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Group Rights, Individual Rights, and the Fundamentalist Challenge

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Citation

Cliteur, P. B. (2021). Group Rights, Individual Rights, and the Fundamentalist Challenge. In J. Doomen & M. van Schaik (Eds.), *Religious Ideas in Liberal Democratic States* (pp. 23-44). London: Lexington Books. Retrieved from <https://hdl.handle.net/1887/3278523>

Version: Not Applicable (or Unknown)

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

Religious Ideas
in Liberal
Democratic
States

edited by JASPER DOOMEN
and MIRJAM VAN SCHAİK

Published by Lexington Books
An imprint of The Rowman & Littlefield Publishing Group, Inc.
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706
www.rowman.com

6 Tinworth Street, London SE11 5AL, United Kingdom

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British Library Cataloguing in Publication Information Available

Names: Doomen, Jasper, editor. | Van Schaik, Mirjam, editor.

Title: Religious ideas in liberal democratic states / edited by Jasper Doomen and Mirjam van Schaik.

Description: Lanham : Lexington Books, [2021] | Includes bibliographical references and index.

Identifiers: LCCN 2021006421 (print) | LCCN 2021006422 (ebook) | ISBN 9781793618382 (cloth) | ISBN 9781793618399 (ebook)

Subjects: LCSH: Liberalism (Religion) | Liberalism—Religious aspects. | Religion—Philosophy. | Rawls, John, 1921–2002.

Classification: LCC BR1615 .R45 2021 (print) | LCC BR1615 (ebook) | DDC 323.44/2—dc23

LC record available at <https://lcn.loc.gov/2021006421>

LC ebook record available at <https://lcn.loc.gov/2021006422>

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Chapter Two

Group Rights, Individual Rights, and the Fundamentalist Challenge

Paul Cliteur

[2.0] This chapter starts with an analysis of Article 2 of the *Treaty on European Union* (1992). The author, analyzing the Article, claims that there is an inherent tension between the rights of minorities on the one hand and individual human rights on the other. The author shows that this tension was already present in a critique of the *Universal Declaration of Human Rights* (1948), which appeared even before the declaration was adopted by the General Assembly of the United Nations. This critique was published in an article in the *American Anthropologist* (1947) with debunking the notion of individual human rights as subtext. In this chapter, the author will argue that individual human rights are essential and are incompatible with group rights defending the cultural identity of the group, as the anthropologists do.

[2.1] The most controversial group rights are those claimed by fundamentalist Muslim groups. They are controversial because wayward individual members of the group (women, apostates, heretics, blasphemers, and homosexuals)¹ invoke individual rights *against* the group. The acceptance of group rights will amount to a destruction of the individual rights of the dissidents, in particular, the right to read, the freedom of thought and expression, and the right to criticize, satirize, and mock religious icons. This may be considered a significant loss. The notion of collective rights or group rights places us before many challenges, especially against the backdrop of a rise of fundamentalist interpretations of religion (and in particular of Islam).

[2.2] This paper is divided into three sections: Section I (Individual rights and group rights), Section II (Fundamentalist Islam), and Section III (What is to be done?).



I. INDIVIDUAL RIGHTS AND GROUP RIGHTS

[2.3]

Human Rights in Article 2 Treaty on European Union (Maastricht Treaty)

[2.4]

Article 2 of the Treaty on European Union (TEU, or Maastricht Treaty, 1992) states:

[2.5]

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the *rights of persons belonging to minorities*. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail (italics added, PC).

[2.6]

Now, what are the problems concerning (i) minority rights and (ii) individual human rights as they both implicitly appear in this Article? Different political groups emphasize different elements from the rights enumerated in the TEU.

[2.7]

I will start with a bold, perhaps very bold, statement.² When it comes to the notion of human rights, the political left, at least in its contemporary manifestation, is primarily interested in the “rights of persons belonging to minorities.”³ And these are not *personal* in the sense of rights belonging to the human individual, but collective rights, *i.e.*, rights of the group.⁴ This central problem is the point of departure for this paper. Besides, there is another assumption implicit in the words of the TEU. The concept of “minorities” is nowadays used in a very restricted way. We are not talking about the minority of stamp collectors, the minority of people reading Homer, or the minority of people who love tap dancing. With minorities, one usually refers to *ethnic or religious minorities*. And even more specific, in the European context, the religion most discussed is Islam. So when we speak about religious minorities in the contemporary discussion, we talk about Muslims. We are talking about the group rights of Muslims.

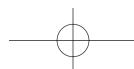
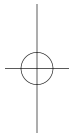
[2.8]

Paradoxically, by focusing on *group* rights, we tend to ignore⁵ the *individual* rights of Muslims, which is not without difficulties. Let us look closely at the phrase: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights” (see the text of Article 2, TEU). This implies that minorities are not only the beneficiaries of this “respect”; they should also *practice* that respect.

[2.9]

The Dutch empirical sociologist Ruud Koopmans, presently connected to the Humboldt University in Berlin, did some research that is relevant to this topic.⁶ His work and that of other authors defending a perspective similar to his⁷ is dedicated to what I would like to call the problem of the “minority within the minority.”⁸ The theme of his work is the “severe suppression of religious minorities, apostates and atheists, women and homosexuals in the

[2.10]





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Islamic world.”⁹ This suppression is not only practiced by the state, but also by the Muslim community itself. Minorities, more in particular the Muslim minority, violate the individual rights of their members. So the question is: are their actions, perhaps, based on a specific notion of human rights, *e.g.*, the idea that not only individuals have rights but also groups (“group rights” or “collective rights”)?

