



Københavns Universitet



## **Believing in Norway, Beliefs in Norway**

Modéer, Kjell Å.; Petersen, Hanne

*Publication date:*  
2009

*Document Version*  
Publisher's PDF, also known as Version of record

*Citation for published version (APA):*  
Modéer, K. Å., & Petersen, H. (2009). Believing in Norway, Beliefs in Norway: A "Humanitarian Great Power" under Globalization. Oslo: University of Oslo. Report, No. 3, 2009

3 • 2009

# REPORT

Believing in Norway,  
Beliefs in Norway:  
A “Humanitarian Great  
Power” under Globalization



**UNIVERSITY  
OF OSLO**

Norwegian Centre for Human Rights



NORWEGIAN HELSINKI COMMITTEE

# Believing in Norway, Beliefs in Norway: A “Humanitarian Great Power” under Globalization

By

Kjell Å Modéer, prof. em., jur.dr., University of Lund  
Hanne Petersen, prof., dr. jur., University of Copenhagen

# Contents

<b>Preface</b> .....	<b>5</b>
<b>Summary</b> .....	<b>7</b>
<b>Suggestions</b> .....	<b>10</b>
<b>1. Introduction</b> .....	<b>12</b>
<b>2. Position and Methods of the Investigators</b> .....	<b>16</b>
<b>3. The Norwegian Context</b> .....	<b>18</b>
<b>4. The Historical Context</b> .....	<b>23</b>
<b>5. Globalization and Tradition</b> .....	<b>28</b>
A. Monarchy and Late Modern Identity .....	28
B. Gender, Globalization and Identity: the Hijab and the “Princess Story” .....	30
C. Norwegian Normative Practice in a Global Pluralist Context.....	34
D. Towards Global Legal Realism? .....	37
<b>6. Inclusion versus Diversity</b> .....	<b>42</b>
A. The Paradigm of the OSCE Guidelines .....	42
B. Basic Values, National Values, Norwegian Values .....	44
<b>7. Conflicts in Local and Globalized Communities</b> .....	<b>46</b>
A. Long Term Normative Influence: Education .....	46
B. Authority of Affective Communities: Family Law and Changing Family Lives.....	52
<b>8. Concluding Reflections</b> .....	<b>56</b>



# Preface

Issues on the role of religion in society and state and the extent of religious freedoms remain contentious in Norway as well in many other states. Often debates on these issues focus narrowly on the Norwegian context and history, underlining the need of defending Norwegian traditions which are seen as threatened by refugees and immigrants bringing foreign religions and cultures with them.

According to our view, the debates need to be enriched by reference to a wider international and human rights context, including reflections on challenges resulting from globalisation, on how to define the most important principles at stake as well as on how to adapt relevant international legal and political standards to these issues.

This is part of the background for a decision in 2006 by the Norwegian Helsinki Committee and the Norwegian Centre for Human Rights to commission a review of Norwegian legislation and practice in light of Organisation of Security and Co-operation in Europe (OSCE) standards for freedom of religion or belief. The project was funded by the Norwegian Freedom of Expression Foundation (Institusjonen Fritt Ord).

In order to have an informed as well as an outsiders view on the situation in Norway, two outstanding Scandinavian academics were commissioned to conduct the review: Kjell Å Modéer, prof. em., jur.dr., University of Lund and Hanne Petersen, prof., dr. jur., University of Copenhagen. They have been commissioned to work independently of any views of the two organizations, at the same time being given possibilities to consult with and hear viewpoints of representatives of the organisations.

Njål Høstmælingen, Head of the National Institution at the Norwegian Centre for Human Rights, and Gunnar M. Ekeløve-Slydal, Deputy Secretary General of the Norwegian Helsinki Committee, were responsible for the project, including editing this report. Tore Lindholm, Associate Professor at the Norwegian Centre gave valuable inputs and comments.

OSCE standards and guidelines on freedom of religion or beliefs have been offered by the OSCE and its institutions as a tool to improve policies and legislation in the field. They build upon international human rights law provisions, adapt them and draw lessons from them in order to give advice to authorities dealing with increasingly complex multicultural and multireligious societies. Norway has been an active participating state in the OSCE since the organisation started as a series of conferences on European security issues in the 1970s. All OSCE standards have been adopted by consensus and are politically binding upon all OSCE participating states.

In OSCE discussions and policy review, some Eastern states repeatedly criticise what they perceive as an unjustified focus on shortcomings and violations only in Eastern states. The OSCE area consists of all states of North America, Europe and Central Asia, these states would argue, and there should be a balance in OSCE focus West and East of Vienna, the venue of the OSCE headquarter. There is a false presumption, they would add, that everything is fine in the way Western countries abide by their OSCE human rights commitments.

Whatever the motivations behind these criticisms, the Norwegian Helsinki Committee and The Norwegian Centre for Human Rights see the importance of a review of Norwegian legislation and practice in light of Norway's OSCE commitments in the field of freedom of religion. The main reasons for this are the following:

- Such a review would contribute to strengthening principled views and arguments in the current debate;
- It is important in itself to clarify whether Norway, which has been a driver internationally in securing respect for religious freedoms and tolerance, fully stands up to the standards it argues other states should abide by;
- The debate is of paramount importance in shaping the future of Norway. It is a field with many burning and controversial questions, potentially creating conflicts and polarization in society.

As the reader will see, the report employs a rather general approach, not providing detailed review of specific legislation. It contains reflections on current challenges in Norway resulting from ongoing processes of globalisation as well as from Norway's history and societal context.

Our hope is that the report will contribute to quality in debating and finding solutions to some of the important questions of our time. According to our view, it adds important international perspectives to a debate which in Norway is often too inward-looking and closed.

Bjørn Engesland  
Secretary General  
Norwegian Helsinki Committee

Nils Butenschøn  
Director  
Norwegian Centre for Human Rights

# Summary

Since the break-down of the Berlin Wall in November 1989 European geo-politics has changed dramatically. The return of religion to the public sphere in Scandinavia and Europe runs parallel to and is interlinked with the post-1989 return of religious rights and institutions, discourse and practice to the former Soviet Union and Central and Eastern Europe. The discourses regarding the future of the welfare state, civil religion and constitutional values about democracy, human rights and rule of law have been important in the Norwegian context.

With the fragmentation of state and law due to globalization and market forces, concerns about social cohesion and communal, historical values have grown. A discourse has developed on religious values and other late modern values of diversity, dignity, responsibilities and respect and their contribution to social cohesion. Monarchy, Church of Norway and an independent judiciary, which are all interlinked, play an important role in Norwegian political and legal culture.

Norway may be understood as both a traditional community, held together by a common language and geography, and as a community of belief, sharing beliefs or values that stress solidarity and interdependence. Traditionally both legislation and normative practices in Norway have been strongly influenced by a homogenous Christian heritage. This heritage now has to be adjusted and has to fine-tune itself to a much more diverse context. The global dimensions of these struggles are demonstrated in the fact that the status of the KRL-education (compulsory education in Christianity, religion and other life-views in public schools) has been subject to decisions by two international treaty bodies, in 2004 and 2007.

To ensure respect of religious freedoms is an important element in the transformation from totalitarian and authoritarian states to democratic ones. The OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief of 2004 were created to serve as an instrument for reviewing national legislation in light of international standards in the field. They are, however, developed on the basis of a human-rights system focusing mainly on the relations between individuals and the state and not on the relations between states and diverse national communities as well as world society. Measures which go beyond ensuring that national legislation is in compliance with international freedom of religion standards are clearly needed. Equally important is to raise awareness and capacity among religious communities to adapt to a situation of multi-ethnic and multi-religious societies.

The practical challenges in relation to freedom of religion or belief in Norway are amongst others whether and how the *public climate* and the media as the most important moral authorities are able to handle situations of mixed values, religiosities and public representation. A dynamic contradiction between *basic* values and *national* values is another challenge. The conflict between the concept of the state church and the concept of individual human rights is a formidable challenge to traditional Norwegian identity. This has also been emphasized in the OSCE guideline principles.

The concept of Scandinavian state churches is historically based and traditionally upheld. It could still fit in a homogeneous modern welfare-state of the 20<sup>th</sup> century, but it is running into problems in heterogeneous late modern multi-cultural and multi-religious societies of the 21<sup>st</sup> century. The issue at stake in relation to religious diversity is as much an issue of how relatively homogenous states and societies *collectively* adjust to a heterogeneous post-secular and diverse *global* reality.

Globalization often leads to disorientation for both national and individual identity. In a self-perceived homogenous national Norwegian *society and state* the secular and monistic modern tradition has difficulties in generating and supporting a common identity encompassing plural and mixed legal, religious and spiritual traditions and practices inside Norway. The secular and monistic modern tradition also poses problems for Norway's own integration into or adaptation to a pluralistic, multicultural and multi religious world society as demonstrated in recent international court cases on religious issues.

Under these conditions a global legal realism would need to take into consideration that Western and Northern countries, a century ago still countries of emigration, have during the last decades become goals for migrants wanting to improve their own living conditions as well as that of the host countries. From *migration* follows the diversification of local affluent societies both in terms of social and belief practices. From *globalization* follows the 'displacement' of the state, its loss of regulatory power, and its loss of authority to provide a common sense of identity.<sup>1</sup> A global legal realism would need to take into consideration that in world society different types of norms interact. Some of them are state produced norms, others are created and interpreted by other communities and are based on other understandings of relations between the sacred or religious and the secular, as is the case with the traditional Sámi community in Norway. The division between relig-

---

1 See the article by Silvio Ferrari 2006, "Nationalism, Patriotism, and Religious Belief in Europe". In *University of Detroit Mercy Law Review*, Vol 83, Issue 5, Summer 2006, pp.625–639

iosity and secularism and the secular nature of Western states itself is increasingly questioned.<sup>2</sup>

In the analysis of these general adjustment processes the relation between national legislation and supranational norms may be viewed as part of a collective adjustment of the national Norwegian community to world society. Recognition of these complementary adjustment processes taking place more or less simultaneously on different levels requires increasing self awareness amongst members of different normative communities including legislators and other normative agents and authorities in different communities. In a period, where rapid changes are taking place, and where the importance of values as points of reference and cohesion are underlined, secular and religious values sometimes become hard to distinguish. Value tensions and conflicts are nothing new in modern societies, but during the last decades a shift has taken place from a focus on conflicts concerning class issues to conflicts concerning issues about gender, sexuality, ethnicity and religiosity.

For Norway and Norwegians to become adapted to a culturally and religiously pluralistic world society, it seems that there is a need to expose oneself to knowledge about other cultural, religious, legal as well as general knowledge traditions of world society. This perhaps requires an adaptation and a change of attitude and practice both on behalf of local communities of belief, national communities and individuals belonging to several of these communities.

To the two authors the work with this report has underlined the general need for collective self-reflection in a time of cognitive and societal change. Traditionally the state has transformed its norms with help of legislation and judicial decisions. In the current situation, however, this is not sufficient. It is increasingly necessary to identify the vague value-based structures and immanent and informal powers of the late modern society.

---

<sup>2</sup> See Jose Casanova 2007, "Political Challenges for Religion in the 21st Century". (Forthcoming in *Religion in the 21st Century. Challenges and Transformations*, ed. By L. Christoffersen, H.R. Iversen, H. Petersen and others) and Linda Woodhead 2005: Gendering Secularization Theory, In *Kvinder, Køn og Forskning* p. 20–32. op. cit.

## Suggestions by the authors

One of our suggestions for further work and for securing religious freedom and tolerance in a manifold Norwegian society is that more dialogue and cooperation should be encouraged; further strengthening the high level of activity supported financially by the Norwegian government and carried out by religious and life stance communities and organisations in Norway.<sup>3</sup> Norway has a heritage as a mediator in international conflicts, which might be used also in a national context related to a situation of diverse religious and secular values. Such dialogue might contribute to a further development and deepening of a multi-level democracy in different communities adhering to a diversity of values in both national and world society. We are moving from an understanding of democracy as majority power within the context of the state to its inclusion of plural overlapping minority communities and implementation in such communities.

The call for dialogue is clearly in line with the wording of the contested Education Act, which underlines that education, should 'promote understanding, respect and ability to carry out a dialogue between people with different views concerning beliefs and philosophies of life.'<sup>4</sup> The privileged status of the Christian religion expressed in the Education Act is to a large degree a historical fact in contemporary Norway and an outcome of a historical process. However, in a period of global change this privilege comes with the obligation of both church and national community to enter into dialogue in order to prevent conflicts, and secure peace and non-discrimination and learn understanding and tolerance needed for coexistence in a global world.

It is also in line with recommendations by the UN Special Rapporteur on freedom of religion or belief, who says that specific concern should be given to include the voices of women and initiatives at grass roots level in the inter- and intra-religious dialogue, which is vital for the prevention of conflicts. She mentions that "Religions may examine ways of managing the expression of their own internal diversity while at the same time incorporating a genuinely pluralist culture."<sup>5</sup>

---

3 Such as the Council for Religious and Life Stance Communities, [www.trooglivssyn.no](http://www.trooglivssyn.no). Read more about the History of Interfaith Dialogue in Norway at [www.trooglivssyn.no/doc/35%20%20%20%20%20%20\\_Eidsvåg.Lindholm.pdf](http://www.trooglivssyn.no/doc/35%20%20%20%20%20%20_Eidsvåg.Lindholm.pdf)

4 LOV 1998-07-17 nr 61: Lov om grunnskolen og den vidaregående opplæringa (opplæringslova). (latest changes: LOV-2008-12-19-118 fra 2009-01-01) Paraphrase 2(3), *Undervisninga i religion, livssyn og etikk skal bidra til forståing, respekt og evne til dialog mellom menneske med ulik oppfatning av trudoms- og livssynsspørsmål*.

