



Religious Diversity and
Secular Models in Europe –
Innovative Approaches
to Law and Policy

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CHALLENGES OF RELIGIOUS ACCOMODATION IN FAMILY-LAW, LABOR-LAW AND LEGAL REGULATION OF PUBLIC SPACE AND PUBLIC FUNDING

DANISH SOCIO-LEGAL RESEARCH REPORT

*From National State-Church-Religion Perspective
To Danish Law on Religion*



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Centre for European Islamic Thought, University of Copenhagen,
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0. Executive Summary

Danish research on law and religion traditionally takes its point of departure in state-church-religion relations. *Empirically*, religion functions intertwined or entangled with public life as civil religion. But also in private life, religious rites are entwined into family life, and consequently still nearly 80% of the Danes are baptized members of the Danish national church, folkekirken, even though they at the same time are among the most secularized people in the world. *Normatively*, religion is in the same time understood as narrowly related to precisely such public events and personal rituals.

A rising tendency to accept religiously motivated requirements both in labor market and family life is thus one of the most surprising results of these Danish qualitative interviews; the result should however be understood related to its very secular background. Thus, *one of the policy recommendations* from the Danish team is not to overestimate the readiness to accept collective religious freedom at the expense of the individual believers' or employees' right to self-determination. *Another central result* of the interviews is a clear tendency to understand the Danish national church, folkekirken, more as a church alongside with other churches and religious communities and less as a common good. Such a change will, if it becomes remarkable, be influential on the way the church is managed. *A third clear response* is a hesitation towards becoming too principled, when it comes to religious identification in the public sphere, given that also public institutions are seen as the people's common institutions more than as representing 'state values', a concept rather strange for Danish ears. A pragmatic turn has thus changed the general understanding among the Danish elites, maybe as a reflection after the cartoons crisis (2005-6).

Thus, the Danish analysis seems to open slightly also for another turn: from State-church-religion-relations to law on religion. That this is, however, a turn, which should not be pressured through the European Union, is the last very clear statement in these interviews.

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Historical Introduction to the Socio-Legal Frame: State, Church and Religion in Denmark - a Challenged Regime

Presenting a status of Danish legislation and the regulation of religion as basis for qualitative reflections on what ought to be law on religion in Denmark is by nature a complex task. It includes capturing political discourse, reflecting theological discussions on especially the *Folkekirke*,¹ and formulating a careful analysis of administrative and legal practice. It would have been a straightforward task if relations between the Danish State, the Church and Religion had conformed to the rudimentary models suggested by Silvio Ferrari (Ferrari & Bradney 2000) or by Roland Minnerath (2001). However, the Danish regulative model of these matters differs in several specific ways. Regarding its history and its legal state of affairs, Danish regulation of religion cannot be said to conform to a single model based on a civil judicial structure that would allow the churches to act independently, as is the case in Germany, nor can it be claimed that Denmark has a concordat or bilateral agreement between state, church and religion as in the case of many countries with majority Catholic churches. Nor is Denmark a secular country with a clear separation of religious communities from the state, as is to some extent the case in France and even more so in the United States (Christoffersen 2010B).

Rather, Denmark has a history of regulating religion that on the one hand represents a particular understanding of Lutheranism in a majority context after the European wars of religion (1524-1648, *cujus regio, ejus religio*), and on the other hand presents some tense and difficult compromises in Danish *realpolitik*. Since the introduction of the democratic constitution of 1849, Danish regulation of religion has firmly established the Evangelical Lutheran Church as one of the four pillars of Danish society (§4 of the constitution, Christoffersen 2010A) coupled with a dual constitutional promise of independence and establishment. On the one hand, a law was envisaged that would establish the *Folkekirke* as a self-determining institution independent of, but supported by, the state (§66 and §4), and on the other hand, a law was to be framed to regulate on equal terms the status of other autonomous religious communities with an expectation of similar freedoms and responsibilities granted to the *Folkekirke* (§69).

However, no such laws were ever passed and instead of becoming a public societal institution supported by the state, the *Folkekirke* still resembles more a state church than anything imagined by Martin Luther (Andersen 2010, 393). Furthermore, the constitution applied a legal framework for explicit recognition by royal decree of the few religious communities that were already a reality in 1849. Among these is the Jewish community (*Danish: Mosaisk Trossamfund*), which was recognised already in 1685. This system of administrative recognition was extended after the introduction of the constitution to include a list of Christian churches, such as the Roman Catholic Church, the Orthodox Russian church in Copenhagen, the Norwegian, the Swedish and the English (Anglican) Churches, the reformed churches, the Baptists, and the Methodists. The system of recognition was changed just after the Second World War so that religious communities such as Muslims and Buddhists who arrived (by immigration) after 1960 have only been ‘approved’ by the Minister of Church Affairs. They are thus relegated to the administrative competences of the ministers and permanent secretaries of changing ministerial departments and offices (Christoffersen 2012E).

During the 19th and 20th century several attempts were made to re-ignite both the political and public debates and to re-open the legislative agendas promised in the 1849 constitution. Three short-lived crises and subsequent changes managed to put religion on the political agenda, only for it to be neglected in the dawning reality of the succeeding governments. The

¹ It is common at this stage of a study to discuss how to translate the name of the majority Evangelical Lutheran church in Denmark, which literally means the national church or the people’s church (see Christoffersen 2010A). We have chosen to use the Danish name *Folkekirke*.

first change came in 1849, when three commissions were set up to clarify and begin the promised legislative processes. The first two commissions of 1853 and 1868 were marooned in internal disagreement amongst the different wings of the *Folkekirke*, while the Church Council of 1883 that was set up to finally produce a workable political, ecclesiastical, and legal compromise was disbanded in 1901. By this time the entire political structure had been reformed with the introduction of the parliamentary system, the end of any effective political power of the king, and the formation of governments based on the mandate of the popular vote.

The second change came with the politico-economic arrangement of 1933 that aimed, firstly, to end a general conflict on the reduction of wages between unions and employers; secondly, to avoid a threatening crisis for Danish agricultural exports; and thirdly to open up for social reforms that would build the foundation of the modern welfare state. Although religion and church affairs had resurfaced in the Church Council that was active from 1928 to 1939, the religio-political agenda gave way to the social reformist agenda of the Social Democrat party, which in turn backed away from a traditional leftist opposition to established religion. This reframed and re-systematised the entire social welfare system and made it primarily an issue of state rather than of other actors, including the churches. In research on the subject (Østergaard 2005, Hansen, Petersen & Petersen 2010 and others) there is widespread disagreement as to whether the Danish welfare state is built on Lutheran ethics – in their adaptation following N.F.S. Grundtvig (1783–1872), who stressed individual engagement and voluntarism – or it is the product of a social democratic agenda that succeeded to the extent of its own obsolescence – or it is a combination of both normative and ideological sources. Whatever the case, the very nature of the crisis of the 1920s and 1930s paved the way for the social and economic empowerment instituted in the settlement of 1933. Danish welfare became a matter for the state, and religious issues disappeared once again from the political agenda.

A third attempt was made by a commission (*strukturkommissionen*) set up in 1964 to establish the nature of the relationship between the state, the people, and the *Folkekirke*. The Social Democrat Minister of Church Affairs, Bodil Koch (1903-72), wanted to know how best to establish church and religion as the ‘marrow and muscle of the people’. Unfortunately, the work of the commission ceased with a change of government and the death of the minister. The result was the reaffirmation of Danish church law by permanent secretary August Roesen (1909-87) on the argument that the *Folkekirke* had become a part of public administration and in effect had no independent governance. All matters pertaining to the *Folkekirke* would be regulated by Parliament and the Minister of Church Affairs, while the 10 bishops would remain ‘inspectors’ of the *Folkekirke* and consultants to the Ministry (Roesen 1976; Huulgaard 2004, 29).

The two promised sets of legal norms that would ideally give independence to the *Folkekirke* and equality of religion at least among other religious communities (ideally speaking also in relation to the *Folkekirke*) never came into being. The political and public debates always ended without substantial change, the legislative agenda was never revived, and the administrative handling of religious issues remained the law of the land. Over time, the best of worlds envisioned by the constitution made way for the dual reality of regulating religion in Denmark. Firstly, the sociological reality that the actual number of “other religions” was insignificant, and secondly, the closely related political reality that there were no problems to mention, no dissidents, no media attention, and most importantly, no votes to be gathered in a political engagement with religion, on the contrary.

A third central premise should be set: in the Danish public and common (national church) tradition, religion is of course a relevant norm into how to organise labour market and family law. But there is, in this tradition, no direct link between religion and law outside state-church-religion-relations; and thus consequently the Danish legal tradition will not speak about religious family laws or religious norms at the labour market. As will be seen in the qualitative interviews, this state of the art causes surprises when our respondents are confronted with questions within these areas - but on the other hand it is also clear that also the Danish society is

now envisaging religious normative demands towards the law outside a narrow understanding of law-religion-relations.

From the time of the 1849 constitution until very recently, religion has thus functioned as a *modus vivendi* that declared Denmark to be Christian by history and culture on the one hand, and secular in all legal, public, and administrative matters, including those related to family and labour market, on the other. This has now been not only challenged, but is perhaps also being found to be a myth.

2. Methodology

This report is written as the Danish contribution to the European Commission's Seventh Framework Programme project 'RELIGARE – Religious Diversity and Secular Models in Europe.' The report is written by Niels Valdemar Vinding & Lisbet Christoffersen. Niels Valdemar Vinding holds a Bachelor of Theology and a Master of Islamic Studies degree. He is currently writing a PhD on Islam in Europe at the Centre for European Islamic Thought (CEIT), Faculty of Theology, University of Copenhagen. Lisbet Christoffersen is currently part-time professor in European Religion Law at CEIT and full professor of Law, Religion, and Society at Department for Society & Globalisation, Roskilde University.

Vinding & Christoffersen have written the report in collaboration and they are jointly responsible for the result. Vinding wrote a full first draft of the chapters on the situation in Denmark today. Christoffersen wrote a full first draft of the chapters on structure and methodology. Vinding wrote full first drafts of the chapters on Religion and Family Law and on Religion in the Public Space. Christoffersen wrote full first drafts of the chapters on Religion and the Labour Market matters and on State support for Religions. The concluding chapter was written together (see further down for the collaboration with the full Copenhagen RELIGARE team).

The report was first published in August 2012 under the name *Danish Regulation of Religion, State of Affairs and Qualitative Reflections* (Publications from the Faculty of Theology no 36, ISBN 978-87-91838-49-1). This first version includes (in an appendix) the direct quotations from the respondents in Danish as well as the Danish topics list, also in the Danish language, which might be useful for readers, familiar with that language. That first version can still be downloaded from http://www.teol.ku.dk/ceit/religare/Danish_Report_Final_2012.pdf/ or via [http://rucforsk.ruc.dk/site/da/publications/danish-regulation-of-religion-state-of-affairs-and-qualitative-reflections\(83319988-789f-4cf2-a6a8-60fcc4516877\).html](http://rucforsk.ruc.dk/site/da/publications/danish-regulation-of-religion-state-of-affairs-and-qualitative-reflections(83319988-789f-4cf2-a6a8-60fcc4516877).html).

In this version of November 2012, published through CEPS for the final RELIGARE conference in Brussels 5-6 December 2012, the structure of the first introductory chapters are reorganised and slightly changed; all Danish quotations are taken out and the Danish topics list is translated into English by Jørgen S. Nielsen; and an introductory Executive Summary has been added. No changes have however - of course - been made in the findings. This revision has been made by Lisbet Christoffersen.

2.1 Legal reports: case law and templates

The RELIGARE project can be seen as a socio-legal comparative investigation, building its results on different types of data collection all related to the four topics of interest within RELIGARE, namely: Religion and Family Law, Religion and Labour Law, Religion and Public Space, and Religion and State Support.

Early in the life of RELIGARE it was decided to establish a database with reports of legal cases relevant to these four fields of interest. The database is limited in time to the years from 2000 and onwards. It contains 20 Danish court cases from this period, which will all be included in the discussion in this report.

It has also been decided to establish templates in order to give a clear and concise series of answers on sub-topics within the four fields of interest. Each of these templates contains information regarding the basic legislation in the area. Each mention in short forms the relevant legal cases (which are correlated with the database) and formulates recommendations from the national research team within the field of interest. The Danish team has discussed the content of the templates parallel with the content of this report. The recommendations as expressed in the templates are thus built on legal knowledge of relevant legislation and legal cases, and on the results of the qualitative interviews. All the information from the templates can therefore be

found in this report in relation to the relevant fields of interest. On the other hand, the templates have been revised in their structure after this report was finalised. In order to get a full overview, it is thus recommended to read both the report and the templates.

The reports on Danish case law and the Danish templates are collected by law student Badar Shah under the supervision of Professor Hanne Petersen, Faculty of Law/University of Copenhagen. The later revision of the templates has been done by Lisbet Christoffersen. The recommendations in the templates have been discussed within the full Danish RELIGARE team.

2.2 Danish elite interviews

It was decided from the beginning of the RELIGARE project to establish knowledge on the function of law and religion relations within the four fields of interest through conducting a series of qualitative interviews with elite persons. The study has been planned in a work compendium aimed at this dimension. Lisbet Christoffersen contributed to the development of this study from the beginning. The interviews are conducted in six European states, chosen so that they represent the existing models for State, Law, and Religion relations and also reflect existing normative or religious traditions. Denmark was selected in order to show current elite reflections on a traditionally strong state influence in religious governance combined with a traditionally strong presence of Protestantism.

The Danish RELIGARE group conducted 20 interviews in 2011 with nine females and eleven males. They represented people aged from 26 to 79 as well as minority and majority perspectives on religion, both older and more recent ones.

After we finished the interviews and sent selected quotations to the respondents for approval, two of the male respondents decided that they did not wish to contribute to the study. Among the remaining respondents are five elite individuals from political, administrative, and judicial contexts in Denmark and the European Union. There are two spokesmen from labour unions and other nationally independent organisations. There are six elite people from Christian churches and comparable religious and faith-based organisations. There are five central voices, both secular and religious, from the public discourse. All respondents are Danish nationals. It should be stressed, as all our respondents have done, that nobody speaks on behalf of the organisations that they are normally linked to in public.

The respondents were identified in order to give voice to different positions in Danish society with regard to religious and secular norms. The idea was to have both male and female respondents from different generations, with different religious backgrounds, representing as nuanced a picture of institutional functions as possible. The Danish survey therefore includes politicians from parliament and the municipalities, leading civil servants, judges, members of labour unions, as well as of organisations in civil society such as human rights institutions and academia.

The focus on elites means that this qualitative survey is focused on established understandings and norms rather than on the recent shifts of positions or changes from below. Precisely therefore, the clear changes and critiques concerning established law in these interviews are even more relevant to focus on. It is characteristic of elites that they are attuned to society. Characteristic for them is that they may hold power in their position, they are good communicators, they are often very busy, and they may have something to defend and protect at the same time as having an active interest in profiling either themselves or a certain view on the questions raised. This qualitative survey aims to show the clear interests, positions, and profiles among elites with regard to the issues raised.

It has not in itself been difficult to establish contact with relevant respondents, except as regards representatives from Hindu and Buddhist milieu, where we did not succeed in establishing contact within the given time-frame. Most of the other respondents we approached willingly agreed to give an interview. The respondents were identified after several discussions

in the Danish team, which demonstrates a very central point when it comes to this Danish survey. Denmark is a very small country, with only 5.5 million people, and many individuals are fairly well-known through their public profiles. Some of them thus have dual identities, meaning that they are seen as representing not only, for example, a legal identity but also a religious one at the same time.

The individual profile was clearly established as we began each interview by asking the respondent about his or her combined identity. This not only presents their professional but also their personal, social, and religious background. In a society where religious affiliation is not frequently asked about, albeit tacitly known of most, this way of opening the interviews has been very interesting and conducive to a full result.

Annex I gives a short biographical introduction of each respondent, including information regarding not only their professional, but also their personal life and background as well as their religious or non-religious position. Each individual respondent has approved their introduction.

2.3 Methodological reflections on the Danish qualitative interviews

Looking at the list of respondents, one might think that the *Folkekirke* is underrepresented compared to its numbers in the population, whereas Islam, other-Christian, and other-faith backgrounds and norm-sets seem overrepresented.

A closer look, however, reveals what is obvious in Danish society as such, that all respondents have dual identities, many of which combine a professional background with a link of some kind to the *Folkekirke*. Of these professionals, most represent a conventional cultural-Christian understanding of not only Christianity, but also of the role of the *Folkekirke* in Danish society. By including these reflections we provide most dimensions of their relation to the *Folkekirke*.

This also means that even though they are all identified on the basis of a fairly clear single identity, they each have a much broader interest in the fields which also form part of the background for their agreeing to give the interviews. Thus all supposed secular respondents have a religious or mixed identity either religious or secular or even very secular.

Many respondents also have dual identities with regard to national background. There is an adopted child from South-East Asia, a spouse of a national from another European state, while a third has left the *Folkekirke* in favour of an eastern religion; this was not part of his public identity, but part of his reflections on the topic. A fourth is a convert to Islam. A fifth is administratively stationed abroad, and so on.

It is characteristic that only the respondents representing humanist standpoints, the church's Home Mission, and one of the Muslim representatives, all male and in their 30s, have rather singular identity profiles. At the same time, their standpoints are as a rule close to each other, even though one might have expected otherwise.

There is a clear generational dimension in the responses. A traditional link to the *Folkekirke* is seen as normal for the respondents around the age of 60, whereas respondents around 40 all have very clear, reasoned standpoints – ranging from supporting the *Folkekirke* to fighting for its change. The only respondent with a definite rejection of any religious organisation is the single female in her 20's.

There is also a gender-dimension in our interviews. All our respondents are well-educated and have – or have access to – well-paid and highly branded jobs. Especially the women, however, seem to represent what can be seen as a class journey and a journey into higher education more common than in the previous generation. Most of them have kept a relation to religion during this journey. Religion generally and the *Folkekirke* specifically have provided room for reflection, a space for thankfulness, and time to grieve. These women – and probably also some of the men, especially those relating to the *Folkekirke* – represent a traditional intertwined identity, for at the same time they do not want the church to decide over them or for them. Pluralism, flexibility, concrete contextualised analyses and solutions combining secular and religious norms are very characteristic for them. There are of course exceptions, also among

the women. One woman has decided to establish a public voice from the formal position of a housewife. She fights against politicised religion in society and for the role of the Folkekirke. Generally, we see a late religious modernity among the female respondents – in contrast to what could be called moral panic with regard to a supposed role for Islam in the West or the decay of values. It was our prior assumption that the male respondents would demonstrate a greater ambivalence and to a larger extent lean towards traditional solutions depending on their religious background. It remains however contested in the report whether the male religious and secular leaders are more traditional than the female secular and religious leaders.

The qualitative interviews are supported by a general framework phrased and structured by the leader of the work compendium, Professor Veit Bader, Amsterdam (annex II). Subsequently a topics guide in Danish was produced in order to make the common idea of the ‘basic tensions’ clear in a Danish context. This Danish topic guide, which is merely a contextualisation into the Danish society and language of Bader’s general framework, can be found in the Danish published version of this report.

Lisbet Christoffersen usually made the first contact to each respondent through mail or telephone. Agreement on participation was followed up by a standard mail from stud.teol. Karen Gjødesen, who worked as research assistant on the project, confirmed interviews, and sent the necessary papers in order for the respondent to prepare. All the interviews were conducted by Lisbet Christoffersen, many of them together with Niels Valdemar Vinding. It was stressed both in the preceding mail and at the beginning of each interview that it would take the character of a conversation, led by Lisbet Christoffersen, and that the focus would be on the respondent’s reflections on each of the given questions.

Most of the interviews were conducted at the office of the respondent and each interview took between one and two hours. All interviews have been transcribed into Danish and collated by Karen Gjødesen. These files are known only to the members of the Danish RELIGARE team, but they are protected by confidentiality; it was promised to each respondent that the transcription – in part or in entirety – shall not be used by anybody else.

Within the European frame it had been agreed that all transcribed interviews should be translated into English and placed on the internal database. After having conducted the first two interviews, a long process was established in order to have the first respondent accept the full, transcribed version. However, this took a disproportionate amount of time. The second respondent refused to approve a full transcription on the grounds of his role in Danish public life. The group then changed strategy. A short version was to be identified by the interview leader and subsequently approved by the individual respondent. However, this proved counterproductive to the survey, as both the interests of the respondents and of the survey in our small country have to do with what they say and think in the context of the study. The final agreement with the respondents was that each should approve all direct quotations from the interviews. On the basis of a draft of this report, a document with the relevant quotations for each single interview person was presented and approved.

Danish society, being what it is, and the elite respondents being open-minded in answering, our responsibility is to find a feasible manner to reflect this trust in our presentation of the findings, both in relation to the European project and in relation to the Danish audience. The strategy here presented now seems satisfactory to all parties.

The question of anonymity is also difficult in a small country. As it is, any scholar with knowledge of Danish state and religion affairs can decipher the list of respondents in Annex I. We have nevertheless deliberately chosen not to use full names, since even though the persons are fairly recognisable in a Danish context, the possibility of tracing their identity in a broader European context has been minimised through the use of initials.

The transcribed interviews from the Danish survey consist of approximately 600 single-spaced pages. Lisbet Christoffersen and Niels Valdemar Vinding have read through these pages carefully. Professor Jørgen S. Nielsen, Director of the Centre for European Islamic Thought (University of Copenhagen) and leader of the Danish RELIGARE team, and Professor of Legal

Culture, Faculty of Law, University of Copenhagen, Hanne Petersen (also member of the Danish RELIGARE-team) have likewise had the chance to read all the interviews and have contributed with general reflections on the results.

Draft versions were also discussed with Jørgen S. Nielsen and Hanne Petersen. The discussions took the form of several half-day seminars with the assistance of Karen Giødesen and Badar Shah. The foci of these meetings were the methodology, the main findings, relations to the reporting instruments used in the RELIGARE context, the concluding chapter, and the final recommendations.

As part of the process, the relevant quotations were checked by Giødesen, who also received confirmation and approval from the respondents of each of the Danish quotations used in the report. Christoffersen focussed especially on framing the report, on methodology and on discussions of the results of the interviews. Each chapter reporting results from the interviews opens with a contextual frame and gives a presentation of the main legislation. These parts were cross-referenced with the findings from Shah and Petersen. Shah was also responsible for the translation of all Danish quotations into English. Finally Nielsen checked through the entire report and a final language check was conducted.

We wish to thank the Theological Educational Centre, Løgumkloster, for their kind and generous hospitality while we were writing the report. We also wish to thank the European Commission's Seventh Framework Programme and the RELIGARE management and leadership for the opportunity to contribute with insights from the Danish context. Thanks also to Jakob Dorph Broager for helping with the transcriptions and to Leila Stockmarr for helping with the early interviews. We are also grateful for the contributions of Karen Giødesen and Badar Shah, whose continuous assistance and support have been invaluable, and to Edward Broadbridge for the last checking of the English text.

Above all, we wish to thank the Danish respondents for their time and commitment to this report. We hope it truthfully reflects their thoughts, while we must nevertheless emphasise that sole and entire responsibility remains with the authors.

2.4 Structure of the report

The report is organised around the list of topics, following the templates decided within RELIGARE. This means that it is rather easy to compare legal and socio-legal knowledge. A final restructuring has as mentioned taken part in November 2012. The report is introduced through a discussion of general questions: the basic tensions. Each of the four fields is also introduced through a discussion of general issues within that field, stemming from the Danish socio-legal investigation. The report thus combines a reading of the results of the Danish interviews with relevant reflections of two overlapping, but not identical, lists of topics (basic tensions and template issues).

Each of the four fields contains a short introduction on the legal status within the field. This legal status builds on and includes information placed by the Danish team into the data bank of legal cases and into the list of templates.

Thus the socio-legal data in the report – the quotations from the interviews – function as a critique and discussion of the legal situation today. The structure of the report allows for use of the templates as preliminary information about the legal status within the area, combined with recommendations where relevant. The report can then be read as an in-depth analysis of the same topics.

As an introduction to the qualitative chapters related to the four topics, the report first introduces more detailed to the Danish background in regard to sociology of religion (Religious diversity, demography etc) and in regard to religion-state model. The legal background for each of the four topics is to be found in an introduction to each of these four chapters.

3. Religion in Denmark – through sociological lenses

Denmark is commonly thought to be a homogeneous country with one language, one faith, and one people (Gundelach *et al* 2008, 15). However, if this was ever the case, it is certainly not any more. A brief overview of the basic quantitative data concerning demography, religions in Denmark, and Danish religiosity is therefore in order, before supplementing and comparing with the qualitative data from the socio-legal RELIGARE survey.

Looking for demographically reliable numbers regarding religiosity in Denmark is difficult, because public registration of religious affiliation is illegal. This means that the numbers used by Danish scholars are generally gathered either from polling or from the faith-based organisations that are able to supply them, and they are then calibrated by looking at other statistics, at other countries, at migratory patterns and so on. In such cases, it is important to differentiate between proper membership and other degrees of affiliation and engagement, and scholars should be aware of the problems of defining or limiting one religious group as opposed to another (Warburg 2007, 6-7). Regardless of how the scholar proceeds, any survey is likely to favour one group, one denomination, or one interpretation and alienate another. However, no matter how many caveats and reservations researchers bring along with their quantitative surveys, the number will usually be boiled down accordingly.

In 2009, the national agency 'Statistics Denmark' ran the numbers from the Central Person Registry and concluded that as of January 1st there were 4,492,121 registered members of the *Folkekirke* (Lodberg 2009, p. 12). This translates into about 81.5% of the entire population. As of July 2011, the number of members was 4,463,981, the equivalent of 80.2% (www.dst.dk). These numbers are as precise as they get, but there is a certain margin of error. Amongst the errors is the fact that as an administrative default the tax returns count people who have not actively opted out of being members of the *Folkekirke*. This means that the number given includes new taxpayers, migrants, and people of other faiths who think the *Folkekirke* is worth supporting. And thus the number does not reflect the actual number of Christians affiliated with and/or baptised into the *Folkekirke*. Furthermore, the numbers are considered 'soft' because sociology of religion scholars are able to demonstrate that the number of members who celebrate on a regular basis is as low as between 2% and 10% (Religion i Danmark 2011).

As for the second largest religion in Denmark, Islam, the numbers are a little harder to come by, and most rely on estimates. Jacobsen (2010) in *Yearbook of Muslims in Europe* estimates a rough 225,000 Muslims, tying closely with *Pew Forum on Religion & Public Life* (2009) which estimates 226,000, while *International Religious Freedom Report* (2010) maintains a more modest 199,000 and the *CIA World Fact Book* is further off with 110,200 Muslims in Denmark (Jacobsen, 2012). Using the numbers most agree on, we can estimate Muslims to constitute roughly 4.0% of the entire population. The demographic problems mentioned above are accentuated in the case of Muslims, because it is unclear who is to define who is a Muslim and who is not. There are many different denominations and observations within Islam, and even deeper levels of engagement and commitment, not to mention the fact that these statistics are often blind to the difference between ethnicity, nationality, and proper religious affiliation (Jeldtoft 2009, p. 9-14). In addition, media and public political agendas make Muslims out of people that never were, such as orthodox Christians, Armenians, and all those who do not consider themselves members of any faith (Spielhaus 2010). The fact of the matter is that the numbers mentioned are operationalised for the very purpose of producing a single number (Jacobsen, 2012). As for organisation, only an estimated 10% of the 225,000 are associated with a recognised or approved Muslim congregation (Religion i Danmark 2011, 7). In Denmark, most Muslims still organise according to their ethnic and language dividers, and thus they have so far been unable to unite different wings and factions of Islam under one networking organisation that is capable of representing them to the state and the rest of Danish society.

There have been several attempts at creating such umbrella organisations, the largest of which are the United Council of Muslims, Danish Muslim Union, Muslims in Dialogue and a few others (Jacobsen 2007, 156-157).

The third largest religious group in Denmark is the Roman Catholic, who as the Catholic Church in Denmark are enumerated at 39,067 members with 47 different congregations. Also here numbers are soft. Based on estimations of participation at the services, immigration from typically Catholic countries, and estimation of double or default membership of the *Folkekirke*, the number of Catholics in Denmark is most often estimated at little more than 50,000 (1% of the Danes). The Catholics in Denmark follow the Holy See in Rome and are under the authority of Danish-born bishop, Czeslaw Kozon. From the reformation to the constitution of 1849 Catholics in Denmark were considered as resident foreigners, but from 1682 they were allowed to practise their somewhat 'deviant' faith (Oftestad 2010). With the introduction of freedom of religion in 1849, the Roman Catholic Church was re-established in Denmark – with considerable growth around 1900. Again in recent years the number of Catholics in Denmark has multiplied, and the Roman Catholic Church is now the fastest growing church in the country. This is mainly due to the ability of the Catholic Church to attract and maintain immigrants from Catholic countries as well as European migrant workers, especially after Poland joined the European Union in 2004 (Religion i Danmark 2011, 31).

The fourth group to be mentioned specifically are the Jews, who as of 2011 are an estimated 8.000 according to the Jewish Community in Denmark (www.mosaiske.dk). Others estimate somewhere between 5.000 and 6.000 (Religion i Danmark 2011, 16), and others again, also including individuals of Jewish *background*, would estimate around 15,000 (BL interview, 2011). In sharp contrast to the Catholics, membership of the mainstream Jewish Community in Denmark is in steep decline, as there were roughly 3,000 members in 2000, but are now only between 2,400 and 2,200 (Religion i Danmark 2011, 98). An ultra-orthodox and a reform Jewish community exist alongside the old, mainstream community. The head of the mainstream community is Chief Rabbi Bent Lexner who functions both as rabbi to the congregation in rituals and celebration and as head of the interim rabbinical triumvirate, 'Beth Din,' which settles disputes on a formal and an informal basis (BL interview, 2011).

The religious landscape further includes an approximate 77 Christian and Christianity-inspired organisations and another 50,000 or so believers (including Baptists, Pentecostals and others); there are roughly 25,000 Buddhists and 11 Buddhist groups with 7,200 members; there are some 13,000 Hindus and 8-9 Hindu organisations with approximately 6-800 members (Religion i Danmark 2011).

Last but not least, it is prudent to mention those who are not affiliated with any faith. Of these, there is an estimated and growing number of 10-13% (Religion i Danmark 2011). A New-Age-inspired journal has a print-run of 85,000 copies, which is more than all the main Christian journals and newspapers put together. Only the Bible Society has a print-run which is higher.

From the numbers mentioned above, from interviews, from reports made by official and independent agencies and researchers, it is safe to conclude that freedom of religion exists in Denmark to a very great extent. Moreover, most religious groups report that there are few conflicts over issues of pluralism, acceptance, and accommodation (e.g. BL interview, 2011). Also, it can be maintained – as a former Prime Minister did – that Denmark is a secular country that respects, but limits, the space available for religion. Thus, not much research needs to be done before it becomes apparent that freedom of religion is perhaps not carved in stone and that very profound differences have been present since the Reformation and were present when the Danish constitution was enacted in 1849. Neither culture, nor language, nor religion are static; they must be debated, reinterpreted and reconstructed in our on-going deliberation of what we were, who we are, and who we are becoming. This is reflected in the recent changes in the public debate and in political agendas, where religions these past 25 years seem to be resurgent. This means that it is difficult to maintain secularism understood as strict separation; it must

rather be seen as distinction and differentiation within those conglomerate institutions that are both state and religion.

Administration and government, by extension, remain secular, but how secularism as a concept applies to the discourses, to legislation, to public debate and to communities, remains to be seen throughout the report.

4. Religion in Denmark – a legal approach

4.1. Legal tradition regulating religion

On the surface, religion in Denmark is, legally speaking, embedded in two different regulatory regimes. The Folkekirke is regulated as a public, administrative body in public law, whereas all other religious communities are regulated under private law as associations, charities or private institutions. From a legal, organisational, and administrative point of view, there is thus little qualitative difference between the Folkekirke and any other public administrative body. This is the conclusion to be drawn from Roesen's interpretation. The other religious communities are regulated just like any other private association with no regard for the idea that the organisation or community is religious.

This regulatory approach can be said to be pragmatic with a conclusion derived from a legal fact. As such, Roesen's interpretation is very much in line with the jurisprudence of legal realism, which in the framing of Danish Professor of Law Alf Ross (1899-1979) was the prevalent jurisprudence in the second half of the 20th century (Ross 1946, 1957). The legal realism we see in Denmark is part of a broader trend called the Uppsala school of legal thinking that was inspired by Swedish philosopher Axel Hägerström (1868-1939). He, and thus in turn legal realism, was rooted in reason and a positivist approach to legislation, which places law as a necessary condition for organised social life (Bjarup 2005, 2010). Legal realism is marked by the pragmatic conclusions to be drawn from legal positivism and it denies that there is any valid law that is not positively established, such as natural law or religious informal law.

It is within this understanding that Denmark claims to be secular. Secularism is not a matter of public policy or a product of deliberate legislation. The legal and political pragmatism that claims this secularism considers itself realist, and maintains that in legislation and administration there is no consideration of the legal conclusions to be drawn from religion. Secularism is pragmatic and therefore understood as realistic. It is, difficult, however, to see where secularism was historically and structurally embedded in Denmark.

Most striking are the changing interpretations of Martin Luther's idea of two kingdoms, a spiritual and a secular. These two normative kingdoms have periodically been understood as establishing a distinction between normative theological and spiritual arguments on the one hand and secular legal and organisational ruling norms on the other, meaning that all legislative and organisational powers also with regard to the Church were in the secular hands of the King, Parliament etc. In later periods, not least in the current 21st century, the argument reappears or perhaps even prevails that the difference should also include a distinction between on the one hand the outer organisation of the Church as a spiritual entity, led under spiritual legal norms by religious leaders, and on the other hand the secular affairs of the state, led by democratic regimes (Andersen 2010).

No matter how the theological interpretations are to be understood, it is a historical fact that the institutions of State and Church were built on the same foundations, and there seems to be what has been called an 'internal convergence but an external divergence' (Modéer 2010, 61). Or rather, separation was unimaginable and distinction was imprudent, for being the head and legislator of both State and Church the King had absolute jurisdiction. The overlap in structure can be seen in the promulgation of the Danish Law from 1683, in which the Penal Code was ordered according to the prohibitions and directives of the Ten Commandments (Ex. 20:2-17; Deut. 5:6-21). As such, the law enacted by God in the commandments was codified and policed by the King. Furthermore, those who were Danish were by definition Christian Lutheran, and those not Christian Lutheran were by the same logic foreigners.

As mentioned, a clearer distinction between State and Church was added in the constitution 166 years later, but it stopped just short of separation. The first four articles of the constitution can be said to demarcate the jurisdiction or, figuratively speaking, erect the pillars on which the modern state was built. The first articulates the geographical territory of Denmark, the second establishes the monarchy, the third enacts the division of powers and the principles of justice, and the fourth establishes the Folkekirke (Zahle 2006; Christoffersen 2010, 147): “The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State”.

This means that although the Folkekirke and minority religious affairs were to be regulated autonomously, they were to be kept within the organisational frame of the constitution. In this sense, the Folkekirke – in parallel analogy to the Monarchy and the institutions of power – was both constituent to, and subject to, the rule of law and democracy as defined in the rest of the constitution.

To the extent that Denmark can be said to be secular, it is so in the logic of legal realism, and the Danish paradigm of regulating religion exposes itself to the same criticisms that legal realism did. This includes the notions of non-voluntarism, scepticism, and the insistence on laws that must be based on social fact and regulate social behaviour. However, based on actual social realities, the normative power of religious morals seems to be resurgent.

4.2. From 2001 to 2011

A whole series of cases concerning the management of the inner life of the *Folkekirke* has emerged in the latter part of the 1990s and continued through the last decade. These concern everything from baptism as the basis for church membership and the duties of pastors as employees to the sanctity of a church that harbours refugees and the financial independence of the *Folkekirke*. Such cases have led to a growing realization that the *Folkekirke* is a church that has autonomous regulative rights and responsibilities. However, the limits of these rights to regulate the inner and doctrinal aspects of the church should be tested continuously in the civil courts, in order to keep within the existing rights allowed by the state and the European Union. Provisions of the government or the administrative departments of state should not be the regulators.

The sub-theme of Islam also materialises in this period and becomes gradually more explicit in the debate. Commentators from the right, secularists, and the more conservative sections of the *Folkekirke* started to make themselves heard in response. It was an unfortunate coincidence that a general election was held in November 2001, since under the impact of 11 September 2001 the political debate on ‘what to do about foreigners and refugees’ focused largely on the Muslims in Denmark. The final major tightening of immigration and refugee law was pushed through by the new centre-right government to place Denmark among the most restrictive countries in the European Union at the time.

It is important to note that since 2001 Denmark has in many ways been functioning at two different levels, with little overt relationship between the two. In the public debate – in the media and in national politics – there has been a strong polemic over the question of ‘foreigners’ and Islam, often used almost interchangeably. The Mohammed cartoon crisis of 2005-06 took place in this context (Christoffersen 2006; Christoffersen 2010). The other level has been the local, especially in the areas characterised by significant ethnic plurality, not least in certain districts of the three largest cities: Copenhagen, Aarhus, and Odense. Here there has been a strong record of constructive integration activity supported by local government and local voluntary associations both secular and religious.

Examples of how religion as such has been kept out of the continuous legislative agenda in parliament and relegated to the administrative level of government are as follows: The Danish state’s general understanding of religion and to some extent its social welfare dimension; the current lack of a constitution for the church; the debates on values, on ‘Danishness’, on immigration and on Islam; the Mohammed cartoon crisis; and perhaps even more relevant and

recently, the Danish government's support of the revolutions in the Middle East and the military action in Libya. However, and this is the breadth of the contrast, apart from over the economy almost every public debate over legislation has been in one way or another related to values, immigrants, policing diversity, war in Afghanistan, Iraq and Libya, and so on.

Even though this report takes its point of origin in an ongoing internal debate about how to understand the political events of the past and the present, it will very soon become clear how a national debate on values has been emerging in the past ten years which has had a distinct influence on the Danes' reinterpretation of their Lutheran heritage, the responsibility of the welfare state and the role of religion in the public sphere. A national debate is forming and the very essence of the distinct 'Danish model' is on the agenda.

4.3. New government – new paradigm?

In its political foundational document, the left-of-centre government that took office in 2011 envisages a commission to suggest changes in legal and economic governance of the *Folkekirke*, and the Danish Society for Church Law has published a draft report titled 'A Constitution for the Church anno 2011' in an attempt to re-ignite both the public and the political debate about the future of the church (Christensen *et al* 2011).²

Any future model must be built on a firm legal basis out of concern for the inner life of the *Folkekirke* and the equality of religious communities. It will have to simultaneously strengthen, accommodate and clarify the triangular relationship between the secular state, the free religious communities, and the re-established *Folkekirke*. It seems the original intent of giving the *Folkekirke* and religious communities their own distinct legislation and freedom to organise their internal affairs would not only overcome some of the many challenges posed today, but would in accordance with European legislation and the desires of the religious communities absolve the need for a distinct Danish model that in identity and values protects Denmark against the religious other and the illusory 'unknown'.

² An official commission for analyzing the future structural organization of the *folkekirke* was appointed 10. September 2012 by the Government, supported by all political parties in the Parliament. For further information, see: <http://miliki.dk/kirke/nyhedsarkiv-kirke/nyhed-om-kirke/artikel/alle-folketingets-partier-staar-bag-udvalg-om-folkekirkens-fremtidige-styre/> .

5. Religion and Family in Denmark

5.1 Basic principles of Danish family law

In 1536 the Reformation introduced a secularisation of Danish family law, meaning that the competence area shifted from church law to state law. The state upheld the church as the main provider of the legal status of marriage and in principle this has never been completely separated.

Marriage. A couple who therefore wish to establish a legal married relationship may marry according to Danish law (Law on marriage and divorce, LBK nr 38 of 15/01/2007). The condition is that marriage is between two adults (polygamy is prohibited), and the parties must both be over the age of 18. Marriage may be performed at the mayor's office or within the *Folkekirke*, since the pastors in the *Folkekirke* are authorised by law to perform marriages with civil validity. In addition, priests in other churches, the Chief Rabbi, and a group of imams have been authorised to perform marriages under the condition that the religious community is approved to have this function and that at least one of the parties is a member of that community. The legal conditions for such marriages are under Danish law, meaning that the religious marriage by a pastor in the *Folkekirke* or in, say, the Roman Catholic Church does not give that marriage any legal dimension of being religious (Lutheran or Catholic). The practical understanding among people, however, may be different.

