

Liberal Philosophers and Political Parties on Religious Tolerance

*A case study on the positions of the VVD and D66 on Christian wedding
officiants who refuse to marry same-sex couples*



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Executive summary

The Netherlands was the first country in the world to legalize same-sex marriage in 2001. Yet in 2012, it was estimated that around 87 Christian wedding officiants continued to refuse to marry gay couples due to their religious beliefs. Even though municipalities were allowed to hire these so-called ‘refusing wedding officiants’, they were still obliged to contract same-sex marriages and this obligation has never been violated. However, the refusal of a wedding officiant to contract a same-sex marriage was still a violation of the Equal Treatment Act. This violation was the key motivation for the Dutch liberal parties, the People’s Party for Freedom and Democracy (VVD) and Democrats 66 (D66), to implement a new law which outlaws the right to conscientious objections in the case of the refusing wedding officiant.

The goal of this dissertation was to determine the extent to which the VVD and D66 adhere to the principles on religious tolerance, developed by liberal philosophers Thomas Hobbes, John Locke and John Stuart Mill. This extent was determined by examining the ban of the refusing wedding officiant. Throughout this research, two forms of qualitative research methods have been used. The first method relates to the extensive literature review on the writings of each of these philosophers, which was essential to clarify their individual position on religious tolerance and personal freedom. Secondly, multiple interviews were conducted to obtain further insights into the debates on the refusing wedding officiants and religious tolerance in general.

In addition, other cases have been examined as well, including the proposal of mandatory vaccination, the ban of the ‘single-fact’ construction and the proposed limitations on the educational freedom of Christian schools. Following these discussions, it was found that the views of the Dutch liberal parties on religious tolerance, correspond relatively well with the philosophy of Hobbes in comparison to the principles of Locke and Mill. It was concluded that Locke’s suggested separation of church and state, as well as the harm principle developed by Mill, are not applied by the Dutch liberal parties, which becomes evident by examining the case study of the refusing wedding officiant. Moreover, this same case study illustrated that the views of Hobbes on the authority of the state and the right to conscientious objections are similar to the ideas of both the VVD and D66.

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Introduction

In the Netherlands, there is an intense debate on the extent to which religious freedom should be allowed for in the public domain. As a result, this dissertation is written to provide new insights into this debate by answering the following main research question: To what extent are the principles on religious tolerance, developed by Thomas Hobbes, John Locke and John Stuart Mill, adhered to by the VVD and D66? In order to provide an answer to this question, the next two sub-questions will first need to be discussed. First of all, what are the main principles of Hobbes, Locke and Mill on religious tolerance? And second, what is the current position of the Dutch liberal parties on religious tolerance?

Hobbes, Locke and Mill have been selected, because these philosophers have strongly influenced the liberal philosophies, the concept of tolerance and the idea of personal liberty. In addition, the parties that will be discussed are the People's Party for Freedom and Democracy (VVD) and Democrats 66 (D66) for these parties affiliate themselves with liberal thought. Moreover, a case study is used to analyse the differences and similarities between the positions of the philosophers and the political parties. This case study concerns the ban of Christian wedding officiants who have conscientious objections to marrying same-sex couples. This ban was proposed by D66 and supported by the VVD, making it a suited case in answering the main research question. However, this dissertation does not aim to defend or critique the policies of the liberal parties on religious tolerance, but instead hopes to support and motivate readers in their own critical thinking.

Finally, a qualitative research method was conducted, as this dissertation discusses the meanings and values of an idea, being religious tolerance based on the principles of liberalist theory (MacNabb, 2010). The research methods can be divided into two main categories. First, the literature review has been vital in discussing and analysing the philosophies of Hobbes, Locke and Mill. Second, three academics who study the relation between religion and politics, were interviewed namely: Theo de Wit, Bas Hengstmengel and Johannes ten Hoor. These interviews combined with the literature review, led to the conclusion that the principles of both Locke and Mill were not applied by the Dutch liberal parties in their decision to ban the refusing wedding officiant. However, it was found that the philosophy of Hobbes did correspond with this decision of the VVD and D66.

Definitions

In this section, specific terms relevant to this dissertation will be explained for these terms have been credited with different definitions which might lead to misinterpretations. The terms that will be briefly discussed are: tolerance, religion and liberalism as these terms are most fundamental to this dissertation.

Tolerance

The word tolerance originally comes from the Latin word *tolerantia*, which can be defined as the “endurance of pain” (Riddle, 1870, p. 114). The English word tolerance is often defined as the “willingness to allow people to do, say, or believe what they want without criticizing or punishing them” (Longman, 2009, p. 1859). In order to understand the meaning of tolerance, it is essential to know that one cannot tolerate something that one likes, or tolerate someone with whom one agrees. Above all, the translation of the Latin word *tolerantia* expresses that tolerance relates to the bearing of pain. This dissertation argues that therefore, tolerance cannot be linked to indifference, as no individual experiences hardship when allowing the existence of different ideas or actions from which he or she is unattached in the first place.

The original definition of tolerance is, however, in conflict with meanings that are currently being attributed to it. For example, the idea that tolerance includes the assumption that no world view contains absolute truth is not based on any of its original definitions. In 1995, the United Nations Educational, Scientific and Cultural Organization stated in its *Declaration of Principles on Tolerance* that tolerance “involves the rejection of dogmatism and absolutism” (UNESCO, 1995, p. 71). Nevertheless, the rejection of absolutism, either being absolute truth or moral absolutism, does not relate to the definition of tolerance. Therefore, if the words *to tolerate* appear in this dissertation, it means to “allow people to do, say, or believe something without criticizing or punishing them” (Longman, 2009, p. 1859).

Religion

The English word religion finds its origin in the Latin word *religio* which can be translated as “a sacred obligation” or “bond”, in the sense of a bond between people and God or gods (Riddle, 1870, p. 578). Throughout this dissertation, the definition of the word religion that will be used is borrowed from the *Longman Dictionary*, which states that a religion is a “belief in one or more gods” with the additional note that religion includes “all the ceremonies and duties that are related to it” (Longman, 2009, p. 1471). Moreover, the primary religion throughout this dissertation will be Christianity due to the selected case study. In order to prevent misconceptions on what kind of beliefs fall under Christianity, the following definition might provide some clarification: “A religion based on the life and teachings of Jesus. Most forms of Christianity hold that Jesus is the son of God and is the second person of the Trinity, through whom humans may attain redemption from sin” (American Heritage Dictionary, 2014, “Christianity” section, para. 1).

Liberalism

The word liberalism is a relatively new word, which was introduced at the beginning of the 19th century. However, the word liberal is much older and finds its origin in the Latin word *liber*, which can be translated as “free” or “unrestrained” when used as an adjective. When *liber* is used as a noun, it refers to a person that is “his own master” (Riddle, 1870, p. 353). In Europe, the ideas of liberalism are used by both left- and right-wing political parties. This has led to the existence of terms such as classical liberalism, social liberalism, progressive liberalism, neoliberalism and conservative liberalism. Liberalism in this dissertation relates mostly to the definition of classical liberalism, which is defined as a political “ideology advocating private property, an unhampered market economy, the rule of law, constitutional guarantees of freedom of religion and of the press, and international peace based on free trade” (Raico, 2010, “What is Classical Liberalism?” section, para. 1).

1. Thomas Hobbes, John Locke & John Stuart Mill on religious tolerance

This first chapter discusses the ideas of Thomas Hobbes, John Locke and John Stuart Mill on religious tolerance. The ideas of these philosophers on how to deal with religious groups are very diverse. Yet, their different positions are all relevant in understanding the debate on the refusing wedding officiant, as will be shown later in this dissertation. In addition, the position of each philosopher on religious tolerance will be discussed separately in order to clearly demonstrate the uniqueness of their viewpoints. Moreover, every sub-chapter will first discuss the more general worldview of each philosopher on matters such as individual liberty and the role of the government, for these ideas strongly impacted their position on religious tolerance. Furthermore, there is an immense amount of writings on the ideas proposed by these great thinkers demanding a narrow selection to be made. Therefore, only the most important principles concerning religious tolerance developed by each of these philosophers will be discussed and explained.

Furthermore, this dissertation discusses the principles of Hobbes, Locke and Mill without involving their personal beliefs. As a result, the principles will be applied in a neutral way to the positions of the VVD and D66 on religious tolerance for two reasons. First of all, focussing on personal statements would prevent any form of objective discussion on the issue of religious tolerance. Secondly, it will be impossible to consider their personal views when examining cases such as the refusing wedding officiant, for the exact ideas of Hobbes, Locke and Mill on same-sex marriage and gay rights cannot be determined. Thus, this thesis focusses on the principles themselves and tries to minimize the influence of the personal beliefs and opinions of these three intellectuals.

Finally, different years are written in the in-text references behind the name of the same philosopher for two main reasons. First of all, different years can be observed, because several pieces of writing of the same philosopher have been used to explain each of their position. Second, this dissertation tried to remain as close as possible to the original writings by using older translations. However, more recent translations have been used when the older texts were quite difficult to comprehend.

1.1 Thomas Hobbes – Leviathan

The ideas of Thomas Hobbes on religious tolerance are distinctive due to their emphasis on how to *avoid intolerance* instead of how to *stimulate tolerance*. This different focus could be seen as a consequence of Hobbes' cynical perspective on humanity, which he clarifies by describing the natural condition of mankind in *Leviathan*. In this natural condition, no higher authority exists and every individual has the total freedom to do whatever one wants or finds necessary to do. Hobbes is convinced that in this natural condition, people will have a life that is "solitary, poore, nasty, brutish, and short" (Hobbes, 1909, p. 97). Hobbes explains that this horrific state of life is caused because man "cannot assure the power and means to live well, which he hath present, without the acquisition of more" and that this lack of assurance leads to a "Restlesse Desire of Power, after power, that ceaseth onely in Death" (Hobbes, 2007, p. 58). Therefore, a person will not feel safe when fully dependent on his own strength due to the uncertain, harmful and life threatening intentions of others. When the security of human beings depends solely on themselves, Hobbes expects them to be in a "continuell feare, and danger of violent death" (Hobbes, 1909, p. 97). Thus, Hobbes associates the natural condition with a state of war which "consisteth not in actuall fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is Peace" (Hobbes, 1909, p. 96). In other words, Hobbes argues that a state of war is present when peace is not guaranteed, which means that actual fighting is not required.

However, there is an alternative to this horrific state of war. Instead of being hopelessly divided, Hobbes suggests that society can be fully united under the total rule of a Sovereign, also known as the Leviathan. The main advantage of having such a Sovereign with absolute power is the guarantee of peace and security, i.e. peace among the citizens themselves and security from enemies abroad (Hobbes, 1909). Moreover, Hobbes argues that the role of the Sovereign can be fulfilled by each of the three government systems which are monarchy, democracy and aristocracy (Hobbes, 2005). Nonetheless, Hobbes does prefer a monarchy, because "a monarch cannot disagree with himself out of envy of interest, but an assembly may, and that to such a height as may produce a civil war" (Hobbes, 2005, p. 142). Furthermore, the conveyance of power upon the Sovereign is possible through the use of a *social contract*. Hobbes explains in *Leviathan* that signing

this contract is as if “every man should say to every man, *I authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner*” (Hobbes, 1909, p. 132). By signing this contract, all the different wills of the people have converged into one will of which the Sovereign is not just the representative, but the actual embodiment. As a result, Hobbes writes that “no man can without injustice protest against the Institution of the Sovereign” for the actions of the Sovereign are authorized by society itself (Hobbes, 1909, p. 135). The Sovereign can only be dissolved “not by external violence, but intestine disorder”, as this would be the fault of the rulers and not of society (Hobbes, 1909, p. 247).

In order to clarify how this Sovereign influences Hobbes’ position on religious tolerance, two aspects will now be clarified. The first one being the extent to which the Sovereign has the authority to define the religious beliefs of society. The second aspect concerns the amount of religious freedom that exists under the Sovereign’s rule.

1.1.2 The authority of the Sovereign over religious beliefs

The Sovereign that Hobbes proposes, should not be understood as merely a political power. In *Leviathan*, Hobbes argues that the Sovereign should be both the highest political and religious authority to protect public order as “He is Judge of what is necessary for Peace; and Judge of Doctrines: He is Sole Legislator; and Supreme Judge of Controversies” (Hobbes, 1651, p. 140). In addition, Hobbes uses biblical scriptures to defend this united religious- and political authority of the Sovereign. For example, Hobbes quotes the following two verses in *Leviathan*: “And if a kingdom be divided against itself, that kingdom cannot stand” (Mark 3:24, King James Version) and “No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other” (Matthew 6:24, King James Version). According to Hobbes, these verses imply that people should not divide their loyalties between religious and civil authority, as this is impossible for “both will have their commands be observed as law” (Hobbes, 1839, p. 316). Therefore, the Sovereign must both be the head of the state and head of the church, though this does not mean that Hobbes denies the sovereignty of God. What it does mean is that Hobbes believes that all citizens, including Christians, must obey the earthly Sovereign as long as the Kingdom of God is not present (Hobbes, 1998).

1.1.3 Religious freedom under the Sovereign

Although Hobbes defends the rule of an absolute monarch, he also defends the right of citizens to have religious freedom and to be tolerated when having different beliefs. Hobbes makes a combination of these two possible by making a distinction between *private* and *public* activities. This distinction can be made, because Hobbes does not support the idea that the Sovereign should define the very conscience of individuals as this is impossible (Hobbes, 1909). The reason why the Sovereign should have authority over religious beliefs, relates to the protection of public order and peace, but there is another motivation. This motivation relates to the establishment of a uniform public language, which Hobbes believes is needed to prevent conflicting public opinions, for these conflicts are often based on the incorrect usage of words (Hobbes, 1985, p. 74).

Secondly, Hobbes is able to make a distinction between *private* and *public* activities for having different religious beliefs does not necessarily mean that one does not acknowledge the authority of the Sovereign. Furthermore, Arash Abizadeh, who researches the history of political philosophy, wrote a paper on how Hobbes was able to combine the Sovereign as highest religious authority, with the possibility of having religious freedom. In this paper, Abizadeh explains that non-conforming *private* actions of individuals can be *visible*, as long as these actions are not *representative*. For example, he writes that “Hobbes explicitly defined the difference between public and private worship: in terms not of visibility, but of communal representativeness: “Publique, is the Worship that a Commonwealth performeth, as one Person,” as a corporate body, while “Private, is that which a Private person exhibiteth,” in his or her own name only” (Abizadeh, 2013, p. 286).

