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Sharia and the Scandinavian Welfare States

The Stumbling Stone of Sharia in a Post-Westphalian Order.

For more than a generation, Muslims and Islamic institutions in Europe have been undergoing highly critical deliberative questioning (March 2011; Petersen & Vinding 2020). Muslim ideas, values, ethics, law and practice have been subjected to social, political, judicial and public media scrutiny to assess if Muslims live up to the standards of democratic society and qualify to be admitted into the vague societal contract that is foundational to the European way of life (March 2007, 2011; Cinalli & O'Flynn 2014; van Es 2018). The 1646-48 Treaties of Westphalia (Cavanaugh 1995; Beyer 2013; regarding Muslims, see Nielsen 2009) are most commonly, yet not entirely adequately, understood as expressing a negotiation of loyalty to the state and peace amongst religions, which guarantees the public status quo of secularism in the modern welfare state (Modood et al. 2006; Roy 2013). Until recently, this has been widely lauded in political and sociological doctrine by reference to the political compromise, peace and early secularism of the Treaties of Westphalia. Here, 'famously' the *cuius regio eius religio* principle aligns state sovereignty with religious identity, thus placing limits on religion. However, sociologist Peter Beyer, challenging the established wisdom of Taylor (2007), Casanova (2008, 2011) and Habermas (2010), has called this romanticized peace into question, arguing that such an understanding of secularism is misleading, inadequate and misses very important points in the relationships between state and religion as they have been developing for some time (Beyer 2013, 2020). From a neo-Durkheimian position, with the concept of religion as expressing socie-

ty's image of itself (Durkheim 1912; Mårtensen 2014, 6), Beyer highlights that societal structures arise in relation to religion, “meaning that they were interdependent, [and] distinguished themselves with reference to each other” (Beyer 2013, 667). This implies that the Peace of Westphalia was a “critical restructuring and reimagining of religion”, which meant a greater “relational differentiation of religion and polity” (Beyer 2013, 668-669). This became ‘domestication’ and control of religion under a clear order demanding loyalty to the state, which would then, in turn, tolerate or even delegate responsibilities to religion (Cavanaugh 1995). In Beyer’s words this “rise of structural dominance” (Beyer 2013, 668) echoes the sense of domestication and precisely characterizes the advent of the early modern state. It is a mode of relations and a socio-structural pattern, which maintains a strong loyalty to state.

However, as Beyer argues, this mode of relations is changing and becoming less self-evident, and he therefore speaks of a post-Westphalian condition (Beyer 2013, 670). By this he means “a relative de-linking of religion from how states have been structured, ... a decline in religion exclusivism, [and] the relative increase in religious bricolage” (Beyer 2013, 670). This means a higher and more deliberate degree of ‘production’ and ‘competition’ in religion as a ‘service’ (Beyer 2013). It seems that the interdependent, structuring relationship between state and religion is being pluralized, and that the *cuius regio eius religio* may include more bilateral and concordat relations between a polity and more religions. “Religion in consequence becomes a far messier system” (Beyer 2013, 671), which also allows for much more deliberate and strategic governance (e.g., ‘divide-and-rule’), and a stronger institutional path dependence or ‘churchification’ of other religions, such as Islam (Vinding 2013, Vinding 2018).

In that mindset, an unbridgeable contrast between Islamic politico-religious thought and the Westphalian order is argued even in much recent literature (case-in-point: Delahunty 2018, *Idea of a Caliphate and the Westphalian Order*; cf. Aydin 2017, Esmaeili 2018). Muslims, the logic follows, cannot be part of a Westphalian order. The stumbling block that keeps invalidating Muslims and Islamic values seems to be *sharia* – that ambiguous, almost semantically void complex of Islamic laws, ethics and practice, changing across time and space.

Based on the assumption that the state is governing, domesticating and producing religion in the post-Westphalian ‘mes-

sy' condition, this special issue sets out to explore some of the complex problems of 'producing sharia' in Scandinavia today by investigating the production of sharia through the prism of the modern state. The state has always been a producer of religion, and the argument is that the pluralisation of the post-Westphalian state-and-religion relations facilitates breaking the monopoly on goods of salvation by establishing sharia as a competitor in the services of salvation, through free-schooling, religious welfare services, legal and quasi-legal religious mediation and more.

