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Associational governance as a promising alternative

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Political Participation of Organised
Religions in Europe**

**Associational Governance as a
Promising Alternative**

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Standing Committee for the Social Sciences (SCSS)
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Dilemmas of Institutionalisation and Political Participation of Organised Religions in Europe. Associational Governance as a Promising Alternative

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Abstract

This article portrays the institutionalisation of religion as a conflictive, two-way process that involves many actors and is influenced by differential opportunity structures. Institutionalisation entails promises but also poses risks for religions, religious minorities, and governments. Religious newcomers are drawn into lobbying and coalition building, and conflictive processes of 'negotiations cum deliberations' are an unavoidable side effect of this. All regimes of governance imply serious strategic problems for religions. The first problem is how to deal with the trade-off between autonomy and privileges on the one hand, and political influence on the other (the autonomy dilemma). Legal privileges along with fiscal and monetary 'gains' for religions, go hand in hand with 'losses' in the formal autonomy of religions and with increases in state regulation and control. The second problem concerns how to deal with issues inherent to institutionalisation (the organisation and mobilisation dilemma). Both problems involve further complications for liberal-democratic states. According to the author, associative democracy offers a sensible balance between individual and associational autonomy, and also between equality before the law and more substantive equality. This option seeks to institutionalize procedures of external review and evaluation at regular intervals for the renewal of both grants and the legal status of privileged organizations after accreditation. The most important effect of putting systems of public scrutiny and control in place is that working in the shadow of hierarchy stimulates pro-active self-control considerably. Proposals like these allegedly offer better balances between competing principles for national systems of cooperation and for emerging supra-national regimes of religious governance in the EU.

This work begins with a brief analysis of my understanding of institutionalisation (section 1), which depicts it as a conflictive, two-way process. This process involves many actors and is influenced by differential opportunity structures (section 2). It includes promises, but also poses risks for religions, religious minorities in particular (section 3) as well as for governments (section 4). Contrary to separationist rhetoric, all existing liberal states 'define', 'register', 'recognize' and 'finance' (organised) religions in one way or another,

whatever their official regimes of religious governance. As examples, I discuss the empirical patterns of Muslim representative organisations in several European states and the USA (section 5), before drawing normative conclusions from the tradition of associational governance, since none of these patterns seems to provide appropriate solutions to the many dilemmas of institutionalisation (section 6).

Claims-making, organisation, negotiations and selective co-operation

New (immigrant) religions are ‘here to stay’. The long-term presence of new religions creates processes of institutionalisation in every polity regardless of the respective regimes of governance. Newcomers *raise claims* to have their divergent religious practices permitted in private, semi-private and public organisations. They have to *organise* (e.g., in local mosque associations) and to come up with representatives or spokespersons in order to raise such claims effectively, and they have to negotiate with the managers of the respective organisations and with public administrators in neighbourhoods and municipalities. The capability to negotiate requires answers to questions such as: who is negotiating? Who is he/she representing? How representative are the spokespersons, interlocutors and organisations? How binding are the concessions, compromises and agreements that have been reached? (Bader 1991: 241f; Kreienbrink and Vardar 2010:9f) These external pressures on the organisations, their leadership and mobilisation increase if their claims are not smoothly accommodated but instead are strongly resisted, especially if they are asking for the adaptation and change of implicit or rule-guided organisational and administrative customs and practices. In addition, the organisation and leadership of newcomers tends to become more stable and structural with time, as is the case with conflicts that last for a longer period of time.

Some claims (e.g., building mosques, holding funeral ceremonies or using cemeteries) require exemptions from the rules and regulations by the local public administration (zoning, building, parking and cemetery requirements) and induce a shift on the part of their addressee from private corporate governance to public government. They also require immunities from state and federal laws, which is more obvious in the case of claims for exemptions in taxes, labour law (see Bader, Alidadi et al. 2013), military conscription, general admission rules (for ministers of religion), and to changes in anti-discrimination law and/or blasphemy law. This induces a tendency to develop more centralised or umbrella organisations (from neighbourhoods to the municipal, state, and federal levels of government). It also contributes to the politicisation of the claims-making process - its organisation, leadership and mobilisation,¹ particularly if these claims are resisted, as is normally the case with exemption claims. This is much more so with the claims to respect and symbolic significance of religious newcomers, and with the claims to participate at the political core of the debates on decisions and rules. Centralisation and politicisation are reinforced by the counter-mobilisation of old religions, nativists as well as aggressive secularists. Increasingly, religious newcomers are drawn into lobbying and coalition building, and into traditional pluralist politics, whether they like it or not. Conflictive processes of ‘negotiations *cum* deliberations’ are an unavoidable side effect in

¹ Both tendencies are stronger in states with dense and deep systems of legal regulations (as in the Netherlands) but can be softened by practices of condoning instead of strict law enforcement (always only attempted).

processes of claims-making that arise quasi-spontaneously.² Eventually, as conflicts and negotiations become routine, mutual expectations regarding the ways and means of interaction, representative organisation, and minority leadership, as well as some minimal trust between the parties, emerge in all states independently of their regimes of government (Bader 1991, Chapter X.4). Both processes are neither purely spontaneous nor are they isolated from external impacts. They are strongly influenced by two clusters of variables.

First, new religious minorities do not act from scratch. Their claims, and also their ways of organising and mobilising, their strategies and actions ‘in politics’, are influenced by their respective doctrinal and organisational traditions. The organisational structure of religions shows huge variations in terms of formalisation, centralisation, hierarchy, democracy/autocracy and leadership. Christian church(es) differ from the Buddhist *sangha*, the Islamic *umma* and mosques, Hindu temples, Jewish councils and synagogues, and from formally unorganised religious leadership in ‘tribal’ religions. Furthermore, within Christendom, the spectrum ranges from the pole of the highly formalised, centralised, hierarchical, autocratic and international Roman Catholic Church, through Orthodox and Lutheran or Anglican (Episcopal) national churches to fairly decentralised, radical Protestant congregations and informal sects. These organisational differences are related to differences of strategy and action repertoire: from militant proselytising by military force to strict non-violence, civil disobedience and *satyagraha*. Less formalised, centralised and hierarchical structures seem to be less capable of representative and effective negotiation, deliberation and compromise. These types of religious communities (e.g., Muslim communities) are seduced and pressured into developing central or umbrella associations and leadership, particularly in pluralist regimes of religious governance. In addition, these processes within the states are not neatly separated from the ‘rest of the world’. They are increasingly international (Levitt: “God needs no Passport”), particularly under conditions of ‘glocalisation’. This is especially the case with universalist religions that are internationally organised (such as the Roman Catholic Church, the Anglican Church or the Pentecostals) or have global pretensions (such as the ‘unorganised’ and officially ‘leaderless’ Islamic *umma*, backed by some ‘Muslim states’ like Saudi Arabia). However, this also applies to traditionally parochial and formally unorganised ‘tribal’ (Tully 2003) and ‘new age’ religions inspired by Hindu and Buddhist traditions. Internationally organised or oriented religions, and some foreign states, have interests and also the means by which to influence processes in other states. Together, these differences in internal structure and international organisation and orientation help explain why new religious minorities show divergent patterns of organisation, mobilisation and institutionalisation *within the same state*.

Secondly, the patterns of claims-making, organisation, negotiation and selective co-operation are strongly influenced by divergent regimes of religious governance and by differences in the general structure of societal and political opportunity. This helps explain why *the same religious minority organises, mobilises and acts differently in different states* (for Muslims in different European countries and the US, see section 5). Incorporation of religious minorities in all its dimensions inevitably includes many actors, but most prominently the states, on various levels.³ All minimally decent states have an interest in

² See Bader 2007, Ch. 5 for the different types and stages of claims-making.