Divorce. Divorce is only possible if the couple has been officially married and the state authorities dissolve the marriage, for no religious leader has any official role with regard to divorce. Failing this, there can be a case on interpretation of a contract on the economic dimension of the marriage and on custody of the children. The *Folkekirke* is not authorised to grant a divorce, nor can the local minister in any other church. Pastors are always willing to give advice or help facilitate reconciliation if so wished by the parties involved, but this happens on an individual basis, and there are many secular, established or alternative, counselling services available in Denmark. When discussing divorce in the Danish context, there is a general, albeit pessimistic, common impression that – based on statistics – roughly half of all marriages end in divorce. Usually divorce is granted following a one-year period of separation and custody is granted following administrative decisions or court decisions on relevant factors and the wishes of any children involved. If there are circumstances that call for an immediate divorce, such as domestic violence or infidelity, the civil courts may grant these as well.

Cohabitation. A couple that are of age can choose to live together without any legal consequences and with no legal formalities. The only condition is that both parties are over the age prohibiting sexual intercourse, being 15. If one of the parties is under 15, the case can be brought before the courts as a criminal law case. Cohabitation is widespread in Denmark, and also common among religious groups who do not follow Danish family law. In Muslim milieu this way of living is mapped in a recent report on concepts and norms within practices parallel to the Danish legal system (Liversage & Jensen 2011). The report names these practices among Muslim groups 'Nikah-relations'. This type of relation seems to be widespread and is established under the blessing of imams from different groups, including imams who have the official right to perform official marriages.

Custody is a public law decision. The parents can make internal agreements and arrangements, but either (or any) of them can always bring a case before the public administration, and the social authorities always have a final say over custody of children living in Denmark.

Economic relations through and after marriage. The general principle in Danish law is that the parties share burdens, responsibilities, and fortunes equally, each of them taking care of their own economy but with responsibility for the other. In the case of divorce the general principle is that the property is shared equally – and at death there are similar principles. However, all principles regarding the equal sharing of economy in a marriage can be changed through contract, except that the couple remain equally responsible for maintaining each other.

Freedom of contract is thus the basic principle with regard to economic relations in family law, a contract which can always be interpreted under general norms by the courts.

Private International Law principles are of course only relevant if the family has a relation to another country than Denmark. Contrary to most European countries the basic principle in Danish Private International Law is domicile. Consequently, Danish domicile means the case is brought under Danish law, even though one or both parties are not Danish citizens. Domicile means in the Danish context the place where the parties live with the intention of staying there, i.e. both an objective and a subjective factor. If a legal status – such as marriage – is performed under the law of another country, the question with regard to Danish law is only whether or not this status can be recognised, that is: whether or not the couple can be acknowledged as a married couple. There is no question of acknowledging any foreign legal consequences of the marriage, since – according to the basic principle – these will be judged under Danish law. A case of divorce or other conflicts over status that is brought in Denmark will be judged according to Danish law, not according to foreign law.

These general norms are nevertheless modified through the Nordic Convention, the EU Convention, and the Hague Convention.

Relevant cases:

CRD2001.1998-540-84 – Following a divorce, a parent adhering to Hare Krishna was denied full custody over their child.

U.2002.690Ø – The courts refused to recognise an Islamic divorce and sentenced a man to 60 days in prison for bigamy.

V2003.B-1791-03 – A previous religious marriage was not recognised by the court, whereas a divorce from a second wife was allowed.

U.2005.2314Ø – After a divorce, the Islamic concept of Mahr was explained and the courts deemed it analogous to a gift.

OE2006.B-3980-05 – Following a divorce, a child custody contract made by an imam was nullified by the court.

OE2008.B-1005-08 – Following a divorce, the mother feared that the father of the three children would transport them to Pakistan for a more religious upbringing. The court deemed that there was no flight risk.

5.2 State recognition of religious marriages and authority to perform marriages

The Danish state grants key religious personnel of all the recognised and acknowledged religions the authority to perform a marriage ritual that is recognised by the state.

All of the respondents we spoke to on the legal status of marriage, the religious dimensions of marriage, and the protection of legal rights confirm a general respect for public order. Many respondents made it clear that the internal affairs of a religious community were safely within public demands.

As a human rights lawyer, JC sees the religious performance of marriage as an obvious element in freedom of religion that should be granted with reference to the civil code. If religious communities want recognition of their marriages it must be within the established Danish public order:

JC: “They must interpret what their religion warrants them. In my view, in a democratic society one must try to regulate it by saying that the basis of our society is that we do it this way. If they desire something else, then they must carry the burden of the argument that there is something else, something contrary to what is valuable to us; something which we have democratically decided must be like this. So in a way, they are subject to the decisions of Danish democracy.”

JC goes on to nuance his position when asked where he would then draw the line if minority wishes and priorities conflict with either human rights concerns or state legislation:

JC: “[It has to be] ... within the public order, and what does that mean? It’s easy enough for lawyers to say that we will recognise the marriage unless it goes against the public order, but what exactly is that? There I believe you will have to come down and say that it will be a very solid, political evaluation of what we can accept in Danish society, vis-à-vis ‘odd arrangements’ which ‘weird people’ from ‘strange religions’ bring and want us to tolerate in the name of humanism. That is there where the dilemma arises. How far must we go? The starting-point must be that there can be nothing that disallows you from doing things differently, as long as it is not provocative in regard to our values. Where that limit goes, that is extremely individual. It will have to be decided on a societal level.”

PVB, the young female left-wing politician, herself a theologian, is asked whether or not it would be easier just to have a civil marriage and let the religious communities decide themselves on their different sorts of blessing etc:

PVB: “This is the right solution, which is always dropped onto the suggestion table and which I myself have suggested whenever the issue has been same-sex marriages, when it’s about something we don’t [...] When it becomes difficult in regard to the marriage authorities within these authorised faith communities, then it is much easier to say: Let’s pull it all away, and then nobody is allowed to do it. You could also imagine that you begin a dialogue with the imams about what the components of Danish society are, because I believe the other approach can result in a lot of shadowboxing or it can make it so that you never truly understand what is going on. Then you undermine the authority of the imams. Some would think that that is quite all right. I would think that it would be unfair to all those who know how to follow the rules.”

Also the bishop from the *Folkekirke* sees the right to perform marriage as part of a traditional freedom of religion in Danish society. He sees the tendency to understand the religiously performed marriage as also including religious-legal norms, but he does not think that would change if marriages had to be performed civilly before the religious ceremony:

PSJ: “It’s clear that you draw in some religious traditions, that is, you bring in cultures and traditions, that’s obvious. But the access given to religious leaders – including pastors in the *Folkekirke* – doesn’t lie in the fact that the religious leaders are bringing a religious order into the marriage. That’s not part of the concept of marriage in Denmark, as I see it. That also goes, by the way, for people having a civil marriage at the city hall and then being religiously wed at the *Folkekirke* or by the imam or something. There is no religious law to be brought in there. The religious marriage is merely a blessing, which in Denmark can draw in Danish civil law – nothing more.”

MB, a recently-elected member of parliament from the Liberal Party, follows the liberal line in her argument:

MB: “The formation and dissolution of marriage? I believe that is a legal matter, and in reality, it is a civil matter and we must hold on to that. How you are advised, that choice is up to people themselves, who can then choose to be wedded in some form of religious community. How that advising takes place that should be left up to the communities themselves.”

A fairly new trend revealed in the interviews is that most want an additional religious celebration of the holy commitment of the marriage. And this is where the material can demonstrate a wide-ranging concern for a clear distinction between the religious and the civil

dimension of marriage – even though the Lutheran bishop doubts whether it would really change anything, as we saw in the former quotation.

SA, who is a lawyer herself and an observing Muslim, points to the need for this distinction. In Islam, she says, the rules dictate that two witnesses are enough to make the marriage public. Precisely because this is not enough according to Danish law, the Muslims have resourcefully begun to refer to this religious and ceremonial act as an engagement:

SA: “Here’s an example, I have been invited to an engagement here on Saturday. It’s funny that they call it an engagement because what they’re actually doing is there is an imam that will wed these two people. So in my eyes, these two people are Islamic speaking ‘halal’ for each other, they can do whatever they want with each other, as they are married within the Islamic rules at the very least. So when I see a marriage performed by an imam who has the necessary marriage authority, then that is a marriage, even though some would call it an engagement.”

When asked about the possibility of a conflict with existing law, she immediately responds that a Muslim religious marriage in the minds of Muslims is a *de facto* marriage. When asked to reflect on her own experiences, she relates both the core problem of two competing ideas of marriage and her own position on the matter:

SA: “I very much presume that the imams tell people that they should be registered afterwards at the municipality as being married. In fact, I’ve never really thought it over because I’ve always thought that. [...] that once you’re married by an imam, then you’re married! I’ve never thought about it in that way. It hasn’t ever interested me either, whether I’m married or not in accordance with Danish law because Islamic speaking, I am married! What I am according to Danish law, I’ve never really been interested in that. I must admit that.”

An imam from Copenhagen, AWP, confirms the general position above and adds that the distinction between the civil law aspects of the marriage needs to be clearly separated from the religious aspect. Asked whether or not he is registered and has the authority to perform the recognised marriage, he states:

AWP: “No. I marry people without authorisation. I perform solely religious marriages.”

His style is provocative and he smiles at being able to be so categorical. He is so, because he wishes to stay independent and to keep marriage as a sacred institution. However, his point is exactly that Muslims should register themselves with the authorities, but that this is not his responsibility, and he insists that the authorities should take care of the legal aspects and leave the sacred, religious, Muslim dimension of marriage to people like him:

AWP: “So we are a few, and I’m one of them, who have chosen not to seek marriage authorisation from the municipality because I am not interested at all in performing civil marriages. I am utterly indifferent to that in a religious context. Of course, I advise people when they come to me solely for a religious marriage. I advise them to also have a civil marriage performed. [...] If you need to make your relationship halal, of course there are some specific things that need to be done for it to become halal, and I will of course advise people to do those things. But there I also tell people that when I perform this marriage, they don’t automatically receive the rights one has, automatically, in a civil marriage. They have to be aware of that.”

Before we conclude on the potential conflicts of such an understanding and distinction between secular and sacred in the institution of marriage, it is relevant to turn to the other

religious minorities in Denmark to discuss the recognition of religious marriage and how they see the problems and possible conflicts.

ET, an elderly Catholic who serves as advisor to the Danish Catholic bishop, also begins with reference to the sanctity of marriage and develops his understanding of a valid and proper marriage from there:

ET: “Marriage is a sacrament, and it is the couple that announce it to each other.”

Q.: “It’s not the priest that announces it?”

ET: “The priest is a witness and he is the one witness that is authorised to determine that now they have married each other. In Danish, we use the word ‘wed’, but in reality, he does not wed them, it is they who wed themselves. One of the basics of Catholic marriage law is that one cannot be wed to another person if it isn’t entirely voluntarily; if you’re not authorised [to be married]; if you’re not sane or not able to take care of your affairs.”

ET maintains that marriage is between a man and a woman who wed themselves to each other. He clearly holds that Catholic priests are authorised to perform the marriage by the state, but in a Catholic sense, the priest is only a witness on behalf of God to make sure the parties are capable of entering into the marriage.

The Chief Rabbi, BL, mentions as an anecdote an interesting aspect of Jewish marriage as it is conducted in Denmark; it has everything to do with the symbolic power of the marriage and rests firmly on the principle and recognition of mutual agreement in the marriage:

BL: “Originally, marriage was a way to secure the woman. I mean, it’s a funny thing that we still have this tradition that in the matrimonial contract we continue to have an economic transaction, only being symbolic since economic relations between Jews in our countries tend to follow the rules of the country itself.”

The question of contract or explicit agreement in the marriage – and the very idea of a need to register the marriage – has everything to do with the possibility, if not probability, of the marriage ending either in divorce or in the death of one of the spouses. The imam, the Catholic advisor, and the Rabbi all stress the symbolic and religious aspects of the religious marriage. The reason for this is of course the social importance of an explicit recognition before both the community and God. This is the importance that prompts the imam, AWP, to distinguish between the religious and the civil. There is a theological sense to this that adds another important aspect to the religious marriage: when a couple marry, they come closer to God, and when the couple divorce, they distance themselves from God. This seems to be true also for Roman Catholics, as can be seen in the structural reluctance to make an annulment.

5.3 Divorce

As mentioned, much if not most of the public interest in religious marriage has to do with the conflicts that arise from the end of marriage – either in divorce or in death. As most of the conflicts relevant to this survey are derivative not of the marriage itself but of the divorce, issues of dispute resolution, matrimonial property (e.g. Mahr), custody, guardianship, and so on, will be treated in due course.

In order to give proper language and nuance to the conflicts of divorce discussed in the survey, we need to distinguish further in the complex of marriage and divorce between the secular and the religious. In doing so, we follow Liversage & Jensen (2011), who in their report on *Parallel Perceptions of Law in Denmark* operate with the intersection of the two relevant aspects of marriage and divorce. In order to map the possible tension and conflicts, they ask, firstly, “Did the couple divorce according to Danish law?” and, secondly, “Did the couple divorce according to the religious norms?” (Liversage & Jensen 2011, 86). If the answer to both questions is either “yes” or “no” they are either still married or completely divorced. The

tensions emerge when the answer to the first question is “yes”, but to the second is “no”. This is what has been called a ‘limping marriage’ and leaves the couple in the same legal uncertainty when facing a divorce as if they never registered the marriage civilly in the first place.

The frame presented by Liversage & Jensen and the complexity of the issue is confirmed when we address the respondents on the issue of divorce.

SA: “... there are some Muslims who believe that if you are Islamically wed, then you must also get divorced according to Islam. But there is no such thing, because if she married according to Danish law and she receives a Danish divorce and it becomes public, then in accordance with Islamic rules, the publication of her divorce is final, also in an Islamic sense. So I see a lot of people – not as many as there used to be – who marry, and they are registered as married, then they carry out a divorce yet continue to live together. Maybe they want the social benefits, I don’t know, but it is actually a sin in Islam that they do this because it has been made public that they are divorced, yet they continue to stay together. And then the husband says: But we’re not divorced according to Islam! They have no understanding! They don’t understand the legality in Islam that once it is made public, then it is a divorce – he has declared that he has had himself divorced according to Danish law. Whether it’s Danish law or not, that doesn’t matter; Islamically, it counts. Quite a lot of people aren’t actually aware of this.”

SA points to the implications of divorcing legally in the Danish system. She maintains that if the couple divorce legally, they are also divorced according to Islamic principles, as it is public to the community. However, there seems to be some internal disagreement on, or lack of, Islamic legal understanding internally in the community in this regard, as there is evidence to suggest that the husband can maintain social and religious power over his wife even in a ‘limping marriage’. This leaves her in the same situation as if the marriage was never registered in the first place. In addition there is a difference between the genders in gaining access to a divorce.

NB: “A man can basically say; ‘I am divorcing you’ and then be divorced. It’s a bit more difficult for the woman because she can’t just say “Now I’m out of this”, even though there are different opinions about this – but I’ll get back to that – in a traditional sense, then the woman would have to go to the qadi, the mufti, and again to a mediation council and then if her reasons were good enough, then she would be able to seek divorce. Something else that has to be taken into consideration is the contract she entered when they married. If there were any special conditions for divorce and if they are included, then it would also be possible for her to seek divorce.”

As with Muslims, the Jewish community allows for divorce.

BL: “We do allow divorces, as a religious part of things. We don’t have any right to perform divorce in Denmark because priests have no right to grant a divorce. But as is the case, when people have had a civil divorce, then they ask the rabbi to give them a religious divorce. And that is of course legally valid in a Jewish understanding. And there are no problems with that. But that again is related to the fact that, basically, we don’t have the concept of illegitimate children. With us, every child that is born is a legal child, completely regardless of whether it is with the partner or not with the partner or whoever. The only case where there could be a problem for the child is if the mother is living with a Jewish man and has a child by another Jewish man. Then we have a problem, because then there are certain rules for this child. And we want to avoid that at all times, and that’s why we say that we need the parties to have this religious divorce.”

Roman Catholics do not allow for divorce, but there is an option of having the marriage

dissolved or annulled. As an implication of the marriage sacrament, the legal effects of the marriage continue to be in place for as long as they both live.

Q.: “They can live separately but the legal effects remain?”

ET: “Yes. The thing that may become a problem is whether you were even married the first time around, if it actually was enforceable; if you were so immature that you in reality could not take responsibility for your actions. Maybe if you were mentally ill, yes, then you’d have to say that the marriage never took place to begin with. Often, you use the expression that you can “have your marriage annulled”, but that’s not accurate; the question is, whether you can say the marriage is “null”, i.e. annulled not as an action but annulment as an assertion. The assumptions were never there.”

In the Catholic case, the annulment of marriage or the deeming of a marriage as void is done by a marriage court that examines the evidence and deliberates on the preconditions of the marriage and whether or not it is invalid. The parties have legal recourse to the very top of the canonical system in Rome, where legal experts rather than the parties in question will speak on behalf of the marriage and against the claim of its invalidity.

ET fully recognises the importance of the sacrament of marriage, but questions the procedures and difficulties in changing the status of the marriage:

ET: “I believe that it’s a wrong system, because while I do acknowledge the indissolubility of marriage, I also believe it is unrealistic to put your faith in such a court to determine what actually happened during the marriage. What you should do is, you should give them an extensive course on what marriage is all about. Then you can say, ‘Now you know how it all goes and then you must settle the matter with your conscience and the Lord.’ So you with your conscience and after you have been taught, say that this is how it is, and you admit and sign it in front of God and man, then we will use that as our basis. In reality, I think it’s ridiculous that you try to reach an objective decision in many of these cases.”

Also the Lutheran bishop is very frank. When asked about the religious dissolution of marriage and whether religious institutions should decide on such dissolutions, he exclaims:

PSJ: “Obsolete! I’m not the right person to ask this, but I see it to be outdated because I consider them to be divorced when they *are* divorced. But most of them aren’t divorced if you’re talking about the Roman Catholic Church. It’s so difficult to have your marriage annulled.”

Q: “Those kinds of cases exist not just with Catholics but also in the Jewish communities and in Muslim circles.”

PSJ: “Yes, well I can’t do much about that and I don’t think secular society can do much about it either. But within those respective religious societies, the actualities must at some point be acknowledged.”

Q: “With this type of case, would you consider them mediation institutions?”

PSJ: “The Catholic man that goes and gets a divorce and cannot have his marriage annulled, he’ll still go and do what he thinks is right after a few years, but then he can’t get married. Those are heavy implications for the man in question; he is excluded from Holy Communion and so on. Very serious implications. But these are implications that cannot be solved here, by us, in the secular society.”

Here HC, the female leader of a diaconal project, has a very clear focus on the weak party and therefore argues for one law for everybody:

Q: “Now when you’re talking about uniform rules, do you mean specifically or are you referring to the bigger picture?”

HC: “It’s mostly the bigger picture, I mean, again based on the different discussions I have listened to or read up on, like whether we need special, private courts to solve family feuds or conflicts – or infidelity vows, I nearly said – or other conflicts regarding that and other things.”

Q: “What is this outlook that you want to protect?”

HC: “I want to protect the weak.”

Q: “Who is ‘the weak’?”

HC: “That will of course always be an individual assessment but as I see it, or as a citizen in society, what I will try to support is that the weaker side has an opportunity to appeal to a third party.”

Thus the attempt to reconcile the marriage either by mediation or by educating the parties on the social and religious implications of either ending or voiding the marriage is similar in the case of Muslims, Jews, and Catholics. We return to mediation when treating the implications of alternative dispute resolution.

5.4 Marriage contracts and access to divorce

Many of the respondents stress the purpose of having an explicit and legally binding marriage agreement. This is important when considering both the terms of the marriage and the terms of its termination.

In the Muslim environment there is an explicit recognition of the unequal access of the partner to a divorce. A practice is emerging that equalises the access to divorce and challenges traditional Muslim family law. NB explains the change and sees it as a convergence with the proper and usual way of terminating a marriage:

Q: “In Danish Muslim society, are marriage contracts being made?”

NB: “Yes [...] Where individual conflicts arise, that occurs when there isn’t an agreement on the divorce, right, and especially from the husband’s side: he doesn’t want to let go for example and the wife says: ‘Yes, I just want to be rid of you’, right.”

Q: “Do the contracts oblige the men more so than traditional family law? Do the men also need reasons listed in the contract to be divorced?”

NB: “They’re already there to begin with and partially also for the women; for example if the husband is violent or doesn’t fulfil social, emotional, sexual needs, doesn’t help economically... these are reasons enough that a woman can say, ‘you know what? You’re not giving me my monthly contribution, this isn’t working economically and we don’t have enough to live on, so I want to divorce you’.”

As NB stresses here, the termination of the marriage is valid or appropriate if the marriage is mismanaged or if either of the parties feels mistreated. Here, the contract adds some sort of automaticity to the procedure. The fact remains, however, that such a contract is difficult to maintain because conflict in itself is not enough to make the community accept the divorce. Rather, there seems to be a logic which dictates that conflicts in the marriage can be resolved as long as they do not concern the preconditions or basics of the marriage. There can be no divorce without reason, and seldom without reconciliation attempts.

NB: “No, they need some reasons. They can’t just have a divorce. There are some moral and ethical rules that apply, so they can’t just say; ‘I don’t like you anymore!’ That wouldn’t be reason enough for a divorce. So a man can’t just come home one and say, ‘I want a divorce from you because you’ve been wearing that blue dress. I don’t like it.’ That wouldn’t be reason enough and that is why, when the cases usually go into these mediation agencies, you’d want to hear if there is a good enough reason. You could call

upon the local imam or mufti for these things [...] Where the differences lie, as I've understood them, is that a woman can actually ask for a divorce but when she does, she has to go to a mediation council and have some specific points of complaint, points that are in accordance with Islamic law, just like with the man. There are just – maybe you could say – stricter demands that the woman needs to fulfil. The demands are a bit more strict."

The practice of making such a contract is not as straightforward as might have been expected, and in Denmark there is doubt as to whether such a contract is enforceable. Such cases remain within the general frame of marriages 'not registered'. A contract stipulating that one of the parties would willingly and knowingly grant a divorce to the other, might be legally questioned and not necessarily binding on the parties. However, and this is important, it might still be legally relevant in case of disputes. This distinction adds to the social power of *having* the contract.

We also asked the Lutheran bishop for his view on the possibility of establishing marriage contracts where religious norms had a legal impact. He was hesitant:

PSJ: "I've never speculated on that, I mean, there will be some subjects that I haven't thought through. Probably the kind of cases that the Anglican Archbishop Rowan Williams was vocal on, a few years ago: You can easily encounter something like that. But I think, I would say, that if it could pave the way towards some kind of solution, where we're talking of some kind of mediation court, which could be helpful ... I'm going to have to think about that, it's interesting..."

5.5 Contested divorce and conflicting demands

What the contract does well, however, is to stipulate the demands and rights of the parties in case of divorce. That is not a concern in itself with the access to divorce of a marriage that is not recognised. In the Muslim case, this is relevant in the question of Mahr, that is, the amount of money or property which in a Muslim marriage is an obligation of the husband to the wife.

Recently, Rubya Mehdi and Jørgen S. Nielsen published *Embedding Mahr in the European Legal System* (DJØF forlag, 2011), which discusses the implications of introducing Mahr into the legal system. They point to the fact that European courts are opening up much more to questions of Mahr than any other aspect of Islamic family law. This is partly because Mahr is so important to families in the community, and partly, as SA explains, because it is relatively easy to demonstrate a violation of the marriage contract through reference to Mahr.

SA: "If you enter into an Islamic marriage with all the rules and duties and rights that come with it, what can occur is, for example, let's say the husband doesn't want to pay his dowry. Then what do you do? Then – it's actually very easy because I get these kinds of questions once in a while – then you can say, 'If the dowry isn't paid, then you can go public and say: 'I am not married, the dowry hasn't been paid'.' And then it doesn't matter what he says, then he has to prove that the dowry *has* been paid, and if he can't do that, then in the eyes of the public, you aren't married. That's easy enough. But there is another problem, such as: 'He doesn't provide for me. What do I do?' She can't go to the municipality for example and say 'My husband isn't providing for me!' because according to Danish rules, he's just her boyfriend if she hasn't been registered as married. That's when they are forced to go to an imam or an upstanding and respectable citizen or his family members and say, 'Look at this! My husband isn't fulfilling his duty to provide for me.'"

In the case of granting a partner a divorce, there are numerous examples from different contexts and religious communities of harassment, provocation, and partners deliberately dragging their

feet in malice. The following example is from the Chief Rabbi, BL, but could have come from almost any of the religious leaders we spoke to.

BL: "... If it is purely harassment, after a while, which can be quite some time, I would make the decision to go through with the divorce."

Q: "As in, opposing the divorce is a form of harassment?"

BL: "Yes, harassment. It's not economic, it's merely a matter of me not wanting, he shouldn't be able to ... or she shouldn't have the right to live a proper life [...] I actually have a case at the moment where the girl's former husband really doesn't want anything, it's just harassment. And I've seen that many times."

He relates several incidents and the cases he refers to demonstrate precisely that the harassment begins once the legal and civil divorce has been granted but before the Rabbi can finalise the religious divorce. Because the civil courts deal with issues regarding children and lingering economic issues from the marriage, the Rabbi naturally waits for the courts to finish their work. The harassment then begins, because a Jew cannot marry again before the religious divorce is finalised. If there is indeed no reason save malice and no lingering issues like custody, the Rabbi will push the divorce through, but according to his testimony, this can easily take a few years.

In the most extreme of these cases the Rabbi, imam, priest or pastor has an option which most of them say they seldom use. They have the possibility of making the specifics of the malicious harassment public and known to the religious community.

BL: "I can tell you that in one of the cases I have actually thought of publicising it: to make it known that this guy is simply ... because he is active in the congregation, he has a huge network, and he knows many people. That's what you would do in Jewish congregations around the world, there you would simply say, 'This man or that woman ...' I haven't done that though. I think our congregation is too small to be able to bear it"

SA relates that this kind of thinking is common in the Muslim communities as well, and even well-known in the Islamic traditions.

Q: "Are there any sanctions, some sort of pressure within the Islamic legal way of thinking that you can apply?"

SA: "If we have an Islamic court where women could go, then yes, then there could be some sanctions. If for example he doesn't follow his rules, then he could receive some admonitions and then he can ... Now you're asking me legal, Islamic questions. I could just look it up in the different legal schools, how it is, but there are some sanctions and it can end in there being no marriage at all if he doesn't abide by the rules that he should. She also has the right to some things. But when we're talking about Denmark, then you can't use the rules we're talking about. Then you use social pressure instead."

From what SA relates it is clear that not only can marriages in Islam be seen to be limping, but that there is a system of justice that lacks some of the internal components for imposing sanctions or checks and balances in matters of family law. Instead, the community becomes a public court and executive in order to force the couple in question to resolve the conflict.

ET relates similar cases from the Roman Catholic context, such as the case of a non-Catholic woman who was divorced and then later married a Catholic husband. For her, it was not socially acceptable to take part in Holy Communion. It is possible to deny a member of the Catholic community access to Holy Communion, but it happens only in extreme cases, and ET would not think it proper to do so in this day and age:

ET: "That's what church law says, but it's not observed in a lot of places. Divorced and

remarried couples walk up to the altar and they aren't rejected. It could be that a priest would privately tell them that this isn't allowed. But not many priests would say that. If somebody walks up and they don't intend to provoke, then they won't be turned away. Nobody walking hand in hand up to the altar will be denied on the spot. You just don't do that."

5.6 Alternative dispute resolution and the persistent issue of parallel jurisdiction

As with marriage, the social and religious implications of divorce on the community are significant. This is not to say that they are not important to the individuals involved, but the religious leaders in the survey seem to focus on the *communal* aspect. Before we turn to the question of dispute resolution with all the overarching communal, social, and symbolic aspects, and the much-contested problems of parallel jurisdictions, there is also evidence to suggest that a benign and private solution is possible.

SA bases her reflections on personal experiences in which a divorced woman – although the Danish system granted her the custody of her children – decided together with the father to live their lives according to Islamic principles. The example is presented here in order to demonstrate that there is a clear sense of a dual and overlapping consensus between the two legal systems, without endangering the rule of law or Islamic principles. The solution that the couple in the example reached is original and conducive to both the public order and Islam in Denmark.

Q: "When you say that they belong to the father, what legal system are you basing this on?"

SA: "This is of course according to Islam, because the couple are trying to live in accordance with Islam and he is their father and they live with him. That doesn't mean they can't live with her when they want to. They'll go there, when they need money, sometimes, or when they're upset with their father, and then they will go to her. But anyway, they have split it up so that when the children reached the age they were supposed to, Islamic speaking, then they had to live with him. That's how the Islamic rules are, right? [...] If she says, 'OK, I get the child because the Danish laws have given him to me, I have automatic custody,' well then she can decide, by using her granted custody, to share the child with her ex-husband. So I can't see... I mean it's not a breach of Danish law, because Danish laws give plenty of space to make deals. Only if there is a sudden dispute and a disagreement, that's where it can be tricky, because then the man might say; 'I have a right according to Islam and so on' and then the woman would say, 'Yes, as a Muslim, I won't take that from you because of course you're to have a right to the child when you want to take care of him or when you want responsibility for him.' That's something she can decide, given that she is the one with the parental custody."

We also asked the Member of Parliament, PVB, about alternative dispute resolution:

Q: "Is it imaginable that the religious societies themselves established some alternative methods of conflict resolution, for example via imams, rabbis, matrimonial courts?"

PVB: "Certainly, I could imagine that happening, but now you have to be careful you don't end up with the same problems as the English archbishop who had exactly these suggestions and ideas as to how you can solve some of the problems, and I think that could happen. The only thing I sometimes worry about is that in Danish case law and Danish legislation, women and children have always been subordinate and worse off, when it comes to legal certainty, and it's common knowledge that traditionally in many faiths, the women and children are subordinated legally and traditionally. The thing is that the struggle to oppose this has to come from someplace within. And then if you allow the fact that it's not just religious norms being a factor in these mediations ..."

PVB thinks it would be interesting if the decisions from such an institution could be brought before the common courts in society.

Again, HC as leader of diaconal work has an even more focussed perspective on the weak party:

HC: “It may be that mediation is a tool that could be used, but again, these middle roads, I’m a bit worried that there could be assaults; I mean, bringing the victim and perpetrator together – and I feel it’s too close for comfort, that it’ll be the weak party that again ends up losing.”

Q: “So the legal development within criminal law regarding mediation, you are quite hesitant towards it?”

HC: “Yes, I mean what I fear is that...some of it is that it’s such a pleasant way to solve things and then we become good friends, and that’s of course a caricature, but that’s the sort of thing I fear is behind this, instead of looking at the unpleasantness and the things that may cause problems, to say, ‘We must decide in favour of the person or persons who have been wronged’.”

5.7 Freedom to enter into a contract

Alternative dispute resolution is quite a common practice and is used in many aspects of public and private life; most often it does not require the law’s support. However, a recurrent topic in the Danish debate in recent years is the question of whether or not religious mediation is producing a parallel jurisdiction. When confronted with this dilemma, most respondents point to the freedom to enter into a contract and – if not forced, and willingly – agree as they wish.

Alternative dispute resolution has been in effect in Denmark within the Jewish community for a very long time.

BL: “We have situations where the Chief Rabbi is called when there are conflicts between two Jewish parties. It’s not very often but it has happened. [...] It requires that both sides be prepared for the fact that it’s a legal decision, something you basically have to accept right from the start. It’s not like I can send out the police or someone else in such a case. But it happens. Not very often. And that’s what is misunderstood when we’re talking about shari’a and all that, because it doesn’t have anything to do with shari’a, besides, it’s always problematic to talk about, but it’s absolutely clear that here you have an incident where two Jews have a case in which they say, ‘We would like the rabbi to decide for us.’ [...] And that is based on the parties having to agree on the decision.” ...In some places you have congregation rabbis and then you have some rabbis that are employed in what’s called Beth Din, which is the Jewish court. But we don’t have that here. [...] So I choose two religious people to be a part of that. Ultimately, I never sit there on my own. It doesn’t require, what can I say, special training or something; the job, it’s like arbitration; [...] It’s all based on two people having a pretty religious predisposition.”

The Copenhagen imam, AWP, has a clear understanding of how arbitration and mediation is used in Denmark. His context is the developments in England, and he reflects the seriousness of the matter:

AWP: “In Denmark, you’re working all the time with arbitrary courts or pure arbitration. For example, when you’re bargaining: That’s not a court; that’s arbitration. But it’s binding for the parties that have sat down at the table, there, it’s binding. You could definitely create some arbitration court in Denmark that only deals with special kinds of cases. And I believe there is a need for courts such as these because as things are right now, for example, a lot of divorce cases end up coming to me. But who am I? I mean, I’m

some old hippie from Djursland [in East Jutland, ed.]; why do I have to be a part of divorce cases? What qualified me for that? My qualification is a small word, consisting of four letters [i.e. 'imam'], but I don't think that's good enough. Instead, if we could create some kind of arbitration court with, let's say, ten qualified lawyers, caseworkers, social workers and I don't know what, some kind of magistrates and then you could call them in three at a time and then you'd have three judges there working a five-hour session every other Thursday or some such and people could come and those stepping in through that door, they would lay down a symbolic amount to be allowed to walk in and then they're also saying: This will bind us. That way, you could solve a lot of conflict instead of walking down a side street to a, as someone once called me, a self-anointed second-rate imam. Well, I was promoted since then because I became a third-rate one instead so that has to be higher up the chain [*laughing*]. Why does it have to come to me? That's not good enough"

From a complementary aspect of Muslim life in Denmark, NB points to the need for a publicly recognised institution that will be able to handle the issues that the imams are struggling with, especially in securing women's equal access to divorce:

NB: "There are some imams who say, 'We need a body that also has support from the government, an official recognition, legitimised.' And you could go in and practise family law [...] warrants, that would help women that are, let's say, trapped in their marriages, in accordance with Islam. With that you need mediation in some cases, especially if it's the woman that's seeking a divorce; Both men and women are able to ask for a divorce in Islam but the requirements are a bit different for each and that's why you need a mediation council, and some imams would say that that's important [...] I don't believe you can use the term 'court'. I believe this has to be done cooperatively. If there has to be a mediation body – let's just use the words 'mediation body', a Muslim mediation body – then it would have to be a multidisciplinary collaboration between the legal, social, and economic aspects [...] I see that we need a place we can send these women to. What authority do I have to write a letter which would be approved? I could do it if they asked me, but I think these women should have a formalised, structured place they can go to. Some of these women, they call on imams in different places, they spend so much time trying to figure it out; they become confused, sometimes they become sad when they can't get the solutions they want. I think we need a body that takes care of these things and to try to work out something together."

The imams both recognise the danger of addressing issues of criminal law in these cases and reflect further on the danger of risking equality of law:

AWP: "There has to be one punishment for one crime. I mean, it shouldn't be that you're punished by different people for the same crime. But if you could find some tools in other traditions that could help with social rehabilitation or help in some shape or form, well, then I think that would be excellent."

Q: "I wasn't actually thinking you'd be punished twice, but you could be judged half and half in two different paradigms, so you have..."

AWP: "No, no. I don't think so, because that's when you would need multiple parallel legal systems at the same time; No, I don't think that would be a good idea... I mean in Denmark you've used that when you've shot people in Afghanistan or Iraq, then the Danish side has actually gone out and paid blood money. But that's because that's a tradition in that part of the world."

Q: "It's not something that belongs here?"

AWP: "No, not unless it can somehow stop an escalation or some other type of conflict

that hasn't necessarily developed into something criminal but where it nevertheless could do so, unless a penalty is paid."

The issue of blood money is difficult to consider, because it is often misrepresented through many of the bleak associations and ideas it provokes. When we ask TB, who is a judge and skilled mediator herself, she distinguishes between criminal matters and the lingering social, religious, and emotional tension that often follows serious crimes. Mediation is there to prevent escalation and serves the same purpose as blood money:

TB: "Well I am a mediator at heart and I think that anything that is capable of being mediated upon, that's best for all sides. If they can sit down and figure it out themselves, then that would be the best way. If it's myself as a mediator in a legal system or it's a schoolteacher, imam etc. sitting there, being a part of a facilitating staff, I don't really care about that. If it fails, then they always have the courtrooms they can go to... In my world, mediation is only ever finished when all parties have come to an accepted agreement. Then it's their deal and not the decision of the mediator. I believe [... but,] that if they have signed a clear-cut agreement, then they may still go to the courts and say there was coercion and argue that the agreement was made under false pretences, but otherwise, it would be a binding agreement."

When JC, the human rights advocate, is asked about the question of mediation with the religious communities and the possible binding legal effects and awards of such mediation, he is slightly hesitant, but he develops the circumstances under which he sees it as acceptable:

JC: "If it's within reason, and where that begins and ends, that's up for discussion. But of course, if there is some kind of family argument in Nørrebro and an imam comes and says that this guy needs a good caning, that won't do. But we don't even use physical punishment anymore. My basic view is that one shouldn't be afraid that the rules and systems of other countries will be acknowledged in Denmark. Or that there are deals being made across the dinner table at home that we can fairly keep ourselves out of. It's obvious that if you say, 'I killed your son but I talked it over with the imam!' then I would still say that we can't do that, since we cannot decide the matter ourselves because it's the state that has the authority to do so.... Then you're coming back to the question: Is this within reason? Is this normatively acceptable? The idea that people are forced into making agreements that everybody thinks are fair, you'd probably be able to live with that, but if you're coerced, using informal coercion, society would say that is entirely unreasonable. That's what society is trying to fight against, when we're against mediation by imams. We don't oppose the reasonable and balanced 'Jewish Community' mediation with open-minded, educated, and free parties that need a solution. What we oppose, when we're even having the discussion, is when the exercise of power is too great."

JC points to the dual dangers in this. The first has to do with due process, but the second is much wider, as it has to do with the socially acceptable. This is where most of our respondents have an opinion and want to contribute.

5.8 Mixing norms? Separating norms?

Most of what has been presented thus far tries to give a status and overview of the possible conflicts that may emerge. Most of the respondents have something to contribute, but we have limited the family law section of the report to give a representation of the different positions. However, as the respondents have significant insights into the problems that may arise and an outlook on the whole of society, it is of relevance to enter into the wider discussion: Do we need to mix the religious and secular norms? Is it possible to distinguish between them, or do we need to do something to separate them? Do we need to nuance the

language and keep the law legal and religion religious, without mixing these?

Q: “Are shari’a and canon law so clear-cut, clearly separated from other legal systems that you can say: ‘Now I’m using shari’a, now I’m using Danish law?’”

SA: “I think that there are some things that are confused in your questions; shari’a is a very large code of law that can be used differently, depending on the situations, the legal schools and so on, but shari’a as a code of law is made to be used in a Muslim society. And then you can say that I, as a private person – it’s also a part of shari’a that I pray, I wash myself in a certain manner, that I have a specific opinion on different things; but I don’t see it as [...] I don’t separate it from my real life, I don’t think that when I run a red light, I’m breaking shari’a, but rather, I’m thinking of safety concerns and the law and if I get a ticket, I’ll get a ticket, which I’ll obviously pay, but I don’t stop and wonder that this is shari’a and this is Danish law. [...] I think that’s because I see Danish laws as the rules of the game that apply where I live. It may be that there is a religious rule I can’t follow through on but that’s just how it is, because I live here. I have an opportunity to affect them and I’ll do what I can as a Muslim in Denmark to affect those rules; and that’s why I wrote that response to the legal committee. The rules that apply are something that is determined collectively and then I’d have to choose: Do I follow that rule or not? I’ve chosen, in some cases, to follow the rules that apply because that is the most appropriate for my life, but at other times I might say; I can’t comply with this rule, instead I will follow the rule of my religion.”

