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FREEDOM OF RELIGION FOR MUSLIMS – ON 'FLEMISH' TERMS ONLY?

An Interdisciplinary Analysis of Four Proposals Impacting Freedom of Religion in Flanders, Post-Terrorist Attacks

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I. Foreword

Writing a dissertation is like setting out to climb that beautiful, lush, sun-clad mountain, right in front of your eyes. You get up and start walking, aiming to make it a nice and enjoyable walk – the mountain and its secrets are just waiting there for you to be discovered, and on your return you will be able to share all the beautiful things you unearthed there with the world.

Yet when you start walking, you realize you only looked up. You did not see the deep ravines separating you from your destination. Nor did you notice the extensive forests you would have to find your way through, or the deep rivers you would have to cross. A little walk becomes a true adventure – an expedition that cannot succeeded without the help of others. A great thank you, therefore, goes to all those who were involved, and especially the following people.

Anna-Sara, for being the perfect host, equipping us with all the necessities, including the indispensable semla, to bring the endeavour to a successful end.

Victoria, for being the guide that was always there when needed, to look back at, and correct, the travelled paths, and give suggestions as to which road to take next.

The Global Classroom people, for temporarily teleporting me to another universe, where I could gain new insights, and a little taste of paradise as a welcome distraction.

The entire E.MA group, for being a continuous source of friendship and inspiration.

And Lieve, who travelled the entire way with me, and successfully navigated the uncharted territory that is Swedish society, full of lagom, systembolaget, fika, and allemansrätt.

Thank you.

II. Abstract

This dissertation presents an interdisciplinary analysis of four political proposals, affecting freedom of religion, that were made in Flanders in the aftermath of the terrorist attacks of 22 March 2016. These were the following: a suggestion to, constitutionally, no longer allow religious exceptions from the law; a proposal to criminalize expressions of 'radicalism'; an attempt to ban the burkini, a swimming suit for Muslim women; and a political agreement to ban the practice of ritual slaughter without stunning.

Fusing legal method with philosophy and political science, more specifically securitization theory and discourse theory, this thesis asks whether or not these proposals would violate the human right to freedom of religion, as codified in the ECHR. After first outlining a conscience-based philosophical justification for freedom of religion, it is argued that the ECtHR's protection for this right is insufficient, following its problematic use of the limitation criterion of a 'legitimate aim' in art. 9(2). Through this, it is revealed, the ECtHR has unjustly allowed States to interpret and judge religions, so that its doctrine does not suffice to assess possible violations, and an alternative framework is needed. A thoroughly constructivist version of securitization theory, linked with identity constructions, it is argued, can provide this alternative, as it allows to asses violations based on the way in which manifestations of religion are discursively constructed as 'threats' to a 'legitimate aim', and can reveal whether or not this happens on the basis of an interpretation of, and value-judgment about, a religion as a whole.

Applying this framework through a discourse analysis of selected newspaper articles, opinion pieces and parliamentary documents, it is then argued that each of the concerned proposals would violate this right. None of them complies with the requirement of a legitimate aim, as it is revealed that all proposals are based on a value-judgment about one religion: Islam. This, in turn, is the result of the particular identity construction driving these proposals: Flemish identity is being constructed against the Islamic 'other', resulting in the demand that Muslims abandon manifestations of their religion in order to become part of the Flemish 'us'. This identity construction is incompatible with freedom of religion for Muslims, and alternatives, based on an inclusive identity that respects the implications of freedom of religion, must therefore be supported.

Keywords: freedom of religion, human rights, European Convention of Human Rights, European Court of Human Rights, legitimate aim, threat, securitization theory, Flanders, identity, Islam, burkini, ritual slaughter, radicalism, terrorism, discourse analysis.

III. List of Abbreviations

ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
ECommHR	European Commission of Human Rights
GC	Grand Chamber
N-VA	Nieuw-Vlaamse Alliantie (Flemish Separatist Party)
SP.A	Socialistische Partij Anders (Flemish Socialist-Democrat Party)
CD&V	Christen-Democratisch & Vlaams (Flemish Christian-Democratic Party)
OpenVLD	Open Vlaamse Liberalen en Democraten (Flemish Liberal-Democratic Party)
MR	Mouvement Réformateur (Walloon Liberal Party)
UN	United Nations

IV. A Note on Referencing

References in this dissertation are made according to the Chicago Manual of Style, accessible online at http://www.chicagomanualofstyle.org/home.html. Books and articles are therefore cited in-text, in the following way: (author year, page).

Throughout this dissertation, a large amount of newspaper articles and parliamentary documents is referred to as well. Many of them are written by the same authors, or a combination of authors, and within the same year. This would make using the normal (author year) system somewhat less practical. Whenever a newspaper article, opinion piece or parliamentary document is cited, therefore, a small change in the citing system is made, that includes not just the year, but the exact date of publication, as follows: author, dd/mm/yyyy. To increase readability, moreover, these references are made in footnotes.

Full references are provided in the bibliography at the end.

V. Table of Contents

I. Research Questions and Rationale

On March 22 2016, two terrorist attacks were carried out in Brussels, the capital of Belgium. In near simultaneous explosions at the national airport of Zaventem and the central underground station of Maelbeek, 32 people were killed when 3 perpetrators committed suicide attacks.[1] It quickly became clear that the three considered themselves soldiers of Islamic State, the same movement that had earlier claimed the deadly attacks of November 2015 in Paris.[2]

In the months following these attacks, politics in Flanders, the northern Dutch-speaking part of Belgium, turned to religion. Within the sphere of Flemish politics, the Belgian Constitution and the role of religion in it came under review as a suggestion was made to no longer allow religious exceptions from the law;[3] a proposal to criminalize expressions of 'radicalism' was repeatedly put forward;[4] an attempt was made to ban the burkini, a swimming suit for Muslim women;[5] and after years of discussion, a political agreement was reached to ban the practice of ritual slaughter.[6]

In the wake of the terror attacks, freedom of religion thus became a topic of debate in Flanders, as multiple limitations on this right were proposed - prompting the question as to whether such measures would, or would not, constitute a violation of the human right to freedom of religion. It is this question that the present dissertation primarily aims to provide an answer to, that is:

Would the mentioned proposals constitute a violation of the human right to freedom of religion as embodied in the European Convention for Human Rights?

Answering this question requires having a suitable framework to determine whether or not a particular measure constitutes a violation of this human right, and the initial part of this dissertation will therefore be devoted to the development of an interdisciplinary framework to assess possible violations of the human right to freedom of religion, fusing legal method, philosophy and political science.

Indeed: writing a dissertation about possible violations of the right to freedom of religion cannot be done without having a deeply-rooted understanding of, firstly, *what* the right to freedom of

[1] Heylen and Huyghebaert, 25/03/2016.
[2] Huyghebaert and Willems, 22/03/2016.
[3] Peeters and Van Horenbeek, 10/05/2016.
[4] De Roover, 27/07/2016.
[5] Willems, 17/08/2016.
[6] Belga, 30/03/2017a.

religion is supposed to protect, and *secondly*, how a violation of this right can be assessed. A first step in answering the proposed question is therefore to review both the – often neglected, yet essential - *philosophical* justifications for this right, and its juridical development by the European Court.

It is through touching this philosophical justification to the European Court's doctrine, that deficiencies in the Court's case law are revealed: contrary to what should be the case, it will be argued, the Court has allowed State Parties to interpret religions through the limitation criterion of a 'legitimate aim'. This makes assessing violations by using only the Court's doctrine unsatisfactory, so that an alternative framework needs to be developed. And this framework, this dissertation will argue, can be found in a thoroughly constructivist version of securitization theory, a theory that originated in International Relations to explain how threats to security are discursively constructed, but which can arguably be applied to the – currently deficient - limitation criterion of a 'legitimate aim' in article 9(2) ECHR as well.

Indeed: what securitization theory makes clear, is that a manifestation of religion has to be discursively constructed as a 'threat' to a 'legitimate aim' in order to be limited. The construction of these 'threats', in turn, is linked to identity constructions, and the 'threats' that clashing identities provoke. Whether or not a limitation on manifestations of religion complies with the required criterion of a legitimate aim – and thus does, or does not, constitute a violation of the human right to freedom of religion - it will be argued, therefore depends on the identity construction that constituted a particular manifestation as a 'threat'. In order to answer the central research question of this dissertation, therefore, a second question will have to be answered, that is:

Which identity constructions made these proposals possible?

While in first instance needed to answer the central question of this dissertation, this focus on identity simultaneously provides the study of freedom of religion with a greater emancipatory aspect. For while it is undoubtedly true that at the core of human rights studies lies a concern with people's lives and dignity, purely legal studies are limited to the legal sphere. They can criticize laws that violate human rights, and propose others that honour them. What such studies cannot do, however, is go beyond this. And that is where securitization theory, developed from a discourse theoretical perspective, can contribute, since its constructivist ontology allows for perceiving restrictions on human rights not as purely legal, but as a reflection of wider

constructions of identity. A violation of human rights can therefore not only be criticized on its own - it can also open the way for criticism on the identity constructions that made it possible.

Through asking these questions, and answering them in an unexplored way, this dissertation hopes to contribute in an innovative way to the much needed body of case studies on human rights in European countries. Like many countries in Europe, Belgium has witnessed a steady shift towards nationalist and populist politics, with human rights becoming increasingly threatened. In the wake of the 'migration crisis', key treaties of international law, such as the Geneva Convention, were openly questioned by prominent politicians.[7] The terrorist attacks of March 2016 further reinforced this atmosphere, as much criticized new measures, giving the government more powers to arrest those who encourage terrorism, keep suspects in temporary custody for longer,[8] and extensive data-retention laws,[9] were implemented. Like in many other places in Europe, human rights are becoming less evident every day, and there therefore is an imminent need for research to address possible violations. Freedom of religion has not been studied in this recent context in Belgium, and while only one of the four proposals – a ban on ritual slaughter - has been realized, the fact that these proposals are made is relevant in itself in a human rights context. Threats to human rights appear long before they are set in stone by laws, and it is there that this study wants to contribute.

Any study within the Belgian context, however, has to make the difficult choice between studying Belgium as a whole, or one of its language-based regions and communities. The peculiar historic-political development of Belgium has resulted in a political scene that is often entirely divided between the Flemish and the Walloon part, a divide that is reinforced by the language barrier. Because of considerations of language (Dutch is this researcher's mother tongue) and politics (the mentioned proposals originated in Flanders) this study has opted to concentrate on the Flemish political debate only. This may give the impression of incompleteness, but the particular case of Belgium warrants against this: in many areas, the Flemish region has full autonomy, and studying Flanders instead of Belgium therefore arguably is more relevant than a 'comparative' study of the Belgian regions.

[7] Paelinck, 22/09/2015.
[8] Amnesty International, 12/07/2016.
[9] Human Rights Watch, 03/11/2016.

II. Research Design

As made clear by the elaboration of the research questions, this dissertation will have a theoretical as well as a practical focus. Reflecting this division, the present dissertation will proceed in two parts.

Part I will focus on the theoretical framework of this study: securitization theory, and its interplay with the human right to freedom of religion. Adopting an interdisciplinary perspective that uses legal method to analyse the ECtHR's case law, and combines this with philosophy and political science, this part will lay bare the weaknesses in the ECtHR's current approach to this right and the way these can be redressed by securitization theory.

Part II will subsequently study the selected case studies from the perspective developed in Part I. The framework of securitization theory will be applied to the concerned proposals, and it will be investigated whether they – and the identity constructions that made them possible - stand up to scrutiny in terms of human rights.

Part I

Chapter I, to start with, will analyse the *philosophical* justifications for the human right to freedom of religion. As we stated, no dissertation about freedom of religion should be written without understanding if, and why, limiting this freedom is problematic in the first place – an aspect that is often neglected in legal studies. Reviewing the possible justifications for having such a right, it will be argued that there is only one that holds up: one based on conscience and dignity. Only this justification attributes an inherent value to freedom of religion specifically, and can therefore justify its existence as a separate human right.

Chapter II will subsequently link this philosophical part to the *legal* part of this interdisciplinary study, and touch the ECtHR's doctrine to the proposed justification, in search of a suitable framework to assess possible violations. After setting out the way in which the Court has protected freedom of religion in general, it is made clear that the protection it has afforded to this right, falls short of the protection required by its justification - foremost since its doctrine allows for limitations that should be considered violations.

More specifically, it will be revealed, the Court has opened the way to interpreting religions (through the *Arrowsmith*-case) and, more relevantly to the current study, has given States a wide margin of appreciation to do the same through its treatment of the 'legitimate aim' criterion for limitations (as shown by *Dahlab v. Switzerland* and *Leyla Şahin v. Turkey*)

Manifestations of religion can currently be limited – or defended - on the basis of the interpretations states make of them, and this is directly contrary to the right to freedom of religion, which should take into consideration the central role of individual conscience.

On the basis of this review, it is concluded that the current framework to assess violations, does not suffice. This calls for an alternative framework, which can, it will be argued, be provided by incorporating securitization theory in the study of freedom of religion, and using it to look at the requirement of a 'legitimate aim'.

Chapter III will subsequently focus on this securitization theory, which adds *political science* to the spectrum of interdisciplinarity. After shortly elaborating on the original development of securitization studies, the dissertation will develop a theory of securitization, linked to discourse theory, that is consistently constructivist, and has an emancipatory facet through its link with identity constructions.

The relevance of this theory to the study of the human right to freedom of religion will then be clarified. Securitization theory, it will be argued, can tackle the weakness inherent in the ECtHR's approach to freedom of religion, i.e. its tendency to allow interpretations of religion, since it provides an alternative way to analyse the criterion of a 'legitimate aim', based on identity constructions and the 'threats' that can ensue from these: manifestations of religion have to be constructed as a 'threat' to a legitimate aim in order to be limited, and securitization theory can investigate how this happens. Additionally, it can give the study of human rights law an emancipatory facet that is missing in purely legal studies, as it can not only tackle legal proposals, but brings within its scrutiny also the identity constructions that make these possible – which can consequently be criticized.

Chapter IV will then close the theoretical part of this dissertation, by developing the methodology that will be applied to the analysis of the selected case studies. Based on discourse theory and critical discourse analysis, a method of discourse analysis will be set out that is aimed specifically at the study of human rights through securitization theory.

Part II

Throughout Part II, the theoretical framework developed in Part I will be applied to the case studies that stand at the centre of this dissertation.

Chapter V will therefore look at the mentioned proposals and measures themselves, which will be analysed on the basis of newspaper articles, opinion pieces, and, where available,

parliamentary documents. These will, each in turn, be analysed, after which conclusions as to whether they, once realized, would constitute violations can be drawn - as well as to which identity constructions they were made possible by.

Throughout this chapter, several 'contextual' episodes will moreover be analysed as well. These are the interview in which Belgian Minister of Interior Jan Jambon said a 'significant part of the Muslim community danced' after the 22/3-attacks, and the political debate about a refusal to shake hands for religious reasons. The first was referred to in the proposal to criminalize 'radicalism', while the second intersected with the debate on banning ritual slaughter. Analysis of these episodes has no direct consequences or implications for the concerned proposals. But it gives the context that is necessary to understand them, and will serve as either a strengthening of the conclusion that will be reached, or a necessary check against reaching such conclusions too readily.

I. Freedom of Religion: What and Why? The Case for Conscience[10]

Understanding what exactly the human right to freedom of religion is, is essential to this dissertation. It is the aim of this study to judge whether or not certain measures would amount to a violation of this right – but only when one understands the meaning and purpose of a human right, can one judge about its limitations.

This chapter will therefore look at the different *philosophical* justifications for having a human right to freedom of religion. The aim of this is to uncover what this right should 'contain', and which kind of protection it should be accorded: different justifications have different consequences, and how the right to freedom of religion is to be protected, will depend on which justification is found applicable.

Many justifications have throughout the decades been proposed, and most notable among those are pragmatic, religious and liberal ones. It is the aim of this section to critically review these, in order to come up with a solid justification, that can withstand criticism and guide the approach to the right to freedom of religion in this study.

a. Pragmatic and Religious Justifications: Freedom of Religion as a Policy

Pragmatic justifications for freedom of religion, firstly, argue that freedom of religion should be protected for practical reasons. Religious wars, the argument goes, have caused great suffering, and it is through institutionalizing freedom of religion that this can be evaded. Freedom of religion is therefore an instrument, a means to an end: it is a policy states adopt to prevent suffering, and protect other human rights, e.g. the right to life (Evans 2001, 23-25).

Implied in this justification, however, is that freedom of religion has no independent existence as a human right: it is only useful to prevent religious groups from engaging in deadly conflict. There is according to this justification no independent or inherent value in having freedom of religion, and rather than justifying it as a right, it therefore only succeeds at defending freedom of religion as a policy – a policy that can be retracted when there is no need for it anymore. It moreover gives no guidance at all as to the supposed content of this right: at most, a right based on this justification could mandate that no one may be treated differently, or have any human right violated, on the basis of one's religion. But it would not be able to produce a position on

[10] This chapter has been adapted and extended from an essay I wrote earlier this academic year, in the course of the E.MA program. Vancutsem, Willem. 2016. "A Reappraisal of Freedom of Religion – and Its Limits".

matters such as manifestations, and is as such insufficient as an independent justification (Evans 2001, 23-25).

