

7. Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 114.
8. *Ibid.*, para. 116.
9. *Ibid.*, para. 118; Manoussakis and Others v. Greece, 23 E.H.R.R. 387 (1997)(ECtHR, Sept. 26, 1996), paras. 43-53.
10. Metropolitan Church of Bessarabia v. Moldova (ECtHR, Dec. 13, 2001, App. No. 45701/99), para. 118.
11. Para. 47.
12. Para. 49.
13. Para. 15.
14. Para. 63.
15. Para. 66.
16. Para. 96 and 59.
17. Para. 101.
18. Case of Church Of Scientology Moscow v. Russia (Application no. 18147/02) (ECHR 5 April 2007), Para. 75.
19. Brian J. Grim, "Religious Freedom: Good for What Ails Us?" in *The Review of Faith and International Affairs*, 5 (Summer 2008); Brian J. Grim and Roger Finke, "Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?" *72 American Sociological Review* 633, 652 (August 2007); Pew Forum Report.
20. Brian J. Grim, "Religious Freedom: Good for What Ails Us?" in *The Review of Faith and International Affairs*, 5 (Summer 2008).

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**THE TENACITY OF IDENTITY POLITICS IN NORWAY:  
FROM UNABASHED LUTHERAN MONOPOLY  
TO PSEUDO-LUTHERAN SEMI-HEGEMONY?  
(Abridged version)**

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 outcome<sup>35</sup>, not significantly modified by the in other respects liberal 17 May 1814 Constitution of Norway (now the second-oldest

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<sup>35</sup> 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. Furre Berge, "Kva skjedde med religionsfridommen på Eidsvoll 1814?" [What happened to freedom of religion at Eidsvoll 1814?], in: Peter Lødrup et al. eds, *Retts teori og rettsliv. Festschrift til Carsten Smith* [Theory of Law and Lawlife. Festschrift for Carsten Smith], Oslo: Universitetsforlaget, 2002. P. 261-284.

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 (Breistein 2003). At the level of *constitutional reform* this process culminated 120 years later, in 1964, with the insertion of the following provision in Article 2: “All inhabitants of the Realm shall have the right to free exercise of their religion.” But the subsequent provision of 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, CoN 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 CoN). True, Parliament in 1920 legislated that CoN have local parish councils, in 1933/34 that the Church have Diocesan Councils, and during the last decades of the 20<sup>th</sup> 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, CoN 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 CoN is shaped and authorized by a Parliament the religious legitimacy of which is ever more questionable. And the appointment of CoN 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,<sup>36</sup> 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 CoN, 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-

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<sup>36</sup> 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 CoN. – 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 imposes 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.

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 21<sup>st</sup> century Norway is surely a modern, functionally differentiated, culturally complex, and religiously diversified but not overly religious society. Basically Norway has become a secular society (Høibraaten 1993), with a secular state,<sup>37</sup> poles apart from the unitary 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.

## *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 CoN. 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. 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 religions, 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 CoN 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*".

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<sup>37</sup> 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 CoN must not infringe on constitutional provision on the Evangelical-Lutheran religion as the public religion of the State. See Børre Knudsen-saken [The Norwegian Supreme Court Judgment in the *Børre Knudsen* case] 1983-09-23: Rt. 1004-1043

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 CoN 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, CoN 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.<sup>38</sup>

A minority of four Committee members recommends an *independent* popular church as a model for a new system. This means that CoN 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 CoN 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 CoN (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.

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 CoN “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] (NOU 2006: 2:181)

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

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<sup>38</sup> The approach to disestablishment advocated by Plesner (note 10) submits that a *sunset clause* terminating once an autonomous church constitution were in place, would *suffice* to facilitate an independent CoN.

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*”. 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.” (NOU 2006: 2:9-10). Referring to this directive, which is concerned with the value foundations of the Norwegian *people*, the majority of Committee members 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.<sup>39</sup>

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 (NOU 2006: 2:164).

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 propose: “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 (NOU 2006: 2:164).

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”.

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<sup>39</sup> The significant shift from *people* to *state* appears not to be noted by Committee members. *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 CoN. Recommendations of the State–Church Committee]. [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](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)

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 (Høstmælingen 2006).

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.<sup>40</sup> 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 doctrinal heartlands (Bielefeldt 2007:43-55; Lindholm 2004:19–61, at 24-36, 53-56). Similar processes of profound reconstruction are in process within most non-Christian normative traditions (Runzo 2003). 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 CoN bodies overwhelmingly support the formula: “The Christian and humanist heritage shall remain the value foundations of the

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<sup>40</sup> 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”.

State.”<sup>41</sup> The General Synod of CoN 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”.<sup>42</sup>

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 (KIFO 2007:19):

(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 Hedningsamfund], The Mosaic Religious Society [Det Mosaiske Trossamfund].

