The main theme of this article is the relation between state and church and state and religion in Norway, with a special focus on the constitutional changes that were adopted in 2008. Analysing material such as the Constitution, legislation, administrative regulations and public reports, the question is whether these relations evolve in the direction of disestablishment and disconnection of state and religion. On the one hand, the relations between state and religion are viewed in terms of a drive for more religious autonomy and equality. On the other hand, they display the state’s continued involvement with religion, in part to support religion and religiosity in general as an allegedly positive force in society, and in part to sustain the continuation of a strong cultural religion in Norwegian society. As a result, the ongoing processes of change can hardly be described as disestablishment.

Keywords: State church, disestablishment, religious communities, Church of Norway, Constitution, religious freedom, religious equality, privileges

Introduction

The relations between state and church as they are defined in the Constitution and legislation are currently changing in Norway, and by implication, this might also apply to the relations between state and religion. Zsolt Enyedi (2003:219) has suggested that changes in the direction of secularization, separation and differentiation of religious and political institutions mark relations between state and church on the European political scene, although in a non-linear manner. Does this description fit the Norwegian situation as well? In this article I explore the relations between state and church, and more generally between state and religion in Norway. I am specifically interested in the extent to which the expected legal changes likely to ensue from the political agreement of 2008 indicate accelerating disestablishment and disconnection between state and religion. I will argue that the picture is twofold: on the one hand, there is a slight change in the direction of disconnecting the state and the established church, although not nearly emphatic enough to suggest a general disestablishment. On the other hand, there are clear indications of an intensified involvement of the state in religion, fuelled by the idea that religion might contribute positively to society, and an
interest in sustaining cultural religion as a (allegedly) widely shared heritage and tradition.

Methodologically, the article analyses legal texts such as laws, regulations, decisions and the Constitution, but also political decisions and register data.

A dominant feature of the larger societal context throughout the period between 1988 and 2008 was that Norwegian society became less religiously monolithic. The membership rate in the Church of Norway dropped from nearly 90 per cent to 80 per cent of the population. Furthermore, the group comprising non-members of the Church of Norway is also changing in a way that challenges a hegemonic, protestant-secular religious culture. Protestant free churches, with a long history in Norway, are declining. The Roman Catholic Church, world religions outside Christianity – especially Islam – and the religiously non-affiliated are growing (Schmidt 2010). These changes can at least partially be explained by migration and a corresponding ethnic and cultural diversity. From 1988 to 2008 the number of immigrants and children born of immigrants has tripled, from 160 000 to 500 000 (Statistics Norway 2011). Many originate from countries with a different religious profile than Norway. Immigrants with Eastern European backgrounds and immigrants with a background from Asia, Africa or Turkey represent the greatest increase. Needless to say, this also increases religious plurality, and creates a completely different societal and cultural context for the relations between state and religion. Conditions for membership in the Church of Norway, however, have remained unchanged and do not explain the drop in the membership rate. Baptism is the general condition for membership. Children below 18 are considered to belong to the Church of Norway if one or both parents are members, and have not notified the church registrar otherwise, and then become members if and when baptized (Church of Norway Act, section 3).

Perspectives on religion and law

When studying the relation between law and religion both can be viewed as independent variables (Richardson 2009). Taking religion as the independent variable allows us to see how religion might underpin and affect legislation, but also how religious groups make use of legislation and legislative processes for their own good and well-being within a society. Taking the law as the independent variable draws attention to how legislation regulates religion and provides religious groups and communities with both burdens and benefits.

Different interpretations of the Norwegian and other state-church systems exemplify these two approaches. Human rights theorists have typically criticized this system for violating the right to free exercise of religious faith, for example when it is dictated that bishops and deans are to be selected by the King, i.e. the Council of State (Høstmåling 2005). This interpretation focuses on legislative constraints on religion and religious practices that are potentially incompatible with the right to freedom of religion. Other theorists from the field of sociology of religion have claimed that although the Norwegian and Nordic state churches represent a formal integration of state and
religion, they are functionally secular states with secular politics (Demerath 2007). This description looks for and expects to find manifestations of a formal integration between state and religion in the state’s legal decisions and bureaucratic administration. Finding few such manifestations, the conclusion is that the Nordic countries, including Norway, are in effect secular states.