³ See Bader 2007a; empirically Koopmans and Stratham 2000; for Muslim leaders in Europe: Klausen 2005.

guaranteeing smooth public administration, public order, security and toleration, and also in preventing violence and conflict escalation (policing religions). In addition to these general ‘reasons of state’, states with liberal-democratic constitutions should have (and to different degrees they do have) an interest in guaranteeing the basic rights of all residents and at least minimally ‘civilising and democratising’ their citizens through appropriate policies.⁴ These state interests also work in favour of having a minimum of regular negotiation and national institutionalisation.

Differential opportunity structures; selective recognition and co-operation

One dimension of opportunity structures consists of the prevailing normative models of religious governance, constitutional models in particular. Roughly I distinguish three different varieties of ‘*establishment*’ of religion(s) –strong establishment, weak establishment and plural establishment– from two main varieties of *non-establishment* - non-constitutional pluralism (NOCOP) and non-establishment cum private pluralism (NEPP).⁵ Weak establishment, plural establishment and NOCOP are models of religious institutional pluralism or ‘selective cooperation’; NEPP is a model of strict separation of state and (organised) religions. In this article I focus only on NOCOP and NEPP as the normatively most promising models and compare them with my preferred realist utopia: associative democracy (AD).

Irrespective of divergent models or regimes of religious government, *no liberal state can avoid ‘recognising’ religions administratively* and/or in legal or jurisprudential practice to a certain degree (see Bader 2007, chapter 1.3.3.3 to 1.3.3.5). In deciding whether individual claims to exemptions should be granted, they all have to deal with the nasty question of ‘defining’ religions⁶ either by legislation or jurisdiction. In deciding whether religions or related organisations should be granted tax exemptions, states use thresholds in terms of minimal numbers of adherents and minimal duration and stability, and they do so regardless of whether these administrative practices are governed by legal rules and judicial control, as they should be in liberal states, or not. If states grant faith-based organizations (FBOs) public money in healthcare (as all liberal states do), or in education (as most states do), these contested thresholds in terms of numbers, territorial concentration of clients/students, organisation, credibility and duration of service providers are usually and inevitably much higher.

Irrespective of countervailing ideologies and normative ‘models’, the emerging pattern of selective (administrative, legal and judicial) recognition of religions and of selective institutionalised co-operation in all liberal-democratic states involves *two normative problems*, which should be openly acknowledged by all, instead of being myopically used as weapons against defenders of NOCOP or AD. First, legal privileges, fiscal and monetary ‘gains’ for religions go hand in hand with ‘losses’ in formal autonomy

⁴ This should be clearly distinguished from ‘securitization’ and ‘integration’ or ‘social cohesion’ under the spell of imposed assimilation (see below).

⁵ See Bader 2007, chapter 7 and 2007a for the problems of designing models.

⁶ See Bader 2012:6-11 for my criticism of Christian, monotheistic or theistic bias, and also for dissolving religion in purely subjective beliefs or in ‘culture’ (for the latter see my exchange with Prakash Shah on the RELIGARE website).

or with increases in the corresponding standards of state regulation and control (from fiscal accountability to the application of liberal-democratic standards of non-discrimination). Second, the increase in privileges for religions is inevitably tied to increasing minimal thresholds, which work to the disadvantage of very small, new religious minorities, even if this is not intended to be so. States try to counteract this unintended effect by explicit minority policies.⁷

These problems are sharpened by pluralist regimes (including AD) that provide opportunities for religions to participate in the setting of standards, the implementation and control of services, selective co-operation with governments, and some formal representation in the political process, particularly at national and supra-state levels. Such regimes are characterised by very demanding systems of public recognition of religions - e.g., as *Körperschaften öffentlichen Rechts* (public corporation) in Germany, an extreme case- and by higher thresholds of institutional interest intermediation. Moreover, they considerably increase the demands on religions to develop more centralised and representative structures than those needed for lobbying in civil societies and politics.

Dilemmas and strategic problems for religions

All regimes, but especially institutionally pluralist ones, pose serious strategic problems for religions in general and for religious minorities in particular. The first dilemma is how to deal with the trade-off between autonomy and privileges on the one hand, and political influence on the other (the *autonomy dilemma*). The second refers to how to deal with problems inherent to institutionalisation (the *organisation* and *mobilisation dilemma*).

Ultra-orthodox Christians and Jews want to be left alone completely, hoping to achieve maximum *autonomy* by not asking for any privileges except those involved in being left alone. They only end up going to court, and organising and mobilising when states do not guarantee the required exemptions. The strictest possible 'separation of state and religions' tenet has also been propagated by Protestant Free Churches and by sects in a historical context of established churches, and have experienced massive state interference into core doctrinal issues and internal organisation. Today, all states with liberal-democratic constitutions claim to respect 'church autonomy' (as a misleading but short term for 'autonomy of -organized- religions') and actually do so in different ways, which has softened the autonomy dilemma considerably (see Bader 2007, chapter 1.3.3.4). It is also common practice that religions are free (as they should be) in their choice of whether to ask for registration, legal and judicial recognition or for the more demanding public recognition needed for exemptions or additional privileges. Still, the choice is difficult because increasing privileges and opportunities of co-operation go hand in hand with more demanding criteria of recognition and more opportunities for governments to legitimately interfere with practices (Ferrari 2005: 7f), but also with clearly more illegitimate ways if governments try to impose their own 'liberal' and 'democratic' definitions to the respective religions. Honesty demands us to state at the outset that institutionally pluralist regimes

⁷ See Bader 2007 chapter 1.3.3.3 for this 'pyramidal pattern' of privileges and corresponding regulations. The scale runs from non-registration, non-recognition and non-establishment to establishment in terms of highest/lowest formal church autonomy. It is superimposed by the pyramidal pattern of selective and gradational co-operation in 'selective co-operation' countries (slightly different from Ferrari 2005: 7).

pose some serious dangers for religions, such as external pressure to adaptation, calculability, moderation, heightened internal control and disciplining of members and constituency, and even intervention in contested core issues of religions. This all makes the choice more troublesome. Moreover, the choice is even more exacting for new and small religions because there is a greater chance that governments and administrations (having accommodated the practices of old religious majorities, or even seeing them as ‘neutral’) will define these ‘strange’ religious practices as illegitimate or illegal, and also because small religions may need more exemptions and positive privileges as they have less power to resist illegitimate state interference (Robbins 1987: 145).

All religions have to face the *dilemmas of organisation*, leadership, centralisation and institutionalised co-operation that are already known from the study of social movements (Bader 1991, chaps. VII and VIII.3). If religions want to reap the benefits of registration, legal and judicial recognition and material and political privileges, and if they want to be politically effective in public and in negotiations on all levels of government, they need to develop effective and representative organisations and leadership. This is especially true for new religious minorities because they have to challenge established power balances and routines. Yet, organisation, leadership and centralisation come at a price. Formal organisation implies tendencies of bureaucratisation (organisation costs, the material interests of functionaries, tendencies to conservatism, ritualism and rigidity) and oligarchisation (difficulties to control the illegitimate power and domination of leaders).⁸ This explains why more communal, congregational and democratic religions (e.g., radical Protestantism) are more critical and reluctant compared with Episcopal, hierarchical and autocratic churches, but they also have to address the trade-off with political clout. Lobbying central governments or supra-national polities increases the demand for religions to develop federal and even supra-national representational structures. This demand, again, is much stronger in institutionally pluralist systems. One way in which religions can respond is by organisational centralisation, which promises to overcome the negative effects of competition between denominational organisations and leaders within one religion: internal conflict instead of co-operation; lower degree of information, communication, and co-ordination; the lack of a minimal agreement in terms of issues, opinions, decisions and action; ritualised battles amongst organisations and leaders; dogmatic struggles over the ‘purity’ of the doctrine and the respective ‘purification’ and essentialisation of religion.⁹ These effects, which are well known from the radical Protestant denominational model, are highlighted by traditional theories and are used in external strategies of ‘divide and rule’ by opponents. The optimal response would then be the organisational model of the “*una sancta Catholica et apostolica ecclesia*”, the Roman Catholic Church representing all Catholics in all issues on all levels in all countries.