Much related to this pragmatic argument, are religious justifications, which are based on calculations that are internal to the situations of particular religions. Some minority religions might for example want to promote freedom of religion to escape persecution: they could advocate for freedom of religion because it would be beneficial for their own situation. Others might for doctrinal reasons be in favour of freedom of religion, such as the Islamic dictum that there can be no compulsion in religion (Evans 2001, 25-27).

Inherent to these justifications, however, is that they are very particularistic: freedom of religion would only exist for reasons internal to *one* religion. Not only would there therefore be no reason why non-religious people should adhere to it, freedom of religion would also not be justified as a human right, which should be applicable to everyone for reasons that are universal.

Indeed: it is not because one group of people deems (freedom of) religion to be important that it qualifies as a human right. For it to qualify as such, there has to be an inherent value in freedom of religion as such - and neither pragmatic nor religious justifications succeed in attributing it such value.

b. Liberal Justifications: Religion as Another Form of Thought

Having dismantled both pragmatic and religious justifications for freedom of religion as insufficient, a third strand of justifications that comes to attention are those from the liberal tradition. This tradition encompasses two main strands, each of which will be reviewed in the following paragraphs: the argument for truth/critical capacity, and the argument for autonomy/equal liberty.

Starting with the former, the argument for truth (Evans 2001, 28) or critical capacity (Scolnicov 2011, 35), this line of reasoning maintains that ideas, religious or otherwise, should never be suppressed, for the sake of society as a whole. Rather, ideas should be left to circulate freely, so that societies can, through critical debate, arrive at the best points of view. Any idea may be true, and by suppressing it, one takes away the possibility that society eventually comes to embrace this truth – an argument that is close to Kant's idea of the "specific uncertainty of religious beliefs", the uncertainty of them mandating that they should not be suppressed (Mahlmann 2009, 2483).

This justification, contrarily to the earlier ones, aims to attribute an intrinsic value to freedom of religion as such: it is because religion itself is valuable, that it should be protected. Yet, when scrutinized, it becomes apparent that freedom of religion in this strand of thought merely equals freedom of thought - or rather: freedom of opinion and expression. No difference is made between religious and other ideas, and there is consequently no justification for having a separate right to freedom of religion. One human right suffices: the broader right to freedom of opinion and expression.

The second liberal argument, finally, is the one for autonomy and pluralism (Evans 2001, 29) or equal liberty (Scolnicov 2011, 37). Central here is the notion that everyone is equal, and should be free to control their own lives, pursue what they think is 'good' (cfr. Morsink 1999, 259; De Jong 2000, 8). And this, Evans argues, makes freedom of religion "'trump' all but the most serious social reasons for restricting it" (Evans 2001, 30).

Here, once again, intrinsic value is attributed to freedom of religion. But the problem with this line of reasoning is its immense scope. This argument pursues the ideal that everyone should be allowed to live the life they want to, in every aspect, not just with regards to religion: religion is merely one incarnation of ideas about 'the good'. But allowing all of these, without distinction, to be lived out extensively, carries within it in the danger of a lawless society, in which general rules would not anymore apply.

Indeed, "if everyone has a fairly broad right to manifest their beliefs […] this would cut across a huge range of State activity" (Evans 2001, 66). And this would severely complicate the idea of government: political communities are moral communities, and thus cannot allow every other moral living style (Domingo 2014, 227).

The necessary consequence of this justification, is therefore that everyone may pursue 'the good', but within the laws of society only. What at first appeared to be a 'trump', thus turns out to be its opposite: any right to freedom of religion backed up by this justification, at the first instance succumbs to the pressures of majoritarian democracies. If not, the idea of a society governed by shared rules would become impossible.

While this justification therefore aims to attribute freedom of religion an intrinsic value, it fails at giving it any content - and as such undermines the usefulness of having a separate right to freedom of religion.

Neither of the four justifications reviewed can therefore justify having a specific human right to freedom of religion. If no such justification exists, limiting this human right would be hardly problematic: it would only be so if a limitation would also violate another human right. Yet, it is the assertion of this study that there indeed *is* a justification for freedom of religion: one that is based on its link with conscience, and with dignity.

c. Conscience and Dignity as the Basis for Freedom of Religion

Whereas the first two justifications for freedom of religion were found inadequate because of their particularism, the two liberal justifications were found to have universal aspirations. They aimed to infuse the right to freedom of religion with an intrinsic value, yet failed in justifying why exactly religion, as distinct from other forms of thought, had to be protected. And while they each had their own approach, one central point they arguably shared was that they regarded religion – like opinions or ideas about the 'good' – as a choice. Religion was therefore not deemed different from other opinions or ideas, and the case for specifically protecting freedom of *religion* thus disappeared.

However, as the American philosopher Sandel (1989, 610) notes, the notion that religion is a choice, and hence not different from other forms of thought, is in fact very problematic, as this does not "secure religious liberty for those who regard themselves as claimed by religious commitments they have not chosen." In other words: religious people might not consider their religion to be a choice, and their beliefs are therefore inherently different from other forms of thought. Based on this observation, Sandel (*idem*) proposes a justification for freedom of religion that depends on the link of religion with conscience, an idea that is more forcefully developed by the American philosopher Martha Nussbaum, who connects religion and conscience with dignity.

Indeed, dignity, the moral basis of all human rights, Nussbaum argues, is closely connected with conscience, which she defines as the "faculty with which people search for life's ultimate meaning" (Nussbaum 2012, 65). It is because of conscience, that people adhere to a religion. And conscience, Nussbaum argues, can impose obligations on someone, which one is unable to resist: it compels people to act in certain ways, and when this is prevented, a person's dignity is impacted.

Accepting this has two important consequences. The first is that states cannot violate people's conscience, as this would imply that they would also violate their dignity, and thus violate the central core of all human rights. No one may therefore be forced to act against his own

conscience. And no one may additionally be prevented from acting in the way one's conscience demands – for if one cannot obey one's conscience, this conscience is violated as well (Nussbaum 2012, 65-66).

The second consequence follows from Nussbaum's definition of 'conscience'. This makes clear that this conscience is more than just a search for 'the good', which is generally advocated for by the liberal theories reviewed above – narrower even than "meaning-giving beliefs and commitments" as proposed by Taylor and Maclure (cited in Laborde 2015, 271-2). It is not needed, nor achievable, to protect manifestations of every conception of 'the good', of every moral conviction. But what should be protected, are those convictions that people cannot resist.

The dignity that should be protected, therefore, is not one that depends on choice, but on its opposite: obligation. Religious freedom thus becomes "the freedom to be unfree in a particular kind of way" (Lambek 2015, 298), the subjection to an alternative authority than that of the state.

What this eventually amounts to, is the recognition of religion as experienced by believers. This might, admittedly, appear a particularistic endeavour: it might seem that freedom of religion is protected because religious people think it should be – which would bring us back to the insufficient religious justification reviewed earlier. Yet this can easily be countered, for it is not for religious reasons that freedom of religion should be protected. Rather, freedom of religion should be protected as a human right, because doing so amounts to a recognition that religious ideas can play a considerable role in a human's life. Recognizing freedom of religion as a human right in the sense proposed, is a recognition of the universality of the possibility of religion.

When this is accepted, we finally encounter a right to freedom of religion that cannot be subsumed under other rights. This is the case foremost because it has an intrinsic value of its own, that logically includes the right to manifest one's religion, even if it collides with the generally applicable law, because this is necessary to honour people's conscience, and their dignity.

Even more: because laws in society "embody majority ideas of convenience" (Nussbaum 2012, 74), exceptions from these laws should be granted, as it would be unfair to "grant the majority a liberty much more extensive than […] others" (Nussbaum 2012, 75). Exceptions from the law are thus not a matter of particularistic interests: the opposite is the case, as it is a matter of equality that everyone gets the same privileges (Bielefeldt 2013, 59) – at least when it concerns those privileges that are demanded not by a general search for 'the good', but by conscience.

What this justification therefore mandates, is that freedom of religion is protected as widely as possible: the premise should be that manifestations of religion – which are demanded by one's conscience - are allowed, and there should be no state interference with matters of doctrine. Religion is a matter of an individual's conscience, and State or Court should only interfere when absolutely necessary. This interference can never happen arbitrarily – nor on the basis of a State or Court interpretation of, or value-judgment about, religion: it is only for individuals, not a state, to determine whether a religion and its doctrine are good or bad.

This is the only approach that succeeds at justifying a human right to freedom of religion, and the only one that can consequently explain why limiting this right is problematic. Assessing whether something constitutes a violation of this right, should therefore take this justification into account – something we will turn to in the following chapter.

II. The European Court of Human Rights and Freedom of Religion in the ECHR

Having established why there should be freedom of religion, the next step is to touch the *philosophical* justification for this right to the existing *legal* framework. The purpose of this is to determine whether the ECtHR's current framework is sufficient to protect freedom of religion – and thus whether its doctrine can be applied to establish violations of this right, or a different framework needs to be devised.

This chapter will therefore, from a legal point of view, analyse the right to freedom of religion as embodied in the European Convention for Human Rights, and the way the European Court has developed it in its case-law. The ECtHR is within Europe the highest human rights institution, and it is by its judgment that it is decided whether something amounts to a violation of the human right to freedom of religion. Assessing whether the proposals selected in this study amount to a violation, can thus most usefully be done by taking its standards as a basis.

a. Freedom of Religion in the ECHR: *Forum Internum* vs. *Forum Externum*

As is well-known, the right to freedom of religion or belief is embodied in article 9 of the ECHR, which 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.

Like the articles that immediately precede and follow it, the right to freedom of religion therefore is a qualified right: it can be limited in specific circumstances. Yet this does not apply to all of its aspects – only the freedom to manifest one's religion or beliefs can according to article 9(2) be limited. It is on the basis of this distinction, that the ECtHR has developed the doctrine of the *forum externum* and *forum internum* (Evans 1997, 299), which guides the Court's approach to the right freedom of religion as a whole.

The *forum internum,* firstly, comprises those aspects of religion and belief that are entirely internal to a person's conscience or thought, and refers most notably to a person's freedom to

either *choose* and *maintain* or *change*, a belief (Uitz 2007, 29). Since these aspects are private, and thus difficult to access, they have been interpreted by the Court and the former Commission as absolute: any restriction is thought to be illegitimate. While the Court has never precisely defined the exact scope of the *forum internum* (Evans 2001, 73; Taylor 2005, 115), its most obvious translation to practice would be that there can be no state coercion when it comes to religion or belief: a state may not indoctrinate its citizens, nor force them to adhere to, or denounce a religion or belief (Taylor 2005, 116).

This of course is in any case quite difficult for a state to achieve, as it is hard to see how a state could force people to change their thoughts – and because of this very limited scope of, and thus protection for, the *forum internum*, there is an ongoing discussion on whether the absolute *forum internum* also mandates, inter alia, a prohibition that states impose on citizens acts that may lead to indoctrination (Evans 2001, 73; Taylor 2005, 117).

The *forum externum,* on the other hand, is concerned with those aspects of belief and religion that are external to one's thought or conscience, and thus manifested (Evans 2001, 73). Whenever one acts because one has a religion or belief, one is manifesting it, and this manifestation is protected in art. 9 through the freedom "to manifest his religion or belief, in worship, teaching, practice and observance." Yet, manifestations can, according to paragraph 2 of article 9, be restricted, and they hence constitute the non-absolute limb of the right to freedom of religion.

As article 9 so neatly describes these different aspects, and prescribes possible restrictions only with regard to manifestations, the distinction between the *forum internum* and *forum externum* appears to be the logical consequence of its structure. The Court's doctrine therefore at first sight appears uncontroversial, and a dutiful application of the requirements set by the article. No problems with regards to the justification elaborated earlier immediately appear, as a justification based on conscience, too, has to allow for manifestations to be limited in certain circumstances.

However, several authors have pointed out that the very distinction between *forum internum* and *forum externum* may not actually be as straightforward as it seems. "The idea that beliefs and actions are separate and distinguishable notions," Evans (2001, 74-75) points out, "is controversial," as this distinction is "not necessarily consonant with the way in which many religions would define themselves". The notion that religion is a primarily intellectual matter may even be peculiar to European notions of religion and belief (Evans 2001, 75-76), and be a

reflection of a distinctly Christian or Protestant interpretation of religion (Hurd 2015, 47; Bender 2015, 70; Yelle 2015, 18).

And indeed: the rigid distinction between *forum internum* and *forum externum* does appear somewhat artificial as well when held against a conscience-based justification for this human right. This justification, as pointed out earlier, recognizes that conscience may demand action, and blurs the line between internal and external aspects of religion: limiting the *forum externum* may have the same impact on one's conscience as limiting the *forum internum*. That being said, there may still be circumstances in which manifestations of religion have to be limited, quite simply because they, contrarily to one's thoughts, may impact other people. But as the following paragraphs make clear, problems do arise when the Court's further interpretation of the *internum/externum* distinction is scrutinized - in particular when it comes to the protection afforded to manifestations.

b. What are Manifestations? The Problematic *Arrowsmith*-test

As article 9 prescribes, only the freedom to manifest a religion or belief can be limited. This appears to be straightforward, but behind this seemingly simple façade hides a two-headed monster. One head is occupied with what should count as a religion or belief. And the second, most problematic one for the current purpose, concerns what should be recognized as a manifestation of these.

With regards to the definition of belief and religion, it suffices to note that the Court has opted for a very – and arguably too – wide definition, adopted in the case of *Campbell and Cosans v. UK* (ECtHR 1982, §36) . In this case, the Court noted that belief is not synonymous with "'opinions' or 'ideas'" and must "attain a certain level of cogency, seriousness, cohesion and importance" (Evans 1997, 290). Doing so, the Court appears to have aimed, on the one hand, at separating freedom of religion and belief from freedom of opinion. On the other, however, it also appears to have wanted to extend protection to a range of religions and beliefs that is arguably wider than those that would comply with the justification for this freedom developed earlier.

This might at first sight not appear too problematic. But the consequence of this decision is that the Court has had to backtrack on the protection it is willing to afford to manifestations of these religions or beliefs. Because of the width of the beliefs that qualify as such, the danger of

allowing manifestations of all conceptions of the 'good', and thus of a lawless society, would otherwise become dangerously close.[11]

Seemingly in a reaction to this, the former Commission therefore established, in the hallmark case of *Arrowsmith v. UK* (ECommHR 1977, § 71) that "practice […] does not cover each act which is motivated or influenced by a religion or belief" (Taylor 2005, 210-11). Rather, the manifestation must "express the belief concerned", and has often been further tightened to a demand that the manifestation be necessary (Evans 1997, 307; Taylor 2005, 211). And while the Court originally imposed this demand only in the case of practice, it has later regularly extended this to the concepts of worship, observance and "possibly also teaching" (Taylor 2005, 219), as such diminishing the significance of the difference between these terms (Evans 1997, 306).

This jurisprudential development is, however, quite problematic, since the Court through judging about the necessity of a manifestation, actually decides about religious doctrine, something it is not qualified for (Plant 2011, 11). And this may lead to an illegitimate limitation of freedom of religion, in case the Court decides a practice is not necessary while believers think it is. In such cases, a manifestation of an acknowledged religion or belief would not be able to avail itself of the protection of article 9.

Prohibiting it would therefore not even count as an interference, as was made abundantly clear in the *Arrowsmith* case[12] – a case which although old has according to Taylor guided subsequent Court decisions, even if only by reference to the phrase that article 9 "does not cover each act which is motivated or influenced by a religion or belief" (Taylor 2005, 220). As he notes, the Court has mostly reiterated this phrase without applying it in a detailed way. Yet the mere fact that the Court has continued to refer to it, including in recent cases,[13] arguably testifies to the important place it is still deemed to occupy in its doctrine – and thus keeps the door open to restricting manifestations on the basis of *Arrowsmith.*

The Court's case-law has thus developed in the opposite direction of what should have been the case, had it taken the rationale for freedom of religion into account, a rationale that mandates protecting manifestations as widely as possible so as not to infringe on people's conscience. Through aiming to protect an extensively wide range of beliefs, it has wrought itself into a

[11] Cfr. The liberal justifications and their problems discussed earlier
[12] Campaigning against soldiers' participation in the war, was not recognized as a manifestation of pacifism.
[13] E.g *Leyla Şahin v. Turkey* (ECtHR GC 2005, §105).; *Eweida and Others v. UK* (ECtHR 2013, §82).

corner, from which there was only one escape: to limit the range of manifestations protected. And as the following paragraphs make clear, a similar development has worryingly taken place as well when it comes to restricting recognized manifestations.

c. The Restrictions Clause: Hollowing Out Freedom of Religion Through the Criterion of a 'Legitimate Aim'

Following the low degree of protection provided in art. 9(1), Evans (2001, 134) notes, the Court could have been expected to adopt a restrictive interpretation of the restrictions clause in art. 9(2), so as to provide those practices that are recognized as manifestations with a high degree of protection. Yet, this has not been the case: while the restriction clause of art. 9 was intended by the drafters to be the least restrictive of all such clauses in the Convention, it has, in practice been interpreted the other way round (Evans 2001, 137) – further hollowing out the protection that manifestations of religion should be accorded.

