Do we really need special regulation of religion?

Per Pettersson

Karlstad University. Centre for Multidisciplinary Research on Religion and Society (CRS), Uppsala University, Sweden

Introduction

Europe has historically developed from state-related monopoly churches controlling and regulating religion, to secular religiously neutral states with individual freedom of religion. In parallel Europe has continuously become more religiously and culturally diverse by globalisation, migration, travel etc. As part of increasing religious pluralism new questions on religion and possible needs for special regulation of religion are brought up in political and juridical contexts.

Simultaneous with the increasing use of the concept of religion in the secular legal context, it is questioned as a useful concept by researchers in religion. The concept of religion is too multifaceted and there is no common universal definition of religion. It is also criticised as being a western European social construction, which makes it especially problematic to use in general policies and common law in a religiously diverse society with many different understandings of "religion".

This chapter discussess the needs and limitations of regulation of religion, and questions if secular states really need special regulation of religion. Is it not enough with the same common law for people of all kinds of belongings, beliefs, values and practices regardless if they are religious, non-religious, political etc.? The European empirical context is in focus, although the theoretical discussion is largely general.

Historic regulation of religion by churches

Europe has a relatively homogeneous religious history of dominant Christian churches with close relationships to the nation-state. The Christian heritage is a formative factor in the construction of Europe, in terms of institutional structures

as well as cultural norms (Davie, 2000; Hervieu-Legér, 2000). The historic religious monopolies combined with dominating agricultural economies formed unitary societies. Religion, state, politics, values and culture were closely linked, and the Christian majority churches were in the centre of society having political and legal power, including regulation of religion. Collectivism, standardisation, and subordination of the individual were promoted and tendencies to individualise religion were subdued and even punished by the churches and the state.

However, from being relatively uniform in the long history of agricultural dominance, society has rapidly become increasingly diversified and pluralistic in the age of the industrial revolution and the subsequent development of a service-dominated society. The continuous functional differentiation process of the previous unitary society has implied changes of relationships in the European religious landscape at societal, organisational, and individual levels (Luhmann, 1982; Dobbelaere, 2002). Relationships have changed at the macro level between religion and society as a whole by the loss of churches' dominating position. Secondly, relationships have changed at the meso level, between the historic churches and other societal functions, which have developed as separate organisations in parallel with the churches and free from religious control. Thirdly, relationships have changed between religious organisations and individuals as a consequence of the changes at the two other levels. From historically been authorities of religious regulation, religious organisations are in present society appearing as possible resources and service providers, to be voluntarily used by free individuals (Chaves, 1994; Gauthier & Martikainen, 2013).

This development paved the way for Europe to become increasingly religiously diverse in two different forms. Firstly by continuously growing cultural and religious pluralism among Europeans themselves. The loss of traditional and hierarchical forms of social control over cultural resources means that individuals are free to pick and choose from a global market of cultural and religious resources (Giddens, 1991). Globalisation, internet, media, travel etc. have made endless religious and cultural alternatives accessible. Secondly, religious diversity is driven by migration, especially having an impact in Europe by the last decades of growing numbers of immigrants arriving from many different parts of the world (Vilaça *et al.*, 2014).

As a result, Europe's common historical traditions become increasingly mixed with new forms of religious pluralism, caused on the one hand by immigration, and on the other by internal religious differentiation and the growth of more individualized forms of spirituality (Heelas & Woodhead, 2005; Jakelić, 2010). From a historical perspective, the change from Christian European unitary societies to present multicultural religious pluralism has taken place during a very short period.

In the past, the majority of churches took on the task to regulate religion; what kind of religion and religious practice that should be accepted and how individuals' religion should be regulated. Today however, we may ask if there is any need to regulate religion in liberal religiously neutral societies, since religion is regarded as an individual matter.

Revival of religion in legal regulation

European states are religiously neutral, churches are no longer controlling religion and individuals are free to believe and practice religion in liberal democracies. Seeming like a paradox, religion has during the last decades appeared more frequently as a hot topic in the European discourse on legal regulation (*e.g.*, Doe, 2011; Lind *et al.*, 2016). This new focus on religion in a legal context has mainly been related to new issues raised by the increased immigration of people from Muslim dominated countries, and an increasing notion of people's religious identity (Shiffauer, 2017). In the previous waves of migration from Greece, Spain, former Yugoslavia, Vietnam etc., different groups of immigrants were labelled by their nationality. However, with the increasing immigration of people from Islam-dominated countries there has been a "religionising" of their identity and they are reduced to "Muslims" instead of specifying that they are Turkish, Syrian, Iranian, Somali etc. (Mattes, 2018). Often all people from these countries are counted as Muslims even if many of them belong to another religion, *e.g.*, Christians.

