Freedom of religion and the securitisation of religious identity: An analysis of proposals impacting on freedom of religion following terrorist attacks in Flanders

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Abstract: *This article develops an adapted, discourse theory-based framework of securitisation theory to assess possible violations of the human right to freedom of religion. The relevance of this framework is illustrated by the analysis of three political proposals that would limit freedom of religion, made in Flanders after the terrorist attacks of 22 March 2016: a change to the Constitution; the criminalisation of 'radicalism'; and a ban on the wearing of the burkini. While none of these proposals has subsequently been put in place, the article demonstrates how securitisation and identity constructions may impact on freedom of religion in illegitimate ways, while drawing attention to the possible effects of a particular construction of Flemish identity on the right of Muslim citizens to freedom of religion. After first outlining the securitisation theory and its original shortcomings – most notably the failure to take the discursive context and the role of identity constructions into account – the article links this theory to the human right to freedom of religion, through the limitation criterion of a 'legitimate aim' in article 9 of the European Convention on Human Rights. It is shown that a manifestation of religion has to be securitised, or constructed as a threat to a 'legitimate aim', in order to be limited. However, it is argued that there are different ways in which this securitisation can occur: First, a manifestation of religion can be securitised in its own right; or, second, on the basis of an interpretation of the religion it belongs to. Embracing the insights of discourse theory, it is argued that both are related to identity constructions and the threats that ensue from clashing identities. The second instance, it is argued, constitutes a violation of the human right to freedom of religion. This insight is subsequently applied to the three proposals, demonstrating the relevance of the theory and its practical implications. All proposals, it is shown, ensue from a wider construction of 'Islam' as a 'threat' – the result of a Flemish identity construct that regards Muslims and Islam as the 'other'. It is this construction that has given rise to the three proposals that aim to securitise manifestations of Islam. This identity construct, it is concluded, therefore is not compatible with freedom of religion for Muslims, and alternatives should be supported.*

Key words: *securitisation; freedom of religion; legitimate aim; Islam; identity; discourse, European Convention on Human Rights*

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1   Introduction

On 22 March 2016, two terrorist attacks were carried out in Brussels, Belgium. In almost simultaneous explosions at the national airport and a central underground station, 32 people were killed when three perpetrators committed suicide attacks (Heylen & Huyghebaert 2016). It soon became clear that the three considered themselves soldiers of the Islamic State, the same movement that had earlier claimed the deadly attacks of November 2015 in Paris (Huyghebaert & Willems 2016).

Shortly after the attacks, Belgian politics reacted in an expected, forceful way. However, along much criticised new measures, giving the government more powers to arrest those who encourage terrorism, keep suspects in temporary custody for longer periods (Amnesty International 2016) and extensive data-retention laws (Human Rights Watch 2016), politics also turned its focus to religion. Within a span of less than six months, the Belgian Constitution and the role of religion in it came under review; a proposal to criminalise 'radicalism' was advanced; and an attempt was made to ban the *burkini*, a swimsuit worn by Muslim women.

The aim of this article is to approach these proposals from the perspective of a newly-elaborated version of securitisation theory, applied specifically to the right to freedom of religion. While none of these proposals has been implemented, their analysis illustrates the relevance of securitisation theory to the right to freedom of religion. Additionally, the analysis demonstrates the relevance of these proposals as an expression of identity constructions in their particular historical context, with problematic implications for the right to freedom of religion of Muslim citizens in Flanders.

In order to demonstrate this, first, the specific framework of securitisation theory adhered to in this study is elaborated. Building on the scholarship of Stritzel, McDonald and McSweeney, and incorporating aspects of Laclau and Mouffe's discourse theory, it is argued that the original 'Copenhagen school' framework of securitisation theory is defective in two ways: The importance of the discursive context and identity constructions for making possible *securitising moves* is neglected; and the emphasis on the 'extraordinary' nature of *securitising moves* is too strict. Taking this into account, it is revealed that securitisation is part of everyday politics, and closely related to clashing identity construction.

Having established this, the human right to freedom of religion is briefly expanded upon. According to the European Convention on Human Rights (European Convention), the right is qualified: Manifestations may be limited only when specific requirements are met. More specifically, limitations have to be prescribed by law, be necessary in a democratic society, and pursue a legitimate aim. The aims mentioned are the interests of public safety; the protection of public order, health or morals; and the protection of the rights and freedoms of others. Put another way, the right to manifest a religion or belief may be limited when a manifestation is considered a *threat* to public safety, to public order, health or morals, or the rights and freedoms of others. In terms of securitisation theory, this means that a manifestation has to be *securitised* for it to be limited.

This securitisation, however, can occur in different ways, and the way in which this securitisation happens should therefore be taken into

account – a matter that will be clarified with reference to the *Dahlab* case of the European Court of Human Rights (European Court). It will be argued that if a manifestation as such is considered a threat for reasons *external* to any specific religion, it possibly might legitimately be limited. Yet, if this is the case because of the meaning attributed to a manifestation, on grounds deemed *internal* to the religion, it is a manifestation of something that is the result, it will be argued, of a particular identity construction. This constitutes an undue interference with the right to freedom of religion, and thus a violation of this human right.

