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Constitutional Principles as State Territory

Paul B. Cliteur*

One of the enduring chestnuts of political and legal philosophy is whether we can uphold civilized values and principles without a firm basis in religion. In Peter Watson's *The Age of Nothing: How We Have Sought to Live Since the Death of God* (2014),¹ the British historian of ideas² presents an overview of the way hundreds of intellectuals in the 20th century have coped with the idea that God has left centre stage. But although the God of Judaism, Christianity and Islam has become less important for many people as the great legislator and judge of the world, that does not mean that we have abandoned the quest for sacred things.³ Watson takes us on a tour along the impressive gallery of secular attempts to fill the gap. For instance, there's the German poet Stefan George (1868–1933), who teaches that all men need a vertical axis, someone to look up to and learn from, and a horizontal axis, where members of the worshipping community live together according to shared ideals obtained by worship.⁴ One of the members of the circle the charismatic George had assembled around him, Friedrich Gundelfinger (1880–1931), said, "I want to serve Shakespeare and not Yahweh or Baal".⁵ Is that possible, having Shakespeare as your guiding star rather than the God of Israel?

Whatever may be the answer to that question, the idea that we need substitutes for the loss of God was widely shared among the literati in the first half of the 20th century, especially between the two world wars. Jean-Paul Sartre (1905–1980) points to the French poet Stéphane

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¹ Peter Watson, *The Age of Nothing: How We Have Sought to Live Since the Death of God* (London: Weidenfeld & Nicolson, 2014) [hereinafter "Watson, *The Age of Nothing*"].

² See also Peter Watson, *Ideas: A History of Thought and Invention, from Fire to Freud* (London: Weidenfeld & Nicolson, 2005); Peter Watson, *The German Genius: Europe's Third Renaissance, the Second Scientific Revolution, and the Twentieth Century* (Simon & Schuster, 2010).

³ See also Ben Rogers, ed., *Is Nothing Sacred?* (London: Routledge, 2004).

⁴ Watson, *The Age of Nothing*, *supra*, note 1, at 162.

⁵ Gundelfinger or, as he was called within the circle, Gundolf, as quoted in Watson, *The Age of Nothing*, *supra*, note 1, at 158.

Mallarmé (1842–1898), whose views are comparable to those of George. Mallarmé's view, as paraphrased by Sartre, was that "The poet was only the trumpet; God supplied the breath".⁶ The poet had the function of the priest. And "inspiration was the secular term for Grace".⁷

This idea was also to be found in Émile Durkheim's work *The Elementary Forms of the Religious Life*, which appeared in 1912.⁸ The central thesis of Durkheim (1858–1917) was that totemism, which he had studied in Australia among the Aborigines, was, or is, the basic form of religion. Totemism refers to the worship of the clan or the tribe of a specific animal or plant. This animal or plant is considered to be sacred.⁹ Durkheim thought that with the coming of urbanization, industrialization, materialism, massification and technology, it became necessary to see *the individual* as sacred. And the focus shifted from the individual relationship with God to the sacred bonds of the individual to society and certain sacred universal principles. As examples of these sacred principles Durkheim mentions "Fatherland", "Liberty", and "Reason".¹⁰

What seems to me interesting in the attempts outlined here is that all these thinkers are all concerned about presenting some values that *all of humanity* can share. This quest for universal principles in a world where people are divided about so many things seems important.

It is especially about religion that people are divided nowadays. While the great source of division in the world prior to 1989, when the Berlin Wall fell and communism became obsolete, was political,¹¹ nowadays it seems religious.¹²

Let me mention one of the most spectacular examples of such a conflict of views. It centres around the notion of religious criticism, more in particular religious satire. According to the Universal Declaration of Human Rights (1948), the International Convention on Civil and Political Rights (1966) and the American Constitution (1787), to name only a few important codifications of modern values, there is not only a

⁶ Jean-Paul Sartre in *Mallarmé, or the Poet of Nothingness* (Pennsylvania State University Press, 1988), as quoted in Watson, *The Age of Nothing*, *supra*, note 1, at 149.

⁷ Sartre quoted in Watson, *id.*, at 150.

⁸ Émile Durkheim, *Les Formes Élémentaires de la Vie Religieuse: le Système Totémique en Australie*, 1912 (Presses Universitaires de France, 2003).

⁹ Watson, *The Age of Nothing*, *supra*, note 1, at 143.

¹⁰ *Id.*, at 145.

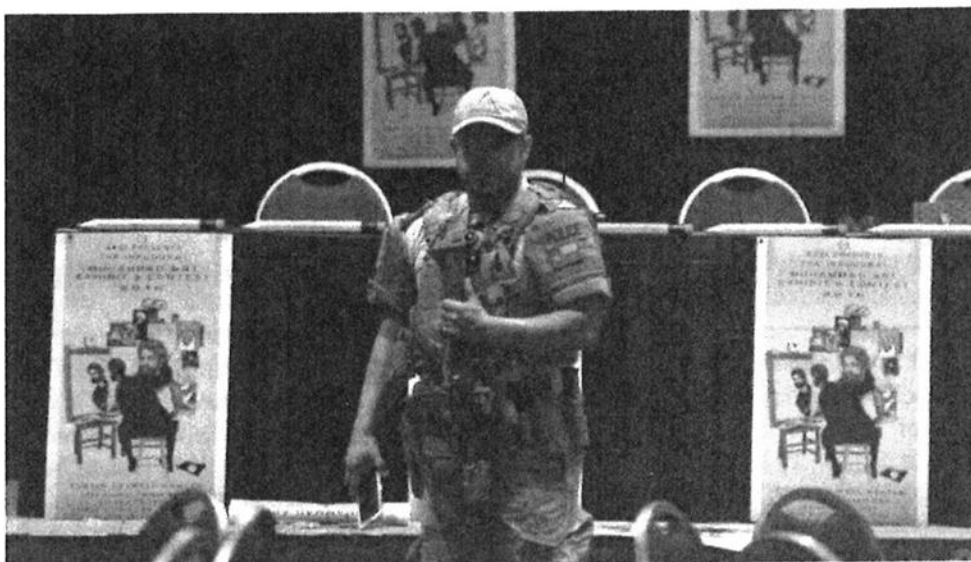
¹¹ And "won" by liberalism, according to Fukuyama, a thesis soon refuted by the resurgence of religious fundamentalism, in particular in the Middle East. See Francis Fukuyama, "The End of History?" *The National Interest*, No. 16 (Summer 1989), at 3-18.

¹² Tony Blair, "Religious difference, not ideology, will fuel this century's epic battles" *The Observer* (January 25, 2014).

right to choose a religion but also the right to reject a religion or the right to change from one religion to another (or no religion and all). This secular right to religious criticism clashes heavily nowadays with the claims of fundamentalist, terrorist movements that all criticism of religion, their religion, is illegitimate. The recent developments in both Dallas (Texas) and Paris give us some material to think about.

When the 12 cartoonists and members of the editorial staff of the French satirical magazine *Charlie Hebdo* in Paris were killed on January 7, 2015,¹³ and when the shootings in the Culwell Event Center in North Garland, Texas, during the Muhammad Art Exhibit and Cartoon Contest on May 3, 2015, occurred, this was widely experienced (and rightly so, in my opinion) as an attack not only on individual lives (sacred, according to Durkheim), but on sacred principles (although secular) as well. How to uphold those principles in a world with religious fanatics all around us? How to protect a common non-religious space in the public domain? How to bridge the ever-growing antithesis between secularism and religious fanaticism? And, most importantly perhaps, is there room for compromise? Would, for example, caving in (up to a certain point) to the demands of the terrorists who kill cartoonists be an option?