[2.11]

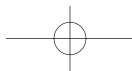
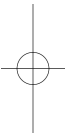
The problem of the minority (*e.g.* the human individual) within a minority (*e.g.* the Muslim group) can be recognized in all social groups. But, as I said, most attention nowadays is given to the predicament of the Muslim minority (or individual Muslim) within Muslim groups as a whole. Adherence to Islam on a world scale amounts to 21% of the world population.¹⁰ So on a global scale, Islam is the second-largest religion and certainly not a “minority.” On that scale, Sikhism (0.35%) and Judaism (0.25%) are minority religions, not Islam. Where does the reputation of Muslims adhering to a minority religion come from? It derives from the fact that *within European nation-states*, Islam is a minority position. Figure 2.1, from the American think-tank Pew Research Center, gives us an idea.¹¹

[2.12]

But although Muslims within European nation-states are a minority, this is changing rapidly, as this figure makes clear. For instance, France’s Muslim population has significantly increased in recent years. This increase is partly due to the increasing number of migrants from Muslim countries, but also to fertility rates. The German Islam-scholar Bassam Tibi points out that by the year 2050, 20% of the population in Germany will be Muslim.¹² This is not a problem in itself, of course, but as Eric Kaufmann makes clear, it becomes a problem when we realize that especially religious fundamentalist populations are growing. According to Kaufmann, that implies that liberalism and secularism will come under pressure. Liberal societies will have to take measures to counter the fundamentalist challenge.¹³ Although religious fundamentalism is a problem in Judaism, Christianity, Hinduism, and other religions, it is especially noticeable in Islam. Bassam Tibi refers to a “global migration crisis” (an early warning by Myron Weiner)¹⁴ because of the clash between the culture of modern secularism and the religious fundamentalist attitude that characterizes migrant communities from countries where Islamic fundamentalism has blossomed.¹⁵

[2.13]

Translated in the language of human rights, which is the focus of this contribution, this means that Muslims in Western countries do not always respect the individual rights of Muslims within the group. Besides, they do not always respect the rights of the majority of the population to make decisions by majority vote. When, *e.g.*, Muslim immigrants stick to an ideal of 7th century Medina as the ideal community, ideal society, and perfect state, this is terrible news for the European secular order as sketched in European human rights treaties or the constitutions of the European nation-states.¹⁶ It should be made clear to fundamentalists and those who come under the spell





[2f1] Figure 2.1. Courtesy of Pew Research Center, Washington, DC.

of their message that this reorientation on Medina is not only incompatible with European modernist constitutions but also not religiously mandated. The fundamentalist construction of Medina as a political ideal is the invention of a tradition in the sense of Eric Hobsbawm, as Bassam Tibi rightly observes.¹⁷

The problem of the Muslim minority within Western societies is this: should Muslims, based on presumed group identity and committed to group rights, be allowed to infringe the rights of the minorities within their midst?

[2.14]



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[2.15] The Problem of the Minority within a Minority

[2.16] To answer the question stated above, let us take the following questions as representative. What are the rights of Muslim women?¹⁸ The Muslim apostates?¹⁹ The Muslim homosexuals?²⁰ Muslim atheists?²¹ Should these Muslim individuals be protected against group pressure (or worse) from their communities, *e.g.*, by stressing individual human rights? Or should communities be protected against the state and against dissident individuals within their midst, *e.g.*, by emphasizing the right to maintain your own culture *as a group*?

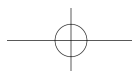
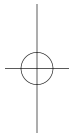
[2.17] Rights-vocabulary is a real asset to our political culture, as legal philosopher Ronald Dworkin has emphasized.²² But only if used carefully, we have to add. And we should prudently distinguish between: (a) rights of the individual, (b) rights of the group, as Article 2 TEU fails to do. This contribution aims to highlight the tension between *a* and *b*.

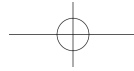
[2.18] For the future of the liberal democratic culture of European societies it is crucial to support the individual rights of Muslim women,²³ apostates,²⁴ homosexuals, and atheists.²⁵ This support is necessary to make possible what Bassam Tibi calls a “Euro-Islam.”²⁶ Religious fundamentalists counter this development by invoking group rights to protect their culture.²⁷ This culture they call “Islam.” But the result of all this is that they defend religious fundamentalism or political Islam or Islamism, the most backward version of their religion.²⁸

[2.19] Unfortunately, most of the political left is unconscious of the political process that unfolds itself in Europe, and it unwittingly supports radicalization as, among others, Jean Birnbaum and Caroline Fourest make clear in their work.²⁹ By confusing “religion” with “race,” religious criticism is, when it comes to Islamism, becoming increasingly difficult, and religious reformers or critics of Islam(ism) in its contemporary manifestation run the risk of being convicted of “racism.”³⁰

[2.20] Under the banner of “multiculturalism,”³¹ which was for a long time a dominant perspective among the left, minority groups received protection against the state and society. “The communities” were allowed to practice discrimination, intolerance, injustice, and inequality towards “their” women, homosexuals, and apostates. Paradoxically, the legitimacy for this is the first part of Article 2 TEU. Such clauses can - again, under the banner of multiculturalism - be interpreted as a right of a group against the state or society as a whole. The text as used in Article 2 TEU runs the risk of being construed as a group right for the minority group as a whole and being inimical to the rights of individual Muslim women, apostates, or homosexuals to be exerted against their own communities.

[2.21] The imminent danger of this TEU-clause is this: it silences individuals because the protection of the group is deemed to be more important than the





individual. The social cohesion within the group should not be jeopardized, even if this means suppressing the individual. For a proper understanding of the problems with minority rights and individual rights, it is essential to elaborate on that tension between individual rights and group rights a little longer.

Cultural Relativism

[2.22]

Those who advocated the rights of individual Muslims to fight discrimination within their own group³² were silenced with several arguments.

[2.23]

One of these was the thesis of cultural relativism. Cultural relativism means that criticism is only legitimate *within the group*. That means that no outsider from, e.g., the group of Muslims, is allowed to criticize Islam, Islamic culture, Muslims in general, or even Muslim leadership in general. Who are we to judge them (“non-judgmentalism”)?³³

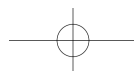
[2.24]

According to philosopher Kai Nielsen (*b.* 1926), cultural relativism became popular with cultural anthropologists, the most prominent of whom are Lévy-Bruhl and Ruth Benedict.³⁴ In the same year that G.E. Moore’s *Principia Ethica* (1903) was published, Lévy-Bruhl argued in his *La Morale et la Science des Moeurs* that moral codes are mere “rationalizations of custom.” Morality is simply the body of rules which determines conduct in any society, as Nielsen presents the relativist stance. The difference in cultural behavior is enormous, according to the cultural anthropologists. Some cultures have a rule that all twins are to be killed at birth. Others that captured children of an enemy tribe are first to be adopted and then, during adolescence, to be eaten by the families that have adopted them.³⁵ Ruth Benedict summarized the cultural relativist stance by saying that “morality differs in every society, and is a convenient term for socially approved habits.”³⁶ In other words, “morally good” is no different from “habitual.”³⁷

