



Universiteit
Leiden
The Netherlands

Self-Defence and Terrorism

Cliteur, P.B.; Eyffinger, A.; Stephens, A.; Muller, S.

Citation

Cliteur, P. B. (2009). Self-Defence and Terrorism. In A. Eyffinger, A. Stephens, & S. Muller (Eds.), *Self-Defence as a Fundamental Principle* (pp. 67-102). The Hague: Hague Academic Press. Retrieved from <https://hdl.handle.net/1887/14469>

Version: Not Applicable (or Unknown)

License: [Leiden University Non-exclusive license](#)

Downloaded from: <https://hdl.handle.net/1887/14469>

Note: To cite this publication please use the final published version (if applicable).

Cliteur, Paul, "Self-Defence and Terrorism",
in: Arthur Eyffinger, Alan Stephens, Sam Muller, eds., *Self-Defence as a
Fundamental Principle*, Hague Academic Press, The Hague 2009, pp. 67-103.

SELF-DEFENCE AND TERRORISM

Paul Cliteur*

This Chapter sets out to analyse the dangers threatening international peace in the new, post-ideological age that began in 1989. With the Fall of the Berlin Wall, expectations that major ideological conflict would be a thing of the past seemed justified. The man who succeeded in defining this mood most pithily was the American political analyst Francis Fukuyama. Fukuyama argued in 1989 that since liberalism had won the great ideological battle against communism and fascism, this would result in a world where boredom reigned.

What Fukuyama failed to appreciate, however, was that in this very same year a death sentence was issued against a Western writer, Salman Rushdie, which gave us an insight into a brand new kind of threat to the Western world: radical Islam.

Later, radical Islam was to manifest itself in the attacks in the United States on 11 September 2001, the attacks in Madrid on 11 March 2004, the attacks in the London underground on 7 July 2005, the murder of the writer Theo van Gogh on 2 November 2004, and, more recently, in the calls for the murder of the cartoonists who had depicted the Prophet Muhammad by the Jamaat-e-Islami party from Pakistan, among others.

Some people believe that we are witnessing a divide between the ideology of the West, led by the United States, and at least a part of the Islamic world. Others believe that this is a tendentious representation of the facts, which may even be dangerous as a 'self-fulfilling prophecy'.

* Prof. Paul B. Cliteur, Ph.D. is professor at the Universities of Leiden and Delft, The Netherlands.

This conflict raises countless questions. First: how should we define it? Is it a 'Clash of Civilizations', to use Samuel Huntington's well-known phrase?¹ Is it a 'religious' divide (or is it unrelated to religion)? Is it a problem that we should take seriously (or would it be better not to pay too much attention to it)? The most important question, however, is the following: can the problem be solved?

The justification for raising this problem in a book on 'self-defence' is that on both sides – the Western world as well as the Islamic world – people characterize their own response as a form of 'self-defence'. Both parties believe that they actually respond to the other's aggression. As far as that is concerned, the National Security Strategy of the United States of America of 20 September 2002² is not different from Ayatollah Khomeini's fatwa in which he rejects Rushdie's *The Satanic Verses*.³ The Americans claim the right to defend themselves against attacks by religiously motivated international terrorists by means of 'pre-emptive strikes'. Radical Muslims⁴ in Islamic countries and in the West – or at least some of them – view cartoons (*Jyllands Posten*), films (*Submission*) and novels (*Satanic Verses*) that are insulting (or that they regard as insulting) to the Prophet or Islam as an unjustified attack to which they must respond, if necessary by using force.

Because the right of self-defence is an important ground recognized in international law for ignoring the prohibition against the use of force, this may well give rise to further conflict, and in the most pessimistic scenario, pose a threat to world peace.

What should happen? Following Roger Scruton and – in part – Francis Fukuyama, it is argued in this Chapter that the situation is serious and, in all

¹ Huntington, Samuel, 'The Clash of Civilizations?', in *Foreign Affairs*, Summer 1993, pp. 22-49; Huntington, Samuel, *The Clash of Civilizations and the Remaking of World Order*, Simon & Schuster, New York 1996.

² <http://www.whitehouse.gov/nsc/nss/html>.

³ Included in Pipes, Daniel, *The Rushdie Affair. The Novel, the Ayatollah, and the West*, Second Edition with a postscript by Koenraad Elst, Transaction Publishers, New Brunswick (USA) and London (UK) 2003, p. 27.

⁴ I will refer to Islamic believers who take the view that the use of violence, for example, in response to cartoons about holy figures in Islam is permitted as 'radical Muslims', 'Muslim terrorists', 'Islamists' or 'supporters of political Islam'. In this way I hope to make it clear that I am not generalising about 'all Muslims' or about 'Islam as a whole'. I will not deal with the relationship between political Islam and 'ordinary Islam'. For the purposes of this Chapter, it is sufficient to note that certain people legitimize violence by invoking their religion. I will not address the question of whether they are right in doing so.

likelihood, insoluble in the short term. Perhaps we should not rule out that we are entering a phase that could last as long as the Cold War.⁵ During this phase, two world views will be opposed to each other: that of the West and that of religious fundamentalism. In this process – as the French Islam expert Gilles Kepel has pointed out – *either* Europe will get Islamized *or* Islam will get Europeanized.⁶

Fortunately, there are signs suggesting that the latter may happen. This means the rise of liberal Islam (or European Islam).⁷ Even so, we should not be blind to the fact that religious fundamentalism is gaining ground. And that means that the Western liberal democracies are no longer threatened by secular political ideologies such as communism and Nazism (as Fukuyama rightly pointed out), but by religious fundamentalism (to which Fukuyama paid too little attention).⁸

Due to its universalist nature (Islamic law prevails over democratic legislation) and its claim to absolute truth, religious fundamentalism is essentially incompatible with the principles of a liberal constitutional order. In the years to come, Western democratic states under the rule of law will have to do their utmost to develop a strong national identity that is acceptable to all citizens and is perceived as the primary focus of loyalty. In this context, it is particularly important to strengthen the principle of territorial jurisdiction. This, however, presupposes building on national identity and the integration of religious minorities in secular democracies. It is not easy to say how this should be done. It is possible, however, to say one thing that has received insufficient attention for a long time: religion, in particular religion in its fundamentalist form, is a factor that impedes the development of national identity and state formation. Authors such as Francis Fukuyama and Fareed

⁵ For a pessimistic opinion, see Dalrymple, Theodore, 'When Islam breaks down', (2004), in Theodore Dalrymple, *Our Culture, What's Left of It*, Ivan R. Dee, Chicago 2005, pp. 283-296, p. 295: 'To be sure, fundamentalist Islam will be very dangerous for some time to come, and all of us, after all, live only in the short term; but ultimately the fate of the Church of England awaits it.'

⁶ Kepel, Gilles, *Fitna. Guerre au coeur de l'islam*, Gallimard, Paris 2004; Kepel, Gilles, *Jihad. Expansion et déclin de l'islamisme*, Gallimard, Paris 2000.

⁷ This is advocated, *inter alia*, by Tibi, Bassam, *Im Schatten Allahs. Der Islam und die Menschenrechte*, Ullstein, Düsseldorf 2003.

⁸ And which Huntington understood better. A radical approach to this perspective is to be found in Harris, Sam, *The End of Faith. Religion, Terror, and the Future of Reason*, The Free Press, London 2005.

Zakaria do not pay sufficient attention to this point.⁹ For this reason, it would be a good thing if religion became more of a private matter (*laïcité*) rather than a part of the nation's public morality (as rightly argued by Roger Scruton and, by implication, by Todorov). There are no signs, however, suggesting that this will be the case within the foreseeable future (as Sam Harris and Theodore Dalrymple rightly argue).

1. FUKUYAMA AND THE END OF HISTORY IN 1989

In 1989, a neoconservative magazine, *The National Interest*, published an article by the American political analyst Francis Fukuyama. The title was *The End of History*. Fukuyama's main thesis was that in his lifetime liberal democracy had defeated all its enemies (communism, fascism, socialism). We were living in a new age. This age witnessed the triumph of the West, of the Western *idea*. All the systematic alternatives to Western liberalism had been defeated. What we were witnessing was not only the end of the Cold War, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalisation of Western liberal democracy as the final form of human government. 'The state that emerges at the end of history is liberal insofar as it recognizes and protects through a system of law man's universal right to freedom, and democratic insofar as it exists only with the consent of the governed.'¹⁰

Right at the end of his essay, there is a telling sentence, however, that shows that Fukuyama was slightly uneasy about something. It is not too difficult to imagine this uneasiness. In 1979, the Iranian Revolution overthrew the reign of the Shah and installed an Islamic government. What did Fukuyama have to say about that? In a famous sentence he implicitly refers to it as follows: '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 movements, and which

⁹ Zakaria, Fareed, 'The Islamic Exception', in Fareed Zakaria, *The Future of Freedom. Illiberal Democracy at Home and Abroad*, W.W. Norton & Company, New York, London 2003, pp. 119-159.

¹⁰ Fukuyama, Francis, 'The End of History?', in *The National Interest*, No. 16, Summer 1989, pp. 3-18, and in Paul Schumaker, Dwight C. Kiel, Thomas W. Heilke, eds., *Ideological Voices. An Anthology in Modern Political Ideas*, The McGraw-Hill Companies, Inc., New York etc. 1997, pp. 409-417, p. 411.

are therefore part of world history.¹¹ Fukuyama also explains his statement. He says that for our purposes, 'it matters very little what strange thoughts occur to people in Albania or Burkina Faso, for we are interested in what one could in some sense call the common ideological heritage of mankind.'¹²

These are strange examples. Nobody was talking about Albania. And nobody would claim that Burkina Faso posed a threat to the United States of America and its Western allies. Why does Fukuyama not say more about this 'crackpot messiah'? By using the word 'messiah', Fukuyama seems to indicate that he has a person with religious authority in mind, but by adding the word 'crackpot', he also suggests that he does not take this spiritual authority seriously at all.

