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Church Assistance to
Unauthorized Stayers: The U.S.
and Netherlands Compared

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Abstract

This paper compares the normative and practical considerations undertaken by faith-based organizations in the United States and Netherlands on the question of whether to assist unauthorized stayers. For purposes of this paper, the phrase “unauthorized stayers” refers to people who find themselves within the territory of a country but do not, or no longer have, the immigration authorities’ permission to remain in that country. The normative and practical considerations of faith-based organizations are discussed in light of church-state relations. An analysis of these considerations reveals that church-state relations are 1) better understood as a dynamic relationship, and 2) better understood when the two actors (the church and the state) are disaggregated into their constituent parts.

Keywords

Migration, religion, law, church-state relations.

1. Introduction

In recent years, there has been an increasing trend in the promulgation of immigration laws aimed at criminalizing people for offering assistance to irregular migrants, both in the United States and the European Union.¹ These laws can place people, whose religious beliefs instruct them to help migrants regardless of their residence status, in the precarious position of choosing between deeply held convictions and state law that forbids, or at least calls into question the legality of, exercising these convictions. Despite the risk of being monetarily penalized or even jailed,² people continue to provide such assistance on both continents. But why?

While scripture is likely an influence in at least some people's and churches'³ decisions to become involved in the assistance⁴ of unauthorized stayers,⁵ it is likely not the only relevant consideration in the decision-making process. The absence of explanation and theory regarding why people and churches become involved in this type of work is the motivation for this paper. To gain insight into this query, I conducted interviews with representatives of churches that work with unauthorized stayers in both the United States and Netherlands. However, due to space restrictions, I do not discuss those results in depth in this paper. Rather, I analyze the results of the interviews to extract themes and implications, particularly those relating to contemporary church-state relations, through the lens of migration.

Based on the results of this research, I argue that contemporary theories of church-state relations suffer from at least two deficiencies. First, their overgeneralization paints an inaccurate picture of church-state relations and the separation

1 For a recent and very extreme example, see the 'Stop Soros' bill introduced in Hungary, criminalizing (including imprisonment and expulsion) assistance to people wishing to apply for asylum or residence in Hungary: europa.eu/rapid/press-release_IP-18-4522_en.htm.

2 Until now, there has been no legal action taken in the U.S. or the Netherlands against people who have only assisted migrants once they were already in the country; in other words, people who have not also assisted migrants in traversing national borders without authorization have avoided criminal prosecution. However, there is arguably room in both countries' criminal codes for punishing those who merely help people once they are in the country. For the U.S., see 8 U.S.C. § 1324. For the Netherlands, see Article 197A of the Criminal Code.

3 Unless otherwise specified herein, 'church' and 'churches' include faith-based organization(s).

4 Assistance includes food, shelter, safety, and access to legal advice and medical care.

5 In this paper, I chose to use the phrase 'unauthorized stayer' rather than 'irregular migrant' or 'unauthorized migrant'. 'Unauthorized' was chosen instead of 'irregular' because it has more precision: it refers to a person whose stay is not authorized, or is no longer authorized, by national government authorities. 'Stayer' was chosen instead of 'migrant' because most of the people who are helped by the churches and faith-based organizations researched in this study can hardly be defined as migrants as 1) they have no intention to migrate any further, and 2) in fact have not migrated in months or years. They simply remain within the borders of a country whose authorities have not authorized, or no longer authorize, their presence.

principle. This can be remedied in part by disaggregating both the church and the state. Second, they fail to recognize the dynamic nature of church-state relations. The dynamic nature is explained in the final part of the paper through discussion of the relevant considerations undertaken by churches, which, when acted upon, have the propensity to add to the fluidity of church-state relations. Through a modified, more nuanced model of church-state relations, I explain the considerations that influence people's and churches' decisions.

2. Church-State Relations

Churches' assistance to people, whose stay government authorities have not authorized or no longer authorize, invites discussion on church-state relations. The general principle of separation of church and state is recognized in some form in both the United States and the Netherlands. In the United States, this principle is enshrined in the so-called Establishment Clause of the First Amendment to the United States Constitution: 'Congress shall make no law respecting an establishment of religion.' In a landmark U.S. Supreme Court case, the *Everson* case declared, '[t]he First Amendment has erected a wall between church and state. That wall must be kept high and impregnable.'⁶ The *Everson* court ruled that this wall applies equally to the federal government and the state governments.⁷ In the Netherlands, the principle emerged around 1796 when the Dutch Reformed Church ceased to be the established church of the country. Though the separation of church and state is not explicitly mentioned in the Dutch Constitution, it is implicitly embodied through a combination of codified rights. These include mainly Article 1,⁸ which prohibits discrimination on grounds of religion, and Article 6,⁹ which deals with the free exercise of religion.

6 *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

7 'The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State".' *Id.* at 15-16.

