

**The Tenacity of Identity Politics in Norway:
From Unabashed Lutheran Monopoly to Pseudo-Lutheran Semi-Hegemony?**

Introduction

Three quandaries rooted in a tradition of religion-run-by-government

Identity politics is fraught with ambiguity.¹ As I understand this term, it stands for mobilization and deployment of political power professedly in the service of defending the interests of a particular community identifying itself in terms of its shared culture, religion, language, or its otherwise demarcated *inherited tradition*. Identity politics may seek communal recognition, aspire to rectify injustice or repel threats to a shared, identity-defining and more or less habitualized way of life. Identity politics, though often denoting minority and under-dog political struggles, may also be pursued by agents from a dominant community resisting the undermining of inherited hegemony. The disrepute of identity politics is earned, in part, by it being linked with the instrumental use of a community's inherited tradition for political aims not conducive to fostering that very tradition, or, with a penchant of conflating traditionalism and living tradition. And sometimes both fallacies operate in tandem.

In this paper the identity-political predicament to be addressed is that of a majority, exemplifying, so I shall argue, both (1) use of political power in a way detrimental to the proper cultivation of that majority's inherited tradition and (2) recourse to traditionalism professing to cultivate a living tradition. The peculiar tradition I shall deal with is embodied in religion-run-by-government in the Kingdom of Norway. More specifically, I shall address present-day public disputes rooted in quandaries of spent hegemony: the centuries-old, now dated hegemony of Norway's Evangelical-Lutheran state church.

Part 1 of this paper sketches a modicum of historical background and *Part 2* presents and discusses what is at stake in three unsettled controversies in Norway as of spring 2008. Each is a political argument, soon up for legislation, about aspects of the nation's future. The *Conclusion* elucidates why and how Norway's Lutheran state church tradition still carries a lot of weight, even though it is in ruins if appraised by standards properly its own.

The first of my three controversies is triggered by a widely shared expectation of a forthcoming partial disestablishment² of the so-called Church of Norway², the Evangelical-

¹ See the article "Identity Politics" by Cressida Heyes, at, <http://plato.stanford.edu/entries/identity-politics/>

² "Church of Norway" is a translation of the Norwegian term "Den norske kirke", a locution that came into official use, without ever being formally adopted, during the second half of the 19th century. The first more official use of the term appears to be a 1850 collection of the symbols of the then "official religion of the State": J. M. P. Kaurin, A. W. Fangen and W. A. Wexels eds. *Den Norske Kirkes symbolske Bøger*, Christiania 1850, and the term reappears in *Alterbog for den norske Kirke*, Kristiania 1889. "CoN" is short for "Church of Norway".

Lutheran state church. The controversy is about the following: Once the provisions in the Constitution of Norway pertaining to the “official religion of the State” are removed (wholly or partly), should then the Constitution be augmented (compensating for the removal, as it were) to enounce *an official value foundations of the Norwegian State*, and to boot one in terms of “our Christian and humanist heritage”?

The second controversy I shall address arises from a forthcoming revision of the *Christian object clause* (“kristne formålsparagraf”) in the laws regulating the national school system, (i.e. Norway’s unitary school system extending from kindergarten through junior high school). The existing object clause, which is to be replaced, bluntly requires that the school in cooperation and concord with the home shall help towards giving pupils a Christian and moral education.³ What is at stake here is whether, and how, a revised object clause is to cater for Norway’s presumed “Christian and humanist heritage”.

Finally, the third public controversy arises from a recent Grand Chamber Judgment of the European Court of Human Rights in the *Case of Folgerø and others v. Norway*.⁴ The Strasbourg Court in effect instructed Norway to revise *the mandatory school subject of religious education*, called “Kristendoms-, religions- og livssynskunnskap” [Knowledge about Christianity, Religion, and Life Stance] so as to remove aspects found to violate freedom of religion or belief norms binding on Norway under the European Convention on Human Rights. Here, the basic issue is whether, how, and to what extent, the teaching of Christianity is to be trimmed down in the mandatory school curriculum of religious education.

Public controversies are not new in any of these fields. – Debates about the *substance of mandatory religious education* have been passionate since 1997 when the then brand-new unified and compulsory school subject was introduced under its initial name “Knowledge of Christianity with Orientation about Religions and Life Stances”. – Heated discussions about the *Christian object clause* in the laws regulating the entire national school system are much older. – The contemporary debate over a constitutional fixation of *the Norwegian polity’s official value foundations* branches off from what is only the latest round of struggles over Norway’s state religion. These battles go back to the beginning of Norway’s independence in 1814 (*some* constitutional fathers were consistent liberals also with respect to religious liberty!) and have been fierce, on and off, during the 20th century.

³ See text to note 34 below.

⁴ *Folgerø and others v. Norway*, 29 June 2007, Application no. 15472/02, Grand Chamber (<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=819532&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>)

But what is peculiar for the situation in Norway as of spring 2008 is that each of these three political questions are open *simultaneously*: whether to amend the Constitution to enounce a “Christian and humanist” value-foundation of the State; how to balance “Christian and humanist heritage” against other normative concerns in the objects clause of schools; and how to modify and perhaps downsize the teaching of Christianity in mandatory religious education. To each problem new constitutional or new legislative resolutions have to be devised, *at this time*. And once novel draft proposals are framed sufficient political support have to be gathered from the requisite Parliamentary majorities, for the case of amendments to the Constitution two-third majorities in two separate, consecutively elected Parliaments.⁵

I shall argue that the three political battles are interconnected not just as to their substance but in the sense that each, in its own way, is stuck in Norwegian identity politics. Political pursuits in identity-political modes may exhibit a constrained or restricted rationality by implicitly retracting or undermining the identity-constitutive values actors presume they are defending. I shall maintain that the species of identity politics addressed in this paper are all rooted in Norway’s peculiar variety of “landesherrliches Kirchenregiment” (that incomparable German term for “church rule by the peer of the realm”). In Norway this tenacious yet pliable mode of politically controlled religion, though intellectually and theologically long since in ruins⁶, has endured into the 21st century. Commenced and fortified under more or less pious and more or less absolutist Kings during centuries before Norway’s independence from Denmark in 1814 it has afterward outlasted both the onset of parliamentarianism in the relationship between Parliament and the King’ Council (the cabinet) late in the 19th century, and, during the 20th century, survived several generations of at best religiously indifferent, and at times somewhat authoritarian, Social Democratic governments.

Part 1

Government-run religion; compulsory religious education; slow advent of religious freedom

Part 1 of this paper gives a potted account of the origin of Norway’s state administration of religion, or the state-church system, the associated emergence of Norway’s public school sys-

⁵ The Norwegian term for Norway’s Parliament is the “Storting” [literally the “Grand Thing”]. Hereinafter I write Parliament and Parliamentary etc. without repeating the Norwegian terms.

⁶ In German history *landesherrliches Kirchenregiment* was discontinued by the 1919 Weimar Constitution, Article 137 providing for the right of churches to autonomy. – I believe Martin Luther himself *never* accepted “cura religionis” (the idea that a Christian magistrate has by right the legal authority to oversee religious practice in his *regio*) other than as a deplorable emergency devise. This much is, I hold, clear from his *Von weltlicher Oberkeit* (1523) through his Genesis Lectures (1535–1545).

tem, and the slow and hesitant introduction of freedom of religion or belief in the realm during the last two centuries.⁷

Norway has had a government-run Lutheran church since 1537. In that year King Christian 3 of Denmark and Norway by means of a military expedition ousted Norway's Catholic bishops, expropriated all church property in Norway, and took charge of all church affairs.

A heavy-handed religious monopoly was maintained throughout several centuries. State-imposed religious control was, in the final outcome⁸, not significantly modified by the in other respects liberal 17 May 1814 Constitution of Norway (the second-oldest in the world). The dismantling of Lutheran monopoly took place only slowly, by fits and starts, beginning at the level of *legal reform* in 1845 with the decriminalization of certain categories of non-Lutheran Christians.⁹ At the level of *constitutional reform* this process culminated 120 years later, in 1964, with the insertion of the following provision at the beginning of Article 2: "All inhabitants of the Realm shall have the right to free exercise of their religion." But the subsequent paragraph of the selfsame Article 2 of the Constitution is still, in 2008, unrevised 1814 language: "The Evangelical-Lutheran religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same."

So, after 1964 Article 2 of the Constitution does *both*: provide for freedom of religion or belief (non-religious life stances were added in 1981) *and* declare the Evangelical-Lutheran religion to be the official religion of the State. It may take steadfast Norwegian clergymen, or jurists, to miss the normative contradiction buried in the conjunction of these two provisions.

