Summary and Evaluation

The freedom of conscience brought on by the Union of Utrecht (1579) was a milestone on the way to freedom of religion and indicated a start of the codification of freedom rights. Although this was very important, it did not mean that the people who were not members of the public Reformed Church had freedom of worship. The theological doctrine of the one true church stood in the way of the public services of other churches. In time they were granted more and more freedom and they were allowed to have their own church buildings, provided that they were not too noticeable. This was a freedom by degrees. Lutherans were allowed more than Roman-Catholics and the Jews' position was relatively favourable compared to others.

At first sight the position of the public church appeared to be very good. One of its main advantages was its monopoly on government relations. Only members of this church could become civil servants, teachers or members of the States. On the other hand, the authorities were very much involved with church affairs. A case in point is the action of the States of Holland during the Twelve Years' Truce. They did not want lose their sovereign, provincial grip on the church as laid down in the Union of Utrecht. The power of the state over the church was defended by Hugo de Groot who also plead for one large, catholic church with a minimal confession of faith.

The freedom of confession was relatively great, but Socinianistic, anti-Christian and blasphemous publications sometimes lead to criminal proceedings. Moreover, press censorship was exercised until 1795. This did not have much effect though, mainly because the States showed restraint in the production of placards.

The increasing tolerance in the 18th century was stimulated by thinkers who made a stand for the natural human rights. It is remarkable that the right of freedom of religion was paid less attention to in the writings of the European thinkers than in those of the thinkers of the United States. There, freedom of religion was included as a *First Amendment* in the *Bill of Rights*. This prominent place and the old charters and constitutions of the States indicate that freedom of religion was at the source of the idea to constitutionalize the universal human rights.

Freedom of religion in the American Constitution had strongly changed constitutionnally because statutory provisions that conflicted with the Constitution could be declared non-binding. In the United States, this hierarchy of laws lead to a constitution that was very much alive. The freedom of religion was based on the principle that believers should be free of state intervention. The freedom of religion in the American *Bill of Rights* was 'self evident', whereas it was part of the *volonté générale* in the more secular French *Déclaration des Droits de l'Homme et*

du Citoyen. This more abstract approach of the freedom rights was less appealing to the Dutch than the American one. Draft constitutional laws, mostly from patriotic quarters, were therefore more in line with the *Bill of Rights*.

The Batavian administration extended the freedom of religion in the constitution of 1798 by guaranteeing everyone not only individual freedom, but also freedom of worship, confession and organisation. Only processions and the wearing of religious dress and symbols in public were forbidden. However, the administration did not succeed in cutting the ties with the former public church that was financially completely depending on the state.

The constitution of 1798 did not exist for a long time. It was replaced by another constitution in 1801 and again in 1805. These formulated freedom of religion less and less strongly while at the same time strengthened the ties with the churches. A new age dawned with King Louis Napoleon's constitution of 1806. Freedom of religion was not only restricted but also made dependent on the head of state as legislator. The individual freedom of religion was maintained but the freedom of organisation was almost completely annihilated. A powerful Ministry of Worship was instituted. There even was supervision of the religious principles to prevent the preaching of systems which would deteriorate the society and corrupt morals. The king aimed for effective regulations, but the enacting was thwarted by the annexation of Holland by France.

Napoleon's opinion on freedom of religion was simple: 'the people need a religion and this should be controlled by the government.' In accordance with this principle, he signed a concordat with the Pope which was laid down in the *Loi relative à l'Organisation des Cultes du 18 Germinal, an X (*1802*)*. To the Pope's great dissatisfaction he added 77 Organic Articles to restrict the freedom of the Roman-Catholic Church. In this same law he also arranged for the organisation of both protestant churches, the Reformed and the Lutheran church. This law came into effect on 15 May 1810 for the southern provinces and on 29 October 1811 for the rest of Holland.

