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Moral and Religious Counselling in French-Speaking Belgium since the 1970s. The Quest for Legal Recognition and Dignity

Introduction

In today's Belgium, the question of moral and religious assistance is both an intense and muted debate within the relationship between churches and state. A more visible debate, which has been resurfacing for several years, concerns the public funding of religious denominations.¹ Firstly, I will attempt to review the major stages of moral and religious assistance in Belgium over the last 50 years or so and place this issue in a very specific contemporary context. Secondly, I will look at the extent to which this key aspect of the Belgian secularist system is now taking place in a context where the principle of the neutrality of the state with regard to religious denominations is changing significantly. In recent years, the legislature – and in particular the Constitutional Court, which has jurisdiction in this area alongside the Council of State – seems to have observed a change in the very notion of neutrality. Once considered to be 'neutral', it has sometimes been pointed out that it carries an ideology, which needs to be identified on a case-by-case basis (in certain state schools, for example). We are therefore moving towards a system of secularism in which neutrality does not permit pluralism but where neutrality can be ontologically considered plural and therefore more open to interpretation.² This subjectivisation of the principle makes it lean towards both an 'inclusive' (positive, even if this adjective, used in the French context by Nicolas Sarkozy, has been strongly criticised) and an 'exclusive' (negative) concep-

1 Provided for in the Belgian Constitution of February 1831, this principle has been called into question by the European Court of Human Rights (ECHR, 5 April 2022, no. 20165/20, *Assemblées chrétiennes des Témoins de Jéhovah d'Anderlecht et a. c. Belgique*), following the non-financing of nine jehovah's witness communities in Brussels. The ECHR found that the recognition (and therefore funding) process was not sufficiently predictable and transparent; however, this does not constitute a formal condemnation of this principle. See Louis-Léon Christians, "Le régime belge des cultes reconnus: pas de problème en soi pour Strasbourg, mais . . . où est la procédure de reconnaissance fédérale?", *Observatoire juridique du fait religieux en Belgique*, last modified 28 April 2022. <http://belgianlawreligion.unblog.fr/2022/04/28/ le-regime-belge-des-cultes-reconnus-pas-de-probleme-en-soi-pour-strasbourg-mais-ou-est-la-procedure-de-reconnaissance-federale>.

2 Léopold Vanbellingen, "Laïcité 'à la belge': vers une neutralité intrinsèquement plurielle?," *Revue du droit des religions* 14 (2022): 57–70, <http://journals.openedition.org/rdr/1898>.

tion of the principle of regulating relations between churches and state. Thirdly, I will examine the causes of the difficulty in legislating moral and religious assistance, by briefly reviewing a traumatic moment in the matter, namely, King Baudouin's refusal to countersign the law decriminalising abortion in 1990. Fourthly, some conclusions will be put forward.

In a country with an extremely deep-rooted catholic culture, a former citadel of the Counter-Reformation, very often run by catholic or social christian governments, both *laïcisé* and secularised (more so in Wallonia and Brussels than in Flanders, at least for a long time, before the situation rebalanced in recent years) but still with major privileges granted to the Catholic Church, secular activists have often had to adopt a proactive stance to make themselves heard, even if it meant adopting the traits of their historical adversary.³ That is why Claude Javeau had the mischievous but fair idea of talking about a regime of "*laïcité ecclésialisée*".⁴ However, this does not mean that there is a 'secular pillar', as this notion is not backed up by a common political project, as was the case with catholicism (which became social christianity), socialism and, to a lesser extent, liberalism. Moreover, the subsidised institutionalisation of *laïcité* since 1981 (the seventh conception, the first non-religious one, to be secular since the country's independence), took place about a century after the phenomenon of 'pillarisation' had emerged in Belgium.⁵ Consequently, beyond the fact that the values promoted by *laïcité* may well cut across the various pillars mentioned, it would be anachronistic to speak of a 'secular pillar'. Moreover, a philosophical like-mindedness is not enough to constitute a pillar.⁶ Rather, as stated by Witte, it is a "community",

3 See, in addition to the references mentioned below, see "Les religions et la laïcité en Belgique," Observatory of Religions and Secularism, Université Libre de Bruxelles, 157–163, last modified in 2020, https://o-rela.ulb.be/images/stories/RAPPORTS_ISSN_alternative/RAPPORT_ORELA_2020.pdf.

4 Claude Javeau, "Belgique: la laïcité ecclésialisée," *Laïcité et sécularisation dans l'Union européenne*, edited by Alain Dierckens and Jean-Philippe Schreiber (Brussels: Editions de l'Université de Bruxelles, 2006), 83–88 (*Problèmes d'histoire des religions*, XVI).