Back in 1989 this was not very strange. International terrorism, Bin Laden, Al-Qaeda: these were matters insiders concerned themselves with. It is true that the Iranian Revolution took place in 1979, but this was considered for the most part a relatively isolated event. This is why it is understandable up to a certain point that Fukuyama failed to appreciate the importance of religion as a factor of political tensions.

This failure to appreciate the significance of religion may also be related to secularisation. Charles Seelengut described in detail how Western, secularized intellectuals have developed a blind spot for the influence of religion.¹³ In the Western world, religion has been privatized to a great extent. Many Westerners do not base their morality exclusively on their religion, but have come to regard this as such a matter of course that they forget that this is quite different in other parts of the world and in other cultures. In other parts of the world, secularisation has not progressed as much as in the West. Some people are of the opinion that it is even non-existent in the Islamic world.

In 1991, the philosopher and cultural anthropologist Ernest Gellner shocked many by putting this as follows. 'I think it is fair to say that no secularisation

¹¹ Fukuyama, *supra*, fn 10, p. 413.

¹² *Idem*.

¹³ On this subject, see Seelengut, Charles, *Sacred Fury*. Understanding Religious Violence, Rowman & Littlefield Publishers, Walnut Creek, Lanham, New York, Toronto, Oxford 2003. A similar point was made in Nelson-Pallmeyer, Jack, *Is Religion Killing Us?* Violence in the Bible and the Quran, Trinity Press International, Harrisburg 2003; Röhrlich, Wilfried, *Die Macht der Religionen*. Glaubenskongflikte in der Weltpolitik, Verlag C.H. Beck, München 2004; Haught, James, *Holy Hatred*. Religious Conflicts of the '90s, Prometheus Books, Amherst, New York 1995.

has taken place in the world of Islam: that the hold of Islam over its believers is as strong, and in some ways stronger, now than it was 100 years ago. Somehow or other, Islam is secularisation-resistant, and the very striking thing is that this remains true under a whole range of political regimes.¹⁴

Three years later Gellner repeated this point when he said that, compared to other world religions, Islam was different in this respect.¹⁵ For all world religions, it is true that the gradual process of industrialisation that many societies have gone through has weakened the position of religion. This secularisation thesis is roughly correct: 'It would be difficult to deny the overall trend towards secularisation', writes Gellner. But the position of Islam is an exception to that. The position of Islam has not weakened in the past one hundred years; on the contrary, one may even claim that its position has become stronger.

The hold of Islam over the populations of the lands in which it is the main religion has in no way diminished in the course of the last hundred years. In some ways it has been markedly strengthened.¹⁶

The American Arabist Bernard Lewis has made similar observations.¹⁷

It was a long time before scholars began to recognize the correctness of this view and many have still not done so. Many still consider it more or less a matter of course that Islam will go through (or has already gone through) the same development as Christianity. This means a development of increasing liberalism, a development towards ever increasing secularisation.¹⁸ This explains why Fukuyama was still able to believe in 1989 that with the disappearance of the classical ideologies, the most important cause of tensions between the states on the world stage would disappear too. The latter has proved to be a serious flaw in his analysis. Fukuyama's essay ended with a curious passage. After the writer had sung the praises of the triumph of liberal democracy and liberalism, he predicted that the new era without ideologies that we were about to enter would be a sad time:

¹⁴ Gellner, Ernest, 'Islam and Marxism: Some Comparisons', in *International Affairs*, Vol. 67, No. 1, January 1991, pp. 1-6, p. 2.

¹⁵ Gellner, Ernest, *Conditions of Liberty*. Civil Society and Its Rivals, Hamish Hamilton, London 1994, p. 15.

¹⁶ Gellner, *Ibid.*, p. 15.

¹⁷ Lewis, Bernard, 'The Return of Islam', in *Commentary*, January 1976, pp. 39-49, revised and recast in Lewis, Bernard, *Islam and the West*, Oxford University Press, New York, Oxford 1993, pp. 133-155.

¹⁸ In a way, this is also the position taken by Sorman, Guy, *Les Enfants de Rifaa*. Musulmans et modernes, Fayard, Paris 2003.

‘The end of history will be a very sad time. The struggle for recognition, the willingness to risk one’s life for a purely abstract goal, the worldwide ideological struggle that called forth daring, courage, imagination, and idealism, will be replaced by economic calculation, the endless solving of technical problems, environmental concerns, and the satisfaction of sophisticated consumer demands. In the post-historical period there will be neither art nor philosophy, just the perpetual caretaking of the museum of human history. I can feel myself, and see in others around me, a powerful nostalgia for the time when history existed. Such nostalgia, in fact, will continue to fuel competition and conflict even in the post-historical world for some time to come. I have the most ambivalent feelings for the civilisation that has been created in Europe since 1945, with its north Atlantic and Asian offshoots. Perhaps this very prospect of centuries of boredom at the end of history will serve to get history started again.’¹⁹

This is an interesting passage that includes – partly unintended perhaps – some elements that were later found to be correct but also some elements that show that Fukuyama was wide of the mark.

2. CRITICISM OF FUKUYAMA

Let us start with the latter point. It will have escaped nobody’s attention that these ‘centuries of boredom at the end of history’ have turned out quite different from what Fukuyama expected and predicted. Ideological tensions in the world have run high. But are these in any way related to ideology? Fukuyama would undoubtedly object. That depends on how one defines ‘ideology’. One thing is clear: these are not the familiar ideologies we associate with the 1930s or those that manifested themselves in the battle of ideas during the Cold War. But that does not mean that nowadays people no longer devote their heart and soul to specific views for which they are prepared to literally go through fire and water. It is certainly ironic that Fukuyama refers to the unwillingness to ‘risk one’s life for a purely abstract goal’. What the new world of international religious terrorism has confronted us with is people who are *pre-eminently* willing to risk their lives for abstract goals. Present-day suicide terrorism is characterised by immense willingness to sacrifice. This willingness to sacrifice is greater than anything we have witnessed in

¹⁹ See Fukuyama, *supra*, fn. 10, p. 417.

previous centuries.²⁰ This is what makes terrorism so difficult to grasp: all classical functions of criminal law and all classical theories about deterrence in international traffic fail to have any effect on religious terrorists.

As is well-known, we have undergone many traumatic experiences with religion as a factor in social tension and strife in Europe. In the 16th and 17th centuries, Europe was the scene of battle during the conflicts between Catholics and Protestants, a battle that was pacified with the rise of national states and the development of such principles as freedom of conscience, freedom of religion and freedom of speech. It is not inconceivable, however, that a new social contract of this kind will again have to be sought.

The 1990s were characterised by what has been called 'The Return of the Sacred' or '*La Revanche de Dieu*' (Gilles Kepel), and in particular, as mentioned above, 'The Return of Islam'.²¹ The challenge facing Western democracies in the years to come is to integrate religion into the liberal constitutional order.

3. DOES POLITICAL ISLAM POSE A THREAT TO THE WEST?

As we have seen, Fukuyama devoted hardly any attention to religion in 1989. As a matter of fact, this has not changed subsequently, which may explain why Fukuyama has paid so little attention to political Islam. He considers political Islam a movement that will not pose a challenge to the West, because political Islam is probably not a viable alternative to liberalism. Socialism and fascism were such alternatives. Fukuyama himself makes it clear that he is concerned with challenges to liberalism that manifest themselves 'in important social or political movements, and which are therefore part of world history.'²² Does political Islam satisfy this criterion? Fukuyama thinks not. This was his view not only in 1989 but also in 2004. In that year, he wrote: 'Al-Qaeda and other radical Islamist groups aspire to be existential threats to American civilisation but do not currently have anything like the

²⁰ See Cook, David, 'The Implications of 'Martyrdom Operations' For Contemporary Islam', in *Journal of Religious Ethics*, 2004 (32), pp. 129-151; Cook, David, *Understanding Jihad*, University of California Press, Berkeley, Los Angeles and London 2005; Broom, Mia, *Dying to Kill. The Allure of Suicide Terror*, Columbia University Press, New York 2005.

²¹ See Lewis, Bernard, *supra*, fn. 17, pp. 133-155.

²² See Fukuyama, *supra*, fn. 10, p. 413.

capacity to actualize their vision: They are extremely dangerous totalitarians, but pose threats primarily to regimes in the Middle East.²³

The theory Fukuyama presents here is frequently advocated by those who point out that Islamic fundamentalism actually testifies to the failure of political Islam rather than its success. Nowhere – except in Iran – have the political Islamists been able to install Islamic theocracies. This has exasperated the Islamists so much that they resort to violence. This violence takes the form of terrorism, but this terrorism does not show the power of political Islam, but its impotence. Fukuyama defines this theory as follows: ‘The global Nazi and communist threats were existential both because their banner was carried by a great power, and because ideologically there were many people in the United States and throughout the Western world seduced by their vision. The Islamist threat has no such appeal (...)’.²⁴

To be sure, communism and fascism represent a kind of threat to Western states that is *different* from the threat posed by Islamism. For example, Islamic states like Iran do not constitute a threat to the hated United States in the sense that tensions could result in a classical form of warfare that is potentially threatening to the United States. As Sadik Al-Azm puts it: the Islamic states are not in the same league as the West.²⁵ But those who are ‘not in the same league’ in the traditional sense of the word may still constitute a considerable threat in an entirely new sense.