KWH is a trained theologian and a frequent participant in debates. Faced with these issues, she points to the importance of separating and distinguishing between civil and religious identities:

KWH: “I’d like to get away from the business of talking about religion because it is undeniably dependent on what kind of religion it is. I think it’s shocking that we’re experiencing polygamous relationships in Europe in this day and age. I really think it’s civilisational regression that we’re sort of going to back to the days of the Vikings. If freedom of religion is used as an argument for that sort of thing to happen, then we’re forced to critically re-evaluate the concept of freedom of religion. That’s how it is... and then they’d say, ‘Shouldn’t you have a clear idea about what it is you’re criticising?’ No, we have to look at it directly and say, right, and we’ll have to say outright that we don’t want underage marriages and we don’t want polygamous relationships. Why isn’t polygamy all right? [...] I use it as a test on people; if people say that that is none of the government’s business and that people should be able to marry as they want, then they fail my test. I myself think it’s tough to argue for it, because it really is: Why don’t we think polygamy is all right? Why do we think that? It’s very difficult; that’s because we have a cultural, moral, and religious baggage with us, whether we realise it or not.”

We ask CS, a senior official in European politics, about this and he tends to concur with KWH and also point to the importance of distinction. However, he stresses that conflict resolution on an informal basis is acceptable if the legal system remains transparent and consistent as to secure the rule of law:

CS: “... I don’t really think it belongs [in the legal system]. What you do in a legal system, that’s value-based, and where do those values come from? They still come from something in Christianity or something normative or someplace else. Where I’ll have an issue, that’ll be if people take something from Islam or somewhere, and then give it a special status, and then at the same time they take something from Hinduism, and then you take a fourth piece and you make a compound of different methods of conflict

resolution which results in a lack of transparency and a lack of understanding. And in the end, people say, ‘What’s really the legal position here, because apparently, you can choose?’... then we’ll go shopping. It’s a kind of supermarket. And that sounds very fancy, but in reality it’s superficial”

What is implied in the quote here is the importance of stressing that in private, people can agree on mediation as they like, while not being either forced or coerced into accepting the *premise* of the mediation. In public, however, the legal system must remain consistent and transparent, and must not become a supermarket or subject to justice-shopping or forum-shopping, that is, addressing a forum where one expects a favourable outcome.

5.9 On international private law

The logic at work in forum-shopping can be extended across international borders. Although international private law is a system to ensure different national conceptions of family law are enforceable across borders, there is a danger of an increase in shopping around. Especially after several decades of migration and increased globalisation with its proliferation of transport and communication, the option to travel to the opportune forum is available.

There is not much evidence from the religious respondents to point to international forum-shopping being a problem that differs from local forum-shopping. When we speak to JC, he stresses the fact that within the context of recognition of different jurisdictions for freedom both to enter into agreements and to resolve private conflicts, there is no substantial difference between religious concerns and the secular concerns.

JC: “... We have a world where we normally acknowledge that if Colombian law applies to a marriage, then that can be used here in Denmark. They once lived in Colombia and then they moved up here and after six months they had a divorce. Then that is the way it is regulated. On the one hand, that’s the consequence of us always doing it that way. People have the freedom to make the agreements about the solutions that they choose. To me, conflict resolution by an imam isn’t worse than all the other types of conflict resolution, so long as it’s within reason.”

Q: “Religion can’t be used as an argument in reality?”

JC: “I’m trying to justify it from a secular viewpoint when I say that no, that’s not why, but at the same time I want to say yes, that *is* why, that there should be *room* for it. Religion can play a special role in how people regulate their internal relationships and there should be room for that. If you don’t recognise the open point of view, then you end up suppressing a lot of good ways to regulate relationships and solve conflicts. You have to be careful with that.”

We ask the religious leaders to reflect on the overlap of jurisdictions and the possibility of forum-shopping, both locally and globally. Rather than pointing to the legal aspects of the problem, most mention the deeper and more complicated social aspects of a ‘limping marriage’ and other examples of uncertain family status. There are social problems that cannot be solved legally and there are legal problems that cannot and must not be solved socially. But we are seeing a field of problems where there is an overlap between the legal, the religious, and the social. Moreover, it is not just that these problems overlap, in a few cases the social and legal norms for resolving them are even competing against one another. In Denmark, there is one field of problems that has been debated heatedly in 2011 and that is to do with same-sex marriages and the question of what can be legally imposed on the religious communities.

5.10 The question of same-sex marriages in Denmark

In June 2012, the Danish parliament passed a bill allowing same-sex marriages to be performed in the *Folkekirke*. Eight of the ten bishops drew up a new wedding ritual, and the first gay couple were duly married in the same month. There were a number of protests,

mostly from within the church, but there were also legal considerations to be faced, one of these being on jurisdiction. The Minister of Church Affairs and Equality, Manu Sareen, argued that it was a question of equality and that pastors in the *Folkekirke* should be allowed freely to decide if they wish to perform same-sex marriages. Although this has been passed into law for pastors, all other church staff are bound by law to perform their normal duties at same-sex weddings. The conflict is also one of jurisdiction and legal competence, which is an unresolved question lingering from the constitutional promise of ‘regulation of the *Folkekirke*’ in the 1849 constitution.

The second on-going discussion is precisely about whether or not the church – and other religious communities – should even be *able* to provide marriages for couples of the same sex. This question is seen from all sides as a religious one.

As part of the interviews we ask several of the religious respondents for their opinion on the matter: PSJ from the *Folkekirke*, ET from the Catholics, LMH from the Baptists, while DN spoke as a humanist.

PSJ was chair of a committee under the Ministry of Church Affairs, trying to resolve this question with regard to the *Folkekirke*. His position is clear: it is an obligation for the *Folkekirke* to perform marriages also for homosexuals, not only for political reasons – being the church supported by the state – but especially for theological reasons:

Q: “So internally, within the *Folkekirke*, would you say: ‘We have to, because we have the theology for it’? Is it that sort of an argument?”

PSJ: “Yes, yes. Yes, yes. I believe we should. I believe that we are now talking about something on principle. We should do it for pastoral theological reasons, for theological reasons. While I’m hesitant to say the opposite position is good theology, it’s only because it’s the starting-point for their basic theology that is wrong. They’re not proper theological starting-points. You can’t have that view of the Bible as a basis for theology from that angle, according to my best convictions.”

When asked whether other faith communities should be obliged to organise religious marriages for homosexuals as a condition for the right to perform hetero-marriages, the answer is equally clear:

PSJ: “No. I can’t agree to that.”

Q: “Would you want to?”

PSJ: “No, I wouldn’t! It’s an issue left to the individual religious societies.”

Q: “So a religious community should be able to keep its marriage authority, even though they won’t marry homosexuals?”

PSJ: “Yes. The *Folkekirke* will take its own stance on the issue. It’ll be us who decide it in the *Folkekirke* and correspondingly, the other faiths have the right to choose what they want.”

The Roman Catholic perspective is similar, based on a distinction between secular norms administered by the state and religious norms administered by the religious communities – and the belief that freedom of religion also entails a right to define which types of marriages the religious community wants to bless or perform:

ET: “Now there’s talk of having gender-neutral marriages. I would say that in this case, secular society could make such a system. You can have a political opinion on that and – independent of my Catholic perception regarding homosexuality – I have the view that incorporating such a system would in reality weaken society’s protection of the ordinary marriage and thus of the family and children. I believe, for purely social and anthropological reasons, that it would be a wrong decision. Then it will be like, suddenly

you can't have legislation that takes families into account because it also has to apply to all the others. That would be like banning the wearing of the cross just because you don't want others to wear a headscarf. That is why I am against it. It would be a sign of secularity if you said that the independent churches are also obliged to have gender-neutral marriages. The basic problem here is that freedom of religion isn't just for the individual but for the collective. They say the pastors of the *Folkekirke* will be independent but the church itself will not. It's hardly a practical problem because there are enough pastors in the *Folkekirke* that will happily go along with it."

ET points to an important aspect of the problem: freedom of religion is not just an individual freedom, it is also collective. Leaders of churches outside the *Folkekirke* fear that being forced to accept same-sex marriages will be a condition for becoming authorised. The legislation has ensured the right for other religious communities to decide this matter at community level. The debate is mainly, as we have seen who speaks on behalf of the *Folkekirke*? Who can commit an institution to a matter of policy, when the issue is so contentious? Is it violating the rights of members and pastors in the *Folkekirke* to make same-sex marriage a matter of *public* policy? When we asked LMH about the matter in 2011, it became clear that other religious and faith-based organisations in Denmark would not agree to such a policy. As a religious institution, LMH's organisation wants to avoid the dilemma entirely.

Q: "If Parliament changes the marriage law and you could marry homosexuals, how would you react to that?"

LMH: "What we have talked about is that we don't wish to be put into that dilemma. So I think we would give up our right to perform marriages. [...] There are those who would say that they recognise a homosexual couple or also see homosexuality as love from God, as a sign of it being legitimate and that it should also be possible to register and be blessed as well. And then there are those that say it has nothing to do with love; it is a delusion, maybe even a disease, and it's something you pray to be cured of, or you should just stay celibate for the rest of your life, if you have those tendencies. So we have the entire spectrum. [...] In some ways, we probably feel that, at least some of us, where we just say: There are more important things to discuss than that. I mean, in reality we think that it's such a small part in the role of a church, but it ends up as a *stamp* in some way. That's something some of us don't like."

LMH talks about the organisation handing over their state recognition and the benefits that come from that, if forced into the dilemma. There is a clear sense that the dilemma is the problem, not so much whether or not homosexuals have the right to be married in the *Folkekirke*. The core of the matter is that the dilemma will destabilise the organisation, with devastating consequences.

DN from the Humanist Association has a clear solution to the problem:

DN: "A completely gender-neutral marriage law, where you say that people who love each other and want to commit to a partnership with each other and commit to the different legal obligations, following cohabitation in secular society, by entering into a marriage. These are included regardless of what the different religious groups believe the marriage concept to contain in their own eyes. So it's a legal term we use in Denmark, and it is first and foremost the relationship between the citizens and the state that is interesting. What the individual faiths out there want to do afterwards, that's none of my business, but what we have chosen to call a marriage from the government's side, that... if you have other criteria, then you follow them. What you're doing *out there*, that doesn't have any legal validity for us, since it's just your own ceremonial and symbolic construct."

DN takes neutrality to its logical conclusion. He leaves religion in peace to be religion, he leaves the state institutions as a matter for the state, and the law can be the law. And the effect is a gender-neutral marriage law that everyone can agree on.

From the well-respected diaconal organisation HC is of the same opinion and argues the case for an independent, neutral marriage with an optional religious ceremony for those who so wish within their own faiths and community.

HC: “For many years now I’ve had the conviction that I don’t think there should be a legal marriage formalisation, not in the church either. [...] I think that having a marriage formalisation which is equal wherever – again, this is repeating a point in what I say – at the city hall or wherever it is, is that society makes the decision about that, and you can say those who wish to, can go to their respective religious communities and receive a blessing or whatever you want to call it.”

5.11. Conclusions regarding religion and family in Denmark

For many of the administrative leaders and *Folkekirke* leaders among our respondents, these questions on religion and family law are surprising. They have not expected such questions, since the general understanding among the secularist and *Folkekirke* respondents is that family law belongs under civil law, and the even more general understanding that law is law and law is secular. If people find other solutions that are open for deliberation – that is up to them. It does not really matter whether the solutions are inspired by religion, as long as they do not break Danish family law.

On the other hand the respondents from the Islamic context have many observations on the conditions and validity for establishing and dissolving marriages. They try to avoid forum-shopping but feel their own lack of authority. They formulate concerns, but have difficulty presenting solutions.

The Roman Catholic and Jewish respondents feel that their internal marriage courts or tribunals or advisory institutions are precisely that: advisory and not mandatory. It is a recurring problem that the issues around a possible divorce are of little or no concern when a couple enter into marriage. There is little or no correlation between the one and the other, in the sense that the one is a matter for God and the other is a matter for the community.

6. Religion and the Workplace in Denmark

6.1 General introduction to Danish labour law

The Danish labour market is basically and in principle market-regulated. General rulings are made through agreements between the parties. Legislation is foremost in use when parliament finds it necessary to establish norms for all, whether they be members of labour unions or not, in order to protect the most vulnerable on the labour market. The general approach is therefore a freedom of contract within the legal framework set by collective agreements and law.

As a member of the International Labour Organisation and of the European Union, Denmark has implemented the relevant treaties and not least the relevant regulations and directives ordering the labour market in relation to rules against discrimination.³

Danish national legislation has a wide range of applicable laws against discrimination in the workplace. From the introduction of the 1849 constitution right up to recent legislation, two principles are fundamental: That employees cannot be discriminated against on the basis of their religious beliefs; and that religion cannot be used as an argument for establishing special favours on the labour market. This double code in the Danish approach may have resulted in a fairly secular understanding of the labour market, but it also means that nobody cares if nobody cares.

This is also the line followed in case law:

U.2008.1028Ø – The applicant was not hired due to her refusal to eat during Ramadan. The court awarded compensation to be paid to the applicant.

OE2008.B-821-07 – The plaintiff was a Jehovah's Witness and left a birthday reception at work. Claiming it was against her religion, she resigned. The court found in favour of the defendant and the dismissal of the member of Jehovah's Witnesses was upheld.

U.2005.1265.H – A woman chose to wear a headscarf and was lawfully dismissed from work after violating the company dress code. The court deemed her dismissal acceptable.

U.2001.207.V – A man's religious beliefs were revealed to a hiring board and he was deemed unfit to work with others and his contract was terminated. The court found the contract termination to be unlawful.

U.2000.2350.Ø – An intern was not accepted due to her headscarf. The store had no official dress policy and the court found the dismissal to be discriminatory.

In practical terms, although the law protects against discrimination in the workplace, cases seem to show that if there is a valid reason to dismiss an employee – i.e. a reason not directly related to their religious beliefs and customs – then the courts will allow it.

6.2 Religion and the labour market in general

As mentioned in chapter one, an important element in the general transition from state religion to freedom of religion in the mid-19th century was that religion should no longer have any influence on the individual's access to civil and political rights (Constitutional Act, section 70). From the outset this constitutional norm has been understood as a prohibition against taking any account of the religion of an individual applying for a public post such as judge, teacher, doctor, etc. Over time the requirement of belonging to the *Folkekirke* as a precondition for becoming a civil servant has been taken out of all legislation.

³ For more detailed information and discussion of the implementation of anti-discrimination regulations with regard to religion, see Christoffersen, L (2012 D): "Denmark" in Mark Hill (eds): *Religion and non-Discrimination*. Trier: European Consortium for Church and State Research.

The second part of the same section in the constitution underlines that religious requirements cannot be justified for evading the fulfilment of any general civic duty. In the general understanding, this means that the individual cannot use religious arguments for asking favours, or for not fulfilling duties related to job-functions.

On this background, the general understanding in the Danish public has been that the labour market is secular, unless it is a question of clearly religious functions and workplaces. In addition, institutions run by religious organisations must argue their case if they are to oblige their employers to take part in and pay loyalty to religious norms and rituals. This secular approach to the labour market has been the general understanding – with no real distinction between a public and a private sector.

A series of questions regarding formally private institutions with public functions have made the secular approach to the labour market increasingly problematic, however. These include the strange anomaly of the faith schools in Denmark, privately run yet overwhelmingly funded by public means and satisfying public demand. Likewise, the distinction between private and public formal ownership is increasingly seen as not necessarily the most relevant distinction, where function and general legislation with not only vertical but also horizontal effects must be taken into account.

By the same token, questions regarding the visibility of religious identity and/or norms within the public labour market and the accommodation of these have also come onto the agenda. These include, for instance, public institutions such as schools that are seen as representing not necessarily state ideals, but rather common ideals and norms.

6.3 Working hours and holidays

The Danish calendar is still based on a protestant understanding of Christian holidays, though with certain Danish specialities included.⁴ Christmas, Easter, and Pentecost, all three including the following day, are respected in public life and on some of the most central holidays the public peace must be kept with no disturbance from music, football and so on. Other Christian holidays, Constitution Day (5th June), and all Sundays are common holidays with a protection of the services of worship in the *Folkekirke*. These days form part of the common agreements on the labour market as days off for all employees, meaning that anyone who has to work on these holidays is paid extra. Nonetheless, there is no right to argue that one does not wish to work on Sundays or on Christmas Day; everyone has to take their shift and nobody can use the argument of religious custom, such as going to Sunday service, to avoid it. Religious practices are not seen as a legitimate argument for extra days off, or even that special day off (Christoffersen 2011).

The calendar does not include any of the holidays of the minority religions. This goes for the special Roman Catholic holidays, as well as for the religious festivals of Islam and Judaism. Consequently Catholics, Muslims and Jews, as well as, for instance, Jehovah's Witnesses are given no favours parallel to the Christian holidays.

Most of the problems that can arise in this area find solutions on a basis of accommodation, either among the workers themselves or from the employer. There is, however, a rising concern that this is not enough. As the imam from Copenhagen suggests, there might be good reasons for changing the national holiday calendar. These go beyond the strictly religious arguments.

AWP: "I actually think it would be an advantage for the entire labour force if you were allowed to move your days off to a greater extent than is allowed today. I know for example in the transport sector, bus-drivers and train conductors and all those, Muslims

⁴ See for a more detailed discussion of the questions regarding calendar, Christoffersen, L (2012 A): "Religion and State: Recognition of Islam and Related Legislation", in: Nielsen, J.S. (ed): *Islam in Denmark*. Plymouth: Lexington Books

are really appreciated there because they don't mind working at Christmas while a lot of ordinary Danish non-Muslims would prefer not to work at Christmas."

However, not all workplaces can see the advantage in accommodating their employee's wishes not to work on holidays. Some individuals are strong enough just to quit and they therefore think this should be regulated on an individual basis:

SA: "I believe you should let people make their own arrangements with their workplace. I've been lucky enough that when I've worked at a Muslim workplace, I get days off at the end of Ramadan. If my place of work doesn't want to be a Muslim workplace, then I would try to negotiate about it and if my employer wants to be angry or silly about it, like 'No, under no circumstances can you get a day off at the end of Ramadan, for the Muslim Christmas', well then I would say: 'Thanks for the great work experience, I quit.'"

Others rely on the support they can get from their faith community:

BL: "On the one hand it's become easier because people are more free, meaning you can generally choose your days off... but we actually have a school teacher who was denied the right to spend a day off on a Jewish holiday. And we've also been able to change the attitude in the high schools, namely that in the old days you would deliver a note from the Chief Rabbi to the principal where it said the person in question should be given a day off on Monday and Tuesday for Rosh Hashana and that's how it was done. You don't do that anymore. Today, neglecting Rosh Hashana is seen as well... neglect."

The Jewish community has been part of Danish society for hundreds of years and much accommodation can be reached through negotiations. An example is the question of exams on official Jewish holidays. The rabbi reflects on the lengths they go to in order to meet the most frequent difficulties, but observes that the problems that nevertheless arise are resolved benignly and swiftly.

BL: "[I] write to the Ministry of Education every five years and request that the official exams shouldn't be at that time because that's a Jewish holiday. And generally, that's something that is accepted. And I would say such things happen sometimes. Last year, I actually had two students ... they had been told to show up for an exam on one of the Jewish holidays coinciding with Pentecost ... and there the teacher had told them that there was no option for a make-up exam and no option to take it again at another point in time. So they turned to me and I wrote to the principal or whatever he's called and I said this and that and how it was a problem for them and how was he going to deal with it and after about ten minutes, I got a reply back, 'I have announced that they don't have to take the exam'... so I would say overall, things can be solved."

Such accommodation is not common in Danish society, however. The general impression is that that many practising Christians would support the idea of a first choice for religious people to get a day off on certain holy days, if the rule were also practised by Christians who want to follow *their* holy days. But accommodation only for minorities would hardly be accepted, even though the calendar in general gives much better possibilities for Christians. Equally, if the calendar no longer followed the Christian holy days, there would be many objections.

Another conflict on the Danish labour market has been whether a workplace should allow religious practices in working hours, such as Muslim daily prayers. One of our respondents has actually had permission to pray at work on condition that he does not involve others and that he is prepared not to change meetings scheduled by others etc.

MB, the recently-elected Member of Parliament, would leave the decision to local institutions:

“Why should Parliament engage in how people are dressed and whether or not there are premises for daily prayer?”

Such a preparedness to be accommodative is not widespread, yet even the humanist observer among our respondents would argue for an accommodative approach, also with regard to establishing space for daily prayers:

DN: “My personal advice to companies when I’m asked about this, is that I think they should think things through when you do that kind of thing because otherwise you’ll end up making people more ethnic than they actually are. You have to concentrate on the fact that co-workers are co-workers and then you have to see if you can’t separate the private and the religious from your work. I actually don’t see it as a big problem. It can be an issue in companies employing low-skilled labour such as cleaning companies and factories, which often have people being a bit more religious since religion plays a bigger role for that group of people. They want these things to be available, kind of like how the Danes would like to have an exercise room. So I think you have to go into a negotiation to accommodate that. Do we ensure that the workers will stay by taking these measures? I think it’s dangerous to make prayer rooms from the start, in some divinity’s name, because that emphasises some differences rather than...”

It might be that such a position is basically Lutheran in its distinction between the secular and the sacred, since even the Lutheran bishop does not find it appropriate to open up for religious practice in private companies and organisations:

PSJ: “I don’t think that you should impose it on the employers, the option, to make a prayer room. For them, I think it would be a big mistake to impose restrictions on crosses or headscarves. They are life interpretive signs; they’re not neutral at all. It is such a large part of their personality so I would feel it wrong to take that away from them. It might be alright in connection with certain types of work, where there are uniform regulations.”

6.4 Religious dress and grooming codes in the labour market

As can be seen from the quotation from the Lutheran bishop above, there seems to be a close relation in the labour market between questions of religious practice and religious symbols. The question of dress codes has been contentious over the last ten years. The courts have made it clear that the employer is allowed to establish clear dress codes, but that if there is *no* dress code, then the employee has a certain freedom, limited only by general, public order arguments. All in all there are many voices in favour of much more accommodation with regard to religious dress, because what there appears to be no problem provided decent manners and the ability to communicate are upheld.⁵

For some observers from the general public the basic requirement is to be dressed decently, but there is also a dimension of how public institutions treat their citizens. This concerns those who need the help of the persons employed by the institution in question.

BP: “Yes, I generally feel that if you work in a public office then you need to have respect for the institution you are at and respect for the people that come there. I don’t condone low-cuts or jewellery all over the place or thigh-highs or even making much of a ruckus about your own faith to the people that come there. They need to have the feeling

⁵ For further elaboration, see Christoffersen, L (2012 (forthcoming): “A Quest for an Open Helmet,” in: A. Ferrari (eds.) *Burka Affairs across Europe*. Farnham: Ashgate.

that in this place, things are handled by unbiased people who know the rules and not much else. If it was ostentatiously so, then I would have a problem with it... but you have to be able to see the hands and have a sensible and attentive conversation that doesn't involve you sitting there and thinking, 'I wonder what's going on underneath all that.' Then you shouldn't have such a job. Also, it's a choice that you make if you feel like demonstrating your religion because you're also choosing not to work with certain jobs."

We are facing a real conflict here, since central leaders from Muslim milieux do not see any problem in any sort of religious clothing at work and would also accept a burka for a woman who had small children in day care:

AWP: "In my time as a head teacher, I've had a woman wearing a burka hired in a kindergarten class. But then, I knew that when she came into the kindergarten, she would take the veil off and would tumble around with the children just like anybody else. She was a damn good teacher."

Q: "Can she also be a child-minder?"

AWP: "I guess she could if the parents of the children in her care think it's alright. The one I had was a damn good teacher, educated in Denmark, and since the same school had just been put under stricter supervision by the Ministry of Education, I could see that they were about to fall over backwards as she sat there and they would peek at her through the corners of their eyes. And when she suddenly opened her mouth and started talking using all the technical terms, well then they could see that this was a human being sitting there and she knew what she was talking about."

PVB, the young female Member of Parliament, disagrees:

PVB: "I feel that you could probably say that the child-minder in Odense was a good example of how you can fail at your job if the child can't see a facial expression and if the parents, when they come to take and drop off their child, can't see her expression, then I think it's alright that the Odense municipality goes in and sets some guidelines."

Even though there seems to be a real conflict in approaches here, it is our general impression that the norms in Danish society are changing towards more accommodation and more inclusiveness when it comes to dress codes and working hours. This seems limited only by decent behaviour and reverse accommodation, meaning that not only the employer, but also the employee, must try to accommodate the whole situation and also include more secular colleagues.

Here the Lutheran bishop steers more or less towards the middle. He does not want to strip religious women of their veils, and he has no problem with the religious symbols as long as it is possible to establish contact through recognition of each other's faces:

PSJ: "For myself, I'd say that if a person wears a cross, I wouldn't mind that at all. If a person comes up with a crescent, I wouldn't challenge that, or a headscarf for that matter. It's all right. However, I would say that we live in a culture where we see each other face to face and see each other eye to eye, so in that regard, something that completely covers the face would not be acceptable. But on the other hand, I wouldn't dream of banning it in society. On streets and roads. Well, I say if you want to cover yourself completely, that's OK, but I would like to say that I wouldn't hire a person like that."

The Lutheran bishop maintains that the ability to see the face is the key. As long as this minimum of visual sociability is there, anyone is allowed to wear a veil, a scarf or any other vestment. This is important in the Danish context, as professionals in both private and public sector healthcare institutions have argued that banning the veil is a cultural or religious assault

on the individual wearing it. Although the bishop partially agrees, there are a series of additional concerns.

PSJ: “There needs to be another approach, because otherwise I think it will pressurise some people too much. So I think in this case you have to be sensitive to what exactly is going on in their lives. Very often, the women wearing these have had difficult struggles, probably with both their fathers and their mothers to get an education and especially an education that they’re passionate about – maybe even for the right to marry in a certain way, and then, to sort of soften the blows on these cultural fights, they wear the headscarves. I’ve certainly heard some cases of that happening. So I don’t think I need to get involved and decide anything. That only makes them look suspicious. There have been struggles fought that we can’t even begin to imagine and we shouldn’t interfere in that.”

Q: “But isn’t there within the Christian groups in Denmark and among the Muslims and maybe even the Jews in Denmark, a rising fundamentalism? I mean, religious groups becoming stronger and creating stronger religious norms for their own people who are making it even harder to change?”

PSJ: “That’s a good question. There is no doubt that the press is all the time focusing its attention on the pastor who hangs a Danish Christmas pixie from the gallows outside his church as coming from the Devil, to the imam who doesn’t completely denounce stoning, or even the rabbi who gets it in the neck for taking a stance on the settlements on the West Bank. But to a certain extent, it’s a phenomenon created by the media.”

6.5 Religious requirements on the labour market

All our respondents agree with the general norm that it is necessary to formulate religious requirements of key staff within churches and religious communities. A Catholic priest is required to follow Catholic norms, for example.

Similarly, all of them support the general idea that no religious requirements should be allowed on the secular labour market. For instance, the exclusion of Muslims from certain jobs on principle is clearly seen as discriminatory and therefore illegal.

Even though this is the general self-understanding in Danish society, also among the respondents, this sample nevertheless gives surprising instances of religious discrimination in the public labour market. Here is a theologian from the Baptist church [where only adult baptism is practised, ed.]:

LMH: “I wouldn’t mind being a hospital chaplain for example or a prison chaplain, but I can’t do that because to do so, you have to be a Lutheran priest. I find that discriminating. I know the reasoning, because let’s say somebody comes and wants to baptise their child, well, I wouldn’t baptise them, right? Or there can be many other questions. But I think it would enrich our society if there was more equality and if there were different kinds of hospital chaplains or prison chaplains.”

There is still unease in the field concerning religious requirements of employees in the labour market. These tensions are related to three different areas as follows:

Firstly, which religious requirements concerning loyalty, behaviour, and active support of core values are acceptable with regard to secular jobs within semi-religious organisations, such as diaconal organisations? In brief: Is it acceptable to expect religious loyalty from the cleaner in the church? The two other questions are another version of the same topic.

Secondly, which normative requirements can a religious organisation (such as a private school or kindergarten) performing secular functions with the support of public means demand from their employees in general? In brief: Is it acceptable to require the Catholic faith of a Mathematics teacher in a Catholic school?

Thirdly, should clearly religious or ethos-based organisations require loyalty or active support from all employees?

These questions have been dealt with by the Equal Status Council recently in the case of a broad Christian diaconal organisation which requires all active employees and volunteers to be members of the *Folkekirke*. The Council decided that such requirements should only be applied to key staff, and not to cleaners, for instance. The argument of many religious organisations is that they do not distinguish between the values of the jobs and that they need a common obligation from everyone active in order to be sure of fulfilling their aims. Interestingly, this was also the general norm among our respondents, even though some would still stick to the distinction between key members of staff and the cleaner.

We discussed these questions with nearly all the respondents, beginning with the chair of the organisation of social workers. We formulated a situation where one of her members applied for a job in a clearly religious diaconal organisation that was looking for a ‘committed Christian social worker’:

BP: “I actually think that’s illegal, just like you can’t just ask for a male or a female. I don’t think that’s acceptable. Maybe you would *choose* that ... but I’m not sure you’re allowed to do that.”

Q: “What would you say was required before such an institution could function, in this mix of professional and religious spirit, as it were?”

BP: “It’s clear that you must state the core values on which you are based. There can be no doubt that if it’s been stated that the work is based on Christian values, then most Danes would know what that is.”

Q: “And that would be something you could ask of the applicant?”

BP: “Yes, clearly. Like if you couldn’t ask at Toms [Danish Confectionary Company] whether you find the thought of standing on an assembly line appealing. I think it’s all right. But I don’t think it’s all right to ask if you’re a member of the *Folkekirke* and then choose people based on that.”

Q: “So you’re saying that you can’t ask about people’s inner convictions but you’re allowed to ask how they will relate to the workplace they’re going to be at? And how they can behave at that workplace?”

BP: “Yes, and whether they can imagine themselves working under the values and norms they’re presented with. That’s obvious, and you’d do that pretty much everywhere. In our country we have a particularly accommodating family policy, so if somebody has sick children, we allow them to stay home for a few days. It’s the same idea.”

This line of argument is the same among almost all our respondents. It seems to be acceptable to declare the core values of the organisation and the employer, and require that the employees are loyal towards this foundation. But it seems less important for our respondents to question an applicant about their personal faith.

When asked how much emphasis should be placed on personal convictions in secular jobs and how much on the rules of the workplace, the Lutheran bishop, PSJ, illustrates the point:

PSJ: “Faith considerations, I believe that is important. Sexuality, on that I’m not sure, I don’t think that it matters much in that regard, I’m probably more the product of a Christian enlightenment, where it is the professionalism that should be emphasised.”

Q: “Is it part of the theology of some faith group or independent church that their theology should be shown in practice? Such as, we won’t hire divorcees, we won’t hire gays, we won’t have women who have had an abortion; we won’t hire them to begin with, and if they have an abortion, we’ll fire them – What is your stance on that?”

PSJ: “I wouldn’t say that’s fair.”

Q: “And that’s what I’m asking about; would you say that society should accept this kind of legislation?”

PSJ: “No. Now we’re in the grey areas. No, I wouldn’t.”

Q: “Would you say that society should accept via its legislation that people wear religious symbols, but that society shouldn’t accept legislation that can lead to hiring or dismissing people based on their faith?”

PSJ: “Yes. There can be some religious justification. I mean, when there is a specific religious society, you can say they have specific beliefs, which I can understand if the employer wants to stress this. But other than that, I don’t think you should be able to fire people based on their ethics.”

Q: “There was a case where a foreign missionary society wanted a believer on their finance staff. Would you say that if they advertised for a financial co-worker who in his faith could support them and be loyal to them and actively contribute to the organisation, you would accept that?”

PSJ: “Yes!”

Q: “I have a personal limit, namely that at a workplace, you cannot ask people about their inner faith, but you can ask them about their outer practice. Is that a relevant distinction for you?”

PSJ: “Yes, it could very well be. I’ve never thought about it, so you’re giving me something that seems relevant. It’s very typical of the *Folkekirke* to say that we won’t scrutinise people’s hearts and kidneys, their inner convictions. I won’t accept that a homosexual cannot be a teacher because of his sexuality. I would find that highly inappropriate. It must be about his convictions, not his sexuality.”

Q: “And you would support the government saying that that was legally wrong – that that dismissal was not in accordance with the law?”

PSJ: “Yes, I think so; I’d say that I don’t care for it. There you’ve crossed the line. You’re judging on personality there. I wouldn’t be able to accept that.”

Q: “In that situation, would you expect the *Folkekirke* to have an internal management to deal with the issues of decorum? Or would you expect there to be some other common labour law that you could use, or is it a mix of the two? Do you understand my example?”

PSJ: “I do. But I’ll have to admit that I’m not quite sure about it. That’s the thing that becomes so tremendously difficult with the organisation of the church, which has to be changed...”

Q: “It has to be changed?”

PSJ: “Yes, but it has so many implications which are now surfacing. It will probably be a mix.”

Q: “A mix, which would mean you want there to be an internal management but it has to be framed by rules from a common labour law?”

PSJ: “Yes, because what I’m terrified of is that if we say we’re going to have an internal court in the church... I’m so afraid of the church that can go and develop a parallel legal system. We’re pretty good at that to begin with.”

Q: “It’s all slowly coming apart?”

PSJ: “Yes. It’ll be an odd institution in society. That’s why I think, I very much believe, that the thing to do is to keep on calibrating our own perceptions without becoming windsocks. As regards legislation, there we have to be as integrated as possible. At least as ‘the *Folkekirke*’. I wouldn’t demand the same of the others but I wish they thought the same way.”

It seems that this is a position more easily formulated than established in practice. We did not know when we phrased our questions and identified our respondents that one of them was head of one of the organisations which had been through the Equal Status Council with a case on these matters. The following rather long exchange illustrates how a conflict arose. We can clearly see how different expectations clash when considering the religious, the organisational, the national and the European aspects of the conflict.

HC: “Basically it says in our regulations that Danchurchsocial [*Kirkens Korshær*], ed.] seek staff among members of the *Folkekirke*, and what we’re saying is: To seek is not the same as to find, so where we find our co-workers, those that fit the criteria we seek, then there is an option for our board to grant a dispensation. But normally, if I can use the word – and this goes for the user-related work – the fact of the matter is that we have a ‘brand’ that says we work ‘on the basis of the *Folkekirke*’ and that’s why that is what you’d want to meet. It’s very relevant for us, because we’ve just been brought before the Equal Status Council and had a decision about a fortnight ago that we were in the wrong... in this case, it was about an ad for a job application as a consultant which required ‘membership of the *Folkekirke*’. There was a lady who took it to the Equal Status Council.”

Q: “What about staff in your public section and your private section, respectively?”

HC: “We don’t differentiate like that amongst them; they’re all colleagues of Danchurchsocial. The idea that there are certain shelters with (public/private ed.) operating agreements, that’s mostly a technical thing. But the staffs we have are of all kinds. I mean, as I just said, at Blågårds Plads we have a Muslim – by the way, we have several Muslims hired in the same area because we have some football clubs and homework help for the boys in the neighbourhood and there are some young men, Muslim as far as I know, who run that.”

Q: “But that’s an exception and as you said, it warrants a certain dispensation. Who is the ‘ordinary’ staff member?”

HC: “The ordinary staff member is a member of the *Folkekirke* and, as I said, there can be some special cases, such as if the person running the project where you want to hire someone demands that it has to be that particular person. [...] We have both staff and volunteers here and we call them colleagues, all of them. We have about 7-8000 volunteers and about 400 employed staff and I think it’s mostly the staff we must be talking about here, I don’t know. It’s really *there* that we have the requirement of being a member of the *Folkekirke*.”

Q: “OK, so you don’t have that requirement for the volunteers?”

HC: “No. But we do demand that they must be able to work based on the Christian life and human values of Danchurchsocial.”

Q: “What is your comment to the question regarding the staff of the *Folkekirke*?”

HC: “Well, I find it fundamentally strange that organists don’t have to be members of the *Folkekirke*, since music is the primary source of praise and it establishes the space for preaching in which the spoken word is heard.”

Q: “Would you think that vergers and sextons, that all the staff of the *Folkekirke*, should be members or at the very least, you could demand some kind of loyalty?”

HC: “Yes, regarding loyalty, I would say, even from experience, that vergers working in the churchyard are commonly sought out for conversation by the people walking around.”

Q: “Staying with the labour market, I place your organisation in a field where you can make demands on leading staff – that’s how I would interpret the jurisprudence. And you can demand some loyalty from the remaining staff. What is this case you mentioned?”

HC: “We’ve actually had numerous cases; I believe all of them started by the Centre for Racial Discrimination and Equal Treatment. They’ve worked very diligently with these things and in that connection they targeted Danchurchsocial. We’ve never received any reprimands before, I must add. The latest one, as I said, was about a consultant being part of the diaconal activities which we carry out at Danchurchsocial. That person has to advise the leaders on their diaconal activities and other diaconal activities related to the *Folkekirke*, which is what it is, and that’s why we had the requirement, even though there wasn’t any *outside* contact in that position as an adviser on diaconal activities. [...] Basically, I’m a supporter of equal treatment for everybody. I can’t really see round all the corners in these cases which you have briefly summarised. To begin with, you could say that it doesn’t happen in ordinary work relations that your private life, how you live

your life, has any weight, besides the fact that you can pull the loyalty card or other expectations of loyalty and say, ‘You have damaged the product of your company’, if you’re sort of translating it, by discrediting it in your way of life. It wouldn’t be out of the ordinary for *non*-religious businesses that something like that...”

Q: “Some kind of decorum concept?”

HC: “Yes, that your entire persona, including your free time, including how you talk about your workplace and so on... that’s very common, even if there are certain consequences if you’re writing on Facebook how stupid your boss is and all that kind of stuff, right? We have very fluid borders even in this context.”

When the question is turned around, the answer is the same: personal faith is an internal and private question, but the employer is allowed to require loyalty when the person is at work. Unless the organisation has such a clear profile that loyalty is not enough, one is also allowed to require commitment. The judge reflects here on our intentionally provocative questions:

Q: “A person who continuously shows in his actions and his vocabulary that he is thwarting the company or has some other religious view?”

TB: “It must be incorporated under the rules of what an employee can expect and tolerate from his employees and clearly you can’t tolerate that your employee is frustrating the company so explicitly. You can also make dress codes that apply to all.”

Q: “Now, these are nice, well-behaved employees this employer has, so they don’t say anything. But as soon as they’re off, then they cross the street and it’s clear that they go off to another religion. ... Obviously they have a different view and they are still dishwashers [with you, ed.]. Maybe it’s a verger who not only washes the floors but is also there to welcome funeral guests and create the atmosphere of the house.”

TB: “I’m beginning to be a bit unsure regarding vergers. There, I think we’re at a level where I could imagine that it mattered that you belong to the same club that you’re working in. But really, what you’re saying doesn’t really change my opinion. It’s a question of free time. As long as you’re behaving decently and loyally at work. By loyalty, I don’t mean that you can’t have a different opinion, nor do I mean that you can’t express it. You just need to be an employee that doesn’t work *against* his workplace.”

Q: “Let’s assume that at the local office of the Christians’ Trade Union [the 3rd largest in Denmark, ed.] that there are some morning devotions, where you sing hymns, read a prayer and read from the Bible. Then you hire an employee who is very good at the union work but doesn’t want to be a part of the morning devotions. Could you fire him?”

TB: “I think that there should be enough leeway so you could say, They don’t have to come to the morning devotions but they could still perform the work they’ve been hired to do.”

Q: “Let’s say we have a teacher at a significantly Christian free school which is on the religious right in Denmark, where you’re clearly opposed to abortion, divorce, and homosexuality. One of the teachers has an abortion, the second one gets a divorce and the third one turns out to be openly homosexual and they are fired. What would you think of these instances? Or we could just say they don’t get hired in the first place because during the job interview, they are asked about their sexuality, their stance on abortion and family relationships. They say it’s illegal to ask them these questions and so they come to you.”

TB: “As I understand it, we’re dealing with a Christian free school where these are basically the ground rules, this is how it is. As teachers, they have to present themselves on a level where it can’t be argued that they’re acting *against* the school foundation. I would say that as an employer, you shouldn’t tolerate that, because there is a core value belief for the school and because at that level it matters to the parents that there is a common basis. That’s why you *have* this school. What I’m thinking is, that I’m using the discrimination rules I know. With these, I think you could reach the result I’m talking

about.”

Q: “Exactly, it’s about a combination of this ethos within the business and what loyalties you can demand, vis-à-vis both attitude and action, partly when you want to hire them and partly when you want to fire them.”

