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On November 21, 2013, Rasit Bal, president of the Dutch Contact Organ for Muslims and Government (CMO), gave a lecture for local interreligious dialogue groups on ‘The Agenda for the Future.’ According to Bal, closed communities are met with distrust in our society and are framed as a potential threat. The public space is expanding, and it is becoming increasingly difficult to solve problems within one’s own circle. The public space does not allow norms or values to be justified by an appeal to authoritative sources or traditions. “The state has won the battle and religious traditions should adapt,” Bal says. All religious communities are minorities, and religious believers, according to Bal, should be committed to society as a whole and participate in the debate on what is good for society—but not from a privileged position. They are “co-owners” of public space and should refrain from attempts to dominate it. Bal observes that society needs religious communities to create social cohesion, but such cohesion is also being threatened as communities struggle with a growing internal diversity when it comes to the interpretations of traditional norms and values. While some believers tend to uphold tradition, others seek, in Bal’s terms, “authentic” and “liberating” norms that fit in with their experiences as members of modern society.

The interpretation that a community leader like Bal gives of the position of Muslim communities and their members in Dutch society is familiar. What is striking, however, is an unresolved tension he addresses in his speech. He speaks of twin fears: on the one hand the fear—implicit in his description—that many Muslims have of an expanding state and of a public space in which nothing remains hidden from the public gaze, and, on the other, the fear in modern society of religious communities, given the distrust he describes.

Bal is involved in a platform of Jewish, Christian, and Muslim religious leaders debating social issues. But the Muslim community is not often sought out as a participant that could make a valuable contribution to ideas of the good

1 http://www.cmoweb.nl.
4 Bal, “Agenda,” 5
life in society. More often, it is Muslim communities and their spokespersons that are held to account when the majority consensus is offended by certain religiously inspired practices, as we will see below.

Modern secular nation states present themselves as open access societies. No particular cultural or religious community is privileged in the public domain, which therefore becomes a neutral ground where every individual citizen has an equal say. Problems arise, however, when citizens claim space for the religious or cultural practices that are seen in their community as the ‘law of God.’\(^5\) Norms for behavior must be legitimized by a generally shared view of the good life in the public domain, not by an appeal to religious authority. For many, this implies that religiously based behavior should not have a place in the public arena. This is especially clear when the debate focuses on migrant religious communities and even more so when these are Muslim communities. For religious people who want to follow the ‘law of God’ in their daily lives, this creates problems. What exclusions lie behind such a common-sense representation of what it means to be ‘religious’ in a ‘modern’ and ‘secular’ context? What place could the ‘law of God’ have in the public domain?

In this article, I will start by pointing out some of the tensions that arise from marking the boundaries between the public domain and the space claimed by religious communities in modern Dutch society. I will then turn to Talal Asad’s analysis of ‘secularism’ as a disciplinary system that, in effect, excludes religion from the public space. Asad attempts to read the various meanings of secularism, secularity, and the secular state into different Western modern contexts and so presents a view from outside that can help us discover unspoken assumptions behind these terms. Then I will discuss the ways in which the Shari‘a—for Muslims the ‘law of God’—could function in public space in modern nation states, comparing the approach of Asad with that of another Muslim thinker, Abdullahi Ahmed an-Na‘im. I will conclude with a brief exploration of the concept of ‘middle space.’

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\(^5\) Pieter Dronkers has elegantly summed up the different approaches to the tension between political and religious loyalty in liberal political theory, see Pieter Dronkers, *Faithful Citizens: Civic Allegiance and Religious Loyalty in a Globalized Society. A Dutch Case Study*, doctoral thesis (Amsterdam/Groningen: Protestant Theological University, 2012).
The Dutch Debate: Religion as an Individual Opinion

In recent years, Dutch politicians have contributed to the debate on religion in the public domain. One of them is Jeanine Hennes Plasschaert, a leading MP for the Liberal Party, the VVD, at the time of the interview I quote from (March 15, 2011) and now the Dutch Defense Minister. She declares: “Look how France is doing it; there the headscarf is forbidden in public schools. The debate, when do you wear a headscarf? — that’s what I want to conduct.” Hennes Plasschaert would like to prohibit civil servants working behind the counters in municipal offices from wearing headscarves and other religious symbols.

All religions are equal for me in that respect. Universities, schools, I would like a debate about them too. But the Christian parties see this immediately as an infringement of the freedom of religion. That’s nonsense as freedom of religion is covered in so many other articles: freedom of assembly, freedom of opinion. In fact, the article about religious freedom is superfluous. We talk a lot about the separation of church and state, but, in fact, the church has encroached upon the state substantially. Look at confessional schools, the organization of public broadcasting, and—a sensitive issue—this also goes for ritual slaughter.