Indeed, much like other qualified rights in the ECHR, limitations on the right to manifest a religion or belief have to comply with three conditions: they have to be prescribed by law, must be necessary in a democratic society, and must serve one of the legitimate aims that are listed in the article, these being "the interests of public safety", the "protection of public order", "health or morals", and "the protection of the rights and freedoms of others".

The first and the second of these are, of themselves, little problematic – the case law of the Court in this regard is little different from the interpretation it adheres to with regards to other rights. As established in *Sunday Times v. UK* (ECtHR 1979, §49) the requirements to satisfy the "prescribed by law" criterion are that "the law must be adequately accessible and must be formulated with sufficient precision that the consequences of a given action are foreseeable" (Taylor 2005, 294).

"Necessary in a democratic society", on the other hand, as established in *Handyside v. UK* (ECtHR 1976, §48) means that a proposed measure must be less than indispensable, but more than admissible, reasonable or useful – the measure has to meet a "pressing social need". A concerned measure has to be "justified in principle", which means that it has to be proportionate to the third requirement, that of a legitimate aim (Taylor 2005, 308).

It is this third requirement, however, that of a legitimate aim, that undermines the protection given to freedom of religion, as the following paragraphs will make clear. This is the case

mostly since it is almost entirely subordinated to national decision-making, meaning the European Court executes little to no control over it.

Indeed, when a State Party invokes a legitimate aim, Taylor (2005, 302) notes, this aim is most often easily accepted by the Court, and passed over "with little detailed analysis". There is an obvious reason for this: not accepting the cited aim would be politically difficult for the Court, since it would amount to "accusing the State of bad faith and mendacity" (Evans 2001, 148). Yet this practice has made the test of legitimacy "such a weak one that it places little constraint on States that can make a plausible case for saying that the aim of a measure falls within one of the headings mentioned in article 9(2)" (Evans 2001, 148).

This statement deserves some elaboration. For as Evans implicitly indicates in the foregoing quote, it is not sufficient that a State invokes a legitimate aim: it has to make a case for invoking it. Specifically, a State has to argue that its reasons for citing an aim, are "relevant and sufficient", as established in *Sunday Times v. UK* (ECtHR 1979, §62). A State, that is, has to explain why restricting a particular manifestation of religion pursues a cited legitimate aim. But especially in matters of religion, the Court has stated (e.g. *Leyla Şahin* (ECtHR GC 2005, §109-110)), a State's margin of appreciation is very wide, meaning that the scrutiny the Court applies in assessing whether the cited reasons are "relevant and sufficient", is rather low.

Indeed: the ECtHR (*idem*) stated that "where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance […] It is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and the meaning or impact of the public expression of a religious belief will differ according to time and context."

In other words: the ECtHR's doctrine is that states can themselves define the "meaning … of the public expression of a religious belief" – and the way this plays out in practice is made especially, and problematically, clear by the cases of *Dahlab v. Switzerland* and *Leyla Şahin v. Turkey* - and in a different but equally interesting way, by the case of *Lautsi v. Italy.*

1) The Case of *Dahlab v. Switzerland* (ECtHR 2001)

This first case concerned a female teacher, Ms. Dahlab, who after years without problems, was suddenly prohibited from wearing the headscarf in her job as a primary school teacher. While the case, brought under article 9, was declared inadmissible, the Court's reasoning in it has been very influential – it was referred to in *Şahin* (ECtHR GC 2005, §111) as well as *Lautsi* (ECtHR

GC 2001, §73) - and it therefore is essential to review the Court's decision in the context of this dissertation.

In *Dahlab,* the Swiss government argued that a ban on the headscarf was justified as it pursued the legitimate aims of "public safety, public order, and the protection of the rights and freedoms of others" (2001, 4-5;12) – a claim the Court did not object to. Indeed: in conformity with its practice of not disputing legitimate aims – see above - it simply accepted that banning the headscarf pursued the cited aims.

The reasons adduced by the Swiss government for citing these aims, however, still had to be judged "relevant and sufficient" by the Court (*idem,* 12). And in this regard too, the Court accepted, with little scrutiny, the Swiss government's argumentation. This was based on the allegation that the headscarf was a "powerful religious symbol" that could, firstly, interfere with the religious beliefs of others and their right to be taught in a denominationally neutral environment, and secondly, evoke religious conflict. Moreover, the Swiss government also argued that the headscarf was "opposed to gender equality" (*idem,* 12-13).

Following its doctrine of subsidiarity to national contexts in matters of religion, the ECtHR arguably had no reason to scrutinize this argument. Indeed: it was up to the State, it established, to define the meaning of religious manifestations. If the Swiss government therefore determined the headscarf was a "powerful religious symbol" that could interfere with others' rights and evoke conflict, the Court's doctrine of subsidiarity mandated that it accept this argument.

What the Court therefore did not scrutinize critically, is *why* it was that the headscarf – and not, as the Swiss government stated, "discreet religious symbols … such as small pieces of jewellery" (*idem,* 7) such as a cross – was considered a 'powerful religious symbol', possibly proselytizing, and opposed to gender equality. There is nothing inherent in a headscarf that makes it a powerful symbol, or opposed to gender equality. For all we know, it could be considered as such because all religious coverings are thought to be powerful symbols; because Swiss norms of gender equality indicate that all women have to be bare-headed; or more problematically, because the Swiss government interpreted the religious precepts that prescribe the headscarf as proselytizing and opposed to gender equality. That is, the ban could be based upon an interpretation of, and value-judgment about, Islam – an assumption that appears to be supported by the Court's statement that "[the headscarf] appears to be imposed on women by a precept which is laid town in the Koran and which, as the Federal Court noted, is hard to square with the principle of gender equality" (*idem,* 13).

At the very least, the impression is therefore evoked that the meaning attributed to the headscarf was the result of illegitimate considerations, based upon an interpretation of religion – Islamic doctrines were judged to be 'bad' - something the Court nor any State is qualified to do. What the case of *Dahlab* therefore makes clear, is that the requirement of a legitimate aim in matters of religion, instead of protecting manifestations of religion, opens the door to more undue limitations of it: the acceptance of a cited legitimate aim, together with the state's margin of appreciation in matters of religion, gives states a freeway to limiting manifestations on illegitimate grounds. A matter that is also made clear by the case of *Leyla Şahin v. Turkey*.

2) The Case of *Leyla Şahin v. Turkey* (ECtHR GC 2005)

The case of *Leyla Şahin v. Turkey* concerned Ms. Şahin, at the time a student of medicine at the University of Bursa in Turkey. She had worn the headscarf during her studies for four years, and in her fifth enrolled at Istanbul university. There, she was denied the right to continue wearing it (§15-16). The case eventually came to the ECtHR, where it was referred to the Grand Chamber after the Chamber had found there was no violation of article 9 – a judgment the Grand Chamber confirmed.

Indeed, in this case, the Grand Chamber accepted that the ban on the headscarf "primarily pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order" (§99). Justifying this position, the Court referred to its decision in *Dahlab*, noting that "in a democratic society the State was entitled to place restrictions on the wearing of the Islamic headscarf if it was incompatible with the pursued aim of protecting the rights and freedoms of others, public order and public safety" (§111).

Having accepted these aims, the only remaining task for the Court was to establish whether the reasons adduced to justify these legitimate aims, were "relevant and sufficient". As the original Chamber judgment stated: "regard being had to the principles applicable in the instant case, the Court's task is confined to determining whether the reasons given for the interference were relevant and sufficient" (ECtHR 2004, §103). Just like in *Dahlab*, the Court's task was therefore from the outset very much restricted.

Within this limited framework, the Grand Chamber then stated that the headscarf could be banned because gender equality had to be protected, and that attention had to be paid to "the impact which wearing such a symbol, which is presented or perceived as a compulsory religious duty, may have on those who choose not to wear it" (§115).

Elaborating on this, it noted: "the issues at stake include the protection of the 'rights and freedoms of others' and the 'maintenance of public order' in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhere to the Islamic faith. Imposing limitations on freedom in this sphere may, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since, as the Turkish courts stated ..., this religious symbol has taken on political significance […] … The Court does not lose sight of the fact that there are extremist political movements in Turkey which seek to impose on society as a whole their religious symbols and conception of a society founded on religious precepts" (§115).

By referring to the Turkish Courts to back up its judgment, the ECtHR fully adopted the Turkish position. Indeed: it invoked a 1984 Supreme Administrative Court decision which noted that "wearing the headscarf is … becoming the symbol of a vision that is contrary to the freedoms of women and the fundamental principles of the republic" (§37). Additionally, the Court also invoked a 1989 Constitutional Court judgment, which noted that "when a particular dress code was imposed on individuals by reference to a religion, the religion concerned was perceived and presented as a set of values that were incompatible with those of contemporary society." Moreover, the same judgment said that it would be "liable to generate conflicts between students with different religious convictions or beliefs" (§39).

In the original Chamber judgment, moreover, the Turkish government – which did not change its position in the Grand Chamber hearing - argued that "the situation in Turkey and the reasoning of the Turkish courts showed that the Islamic headscarf had become a sign that was regularly appropriated by religious fundamentalist movements for political ends and constituted a threat to the rights of women" (Chamber, §93-94). Additionally, it argued that "the provisions of the Sharia concerning, among other matters, criminal law, torture as punishment for crime, and the status of women were wholly incompatible with the principle of secularism and the Convention" (*idem*).

It are these statements by the Turkish government and the Turkish Courts that the ECtHR's Grand Chamber based its finding of no violation upon. Determining the meaning of the headscarf fell, according to the Court's doctrine, within the State's margin of appreciation. The Court therefore arguably accepted the Turkish argument that the headscarf was opposed to gender equality, and a symbol for those "extremist political movements" that seek "to impose on society as a whole their religious symbols". As such, banning it pursued the legitimate aims of the protection of the 'rights and freedoms of others' and the 'maintenance of public order'.

Even more so than in the case of *Dahlab* however, this result is deeply problematic. As judge Tulkens noted in the sole dissenting opinion to the Grand Chamber's judgment: "European supervision seems quite simply to be absent from the judgment." The majority, in her opinion, relied "exclusively on the reasons cited by the national authorities and the courts". She also pointed out that the majority considered "that wearing the headscarf contravenes the principle of secularism [and] take up position on […] the signification of the headscarf" and that "it is not the Court's role … to determine in a general and abstract way the signification of wearing the headscarf."

Tulkens' criticism goes directly to the heart of the matter, as it reveals two essential deficits in the Court's doctrine: the absence of supervision because of the excessively wide margin of appreciation in matters of religion, and the resulting (endorsement of a State's) interpretation of religion. Because of the Court's subsidiarity in matters of religion, it had to accept the Turkish arguments. And these, as Tulkens pointed out, were based on an interpretation of the signification of the headscarf – something that is not the Court's, nor any State's, role.

And indeed, looked at closely, it is readily apparent that the Turkish government's reasoning for banning the headscarf was primarily based not on opposition to the piece of clothing that is headscarf, but on the interpretation it gave to it: the headscarf was being opposed because it was thought to express values that are incompatible with secularism and the Turkish Constitution - the values of Islam. What the Court's judgment in the case of *Leyla Şahin* therefore amounts to, is a formal endorsement of a State Party's interpretation of, and value-judgment about, religion. And this is incompatible with the right to freedom of religion.

3) The Case of *Lautsi v. Italy* (ECtHR GC 2001)

The case of *Lautsi v. Italy*, finally, concerned the compulsory display of crucifixes in the classrooms of Italian public schools. Ms. Lautsi complained that this infringed her and her two minor children's rights, more specifically art. 2 of protocol 1, together with article 9 (§4, 10-11). The Chamber of the ECtHR originally ruled in favour of Ms. Lautsi and found a violation of both articles – yet the Grand Chamber reversed this decision. Because this case does not concern a limitation, but rather a defence, of a manifestation of religion, the issue of legitimate aims is of less importance here. Yet, as in *Dahlab* and *Şahin*, the problems connected to interpretations of religion clearly transpire from this case as well, showing the other side of a state's margin of appreciation.

Indeed, in the case of *Lautsi,* the Grand Chamber ruled that, in the Italian context, the crucifix was a religious symbol – but one which, contrarily to what it said about the headscarf in *Dahlab,* was of a "passive" nature. According to the Grand Chamber, there was in this case "no evidence … that … a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed […] [T]he applicant's subjective perception is not in itself sufficient" (§66). A far cry from the position it took in the cases of *Dahlab* and *Şahin,* in which the influence of the headscarf on others was a predominant consideration.

Moreover, the Grand Chamber concluded "that the decision whether crucifixes should be present in State-school classrooms is, in principle, a matter falling within the margin of appreciation of the respondent State" (§70) and noted that the "preponderant visibility" did not in itself "denote a process of indoctrination" (§71). The crucifix, it stated, "is an essentially passive symbol […] It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities" (§72).

Referring to the passive nature of the crucifix, the Grand Chamber explicitly reversed the Chamber's judgment, which ruled that crucifixes should "be considered 'powerful external symbols' within the meaning of the decision in *Dahlab*" (§73). According to the Grand Chamber, *Dahlab* could not serve as a basis for this case since the facts of the cases were entirely different.

This arguably is true, but not primarily for the reasons the Court invoked. The ECtHR did point out that *Dahlab* was about denominational neutrality, and protecting the "religious beliefs of the pupils and their parents", while in *Lautsi* this neutrality was of lesser consideration since Italy allowed other religious manifestations as well (§73-74). But what it did not consider, was the difference between the positive (freedom of religion) and negative (freedom from religion) aspects in these cases, or the related difference between the state-imposed manifestation of religion in *Lautsi* and the personal manifestations in the other cases. Instead, it chose to focus primarily on the different State parties' arguments – such as the supposed meaning of the crucifix, which it ruled was "not associated with compulsory teaching about Christianity" (§74) – and thus again followed the State interpretation of a religious manifestation.

Indeed: as far as the factors weighing in on the ECtHR's judgment are concerned, the main difference between both cases arguably is that in *Dahlab,* the State aimed to limit a manifestation, while in *Lautsi* the State aimed to protect it. In both cases, the Court accepted

the State's argumentation: the Swiss government argued that the headscarf was "a powerful external symbol" and the Italian government argued that the crucifix was "passive". Since the determination of the meaning of religious manifestations falls within a State's margin of appreciation, the Court had to rule in favour of these – and thus reverse the Chamber's decision. Once again, therefore, the margin of appreciation in terms of religion resulted therein that a state was entirely at liberty to define the meaning of a manifestation of religion, while European supervision was all but eclipsed. And once again, this opened to way to an interpretation of, and value-judgment about, religion.

Indeed: delving deeper into the Italian state's arguments for considering the crucifix a "passive symbol", it appears that it was considered so because the religion it was thought to express – Christianity – was approached positively. The Italian government at the Grand Chamber argued that the crucifix was a "passive symbol", that was not only religious but also "a cultural and identity-linked symbol, the symbol of the principles and values which formed the basis of democracy and western civilization" (§67). The presence of the crucifix, it stated, was the expression of "long-standing attachment to the values of Catholicism" (§36).

This was reflected as well in a preceding ruling of the Italian Administrative Court, which noted that crucifixes were symbols of "a value system: liberty, equality, human dignity and religious toleration, and accordingly also the secular nature of the State … the Constitutional principles of freedom have many roots, which undeniably include Christianity". And it went on to argue that "the logical exclusion of the unbeliever is inherent in any religious conviction … the sole exception being Christianity" (§15). Moreover, the Supreme Administrative Court ruled in the same vein that the crucifix "symbolized the religious origin of values … which characterized Italian civilization" (§16).

In other words: the Italian state considered the crucifix a harmless symbol because Christianity was deemed a benevolent, "inclusive" religion. The European Court therefore did not protect crucifixes because it had an elaborate doctrine on protecting manifestations as such: it protected them because it adopted, again, a 'margin of appreciation' in matters of religion, which opened the door to, this time, *allowing* a particular manifestation on the basis of the interpretation given to it by a State Party, which relied upon a value-judgement about Christianity.

d. Conclusion

What the three cases analysed above make clear, is that the European Court fails to adequately and consistently protect the right to manifest a religion or belief. Not only is it – following the

Arrowsmith-test – at risk of being too strict in recognizing manifestations, it is more importantly for the purposes of the present dissertation also much too lenient in accepting limitations on those manifestations that *are* recognized.

This is the result of a combination of two factors: the Court's easy acceptance of an invoked legitimate aim, and the margin of appreciation given to States in defining the meaning of a manifestation of religion. Together, this opens the door to limiting manifestations of religion on the basis of interpretations of, and value judgments about, religion: a State Party interprets, and the Court confirms. And this makes the right to manifest a religion or belief instead of universal, severely and dangerously culturally relativist. By subordinating religion to a State's margin of appreciation, the right to manifest a religion or belief is emptied of all consistent meaning. A State can either defend or prohibit a manifestation on the basis of a value-judgement about a particular religion – and the Court will normally accept this.

In order to assess whether limiting a particular manifestation of religion would amount to a violation of the human right to freedom of religion, we therefore are in need of something more than the test produced by the Court. Citing a legitimate aim and explaining why it has been cited, is not good enough, as it allows for illegitimate interferences with the right to freedom of religion: States should not be allowed to take decisions on the basis of what they think about a religion. The criterion of a 'legitimate aim' thus has to be further refined. And this, I will argue in the following chapter, can be done by taking recourse to securitization theory.