TB: “To begin with, you can say that it’s clearly discriminating that you start off a conversation with a possible future employee by asking whether they have any plans for getting pregnant, and if they do, would they opt for an abortion. But here we’re dealing with a business where it’s a core value that you have to accept as an employee if you want to work there. Otherwise, you’ll have to stop working there.”

The answers from centrally placed lawyers elsewhere in society follow the same lines of argument – on the widely held belief that it is all a question of qualifications for a job.

There are in fact no clear answers. The reflections and interpretations are related to the concrete context and the concrete questions. Which type of organisation? How clear is it that there are core values related to the organisation? What is the actual nature of the job? How interlinked are value-based practices to the job? And many more such questions. When asked where to draw the line, KWH, the female theologian, argues for liberty on behalf of the employer to freely manage, for instance, a Christian free school under the current legislation:

KWH: “I think you should be allowed a certain degree of freedom when you’re dealing with the law on free schools. Otherwise, you can just say, ‘We don’t want a law regulating free schools’, because you can’t have your cake and eat it. If you want Christian free schools, then you can’t prevent them from having an old-fashioned Christian view about certain things. So I think that would be strange. Yes.”

The same type of reflection can be found among the religious leaders in our sample. The leader from the Pietist Christian movement:

HOB: “I think the situations will often depend just as much on how people deal with it themselves. For instance, I mentioned somebody who has remarried. You could even take a step further back and talk about a divorcee. To me, there’d be a difference there. Another example could be that we had an employee who got a divorce. Can that person still be an employee? To begin with, I’d say yes, but that depends on what the cause of the divorce is and how the person in question thinks about it and what they are going to do about it and so on. So it would very much be contingent on a conversation. But it would be a conversation on a number of other areas as well, I mean; it could very well be like the situations where we have had people who have *left* the *Folkekirke*. In such a case we still retain our identity, that we are a workplace *related to* the *Folkekirke*. But... if you had reached an agreement that you could still work there, then you’d still be hired... there has to be a decent length of time, but with loyalty and a good trust in each other.”

When examples are related to double discrimination (e.g. religion *and* sexuality), the answers are more difficult:

HOB: “Of course you can end up in situations where we’ve had a job opening and somebody applies for the position and the person is qualified but there would be... now I’m not sure about sex but there would be a case where, for example, if it was about sexuality, that somebody would say that we won’t hire that person because it goes against our core values.”

Q: “Or would you fire the person in question because he started to practice his homosexuality (Yes). Would you say that this is how it should be, this is how you should be allowed to organise yourselves or...? How do you view the legitimacy behind the legislation in regard to your practice?”

HOB: “The word ‘discrimination’ is such a strong word. Discrimination can mean that if you end up saying nobody is discriminated against, then it means that it’s almost an open floodgate for the individual to set the agenda for other people. I fully support that if it’s about people being discriminated against because of their sexuality and in that way are almost publicly ostracised and so on, I’m clearly opposed to that. In other words, I believe that when it’s about society, or should I call it the Evangelical-Lutheran in the secular regiment, I believe there should be enough room for people to...”

Q: “When you talk about the secular regiment, would that be Toms Chocolate factory or Føtex [supermarket chain, ed.] or...?”

HOB: “I would say yes, where there is a piece of work, construction work or whatever. But obviously if there is... if you could say there is a level of ideology, of theology, as with us, then there isn’t just a set of work rules that apply but there’s a faith foundation which is *the* identity for that activity. So I think that the balance must be that the organisation with a profile says, ‘This is what we stand for and we hire people within this frame, and if you can fit in with that’..., well then there have to be some pretty good reasons for us not... I mean there can be other qualified applicants but there shouldn’t be any discrimination there. And then I actually thought about those cases that have actually happened: Christian free schools, where the word is actually ‘Christian’, well fine, there’s a label on that then. There is a reason that you’d create a free school, kind of like if it was a Rudolf Steiner school or a...”

Q: “But is that a reason where you would also expect there to be a resonance in the demand for how people live their life outside the school? – I mean the teachers exercising their privacy *outside* the school? Again, is it the homosexuality? It may not be that they’re practising their homosexuality *in* school, right, but in their private homes where they live with a homosexual partner or have a homosexual lifestyle?”

HOB: “Yes, I would say so. Because as you say, if we’re using the school example, if you’re an adult, a teacher there and really, you’re carrying the identity and behaviour of the school with you, then you have a certain way of being, even in your private life, and that will most likely not be hidden, so it would appear as a contrast and I believe for a school board, that’s a very a sticky situation to be in.”

Also the imam pays most attention to the question of loyalty and is aware of not touching on the individual’s personal faith, but focusing on the core values of the organisation:

Q: “Regarding the choice of the best person for the job, does it matter what the individual feels about Islam, also with the different ideologies within Islam itself?”

NB: “No, you can’t deliberately go into the religious area, but you can ask about their relation to humanity and ask about how they view diversity, because we have so many Muslim students at the school – How do you view the way we run our private free school? We do this and that, what do you think of that? That way, you get some answers from them. But I don’t think we should put down an ultimatum that a Muslim free school needs a Muslim headteacher.”

The Roman Catholic answers along the same lines: a religious organisation can require loyalty:

ET: “You’d expect some kind of loyalty. Like, the Catholic children coming to church on Sunday, they don’t see Mr. Jensen at the Sunday mass but they don’t see Mr. Jensen [i.e. the headteacher, ed.] standing outside and saying that they’re wasting their time in church. There’s an obligation to be loyal. But there can be circumstances... if as a Catholic headteacher I suddenly abandoned my wife and children and moved in with a teacher 20 years younger than me working at the school, then I think I would realise that this isn’t working out.”

Q: "So your life as testimony goes against your oral testimony?"
ET: "Yes. It does."

And the rabbi:

Q: "Do you have religious requirements for all your employees?"

B: "No. And I don't think it would be right either. We have non-Jewish teachers at the schools. We have Muslim staff at the nursing homes and the only requirement we have is loyalty to your workplace."

Q: "And regarding parents, the children at the school, are there any requirements?"

B: One of those is that one parent has to be a member of the Jewish Community. The one that *can* be a member *must* be a member."

We end this discussion with some rather surprising reflections from the legal scholar, revealing that the days of easy answers are over:

JC: "My basic position would be that the organisations that are atheist or religious should be able to keep themselves together without getting Trojan horses within their ranks. If that means that in relation to other faith-based communities you allow them a broader scope, I can live with that. You can also say that the starting-point is that faith-based communities have a larger degree of freedom. The *Folkekirke* doesn't, because it's the *Folkekirke* and you're just going to have to live with the slightly tighter regulation."

JC: (commenting on two specific cases from ECtHR (those of Schüth & Obst in Germany): "I would say that if you're employed in a church or a Mormon community or a Jewish community, then there are rules to abide by there. Don't come and use the legal system to make nonsense because you want to be an organist there. That's just tough on you; you'll just have to play the organ someplace else. That would be my position. It's just too ridiculous to be turned into an international human rights violation that a religious organisation can't decide on something that's of fundamental value to them. You violate the values of a religious organisation by sleeping around or whatever it is the other guy had been doing."

Q: "Would that also be your position if we were in the labour market with a religious ethos? For example in Denmark, with The Danish Deaconess Foundation, Danchurchsocial or a church kindergarten. In a church kindergarten, would you accept that here we have a leadership that says it is a clear-cut kindergarten for the Christian church and we won't hire anybody who has had an abortion?"

JC: "Yes, I think I would. There can always be a situation where you have to say, hey, this is where we draw the line. There are thousands of people and it's just one bookkeeper who's had an abortion because she was raped. There can always be borderline cases but my position will always be that these organisations need to some degree to be able to have an employment ban; like this is what we want and this we don't want in our midst. Then you can discuss whether they're actually going to manage that. Again, you have to say that if you have an alternative, I mean, if you could be an organist someplace else, then you're going to have to live with that. If you're a railway worker and if there was only one employer, that'd be a different case. They can lose their livelihood if they can't work there."

JC: "Fundamentally, I believe that if you want to work in a religious organisation, then you have to live with the fact that you need to be religious. I hope that the people working at the Institute for Human Rights don't feel the need to think about human rights in a specific fashion. More than that, I have my own freedom to interpret and I hope my co-workers also believe that. I think it'd be difficult to have an employee who went about all the time and criticised everything about human rights. What would you do here then? ... the guy who won the freedom to opt out of the union closed shop and become a member

of the Christian trade union, he was applying for a job at the Co-op supermarket knowing that he had to be a member of SID [Specialist Workers Union, ed.], so then he provoked a legal case out of that. I think the case should have been dismissed as tomfoolery because it was just an opportunity for him to deliberately create a situation which the Court of Human Rights shouldn't have been involved in.”

6.6 Subtle Changes

There is no doubt that subtle changes are on the way when we ask about religion in the labour market. This goes both for the requirements of the individual to be allowed to follow religious norms on the non-religious labour market, and for the requirements from religious employers for employees to be loyal to the ethos of the organisation in showing respect for the organisation in both word and practice.

As for the non-religious labour market, i.e. the secular labour market, already 10 years ago there were a couple of court cases that settled the question about religious clothing in the labour market, resulting in a general right for employers to decide that employees must follow general dress codes and thus not be allowed to wear religious garments. Most respondents know these court decisions and they accept them to a certain extent as valid for private organisations and enterprises. Nor in general do the respondents see any problem in the wearing of small religious symbols at work. However, when it comes to traditional religious clothing, the standpoints are divided. Both Muslims and Catholics would accept a veil, while others would fight against any religious clothing since they think it does not belong in a secular working space, or they argue that religious clothing is only related to women and is thus a symbol of suppression of women. One of our young male respondents actually explains that he normally changes to religious clothing in his home environment. The judge is furious over the legislation prohibiting her wearing religious clothing in court – at the same time as there being a general rule that everyone on the bench must wear a gown, She sees the rule against religious clothing as an example of the attempt to reject a more pluralist way in general.

All respondents adhere to the general rule that discrimination on the basis of religion in the general labour market is prohibited and has been so since the Danish constitution of 1849. Some see rules on religious clothing as an attempt at unacceptable indirect religious discrimination, even though court cases and legislation rule differently.

When it comes to churches and religious core organisations in their capacity as employers, the subtle changes are obvious. Ten years ago, most employers in Danish society would argue that loyalty and personal conviction requirements for employers – even in the religious core organisations – must be applied on very limited grounds and only in relation to core workers, such as pastors and religious leaders.

Among our respondents there is a growing and surprisingly broad acceptance of general requirements demanded for membership, but also for personal conviction from almost everyone within a religious core organisation, especially if the organisation is rather small or has a clear mission statement. Organisations working for foreign mission in Africa are an example. The Lutheran understanding of a ‘calling’ as being related not only to ordained pastors, but also to lay persons – combined with an understanding that it is no less ‘fashionable’ to be the servant or the cleaner in an organisation – makes this a topic where formal law apparently does not quite fit with the general understanding among the respondents. This also goes for the humanist respondent, who would accept high demands for loyalty from all people employed in religious core organisations.

When it comes to faith-based organisations such as private schools or social organisations with a religious ethos, our respondents are more divided. The general trend of change is also visible here, which means that many are prepared to accept requirements of loyalty. It is no longer enough to declare that one is not working against the ideas of the organisation. On the other hand this area is where the legal cases can be found.

As long as employers only require personal conviction or loyalty, many employees accept this. However, if an employer demands a certain morality, and especially claims that family morals could influence the possibility of offering an applicant a job in a religious organisations, it would still be seen as very foreign to Danish society. We have mentioned examples of court cases from other European countries, such as those of *Schüth v. Germany* (Chamber Judgement 1620/03, 23.09.2010) and *Obst v. Germany* (Chamber Judgement 425/03, 23.09.2010). Such cases are not yet accepted outright among Danish leaders. We all face divorces, even in our closest family, as the Lutheran bishop sighed.

7. Religion and the Public Space in Denmark

7.1 Basic principles on religion and the public space in Denmark

Whereas questions of both family matters and the labour market are to a large extent legally based and even legally driven through legislation and the courts, this is not the case when it comes to religion and the public space in Denmark. Of course there is legislation to cover many of the individual cases such as teaching Religious Knowledge in public schools, or the existence of religiously-led private schools, or even the wearing of religious clothing in certain institutional contexts and in relation to religious buildings, churchyards and so on. We shall introduce these regulations in relation to each of the topics in the present chapter.

The overall situation, however, is driven much more by political norms, by identity concepts, and by constitutional traditions. Summing up the Danish debate on public space, it would be tempting to reduce the entire matter to a question of secularism and symbols. As such, each of the subtopics of this part of the report appears to concern either the secular, or the symbolic, or both. But this would be a very reductionist approach and the realities of the interviews suggest a much deeper complex.

There are two ends of the spectrum when we turn to symbols and secularism. At the one end, either no symbol is accepted in the public sphere, or, at the other end, every symbol is accepted. On the other spectrum, we have either a secular public space, where religion is welcome and where everyone is allowed and allotted their say, or a public space where none of the religions are present. In both cases it is possible to find an all-in model (or an opt-in model) or an all-out model.

In the following, each of these four positions will be presented and considered by the respondents and thus the conflicts regarding public space will emerge. In the on-going debate, strong arguments for each of these positions materialise. It is moreover remarkable to see that conflict emerges when the internal logic of each argument collapses and the state of affairs is moved into a middle position between either no, or all, symbols or no, or all, religions.

Before addressing the legal issues and the many particular aspects and questions raised in this section of the survey, the respondents reveal that it is important to make clear these four key positions as they frame the whole debate. None of the positions dominates in the Danish debate and it is very telling of the current situation that one former Liberal Prime Minister, Lars Løkke Rasmussen, even challenged the position of another former Liberal prime minister, Anders Fogh Rasmussen, whom he succeeded.

HOB, who is a Christian theologian and a critical voice in mainstream religious debates in Denmark, has a clear opinion about the public space in Denmark. Although he represents a wing of Lutheranism, the frustration that shines through his remarks is representative of the frustration that many of the religious respondents express.

HOB: “Sometimes, I think it’s a bit of a shame about Danish society that it’s almost as if we’re trying to legalise neutrality. And what is ‘neutral’? What is ‘normality’? We can’t forget that, being Christian, there are different expressions of that. For me, there are numerous phases to it and... the first phase is that – even according to the constitution – we wish to hold on to Denmark as a Christian country. It may be a question simply of historical circumstances but still, it’s part of our Christian and/or Danish cultural heritage to be Christian. So in that sense I believe that the Christian strain, even the religious symbols and expressions that are present in it, must take some kind of preference. And I believe that should also be legal in the public space.”

Whether or not the Danish heritage of Evangelical Lutheranism commits Denmark and the Constitution to be contested, the conclusion that HOB draws – that religion in the public sphere is legitimate and acceptable – is very significant.

BL, the Chief Rabbi, has an observation that follows closely on the remarks of HOB. As head of an old and acknowledged Jewish Community in Denmark, the Chief Rabbi's mere presence has been widely accepted at least since the Constitution of 1849. This was proved especially during World War II.

BL: "I think I experience, I don't know if it's just me but I think, I believe that the Jewish community today, has become a... it's viewed differently in Denmark than it was 25 years ago. Back then Jewish society was a *part* of Danish society. Today Jewish society is part of the society that belongs to the foreign community."

Q: "So it's part of the foreigners as well? I mean, not just a part of the Danish minority that needs protection but belongs among the foreigners?"

BL: "Yes, because people, it goes for people, it actually also goes for politicians as well: the whole deal with distinguishing between Muslims and others, they can't figure that out."

Q: "It's very interesting but very problematic."

BL: "There is no doubt that Jews in Denmark are more alienated today than they have been."

Interestingly, the Lutheran bishop has the same understanding. The cultural environment has changed over the last 25 years and also Christianity has become more 'religious' and less 'cultural.' The distinction between secular and religious, including the *Folkekirke*, has become clearer:

PSJ: "As for questions about the religious and the secular, I think we have a very complex situation in Denmark. I think if you ask most of the pastors here, they would say, 'It's never been simpler to be a pastor; never have the questions and conversations been this good, never has it been this simple to perform baptismal interviews, because there's actually...' – now you're getting to the core of it. If you ask colleagues from the heyday 30 years ago, back then it was pretty difficult because you were considered odd if you were interested in theology. We don't have to be seen like that again. Not at all, in my opinion. On the contrary, I think we're met with a sympathetic understanding. You can see for yourself, nothing can touch you without it being watched by the press, both the scandalous but even the social interventions really, and even the religious interventions. It's very interesting because there is no doubt that it's not just a fad people are going along with, I mean it's not, how shall I put it, bound into the church."

Q: "So what you're saying is that religious values have become more recognised (Yes) and accepted or in demand?"

PSJ: "In demand, and I also think recognised because otherwise there wouldn't be this apparent interest in it."

Q: "But at the same time, it has become more problematised?"

PSJ: "Much more problematic and this is a rising trend. You can see it both in the public institutions and even in large private businesses which wouldn't have been afraid to support the church in the past; something being 'religious', that's also become dangerous. That's an issue that I believe leads back to 2001. And a growing problem all around the world. It really has dawned on western Europeans that religion is something deep within people, it's something that drives very strong but also very large ideas. Somewhere, you know that there is a potential for peace in this, but there is also a large potential for violence and opposition."

Q: "With what you're saying, is there a part that says that the *Folkekirke* has been a 'given' in Danish society and now that part has become – what?"

PSJ: "What you have to say is that it's clear that there are *other* religions in Denmark now. We have always, most of the time, lived with the Jewish community being more or

less a Copenhagen phenomenon. Now we've also got a lot of Muslims in the country and that's not just limited to Copenhagen. It has become a national phenomenon.”

AWP, who is a convert to Islam, is in a unique position as a Danish Muslim to reflect on Danish Islam as opposed to merely Islam in Denmark. He knows by heart what Danish-ness looks like and has, like the Chief Rabbi, an outlook on the Danish religious landscape and the role of religion in the public sphere.

AWP: “Christianity has many outlets and means of expression which are conditioned by history, social conditions, interpretations by the pastors, cultures, and all kinds of things, and movements of course, within Christianity. The same goes for Islam. The grand and exciting experiment at the moment is: What does Islam look like, when Islam is lived through a Danish sense of self-understanding? ... We are face to face with where we as Muslims must find this identity, like how I as a Dane need to keep my Danish identity while at the same time having to grapple with my religion; while others, let's say children of newly immigrated families or some such, they have to deal with their Danish identity while still keeping a hold on Islam. I haven't become an Arab, I haven't become a Turk, I haven't become a Pakistani, and I haven't even become a city person. I'm a Jutlander, and well, I probably have something of Nørrebro [tough Copenhagen inner city suburb, ed.] in me. The whole thing about keeping your own identity and then taking on a religious identity, that's there to form a religion into a new kind of expression. [...] What Muslims and Islam can contribute to this society, that's really a part of the dynamic that's at work in society. Denmark isn't static, no society is static, so as part of the dynamic Islam is a part of society, there is also – and especially during this time of globalisation which we are living in right now – the fact that Denmark has to understand and adapt to all sorts of different nationalities that are here. I mean, Islam has certainly brought that agenda into focus.”

Very few other people are able to speak to the best of the Danish mentality while at the same time chastising the Danes for their tendency to be narrow-minded and focused on a local, irrelevant frame. The imam speaks plain Danish to Danes, but talks of Islam because he himself – in himself – is able to bridge the gap between the two. In a sense he brokers one to the other. He clearly demonstrates that Islam is, like Christianity, in the same situation in the public space. As things change, religion is part of the response to, and the reflection of, this change.

7.1.a Between the secular and the secularised

If we wish to retain our focus on the divergences in the Danish debate on religion in the public sphere, we need to distinguish between the two. By analogy, ET stresses the importance of this distinction and explains why:

ET: “A secular Denmark? Secularity isn't the same as secularism. You can very well be patriotic without being nationalistic, you can be social without being a socialist, and you can be a locally-oriented, ‘commune’ supporter without being a communist. [...] The set-up is that we have a secular society and that's a good thing because secularism is the basis for freedom of religion. We don't have a *secularist* society though some are trying to convince us that they would *prefer* a secularist society. A secular society rejects religion and that's not what the Danish society does. Our constitution starts by mentioning the church that needs to be supported by the government; and by the way, the other faiths are mentioned as well. What's interesting is that it's not just the religion of the majority that is mentioned in the constitution but also the religion of the *minority*. Their right to exist is determined in the constitution itself. That is, we are secular in the sense that we don't

dismiss religion. We are not hostile to religion. On the contrary, we are accepting of religion.”

ET is a Roman Catholic and argues for inclusiveness in Danish society. KWH, who is very Lutheran in her outlook, also speaks for the very same distinction and for the importance of being able to keep politics, law, and religion as separate entities. On the secular society she maintains, like ET, that secularism is the precondition of freedom of religion and freedom of speech.

KWH: “What ‘secular society’ means is that there is no sacred law, a theocracy that determines how we build our society; there is freedom. We can argue all the days of the week whether we need a monarchy, a republic, free abortion or not, and we don’t look up our answers in religious codices to figure it out. But at the same time, we have a close connection to religion; we even have a state that supports it... A secular society is exactly the kind of society that can be interwoven with the religious aspect but where you still have the freedom to argue how a secular society should be built up. I would say the secular society is Danish society. [...] “You could also say that I’m secular because I’m Christian. [...] That’s the freedom that I really have from Christianity, that’s something you can use. There’s also the fact that secularism is freed from Christianity. There is no legal code, no shari’a, no paragraphs; we can openly argue because this is the realm of Caesar; here we can argue.”

From KWH and her understanding of the secular growing out of the Christian there comes a freedom to argue and a freedom to stick with what we believe. DN, who has been a spokesman for the Humanist Association, wants to keep that very same neutral space in which we can manifest our religious and other opinions. However, he adds a further distinction between the public sphere and the state sphere. His point is that if we truly want a free discussion and debate – as KWH does – the state sphere and its institutions should be clearly neutral, so that the public sphere may be utterly open for all sorts of symbols and expressions.

DN: “The public space is the space we all occupy, all the time. There are two kinds of public space: There is the governmental public space and then there is the public space that means we are outside our private lives. These two spaces are different because in the public space there is room for different viewpoints. [In the broad public space] we can clash all we want and I will stand my ground and say my point of view is better than theirs, but they have just as much right as me to have their own point of view. The other kind of public space, and that’s where I’ve been and where the Humanist Association is very active, that’s about governmental institutions, that is, everything from the welfare office to the library to the public school and all those other places which are religiously neutral.”

DN’s dual public sphere fills the spectrum of the secular in the public sphere. On the one hand, certain institutions should be truly neutral to religion in the sense that religion is not relevant to the business of statecraft, legislation, education, social affairs and so on. On the other hand, everything else that is not either this neutral state sphere or the private sphere should be filled with discussion. Most of the respondents would agree to this image of three spheres, but there is plenty of conflict about where to draw the distinction between them.

7.1.b Legislation:

It seems appropriate at this point to introduce the Danish constitutional principles and the relevant legislation on the topic ‘Religion in the Public Space.’

The Constitution of 1849, most recently revised in 1953, is published as **Law no. 169 of 05/06/1953**. In its first four sections it identifies the founding stones of Danish society: the

territory; the monarchy; the separation of powers; and the existence of the *Folkekirke*, as such supported by the state. Each of these four sections is further regulated and the preconditions of the existence of these corner stones are laid down in the subsequent chapters. As for the *Folkekirke* and the obligation for the state to support the Evangelical Lutheran Church, the precondition is freedom of religion for each individual person as well as a prohibition on religious discrimination outside the religious area (Christoffersen 2010A).

Besides its function as the church for 80% of the Danes, the *Folkekirke* also runs the public civil registration in the country and most of the public cemeteries, though the ten main cities run their own cemeteries. Other religious communities can gain approval for opening a cemetery, which has been the case for the Jewish community, for some Reformed and Catholic communities, and, after lengthy discussion for Muslim communities. A Muslim burial ground was opened in 2006. This is regulated according to the law on burials (*Begravelsesloven*), **LBK nr. 665 of 16/06/2010**.

On the question of teaching religion in the public school, this is regulated through the law on public schooling (*Folkeskoleloven* - **LBK nr. 998 of 16/08/2010**). The subject 'Christian Knowledge' is taught as an ordinary exam topic at all levels from lower primary to upper secondary, though with the possibility for individuals to withdraw from classes on religious grounds. It is also possible to open private schools based on religious ideas and norms. (Christoffersen 2012B).

The national legislation of Denmark touches upon differing burial customs and the specifics within them. In 2010 the government analysed the use of the burka in the public space as well as in public institutions. Legislation was passed with regard to wearing religious clothing in courtrooms. However, with regard to religious clothing or symbols in schools, there is a decided lack of legislation. There has simply been no need to address the issue.

This is the relevant case law:

U.2001.910.V – A tombstone engraved with the words “Hell’s Angels” was not allowed to be raised in a local churchyard by the local church council. The court found in favour of the church council.

U.2001.83.H – A group of students prayed in the school cafeteria and were reprimanded for it. They were then given a separate prayer room. Afterwards, a student was again found praying in the cafeteria and was expelled for it. The court found in favour of the school and deemed the expulsion acceptable.

There is little Danish case law regarding the thematic issues of places of worship and full-face veils in school. In regard to veils and headdresses, there have been some cases in the workplace but none that pertain to schools. In regard to places of worship, there has been some media coverage of Muslim burial grounds and the construction of mosques but none of those issues has ever escalated into actual court cases.

7.2 On symbols; between the symbolic and the deviant

Many of the questions dealt with to some extent by legislation but to a much higher degree by public debate, concern the conflict between the symbolic and the deviant.

The burka was mentioned in the previous section. Although we return to the discussion about the burka in much greater detail later in the report, there is a need to say something here about religious symbols and how we see them in the public sphere. The burka in and of itself is not necessarily a religious symbol and, if anything, is as much a product of history and culture as it is of religion. However, it is often *seen* as a religious symbol, and it influences the debate about religion in the public sphere as if it *was*. The significant thing about symbols is that they are the individual expression of, or contribution, to the common norms on which we build our society and of which the public sphere is the face.

In order to appreciate the nuances of the debates on religion in the Danish public sphere, we need to see the spectrum of symbols from those that truly express the very core values of

society to the symbols that clearly challenge these values. However, it is important to remember that there is little agreement on what the core values are in Denmark, which is what sparks the tension. In addition, there is a communicatory aspect to symbols in that the meaning thought to be embedded in the symbol is often only discernible to those who know or agree while those who disagree only see the contrast. As such, the burka may mean freedom of religion or expression to one respondent while it is oppressive and deviant to the other.

On the matter of symbols in the Danish public sphere, JC is asked how he perceives the symbols that are religious by nature and used in public:

JC: “We’ve had a very long tradition of having a cross in our flag, and it’s no longer a religious symbol to the Danes. It’s a flag symbol. Most Danes think they’ve disconnected and no longer see a cross and that’s why it doesn’t symbolise a religious manifestation that there’s a cross in the flag. This can be misunderstood when people come here, like if we go to Turkey and see the crescent, where you realise it’s a Muslim symbol and you realise this [the cross in our flag] is a Christian symbol but it has lost that significance in everyday life. There was a person who raised the question whether it was legal to have the Jelling stone [with its carved crucifix] on the inside of our passport. [...] I find that the number of religious symbols in the public space is quite modest in Denmark when compared to all kinds of other countries. Or at least equal to and just as modest as in many other countries. Our position is still that we consider religion a private matter. That’s why it’s possible that I as a Dane sometimes disconnect, which I have done, but it could still be there for others and maybe you should work on toning it all down. But I must admit, before the rise of the issue, I hadn’t even thought about it.”

As he reflects on the question and the problem of symbols in the public sphere, JC agrees at the abstract level on the existence of the dilemma. On the one hand, religion is a private matter, and on the other, the religious symbols are not offensive. JC thinks of the flag and the old Nordic Christ figure in the passport as symbols that have become so common or accepted as to symbolise the very core of society rather than anything problematic or deviant. Most of the respondents agree that these basic symbols are not contested, but DN criticises the ‘fetishisation’ of the latent religion in these symbols.

DN: “The *Folkekirke* became a state church and it’s been one for a long time and that sort of rubs off. Symbols have a way of meaning something in one era and it becomes a bit disconnected with what it actually started out as. [...] I’m not into the whole symbol fetish and I don’t think they have that power. Symbols are what we make them and read into them, and we people renew something and then let it die again. I see no reason to start making some kind of ... it’s a bit reminiscent of the Soviet Union where they changed history so it fitted the new way of doing things. You have to take history into consideration. That was then and here we are today. But to start changing it so it fits the present, I don’t think that’s a good idea.”

In the Danish context the relevance of the discussion of symbols in the public sphere has reappeared, as we shall see when we address the issue of religious symbols and headwear in the courts and other public institutions. This discussion also draws on aspects of the secular nature of the public sphere.

7.2.a The role of religious leaders:

Religious leaders and key religious personnel play an important role in the public sphere. We ask the Bishop in Copenhagen on the role and importance of religious leaders in the public space.

PSJ: “Well, that’s changed quite a lot, and here I may say something that is perhaps a bit beyond my station but it’s important. You can see that in January I was persuaded by the Ministry of Foreign Affairs to arrange a peace conference with the Iraqis [asylum seekers. ed.], so the Danish People's Party [right-wing, ed.] thought that it was wrong of us to accept, that their religious leaders played the role that they did. But I have to say that if you want peace in Iraq then we need peace amongst the religions and we need peace amongst the different... It’s easy to sit up here [in Scandinavia] and say religious leaders have no political power. In that way, we’ve been thoroughly removed from power, and I think that’s fine, but that’s not the case in other parts of the world.”

Q: “Well, partly that’s not the case in other countries and partly Denmark falls into that category, (“Yes”) and that’s why you hosted the conference. But you also mention the initiative from Copenhagen, where the political leadership says, ‘Here we have a rise in violence and it’s religiously justified; we need to bring in the religious leaders. And that’s something new in Denmark.’”

PSJ: “It’s something new in Denmark, but I also think that... clearly I’ve experienced it myself a few times as a bishop that when you say something, something you yourself think is ordinary church commentary from the sidelines and then it goes pow! in the public space...”

Q: “So what you’re saying is that not least the bishops in the *Folkekirke*... have their congregations become much larger?”

PSJ: “Yes, I think they have. Everybody... I mean, even the pastors’ pulpit has become much bigger... We can also see that some think there’s too much of that, that we interfere too much... The pastors, they’re saying, interfere too much in the public debate.”

7.3 Places of worship

7.3.a Places of worship – churchyards and cemeteries

As things currently are in Denmark, everyone has the right to be buried in the local cemetery even if it is an Evangelical Lutheran churchyard. The only exceptions are ten of the largest municipalities where there are *public* cemeteries. Some of the recognised and approved religious minorities have their own cemeteries, but most are referred to the Christian churchyards, perhaps with a corner set aside for other religious groups.

We ask the Lutheran bishop whether the cemeteries should still be blessed as Christian and how they should perform their obligations towards people of other faiths:

Q: “There’s an actual debate going on in Denmark whether they’re going to make a new chapel, a new hospital chapel which is a place where... no, wouldn’t you describe what a hospital chapel is?”

PSJ: “Yes, but it is, how shall I put it, a room created for a rite of passage between life and death. [...] And those rooms have so far, for some people, probably been consecrated as Christian churches for Christian use and that would mean that they also have the necessary religious symbols, that’s a given. When a Christian pastor comes in... in that way it’s easy to be a Danish theologian because the words and the prayers sanctify the room. It needn’t be consecrated to begin with.”

Q: “So you would want the room to be without religious symbols, without any separate consecration and then the priest or imam, the one using the room, could make it into the religious room?”

PSJ: “That would certainly be very good. As Protestants we really don’t have any problem doing that. There could be other Christian groups that have more trouble with this method, but I think we might have to be more vigilant with that.”

Q: “Churchyards and burial grounds in Denmark are the starting-point. There are 2,000 churchyards around the country belonging to the *Folkekirke* and consecrated to

Christianity. Ten other cemeteries are run by municipalities, but even they are Christian and then there are some separate sections. Should we continue to consecrate cemeteries?"

PSJ: "Yes, I think we should. I actually think we should. I've just been asked what I think about atheists having a say and I have to say, I don't even know why they ask because if they don't believe in anything, does it matter where you are buried...? I mean, I think... and it's not to be cheeky that I'm saying it, I just don't understand how it's an issue. So it wouldn't matter for them if they're put six feet down, it's not consecrated for their sake."

Q: "Where you see the problem, that's with the Muslims or the Jews or what?"

PSJ: "That's something completely different, I mean just like out at the West Cemetery [in Copenhagen], then we need sections. Catholic churches as well and so on ..."

When asked to reflect on the current regulation and availability of cemeteries, TB does not have a problem with the existing state of affairs, but stresses that there is room for improvement and wider acceptance:

TB: "I don't know what the alternative could be and we do have to bury people somewhere. So I think it's all right. Or we could have a neutral ground some place where you could just stuff us all down. The best solution would be if every faith had their own. [...] There have to be different rituals and ideas about what happens after death. [...] Out of respect for them, it would be optimal if every faith had their own burial grounds."

A recent subject of discussion has been the old Jewish Cemetery in Copenhagen. The issue is complex. The municipality of Copenhagen helped finance renovation of the cemetery and part of the agreement was that the cemetery should be opened up to the general public. However, this caused some concern in the Jewish community, as there have been issues of sacrilege in the past.

As part of the survey we ask the mayor responsible for integration, AMA, about the issue and pose the same questions to the Chief Rabbi. Both recount the case and their experiences:

AMA: "... What I was a part of was the opening of the Jewish cemetery... we went along to restore it and one of the requirements for us giving so much money to it, was that it should be opened up. Well it hasn't been as much as I wanted, but it has been opened up. There are actually quite a lot of people that are interested in that."

Q "Has there been a new sort of roistering system or has it been completely opened up, like a park you can just walk into?"

AMA: "Unfortunately no. I believe they think it's a bit private. And I also think there's the aspect of harassment. They've got guards posted since they've been harassed and there's been some destruction of the tombs."

The Chief Rabbi, BL, adds:

BL: "Two years ago I become aware that there's some money that can be applied for in the Copenhagen Municipality for a specific purpose. I put my thinking-cap on and made a proposition that we should open the burial ground at Møllegade. It's actually a pretty amazing area. It's been closed for a number of years for security reasons and so on and the decision has been well received by pretty much everybody and in no time there was a grant of 1 million kroner. Very nice and all that. And then we get a letter from the municipality that now that we have 1 million kroner, it can be turned into an open burial ground. So I write to them: Dear friends, opening such a cemetery, this isn't the Assistens Cemetery [a popular municipal cemetery in Copenhagen], this means we need security. First and foremost, we need security. One requirement is that we can't be open all the time but we will have specific opening hours. But there is no understanding for that; they don't get it at all."

Q: “What you’re saying is that it can’t be a park where there is public access?”

BL: “Exactly. And they don’t get that. If I say this million is given on the condition that – and it’s the officials, I have to say – is given on the condition that you stay open, then I have to spend time and energy to explain to them that it’s like this: we can open three times a week but it’ll be four hours three times, and then we’ll see how things evolve. And you can see right here, I’m just mentioning it as an example, there are things that you always have to look at, what is that?, because there is nothing immediately... I understand the officials on this because there are certain rules on how you do it. They can’t immediately relate to this problem, which is the way we do things.”

There seems to be a miscommunication here, with the municipality expecting the cemetery to be opened up as a public park, while the Jewish Community has serious concerns for the possible mistreatment or vandalism of the graves and the cemetery. Somehow, the municipality is assuming that the Jewish minority should open up in some analogy with the open public cemetery in the same Copenhagen district. However, the minority perspective makes all the difference. Public cemeteries are open because many of the institutions of the *Folkekirke* are part of the common public sphere. The assumption that the two religions can be treated the same – although not clearly equally – is a stumbling-block to the Jewish community.

7.3.b Places of worship – buildings

The most urgent matter regarding places of worship in Denmark concerns the building of purpose-built mosques to service the Muslim communities in the larger cities. So far, Muslims have organised prayer rooms and cultural associations in private homes and apartments with the support of the community or international organisations. There are a few examples of entire houses being converted for worship, but so far there is no purpose-built mosque in Copenhagen. The municipality has been supportive of the idea, but does not see it as a public responsibility to facilitate the process or be proactive on the matter.

There seem to be several aspects to the controversy as it currently stands. One regards funding the project and whether the state should be involved, another is whether international organisations and governments can co-finance it. There is also the question of *who* should build the mosque. Internal divergence within the Muslim organisations appears to be insurmountable. Naturally, it is the imams among the respondents who reflect most on the matter. NB argues that the most tangible need for Danish Muslims today is a mosque where they can meet, pray together, and enter into dialogue with one another and people of other faiths.

NB: “The Muslims need a mosque [and] the role of the state is to facilitate the building of a mosque. Now, I said ‘mosque’ to begin with; I don’t think it’s the most important task but we’ll deal with it first. The state should facilitate this project, not just the mosque but also facilitate a dialogue that says: ‘Everybody is welcome here; having a mosque is not a problem.’ [...] I would say the state has to pay for a part of it – whatever the Muslims can’t get themselves, which is problematic since deep down, the state may not want funding to come from Iran or Saudi Arabia. [...] It would be Danish Muslims, it would be Danish authorities – whether you want to call it the state or the authorities, that doesn’t matter... but on the other hand, I wouldn’t mind if other Muslim countries or western countries give and support the project, as long as the expectations are sorted out. The expectations are that there shouldn’t be any influence from Iran on local matters regarding the mosque or Muslims in Denmark.”

There is little agreement on the matter, and in the to and fro between the interviewer and AWP, the Copenhagen imam, the various aspects on the building of the mosque become apparent. In his own provocative style, AWP sketches the issues of responsibility, funding, participation of the state, and even the public aspects of such a building project.

Q: "Who's going to finance a proper mosque in Copenhagen?"

AWP: "The Muslims."

Q: "The Danish Muslims or Muslims from abroad?"

AWP: "They can all do it. All those that want to. Non-Muslims can do it too!"

Q: "Thanks. Even foreign states?"

AWP: "Foreign states as well – as long as there are no conditions. That would be the ultimate criteria for accepting any kind of support from anywhere, I would say, despite the fact that in Denmark, you've been out building churches and deciding for yourselves who stands in the pulpit. So yes, I don't think we're going to have somebody from outside telling us who is to preach in the mosques of Denmark."

Q: "Should the state get involved in financing the building?"

AWP: "Well, I don't have any problems with that. I think that's fine."

Q: "Organisationally, who would support such a project?"

AWP: "The Muslims in Denmark."

Q: "Can they do that?"

AWP: "Yes, they can. The Muslim Joint Council can do it. They have the size and strength to pull it off."

Q: "Should the state or the municipality do something?"

AWP: "No, they shouldn't. They must just grant the permissions required to carry out the project in accordance with the legislation covering the different areas."

Q: "Could there be minarets?"

AWP: "Yes, sure."

Q: "Should they be able to call to prayer?"

AWP: "No, because that doesn't make any sense. People don't come to pray because we call out across Amagerbro Street or something. They don't. People here know when it's time to pray; they go to prayer when it's time to pray."

Q: "Should they stop ringing church bells because people know what time there's a church service?"

AWP: "No skin off my nose."

On the face of it the two imams represent two different positions and give separate reasons for the limited success so far. But they each point to one of the two major problems: AWP stresses public intervention and the political tensions of the project while NB points to mismatched expectations,

Several of the respondents see these two factors as the main challenge to the Muslim organisations in the next few years. Some even say that collaboration problems and the internal power struggle is the reason why the Muslim communities have so limited positive impact on the public debate on this and other issues. It is a difficult problem, since even if it is the religious and not the cultural, national, and ethnic differences that truly divide the Muslims; Islam is by no means a singular entity.

NB is constructive and forward-looking, and although he is uncertain how further collaboration should be managed; he is unyielding in his analysis of the necessary first step:

NB: "If you ask me what could be a good model, I'd say that I'm pretty unsure myself, but what I am sure about is that we need cooperation between the Muslim organisations. Let's just take two that are the two umbrella organisations which are the largest, and then you can take an Islamic Shia organisation and say: 'We're going to sit down and figure out how we make a working model on how to run the Danish mosques in Denmark.' That's the first step. And then they need to figure out... then I'm pretty sure about which model to follow. We need to create it together and the state needs some kind of influence on that. It has to be partly autonomous, the money shouldn't be coming from the outside and it has to be something of a Danish project as much as possible."

