

Social Change and the Accommodation of Religious Minorities in the Netherlands

New Diversity and Its Implications for Constitutional Rights and Principles

Wibren van der Burg

Professor of Legal Philosophy and Jurisprudence, Erasmus School of Law,
Erasmus University Rotterdam, Rotterdam, the Netherlands
vandenburg@law.eur.nl

Wouter de Been

w.h.j.debeen@gmail.com

Abstract

The toleration of religious minorities is changing in the Netherlands. In this paper we analyze three recent developments in Dutch society that are important for understanding the way the Dutch regime of religious tolerance is adjusting to 21st century circumstances. The first one concerns the growing homogenization of Dutch society and the emergence of a secular and liberal majority. The second is the dominance in policy and public debate of a “Protestant” conception of what religion amounts to. The third development is the fragmentation of religion and its simultaneous combination into new networks and groups made possible by new information and communication technologies. These developments pose challenges to constitutional rights and principles. There are no simple solutions to these challenges, but the Dutch tradition of consociationalism, as a liberal tradition in its own right, may provide some valuable perspectives.

Keywords

secularization – diversity – consociationalism – the Netherlands – liberalism – republicanism – individualization – aggregation

1 Introduction¹

Regimes and practices for the toleration and accommodation of religious diversity cannot be designed in a vacuum. They depend on social context and on the patterns of religious diversity in the community that is doing the tolerating.² It matters whether religious groups are geographically concentrated or thinly spread over the population. It matters whether religious communities are historically entrenched, with established rights, or whether they are loose collections of recent arrivals, immigrants who chose to move to a host polity freely and individually. Size also matters. Is there a large majority tolerating several small minorities, or is there a set of coequal religious and secular communities tolerating each other? The nature of religions practiced by groups of citizens matters, too. Do religious communities possess a highly organized church structure, or do they constitute a fuzzy group of believers? Is there a set of well-understood rules and precepts guarded by priests and church leaders, or are believers bound together mainly by shared rituals and what Alexis de Tocqueville, in a political context, once termed “habits of the heart.”³ All these things bear on the possible normative solutions for religious diversity within a liberal democratic order.⁴

Historically, in the Netherlands, the dominant regime of toleration has been *verzuiling*, or “consociationalism.”⁵ It is a system of accommodation of religious

1 Earlier drafts of this paper were presented at the conference: The Future of the Religious Past in Amsterdam, 2011, the Law and Society Association Annual Meeting in Minneapolis, 2014, and the International Association for the Philosophy of Law and Social Philosophy (IVR) in Lisbon, 2017. We want to thank Stefan Philipsen and Sohail Wahedi for comments on a draft version of this paper, and our student assistants Jacqueline Brand and Haris Sabanovic for their help with the literature research and the final editing. The research for this paper was partly financed by the Dutch Research Council (NWO).

2 We agree with Michael Walzer, *On Toleration* (New Haven: Yale University press, 1997, 3) that regimes of toleration need to be differentiated by time and place and that they need to be “properly circumstantial.”

3 “Habits of the heart” is a phrase popularized by Robert Bellah et al., *Habits of the Heart* (1985). The phrase originates in George Lawrence’s translation of Alexis de Tocqueville’s *Democracy in America* (1966).

4 This article is written in the vein of pragmatism. It proceeds from the notion that normative and descriptive theory are continuous. For us, normative theory is inescapably situated and needs to be informed by a rich and detailed understanding of real-world practices. Our aim is not to devise a theory from first principles, or to develop a theoretical edifice behind a veil of ignorance, but to argue from real-world circumstances toward what John Dewey called “ends in view,” i.e., ends that are informed by situation we find ourselves in, and that can be feasibly attained from these situations.

5 “*Verzuiling*,” literally means “pillarization,” i.e., a vertical segmentation of society.

division that resulted from a long history of sizable, geographically concentrated religious minorities cohabitating in a single nation state without any one group ever constituting a majority. The system of consociationalism, which operated until the 1960s, is a model the Netherlands shared with a small number of other countries.⁶ Under consociationalism, the Dutch state did not deal with religious division by a hands-off approach, but by sharing power and giving every secular and religious group its due, i.e., a proportional share in the public good. For example, religious and secular groups managed their own public schools and broadcast their own public television and radio programs, in proportion to their size. Today, as a result of secularization, this traditional arrangement is rapidly disappearing. The Netherlands is no longer the patchwork quilt of secular and religious groups that it once was, but increasingly resembles a monochromatic secular cloth with a small number of religious embroideries—some old and familiar, like the remaining Protestant community, others new and exotic, like the various communities of Muslims or Polish Catholics. The new dominance of a secular majority has clearly changed the context of toleration in Dutch society. If in the past different religious and secular groups were forced to share power, today a secular majority can, if it so desires, set the terms for the way in which religious groups are tolerated. This has made a marked difference in the way religious diversity is currently accommodated.

In this paper, we analyze three developments in modern Dutch society that are important for understanding the changes, and discuss the challenges they pose to the legal system and the liberal political culture of the Netherlands. The first of these developments is the recent secular homogenization of Dutch society. According to sociologist Jan Willem Duyvendak and historian James Kennedy, the Netherlands is no longer a country consisting of several sizable secular and religious minorities, like in the days of *verzuiling*, but a country with *one* large liberal majority.⁷ The second development is the growth of a certain insensitivity with respect to religion in a social context from which religion is increasingly absent. A majority of Dutch citizens deal with religion only obliquely and sporadically, therefore they no longer have regular

6 Forms of consociational government also operated in Belgium, Austria, Switzerland, and Lebanon.

7 Jan Willem Duyvendak & Menno Hurenkamp, *Kiezen voor de kudde. Lichte gemeenschappen en de nieuwe meerderheid* (2004); Jan Willem Duyvendak, *De staat en de straat. Beleid, wetenschap en de multiculturele samenleving* (2006); James C. Kennedy, *Bezielende verbanden. Gedachten over religie, politiek en maatschappij in het moderne Nederland* (2009); Jan Willem Duyvendak, *The Politics of Home. Belonging and Nostalgia in Western Europe and the United States* (2011), especially Chapter 5.

exchanges with religion, and have a much more superficial understanding of it than did earlier generations. Lack of acquaintance with religion is leading to a reduction to the local, historically dominant Protestant conception of religion, that is, to an understanding of religion as a practice principally centered on a holy text and defined by it. This is a development that does not foster understanding of aspects of religion that do not fit this text-oriented conception. The third development is the process of hybridization and fragmentation of identities that the Netherlands is experiencing in an increasingly global and interconnected world, and the emergence of new networked religious communities.⁸ Although the Netherlands, much like other Western European countries, can be said to have gone through a process of secularization in recent decades, the world as a whole seems to be on an opposite course, having gone through a period of religious revival during the same time.⁹ The most visible aspect of this is the presence of a large Muslim minority in the Netherlands.

The central question is what are the implications of the three facets of contemporary Dutch society for political and legal practices in the Netherlands. To chart these implications, in Section 2, we provide some more details about the recent changes in the multireligious Dutch society. This also gives us an opportunity to take on two fundamental counter-arguments against our accommodationist suggestions: first, that consociationalism is a model from the past that has outlived its relevance; and, second, that Islam, at least in its current shape, is simply irreconcilable with liberal democracy. In Section 3, we elaborate on the dominant new secular liberal majority consensus described by Kennedy and Duyvendak. Our thesis is that, although there is a large unanimity of opinion on secularism, when it comes to specific religious and cultural issues, this ideology is not monolithic, but it consists of a range of views on the role of religion in the public sphere. It is a consensus that combines classic liberal ideas on freedom of religion and separation of church and state, with notions taken from the French tradition of *laïcité*, and the widespread embrace of the permissive and progressive values of the 1960s counterculture. We argue that these different sources of the Dutch secular consensus pull in different directions and do not offer a clear-cut alternative to consociationalism.

In Section 4, we describe how the local Protestant model of what religion is has become dominant. This particular understanding of what religion is fails

8 Duyvendak & Hurenkamp, *supra* note 7; Wetenschappelijke Raad voor het Regeringsbeleid (WRR), *Identificatie met Nederland* (2007).

9 Peter L. Berger, *The Desecularization of the World: Resurgent Religion and World Politics* (1999); Hans Joas & Klaus Wiegandt, *Säkularisierung und die Weltreligionen* (2007); John Micklethwait & Adrian Wooldridge, *God is Back: How the Global Rise of Faith is Changing the World* (2009).

to recognize the importance of certain religious practices central to non-Protestant and non-Christian faiths. Finally, in Section 5, we describe the processes of fragmentation and hybridization that add complexity to the situation. Globalization and networked communication create a social world that is both strongly compartmentalized, with likeminded people congregating within their own bubble, and strongly transnational, with national borders and geographic distance becoming less important. These processes have created a highly diverse religious landscape and have brought forms of orthodoxy and fundamentalism to the Netherlands, which many Dutch citizens find problematic.

Sections 2 through 5 provide an outline of the new Dutch landscape of religious diversity and the way it is being accommodated. In the final part of the article, we explore some problems presented by this new lay of the land, this new configuration of the Netherlands as a country with a dominant secular majority and a set of small religious minorities. In Sections 6 and 7 we argue that these characteristics present serious challenges to current constitutional principles and rights. Finally, we argue that we need not regard these challenges as insurmountable. We draw on aspects of the tradition of consociationalism to sketch an alternative approach to the classic liberal, the secular republican, and the progressive nationalist strands in the current debate on religion in the Netherlands.