⁸ See Bader (1991: 243-46) for criticism of the respective ‘iron laws’ and the illusions of the one-best organisational model that would fit all contexts. Large churches like the Roman Catholic, Lutheran or Anglican are clearly more vulnerable to these tendencies.

⁹ Given the serious structural power asymmetries that exists between (secular or religious) majorities and minorities, how can religious minorities prevent reactive essentialism (i.e. the purification of cultures or religions) and the silencing of dissenting voices, without being prey to the ‘divide and rule strategies’ often successfully used by majorities (and ‘their’ state)? This is indeed a structural dilemma for all minorities (Bader 1991, chapter 10) that cannot be resolved by ‘strategic essentialism’ (Bader 2001: 264ff). This dilemma exists in all regimes of government of religious diversity but is sharpened by corporatist institutions and by the wrong, rigid variety of multiculturalism policies (see my criticism; Bader 2013a:39f), sharply criticised by Baumann, Hollinger or Barry (see Bader 2006b for criticism).

However, organisational centralisation also has its serious downside (ignored by Pfaff and Gill 2006), and competition between organisations and leaders has often neglected its positive effects. Within an organisation, competition tends to stimulate higher participation of members and more democratic opinion and decision-making, as well as the capacity to adapt, learn and innovate. Between organisations and leaders of the same religion, competition prevents the control and monopolisation of the religion by one organisation; it allows higher degrees of organised heterogeneity of the religion and at the same time more specialisation and internal unity of the competing religious organisations. It also tends to broaden and deepen the involvement, motivation of believers and the base of mobilisation, and it increases the capacity for innovation and adaptation. In this regard, a model of a loose federal association of independent organisations, like the Board of Jewish Deputies in the UK, seems to be more appropriate, although it may be difficult to transplant at the international level. The higher up and the more diverse the constituency and its organisations in terms of doctrinal differences or even cleavages, and in terms of ethnic and national composition, the more difficult is the co-ordination and effective and legitimate representation. In addition, institutionalised co-operation confronts religions with a structural *mobilisation dilemma*: how to save the benefits of institutional pluralism (secure rights, legal and public recognition, public money, co-operation and some representation in the political process) without the usual losses of initiative, motivation, spontaneity and activism by the religious constituency and the members on which the mobilisation potential and the power position of the organisations are based. The difficulty in finding workable solutions for this dilemma (the practical version of Weber's *Veralltäglichung des Charisma* – 'routinization of Charisma') is vividly demonstrated by the different historical waves of evangelisation in opposition to established, bureaucratised Protestant churches, or by the mobilisational power of recent Pentecostalism, compared with stuffy, saturated Anglican churches.

Dilemmas and strategic problems for liberal-democratic states

These problems of religions are mirrored by serious dilemmas and strategic problems for liberal-democratic states. Again, no one best solution is available. These types of states (as all states that want to *guarantee security, public peace and order*) have to choose a context-dependent mixture of policies of persuasion, positive or negative sanctions, or repression, which may have counterproductive effects. In addition, liberal-democratic states are restrained in their means by the rule of law, due process and constitutionally guaranteed civil and political rights and freedoms of communication. The inherent tension between security and public order and these constraints increases dramatically under conditions of (real or imagined) emergency, as the recent internal and external 'war on terrorism' painfully reminds us.

In guaranteeing 'smooth administration', the choice is between a government that is separated as far as possible from all 'interest groups' (including religions) on one side, and governance - selective and gradual co-operation with relevant stakeholders, including religions - on the other side. State definition of rules and standards, implementation and control may at first sight promise better rule compliance, accountability and control. However, this is confronted with serious problems of efficiency and effectiveness, which increase dramatically in complex matters where governance promises much better results.

Yet, governance has problems in living up to a traditional understanding of the rules of law and democracy.

The task of the liberal state in *guaranteeing the basic rights* of all citizens and residents, particularly those of vulnerable minorities, requires external intervention in cases of serious violations (see Bader 2007, chapter 4.4 and 4.5). Systems of selective registration and legal recognition of religions seem to provide better chances here, compared to strict ‘separation’ and absolute autonomy, ‘complete deference’ or libertarian ‘leave them alone’ models, although the former systems cannot resolve the difficulties in cases of small, formally unorganised sects.

Systems and policies of selective financing and co-operation that apply more demanding liberal and democratic standards may increase the chances of illegitimate state intervention in the core of religions (Bader 2007, chapter 4.3) and they are vulnerable to charges of unequal treatment. On the one hand, policies to finance and co-operate with the more ‘civilised’, liberal and moderate religious organisations may contribute to stem radicalisation and religious fundamentalism. However, they may also backfire because the external influence in the development of religious minorities may be seen as illegitimate (assimilationist, colonialist, domesticated, etc.). The ‘moderate’ organisations and leaders may be accused of being traitors, and the excluded organisations may radicalise. On the other hand, systems and policies of ‘absolute separation’ – no public money or privileges in education and healthcare, for houses of worship, religious instruction in schools or the education of Imams – may also contribute to radicalisation and fundamentalism. This is particularly so if they are (or are seen) to be unfairly excluding only certain new, ‘strange’ religions like Islam(s), if their individual and associational religious freedoms are partly infringed, and if accommodation of their legitimate religious practices is absent, reluctant or delayed. If governments do not provide money and assistance, foreign states and international fundamentalist or jihadist networks are eager to do so and actually finance mosques, madrassas and Imams. If public money and assistance is not provided as a regular part of the policies of incorporation of minorities, but only as a delayed reaction to perceived or actual processes of segregation and radicalisation and with the explicit intent of ‘liberalising and democratising’ the ‘Muslim community’ (as, most prominently, in France), the chances of de-legitimisation of ‘collaborating’ religious associations (‘domesticating’ or ‘normalization’) and of radicalisation of the excluded ones are much higher.

Systems of selective co-operation depend on and stimulate the emergence of representative organisation(s) and leader(s) on national and supra-state levels, and even otherwise fairly separationist countries initiate such processes for reasons of counterinsurgency or state-imposed ‘integration’. Here, the policy choice is either to wait until these structures develop more or less spontaneously from below, or try to organise the process from above through direct state policies intended to externally initiate, stimulate, influence and steer these processes, or to mix these options (Silvestri 2010:47). The disadvantage of the first option is that self-organisation may be completely blocked by internal doctrinal, ethnic and linguistic differences, cleavages, organisational rivalry and leadership competition. In the meantime, it may take a very long time, with no representative organisations or leaders for administrations to co-operate with. The disadvantages of the second option is that the whole process may be seen as an illegitimate external imposition, that it provides states with chances to intervene in core matters of

religious belief and practice, incompatible with religious freedoms and autonomy, that it massively contributes to internal splits and cleavages, and that it de-legitimises ‘collaborating’ ‘moderate’ or ‘liberal’ organisations and leaders. In addition, neither options guarantee that such collaborative branch will win, instead of the more traditionalist or conservative organisations and leaders.

Representative Muslim organisations in Europe and the USA

The diverse patterns of the emergence of representative Muslim organisations at the national and supra-state level in Europe and the USA, very roughly summarised here, vividly demonstrate these dilemmas.

Institutionalisation of Islam in Europe

The common element of all regimes of selective co-operation is “the need to promote the constitution of an organization or a coordinating body that represents the largest possible number of the Muslim communities present in a country, independent of the religious and national currents into which they are divided” (Ferrari 2005a: 10). In those European countries in which legislation and jurisdiction on religious matters is focused at the national level, Muslim communities without an institution of this type “are condemned to remain at the edges of the system of relations between the state and the religious groups”.

