Reconsidering Religion, Law, and Democracy

New Challenges for Society and Research

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Religion, Law and Democracy

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Anna-Sara Lind, Mia Lövheim & Ulf Zackariasson

Few would deny that Western societies have become more and more diversified in a number of respects, of which religious diversity is one – but far from the only – interesting aspect. This increasing religious diversity creates new forms of challenges for societies whose historical experience of religion has often been significantly shaped within the kind of post-Westphalian states where religion and national identity were relatively closely linked. Even before this link had begun slowly to wither away, both the public and academic perception and study of religion in the West came to be dominated by the expectation that secularisation was an irreversible process with a given outcome, namely, that what Christian Welzel and Ronald Inglehart call *secular–rational values* would eventually come to permeate politics entirely and the public sphere more generally (Inglehart & Welzel, 2005). Increasing religious diversity, which also contributes to an increasing visibility of religion, hence creates a new form of challenge both for society and for academic research.

How are Western, mostly secular, societies handling religion in its increasingly pluralistic and complex forms? What different forms of interaction between and negotiations of religion and religious beliefs can we see in contemporary society? Who are the primary contenders in these interactions and negotiations? The essays in this volume illustrate how researchers today study a variety of interaction processes between different expressions of religion and different spheres of society such as the media, the judicial systems and state administration and policy. The essays primarily approach these questions from a North European, but also to some extent a global

perspective. A common denominator is a dynamic perspective on the relation between religious organisations, society and the individual actors – in other words how all of these levels are interconnected and transformed in these processes.

The dynamic perspective on interactions and negotiation processes in which religion is involved in contemporary society imply that these processes can be conceptualised as both 'challenges' and 'opportunities'. They appear primarily as challenges from points of view that – often for political reasons – emphasise the strictly private character of religious belief and the way religion is, due to secularisation, no longer a publicly legitimate phenomenon. At least some of these interactions and negotiation processes can, at the same time, be perceived as opportunities, for instance, in the eyes of religious organisations and voluntary associations. These organisations have found new ways of implementing their beliefs as the erosion of a strong national state administration today is a fact and it has become harder for the state to control for example healthcare or social work. To this should also be added that politicians strive to manage the costs and challenges of a changing demography and increasing diversity through, amongst other means, calling on the active involvement of civil society.

This book studies interactions and negotiation processes between religions and religious citizens on the one hand, and states, judicial systems, the media, and secular citizens on the other. All the essays have been developed from an international conference in Uppsala in May 2013 arranged by the Linnaeus Research Programme and Centre of Excellence: *The Impact of Religion: Challenges for Society, Law and Democracy* at Uppsala University, 2008–2018. 'The Impact of Religion' research programme considers the place of religion in society in the light of complex economic, social, political, legal and cultural transformations taking place in Sweden and the Nordic countries. This means that the framework of thought that governs the structure and content of this book is multidisciplinary in two distinct senses. Firstly, the researchers represent several different academic disciplines, such as sociology, psychology, political science, history and law. Secondly, many of the contributions explicitly point to the need to draw on and integrate results from several research disciplines in order to develop a more comprehensive understanding of the different public roles played by religion in contemporary society.

In this *Introduction*, we present the various essays and the outline

of the book. Before doing so, we would like to raise some of the questions and theoretical challenges for a religiously diverse society and for research about religion in this context.

Challenges for society

Contemporary societies are often described through a set of more or less long-lived 'buzzwords' such as 'fragmentation', 'modernisation', and 'globalisation'. However suspicious one may be of the consecutive buzzwords used to characterise the current era, there is hardly any point in denying that they point towards developments that are important, yet difficult to explain and account for.

There are, of course, many causes of the increasing religious diversity in contemporary society: liberalisation and the general socioeconomic fragmentation of society, the emergence of new media and modes of communication, as well as different forms of migration are, arguably, among the most important. Given that many interactions between religions and society are regulated in law and various forms of policies, societies face new challenges when they, for various legal, fiscal or other purposes, seek to demarcate religion from non-religion. In fact, one of the interesting findings of this book is that this is often done in ad hoc and case-to–case-based ways that, when taken together at an aggregate level, result in tensions and even inconsistencies in how societies regulate religion. At the same time, it is worth pointing out that states thus engage in forms of 'religion-making', since their various regulations tend to affect communities seeking recognition *as* religious communities – and here too, there can be many reasons why communities seek to achieve such recognition. In such situations, intriguing questions come to the fore concerning which actors have the power and authority for example to categorise religion or to demarcate it from other social phenomena, and for which purposes they apply such categorisations and demarcations.