Hennes Plasschaert is not the only one urging that Article 6 in the Dutch Constitution on the freedom of religion be abolished. At the other end of the Dutch political spectrum, a member of the Socialist Labor Party (PvdA), Paul de Beer, writes that the article on freedom of religion has on several occasions forced the state or legal authorities to evaluate the content of religious convictions. Thus, servants of the neutral, secular state had to formulate theological judgments.

To prevent such an infringement of state neutrality in the religious field, freedom of religion should not be used as an argument in public debate, says de Beer. De Beer is aware that many believers see their religion not merely as

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7 I.e., on the existence of ideologically based schools and universities; see Bessem, “Religieus symbool,” 1.
8 Bessem, “Religieus symbool,” 1 (my translation, GS).
an opinion but as a way of life that prescribes certain forms of behavior. An example he gives is that of a Muslim street coach who refuses to shake hands with women, not because he does not respect women but because his religion forbids him to do so.\(^\text{10}\)

De Beer points out that a state that defends the rights of its citizens to choose their own religion and therefore freedom of individual choice becomes problematical if these individuals subsequently appeal to a collective, the religious community, that determines their actions. Although the choice to belong to a religious community means far more to the adherents of a particular religion than, say, the choice of a holiday destination or brand of cell phone, a judge can do nothing else but treat the appeal to the law of God as another individual opinion.

A street coach ... who is not allowed to shake hands with females ... becomes a *contradictio in terminis*. If religion is a free choice, one can no longer say that one’s religion does not allow one to shake hands with females. What you mean by saying this is that you do not want to shake hands with a female because of your religion. If religion is a free choice, then any behavior and any utterance originating from that religion is inevitably a personal, free choice. And then there is no justification to judge that behavior or utterance legally in another way than you would if they did not originate in a religious conviction.\(^\text{11}\)

De Beer makes it clear that the consequence of the idea of a secular state is that public law can protect the individual but not a religious community that prescribes a certain set of rules for its followers. A consequence of the necessary constraints on the lawgiver’s scope to interpret the law of God is that article 6 of the Dutch Constitution should be expunged, de Beer argues.

De Beer’s article makes it clear that in late modernity, secular public space is a place where free individual citizens and not religious communities are seen as agents. Individual citizens decide together what norms and rules are acceptable for all, creating a public law. The traditional concept of freedom of religion may be at odds with this principle.

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\(^{10}\) De Beer, “Paradox,” 6.

\(^{11}\) De Beer, “Paradox,” 9 (my translation, GS).
In many religious communities, people want to live their lives according to how they believe God wants them to live, according to the ‘law of God.’ For Muslims, for instance, the Shari’a prescribes the way they pray, fast, what they may eat and drink (and what not), how children should behave toward their parents, how marriage ceremonies are conducted, how money is lent. In late modern secular states, the room for such collective religious precepts is limited. Only if they do not infringe on public laws and do not offend public morality, there may be space for the ‘law of God.’ In practice, this may mean that if religious precepts clash with certain majority norms, they should be forbidden by public law.

This is not only a problem for Muslims. Recent debates in the Dutch media have shown the tension between secular society and religious people who live according to religious rules. For instance, the secular legal system has to deal with religious communities that do not admit women to the pulpit or the altar, or with religious schools that refuse homosexual teachers. Recent debates also concern the practice of circumcising small boys, thereby violating the integrity of their bodies.

Legally, as de Beer points out, the lawgiver and judge cannot see religion as anything but an opinion, a set of ideas. De Beer could also have appealed to the Dutch Constitution here. Article 6.1 says: “Everyone shall have the right to profess freely his religion or belief, either individually or in community with others, without prejudice to his responsibility under the law.”12 What Dutch law protects when it protects ‘freedom of religion’ is the freedom to confess a religion or philosophy of life. And confession implies a set of convictions that are chosen by a believer to be his or her guidelines in life. The article does not speak about behavior or actions connected to that choice. In this light, the argument for abolishing Article 6 becomes understandable. After all, a confession may be just another, more formal description of a set of opinions, a view of life that one subscribes to.

Behind the debate about curtailing the freedom to follow religious precepts in guiding one’s behavior lies a certain approach to what ‘religion’ actually is. If religion is indeed a set of ideas, then religious practices are not protected by the Constitution. If, on the other hand, religion can be approached as a disciplinary system, then the article on religious freedom would create more room for religious communities to follow practices that diverge from majority customs than the articles on freedom of opinion and expression do. I will

therefore turn to the debate about the meaning of the word ‘religion’ in order to expose alternative views on the place of religion in the public space.