5 For a historical analyses of this process and its origin, see Caroline Sägesser and Jean-François Husson, "La reconnaissance et le financement de la laïcité," *Courrier hebdomadaire du CRISP* 11, no. 1756 (2002): 5–43; see Niels De Nutte, "Une Belgique en faveur de la non croyance organisée. L'humanisme séculier est-il l'Église subventionnée des « sans religion? »" in *L'État et la religion dans l'espace public: approches pratiques et théoriques de la laïcité*, edited by Jérôme Grosclaude (Rouen: PURH, 2021).

6 Karel Dobbelaere, Jaak Billiet and Roger Creyf, "Secularisatie enverzuiling in de Belgische politiek," *Res Publica* 20, no. 3 (1978): 407–431; Jaak Billiet, "Verzuiling, ontzuiling, verzuiling in België," *Ons Erfdeel* 17, no. 3 (1974): 349–357. In contrast to this perspective, some works remain attached to the concept of 'pillarisation' applied to the contemporary context, such as Lynn Bruyère, Anne-Sophie Crosetti, Jean Faniel and Caroline Sägesser, ed., *Piliers, dépolarisation et clivages philosophiques en Belgique* (Brussels: CRISP, 2019). This issue is all the more sensitive be-

made up of a liberal and bourgeois bloc joined by a socialist tendency but, at the heart of a climate of internal contradiction, far removed from the concentric arrangement of the catholic pillar.⁷

In fact, since the initial subvention of 1981, the French-speaking secular associations making up the *Centre d'Action Laïque* (Center for Secular Action – CAL, set up in 1969) have been secularised as a 'cult' in their own right. It was in the 1960s, quite early if we consider the problem in an international context, that the first legal measures were taken to regulate non-confessional assistance, which later became an important aspect of the 2002 finance law of *laïcité*. In addition to the numerous associations and public debate that had emerged since the nineteenth century in favour of civil burials, cremation (the subject of recent research),⁸ euthanasia,⁹ abortion and the movement to secularise oaths in the legal field, the issue of moral assistance (while chaplaincies had long existed in so-called 'closed' institutions, i.e. the army, hospitals and prisons)¹⁰ was taken on by the Royal Decree of 23 October 1964.¹¹

The aim was to provide a framework for non-confessional or non-religious moral assistance to prisoners and also set standards that hospitals and their serv-

cause, when a Belgian researcher travels abroad and deals with the relationship between religion and the state, he or she is immediately associated with the context of 'polarisation', a term which, in the eyes of foreign colleagues, seems to summarise the 'Belgian model'. However, this model is mainly applicable to part of Belgium's contemporary history (from the end of the nineteenth century to the 1980s), with phenomena of aggregation, disaggregation and major limitations (the dubious hypothesis of a 'secular pillar').

⁷ Els Witte, "De specificiteit van de verzuiling langs vrijzinnige zijde. De inbreng van de historische dimensie," *Belgisch Tijdschrift voor Nieuwste Geschiedenis* 1 (1982): 23–58. In recent years, the usage of the word 'community' to describe these groups in Belgium has come under scrutiny, see Jeffrey Tyssens and Niels De Nutte, "Comparative Humanisms: Secularity and Life Stances in the Post-War Public Sphere," *Looking Back to Look Forward: Organised Humanism in the World: Belgium, Great Britain, The Netherlands and the United States of America 1945–2005*, edited by Niels De Nutte and Bert Gasenbeek (Brussels: ASP, 2019), 151–172.

⁸ Jeffrey Tyssens, "Early Secular Burials in 19th-Century Flemish Provincial Towns," *Secular Studies* 4, no. 1 (2022): 42–70 (special issue *Secularity and Belgium's Death System 1850–1950*, edited by Jeffrey Tyssens, Christoph De Spiegeleer and Niels De Nutte).

⁹ Niels De Nutte, "Societal Attitudes and Popular Opinion on Medical Aid and Dying in Belgium," *Secular Studies* 4, no. 1 (2022): 71–92.

¹⁰ John Bartier, "Anticléricalisme, laïcité et rationalisme en Belgique au XIX^e siècle. Orientation bibliographique," *Colloque: Sources de l'histoire religieuse de la Belgique, Bruxelles, 30 novembre – 2 décembre 1969* (Leuven: Nauwelaers, 1968), 46–63 (*Cahiers CIHC*, 54).