Based on this distinction, the case studies at hand are subsequently analysed, illustrating the relevance of the theory to the right to freedom of religion; and the problematic consequences a particular construction of Flemish identity may have for the right to freedom of religion for Muslim citizens.

2   Securitisation theory: Towards a consistent theory of discourse

The securitisation theory forced a paradigmatic breakthrough in the field of security studies by shattering the dogma of security and threat as objectively-existing facts. Writing in the early 1990s, Buzan and Waever proposed a radically different paradigm, thenceforth known as securitisation theory: the idea that security, instead of being an objective situation, is socially constructed.

It was, they claimed, 'when an issue is presented as posing an existential threat to a designated referent object' that securitisation happens, and (in)security is constructed. Constructing security in this way, is called a *securitising move.* It is through this move that, if successful, the use of extraordinary measures to handle the created threat could be justified (Buzan et al 1998: 21). Security, therefore, it was argued, involved the construction of *existential threats* to justify *extraordinary measures*, a process that takes place when a *securitising actor* describes a threat to a *referent object* in a *speech act,* and the *audience* accepts this as such (Buzan et al 1998: 36).

Theirs has ever since remained the basic framework of securitisation theory, also referred to as the Copenhagen School's theory of securitisation. However, this theory has not been without its critics. Stritzel, McDonald and McSweeney are the most significant for this study. It is on the basis of their criticism, in combination with the insights offered by discourse theory, that an alternative version of securitisation theory will be elaborated in this article, one that makes the theory both more consistent and complete, and gives it an emancipatory facet that is lacking in the original version.

2.1   Discourse: From instrumentalism to constructivism

A first point of critique concerns the Copenhagen School's use of the concept of discourse. According to Buzan and Waever, discourse is constructive of reality, as it is through discourse that security is constituted. However, they, problematically, appear to limit this construction to the conscious and instrumental acts of securitising actors: Only *they* can construct security, while the *audience* merely has a *receiving* role. Discourse is hence made to be a weapon in the hands of state elites.

It is, of course, true that *securitising actors* use language in a strategic way: They want to achieve something by using it. But what is missing in Buzan and Waever's thesis is the realisation that *securitising actors* strategise only because they, too, already have certain conceptions of reality that are equally constructed. Indeed, when it is acknowledged that discourse is constructive of reality, it should be acknowledged that *securitising actors* also live in such a constructed reality. This means that they do not construct threats out of mere political, instrumentalist reasons: They do so because they are embedded in discursive constructions that inform them. Securitisation analysis has to take into account this context, since it is this context that makes possible *securitising moves* (Stritzel 2012: 553; McDonald 2008: 573).

Acknowledging this has important consequences for the theory. First, it requires realising that *securitising moves* may not be the first step in securitising an issue. Rather, *securitising moves* are a reflection of perceived threats in society at large: They *reinforce* rather than *constitute* security by institutionalising it. As McDonald (2008: 580) notes, '"securitisation" is often presented as shorthand for the construction of security', but exactly this difference should be clarified. We will, therefore, reserve the concept of securitisation for the (attempted) institutionalisation of already-existing threat perceptions.

Second, it has to be realised that these threats do not come out of the blue. People do not for no reason consider something to be a threat: They do so because threats are intimately linked to constructions of identity. Discourse theorists (Laclau & Mouffe 2001: 106-128; Torfing 2005: 14-15) have long argued that identity, like everything else, is discursively and relationally constructed: One is defined by what one is not. 'We' are defined in opposition to an 'other', and it is when discourses of identity collide (Jorgensen & Philips 2002: 48) that the 'other' becomes an enemy, and thus a threat. As Mouffe (2009: 7) points out, this happens 'when the others, who up to now had been considered as simply different, start to be perceived as putting into question our identity and threatening our existence', or in more palatable terms, 'we' can be defined as 'Flemish', based on certain characteristics, and opposed to others. It is when those defined as 'other' claim to be 'Flemish' as well, defining it in a different way, that they – and the things they do – become a threat to 'our' identity.

This, however, does not mean that within a given society we either have to be all the same and agree on everything, and if we do not, that we are each other's enemy: An 'other' can be accepted, and become part of an encompassing, higher identity. This happens when a common ground is found that can embrace difference. As Torfing (2005: 16) writes, there are 'political attempts to make antagonistic identities coexist within the same discursive space. Hence, the political construction of democratic "rules of the game" makes it possible for political actors to agree on institutionalised norms.'

'We' can thus define our identity on the basis of our common respect for democracy and human rights, while embracing the difference that this entails. The only 'threats' that will then arise are those that directly undermine these very 'rules of the game': attempts to neglect or abolish (aspects of) democracy or human rights. When such an inclusive identity does not exist, Mouffe (2009: 9) warns, a 'ground is laid for various forms of politics articulated around essentialist identities of nationalist, religious

or ethnic type and for the multiplication of confrontations over non-negotiable moral values'.