At the level of law and international treatises, the presence of binding (and justiciable) human rights, regionally and globally, also push states in a direction where they are increasingly obliged to respect and even encourage various forms of diversity (including religious diversity), and in some cases to provide conditions that enable people to lead their lives in ways that they themselves see fit.

However, human rights also lead to stronger tensions between what

we can call individual, collective and group-based rights and liberties, so even where human rights are widely endorsed, many difficult questions remain unanswered. Just to take one example, it makes a substantial difference if we construe freedom of religion as first and foremost the freedom of religious communities to regulate their internal affairs, or as being concerned with each individual's right to choose freely and to form her or his religious or secular life orientation. Emphasis on the former leads to a hands-off policy vis-à-vis religious communities that advocates of the latter would consider unacceptable, and vice versa. As the religious landscapes of Western societies become more diversified, questions about the fair and just treatment of different religious majority and minority groups become more and more frequent and pressing. Here, we are led back, again, to questions about how religion is defined and demarcated, by whom, and for which purposes.

Another interesting dimension of the increasing liberalisation of society and the emphasis on individual human rights, is the way in which certain secular organisations, public intellectuals and citizens have responded to the increasing public visibility of religion in society by underlining the rights to express any and all opinions, even when they may be considered insulting or blasphemous by certain religious movements or individual believers. These responses are often combined with an understanding of religious freedom that primarily focuses on the right to live a life unaffected by religious traditions. This tension between various understandings of the connection between religion, secularity and human rights in terms of, say, sexual and gender equality is discussed in several of the essays in this volume, for example by Shipley and Gustavsson.

Challenges for researching contemporary religion

Social transformations as described above have not only led to new challenges and opportunities for Western societies; the same can be said for academic research on religion, which, actually, has often operated with similar presuppositions and expectations about the way religions would gradually decline and withdraw from public settings. These presuppositions and expectations have been used in the formulation of hypotheses, interpretations of courses of events, and even the very identification and categorisation of phenomena and phases. Hence, it is not only society that needs to rethink its ways of understanding

and handling religion and religious citizens; the same holds true for research on religion (Davie, 2013; Bender et al., 2012; Woodhead, 2012). We can thus see here how established categories of thought in society and the academy stand in a reciprocal relation, and how the need to rethink them in one sphere hangs together, in complex ways, with a need to rethink them in others.

In this introduction, we wish to draw attention to challenges to academic research that occur at somewhat different levels: on the one hand, challenges for academic disciplines, traditionally conceived, and on the other, the challenge to transcend boundaries between disciplines when necessary. Thus a first level of challenges concerns the very categories of thought predominant within particular disciplines. In disciplines where religion has been a principal focus – such as religious studies and the sociology of religion – a major challenge is to rethink the ways in which religions have been studied. One example is to learn how to transfer a perspective that takes the religious actor, individuals and organisations as its point of departure, into a perspective that better accounts for the public dimensions of religion, not least the way it is increasingly being defined and used by other social actors such as the media, government authorities, public intellectuals, and others. Questions raised by this challenge concern, for example, how to understand the relation between collective and individual religiosity and identity, visibility and significance, agency and power.

In other disciplines, where religion has rather been a subtopic only approached in connection with other issues – such as history or political science – the challenges look somewhat different. Here, one important challenge is to consider seriously whether the expectations of secularisation and the decline of religious influence may have led to a general tendency to downplay and underestimate the public roles of religion. The challenge in this case becomes to think again about how helpful dominant theoretical models, concepts and methods actually are. We are possibly facing a post-secular situation in the sense described by Habermas (2006, 2008), and if that is the case, this calls for new theoretical models and frameworks.

In the discipline of law, a specific challenge concerning how religion should become a topic of research arises. The material used in legal science is, first and foremost, the sources of law, and these sources create a certain framework for research. In both national as well as international law, the sources of law are clearly defined and any interpretation of rules

in order to decide the scope and content of a rule must be carried out in accordance with legal methodological interpretation and respect for a specific hierarchy of norms. The possibility for research on 'religion' then comes to depend on two things. First of all, the lack of 'religion' in the sources typically used in legal science sets a strong limitation (see Borevi, Leis-Peters and Lind, this volume). Secondly, legal scientists' ways of posing questions to their material might, perhaps even more decisively than in other fields of science, make religion something that primarily exists in the shadow of other matters legislators and the legal community have judged to be more readily at hand and easier to study and delineate (see for example Enkvist and Nilsson, this volume).