In his proclamation of 2 December 1813 prince William of Orange declared that his sovereignty was not by virtue of a constitution agreed on with the people but by virtue of assumption. He saw himself a sovereign insofar as the Constitution did not restrict him. Consequently, civil freedoms were more likely to be formulated as favours depending on the sovereign than as rights. Also, this preliminary sovereignty meant that the sovereign was inclined to interpret the constitution in a restricted sense in order to maintain or strengthen his position. As a matter of fact, the explanation of the constitution was left to the sovereign. The States-General's responsibility was limited to the discussion of a number of mentioned organic and budgetary laws. There was no criterion for the conduct of state affairs to be either by law or by decree so that the sovereign could exercise control in many cases by bypassing the States-General. The sovereign became even more powerful when the Council of State was degraded to being an advisory board.

The constitution of 1814 offered equal protection for all existing religious persuasions ('gezindheden'). The word 'existing' was used to exclude 'sects' from this protection. The use of the words religious persuasions next to religion did not

make the text any clearer. To maintain the protestant character of the Netherlands, the constitution prescribed the sovereign to be devoted to the 'Christian Reformed Religion". Unlike in 1798, far-reaching government intervention with the denominations was accepted. The freedom of conscience and that of confession and opinion were assumed but not guaranteed. The freedom of confession was limited because the state almost completely monopolised education. The freedom of worship was mentioned but was really restricted because of the prohibitions of the *Code Pénal* which remained effective just like all French legislation according to the additional articles.

The judges' independence was relatively ensured. The Constitution did not speak of a competence of the judiciary to test laws, rules and the government's actions against the Constitution. The position of the Public Prosecutor was complicating. After 1813, this was part of the executive branch having controlling influence on the judicial branch.

Minister of Justice Van Maanen's speech in which he elucidated the Constitution indicated that it was considered to be the states duty to promote religiousness, morality, knowledge and virtue, to stop factions and civil dissension and to commit everyone to the state interest. He regarded the enlightened works of old and recent theologians and philosophers, Christians and Jews, Roman Catholics and non-Roman Catholics to be part of religiousness.

The Constitution of 1815 made hardly any changes to the freedom of religion. It did shorten the provisions about the state authority over church organisations, but this did not mean a lot since the king's sovereignty allowed him to intervene given that the Constitution did not forbid him to do so. The principle of equal protection of the existing religious persuasions was maintained in accordance with the Eight Articles of London against the will of the Roman Catholic members of the constitutional committee. They had tried in vain to give their own church more advantages and the clergy more control over education. On the other hand, the provision that stated that the king had to be devoted to the reformed religion was dropped. During the deliberations Van Maanen spoke disparagingly about 'unknowing zealotic' Catholics and 'zealotic, dumb reformed people'.

The position of the States-General remained as weak as before. Attempts to strengthen the ministerial responsibility and to prosecute the ministers on indictment by the States-General failed. The ministers could only be prosecuted for civil offences by order of the king and with the States-General's permission. The States-General could no longer be seen as the interpreter of the law since the provision to that effect was dropped. Constitutionally, it was logical to assign this task to the court. Later, this opinion was opposed by the government posing that law making was assigned to the king and the States-General, not to the court. This meant that freedom of religion was no longer a certainty.

The Belgian clergy felt a deep aversion to the equal freedom of religion since it meant that the Roman Catholic Church would lose its exclusive position. According to bishop De Broglie of Ghent this equality was a sign of indifference and an attack of blinded modernists on religion, moral and healthy politics. The catholic vision stated that there could only be one church, just like there was only

one truth. Equal protection of the churches would come down to an equal protection of both truth and lies. The fact that the current legislation meant that the church was subjected to a protestant government and protestant civil service was considered intolerable by the bishop. He thought freedom of press was fundamentally wrong since it opened doors to anti-Christian literature. He and other higher clergymen succeeded in mobilising the population so that a majority of the 1500 dignitaries who had to represent the people voted against the constitution. When the constitution was nevertheless ratified, the bishop of Ghent implored his catholic countrymen in a *Jugement doctrinal* not to take an oath on it. As a result many Catholics refrained from becoming civil servants or administrators so that the southern civil service became for the most part protestant.