7.3.c Protection as monuments

Even though one would have imagined that the state's financial support for the *Folkekirke* would also be used for the maintenance and upkeep of the oldest churches in Denmark, this is not the case. All the individual church buildings are maintained through the taxes paid by church members, not through state tax.

There is general agreement that some national body should be invested with special responsibility for these churches and the cultural heritage, as well as for the cultural heritage of other religious buildings. A few, including DN of the Humanist Society, nevertheless warn against the special treatment of the *Folkekirke* that might follow. Not many of the other religious communities have religious buildings of cultural heritage value, but a future case could well be the Jewish synagogue in Copenhagen.

7.4 Schools and Religion in general

One of the central issues of the interviews was the question of religious discrimination in schools. The perspective is two-fold. It is a problem partly of discrimination among students and teachers in schools and partly of discrimination in giving preference to one religion at the expense of others. The first is a limited problem and has little to do with the state, whereas the second is a systematic problem and therefore the responsibility of the state.

The only respondent who mentions inter-religious discrimination in schools is the Chief Rabbi, who points to clashes between Muslim and Jewish pupils in the public schools. However, he quickly stresses that the problem is limited and ought to be easily solved:

BL: "That's our problem today, that the students from the Caroline school [the Jewish private elementary school in Copenhagen]... there are some senior high schools that they won't go on to. In those there are a majority of Muslim youngsters and experience has shown there are some problems that arise from that. We've actually experienced that. It's something that crops up every year when they apply for high schools, then one or two of the youngsters are placed in a high school they don't want to go to. For some years I had good cooperation with a principal at one of the Hellerup high schools, and then he'd say: You know what, you just call me and we'll figure something out."

None of the respondents mention any similar problem among teachers, but a few point to the obvious fact of a certain loyalty to the institution of employment. A Jewish or Muslim school naturally demands respect for the religious dimension and loyalty to the founding principles and it seems there is a general or pragmatic respect for this fact.

The question of inter-religious violence is also touched upon by the Lutheran bishop, who referred to an initiative taken by the city of Copenhagen in order to combat religious violence:

Q: "Couldn't you, before you continue, explain what you mean by 'religious violence' in Copenhagen?"

PSJ: "Yes, it's that Muslim converts and Christians are harassed; that Muslim women have their headscarves pulled off! That people can do such things, it's utterly unfathomable and that they're being yelled after; that a Jew cannot walk on Nørrebro with a kippah [Jewish male cap] without risking harassment or attacks. We're seeing a rise in that. Not monumentally so, but there is a tendency. That's why there's no reason to create a scare campaign, and fortunately the Copenhagen municipality is planning a warning campaign and an educational campaign and we're three religious leaders who have made ourselves available for this campaign because obviously we don't wish to live in such a society. Of course we don't."

Q: "And who are the three of you? That is, it's you and...?"

PSJ: “There’s Zubair Hussein from the United Islamic Forum and then there’s Finn Schwarz who is the chairman of the Jewish Community and then there’s me.”

Q: “And then there’s the Mayor of Integration in Copenhagen municipality?”

PSJ: “Yes, that’s Anna Mee Allerslev in charge there. And I must say, I have tremendous respect for the Copenhagen municipality that they see something brewing up and they hurry to take care of it before it develops into a problem.”

7.4.a On choice of schools:

A surprising finding that was confirmed among several of the respondents was that those of a strong religious conviction prefer a private school that is attentive to religion rather than a public one. Religion is assumed to be ignored or not sufficiently represented in the public schools and therefore a private, religious school is preferred no matter what the nature of the religious creed.

NB confirms this interest and that people often cite religious values and attentiveness to religiosity as the main reasons:

NB: “[The children] go to a private school. They go to a private Catholic school in Taastrup. By the way, a lot of people do that and studies have shown that many Muslims also send their children to Catholic schools because there is a discipline there, there are some values you can relate to, which you can recognise and which you follow.”

7.4.b Christian Knowledge in schools

One of the recurrent issues in the interviews is the question of mandatory classes in public schools on Christian Knowledge including teaching about other religions and the nature of religious education.

The summary issue that has been discussed publicly and politically is whether or not the mandatory classes on Christian Knowledge in primary school should teach, for instance, the Lord’s Prayer and the most common hymns from the Lutheran tradition. The argument in question is whether they are so fundamental to Evangelical Lutheranism that if they are not taught, a proper understanding is impossible.

We put the question to JC, the human rights specialist, as he can reflect on the issue in the light of the European Court of Human Rights grand chamber decision in *Folgerø and Others v. Norway* (Grand Chamber Judgment 15472/02, 29.06.2007), and can also situate it in the problematic Danish context. We ask whether he thinks it is acceptable to include the hymns and the Lord’s Prayer:

JC: “Yes, I actually think you could do that. At least with the songs, right? With the Lord’s Prayer, I’d have a tougher time with that. If my daughter came home and said to me that they had to pray the Lord’s Prayer, then I’d try to make sure that they had an opportunity to say they don’t want to do that. [...] On the other hand, when there are strongly religious Christian cabinet members promoting hymns as a significant aspect of their integration policies, then that has an entirely different tone for me. There’s a difference if it was an integration project launched from above or if it’s a local school being visited by the Crown Prince and [in that connection] he was going to something in a church. It depends on the context. We live up in Lyngby [north of Copenhagen], and there they attend nativity plays and they go to church and they sing, and it’s a perfectly natural part of their education. But I hope that they also learn about Judaism, Islam, Hinduism, Buddhism, the nature religions and the non-religions in the course of their schooling. There aren’t many immigrants in Lyngby and those that are; I’d hope that they and their parents’ religion is addressed in the classroom in a sensible manner. [...] They also need to know that there are people out there who believe in something completely different and it’s about this and that and their fundamental beliefs are like this and that. That’s why I personally don’t think it should be called Christian Knowledge. I think it

should be called Religious Education. Christianity is a natural part of it, and in a country like Denmark it takes up a lot of space. I think it would be a huge disservice to us all if we don't educate each other in what the principles of Islam are, for example, since about 250,000 people in Denmark actually profess Islam. If you don't know about the five pillars of Islam by the time you reach 7th grade, then I believe we have failed."

PVB, the female Member of Parliament, does not see the school topic as 'religious classes'. When asked whether the subject should be called 'religion,' 'Christianity' or 'Life stance,' she explains the topic as follows:

PVB: "80% of the subject should still reflect that culturally, it is a Christian nation we are in. But the exemption clauses are a remnant of the past, and the content descriptions of the subject have also become a remnant more recently, from a time when there were no differing perceptions. The subject has become much better than its reputation... the content description of Christian Knowledge. We're going round discussing how it's all so bad, but it's not! There is room for the major religions and there is room for many things in the subject, but the exemption clauses come from back then when proselyting was allowed in the subject."

AMA, the Mayor of Integration in Copenhagen, addresses the problem of the very wording and name of the mandatory classes on religion in school:

AMA: "I fully believe that we need to have teaching of religion instead of teaching of Christianity. I believe that Christianity should be a large part in the teaching of religion, since it is a large part of our culture and our history. It has a special place and it will probably stay that way for many years to come. It needs to have a central place in religious education. The most important thing for me is that we have religious education instead of solely Christian education... then you'll just have to accept it, if some students don't want to participate. Jehovah's Witnesses are also exempt from Christian Knowledge. We've made part of our integration policy into this cooperation between Christians, Jews, and Muslims. ... That was during a time with some unfortunate cases where some young Muslims, in my eyes, abused their religion to say, 'We are Muslim and that is why we harass Jews and Christians'. It was a hot topic in the media but fortunately, we didn't see much of that in Copenhagen, but it was something that the media picked up on."

The problem of conflicts between Muslim and Jewish children, or rather the artificial non-reflected imitation or reproduction by children of the conflicts, could perhaps be limited by a proper introduction to these religions in school. Or so TB, the judge, suggests:

TB: "I think religious education only makes sense if you tackle it and deal with all the different religions and that's what you do in high school. But as I've seen for myself and via my children, Christian education in the schools tends to be a bit missionary. There I think you could spend more time educating children in the different kinds of faith and building up this tolerance that one faith can be just as good as another."

We would be naïve not to think that there is a preferential treatment of the majority religion in Denmark. Although there are several provisions to help alleviate the differences, school is one of those places where the secularised Christian traditions keep showing up. But that should not mean that the teaching of other religions should not be qualified and up to standard. This failure has unfortunately been the experience of NB, the imam:

NB: "... it's important in a post-secular society that we talk about these things. It's OK to celebrate Christmas; it's OK to have Christmas parties in the school; it's OK that you have confirmation classes [in school time, ed.]; but it's not OK that you can't teach about Islam when half the students or 90% of the students are Muslims and four years have passed in school and you haven't even touched upon it, haven't even properly discussed it. What's important is that the education, what's being taught and the curriculum, that it's put together along with Muslim organisations, theologians and so on, just like in other European countries. It's a problem: I was for example at a high school – just to give an example – where there was a 'Religions Day' and there was a student who asked me, 'How can you as an imam accept that Muslim women can't go to heaven because it says so in the Koran?' And I said, 'Where did you hear that?' 'Our teacher taught us that.' – And she was sitting right next to us It's things like that that can make me angry and upset, that we still don't have factual information about other religions in Denmark. Many of the writers writing about Islam in Denmark, they already have an agenda, they already have a predisposition on how they're going to present Islam and how it'll end up reaching you."

BL, the Chief Rabbi, who shares the acceptance of a dominant Christianity for historical and pragmatic reasons, similarly stresses not only the need for a proper and serious introduction to the religions, but also the possibility of an exemption from both classes and curriculum. This brings us back to the debates after the decision on *Folgerø and Others v. Norway*, where the option of exemptions was part of the case.

BL: "I discussed this with Bertel Haarder [Former Minister of Education and Church Affairs, ed.] some time ago, when we were talking about exemption from education and I told him I believe that the real problems arise during the early classes. There I think it's necessary for Muslim families and Jewish families to say, 'We want the child exempt from religious education because it is heavily based on Christianity and the New Testament and all that, and it'll be terribly confusing' or some such. But on the other hand, I can easily say that the upper classes of primary school or high school should have religion as a class. Of course it can be a problem if a Jewish student or a Muslim student has an exam in, I don't know, the Sermon on the Mount, or something. You could say that's a professional opinion; that the student has to go through that, I don't really think there's any problem with that."

7.5 Religious dress codes in institutional public space

There are two aspects of the contemporary discussion on religious clothing that concern headwear and uniform. The one has to do with wearing the the burka or the full face veil in public in general, and the other has to do with a highly relevant and hotly debated issue of judges and lay judges wearing any religious symbols.

The two issues are intertwined in the debates, and in these matters we see how presumptions of both symbols and secularism are tenets of the discussion.

As has been the experience in the interviews, it is often the imams who frame the problems most clearly, partly because it concerns them, but very much also because the question of headwear in Islam is far from being as straightforward as is often generally assumed:

NB: "Principally, I think that you should respect all religious symbols, even burkas. But there can be some practical limitations, practical challenges where, for example, wearing a burka or a cross that is really 'big' – I've seen that – that's impractical. It can also be a t-shirt where it says something religiously provocative. And then you have to..."

Q: "So it can be too visible and thereby provocative, or it can be impractical: you can't perform well in your job?"

NB: "Yes, it can be impractical in regard to your work, such as schoolteachers where

mimicry and facial expression and eye contact can be important in the teaching. It can be difficult having a woman with a burka present in, let's say, a kindergarten class. Then that person can – in a dialogue of course – be told, 'This may be hard; so you can be given some other tasks so you could maybe use your training for something else.' Be welcoming like that. [...] But let's get back to the burka thing, there's one very important point: It can also be for religious reasons that I'd say 'no' because I know that Islam does *not* require you to cover your face. There are some other requirements. And that would make me say that I have a religious reason for not allowing you to wear a burka because this Muslim free school has this attitude towards it."

There seem to be two general concerns regarding the burka in public; one is identifying oneself to police officers, to the bus driver, and even to friends, and the other concerns professionalism.

SA: "I have a friend that I met at the Frederiksberg Mall. The only way I recognised that it was my friend was because she was holding her child. It's because she was wearing a burka. But when she saw me, she said, 'It's me!' So I had no trouble talking to her, even though I couldn't see her face. But I know that other people don't feel the same way I do. I can see that."

It is assumed that one cannot be as professional a nurse, or day care helper, or teacher if one wears a burka. But, that is not a reason for discrimination against religion in public.

HOB: "I believe that if you want to put religion aside, like it doesn't exist, then the public space, and not just the public space... then it'll only make room for those that make no distinction and I believe that is wrong. As I said, I believe the preference should be that we are a Christian country with a Christian cultural heritage and I feel good about that and that it finds expression... if you as a Jew walk around wearing a kippah, then I don't think you will be allowed to go far through a train or sit there without being ridiculed or harassed. And that's why I believe that the tolerance level isn't that high. It could be both the Christian that doesn't understand what it's all about but it can also be amongst the Muslims. So I think there should be room for the cashier in Irma supermarket to wear a headscarf or wherever you're sitting, it's alright by me. But then respect should go both ways, from Muslim women that the cashier at nr. 2 is wearing a cross, that that is also legitimate."

It is a fairly general trend in the interviews that religious symbols and headwear are – to some extent – perfectly acceptable. But there is not necessarily agreement on whether it is a 'good' or a 'bad' thing, and that has to do with the signals sent in the public sphere and the signals that go against our individual ideas about public order and public peace.

AMA: "A good example is the burka – many people think that headscarves are completely legitimate. I've also spoken to some children who say that this isn't even an issue at all and these are children you wouldn't necessarily expect to be so open. In regard to the burka, it is my position that if it impedes professionalism then I don't think it's all right. If you can professionally and academically prove that wearing a burka makes you a poorer educator because the children become uncomfortable... personally and politically, I don't like burkas but I wouldn't ban them or something. Nonetheless, I believe that burkas are somewhat oppressive to women, completely different than the other kinds of headscarves. Just as I don't care, politically, for people walking around with a swastika on their back. I also think that sends the wrong signals, but we can't ban that."

The comparison of the burka and the Nazi swastika, with its subtext of assumed extremism, is

problematic from an academic and a politically correct point of view, but the association in common between the two is one of oppression and a threat to personal safety and comfort. HOB points to something that might remedy the situation. Professionalism needs to be taken on its own terms; there is no reason to question it. Likewise, religious symbols and religion in the public are here to stay, but there might be a need for publicly expressing an opinion and certain attitudes. Not that everyone wearing Muslim religious headwear is assumed to be in favour of shari'a punishments, but that in a public space we must have the courage of our convictions and enter into discussion on these important issues:

HOB: "So the question is, How do we get rid of some of these uncertainty factors? If the person in question wants to work and treat the patients that he or she has, and they live up to the professional standards, then I have no problem with that. That also goes for the legislation. So if someone's sitting there wearing a headscarf and you're not sure if you're judging based on shari'a or if it is... - in the courts or in parliament, then I think it's problematic. I would say it's a lot about how you can make clear your convictions and behaviour in this, and that the starting-point of freedom in mutual respect is there... To suppress that and to suppress religious expression in the public sphere, that kind of neutrality, I have a hard time believing that it's sustainable."

In the interviews there is a measure of degree of what the public sphere is, and most respondents agree that in principle it is important to distinguish the one public sphere – where everyone meets at random or freely as in the park or open street – from the other public sphere where we must all be able to address one another. In using this distinction when reflecting on nurses and other medical professionals wearing religious headwear, DN argues that taking your religious business to a public place where everyone of necessity comes once in a while should not be allowed:

DN: "Now we're entirely in the public space and by that I mean a public hospital where there are no private institutions taking part in the daily operations. It has to be like that, that everybody is equal; you shouldn't be met with religious symbols maybe other than a pin, used for historical reasons. People like me aren't allergic to religious symbols, but symbolism is symbolism and that's where you start to affect people's attitudes in a religious direction within the public institutions. For example, if there is a priest. I really believe this is a problem because he affects dying people in a specific religious direction, and he is allowed to do so and proselytise in the place. If he has to be there, and he is allowed there, then there has to be an alternative as well."

Before we turn to the special case of the clothing worn by judges, JC gives a word of warning against taking the distinction between the public spheres too far, because the line is impossible to draw. There is a right for everyone to have a religion, but not to dictate to others what they can or cannot do. Weighing individual rights against public concern is, as always, the crux of the matter:

JC: "You can take the judges and you can take the uniformed personnel such as the military or the police and then you can also take the nurses and say that since they're wearing uniforms, they have to be standardised as well. Then you can take the librarians since you should be able to walk into a library and receive religiously neutral counselling and then you remove it from there. Then you can take the educators since you don't want them raised like that and so on and so on. There would be no end to it, and it'll be the individual citizens lording it over the others since they'd want it their own way. The human rights convention is: 'Every parent has the right for their child to be raised in accordance with their own religious conviction.' It's a beautiful principle but it doesn't mean you can't teach religion, you can't indoctrinate; there just has to be a balance. But if

it becomes so that every citizen can decide that ‘I don’t want to see this if it offends me’, then you’re really exerting excessive power over others in society. It’ll end up being a violent power, since I will then decide what others can and cannot do. That’s the other extreme that I can see. We can become so sensitive that we can’t tolerate other people, if they aren’t exactly like me.”

7.5.a The special case of religious headwear in courts

In Denmark, we have seen the recent special case of the amendment to the Civil Procedure Code (section 56) regarding judges’ appearance in courts, and many of the respondents return to discuss the symbolic use of law. In 2009, parliament made it illegal for a judge or a lay-judge to wear religious headwear and other visible religious symbols while in court. Although generally phrased, it was understood to address Muslim lay judges wearing the scarf or even the burka. The legislation has been criticised for regulating a marginal problem, but similar legislation has been passed in several European countries. For Muslims and most others of a religious conviction it is difficult not to see this as a disproportionate and invalid use of legislation.

SA, a trained lawyer and devout Muslim, helped write the Muslim organisations’ response to the legislation:

SA: “I wrote a response to the parliamentary justice committee at the time from the Muslim joint council without saying which religion I belong to. The headscarf that I wear, it’s like my trousers and my shirt and shoes, and it’s a piece of my clothing. And that’s what they discuss in the preparatory work for the court, where they say that if it is sufficient to create an ‘idea’ that I’m a Muslim... then I think: Are you considerate of the people who get convicted if they’ve had a bad experience with somebody wearing glasses? Would they then say, ‘I don’t want to be judged by that judge because he wears glasses. It gives me a bad feeling. I’m suspicious that he’ll have prejudices.’ That’s kind of ridiculous. I don’t think you should interfere in what people wear. Fortunately, I have a great deal of backing from the legal system because the judges themselves, the judiciary and the bar council and the Danish Lawyers and Economists Association and so on, they don’t take that law seriously.”

In addition to her professional reflections and her religious background, SA also serves as a lay-judge, and in her experience the presumed problem is non-existent:

SA: “Sometimes you get these looks from ... when for example the police come in as witnesses or ... I had a hooligan in the other day; They look up at you but they’re so focused on what’s going on in the court that the novelty wears off within two minutes and then they have to focus on other things. It doesn’t really affect my judgement in any way; I rule according to the rules I’m supposed to and that’s the Danish legislation as it is at the time I’m judging.”

Almost all of the respondents have reflections on the headwear in courts legislation, but most of the deeper ones come from those who are legally trained. TB, who is a judge herself, reflects on the motivation for the legislation:

TB: “I honestly believe this proposal was adopted because people are scared of shari’a and that it may have an influence. But no matter what, it didn’t end up with the entire jury system and the court system being invalidated. I can be a Muslim without wearing a headscarf. Nobody can see it on me. We have to judge on the basis of the laws passed in our society. Probably there are some ethnic Danes thinking: Damn, she’s sitting there with a headscarf on and now I’m probably going to get my hand chopped off or whatever they do in that system. But that’s what’s wrong, if anybody is thinking like that. It’s not

that she has a specific faith.”

Q: “So you would expect the judges and jury to represent the Danish legal system. But do we share the common norms that lie behind all that? Do we agree on the common values that should be applied in this common legal system?”

TB: “I would say that that is something we have to believe, since we don’t really have a list of the people we select for jury service. We choose them because they are citizens in a certain area and they have to be of all kinds, because they are representing Danish society at large. And it is our obligation as judges. We don’t become judges if we don’t apply the Danish legal system and it is our duty to keep them in line. There are some toads amongst them, very active in the Danish People’s Party [right-wing, ed.], asking if the person shouldn’t be deported for example, and then we say no because you really can’t do that in a case like this and that’s that.

Q: “So these conflicts of value exist, independent of people’s religion?”

TB: “Exactly. We are not alike. And it can be all kinds of things that play a role, such as politics. All kinds of things can make the difference.”

To this, BP, who is the general secretary of the social workers association, adds in a very pragmatic way an observation on the political agenda behind the legislation:

BP: “Again, I would like to point out that the Danish People’s Party are doing what they can to create a problem. All this about whether lay-judges can wear headscarves, which I am reminded of every time I turn on my computer, since I have an image of a judge wearing a burka. It’s a non-issue, since it doesn’t exist and if there should ever be a judge in a burka, then you’ll have to trust her to be educated enough to retain that position.”

The most significant reflection here is that the conflicts from their lives, from their religion, or from other convictions that people bring into the courts, will always be present. The value-conflict and the personal differences are what make the institutions human and accessible, and the professionalism, which is an equally constituent part of the courts, is what makes the courts, judges, and judgements accountable and consistent.

In the interview with SA, she adds a personal reflection on how her religion is exactly that: it helps her in the serious and pragmatic task as a lay-judge:

SA: “Yes, but no, I can’t split it up like that because my belief in God is that God made everything and everything going around in the world, it comes from God, even for that matter if it’s secular. But I can see how it clashes sometimes. For example, I’m also a magistrate in the courts; I remember when this terrible law came into effect against religious headwear. There you feel like there is a clash of religion with the secular system. There, you try to say as a Muslim, ‘Can I affect this direction so there is a possibility that I can be both a Muslim and a judge, say in the city court? So you try to unify it, you try to find a path to the solution.’”

7.6 On shaking hands:

Shaking hands with women is another of those problems that has caught the public attention yet where it seems there is little or no actual conflict. This goes for both genders. There was an episode a few years ago of a young Muslim woman running for parliament, who said that she would not shake the hand of her male colleagues for religious reasons. Similarly, and in fact in consequence, the Chief Rabbi, BL, relates a story from the Minister of Church Affairs at the time who would not welcome anyone who refused to shake her hand:

BL: “I was pointing out certain ethical problems that create conflict between religion and democracy. And that was, for example when Birthe Rønn Hornbech, whom I by the way not only respect but know privately, said, ‘If an imam came on an official visit to

Denmark and didn't shake my hand as the Minister of Church Affairs, I wouldn't receive him." There is an area of Judaism as well where some men don't shake hands with a woman. She has to respect that. And she shouldn't put her personal norms ahead of the religious context. [...] I believe that the Danish public is represented by our Minister, and she must be tolerant enough that it is accepted. She has to, in the name of the freedom of religion in Denmark, she has to accept that this is a person of a different system of values [...] I believe she represents Denmark in the official sense, as a society allowing people freedom of religion. So I think she's confusing the issue of imams and Muslims into a context which I do not find worthy of her."

The remarkable thing about this quote is that the Chief Rabbi refers to it in the context of lay-judges wearing religious symbols. The professionalism that he and other religious leaders maintain as the true criteria for doing the job is the same professionalism that he does not see in the Minister of Church Affairs. She is confusing her private and perhaps political opinion with the position of trust that she has on behalf of the general public.

7.7 The Royal Family

A special public sphere in Denmark is occupied by the Royal Family, which is linked to the *Folkekirke* through section six of the Constitution. This stipulates that the monarch shall be a member of the Evangelical Lutheran Church. This – and the fact that pastors in the *Folkekirke* are regarded as civil servants – means that the senior pastors, deans, and bishops are invited to certain events of state such as the Queen's New Year's Audience and participate in religious ceremonies such as royal weddings and baptisms.

As regards religious minorities in Denmark there is a slight difference from the *Folkekirke* in their relationship to the Royal Family and state events. If the Chief Rabbi requests an audience with the Queen or decides to attend the funeral of a member of the Royal Family, he will usually be granted the audience in recognition of his role and position in Danish religious life, based on the acknowledgement of the Jewish society already in 1685 during the days of royal absolutism. However, the Chief Rabbi is not invited to the annual New Year's Audience or to regular occasions in the Royal Family with the Lutheran Queen Margrethe II as head of state. Regarding his public profile, the Chief Rabbi is comparable to the bishops and this is recognised in the order they each greet the Queen. He is not invited to the special royal or state occasions, but in practice he has a lenient opt-in possibility if both he and the Royal Household deem it appropriate.

7.8 Conclusions:

There is a very old tradition for what is called free schools in Denmark of both religious and political character. Schools of faith must live up to the general requirements and goals for primary and secondary schools, but they decide themselves on the curriculum necessary to reach these goals, and they are allowed to supplement this with daily prayers, for instance. However, recent legislation is requiring also these schools to prepare for living in a democratic society. School leaders are taking it seriously, but it was not much of an issue in our interviews. The state of course treats public and private schools differently – that is the very idea of having the free schools.

Some political parties in Denmark think that especially faith schools threaten social cohesion – others that this plurality *ensures* social cohesion. Among our respondents some of the young Muslims who have tried to integrate are now responsible for their children's upbringing. To their own surprise even many of them have placed their children in private schools, including faith schools, because they find the general school environment too secular, especially with regard to moral norms. At the same time these young Muslim and Christian leaders reveal a clear understanding of globalisation; they want their children to be able to function in a global age, which is also their argument for using private schools.

The traditional religious minorities would of course be glad to be given state support for establishing or maintaining their buildings, but they do not want to pay the price that the Lutheran church pays. So at the end of the day they prefer to be self-sufficient. However, they do want to get fair treatment, or even support, for constructing their own buildings, which has not always been the case. There is perhaps also a lack of professionalism among the small groups behind the small minorities or the new minorities recently arrived. The state could perhaps help more here – but then it becomes a political question.

In order to appreciate the nuances of the debates on religion in the courts, we need to see the spectrum of symbols from those that truly *express* the very core values of society to the symbols that truly *challenge* these values. And it is important to remember that there is little agreement on what the core values are in Denmark; that is what sparks the tension. In addition, symbols work as communication, in that the meaning thought to be embedded in them is often only discernable to those who know or agree while those who disagree only see the contrast. As such the headwear issue may mean freedom of religion or expression to one respondent while it is oppressive and deviant to the other.

As legislation becomes symbolic and starts addressing matters of the courtroom and the aspects that have to do with the protection of values that are of no concern to the courts, the minorities start opting out of the civil legal system. The religious ‘courts’ of these minorities by contrast become places where the religious identity is not only welcome, but is encouraged and reinforced. We are seeing a dual creation of new identities. In effect, there is a negative targeting in the public courts – in legislation, in the media, and in public debates – and a positive affirmation of religious identity in the religious institutions.

8. Public (State) Support for Religions in Denmark

8.1 General introduction to the law on public support for religions

It is difficult in a Danish context to discuss state support for churches and religious communities with a focus solely on financial support. For the subject also includes: the distinction between state, church, and religious communities; organisational support; ownership of church land and religious buildings; and decisions in the general public on the role of religion in the public space. In the last-mentioned case there are many overlapping arguments from the analysis in chapter five. While focusing here on finance (including elements related to financial and juridical status), we have tried to maintain the distinction between secular public space where religion is welcome, and public space where none of the religions are present. From our perspective, the role of religion in the mass media could also have been analysed in chapter five, but given the guidelines in RELIGARE we have included the discussion here, since it is of course also a matter of economy and law whether or not to transmit religious services on a daily or weekly basis. The same goes for the discussion regarding the training of religious leaders and the continuing inclusion of theology as a university subject. Here we are dealing with the role of religion in the general public institutions.

Before the Reformation of 1536, the church was an independent legal organisation, including church buildings, monasteries, and other areas established largely on the basis of private funding and endowments. These gifts were regarded at the time as personal donations to the church. This changed only slightly after the Reformation, when the king took over some of the land owned by especially the bishops. Consequently the bishops were regarded as royal officials, representing, but also paid for, by the king. Financially, the local community and their pastor were still self-supporting, living off the farmland and supporting each parish with tithes and gifts.

This system of financing from within the *Folkekirke* changed after 1919, when the state again took over considerable amounts of church land. The expropriation meant that it was no longer possible for the parish to live off the land that belonged to the church, while at the same time the system of tithes was abolished.

The economy of the *Folkekirke* has since been based on church taxes paid by members of the *Folkekirke*. Since the late 1960s, pastors have received equal salaries, no longer dependent on the size of their vicarage. The tax is collected by the state as a form of organisational support raised alongside taxes for municipality and state purposes.

The state also gives direct financial support, paid by all taxpayers through the state taxes. This support is seen as a reimbursement for the expropriation of the bishops' land at the Reformation; so the state pays the salaries of the 10 bishops. It is also partly seen as reimbursement for the expropriations in 1919, so the state also pays 40% of the salary for a fixed number of pastors. Finally, direct financial state support is seen as a reimbursement for civil obligations carried out by the church, especially the keeping of civil registration and of public cemeteries except in ten cities where the municipality runs these.

Also other religious communities, namely the 11 especially 'approved', keep books for civil registration and have access to organise cemeteries for their own members, but they do not receive any direct financial support from the state. The same is the case for any of the other religious communities, where even maintenance of buildings or cemeteries depends solely on payments from members. Christian communities outside the *Folkekirke* do not have the possibility of asking the state to collect church taxes for them, so they receive no indirect organisational support. However, they do have the possibility of deducting their church payments on their tax returns, an option that is not available to members of the *Folkekirke*. Another indirect support is that other religious communities than the *Folkekirke* are exempted from taxes as companies, whereas the *Folkekirke*, strangely enough, pays value added tax.

It is a complex situation and all the issues raised are resolved by legislation and approved of case by case by the public authorities as well as by the courts. The explanation for this is that

any other approach opens up for the much bigger question of who actually *owns* the remaining church land and buildings. Who indeed owns the expropriated church land from 1536 and 1919? Does the *Folkekirke* even own *itself*, or is it owned by the *state*? In Iceland, to mention a particular example, this has recently been solved in a political and legal decision that the state owns it all on behalf of the people. In Sweden, the opposite solution came about as part of the separation of church and state in the late 1990s. In Norway as in Denmark, this struggle lies ahead.

The relevant legislation is as follows:

LBK nr 1352 of 05/12/2010. Lov om folkekirkens økonomi – the law on financial affairs within, and financing of, the *Folkekirke*.

For other religious communities, the following legislation is relevant:

LBK nr. 1017 of 28/10/2011: Ligningsloven – The law on financial accountability.

LBK nr. 175 of 23/02/2011: Skatteforvaltningsloven – The law on tax administration;

LBK nr. 1376 of 07/12/2010: Selskabsskatteloven – The law on corporate tax.

The national legislation in Denmark in regard to taxation is quite extensive but it does establish that religious communities other than the *Folkekirke* are exempt from taxation and that individual taxpayers can deduct their gifts to religious communities – except the tax members of the *Folkekirke* pay. The system is in no way logical.

From case law can be mentioned:

SKM.2008.760.SR – An unnamed religious society wanted to clarify if it was exempt from tax. The tax council concluded that any religious communities approved by the Ministry of Justice would be exempt from tax.

SKM.2010.596.SR – A parish council could provide computers for both unpaid workers and volunteers without triggering a tax. Paid workers, however, were not exempt from the tax.

With regard to case law, previously only religious communities recognised by royal decree were exempt from taxation, but as the case law testifies, approval by the Ministry of Justice currently has the same effect.

U 2008.342 H was a spectacular case in the Eastern High Court. An independent group of five Roman Catholics claimed the current system was against the constitution and against international human rights on three counts: the lack of equality in regard to state support for the *Folkekirke* and no state support to other religious communities; the fact that citizens who are not members of the *Folkekirke* have to pay a higher price for funerals at cemeteries; and the upholding of civil registration within the *Folkekirke* rather than at the town hall. The court held: That state support for the *Folkekirke* was partly a repayment for earlier expropriations and could therefore not be considered to be against freedom of religion for others; that the differential payment for members and non-members of the *Folkekirke* with regard to funerals had its basis in the fact that members of the *Folkekirke* pay for upkeep of churchyards through church taxes not paid by non-members; and that civil registrations could be seen as merely public administrative obligations discharged by the church for the state. The case has not yet been brought to the European Court of Human Rights.

Religious media can apply for the right to open radio channels on equal footing with other mass media, but there is no legislation giving religious mass media any advantages, on the contrary. On the other hand, as part of its public service obligation, the Danish Broadcasting Company (DBC) broadcasts Morning Prayers from the *Folkekirke* live from the cathedral in Copenhagen each morning. This must be regarded as a huge indirect mass media support.

The *Christian Daily*, a newspaper also with internet services, receives state support like other small mass media – there are no advantages or disadvantages in being a religious newspaper.

Finally, it should be mentioned that two Danish universities, Copenhagen and Aarhus, offer degrees in Theology, which is the essential qualification for all Danish pastors. Two *private* theological schools also exist, claiming to be more biblical, but they have so far not been given the right to offer public exams. Nor are there any education programmes relevant for becoming a religious leader within the Jewish or Muslim communities (though there are courses available in Sociology of Religion, History of Religion, and Islamic Studies). A BA in Theology from a private institution (the Lutheran School of Theology in Aarhus/*Menighedsfakultet*) has been accredited for other Protestant churches than the *Folkekirke*.

8.2 On Public (State) Support for religious elements in the media

It was not clear from the start how the role of religion in the mass media should be presented and discussed. It is an area which has been researched also in a Danish context, but in other analyses the question has been linked to the public debate. Thus, when asked about the general relevance of this investigation, the human rights officer answers:

JC: “There is a prominence of Christian debaters who fail to reflect on their own values. [...] There’s not enough of them at least, with regard to the positions they place themselves in. That also goes for a lot of interesting societal debaters. Whoever pushes his message unapologetically and loudest is typically the one who gets the screen time. It has more to do with the media image... We’ve seen a number of very strong, and often female, theologians taking a big part in the public debate. I see it as the religious Christian aspect playing a much larger role today in the public space than it did ten years ago. I think it is a consequence of the foreigner and immigrant debate in general, to have a Christian answer to what is seen as the threat from Islam. That’s why I think they’re getting more screen time, which I don’t think they would have got if there was not such a big debate about immigrants.”

This observation, that the general picture in the media regarding religion has changed, is also part of the bishop’s reflections on the role of religion in the public space. There has been a heated debate in recent years as to whether public radio (DBC) should continue to transmit Morning Prayers – which has been the case ever since the DBC started broadcasting. By way of compromise Morning Prayer has been moved to a secondary radio channel but is simultaneously also transmitted on a TV channel (without live pictures). Thus, broadcasting religious services is part of the Danish *kulturkampf*. The bishop comments on this:

PSJ: “The religious content on the DBC is being heavily scrutinised. Is it biased towards the *Folkekirke*, is it biased towards religiosity, Christianity...? There are some that ask... I don’t think so... it’s become very difficult to be too biased when you think that the DBC also has an obligation to explain what ‘Danish’ is all about. I’ve just made myself into a spokesperson because all this talk about cultural heritage, I don’t really care for it because I’m no custodian, I’m no museum inspector. Cultural heritage; that sounds a bit too much like a museum to me. I mean, I participate in a living culture, which is constantly evolving... We use our faith to understand, comprehend, and even misunderstand things with, sometimes.”

Q: “But would you say, if we take the DBC and the religious aspect and... would you say that they should keep the strong Christian components, with the *Folkekirke*, and then add in the other religions? Or should they just keep the heavily Christian aspect with the *Folkekirke*, or should they just try to be more neutral?”

PSJ: “I think they should keep a strong flow of [Christian] communication. We live in a society where we might just as well acknowledge that the modern western world, such as ours, doesn’t work without arguments. You can’t just lean back and say: 80% of us, we’ve always been here and we have the longest history here, more than yours. That’s not

what I want. Not at all. We need to have this discussion all the time and then have communication. And we should also talk about Islam and the other religions... and they should, as is already the case, of course transmit from the synagogue. .. All the way round, I mean the entire spectrum, but it can't help anybody if we suddenly start pretending we're all atheists. And I also believe that many people calling themselves atheists are unambiguously Lutheran because a lot of them, they probably think that – with all due respect because I don't want to be condescending towards non-believers – [the DBC] must reflect the Danish people; and the Danish people are now composed of ... we have a number of religions.”

In this reflection, the bishop argues not only that religious transmissions from the *Folkekirke* should be upheld. He also believes that other religious services from as broad a group as possible should be part of the public media. They can then defend religious voices in the public space as voices *on* religion as well as voices *from* the religious communities themselves, and not only for analysis and discussion but also as direct religious services.

At the same time the bishop underlines that his line of argument is not based on any idea of cultural heritage. Religions are *here* in Denmark, they are part of the current public life, and that is the main reason why they should be supported *within* broadcasting instead of being forced out of public life.

8.3 Public (State) Support for the *Folkekirke*

All our respondents find it difficult to distinguish financial support for the *Folkekirke* from what could be seen as organisational support or, from another point of view, as a question of church autonomy.

We have therefore decided in this part of the analysis first to present the reflections from each of our respondents in more or less full length and only then to give our own interpretative analysis.

The starting-point is interpretative. In a Danish context, the most common approach is to underline the special role of the *Folkekirke*, legally speaking, and the state obligation according to section 4 of the constitution to support the *Folkekirke*, an obligation which for historical reasons relates solely to the *Folkekirke* and which thus establishes a rule of discrimination within Danish religious law – a rule of discrimination which is often argued to be in opposition to general human rights. The constitution establishes a situation where the state has obligations in relation to religion, in international human rights perspectives often understood as in opposition to a norm of state neutrality. It is therefore of interest first to invite reflections from the human rights official:

JC: “For me it must be a basic prerequisite in society that even though we don't have equality of religion, since the *Folkekirke* and the protestant/Lutheran belief has a different position in Danish society [the other faiths must have some options]. I think that you simply have to make sure that everybody has the same opportunities to express their religion. So that's why my answer would be that they should have made it equal for all, but so be it.”

Q: “Some of the other major faiths are saying that since we have a church tax, shouldn't they also be able to make a demand for taxes?”

JC: “I would think that to be fair. If the administrative process was to be figured out, you could say that I would like to give my 0.85% to religion number 27. I think it's fair that a state should offer that assistance.”

Q: “Fundamentally, don't you have an idea, a vision, that the state should keep all things religious at arm's length and not go around helping religious communities? Instead, I'm hearing a view which says it's part of life so if you give a little assistance to make it work, then it's all right?”

JC: “Once you've said A, then you have to say B as well. If you start saying that the

members can demand a certain percentage and choose which religion to give to, then I don't see any reason why they shouldn't be able to. If it's more or less practical for the others to do so, that is. The basic condition is that we do have a *Folkekirke*. Are we OK with that? Well, yes we are. Could you change that by changing the constitution? Yes, you could probably do that too. They did it in Sweden and nobody was any worse off. It would become something else. It would be an entirely different tradition."

In short, this is the Danish way within the current constitution. It is of course possible to change it, but as long as the constitution remains the same, there is no real argument for claiming equality. The real arguments are out securing for religious communities outside the *Folkekirke* as good a situation as possible.

The bishop argues very much along the same lines. He also includes the delicate question of church autonomy or establishing a national church council, which he thinks has to be done in one way or the other. We started this part of the discussion by asking him to take some kind of legal approach to the *Folkekirke*:

Q: "Can you compare the *Folkekirke* with other institutions in Danish society, such as A.P. Møller [the international shipping company], that is, a major business, or the school system, that is, a public administration area, or the sports world, that is, a privately-run, business-minded organisation?"

PSJ: "Well, I rarely draw parallels, it all fits together – it is in a theological sense that it *has* to be inclusive for as many as possible. ... But there should be a change in how the state and the church relate to each other. I don't doubt for a minute that if the pledge clause [to the *Folkekirke*] is upheld, it is necessary for us to give a clear answer, now more than ever. And it's necessary that something is done about this. There are many reasons why. One of the reasons is that the *Folkekirke* has become politicised in a negative way. That's a problem. The *Folkekirke* has become really politicised. And I don't think parliament would want to deal with legislation on the *Folkekirke* in the future. I can imagine there being certain politicians who would draw a line there. I imagine some kind of Church Board or Church Council. At present we have the diocesan councils, so fortunately the bishops have someone to consult with. It's no less necessary on a national level. As I said, I hope the state lives up to its financial obligation."