Whether or not the state’s relation with church and religion constitutes a state church can hardly be answered simply by yes or no. It is better understood as a continuum between two extremes. One extreme is a situation where a religious community or institution, such as a church, is entirely integrated in the state administration and bureaucracy. The other extreme on this continuum is a religious community or church that is completely independent from the state and its institutions (Smith 2006, see also Fergusson 2004:168–169). How any given church or religious community is located along this continuum depends on various empirical indicators. Three variables are particularly relevant: a) How the state recognizes religious communities – the state church and others; b) how autonomy is balanced against intervention, and; c) how this relation distributes privileges and burdens and thereby promotes or impedes equality.

However, these variables are not sufficient to capture the ongoing changes in the relations between state and religion in Norway. Additionally, one should ask how the ongoing changes affect religious equality in a way that points towards the state’s withdrawal from or its active involvement in and support of religion and religious communities. A further relevant variable for understanding the relation between state and religion in Norway is how the Constitution and legislation relate to the position of the Church of Norway in tradition, culture and history. Does the Constitution underpin or protect a particular cultural position, or is this left outside the scope of legislation? A useful notion in this respect, as I will explore more closely below, is N.J. Demerath’s (2001:227) concept of «cultural religion», which refers to what he sees as a prevalent form of religion, with less weight on personal conviction and commitment, and more on sustaining identities by connecting with a cultural heritage. The interesting question is whether constitutional or legislative measures are used to promote cultural religion. To anticipate the analysis below, it seems that the proposed changes to the Constitution and other legislation are attempting to strike a pragmatic balance between respecting and even encouraging a plurality of religious communities, and protecting a particular position of cultural and historical prominence for the Church of Norway.

State and church: Constitutional cornerstones in transition

The Constitution, which defines the basic relation between state, church and religion, currently establishes the following key elements: a) the Evangelical Lutheran religion is defined as the official religion of the state, combined with the right – added in 1964, cf. below – of all inhabitants of the realm to freely exercise their religion (Article 2); b) the Constitution requires that the King professes, upholds and protects the Evangelical-Lutheran religion (Article 4), and that he c) ordains all public church services and public worship, meetings and assemblies. In short, it defines the King as the head of
the church (Article 16) so that; d) the King therefore appoints all senior ecclesiastical officials, that is, bishops and deans (Article 21) and; e) half the members of the Council of the State shall profess the official religion of the State (Article 12) in order to form the so-called ecclesiastical Council of the State, which deals with matters related to the Church of Norway. This constitutional framework has remained largely unchanged since the founding of the Constitution in 1814 and, needless to say, also between 1988 and 2008.

Important changes to the organizational structure of the Church of Norway have occurred during these two decades, but only within the existing constitutional framework. After lengthy debate and several reports, a process was started in 1980 to transfer extended internal governance to the Church of Norway and its own organs. In 1984 the General Synod was established to exercise delegated authority over internal questions, with the National Council as its operative body; in 1988 the doctrinal commission was set up as an independent organ to address doctrinal matters, and in 1996 the Act relating to the Church of Norway (Church of Norway Act) was passed. This Act guarantees wide self-governance for the local church by identifying the parish as a subject of legal rights and duties, by defining a local, elected council within the church structure at the municipal level, and giving it authority over finances and employer responsibility, which formerly rested with the local authorities.

That the Constitution at this point has remained more or less unchanged since 1814 does not mean that its provisions have not been debated. Throughout the twentieth century the issue of a free church independent of the state has repeatedly been addressed in public and ecclesial commissions. The concern for religious freedom and religious equality did not have prominence in this debate until the 1970s. The debate actually commenced much earlier than 1948, which Gustafsson (1985:241) indicates as its beginning. Already in 1911 a public commission presented a split vote, with a minority vote supporting a free, publicly funded folk church. But the conclusion was and continued to be to modify the church organization within the existing constitutional framework.

But in 2008 what appeared to be a potentially radical change to this pattern occurred. In April 2008, a government report was submitted to the Storting after a nearly decade-long, intense debate amongst the general public, the Church of Norway, and other religious and life-stance communities, and within political institutions. The crux of this report was a mutual agreement between all political parties represented at the Storting to support constitutional amendments during the 2009–2013 parliamentary term. The general perception is that these adopted amendments would make the Church of Norway more independent vis-à-vis the state. The condition for this was, however, that within 2011, the church would successfully reform itself to solidify its democratic foundation, and increase participation and involvement in elections and governance of the church. Major milestones in this reform would be the elections for the church councils in 2009 and 2011.