Fukuyama thinks too much in the classical terms of danger and threat and perhaps also too much in terms of large numbers, because it may be true that the radicalism of political Islam is able to mobilize only few people in terms of *quantity*, but it seems that this small number of supporters is amply compensated by the fanaticism of the few who are inspired by it. The words spoken in this context by the American Arabist Bernard Lewis seem to be more sensible: ‘Terrorism requires only a few. Obviously, the West must defend itself by whatever means will be effective. But in devising means to fight the terrorists, it would surely be useful to understand the forces that drive them.’²⁶ This is a penetrating observation: ‘Terrorism requires only a few’.

²³ Fukuyama, Francis, ‘The Neoconservative Moment’, in *National Interest*, July 1, 2004.

²⁴ See Fukuyama, *supra*, fn. 10, p. 413.

²⁵ On the occasion of the presentation of the Erasmus Prize. Here quoted in: Ede Botje, Harm, ‘De voorgangers van Van Gogh’, in *Vrij Nederland*, 27 November 2004.

²⁶ Lewis, *The Crisis of Islam*, p. xxviii.

Incidentally, the flawed nature of Fukuyama's analysis relating to political Islam is also shown by the continuation of the passage quoted above. After Fukuyama has said 'the Islamist threat has no such appeal', he continues as follows: 'except perhaps in countries like France that have permitted high levels of immigration from Muslim countries.'

This is not an unimportant addition. After 11 September, after the murder of Theo van Gogh, after many other incidents, such as the attacks in London, which involved religiously motivated terrorists, this seems to be the concession to the power of religion Fukuyama is prepared to make. At this juncture, in 2004, he indicated that his optimistic assessment of the danger of Islamism was based on immigration figures and demographic relations in the United States. But in European countries, such as France – countries with a considerable Muslim population – this 'may be different'.

Accordingly, it seems perfectly justified to give some further thought to the challenge posed by political Islam to the Western countries – even on the basis of what Fukuyama *himself* writes about it.

4. RUSHDIE'S DEATH SENTENCE

The year 1989 saw not only the publication of Fukuyama's article and the Fall of the Berlin Wall, which had defined the ideological differences between the East and the West since the end of the Second World War, but also the emergence of a new actor on the stage of world history. This was the very 'crackpot messiah' about whom Fukuyama had spoken in such slighting but also soothing terms. One of the most striking letters in recent political history written by one head of state to another was sent in that very year of 1989. The letter was sent by Ayatollah Khomeini to Michael Gorbachev. In this letter of January 1989, Khomeini commented on the failure of Marxism ('henceforth communism should be found in the museums of world political history'). That should not drive Gorbachev in the hands of liberalism, Khomeini argued. He should not look to the West for spiritual renewal, but 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', the Iranian leader wrote to his disillusioned colleague. '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.²⁷

This letter breathes enormous self-confidence, which is also expressed in the pretensions of the fatwa Khomeini issued against Rushdie. Since 1570, when Pope Pius V issued the bull *Regnans in excelsis*, in which he called on the population to resist the British Queen Elizabeth I, no spiritual leader had addressed the British secular authorities in this manner. The pretensions of this kind of fatwa are far-reaching, as we are gradually beginning to realise. How can an Iranian spiritual leader claim jurisdiction over a *British* writer?

In a way, this is related to the specific nature of Islam, but also to the conditions under which we live nowadays. This specific nature of Islam means that Muslims believe in the revealed Word of God, whose Will has been written in a Holy Book, which prescribes rules of life that may under no circumstances be violated.

Of course, this was not a new theory. It is not even a theory that needs to result in insuperable problems under conditions other than those under which we live today. Khomeini's theory, for example, would not be too great a problem in a homogeneous society in which people sharing the territory of the state believe in one and the same god. That is no longer the case, however, in the world in which we live. We live in a globalising world, in which people with the most different religious views live more-or-less next to each other. This 'living next to each other' may actually mean living physically next to each other, but it may also concern a situation in which the modern means of communication inform us about what happens in other parts of the world at amazing speed. It is a cliché, but the world has become smaller. Anyone who publishes a book in Britain may deeply insult a person in Iran or Pakistan with it (as actually happened with Rushdie's book). In the new global world, everybody feels 'vulnerable'. Everybody is aware that he or she is directly confronted with a world that remained hidden from him or her in the past or about which it was extremely difficult to gain any knowledge.

This vulnerability means that people feel that they have to 'defend' themselves. And the act of defending oneself may be accompanied by 'force'.

Terrorist violence manifests itself in two ways. First of all, in the attacks in London, Madrid and the United States of America, a group of terrorists place a bomb on an underground train, in a train station or another place

²⁷ Quoted in Pipes, Daniel, *supra*, fn. 3, p. 192.

where many people are gathered. The victims are random strangers, or at least their only involvement in the 'conflict' is that they are part of the culture that is rejected by pious believers or that they have tolerated the wrong government (in democracies nobody is innocent, terrorists tend to say, because the citizens in a democracy tolerate their governments). A second kind of attack is the targeted killing of people the radicals accuse of insulting Islam. Examples of the latter include the fatwa against Rushdie, the murder of Dr. Farag Foda on 8 June 1992, the attack on Egypt's Nobel laureate writer Naguib Mahfuz, who 'was stabbed in order to silence and intimidate outspoken critics of fundamentalists' in 1994,²⁸ the murder of Theo van Gogh on 2 November 2004²⁹ because he had insulted the Prophet, and the calls for the killing of cartoonists who satirised the Prophet Muhammad in February 2006.

With the murder of Theo van Gogh, a new chapter in the history of political-religious terrorism on European soil was written. Before the murder of Van Gogh, religious terrorism had been confined to collective attacks. With the murder of van Gogh, the practice of murdering individuals, such as Farag Foda in Egypt, had come to Europe.

Present-day religious terrorism is different from traditional terrorism in yet another respect: the use of violence against people because of their ideological views or the opinions they express. Pim Fortuyn had become a prominent politician in the Netherlands, van Gogh was only a writer and film-maker.

This means that the ambitions of modern religious terrorists are different from those of the terrorists of the past. They attempt to hit Western societies in the heart of their existence. This heart is the free discussion of political views, scientific views and religious views.

The latest conflict is relatively recent and, by way of illustration, it will be dealt with in somewhat greater detail.³⁰

5. THE DANISH CARTOON AFFAIR

In September 2005, the Danish newspaper *Jyllands Posten* published a series of 12 cartoons about the Prophet Muhammad, which triggered a great

²⁸ Esposito, John L., *Unholy War: Terror in the Name of Islam*, Oxford University Press, New York 2002, p. 92.

²⁹ See Jansen, Johannes, *The Dual Nature of Islamic Fundamentalism*, Cornell University Press, Ithaca, New York 1997, p. 113.

³⁰ See 'Woede over cartoons raast voort', in *Trouw*, 1 February 2006.

many protests, death threats, mass demonstrations, and diplomatic boycotts. Initially, only Danish Muslims were angry about the cartoons, but after some time it escalated into an international row.

For example, when the interior ministers of the Arab League gathered in Tunis on 31 January 2006, they opened the attack on what they perceived as the Western principle of freedom of speech and requested the Danish Government to punish the relevant cartoonists 'severely'.

On 31 January 2006, the editorial office of *Jyllands Posten* in Aarhus was evacuated following a bomb alert. The Pakistani Jamaat-e-Islami offered a reward of 8000 dollars to anyone who managed to murder one of the cartoonists. This meant that once again a reward was offered for murdering people because of their views. This time it did not concern views expressed in a novel but views expressed in cartoons.

Throughout the world, there was a storm of protest against the cartoons, and supporters and opponents were at each other's throats, which claimed several victims.

In this respect, there seems to be a contrast between the predominant opinion in the Western world and the predominant opinion in Islamic countries. Muslims – and perhaps not just radical Muslims – think that insulting the Prophet constitutes an absolute limit to what can be tolerated in the name of the freedom of speech. The writer Theo van Gogh was killed because he had insulted the Prophet. Of course, many Muslims reject this kind of murder, but the cartoon affair shows that insulting the Prophet is a very sensitive issue in the Islamic world, and not just among religious fanatics.

It is often said that the issue should be resolved by considering each other's sensitivity, by refraining from hurting each other's feelings. In fact, the Danish cartoons affair is a repeat of the Rushdie affair. The Iranians could not understand in 1989 why the British Government did not take disciplinary action against the writer Rushdie, who had insulted the Prophet in his book *The Satanic Verses*. The British had made it clear that they were not happy with the book either, had they not? The British made it clear that they did not want to insult Muslims. Why was the book not banned? Why was the book not withdrawn from the market?

These are obvious demands from the perspective of a dictatorial regime. Any failure to meet these demands cannot but be regarded as hypocrisy on the part of the Western states.

When viewed from a Western perspective, on the other hand, it is virtually impossible to punish a writer for what the characters in his novel say. There are similar problems when it comes to prohibiting cartoons. Any artist faced with a statutory ban against making cartoons could challenge this statute immediately on account of its inconsistency with the Constitution or with a provision from one of the human rights conventions.

In addition, it is virtually impossible for any government in a Western state under the rule of law, to control all manifestations the new means of communication allow (the Internet, for example). This means that those who want to prohibit cartoons and novels place high demands from a legal perspective and their demands are also technically impossible. It may sound far-fetched, but it seems justified to conclude that prohibiting simple cartoons or novels would require a Western open society to transform itself into a dictatorship.

It does not seem to be overly pessimistic to claim that there is a fundamental clash between the predominant opinion in the Western world and the predominant opinion in Islamic states in relation to matters such as freedom of speech, freedom of religion,³¹ equality before the law between men and women, and sexual freedom.³² In all likelihood, this clash will continue to be a source of conflicts³³ between population groups sharing territory in one and the same state, but also between states and, above all, between terrorist and fundamentalist religious groups on the one hand and Western states on the other, whereby terrorists will use the ultimate instrument (murder) to destabilize and intimidate Western societies.