This paragraph is quoted from an earlier version in note 1 in the decision by UN Human Rights Committee document CCPR/C/82D/1155/2003, (Leirvåg vs Norway) p. 3, note 1

5 Report of the Special Rapporteur on freedom of religion or belief. A/HRC/6/5, 20 July 2007, from Section III Conclusions and Recommendations

Traditionally both legislation and other normative practices in Norway have been strongly influenced by Protestant Christian heritage. This heritage now has to be adjusted and has to adjust itself both internally and externally to a much more diverse context. This requires increased awareness of the value foundation of local regulations, judgments, decisions and practices, and of their interaction with other value based practices both locally and globally. This is a challenge to a legal profession and an administration brought up under a monist view of law and religion and largely unconscious of the historical and religious heritage of these views. The issue at stake is how formerly relatively homogenous states and societies adjust to a more heterogeneous post-secular and diverse *global* reality. In this respect education of educators and administrators of norms and values will be crucial.

What is needed for these adjustment processes to take place successfully and peacefully is both scrutiny of national legislation and practice, as well as practical and exemplary investigations of community practices at all levels. One way of mapping such practices might be through the establishment of both high-level and low-level inter-community meetings, cooperation and dialogue, where different communities of believers and non-believers or 'secular believers' may come together to solve practical problems and at the same time reflect upon the philosophies, practices and values of members from other communities – perhaps guided by facilitators or local rapporteurs.

Judaism, Christianity and Islam are monotheistic religions with historical roots and origins in common, emanating from the same areas and historical traditions and they are all based upon patriarchal cultures, norms and rules, although to varying degrees. Atheists often refer to the gods of the dominant religious traditions of the societies and communities of which they have been part. Both commonalities and differences might be used as basis for common and critical dialogue in shifting contexts of majority or minority status of one or the other of these belief communities.

# 1. Introduction

Since the break-down of the Berlin Wall in November 1989 European geo-politics has changed dramatically. The ratification of the Maastricht treaty in 1994 made it possible for the member-states to found the European Union, and the implosion of the Soviet Union resulted in the establishment of nation states along the Baltic Sea with rule of law and human rights as important parts of their new constitutions. For the Scandinavian countries these changes have resulted in claims for new positions related to open boundaries, trans-nationalism and globalization. The Scandinavian countries have during the last 20–25 years moved from homogeneous, monolithic and strong welfare-states to heterogeneous multicultural and multi-religious entities. Immigrants have contributed to making religion visible in the contemporary Scandinavian countries.

The national discourses on the relation between state and church have resulted in claims for separation between church and state. In Sweden this separation took place January 1, 2000. In Norway an investigation on the same matter was published in February 2006,<sup>6</sup> resulting in a compromise agreement between all political parties represented in the Norwegian parliament April 10, 2008 upholding a mitigated state-church system, pointing towards a democratization of the Norwegian Church, including autonomy regarding nomination of bishops and deans and the founding of a Norwegian synod.<sup>7</sup> In Denmark the strong relationship between church and state has been an important part of current Danish politics. This demonstrates two things:

1. Religion is back in the public square in the secular Scandinavian countries
2. The concept of Scandinavian exceptionalism has changed from being identified by harmonisation and convergence to being increasingly dominated by nationalism and divergence.

This return of religion to the public sphere in Scandinavia and Europe runs parallel to and is interlinked with the post-1989 return of religious rights and institutions, discourse and practice to the former Soviet Union and Central and Eastern Europe – parts of the world, which had for generations been considered secular and to a great degree also atheist. The issue of *freedom of religion or belief* ranked high in discussions about a new constitutional and legal framework for the countries and entities which emerged after the collapse of communism and transition to sometimes predatory capitalism.

---

6 Staten og Den norske kirke, NOU 2006:2.

7 Det kongelige kultur- og kirkedepartement, St.meld. nr 17 (2007–2008): Staten og Den norske kirke. Box 5.1. Political contract, April 10, 2008 [Boks 5.1 Politisk avtala av den 10. april 2008.

Organizations, such as the non-governmental Helsinki Committees and the Organization for Security and Cooperation in Europe (OSCE) had for a long time been concerned with the protection of human rights in the former East Bloc. In 1990, at a time of urgent need for constitutional assistance in Central and Eastern Europe, the Venice Commission was created as an advisory body of the Council of Europe, composed of independent members in the field of constitutional law. The Commission's official name is the European Commission for Democracy through Law.

In 2004 OSCE adopted the so-called *Guidelines for Review of Legislation Pertaining to Religion and Belief* which "were prepared to assist the OSCE Panel and the Venice Commission in their analyses of laws and draft legislation pertaining to the freedom of religion or belief... The Guidelines were not designed to be a comprehensive statement of all relevant human rights standards related to freedom of religion or belief, but to provide an overview and suggestions for those who will be involved in the review of laws".<sup>8</sup> The Guidelines had been endorsed at the 59<sup>th</sup> plenary session of the Venice Commission on 18 June 2004 and were welcomed by the OSCE Parliamentary Assembly at its Annual Session in July 2004.

In 2006 the Norwegian Helsinki Committee and the Norwegian Centre for Human Rights, decided to commission an investigation of Norwegian legislation and practice in relation to OSCE standards for freedom of religion and belief, funded by Institusjonen Fritt Ord (the Freedom of Expression Foundation). One of the reasons for this initiative was that within OSCE there had been a demand for evaluations of the situation in Western countries. Certain Eastern states had strongly opposed that OSCE mainly criticized these states while Western states got away more easily.

The ideas behind and the reasons for this joint initiative is described as follows:

- "Strengthen principled views and arguments in the Norwegian debate in the field, not least in relation to questions of how the relation between state and different religious communities should be regulated. The Norwegian debate often appears as one-sidedly focused upon Norwegian tradition and history without relating to considerations of principle founded amongst others in human rights;
- Securing that Norway, which has been a driver internationally in securing respect for religious freedoms and religious tolerance fully stands up to international standards in the area;

---

8 [http://www.osce.org/publications/odihr/2004/09/12361\\_142\\_en.pdf](http://www.osce.org/publications/odihr/2004/09/12361_142_en.pdf) , p.5.

- Clarify which role the Norwegian state needs to have in relations between different religions and cultures. This is a field with many burning and controversial questions both in Norway and internationally;
- Increase knowledge and awareness about Norway's international obligations;
- Contribute to document and report on Norwegian legislation and practice in relevant OSCE-organs and meetings.”<sup>9</sup>

Having been appointed to carry out this investigation, the authors of the present report have decided to employ a general approach, as the task has not been to review specific draft legislation, and since it has not been possible and meaningful to deal with all Norwegian legislation.

Since the OSCE Guidelines were prepared with the situation in former Central and Eastern Europe principally in mind, the two authors have also had to rethink the paradigm behind these guidelines. They were established on the background of a historical legacy of strong states prohibiting religious activities in communist societies, sometimes with considerable political and public backing. As a reaction to this anti-religious modern tradition, individual freedom to practice belief and religion was considered important from a Western perspective. After WWII the European Convention of Human Rights was influenced by Christian – and Catholic – democratic ideas, guaranteeing amongst others political, economic and religious freedom. The choice of a Polish Archbishop as Pope John Paul II in 1978 also reinforced Catholic struggle for freedom of religion in the Communist bloc, while its influence waned in Western Europe.

In the Nordic countries there have traditionally been close links between church and state, also during Lutheran secularism.<sup>10</sup> Due to the break up from the homogeneous nation state and the enactment of anti-discriminatory regulation regarding minorities, as well as due to increased global migration, law, politics and religion have acquired new positions in the late modern nation state. This has resulted in an increasing *visibility* of religion in the public square, where it had formerly been considered to belong to the private sphere. It has also put fundamental social values in focus. The discourses regarding the future of the welfare state, civil religion and constitutional values about democracy, human rights and rule of law have also been important in the Norwegian context.

Crudely said there seems to have been a – Western political – demand for more religious rights in former communist countries and for more secularism and less

---

<sup>9</sup> Utredningsprosjekt om norsk lovgivning og praksis når det gjelder religionsfrihet, Oslo 30.3.2007 (our translations).

<sup>10</sup> Anders Berg Sørensen, “The Politics of Lutheran Secularism: Reiterating Secularism in the Wake of the Cartoon Controversy”. (Forthcoming in *Religion in the 21st Century. Challenges and Transformations*, ed. By L. Christoffersen, H.R. Iversen, H. Petersen and Margit Warburg, Ashgate 2009).

religious pluralism in Western European countries. This paradox might be explained by the fact that Europe has been considered the secular exception in the world.<sup>11</sup> However, with the fragmentation of state and law due to globalization and market orientation, the concern for social cohesion and communal, historical values has grown and with it the discourse also on religious values and their contribution to such cohesion.

Paradoxically it might seem as if the Norwegian community and state is more in need of a unifying religion and/or belief in a very broad sense for the purpose of social cohesion and identity in the beginning of the 21<sup>st</sup> century than was the case in the latter part of the still very secularized 20<sup>th</sup> century. At the same time the challenge to a uniform belief – in the case of Norway in the form of state-supported Lutheranism – is growing due to economic globalization and migration. Other factors in the same direction are a still strong secular movement and politics and human rights discourses arguing in favour of individual freedom of and from religion.

In this report we have tried to address some of these paradoxes by focusing on the intersection between what we have called “believing in Norway and beliefs in Norway” and “local and global contexts and processes”. We have chosen to focus upon some of the substantive issues listed in the OSCE Guidelines and to illustrate them in relation to the provided material and other information. But before we embark on the investigation, we need to present ourselves and locate our own positions.

---

11 Grace Davie (2007), *Europe: The Exceptional Case. Parameters of Faith in the Modern World*. Darton, Longman, Todd, London.

## 2. Position and Methods of the Investigators

Current legal science is not only focusing on black letter law, *the texts*, but also to a great extent on *the contexts*, in which the legal fields are operating. Contexts and implicit values are often clearer to outsiders and newcomers, who have less knowledge of legal details, but perhaps better possibility of distant reflection. The investigators in this Norwegian project are two outsiders, one from Sweden and one from Denmark, who in their research to a great extent have worked on legal contexts in a Scandinavian and global setting.

Kjell Å Modéer is a legal historian from Lund University who in his research has worked substantially within comparative legal history, and on the concepts of legal culture and legal traditions and their implementation in a Scandinavian and European perspective.

Hanne Petersen is a professor on legal cultures at the Centre for Studies of Legal Culture at Copenhagen University, who has worked on issues concerning gender and law, on legal polycentricity and globalisation of law and has for several years been a professor of Greenlandic (Arctic) law.

Modéer and Petersen have worked together in different Scandinavian projects on law and religion, legal cultures and jurisprudence. In this project they have benefited from these common experiences and their positions in discourses on comparative law, polycentricity and legal pluralism, legal culture and legal traditions of the world, law and religion and political theology.

The approach to this joint task has been to address the OSCE Guidelines, as well as legal and other material provided by the commissioners and collected by the authors as examples of contemporary normative history – of *'Zeitgeschichte'*. In this material we have been trying to discover and identify relevant aspects of European, Nordic and Norwegian legal culture. These aspects concern values, attitudes and expectations towards law and legal institutions and produce patterns of action and discourse both in public opinion and legal environments. The institutions of monarchy, Protestant Church (and historically Protestant education) and national and democratic courts and their interrelations are important for Norwegian political and legal culture. The concept and elements of legal culture serve as a kind of *'Vorverständnis'* (pre-interpretation) helping us to understand and situate the concrete and contemporary legal and cultural challenges in relation to the broader issue of the changing relations between law, religion and politics in the Norwegian condition.

The practical and joint task has required that we have had several meetings and discussions with the commissioners, and that we have had a continued series of discussions about the somewhat fluid investigation amongst ourselves. The method behind this report could be described as consisting of a combination of desk studies, continued and repeated dialogue and joint writing and rewriting.

Due to our lack of expert knowledge on the Norwegian situation in this field, we have to a large degree been provided with written material from the commissioners. To this we have added our own 'Vorverständnis' of the Nordic legal maps, and the transitions they have been undergoing in recent history. The selection and interpretation of the material is thus influenced by the outsider perspective.

In this respect this study of Norway has similarities to studies of other OSCE countries where outsiders are expected to comment on and interpret local and regional legal material.

Our experience is that this has been a very fruitful – and also somewhat lengthy – process. The insights gained from joint work and writing on foreign material are very valuable and throw light not only on the particular case but also on general processes of interrelations between such normative regimes as (secular) law and (monotheistic) religion in the present European and Nordic situation.

### 3. The Norwegian Context

*“Norway wants to present itself as a humanitarian great power.”<sup>12</sup>*

*“We are a missionizing people for good and for bad. The missionary attitude goes to the heart of our identity: ‘Norway saves the world, thus Norway exists.’”<sup>13</sup>*

In relation to the other Scandinavian countries, Norway has historically moved back and forth between divergence and convergence. Universalism and harmonization on one hand has been transformed into nationalism and national identity on the other. No doubt, modern Norwegian legal and religious traditions have been constructed with help of major representatives of the Norwegian cultural canon, like Henrik Ibsen and Sigrid Undset, Edvard Grieg and Knut Hamsun. These authors and composers have had a huge impact for the identification of the Norwegian citizen from below. There is a Peer Gynt or a Gregers Werle in each native born Norwegian, and perhaps also a modern Nora or a religiously challenged Kristin Lavransdotter?

The historical background and late formal independence of the Norwegian state has nourished an idealist and activist tradition, which is clearly expressed in a publication for new Norwegian citizens.

In 2006 the Norwegian Ministry of Work and Inclusion (Arbeids- og inkluderingsdepartementet) published an exclusive, highly illustrated gift book entitled “Welcome as a New Citizen” (Velkommen som ny statsborger) to be presented to future Norwegian citizens. The publication of this book is linked to the introduction of a voluntary ceremony for persons who have been granted Norwegian citizenship. The new citizens are in a sense converting into a new Norwegian civil religion. Their new identity has to be ritualized to confirm their new citizenship.

The (royal) blue cover of the book informs that “[t]he ceremony shall be a dignified and solemn demonstration of the transition to Norwegian citizenship, and contribute to strengthening the bond between the state and new citizens. New citizens who accept to participate in the citizenship ceremony must present a vow of fidelity and will be presented this book as a gift.”

---

12 “Velkommen som ny statsborger”, 2006, published by the Ministry of Work and Inclusion (Arbeids- og inkluderingsdepartementet) p.80 (the translation of this and the following quotes are all by us).