[2.25]

Cultural relativism became enormously influential in our time, and it is no exaggeration to say that it was the great competitor of the notion of individual universal human rights as developed in the *Universal Declaration of Human Rights* (1948). Philosopher W.T. Stace said: “The present age is obsessed with the notion of moral relativism.”³⁸ He also states that the relativist/absolutist dichotomy is politicized in the following manner: “Those of the left are the ethical relativists. They are the revolutionaries, the clever young men, the up to date. Those of the right-wing we may call the ethical absolutists. They are the conservatives and the old-fashioned.”³⁹ Curiously enough, this characterization is still relevant for understanding the situation in our time. And the cultural anthropologists had a significant influence on this state of affairs. Their impact was on the whole negative because it undermined respect for individual human rights. Their ideas may sound innocent and even wholesome as a correction to individualist conceptions of human rights,

[2.26]



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but in fact, they are undermining a proper understanding of human rights, and in an age of increasing religious fundamentalism, this is undoubtedly dangerous. In the next section, I will show how cultural relativism became the dominant philosophical perspective for the early anthropological critics of the *Universal Declaration*.

[2.27] The Anthropologists' Revolt against the Universal Declaration

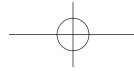
[2.28] In 1947 the *American Anthropologist* published a highly influential article, "Statement on Human Rights."⁴⁰ It was a declaration by the American Anthropological Association, giving their advice to the Commission on Human Rights of the United Nations. The problem faced by the Commission on Human Rights in preparing the Declaration, the American anthropologists stated, was this. The declaration is concerned with respect for the personality of the individual as such, and its right to its fullest development as a member of society. However, in a world order, "respect for the cultures of different human groups is equally important."⁴¹

[2.29] Is that true, one may object? Is respect for culture *equally important* as respect for the personality of the individual? The anthropologists think so, but this is a controversial claim to make. In an attempt to further underpin their claim, they refer to the truism that groups are composed of individuals and that human beings do not function outside the societies of which they form a part. From this, they draw an important conclusion:

[2.30] The problem is thus to formulate a statement of human rights that will do more than just phrase respect for the individual as an individual. It must also take into full account the individual as a member of the social group of which he is a part, whose sanctioned modes of life shape his behavior and with whose fate his own is thus inextricably bound.⁴²

[2.31] The problem with this statement is that "phrase respect for the individual as an individual" is precisely what the notion of human rights is all about. So the cultural anthropologists hit the human rights tradition in its essence because human rights thinking is wholly dedicated to enshrining the human individual as an ultimate subject of dignity. If we did what the cultural anthropologists want us to do and focused on the individual *as a member of the social group*, the whole notion of human rights would evaporate. The reason is that human rights are also rights *against the group*. So what the cultural anthropologists do extends far beyond the claim that morals are influenced by culture. That morals are influenced by culture is a factual claim. It is also true, of course, even a truism. But the anthropologists tend to make the step from "is" to "ought."

[2.32] The anthropologists claim to be scientific. They think it necessary to "outline some of the findings of the sciences that deal with the study of



human culture.”⁴³ Subsequently, they point out that there is a wide variety of cultural mores. But what they do not realize is that showing us cultural variety contributes nothing to the thesis that variety is good. Nor does it point in the direction of the claim that groups should be equally important as individuals. So the philosophical underpinning of the argument of the cultural anthropologists seems flawed.

In drawing up a *Bill of Human Rights*, the anthropologists think three propositions are crucial.

[2.33]

Culture is important. The individual realizes his personality through his culture. Hence respect for individual differences entails respect for cultural differences, they say. There can be no full development of the individual personality “as long as the individual is told, by men who have the power to enforce their commands, that the way of life of his group is inferior to that of those who wield power.”⁴⁴

[2.34]

All evaluation is not scientific. Respect for differences between cultures is validated by the scientific fact that no technique of qualitatively evaluating cultures has been discovered. Eternal verities only seem so because we have been taught to regard them as such, the anthropologists claim.⁴⁵

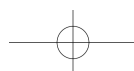
[2.35]

Morals and convictions about rights are relative to culture: universality denied. Standards and values are relative to the culture from which they derive. And this implies that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must, to that extent, detract from the applicability of any *Declaration of Human Rights* to Mankind as a whole.⁴⁶

[2.36]

The anthropologists think they have successfully deconstructed the attempt to formulate universal values, as is the ambition of the United Nations,⁴⁷ but it is difficult to see how their argumentation can contribute to that aim. What they have accomplished is pointing out that there is much cultural variety in this world.⁴⁸ And what they have done is making the statement that group behavior exerts a particular influence, a significant influence perhaps, on individual behavior. But these claims do not in any way undermine or refute the notion of universal individual rights. One may still claim that, despite all the cultural variety, there are certain norms, a limited list perhaps, that have universal significance. That there are some individual rights which the human person, wherever he lives, whatever his cultural background, whatever his religious conviction, his race, gender, has as his birthright. The anthropologists are blind to this idea. The anthropologists underline that “what is held to be a human right in one society may be regarded anti-social behavior by other people,” but that does not in any way contribute to the proposition that there are no universal human rights. People make errors with computations as well, but that does not in any way substantiate the claim that truth is only in the eye of the beholder. The anthropologists seem to be under the spell of some crude relativism.⁴⁹

[2.37]





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[2.38] It is even somewhat puzzling that only two years after the Second World War, people could be impressed by sentences as “what is held to be a human right in one society may be regarded anti-social behavior by other people.” On a descriptive level, this is entirely right. What happened in the Nazi-era most people regarded as anti-social behavior outside of the Third Reich, but it would be wrong to conclude from this that there are no universal norms and values or no universal rights. To say that ethics in the normative sense is only a matter of opinion purely based on cultural variety is a mistake.

[2.39] The same applies to their observation that the problem of drawing up a *Declaration of Human Rights* was relatively simple in the Eighteenth Century because it was not a matter of human rights, but the rights of men within the framework of the sanctions laid by a single society.

