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State and religion against the backdrop of religious radicalism

Paul Cliteur*

This article is about the nature of religious radicalism and whether this necessitates a rethinking of the classical models about state and religion. The author discerns five models: (1) political atheism, (2) the religiously neutral or secular state, (3) multiculturalism, (4) state church, and (5) theocracy. Political atheism and theocracy are both rejected because they violate the basic principles of liberal-democratic society. A state church and its concomitant plea for a revitalization of Judeo-Christian culture are not likely to be successful in an increasingly pluralist society. The debate concentrates on the comparison of multiculturalism and the religiously neutral state (laïcité). Under the present conditions of religious radicalism, this article contends, multiculturalism is more likely to fissure society than provide a real common basis for national social cohesion. The model of the religiously neutral state (secular state) has better prospects. The author also evaluates two common objections to the religiously neutral state.

In the past decades the world has witnessed a remarkable resurgence of what might be called religious extremism or radicalism. In the United States, the Bush administration violated the principle of the separation of church and state, and signs of violent religiosity could also be discerned in the physical attacks on physicians performing abortions.

An even more radical form of religious extremism can be found in the Islamic world in the resurgence of Islamist movements, some of them preaching hatred against the West and advocating violent activism. Especially since September 11, 2001 (Twin Towers), March 11, 2004 (Madrid), July 5, 2005 (London), November 2, 2004 (the murder of Theo van Gogh in Amsterdam), and the Danish Cartoon Crisis (2006) there

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is an increasing attention to the religious roots of terrorism¹ and radical Islamism in particular.²

The focus of this article is an analysis of the classical models of the relation between state and religion against the backdrop of the new religious radicalism. Does religious terrorism and radicalism necessitate us to rethink the relation between state and religion? My answer is that it does.

We can discern five models of thinking about the relationship between state and religion.³ These models are: 1) political atheism, 2) the religiously neutral state, 3) multiculturalism, 4) state church, and 5) theocracy.

In this article I want to analyze the different models and gauge which would be most appropriate to respond to the new challenges we are facing. My conclusion is that the idea of the religiously neutral state (model 2) is better adapted to the present challenges than the other models available. Political atheism (model 1) and theocracy (model 5) are both incompatible with liberal democracy. The idea of a state church (model 4) is no longer a viable alternative in a society that is deeply religiously divided. What is left are the religiously neutral state (model 2) and the multicultural state (model 3). The conclusion of my analysis is that the religiously neutral state is best adapted to incorporate religious and ethnic minorities in European liberal democracies.

This analysis is made against the backdrop of the revitalization of the ideology of model 5: theocracy. Religious terrorists are inspired by a worldview that is antithetical towards the basis of a liberal democratic society. For that reason this article can also be read as an attempt to formulate an answer to the “spiritual challenge” presented by religious extremism and religious terrorism.

1. Five models for the relation of state and religion

The first model is what we could call “political atheism.” It could also be labeled “totalitarian atheism.” In this model atheism is a state doctrine. Atheism is not regarded as a private conviction that God does not exist or that the reasons for believing in God’s existence are inconclusive, and so we better suspend our judgment, but as an official state policy aiming to eradicate all sympathy for religious ideas, and the idea that God exists in particular. Adherents of political atheism make a plea for an

¹ CHRISTOPHER CATHERWOOD, *MAKING WAR IN THE NAME OF GOD* (2007); JACK NELSON-PALLMEYER, *IS RELIGION KILLING US? VIOLENCE IN THE BIBLE AND THE QURAN* (2003); MARK JUERGENSMEYER, *GLOBAL REBELLION: RELIGIOUS CHALLENGES TO THE SECULAR STATE, FROM CHRISTIAN MILITIAS TO AL QAEDA* (2008); CHARLES SELENGUT, *SACRED FURY: UNDERSTANDING RELIGIOUS VIOLENCE* (2003).

² CAROLINE COX & JOHN MARKS, *THE WEST, ISLAM AND ISLAMISM: IS IDEOLOGICAL ISLAM COMPATIBLE WITH LIBERAL DEMOCRACY?* (2003); MEGHNAD DESAI, *RETHINKING ISLAM: THE IDEOLOGY OF THE NEW TERROR* (2007); MICHAEL GOVE, *CELSIUS 7/7* (2006).

³ Winfried Brugger, *Varianten der Unterscheidung von Staat und Kirche* [Varieties of the Distinction between State and Church], in *ARCHIV DES ÖFFENTLICHEN RECHTS* 4 (2007). Brugger distinguishes six and not five models, as I do. See on secularism and the models of the relation between state and religion also: András Sajó, *Preliminaries to a concept of constitutional secularism*, in 6 *INT’L J. CONST. L. (I·CON)* 1 (2008); JOHN M. SWOMLEY, *RELIGIOUS LIBERTY AND THE SECULAR STATE* (1987).

atheist state that would foster atheist convictions in its citizenry. This would require a tremendous power of the state, of course, and therefore the connection with totalitarianism is evident.⁴ The state would have to control the minds of its citizens into the smallest details, exactly like what happened in Orwell's *Ninety Eighty Four* or in the German Democratic Republic. Political atheism is just as totalitarian, one might say, as the ambitions of the Catholic church at the time of the Inquisition (abolished as late as 1820) or—to a lesser degree—in the period when the church tried to suppress freedom of thought with an index of prohibited books (1559–1966).⁵

Although the atheist state existed for a considerable time (“considerable” especially for those who suffered under its regime), it was not as long as the period of Catholic suppression of free thought. The atheist state was inaugurated in 1917 with the Russian Revolution, and ended with the fall of the Berlin Wall in 1989 and the subsequent demise of the Soviet Empire. This means that political atheism reigned throughout the greater part of the twentieth century, in particular if we agree with the French journalist Jean Daniel (1920–) who said that the twentieth century started with the First World War and ended with the fall of the Berlin Wall.⁶

The attitude of the state regarding religion was strongly influenced by the writings of Karl Marx (1818–83). Religion, according to Marx, was false consciousness. Criticism of religion was an essential part of social criticism, wrote Marx in his notorious introduction to *Zur Kritik der Hegelschen Rechtsphilosophie* (1843–4).⁷ Man creates his religion, religion does not create man.⁸

So far, non-Marxists could also subscribe to this criticism of religion. The necessity of religious criticism was not something that Marx was the first to proclaim, but an integral part of the work of the Young Hegelians, Ludwig Feuerbach (1804–72) being

⁴ See generally on Marxism-Leninism: H.B. ACTON, *THE ILLUSION OF THE EPOCH: MARXISM-LENINISM AS A PHILOSOPHICAL CREED* (Routledge & Kegan Paul 1962) (1955); JOSEPH M. BOCHENSKI, *MARXISMUS-LENINISMUS: WISSENSCHAFT ODER GLAUBE* [Marxism-Leninism: Science or Faith] (3d ed. 1975); G.A. WETTER, *SOVIETIDEOLOGIE HEUTE, VOL. 1: DIALEKTISCHER UND HISTORISCHER MATERIALISMUS* (1962).

⁵ For the Index of Forbidden Books, see GEORGE HAVEN PUTNAM, *THE CENSORSHIP OF THE CHURCH OF ROME AND ITS INFLUENCE UPON THE PRODUCTION AND DISTRIBUTION OF LITERATURE: A STUDY OF THE HISTORY OF THE PROHIBITORY AND EXPURGATORY INDEXES, TOGETHER WITH SOME CONSIDERATION OF THE EFFECTS OF PROTESTANT CENSORSHIP AND OF CENSORSHIP BY THE STATE* 2 vols. (1906–7). On the Inquisition, see Philippe Valode, *Cinq siècles d'inquisition: le bilan* [Five Centuries of Inquisition: Overview] (2007).

⁶ Jean Daniel, *Albert Camus*, 15 *PHILOSOPHIE MAGAZINE* (Supplement) 2, 2 (Dec. 2007–Jan. 2008): “il faut souvenir que le XXe siècle a commencé avec la guerre de 1914–1918 et s’est terminé avec la chute du Mur de Berlin en 1989” [“we must remember that the twentieth century began with the war of 1914–18 and ended with the fall of the Berlin wall in 1989”].

⁷ Karl Marx, *Zur Kritik der Hegelschen Rechtsphilosophie* [1843–4] [A Contribution to the Critique of Hegel's Philosophy of Right], in KARL MARX & FRIEDRICH ENGELS, *AUSGEWÄHLTE WERKE, BAND I* 9, 9 (Dietz Verlag 1977).

⁸ *Id.* at 10:

Das religiöse Elend ist in einem der Ausdruck des wirklichen Elendes und in einem die Protestation gegen das wirkliche Elend. Der Religion ist der Seufzer der bedrängten Kreatur, das Gemüt einer herzlosen Welt, wie sie der Geist geistloser Zustände ist. Sie ist das *Opium* des Volks. (Emphasis in the original). [Religious suffering is, at one and the same time, the expression of real suffering and a protest against real suffering. Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless conditions. It is the *opium* of the people].

the most prominent among them. In *Das Wesen des Christentums* (1841) Feuerbach contended that God was a creation of human imagination.⁹ What distinguishes Marxist criticism of religion from the criticism of Feuerbach, is that the criticism of Marx was the basis of Stalin's and Lenin's work that made this critique an essential part of state activity. It is the state that has to free people from the pernicious illusions created by religion. The state has to liberate people from religion for the same reasons that a modern state looks after the health of its citizens.¹⁰

In this respect, this approach differs to a great extent from contemporary Western authors who represent atheist positions in public debate.¹¹ Contemporary atheism, as advocated by such authors as Richard Dawkins,¹² Sam Harris,¹³ Christopher Hitchens,¹⁴ Daniel Dennett,¹⁵ and others (brought together under the banner of "the New Atheism"),¹⁶ is not meant as a state policy. For the authors mentioned, atheism is a private conviction. This "private atheism" respects the right of every citizen to choose a religion but also to reject a religion or even all religions.

The second model is the religiously neutral state. The most well known brand of this model is the French *laïcité*. The French republic is even organized around the principle of *laïcité* according to a French commission (known as the commission Stasi, named after its chairman Bernard Stasi) set up by president Chirac in order to reformulate the ideals of the Republic.¹⁷ All democratic states respect liberty of conscience and the principle of nondiscrimination. But only the French republic is based on *laïcité* as a fundamental principle.¹⁸ *Laïcité* is based on three indissoluble values: freedom of conscience (*liberté de conscience*), equality before the law (*égalité en droit*), and the neutrality of political power (*neutralité du pouvoir politique*).¹⁹ *Laïcité* is far from curtailing freedom of religion. On the contrary, it is the central presupposition under which freedom of religion can flourish. *Laïcité* makes it possible for every individual citizen to decide for himself what choices to make with regard to his spiritual and religious life (*sa vie spirituelle ou religieuse*).²⁰ The equality before the law prohibits all discrimination or force and the state does not give privileges to any of the spiritual creeds.