We should not forget that many of the attacks committed by religious terrorists are connected with what may well be regarded from the Western perspective as the core principle of Western freedom: the freedom of speech and the freedom of religion.³⁴ When viewed from the Islamic perspective,

³¹ See Warraq, Ibn, ed., *Leaving Islam. Apostates Speak Out*, Prometheus Books, Amherst, New York, 2003.

³² Howland, Courtney, ed., *Religious Fundamentalism and the Human Rights of Women*, Palgrave, New York 2001.

³³ On the introduction of parts of Sharia in Western legal systems, among other issues, see Marshall, Paul, ed., *Radical Islam's Rules. The Worldwide Spread of Extreme Shari'a Law*, Rowman & Littlefield Publishers, Inc., Lanham etc. 2005.

³⁴ The basis for the other fundamental rights. On this subject, see Jellinek, George, *Die Erklärung der Menschen- und Bürgerrechte*, Vierte Auflage, in Dritter Auflage bearbeitet von Walter Jellinek, Duncker & Humblot, München und Leipzig 1927.

these attacks are connected with the holiest of the holiest: God and the Prophet.

6. THE CONTEXT OF GLOBALISATION SHARPENS THE DIFFERENCES

Naturally, the question to be addressed is whether we are facing a problem of radical Islam,³⁵ Islam,³⁶ monotheism,³⁷ religion, or fanaticism?³⁸ It lies outside the scope of this Chapter to deal with this question, but the point we can make is that conflicts that did not exist or were only of local significance in the past have a much greater impact in this day and age. This was already shown by the conflict about the publication of Rushdie's *The Satanic Verses*, but is also clear from the Danish cartoons affair. It was a *Pakistani* organisation that offered a reward for the murder of cartoonists in *Denmark*. It was *Iraqi* terrorists who took *French* tourists hostage because they wanted to exert influence on French legislation.³⁹ After the *Dutch* Member of Parliament Hirs Ali had made some remarks about the Prophet Muhammad, representatives of the *international* Organisation of Islamic Conference reported to the Chairman of the parliamentary party of the Dutch Liberals (*VVD*) in order to complain about the discourteous treatment of the Prophet by a Liberal Member of Parliament.⁴⁰ A *Danish* imam informed Al-Jazeera about the cartoons

³⁵ This is the opinion of Tibi, Bassam, *Der neue Totalitarismus*. Heiliger Krieg und westliche Sicherheit, Primus Verlag, Darmstadt 2004.

³⁶ This is the opinion of Spencer, Robert, *Islam Unveiled*. Disturbing Questions About the World's Fastest-Growing Faith, Encounter Books, San Francisco 2002; Spencer, Robert, *Onward Muslim Soldiers*. How Jihad Still Threatens America and the West, Regnery Publishing, Inc., Washington 2003; Raddatz, Hans-Peter, *Allahs Frauen*. Djihad zwischen Scharia und Demokratie, Herbig, München 2005.

³⁷ Kirsch, Jonathan, *God against the Gods*. The History of the War between Monotheism and Polytheism, Viking Compass, New York 2004.

³⁸ As is argued by Laqueur, Walter, *Krieg dem Westen*. Terrorismus im 21. Jahrhundert, Propyläen, München 2003.

³⁹ 'Headscarf, the reason for kidnapping', in *De Telegraaf*, 30 August 2004: In August 2004, two French journalists were kidnapped by Iraq Muslim terrorists. The journalists involved were Christian Chesnot from *Radio France International* and George Malbrunot from *Le Figaro*. They were kidnapped by the Islamic Army, which killed the Italian journalist Baldoni on 26 August 2004. The terrorists threatened to behead the journalists if France did not immediately lift the headscarf ban in French schools.

⁴⁰ On 26 February 2003, a letter was sent to the Chairman of the parliamentary party of the *VVD*, Gerrit Zalm. The letter was sent by 21 members of an Islamic organisation known

affair, as a result of which the conflict took an *international* dimension. And so on and so forth. In this context, globalisation presents an important problem: the national borders seem to crumble.

Because different parties rely on the concept of 'self-defence', it is important to reflect on its nature, as it forms a second core concept of the argument advanced in this Chapter.

7. THE CONCEPT OF SELF-DEFENCE

Self-defence is considered to be a fundamental principle of law. It is an inherent right that, according to the great Roman lawyer, philosopher and statesman Cicero has the status of a natural law principle: 'There exists a law, not written down anywhere but inborn in our hearts; a law that comes to us not by training or reading but from nature itself (...) that if our lives are endangered, any and every method of protecting ourselves is morally right.'⁴¹

According to contemporary standards relating to rights and morals, this formulation is much too broad. Numerous questions of interpretation present themselves. Is it true that the right to self-defence is a natural law principle? Is it really inborn in our hearts and not acquired by training? Is really *every* method of protecting ourselves morally right if our lives are endangered? Or should we even then restrain ourselves to proportional violence?

We can also formulate interesting questions regarding the interpretation of the word 'lives'. 'If our lives are endangered, any and every method of protecting ourselves is morally right.' What does that mean? Is 'lives' only our biological lives? That would mean that self-defence would not be allowed if I am attacked for the purpose of being sold as a slave (it is not my life that is in danger, but my freedom). Is self-defence possible only if my *own life* is attacked or also the lives of my relatives, my friends and compatriots?

as the 'Organisation of the Islamic Conference' (OIC). The signatories of the letter complained about the 'insulting comments made against the Prophet Muhammad by a newly elected Member of Parliament, Ms. Ayaan Hirsi Ali' in the newspaper *Trouw* of 25 January 2003. Hirsi Ali had called Muhammad a 'perverse man', because he was married to a nine-year-old girl: Aisja.

⁴¹ The Second Amendment: America's First Freedom, by Charlton Heston, Fall 1999 *Human Rights Magazine*.

And finally: who decides what is my 'self'? Can I define my 'self' as my 'honour', my ethnic and religious pride? And, most important, perhaps, can I define my 'self' with reference to the Prophet, so that I am justified in defending my 'self', when the Prophet is insulted?

On this particular point, there seems to be a great difference of opinion between the Western world on the one hand and some parts of Islamic culture on the other, as the row over the Danish cartoons has demonstrated. In Islamic culture there seems to be not only a different conception of 'self', but also a different conception of 'violence' and 'attack'. Self-defence is considered to be justified not only in the case of an *armed* attack on the *physical integrity* of the state, but also when the Prophet's honour is violated or when 'Islam' is threatened by means of speech and even drawings.

In Lucknow, the capital of the Indian state of Uttar Pradesh, an Islamic court issued a death sentence against the 12 cartoonists of the Danish Muhammad cartoons on 20 February 2006. This also took the form of a fatwa, a religious ruling. The religious head of the court, Maulana Mufti Abul Irfan, declared: 'Death is the only sentence for the sacrilege of the cartoons.'⁴² Irfan claimed that the court's opinion was binding on all Muslims, wherever they were.⁴³

Some questions that can be posed in the footsteps of Cicero's formulation of self-defence have been answered by courts dealing with cases in which these questions were relevant.

As would be expected, self-defence has a place in national penal law, but also in international law. According to the law of nations, the *state* is an entity that is allowed to defend itself. And what the state is allowed to defend is its *territorial integrity*. Some writers infer this from the concept of a sovereign state. 'A sovereign state is entitled to defend itself, that is, to protect its territorial integrity.'⁴⁴ According to Wheaton, the right to self-preservation is an absolute right, lying at the foundation of all the other rights of states.⁴⁵ A state's right of self-defence is nowadays recognized in Article 51 of the United Nations Charter: 'Nothing in the present Charter shall impair the inher-

⁴² 'Iran, too, wants to soothe the cartoons affair', in: *NRC Handelsblad*, 21 January 2006.

⁴³ 'Islamic court in India issues death sentence to cartoonists', in *Agence France Press*, 20 February 2006.

⁴⁴ Janis, Mark W., *An Introduction to International Law*, Second Edition, Little Brown and Company, Boston etc. 1993, p. 179.

⁴⁵ Cited in Janis, *supra*, fn. 44, p. 178.

ent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations (...).’ Concomitant with Article 51’s right to self-defence is Article 2(4)’s prohibition against ‘the threat or use of force against the territorial integrity or political independence of any state.’

The classic definition of the right of self-defence in customary international law was formulated in the *Caroline* case. As a result of this case, the American Secretary of State laid down the essentials of self-defence that made history. There had to exist ‘a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation.’⁴⁶

The history of the case goes back to the middle of the 19th century. In 1837, the British tried to crush a rebellion in Upper Canada. The United States was unwilling to antagonize the British by giving direct support to the rebels, but did not prevent the formation of private militias in New York. The volunteers used a steamboat, the *Caroline*, to transport arms and men to the rebel headquarters of Navy Island, on the Canadian side of the Niagara River. The British responded with a night raid. They captured the boat, as it docked at Fort Schlosser, New York, set it on fire and sent it over Niagara Falls. Two men were killed as they fled the steamer.⁴⁷

The incident meant that the British had intervened on US territory. The British justified their action by saying that the destruction of the *Caroline* was an act of ‘necessary self-defence’.

In 1842 the incident was discussed again when the two parties tried to settle the case amicably. On this occasion, the American Secretary of State, Daniel Webster, presented his famous definition of self-defence. He conceded that the use of self-defence could be justified in some circumstances. He said:

‘Undoubtedly it is just, that, while it is admitted that exceptions growing out of the great law of self-defence do exist, those exceptions should be confined to cases in which the necessity of that self-defence is instant, overwhelming, leaving no choice of means, and no moment for deliberation’.⁴⁸

Webster added that nothing ‘unreasonable or excessive’ could be done in self-defence. Since then these parameters of customary international law have

⁴⁶ Cited in Shaw, Malcolm, *International Law*, Third Edition, Grotius Publications, England 1991, p. 692.