According to these adopted amendments, the Evangelical-Lutheran religion will no longer be constitutionally defined as the state’s official religion. The sections concerning the King’s ordinance in church affairs, the provisions that half the members of the
Council of the State must profess the state’s official religion and that bishops and deans are selected by the state will be repealed. Furthermore, the relation between state, church and religion will be constitutionally defined in a new Article 16, containing four sub-sections: a) religious freedom for all citizens; b) the Church of Norway, an Evangelical-Lutheran church, shall retain its position as the folk church of Norway, and is as such supported by the state; c) its order/structure will be determined by law, and; d) all religious and life-stance communities are entitled to public support proportional to the Church of Norway.

Do these amendments imply that the period from 1988 to 2008 ends with an accelerated process towards disestablishment in the relation between state and church in Norway? In the following I answer this question by concentrating on the variables listed above: state recognition of church and religious communities, autonomy versus intervention, equality, support and cultural privilege.

Recognition of church and religion: Forms and thresholds

The current Constitution defines the Evangelical-Lutheran religion as the official religion of the state and establishes the right to religious freedom for all inhabitants of the realm (Article 2). For reasons that are still being debated, the right to religious freedom was not guaranteed in the original Constitution of 1814, even though there was in fact a proposal to that effect. This right was not introduced until 1964, which obviously does not imply that freedom of religion was denied prior to this time. An important legislative step in the history of religious freedom in Norway was the repeal in 1842 of the so-called Edict of Convents from 1741, which had regulated religious life outside the formal congregations very strictly. Its repeal implied that lay church members were now allowed to preach publicly and to form congregations without the parish minister’s knowledge and control. Another decisive step in introducing religious freedom in Norway was the passing of the so-called Act relating to Dissenters in 1845. This Act allowed Norwegian citizens to withdraw from the established church and form Christian communities outside governmental control, although at the cost of the denial of some of their civil rights. In 1851, Jews were allowed to enter the realm, but not until 1891 were non-Christian religions allowed (Breistein 2003:49–51). Jesuits were not allowed until 1956.

According to the political agreement from 2008, the provision in Article 2 concerning an official religion of the state will be repealed. But the wording in the amended Article 16 still implies a specific recognition of the Church of Norway as Norway’s folk church, a recognition which will define it as an established church.

Other religious communities and groups are not thereby excluded from recognition by the state. They can attain recognition according to the Act relating to Religious Communities, etc.² (Religious Communities Act), and the thresholds are low. Registration by the County Governor is granted for a religious community provided it fulfils certain formal requirements and if «its activities and doctrine do not conflict with the law or with public morals» (section 13). The formal requirements are submission of an
exclusive and identifiable name, and relevant information such as address, leaders, membership requirements, doctrines and creeds, and activities. There are no other requirements with respect to membership, activities, history or doctrine. Religious communities may be struck off the register if they no longer fulfil the conditions for registration or fail to meet their statutory duties, such as submitting an annual report. In 2010, more than 500 religious and life-stance communities were listed by the respective county governors as registered communities in the Brønnoysund Register Centre (the public register authority in Norway).3 This, however, also includes regional and local units within the same national community who might be registered in addition to their national organization. In comparison to the other Nordic countries, Jehovah’s Witnesses is a registered community under this Act, whereas Scientology has been denied registration, apparently because there are doubts as to whether it meets the criteria of a religious community. Their formal appeal is currently being considered by the Ministry of Culture. There are sporadic instances of religious communities being denied registration, but almost always on formal grounds, for example, for failing to provide sufficient and satisfying documentation regarding doctrine, name, leadership, conditions of membership and so on.

Autonomy versus control and coercive intervention

An important dimension of the state’s recognition of church and religion is how it administers autonomy versus control and coercive intervention. This not only affects church and religion, but potentially also the state. The constitutional definition of an official religion of the state in Norway has not, at least not in recent years, been understood to restrict the state’s legislative powers, other than in matters relating to the Church of Norway. In the early 1980s, a Church of Norway minister protested against the newly introduced abortion legalization by abandoning the civil duties of his office. When the case was brought before the Supreme Court, he claimed that the state had violated its constitutional obligations according to Article 2, which, as he saw it, compelled the state to legislate in accordance with Evangelical-Lutheran doctrine. This argument was unequivocally rejected by the Supreme Court, which ruled that the Constitution merely confines the state’s legislative powers in matters pertaining to the Church of Norway, but not in other areas (NOU 2006:2 Staten og Den norske kirke, 40–41).