⁹ LUDWIG FEUERBACH, *DAS WESEN DES CHRISTENTUMS* [THE ESSENCE OF CHRISTIANITY], (Karl Löwith, pref., Philipp Reclam Jun. 1978) (1841). See also Carter Lindberg, *Luther and Feuerbach*, 1 SIXTEENTH CENTURY ESSAYS & STUD. 107 (1970).

¹⁰ See PAUL FROESE, *THE PLOT TO KILL GOD: FINDINGS FROM THE SOVIET EXPERIMENT ON SECULARIZATION* (2008).

¹¹ On what atheism means, see Paul Cliteur, *The Definition of Atheism*, in 11 J. RELIGION & SOC'Y 1 (2009).

¹² RICHARD DAWKINS, *THE GOD DELUSION* (2006).

¹³ SAM HARRIS, *THE END OF FAITH: RELIGION, TERROR, AND THE FUTURE OF REASON* (2005).

¹⁴ CHRISTOPHER HITCHENS, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007).

¹⁵ DANIEL C. DENNETT, *BREAKING THE SPELL: RELIGION AS A NATURAL PHENOMENON* (2006).

¹⁶ See VOX DAY, *THE IRRATIONAL ATHEIST: DISSECTING THE UNHOLY TRINITY OF DAWKINS, HARRIS, AND HITCHENS* (2008).

¹⁷ See *Laïcité et République* [Laicity and the Republic], Rapport au Président de la République, Commission présidée par Bernard Stasi, La Documentation française, Paris 2004 [hereinafter *Laïcité et République*].

¹⁸ *Id.* at 21.

¹⁹ *Id.*

²⁰ *Id.*

Laïcité has roots in European history, going back to ancient Greece, the Renaissance, and the Reformation.²¹ It is intimately connected with the Edict of Nantes (1598) issued by Henry IV of France to give the French Calvinists (Huguenots) substantial rights in a country that was predominantly Catholic.²²

The movement of *laïcité* aimed at realizing what could be characterized as “political secularism”: the aim of separating the state from religious confession. It is more often characterized as secularism *tout court*.²³ It is the explicit aim of political secularism not to advocate for or against religion. The state must remain “neutral.” All religions (as far as they do not advocate violence) may be represented in society, but none of them has a privileged position. Upholding religion is not a task of the state.²⁴

In a system operating under the banner of *laïcité* the state is not allowed to make favorable propaganda for religion. There is also a ban on financing churches and other religious institutions. This element of political secularism is usually characterized as “the separation of church and state.”²⁵

The pretence of political secularism is that with this approach the state does not manifest an *antireligious* outlook as its critics all too often contend. The commission Stasi distinguishes between two models of *laïcité*. The first is combative and anticlerical. It was defended by Émile Combes (1835–1921). The second model is more concerned with the separation of church and state and regards all spiritual options with equal respect. This second approach, more liberal and tolerant, goes back to Jules Ferry (1832–93), Jean Jaurès (1859–1914), and Aristide Briand (1862–1932).²⁶

There are several varieties of the religiously neutral state: the French model (*laïcité*), the American “Wall of Separation,”²⁷ the Turkish model, and others. Those empirical manifestations of the religiously neutral state show considerable differences, and we should not identify the ideal of the religiously neutral state uncritically with one of its empirical manifestations (“You are in favour of the religiously neutral state? Oh, than you *must be* in favour of a ban of headscarves on public schools”).²⁸

²¹ See JEAN-MICHEL DUCOMTE, *LA LAÏCITÉ* 6–9 (2005); HENRI PENA-RUIZ, *HISTOIRE DE LA LAÏCITÉ* (2005); HENRI PENA-RUIZ, *LA LAÏCITÉ: TEXTES CHOISIS* (2003).

²² *Laïcité et République*, *supra* note 17, at 25.

²³ The reason why I speak of “political secularism” is that one can also discern “moral secularism”: the ambition to develop morals on a non-religious foundation.

²⁴ See MICHÈLE VIANÈS, *UN VOILE SUR LA RÉPUBLIQUE* [A Veil over the Republic] 163–241 (2004).

²⁵ The secular state is also advocated outside of France, of course. See, for the American interpretation of this ideal, James Madison, *Memorial and Remonstrance Against Religious Assessments*, 1785, in JAMES MADISON, *WRITINGS* 29 (Library of America 1999). For a critical evaluation of the American approach, see H.M.Th.D. ten Napel, “A brick from the wall”: *Zelman v. Simmons-Harris et al. en het einde van de strikte scheiding tussen kerk en staat op onderwijsgebied in Amerika* [“A brick from the wall”: *Zelman v. Simmons-Harris and Others, and the End of the Strict Separation between Church and State in the Field of Education in the United States of America*], in RECHTEN, PLICHTEN, DEUGDEN 185 (P.B. Cliteur & H.-M.Th.D. ten Napel eds., *Ars Aequi* 2003), and for a defense, see ISAAC KRAMNICK & LAURENCE R. MOORE, *THE GODLESS CONSTITUTION: A MORAL DEFENSE OF THE SECULAR STATE* (W.W. Norton 2005) (1996).

²⁶ *Laïcité et République*, *supra* note 17, at 27.

²⁷ PHILIP HAMBURGER, *SEPARATION OF CHURCH AND STATE* (2002).

²⁸ See CHATHERINE KINTZLER, *QU’EST-CE QUE LA LAÏCITÉ?* [What is Laicity?] 47 (2007).

The *third* model is the “multicultural” or “multidenominational state.”²⁹ This model intends to treat all religions equally by *helping* them equally. In other words, the state does not favor Christianity over Buddhism, or vice versa, but it treats Christianity on an equal basis with Buddhism. If Christianity gets state subsidies for its preachers, the maintenance of its churches, or the organization of its chaplains, Buddhism can claim subsidies as well. If Christian institutions are state-funded, other religious denominations can claim funding. Adherents of the multicultural state see this as “equal treatment.”

The question is, of course, whether this approach is correct. Supporting all the religious life and worldviews equally can still imply unequal treatment of nonreligious attitudes towards life. Placing all religions on equal footing can still imply discrimination of nonreligious views, contend the critics of multiculturalism.³⁰ We will discuss this argument later.

The third model is sometimes characterized as “pluralism” or the “pluralist state.” But that is somewhat misleading because political secularism (the second model) aims to serve pluralism, too. The choice seems to be between “spontaneous pluralism” or “not state-supported pluralism” (second model) on the one hand and “state-organized pluralism” (third model) on the other hand.

The fourth model is the established church. According to this model state and church have an intimate connection in upholding the public order. That does not imply that religions other than the official one are suppressed, but they do not have priority. This discrimination is usually justified on a historical basis. The religion that was first adopted in the territory of the state gets more attention and enjoys special privileges, as is the case with the Anglican church in the United Kingdom.

The fifth model is theocracy. This is the exact opposite of political atheism. There is one religion that is favored above other religions, and other religions are suppressed—often by law and force. This model radicalizes the tendency inherent in the model of the state church. Examples are Saudi Arabia and Iran.

Presented in the order I have described above, the five models show an increasing influence of religion on the sphere of the state. Political atheism (model 1) excludes all influence by all the means available. Political secularism (model 2) tries to neutralize the state. Multiculturalism (model 3) interprets “neutrality” as giving aid to religion in general. The idea of the state church (model 4) opts for one specific religion on historical grounds. And theocracy (model 5) prescribes one religion and tries to suppress all other religions by force.

It requires no elaborate argument that the first (political atheism) and the fifth model (theocracy) are irreconcilable with the central tenets of liberal democracy.³¹

²⁹ See BHIKHU PAREKH, *A NEW POLITICS OF IDENTITY: POLITICAL PRINCIPLES FOR AN INTERDEPENDENT WORLD* (2008); BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* (2000); Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25 (Amy Gutman ed., 1994); WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995).

³⁰ Incisive criticism on multiculturalism is to be found in H.E. BABER, *THE MULTICULTURAL MYSTIQUE: THE LIBERAL CASE AGAINST DIVERSITY* (2008); BRIAN BARRY, *CULTURE & EQUALITY: AN EGALITARIAN CRITIQUE OF MULTICULTURALISM* (2001).

³¹ See on this BARRY HOLDEN, *UNDERSTANDING LIBERAL DEMOCRACY* (2d ed. 1993), and for the opinion of the European Court of Human Rights in Strasbourg on what is and what is not compatible with the liberal-democratic order, see *Refah Partisi (The Welfare Party) and ors v. Turkey*, Eur. Ct. H.R. (Feb. 13, 2003).

They are not only impossible to harmonize with the political model of liberal democracy but also with European values as expressed in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). Even within a broad *margin of appreciation* of national regimes to place their own emphasis in interpreting the relationship between state and religion, theocracy and political atheism can never be reconciled with the ideas on which the European Convention was built.³² So the real discussion focuses on the three intermediate models. Which one is the most appropriate? And in particular: which one is most likely to accommodate radical movements and foster a sense of national social cohesion?

2. The resurrection of theocracy

It is important to understand that we evaluate the models against a specific social and political background of increasing radicalism in religion. Recently, much attention has been paid to the influence that “neoconservatives” exerted on American foreign policy.³³ Much less attention has been given to the “theoconservatives” as a major factor in American politics.³⁴ One of the most influential “theocons” is Richard John Neuhaus (1936–),³⁵ who was an important influence on the Bush administration, in particular with regard to its attempts to tear down the “Wall of Separation.” The Bush administration maintained warm relations with Christian Evangelical circles.³⁶

Neuhaus writes that politics and religion are different enterprises. But what he opposes is what he calls “the naked public square.”³⁷ He continues:

The naked public square is the result of political doctrine and practice that would exclude religion and religiously grounded values from the conduct of public business. The doctrine is that America is a secular society. It finds dogmatic expression in the ideology of secularism. I will argue that the doctrine is demonstrably false and the dogma exceedingly dangerous.³⁸

This passage exhibits a tendentious rousing of public sentiment. The vocabulary that Neuhaus uses to attack the idea of secularism is too vague and therefore inapt for the intricate discussion we are conducting with regard to this topic.