In some countries, the Muslim community was recognised by law fairly early on: In the Austrian Hungarian Empire in 1912, in Poland in 1936 and in Austria in 1979. In other countries, legal recognition and actual representative organisations came much later: In Belgium, Islam was recognised in 1974 but the first elections only took place in 1998; in Spain in 1992 (Arigita 2010: 73-78), in the UK in 1997 (McLoughlin 2010:134ff), in France in 2003 (Fregosi 2010), and only partly and in a restricted way in Italy (Mantovan 2010: 102-106) and in Germany in 2006 (Bodenstein 2010:59-63).

This divergence can only be partly explained by the time and size of the respective Muslim settlements and by internal differences in the respective Muslim communities.¹⁰ It is also the result of imperial and colonial traditions (in Austria, the UK, France and the Netherlands) and of legal regimes: whether a unitary organisation is required (as in Germany and Italy), or whether a federation of independent organisations or even several independent organisations is/are accepted (as in Sweden and Norway, both unfortunately often neglected in comparisons, e.g. in Kreienbrink/Bodenstein eds. 2010). In addition, differences in state policies have a considerable impact: (i) whether governments facilitate fairly autonomous Muslim representation (as in Austria) or are more neutral and/or reluctant (as in the UK and Germany; Pfaff and Gill 2006: 814f, 820-2) or try to impose their preferred unitary pattern of representation and their preferred organization and leaders, as in Belgium, France and Italy; (ii) whether they follow pro-active policies of selective co-operation, which are part and parcel of their normal religion and/or ‘multiculturalism’

¹⁰ There are large numbers of Muslims in France, the UK, Germany and the Netherlands. Muslims in the UK came mainly from the Indian subcontinent, in Germany from Turkey, in France from the Maghreb. The density of transnational networks and ties with countries of origin differs, and states that are different from the regions of origin try to influence developments (e.g., Diyanet in Germany; Morocco, Tunisia, Algeria and Saudi Arabia in France; Morocco and Turkey in the Netherlands).

policies, or reactive policies of ‘fighting terrorism’ in isolation from (as in France) or combined with radical changes in the traditional regimes of religious government and minority incorporation (as recently in the Netherlands).

Excursus on France

French attempts to create a single, national representative Muslim body with which to negotiate and deliberate, and also draw legitimacy for the state’s decisions, may illustrate the problems of such a reactive, late, top-down approach. Since the 1980s, different Left and Right governments (from the helm of the Ministry of the Interior) tried to create such an *instance représentative* as an ‘identified interlocutor’ in three major efforts (see extensively Bowen 2006: 42-62). First, in 1989, as a direct response to the ‘Islamic threat’ symbolised by the first foulard affair and the fatwa against Salman Rushdie, Pierre Joxe set up the *Conseil de Réflexion de l’Islam de France* (CORIF) as an advisory body presided over by the rector of the Paris Mosque. It collapsed the following year. The second effort was made by Charles Pasqua, who formed a new Representative Council of French Muslims in 1995 around the *Charte du culte musulman en France*, leaving out major players like the UOIF and the FNMF. The council never had any authority or influence. The third attempt began with Jean-Pierre Chevènement’s creation of the Consultation of French Muslims in 1999 and, after laborious state crafting, eventually produced the *Conseil français du culte musulman* (CFCM) in 2003. I briefly point to some of the inherent problems.

First, these attempts show that France “is caught in a dilemma faced by most efforts to construct legitimate representation from the top down: those willing to be ‘co-opted’ are also those with the least legitimacy” (Bowen 2006: 55). Seven Muslim organisations have been entangled in power struggles for representation and leading roles in this process. Attempts by Joxe and Pasqua to privilege the Paris Mosque, and by Sarkozy to guarantee that Dalil Boubakeur, the State’s ‘favourite moderate Muslim’, would be the first President of the CFCM have been vigorously opposed and failed. Some attempts have clearly been untimely and strategically unwise.

Second, possibly motivated by the consideration that “Islam is today the only religion without a national unified organization” (*Libération*, 21 February), Sarkozy aimed to end this seemingly endless struggle for power by “devising rules for selecting members to the Council that would be at least minimally acceptable to all” and by ensuring that “the two associations with the strongest control over participating mosques (the UOIF and the FNMF) did not end up controlling the Council” (Bowen 2006: 56). Eventually, under strong time pressure and state interference, an agreement was reached about the composition of the CFCM and about electoral procedures, and the elections were held in April 2003. State administration not only initiated this process, it also financed the elections and massively influenced the procedures and composition of the Council. Still, some think that it has “*pleinement joué son rôle de médiateur et de facilitateur en veillant à ne pas exercer de tutelle*” (Sevaistre 2004: 41), and some scholars like Ferrari (2005b: 10) seem to agree.¹¹ I agree with John Bowen that this judgement seriously underestimates the second

¹¹ Like the French administration, the Belgian administration played an active role in the elections for a constituent assembly in 1998 (which then appointed an executive committee, recognised in May 1999) “creating a special commission to check the conduct of the elections, validating the results and sustaining all the costs of the election procedure”. However, in addition “over half of the members designated to take part in the executive committee

aim of the French administration and its impact on the negotiations about the composition of the Council and the electoral procedures. The roles of facilitator and mediator and the role of the interested party have not been clearly separated, and cannot be in principle. French administration indeed interpreted and used its self-proclaimed competencies in a 'Bonapartist' fashion (Terrel 2004: 71-4; Bowen 2006: 60).¹²

Last, the second main aim of the French administration has explicitly and consistently been to control and domesticate Islam, to assimilate Islam into the republic, to create a moderate, liberal and privatised 'French' Islam and to fight "the idea of a 'community' that runs counter to French Republican principles" (Jean-Pierre Raffarin, *Le Figaro* 5 May 2003), instead of allowing the free association and organisation of the different 'Islam(s) in France' on their own terms. It has been unambiguously expressed and made clear "that the State intended the CFCM to be its instrument in promoting its sort of Islam and ridding France of all other sorts". Prime Minister Raffarin ordered the CFCM to serve as "the enlightened word of French Islam to fight against deviant tendencies which could threaten social cohesion" (Bowen 2006: 62).

The French case vividly demonstrates two points. First, state interventions into the organisational structure and even more so into core matters of faith are clearly beyond the threshold of morally legitimate interference and also seem to be incompatible with the respective constitutional and legal regulations in France and with ECHR (European Convention on Human Rights, Art. 9). Second, they also conflict seriously with proclaimed state neutrality (both in the older and in the more refined recent versions of *laïcité*) and with constitutional and legal regulations on equal treatment of religious groups.

Two more general, empirical conclusions for European countries seem in order. First, the importance of the existence or absence of a national representation of Muslims (whether legally recognised or not) depends very much on the regime of religious government. The absence of a representative Muslim presence at the central level in the UK, where no form of legal registration and recognition of religious communities exists and negotiations are mainly local, is much less serious than in Italy or Germany. Here many legal and monetary privileges are exclusively granted to centrally and publicly recognised religions (with an 'intesa') and the absence of central recognition cannot be compensated for by co-operation at local or provincial (*Länder*) levels (Ferrari 2005b: 7-9).

Second, we see the emergence of three different patterns of central Muslim representation: a more 'church'-like central, unitary organisation (mainly as a result of state imposition) as in France or Belgium, a confederal association that represents the common interests of independent Muslim organisations in a co-ordinated and legally recognised way (as the Spanish *Comisión Islámica de España*; Arigita 2010),¹³ and the representation of

were rejected by the Ministry of Justice, as they were considered to be of an excessively radical orientation" (Ferrari 2005b: 12-14), and the constituent assembly was dissolved in 2004 before its natural term of office had expired (2009).

¹² Frégosi tries to show that the concept of the 'Preacher State' has been more operative than the 'jacobin-cesaropapist' or the 'Gallican state' (2010:112ff.) See also Peter (2004: 7-15, 20f) and Bowen (2004) for the impacts of these attempts to create a 'moderate', anti-fundamentalist, republican, individualised and subjectivised 'Islam de France' on discourses and claims by Muslim intellectuals and leaders.