¹¹ In the case of prisoners, the often mentioned Royal Decree of 21 May 1965, published in the *Moniteur belge*, 25 May 1965, applies.

ices had to meet.¹² A circular letter issued in the wake of this decree on 3 April 2008, stressed that patients must be informed of their rights as soon as they enter the hospital. In this circular letter to hospital managers, we find a duplicate of the form to be completed by patients, offering them several contact addresses (the dioceses, the *Fondation pour l'Assistance Morale Laïque* for “non-confessional moral or philosophical opinions”, the *Consistoire Central Israélite de Belgique*, the *Comité Central du Culte Anglican en Belgique*, the *Synode de l'Eglise Protestante Unie de Belgique*, the *Ecumenical Patriarchate of Constantinople* and the *Exécutif des Musulmans de Belgique*).¹³

The Path to Secular Moral Guidance

The issue of seculars and *laïcité* in the hospital environment has been the subject of more research in France than in Belgium.¹⁴ This may have been motivated by the fact that over the last ten years or so, there has been a proliferation of booklets, vade-mecums and charters on secularism or *laïcité* in schools, the public transport companies, and, in 2016, in hospitals as well (under the auspices of the *Observatoire de la Laïcité*, which was to be dissolved in April 2021). Since the *Ancien Régime*, hospitals had been the responsibility of catholic congregations. They were run by lay people (who were very poorly paid) and the congregational supervisors generally exceeded the dosages recommended by the Faculty of Medicine; they were more concerned with the soul than the body and paid little attention to basic hygiene (the Paris City Council made this a subject of debate around 1880).¹⁵

¹² On moral assistance in Belgium, a useful point is made in Sägesser and Husson, “La reconnaissance et le financement de la laïcité,” 9–102.

¹³ Assistance morale, religieuse et philosophique aux patients hospitalisés, “cellule stratégique de ministre des affaires sociales et de la santé publique, last modified 3 April 2008, <https://www.catho-bruxelles.be/wp-content/uploads/2022/10/circulaire-De-Saeger.pdf>.

¹⁴ Tyssens and De Nutte, “Comparative humanisms: Secularity and Life Stances in the Post-War Public Sphere,” 161; Jean-Pierre Chantin, “La laïcité en milieu hospitalier et dans les structures sociales et médico-sociales,” *Histoire, morale et cultures religieuses* 41 (2017): 111–118; Séverine Mathieu, “Quelle laïcisation de la médecine française au XIX^e siècle ?,” *Histoire, morale et cultures religieuses* 41 (2017): 353–371; Christian Chevandier, “Laïciser les hôpitaux. Les rythmes de la société et du politique,” *Politiques de la laïcité au XX^e siècle*, edited by Patrick Weil (Paris: PUF, 2007), 373–389.

¹⁵ Jacqueline Lalouette, “Expulser Dieu: la laïcisation de l’école, des hôpitaux et des prétoires,” *Mots* 27 (1991): 27, 23–39.

The Parisian *Hôtel-Dieu* was secularised in 1879, when it was decided that ministers of religion would no longer be members of hospital committees. The secularisation of medical assistance in the French capital (with hospitals like Bicêtre, Pitié-Salpêtrière, Lariboisière) took hold in the last quarter of the nineteenth century.¹⁶ The first secular nursing school was founded in 1907. Article 2 of the Law on the Separation of the Churches and the State of 9 December 1905 stipulated that chaplaincy services in closed institutions would be envisaged under the auspices of the Republic (hospitals, boarding schools, prisons, asylums and barracks).¹⁷ However, what used to be known as 'social work', which was increasingly removed from the religious sphere, still escaped this recognition and it was only in the 1960s that the gap became more and more apparent. The professionalisation of these social and medico-social structures was regulated by the law of 30 June 1975. However, the hospital remained a place charged with religion. Suffering, chance and pain all contribute to this dimension.¹⁸

But let us return to Belgium. It is interesting to see that the question of whether or not to mention the term '*laïque*' was already being raised in the 1960s. The preferred notion became 'non-confessional morality', in line with a larger lexicon of words expressing a negation of religion. Speaking in terms of 'non-confessional' rather than 'secular' (at least in legal settings) is easy to explain. Indeed, if we stick to the French notion of '*laïque*' (which is the closest to 'secular'), religious communities and abbeys that were not recognised by the law of 4 March 1870 on the temporal status of religions (voted in by a liberal Frère-Orban administration) could apply for recognition by the state, i.e. direct funding. This raises the question of the secularisation of recognition as well as its unexpected effects.¹⁹ The purpose of this 1870 law was to ratify the legal regime in force since the Imperial Decree of 30 December 1809 on the organisation of the *fabriques d'églises*. The Concordat of 15 July 1801 and the organic articles of 8 April 1802, were abolished by the Constitution of 7 February 1831. The secular framework as it is construed in Belgium is based on two main principles. Firstly, the emancipation of the Churches from the State (article 21, paragraph 1, formerly article 16, paragraph 1 of the Constitution) in terms of the appointment of clergy and respect for the secrecy of correspondence within that same sphere. Secondly, it supports the idea of public funding of religious denominations (article 181, paragraph 1, formerly article 117). As Leo XIII

16 Lalouette, "Expulser Dieu: la laïcisation de l'école, des hôpitaux et des prétoires," 27, 23–39.

17 Loi du 9 décembre 1905 concernant la séparation des Églises et de l'États last modified 26 August 2021, <https://www.legifrance.gouv.fr/loda/id/LEGISCTA000006085397>.