First, Neuhaus makes no mention of the distinction between state and society. And this distinction is crucial. The primary aim of secularism is not to make “society”

³² The Margin of appreciation is the doctrine that allows the court to take into effect the fact that the Convention will be interpreted differently in different signatory states. See THE EUROPEAN CONVENTION OF HUMAN RIGHTS 52 (Clare Ovey & Robin White eds., 4th ed. 2006).

³³ See, e.g., SHADIA B. DRURY, THE POLITICAL IDEAS OF LEO STRAUSS (updated ed. 2005); FRANCIS FUKUYAMA, AFTER THE NEOCONS: AMERICA AT THE CROSSROADS (2006).

³⁴ DAMON LINKER, THE THEOCONS: SECULAR AMERICA UNDER SIEGE (2006).

³⁵ RICHARD JOHN NEUHAUS, THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA (2d ed. 1997).

³⁶ MICHÈLE GOLDBERG, KINGDOM COMING: THE RISE OF CHRISTIAN NATIONALISM (2006); ESTHER KAPLAN, WITH GOD ON THEIR SIDE: GEORGE W. BUSH AND THE CHRISTIAN RIGHT (2004); DAVID DOMKE, GOD WILLING? POLITICAL FUNDAMENTALISM IN THE WHITE HOUSE, THE “WAR ON TERROR” AND THE ECHOING PRESS (2004); PETER SINGER, THE PRESIDENT OF GOOD AND EVIL: TAKING GEORGE W. BUSH SERIOUSLY (2004).

³⁷ Neuhaus, *supra* note 35, at ix.

³⁸ *Id.*

secular. What political secularism tries to achieve is a religiously neutral *state*. And “neutrality” is interpreted as the absence of religious preference. But that leaves society and the individual citizen with the freedom to cultivate religious beliefs and to manifest allegiances in the public sphere.

Second, Neuhaus seems wrong on empirical grounds when he contends that Western societies are societies with a “naked public square.” On the contrary, never before did we see such religiously pluriform societies as nowadays. What Neuhaus means, perhaps, is that there is no longer *one specific religion* that binds us all, but that is, of course, something entirely different. What contemporary societies manifest is religious diversity. And this diversity is possible because Western constitutional traditions operate on the basis of what I have called “political secularism.”

Therefore Neuhaus’s statement that “Christian truth” is “public truth”³⁹—as if that were something special—is misleading. Not only is “Christian truth” “public truth,” but every other kind of “truth” is “public truth” as well, in the sense that people are accustomed to communicate “truth” to each other and this process is protected by civil liberties, freedom of speech being among those principles.

Third, Neuhaus insinuates that religion is “excluded” by doctrinaire convictions or perhaps even by judicial means, from society, but this is not the case. On the contrary, the first amendment protects the free exercise of religion. There are no people—as he claims—who want to “keep the public square naked of religious symbol,” because everyone can manifest his/her religious beliefs in society. So Neuhaus does not really say what he means. What he means, perhaps, is that he wants *Christian* symbols to be visible in the public sphere and probably financed by the government because the country he lives in is considered to be a Christian country.

Fourth, Neuhaus uses a rhetorical and, we could say, misleading concept of secularism, identifying it with a kind of forced secularization of society. He writes:

The case can be made that the great social and political devastations of our century have been perpetrated by regimes of militant secularism, notably those of Hitler, Stalin and Mao.⁴⁰

The conclusion that Neuhaus draws is that “the naked public square is a dangerous place.”⁴¹ He contends that when religious transcendence is excluded the space is opened to “demons aspiring to transcendent authority.”⁴²

Neuhaus fails to see that these are all very different claims. That Nazism, Stalinism, and Maoism have caused great havoc in the twenty-first century cannot, of course, be contested. But what made those regimes so despicable was *not* that they did not profess belief in the Christian God. Atheism was also not the *cause* of the violation individual rights. Besides, not all of those regimes were so “atheistic” as Neuhaus claims them to be. Adolf Hitler was not an atheist.⁴³ The cult around Stalin has religious tenets. When Joseph Stalin established his rule in the late 1920s, he introduced the obligation of

³⁹ *Id.* at 19.

⁴⁰ *Id.* at 9.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See MICHAEL HESEMANN, *HITLER’S RELIGION: DIE FATALE HEILSLEHRE DES NATIONALSOZIALISMUS* (2004).

the members of the Communist party to repent. Party members that had entertained what we might call “heretical” ideas and convictions were obliged to admit them publicly and acknowledge the correctness of Stalin’s general line.⁴⁴

Neuhaus also mixes up political atheism (or “forced atheism”) of model 1 with the religiously neutral state of model 2. A supporter of *laïcité* who advocates that the state remain neutral in religious matters, does not advocate that the state should persecute citizens who, on the basis of their individual rights, profess the belief in some transcendent faith. Finally, Neuhaus seems to subscribe to a controversial theory that whoever does not believe in the Judeo-Christian God would be an easy prey for all kinds of superstition: “the space is opened to seven demons aspiring to transcendent authority.”⁴⁵

3. The vitality of political Islam or Islamism

Even more apposite to illustrate the recent revival of religious political thinking is the upsurge of “political Islam” or “Islamism.” In the 1970s there was a widespread revival of political-religious movements in the Middle East, having wide reverberations in other parts of the world. Some key dates are: 1969, 1979, 1989.

In 1969 the Iranian religious and political leader Ayatollah Khomeini published a tract that is generally considered to be one of the most important documents of political Islam: *Velayate Faqih*.⁴⁶ In this text Khomeini tells us that the Jews and other tribes that were even more satanic than the Jews tried to establish a completely wrong vision of Islam. In this false version of Islam they tried to deny the “revolutionary dimension” of Islam. They also contended that Islam was not a social religion, but something that was only concerned with the inner tranquility of the soul, claimed Khomeini.⁴⁷

These are *prima facie* not very disturbing views. They may even be seen as legitimate criticism of the lack of freedom of religion in the West, in particular in the Soviet Union where religion, including the Islamic religion, was forcefully suppressed. But Khomeini’s argument becomes more disturbing when he tells us that the Prophet was “also a politician.” The prophet installed governors, operated as a judge, contracted treaties with foreign powers—in short: he was not only a religious but a political authority as well.

This idea that religious and worldly power should reside in the same hands is, of course, well known in the Western tradition, but, generally speaking, the experiences with this type of government have not been favorable. We can discern two variants. The first model is theocracy. *Theocracy* means, according to the French contemporary philosopher Tzvetan Todorov (1939–), that worldly power is simply put in the service

⁴⁴ Erik van Ree, *Stalin’s Organic Theory of the Party*, in 52 RUSSIAN REV. 43, 43 (1993). See also ORLANDO FIGES, *THE WHISPERERS: PRIVATE LIFE IN STALIN’S RUSSIA* (2007).

⁴⁵ Neuhaus, *supra* note 35, at 9.

⁴⁶ For an English translation, see Imam Khomeini, *Islam and Revolution*, in ISLAM AND REVOLUTION: WRITINGS AND DECLARATIONS OF IMAM KHOMEINI (1941–1980) 27 (Hamid Algar trans., 1981).

⁴⁷ See on this Afshin Ellian, *Het totalitaire gevaar van de politieke islam* [The Totalitarian Danger of Political Islam], in CRISISBEHEERSING ANDERMAAL BELICHT 71, 73 (G. ter Horst, Uri Rosenthal et al., 2007).

of religious power.⁴⁸ In other words: the religious leader is also the political leader. In Europe this implied: the Pope is superior to the emperor. The other variant is the opposite. Here the emperor is superior to the religious power. We call this *caesaro-papism*. In other words the emperor or the king is the overlord of the church. So it is the emperor who decides what is to be the religion of the land. He can appoint the religious leaders and control their behavior and he even adjudicates in doctrinal differences.

The struggle between pope and emperor raged on for many centuries in Europe.⁴⁹ This struggle ended with the separation of worldly and religious power. Each is sovereign within its own domain. The political ideas revived by Khomeini would undo that separation.

Another problem with Khomeini's confusion of religious and political power is that he implicitly violates the principles of the separation of powers as laid down by Montesquieu in his *The Spirit of the Laws* (1748). The legislative, administrative, and judicial branches should be separated in order to prevent abuse of power.⁵⁰ The general idea behind the separation of powers is that divided power is limited power. And limited power is the general idea behind constitutionalism which, next to democracy, one is of the central tenets of good government.⁵¹

Khomeini's approach therefore violates the central ideas of the European political order and the principles of the European Union, the European Convention of Human Rights and Fundamental Freedoms, and the idea of liberal democracy that animates the political development in Europe since the sixteenth and seventeenth centuries.

It is therefore a disquieting idea that Khomeini not only advocates his political model for Iran but for the rest of the world as well. He tells us that the "laws of Islam" are not dependent on time and place. They are valid for all eternity and have to be executed.⁵²

It is clear that, under the garb of the seemingly innocuous thesis that Islam is a "social religion" and a "religion of life," Khomeini in fact initiates a religious-political ideology that is inimical to the central tenets of good government which are enshrined in

⁴⁸ Tzvetan Todorov, *L'ESPRIT DES LUMIÈRES* [THE SPIRIT OF THE ENLIGHTENMENT] 59 (Robert Laffont 2006): "Le pouvoir temporel est simplement mis au service du projet religieux" [Worldly power is simply put in the service of the religious project].

⁴⁹ See LUIGI STURZO, *CHURCH AND STATE* (1962).

⁵⁰ Montesquieu, *De l'Esprit des lois* [The Spirit of the Laws] [1748], in MONTESQUIEU, *OEUVRES COMPLÈTES* vol. 2 225 (Roger Caillois ed., Gallimard 1951), see, in particular, ch. 4, *De la Constitution d'Angleterre* (id. at 396).

⁵¹ Carla M. Zoethout, *Does the Multicultural Society Require New Human Rights? An Appeal to the Ideal of Constitutional Democracy*, in PLURALISM AND LAW, PROCEEDINGS OF THE 20TH IVR CONGRESS AMSTERDAM 44 (Arend Soeteman ed., ARSP Beiheft Nr. 90, 2001); Carla M. Zoethout, *Reflections on Constitutionalism in the Netherlands*, in CONTROL IN CONSTITUTIONAL LAW 153 (Carla M., Ger van der Tang, & Piet Akkermans eds., 1993); CONSTITUTIONALISM, IDENTITY, DIFFERENCE, AND LEGITIMACY: THEORETICAL PERSPECTIVES (Michel Rosenfeld ed., 1994).