Q: "The economic relation between the *Folkekirke* and the state, that's what, two or three elements? They tax members of the *Folkekirke*, which finances about 85% of all the church's expenses. Then the state budget grants 15% and covers those expenses, and thirdly, the Minister of Church Affairs determines the size of the national church tax that members pay and decides on the budget that the money is to be used on. These three functions, can you imagine any of them being changed?"

PSJ: "Yes, the third and the last one, that will probably be changed. There are many decisions that need to go through a church council or something. And it's obvious that if it gets around that the laws of the land are being radically changed, and then it may come to the point where we're sitting there discussing whether it's alright that the church is supported by the state. It's a possibility that we'll come to a point where this subject is taken up, I don't know. It's not hard to imagine."

Q: "What you're saying about the registration law, did I understand you correctly, that it's possible that the *Folkekirke* would no longer have a role in the civil registration of Danish citizens?"

PSJ: "Yes, if it no longer has that role, then clearly the state would reconsider changing its mind on financial support for the *Folkekirke*."

Q: "What if we say: there have to be some changes to the relation between the church and the state but fundamentally, there should still be some kind of support. That support, in your eyes, is that support solely financial or is it other kinds of support?"

PSJ: “It’s also financial, but today the state is increasingly considering itself secular. So where the *Folkekirke* is to make use of its power, it should also, occasionally, be its conscience. We’ll be that, but not in an inappropriate manner. That is the church’s job. That goes for the Catholic Church, in fact any church really. It is the role of all religions. And that role has also been fulfilled, I think.”

Q: “Can you imagine drawing the other religions more closely into this role, in an organisational manner or in other, supportive ways?”

PSJ: “That’s how we do it, as you can see. We’re three major religions who go together to the Copenhagen municipality and say; ‘Listen, we stand together. We believe in different things and we like to argue with each other but we can unite and fight this threat of violence.’”

Q: “Could you support that, and should you support that, with organisational or financial methods? It has been suggested that like the members of the *Folkekirke*, other religions could have their members pay a percentage, just like the church tax, via the state.”

PSJ: “I know, there is an excellent piece of work on that. I’ve read it through, it needed some adjustments... but I think the state could do that.”

Q: “In Norway, the model is the opposite: it’s the state that pays the expenses not only of the Norwegian Church but also the others. And they do something similar in Sweden.”

PSJ: “I think the state could take that upon itself. I think the other religions shouldn’t just be subjected to the law on public access [to their finances]. We may be subject to it, but then we also receive support from the state. Whether the other religions want to be subjected to that, I don’t know. Transparency is in fact an advantage for our church.”

There is no doubt about the Lutheran bishop’s position: the *Folkekirke* must have its own governing body, able to decide over its budget, and the role of the state must change. Financial support is clearly linked to organisational support, but there is a lack of organisational responsibility due to the lack of a body to deal with these questions. The analysis is more deeply related to the role of religion in the public space: the state must support the idea of having public religions arguing with a voice that differs from the political voices on politics, society, and individual needs.

The bishop’s reflections are of considerable interest in the Danish context: namely, that the clause on the *Folkekirke* in the 1849 constitution should finally be implemented, meaning that the state should stop *running* the *Folkekirke* and start *supporting* it, thereby setting the pastors free to have a public voice. Yet the question may already be redundant, for the current debate on national values is asking: Is Denmark a ‘Christian’ country at all? How does the *Folkekirke* answer this? And what are the consequences of a yes or a no for the non-Christian communities?

The human rights officer in his reflections on the role of Christianity in the public media mentioned a group of theologians who are very visible in the public space. Among them is a female theologian who is an appointed member of the DBC board. She argues that the country as such benefits from the current organisational and financial situation of both the *Folkekirke* and the other religious communities in relation to the state. Here is her line of argument:

Q: “So when we in Denmark have a system where the state, financially, structurally, and normatively, supports the *Folkekirke* and at the same time gives full freedom to other religions to fend for them without any support given there, what is your assessment of that?”

KWH: “I think it’s excellent, because I’d say there is no *state* church, only a people’s church, a *Folkekirke*, and you can argue all you like about that, but I believe it is absolutely crucial. So, as you pointed out, the country isn’t neutral, it’s a Christian country. That doesn’t mean everybody is a Christian, but it means the official wrappings are, our flag is, they are our markers. Parliament opens with a church service and so on.”

Q: “When you say it benefits the state, did I get that right? Or is it society or the

country?”

KWH: “Yes, it benefits the country”.

Q: “Does it also benefit the *Folkekirke*?”

KWH: “Yes, I actually think it does. I think we’re much more privileged than, let’s say, the East German church, which is a lot like us, but is in utter dissolution. As a church, we’re very spoiled. By that I mean we may not know how privileged we are and we’re lazy and we don’t care and we care mostly about how large our vicarages are and all that. But the problem in the *Folkekirke* isn’t the structure. The problem is spiritual flabbiness, in my opinion.”

Q: “What about the other religions in Denmark? Today the reality is that there is no formal support of any kind. That is, priests can acquire the authority to perform marriages... and tax deductions and residence permits are given to foreign preachers. What is your comment on the position of the other religions?”

KWH: “They have total freedom. That’s a beautiful thing. You wouldn’t have that if you were a church in the Middle East, so it’s freedom. And sure, freedom can be tough, because then you have to fend for yourself, but it’s freedom and it’s beautiful.”

Q: “Shouldn’t the *Folkekirke* also have this beautiful freedom?”

KWH: “It does. The good thing about the *Folkekirke* is that – and these days I think it is its strength – it is bound. It is bound to the words of the constitution, which says in paragraph 4 that it’s not just anything we give our support to, it’s the Evangelical-Lutheran Church. So the *Folkekirke* has complete freedom to be an Evangelical-Lutheran Church. It is highly privileged, of course it is, but I think it should be too.”

Q: “Part of financing the *Folkekirke* is that members pay about 85% of its expenses, but they pay them through the church tax which is charged alongside the municipal tax and the state tax. There have been suggestions that a similar church tax could be charged for the Roman Catholic Church and the other religions in Denmark, which would have...”

KWH: “Yes, it’s another attempt at this equality craze that we are evil, evil, evil people, if people aren’t treated equally but... we discriminate! Yes, because we do have differences, we give privilege to one specific confession, which is the Evangelical-Lutheran. We’ve done so since 1849, 1536, whatever, and we’re going to keep doing that. We shouldn’t be ashamed of ourselves, we should be proud of ourselves, and I believe that the Catholics should be pleased because they enjoy a freedom of religion which they’ve given reluctantly, and they’ve been very slow in granting it to others. I mean, I’m sorry to put it like this, but a lot of heretics have been burned through the ages, yet the Catholic bishop can freely express his Catholicism here, fortunately.”

This has been the most common understanding of State, Church and Religion relations in Denmark until very recently. There is cultural and economic support for the *Folkekirke*, combined with an organisational and confessional binding to not only the gospel, but also to the state, as benefitting both the state and especially the people. At the same time comes the argument that freedom of religion is total in Denmark (precisely based on this concept), in contrast to both Catholic traditions and current Muslim or at least Middle Eastern practices. There is much provocation for non-*Folkekirke* Danes in this way of thinking – but are there also any lessons to learn about degrees of freedom both for religious communities and for individual religious persons in different systems?

This understanding is now under increasing pressure among elites in Danish society. The newly-elected Member of Parliament, herself a practising member of the *Folkekirke* throughout her life, formulates the changed understanding of the need for both the *Folkekirke* and the state to establish some kind of distinction between them and perhaps give a form of autonomy to the church:

MB: “It is my impression that within the last 10 to 15 years, state intervention in church matters – and I’m not talking about internal matters but matters of finance and structure – has been on the increase. When the state starts to interfere in the detail, something happens to a church: something happens to the life around the parish councils, something happens to the commitment of the appointed staff in the churches. If you have the traditional triangle of the state, the market, and civil society, the church has evolved more into the state area. But at the same time, it’s also become more involved in the market area. Many speak in the terminology of the free market when we’re talking about the *Folkekirke* today, and both developments, I believe, are unfortunate. Then I’d rather that we ask, ‘What about civil society, what are the tasks of the congregation?’ That is, if the congregation really is the cornerstone of the church, what is their role? Have we in reality sucked the life out of the congregations by saying this is done or fixed by the state. Are we saying ‘we as a church will adapt to our consumer base’? – I mean, there are people actually talking about the ‘customers’ in the *Folkekirke*; they talk of selling the message, they talk of marketing and so on. To me, that is an alien terminology with regard to what the church should really be about, what is the core of the church, the being itself. I mean the important thing is to preach the gospel, and how do we frame this preaching so the church becomes a living church? So I would much rather give power and space to the civil population – in this case the congregations – so they can bear more, of their own free will. And that’s the liberal aspect of it, you could say.”

This approach combines her liberal political standpoint with a perspective on the church and especially the individual congregations as part of civil society – and self-sustaining. Her wish is to reformulate the relations between church and state in order to gain a more balanced and neutral role for the state, based not on political motives in relation to state ideology, but on motives related to an understanding of the church as self-supporting and self-organising. Hers is a more congregational or even grass-roots perspective on what church should be.

In the existing system pastors are civil servants. This arrangement is seen by many as being to their advantage: they have a fixed salary like everyone else in modern society, they have regular holidays where they are not on call, and the Pastors Association is a professional body that looks after their interests through collective negotiations and agreements. Thus, the few pastors who are employed outside the *Folkekirke* are not covered by any good collective agreements and only have an individual contract to work with. There are former pastors from free churches who have bitterly tasted the lack of legal security, but not enough of them to make their voices heard. Perhaps they can become part of a reorganised *Folkekirke*. We discuss the matter with the leader of a diaconal organisation, a former chair of the Pastors Association, expecting her to stand up for their rights within the existing system – but she wants change:

HC: “As for the *Folkekirke*, I believe it needs some kind of constitution and it’s needed it for a long time. I’ll probably get a thick ear for saying this because nobody has really wanted to do so, but it’s got a lot to do with laying out the economy, the theology, the law and all that. Because the system as it is rests on an understanding that has been quite close with all the players, including members of parliament. But that’s no longer there, and in the next generation the politicians will have completely backed away.”

Q: “What’s the main problem that a constitution would fix?”

HC: “It has to embrace the churches’ own administration of its economy, including the question of property ownership, because a lot of emotions are tied up with the bricks. I’m a pastor in one of the parishes where a church is closing down but it hasn’t actually been closed down yet. There are some deep emotions there, embedded in the building itself ... But then you have to figure out whether it’s part of the cultural heritage and thus the responsibility of society or whether it’s a church, run as a church, and a place for the congregation to gather.” (HC, p 17)

Q: “Should you still charge the church tax alongside the municipal and the national tax?”

HC: “That doesn’t seem very natural to me, because there’s already an independent association. It’s just a mess that you call it a church tax, it doesn’t have anything to do with taxation but it’s probably because it’s charged at the same time. It’s a membership fee and really, you could call it that.”

Q: “So in the future, who is going to administrate and organise the economy in the *Folkekirke*?”

HC: “That would be the church itself. So it’s a good thing that there is the civil registration, because then you have some tools at your disposal, I think”

The organisational vision of the *Folkekirke* for the future presented here is that of an association. It is responsible for, and has the basis for, its own economy, among others through ownership of the churchyards, for example. But there is not a single word on possible difficulties for pastors in the future – it is as if her vision is that they will simply change their identity in a changed structure.

It is thus fair to argue that the common approach to understanding state, church, and religion relations – including organisational structure, economic basis, and state support – has changed, especially among respondents speaking from within the *Folkekirke*. It is not so long ago that such an interview among elites would result in a clear vision parallel to that of KWH – this is our model and we should keep it. It is also striking that the arguments for changing the model do rest, as one might have expected, on an understanding of international human rights. Those who envision a changed organisation and changed forms of economic support do so from the perspective that that would support both the church and the state better. In other words, it is the basic and very Danish understanding of what serves the people which has changed.

We also ask respondents from other faith communities the same questions about state support for religious communities in the form of both economic and organisational support. The main question is whether one should strive towards stripping the *Folkekirke* of support or give state support to other religious communities. First the respondent from the Catholic Church:

ET: “Regarding state support of churches and religions, I would distinguish between grants and services. Grants are like the state paying the salaries of the bishops and 40% of the pastors’ pay checks. Service is like the tax authorities collecting the money that people have to pay. We don’t want grants, we would prefer not to be paid by anybody other than ourselves, but we would like to have some help to do some things. There is no doubt that if the *Folkekirke* didn’t have this arrangement... then it would’ve gone bankrupt a long time ago.”

The argument is that the collection of church taxes through the state tax system is much more effective and thus gives a much higher degree of financial security than a system of collecting them at the Sunday service – Members of faith communities have the further incentive that they can deduct their gifts on their income tax returns, an option unavailable to *Folkekirke* members. In order to gain a higher degree of financial security, the Catholic Church in Denmark suggested a couple of years ago that other religious communities than the *Folkekirke* could get state support for their collections. Today the church tax is a sort of membership fee, collected by the state for the *Folkekirke* and at a different rate in different areas of the country. The state could collect the fee that each church member should pay and thereby support the other religious communities. The system would need to be adjusted with regard to whether there should be a previous acceptance from the individual members of the church, or they should only be allowed to opt out of the system with the consequence that they also opted out of their church. There are also other technical details, experiences of such a system are positive in countries such as Norway, Iceland and Sweden as well as in Italy, all of whom have different church tax systems outside the majority church.

The proposal from the Catholic Church in Denmark has been supported by the National

Council of Churches in Denmark (*Danske Kirkers Råd*) and was also discussed in the central committees of the former centre-right government, who nevertheless rejected the idea with the formal argument that the state is obliged by the constitution to support only the *Folkekirke*. There were political arguments behind the rejection. The then government, supported by the Danish People's Party, could not stomach the idea of collecting membership fees for Muslim communities. The current government has not yet reacted to the same proposal. With regard to Muslim communities one of the most recent discussions in Danish society has been precisely on financial support, namely who should pay for the building of a mosque in Copenhagen.

Currently nobody has a full overview of the economy in faith communities outside the *Folkekirke*. Independent organisations and charities in Denmark are normally obliged by law to inform publicly about their entire economy. But religious communities are exempted from the law, because it was mistakenly thought that the Ministry of Church Affairs was supervising them. This means that there is a loophole in the legislation which prevents members of religious communities from accessing information about their economies: equally there is no right for either public authorities or the public as such to access information about financial data within faith communities.

We asked ET about this loophole. Does he think that the religious communities ought to be transparent and accountable?

ET: "When it comes to demands that can be made on the faith communities, I am very minimalistic. What demands do you make on a professional organisation, associations and businesses? It's true that if you have any kind of business, then somebody is making money and of course you have to account for that and pay taxes. As for public access into the situation of faith communities, I feel the burden of proof should be on those that want it. What are they going to use it for and why do they need it? What is it all about?"

Q: "The question of leadership, organisation, budget, finances – would you accept a reasonable access by the public, similar to what the public has access to in the major companies?"

ET: "If they're not an actual business and they don't pay taxes, then no. We're continually closing in on the question of the law on funds. Those that say it should apply carry the burden of proof and argumentation. They must tell us what the purpose of it is, if it is to be included. What purpose does it serve that the public has that knowledge about these communities? That's not certain at all. I'm quite pragmatic when it comes to that. I know what happens when journalists don't have anything to print and parliament members don't have political issues in need of questioning and response and when officials are sitting there, spending billions trying to answer completely inane questions. We simply don't have the strength to do that. If we suddenly had more resources, then they'd be used for something other than this silliness. So I ask, what is the legitimate purpose that the state and the public need this insight? In what's written about the church tax, we write that society is granted a lump sum. They don't need to know what each individual has paid because then they'd be looking into their private economy. We must trust that the Inland Revenue Service is functioning properly. They say 40 million kroner have come in, then you'll get 40 million, but the church often has to account for how the money's been spent internally. That's also for the sake of the members."

In relation to the building of a mosque the current situation is that such a building will require economic support from abroad, i.e. Saudi Arabia. On the one hand there is no argument against this, since the Danish state also supports the 53 Danish Lutheran Churches. On the other hand there is a general feeling that if the Danish state was to support the Muslim faith communities in better ways, e.g. by collecting membership fees, then there would not be the same need for economic support from other countries.

We ask one of the Muslim respondents about this in relation to the financial security of Muslim groups in Denmark and whether or not he would prefer indirect state support in the

form of organisational help to collect membership fees or other things. We also ask whether or not the state should have a role with regard to religious communities in general:

AWP: “The state already does that since the *Folkekirke* gets part of its funding from the state, so you already have a state-funded religion; but then the other religions can get a § 8a with approval and then get some tax deductions for their members. And that’s all fine, but I think it should be changed. There are a lot of models you can look at; there’s the Norwegian one and the Swedish and the Italian and all these different ones you can look at, how you can make sure there’s a better financial option for the religions, or like the Italian one, where you can pay to both cultural institutions and religious ones, and so on. It can be changed so things are a bit more evenly spread.”

The financial foundation of a mosque is a hot political issue, also because there is a general feeling that even though money doesn’t smell, it might draw certain obligations with it. The Mayor of Integration in Copenhagen comments:

AMA: “I’ve been on the offensive with that agenda and I’ve said, I’m happy as the integration mayor in Copenhagen that our second biggest religion now has a place where they can practice their religion. For me, freedom of religion is about you being able to practice your religion within a decent framework. I’ve also said that I’m happy we’re getting a mosque, but I’m happier, politically, for the one being built on Amager. We’ve had a good, constructive dialogue all the way through with the Muslim Joint Council. They have an independent board. I’m aware that the financing in both places cannot be achieved without outside funding. We still don’t know where the money is coming from. It wouldn’t do for any of us if the money was from states we’re not that fond of. But again, as long as it is not illegal... Doesn’t AP Møller sometimes deal with those we don’t quite like and do we ever do anything about that?”

Q: So you think that in reality, we should have more active policies on religion in Denmark so the state and the municipalities could give financial aid in the construction of religious buildings?”

AMA: “I’ve thought a bit about that. I wouldn’t mind it at all, if the state or the municipalities would start doing it. You’d just need to find the right frame of mind, since it’d be a sensitive subject. Then you would also be making demands, I think.”

Q: “What kind of demands would you make?”

AMA: “One of the reasons I really like the mosque on Amager is that it has an independent board. They’ve also said that they will preach and do their Friday prayers in Danish.”

Q: “I’ve sometimes made myself a proponent of transparency and being accountable or publicizing the names of the leaders in the organisation and that the structure of the organisation is transparent. There has to be a public insight into what funds are going in and out.”

AMA: “You’re absolutely right. If you give public support to some – if you finance something in other organisations, then you of course have certain requirements and then the same requirements would apply here.”

Q: Would you make the same demands if there were no state money involved?”

AMA: “I don’t know. Perhaps I would encourage it instead of demanding it. The thing is that politically we work in general terms, that is, we start with encouragement and then initiate a dialogue. If that doesn’t work, then you could consider a demand, but I haven’t thought much about it.”

The political vision formulated here concentrates more on the possibility of building a mosque in the near future, but is also closely concerned with the organisational structure behind it.

However, when asked about rules on transparency and accountability that the mayor and her party would normally favour, she is more hesitant, comparing a faith community with the biggest multinational firm in Denmark instead of with near relations in an organisation. In so doing she shows clearly that – at least to Danish ears – this is a delicate topic.

The Rabbi too was asked about financial support for religious communities and about transparency:

BL: “I’ve been asked several times: What about the Swedish model? And then I’d say, I’ll tell you, when I’ve found a mathematician to calculate whether it’s worth it. The thing is that I’m not sure. The Jewish community is getting smaller and smaller – it is: the Jewish society is shrinking, not least because people are leaving; the youngsters are going to Israel and so on. So I’m not sure it’s the proper way to go, to say that every member triggers some kind of payment. But on the other hand, I think there are some things that you should be *given*. For example I think the registration, the fact that I work for the state, that should be eligible for funding, just like the sacristan, because my secretary spends a whole lot of time on all of that. On the other hand we consider that an advantage, a bigger advantage than most others, because we have such a need to go back into our ancestry, much more than other communities around here.”

Q: “So the performance ratio is not proportional?”

BL: “No, not at all.”

Q: “Would you want it to be? What would it take?”

BL: “Again, that’s the question of what really lies in the word ‘funding’. If there is a requirement of accountancy or some such along with the funding, then it’s more problematic, because I still believe that it’s a very important part of Danish society that the religions are allowed to keep to them as long as they behave. That’s a very important thing.”

Q: “Does the Jewish community have public records? (B: yes) which they automatically present to the authorities in a ... on the homepage (B: yes) or some such? So what you’re talking about here, that’s some kind of regulation that goes beyond public records because you already do that?”

BL: “Yes.”

The Jewish community comprises a mere 7,000 people and cannot therefore support a complex administrative system. But given this, the rabbi is not arguing against financial support, only against more control than transparency itself, which he is very much in favour of.

The Secretary General of the Baptist Association also has many reflections on both state favour of the *Folkekirke* and possible financial or organisational support for other faith communities as well as directives on transparency and so on. The point of departure in state relations with religious communities, including Baptists, is that the state ought not to deal with religious affairs, be they financial, organisational, dress codes etc. State support for the *Folkekirke* is against the normative ideals of the Baptist church, also in Denmark. Asked more specifically about the proposal from the Catholic Church that faith communities should be on equal footing with the *Folkekirke* in collecting membership fees, the Secretary General answers:

LMH: “We’ve actually debated this in the Baptist church. I believe there were some people that were proponents of us charging a church tax for Baptists as well. However, we can’t reach agreement on it. I don’t think it will happen, because we have this attitude... most people have the attitude... that state and church shouldn’t mix. In the 1970s there was a lot of talk about ‘associations’, and there were a lot of youth associations who got government grants. That movement has gone pretty much the opposite way in the 2000s where a lot of associations have been dissolved because they’ve said, ‘We shouldn’t think about grants, we should actually make it a virtue to be financially independent ... and not think about how we’re going to squeeze as much as

possible out of the public coffers. That's unethical – and it's not the Baptist way.”

The argument is clear-cut. It would be unethical and un-Baptist. This is not only about what is economically effective, it is also about a deeply-felt understanding of what a faith community ought to be. Thus also in relation to majority support and structural discrimination:

Q: “So you think that you should legally privatise the *Folkekirke* and at the same time, you should, politically, culturally, or morally, include all the churches and religion a bit more in the public space? Is that what you mean?”

LMH: “Yes, I think it could be put like that. I think that equality would mean that we all had the same opportunities to... I don't know if it's called judicial opportunities... I can tell you what it's about. I'd like to be a minister in a hospital for example or in a prison and I can't become one because it has to be a Lutheran pastor. I find that discriminating. I know the reasoning behind it, because what if somebody comes and wants to baptise their child, then I wouldn't baptise them, right? Or there can be all kinds of issues. But I think it would enrich our society if there was more equality and if there were different kinds of priests in hospitals and prisons. Or if there was no difference on who has to pay to be buried in the churchyards. Then there are the public cemeteries, like we'd be married at the city hall and then have a church marriage ceremony afterwards, or go to the mosque or the Jehovah's Witnesses or wherever we want to go and get some kind of blessing. To me, that's equality and religious recognition of each other.”

The newly-elected liberal Member of Parliament is also asked whether or not the state should support other religious communities in their organisation, structure, or finances. Even though her general understanding is that Denmark is a Christian country, her approach to organisational and financial matters is more liberal, focusing on the establishment of equal opportunities for all faith communities:

MB: “With the other religious communities, I believe that even though we shouldn't be afraid to say that Denmark is a Christian country and we live in a Christian society, then I'm very attuned to the fact that we actually enjoy – and should preserve – the freedom of religion. I would like to see a development where the church economy and the state economy are separated. Many find it offensive that the state pays the salaries of the pastors and if you're an atheist or a Buddhist why should you be paying for the pastors in the national church? But I have a feeling, and I want support for this, that you could actually do this – separate their finances. The state should continue to pay for the preservation of our cultural heritage, the old churches and so on, everybody would understand that. I feel that you could easily say the *Folkekirke* should be paid for [solely] by the church tax. Period. If you separate that, then you remove some reasons for objections for a lot of people. – Things like that muddle the debate... Let's start by doing something that should be simple enough! Along with that, I'm also open to the idea that the state could demand church tax, or whatever you call it, from the Catholics and I don't know whether Muslims are even allowed to do something like that but anyway, the major religions. You say to them, ‘If you want society to provide the same services that we give to the *Folkekirke* then we'll provide that for you as well.’ It can't be that difficult, bureaucratically, if you know who the members of the different communities are. And that way, I think we can take a step in the right direction when we say we have freedom of religion in Denmark.”

She thus supports the Baptist and Catholic view that the current situation increases inequality among faith communities in a way which is neither fair nor necessary. Also the theologian who is a left-wing Member of Parliament argues along the same lines. It is a matter of recognition:

PVB: “As it is today, we’re turning our back on the religions, we see them, almost all the religions, even the Jewish community and the many Muslim communities and the Catholics, as sects. It’s just before I think they have a sect-like status. So they’re recognised on paper but on the other hand, you can’t have legislation telling people their religion is exactly like the national church. The Catholics want the state to charge membership fees, and in civil registry to handle things differently, and so on. That has been refused outright, without any reasoning, other than that the majority are something specific. That’s not recognition. You could imagine that if the state demands membership fees of the religions, just like the *Folkekirke* charges through taxes, then you could ask for transparency with regard to accountancy, with regard to what practices the religions have when people opt out of them, what goes on when people join, what are their rights and duties towards these religions and so on.”

Q: “What if the religious communities say, ‘That’s all very well, the rights given are nice but we’re not interested in public access to our accounts and budgets and we’re not interested in knowing about least of all supervision with regard to the rights and options for our members’?”

PVB: “I think that’s problematic, because I don’t want a model where religion is completely in the realm of the private sector, outside the reach of the public, but I don’t want us to be a non-secular society either. I would like a middle road where we make religion part of the society and community, somewhere between the state and the free market; I think that would be in the best interest of the religions, even though they don’t believe that – to be part of society, with regard to both rights and duties. I would like to start this dialogue on how best to do this without offending the religious communities and without being suspicious of them. But I also think we should move towards a position where they don’t have the status of a sect and I think a lot of them have that today.”

The religious organisations ought to accept transparency and accountability simply because they are acknowledged and recognised parts of civil society – they should no longer be regarded as a sect, somewhat suspect in the eyes of the general public as well as the public authorities.

This distrust of certain religious identities and norms was also highlighted in a totally different yet equally interesting part of our interviews. The leader of an organisation of publicly-employed social workers reflects on the *acknowledgement and recognition* of faith communities in relation to general norms and standards for social work. Her concern is for decreasing norms and standards in social work for certain marginalised groups in society, legitimised through the idea that these groups are ‘religious’, a position which she sees as discriminatory:

BP: “Yes, currently there is a strong discussion regarding ethics and professionalism because we are challenged, on both fronts, with the current political discourse and direction which is increasingly creating poorer conditions for socially vulnerable Muslims and others with a non-ethnic Danish background.”

Q: “What do you mean by that? What are you thinking of?”

BP: “Yes, a series of new rules have come into force which de facto discriminate in Denmark. For example, we’ve now got ‘start-aid’, which is a sort cash aid, half as much as what’s usually given, and it’s given to people who haven’t lived in Denmark for 7 out of the last 8 years all told. That aid is conditioned by a lot of things and the fact is that over 90% of the recipients have a non-western background. Then we have what we call the 450-hour rule, which will soon become a 250-hour rule, which is a rule that requires married couples receiving aid to each do 450 hours of regular work within the past two years to keep their benefit, to be able to get the aid. If they can’t do that, then the one that’s been mostly away from the workforce loses his aid and then that’s what you’ll have left to live on, including the children. That rule simply homes in on non-westerners. Together, these two rules mean for example, what we at SFI call ethnic segregation,

where many are evicted from their apartments since they can't pay the rent. If you've been following the political development over the years, it's very clear: one special clause after another, going ahead without anybody mentioning ethnic minorities."

The last voice to be included in this discussion on organisational and financial support from the state for the *Folkekirke* and other religious communities, plus the related questions on equal opportunities or equality as such, belongs to the high-ranking civil servant from the European Commission:

Q: "Is it a political goal to support religion in some form or other out of regard for the freedom of religion?"

CS: "I think you should look at what religion really is: Is it religious schools, is it religious kindergartens, is it nunneries, is it preservation of buildings, is it paying for the bishops' vestments? I mean, there is probably a long list of things where I'd say that some of these services provided are similar to some others, provided by others, which could just as well have been provided by the state. And then there are some which are very 'close to the altar', which is where they should be dealt with. ... You could say that on this end of the scale, that's the job of the state or it could co-finance, and the other things are what the congregation has to pay for, because they form part of their own values so they must finance that themselves. Then, if the Danes say that we're all in this together and we want a national church that pays for that, then you could make some sort of agreement on it. But I honestly can't see why we pay for the strictly religious assignments of the *Folkekirke* but we don't pay for the Muslim equivalent. And really, I think we should do that: it also gives a bit of an insight into what's going on within these communities."

Q: "So you actually think it's a good idea that the state charges a church tax for the members of the *Folkekirke* and then does the same for the Muslims and so on?"

CS: "I must admit that one of the reasons I'm still a member of the *Folkekirke* – that is one of the reasons, not the only one – is that I believe the tribal instinct is so deeply ingrained within us that we want to channel it some place where it won't mess things up. A national church under democratic control is a good construction. It could be spread further."

Q: "That would mean that when I use words like transparency and accountability, they wouldn't be foreign words to you with regard to religious communities?"

CS: "No, no, not at all. I think that would be fine. And it goes for the Catholic Church and the Muslims; it goes for all of them. I think that's fair."

Here is no hesitation: members ought to pay for themselves for the more religious area of their economy and could get state support for the more common dimensions, such as schooling etc. And all religious communities, no matter how they are financed, ought to be bound to general norms of transparency and accountability – these are also general norms, not only supported by the European Commission, but simply part of *acquis communautaire*.

8.4 Subventions to different projects

This distinction between finance for the more religious dimension and finance for the more social dimension is of course central in an analysis of state support for religious communities.

We discussed the question with the minister who leads a major Christian charity organisation focussing on the social needs in society. Our questions concerned information:

Q: "Who finances Danchurchsocial's work and who are your staff?"

HC: "In 2010 our revenues were DKK 211 million. About 35% of that comes from gifts, including contributions from charity shops, and about 65% from state grants."

Q: "... the 35% goes under your 'privately collected means'. Is that because the work is voluntary?"

HC: "Yes, exactly, and because it differs from state means. We collect a lot by working closely with municipalities or the state, from funds from different ministries or from cooperation agreements with the municipalities or what we call Paragraph 18 grants, which is money the municipalities get from the state to pass on for voluntary work. So it's a hodgepodge of various kinds of collaboration with the state. A bit half and half."

The imam, working at the national hospital, informs us about the cultural function of his work:

NB: "I've just been hired as coordinator for the resource team at the hospital but I also work as a volunteer imam and have been since 2005, so that means I'm attached to the hospital. I'm not officially appointed, because there are no positions as a hospital imam in Denmark today, as there are with hospital pastors and so on. So that's why you can't appoint me or somebody else as a hospital imam or a 'hospital chaplain' as they would say in England. So as part of my not quite official work but as part of my position at the hospital I also have the responsibility of taking care of people who die, who need a funeral, who need care, support, heart-to-heart conversations, who need mediation and have questions about bioethics, blood transfusions, abortions, autopsies or just being a mediator at a hospital with, for example the respirator issue – does turning it off equate to murder? – To try to see what can be done when a patient or their relatives ask me 'Is it alright in Islam to turn off his respirator? What about sedatives, how much can he get so he passes peacefully away? And so on... these are all issues that I need to relate to in my position as imam at the hospital. So that's just giving you an overview of what I do."

Q: "Who finances this organisation? And what is the purpose of this organisation for which you are coordinator?"

NB: "It's a visiting service, it's a cultural mediation of sorts we've got here and we also teach and advise the personnel at the hospitals."

Q: "So this cultural mediation is in regard to both patients and personnel?"

NB: "Yes. The mediation goes on between patients, relatives *and* the personnel. Sometimes, it can also be between patients and relatives if a conflict arises. Other times, it's just practical stuff, but then it's not mediation as such. For example, if you need to bring a family member from another country to visit a cancer patient, a patient terminally ill, no, I don't like the word – a 'palliative' patient, then we'd do some practical work where we can come in and... or a letter of complaint... we are 35 volunteers in the team. I am the only one appointed as coordinator. So it's a volunteer service."

Q: "I understood, before we began this interview, that there are four large hospitals in Copenhagen which have come together to finance this cultural mediation team (yes). What reasons do the hospitals have to do that? What is their thinking, what needs have they seen which have made them set aside a part of their budget labelled 'cultural mediation'?"

NB: "It's something to do with freedom of religion, with the constitution, with the human rights declaration..."

Q: "So it's simply been the freedom of religion?"

NB: "Freedom of religion, Joint Commission Standards, an accreditations company, American, where all hospitals are accredited and some of the standards that they have involve spiritual support for patients and relatives. So we have the new, Danish quality model launched at the end of 2009, [IKAS, Institute of Quality Assurance and Accrediting in Health Care, www.ikas.dk], a semi-official organisation which launched the Danish model of quality for all private and public hospitals in Denmark with a set of standards, over 100 of them, which are now being implemented in municipalities, apothecaries, and so on."

Q: "Is spiritual caring part of those standards?"

NB: “Religious and cultural support for patients and relatives is included, and in the guidelines there are things like diet, decency, clerical assistance, and one last thing which I can’t recall right now, that’s all included. This goes for everyone – it isn’t directed just at Muslims, it’s a cultural and religious support. It’s the first time, as far as I know, that hospitals now have specific standards for religion and culture. It’s never happened before. The reason for this, I think, is the American accrediting organisation, which has included it. Then suddenly the hospitals are all in a hurry. ‘What if they ask us about that? We need some kinds of standards for diet, decency... so it was sent to a hearing and all these things have happened!’”

The Christian diaconal organisation, led by HC, is more than 100 years old, and Danish society is used to such organisations, even though there is little common knowledge that, for instance half their income comes from voluntary work. We have included this long quotation from the hospital imam, because the very existence of non-Lutheran religious service in the general public is very new in Danish society. It compares with the Secretary General of the Baptist Association, who would like to work as a hospital or prison chaplain, but cannot get this type of job due to her confession. There is no doubt that state support for these areas of public welfare will in future take stock of a changed understanding of confessional claims and standards.

8.5 Public Funding of Religious Leaders’ Training

Theological research and training has been part of Danish universities since the first university was established in 1492. The Faculties of Theology at the universities of Copenhagen and Aarhus are not confessional. But although neither staff and nor scholars need belong to any confession, all pastors in the Danish Lutheran Church are required to have a degree in Theology. The two faculties are therefore seen by some as being part of the state support for the *Folkekirke*. Others understand them as a natural part of the highest possible training for pastors in a field within the existing labour market. Three of the Danish universities also include research and teaching on topics in relation to Islam, including Islamic Religious Studies and a Centre of European Islamic Thought at the Faculty of Theology in Copenhagen.

Even though this centre is established at a Faculty of Theology and even though Theology as a subject is non-confessional, there is no doubt that the courses are largely oriented towards Lutheran Christianity. In consequence the evangelical churches have set about establishing their own pastoral training, Roman Catholics follow university training in other countries, and Muslims have to go to England or Germany for academic training. For some time the debate has been whether to establish formal theological training in Islam in Denmark. We asked some of our respondents about this including the hospital imam:

NB: “Yes. Definitely! It also has to be interdisciplinary. It has to be across the board, I mean things like, What is ‘Muslim counselling’? for example. But also things like confidentiality, social conditions, how Denmark is structured... internships, so you could learn about... on an equal footing with the hospital chaplain training that you can get at places such as Løgumkloster Theological Training Centre. Something like that.”

Q: “Like an extra training after an MA in Theology. In your opinion, what kind of academic education should the universities offer?”

NB: “If that’s what you’re talking about, normally we call it ‘imam training’. It’s not that really. Firstly it’s theological training; you can’t just become an imam because you’ve studied Theology, but I think you could easily offer extra courses, and even a master’s degree in interaction with the other Muslim organisations in Denmark, making it a theological training in Islam. Maybe just a bachelor’s at first, and then work up towards a master’s degree.”

Q: “In coordination with the other Muslim associations in Denmark... What is needed for those with this training to get a job afterwards?”

NB: “What’s needed is some kind of recognition of their study, and clearly it will be recognised if it’s being offered by the universities.”

Q: “Who should recognise it? Is it the universities, that is, the Ministry of Science, Innovation and Higher Education, or is it...?”

NB: “Yes, or the Ministry of Education. It doesn’t matter, as long as there is recognition that we have a Bachelor of Theology degree which everybody can take, something that’s non-denominational, which is scientific and so on. There is some criticism that we cannot have an imam training because it is religious and not scientific and so on, but we have examples from many European and Muslim countries that you can have a theological schooling that is academic and not religious. The confessional element, as I see it, is important on another level, if you’re to function as an imam, but you can do that elsewhere, also with the universities, just like with the pastoral seminaries, which also have a connection to the theological faculty. So definitely... !”

Q: “So you could really just build it completely parallel to the university degrees in Theology with subsequent confessional training.”

NB: “Yes. And if you could see that there weren’t enough enrolments – if there simply wasn’t enough demand – then you could create a model that included Norway and Sweden, a Scandinavian model, together with some of the other faculties, maybe even draw Aarhus in, I don’t know... in that way, make a solid model, structured. That could be an idea, maybe you could think of other models. The question is whether these people, those that have taken a Muslim theological training course, whether they will be able to use it afterwards. They’d need jobs: Municipalities, universities, social institutions, mosques, prisons, hospitals. And you also have priests in various institutions and companies, they’ve been talked about. There are a lot of options, but this of course requires an open discourse that it comes onto the agenda. Instead of just saying: Imams don’t know anything, they’re good for nothing, and just look at that stupid statement he’s made; they don’t even know how things work. You have to say: ‘OK, we would like to tell you how it works but we’ll do it together, in cooperation, where you also get to decide the curriculum, with the other Muslim umbrella organisations. Instead of isolating, involve! That’s what we’ve been seeing so far; imams and theologians have been isolated, they’ve not been involved together and really, that’s the real problem, as I see it. Some higher-ups are saying: ‘We don’t need them at all: they are a problem and they’re making things worse.’”

We have included this long quotation, because it shows the situation as regards confessional identity, the labour market, and the need for recognition in relation not only to Islamic education, but also to all types of theological training.

However, there is also a price to pay for being an imam on the state payroll or even just being in public, as opposed to private, education. Not all are prepared to pay such a price:

Q: “As I understood you earlier, the role of an imam is quite broad. Could you imagine it being the work of an imam to be partially paid and then to travel round the public schools and give talks there, or be part of an education corps, or whether that should be somebody else...?”

AWP: “No, I don’t think it should be the imams, and I’d actually also say that that is my position is today, where I’m not *paid* to be an imam, that’s the most ideal position. That’s because then I don’t have to answer to anybody but myself and God and the congregation I face, but I’m on no payroll. I see it as a problem for those that are on a payroll because you have to be a bit loyal to the hand that feeds you.”

Q: “But then in a municipality or a region... to employ a couple of consultants from the teachers’ training colleges....?”

AWP: Yes, that could be a solution. I just think we lack a debate on the issue. Just as we need other debates in Denmark, I think we need a debate on this entire religious education

subject as a whole, because if it lies in some old adopted forms which are basically not good enough for the society we have today...

Q: But you'd like some imam training?

AWP: Yes.

Q: What kind of labour market would it be used for if you also believe it is an ideal form not to be paid?

AWP: It's possible that some of them could be paid, but then they have to be paid in some way that's from a neutral platform. For example, imagine a mosque where they have a board and the board deals with the day-to-day matters and could even be the ones to appoint and dismiss an imam, because somebody has to do it, but where the salary of the imam comes from a fund and not from the board itself, that is, where the board has a formal function with regard to appointments and dismissals but they're not the ones paying the wages, so you avoid that.

