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Some Constitutional Remarks on Tolerance in The Netherlands

In Response to Jonathan Israel¹

In my opinion, foreign reflections on Dutch developments and phenomena are absolutely necessary and useful for a proper understanding of the typical, rather special, and in many ways deviating history and culture in The Netherlands. An example of such a reflection is Professor Jonathan Israel's *The Dutch Republic: Its Rise, Greatness and Fall, 1477-1806* (1998).² Israel has made it clear that during the sixteenth and seventeenth century the religious toleration in the Dutch Republic must be characterized as a situation of status quo between conflicting confessions and theologies. He has also pointed out that this position changed substantially as a result of revolutionary and democratic developments in the United States, France and Britain in the period 1775-1800. These countries surpassed the Dutch Republic in freedom of conscience and religious non-discrimination – a very convincing analysis, as far as I am concerned. Nevertheless, I would like to share some additional constitutional observations.

In The Netherlands, state development has been a very peculiar process. Our state and constitution developed totally different from that of the surrounding European countries. At the end of the Middle Ages, England, France and German territories scaled up to absolute monarch states, and from there to unitary states with the Rule of Law, Separation of Powers, Human Rights and a system of parliamentary democracy. This constitutional progress was very much influenced by political philosophers like Niccolò Machiavelli (1469-1527), Thomas Hobbes (1588-1679), John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778), who created fundamental new constitutional theories and concepts of power, authority, sovereignty and legitimacy.

But this constitutional advancement did not occur in the Low Countries. The Dutch territories in the Middle Ages were characterized by very particular social and administrative structures, with a great number of different customs and rights. When The Netherlands became a part of the

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Spanish Empire of Charles V, the people in these parts, for the first time, were forced to get used to all kinds of reforms in order to establish central governmental authority. However, they were not prepared and certainly not willing to give up their privileges on local and regional structures and cultures in administration, taxes and law-ruling. In my opinion this is what triggered the political leaders in these parts to start a revolt against the lawful, but foreign king Phillip II of Spain.

Essentially, this was a conservative revolution. To succeed, the Republic – although a new political entity – had to match these traditions and conventions. Therefore, it was an atypical political society in all sorts of ways. This meant that there was no constitution, no head of state, and no central organization. Instead, there were deeply rooted political and administrative traditions of cooperative, consensual and collegial forms of local and regional governance. The Republic was a mixture of opportunistic constructions and inconsistent improvisations, without any clear perspective, except to maintain the status quo.

I hope this illustrates the interesting paradox of this conservative revolution in The Netherlands. The preservation of the privileges on domestic political and social traditions, customs and cultures, on the one hand, had to be enforced from the legal authority by means of a legitimized revolt on the other hand. In order to obtain a certain justification for this Revolt, the Provinces had to clarify that the king had lost his right to be the lawful ruler of the Provinces. By enforcing the recognition of the catholic religion, followed by religious prosecution and heavy taxes, he had illegitimately violated the earlier recognized rights and privileges of the local authorities. The Union of Utrecht (1579) then registered the agreement of the seven Provinces to bind themselves to a joint defense, and tax arrangements in order to provide the means, but also a guaranteed freedom of conscience and religion. This was the starting point of the long cherished believe in Holland as a tolerant nation.

The decline of the Republic at the end of the eighteenth century was followed by an invasion of "liberating" French armies. From a constitutional point of view this period is interesting because it brought an external drive for a very substantial modernization of the political and administrative structures. The first Dutch Constitution of 1798, which was very much influenced by the ideas of the Enlightenment and the French Revolution, was the most modern and inspiring constitution we ever had: sovereignty of the people, the rule of law, a separation of powers, the separation of

church and state, constitutional and human rights, the unitary state and parliamentary legislation.

However, the revolutionary élan, the vitality and the distinctive perspective on a new concept of state and society did not endure. Political and social unwillingness and administrative practical barriers prevented this advanced, but as foreign perceived, idea to really incorporate in our country. At the start of the constitutional monarchy in 1814, The Netherlands – unfortunately – in many ways returned to their entrusted institutions and patterns from the former Republic.

Since then, our Constitution can be described as a "polderconstitution". It is a formal and rigid constitution, with hardly any constitutional standards and principles. This gives the political and religious minorities the opportunity to maintain the political status quo, in order to protect their interests. But it is certainly not an inspiring and social cohesion-supporting document.

These constitutional observations lead me to two the following questions: to what extent can or must the Dutch freedoms of conscience and religion still be explained as a principle-based and well considered choice for an explicit establishment of fundamental constitutional rights? And to what extent can we still persist that The Netherlands once were, and perhaps still are, a leading nation in tolerance?

As far as the first question is concerned, I would say that the declaration of the principle of freedom of religion was mainly motivated by political goals and considerations, and not by a fundamental choice for religious tolerance. The Revolt had to be justified, not only in The Netherlands, but also to the world. And therefore the issue of religion became part of a pragmatic strategy. Although the catholic belief was not accepted anymore by the leading Protestants, the issue of religion had to be defined in terms of non-prosecution. This paradox of non-acceptance and non-prosecution was necessary in order to get as much support as possible for the revolt against the catholic king.

With regards to the second question I would say that we are absolutely not a country with a principle-based tradition of tolerance. We simply are not a nation with a great interest in fundamental principles or abstract-philosophical core-values. Nor are we that much down to earth, as we would like to think. In general, this country and its people are rather characterized by a pragmatic attitude of a mutual acceptance of the many existing social, geographical, cultural, religious and political minorities. This is a land of

many minorities. In order to maintain a society, we have to preserve some kind of peaceful co-existence.

Now that the so-called sectarian and top-down pillar system, recognizable by the statement "To live and let live", collapsed in the silver sixties, it has become much more difficult to apply the pragmatic wisdom of practical tolerance. Actually, the Dutch tolerance can or even must be described a value-neutrality, as Allan Bikk wrote in his "Tolerance as Value-Neutrality in the Seventeenth Century Dutch Republic" (2007).³ I think this very much summarizes it. For a long time we have accepted that we have to deal with and get along with many religions, many cultures, many political parties, many newspapers, many broadcasting organizations, etc. For a long time we have made ourselves believe that this is the crux of a tolerant nation. But in doing so, we have framed ourselves more than that we have acted on it. During the last fifteen years or so we have seen the rise or emancipation of the so-called silent majority. The commercial broadcasting organizations, the social media and populist politicians have given them a voice. As a result, they now express their opinions without any restraint. The so-called truth (their truth) has to be told. The so-called truth about refugees, the Islam, the elite, politicians, judges, bankers, CEO's, the European Union, global economy, etc.

My concern is that I can hardly see any aspect of tolerance in the political and social debate of today. What I do see is a growing polarization and hardening in the discussions, with growing uncivilized and even aggressive expressions of discontent and hate. I don't think that we now experience the legacy of a consistent national character of tolerance and sobriety. Even if we once were a nation of true and real tolerance, we seem to have lost it somewhere along the way. In my opinion this is a serious cause for concern.

Notes

1. Speech at the University Colloquium in response to Professor Jonathan Israel (Groningen: *Studium Generale*, 4 november 2015).
2. J. I. Israel, *The Dutch Republic: Its Rise, Greatness and Fall, 1477-1806* (Oxford: Clarendon Press, 1998).
3. A. Bikk, "Tolerance as Value-Neutrality in the Seventeenth Century Dutch Republic," this was written as a paper for the seminar *The Dutch Republic and Britain: The Making of European World Economy* at the University of Massachusetts in 2007, the full paper is available at: <http://www1.umassd.edu/euro/2007papers/bikk.pdf>.