⁵² Ellian, *Het totalitaire gevaar van de politieke islam*, *supra* note 47, at 73. On the ambitions of Iran, see also CHADHORTH DJAVANN, *À MON CORPS DÉFENDANT L'OCCIDENT* [Defending the West Against My Will] (2007); HANS-PETER RADDATZ, *IRAN: PERSISCHE HOCHKULTUR UND IRRATIONALE MACHT* [Iran: Persian High Culture and Irrational Power] (2006); NASRIN ALAVI, *WIR SIND IRAN: AUFSTAND GEGEN DIE MULLAHS—DIE JUNGE PERSISCHE WEBLOG-SZENE* [We are Iran: revolt against the mullahs—the young Persian weblog-scene] (2005).

human rights treaties and in the constitutions of European states. His is, in fact, a totalitarian approach to politics.⁵³

One can also put it differently: Khomeini tries to reinstall theocracy as a political model. It is the religious power that oversees the political power. Theocracy has to rule over democracy.

As stated above, in 1969 Khomeini's highly influential tract on Islamic government was published.⁵⁴ Ten years later, in 1979, his ideology gained actual political power in Iran, and ten after that, in 1989, the Berlin Wall broke down and the conflict between the East (Marxism) and the West (Liberalism) ended. But did this imply the demise of all ideological conflicts, as Fukuyama was hastily concluding?⁵⁵ Or were there new challenges for what Fukuyama had dubbed "liberal democracy"?

Fukuyama should have noticed that in 1989, with the tenth anniversary of the Iranian regime, there was apparently a new ideology on the world historical stage that commanded the adherence of a considerable amount of people. This new ideology was "Islamism" or "political Islam."⁵⁶ The political leaders of this new ideology, Khomeini being the most prominent among them, revitalized the ideal of the ecclesiastical-statesman, the religious and political leader in one. Theocracy, a model deemed dead, rose from the ashes as the mythological phoenix.

The self-confidence of the new ideology challenging the dominance of liberal democracy appears clearly from the first major message to a foreign head of state that Khomeini had sent since the revolution. It was a personal letter to Mikhail Gorbachev (1931–). In this revealing letter Khomeini noted the failure of Marxism and admonished the Russian leader to look for spiritual renewal to the south:

I strongly urge that in breaking down the walls of Marxist fantasies you do not fall into the prison of the West and the Great Satan. . . . I call upon you seriously to study and conduct research into Islam. . . . I openly announce that the Islamic Republic of Iran, as the greatest and most powerful base of the Islamic world, can easily help fill up the ideological vacuum of your system.⁵⁷

Eduard Shevardnadze (1928–), the Soviet Minister of Foreign Affairs, informed Khomeini that "all the members of the Soviet Presidium have studied the contents of Your Eminence's message. No doubt we agree on a number of major points, but there are certain points on which we disagree." Daniel Pipes comments: "One cannot get much meeker than 'there are certain points on which we disagree.'"⁵⁸

⁵³ See BASSAM TIBI, *DER NEUE TOTALITARISMUS: HEILIGER KRIEG UND WESTLICHE SICHERHEIT* [The New Totalitarianism: Holy War and Western Security] (2004).

⁵⁴ Imam Khomeini, *Islamic Government*, in ISLAM AND REVOLUTION 27, *supra* note 46.

⁵⁵ Francis Fukuyama, *The End of History?*, in 16 NAT'L INTEREST 3 (1989), reprinted in IDEOLOGICAL VOICES: AN ANTHOLOGY IN MODERN POLITICAL IDEAS 409 (Paul Schumaker, Dwight C. Kiel, & Thomas W. Heilke eds., 1997).

⁵⁶ For an analysis of the concept of "political Islam," see Afshin Ellian, *Monotheism as a Political Problem: Political Islam and the Attack on Religious Equality and Freedom*, 145 TELOS 87 (2008); GILLES KEPEL, *JIHAD: THE TRIAL OF POLITICAL ISLAM* (rev. ed., Anthony F. Roberts trans., I.B. Taurus 2004) (2002); and BASSAM TIBI, *POLITICAL ISLAM, WORLD POLITICS AND EUROPE: DEMOCRATIC PEACE AND EURO-ISLAM VERSUS GLOBAL JIHAD* (2008).

⁵⁷ Cited in DANIEL PIPES, *THE RUSHDIE AFFAIR: THE NOVEL, THE AYATOLLAH, AND THE WEST* 192 (2d ed. 2003).

⁵⁸ *Id.*

4. Why theocracy is important again

The new turn towards theocracy as an actual political system also implied a new relevance of the theocratic doctrine. Fukuyama did not mention theocratic movements as a new challenge to the ideology of liberal democracy in 1989. On the contrary, he rather dismissively wrote:

Our task is not to answer exhaustively the challenges to liberalism promoted by every crackpot messiah around the world, but only those that are embodied in important social or political forces and movements, and which are therefore part of world history.⁵⁹

With the wisdom of hindsight this was perhaps his greatest miscalculation in a mostly visionary essay.⁶⁰ There was at least one “crackpot messiah” that had ignited a revolution: Khomeini in Iran. And in 1989, when Fukuyama was writing his book, the Iranian Republic posed a considerable challenge to the Western world. Could Fukuyama retort that Islamism is not an ideology that is “embodied in important social or political forces and movements”? I think not. That would be overly optimistic, if not naïve. Gradually, Western scholars had to learn that “crackpot messiahs” had more influence than one might suppose. And that implicates that we have to read their scriptures in order to know what motivates them and their acolytes.⁶¹

It would be a bit haughty as well as not very fruitful politically to dismiss their ideas as “obsolete,” “medieval,” “crazy,” “cracked,” or simply not very serious. When mad medievalism successfully runs for office, we have some cause for concern. And radical groups in real states such as Saudi Arabia, Afghanistan, or Sudan see theocracy as a political goal to be realized. Even in countries like Turkey or Egypt theocracy has a less negative image today than it used to.⁶² We may put it this way: Albania or the Soviet Union are no role-models for the contemporary world, but Iran, in a certain sense, is. It is for that very reason that the study of Stalin and Lenin has historical significance, while the works by Sayyid Qutb (1906–66), Ayatollah Khomeini (1902–89), Hassan al-Banna (1906–49), Ibn Taymiyya (1263–1328), and other ideologues of radical Islam are relevant to our contemporary predicament that is not yet acknowledged by the general public.⁶³

The London bombings; the murder of the Dutch filmmaker Theo van Gogh (1957–2004) by a home-grown jihadist on November 2, 2004; the Danish cartoon crisis that raged all over Europe in February 2006—these are all manifestations, so it seems, of a new assertion of self-confidence of radical Islamist groups. It seems correct to repeat

⁵⁹ Fukuyama, *The End of History?*, *supra* note 55, at 412.

⁶⁰ *See id.* at 413.

⁶¹ As is done by THE AL QAEDA READER (Raymond Ibrahim ed., 2007); AL QAEDA IN ITS OWN WORDS (Gilles Kepel & Jean-Pierre Milelli eds., Pascale Ghazalleh trans., 2008); MESSAGES TO THE WORLD: THE STATEMENTS OF OSAMA BIN LADEN (Bruce Lawrence ed., 2005).

⁶² *See on this*, TIBI, DER NEUE TOTALITARISMUS, *supra* note 53; BASSAM TIBI, EUROPA OHNE IDENTITÄT? LEITKULTUR ODER WERTEBELEBIGKEIT [Europe Without Identity? Leading Culture or Arbitrariness of Values] (2d ed. 2001); BASSAM TIBI, IM SCHATTEN ALLAHS. DER ISLAM UND DIE MENSCHENRECHTE [In the Shadow of Allah. Islam and Human Rights] (2003).

⁶³ *See on this*, JOHANNES J.G. JANSEN, THE DUAL NATURE OF ISLAMIC FUNDAMENTALISM (1997).

after the chairman of the French commission, which defended the old constitutional ideal of *laïcité*, that secularist ideals are challenged nowadays by religious extremists.⁶⁴

In a ruling by a Dutch court of January 23, 2008,⁶⁵ four years after the murder,⁶⁶ the murderer of Van Gogh gave some new insight into his motives. He declared:

The reason for the murder of Van Gogh is that he offended the Prophet. According to the law, he deserved the death penalty which I have executed. . . . Theo van Gogh considered himself to be a soldier. He fought against Islam. On November 2, Allah sent a soldier to cut his throat. . . . This is Jihad in the most literal sense. Van Gogh saw himself as a soldier and he had to be slaughtered. Van Gogh knew what he was doing. He stepped into the arena.⁶⁷

Van Gogh had made a film, together with the Dutch parliamentarian Ayaan Hirsi Ali, on the predicament of women in the Muslim world. Van Gogh's open letter to Hirsi Ali, a notorious critic of Islam, which stated that she was meant to be a next

⁶⁴ *Laïcité et République*, *supra* note 17, at 13:

Car il faut être lucide: oui, des groupes extrémistes sont à l'œuvre dans notre pays pour tester la résistance de la République et pour pousser la résistance de la République et pour pousser certains jeunes à rejeter la France et ses valeurs.

[For one must see clearly: indeed, extremist groups are operating within our country in order to test the resistance of the Republic and to challenge the resistance of the Republic as well as to incite certain young people to reject France and its values].

⁶⁵ This ruling was about the question of whether there was sufficient coordination between the members of the group to have the whole group convicted as a criminal organization. The court denied this. By that time B. was already interned for the murder of Van Gogh on Nov. 2, 2004. On the Hofstadgroep, see EMERSON VERMAAT, *DE HOFSTADGROEP. PORTRET VAN EEN RADICAAL-ISLAMITISCH NETWERK* [The Hofstadgroup. Portrait of a Radical-Islamic Network] (2005); and EMERSON VERMAAT, *NEDERLANDSE JIHAD: HET PROCES TEGEN DE HOFSTADGROEP* [Dutch Jihad: The Trial of the Hofstadgroup] (2006).

⁶⁶ An interesting account of the public debate on the murder of Van Gogh is given by THEODOR HOLMAN, *THEO IS DOOD.; MET EEN VOORWOORD VAN GIJS VAN DE WESTELAKEN* [Theo is Dead, With a Preface by Gijs van de Westelaken] (2006).