2.2   From extraordinariness to the ordinariness of security

Accepting this brings us to the second point of critique. If it is accepted that security is often only institutionalised through a *securitising move,* it has to be asked whether the 'extraordinary' nature of measures should still be considered a defining factor to be able to speak of securitisation.

Going against the Copenhagen School's emphasis on extraordinariness, several scholars have indeed argued that securitisation often happens 'below' the level of exceptionality and through normal legal procedures (Stritzel 2012: 565; 2007: 367; Basaran 2008: 340) and it is the premise of this article that this indeed is the case. Securitisation therefore should not be conceptualised as something 'above' politics, but rather as embedded *within* politics. *Securitising actors* need not take recourse to emergency measures in their *securitising moves*: They can also make use of the normal legal procedures. McDonald (2008: 567) is therefore right to claim that 'issues can become institutionalised as security issues or threats without dramatic moments of intervention'.

Taking these points seriously, we end up with a theory of securitisation that differs on important aspects from the original framework of the Copenhagen School: It has received an emancipatory goal through its link with identity, and is broadened to include the 'normal', 'ordinary' politics of security. A *securitising move* thus becomes more than a merely instrumental act: It is a reflection of society and its identity constructions, and aims to institutionalise the threat constructions that are already existing. *Securitisation analysis* therefore does not reveal how one actor constructs something as a threat – it goes deeper, and can lay bare existing threat constructions and their linked identity constructions, as a 'retroduction' can be made from 'empirical manifestations of discourse to its structures' (Laffey & Weldes 2004: 28), opening those up for emancipatory critique, an aspect that is lacking in the original formulation.

It is this framework that will be applied to the case studies at hand, after a brief elaboration on the right to freedom of religion, a detour that is necessary in order to establish what would, and would not, constitute a violation of the right to freedom of religion, and adds a securitisation perspective to limitations of this human right.

3   Freedom of religion: Securitisation as a justification for limitations?

Codified as article 9 of the European Convention, the right to freedom of religion reads as follows:

1   Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2   Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Much like articles 8, 10 and 11 that precede and follow it, the right to freedom of religion, therefore, is a qualified right: it can lawfully be limited in specific circumstances. Yet this is not the case for all its aspects: Only the freedom to manifest one's religion of beliefs – the so-called *forum externum* – may be limited, and solely when all conditions enumerated in sub-section 2 are complied with. Any limitation on the right to freedom of religion, therefore, must be prescribed by law, serve a legitimate aim, and be necessary in a democratic society – the mentioned legitimate aims being the interests of public safety, the protection of public order, health or morals, and the protection of the rights and freedoms of others.

Interestingly, however, when the requirement of a legitimate aim is looked at through the lens of securitisation theory, it becomes apparent that in order for a manifestation of religion or belief to be limited, a state has to consider this manifestation a *threat*: a threat to 'public safety', 'public order', 'health or morals', or 'the rights and freedoms of others'. A manifestation of religion or belief, in other words, has to be *securitised* in order for it to be limited: Securitisation, it is the premise of this article, is the *sine qua non* for limiting freedom of religion.

Manifestations of religion, admittedly, should be able to be limited in specific circumstances. However, the realisation that the threat required to limit it is constructed, like any other threat, necessitates that this threat construction is taken into account. Indeed, one may feel 'threatened' by a religious manifestation for different reasons, which can be related, or unrelated, to a specific religion, something which is made especially, and problematically, clear by the contentious case of *Dahlab v Switzerland* (ECtHR 2001).

This case concerned a ban on the headscarf worn by Ms Dahlab, a teacher at a primary school, thereby constituting a limitation on her right to manifest a religion. This limitation was allowed because the headscarf was considered a 'threat' to the rights and freedoms of others, as it threatened their right to be educated in a neutral environment, and a 'threat' to public order, since it was argued that the presence of the headscarf might lead to conflict. The headscarf thus was securitised, and explaining *why* the headscarf was a threat, the Swiss government argued that it was a 'powerful religious symbol' which could interfere with pupils' beliefs, a symbol that moreover is 'hard to square with gender equality'. The European Court accepted this explanation but, I would argue, problematically so.

This is the case because what this Swiss explanation for citing the legitimate aims reveals is that the aim of the ban was not the headscarf itself, but the message it was deemed to represent. The piece of clothing that is the headscarf itself obviously did not in any way constitute a threat to the legitimate aims cited in the European Convention. The meaning it was attributed by the Swiss government, as 'powerful' and therefore possibly proselytising, and as opposed to gender equality, did.[1] In other words, the Swiss government *interpreted* a religion, Islam, and this interpretation made its manifestation a threat. That is an undue interference with the right to freedom of religion, since neither the

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1   In the same case, the Swiss government claimed that a little cross was not a 'powerful' religious symbol.

government nor the court is qualified to interpret a religion, even less act on the basis of such interpretation. That would constitute an illegitimate interference with one's conscience which, as Nussbaum (2012: 65) argues, is the very basis for the right to freedom of religion.

What the *Dahlab* case, therefore, makes clear, is that it should not be sufficient that a manifestation is securitised to allow a limitation, because the required legitimate aims can be 'filled' with explanations that are illegitimate, and may be based on interpretations of religion. Before any legitimate aim can be cited, and accepted or refused, it has to be studied how the specific threat a religious manifestation is deemed to be, has come to be constructed – something that can be related to the mechanisms of threat and identity constructions pointed out earlier.

