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INTRODUCTION:
LEGAL REGULATION OF RELIGION IN THE NORDIC COUNTRIES

Abstract

The NOREL program compares the role played by religion in the public sphere in five Nordic countries – Denmark, Finland, Iceland, Norway and Sweden – between 1988 and 2008. This introductory article places the five NOREL project articles in this issue of The Nordic Journal of Religion and Society in the wider context of recent debates on relations between religion and state in Europe.

Keywords: Nordic countries, religion-state, constitution, legislation, comparison

Introduction

Church-state relations constitute a classical topic in the sociology of religion, as well as in the related disciplines of church history and ecclesiastical law. Traditionally, the discussion of church-state relations has belonged in specialized journals (for instance Church and State; Ecclesiastical Law Journal; Journal of Church and State; European Journal for Church and State Research; Religion, State and Society) and has been considered marginal to larger debates on law, history and society. In recent years, however, church-state relations have been reformulated to ‘religion-state relations’, and these issues have moved center-stage (Fox 2008; Madley and Enyedi 2003; Madley 2009; Robbers 2001, 2005; Sandberg 2008). They have also become an important variable in the analyses of, for instance, immigration and integration policy, the welfare state, and democracy (Manow and van Kersbergen 2009; Oorschot, Opielka and Pfau-Effinger 2008; Minkenberg 2008). Religion-state relations have also become an increasingly important element in debates on Islam in Europe, in particular in relation to the discussions on accommodation to or the governance of Islam in European countries (Maussen 2007; Monsa and Soper 1997; Haddad 2007). This change may in part be attributable to a general return of religion to the academy (Ebaugh 2002); but the feeling is widespread that the religion-state settlements arrived at in the nineteenth and early twentieth centuries are currently undergoing renegotiation as a result of develop-
Religion-state relations in Europe: the need for a new approach

Church-state relations in Europe were traditionally discussed in terms of three categories: systems with a state, national or established church (for example, the Nordic countries, England, Greece, Bulgaria); those with a separate church (for example, France, Netherlands); and those that are cooperationist or concordatarian (for example, Spain, Germany, Italy). This categorisation is now almost routinely dismissed as «outdated» (Ferrari 2010: 152) and «hampered by reliance on old stereotypes» (Madeley 2009: 282), and it has been argued that this kind of scholarship «itself has become a barrier to the understanding of church and state relations in Europe» (Sandberg 2008: 329).

The problems are twofold. First, the categories used are not accurate. The Nordic countries (maybe excluding Sweden) are routinely categorized along with, for instance, Greece as systems with state, national or established churches. But as Russell Sandberg of Cardiff Law School argues:

> The high degree of state control found in Denmark, where the Danish National Church has no Synod, no legal personality, and is not a corporate body, has little in common with the Greek Orthodox Church which has its own legal status as a legal person and where the self-government of the church is guaranteed by the Greek constitution (Sandberg 2008: 331).

A sharp distinction between countries with separate churches, countries with concordats, and established churches is too rigid to fit current European realities. The fact that Sweden, since disestablishment in 2000, tends to be excluded from categorization altogether exposes this problem (Sandberg 2008: 331). Second, the categories of separation, concordats and establishment status were constructed for the purpose of discussion of church-state relations, and for obvious reasons do not accommodate description of the general theme of religion and state. European states – states in general – deal with religion in multiple ways. A simple one-dimensional scale representing the relationship with one particular religion will not suffice.

Methods and data

This volume of *Nordic Journal of Religion and Society* presents articles from Denmark, Finland, Iceland, Norway, and Sweden on changes in the legal regulation of religion 1988–2008. This research has been conducted as part of the on-going NOREL program, funded by NOS-HS (the Joint Committee of the Nordic Research Councils for the Humanities and Social Sciences) and directed by Inger Furseth, comparing the position of religion in the public sphere and the changes it has undergone over the past twenty years in the Nordic countries. The program involves four focus areas: religion-state relations; religion and politics; religion and the media; and the role of religion in
civil society. The NOREL program is based on a previous study led by the Swedish sociologist of religion, Göran Gustafsson, also funded by NOS-HS.

