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Harchaoui, S.

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SADIK HARHAOUI

Church and State in Multicultural Society

There seems to be an irreconcilable gap between the Dutch state and its Muslim inhabitants. This impression is transforming into an increasingly popular standpoint, not only in politics and the media but also among legal philosophers, historians, and jurists. As the mantra that supports the apparent gap, what tends to be singled out is the principle of the separation of church and state. This separation is allegedly alien to Islam, and therefore Islam is irreconcilable with the idea of a constitutional state. The mantra appears to be a common-knowledge fact, for which reason any substantiation and explanations are casually dropped out, but wrongfully so.

The state under the rule of law and the principle of the separation of church and state are not unambiguous concepts. The relevance and scope of the principle is unclear; moreover, a fair question can be raised as to whether this liberal principle is even problematic at all in relation to Muslims in the Netherlands.

The foundations of the state under the rule of law are the principles of legality, separation of powers, civil rights, and judicial control. Individual freedom is most important. The individual determines his or her own human vision and there is no dominant reality. Given that the government can never prescribe what 'real' freedom is, it should keep its distance.

Separation and the Muslim presence

After 11 September 2001, the presence of about 860,000 Muslims in the Netherlands has been increasingly perceived as a problem. People do not talk these days about 'Muslims', they talk about 'Islam' – as if it were a national organization. The image of church and state does not fit the mosque, as religious variation is large and there is a diversity of interpretations and views.

When is the principle of the separation of church and state relevant today? In the first place, when the government singles out certain religions (whereas Islam as an ideological concept is not presently singled out by the Dutch government). Moreover, there are no Islamic parties at a national or local level with political power to favour 'Islam' over other ideologies. The situation in which only associations with a Christian orientation are eligible for subsidies, as was occasionally the case in municipalities controlled by Dutch Reformed parties in the 1980s, has no Islamic equivalent. On the contrary, and in conflict

alleged conflict with what a woman's 'calling' is. In September 2001, the UN Committee on the Elimination of Discrimination against Women called for legal measures against this discrimination. Still, the government persists since 1991 in its view that discrimination against women should be weighed against other rights pertaining to the foundations of the Dutch legal system – freedom to gather, religious freedom, and free speech. A prohibition can only be set when there is a 'systematic, very severe disturbance of the democratic process'.

This is somewhat surprising in light of the prohibition declaration by the highest Turkish judge of the Turkish Welfare Party, whose judgment is maintained by the European Court of Human Rights. The focus of the activities of the Welfare Party is supposed to be the elimination of the separation of church and state.²

If the Dutch criterion of a 'very serious disturbance of the democratic process' does not work for the SGP, for which Islamic organization could it possibly work? The link in public debates between wearing headscarves or the nonsensical remarks of some imams (e.g. on homosexuality) and the separation of church and state lacks credibility and is inconsequential.

None of this means that Islamic religious diversity resulting from the arrival of immigrants, refugees, and converts does not present the government with problems. The discussion over issues like wearing headscarves in school, at work, or even in court is not primarily about the separation of church and state but about basic civil rights. In these considerations, meanings for Muslims and non-Muslims are often diametrically opposed. For instance, non-Muslims cannot seem to accept that progressive views can very well be combined with a strong degree of religiosity, or that for some girls the headscarf is a means to emancipation and participation.³ A forced secularization of Muslims does, on the contrary, conflict with the separation of church and state. After all, giving preference to secularism equals favouring ideological truths.

Foundations of citizenship

The real problem lies in the fact that the Netherlands has no consequent policy regarding philosophies of life. All kinds of arguments are thrown into the pile. The policy or the approach is often a question of taste, of understanding. The essence of a state under the rule of law, particularly the protection of individual freedom, plays too marginal a role. Behind every Muslim is an individual: child or adult, man or woman, traditional or progressive, ailing or healthy, lonely, enthusiastic, expressive – you name it. Giving space to the reality and truth of that individual is important, and experience has taught us that repressed identities are more likely to develop into extremist variants. The uninvited construing of or emphasis on 'the' Islamic identity of Muslims in a hostile (or friendly) environment is what leads to a distancing from Dutch society. This Islamic identity is confirmed as a reaction to alienation and social exclusion.⁴ It is this alienation that is threatening in the long term. Many individuals – not only Muslims – no longer feel at home in the Dutch state, and feel unprotected against an indiscriminate government. Dutch Muslims and

their children deserve the chance to make a free choice in becoming citizens of the Dutch democratic state, and the chance is theirs for the taking.