Q: What is it that you want to protect: is it the freedom to preach that you want to protect?

AWP: Yes, it is. But that also includes the inner freedom to preach. So you can stand there and look your congregation in the eye.

Q: Could you imagine if they simply said, 'Out of concern and protection of the Muslim freedom to preach, we're appointing imams as state officials?'

AWP: No, because then you're under a ministry, no no, that's the last thing that I'd want... it'd be terrible to have a political boss. No. [laughing] That's doubly bad goes double. Internal freedom to preach. But also protection against outside influence, I mean wouldn't... that's the last thing I could imagine, that Muslims would be under some ministry or other and there'd a publically elected politician sitting there, bossing around what you can and can't do. No thank you!"

8.6 Public funding of religious heritage

Religious buildings in Denmark are funded by those religious communities who wish to have them built. That goes for both the building and the maintenance. Thus, the financial support from the state to the *Folkekirke* does not include any funding of church buildings. They are kept up through church taxes paid by members only. Thus, for instance, church members alone paid for a recent restoration of the popular tourist sight of Our Saviour's Church in Copenhagen with its golden spire and an outside stairway to the top, even though it cost over €10 million.

Our general understanding from the interviews is that it is seen as more relevant for the state to pay for such a restoration of a church building than to pay for more confessional purposes or for the salaries of pastors. It would also be easier for other faith communities to receive and request public support for buildings, cf. the discussions regarding the mosque. However, we did not ask directly about this in the interviews, and cannot therefore present any relevant quotations.

8.7 Conclusions

The Danish constitution of 1849 established a distinction between the *Folkekirke* and other religious communities in their relation to the state. The distinction can be maintained for as long as the Lutheran church is the church of the majority of the population. As such, the state is obliged to support it, while retaining the right to decide on the internal *structure* of the church. Others interpret the constitution in more moral or religious terms. In its Lutheran heritage, the state is obliged to support precisely this church, thus maintaining it as a central dimension in Danish society. Other churches or religious communities should not have autonomy vis-a-vis the state, but should follow the general rules and norms in society, except when it comes to regulation of the *religious* functions of the church or community.

As can be seen from this chapter both understandings of the differential treatment of the Lutheran church compared to other religious communities in Denmark are changing in the 21st century, and they are changing quickly. Among the leaders here interviewed it suddenly became

a minority standpoint to argue for intertwinement between the state and the *Folkekirke*; the majority argued for a *change* in relations, both in order to let the church become more ‘church’ and in order to establish better conditions for other religious communities.

What these better conditions should comprise is not quite clear, however. Total freedom has its advantages and many leaders are not prepared to give up any of these. On the other hand financial security also matters, as does the opportunity for training etc. Nothing can be concluded on these points, except that the question of state support is central for those who are interested in the role of religion in the secular 21st century society.

On the other hand it is also our common and general understanding on the basis of these interviews that the European Union or the European Court of Human Rights should not do anything about the inequality of religions in Denmark, or state support for religious communities or the status of the *Folkekirke*. To find solutions for the future in this area is a matter for the Danes alone. The general feeling is also that there is not much political leverage in trying to analyse the area. Nevertheless, the centre-left government is setting up a commission to present an overview of the problems and the possible solutions.

9. Conclusions: Basic Tensions of Religion and Secularity in Denmark⁶

The aim of this report is threefold, and this being so our conclusions will follow a threefold structure.

First, we present conclusions on the basic tensions and conflicts of governance of religious diversity. The survey set out to investigate how religious and secular leaders as well as governing institutions in Denmark understand the relations between law and religion in a contemporary context and how they see the basic tensions and conflicts unfolding (On ‘Basic Tensions,’ by Professor Veit Bader, see Annex II). This is examined specifically within the four chosen research areas of the RELIGARE project: religion and family law, religion and the labour market, religion in the public space, and state support for religion. The chapters in the report follow these, and thus the conclusions in this chapter begin by summarising the results from the four research areas (9.1.). Because the basic tensions were identified as both general *and* specific, they also raise a series of overall questions to be answered. These concern the tensions between individual and collective autonomy, between religious freedom and other human rights, between religious freedom and a security issue, and between formal equal treatment and substantive equal treatment. In section 9.2 we have identified these possible overall basic tensions of law and religion relations in Denmark. We see this part of the investigation as related to the introductory chapters on the situation in Denmark at the time of writing. Here we ask how Denmark is changing and are there European tendencies visible also in the Danish context. We shall focus on how and where the Danish state, church and religion relations are currently under pressure.

Secondly, the aim of the investigation is to present Danish empirical research results and through these establish a framework for comparison with other European models. The hypothesis behind the common socio-legal investigation in the RELIGARE project was that in European countries a path dependency exists in relations between law and religion in the four chosen fields of research. This path dependency may be related to the internal self-perception in the major religions of the country. On the basis of this hypothesis, six countries representing different majority models were identified for socio-legal investigation. In the Danish context the question was: To what extent can a Lutheran influence be identified and to what extent is it still visible and of contemporary importance in relation to law. These conclusions are given in section 9.3.

Thirdly, in the final section, 9.4, of the conclusion, we will present some limited and general recommendations that address themselves to both the international European research and policy agenda and to the domestic Danish state of affairs.

9.1 Main results from the four areas of basic tensions

9.1.a Religion and Family Law

Among the respondents from the legal and administrative sphere and among the leaders from the Danish national church, the *Folkekirke*, the question of religion and family law is the most surprising. The general understanding among representatives of the majority perspectives is that law is secular, that secular law holds jurisdiction, and that established religion has little to say regarding conflicts in family matters, because the law governs the family with concern for public order. If people need other solutions regarding family and religion, this is open to

⁶ This conclusion is written according to the model mentioned in the Methodology-chapter. To this particular chapter, Hanne Petersen has however also contributed with additional written input. The conclusion has been discussed at meetings involving the full Danish RELIGARE team and thus reflect views supported by the full team.

discussion and alternative resolution. For most respondents it is of little importance whether the practical solutions chosen are inspired by religion, as long as Danish family law is upheld and public order is maintained. This is the starting-point for a democratic society, some of the respondents argue. In cases that are potentially conflicting, our collective societal responsibilities embedded in the family take priority over individual religious matters for the respondents, who thus tend to represent collective rather than individual interests. This goes for gender, sexuality, ethnicity, and political convictions as well as religion. In relation to these issues multiculturalism, tolerance of dissent, and a diversity of practice are well established, and all of the respondents stress that minority religions enjoy freedom of religion and a fair amount of accommodation.

That said, problems and areas of conflict do exist within the fields of religion and family law, and the establishment and the minority religious leaders differ over the issue of what constitutes a marriage. In the interviews the Muslim, the Catholic, and the Jew all stress the importance of the symbolic and religious aspect of marriage – and subsequently of divorce. In this perspective, marriage is the proper order for social life and remains at the core of the family. The administrative establishment seems to agree with this focus on marriage as a cornerstone of the public order. However, the state claims the *de facto* jurisdiction to define marriage not as a religious institution, but as a publicly-recognised status equally available for all to enter into and to dissolve accordingly. Furthermore, rules and practices for divorce differ between minority religions and the norms and rules governing divorce for the majority community, whether marriage is considered to be religious or secular. This concerns also same-sex or gender-neutral marriage. Same-sex marriage is a divider within most religious groups, including the *Folkekirke*. It points on the one hand to the contested limits of secular state governance of religious organisations and on the other hand to contested minimum standards of the internal autonomy available to religions.

Our Muslim respondents reflect widely on the conditions for, and the validity of, establishing and dissolving marriages. Imams argue for the preservation of time-honoured family regulations and insist, for example, on mandatory mediation before divorce as well as distinguishing between the civil and the religious institution. They do this to protect not only the religious institution but also the social and economic interest of women and children upon entering and dissolving marriage. They recognise state jurisdiction in principle, they try to revive the so-called ‘limping marriages’ or partial divorces, and they struggle against opportunistic forum-shopping. However, they have limited social authority and impact, and although they stress their concerns, they have no authoritative and uniform solutions to present.

Faced with the same questions regarding recognition of marriage, divorce, and religious mediation, respondents from Catholic and Jewish contexts see no initial parallel to the situation for Muslims, especially because they feel that their internal marriage courts or tribunals or advisory institutions are precisely just that: advisory and not mandatory. According to them this becomes very clear in their internal teaching and their social regulations, and they insist that no one is forced into anything. However, they consider using social pressure where this is a last resort in order to achieve a fair solution.

Overall it must be stressed, as it is by the respondents, that most of the struggles and conflicts mentioned can be limited to one of two types. Some of the conflicts are deliberately malicious or products of socially unacceptable behaviour on behalf of a few rotten apples, but these are very few and may be found at all levels of most societies and have little to do with religion. The rest of the conflicts are products of misunderstandings, ongoing re-negotiations and reinterpretations that are the well-known signs of a society in change and people struggling to understand their new identities and new lives.

However all our respondents – Muslims, the Catholic and the Jewish as well as the Christian majority and minority respondents – warn against three likely overall scenarios of conflict:

Firstly, in their view there seems to be widespread confusion, mythmaking, and misunderstanding concerning religion in general in the Danish population at large. The media, the politicians, the radical religious protagonists and the old entrenched believers produce

between them more of a cacophony of outcries than a constructive dialogue. Most of the respondents call for greater clarity of thought, principles, language and discourse when addressing the conflicts of religion and family law. Because the social and religious *modus vivendi* among minorities has only recently become a matter of public affairs, a state of exclusion of minority affairs has existed that is now being remedied. However, in the present situation of uncertainty and confusion well-established social and religious ways of handling marriage and divorce in the minority religions are sometimes mistaken for either social abuse or for misrepresentations by legal counterparts. The Nikah marriage (the contract between bride and groom), for example, is not a legally established institution and should not be mistaken for such. There is a need for a general understanding that in some instances religious and customary practices grant social and cultural and religious *legitimacy* to relations or dissolution of relations in the local, religious communities without this requiring formal legal recognition by Danish law. In addition, in the religious communities and in society at large there is a further need to understand that certain relations require formal legal recognition in Danish society by Danish law in order to secure certain legal consequences, such as custody, inheritance and so on.

According to most of the respondents, the holy commitment in marriage must be celebrated socially and religiously. Legal public order must govern the secular aspects of relationships between adults, including marriage. No single interpretation of marriage – either religious or secular – should take priority over another, but a distinction must be knowingly maintained for a new legal intertwinement to be established. In this context it should also be remembered that the last half-century has witnessed considerable changes in lifestyle and relations between adult members of the majority community, no matter whether they are self-identified as being religious or secular. Increasing numbers of divorcees, cohabitating couples, and single household members have given legitimacy to more complex forms of intimate relations and family life. Complexity in family life and family law is thus not only a religious/non-religious issue, but also an issue of reconstitution of family life in late modernity.

Secondly, and this is an aspect of the first point, the deliberate obscurity of certain aspects of socio-religious life remains counterproductive and leads to the use and manipulation of subversive strategies that have always been applied in any social sphere. In the interviews, there are plenty of examples of malicious harassment, provocation, and foot-dragging by spouses. Religious minority leaders consider instruments of social pressure as reactions to this, such as making such harassment publicly known in the community. Religious leaders seem to focus more on community solidarity than on individual aspects of divorce. Parties in divorce cases sometimes find models of dual and overlapping consensus between the two systems, such as mothers gaining custody in Danish courts and sharing it with fathers according to Muslim norms. It is important to stress that while deliberate harassment and malicious intent is unacceptable, there must be room for the authority of families to regulate the minor issues of their own lives.

Thirdly, there is reason to consider the possibility of ‘mixing instruments’ from different traditions in order to reach acceptable solutions. Alternative dispute resolutions might be more open to such solutions and legal innovations. Some respondents warn against being afraid of other legal systems and rules being acknowledged in Denmark. The interviews also demonstrate that minority religion members individually mix norms according to their ‘religious conscience.’ There is not much evidence pointing to a more international than a local forum shopping. But there are overlaps between legal, religious and social norms and practices which may create uncertain family status.

9.1.b Religion on the Labour Market

The Danish labour market is regulated by collective agreements between the labour market parties and is supplemented by international conventions, which in the last 40 years or so has meant increasingly by EU-regulation. Industrial labour contracts used to be considered public and collective secular contracts covering secular relations. It is true that in the 19th century,

Protestant religious affiliation had sometimes been required for access to specific jobs, but such requirements were gradually eradicated from the end of the 19th to the beginning of the 20th century. Collective labour agreements represented a secularisation model and accommodation to changing production and a changing labour market. Around the turn of the 21st century this secular model is being challenged. Individuals voice an increasing demand for freedom for their practical and symbolic expression of religious affiliation in the workplace. Conversely, employers are demanding loyalty and decorum from employees and are claiming the prerogative to appoint and dismiss them accordingly. An ambivalent recognition of such demands for religious performance, loyalty, and decorum from both employees and employers is expressed by several of the respondents. Their views on regulation and their evaluation of emerging practices and norms are characterised by a certain ‘confusion’ or lack of clarity. As with religion and family law, one of the basic tensions is expressed as contradictory and ambivalent views of the governing principles and norms. Neither easy nor clear solutions can be given. The limits to reasonable demands, the categories of personnel who can justifiably be met with such demands, and the nature of the communities that may legitimately present such demands are unclear.

The interviews disclose a discrepancy between contemporary formal legislation and the prevailing views of the respondents and we see new claims being made about both religion and secularity. In our topology, it is important to keep in mind the fourfold working distinctions between (i) the explicitly religious labour market, (ii) the religious or social organisations that perform a public or publicly-sponsored assignment (iii) the private organisations and businesses that employ both religious and non-religious staff, and (iv) the secular and public organisations such as the municipality, the hospital, the armed forces, and the schools. Until recently, the *Folkekirke* had been understood as one of the public institutions in this typology, with a clear Evangelical-Lutheran ethos and with explicit state support.

The first of these four categories consists of explicitly religious organisations, churches and the other religious communities distinct from *Folkekirke*. Questions here are related to whether or not distinctly religious organisations with a diaconal, missionary, or faith based school ethos should be placed in this category. Within this category the ethos is explicit, and from the interviews it seems that the faith communities do not distinguish between the value and importance of the jobs performed. All work together for the greater benefit of the religious foundation of the community or organisation. There is agreement that crucial members of staff such as priests/ministers and secretary-generals must be religiously committed to the ethos and worldview of the organisation. On the question of other employees outside these, there seems to be disagreement. Although court cases demonstrate that it is illegal to discriminate in employing co-workers of one faith only, respondents accept that loyalty and adherence to the organisation’s principles can be demanded. Religious affiliation could be likened to a brand or a trademark, where disloyalty to the ‘product’ cannot be tolerated. Not only membership is demanded, but also to some degree personal conviction from nearly everyone within a religious core organisation. This opinion is growing and is surprisingly well established, especially if the organisation has a very clear mission statement and especially and/or is rather small. This change means that the traditional distinction between personal faith and general loyalty to the religious organisation no longer sustainable in many corners. It seems as though these religious organisations are claiming a ‘personhood’ and identity, which would grant them the rights and protections to institutionally perform their collective beliefs as if the community or organisation as an employer was indeed an individual.

The really hard cases for this faith-based labour market seem to arise when the respondents from religious organisations and institutions are asked about the employment of divorcees and homosexuals. Discrimination of such individuals is strictly forbidden in Danish legislation, but the ‘deviance’ from discrimination law in favour of more restrictive and directly or indirectly discriminatory religious norms is visibly significant. From the interviews, it seems explicit that co-workers jeopardise their employment if revealed to be divorced or homosexual, and their continued affiliation depends on their conduct. If the divorced employee has initiated the

divorce or if the homosexual is not in the least ashamed, this could be seen as disloyal and contradictory to the ethos of the organisation. Such cases are highly problematic, and the freedom of religion principles seems inadequate to navigate the issues.

The second of the four types of employer in the labour market of interest for this report are the faith-based organisations such as private schools or social organisations with a religious ethos such as diaconal work. Here the responses of the respondents are more divided. As with the previous category, the general trend is also visible here, namely that many are prepared to accept requirements of loyalty not seen before. It is no longer enough to declare that one is not working against the ideas of the organisation; explicit loyalty to the governing social mission and norms including appropriate behaviour is demanded. In this area it is likely for difficult cases to be found.

The tensions concerning loyalty, behaviour and active support of the foundation seem to fall into two areas. Firstly, what is acceptable with regard to secular jobs within semi-religious organisations? Here the defining question in the interviews was; "...is it acceptable to expect religious loyalty from the cleaner in the local church?" Secondly, which normative requirements can a faith-based organisation – such as a religious private school or kindergarten – performing secular functions with the support of public means demand from its staff in general? Here the defining question remains: "is it acceptable to require the Catholic faith of the schoolteacher of Mathematics?"

As long as the employers require only individual conviction or loyalty, many employees accept that. In Danish society, however, it would be seen as alien for an employer to demand a certain morality, or claim that family morals could influence the possibility of getting a job in faith-based organisations. The respondents mention examples of court cases from other European countries, such as the cases of *Schüth v. Germany* (1620/03, Chamber judgment 23.09.2010) and *Obst v. Germany* (425/03, Chamber judgment 23.09.2010). Such claims are generally not in tune with Danish popular and legal culture, which means that most Danish faith-based organisations and Danish leaders are not ready to make such radical legal claims.

The third of the four types in our distinction are the private organisations and businesses that employ both religious and non-religious staff. Businesses are privately-run in principle for the sake of business and as such are part of the non-religious labour market. However, they still employ a wide range of people, who bring their religion with them when they come to the workplace. Similar to the public institutions, there are no religious demands on employers, and any possible violation or discrimination is likely to be directed towards the employee. However, and this has been a strong claim in Danish cases, businesses do have a prerogative on directing uniform codes, grooming codes, and the wearing of explicit religious symbols. In the same way that religious organisations claim 'a religious brand,' so do businesses claim an ethos or a 'corporate culture' that needs to be respected. Primarily, this means that public ethical standards and professional standards must be met. However, it also means that a conservative brand store can remove employees from customer contact or even have back office personnel dress according to the corporate uniform code. In this regard, the interviews reveal an inclination towards separating or downplaying the religious from the professional. This means that the complete abolition of religious symbols might be a step too far, but creating prayer-rooms may be too great a concession to religion. Not all the respondents agree with this, however. Many of the religious respondents advocate an individually negotiated agreement. One even stressed that an employer who would not make time for prayer, would need to find someone else to hire. Unfortunately, this is a luxury that not everyone can enjoy, and many do find a minimum of accommodation essential for even their professional and economic lives. Overall, although the respondents approach the matter from different angles, most find that the legislation and litigation should be kept to a minimum and that there should be greater room for informal agreements between employer and employee within the limits of the law and reasonable accommodation.

With the fourth of the four typologies, the secular and public organisations, we enter the totally public domain. This public, secular labour market seems primarily challenged by two basic tensions. One is the question of the individual religious performance of the employee, especially illustrated by the use of the veil, and the other is the need for time off for religious holidays other than the dominant, historically Christian, legally authorised and protected holidays. Here the views are divided. Some respondents think that employers should accept the veil, while others would argue against any religious clothing as being inappropriate to a secular workplace. Similarly, some male respondents hold that religious clothing is only related to women and symbolises their suppression. Several of the respondents were furious over the legislation prohibiting religious clothing in courts combined with a general rule that all judges must wear a gown while on the bench. The legal professionals in the interview see this legislation as an example of trying to turn away a more female pluralist mode of clothing in general, while playing symbolic legal politics at the same time. All adhered to the general rule that discrimination on the basis of religion is prohibited in the general labour market. Some saw rules prohibiting religious clothing as an example of, or attempt at, indirect religious discrimination, even though court cases and legislation rule differently. However divided the respondents were as to the interpretation and role of religious headwear, almost all agreed that full coverage of the face in the *burka* was unacceptable, no matter how professional or qualified the wearer might be. It should also be mentioned that the *Folkekirke* has been understood classically as a general public institution with only very few possibilities for requiring religious loyalty from anyone but the bishops, deans and pastors. The respondents draw inspiration for this from changes elsewhere in Europe. But this too seems to be changing; it might be possible in future to formulate religious loyalty requirements of others working within the *Folkekirke*.

The question of holy days was an interesting one that addressed the Lutheran heritage and the established ways of the majority. Lutheran secularism is reflected in work and vacation regulations and traditions covering school and work. The general holidays are closely linked to the Christian calendar, which enjoys practical protection. The holy days of minority religions, such as Ramadan and Rosh Hashanah, receive no similar consideration. There is a tendency among respondents from minority religions towards suggesting a freedom to agree on the distribution of religious holidays on an ad hoc basis. Each according to their religion could arrange their work-hours, and Christians, Muslims, and Jews might even benefit mutually from covering each other's holidays. Such a freedom to change the public holidays may not gain general and popular support, but it is nevertheless a clear expression of the 'flexibility-with-job-security' brand of public business typical to Denmark.

Overall the current state of religion on the labour market clearly reflects changing social norms and legal landscapes. Practical solutions have been reached through individual and employer driven accommodation based on a principle of fairness. The focus on 'identity politics' of the different religious attitudes in the labour market seems to be gaining much attention. However, this *modus vivendi* is no longer considered sufficient by several of the respondents. The proper degree of consideration for religious identity remains contested by the different religious communities. The danger it seems is that religious belief or corporate loyalty will gain superiority as a protected right of organisations on the labour market and to a destructive degree downplay the importance of protecting against other discrimination such as class, gender, professionalism, sexuality and so on.

9.1.c Religion in the Public Space

Many of the issues regarding religion and the labour market seem to be similar or comparable to the problems of religion in the public sphere. A number of the key agents and organisations are the same and many of the sub-issues from the other areas of interest feed into the question of the public and private, sacred and secular. However, issues and concerns in the public sphere are less likely to be covered by general national legislation and case law than the other areas. Political norms, identity concerns, and constitutional and media traditions play a more important role.

In the RELIGARE focus on tensions and potential conflict, the public sphere is the most likely place for such conflicts to unfold. This is not only where we meet each other, this is also a space that most claim access to and acceptance from. This is the natural place for political norms to be expressed and here debate will focus on the circumstances we share, the values we must discuss, and the commonalities that everyone must tolerate. In order to give structure to a debate about the Danish public sphere we suggested a tentative analytical diagram of two spectra of availability of symbols and exposure of secularism respectively. At the one extreme of the one axis there can be no symbols in the public sphere and at the other every symbol is allowed. On the other axis, the one extreme is a secular public space where none of the religions are present, and at the other extreme is a public sphere where religion is welcome and where everyone is allowed and allotted their say. At the centres of each these axes, we find the neutral positions. Within such a diagram, we find the possible positions that frame this complex debate.

Perhaps the most common concern regarding religion in the public space is the public tone and the public discourse. Dominant Lutheran secularism, traditionally understood as a neutral or benign position, is questioned by Christian minority representatives and the leaders from other religious groups. Yet the evidence of the Christian tradition, its history and heritage is visible and even influential everywhere. Church bells ring at least every Sunday morning, churches are a part of every small town, Christian names are common, Christian references are frequent in literature and media, and although most people call themselves ‘cultural Christians’ the *Folkekirke* enjoys an 80 % membership rate and most of these members have incorporated Christian holidays and celebrations into their lives. That said, the Christian respondents see a marked reduction in public Christian virtues and voices and in general they fear for the continued role of religion in the public space.

The reason for this has to do with the tone in the struggle between the religious and the secular. Religion nowadays enjoys a popularity and attention unprecedented these past 50 years, yet the religious values are increasingly being scrutinised in the media and in the public. This continued contestation has an impact on public religion. The Jewish minority no longer considers itself an undisputedly accepted community, making up part of Danish society, as they did 25 years ago, and is now feeling somewhat alienated. Representatives of the Christian ‘majority’ feel more ‘religious’ and less cultural and national than before. A Danish Muslim converts and imam reflects on the need to mould and express religion in a new context and to build bridges between different parts of society.

Nevertheless, the secular seems as important a bulwark as the Evangelical-Lutheran heritage for the Danish understanding of religion in the public space. As the Catholic advisor reminds us: just as we may be social without being socialist or national without being nationalist, we may be secular without being secularist. The secular is a distinction and not a separation, and according to some of the respondents, this is a product of the Lutheran Christian mind-set. Christianity is understood as promoting freedom and freedom is the hallmark of the secular ideals. In the public space, being secular is an inclusive argument that addresses itself to the religious argument. The *Folkekirke* continues to enjoy normative gravity, and more or less ‘secular Christianity’ is considered a public good that despite its widespread appearance excels by knowing when to limit itself in the public space. Danish society must have a number of common and crucial public service institutions where religion remains neutral and a non-issue. Among these are the municipality, the hospital, the public schools and many of the other welfare institutions.

Some of the fundamental problems arise when we start considering symbols in the public space. As a general trend religious symbols and headwear are considered perfectly acceptable in theory by the respondents. Symbolism as personal expression is widely tolerated, but there are serious difficulties about where to draw the line and how to receive and understand the symbolic expressions. Indeed, much of what seems a symbol to others in fact holds little symbolic value for the wearer and many of the symbols actively communicated go unnoticed in the public. Symbols representing majority Lutheran secular culture, such as the cross on the

Danish flag, are hardly perceived as religious, whereas minority symbols are predominantly interpreted as religious even though they may also be custom, fashion, tradition, empowerment or protest. Religious dress codes are in general seen as very strong symbols, also in the general public, attracting very much attention. We see the strong confrontations in this field as running between strong symbolic languages. Since symbols work as communication, the *meaning* thought to be embedded in them is often only discernible to those who know or agree, while those who disagree only see the provoking contrast. As such, certain headwear may mean freedom of religion or expression to one respondent while it is interpreted as oppressive and deviant to the other.

One of the other serious conflicts presented in the interviews comes as a consequence of the legislation banning the wearing of religious symbols in the judiciary. Enacted in 2009 without any practical cases having been experienced prior to it, the law is considered 'symbolic' legislation, seen as a response to the perceived symbols. A secular female union leader considers the 'burka-problem' a 'pseudo-problem,' while lawyers and judges alike argue that the law will never be recognised as applicable.

Another concern regards places of worship. What goes for symbols can also be seen at places of worship. A symbolic interpretation of the places of worship in the public sphere is of course legitimate and to some extent appropriate. However, it must be maintained that religious buildings such as mosques and churchyards are less of a symbolic and aggressive intrusion into the public and more of a necessity or utility needed in religious life. The building of mosques, the upkeep of churchyards, and the closing of churches have received considerable media attention, and the fear of 'foreign' financial and spiritual influence has dominated the discourse. A young female Copenhagen Mayor of Integration has established a council of cooperation with the Lutheran Bishop of Copenhagen, the Jewish Rabbi and an imam in order to contribute to a prevention of violent clashes between radicalised members of their communities. The involved and interviewed members consider this very favourably. The mayor also underlines the need for a less biased education on religious issues.

The last of the major concerns in the public space regards the issue-complex of religion in schools. In Denmark, this is a concern both in the public schools and in the religiously oriented private schools. In Danish public schools 'Christian Knowledge' is taught as an ordinary exam topic at all levels. There is a legally established opt-out possibility, even though the subject content covers not only information about Lutheran Christianity, but also about other Christian creeds and other world religions. The topic is in some corners still seen as a privileging of the majority belief tradition, and is beginning to be questioned, as is the wearing of Christian religious symbols in the public space. But no serious demand for banning such symbols in public schools has been voiced. Free schools with a religious ethos have been seen as central to the plurality of schooling in Denmark and are a very old tradition with both religious and political impact. Such schools must meet the general goals for primary and secondary schools in Denmark, but they decide themselves the planning of the curriculum in order to reach these goals, and they are allowed to supplement them with daily prayers and so on. Recent legislation requires these schools to prepare for participation in a democratic society. Such legislation is generally challenged by the school leaders, but is not discussed much in our interviews. In addition, some political parties in Denmark think that religious schools in particular threaten social cohesion, while others see the plurality as ensuring it.

A final point is that legislation is apparently becoming more symbolic. It is addressing matters of the courtroom that have to do with the protection of values that are of no concern to the business of the courts. In consequence minorities are beginning to opt out of the civil legal system. The alternative dispute resolution of the religious courts by contrast becomes a forum where the religious identity is not only welcome, but is encouraged and reinforced. We see a dual creation of new identities; there is in effect a negative targeting in the public courts (and in legislation, in the media and in public debate) and a positive affirmation of religious identity in the religious institutions. As such, addressing religiously coloured mediation becomes a performativity symbolic confession.

In sum, in order to appreciate the nuances of the debates on religion in the public spaces of the courts, the schools and the media, we need to see the secular in relation to the religious rather than in separation from it. In Denmark, secularism as a political programme rests on the ability to see distinctions in the intertwined nature of our institutions. Equally, we need to see the spectrum of symbols ranging from those that truly express the very core values of society to the symbols that truly challenge these values. It is therefore important to remember that there is little agreement on what the core values are in Denmark, which is what sparks most of the basic tensions. As with several of the other concluding observations, there is a definite contesting of religion in the public space.

9.1.d Public (State) support for religions

State support for religions in Denmark can conceptually be divided into (i) direct and indirect economic support, (ii) administrative and educational support, and (iii) support with regard to status in the Danish society. In practice these are often correlated, but the distinction is important, especially when mapping out majority domination and possible discrimination of minorities.

Historically, all religious communities in Denmark were established on the basis of private funding and later on a system of natural economy. During the 20th century the economy within the *Folkekirke* changed from being based on natural sources and subsistence to being based on church taxes. From the late 1960s the pastors within the *Folkekirke* received equal salaries, no longer depending on the size of the vicarage. These taxes are paid by the members of the *Folkekirke*, who still make up the vast majority of the population. They are collected by the state together with taxes for municipalities and state purposes. In this way, the state offers a direct organisational and administrative (and in this respect also indirect economic) support to the majority religious community organised in the *Folkekirke*. The state further grants direct economic support through the state taxes, paid by all taxpayers independent of their religious affiliations. One of the historical arguments for this support is (partly) that it serves as a reimbursement for the expropriation of the bishops' land at the Reformation in 1536, which required the state to pay the salaries of the bishops – and for further expropriations of church land in 1919. The reimbursement argument extends to cover payment by the state of 40% of the pastors' salaries. Finally, direct financial state support is seen as a compensation for civil administrative obligations performed by the church, especially the keeping of the civil birth registration and the upkeep of all public churchyards.

Eleven explicitly recognised religious communities keep civil registration books and have access to organise cemeteries for their own members. Neither they nor any of the other religious communities receive any direct financial support from the state for building maintenance or anything similar. Nor can the state collect their financial gifts to the church. Indirectly, however, the members of other religious communities have the possibility of tax deductions on their personal income taxes of payments to a religious community. This does not apply to the *Folkekirke*, but some of the related religious ethos organisations are exempt. Other religious communities than the *Folkekirke* are exempted from business taxes, which constitutes a further indirect support, whereas the *Folkekirke* pays value added tax.

This economic pattern of support demonstrates an incremental model. In practice it has – not surprisingly – privileged the majority religious community. The existing highly blurred mix of state administration and established church finds little support among the leaders with insight into the system. It is a paradoxical model in that it is confusing, and most likely indirectly discriminatory, but nonetheless it seems so far to have a relatively high legitimacy amongst taxpayers. Generally payment of income tax can be said to have high legitimacy in the majority of the population in Denmark, and payment of church taxes may benefit from this general attitude. Practical administrative customs, and loyalty towards – or limited criticism of – the religious and cultural tradition may also play a role, since resignation from membership for economic reasons has so far been relatively limited.

A Catholic religious respondent claims that if the Danish *Folkekirke* had not had this tax collection privilege, it would have gone bankrupt long ago. The existing model was supported by a few respondents, who still uphold a reminiscence of their childhood relations between people and church, or by respondents who would fight to re-establish Danish society as a Christian society. The large group in the middle, who would normally have supported the model, is increasingly embarrassed by its unfairness towards other religious communities or towards how it is seen abroad. The impression from the interviews is that support for the Danish church model of finance is on the wane.

In Denmark a number of the broadcast media are publicly owned, but run by appointed boards under government oversight and financed by licence fees. Generally these cover religious news, but specifically the radio channels cover majority religious issues and church services on a daily, regular, and weekly basis. However, this is seen as part of the public service requirements, and the state in no way influences media programming and editorial decisions or has mandatory coverage demands.

Media attention to symbolic religious performance by members of minority religious communities has been considerable over the last decade, where especially the Mohammed cartoon crisis (2005-06) has produced thousands of articles as well as media and other public discussion. By comparison issues concerning economy or the economic privileging of the majority belief community and indirect discrimination of minority belief communities have been insignificant. A few of the respondents, among other a female protestant theologian with a significant public profile, defend the majority privileges in a rather sweeping way; in her media performance she has been very critical of especially Islam and symbolic religious performance. Economic privileges for the majority religions have led neither to case law, legislative change, nor substantial media debate. In this respect, where no 'fear of small numbers' exists, the concern is stronger among the majority about minority religious communities and potential foreign financing of their institutions, such as mosques, schools, and so on.

In addition, there is a legal case which was briefly related in the interviews regarding a concern in the public debate. Being accused by a government minister of being in favour of stoning women, a Muslim public leader had indicted the minister in a defamation case which was decided in favour of the Muslim. His attorney fees were so high; however, that they laid a serious financial burden on him, whereas the minister's attorney was paid by the government office because the minister spoke in office. The case sparked popular support in favour of the Muslim and a movement formed to collect donations to help pay his attorney fees. The case points to a practical imbalance between freedom of speech in principle and the position of government power in the public sphere.

In sum, the existing differential treatment results in freedom, but not equality in religious law. Yet there are significant arguments for upholding it. In spite of the growing internal dissatisfaction with the model the general feeling is that the European Union or the European Court of Human Rights should not dictate policy or force change. Solutions for future equality in this area should be found on a local level. In its programme of governance, the present government has announced that a commission will be appointed to present an overview of the problems and possible solutions.

The traditional religious minorities would of course be pleased to be given financial state support for establishing or maintaining their buildings, but they do not want the state dependency that the *Folkekirke* has. At the end of the day they may prefer to be self-sufficient. However, they do want fair treatment with regard to, or even support for, the construction of their own buildings. This has not always been the case. Small or new minorities, recently arrived in Denmark, often have lower educational levels than the majority society and may suffer from a lack of professionalism organisationally, linguistically, and in other respects. This could be a scenario where the state might offer help and support in order to compensate for the indirect economic discrimination of minority communities, and in order to uphold the political legitimacy of the economic and legal privileges offered to the majority community.

9.2 Concluding reflections on the general basic tensions

The main question in this survey is whether the tensions and conflicts between basic rights with regard to religion are on the increase. The aim was to see how normative structures hold deeper, implicit religious and cultural biases and how the legal institutions and agents are dealing with them. Both these questions are concerned with empirical evidence of tensions and normative reflections on what needs to be changed. In the report we have provided evidence of the specific instances of basic conflict in Denmark and in the various sections we have summarised and concluded on these. The general basic tensions all relate to the following: individual and collective freedom of religion; collective religious freedom and other human rights; religious freedom and public order including security; and finally formal equality before and in the law. Under the last-mentioned lies more substantive equal treatment, understood as negative freedoms of religion contra positive freedoms of religion. Although these tensions are analytically separate, the conclusions below will demonstrate that in Denmark they are intertwined and they seem to point to profound and culturally deep-rooted tensions that are perhaps more socio-political challenges than they are strictly speaking legal problems.

9.2.a Possible tensions between individual and collective autonomy regarding religion.

The Danish system grants total protection of individual freedom of religion. Nobody argues that there should be any problem with the individual right to have, to adapt, or to change religion. On the contrary, the freedom of religion for people whose religion is organised *outside* the *Folkekirke* is as secure as is practically possible. Although the state will only approve religious organisations for marriage registration and tax exemption if they uphold common sense mandatory organisational minimums, not even such an approval is compulsory. In addition, there are no requirements regarding organisational structure or public access, and religious communities are not even obliged (as are other organisations in the society) to inform their own members or the public about their economy or their legal basis. Thus transparency and accountability are not concepts that are compulsory for Danish religious communities, so their freedom must seem striking to an outsider.

However, when it comes to the 80% of the Danish population who are members of the *Folkekirke*, there is no collective freedom of religion, if that concept means freedom from state intervention in religious and organisational matters. This is in fact the current debate in Danish society, namely, that there is no legal or *de facto* clarity about a decision-making authority or internal autonomy in the *Folkekirke*. It remains to be seen to what extent the *Folkekirke* will have administrative autonomy to decide for itself the core of religious freedom.

In addition, it is necessary to reflect on the numbers of members in the Danish *Folkekirke*. Membership here is still seen as a majority norm. To be Danish means by default to be part of the *Folkekirke*; other religions and religious communities are seen as increasingly alien. Furthermore, the *Folkekirke* contributes to general state structures, and sociologically speaking holds influence on certain matters outside the framework of other communities.

As can be seen from the interviews, this is one of the most heated topics in Danish law on religion and some sort of autonomy will obviously be the result. As the Danish model is changing, it will be of great interest to see if an independent Lutheran transformation is possible and if Denmark will produce the true, religiously neutral, soft secular model to which it has been aspiring since the 1849 constitution was introduced.

The governing principle of future models of state, religion, and church relations will be to minimise the tension between collective religious freedom and other basic human rights within such a model. Currently in Danish society there is a growing concern about the religious claims and demands made by organisations and communities on the believers, members, and followers. The freedom to decide individually is on a likely collision course with the collective concerns.

9.2.b Possible tensions between collective religious freedom and other basic human rights

Tensions between different sets of rights regarding religious clothing in the labour market appear to be decreasing. The freedom to work and the freedom to believe are being resolved by the collective powers in the labour market and there is evidence to be optimistic. However, as businesses move further towards accommodation, media and public discourse seem to frame another possible tension. The deeply rooted question being politically explored by certain parties is whether wearing the burka or the hijab is really the result of an individual religious understanding, and if so, should the general public then accept them as a common norm in society – or should the general public even require an open-mindedness not only to other religious customs but also to clothing? As people voice their opinions, it turns into a second-order problem, for should the general public be tolerant towards also those who are not so tolerant themselves? Most feelings and reflections in these interviews have to do with whether or not women and children can enjoy the same amount of individual freedom if the religious communities gain greater autonomy. In this context, it is worth noticing that it comes as a surprise for many of our respondents that they should reflect on family law in relation to religion and secularity. In a Danish context family law and labour law only indirectly have to do with religion, and many wish it to remain so. It is our assessment that we have seen only the beginnings of conflict with regard to religious norms on both the religious and the secular labour market.

Freedom of speech is well established in Denmark and holds strong political sway in Denmark. However, there is a concern when weighing freedom of religion against freedom of speech. The defamation case against a government minister, which was decided in favour of the Muslim (see p. 137), illustrates a socio-economic bias against the protection of freedom of religion. The structural and financial pressure seems to be discouraging for minorities. The case is unique in Denmark and has received a lot of media and political attention; it appears to point to culturally deeper tensions that again are more socio-political than legal.

9.2.c Possible tensions between religious freedom and public order and/or security

The same fear of pressure from religious groups towards individuals was very obvious when it comes to possible conflicts or tensions between religious groups. Most of our respondents refer to tensions between Muslim and Jewish youngsters and explain about initiatives taken in order to counteract such situations. However, conflicts have not reached a level anywhere that constitutes a public order/public security situation.

Turning the issue around, there is evidence in the interviews of a concern that religious problems are misconstrued or misunderstood in the public debate. This has specifically to do with Islam and the cases of terrorism seen both nationally and internationally. Although there is no evidence of a legal misconception of Islam as terror and a threat to security, such is clearly implied at many levels of the public debate. In that regard, however, Danish examples do seem to be neither special cases nor the most illustrative ones.

9.2.d Possible tensions between formal equal treatment of religious and non-religious individuals and collectives before the law and more substantive equal treatment.

A society such as the Danish does not give much space to negative freedom of religion. The argument that individuals have the right to live in a social and public context without any religious influence seems to be uncommon. A public sphere without religion seems well-nigh impossible in Denmark. Of course, you can exempt your children from religious classes in elementary school even though these are non-confessional, and you do not have to watch the Queen address the nation every New Year's Eve and ask for God's preservation of Denmark each year. The cross on the national flag is an old crusader symbol, the passport with a picture of the crucified Christ is part of the national cultural heritage, and the major religious Christian celebrations remain public holidays and are supported by the state through special legislation.