By means of his almost absolute sovereignty and the still valid French legislation, the king tried to use religion as a political instrument to build and maintain the young nation. Parallels were to be seen between his church politics and those of Hugo de Groot: internally tolerant and externally intolerant. One of his first aims was to unite the Roman Catholics and the Old Catholics into one national catholic church, as independent from Rome as possible. To that end he appointed a committee of the Council of State for the catholic worship affairs, he took over the appointment of the clergy and he ordered his civil servants to administer the *Loi relative á l'Organisation des Cultes du 18 Germinal, an X*. In effect he took over the religious authority over the church from Napoleon. To enforce the policy minister Van Maanen gave orders to the judicial authorities to exercise strict supervision over the behaviour of the clergy.

The church turned out to be obstinate though and De Broglie kept defying the royal authority. Since the government acknowledged that the freedom of religion was at stake, the king hesitantly decided to have the bishop prosecuted in 1816. Following Van Maanen's advice based solely on French legislation, the king rejected the bishop's excuse that he was a Roman Catholic. The bishop fled to France and was convicted by the Assize Court that tried the case. They followed the same reasoning and sentenced him to deportation for publishing the *Jugement doctrinal* and violation of the right of exequatur (placet).

At the same time and in years to come De Broglie's sympathizers were also prosecuted, sentenced or discharged from office. Church services were checked and the catholic press was gagged. The so-called Oproerwet (insurrection law), a law specially drafted for the occasion and issued at Napoleon's return in 1815, was often applied. This prohibited almost all manifestations and publications against the authorities and was evidently a useful mean to deal with opponents. Strikingly, minister of Justice Van Maanen sent circulars to the members of the judiciary in order to mobilise them to support the government in their conflict with the clergy. He succeeded, because apart from some exceptions many people were convicted.

A change in the Roman Catholic thoughts on religious freedom was brought about by the actions of bishop De Méan of Liège. He made a distinction between theological and political tolerance so that the Catholics could take an adapted oath on the Constitution. This distinction was the seed of the future liberal Catholi-

cism. It says a lot that the king took his time accepting the new text for the other Catholics.

The king's restricted interpretation of religious freedom became apparent when he ordered the prosecution of the Stevenists in his decree of 18 August 1817. According to the king, this catholic church grouping was not entitled to freedom of religion since they were not part of the existing religious persuasions that had the right of protection in accordance with the Constitution in 1815. The decree stated that they were not known when the Constitution was established. Apart from the fact that it could be demonstrated that the government had known that Stevenistic meetings had existed since the day of the concordat in 1801, this requirement could not be found in the Constitution. Consequently, the Stevenists suffered disruptions of their meetings, prosecutions and convictions from 1817 to 1820. Articles 291-294 of the *Code Pénal* in particular were used to this end.

The freedom of confession was violated by the persecution of the press. Liberal writers as well as members of the catholic clergy were persecuted. Not only critical publications, but also sermons and prayers were under scrutiny. The courts' sentences were relatively harsh. Often the Oproerwet that did not leave much room for freedom of speech and confession was applied.

The Catholics in the Southern Netherlands were put at a strong disadvantage by the government's educational politics. Although the government meant to improve education by introducing state schools, the anti-Roman characteristics of the policy did not stay hidden. It all got out of hand when the king closed the preparatory seminaries and founded the *Collegium Philosophicum* in Leuven in 1825. This action drove the Catholic part of the population opposetion for good. They considered this to be an attempt to establish a state religion. Remarkably the Catholics argued that freedom of religion and freedom of education were in line, a vision that was put forward in the Northern Netherlands only at a much later stage. The Liberals of the Southern Netherlands who in turn were upset by the many press persecutions based on the Oproerwet joined the Catholic opposition. This resulted in a combined opposition that stood up for freedom of religion, freedom of education and freedom of press.

Although it was clear that the constitution was violated, the House of Representatives (Tweede Kamer), kept aloof because they thought they could not act as an authentic interpreter of the constitution nor as judges. People who complained were redirected to the court. Only in the second half of the 1820s a clear opposition against the governments action arose, but the objections were completely underestimated and rejected by the majority of the House.