[2.40] Given the evident failures of their argumentation, it is hard to understand how cultural anthropologists could be so successful in their protest against universal human rights. And successful they were, because, although the philosophical underpinning of the anthropologists’ claims is relatively weak, their influence seems to be immense. Relativism is rampant in contemporary culture.⁵⁰ It might not be exaggerated to say that not Eleanor Roosevelt, H.G. Wells⁵¹ or other protagonists of individual human rights have won the day, but the cultural anthropologists with their relativist stance towards universal rights and values. This is not without consequences for the individual rights of people belonging to minority cultures. They are left unprotected.

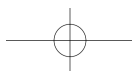
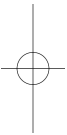
[2.41] Let us try to see what the problems within Muslim culture are when it comes to individual human rights. I will take Ruud Koopmans’s work as a point of departure and try to translate his findings into human rights vocabulary. Koopmans’s work is similar to the work of Bassam Tibi, fragments of which I have characterized in the previous sections. Koopmans’s work can be read as the empirical underpinning of Tibi’s work. It is not without philosophical assumptions, however, as I will make clear in what follows.

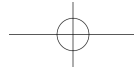
[2.42] II. FUNDAMENTALIST ISLAM

[2.43] **Ruud Koopmans’s Research**

[2.44] One may distinguish four ways to establish the nature of religion. Between the adherents of those four approaches there is a confusing debate going on; it is especially confusing because the participants do not spell out (and are often unconscious of) their assumptions. The controversy is about the question: what is religion? Or rather about the question *how to ascertain* what is religion? In my view, there are four possible answers to that question.

[2.45] 1. Religion is Scripture (Bible, Koran),⁵²





Chapter 2

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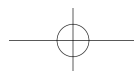
- 2. Religion is what believers believe (what do people self-identifying as Muslims, Christians, Jews think?),⁵³ [2.46]
- 3. Religion is what authorities say religion is (popes, priests, imams, reverends), [2.47]
- 4. Religion is imagination, *i.e.*, the highly personal interpretation someone gives to his belief.⁵⁴ [2.48]

Theologians focus on 1; sociologists on 2, religious authorities on 3, and individual believers in a highly individualized contemporary culture on 4. Koopmans's research deals with the convictions of Muslims, and is thus oriented on 2. [2.49]

Accordingly, Koopmans, as an empirical researcher, focusses on one aspect of religion. And comparing the opinions of Muslim believers with those of other believers, he teaches us that Muslim believers are comparatively "fundamentalist." Why? Because they score significantly higher on fundamentalist convictions in answering survey questions. Koopmans uses the following indicators of fundamentalism: (a) Believers have to go back to the roots of their belief, (b) There is only one interpretation of holy scripture, and (c) The rules of holy scripture are more important than the laws of my country.⁵⁵ People who answer affirmatively on all three questions are full-blown fundamentalists. [2.50]

Especially Koopmans's third criterion to measure fundamentalism seems relevant in the context of individual human rights and group rights, which is the focus of this article. The meaning of the notion of individual universal rights is that those rights pertain to the human individual and that nation-states have accepted that notion (for instance in their constitutions) so citizens in nation-states can claim these rights, both against the state and against the group to which they belong. Fundamentalists deny this proposition. They say that the group, *e.g.* the Muslim group, have rights if these rights are attributed to them by God. So individual human rights as enshrined in *The Universal Declaration of Human Rights* (1948) are not decisive, but rather the rights to be found in the Koran or sharia law.⁵⁶ [2.51]

Why is this important with regard to group culture and group rights? Because the Koran, like the Bible, or any religious document from the pre-modern period, is oriented towards group rights or the religious group and not the rights of the human individual. It is a common - postmodern - understanding of texts (so also the Bible or the Koran) that they can mean anything the interpreter wants them to mean, but this semantic relativism is not very convincing.⁵⁷ The Bible and the Koran cannot mean *anything* like the American Constitution and Shakespeare's play cannot mean *anything*.⁵⁸ There is an element of uncertainty in every interpretation but it would be a silly to say there is nothing else than uncertainty.⁵⁹ [2.52]



[2.53] Fundamentalism and Theoterrorism

[2.54] The three elements of fundamentalism, as outlined by Koopmans, have far-reaching consequences for contemporary society. The idea that (a) Believers have to go back to the roots of their belief, that (b) There is one and only one interpretation of holy scripture, and that (c) The rules of sacred scripture are more important than the laws of my country has consequences for the individual rights of women, homosexuals, heretics, blasphemers, apostates and unbelievers.

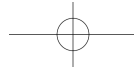
[2.55] The first element (*a*) is what Bassam Tibi called *Rückwärtsorientierung*: orientation on the past. This orientation leads to a fundamentalist construction of the Medina-model,⁶⁰ *Hakkimiyatt Allah*, and the rule of Allah,⁶¹ which stands in an antithetical relationship to the democratic-secular order of, e.g., the German Constitution.⁶²

[2.56] The second element, *i.e.*, that there is one and only one interpretation of scripture, leads to a rigid insistence of one and only one possible understanding of precepts.

[2.57] But the most dangerous element of religious fundamentalism is perhaps the last, *i.e.*, that the rules of the secular democratic order are null and void if they contradict religious law (*sharia*).⁶³ This third element (*c*) is hazardous for the minority within the minority. The idea that women are equal to men, that homosexuals (or LGBTQ-people) have the same rights as heterosexuals, and that blasphemy, apostasy, and unbelief are convictions protected by human rights culture is modern.⁶⁴ It is intimately connected with Enlightenment philosophy and the rights as enshrined in the *Universal Declaration of Human Rights* (1948), and certainly not with the collectivist culture that religious fundamentalism tries to reestablish.

[2.58] The third element of Koopmans's fundamentalism-concept has enormous consequences for the recognition of the rights of Muslim individuals against the Muslim group. But this third element of the fundamentalist mindset, the priority of religious texts above common law from the state, is also crucial in the context of contemporary religious terrorism. Why? Because terrorist attacks in Western European nation-states⁶⁵ are perpetrated by people with fundamentalist convictions. Those people are not deranged, only full of ideological fervor. What they believe is that if the secular laws contradict religious law, religious law has priority. Let me give two contemporary examples.