Anyhow, Church of Norway is still a part of the State and formally ruled by the King in Church Cabinet ("kirkestatsråd", consisting of those cabinet ministers who are members of Church of Norway). True, Parliament in 1920 legislated that Church of Norway have local parish councils, in 1933/34 that the Church have Diocesan Councils, and during the last dec-

⁷ For a lucid overview of the historical events referred to, albeit from a different perspective, see the chapter by Eivind Smith. For a critical assessment of the legitimacy of traditional Lutheran "landesherrliches Kirchenregiment" from the vantage point of enlightened present-day Evangelical-Lutheran doctrine, see the chapter by Svend Andersen. The chapters by professors Smith and Andersen are printed in *Nordic Perspectives on Law & Religion in the 21st Century – New Life in the Ruins: Pluralistic renewal in the Lutheran setting*, edited by Lisbet Christoffersen, Svend Andersen, Kjell-A. Modéer (forthcoming)

⁸ Norway's constitutional fathers 15 April 1814 made a preliminary decision to include religious liberty among principles to be safeguarded by the future Constitution. But the finalized Constitution of 17 May did not follow up on this. Berge Furre, "Kva skjedde med religionsfridommen på Eidsvoll 1814?" [What happened to freedom of religion at Eidsvoll 1814?], in: Peter Lødrup et al. eds, *Rettssteori og rettsliv. Festskrift til Carsten Smith* [Theory of Law and Lawlife. Festschrift for Carsten Smith], Oslo: Universitetsforlaget, 2002:261-284..

⁹ Ingunn Folkestad Breistein, *Har staten bedre borgere? Dissidentenes kamp for religiøs frihet 1891-1969* [Does the State have better citizens? The struggle of dissidents for religious freedom 1891-1969], Trondheim: Tapir akademisk forlag, 2003.

ades of the 20th century delegated decision-making authority to national-level “internal” bodies of the Church, notably to its Church Council (“kirkerådet”, established 1969) and its General Synod (“kirkemøtet”, established 1984). But irrespective of such politically managed devolutions, Church of Norway still has a status vastly different from that of any other community of faith or conviction in the realm. For one thing, each step of legislated devolution as regards Church of Norway is shaped and authorized by a Parliament the religious legitimacy of which is ever more questionable. And the appointment of Church of Norway bishops and deans is still a prerogative of the King in Church Cabinet, in practice the Minister of Culture and Church Affairs.

Consequently, the Norwegian State as of 2008, though it protects basic religious freedoms with perhaps remarkable generosity,¹⁰ does not substantively nor expressively accord *equal status* to, nor does it *impartially respect*, all religious or life-stance communities in Norway – to the spiritual detriment not least of Church of Norway, which is still an annex of the Norwegian State.

The emergence of Norway’s public school system came about in a paradigmatically post-reformation and orthodox-Lutheran way. With the path-breaking Danish-Norwegian law on public schools (“almueskolen”) 1739, King Christian 6 established as mandatory that all children in the realm should henceforth learn to read, write and do arithmetic, and above all to understand the Lutheran basics of Christian faith: the Creeds, the Catechism and its elucidation, The Psalms of David, The New Testament and Church Hymns. School buildings, teacher positions, books and resources were to be provided by the King and his officials, thus giving effect to a core duty on an Evangelical-Lutheran King. Through a coordinated, ingeniously organized effort of Church, School, and other branches of government the entire people was to be inculcated in the unitary doctrinal and moral foundation of the polity, as conceived by orthodox Lutheranism.

At the beginning of the 21st century Norway is surely a modern, functionally differentiated, culturally complex, and religiously diversified but not overly religious society. Basically Norway has become a secular society¹¹, with a secular state¹², poles apart from the uni-

¹⁰ All religious and life-stance communities receive from the government purse a per capita financial support *in principle* equal to the per capita government expenditure for running Church of Norway. – Once an official religion is administered and financed by the State any other financial arrangement would constitute discrimination on grounds of people’s religion or belief, hence violate internationally codified human rights. Alas, the regulation on government support of non-religious life-stance communities impose a 500 members requirement for these to be eligible to financial support. This restriction discriminates against life-stance communities since no similar rule applies to religious communities.

¹¹ Helge Høibraaten, “Secular Society: An Attempt at Initiation”, in Tore Lindholm, Kari Vogt, eds., *Islamic Law Reform and Human Rights. Challenges and Rejoinders*, Nordic Human Rights Publications, Oslo, 1993

tary Lutheran order indicated above. Nevertheless, in the Kingdom of Norway the political aspiration still subsists of maintaining a unitary school system serving the entire population and furnishing everyone with a modicum of shared knowledge and competence required to uphold social unity, solidarity, and civility. – In my discussion of three public controversies below, I do not for a minute question this or any similarly inclusive political aspiration. But I do question the normative propriety and the intellectual coherence of some prevalent responses to the three challenges addressed. My criticisms target identity-political hang-ups that are non-inclusive and traditionalism undercutting living tradition.

Part 2

Three pending controversies rooted in Norwegian identity predicaments

2.1 Should an official enunciation of the value foundations of the State be incorporated into Norway's Constitution in terms of "our Christian and humanist heritage"?

The first of my three public debates is triggered by the widely shared expectation, at this time, of a forthcoming partial disestablishment of Church of Norway. At stake, for the purpose of my discussion, is the following issue: Once the provisions pertaining to the Church are removed (wholly or partly) from the Constitution of Norway, should the Constitution then be augmented to enounce *the official value foundations of the Norwegian state* in terms of "our Christian and humanist heritage"?

The expectation of a forthcoming disestablishment (whether partial or more) was created by the Recommendation submitted by a State–Church Committee appointed by Royal Decree in 2003.¹³ The twenty members Committee consisted of a wide range of representatives from all political parties in Parliament, Church bodies, the Sami population, the Norwegian Council of Free Churches, the Norwegian Humanist Association, different other relig-

¹² Article 2 of the Constitution proclaiming the Evangelical-Lutheran religion as state religion does not put religious restrictions on the legislative sovereignty of Parliament. But it entails that legislation pertaining to Church of Norway must not infringe on constitutional provision on the Evangelical-Lutheran religion as the public religion of the State. See: the Børre Knudsen Supreme Court Judgment (1983-09-23; Rt-1983:1004-1043)

¹³ NOU 2006: 2, Staten og Den norske kirke. Utredning fra Stat–kirke-utvalget oppnevnt ved kongelig resolusjon av 14. mars 2003. Avgitt til Kultur- og kirke departementet 31. januar 2006. [On the relationship between the Norwegian State and Church of Norway. Recommendations of the State–Church Committee]. My outline below of the main proposals of the Committee paraphrases the language of a semi-official translation: http://www.regjeringen.no/nb/dep/kkd/Tema/andre/Stat_og_kirke/On-the-relationship-between-the-Norwegian-State-and-the-Church-of-Norway.html?id=448396&epslanguage=NO – Of course, the most weighty state-and-religion issue in present-day Norway is the future (and, as the present authors hopes, the abolition) of the state-church system itself. This paper cannot deal with the wide-ranging complexities of this main issue. Only this much should be mentioned here: The three options proposed by the Committee and presented below are not exhaustive. A promising fourth option is for the government to provide "extra-governmental" bodies of Church of Norway with a suitable mandate and sufficient time to elaborate an autonomous church constitution; see Ing-vill Thorson Plesner, *Skal vi skilles? – veier videre for stat og kirke* [Should we be divorced? – Paths ahead for State and Church], Oslo: Forlaget press, 2006:60-61, 68-70, 117, 119, 128, 131

ions, and representatives with special expertise. Their mandate was to come up with a recommendation that should provide a basis for determining whether the state-church system should be *continued*, or *reformed*, or *discontinued*. The mandate was based on the politically pre-given premise that Church of Norway shall continue to be a “confessional, missionary, serving and open popular Church.” The Committee in January 2006 presented three different proposals corresponding to the options of reforming, or discontinuing, or continuing the existing state-church system, called, respectively, “*a statutory popular Church*”, “*an independent popular Church*”, and “*a constitution-based popular Church*”.¹⁴

A majority of fourteen of the twenty Committee members recommends a *statutory* popular Church entailing a revocation of the now existing Articles in the Norwegian Constitution relating to the state-church system and making Church of Norway an independent legal entity with its own governing bodies and independent responsibility for all matters relating to the Church’s faith and activities. Bishops and deans would be appointed by the Church’s own bodies on the basis of broad-based arrangements for nominations and elections. But, Church of Norway would continue to have a special relationship to the State pursuant to a new Church Act to be adopted by Parliament. The majority recommends that the Church Act be formulated as a brief framework statute to be based, in turn, on a new Article in the Constitution.¹⁵

A minority of four Committee members recommends an *independent* popular church as a model for a new system. This means that Church of Norway would no longer be part of the state administration but would be set up – that is to say: would set itself up – as an independent religious community on par with other religious and belief communities. Its activities would be regulated through legislation common to all religious and belief communities in Norway. This minority finds it crucial to ensure that Church of Norway is regarded and treated *as* a religious community and that political bodies are not able to determine anything relating to the Church’s foundation, works, and conduct, thus respecting its unique nature as a free community of faith. In the view of this minority, only a fully independent Church of Norway (if this name be kept) would make this entirely clear; it would also be the best way of meeting the demand for equal treatment of all religious and life stance communities.

¹⁴ The locution “popular Church”, whether or not preceded by the adjectives “statutory”, “independent” or “constitutionally-based”, is a translation of “folkekirke”, reminiscent of the German “Volkskirche” (hailing from Schleiermacher) with its accompaniment of romantic associations and later ideological accretions not all welcome from a liberal viewpoint. Also, the terms “folkekirke” suggests that “Church of Norway” represents the Norwegian people, understood as a communal subject, something that is not veridical of the real situation.

¹⁵ The approach to disestablishment advocated by Plesner (note 13) submits that a *sunset law* terminating once an autonomous church constitution were in place, would *suffice* to facilitate an independent Church of Norway.