In time, many inhabitants of the Southern Netherlands lost confidence in the judiciary. It was said that the magistrature was an obedient instrument of the government that had come down to the lowest level of servility and dishonourableness. It can be stated that the administration of justice supported the government's politics with severe punishments and few acquittals. Sometimes direct or indirect influencing of the minister of Justice took place.

It is remarkable that in reaction to the enlightened protestant reign the Belgian Catholics' vision dramatically changed. One realised that freedom of religion is

not a theological but a political notion. The 1831 Belgian Constitution showed this by giving an excellent description of freedom of religion starting from a free and independent church in a free state.

In the North, the king also wanted to regulate and govern the Catholic Church according to the plan designed in 1826. The concordat of 1827 prevented this from happening. The execution of the concordat itself also failed due to the king's ambition to unite all churches into one general Christian church. Even the union of the Roman Catholics and Old Catholics he wanted did not come about. He did manage to impose regulations on the Jewish communities and the Lutheran and Reformed Churches. Characteristic was the great power he had on the church organisations. The regulations were drawn up by a civil servant who had already been working on making the church organisations more centralistic in nature during the reign of King Louis Napeoleon and the emperor himself. The regulations could not be called unconstitutional however. Therefore the Council of State did not see any objections , although they warned for the danger of violating the *jus in sacra*. An indirect influence on the church doctrine was inevitable though.

Although freedom of confession and freedom of press were praised in the North, they were in fact limited. On some occasions publications in which a writer criticized the government led to convictions. The critical protestant press and utterances were watched closely. In one case a church minister was given a public royal reprimand. The catholic press suffered even worse and was given a hard time – against the advice of the Council of State.

Freedom of Worship was only applied to official church services and meetings of officially recognised church communities. Sometimes meetings of sectarians and dissidents were tolerated, but mostly they were acted against, especially conventicles or other religious meetings. The government feared zealotry, religious intolerance and disturbance of the 'internal' peace. Catholic manifestations outside church buildings were not tolerated either. Royal decrees, regulations, circulars and letters limited the opportunities for more processions and prohibited inappropriate clothing and other excesses.

The Act of Secession and Return signed by the minister and members of the church in Ulrum on 14 October 1834 was an attack on religious unfreedom. The people who seceded from the Dutch Reformed Church for conscience' sake challenged the almost absolute sovereign reign of the king of the Napoleonically organised state. The secession was not in the least due to the joint actions of the church and the government against some ministers who dared to revolt against the tolerated unreformed views that had penetrated the church in their publications, preaching, pastoral care and church conduct. In agreement with the government, it was made to look like the church's proceedings against the ministers were not meant to discharge the ministers because of their religious beliefs, but because of the violation of church regulations. All appearances of religious coercion and intolerance had to be avoided.

Consequently the ministers and their followers who did not accept the church's verdicts were systematically tried by the court, mostly for an offence against articles 291-294 of the *Code Pénal*, but also for disturbance of the peace, lese majesty

and criticism of church resolutions. Soldiers were deployed to disperse meetings and billeted in places where many secessionists lived.

The government action with a key role for Minister of Justice Van Maanen and Minister of Worship Van Pallandt van Keppel was characterized by a lack of distinction between politics and theology and between state and church, and not recognizing the value of diversity so that one reasoned from the contrast between their own people and the enemy that was not part of them. From the fact that the government treated them as a-socials and dumb zealots, it can be deducted that psychological and sociological factors also played a part. One couldn't speak of real communication between the government and secessionists. In correspondence and advices the following motives for the measures can be found: the protection of the Dutch Reformed church as a pillar of the nation, fear of the secessionists' pretensions that they formed the continuation of the old reformed church, a fear of a disturbance of the moderate enlightenment and the church's pursuit of unity, aversion of and fear of a return to Dordt and its religious dissensions, a fear of revolt and riots, violation of the king's sovereignty, belief in a tough approach, and finally as justification the pursuit of judicial equality by continuing the policy pursued against the Stevenists and others. It was crucial that according to the ministers and the king freedom of religion meant only freedom of conscience for members of unauthorized church denominations.