2 Social Change and the New Dutch Religious Landscape

As noted, recent developments that changed the Dutch religious landscape were, on one hand, the secularization of Dutch society, the fading of traditional Dutch religious communities, and the dwindling of their system of consociationalism; and, on the other, the immigration and rise of new religious communities, mainly Muslim, in a context of globalization and 21st century networked communication. Not everybody is familiar with the Dutch tradition of consociationalism, or with the current makeup of the main religious groups in the Netherlands. Hence, in this section we provide some details.

2.1 *Consociationalism*

The Netherlands is a product of the Reformation. It came into existence as a result of a Protestant rebellion against the rule of the Catholic king of Habsburg Spain. The Dutch republic was a country founded on the idea of religious freedom, although initially this did not include much tolerance of the Catholic minority. Throughout most of its history, the Netherlands has been a country

divided into several rival, partly geographically concentrated communities, or “pillars,” none of them dominant. Until the 1960s, these communities lived parallel lives. They had their own political parties, labor unions, newspapers, schools, and public broadcast organizations. Since the late 19th and early 20th century, these communities were not all religious. Alongside a Protestant and a Catholic pillars, there were also a liberal and a socialist one.

The political culture that developed to accommodate this type of deep division was based on several characteristic principles. One of these was proportionality, the idea that public services and public offices were divided proportionally between the different groups in society. It was an approach intended to give every group its due. Hence, the amount of broadcasting time on public television that you could fill; the number of mayors, who in the Netherlands are appointed rather than elected, that you could supply; and the number of public schools that you could operate roughly reflected the size of the group that shared your religion or your worldview. A second principle was the value of consensus. Dutch democratic decision-making is not centered on the idea of “winner takes all.” Dutch politics is consensual. It does not prize simple majority decisions in which you can maximize what you can get out of a decision for your own group, but seeks broad support from as wide a set of groups as possible. To this day, the clichés of Dutch politics reflect this value. When they are negotiating compromises, politicians often talk about “taking everybody along” (*iedereen meenemen*) or “creating a broad surface of support for a decision” (*draagvlak creëren*). Holland is known for its grass-roots consultations and patient stakeholder deliberation. It is a political culture focused on appeasing political differences through compromise, rather than fighting out rivalries to push through your own proposal.

Consociationalism in the Netherlands is currently associated with the old-fashioned politics of the past. It was originally conceived to address a set of circumstances that no longer exist, that is, the deep segmentation of society along religious and ideological lines. With secularization have come calls to adopt classic liberal or French republican models to protect freedom of religion through strict neutrality and a conception according to which religious freedom is guaranteed to individuals in the private sphere. Nevertheless, we believe that consociationalism still contains some valuable elements to build on. Its basic principles of inclusiveness, proportionality, and accommodation may still suggest solutions for dealing with the smaller religious minorities of the 21st century. Religious groups become entrenched and inward-looking as a result of networked communication technologies rather than geography, these days. We argue that it would be better to engage with these groups and accommodate and integrate them in the public sphere, than to ban their presence in

public. Indeed, in a recent book former vice-president of the Dutch Council of State argued that Dutch politics has become too managerial and distant, and that Dutch citizens have become too disengaged from the public weal. He suggests drawing on the consociational politics of the past, with its dedication to “sovereignty within your own circle” and “subsidiarity,” to revive citizenship, empower citizens, and reconnect them with the Dutch state.¹⁰

2.2 *New Religious Diversity and Islam in the Netherlands*

The fading of consociationalism in the Netherlands is closely related to the process of secularization. Like many Northern European countries, the Netherlands went through a rapid process of secularization in the second part of the 20th century. With religion playing an increasingly modest role in people's lives, and churches and religious institutions disappearing, the consociational arrangements slowly became redundant. Since the 1960s and 1970s, there seemed to be no longer the entrenched religious and ideological divisions that the consociational system was designed to bridge. Yet, Dutch society never became a fully secularized one. Remnants of the old religious communities remained, and new ones were added through immigration. Beside a large multi-religious community from Surinam and the Dutch Caribbean islands, it was mainly an influx of Muslims from Turkey and Morocco that added to the religious diversity of the Netherlands. These new religious groups did not conform to the secularization trend in the Netherlands. Their religiosity remains fairly high, and they seem able to sustain themselves in part because of improved information and communication technology.

This suggests that in open and interconnected societies like the Netherlands, religion will remain a persistent phenomenon, and that we are not likely to simply outlive religion. Moreover, it suggests that there can be no certainty that the future will be fully secular, and that the process of modernization has put a liberal democracy like the Netherlands on an automatic path to a world without religion.¹¹ A study from 2018 found that on the whole, Muslims in the Netherlands were becoming more religious, praying more often, and visiting

10 Herman Tjeenk Willink, *Groter denken, kleiner doen: Een oproep* (Amsterdam: Prometheus, 2018), 64–65.

11 We take this to be the central notion of Jürgen Habermas' post-secularism thesis. The secularization thesis notwithstanding, religion will not be fading away anytime soon, and post-secular societies must learn to embrace and incorporate the contributions of their religious communities (Jürgen Habermas, “Notes on Post-Secular Society”, 19 *New Perspective Quarterly* (2008)).

the Mosque more regularly.¹² Religion cannot be marginalized or discarded on the basis of some theory about the disenchantment of the world in late modernity or the inevitability of secularization.

If this is true, from a liberal perspective, religions will have to be accommodated as coequal ideas of the good, in the sense that John Rawls defends in his later work, *Political Liberalism*.¹³ For Rawls, a liberal order should not be seen as an expression of a distinct comprehensive liberal view of the good, but as a limited overlapping consensus of all the diverse secular and religious groups that make up the liberal order, that is, as a consensus on the way secular and religious groups should live together in the same political system. This is an “overlapping” consensus because it is constituted out of political principles and norms of civility that are part of each of the separate religious and secular views of the good that cohabit the liberal order or can be adopted into it.¹⁴ For example, there is not only a liberal argument for respecting fellow citizens with different views of the good, but also a Christian, Muslim, and Jewish argument for respecting them. (We believe that the Dutch system of consociationalism, the shared dedication to power sharing and proportionality was also an example of such an overlapping consensus, albeit not a Rawlsian liberal one.)¹⁵

The question that remains is whether religious groups, most notably Islam, can be seen as part of such an overlapping consensus. The suspicion that it cannot has made the accommodation of religion a controversial issue in recent years. There has been a notable increase in anti-Muslim sentiment because

12 Willem Huijnk, *De religieuze beleving van Moslims in Nederland: Diversiteit en verandering in beeld* (2018).

13 John Rawls, *Political Liberalism* (1993).

14 Clearly, liberal democracy is not exclusively a secular conception and achievement. We should recall that some of the great strides made in the 20th century with respect to equality and civil rights were brought about by leaders with strong religious motivations like Martin Luther King, a Baptist preacher, or Mahatma Gandhi, a Hindu leader. That is not to say that current aspirations in many liberal democracies to create a world with greater gender and sexual equality—perhaps the great social issues of our age—do not pose serious challenges to many religious communities.

15 Critics of Islam who argue that Islam is irreconcilable with liberal democracy would argue that Muslims are not and cannot be part of such an overlapping consensus on first principles. This position, i.e., that there is no such thing as a moderate Islam, mimics the dogmatism of Islamic fundamentalism in a secular frame. Even an outspoken critic of Islamic fundamentalism, like Ruud Koopmans, believes that we should be careful to distinguish Islamism from Islam (2019). Other religions also have fundamentalist off-shoots, he argues, and Islam accommodates a wide range of interpretations that can be reconciled with liberal democracy. If there is no question that Muslim citizens *can* play a constructive role in a liberal polity, the next question is how best to facilitate that role? Koopmans' focus is on confining and restricting fundamentalist Islam and treating Muslims with a healthy suspicion. Our focus is on making mainstream Islam part of the Dutch institutional landscape and giving it a stake in Dutch society.

Islam is widely seen as a religion fundamentally at odds with the achievements of modernity. As a result, tolerance for traditional religious views and practices seems to have diminished. This changing attitude toward Islam is in part a response to the large-scale influx of Muslims, and in part a response to the rise of Islamist religious extremism in recent decades, especially in the period following 9/11. Although most Dutch citizens do not share the belief, propounded by some parties and commentators, that terrorism is inherent in Islam, their trust in their fellow Muslim citizens is clearly being tested by the rise of fundamentalist strains of Islam that seem difficult to square with liberal democracy and the fundamental rights of non-Muslims.¹⁶ Our analysis proceeds from the notion that these fundamentalist strains are not representative of Islam, that there is nothing inherent in Islam that need prejudice it against liberal democracy, and that Islam can be accommodated in Dutch society.¹⁷ The change in Dutch attitudes toward Muslims should also not be exaggerated. Although populist politicians like Pim Fortuyn, Geert Wilders, and most recently Thierry Baudet attract a great deal of media attention, the appeal of their brand of anti-Islamic populism seems to be limited to a maximum of about one fifth of the population.¹⁸ Large groups of Dutch citizens still favor openness and tolerance.¹⁹ The focus in the media is often on eye-catching extremes, while the complexities and unobtrusive continuities are ignored. There is more than just anecdotal evidence that in recent years Dutch attitudes toward religious minorities in general, and Muslims in particular, have shifted and have become more negative.²⁰

16 The most outspoken party in this regard is the PVV, which wants to forbid the Quran in the Netherlands, close Mosques and Islamic schools, and de-Islamicize the Netherlands (see its election program: *Concept-verkiezingsprogramma PVV 2017–2021*, viewed on 7 April 2020 <https://www.pvv.nl/visie.html>).