⁶⁷ Translation is mine. In Dutch:

Het motief van de moord op Van Gogh was gelegen in het feit dat hij de profeet had beledigd. Volgens de wet verdiende hij de doodstraf en die heb ik voltrokken . . . Theo van Gogh zag zichzelf als een soldaat. Hij streed tegen de Islam. Op 2 november 2004 heeft Allah een soldaat gestuurd die hem de strot heeft doorgesneden. Allah heeft het woord van Kufr op die dag vernederd. Op die dag heeft Allah het woord van de waarheid gevestigd. De Kafir is afgeslacht. Dit is Jihad in de meest letterlijke zin . . . Van Gogh zag zichzelf als soldaat en hij moest afgemaakt worden. Van Gogh wist precies wat hij deed. Hij bevond zich in de arena.

On the murder of Van Gogh, see Paul Cliteur, *Godslastering en zelfcensuur na de moord op Theo van Gogh* [Blasphemy and Self-Censorship after the Murder of Theo van Gogh], in 45 *NEDERLANDS JURISTENBLAD* 2328 (2004); Paul Cliteur, *Cast Your Discomfort Aside: In matters of life and death, debate is the only thing that counts*, in *TIMES HIGHER ED. SUPPL.*, Jan. 28, 2005, available at <http://www.timeshighereducation.co.uk/story.asp?storyCode=193770§ioncode=26>; Hans Jansen, *De brief van Mohammed B., bevestigd aan het lijk van Theo van Gogh* [The letter of Mohammed B., pinned down on the corpse of Theo van Gogh], in 118(3) *TIJDSCHRIFT VOOR GESCHIEDENIS* 483 (2005); Petter Nesser, *The Slaying of the Dutch Filmmaker—Religiously Motivated Violence or Islamist Terrorism in the Name of Global Jihad?*, Norwegian Defence Research Establishment PO Box 25, NO-2027, Kjeller, Norway 2005.

target, was pinned on the murder victim's chest. During the last trial in which Mohammed B. appeared, the murderer declared that Hirsi Ali stepped "into the arena" and marched in the "ranks of the soldiers of evil." He added:

She has offended the Prophet, she is an apostate, and she has associated with the enemy. Three reasons each in itself sufficient to qualify for the death penalty. . . . From the moment that she went into politics and declared her oath in Parliament she became an apostate. . . . I left the "Open letter to Hirshi Ali" on the corpse of Theo van Gogh to make a clear statement. . . . That statement is: it is war and if you enter the arena you know what will happen.⁶⁸

Especially the last point is interesting in relation to the five models we have delineated. From the moment Hirsi Ali was sworn in into her political office she was, according to B., an "apostate." She affiliated herself with the enemy.

What can we make of this? Apparently, the home-grown terrorist B. is severely opposed to democracy as a political system.

B. claims that one cannot be both a true believer and a member of parliament in a democracy. He does not use the word "theocracy," but this concept seems appropriate here. And according to the Jihadist, there is a sharp contrast between democracy and theocracy. A theocracy is a government by God ("theos"); democracy, on the other hand, is a government by the people ("demos"). It is impossible for God and the people to be on the same level. In other words: one cannot both serve God and "us the people." There can only be one final source of sovereignty. *Either* God is the ultimate source of our laws *or* this sovereignty is vested in the people. We are either ruled by sharia-law or by man-made law. According to the violent theocrat, there simply can be no compromise. Contemporary European societies have to deal with radical minorities who defy the authority of the national state. That poses a new challenge to the traditional paradigms of thinking about the relation between state and religion.

5. The model of the state church

The fourth way government can relate to religion is by establishing a state church. Among the twenty-five countries within the European Union seven have a state church. This is the case with Denmark, Finland, Norway, Sweden, Greece, Great Britain, and Malta.⁶⁹ Measured against the backdrop of a religiously pluralist society, the idea of a state church is problematic. The fourth model is a relic from the past

⁶⁸ Translation mine. In Dutch:

Ze heeft de profeet beledigd, ze is afvallig en ze heeft zich aangesloten bij de vijand. Drie redenen, die ieder op zich voldoende zijn om haar voor de doodstraf in aanmerking te doen komen. . . . Vanaf het moment dat zij de politiek in ging en haar eed voor het parlement aflegde, is ze afvallig geworden. . . . Ik heb de "Open brief aan Hirshi Ali" op het lichaam van Theo van Gogh achtergelaten om een duidelijk statement te maken (. . .) Het statement is: het is oorlog en als je in de arena bevindt, weet je wat er gebeurt.

⁶⁹ XAVIER TERNISIEN, *ÉTAT ET RELIGIONS* [State and Religions] 29 (2007).

when European societies were much more homogenous, and one specific religion could function as the common bond of society. In that sense it is a “pre-modern” model. It has a great historical significance, as can be illustrated with reference to the Netherlands or Great Britain.

The Dutch Union of Utrecht (1579) inaugurated a certain amount of religious freedom. One had learned from the past that religion could be the source of endless strife. This could tear society apart and if we would wish to avoid that, the best way to do this would be to realize religious freedom. So in the Union of Utrecht religious freedom was acknowledged to a certain extent. “A certain extent,” because the Reformed Church still had a privileged position.⁷⁰

The idea of the state church is easily combined with the idea of the nation-state. It is based on *cuius regio, eius religio*. The region determines the religion; more precisely: the king decides what is to be the religion of the land. Because that religion is the same for all citizens, religion can function as the bond of social cohesion.

In a multid denominational or pluralist society—as most European societies are nowadays—this model seems nostalgic or romantic. It is something adored by Romantics such as the German poet Novalis (1772–1801) in his book *Die Christenheit oder Europa* (1799). Novalis’s ideas are steeped in the longing for the one and only unifying religion: Christianity.⁷¹ But the chances that one religion—whether it be Christianity, Islam, the Jewish religion, or any other creed—will gain the upper hand on European soil in the foreseeable future is not very likely.

Nevertheless, Romanticism did not die with Novalis. There are a host of contemporary intellectuals that refer to “our Judeo-Christian civilization” that should be protected against the inroads of the alien Islam or the spirit of modern culture, usually characterized as “Enlightenment.”⁷² If those advocates of Judeo-Christian culture want to show that Christianity and the Jewish religion had a great influence on European civilization no one could reasonably disagree. But the question is not *where we come* from but in *what direction* we are developing.⁷³ It is in this respect that the popular Muslim teacher and academic Tariq Ramadan is more realistic than his many critics who sometimes seem to dream about a uniquely European civilization with its “roots” in Judeo-Christian culture. The cultural historian can muse over the roots of European civilization; the political philosopher must reflect on the future course of events. And the society of the future will probably be pluralist and multicultural.

⁷⁰ F.T.OLDENHUIS, J.G.BROUWER, D.N.R. WEGERIF, & F.E. KEIJZER, *SCHURENDE RELATIES TUSSEN RECHT EN RELIGIE* 24 (2007).

⁷¹ NOVALIS, *DIE CHRISTENHEIT ODER EUROPA* (Reclam 1984) (1799).

⁷² This is a prominent theme in DANIEL ALI & ROBERT SPENCER, *INSIDE ISLAM: A GUIDE FOR CATHOLICS* (2003); and ROBERT SPENCER, *RELIGION OF PEACE?: WHY CHRISTIANITY IS AND ISLAM ISN'T* (2007).

⁷³ See on this, DINESH D'SOUZA, *WHAT'S SO GREAT ABOUT CHRISTIANITY?* (2007); FRÉDÉRIC LENOIR, *LE CHRIST PHILOSOPHE* (2007).

6. The religiously neutral state v. the multicultural state

Let me recapture what my conclusions are, so far. For the first model, political atheism, there are no adherents left.⁷⁴ The fourth model, state church, is mainly defended by stealthily indicating what Europe and the West owes to Christianity. In most cases such comments are restricted to a historical reflection on the sources of inspiration of European civilization. And as far as historical commentary is concerned, there is nothing wrong with that, of course. The problem arises when those revealing the Christian roots of European civilization shift to defending Christianity as the basis *for our contemporary legal institutions* and shared morality. Those who take that step are defenders of the model of the state church. But this fourth model is not suitable for a multicultural and pluralist society.

The fifth model, theocracy, has followers in Western states, especially among radicalized youth, but the majority of people (including Muslims) agree that we should try to stay clear of it. Because political atheism (the first model) is obsolete, the discussion focuses on the following, intimately linked questions. First, what model is the most appropriate to avoid theocracy? Second, what model is fair with regard to people with diverse religious backgrounds, i.e. able to safeguard their freedom of religion and yet prevent the free exercise of religion from sapping the principles of a democratic legal order. In other words: what model is the most appropriate to prevent theocracy (the fifth model) from gaining ground and at the same time suitable to regulate pluralist society? This implies: the debate will focus in the coming years on the second and the third models: on the religiously neutral state (the second model) and multiculturalism (the third model).⁷⁵

Within the Europe there are two countries that play a prominent role: on the one hand France—the most outspoken representative of the second model; on the other hand Great Britain—the prototype of a multiculturalist state.

What are the most important arguments advanced against multiculturalism (model 3)? And *vice versa*: what critique is raised at the model of the religiously neutral state (model 2)?

⁷⁴ Although the prominent British historian Eric Hobsbawm wrote in his autobiography (2002): “To this day I notice myself treating the memory and tradition of the USSR with an indulgence and tenderness.” (Cited in DAVID HOROWITZ, *UNHOLY ALLIANCE: RADICAL ISLAM AND THE AMERICAN LEFT* 61 (2004)). Horowitz comments: “These are his feelings toward a regime that enslaved and slaughtered tens of millions, and reduced hundreds of millions to lives of inconceivable misery” (*Id.*). For more criticism along these lines, see DINESH D’SOUZA, *THE ENEMY AT HOME: THE CULTURAL LEFT AND ITS RESPONSIBILITY FOR 9/11* (2007).

⁷⁵ See on this, LAÏCITÉ ET SÉCULARISATION DANS L’UNION EUROPÉENNE [Laicity and Secularization in the European Union] (Alain Dierkens & Jean-Philippe Schreiber eds., 2006); YVES CHARLES ZARKA, *FAUT-IL RÉVISER LA LOI DE 1905? LA SÉPARATION ENTRE RELIGIONS ET ÉTAT EN QUESTION* [Should the 1905 Law Be Rewritten? Questioning the Separation Between Religions and the State] (2005); ALAIN RENAUT, *UN DÉBAT SUR LA LAÏCITÉ* [A Debate Around Laicity] (2005); GUY HAARSCHER, *LA LAÏCITÉ* 99–122 (2004); ÉDOUARD BALLADUR, *LA FIN DE L’ILLUSION JACOBINE* [The End of the Jacobonic Illusion] (2005).