III. Securitization Theory and Freedom of Religion

Securitization theory originated, in the 90's of last century, in the field of security studies and international relations. Going boldly against the dominant paradigms in the field, which adhered to the dogma of security and threat as objectively existing facts, Copenhagen scholars Barry Buzan and Ole Waever proposed a radically different paradigm, thenceforth known as securitization theory: the idea that security, instead of being an objective situation, is socially constructed.

It was, Buzan and Waever claimed, "when an issue is presented as posing an existential threat to a designated referent object" that securitization happens, and (in)security is constructed. Constructing security in this way, was called a *securitizing move.* And it was through this move that, if successful, the use of extraordinary measures to handle the created threat, could be justified (Buzan e.a. 1998, 21).

Security therefore, it was argued, was about the construction of *existential threats* to justify *extraordinary measures*, a process that takes place when a *securitizing actor* describes a threat to a *referent object* in a *speech act*, and the *audience* accepts this as such (Buzan e.a. 1998, 36).

The main field of application for this theory, it was noted, was international relations: securitization could explain why states saw each other as the enemy, and took measures against each other. Yet despite its different origins, it is this theory, I will argue, that can provide the much necessary addition to the currently applicable, deficient framework of protection for the right to freedom of religion – because it can provide an alternative way of looking at the requirement of a 'legitimate aim'.

Indeed, central to securitization theory is the concept of a 'threat': when someone *securitizes* an issue, one constructs this issue as a *threat* to a *referent object*. And this is directly relevant to the study of the legitimate aims that are required to limit manifestations of religion.

These aims are, as noted earlier, "the interests of public safety", the "protection of public order", "health or morals", and "the protection of the rights and freedoms of others". Only in response to those aims, can a manifestation of religion be limited. And this can quite simply be translated to the concepts of securitization theory. For when one adopts the lens provided by securitization theory, it becomes clear that in order for those aims to be invoked, a manifestation of religion has to be considered 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 *securitized* in order for it to be limited: a manifestation is constructed as a *threat* to a *referent object*, those *referent objects* being the legitimate aims, and the explanation given to them by states. Securitization therefore is the *conditio sine qua non* for limiting manifestations of religion: states *cannot* limit a manifestation of religion according to the requirements set by the ECHR, without securitizing it.

The practical example of *Dahlab v. Switzerland*, referred to earlier, makes this forcefully clear. In terms of securitization theory, the Swiss government in this case considered the headscarf a threat to the *referent objects* of public safety, public order and the rights and freedoms of others. This was then further specified: the headscarf was considered a threat to these legitimate aims, because it was a "powerful religious symbol" that could, firstly, interfere with the religious beliefs of others and their right to be taught in a denominationally neutral environment, and secondly, evoke religious conflict. Moreover, the Swiss government also argued that the headscarf was "opposed to gender equality".

In other words: it was because the headscarf was considered – or rather, constructed as - a threat, that it could be limited. As we argued, the way in which this threat was constructed was of little interest to the Court: it sufficed that the headscarf was considered a threat to the cited legitimate aims as such. This, we established, was problematic because it opened the way for allowing restrictions that were based upon value-judgements, not about manifestations themselves, but about the religion they expressed.

Likewise, in the case of *Leyla Şahin*, the Turkish government argued that the headscarf had to be banned because it was a 'threat' to the rights and freedoms of others, and to public order. This was backed up by the argument that the headscarf could impact those who chose not to wear it, its supposed opposition to gender equality, and its being a sign of extremism. The headscarf was seen as a threat to "the freedoms of women and the fundamental principles of the republic", an expression of a religion that expressed a "set of values that were incompatible with those of contemporary society". The Turkish government moreover explicitly stated that it was "a threat to the rights of women". Once again, the headscarf was therefore constructed as a 'threat' – and as in *Dahlab*, this construction appeared to be based on a value-judgment about religion, *in casu* Islam.

What securitization theory thus makes clear, is that manifestations, such as the headscarf , in order to be limited, have to be constructed as a threat – and most importantly, that this threat is

never *objective.* In order for something to be seen as a 'threat', it has to be first discursively constructed as such. It is this insight – that a manifestation of religion has to be considered a 'threat', and therefore must be 'securitized' – that will guide this dissertation and the refinement of the 'legitimate aim' criterion that will be developed.

Indeed: because it explicitly focuses on the way issues are securitized, securitization theory can lay bare how it is that a certain manifestation is considered as a threat in the first place, and whether or not this is done on the basis of illegitimate considerations – something the Court fails at. This, as a consistent review and adaptation of the theory makes clear, is closely connected to issues of identity – and whether or not a limitation violates the right to freedom of religion, therefore depends on the identity construction that constitutes a particular manifestation as a threat. This will be made clear in the following pages.

a. Securitization Theory and Discourse: From Instrumentalism to Constructivism

As we noted, the basic premise of securitization theory is that security does not objectively exist, but is constructed through discourse. According to Buzan and Waever, therefore, discourse is constructive of reality, as it is through discourse that security is constituted. However, in their original conceptualization of the theory, they appear to limit this construction to the conscious and instrumental acts of *securitizing 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.

What Buzan and Waever get right is that it is true that *securitizing actors* use language in a strategic way: they want to achieve something by using it. But what is missing in their thesis, is the realization that securitizing actors strategize 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 securitizing actors as well live in such a constructed reality. Not only security is therefore discursively constructed: as poststructuralist discourse theory makes clear, all meaning is constructed through language. Language, Hansen (2006, 18) writes, is "ontologically significant".

This means that *securitizing actors* do not construct threats out of mere political, instrumentalist reasons: they do so because they are embedded in a discursive construction that informs them. Securitization theory has to take into account this context, since it is this context that makes possible securitizing moves (Cfr. Stritzel 2012, 553; McDonald 2008, 573).

Acknowledging this has important consequences. Firstly, it requires realizing that *securitizing moves* are not the first step in securitizing an issue. Rather, securitizing moves will be a reflection of perceived threats in society at large: they reinforce, rather than constitute security by institutionalizing it. "Policy discourse", Hansen (2006, 17) writes, relies "upon particular constructions of problems and subjectivities". And as McDonald (2008, 580) notes, "'securitization' is often presented as shorthand for the construction of security", but exactly this difference should be clarified. We will therefore reserve the term '*securitization'* for the – sometimes only attempted - institutionalization of threats through policy discourse.

This also means that 'extraordinariness' ceases to be a requirement to be able to speak about securitization. Going against the Copenhagen School's emphasis on extraordinariness, several scholars have argued that securitization 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 dissertation that this indeed is the case. Securitization should therefore not be conceptualized as something 'above' politics, but rather as embedded within politics. *Securitizing actors* need not take recourse to emergency measures in their *securitizing moves*: they can make use of the normal legal procedures as well. McDonald (2008, 567) is therefore right to claim that "issues can become institutionalized as security issues or threats without dramatic moments of intervention."

Secondly, it has to be realized that the threats that are being institutionalized through *securitizing moves* 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 and Mouffe 2001, 106-128; Torfing 2005, 14-15) have long argued that identity, like all other meaning, is discursively, and relationally, constructed: one is defined by what one is not. As Laclau and Mouffe (2001, 128) put it: "to be something is always not to be something else". 'We' are defined in opposition to an 'other'. This, Mouffe (2009, 7) writes, does not mean that the 'other' is always the enemy – "but it means that there is always the possibility of this relation us/them becoming one of friend/enemy."

Indeed: it is according to discourse theory when discourses of identity collide that 'social antagonisms' are created (Jorgensen and Philips 2002, 48). This happens, Mouffe (2009, 7) points out, "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." Through this 'social antagonism', an 'other' comes to be seen as an enemy, and thus a 'threat'. Or as Torfing

(2005, 16-17) writes, "identity is intrinsically linked to the construction of *social antagonism,* which involves the exclusion of a threatening Otherness."

A useful example of this is given by Hansen (2006, 19), who describes how women in the 19th century were constructed as "emotional rather than rational, motherly rather than intellectual, reliant rather than independent, and focused on the simple rather than the complex". This was constructed against men, who were the opposite. It is therefore not, Hansen (2006, 25) continues, that "there is no positive identity construction … but that this is simultaneously constructed through a process of differentiation." And it is, as we noted above, when this meaning comes to be contested, for example through women's rights movements, that a *social antagonism* erupts – a *social antagonism* that, Torfing (2005, 16) writes, "shows itself through the production of political frontiers."

Within discourse theory, threats are therefore linked to the construction of a threatening 'Other'. But this does not mean that, within a given society, we *either* have to be all the same and agree on everything, *or* we don't, and 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 institutionalized norms."

Mouffe (2000, 15) further elaborates on this in her theory of 'agonistic politics'. The aim of this, she argues, is "to construct the 'them' in such a way that it is no longer perceived as an enemy to be destroyed, but an 'adversary', i.e. somebody whose ideas we combat but whose right to defend those ideas we do not put into question." According to the agonistic perspective, Mouffe (2009, 9) writes, "the central category of democratic politics is the category of the 'adversary', the opponent with whom we share a common allegiance to the democratic principles of 'liberty and equality for all' while disagreeing about their interpretation." And this means that there can be "real confrontation but one that is played out under conditions regulated by a set of democratic procedures accepted by the adversaries" (*ibid*). When this is not allowed, she 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" (*ibid*).

What this means, is that identities can be constructed in different ways, and correspondingly "threats" and "legitimate differences" can ensue. For a polity to be democratic, it is essential that a common identity is based upon democratic rules of the game – which must arguably include human rights, and freedom of religion. An encompassing 'we' is then created, within which legitimate differences can exist as long as they do not violate the common rules. The alternative option is that 'we' are defined in other 'non-negotiable' ethnic, religious or moral ways, which will lead to the construction of an 'incompatible Other' within a society as a threat. How this theory of identity translates to freedom of religion, will be elaborated in the following paragraphs through the help of several examples.

b. Identity and Freedom of Religion: Common Rules or a Threatening 'Other'?

The first example concerns religion 'x'. This religion demands that its followers sit in the middle of a crossroads for one hour every day. By doing so, they disturb traffic and cause accidents. In reaction to this, a State, say Belgium, forbids this practice: the manifestation, it claims, is a threat to public order, public safety, and the rights and freedoms of others.

This, at first sight, might appear to have nothing to do with identity. But a closer look reveals that it actually has: it is only because not all of us belong to religion 'x', that we consider sitting in the middle of a crossroads as a threat. Sitting in the middle of a crossroads is not automatically a threat: it only becomes so because the act has a different meaning to 'us' and to 'them', meanings that are not compatible. 'We' think of a crossroads as a means for traffic, that is to be used on a daily basis to get from point a to point z, the disturbance of which results in danger and a threat to people's human rights. 'They' think a crossroads is a religious place. Those meanings, which are embedded in larger discourses of identity, collide. And the result is that their sitting in a crossroads is considered a threat.

In this example, therefore, it is the struggle over the meaning over one particular issue, that brings discourses of identity in conflict with each other, not the fact that religion 'x' is necessarily a threat. 'We' do not hold anything against religion 'x' as such. Adherents of 'x' are welcome to live in 'our' society. Or in terms of the example: 'Belgian' identity here embraces religion 'x' as a part of it: one can be Belgian and 'x' at the same time. However, it is because this Belgian identity is also constructed upon democratic rules of the game, and respect for human rights law, that the particular manifestation becomes a threat that can qualify for one of the legitimate aims mentioned in article 9.

Now consider the second example, concerning religion ‘y’. This religion demands that its followers paint a second set of eyes on their faces. They attract funny looks in Belgian society, and some people take offense at it. These people feel that the religion that prescribes such things, is bad and prescribes values they do not agree with, such as gender inequality. They think an extra pair of eyes has a proselytizing effect, and can therefore impact their rights. These things, they feel, do not belong in ‘our’ society.

In this example too, a manifestation of a religion is constructed as a threat because of different identity constructions. But the logic is different. Whereas in the former example, it was the manifestation as such that was considered threatening since it fell outside the ‘rules of the game’, in this example the manifestation was 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 is therefore not acceptable.

The ‘threat’ in this example therefore is constituted on another level: whereas in the first example the collision with the ‘Other’ was focussed on a particular manifestation, in this example the specific manifestation became a ‘threat’ because the ‘Other’ is considered a threat as such. It is not because two identity constructions attributed a different meaning to a specific manifestation that an antagonism ensued here – it is because the ‘Other’ is a threat, that manifestations expressing this ‘Otherness’ becomes a threat as well. It is here that the *social antagonism* as developed by discourse theory truly plays out, and explains why this ‘Other’ became a threat: the ‘Other’ became a threat because it challenges the meaning of ‘Us’. Once ‘We’ are constructed in opposition to an ‘Other’, a collision develops when this ‘Other’ wants to become part of ‘Us’ – it then challenges the way ‘We’ had constructed ourselves, since ‘We’ do not want the ‘Other’s’ values in ‘Our’ society.

Translated to the Belgian example: if being Belgian is constructed in opposition to an ‘incompatible’ religion ‘x’, ‘x’ is an ‘Other’ to Belgian identity. Now, ‘x’ wants to be recognized as ‘Belgian’ as well. This ensues in a struggle for the meaning of what being ‘Belgian’ means: a *social antagonism* develops. ‘X’ thus becomes a threat only when it brings its ‘Otherness’ to ‘Us’. Indeed: the ‘threat’ here does not ensue because a ‘basic rule of the game’ is disrespected – the threat is constituted because Belgian identity is constructed in an exclusionary way.

From the perspective of freedom of religion, the first example could arguably legitimately be limited: while it follows from our justification for freedom of religion that manifestations

should be allowed as much as possible, there must be limits. And in this first case, these limits are set by the consequences a manifestation itself has for other people, without judging on the value of the religion it belongs to: the threat ensues from some believers' disrespect for human rights, that constitute 'our' identity. The fact that 'they' do something, results in that fact that 'we' cannot do something else, or bear the consequences of 'their' actions. Conscience demands that freedom of manifestation is extensive, but in this case non-consenting others' dignity could be impacted, for example by violating their rights to life and to health.

In the second case, however, the situation is different. There, the manifestation is not considered a threat itself: the extra pair of eyes is not the issue. It is considered a threat because it allegedly expresses values people do not agree with, because religion 'x' is 'bad'. The manifestation is a threat because people have passed a value-judgment on a religion: the 'Other' has become a 'threat' as a whole. It is because 'we' do not want 'their' values among us, that the manifestation is a threat. And such a limitation is unacceptable from the perspective of freedom of religion: it is only for believers to say what a particular manifestation means, and 'we' should not prohibit manifestations because 'we' think a religion is bad. 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. As the first example and the possibility of an inclusive identity makes clear: 'we' can be defined upon respect for human rights, with respect for each other's differences – but the construction of a specific religion as the 'Other', does not allow for this.

Different mechanisms of 'threat' thus exist, and their acceptability depends on the way an identity is constructed. In a democratic polity, a 'We' is possible that can cope with differences, which in terms of freedom of religion translates to the acceptance of different religions as part of an overlapping, inclusive identity, without passing value judgments on these religions. The other possibility is an exclusionary identity, that passes value judgments on religions, and will limit them on illegitimate grounds - as was arguably made clear already by the cases of *Dahlab* and *Şahin,* in which not the headscarf, but the religion behind it was the problem.

c. Conclusion

On the basis of the distinction elaborated above, it becomes clear that securitization theory, enriched by discourse theory, can provide a useful framework to study freedom of religion, that can be directly applied to assess whether or not a particular proposal or measure would violate freedom of religion. A *securitizing move* – the proposals we will analyse - we

established, is a reflection of society and its identity constructions, and aims to institutionalize the threat constructions that are already existing. These threats come to exist as the result of different mechanisms related to identity constructions, and it is on the basis of these that it can be established whether a particular measure constitutes a violation of the right to freedom of religion, or not.

In order to determine whether a particular measure amounts to a violation of the human right to freedom of religion, it thus has to be determined which identity construction it was made possible by – and analysis therefore does not only reveal whether or not a particular measure would violate the human right to freedom of religion, but also allows to criticize the identity constructions that gave rise to them. Applying securitization theory therefore not only allows to assess violations, it also enriches the study of freedom of religion with an emancipatory aspect, since the results of the analysis can lay bare identity constructions that are inimical to human rights, and provide building blocks for the promotion of alternative identity constructions.

How exactly this framework will be applied in this dissertation, will be explained in the following chapter.

IV. Methodology

As Buzan and Waever indicate in their original study of securitization, the preferred way of studying securitization, is through discourse analysis: the analysis of the language through which securitization happens. As their focus lay solely on the *speech act*, it seemed natural to analyse the texts that recorded those, and look for clues of securitization. That is, Buzan and Waever proposed to simply look for "arguments that take the rhetorical and logical form defined here as security" (Buzan e.a. 1998, 177). And because, they argued, it is in the nature and purpose of security to be obvious, analysis had to only take account of important and visible texts. They did not outline any distinct methodology, but noted they would not use "any sophisticated linguistic or quantitative techniques" (Buzan e.a. 1998, 176). For them, it sufficed to look for the word 'security', which functioned as an indicator of securitization.