These assumptions and questions are some of those that inform the research project on "Producing Sharia in Context" (*Danish Independent Research Fund*, 0163-00070B, PI Vinding, 2021-2024) at the University of Copenhagen. The argument is that reinvention and transformation of sharia is currently ongoing (or rather still and continuously happening) and that state institutions still require Muslims to transform sharia into a domesticated relationship across all sectors of society, as was the case in the Westphalian Order. Our task in the research project is to see sharia in the context of the modern Western state and society, but not as a sole product of Muslim pious intellectuals but as a co-product of social generative structures, with the modern welfare state as the first and strongest amongst such structures.

This relatively recent focus on state-and-religion interdependence gives a renewed perspective onto strategies of domestication governmentality (Dean 2010), institutionalization (Scott 2008), production and subjectivation (Foucault 1982), and may be argued using the frame of generative structuration (Calhoun 1991), which Bourdieu (1985) and Giddens (1984) have demonstrated and analyzed. In Bourdieu's analysis of the power relations in religion vis-à-vis the state (Bourdieu 1991: 23; Kühle 2009), he speaks of the administration of the goods of salvation as the source of symbolic religious power, which a church or religious entity may only be allowed to administer if loyal to the governing polity. This is the insight on the power of the state and politics as regards religion that is studied in terms of sharia in the post-Westphalian context of contemporary Scandinavia.

Sharia as a new case for old problems

The problem of sharia seems to rest on the scholarly, legally and politically contested questions of what sharia is and the public

moral questions of what sharia in society should be. Two self-reinforcing circumstances make the issue of what sharia in society is or should be very difficult and acutely important to answer. Firstly, there is very little scholarly agreement on the definition of sharia, and even considerable disagreement over the reasons for this. Secondly, because of this ambiguity, the political fictions and legal conceptualizations of what sharia is, which are being produced in an increasingly mainstream political environment, are taking over. In this light, our project pursues a subjective-reflective turn in the scholarly conceptualization of sharia, namely, one that presents sharia as inherently flexible, modulable and primarily grounded in living Muslim practice in the relational contexts of state and society, rather than a stale discursive tradition defined by Islamic legal dogmatists as well as contemporary scholars. In modern welfare states, this renders sharia a social, political and moral co-product of state and society rather than of something alien or outside society. This is not only due to the historically, empirically and normatively demonstrable modularity of sharia, but also of the hegemonic governmentality and socially generative nature of the modern welfare state.

The important change comes with the domestication of sharia in the colonial and modern governance of religion, as Wael Hallaq has examined in several major volumes over the past 15 years (Hallaq 2009; 2012; 2018). As the pre-modern, organic, knowledge-and-justice system that is sharia (in Hallaq's view) encounters the modern colonial state, sharia is fundamentally transformed. What is left from such a devastating encounter, he argues, is merely the textual residue of what was once the systemic nature of sharia, to be applied and reproduced as fits the state governmental logics (Hallaq 2009, 547). As Hallaq has argued, along with Talal Asad amongst others, much postcolonial/post-oriental scholarship is inherently outraged by the encounter between the state and sharia and repeatedly highlights the incompatibility of the two. Such a sentiment seems to be accepted and taken on board by post-oriental, Western sociologists and anthropologists, including Mauritz Berger (2018) and John Bowen (2013). However, while Hallaq's point is a historical one in which he laments the devastation of systemic sharia, the observation is highly appropriate today. His identification of the power of the state is accurate and still relevant, yet he never takes the observation to its logical conclusion by investigating the full extent of the power relations between the modern state and

sharia; nor does he transcend the banal moral judgment of bad state versus good sharia.

However, as Leon Buskens has historically demonstrated – thus echoing Cavanaugh's (1995) and Beyer's (2013) observations from European history – the encounter between the state and traditional society did not just collapse the epistemic system of sharia romanticized by Hallaq; it also created and produced it in its modern expressions. Buskens famously (re-)discovered that there were also contemporary arguments for aligning state and sharia institutions writing, "The dichotomy between Westernization and local reception is misleading. Muslim scholars, civil servants, and politicians were active participants... in transforming sharia" (Buskens 2014, 211). Such critical analysis might lead to "a radical epistemological critique of our contemporary scholarly study of Islamic law". Indeed, the consequence for the study of sharia is that it is dependent on appreciating the entirely dialectical relationship between European state modernity and Islamic forms of law, ethics and practice, which has been missing from much of the prevailing 'understandings of sharia' in both public and current research.