7. Arguments against multiculturalism

The first thing we have to realize is that multiculturalism is a kind of pluralism.⁷⁶ And pluralism can be underestimated but it can be overstated as well. Under the present circumstances we are more prone to overestimate the amount of pluralism than underestimate it. Here is a characteristic statement from Noel Annan (1916–2000), a prominent British intellectual giving a portrait of “his age,” i.e. post-war Britain: “The brave new world was to be a pluralist world. People should acknowledge that there was no single model of belief and behaviour, such as that of the gentleman in bygone days.”⁷⁷ But what Annan does not fully realize is that the glorification of pluralism underestimates the fact that our daily intercourse is based on countless implicit rules that we honor in our practice without consciously talking about them. We do not *fight* over our differences, for instance. We do not *behead* someone who tramples on our most sacred beliefs. We presuppose that people *speak the truth* unless we have reason to think otherwise. We consider it important that someone does not *contradict himself* in discussions over value preferences. We consider every rational disputant *worthy of an answer* if his arguments seem cogent. This points in the direction of a wider consensus on values that most people are inclined to acknowledge. What this all means, is that pluralism can easily be overstated as is the case in this remark by Annan. His portrait of his generation is full of those implicit understandings, although the writer does not notice them because they are experienced as more or less self-evident.

A more normative complaint that secularists voice about multiculturalism is that, although it presents itself as bringing social cohesion in society, it in fact undermines that cohesion.⁷⁸ One may also put it in another way: Multiculturalism reinforces the ties between the different religious and ethnic communities but weakens the national bond. This has to do with the role that religion plays in the multiculturalist approach. Religion fosters the ties of the religious community and weakens the idea of national social cohesion. A religious terrorist obeying the laws of his religious community even if those violate national laws is an extreme but not altogether alien manifestation of that process.

Arguably, the religiously neutral state is in a better position than the multiculturalist state to foster social cohesion. The religiously neutral state says that it does not recognize nor finance nor support any religious direction (“La République ne reconnaît, ne salarie ni ne subventionne aucun culte,” according to the law of 1905 that introduced *laïcité*

⁷⁶ See PAREKH, *A New Politics of Identity*, *supra* note 29; PAREKH, *Rethinking Multiculturalism*, *supra* note 29; Taylor, *supra* note 29; KYMLICKA, *supra* note 29. More or less sympathetic towards multiculturalism are the contributions assembled in *THEORISING MULTICULTURALISM: A GUIDE TO THE CURRENT DEBATE* (Cynthia Willet ed., 1998). For more critical perspectives, see Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Joshua Cohen, Matthew Howard, & Martha Nussbaum eds., 1999); YASMIN ALIBHAI-BROWN, *AFTER MULTICULTURALISM* (2000); YASMIN ALIBHAI-BROWN, *WHO DO YOU THINK WE ARE?: IMAGINING THE NEW BRITAIN* (2001); DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991).

⁷⁷ NOEL ANNAN, *OUR AGE: THE GENERATION THAT MADE POST-WAR BRITAIN* 18 (1990).

⁷⁸ See ARTHUR SCHLESINGER, JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* (rev., enlarged ed., W.W. Norton & Co. 1998) (1991).

as an important principle of the French constitutional order).⁷⁹ The American Republic proclaims the same in the First Amendment to the Constitution: “Congress shall make no law respecting an establishment of religion. . . .”⁸⁰ By not reinforcing the influence of religion on society the religiously neutral state might be better equipped to foster a sense of national cohesion. The religiously neutral state sees the bond of society in religiously neutral values of good citizenship.

8. Does the religiously neutral state violate individual rights?

Nevertheless, the religiously neutral state is heavily criticized by those who advocate more rights for religious beliefs. One of the most frequently voiced objections to neutralism is that this violates the civil rights of believers. It is an old complaint. In 1872, the *laïcist* politician and French premier Léon Gambetta (1838–82) wrote that the enemies of *laïcité* indict the secularists for not honoring the principle of freedom of conscience, and claim that *laïcists* persecute people for their convictions (“Nos adversaires disent que nous sommes les ennemis de la liberté de conscience, que nous persécutons les consciences”).⁸¹ But defenders of the secular state vehemently deny this. The *laïcist* position, in the words of the French socialist leader Jean Jaurès (1859–1914), one of the foremost ideologists of the secular state, “respects and completely assures the necessary freedom of all consciences, all creeds, all cults, but it does not accept any dogma as the basis of social life” (“Elle respecte, elle assure l’entière liberté de toutes les consciences, de toutes les croyances, de tous les cultes, mais elle ne fait d’aucun dogme la règle et le fondement de la vie sociale”).⁸²

The question is topical again with regard to the discussion on the veil or headscarf in French schools.⁸³ The discussion started in 1989 when two girls wearing headscarves were expelled from a school in Creil (Oise).⁸⁴ The minister of Education, Lionel Jospin (1937–), tried to find a compromise, but the matter soon developed into a national

⁷⁹ *Laïcité et République*, *supra* note 17, at 27 (“The Republic does not recognize, endorse, or subsidize any cult”); JEAN BAUBÉROT, *HISTOIRE DE LA LAÏCITÉ EN FRANCE* [The History of Secularism in France] 93 (2000); Pierre Kahn, *La laïcité* 53 (2005).

⁸⁰ Based on Madison, *supra* note 25.

⁸¹ Léon Gambetta, *Discours prononcé à Angers le 7 avril 1872* [Speech Delivered in Angers on April 7, 1872], in *DISCOURS POLITIQUES DE M. GAMBETTA* 96 (1875), *Reprinted in* LA FRANCE, UNE IDENTITÉ DÉMOCRATIQUE: LES TEXTES FONDATEURS 302 (Vincent Duclert ed., 2008) (“Our adversaries claim that we are enemies of the freedom of religion, that we persecute beliefs”).

⁸² Jean Jaurès, *L’enseignement laïque, Discours de Castres du 30 juillet 1904* [Lay Education, Speech in Castres, July 30, 1904], in *L’HUMANITÉ* (Aug. 1, 1904), *Reprinted in* Jean Jaurès, *LAÏCITÉ ET RÉPUBLIQUE SOCIALE 1905-2005: CENTENAIRE DE LA LOI SUR LA SÉPARATION DES ÉGLISES ET DE L’ÉTAT* 63 (Gilles Candar ed., 2005).

⁸³ Ivan Brovelli, *Laïcité: Réflexions autour d’un mal français: Les limites d’une société sans Dieu* [Laicity: Thoughts on a French Malady: The Limits of a Society Without God] (2006); JOAN WALLACH SCOTT, *THE POLITICS OF THE VEIL* (2007); JOHN R. BOWEN, *WHY THE FRENCH DON’T LIKE HEADSCARVES: ISLAM, THE STATE AND PUBLIC SPACE* (2007); RÉGIS DEBRAY, *CE QUE NOUS VOILE LE VOILE: LA RÉPUBLIQUE ET LE SACRÉ* [What Veils the Veil: The Republic and the Sacred] (2004); GUY COQ, *LAÏCITÉ ET RÉPUBLIQUE: LE LIEN NÉCESSAIRE* [Laicity and the Republic: The Necessary Link] (1995).

⁸⁴ JEANNE-HÉLÈNE KALTENBACH & MICHÈLE TRIBALAT, *LA RÉPUBLIQUE ET L’ISLAM: ENTRE CRAINTE ET AVEUGLEMENT* [The Republic and Islam: Between Fear and Blindness] 188–190 (2002).

debate. Some public intellectuals, including Régis Debray (1940–), Élisabeth Badinter (1944–), and Alain Finkelkraut (1949–) published an article in the French magazine *Le Nouvel Observateur* under the title “Teachers, do not capitulate.”⁸⁵ Those writers warned against a kind of “Munich of the republican school.” They were answered by the sociologist Alain Touraine (1925–) and the politician Harlem Désir (1959–) who stressed that the expulsion of the girls wearing headscarves would be a real tragedy.⁸⁶

Jospin asked the Conseil d’État for a judgment. The Conseil d’État came up with something of a compromise. It proclaimed that the wearing of religious symbols is not in itself incompatible with *laïcité*, provided that this is not done in an “ostentatious” manner.

However, this was considered to be too vague to be helpful for the educational institutions, and on the July 3, 2003 the French president Jacques Chirac (1932–), established a commission to inquire into the present-day meaning of *laïcité*.⁸⁷ This was the commission Stasi, named after Bernard Stasi, whose report has been cited above. Stasi presented the findings of the commission on December 11, 2003. Meanwhile, the legislative process was working at full speed. On March 15, 2004, the parliament passed a law revitalizing the ideas of *laïcité*, that is to say: reinforced the principles outlined in the law of 1905 which for the first time legally established the separation of church and state.

This implied that from March 15, 2004 onwards Muslim girls were not allowed to wear ostentatious religious symbols in French schools. The veil and the headscarf, being such ostentatious symbols, were banned.

According to some commentators, this violates the freedom of religion of the girls who want to wear their religious symbols.⁸⁸ Is this a convincing argument against neutralism?

I will try to gauge the significance of the religiously neutral state as a model that might be operative for other liberal democracies coping with a multicultural citizenry as well. The French system appears *prima facie* well equipped to integrate a considerable amount of people with non-Western backgrounds. But if this success is only accomplished on the basis of a discriminatory politics, that is a heavy price to pay, indeed. Let us inquire further into the criticism that is being directed at *laïcité*.

9. Why working in the civil service implies religious neutrality

Before we can judge whether the ban on religious symbols violates civil liberties (and does it to an extent that is unacceptable) we have to place this in perspective. Usually, one talks about a ban on religious symbols in the “public sphere.” That is hopelessly

⁸⁵ TERNISIEN, *supra* note 69, at 121.

⁸⁶ A timetable with the relevant events is included in: JEAN-MICHEL HELVIG, *LA LAÏCITÉ DÉVOILÉE. QUINZE ANNÉES DE DÉBAT EN QUARANTE « REBONDS »* [Laicity Unveiled. Fifteen Years of Debates in Forty “Jumpstarts”] 9–13 (2004).

⁸⁷ For Chirac’s own stance, see Jacques Chirac, *Discours Relatif au Respect du Principe de Laïcité dans la République*, Palais de l’Élysée, Dec. 17, 2003 [Speech On the Respect of the Lay Principle in the Republic], in *GUIDE RÉPUBLICAIN. L’IDÉE RÉPUBLICAINE AUJOURD’HUI* 9 (2004).