Such straightforward methodology might have been suitable to study the original framework of securitization, which was conceptualized as an instrumental move that had to comply with strict criteria to qualify as "real" securitization. In line with the theoretical framework outlined above, however, it is clear that some changes to this very concise method of discourse analysis should be made, which allow to analyse both the identity constructions that condition the possibility of securitizing moves, and to uncover threat constructions that do not conform with the obvious rhetorical requirements set by Buzan and Waever. What is proposed, is therefore an expanded, yet targeted, method of discourse analysis, that focusses on the following issues.

a. Analysing Identity: Subject Positions and Predications

Firstly, as argued earlier, securitizing moves should not be seen as mere instrumentalist moves by securitizing actors. This means that identified securitizing moves (i.e. proposals to limit freedom of religion) should be considered as a reflection of wider discourses, and that analysis should focus on more than just the securitizing move *an sich*. Indeed, a securitizing move is made within a discourse that is reflective of more than just the construction of something as a security issue: issues are securitized because they are related to a wider discourse of identity.

Making use of the insights offered by the related fields of discourse theory (Cfr. Laclau and Mouffe 2001; Torfing 2005; Howarth 2005) and critical discourse analysis (Cfr. Fairclough 2012; Wodak 2001), discourse analysis can therefore also reveal which identity constructions are reflected in a particular text, how different subject positions are articulated, and which characteristics are ascribed to these subject positions. Securitization analysis should focus on

these aspects of discourse as well, as they are intimately connected to the possibility of threat constructions, and thus of securitizing moves.

Most important in this regard, is to focus on (a) subject positions, and (b) predications. In other words: analysis of discourse has to uncover the categories people are put in, how 'we' and 'they', 'us' and 'them' are created. This is the very basis of identity constructions (Cfr. Jorgensen and Philips 2002, 15; Laffey and Weldes 2004, 28; Weldes 1996, 326; Milliken 1999a, 239).

After having discerned those subject positions, predication analysis can reveal which characteristics they are attributed. Different subject positions are linked to different concepts and then opposed to other concepts, and analysing this may reveal how the 'self' is constructed in opposition to an equally constructed 'other' (Cfr. Doty 1996, 11; Howarth and Stavrakakis 2000, 10; Howarth 2005, 341; Wodak 2001, 73-74).

b. The Implicitness of Security

Secondly, securitizing moves, it was noted, are not always expressed in terms of obvious 'security'. It is not always necessary to explicitly say something is a security issue to transform it into one. The scope of analysis should therefore be wider than originally prescribed: it is not sufficient to only look for the obvious. Rather, it may be necessary to indeed use 'sophisticated linguistic techniques' to reveal implicit assumptions that drive policies, which may not be explicitly framed as 'extraordinary' or 'emergency'.

Helpful in this regard is to focus on presuppositions, declarative sentences that take things for truth without offering evidence. These can be definite articles and demonstrative pronouns, 'factive' verbs (that indicate something 'is'), and verbs that express a value judgement (Fairclough 2003, 56). Additionally, metaphors are of relevance as well (Wodak and Reisigl 2001, 386). If one, for example, compares immigration with pollution, it is implied that immigration is considered a threat, without explicitly saying so.

c. The Importance of Context

Thirdly, the importance of context for making sense of securitizing moves implies that this context should be part of the analysis as well. This means that not only the proposals and measures referred to earlier will be analysed. Rather, two highly mediatized developments in Belgium after 22/3, that are relevant to the analysed proposals, will be included in the analysis as well. These are:

- Firstly, the episode in which Belgian Federal Minister of Interior Jan Jambon said that "a significant part of the Muslim community danced" in response to the terror attacks.
- Secondly, the episode of an alderman who did not want to marry couples that for religious reasons did not want to shake his hand, and the reactions thereto.

Analysing these circumstantial episodes might appear unnecessary, since it has earlier on been argued that securitizing moves – that is, those statements in which a certain proposal or measure is being promoted – are already representative of identity constructions. Hence, it could be argued, there is no need to include these episodes as well.

However, there are several reasons for nevertheless including these episodes. Firstly, the statement about the 'dancing Muslims' dominated Flemish politics for months, and was explicitly referred to in the proposal to criminalize 'radicalism'. Understanding the context within which the analysed proposals were made, is not possible without taking into account this incident.

Secondly, the other episode is important because it directly touches upon the role of religion, without concerning a new proposal or measure, while intersecting with the debate about religious slaughter. While not a new proposal, this episode does have practical implications that directly influence freedom of religion, and from an identity point of view, it is therefore as important as the proposals and measures themselves.

And thirdly, analysing these proposals strengthens this study as a whole. It provides extra material, that can either strengthen, or contradict, the findings that result from the analysis of the proposals and measures themselves. As such, incorporating these episodes is a useful touching stone that warrants against drawing conclusions too hastily.

d. The Selection of Material for Analysis

Having established how the analysis will proceed, and which incidents, proposals and measures will be analysed, it rests to be explained how the selection of analysed texts was done.

As indicated in the introduction, the four issues that stand at the centre of this study are (1) the debate about reviewing the Constitution (2) the proposal to criminalize radicalism (3) the proposal to ban the burkini, and (4) the decision to ban ritual slaughter. For multiple reasons set our earlier, the decision was made to focus not on Belgium as a whole, but specifically on the Flemish political sphere.

Translated to practice, this means that in this study, only Flemish source material was analysed. The selection of texts was made through the online database GoPress (http://academic.gopress.be), through which the archive of all important written Flemish media is accessible. Newspapers were screened for articles/opinion pieces that treated the mentioned episodes, and in these articles, statements by politicians were sought for and analysed. This resulted in a sample of 285 newspaper articles. Of these, the most relevant ones are cited. A list of all consulted articles is attached to this dissertation in Annex 1: where articles were available online only, a link and date of access is given. Otherwise, only the title of the medium is mentioned.

Additionally, primary source material from parliamentary debates was analysed when available. This proved to be the case only for the decision to ban religious slaughter: the other proposals were only discussed in the press and did not (yet?) make it to a parliamentary debate. This material was gathered through the website of the Flemish parliament (www.vlaamsparlement.be), and included both discussions in the plenary session of parliament, as well as the specific committee for animal welfare. As with the newspaper articles, only the directly cited documents are referred to in the body of this dissertation, while a full list of 32 documents can be found as attachment, in Annex 2.

V. Limiting Freedom of Religion: The Constitution, Radicalism, The Burkini and Ritual Slaughter

Throughout the preceding chapters, a theoretical framework to deal with the right to freedom of religion was developed, on the basis of a combination of philosophy, legal method and political science.

Firstly, it was established that only a justification based on conscience could support a human right to freedom of religion, a justification that underlined the importance of manifestations of religion. Subsequently, this justification was touched to the European Court's doctrine on freedom of religion, revealing the Court's problematic attitude towards exactly those manifestations. Not only, it was argued, is the Court at risk of being too strict in recognizing manifestations, it is also much too lenient in allowing limitations on those manifestations that are recognized, because of the wide margin of appreciation it grants to States, especially when it comes to the limitation criterion of a legitimate aim. This, it was established, allowed limitations on the basis of interpretations of, and value-judgements about, religion – and that should not be allowed.

It was therefore, it was argued, not sufficient to adhere to the Court's doctrine to assess possible violations, and an alternative framework was consequently devised. Manifestations of religion, it was argued, have to be *securitized,* or discursively constructed as a 'threat' to a 'legitimate aim' in order to be limited. And this, in turn, was made possible by identity constructions. It was therefore by analysing which identity construction gave rise to a certain *securitizing move,* that it could be established whether or not a limitation of the right to freedom of religion would amount to a violation of this human right.

It is on the basis of this framework, that this chapter will now turn to the analysis of the four proposals that stand at the centre of this dissertation: the initiative to change the Constitution; the attempt to criminalize 'radicalism'; the proposal to ban the burkini; and the political agreement to prohibit ritual slaughter. Through a discursive analysis of the political debate surrounding these, it will be asked which identity constructions made them possible – and whether the proposals and the underlying identity constructions stand up to scrutiny in terms of freedom of religion.

As will become clear, all of them fail to do so: underlying each proposal is an identity construct that sees Muslims and Islam as the incompatible 'Other'. Manifestations are therefore *securitized* not because of the manifestations themselves, but because they are deemed to

express the 'Other's' incompatible values. They are based upon a value-judgement about religion – and these proposals for limitation can therefore not comply with the central criterion of a 'legitimate aim'.

a. Islam-proofing the Constitution

In the aftermath of the Paris attacks of November 2015, a federal parliamentary initiative was set up to examine whether the Belgian Constitution had to be changed, and the division between state and belief explicitly included. The initiative was taken by the federal parliamentary leader of OpenVLD (the Flemish liberals), Patrick Dewael, who stated that 2015 had been "a tipping point"[14] and that "there is increasing pressure on our fundamental values". Politics, not courts, he argued, had to decide on issues like "separate swimming hours for men and women", and the dress code for teachers of religion.[15] The starting point for the debate therefore was that the terrorist attacks – which sparked the debate - were somehow related to the role of religion in our society, and that this religion was putting increasing pressure on 'our' values. The cited examples moreover revealed that the concern mostly was with one religion, Islam.

Apart from a few articles in newspapers in which parties flouted ideas about the concepts of 'neutrality' and 'impartiality',[16] a new preambular to the Constitution,[17] and the possibility of a convention of civilians to decide on 'Belgian values',[18] little happened with the initiative. Yet after a few months of low-profile politics, the debate suddenly peaked in May 2016, when N-VA members Hendrik Vuye and Veerle Wauters rejected the other parties' thoughts about a preambular and 'neutrality',[19] and brought forward their party's proposal to amend the Constitution. In an interview, they stated they wanted to make only one simple change: add 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".[20]

This sentence is quite a conundrum, as its immediate meaning or 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

[14] Belga, 12/01/2016.
[15] Peeters, 18/02/2016.
[16] Peeters, 25/02/2016.
[17] Belga, 16/03/2016.
[18] Van De Velden, 27/04/2016.
[19] Belga, 10/05/2016.
[20] Peeters and Van Horenbeek, 10/05/2016.

– an exception the annulment of which was being debated in a simultaneous debate about this practice, and has in the meantime passed Flemish parliament (see later).

The unpleasant impression is therefore evoked that the purpose of such amendment would be that no religious exemptions from the 'applicable rules of law' would be allowed anymore, 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. But 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 only from the 60s of last century 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 ECHR - which, contrarily to the proposed amendment, does not only demand a law, but also a legitimate aim and a pressing social need, as set out by article 9(2).

The proposed amendment is therefore problematic in and of itself. And a further analysis of the arguments adduced to justify it, further problematizes it, since this makes clear that the proposal resulted not from a general concern with the role of religion, but from the construction of Islam as a threatening 'Other', and thus aimed 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 target any specific religion on the face of it, this justification makes clear that one group in particular was being targeted: Muslims. The amendment was 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 the Belgian law, are thus securitized and constructed as a 'threat': the only way to be a 'non-problematic Muslim', is to not ask for accommodation.

The message that is conveyed through the proposed amendment thus is the following: 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 stated 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."[21]

This link between the terror attacks and the presumed need to change the Constitution in the proposed way, reveals that terrorism was seen as an extension, a result, of those who want to 'put themselves above the law'. Terrorism was the result of the perceived 'problem in Islam'; and the way to prevent future terror, was to make 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 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."[22]

The debate, it is recognized, is political. The authors want to make a point through it – and this point is aimed at the securitization of manifestations of Islam. There is a place for religions in 'our secular society', they say, on the condition that religions 'adapt to our society'.[23] Yet the only religion mentioned is, once again, 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

[21] Vuye and Wauters, 11/05/2016.
[22] Vuye and Wauters, 17/05/2016.
[23] One can moreover debate how 'secular' a society, in which public holidays accommodate Christian holidays, the King addresses the people in a Christmas speech, and the Sunday Mass is broadcast on public radio, really is.

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, Vuye and Wauters 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. 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 gender equality, the main reasons cited were 'living together' and public safety.[24] The authors therefore recognize that this was, in fact, a façade: the burka had to be banned because it was contrary to 'our values' 'our culture', 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 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.

And indeed: defending Vuye and Wauters' proposal against allegations of 'Islam-bashing', N-VA federal parliamentary leader Peter De Roover asked on his website whether we target "the entire Muslim community by expecting that no one can be excepted from the applicable rules of law on the grounds of religious or philosophical motives? Whoever says that, actually says that all Muslims want to do that … all Muslims according to them are fundamentalists."[25] In his defence, De Roover thus again made clear that those Muslims that want to manifest their religion in ways we don't agree with, are considered fundamentalist - and are not welcome among 'us'.

The concerned proposal, which could arguably impact all religions in Belgium, thus came forth out of the construction of 'Muslims' as a threat, and aimed at the securitization of manifestations of Islam. Muslims were the 'Other', and 'their' values had no place in our society. Specifically Islamic manifestations were meant to be targeted, because of the interpretation given to Islam, and not for reasons 'external' to this religion. While 'rules of the game' were invoked, these

[24] Belga, 28/04/11.; Grondwettelijk Hof, "Arrest nr. 145/2012 van 6 december 2012."
[25] De Roover, 17/05/16.

were not the basic democratic ones, or human rights. The invoked rules were the ones that 'we' make, on the basis of 'our' interpretation of the 'Other'. The proposal thus was a response to outsiders' interpretations of Islam and its manifestations - and as such, it cannot comply with any legitimate aim.

b. Criminalizing 'Radicalism' – Implicating Islam

With the debate about the Constitution subdued following a lack of agreement among political parties – only OpenVLD appeared willing to more or less support N-VA's proposal[26] - July 2016 witnessed a new proposal that could impact the right to freedom of religion: criminalizing 'collaboration' with Islamic terrorism. After a hotly debated summer, the proposal was shelved at the end of August[27] – only to be relaunched in January 2017, in the form of an even more contentious proposal to all-out criminalize 'radicalism'.

The starting shot for this proposal was given by Peter De Roover, federal parliamentary leader of N-VA, in an opinion piece on July 27 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 'radicalized people'.[28]

"In times of war", De Roover argued, "words are naturally part of the arsenal of enmities", and it are the words of radicalized 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, noting 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 radicalized people mentioned, are: they are Muslims. And more specifically, not Muslims that openly promote terror, 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 clear to Muslim youth what 'our' values are, that they follow the path set out by Islam and radicalize, and go on to commit terrorist attacks.

[26] Peeters and Van Horenbeek, 10/05/2016.; BBR, 09/06/2016.
[27] Blomme, 19/08/2016.
[28] De Roover, 27/07/2016.

Further on in his piece, De Roover tries 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 securitizes Islam. Firstly, 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. Secondly, he notes that Islam *can* function in our society. But only, as made clear earlier, 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." The following day, his party president Bart De Wever backed him up, saying that "we cannot leave sympathisers of IS untouched. We have to act stronger against extremism on our own soil. […] People of whom you know that they actively sympathize, that do not do anything unlawful, but of whom you cannot exclude that they might do it tomorrow. Why wait until it is too late?"[29]

After much debate, the proposal was shelved at the end of August. But 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."[30]

And 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

[29] Van Waeyenberghe, 28/07/2016.
[30] Justaert, 23/01/2017.

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 criminalizing radical Islam. If we do not do that, our society will be taken over by 'radicals'.

As with 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 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, §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 freedom of religion – as Taylor (2005, 270;333) argues, freedom of religion can be seen as *lex specialis* to freedom of expression - as it would make it a criminal offense 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 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 would be that manifestations of 'radical Islam' - in words or otherwise - would be prohibited. 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 'radical' Islam as a whole that is securitized, as a result of its perceived incompatibility with 'our' values. What this 'radical' Islam is, is not made clear – but what we *do* know, is that 'radical' Muslims do not do anything unlawful: they are radical because they have values that are different from 'ours'. Only Muslims that think exactly the way we think, therefore appear to be not radical - and not 'radical' Islam, but Islam in general is therefore securitized. Indeed, Muslims, the 'Other', 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, again, the 'Othering' of Islam, its interpretation by outsiders, that made possible this proposal – a proposal that would therefore violate the right to freedom of religion, as such interpretation and the concomitant value-judgment cannot comply with any legitimate aim.

Context (1): Why Wait Until it is a 'Significant' Group?

Asking why we 'would wait until it is a significant group', De Roover referred to a statement Federal Minister of Interior, Jan Jambon (N-VA), made after the Brussels attacks. Just three weeks after, he made the following statement in an interview: "A significant part of the Muslim community danced in response to the attacks. They threw stones and bottles at the police and the press at the arrest of Salah Abdeslam. That is the real problem. Terrorists we can arrest, take them out of society. But they are just a pimple. Underneath there is a cancer that is way more difficult to treat."[31] Two weeks earlier, he had already noted that there were "street parties in certain neighbourhoods of Brussels. Not mourning events, street parties."[32]

His statement provoked fierce criticism, because it turned out there was no evidence that anything like this happened. Jambon, however, refused to apologize, defending himself by claiming that the word 'significant' was not meant to be interpreted in a quantitative way.[33] Yet what is more interesting than the semantics of 'significant', are the presuppositions underlying this statement: the idea that terrorists are a 'pimple', representative of a 'cancer' in the 'Muslim community': Jambon considered the terrorist attacks to be directly linked to Islam and Muslims, and terrorism to be a consequence of a 'cancerous' belief.