Scandinavia as a laboratory for the study of sharia.

This is our starting point as we examine sharia in Scandinavia from sociological, anthropological, linguistic and political perspectives – in the research project, but most significantly also here in the articles of this volume. In our particular Scandinavian context, there are telling instances of research that comes thematically close to the themes explored in this current issue. Ulrika Mårtensen's introductory article for the special issue of the Danish Islamic Studies Journal Vol. 8 No. 1 (2014) – "Public Islam' and the Nordic Welfare State: Changing Realities?" – is written about the dynamic relationship between public and Islamic institutions and values (Mårtensen 2014, 4). In it she notes the problematic role of Islam in public debates, and considers the discussions of Islam as resistant to secularization and inimical to the established Nordic Lutheran division of power between church and state (Mårtensen 2014, 5). In such a context, she investigates the "institutionalization of Islam in the Nordic context with reference to both the theses of de-seculari-

zation and studies of change within the Nordic welfare state" (ibid.), tracing her argument in broad strokes back to the lasting impact of the reformation on Nordic welfare administration. She demonstrates how schools, hospitals, charity and poor relief were surrendered to the Danish and Swedish monarchs, enabling them to expropriate the Church's lands and with them the ultimate responsibility for education, care, the poor and infirm. This clearly demonstrates how the conjunction or agreement of state and church in the Lutheran state model is one that rests on sovereignty first and foremost, with the actual organization of affairs to be sorted out incidentally. As such, a 'Scandinavian model' is distinct from other European models or the American model, which "represents the logical opposite of the Nordic state model and its way of organizing welfare, civil society, and religion" (Segdwick & Mårtensen 2014, p 1).

In positively defining the Scandinavian welfare states as highly relevant contexts for studying sharia in the public moral negotiations, three arguments may briefly be outlined. Firstly, Scandinavia makes for an interesting 'laboratory' for the study of sharia because of the far reach of the state and the attuned welfare governmental technologies and logics, especially in regard to church and religion (Iversen 2006; Christoffersen et al. 2012). Secondly, and this is related, the Scandinavian welfare states are known for their spirit of social development, with inclusion in the labor force as the main objective, combined with an ethos of social class and gender equality (Martikainen 2014, 79). In this sense, the mechanisms of inclusion in welfare institutions work to challenge segregating or disintegrating ideas, seeking deliberately to challenge Islamic law, ethics and practices – or perceptions thereof.

Thirdly, Danish and Scandinavian scholarship seems to be at the forefront in approaching the interpretive and co-productive understanding of sharia in state and societal contexts. A case in point is Christoffersen's and Nielsen's *Sharia as Discourse* (2010), wherein the authors, while not moving much beyond the perspectives of comparative law (Mod er 2010, 89ff) or the nature of sharia (Christoffersen 2010, 57), nevertheless explore sharia as a norm system that explicitly addresses the relation between state, law and religion in Nordic contexts. At the most recent forefront of Scandinavian research on relations between sharia and the state, Marianne B e has investigated Norwegian legislation as it addresses Islam (B e 2018) and Torkel Brekke in

Norway directed a cross-Scandinavian research project FINEX on “Financial exclusion, Islamic finance and housing” to see if Islamic norms about money result in the exclusion of Muslims from the financial system (Brekke et al., 2019). Sayed in Sweden investigates *The Impact of Islamic Family Law on the Swedish Legal Landscape* (Sayed 2016), and al-Sharmani and Mustasaari (2018) have researched the dissolving borders between ‘official’ and ‘unofficial’ in the social and legal practices of Muslim marriage in Finland. In Denmark, Mikele Schultz-Knudsen studies how and in what sense Islam and Islamic law is understood and applied in Danish courts (Schultz-Knudsen 2020), and Jesper Petersen has undertaken deep and thorough explorations of Islamic councils and negotiations of sharia, in particular in relation to the police and the municipality (Jesper Petersen 2020, 2021). In other words, ample indicators and emerging trends in the state of the art may be seen, if not yet the full impact or empirical imperatives of the hypotheses of this project.