As a result, an individual can express non-conforming religious beliefs both privately, within the walls of his or her own home, as well as publicly, in the open for others to see, with the condition that the individual acknowledges his expression to be personal, while simultaneously respecting the authority of the Sovereign as ruler. However, the Sovereign always maintains the right not to tolerate any behaviour which it considers a threat to security (Hobbes, 1651, p. 140). For this reason, non-conforming actions of an individual, or a group of individuals, can still be prohibited by the Sovereign, even when these non-conforming actions are both non-representative and private.

1.1.4 Thomas Hobbes on religious tolerance

The position of Hobbes on religious tolerance cannot be explained without emphasizing the impact of the Leviathan. As previously discussed, Hobbes is convinced that without a mighty Sovereign, society will fall apart and people will be in a state of war in which it is every man against every man. Moreover, Hobbes applies this fear for civil war on religious tolerance and religious pluralism as well. In the book called *Persecution and Pluralism*, it is mentioned that while “tolerationists insisted that *peace* could be secured by granting toleration and permitting religious pluralism, Hobbes believed that peace could only be achieved when the Sovereign imposed a uniform public worship and the subjects yielded outward conformity” (Bonney & Trim, 2006, p. 161). However, the rejection of Hobbes’ suggested Sovereign by most tolerationists should not lead to the conclusion that Hobbes rejected the idea of religious tolerance. It is true that Hobbes was sceptical towards religious pluralism, as he considers a plural society to be more likely to fall apart (Hobbes, 1909). Nevertheless, Hobbes made a distinction between non-conforming actions in public that are *visible* and non-conforming actions that are both in public and *representative* (Abizadeh, 2013). In short, Hobbes supports the idea that citizens can have religious beliefs that are different from those of the Sovereign, as long as these beliefs are kept private. Private here means that these beliefs must stay away from the political field which is under the total authority of the Sovereign.

In addition, Hobbes’ defence of a Sovereign, who is also the highest religious authority, relates to the absence of a higher power on earth. As mentioned earlier, Hobbes is convinced that all citizens are subjected to the authority of the Sovereign for Christ has not yet returned, which means that at this point of time, the law of the Sovereign is above the law of God (Hobbes, 1998, p. 208). Consequently, the Sovereign has the authority to define the public conscience through laws yet freedom of conscience on the personal level exists, because it is “in the conscience only, where not man, but God reigneth” (Hobbes, 2010, p. 299). Thus, Hobbes acknowledges freedom of personal conscience, while simultaneously arguing that in the public sphere, people must adhere to the conscience as defined by the Sovereign. Therefore, Hobbes would argue that concerning religious freedom, people have the right to act in accordance with their own conscience unless these actions are in public and opposing the public conscience as defined by the Sovereign.

1.2 John Locke – The separation of church and state

In order to understand Locke's position on religious tolerance, it is important to know how he defines the different roles of the church and state. In *A Letter Concerning Toleration*, Locke argues that a separation of church and state liberates the state from its responsibility for the well-being of souls, while simultaneously liberating the church from its political tasks (Locke, 2004). Concerning the responsibilities of the government, Locke wrote the following: "The Commonwealth¹ seems to me to be a Society of Men constituted only for the procuring, preserving, and advancing of their own *Civil Interests*. *Civil Interests* I call Life, Liberty, Health, and Indolency of body; and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like" (Locke, 1983, p. 26).

Following this statement, Locke continues by mentioning that "the whole Jurisdiction of the Magistrate reaches only to these Civil Concernments, and that all Civil Power, Right and Dominion, is bounded and confined to the only care of promoting these things; and that it neither can nor ought in any manner to be extended to the Salvation of Souls" (Locke, 1983, p. 26). Thus for Locke, limiting state authority to only the civil interests is needed to allow for the existence of religious freedom.

Furthermore, while Hobbes believes that the law of the Sovereign is currently above the law of God, Locke considers the opposite to be true. In *A Letter Concerning Toleration*, Locke writes that "with regard to eternal salvation, everyone should do what he in his conscience thinks is acceptable to the Almighty", followed by the statement that "obedience is due first to God and then to the laws of the land" (Locke, 2010, p. 19). Locke continues this defence by discussing the importance of individual conscience which he believes to be superior to the commands of any government. In fact, an individual does not have to obey laws that "lie outside the magistrate's authority" and should in these cases adhere to his or her own conscience instead (Locke, 2010, p. 19). In short, Locke argues that a law that does not deal with the earlier mentioned civil interests, is illegitimate and does not have to be obeyed for the "political society is instituted purely to secure each man's possession of the things of this life" (Locke, 2010, p. 19).

¹ A "Commonwealth" can be defined as "a nation, state, or other political unit: as one founded on law and united by compact or tacit agreement of the people for the common good" (Marriam-Webster, 2015).

1.2.1 The earthly nature of human judgments

The separation of church and state is one of the foundations on which Locke has built his position on religious tolerance. However, this dissertation argues that the separation of church and state is not the cornerstone which further defined Locke's ideas on tolerance. The true fundamental element lies in Locke's definition of what tolerance truly means. At the beginning of this dissertation, the meaning of the verb "to tolerate" was defined as to "allow the existence, occurrence, or practice of (something that one dislikes or disagrees with) without interference" (Oxford Dictionaries, 2015). Locke would most likely have added at least one more aspect to this definition. Not only should one respect the potential false beliefs of *others*, one must also acknowledge that one's *own* beliefs cannot be considered as some sort of divine judgments (Locke, 2004). This differentiation between human judgments and God's judgments will now be discussed, as it is vital in understanding Locke's defence of religious tolerance.

First of all, the separation of church and state could be seen as a consequence of Locke's understanding of what knowledge and judgement are. In *An Essay Concerning Human Understanding*, Locke writes that when knowledge is desired but not acquired, humans turn to "*judgement*, whereby the mind takes its ideas to agree or disagree; or, which is the same, any proposition to be true or false, without perceiving a demonstrative evidence in the proofs" (Locke, 1825, p. 145). In addition, Locke noted that ideas, on which judgments are based, must already be obtained from one's senses, as it is impossible to compare ideas which one cannot think of (Locke, 1825, p. 145). Correspondingly, Locke asserts that the limits of human knowledge are determined by the content of those ideas which humans are capable of comprehending. Following this logic, incomprehensible ideas such as religious based ideas, cannot be considered as knowledge for humans are unable to comprehend heavenly matters. However, this does not mean that such matters do not exist. For instance, Locke was convinced that the Bible contains "Truth without any mixture of error" and that this truth "is all pure, all sincere; nothing too much, nothing wanting" (Scott, 1854, p. 49). Tolerating the beliefs of others has nothing to do with truth being relative according to Locke. Truth is *absolute*, but humans should acknowledge that they cannot be *absolutely* sure that all their religious ideas are correct and should therefore tolerate the possible incorrect beliefs of others as well. As a result, Locke favoured a

separation of church and state to allow for the existence of religious freedom. Moreover, Locke fears both a church that has the political authority needed to impose its religion on society, as well as a government that considers itself capable to comprehend the judgments of God (Locke, 2004). In both settings, whether the highest authority is a political church or a religious government, making a differentiation between human judgments and God's judgments is considered by Locke as the only solution (Locke, 2004). Without understanding that a difference exists between earthly and heavenly matters, it becomes complicated to apprehend that the judgments of both the church *and* the government are of an earthly nature. Therefore, Locke maintains that in the perspective of God's judgments, humans will be able to recognize that their own judgments cannot be considered as being divine (Locke, 2004). Thus for Locke, tolerance strongly relates to the awareness that judgments made by religious institutions, political authorities and oneself are all of an earthly nature based on the limited understanding of humans.

1.2.2 John Locke on religious tolerance

In conclusion, the position of Locke on religious tolerance is largely based on a separation of church and state in combination with the idea that human judgments are not divine. These two aspects combined, allow for the existence of both religious freedom and religious tolerance. In addition, Locke suggests that as humans have had a small amount of sense perceptions, they have a small number of comprehensible ideas, are therefore limited in their perceptions of knowledge and unable to comprehend heavenly matters. This incapability then causes the individual to form judgments which, by definition, are of an earthly nature (Locke, 1825, p. 144). Following this conclusion, Locke believes that humans should tolerate different religious beliefs to create a society in which people "secure unto each other their properties in the things that contribute to the comfort and happiness of this life, leaving in the mean while to every man the care of his own eternal happiness" (Locke, 1796, p. 50). This quote also well reflects how Locke views the ideal society. According to Locke, there needs to be a government that allows for the protection of property, while each individual's right and freedom to protect the well-being of his or her own soul is respected. For the government has no legitimate authority over issues unrelated to the earlier mentioned civil interests and outside these interests, every man has "the supreme and absolute authority of judging for himself" (Locke, 1796, p. 49).

1.3 John Stuart Mill – The harm principle

The two works of John Stuart Mill on which most attention will be drawn are *On Liberty* and *Utilitarianism*. In this sub-chapter, the harm principle will be discussed first, followed by a short discussion on the subjective nature of judgments. Afterwards, a short description will be given of the greatest good for the greatest number, which is a utilitarian principle that was largely developed by Jeremy Bentham, but which was further expanded by his student, John Start Mill (Stephen, 1901). Finally, the relation between these ideas will be explained and the position of Mill on religious tolerance will be discussed.

According to Mill, individual freedom should not be constrained when dealing with actions that only affect the individual him- or herself. This is the *liberty principle* and is known as the first of the two guiding principles of Mill's essay *On Liberty* (Oliveira, 2004). Mill believes that restriction on such individual action is harmful to personal happiness and blocks the progressive force which society needs to develop (Mill, 1998, p. 383). In *On Liberty*, Mill writes that "the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others" (Mill, 1978, p. 9). Therefore, the harm principle argues that an individual is not amenable to society when dealing with actions that do not harm any other person. This principle forms the second guiding principle in *On Liberty* and is known as the *social authority principle*, which relates to the authority of society to interfere in individual freedom when damage is inflicted on another person (Oliveira, 2004).

Moreover, Mill explains that the harm principle must be applied to the two domains of liberty. The first domain is the "inward domain of consciousness", which includes "the liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological" (Mill, 1909, p. 214). The second domain concerns the liberty of tastes and pursuits. Individuals should be free to do what they want "without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong" (Mill, 1909, p. 215). For Mill, this is true freedom and "no society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government" (Mill, 1909, p. 215).

1.3.1 The subjective nature of human judgments

This dissertation suggests that similar to Locke, Mill formulates his solution to intolerance, the harm principle, based on his view on the nature of judgments. However, while Locke focussed on the *earthly* nature of human judgments, Mill seems to focus on its *subjective* nature, considering the following text he wrote in *On Liberty*: “No one, indeed, acknowledges to himself that his standard of judgment is his own liking; but an opinion on a point of conduct, not supported by reasons, can only count as one person’s preference; and if the reasons, when given, are a mere appeal to a similar preference felt by other people, it is still only many people’s liking instead of one” (Mill, 1978, p. 5).

Mill considers this standard of judgment a threat to individual freedom due to the so-called *tyranny of the masses* which is a mere consequence of the majority’s determination to impose its subjective judgments on the rest of society. Above all, Mill observed that no coherent principle exists that is used to defend the individual freedom of any person, at any time and in any situation. For instance, Mill wrote that “there is, in fact, no recognised principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences” (Mill, 1978, p. 8). In other words, personal preferences leading to subjective judgments, determine the extent to which both society and the government can interfere in the personal affairs of individuals. In each different case, people either decide to be tolerant or intolerant depending on their own subjective judgments instead of staying to an “opinion to which they consistently adhere, as to what things are fit to be done by a government” (Mill, 1978, p. 9). The goal of the harm principle is to break this circle and to create a society that allows for consistent freedom and tolerance without involving personal preferences.

1.3.2 The greatest good for the greatest number

As mentioned earlier, the concept of the greatest good for the greatest number was originally created by Jeremy Bentham, who was a friend of James Mill, the father of John Stuart Mill (Stephen, 1901). The most important adjustment made by John Stuart Mill, relates to the distinction between higher and lower pleasures. This distinction was not made by Bentham who instead, only focussed on the quantity of pleasures (Rosen, 2003).

In addition, the greatest good for the greatest number is based on the utilitarian moral framework, which Mill explains in *Utilitarianism*. In short, utilitarianism is a moral doctrine which holds that utility forms “the foundation of morals” which means that the concept of the greatest good for the greatest number determines what is right and what is wrong (Mill, 1863, p. 9). In *Utilitarianism*, Mill claims that “actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain and the privation of pleasure” (Mill, 1863, p. 9). Thus according to utilitarian thought, an action can only be considered either right or wrong on the basis of its effects on the happiness of the largest number. Consequently, one’s own pursuit of happiness ends when it harms the happiness of someone else and similarly, one’s freedom ends when it diminishes another person’s freedom or that of the greatest number (Mill, 1863).

Moreover, there is a solid relation between the harm principle, the utilitarian doctrine of ethics, the subjective nature of human judgments and the threat imposed by the tyranny of the majority. First of all, the subjective nature of human judgments, which are the likings and dislikings of society, forms “the main thing which has practically determined the rules laid down for general observance, under the penalties of law or opinion” (Mill, 1978, p. 7). Mill explains that these subjective rules are caused as people have “occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals” (Mill, 1978, p. 7). The enforcement of these laws by the majority of society is exactly what Mill is pointing at when mentioning the tyranny of the majority. In *On Liberty*, Mill writes that “the tyranny of the majority” is not only enforced by social judgments and opinions but “through the acts of the public authorities” as well (Mill, 1978, p. 4). The main solution to this tyranny is the harm principle which should, as earlier mentioned, allow for continual freedom and tolerance independent of subjective judgments shared by the majority of society. Finally, utilitarianism could be seen as the moral justification of the harm principle. Mill suggests that there is nothing morally wrong with doing something that is considered “foolish, perverse, or wrong” by the majority of society, as long as no harm is inflicted on another individual (Mill, 1909, p. 215). In short, the solution to the tyranny of the majority is the utilitarian harm principle which aims to allow for the greatest amount of happiness and freedom to the greatest number of people.

1.3.3 John Stuart Mill on religious tolerance

Although Mill did not intensively elaborate on religious tolerance in his writings, like Locke did in *A Letter Concerning Toleration*, his position is not any less clear. Instead of focussing on religious tolerance, Mill developed principles to define and defend tolerance in general, including religious tolerance. In addition, the work of Mill marks the beginning of the more contemporary understanding of tolerance, because before Mill's writings, the "discussion of toleration was limited to whether religious differences should be tolerated or not" (Lacewing, 2008, p. 1). Furthermore, the extent to which actions and beliefs should be tolerated is very extensive when the principles of Mill are applied. In fact, it could well be argued that Mill pleads for a more all-embracing form of tolerance than Hobbes and Locke. While Hobbes focusses primarily on how society can be prevented from falling apart and whereas Locke concentrates on how to prevent religious-and political authorities from abusing their power over society, it is Mill who takes the debate to a new level by arguing that society itself forms a threat to personal liberty as well.