I. FREEDOM OF THOUGHT, FREEDOM OF EXPRESSION, FREEDOM OF RELIGION*



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¹³ See on this: Jacques Attali, e.a., *Nous sommes Charlie: 60 Écrivains unis pour la liberté d'expression* (*We are Charlie: 60 authors united for the freedom of expression*), Les Livre de Poche, Paris 2015; Charb, *Lettre aux escrocs de l'islamophobie qui font le jeu des racistes* (*Open Letter: On Blasphemy, Islamophobia, and the True Enemies of Free Expression*), Les Échappés 2015.

There is something strange about the picture above. It is a picture taken at the inside of the Culwell Event Center in North Garland, where around 200 people had assembled at the Muhammad Art Exhibit and Cartoon Contest, organized by the American Freedom Defense Initiative on Sunday, May 3, 2015.

Why do Americans come together in Texas to watch drawings of a religious figure they do not appear to have an especially favourable relationship with? Opinions about this differ.

One answer is that they come together to provoke and offend all that is holy to vulnerable religious minorities in their own society. According to this answer, the people assembled at the contest are provocateurs.

Another answer is that they come together not only to exercise their First Amendment rights, but to defend these rights in the face of looming oppression and erosion. According to this theory, the people coming together in Texas to draw, or to watch, the cartoons are militant democrats — “militant” because they do not take democracy for granted but are prepared to advocate for it, to struggle for it;¹⁴ “democrats” because freedom of thought and freedom of expression is the lifeblood of every democracy.

According to the militant democrats, their actions are necessary to defend the values their country is based upon (since roughly 1776, the American Declaration of Independence or, since 1787, the American Constitution).¹⁵

The militant-democracy thesis is based not only on a belief in some sort of inspiring mission but also on an almost-metaphysical presupposition that nothing in this fragile world can hold if it is not explicitly defended. And defended means, ultimately, with force.

And for that reason, we have that weird combination we see in the picture. We see a heavily armed man, making it possible that irreligious

¹⁴ Paul Cliteur & Bastiaan Rijpkema, “The Foundations of Militant Democracy” in Afshin Ellian & Geliijn Molier, eds., *The State of Exception and Militant Democracy in a Time of Terror* (Republic of Letters Publishing, 2012), at 227-73; Karl Loewenstein, “Militant Democracy and Fundamental Rights, I” in *The Am. Poli. Sci. Rev.* Vol. 31, No. 3 (June 1937), at 417-32; also in András Sajó, *Militant Democracy* (Eleven International Publishing, 2004) [hereinafter “Sajó”], at 231-45. Karl Loewenstein “Militant Democracy and Fundamental Rights, II” in *The Am. Poli. Sci. Rev.* Vol. 31, No. 4 (August 1937), at 638-58; also in Sajó, at 245-65; Bastiaan Rijpkema, ed., *Wat te doen met antidemocratische partijen? De oratie van George van den Bergh uit 1936*, Ingeleid door Bastiaan Rijpkema, met een voorwoord van René Cuperus, en een nawoord van Paul Cliteur (Elsevier Boeken, 2014).

¹⁵ See Carl L. Becker, *The Declaration of Independence: A Study in the History of Ideas* (Vintage Books, Random House, 1970 (1922)); A.C. Grayling, *Towards the Light: The Story of the Struggles for Liberty and Rights that Made the Modern West* (Bloomsbury Publishing, 2007).

or non-believing, or at least, one may presume, non-Islamic, Americans come together to watch cartoons being drawn. What cartoons? Cartoons of a figure they, under normal circumstances, do not have the slightest interest in. But what makes that figure interesting? Only the fact that he may not be drawn. And it is precisely because this is prohibited by the terrorists that it becomes a moral duty to draw, according to the activists of AFDI. Not only a moral right, but a moral duty.¹⁶

What strikes me in the discussion between those who feel attracted to the first answer (provocation) and those who feel attracted to the second answer (necessary defence of civil liberties) is that participants do not exert a great effort in placing the incidents in context. This is unfortunate. This is not right, because if we study all the precedents of the *Charlie Hebdo* massacre and the Texas shooting during the Prophet Muhammed cartoon contest, we will see there is a long history of this conflict. This history goes back to the 1980s, when the film *The Death of a Princess* was broadcast in many countries, despite protests from the Saudi theocracy.¹⁷ Or to the discussion on criticizing Ayatollah Khomeini on Dutch television, as was the focus of the Rudi Carrell Affair in 1987.¹⁸ We may also think of the Rushdie Affair,¹⁹ the death verdict by Khomeini on the British author of *The Satanic Verses* on February 14, 1989.²⁰ Or the Danish Cartoon Affair of 2005.²¹

If we want to take a position in this matter we at least should have a clear idea about the issues at stake. This, unfortunately, is seldom the

¹⁶ This point is well defended in Douglas Murray, *Islamophilia*, 1st ed. (Amazon Digital Services, 2013).

¹⁷ Derek Paget, "Death of a Princess" in Ian Aitken, ed., *The Concise Routledge Encyclopedia of the Documentary Film* (Routledge 2013 (2006)), at 198-200; Jonathan Goodman, "The Death of a Princess Cases: Television Programming by State-Owned Public Broadcasters and Viewers' First Amendment Rights" (1982) 36 U. of Miami L. Rev. 779-805; Thomas White & Gladys Ganley, "The 'Death of a Princess' Controversy", Program on Information Resources Policy, Center for Information Research (Harvard University, 1983).

¹⁸ Paul Cliteur, Tom Herrenberg & Bastiaan Rijpkema, "The New Censorship: A Case Study of Extrajudicial Restraints on Free Speech" in Afshin Ellian & Geliijn Molier, eds., *Freedom of Speech Under Attack* (Eleven International Publishing, 2015), at 291-318.

¹⁹ Daniel Pipes, *The Rushdie Affair: The Novel, the Ayatollah and the West*, 2nd ed. with a postscript by Koenraad Elst (Transaction Publishers, 2003); Russell Blackford, "The Rushdie Affair – Lest we Forget", *Free Inquiry*, Vol. 34, No. 4, June/July 2014, at 8 and 53; Bernard Lewis, "Behind the Rushdie Affair", *The American Scholar*, Vol. 60, No. 2 (Spring 1991), at 185-96; Kenan Malik, *From Fatwa to Jihad: The Rushdie Affair and Its Legacy* (Atlantic Books, 2009).

²⁰ Lisa Appignanesi & Sara Maitland, eds., *The Rushdie File* (Syracuse University Press, 1990), at 68.

²¹ Christopher Caldwell, *Reflections on the Revolution in Europe: Immigration, Islam and the West* (Allen Lane, Penguin Books, 2009); Jytte Klausen, *The Cartoons that Shook the World* (Yale University Press, 2009).

case. This even applies to the stances taken by high-ranking politicians who make comments on these incidents. They seldom seem to be aware of the fact that similar issues were at stake in previous phases of this conflict. What would help, perhaps, is placing these incidents in context in order to give a more rational and well-considered answer to the questions formulated and the political challenge of how to cope with these developments.

II. THE VAN GOGH AFFAIR

In a certain sense, the cartoon controversy at the heart of the *Charlie Hebdo* massacre and the attempt to kill the participants in the Texas draw-Muhammed contest started in my country, in the Netherlands. On November 2, 2004, the Dutch filmmaker Theo van Gogh was killed.