Objections to this policy came from among others the Minister of Interior who considered it to be exaggerated and contra-productive. The Council of State also stated in its advice of 6 November that the government's acting was not in accordance with the law and that the persecutions would lead to escalations if there was no other way out. This made the government decide to make recognition possible, setting impossible conditions though. In 1836, continuing resistance by the Council of State forced the government to leave a window of opportunity open for recognition.

The trials did not go smoothly for the government because some courts acquitted the suspects. It was also a problem that strictly speaking the prohibition of articles 291-294 of the *Code Pénal* did not apply to the ministers so that they had to be acquitted if the articles were interpreted literally. The Public Prosecutor came up with a questionable construction to avoid this and this was taken over by the courts. Important was the Supreme Court's ruling of 30 December 1835 that the implementation of articles 291-294 of the *Code Pénal* did not contravene the freedom of religion. This seemed to settle it, but not all courts agreed. Especially the court of Amsterdam which functioned as the final court of appeal for a number of districts kept ruling that the articles 190, 191 and 196 of the Constitution did not allow the implementation of the articles of the *Code Pénal.* The Supreme Court (until 1838 the 'Hooggerechtshof' and since 1838 the 'Hoge Raad') insisted that when they tested the law against the constitution it was compatible. On the other hand, the Supreme Court did condemn the construction that had been used for years to convict ministers and preachers as heads of associations. They formulated a sharper definition of a number of legal concepts, thus implying that the law had been interpreted too broadly in earlier rulings at the expense of the secession-

ists. On balance, the secessionists and their lawyers did not get enough support from the judiciary in their appeal for freedom of religion and conscience.

The House of Representatives did not offer the secessionists any support either. The House was an example of unanimity and loyalty to the authorities. Only a single liberal representative would raise his voice. Although he was not given response by his fellow representatives, his remarks did have an effect in government and secessionist circles.

In time objections against the strict persecution policy were raised in judicial and political circles. Most impressive was Groen van Prinsterer's pamphlet in which he called the measures against the secessionists he listed ineffective and unlawful. His pamphlet led to a chain reaction of publications that challenged each other. Thorbecke, for one, rejected Groen's objections and the government had a senior official write a book to defend its politics.

Although dissidents had been denied the freedom of worship, the freedom of confession increased. Strong criticism on the authorities could still lead to convictions, but the secessionists were not persecuted for their scathing publications. This was partly due to the liberalization of the press legislation. Some people who wanted to found a Christian school were persecuted, because the government strongly adhered to the principle of one school for all children, even if this was at the expense of freedom of education.

The government's recognition of the secessionist community of Utrecht in 1839 was a turning point in the relationship between the government and the secessionists. The secessionists did have to make so many concessions such as giving up the name reformed ('gereformeerd') though that Groen van Prinsterer spoke of capitulation. He also thought that they had traded the principle of the right of freedom of worship for a favour of the king. Groen did not see, however, that access to the 'civil society' was also involved. The existence of the church itself and its theological pretentions were not at stake. This distinction showed something of the future separation of Church and State.

At the revision of the Constitution in 1840, both Protestants and Catholics argued for more freedom of religion, but in spite of this the existing provisions were not changed. During the debates Groen van Prinsterer stood up for a state based on Christian principles. He had given up his former ambition of a protestant state that the Catholics had fulminated against.

When king William II took office, the freedom of religion was increased because of his sympathy for the secessionists and the Roman Catholics. He ended the billeting of soldiers in the homes of secessionists, stopped the execution of sentences and announced that he would pardon convicts in future. He also extended the possibilities to get recognized. In favour of the Roman Catholics he allowed the monastic orders to admit new members. His attempts to put the 1827 concordat into effect were met by a massive and vigorous protest from the protestants' side. Therefore the king made a secret agreement with the pope to appoint a number of bishops *in partibus infidelium.* Victim of this agreement was the formerly privileged Old Catholic Church that was no longer allowed to appoint bishops and was no longer a recognized denomination.