‘Religion’ versus ‘the Secular’

The question of what ‘religion’ is and is not has become a hot topic, both in the political arena (the debate on freedom of religion) and in the field of religious and cultural studies (the distinction between ‘religion’ and ‘culture’).13 In this debate, critical thinkers point out the close connection between the definitions that are given of religion and secularity. One of the first observers of this connection between views on religion and secularity was the anthropologist Talal Asad. In his book Genealogies of Religion, Asad deconstructs modern essentialist definitions of religion that “separate religion conceptually from the domain of power.”14 Taking his starting point in the definition supplied by the anthropologist Clifford Geertz,15 Asad traces the genealogy of this view, with its separation between the ‘meaning’ of symbols and the social and historical disciplines of power and knowledge in which they function, back to seventeenth-century debates on ‘natural religion.’16

Thus, what appears to anthropologists today to be self-evident, namely that religion is essentially a matter of symbolic meanings linked to ideas of a general order (expressed through either or both rite and doctrine), that it has generic functions/features, and that it must not be confused with any of its particular historical or cultural forms, is in fact a view that has a specific Christian history. From being a concrete set of practical rules attached to specific processes of power and knowledge, religion has come to be abstracted and universalized.17

15 Asad, Genealogies, 29 f: “Religion is a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic.”
16 Asad, Genealogies, 32–39.
17 Asad, Genealogies, 42.
For the lawgiver in secular Dutch society, as we saw, ‘religion’ is indeed a set of meanings linked to ideas of general order, ideas that one can affirm by subscribing to a confession of faith. Such a view paves the way for politicians who reason that religion in the public domain is basically an opinion, not unlike a political or aesthetic opinion, an opinion that every individual is free to develop on his or her own.

Asad contrasts this with a view that was operative in earlier periods in the Christian world when both ‘autonomy’ and ‘choice’ were seen as the result of disciplining practices. As Augustine taught, an act of choice, though spontaneous, must be prepared by a long process of teaching (eruditio), and warning (admonitio), in which there might even be an element of fear and punishment: “Let constraint be found outside; it is inside that the will is born.”

In the religious world of earlier Christians, as well as that of Muslims, Jews, and others, religion was not a matter of ‘faith’ as an autonomous a priori choice of a set of symbols giving meaning to life, but of certain practices that were approved by religious authorities as ‘correct.’ Most believers followed these disciplines without engaging in theological discourse or having clear-cut “conceptions of a general order of existence.”

Thus, what Asad wants to contest is the idea that there is a natural, self-evident connection between the modern categorization of the religious field as being essentially about ideas and the way Muslims or Christians lived their lives before God in other times and places. The historically and culturally located view on ‘religion’ is closely bound up with the secular societies of the West.

In his book *Formations of the Secular*, Asad discusses the relationship between ‘the secular’ as an epistemic category, ‘secularism’ as a political doctrine, and ‘secularization’ as a process that transforms social, cultural, and religious forms of life.

The separation of religion from other institutions (‘church’ from ‘state’) is not confined to modernity. It can be found in medieval Christendom and in the Islamic world, as well as elsewhere. As a political doctrine, however, this separation found its full-fledged formulation in early modern Europe.

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18 Asad, *Genealogies*, 34.
19 Asad, *Genealogies*, 36.
20 As Asad explains in a later publication, in traditional Islamic Shari’a there is no distinction between ‘law’ and ‘morality,’ Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 241.
21 Asad, *Formations*, 16.
22 Asad, *Formations*, 1.
As a political doctrine, secularism arose in Europe after the religious wars in the seventeenth century. It is often presented as the only possible system for creating a political ethics independent of religious convictions, thereby guaranteeing religious peace and the accessibility of all inhabitants of the nation state to the political process. To do so, however, there must be some starting point on which all participants agree. John Rawls has introduced the concept of “overlapping consensus” as such a starting point. The citizens of a secular nation state may come from very different religious backgrounds and may not agree on all points about what exactly ‘justice’ is or what normative codes of behavior they have to follow. But they can find agreement on certain principles of justice (for instance, that one should deal with one’s neighbor in a fair and just way). Such principles are foreground political principles. For a secular state to function, citizens do not need to agree about their background justifications (we do not need to agree why we should be fair to our neighbors), but they do need to have a basic consensus about the foreground political principles.

Drawing on an article by Charles Taylor, Asad analyzes the workings of this concept of overlapping consensus. Taylor argues that there must be more space between the foreground political principles of citizens than Rawls maintains. He paints a picture of constant debate and negotiation between different groups in secular society, not only on the norms and values themselves but also on the question of which norms and values count as political principles and which are background justifications. It is not difficult to connect this picture of constant debate and negotiation with the practice in Dutch society, where ethical questions like same-sex marriage, the treatment of animals, or euthanasia are subjects of an ongoing debate.