Theo van Gogh (1957–2004) was born in The Hague, the Netherlands. But he lived in Amsterdam in the years before his death, the capital of the country, where he was killed, on the streets, in broad daylight. He was the son of Johan van Gogh (*b.* 1922), who had worked for the Dutch Intelligence Agency (AIVD). Theo's uncle (1920–1945), also called Theo, was a resistance fighter who was executed by the Nazis during the occupation of the Netherlands in the Second World War. In the polemics of the murdered filmmaker, the Second World War was never far away. The idea that you had to defend the principles for which you stood obsessed Theo. He did so ruthlessly, and he made innumerable enemies along the way. There was so much collateral damage in his feuds with other people that many people saw no more than damage in what Theo stood for.²² But at the same time it is hard to deny that at the end of his life he fought a battle that has not since disappeared from this world. On the contrary, it seems it has only become more and more obvious that the world has a problem with the sort of ideology van Gogh was obsessed with at the end of his life (and, basically, terminated his life).²³

²² Good examples are perhaps Ian Buruma, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (Penguin, 2006), who compared van Gogh in fanaticism with his murderer. Or Geert Mak, *Gedoemd tot kwetsbaarheid* (Uitgeverij Atlas, 2005), who compared van Gogh's and Hirsi Ali's film on the suppression of women in Islamic countries to the war propaganda of Joseph Goebbels.

²³ A good introduction is Guido Steinberg, *Kalifat des Schreckens: IS und die Bedrohung durch den islamischen Terror* (Knaur, 2015); Boualem Sansal, *Allahs Narren: Wie der Islamismus die Welt erobert* (Freiburg: Merlin Verlag, 2014).

Because Theo van Gogh was the first tragic victim of the conflict between Islamist religious extremism and free speech on European soil, we may expect that his name will figure prominently in the history books of the coming generations. His name will help. His great-grandfather, also called Theo, was the famous art dealer (1857–1891), younger brother of the world-renowned artist Vincent van Gogh (1853–1891).

As I said, Theo van Gogh's life was full of personal quarrels and vigorous intellectual clashes with people he deemed to be simply politically correct or otherwise insincere. In the last years of his life he was much impressed by the ideas and work of two other notorious Dutch opinion makers. The first is Pim Fortuyn (1948–2002) and the second one is Ayaan Hirsi Ali (b. 1969). Fortuyn was a Dutch politician who was murdered by a left-wing activist, Volkert van der Graaf (b. 1969). Van der Graaf deemed Fortuyn a "danger" that had to be stopped.

One of Fortuyn's political stances was criticizing Islam for its anti-Enlightenment stances, in particular with regard to homosexuality (Fortuyn was an ostentatious homosexual himself). His most controversial statements were about the "backward nature" of Islam.²⁴

Hirsi Ali (b. 1969) is a Somalia-born writer, politician, social activist and feminist who, after becoming an atheist,²⁵ criticized her former religion, Islam, because of its anti-feminist proclivities.²⁶ She made a film with van Gogh on this issue, which was shown on August 29, 2004,

²⁴ Frank Poorthuis & Hans Wansink, "De islam is een achterlijke cultuur", interview with Pim Fortuyn in *De Volkskrant*, February 9, 2002. Fortuyn's ideas on Islam are explained in Pim Fortuyn, *Tegen de islamisering van onze cultuur* (Against the islamization of our culture), in *De grote Pim Fortuyn omnibus*, Speakers Academy, Van Gennep, 2001, at 197-283. Fortuyn was influenced by Jan Goodwin, *Price of Honor: Muslim Women Lift the Veil of Silence on the Islamic World* (Plume, 2003 (1995)). See on his life and ideas in general Bert Snel, *Pim 1: De politieke biografie van Pim Fortuyn als socioloog en als politicus 1990–2002* (Uitgeverij Van Praag, 2012); Bert Snel, *Pim 2: Pim Fortuyn en zijn partijen, Leefbaar Nederland*, Leefbaar Rotterdam, Lijst Pim Fortuyn, Prof. Dr. W.P.S. Fortuyn Stichting 2013.

²⁵ She tells her life story in two autobiographical books: *Infidel: My Life* (Free Press, 2007) and *Nomad: From Islam to America, A Personal Journey through the Clash of Civilizations* (Free Press, 2010).

²⁶ She made her entrée in Dutch intellectual circles in 2001 with "Allow us a Voltaire". She means also allow us, Muslims, critical minds such as Voltaire. Do not condemn us, Muslims, to obscurity by criticizing the Enlightenment thinkers who criticize religion. See Ayaan Hirsi Ali, "Gun ons een Voltaire" (*Trouw*, November 24, 2001); also Jaffe Vink & Chris Rutenfrans, *De terugkeer van de geschiedenis* (Uitgeverij, August 2005), at 79-85. Her criticism was worked out in books like *The Caged Virgin: An Emancipation Proclamation for Women and Islam* (Free Press, 2006). Her work shows some similarities with that of Taslima Nasrin (France), Necla Kelek (Germany) and Maryam Namazi (U.K.). See Paul Cliteur, "Female Critics of Islamism" (*Feminist Theology*, 2011) 19(2) 154-167. In her most recent book, *Heretic: Why Islam needs a Reformation Now* (Harper Collins, 2015), she advocates a reformation of Islam.

on Dutch television.²⁷ The title of the film, *Submission*, refers to the literal translation of the word “Islam”. But it also refers to the submissive attitude the believers exemplify with regard to the central ideas of their belief system, which makes progress difficult, if not impossible. For van Gogh, Hirsi Ali and Fortuyn, progress in the sense of Enlightenment was only possible by relinquishing religion or, to put it more mildly, bringing radical religion under the control of reason.²⁸

As some commentators claim, Hirsi Ali has modified her position somewhat and she presents herself as a “heretic”.²⁹ That is, she still is an atheist,³⁰ but she positions herself amid a circle of others, engaged in reforming Islam. “Reforming Islam” means that there are five ideas to be reformed:

1. Muhammed’s semi-divine and infallible status, along with the literalist reading of the Qur’an, particularly those parts that were revealed in Medina;
2. The investment in life after death instead of life before death;
3. Sharia, a body of legislation derived from the Qur’an, the hadith, and the rest of Islamic jurisprudence;
4. The practice of empowering individuals to enforce Islamic law by commanding right and forbidding wrong; and
5. The imperative to wage jihad, or holy war.³¹

²⁷ Ayaan Hirsi Ali, *Submission*. Broadcast on Dutch television on August 29, 2004.

²⁸ At least Islam. Fortuyn had sympathy for Catholicism. Ayaan Hirsi Ali and van Gogh were straightforward atheists and had no sympathy for any religion whatsoever. Ayaan Hirsi Ali was influenced by the Dutch atheist Herman Philipse. See Herman Philipse, *Verlichtingsfundamentalisme?* (Enlightenment fundamentalism?), Bert Bakker, 2005. Fortuyn, combining his sympathy for Catholicism and free speech with criticism of Islam, can perhaps be compared with the prolific writer Robert Spencer, who also combines Catholicism with strong criticism of Islam: Daniel Ali & Robert Spencer, *Inside Islam: A Guide for Catholics* (Ascension Press, 2003); Robert Spencer, *Religion of Peace? Why Christianity Is and Islam Isn’t* (Regnery Publishing, 2007); Robert Spencer, *The Politically Incorrect Guide to Islam (And the Crusades)* (Regnery Publishing, 2005).