Indeed, as discourse theory argues, 'threats' result from clashing identity constructions. It was already pointed out that an 'other' could become a threat when it contested 'our' identity - and the way this relates to the 'threats' that manifestations of religion must be constructed as, can be explained by reference to two examples.

The first example is the following: Imagine a religion, religion X. This religion demands from its followers that they kill a person every day. In reaction to this, a state, say Belgium, forbids it. The manifestation, it claims, is a threat to public order, public safety, and the rights and freedoms of others. This might appear to have nothing to do with identity. However, a closer look reveals that it actually has. It is only because not all of us belong to religion X that we consider this killing a threat. The killing only becomes a threat because it has a different meaning to 'us', who have built our identity upon respect for human rights, including the right to life, and 'them', meanings that are not compatible.

Now consider the second example, concerning religion Y. This religion demands from its followers that they paint a second set of eyes on their faces. Some people take offence at this, since they feel that a religion that prescribes such things is bad and prescribes values they do not agree with. In the former example it was the manifestation as such that was considered threatening since it fell outside 'our' identity of human rights. In this example the manifestation is considered threatening because of the meaning attributed to the religion it belongs to. In this example, it is religion Y that is considered incompatible with 'our' values, and its manifestation therefore is not acceptable.

From the perspective of freedom of religion, the first example could arguably legitimately be limited: 'We' did not hold anything against religion X, but they excluded themselves from 'us' through the killings. Yet, in the second example, the manifestation was considered a threat because people had passed a value judgment on a religion, on the basis of their own interpretation of it. The 'other' had become a 'threat' as a whole. It was because 'we' did not want 'their' values among us that the manifestation became a threat. Such a limitation is unacceptable from the perspective of freedom of religion: It is only for believers to say what a particular manifestation means. Even if it were to be obvious that contestable values are expressed through it, freedom of religion allows people to adhere to these: Freedom of religion is not solely freedom of 'acceptable' religion.

Therefore, there are two mechanisms of threat constructions – one that is acceptable, and one that is not. It is this mechanism that has to be carefully considered every time a proposal to limit a religious manifestation is made. This insight will now be applied to the case studies at hand, illustrating the theory and its usefulness to assess limitations on the human right to freedom of religion, and their link with identity constructions – in this case, constructions of Flemish identity.

4   Flanders post-22/3: Securitising Islam, violating freedom of religion

With the Brussels attacks carried out on 22 March 2016, it took Flemish politics less than six months to formulate three proposals explicitly targeting religion. In May the debate about a revision of the Constitution, which had slowly taken off already after the Paris attacks in November, reached its peak. In July Flemish party N-VA proposed to criminalise radicalism as a form of collaboration, a proposal that was eventually shelved, but was relaunched in January 2017. In August the *burkini* was targeted by the same party, which proposed to ban it in all public places. These are the three proposals that will be analysed using the frameworks of freedom of religion and securitisation theory, as sketched above. More specifically, the debate surrounding each of these proposals will be discursively analysed, to reveal how the threats were constructed that these measures would respond to. By doing so, the analysis reveals which identity constructions made these threat constructions possible, opening them up for emancipatory critique.

4.1   The Constitution: A case of Islam-proofing?

After a few months of low-profile politics, the debate about revising the Belgian Constitution reached its peak in May 2016, when N-VA members Hendrik Vuye and Veerle Wauters brought forward their party's proposal to amend the Constitution. In a newspaper interview, they stated that they wanted to make only one simple change: adding a line that says that 'no one can put himself, on the ground of religious or philosophical motives, above the applicable rules of law, or limit the rights and freedoms of others' (Peeters & Van Horenbeek 2016).

This sentence is quite a conundrum, as its immediate meaning and purpose are not exactly clear. It is, of course, already the case that no one can put himself above the law. Religious exceptions from laws do exist, but those are also prescribed by the law itself: Slaughter without stunning, for example, is generally forbidden in Belgium, but an exception exists for religious slaughter – an exception the annulment of which was being debated in a simultaneous debate about this practice, and has in the meantime been passed by the relevant committee in parliament.

The unpleasant impression therefore is evoked that the purpose, or at least the effect, of such an amendment would be that no religious exemptions from the 'applicable rules of law' would be allowed any longer, which would amount to a frontal attack on the right to freedom of religion. Manifestations of religion that contradict the law would be banned. That would arguably not be much of a problem for the country's Christian majority, which has historically shaped the laws of the country.

However, a heavy burden would be imposed on those religious groups that are relatively new, and seek accommodation by a legal system that has been set up without taking their needs into account – in the case of Belgium, mostly Muslims, who started to migrate in large numbers to the country from the 1960s onwards. Such accommodation would become impossible, and any existing accommodation could be annulled by a simple majority decision.

