

Lisbet Christoffersen, Kjell Å Modéer and Svend Andersen (eds.): *Law & Religion in the 21st Century – Nordic Perspectives*. Djøf Publishing, Copenhagen, 2010. 638 pp.

This heavy volume is the result of work within the wide ranging Nordic Research Network on Law, Religion and Ethics in the Nordic Countries funded by NordForsk during the period of 2005-2008. It reports the state of the art of research on law and religion in the Nordic countries organized under three general themes.

The first theme, 'Law and Religion', details the specific relation between state and church in each of the 5 Nordic countries. The papers provide information on how the legal relations between state and church have developed in the Nordic states and on recent political debates about the historically emerged settlements.

The second theme, 'Late Modern Challenges', covers a more diverse range of issues, including the understanding of 'late modernity' and its symptoms as expressed in the relation between law and religion in the Nordic states and human rights challenges to established state-religion relations. These papers combine empirically detailed accounts of particular problems involving law and religion with more theoretically informed discussion and criticism.

The third theme, 'Challenges from Particular Normative Traditions', presents normative perspectives on the law-religion relationship, including Lutheran natural law, Islam, Feminism and human rights, and discussions of specific cases from the Nordic countries in this light.

The three themes are finally set within a more general research framework raising the question about the relation between law and religion. This framework, and the various questions and debates it gives rise to, receives ample treatment in several (sic!) introductory essays and concluding discussions.

As is apparent from this sketchy overview, the collection is not only big in quantitative terms, it is also both multi-disciplinary, multi-national, and wide ranging in the issues addressed. This broad scope is both the strength and the weakness of the volume considered as a whole. The collection provides anyone interested in the relation between law and religion in general, or its particular evolution or current state in the Nordic countries, with much relevant and interesting information. It also provides detailed and thorough treatments of a number of more particular cases, controversies and issues. On the other hand, the focus of the volume is only unified by the very broad and quite vague idea of 'Law and Religion', the understanding of which is not obviously the same in the different contributions – whereas some contributions take 'law' and 'religion' as more or less fixed and independently defined categories, e.g. 'law' as constitutional texts and international human rights precedent, others take them to be interdependent or as points on a continuum, e.g. the idea of 'legal traditions' as encompassing both black letter law and religious norms. The choice of specific cases and issues furthermore does not always follow any systematic rationale – this is especially the case for the 'late-modern challenges' and some of the 'normative traditions'.

In the remainder of this review I will therefore not attempt to cover the entire volume but will instead focus on two aspects or underlying themes. One theme touched upon many times, mostly as a way of motivating the concern with the relationship between law and religion, is *multiculturalism*. As Silvio Ferrari observes in his 'Introduction to European Church and State Discourses', European states are no longer homogenous nation-states, but now host within their borders different cultural, ethnic, religious, linguistic, and racial communities (36). This fact of multiculturalism raises the issue of the relation between law and religion in countries which formerly relied on having reasonably religiously homogeneous populations. Hjalti Hugason thus begins his case study of the evolution of the Icelandic majority church by noting that 'As multiculturalism has grown in the Nordic countries it has become increasingly difficult to defend' the special status of the Lutheran majority churches (107). In his informative discussion of in what sense Norway can be characterized as a confessional state, Eivind Smith similarly remarks that one of the most powerful arguments in favor of amending the constitution in a way dismantling the privileged status of Lutheran Christianity is a 'concern for the way the constitution may serve as a symbolic glue in an increasingly multicultural society' (134-135). Tage Kurtén in passing motivates his discussion of the reemergence of moral language in what he calls 'late modernity' by invoking the search for 'a *modus vivendi* in multicultural and multi-religious societies' (172). 'Multiculturalism' here of course denotes multi-religiosity and as such it is especially, as Lisbet

Christoffersen notes, 'the influx of a sizeable Muslim population' that has generated debates on law and religion (159).