8 'All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.'

9 '1. Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.
2. Rules concerning the exercise of this right other than in buildings and enclosed places may be laid down by Act of Parliament for the protection of health, in the interest of traffic and to combat or prevent disorders.'

While the principle may seem straight forward in the abstract, the reality is much more nuanced and complex. The reality is that degree of separation between church and state varies along a continuum. Legal scholars in both countries have attempted to model church-state relations. In the U.S. context, the above-mentioned idea that there ought to be an impregnable wall between church and state represents one theory on church-state relations that is often termed *strict separation*. This theory is one of three main theories informing the church-state debate. Professor Chemerinsky credits the birth of this approach to the Jeffersonian understanding of the Establishment clause, explained by Justice Rutledge in his dissent in the *Everson* case:

The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.¹⁰

The basic idea is that if religion becomes intertwined with government at all, there is a resulting inevitable coercion to participate in that faith. And, in a country of different faiths or no faiths, people are excluded on this basis, which in turn divides a country, which is ostensibly built on pluralistic ideals.

The second approach to the Establishment Clause is known as the *neutrality* theory. Under this approach, the government cannot favour one religion over another, and it cannot favour religion over non-religion. Kurland has described this approach, stating 'the clauses should be read as stating a single precept: that government cannot utilize religion as a standard of action or inaction because these clauses, read together as they should be, prohibit classification in terms of religion either to confer a benefit or to impose a burden'.¹¹ Under this approach, the Supreme Court has formulated a 'symbolic endorsement' test which asks whether the government has symbolically endorsed a particular religion or if generally endorsed either religion or secularism.

The third approach is known as the *accommodation* approach. This approach permits the loosest degree of separation between church and state. Under this theory, courts should recognize the importance of religion historically and socially by accommodating it on equal footing with non-religion. This approach posits that the government violates the Establishment Clause only if it establishes a church, coerces religious participation, or favours some religions over others.¹²

10 *Everson*, 330 U.S. 1, 31-32.

11 Kurland, P., 'Of Church and State and the Supreme Court', 29 *U. Chi. L. Rev.* 1961, 1, 96.

12 Chemerinsky, E., *Constitutional law – principles and policies*. New York: Wolters Kluwer 2015, p. 1263-1264.

Dutch scholars have identified five models of church–state relations. According to Vermeulen, the *totalitarian secularism* model, which subscribes to atheism as the official doctrine, lies on one end of the spectrum.¹³ Under this model, schools and other institutions are seen as organs of the state that must propagate the official doctrine, usually displaying unconditional obedience to a supreme leader or party. Religious freedom is completely absent or relegated to the limited private sphere of family life. On the other end of the spectrum is the theocracy model. Neither of these two models has significant support in the Netherlands because of their incompatibility with the basic principles and values of Western Democracy.¹⁴ Thus, the real debate centers around the three models that fall between these two ends of the spectrum.

The first of the three is the strong separationist model, similar to the American strict separation approach, summarized by Vermeulen as follows:

[it] seeks to exclude religion from the sphere of the government, the school system and the public sphere in general. It presumes a strong separation of church and state. Religion should remain a private matter, belonging to the realm of purely individual choices, while only the state is concerned with public affairs. Religion and politics should be kept apart. When they are mixed – the state dictating or favouring religious beliefs, or religion using the state for its purposes – both of them suffer. Therefore the state should be neutral on religious matters, and this neutrality is best maintained by keeping religion and politics separate, and by keeping religious views outside the public sphere.¹⁵

The second model, similar to the American neutrality approach, has been termed the pluralist-cooperationist view. According to this model, the government should not take sides among different religions and secularism, and should treat them evenly. Religious freedom under this model can mandate active state involvement in its assurance.¹⁶

The third model is the established or privileged church model. While in some ways similar to the American accommodation approach, it goes further and permits the government to favour a church or group of churches to partner with and advance both church and state causes. Religious freedom is guaranteed in the private sphere, but established churches have a favoured status in the treatment by the government.¹⁷

13 In: M.-C. Foblets, J.-F. Gaudreault & A. Dundes Renteln (eds.), *The Response of State Law to the Expression of Cultural Diversity*, Brussels: Bruylant (Editions Yvon Blais) 2010, p. 45-143.

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

2.1. Disaggregation of Church and State

While these models are useful to illustrate that church-state relations are better understood on a continuum, they suffer from overgeneralization, which leads to inaccuracy. To more accurately conceptualize and model church-state relations, it is useful to disaggregate the church and the state. The state can be functionally disaggregated into three branches: the judicial, legislative, and executive, bearing in mind also that these exist on local and central levels. For purposes of this research, I will use the commonly understood definitions of these terms. Judicial refers to people and entities with the power to decide cases and controversies, legislative refers to lawmakers, and executive refers to the enforcers of law. The church, for purposes of this research, can first be broadly disaggregated into the Catholic and Protestant traditions. Within each, there are substantial differences between the work of churches and the work of religious orders, the latter generally exhibiting a greater willingness to engage or interact with the branches of government.

