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Transnational impact of Religious law developments

Traditionally, i.e.: during the last nearly 500 years, Nordic law has been understood as increasingly secular (Breemer, Casanova & Wyller, 2013) alongside with an overall common social and religious culture, former with more than 90% of the populations as Lutherans, organized in state churches alongside with freedom of religion for small religious minority groups; however under the precondition, that all citizens follow *the law of the land* (Christoffersen, Andersen & Modéer, 2010).

This picture is *socially changing*, not only due to increasing *migrations* in Europe and the Nordic countries, but also due to a widespread *secularity* in the populations (Christoffersen, Iversen, Kærgård and Warburg, 2012). Links between the states and the Lutheran majority churches are loosened and they now cover around 75% of the populations; other religious communities (Catholic Church, Evangelical and Pentecostal churches, migrant churches, Jewish community and Muslim communities) now include 10-15% of the populations and up to 15% are without any religious affiliation.

As part of the increasing religious pluralism, requests of *legal pluralism* are increasingly heard, also in these countries, arguments in favor of such pluralism focusing on *equality* between religious groups and *inclusion* of social groups (Nielsen & Christoffersen, 2010; Nielsen 2012), counterarguments however being that group rights tend to lead to *exclusion* of individuals in minority positions within the groups. In the Nordic countries, the lack of legal pluralism thus seems to have given rise to individual equality and inclusion of all citizens without paying attention to their religious backgrounds (Ventura 2010).

The Nordic model, with individual equality and limited group rights seems, however, to be under pressure. Religious minority groups are claiming equality with majority groups; they claim ministerial exemption from labor law regarding broad groups of employees (Slotte & Aarsheim, 2015); and they support implementation of religious marriage law and further family norms and rights (Liversage 2013). Such claims are, not least under the impression of American Supreme Court decisions and their imitations, followed in international and European courts and monitoring systems. Also the UN Special Rapporteurs of Freedom of Religion increasingly support what

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could be named a 'wall of separation' between state law and religious law, also including parallel religious legal systems (Sandberg et al, 2015), leaving religious citizens with a choice between protections under state law vs following their religious convictions .

Consequently, the Nordic systems have all, apart from the Danish, been changed within the last 20 years in order to *accommodate international and transnational tendencies* in the field of religion-law. These changes have, first, led to a reorganization of most of the national churches and their legal relations to the states, in order for them to re-appear as national majority churches, treated equally with minority churches and religious communities. Secondly, the legal and economic situation for minority religious communities has been changed in order for them to appear as more sound and well-functioning in the Nordic societies. On basis of this, however, recent voices have thirdly argued for a further acknowledgement of religious law as parallel legal systems; a development that would change the fundamental understanding of Nordic law, whereas others have argued for understanding the internal regulation in religious communities as *governance-systems* under delegation from the law of the land.

The research project *INTRAlaw* at Aarhus University, in which the presenters of this paper both take part in different capacities, has as its purpose to conduct empirical studies over, how international and transnational law impact, challenge, change and re-formulate national and regional legal systems and different legal actors.

In this paper we want to present our common research as part of the INTRAlaw project on the impact of transnational tendencies within law on religion theories as well as theories on religious law as parallel legal systems into the Nordic and here especially the Danish legal system.

The *research question*, we are analyzing is, which advantages and disadvantages can be identified in implementing religious law as parallel or overlapping legal systems in the Nordic countries, and to which extent such religious law should be able to change the law of the land for the individual, belonging to a religious community.

Such questions are not new in an international sociology of law context. But they certainly are in the Nordic context. Currently, e.g., the Danish government three years ago organized a committee to analyze relations between the state and the majority

church in the future; Christoffersen was member of that committee, whose results have not yet been basis for legislation. The government has also set up a committee to analyze how relations between religious communities and the law of the land should be regulated in the future. Lemann Kristiansen is a member of this committee. The questions are thus not only relevant for the research agenda, but also for practical politics and regulation. *Empirically*, our paper builds on material from these two committees.

Sociological as well as legal research has shown that practices concerning e.g. marriage within religious communities in the Nordic countries by the participants themselves are understood as legal or semi-legal, or that the participants are confused about what the legal impact of such practices can possibly be, meaning that the practice to a large extend remains in the shadow (Liversage, 2013; Liversage and Rytter, 2014; Mehdi and Nielsen, 2011; Mehdi, Menski and Nielsen, 2012).

Besides the practical implications for the parties concerned there are also theoretical challenges in connection to these practices and norms such as: are religious norms within a faith community law, are they theological discourses, or is it possible for (maybe parts of) them to fit in to a concept of law by being both? (Christoffersen, 2012). This is a special challenge in Nordic legal traditions: none of the Nordic countries have a practice of Concordat with the Roman Catholic Church (which is a very common practice in Central, Eastern and Southern Europe, Nêmec, 2012). On the contrary: to demolish Canon Law and to take a stance towards religious norms within law is part of not only reformatory inheritance, but also of widespread legal theory in the Nordic context.

The theoretical question has a methodological impact on research designs within the field. Based on a rather narrow concept of law, some strands within sociology of law research would analyse how religious norms might impact the development of legislation and legal practices or the implementation of the law within religious communities (Dalberg-Larsen, Lemann Kristiansen, 2014). Others would recognize Canon Law or versions of Shari'a as a legal system of their own, especially if Alternative Dispute Resolution systems were established (Doe, 2003; Rohe, 2015).

A now even more common route to reach the same conclusion (i.e. that the religious norms constitute a legal system of their own) is via acknowledgement of religious autonomy as a consequence of (collective) freedom of religion/religious associations'

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rights (Rivers, 2010), including acceptance of canon law as valid law for limitation of other's human rights. This has been the case in a couple of recent court cases from ECtHR (Sindicatul v Romania, 2013 and Fernández v Spain, 2014) as well as in one Norwegian judgment (Borgarting Lagmannsretts dom 8. Juni 2009 (LB-2008-142425). See also Nytt i Privatretten 2009-3, p. 4-5).

How to deal with these developments has theoretical implications, questions being how to distinguish between legal norms and other types of norms? How to understand the concept of law? And: how to solve the concrete conflicts. The developments also include methodological challenges regarding how to handle multiple sets of norms – as all being part of one system? As by purpose trying to include them all under one system? or, if not, how then to handle more than one legal system in this area of the world, that has been living under one legal system for nearly 500 years.

In our paper, we want to analyze these questions in a concrete, regulatory context, asking about how far regulation is necessary or even relevant in order to establish the best possible conditions for both religious groups and for individuals, belonging to such groups.