As a consequence, Mill suggests that the authority of society should be constrained as well, for "there is a limit to the legitimate interference of collective opinion with individual independence; and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism" (Mill, 2015, p. 8). Subsequently, Mill suggests the harm principle which should enable society to constantly decide where the limits of both governmental and societal authorities over the individual are located. In addition, Mill's most relevant contribution to the debate on religious tolerance relates to the conviction that individuals need "protection also against the tyranny of the prevailing opinion and feeling, against the tendency of society to impose, by other means than, civil penalties, its own ideas and practices as rules of conduct on those who dissent from them" (Mill, 2003, p. 154). And as mentioned earlier, these opinions, feelings and ideas shared by the majority of society practically determine public legislation (Mill, 1978). This additional input from Mill should be kept in mind when reading the case study on the refusing wedding officiant.

2. The position of the Dutch liberal parties on religious tolerance

This second chapter will start off by discussing the liberal philosophies of the People's Party for Freedom and Democracy (VVD) and Democrats 66 (D66). This discussion is provided in order to explain the political philosophy on which both the VVD and D66 have built their position on religious tolerance. After having discussed the liberal philosophies, this chapter will clarify the extent to which the VVD and D66 allow for religious freedom by using small case studies as illustrations. Finally, a discussion will be provided on how the VVD and D66 have handled the case study relating to the wedding officiant who refuses to marry gay couples. Finally, a brief conclusion will be provided describing the shared ideas of the VVD and D66 on this same case study.

In addition, the objective of this chapter is to present the positions of the VVD and D66 on liberalism and the case study, on the basis of what these parties have declared themselves. These statements will not be further analysed, critiqued or defended for the goal of this dissertation is to compare the ideas of liberal philosophers on religious tolerance to the positions of the Dutch liberal parties. Thus, the description of these positions of the VVD and D66 will mostly be based on the proclamations which these parties have affirmed themselves.

Finally, nearly all of the footnotes in this chapter are written in Dutch, because the sources that have been used were written in this language. However, this should not impose serious implications to anyone not familiar with the Dutch language, as the footnotes are translated into English in the actual body texts of this dissertation.

2.1 The liberal philosophy of the VVD

Since its creation in 1948, the VVD considers personal freedom to be the greatest good² and wants to allow for the maximum amount of religious, political and social freedom for the largest amount of people (VVD, 1948). Furthermore, the VVD is convinced that true freedom can only exist in combination with responsibility and that it is the task of the democratic state to formulate these conditions³ (VVD, 1948). The idea that freedom and responsibility combined lead to true freedom, is still strongly present in the liberal philosophy of the VVD. As a result, later formulated VVD statements of principles have continued to underline the importance of people feeling responsible for their fellow citizens (VVD, 1980). Moreover, the VVD asserts that this responsibility should come voluntarily from society, but does seem to believe that the government has every right to intervene in case it does not. For example, the VVD states that it “wages war against the dictatorship of the majority, struggling to defend the rights and beliefs of minorities and individuals” (VVD, 2013, p. 6).

Another fundamental liberal principle of the VVD is its support for the separation of church and state, which it has supported since its foundation. In its current statement of principles, the VVD states that the party is “a purely political grouping, unlike the ‘confessional’ parties whose political objectives are founded on religious convictions” (VVD, 2013, p. 8). Nonetheless, a change did occur concerning the party’s affiliation with Christianity. For example, the VVD wrote in its first statement of principles that the party is deeply convinced that the foundations of Dutch civilization are rooted in Christianity, though this may be differently understood by various groups of society⁴ (VVD, 1948). The party’s current detachment from Christianity does not necessarily affect the principles of the VVD, but it could partly explain its current position on the religious tolerance of Christians. This position will be discussed but first, this dissertation will clarify where the VVD stands between the different perspectives on liberalism.

² Beginsel Program van de VVD, Artikel 4: “De vrijheid van de mens, naar zijn aard bestemd om als vrije persoonlijkheid in gemeenschap te leven, beschouwt de Partij als het kostbaarste goed”.

³ Beginsel Program van de VVD, Artikel 4: “De Partij is er zich van bewust dat ware vrijheid alleen bestaanbaar is, indien zij gepaard gaat met verantwoordelijkheid. Het is de taak der democratie de voorwaarden te scheppen, waardoor die verantwoordelijkheid tot haar recht kan komen.”

⁴ Beginsel Program van de VVD, Artikel 3: “De Partij is diep overtuigd, dat de grondslagen der Nederlandse beschaving wortelen in het christendom, al moge dit door de onderscheidene groepen des volks nog zo verschillend worden verstaan.”

Therefore, a brief discussion will now be provided on the main differences between classical- and social liberalism, which are the two main political forces within liberal thought. In short, classical liberalism argues that personal freedom is best served under the rule of a small government. According to historian Jim Powell, who is specialized in the history of liberty, Locke is the founder of classical liberalism, because he was the first writer to suggest that governments are morally obliged to serve the people by protecting life, liberty, and property (Powell, 1996). According to Locke, the government should protect only these three concepts and considers a government that is involved in additional areas, as a threat to personal freedom (Locke, 1983, p. 26). In contrast, social liberalism argues that individual liberty comes to its fullest right when the government interferes on other terrains as well, besides the concepts of life, liberty and property (Wissen van & Boon, 2004). An example of such a terrain is public education, to which Locke objected as he supported home-schooling instead (Powell, 1996). There are numerous other differences between social- and classical liberalism, but the main contrast relates to the belief of classical liberals that there is no role for the government in stimulating liberty, while social liberals do support the existence of such a role (Wissen van & Boon, 2004). Considering this main difference, it is possible to define the liberal stream of thought to which the VVD adheres to.

In 2004, the Telders Foundation, the think tank of the VVD, published an article in its journal *Liberaal Reveil*, on the debate whether the VVD is mainly a classical- or social liberal party. The article argued that since its foundation, the VVD has mainly been a social liberal party and defended this argument on the basis of the VVD statements of principles. For instance, the VVD stated in its first statement of principles that the party does not support the principle of *laissez faire, laissez passer*, which asserts that a “government should allow the economy or private businesses to develop without any state control or influence” (Longman, 2009, p. 974). The VVD parted from this economic doctrine as it would allow individuals to act according to their own discretion⁵ (VVD, 1948). However, the article claimed that this is the reason why the VVD *should* adhere to the principle of *laissez faire, laissez passer*, for having the possibility to act according to one’s own discretion is essential to the liberal philosophy (Wissen van & Boon, 2004).

⁵ Beginsel Program van de VVD, Artikel 5: “Zij verwerpt derhalve de leer van het *laissez faire laissez passer*, die een ieder de vrijheid wil laten naar eigen goeddunken te handelen”.

In addition, article 15 of the first VVD statement of principles states that private property is not an unchanging right, for it should constantly adapt to the current social developments⁶ (VVD, 1948). However, adjusting the right of private property in any way, due to the interests of society, is in violation of Locke's position on property rights. Locke argued that no government should have control over an individual's property, unless goods are confiscated as a form of legal punishment (Locke, 1796). Above all, the impossibility of violating property rights is not only vital to Locke's philosophy, but forms the very foundation of classical liberalism (Wissen van & Boon, 2004). Nevertheless, it should be remarked that the VVD does not actually proclaim to be a classical liberal party. Therefore, this discussion does not aim to critique the VVD, but tries to clarify where the party is positioned between the classical- and social views on liberalism.

Moreover, the shift towards social liberalism is not perceived as a violation of basic liberal philosophy by most VVD party members. In 2006, an article in *Liberaal Reveil* discussed how classical liberals have adapted social liberal ideas since the end of the 19th century due to the modernization of society. The article argues that social liberalism is not a new response to liberalism, but a *modification* of it (Beaufort de, 2006, p. 136). Furthermore, former Minister of Defence, Joris Voorhoeve, believes that social liberalism is merely a *modernization* of classical liberalism, which does not contradict the classical liberal philosophy⁷ (Voorhoeve, 2006, p. 140). This seems to indicate that many liberals would assert that social liberalism is a follow-up ideology of classical liberalism. In addition, current Minister of Infrastructure and Environment, Melanie Schultz van Haegen (VVD), stated in 2006 that there is little discussion within the VVD on the party's political ideology, as politicians usually do not consider ideological principles when practicing politics⁸ (Schultz van Haegen, 2006, p. 145). Thus, adjusting the liberal philosophy of the VVD seems to be considered either non-contradictory to the original principles, or, the adjustments are considered to be non-relevant for the actual practice of politics.

⁶ Beginsel Program van de VVD, Artikel 15: "Het eigendomsrecht is echter geen onveranderlijke grootheid. De wijze, waarop het mag worden uitgeoefend, behoort voortdurend aangepast te worden aan de maatschappelijke ontwikkelingen".

⁷ Voorhoeve, 2006: "Ik zie geen tegenstelling tussen beide; het klassieke liberalisme past in de politieke strijd van de afgelopen eeuwen die leidde tot de moderne staat en het sociaal-liberalisme gaat uit van de resultaten en voegt daar een aantal dingen aan toe".

⁸ Schultz van Haegen, 2006: "De politieke theorie is maar voor een paar mensen interessant. Politici bedrijven de politiek toch vooral vanuit de praktijk en het komt niet vaak voor dat zij de tijd nemen om stil te staan bij de ideologische uitgangspunten".

2.2 The liberal philosophy of D66

The liberal philosophy of D66 is based on social liberal thought and could be summarized with the idea of autonomy in unity⁹, which is a motto used by D66 to describe its affiliation with liberalism. In addition, D66 clearly ascribes to social liberalism unlike the VVD, which does not describe its ideology by using a specific label and instead chooses to refer to liberalism in general. As previously discussed, the liberal philosophy of the VVD is nonetheless largely influenced by social liberal thought. However, a clear distinction between the philosophies of D66 and the VVD should be made. The VVD is influenced, but not defined by ideas relating to social liberalism. This forms an important contrast to the political thought of D66, which is not just influenced by social liberalism, but largely defined by this political movement as will be shown in this sub-chapter.

In order to clarify the party's identity, D66 has formulated five guiding principles which form the essence of its social liberal thought. In 2011, these principles were published and discussed in a publication of the Van Mierlo Foundation. The first principle deals with having trust in people's own power. D66 considers this to be the key component needed for change, as what people can do for themselves and others, is more important and effective than what the government is capable of doing (Witteloostuijn, Sanders & Hendriks, 2011, p. 14). The second basic value relates to the international orientation of the party. For example, D66 believes that international cooperation and economic progress are the best solutions to conflicts around the world (D66, 2014b). Thirdly, D66 supports the idea that performance should be rewarded while simultaneously arguing that the wealth needs to be shared. Through this combination, the party hopes to establish an "open society in which everyone has the freedom to make their own decisions and to develop as they wish" (D66, 2014b, "Reward performance and share wealth" section, para. 3). The fourth guiding principle relates to the protection of the environment, which includes the aim of D66 to decrease environmental pollution (D66, 2014b). Finally, the fifth basic value of D66 concerns the importance of civil rights and shared values. On its website, the party states that "the fundamental values of our society are freedom and equality for everyone, regardless of belief, religion, sexual orientation, political views or ethnicity" (D66, 2014b, "Cherish our civil rights and shared values" section, para. 5).

⁹ Van Mierlo Stichting, Sociaal-liberalisme: "Vrijheid (libertas) in verbondenheid (societas)".

Though the above named guiding principles might provide some insights into the political identity of D66, these principles are not sufficient in determining its liberal philosophy. Therefore, a more in-depth discussion on the development of the relation between D66 and liberalism will now be provided.

In 1966, Democrats '66 was founded under the leadership of journalist Hans van Mierlo, with the goal to further democratize politics and society¹⁰ (Land van der, 2014). During the general elections of 1967, D66 immediately won seven seats and in 1994, D66 rose from 12 to 24 seats in the House of Representatives. However, the party faced difficulties in clarifying its political identity, which was partly due to the lack of an ideological label (Land van der, 2014). Yet party leader Hans van Mierlo did not want his party to adhere to any label, but the youth movement of D66 did not share his vision and was successful in providing the party with the social liberal label in 1997 (Land van der, 2014). From this moment on, D66 would describe itself as a social liberal party. Moreover, it is worth noticing that the choice for this social liberal label was not based on strong ideological motivations. The former parliamentary group leader of D66, Lousewies van der Laan, stated in 2006 that the label was only required to enable people to place D66 within the political spectrum (Laan van der, 2006, p. 156). In fact, Van der Laan was personally involved in proposing a label for D66 and later mentioned that many different labels were considered besides social liberal, including modern-liberal, left-liberal, secular-democratic and liberal-democratic¹¹. According to van der Laan, the label of social liberal was elected but another label could have been chosen as well, because it is not the label itself that was important, but the philosophy behind it (Laan van der, 2006). In addition, it was already mentioned that current Minister of Infrastructure and Environment, Melanie Schultz van Haegen (VVD), stated that the VVD's ideological background is normally not considered by VVD members when they are practicing politics (Schultz van Haegen, 2006). Similarly, Lousewies van der Laan cited that ideological-based discussions might be interesting, but not very useful in solving concrete political problems¹² (Laan van der, 2006, p. 156).

¹⁰ Land v.d., 2014: "Onder leiding van de journalist Hans van Mierlo deed het Initiatiefcomité voorstellen voor een vergaande democratisering van politiek en samenleving".

¹¹ Laan v.d., 2006: "Allerlei termen, sociaal-liberaal, vrijzinnig-liberaal, links-liberaal, vrijzinnig-democratisch en liberaaldemocratisch kwamen toen als mogelijkheden voorbij".

¹² Laan v.d., 2006: "Ik zie ook niet zoveel in ideologische discussies, die zijn wetenschappelijk wel interessant, maar in de praktijk heb je er minder aan. Concrete oplossingen voor concrete politieke problemen laten zich niet zo makkelijk in een ideologie vangen".

Furthermore, the focus on a pragmatic approach in practicing politics is an important aspect of the philosophy of D66. In 2000, D66 published a statement of principles which declared that the party practices practical and results-oriented politics on the basis of its ideals, without blueprints or dogmas¹³ (D66, 2000). One might critique that this way of practicing politics prevents the party from formulating policies in a consistent manner. However, consistency being “the quality of always being the same, doing things in the same way, having the same standards” (Longman, 2009, p. 359), is a quality strongly rejected by D66. Instead of consistent policies, D66 prefers to follow the societal developments and continuously adjust its program to the detected needs and wants of society¹⁴, as discussed by Hans Gruijters, the co-founder of D66 (Gruijters, 1967).