¹³ Following the pattern of Jewish and Protestant federations, see for the UK McLoughlin (2010:131f) for the importance of 'lay leadership' and 'secular Muslims' (2010:131f) and concluding that "overall, there is still a preference for facilitating the self-regulation and self-organisation of Muslim representative bodies, rather than direct legal intervention in their affairs" (146). This option is also defended by Modood (2007: 182- 4) and O'Toule et al. (2013): "The representation of British Muslims in governance has passed through various phases.

Muslim communities by several independent, loosely co-ordinated, publicly recognised organisations (as in Sweden -Otterbeck 2004- or Norway).¹⁴ At present, it seems unlikely that one and the same representational pattern will emerge in all member states of the European Union (Ferrari 2005b: 17).¹⁵

Institutionalisation of Islam in the USA

The situation in the US differs from the European one in three main aspects: (i) the impact of denominationalism on all religions, (ii) the fairly limited system of selective co-operation, and (iii) the absence of state-induced or imposed patterns of organisation and representation.

The religious landscape in the USA emerged and developed in opposition to European church-like structures (both Catholic and Protestant) under the predominance of radical Protestantism and its typical denominational structure. At the basic level of local religious communities, congregationalism is characterised by an associational pattern that shows fairly high degrees of voluntarism, a non-profit organisational form led by laity, and the fact that congregations are “more than houses of worship or prayer, but (...) authentic community centres with different kinds of educational and social services, fellowship and recreational activities, and task-specific associational networks” (Casanova 2005: 25).¹⁶ This originally and radically Protestant congregational pattern has been historically adopted by other immigrant religions, first by Catholicism, next by Judaism and now also by Islam, Hinduism and Buddhism, fairly “irrespective of their traditional institutional form in their home settings”, whether they are characterised by a quasi-congregational structure like Islam or not (like Buddhism and Hinduism) (Casanova 2005: 23). Christian churches, synagogues, mosques, masjids and temples are transformed into congregations.¹⁷

There has been a pluralisation away from a single or small number of representative organisations, and a reliance on a ‘take me to your leader’ approach, towards a more complex ‘democratic constellation’ of representation, which should be welcomed. Criticism levelled against Muslim umbrella bodies have centered on their inability to represent all Muslims, due to their ethnic and theological diversity. Yet leaders of Muslim umbrella bodies do not see representation in this way and do not claim to represent all Muslims at all times, speaking more often in terms of common interests that unite Muslims. There is a need to focus on the representativeness of claims, not of claims-makers” (page 16). See for some reactions: www.publicspirit.org.uk

¹⁴ See Mantovan (2010:107) for Italy, and more generally Kreienbrink (2010: 9) for ‘pluralist representation’. Even for Germany, the Federal Ministry of the Interior “gave up the idea of a single representative Muslim body and is now willing to accept a polyphone and multiple representation of Muslims in Germany by several organisations” (Thielmann 2010:174).

¹⁵ In addition to my arguments against the emergence of one ‘concordatory Europe’ (Massignon 2003), one would have to recognise differences in the organisational and representational structures of the divergent religions (e.g., the CEC (Council of European Churches), the COMECE (Commission of European Bishop Conferences), the EHF (European Humanist Federation) at the EU level.

¹⁶ This structure is typical for all churches before the development of welfare states, but even more so for all ethnic immigrant churches (see Bader 2007, chap. 4). In the USA, due to in-existent or poor welfare state arrangements, this congregational structure is much more important for immigrants. Mosques are also particularly apt for this task.

¹⁷ At the level of denominations properly speaking, American Protestantism “emerged as doctrinally or ethnically differentiated plural denominations”, whereas “the hierarchically organised Roman Catholic Church was able to incorporate all Catholic immigrants (with the exception of the Polish National Church) into a single American Catholic Church through the ethnic parish system. American Judaism also became differentiated into three main denominations (Orthodox, Reform and Conservative). It is still unclear whether various branches or traditions of the other world religions will become institutionalised as separate denominations in America or whether other denominational divisions will emerge” (Casanova 2005: 26). At the ‘national level of ‘imagined community’ at which immigrant religions gain symbolic recognition and are thus incorporated into the nation as

Second, contrary to ‘separationist’ ideology, the USA also has practices of selective legal recognition and support of religions. Yet, an elaborate system of selective co-operation as in Italy, Austria or Germany is absent, particularly at the federal level. Not many privileges can be gained, there is no central ‘negotiation table’ that would require some form of public recognition of religions and of structured selective co-operation. Religions are not induced by positive incentives to develop national organisations and federal administration is not in need of interlocutors representing religions (supply and demand sides do not stimulate their emergence).

Third, unlike France or Belgium, the state does not attempt to impose a uniform organisational and representational pattern. On the one hand, the result is that religions (new minority religions included) are inspired to develop national organisations or associational structures only or mainly in order to more effectively propagate and proselytise, to influence civil society and –like all other interest organisations– to lobby. Lobbying means trying to influence legislation, administration and judiciary, informally and indirectly. It also means trying to gain national symbolic recognition to extend the denominational forms of American civil religion from Protestant-Catholic-Jewish to ‘Abrahamic’, or eventually to incorporate all world religions and become “the first new global society”, because this process is not as independent of national organisations, their power resources, mobilisation and strategies as Casanova (2005: 26-8) assumes. On the other hand, the state’s interest in having national representatives of religions (including new minority religions) is limited to symbolic demonstrations of its neutrality and, because of American religious pluralism, at ceremonies in response to terrorist attacks.

Islam has now taken root in the USA as one of the major American religions. As in European countries, the internal challenge confronting Islam is how to supersede linguistic, ethnic, national and doctrinal diversity, “how to transform diverse immigrants from South Asia, which today constitute the largest and fastest growing group of Muslim immigrants, from Arab countries and West Africa into a single American Muslim *umma*” (Casanova 2005: 29). Two cultural options seem to compete: the segregated, defensive sub-cultural ‘Nation of Islam’ model versus a public, self-assertive, powerful and cultural option within American competitive religious and cultural pluralism, “which many Muslims view as an actualization of Islam’s universalism” (i.e. the Islamisation of America to counterbalance the Americanisation of Islam). Like earlier Catholic and Jewish minorities, Islam is also confronted with the pressure to choose an appropriate organisational and representational structure.

It is still an open question as to which kind of internal denominational structure Islam in America is going to assume: whether it will succumb to what Niebuhr called ‘the evil of denominationalism’, which he saw grounded in socio-economic and ethno-racial divisions, or it will organize itself into a national church-like *umma*, able to bridge its internal ethno-linguistic and juridical-doctrinal divisions. American Protestantism, Catholicism and Judaism (three main denominations and the Board of Jewish Deputies representing common interests – V.B.) represent in this respect alternative denominational models. American Islam is likely to

‘American’, Casanova thinks that this incorporation takes place “irrespective of whether they also develop national organizations”.

develop its own distinct denominational pattern, while sharing some elements with all three (Casanova 2005: 30).

In contrast with Europe, this choice is not massively crafted by state administrations, and this fact considerably alleviates the related problems of church autonomy, equal treatment of religions and relational state neutrality. Islam(s) in America is/are less forced into an imposed ‘American Islam’. The ‘Americanisation of Islam’ from below is more the unintended but welcomed by-product of the American system of religious governance than the result of intentional state policies to ‘Americanise Islam’, compared to attempts to create a ‘French’ Islam from above.

Associative democracy, church autonomy, legal and substantive equal treatment

All existing regimes of religious governance and all alternative institutional designs have to deal with tensions among normative principles. No ideal model –neither an idealised NEPP nor Associational Democracy– can maximise or optimise them all. Here, I focus on two trade-offs involved in my analysis of institutionalisation: on the *autonomy dilemma* and on *legal versus substantive equal treatment*.