Elsewhere in the interview, Jambon moreover noted that a lack of integration partly caused the attacks. And in earlier interviews he called upon the Muslim community to distance itself from terrorism[34] – something that only makes sense if one is suspect in the first place – while his party's president, Bart De Wever, also noted that "we have to make clear the rules of the game of our society to the newcomers", and that with regard to the Muslim community, we have "no idea" about "who is still at the side of the Enlightenment, and who is not".[35] We are, N-VA president Bart De Wever said, in "a battle between Good and Evil", and the risk is "that we retreat more and more, until we are faced with a group that asks your surrender".[36]

In these statements, the entire Muslim community is therefore considered a 'threat' to 'our' society. 'We' don't know who among 'them' are still on our side. 'They' do not respect the

[31] Brinckman and Justaert, 16/04/2016.
[32] Goossens, 18/04/2016.
[33] *Idem*.; Belgische Kamer Van Volksvertegenwoordigers, 20/04/2016.
[34] DDW and JVH, 29/03/2016.
[35] Lesaffer, 9/04/2016.
[36] *Idem.*

rules of ‘our’ society, and are challenging ‘our’ norms and values. It is because ‘they’ do not integrate, that the cancer further develops, and more terrorist attacks will happen.

c. The Burkini: Threatening ‘Us’ by Dress

With the political debate about ‘radicalism’ still running high, another matter burst into the newspapers mid-August. Following a ban on the burkini in several French cities, 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, a member of Flemish parliament for N-VA, who 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.” And 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”.[37]

While almost all political parties rejected N-VA’s idea,[38] Sminate’s proposal was 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.” [39]

Even Muslima’s who would chose 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.” And he added: “the entire debate [these days] is about identity, safety, migration and the position of Islam in the Western world.”

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” .[40] And N-VA president Bart De Wever deridingly stated that “in former times,

[37] FEM and DVL, 17/08/2016.
[38] MJA and WWI, 18/08/2016.
[39] Bervoet and D’hoore, 20/08/2016.
[40] Justaert, 23/08/2016.

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."[41]

Clearly, the proposal targeted only one type of 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. 'We', she argued, 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's endorsement of Sminate further set the opposition at sharp, noting that it was not just a matter of women being forced to wear the burkini: it was about the burkini, and the values it was deemed to express, itself. 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 possible say it in a clearer way: what Francken made clear, is that it was not the burkini, 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 would not be 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 resulted directly from the construction of Islam as a 'threatening Other'. The burkini needed 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 would therefore violate the right to freedom of religion. The façade of a general and neutrally applicable law was not even made use of: from the earliest moment it was clear that only one piece of clothing was targeted: the burkini. And as the analysis of the justifications for such a ban made clear, it was once again aimed at

[41] Segers, 22/08/2016.

securitizing a manifestation of Islam, a securitization that is intimately connected to the construction of a Flemish identity in opposition to the Islamic 'other'. Again, therefore, the criterion of a legitimate aim could not be complied with, since the 'threat' was based on a value-judgement about religion.

Like the other proposals, this proposal too was eventually shelved, because it was deemed to be 'not manageable juridically'[42] Yet this did not stop the party from pursuing the ban. Indeed: elaborating on the decision to abandon the proposal, N-VA president Bart De Wever noted that "Our 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."[43]

The message: we know that a general ban would violate human rights. So mayors, go ahead and try to ban the burkini under the pretext of hygiene. No law was passed - but its intended effect was at least partly reached. And indeed: one week later, Fons Duchateau, alderman of Diversity and 'Inburgering'[44] in Antwerp – where N-VA president Bart De Wever is mayor - picked up the burkini in an interview. In his city, the burkini is forbidden,[45] and in the interview he did not leave any doubt why: "I do not believe that a women wants to bathe in a burkini of her own free will. I think that is a fundamental problem. We have to be careful that this does not slowly become the norm. […] Islam is an expansive religion, which wants to spread and impose its dogma's on other people."[46]

d. Ritual Slaughter: Freedom of Religion and the U-turn of the Political Spectrum

One last proposal that requires analysis, is the now agreed upon ban on slaughter without stunning. Like the other proposals, this one too was discussed in the wake of the Brussels attacks: a full-out ban started to be seriously contemplated by Flemish political parties in May 2016, and an agreement was reached almost one year later, in March 2017.

However, unlike the other proposals, the ban on ritual slaughter – which is what a ban on slaughter without stunning amounts to for many Muslims and Jews – has a longer history, as it was preceded by a ban on slaughter without stunning on temporary slaughter-floors.[47]

[42] Abbeloos, 29/08/2016.
[43] KST, 30/08/2016.
[44] 'Inburgering' translates to 'becoming a civilian'. It is the official name for the Flemish policy of integration.
[45] Belga, 23/09/2015.
[46] Renson, 03/09/2016.
[47] Temporary slaughter floors have a different legal statute than permanent slaughterhouses. They have to fulfil less criteria to be recognized, making it easier for Muslims to make use of them for the yearly Feast of Sacrifice.

Contrarily to the analysis of the other episodes, the current analysis will therefore not be limited to the period *after* 22/03/2016, but will include the relevant debates that were conducted from September 2014 onwards, when ritual slaughter first became a hot topic in Flanders. And because this ban was eventually agreed upon by all parties, it is relevant to here also include their positions.

1) September 2014: European Regulations and Temporary Slaughter Floors

On 13 September 2014, Flemish Minister for Animal Welfare Ben Weyts (N-VA) announced he would introduce a ban on slaughter without stunning on temporary slaughter-floors. In Belgium then, slaughter without stunning was generally prohibited, but an exception existed on religious grounds. The complicated Belgian federal structure had just devolved the competency for Animal Welfare from the federal to the Flemish level, and the announcement was one of the first communications Weyts, as the new Flemish Minister for Animal Welfare, made.[48]

Commenting on his decision, Weyts told newspapers that "from 2015 onwards, ritual slaughter has to happen in slaughterhouses, or give way to grants to charities."[49] There are, he said, alternatives: "As a Muslim, you can donate money. Another possible solution is to work with electro-narcosis … many Muslims accept this as ritual slaughter as well."[50]

Clearly, Weyts' decision was meant to explicitly target the Islamic Feast of Sacrifice, for which many Muslims traditionally slaughter a sheep – something he later confirmed, when he said that the Feast of Sacrifice was the motivation for the measure.[51] Muslims would be the only ones affected by his decision, as no other group made use of temporary slaughter floors. Reason for his decision, Weyts argued, was a 2009 European Regulation,[52] which demanded that slaughter without stunning take place in recognized slaughterhouses only.[53] Yet elaborating on this, he noted that "as the minister of animal welfare, I am naturally in favour of a total ban on slaughter without stunning."[54]

Interestingly however, the reactions of most other political parties, N-VA's coalition partners as well as the opposition in Flanders, were negative – with the exception of Hermes Sanctorum of the Green party (Groen!) and, significantly, the extreme right-wing party, Vlaams Belang,

[48] Vlaamse Overheid, 11/09/2014.
[49] Van Eycken and Van Wiele, 13/09/2014.
[50] Casagrande, 15/09/2014.
[51] Vlaams Parlement, 13/05/2015.
[52] Council Regulation (EC) No 1099/2009.
[53] Truyts, Joris, 12/09/2014.
[54] *Idem.*

both small opposition parties. Sanctorum, a politician aiming to represent the 'weak' and 'vulnerable' voiceless animals,[55] said he did not think a ban violated freedom of religion,[56] since religion could not give people the right to make animals suffer,[57] while Vlaams Belang framed it as a question of culture and civilization,[58] and "Islamization",[59] and explicitly stated that "Islam is a problem."[60] But all other parties were opposed - and couched their opposition in terms of human rights.

Indeed, Sonja Claes of the Christian Democrats (CD&V), N-VA's main coalition partner in the Flemish government, cited art. 9 ECHR to argue that a ban on ritual slaughter would violate freedom of religion. "It is not for us", she said, "to talk about the way they have to do religious slaughter." The ECHR is "essential" for us,[61] she noted, arguing that a ban on temporary floors would make "it impossible that Muslims slaughter."[62]

Similarly, the liberal OpenVLD, N-VA's second coalition partner, too, evoked the ECHR. Addressing the Commission for Animal Welfare, Gwenny De Vroe noted that "apart from personal sentiments, there is the juridical reality, which makes impossible a total ban on ritual slaughter on the basis of art. 9 ECHR".[63] And SP.A, the socialist opposition, noted that "in our country, freedom of religion is deemed very valuable, and it is included in the Constitution. We have to therefore respect it, whichever religion we ourselves adhere to. […] Sometimes, it is said that the Muslim community does not care about animal welfare, but […] a Muslim, like any other human being, has respect for animals." [64]

At the moment minister Weyts announced his decision, opposition was therefore widespread. Not only did the most important political parties oppose a ban on ritual slaughter, they also opposed Weyts' decision to implement the European regulation. Doing so, they feared, might lead to capacity problems, which would make it impossible for Muslims to slaughter ritually. Indeed, referring to a 2006 advice by the Council of State on ritual slaughter, which concluded that "the abolishment of the exception to the requirement of preceding stunning in the case of

[55] Vlaams Parlement, 10/11/2016.
[56] Vlaams Parlement, 22/10/2014.
[57] Vlaams Parlement, 10/09/2015.
[58] Vlaams Parlement, 03/07/2015.
[59] Vlaams Parlement, 05/10/2016.
[60] Vlaams Parlement, 15/06/2016.
[61] Vlaams Parlement, 22/10/2014.
[62] *Idem.*
[63] Vlaams Parlement, 13/05/2015.
[64] *Idem.*

ritual slaughter … disproportionately limits freedom of religion",[65] Claes (CD&V) stated that "by immediately saying that temporary floors are being abolished, you […] go against the reasonableness the Council of State demands. You make it impossible that Muslims slaughter."[66] And OpenVLD too noted that "there has to be sufficient capacity."[67]

Weyts, however, countered that "there are obviously foreign examples that illustrate that compulsory stunned slaughter is possible, with respect for the cited fundamental principles of law."[68] And in February 2015, his party stated in Parliament that "in more than half of the Islamic countries, Muslims accept reversible stunning as halal. Sorry, but then Muslims here have to just accept that. Their problem is immediately solved if they want to accept that. … There is a very simply solution, but if they do not want to give in, I see that as a problem, but rather their problem. … I can surely hope that animal welfare goes above the right to freedom of religion."[69]

In the vision of N-VA, therefore, several things stood out. Firstly, it is apparent that one of the main arguments for justifying the partial, and eventually total, ban on ritual slaughter, was that ritual slaughter is not required by Islam. There are, it was repeatedly stated, alternatives. Making such arguments, however, is entirely contrary to the core of freedom of religion. It is not up to outsiders to decide what is, and what is not, required by a religion: this is a question of individual conscience, and a state should never interfere with this, or use it as an argument to limit a manifestation.

The presumption underlying this argument, moreover, is that Muslims who continue to practice ritual slaughter, are unreasonable. They have to just 'accept' stunning, and if not, it is 'their problem'. And indeed: if ritual slaughter is not required by their religion, then why do they do it? There seem to be only two possible answers: either they are radically religious, or they do it because they want to oppose 'our' wishes.

Secondly, N-VA was – with the exception of Sanctorum and Vlaams Belang - the only party that saw an opposition between animal welfare and freedom of religion, specifically of Muslims. Adhering to, or supporting, ritual slaughter was equalized with being against animal

[65] Raad van State, 16/05/2006.
[66] Vlaams Parlement, 22/10/2014.
[67] *Idem.*
[68] *Idem.*
[69] Vlaams Parlement, 11/02/2015.

welfare. For the other parties, this opposition was not necessarily there: SP.A for example noted that Muslims too care about animal welfare.

Yet this is mostly significant for a second reason, namely: N-VA was the only major party that thought ritual slaughter was politically significant in terms of animal welfare. And this is important because one should not lose sight of one crucial point: slaughter without stunning was already forbidden for everyone save Muslims and Jews. It is not as if Muslims, by adhering to ritual slaughter, were preventing others from slaughtering with stunning. The debate *only* concerned the exception. But such exception was deemed unreasonable by N-VA.

Indeed, parties opposing the ban so that capacity problems could be tackled, N-VA said, wanted "to give only one group, the Muslims, a free letter".[70] The underlying thought, rather than animal welfare, thus appeared to be that everyone had to act in the same way as 'we' do. And it is here that the main difference with the opposing parties becomes clearest: while they might have morally opposed the practice, and could have thought it to be contrary to animal welfare, they did not think it had to be tackled politically, through a ban. Ritual slaughter, for them, did not have to be '*securitized'*: 'we' could, and more than that, 'we' *should*, accept that Muslims slaughter religiously. Not because it was preferable to slaughter in that way, but because their concept of Flemish identity embraced freedom of religion for Muslims, who could be 'Flemish' if they continued to do so as well.

Despite widespread political opposition, Weyts decided to go forth with the ban in May 2015, after an alternative proposal he had worked on to ban all forms of ritual slaughter by 2020, and grant an extension on temporary floors until 2016, was rejected.[71] Reacting to the commotion this caused, Weyts said that the feared capacity problem needed not materialize, as "there are, in other countries, alternatives for slaughter without stunning that are accepted by Muslims as halal. But those suggestions were always rejected."[72] "Why", he asked, "can't Muslims just slaughter with stunning?".[73] And his co-party member Jelle Engelbosch said that "in Flanders, animal welfare stills goes above freedom of religion".[74]

Again, therefore, an opposition was created between 'Flanders' and unreasonable Muslims, whose adherence to a religious ritual was being delegitimized. There was no reason for them to

[70] Vlaams Parlement, 01/06/2015.
[71] Van Damme and Verbaeken, 29/05/2015.
[72] Van De Perre, 30/05/2015.
[73] Poppelmonde, 06/06/2015.
[74] Casagrande, 30/05/2015.

not slaughter with stunning, it was argued. Adhering to it, amounted to being stubborn. Talking to the relevant commission in Parliament, Weyts moreover said that "the slaughter of animals without preceding stunning is a question of animal welfare, of animals that needlessly and unnecessarily suffer, and not a question of freedom of religion within the contours of the law. Religious prescriptions cannot overrule the law."[75] At the same time, his party co-member Jelle Engelbosch stated that those parties who opposed the ban, made animal welfare subordinate to electoral gains, and noted he was "ashamed" of them.[76] "The norms and rules in Flanders have to be followed," he said. "N-VA is pro freedom of religion, but within the margins of the law". "Or", he added, "do we want to also allow female genital mutilation and child marriages? That also is part of freedom of religion".[77]

By invoking that "the norms and rules in Flanders have to be followed", an additional presupposition is revealed in this statement: that the discussion is about newcomers, who bring their own, incompatible, norms and values. "We" in "Flanders" care about animals. "They", who commit or support religious slaughter, do not. Accusing other parties of pursuing 'electoral gains', moreover delegitimizes listening to, and representing, the voices of the Muslim community: defending religious slaughter cannot be about freedom of religion, only about appealing to the votes of Muslims, which apparently is a bad thing. Muslims were thus excluded from the political community, while the radical opposition of ritual slaughter to animal welfare put other parties under pressure: if you are for animal welfare, the message was, you have to join our call to end ritual slaughter.

Additionally, the reference to female genital mutilation and child marriages further demonized ritual slaughter. By referring to these within the context of Islam, it was implied that if we accept religious slaughter, we open the door to further, threatening manifestations of this religion. Before we know it, Muslims will start to ask exceptions for female genital mutilation and child marriages.

A clear opposition between 'us' and 'them' was thus constructed in the debate around religious slaughter, an opposition that was further set sharp after a group of Muslim organisations decided to challenge Weyts' decision, by asking for ritual slaughter to be recognized as a 'Flemish cultural tradition'.[78] This, they hoped, would allow for an exception to be made, since a

[75] Vlaams Parlement, 3/07/2015.
[76] *Idem.*
[77] *Idem.*
[78] Rommers, 06/08/2015.

recognized tradition exists in which little fish are swallowed alive.[79] But Weyts noted that their proposal was "totally absurd".[80] "In a civilized society," he said, "all evitable animal suffering has to be evaded".[81]

While Muslims wanting to commit religious slaughter were in earlier statements already qualified as unreasonable and against animal welfare, Weyts now gave them an extra label: they were 'uncivilized'. Their behaviour, Weyts argued, did not fit in a 'civilized society' like 'ours'. Asked, however, why he then did not also tackle hunting, he answered: "I would not compare the first with the second. I am not a great propagandist of hunting. But someone who calls himself a hunter does not have the ambition to kill an animal and wait until it bleeds to dead and perishes."[82] And, he noted, "this has nothing to do with Muslims […] I also hear from representatives of the Muslim community that they agree with me, that we had better slaughter with stunning like abroad. That would be a good thing for the perception: that animal welfare is important for Muslims, and that they on that matter come to comply with the public opinion in Flanders." [83]

These extracts again reveal several interesting issues. Starting with the final one, Weyts is at pains to make clear that he does not target Muslims. But apart from – again – repeating the argument that 'many Muslims actually think ritual slaughter is not necessary', Weyts also talks about perceptions, Muslims, and public opinion. And doing so, the debate around ritual slaughter is put plainly within the context of integration and identity: the fact that Muslims want to continue slaughtering, is evidence that they do not 'comply with the public opinion in Flanders'. Stopping slaughter is not just about animal welfare – it is about complying with what people in Flanders expect. Indeed: it would, Weyts noted, be good for the 'perception'. Now, Muslims are suspected of being against public opinion in Flanders. By accepting stunning, they can show that they want to integrate, comply with what 'we' think is right.