Above all, D66 considers further democratization to be the solution to outdated ideologies and dogmas, which are not useful in formulating answers to the problems faced by today’s society (Gruijters, 1967). Moreover, D66 observes that norms and values are changing and affecting the demands of the general public. This change of demands requires a more democratized form of public governance that is able to continuously adapt to these rapidly changing demands (D66, 2000). Through this democratization process, D66 aims to support citizens in regaining a stronger grip on their government, for the party asserts that the majority should provide for the political guidance, which ideologies fall short of providing¹⁵ (Gruijters, 1967).

2.3 The VVD on religious tolerance

Before discussing the position of the VVD on religious tolerance, it should be reiterated that the chosen case study concerns the religious tolerance of Christian wedding officiants. Therefore, this sub-chapter will also be centred around the extent to which Christians are tolerated by the VVD, in order to put this discussion on a more equal footing with the case

¹³ D66, 2000: “D66 bedrijft praktische en resultaatgerichte politiek vanuit haar idealen, zonder blauwdrukken of dogma’s”.

¹⁴ Gruijters, 1967: “Ze wil met een voortdurend aangepast programma de maatschappelijke ontwikkeling ‘kritisch volgen en het ontstaan van nieuwe noden en vraagstukken tijdig signaleren”.

¹⁵ Gruijters, 1967: “D’66 realiseert zich zeer wel, dat die doelmatigheid in eerste en in laatste instantie door de meerderheid beoordeeld moet worden. Juist, wanneer de ideologieën als leidraden zijn afgedankt. Daarom de grote nadruk op de radicale democratisering, die de burger de greep op ‘zijn’ overheid moet teruggeven”.

study. In this sub-chapter, two cases will briefly be discussed to illustrate how the VVD regards religious tolerance. The first case relates to the issue of mandatory vaccination and the second concerns the freedom of education of religious schools.

In May 2013, a measles epidemic started in the Netherlands and lasted until March 2014. According to the National Institute for Public Health and the Environment (RIVM), 2.640 patients with measles were registered, 182 children were hospitalized and one child died during this epidemic (RIVM, 2014). From 1999 until 2000, there had also been a measles epidemic which led to the death of three children (Giesbers, 2014). Dutch children normally get a vaccination against measles when they are 14 months old. Nonetheless, conservative Protestants often have religious based objections to vaccination programs. Thus following the measles epidemics, the debate on mandatory vaccination resurfaced. During the last epidemic, VVD Senator Heleen Dupuis announced that she wanted the measles vaccination to be mandatory, because the government has a duty to protect children (Boon, 2013). According to Dupuis, parents do not have the right to decide whether or not their children receive a vaccination from the government and that children sometimes need to be protected from their own parents¹⁶ (Boon, 2013). In addition, the VVD linked Telders Foundation published a report in 2014 defending mandatory vaccination for children to prevent life threatening diseases. The report suggested that exceptions on the basis of religious beliefs should not be accepted, as this would be in conflict with the well-being of the child¹⁷ (Hees, Beaufort, Bruin, Schie & Wissenburg, 2014, p. 117). However, following the measles epidemics, the VVD did not initiate an official legislative procedure to try to implement a mandatory vaccination program.

In 2005, a Liberal Manifesto on freedom was published by the VVD commission which outlined the fundamental principles of the party. This Liberal Manifesto included the proposal to amend article 23 of the Constitution, which is the article that protects freedom of education. According to the VVD, an amendment was necessary to realize the civic education of citizens (VVD, 2005, p. 63). The Liberal Manifesto argues that education

¹⁶ Dupuis, 2013: “In het gezondheidsrecht staat vast dat ouderen voor zichzelf kunnen beslissen om iets wel of niet te doen, maar als het om kinderen gaat heeft de overheid de plicht om kinderen, als het moet, tegen hun ouders te beschermen”.

¹⁷ Telders Foundation, 2014: “Stel inenting tegen epidemische ziekten met potentieel zeer schadelijke of dodelijke gevolgen voor kinderen verplicht. Een uitzondering op grond van levensovertuiging is in strijd met het welzijn van het kind”.

should help to transform children into citizens that are capable to coexist with their fellow citizens in the public space¹⁸ (VVD, 2005, p. 64). Consequently, freedom of education should be acknowledged as long as it contributes in this creation of a peaceful public sphere. As a result, the VVD wants to amend article 23 by adding the requirement that freedom of education is only possible, *if* the provided education is free from discrimination based on a certain view of life¹⁹ (VVD, 2005, p. 65). What this in practice will mean is that Christian schools can for example no longer assert that homosexuality is a sin, or the school could be shut down by the government (Trouw, 2005). Thus, the VVD asserts that clear limitations of freedom of education are needed for tolerance to exist. In fact, the VVD asserts that the government must intervene whenever religion poses a threat to public order or the peaceful coexistence of society²⁰, and proclaims that freedom of education is subordinated to democracy and public order²¹ (VVD, 2005, p. 65). However, it is not the aim of peaceful coexistence that ignited debates on the proposed amendment, but rather the definition of what forms a threat to peaceful coexistence. For instance, many conservative Christian schools would not consider a traditional view on the different roles between men and women as a threat to peaceful coexistence, though this view is unlikely to find support among the non-confessional parties.

2.4 D66 on religious tolerance

Similar to the previous discussion on the VVD, this part will examine two cases to clarify the extent to which D66 is willing to tolerate Christians, taking into account the chosen case study of the refusing wedding officiant. The first case that will be viewed is the annulment of the so-called ‘single-fact’ construction²², which allowed for Christian schools to refuse, and in some cases even fire, homosexual teachers. The second case concerns the implemented law proposed by D66, which obligates schools to give education on homosexuality.

¹⁸ VVD, 2005: “Samen met de ouders vormt onderwijs kinderen tot burgers die in de publieke ruimte met hun medeburgers kunnen samenleven”.

¹⁹ VVD, 2005: “Het geven van onderwijs is vrij, behoudens het toezicht van de overheid en het onderzoek naar de bekwaamheid en zedelijkheid van hen die onderwijs geven, en mits het onderwijs vrij is van discriminatie op levensbeschouwelijke gronden (cf. artikel 1 van de Grondwet)”.

²⁰ VVD, 2005: “Maar er is een duidelijke grens. Wanneer religieuze beleving een gevaar wordt voor de openbare orde of voor het vreedzaam samenleven, dan grijpt de staat in, uit naam van de tolerantie”.

²¹ VVD, 2005: “De democratie en de publieke orde gaan aan de vrijheid van onderwijs vooraf”.

²² The ‘single-fact’ construction is known in Dutch as “de enkele-feitconstructie”.

In March 2015, a law proposing to ban the ‘single-fact’ construction from the Equal Treatment Act was adopted by the Senate. Before this new legislation, religious schools were already prohibited from refusing gay teachers on the basis of their sexual orientation. Nonetheless, the ‘single-fact’ construction made it possible for religious schools to refuse, or fire, a homosexual teacher on the basis of additional circumstances (Hekma & Duyvendak, 2013, p. 109). For example, a teacher at a Christian primary school was suspended after he had informed the school that he was in a relationship with another man (COC, 2009). On the basis of the teacher’s decision to practice his sexuality, the school board was able to suspend him due to the ‘single-fact’ that he decided to live with another man. However, the ‘single-fact’ construction is no longer valid after the non-confessional parties passed the adjusted Equal Treatment Act in the Senate (Eerste Kamer, 2015).

In addition, it was D66 Member of Parliament Boris van der Ham, who first proposed the annulment of the ‘single-fact’ construction in 2010 (NRC, 2010). In 2012, van der Ham left the House of Representatives and the legislative proposal was taken over by D66 Member of Parliament Vera Bergkamp, who continued working on the proposed legislation in cooperation with four other Members of Parliament. The primary motivation for D66 to ban the ‘single-fact’ construction related to article 1 of the Constitution. As mentioned before, article 1 involves the equal treatment of all citizens and is further explained in the Equal Treatment Act. As a result, the proposal aimed to amend the Equal Treatment Act to prevent religious schools from discriminating teachers on the basis of their homosexuality²³ (Bergkamp, 2014). Moreover, the mentioned “additional circumstances” supporting the ‘single-fact’ construction needed to be deleted according to D66, for they were both discriminatory and unclear²⁴ (Bergkamp, 2015).

The second case that will now be discussed is the proposal of D66 to obligate both primary-and high schools to provide education on homosexuality. Obligating this type of education had been an important goal of D66 for several years. In 2009, D66 proposed a legislative proposal, as well as in 2011, but the proposal was rejected twice by the ruling cabinet (D66, 2012a). Then in 2012, former Minister of Education, Culture and Science,

²³ Bergkamp, 2014: “Onze initiatiefwet schrapt de “enkele feit constructie” en geeft concreet aan dat discriminatie op grond van homoseksualiteit niet mag”.

²⁴ Bergkamp, 2015: “Een tweede reden om dit wetsvoorstel in te dienen is dat de wet duidelijker moet zijn. De wet is onder andere onduidelijk met betrekking tot de enkele feiten en de bijkomende omstandigheden”.

Marja van Bijsterveldt (CDA), wanted to postpone the start of the proposed education on homosexuality from august 2012 till august 2013 (Trouw, 2012). However, a motion from D66 Member of Parliament, Pia Dijkstra, caused the Minister to adjust her position and from the first of December 2012, Dutch schools were obliged to provide education on homosexuality (D66, 2012a). Following the implementation of the legislative proposal, The House of Representatives accepted a motion from D66 and the VVD which suggested that the Dutch Inspectorate of Education should monitor schools for a period of five years to guarantee that all schools do in fact provide education on homosexuality (ND, 2013). Whether all schools do indeed educate their pupils on sexuality in accordance with the adopted law, remains to be seen in the coming years.

3. The case study of the refusing wedding officiant

On 1 April 2001, same-sex marriages were contracted for the first time in the Netherlands. At that time, it was decided that Christian wedding officiants were allowed to refuse to marry gay couples on the basis of religious beliefs, as long as no gay couple was hindered in getting married (CGB, 2008). However, this changed after the implementation of law proposal 33.344, which was initiated by D66 to fully ban wedding officiants who refuse to marry same-sex couples. Nonetheless, refusing wedding officiants who were hired before the approval of this law do not necessarily have to be fired (Eerste Kamer, 2014b). Although in some municipalities, wedding officiants were already prohibited from having conscientious objections to contracting same-sex marriages.

Before the approval of the official ban, an inquiry form was sent by the COC, the Dutch organization that advocates the rights of the LGBT community, to all the municipalities in order to obtain information on their policies concerning wedding officiants. The results found that out of the 443 Dutch municipalities that existed in 2007, 247 already required their wedding officiants to be willing to contract same-sex marriages (COC, 2012). Moreover, it was found that as of 2007, 48 municipalities had refusing wedding officiants in function, which amounted to a total number of 87 wedding officiants (COC, 2012). One of these 48 municipalities hired three refusing wedding officiants, just before the ban came into force. This was the municipality of Tholen, where the Reformed Political Party (SGP) is by far the largest party. The decision of Tholen generated criticism from both D66

(Tweede Kamer, 2014), as well as from the COC, which demanded that the wedding officiants would still be discharged (COC, 2014). The case of the municipality of Tholen is noteworthy for it illustrates that the refusing wedding officiant is not isolated from the Christian conservative segment of society. In other words, the decision to prohibit conscientious objections on contracting same-sex marriages, affects not only Christian wedding officiants, but a larger Christian community as well. The positions of the VVD and D66 on the ban of these conscientious objections will now be separately discussed.

3.1 The position of the VVD on the refusing wedding officiant

In 2011, a motion was proposed by the Greens to ban the refusing wedding officiants. At that time, the VVD formed a coalition with the Christian Democratic Appeal (CDA), which did not support the proposed motion. As a result, the VVD unwillingly voted against the motion to protect the stability of the coalition (Timmermans, 2011). But in April 2012, the Party for Freedom led by Geert Wilders, no longer supported the minority government of the VVD and CDA leading to the resignation of the cabinet. Then in June 2012, the VVD and D66 stated that they did not want to wait until the formation of a new cabinet to finish once and for all, the position of refusing wedding officiants (Visser, 2012). Subsequently, both parties continued working on the already existing motion (Willems, 2011). Then in August 2012, the legislative proposal was presented by D66, supported by the VVD, and adopted by a majority in the House of Representatives in June 2013, as only the Christian parties voted against (Egmond, 2013). The VVD continued its support for the legislative proposal in the Senate, where it received a majority of the votes as well. Hence, the law was adopted and implemented in November 2014.

The VVD had several motivations for supporting the proposed legislation which will now be explained. First of all, the VVD believes that religious freedom should not be allowed to limit the rights of gays, lesbians, bisexuals and transsexuals²⁵. Current VVD Minister of Defence, Jeanine Hennis-Plasschaert, and VVD State Secretary of Security and Justice, Klaas Dijkhoff, mentioned this multiple times in their article on the relation between gay rights and religious freedom. This article mentioned that freedom, including religious

²⁵ Hennis-Plasschaert & Dijkhoff, 2012: "De religieuze vrijheid mag daarom niet gebruikt worden om de vrijheid van homo's, lesbiennes, biseksuele en transseksuelen in te perken".

freedom, ends as soon as it limits the freedom of others²⁶ (Hennis-Plasschaert & Dijkhoff, 2012). In addition, the VVD did not consider it sufficient that all municipalities guaranteed that every same-sex marriage would be contracted, for the importance of non-discrimination is superior to this guarantee. For example, during the debate on the ban of the refusing wedding officiant, VVD Senator Koos Schouwenaar stated that equality should not be dependent on practical solutions (Schouwenaar, 2014, p. 7).

Secondly, the VVD considers the refusal to marry homosexual couples to be a form of discrimination forbidden under article 1 of the Constitution. Moreover, a law that was often cited during the debates is the Equal Treatment Act, which aims to protect equal treatment of persons irrespective of their religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (Thijn, 1994). Furthermore, the VVD explains that it supports the ban of the refusing wedding officiant for the government does not discriminate. This position was underlined by VVD Senator Schouwenaar, who stated that the proposal was in line with the non-discriminating character of the VVD's election programme (Schouwenaar, 2014, p. 6). Furthermore, the argument of non-discrimination was linked to the belief of the VVD that the government must be neutral towards all citizens and that this neutrality was harmed by refusing wedding officiants. As a result, the VVD asserted that conscientious objections are not valid when harming the ability of the government to execute the law, as all citizens should be able to trust that the law is respected²⁷ (Schouwenaar, 2014, p. 7).