The American denominational regime and European regimes of selective co-operation both guarantee individual religious rights, which is an important similarity. The latter provide more legal and substantive privileges and more representation in the political process for recognised religions, but also permit more involvement by public powers (interventionism) in religious matters that potentially or actually infringe on church autonomy. Recognition of and co-operation with religions by the state is inevitably selective and this selectivity is reflected in the pyramid of plural legal statuses established by states for various religions. Systems of public recognition and co-operation are also more rigid and less open and pluralist. On the face of it, the American regime clearly seems preferable because it respects church autonomy more fully, it guarantees a more, though also not a totally, equal legal treatment of all religions, particularly of minority religions, and it is more flexible and pluralist. Can Associational Democracy (AD) overcome some of these serious shortcomings of existing regimes of public recognition in Europe and also avoid some of the deficiencies of existing American denominationalism?¹⁸

Church autonomy or selective recognition and co-operation?

In all liberal-democratic regimes, the autonomy of religions is restricted by moral and legal requirements to guarantee essential basic rights of members and non-members. Within these constraints, autonomy rights with regard to the doctrinal and legal core and the internal organisational structure of religions are necessary to guarantee a wide and well-defended space of freedom for all religions, including the smallest, newest and ‘strangest’

¹⁸ Associational democracy (AD) is situated between existing American denominationalism and existing regimes of selective co-operation. It shares with American denominationalism the importance of high degrees of voluntariness of (religious) associations, the preference for internally democratic structures, the avoidance of state sanctioning from above and the preference for building associations from below and in free rivalry with others. However, when it comes to answering the difficult questions of ‘how to go from here to there?’ it may be easier to start from existing NOCOPs and the urgent requirements for change ‘to keep up with the times’ (Ferrari 2005a: 8f.). This makes this question practically and strategically all the more urgent.

ones. The legal instruments to guarantee individual and collective or associational religious freedom should be equally and indiscriminately available to all religions, but this requirement has often not been applied in European countries in the face of Islam and new, spiritual religious movements. Autonomy rights for religious core organisations, however, do not equally cover faith-based organizations in education and care. All regimes rightly and legitimately impose requirements of fiscal accountability and differentiated applications of anti-discrimination laws, labour laws and co-determination laws on these organisations if they are publicly financed partially or fully. The meaning, extent and limits of religious autonomy and the depth and width of legitimate exemptions are contested and continually negotiated both in Europe and in the US. I agree with Ferrari that “public administration can graduate its support within certain limits and maintaining certain proportions” (2005b: 16). However, I suspect that the broad reference to “the democratic and secular rules of the state” and the perceived “impact of religions on civil co-existence” may do more harm than good in this regard. I have advocated a more offensive ‘libertarian’ position to safeguard the associational autonomy of religions, which also extends to the question of national representation of organised religions in the political process. AD, similar to European co-operation regimes, provides opportunities for co-operation that is inevitably selective. However, it clearly insists that central organisational and representational structures by the respective religions emerge as far as possible from below, to avoid the second great threat to religious autonomy through external state-crafting from above.¹⁹ Here too, autonomy rights should be defended and distinguished from ‘rights to cooperation’ as clearly as possible (Ferrari 2005b: 16).

Equality and selectivity: legitimate and illegitimate exclusions

Registration, administrative, judicial and legal recognition of religions are inevitably selective in terms of time and durability of settlement, minimal numbers of adherents and stability of association/organisation. Minimal thresholds and inevitable selectivity, however, increase when it comes to material and other privileges, particularly (i) when systems of official co-operation between administrations and publicly recognised religions emerge, (ii) when faith-based organizations participate in standard setting, implementation and control, and (iii) when some religious organisations gain rights and opportunities of representation in the political process. “Reasons of history, number of adherents, social roots, and so on” (Ferrari 2005a: 8) clearly matter in existing regimes and, according to a contextualised theory of morality (Carens 2000, Bader 2007, chapter 2), legitimately so. Yet, selectivity means inclusion and exclusion, and the normative problem is how to prevent illegitimate exclusionary effects, inflexibility and rigidity, which are particularly serious for religious minorities.

The establishment of private, faith-based schools and healthcare institutions requires a certain minimum number of students and clients and also territorial concentration, even independent of public financing and recognition. Very small or dispersed religious minorities are quasi-‘naturally’ excluded. Public financing requires the definition and application of contested minima in terms of numbers. Equality before and under the law requires that these thresholds (which may be different for primary, secondary

¹⁹ Generally against the state crafting of associations from above, see Hirst’s criticism (1992: 473-77) of Cohen and Rogers; Bader 2001a: 42, 55-60.

and high schools, etc.) have to be applied equally and indiscriminately to all applicants, irrespective of faiths. Also, fairness requires that these numbers are as low as possible to prevent exclusion of minorities not based on justifiable grounds of feasibility or workability. All service delivery, whether publicly financed or not, has to live up to contested minimal standards of provision, but public financing and recognition may add more demanding standards. Again, these standards should be applied equally and indiscriminately to all applicants, and fairness as even-handedness requires that public authorities do not impose ‘biased’ contents and procedures on religions and on religious minorities in particular (see Bader 2007, chapter 5.2 and 5.3).

Because numbers and standards of service delivery are hotly contested, it is crucial that organised religions are involved in negotiations and deliberations at the municipal, provincial/state and national levels where decisions are made. Regimes of governance of education, care or media differ widely among countries, and the higher the levels of decision-making competencies the stronger the incentive for and the pressure on the respective religions to develop representative national or federal peak organisations. Furthermore, systems of associative governance of sectors (e.g., education and healthcare) increase the thresholds considerably because the respective councils (analogous to tripartite neo-corporatist socio-economic councils) impose stricter limits on the number of participating parties (i.e., public authorities, representative organisations of service providers as employers, of professions and of clients as stakeholders). Unlike parliaments, they have to be working bodies in order (i) to deliver the gains of organised interest intermediation and increase the deliberative character of negotiations; (ii) to foster less particularist, more open definitions of interests and preferences; (iii) to find more innovative, less biased definitions of situations and issues, and new present and future oriented ways to solve problems;²⁰ (iv) to increase trust among participating parties with divergent and partly conflicting interests; (v) to deliver better informed and more efficient and effective standard setting, implementation and control. The exclusion for functional reasons, which may vary in different sectors, is still an ‘unsettled empirical issue’ (Cohen and Rogers 1992: 445) and a matter of institutional tinkering. Yet, two points seem plain to me. First, the existing systems at sector, national and EU levels are needlessly and unfairly exclusive. Second, even less exclusive or closed systems are confronted with the problem ‘to find a reasonable trade-off between (morally recommendable) inclusion and (functionally required) workability’ (Bader 2001: 39).

Developed sectorial systems of representation of religious organisations are scarce (e.g., for public media in Austria) and standard setting and control in education and care seems to be reserved for public authorities only (parliaments, departments of education or healthcare and state inspections).²¹ There is often the requirement of having only one religious organisation publicly recognized for the educational system, even if it is federal as in Germany, where the requirement of legal recognition as *Körperschaft öffentlichen Rechts* has impeded Muslim religious instruction at the *Länder* level.²² At the national level, the

²⁰ They are also required to stimulate frame reflection, a thorough revision of cognitive and normative patterns (Hoekema 2001; Parekh 2000: 331ff; Zinterer 2000), Trute 2005, Sabel/Zeitlin 2012, Bader 2013).

²¹ See Denmark and Flanders as exceptions, see Bader/Maussen 2012.

²² This is neither functionally required nor fair, because the requirement of one national organisation for all Christian denominations would be clearly outrageous.

existing systems of public recognition in European countries are often needlessly and unfairly exclusive. Criteria for recognition are vague and not applied indiscriminately; there is too much discretionary power by public administrations and too little judiciary control (see Ferrari 2005a: 9), which is a disadvantage that would be even more serious if the actual recognition that is needed for any negotiations were left to administrations alone.