⁸⁸ Extremely negative comments on the French system can be found in Scott, *supra* note 83.

vague, as we have seen discussing the work of John Neuhaus.⁸⁹ What is the “public sphere”? A firm distinction should be made between the state and society. Both belong to the “public sphere,” but the regime of *laïcité* concerns the state. So the first situation we have to distinguish is that of someone working in the civil service, in particular in professions where a high ethos of objectivity is expected. That is the case with policemen, people serving in the army, but also judges and public prosecutors. They all wear special attire to indicate that their work requires a certain objectivity and neutrality. Now, what is the situation when one of those civil servants objects to wearing religiously neutral clothing because he or she wants to wear a crucifix, a veil, or a yarmulke? The answer must be that in this situation, invoking civil rights would be somewhat misleading or at least very different from the situation of an ordinary citizen claiming his civil rights.

It is therefore not surprising that the European Court of Human Rights in Strasbourg has recognized the right of the state to make law that safeguards the neutrality of the state in education. In *Dahlab v. Switzerland* (February 15, 2001) a judgment was presented on a case about a teacher in the canton of Geneva. The teacher was not willing to abandon her headscarf although she had been subjected to several disciplinary measures by the school authorities. Those measures did not violate the European Convention, according to the European judges in Strasbourg.⁹⁰ In *Valsamis v. Greece* (July 6, 1995), measures taken against a pupil violating the school rules could not be justified by an appeal to religious freedom.⁹¹

The question of the religious symbols is intimately related to a more general question, i.e. whether civil servants should have the right to express their opinions, even if those opinions contradict the general policy of their political superiors. Not only in France but also in other liberal democracies this is a highly contested issue. If the civil servant could express his own views instead of those of his political superiors (ultimately those of the state itself), it would be tantamount to undermining the presuppositions on which liberal democracy rests, as so many political theoreticians have emphasized. One such theoretician is the British political scientist Herman Finer.

Herman Finer (1898–1969), the brother of the political scientist and historian Samuel Finer (1915–1993), was the son of Romanian Jewish parents, who joined the staff of the London School of Economics in 1920, resigning in 1942 to become professor of political science at the University of Chicago from 1945 to 1968.⁹² He was a passionate democrat, an anti-Marxist and anti-fascist.⁹³ His major work is *The Theory and Practice of Modern Government* (1932, revised in 1949), based upon the study of four democracies: Britain, the US, France, and Weimar Germany.⁹⁴ What is important

⁸⁹ See, e.g., ROGER TRIGG, *RELIGION IN PUBLIC LIFE: MUST FAITH BE PRIVATIZED?* (2007) who does not discriminate sufficiently within the notion of “public life.” The same is true of STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF* (1993) and JOSEPH VITERITTI, *THE LAST FREEDOM: RELIGION FROM THE PUBLIC SCHOOL TO THE PUBLIC SQUARE* (2007).

⁹⁰ *Laïcité et République*, *supra* note 17, at 49.

⁹¹ *Id.* at 50.

⁹² S.E. Finer, *Herman Finer*, in *THE BLACKWELL ENCYCLOPEDIA OF POLITICAL SCIENCE* 234 (Vernon Bogdanor ed., 1991).

⁹³ See HERMAN FINER, *MUSSOLINI'S ITALY* (1935).

⁹⁴ HERMAN FINER, *THEORY AND PRACTICE OF MODERN GOVERNMENT* 724–728 (rev. ed., 1950).

within the context of the *secular outlook* is Finer's analysis of the loyalty of the civil service in a democratic state. He proposed his ideas in *British civil service* (1937)⁹⁵ and in other writings. The relevant question is: "Are the servants of the public to decide their own course, or is their course of action to be decided by a body outside themselves?"⁹⁶ Finer's answer is that the servants of the public are *not* to decide their own course; they are to be responsible to the elected representatives of the public, and those are to determine the course of action of the public servants "to the most minute degree that is technically possible."⁹⁷ This would leave no room for individual self-expression of the members of the civil service, to be sure. But does that not violate the civil rights of civil servants? And, if so, why should we be so harsh on them?

The treatment of the civil servants has to do with the internal logic of a system of representative government. Finer contends that the only form of self-government worthy of the name is government through ministers responsible to an elective legislature. But that system rests on certain presuppositions that are not always made explicit. One of those presuppositions will be made clear by means of an anecdote about Sir Oswald Ernald Mosley (1896–1980), founder of the British Union of Fascists. During a political manifestation a skeptical citizen asked him: "How can I get rid of you, if you don't please me?"⁹⁸ That was not something that had occurred to Mosley. He had pondered upon how to get elected, not how to leave the stage in case of political failure in the eyes of the people he claimed to represent.

In the second half of nineteenth century European states developed a mechanism for the non-violent removal of ruling elites in case they would no longer "please" the citizen. Democracy is a system "in which the people can at regular intervals constitutionally dismiss the governors if they so choose."⁹⁹ The device to accomplish a bloodshed-free circulation of political elites is called "ministerial responsibility." Ministerial responsibility is the constitutional convention in governments using the Westminster System that a cabinet minister bears the ultimate responsibility for the actions of their ministry or department.¹⁰⁰ Since the development of ministerial responsibility in the second half of the twentieth century, democracy is predicated on the notion of ministerial accountability. This means that the minister has to justify the policies of the state towards Parliament and not towards the King.¹⁰¹ If Parliament is dissatisfied (and remains dissatisfied) with the course of action proposed or actually effected by the government, the responsible politicians have to be replaced by other politicians. This is the way democracy functions. Thus the system places a heavy responsibility on politicians. Their power is circumscribed by the power of the representative body

⁹⁵ HERMAN FINER, *THE BRITISH CIVIL SERVICE* (1937).

⁹⁶ Herman Finer, *The Case for Subservience*, in *PUBLIC ADMINISTRATION IN THE UNITED STATES* 80 (John C. Koritansky ed., 1999), and HERMAN, *THEORY AND PRACTICE OF MODERN GOVERNMENT*, *supra* note 94, at 865–870.

⁹⁷ Finer, *The Case for Subservience*, *supra* note 96, at 81.

⁹⁸ Cited in G.H. van den Bergh, *De democratische staat en de niet-democratische partijen* [The Democratic State and Non-Democratic Parties], in *VERZAMELDE STAATSCHEPTELIJKE OPSTELLEN* 6 (2d ed., 1955).

⁹⁹ RICHARD ROBINSON, *AN ATHEIST'S VALUES* 230 (1964).

¹⁰⁰ See JOHN ALDER, *CONSTITUTIONAL & ADMINISTRATIVE LAW* 223–228 (2d ed. 1994).

¹⁰¹ On the evolution of the system, see VERNON BOGDANOR, *THE MONARCHY AND THE CONSTITUTION* 1 (1997).

that can remove them from office. Now (and here individual self-expression of civil servants comes in), this responsibility can only be effective if the minister has great powers over the civil service as well. He must be sure that the civil service executes his orders. “What is needed,” says Finer, “is not technical capacity per se, but technical capacity in the service of the public welfare as defined by the public and its authorized representatives.”¹⁰² To make this system work the technical expert *has to be subservient* to the political powers. And here the idea of a religiously neutral state comes in. In its ultimate consequences this idea implies the complete renunciation by those working in the civil service of all ambition to exert political power or to manifest a personal worldview.

Another great scholar whose name is intimately linked with this idea is the German sociologist Max Weber (1864–1920). Weber’s famous definition of state has been introduced above. In Weber’s vision of politics, power plays an overriding role. His commentaries on this topic could even be read as cynical by a more idealistic audience. Nevertheless, his characterization of the state as hierarchical organization would nonetheless form the basis for the development of democratic doctrine because only when power is concentrated in a certain point it can be limited and subjected to certain controls. Weber sees the public administration as a hierarchically organized civil service and in his *Politik als Beruf* (1919) or *The Profession and Vocation of Politics*¹⁰³ he develops the idea of a strict submission of the civil service to political leadership—in general, reiterating Herman Finer’s ideas discussed above. Weber notoriously pointed out that without the loyalty of the civil service the whole machinery would stagnate (“ohne diese im höchsten Sinn sittliche Disziplin und Selbstverleugnung zerfiel der ganze Apparat”).¹⁰⁴ If and only if the loyalty of the civil service is secured, the minister can bear responsibility for policy decisions towards Parliament.

The loyalty of the civil service would be undermined, however, if the civil service as whole or individual civil servants would partake in political discussions, advocate political ideologies, manifest their religious alliances, or in another way betray their personal predilections in contradiction with the official policy of the state. The right to manifest your personal religious affiliations, although an important civil right or human right, cannot be fully accorded to those working in the civil service. At least that is the case in a democratic state. This fact was also recognized by the European Court of Human Rights in Strasbourg in the case *Ahmed v. United Kingdom* (1998).¹⁰⁵

A British law prohibiting civil servants to engage in politics was *not* violating the principles of the European Convention, according to the European Court in Strasbourg. I would consider this to be an understatement. The loyalty of the civil service to their political superiors is not only not violating the principles of the European democratic political order but it is an *essential ingredient* of it. Democracy is impossible

¹⁰² Finer, *The Case for Subservience*, *supra* note 96, at 83.

¹⁰³ Max Weber, *The Profession and Vocation of Politics*, in *POLITICAL WRITINGS* 309 (Peter Lassman & Ronald Speirs eds., 1994). I will quote the German version.

¹⁰⁴ MAX WEBER, *POLITIK ALS BERUF* 28 (7th ed. Duncker & Humblot 1982) (1919). See also Max Weber, *La déontologie laïque* [Secular Deontology], in *LA LAÏCITÉ: TEXTES CHOISIS* 207, *supra* note 21.

¹⁰⁵ See on this, Paul Cliteur, *De zaak Ahmed e.a. vs. Het Verenigd Koninkrijk*, in *Rechtsfilosofische annotaties* 142 (Ronald Janse, Sanne Taekema, & Ton Hol eds., 2007).

without this loyalty. The loyalty of the civil servants is as important for sane democracy as divine revelation is for theocracy.

It is clear that the situation of people working in the civil service is completely different from that of ordinary citizens. Freedom of religion, freedom of speech, the “right to read”—as it is called by Paul Blanshard¹⁰⁶—imply that ordinary citizens can exercise their religious freedom in society. But democracy prohibits civil servants from appealing civil rights in order to manifest their religious and political orientation if it is at odds with the ideas of the cabinet. The principles of the secular state or religiously neutral state are in harmony with democratic theory.