13 Quote by former Minister of Foreign Affairs, Thorvald Stoltenberg, *ibid* p.83.

The vow of fidelity is printed on the back cover: “As a Norwegian citizen I vow fidelity to my country Norway and the Norwegian society, and I support democracy and human rights and will respect the laws of the country.”

Following the list of contents, the left page of the book presents a colour photograph of His Majesty King Harald V wearing royal ceremonial dress juxtaposed to a personal letter to the new Norwegian citizen from the King, Harald Rex.

*“The citizenship ceremony, the vow of fidelity and the gift book sets a solemn frame around your new citizenship. The gift book shall be a source of knowledge and inspiration. The citizenship is a symbol of the reciprocity between state and citizen. In this there is not only an expectation of loyalty and participation in societal life. It marks that you as a citizen give your approval of the basic values upon which our society is built, such as democracy and human rights. You also have the benefit of the protection by the Norwegian state.*

*The plurality in Norway becomes visible through a population with different religions, languages, ethnicity and cultural background. Therefore it is important that we find good ways of living together. Mutual respect for each other’s background and life stance is important. Everybody who lives in Norway must be conscious about his or her rights and duties, and take responsibility for participating in local society and society on the whole. I wish you welcome to this manifold community which constitutes contemporary Norway.”*

The rhetoric in the welcome letter underlines the ritual, ceremonial, emotional and idealistic relationship – and mutual attachment – between citizen and monarch/state.

It underlines contemporary values of diversity, multiculturalism (without using the term) and respect, as well as the so-called basic values of democracy, human rights and security (protection by the Norwegian state), but also pre-modern values of fidelity, loyalty and obligations.

The welcome letter does not, however, underline modern values of ‘freedom, equality and solidarity’ of the American and French revolutions of the 18th century, which dominated the post-war period of the 20th century. It is rather an expression of the values of the post-communist and post-cold war era: late 20th and 21st century values of diversity, dignity, democracy, human rights (individualism), respect, and security.

The gift book is a manifestation of the continued strong importance of pre-modern institutions of monarchy and religion. Belief in and loyalty to Norway is closely

linked to an acknowledgment of the important historical role of these institutions. The strong and symbolic quality of the 1814 Constitution for Norwegian statehood and identity underlines the important role of Evangelical-Lutheran teaching for Norwegian recent history and Norwegian citizens. Symbols like royalty and religion are in practice essential for contemporary Norwegian identity in a global world.

The first chapter on history in the Welcome Book underlines the strong relations between the Church and the King during the Viking Age and the Christianization of Norway from 1030.<sup>14</sup> The 1814 Constitution, which stated in its section 2 that the Evangelical-Lutheran teaching would remain the official religion of the state, is mentioned as having become notorious because it also included a prohibition against Jews, Jesuits and monks, which were denied access to the Norwegian realm.<sup>15</sup> The fortunate Norwegian development since 1814 is explained by historical shifts, a favourable position and favourable economic timing. Lines are drawn from the relatively egalitarian agrarian society in Norway in the medieval times up to the relatively egalitarian modern society in Norway today.<sup>16</sup>

It is described as a society within which the conflict of most modern societies exist – that between growth and protection – especially protection of the environment and against global warming.<sup>17</sup> Norway also wants the greatest possible protection of its own agriculture as well as the most liberal trade regime with other goods and services.<sup>18</sup>

As many other societies it finds itself divided between modern values of equality, growth and a strong welfare state, and emerging values of diversity, security, protection and respect for the individual and nature as well as a weaker state. Secularity and religiosity as well as public and private are in practice mixed.

Norway prides itself of equality, particularly in relation to gender but also to ethnicity. Nonetheless there is considerable discrimination of ethnic minorities in the labour market.<sup>19</sup> Family forms have changed, and the state has taken over the role of the family in guaranteeing welfare. The society has developed a specific concept “*dugnad*” for voluntary unpaid work supporting common purposes. “(T)he state fragments and democracy (folkestyre) crumbles” is a common understanding. State control is less clear and crumbling in several areas.<sup>20</sup>

---

14 The book contains six chapters: 1) The history of Norway; 2) Contemporary Norway; 3) Norwegian democracy; 4) Rights and duties; 5) On citizenship; 6) What does citizenship mean for you?

15 Velkommen som ny statsborger, 2006, p.19.

16 *ibid.* p. 30 and 31.

17 *ibid.* p.38.

18 *ibid.* p.46.

19 *ibid.* p.50.

20 *Ibid.* p.60.

Religion is described as having a paradoxical place, since the country has a state church, while “in practice it functions as a secular society, where religious activities and expressions have a modest place in the common public field. The Christian religion in Lutheran form is both a state matter and a private affair.”<sup>21</sup> Norwegians are “Christians by choice”, in a society where the Church is described as a “steward of tradition” and a society of believers. “Religion as a personal and private issue in a way unites the non-believers and the strong-believers towards an understanding of religion as a more general and societal and cultural phenomenon.” Society has changed in a more multi-religious direction.<sup>22</sup>

The idealist and romantic Norwegian self-perception is clearly expressed and underlined in a section ironically called “It is typically Norwegian to be good.”<sup>23</sup> Norwegian goodness is not least demonstrated in the realm of sports, which has been an important field of Norwegian identity, as is the case with many (recent) states of the 20<sup>th</sup> century. The Winter Olympics in Lillehammer, Norway in 1994 were “a mixture of national romantic and inward identity celebration and modern image manufacturing directed to the outer world... For a period we became even more convinced that we are an idyllic and peaceful model for others, but also a country which may plan and construct complex structures and make them work.”<sup>24</sup>

As in many other contexts pride is part of the local and national romantic and idealist self portrait.

In the chapter on Contemporary Norway, Norwegian values and Norwegian self-perception are described through references to children’s books and fairy tales.

The national self-perception shows an image of something “marginal and hard-working but beautiful”, of independent mindedness as long as one does not harm others, but also of petty-mindedness, social pressure and controlling societal morality. Personal freedom and individual self-determination are praised as basic Norwegian values, but common consent is strong and remarkably often opinions change in unison.<sup>25</sup> The inner conflict in the Norwegian psyche is incarnated in the conflict between “the protestant work ethic against the temptations of sin”.<sup>26</sup> The ‘indigenous’ Norwegian psyche may in our view thus be described as a ‘religious construct’.

---

21 *ibid.* p.64.

22 *ibid.* p.66.

23 *ibid.* p. 69.

24 *ibid.* p.70.

25 *ibid.* p.77.

26 Quote by Danish author Carsten Jensen, *ibid.* p.78.

According to the Welcome Book, freedom and equality are highly valued, as are freedom and community. But too much weight on equality undermines freedom, and too much weight on freedom threatens equality, be it between gender, classes, ethnic groups or geographical areas.<sup>27</sup> Here the competition between *modern* and *globalized* values is expressed very clearly. The ritual and symbolic book transmits a picture of a *Norwegian community* struggling for an identity in a global society. This identity is claimed to be secular, but is in practice strongly held together by a monarchist and Lutheran heritage which constitutes an important foundation for the late modern Norwegian state. In this enlightened petroleum state the Protestant work ethic could be losing its rationale in favour of respect for democracy and human rights – which may be described as values of a quasi-religious or at least moralistic and ideal nature.

---

27 *ibid.* p.79.

## 4. The Historical Context

The ideals of the French enlightenment came relatively early to Norway. When the Norwegian founding fathers in 1814 drafted the Constitution, a copy of the U.S. Constitution was placed on the table of the Constitutional Commission. The Norwegian constitution was adopted on May 17<sup>th</sup> 1814 by the Constituent Assembly at Eidsvoll. This constitution is still in force and there have not been any major revisions of it, even if numerous amendments have been made.<sup>28</sup>

Norway's May 17<sup>th</sup> Constitution is the second oldest constitution in the world, only the U.S. Constitution from 1787 being older. It is a document upholding the *civil religion* of the country, as does the U.S. Constitution. The Norwegian civil religion is of course related also to the position of the Norwegian state church and its religion.

According to § 2 of the Constitution the Evangelical-Lutheran religion "remains the official religion of the State." The inhabitants professing it should be bound to bring up their children in the same. In the original text Jesuits and monastic orders were prohibited, and Jews were excluded from being admitted to the country. These provisions have later been amended.<sup>29</sup>

From 1814 and onwards institutional autonomy and independence have been a main part of the national constitutional character in relation to legal transplants from Sweden during the 19<sup>th</sup> century (1814–1905) and from Germany (1940–45). Constitutionalism as a part of the globalization of the 21<sup>st</sup> century is an important part of that discourse.

Constitutional idealism as developed e.g. in West-Germany after World War II had its parallel in Norway. As mentioned the Norwegians regarded themselves as belonging to a romantic, idealist and activist tradition of interpretation of Norwegian law. The broad (thick) interpretation of Professor Frede Castberg's works including a natural law inspired position helped to put Norway into that standard.<sup>30</sup>

---

28 Njål Høstmaælingen, "The permissible scope on the freedom of religion of belief in Norway", 19 *Emory International Law Review* (2005), vol. 19, no 2 (2005), 989 ff.

29 The "Jew paragraph" was abolished in 1851, but temporally reintroduced by the Nazi-regime during World War II. The general prohibition regarding monastic orders was abolished in 1897. Only in 1956 Jesuits were welcome to Norway. See NOU 2006:2, 25.

30 Frede Castberg, *Norges statsforfatning*. Bind 1–2. 2d ed. Universitetsforlaget: Oslo 1947. Frede Castberg, Det naturrettslige minimum, In: Forelæsninger over rettsfilosofi, Universitetsforlaget Oslo 1965, 126 ff.

There are still four external national symbols related to 1814 in the current national identity: “The Parliament, the flag, 17 of May and the Constitution”.<sup>31</sup>

There are immanent identity marks in modern Norwegian history related to law and religion, which can be traced back to the time of the major crises of the Constitution related to the German occupation of Norway in 1940. Norwegian constitutional culture to a great extent can be identified by institutional autonomy and independence of civil servants. The Supreme Court (Høyesterett) is upholding the judicial review, and the state church – even if it is a state institution – has a low profile in the public square and is upholding a “[w]all of separation between church and state”.<sup>32</sup> In 1940 this wall of constitutional separation between the executive on one hand and the courts and Church of Norway on the other was tested.

Vidkun Quisling as the head of the executive branch in 1940 urged the Supreme Court to implement a statute of his. The court made a judicial review and found – due to Hague convention of 1907 – that the statute was invalid as it gave the Quisling government authority to interfere in the composition of the courts in contravention of the Constitution. The Reichskommissar, however, responded that the Court had misinterpreted their right to review an international convention in relation to the statute he and his council had decided. The judges found that they operated as “power politicians” and decided to “stand together and fall together”. The full court decided to step down from the bench in December 1940.<sup>33</sup> Instead the Commissary Supreme Court was commissioned in January 1941 and functioned until the end of the war in the spring of 1945. This chapter in the Court’s history has recently been under debate.<sup>34</sup>

Also the Church was affected when the state interfered in questions of belief. The bishop Eivind Berggrav initiated and founded an association in 1942 “Christian Cooperation Council”, *Kristent samråd*. It wrote a document, *Kirkens grunn*, which upheld the autonomy of Church in relation to the state. “If the state wants to force the souls in cases related to conviction the result will just be pangs of conscience, injustice and persecution. Then the Sentence of God will be suitable: Where the power of the state is dividing law from justice, the state will not be the tool of God but a demonical power.”<sup>35</sup> The document was secretly distributed to the parishes

---

31 Velkommen som ny statsborger 31. – The Norwegian national anthem is another part of the Norwegian identity. The text is related to the Norwegian song tradition. Peter Häberle, *Nationalhymnen als kulturelle Identitätselemente des Verfassungsstaates*, Duncker & Humblot: Berlin 2007, 97.

32 Eivind Smith, *Høyesterett og folkestyret: Prøvingsretten overfor lover*, Universitetsforlaget: Oslo 1993.

33 Ferdinand Schelderup, *Høyesterett sier fra*, Norsk Tro og Tanke [NTT] Bd 3 (1940–2000), 105 ff

34 Erling Sandmo, “Just past: on historical and legal history”, in: Kenneth Johansson & Marie Lindstedt Cronberg (eds.), *Vänskap över gränser. En festskrift till Eva Österberg*, Lund 2007, 18, 121 f.

35 “For om staten vil tvinge og binde sjelene i overbevisningens saker, da kommer derav intet annet en samvittighedsnød, urett og forføljelse. Da blir dommen i Guds ord aktuell: at hvor statens makt skiller lag med retten, der blir staten ikke guds redskap, men en demonisk makt.” *Kirkens Grunn V*, Christie 1945, 168.

and dioceses of the Norwegian Church with a claim for Church autonomy and urged the bishops to lay down their offices if the executive didn't listen to their claims. The document went public from the pulpits on Easter day 1942.<sup>36</sup>

Both these brave decisions from the high representatives of law and religion had a great impact on the integrity of the judiciary and the national autonomy related to religious consciousness in modern Norwegian society.

The state has no obligation at all to follow the views of or advice from the Church of Norway. However, there have been some conflicts between the state and the Church in modern Norwegian history. They have for instance been related to female clergy, abortion and homosexual partnership.<sup>37</sup>

The possibility for women to be ordained to the clergy of the Church of Norway was opened through statutes in 1938 and 1956. Within the Church, however, the resistance against female clergymen was great. When, in 1961 the first female minister (Ingrid Bjerkås) was ordained by the Bishop in Hamar diocese, Kristian Schjelderup it resulted in negative reactions from the conservatives.<sup>38</sup>

In 1975 a new law on abortion gave the woman an exclusive right to decide about abortion during the first 12 weeks of pregnancy. The bishop of the Bjørgvin diocese Per Lønning had actively defended the rights of the unborn and as a result of the statute; he decided to step down from his position as a bishop. He did not leave the Church of Norway, but stepped down as a bishop because he could not be loyal to the government. The time was not mature enough for a break between Church and state.<sup>39</sup> His action can be seen as a part of the identity of the Norwegian clergy.

