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RELIGIOUS AND LEGAL CULTURES IN FEMINIST PERSPECTIVE. THE CASE OF DENMARK IN A EUROPEAN CONTEXT

Abstract

Europe is characterized by both religious and legal pluralism involving mainly the monotheistic Abrahamic religions, which have all historically been dominated by patriarchal and hierarchical values and attitudes. The Protestant north, and especially the Nordic countries with state churches under absolutism and continued strong state influence on church matters after introduction of democracy have since WWII seen a legal, political and cultural development where women have been given legal rights to become priests and now make up slightly more than half of the clergy. This influences religious practice, interpretation and implementation. It has also inspired the establishment of the first female-led Mosque in the Nordic countries in Copenhagen. This article will reflect on these developments and their relation to law and legal culture.

KEYWORDS

historical developments, legal and religious cultures, normative pluralism, gender perspectives, change and interaction

SŁOWA KLUCZOWE

rozwój historyczny, kultury prawne i religijne, pluralizm normatywny, perspektywy płci, zmiana i współdziałanie

INTRODUCTION

No institutions, structures, norms, values or attitudes are completely static over time. Political, legal, economic and religious institutions change – as do family forms, relations, values and norms regarding for instance property, ownership, marriage, inheritance and inter-generational relations. American professor of legal history, Lawrence Friedman in an important article in 1969, discussed the concept of legal culture. Since then he has described the legal system as consisting of 1) structures, mostly institutions, 2) substance – rules, doctrines, legislation and directives and 3) legal culture – the values, norms and attitudes, which hold together the systems and decides on its position in societal culture.¹ In the 20th century, most lawyers have dealt with the first two elements, which are what most people in Western countries think of, when they think of law.

If we look back further, we will find a somewhat different and wider perspective. Professor Atiyah in his book of 1979 *The Rise and Fall of Freedom of Contract* outlined how throughout the 19th century freedom of contract was an ideology whose influence extended into politics, economics and morality, as well as the law.² In his book of 1983, *Law and Revolution. The Formation of the Western Legal Tradition*, Professor Harold J. Berman traced the development of Western law from folk law via the Papal revolution to the formation of secular legal systems. In her book of 1988, *The Sexual Contract*, professor of political science Carole Pateman discusses how contract theory continues to affirm patriarchy through methods of contractual submission where there is ultimately a power imbalance stemming from systemic sexism.³

A thorough review article of 2004 by law professor Gad Barzilai addresses *Culture of Patriarchy in Law: Violence from Antiquity to Modernity* and in a note mentions the interests and ability of the film industry – the modern-day pro-

¹ See the articles by L. M. Friedman: *Legal Culture and Social Development*, “Law & Society Review”, 1969, Vol. 4, No. 1, pp. 29-44; *Law, Lawyers, and Popular Culture*, “Yale Law Journal”, 1989, Vol. 98, No. 8, pp.1579-1606; *Technology and Legal Culture. Liber Amicorum Kjell Å Modeer*, Juristförlaget, Lund 2007, pp.169-179.

² P. S. Atiyah, *The Rise and Fall of Freedom of Contract*, Oxford 1979.

³ C. Pateman, *The Sexual Contract*, Oxford 1988.

ducer of myths – to maintain a patriarchal society.⁴ Barzilai considers that “social forces, such as feminist NGOs should carry the criticism and deconstruct patriarchy through placing non-normative and normative mythologies, while state law cannot render such a social change by itself. Since patriarchy is grounded in state law itself – in its formalities, legal ideology and practices... legislation and court rulings are constitutive constructs of patriarchy itself, despite the contingencies and dynamics of hermeneutics”.⁵

The editors Amanda Whiting and Carolyn Evans called their book of 2006 *Mixed Blessings. Laws, Religions, and Women's Rights in the Asia Pacific Region*. In chapter 1, they write that the essays in the book show:

“that for women, laws (customary, colonial, post-independence, and international) and religions (indigenous or introduced, Buddhism, Christianity, Islam and Confucianism) have been a ‘mixed blessing’. These diverse legal systems and religious doctrines and institutions have variously denied women authority and the capacity to participate fully in the public organization of social, political, and religious life; they have furthermore constructed gender and familial relations in ways that subordinate women. Yet they have also offered promises of women’s empowerment, and provided rules and procedures, norms, values, and interpretations of sacred traditions to deliver those emancipatory promises”.⁶

A combination of interacting patriarchal, religious and legal structures have historically influenced Europe and the world for millennia – however in somewhat different forms and to different and changing degrees over time – moving both back and forth. In this article, I will primarily focus on the development of Denmark, Poland’s northern neighbor across the sea.