However, the VVD did critique the proposal for stating that it aimed to protect the separation of church and state, for the VVD did not consider this separation to be endangered by the refusing wedding officiant²⁸ (Schouwenaar, 2014, p. 7). Thus, the VVD did not consider the separation of church and state to be imperative to this specific case. This is worth mentioning as it could clarify why the VVD also did not deem the *ban* of the refusing wedding officiant to have any effect on the separation of church and state.

²⁶ Hennis-Plasschaert & Dijkhoff, 2012: "De vrijheid om te zijn wie je bent, om te vinden wat je vindt en om te geloven wat je wilt. Die vrijheid stopt waar je die van anderen beperkt".

²⁷ Schouwenaar, 2014: "Iedereen moet kunnen rekenen op een overheid die neutraal is en die zich aan de wet houdt".

²⁸ Schouwenaar, 2014: "De VVD-fractie twijfelt ook aan de vierde doelstelling: handhaving van de scheiding van kerk en staat. Zij meent dat die scheiding niet in het geding is".

3.2 The position of D66 on the refusing wedding officiant

In November 2011, Green Left Member of Parliament, Ineke van Gent, first initiated a motion to ban the refusing wedding officiant, but this motion was rejected by Piet Hein Donner, who was at that time the Minister of the Interior and Kingdom Relations (Dool v.d., 2011). In 2012, Van Gent tried once more yet again the motion was rejected, but this time by Minister Liesbeth Spies (CDA), who did not want a demissionary cabinet²⁹ to make a decision on the legislative proposal (Boon, 2012).

Consequently, D66 Members of Parliament Pia Dijkstra and Gerard Schouw decided to initiate a private member's bill (Coevert, 2012). In August 2012, their proposal to ban the refusing wedding officiant was presented. According to Schouw, the refusing wedding officiant needed to be banned, because if an individual decides to become a wedding officiant, then he or she should simply execute the law³⁰ (D66, 2012b). Moreover, Dijkstra stated that the freedom to decide with whom one wants to marry should not be limited by any municipal official³¹, and that the needed execution of the law overrules the opinion of the refusing wedding officiant (D66, 2012b). Similar to the VVD, the essential reason why D66 supported the initiated legislative proposal, related to the party's conviction that the refusing wedding officiant discriminated on the basis of sexual orientation and therefore violated article 1 of the Constitution. This is also pointed out in the legislative proposal of Dijkstra and Schouw. In fact, the first sentence of the proposal states that the initiators consider it desirable that public civil servants execute their assigned tasks without discriminating³² (Dijkstra & Schouw, 2012).

The position of D66 on the proposal has further been explained by D66 Senator Thom de Graaf during the debates in the Senate. For instance, de Graaf stated that the ban of the refusing wedding officiant is important as the emancipation of homosexuals is still a point

²⁹ Reese, 2014: "Between the ending of the States-General beforehand common votes and the engagement of a spic-and-span Cabinet, the incumbent Cabinet is named Demissionary cabinet/demissionair, that is, a custodian political authority restricting to pressing and pushing interests and according to tradition not seizing whatever contentious resolutions".

³⁰ Schouw, 2012: "Kies je ervoor om trouwambtenaar te worden, dan hoor je de wet uit te voeren".

³¹ Dijkstra, 2012: "In Nederland heb je de vrijheid om te trouwen met wie je wilt, die vrijheid moet niet beperkt worden door een ambtenaar".

³² Dijkstra & Schouw, 2012: "Alzo Wij in overweging genomen hebben, dat het wenselijk is buiten twijfel te stellen dat een ambtenaar van de burgerlijke stand zijn ambt dient uit te oefenen zonder onderscheid te maken als bedoeld in de Algemene wet gelijke behandeling".

of debate (Graaf de, 2014). As a result, clear legislation is desired because if the government remains silent and allows for conscientious objections towards gay marriage, then a wrong signal would be sent to society³³ (Graaf de, 2014). In addition, another motivation for D66 to support the legislation relates to the suitability requirements for public civil servants. These suitability requirements primarily concern the prohibition of direct and indirect discrimination and are needed to protect the neutrality of the government. However, de Graaf clarified that D66 does not want to force any civil servant to be neutral as a *person*, but does require every civil servant to be neutral as a *civil servant* (Graaf de, 2014). The neutrality of the governments and its representatives, including the wedding officiant, is important as citizens should be able to trust that they will not be discriminated in any way by governmental bodies³⁴ (D66, 2014a). Therefore, obligating the wedding officiant to be neutral and non-discriminating is not a form of intolerance, for all public authorities must adhere to this neutrality principle.

Furthermore, D66 Member of Parliament, Vera Bergkamp, wrote an article in 2013 discussing the debate on the refusing wedding officiant. In the article, Bergkamp writes that society has decided to treat homosexuals no different than heterosexuals (Bergkamp, 2013). Following this statement, the article argues that the debate on banning the refusing wedding officiant is not on *limiting* the rights of a minority, Christians, but that it deals with *acknowledging* the rights of a minority, the gay community³⁵. The question is then asked why the government should tolerate a public civil servant who asserts that the rights of heterosexuals are unequal to those of homosexuals (Bergkamp, 2013). It is important to notice that no distinction is made here between person and sexuality. The refusing wedding officiant is considered to be hostile towards the homosexual and not just gay marriage. During the debates, this distinction was disputed by the parties supporting the proposed ban, while it was recognized by the confessional parties. This dissertation will refrain from arguing whether such a difference is important, but it will suggest that the differentiation, whether meaningful or not, matters in order to understand the debate.

³³ Graaf de, 2014: “Een overheid die in deze context blijft toelaten dat ambtenaren zich in hun functie van bestuursorgaan succesvol beroepen op morele bezwaren om homo's te trouwen, ondanks dat de wetgever dat nadrukkelijk heeft gewenst, geeft mijns inziens een fout signaal af aan de samenleving”.

³⁴ D66, 2014: “Dat belang is dat burgers mogen vertrouwen op toepassing van de wet door bestuursorganen zonder onderscheid des persoons”.

³⁵ Bergkamp, 2013: “De kern van dit debat is niet, ondanks dat confessionele partijen ons dit willen doen geloven, of wij met het afschaffen van de weigerambtenaar de rechten van een minderheid inperken. De kern is dat wij besluiten de rechten van een minderheid volledig toe te kennen”.

4. Discussion of the refusing wedding officiant

This chapter will discuss the extent to which the principles of Hobbes, Locke and Mill on religious tolerance are adhered to by the VVD and D66. In order to define this extent, the case study of the refusing wedding officiant will be used as the measuring instrument. In addition, three main aspects relating to the ban of the refusing wedding officiant will be described. First of all, it will be suggested that the positions of the VVD and D66, on the refusing wedding officiant, strongly correlate with one another. Second, this discussion will demonstrate that the main principles of both Locke and Mill are not applied by the VVD and D66. And finally, this chapter will argue that the concepts of Hobbes are most in line with the positions of the VVD and D66 on religious tolerance, which becomes most evident when considering the ban of the refusing wedding officiant.

To begin with, there are multiple similarities between the positions of the VVD and D66 on the selected case study. For instance, both the VVD and D66 suggest that refusing to marry a same-sex couple as a public civil servant, is a form of discrimination and thus a violation of the Equal Treatment Act (Eerste Kamer, 2014a). Moreover, both parties assert that someone's religious freedom should not be allowed to limit the personal freedom of someone else, that the government must be neutral and treat all citizens equally and that refusing wedding officiants should be banned not because they *have* conscientious objections, but because they *act* in accordance with their religion in the public domain (Eerste Kamer, 2013). Furthermore, the VVD and D66 do not consider the ban of the refusing wedding officiant to be a violation of article 3 of the Constitution, which states that "all Dutch nationals shall be equally eligible for appointment to public service" (Ministry of the Interior, 2008, p. 5). The two parties suggest that article 3 is respected, because the new suitability requirement applies to all new wedding officiants and therefore does not discriminate (Eerste Kamer, 2014a). Overall, the positions of the VVD and D66 on the refusing wedding officiant parallel very well and no critical contrasts can be found.

Secondly, this dissertation defends that the principles of Locke and Mill on religious tolerance, are not applied by the VVD and D66. To start with, the responsibilities of the state, as described by Locke, differ with the current responsibilities of the Dutch government. The key difference relates to the involvement of the state in affairs that lay

outside of the civil interests³⁶ (Locke, 1983, p. 26). For example, Locke rejected the idea that the government should be allowed to decide which moral standards are taught in schools (Powell, 1996). However, this is what D66 achieved by obligating schools to provide education on homosexuality and what also the VVD supports by arguing that freedom of education should be limited to protect public order (VVD, 2005). Moreover, the ban of the refusing wedding officiant does not fall under the civil interests described by Locke. Although, it could be disputed that the mentioned civil interest of liberty justifies the ban of the refusing wedding officiant, as gay couples should not be denied the liberty to get married. Nevertheless, the validity of this argument is dubious taking into account that refusing wedding officiants never prevented, nor tried to prevent, any same-sex couple from getting married (Holdijk, 2014, p. 12).

In addition, Locke's separation of church and state allows individuals to pursue their own eternal happiness by following their conscience, but does not permit people to impose their own beliefs on others (Locke, 1796). This means that in the case of the refusing wedding officiant, Locke would determine whether the wedding officiant refused to marry gay couples because it harms his or her own standards of morality, or, if the wedding officiant refused in order to impose his or her standards of morality on the gay couple. This forms an essential contrast for in the first situation, the object is the pursuit of one's own happiness, which Locke defends. However, the objective in the second situation is to determine the happiness of *others*, which Locke criticizes. Therefore, it can be presumed that Locke would acknowledge the right to conscientious objections in the first case, while denying this same right in the second case (Hoor ten, J., personal e-mail, April 16, 2015). Overall, it can be asserted that the main principles of Locke have not been applied by the VVD and D66, in their approach on the refusing wedding officiant.

Furthermore, it was Mill who claimed that society does not have a principle that consistently defines "what things are fit to be done by a government" (Mill, 1978, p. 9). Instead, the majority poses its own subjective likings and dislikings on the rest of society "under the penalties of law or opinion" (Mill, 1978, p. 7). Likewise, this dissertation reasons that the ban of the refusing wedding officiant is a law based on the likings of

³⁶ Locke, 1983: "Civil Interests I call Life, Liberty, Health, and Indolency of body; and the Possession of outward things, such as Money, Lands, Houses, Furniture, and the like".

society. The main reason being that the ban was not required to prevent actions that were harmful to the interests of others, nor was the freedom of another individual limited, for each Dutch municipality already ensured that every same-sex marriage would be contracted (Holdijk, 2014, p. 12). In addition, this was the exact reason why Bas Hengstmengel, one of the interviewed academics, suggested that the conscientious objections of the wedding officiant could have been dealt with in a much more pragmatic way (Hengstmengel, B., personal e-mail, May 18, 2015). Yet the majority of society, as well as the Dutch government, were both able and willing to ban the small number of refusing wedding officiants, who were already banned from most municipalities (COC, 2012). According to Hengstmengel, this raises the question on how much tolerance exists for individuals with conscientious objections, for tolerance concerns the decision to allow people to have their freedom, even when capable to prohibit their actions (Hengstmengel, B., personal e-mail, May 18, 2015). Nonetheless, it should be stated that “no one, indeed, acknowledges to himself that his standard of judgment is his own liking” (Mill, 1978, p. 5), which also applies to the refusing wedding officiant. However, the crucial difference is that the refusing wedding officiant does not pose his or her likings and dislikings on the rest of society, but that society poses its judgments on the wedding officiant. In addition, this enforcement would be rejected by Mill, who believes that individuals need “protection also against the tyranny of the prevailing opinion and feeling” (Mill, 2003, p. 154). Therefore, according to Mill’s harm principle, the freedom of the wedding officiant to have conscientious objections should in this case be respected, because the refusal does not harm another person’s interests nor violates a person’s liberty as explained above.

Finally, this dissertation argues that the principles of Hobbes on religious tolerance are more adhered to by the VVD and D66, than the principles of Locke and Mill. Two main reasons will be provided to clarify this argument.

The first reason deals with the authority of the Dutch government in the public domain. In contrast to the positions of Locke and Mill, Hobbes believes that the Sovereign, which can be a democratic form of governance (Hobbes, 2005), must be able to decide whether any undesired action should be tolerated or prohibited. Considering the ban of the refusing wedding officiant, Locke would most likely object to this ban for governmental authority should be constrained to civil interests, while Mill would oppose as no harm is inflicted on

another individual's interest. However, Hobbes claims that society has agreed to the social contract and has thus become the author of the actions of the government, which cannot be called unjust as a result (Hobbes, 1909). In the case of the refusing wedding officiant, the majority considered it to be desirable that every wedding officiant is willing to contract same-sex marriages and that a law guarantees this willingness. Opposing to such a law is then denying the authority of the Sovereign, now being the majority, and is therefore not a valid form of disapproval for society itself has agreed to this transference of authority through signing the social contract (Hobbes, 1909).

Secondly, the principles of Hobbes correlate to the positions of the VVD and D66 on the refusing wedding officiant regarding the legitimacy of conscientious objections. In more detail, the decision of the refusing wedding officiant not to marry gay couples falls under those private actions that are visible, but not representative since the wedding officiant openly refuses, but does this in "his or her own name only" (Abizadeh, 2013, p. 286). In contrast to Locke and Mill, Hobbes believes that the Sovereign should still be allowed to forbid the refusal of the wedding officiant, when the refusal is considered a threat to the Sovereign's authority or to public order (Hobbes, 1651, p. 140). As a party that wants to further democratize society, D66 is inclined to suggest that the authority of the democracy is indeed threatened by the refusing wedding officiant (Gruijters, 1967), while the VVD seems to lean more towards the idea that public order needs to be protected³⁷ (VVD, 2005). However, whether the justification of the ban of the refusing wedding officiant is based on the authority of the majority or on the protection of public order, both justifications would be endorsed by the philosophy of Hobbes, but discouraged by the principles of both Locke and Mill.

³⁷ VVD, 2005: "Maar er is een duidelijke grens. Wanneer religieuze beleving een gevaar wordt voor de openbare orde of voor het vreedzaam samenleven, dan grijpt de staat in, uit naam van de tolerantie".

5. Conclusions

Following the described position of the VVD and D66 on religious tolerance and the discussion of the refusing wedding officiant in specific, three different conclusions will now be discussed to provide an answer to the main research question.