[2.59] On November 18, 2019, a Dutch district court (The Hague) convicted Junaid Iqbal, a 27-year old Pakistani jihadist, to 10 years prison confinement for the preparation of a terrorist attack on the Dutch populist politician Geert Wilders.⁶⁶ The reason was that Wilders had planned a Mohammed Cartoon contest to protest against the increasing Islamization of Dutch society, in particular the erosion of freedom of expression. Iqbal came to the Netherlands with the explicit purpose to murder Wilders and thereby avenge the



injustice done to the Prophet of Islam. Iqbal went to the Netherlands to punish for blasphemy.

[2.60]

Jawed is another case in point. On October 14, 2019, another Dutch district court (Amsterdam) convicted Jawed Sultani, a 20-year old Afghani jihadist, for the stabbing of two American tourists at Amsterdam Central Station. It was a deliberate attempt to murder, with terrorist purposes, and the offender was convicted of a 26-years prison sentence.⁶⁷

[2.61]

The motives for Junaid I. and Jawed S. were similar: stopping Wilders’s cartoon contest, or punishing the offender before the eyes of God and his people. They also wanted to take reprisals on Dutch society for having the freedom to criticize and even mock religion.⁶⁸ Could Wilders not do what he wanted to because Dutch legislation gave him the opportunity? And did this not make the Dutch people at least partly responsible for the blasphemous cartoons? And the Dutch people were not singular in this regard. This right to religious criticism is codified in the *European Convention on Human Rights* (1950), which protects freedom of speech, and not only speech, information, and ideas that are well received or regarded as inoffensive or as a matter of indifference, but also ideas that “offend, shock or disturb the State or any sector of the population,” as the European Court on Human Rights declared (*Handyside*, para 49 of the judgment).⁶⁹ For Junaid and Jawed, this is all grossly unjust. For them, these secular laws and rights should be subject to the strictures of the holy law, sharia law. Muslims as a group have some sort of collective religious right against the human individual. If the human individual, e.g. a dissident member of the group, tries to defect from the collectivist creed, for instance by blaspheming or apostasy, he should be corrected, even with the draconic punishments prescribed in holy scripture. Religious law has priority over secular state law.

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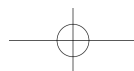
The cases of Junaid I. and Jawed S. make clear that upholding the freedom to shock, offend or disturb is far from easy with jihadist terrorists around who have vowed to retaliate if the honor of the Prophet is at stake. In 2015, the attack on the editorial offices of the French satirical magazine *Charlie Hebdo*⁷⁰ made clear that protecting freedom of speech in an age of jihadist terrorism (or “theoterrorism”) is far from easy.⁷¹ Needless to say, this has also influenced the support for populist leaders critical of migration in our time (among whom Wilders).

III. WHAT IS TO BE DONE?

[2.63]

Listening carefully to Iqbal and Sultani, it is essential to understand the nature of the challenge ahead of us. People like Iqbal and Sultani come from premodern cultures with totally different ideas about blasphemy, freedom of speech, individual rights, and other modernist values as they became com-

[2.64]



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mon in modernist societies.⁷² They have a different cultural background, which is incompatible with modern culture. They are horrified by criticism of their religion and feel obliged to play the avenging angels for the honor of God. The cultural anthropologists criticizing individual human rights may be right that culture is important. But not all culture is compatible with modern culture, and not all culture deserves defense against criticism. Fundamentalist culture does not deserve protection. But if the cultural anthropologists elevate “culture” to a sacrosanct status immune from individual criticism the freedom to choose, freedom to criticize, evaporates.

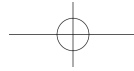
[2.65] The problem with Article 2 of the TEU is that it tends to accept group rights or rights for minorities. But a right for the minority as a group jeopardizes a right for the human individual. Totally unintended, but nonetheless, Article 2 TEU fatefully reinvigorates fundamentalist interpretations of rights. So contrary to its ambition, the EU with Article 2 TEU paves the way for a development that is inimical to individual human rights. An example is the claim that there is a “group right” to maintain your own culture, including the right to uphold criminalization and punishment of blasphemy and apostasy.

[2.66] This elementary mistake of Article 2 TEU is all the more dangerous because it is in line with an important strain of thought in Western thinking, addressed above, that can be characterized as “cultural relativism”: the idea that the culture of the group, whatever its moral value, is something to be defended. Cultural relativism makes individual rights subservient to group rights.

[2.67] The first influential critique on the notion of individual human rights as enshrined in the *Universal Declaration of Human Rights* (1948) came from a group of American cultural anthropologists. Because of their inherent cultural relativism, their role was not beneficial for the orientation on individual universal rights. The focus was on the right of the group to protect its own culture. This proved to be a dangerous line of thought, because it makes it very difficult, if not impossible, that critical individuals improve the group culture to something more advanced, something more in accordance with universal notions of right and justice.

[2.68] The most severe challenge is, perhaps, contemporary Jihadist terrorism. The Netherlands, like other countries in the world, not only in the Western world, has to deal with terrorists who aim to destroy the constitutional foundations of liberal democratic societies. Freedom of thought, freedom of expression, and freedom of religion and belief (including the right to change your religion, including the right to apostatize) are in serious jeopardy by the type of attacks as Paris experienced in January 2015 (*Charlie Hebdo*). The reaffirmation of rights mentioned is a matter of great urgency.

[2.69] Unfortunately, not only cultural relativism plays into the hands of fundamentalists. This is also the case with contemporary identity politics. In *Identity: The Demand for Dignity and the Politics of Resentment* (2018), Francis



Fukuyama rightly warns against a New Tribalism.⁷³ The emergence of movements promoting the rights of Native Americans, immigrants, gays, lesbians, and eventually transgender people, all based on group rights, have resulted in claims for the rights of white people.⁷⁴ Identity politics and demands for group rights “have paved the way for the emergence of right-wing identity politics that, at its most extreme, takes the form of racist white nationalism.”⁷⁵

Let me summarize the gist of my argument. I started with a phrase from Article 2 of the *Treaty on European Union* (1992), *i.e.*, that part which refers to the “rights of persons belonging to minorities.” This innocently sounding phrase “rights of minorities” proves to be less innocent if interpreted as group rights that can be appealed to against individual rights. The tension between individual rights and group rights goes back to a discussion in 1947 even before the *Universal Declaration* (1948) was adopted, *viz.* a critique of individualism by American cultural anthropologists. The fact that group rights, including a defense of the integrity of the group, have nonetheless made history proved to be troublesome. It stifles the opportunities of individual Muslim reformers to develop Islam into a more liberal democratic order. It is perhaps bitter to acknowledge, but populists see this more clearly than representatives of the political left. If the left wants to stem the advance of right-wing populism, it might be wise to reconsider its attitude towards religious fundamentalism and the terrorist threat with which European nation-states are confronted.