THE CASE OF DENMARK

In the latter part of the 9th century after Christ – a traditional Western way of measuring time – King Harald Bluetooth, who ruled from 958-986, united a number of small kingdoms into Denmark – now considered one of the oldest kingdoms in Europe – and introduced Christianity/Catholicism. This brought him some support from the Pope and the Holy Roman Empire, and allowed him to

⁴ G. Barzilai, *Culture of Patriarchy in Law: Violence from Antiquity to Modernity*. Reviewed work: *Every Breath You Take: Stalking Narratives and the Law* by Orit Kamir, “Law & Society Review” 2004, Vol. 38, No. 4, pp. 867-884, see note 9, p. 872.

⁵ *Ibid*, p. 878.

⁶ C. Evans & A. Whiting, *Situating the issues, framing the analysis*, (in:) A. Whiting & C. Evans, *Mixed Blessings. Laws, Religions, and Women's Rights in the Asia Pacific Region*, Leiden-Boston 2006, p. 1.

dismiss many of his opponents, who adhered to the old mythology. Most likely, it also contributed to the important development of a centralising political and religious ideology among the social elite that sustained and enhanced an increasingly powerful kingship, where Roman law never had a direct impact. The Crown and Church often competed for power. However, the Middle Ages saw a period of close cooperation between the Crown and the Catholic Church. Thousands of church buildings sprang up throughout the country during this time.⁷

In 1397, Margrete the First (1353-1412) was credited with establishing the very important *Kalmar Union*, a Personal Union roughly encompassing the areas which today are called Denmark, Norway and Sweden. Norway brought the Faroe Islands, the Shetland Islands and Orkney Islands as well as Iceland and Greenland, which it had taken earlier into the Union. A *Personal Union* is a union of one or more states constituted by their becoming subject to the same personal ruler without loss of independent sovereignty⁸ – in this case the ruler was Margrete the First, who governed until her death – perhaps caused by the Black Death – in 1412. She bore the almost queer title “Guardian Lady and (Right) Husband” – as she ruled on behalf of her male heir and (adopted) son, thus indicating the patriarchal structures of the time in both family, state and church. She was the only acting female ruler in Danish monarchical history before the change to a constitutional monarchy in 1849.

The power of the Catholic Church at the time was demonstrated by the need to obtain the Pope’s permission for the establishment of the University of Copenhagen in 1479. King Christian II travelled to Rome especially to receive the permission. In line with the Christian and European order of the day, this was an educational institution reserved for men – sons of upper-class families, who until then had to travel to European universities to receive their education in all-male institutions.

Shortly after, King Christian III (1503-1559), who had grown up in a German environment and heard Martin Luther speak in Wittenberg as a young man in 1521, accepted the Reformation for Denmark in 1536. Martin Luther’s protest in 1517 against the moral and economic corruption of the Catholic Church also led to his translation of the Latin version of the New Testament to the vernacular German language. This translation had a strong impact on the German-speaking area in Europe. It introduced a German written language, which would come to unify its users in spite of territorial fragmentation. In the Nordic countries, the introduction of Lutheranism strengthened the monarchies, where the kings also became heads of the church. The University of Copenhagen was reestablished as a Lutheran University after 1536 and its main purpose became to preach the gospel in Danish in the reformed Danish National Church. A century later, the Treaty

⁷ *Ibid.*

⁸ <https://www.merriam-webster.com/dictionary/personal%20union> (accessed 24 April 2023).