(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, Islamic Council Norway, The Norwegian Humanist Association, The Council for Religious and Life Stance Communities on Norway, Christian Council of Norway, Freedom of Religion in Practice, Community of Seventh-Day Adventists, The Religious Society of Friends (Quakers) in Norway.

(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 Christian Center, The Methodist Church in Norway.

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.*

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.

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<sup>41</sup> *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].

<sup>42</sup> Decision of the General Synod of Church of Norway 2007, agenda item 8/07 point 1.1.3. sub-point 9 (adopted against 16 votes); point 2 (unanimously adopted). [Den norske kirke, vedtak fra Kirkemøtet, sak 8/07 punkt 1.1.3 underpunkt 9 (mot 16 stemmer); punkt 2 (enstemmig) <http://www.kirken.no/?event=doLink&famID=6894>]

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 CoN. 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”. (KIFO 2007:19-20)

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”<sup>43</sup>) 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 CoN is emblematic.

It seems reasonable to ask: does the response by the General Synod of CoN 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 Evangelical-Lutheran thinking? If CoN 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? 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 in Norway?

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 objects clause of the national school system serve “our Christian and humanist heritage” and in case how?*

The second public controversy I shall address arises from a forthcoming revision of the so-called *Christian objects 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 objects clause of *the national school system* is to cater for “our Christian and humanist heritage”. As reported above, the existing objects 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 assist in

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<sup>43</sup> 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.

providing pupils with a Christian and moral education.” [Grunnskolen skal i samarbeid og forståing med heimen hjelpe til med å gi elevane ei kristen og moralsk oppseding.]

Again, a broadly composed public committee was assigned with the task of preparing widely acceptable proposals for new legislation on the objects 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 objects clauses”) by the Bostadutvalget presented 8 June 2007 is instructive of the approach chosen. It runs:

The Committee that has examined the objects of school education and the objects of kindergarten has reached consensus on proposals for new objects clauses. The proposals imply that the values foundation of objects 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.*

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

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.

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. 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 10<sup>th</sup> 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.

Is this compromise on a *consensus formula* of the objects 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.<sup>44</sup>

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 (NOU 2007: 6:21-24).

Judging from the proposed legislation on educational objects 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.”

But not all parties to the controversy will be relieved. – Assessing the proposed objects 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 objects 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 Christian tradition, as in the existing proposals. – A spokesperson from the Christian Democratic Party, on the other hand, asserts that the proposed objects clauses “are lacking in distinctness, they must have a much clearer basis in Christian and humanist values.” And a spokesperson on educational politics of the right-wing, populist Progress Party declares that the consensus proposal is “without value”, in particular

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<sup>44</sup> 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/troetikkeksistens/article3402325.ece>

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 objects clause.”

The public debate on the compromise *consensus formula* for new objects 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*. 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]”. 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 approach in respect of different religions and philosophies” and KRL thus be “an ordinary school subject which should normally bring together all pupils”. 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. Each proposal was subjected to an extensive but speedy public hearing process.

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 submissions to the proposed new RLE Subject Curriculum were negative.

Professor Gunhild Hagesaether, in a full-page feature article in *Vårt Land* criticized the proposed new RLE Subject Curriculum on several counts, under the heading "Christianity 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. 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 finds 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 public schools. – 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. However, 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 objects 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 *objects clause*.

### *3: Outcomes and a Conclusion: The Might of Lutheran State Religion Even When in Ruins*

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 CoN. 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 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.

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]. CoN, 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.”
- 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.”
- 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.
- *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 in favor of retaining the state-church system.
- *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 been weakened but still be firmly grounded in the Constitution, in new legislation adopted by Parliament, and in the *de facto* administrative intertwinement 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.

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 CoN: 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 as a piece of constitutional drafting. Also the inclusion of the term “Folkekirke” [popular Church] in a new constitutional Article 16 is a questionable bow to the somewhat illusory self-conception of CoN. But other aspects of the IPSaC Deal promise to be genuine departures from government-run religion and real-world 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*. (As reported, political agreement is not yet arrived at.) – And the adopted revision of the law and the subject curriculum for a renamed *mandatory religious education* (Religion, Life Stance, and Ethics) brings laudable changes, from the vantage

point of universal human rights and inclusive political liberality – if implemented by school authorities and not revoked by future Parliaments.

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. A religio-political semi-hegemony enjoying, at best, pseudo-Lutheran legitimacy is hardly a stable arrangement. Surely, in Norway as of spring 2008 full-fledged hegemony of state-run majoritarian Evangelical-Lutheran religion is in ruins. But, as this paper may have demonstrated, there is definitely life in the ruins.