The remaining two Committee members recommend a *constitution-based* popular Church, urging that the current state-church system be preserved based on the existing Church-related Articles of the Constitution. This minority holds that the current state-church system is the best way of ensuring that Church of Norway “is there for everyone who wants it, and is the best system for ensuring that the threshold is low enough for everyone to feel at home in the Church, regardless of their religious commitment.” They believe it is extremely important to uphold the provisions relating to the Church in the Norwegian Constitution and fear that removing the Articles dealing with the Lutheran faith and associated arrangements “would create a constitutional vacuum of which it is impossible to envisage the ramifications.”

So much for background. The bone of contention to be discussed in this subsection is solely the proposal, supported by 11 Committee members, to replace the 1814 language of Article 2, Paragraph 2, of the Constitution of Norway (the provision affirming that the Evangelical-Lutheran religion “shall remain the official religion of the State”) by an official fixation of the Norwegian polity’s historical “value anchoring” in her presumed Christian and humanist heritage: “The Christian and humanist heritage shall remain the value foundations of the State.” [Den kristne og humanistiske Arv forbliver Statens Værdigrundlag]¹⁶

Why this unprecedented proposal of a “values Article” in the Norwegian Constitution? – If the recommendation of a *statutory* popular Church, respectively of an *independent* popular Church, were to be adopted then obviously Article 2, Paragraph 2, of the Constitution would have to be revoked: The Constitution can no longer proclaim the Evangelical-Lutheran religion to be the official religion of the State. The existing constitutional provision to be revoked, so the Committee, “is not a values Article for the nation in the legal sense, but *many people believe it to be so*”.¹⁷ In the governmentally given mandate to the Committee, the Committee was asked to consider what consequences their proposals would have for “. . . our culture and the value foundations of our people.”¹⁸ Referring to this directive, which is concerned with the value foundations of the Norwegian *people*, the majority of Committee mem-

¹⁶ NOU 2006: 2:181

¹⁷ The semi-official English translation of NOU 2006: 2 (see note 8 above; italics added) This factual claim about what many people believe is questionable. Nowhere does the Committee so much as hint at having investigated the empirical basis for such a factual claim. It may, I submit, indicate a readiness to take recourse to traditionalism without checking whether the use of political power thus prepared for is conducive to proper cultivation of the Christian and humanist values invoked.

¹⁸ NOU 2006: 2:9-10

bers is moved to recommend that the proposal, cited above, for a new Article pertaining to the value foundations of the Norwegian *State* be incorporated into the Norwegian Constitution.¹⁹

Three Committee members supporting a *statutory* popular Church (among these, notably, the Muslim member) recommend that a new values Article, *if* there is to be one, be confessionally neutral and instead refer to the political principles on which the State is erected rather than to inherited societal values. They identify democracy, rule of law, and human rights as core elements and point to the political principles that all legitimate power springs from the people and is to be exercised according to law, with due respect for the inherent dignity of human beings.²⁰

The Committee member representing the Norwegian Humanist Association (secular humanists) declines to be taken hostage, as it were, in support of Norway's presumed "Christian and humanist heritage". She advocates State neutrality in matters of religion and life stance and proposes a constitutional formula saying that the State and its organs shall safeguard basic human rights according to binding international treaties. The representative of Free (that is "non-State") Christian Churches in Norway reasons similarly, on behalf of the church communities he is representing (most prominently Pentecostals, Baptists, Methodists, and Evangelical-Lutheran Free Church).

Two members, the representatives of the right-wing Progress Party and the left-wing Socialist Left Party proposes: "The present Constitution shall guarantee democracy, rule of law and the inherent and inviolable dignity of the human being. All inhabitants of the Realm shall have the right to free exercise of their religion. The Christian and humanist heritage shall remain the value foundations of the State." [Denne Grundlov skal sikre Demokrati, Rettsstat og Menneskenes iboende og ukrænkelige Rettigheder. Alle Indvaanere af Riget have fri Religionsøvelse. Den kristne og humanistiske Arv forbliver Statens Værdigrundlag.]

A single member of the majority of 14 supporting a *statutory* popular Church (notably, a Lutheran theology professor) recommends that the amendment of Article 2 be restricted to what is necessary for a transition from a state religion to a *statutory* popular Church.²¹

Finally, five Committee members take the *primary* view that there is no need at all for a new constitutional Article that refers to the "historically-based values of the nation".

¹⁹ NOU 2006: 2:9, 181 The significant shift from *people* to *state* appears not to be noted by Committee members.

²⁰ NOU 2006: 2:164

²¹ NOU 2006: 2:164

In public discussions and in extensive public hearings that have taken place after the launching of the Recommendation of the State–Church Committee the majority proposal for a new values Article in the Norwegian Constitution has met with some principled rejection, most vehemently perhaps from human rights quarters.²²

The main counterarguments are, first, that a Constitution of an irreversibly culturally and religiously plural and diverse society – and no one would think of denying that Norway is one – should be *an inclusive constitution* and hence not by implication accord to some citizens a symbolic second-rate status due to their affiliation with religious and cultural traditions that differ from those of the majority with respect to an assumed and unanalyzed “Christian and humanist heritage”. There is in present-day Norway no dearth of widely shared political principles, values, and loyalties that *could* be included in a values Article that does not fudge an inclusive Constitution, should such an Article be needed.²³ An inclusive Constitution for a religiously diverse population ought, from a freedom of religion or belief point of view, to identify with no particular religion or life stance, be equally respectful of all religions and life stances, and invite adherents of each normative tradition to embrace, on an equal footing, the core constitutional principles to be shared by all citizens, such as democracy, human rights, rule of law, and equal human dignity.

But second, the meager arguments submitted in defense of a novel values Article are questionable to the extent they amount, as they mostly do, to a postulated but never substantiated historical narrative about a “heritage that should not be given up lightly”. In rebuttal, it may well be argued that the pertinent facts about historical heritage, as far as *consistent embrace* of constitutionalism, democracy, human rights, and equal human dignity are concerned, indicate that these specific principles are *neither* Christian *nor* “Christian and humanist” in their historical origins, and surely not as a heritage. Why? Because only *after* the moral catastrophes of religious wars between and within Western Christian (and “humanist”) nations, only *after* the protracted battles during centuries against slavery, racism, subjugation of women and colonialism were won, only *after* holocaust did mainstream Christian churches embrace such principles with arguments that have now become securely based in their own

²² Njål Høstmælingen, Tore Lindholm, Ingvild T. Plesner, eds., *State, kirke og menneskerettigheter* [State, Church, and Human Rights], Oslo: Abstrakt forlag, 2006 Proceedings of a Seminar hosted by the Norwegian Centre for Human Rights, February 2006.

²³ Compare the list of non-exclusive political values listed in the compromise proposal for a revised object clause in the laws regulating Norway’s school system, discussed below in section 2.2.: The list includes: “respect for human dignity, intellectual freedom, neighborly love, equal worth and solidarity”.

doctrinal heartlands.²⁴ Similar processes of profound reconstruction are in process within most non-Christian normative traditions.²⁵ Self-congratulatory historical fantasies and half-truths, however pleasing to a hegemonic majority, have no proper place in the Constitution of a polity embracing, and to be embraced by, an enlightened pluralist, religiously diverse, and multi-cultural society.

The Ministry of Culture and Church Affairs in 2006/2007 conducted an extensive public hearing on the Recommendation of the State–Church Committee. Summing up the responses as to whether a new values Article containing a special reference to “Christian and humanist heritage” should be incorporated into the Norwegian Constitution, it turns out that the local, intermediate, and central level Church of Norway bodies overwhelmingly support the formula: “The Christian and humanist heritage shall remain the value foundations of the State.”²⁶ The General Synod of Church of Norway in its resolution on the Recommendation states, “The Constitutional provision on the official religion of the State shall be replaced by a ‘values Article’ referring to ‘the Christian and humanist heritage’”, adding for good measure in its conclusion, “The General Synod wants to emphasize the significance of establishing a constitutional provision about the value foundations of the nation”.²⁷

Among other communities of faith and life stance in Norway the three main responses (noting that the two first are not mutually at odds) can be summarized as follows:²⁸

(1) There is in the Constitution of Norway no need for a provision beyond what is required to safeguard freedom of religion or belief: The Mission Covenant Church of Norway [Det Norske Misjonsforbund], The Evangelical Lutheran Free Church [Den Evangelisk Lutherske Frikirke], Norwegian Society of Pagans [Det norske Hedningsamfunn], The Mosaic Religious Society [Det Mosaiske Trossamfund].

²⁴ Heiner Bielefeldt, *Menschenrechte in der Einwanderungsgesellschaft. Plädoyer für einen aufgeklärten Multikulturalismus*, Bielefeld: transcript, 2007:43-55 and passim. See also Tore Lindholm, “Philosophical and Religions Justifications of Freedom of Religion or Belief”, in Tore Lindholm, W. Cole Durham, Jr., Bahia G. Tahzib-Lie eds., *Facilitating Freedom of Religion or Belief: A Deskbook*, Leiden: Martin Nijhoff Publishers, 2004:19–61, at 24-36, 53-56.