Also the legislation on homosexual partnership in 1997 resulted, due to conflicts, in a compromise. Persons who live in homosexual relation cannot uphold a position within the Church of Norway as clergy, deacon or catechumen.<sup>40</sup>

The examples mentioned demonstrate the ongoing discourse on the political role of the Church of Norway in the society. The discourses regarding Church law and legal theology (*Rechtstheologie*) have also been continuous up to current times.<sup>41</sup>

---

36 NTT 3, 117 ff.

37 Statsborger, 65.

38 Ingrid Bjerkås, Mitt kall, *NTT*, Vol 3, 415 ff.

39 Per Lønning, Til kongen, Oslo 29.5.1975, *NTT*, Vol. 3, 421 ff.

40 Den norske kirkes syn på homofile (1995), *NTT*, Vol. 3, 424 ff.

41 Anders Aarflot, Per-Otto Gullaksen.

Recently the position of the state Church has been challenged. In 2003 a Parliamentary investigation regarding the future of the Norwegian Church was appointed, the so called Gjøannes Committee, named after its chairman Kåre Gjøannes. Its mandate was to prepare for a decision on the state Church order: should it continue unchanged, be reformed or be discontinued. In 2006 the committee published its conclusions. A large majority of the members (14 of 20) proposed a reformed, statute-based *popular Church (folkekirke)*. The reform did require constitutional amendments, to be decided by the next Storting.<sup>42</sup> After a consultative process a compromise was reached among the political parties represented in Parliament in April 10, 2008, concluding that the Church of Norway will be “a statutory folk Church” within the Norwegian state, but with strong autonomy.

The 2008 compromise resulted in a proposal for amendments of § 2 of the Constitution: “The value foundations shall remain our Christian and humanist heritage. This Constitution shall secure democracy, rule of law and human rights.”

The draft amendments are examples of how religion and *civil religion* are regarded as important parts of the national identity. The majority of the Gjøannes Committee underlined that the Church of Norway not only is a religious society but also “an important carrier of cultural and religious traditions and rites which are keeping the citizens together in different phases of life irrespective of engagement or activity within the Church.” Christian belief and morals will, according to the majority of the Committee, also in the future be upheld as fundamental values of the society.<sup>43</sup>

This was also underlined in the Parliamentary debate about the reforms. Diversity, differentiation, and globalization within the current society are challenging its traditional values. “Even if it earlier was compulsory to confess to the Evangelical-Lutheran religion, you are today as good a citizen if you belong to another religious or life-stance society or if you do not belong to any such society at all.”<sup>44</sup> Principles of freedom of religion and belief as well as of non-discrimination are balancing the upholding of traditional societal values.

The draft amendment of § 2 of the Constitution is transforming the “Official religion of the State” into a new “value paragraph” with marginal legal functions. “The fundamental principles and values will be made operational by other provisions of the Constitution that to a greater extent directly provide for rights and duties.”<sup>45</sup>

---

42 NOU 2006:2, 159.

43 NOU 2006:2, 161.

44 St.meld.nr.17 (2007–2008), 14.

45 St.meld.nr.17 (2007–2008), 71.

The proposals regarding the new relation between the Norwegian State and Church of Norway have initiated a new and very intense public discourse.<sup>46</sup> Especially the proposals for a new value article have resulted in critical articles.<sup>47</sup> The discourse demonstrates how the international – and even global – discourses regarding the increasingly diverse nation-state are challenging traditional values of the society.

---

46 Hans Stifoss-Hanssen and Inger Furseth (eds.), *Mellom prinsipper og pragmatisme – analyser av høringen om staten og Den norske kirke*, KIFO Oslo 2008. – Tore Lindholm, The Tenacity of Identity Politics in Norway: From Unabashed Lutheran Monopoly to Pseudo-Lutheran Semi-Hegemony? In: Lisbet Christoffersen et al (eds.), *Living Ruins: The Nordic Churches in Late Modernity*, forthcoming.

47 Njål Høstmælingen, Tore Lindholm, Ingvill T. Plesner (eds.), *Stat, kirke og menneskerettigheter* [State, Church, and Human Rights], [Proceedings of a Seminar hosted by the Norwegian Centre for Human Rights], Abstrakt Forlag: Oslo 2006.

## 5. Globalization and Tradition

*“There is some confusion about the national identity in a globalized and multicultural reality. The country is in a formative period, where understandings of what is Norwegian may intensify as well as crumble. The danger is a development, where Norwegians with different social, ethnic and religious backgrounds gather together and isolate in parallel societies characterized by distrust between groups. The positive possibility is that new and old inequalities and minorities become integrated in a social community, where everybody participated and where conflicts are solved peacefully.”<sup>48</sup>*

### A. Monarchy and Late Modern Identity

*“Displacement of the state ... raises questions as to the role the state plays as a provider of common identity”,* writes Italian professor of Church-State Relations, Silvio Ferrari, in an article on “Nationalism, Patriotism and Religious Belief” echoing the concerns voiced in the Welcome Book to new Norwegian citizens. This displacement means that the state is unable to tackle a number of important problems, which are solved at levels below or above the state.

According to Ferrari “(g)lobalization has deprived territorial sovereignty (which is one of the most important prerogatives of the State) of much of its meanings ... Globalization, by reducing any particular culture to a regional custom, engenders a sense of alienation and disorientation and fosters the need of a common identity. Today’s States, however, are rarely in a position to provide an answer to this need.”<sup>49</sup>

It is clear from the lay-out of the Welcome Book that the secular, Norwegian state today looks to the monarchy for help to provide a feeling of identity in contemporary Norway. In the ‘displaced state’ of late modernity, monarchies and religious beliefs may be points of orientation and may support feelings of belonging to a combination of local and trans-national communities. In a self-perceived homogenous national Norwegian *society and state* the secular and monistic modern tradition has difficulties in generating and supporting a common identity encompassing plural and mixed legal, religious and spiritual traditions and practices inside Norway. This secular and monistic modern tradition may also pose problems for Norway’s

---

48 Velkommen som ny statsborger, p.83.

49 Silvio Ferrari, “Nationalism, Patriotism, and Religious Belief in Europe”. In *University of Detroit Mercy Law Review*, Vol 83, Issue 5, Summer 2006, pp.625–639, p.626.

own integration into or adaptation to a pluralistic, multicultural and multireligious world society.

The monarchy is considered an anachronistic institution in a modern democratic nation state but it is also an inclusive and “psychological state form in a post-sovereign world.”<sup>50</sup> This paradox is especially strong in Norway, where the “monarchy symbolizes both national independence and national community.

The monarchy is of the same age as independent Norway and it strengthened its position, when the King in a very clear manner opposed the German regime during the war.”<sup>51</sup>

The monarchy is at the same time both an outdated and a highly updated and hyper visible institution – not least in various forms of contemporary media, which to different degrees make the most of popular interest in the glamour and exclusivity of royalty.

In the Nordic countries monarchies seem to be both needed and suited to foster a certain sense of a common identity, not least if they act inclusively in relations to plural ethnic, religious and gendered identities. Identity and (national) identification in the small democratic Norwegian state proud of its egalitarian politics, is strongly related to a monarchic tradition. The monarchic tradition is related to and legitimized by the monistic Lutheran church. And the Lutheran church is considered important for the development of the independent Norwegian state. In the national context Norwegian monarchy represents a historical expression of national community and identity through its identification with Evangelical-Lutheranism. “Protestantism is not just a personal belief for a few, but also woven into the societal values, cultural tradition and everyday life.”<sup>52</sup>

The constitutional position of the Church of Norway upholds this monarchist position – also after the Constitutional revision of 2008. Along these lines the King personally interfered with the political processes when asking Trond Giske, the Minister of Culture and Church Affairs, to uphold paragraph 4 of the Constitution (on the King’s mandatory membership in the Church of Norway).<sup>53</sup> This *embeddedness* of Protestantism in Norwegian legal and political culture makes it difficult in practice to accept both freedom from religion and freedom to other religions.

---

50 See the chapter on “Monarkiet – en psykologisk statsform i en postsuveræn stat” in Hanne Petersen: *“Retspluralisme i praksis”* (Legal Pluralism in Practice), Jurist- og Økonomiforbundets Forlag, 2006.

51 Velkommen som ny statsborger, p. 32.

52 *ibid.* p.67.

53 [www.nettavisen.no/innenriks/politikk/article1750081.ece](http://www.nettavisen.no/innenriks/politikk/article1750081.ece)

## **B. Gender, Globalization and Identity: the Hijab and the “Princess Story”**

*“The debate about hijab and other dress, which signals religious affiliation, has come as a surprise for quite many. Religiously motivated views and demands have returned to a secularized culture which is not used to dealing with “the sacred.””<sup>54</sup>*

The debate about the hijab is a global debate, which especially after nine-eleven has raised concern in many European countries – particularly France and Turkey – about religious freedom, freedom of expression and other fundamental rights. As a reaction to the debate in Norway in 2003 the Norwegian Centre for Human Rights produced an anthology on “Hijab i Norge: Trussel eller menneskerett? (Hijab in Norway: Threat or human right?). Here this debate is described and addressed from different angles.<sup>55</sup> A new debate was initiated in spring 2009, when Knut Storberget, the Minister of Justice, decided not to accept hijab as part of the police uniform, reversing a decision made by the administrative head of the National Police Directorate, Ingelin Killengreen.<sup>56</sup>

Apart from demonstrating the common heritage of commands of covering of women’s hair in the Abrahamic religions, Judaism, Christianity and Islam, and the Norwegian practices until recently influenced by both Christian and local traditions, the book also demonstrates how criticisms of the hijab and of women’s inequality have legitimized colonial and other interventions by outsiders during different periods.

According to Berit Thorbjørnsrud women seem to secure other symbolic functions than men. Women’s appearance, their dress and attitude are often used as symbolic markers for the groups they belong to whether these are their own families, religious or ethnic groups or the nation.<sup>57</sup>

Anthony Giddens points to the issue of *changing femininity*. He maintains that women’s identities are at the forefront of the new global environment in which we live. Femininity is no longer a given, but an object for struggle. Fundamentalist orientations insist on women’s purity, on a strong division of work between gender and on traditional family values. The hijab thus reflects the diversity of women’s experiences and goals around the world, and has no homogeneous meaning.

---

54 *ibid.* p. 67.

55 Njål Høstmælingen (red.) 2004, *Hijab i Norge. Trussel eller menneskerett?* (Hijab in Norway. Threat or human right?), Abstrakt forlag, Oslo

56 [www.dagbladet.no/2009/02/20/nyheter/hijab/politiet/hijab\\_and\\_police/storberget/4953601/](http://www.dagbladet.no/2009/02/20/nyheter/hijab/politiet/hijab_and_police/storberget/4953601/)

57 Berit Thorbjørnsrud, “Motstand mot slør / motstand med slør” [*Resistance against the veil / resistance with the veil*]. In Høstmælingen (red) 2004.

In this context it is interesting to note that the Norwegian female author and Nobel Prize laureate, Sigrid Undset wrote her award winning trilogy on Kristin Lavransdatter (Kristin Lavran's daughter) from 1920 to 1922, after a major war and value crisis in Europe.<sup>58</sup> This novel is an indirect criticism of the work life, erotic life and family life of the modern woman in the early 20<sup>th</sup> century. It takes place in independent Norway of the Middle Ages (beginning of the 1300s) describing an increasingly pious (veil wearing) Catholic protagonist. The author herself converted to Catholicism some years later.<sup>59</sup> Henrik Ibsen who published "A Doll's House" in 1879 had already had an international influence on views about marriage and the role of women. But also Ibsen was very ambivalent regarding modernity and its dilemmas and consequences.

In the Nordic countries, gender equality has been strongly underlined as a national characteristic in the last part of the 20<sup>th</sup> century. "Gender identity is a key value in the Norwegian public, and groups to be equal are always gender. Nobody uses the word equality to describe equal value between groups with different view of dress", writes anthropologist Thomas Hylland Eriksen.<sup>60</sup>

In line with Thorbjørnsrud's arguments the symbolic value of *modern femininity* today seems to be very strong for the Nordic countries, including Norway. Modern, gender equal and individualized femininity is often described as characterizing modern Nordic (no longer homogenous) welfare states and distinguishing them from less advanced, less unified, more mixed and disordered states and communities. This modern femininity is however considered under threat as it is clear from other books written by prominent Nordic authors.<sup>61</sup>

Nordic feminism has been particularly strong in rejecting a feminism influenced by or inspired by religious (Muslim) values.<sup>62</sup> It has considered the state as an important support in this struggle. Nonetheless, women are statistically considered to be religious believers in greater numbers than men, in many societies including Norway, and women are followers of new age spirituality in important numbers.<sup>63</sup> Especially

---

58 Sigrid Undset: Kristin Lavransdatter. *Kransen, Husfrue & Korset*. Republished in 2001 by Lindhardt & Ringhof, Denmark.

59 Bernt Oftestad, *Sigrid Undset. Modernitet og katolisisme*. Universitetsforlaget: Oslo 2003.

60 Thomas Hylland Eriksen, "Hijaben og 'de norske verdiene'". In Høstmøling (red) 2004, p.102.

61 See for instance the book by the early feminist, member of the Left socialist party, then social democrat and minister of social affairs and later member of the liberal (Venstre) government and minister of welfare Karen Jespersen and her husband and political commentator for the Danish newspaper, Jyllandsposten Ralf Pittelkow (2006), *Islamister og naivister. Et anklageskrift* [Islamists and Naivists. An Indictment], People's Press, printed in Germany.

62 See the articles by Sherene H. Razack, "Imperilled Muslim Women, Dangerous Muslim Men and Civilised Europeans: Legal and Social Responses to Forced Marriages", *Feminist Legal Studies* Vol 12, no. 2, 2004, p.129–174 (specifically on the situation in Norway) and "The 'Shari'a Law Debate in Ontario, The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture", *Feminist Legal Studies* Vol 15 p.3–32, 2007.

63 See the chapter on "Engle, ånd og ordener" (Angels, spirit and orders) in Hanne Petersen, *Retspluralisme i praksis* (Legal Pluralism in Practice), Jurist- og Økonomforbundets Forlag, 2006; (originally printed as an article in 2003 in *Fortsatt uferdig: Festskrift for Thomas Mathiesen 70 år*. Unipax Oslo).

in *modern* societies, men may be stronger believers in nations and natural sciences. Recent research suggests that also secularization theories should be studied in a gendered perspective.<sup>64</sup> Modern femininity may be more diverse and seemingly paradoxical than what immediately meets the eye.