Constitutional and legislative restrictions on autonomy rather work the other way around, affecting the established church, and its organization and activities. The most significant, at least symbolically speaking, and also the most contested and criticized, is the state’s selection of the Church of Norway’s senior ecclesiastical officers, i.e. bishops and deans. On more than one occasion over the past twenty years this power has been used by the state to appoint bishops who did not receive the majority vote in the preceding nomination process within the church. This article will be repealed pursuant to the adopted amendments to the Constitution.
Another potential infringement on church autonomy has been observed by the legal scholar Eivind Smith (2006), who focuses on the right of a church or religious community to determine its doctrinal basis. For the Church of Norway, this right rests with the state. The Constitution requires – and will continue to do so – that the church remains Evangelical-Lutheran. The symbolic books are defined in the Norwegian Act of 1687, and changing them requires a legislative amendment and is not within the Church of Norway’s authority.

The King’s ordinance in church affairs (Article 16) also confines the church’s autonomy. Although authority over a wide range of issues has been delegated to the church bodies over the last three decades, this is a delegated authority which must be executed under the auspices of the delegating power – the state – and which can in principle also be revoked.

The state intervenes legislatively with the established church, not only through the Constitution, but also through the legislative power of the parliament, especially through the Act relating to the Church of Norway. The current Act regulates the fundamental organizational structure of the church, organizational units and elected councils, membership, voting rights and financial liabilities. The church’s autonomy is constrained when these matters are legislated by the state and not by the church. The political agreement and the changes expected to follow from it will not only not reduce the state’s authority regarding legislation of the basic church order, but will make it constitutional. The extent to which the state will actually intervene coercively through this Act will depend on its scope and range. Church leaders have repeatedly underlined that this should be a brief, legal framework, leaving a wide range of legal issues and matters in the hands of the church. How the concrete balance between church autonomy and legislative intervention by the state will be solved at this point remains to be seen.

In addition to being a religious community, the Church of Norway is also integrated within the administrative bureaucracy and as such is subject to legislation and administrative regulations that apply to the state bureaucracy in general. This includes legislation such as the Civil Servants Act, the Public Administration Act and Freedom of Information Act. This general, legal regulation of public services and bureaucracy is obviously not intended as coercive intervention in church affairs. The implication, nonetheless, is that the activities and administration of the church must comply with the state’s administrative authority and regulatory framework. These restrictions on church autonomy will also remain after the proposed amendments, and the Church of Norway will maintain its double character of public administration and religious community.

The recognition of the Church of Norway laid down in the current Constitution and legislation entails constraints on its autonomy in terms of selection of leaders, basic organizational framework, doctrinal basis and administrative regulation of organizational activities. And although the pending constitutional amendments will remove some of these constraints, they will preserve or even symbolically reinforce others by making them constitutional.

The state’s recognition of religious and life-stance communities only requires that their doctrine and practices do not conflict with law and public morals, which in prac-
tice has not in itself been viewed as intervention in their autonomy. But questions as to how far the state can legitimately put legal constraints on religious communities have also been raised in connection with other legislation, especially in such areas as gender equality and anti-discrimination, and its relation to the internal values and practices of religious communities.

Until recently, the Gender Equality Act had an exemption clause according to which its prohibitions on differential treatment did not apply to religious communities. Similarly, the Working Environment Act (2005) included a clause which exempted organizations or corporations that had the explicit objective of advocating a particular political or cultural view from the general prohibition on enquiring about political views, sexual orientation and living arrangements, provided the required information was justified by the nature of the job position being applied for. In other words, the law was made non-applicable to certain types of corporations and organizations.

This has recently been amended. Differential treatment is permitted only if it serves a justifiable purpose, does not disproportionately affect those treated differentially and is necessary for executing the profession and position. There is no general exemption from the prohibition against gender discrimination. The same applies to differential treatment proscribed in the Working Environment Act for such reasons as political opinions, union membership, sexual orientation or age. Employers may only inquire about political views, union membership or type of cohabitation provided such information is related to the nature of the position, and has importance for the realization of its objectives. Unless religious communities can provide justification based on the objectives of the community, as well as on the nature of the position or profession, they will have to comply with general legislation which prohibits differential treatment and the collection of information on job candidates’ biographical details. This limits but does not eliminate the religious communities’ right to differentiate between men and women or against people in same-sex partnerships in certain roles, functions or offices. Widely shared values, such as equal treatment and non-discrimination, are expected to bind the activities and practices of religious communities, unless they can justify, in a way that is acceptable to a larger community, how and why an exemption would be legitimate in a specific case. This restriction on religious communities’ autonomy must, however, be evaluated in relation to the privileges they have access to, which will be considered below.