²⁵ For the case of major religions in the present-day world, see Joseph Runzo, Nancy M. Martin, Arvind Sharma, eds., *Human rights and responsibilities in the world religions*, Oneworld Publications: Oxford, 2003

²⁶ KIFO, *Offentlig høring om NOU 2006:2, Staten og Den norske kirke – Oppsummering av høringssvarene*, Rapport 2 August 2007:18-20 [Public Hearing in NOU 2006:2, On the Relationship between the Norwegian State and Church of Norway – Summing up the Responses, Report 2] – Stiftelsen Kirkeforskning (KIFO) is the Research Centre of Church of Norway.

²⁷ Church of Norway, Decision of the General Synod in Case 8/07 point 1.1.3. sub-point 9 (adopted against 16 votes); point 2 2 (unanimously adopted). [Den norske kirke, Vedtaket fra Kirkemøtet i sak 8/071.1.3. punkt 9 (mot 16 stemmer); 2 (enstemmig). <http://www.kirken.no/?event=doLink&famID=6894>

²⁸ KIFO Report 2:19

(2) A Constitutional values Article ought to be inclusive, be neutral with respect to religion or belief, embrace all citizens, and refer to shared values such as human rights or the constitutional principles of the State: Holist Association [Holistisk Forbund], Islamic Council Norway [Islamsk Råd Norge], The Norwegian Humanist Association [Human-Etisk Forbund], The Council for Religious and Life Stance Communities on Norway [Samarbeidsrådet for tros- og livssynssamfunn], Christian Council of Norway [Norges Kristne Råd], Freedom of Religion in Practice [Religionsfrihet i Praksis], Community of Seventh-Day Adventists [Syvendedags Adventistsamfunnet], The Religious Society of Friends (Quakers) in Norway [Vennesen Samfunn Kvekerne].

(3) The majority formula, “The Christian and humanist heritage shall remain the value foundations of the State”, is to be preferred: Catholic Diocese of Oslo [Oslo Katolske Bispedømme], Oslo Christian Center [Oslo Kristne Senter], The Methodist Church in Norway [Metodistkirken i Norge].

The KIFO Report 2 pays special attention to the response given by Islamic Council Norway paraphrasing it as follows:

A new Constitutional values Article for the State ought to be elaborated that include all citizens of the country in an optimal manner. An alternative stating that the Constitution of the State is based on democracy, rule of law, and human rights is one option. Another alternative [...] is a reference to those values on which society ought to be based, without indicating from where one assumes such values to hail. *This for the reason that any identification will in effect exclude others.*²⁹

The responses from academic institutions varied greatly. The Norwegian Centre for Human Rights, Faculty of Law, University of Oslo, objected to the very question about a “values Article” in the Constitution, partly because the basis for a decision in NOU 2006:2 is far too fragile and the question requires a much more thorough study before a conclusion can be reached. Also, a potential new “values Article” has a problematic relationship to the existing obligation on the State in accordance with Article 110c of the Constitution which, being the existing “human rights provision”, would be more suitable and proper as a values provision.³⁰

But other institutions of higher learning – all of which are in departments of theology or the study of Christianity – support the formula “Christian and humanist heritage”.

KIFO Report 2 concludes by saying:

Altogether, among all respondents to the hearing the strongest support for a potential new values Article of the Constitution is for one referring to Christian and humanist heritage as the value foundations of the State. This is most clear-cut among respondents attached to Church of

²⁹ KIFO Report 2:19 (Italics added)

³⁰ SMRs høringsuttalelse om NOU 2006: 2 Staten og Den norske kirke [NCHR Response to Hearing on NOU 2006: 2] December 2006, at <http://www.humanrights.uio.no/omenheten/nasjonalt/horinger/index.html>

Norway. The picture is more diverse among other respondents. Here we find alternative proposals as well as explicit criticisms of the formula “Christian and humanist heritage”.³¹

In the materials canvassed so far, principled arguments beyond uncorroborated hints about heritage and popular sentiment, are in no case offered for making the Constitution exclude people adhering to non-Christian (and “non-humanist”³²) beliefs or convictions from identifying with the Norwegian polity *on an equal footing* with the majority of the population assumed to be linked with “Christian and humanist values”. The response to the hearing by the General Synod of Church of Norway is emblematic.

It seems reasonable to ask: does the response by the General Synod of Church of Norway accord with Christian ethics, say with the commandment of love of God and love of neighbor, or with the Golden Rule, as understood by contemporary enlightened Evangelical-Lutheran thinking? If Church of Norway does embrace the equal dignity of all citizens whatever their religion or life stance, can the Church then consistently accept that the basic constitutional framework of their polity relegates to a somewhat inferior rank those citizens who do not identifying themselves in terms of a Christian and humanist heritage?³³ And would not such a symbolic exclusion of a subset among all Norwegian citizens imperil the benign stabilizing function of shared political commitments, that is to say: of political loyalties, values, and virtues that are not only *shared in fact* but also *publicly recognized to be shared* across the board of diverse religions, denominations, and cultural traditions?

Public discussion on whether and how to insert an identity-demarkating and mostly decorative “values Article” into the Constitution of Norway has, as of April 2008, been running for more than a year. A new lease of life for this debate is expected once the Government has presented to Parliament its proposals for Constitutional reforms of the state-church system, expected in early April 2008.

2.2 *Should a revised legal codification of the present Christian object clause of the national school system serve “our Christian and humanist heritage” and in case how?*

³¹ KIFO Report 2:19-20

³² As already mentioned, the Norwegian Humanist Association rejects being taken hostage in defense of the Committee majority’s proposal for introducing a so-called “historical” and diluted Christian values Article in the Constitution.

³³ See Odd Bondevik, “Om bispeseter og andre stoler – perspektiver på debatten om stat og kirke” [On Diocesan Chairs and other Chairs – Perspectives on the Debate about State and Church] in Njål Høstmælingen, Tore Lindholm, Ingvild T. Plesner, eds., *State, kirke og menneskerettigheter* [State, Church, and Human Rights], Oslo: Abstrakt forlag, 2006:at 105-108. Church of Norway Bishop Bondevik applies the Golden Rule to the ethical challenge faced by a hegemonic religious majority when relating to religious minorities, reflection on his own experience as a Christian missionary in a minority position in Japan. Bishop Bondevik’s voice is, alas, well nigh a lone cry in a dessert of Lutheran majority complacency.

The second public controversy I shall address arises from a forthcoming revision of the so-called *Christian object clause* [kristne formålsparagraf] in the laws regulating Norway's unitary school system extending from kindergarten through junior high school. – What is at stake is whether, and in case how, a revised legal codification of the object clause of *the national school system* is to cater for “our Christian and humanist heritage”. As reported above, the existing object clause has come to be held unacceptable because of its exclusive emphasis on “Christian” as different from other religious or life-stance orientations. It runs: “The school shall in cooperation and concord with the home help towards giving pupils a Christian and moral education.” [Grunnskolen skal i samarbeid og forståing med heimen hjelpe til med å gi elevane ei kristen og moralsk oppseding.]³⁴

Again, a broadly composed public committee was assigned with the task of preparing widely acceptable proposals for new legislation on the object clauses for kindergarten and schools: the Bostadutvalget, named after the chairperson Inga Bostad, prorector of the University of Oslo. The political authorities appointing Bostadutvalget stressed that a consensus proposal would be appreciated. A press release (“Unanimity on new object clauses”) by the Bostadutvalget presented 8 June 2007 is instructive of the approach chosen. It runs:

The Committee that has examined the object of school education and the object of kindergarten has reached consensus on proposals for new object clauses. The proposals imply that the values foundation of object clauses are expressed through shared values as manifested in Christian and humanist tradition, different religions and life stances, and as they are anchored in human rights. The Committee's recommendation is unanimous.

The parts of the Committee's proposals pertaining to the contested issue of value foundations are as follows (the relevant parts of the texts are italicized by T.L.). For a new Paragraph 1 in The Law on Kindergarten, Bostadutvalget recommends:

Kindergarten shall in cooperation and concord with the home attend to children's needs for care and play, and promote learning and culture as a basis for comprehensive development. Kindergarten shall build on respect for human dignity, on intellectual freedom, neighborly love, equal worth and solidarity, *as these basic values are manifested in Christian and humanist tradition, in different religions and life stances, and as they are anchored in human rights.* [Barnehageloven § 1: Barnehagen skal i samarbeid og forståelse med hjemmet ivareta barnas behov for omsorg og lek, og fremme læring og danning som grunnlag for allsidig utvikling. Barnehagen skal bygge på respekt for menneskeverdet, på åndsfrihet, nestekjærlighet, likeverd og solidaritet, *slik disse grunnleggende verdiene kommer til uttrykk i kristen og humanistisk tradisjon, i ulike religioner og livssyn, og slik de er forankret i menneskerettighetene.*]³⁵

For a new Paragraph 1-2 in The Law on School Education, Bostadutvalget recommends:

³⁴ Law on School Education § 1-2, Part 1, <http://www.regjeringen.no/nb/dep/kd/dok/NOUer/2007/NOU-2007-6/10.html?id=471553>

³⁵ NOU 2007: 6:5 <http://www.regjeringen.no/nb/dep/kd/dok/NOUer/2007/NOU-2007-6.html?id=471461>