²⁹ See e.g., Ayaan Hirsi Ali, “Why Islam Needs a Reformation” *The Wall Street Journal* (March 20, 2015). Whether this is, indeed, a change of her position is open for debate. From a more orthodox perspective the demands she formulates for a reformation of Islam *de facto* come down to an abolition of Islam. What is “further development” and “annihilation” is an element of controversy and depends on the perspective one takes. From an orthodox perspective, there can be no further development of a once-revealed truth. God does not develop and so His Word does not develop. Pleas for further development are basically veiled attempts to abolish the religion.

³⁰ Or infidel; see Ayaan Hirsi Ali, *Infidel: My Life* (Free Press, 2007).

³¹ Ayaan Hirsi Ali, *Heretic: Why Islam Needs a Reformation Now* (Harper Collins, 2015), at 24.

But let us return to van Gogh, because his views are less well known on this side of the ocean. Since the terrorist attacks of 9/11, van Gogh made criticism of Islam an important part of his polemics. His last film was dedicated to the life and murder of Pim Fortuyn (entitled *06/05*). In 2003, he wrote a book titled *Allah weet het beter* (Allah knows better).³²

In circles of artists and writers, van Gogh was exceptional because he did not subscribe to the fashionable left-wing views of much of his colleagues. But he was also hated for this and for his personal attacks, which were, it has to be admitted, often beyond the pale.³³

The irony is that for many people his death, and especially the way this came about, actually corroborated what he had not been able to convey during his lifetime through his own columns and his polemics, viz. that radical Islam was a mortal danger to the social cohesion of Dutch society (and, frankly, all democratic and liberal societies).

III. THE MURDER OF VAN GOGH

On November 2, 2004, van Gogh was murdered by the home-grown jihadist Mohammed Bouyeri (b. 1978).³⁴ Van Gogh was, as usual, cycling to his work in the morning. The killer shot the filmmaker eight times with a handgun and afterward tried to decapitate him with a knife. He also sunk two knives in the chest of his victim, one with a note in which he spelled out his extremist message to the world, more in particular to western democracies, to Jews, and to Ayaan Hirsi Ali. Hirsi Ali had proven to be untouchable for the killer, and van Gogh was a soft target.

Van Gogh was easy to kill for two reasons. The first was that he had no police protection, unlike Hirsi Ali who had. Van Gogh used to mock the Amsterdam police for offering him protection but only during and after his public performances. "I hope that Al Qaeda respects the office hours," van Gogh used to say. The second was that he himself believed he was not a target for terrorist attacks in the same way Hirsi Ali was, because *she* was a Muslim (or rather an apostate Muslim) and *he* was a

³² Theo van Gogh, *Allah weet het beter* (XTRA Producties, 2003).

³³ A portrait of van Gogh is painted by his friends Holman and Pam: Theodor Holman, *Theo is dood* (Theo is dead), (Schilt, 2006); Max Pam, *Het bijenspoek: over dier, mens en god* (Prometheus, 2009).

³⁴ Ian Buruma, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (Penguin, 2006); Ron Eyerman, *The Assassination of Theo van Gogh: from Social Drama to Cultural Trauma* (Duke University Press, 2008); Mario Vargas Llosa, "Schießen, schneiden, stoßen: Theo van Goghs schrecklicher Tod" (*Die Welt*, November 4, 2006); Jutta Chorus & Ahmet Olgun, *In Godsnaam: Het jaar van Theo van Gogh* (Uitgeverij Contact, 2005).

Dutch writer with no ties to Islam. So, in his case, there was no “apostasy”.³⁵

According to his understanding of Islamist ideology, there would be no reason to harm him, let alone kill him. He was, after all, “the village idiot”. But this proved to be a fatal mistake of not only his but also of the Amsterdam police and Dutch authorities in general. That you do not have to be a Muslim to get killed by a jihadist had been proven by the murder of Rushdie’s Japanese translator, Hitoshi Igarashi (1947–1991), on July 11 and by the attack on his Italian translator, Ettore Capriolo (1926–2013), on July 3, 1991. And Rushdie’s Norwegian publisher, William Nygaard (*b.* 1941), was wounded by gun shots on October 11, 1993. These victims were not Muslims. So, it is not the identity of the victim (Muslim or not Muslim) that counts, but the perceived severity of the offence (blasphemy, heresy and apostasy are considered by the faithful to be very serious offences).

Ten years later in France, an event took place that was in some ways similar to the killing of van Gogh. On January 7, 2015, during a meeting of the editors of the French satirical magazine *Charlie Hebdo*, two theoterrorists, Saïd and Chérif Kouachi, forced their way into the building and killed those who were present: Charb, Cabu, Wolinski, Tignous, Honoré, Esla Cayat, Mustapha Qurrad, Bernard Maris, Michel Renaud, Frédéric Bousseau, Frack Brinsolaro and Ahmed Merabet.³⁶ These were ordinary French citizens. Apparently, Al-Qaeda Yemen does not discriminate between Muslims and others when it comes to avenging the name of the Prophet. The case of Theo van Gogh had made that clear 10 years earlier.

In 2004, the murder of van Gogh took most people by surprise — the politically correct elite whom van Gogh had so vehemently criticized especially felt embarrassed, although not many people changed their attitudes openly. For Dutch society, though, the murder proved a watershed. The anti-Islam party of Geert Wilders booked huge electoral success.³⁷ It is difficult to imagine this would have taken place without the murder.

³⁵ See on apostasy: Ibn Warraq, ed., *Leaving Islam: Apostates Speak Out* (Prometheus Books, 2003); Paul Marshall & Nina Shea, *Silenced: How Apostasy and Blasphemy Codes are Choking Freedom Worldwide* (Oxford University Press, 2011); Paul Marshall, ed., *Radical Islam’s Rules: The Worldwide Spread of Extreme Shari’a Law* (Rowman & Littlefield Publishers, 2005); Patrick Sookhdeo, *Freedom to Believe: Challenging Islam’s Apostasy Law* (Isaac Publishing, 2009).

³⁶ Jacques Attali *et al.*, *Nous sommes Charlie: 60 Écrivains unis pour la liberté d’expression* (Les Livres de Poche, 2015), at 9.

³⁷ For a biography of Wilders see Meindert Fennema, *Geert Wilders: Tovenarsleerling* (Uitgeverij: Bert Bakker, 2010). Wilders published an autobiography, *Marked for Death: Islam’s War Against the West and Me* (Regnery Publishing, 2012).

The murderer, Bouyeri, was apprehended on the spot and on July 26, 2005, sentenced to life in prison without parole.³⁸ This severe sentence was a result of the fact that the murderer showed no remorse at all. On the contrary, he used the public trial to explain the jihadist ideology in a manner that must have been jolting for the many people who had denied there was any danger.

After the murder, a confusing and heated debate on the “causes” of this tragedy erupted. A deep rift in Dutch society came to the surface. On the one hand, the multicultural and politically correct Dutch elite pointed to van Gogh’s brutal and outrageous criticism of vulnerable minorities in Dutch society.³⁹ On the other hand were the people who pointed to the nature of jihadist ideology. The two groups could not agree on the causes of the new religious terrorism that seemed to be taking hold.

This fundamental cleavage manifested itself in more or less the same manner in France, Great Britain, Germany, the United States and other countries where debate arose about how to deal with the new religious terrorism.