But legislation might also protect expressions of religious freedom, as hinted at by the distinction between religion and legislation as the independent variable. The Public Holiday Act defines the holidays that are celebrated by the Church of Norway as main holidays, with regulations on public order, and with restrictions on public arrangements on Sunday morning. There are, however, multiple exceptions and a relatively liberal practice in granting dispensations. Employees who belong to another religious community have the right to leave for up to two days in connection with holidays observed in accordance with their religion, pursuant to the Religious Communities Act (section 27 a). The employer can, at the same time, require that these days are compensated for by working on other days instead.
Protection of religious groups from hateful speech by placing restrictions on free speech has recently been heavily debated in many countries, including Norway. The Norwegian criminal code used to ban insulting and scornful speech and actions against religion, i.e. blasphemy. No one has been charged under these laws since the 1930s, but the Rushdie affair and especially the Mohammed cartoons brought this debate front and centre, where some wanted to maintain legislation against blasphemy, while others wanted it repealed all together. Following a general revision of the criminal code, the blasphemy law was eventually repealed in 2009.

State, religion and privileges

*Material privileges related to funding and politics*

Another dimension in the state’s involvement and interaction with the established church and other religious communities is the way in which it confers privileges. Whereas the state’s constraints on autonomy relate to religious freedom, privileges relate to religious equality.

Financial subsidies are clearly one of the important privileges the state provides. The Church of Norway is predominantly funded by the state. Salaries for ministers and senior ecclesiastical officials, and for regional and central church administration, and costs incurred from large national reforms, are paid directly through the state’s national budget (in 2009 amounting to NOK 1600 million – € 204 million). Expenses for wages for other personnel, investments and running expenses for church buildings, administration, as well as for graveyards, fall under the responsibility of the local church councils, and they receive financial support from the local authorities for this, in 2009 amounting to NOK 2300 million (€ 294 million) (Ministry for Government Administration, Reform and Church Affairs 2010). This includes costs for administration and maintenance of burial sites and graveyards (in 2009 approximately NOK 652 million € 83 million), which normally are the responsibility of the local parishes, although financially covered by the local authorities. All types of public subsidies, national and local, are funded through general tax revenue. There is neither a church tax nor a membership fee. Some additional and earmarked funding for specific activities comes from the church’s own funds (based on land and properties) and from local donations.

According to the Religious Communities Act, religious and life-stance communities are entitled to financial support in proportion to the support given to Church of Norway, based on membership:

Registered religious communities are entitled to an annual grant from the Treasury. The grant shall be proportionately approximately equivalent to the sum budgeted for the Church of Norway, and shall be calculated on the basis of the number of members of the community (section 19).

Religious communities entitled to state grants are also entitled to corresponding grants from the municipalities where members of that community live, calculated on the basis of the locally budgeted appropriations to the Church of Norway. And when large national church reforms, such as the democratization reforms or religious education
reforms receive funding from the state, other religious and life-stance communities receive proportional support. State subsidies can also even be obtained by religious communities which for various reasons are not registered, according to the Act relating to Allocations to Religious Communities (1981)\(^4\). The condition is that they have a minimum of 500 members and do not «violate the law or normal standards of decency» (section 1). For 2010, the subsidy received from the state per member was NOK 378 – € 46.\(^5\) A total of 656 (on a local level) religious and life-stance communities received subsidies in 2010.

In principle, this would seem to prevent the occurrence of inequalities between religious communities with respect to state subsidies, but the situation is more complicated than that. First, the level of financial support received by religious and life-stance communities has in principle been derived from the state’s subsidizing of the Church of Norway, as a kind of reimbursement. Critics claim that this creates an inherent asymmetry, where subsidies for religious communities depend on the established church’s financial appropriations and level of support. Second, not all subsidies received by the Church of Norway are included in the calculation base. For example, extra costs related to maintenance of listed church buildings are not included. Third, the sheer size of the Church of Norway will imply proportional advantages relating to church buildings, administrative costs, and so on, that are not effectively compensated for by proportional financial subsidies to much smaller communities. Fourth, a more practical objection derives from the fact that incorrect membership lists in the Church of Norway and religious communities prevent exact calculation of financial support. Furthermore, religious communities with many migrant participants complain that participation is much higher than their membership lists indicate. For example, the Roman Catholic Church claims to have a large attendance of migrant workers who come to Norway under the EEA rules but do not enlist as members and are therefore not included when calculating funding. Finally, even though this system does not benefit some religious communities over others, it does indirectly benefit those who belong to such communities over those who are not affiliated with any church, religious or life-stance community, currently 10 per cent of the population. One could argue that this is in fact a widely accepted principle of the welfare state. Citizens are required to contribute to common welfare goods, such as public schools or health care services whether or not they benefit from these goods themselves. In Norway, NGOs within sports, culture and other fields receive public support through tax revenue from all citizens. The conclusion seems to be that the state does not embrace a principle of neutrality \textit{towards} organized religion and world-views, although it has to some degree adopted a principle of neutrality \textit{among} organized religions and world-views (Audi 2000:37).