There are of course voices in Danish society that wish for more decisive freedom from religion. Interestingly, however, they are not represented among our respondents (even though we had expected a couple to respond thus). This reflects the degree to which Denmark is still a country where Christianity is supported by public opinion. Whether or not this has to do with the underlying confessional background or, more likely, with the fact that the *Folkekirke* has not been involved in many revolutionary conflicts in the past, is an open question.

9.3 Danish conclusions of general relevance for the national and the European public

The most general conclusion from the Danish study is that there are various but not overwhelming tensions and conflicts in Danish society in relation to both religious and legal norms and their interrelationship. These are not easily identifiable ‘basic tensions’ in the way that the concept has been used in the RELIGARE context. The respondents do not identify issues concerning freedom of, and from, religion as a basic conflict, especially when looking at distinctly Danish aspects of general relevance. There are of course specific conflicts between individual and collective autonomy; conflict between collective religious freedom and other human rights; tensions between religious freedom and public order; and some tension over a disproportionate lack of equality, both formal and substantial. But legal norms and instruments do not seem to be the most appropriate tools to solve these conflicts. The tensions in Denmark cannot be seen as human rights conflicts where individual or collective human rights are under pressure. The conflicts and tensions illustrated in the report concern substantial, complex, and even paradoxical conflicts, debates, or tensions that reflect the nature of the Danish state and the conditions for religious belief and practice in Danish society. The sentiment is that just as these relations are intertwined but distinguishable, so are the conflicts. There is a general understanding, even among religious minorities, that Danish society with its inherited structure also in religious matters is the given, common society, which history has passed on to this generation. It has to be reformed softly, slowly, and through public deliberation in order to maintain the values worth protecting and to change what needs to be changed. The historical roots are acknowledged by the respondents and it is recognised that this is how change in Denmark has always come about, even from before the 1849 constitution.

A metaphor illustrates how the basic conflicts are as intertwined and historically rooted. In Denmark, the three core governing institutions – Parliament, Government and the High Court – are all housed in the same castle, Christiansborg, in the centre of Copenhagen, which is also where Queen Margrethe II has her representative rooms. This is the only example in the world of one centre housing all three institutions – and a monarch to boot! Moreover, closely associated with the castle is the castle church, Christiansborg Slotskirke, where a service is held on the morning of the annual inauguration of the legislative and parliamentary year. Expanding the picture even further, it is worth noting that the current castle, built from 1906 to 1928, is the fifth castle on the grounds. The first castle dates back to 1167 C.E. and the ruins of this are still visible beneath the current walls. The area takes on a metaphorical air, for the people are assumed to be as homogenous as the governing order. Benedict Anderson (1983) has conceptualised such a situation as an ‘*Imagined Community*’; Warburg, Gundelach and Iversen (2008) have in their research on the sociological representation of the same used the concept *common mind-set*; and Warburg (2009) has added several reflections on how the original American concept of *civil religion* could be used to understand the Danish religion-model. In this report we have more often used the concept *intertwinement* (Christoffersen 2006), since it has been our aim to show the current order of Danish soft secularism. The three branches of government, plus the monarch and the church co-exist in one castle which stands on the remnants of old. Thus understanding Danish conflicts must entail an appreciation of the associated and intertwined nature of Danish soft secular governance, the virtue being not separation, but a knowledge of the differentiation of powers of state and of religious matters.

Despite the historic explanatory power of the metaphor and the assumed stability of the intertwined soft secularism, there is in the interviews an almost urgent awareness that things are changing. As the walls begin to crumble a little, the historical model may become porous. Some people – not among our respondents but in society as such – have even compared the Danish law on religion with the Berlin Wall in early 1989. Cracks in all three relationships between the state, the *Folkekirke*, and religion in general begin to appear. The current conflicts reveal in a paradoxical way the basic tensions that were assumed to have been solved, yet at the same time they demonstrate that the nature of the order was inherently unstable.

The list of unsolved questions is long. What role will the state play in the future with regard to religious communities? Will the state become religiously neutral? Will religions experience equal treatment? Will there be a growing conflict between individual and collective freedom of religion? Will the public sphere be a field of deliberation of religion, or will it become increasingly secular with growing European influence? Or will we witness a growing tendency towards renewed responsibility instead of renewed conflicts also within the triangle of public authorities, the *Folkekirke*, and other religious communities?

The labour market has become increasingly concerned with demanding corporate loyalty from employees. If religious employers are able to demand further exemptions from the consideration of individual human rights under the guise of protection of religious freedom, this may lead to an increase in employer prerogatives and in the management rights of these employers. This is especially relevant in a European labour market, where welfare provisions are already offered by faith-based employers. Such developments may end up limiting individual freedom of belief.

We seem to be witness to the paradox of a paradigm in shift. Political, legal and religious arguments that were strong at the time of the 1849 constitution do not seem reasonable in the face of contemporary challenges. This goes not only for the Danish solutions to the Danish constitution, but also for attempts at importing European standard solutions. The potential paradigm shift follows from the challenged position of the existing governing order. The norms that used to be clear identifiers of majorities and clear separators of minorities have themselves become intertwined and the result is confusion. Muslims now clearly identify themselves according to the social norms of the *Folkekirke*. The norms of separation have ceased to operate and are being supplanted by a new interpretation becoming like the *Folkekirke*. This in turn means that the standard of belonging to the *Folkekirke* has been emptied of its explanatory power. Such a challenge to the historically dominant legal, political and cultural model of relations between the state and the dominant Protestant Church may lead to a new model, the content of which is at this moment not clear.

Many of the respondents still think that the absolute freedom of religion that religious communities now enjoy is mostly relevant for small minorities who are members of other communities than the *Folkekirke*. In a more pluralist society, requirements regarding rights and possibilities for not least women and children and other vulnerable groups *could* be, but will not necessarily be, framed by law and on an equal footing. In such a scenario, the future opens up for a more equal treatment of religious communities in Denmark, but also for more state influence on the individual religious community with regard to openness, transparency, and accountability.

It is also possible that a future Danish model will grant *internal independence* to religious communities instead of applying a concept of full autonomy. The Kingdom of Denmark includes both Greenland and the Faroe Islands, and the Danish constitution not only guarantees seats for Faroese and Greenlandic members in parliament, but has also established self-determination for these countries which has been continually expanding and developing. In this respect, the idea of coexisting and overlapping – i.e. intertwined – legal systems is already being practised. It might be possible to apply a parallel idea of coexisting norms in the religious sphere. This is still considered alien to Danish society and most arguments for full autonomy for religious communities, applying parallel legal orders, still seem far off in Denmark. This becomes especially clear in relation to family law. In spite of this, most respondents are open to

pragmatic solutions and possibilities, and there might be a future for religious dispute resolution mechanisms, legitimised through concrete needs among users rather than theoretical approaches from the religious communities.

One possible development for the future is that Denmark may become an even more secular state. Equally likely, however, is the possibility that the common public space might also become more religious, and be based on a general acceptance of individual freedom of religion as well as a growing religious pluralism in society with a presence for a more differentiated picture of collective freedom of religion. There is no doubt that religious communities and especially religious leaders will play a more public role than has been the practice before in Denmark, voicing religious arguments and religious norms. It is also our understanding that the Danish model of teaching religion in the public school as a common school subject will be broadened. The consequence would be that most pupils would know more about all religions from the perspective of an academic approach, whereas in-depth knowledge about one religion will be taken out of the public school system. Thus instead of an increasing secularisation a rather different yet possible route in the future might be the opposite: a new form of *interconnected responsibility*⁷ between public authorities and religious communities, including the *Folkekirke*, and thus responsibility not only for the collective positions, but also for the individual needs.

It has surprised us to realise that there is a higher acceptance of religious identity on the labour market than the High Court cases ten years ago showed. If this is a common trend in society, it also means that religious organisations are being allowed to voice religious claims regarding loyalty to a higher degree than we would have expected. This is something to be considered more generally by actors in the labour market and beyond. Some of the legal cases, however, are being decided on the basis of a more legalist and formalist understanding of what is acceptable. This discrepancy between an emerging wider acceptance of requirements of religious loyalty and stricter legal limits to demands for loyalty (reflecting a more secular ‘spirit’ of labour law) seems to present a remaining area of conflict.

Finally, as already pointed out, it is our understanding on the basis of these interviews that the existing state-*Folkekirke* model is under severe strain. There seems to be a general expectation by most of our respondents that the *Folkekirke* will acquire a more distinct organisational structure, possibly resulting in a more religious, more confessional identity. The Danish model of soft secularism with a discernible intertwinement of state and religion is under pressure, because it is basically already in conflict with its own constitutional basis. Many voices both from majority religions and from secularist strands argue for a change. Interestingly, voices from minority religions are either silent or support the existing model. They may want more equal treatment, but they do not want to fight a change at the expense of the majority church.

The secularist opposition to the existing relation between the national church, the monarchy, the state and the public elites has become stronger. It is being minted from specifically secularist organisations, but what carries more weight is that the generation under forty is less than ever interested in the *Folkekirke*. Its unwillingness to become engaged even at the most basic level is having a major impact on the *Folkekirke*, and this is why the soil under the old institutions seems to be eroding.

There is no doubt that the upkeep of the existing huge state involvement in the *Folkekirke* had to do with the Lutheran heritage. The interviews show that what happens currently in old Lutheran state and church systems elsewhere in Europe may also happen in Denmark. There is a tendency towards change, but not necessarily to the European Catholic and Calvinist models of state neutrality combined with church autonomy and ecclesiastical laws and courts. Many in the old Lutheran contexts would still argue that law is basically secular, but that precisely this

⁷ This concept is suggested by Hanne Petersen.

secular law is obliged to establish room for freedom of religion, and they therefore strive to find other solutions than hierarchical autonomous churches with independent and parallel legal jurisdictions of their own.

It is our impression from the introductory remarks to our interviews that the interviewed elites to a certain degree accept that the European Union system has an interest in religion in relation to other policy areas. To a less remarkable extent they also accept that churches and religions ought to engage in these areas and they of course know that European Union politics and European Union law indirectly influence churches and religious communities.

However, several of the respondents are not interested in the European Union outlining policies in the field of religion, church, and state. These questions are seen as national policy matters, based not only on formal arguments such as lack of competence, but also on a material stance to these topics as being part of the identification of the national state. There is a long-standing and well-known scepticism towards the European Union in Denmark. This spills over onto religious issues and conflicts which in a Danish context are understood as local or national issues of relevance for individuals. Thus the European institutions, and especially the courts, should consider these traditions and how they influence the understanding of the legitimacy of European initiatives and decisions in local contexts.

9.4 Possible recommendations:

1) In the interviews we have spoken to a Muslim imam, the Jewish Chief Rabbi, the diocesan bishop and the Mayor for Integration, all from Copenhagen. Independently of one another they mention regular dialogue meetings, which the Mayor has set in an institutional frame. Although there are not that many significant conflicts among the groups, it seems that voicing and addressing them has helped to resolve inter-religious conflict and to harmonise mutual expectations between the municipality and the religious communities. The key to their success, it seems, is addressing the actual matters at hand rather than discussing problems of doctrine or the Israel-Palestine conflict. It is unclear, however, whether and how this city forum could work at a national level, and there is little evidence that any serious attempts have been made.

2) Generally strengthening interreligious dialogue is recommended but it should not be especially privileged in comparison with dialogue among other civil society partners. The widespread fear of dialogue among the religions should be assuaged, as the experience mentioned in 1) justifies it.

3) In employment there must be an accommodation which takes account of the reasonable demands of the various religions. There is enough evidence from around Europe to indicate that this can be achieved and that it can improve labour relations.

4) It is necessary to clarify the formal status of the *Folkekirke* and the other religious communities.

5) In such a context it is necessary to ensure that a balance is maintained between the rights of the religious community and the rights of the individual members.

6) In an environment where the tendency is towards expanding employers' expectations of their employees' loyalties, it is important that the rights of the individual are not impugned, also when the employer is a religious organisation.

7) Arising out of the interviews come a demand for greater transparency in the governance of religious organisations and communities and faith-based organisations. Many already make public their financial, governing, and structural decisions, but it would be in the Danish tradition to make public as much of this information as possible. The legal instruments are already available and the implementation would be straightforward. In addition, it would empower the individual member, it would open up religions to the public, and it would counteract rumours and suspicions about foreign influences.

8) Finally, the EU principle that the governance of religion is a responsibility under the member states and not the Union needs to be reiterated.

Annex I: The Danish Respondents with short Introductions

As pointed out in the Introduction, all the respondents speak in a personal as opposed to a representative capacity, unless otherwise mentioned below

Elites from a political, administrative and judicial context:

AMA, female, 27, elected Mayor of Integration in Copenhagen city council, representing the Social Liberal Party. BA Political Science & BA Law. Studying MA Law at University of Copenhagen. Single. Father is a member of the *Folkekirke*, but not being baptised as a child, she chose baptism and confirmation simultaneously at the age of 14. Recently decided to cancel membership of the *Folkekirke*.

PVB: Female, 36, Member of Parliament for the Socialist People's Party; Spokeswoman for among others church affairs; Once mentioned as possible future Minister of Church Affairs, but instead led her parliamentary group after the 2011 elections. Theologian by profession. Married and mother of two small girls; Born into working-class family. Attends the *Folkekirke* on a regular basis.

MB: Female, 54, new Member of Parliament in the 2011 election for the newly-founded Liberal Alliance Party. Vice-chair of the Parliamentary Committee for Church Affairs. MA in Political Science and MA in Philosophy. Former editor of major newspaper in south-west Denmark, former pro-rector at Aarhus University; former director of programmes with Danish Broadcasting Association. Married with 3 grown-up children. Lives in the same parish where she grew up (and mentions that as something which was common earlier, but now is rare). Attends the *Folkekirke* on a regular (monthly) basis.

TB: Female, 56, High Court judge and chair of the administrative equality body and thus by profession a lawyer. Speaks on behalf of the judiciary. Civil marriage, 2 children, not baptised. Born into working-class family, first academic in family. Baptised as child and member of the *Folkekirke*, wants to uphold that relation, attends church at Christmas and on family occasions. Sees the *Folkekirke* as central to Christian values in society.

CS: Male, 60, civil servant in the EU Commission. Raised in Switzerland, educated as economist/political scientist there and in Denmark, after which he joined the Danish Foreign Service. Married to wife with Greek background. Grandfather a pastor. Baptised as a child and upholds his membership of the *Folkekirke* to relate to his Danishness as a sort of tribal culture. Has served as a member of church councils with Danish Church Abroad. Sees himself as rooted in a combined secular/humanist and Christian value tradition.

Labour Unions and other national independent organisations

BP: Female, 50, chair of the labour union for social workers in the municipalities, working among others with practical integration of migrants and questions of religion in this context. Engaged in social politics and the welfare state and is herself a social worker herself. Background in lower middle-class with traditionally gendered division of labour. Baptised and confirmed, not married (neither legally nor religiously). One of her children confirmed, the other not (personal choices). Has cancelled membership of the *Folkekirke* due to the use of money on buildings rather than a socially-aware and open institution.

JC: Male, around 40, director of the Danish Institute for Human Rights. Professor of Law. Professionally focused on human rights in general rather than freedom of religion. Protects his religious identity as being private. Baptised and confirmed aged 15 after being inspired by an

adult. Left the *Folkekirke* some years ago and joined a different religious community, but has not changed his view of society. Thinks that the general legal environment understands itself as hard-core secular with clear distinction between religious and political norms, but has realised that state, law and religion are much more intertwined than would be acceptable in other countries.

Elites from churches and religious communities

PSJ: Male, 52, elected Bishop of Copenhagen (primus inter pares). MA Theology (Copenhagen) and MA in Theological Understanding, Industrial Society, University of Hull. Pastor in *Folkekirke* for (Danish) seamen in Hull, England, and chaplain to the Danish Royal Navy in Copenhagen (thus also taking part in military operations). Then pastor in Copenhagen parish. Theologically leanings are Lutheran, Reformed, Anglican, and interested in Roman Catholic theology and practice. Married with two grown up daughters.

NB: Male, 36, first hospital imam at the National Hospital in Copenhagen (Rigshospitalet). Coordinator for the Ethnic Resource Team there and for three other Copenhagen-based hospitals. Born to Pakistani immigrant parents in Denmark. Father taxi-driver, mother interpreter, parents later divorced, mother deeply involved in Pakistani religious milieu, siblings all academically-trained after Danish school education. Six years of Islamic Theological training from Islamic International University in Islamabad. Supplementary studies for Muslim Chaplaincy in Leicester, England, studied Muslim Counselling. Has been imam to prisoners, teacher in Muslim free schools, and motivator of Islamic-Christian Study Centre, Understands Islam as a dynamic way of leading life based on experiences and on practice and identity more than as a religion.

AWP: Male, 57, functions as imam in Nørrebro, a popular Muslim area of Copenhagen. Book seller, relief worker, free intellectual. Married, father of four children. Born into a non-religious Danish-Finnish working class socialist family in the countryside in north-eastern Jutland. Baptised and confirmed in the *Folkekirke*, but left the church at the age of 16. Studied Buddhism, later followed Hinduism, and was part of the post 68-generation. Has always been religious, chose to become a Muslim at the age of 28 in 1982 before Islam became a force in Danish public life.

ET: Male, 79. Central voice among Roman Catholics, including an internet based news radio. Retired from teaching in Catholic school and then spent 2 years studying biblical theology in Paris. Former well-known politician for the Liberal Party, former chairman of the National Ethical Council. Active in the National Council of Churches in Denmark. Married, children and grandchildren. Born into a family with a Catholic mother and grandparents. Does not see himself as a minority – “Catholics make up half the world’s Christians.”

BL: Male, 65. Rabbi in the Jewish community in Copenhagen since 1976, Chief Rabbi since 1996. Born to Danish immigrants Ukraine and Lithuania. Parents were refugees in Sweden in 1943. Parents-in-law captured and interned in Theresienstadt concentration camp, freed in April 1945. Himself educated in Denmark, followed by a year in Israel, served in the Danish army and then took rabbi-exam in Israel 1971-76. Married, 3 children raised and educated in Denmark, all now married and living in Israel. 6 grandchildren.

LMH: Female, 50, part-time minister in a Baptist church on Bornholm and part-time general secretary of the Baptist churches in Denmark, based in Copenhagen. Journalist by profession. Aged 39, took Theology degree at Baptist Seminary. Also studied in Israel. Ecumenically oriented. Married, 2 grown-up children, 1 grandchild. Grew up in Eastern Jutland.

Central voices from the public discourse

DN: Male, 36. Independent intellectual. Contributes to media and functions as external university teacher, MA in Anthropology (Aarhus). Published on scientifically-based, humanist Darwinist anthropology. Member of and former press representative for the newly-established Humanist Association. Grew up in Aarhus. Married.

SA: Female, 39. Independent intellectual. MA Law (Copenhagen) MA Journalism, BA Arabic, currently doing a BA Turkish languages along with Islamic art and architecture at Oxford University. Teaches Danish, History and Social Sciences at a Muslim private school. Active in various Muslim organisations, especially supporting building of a mosque in Copenhagen. Family background of Christian, Shia-muslim, and Sunni-muslim (following different law schools). Grown up mostly in Denmark. Sees herself as much more religious than the parents' generation. Follows Sunni-Islam, earlier the Maliki, now the Hanafi law school. Wears religious veil, causing problems as she functions as lay judge. Distinguishes between the use of Shari'a as a norm to follow in private life (which she does) and as a legal code to be followed in Muslim countries.

HOB: Male, 38, Free Church minister, related to, but not part of the *Folkekirke*, Chair of Home Mission (150-year-old pietist missionary organisation) MA Theology (Aarhus) with link to Menighedsfakultetet (a conservative private Lutheran School of Theology). Has taught at both Danish Schools of Theology (conservative, private), former missionary for Danish Israel Mission and pastor in Danish Lutheran church in Jerusalem. A voice from the evangelical wing. Single but in relationship, grew up in lower middle class religious home in Jutland.

KWH: Female, 41. Independent intellectual theologian, editor of Free Press Magazine 'Sappho.dk.' Vice-president of Free Press Society, writer, columnist, and housewife financed by family breadwinner (a rare choice in the Danish context). Very active in the media, member of commissions, organisations etc., active in the Kierkegaard-inspired old-school-Lutheran organisation *Tidehverv* giving voice to theological dimensions of a nationalist approach related to the Danish People's Party. Married, schoolgoing children. Background in a Lutheran pastor's home, father later very active in national politics and a central figure in Danish People's Party as Member of Parliament, a seat her sister acquired after him at the latest parliamentary election.

HC: Female, 54. Recently appointed full-time national leader of Kirkens Korshær, a popular, widely-respected diaconal organisation with focus on supporting vulnerable and exposed people: prisoners, psychiatric patients, suicidal people, junkies, the poor and the homeless. The organisation has 400 employees and 7,000 voluntary workers. It runs soup kitchens, hostels etc, primarily financed through private means and especially through thrift shops. MA Theology (Copenhagen), former pastor and pastoral seminary teacher within the *Folkekirke*. Active in organisations, including chair of Pastors' Association. Married to an academic who also works in the *Folkekirke*. Four children, all under education. Father a pastor with working-class roots, later a bishop. Grew up in an academic home with focus on social needs.

Annex II: Topic Lists Used

II.A. Basic Tensions of Governance of Religious Diversity - By Professor Veit Bader

General Tensions/conflicts between Basic Rights - Item-list for the socio-legal research.

The focus on basic tensions or conflicts between basic rights may be easily misunderstood. Tensions or conflicts between rights are, indeed, normative tensions but not of the kind of ‘normativity’ characteristic for moral philosophy. Quite to the contrary, these are tensions inherent in empirical norms (i.e. norms claiming legal validity) both in International Covenants of Civic and Political Rights or the ECHR as well as in (Constitutional) Law of Member States, whether we call these constitutions ‘liberal democratic’ or ‘constitutional democracy’ or not. In this ‘socio-legal’ part of RELIGARE, we are interested in the empirical way in which Courts and Equal Treatment Commissions deal with them practically, how they argue for – often widely diverging – balancing and weighing up when judging cases in specific contexts and circumstances – and whether and, if so how, these processes are influenced by deeper, implicit cultural biases. In addition, we are interested in how our respondents (preferably also judges and chairpersons of Commissions amongst them) perceive these tensions and deal with them. Last but not least, we are also interested in conflicts that do not end up before the courts (‘non-cases’) and in divergent non-jurisprudential practices and resolutions of (potential) conflicts. We present the items (in all thematic work packages WP3 – 6) in the following order: (i) (empirical) practices (of case law and conflicts or good practices that do not appear in case law); (ii) (normative) what, if anything, should be changed?

1. Tension between individual and collective autonomy. In terms of religious freedoms: tensions between individual or internal religious freedom (freedom of conscience) and collective or external religious freedoms (religious practices and associational freedoms of (organised) religions).

2. Tensions between collective religious freedoms and other basic human rights (ICCP Art. 9,2: “protection of the rights and freedoms of others”), such as: freedoms of speech/expression and anti-discrimination (both with regard to ‘religious speech’ and ‘secularist speech’); protection of essential basic rights of individuals and religious minorities (particularly minors, dissenters, women, ethnic and gender minorities (vulnerable minorities)) within religious minorities and within religious majorities and their organisations.

3. Tensions between religious freedoms and ‘public order’ and ‘security’ (ICCP Art. 9,2: “public safety, public order, health or morals”), **particularly in an age in which security-issues get ever more prominent.**

4. Tensions between (formal) equal treatment (of religions and non-religions) **before and in the law and more substantive equal treatment (if any)** (commonly phrased in terms of ‘negative freedoms of religion’ versus ‘positive freedoms’)

Family Law (WP 3)

1. Basic Tensions in cases in which rules and practices of (minority or majority) religious family and divorce laws and customs are at odds with basic principles of international family and divorce law and general civil or state marriage and divorce law: equality between the sexes and favor divortii (marriage, divorce, custody (and inheritance, excluded in WP 3) [It has already been decided in the RELIGARE project proposal that we do not research cases of conflicts with rules and practices of modern criminal law such as wife beating, child beating,

genital mutilation, honour killing]. Because of the increasing importance which the ‘legal regulation of intimate relations’ has recently gained with issues of same-sex marriage and adoption, we include issues of polygamy and same-sex marriage and the respective challenges and defences of the ‘norm’ of monogamy and nuclear family.

Domains: (i) International Private Law (IPL); (ii) domestic religious law(s) versus state law; (iii) Alternative Dispute Resolution (ADR) (e.g. Islamic Arbitration Tribunals)

Items:

(i) International Private Law (IPL):

(1) In case of difference between citizenship and residence of the persons involved should the legal order of the former or the latter should prevail (or should there be the option of choice)?

(2) If traditional practice and customary marriage- and divorce- and adoption law of religious communities (e.g. in India) is not legally recognised by ‘modern’ (e.g. English) IPL law, how do judges deal with such cases?

(ii) Domestic religious law(s) versus state law:

(1) is there/should there be ‘one civic marriage and divorce law and courts only’ for all citizens/residents and, if so, why?

(2) Is there/should there be the option of religious marriage and divorce law and courts parallel to or as a replacement for civil marriage and divorce law? If parallel, under what conditions and limitations? If religious marriage and divorce laws and courts only, under what conditions and limitations? (Include: voluntariness vs. marriage under duress; freedom of exit (favor divortii); rough equality amongst the spouses (in all types of possible ‘marriages’: monogamous, polygamous, same-sex, PACS (pacte civil de solidarité); minimal responsibilities for childrearing)

(iii) Alternative Dispute Resolution (ADR):

(1) Is there/should there be separate religious dispute resolution and, if so, why?

(2) Is there/ should there be state recognition of religious courts? Of religious arbitration tribunals? Of religious arbitrators? Of arbitral awards? Under what conditions and limitations?

Labour Law (WP4)

Basic Tensions: Religious interests of employees versus interests of other interested parties (employer, co-workers, customers, general public) and other liberal values such as secularism, non-discrimination (sex and gender equality) (the individual religious freedom cluster). Collective autonomy (practices of majority or minority religious organisations and associations that are protected by collective religious freedoms) versus labour law principles of non-discrimination on the basis of religion, gender, sexual orientation (and possibly race) (the collective religious freedom cluster).

Domains: (i) ‘non-religious’ or not ‘faith-based’ workplaces (including private, semi-private and public employers) (ii) (organised) religions (including the whole variety of religious core-organisations as employers, not only ‘churches’) (iii) ‘Faith-based’ organisations as employers (including not only ‘religion’-based ‘ethos’ employers but all non-religious ‘ethos’ employers)

Items with regard to legal/legitimate **exemptions from general labour law rules and standards:**

(1) Is there/should there be a special (non-) employment status of church staff (ranging from pastors of cult to lay cleaning and gardening staff) and what is/should be the role of existing/developing (member-state and European) law and jurisprudence?

(2) What is/should be the role of labour union advocacy in this regard?

(3) How are claims for the accommodation of religious exemptions in the workplace (dress codes, food-prescriptions, prayer-facilities, time schedules etc.) and for equal access and inclusion in the labour market perceived and dealt with and what is/should be the role of existing/developing law and jurisprudence in this regard?

Public Space (WP5)

Basic Tension: Basic principles of liberal democratic constitutionalism (such as ‘**state neutrality**’ (as ‘strict’ or ‘formal’ versus ‘benevolent’ or ‘relational neutrality’; as ‘neutrality by subtraction’ or ‘by addition’) and **fairness** (as ‘hands-off’ or as ‘even-handedness’) **versus traditional historical ethno-religious ‘national (majority) culture’** (and quite often highly questionable assumptions regarding ‘necessary social cohesion’ and ‘political unity’). The reluctance to or rejection of reasonable accommodation is based on (i) intrinsic problems of all forms of pragmatic, administrative accommodation (working out practices by way of talking and negotiating) and (ii) on more or less deeply entrenched cultural majority-bias opposed to public symbolic recognition. Both reasons work out very differently in countries and ‘national jurisdictions’. The core conflict is how ‘neutrality and fairness’ are interpreted and how much weight is given to legitimate claims to protect/develop ‘national culture’. The core normative issue is – given all this (legitimate) variety – to defend and implement accommodation that is minimally required in countries characterised by wide and deep religious diversity.

Domains: (i) religiously oriented private schools; (ii) dress codes; (iii) building/maintaining places of worship

Items:

(i) Non-governmental religious schools: (1) Does/Can the state forbid or limit the existence of non-governmental schools? Which is/should be the justification of the limitations or conditions that the State impose on the existence or management of this type of schools? Does the State treat differently governmental and non-governmental schools and if so, why? (2) What is/could be their contribution to plurality in education? (3) to learning and practicing minimal civic virtues and liberal-democratic virtues?(4)Do they threaten minimal social cohesion and national unity and, if so, why? How can/should the state ensure that they do not threaten minimal social cohesion and national unity?

(ii) Dress codes: (1) Are there/should there be any legal prescriptions against wearing religiously prescribed dress codes in public spaces and, if so, which dress and in which spaces, and why (again: social cohesion, national identity and, in addition: equality and security?)? What is/should be the role of member-states and EU courts in balancing individual and collective religious freedoms with other basic rights and with ‘national values’?

(iii) Building and maintenance of places of worship:

(1) Should every religious community have the right to build a place of worship? On what conditions? (2) Should the government consult the citizens of the area where the place of worship is planned to be built? (3) Should the government cover the costs for maintenance when a place of worship is a monument? (4) Should the place of worship then be open to the public? (5) Do you consider a place of worship in general as a public place? (6) Is the use of a building that is abandoned as a place of worship open to the choice of the seller, or should the former religious use be respected in some way?

State Support (WP6).

Basic Tensions: (i) ‘**strict neutrality**’ = **no financing and recognition** (obviously only in an imaginable world, not in any existing regime of religious governance) versus **relational neutrality and equality as fairness:** (ii) if any public money, then ‘**equality before the law**’ instead of privileging the entrenched majority religion(s) and/or ‘**substantive equality**’ minimally requires to take history into account (e.g. in cases of very recent ‘disestablishments’ or the many hidden forms of financing churches via ‘cultural heritage’). (iii) For religious and religion related organisations: (a) autonomy dilemma: trade-off between autonomy and privileges. Less or no scrutiny and control by the state, on the one hand, and money and other privileges (connected to public/political scrutiny and control) and political influence, on the other; (b) organisation and mobilization dilemma (see Bader (2007), p. 228f).(iv) Basic tensions for liberal-democratic states (p. 229-31).

Domains: (i) religious core organisations; (ii) FBOs (such as religious schools, media)

Items

1. Should there be a public funding of religions and FBOs? Why?
2. Do you feel that all religions and FBOs are entitled to public funding?
3. What kind of public funding for religions and FBOs is available in your country? What type of funding can it be compared to? Which would be the best way for the State to finance religions and FBOs? (Suggested Typology for (organised) religions): (i) subventions to the sustained religions (ii) subventions granted according to precise projects (iii) tax deduction granted to religious institutions (iv) church tax according to the religious affiliation (iv) possibility of granting part of the income tax to religious denominations
4. Is there control over the use of the public support? Is there a demand of transparency / accountability? If so, how do religious bodies deal with it?

These are some of the basic tensions of governance of religious diversity that are characterizing all modes of governance in states with liberal-democratic constitutions.

For this reason, they should form the common core of the items to be included in the list.

The changing ways in which they are perceived, articulated and, most importantly, dealt with and ‘resolved’ depends on a huge variety of historical and contextual aspects. Thematic WP’s and country teams should, in a first, fairly preliminary step, give a rough indication of how this is done in the six countries (a rough ‘country profile’). On this basis we can then proceed to specify the items in such a way (e.g. by selecting either landmark-cases or contested cases that received much public attention) that the respondents in the six countries do not find it difficult to understand what we want to talk about during the interviews.

Annex III: Bibliography

- Andersen (2010), S.: "Law in Nordic Lutheranism," in: Christoffersen, Modéer & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, Copenhagen
- Andersen, S. & U.B. Nissen, eds. (2009): *Kærlighedens lov. Retsteorier i dansk teologisk etik*, Anis, Copenhagen
- Anderson (1983), B.: *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Verso: London
- Busch Nielsen (2005), K.: "Ingen Unødvendige Forenklinger, TAK!" in: *Dansk Kirketidende*, vol. 3, issue 157: Kirkeligt Samfund,
- Bjarup (2010), J.: "Scandinavian Realism," in: *IVR Encyclopaedia of Jurisprudence, Legal Theory and Philosophy of Law*, ivr-enc.info, (accessed 01.10.2011)
- Bjarup (2005), J.: "The Philosophy of Scandinavian Legal Realism," in: *Ratio Juris* 18 (1):1-15.
- Christensen (2011), P. et al, eds.: *En kirkeforfatning anno 2011*, Selskab for Kirkeret, www.kirkeret.dk, (accessed 01.10.2011)
- Christoffersen, (2006) L.: Intertwinement. A new Concept for understanding Religion-Law Relations. *Nordic Journal of Religion and Society*, 19(2).
- Christoffersen, (2010A) L.: "State, Church and Religion in Denmark", in: Christoffersen, Modéer & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, Copenhagen
- Christoffersen (2010B) L.: "Church Autonomy in Nordic Law", in: Christoffersen, Modéer & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, Copenhagen
- Christoffersen (2012A), L.: "Religiously oriented Non-Governmental Schools" in Javier Martinez-Torron (forthcoming, RELIGARE)
- Christoffersen (2012B), L.: "Burka in Denmark" in A. Ferrari (forthcoming, RELIGARE)
- Christoffersen (2012C), L.: "Denmark" in Mark Hill (ed): *Religion and Discrimination Law in the European Union*. European Consortium for Church and State Research, www.churchstate.eu
- Christoffersen (2012D), L.: "A Case of a strong – by and large irrelevant – public/private Divide. On Public Funding of Religions in Denmark" in Francis Messner & Anne Fornerod: *Public Funding of Religions* (Forthcoming, RELIGARE)
- Christoffersen (2012E), L.: "Religion and State: Recognition of Islam and Related Legislation," in: Nielsen, J.S. ed.: *Islam in Denmark. The Challenge of Diversity*, Lexington, Lanham, MD

- Christoffersen (2006), L (Ed.): *Gudebilleder. Ytringsfrihed og Religion i en globaliseret verden*, Tiderne Skifter, Copenhagen
- Christoffersen, Iversen, Petersen & Warburg (eds 2010): *Religion in the 21st Century – Challenges and Transformations*, Ashgate, Farnham
- Christoffersen, Modéer & Andersen, (eds 2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, Copenhagen
- Christoffersen, Iversen, Nielsen & Warburg (eds 2012): *Fremtidens danske religionsmodel*. København: Anis
- Ferrari, S. & Bradney, A. (2001): *Islam and European Legal Systems*, Ashgate Publishing, Farnham
- Gammeltoft-Hansen, H. (2004): "Kirkeforfatning og non-diskrimination," in: Kock, H. (2004): *Politik og Jura – Festskrift til Ole Espersen*, Forlaget Thomson, København
- Gundelach, Iversen & Warburg (2008): *I hjertet af Danmark*, Hans Reitzels Forlag, København
- Hansen, N.G., Petersen, J.H., & Petersen, K. (2010): *I himlen således også på orden? Danske kirkefolk om velfærdsstaten og det moderne samfund*, Syddansk Universitetsforlag, Odense
- Huulgaard, A (1976): "Forholdet mellem stat og kirke i utide," in: *Aarhus Stiftsblad*, vol. 42, Landemodet og Aarhus Stiftsfond, Aarhus
- International Religious Freedom Report* (2010), U.S. Department of State, www.state.gov/g/drl/rls/irf/2010/ (accessed 01.10.2011)
- Iversen, Hans Raun (2007): "Religion skamrides i politik og medier," in: *Information*, 25.07.2007, København
- Jacobsen (2012), B.A.: "Muslims in Denmark – a Critical Evaluation of Estimation," in: Nielsen, J.S. ed.: *Islam in Denmark. The Challenge of Diversity*, Lexington, Lanham, MD
- Jacobsen (2010), B.A.: "Denmark," in: Nielsen et al, ed.: *Yearbook of Muslims in Europe*, vol 2, Brill, Leiden
- Jacobsen (2007), B.A.: "Muslimer i Danmark - en kritisk vurdering af antalsopgørelser", in: Warburg & Jacobsen, *Tørre tal om troen. Religionsdemografi i det 21. århundrede*, Forlaget Univers, Højbjerg
- Jeldtoft (2009), N.: "On Defining Muslims," in: Nielsen et al, ed.: *Yearbook of Muslims in Europe*, vol 1, Brill, Leiden
- Klausen (2005), J.: *The Islamic Challenge: Politics and Religion in Western Europe*. Oxford, Engl. and New York, USA: Oxford University Press, 2005
- Lodberg (2009), P.: "Folkekirken i tal," in: *Religion i Danmark 2009*, University of Aarhus, Aarhus
- Minnerath, R. (2001): "Church Autonomy in Europe" in Robbers, ed.: *Church Autonomy*. Peter Lang, Frankfurt am Main

Mod er (2010), K.A.: "Internal Convergence – External Divergence," in: Christoffersen, Mod er & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJ F Publishing, Copenhagen

Nielsen, J.S & Mehdi (2010), R.: "Islam and Law in the Nordic Countries in the 21st Century," in: Christoffersen, Mod er & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJ F Publishing, Copenhagen

Nielsen (2012), J.S. (ed): *Islam in Denmark*. Plymouth: Lexington Books

Nissen (2010), U.B.: "Lutheran Natural Law Thought in the Nordic Countries in the 21st Century," in: Christoffersen, Mod er & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJ F Publishing, Copenhagen

Oftestad (2010), B.: "Presence and mission. The Socio-Ethical Engagement of the Catholic Church Within the Nordic Context 1970 – 2006," in: Christoffersen, Mod er & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJ F Publishing, Copenhagen

Petersen (2010), H.: "Beyond National Majority / Minority Dichotomies," in: Christoffersen, Mod er & Andersen, (2010): *Law & Religion in the 21st Century – Nordic Perspectives*, DJ F Publishing, Copenhagen

Pew Forum on Religion & Public Life (2009), Pew Research Center, pewforum.org/

Religion i Danmark 2011, University of Aarhus, Aarhus

Religion i Danmark 2009, University of Aarhus, Aarhus

Riis, O. (2007): "Religious pluralism in local and global perspectives: Images of the prophet Mohammed seen in a Danish and a global context," in Beyer & Beaman, eds.: *Religion, Globalization, and Culture*. Brill, Leiden

Robbers, (2001) G. (ed.): *Church Autonomy*. Peter Lang, Frankfurt am Main

Roesen, A. (1976): *Dansk Kirkeret*, 3rd edition, Den Danske Pr steforening & Rud Pallesen, Hiller d

Ross (1946), A.: *Towards a Realistic Jurisprudence: A Criticism of the Dualism in Law*, E. Munksgaard Publishers, Copenhagen

Ross (1957), A.: "T -T ", *Harvard Law Review* vol. 70, Issue 5, March 1957, pp. 812-825

Spielhaus (2010), R.: "Media making Muslims: the construction of a Muslim community in Germany through media debate," in: *Contemporary Islam*, vol. 4, no. 1, 11–27, Springer Netherlands, Dordrecht 2010

Stenb k (2004), J.: "»Hvad forstaas ved den evangelisk-lutherske Kirke?« Om Henning Matzens statskirkelige folkekirkeforst else," in: *Festskrift til Hans Gammeltoft Hansen*, DJ F

Warburg, M., Gundelach, P., Iversen, H. R. (2008): *I hjertet af Danmark. Institutioner og mentaliteter*. Hans Reitzels Forlag, København 2008.

Warburg (2007), M & Jacobsen, eds.: *Tørre Tal om Troen – Religionsdemografi i det 21. århundrede*, Forlaget Univers, Højbjerg 2007

Warburg (2009), M.: “Transnational Civil Religion: The Fourth of July in Denmark”, in: Annika Hvithamar, Margit Warburg and Brian Arly Jacobsen (red.) *Holy Nations and Global Identities. Civil Religion, Nationalism and Globalisation*, E.J. Brill,

Zahle (2006), H.: *Danmarks Riges Grundlov med kommentarer*, 2nd Ed, DJØF Publishing, Copenhagen

Østergaard (2005), U.: “Lutheranismen og den universelle velfærdsstat,” in: Schjørring & Bak, eds., *Velfærdsstat og Kirke*, ANIS, København