IV. THE DANISH CARTOONS

The second phase in this great contemporary clash of opinions, which now has reached the other side of the Atlantic Ocean, occurred in Denmark. As I said earlier, what not many people seem to realize is that the Danish cartoon controversy is a direct outcome of the murder of van Gogh. Flemming Rose (b. 1958), culture editor of the *Jyllands Posten*, the daily that published the cartoons, was surprised that during the 2005 International Film Festival in Rotterdam the film *Submission*⁴⁰ by Theo van Gogh and Ayaan Hirsi Ali was not shown because of security considerations.⁴¹ Rose considered this to be odd. Would this not imply

³⁸ Rechtbank Amsterdam, July 26, 2005 (on the murder of Theo van Gogh).

³⁹ This point of view found a marked expression in Ian Buruma, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (Penguin, 2006); Ian Buruma, “Der Dogmatismus der Aufklärung” in Thierry Chervel & Anja Seeliger Hrsrg, eds., *Islam in Europa: Eine internationale Debatte* (Suhrkamp Verlag, 2007), at 126-28. Exactly 10 years later, after the attack on the editorial board of the French magazine *Charlie Hebdo*, Buruma defended the same position in “Charlie and Theo” (*Project Syndicate: The World’s Opinion Page*, January 15, 2015). In 2004, Buruma depicted van Gogh as the “provocateur”; in 2015, he did the same with the French cartoonists who were massacred.

⁴⁰ Ayaan Hirsi Ali, *Submission*, broadcast in “Guests of the Summer”, *Zomergasten*, August 29, 2004, with an introduction by Betsy Udink (August 2004).

⁴¹ Nanda Troost, interview with Kurt Westergaard, “Een totalitaire macht bedreigt ons”, *de Volkskrant*, March 10, 2008; Nanda Troost, interview with Kurt Westergaard, “Nooit zal ik zwijgen”, *de Volkskrant*, January 9, 2010.

that the free press had given in to threats of violence? Under those circumstances, was freedom of expression not in fact abolished, or at least severely limited?⁴² That was Rose's question.

Another incident that provided food for thought was that the writer Kåre Bluitgen (*b.* 1959) found it impossible to contract an illustrator for a children's book on Islam because nobody dared to make a picture of the Prophet Muhammed.⁴³

This was the background of the cartoon affair. This is important, because if this is true, there were no pestering xenophobic intellectuals trying to target innocent religious minorities, as was contended in many commentaries.⁴⁴ The people who devised the cartoon experiment were primarily worried. They were concerned about the erosion of civil liberties.

But it soon appeared to Rose that it was much more difficult than expected to convince people there was something important at stake. There was no problem at all, many said. Then the idea to "test" whether there really was a problem arose. A real empirical test, like the way science operates to prove or disprove something.⁴⁵ To test whether cartoonists exerted self-censorship, he asked 42 cartoonists to give their view on the Prophet Muhammed. As has been said before, only 12 actually made a cartoon. It was not clear in advance who would present a critical view of the Prophet and who would take a more laudatory stance. The experiment was simply to establish if, and how many, people *would dare* to make such a cartoon. And so the 12 cartoons that would cause such turmoil on the international scene came into being: the cartoons "that shook the world", to quote the title of Jytte Klausen's book on the matter.⁴⁶

⁴² Flemming Rose, "Why I Published Those Cartoons" *Washingtonpost.com* (February 19, 2006); Flemming Rose, *The Tyranny of Silence: How one Cartoon ignited a Global Debate on the Future of Free Speech* (Cato Institute, 2014).

⁴³ Sebastian C.H. Kim, "Freedom or Respect: Public Theology and the Debate over the Danish Cartoons" (2007) 1 *International Journal of Public Theology*, at 249-69.

⁴⁴ For example, a princess of the House of Orange, Mabel, stated in an interview that one should not publish something with the sole aim to insult, harm, or humiliate other people. See her remarks in Yoeri Albrecht & Pieter Broertjes, "Ik kan niet tegen onrecht. Het veelkoppige monster van de onvrije democratie" *de Volkskrant* (March 10, 2007).

⁴⁵ See on the scientific method Bertrand Russell, *Religion and Science* (Oxford University Press, 1935), at 7-19.

⁴⁶ Jytte Klausen, *The Cartoons that Shook the World* (Yale University Press, 2009).

V. THE MUHAMMAD ART EXHIBIT AND CARTOON CONTEST

The Danish cartoon controversy, in itself a direct outgrowth of the murder of van Gogh, set the stage for the two subsequent events. First, the killing of the 12 French cartoonists of *Charlie Hebdo*, which had not only published new Muhammed cartoons (by French cartoonists)⁴⁷ but also republished the original Danish cartoons.⁴⁸ Second, the attempt to kill the 200 visitors of the Texan event. Due to the alertness of local police, the two gunmen who opened fire had no chance to complete their mission. The French cartoonists were less lucky; the two security men in front of their office were apparently totally unprepared for what might happen.

The two American jihadists, Elton Simpson and Nadir Soofi, drove up to the Culwell Event Center in North Garland and got out of their car.⁴⁹ They then started shooting with assault rifles, wounding a security guard, just as the Muhammad Art Exhibit and Cartoon Contest was coming to an end. In the subsequent exchange of fire with police, the two gunmen were killed.

The event sponsors, the American Freedom Defense Initiative, is considered by some to be an anti-Muslim group, by others an anti-Islamist group. The AFDI says it stands for “equality of rights of all people before the law”.⁵⁰ Nevertheless, this stance on freedom of speech brings the organization at loggerheads with Islamism as an ideology. The AFDI is, according to its own judgment, “opposed to Islamic prohibitions of ‘blasphemy’ and ‘slander’”.⁵¹ Their support for freedom of conscience is also interpreted in contrast to radical Islam. Freedom of conscience means being opposed to “the Islamic death penalty for apostasy”. And equal rights of all people is construed as “opposed to (...)

⁴⁷ Charb and Zineb, *La Vie de Mahomet* (Les Échappés, 2013).

⁴⁸ This was done out of solidarity with the Danish cause but also to safeguard the defence of free speech in a world where this principle is under attack. See on the motivations of the editorial board Charb, *Lettre aux escrocs de l'islamophobie qui font le jeu des racistes* (Les Échappés, 2015); Charb, *Petit Traité d'Intolérance* (Les Échappés, 2009); Philippe Val, *Malaise dans l'inculture* (Bernard Grasset, 2015); Philippe Val, *Reviens Voltaire, Ils sont devenus fous* (Bernard Grasset, 2008).

⁴⁹ Manny Fernandez & Richard Pérez-Peña, “Two gunmen killed at anti-Islam exhibit are identified”, *The New York Times* (May 4, 2015).

⁵⁰ Holly Yan, “Garland shooting: What is the American Freedom initiative?” CNN (May 4, 2015) [hereinafter “Yan”].