18 Jean Baubérot and Raphaël Liogier, ed., *Sacré médecine. Histoire et devenir d'un sanctuaire de la Raison* (Paris: Entrelacs, 2010).

19 *Moniteur belge*, 9 March 1870, 905–906.

said, this system “combines the advantages of unity samewith the benefits of independence”. However, the liberal ministers of the nineteenth century felt that the decree of 1809, which governed the the practical organisation of the *fabriques*, had fallen into disarray. They had long since wanted a law to mediate the situation. The law of 4 March 1870 on the temporality of religious denominations, the legislative lock on the Belgian system of religious denominations, fulfilled this wish. From then on, the Catholic Church was obliged to submit the budgets and accounts of the *fabriques*. The impact of the law on Protestant and Jewish denominations was more significant: this situation strengthened the synodal structure, while the Central Committee of the Anglican denomination was established as a consequences of this law (civil personality was granted to each recognised community).²⁰ Historian Hervé Hasquin argued against enshrining *laïcité* in the Belgian Constitution precisely for this reason, underpinned by a law dating back to the end of the nineteenth century.²¹ The terms ‘non-confessional moral’, ‘non-confessional thought’ and ‘*Conseil Central des Communautés Philosophiques Non-confessionnelles de Belgique*’ (even though, in Dutch, the concept of ‘philosophical conception’ were included, i.e. *levensbeschouwing*).

For its part, the *Service Laïque d'Aide à la Personne* (Secular Service for Personal Aid – SLP), and its president, Stéphane Nelissen, helped to set up a secular moral assistance service in French-speaking Belgium. From the 1980s onwards, in the framework of the federalisation of the Belgian state apparatus, personal assistance was transferred to the communities (i.e. one of the subdivisions within the Belgian federal state structure). This led the secular sphere to split into two non-profit associations (organised under the law of 27 June 1921). On the French-speaking side, the SLP was set up in 1988, while on the Dutch-speaking side, the *Stuurgroep Morele Bijstand* was founded in 1995. These two associations are now members of CAL and its Dutch homologue deMens.nu (formerly *Unie Vrijzinnige Verenigingen* [UVV]). This service objective was part of the programme of the president of CAL, René Toussaint, who wanted the Foundation for Moral Assis-

²⁰ Caroline Sägesser, “Retour sur la loi du 4 mars 1870, pierre angulaire du régime des cultes belge,” in *Questions d'histoire politique de Belgique. Liber amicorum Paul Wynants* (Namur, Brussels: CRISP, Université de Namur, 2022), 78–98. The historian from Brussels, Frans Van Kalken, himself sensitive to anti-clerical liberalism (without being anti-religious), writes about Frère-Orban: “La surface de cette trame se limite à l’indépendance réelle du pouvoir civil, aux devoirs de l’État en matière scolaire, au culte de la laïcité étroitement associé aux vertus civiques et à la pratique des grandes libertés modernes”. See Frans Van Kalken, “Notice sur Walthère Frère-Orban,” *Annuaire de l’Académie royale de Belgique* (1952): 104.

²¹ Hervé Hasquin, “La Belgique est-elle un État laïque?,” *Bulletin de la Classe des lettres et des sciences morales et politiques de l’Académie royale de Belgique* 1–6 (2007): 95–126; Hervé Hasquin, *Inscrire la laïcité dans la Constitution belge?* (Brussels: Académie royale de Belgique, 2016).

tance to Prisoners (created in 1964) to be enriched by a *Fondation pour l'assistance morale laïque*. This bilingual public utility establishment was founded on 23 September 1971, and became an official public utility foundation in 2002. On the French-speaking side, moral assistance is organised by the foundation in conjunction with the SLP and thanks to the support of volunteers. The CAL's regional associations regularly help the SLP's regional nonprofit associations.²² As for the *Conseil central laïque* (Central Secular Council – CCL) uniting the世俗s from both language groups, it has gained in importance, notably through its recognition by public health minister Rudy Demotte in 2006. On the Dutch-speaking side, the *morele consulenter* have existed since the 1980s; they are linked to deMens.nu and their training is provided by the *Vrije Universiteit Brussel* and Ghent University (whereas the *Université Libre de Bruxelles* is responsible for the French-speaking part).²³