Asad comments that Taylor is too optimistic about the outcomes this process has for minorities.

Consider what happens when the parties to a dispute are unwilling to compromise on what for them is a matter of principle (a principle that is justifiable by statements of belief). If citizens are not reasoned around in a matter deemed nationally important by the government and the majority that supports it, the threat of legal action (and the violence this implies) may be used. In that situation, negotiation simply amounts to

the exchange of unequal concessions in situations where the weaker party has no choice.\textsuperscript{25}

The possibility of legal action mentioned by Asad is not a theoretical one for religious minorities in the Dutch nation state. It was invoked when some Christian civil servants appealed to their freedom of conscience when they were asked to conduct marriage ceremonies between same-sex partners. A law was recently passed in Parliament stating that it would be impossible for such conscientious objectors to be appointed as wedding registrars.\textsuperscript{26} A law forbidding ritual slaughter was passed by Parliament but did not reach consensus in the Senate,\textsuperscript{27} and another law obligating general practitioners to refer patients requesting euthanasia to a colleague has passed preliminary hearings in Parliament.\textsuperscript{28} A law banning headscarves for government employees has been a topic of debate in Parliament but was rejected by a large majority.\textsuperscript{29} In these instances, it is not so much the "conceptions of a general order of existence" of certain Christians, Muslims, and Jews that are at stake but the actions that result from them. And it is difficult to see how this could be otherwise in present-day Dutch society. If some acts that offend the majority norms and values should be allowed in the public domain, this would create inequality before the law and therefore go against one of the most sacred values of modern secularist societies. Also, on a more practical level, allowing such differences in practice would lead to a further segmentation and fragmentation of the nation state.

Minorities for whom 'religion' is not so much a worldview as a system of knowledge and power that also entails certain forms of action or behavior cannot go their own way unchecked by the majority consensus on the good life. If they nevertheless want to live by 'the law of God,' what alternatives to the modern secular nation state could be found? A recent study showed that one of the alternatives that appeal to many Muslims is a country where democracy is combined with an Islamic state based on Shari‘a. In other words, in situations where the majority of the population is Muslim, a Shari‘a-based state is, in the

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\item[26] http://www.nrc.nl/nieuws/2013/06/11/grote-kamermeerderheid-maakt-einde-aan-wei
gerambtenaar/.
\item[27] http://www.nrc.nl/nieuws/2012/06/19/eerste-kamer-stemt-tegen-verbod-op-onver
doofd-ritueel-slachten/.
\item[28] https://www.d66.nl/actueel/initiatiefwet-verwijsrecht-euthanasie-ingediend/.
\item[29] http://www.volkskrant.nl/vk/nl/2824/Politiek/article/detail/707588/2004/03/18/Kamer-
wijst-hoofddoekverbod-ambtenaren-af.dhtml.
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eyes of many Muslims, a viable alternative to a secular state. But can such a state be truly ‘Islamic’?

The Impossibility of a Modern Shari’a-based State

In a lecture given in Saudi Arabia, Talal Asad addressed the intellectual legacy of his father, Muhammad Asad. Muhammad Asad (1900–1992; formerly Leopold Weiss) was a Jewish convert to Islam who was actively involved in the debates on the foundation of the Islamic state of Pakistan. Muhammad Asad laid down his ideas about the Islamic state in his book *Principles of State and Government in Islam*. He argues that unanimity about right and wrong is essential for any community, and only religion can provide a permanent and absolute moral basis for such an agreement. For Talal Asad, the concept of the Islamic state his father proposes is highly problematic. One of the reasons why he disagrees with his father in this respect is that religious minorities could not fully participate in the political life of such a state. But Talal Asad’s more deeply rooted objection rests on the theological basis of the idea of a Shari’a-based Islamic state. Modern nation states are sovereign and claim absolute loyalty from their subjects. This is a completely new phenomenon for many traditional Muslim societies, as this type of nation state is the offspring of modernity. For a Muslim, only God can demand absolute loyalty from His creatures. The whole idea of a modern nation state is therefore problematic for Muslims who want to live in accordance with the Islamic *shahada*. Defenders of the idea of a Shari’a-based Islamic state often refer to the Qur’anic precept that Muslims should “enjoin what is right and forbid what is wrong” (*amr bi al-maruf wa-nahy ‘an al-munkar*). This important doctrine, Asad argues, does not require a state that decides what is ‘wrong’ and ‘right.’ Indeed, he tells his Saudi audience, it would be intolerable if the modern nation state would as-

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30 http://www.pewforum.org/2013/04/30/the-worlds-muslims-religion-politics-society_exec/
33 Asad, “Muhammad Asad,” 159.
34 Asad, “Muhammad Asad,” 160.
sume a theological role. As strict monotheists, Muslims cannot subscribe to a political theology in which the state makes decisions about “the morality of a national population.”