In the longer run, this also means that a stronger focus on more fundamental rights adds to this complexity, and has an impact on how we interpret the law and on how law 'communicates' with other fields of research. One could say that the legal interpretation in matters that on the surface seem to be fairly simple, with necessity moves towards very complex operations of interpretation. Often, several legal orders and legislators are involved, and many different rights (fundamental, human, etc.) are at stake (Lind, 2013).

This leads us to a second level of challenges for research on religion in contemporary society, namely, how to do multidisciplinary or even interdisciplinary research. The essays in this volume contain several examples of these challenges and how they can be dealt with. As some of the contributions show, crucial questions that arise in these efforts concern the formulation of the research question and hypothesis; the definition of religion as a matter of beliefs, practice or discourse in the form of representations in media or legal texts; and how to understand and implement findings when researchers meet who come from disciplines with divergent expectations and norms regarding what counts as results and significant findings.

This volume represents an attempt to address these challenges, both within particular disciplines and in an emerging collaboration between them. The distinct contribution of this volume in addressing these challenges lies in the readiness of the authors to engage with these topics through an interdisciplinary approach, both regarding the choice of issues, and the diverse methodologies or theoretical positions employed to understand the issues at stake. One of the most significant things that these contributions show is the need to problematise both discourses that address the new religious diversity and complexity in

terms of 'more' or 'less' impact, and approaches that seek to address them in terms of a narrow understanding of 'challenge' or 'opportunity'. What the contributions in this volume above all show is that a variety of perspectives and experiences is needed, in terms of how to approach, evaluate and implement studies of religion in contemporary society.

Presentation of the book

The contributions in this book have been divided into three groups, representing three different themes: society, law and democracy.

In the first part, *Society*, the role that religion has in society and in people's lives today is reflected upon. Special focus is given to the question of how religious persons handle society's and their religion's rules and norms when these come into conflict with each other.

In his essay 'Historical Perspectives on Church Social, Welfare and Community Work in England', *Neil Armstrong* shows what an important role churches and Christian voluntary organisations played in the English welfare society at a time when when society was already described as being ruled in a manner dominated by social democratic consensus. He also analyses the continuity historically and in the present in the role played by voluntary organisations closely linked to different religious organisations. In conclusion, he argues that research about the role played by churches and other religious institutions as social actors in society today must be cautious not to overemphasise the 'new' visibility of religion in society today.

Among refugee survivors of war and human rights abuse in Norway, the waiting lists for rehabilitation increase daily. At the same time, most war refugees who arrived a few years ago seem to be managing remarkably well. *Gwynyth Overland* contributes an essay on 'Accessing Religious Resources in Transcultural Healthcare: Meaning-making and Survival'. Her biographical research carried out among particularly resilient survivors of the Khmer Rouge regime (1975–79), shows that interviewees indicated a secure 'knowledge' of how to act and how to explain the traumatic events of the Cambodian holocaust. Their religion, Khmer Buddhism, appeared to have provided resources in the form of a coherent system of meaning and cognitive and normative devices which they used in the subjective ordering of experience. The discovery suggested a new approach to the psychosocial care of war refugees, using theories of meaning-systems or underlying world-views

presented by Max Weber and Peter Berger, which might be helpful in understanding how parallel – although different – resources may well be available to other war survivors.

Heather Shipley's essay 'There and Back Again: Representations of Religion and Sexuality in Canadian LGBTQ Media' turns our attention to the question of how media presents religion and religious identity, especially in relation to questions regarding youth, identity and sexuality. Through a comparison of print media coverage of a debate about the sex education curriculum in Ontario, Canada, from both mainstream and LGBTQ sources, Shipley shows how the representations differ in terms of assumptions of religion and the representation of religious voices. While mainstream media give a narrow and selective account of the relation between religion and sexuality, disproportionally based on a few conservative religious voices, LGBTQ media show that anti-homosexual attitudes are also found in the public, secular sphere. Thus, mainstream media representations of religious identity are far removed from the experiences of young religious and queer people themselves. Furthermore, such – generally rather negative – representations risk limiting these people's willingness to express a religious identity publicly and also to reinforce discriminatory attitudes against religions and religious people in the public, secular sphere.