According to the expected amendments, a general responsibility for the state to support the Church of Norway and other religious and life-stance communities on the same scale will be constitutionally guaranteed (St.meld. nr. 17 (2007–2008) Staten og Den norske kirke).

The total amount of subsidies received by the Church of Norway, as well as the earmarking of funds for specific purposes, is subject to the general positioning over resources that is always part of the political budget processes. This has occasionally led
to complaints about state intervention in the church’s autonomy to set its own priorities. Nonetheless, the Church of Norway has so far preferred guaranteed and relatively stable and predictable state support, with some restrictions on budgetary autonomy, to financial independence with less fiscal security and predictability. For religious communities, the subsidies are not earmarked for specific purposes, only for a general purpose related to the community’s activities (Religious Communities Act, section 19; Act relating to Allocations to Religious Communities, section 1).

The question is occasionally raised as to whether these relatively generous subsidies can justify placing demands on religious communities with respect to their practices, doctrines and values. Government reports on the state’s relation to religion reflect this issue when they emphasize that faith and world-views are a common good in society. Religions and world-views help sustain a sense of belonging, they contain and communicate values and uphold and transmit traditions, and should therefore be considered as goods in a society (St.meld. nr. 17 (2007–2008): 18, 74). This has been seen to represent a shift or at least an expansion in justification for state support of religious communities. Whereas these subsidies used to be justified by the concern for equal treatment of religious and life-stance communities in relation to the Church of Norway, the concern is now also for the state’s interest in and obligation to actively support religious life and religious communities (Leirvik 2009). But this expansion in justification links state subsidies with the religious communities’ contribution to a common good. When religious communities seek exemption from legislation with respect to gender equality or anti-discrimination based on their right to religious freedom, to what extent could the public funding they receive justify that this exemption is denied? No religious community has apparently yet been denied subsidies they were entitled to, but on a few occasions there have been threats to withdraw financial support mandated by other Acts or regulations for youth organizations within religious communities that were explicitly rejecting gay job candidates. Does a relatively generous state funding for religious communities justify society’s expectation that these communities do not oppose widely accepted values? The conclusion to this question is still open, but the state appears quite reluctant to use the access to financial support as a means of exerting pressure and indirectly constraining religious communities’ autonomy.

Access to public positions and offices could be another privilege associated with the state’s relation to church and religion, but there is little of this in Norway. What has attracted wide attention is obviously the constitutional provision that half the members of the Council of State, including the Minister of Church Affairs, must profess the official religion of the state and be members of the Church of Norway. This clearly exemplifies what Robert Audi has called limitations on opportunities due to a lack of preferred religious affiliation (Audi 2000:36). The more curious consequence of this is that ministerial department of church affairs has moved between several ministries, depending in part on the Minister’s affiliation. Most recently it moved from the Ministry of Culture and Church Affairs, to the Ministry of Government Administration, Reform and Church Affairs, apparently because the newly appointed Minister of Cultural Affairs was not a church member. Although this provision and the privileges it provi-
As for members of the established church will be repealed, the minister responsible for church affairs will still be required to be a member of the Church of Norway.

Beyond this, members or representatives of the Church of Norway or other religious communities do not have privileged access to or formal representation within public councils, committees or advisory boards (unlike some countries).

Symbolic privileges related to affirmation of hegemonic position

The economic and political privileges considered so far are in a sense material and tangible, mandated by the state and clearly defined with respect to content and scope. The state controls the privileges it distributes and the extent to which they entail differential treatment and inequalities. But focusing exclusively on these formal and tangible privileges and inequalities does not fully capture how the established church or religious communities might be privileged through other kinds of involvement between state, church and religion. As described above, the agreed amendments to the Constitution will repeal the definition of an official religion of the state. But rather than eliminating it, it relocates a privileged position for the Church of Norway in a constitutionally guaranteed position as Norway’s folk church. The public reports which surround and precede these amendments present two justifications for continuing a specific constitutional recognition of the Church of Norway. One objective is to ensure that the Church of Norway continues to provide a clear and constructive contribution with respect to tradition, culture, values and faith in local communities, as well as society at large (St.meld. nr. 17 (2007–2008) Staten og Den norske kirke:66). The second is to preserve a sense of belonging for the large group of church members. It is repeatedly said in this government report and other essential documents that changes in the relation between church and state must not jeopardize the Church of Norway as a religious home for the majority of the Norwegian population, a place where they feel they genuinely belong (St.meld. nr. 17 (2007–2008):19, 66).