17 A fierce critic of Islam like the Dutch sociologist Ruud Koopmans also stresses that there are many tolerant and peaceful interpretations of Islam (*Het vervallen huis van de islam: Over de crisis van de islamitische wereld* (2019), 7).

18 In 2009, the PVV achieved its best election results, with 17% of the popular vote. In 2017, it received 13%. In the provincial elections of 2019, the PVV and Baudet's *Forum voor Democratie* party together gained about 20% of the vote and 18 out of 75 seats in the Dutch Senate.

19 The most recent survey by the Netherlands Institute for Social Research paints a mixed picture of Dutch attitudes toward discrimination. On one hand, Dutch people experience discrimination as a real and increasing problem, and on the other they increasingly believe that minorities are too sensitive and too quick to take offence. Moreover, both Islamization and racism are mentioned as some the most salient concerns of today; Josje den Ridder et al., *Burgerperspectieven* (2017).

20 As of 2015, a majority of more than 50% of Dutch people described themselves as non-religious (Hans Schmeets, *De religieuze kaart van Nederland, 2010–2015* (2016), 5). About 50% of Dutch people believe religion is a private matter that should not play a role in the

3 Reconstructing the Secular Majority Consensus

As noted above, Duyvendak has argued that since the 1960s, ideological and religious divisions started to abate, and the Netherlands became a relatively homogeneous country, with a broad secular consensus that coalesced around several socially liberal views, like the equality of men and women and the acceptance of homosexuality and same-sex marriage.²¹ Naturally, the old communities did not fully disappear. It would be misleading to speak of a fully homogeneous national culture. Rather, the Netherlands became a country with what could be called a “moral majority,” with a dominant, socially liberal ideology or identity. Since the 1960s, the Netherlands developed an image of itself as a *gidsland*, a “guiding nation,” blazing the trail for other Western societies to follow, and pioneering several liberal and progressive arrangements, such as same-sex marriage, a liberal drug policy, and euthanasia. According to Duyvendak, the consensus around these values has become even more clear in the 21st century, in response to the arrival of Muslim immigrants. To define themselves against the traditionalism of Muslim citizens, a large majority ended up wholeheartedly embracing socially liberal values that were still contentious well into the 1990s, like support of same-sex marriage and acceptance of LGBTQ+ identity.²² When Duyvendak reconstructed these liberal views as a new source of Dutch identity, he made a valid point. Dutch citizens increasingly turn out to share a set of liberal-progressive preferences. In the Netherlands, these socially liberal views do not stand opposed to some notion of traditional Dutch identity, but rather make up this identity. Therefore, embracing same-sex marriage and supporting euthanasia are seen as quintessentially Dutch, not as deviations from conventional Dutch values and beliefs. To be Dutch is to be socially liberal. Conversely, to hold on to socially traditional values is to be un-Dutch.

Duyvendak and Kennedy’s analysis of the rise of a socially liberal majority consensus is central to understanding the way religious minorities are presently accommodated in the Netherlands. Below we add nuance to the unity

public sphere (Paul Dekker et al., *Burgerperspectieven* (2016), 51). Moreover, around half of non-immigrant Dutch people believe that Islam and the Western way of life are incompatible, and only around 40% feel that Muslims have a lot to contribute to Dutch culture (Claire Aussems, *Moslims in Nederland 2014* (2016), 12).

21 Duyvendak & Hurenkamp, *supra* note 7; Duyvendak, *De staat en de straat*, *supra* note 7; Duyvendak, *The Politics of Home*, *supra* note 7. For a similar view, see Bas van Stokkom, *Mondig tegen elke prijs. Het vrije woord als fetisj* (2008).

22 Jan Willem Duyvendak, “Zijn we niet altijd al modern geweest?”, 73 *Socialisme & Democratie* (2016), 13, 14–17. See also Lisette Kuiper, *Opvattingen over seksuele en genderdiversiteit in Nederland en Europa* (2018).

and coherence of this liberal-progressive consensus, but first we need to sketch its rough outlines. Politically and legally, this consensus draws on three main sources. First, it contains several classically liberal elements like the separation of church and state and the freedom of religion. Second, it includes elements based on the French-republican tradition and the notion of *laïcité*, like the privatization of religion and the insistence on a strictly secular public sphere. The French republican conception of religious tolerance is not traditionally part of the Dutch tradition of tolerance and accommodation, but it has become a fixture in the commentary of several prominent Dutch opinion leaders, like Ayaan Hirsi Ali, Paul Cliteur, and Paul Scheffer. Third, it draws on the progressivism and permissiveness of the 1960s, reconstructing these socially liberal attitudes, like the voluntarism of lifestyle choices and the cultural and sexual liberation of the individual, as hallmarks of Dutch cultural identity.²³ Although these notions ostensibly promote freedom and choice, for people of faith they can be experienced as antagonistic and oppressive, because their religious beliefs are treated as old superstitions that need to be transcended, as narrowmindedness that needs to be opened up. Especially in the field of cultural and religious differences, liberal progressivism and French-republican tendencies seem strong. If you believe that Dutchness, today, is centrally defined by its rejection of traditional, religious beliefs, this conception evidently contains a built-in bias against people who hold such traditional religious beliefs.

The contemporary Dutch liberal majority consensus is characterized by a loose set of attributes that roughly represent the manner in which many citizens and politicians see themselves, and what they expect from religious minorities. It is generally consistent with the changing conception of Dutch citizenship in integration policy discourse since the 1980s. Sociologists Willem Schinkel and Friso van Houdt described it as a change “from pluralist to universalist to assimilationist policy discourse; from thin to thick integration and identification; from state responsibility to individual and market-based responsibility.”²⁴ Whether one regards it as a new consensus among Dutch citizens, as Duyvendak and Kennedy do, or as a new mentality within policy discourse, as Schinkel and Van Houdt do, it has several recognizable characteristics.

23 Samira van Bohemen et al., “Seculiere intolerantie: Morele progressiviteit en afwijzing van de islam in Nederland”, 8 *Sociologie* (2012), 199.

24 Willem Schinkel and Friso van Houdt, “The double helix of cultural assimilationism and neo-liberalism: citizenship in contemporary governmentality”, *The British Journal of Sociology* (2010), 701.

1. *A strong emphasis on liberty in the private sphere.* In the private sphere, everyone should be free to do what they want, not only with regard to religion, but also with regard to sex and lifestyle, within the limits of the harm principle. In other words, liberty should be protected, as long as one does not harm others.
2. *A voluntaristic understanding of identities.* When it comes to religion, there is a strong emphasis on free choice. You can be what you choose to be. Religion, relationships, sexual preferences, culture, language, having children—are all considered to be the object of free choice; as Schinkel and Van Houdt suggested, they are almost consumer preferences. Because you choose freely, you must also bear responsibility for the consequences of these choices. If you choose to come to the Netherlands, learning Dutch is your responsibility. If you are refused a job because you wear a headscarf, your socio-economic hardship results from your free choice. Identity is the sum total of all your personal choices.²⁵
3. *A privatization of identities.* Expressions of personal identity outside the private sphere often meet with little tolerance. Examples are criticism of head scarves and mosques, but also of speaking foreign languages in public. There is little tolerance of deviant behavior in the public space. Deviance is allowed, provided no one can see it.
4. *An understanding of equality as conformity to the average or standard citizen.* Since the revision of the Dutch Constitution, in 1983, equality has become a more fundamental norm in Dutch law and society. The first article of the amended Constitution stipulates that: “All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.” From a liberal perspective, this is entirely right, because equality is the foundational principle of a liberal democracy.²⁶ Yet, as Schinkel and Van Houdt showed, in

25 This voluntaristic understanding of identity was fiercely criticized in the liberal-communitarian debate of the 1980s and 1990s. Michael Sandel called this liberal view of citizens as individuals who could be whatever they wanted to be, the view of the “unencumbered self.” According to Sandel, this concept of the self was sociologically naïve. People are social creatures, and their choices and preferences are, always and unavoidably, profoundly affected by the social and cultural setting in which they grow up and live. For persons, there is no way to break out of the existential setting that made them what they are, to decide what they really want to be (Michael Sandel, “The Procedural Republic and the Unencumbered Self”, 11 *Political Theory* (1984)).