The philosopher of law Abdullahi Ahmed an-Na’im, of Sudanese descent, also argues against the application of Shari’a law as the codified law of nation states with a Muslim majority population. An-Na’im points out that, traditionally, Shari’a (a theological concept) and its application in fiqh (more a collection of case-law decisions than a law code) belonged traditionally to the domain of religious scholars and jurists, not to the state. By nature, actual rulings based on Shari’a law are diffuse, ambiguous, and contradictory and therefore liable to manipulation by elites. An-Na’im might agree with Asad that the problem is not the ‘law of God’ in itself but the present-day context in which it is brought into the political process: it is precisely because Shari’a has been made into something that it had not been hitherto (a law code, applied by a sovereign nation state) that Shari’a was perverted into something encroaching on the freedom that is essential to religious Muslims in their relationship with God.

Muslims everywhere, whether minorities or majorities, are bound to observe Shari’a as a matter of religious obligation, and ... this can best be achieved when the state is neutral regarding all religious doctrines and does not enforce Shari’a principles as state policy or legislation.

According to An-Na’im, only constitutionalism, based on human rights, in a secular state is able to ensure the right relationship between God and human beings as it guarantees the complete freedom of religious choices made by Muslims. If an individual is not free in his or her decision to follow the path of God, then his or her faith cannot be sincere.

In a modern sovereign nation state, therefore, Muslims, as well as others, need to be protected in their rights, not by a modern adaptation of Shari’a law, however modified, but by a secular constitution. To prevent pressure groups from taking over the apparatus of the state, constitutionalism, human rights, and free access to public debate, together with the free exchange of ideas, are

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36 Asad, “Muhammad Asad,” 162.
38 An-Na’im, Secular State, 108.
39 An-Na’im, Secular State, 3.
40 An-Na’im, Secular State, 137.
necessary.\textsuperscript{41} An-Na’im points out that the advocates of a state based on Shari’a law invariably present a distorted picture of what Shari’a actually is. He gives the example of Pakistani Islamist Abu al-A’la Mawdudi, who explicitly advocated a totalitarian state along the lines of a fascist/Soviet model.\textsuperscript{42}

If a Shari’a-based modern national state is a barrier to the right relation between a Muslim and God, and if he or she experiences resistance when following Shari’a precepts as a minority in the West, then the question is how a Muslim today can live according to the ‘law of God.’

Re-defining the Public Domain: Complex Space?

In his lecture on Muhammad Asad, Talal Asad briefly addresses the way Islam may be brought into the public debate:

It therefore seems to me that for Muslims the possibilities of ‘political Islam’ may lie not in the aspiration to acquire state power and to apply divinely authorized law through it but in the practice of public argument—in a struggle guided by deep religious commitments that are both narrower and wider than the nation state. Politics in this sense is not party politics, it is not a duel between pre-established partial interests: it is about values in the process of being discovered (or rediscovered) and formed (or reformed) within complex traditions. It presupposes openness and readiness to take risks in confronting the modern state that the state (and party politics) cannot tolerate. This politics may confront the liberal state by opposing particular policies through civil disobedience, or even by rising up against an entire political order.\textsuperscript{43}

For Asad, it is the modern sovereign nation state, the guarantor of a political order that thrives on greed and growing militarization, that Muslims should oppose and confront—in both Western and so-called Islamic states. In this struggle they should form alliances with non-Muslims, accepting that the heterogeneity and diversity of different communities are here to stay. Does this form of ‘public argument’ help us find ways in which Muslims, Christians, and Jews can live under the ‘law of God’ in a secular nation state?

\textsuperscript{41} An-Na’im, \textit{Secular State}, 92.
\textsuperscript{42} An-Na’im, \textit{Secular State}, 292.
\textsuperscript{43} Asad, “Muhammad Asad,” 162.
An-Na’im gives a more optimistic view of the possibilities for religious communities to be engaged politically in the secular public space. Although some Western nation states do promote “a hegemonic idea of national culture” in the moral domain, the state should ideally leave a maximum of space for associations of citizens to debate moral issues. For the state can never be the final source for morality. Secularization can be effective only if the state itself has limited moral claims to make and does not operate as an arbiter in situations of disagreement. Citizens should be able to enter into the debate on policy and legislation on the basis of what An-Na’im calls “civic reason.” This is a reasoning that the large majority of citizens in the state can accept or reject. “Civic reason and reasoning, and not personal motivations, are necessary, whether Muslims constitute the majority or the minority of the population of a state.”