⁵¹ *Id.*

institutionalized discrimination against women and non-Muslims” as it occurs in Sharia law, or strict Islamic law.⁵²

In 2012, the AFDI launched an ad campaign in the Washington subway system. The text of the ad was “In any war between the civilized man and the savage, support the civilized man. Support Israel. Defeat Jihad.”⁵³

During the event, cartoonists had been invited to send in drawings of the Prophet Muhammad. The AFDI received more than 350 submissions.⁵⁴ The winner stood to win \$10,000. The event had 200 visitors. Security was tight, and only those who had purchased tickets ahead were admitted. The keynote speaker was the Dutch politician Geert Wilders (*b.* 1963). It is typical for newspaper articles to describe Wilders as “right-wing”, but this qualification may be challenged. He seems to me more left-wing (although his ideas on immigration may be considered right-wing), at least if you take a commitment to free speech as a distinguishing mark of the left rather than the right. Wilders is a target of religious extremists, like Ayaan Hirsi Ali is, Kurt Westergaard and Salman Rushdie are, and the recently murdered French cartoonist Stéphane Charbonnier was.⁵⁵

The president of the AFDI, Pamela Geller (*b.* 1958), is motivated by the same considerations as other contemporary advocates of free speech. Once you give in to intimidation, you will lose free speech as a founding principle of western liberal nation states. She says, “I will not abridge my freedoms so as not to offend savages. Freedom of speech is under violent assault here.”⁵⁶

VI. THE MOLLY NORRIS AFFAIR

As I have said, the Danish Cartoon Affair was a follow-up to the Dutch events that cost Theo van Gogh his life. The Garland shooting was, in a certain sense, a continuation of the Danish Cartoon Affair, but it

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Kevin Conlon & Kristina Sgueglia, “Two shot dead after they open fire at Mohammed cartoon event in Texas” CNN (May 4, 2015).

⁵⁵ Charbonnier or “Charb” was not only a cartoonist and editor-in-chief of the French satirical magazine *Charlie Hebdo*, but he was also an able defender of the ideals that animated the crew to continue their dangerous mission. See on this Charb, *Lettre aux escrocs de l’islamophobie qui font le jeu des racistes* (Paris: Les Échappés, 2015), an apology of his views published post-mortem and completed only a few days before his death.

⁵⁶ Yan, *supra*, note 50.

was also connected to another American event, which till now was relatively unknown to many people: the disappearance of American journalist Molly Norris.⁵⁷

As a reaction to the violence perpetrated by Islamist theoterrorists, Norris proposed, on a Facebook page, to organize an “Everybody Draw Mohammed Day”. It was, basically, the same idea as that behind the Garland event, but it was to take place on Facebook.

Norris was inspired to do this after death threats were made against *South Park* cartoonists Trey Parker (b. 1969) and Matt Stone (b. 1971). Parker and Stone had depicted the Prophet Mohammed in the episodes 200 and 201 of the American animated TV sitcom. These were aired in April 2010. Mohammed was featured as a character in a bear costume. On radical websites, this sparked statements comparing Parker and Stone to Theo van Gogh. It was also declared they could meet a similar fate.

In reaction to the threats against her fellow cartoonists, Norris’s idea to launch “Everybody Draw Mohammed Day” in May 2010 was in support of free speech and the First Amendment. The idea was that if enough people were to draw a picture of Mohammed targeting cartoonists, it would exceed the capacity of even the most resourceful terrorist organizations to take revenge.

Norris attracted the attention of the radical Muslim cleric Anwar al-Awlaki (1971–2011), who issued a fatwa calling for her death.⁵⁸ Al-Awlaki said in the June issue of the Al-Qaeda digital publication *Inspire* that Norris was a “prime target” whose “proper abode is hellfire”.⁵⁹ According to the *Seattle Weekly*, where Norris had worked, she was now in hiding. But the remarkable detail: she had done so *on the FBI’s recommendation*. The *Seattle Weekly* also indicated that Norris’s contributions would no longer appear in the alternative newspaper.

VII. WHAT THE FBI RECOMMENDED

It is interesting that the advice to “go ghost”, as it is called, was given by the U.S. Federal Bureau of Investigation. As the *Seattle Weekly* noted,

⁵⁷ Holly Yan, “Garland shooting: Other cases involving Americans and Prophet Mohammed drawings” CNN (May 4, 2015).

⁵⁸ “Female cartoonist forced into hiding after doodling ‘Everybody Draw Mohammed Day’ picture” *The Daily Mail* (September 17, 2010). See on Anwar al-Awlaki: Karima Bennouna, *Your Fatwa Does Not Apply Here: Untold Stories from the Fight against Muslim Fundamentalism* (WW Norton & Company, 2013), at 24.

⁵⁹ *Id.*

“On the insistence of top security specialists at the FBI”, Norris is “moving, changing her name and essentially wiping away her identity”.⁶⁰ David Gomez, the FBI’s assistant special agent in charge of counterterrorism in Seattle, commented, “We understand the absolute seriousness of a threat from an Al Qaeda-inspired magazine and are attempting to do everything in our power to assist individuals on that list to effectively protect themselves and change their behavior to make themselves less of a target”.⁶¹ The word “everything” is important in this context. This includes to go ghost. In other words, the state advises its citizens to erase themselves because the state cannot protect them, or claims it cannot protect them, against terrorist attacks on territory the state claims to have under its control.⁶² This is not far from the scenario in which facial-reconstruction surgery is recommended, as Rushdie’s biographer, Weatherby, noted; this was on the table in the beginning of the Rushdie Affair.⁶³

There is another aspect that needs to be highlighted. As we have seen, the decision to go ghost is, in the quote from Gomez, made by the individual targeted (in this case, Norris). The FBI only “assists” individuals in that decision and helps them set up a new identity. The state claims that it only helps the individual in making decisions, but in reality there are no real alternatives left. And there are no alternatives left because the state basically fails in fulfilling its primary function (in fact, its *raison d’être*).⁶⁴ The state has to guarantee the security of the citizens on the territory of the state. A state that cannot fulfil this basic function is no state, or what we call a failed state. A contemporary manifestation of a failed state is a state that “dumps its citizens” because it feels no longer capable or morally obliged to protect them.

There is an interesting commentary by Ian Davidson on the Rushdie Affair that deserves to be mentioned here: “Mealy-mouthed expressions of distaste of *The Satanic Verses* merely served to make the Government

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² An essential function of the state. See Max Weber, *Staatssoziologie* (Duncker & Humblot, 1966), at 27.

⁶³ In W.J. Weatherby, *Salman Rushdie: Sentenced to Death* (Carroll & Graf, 1990). The story is also told in Peter Watson, *The Age of Nothing: How we have sought to live since the Death of God* (Weidenfeld & Nicolson, 2014), at 2.

⁶⁴ Only a state that manages to do this can be called sovereign. See James Bryce, “The Nature of Sovereignty”, *Studies in History and Jurisprudence*, Vol. II, reprint of 1901 ed. Oxford (Scientia Verlag, 1980), at 49-111.

look obsequious and cringing”.⁶⁵ Rushdie had good reason to be fearful of the events, Davidson continues, because “he was in danger of being dumped by the British government”.⁶⁶

Being dumped by your own government. That is a real prospect for some citizens nowadays, and this is one of the most cynic contemporary manifestations of state failure. Not in Somalia or in Yemen, but in the United States of America.

VIII. CONCLUSION

From the recent Charlie Hebdo attack and the other events highlighted in this essay some lessons can be (and should be) drawn. Let me try to formulate some of those lessons, starting from what may be qualified as the least controversial one.

The importance of the subject. From the murder of Theo van Gogh in the Netherlands in 2004 to the Texas and Paris shootings in 2015, we have, roughly, 10 years of experience with the way Islamist radicals are trying to suffocate free speech as a basic principle of western nation states. It is important that those in power learn to see that these incidents are important and that there is a pattern in those events.