⁴⁷ Byers, Michael, *War Law*. International Law and Armed Conflict, Atlantic Books, London 2005, p. 53.

⁴⁸ Cited in Byers, *supra*, fn. 47, p. 54.

been accepted by other governments: 'necessity' and 'proportionality' were the keywords. Force used in self-defence must be 'necessary' and 'proportional' to the seriousness of the armed attack.⁴⁹

Although much effort has been made to present a viable concept of justified self-defence, the content of Article 51 is very much rooted in customary international law.⁵⁰

First, there is the question of territory. The attack that gives rise to the right of self-defence need not necessarily be directed against a state's territory. Article 6 of the North Atlantic Treaty 1949 provided for collective self-defence against 'an armed attack on the territory of any of the parties in Europe or North America (...), on the occupation forces of any of the parties in the North Atlantic area (...) or on the vessels or aircrafts in this area of any of the parties'.⁵¹ In the *Corfu Channel* case, the International Court of Justice held that British warships under attack in foreign territorial waters were entitled to return fire.

Another question is whether the right to self-defence can be invoked when a state's citizens are attacked. Can the right to self-defence also be invoked when a state's nationals resident abroad are attacked? Most writers do not think so.⁵²

There are also some important questions concerning the notion of 'armed attack'. What is the precise extent of the right of self-defence? Can it be resorted to only 'if an armed attack occurs' or also in other circumstances? And what is 'armed attack'? The Court noted that this includes not only action by regular armed forces across an international border, but also other activities similar to an armed attack.

8. CAN THE AMERICANS INVOKE SELF-DEFENCE IN THE WAR ON TERROR?

Naturally, international law may adhere to a limited conception of self-defence. In that case self-defence could be justified if

⁴⁹ *Nicaragua v USA*, *ICJ Reports*, 1986, pp. 14, 94 and pp. 122-123.

⁵⁰ This is the opinion of Byers, see above, fn. 47, p. 56.

⁵¹ Akehurst, Michael, *A Modern Introduction to International Law*, Sixth Edition, Harper Collins Academic, London 1991 (1970), p. 264.

⁵² *Idem*.

- a state (and not a group of people);
- is physically attacked (i.e. by military means, not by words);
- by another state;
- and the Security Council has authorized this.

The United States were not attacked by a state, but by an organisation (Al-Qaeda), perhaps backed by one or more states.⁵³

About one year after 11 September 2001, the Bush administration presented a new national security plan: The National Security Strategy of the United States of America (2002).⁵⁴ The Bush administration does not deny that the events of 9/11 were a major factor in its drafting. 'The events of September 11, 2001, fundamentally changed the context for relations between the United States and other main centres of global power', the plan states.⁵⁵ And another passage reads: 'The major institutions of American national security were designed in a different era to meet different requirements. All of them must be transformed.'⁵⁶ It is hard to deny that the American administration presented a very controversial plan, but it cannot be denied either that it is based on a consistent idea. In fact, the guiding ideas are mentioned in the introduction and are elaborated in the succeeding chapters. One could characterize the plan or the memorandum on the basis of five pillars or themes. The plan itself does not distinguish these very clearly, but it may clarify matters to present it in this way.

First pillar: communism defeated. The first pillar of the plan comprises an historical assertion, and one which is not particularly controversial. It means that the world has fundamentally changed as a result of the disappearance of the Soviet Union as a world power and the disappearance of communism as the ideology that poses a challenge to the Western world. 'The great struggle of the twentieth century between liberty and totalitarianism ended with the victory of the forces of freedom', the Bush administration writes.⁵⁷

⁵³ See Franck, Thomas M., 'Terrorism and the Right of Self-Defense', in *The American Journal of International Law*, Vol. 95, No. 4 (Oct., 2001), pp. 839-843, who criticizes the grounds for the European condemnation of the US.

⁵⁴ <http://www.whitehouse.gov/nsc/nss/html>.

⁵⁵ *The National Security Strategy of the United States of America*, p. 28.

⁵⁶ *Ibid.*, p. 29.

⁵⁷ *Ibid.*, introduction.

Second pillar: rejection of cultural relativism. The second policy pillar is defined less explicitly and certainly not in the terms I will now use, yet it constitutes an unmistakable element of the United States' new security strategy and the underlying world view. This second pillar is the rejection of cultural relativism.

Cultural relativism is the conviction that every culture has its own values and standards that cannot be traced to another culture.⁵⁸ Morality is always local morality. Politics is always local politics. Any idea that there is such a thing as universal morality, values and standards that apply to all people is an illusion. The American policy memorandum rejects this cultural relativism and argues in favour of universality.

People everywhere want to be able to speak freely; choose who will govern them; worship as they please; and enjoy the fruits of their labour. These values of freedom, the plan continues, are 'right and true for every person, in every society'.⁵⁹

In this way the Bush administration does not comment on the time in which we live (as with the first pillar), but it commits itself to a philosophical position. It embraces the universalist position of the natural-law doctrine or of universal morality. It rejects the principles of cultural relativism that indicate that values and standards are a matter of local customs without any claim to universality. A phrase that is sometimes used in this context is that certain values 'are non-negotiable'. The strategy plan defines it as follows: 'America must stand firmly for the non-negotiable demands of human dignity: the rule of law; limits on the absolute power of the state; free speech; freedom of worship; equal justice; respect for women; religious and ethnic tolerance and respect for property.'⁶⁰ In the same way that Cicero bases the right of self-defence on a universal human nature, other values may be derived from this human nature.⁶¹ The US also indicates that it wants to propa-

⁵⁸ See Rachels, James, 'The challenge of cultural relativism', in *The Elements of Moral Philosophy*, Fourth edition, McGraw-Hill Inc., New York etc. 2003 (1986), pp. 61-31, p. 18/19; Donnelly, Jack, 'Cultural Relativism and Universal Human Rights', in *Human Rights Quarterly*, 6 (1984), pp. 400-419; Gensler, Harry, 'Cultural Relativism', in *Ethics*, Routledge, London & New York 1998, pp. 11-20.

⁵⁹ *The National Security Strategy of the United States of America*, introduction.

⁶⁰ *Ibid.*, p. 3.

⁶¹ With respect to human nature as the basis for natural law, see Gardner, Martin, 'Beyond Cultural Relativism', in Gardner, Martin, *The Night is Large. Collected Essays 1938-1995*, Penguin Books, London 1996, pp. 149-161.

gate these values across the world: 'the United States will use this moment of opportunity to extend the benefits of freedom across the globe.'⁶²

Third pillar: American supremacy. The third pillar is in fact the military-strategic counterpart of the first pillar. The third pillar means that the United States of America is the only superpower left. This position entails certain obligations, the Americans argue.

Today, the United States enjoys a position of unparalleled military strength and great economic and political influence.⁶³

Fourth pillar: all the same, the world has not become a safer place. It could be argued that the fourth observation is the most innovative. It is an idea fostered by 9/11: in spite of the first three points, the world has not become a safer place for Americans, or for others.

In this modern world, however, the threats to freedom are different from those of the Cold War. The threats are no longer posed by large states, but by 'shadowy networks of individuals' that may cause considerable damage. These networks 'can bring great chaos and suffering to our shores' for less than the cost of purchasing a single tank.⁶⁴ The biggest threat, according to the Bush administration, lies 'at the crossroads of radicalism and technology.'⁶⁵ For example, the opponents of the US claim that they are attempting to develop or have already developed weapons of mass destruction.

Another way of putting it is as follows. The danger is no longer posed by strong states but by weak states, because the latter states often provide the space within which terrorist organisations can develop. What 11 September 2001 has taught us, the Bush administration writes, is 'that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states.'⁶⁶ 'America', it writes, 'is now threatened less by conquering states than we are by failing ones. We are menaced less by fleets and armies than by catastrophic technologies in the hands of the embittered few.'⁶⁷

Incidentally, this part of American thinking about defence is broadly supported, even by some critics of American policy. For example, Fukuyama writes: 'The fact is that the chief threats to us and to world order come today

⁶² *The National Security Strategy of the United States of America*, introduction.

⁶³ *Ibid.*, introduction.

⁶⁴ *Idem.*

⁶⁵ *Idem.*

⁶⁶ *Idem.*

⁶⁷ *Ibid.*, p. 1.

from weak, collapsed, or failed states. (...) Before 9/11 the United States felt it could safely ignore chaos in a far-off place like Afghanistan; but the intersection of religious terrorism and weapons of mass destruction has meant that formerly peripheral areas are now of central concern.⁶⁸

The danger is also called 'terrorism'. According to the plan, the United States of America 'is fighting a war against terrorists of global reach. The enemy is not a single political regime or person or religion or ideology. The enemy is terrorism – premeditated, politically motivated violence perpetrated against innocents.'⁶⁹ Poverty alone does not cause terrorism, the plan claims, but poverty in combination with weak institutions, a corrupt state and terrorist networks constitutes a deadly danger.⁷⁰

Besides terrorism, the plan refers to 'rogue states' as a big threat to the US.

Fifth pillar: The US must defend itself. So far the plan has not legitimized regime change, humanitarian interventions or pre-emptive strikes in self-defence. It is perfectly possible to take the view (a) that communism has been defeated; (b) that the time has come in which all people, all over the world, should be entitled to the same rights; (c) that US military supremacy is firmly established and (d) that the world has not become a safer place in spite of the earlier processes; it is possible to endorse all four points (in other words, the first four pillars) and *still* maintain that the United States does not have the right to preserve order in the world as the unipolar⁷¹ superpower or take defensive action against foreign attacks without the explicit support of the Security Council of the United Nations.⁷²

⁶⁸ Fukuyama, Francis, 'Nation-building', in *The Atlantic Monthly*, 293 (1), pp. 159-162. See also Fukuyama, Francis, *State-Building*. Governance and World Order in the Twenty-First Century, Profile Books, London 2004, preface.