of Westphalia (1648) ended the Thirty Years' War. Both law and religion became territorially defined, according to the principle of *cuius regio, eius religio* – he who governs decides on the religion. Both law and religion continued to uphold a patriarchal order. Monarchy and the Lutheran Church in Denmark mutually supported each other and excluded members of all other religious communities for several centuries. Finnish feminist legal historian Anu Pylkkänen writes that these churches “upheld a social hierarchy and differentiation according to rank and gender, and religious education became to a large extent a part of the indoctrination into such a hierarchical social order”.⁹ “The dominant notions of marital relationship as well as the social role of women were inherently patriarchal and justified with religious arguments”, she writes. However, in “Protestantism it was underlined that each individual has the right and even the duty to form a personal connection to religious knowledge (universal priesthood) by reading the sacred texts in their mother tongue, not just by relying on authoritarian instruction”.¹⁰

The otherwise very influential French Revolution hardly provided any rights for women. It was strongly anti-clerical, but it actually did not seem to trust women at all.¹¹ Its direct and indirect influence in Europe had, however, a strong impact on legal culture undermining feudal society, introducing the values of liberty, equality and fraternity, which gradually and slowly also led to the creation of women's rights. After the Napoleonic Wars in 1814, the Danish Empire had to transfer Norway to Sweden. This was also the year when basic education for both girls and boys was introduced – ensuring that they could read the New Testament.

THE DANISH CONSTITUTIONAL MONARCHY AFTER 1849 – EDUCATION, VOTING RIGHTS AND FEMALE PASTORS

After the European revolutions of 1848, Denmark became a constitutional monarchy with the 1849 constitution offering limited political rights for a small group of affluent men. This constitution stated in the original Article 3 that “The Evangelical-Lutheran Church shall be the established Church of Denmark, and as such shall be supported by the state”. This wording is unchanged in the present

⁹ A. Pylkkänen, *Feminism and the Challenge to Religious Truths on Marriage. The Case of Nordic Protestantism*, (in:) L. Christoffersen et al (eds.), *Law & Religion in the 21st Century – Nordic Perspectives*, Copenhagen 2010, p. 529.

¹⁰ *Ibid*, p. 530.

¹¹ See J. A. Goldstone, *Revolutions. A Very Short Introduction*, Oxford 2014, p. 40. I quote him in my article, *Revolutions and Legal Cultures. Perspectives and Reflections*, (in:) H. Hydén et al. (eds.), *Combining the Legal and the Social in Sociology of Law. An Homage to Reza Banakar*, Hart 2023, pp. 331-342.

version of the constitution.¹² It led to the “freedom of religion” and abandoned the exclusive position of the Evangelical-Lutheran Church, but demanded in article 6 that the King should still belong to the Evangelical Lutheran Church.¹³

Denmark lost further territory and population after the war with Prussia in 1864 – and probably needed the involvement and labour power of those who had been excluded until that time – farmers, workers and women. Folk high schools expanded and since the 1870s political parties and trade unions were founded. Women got access to university education at Copenhagen University – still the only university in the country – from 1875, although they were not allowed to study theology until 1904. The international movement for suffrage for women had started the very long fight decades earlier. Women in Finland were the first Nordic women to gain voting rights in 1905 due to the aborted Russian revolution.

Interestingly, the development towards political representation of women in Denmark took place partially overlapping with the creation of a new social and ‘ecclesiastical’ institution, the *parish councils*, which were adopted by law in 1903. This law established a new principle, which required that *church members should have a say in church affairs*. Accordingly, the bill contained proposals on women’s suffrage and eligibility from the outset. Female suffrage in church affairs was assessed by all sides of the Upper Chamber of Parliament as beneficial for church life, and the debate therefore concentrated more on whether servants should also have the right to vote and be eligible for election. Servants also ended up getting the vote, because the central point of the arguments was not the criteria for authority and independence that had been debated in previous decades on the issue of municipal and national suffrage, but rather if the voter possessed the right faith. When women and servants were given the right to vote and to stand for election, it was thus based on their religious affiliation with the congregation.¹⁴ Political voting rights for women were passed as legislation in 1913 in Norway, in 1915 in Denmark and in 1921 in Sweden.

After 1915, Danish women had voting rights in the parish councils, the right to study theology, as well as political voting rights. The parish councils decided on who were to become the local priests. In 1947, a Social democratic government in Denmark introduced the first bill in the world to give female theologians the possibility to become priests – something that until then had been an exclusively male privilege. A few parishes had already employed female theologians

¹² See the present text – now in Article 4 here https://www.ft.dk/-/media/pdf/publikationer/english/my_constitutional_act_with_explanations.ashx (last accessed on 14 December 2021, no longer available).