The symbolic value struggle about the role of women, and of women's religiosity under globalization is not only reflected in discussion on the hijab and Muslim women, but also in the role and expectations directed to women and daughters in the Norwegian royal family.

On July 24, 2007, during the so-called *silly season* (in Norwegian and Danish called *the cucumber season*) the story about the *angel princess* hit Norwegian media. This story demonstrates some of the paradoxes in contemporary Norwegian (and Western) understandings of gender, society and religiosity in a period of globalization.

In 2002 the princess, Märtha Louise, gave up her title of "Her Royal Highness" because she wanted to become an independent businesswoman, and she is now only called the princess. She is an educated physiotherapist and trained in the so-called Rosen method.<sup>65</sup> In 2007 it became known that the princess was starting a school called Astarte Education. According to the Norwegian newspaper, *Aftenposten*, the princess claimed on the internet site of the school that she is clairvoyant, and has had supernatural powers since she was a child. The message on the first page on the internet site was "Create miracles in your life with angels and your own power." This gave rise to a considerable media debate.

Royal status and the role the monarchy plays for (Norwegian and Nordic) late-modern identity in a globalized world present a paradox. "The royal family has a media power, they have been cautious in using ... The royal family has a magic aura,"<sup>66</sup> a commentator remarked in *Aftenposten*. In the global market monarchies mediate between national interests and market interests.

The princess case illustrates the growing importance of de-secularized new age thinking characteristic of late modernity in Europe and the Nordic countries. This non-institutionalized spirituality has been considerable not least in the US, which has been a society of orientation for Norway since World War II. The princess was criticized by some for having married in the Lutheran Church of Norway and having her children baptized there, while practicing new age religiosity. They argued she

---

64 Linda Woodhead (2005), "Gendering Secularization Theory." In *Kvinder, Køn og Forskning* p. 20–32.

65 "Märtha vil lære folk å snakke med engler", 24.07.07, *Aftenposten* website 29.10.07.

66 "Vi har verdens mest spennende kongehus", 24.07.07, *Aftenposten* website 29.10.07.

should leave the Church of Norway, since the monarchy always had strong links to Lutheran Christianity. She was actually practicing a kind of *overlapping* membership common to many religious adherents in the Nordic countries today.<sup>67</sup>

Others did not consider her new age religiosity a problem, but criticized the monarchy as an outdated constitutional institution in the wake of this case. She was also criticized not for her “dependent business life” but for her “spiritual project”.<sup>68</sup>

Norwegian stand-up comedian Shabana Rehman, of Pakistani origin, wrote an article about the case entitled “Angelic contact and spiritual pornography.”

*“Speculations have been many. Is the princess a hard-core capitalist, who knows how to sell dreams about a better life for seekers and sick people? Or is she so pure, so unsuspecting and beautiful that she sees more than others and therefore credibly can be a medium between humans and angels? Is this angel story a fantastic commercial for the country or an expression of a crisis for Christian Norway? Is New Age religiosity, as represented by the royal family itself a threat to the Christian basic values and the first step towards choosing totalitarian religions as Islam and Catholicism?”*

*... Scandinavia has not experienced a boom in spirituality similar to what we know from America and the Orient ... Scandinavia is not used to spiritual commercialism, guides and gurus as the rest of the world is.*

*Therefore the Norwegian crown princess has become a symbol of a religious change of scenery, which does not have anything to do with the rigid debate about Islam and the West, but of a free spirituality, which is a threat both against Western rationalism and religious fundamentalism. This is what makes the angel princess so interesting and important.”<sup>69</sup>*

There is no doubt that the princess story was a very high profiled example and perhaps even a symbol of a (local and national) situation characterized by mixed

---

67 Lars Ahlin, “Counting Religious Adherence in Denmark” (forthcoming in *Religion in the 21st Century. Challenges and Transformations*, ed. by L. Christoffersen, H.R. Iversen, H. Petersen and others).

68 Several articles and comments in *Aftenposten* from 24.07.2007 onwards, downloaded from the website 29.10.07, some of the titles:

“Märtha vil lære folk å snakke med engler” 24.07.07, “Vi har verdens mest spennende kongehus”, 24.07.07; “Engler til besvær” 24.07.07; “Prinsessen bør melde sig ut av statskirken”, 24.07.07; “Telefonene går til slottet”, 24.07.07; “Engler og prinsesser”, 25.07.07; “Noe helt annet enn kristendom”, 31.07.07; “Engler og sånt”, 05.08.07;

Articles from *HegnarOnline* (website):

“Prinsessen på kollisjonskurs med kristen tro”, 25.07.07; “Mette-Marit: Märtha Louise helbredet meg”, 27.07.07; “Trygve Hegnar om englevakt, Stein Erik Hagens hest og Märtha Louises engleskole”, 30.07.07 (editorial from *Finansavisen*, 28.07.07), “Monarkiet svekkes ikke av engleskole?”, 12.08.07

Articles from *Morgenbladet* (website):

“Kongehusets englevakt” by Carl Erik Grimstad (03.08.07), “Heksejakten på Märtha” (051007).

69 Shabana Rehman, “Englekontakt og åndelig porno”, *Information* 31.8.2007.

religiosity, gendered secularization and their challenges to established hierarchies and religious institutions. In this way it raises issues similar to some of the challenges posed by immigrant women wearing the hijab.

It demonstrates the ambivalence and insecurity both legally and in the public sphere and the media concerning the challenges presented by non-institutionalized religiosity in the Norwegian state in its “Lutheran-secularized” identity. Perhaps it also demonstrates how outdated monarchic traditions may adapt to changing conditions more readily and easily than rigid modern traditions and institutions, as indirectly indicated by Shabana Rehman. Does this story and the comment by Rehman indicate that in order to be able to still provide a point of orientation for a common local Norwegian identity, the secularized homogenous tradition may have to change into a de-secularized, post-sovereign contemporary form, for Norwegians – indigenous as well as newcomers – for Norway to be able to integrate into a global market and a world society?

### **C. Norwegian Normative Practice in a Global Pluralist Context**

According to the Welcome Book for new citizens Norwegians are described as “myopic world citizens”. Norway is, seen from the outside, a rich oil nation in the periphery which “is rather self-sufficient and egoistic, expensive and a little exotic, but all in all harmless and not dangerous. A country for the especially interested. Norwegians would like to impress the rest of the world, and we are very concerned about our international reputation, and what others think about us. After the oil affluence an element of bad conscience has been added, as we do not want to be seen as unpleasant nouveau riches, but want to smarten up the profile by doing something good in the world.”<sup>70</sup>

This concern about fame and reputation, as well as the bad conscience makes Norway attentive to international criticism even if Protestantism is used to support a national Norwegian identity politics.

An important challenge in relation to freedom of religion or belief is whether and how the public climate and the media as practically highly important moral authorities are able to handle situations of mixed values, religiosities and public representation. Some of the global aspects of such a challenge are expressed by the UN Special Rapporteur on Freedom of Religion or Belief, Pakistani female lawyer, Asma Jahangir.

---

70 Velkommen som ny statsborger, 2006 p.83.

In a 2007 report she is concerned with the situation of vulnerable groups:

*“Since believers are in a situation of special vulnerability whenever they find themselves in places of worship, States should pay increased attention to attacks on places of worship and ensure that all perpetrators of such attacks are properly prosecuted and tried.*

*Women, persons deprived of their liberty, refugees, children, minorities and migrant workers can be identified as particularly vulnerable groups with regard to their freedom of religion or belief.”<sup>71</sup>*

The vulnerability of these groups may perhaps vary from community to community, but there is no doubt that these groups are also vulnerable in a Norwegian context, and thus require special attention from normative and legislative institutions.

In her report, the Special Rapporteur “recommends preventive measures in order to ensure a peaceful coexistence of the members of various religions and beliefs as well as non-believers.” She further underlines that “freedom of religion or belief is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” She refers to the UN General Assembly resolution 66/254 which encourages all States to promote “a culture of tolerance and respect for the diversity of religions and for religious sites, which represent an important aspect of the collective heritage of humankind”. And she notes that “[t]he concepts of worship, observance and practice of religion or belief extend to the display of symbols and they may also include customs such as the wearing of distinctive clothing or head coverings.”

These recommendations seem of relevance in a Norwegian context, and in relation to discussions about how to make sure that Norway secures respect for religious freedom and religious tolerance according to international standards.

In the section on ‘Vulnerable groups’, the Special Rapporteur states that:

*“Women all too often are required to negotiate with male religious leaders and with other members of their own communities in order to exercise their full human rights. Women themselves have to be empowered since they continue to be largely excluded from the decision-making process within most religious*

---

71

Report of the Special Rapporteur on freedom of religion or belief. A/HRC/6/5, 20 July 2007. Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Accessible at: <http://www2.ohchr.org/english/issues/religion/annual.htm> (downloaded 10 February 2009).

*communities. Similarly, at a time, when much emphasis is put on inter-religious dialogue, the absence of women's voices from that dialogue is striking."*

It is clear that the Special Rapporteur is concerned about the rights of believers and their status – which may shift according to context:

*"It has to be borne in mind that while a certain religion may be a minority in one part of the world and suffer accordingly, it may constitute the religion of the majority of the population in another part of the world. Religious minorities face various forms of discrimination and intolerance, both from policies, legislation and State practice."<sup>72</sup>*

The final section of the report concerns the obligation of state and non-state actors to abide by applicable international human rights standards, and especially to develop proactive strategies in order to prevent violations.

The report issued only four days before the 'princess story' hit the media, of course does not consider princesses as members of the vulnerable groups. But the case demonstrates that even when what could be called a privileged and symbolic dissenting voice is heard from a (female) member of the Norwegian royal family, this gives rise to public concern and confusion. The story could be viewed as an example of involuntary *intra-religious* dialogue, and it might be an occasion for the dominant Lutheran religion to examine ways of managing the expression of their own internal diversity while at the same time incorporating a genuinely pluralist culture.

The discussions on the hijab, the princess story, the discussions on headscarves for police women and the widespread discussions about primary school education in Norway as well as the UN Report underline that the contemporary challenges for Norwegian and world society is not only the right of freedom *from* religion but also the freedom to practice other religions and philosophies than the dominant religion and philosophy in ways other than those dominant within the religions themselves – be they majority or minority religions in the concrete context.

The "confusion about the national identity in a globalized and multicultural reality" mentioned in the Welcome Book illustrates the difficulties of states and societies – perhaps especially in homogenous and quasi-secularised societies such as the Nordic societies and Central and Eastern European societies – to come to terms with the religious, philosophical and ethnic pluralist realities of a post-communist and post-modern world.

---

72 *ibid*, from Section C on vulnerable groups.

Traditionally legislation and other normative practices in Norway have been strongly influenced by the Christian heritage. This heritage now has to be adjusted and has to adjust itself both internally and externally to a much more diverse context. This requires an increased awareness and reflections on local regulations, judgments, decisions and practices, and their interaction with other regulatory practices both locally and globally. This is a challenge to a legal profession and an administration brought up under a monist view of law and religion. The legal and political discussions and decision on topics such as blasphemy, hijab as part of the police uniform, education and the state-church relationship, indicates that there is room for adjustments in Norway.

## D. Towards Global Legal Realism?

“How shall a society with a very uniform ethnic and cultural tradition function as a multicultural community in a globalized world?”<sup>73</sup>

*“As a small country with a big external trade Norway has a big interest in a better organized world with binding conventions and common rules which give predictability and safety. This is however always weighed against the need to promote and secure special Norwegian interests and values, amongst others through demands for ‘permanent special arrangements’ in the inner market of the EU. We want to participate in the world out there, but have as little intervention at home as possible. Globalization and opposition towards globalization follow each other as shadows.”<sup>74</sup>*

The issue which seems to be at stake in relation to religious diversity is perhaps less the issue of the migrant worker and woman in Norway (or elsewhere), who is relatively dispassionate about his or her religious affiliation and its expression, and who has to adjust to a new context and country including its quasi-secular, homogenous traditions.<sup>75</sup> It may be as much an issue of how relatively homogenous states and societies adjust to a confused and confusing, heterogeneous post-secular and diverse *global* reality.

For a long time these problems have been seen as problems of *individuals* moving away from their home countries to seek a better living in other places of the world. However, the problem of *collective adjustments* of local societies to a changing and globalizing world, where both individuals and societies are becoming more

---

73 Velkommen som ny statsborger, 2006, p.34.

74 *ibid.* p.81.

75 Elements of this problem in a Danish context is discussed in the article by Hanne Petersen, “Integration i foranderlighed” [Integration in variability] in Rubya Mehdi (red), *Integration og retsudvikling*. Jurist- og Økonomforbundets Forlag, 2007, p.235–252.

interdependent and more confused in terms of collective orientation, may become as large in the near future.

Nordic countries, which are all small and all affluent, not least Norway, have grand aspirations to become or stay humanitarian great powers, as well as world champions in a lot of areas. This demonstrates idealistic elements in the self-perception of Nordic countries which have a historical legacy. But it also contrasts with certain developments of *realism*. The legal tradition of the 20<sup>th</sup> century in all the Nordic countries has been strongly influenced by democratic developments and Scandinavian legal realism. Probably due to the influence of recent idealism – including human rights idealism – there have been relatively limited attempts to develop what might be called a *global legal realism*.<sup>76</sup> This task could be seen as a challenge to contemporary Nordic and Norwegian jurisprudence.