The focus of the Gustafsson study was religious change in Denmark, Finland, Iceland, Norway and Sweden, 1938–1978 (Gustafsson 1985, 1987). Data was collected on a broad range of issues, including the areas of legislation, religion and politics; religion in the media; and religion in public institutions. In addition, a local community study was conducted (Gustafsson 1987). By contrast, the NOREL program focuses more specifically on the role of religion in the public sphere. As noted above, data have been collected within four areas: religion-state relations, religion and politics, religion and media, and religion in civil society. In all areas, great care has been taken to collect data that allow for longitudinal comparisons with the Gustafsson study, whenever possible. Due to the changes in this area, the focus on the public sphere, and increased manpower resources, new indicators are added in the NOREL program that will not be comparable back to 1938.

Within the area of religion-state relations three areas are under study: legal regulation of religion, the role of religion in public institutions (educational institutions, hospitals, military, and prisons), and the presence of civil religious rituals and rhetoric. The five articles in this volume analyse the first group of indicators, on the legal regulation of religion. Regulation refers to «the process of directing or controlling things in accordance with rules» (Beckford and Richardson 2007: 397). In comparison to the Gustafsson study, the NOREL program focuses more on minority religions and uses a more comprehensive concept of legislation, investigating administrative practices in implementing legislation whenever possible. The potential lump of material is therefore quite substantial, which is why material relating to the other two indicators (the role of religion in public institutions and the presence of civil religious rituals and rhetoric) is only sparsely included in the articles in this volume. Other omissions include systematic attention to the regulation of religion at the local level and the rulings from court cases (at all levels) relating to religion. All these (and potentially even more) could have been included as indicators of religion-state relations in the Nordic countries, and might have added depth to the current presentations. Some material might, however, add unhelpful ambiguity about exactly what data they represent. An example of this is provided by a study comparing prison chaplaincy in Denmark and Norway. While the system of prison chaplaincy in Norway reflects general policies on religion, in Denmark it is at odds with the general system of regulation of religion, as the employment of prison imams arises out of the needs of the prison system rather than general policies on religion (Furseth and Kühle 2011). Because the NOREL is first and foremost a comparative project, it is important that data is as comparable as possible.

The mainly legal material used in the articles constitutes a specific kind of data. Most countries in the world mention religion in their constitutional acts (Beckford and Richardson 2007: 403). Although, like all legal documents, constitutions may not correspond to an actual state of affairs, as they may either lag behind or race ahead of social realities (Demerath 2001: 201) and tend to present idealized pictures of conditions in society (Beckford and Richardson 2007: 403), they do express a message to
citizens about how legislators regard relations between religions and society. Laws on religion also set up opportunity structures for the different religions to navigate within.

The Gustafsson study focused on the years 1938, 1958, and 1978. The years were to be regarded as ‘markers’ rather than ‘absolute points’, which meant that data in other years were included whenever relevant (Gustafsson 1987: 148). Similarly, the NOREL program pays particular attention to the years 1988, 1998 and 2008. Again the years are markers rather than absolute points, as changes in legislation as well as in discourse are often discontinuous and may not be reflected in these particular years.

From secularization to pluralization: changes for religion and state?

At the time of the Gustafsson study, most scholars considered secularization to be an inevitable consequence of modernization. Secularization provided the initial starting-point of the Gustafsson study, but the research team, consisting of one scholar from each country, had methodological and theoretical reservations and ended up preferring the concept of religious change to secularization as such. Summarizing and comparing the material on church-state relations collected by the research team, Gustafsson presented three results.

1. Church autonomy

First, in terms of constitutional aspects of church-state relations with established churches, he found the Nordic countries exceptionally similar (Gustafsson 1987: 145). A distinction was made between the state churches in Denmark, Norway and Iceland (with a very low degree of church autonomy) and the more autonomous churches in Sweden and Finland. Gustafsson described this as the historical product of the two «state configurations» of Denmark/Norway/Iceland and Sweden/Finland at the beginning of the nineteenth century. When freedom of religion was established in these countries in the second half of the century, synods were established for the Evangelical Lutheran Church in Finland and Sweden, whereas in Denmark, Iceland and Norway all formal power of the majority church was left with the state. In Finland, church and state have been formally separate since the country’s first Constitutional Act of 1919, which established Finland as confessionally neutral, and the Freedom of Religion Act of 1923, which guaranteed freedom of religion for all. Informally, however, a close relationship continued between the Finnish state and the two national churches, the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church (although with larger degrees of autonomy than was the case in the other Nordic countries). Gustafsson argued that in the period under study (1938–1978) the historical East Nordic / West Nordic pattern came under challenge and there was a move towards more autonomy as church-state relations in Norway and Iceland moved towards the Swedish situation, through the establishment of the Church Assembly of Iceland in 1957 and of the synod of the Church of Norway in 1984 (Gustafsson 1987: 157). Evangelical Lutheran Church of Finland, by contrast, almost nothing had happened in Denmark, the country
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with least church autonomy, Gustafsson used the word «divergence» to describe the developments. He added, however, that the 1980s had seen some tendencies to convergence (1987: 157, 162). The different trajectories were explained by reference to differing cultures of theological self-interpretation and religion in general in these countries (1987: 147, 178).