¹³ *Ibid*, this is still article 6.

¹⁴ <https://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/fra-menighedsraads-valg-til-rigsdagsvalg-indfoerelsen-af-kvindelig-valgret-1903-1915/> (last accessed on 24 April 2023).

as priests, but they could not be ordained. With the 1947 legislation this was now possible in spite of resistance from bishops and priests, and the first three female priests were ordained by a brave bishop in 1948.

In 1950, Denmark got the world's first social democratic female minister of Church Affairs, the theologian Bodil Koch. Resistance against female clergy by the conservative part of the Church and clergy gradually diminished. The Youth Revolution in 1968 changed both political and legal – as well as religious – culture in a more secular and less traditionalist direction. Representation of women in education and public and religious affairs grew gradually. Since 1968, no bishop has opposed the ordination of female pastors. With the passing of a bill on equal treatment of men and women in 1978 (an implementation of an EU directive on equal treatment) the minister was, however, allowed to undertake exemptions from the law if “in the case of certain professional activities and the associated education, it is essential that the practitioner is of a certain gender”, which he did for clerical positions.¹⁵ It did not stop the increase of female pastors strongly. Nonetheless, some political and church resistance to female pastors continued. According to the 1912 Rite of Ordination to the Priesthood, ordinands in the Danish People's church were required to shake the hand of *all* clergy who were present. This was changed in the 1992 Rite, where ordinands could, as a minimum, shake the hand of bishops and those pastors who are present as readers. In 1995, the first female bishop was ordained, and until 2007, bishops in the conservative Diocese of Viborg allowed male pastors, who were opposed to female bishops and pastors to refrain from shaking their hands.¹⁶ From that year women made up half of the clergy. In 2012, the Lutheran Church accepted to perform same-sex church marriages. In 2014, female clergy made up 55% of the priests in the Danish People's Church. Until 2016, Denmark was the only country in Scandinavia that reported more female than male pastors.

In an article from 2017, Else Marie Wiberg Pedersen combines a reflection on three interlinked anniversaries that same year: the 500 years from the start of the Reformation, the 75th anniversary of women being allowed to study theology at the University of Aarhus, and the 70th anniversary of the law allowing women to become pastors in the Danish People's Church. Else Marie Wiberg Pedersen considers that later generations of Lutherans were often more conservative than

¹⁵ L 148 1978 Act on equal treatment of men and women with regard to employment, etc. and Executive Order No. 350, 10/07/1978 on derogation from the law on equal treatment of men and women with regard to employment, etc. as far as clerical positions are concerned.

¹⁶ See O. H. Hansen, *Fra undtagelsesregel til undtagelsestilstand. Politiske og kirkelige hensyn til modstandere af kvindelige præster 1947-2007 [From rule of exception to state of exception. Political and ecclesiastical consideration]*, "Kirkehistoriske Samlinger", 2013, pp. 177-184. At the end of 2023 this exception has been limited but not totally abandoned.

Luther himself, especially regarding their arguments against women's ordination in the 20th century.¹⁷

FEMINIZED RELIGIOUS PRACTICES AND INTERPRETATIONS

The Scandinavian churches have clearly become 'feminized' in the 21st century and some observers see the shift to more female priests as a demand for a more unified and maternal church.¹⁸ Family forms have become more plural – also among clergy, and divorce is not unusual. Church practice has changed with quite a few churches offering family-oriented 'spaghetti services' which 'cater' for busy parents and their young children.¹⁹ The Copenhagen Faculty of Theology had a female dean from 2013 – 2020, who modernized the Faculty considerably and contributed to a change in the very male-dominated institution. Female pastors reinterpret biblical texts searching for traces of other understandings of female authority.²⁰