A global legal realism would need to take into consideration that Western and Northern countries, a century ago still countries of emigration, have during the last decades become goals for migrants wanting to improve their own living conditions as well as that of the host countries. From migration follows the diversification of local affluent societies both in terms of social and belief practices. From globalization follows the *displacement* of the state, its loss of regulatory power, and its loss of power to provide a common sense of identity.<sup>77</sup> A global legal realism would also need to take into consideration that in world society different types of norms interact. Some of them are state produced norms, others are created and interpreted by other communities and are based on other understandings of relations between the sacred or religious and the secular. The division between religiosity and secularism and the secular nature of Western states itself is increasingly questioned.<sup>78</sup>

This crisis of the national context and the modern value foundation may give rise to idealism and romanticism, but also to long-term reflections on interactions between local and global developments. In Norway as elsewhere this loss and change is reflected upon from many angles. One expression of this is a dialogue-book by a philosopher and two former businesspeople.<sup>79</sup> The hope and idea that Norway may become a model and an inspiration for other countries in how to build a good society, a satisfied society, and that it may contribute to the world, that it may move from materialism to humanism and to stewardship thinking is expressed again and

---

76 Werner Menski calls himself a 'global legal realist' in an article on "Law, Religion and Culture in Multicultural Britain" in Rubya Mehdi, Hanne Petersen, Erik Sand & Gordon Woodman (eds), *Law and Religion in Multicultural Societies*. Jurist- og Økonomiforbundets Forlag, Copenhagen, 2008, 43–62.

77 See the article by Silvio Ferrari 2006 above.

78 See Jose Casanova 2007: *Political Challenges for Religion in the 21st Century*. (forthcoming in Religion in the 21st Century. Challenges and Transformations, ed. By L. Christoffersen, H. R. Iversen, H. Petersen and others) and Linda Woodhead 2005: *Gendering Secularization Theory*, op. cit.

79 *Visjoner for Norge. Fra uro til mening*. [Visions for Norway. From restlessness to meaning] En samtalebok med Guttorm Fløistad, Øystein Dahle & Henrik B. Tschudi, Flux Forlag, 2004.

again.<sup>80</sup> These dialogue partners also reflect on the need for far-sighted thinking and reflection, and a *cosmological* culture.<sup>81</sup> It is not an upholding of strict divisions between religious and secular or national and international, which is at stake here, but rather a reorientation in a changing context of mixed values.

When the belief in Norway and in Norwegian common identity is endangered leading to restlessness and meaninglessness, this belief in local or national community is also challenged and to some extent replaced or supplemented by increasing local or immigrated beliefs in other communities of a religious or philosophical nature. The state is placed in a situation where it is competing with other communities, which have strong normative powers.

Roger Cotterrell suggests in his book *Law, Culture and Society* that the concept of society should be replaced by a concept of community including that of national community and global community. In Norway this replacement has already happened in the royal letter to the new citizen quoted above, where citizenship is understood as a demonstration of “attachment to the Norwegian community.” According to Cotterrell the concept of society has been strongly identified with the state and thus with state-made law, and he suggests that law should be understood as regulation of communities. Community has to be “a notion flexible enough in its social imagery to be applicable to the complex, diverse, mobile and individualistic populations of advanced twenty-first-century societies ... each pure type of community may have its own distinctive regulatory aspects.”<sup>82</sup>

Contemporary inhabitants in Norway are members and participants of several communities with different and competing powers and regulatory aspects. In line with early 20<sup>th</sup> century sociologists Cotterrell speaks about *affective*, *traditional* and *instrumental* communities as well as *communities of belief*. Affective communities are made up by family and friendship groups. Traditional communities are local communities, i.e. “the coexistence of people in a defined geographical space; a neighbourhood, for example.” Traditional communities may also be linked by a sharing of language. Instrumental communities are mainly business communities or the EU. Community may also relate to the sharing of beliefs or values that stress solidarity and interdependence, and this is what Cotterrell calls *community of belief*. Inhabitants may relate themselves to different communities.<sup>83</sup>

Norway itself may perhaps be understood as both a traditional community, held together by a common language and geography, and as a community of belief,

---

80 *ibid.* See pages 24, 26, 36.

81 *ibid.*, comment by Fløistad, p. 46.

82 Roger Cotterrell, *Law, Culture and Society. Legal Ideas in the Mirror of Social Theory*, Ashgate 2006, p.7 and 8.

83 The Norwegian Humanist Association (Norsk Human Etisk Forbund) would in Cotterrell’s terminology probably be classified as a community of belief.

sharing beliefs or values that stress solidarity and interdependence. Understood in this way, *believers in Norway* come very close to understanding Norway as a *community of belief* which is coexisting and competing with other communities of belief, and other believers, who are parts of other communities of belief. In his *Atlas of the World Religions* Ninian Smart describes nationalism as “in itself almost a religion.”<sup>84</sup>

In contemporary world society, believers in the Norwegian community coexist and compete with *other communities of belief* both within the state of Norway and within world society. Furthermore they coexist with members of *other forms of communities*. Most individuals are members of several different types of communities, some local, some national and some trans-national. Most national communities and states encompass several forms of communities. And several communities reach beyond the limits of states.

The plural loyalties towards diverse communities have during the heyday of the nation states – not least the Nordic welfare states – become streamlined and subjected to the overarching loyalty towards the state and national community. During the period of displacement of the state and globalization of the world, the superior loyalty towards the state and the national community is challenged and cannot be upheld. This period seems characterized by competition and confusion of and between loyalties.

The challenge to learn to live with diversity and to move from a homogenous Norwegian national community towards a more heterogeneous local Norwegian community, which is becoming an ever more integrated part of a very heterogeneous world society, seems to be the general challenge facing Norway. The issues concerning Norwegian legislation and practice in relation to standards for freedom of religion and philosophy are but one aspect of this general challenge.

It might perhaps help in the analysis of these general adjustment processes to view the relation between national legislation and supranational and international norms as part of a collective adjustment of the national Norwegian community also to world society. The relation between the individual migrant and the Norwegian community is often perceived as one of internal adjustment of individuals and migrant communities to the Norwegian community. It is however, also one of mutual *local*, Norwegian community adjustment to a plural reality of norms and values.

Recognition of these complementary adjustment processes taking place more or less simultaneously on different levels requires that members of different normative

---

84 Ninian Smart (ed), *Atlas over verdens religioner*. Koenemann, Germany, p. 13.

communities including legislators become aware of the different levels, different processes, different communities and values and the interrelations between them. In her recommendations the UN Special Rapporteur on Freedom of Religion or Belief suggests that “[i]nter-religious and intra-religious dialogue should not only include religious leaders but could also involve initiatives at the grassroots level. In this regard, it may be useful to take into account the perspectives of believers who are dispassionate about their faith and of non-believers”.<sup>85</sup>

Perhaps what is needed for these adjustment processes to take place successfully and peacefully is not only a scrutiny of national legislation and practice, and not only inter-religious and intra-religious dialogue, but investigations of community practices and establishment of inter-community dialogue, where different communities of believers come together, and where members of different communities reflect upon the philosophies and values of members from other communities – or their own mutual belongings to diverse communities.

---

85 Section III Conclusions and Recommendations in United Nations, General Assembly, Human Rights Council, 6th session, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development.* Report of the Special Rapporteur on freedom of religion or belief. A/HRC/6/5, 20 July 2007.

## 6. Inclusion versus Diversity

### A. The Paradigm of the OSCE Guidelines

Europe after 1989 can be characterized as a bouquet of nation-states involved in an evaluation and revision of constitutional and other values. The unification of Europe was not only manifested by the reunification of Germany and the break-down of the Berlin Wall. It was also developed in an ongoing unification of the EEC via the Single Act to the European Union. Europe became on one hand increasingly more seamless, bound-less and transparent. On the other hand the diversities and differences became increasingly important when the nation-states tried to identify their national identities – especially those in Central and Eastern Europe after the abolition of the Soviet Union.

The Maastricht Treaty of 1994 tried to combine convergence and divergence as the identity of the European Union. The East and Central European countries more or less regarded the Soviet period as a parenthesis and time and space became – also in a broader perspective – important parameters in the construction of the late modern European nation state. Constitutions were evaluated, revised and rewritten. These revisions did not only include the incorporation of the rule of law and human rights concepts. They also included the renaissance of the separation of power principle, and introduction of judicial review and constitutional courts.

These constitutional revisions were evidently connected to those of the Italian Constitution (1948), which to a great extent was received in Spain and Portugal after their political revolutions in the 1970s and – more evidently – to the German Basic Law (1949). The ideological paradigm of these post-war West-European constitutions was idealistic, and connected to the discourses of the time, all related to the concepts of natural law, human dignity, Christian values, and human rights.

The European Convention of Human Rights (ECHR), adopted by the Council of Europe in 1950 and ratified by West European states in the years to come, was as such a time-bound document, related to the humanitarian values and social ethics of Western Europe in contrast to that of Eastern Europe (democracy versus totalitarianism), although also strongly influenced by developments in the United Nations which had adopted the Universal Declaration on Human Rights 10 December 1948. Concepts like the Iron Wall, the Berlin Wall and the Cold War manifested this dichotomy of different constitutional concepts in the West and the East in the post-war period.

During the same period the European Court of Human Rights in Strasbourg started to receive an increasing number of complaints against State Parties to the ECHR. The decisions of the Court were reluctantly accepted by State Parties. Sweden is but one example of a European state which hesitated and slowly accepted this supranational jurisdiction.

After 1989 the position of the ECHR became stronger not only in Eastern but also in Western Europe. In the 1990s the Scandinavian countries incorporated the convention into their legal systems, Denmark in 1992, Sweden in 1995, and Norway in 1999. The Council of Europe accepted East and Central European countries as new members after evaluating their abilities and willingness to comply with the ECHR. The number of Member States of the Council of Europe increased much more rapidly than in the European Union.

This new position of the ECHR has to be combined not only with the new constitutionalism of Europe but also with the open boundaries (Schengen Treaty), the mobility of labour, and the different relations to refugee politics in Western European countries. The monolithic Scandinavian welfare states have in that sense been challenged in relation to their traditional constructs of their national cultures and values. The ongoing secularization of post-war Western Europe increasingly clashed with a visible religiosity of immigrants, especially Muslims. Religious Diasporas have successively been a part of the ghettoization of the late modern societies, in Great Britain, Germany, and France – as well as in the Scandinavian countries.

An upheld principle of the Enlightenment has been to keep religion in the private sphere. Religious freedom has been related to the private – not the public square. The constitutional cultures in Scandinavia, however, have been challenged in their nationalistic positions in that sense. National interests related to freedom of press and freedom of religion have collided and resulted in political conflicts of global size. The Mohammed cartoon crisis in Denmark in 2005–2006 is but one example of this polarization between different traditions. Traditional constitutional and religious values are related to the creation of the late modern nation state.

The OSCE Guidelines for Review of Legislation Pertaining to Religion or Belief has to be put into this constitutional context. Even if they in particular might be relevant for OSCE Participating States with weak protection of religious freedoms, they might also prove relevant for Western European countries and their discourses on cultural and religious values.<sup>86</sup> An important part of the current discourses concerns the

---

86 The OSCE Guidelines were prepared by the members of the Advisory Panel of Experts on Freedom of Religion and Belief (Panel) of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), in consultation with the European Commission for Democracy through Law (the Venice Commission).

problem whether a state-church system is in compliance with international human rights conventions. Only an autonomous “Peoples’ Church” may be in accordance with Norway’s human rights obligations.<sup>87</sup>

## **B. Basic Values, National Values, Norwegian Values**

To be able to reflect on the current discourses on cultural and religious values in the Scandinavian context we have to turn back to 19<sup>th</sup> Century romantic and religious constructs. The discourse on Scandinavism based on a common historical and religious heritage dominated the period 1830–1860. The creation of the modern, democratic nation-states in Denmark, Norway and Sweden was embedded in national romantic values up to the Great War. The democratic break-through around 1920 also initiated a period of secularization of the Scandinavian countries which has dominated the societal discourses up to the 1990s.

The Scandinavian exceptional state-church systems have been discussed since early 20<sup>th</sup> century in the Scandinavian countries. In late modern Scandinavia this question has been increasingly important. In Sweden it resulted in a separation between the Swedish Church and the State in 2000.<sup>88</sup> In Norway a legislative commission in 2002 presented a draft to a similar separation between the state and the Church of Norway which was later rejected.<sup>89</sup> A political compromise in 2008 will provide the Church of Norway with strengthened autonomy, but while pointing in the direction of a future separation, the Church of Norway shall at this stage remain a part of the administration of the state. In Denmark such a proposal on separation has only marginal support.

The current discourse on separation between Church and State in the Scandinavian countries raises important questions related to constitutional values as representative for the state and for the society. Constitutional “hard” norms are combined with societal “soft” values. Values have been an important part of constitutional reform. Each individual is representing values on different territorial levels. The Swedish conservative foreign minister Carl Bildt demonstrated this in an auto-biographical book called “Hallänning, Svensk, Europé”, in which he argued that he identified himself with three territorial concepts and their different (and common) values: regional, national, and international.<sup>90</sup>

---

87 Norwegian Centre of Human Rights, Statement to the Ministry of Culture and Church, 1.12.2006. (Høringsuttalelse. NOU 2006:2 Staten og Den norske kirke.) – Cf. Njaal Høstmælingen, “The Permissible Scope of Legal Limitations on the Freedom of religion or Belief in Norway”, *Emory International Law Review*, vol 19, no 2 (2005).

88 Lag om svenska kyrkan 1999; Lag om religiösa trossamfund 1999.

89 NOU 2006:2 Staten og Den norske kirke.

90 Carl Bildt, *Hallänning, Svensk, Europé*, Bonnier Stockholm 1991.

On one hand there is a contradiction between basic values and national values, as well as there is a contradictory element in the concept of the state church related to human rights. This is emphasized in the OSCE Guideline principles. The concept of Scandinavian state churches is historically based and traditionally upheld. It fitted in a homogeneous modern welfare-state of the 20<sup>th</sup> century, but it is running into problems in heterogeneous late modern multi-cultural and multi-religious societies of the 21<sup>st</sup> century.

In Norway this change can be related to the parade at the national holiday celebrating the May 17<sup>th</sup> Constitution, where Norwegian national flags today are reluctantly combined with those of Pakistan and the Sámi people.<sup>91</sup> The homogeneous state did not observe or acknowledge any differences between state and society. In Sweden this concept of modernity was articulated in the concept of “Folk Home” (Folkhemmet). But in a religious pattern where the Norwegian state church still represents 82 % of the population, the claims for upholding collective rights related to the freedom of religion of the minorities are made more visible.