The upshot of all this is that those working for the state cannot be allowed to display religious symbols. Thus policemen, civil servants, servicemen, and members of the judiciary should be “religiously neutral.”

10. The position of ordinary citizens

Now let us set aside the status of the civil servant and focus on the ordinary citizen. Should the ordinary citizen (as distinguished from the civil servant) also refrain from wearing religious symbols? What about the girls in French schools, for instance? Those girls, not being teachers, certainly do not represent the authority of the state. So the argument that is applicable to the civil servants does not apply to them. Should not this imply that the prohibition of the headscarf is illegitimate as far as ordinary citizens are concerned? Should not human rights have priority over other considerations in this context?

The French do not think so but, as appears from the foregoing considerations, a ban on the headscarf worn by students has to be based on different grounds than neutrality of the civil service. The neutrality of the civil service would only justify a ban on the headscarf for *teachers*. How to justify the fact that the *students* are not allowed to wear religious symbols?

The core of the French argument against students displaying religious symbols is that they are the weaker party in relation to their fathers, brothers, priests, imams, and other people placed in a formal or informal hierarchical relation to them. We may put this as follows: *laïcité à la française* chooses to protect the integrity of the child against the real or supposed religious rights and interests of the parents. The French want the school to be a refuge against social tensions. At school, the child should be allowed to make his or her own choices, even if those contradict the choices of their parents.¹⁰⁷ But, of course, this is not an exclusively French idea. The British philosopher Grayling said: “Let us challenge religion to leave children alone until they are adults, whereupon they can be presented with the essentials of religion for mature consideration.”¹⁰⁸

¹⁰⁶ PAUL BLANSHARD, *THE RIGHT TO READ: THE BATTLE AGAINST CENSORSHIP* (1955).

¹⁰⁷ On the school from a laicist perspective, see HENRI PENA-RUIZ, *QU’EST-CE QUE L’ÉCOLE?* (2005).

¹⁰⁸ A.C. GRAYLING, *AGAINST ALL GODS: SIX POLEMICS ON RELIGION AND AN ESSAY ON KINDNESS* 26 (2007). See also R.G. INGERSOLL, *Mistakes of Moses*, in *COMPLETE LECTURES OF COL. R.G. INGERSOLL* 7, 7 (M.A. Donogue & Co. 1900): “I want to free the schools of our country. (. . .) I wish to see an eternal divorce and separation between church and schools.” See also STEPHEN LAW, *THE WAR FOR CHILDREN’S MINDS* (2006).

From the point of view of *laïcité* the school is the main protector of the freedom of conscience for young people. Children should not be indoctrinated but be allowed to develop their own ideas. They should be educated to become moral and autonomous agents. This is why *laïcist* philosophers and politicians emphasize the importance reading has for children. In an address to school instructors in 1888, Jean Jaurès proclaimed that everything starts with reading. It is absolutely necessary that children learn how to read (“Il faut d’abord que vous appreniez aux enfants à lire avec une facilité absolue, de telle sorte qu’ils ne puissent plus l’oublier de la vie et que, dans n’importe quel livre, leur oeil ne s’arrête à aucun obstacle. Savoir lire vraiment sans hésitation, comme nous lisons nous en moi, c’est la clé de tout”).¹⁰⁹

Children’s education is also important for the preservation of democracy itself. Children have to learn about the principles of democratic government and the attitude that they involve. It was again Jean Jaurès who proclaimed in 1904 that *laïcité* respects all religious convictions. It attributes no privileged status to any of them (“Elle respecte, elle assure l’entière liberté de toutes les consciences, de toutes les croyances, de tous les cultes, mais elle ne fait d’aucun dogme la règle et le fondement de la vie sociale”).¹¹⁰ But it is absolutely essential for the continuation of democracy and the secular state that the principles on which it rests are bequeathed to next generations. That implies that democracy has the duty to educate the youth. And the youth has the right to be educated according to the same principles that will later in life guarantee their freedom. No other institution has the right to frustrate this process (“La démocratie a le devoir d’éduquer l’enfance; et l’enfance a le droit d’être éduquée selon les principes mêmes qui assureront plus tard la liberté de l’homme. Il n’appartient à personne, ou particulier, ou famille ou congrégation, de s’interposer entre ce devoir de la nation et ce droit de l’enfant”).¹¹¹

The French commission Stasi, which revived and reaffirmed the principles underlying the idea of the religiously neutral state,¹¹² leaned heavily on the idea of the school as a refuge against social tensions. The commission’s reasoning behind the idea of the religiously neutral state was that wearing religious symbols was not a voluntary choice made by children but oftentimes was forced upon them.¹¹³ And where those more powerful apply pressure on those less powerful, the state has an obligation to protect the weaker party.

¹⁰⁹ Jean Jaurès, *Aux instituteurs et institutrices*, in LA DÉPÊCHE, Jan. 15, 1888, reprinted in VINCENT DUCLERT, LA FRANCE, UNE IDENTITÉ DÉMOCRATIQUE: LES TEXTES FONDATEURS 309, 310 (2008).

¹¹⁰ Jaurès, *L’enseignement laïque*, *supra* note 82.

¹¹¹ *Id.*

¹¹² *Laïcité et République*, *supra* note 17, at 33:

Cette exigence s’applique d’abord à l’école. Les élèves doivent pouvoir, dans un climat de sérénité, s’instruire et se construire afin d’accéder à l’autonomie de jugement. [This demand first applies to schools. Pupils must be able to learn and develop in a peaceful climate in order to attain autonomy of judgment.]

¹¹³ An influential author in this respect is CHAHDORTT DJAVANN, BAS LES VOILES! [Down with the Veil] (2003); CHAHDORTT DJAVANN, QUE PENSE ALLAH DE L’EUROPE [What Does Allah Think of Europe] (2004). See also paragraph 9 above.

What this amounts to is that the religiously neutral state is *possible* in the sense that it does not violate the foundations of liberal democracy.¹¹⁴ The common arguments against it are only valid against the background of a multiculturalist ideology.

The religiously neutral state is not only possible, it may also be *necessary* against the background of religious radicalism and extremism that seems to grow among the youth of ethnic and religious minorities. Youngsters disaffected from European societies pose a security risk if they radicalize in Islamist ideologies that are being exported from countries like Iran, Saudi Arabia, and other strongholds of radical Islamist thought.¹¹⁵ European societies themselves cannot afford any longer to cultivate multiculturalist ideology that fosters religious communities and weakens the national state, as was the fashion in the 1970s and 1980s.

At present, there seems to be growing a vague sort of acknowledgment that European states have a problem with their radicalized youth,¹¹⁶ but there is still widespread ignorance about what exactly makes radical thought “radical” or “extreme.” That is, on the one hand, of course, that those people who are being radicalized are prepared to use violence to realize their aims.¹¹⁷ Yet there is something else that defines the religious terrorist: he (or she)¹¹⁸ lives in a mental world where national sovereignty has no place. Like Ayatollah Khomeini who condemned the British writer Salman Rushdie for crimes he did not perpetrate within the Iranian jurisdiction,¹¹⁹ the home grown terrorists simply do not feel bound to the national laws of the country where they live. Mohammed B., the home grown jihadist who killed the Dutch filmmaker Van Gogh, derived his inspiration and the legitimacy of his actions from a kind of universal religious law deemed to be higher than state law.¹²⁰

Both the model of state church (and a concomitant plea for the revitalization of the Judeo-Christian roots of European culture) and the reaffirmation of the religiously

¹¹⁴ As was also judged by the European Court of Human Rights in Strasbourg in *Dogru v. France*, Eur. Ct. H.R., Dec. 4, 2008.

¹¹⁵ See on this, MUNIRA MIRZA, ABI SENTHILKUMARAN, & ZEIN JA'FAR, *LIVING APART TOGETHER: BRITISH MUSLIMS AND THE PARADOX OF MULTICULTURALISM* (2007).

¹¹⁶ See SOUAD MEKHENNET, CLAUDIA SAUTTER, & MICHAEL HANFELD, *DIE KINDER DES DSCHIHAD: DIE NEUE GENERATION DES ISLAMISTISCHE TERRORS IN EUROPA* (2008).

¹¹⁷ We may also call “radical” those who do not perpetrate any violence themselves, but condone that violence or even encourage that others use violence. According to a Gallup poll, seven percent of the 1.3 billion Muslims in the world could be called “radical” in that sense: “According to the Gallup Poll 7% of respondents think that the 9/11 attacks were ‘completely’ justified. . . .” See JOHN L. ESPOSITO & DALLA MOGAHED, *WHO SPEAKS FOR ISLAM? WHAT A BILLION MUSLIMS REALLY THINK* 69 (2007). This translates into 91 million. See *id.* at 97.

¹¹⁸ On women active in radical networks, see JANNY GROEN & ANNIEKE KRANENBURG, *STRIJDSTERS VAN ALLAH: RADICALE MOSLIMA'S EN HET HOFSTADNETWERK* [Female Fighters for Allah: Radical Muslims and the Hofstad Network] (2006).

¹¹⁹ On the Rushdie case, apart from the book by Pipes quoted above, see MALISE RUTHVEN, *A SATANIC AFFAIR: SALMAN RUSHDIE AND THE RAGE OF ISLAM* (1990). The tension between Islamist radicalism and national sovereignty is analyzed by TIBI, *POLITICAL ISLAM, WORLD POLITICS AND EUROPE*, *supra* note 56; Daniel Philpott, *The Challenge of September 11 to Secularism in International Relations*, in 55 *WORLD POL.* 66 (2002); Daniel Philpott, *The Religious Roots of Modern International Relations*, in 52 *WORLD POL.* 206 (2000).

¹²⁰ See also Ellian, *Monotheism as a Political Problem*, *supra* note 56.

neutral state can be understood as attempts to provide a basis for common citizenship. The problem with the reaffirmation of the Judeo-Christian roots, however, is that it is exclusionary towards ethnic and religious minorities. This is not the case with the attempt to find a *religiously neutral* basis for common citizenship. It is therefore the model of the religiously neutral state that has the best chances of providing a moral basis for the development of national social cohesion. Oscar Wilde once quipped: “It’s hard to prophesize, especially about the future.” And, of course, nobody can forecast what model of state–religion relations will prove to be most successful in “creating citizens.” What we can do, however, is to point out what model of available possibilities is the most likely to fulfill that role.