‘Civic reason’ resembles what Rawls calls “public reason,” but An-Na’im shares Habermas’ criticism of how Rawls sets up an impermeable boundary between the private and the public domains of social life. For Rawls, politics are confined to the public domain. Habermas points out that, in actual fact, other spaces than the public domain, like the arenas offered by NGOs, trade unions, or churches, can be important places of debate on the order and direction of society. They are not institutions of the state but active partners in the political debate. An-Na’im distinguishes between the state and politics. The state has to do with the exercise of power, with legal punishment and warfare. Politics, on the other hand, is a continuing public struggle between various contenders. For An-Na’im, public space is the place where people from different backgrounds try to explain to one another what the common good is. Muslims can do this, using their own Shari’a precepts but translating them into a common ‘language.’ According to Shari’a law, for instance, demanding interest on loans is haram. Muslims are free to follow the precepts against requiring interest. They could, for instance, create an interest-free banking system. However, if they want to persuade others that an interest-free economy should be the object of public policy or legislation, they need to give other arguments.

44 The French banning of headscarves in public schools “illustrates how secularism can be invoked as a hegemonic idea of national culture to the exclusion of other identities ...” (An-Na’im, Secular State, 41).
45 An-Na’im, Secular State, 8.
than “Interest is not permitted by our religion.”49 So, the Muslim participants in the debate on the common good should try to reach common ground with others, and, in doing so, they have to translate the principles of Shari’ā into a common language.50 But An-Na’im does have an important proviso in his argument for a form of public space that allows minorities to live according to the ‘law of God’: human rights should provide the framework for civic reason. He addresses the tension that may arise from this: some rulings of the traditional Shari’ā are not compatible with important human rights like equality between men and women or that of non-Muslims and Muslims.51 He is optimistic, however, about the possibility of overcoming these tensions. He points out that the traditional interpretations of Shari’ā are human, not divine, and that there has always been the possibility of an ongoing process of re-interpretation and adjustment of Shari’ā precepts.52

An-Na’im wants to uphold the universality of human rights, although he points out that, like Shari’ā law, human rights are the outcome of human efforts and struggle and therefore not unchangeable. The original charter of human rights was laid down by Western nation states, and these rights can become universal norms only through a global consensus-building process in which different participants within as well as among cultures have their say.53 If one were to treat either Shari’ā or human rights as solid blocks, the acceptance of either one or the other would suffer in our modern pluralistic nation states. Only by concentrating on the difficult and dynamic process of negotiation and interpretation can we resolve the dilemmas of diversity.

We can conclude that An-Na’im, like Asad, questions the secular liberal notion that the introduction of religious and moral questions into the public arena would result in chaos and that in a secular state people can engage in political debate only by leaving their religion at home. For An-Na’im, civic reason compels Muslims to enter into the debate on the good life with others. They need to use terms and arguments in that debate that are understandable and acceptable to others. But Muslims should not be asked not to talk about Shari’ā in the public arena or not to follow it either in their private lives or in the public domain. In other words: space should be made for Muslims to use Islamic banking systems, to eat and drink what is permitted by Shari’ā, or to create Islamic forms of mediation for Muslims with marital problems. Ideally,

49 An-Na’im, Secular State, 93.
50 An Na’im, Secular State, 95.
51 An Na’im, Secular State, 109.
52 An Na’im, Secular State, 112.
53 An Na’im, Secular State, 114.
in modern Western states, this should not pose a problem. In a secular state, Muslims and other believers have free access to the public debate, and the state is neutral in regard to the religious practices, the law of God they want to follow, either in their private lives or in the public arena. In reality, however, the individual European countries react very differently to the emergence of elements of Shari’a in European public space. This is partly so because there is no consensus about what ‘public space’ really is.