Given that multiculturalism is used to set the stage for the volume as a whole and motivates many of the contributions, it is a bit strange most contributions only provide partial attempts to answer the question about what the fact of multiculturalism means, or should mean, for the relationship between law and religion. Several contributions detail how areas such as private law generally and family law in particular (e.g. the article by Rubya Mehdi and Jørgen S. Nielsen), as well as the teaching of religion in public schools (e.g. the interesting and highly informative contributions of Tore Lindholm and Pamela Slotte), have become arenas for multicultural contestations or areas where reforms happen or are required in light of multicultural developments. But the normative questions that are raised in or seem to motivate many of these studies are seldom given any sustained or systematic discussion. When Kurtén as noted writes about a *modus vivendi*, he does not explain his invocation of this particular idea (formulated by John Rawls) or give any reasons for why this might be the relevant political approach to issues of pluralism (something which Rawls denies). Similarly, Smith's noted concern for how the constitution can function as symbolic 'glue' remains a metaphor which is not really fleshed out either empirically (is there evidence for problems of lack of stability or solidarity in confessional states?) or with explicit normative argument.

The normative issues are discussed more explicitly in Ingvill Thorsen Plesner's very interesting

contribution on how 'secularism' should be understood, and whether it requires the privatization of religion. Plesner's discussion of hijab-cases in Norway and Denmark includes some helpful and illuminating distinctions between different conceptions both of secularism and public and private. Her question 'how should secularism be defined' is a normative question, and she specifies the criteria for a satisfactory answer to be compatibility with basic human rights principles of freedom of religion and non-discrimination. But as long as one answers this normative question with reference to the legal precedents of the European Court of Human Rights, doesn't the same question reemerge with respect to how the human rights principles themselves should be understood?

Even though Tore Lindholm's discussion of controversies regarding the state-church relationship in Norway is primarily a descriptive account of human rights cases and political bargaining leading to the new parliamentary agreement on state-church relations in 2008, Lindholm also clearly expresses his personal views regarding how these matters *should* be settled. Like Plesner, Lindholm also makes human rights standards of religious freedom pivotal to his criticisms, but he also asserts that these standards can be adequately justified on the basis of the golden rule as formulated in the Bible. This is a clear illustration of the Rawlsian idea that human rights can be based on an 'overlapping consensus' of religious views, which Kurtén disparagingly rejects (177). The problem is not, however, as Kurtén seems to think, that such a consensus is 'theoretical', but that it depends on an interpretation of the religions

in question that actually supports the human rights to be agreed upon, which is apparently not the case for the representatives of the Church of Norway whom Lindholm criticizes. The idea that Lutherans not only can but perhaps should accept liberal justifications of human rights, even when they undercut the privileges traditionally given by the Nordic states (in paradoxical contradiction with Lutheran doctrine) to Lutheran churches, is also endorsed and further spelled out by Svend Andersen in his both theologically and historically enlightening contribution on 'Law in Nordic Lutheranism'. Lutheran theology addressing issues of law and the legal framing of the Lutheran churches should, Andersen concludes, adopt liberal political theories such as those of Rawls, Jürgen Habermas and Ronald Dworkin (407).

Another general theme is the suggestion that the volume is unified by a common approach to law and religion and studies these phenomena under conditions of 'late modernity'. The notion of late modernity is at most a rough description of the fact that religion seems to be politically and socially on the rise again in a number of respects after a comparatively less religiously infused 'modern' period. But the characterization of these periods is difficult and controversial – is it for example true, as Kurtén assumes, that 'modernity' was a 'quest for the objectively true concerning views of life' (165)? That presupposes an understanding of 'modernity' (e.g. in the form of functional differentiated societies, secularized law, international human rights, free market economy, rationally managed welfare states etc.) as itself a form of religion or as a substitute for religion. But

isn't it at least as plausible to claim that these so-called 'modern' phenomena are first of all not a unified whole and secondly often concern something else than traditional religion did or concern the same things in radically different ways?

A similar worry can be raised in response to John Witte's programmatic statement in his introductory essay that the study of law and religion is 'predicated' on the assumption that law and religion are really two sides of the same coin, and that law must always in some way be religiously informed if it is not to degenerate into 'empty formalism' or 'totalitarianism' (43). But the formalism charge simply to confuses *values* of any kind with specific *religious* values. Of course law is informed by values, as Witte's criticisms of legal positivism rightly illustrate, but values are not necessarily religious in any interesting sense. And the implicit claim that law without religion necessarily degenerates into totalitarianism is simply an unsubstantiated and unjustified recycling of Edmund Burke's conservative criticism of the human rights declaration of the French Revolution – hardly something scholarly investigation or systematic normative discussion of law and religion should be 'predicated' on.

Altogether, the volume is informative and invites further discussion. It raises many further interesting issues which cannot possibly be even mentioned here. It certainly provides evidence for the existence of both a fruitful area of investigation and discussion, and a scholarly community committed to its study.

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