Maria Zackariasson in her essay 'Perspectives on Participation: Organisational Work among Free Church Youth' discusses a similar theme of religious youth and their engagement in society. In Swedish studies of civic participation among young people, religious organisations are seldom included, even though nonconformist religious youth organisations have a long history of adult education and political commitment. Religious organisations also represent a large proportion of the youth organisations in Sweden today. Zackariasson's article argues for the use of an intersectional perspective to understand the various meanings of active membership in religious organisations and associations, as age and religious affiliation are core matters in the interviews she has conducted with young and active members in the nonconformist organisation Equmenia. She concludes that individual experiences and goals might clash with the societal expectations. Even if scholars and policymakers might value participation in the sense of taking part in organisational structures in order to develop democratic skills, the young people themselves might have quite different goals for their involvement.

The second part of the book, *Law*, draws our attention to how law and the judicial system face new challenges as 'religion' can no longer be regarded as a uniform but rather as a pluralistic concept today. The religious landscape is composed of many different religions that in turn prove to be rather complicated to handle for those interpreting and applying law in their research.

Victoria Enkvist and *Per-Erik Nilsson* study how a new form of religious movement is dealt with from a regulatory point of view in Sweden. Their contribution 'The Hidden Return of Religion: Problematising Religion in Law and Law in Religion in the Swedish Regulation of Faith Communities' takes as its point of departure how Kopimists were acknowledged as a legal faith organisation ten years ago. The national agency in charge of ruling on how the legal criteria are met in the applications took a final positive decision on the third application received. Enkvist and Nilsson illustrate questions regarding religion in law and law in religion, taking the case of the Kopimists as their case and example. What importance has the law for religion and what role does religion play when law is formed and decided?

Carmen Garcimartín shows in the essay 'The Neutrality of the State and the Godless Society' how the so-called *laïcidad* article in the Spanish constitution has developed and been interpreted in case law over recent decades, a period of time marked by the development of an increasingly pluralistic society in Spain. The paragraph in question was apparently formulated in a uniformly Christian society, which has led to a great deal of interpretative problems in several court cases. The discussion of these problems is the focus of Garcimartín's essay. In this, she illustrates the complexity in adapting a constitution and laws to changes in a country's religious structure.

In the essay 'The Doctrine of Non-Justiciability of Religious Doctrine and Practice in English Courts', *Hamid Harsani* has chosen to analyse the problems that appear when a court needs to decide what is to be seen as an authentic religious position that should fall within the scope of freedom of religion. Regarding civil rights, such as property and contract rights, the case *Khaira v Shergill* has come to be a key case with strong precedence for establishing the boundaries of society's and the law's non-intervention in the religious sphere. This is even more accurate regarding the question of whether or not religious law can be seen as part of the religious tradition that falls within the scope of freedom of religion. Harsani discusses these boundaries and the problems

caused by them, and presents an alternative model for solving some of the problems that have arisen in this way.

Lise Eriksson's essay concerns 'Finnish Legislation on Assisted Reproductive Technologies: A Comparison of Church Statements'. In Finland, the Finnish Evangelical Church has been strongly involved in matters regarding assisted reproduction and surrogacy, and has had great impact on the political discussions in these questions. It has also opposed the recommendations from the Finnish National Agency on Health and Welfare. In the essay, Eriksson compares how these two actors make their recommendations and suggestions on when and how society should provide for assisted reproduction and surrogacy, especially with regard to the Lutheran ethics put forth by the Church as it contradicts the legislation in force today.

Mosa Sayed discusses Swedish legislation on international inheritance and property rights in his contribution entitled 'The Impact of Islamic Family Law on the Swedish Legal Landscape: Challenges and Possibilities'. Sayed asks if this legislation offers enough possibilities for the incorporation of rules that differ from the principles fundamental to the legislation in force. Another matter discussed by Sayed is whether or not spouses can be given the possibility to organise their marriage according to another country's laws reflecting other religious and cultural values.

In the third part of the book, *Democracy*, we turn our attention to the matter of how religion impacts society and political processes and how norms about the 'good society' can be used as a tool both to stigmatise and to idealise religion as a democratic actor.