In 1973, a decisive time for our present purposes, the christian democratic Minister of Public Health, Jozef De Saeger (1911–1998), was the author of a ministerial circular letter (amended on 13 March 1997, as explained above) providing for the organisation of moral, religious or philosophical assistance in the hospital sector, based on the principle that it could henceforth be up to lay people who were not priests to provide catholic service alongside clerics, who until then had been the only ones authorised to perform this function.²⁴ Belonging to the left wing of catholicism and having entered politics after the war, De Saeger, was a convinced federalist and was involved in issues relating to unemployment and social legislation. He was one of the architects of the modernisation of public aid to the most disadvantaged (notably by introducing the minimum wage). The minister was particularly sensitive to patients' rights and his action helped to nurture the idea that in Belgium, patients' rights were born in the bosom of secular organisations. However, it is important to understand that the SLP is not enjoying some kind of monopoly on moral assistance. In the same vein, it is to be remembered that the CAL is not the repository of all secular action. What we see – unsurprisingly – in the CAL's publications (such as one of 2010), which oscillate between analysis, testimony and militancy, is the interesting idea that the secular 'counsel-

²² The first chairman of the Foundation was Robert Dille, while the minister responsible for this area was Louis Namèche, who held the portfolio of public health.

²³ On this subject, see the following publication, one of the few to deal with our question from a point of view that oscillates between cold analysis and secular militancy. It is a very interesting printed source. *Aider en laïque. Quarante ans d'assistance laïque d'aide aux personnes* (Louvain-la-Neuve: EME, 2010). For my purposes, the interest was mainly focused on Nélissen, "Quarante ans d'assistance morale laïque," 13–20; Mayer, "Timides précurseurs," 21–28; Porquet, "Le conseiller laïque, acteur de la santé communautaire. Des pistes pour demain," 37–46.

²⁴ Etienne Cooreman, "Jos de Saeger," *Nouvelle biographie nationale* (Brussels: Palais des Académies, 2005), 8, 111–113.

lor' (there are about a hundred of them active today) is a 'timid precursor' of 'societal secularism'.

The latter term is interesting in itself and is part of a Belgian-centric lexicon of secularism. Former CAL president Pierre Galand once spoke of a "secular people", an expression that seems inconceivable in the French context and which, even in Belgium, carries a strong militant connotation. It could also be argued that society is not secular but that it is becoming secularised, while institutions are becoming "laicised".²⁵ The Foundation for Secular Moral Assistance was now able to appoint a secular 'counsellor' for places of detention. This 'counsellor' is often a volunteer, whereas the *délégué* ('delegate') is more commonly a professional. It is accepted that he/she is put in contact with the patient by the nurse or a social worker. The role of these secular actors is not unrelated to the definition of counselling (moral and psychological support). Over time, the CAL wanted to consolidate the legitimacy of the De Saeger circular letter. In 2010, the SLP wanted to transform it into a Royal Decree, in a context where lay counsellors are still volunteers, as opposed to hospital chaplains, said to be permanent and paid by their religious group.

The aim of this brief contribution, beyond these few considerations, is to understand the current issues involved in legitimising the moral, religious and philosophical assistance. As the only country where seculars are organised in this way, Belgium presents a special terrain in terms of moral assistance and help for the non-religious, which has been envisaged since 1973. Nurse and retired teacher Andrée Porquet chairs the *Service d'Aide aux Personnes* for the seven CAL regions.²⁶ In particular, she is responsible for establishing contact with the interdenominational structures of the hospitals where the CAL has been mandated to work. A key question for her is how to work on an interfaith platform with representatives of traditional religions. And, more crucially, how can patients' rights be integrated with fundamental rights at large? In the past, the bishops had set up a platform in each hospital, but the CAL very quickly wondered how, in this context marked by the religions, to make its 'pro-active' *laïcité* heard? How to ensure the 'neutrality' (at least in CAL's very subjective sense) of public services? How to train staff members to make them compatible with a 'neutrality of public appearance' (a wording that is difficult to understand in concrete terms)? In the wake of a number of recent legal disputes, some jurists are emphasising the *intrinsically* plural nature that the principle of neutrality must adopt in the Belgian secular system, at the risk of being at odds with the reality of

²⁵ Philippe Grollet, *Laïcité: utopie et nécessité* (Brussels: Labor & Espace de libertés, 2005); Jean Baubérot, "Laïcité/Laïcisation," *Dictionnaire des faits religieux*, edited by Régine Azria, Danièle Hervieu-Léger, Dominique Logna-Prat (Paris: PUF, 2019), 672–676.