26 It may be helpful to put the development in historical perspective. Until the revision of the Dutch Constitution, in 1983, equality before the law was only a minor constitutional provision. In 1983, however, a broad equality clause became Article 1 of the Dutch

policy discourse there has been a shift from a pluralist to an assimilationist understanding of basic equality. They argued that the understanding of equality has shifted from a right to be different to a duty to be similar to the standard Dutch citizen, that is, a citizen who holds Dutch norms and values, which “are seen as ‘modern’, which means ‘secular’, meaning: ‘non-religious’, ‘individualist’, ‘egalitarian.’”²⁷ This is the context in which the orthodox Calvinist party, SGP, complained, not without justification, that an ideology of equality has become oppressive.²⁸ Equality is increasingly interpreted substantively as equality to the standard citizen. In a way, this harkens back to the classic problem of democratic society, first noted by Tocqueville, that equality can lead to conformity and a tyranny of the majority.²⁹ The liberal-progressive consensus that Duyvendak and Kennedy uncovered is not only a sign of openness to difference, but can also be seen as a norm that people are expected to conform to. Believers are accepted, as long as their behavior does not deviate from the secular norm, and their religion is something they keep at home. Migrants should simply speak Dutch, like everyone else.

5. Related to characteristic (4) is an appropriation of the *French republican view on citizenship*. There is an increased focus on active citizenship, civic virtues, and “normen en waarden,” or norms and values. The “operative image,” Schinkel and Van Houdt noted, “is that of the good citizen as a working (‘participating’) citizen,” not only economically, but also culturally.³⁰ Increasingly, there is a wish to view citizenship as a shared identity, rather than a role or status that confers rights.³¹ Citizens are expected to participate in public institutions, such as schools and associations. A citizen is not merely a voter or a carrier of rights, but should adopt vaguely

Constitution. Only in the decades after 1983 did this Article gradually gain broad acceptance as the most fundamental clause of the Constitution. See Wibren van der Burg, “The Irony of a Symbolic Crusade: The Debate on Opening Up Civil Marriages to Same-Sex Couples”, in Nicolle Zeegers et al. (eds.), *Social and Symbolic Effects of Legislation Under the Rule of Law* (2005).

27 Schinkel and Van Houdt, *supra* note 24 at 700.

28 Barbara Oomen et al., “CEDAW, the Bible and the state of the Netherlands: the struggle over orthodox women’s political participation and their responses”, 6(2) *Utrecht Law Review* (2010), 158.

29 See Alexis de Toqueville, *Democracy in America, Vol. I & II* (1945) 1835, 1840, Vol. 1, ch. xv.

30 Schinkel and Van Houdt, *supra* note 24 at 705.

31 Herman van Gunsteren criticized this as a culturalization of citizenship. For Van Gunsteren, citizenship should be about freedom and autonomy, but he argued that this culturalization of citizenship leads to a form of control by setting cultural norms (*Bouwen op burgers: Cultuur, preventie en de eigenzinnige burger* (2008), 37ff.).

defined Dutch “norms and values,” act civilly, and show active commitment to common projects. These projects, however, should not be sectarian, but should have value for the general public good. Active engagement in ethnic churches, mosques, or other ethnic organizations is regarded as sectarian and as a sign of failed integration.

6. A culture of *rising moral expectations*. The idea that since the 1960s we have entered an era of greater individual liberty is contradicted by sociologist Gabriel van den Brink. He observed that the mutual demands of citizens on one another have increased.³² Certain behavior that was simply tolerated until recently is now rejected. The morality of the majority has increasingly become a tight moral code. There is a dynamic toward ever greater perfectibility, in more and more areas, and citizens are expected to conform to the majority. The expectation is that fellow citizens live up to the socially liberal consensus that for many defines the very essence of Dutch citizenship.

These different characteristics of the majority consensus show clear traces of their theoretical origins. The emphases on liberty and on free choice are classic liberal elements. The privatization of identities, the idea of equality as conformity with the standard citizen, and the republican view on citizenship, in turn, fit more easily with the French republican tradition and with the renewed emphasis on a shared, liberal-progressive national identity. Characteristic (6) is a sign of illiberalism rather than liberalism, and shows how the embracing of the ideal of modernity and of a progressive liberal society can lead to moral conformity and intolerance for deviant minorities.

As noted above, there is an unresolved tension in the dominant ideology between the classic liberal, French-republican, and progressivism-as-national-identity strands, which is reinforced by decreased tolerance. For example, as Duyvendak noted with respect to the current consensus on Dutch identity, citizens simultaneously embrace the notion that the state should be strictly secular and neutral *and* that Dutch culture is a product of the Judeo-Christian tradition, with Christian holidays being part of our shared national identity that should not be changed to accommodate citizens from a different religious background.³³ In a similar vein, in an article on the emergence of the liberal-progressive national identity, Samira van Bohemen, Roy Kemmers, and Willem de Koster noted that opinion grouped around two distinct clusters, where

32 Gabriel van den Brink, “Hoger, harder, sneller en de prijs die men daarvoor betaalt”, in P.T. de Beer & C.J.M. Schuyt (eds.), *Bijdragen aan waarden en normen* (WRR-verkenning 2) (2004). For a similar conclusion with regard to the increasing demands that second- and third-generation migrants must meet, see Han Entzinger and Edith Dourleijn, *De lat steeds hoger. De leefwereld van jongeren in een multi-etnische stad* (2008).

33 Duyvendak *supra* note 22, at 16.

Dutch people who achieved a higher education tended to embrace the liberal-progressive consensus in a cosmopolitan way that was open to foreign cultures and Islam, and those who achieved a lower education tended to embrace the liberal-progressive consensus in an exclusive and ethnocentric way that rejected other ethnic groups and Islam as a threat to Dutch liberal-progressive identity.³⁴ This suggests that there are some deep fissures within the liberal-progressive consensus, with one section favoring diversity and openness, and another embracing national identity and cultural unity.³⁵ Consequently, a clear alternative model for the toleration of religious minorities may not ensue from the new secular majority described by Kennedy and Duyvendak.

4 A “Protestant” Understanding of Religion

In Dutch public debate and legal discourse today, many believe that religion is fundamentally a text-based phenomenon. It is an understanding of religion closely akin to the once dominant Protestant understanding, and a frame³⁶ shared by the extremes in the debate about secularism and religion: zealous secularists as well as orthodox Muslims and fundamentalist Christians focus primarily on the text.³⁷ The text-based approach is problematic, however. As Ruud Koopmans noted, secular critics who argue that fundamentalist interpretations of the Bible or the Quran are the only “true” interpretations of Christianity or Islam, adopt the same position as fundamentalists who want to return to the literal truth of the holy texts.³⁸ Yet, this text-based approach is only one of many different ways of interpreting a religious tradition, which casts religion as a set of rules, precepts, and dogmas based on sacred texts such as the Bible and the Quran. These rules are categorical (rather than, for example, based on a virtue ethics, as in Catholic theology). This frame can be characterized as Protestant, because the first two of the classic Protestant *solae* are central. It may be described by five broad characteristics:

34 Bohemen et al., *supra* note 23, at 208–209.

35 In a way, this is also evident in the political parties that represent this consensus in parliament. They range from the Green Left party and the progressive liberal D66, to the conservative liberal VVD and the nationalist, anti-Islam party, PVV.

36 The notion of frame is derived from Donald A. Schön and Martin Rein, *Frame Reflection. Toward the Resolution of Intractable Policy Controversies* (1994), 23. Frames can be defined as “underlying structures of belief, perception and appreciation.”

37 See, for example, Herman Philipse, *Atheïstisch manifest en de onredelijkheid van religie* (2004); Paul Cliteur, *The Secular Outlook* (2010).

38 Koopmans, *supra* note 17, at 7.

1. *Religious texts are central (sola scriptura)*. In orthodox Protestantism, Scripture is fundamental; many discussions, at times leading to church secessions, focus on the correct interpretation. Dutch public debate, and frequently also Dutch legal argument, seems to proceed from the premise that this holds for religion generally. The popular Dutch legal philosopher and secularist, Paul Cliteur, argued that a religion should literally be taken to be what its authoritative texts say it is, not what religious groups metaphorically interpret it to be in a modern context. The texts of the Abrahamic religions contain clear and literal instigations to violence and intolerance, he claims, and propagate a theology of terror.³⁹ The assumption seems to be that true believers must take the text of the Bible or the Quran literally—other interpretations cannot be taken seriously. A classic legal example was provided by a lower Dutch court, the district judge of Zevenbergen. In violation of environmental regulations, a Hindu had strewn cremation ashes in a small river. The Hindu's appeal to religious freedom was denied, because, according to the judge, there was no authoritative basis for such a religious duty in Hindu sacred writings. The Hindu in question, in other words, was judged by the Protestant criterion of being true to the text. Yet, while Hindus know certain writings with a special status, in contradistinction to Protestantism, these writings do not constitute the basis for their religious practices.⁴⁰
2. *The doctrinal contents of religious beliefs are central (sola fide)*. Religion is regarded primarily as a doctrine, a set of religious dogmas. Within such a doctrinal model of religion, orthodox belief is the paradigm. Religions that emphasize praxis, especially spirituality, ritual, and ethics, do not fit this frame. A doctrinal model of religion is dominant in law as well. It employs infelicitous wording such as “religious expressions” and “views of life,” suggesting that religious freedom, as a variety of freedom of expression, protects merely the expression of religious views and not religious practice. This doctrinal, rather than praxis-oriented, conception also plays a role in the debate on head scarves, which are often regarded as expressions of religious convictions, comparable to the wearing a cross or a political sign. Yet, there is a range of reasons why women wear headscarves. For many women, covering their hair is regarded not as an expression of religious faith but as a religious practice, based on a religious obligation (just like covering their breasts). Wearing a cross, by contrast, is

39 Paul Cliteur, *Het monotheïstisch dilemma: of De theologie van het terrorisme* (2010), 153–154. Since Spring 2019, Cliteur is the leader of the *Forum voor Democratie* party in the Dutch Senate.