This may seem self-evident and hardly worth mentioning, and yet there are indications that our political leaders do not see it like that. My experience with Americans and Canadians on this topic is that they tend to see the “cartoon controversies”⁶⁷ as a European problem. Or they see a *pattern* in the European events, but in the U.S. and Canada they see only a few “incidents”.

That seems to be an illusion.⁶⁸ When Salman Rushdie travels from the United Kingdom to the United States, the aggression toward his person becomes an *American* problem. When Ayaan Hirsi Ali becomes an American citizen, or Geert Wilders pays a visit to Texas, all the problems connected to terrorist threats become manifest in the U.S. as well. And not only because the *targets* of jihadist aggression come to the U.S.A.,

⁶⁵ Ian Davidson, *The Financial Times* (March 9, 1989).

⁶⁶ *Id.*

⁶⁷ I will use this as a *pars pro toto* for all the incidents where freedom of expression clashed with a theoterrorist agenda. Salman Rushdie is a novelist and not a cartoonist, yet it seems legitimate to bring the Rushdie fatwa under the general heading of the cartoon controversies.

⁶⁸ See on the character of the illusions to which intellectuals are particularly prone Maarten Boudry, *Illusies voor gevorderden: of waarom waarheid altijd beter is* (Polis, 2015).

but because the *principles* of the American Constitution are what ignites terrorist attention (*e.g.*, the First Amendment).

The Obama administration tried to sanitize its vocabulary and avoided speaking of jihadism or other qualifications that highlight the cultural dimension of the conflict. Religious terrorists are portrayed as extremists and lunatics, and the focus of their attention (Westergaard, Charbonnier, Rushdie, Vilks) as provocateurs and people who “poke the bear”, but in the long run this vocabulary will prove to be misguided.

Religious terrorism. A second lesson we can learn from the controversies described in this essay is that, in all likelihood, the present terrorist threat is predominantly religiously motivated. Most people find that a most unpleasant idea, probably because they foresee some sort of apocalyptic conflict between Islam and Christianity if the controversy is framed in these terms. This worry is unfounded. Even if present-day Islamists have “hijacked” Islam and their world view is not representative of the majority of Muslims, it might still be the best strategy to take the religious motivation of Islamists seriously. Know your enemies. Try to understand what moves them. Only on the basis of an adequate diagnosis of the evils that befall us can a successful therapy be developed.

The problem is that, because of widespread secularization in the western world, people have lost track of religious motivations.⁶⁹ When Ayatollah Khomeini,⁷⁰ Osama Bin Laden,⁷¹ or Al Baghdadi⁷² say that heretics, blasphemers and apostates have to be killed because that is the prescribed punishment for heresy, blasphemy and apostasy, we better take them at their word. That is *really what they believe*. Secularized westerners find this so revolting that they do not see this is the “real”

⁶⁹ This point is well developed in Maarten Boudry, *Illusies voor gevorderden: of waarom waarheid altijd beter is* (Polis, 2015); Wim van Rooy, *Waarover men niet spreekt: bezonken gedachten over postmodernisme, Europa, Islam* (Uitgeverij Van Praag, 2015), but also in Richard Dawkins, *The God Delusion* (Bantam Press, 2006) or Sam Harris, *Letter to a Christian Nation* (Knopf Doubleday Publishing Group, 2006). Needless to say, one does not have to agree with the New Atheists in everything to value that they stress the importance of the religious factor as something that is really motivating people.

⁷⁰ Khomeini, “Islamic Government” in Hamid Algar (tr. anot.), *Islam and Revolution, Writings and Declarations of Imam Khomeini* (Mizan Press, Contemporary Islamic Thought, Persian Series, 1981), at 27-150; Ayatollah Ruhollah Khomeini, “Islam is not a religion of pacifists” in Marvin Perry & Howard Negrin, eds., *The Theory and Practice of Islamic Terrorism: An Anthology* (Palgrave MacMillan, 2008), at 29-33.

⁷¹ Osama Bin Laden, “Declaration of Jihad”, August 23, 1996, in Bruce Lawrence, ed., *Messages to the World: The Statements of Osama Bin Laden* (Verso, 2005), at 23-30.

⁷² Graeme Wood, “What is the Islamic State?” *The Atlantic* (March 2015), at 79-94; Graeme Wood, “What ISIS Really Wants: The Response”, *The Atlantic* (February 24, 2015).

motive. They invent motivations of their own. The problem is, the Islamists are very clear about what they want and do. They really say what they believe.

The world is confronted with a (relatively) new phenomenon, a new sort of religious terrorism that is directed against free speech⁷³ and deserves to be taken seriously, next to the more classic grand-scale attacks as 9/11.

Terrorist threat is not a private problem of the cartoonist. The Cartoon Affairs have much more impact on society than most people are inclined to see. Especially in the early stages of all this, in 2005, many commentators were prone to cast this as an issue between the individual cartoonist (or writer) and terrorists. It was as if the incidents were some sort of private problem of the cartoonists or other artists. It was a problem that could be solved, many people thought, if only the cartoonist would exercise self-restraint. Why be so provocative? Why not simply stop making insulting drawings? Are not the social costs simply too high? And what would be lost when everyone learns to act a little bit more civilized?⁷⁴

What the recent developments made clear is that those who draw cartoons and create in other forms have a story of their own. Stéphane Charbonnier, Theo van Gogh, Salman Rushdie, Kurt Westergaard, Lars Vilks and many less well-known people are committed to the defence of important principles, as are the terrorists who are committed to the defence of *their* principles — the main difference being, of course, that only the latter resort to violence.

Initially, many states tried to accommodate this conflict by rejecting both kinds of “extremism”: extremism from the side of those, for example, making cartoons and extremism from the side of those who kill cartoonists. This juxtaposition is evident in the books by Ian Buruma⁷⁵ and Geert Mak⁷⁶ about van Gogh⁷⁷ and in the biography by the journalist

⁷³ We may call it “theoterrorism” for reasons explained in Paul Cliteur, “The Rudi Carrell Affair and its Significance for the Tension between Theoterrorism and Religious Satire” (*Ancilla Iuris*, 2013:15), at 15-41, online: <http://www.anci.ch/paul_cliteur> Paul Cliteur, “The Challenge of Theoterrorism” *The New English Review* (May 30, 2013), online: <http://www.newenglishreview.org/Paul_Cliteur/The_Challenge_of_Theoterrorism/>.

⁷⁴ These were questions posed to Salman Rushdie by art critic John Berger, historian Hugh Trevor-Roper and the philosopher Michael Dummet. See on this Rachel Donadio, “Fighting Words on Sir Salman”, *The New York Times* (July 15, 2007).

⁷⁵ Ian Buruma, *Murder in Amsterdam: The Death of Theo van Gogh and the Limits of Tolerance* (Penguin, 2006).

⁷⁶ Geert Mak, *Gedoemd tot kwetsbaarheid* (Uitgeverij Atlas, 2005).

⁷⁷ Or others deemed to have similar convictions and pilloried as “Enlightenment fundamentalists”.

Scroggins of Ayaan Hirsi Ali;⁷⁸ but it was also to be found in the commentaries by many people reacting to the Rushdie Affair.⁷⁹

Causality. The fourth point is, in a sense, the most difficult. At the heart of the controversy between those who accuse the AFDI of provocation and those who think we have to stand up for our principles is a difference of opinion about causality. One may say the two parties give a different answer to the question of the *cause* of the unfortunate predicament we are in with respect to freedom of speech and terrorist tension.