In addition, this unfair selectivity of existing national regimes²³ is stabilised by two elements that are characteristic of all systems of organised interest representation: their rigidity (how vested their constituent organisations are), and their lock-in effects (Bader 2001: 43f). Once established, systems of public recognition of religions tend to become quasi-permanent because they endow religious organisations with public status, subsidies and power, which they may use to freeze their position and to exclude newcomers, and also because it takes time before the demands for legal recognition by newcomers are successfully completed (see Ferrari 2005a:9).

Excursus on 'Islam and Religion in the EU Political System'

This may be briefly illustrated by the process of representation of Muslims in the European Union.²⁴ It is well known that the EU, officially, lacks explicit legal competence in religious affairs.²⁵ Still we can see an increasing importance of and growing attention to religious affairs in general, and for Islam in particular, by the Commission, the European Parliament and the Council and Courts. Here the focus is on the Commission. This development runs from 'informal practices of dialogue' via more 'structured dialogue' towards 'semi-formal' avenues for dialogue and negotiation with (organized) religions (based on Art. 17(3) 'open, transparent regular dialogue'), and eventually to a sort of semi-formal 'policy towards religion' (Silvestri 2007, 2010:1221). The main steps were: (i) the establishment of the Forward Studies Unit (FSU) by Delors, directly responding to his Presidential office; (ii) in 1994 'A Soul for Europe' (SfE) is attached to the FSU; the 'Comité de Sélection', later 'Comité de Coordination', are formed by invited representatives of various religious and philosophical convictions (based in the office of the Conference of European Churches in Brussels) in order to develop intercultural and interreligious dialogue, including Islam; (iii) on the initiative of Prodi, in 1999 the FSU was organisationally moved and renamed as 'Group of Policy Advisors' (GOPA), entrusted – amongst other thing – with 'dialogue with religions'. On Barroso's initiative it was reshuffled in 2004 and called 'Bureau of European Policy Advisors' (BEPA), the 'dialogue with communities of faith and conviction' reappearing in the 'political chapter'. In 2005, a series of official 'closed-door annual meetings' was inaugurated that, unlike its predecessors, has been made more official, publicly advertised and opened up to leaders of the EU Council and Parliament.

²³ See Ferrari's second requirement: "if the range between those placed at the lower levels and at the higher levels is too wide, not only will equality suffer, but so will individual religious freedom." (2005a: 9). See also Kraler 2007 for special admission rules for ministers of religions and for the education of Imams.

²⁴ The following is based, without quotes and further references, on studies by Massignon 2003, Silvestri 2007 and 2010, and Carrera/Parkin 2010.

²⁵ Dec 11 of the Amsterdam Treaty, Art 52 of the draft Constitutional Treaty, and Art. 17 of the Lisbon Treaty: "member-states retain sovereign competence".

The main actors involved have been the following: the SfE included two representatives each from Catholicism, Protestantism, Judaism, Islam, and agnostic or atheistic Humanism, independent of the relative size of their respective traditions. The FSU, by 2003, included 50 invited partners, religious representatives, religious NGOs and European offices of religious orders. Unlike the SfE initiative, Buddhists, Hindus, Christian Scientists and Scientologists also take part. Protestant Churches are more widely represented by Evangelicals, Pentecostals and Quakers. A diversity of Muslims and Jewish organisations are invited. The Russian Orthodox Church opened an office in Brussels by the end of 2002. So did the Catholic Church of Ukraine in 2003 (Massignon 2003). The main organizations on the European level representing Islam(s) have been the Muslim Council of Cooperation in Europe (MCCE), established in 1996 *from above*, on the initiative of the Commission together with some good-willing Muslim intellectuals and some clerics trying to encourage a 'moderate Islam'. However, it "does not appear to have much of a life beyond a leaflet ... and on an old website" (Silvestri 2007:18f). Later on, one sees initiatives of transnational European Muslim organisations *from below*, such as the Federation of Islamic Organisations in Europe (FIOE) and the Forum of European Muslim Youth Student Organisations (FEMYSO). In addition, from outside the EU, there are the initiatives by individual embassies of Islamic states and/or the Organisation of the Islamic Conference (OIC).

Let me highlight some crucial characteristics of this process: (i) The big Christian Churches – the CEC and the COMECE – had enormous advantages in all regards and in all phases, particularly in informal and rather invisible lobbying; (ii) even other Christian denominations, particularly smaller, newer, 'stranger' and in many regards more radical ones, had huge difficulties to be 'invited' or to fight their way in, and this is clearly more obvious for non-Christian 'Abrahamic religions' and for poly-theistic or non-theistic religions like Hindus, Buddhists, and 'new age' regions; (iii) the historical and structural difficulties for 'Muslims' to form 'representative organisations' –discussed above for member-states– are aggravated at the European level. Here I can only point to some fairly simple explanations for exclusions, selectivity and weaker positions. First and foremost, there is a huge asymmetry of structural power between the different religious organisations in terms of resources (money, numbers, networks, information, degree of organisation and centralisation) and of chances to mobilize them. Even the Catholic, Protestant and humanist networks –the most structured organisations at the EU level– are not on an equal footing'.²⁶ In the absence of official relations between the religions and the European institutions, developing strategies to influence the European decision-making process and even simply obtaining information on developments in European integration requires considerable resources. Second, the 'Christian bias' is historically understandable, but indefensible, even from a perspective of fairness as evenhandedness that does not require 'strict equality', and it depicts even the very definition of what counts as a 'religion' (see note 6). Third, EU policies and institutional structures have a considerable negative impact on the 'representation of Islam'. Evolving European Islam-politics, like member-state politics, are increasingly under the assimilationist spell of 'social cohesion, integration' and 'our values

²⁶ There is a staff of eight persons at COMECE Brussels office, six at CEC, and two at EHF, resulting in disparities in access to information and influence on decision making in the Commission preparing directives. See also Willaime 2004; Koenig 2003 (and 2006: 18ff for more details on the weakness of Muslim organisations at EU level).

and norms' in order to impose a 'moderate', 'domesticated' or 'civilized' and 'democratic European Islam',²⁷ and under the spell of 'securitization' in order to tame the 'threat of Islamism'. EU informal representation structures are, compared with most member-states, less closed and unitary, more open, transparent and pluralist, but seem to maintain unequal inclusion because of inequalities in resources. Hence Massignon pleads for "official relations between the religions and the European institutions" and proposes the establishment of a consultative NGO status by European institutions, comparable to the European Council, to complete the fulfilment of this informal pluralism, which she sees threatened by attempts of the Churches seeking an official recognised status:

This development would automatically define who was included and who was excluded. Lacking expertise, the European Commission is already inviting the more structured groups, CEC and COMECE, to seminars of dialogue on specific topics concerning EU policy. In the same way, there are unofficial tripartite CEC, COMECE and European Council meetings before each new EU Presidency (Massignon 2003).

Unfortunately, it seems that we have only two options: NEPP and NOCOP.

Conclusions

In conclusion, can associational democracy avoid or soften this unfair selectivity, fixity and closure of existing systems of selective co-operation at the national and at the emerging European level, and if so, how and by which proposals? First, associational democracy tries to keep the thresholds for representation and co-operation as low as is compatible with workability requirements, and also to include the relevant stakeholders. For national and European *advisory councils* (religious councils, 'ethics councils') that are not involved in decision-making and implementation, the thresholds can be much lower than those of sectorial councils. Also, associational democracy vigorously insists that the voice of relevant, vulnerable internal minorities should be represented in the former, if they so wish and are sufficiently organised. In *sectorial governance bodies*, the thresholds for faith-based organizations are higher but minorities can and should be represented. As with all organised interest representation, however, the wish to be represented, the capacity to make claims, and a stepwise, increased, minimal organisational capacity are required.²⁸

²⁷ See Foner and Alba 2008 for a transatlantic comparison.