First of all, it is concluded that religious freedom is important to both the VVD and D66, although not paramount. As demonstrated in the short case studies, the VVD and D66 are reluctant in tolerating the religious freedom of Christians when this freedom is considered harmful to other values. For example, the case on mandatory vaccination illustrates how the VVD considers the protection of health to be supreme over religious freedom (Telders Foundation, 2014). Similarly, the VVD recommends that freedom of education should only be acknowledged if the provided education is free from discrimination based on a certain view of life³⁸ (VVD, 2005). This would limit the educational freedom of certain Christian schools, for their perception on what should be considered discriminatory often differs from the position of the VVD. Moreover, D66 prioritizes religious freedom in a similar way as the VVD. For instance, D66 proposed to ban the ‘single-fact’ construction to prohibit religious schools from rejecting homosexual teachers (Bergkamp, 2014). This is one of the cases which illustrates that the boundary of religious tolerance is reached when D66 considers another value, such as non-discrimination, to be under threat. Furthermore, it was D66 that initiated a legislative procedure to obligate schools, including religious schools, to educate pupils on homosexuality (D66, 2012a). Hence, these examples demonstrate that the VVD and D66 do not allow for religious freedom when this freedom is perceived to be supportive of discrimination, or a threat to an issue such as public health.

Furthermore, this dissertation concludes that the principles of Hobbes align more with the approaches of the VVD and D66 on religious tolerance, than the principles of Locke and Mill. As explained in the earlier discussion, the principles of Locke are not adhered to by the VVD and D66 for two main reasons. Firstly, the ban of the refusing wedding officiant is in contrast with Locke’s belief that a “government has no other end but the preservation of property”, which he defends in *Two Treatises of Government* (Locke, 1947, p. 168).

³⁸ VVD, 2005: “Het geven van onderwijs is vrij ... mits het onderwijs vrij is van discriminatie op levensbeschouwelijke gronden (cf. artikel 1 van de Grondwet)”.

Locke pleads for a minimized state, as he expects a big government to dictate the beliefs and actions of individuals. Similarly, Locke argues that also individuals should not be allowed to enforce their own beliefs on others (Locke, 1796). However, refusing wedding officiants did not try, nor were they able, to impose their beliefs on same-sex couples. Thus, as long as the refusing wedding officiant does not try to impose his or her moral standards on others, Locke's principles on religious tolerance would support the right to conscientious objections (Locke, 1796). In addition, Mill denies the majority of having the right to define what actions should be tolerated or prohibited and introduced the harm principle as a result. Considering the ban of the refusing wedding officiant, it is not possible to justify this ban by using Mill's harm principle, for this principle insists that actions can only be prohibited by society, when they harm the interests of others or when they limit another one's freedom (Mill, 1978).

Finally, this dissertation asserts that the philosophy of Hobbes is more applied by the VVD and D66 in their approach to religious tolerance, than the principles of Locke and Mill. In addition, while Locke would turn to the separation of church and state to make a decision on the refusing wedding officiant, and while Mill would apply the harm principle to decide whether the ban of the refusing wedding officiant is legitimate, Hobbes would turn directly to the decision of the Sovereign. Taking into account that the majority of society supported a ban, only Hobbes would then maintain that this decision is justified by pointing out that society itself has giving its authority to the Sovereign through the signing of the social contract (Hobbes, 1909).

As a final note, it needs to be remarked that this conclusion does not aim to critique or support the principles developed by Hobbes nor does it recommend the VVD and D66 to apply the principles of Locke and Mill instead. Each person should decide individually whether the concepts of Hobbes should be applied to religious tolerance. Yet no matter which form of religious tolerance is preferred, it should be remembered that one can only be considered tolerant when allowing for the freedom of others, while strongly disagreeing with their ideas or actions. As John F. Kennedy stated: "tolerance implies no lack of commitment to one's own beliefs. Rather it condemns the oppression or persecution of others" (Kennedy, 2012, p. 275).

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Appendices

The following appendices display the questions and answers of the interviews, which were conducted via e-mail. Both the questions and answers are in Dutch, but the parts that have been used in this dissertation are translated into English and written in *italic*. In addition, some background information on each of the interviewees will now be provided:

Johannes ten Hoor is currently studying political science at the University of Antwerp after having completed a Master's programme in philosophy at Utrecht University. In addition, ten Hoor is the editor in chief of the member magazine of the CDJA (the Christian Democratic Youth Appeal). On his blog, ten Hoor posted two interesting articles on the refusing wedding officiant and was therefore contacted for an interview.

Theo de Wit is Professor at the Department of Systematic Theology and Philosophy of Tilburg University. In his current research, de Wit concentrates on the relation between politics and religion, including the separation of church and state, the role of democracy and the concept of tolerance.

Bas Hengstmengel works at the Faculty of Philosophy of Erasmus University Rotterdam as a guest-researcher and teacher. He obtained degrees in Dutch Law and Legal Philosophy, Psychology and Philosophy. For the Dutch newspaper *Trouw*, Hengstmengel wrote an article on the refusing wedding officiant, which he was willing to further clarify by answering questions via e-mail.

Furthermore, the e-mails confirming the participation of the interviewees can be found at the end of this chapter. In addition, the student ethics form and an example of the informed consent form are included in the end as well.

Interview with Johannes ten Hoor

1. Is naar uw mening een ambtenaar die weigert een democratisch ingevoerde wet op te volgen daarmee ook een ambtenaar die tegen de democratie is?

Nee, niet noodzakelijkerwijs. Dat iemand in principe instemt met de beginselen van de democratische rechtsstaat, wil nog niet zeggen dat iemand geen fundamentele (morele) bezwaren kan hebben tegen sommige uitkomsten van het democratische proces. Bovendien is het nog een verschil om een democratisch aangenomen besluit te accepteren *an sich*, of ook een actieve rol te moeten spelen bij het uitvoeren van een wet. In discussies als deze is het van groot belang dit soort zaken conceptueel uiterst nauwkeurig te onderscheiden. Niet zelden worden er zeer voorbarige conclusies getrokken.

2. In hoeverre zou volgens u een weigerambtenaar in staat moeten zijn om een toekomstig echtpaar niet te trouwen wegens gewetensbezwaren? (Bijvoorbeeld: Als een christelijke trouwambtenaar mag weigeren homoseksuelen te trouwen, zou een christelijke trouwambtenaar dan ook moeten kunnen weigeren om een man en een vrouw te trouwen die in hun leven al een keer gescheiden zijn?)

Mijn eigen denken over tolerantie is vooral gestoeld op het werk van Jürgen Habermas. Volgens Habermas is de mens niet alleen een biologisch wezen, maar ook een cultureel wezen, een positie die we ook in de communitaristische filosofie tegenkomen, bijvoorbeeld bij de Amerikaanse politiekfilosoof Michael Sandel. Sandel stelt: “For to have character is to know that I move in a history I neither summon nor command, which carries consequences nonetheless for my choices and conduct.”³⁹ Onze keuzes en gedrag worden volgens Sandel beïnvloed door onze geschiedenis, waartoe hij ook de cultuur en gemeenschap waarin wij leven rekent. Het individu kan daarom nooit volledig buiten zijn geschiedenis en gemeenschappen bestaan en begrepen worden. Habermas trekt uit deze culturele bepaaldheid van de persoon de conclusie dat het beschermen van die persoon niet alleen een biologische component heeft, maar ook een culturele: het beschermen van de leefwereld. We beschermen een ‘persoon met identiteit’; In relatie tot religie houdt dat in dat we niet religie *an sich*

³⁹ Michael Sandel, “The Procedural Republic and the Unencumbered Self,” *Political Theory* 12 (1984): 81-96, 90.

beschermen, maar wel de religieuze persoon. Religieuze praktijken kunnen vanzelfsprekend onderdeel zijn van en constitutief zijn voor de culturele identiteit van een persoon.⁴⁰

Vanuit deze visie ontstaat er ineens ruimte voor uitzonderingen in het beleid voor specifieke groepen of personen. Wanneer een religieuze opvatting of praktijk constitutief is voor de identiteit van een persoon, zou een wettelijke inperking van die opvatting of praktijk tegelijkertijd een aantasting van iemands persoonlijkheid zijn. Een uitzonderingspositie voor minderheden die in eerste instantie wellicht discriminatoir kan overkomen, blijkt vanuit deze uitleg juist een fundamentele gelijkheid te garanderen: namelijk de vrijheid voor iedere burger om een persoon te zijn. Het zijn, in de woorden van Habermas, ‘correcties op onaanvaardbare asymmetrische effecten van algemene wetten’. De Canadese cultuurfilosoof Charles Taylor spreekt in deze context over *reasonable accommodation*. Op basis van goede redenen – het kunnen zijn van een persoon – wordt het beleid aangepast, en stelt de seculiere meerderheid zich inschikkelijk op tegenover een religieuze of culturele minderheid.⁴¹ Vanuit deze visie zou er ruimte kunnen zijn voor gewetensbezwaarde ambtenaren, als een vorm van *reasonable accommodation*. Het sluiten van een huwelijk tussen twee mannen of twee vrouwen zou dan een inbreuk zijn op de religieuze identiteit van de gewetensbezwaarde ambtenaar.

Habermas schrijft: “Tolerantie wordt verlangd van degenen die om goede subjectieve redenen andere overtuigingen en praktijken afwijzen, in het besef dat het hier weliswaar om een cognitief maar op lange termijn onoplosbaar meningsverschil gaat.”⁴² Het meningsverschil moet redelijkerwijze niet weg te nemen zijn, en zodoende een onderhandelbaar karakter hebben. Tolerantie is geen oplossing voor dit meningsverschil, maar slechts een wijze om er mee om te gaan. Op basis van wederzijdse tolerantie zou de gewetensbezwaarde ambtenaar zijn werk dan kunnen blijven uitvoeren en ‘ontslagen’ worden van het sluiten van huwelijken tussen paren van het gelijke geslacht. De betreffende ambtenaar tolereert het huwelijk tussen deze mensen, homoparen tolereren de gewetensbezwaarde ambtenaar. Beide partijen hebben hier goede, rationeel aanvaardbare redenen voor nodig. Van de gewetensbezwaarde ambtenaar vraagt dat dus ook om een goed onderbouwd verhaal. De enkele reden dat ‘iets in

⁴⁰ Jürgen Habermas, “Religious Tolerance—The Pacemaker for Cultural Rights,” *Philosophy* 79 (2004): 5-18.

⁴¹ Jocelyn Maclure en Charles Taylor, *Secularism and Freedom of Conscience*, vert. Jane Marie Todd (Cambridge: Harvard U.P., 2011), 65-68; Habermas, *Gelijke behandeling van culturen*, 187-188.

⁴² Jürgen Habermas, “De gelijke behandeling van culturen – en de grenzen van het postmoderne liberalisme,” in *Geloven en weten*, red. René Gabriëls en Ruth Sonderegger, vert. Frank Rebel en Hans de Vries (Amsterdam: Boom, 2009): 169-204, 200.

strijd is met zijn of haar geloof” kan niet aangemerkt worden als een goede reden, omdat deze niet rationeel aanvaardbaar is voor seculiere partijen.

Enfin, een hele verhandeling over Habermas, terwijl je schreef met Locke en Mill aan het werk te zijn. “Vanuit het denken van Locke zou je denk ik het volgende onderscheid moeten aanbrengen: a) een ambtenaar kan weigeren een huwelijk te sluiten omdat hij ervan overtuigd is daar **zelf** een moreel verkeerde handeling mee te voltrekken, of b) een ambtenaar kan weigeren een huwelijk te voltrekken omdat hij de overtuiging is toegedaan dat **de ander** daarmee een moreel verkeerde handeling voltrekt. In het eerste geval is er, vanuit het denken van Locke gezien, ruimte voor gewetensbezwaren. In het tweede geval echter geenszins, omdat een ambtenaar dan vanuit zijn overheidsfunctie zijn morele maatstaven aan een ander zou willen opleggen.” Zelfs als je dus meent dat een ander zijn ‘zielenheil’, zoals Locke het omschrijft, in gevaar brengt door met iemand van een ander geslacht te trouwen, mag je die persoon daar vanuit een overheidspositie niet van weerhouden.

“From the perspective of Locke, I think you should make the following distinction: a) a public civil servant can refuse to contract a marriage, because he is convinced that it will cause him to do something that is morally wrong, or b) a public civil servant can refuse to contract a marriage, because he is convinced that it is the other who will then commit an immoral act. In the first case, from the perspective of Locke, there is room for conscientious objections. In the second case, this room does not exist, because a public civil servant would then use his public function to impose his moral standards upon someone else.”

3. Hebben volgens u gewetensbezwaren op basis van religie een hogere waarde dan gewetensbezwaren op basis van iets anders als bijvoorbeeld ideologie of persoonlijke voorkeur? (Als een christen homoseksuelen mag weigeren op grond van de Bijbel, mag dan ook een antisemiet Joden weigeren te trouwen op basis van Mein Kampf?)

Nee, religieuze bezwaren zijn niet zwaarwegender dan andere morele bezwaren. Althans, niet in een seculier tolerantiedebat. Als gelovige kun je van mening zijn dat gewetensbezwaren op basis van religieuze overtuiging van zwaarwegender belang zijn dan gewetensbezwaren die voortkomen uit andere levensbeschouwingen. Deze positie is echter niet rationeel

aanvaardbaar voor niet- of andersgelovigen, en daarmee onhoudbaar in een hedendaags debat over tolerantie.

Dat het problematisch is om religieuze argumenten zwaarder te laten wegen wordt m.i. goed uitgelegd door Sonu Bedi in zijn essay *What is so Special About Religion?* Bedi noemt een aantal argumenten die regelmatig worden aangedragen om de positie van religie te verdedigen. De eerste reden is die van respect: we moeten, bijvoorbeeld, respecteren dat een ambtenaar van de gemeente tijdens haar werk om religieuze redenen een hoofddoek wil dragen. Echter, een beroep op respect is onvoldoende om een uitzonderingspositie te creëren voor gelovigen, gezien op basis van respect evengoed uitzonderingen gemaakt zouden kunnen worden voor niet-gelovigen. Waarom bijvoorbeeld niet dezelfde mate van respect betonen aan dragers van baseballcaps? ‘Omdat daar geen normatieve kracht achter schuilt, in tegenstelling tot religieuze voorschriften’ zou een tegenstander kunnen zeggen. Volgens Bedi is dat echter onterecht: ook andere organisaties kunnen morele standaarden hebben, religie heeft geen monopolie op moraliteit – hoewel ik me niet aan de indruk kan onttrekken dat bepaalde christelijke groeperingen nog altijd die illusie hebben.