Education in school and training enterprises shall open gates to the world and the future and provide pupils with historical and cultural understanding. It shall build on respect for human dignity, on intellectual freedom, neighborly love, equal worth and solidarity, *as these basic values are manifested in Christian and humanist tradition, in different religions and life stances, and as they are anchored in human rights*. Education shall promote democracy, equality and scientific thinking. [Opplæringsloven § 1-2: Opplæringa i skole og lærebedrift skal opne dører mot verda og framtida og gi elevane historisk og kulturell innsikt. Ho skal byggje på respekt for menneskeverdet, på åndsfridom, nestekjærleik, likeverd og solidaritet, *slik desse grunnleggjande verdiane kjem til uttrykk i kristen og humanistisk tradisjon, i ulike religionar og livssyn, og slik dei er forankra i menneskerettane*. Opplæringa skal fremje demokrati, likestilling og vitskapleg tenkjemåte.]³⁶

Bostadutvalget succeeds, in the unanimous proposals cited, to arrive at a somewhat unstable compromise between reinforcement of hegemonic identity politics and heed of universal inclusion. Education in Norway, so the proposal, is to build on certain basic values: respect for human dignity, intellectual freedom, neighborly love, equal worth, and solidarity. Bostadutvalget does not dispute that these basic values are recognized by *all* pertinent faith and life-stance communities in Norway; to the contrary. But the proposed compromise formula nevertheless gives pride of place to the normative heritage claimed for themselves by spokespersons of a hegemonic majority, by *naming* the “Christian and humanist tradition” whereas other specific normative traditions are not named but *anonymously identified* through the “othering” locution “different religions and life stances”.

The public hearing conducted 18 June to 1 November 2007 on the Recommendation of the Bostadutvalget indicated broad public support of their Consensus Proposals. Or so the Ministry of Education and Research reports in a “Facts Sheet” published 4 April 2008.³⁷ The Ministry, accordingly, saw no reason to introduce changes in the language put forward by the Bostadutvalget, beyond dropping two commas and inserting the terms “and in”. According to the proposal submitted by the Ministry to Parliament 4 April 2008 all public education in Norway from kindergarten through 10th grade is to build

on respect for human dignity, on intellectual freedom, neighborly love, equal worth and solidarity, as these basic values are manifested in Christian and humanist tradition and in different religions and life stances and as they are anchored in human rights.³⁸

³⁶ NOU 2007: 6:6 <http://www.regjeringen.no/nb/dep/kd/dok/NOUer/2007/NOU-2007-6.html?id=471461>

³⁷ The Fact Sheet [Fakta-arket] can be download from: [//www.regjeringen.no/en/dep/kd/press-contacts/Press-releases/2008/--en-inkluderende-formalsparagraf-.html?id=506648](http://www.regjeringen.no/en/dep/kd/press-contacts/Press-releases/2008/--en-inkluderende-formalsparagraf-.html?id=506648)

³⁸ Ot.prp. nr. 46 (2007-2008):35; and Ot.prp. nr. 46 (2007-2008):34. Both propositions to Parliament can be downloaded from <http://www.regjeringen.no/nb/dep/kd/dok/regpubl/otprp.html?id=618>

Is this compromise on a *consensus formula* of the object clauses of Norwegian public education generally found to be fully satisfactory? Hardly: Most members of the Bostadutvalget accepted the consensus formula after having first spelled out their primary positions: – Eight members would have preferred an objects clause with no particular religion or life stance providing the aim of or basis for education. In today’s multicultural and multireligious society the aim of education should point to the future and include children and young people regardless of their differing religious or cultural backgrounds. Moreover, they argue, the values “human dignity, intellectual freedom, neighborly love” etc. that are backed by all committee members, “cannot be said to be specifically ‘Christian’ but on the contrary largely shared . . . regardless of religion or life stance.” – Another three members, however, primarily want to underline “the basic values in the Christian and humanist tradition” as the cultural foundation of education. – Yet another three members of the Bostadutvalget declare the value basis described in the consensus proposal to be in line with their primary position.³⁹

Now, since all three parties within the Bostadutvalget wanted to contribute to a solution that stood a reasonable chance of political implementation, they could all embrace the compromise *consensus formula*, albeit for the majority only as an acceptable “second best” solution.⁴⁰

Judging from the proposed legislation on educational object clauses submitted by the Ministry of Education and Research to Parliament as well as from the first public responses to these proposals it seems that the consensus formula (as slightly revised by the Ministry) has a fair chance of being politically implemented. The proposed objects clause has been hailed by one major player in Norwegian education politics as “buttressing the very idea behind Norway’s Christian and Religious Education school subject (soon to be renamed Religion, Life Stance and Ethics), by taking cultural plurality seriously while keeping to the Christian foundations. This is a piece of good political craftsmanship.”⁴¹

But not all parties to the controversy will be relieved. – Assessing the proposed object clauses from the vantage point of human rights standards the Norwegian Centre for Human Rights has in its response to the hearing (31 October 2007) pleaded that the object clauses of public education should be optimally inclusive, hence be articulated on terms of fundamental values that are today endorsed by different religions and life stances, without linking this to a

³⁹ More than 10 000 petitioners to the Bostadutvalget supported the view that the so-called “Christian” objects clause should be retained in the laws on kindergarten and school education. But this view is rarely made public except in “Christian” papers, such as *Vårt Land*. <http://www.vl.no/meninger/troetikkesistens/article3402325.ece>

⁴⁰ NOU 2007: 6:21-24

⁴¹ So Erling Pettersen, the father of the hotly contested school subject Knowledge about Christianity, Religion, and Life Stance, to the newspaper *Vårt Land*, 4 April 2008. <http://www.vl.no/samfunn/article3452101.ece>

Christian tradition, as in the existing proposals.⁴² – A spokesperson from the Christian Democratic Party, on the other hand, asserts that the proposed object clauses “are lacking in distinctness, they must have a much clearer basis in Christian and humanist values.”⁴³ And a spokesperson on educational politics of the right-wing, populist Progress Party declares that the consensus proposal is “without value”, in particular slating “that our nation’s historical role as a vehicle of Christian and humanist values does not lead to consequences in the proposal for a new object clause.”⁴⁴

The public debate on the *consensus formula* for new object clauses of kindergarten and school in Norway has as of early April 2008 just begun.

2.3 *Should the teaching of Christianity be trimmed down in the mandatory curriculum on religious education in Norway’s school system and, if so, how, and to what extent?*

The third public controversy I shall present and discuss arises from the recent Grand Chamber Judgment of the European Court of Human Rights (ECtHR) in the *Case of Folgerø and others v. Norway*.⁴⁵ Norway was in effect instructed to revise her mandatory school subject of *religious education*: “Kristendoms-, religions- og livssynskunnskap” [Knowledge about Christianity, Religions, and Life Stances, KRL] so as to remove aspects that were found to violate freedom of religion or belief norms binding on Norway under the European Convention on Human Rights. – Here, the issue is whether, how, and to what extent, the teaching of Christianity is to be trimmed down.

This interpretation of what is at stake may not be obvious. The ECtHR Grand Chamber judgment against Norway “finds that the refusal to grant the applicant parents full exemption from the KRL subject for their children gave rise to a violation of Article 2 of Protocol No. 1 [to the European Convention on Human Rights, ECHR]”.⁴⁶ But on a closer reading of the Judgment the Court’s main assessments address not the partial exemptions regime but the substantive norms and contents of the KRL subject itself. Here the Court welcomes the legislator’s goal of “promot[ing] understanding, respect and the ability to maintain a dialogue between people with different perceptions of beliefs and convictions” and the Court espouses the legislator’s goal that “teaching [in the KRL subject is to] follow a uniform pedagogical

⁴² NCHR response letter to hearing 31 October 2007, page 4. Responses to hearings from the Norwegian Centre of Human Rights can be found at <http://www.humanrights.uio.no/omenheten/nasjonal/horinger/index.html>

⁴³ So Dagrunn Eriksen, vicechair of the The Christian Democratic Party, to *Vårt Land* 4 April 2008 <http://www.vl.no/samfunn/article3452101.ece>

⁴⁴ Anders Anundsen to *Dagen Magazinet* 7 April 2008 <http://www.dagenmagazinet.no/artikkel.asp?Artid=26092>

⁴⁵ *Folgerø and others v. Norway*, 29 June 2007, Application no. 15472/02, Grand Chamber. See note 41 above for the internet address of the full text of the Judgment.

⁴⁶ *Folgerø and others* paragraph 102.

approach in respect of different religions and philosophies” and KRL thus be “an ordinary school subject which should normally bring together all pupils”.⁴⁷ However, the Court finds that “not only quantitative but even qualitative differences applied to the teaching of Christianity as compared to that of other religions and philosophies are such that it is not clear how these aims can be properly attained.” Only then does the Court move on to assess the system of partial exemption, concluding as reported above.

Here it should be stated that the Human Rights Act of May 1999 incorporate into Norwegian law several human rights treaties, giving them legal precedence over conflicting domestic norms. Among the relevant human rights provisions are: ECHR, Article 9 and Protocol No. 1 Article 2; International Covenant on Civil and Political Rights, Article 18; International Covenant on Economic, Social, and Cultural Rights, Article 13 (“...education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups,”); and Convention on the Rights of the Child, Article 13 and Article 29.1 (“State Parties agree that the education of the child shall be directed to: .. (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups. .”). – From a human rights point of view, then, it will not suffice just to *remove* certain parts of the KRL subject. And a more liberal exemption regime cannot as such satisfy applicable human rights educational requirements. Education about religions and life stances may be mandatory in a multicultural and religiously diverse society. Therefore Norway’s KRL-subject needs to be revised in a way and to an extent that eliminates, as far as possible, reasonable grounds of parents, whatever their religion or belief, for asking that their children be exempted from tutoring in the subject.