The Cathedral of Copenhagen, the most important one in the country, is named Our Ladies Church, indicating that it was originally a Catholic Church. It publishes a Church Magazine, which for 2021–2022 has a special issue on the Holy Family. The magazine asked whether the family has also in a church context too often been "cut out of glossy paper", and it dealt with the suffering family in the realm of God, the modern family as vulnerable and moral, mourning as the most difficult stage in life and an article on "Queer Christmas cribs, woke baptismal rites and polyphonic Bible texts". All but one article are written by women.²¹ A newspaper journalist has visited a "climate mourning group" in a church in Nørrebro, an old working-class area in Copenhagen, now inhabited by many migrants and a young population including students. The small "climate mourning group" consists of an international and intergenerational group of women, who are dealing with climate anxiety. They are feeling overwhelmed by the unmanageable consequences of the climate crises and they seek to understand and reflect on

¹⁷ E. M. W. Pedersen, *Reformationen og køn. Kvinder og kirkens embede*. [The Reformation and Gender. Women and the Office of the Church], "Dansk Teologisk Tidsskrift", 2017 80. årg., pp. 146-165.

¹⁸ H. Macaulay, *Do female priests represent a true religious reform?* <https://europeanacademyofreligionandsociety.com/news/do-female-priests-represent-a-true-religious-reform/> (accessed 24 April 2023).

¹⁹ <https://www.folkekirken.dk/gudstjeneste/andre-gudstjenester/spaghattigudstjeneste>.

²⁰ See M. A. Skovmand, *De skjulte ledere. Om kvinderne i den tidlige kristendom*. [Hidden leaders. On women in early Christianity], Gyldendal 2021.

²¹ *Domkirken, Kirkemagasinet / Vor Frue Kirke / København*, December 2021-February 2022, Special Issue: The Holy Family.

their feelings of powerlessness, anger, hopelessness and apathy. One of them is a pastoral trainee, but the group is not necessarily Christian. The 29-year-old initiator, who works in an NGO, explains that they have turned towards the church because its solemn space may make it easier to open up for difficult feelings and because there is a priest present who is trained in dealing with mourning and taking care of human well-being. For the initiator it does not come as a surprise that the group is dominated by women. According to her, women are overrepresented among Danish climate activists and in this context which focuses on emotions and mourning it makes sense that it is primarily women, who turn up.²² In an international context, this is probably also the case and one may think of the teenager Greta Thunberg, who visited Pope Francis in April 2019 on one of her global tours. The same year she visited Denmark in May for a big demonstration just before both the EU and national elections in May and June. Those elections led to a considerable green shift in politics – a shift which has, however, to some extent been stalled by the global pandemic, probably leading to increased anxiety, anger, frustration and mourning amongst young people.

TRANS-RELIGIOUS GENDER INSPIRATION AND INTERACTION

Since 1979 and the Islamic Revolution in Iran, since Salman Rushdie's *The Satanic Verses* from 1988 and since the collapse of State socialism in Eastern Europe in 1989, we have witnessed an increasing and contested interest in religion and a populist resistance against Islam, also in Denmark, where the Danish People's Party was established in 1995. We have also experienced a constant rise in votes for the party until the elections in 2019, which reduced its number of members of Parliament by more than a half.

In 1997, an Islamic-Christian Study center was established at the initiative of, among others, a female priest for ethnic minorities and prison chaplain, Lissi Rasmussen, who was the head of the center for many years. The center celebrated its 25th anniversary in 2021.²³ It has not had an easy task in the past years – to a large degree due to geopolitical and national developments. During this period, the center and groups have moved from dialogue to dia-practice between Christians and Muslims, said the former leader, who in 1997 wrote her theological doctoral dissertation on similar developments in an African context.

²² Siri Franceschi, *På besøg i en klimasorggruppe: "Den her snak om håb, den hænger mig langt ud af halsen"* [Visiting a climate mourning group. "All this talk of hope. I'm sick and tired of it."] "Information", 15 December 2021.

²³ M. Fenger-Grøndahl, *Islamisk-kristent center fylder 25 år*, "Kristeligt Dagblad", 26 August 2021.