Dat een hoofddoek al eeuwenlang tot de gebruiken van een religie behoort, en een baseballcap een recent verschijnsel is, is volgens Bedi ook irrelevant. Als we op dit vlak grenzen willen gaan trekken worden ze onvermijdelijk arbitrair. Een laatste poging dan: ‘zijn de kosten voor een gelovige niet veel groter, namelijk dat haar eeuwig lot hiervan afhankelijk is?’ Maar dit is nu juist het soort argumenten dat in de huidige seculiere samenleving geen enkel gewicht meer heeft. Wellicht is de baseballcapdrager ook de stellige overtuiging toegedaan dat zijn eeuwig lot samenhangt met het dragen van zijn pet, en wie bent u die overtuiging in twijfel te trekken? Waarom zou een ongelovige zijn voorkeur moeten conformeren aan de wet en een gelovige niet?⁴³

Overigens wil ik hier nog wel opmerken dat je altijd voorzichtig moet zijn met op het eerste gezicht analoge situaties of *slippery slope* argumenten door bijvoorbeeld gewetensbezwaarde ambtenaren die geen paren van het gelijke geslacht in de echt willen verbinden op één lijn te stellen met antisemieten die joden niet in de echt zou willen verbinden. In het eerste geval

⁴³ Sonu Bedi, “What is so Special About Religion? The Dilemma of the Religious Exemption,” *The Journal of Political Philosophy* 15.2 (2007): 235–249.

gaat het om een moreel bezwaar tegen een specifieke verbintenis tussen twee personen, in het tweede geval gaat het om een irrationele haat tegen personen zelf. Waar de gewetensbezwaarde ambtenaar die geen paren van hetzelfde geslacht in de echt wil verbinden geen schade toebrengt aan de personen zelf (hoewel sommigen dat punt aanvechtbaar vinden), doet een antisemiet dat wel – die wil andere het recht ontnemen een persoon te zijn. Een meer vergelijkbare situatie zou zijn wanneer een islamitische ambtenaar weigert een huwelijk te sluiten tussen een moslim en een jood/christen, omdat hij morele bezwaren heeft tegen een huwelijk tussen een gelovige en een (vanuit zijn opvatting gezien) ongelovige.

4. Zou naar uw mening het toelaten van de weigerambtenaar een schending zijn van de Algemene wet gelijke behandeling? (Waarin staat dat geen enkel persoon op een andere manier behandeld mag worden, direct nog indirect, op grond van hetero- of homoseksuele gerichtheid)

Dat is een lastige kwestie. Ik denk dat het er deels van afhangt of je een individuele ambtenaar beschouwt als de verpersoonlijking van de overheid. Indien dat het geval is, dan is het toelaten van een weigerambtenaar inderdaad een schending van het recht op gelijke behandeling. Echter, je kunt ook stellen dat de overheid het mogelijk moet maken dat iedereen een gelijke behandeling ontvangt. Dat hangt niet af van het gedrag van een individuele ambtenaar, en wordt er dus niemand ongelijk behandeld. Dat was praktisch gezien ook de situatie zoals die was. Er is nog nooit een paar niet getrouwd omdat er geen ambtenaar was die hen wilde trouwen. De hele discussie over de weigerambtenaar is dus een puur principiële. Het komt er in dit geval dus op aan of je de weigerambtenaar ziet als een representatie van de overheid of als een individu die zijn persoonlijke morele overwegingen mag laten meewegen in de uitvoering van zijn werk.

In het eerste geval is de positie van de weigerambtenaar inderdaad onhoudbaar omdat het tegenstrijdig is aan het recht op een gelijke behandeling. In het tweede geval wordt het alsnog lastig, omdat een huwelijksvoltrekking in strikte zin voor de overheid niets meer is dan een juridische handeling. Door te weigeren deze handeling te voltrekken als het gaat om twee mensen van het gelijke geslacht, terwijl de Nederlandse wet hier al ruim tien jaar geen onderscheid meer in maakt en er dus op voorhand geen wettelijk bezwaar is, ondermijnt de gewetensbezwaarde ambtenaar de rechtspositie van homoseksuelen. Dit reikt fundamenteel

verder dan bijvoorbeeld een bakker die weigert een bruidstaart te maken voor een homopaar of een hoteleigenaar die hen geen kamer wil verhuren. De gewetensbezwaarde ambtenaar, als zijnde vertegenwoordiger van de overheid, is niet bereid om homoseksuelen dezelfde rechten toe te kennen als heteroseksuelen. Het tolereren hiervan biedt ruimte aan een van overheidswege ongelijk toekennen van rechten aan burgers.

5. Zou het toelaten van de weigerambtenaar volgens u in strijd zijn met de bestaande scheiding van kerk en staat? (Is het niet zo dat het burgerlijk huwelijk door de scheiding van kerk en staat volledig onderworpen is aan de staat?)

De scheiding van kerk en staat houdt in dat de kerk zich niet bemoeit met staatsaangelegenheden (dus, om in termen van Locke te blijven spreken, geen aanspraak maakt op burgerlijke goederen en op dat vlak ook geen sancties mag opleggen), en dat de staat zich niet bemoeit met kerkelijke aangelegenheden (dat laatste aspect wordt vandaag de dag graag vergeten bij het publiek, wat er zomaar toe kan leiden dat men betoogt dat de overheid kerken moet dwingen homo's aan eucharistie/avondmaal toe te laten, wat een grove inmenging van de overheid in een kerkelijke aangelegenheid zou zijn, en daarmee een flagrante schending van de scheiding tussen kerk en staat).

Interview with Dr Professor Theo de Wit

1. Als het verbod op de weigerambtenaar niet ingevoerd was, was er dan een onderscheid gemaakt tussen gewetensbezwaren op basis van religie en gewetensbezwaren op basis van ideologie of persoonlijke voorkeur?

(De weigerambtenaar zou dan immers niet verplicht zijn zich te houden aan de Algemene wet gelijke behandeling waarin staat dat geen enkel persoon op een andere manier behandeld mag worden, direct nog indirect, op grond van hetero- of homoseksuele gerichtheid. Zou deze uitzondering dan ook moeten gelden voor niet religieuze ambtenaren die om andere reden bezwaar zouden hebben tegen het homohuwelijk?)

Mijn voorstel is om tegemoet te blijven komen aan gewetensbezwaren: religieuze of politieke (denk aan de ‘totaalweigeraars’) / Zie hier de passage uit mijn blog: ... terwijl een columnist als Heijmans in Nederland de wind mee heeft en een zelfverzekerde meerderheid mobiliseert tegen een kleine minderheid van SGP-gelovigen, neemt *Pussy Riot* het met grote persoonlijke moed op tegen een oppermachtige staat – intussen wacht de vrouwen een strafkamp van twee jaar.

Maar misschien wel het meest zwaarwegend is een laatste, praktisch bezwaar tegen het aan de schandpaal nagelen van weigerambtenaren. Vragen we onszelf nuchter af: welk probleem wordt er eigenlijk opgelost wanneer deze gewetensbezwaarde ambtenaren zijn ontslagen of tot gehoorzaamheid zijn gedwongen? Nog nooit hebben wij berichten ontvangen dat de huwelijksvoltrekking van ook maar één koppel is afgelast omdat een ‘weigerambtenaar’ die verhinderde. Zelf zou ik trouwens bij mijn huwelijk helemaal niet *willen* worden toegesproken door iemand die zijn best staat te doen zijn eigen overtuigingen te verbergen.

2. In uw artikel over de weigerambtenaar sprak vooral het volgende mij erg aan:

“Onze tolerantie bereikt spoedig een grens, wanneer zij wordt uitgedaagd door politiek-religieuze intolerantie, tegenwoordig al snel ‘fundamentalisme’ genoemd, en vaak al wanneer de angst daarvoor bezit van ons heeft genomen of zelfs door de massamedia actief wordt

verspreid”. Was er volgens u tijdens de discussie over de weigerambtenaar ook een zekere angst onder de liberale partijen die het verbod op de weigerambtenaar steunden?

Ik denk inderdaad dat de meeste politieke partijen momenteel streven naar meer morele homogeniteit die via de wet wordt afgedwongen. Dat laatste is het problematische punt: onze rechtstaat accepteert een verschil tussen wet en moraal: je moet je aan de wet houden, maar je mag de wet moreel gezien abject vinden.

3. Wat is volgens u het belangrijkste criterium waaraan gewetensbezwaren moeten voldoen om erkend te worden door de rechtsstaat?

Een heldere uitleg geven van hun gewetensbezwaar. De rechtsstaat moet daarin nogal flexibel zijn: mensen zijn onvoorspelbare wezens, wat ik niet begrijp kan voor een ander zeer belangrijk zijn...

4. Nu dat de weigerambtenaar bij wet verboden is, verwacht u dat er soortgelijke wetten zullen komen voor ook andere beroepen? Zou het volgens u mogelijk zijn dat verpleegsters straks in Nederland verplicht worden om abortussen uit te voeren?

Best mogelijk. Of: verplicht tot het uitoefenen van euthanasie! Bijvoorbeeld op Tbs'ers die het leven zat zijn omdat er geen goede behandeling voor hen wordt beschikbaar gesteld, zoals onlangs in België – staatscynisme (overigens daar op het nippertje net verhinderd...)

Interview with Bas Hengstmengel

1. Als het verbod op de weigerambtenaar niet ingevoerd was, was er dan een onderscheid gemaakt tussen gewetensbezwaren op basis van religie en gewetensbezwaren op basis van ideologie of persoonlijke voorkeur? (De weigerambtenaar zou dan immers niet verplicht zijn zich te houden aan de Algemene wet gelijke behandeling waarin staat dat geen enkel persoon op een andere manier behandeld mag worden, direct nog indirect, op grond van hetero- of homoseksuele gerichtheid)

Probleem is dat er in de samenleving steeds minder begrip lijkt te bestaan voor een beroep op het geweten. Een gewetensbezwaar wordt niet zelden gelijkgesteld met een willekeurig ander standpunt, terwijl het toch gaat om meer dan een mening. Een gewetensbezwaar heeft te maken met fundamentele overtuigingen die raken aan iemands levens- en wereldbeschouwing. Aan een gewetensbezwaar mogen eisen gesteld worden. Het moet ook aannemelijk gemaakt worden. Wat echter zal blijven, is dat een gewetensbezwaar botst met overtuigingen van een meerderheid. De vraag is dan, hoeveel ruimte de meerderheid de minderheid gunt. Ik zie geen scherp onderscheid tussen religie en ideologie, in die zin dat ze beide gerekend kunnen worden tot een levens- en wereldbeschouwing. Ze zijn echter te onderscheiden van een persoonlijke voorkeur doordat ze samenhangen met andere overtuigingen, niet eenmalig zijn, geen opwelling zijn. Ze gaan dieper dan een voorkeur doordat ze aan iemands identiteit raken, aan zijn persoon, niet alleen als burger, maar ook als moreel en religieus wezen. Gewetensbezwaren vormen een staatsrechtelijk probleem. Ze staan aan de grens van het recht. Soms wordt er een specifieke regeling in het leven geroepen voor de omgang met gewetensbezwaren. Denk aan artikel 99 van de Grondwet en de Wet gewetensbezwaren militaire dienst. Honorering van gewetensbezwaren blijft echter altijd uitzondering op de regel. Ze zijn dan ook niet goed te begrijpen vanuit de regel. De wet beoogt en pretendeert een sluitend systeem te zijn; de werkelijkheid is weerbarstig.

2. In uw artikel “Tegen het totalitaire gelijkheidsdenken” schreef u:

“De democratische rechtsstaat is niet het hoogste goed; het is een tijdelijke orde in een gebroken wereld. De rechtsstaat bewaart de publieke orde en vrede en heeft slechts zeggenschap over die vormen van handelen die de publieke orde bedreigen. Hij heeft geen zeggenschap over ons denken en evenmin over al ons handelen.” Thomas Hobbes stelde ook

dat de rechtsstaat slechts een tijdelijke orde is maar dit was voor hem juist een reden om te pleiten voor volledige gehoorzaamheid in het publieke domein dat onder het gezag valt van de staat. Er is volgens Hobbes immers geen andere orde op aarde die ons als burgers kan beschermen en dus geen andere orde die onze gehoorzaamheid verdient. Is volgens u de staat zonder gehoorzaamheid in het publieke domein nog wel in staat om handelingen te verbieden die de publieke orde bedreigen?

Thomas Hobbes had ongelijk. Slechts in een situatie van anarchie is een totalitaire orde beter dan geen orde. Een totalitaire orde ontnemt echter de vrijheid. Een democratische rechtsstaat biedt checks and balances voor verschillende vormen van macht, waardoor de twee uitersten van anarchie en totalitarisme voorkomen worden. Slechts die handelingen die de maatschappelijke orde bedreigen mogen onder het gezag van de staat gebracht worden. Op die terreinen mag de staat gehoorzaamheid afdwingen, daarbij gebonden door de wet. Bedenk dat (klassieke) grondrechten primair bescherming tegen de staat beogen (zie Locke en Mill). Wanneer de staat in de greep komt van wat ik een ‘totalitair gelijkheidsdenken’ heb genoemd, kunnen grondrechten door de staat worden gebruikt als middelen tegen de burger.

3. Is volgens u het burgerlijk huwelijk door de scheiding van kerk en staat volledig onderworpen aan de staat? (Mocht dit zo zijn, is het toelaten van weigerambtenaren dan in strijd met deze scheiding?)

Het burgerlijk huwelijk is de juridische vormgeving van wat primair een moreel, biologisch en religieus verschijnsel is: het huwelijk. Het huwelijk is een in principe duurzame samenlevingsvorm van twee mensen. De uitdrukking ‘burgerlijk’ geeft al aan dat het gaat om het huwelijk voor zover het raakt aan het staatsburgerschap, aan het geordend samenleven. Het ‘burgerlijk huwelijk’ is dus per definitie een staatsaangelegenheid. De wet regelt de uiterlijke rechten en plichten. Ik zou daarbij niet willen spreken van ‘onderworpen aan de staat’, maar van een staatsaangelegenheid. Voor het huwelijk is geen staat nodig, maar de staat heeft belang bij kenbaarheid van de juridische verhoudingen, in het bijzonder waar het de verantwoordelijkheid voor kinderen betreft, maar ook vermogensrechtelijk. Het huwelijk is een maatschappelijk relevant verschijnsel dat om ordening vraagt. De juridische ordening van het huwelijk is niet een neutrale aangelegenheid, maar wortelt rechtstreeks in morele opvattingen over wat wel en niet toelaatbaar is. We kennen bijvoorbeeld geen burgerlijk

huwelijk van drie mensen. De vraag is waarom. Wanneer de koppeling tussen enerzijds het biologische gegeven van de complementariteit van man en vrouw en anderzijds de juridische formalisering daarvan wordt losgelaten, is er feitelijk geen steekhoudend juridisch argument meer waarom niet andere samenlevingsvormen juridisch zouden kunnen worden erkend. Toch houden we vast aan een huwelijk van twee personen. Dat betekent dat moraal en recht niet los staan van elkaar. Dat blijkt in het strafrecht het meest expliciet, maar toch ook in het personen- en familierecht.