The problem is how the values of the state – as demonstrated in the constitution as the civil religion – can be formulated in relation to those of the society, in which the religious and belief communities (in plural) are representing (concurring) values. On the European level this problem was demonstrated when the preamble of the European treaty was discussed. Some Mediterranean member states argued for the need of a religious statement: Europe is a Christian territory, others (Scandinavian) argued for a secular position of the values.

---

91 An intense debate on prohibiting other flags than the Norwegian in the parade has been running for years, see inter alia [www.dagsavisen.no/innenriks/article343352.ece](http://www.dagsavisen.no/innenriks/article343352.ece)

# 7. Conflicts in Local and Globalized Communities

## A. Long Term Normative Influence: Education

The OSCE Guidelines, Section C underline that “primary and secondary education is one of the most complicated areas pertaining to rights of religion or belief ... Laws involving education should be reviewed to identify these and other issues raising concerns regarding international standards and OSCE commitments.”

The Guidelines mention the following six issues as the most common and interrelated issues:

3. Parental rights related to education of their children
4. State financing of religious education
5. Religious, ethical or humanist education in State and community schools
6. State authorization of private religious or philosophical schools
7. Rules pertaining to hiring and firing teachers and other school personnel on grounds of religion or belief
8. Religious symbols (and attire) in State schools

The Norwegian legislation and practice in relation to this section concerns mostly numbers 1 and 3, parental rights related to education of their children and religious, ethical or humanist education in State and community schools.

Educational institutions are normative institutions which convey and install norms and values of great importance for both states and local communities. Issues concerning educational institutions, their structure, the curriculum etc. have thus always been contested issues of great political concern.

But they are also considered institutions of great importance for the development of tolerance and non-discrimination as expressed by the UN Special Rapporteur on Freedom of Religion or Belief:

*“Especially primary and secondary schools may be a suitable place for learning about peace, understanding and tolerance among individuals, groups and nations in order to develop respect for pluralism. States, academic institutions and NGOs should be encouraged to elaborate models for education in religion and ethics in accordance with international human rights instruments as a follow-*

*up to the 2001 International Consultative Conference on school education in relation to freedom of religion and belief, tolerance and non-discrimination.*

*Furthermore, inter-religious and intra-religious dialogue is vital for the prevention of conflicts. Religions may examine ways of managing the expression of their own internal diversity while at the same time incorporating a genuinely pluralist culture.”<sup>92</sup>*

In the absolutist Nordic states Christianity was an important part of the school curriculum, and in Norway this importance has been of specific significance due to the late independence of the country. Protestant Christianity has been taught since general mandatory education was introduced in 1739, but from the time of the Dissenter or Non-conformist act of 1845, a right of exemption for children of other faiths has existed.<sup>93</sup> The Nordic Lutheran Churches have thus a privileged position in the constitutions, and knowledge of Protestant Christianity has both in the 20<sup>th</sup> and 21<sup>st</sup> century been secured a privileged status in the curriculum of state financed primary schools and in the objects clause of primary school and pre-school institutions.

This privilege has later been expanded to the area of care for pre-school children. In the Act on Kindergartens from as late as 2005 it is stated in Section 1 that “[t]he Kindergarten shall help in giving children an upbringing in accordance with Christian basic values.”<sup>94</sup> Almost 70 % of all pre-school children go to kindergarten in Norway. This is thus a requirement with very broad consequences and not particularly supportive of intra-religious dialogue.

The former Ministry of Children and Family commented to this section of the law that upbringing must take place in close cooperation with the home in order to prevent conflicts of loyalty. The debate on the Christian objects clause was strong and emotional in the 1970s and 1980s. The Ministry states, however, that there has been relative satisfaction with the clause since then.<sup>95</sup>

This indicates that in periods when rapid changes are taking place, and where the importance of values as points of reference and cohesion are underlined, secular and religious values become hard to distinguish. It also looks as if it becomes difficult to secure non-dominant values. The working group which drafted the law underlines the need to secure the rights of Sámi children. This reflects the political

---

92 Report of the Special Rapporteur on freedom of religion or belief. A/HRC/6/5, 20 July 2007, from Section III Conclusions and Recommendations

93 See CCPR/C/82/D/1155/2003

94 Lov om barnehager § 1

95 Det Kongelige Barne- og Familiedepartementet. Ot.prp.nr. 72 (2004–2005). Om lov om barnehager, s. 25–26

weight put on the situation of the Sámi people during the last decades, resulting in ratification of ILO Convention No. 169, Section 110a in the Constitution (on the Sámi culture), the Finnmark/Sámi Act, the Sámi Parliament etc.<sup>96</sup> A later committee which has worked on the objects clause suggests that the provision should not be continued in future legislation.<sup>97</sup> This is also a result of the critique of the school curriculum discussed below.

Between 1993 and 1997 a process of reform of compulsory primary and secondary school took place.<sup>98</sup> In August 1997, the Norwegian government introduced a new mandatory religious subject in the Norwegian school system, entitled “Christian Knowledge and Religious and Ethical Education” (CKREE, in Norwegian called KRL) replacing the previous separate Christianity subject (with exemption clause) and the alternative life stance subject. The new subject only provides for exemption from certain limited segments of the teaching.<sup>99</sup>

The majority of the Parliamentary Committee for Church Affairs, Education and Research emphasized “the importance of ensuring an open and inclusive school environment, irrespective of the pupils’ social background, religious creed, nationality, sex, ethnic group or functional ability. The school should be a meeting place for all views. Pupils having different religious and philosophical convictions should meet others and gain knowledge about each other’s thoughts and traditions. School should not be an arena for preaching or missionary activities.”<sup>100</sup>

This is clearly in line with the views of the 2007 report by the UN Special Rapporteur, who writes that “[e]ducation should aim at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief.”<sup>101</sup>

The post-cold war Education Act paragraph 2(4) reads as follows: “Teaching in CKREE shall

- provide a thorough knowledge of the Bible and Christianity both as cultural heritage and Evangelical-Lutheran faith
- provide knowledge of other Christian denominations

---

96 The Sámi Parliament commented on the draft legislation, *op.cit* p. 29

97 NOU 2007:6. Formål for framtida. Formål for barnehagen og opplæringen. Utredning fra et utvalg oppnevnt ved kongelig resolusjon 2. juni 2006. Avgitt til Kunnskapsdepartementet 8. juni 2007, p 77.

98 See Case of Folgerø and others v. Norway (15472/02) Judgment by ECHR 29.06.07

99 CCPR *ibid*.

100 Case of Folgerø and others v. Norway, p. 5

101 From Section on Vulnerable groups in United Nations, General Assembly, Human Rights Council, 6th session, “Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development.” Report of the Special Rapporteur on freedom of religion or belief. A/URC/6/5.20 July 2007.

- provide knowledge of other world religions and philosophies of life, ethical and philosophical topics
- promote understanding and respect for Christian and humanist values  
promote understanding, respect and ability to carry out a dialogue between people with different views concerning beliefs and philosophies of life”<sup>102</sup>

A 2000–2001 white paper evaluating the subject points to challenges stemming from the fact that Norway has increasingly become a multicultural society.<sup>103</sup> This development may lead to enrichment, but also to a society characterized by ethnic and religious conflicts, hate, suspicion, racism and ghettoization. The challenge for any society is to decrease tension and conflict. But it is also necessary for individual members of society to have a thorough knowledge about its cultural, value and belief foundation. In order to avoid alienation in one’s own country and avoid different forms of class divisions and marginalization everybody needs insight into this foundation.

According to the white paper, “Christianity has a special status in Norwegian society, partly because this religion is an integrated part woven into Norwegian history and culture, partly because the great majority in Norway belongs to the Christian church. Therefore it is also important that all who live in Norway have sufficient knowledge about Christianity to understand its societal importance. A uniting joint subject on belief and life stance shall contribute to an answer to these challenges.”<sup>104</sup>

Value tensions and conflicts are nothing new in modern societies, but during the last decades a shift has taken place from a focus on conflicts concerning class issues to conflicts concerning issues about gender, sexuality, ethnicity and religiosity.

Especially since the end of the cold war and since nine-eleven focus on religiosity has grown, sometimes overlooking the interrelations between gender, ethnicity and religiosity on the one side and class on the other.<sup>105</sup>

When class divisions were important in national societies, schools were important arenas in socialization processes as well as important arenas for value struggles. This has not changed but the concerns and focus of the value struggles have shifted from economic redistribution to cultural struggles.

102 CCPR, *ibid*, p. 3, note 1

103 St.meld. nr. 32 (2000–2001) Evaluering av faget Kristendoms-kunnskap med religions- og livssynsorientering. Det Kongelige Kirke-, Utdannings- og Forskningsdepartementet

104 *Ibid* p.3

105 See Fareena Alam (2004), “Britisk assimilering”. In *Høstmølingen* (red.), *Hijab i Norge. Trussel eller menneskerett?*

The global dimensions of these struggles are demonstrated in the fact that the status of the CKREE -education has been subject to decisions by international human rights bodies in 2004 and 2007. Both decisions concern a case originally taken to court by the Norwegian Humanist Association. The plaintiffs argued in Norwegian courts that the CKREE-subject favoured one religion on behalf of others, which in their view is a breach of freedom of religion and against the ECHR Art. 9.<sup>106</sup>

The first international decision in the case is a November 8, 2004 so called "View" of the UN Human Rights Committee in Communication no.1155/2003 (*Leirvåg et al v. Norway*).

The UN Human Rights Committee found that the State party had violated art. 18, paragraph 4 of the International Covenant on Civil and Political Rights, and that the State party is under an obligation to avoid similar violations in the future.

The Committee concluded that the teaching of CKREE "cannot be said to meet the requirement of being delivered in a neutral and objective way, unless the system of exemption in facts leads to a situation where the teaching provided to those children and families opting for such exemption will be neutral and objective."<sup>107</sup>

In the parallel *Case of Folgerø and others v. Norway* (Application no 15472/02) (Judgment of June 29, 2007) the European Court of Human Rights outlines the question at hand as follows:

*"The question to be determined is whether the respondent State, in fulfilling its functions in respect of education and teaching, had taken care that information or knowledge included in the Curriculum for the KRL subject had been conveyed in an objective, critical and pluralistic manner or whether it had pursued an aim of indoctrination not respecting the applicant parent's religious and philosophical convictions and thereby had transgressed the limit implied by Article 2 of Protocol No 1. In examining this question, the Court will consider, in particular, the legislative framework of the KRL subject as it applied generally at the time when the case stood before the national courts."*<sup>108</sup>

The Court found that the refusal to grant the applicant parents full exemption from the KRL subject for their children gave rise to a violation of Article 2 of Protocol No.1. This view was held by nine votes to eight, a decision which underlines the divisive aspects of contemporary cultural and legal value struggles. The Norwegian

---

106 The case is mentioned in St.meld. nr. 32 (2000–2001) p. 17

107 See CCPR/C/82/D/1155/2003, Consideration of the merits, section 14.3.

108 *Folgerø and others v. Norway* Judgment, section 85

judge joined the dissenting opinion of the eight votes, supporting the status quo in relations between individuals, states and international regulation in favour of the national state. Amongst the majority of nine judges were four (out of the five participating) female judges. The slight majority is thus of a more gender equal composition than the big minority.

This may perhaps be regarded as an indirect female voice in favour of both inter-religious and intra-religious diversity, and individual agencies mentioned by the UN Special Rapporteur (see above).

In both cases the Christian dominance in the strong national community is mentioned – and indirectly supported by the State Party. For new citizens to become integrated into and made to feel that they belong to a local community where the Christian culture has had such strong importance, it seems convincing that there is a need of knowledge about this cultural history, its dominance and its present status. For Norway and Norwegians to become adapted to a culturally and religiously pluralistic world society, it seems that there is another need to expose oneself to knowledge about other cultural, religious, legal as well as general knowledge traditions of world society. This perhaps requires an adaptation and a change of attitude and practice both on behalf of local communities of belief, national communities and individuals belonging to several of these communities.

The processes of adaptation on behalf of the national communities have to some extent already started with the exposure of problems of mutual adaptation demonstrated in the concrete international cases. However these processes probably need a concerted effort of development of mutual educative methods and techniques on several levels.<sup>109</sup>

The privileged status of the Evangelical-Lutheran Church of Norway is to a large degree a historical fact in contemporary Norway and an outcome of historical processes. However, in a period of global change this privilege comes with the obligation of both Church and national community to enter into inter-religious, intra-religious and trans-community dialogue in order to develop respect for pluralism, prevent conflicts, secure peace and non-discrimination and learn understanding and tolerance needed for coexistence in a global world as expressed by the UN Special Rapporteur.

This goes beyond the OSCE Guidelines which, due to their focus on human rights, cover relations between individuals and the state and not relations between states

---

109 See also St. meld. Nr. 32, p.15–16

and national communities and world society. A globally ambitious community as the Norwegian community, however, would probably wish to contribute to a development that goes beyond a focus merely on the relations between individuals and state.

## **B. Authority of Affective Communities: Family Law and Changing Family Lives**

Already when ideas of Scandinavism were articulated in the 1840s, family law was looked upon as a field of harmonisation between the legislation of the Scandinavian countries. The 20th century has since successfully adopted treatises within the Nordic countries related to family law. This success is very much related to the state church concepts of these countries. Norwegian family law is thus to a great extent a part of the common Nordic Christian tradition of the family as a societal institution.

The Nordic model of marriage introduced in the 1920s was characterized by egalitarianism and secularism, and the Nordic countries harmonised their marriage laws in order to avoid discrepancies, when people moved from one country to another. The professed goal was to abolish private patriarchy and furnish married women with legal rights.<sup>110</sup> After World War II a gradual change of marriage laws took place, and the 1970s and early 1980s is described as the most *secular* period in Denmark and probably also in Norway.<sup>111</sup> Two important volumes on women's law published in 1985 focused on Birth law and Housewives' Law in Norway. But none of these volumes dealt with the important role of Christianity in shaping the expectations for family life.<sup>112</sup> Pylkkänen underlines that even the seemingly neutral and secular understandings of law – especially family law – have roots in the early modern interpretations of Protestant faith and that the “*Nordic nation states are a paradigm example of the fusion of Lutheran ideas and social welfare.*” The issue of family is clearly amongst the ones with deep religious roots. This is an area where direct religious laws have strong impact, or where still existing but often unconscious and unacknowledged religious values still play a very important role.