⁶⁹ *The National Security Strategy of the United States of America*, p. 5.

⁷⁰ This idea is also expressed in Pipes, Daniel, 'God and Mammon: Does Poverty Cause Militant Islam?', in *National Interest*, Winter 2002, and also at www.danielpipes.org/article/104.

⁷¹ This term was introduced by Charles Krauthammer. See Krauthammer, Charles, *Democratic Realism: An American Foreign Policy for a A Unipolar World*, The 2004 Irving Kristol Lecture, the American Enterprise Institute, Washington, DC. 'The unipolar moment has become the unipolar era', said Krauthammer in the years 1990-1991. This view was shared by intellectuals who had gathered round the journal *The National Interest*, people such as Irving Kristol, Bill Kristol, Samuel Huntington, Paul Wolfowitz, Norman Podhoretz and Daniel Pipes.

⁷² As a substantial proportion of the commentaries indicate. See, for example: Charney, Jonathan, 'The Use of Force against Terrorism and International Law', in *The American Jour-*

But that is not the conviction of the Bush administration. As presented in September 2002, the plan has a fifth pillar. The Bush administration infers a fifth point from the preceding four points, namely that the United States must defend itself: 'To defeat this threat, we must make use of every tool in our arsenal – military power, better homeland defences, law enforcement, intelligence, and vigorous efforts to cut off terrorist financing.'⁷³

The passages in which the Bush administration indicates that it wants to confront the dangers differently from in the past are undoubtedly the most important part of the document. It does not want to wait passively until disaster strikes but to intervene before the danger has fully materialized: 'America will act against such emerging threats before they are fully formed.'⁷⁴ And another passage reads: 'Nations that enjoy freedom must actively fight terror.'⁷⁵ The word 'prevention' is used regularly in the plan. The United States of America will 'prevent our enemies from threatening us'.⁷⁶

The policy memorandum also invokes the notion of 'self-defence'. It is noted that the US will do everything possible to maintain alliances with others, but if this is not successful, it will have to act alone. 'While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting pre-emptively against such terrorists, to prevent them from doing harm against our people and our country.'⁷⁷ And a little later we find the following passage: 'To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act pre-emptively.'⁷⁸

It justifies this new approach by claiming that the traditional concepts of deterrence will not work in the new situation. 'Traditional concepts of deterrence will not work against a terrorist enemy whose avowed tactics are wanton destruction and the targeting of innocents; whose so-called soldiers seek martyrdom in death and whose most potent protection is statelessness.'⁷⁹

nal of International Law, Vol. 95, No. 4 (Oct., 2001), pp. 835-839. This was criticised by Franck, Thomas, 'Terrorism and the Right of Self-Defense', in *The American Journal of International Law*, Vol. 95, No. 4 (Oct., 2001), pp. 839-843.

⁷³ *The National Security Strategy of the United States of America*, introduction.

⁷⁴ *Ibid.*, introduction.

⁷⁵ *Idem.*

⁷⁶ *Ibid.*, p. 1.

⁷⁷ *Ibid.*, p. 6.

⁷⁸ *Ibid.*, p. 15.

⁷⁹ *Idem.*

The last passage quoted above allows us to catch a glimpse of the nature of the terrorist danger that the US fears: it concerns a kind of terrorism whose 'soldiers' seek martyrdom. This is the only reference to the nature of the terrorist danger. It concerns religious terrorism and – it is safe to assume – primarily the terrorism that is created by Islamic groups and persons. The Bush administration is deliberately very cautious, however, in referring to the religious background of the threat. The latter finds expression only in the reference to 'martyrs'.

9. CRITICISM AND THE NEW POLICY IN THE USA

The new defence policy of the US has aroused a storm of criticism. According to Jonathan Charney, the new US policy is disastrous.⁸⁰ Actions in self-defence under Article 51 of the Charter, uses of force against the territorial integrity or political independence of another state, must be authorized by the Security Council under Chapter VII. Article 2(4) prohibits both the conduct of a just war and forceful reprisals.⁸¹ The use of force in self-defence is limited to situations where the state is truly required to defend itself from serious attack. 'In such situations, the state must carry the burden of presenting evidence to support its actions, normally before these irreversible and irreparable measures are taken. The United States should have disclosed the factual bases for its claim of self-defence against the terrorist attacks before engaging in military action.'⁸² Over the long term, the interests of the United States and the international community will be best served by the Charter-based system of world order. 'If international terrorists have a coherent goal, it is to undermine this system – an objective the United States is perhaps unwittingly promoting by its actions.'⁸³

The French philosopher Tzvetan Todorov is another opponent of this American defence policy. Todorov believes that the policy is guided by an entirely new view on humans and society. According to this view, there are no limits to the extent to which government action can transform society. This is also called neo-conservatism, but, in Todorov's opinion, this is not

⁸⁰ Charney, see above, fn. 72, pp. 835-839.

⁸¹ Ibid., p. 835.

⁸² Ibid., p. 836.

⁸³ Ibid., p. 838.

quite correct. It could also be called 'neo-fundamentalism'. The architects of the new security policy are 'fundamentalists', as they use the concept of Absolute Goodness as a guideline they wish to prescribe to everyone in a binding manner. It is called 'neo', because it is not dictated by God but by the values of liberal democracy. '*Les fondamentalistes croient aux valeurs absolues, ils rejettent donc le relativisme ambiant, les excuses données aux entorses de la démocratie par les multiculturalistes, la langue de bois du 'politiquement correct'*'.⁸⁴ The idea that government action can transform society is predominant. That is why it is hardly surprising that most neo-conservatives used to be Trotskyists or Maoists.⁸⁵

This is not the strongest part of Todorov's criticism, however, because the neo-conservatives would, perhaps, not deny that they still believe in the idea that government action can transform society.

An interesting point in Todorov's criticism of the American intervention in Iraq and other areas is that a democracy should never impose its values on others. Todorov puts it as follows: '*Dans une démocratie, il n'a pas le droit d'imposer son propre mode de vie aux autres par la force.*'⁸⁶ Anyone who does do so is called a 'fundamentalist'.

This is, of course, a rather tendentious representation of the facts. As if it concerned the imposition of a 'mode de vie'. Legitimation of military intervention may be based on humanitarian considerations (in other countries fundamental rights are violated on such an enormous scale that it would be irresponsible to stand by and watch)⁸⁷ and considerations of self-defence (to which we will confine ourselves in this Chapter). Naturally, it is never about imposing another way of life!

A second issue concerns Todorov's suggestion that a democracy should never be allowed to impose its values *by force*. This would mean that democ-

⁸⁴ Todorov, Tzvetan, *Le Nouveau Désordre mondial*. Reflexions d'un Européen, Préface de Stanley Hoffmann, Robert Laffont, Paris 2003, p. 36. Todorov's view bears some resemblance to the view of those who believe that both the United States of America and its fundamentalist opponents in the Middle East are guided by a form of fundamentalism. This view is expressed by Ali, Tariq, *The Clash of Fundamentalisms*. Crusades, Jihads and Modernity, Verso, London and New York 2002, and Sim, Stuart, *Fundamentalist World*. The New Dark Age of Dogma, Icon Books UK, Totem Books USA 2004.

⁸⁵ Todorov, see above, fn. 84, p. 36.

⁸⁶ Ibid., p. 39.

⁸⁷ On this subject, see Cushman, Thomas, ed., *A Matter of Principle*. Humanitarian Arguments for War in Iraq, University of California Press, Berkeley, Los Angeles, London 2005.

racies should, by the nature of things, be pacifist. This is a far-reaching claim, which raises the question whether Todorov confuses the *internal functioning* of democracy with the question whether democracy *may be created through military intervention*. It is true that a democracy is characterized by the fact that political elites succeed each other without the use of force. But this does not mean that democracies have to be pacifist *in their relations with the outside world*. Nor does it rule out that democracies may be established by force. One may oppose such developments, but it is highly questionable whether this opposition can be legitimized on the basis of any reflection on the nature of the ideal of 'democracy', as Todorov suggests.

Todorov thinks that democracy means that every people is sovereign and that it has the right to define itself what it considers to be good. ('*La démocratie signifie que chaque peuple est souverain, qu'il a donc aussi le droit de définir pour lui-même le Bien, plutôt que de se le voir imposer du dehors.*') But here Todorov is mistaken in the sense that a specific people's decisions command respect only if this people reaches a decision through a democratic process. In other words: a people must *first* achieve a democracy *before* it earns respect for its own choices.

If we take this argument to its logical conclusion, this naturally leads to the position that only democracies should not have to fear interventions by foreign states, whereas dictators can be overthrown with impunity by powers that are democracies themselves. Is this correct?

This may be morally correct, even though it is arguably undesirable from a pragmatic perspective, because it puts the world's security at too much risk.