40 Kantonrechter Zevenbergen, 3 februari 1982, *NJCM-Bulletin* 1982, 418.

usually not considered a religious obligation and involves primarily the display of a religious symbol. Therefore, the legal protection of wearing a cross can often be adequately analyzed in terms of freedom of expression, whereas donning a headscarf must often be analyzed in terms of the right to live according to one's religion.

3. *Religious norms must be regarded as categorical rules.* In orthodox Protestantism, religious norms are categorical: they hold always and everywhere (Immanuel Kant was a typical Protestant). But there are also religions and spiritual practices that focus on spiritual growth, like Buddhism and Freemasonry, involving stages of religious development. Many Muslim women start wearing a headscarf only after a certain age, after they reach a certain stage in their religious development. In a Protestant frame, however, this suggests insincerity, or at least the notion that if wearing a headscarf is not a categorical obligation, it is probably not an important one and need not be taken seriously as a religious obligation.
4. *Orthodox Protestantism is the archetype for understanding religion.* In the Netherlands, Islam is frequently understood by comparison to Dutch orthodox groups. According to the New Testament, women should cover their head during church service because they are subservient to men.⁴¹ Until recently, the Netherlands even knew a small party that opposed the right of women to hold political office on these biblical grounds.⁴² The Quran dictates the covering of certain parts of the body as a protection against sexual temptation, for both men and women. This is primarily a motive based on sexual morality.⁴³ These differences make it problematic to interpret the headscarf in a sweeping fashion as a sign of gender discrimination.
5. *Religions take shape in hierarchical, strongly institutionalized organizations.* Most traditional Christian churches are well organized, hierarchical organizations with synods, bishops, and popes. The history of the West is one of rivalry and conflict between churches and states over which institution has supreme authority. In most Western countries, this

41 1 Corinthians 11: 3–16.

42 SGP, the Political Reformed Party, the oldest party of the Netherlands. See *Staatkundig Gereformeerde Partij*, Supreme Court of the Netherlands, (9 April 2010), ECLI:NL:HR:2010:BK4549. The same case was brought before the European Court of Human Rights: *Staatkundig Gereformeerde Partij v. the Netherlands* (10 July 2012), Application no. 58369/10. The ECtHR qualified the party's point of view as "unacceptable regardless of the deeply-held religious conviction on which it has been based." The party changed its rules, and in 2014 its first female local councilor was elected.

43 This textual interpretation is often intermingled with cultural understanding about the subservience of women.

has led to a separation of church and state, albeit rarely a strict one.⁴⁴ The legal doctrine of separation of church and state does not focus on the content of policies and law, but on institutional power. The church should not have institutional influence over the state, and *vice versa*. Separation of church and state does not mean that law should not embody religious norms, however. That is an issue of state neutrality. Legal norms in many countries still enforce some traditional Christian norms, for example, on marriage and euthanasia.⁴⁵

In Islam, and especially in religions like Buddhism or Hinduism, similar authoritative institutions are absent. Generally, religious leaders have a spiritual authority, but only limited secular authority, usually in matters of family law. (There are some exceptions, as in the case of Iran, with its distinct version of Shia.) Yet, in the Dutch public debate, the role of imams and religious organizations is interpreted in the frame of organized Christianity, as if they were institutions that wield power and exert doctrinal authority, as Christian leaders and churches once did. In short, it is not always appropriate to use the traditional framework of separation of church and state, with its focus on institutionalized religion, for addressing the relations between the non-Christian religions and the state.

These five characteristics of the Protestant conception of religion are, of course, ideal typical. They are not always all present in public discourse or in the self-understanding of orthodox religious groups. The institutional dimension, for example, is not always present. The characteristics clearly apply to orthodox Calvinist groups, once a culturally dominant force in the Netherlands, but today only a small percentage of the Dutch population. They fit relatively well fundamentalist Muslims, but not fully. For example, many Muslim fundamentalists have moved away from the notion that religious authorities interpret the Quran toward a Western individualist (and in a sense also Protestant) approach according to which individual believers interpret the sacred texts autonomously.⁴⁶

44 Cf. the seats of Anglican Bishops in the House of Lords, or the position of the British Queen as head of the Anglican Church.

45 This may be in conflict with state neutrality, but is not a violation of the separation of state and church. See Roland Pierik and Wibren van der Burg, "What is Neutrality?", 27(4) *Ratio Juris* (2014), 496.

46 Oliver Roy, for example, argued that the deterritorialization of Islam, i.e., the fact that for many Muslims in the diaspora religion is no longer embedded in religious institutions or in the social and cultural fabric of their daily lives, as is the case in Muslim majority countries, leads to a Protestantization of Islam, a personal reconstruction of Islam on the basis of religious texts (*Globalized Islam: The Search for a New Ummah* (2004), 26–29; *Secularism Confronts Islam* (2007), 70–77), Islam might also invite such a text-oriented approach.

Unfortunately, this Protestant frame hides from view more liberal, praxis-oriented religions, dynamic and pluralist interpretations of religion, and post-modern religious *bricolages*. If religions are reduced to authoritative texts that dictate rigid precepts, attempts to combine religion and liberal democracy are well-nigh impossible from the outset. If one adopts this narrow conception of religion, it becomes easy to deny the empirical given that a majority of European Muslims accept the values of liberal democracy and to claim that every true believer must be an orthodox believer—a recurrent theme from Ayaan Hirsi Ali to Geert Wilders, who regard every liberal Muslim a hypocrite.⁴⁷ This leads to a reduction and fixation of religious identities to their extreme versions, defended only by small minorities.

5 Hybridization, Fragmentation, and Networked Communities

Cutting across the rise of a secular moral majority in the Netherlands is a trend toward hybridization and fragmentation. With the explosion of social media, mobile telephony, networked communication, and the democratization of mass media, the public is disaggregating into insular and inward-looking groups. Manuel Castells has called this new type of communication a form of “mass self-communication,” in which ordinary citizens can reach potentially global audiences with low-budget operations.⁴⁸ This shift from old-fashioned mass communication from the few to the many to democratized communication from the many to the many leads to a world of choice, in which a large number of secular and religious views of the good are on offer. On one hand, this creates conditions for a hybridization of identity, for a certain postmodern, pick-and-mix approach to identity. On the other hand, many-to-many mass communication also creates conditions for a balkanization of the public into so-called “filter bubbles,” closed and inward-looking communities of like-minded people who communicate only with each other.

The Quran is understood to have been revealed to Muhammad by God through the Archangel Gabriel. As a text, it is sacred; a literal, uncreated transcript of God's speech. This is why there is so much emphasis on the recitation of the Quran in Islam, and why verses of the Quran are reproduced on the walls of Mosques.

47 Ayaan Hirsi Ali, “Open brief aan burgemeester Job Cohen”, in *Trouw* (6 March 2004). Wilders and his political theoretician, Martin Bosma, started a debate about the unreliability of Muslims, because they are allowed, or even obliged, to hide their true intentions, based on the Islamic dogma of *taqqiya*. See the interview with Martin Bosma, in *NRC Handelsblad* (25 September 2010); cf. Proceedings of the Dutch Lower House of the States-General, 2010–2011, Regeringsverklaring/algemene politieke beschouwingen, (26 October 2010), at 13–58 ff.

48 Manuel Castells, *Communication Power* (2009).

Focusing on the hybridization aspect of this development, the Dutch Scientific Council for Government Policy has claimed that the Netherlands is currently experiencing a fragmentation of identities.⁴⁹ Hybridization is a process in which citizens combine elements from different cultures and traditions to create their own complex, multi-layered, cultural and religious identity, for example, as a liberal Muslim who is critically loyal to both Moroccan and Dutch culture.⁵⁰ In the old days of pillarization, the delineated groups or pillars were fairly homogeneous. This segmented and uniform cultural structure has crumbled. Some of the formal institutions are still partly in place, but people no longer live their social lives within their own pillar, their own closed community, or their own religious group. There is something resembling a mini-pillar for orthodox Protestants, to be sure, but even that community is not as hermetic as it once was. Although there still may be a core group of orthodox Protestants that live a rather isolated life, both socially and geographically, the orthodox Protestant pillar also contains people with hybrid orientations, who live their life partly within the confines of the schools, families, newspapers, and political parties belonging to the pillar, and partly in wider secular Dutch society. These individuals with hybrid orientations form a bridge between the pillar and the secular environment.

Similarly, some migrant communities consist of small groups that have little contact outside of their religious and ethnic community, if only because of the language barrier, and larger groups with a hybrid identification that fully participate in wider Dutch society. Hybrid identification processes are especially common among second- and third-generation migrants, who identify with Dutch society and its liberal-democratic values as well as with their country of origin and their family religion. They construct their own hybrid identity. Their children celebrate Christmas at their Protestant school (Jesus is a Muslim prophet too), Muslim festivals at home, and King's Day as members of Dutch society.