Family life has undergone considerable changes in the Nordic countries. Divorces have increased almost dramatically over the last decades. The family is no longer

---

110 Pylkkänen, Anu (forthcoming), “Feminism and the Challenge of Religious Truths: the Case of Nordic Protestantism”, Paper for the 2007 Conference on Law and Society in the 21<sup>st</sup> Century; workshop on Feminism, Secularism and Religion. In Lisbet Christoffersen et al (eds), *Law & Religion in the 21st Century – Nordic Perspectives – New Life in the Ruins*.

111 Hanne Petersen (forthcoming), “Women, Secular and Religious Laws and Traditions. Gendered Secularization, Gendering Shari’a” in Jørgen S. Nielsen and Lisbet Christoffersen (eds.), *Tradition and renewal: Shari’ah as discourse and the encounter with Europe*.

112 Tove Stang Dahl (ed.) (1985), *Kvinnerett I & Kvinnerett II. Kvinners levekår og livsløp*, Oslo: Universitetsforlaget. See also the abbreviated English translation from 1987 by Tove Stang Dahl, *Women’s Law. An Introduction to Feminist Jurisprudence*. Oslo: Norwegian University Press.

considered a union between two grownups of different sexuality. The important legal relationship today is not the gender relationship, but the generational relationship between parent (often single parent) and child. In this relationship there are still considerable economic and caring duties to be carried out – in the case of single parent families most often by women, who are economically and institutionally supported by the feminized welfare state.<sup>113</sup>

Linda Woodhead, senior lecturer in Christian Studies, writes that the classical accounts of secularisation have in mind chiefly men and the life-stories of men. The continued differences in the patterns of male and female labour yield information about the nature of recent secularisation and sacralisation, by which she means the decline of traditional religion and the growth of new forms of spirituality. Women are still disproportionately engaged in part-time labour, they still carry out the bulk of unpaid caring work and there is still gender segregation in the workforce. Women who share a typically male experience of the workplace are likely to find this “equally corrosive of religious commitment”. Women who *juggle* work and home may privilege one over the other and thus reject either Christianity or find in it a legitimization for their domestic roles. “Holistic spirituality caters predominantly for women, as well as being predominantly ‘run’ by women... What is more, such spirituality is primarily concerned with catering for the stresses and strains of female life, including dealing with issues of overwork, stress, and lack of self-confidence.”<sup>114</sup>

These issues have been of clear relevance and concern for women for decades, and are increasingly important on a global scale.<sup>115</sup> Secular national laws oriented towards equality as well as welfare legislation in the Nordic countries have not been able to solve them.

The Norwegian professor of Women’s Law, Tove Stang Dahl in 1992 published a book called *The Muslim Family* (“Den muslimske familie”), based on anthropological material from Cairo. She maintains that the organization of the Muslim family in complementary gender roles had been very important for the results which had no doubt been achieved.

*“This family form has guaranteed that poor neighbourhoods have inhabitants present 24 hours with women as the putty in the families and bearers of the neighbourhood networks. Women are there all the time and take care of*

---

113 Hanne Petersen (2007), “Integration i foranderlighed”, in Rubya Mehdi (ed), *Retsudvikling & Integration*. Copenhagen: Jurist- og Økonomiforbundets forlag.

114 Woodhead, Linda (2005), “Gendering Secularisation Theory”, in *Kvinder, Køn & Forskning*, Vol.14, No1–2, p 30

115 Gambles, Richenda, Suzan Lewis & Rhona Rapoport (2006), *The Myth of Work-Life Balance: The Challenge of Our Time for Men, Women and Societies*, John Wiley & Sons Ltd.

*children and everyday life. One does not see roaming street children in the poor neighbourhoods of Cairo, in contrast to many other large cities in the world. It is women who to a large degree are to be credited for the fact that family life and society has had a stable development, and that it has developed to the better ... But it is also women who to a large degree have had to pay the price. Women have been obliged to pay their contribution through religion, morality and legal sanctions, without having formal possibility to decide over their own and their families' lives. The law of patriarchy has in more than one way made women's lives insecure. Women who marry a good patriarch will have the possibility of a life in codetermination and respect. But those who are so unlucky to be subjected to a power-seeking and dominant husband have been doomed to a difficult life without change or possibilities to leave. Their human rights to co- and self-determination have been nonexistent. But no matter what legal injustices, women have in practice and as a group managed to go forward.*

*It is clear that this type of complementary family, which is built upon one part's one sided right and final work, cannot survive in a world where the family construction is practiced very differently.”<sup>116</sup>*

Tove Stang Dahl underlines that it is not the complementary family form which is the problem. But division of labour in the family must take place based upon general human rights principles of equal worth of grown up humans, where everybody has a right to co- and self-determination. “In family life as in other areas of social life, it is negotiations between the involved parties which must create the basis and soil for the organisation, sustainability and potential for life of the family.”<sup>117</sup> And her final sentence underlines that a wish for increased dialogue should stand in the foreground for all of us.

Her reflections on family life a few years after the serious changes in Europe indicates a will to understanding of the other and an acknowledgement of the importance of communication. Her work has demonstrated how family lives have been challenged by modernity and late modernity both in Norway and on a global scale, and how these challenges have led to changes of family forms both in societies where families are based upon Christian traditions and where they are based upon Muslim traditions. The interrelations between actual and practical forms of family life and the values underlying these forms have become much stronger and important in the decades since the publication of her book.

---

116 Tove Stang Dahl (1992), *Den muslimske familie*. Det Blå bibliotek, Universitetsforlaget, Oslo, p.172 (our translation).

117 Ibid, p.173.

The challenges to family law in the OSCE Guidelines are especially relevant when it comes to the issue of Islamic law versus *secular* state law. It should be remembered that in the legal culture of the Nordic countries, this secularism is deeply infused by Lutheranism and thus by Christian values in relation to both forms of marriage and family, parenthood, inter-generational relations, custody etc. Judaism, Christianity and Islam are monotheistic religions with historical roots and origins in common, emanating from the same areas and historical traditions and they are all based upon patriarchal cultures, norms and rules, although to varying degrees. These commonalities and differences might be used as basis for a common dialogue in shifting contexts of majority or minority status of one or the other of these belief communities.

## 8. Concluding Reflections

This report should be seen as a contribution to the current late-modern discourses on human rights in relation to law, religion and politics. Our work with and preparation for this report has underlined the need for collective self-reflection in a time of cognitive and societal change.

The Nordic countries as welfare-states had their peak during the modernity pre-1989. Today, in our time of late-modernity, Norway and the other Nordic countries have to tackle quite new challenges, related to the transformation from homogeneous to heterogeneous, from mono-cultural to multi-cultural, from mono-religious to multi-religious societies and communities.

This process of transformation challenges dominant collective identities, especially the national identity but also the secular identity. The current and often heated discourses on culture and identity are to a great extent related to this insecurity within a more general process of reflection related to changes on the local level and adjustment to the global one.

Traditionally the state has transformed its norms with help of legislation and judicial decisions. In the current situation, however, this is not sufficient. It is increasingly necessary to identify the vague value-based structures and immanent and informal powers of the late modern society. One instrument for this purpose is to go beyond 'positive' and "valid law", to find (look for) layers which Kaarlo Tuori calls the *national legal culture* and the *trans-national deep structures of the law*.<sup>118</sup> In the Nordic countries Protestant Christianity (Lutheranism) is an essential element and parameter of the deep structures of law.

Freedom of religion or belief is an important human right which may be studied in the transformation from totalitarian and authoritarian states to democratic ones. The OSCE Guidelines are created to serve as an instrument in that respect. They mainly apply international human rights provisions in order to guide states on legislation pertaining to religion or belief. As we have argued, useful as this may be, legislation in compliance with international human rights may not be enough in order to accommodate communities with conflicting values and beliefs in a common society.

---

118 Kaarlo Tuori, "Towards a multilayered view of modern law", in Aulis Asnio, Robert Alexy, Gunnar Bergholz (eds.), *Justice Morality and Society: A Tribute to Aleksander Peczenik on the Occasion of his 60<sup>th</sup> Birthday 16 November 1997*, Juristförlaget i Lund 1997, 432 ff.

Dialogue at different levels is an equally important pre-requisite to prevent conflicts and negative relationships.

The Norwegian political and religious communities have been challenged by this in a “post-1989” and “post-nine-eleven” context. A draft amendment of the almost bicentennial Constitution on the relation between State and Church proposed a separation of the Church from the state – in a similar way to what already has taken place in Sweden – but during political negotiations the changes in the relationship were reduced to a minimum. This challenge to the Lutheran Christian heritage, which has had a major impact on state and community life, was thus rejected. Norway upholds its combination of privileged religious and secular values as part of its constitution and its societal cohesion. This may present future challenges for its existence as “the manifold community, which constitutes contemporary Norway” presented to the future Norwegian citizen in the letter by His Majesty, King Harald V.<sup>119</sup>

The late-modern Norwegian society uses a historical argumentation in its search for a new position and identity. The deep structures of religious education – based on tradition and still supported by about 82 % of the Norwegian population who are members of the Church of Norway – are examples of that. The constitutional symbols, e.g. Eidsvold (where the 1814 Constitution was adopted), May 17<sup>th</sup>, the King, the flag etc. are other such examples.

This process is, however, also related to a collective adjustment. Even if Norway is not a member of the European Union it has found its adjusted position to the European entities. Beyond that it has since decades taken up an international responsibility, also as a part of the Norwegian *missionary calling*.

An important part of the discourse on globalization has been that of post-colonialism, of “We and the Other”, the dominance of the Western colonial powers in relation to the “Subaltern” of the East or the South. Norway has never been a colonial power; nevertheless Norway is a part of this discourse on “We and the Other”, not least through the presence of the most numerous Sámi populations in the Nordic countries. Since post-war times Norway is playing an important role as a leading actor in several international institutions as the UN (the first Secretary-General, Mr Trygve Lie), the WHO (Gro Harlem Bruntland) and the Council of Europe (Torbjørn Jagland) as well as acting for the peace in the Middle East. Norway has also played an active and visible role in the international human rights discourse (as Rolv Ryssdal, former President of the European Court of Human Rights). Again, this can be seen as a part of the Norwegian missionary calling.

---

119 Velkommen som ny statsborger, 2006.

Employing the retrospect perspective of individual human rights in a time of ideological collapse and globalization Norway ('We') has together with other Nordic countries played the missionary role of the humanitarian and moral superior. Norwegian journalist Åsne Seierstad's conflict with the bookstore keeper in Kabul can be seen as the moral fight between 'We' (the good) and 'The Other' (the bad) in fulfilling the program of individual human rights.

In that respect the late modern citizen is running into a moral dilemma: Where and who are 'the good people' when individualism and liberalism have changed the values in the society? A dynamic society also needs a dynamic reflection on beliefs. In that respect the late modern citizen perhaps has to become a synthesis, 'a responsible self', combining individualism and collective responsibility.<sup>120</sup>

The pre-modernity (of the late 19<sup>th</sup> century) as well as the modernity (of the major part of the 20<sup>th</sup> century) were based on ideology. The late-modern state – strongly influenced by individualism and liberalism – seems so far to be characterized by a lack of communal and post-individual ideologies. Secularism was an important part of the modernity. In the late modernity, however, the secular is competing not with a homogeneous religiosity but with a fragmented one. In this competition the secular ideology – which is also fragmenting – may lose legitimization in relation to the religious.<sup>121</sup>

Our investigations indicate that Norwegians present an official image of a traditional Norwegian secular-Lutheran community to be believed in for newcomers to Norway, but that they – somewhat reluctantly – also want to allow for other beliefs to coexist within Norway.

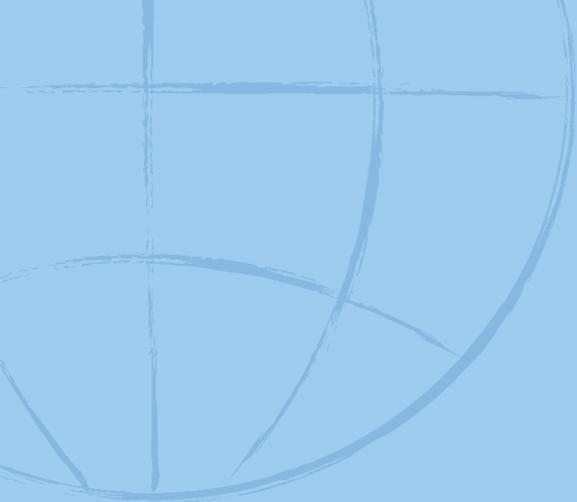
In that respect the motives of the constitutional and statutory reforms of the "popular Church of Norway" indicate openness to the current multi-cultural and multi-religious late modern society. The proposed new value article is also confirming Norway's obligations towards international human rights conventions. What is attempted is striking a balance between (vague and constructed) national traditional (religious) values, on the one hand, and, on the other hand, an adjustment to the current international human rights discourses and the judicial control of its application.

---

120 See also Kevät Nousiainen, Johanna Niemi-Kiesilainen et al (eds.), *Responsible Selves. Women in the Nordic Legal Culture*, Dartmouth: Ashgate, 2001.

121 This is also reflected in the current political debate on "creeping islamisation" of the Norwegian society, as argued by the successful right-wing Progressive Party (Fremskrittspartiet), see [www.tv2nyhetene.no/innenriks/politikk/article2580824.ece](http://www.tv2nyhetene.no/innenriks/politikk/article2580824.ece)

Constitutionalism is nothing new within Norwegian public discourse. Norway's human rights obligations have already – and will likely again – bring decisions of the Norwegian Supreme Court to be scrutinized by international treaty bodies. The reluctance to take the ultimate decision and totally break up from the state-church system may result in new conflicts and new legal cases in these bodies.



NORWEGIAN HELSINKI COMMITTEE  
Kirkegata 5, N-0153 Oslo  
Telefon: (+47) 22 47 92 02 - Fax: (+47) 22 41 60 76  
E-mail: [nhc@nhc.no](mailto:nhc@nhc.no) - [www.nhc.no](http://www.nhc.no)