The utility of this disaggregation becomes apparent when discussing the ways in which certain churches and faith-based organizations interact with different levels and branches of government. As mentioned above, churches' assistance to unauthorized stayers includes some combination of food, clothing, shelter, safety, judicial advice, and medical care. In their efforts to ensure these are provided to unauthorized stayers, churches navigate different avenues and implicate, in varying capacities, the three branches of government mentioned above. Starting with the judicial branch, there is a distinction to be made between the work of certain churches, which navigate the regular legal procedure that starts with a complaint and follows with adjudicative procedures, and that of other churches, in which the church assumes the role of an independent judicial body outside of the judicial system. In other words, in the former, a church may file a complaint against a party and await the relevant court's adjudication of the case. In the latter, rather than availing itself of the legal procedure to determine whether the law has been violated, the church itself decides the issue. An example of both should clarify this significant distinction. The case of *CEC v. the Netherlands* provides an example of the former.¹⁸ In that case, the diaconal organ of the PCN in Utrecht,¹⁹ along

18 The case, in short: a group of churches lodged a complaint against the Netherlands before the European Committee of Social Rights. This committee is an organ of the Council of Europe and is charged with the task of deciding cases originating under alleged violations of the European Social Charter. In this case, the committee found that the Netherlands had violated two articles of the charter when it passed a new law that ended accommodation of asylum seekers four weeks after their claims for asylum were rejected. Essentially, people were thrown out into the street. The violated articles include Article 13, guaranteeing the right to social and medical assistance, and Article 31, guaranteeing the right to housing. According to the committee, these rights belong to *all* people residing in the territory of a signatory state.

19 The PCN is the Protestant Church of the Netherlands. Its diaconal organ is its service organ, assisting disadvantaged members of society, including, among others, migrants.

with a group of churches, lodged a complaint against the Netherlands, alleging that it has failed to fulfill its obligations under the European Social Charter by failing to provide unauthorized stayers with food, clothing, shelter, and medical assistance. The diaconal organ thus availed itself of the established judicial system to present its case and ultimately prevail on the issue of whether these basic necessities must be ensured for all people, including unauthorized stayers.²⁰ By contrast, a Protestant church in Chicago²¹ did not file a complaint against the United States when it believed the government had failed to fulfill its obligations by systemically denying asylum to thousands of Central Americans fleeing wars in the 1980s. Rather, it, along with other churches around the country, decided that they would provide shelter to people who have been, according to them, improperly denied asylum by the U.S. government authorities (in particular the executive branch).²² This stance was then memorialized in letters to the U.S. Attorney General, which stated that they would be sheltering people because asylum seekers were being both illegally denied asylum and illegally deported. Rather than relying on an established judicial system for resolution, these churches themselves adjudicated the question of whether the U.S. government is in conformity with domestic and international refugee law, and answered the question in the negative.²³

That Chicago Protestant church's independent adjudication of the executive branch's conduct was the first step in its response to its perceived failures on the part of the government. After 'striking down' the law on grounds that the government (again, in particular the executive branch) failed to fulfill its obligations arising from international asylum and refugee law, it assumed the role of a law-making body by 're-writing' the law. Of course, the church did not actually re-write any laws in the legally-binding sense, but it did adopt a policy it believed was consistent with what international public law mandated – providing asylum to people fleeing their countries of origin on account of political persecution. Other churches implicate the legislative branch through cooperation rather than assuming the role of a law- or policymaker. For instance, the unauthorized stayers who live at a faith-based refugee organization near Tilburg regularly host dinners to which they invite members of the community, including politicians. Among others, they have hosted at least one local politician from the GroenLinks (Green Left) Party, who, at the conclusion of the event, expressed approval and positivity

20 Also relevant to note here is that the diaconal organ did not avail itself of the Dutch courts. Rather, it utilized a supranational organ of the Council of Europe who is tasked with adjudicating claims arising from the European Social Charter.

21 The names of some churches and faith-based organizations is anonymized for privacy reasons herein.

22 The churches that sent letters to the attorney general did not tend to take issue with the law as it was written but rather the manner in which it was effectuated.

23 Some members of these churches that chose to engage in their own independent adjudication, however, did not escape the wrath of the government in a sanctioned court setting. See, e.g., *U.S. v. Aguilar*, 883 F.2d 662 (9th Cir. 1989).

regarding that organization's work. Though the organization did not explicitly lobby the politician for amending the law, it believed that merely bridging the gap between the local politicians and unauthorized stayers through physical exposure and verbal communication would reduce potential bias and prejudice for both sides. By doing so, the organization hoped that politicians would then legislate with a real person, rather than the idea of a person, in mind. A faith-based organization in Eindhoven employed a similar strategy that produced similar results: it hosted politicians from the municipality for dinners with the aim of bridging the gap these groups of people. As time went on, the municipality started to support the organization with funding for food, shelter, and other assistance.