Contributions to this issue.

In this historically grounded, theoretically established and geographically scoped context, we present the five contributions to our thematic issue.

In her article, titled “The concept of sharia in Scandinavia in Quran translation and literature”, Nora Eggen writes about the concept from many angles and across contexts, yet the text follows a distinct logic. Her starting point is a linguistic, grammatical and exegetic analysis, which she then applies to a selection of Scandinavian Qur’an translations. Eggen traces these linguistic uses into the more technical terms developed in the 19th and 20th century, which are closely related to the growing body of codified national legislation. As she writes,

In this period, one often comes across the adjectivized form *al-sharī‘a al-islāmiyya*, which links the term both descriptively and normatively to a specific tradition. As a borrowed technical term, the link between law and the specific tradition and religion becomes so clear that the more detailed definition becomes redundant, and the loan word in European languages simply takes the short form *sharia*. (Eggen 2022, 28)

An important further contribution to this special issue is that Eggen continues her critical probe into the growing Scandinavian literature as well as application and reception of sharia concepts. A major point made by Eggen is that the translation of both words and concepts associated with sharia does not just entail a loss of meaning, but rather speaks to the addition of meaning. She argues that the added meaning is colored by the conventions and discourses of the Scandinavian languages, both concrete semantic alterations and more diffuse additions of meaning such as value loading and nuances. She demonstrates that two dominant translation and application strategies have been to reproduce a basic semantic content 'way', or a terminological content from the legal domain. In the mix of this, words such as 'norm', 'regulation' and 'law' can also be understood in very different ways. As such, understanding and defining a concept like sharia is closely linked to the legally regulated relationships between the state and the individual, as well as all types of moral, social and ritual relationships, and it is a term, Eggen concludes, over which many actors want defining power.

Continuing with a deep conceptual discussion is Jesper Petersen in the second contribution to the issue, titled "Parallel-samfundseffekten: Sprog, følelser og diskurs i æresrelaterede konflikter" (*The parallel society effect: language, emotion and discourse in honor-related conflicts*). As a pilot study with five Muslim informants, he investigates politically inspired concepts such as 'parallel society' and 'negative social control' and how the informants adopt these in their self-narratives in what he calls the 'parallel society effect'. Petersen focuses on a number of expressions of this in relation to the wide association of ideas and discourses linked to *sharaf*. In addition, he pursues a similar argument regarding the headscarf and the theologies of heaven and hell as they are applied in upbringing, as related by the five informants. Common to these are the emotional effects that the behavior of parents or others in their context instigate. One informant says that she wore the headscarf as a "fuck you to mainstream society". Another relates how the hypocrisy of their parents in honor-related questions revealed that religion was reduced to a social game to protect and produce a certain perception in their immediate social field. To Petersen, this is the most obvious explanation for why four out of five informants did not internalize religion to the degree that they experienced feelings

of sin in connection with violating religious injunctions and prohibitions. The article demonstrates that while Islam plays a role – in upbringing, for example – the informants see this as associated with their parents' honor or society's perception, and not as something that corresponds very well to their understanding of Islam as religion and practice. As such, and very much related to the theme of the issue, the article shows us how the context of minority religious honor or majority political culture has significant direct and indirect effects on the feelings, thinking and practices of the Muslim informants.

The third contribution is by Anika Liversage, who writes about Muslim women and divorce in a Danish context, in "Muslimske kvinder og skilsmisse i en dansk kontekst" (*Muslim Women and Divorce in a Danish Context*). The article investigates the great diversity in ethnic minority women's divorce processes, with a particular focus on Muslim practices linked to terminating a *nikah*. Liversage's article builds on her and Jesper Petersen's major study from 2020, *Ethnic Minority Women and Divorce – Focusing on Muslim Practices*, published by the Danish Center for Social Science Research (Liversage & Petersen 2020). The case studies are drawn from more than 80 interviews with professionals, Islamic authorities and ethnic minority women. As she reviews the divorce processes of four Muslim women, Liversage follows their paths through marriage, marital conflicts and divorce, exemplifying both the wide range of divorce experiences and the serious challenges some women experience. She elegantly uses the theoretical device of 'gendered geographies of power', which is a "framework for analyzing people's social agency – corporal and cognitive – given their own initiative as well as their positioning within multiple hierarchies of power operative within and across many terrains" (Liversage citing Mahler & Pessar 2001, 447).

