Like religious freedom, separation of church and state as we know it today was totally unknown in premodern Western societies. Not that church and state were always identified. That only happened when God was seen as the supreme authority of the state (theocracy), or the priesthood represented and/or legitimised that authority (hierocracy), or, conversely, priestly power was wholly subordinated to a secular ruler who claimed complete authority over ecclesiastic affairs (caesaro-papism).\footnote{M. Weber, \textit{Wirtschaft und Gesellschaft}, Mohr, Tübingen 1980, 688–690.} Paradoxically, the unity of church and state also manifested itself in what is known as the twin autonomy of the two institutions. This meant each had its own jurisdiction with its own interrelated institutions, organisations, and roles but worked in harmony for the sake of a unified society. This unity was symbolised by the ‘sacred canopy’ spanning both. Under that canopy the church sometimes had the upper hand, sometimes the state.

But all that has changed. In modern society the process of functional differentiation has put an end to any such unity.\footnote{N. Luhmann, \textit{Die Gesellschaft der Gesellschaft}, Bd I–II, Suhrkamp, Frankfurt 1998.} The ongoing process of splitting up functions has created more and more autonomous domains with ever more institutions and organisations working according to their own codes and programmes. The sacred canopy imploded. The upshot was that the church became a domain in its own right, separate from the economy, politics, education and teaching, welfare, health care, science and technology, art and culture. In relation to the state, it has grown into an independent body with its own codes, institutions, organisations, and programmes, although this does not exclude what Parsons and Luhmann call the interpenetration of...
domains – an interpenetration that was and remains manifest in relations between church and state.\(^3\)

In this chapter, I first look at the developmental process of the separation of church and state in the course of Western history, divided into a premodern and an early modern period. In the case of the former, I look at two outstanding figures who epitomise the numerous conflicts between church and state that took place under the sacred canopy: pope Boniface VIII and his critic Dante. In the case of the second period, I devote attention to Samuel Pufendorf, a model for the emerging functional differentiation of church and state, who greatly influenced his contemporaries and later generations of scholars, including Rousseau (8.1). I then examine how the constitutional principle of the separation of church and state is legitimised in modern times and how it relates to religious freedom.\(^4\) Here I draw on the ideas of, \textit{inter alia}, John Rawls and Jürgen Habermas.\(^5\) Realising that these authors arrive at different conclusions on certain points, I resort to a – I trust justified – eclecticism (8.2).

Next I explore, by means of empirical research, whether and to what extent the separation of church and state is accepted by the citizens of the democratic state who are supposed to be its carriers. I do so with reference to two thorny issues: the autonomy of politics in regard to euthanasia, and the autonomy of politics in regard to abortion. The two issues are thorny, both politically and religiously. It is important to check to what extent the autonomy of politics in the area of those \textit{res mixtæ} is supported by the citizens in terms of a contribution to the legal culture and human rights culture of a nation.\(^6\) For this empirical study, I use the data collected in 2007–2008 among the same three

---