²⁶ I would like to extend my warmest thanks to Andrée Porquet for the information she kindly shared with me during 2022, and for the documentation she made available to me.

society. Whether we are talking about ritual slaughter without stunning (the neutrality of abstention is powerless in the face of this practice), the wearing of religious symbols in public education (in a ruling of 4 June 2020, the Constitutional Court expressed itself for the first time on this subject, defending the shift from pluralist neutrality to a plurality of forms of neutrality) or neutrality in private companies, this trend is being confirmed.²⁷

This neutrality was again highlighted during the period when Flemish liberal Maggie De Block (2014–2020) headed the ministry of social affairs and public health: she wanted to see an organisation of health ‘pools’ (or groupings of hospitals) based on their Christian or public characters. In any case, it is envisaged that the assistance service must be neutral, with due respect for patients’ rights. That said, and this is a central point in the problem of neutrality and its differentiated application across institutions, each hospital has an Ethics Committee with its own dominant sensitivities. We are, therefore, living under a regime of profound *fragmentation* of the hospital field, coupled with a *fragmentation* of the field of moral and religious assistance. The *Service d’Aide aux Personnes* has a representative in every hospital, through the intermediary of this ethics committee, whether public or not. According to Andrée Porquet, there are a number of issues of an ethical nature that give rise to differences of opinion within these bodies. Although euthanasia has been legal in Belgium since 2002, a doctor can still raise a conscientious objection to it. The same applies to the practice of voluntary termination of pregnancy (decriminalised in 1990). A doctor can refuse to supervise its administration themselves, but the institution to which they belong cannot circumvent the law. Organised secularism has been confronted with this question of conscientious objection, which is crucial in terms of moral assistance, although the 1990 affair had an impact that needs to be reassessed.

A Desire for Legislation?

Since the early 1980s, a number of liberal politicians have been pushing for a law authorising abortion, including Senator Lucienne Herman-Michielsens (together with socialist Senator Roger Lallemand).²⁸ This was one of the rare occasions

27 Stéphanie Wattier and Léopold Vanbellingen, “L’arrêt n°81/2020 de la Cour constitutionnelle: de la neutralité pluraliste à la pluralité des formes de neutralité?,” *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* 4 (2020–2021): 333–340.

28 Karen Celis, “The Abortion Debate in Belgium,” in *Abortion Politics, Women’s Movements, and the Democratic State. A comparative Study of State Feminism*, edited by Dorothy McBride Stetson (Oxford: Oxford University Press, 2003), 39–62, 53.

when a bill was initiated by the legislature (and not the administration). The bill was drafted and presented on 6 April 1986, but it was put on ice until 1989, notably under pressure from the social christian parties (PSC/CVP), in particular, the Flemish CVP party to which Prime Minister Wilfried Martens belonged. Martens opposed the bill on grounds of religious morality. Until March 1990, the King did not express himself clearly on the question to his Prime Minister. Everyone knew of the King's deep catholic faith.

Then a dramatic turn of events occurred. On 30 March 1990, the day after the bill was approved by the House, the King presented his Prime Minister with a draft letter in which he clearly refused to sign the document. Martens told him that he could not offer him his resignation at that precise moment, at the risk of provoking a constitutional crisis. He therefore asked him to reword his letter, asking him to insert a wish for a legal solution to the problem, reconciling the King's conscientious objection with the proper democratic functioning of the country. The fear was that the government's resignation would lead to general elections in which the King and his office would be at stake.²⁹ At this stage, Prime Minister Martens knew that, basically, the only solution would be to trigger Article 82 of the Constitution, which provided for the eventuality of the King being "unable to reign" (in 1831, this was thought to be a loss of his mental faculties, etc.).³⁰ The ministers would then be responsible collectively for initiating this procedure, convening the Chamber, before a regency – a sort of interregnum – was provided for.³¹ Martens presented this solution to André Alen, member of his cabinet and professor at the *Katholieke Universiteit Leuven*. He was not opposed. The King also agreed.³² The signing of the law took place during the night of 3 to 4 April 1990, in the Council of Ministers. For a

29 A few weeks earlier, during a state visit to Switzerland, the King was travelling with his Minister of Foreign Affairs, Mark Eyskens. He told him: "I would never sign such a law". Mark Eyskens, *À la recherche du temps vécu. Mes vies* (Brussels: Racine, 2010), 393–401.

30 Christian Behrendt and Martin Vrancken, "L'article 93 de la Constitution belge et l'impossibilité de régner du Roi: une disposition dépassée par son histoire," in *L'Europe au présent ! Liber amicorum Melchior Wathelet*, edited by Jonathan, Wildemeersch and Paschal Paschalidis (Brussels: Bruylants, 2018), 49–52. See also: Jean Stengers, *L'action du Roi en Belgique depuis 1831. Pouvoir et influence* (Brussels: Racine, 2014), 287–296.

31 This is where a historian comes in. Jean Stengers, a professor at the *Université Libre de Bruxelles*, wrote a book in 1980 in which he reviewed the King's attitude at the start of the war. On 28 May 1940, Catholic Prime Minister Hubert Pierlot declared that the King was "unable to reign". This was to honour an unwritten rule of the State: When one of the three branches of legislative power fails, the other two take over. A ruling by the Court of Cassation validated this legal interpretation in 1944. See Jean Stengers, *Léopold III et le gouvernement. Les deux politiques belges de 1940* (Gembloux: Duculot, 1980).