When the Chicago Protestant church adopted the policy it believed to be consistent with international asylum and refugee law obligations, it engaged in its own policy-making, a task traditionally relegated to the legislative branch of government. And, when it provided asylum in its members' homes (consistent with its policy), it engaged in a task traditionally relegated to the executive branch of government: enforcement of the policy. This legislative/executive function was observed with respect to churches in the Netherlands as well. An Evangelical Protestant church in Leiden provided unauthorized stayers with, among other things, shelter, when the government refused to do so, believing the government's decision was wrong. This effort was funded by local churches until the government began to 'fulfill its obligations' as a result of the *CEC v. the Netherlands* decision discussed above in footnote 10. Representatives of both the PCN and the Catholic Church in the Netherlands stated that although it is the government's responsibility to provide the basic necessities to everyone, someone must step in and do so when the government shirks its obligations. That 'someone' includes the churches.

A disaggregation of 'church' is also useful in depicting a more accurate representation of church-state relations. As a starting point, there are substantial differences between the Catholic tradition and the Protestant tradition as regards the church asylum²⁴ manner of assisting unauthorized stayers. A very salient difference is that, at least according to the high-level members of the Catholic church interviewed for this research, very few Catholic churches in American and Dutch parish have themselves provided church asylum. By contrast, hundreds of Protestant churches across the United States joined efforts to provide shelter to Central Americans fleeing wars during the 1980s in what came to be known as the Sanctuary Movement.²⁵ Similarly, Protestant churches in the Netherlands in the 1980s served as sanctuaries for, among others, Turkish, Eritrean, and Tamil

24 The concept and practice of church asylum has undergone substantial change between its inception in the Middle Ages and today. For purposes of this paper, church asylum is the practice of providing physical shelter to people who do not have authorization to reside in the country. Church asylum and sanctuary are used interchangeably in this paper.

25 For an excellent analysis of the Sanctuary Movement from an anthropological-legal angle, see Rose, A., *Showdown in the Sonoran Desert religion, law, and the immigration controversy*. New York: Oxford University Press 2012.

asylum seekers.²⁶ Still, it would be inaccurate to say that the Protestant tradition is more amenable to the practice of assisting unauthorized stayers than is the Catholic tradition. A further level of disaggregation of both reveals why.

The Catholic Church is organized hierarchically with defined roles for its leaders. Put simply, the structure of the Catholic Church includes the Pope at the top, the bishops below him, the priests below them, and so forth. Each tier of leadership is supervised by, and bound to the rules set by, the tier above. Historically, the Catholic Church has generally been a law-abiding institution, wary of stepping on the toes of the government. This sentiment was expressed in a recent statement by Cardinal Blase Cupich, the Archbishop of Chicago, in which his view on sanctuary emerged: ‘We have not named our churches as “sanctuaries” solely because it would be irresponsible to create false hope that we can protect people from law-enforcement actions, however unjust or inhumane we may view them to be.’²⁷ In other words, his view appears to be that it is not the appropriate role of (Catholic) churches to stand in the way of the law and challenge law-enforcement actions, at least with respect to church asylum. So, while a priest within that diocese could theoretically declare his church a sanctuary, he faces a threat of removal by his superiors if he chooses to do so. Perhaps understandably then, there have not been any known cases of church asylum in Catholic churches. However, there is a distinction to be made between parish priests and deacons, on the one hand, and members of religious orders, on the other hand. Religious orders (communities and organizations of religiously-devoted people) are centered around a particular mission, such as working to help the youth, the poor, the sick, and so on. Religious orders, while part of the Catholic Church, are less confined to its policy and the rules within the hierarchy because they exist outside of the hierarchy in two key aspects. First, congregations (of religious orders) are financed through donations from benefactors, and interest earned on investments that the congregations make. They also receive money from their members who earn salaries for the work they do. Second, members of congregations do not report to, or need approval from, the diocesan bishop; rather, they report to the president of their respective congregation (whose goal is also fulfilling the particular mission of the congregation).

Protestantism is generally less centralized (after all, a chief tenet of the Reformation was its rejection of papal primacy²⁸), but there are distinctions to be made among its denominations. The operational and governing structure of most

26 Bronkhorst, D., *Een tijd van komen: De geschiedenis van vluchtelingen in Nederland*. Amsterdam: Federatie VON 1990.

27 Cardinal Cupich: ‘No Immigration Agents On Church Property Without Warrant’. (2017, March 01). Retrieved from: chicago.cbslocal.com/2017/03/01/blase-cupich-no-immigration-agents-on-church-property-without-warrant/.