This is the main thrust of the Ministry’s proposed revisions pertaining to the mandatory religious education subject in Norwegian schools, beginning with a change of the name. In order to make clear that differing religions and life stances are to be dealt with on an equal footing the subject is to be called “religion, livssyn og etikk” (RLE) [Religion, Life Stance, and Ethics]. Proposals for revised legislation were presented by the Ministry of Education and Research in December 2007 and followed up by corresponding proposals for revision of the RLE Mandatory Subject Curriculum in January 2008.⁴⁸ Each proposal was subjected to an extensive but speedy public hearing process.

⁴⁷ *Folgerø and others* paragraphs 95, 89, and 23

⁴⁸ Documents on the proposed legal changes pertaining to Religion, Life Stance, and Ethics can be downloaded: <http://www.regjeringen.no/nb/dep/kd/dok/hoeringer/hoeringsdok/2007/Horing--forslag-til-endringer-i-opplarin->

Beyond the altering of the name of the religious education subject the proposed legislative changes to the *Law on School Education* include:

- a minor adjustment of the rules about exemption from RLE activities, providing that pupils, and parents of pupils of age below 15 years, be informed annually about the contents of tutoring in the year ahead (§2-3a);
- transferring the RLE competence goals that define what pupils are expected to know at specified stages from the Law to the (administrative) RLE Subject Curriculum, and
- inserting into the Law a directive to RLE teachers: they “*shall present different world religions and life stances in an objective, critical and pluralist way. . .*” the provision continues “. . . from the standpoint of their particular characteristics [ut fra deres egenart]. The same pedagogical principles shall be applied to the teaching of the different topics.” (§2-4)

The proposed revisions to the *RLE Subject Curriculum* [læreplanen] corresponding to the provisions on RLE in the Law on School Education tend to downplay any special status and role for Christianity, they remove fixed quantitative determinations of the various topics from the Curriculum and present RLE more consistently than before as a normal school subject. But the presentations of RLE main areas of teaching in the Curriculum and its lists of stage-specific competence goals clearly indicate that knowledge about Christianity still constitute a major substantive part of RLE from grade 1 through grade 10. The exact extent of predominance cannot be determined from the proposed RLE Subject Curriculum.

The public hearings on the proposals of the Ministry of Education and Research for legislative, respectively curriculum revisions of the mandatory religious education school subject terminated 21 February, respectively 3 April 2008. At the time of writing (early April 2008) public discussion in media and academia is waiting for the Ministry to submit to Parliament its finalized proposals. Most hearing responses to the proposed new RLE Subject Curriculum were negative. Some major opposing voices have already spoken publicly, and main positions are crystallizing.

Professor Gunhild Hagesaether, in a full-page feature article in *Vårt Land*⁴⁹ criticized the proposed new RLE Subject Curriculum on several counts, under the heading “Christianity

[2.html?id=493556](http://www.skolenettet.no/laereplaner/login_lp.aspx?id=46409&epslanguage=NO&scope=ScopeLaerAns). Documents on the proposed revisions to the corresponding Mandatory Subject Curriculum: http://www.skolenettet.no/laereplaner/login_lp.aspx?id=46409&epslanguage=NO&scope=ScopeLaerAns

⁴⁹ *Vårt Land* 31 March 2008:24 – Gunhild Hagesaether has made important contributions to the formation and the scholarly assessments of the KRL school subject. She is professor emerita, Norwegian Teachers Academy, Bergen.

made invisible”. She argues that the ECtHR Judgment against Norway could be fully satisfied by a more liberal exemption regime. All other revisions proposed by the Ministry are uncalled for, among these: *change of name* from KRL to RLE; *removal* of the competence goals “thorough knowledge of the Bible and Christianity as cultural heritage”, “of Evangelical-Lutheran interpretation of Christianity, and of different Christian Church communities”; and *requiring* that religions and life stances “be presented in an objective, critical and pluralist way”. According to Professor Hagesaether, no religion or life stance “is pluralist and [none] can therefore . . . be presented in a pluralist way if the presentation is to be adequate.” – Hagesaether was rebutted by Lisbet Rugtvedt, junior minister of Education and Research.⁵⁰ Rugtvedt insists that *Folgerø and others* must lead to substantive revisions of the Law on School Education and of the religious education Subject Curriculum. “Norway must hold human rights obligations in high regard, and we cannot persist with a religious education in our schools that is not in accord with human rights.” And she goes on to argue that both the alteration of the name and the revision of particular substantive points are called for by the specific criticisms directed against the old KRL subject by the ECtHR.

Assessing the proposed legislative changes to the Law on School Education pertaining to religious education in schools as well as the corresponding revisions of the RLE Subject Curriculum, the Norwegian Centre for Human Rights finds⁵¹ that the alteration of the name, the revised directive to teachers, the “normalization” of the status and role of Christianity within the RLE Subject, and the modified regime for exemptions from RLE activities are all welcome from a human rights point of view. The two more significant objections raised are: (1) The Centre welcomes that quantitative balancing between different topics is left to the discretion of schools or teachers, since this enhances scope for adjustments to local needs. But the Centre suggests that limits should be set to deviations from some standard allocation of time for each main topic and/or some external control procedure be established, so as to forestall breaches of individuals’ rights. (2) The Centre notes that tutors are instructed to teach “each world religions and life stances from the standpoint of their particular characteristics” [ut fra deres egenart]. This locution is lifted from previous subject curriculums; it indicates a “perspective-from-the-inside” that may prove objectionable, in particular if the quantitative weight of Christian topics shall remain predominant. The Centre suggests a revised wording to the effect that teachers should “present each religion and each life stance respectfully”, here referring to the *Toledo Guiding Principles* that emphasize teaching *about*, not *of*, religion in

⁵⁰ *Vårt Land* 8 April 2008:21

⁵¹ <http://www.humanrights.uio.no/omenheten/nasjonalt/horinger/index.html>. January/April 2008; in Norwegian.

public schools.⁵² – The upshot is that the Centre, from the vantage point of applicable human rights norms, finds acceptable the main thrust of the Ministry’s proposed revisions of the law and subject curriculum of mandatory religious education as a response to *Folgerø and others*.

The last round of serious public discussion over the recent proposals for revisions of religious and life-stance education in Norwegian schools had, by the first week of April 2008, not yet got started. It would be reasonable to expect that the two other closely related political arguments would take precedence: First in line would be a heated public debates about the future – the reshaping or demise – of the entire state-church system itself, including the tug-of-war over differing proposals for inserting a so-called values Article into the Constitution. If a political bargain on a constitutional reform package on principles and structures of the state-church system, or its demise, is reached before Parliament disbands before summer 2008, then the issue of a constitutional “values Article” might also be settled. But considering the entrenched political disagreements about the matter, such an accord would seem uncertain. Since only future Parliaments will be able to finalize the requisite constitutional reforms one may have doubts about the robustness of any political agreements reached in spring 2008.

Controversies over the proposed *consensus formula* for revision of the object clause for kindergarten and schools will probably be amplified by controversies over how Norway should respond to the *Folgerø and others* judgment. Debates attracting vociferous participants in greater numbers are to be expected, in newspapers and journals, on radio, television, and internet, and in a host of panel debates and meetings.

Extensive public discussion about all three contested quandaries presented and discussed in this paper are to be expected before summer 2008. After summer vacation 2008, when school starts in late August, a revised mandatory religious education subject, *maybe* called “Religion, Life Stance and Ethics”, must be in place – in a public school system operating under a revised *object clause*.

Conclusion

How Lutheran State Religion Still Matters: The Might of a Tradition, Even When in Ruins

⁵² *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, published 28 Nov. 2007 by the Office for Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe: “The primary purpose of the . . . Guiding Principles is to assist OSCE participating States whenever they choose to promote the study and knowledge about religions and beliefs in schools, particularly as a tool to enhance religious freedom. The Principles focus solely on the educational approach that seeks to provide teaching *about* different religions and beliefs as distinguished from instruction *in* a specific religion or belief.” <http://www.osce.org/item/28314.html>; <http://www.osce.org/search/?lsi=1&q=toledo+guidelines&res=html>

The main body of this paper was finalized by the end of the first week of April 2008. Afterward, political developments in the field under discussion have by happy accident moved exceedingly fast.

I shall first highlight the astounding *State–Church Agreement* struck 10 April 2008 between all political parties represented in Parliament. Next, I shall note the unquestioned endorsement, across political, religious, and life-stance in Norway, of universal human rights including the claim that they have normative priority over competing political values. And finally, I shall offer my analysis of why prevailing contemporary Norwegian approaches to the set of three constitutional and legislative controversies addressed in this paper are, nevertheless, at some distance from solutions proper to a liberal and pluralist democracy committed to universal human rights.