In classic immigrant societies like Australia, Canada, and the United States, hyphenated identities are a well-known phenomenon. What seems to be new

49 WRR, *supra* note 8.

50 According to Jos de Mul ("Database Identity: Personal and Cultural Identity in the Age of Global Datafication", in Wouter de Been et al. (eds.), *Crossroads in New Media, Identity and Law: The Shape of Diversity to Come* (2015)), because of the digital information and communication technologies that developed in the last few decades, there has been a "qualitative rupture" caused by the datafication of our world. This has affected how people shape their identity. De Mul talks about the emergence of a "database identity," where people shop around and construct their own identity with the use of deconstructed and datafied building blocks from different cultural traditions.

is the variation in hybrid identifications and their intense dynamics. Information and communication technologies appear to have intensified diversification and hybridization. Moreover, hybrid identities are new to Dutch society, which historically has been accustomed to clearly demarcated pillars, with authoritative elites defining the shared identity. There is not one group of Moroccan-Dutch citizens; many Dutch people from Moroccan descent make their own combination of elements from the various cultural attributes they are acquainted with. There is also not a single Turkish-Dutch identity, as it became abundantly clear during the Turkish constitutional referendum of 2017 and its reverberations throughout the Turkish diaspora, but multiple identities that reflect cultural and religious divisions in the country of origin and different levels of adjustment to life in the Netherlands.

The circumstances that facilitate and encourage hybridity also affect the liberal progressive “moral majority” that Duyvendak and Kennedy uncovered. To a certain extent, members of this majority also have composite identities. The new Dutch liberal-progressive consensus, as we saw, draws on a set of beliefs that vary widely and pull in different directions. There is a range of possibilities in how secular Dutch people combine these elements. Highly mobile, educated cosmopolitans may combine them with strong international orientations, whereas others may connect them with their sense of Dutch national identity.⁵¹ In a way, this reflects the divide between what are now often called “globalists” and “nationalists,” or the “citizens of nowhere” and the “citizens of somewhere,” a divide that has emerged not only in the Netherlands, but in several of the other older liberal democracies. It is a division between what Stephan Shakespeare, the head of British research data group, YouGov, colorfully called “drawbridge up” and “drawbridge down” constituencies.⁵² If you are in favor of open borders, embrace diversity, welcome international cooperation, and believe that globalization is a boon, you are a drawbridge-down type of person. If, however, you believe in rigorously guarded borders, shared cultural norms, national sovereignty, and protection against the ravages of international competition, you are a drawbridge-up kind of person. These basic attitudes translate into divergent answers from within the liberal-progressive consensus to the questions posed by religious diversity and the accommodation of religious minorities. For a drawbridge-down person, the liberal-progressive consensus suggests that we should embrace and accommodate the

51 Bohemen et al., *supra* note 23, at 208–209.

52 Shakespeare is quoted in *The Economist* (July 30 2016), at 16. For the division between globalists and nationalists, see, e.g., Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* (2012); “The Ethics of Globalism, Nationalism and Patriotism”, 9(3) *Minding Nature* (2016), 18.

religions of minorities and immigrants as a matter of principle. Cultural and religious diversity is something that liberal democracies are supposed to protect and foster. For a drawbridge-up person, however, the liberal-progressive consensus is a standard that minorities and migrants need to internalize, a modern Western identity into which they need to assimilate. Religious groups, especially those that are not part of the Judeo-Christian tradition, can be resisted.

The liberal-progressive consensus need not necessarily be secular. It may be combined with vaguely spiritual, with non-religious, but also with orthodox religious convictions. Although only a minority of Dutch people still identify as members of a church or organized religious group, a substantial minority identifies as religious without strong connections to religious institutions. They believe that there is “something,” a religious force or spirit, or at least more than meets the eye.⁵³ They have become spiritual nomads, shopping in the marketplace of various religious traditions. They may go to a Christmas service, send their children to a religious school to acquaint them with their religious heritage, and at the same time practice meditation drawing on the Buddhist tradition, resulting in a religious *bricolage*. These hybrid identifications are not fixed, but have a variable, dynamic character.

The process of fragmentation and hybridization of identities may be an indication of a growing individualization and a diminishing need to treat religion as a collective phenomenon. But this is not the only story of diversity in the 21st century. There are also trends that reinforce religion as a collective phenomenon, that facilitate the groupishness of religious experience. The fragmentation of religion is closely bound up with a second trend, a change in the nature of communication, with people increasingly tied into networked communities. The Internet, social media, mobile phones, and satellite TV provide the opportunity to belong to geographically dispersed communities of likeminded people. Individuals sort themselves into such groups through the Internet and social media, forming networks on the basis of shared sexual, religious, or cultural identities. At times, these become so homogeneous that they turn into “filter bubbles,” monocultures of likeminded people who constantly reinforce each other’s beliefs.⁵⁴ Although membership in these groups is loose, they nevertheless are creating a public sphere that is increasingly divided into a patchwork of inward-looking and internally homogeneous

53 The Dutch politician Ronald Plasterk coined the word *ietsisten* (“somethingists”) for this group.

54 Eli Pariser, *The Filter Bubble: What the Internet is Hiding from You* (2011), 9–20; for an early visionary account, see also Cass Sunstein, *Republic.com* (Princeton University Press, 2001).

communities, vaguely reminiscent of the old Dutch pillars. In the time of pillarization, the membership of almost all groups to which someone belonged was located within the old, densely-knit communities, where one met the same people in the political party, the church, the school board, the sports club, and other social organizations. In the more fragmented society of today, the networks are more fluid.⁵⁵

Another feature of the new networked communities is that they are not tied to national geography. Diaspora communities and religious groups can maintain intensive contacts across borders, especially with their countries of origin.⁵⁶ Through social media, satellite TV, mobile phones, and cheap flights, it is much easier to connect with countries of origin than it was for previous generations of migrants. Turkish-Dutch citizens can read Turkish newspapers on the Internet, watch Turkish television through satellite, and keep in contact with Turkey through regular visits and cheap phone calls. These networked diaspora communities have hybrid identities, as they may consist of Turkish migrants from various countries—all of them partly influenced by the country of settlement. They are loose communities, in the sense that people can relatively easily dissociate themselves from them, but this looseness does not mean that the influence of these networks cannot be profound. Protests by parts of the Turkish community in Europe in the run-up to the constitutional referendum in 2017 are an example of the power of networks. These networked transnational communities no longer fit the paradigm of the nation state; they transcend borders, and it is difficult for states to control them.

At times, these processes are enhanced by more traditional forms of state support. State organizations in the countries of origin, like the Turkish Diyanet, maintain ties with their diaspora communities by building mosques and training imams. Charities, especially in many Gulf states, offer financial support for Islamic organizations abroad as a way of spreading their strict Salafi strain of Sunni Islam. Some authors are more concerned by these types of cross-border support than others. Ruud Koopmans argued that Saudi Arabia and other Gulf states have had great success in spreading fundamentalist Islam across the globe and in the Netherlands through schools and religious organizations.⁵⁷ A recent study by the Verwey-Jonker Instituut, however, found that although there were efforts, mainly by Saudi Arabia, to spread Salafi Islam, the effects

55 Wouter de Been, "Playing around With a Few of Your Favorite Things: Freedom and Continuity on the Internet", in Wouter de Been et al. (eds.), *Crossroads in New Media, Identity and Law: The Shape of Diversity to Come* (2015), 58–59.

56 Wouter de Been, "Continuity or regime change in the Netherlands: Consociationalism in a deterritorialized and post-secular world", 12(5) *Ethnicities* (2012), 545.

57 Koopmans, *supra* note 17, at 218, 227–228.

were mixed and unclear. Other nations, like Morocco, actively support anti-Salafi programs in the Netherlands. According to the study, Salafi Muslims are a highly diverse group, in which a small minority remains at odds with Western liberal democracy. Most, however, are trying to fit their religious life into the framework of Dutch law, even if reluctantly.⁵⁸ For Koopmans, the foreign influence on Dutch Muslims is a reason to reconsider the accommodation of Islam in the Netherlands. It is possible to argue, however, that such accommodation makes sure that Dutch Muslims are not dependent entirely on foreign funding to organize their institutions, and that Islamic schools are tied into the Dutch system and offer education that is consistent with the values of liberal democracy.

6 Consequences of the Marginalization and Privatization of Religion for Democratic Culture

After we sketched these three trends or phenomena, we can now address their implications for the accommodation of religious diversity. The rise of the new moral majority has led to a growing unfamiliarity with religion, which has bred a lack of understanding. Large parts of the Dutch population have become religiously aloof. Whether it is wearing a headscarf, not drinking alcohol, or rejecting non-marital sex, persons holding these views are considered to be alien to the liberal and secular worldview. This lack of understanding may be associated with the general process of secularization, which for many Dutch citizens has merged with their self-image as members of a liberal-progressive and fundamentally secular nation that has transcended religion. This self-image may be a way for these citizens to distinguish themselves from migrant groups with more traditional views. But the unfamiliarity with religion may also derive from the French republican elements in the majority consensus, especially the non-sectarian view of public citizenship and the public domain, in which there is no place for manifestations of religious identity. If religious identities are in this way privatized and marginalized, citizens are no longer regularly confronted with religious beliefs and practices, and no longer have the opportunity, let alone experience the need, to learn about them. Those who rarely come in contact with religious behavior must make a greater effort to come to terms with such behavior and find ways to accommodate it. This effort is even more challenging if the behavior is framed as irrational and

58 Maurits Berger et al., *Salafisme in Nederland belicht: Vijftien jaar Salafisme onderzoek in Nederland* (2018), 31–33.

premodern. Therefore, the diminishing understanding of religious minorities, and empathy for them leads to a reduction of support for the Dutch liberal tradition of mutual accommodation of religious minorities, as well as for the democratic rights of religious minorities.