Moreover, a peculiar conception of 'animal welfare' is constructed in this statement. 'We' are in favour of animal welfare, 'they' are not. But this does not apply to hunting. Indeed, according to Weyts, hunting is different because hunters do 'not have the ambition to kill an animal and wait until it bleeds to dead and perishes'. Animal welfare therefore does not have to do with

[79] This happens during the 'Krakelingenfeest' in Geraardsbergen.
[80] Amkreutz, 07/08/2015.
[81] Cools, 10/08/2015.
[82] *Idem.*
[83] *Idem.*

animal suffering. It has to do with the – assumed – intention of people: and Muslims, as opposed to hunters, apparently kill to make animals suffer on purpose.

Combined with the earlier issue of public perception, an interesting conclusion can be drawn. That is: 'our' tradition of hunting is not against animal welfare, 'their' tradition of ritual slaughter is. One reason for this is the alleged intention: Muslims aim to slowly and painfully kill animals, rather than to comply with religious prescriptions. Or alternatively, it is this religious prescription that is in itself cruel. The second is that it is a question of public opinion: if 'we' think animal slaughter should stop, 'they' just have to listen. Rather than an 'objective' consideration about animal welfare, it was therefore a concern with one specific group's practice, based on their presumed intentions and the linked lack of willingness to integrate, that drove this proposal.

The decision was one final time discussed in parliament at the end of August, less than a month before the Feast of Sacrifice. CD&V again opposed it, while OpenVLD now stated it could agree on a ban on temporary floors.[84] SP.A said it had the impression that Weyts acted only against "animal suffering that happens during an Islamic ritual, but not against animal suffering in the meat industry, the fur farms and hunting". [85] However, they said they would support a proposal to ban ritual slaughter, if Weyts would also tackle hunting and fur farms and if Muslim theologians would accept it.[86] Weyts, however, answered that it was important to find a balance between freedom of religion and animal welfare that was "democratically established" – read: by the 'Flemish' majority - and that religions could not be given a "veto".[87]

The first year of discussion on ritual slaughter, therefore shows that originally, opposition to Weyts' plans was widespread. Freedom of religion was a predominant consideration for most parties, which led them to oppose not only a total ban, but even the ban on temporary slaughter floors. OpenVLD in the end agreed with the ban on temporary floors, but still deemed a total ban incompatible with freedom of religion.

From its side, N-VA officially based itself on the European regulation. But comments in the margins, about the eventual aim of a total ban, made clear that more was at stake. Minister Weyts continually made remarks about possible 'alternatives', as such violating a core aspect

[84] Vlaams Parlement, 10/09/2015.
[85] *Idem.*
[86] *Idem.*
[87] *Idem.*

of freedom of religion. The presupposition underlying this, was that Muslims who did not want to give up ritual slaughter, were being unreasonable.

More damning even, Weyts' statements about a 'civilized' society and hunting revealed that more was at stake than animal welfare. Adhering to ritual slaughter was constructed as going against a "democratically established decision", against the "norms", "here" in "Flanders". Muslims adhering to the practice, were unreasonable, uncivilized, and had bloodthirsty intentions. Ritual slaughter was therefore not so much about animal welfare, as made clear by the example of hunting. It was about 'them', the 'Other', needing to comply with 'our' values: Muslims had to integrate, and show they complied with the public perception in Flanders. And to 'integrate', they had to give up their freedom of religion - the token of their Islamic 'Otherness' - which was deemed of less importance than, and constructed as radically opposed to, animal welfare.

For N-VA, being Flemish and for animal welfare was constructed as being against ritual slaughter for *everyone* - without the middle way of inclusiveness and respect for freedom of religion, allowing Muslims to adhere to their ritual, that other parties envisaged. And by constructing this opposition, other parties were pressured to take sides: if did they not oppose ritual slaughter, they were accused of shameful 'electoral motives'.

2) From Temporary Floors To A Total Ban – And The Turn Of Flemish Politics

After the ban was implemented, the Feast of Sacrifice passed with little problems following a call from within the Muslim community to boycott it.[88] The feared capacity problems therefore did not materialize, and the debate about ritual slaughter temporarily subdued.

In March 2016, however, it was reinvigorated by Green politician Hermes Sanctorum,[89] who, acting in his own name, stated that one "cannot be in favour of animal welfare, and against a ban", and brought forward a legislative proposal.[90] While N-VA in principle supported this, the proposal failed to get the support of the government due to OpenVLD and CD&V's opposition.

Shortly after, Brussels was rocked by the terrorist attacks, which directed attention elsewhere. But ritual slaughter remained on the parliament's agenda, and in a scheduled hearing on slaughter outside recognized slaughterhouses, N-VA piled up the pressure, stating that even though there might not be any support for stunning among the Flemish Muslims, there also is

[88] Belga, 25/09/2015.
[89] Stragier, 16/03/2016.
[90] *Idem.*

"no support at all among the Flemish population for slaughter without stunning, 88 percent is against."[91] By referring to numbers, N-VA again clearly pitted the issue as one of 'us' against 'them'. 'We', the Flemish population, are against this – and by refusing to stop, 'they', the Muslims, thus go directly against what 'we' want.

The following month, in May – a bare 2 months after the attacks – Weyts stated that N-VA would not take part in a future government without a ban on religious slaughter,[92] thus further politicizing the issue, while Sanctorum, again acting in his own name, tried his luck with his legislative proposal once again, joined by a similar proposal of the extreme right Vlaams Belang.[93] And quite interestingly, other political parties that had initially opposed a ban at that moment started to change their positions.

Indeed: the socialist SP.A, which had formerly opposed a total ban – first in general, because of freedom of religion, and later because it was deemed to specifically target Muslims – now abandoned this opposition. While it originally demanded the agreement of Muslim theologians, this now ceased to be a consideration, and the party simply noted that "when animal suffering can be evaded, we have to do so".[94] A few weeks later, the liberals of OpenVLD also changed their position in favour of a total ban.[95] They now stated that "we are in favour of a total ban on slaughter without stunning,"[96] asking however that there be "consultation with the religious communities" first.[97] While both SP.A and OpenVLD had originally invoked freedom of religion to defend ritual slaughter, all traces of this discourse now disappeared.

Only the Christian-Democrats of CD&V now still opposed a ban, and the prospect of a possible government crisis over the issue made sure that neither OpenVLD or N-VA wanted to vote in favour of a ban. On CD&V's insistence, the vote on the proposals was therefore delayed, and an advice was asked from the Belgian Council of State, to determine whether a total ban would be compatible with freedom of religion.[98] This Council issued its advice at the end of June, warning that a total ban would violate freedom of religion. It stated: "The lawmaker can […] strive to reduce animal suffering for ritual slaughter as far as possible, by imposing the fastest and least painful method for the animal, without however ignoring the freedom of religion by,

[91] Vlaams Parlement, 14/04/2016.
[92] Stragier, 11/05/2016.
[93] Vergauwen, 11/05/2016.
[94] *Idem.*
[95] Casagrande, 25/05/2016.
[96] *Idem.;* Vlaams Parlement, 15/06/2016.
[97] Casagrande, 25/05/2016.
[98] Vergauwen, 25/05/2016.

as is the case in this case, imposing an unconditional prohibition on slaughter without stunning." [99]

This advice might have led to shelving the issue. But the opposite happened. Indeed: reacting to the Council of State's advice, Weyts declared that "this is a societal vision of 20 years ago. It stands so far from the societal reality today in which Flemish people, luckily, attach much more importance to animal welfare. I think it is the damn duty of a civilized society to maximally evade each instance of animal suffering that can be evaded".[100] Supporting his colleague, Flemish parliamentary leader of the N-VA, Matthias Diependaele, called the advice "unworldly".[101]

This reaction again reveals several presuppositions. The 'Flemish people', who are a 'civilized society' are against animal suffering. Implied in this is that those who defend ritual slaughter are not civilized, not part of the Flemish people, and pro-animal suffering. They are 'backward', and adhere to ideas of '20 years ago'. The only way to become part of 'us', is to abandon religious slaughter.

Weyts subsequently decided to appoint a 'independent middle person' to mediate between religious groups.[102] But the goal, he stated, remained the same: a total ban.[103] What this therefore amounted to, was ignoring the Council of State's advice, which stated that an unconditional ban would disregard freedom of religion. Weyts in other words reacted to the objection by announcing that he would do exactly what the Council of State had warned against.

One month later, moreover, the president of his party, N-VA, Bart De Wever, wrote an opinion piece, mentioning religious slaughter. "Increasing integration," he wrote, "can never mean that you slow down inevitable evolutions to more openness. […] No one can systematically rely on a religion to get exceptions from generally applicable rules. Not to mention blocking democratic decisions, supported by an overwhelming majority of the population."[104]

In language reminiscent of the debate about the Constitution, De Wever here widened the debate from animal welfare to integration and democracy. The question of ritual slaughter was now revealed to be one of integration: Muslims that do not want to stop it, show they do not

[99] Vlaams Parlement, 29/06/2016.
[100] Wauters, 30/06/2016.
[101] Vergauwen, 30/06/2016.
[102] Wauters, 30/06/2016.
[103] B., 14/07/2016.
[104] De Wever, 02/08/2016.

want to integrate. Even more: they block, and sabotage, democracy. If 'we' decide something has to happen, 'they' have to listen.

At around the same time, De Wever also gave an interview, in which he referred to CD&V and their support for ritual slaughter. "They accuse me of saying CD&V is a Muslim-party," he said, "[but] I only remark that CD&V is the only party that continues supporting ritual slaughter […] That CD&V branches organize an *iftar* during Ramadan, while lent and Easter pass without attention. May I then conclude that CD&V aims for the votes of Muslims?"[105] This may seem like an innocuous comment. But what transpires from it, is that one party accuses another of aiming for Muslim votes. Something that apparently should not happen, or is illegitimate: Muslims' religious concerns should not be listened to.

In September then, GAIA – the main Flemish organisation for Animal Welfare - deposited a complaint with UNIA, the Belgian Federal Centre for Equal Opportunities, claiming that the exception in the law for religious slaughter amounted to discrimination of non-Muslims and non-Jews.[106] The Centre dismissed this complaint, after which several politicians harshly criticized the institution. Hermes Sanctorum - by then independent because his party wouldn't fully support a ban - said UNIA promoted "more animal suffering",[107] and Weyts repeated what he had said in June. "With their criticism," he noted, "UNIA again shows it stands far away from the modal Flemish person". And he continued: "The judgement is based on the same archaic conception" as the Council of State advice. "We have evolved to a modern society in which we have to evade all animal suffering we can evade".[108]

One month later, moreover, N-VA president Bart De Wever once more let his light shine on the question of ritual slaughter. In an interview, he said: "We promote the '*leitkultur*', inburgering, we are against open borders and we will not say that your own symbols such as Black Pete have to be done away with, and you nevertheless have to tolerate for example slaughter without stunning. The cultural discomfort is stronger with us than the economical, because in the end we all have it relatively well".[109]

A small elaboration on the context of this statement is in place here. Every year on December 6, Belgian children get presents, which according to tradition are brought by Saint Nicholas.

[105] Segers, 22/08/2016.
[106] Belga, 06/09/2016.
[107] Belga, 07/10/2016.
[108] *Idem.*
[109] Dujardin, 26/11/2016.

He, the story goes, comes from Spain, and at night drops presents through chimneys for those children that have been nice during the year.

Saint Nicholas, however, is accompanied by a gang of Black Petes (*Zwarte Pieten*), who wear clownish costumes and are painted 'blackface', donning red lipstick and often golden earrings. Among part of the population, the realization has grown that this is offensive because it is reminiscent of slavery, and voices are being raised to have Petes of all different colours. The Netherlands adhere to the same tradition, and the debate there even attracted the attention of the UN, which noted that "it is clear that many people, especially people of African descent …, consider that aspects of Zwarte Piet are rooted in unacceptable, colonial attitudes that they find racist and offensive."[110] Yet a large part of the population keeps ferociously defending this tradition. It is this issue De Wever is referring to in the context of ritual slaughter.

De Wever thus clearly constructed the question of ritual slaughter as one, not of animal welfare, but of integration and identity. Because of the link with integration, it is clear that Jews are not the problem: they have been in Belgium for centuries. The issue is with Muslims, who bring 'their' symbols to 'our' society, while 'our' own symbols are attacked. This explicitly takes the issue of ritual slaughter out of the context of animal welfare. It is a 'cultural discomfort', not animal welfare per se, that drives the ban. We don't like their values: people who come here, have to become 'us'. Islam as it is perceived, does not fit into that. If Muslims want to become part of 'us', they have to completely abandon 'their' values.

Context (2): The Insult of the Handshake

In December 2016, the debate around ritual slaughter was temporarily sidelined by another incident which became a matter of public debate in Flanders. This related to a Brussels alderman (MR), who had refused to marry 8 couples of whom the bride, for religious reasons, did not want to shake hands with him, 6 of them being Muslim, 1 Jewish and 1 Protestant. Shaking hands, he said, is "about politeness", noting that he did not want "religion in the City Hall. This is neutral territory." [111] A few months earlier, in October, a similar incident had already taken place in Ghent,[112] but while at that time the incident remained rather local, it now transpired to the level of Flemish politics, and invited comments from a member of the Flemish government.

[110] OHCHR, 22/11/2013.

[111] Vergauwen, 16/12/2016.

[112] Bracke, 15/10/2016. An alderman (OpenVLD) was "shocked" by a Muslim man's refusal to shake her hand. She did marry the couple, but wrote an opinion piece and gave an interview, saying that "something was going really wrong with a small part of the Muslim community."

Indeed, reacting to this incident, Flemish Minister of Civic Integration and Equal Opportunities Liesbeth Homans (N-A) wrote an opinion piece, in which she noted that "in order to be able to live together in harmony, there are rules of conduct in our public spaces that have to be followed by everyone." [113] "If one already refuses to shake hands – and that goes for men as well as for women – while this is a generally accepted Western custom that indicates respect," she continued, "then the chance for this person for a deeper interaction with others will become smaller, and possible prejudices will be strengthened. A woman that refuses to shake hands with a male alderman, will also not want to shake the hand of a male employer. I think the chance is very small that she then will be hired. Indeed, it shows a lack of knowledge or a lack of willingness regarding Western social norms and values."

She moreover added that "refusing a hand not only goes against the principle of living together in diversity, but in this specific case also is a sign on the wall of an even bigger and more dangerous problem, that is, religious extremist thought." And she concluded: "Muslims that resist this like this, follow a very fanatical interpretation [of Islam]."

Discourse analysis of this statement is again instructive in terms of securitization and identity. According to Homans, someone who refuses to shake hands, shows contempt for Western customs. Everyone, she argues, has to follow certain rules of conduct so that living together in harmony becomes possible: whoever does not follow these, threatens the harmony of our society. It is moreover this kind of behaviour that causes prejudices: the fault is not with those prejudiced, but with those who cause them to exist, and it is consequently their own fault if they are discriminated against. And lest there be any doubt: the group we are talking about, are Muslims – not the Jewish or Protestant people that refused as well. Their religiosity is 'dangerous' and 'extremist', and Muslims that act in this way are 'fanatical'. While at first sight the act of shaking hands seemed to be the issue, the reference to Islam makes clear that what really matters is the meaning given to the refusal to shake hands: it is a sign of radical Islam.

A clear dichotomy is thus constructed between 'us', Western people, and 'they', Muslims that have values that are different from ours. They are 'dangerous', 'extremist' and 'fanatical' by virtue of having those values. The only way for 'them' to become part of 'us', is by shedding their values, and adapt to 'ours'.

[113] Homans, 18/12/2016.

At the end of March 2017, the mediator appointed by Weyts, Piet Vanthemsche, finally presented his report to parliament. In a reaction to this, the Parliamentary Commission for Animal Welfare agreed to implement a ban on ritual slaughter from January 2019 onwards. More specifically, sheep would have to be stunned by electroshock – since this stunning is reversible, it was presented as acceptable to religious communities - before slaughter, and the same would apply to cattle once this technique was adapted to them. In the meantime, post-cut stunning would become compulsory.[114] This time speaking with one voice, coalition partners N-VA, CD&V and OpenVLD said that "after thorough investigation, a balance was found between religious manifestations and animal welfare."[115]

After all other political parties, CD&V, which had up to then opposed such a ban, had now also changed its position, noting that "we asked three things: a dialogue with the religious communities, a mediator, and an advice of the Council of State. All of that happened. I have always said I would support the report of the mediator."[116] That the advice of the Council of State had warned against a total ban, seemed of no concern: freedom of religion had now also ceased to be of importance for the Christian-Democrats.

