There seems to be an irreconcilable gap between the Dutch state and its Muslim inhabitants. This impression is transformed into an increasingly popular standpoint, not only in politics and media but also among legal philosophers, historians, and jurists. As the mantra that supports the apparent gap, what tends to be singled out is the principle of the separation of church and state. This separation is allegedly alien to Islam, and therefore Islam is irreconcilable with the idea of a constitutional state. The mantra appears to be a common knowledge fact, for which reason any substantiation and explanations are casually dropped out, but wrongly so.

The state under the rule of law and the principle of the separation of church and state are not unambiguous concepts. The relevance and scope of the principle is unclear; moreover, a fair question can be raised as to whether this liberal principle is even problematic in all in relation to Muslims in the Netherlands.

The foundations of the state under the rule of law are the principles of legality, separation of powers, civil rights, and judicial control. Individual freedom is most important. The individual determines his or her own human vision and there is no dominant reality. Given that the government can never prescribe what ‘real’ freedom is, it should keep its distance.

Separation and the Muslim presence

After 11 September 2001, the presence of about 860,000 Muslims in the Netherlands has been increasingly perceived as a problem. People do not talk about these days about ‘Muslims’, they talk about ‘Islam’ – as if it were a national organization. The image of church and state does not fit the mosque, as religious variation is large and there is a diversity of interpretations and views.

When is the principle of the separation of church and state relevant today? In the first place, when the government singles out certain religions (whereas as an ideological concept is not presently singled out by the Dutch government). Moreover, there are dynamic parties at a national or local level with political power to favour ‘Islam’ over other ideologies. The situation in which only associations with a Christian orientation are eligible for subsidies, as was occasionally the case in municipalities controlled by Dutch Reformed parties in the 1980s, has no Islam-ic equivalent. On the contrary, and in conflict alleged conflict with what a woman’s ‘call- ing’ is. In September 2001, the UN Commit-tee on the Elimination of Discrimination against Women called for legal measures against this discrimination. The government persists since 1991 in its view that dis- crimination against women should be weighed against other rights pertaining to the foundations of the Dutch legal system – freedom to gather, religious freedom, and free speech. A prohibition can only be set when there is a systematic, very severe dis- turbance of the democratic process.’

This is somewhat surprising in light of the fact that religions vary by the highest Turk- ish judge of the Turkish Welfare Party, whose judgment is maintained by the Euro-pean Court of Human Rights. The focus on the activities of the Welfare Party is sup- posed to be the elimination of the separa-tion of church and state.

For example, a Dutch criterion for a ‘very serious dis- turbance of the democratic process’ does not work for the SGP, for which Islamic orga-nisms can very well be combined with a strong de-fense of individual freedom, plays too little part in the policy making. The real problem lies in the fact that the Dutch state has no consequent policy regarding the autonomy of life. All kinds of ar-guments are thrown into the pile. The policy or the approach is often a question of taste, of understanding. The essence of a state is the rule of law, particularly the pro- tection of individual freedom, plays too marginal a role. Behind every Muslim is an individual child or adult, man or woman, traditional or progressive, alluring or holy, lonely, enthusiastic, expressive – you name it. Giving space to the reality and truth of that individual is important, and experience has taught us that repressed identities are more likely to develop into extremist vari- ants. The unrestricted constraining of or empha-sis on the ‘Islamic identity of Muslims in a hostile (or friendly) environment is what leads to a distancing from Dutch society. This Islamic identity is confirmed as a reac-tion to alienation and social exclusion. It is this alienation that is threatening in the long term. Many individuals – not only Mus-lims – no longer feel at home in the Dutch state, and feel unprotected against an indis- criminate government. Dutch Muslims and their children deserve the chance to make a free choice in becoming citizens of the Dutch democratic state, and the chance is theirs for the taking.

The real question concerns what the foun-dations should be of a Dutch citizenship with an Islamic identity. The philosopher of law Marlies Galenkamp points in this con-text to the harm principle of the philoso-pher J.S. Mill. The government can only in- terfere with the freedom of the (Islamic) cit-izen if she causes damage to other citizens. On the basis of this principle, Muslims can maintain their own religious views unless they cause damage to others, including those within their own community. A Mus- lim may therefore not discriminate, because that causes others. A Muslim can step out of the community if he disagrees with certain views, such as female circumcision or forced marriages. This comes closer to the perspec-tive of a ‘very serious disturbance of the democratic process’.

None of this means that Islamic religious diversity is threatening to the arrival of immi-grants, refugees, and converts does not pre- sent the government with problems. The discussions on issues like wearing head scarves in school, at work, or even in court is not primarily about the separation of church and state but about basic civil rights. In these considerations, meanings for Mus-lims and non-Muslims are often diametrical- ly opposed. For instance, non-Muslims can- not seem to accept that progressive Muslims can very well be combined with a strong de-fense of individual freedom. Muslims have to be protected against alienation, because the state under the rule of law, particularly the pro- tection of individual freedom, plays too marginal a role. Behind every Muslim is an individual child or adult, man or woman, traditional or progressive, alluring or holy, lonely, enthusiastic, expressive – you name it. Giving space to the reality and truth of that individual is important, and experience has taught us that repressed identities are more likely to develop into extremist vari- ants. The unrestricted constraining of or empha-sis on the ‘Islamic identity of Muslims in a hostile (or friendly) environment is what leads to a distancing from Dutch society. This Islamic identity is confirmed as a reac-tion to alienation and social exclusion. It is this alienation that is threatening in the long term. Many individuals – not only Mus-lims – no longer feel at home in the Dutch state, and feel unprotected against an indis- criminate government. Dutch Muslims and

The Netherlands
SADIK MARCHAOUI

Church and State in Multicultural Society

Historically, individual conscience be-came recognized as absolute freedom to put an end to the claims of absolutist theocratic monarchs. As a result, religious freedom became a fact. By eliminating the privileged position of the ruling church(es), church and state were in fact separated. This was enhanced by all the subjects’ simulta-neous claim to fundamental civil rights. In the Netherlands, the actual separation of church and state was completed in the process starting in 1717, which led to the pillar system in which pluralistic (religious) views found a place for themselves. The state has known no religious ideology ever since. In the words of the prayer in this year’s queen’s address, the edge inscription of the euro reading that God is with us, and the reference to the Almighty at the beginning of our laws mere assertion. The individual determines his or her own human vision and there is no dominant reality. Given that the government can never prescribe what ‘real’ freedom is, it should keep its distance.

To illustrate the relevance of the principle of the separation of church and state in rela-tion to different ideological trends, we should take a look at the Protestant SGP (State Reformed Party). This party aims specifically at a Dutch government based entirely ‘on the divine order revealed in the Holy Scriptures’. This standpoint produces in fact a theocratic party with official status. Dutch in fact a theocratic party with official status. The principle of popular sovereignty but a ‘gov-ernment by God’. It excludes women from having certain voting rights because of an image not available online

Notes
2. Case of Rahaf al-Futtaim (Welfare Party) and others v. Turkey, Applications nos. 13140/99, 41132/00, 41134/00, 41135/00 and 41136/00 of 31 July 2001.

Earning on the court clerks’ right to wear head- scarves in the courtroom.

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 Foundations of citizenship

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Their domestic policy discourse.

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