This latter consideration seems to be decisive in Francis Fukuyama's criticism of the Bush administration. As a matter of fact, Fukuyama's analysis of the state of the world resembles that of the neo-conservatives (to which he belongs, according to some people) and that of the Bush administration in many respects. Nevertheless, he makes some critical comments on the new defence policy of the United States in the light of the great ambitions that may not be achieved.⁸⁸ Fukuyama also criticizes the Americans' 'voluntarism': the optimistic idea that it is possible to establish democracies everywhere, independently of tradition and context. And like Todorov, Fukuyama considers the neo-conservatives to be the architects of the new policy. For

⁸⁸ Fukuyama, Francis, 'The Neoconservative Moment', in *National Interest*, July 1, 2004.

example, Fukuyama comments on Charles Krauthammer's opinion on American unipolarity.⁸⁹

His criticism is, however, mainly based on his assessment that the United States of America overestimates its power. If considered in terms of the various pillars of the American strategy plan of 2002, one may well argue that Fukuyama agrees with the first pillar (the defeat of communism), the second pillar (rejection of cultural relativism), the fourth pillar (the world has not become a safer place), but that he questions the third pillar (American supremacy) and fifth pillar (we must defend ourselves militarily).

As we have seen above, Fukuyama's diagnosis is poor where it concerns the analysis of the causes of the current threats posed to social cohesion in Western states. Political Islam constitutes this threat. This political Islam cannot yet organise traditional armies, as the Soviet Union could, but it is widely supported in 'weak states' and it appeals to the rootless in the Western world.

The problem that seems to occur in this context is that Western multicultural states now have a population of which a proportion trust the traditional institutions that have taken shape since the 17th and 18th centuries and that can be referred to briefly as: democracy, state under the rule of law, and human rights (which are ultimately defined in the Universal Declaration of Human Rights of 1948). On the other hand, a proportion of the population feels alienated from society and seeks refuge in a form of radical religiosity, in particular, that of radical Islam. Roger Scruton defines it as follows: 'Western civilisation has left behind its religious belief and its sacred text, to place its trust not in religious certainties but in open discussion, trial and error, and the ubiquitousness of doubt.'⁹⁰ A considerable group of radical Islamists, however, experience this rational discussion, this trial and error and the 'ubiquitousness of doubt' as an enormous attack on their faith, against which they may defend themselves, in their opinion, by using all means, even violent ones, with a plea based on the right of self-defence.

⁸⁹ Other books and articles in which the neo-conservative view is clearly expressed include Frum, David, & Perle, Richard, *An End to Evil*. How to Win the War on Terror, Ballantine Books, New York 2003; 'Part II, Neoconservatives and Foreign Policy with Some Comments by Friendly Dissenters', in: Stelzer, Irwin, ed., *Neoconservatism*, Atlantic Books, London 2004, pp. 53-141; and for the older neo-conservatism: 'Security and Freedom: Making the World Safe with Ronald Reagan', in Gerson, Mark, ed., *The Essential Neoconservative Reader*, Addison-Wesley Publishing Company, Inc., Reading Massachusetts 1996, pp. 161-207.

⁹⁰ Scruton, *The West and the Rest*, p. xi.

Scruton defines the dilemma very clearly when he writes: 'Territorial jurisdictions sit uneasily upon credal communities, which tend to recognize the validity of no law other than the divine command that shapes their identity.'⁹¹ This is of great significance to Islam. 'For the true Muslim, no law is validated merely by deriving it from the customary law or sovereign edicts that establish a territorial jurisdiction. Laws can warrant our obedience only if they are divinely sanctioned; this means that their validity is established only if they can be derived from the *shari'a* – the revealed will of God.'⁹²

Naturally, this does not apply to all Muslims. Islam, too, includes secularized and modernized groups. Nevertheless, Gellner and Lewis rightly state that it seems that, of the three monotheistic religions, Islam is the most immune to secularisation.⁹³ It is hard to reconcile the idea of territorial jurisdiction with the political culture that is predominant in Muslim countries. These countries have tried to achieve a kind of loyalty to territorial jurisdiction with the philosophy of Arabic nationalism. The territorially defined nation (*qawm*) was supposed to replace the Islamic *umma* as the 'focus of loyalty'.⁹⁴

According to Scruton, we have to do everything possible for this reason to revitalise specific ideas that may otherwise be lost: 'territorial concepts of sovereignty of law, and secular ideas of citizenship'.⁹⁵ If we do not succeed, we will be faced with a period of chaos, both in a national and in an international context.

10. NEUTRAL GROUND

It is argued here that it is Scruton who has written the most sensible things about this subject. His suggestions deserve to be translated into concrete policy, but how could this be done? It would seem that it could be achieved only if citizenship were based on a neutral footing, meaning: independent of religious affiliation. However, there is little enthusiasm for this kind of citi-

⁹¹ Ibid., p. 25.

⁹² Ibid., p. 26.

⁹³ Nevertheless, the other theistic religions have radical forms as well. On this subject, see Fourest, Caroline, & Venner, Fiametta, *Tirs Croisés. La laïcité à l'épreuve des intégrismes juif, chrétien et musulman*, Calmann-Lévy, Paris 2003 en Ruthven, Malise, *Fundamentalism. The Search for Meaning*, Oxford University Press, Oxford 2004.

⁹⁴ Scruton, see above, fn. 90, p. 32.

⁹⁵ Ibid., p. 46.

zenship because of the influence of postmodernism and multiculturalism.⁹⁶ This applies not only to the Islamic world, but also to the United States of America. For example, the present Bush administration has wandered from the original ideal of the American founding fathers, who, in Jefferson's memorable words, envisaged a 'Wall of Separation': a separation between church and state.⁹⁷ On various occasions, the American President expresses his own religious conviction. In doing so, he creates the impression in the Islamic world that there is a clash between Christianity and Islam. Every criticism and certainly every military intervention is then perceived as religiously motivated: the crusaders that want to conquer (or liberate) the Holy Land.

Susan Jacoby, author of a book in the American secularist tradition, writes how President George W. Bush presided over an ecumenical prayer service in Washington's National Cathedral. 'Delivering an address indistinguishable from a sermon, replacing the language of civic virtue with the language of faith, the nation's chief executive might as well have been the Reverend Bush.'⁹⁸

From the perspective of an unbeliever and someone with another religion than the president, this is not the kind of language that fosters social cohesion within a pluralist community. Bush felt free to ignore Americans who do not adhere to any religious faith, whose outlook is predominantly secular, and who interpret history as the work of man rather than God. The Jewish-American lawyer Alan Dershowitz, one of Bush's vehement critics in this field, has this to say about it: 'The very first act of the new Bush administration was to have a Protestant Evangelist minister officially dedicate the inauguration to Jesus Christ, whom he declared to be 'our Savior.' Invoking 'the Father, the Son, the Lord Jesus Christ' and 'the Holy Spirit,' Billy Graham's son, the man selected by President George W. Bush to bless his presidency, excluded the tens of millions of Americans who are Muslims, Jews, Buddhists, Shintoists, Unitarians, agnostics, and atheists from his blessing by his particularistic and parochial language.'⁹⁹

⁹⁶ For an analysis of these concepts, see Gellner, Ernest, *Postmodernism, Reason, and Religion*, Routledge, London and New York 1992.

⁹⁷ On this topic, see Howse, Brannon, *One Nation under Man?* The worldview war between Christians and the Secular Left, Broadman & Holman Publishers, Nashville, Tennessee 2005.

⁹⁸ Jacoby, Susan, *Freethinkers. A History of American Secularism*, Henry Holt and Company, New York 2004, p. 2.

⁹⁹ Dershowitz, Alan, 'Bush Starts Off by Defying the Constitution', in *Los Angeles Times*, January 24, 2001; Dershowitz, Alan, *Shouting Fire. Civil Liberties in a turbulent Age*, Little, Brown and Company, Boston / New York / London 2002, p. 201.

The plain message conveyed by the new administration was that George W. Bush's America was a Christian nation. Non-Christians were welcome in the tent so long as they agreed to accept their status as a tolerated minority rather than as fully equal citizens, Dershowitz wrote.

Another critic of Bush in this regard is the philosopher Peter Singer. Singer formulates the problem with this confusion of evangelizing and politics thus: 'The Islamic militant who believes he is doing the will of God when he flies a plane full of passengers into the World Trade Center is just as much a person of faith as the Christian who believes she is doing the will of God when she spends her days picketing a clinic that offers abortions.'¹⁰⁰ Also the philosopher Sam Harris explains why all this 'God-talk' does not help us in the struggle with international terrorism. Harris's diagnosis is alarming. There seems to be a problem with some of our most cherished beliefs about the world, he tells us. 'They are leading us, inexorably, to kill one another. A glance at history, or at the pages of any newspaper, reveals that ideas which divide one group of human beings from another, only to unite them in slaughter generally have their roots in religion.'¹⁰¹ According to Harris, it seems that if our species ever eradicates itself through war, it will not be because it was written in the stars but because it was written in our books: 'It is what we do with words like 'God' and 'paradise' and 'sin' in the present that will determine our future.'¹⁰² A nuclear war between India and Pakistan seems 'almost inevitable, given what most Indians and Pakistanis believe about the afterlife.'¹⁰³ Many people say that 'extremists' should be taken to task only for what they do. Harris does not think so. He contends it is important to specify the dimension in which some terrorists are deemed to be extreme. They are extreme in their *faith*. 'They are extreme in their devotion to the literal word of the Koran and the hadith (...) and *this* leads them to be extreme in the degree to which they believe that modernity and secular culture are incompatible with moral and spiritual health.'¹⁰⁴ Certain beliefs are *in-trinsically* dangerous.¹⁰⁵ We are killing ourselves over ancient literature.¹⁰⁶

¹⁰⁰ Singer, Peter, *The President of Good and Evil*. Taking George W. Bush seriously, Granta Books, London 2004, p. 104.

¹⁰¹ Harris, *The End of Faith*, see above, fn. 9, p. 12.

¹⁰² Ibid., p. 12.

¹⁰³ Ibid., p. 27.

¹⁰⁴ Ibid., p. 29.

¹⁰⁵ Ibid., p. 44.

¹⁰⁶ Ibid., p. 73.