Obviously, this objective is neither created nor maintained by the words in the Constitution. It has evolved through long historical processes and a complex interplay between political power and decisions, on the one hand, and cultural traditions on the other. And it continues to exist by virtue of affirmation and recognition from the members, a fact that is manifested in the relatively high membership rates, wide use of the church’s services and absence of widespread and profound opposition to the church and its practices. But although the Constitution neither creates nor specifies any legal implications of this privileged position, it is more than a mere observation of a fact. The privileged position that follows from its position as the majority church with religious, historical and cultural hegemony is firmly set in the textual repository of the Constitution, which gives the church the state’s legitimization and affirmation in an exclusive way. The effect of this may not primarily be of a legislative nature – it is not even certain that it will have particular legal implications, other than the rather indeterminate responsibility for the state to support the Church of Norway and other religious communities on an equal basis. The privilege does not lie in material legal, political or economic benefits, but in the constitutional affirmation of the symbolic association in
tradition, culture and minds, whereby the state church stands out as a hegemonic and self-evident backdrop for religious affiliation, values and life for the majority in Norway. The Constitution, and thus the state, symbolically affirms and reinforces a particular societal significance and function for the Church of Norway among religious and life-stance communities.

Towards disestablishment in Norway?

Zsolt Enyedi’s (2003) hypothesis that changes to state and church relations in Europe are marked by secularization, differentiation and increasing disconnection, only to a very limited degree captures the current situation and pending changes in Norway. Some elements undoubtedly point in that direction, primarily the fact that the Constitution will no longer define an official religion of the state, that there will be no constraints on the religious affiliation for members of the Council of the State (other than the minister for church affairs) and that bishops and deans in the Church of Norway will no longer be selected by the state, nor will the King be the supreme authority of the established church.

But it would be wrong to describe this as a linear process of disestablishment. Other features point in the direction of continued and even reaffirmed and reinforced bonds between state and church, and between state and religion. The system of financing religious communities indicates how religion and religious communities are considered to be matters of interest to the state. This interest does not follow solely from commitment to equal treatment. It is increasingly driven and shaped by the idea that religion and religious communities are conducive to common goods. And it is with the potential of contributing to the general welfare and well-being in a thriving society that these communities evoke the interested action and support of a state that is far from neutral towards religion. What religious communities apparently have to accept in return, however, is that the question about the relationship between their values and practices, and widely accepted and acclaimed values in society at large, will repeatedly surface in the public debate as potential criticism.

With respect to the Church of Norway, it is even clearer that the development is not moving unequivocally in the direction of the disestablishment and disconnection of state and church. It will still be recognized in the Constitution as Norway’s folk church, belong to the state administration and be defined by Norwegian law, and it will still be mainly publicly financed. It is also very likely that it will continue to be responsible for burial sites, their maintenance and administration, on behalf of the public authorities. All in all, the state will continue to have an established church with which it will remain closely interrelated.

I maintain that these ongoing but modest and somewhat reluctant changes are largely impelled by a combined desire to heed deep-seated values and ideals of religiously plural modern democracies, such as a secular state and religious freedom and equality, and to preserve what N.J. Demerath (2001) has called cultural religion. This term denotes what Demerath sees as a widespread form of religion and religiosity, with
less weight on personal conviction and commitment, and more on creating and sustaining identities by providing connections with a «passive cultural heritage». Cultural religion takes the form of a more tacit, self-evident backdrop of tradition, history and sense of what binds people together in a shared community, but with, as Demerath puts it, «a lapsed indifference to the core practices around which the community originally formed» (2001:227–228). It is a form of religion usually thought to typify state churches and their combination of high membership rates and relatively high participation in life rituals, but comparatively much lower participation in such activities as frequent and regular church going. Demerath maintains that this form of religion can in fact be an important force in society (2001:59). In Norway, cultural religion is obviously closely related to the Church of Norway and its long-standing position as a religious affiliation for the majority of the population and intertwinement with the nation state and its history.