32 Quoted in Wilfried Martens, *Mémoires pour mon pays* (Brussels: Racine, 2006), 173–178.

few hours, the ministers, who under the 1831 Constitution were deemed to be “responsible”,³³ embodied the sovereignty of the state, each being an ephemeral holder of an “equal part” of it.³⁴

I thought it useful to digress for a moment to 1990, because it clearly shows the importance of conscientious objection in the difficulties of devising fluid, if not systematic, legislation on the secularisation of the body in Belgium and, by extension, the secularisation of hospital care. At least from the point of view of organised seculars, there have been tensions in the context of public hospitals where nurses of the muslim faith or of evangelical christian sensibilities have been found praying with patients. This attitude, likened to proselytising, is strongly criticised by the CAL and its related bodies.³⁵ The difficulties observed in ‘welcoming’ secular counsellors in catholic hospitals are also a sensitive issue in this vast field of assistance.

The application of the De Saeger Circular letter has often been problematic. In a *Note* from the SLP and CAL to SLP trustees, written on 7 December 2012, this difficulty is highlighted. It is interesting to see that this document featured a quote from Voltaire at the top: “Our health is far too important a thing to be left to doctors alone”. Conveying the idea that a hospital is not only a place for treating the body as a biological being but also as a moral entity, this phrase, worthy of Molière, seems rather paradoxical in a document one would expect to have a rationalist tone. Over time, however, the latter has been enriched by a genuine ethics, which has penetrated the medical environment. The memo criticised the fact that patients’ right to moral support was only partially respected. The circular letter stipulated that a questionnaire must be submitted to patients when they enter a hospital, but the procedure was not systematically implemented. This right was guaranteed by law in prisons and the army: the request for the same in hospitals was also on the agenda. There was also a degree of inequality when it came to funding lay counsellors, who are often volunteers and sometimes receive compensation (up to €18.5 per hour), unlike chaplains from recognised religions, who receive direct or indirect subsidies. There was therefore a ‘variable-geometry’ secularisation system in the field.

This situation is all the more paradoxical as the political world has considered moral assistance the corner stone of organised *laïcité* since 1981, and even more

33 Paul Harsin, “La Constitution belge de 1831 et la responsabilité ministérielle,” *Revue d’histoire politique et constitutionnelle* 1 (1937): 164–177.

34 See the comments and criticisms of legal experts Francis Delperée and Rusen Ergec, *Journal des Tribunaux*, October 5, 1991, 595–597; Delperée and Ergec, *Journal des Tribunaux*, April 14–21, 1990, 595–597. Albert II did not echo his brother’s prohibitions or procrastination when it came to sanctioning the bill to decriminalise euthanasia, which was passed in 2002.

35 Documentation transmitted by Mrs. Andrée Porquet.

since recognition under the Constitution (Article 181) and the related law passed on 21 June 2002. Paragraph 2 of Article 117 (now 181) of the revised Constitution of 1993 provides for non-confessional philosophical communities (thus including *laïcité*) to live on an equal footing with recognised religions; this was implemented by the 2002 law, Article 3 of which states that the Central Secular Council “coordinates the organisation and provision of moral assistance according to a non-confessional philosophical conception”. This system involves collaboration between regional and provincial services and CAL (or deMens.nu in Flanders), as well as more specific sectors (hospitals, the army, airports, etc.). The 2002 law provides for the remuneration of French-speaking and Dutch-speaking staff, secular ‘delegates’, by the federal Ministry of Justice. Their number is determined by royal decrees.

There is a big gap between the norm and its application. The need for a law to regulate this assistance is becoming increasingly pressing. A number of parliamentary questions have been raised on this subject, such as the one by christian democratic ‘CD&V’ senator Mia De Schampelaere on 31 October 2000.³⁶ She was particularly concerned about the information given to patients when they are admitted to hospital. She wanted to put an end to *de facto* discrimination in the quality of this information between chaplains, ministers of religion and secular counsellors. This was a quest for equality in the service of a neutrality that appears to be more incantatory than it might seem; you only have to go to a conference abroad to see our colleagues, even those who are very well informed about the Belgian secular system, reducing this situation to the magic terms of ‘pillarisation’ (as if this were the sole prerogative of Belgium, whereas the Netherlands has applied this rule in a sometimes more observant manner) and ‘neutrality’. Whether it is a question of the SLP or parliamentary projects, the aim is to push for the recognition of moral, religious and philosophical assistance as a form of care (one could think of the current debates on the recognition as care of anything other than chemotherapy in the treatment of cancer). It is also hoped that respect for religious convictions will be added to the 2002 law and that the 1973, 1990 and 1997 circular letters will be harmonised.