Some people say that radicals put a wrong interpretation on the sacred texts. This may be true, but does that help us? Does it help us to say that people 'misuse' their religion? According to the Pope, Luther 'misused' his religion. According to Luther, the Pope 'misused' his religion. According to Sayyid Qutb, the source of inspiration for Osama Bin Laden and other religious terrorists, liberal Muslims 'misuse' their religion. According to liberal Muslims, Qutb 'misuses' their religion.¹⁰⁷

We do not have to hold a theological debate here,¹⁰⁸ but an axiomatic contention that every reference to violence cannot be sincerely 'religious' is premature and not very fruitful. We have to deal with the social reality of religion, and this social reality confronts us with radical interpretations that do not shun violence. It is contended that James Gow is right when he writes: 'One of the biggest challenges to stability for the West concerns social cohesion. The impact of violent Islamist action in one Western state, above all within the EU, would have undoubted impact on others, including the prospect of further terrorist activity. One point of this, from the perspective of the Islamist terrorist, would be to mobilize support among co-religionists, no matter what their ethnic, cultural or political background otherwise, and to foster international tensions.'¹⁰⁹

What can be done to avoid the Clash of Civilizations? One thing is clear: silencing those who point out the problems is not a solution. When Huntington presented his thesis, commentators warned the public against this 'dangerous idea'. They assumed that Huntington proposed that we should allow civilisations to clash. As if the American political analyst *wanted* a clash or took the risk that a clash of this kind might occur by using such misleading statements. But, of course, Huntington was not proposing anything of that sort; he was *describing* what he saw that had happened in the social world.

¹⁰⁷ On Qutb, Ibn Taymiyya and other ideological sources of contemporary religious terrorism, see Esposito, John, *Unholy War: Terror in the Name of Islam*, Oxford University Press, New York 2002, pp. 30-31; Jansen, Johannes, *The Dual Nature of Islamic Fundamentalism*, Cornell University Press, Ithaca, New York 1997, pp. 47-54.

¹⁰⁸ See Krauthammer, Charles, 'Violence and Islam', in *The Washington Post*, December 6, 2002, who, when asked the question 'is Islam an inherently violent religion?' answers: 'The question is not just unanswerable, it is irrelevant'. What counts are the 'actions of actual Muslims in the world today'. And then we cannot deny that 'some of the worst, most hate-driven violence in the world today is perpetrated by Muslims and in the name of Islam.'

¹⁰⁹ Gow, James, *Defending the West*, Polity Press, Malden / Cambridge 2005, p. 12.

And in this respect his essay was prophetic, in the same way that Fukuyama's essay was prophetic, at least in part, in 1989.

So what can be done?

11. A SECULAR STATE IDENTITY BASED ON SHARED VALUES

The first solution (or direction of a solution) would be to foster loyalty to a state that can be seen as a neutral arbiter in the eyes of all citizens. That means that all attempts to place the focus of political loyalty on a religiously oriented state or on sacred law, are futile. European countries have to make a tremendous effort to integrate their religious minorities. A necessary feature of the integration process is to relinquish the idea that the primary focus of loyalty should be on the heavenly state and that holy law has priority over secular law.

Todorov clearly defines the values that should play a vital role. He mentions six core values.

Rationality. In this context, rationality does not mean that Europeans always act rationally, but that they assume that the world can be understood by rational means. Even the most curious and mysterious deeds can be understood by the power of reason.¹¹⁰ This assumption also forms the basis for Western science.

Justice. Private acts are based on the idea of justice.

Democracy. A third value Todorov presents as being constitutive of the European tradition is democracy. He calls it an invention of the Greeks. It is true that all kinds of groups were excluded in Ancient Greece: women, slaves, aliens. But this does not alter the fact that they expressed an idea.

Individual freedom. Protagoras' statement that man is the measure of all things indicates that man is central in this mode of thinking. And this is positive. It will eventually result in a greater degree of freedom.¹¹¹

Laïcité. It is remarkable that Todorov presents laïcité as part of an explicitly European heritage. He refers to its Christian roots. It is based on a saying of

¹¹⁰ Todorov, see above, fn. 84, p. 120.

¹¹¹ Ibid., p. 126.

Jesus in Matthew 22:21 that we should give to the emperor the things that are the emperor's, and to God the things that are God's. One can also refer to a saying of Jesus in John (18:36) that his kingdom is not of this world. This is the reason why, in the Christian tradition, there is a contrast between heaven and earth, between the theological and the political. '*La laïcité désigne, non l'absence ou le rejet du religieux mais cette séparation même, et donc le refus d'imposer les valeurs chrétiennes par le glaive.*'

In contradistinction to a regime that recognizes laïcité, Todorov uses the term 'ideocracy'. This is a collective name for theocracy and totalitarianism.¹¹²

Tolerance. Todorov refers to tolerance as a sixth value.

The Return of Britishness

It will also be necessary to foster a sense of solidarity with the nation-state people live in. It seems that the United Kingdom, the most multicultural country in the West,¹¹³ is reconsidering the double loyalties of multiculturalism. On 14 January 2006, Prime Minister Gordon Brown, then Chancellor of the Exchequer, made a speech at the Fabian New Year Conference in London. He asked the following question: 'Should we do more to define a positive sense of Britishness?'¹¹⁴ And his answer was: yes.

Once again, it had been terrorist acts that had given the British – like the Americans – food for thought. Since 7 July 2005, the balance between diversity and integration had to be reconsidered. According to Brown, you had to have a clear view of what being British meant, what you valued about being British and what gave the British purpose as a nation. Brown argued that British values demanded a new constitutional settlement and renewed civic patriotism.

Brown also gave a warning. When people were insecure, he said, there was always a risk that they would retreat into more exclusive identities rooted in 19th-century conception of blood, race and territory. What people tended to forget was that they should celebrate a British identity which was bigger

¹¹² Ibid., p. 130.

¹¹³ On this subject, see Thomas, Dominique, *Le Londonistan. Le djihad au Coeur de l'Europe*, Éditions Michalon, 2005.

¹¹⁴ Speech by the Rt Hon Gordon Brown MP, Chancellor of the Exchequer, at the Fabian New Year Conference, London, 14/01/2006.

than the sum of its parts and that a union was strong because of its shared values. Race and ethnicity were no basis for a common British identity. Although the British response to the events of 7 July had been magnificent, they had to face the uncomfortable facts that there were British citizens, British born, apparently integrated into the British community, who were prepared to 'maim and kill fellow British citizens, irrespective of their religion.' That meant that the British had to be 'far more ambitious in defining for our time the responsibilities of citizenship'. If they did not promote Britishness, they ran a real risk of having a divided society. 'And this British patriotism is, in my view, founded not on ethnicity nor race, not just on institutions we share and respect, but on enduring ideals which shape our view of ourselves and our communities – values which in turn influence the way our institutions evolve.'

What then are these values that Brown defines? He summarizes these as follows: 'Liberty for all, responsibility by all and fairness to all.'

These are important values. But are they specifically British? Perhaps that is only partly the case. Brown carried it off by pointing out that even before America had made these values its own, Britain could lay claim to the idea of liberty. 'Out of the necessity of finding a way to live together in a multicultural state came the practice of toleration and then the pursuit of liberty.'

It can be argued that Brown confuses historical genesis with the claim to validity. It may be true that the British were the first to discover the idea of political liberty in the Western world and include such an idea in their constitution. Voltaire was right when he indicated that Britain had given to the world the idea of liberty. But the question of which nation has discovered an idea is less important than the question of its universal validity. And it cannot be denied that the value of political liberty has universal appeal. This is the true core of the American defence plan. The idea of a 'government accountable to the people' was also first developed in the United Kingdom, but is in fact a universal idea.

* * *

The Berlin Wall fell in 1989. The general expectation was that the world we live in would be characterized by great ideological consensus. This expectation turned out to be unrealistic. It is correct to state that the primary focus of political loyalty is no longer ideological, as Fukuyama has argued. This should

be a hopeful sign, but unfortunately, ideology has been replaced by something else that continues to divide people: religion. Western states have multicultural populations and a proportion of these populations is loyal primarily to religion. This does not apply to all members of religious minorities, but it applies to some of them.

Moreover, members of religious minorities feel out of touch with Western society and its standards. One of these standards is a far-reaching freedom of speech on religious matters. It is perhaps not an exaggeration to say that European states have their roots in religious criticism.¹¹⁵ This means that it is hardly conceivable to consider any concessions in this standard for the sake of pacifying radical Muslims. At the same time, members of religious minorities regard this religious criticism as a violation of the integrity of their world view and as senseless mockery of all that is sacred to them. They defend themselves against it by various means, including violence. Part of international religious terrorism is a response to views and opinions expressed by Western authors. The United Kingdom was the first Western country to be confronted with this international religious terrorism, at the time of the fatwa against Rushdie. In 2004, the Netherlands followed with the murder of Theo van Gogh. This confronts Western countries with a very specific form of religious terrorism, which countries in the Middle East have been dealing with for a longer time (Farag Foda).

Another source of tension concerns the universalist efforts of the United States and other Western states to export Western or universal values to parts of the world referred to as 'failed states' or 'rogue states'. This ambition is justified partly by invoking the universality of the values at issue, partly by invoking self-defence.

It is of crucial importance to world peace and social cohesion within the states of the world community that these tensions are relieved. This necessitates consensus about a new constitutional order, which should be neutral and – consequently – secular. The idea of territorial jurisdiction will have to be strengthened and accompanied by a new kind of focus on citizenship and even patriotism.

¹¹⁵ On the value of the freedom of religion, see Jellinek, George, *Die Erklärung der Menschen- und Bürgerrechte*, Vierte Auflage, in *Dritter Auflage bearbeitet von Walter Jellinek*, Duncker & Humblot, München und Leipzig 1927.