The increasingly tense Western and European political and religious climate in the first decades of the 21st century gave rise to very divisive political reactions especially after Nine-Eleven 2001. However, in this period, Denmark also strengthened its efforts in the Middle East and North Africa as part of the general Danish foreign and development policy. In 2003, the Ministry of Foreign Affairs, launched the *Arab Initiative*, which has continued since 2017 under the name Danish-Arab Partnership Program (DAPP).²⁴ The Arab Initiative and later the partnership program has, among others, supported cooperation between women's organizations. KVINFO is a Danish center for knowledge on gender and equality, which emerged from 1964 linked to the Royal Danish Library, and was from 1987 a self-governing institution. Since 2006, it has also worked internationally in the Middle East and North Africa with programs in Morocco, Tunisia, Egypt and Jordan. This work has consisted in cooperation with feminists including Muslim feminists, especially in the MENA region.²⁵ I have had the privilege to participate in several conferences and to cooperate with different women's groups, particularly in Morocco.

In my view, the work done by these NGOs, the Study Center and KVINFO as well as other initiatives has been very important in bringing together researchers, activists as well as feminists across religions and borders, thus providing information and mutual understanding of the conditions for productive and inspiring (feminist) work also in transnational and trans-religious relations during an otherwise tense period.²⁶

The Danish and Nordic churches' inclusion of female priests has probably inspired Muslim feminists also in Denmark, where there are currently very few female imams. The most well-known is Sherin Khankan, a female imam and founder of Scandinavia's first female mosque, the Mariam Mosque. Though female imams are not uncommon worldwide, they generally have less power and, for instance, cannot marry two people or lead prayers for a male audience. An example of such cooperation between islamologist researchers and Muslims is the work done by Jesper Petersen, who describes the phenomenon in his dissertation entitled *The making of the Mariam Mosque: Serendipities and structures in the production of female authority in Denmark*.²⁷ I think this solidarity with women in other religions is an important aspect of present Nordic and European legal culture and spiritual life even if it is not dominant.

²⁴ See <https://www.dapp.dk/om/> (accessed 24 April 2023).

²⁵ See KVINFOs historie fra 1964-2020, <https://kvinfo.dk/kvinfo-historie-fra-1964-til-2020/> (accessed 15 December 2021 – no longer accessible).

²⁶ I have written about other aspects of this in: H. Petersen, *Changing Normativity and Solidarity: European Legal and Trans-Religious Perspectives*, (in:) H. Krunke et al. (eds.), *Transnational Solidarity. Concept, Challenges and Opportunities*, Cambridge 2020, pp. 374-392.

²⁷ J. Petersen, *The making of the Mariam Mosque: Serendipities and structures in the production of female authority in Denmark*, Lund 2020.

CONCLUDING REMARKS

Acceptance of female authority has been difficult and continues to be a challenge for both legal and religious cultures, where patriarchal and male-dominated values, norms and attitudes have survived. The Danish case shows that a combination of political, legal and church reforms at the beginning of the 20th century have probably paved the way for a considerable representation and recognition of female clergy at the end of the century. However, what has also emerged in the media at the end of my work with this article is a conflict regarding the mental work environment in the Danish People's Church between especially, but not only, pastors and the parish councils.²⁸ In accordance with the rules laid down in this regard, the parish council participates in the election of the bishop and in the election of members of provost committees and diocesan councils. It makes recommendations for vacant priest positions, administers church and cemetery and employs staff at church and cemetery. Further, it administers the revenue of the church and the priesthood and manages the church and the immovable property of the clergy in accordance with the rules laid down in this regard.²⁹ The parish council consists of voluntary members with no professional management expertise in spite of its wide competence. In this century of secularized cultural Christianity, few people run for office and few people vote. Pastors are employed by the Ministry of Church Affairs. It seems that this dual and partly voluntary structure is becoming dysfunctional and in need of reform. This may not be easy and may also take time.

What we are witnessing in the 21st century seems thus to be both changing demands regarding working conditions and organizational structures in general, associated with changes in religious practices and activities as well as in interpretations of authoritative texts. This may be a development towards what has been described as 'cultural Christianity' in Denmark, combined with what I would call an 'everyday feminism' and perhaps a need for another (self) understanding of gender and authority amongst both the users and organizers of (some) religious institutions staffed by a now slightly female dominated clergy.

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²⁹ LBK nr 771 af 24/06/2013 (Gældende) Bekendtgørelse af lov om menighedsråd. [Statutory Order No. 771 of 24/06/2013 (Applicable) Promulgation of the law on parish councils].

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