28 Sullins, D., ‘An Organizational Classification of Protestant Denominations’. *Review of Religious Research* 2004, p. 278-292.

Protestant denominations can be classified into three ‘ecclesiastical polities’: congregational, presbyterian, and episcopal.²⁹ The congregational polity is, in theory, the least centralized, while the episcopal polity is the most centralized, which is the polity of the Catholic Church. To complicate matters further, it cannot be readily said that a Protestant church organized under one polity is more amenable to the plight of unauthorized stayers than a Protestant church organized under another polity. This is because many denominations exist under each of the polities, and each church within each denomination has its own (nuanced) tendency to a particular political stance on migration. But, the deeper the disaggregation goes, the more accurate observations and statements regarding church-state relations and the separation principle become.

2.2. The Dynamic Nature of Church-State Relations

In addition to their overgeneralization, the models discussed above fail to stress the dynamic nature of church-state relations. While scholars who have described the church-state models discussed above acknowledge that many countries’ systems do not fit precisely into one model, they fail to emphasize also the fluidity of church-state relations. There appears to be a presumption that although models vary from country to country, the model within a country remains more or less constant. The reality, however, is that the relations between divisions within churches and branches of government can change quickly in response to a presence or absence of certain conditions and circumstances. That is, the role of church (and its divisions) and the role of state (and its branches) blur when certain conditions change.

An example of this fluidity was observed with regard to one Evangelical Protestant church in Leiden, briefly mentioned above. In that case, the church continuously offered a wide array of assistance – including shelter, food, judicial advice – up until the Dutch Central Appeals Tribunal opined that the *CEC v. the Netherlands* decision was binding, and that the Dutch government must provide these things to all people within its borders. While it was providing this help, the church received donations from other churches around the country, which is what enabled it to continue its work. However, as soon as it was determined by the European Committee of Social Rights (ECSR) that the Dutch government is the responsible entity, donations from the churches stopped, and the church in Leiden no longer had adequate funding to continue this work. As a result, it could now offer only spiritual care.

However, it is not always the case that churches’ activities cease when the responsibility is assumed by another entity. The *CEC v. the Netherlands* case is sometimes referred to as the ‘BBB decision’. ‘BBB’ stands for Bed (bed), Bad (bath), and Brood (bread), and is often used as a shorthand way of describing the basic provisions the government must ensure for all people as the result of the

²⁹ *Id.*

case. Members of at least one faith-based refugee organization near Tilburg believe that the BBB does not go far enough; in their representatives' view, there is a fourth 'B' missing: Barmhartigheid (mercy). For this organization, the ECSR's declaration that the Dutch government must provide certain basic necessities had little or no practical impact on its continued work with unauthorized stayers. The declaration of a supranational quasi-judicial body (the ECSR) that a country must provide basic life necessities to all within its borders is just one event that can contribute to the dynamic nature of church-state relations. There are additional considerations relevant in a church's motivation and decision to become involved in the assistance of unauthorized stayers. These considerations lead to a decision, which, when acted upon, has the capacity to alter and influence church-state relations. These considerations are discussed below.

3. Considerations Relevant in Decision-Making

The considerations relevant in a church's decision to become involved in this type work can broadly be separated into normative and practical dimensions. The normative considerations address the question of whether a church *should* assist unauthorized stayers. The practical considerations address the related questions of can a church, from a pragmatic standpoint, assist unauthorized stayers, and *how* will it do so.

3.1. Normative Considerations

The question of whether a church *should*, in some capacity, assist unauthorized stayers was answered by reference to some combination of the following: scripture, the unauthorized stayer's likelihood of obtaining authorized residence status, and the religious conviction of the unauthorized stayer.

3.2. Scripture

For almost all of the church representatives interviewed, scripture played a role in their motivation and decision. A small number, however, did not seem to rely at all on it. For instance, a representative from a Catholic refugee organization in Chicago stated that he does not do the work he does because his faith tells him it is the right thing to do, but because 'it *is* the right thing to do'. When asked what this means concretely, he stated that 'doing the right thing' simply means helping those who have less than you have.³⁰ Similarly, a representative of a Christian Reformed church in Maastricht stated that the concept of mercy is instructive in deciding what the right thing to do is in these situations.

For the majority of representatives interviewed, by far the most commonly cited and influential passage was *Matthew 25*³¹ and its command to love and welcome the stranger. One representative identified migrants with Jesus' own

30 This idea was instilled in him by his mother during his upbringing.

31 *Matthew 25:35-41*.

habitual migrations. Several representatives cited the parable of the Good Samaritan to show that even one's enemy deserves love. From the Old Testament, the books of Moses³² were cited to illustrate the biblical preferential treatment for the stranger.³³ Some representatives cited passages and theologies that do not deal specifically (or necessarily) with the stranger or migration. For instance, 1 *Peter* 1:1-12 was cited for inspiring hope to all who find themselves in precarious circumstances, and *John* 4 was cited for the exemplification of grace for all people. One representative mentioned the oft-cited parabolic question of moral theology: if a widow is walking by a bakery and her child is starving, can she steal a piece of bread? Finally, a number of representatives in both countries cited Liberation Theology as a central influence. Rather than focusing on a specific segment of the population, the goal of Liberation Theology is, more generally, to liberate the oppressed.