This "religionising" or "Muslimisation" of Muslims has had the function of stressing the "otherness", the difference between "me/us" and the "other/s" and contributed to focus at religion as an identity marker. It is driven from two opposite political discourses; a) right-wing opponents to immigration who stress the difference between European Christian culture and Muslim culture, b) left-wing defenders of immigrant minorities' rights who stress certain rights related to the Freedom of Religion principle of Human Rights. Both of these groups have an interest in stressing the different religions as the identity of immigrants from these countries.

The highlighting of religion as being a more significant identity marker than nationality is underpinned by religious extremism and terror attacks from Islamist as well as right-wing Christian Nazi-inspired groups and individuals. Both of these groups have an interest in polarising Muslims and Christians as part of their respective image of a dualistic reality in conflict. The focus on religion as an identity marker has indirectly implied a "religionising" of a number of issues previously regarded as cultural, ethnical or political issues.

This development has repeatedly brought up religion on the political and legal agenda in all European countries, sometimes regarded as part of a return of religion to the public sphere or the so-called post-secular turn (Ziebertz & Riegel, 2008). The revival of religion in European public discourse raises new questions about how to understand and handle religion in religiously neutral states with common law for all, separation between organised religion and the state, and a view of religion as being a private matter. New questions are also raised on how to understand and define the concept religion.

The unclear concept of "religion"

There is no common universal definition of the concept of religion. It is used in various ways in different social, cultural, political and legal contexts, mostly without a specified definition. There is however a long academic tradition of discussing and problematizing the concept of religion from different perspectives (*e.g.*, Marx, 1970[1844]; Durkheim, 1995[1912]; Freud 1913; Weber, 1920), and different theoretical or empirical definitions of religion have been suggested (*e.g.*, Stark & Glock, 1968; Vaillancourt, 2008; Greely, 2017; Woodhead, 2017).

Over the last decades, there has been an increasing new kind of fundamental critique and deconstruction of the analytical category "religion" (*e.g.*, Beckford, 2003; Fitzgerald, 2015; Horii, 2015, 2021). Several authors stress that the concept of religion is a social construct created in a Western European context that does not exist in that same way in traditional cultures, unless imported from or imposed by Western Europe (Spickard, 2017). It has been highlighted that there is no equivalent concept or word for religion in *e.g.*, Chinese, Japanese, Egyptian, Sanskrit, Pali or native American languages, and it is not used in the Hebrew Bible or the Greek New Testament (Smith, 1962; Schilbrack, 2012).

According to David Martin (1978) the monopolistic Catholic church had a key role in creating the Western European concepts of religion and secular, by polarizing a division between a "religious Christian" part of society and a "secular" part in opposition to the church. When the word religion first appeared in the English language, it was in the process of developing a mainly secular national state. "Religion" was a label for the "The Christian Truth" referring to the Anglican Church and thereby a way of distancing the Church from the state. Subsequently the concept "religion" was developed as a tool of state to classify churches and similar organized societal formations into one single category (Fitzgerald, 2007, 2015; Cavanaugh, 2009; Horii, 2015). The historical background of the category "religion" as a Western European social construction, and the lack of a common definition mean that we need to question if we really should use the concept of religion in a legal context in the present religiously diverse society.

In theoretical discourse, the unclear conceptual understanding of religion is relatively unproblematic. It becomes however a problem when used as a normative concept without definition in public debate, political discourse, policies or legal regulation. In these contexts, the interpretation of the concept of religion often becomes decisive and affects people's practical lives in serious ways. This is especially significant when it comes to demands for special rights or treatment with reference to the concept of religion, for example by referring to the Universal Declaration of Human Rights principle of "Freedom of religion". The lack of a common definition and understanding of the concept of religion makes it difficult to use the concept of religion without specifying what aspects or dimensions of religion we mean in each case.

Religion as belonging, identity, belief and practice

When religion is empirically studied, it is implicitly defined by the way it is conceptualized in terms of *belonging, identity, belief or practice,* and in different combinations of these four dimensions. Questions or items on these dimensions are measured quantitatively in surveys or studied qualitatively in-depth by *e.g.*, interviews (Pettersson, 2019).

Studying *belonging* can mean focusing on formal membership in a religious organisation or an individual's perceived and self-reported belonging. Since the indicators of belonging often build on models from established religion, they tend to miss multiple religious belonging or individual constructions of religion. For example, someone's religious *identity* can deviate from formal or cultural belonging, or someone can belong to both Islam and Christianity, or be both organised atheist and have a Hindu identity. A woman can explain that she is both a Muslim and a Buddhist since her mother was a Muslim and her father was a Buddhist. These examples show the complexity of mapping and comparing statistical figures on religious belonging and identity in empirical studies.