What this addition would therefore amount to is giving the country's majority a trump card to abolish the right to manifest one's religion or belief for all non-majority religious groups, which would in itself be a flagrant violation of the right to freedom of religion in the European Convention which, contrarily to the proposed amendment, not only demands a law to limit manifestations, but also a legitimate aim and a pressing social need.

The proposed amendment therefore is problematic in and of itself. A further analysis of the arguments adduced to justify it further problematises it, since this makes it clear that the proposal results not from a general concern with the role of religion, but from the construction of Islam as a threat, and thus explicitly aims at restricting one specific religion because of the interpretation given to it.

Indeed, in the same interview, Vuye and Wauters argued: 'You see that today, there is a problem in Islam. A number of believers think that religious precepts stand above the law. Think, for example, about the *burkas*. That is not possible, and we have to be clear about that.'

While the proposed amendment did not on the face of it target any specific religion, this justification makes clear that one group in particular is being targeted, namely, Muslims. The amendment was meant to be a response to 'a problem in Islam', this problem being that some 'believers think that religious precepts stand above the law'. Muslims who aim to – and only aim to, not actually do – live according to religious precepts that are now not accommodated by Belgian law are thus securitised and constructed as a 'threat'. The only way to be a 'non-problematic Muslim' is to not ask for accommodation. The message is: Yes, you can be a Muslim. But no, you cannot have habits different from what 'we', the native majority of Flanders, decide.

This analysis is confirmed by interviews and opinion pieces written by Vuye and Wauters in the subsequent days, in which they explicitly state that the proposed change in the Constitution was a response to the terrorist attacks in Paris and Brussels, and that 'we can only live together in harmony if everyone knows our rules of the game, and accepts them' (Vuye and Wauters 2016a).

This link between the terror attacks and the presumed need to change the Constitution in the proposed way reveals that terrorism is seen as an extension, a result, of those who want to 'put themselves above the law'. Terrorism is the result of the perceived 'problem in Islam', and the way to prevent future terror is to make it clear to Muslims that they have to accept 'our' rules of the game.

A final opinion piece, published one week after the first interview, makes this point forcefully clear. In it Vuye and Wauters (2016b) write:

> Let us be honest. This is not a juridical debate. It is a political debate. In our opinion, religion belongs in the private sphere. There is a place for religions in our secular society, on the condition that they adapt to our society. That is what we understand under 'not the state, but religions have to laicise'. Education institutions, care institutions, trade unions … with a religious inspiration, that is all possible. But religions cannot put themselves above the law … Our political choice is clear. What we do not accept, is a society in which fundamental values, such as equality between man and woman, are put aside because of religious and belief-related motives. For us no world with *burka*'s in the street. Why not? French President Nicolas Sarkozy said it well in 2009: This is not how we, in our culture, see the dignity of the woman. That says it all.

The debate, it is recognised, is political. The authors want to make a point through it, and this is aimed at the securitisation of manifestations of Islam. There is a place for religion in 'our secular society', they say, on the condition that religions 'adapt to our society'. Yet the only religion mentioned, once again, is Islam: It is Muslims' religiosity that is targeted by the proposal. Muslims are welcome, but they have to become 'us' – they have to 'laicise', become secular Muslims to be accepted. They cannot 'put themselves above the law', that is, their religious customs will not be accommodated.

Interestingly, however, the examples the authors mention go beyond the 'law'. Indeed, the authors write that 'what we do not accept, is a society in which fundamental values, such as equality between man and woman, are put aside because of religious and belief-related motives'. This does not concern law: It concerns people's convictions, beliefs and religions – that is, those deemed to be of the Islamic kind, exemplified with reference to the *burka*.

This *burka* was indeed banned in Belgium, but not primarily because it was deemed contrary to the dignity of the woman, or to 'our' culture. The law banning the *burka* also banned all other 'clothing that hides the face entirely or to a large extent', and while arguments were made about 'living together' and gender equality, the main reason cited thus was public safety (Belga 2011). The authors thus recognise that this, in fact, was a façade: The *burka* had to be banned because it was contrary to 'our' values, and their proposal is to serve the same aim: banning religious manifestations that they perceive to be contrary to their values. It is this goal that the proposed change to the Constitution must serve: to make it clear that religious manifestations that are deemed to express values 'we' do not agree with are a problem, which cannot be tolerated in 'our' society, more specifically, 'Islamic' values.

The concerned proposal, which could (but not necessarily would) arguably impact on all religions in Belgium, thus aimed at the securitisation of manifestations of Islam. Islamic manifestations were specifically meant to be targeted, because of the interpretation given to Islam – a 'threat' to our identity – and not for reasons 'external' to this religion. The proposal instead is a response to outsiders' interpretations of its manifestations and the meaning attributed to them and, as such, it cannot comply with any legitimate aim.

4.2   Criminalising radicalism

With the debate about the Constitution temporarily subdued following a lack of agreement among political parties concerning the proposed amendment, July 2016 witnessed a new proposal that would impact on the right to freedom of religion: criminalising 'collaboration' with Islamic terrorism. After a hotly-debated summer, the proposal was shelved at the end of August, only to be relaunched in January 2017, in the form of an even more contentious proposal to all-out criminalise 'radicalism'.