King William II's favours also brought more freedom of church organisation. The ties between the Dutch Reformed Church and the state were loosened. This was not always appreciated by the church leaders who still considered the government to be the patroness of the church. The Roman Catholic clergy, on the other hand, had difficulties with the interference of the department of Worship with the church and in particular the right of exequatur (placet). William II was willing to meet their wishes, but his attempts to do away with the right of exequatur were met by strong protests by the protestants and the synod of the Dutch Reformed Church. They wondered desperately how he could give up the *jus majestatis*, the honour and dignity of king and country.

King William II's reign did not bring real freedom of worship. The persecution of preachers and people who housed meetings of denominations and religious groups that had not been recognized was continued. The judiciary also continued to support the government's preventative and repressive policy and denied the appeal of the persecuted based on their constitutional rights. Lower courts sometimes administered very harsh punishments. The Court of Goes set a kind of record by imposing 324 fines in one day on a minister and a baker, for a total of 32.400 guilders. As the fines were not paid, they were held hostage for years. Still, both in political as well as in judicial circles there were signs of a forthcoming turning-point, such as the proposal of the nine members of the House of Representatives, the so-called 'Negenmannen', and the Criminal Code draft of 1847.

The freedom of press was still limited under William II. Although the government exercised restraint, there were still so many persecutions that a fund for persecuted writers was established. The freedom of education did also not improve. A committee appointed by the king was divided in its report. In order to meet the wishes of the Catholics, the clergy were authorized to remove unwanted books from schools. Requests for Christian schools were usually denied and the teachers who taught at 'illegal' schools were persecuted and punished. The limited freedom of education forced many secessionists to emigrate to the United States.

The implementation of the Constitution in 1848 was an important first step towards the separation of church and state and a new milestone on the way to freedom of religion. The sovereignty of the king was limited by the introduction of political ministerial responsibility and direct elections, which also caused the king's personal interference with church affairs to end. The new articles talked of a complete freedom to confess religious beliefs. This was formulated even stronger than the freedom of speech because of the limiting wording 'subject to the protection of society and its members against infringement of the penal code'. The constitution also offered equal protection of all religious denominations, freedom of worship within church buildings, and more freedom of organization by a repressive system. This also ended the right of exequatur. Freedom of confession and worship were reinforced, since the Constitution acknowledged the right of association and freedom of education which still had to be realized by the government. A minus was the prohibition of processions in places where they had not been held previously. Another minus for the constitutional rights was the prohibition of examining laws for compatibility with the Constitution, by the

pretentious and historically and in the matter of the system of the laws wrong provision that the laws were inviolable.

The proposals met some resistance. The lifting of the right of exequatur and the introduction of the freedom of education led to many petitions and notices of objection. The notice of objection against the lifting of the right of exequatur lodged by the General Synodal Committee of the Dutch Reformed Church caused a lot of anxiety among the Roman-Catholics.

The 1848-1853 period (The Torbecke cabinet) has to been seen as a setback for the freedom of religion. The control over the Dutch Reformed Church was even enforced. The government proved to be unwilling to accept that secessionist communities were justified in themselves by requiring governmental recognition. The April movement which protested against the restoration of the Episcopal hierarchy and which brought down the Thorbecke cabinet showed that the protestants could not yet accept freedom of religion for Roman Catholics. The Van Hall cabinet was the first to embed the constitutionally implemented freedom of religion in society by the *Law on denominations*. This law did away with the *Loi relative à l'Organisation des Cultes du 18 Germinal, an X,* just like the *Law on Association and Assembly* (1855) enacted under this cabinet did away with articles 291, 292 and 294 of the *Code Pénal*. After years of clashes between sovereignty and religion, freedom of religion was no longer a favour but a right.

Although freedom of religion was established with difficulty in our country, compared with the rest of Europe, our situation was not the worst. A survey of the situation around freedom of religion in Belgium, the German states, England, France, Austria, Italy, Spain, Russia, the Scandinavian countries and some Swiss cantons from 1830 to1845 shows that our country was not one of the countries in which freedom of religion was violated most often. In that period it was sometimes stated that freedom of religion had its seat in our country, but this can surely not be confirmed.