Hours after the political parties made public their decision, it however appeared that there was no compromise with the religious communities at all: the Jewish as well as the Muslim community rejected the ban.[117] But this did not change anything, N-VA argued. "We have to make clear to them that laws in this country have primacy over all religious rules", Flemish minister-president Geert Bourgeois said.[118] "This is how a democracy works. It is the message we give in the *inburgerings*-course: laws always have primacy over religious customs."[119] And Weyts himself defended the decision by saying that "we did also not ask for the approval from religious communities to allow gay marriage."[120]

One final time therefore, the issue was explicitly focused on 'new' Flemish people. Ritual slaughter was not necessarily about animal welfare: it was about 'new' people adapting to 'our' values – more specifically: Muslims. Their values were deemed incompatible with being Flemish – only by shedding theirs, could they truly become Flemish, and part of 'us'. And by referring to gay marriage, Weyts once more turned the issue upside down: that gay marriage

[114] JC and TT, 29/03/2017.
[115] Van Wiele, 30/03/2017.
[116] Vergauwen, 30/03/2017.
[117] JC, TT and RW. 30/03/2017.
[118] SAN, 30/03/2017.
[119] Belga, 30/03/2017b.
[120] JDB, 30/03/2017.

was allowed, did not impact religious communities. But the ban on religious slaughter, was meant to explicitly target them.

3) Conclusion

What the review of the debate on ritual slaughter made clear is that the N-VA discourse surrounding the measures, firstly of a ban on temporary floors, and secondly a total ban, could not be seen separately from concerns about 'integration' and Flemish identity. To the N-VA, having a ban on ritual slaughter was about more than animal welfare. It was about 'our' norms, complying with 'our' opinions, not going against 'our' democracy. While apparent throughout all analysed texts, this became especially clear in the more recent extracts, in which the president of the party added his voice to the debate, and explicitly framed ritual slaughter as an example of 'them' bringing their values, while 'our' traditions are being attacked – a matter of 'cultural discomfort'.

Again therefore, we can perceive the influence of the Islamic 'Other' on the debate about religious slaughter. There is no denying that concerns about animal welfare were present – but the underlying reason for concern was Islam. Ritual slaughter became a political concern in terms of animal welfare, because it was deemed an expression of the unwillingness of the threatening 'Other', that is Muslims, to 'integrate' in our society, and the threat they posed to 'our' values. That is also why hunting seemed of no concern: hunting was seen as part of 'our' traditions, and since 'we' care about animal welfare, not a threat to it. Sanctorum (first Green, then independent) admittedly advocated for a total ban from a different perspective: the conviction that animal rights *always* take precedence over the human right to freedom of religion. But while this premise itself is problematic too, since it equally reveals a homogeneous nationalism that leaves no place for religious diversity through the subordination of a *human* right to *animal* rights, his perspective was arguably much less influential than that of NVA, Flanders' biggest party, which primarily pushed the ban.

Secondly, the enormous shift in the position of the other political parties is remarkable. With the exception of Sanctorum, and the extreme rightist Vlaams Belang, all parties considered a total ban on religious slaughter contradictory to the right to freedom of religion. We could therefore see a construction of identity that was inclusive: Muslims could be Flemish, and continue to adhere to religious slaughter at the same time. No opposition was perceived by most political parties, since freedom of religion – a common ground – mandated that they could do so. There was no need to politicize, and ban, religious slaughter.

Their position, however, changed, and the great turn appeared to occur after the attacks in Brussels – which, as discussed earlier, sparked the other proposals analysed in this dissertation. All opposition in terms of freedom of religion disappeared, as parties were forced to take sides following N-VA's successful juxtaposition of ritual slaughter and animal welfare – an opposition that came forth, it bears emphasizing, out of a concern with the Islamic 'Other'.

And the other parties' turn did not only happen in the debate on religious slaughter. In August 2016, the president of the socialist party S.PA, John Crombez stated that "many leftists, too, are fed up with the way in which sometimes very young Muslims come to tell us what has to be the norm here".[121] The president of OpenVLD, Gwendolyn Rutten, equally attracted attention by stating that "Islamic State threatens us from within. Ultraconservative Muslims live here, among us, in a parallel society. They radicalise. They live according to the laws of the Sharia. The marry out their daughters. They don't let their wives shake hands. They cover them from top till toe. To them, every homosexual is sick. That is not only backwards, it is also and especially unacceptable."[122] And Pieter De Crem, a senior member of CD&V, noted that "it to me appears very difficult to make Islam go together with Western values […] I do not believe in a European Islam."[123] All evoked the image of a threatening 'Islam', while Rutten also connected this with Islamic State.

From an inclusive identity that saw no problem with allowing religious slaughter because of freedom of religion, the public debate thus evolved, or at the very least succumbed, to a Flemish identity that saw religious slaughter in terms of integration, identity and values. As long as Muslims were part of 'Us', their practice could be accommodated. But through their increasing constitution as a threatening 'Other', this changed. N-VA's powerful but exclusionary discourse, constructed against the Islamic 'Other', pushed aside human rights concerns, and succeeded in securitizing ritual slaughter.

Indeed: it was N-VA that put ritual slaughter on the agenda, out of a concern with the incompatible 'Other', while other parties saw no problem. Through diametrically opposing ritual slaughter to animal welfare, it then pressured other parties to take sides. And it subsequently succeeded in getting the ban accepted, aided by the terrorist attacks that directed the discourse within those same parties increasingly against the Islamic 'other' as well.

[121] Renson, 13/08/2016.
[122] Van de Velden, 16/01/2017.
[123] Abbeloos and De Lobel, 22/04/2017.

As we established earlier, it is the way a manifestation of religion is constructed as a threat that is essential in determining whether or not a particular measure amounts to a violation: when this happens because a religion is constructed as a threatening 'Other', a legitimate aim cannot be complied with, because it then is a value-judgement about this religion that drives the limitation – and it is not up to a State or Court to do this, since religions we do not agree with also deserve freedom of religion. Concerns about animal welfare, we noted, *were* present in the debate about religious slaughter, which makes the case more complicated than, say, a ban on the burkini, where it was very clear that the burkini needed to be banned because it expressed an 'incompatible' Islam. But from the current analysis, it appears that ritual slaughter too became securitized only, like the other proposals, following a broader construction of Muslims and Islam as a threatening 'Other'. It was a value-judgment about Islam, its presumed incompatibility with 'our' values - a 'cultural discomfort' - that fuelled the proposal. It thus follows that the ban cannot comply with a legitimate aim, which should be based on considerations that are independent of the concerned religion – and the ban therefore violates freedom of religion.

VI. Conclusion

This dissertation set out to answer one central research question: would the four proposals that were made in the aftermath of the terrorist attacks of 22 March 2016, violate the human right to freedom of religion? Throughout the dissertation, a framework was developed to answer this question, by incorporating the often neglected philosophical views on freedom of religion into a legal analysis, as well as securitization theory and discourse theory – a framework that ended up by looking at freedom of religion in terms of identity constructions and the 'threats' that 'clashing identities' make possible.

As a first step, this study established that the only possible justification for freedom of religion, was one based on conscience: religion, as Nussbaum argues, is an expression of conscience, which can impose obligations one cannot resist. In order to leave people in their dignity, to which one's conscience is intimately linked, this conscience should therefore be respected. This implied that limiting manifestations of religion should not be allowed too easily: violating people's conscience impacts their dignity, and should therefore be avoided. States should thus refrain from interfering with it as much as possible, and should never interfere with religious doctrine, or judge about religion.

The European Court's doctrine in matters of freedom of religion was subsequently touched to this justification. This made clear that this doctrine is insufficiently stringent: apart from the contestable distinction between the *forum internum* and *forum externum*, which seems less relevant to a justification based on conscience, the Court was also not stringent enough in protecting those manifestations that it deemed part of the *forum externum.* Specifically, it was the Court's treatment of the limitation criterion of a 'legitimate aim' that turned out to be problematic. Through subordinating this almost entirely to a State's margin of appreciation, the Court opened the door to interpretations of religion, and corresponding value-judgments – which constitutes an unjustified interference with people's conscience, something that was made clear by reference specifically to the cases of *Dahlab v. Switzerland* and *Şahin v. Turkey*, and in a different way, *Lautsi v. Italy.*

In order to assess whether a certain measure would violate the human right to freedom of religion, a different way to assess the actual legitimacy of an invoked 'legitimate aim' was therefore needed. And this, we argued, could be done through securitization theory. Applying this theory revealed that manifestations of religion had to be constructed as a 'threat' to a legitimate aim – or '*securitized'* - in order to be limited. By adding the insights of discourse

theory, it was moreover established that these 'threats' were the result of clashing identity constructions. Two mechanisms of 'threat' construction were outlined, on the basis of which it could be established whether a manifestation of religion could or could not be legitimately limited: when an 'Other' as a whole was constructed as a threat, it was established, limiting its manifestations could not comply with a legitimate aim. A methodology to test this was then developed, after which the framework was applied to the four proposals themselves.

What the analysis of these proposals, together with the two episodes that constituted their discursive context, revealed, is that each of them was the result of an identity construction that saw Muslims and Islam as the 'Other' to 'our' identity. The *securitizing moves* that the proposals were, it was shown, resulted from a wider construction of Muslims and Islam as a 'threat'.

The proposal to change the Constitution, firstly, while seemingly neutral, aimed at targeting manifestations of only one religion: Islam. It was explicitly recognized that the proposal – as well as the initiative to review to Constitution in the first place - was a response to terrorism, which itself was considered the result of a problem inside 'Islam' and a lack of integration. Manifestations expressing this religion, deemed to embody values that were incompatible with 'ours' and 'our culture', such as the burka, therefore had to be securitized, and outlawed.

The second proposal, concerning the criminalization of 'radicalism', equally targeted, and securitized, one religion only. And while it in first instance 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 manifestations of this religion. 'Radical values', or 'radical Islam', the argument went, did not have a place in 'our' society. 'We' had to make clear to Muslims that they have to integrate, because if we do not do that, they will radicalize, and make the transition to terrorism.

The third proposal concerned a ban on, or the *securitization* of, the burkini. And here too, it was made apparent that not the burkini itself, but the meaning attributed to it, was the real issue. It was not the concerned piece of clothing that constituted a threat: it was the religion this piece of clothing was an expression of – 'conservative' Islam - a religion that, once again, was deemed to be incompatible with the values of 'our' democratic society.

The ban on ritual slaughter, finally, while more complicated, also appeared to ensue from the construction of Muslims as the 'Other'. While concerns about animal welfare were definitely present – Green member Sanctorum tried to tackle *all* forms of animal suffering - analysis

revealed that matters of integration and identity were the underlying, driving factors in the much more powerful discourse of N-VA. Parties that adhered to an inclusive construction of Flemish identity did not see a problem at first: Muslims could be part of 'us', and continue to execute religious slaughter, as the common 'rule' of freedom of religion allowed for this – but this changed through the strict juxtaposition of animal welfare and ritual slaughter, and with the increasing perception of Islam as a threat to 'our' values, especially in the wake of the terrorist attacks, which pushed aside first SP.A and OpenVLD, and then CD&V's, concerns about human rights, and led to the securitization of ritual slaughter.

Indeed: from the analysis it appeared that ritual slaughter was securitized only because Muslims were perceived as a threatening 'Other'. In a truly inclusive society, built upon respect for freedom of religion, this would not happen, as the initial stages of the debate made clear: even measures that threatened only the slaughter capacity were then protested against. And while Sanctorum also advocated a ban, based on the equally problematic premise of animal rights' absolute precedence over the human right to freedom of religion, it was the much more powerful discourse of N-VA, constructing Muslims as a threatening 'Other', and Islam as 'cultural discomfort', that securitized ritual slaughter and propelled the eventual ban. Like the other proposals, ritual slaughter was therefore also banned following a value-judgment about an 'incompatible' Islam.

All four proposals, it was argued, thus ensued from the larger construction of Islam as a 'threatening Other', a thesis that is confirmed by the two additional episodes that were analysed. In each of them, Islam as a whole was implicated: it was Islam that led to terrorism, and got 'Muslims' to dance, and Islam that threatened 'our values' by demanding a refusal to shake hands.

Translating this to legal terms, all four proposals, it was shown, would therefore violate the human right to freedom of religion, as not one of them could comply with the criterion of a legitimate aim. While they had different focusses – religious symbols, slaughter, and manifestations in general - each proposal aimed to target manifestations of one religion only, but not because the manifestation itself was considered a threat to a specific legitimate aim, as required by article 9 ECHR. Rather, the threat ensued from the construction of Islam and Muslims as an 'Other', whose values could not be accommodated by 'our' society – something that arguably could be seen as well in the cases of *Dahlab* and *Şahin*. Manifestations thus had to be banned and were securitized following an interpretation of, and value-judgment about, a religion – and such threat construction, we established, violates the right to freedom of religion,

as it unjustly interferes with believers' conscience: it is not because 'we' think a religion is bad, that we can also ban it.

What the analysis moreover made clear, it that these proposals ensued from a discourse that is widespread in Flemish society. Indeed: all proposals were devised by one party, N-VA: the Flemish-nationalist party that is part of both the Flemish and the Federal government, and has for years been the largest party of Flanders, attracting 26 to 32% of Flemish votes.[124] While other parties also showed tendencies to construct Muslims as the 'other' – especially OpenVLD, which took the initiative to review the Constitution, and brought the issue of shaking hands in the spotlight a first time – it was N-VA that took these ideas further, and whose discourse most clearly revealed a construction of Flemish identity, opposed to a threatening Islamic 'Other.'

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 *securitizing moves* analysed, was based on what are considered 'our' norms and values, perceived to be different from those of 'Islam'. 'We', with our 'Western' values are constructed in opposition to the values of the 'other', 'Islam' - a process that Edward Saïd has famously documented 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. And this discourse, he showed, has 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 Civilizations' thesis, first formulated in his 1993 *Foreign Affairs* article. According to this thesis, Western civilization 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 1300 years, and it will continue to do so. Islam, Huntington famously wrote, has 'bloody borders' (1993, 35).

More recently even, a growing body of literature has developed on what has come to be called the 'securitization of Islam'. Several authors (Cesari 2009/2010; Mavelli 2013; Edmunds 2011) have argued that Islam and Muslims are increasingly conceived as a threat in many Western

[124] Winckelmans, 19/04/2017.

European countries. Muslims, others have argued, are growingly perceived as a disloyal 'other' (Ajala 2014; Bleich 2009), a suspect threat to 'Europeanness' (Fekete 2009). Regarding Flanders specifically, Zemni (2006/2011) has argued that Islam was in the process of coming to be seen as *the* obstacle to integration and assimilation, while Torrekens (2014/2015), like Gould (2013), in a discourse analysis of the 2011 – federal Belgian - burka ban has argued that the perceived incompatibility of Islam with Western values played a certain part in this, even if sometimes just as an "easy card to play".

Whatever their names –*Orientalism,* an inevitable 'Clash of Civilizations, the 'securitization of Islam' – all of these pieces of research argue, each in their own way and with different approaches, that Islam and Muslims are, or *should be* in the case of Huntington, perceived as the incompatible 'Other' to Western societies. The results of this research show, from yet another perspective, that in Flanders, such a construction is present as well – and that it has a direct impact on the right to freedom of religion for Muslims. The discourse that N-VA has internalized, and built its version of Flemish identity upon, is one that builds upon the construction of Islam as a 'threat – something Ico Maly (2012) also pointed out in his doctoral dissertation about the discourse of N-VA. Being 'Flemish' is identified with adhering to 'Western values', and defined in opposition to 'incompatible' Islamic ones: not respecting democratic institutions and human rights, but one's values come to define who is part of 'us', and who is the 'other'. And it is this construction that transforms Islam and Muslims into a 'threat' when they are not anymore abroad, but living in Flanders, 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 common rules of the game that a democratic identity should be built on, is not sufficient according to such construction: Muslims cannot be Flemish as long as they adhere to the values that Flemishness 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': this is the *social antagonism* that discourse theory proposes. 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 within 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, in a non-causal way, to repeated proposals, or *securitizing moves*, that would limit freedom of religion. Manifestations of Islam are increasingly deemed incompatible with Flemish identity, and as the evolution of the debate on ritual slaughter made clear, the influence of N-VA's discourse has been great. Their point of view pushed aside the discourse of freedom of religion. And this is an important realization with regard to the other proposals analysed earlier: other parties there too invoked human rights to protest the proposed measures. But as the debate on ritual slaughter shows, this can change. And the recent statements by SP.A, OpenVLD and CD&V might indicate that such change is indeed happening.

In order to safeguard Muslims' right to freedom of religion, and by extension that of other religious groups that would be impacted, it is therefore imperative that an alternative discourse of identity is promoted: one that is truly based on pluralism, inclusiveness, and on the universalism of human rights. 'We' have to accept that we do not live in a uniform society. What matters is not that we all think the same way – it is that we all respect a set of common rules that allow for difference, including difference we disagree with.

This common set of rules is provided by democracy and human rights, which are two sides of one and the same coin, balancing each other in a delicate way. Freedom of religion plays an essential role in this, as *the* human right that carves out a space to challenge others' strongly held convictions – a space that is regulated not by the state, but by conscience. A wise treatment of this human right, that recognizes its value and roots, arguably opens the way to a truly pluralist society, that respects people in their uniqueness: 'we' should accept this difference, as long as it does not impose itself on others.

Only such an identity can truly guarantee a human right to freedom of religion. Without it, the right to freedom of religion will all to easily transform from a human right into a mechanism of limitation in the hands of majoritarians – something that should at all costs be prevented, not just in Flanders, but across the world.

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