7 Consequences for Constitutional Rights and Principles

The complex makeup of today's diversity suggests a problem of a legal-technical nature. Legislation works with general categories; law always has a tendency to generalize. Yet, if the old groups, the old "pillars," fade away and are replaced with a complex landscape in which many citizens adopt highly individual and fluid hybrid identities, while others are locked into inward-looking networked communities and some remain loyal to their traditional communities, it becomes more difficult to devise one-size-fits-all legal instruments to accommodate everybody.

The current understanding of various constitutional rights in the Netherlands has an orientation toward groups and organizations; partly because of the history of pillarization, and partly because for the exercise of some rights, organizations such as schools and churches are essential. According to Michael Walzer, as a regime of tolerance, consociationalism is characterized by groups tolerating each other as groups, letting each group live according to its religious or ideological preferences and principles. When circumstances change, and one of the groups becomes dominant, however, like the secular majority in the Netherlands today, the ideal typical regime of tolerance tends to become that of the nation state. In the regime of tolerance of the nation state, tolerance is typically focused not on groups, but on their individual members, who are conceived of as citizens, first, and members of a minority group, second.⁵⁹ Even today, the Dutch system is still characterized by groups tolerating each other as groups. Freedom of education is implemented through large school organizations that largely still reflect the traditional religious and secular communities. The legal framework of religious freedom is also strongly based on recognizing religious communities and organizations. Most religions are organized in collective institutions such as churches and mosques. If divergent views are clearly confined to and univocally expressed within recognizable and relatively closed communities, like those of the Mennonites and Jehovah's Witnesses, it is much easier to accommodate members of these

59 See: Michael Walzer, *supra* note 2 at 22–30.

groups, than when individual citizens construct their own unique religious view.

Hence, the question is whether the traditional Dutch orientation toward groups and organizations should be retained, or whether, for example, freedom of religion should be recast as an individual right in the private sphere. The Netherlands currently hovers somewhere between Walzer's consociational and nation-state models of toleration. Dutch society has become much more individualized. Yet, despite a clear movement in the Netherlands away from the stifling religious and ideological segmentation of the days of pillarization, toward a more fluid and individualistic society, many citizens did not suddenly stop acting like social beings. Undoubtedly, there is less deference to tradition and less respect for the authority of cultural and religious elites than in the 1950s and 1960s, but groups, associations, churches, clubs, and today, social networks and Internet communities remain important sources of identity. Social groups have not disappeared from the Netherlands; they have transformed, loosened up, and in part turned into the networked communities of the digital age. Some of these communities seem quite capable of keeping their shared identity alive, independently of Dutch social institutions. The question is whether these new networked communities can be integrated into Dutch society through the old consociational arrangements, to the extent that they are still available. Is it better to let them look for funding and support from external parties, or to treat them as equals and make them part of the Dutch institutional landscape?

The liberal-progressive majority prefers to deal with cultural and religious diversity strictly in terms of individual rights. Although the accommodation of cultural and religious identity is changing, it remains important. For some groups, for example, the gay movement or for more liberal religious traditions, identities may have become more individualistic and fluid, and distinct groups, organizations, and institutions may have become less important.⁶⁰ In other cases, however, groups, organizations, and institutions remain important for how individuals express their identities and organize their lives. Therefore, a group orientation should remain an option when it comes to facilitating religious and cultural diversity. The collective and institutional dimension of rights such as freedom of religion and freedom of education should be recognized and not entirely reduced to the individual dimension.⁶¹

60 The gay movement has become more individualistic and inclusive, with increasingly open and fluid boundaries, as attested to by the addition of various letters in recent years, adding up to LGBTQIAP+.

61 To avoid misunderstanding, this accommodation of group identities should not go so far, as it does in some radical relativist positions, that the rights of the group should trump

Clearly, the combination of the rise of a liberal-republican majority ideology, its expression as a substantive notion of Dutch citizenship, and the increasing fragmentation of society present important challenges to Dutch democratic culture and its notions of liberal rights. Some constitutional rights and principles may have to be rethought, and their accepted interpretation and implementation may have to change to reflect the changes that have taken place in the Netherlands. These include freedom of education, freedom of religion, the right to non-discrimination, state neutrality, and freedom of expression. We can merely identify the challenges here, as there are no easy solutions.

7.1 *Freedom of Education*

First and foremost, *freedom of education*. The Dutch system of full funding for private schools with a distinct religious or pedagogical character is another legacy of the pillarized past. It was created in 1917, as part of a broad compromise, and it is unique in the world.⁶² At the time, it was defended as a compromise between the various religious and secular pillars, but also for taking the preferences of parents seriously. It is difficult to justify such a collective right within a classic liberal or a national-progressivist framework, however; it is even more difficult to do so within a republican framework. Moreover, the way in which it is implemented in the Netherlands today, through the legal recognition and protection of an oligopoly of a small number of religious school organizations, with little influence from parents or students, is at odds with the increasing fragmentation of identities and with the egalitarian demand for democratic influence. Despite the fact that the Dutch school system remains surprisingly popular—many secular parents seem to believe that it is important to expose their children to their religious heritage—there is clear opposition to the continued overrepresentation of religion in the Dutch school system. Jaap Dronkers noted that the “differences between public and religious schools in the Netherlands are more cultural than material, more school-climate differences than factual operation differences,” but it still seems appropriate that more schools represent a secular culture and create a secular school climate

individual freedoms. The accommodation of groups should take place within the limits of liberal democracy, and therefore always respect individual rights.

62 Ben Vermeulen et al., “The European Convention on Human Rights and the Dutch educational system”, in Jan de Groof and Gracienne Lauwers (eds.), *No person shall be denied the right of education. The influence of the European Convention on Human Rights on the right to education and rights in education* (2004); Paul Zoontjens and Charles Glenn, “The Netherlands”, in Charles Glenn & Jan de Groof (eds.), *Balancing Freedom, Autonomy and Accountability in Education*, (2012) Volume 2.

that reflects the growing secularism of Dutch society.⁶³ At the same time, the sizable Muslim minority should be allowed to continue operating their own schools. Islamic schools have a bad reputation in the Netherlands, but according to Jaap Dronkers this is undeserved, at least with regard to elementary schools. When you control for the socio-economic background of the parents, the performance of Islamic elementary schools is among the best in Holland. Islamic secondary schools have proven unsuccessful so far, however. According to Dronkers, this is because of the lack of “a well-educated and well-connected Islamic elite for the foundations and associations that establish and run the religious schools,” and because of “gender values and norms” that hamper performance of both male and female children. Nevertheless, Dronkers believes that Islamic schools could be instrumental in bringing about the necessary adjustment of Islam to modernity.⁶⁴

7.2 *Freedom of Religion*

A similar point can be made with regard to *freedom of religion*. An increasing number of authors have argued that freedom of religion is superfluous, because other fundamental rights, like freedom of speech, freedom of association, and the principle of non-discrimination already adequately protect religious views.⁶⁵ Admittedly, in a purely Protestant frame with an emphasis on the doctrinal aspects of religion, this may seem logical. When law and public debate no longer recognize religious praxis as part of religion in its own right, but merely reduce it to the expression of religious beliefs, freedom of religion becomes superfluous. Within a republican perspective premised on the absence of religion from the public sphere, the risk of conflict between religious and legal norms may seem minimal. Evidently, such a perspective provides little support for the accommodation of religious practices with a public dimension. Note, however, that this approach neglects the praxis-oriented and collective dimensions of religion. To substantiate the need for a distinct right of religious freedom, this challenge must be taken seriously.

63 Jaap Dronkers, “Islamic Primary Schools in the Netherlands”, 10 *Journal of School Choice* (2016), 8.

64 *Ibid.*, at 18–19.

65 For Dutch authors, see Cliteur, *supra* note 37; Philipse, *supra* note 37. For an international discussion, see James Nickel, “Who Needs Freedom of Religion?”, 76 *University of Colorado Law Review* (2005), 941; Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* (2007); Brian Leiter, *Why Tolerate Religion* (2013). For a more general analysis, see Sohail Wahedi, “Abstraction from the Religious Dimension”, 24 *Buffalo Human Rights Law Review* (2017–2018), 1–44.

7.3 *Right to Non-Discrimination*

Another right that is called into question is that of *non-discrimination*. Anti-discrimination law is a highly controversial field. Opinions of the Netherlands Institute for Human Rights, formerly the Equal Treatment Commission, often meet with fierce criticism.⁶⁶ The tensions between the liberal, republican, and progressive nationalist elements of the dominant ideology are most clearly visible on this topic. Liberalism is highly sensitive to the protection of minorities against intolerant majorities, and therefore supports active anti-discrimination policies. French republicanism, by contrast, tries to abstract from religious and other identities, which in practice means that the majority standards become the public norm, without room for deviation.⁶⁷ Finally, progressive nationalists construct the liberal-progressive consensus as a defining characteristic of Dutch identity into which immigrants and minorities must assimilate. From a liberal point of view, we should try to accommodate minorities, whereas from a republican and a progressive nationalist point of view, we should not. The result of an increasingly republican and progressive nationalist culture is that there is less support for policies and legal instruments that promote religious and cultural equality through the accommodation of minorities.