The starting shot for this proposal was given by Peter De Roover, federal parliamentary leader of the N-VA, in an opinion piece on 27 July 2016. Arguing that the terror attacks meant 'we' were at 'war', De Roover made the case to 'fight' the 'enemy collaborators', whom he identified as 'radicalised people' (De Roover 2016). 'In times of war', De Roover argued, 'words are naturally part of the arsenal of enmities', and it is the words of radicalised people that provide 'an easy transition to violence and terror'. If, he asked rhetorically, 'a free opinion disputes the basic principles of our society, is accepting it then an extreme form of tolerance, or indifference?' A few sentences later on, he readily answered his own question with the dictum that 'no-one respects societies that do not make themselves respected. There too lies a ground of explanation for the radicalisation of youth.'

The context in which this opinion piece was written leaves no doubt as to who the radicalised people mentioned are: They are Muslims. More specifically, they are not Muslims that openly promote terror or break the law but, more generally, Muslims who 'dispute the basic principles of our society'.

Muslims that have a set of values that differ from 'ours' are thus readily designated as 'collaborators' of terrorists. 'They' have to be fought, as it is their radicalism that, if not acted against, will lead to violence and terror. Muslims in 'our' society have to adapt to 'our' values, and it is because we have not made it clear to the Muslim youth what 'our' values are that they follow the path set out by Islam and radicalise, and go on to commit terrorist attacks.

Further on in his piece De Roover attempts to mitigate the foreseeable accusation that he is targeting Muslims with his proposal, noting that 'this is not against/pro religion, or one certain religion. That many Muslims function perfectly within our society, cannot be denied. But that from within this religious community, a discourse is spread today that fundamentally opposes the model we stand for, can of course also not be covered. Not even with the cloak of multicultural love.'

Yet exactly by making this distinction, De Roover further securitises Islam. First, he explicitly notes that the problem comes from *within* the Muslim community. It is therefore Islam as a whole that is responsible, or rather Islam as a religion – not other factors – that fuels terrorism. Second, he notes that Islam *can* function in our society, but only when Muslims entirely adapt to *our* values. 'We' can accept Muslims in 'our' society, but on one condition: that they shed any values that 'we' think are contrary to 'ours'. If they do not do that, they are radical, and being radical equals supporting terrorism. Indeed, concluding his piece De Roover notes:

> Whoever acts violently and/or promotes hatred, is punishable today already. We have to dare and have a debate about the extent to which words that lead to that, or to a radical rejection of our society, still fall inside the untouchable zone of freedom of expression. Collaborators with the enemy, who waylay our freedom and security, have to be fought, even if they limit themselves to words. Who neglects the basic rule, can only lose the war.

After much debate, the proposal was shelved at the end of August. However, in January 2017 De Roover tried his luck again, this time in an interview. Asked how he would define the crime of 'radicalism', he answered: 'A prominent and consistent glorification of a concrete phenomenon that threatens our society, our values. So radical Islam. Because you cannot deny that there is a clear link between radical Islam and Muslim terrorism' (Justaert 2017). He concluded:

> Be not mistaken, those people that are receptive to the discourse of radical Islam can do more harm than their numbers make believe. Why would you wait until it is a significant group? If we do not dare to reject certain opinions, others will do it in our place. That would be a capital mistake.

One can barely imagine a more explicit statement than this one: 'Radical Islam', whatever that may be, is put on the same level as terrorism. Both threaten 'our society' and 'our values', and the only way to counter this threat is by criminalising radical Islam. If we do not do that, our society will be taken over by 'radicals'.

As in the case of the proposal to change the Constitution, there are two aspects to this proposal. The first is the proposal itself, and the second is its justification. As to the proposal, it is clear that in its current form, it would not pass the scrutiny of the European Court, especially since De Roover framed it in terms of freedom of expression: as the Court famously stated in *Handyside v UK* (ECtHR 1976: para 49), freedom of expression also applies to those opinions 'that offend, shock or disturb the state or any sector of the population'.

However, the proposal would also impact on freedom of religion, as it would make it a criminal offence to adhere to a religion that is deemed to be 'incompatible' with 'our society' and 'our values'. As far as the absolute *forum internum* of freedom of religion is concerned, any limitation would without any doubt constitute a violation, although it is unclear how a ban on 'radicalism' itself, as a form of thought, could be implemented. But the logical consequence of the proposal would be that manifestations of 'radical Islam' could be prohibited as well – and this too, would violate freedom of religion because of the justifications adduced.

Indeed, from these it appears that a prejudiced conception of Islam is what drives the proposal. It is Islam as a whole that is securitised, as a result of its perceived incompatibility with 'our' values. Muslims can only become part of 'our' society if they adapt to 'our' values. If they do not do so, they are 'radical', and on the road to terrorism.

It is therefore the construction of Islam as a 'threat', its interpretation by outsiders, that made possible this proposal – a proposal that would violate the right to freedom of religion, as such interpretation cannot comply with the requirement of a legitimate aim.