Kim Knott points out that, whereas ‘public space’ in political theory is perceived as neutral, homogeneous, and passive, in reality it is fragmented, powerful, active, and dynamic. She also states that there are many images of what ‘public space’ should be in a secular state. If we trace the debate about the neutrality of public space back to the time of the great religious wars in Europe in the 17th century, we can distinguish two different ways of stating its neutrality. Knott calls the first a ‘common ground’ strategy: in spite of religious differences, there is a sort of neutral common ground where the communities can meet and negotiate about society as a whole. In this view, religious communities each have a space of their own that is neither completely public nor completely private, and the secular public space is the space between these communities. The second strategy sets up a secular public space as an alternative to religion as such: the ‘independent political ethic’ strategy (Grotius, Hobbes). Here, the public space of secularism is qualitatively different from the (private) spaces of religious communities. The only way to obtain peace between rival religious systems is to leave the public space as empty of religion as possible. There has always been a mix of both views in the different European countries. The way this mix is constructed differs from one country to another. In France, with its system of laïcité, more stress is laid on the ‘independent political ethic’ strategy, whereas in England, with the strong role granted to the Anglican Church, the state creates more space for religious communities in the public debate. The Netherlands has traditionally had a model that verges toward that of overlapping consensus. Recently, however, the representation of the ideal public space as empty of intermediate organizations of citizens and the ensuing erosion of the tolerance of different/deviant behavior is increasingly influential. This creates problems for religious people who want to live their lives in line with the law of God. Therefore, a strong ‘independent political ethic’ strategy is less desirable if religious people are to give full expression to their citizenship in secular society. Is the ‘common ground’ strategy the line one should follow, then?

54 Knott, Location, 43.
55 Knott, Location, 66.
In fact, the actual public space in many modern European nation states in the past has often been a ‘common ground’ type of area. The Netherlands, for instance, had the ‘pillar’ system: the Protestant, Roman Catholic, Socialist, and Liberal communities were each seen as a different pillar, together supporting the building of society but from separate starting points. The leaders of the pillars would meet in the middle space and reach consensus. This model gave space to religious and other communities to participate in the public debate as communities, a middle space between ‘public’ and ‘private.’ The pillar system no longer works, however. People no longer feel a strong commitment to their religious or ideological community. Leaders of the communities have to deal with growing internal diversity, and this gives increasing power to the state, which acts on behalf of the greatest common denominator of the population. The ‘common ground’ strategy works best when there are strong interest groups many people can identify with. In the postmodern era, with its many transient communities, this is not likely to occur. Advocates of secular public space as a kind of middle space between the state and individuals must find other means than the traditional pillar system to achieve this space.

An example of such a renewed plea for a middle space is a lecture by the former archbishop of the Anglican Church, Rowan Williams, in 2008. Williams drew attention to the possibilities of implementing elements of Shari’a family law on a voluntary basis as a supplement to secular family law. In an article on the controversy that arose about this proposition, Vincent Lloyd states that Rowan Williams and other critics of secular liberal forms of political theology, like John Milbank and Gillian Rose, argue for a ‘politics of the middle.’ In such a politics, it is not the sovereign (secular, liberal) state that is the center of theological deliberations—deliberations that either offer a theological basis for that sovereignty or deconstruct such attempts:

Rather than affirming the sovereignty of the secular liberal state, offering a genealogy of that sovereignty, or offering an alternative conception of sovereignty, a politics of the middle does away with the concept of sovereignty altogether. Instead of focusing on a secular liberal subject in relation to an all-powerful state, or a Muslim subject in relation to all powerful Allah, a politics of the middle focuses on the myriad intermediary associations between the individual and some higher power.

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In this conception, the state should not assume a transcendent role but should instead be seen as a mediator between different communities.

Lloyd points out that for some theologians of the middle space, public space is not an empty market square but a complex building full of structures under construction. The theologian John Milbank uses the image of a Gothic cathedral. Different groups of workmen and architects are constructing their own chapels and belfries in nooks and crannies, often in competition with other groups. Their work is never quite finished: the complex space they add to is fragmentary, and there is no a priori harmony in their attempts. What is the role of the state in such a building-in-process? Lloyd suggests that the state may have to step in as an arbiter whenever major disagreements arise between groups working from different premises. In this image, the state fulfills the role of a nexus of master artists, advising local workmen how to harmonize their efforts with the whole. The image of public space as ‘gothic space’ is attractive. It differs from the previous image of communities as different ‘countries’ negotiating in a no-man’s-land because it makes more allowance for the dynamics involved. The Dutch pillar system provided religious communities with a place in the political debate—but at the cost of immobilizing them. Traditions became static, and religious communities concurred with their leadership. If religious communities could be seen as groups of builders rather than as teams of negotiating diplomats, there would be more room for change and movement.