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NOTES

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1. I do not use a more contemporary variant, *viz.*, LBGQT, because the list of abbreviations is open and probably endless. By the time this book is published new letters have to be added to those mentioned. Why stop with Q? Why not add A (atheists)? Or F (Freethinkers)? Or H (humanists)? See *The Freedom of Thought Report 2019: A global report on the rights, legal status and discrimination against humanists, atheists and the non-religious*, Humanists International 2019. Or add “W” (women) in general? See Nicholas Kristof and Sheryl WuDunn, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (New York, NY: Vintage Books, 2010); Ophelia Benson and Jeremy Stangroom, *Does God Hate Women?* (London/New York, NY: Continuum, 2009).

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2. I use the freedom to generalize somewhat; science would be impossible without this. See Hans Reichenbach, *The Rise of Scientific Philosophy* (Berkeley, CA/Los Angeles, CA/London: University of California Press, 1951), 5: “The essence of knowledge is *generalization*.” And, *Ibid*: “Generalization, therefore, is the origin of science.”

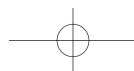
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3. An early criticism of minority rights is Jeremy Waldron, “Minority Cultures and the Cosmopolitan Alternative,” *University of Michigan Journal of Law Reform* 25 (1992): 751-793. See also Liav Orgad, *The Cultural Defense of Nations: A Liberal Theory of Majority Rights* (Oxford: Oxford University Press, 2015); Jennifer Jackson Preece, *Minority Rights: Between Diversity and Community* (Cambridge: Polity, 2005).

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4. Julia Stapleton, ed., *Group Rights: Perspectives since 1900* (Bristol: Thoemmes Press, 1995); Erwin Dijkstra, “Het versmide strafrecht? Een breder perspectief op het toevoegen van geslachtskenmerken, genderidentiteit en genderexpressie aan de AWGB,” *Nederlands Juristenblad* 17 (2019): 1239-1245.

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5. See the previous footnote.

6. Ruud Koopmans, *Het vervallen huis van de islam: Over de crisis van de islamitische wereld* (Amsterdam: Prometheus, 2019); Ruud Koopmans, *Das verfallene Haus des Islam: Die religiösen Ursachen von Unfreiheit, Stagnation und Gewalt* (Munich: C.H. Beck, 2020); Ruud Koopmans, "Fundamentalism and out-group hostility: Muslim immigrants and Christian natives in Western Europe," *WZB Mitteilungen* (December 2013); Ruud Koopmans, "Religious Fundamentalism and Hostility against Out-groups: A Comparison of Muslims and Christians in Western Europe," *Journal of Ethnic and Migration Studies* 41, no. 1 (2015): 22-57; Koopmans, Ruud, "Gehört der real existierende Islam zu Deutschland?," in *Der Politische Islam gehört nicht zu Deutschland: Wie wir unsere freie Gesellschaft verteidigen*, ed. Carsten Linnemann and Wilfried Bausback (Freiburg/Basel/Vienna: Herder, 2019), 11-24.

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7. See e.g. Ayaan Hirsi Ali, *The Challenge of Dawa: Political Islam as Ideology and Movement and How to Counter It* (Stanford, CA: Hoover Institution Press, 2017); Hirsi Ali, Ayaan, "Muslimische Frauen, fordert Eure Rechte ein!," in *Tödliche Toleranz*, ed. Günther Lachmann (Munich/Zürich: Piper, 2004), 280-287; Susanne Schröter, *Politischer Islam: Stresstest für Deutschland* (Gütersloh: Gütersloher Verlagshaus, 2019); Bassam Tibi, "Dankesrede: I'll state my case, of which I'm certain: I did it my way: Leidener Unbequeme Gedanken," in *Basler Unbequeme Gedanken über illegale Zuwanderung, Islamisierung und Unterdrückung der Redefreiheit*, ed. Bassam Tibi (Stuttgart: Ibidem-Verlag, Stuttgart 2019), 342-351.

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8. This concept is used among others, by the Dutch philosopher Floris van den Berg in *Beter weten: filosofie van het ecohumanisme* (Antwerp/Utrecht: Houtekiet and ISVW, 2015), 527.

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9. Koopmans, *Het vervallen huis van de islam*, 9.

10. The approximate numbers of adherents to the largest faiths as percentages of the world's total population are as follows: Christianity 32%, Islam, 21%, Non-religious 15%, Hinduism 12.5%, Primal religions 5.5%, Chinese traditional 5.5%, Buddhism 5.5%, Sikhism 0.35%, Judaism 0.25%, other 2.4%. See Philip Wilkinson, *Religions* (London: Dorley Kindersley Limited, 2008), 338; Paul Cliteur, *The Secular Outlook: In Defense of Moral and Political Secularism* (Chichester: Wiley-Blackwell, 2010), 4.

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11. Last accessed 23-11-2019: <https://www.thelocal.fr/20171201/how-frances-muslim-population-will-grow-in-the-future>.

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12. Bassam Tibi, "Wie die Integration islamischer Zuwanderer nach Europa behindert wird," in *Der Politische Islam gehört nicht zu Deutschland: Wie wir unsere freie Gesellschaft verteidigen*, ed. Carsten Linnemann and Wilfried Bausback (Freiburg/Basel/Vienna: Herder, 2019), 28.

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13. Eric Kaufmann, *Shall the Religious Inherit the Earth? Demography and Politics in the Twentieth Century* (London: Profile Books, 2010).

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14. Myron Weiner, *The Global Migration Crisis: Challenge to States and to Human Rights* (London: HarperCollins, 1995).

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15. Tibi, "Wie die Integration islamischer Zuwanderer nach Europa behindert wird," 38.

16. Bassam Tibi, *The Sharia State: Arab Spring and Democratization* (London/New York, NY: Routledge, 2013); Bassam Tibi, "Introduction," in *Theoterrorism v. Freedom of Speech*, ed. Paul Cliteur (Amsterdam: Amsterdam University Press, 2019), 9; Bassam Tibi, *Im Schatten Allahs: Der Islam und die Menschenrechte* (Düsseldorf: Ullstein, 2003).