Church-state relations and the principle of separation did not evade discussion when considering scripture. Biblically, the separation principle can be framed as the interaction between *Matthew* 25 (along with the other passages mentioned above), and *Romans* 13. *Romans* 13:1-3 reads as follows:

Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained by God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.³⁴

Some representatives in both countries believed that 1) separation is generally desirable, and 2) there can be a tension between the instructions of *Matthew* 25 and those of *Romans* 13. The principle justification offered in support of their decision to follow the instructions of *Matthew* 25 knowing that doing so may be against the law and therefore potentially in violation of the instructions contained in *Romans* 13 deals with moral precedence. Put simply, there is a hierarchy of importance with respect to biblical passages, and some biblical passages take moral precedence over others in certain situations, particularly those in which the dignity of human life is threatened. So, in situations where human dignity is threatened, it is permissible for churches to derogate from the separation principle and take the steps they believe necessary to remove this threat, regardless of the government's law or policy.

32 The books of Moses refers to the first five books of the Old Testament – Genesis, Exodus, Leviticus, Numbers, and Deuteronomy. These five are also sometimes referred to as the Torah or the Pentateuch.

33 See, e.g., *Exodus* 22:21 – ‘You shall not wrong or oppress a resident alien; for you were aliens in the land of Egypt’; *Deuteronomy* 24:19-22 – ‘Leave sheaf, olives, grapes for the alien.’ See also 26:11 – ‘Then you, together with the Levites and the aliens who reside among you, shall celebrate with all the bounty that the Lord your God has given to you and your house’; *Leviticus* 19:9-10; 23:22 – ‘You shall not strip your vineyards bare. Leave them for the poor and the alien.’

34 *Romans* 13:1-3 (New International Version).

Still others did not believe that their work had the capacity to offend the principle of separation. While also acknowledging that separation is desirable, they argued that their work abided by it. Their notion of the separation of church and state was informed by *Matthew 22:22* 'Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's.' Those representatives interpreted this to mean that biblical imperatives, such as the duty to help the stranger, are the word of God; therefore, their fulfilment is rendering unto God what is God's. So, in helping the stranger and following other biblical passages that were relevant to their work, these representatives felt they were working purely outside of the government's sphere.

3.3. Likelihood of Obtaining Authorized Residence Status

Churches in both countries considered a somewhat nebulous criterion in their decision: the likelihood of the unauthorized stayer obtaining authorized residence status. They limit their work to helping only those who, by someone's judgment, have a chance at obtaining authorized status. The entity making the judgment varies from church to church: some place their trust in experts from an NGO; others rely on their own evaluation.

The likelihood that a person without authorized residence status will secure it played an explicit role in the faith-based refugee organization near Tilburg, which would accept only people who were recommended to it by the Dutch Refugee Council. The Dutch Refugee Council engaged in independent reassessments of asylum applications that were denied. It did so to determine whether, in its view, the applicant would have a chance at a positive decision if he or she would reapply and include, for instance, more supporting documentation regarding the asylum request. The Dutch Refugee Council would then recommend people who were positively re-evaluated by it to the organization. The Dutch Refugee Council thus served as a vetting mechanism for the organization sheltering unauthorized stayers. Because of the streamlined vetting procedure, this organization helped only those who were deemed to have a likelihood of obtaining status; people who did not receive a positive evaluation from the Dutch Refugee Council would have to find assistance elsewhere. In a similar vein, a Catholic refugee organization in Chicago offers the same assistance to people whose cases have been evaluated positively by an outside entity.

A faith-based refugee organization near Maastricht assists rejected asylum seekers who wish to reapply for asylum. This organization helps them with housing and also connects them with immigration lawyers to determine whether a second application is worth pursuing. If so, lawyers work with the refugees in building the case for asylum. If not, the focus of the help shifts from second asylum application to figuring out a return strategy. The return strategy involves, among other things, obtaining documentation in the country of origin that would enable the individual to return. At times, though, this process reveals certain details about the situation in the country of origin that may be beneficial in the asylum application, and then

the second application procedure is started or resumed, rather than pursuing a return. For the severely mentally or physically ill, the organization makes an exception to its 'likelihood of obtaining authorized residence' policy and allows them to remain there under care, acknowledging them as an exceptionally vulnerable group that deserves utmost care and attention.

