion	1	VVD
1995-1996	Debate on *bijzonder onderwijs*	1	D66
(N=6)	Debate on equal representation in an advisory board	1	GPV
	Debate on womenquotas in school boards	3	VVD, SGP, CDA
	Short reference on training soldiers in recognizing other cultures	1	D66
	Developing countries and cultural and religious differences	4	SP, PVDA
	Yugoslavia	1	CDA
2005-2006	Sharia law	9	D66
(N=17)	Working hours and Sunday working hours	4	GL, SGP
	Schooling	6	SGP, CU, CDA, PvdA
	Freedom of expression	91	all
	Media and religion	3	LPF, CDA
	Religion classes at public schools	1	LPF
	Article 23	2	SGP, VVD
	Budget foreign affairs: religion and development	7	CU, CDA
	Budget foreign affairs: religion and development	12	CU, CDA
	Budget foreign affairs: religion and development	9	Cda, D66
	Turkey and EU	3	CDA
	Statistics Netherlands appointment no discrimination on religious grounds	1	CDA
	Religion and terrorism	3	D66
	Attendance of Ramadan celebration by Balkenende	4	CDA
	Trust in society	2	CDA
	Religion	1	CDA
	Religion and trust	2	CDA, CU
2010-2011	Discrimination short reference	1	GL

[118] Information retrieved from https://zoek.officielebekendmakingen.nl/zoeken/parlementaire_documenten. Searched for 'religion' [religie] in parliamentary proceedings ['handelingen'].

(N=20)	Motions related to AO 14 June 2011 on human rights and freedom of religion and expression	5	CDA
	religion and acceptance of homosexuality	2	motions
	ritual slaughtering	67	all
	unimp	1	
	on human rights institute	1	GL
	place of embassy in israel	3	voorzitter, CDA
	unimp	1	Cda
	Israel, religious minorities, settlements	2	CDA
	amongst others freedom of religion	11	SGP, PvdA, PVV
	question to minister	1	VVD
	religious based violence (towards homosexuals)	4	SGP, CU
	religion <-> individual freedoms	1	GL
	religious motivated violence and Islam converts to Christianity	5	SGP, CU
	unimp	2	PvdA, CU
	private schools	2	CU, D66
	unimp	1	SP
	Islam as religion or political ideology, freedom of expression & insult on basis of religion	10	VVD, CU, GL,
	Islam as religion or political ideology	6	PvdA, SGP, CU, SP
	Religion as a characterization in student document	3	D66, CDA,

Appendix 7 Parliamentary proceedings in which 'freedom of education' is mentioned

Parliamentary year	Issue	Times Freedom of Education is mentioned
1980-1981 (N=10)	discussion on member's bill on obligatory parent-teacher association (PTAs, *medezeggenschapsraad*) in primary schools. the effect of PTAs on *bijzonder onderwijs* is questioned	15
	discussion on member's bill on obligatory parent-teacher association (PTAs, *medezeggenschapsraad*) in primary schools. the effect of PTAs on *bijzonder onderwijs* is questioned. Exception for *bijzondere scholen*	10
	Discussion amongst others if freedom of education only counts for religious denominations or as well for pedagogical groups	7
	Discussion on costs for bijzonder onderwijs. VVD minister argues freedom of education is an important Dutch acquirement + education for all, politics should not decide if children attend private or public schools	7
	The freedom of education in the new constitution	5
	discussion on member's bill on obligatory parent-teacher association (PTAs, *medezeggenschapsraad*) in primary school where D66 and the PvdA argue for democratization of primary schools. Christian parties argue this limits the freedom of education	4
	discussion on member's bill on obligatory parent-teacher association (PTAs, *medezeggenschapsraad*) in primary school where D66 and the PvdA argue for democratization of primary schools. Christian parties argue this limits the freedom of education	3
	SGP mentions protection of freedom of education	1
	PvdA mentions in discussion	1
	Junior ministers mentions freedom of education in discussion	1
2010-2011 (N=8)	Junior minister responds to question on monitoring schools	1
	D66 MP on monitoring InHolland vocational college in relation to freedom of education	1
	VVD states it will not support a limitation of article 23 during this government term + weak performing schools cannot hide behind freedom of education	5

Open enrollment for primary schools (i.e. in addition to public schools, private schools cannot refuse students to the school, as long as the parents respect the school's religious principles)	9
ChristianUnion mentions it once	1
Questions to the prime minister on the coalition agreement. Amongst others on open enrollment and the single fact construction. GroenLinks accuses governing party VVD of secretly talking to the SGP	13
Speech on the coalition agreement. Freedom of education is guaranteed	1
Discussion on open enrollment and single fact construction	15

Appendix 8: Parliamentarians and their religious backgrounds

The religious background of parliamentarians per party in 1980, 1995 and 2010

	1980			1995			2010		
Party	**Parliamentarians**	**Religious**	**%**	**Parliamentarians**	**Religious**	**%**	**Parliamentarians**	**Religious**	**%**
CDA	49	44	89,8	34	32	94,1	41	40	97,6
Confessional parties, other	4	4	100	7	7	100	8	8	100
PvdA	53	14	26,4	35	5	14,3	34	2	5,9
VVD	27	14	51,9	31	9	29,0	21	7	33,3
Other parties	15	7	46,7	39	11	28,2	46	5	10,9

The relative number of religious parliamentarians and the number of parliamentarians from confessional parties

Party	1980	1995	2010
CDA	89.8	94.1	97.6
Confessional parties. other	100	100	100
PvdA	26.4	14.3	5.9
VVD	51.9	29	33.3
Other parties	46.7	28.2	10.9
Total percentage religious	56.1	43.8	41.3
Number of parliamentarians from confessional parties	53	41	49

Appendix 9: A chi-square analysis on religious parliamentarians in 1980, 1995 and 2010

			Year			
			1980	1995	2010	Total
Religious 1 (yes) or no (0)	0	Count	65	82	88	235
		Expected Count	78.3	77.3	79.4	235.0
		% within Year	43.9%	56.2%	58.7%	52.9%
	1	Count	83	64	62	209
		Expected Count	69.7	68.7	70.6	209.0
		% within Year	56.1%	43.8%	41.3%	47.1%
Total		Count	148	146	150	444
		Expected Count	148.0	146.0	150.0	444.0
		% within Year	100.0%	100.0%	100.0%	100.0%

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[119] Note that the total number of parliamentarians differs; it shows 148, 146 and 150 parliamentarians respectively. This is due to the fact that the parliamentarians are counted on one date (the first of January for each year) instead of per term.

Appendix 10: Seat-share of the CDA in percentages since 1981

	1981	1982	1986	1989	1994	1998	2002	2003	2006	2010	2012
%	30.8	29.4	34.6	35.3	22.2	18.4	27.9	28.6	27.3	13.7	8.5
seats	48	45	54	54	34	29	43	44	41	21	13

[120]

[120] The information for the years 1981 to 2003 are adapted from the table in Lucardie (2004: 161). The election years 2006 to 2012 are based on Nordsieck (2012).