10 April 2008 all seven political parties represented in Parliament, after days and nights of intensive bargaining, agreed on a political settlement on the future legal regulation of the relationship between the State and Church of Norway. I shall refer to this settlement as the Inter-Party State-and-Church Deal (IPSaC, for short). The IPSaC Deal addresses 6 main points: 1. Appointment of bishops and deans; and democratic reform of Church of Norway (CoN); 2. Church Cabinet and church order; 3. Constitutional changes; 4. Financial matters; 5. Administration of funerals; 6. Government-sponsored public ceremonies that are to be neutral with respect to religion or life stance.⁵³

The IPSaC Deal is the outcome of skillful political choreography directed by Trond Giske, Labor Party Minister of Culture and Church Affairs: The Deal gives no party everything it wants, and all parties gets something of what they want most. The IPSaC Deal binds all participating political parties until 2013, when all elements of the new State-and-CoN relationship are to be in place. Interestingly, the IPSaC Deal can be revised, but *only* if all seven political parties accept the revision. Some main components of the IPSaC Deal are reported below (terms in *italics* are marked for subsequent discussion):

- A new Article 16 of the Constitution is the main *substantive* innovation; it runs: “All inhabitants of the Realm shall have the right to free exercise of their religion [lifted from existing Article 2]. Church of Norway, an Evangelical-Lutheran Church, shall remain Norway’s *popular Church* and be supported as such by the State. Specific provisions for its organization shall be determined by law. All communities of faith and life stance shall be supported on an equal footing.” [Alle Indvaanere af Riget have fri Religionsøvelse. Den norske Kirke, en evangelisk-luthersk kirke, forbliver Norges *Folkekirke* og understøttes som saadan af Staten. Nærmere Bestemmelser om dens

⁵³ The text of the IPSaC Deal is available as a pdf-file in Norwegian at <http://www.regjeringen.no/nb/dep/kkd/pressesenter/pressemeldinger/2008/forlik-om-stat-kirke.html?id=507123>

Ordning fastsættes ved Lov. Alle Tros- og Livssynssamfund skal understøttes paa lige Linje.]

- A new Article 2 of the Constitution constitutes the main *symbolic* or *ornamental* innovation; it runs: “The value foundations shall remain *our Christian and humanist heritage*. This Constitution shall safeguard Democracy, Rule of Law and Human Rights.” [Værdigrundlaget forbliver *vor kristne og humanistiske Arv*. Denne Grundlov skal sikre Demokrati, Retsstat og Menneskerettighederne.]⁵⁴
- Existing Articles 4, 21, 22, 12, 27 in the Constitution are to be revised so as to terminate the constitutional basis, as it has been until now, for CoN as a state church.
- CoN bishops and deans are no longer to be appointed by the King in Church Cabinet (henceforth defunct) but by some competent CoN body: either by the General Synod or by Diocesan Councils. However, bishops, and deans and all other CoN clergy shall remain state employees and be salaried by the State. CoN shall remain intertwined with state and municipal administrations. And CoN shall not have independent legal standing.
- Before the agreed-upon constitutional and legal reforms are to be implemented, in 2012, CoN must have become a more democratic church. Various measures for the democratization of CoN are to be worked out rapidly, are subsequently to be tested and assessed, and are finally to be adopted, via an ingenious stepwise process:
- *Step one* is the package of democratization measures (including clarifying the reasons why democratization of CoN is theologically proper) to be worked out by a government-appointed fast-moving committee (deadline early May 2008) headed by dean Trond Bakkevig, a theological doctor with top-level experience in international and interfaith activities of CoN and a staunch Labor Party confidant.⁵⁵
- *Step two* hinges on an informal agreement between Labor Party and Center Party leaders to the effect that the CoN democratization measures, before they are presented for adoption to Parliament, are to be assessed by a team of experts to be headed by Gunnar Stålsett, until recently the CoN bishop of Oslo and formerly the leader of the Center Party, the political party most fiercely disposed to retain the state-church system.⁵⁶
- *Step three*: Only when the CoN democratization measures have been tested at parish, diocese, and General Synod levels and have been found satisfactory by CoN and by Parliament/political parties, foreseeably by 2011, a CoN democratization law and the other constitutional and legislative amendments foreseen in the IPSaC Deal, are to be adopted by Parliament in 2012.

Provided the IPSaC Deal is successfully implemented according to schedule by 2012, CoN shall have become a more autonomous church. The bond between State and CoN will have

⁵⁴ The heading of the first two Articles of the Constitution, according to IPSaC, is to be “On the Form of the State”. One may therefore assume that the entity to be supplied with “value foundations” is the Norwegian State. The proposed Article 2 is symbolic or ornamental since it entails no legal implications and matters of democracy, rule of law, and human rights are already catered for with greater specificity in the existing Constitution.

⁵⁵ The Bakkevig committee is requested to submit detailed proposals for changes in the election systems of CoN and come up with additional measures for implementation in the elections to CoN bodies in 2009-2010. In particular, the committee shall consider measures that may broaden participation in parish council elections in 2009, that may enhance the democratic legitimacy of various CoN bodies, and that may strengthen procedures pertaining to the future selection of deans and bishops.

⁵⁶ *Aftenposten* 11 April 2008:8 – Stålsett has been reported in newsmedia to welcome the IPSaC Deal; he find it “very satisfying” and “can find no negative aspects to it”, *Vårt Land* 12 April 2008:13 – Earlier Stålsett has unequivocally opted for not rocking the existing state-church system and he headed a (not very successful) attempt at creating a populist movement in support of retaining the state-church system, demanding that any revision of it be submitted to a popular referendum. <http://www.forumforstatskirken.no/nyhetstalsett.htm>

been weakened, but still be firmly grounded in the Constitution, in new legislation adopted by Parliament, and in the *de facto* administrative intertwining of CoN with state and municipalities. The extent to which Norway will still have a state church is already hotly debated, and differing groups and voices interpret and evaluate the IPSaC Deal in widely divergent ways. Here I shall not report on the many intriguing conflicting assessments of the IPSaC Deal as a whole but return to the three specific constitutional or legislative quandaries for which determinate solutions would have to be devised spring 2008. To recall: (1) The controversy on whether and how to introduce a “values Article” into the Constitution; (2) the controversy on how to revise the Christian objects clause of kindergarten and schools, and (3) the controversy on whether and how to trim down mandatory Christian education.

As to controversy (1): The IPSaC Deal, if implemented, entails that Norway’s Constitution shall have a new “values Article” more harshly exclusivist and identity-demarkating than any earlier proposal submitted by the State–Church Committee or embraced by the General Synod of CoN. – I need not rehearse normative⁵⁷, substantive⁵⁸, and technical objections presented above to a constitutional celebration of “our Christian and humanist heritage.”

As to controversy (2): Judging from the state of public discussion by mid April 2008 the *consensus formula* proposed by the Ministry of Education and Research to Parliament 4 April 2008 is more likely than not to be made into law before summer 2008. If so, the objects clause in the laws for kindergarten and schools will provide that education is to build on

respect for human dignity, on intellectual freedom, neighborly love, equal worth and solidarity, as these basic values are manifested in Christian and humanist tradition and in different religions and life stances and as they are anchored in human rights.⁵⁹

As to controversy (3): Judging from public debates and responses to hearings conducted by the Ministry of Education and Research on their reform proposals for mandatory religious education, in response to the Strasbourg Court judgment against Norway in *Folgerø and others*, it is not clear how the Ministry’s proposals for a renamed school subject “Religion, Life Stance and Ethics” and its proposed legislative and curriculum revisions will fare. In the view of the Norwegian Center for Human Rights, to which the present author concurs, this set of proposals from the Ministry of Education and Research is, from the vantage point of universal human rights, the better among the three substantively interconnected problem solutions discussed in the present paper. But this assessment, even if well-founded in principle, may not be decisive for political outcomes.

⁵⁷ See two paragraphs of text after note 22 above.

⁵⁸ See text to note 30 above.

⁵⁹ See text to note 37.

Do most participants in the ongoing Norwegian controversies about a constitutional “values Article”, about the object clause for public schools, and about mandatory religious education take human rights standards seriously? Do they accept that fundamental human rights are politically and legally binding on Norway under international law and that the 1999 Human Rights Act have precedence over conflicting domestic norms? Do they appreciate the moral foundations of universally applicable human rights in respect for the equal dignity and freedom of all human beings? My general sense is: in declarative principle the answer is *yes*, and in political applications *perhaps* and *perhaps not*. Two scholars, Høstmælingen and Rødstøl, have now investigated the question in their studies of responses to the public hearing on Recommendations of the State–Church Committee.⁶⁰

Høstmælingen’s and Rødstøl’s findings are noteworthy. Most respondents, they find, tend to declare that human rights principles, and in particular freedom of religion or belief norms, are important and should always be respected. The jurist Høstmælingen soon finds reasons to regret, however, the prevailing absence of legal arguments applying human rights competently to the specific cases at hand, even among respondents that should have the requisite competence. He concludes that the State has failed to prepare for a clear-cut key role for human rights arguments and have facilitated shallow and superficial responses by the questionnaire sent to respondents. But most importantly, stringent human rights arguments would not be instrumentally useful for the great majority of respondents as they perceive their own interests. To the contrary: “[H]uman rights would require that the special bonds between State and Church be cut off and as much equality as possible be established between different communities of religion or belief. But that goes against the interest of a majority of respondents.”⁶¹