The fact that this likelihood is a relevant consideration (for at least some churches) adds another layer to the discussion on church-state relations. These churches have engaged in line-drawing and determined that it is permissible for them to help only those who are currently unauthorized to remain in the country, but have a likelihood of obtaining authorization. The current lack of authorized status is seen as the product of a mistake by an immigration officer or judge, or the product of a lack of relevant information in the asylum case. The idea is that once the mistake or lack of information is remedied, the person receives authorization, and actually should never have been unauthorized in the first place. So, in its view, the organization has not frustrated the state's immigration law and policy; it has actually added a layer of scrutiny to ensure that the government immigration authorities and judges are correctly discharging their duties.

3.4. Religious Conviction of Unauthorized Stayers

With regard to two churches in the Netherlands, the unauthorized stayer's religious conviction or desire to alter his/her religious conviction played a role in the church's assistance. This consideration did not emerge during the interviews that were conducted in the United States.³⁵ The representatives from the Evangelical Protestant church in Leiden stated that while they did not seek to assist only people of a certain ethnic or national background, they did seek people who were either already Christian or desired to convert to Christianity, and in particular Pentecostal Christianity. However, rather than the church actively seeking out such people, the people tended to find their way to the church by word of mouth.

Word of mouth was also the primary mechanism by which refugees found their way to the Christian Reformed church in Maastricht. When the church was founded in 2014, its first members visited four asylum seeker centers in the south of Limburg and invited asylum seekers to the church. This is how the initial connection was fostered. Afterward, new people were brought to the church by the people who were invited by the first members. As mentioned before, some of the refugees had already been granted authorization to stay, while some were unauthorized stayers as a result of their asylum applications being denied. The unauthorized stayers who are helped by the church are primarily asylum seekers who are in the process of reapplying for asylum on a new ground. This new ground is that they wish to convert to Christianity, which would place them at risk of persecution in their countries of origin. Despite the fact that the majority of

35 Of course, this is not to say that there are no churches in the U.S. for which an unauthorized stayer's religious conviction is relevant.

unauthorized stayers whom the members of the this church have helped desired to convert to Christianity, the representative stated that they 'want to help anyone.' According to the representative, it was not a criterion for aid that the person desires to convert to Christianity. However, people who were brought to the church from the asylum seeker centers knew that it was a Christian place of worship they were visiting. To what extent this is a signal that these people were genuinely interested in Christianity apart from its perceived benefit in aiding a second asylum application can only be speculated.

The faith-based refugee organization near Maastricht is also engaged in assisting unauthorized stayers, primarily rejected asylum seekers, in lodging a new application for asylum. According to a representative of the organization, the basic principle is that all vulnerable people are to be helped, irrespective of their religious conviction. What this actually means in practice is that two main groups of people are helped: 1) rejected asylum seekers who wish to convert to Christianity and reapply for asylum on religious persecution grounds, and 2) immigrants, including rejected asylum seekers, who have serious mental or physical problems.³⁶ So, while religious conviction, or a desire to convert, is not a criterion for this organization to help unauthorized stayers, one of the two main groups of people helped are recent converts or in the process of converting.

3.5. Practical Considerations

By contrast to the previous sections that analyzed the question of whether a particular church *should* do this type of work, this section focuses on the practical considerations to answer the question of whether a church can become involved in this type of work. Perhaps unsurprisingly, the major practical consideration for churches is resources. The amount and source of church resources determine the type of help offered, the amount of people who can be helped, and the types of people who can be helped.

Concerns with budget and physical space were topics of discussion at the Chicago Protestant Church when it considered declaring itself a sanctuary church in the early 1980s. A representative from this church noted that there was initial resistance linked to where the funding would come from, but the resistance abated once leaders and members of the church became involved in the process of hearing stories from families seeking help. A Protestant church in northern Illinois shared similar logistical concerns when it considered sanctuary. When the leaders of this church were discussing the idea of becoming a sanctuary, the chief concern was physical space and staff: there was a sexton's apartment in which no one had lived in some time, but it had been used for youth programs. However, even though the youth program had been struggling with its own viability, people still did not completely want to close the doors on the program. Thus, the leaders

36 Those whose who belong to this second category are helped irrespective of their possibilities to have asylum granted.

of the church asked the youth whether they would support using the space for sanctuary, and they agreed. Once the youth gave their blessing, the leadership board and minister supported the initiative, and there was little opposition.

In the wake of the so-called New Sanctuary Movement, the Chicago Protestant church considered whether to reaffirm its commitment as a sanctuary church. This time, the vote for sanctuary did not pass. According to a representative, who has been a member and associate pastor at the church since the early 1980s, the vote did not pass because the church has lost a substantial portion of its members and therefore became weaker financially, as its funding is primarily obtained through members contributions.