4.3   The *burkini*: Threatening 'us' by dress

With the political debate about 'radicalism' still running high, another matter burst into the newspapers in mid-August 2016. Following a ban on the *burkini* in several French cities, Flemish party N-VA proposed to ban the *burkini* everywhere in Flanders. The proposed ban would apply not only in swimming pools, but also on public beaches. This time, the proposal was launched by Nadia Sminate, an outspoken member of the Flemish Parliament. Talking to a newspaper, she argued:

> We absolutely have to prevent that in Flanders, women walk around in a *burkini*. Not in swimming pools, nor on the beach. I do not believe that women, in the name of their belief, want to walk around on the beach in such a monstrosity. If you allow this, you also put women at the margin of society.

She continued: 'We live in Flanders, and we make the rules. If we say that we have to draw borders and have our norms and values complied with, we have to also do it' (El Mabrouk & Van Loo 2016).

Sminate's proposal was soon endorsed by Belgian Secretary of State for Asylum and Migration, Theo Francken (N-VA), who stated that

> the *burkini* is not a new fashion trend but a political struggle symbol for the oppression of the woman. Not every Muslim woman wears a *burkini*. Who does wear it, most often has conservative or even Salafist ideas. That is why it does not belong to a modern society such as ours. Mayors are free to introduce a ban (Bervoet & D'Hoore 2016).

Even Muslimas who would choose to wear it should therefore be prevented from doing so, he argued: 'It might be that they grew up with it, and think such a *burkini* is normal. But we have, as a democracy, the right to say that burkini's are not acceptable.'

More support for a ban came from N-VA *alderman* in Antwerp, Nabila Ait Daoud, who noted that 'there is no one who believes that all those women wear the headscarf or *burkini* of their own free will' (Justaert 2016) and N-VA president Bart de Wever, who deridingly stated that 'in former times, a Muslima could only sit in a little tent on the beach. Now she can wear this little tent, and take it into the sea with her. We are making progress' (Segers 2016).

Clearly, the proposal targeted only one type of religious dress: the *burkini*. According to Sminate, it had to be banned because it was forced upon women, and relegated them to the margins of society. She argued: 'We cannot let something like that take place, because it constitutes an attack on "our norms and values"'. In her discourse, women wearing the *burkini* are therefore excluded from 'our' society; their presence has to be 'prevented'. It is 'us', who live in Flanders, that make the rules, and whoever comes here, has to adapt.

Francken further noted that it was not just a matter of women being forced by others to wear the *burkini*. It was about the *burkini* itself, and the values it was deemed to express. As he explained, the *burkini* was 'a political struggle symbol for the oppression of the woman', an expression of 'conservative or even Salafist ideas', that does not 'belong to a modern society such as ours'.

One could not possibly say it in a clearer way. What Francken made clear is that it was not the *burkini* as a piece of clothing itself, but the ideas behind it that were the problem. The *burkini* was deemed an expression of conservative and Salafist Islam, and this Islam did not belong in 'our' society. 'Ours' is a modern society that will not tolerate the – implied – backward Islam. Even if Muslim women would choose to wear the *burkini*, it is not acceptable, and that is because it is the expression of a religion that should not be given a place in 'our' society. 'Our democracy' has the right to decide so.

Clearly, therefore, the proposal to ban the *burkini* resulted directly from the construction of a 'threatening' Islam. The *burkini* need not be banned because the dress itself was a threat. It had to be banned because of the interpretation made of the religion it belongs to. 'Conservative' Islam, with its values that are different from ours, has no place in our society. It is a threat to 'our' norms and values, and has to be acted against. And 'we', the Flemish people, will decide about that.

Much like the other proposals, such a measure – the *securitisation* of the *burkini* – would clearly violate the right to freedom of religion. The façade of a general and neutrally-applicable law was not even reverted to in this instance. From the earliest moment it was clear that only one piece of religious clothing was targeted, and as the analysis of the justifications for such a ban made it clear, it was once again the 'threat' of Islam that fuelled it.

As in the case of the other proposals, this proposal too was eventually shelved as it was deemed to be 'not manageable juridically'. Yet, this did not stop the party from pursuing the aim of banning the *burkini*. Elaborating on the decision to abandon the proposal, N-VA president Bart de Wever noted that '[o]ur party unanimously rejects the *burkini* as a symbol of inequality of man and woman, even if you would choose to wear it yourself as a woman. We therefore support the ban that exists in most of the swimming pools in our cities and municipalities' (KST 2016). The message: We know that a general ban would be found to violate human rights. So mayors, go ahead and try to ban the *burkini* under the pretext of hygiene.

5   Conclusion

After first elaborating a new version of securitisation theory, and pointing out its usefulness to the analysis of the human right to freedom of religion, this article set out to demonstrate the usefulness of this theory through the analysis of three proposals that would impact the human right to freedom of religion in Flanders, Belgium. While none of the proposals has been implemented, the relevance of their analysis, apart from illustrating the usefulness of the theory, lies not only in their respective compatibility with the human right to freedom of religion, but also in the identity constructs that their analysis lays bare – identity constructs that could then be opened up for criticism if necessary.