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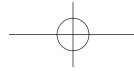
17. Tibi, "Wie die Integration islamischer Zuwanderer nach Europa behindert wird," 38; Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983).

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18. Nawal El Saadawi, *The Hidden Face of Eve: Women in the Arab World*, translated and edited by Sherif Hetata (London/New York, NY: Zed Books, 2007); Fatima Mernissi, *Sexe, idéologie, Islam* (Paris: Tierce, 1983).

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19. Patrick Sookhdeo, *Freedom to Believe: Challenging Islam's Apostasy Law* (Three Rivers, MI: Isaac Publishing, 2009); Samuel Zwemer, *The Law of Apostasy in Islam: Answering the question why there are so few Moslem converts, and giving examples of their moral courage and martyrdom* (London/Edinburgh/New York, NY: Marshall Brothers, 1924); Simon Cottee, *The Apostates: When Muslims Leave Islam* (London: Hurst, 2015); Ibn Warraq, ed.,



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20. Omar Nahas, *Islam en homosexualiteit* (Amsterdam: Uitgeverij Burlaag, 2001).

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21. Brian Whitaker, *Arabs without God: Atheism and Freedom of belief in the Middle East* (Scotts Valley, CA: CreateSpace, 2014); *The Freedom of Thought Report 2019*; Waleed Al-Husseini, *Une trahison française: les collaborationnistes de l'islam radical dévoilés* (Paris: Éditions Ring, 2017).

22. Since the seventies in the previous century (Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978)) till his advocacy of unpopular speech in the face of religious fanaticism in Ronald Dworkin, "The Right to Ridicule," *New York Review of Books*, 12 March 2006.

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23. Ayaan Hirsi Ali, *The Challenge of Dawa*.

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24. Mina Ahadi and Sina Vogt, *Ich habe abgeschworen: warum ich für die Freiheit und gegen den Islam kämpfe* (Munich: Heyne, 2008).

25. Jeanette Bougrab, *Maudites* (Paris: Albin Michel, 2015); *Lettre d'exil: La barbarie et nous* (Paris: Éditions du Cerf, 2017); *Lettre aux femmes voilées et à ceux qui les soutiennent* (Paris: Éditions du Cerf, 2019); Ali Rizvi, *The Atheist Muslim: A Journey from Religion to Reason* (New York, NY: St. Martin's Press, 2016).

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26. Bassam Tibi, *Euro-Islam: Die Lösung eines Zivilisationskonfliktes* (Darmstadt: Primus Verlag, 2009).

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27. See for a sustained criticism Sohail Wahedi, "Singling out Religion qua Religion in Law," in *The Constitutional Dynamics of Religious Manifestations: On abstraction from the religious dimension*, ed. Sohail Wahedi (Rotterdam: Erasmus University Rotterdam, 2019), 1-37.

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28. Pierre-André Taguieff, *L'islamisme et nous. Penser l'ennemi imprévu* (Paris : CNRS Éditions, 2017).

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29. Jean Birnbaum, *Un silence religieux: la gauche face au djihadisme* (Paris: Éditions du Seuil, 2016), *La religion des faibles: ce que le djihadisme dit de nous* (Paris: Éditions du Seuil, 2018); Caroline Fourest, *Quand la gauche a du courage: chroniques résolument progressistes et républicaines* (Paris: Grasset, 2012); Jamie Glazov, *United in Hate: The Left's Romance with Tyranny and Terror* (Los Angeles, CA: WND Books, 2009).

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30. Pascal Bruckner, "Fundamentalismus der Aufklärung oder Rassismus der Antirassisten?," in *Islam in Europa: Eine internationale Debatte*, ed. Thierry Chervel and Anja Seeliger (Frankfurt am Main: Suhrkamp Verlag, 2007), 55-75; *Un racisme imaginaire: islamophobie et culpabilité* (Paris: Grasset, 2017).

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31. Romy Hasan, *Multiculturalism: Some Inconvenient Truths* (York: Politico's Publishing Ltd, 2010); Machteld Zee, *Choosing Sharia: multiculturalism, Islamic fundamentalism & British Sharia Councils* (The Hague: Eleven, 2015); Terri Murray, "Multiculturalism and the Illusion of Diversity," in *Identity, Islam and the Twilight of Liberal Values*, ed. Terri Murray (Cambridge: Cambridge Scholars Publishing, 2018), 20-31; Guiora, Amos, "Multiculturalism and Religious Extremism: Whose Human Rights Do We Protect?," in *Terrorism, Ideology, Law, and Policy*, ed. Geliijn Molier, Afshin Ellian, and David Suurland (Dordrecht: Republic of Letters Publishing, 2011), 337-361.

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32. See Paul Cliteur, "Female Critics of Islamism," *Feminist Theology* 19, no. 2 (2011): 154-167.

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33. Zee, *Choosing Sharia*: 40.

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34. Kai Nielsen, "Ethical Relativism and the Facts of Cultural Relativity," *Social Research* 33, no. 4 (1966): 533.

35. *Ibid.*, 533.

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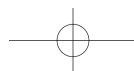
36. Quoted in Nielsen, *Ibid.*, 533.

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37. Ruth Benedict, "Anthropology and the Abnormal," *The Journal of General Psychology* 10 (1934): 59-82.

38. W.T. Stace, *The Concept of Morals* (London: Macmillan, 1937), vi.

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39. Ibid., 1.

40. American Anthropological Association, "Statement on Human Rights," in: *American Anthropologist* 49, no. 4 (October/December 1947): 539-43.

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41. Ibid., 539.

42. Ibid., 539.

43. Ibid., 539.

44. Ibid., 541.

45. Ibid., 542.

46. Ibid., 542.

47. Patrick Hayden, ed., *The Philosophy of Human Rights. Paragon Issues in Philosophy* (Saint Paul, MN: Paragon House, 2001); Michael Ignatieff, *Whose Universal Values? The Crisis in Human Rights* (The Hague: Praemium Erasmianum, 1999); John O'Manique, "Universal and Inalienable Rights: A Search for Foundations," *Human Rights Quarterly* 12 (1990): 465-485.