Moraal is wat anders dan de kerk. Het burgerlijk huwelijk is (per definitie) geen kerkelijke aangelegenheid, maar dat wil niet zeggen dat het geen morele aangelegenheid is. Scheiding van kerk en staat betekent mijns inziens dat de staat zich niet bemoeit met de leer en interne organisatie van de kerk en dat de kerk zich niet bedient van staatsmiddelen. Beiden hebben een eigen domein. Natuurlijk heeft de kerk (of breder: het geloof) met moraal te maken, maar er is ook moraal buiten de kerk. Overal waar mensen een levens- en wereldbeschouwing hebben (religieus of niet-religieus) treffen we moraal aan. En feitelijk heeft ieder mens een levens- en wereldbeschouwing, ook al is deze niet altijd even expliciet gemaakt. Het toelaten (of verbieden) van weigerambtenaren heeft in wezen niets met de scheiding van kerk en staat te maken. Het heeft te maken met de vraag hoeveel ruimte er is voor gewetensbezwaren, of deze nu religieus gekleurd zijn of niet. Bedenk dat we in de Nederlandse samenleving ook gewetensbezwaren kennen van bijvoorbeeld pacifistische of antroposofische aard, die bijvoorbeeld in discussie over de dienstplicht of inentingingen naar voren kwamen en komen.

4. Volgens CDA senator van Bijsterveld is het uitsluiten van de weigerambtenaar een schending van artikel 3 van de Grondwet waarin staat dat alle Nederlanders op gelijke voet in openbare dienst benoembaar zijn. Vormt het uitsluiten van de weigerambtenaar ook na het ingaan van het wettelijke verbod nog steeds een schending van artikel 3?

Het wettelijk verbod verandert mijns inziens weinig aan de situatie. Dit verbod is slechts het doortrekken van de ijzeren logica van de Awgb. Het punt van de gelijke benoembaarheid vind ik juridisch niet overtuigend genoeg. Geen enkel grondrecht is ongelimiteerd. Er kunnen ook altijd eisen gesteld worden aan kandidaten; eisen die samenhangen met de uit te oefenen functie.

5. Wat zou zwaarder moeten wegen, een schending van artikel 3 van de Grondwet of een schending van de Algemene wet gelijke behandeling? Anders gezegd, wat vormt een groter gevaar voor de rechtsstaat: het bij voorbaat uitsluiten van de weigerambtenaar of de weigerambtenaar toestaan om de wet te overtreden?

Het verbod op de weigerambtenaar is een formeel-juridische ‘oplossing’ voor wat eigenlijk een moreel vraagstuk is: hoeveel ruimte is er in de Nederlandse rechtsorde voor gewetensbezwaren? Dit verbod is eigenlijk een ‘buiten de orde verklaren’, een overrulen. Het volgt een ijzeren logica, die echter afbreuk doet aan een goede Nederlandse traditie van pragmatisch omgaan met minderheden. Het doet ook afbreuk aan de mogelijkheid van een lokale oplossing. Dit verbod is een centraal dictaat, een ideologisch geladen dictaat ook. “Je kunt veel pragmatischer omgaan met gewetensbezwaren. De ‘weigerambtenaar’ vormt getalsmatig namelijk geen enkel probleem.” In plaats van het zwart-witte middel van een verbod zou je er ook in de planning en geografische spreiding rekening mee kunnen houden dat er mensen zijn die op basis van hun levensovertuiging moeite hebben met bepaalde handelingen maar voor het overige prima kunnen functioneren.

“You can deal with conscientious objections in a much more pragmatic way. The ‘refusing wedding officiant’ forms not an actual problem considering its number.”

“Moet je alles verbieden wat je zou kunnen verbieden, louter om ideologische redenen? Tolerantie is juist dat je toelaat wat je in principe zou kunnen verbieden. Dat je macht die je hebt niet gebruikt omdat je anderen vrijheid gunt.”

“Do you need to forbid everything you could only for ideological reasons? Tolerance is in fact about permitting what you are capable of forbidding. It concerns the choice to permit actions which you could forbid, because you want others to enjoy their freedom.”

De overheid moet er zorg voor dragen dat de huwelijksvormen die door de wet worden geregeld ook tot stand kunnen komen. Dat is wat anders dan dat iedere individuele ambtenaar alle huwelijksvormen zou moeten willen faciliteren.

The Student Ethics Form

**European Studies
Student Ethics Form****Your name:** Aaron Evers**Supervisor:** Martijn Lak***Section 1. Project Outline (to be completed by student)*****(i) Title of Project:**

Liberal Philosophers and Political Parties on Religious Tolerance.

(ii) Aims of project:

To answer the following research question: To what extent do the founders of classical liberalism differ in their position on religious tolerance compared to the position of current liberal parties in the Netherlands? (An analysis of the writings of John Locke, Thomas Hobbes and John Stuart Mill)

(iii) Will you involve other people in your project – e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher – e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer ‘NO’ to this question.)

YES / NO**If yes: you should complete the rest of this form.*****Section 2 Complete this section only if you answered YES to question (iii) above.*****(i) What will the participants have to do? (v. brief outline of procedure):**

Answering questions, relating to my research topic, either personal or via e-mail

(ii) What sort of people will the participants be and how will they be recruited?

The participants will be professionals who have written on my case study. They can be professors, journalists, bloggers etc.

(iii) What sort stimuli or materials will your participants be exposed to, tick the appropriate boxes and then state what they are in the space below?

Questionnaires[] ; Pictures[] ; Sounds [] ; Words[] ; Other[X].

A list of questions will either be send to them via e-mail or asked to them in person. However, a standard questionnaire will not be used as the questions will be adapted to each interviewee.

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. Either verbally or by means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data? Personal data (name, addresses etc.) should not be stored in such a way that they can be associated with the participant's data.

Every participant will be asked if his or her name can be mentioned in the dissertation. In addition, an Informed Consent Form will be send to each interview guaranteeing the confidentiality of their personal data.

Student's signature: **date:**

E-mails received from Theo de Wit

Van: **Aaron Evers** (aaron.evers@hotmail.com)

Verzonden: dinsdag 12 mei 2015 22:21:32

Aan: T.W.A. de Wit (t.w.a.dewit@uvt.nl)

Beste meneer de Wit,

Dank voor uw tijd en antwoorden. Als u er geen bezwaar tegen heeft, zou ik graag een aantal punten in mijn verslag opnemen.

Met vriendelijke groet,
Aaron Evers

From: T.W.A.deWit@uvt.nl
To: aaron.evers@hotmail.com
Subject: RE: Artikel: Pussy Riot en de weigerambtenaren
Date: Tue, 12 May 2015 11:38:53 +0000

Beste Aaron,

Hierbij mijn antwoorden,

Hart. groet,

Theo de Wit

From: Aaron Evers [mailto:aaron.evers@hotmail.com]
Sent: vrijdag 8 mei 2015 16:28
To: T.W.A. de Wit
Subject: RE: Artikel: Pussy Riot en de weigerambtenaren

Beste meneer de Wit,

Hartelijk dank voor uw reactie.

Graag stuur ik u hierbij vier vragen waarvan ik hoop dat u deze zou kunnen beantwoorden en terugsturen. Ook dank voor uw uitnodiging voor een eventueel gesprek. Ik hoop dat u bereid bent om eerst uw antwoorden terug te mailen zodat ik weet of ik nog veel (bijkomende) vragen over heb. Mocht dit het geval zijn dan zou ik u ook graag persoonlijk nog verdere vragen willen stellen.

Met vriendelijke groet,

Aaron Evers

From: T.W.A.deWit@uvt.nl
To: aaron.evers@hotmail.com
Subject: RE: Artikel: Pussy Riot en de weigerambtenaren
Date: Fri, 8 May 2015 10:33:53 +0000

Geachte meneer Evers, beste Aaron,

Stuur de vragen maar op; maar misschien kunnen we ze beter bespreken in een mondeling gesprek (in Utrecht, waar ik werk) over uw scriptie?

Vriendelijke groet,

Theo de Wit

From: Aaron Evers [mailto:aaron.evers@hotmail.com]
Sent: vrijdag 8 mei 2015 12:28
To: t.w.a.dewit@tilburguniversity.edu
Subject: Artikel: Pussy Riot en de weigerambtenaren

Beste meneer de Wit,

Ik stuur u deze mail naar aanleiding van uw artikel over de weigerambtenaar van 2012 die ik met veel interesse gelezen heb. Momenteel schrijf ik mijn scriptie over het verbod van de weigerambtenaar en onderzoek of, en zo ja in hoeverre, dit verbod in strijd is met de vrijheidsprincipes van de filosofen Thomas Hobbes, John Locke en John Stuart Mill. Hierbij richt ik mij vooral op het schadeprincipe van Mill en de voorgestelde scheiding tussen kerk en staat van Locke.

Ik zou het dan ook oprecht waarderen als ik u een enkele vragen zou mogen mailen over de gevolgen die het verbod volgens u heeft voor de rechtsstaat. Ook zou ik u willen vragen in hoeverre gewetensbezwaren volgens u gerespecteerd kunnen worden door de staat.

Ik zie uit naar uw reactie.

Met vriendelijke groet,

Aaron Evers

E-mails received from Johannes ten Hoor

Van: **Aaron Evers** (aaron.evers@hotmail.com)

Verzonden: vrijdag 17 april 2015 9:54:47

Aan: Johannes ten Hoor (johannestenhoo@gmail.com)

Beste Johannes ten Hoor,

Hartelijk dank voor uw antwoorden! Uw toelichtingen hebben mij verdere verheldering gegeven en ik zal ook zeker de bronnen bekijken die u heeft gebruikt. Als u er geen bezwaar tegen heeft, zou ik ook graag naar de door uw gegeven antwoorden willen verwijzen in mijn scriptie.

Nogmaals dank voor uw tijd en inzet.

Met vriendelijke groet,

Aaron Evers

Date: Thu, 16 Apr 2015 22:48:21 +0200

Subject: Re: Bericht via weblog

From: johannestenhoo@gmail.com

To: aaron.evers@hotmail.com

Beste Aaron,

Bijgaand mijn antwoorden op de gestuurde vragen. Her en der heb ik wat uit eerder geschreven stukken en een lezing geknipt en geplakt, maar ik hoop dat er alles bij elkaar voldoende samenhang in zit om er iets mee te kunnen. Overigens, van de denkers waar jij je mee bezig houdt refereer ik enkel aan Locke. Verder baseer ik me voor op een hedendaags seculiere benadering van tolerantie, en dan specifiek op het denken van Jürgen Habermas. Mocht er iets niet duidelijk zijn of mocht je nog aanvullende vragen hebben dan hoor ik dat graag.

Hartelijke groet,

Johannes

Op 14 april 2015 19:43 schreef Aaron Evers <aaron.evers@hotmail.com>:

Beste Johannes ten Hoor,

Hierbij zou ik u graag de vragen willen sturen over de weigerambtenaar.

De inhoud van sommige vragen klinkt wellicht wat kortzichtig en representeert ook niet mijn eigen standpunt maar het zijn wel de soort vragen die ik regelmatig tegenkom.

Alvast hartelijk dank voor uw hulp en ik zie uw reactie graag tegemoet.

Met vriendelijke groet,

Aaron Evers

Date: Tue, 14 Apr 2015 09:23:47 +0200

Subject: Re: Bericht via weblog
From: johannestenhooor@gmail.com
To: aaron.evers@hotmail.com

Beste Aaron,

Dat is prima, ik zie je vragen tegemoet.

Hartelijke groet,

Johannes

Op 13 april 2015 22:56 schreef Aaron Evers <aaron.evers@hotmail.com>:

Beste Johannes ten Hoor,

Hartelijk dank voor uw positieve reactie. Zou u het in dat geval goed vinden als ik mijn vijftal vragen naar u doormail?

U kunt deze dan eens op uw gemak bekijken en beantwoorden wanneer het u zou uitkomen.

Met vriendelijke groet,

Aaron Evers

Date: Mon, 13 Apr 2015 10:57:13 +0200
Subject: Re: Bericht via weblog
From: johannestenhoor@gmail.com
To: aaron.evers@hotmail.com

Beste Aaron,

Dank voor je mail. Goed om te horen dat je mijn stukken over tolerantie met plezier hebt gelezen.

Een interessante vraag waar je mee bezig bent, en ik ben zeker bereid daar wat vragen over te beantwoorden. Ik woon in Antwerpen, waar je van harte welkom bent. Anders kan het ook per mail of Skype.

Hartelijke groet,

Johannes

Op 10 april 2015 10:55 schreef Aaron Evers <donotreply@wordpress.com>:
Naam: Aaron Evers
Email: aaron.evers@hotmail.com

Bericht: Beste Johannes ten Hoor,

Met veel plezier heb ik uw artikelen over “tolerantie voor beginners” gelezen waarin zo bondig wordt besproken wat de ware betekenis is van tolerantie en hoe deze betekenis veelal verkeerd begrepen wordt door liberale partijen. Graag zou ik willen informeren of u bereid zou zijn om enkele vragen over dit onderwerp te beantwoorden via e-mail of in persoon (mocht u in Nederland zijn).

Ik schrijf namelijk mijn scriptie over het verbod van de weigerambtenaar en onderzoek of (en zo ja, in hoeverre) dit verbod in strijd is met de vrijheidsprincipes van de liberale filosofen Thomas Hobbes, John Locke en John Stuart Mill. Hierbij richt ik me voornamelijk op het schadeprincipe van Mill en de voorgestelde scheiding tussen kerk en staat van Locke.

Mocht u interesse hebben dan hoor ik heel graag van u.

Met vriendelijke groet,
Aaron Evers

The Informed Consent Form signed by Bas Hengstmengel

Informed Consent Form

Informed Consent Form

1) Research Project Title

Religious tolerance in the Netherlands from a liberal perspective

2) Project Description

To what extent do the founders of classical liberalism differ in their position on religious tolerance compared to the position of current liberal parties in the Netherlands? (An analysis of the writings of John Locke, Thomas Hobbes and John Stuart Mill)

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

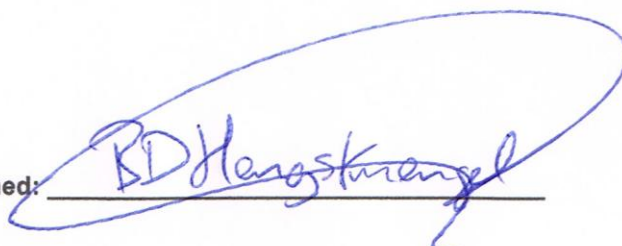
All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____



Date: _____

18/5/2015