Karin Borevi, Anna-Sara Lind and *Anette Leis-Peters* represent three different disciplines: political science, law, and sociology of religion. In their essay 'Layers of Inconsistency: The Swedish National Agency for Education's Guidelines on Muslim Headscarves' they analyse the representations of religion found in the policy guidelines written to assist school principals when applying rules on conduct and clothing in schools. For this purpose they make use of theories and tools developed in the above-mentioned disciplines. Interestingly, the different analyses yield overlapping results in that they all help display the ad hoc character and lack of consistency in these guidelines.

In the essay 'Must One be Christian to be Truly Norwegian? The Relationship Between Religion and National Identity', *Pål Kjetil Botvar* investigates conceptions of the relationship between religious affilia-

tion and national identity in the Nordic countries. Taking surveys and questionnaires as his point of departure, Botvar shows that the dominant conceptions of the link between national identity and religious affiliation are actually very similar in the Nordic countries. The data analysed suggests that although most people in the Nordic countries are convinced that religious affiliation is not decisive for national identity, there are also important minorities that are convinced of the opposite. The essay ends with a discussion of the implications of these results for the larger question of Christianity's role for the construction of national identity in the Nordic countries.

In her essay 'Veils, Nudity and Individuality: Romantic Ideals among Self-professed "Enlightenment Liberals" in France', *Gina Gustavsson* discusses how a number of French 'public intellectuals' have defended the legislation banning full-face veils in France. The focus of the analysis lies on the normative views of France as a kind of 'political project' that these public intellectuals explicitly or implicitly adhere to. The public intellectuals studied argue interestingly enough for classical liberal values such as the right to personal freedom and autonomy, but underline, at the same time, that a veil can never be seen as an *authentic* expression of autonomy. Hence, a kind of anti-liberal legislation is defended with liberal means, and Gustavsson shows that their reasoning is rooted in a Romantic current of liberalism that has not yet been given much attention in studies of the liberal tradition.

Ann-Katrin Hatje's contribution 'The Struggle over Christianity as a School Subject: The Democratic Role of the Press in a Church Campaign in 1963' shows how media coverage of the reduction and reorientation of religious education in schools in 1963 differed a lot between media in larger cities and in rural areas. This difference can be seen as part of a struggle between the more progressive forces in the bigger cities' newspapers, pushing public opinion in an anticlerical direction, and the more conservative forces dominating newspapers outside the big Swedish cities that were concerned about the preservation of established moral values and traditions. Different voices in the debate exemplify, accordingly, different normative views about the proper role of religion in the public sphere, and how certain controversial political proposals can offer fruitful material to study values and views that are otherwise often latent and not much discussed. Similarities as well as differences between the situation in the years following the end of the Second World War and today are identified and discussed.

Finally, the results of the book are discussed and commented on in the afterword 'The Big Picture', where *Grace Davie* connects the essays of the book to the trends and developments during the last decades in academic research on religion as an increasingly topical and interdisciplinary area. She also reflects upon upcoming challenges concerning how to develop ways of addressing new issues in research on contemporary religion as illustrated by this book.

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I

SOCIETY

Historical Perspectives on Church, Social Welfare and Community Work in Britain

Neil Armstrong

Religion and welfare in contemporary society

In recent years there has been growing scholarly interest in the connections between religion and welfare in contemporary society, and the historic role Christianity has played in the emergence of national welfare states. For example, the WREP project coordinated by the Uppsala Religion and Society Research Centre compared the different theological traditions, church-state relations and welfare regimes of eight European nations (Bäckström et al., 2010, 2011). This investigation revealed the variety of ways in which majority churches have begun to resume welfare responsibilities in the context of an increasingly challenging environment for nation states burdened by the pressures of globalisation, shifting demographic patterns and changing roles for women. Though it has been subject to criticism and revision, Esping-Andersen's typology (1990) remains an influential starting point for the study of welfare systems.

Here the United Kingdom is seen as the European nation most closely resembling a liberal welfare regime characterised by a minimum of citizen welfare rights and an emphasis on market-led solutions, despite the existence of universal healthcare provision (Jeppsson Grassman, 2010). Middlemiss Lé Mon's WREP case study (2010) focuses on the northeastern English town of Darlington, where the established Church of England acts in an 'in-between' role manifested largely in community building and the provision of space for local projects. Middlemiss Lé Mon found that Anglican welfare provision is largely parish-based and conducted by volunteers, and based around activ-