As mentioned above, the aim to maintain not only an unchallenged religious affiliation for the majority of the population, but also a source of values, traditions and cultural heritage, is used to justify the continued establishment and constitutional recognition of the Church of Norway as the nation’s folk church, with its entitlement to the state’s support. Only on the condition that cultural religion, in this sense, is not jeopardized can changes to the state’s relation with its established church be accepted. The underlying assumption is that this significance of the church for society depends on its relation to the state. Unless the state retains some kind of relationship with and recognition of an established church, its significance and status for the population, society and culture in Norway may deteriorate. This might in itself be a questionable assumption and it has not been substantiated, but the important point here is to note the kind of argumentation that seems to underpin the relations between state, religion and church in Norway and (constrain) modifications thereof. Compared to the analysis offered by Knut Lundby in Gustafsson’s study of the Nordic situation in 1980, the relations between state and the established church, as well as between state and religion, now follow an additional line. In his analysis of the Norwegian situation regarding the relation between state and church, Knut Lundby contends that it is formed by two lines: the principle of religious freedom, and the understanding of the Church of Norway as part of the state bureaucracy (Lundby 1985:165). Now a third line has been added and has merged with and to some extent taken over the concern for the church as a state bureaucracy. That is the concern for the Church of Norway’s potential as a religious home for the majority of the population and an important repository of shared culture, tradition and values, combined with the concern for other religious communities’ contribution to the common good of society.

The Church of Norway has apparently accepted this kind of argumentation, although with moderate enthusiasm. Its status as placeholder for cultural religion in Norway, combined with its role as a community of faith, is widely acclaimed and apparently accepted as justification for receiving specific recognition by the state. But the fact that it will also continue to be part of the state administration rather than subject to legal rights and duties has evoked strong criticism among its leaders, with the claim that this can merely be a transitory arrangement awaiting a more consistent and perma-
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ent solution. But the often heard scepticism against established churches, namely that their vitality is stifled and they risk alienation from their identity as religious communities as they melt into a wider culture and society, are not the main objections the Church of Norway. It is not the status as cultural religion, nor the fact that it is constitutionally affirmed and legitimized by the state that evokes criticism, but rather the ever present possibility of the state’s coercive intervention in the church’s life and organization.

Other religious communities have complained that although the Church of Norway has an unrivalled position as a cultural religion in Norway, other religious communities also contribute to important common goods in society and foster their members’ allegiances to society at large. And, they claim, their contribution goes largely unnoticed in comparison to the function ascribed to the Church of Norway in this respect. The fact that the pending changes to the relations between state, religion and church have, in spite of these criticisms, received relatively wide acceptance could be indicative of the fact that the established church as well as religious and life-stance communities also profit from these legal arrangements, especially financially. To conclude, the new relations likely to arise between state, church and religion in Norway as a result of the agreed constitutional amendments seem to be a pragmatic but fragile compromise between potentially conflicting concerns. It is unlikely that this can remain a permanent solution in the long run. A more probable outcome is that this compromise will spark further debate on consistent and viable ways for the state to handle its relation to religion, including the issue of an established church. This article will probably need revision not too many years down this road.

Notes

1 I would like to thank the editors, Lene Kühle and the journal’s anonymous reviewer for valuable comments on several versions of this article.

2 On terminology: The Act is called the «Act relating to Religious Communities, etc.» and comprises religious as well as non-religious communities. The parallel term used by the umbrella organization for (some of) the organizations recognized under the Act, is «The Council for Religious and Life-Stance Communities». «Life-stance communities» comprise non-religious secular communities. In this article I use the term «religious and life-stance communities».

3 There is no national register, but the Ministry of Culture informs that in 2010, 656 communities received subsidies from the local and central authorities, and it is assumed that the vast majority of these are registered communities.

4 This goes for example for congregations of other national churches (such as the Finnish and Icelandic Lutheran churches’ congregations in Oslo, the American Lutheran Congregation, or national orthodox congregations) which obviously associate with the church in their country of origin, and to a few charismatically oriented congregations which might have an organizational form that resists this kind of registration and organization.

5 For comparison: The Church of Norway does not receive subsidies per member, but based on calculation of the costs of its main activities. The level of subsidies for religious communities is then decided by calculating how much the subsidies received by the Church of Nor-
way amount to per member, and this is what these communities will also receive per registered member.

References


Grundloven 1814 (The Constitution 1814).


Lov om likestilling mellom kjønnene (Likestillingsloven) 1978 (Gender Equality Act).

Lov om tilskott til livssynssamfunn 1981 (Act relating to Allocations to Religious Communities).

Lov om trudomssamfunn og ymist anna 1969 (Act relating to Religious Communities, etc.).


Smith, Eivind 2006. «Statskirke»? («State Church»?). In Stat, kirke og menneskerettigheter (State, Church and Human Rights), Njål Høstmælingen, Tore Lindholm and Ingvill T. Ple snær (eds.), 36–60. Oslo: Abstrakt forlag.