³⁶ Belgian Senate, session 2000–2001, *Questions et réponses*, Bulletin 2–26, Question n°864 de Mme Mia De Schampelaere du 31 octobre 2000 à Magda Aelvoet, Ministre de la Protection de la consommation, de la Santé publique et de l’Environnement Santé publique, on the *Encadrement spirituel dans les établissements publics de soins. Budget. Règles de droit*. See <https://www.senate.be/www/?MIVAL=publications/viewSTBlok&COLL=B&DATUM=%E2%80%9C05/12/2000%E2%80%9D&DOSID=33556005&MINID=186&LEG=2&NR=26&VTYPE=svid&LANG=fr>.

Conclusion

Let us now draw some conclusions. In recent years, representatives of organised *laïcité* have reaffirmed the need to give greater legitimacy to moral assistance, in particular, by means of legislation. One example is the aforementioned speech by Andrée Porquet at the “Care and Secularism” symposium held at the Haute École Francisco Ferrer in Brussels on 20 April 2017. It is worth looking more closely at the arguments put forward, as well as the lexicon used to define secularism, the patient, the notion of care or, more broadly, a principle. *Laïcité* is defined as the separation between ‘civil society’ and ‘religious society’, which, in my view, opens the door to a number of questions. What does this notion of ‘religious society’ cover? Is ‘civil society’ synonymous with ‘secular society’ (in which case it would also have to be defined)? To speak of secularism as a constitutive element of society, and not of institutions, is more akin to ‘laicism’, i.e. a militant or at least exclusivist conception of the separation of the temporal and the spiritual, or to a conception that takes us back to the religious field, where seculars are to be distinguished from clerics.³⁷ Whatever the case, we are a long way from the paradigm whereby a process of ‘laïcisation’ implies a distancing of public institutions from religion, and whereby a process of secularisation, concerning society, testifies to a liberation from dogmas on the part of populations formerly imbued with them in their daily lives. However, we should not be surprised by these expressions. The CAL readily speaks of a “secular people” or a “secular society”. Another salient point in the nurse’s speech concerns “secular public health policy”.

Another important point is the increasing clarification and recognition of the status of patients attached to philosophical conceptions of atheism or agnosticism. These last two terms are rarely used in the documentation consulted, but they do cover a social reality. Sometimes, in response to a request for moral support, a priest is invited to attend due to a lack of personnel. This shows the extent to which the famous ‘ecclesialised secularism’ of 1981 does not necessarily embody the principle of equality in the face of illness or death. Sociologists are still unfamiliar with this kind of problem because, in France as in Belgium, while the history of atheism has been the subject of recent research,³⁸ a genuine current sociology of atheism, agnosticism or indifferentism, particularly in France (which could include a sociology of secularism and secular movements), has yet to be written.

³⁷ This exclusivist option is developed in Philippe Portier, *L’État et les religions en France. Une sociologie historique de la laïcité* (Rennes: PUR, 2016).

³⁸ Patrice Darteville and Christoph De Spiegeleer, ed., *Histoire de l’athéisme en Belgique* (Brussels: ABA Editions, 2021).

It seems to me that a central problem is the paradoxical situation of moral and religious assistance in the wider field of relations between the spiritual and the temporal. Even as it is, a capital lack of organised *laïcité*, moral assistance seems to be lagging behind in terms of legislation. Indeed, fights in favour of abortion or euthanasia have often been (or still are today) marked by very lively, embodied, corporeal debates, just like the issues themselves. The decisions that are supposed to be taken at the end of these debates generally lead to laws being passed in parliament. It is precisely a law, beyond royal decrees, ministerial circular letters or charters, that moral and religious assistance lacks. This is another area where recognition is needed. For the time being, this issue remains largely governed by flexible regulation. However, this flexible regulation is not without consequences. As we have seen in France, the charters of *laïcité* in schools and hospitals, through the freedom they give to the management of establishments, allow real 'values', rather than 'principles', to influence the conception of secularism in an institution.

Finally, another phenomenon that would require a fascinating study, both historical (although this field has already been well studied) and memorial, is Belgium's thwarted and traumatised (consciously or not) relationship with certain ethical issues, as well as the disappearance of the memory of certain secular struggles within the current components of this philosophical option such as the UVV, Dutch-speaking equivalent of the CAL, founded in 1966, association in 1971. Although it is often associated with a liberal conception of the politics of the body or of intimacy (the 2002 law on euthanasia seems to be the symbol and guarantor of this), it is worth asking whether the memory (or absence of memory) of the school wars, the 1990 precedent concerning abortion, the fear of stigmatising the muslim or catholic population in the hospital context (especially since the 2010s), as well as the independence of doctors (their conscientious objection) with regard to the ethics committees of each hospital, all contribute to slowing down a genuine legislative process, which has long since been lagging behind on the wider secularised nature of the Belgian populace. A reflection on the culture (or lack of culture) of the memory of secular organisation and activism in Belgium would be of great interest.