Some of the most problematic cases arise when husbands maintain their sole right to declare the Talaq divorce and no one is able to mediate or help the women. Liversage argues that while religious family courts in the country of origin might be able to help, there are no such Islamic courts in Denmark. In their absence, the women in their need turn to persons who can be immediately recognized as Islamic authorities – imams in the local mosque, for example. However, more often than not, this leaves the women disappointed, as they often get no help from such sources. In light of the question of the role of the welfare

state posed by this issue, a major point is that social policies on social control, Danish law or a moral panic facing Islam do not necessarily determine the outcomes for Muslim women navigating their divorces. Rather, Liversage argues that an additional three factors seem to come into play, namely: 1) where and how women entered into their nikah; 2) the women's own resources; and 3) the degree of support the women can mobilize from others.

The fourth contribution is by Mikele Schultz-Knudsen and Janet Janbek, who investigate "The role of religion in health promotion: How the Danish health authorities use arguments from Islam". The context of the article is the debate that recently emerged in Denmark when the Danish Health Authority decided to cooperate with seven Islamic organizations in creating the pamphlet, "About Islam and vaccination against COVID-19". It was not well received, politically, and the Minister of Health argued that he considered it to be a mistake. Responding to parliamentary critique, the Minister held the view that the expertise of government agencies should not be mixed with religious arguments.

Through a chain of telling cases, Schultz-Knudsen and Janbek investigate how Danish health authorities have used or considered Islam in their efforts and in communications. After introducing public health theory and the existing literature on the interplay between religion and health, they discuss examples of how Danish health authorities have interacted with Islam before the pamphlet on Covid-19 vaccines, beginning with how the authorities have worked with Islamic authorities to deal with female genital mutilation. Secondly, Islamic arguments are considered in a case involving health workers' dress. Thirdly, it turns out the Danish health authorities have also referred to the opinions of religious leaders in the case of a vaccine which contained gelatin. Additional cases discuss diabetes in Ramadan, circumcision and burials, and a number of other practical situations between patients and health care personnel.

Taken together, these cases raise questions regarding the extent to which religion can and should be considered in such interactions, and whether religion should be taken into account in health promotion. However, the authors conclude that considering that religion is a core part of many people's lives and is an important health determinant, the initiatives by the Danish health authorities may fruitfully contribute to sustainable inte-

reactions between health authorities and religion for all involved parties. They support their case by citing employees of the health authorities who observe that they “would do the same again, also for other religions, when a health problem had its roots in theology”.

The fifth and final contribution is by Olav Elgvin, and investigates “Regulations in flux: Theology, politics and halal slaughter in Norway”. The article describes for the first time the history of the halal debate among Muslims in Norway, showing that halal regulations have been influenced by both theology and politics in bids for influence and status. The approach of the Islamic Council of Norway, the organization mainly in charge of halal regulations, has shifted no less than four times: from acceptance of stunning, to skepticism, to acceptance, to skepticism, and finally to renewed acceptance. He further argues that theological concerns among Muslims have clearly played a role in this process, but politics and power have also mattered. The juridical and political opportunity structures in Norwegian society have laid out the limits for possible approaches to Islamic slaughter, but halal regulations as a field have also been influenced by internal power struggles among the various actors and factions of Islamic institutions in Norway, who have contested each other’s interpretations in bids for influence and status.

The argument that the state co-produces sharia as it is briefly and theoretically sketched in this introduction and as exemplified in the five contributions of the volume will be further explored in the ongoing “Producing Sharia in Context” research project. However, this introduction and the volume is also an open invitation to colleagues across academic fields to get involved in the exploration of state co-productions of sharia, or to discuss and challenge the assumptions and observations we have made herein and which will continue to unfold.

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