2. State protection of Christianity

Secondly, Gustafsson suggested that «state protection of Christianity and the regard granted to specifically Christian conceptions has decreased in the North» in the period 1938–1978 (Gustafson 1987: 165). This was particularly the case in Sweden, where the blasphemy clause had been repealed; it was less true of Iceland, where relatively illiberal legislation on religious holidays prevailed.

3. Freedom of religion for religious minorities

Thirdly, freedom of religion had been codified in Norway and Sweden, and laws against discrimination on basis of faith had been implemented in Denmark, Iceland and Norway (Gustafsson 1987: 165).

Since the conclusion of the Gustafsson study, more recent studies on religion in Europe are increasingly pointing to a new situation, characterized by flux and transformations, caused by what may be referred to as globalization (Berger, Davie and Fokas 2008; Byrnes and Katzenstein 2006). The Italian professor of law Silvio Ferrari (2010: 155) suggests that the growth of religious pluralism and public role of religions has immense consequences for religion-state relations. According to Ferrari,

… changes are too many and too close in time to be explained as simple coincidences: one has the impression that the socio-religious transformations of Europe have at last been noticed by the national legal systems, which have entered a process of adaptation of their content to the new situation (2010: 152).

According to Ferrari, the convergence of the religion-state systems of the European Union may be seen in the development of a pattern of widespread freedom of religion, without equality of religion. For Ferrari, the common European model, connected to a European model of modernity, means a general development away from both state churches and atheistic states, towards general support for church-state systems comprising «a moderate involvement of States with religions» (2010: 155).

The modernist neglect of the state

Ferrari’s idea of European states developing relations with religions is part of a general shift of research agendas towards the growing realization that modernization processes have not entailed the complete separation of religion and state. On an empirical level, this is supported by a worldwide survey of religion-state relations, which found that only the United States would score a total zero on all variables for state regulation of
religion (Fox 2008: 134). On a theoretical level, it represents a criticism of the idea of
the modern state as innately secular, conveyed uncritically by, among others, Charles
Taylor. It also represents a criticism of the related idea of the state as clearly separated
from civil society, an idea which has been foundational for most attempts to theorize
religion in the public sphere, for instance in the work of Habermas and Casanova. This
criticism is voiced in the work of the British sociologist of religion, James A. Beckford,
who contests the claim, in the British context, that the state is always easily distinguish-
able from civil society. Often the boundaries between what is state and what is civil
society are blurred (2010: 125). Beckford finds that the division of labor between polit-
ical science and sociology has led sociologists (and sociologists of religion) to employ
too simplistic ideas of the state, overlooking the work the state is doing in terms of con-
structing, controlling, and interpellating ‘the faith sector’ (Beckford 2010: 129–30).
This concern is shared by the British sociologist John Madeley, who suggests that
European religion-state relations could usefully be framed in terms of the tools of gov-
ernment used by the state. For this purpose Madeley presents a scheme which he calls
TAO, which categorizes the European states by the tools that are used to govern reli-
gion: treasure (economic and financial linkages), authority (the matter in which the
state shares or concedes authority to religious bodies) or organization (countries with
a government department or unit concerned with religious affairs) – or a combination
of these (2009: 285).

In order to embark on research programs like Madeley’s, new types of data on reli-
gion-state relations need to be collected in addition to traditional data. The opening of
the theoretical framework that is currently taking place must be supplemented with
carefully collected empirical data in the search for a «theoretically driven empirical
investigation» (Enyedi 2003: 225).

The five articles in this volume attempt to take some of the first steps towards a
deeper understanding of religion-state relations in the Nordic countries, moving
beyond simplistic negligence of the way modern states relate to religion.

Notes

1 As a country undergoing a substantial economic crisis, Iceland has seen a noteworthy rise in the
importance of civil religion and is for this reason included in the chapter on Iceland.

2 See Madeley (2009) for a criticism of how Charles Taylor in his ‘magisterial’ book A Secular Age
(2007) dismisses state interactions with churches as «a ‘no-brainer’- something so obvious as to
raise few questions of much interest» (Madeley 2009: 275).
References