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48. Like Herodotus had done, or Montaigne. See Paul Cliteur and Afshin Ellian, "The universality of values and principles," in *A New Introduction to Jurisprudence: Legality, Legitimacy, and the Foundations of the Law*, ed. Paul Cliteur and Afshin Ellian (London/New York, NY: Routledge, 2019), 114-165.

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49. See for similar criticism on relativism: John Searle, "Rationality and Realism, What is at stake?," *Daedalus* 122, no. 4 (Fall 1993): 55-83; Stace, *The Concept of Morals*; Fernando Tesón, "International Human Rights and Cultural Relativism," *Virginia Journal of International Law* 25 (1985): 869-898; R.J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), 37-61; Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly* 6 (1984): 400-419.

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50. This was stressed by Stace in the work aforementioned, but in our time by Allan Bloom, *The Closing of the American Mind: How Higher Education has Failed Democracy and Impoverished the Soul of Today's Students* (New York, NY: Simon and Schuster, 1987).

[2n51]

51. Bastiaan Rijpkema, *Militant Democracy* (London/New York, NY: Routledge, 2018), 22 ff.; H.G. Wells, *The Rights of Man, or What are we Fighting for?* (Harmondsworth: Penguin Books, 2015).

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52. Problematic passages in the Koran are: "Prophet, make war on the unbelievers and the hypocrites and deal rigorously with them. Hell shall be their home: an evil fate" (Koran 9:73). Or: "Believers, make war on the infidels who dwell around you. Deal firmly with them. Know that God is with the righteous" (Koran 9:123). A biblical equivalent to these passages is Deuteronomy 13:7-11. But the question is whether Scripture determines the identity of a religion, of course. Karen Armstrong is strongly opposed to that view. She refers to Karl Barth (1886-1968), who defended that the "only valid source of God-knowledge was the Bible." Armstrong comments: "This seems to have the worst of all worlds; experience is out; natural reason is out . . . ; and there is no possibility of learning from other faiths, since the Bible is the only valid revelation." Karen Armstrong, *A History of God: From Abraham to the Present: the 4000-Year Quest for God* (London: Vintage books, 1999), 448.

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53. Koopmans's research shows that religious fundamentalism is not a marginal phenomenon within West European Muslim communities. Almost 60 per cent agree that Muslims should return to the roots of Islam, 75 per cent think there is only one interpretation of the Koran possible to which every Muslim should stick and 65 per cent say that religious rules are more important to them than the laws of the country in which they live. Consistent fundamentalist beliefs, with agreement to all three statements, are found among 44 per cent of the interviewed Muslims. See the summary in https://www.wzb.eu/system/files/docs/sv/iuk/koopmans_englisch_ed.pdf

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54. One may also call this the "mystic" dimension of religion in the sense that every individual believer decides what he or she considers to be the central tenet of his faith. Mystics are not interested in scripture or what others believe or what authorities say about the essence of belief.

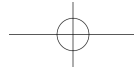
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55. Koopmans, *Het vervallen huis van de islam*, 34.

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56. Zee, *Choosing Sharia*; Tibi, *The Sharia State*; Elham Manea, *Women and Shari'a Law: The Impact of Legal Pluralism in the UK* (London/New York, NY: I.B. Tauris, 2016).





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57. See on this Ernest Gellner, *Postmodernism, Reason, and Religion* (London/New York, NY: Routledge, 1992) and Searle, “Rationality and Realism”: 55-83.

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58. This proposition is forcefully defended by Gellner, *Ibid.* There is a long discussion on how to interpret the Constitution. See Hugo LaFayette Black, *A Constitutional Faith* (New York, NY: Alfred Knopf, 1969); Herman Philipse, “Antonin Scalia’s Textualism in Philosophy, Theology and Judicial Interpretation of the Constitution,” in *Holy Writ: Interpretation in Law and Religion*, ed. Arie-Jan Kwak (Farnham/Burlington, VT: Ashgate, 2009), 15-47.

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59. See on this H.L.A. Hart, “Positivism and the Separation of Law and Morals,” *Harvard Law Review* 71 (1958): 593-629.

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60. Tibi, *The Sharia State*, 38.

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61. See also Tibi, *Im Schatten Allahs*.

[2n61]

62. Tibi, “Wie die Integration islamischer Zuwanderer nach Europa behindert wird,” 30.

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63. See on sharia Tibi, *The Sharia State*; Zee, *Choosing Sharia*; Manea, *Women and Shari’a Law*.

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64. A.C. Grayling, *Towards the Light: The Story of the Struggles for Liberty & Rights that made the Modern West* (London: Bloomsbury Publishing, 2007); Jonathan Israel, *A Revolution of the Mind: Radical Enlightenment and the Intellectual Origins of Modern Democracy* (Princeton, NJ/Oxford: Princeton University Press, 2010).

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65. And *not* the nation-states in Central Europe: not Poland, Romania, Hungary etc.

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66. Rechtbank Den Haag 18 november 2019, 10 jaar cel voor voorbereiden terroristische aanslag op Geert Wilders (Junaid I.), ECLI:NL:RBDH:2019:12069.

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67. Rechtbank Amsterdam 14 oktober 2019, 26 jaar en 8 maanden voor terroristische aanslag op Amsterdam CS (Jawed S.), ECLI:NL:RAMS:2019:5766. See for an analysis of the motives of contemporary jihadist terrorists Bart Collard, “The origin of the threat of Islamic terrorism: an intelligence analysis from 1991 until 2018,” in *Terrorism and counterterrorism after ISIS: theory, law and practice*, ed. Afshin Ellian and Gelijn Molier (The Hague: Eleven International Publishing, 2020).

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68. See François Boespflug, *Caricaturer Dieu? Pouvoirs et dangers de l’image* (Paris: Bayard, 2006); Mohamed Sifaoui, *L’affaire des caricatures de Mahomet: dessins et manipulations* (Paris: Éditions Privé, 2006); Dworkin, “The Right to Ridicule.”

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69. *Handyside v. United Kingdom*, Judgement of 7 December 1976, Series A No. 24; (1979-80) 1 EHRR 737.

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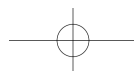
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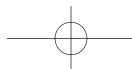


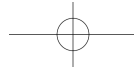


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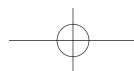




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