The real question concerns what the foundations should be of a Dutch citizenship with an Islamic identity. The philosopher of law Marlies Galenkamp points in this context to the harm principle of the philosopher J.S. Mill. The government can only interfere with the freedom of the (Islamic) citizen if s/he causes damage to other citizens. On the basis of this principle, Muslims can maintain their own religious views unless they cause damage to others, including those within their own community. A Muslim may therefore not discriminate, because that hurts others. A Muslim can step out of the community if he disagrees with certain views, such as female circumcision or forced marriages. This comes closer to the perspective of individual freedom supported by the foundations of the democratic state. Collective thinking is relegated in order to guarantee the freedom of all citizens.

The essence of such a state is not to 'drill' people, but to protect them against the omnipotence of the government. From this principled choice for individual freedom, Muslims must also be actively protected against undesired interference by foreign powers. Protective notions also call for alertness when signing agreements with countries in which Islam is the state religion. One should keep in mind that, under certain circumstances, foreign laws can also be applied to Muslim citizens in the Netherlands on the basis of private international law.

A consequence of alienation is that, in their isolation, Muslims try to solve their own problems outside the law of the state. Transparency is needed to guarantee the freedom of Muslim citizens. For example, a non-registered imam marriage can have negative consequences, such as an increase in polygamy. Muslims have to be protected against alienation, because the state under the rule of law is a guarantee and not a threat. The state belongs to everyone.

image not available online

Hearing on the court clerks' right to wear headscarves in the courtroom.

Historically, individual conscience became recognized as absolute freedom to put an end to the claims of absolutistic theocratic monarchs. As a result, religious freedom became a fact. By eliminating the privileged position of the ruling church(es), church and state were in fact separated. This was enhanced by all the subjects' simultaneous claim to fundamental civil rights. In the Netherlands, the actual separation of church and state was completed in the process starting in 1917, which led to the pillar system in which pluralistic (religious) views found a place for themselves. The state has known no religious ideology ever since; its worldview became neutral. But are the prayer in this year's queen's address, the edge inscription of the euro reading that God is with us, and the reference to the Almighty at the beginning of our laws mere subtleties? The fact that the Netherlands works within the European Union with countries that give different content to this important principle (England, Norway, Greece) is often conveniently 'forgotten' in domestic political discourse.

with the law, the mantra of the separation of church and state is in fact used as legitimation to prevent subsidizing Islamic prayer facilities and schools.¹ Second, the liberal principle becomes relevant when 'Islam' can exert political influence. This does not seem to be the case either. Again, there is no unified national Islamic organization, while the differences between and within Muslim (sub)groups is considerable. Muslims have organized themselves along diverse cultural, religious, and ethnic lines, and these seldom comprise political aspirations.

To illustrate the relevance of the principle of the separation of church and state in relation to different ideological trends, we should take a look at the Protestant SGP (State Reformed Party). This party aims specifically at a Dutch government based entirely 'on the divine order revealed in the Holy Scriptures'. This standpoint produces in fact a theocratic party with official status within Dutch polity that elevates not the principle of popular sovereignty but a 'government by God'. It excludes women from having certain voting rights because of an

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Notes

1. J.D.J. Waardenburg, 'Institutionele vormgeving van de Islam in Nederland gezien in Europees perspectief', *WRR* Werkdocument W 118 (The Hague, May 2001), 30.
2. Case of Refah Partisi (Welfare Party) and others v. Turkey, Applications, nos. 41340/89, 41343/98, 41342/98, 41344/98 of 31 July 2001.
3. B. Parekh, 'A Varied Moral World', in S.M. Okin, *Is Multiculturalism Bad for Women?* (Princeton: Princeton University Press, 1999).
4. F. Dassetto, 'The New European Islam', in S. Ferrari and A. Bradney (eds), *Islam and European Legal Systems* (Dartmouth: Ashgate, 2000).

Sadik Harhaoui is affiliated with the Willem Pompe Institute for Criminal Law and Criminology and is a deputy public prosecutor, the Netherlands.