Yet Milbank’s ‘gothic space’ is a rather optimistic and harmonious picture of the political middle, as Lloyd comments. More often, the middle ground between public and private space is a “broken middle”: “The broken middle focuses on intermediary institutions that are always getting it wrong, that are always in tension with those that compose them, with each other, and with those other organizations of which they are components.” There is a difference, for instance, between the officially professed beliefs of religious communities and the way these are lived out by their members. Instead of happily contributing to the cathedral, the workers are engaged in struggles within and between their communities. Communities are often not built solidly but are makeshift constructions. This brings to mind the proviso An-Na’im made about the contingent nature of formulations of ‘the law of God’ in the Muslim community. The Shari’a was developed during centuries of negotiation and reinterpretation. Up till now, the community of religious and legal scholars was

58 Cf. Asad, Genealogies, 179.
59 Lloyd, “Complex Space,” 239. The term ‘broken middle’ comes from Gillian Rose.
responsible for its development, but, lately, new voices can be heard urging new interpretations—the voice of female scholars, for instance. If we accept the strategy of the middle space as a solution for the problems religious people have to live according to the law of God in the secular public space, we should not try to view religious communities as happy harmonious wholes but as struggling and constantly evolving entities, debating and negotiating both internally and externally. These debates are not only about conceptions and ideas but also (and for the most part) about practices in everyday life. Allowing space for these debates in the public domain would not lead to harmony and social peace.

If one looks at the principle of freedom of religion from the perspective of the ‘middle space’ interpretation of secularism, ‘religion’ could mean more than “conceptions of a general order of existence.” There might be more space for members of Muslim communities in Europe to practice the precepts of Shari’a (in its various interpretations) in their daily lives, as well as for Roman Catholics to use elements of canon law, or for Jews to apply precepts from the Shulkhan Arukh. This would certainly not result in a lessening of tensions in society, and in that respect the middle space is always a broken middle. Some precepts of ‘the law of God’ might, for instance, be in contradiction with the publicly approved and applied norms about the equality of men and women. Moreover, which members of the community have the authority to decide how ‘the law of God’ of a particular community should be applied? There is great internal diversity in Muslim, Jewish, and Roman Catholic communities.

Hence, there must be some provisos in the ground plan of the cathedral. One can only allow forms of ‘the law of God’ in secular nation states if adherence is be absolutely voluntary and if any member can always opt out of her or his community. Individuals can opt out of or into different jurisdictions—a difficult choice—thus combining their ability to choose with the discipline and commitment that group membership requires. The groups in turn must be in a continuous state of negotiation between their traditions and the requirements of their members, a process that could ultimately be benevolent as it calls for a process of “transformative accommodation.”61 Why should this difficult road toward a broken middle space be preferred to a ‘laicist’ option? Because this model offers the opportunity to all citizens in modern nation states to truly combine their rights and duties as citizens of nation states characterized by diversity with their calling to follow what they hold most sacred, for some the law of God.

Conclusion

Starting with the struggle of a Dutch Muslim community leader, Rashid Bal, with the tensions his community experiences in the public space, we looked at different approaches to ‘religion,’ ‘the secular’ and the differentiation between them. If religion is defined in an essentialist way as ‘a symbolic system’ giving meaning to the world, then this definition excludes approaches to religion that allow for the importance of religious practice. For many believers, religion is a ‘way of life’ that is closely connected to forms of behavior determined by other fora than the forum of public debate. They want to follow the ‘law of God’ that is given and interpreted in their religious community in their daily lives. I have shown how two Muslim thinkers, Asad and An-Na’im, argue that ‘the law of God’ should not be conflated with a modern nation state using Shari’a rulings as basis for public law because in that case a modern nation state assumes transcendent power. The ‘law of God’ does, however, require the active engagement of Muslims in the political process. If these Muslims are living in a minority situation in the West, they, like members of other communities, should try to open up the public space to religiously based arguments. Even more so, they should claim space (the middle space) for the exercise in public of relevant religious practices, seeing the public arena not as an empty square but as a building to which each community is actively contributing. But communities engaged in the collective building up of public space cannot remain static. They need to engage in continuous internal negotiation within their religious communities, negotiating between transmitted traditions and authoritative interpretations and the requirements of their members in the present context, between their views on society and those of others, between the freedom to apply their own disciplines and a ‘transformative accommodation’ to the norms of society, knowing that the space in which the law of God operates is, on this earth, always a broken middle space.

Maybe this is what Rasit Bal too means when he concludes his lecture on the participation of Muslim communities in Dutch society. In his final words, he discusses the possibilities of co-operation between the Muslim, Christian, and Jewish groups in which he is involved:

Two topics are at the center: how should we relate to each other, and what does it mean for our own identity if we travel together? We constantly do this on account of a concrete societal problem, and we strive for a common approach, interpretation and statement. The second perspective that is a point of focus is how we as religious traditions can relate to politics, the state and public space. How can we be present in public
space and contribute in a meaningful way? I can see that the people involved connect their norms to this, all the while putting them in perspective, working within this framework and reinterpreting them. That is very promising.62

**Bibliography**