In the case of the Evangelical Protestant Church in Leiden, the type of help offered shifted after the 2014 decision that the government must provide overnight shelter, food, and a shower to homeless asylum seekers. As mentioned above, prior to the BBB decision in 2014, the church had received donations from other churches. These donations were sufficient to sustain between five and ten people at a time, providing them with shelter, food, access to legal advice, spiritual care, and other necessities of everyday life. After the ruling, the donations from other churches ceased, and the budget became severely limited. Thus, between 2014 and 2018, the type of assistance that this church has been able to provide is limited to spiritual care, some legal advice, and helping people gain access to the food bank.

In another part of the country, the Protestant Church of the Netherlands (PCN) is involved in running a Bed, Bath, and Bread shelter. A diaconal pastor in the city of Nijmegen established a foundation to operate such a shelter in Nijmegen. The shelter is heavily subsidized by the local government. According to the pastor, it would not be possible for him and the foundation to run the shelter solely through PCN funding and without these government subsidies. Thus, the local government is financing the provision of the namesake requirements: shelter, food, and bath. However, the PCN does finance a weekly allowance of about ten Euros for the people staying at the shelter. So while standing alone, the PCN would not be able to finance the entire operations of the shelter, working with local government, they are together able to meet the needs of people staying at the shelter. The source of financing for a church can be just as limiting as the monetary amount an organization has at its disposal. Above, I discussed examples in which organizations were limited by the amount of money they had, and they often had to pick and choose which types of help to offer from a finite pool of financial resources. However, there are situations in which it is not the amount but rather the source that is more outcome-determinative with respect to whom churches help, and in what capacity. According to a representative of a faith-based refugee organization in Utrecht, there has been an ongoing battle of finances since it opened a shelter for unauthorized stayers in December of 2013. At the time it was opened, churches were the main source of funding, but they were funding under protest, meaning that they believed it was the government who should be

providing shelter to these people. Afterwards, the municipality agreed to provide funding, also under protest, and later even threatened to shut it down. This threat was extinguished when a large group of people from various backgrounds protested this threatened action. In 2018, the municipality continues to provide funding, but it has since attached conditions, or criteria, as to who constitutes the target group appropriate to be helped. For instance, the municipality has ended support for people in the Dublin procedure, and people who have no ties to Utrecht.

A civil society organization with Catholic roots in the west of the Netherlands relies on a wide-ranging, diverse group of people and entities for its funding. This includes the Dutch Ministry of Foreign Affairs, the European Union and its various organs, private funds, and donations from individuals. The organization has experienced situations in which the first two of these, the Ministry of Foreign Affairs and the European Union, have refused to fund certain projects while continuing to fund others. Thus, even if the source of funding is plentiful and sufficient to provide the full ambit of help for unauthorized stayers, the conditions attached to the money can limit just what type of help is offered.

4. Concluding Remarks

American and Dutch scholars have attempted to model church-state relations, but not through the lens of migration. Moreover, the models suffer from at least two deficiencies. First, they overgeneralize church-state relations, which leads to inaccuracies. Second, the models do not stress the dynamic nature of church-state relations, and do not explain what causes it.

One way to remedy the first deficiency is to disaggregate both the church and the state. Each level of disaggregation provides increased accuracy. For instance, stating that 'religious orders within the Catholic tradition are more likely to step into traditional government functions than are churches within the same tradition' is more accurate than saying 'the Catholic Church remains separate from the government, and supports the separationist model of church-state relations'. Still more accurate would be to say that 'certain religious orders are more likely to work cooperatively with legislators with regard to immigration issues'. An even higher level of accuracy is achieved when clarifying which specific areas of immigration law religious orders are prepared to engage with legislators regarding. Rather than debating which broad model is the most accurate for describing church-state relations in a country, perhaps it is more useful to think about nuanced models at different levels of disaggregation. This is not to say that we should strive for levels of disaggregation that run all the way to the individual. Indeed, this would run counter to the concept and purpose of a model. However, modelling church-state relations as broadly as they are currently modelled adds very little to explaining, understanding, or predicting the principle of separation as it applies to concrete situations.

Regarding the second criticism, I provide a couple of examples from this research that demonstrate the fluidity. There are normative and practical considerations that contribute to the fluidity of church-state relations. The normative dimension answers the should question and includes consideration of scripture, likelihood of the unauthorized stayer securing authorized residence status, and the unauthorized stayer's religious conviction. The practical dimension answers the questions of can and how, and boils down to a consideration of resources. While anyone is free to address and decide on the normative question, effectuating a practical effect based on that normative decision depends heavily on the availability of, and conditions attached to, resources. As shown above, the type of help, and the type of person who can be helped, are both influenced by the amount and source of funding. So while a church can decide to offer the full array of assistance to anyone it deems worthy after its consideration of the normative question, its ability to do so is limited by conditions attached to the funding it receives.

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