The political scientist Rødstøl finds a striking difference between respondents that are *inside* the circle of CoN, respectively are *outside* CoN. CoN *insiders* too emphasize human rights and freedom of religion norms but often state that ECtHR has found that a state-church system does not conflict with human rights. Several CoN respondents also defend a continuation of the state-church system as being particularly beneficial for minority religions (Rødstøl:

⁶⁰ Njål Høstmælingen, “Menneskerettigheter brukt som argumenter i høringsvarene til stat-kirkeutredningen” [Human rights used as arguments in the responses to the hearing on the relationship between the Norwegian State and Church of Norway] and Kristine Rødstøl, “Kringsett av fiender eller et fargerikt fellsskap?” [Surrounded by enemies or a multicolored community?], both in: Hans Stifoss-Hanssen, Inge Furseth, eds., *Mellom prinsipper og pragmatisme. Analyser av høringen om staten og Den norske kirke* [Between Principles and Pragmatic Bargains: Analyses of the hearings on the relationship between the Norwegian State and Church of Norway], Trondheim: KIFO Perspektiv/Tapir akademisk forlag, 2008:97-119, 121-140

⁶¹ Stifoss-Hanssen, Furseth eds., 2008:116-117

they take recourse to “reverse and paternalistic multiculturalism”.) An example of this mode of argumentation, claiming that one’s own privileged position benefits others (without consulting them), is due to the Faculty of Theology, University of Oslo: “[A]ccording to the opinion of the Faculty, if [the state church] is discontinued, that may weaken the place of religion in public space in Norway. And that, in turn, will weaken freedom of religion or belief.”⁶²

Very different is the mode of religious freedom arguments that prevail among respondents *outside* CoN. Islamic Council Norway (ICN) advocates full equality in the long run between different communities of faith and conviction. But it differs from other “outsider” communities by preferring, as the next step, the model of a statutory popular CoN that may secure CoN’s presence in all Norwegian local communities. On the issue of protecting a place for religion in public space there is partial convergence between ICN and some CoN responses.⁶³

Principled and thorough responses arguing coherently *from* universal freedom of religion and belief norms *to* specific and liberal solutions are presented by the Norwegian Humanist Association and by the Evangelical-Lutheran Free Church. Both secular humanists and “free-church” Lutherans demonstrate a clear grasp of the relevant human rights norms and, accordingly, argue for an independent CoN that shall enjoy unrestricted autonomy from the State, on an equal footing with all other faith and conviction communities in Norway. The humanists deplore, for instance, State interference with the appointments of bishops and deans in CoN.

Interestingly, both “free-church” Lutherans and secular humanists see untrammelled equality of basic rights, including equal freedom of religion or belief for all, as the *only* proper model for Norway as liberal State in a multi-religious society. What is special for the response from the Evangelical-Lutheran Free Church, however, is that they, in addition to presenting coherent and well-argued rights-based reasoning, *also* argue for liberal conclusions from their own religious principles. They base their argument for supporting the option of an *independent* “popular church” squarely on their readings of *Confessio Augustana*, Article XXVIII.⁶⁴ I should add that they object to CoN’s use of the term “popular church” in this context “since it gives rise to unfortunate associations of nationalist and ethnocentric attitudes”⁶⁵.

The present author holds the standards of freedom of religion or belief codified in international human rights treaties, as interpreted by competent bodies of the UN and by the

⁶² Quoted by Rødstøl in Stifoss-Hanssen, Furseth eds., 2008:131

⁶³ Recall that ICN was adamant in its rejection of an ethno-religious “values Article”; see text to note 29 above.

⁶⁴ Incidentally, at Church of Norway’s internet site, the subsection on Faith [troen], *Confessio Augustana* ends with Article XXI. Articles XXII through XXVIII are dropped without explanation.

<http://www.kirken.no/index.cfm?event=doLink&nodeID=5402>

⁶⁵ Quoted by Rødstøl in Stifoss-Hanssen, Furseth eds., 2008:139

ECtHR, to be “nearly without blemish”.⁶⁶ I therefore deplore that most voices of my own church, Church of Norway, though *in principle* committed to human rights fail to apply those standards consistently *when they curb the interests of CoN as perceived by them*.⁶⁷ Now, a Christian church does not have to reason solely in terms of “secular” human rights, based on the foundational doctrine that all human beings are due recognition as “born free and equal in dignity”. The precepts of core Christian ethics should suffice to tell Christians that a privileged position for themselves vis-à-vis the State is normatively improper in a modern, multi-religious society. Lutherans should not even have to turn to *Confessio Augustana*, their *norma normata*: The *norma normans* of the gospel teaches, “So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.”⁶⁸ If, when considering the relationship between religious and life-stance communities and State, we fail to see clearly who are our *others* I recommend we reflect on our worries about Christian minority churches in hardships in many places in the present-day world. The advent of globalization and of multireligious societies everywhere may help us appreciate *who are our neighbors*.⁶⁹

Prevailing Church of Norway approaches to the three controversies addressed in this paper diverge tenaciously, and in my view lamentably, from solutions proper to a liberal and pluralist democracy committed to universal human rights. Of course, in a modern democracy effective exercise of majority power, even strategic use of lofty and solemn moral language in pursuit of ones own interests are to be expected and hardly to be frowned at, generally speaking. What calls for some special explanation, I submit, is the propensity of *insider* CoN players engaged in the three controversies discussed in this paper to neglect the application of those public norms and moral principles to which they are committed. As partial explanation, I propose the view that Norway’s Lutheran state church tradition still carries a lot of weight, even though it is in ruins if appraised by standards properly its own. As indicated from the beginning and throughout this paper, I understand major players to be in the grip of a hegemonic Lutheran state-church tradition so as to make them succumb to the temptations of traditionalism and identity-political stratagems that distort *both* enlightened Evangelical-Lutheran doctrine *and* the principles of universal human rights.

How should we to explain the tenacity of identity politics of Evangelical-Lutheran state-church provenience in Norway? Unabashed, governmentally imposed Lutheran religious

⁶⁶ See Lindholm, Durham, Tahzib-Lie, eds., *Deskbook*, 2004:xxxvi-xlii and passim.

⁶⁷ I assume that most respondents know very well the moral function of human rights as “moral side constraints” on permissible practices and strategies.

⁶⁸ Matthew 7:12, *Holy Bible, New International Version*, London: International Bible Society, 1979:983

⁶⁹ Compare bishop Odd Bondevik’s argument reported in note 33 above and the text to that note.

monopoly in Norway is long since of the past. Why then, in 2008, are political resolutions of the three outstanding questions reported above more likely to end up with legislative and constitutional outcomes that, as a reform package, might be characterized as pseudo-Lutheran semi-hegemony? An answer would require the introduction of additional variables, in particular an analysis of Norway's main political parties, including the social-democratic Labor Party that has, mostly very successfully, given political shape to the dynamism of Norwegian society during large tracts of the 20 century. The thorny matter of ownership of CoN and CoN-related property would have to be addressed. And the attitudes of some "theologically liberal" segments of CoN anxious about thoroughgoing equality in CoN for women, homosexuals, and lesbians, would have to be looked at. Such tasks are beyond the scope of this paper.

Summing up: According to our spring 2008 snapshot the State-and-Church constellation in Norway is in slow but steady metamorphosis: The shackles on the Evangelical-Lutheran Church of Norway: as a church run, privileged, and controlled by government are in the process of being shed.

The three constitutional and legislative controversies addressed indicate the ambiguous character of the process: The forthcoming new constitutional "*values Article*", if implemented as foreseen by the IPSaC Deal, is a downright identity-political stratagem, moreover one of little or no legal impact. It is, in the view of the present author, shamelessly exclusivist and incompetently formulated. Also the inclusion of the term "Folkekirke" [popular Church] in a new constitutional Article 16 is a questionable bow to a somewhat illusory self-conception of CoN.⁷⁰ But other aspects of the IPSaC Deal promise to be genuine departures from government-run religion and real-word steps in the direction of equality between different religious and life-stance communities in Norway. – The Ministry's proposals for new *objects clauses* in the laws on kindergarten and for public school in Norway are also substantive steps towards liberal inclusion, equality, and public recognition of societally shared values across the divides of religion or belief, never mind the small-minded and factually dubious preferential naming of "Christian and humanist tradition" which is part of the *consensus formula*. – And the proposed revision of law and subject curriculum for a renamed *mandatory religious education* (Religion, Life Stance, and Ethics) bring laudable changes, from the vantage point of universal human rights and inclusive political liberality – if accepted by Parliament and implemented by school authorities.

⁷⁰ CoN dressing itself, as it were, in Danish garments is a paradigm case of what Grace Davie has analysed as *vicarious religion*, see her paper "Vicarious religion: A methodological challenge", in Ammerman, N. ed., *Everyday Religion: Observing Modern Religious Lives*, New York: Oxford University Press, 2006:21-37.

The controversies addressed in this paper are significant pieces of a much larger picture. The story told exhibits deep-seated ambiguities, and political outcomes are less than certain. Surely, in spring 2008 full-fledged hegemony of state-run majoritarian Evangelical-Lutheran religion in Norway is in ruins. A religio-political semi-hegemony enjoying pseudo-Lutheran legitimacy is hardly a stable arrangement. But, as this paper may demonstrate, there is definitely life in the ruins.