What seems to animate many critics of Kurt Westergaard, Salman Rushdie, Ayaan Hirsi Ali, Theo van Gogh, Pamela Geller, Geert Wilders and other advocates of free speech is that the progressives think that the *critics* of Islamism are the immediate cause of the trouble, not primarily the Islamists targeting free speech.

Prima facie there is something to be said for this. If Salman Rushdie had not published *The Satanic Verses* in 1988, the fatwa against him would not have been issued. If the Danish cartoons had not been commissioned in 2005, there would have been no Danish Cartoon Affair. If Rudi Carrell had not made a pastiche on Khomeini in 1987, the Iranian government would not have been displeased by the Dutch/German showmaster. If Pamela Geller had not organized AFDI's Muhammed cartoon contest in 2015, the terrorists would have seen no need to try to kill the participants. If Theo van Gogh had not made the film *Submission* in 2004, his murderer, Bouyeri, would not have killed him or tried to decapitate him. If Antony Thomas had not made the documentary *The Death of a Princess* in 1980, diplomatic relations with the Saudis would not have been disturbed.⁸⁰

But the question is where that logic leads us.

If Martin Luther King had not given his confrontational speeches, the "rednecks" in the South would have not been disturbed. If Galileo had

⁷⁸ Deborah Scroggins, *Wanted Women: Faith, Lies, and the War on Terror. The Lives of Ayaan Hirsi Ali and Aafia Siddiqui* (HarperCollins, 2012). The juxtaposition of the lives of Hirsi Ali and a terrorist is explained as an interesting illustration of "two women on the front lines".

⁷⁹ Initially Rushdie's book was not only rejected by Ayatollah Khomeini, but also by many colleagues, even those who had a great reputation as competent philosophers and defenders of free speech: Michael Dummett, "Open Letter to Rushdie", *The Independent* (February 11, 1990); Karl Popper, "Popper to the Society of Authors, February 24, 1989, and to Isaiah Berlin, 5 March 1989" in Jeremy Shearmur and Piers Norris Turner, eds., *Karl Popper, After the Open Society, Selected Social and Political Writings* (Routledge, 2008), at 202-204; Charles Taylor, "The Rushdie Controversy" (1989) 2(1) *Public Culture* 118-22.

⁸⁰ Derek Paget, "Death of a Princess" in Ian Aitken, ed., *The Concise Routledge Encyclopedia of the Documentary Film* (Routledge, 2013 (2006)), at 198-200.

not published his heliocentric views, the Inquisition would not have tried to intimidate him.⁸¹ If Giordano Bruno had not published his views on astronomy, the Vatican would not have burned him at the Campo dei Fiori in 1600.⁸² If Socrates had not provoked the Athenian authorities, he would not have been condemned to drink hemlock in 399 BCE.⁸³ If Michael Servet had not provoked John Calvin with his ideas about the trinity, he would not have been burned at the stake.⁸⁴ If Luther had not provoked the Catholic Church, the pope would not have put a ban on his views. If Immanuel Kant had been more cautious in writing about religion, the German prince would not have seen any reason to forbid his further writing on the subject.⁸⁵ If Darwin had not published *On the Origin of Species* in 1859 (and had listened to his loving wife, who gave him the sound advice to abandon the whole project),⁸⁶ 19th-century pastors would not have been dissatisfied with his findings. If Mary Wollstonecraft had advocated the women's cause in a less confrontational manner,⁸⁷ her 19th-century male detractors would have had less to complain about it. If Alan Turing had not shown his interest in other males as sexual partners, there would have been no need for the British government to try to chemically castrate him. If Princess Masha'il Bint Fahd Al Saud (1958–1977), the 19-year-old Saudi princess who was, together with her lover, publicly executed for adultery, had listened to sound advice of her grandfather, Prince Mohammed bin Abdulaziz (1910–1988), the elder brother of the Saudi king Khalid bin Abdulaziz Al Saud (1913–1982), she would still be alive. And so would her boyfriend. And if she had listened to “rational” advice, there would have been no need for Antony Thomas to make a documentary on the matter, which, in its turn, displeased the Saudi theocracy and placed so many western governments in a difficult situation.

Now, apparently some people make a distinction between Kurt Westergaard, Salman Rushdie, Ayaan Hirsi Ali, Theo van Gogh, Pamela

⁸¹ William R. Shea & Mariano Artigas, *Galileo in Rome: The Rise and Fall of a Troublesome Genius* (Oxford University Press, 2003).

⁸² Jochen Kirchhoff, *Giordano Bruno* (Rowohlt, 2003 (1980)).

⁸³ J.B. Bury, “The Trial of Socrates”, 1926, in Harold Teperley, ed., J.B. Bury, *Selected Essays* (Adolf M. Hakkert, 1964), at 75-90.

⁸⁴ Stefan Zweig, *Castellio gegen Calvin: Ein Gewissen gegen die Gewalt* (Fischer Taschenbuch Verlag, 1983 (1936)).

⁸⁵ Paul Edwards, *God and the Philosophers*, Introduction by Timothy J. Madigan (Prometheus Books, 2009), at 108-109.

⁸⁶ Randal Keynes, *Creation: The True Story of Charles Darwin* (John Murray, 2009 (2001)).

⁸⁷ Mary Wollstonecraft, *Vindication of the Rights of Woman*, edited with an introduction by Miriam Brody Kramnick (Penguin Books, 1982 (1792)).

Geller and Geert Wilders on the one hand and Martin Luther King, Galileo, Giordano Bruno, Martin Luther, Socrates, Michael Servet, Immanuel Kant, Charles Darwin, Mary Wollstonecraft, Alan Turing and Princess Masha'il Bint Fahd Al Saud on the other. What exactly is that difference?

Can we say that the first category comprises the “provocateurs” while the second category is filled with morally honourable people?

The problem is: it was not seen that way by contemporary critics of the innovators of the second category. The racists of the South *really thought* Martin Luther King initiated despicable errors. And the Vatican *really thought* Galileo and Bruno made terrible mistakes in removing the earth from the centre of the universe. And the German prince *really thought* Immanuel Kant’s *Religion Within the Bounds of Reason* was a dangerous book. And the wife of the bishop of Worcester was really in earnest when, after having heard about a Mr. Darwin, said, “Descended from the apes? Let us hope it is not true, but if it is, let us hope it will not become generally known.”⁸⁸

The members of the second category were, in their time, generally also considered to be provoking, offending and shocking. And precisely because the European Court of Human Rights in Strasbourg realized that offensive opinions can contain important insights, it judged that the freedom of speech of article 10 of the Convention also protects opinions that “shock, offend or disturb” the state or any sector of the population (*Handyside*, 1976).⁸⁹

Under those circumstances, it is perhaps a sensible strategy to consider constitutional principles as of equal importance as physical territory. If a nation state does not consider giving up some piece of land solely because terrorist organizations and individuals demand this, neither should a state give up its spiritual territory (*i.e.*, its constitutional principles). President Obama would not dream of giving Florida to terrorists for no other reason than that they want to sit in the sun. The British even waged the Falkland War for a tiny piece of land far away from the motherland. If nation states would be prepared to defend their principles with the same tenacity as they do with physical territory, terrorist organizations would have no chance of winning in this confrontation.

⁸⁸ Thomas H. Huxley, *Man’s Place in Nature*, intro. by Ashley Montagu (University of Michigan Press, 1959 (1862)).

⁸⁹ Afshin Ellian & Geliijn Molier, eds., *Freedom of Speech under Attack* (Eleven International Publishing, 2015).