7.4 *State Neutrality*

There are also implications for the interpretation of *state neutrality*. We may discern a shift from inclusive to exclusive neutrality. As a result of the changes described above, there is less support for inclusive forms of neutrality. Inclusive neutrality, also known as evenhandedness, requires that public manifestations of religious and other minority identities be accepted and accommodated. It is a form of power sharing in the public sphere, based on the principle of proportionality, central to the Dutch tradition of consociationalism, in which minorities are respected and free to live according to their own beliefs. It is the notion behind the Dutch system of education, in which every organized religious or secular group is allowed to operate its own public schools, roughly in proportion to the size of their communities. There is now a trend toward a stricter separation of state and religious organizations, similar to the current French interpretation of *laïcité* or exclusive neutrality.⁶⁸ This is a system in which state institutions adopt a strict hands-off approach vis-à-vis the different ideas of

66 In 2013, the Equal Treatment Commission was transformed into an organization with a broader task, the Netherlands Institute for Human Rights.

67 For abstraction, see Wahedi, *supra* note 65.

68 Pierik and Van der Burg, *supra* note 45.

the good of its citizens, and toward religious organizations. The current notion of Dutch national identity as something that is related to the liberal, progressive consensus gravitates toward a strictly secular public sphere.

7.5 *Freedom of Expression*

There is a different tendency with regard to *freedom of expression*. Traditionally, in Dutch law there have been various restrictions on this freedom based on libel, defamation, and non-discrimination laws.⁶⁹ In recent decades, however, the effective protection against hate speech has weakened. Hate speech is not mere speech. It often hurts people profoundly, and violates their self-respect, especially if it is aimed at minorities that are the victim of persistent discrimination, such as gays and Muslims. Speech against heterosexuals is not only rare, but also rarely causes harm, because they are not an oppressed minority. By contrast, anti-gay slurs are much more common and more hurtful, and they reinforce anti-gay sentiments. Similarly, anti-Muslim and anti-immigrant speech is dangerous and hurtful because its targets are marginal groups rather than secure and established communities. There are good reasons, therefore, not to import a libertarian view on free speech, like the one in the United States, but uphold the current legal restrictions. Nevertheless, the dominant republican frame undermines support for such restrictions. Why should we protect minorities against defamation if the majority, the standard person, does not need such protection? If a secularized citizen or liberal Christian does not mind that Christianity is criticized in hateful terms, why should it be different for Muslims? This argument ignores obvious differences in power and status between established groups within mainstream Dutch society and the marginal Muslim community, and neglects the vulnerability of socially disadvantaged groups.

7.6 *Constitutional Rights and Principles*

In this section, we have identified several key challenges to the traditional interpretation of constitutional rights and principles in the Netherlands. They reveal two underlying tensions: (a) between liberal, republican, and progressive nationalist elements; and (b) between the current implementation of those rights and principles in terms of groups, institutions and general categories, and the fragmentation and hybridization of identities in our pluralist society. All constitutional rights and principles that are under pressure rely partly on group-sensitive measures and on acceptance of the public dimension of

69 The statutory prohibition of blasphemy has been without effective enforcement since 1966, and has only been removed on 1 February 2014.

religious and cultural identities. Within a republican framework, these are more difficult to justify, and in a fragmented society with loose networked communities, they are more difficult to implement. These tensions cannot be easily resolved, and they threaten the legitimacy of legal institutions, such as the Netherlands Institute for Human Rights and the courts. Within a liberal framework, the role of the courts is often counter-majoritarian, and it involves the protection of minorities against intolerant majorities. Within a republican and a progressive nationalist framework, however, their role is to express the common identity, leaving less room for minorities.

8 Conclusion: Revisiting Consociationalism?

In this paper, we have identified three developments in Dutch society and argued that they result in reduced support for the Dutch liberal tradition of mutual accommodation of religious minorities. Moreover, they present challenges to the current interpretation of constitutional rights and principles.

We cannot offer easy solutions to these tensions and challenges. Legal scholarship and practice can provide only a minor part of the solution by suggesting changes to legal doctrine in light of changing social circumstances. One of the authors has done so with regard to the ideal of state neutrality, and argued that it should be reconstructed in a pluralist way. In most cases, the state should base its policies on inclusive neutrality, a form that tries to take into account culture and religion in the public sphere in an evenhanded way, and seeks to include all relevant views, controversial worldviews among them, in the decision-making process. In some cases, however, the state should focus on exclusive neutrality, the principle that underlies the French notion of *laïcité*, in which religious or cultural expressions should be excluded from the public sphere. Which of the two versions is to be preferred in what situation, cannot be decided *a priori*, but depends on a pragmatic and context-sensitive analysis. The notion of inclusive state neutrality has implications also for how freedom of education can be reconceived.⁷⁰

Still, legal doctrine can only make a minor contribution here. The tensions are more political and social in nature than legal. Therefore, in dealing with religious diversity in the Netherlands, we should focus primarily on rethinking

⁷⁰ See Wibren van der Burg, "Inclusive Neutrality in the Classroom", in G. Lauwers, J. De Groof and P. De Hert (eds.), *Islam in State-Funded Schools. Religion and the Public Law Framework* (2012), arguing that the notion of inclusive neutrality with regard to religion, views of life, culture, and sexual orientation (known in Belgium as "active pluralism"), should be a guiding principle for all schools and not only for public ones.

the political arrangements and social culture. Naturally, we cannot elaborate a new social and political philosophy here, but our suggestion is that revisiting the tradition of consociationalism may be a successful strategy.⁷¹

Consociationalism is often reduced to pillarization, but in practice it is a broader approach. It includes a culture of power-sharing that is still very much alive in Dutch political and social culture, in the socio-economic *poldermodel*, and in the attempt to find relatively broad support for local and national governments, and their most important policies.⁷² Governments in the Netherlands always must be based on coalitions, which requires fostering the art of compromise and mutual accommodation. It is mainly in the context of cultural and religious difference that consociationalism has been discarded, because of its association with pillarization and the suffocating conformity into which the old pillars forced their members until the 1960s. We suggest that consociationalism can be reconstructed as a distinctively liberal approach that is more accommodating to the collective nature of identity, to the importance of a healthy pluralism in a democratic society, and to the inescapable public dimension of religious life. We want to highlight four distinctive elements of this tradition that are characteristic of the Dutch political and legal institutions.

First, inclusiveness. The system of proportional representation offers even tiny minorities the chance of a seat in parliament. The consensus culture and *poldermodel* imply that government should try to create broad support for policies, also by parties and groups that are not represented in the government. The Netherlands does not have a winner-takes-all system, and although a winner-takes-all mentality is gaining ground, it is still not dominant in Dutch political culture.

Second, evenhandedness. There is official recognition of confessional parties and financial support for religion-based social organizations, such as confessional hospitals and welfare organizations. Most important, there is a constitutional guarantee for evenhanded support of private schools with

71 Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968); Arend Lijphart, "Self-determination versus pre-determination of ethnic minorities in powersharing systems", in W. Kymlicka (ed.), *The Rights of Minority Cultures* (1995); Arend Lijphart, "Constitutional design for divided societies", 15(2) *Journal of Democracy* (2004), 96.

72 Recent examples include two social agreements in 2019 on revising the Dutch pension system and on addressing the climate crisis. Both were preceded by long discussions and negotiations between representatives of many social organizations and political parties, and received support that was broader than that provided by the political parties that constitute the current coalition government.

religious and non-religious identities. This is all carried out proportionally, each group getting their fair share. It also expresses a belief in pluralist democracy and in the importance of a flourishing and diverse civil society, as opposed to the focus on individual citizens of classical liberalism, and to the emphasis on national conformity of republicanism and progressive nationalism.

Third, accommodation. The Netherlands used to be deeply divided on religion. These divisions could have easily destabilized the country and thrown it into turmoil. There is a deep wisdom in the way the Netherlands has historically managed to accommodate different religious and secular minorities by giving each their due. As a system for accommodating several entrenched and antagonistic communities it was extraordinarily successful. With the current secular majority, such mutual accommodation may not be a necessity anymore, but it may still suggest solutions, especially with the rise of new, inward-looking communities facilitated by 21st century communication networks. Where possible, religious minorities should be accommodated through special exemptions and other measures. Dutch law knew, and still knows, a wide range of exemptions to accommodate conscientious objections, from Mennonite objections against military service and the oath to orthodox-Calvinist objections against social security and vaccination.

Fourth, a pragmatic approach. Dutch consociationalism and the *polder* culture have never been the result of a theory of grand design, of Founding Fathers with distinct political theories in mind. Lijphart formulated his theory of consociationalism only a few years before pillarization started to disintegrate in the Netherlands. It developed mainly in practice, nationally, but also at local levels, in a process of compromise and muddling through, adapting itself to changing circumstances throughout its history.

We believe that these principles are still very much alive in Dutch political and social culture. They are distinctly liberal, and may therefore provide a good starting point for rethinking liberal democracy. In our view, they can provide productive perspectives for dealing with the tensions and challenges discussed in this article. In light of the pragmatic approach, however, we believe the development of “consociationalism 2.0” should not start from a theoretical design, but rather go hand in hand with practical understanding of what does and does not work, especially at the local level. The hard work is not that of adapting theory but of adapting practice to changing circumstances.