²⁸ Structural inequalities and power asymmetries may restrict the freedom of minorities to define their interests, identities, self-respect, motivation to participate and their strategic options (Bader 2003c: 147) or to do so more autonomously. In my view, associational democracy accepts these gradual thresholds of agency, will and organisational capacity as the inevitable price to be paid for non-elitist or non-paternalist forms of group representation (the state may invite them and create options, but should not try to organise and demand or impose representation). In addition, if the processes of societal and cultural secularisation and *glocalisation* would not only undermine the rigid 'corporatist' systems of selective co-operation but also the minimally required collective, organisational capacity, as some sociologists predict, this would also undermine associative religious governance. Yet this is not a problem for associational democracy, because it is justice-based and not about perfectionist conservatism. If most religions were to lose the will to be politically present and represented even if institutional opportunities are available and fair, so be it.

For three reasons, associational democracy is more open and flexible than existing neo-corporatist types because it does not overemphasise the demands of encompassment, integrative capacity and scope of responsibility of the represented organisations; it keeps the type of representative organisation open (one centralised vs. federations or pluralist representation by some independent organisations); and it does not insist that Muslims are represented by one organisation while Christians are represented by several denominations. In addition, representation is not equally important in all sectors to all religions. It need not be the same religious organisations that provide services in the different sectors, and a central, nation-wide, ‘public’ or legal recognition is not required for representation and co-operation on provincial or local levels.²⁹ In all of these regards, associative interest representation is less exclusive than existing ones, but it also has to accept the abovementioned challenge to find a reasonable trade-off between inclusion and workability.

Second, highlighting the inevitable selectivity of formalised systems of representation and co-operation should not make us forget that systems (such as US denominationalism) that restrict interest representation to informal ways of influencing governments through network building, lobbying etc. are even more vulnerable to inequality charges because old, big ‘established’ religions have huge and unchecked advantages in terms of power resources and strategies. Associational democracies’ less exclusive, more open formalised system is thus an interesting alternative, also at the European level, which Massignon neglects in her quoted conclusion that formalisation of an official recognised status would ‘automatically’ privilege the big, old religions.³⁰

Third, associational democracy promises a more sensible balance of tensions between equality before the law and more substantive equality. Yet this promise partly depends upon the effectiveness of the proposed measures to counteract vestedness and lock-in effects. Associational democracy demands and tries to institutionalise procedures of external review and evaluation at regular intervals for the renewal of grants and of the legal status of privileged organisations after accreditation (Cohen and Rogers 1992: 444, 450). The threats of withdrawal or amendment must be serious and credible and the gains of accepting such scrutiny must be considerable for religions and faith-based organizations. These are important measures but one should not underestimate the difficulties of external scrutiny and control in terms of time, information and access to insider knowledge. These difficulties are alleviated by democratic and transparent internal organisational structures that increase the possibilities of external control and accountability considerably (Mansbridge 1992). However, honesty requires me to clearly state that the version of associational democracy I am defending resists the temptation to impose democratic internal structures (its own favourite democratic stakeholder model of ‘corporate

²⁹ It is also important that a seat at the tables should not go hand in hand with additional monetary privileges: faith-based educational providers should be fairly and indiscriminately financed whether they are represented or not. The relevant analogy to exclude additional material unfairness would be the German 5% clause for parties represented in parliament: parties below this threshold are indiscriminately publicly financed (according to the percentage of votes) in order to prevent additional material discrimination.

³⁰ Silvestri’s conclusion that “Muslim groups and individuals, as well as Islamic movements in particular, having experienced difficulties in carving out their own space in European countries that did not provide appropriate structures for the accommodation of Islam, could be the first to benefit explicitly from this transnational European platform of engagement with religion” (2010:1229). Yet she does not spell out any institutional detail of such a new structure.

governance’) on faith-based organizations,³¹ although it places the burden of proof for exemptions clearly on them and it requires adequate standards of financial accountability. In any case, the most important effect of putting systems of public scrutiny and control in place is an indirect one. Working in the shadow of hierarchy stimulates meaningful internal, pro-active self-control considerably. In addition to (the threat of) withdrawal, the fixity and rigidity of formalised systems of co-operation can be counteracted by choosing ‘softer law’ instead of hard or even constitutional law. More precisely, if systems of selective recognition, representation and co-operation are part of the constitutional law of countries, constitutions should, to repeat, only contain procedures, criteria and standards but not name specific religious organisations.

Proposals like these promise better balances between competing principles for national systems of co-operation and for possible and emerging supra-national regimes of religious governance in the EU “halfway between the pluralist interdenominational American model and the classic European model of a hierarchy of recognized religions” (Massignon 2003: 6). To indicate these possibilities, I apply some of the general proposals to counteract unfair exclusive effects and structural inequalities of emerging European governance arrangements in the spirit of associationalism to religious governance.³² Phil Schmitter’s proposal (2000: 56ff) to establish functional sub-parliaments or standing committees to formalise functionally diverse, pluralist representation and expertise in the legislative process of the EU may be extended to give religions a more formalised advisory role in European rule making. The proposals by Joerges (1999: 311ff; 2001: 140) to increase the deliberative character of the negotiations in existing European ‘comitology’ and, at the same time, the pluralism and openness of European regulatory policy are also relevant because they are explicitly meant to heighten sensitivity regarding cultural issues, including religious differences in administration and implementation. Again, the problem with existing practices is that they are less open, fair, transparent and accountable than they could be. The most elaborate proposals for tackling unequal access, expertocracy and problematic informality of emerging European Governance Arrangements (EGAs) are Schmitter’s principles for the chartering, composition and decision rules of EGAs in an associational spirit, to increase the democratic legitimacy of the delegation of powers to these political institutions (2001).³³ If applied and worked out in practice, they allow the formalisation of the representation of functional, cultural and religious interests in a more open, flexible, pluralist way without a dramatic decrease in efficiency and effectiveness.

Whether such a realistic utopia can be realised is one of the most intriguing open issues of our times. It would combine the best of the existing US denominationalist and the European selective co-operation regimes of religious governance. Associational democracy, as we have seen, shares with NEPP the open, pluralist, largely voluntaristic character, and also the trust in the beneficial working of an adequate liberal-democratic institutional environment on new religious minorities instead of direct state ‘integration’ policies to impose liberal and democratic institutions and virtues. However, it hopes to avoid its

³¹ This is another, insufficiently recognised trade-off related to the balance between ‘church autonomy’ and external public scrutiny. However, a differentiated application of co-determination systems, instead of imposing one model of democratic corporate governance on all, may undermine existing, more developed models, as the case of *Societas Europaea* recently demonstrates.

³² See Bader 2006 and 2007b, based on proposals by Phil Schmitter, Joerges and Nyer and others.

³³ See Bader 2013 and Sabel/Zeitlin for ‘experimentalist governance’.

downsides by offering religions a fairer, more open and flexible system of institutional pluralism, of selective recognition, representation and co-operation with old and new religions, which it shares in principle with European NOCOPs.³⁴ Basically, I am convinced that it is possible to combine the best aspects of these competing models, and I have tried to indicate how this could be done. However, I have also made it clear that it is hard to find sensible balances among conflicting moral principles, and that trade-offs with other normative principles like efficiency, effectiveness and workability are involved. Even if it seems possible to find better, more sensitive solutions to some of these trade-offs, one still has to deal with realistic challenges of feasibility and inevitable counterproductive effects. After all, the way to hell is paved with good moral intentions.

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³⁴ Casanova (2005: 12ff) rightly criticises the strong exclusionary tendencies of existing NOCOPs in Europe, but sketches a too rosy picture of the American constitutional model and denominationalism (23, 26-28).

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