Throughout the analysis of these three proposals, it is clear that each and every one aimed at securitising manifestations of only one religion: Islam. In turn, this resulted from the construction of the religion of Islam

as a threat to 'our' society and identity – a threat construction incompatible with the right to freedom of religion.

The proposal to change the Constitution, while on the face of it neutral, aimed at targeting the manifestations of only one religion: Islam. It was explicitly recognised that the proposal was a response to terrorism, which itself was considered to be the result of a problem inside 'Islam'. Manifestations expressing this religion, therefore, had to be outlawed.

The proposal concerning the criminalisation of 'radicalism' equally targeted one religion only. While in first instance it appeared to violate freedom of expression, its possible impact on the right to freedom of religion was pointed out: Not only would it outright violate the absolute *forum internum*, it would logically also limit the manifestations of this religion, on the basis of an essentialised interpretation of Islam.

In respect of the third proposal concerning a ban on the *burkini*, too, it was made apparent that the real issue was not the *burkini* itself, but the meaning attributed to it by politicians. It was not the piece of clothing that constituted a threat: It was the religion of which this piece of clothing was an expression.

All three proposals thus ensued from a larger construction of Islam as a threat, and the way they were devised reveals that this threat construction is part of a discourse that is widespread in Flemish society, the discourse of Flemish identity that is propagated by N-VA, the Flemish-nationalist party that is part of both the Flemish and the federal government in Belgium, and has for years been the largest party of Flanders. All the proposals emanated from this party, and it is the identity discourse that this party adheres to, which constructs Islam as a threat, and which fuels proposals such as those analysed in this article.

Indeed, throughout the different analyses it became clear that the Flemish identity construction underlying these proposals and episodes, which provides the conditions of possibility for the *securitising moves* analysed, is one which is based on what are considered 'our' norms and values, perceived to be different from those of 'Islam'. 'We', with our 'Western' values of the Enlightenment, are constructed in opposition to the values of the 'other', 'Islam'. Edward Saïd famously documented this process in his celebrated book *Orientalism*, in which he described orientalism as 'a style of thought based on an ontological and epistemological distinction between "the Orient" and (most of the time) "the Occident"' (Saïd 1979: 2). The 'West', Saïd argued, has throughout history been constructed in opposition to the 'East', and to 'Islam', the 'West' being superior to it in every way. This discourse, he showed, had shaped European imagination, and the practice of colonialism, throughout the ages.

With colonialism largely a practice of the past, the paradigmatic contemporary incarnation of Orientalism arguably is represented by Samuel Huntington's 'Clash of Civilisations' thesis, first formulated in his 1993 *Foreign Affairs* article. According to this thesis, Western civilisation is fundamentally different from the Islamic one, and they can never be compatible. There are 'fault lines' between them, and those at the Islamic side of this line are less likely, for example, to develop democracy. This fault line has repeatedly led to war over a period of 1 300 years, and it will

continue to do so. Islam, Huntington famously wrote, has 'bloody borders' (1993: 35).

It is, arguably, this discourse that N-VA has internalised, and has built its version of Flemish identity on. Being 'Flemish' is identified with adhering to 'Western values', and defined in opposition to 'incompatible' Islamic values. It is this construction that transforms Islam and Muslims into a 'threat' when they are no longer abroad, but living in Flanders itself, and lay claim to Flemish identity.

Indeed, the logical consequence of this Flemish identity construction, constructed in opposition to Islam and 'Islamic values', is that Muslims cannot normally become part of 'our' Flemish identity. Abiding by the law is not sufficient according to such construction. They cannot be Flemish as long as they adhere to the values that Flemish-ness is constructed and defined against.

Integration, therefore, is only possible if Muslims shed those values that are different, and the most visible way to do so is by not manifesting them. Manifestations of a religion that are deemed to be incompatible with our values, therefore, become a threat to 'our' society and 'our' identity – more specifically because those who adhere to it consider themselves 'Flemish' as well.

Indeed, it is because Muslims, who are deemed to have different values from 'Flemish people', lay claim to the Flemish identity that they are transformed from an 'other' into a 'threat'. A struggle is taking place between a nativist conception of Flemish identity and an inclusive one: What is 'Flemish' is being disputed. The former definition at the moment prevails, and the terrorist attacks have only strengthened it: Since they were carried out by people who identified as Muslims, they perfectly fitted into the discourse of Islam as incompatible with our society, and proved the point that if not acted against, Islam will destroy our society. It is this identity construction, reinforced by the terrorist attacks, that has led to repeated proposals, or *securitising moves,* that would limit freedom of religion, in particular that of Muslims.

Religious manifestations of Islam, therefore, are increasingly deemed incompatible with Flemish identity, and in order to safeguard Muslims' right to freedom of religion and, by extension, that of all other religious groups that would be impacted, it is imperative that an alternative discourse of identity is promoted, one that is truly based on pluralism, inclusiveness, and on the universalism of human rights. As pointed out by discourse theory, an inclusive identity that is based upon respect for democracy and human rights *is* possible. Building it is not an easy struggle, but it is an essential one.

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Freedom of religion and the securitisation of religious identity: An analysis of proposals impacting on freedom of religion following terrorist attacks in Flanders

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