Individual *belief* (including values, attitudes etc.) is a third dimension of religion focused in empirical research. Common indicators are *e.g*, belief in God, belief in life after death or the authority of holy books. Results from qualitative as well as quantitative studies show that people's beliefs, values and attitudes are often inconsistent, ambiguous and even internally contradicting. There is an ongoing development of research methods to grasp the grey zone between yes-no options in questionnaires and to catch answers like "I sometimes believe in God" (*e.g.*, Shilderman 2015). Studies on people's beliefs demonstrate the multifaceted character of the concept of religion and the difficulties to judge what should be regarded as religious beliefs.

The fourth main dimension addressed in empirical research on people's religion is *practice,* such as participation in different activities organised by religious organisations or individual practices that are regarded as religious. Studies often include the use of religious services *e.g.*, worship, baptism, confirmation, weddings and funerals, and individual practices such as individual prayer, observation of religious holidays or fasting periods, *e.g.*, Ramadan, observation of restrictions related to food, rules of clothing etc.

These four dimensions of religion have different meanings in different contexts and for different groups of people, which illustrate the problem of defining religion, and using religious belonging in *e.g.*, legal contexts.

Differentiation of belonging, identity, belief, practice and culture

As part of increasing pluralisation and individualisation, differences of religious practice within groups of the same religious belonging increase continuously. Results from empirical research show that individual's religious belonging, identity, belief and practice are very often inconsistent and ambiguous in relation to the official or traditional (theoretical) model of a certain organised/ institutional religion. Differentiation within religious traditions also means a differentiation between religion and culture. Practices that have previously been regarded as very important religious practices thereby become increasingly viewed as historical cultural practices, rather than directly linked to the belonging or beliefs of a certain religious tradition or group (Pettersson, 2019).

This development highlights a number of questions when it comes to the issue of the possibility to regulate religion: How should we define the concept of religion? What should be regarded as an individual's religion when religious belonging, identity, belief and practice appear functionally differentiated, and one and the same individual can be secularised in one of these dimensions, a Buddhist in the second and a Christian in the third dimension? Should religion primarily be regarded as an issue of belonging and perceived identity? Or is religion in its core an issue of belief and confession? And what practices should be regarded as practice of religion? It is often difficult to judge what practices should be regarded as religion and what should be regarded as "culture", and it is common that people themselves talk about their religious practices as "tradition" without distinguishing between religion and culture.

Since the concept of religion is so multifaceted it has a variety of meanings in different contexts and for different people. Thereby the word religion has no common meaning, it is difficult to use and tends to become only a value-loaded word without specific content.

Needs and limitations to specially regulate religion

When it comes to the issue of special regulation of religion, the frame of reference is usually the articles on freedom of religion in the Universal Declaration of Human Rights, and the question is about its implementation in national, European and international law. The Declaration mentions religion in three articles: 2, 16:1 and 18. Only article 18 states special rights that would need special regulation related to religion.

Article 2: *"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"*. The article states that everyone has the same rights and freedoms, so no special regulation of religion is needed.

Article 16:1: *"Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family"*. The article states individual freedom (including religious freedom) in relation to the group in which the individual is born or living. None of articles 2 and 16:1 demand any specified definition of the concept of religion or any specific regulation of religion, since they just stress equal treatment and individual rights of all human beings regardless of religion.

Article 18 declares freedom of religion in three aspects: 1) *"Everyone has the right to freedom of thought, conscience and religion"*. The formulation is wide and does not need a definition of religion or any special regulation of religion. 2) The following text of Article 18 focuses only at religion and belief: *"...this right includes, freedom to change his religion or belief "*. Individual freedom of belonging, identity and belief is stressed and no specific definition of "religion" is needed and no special regulation. 3) The third part of Article 18 is about practice of religion and reads: *"...and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".* It is only this last part of Article 18 that demands a definition of the concept of religion, since it expresses not only freedom, but also states special rights for people with religion or belief – *"in public or private, to manifest his religion or belief"*. Since there is no common definition of religion, the question is what should be regarded as religion when it comes to manifestations in teaching, practice, worship and observance. What is the difference between religion, culture, tradition etc.?

When the needs to regulate religion are raised in public debate, politics or legal context it is in most cases the implementation of Article 18 that is in focus. As long as "freedom of religion" is interpreted as a principle of non-

discrimination based on religion and equal treatment regardless of religion, no special regulation of religion is needed apart from common law for all people. However, when freedom of religion is an argument for special rights to practices that are not granted to everyone, the principle of "freedom of religion" becomes an obstacle to the general idea of equality and will indirectly discriminate people of non-religious beliefs and worldviews (Sullivan 2005). Additionally, if we would accept the right to special treatment when referring to religion, we still have a problematic issue of how to define what should be regarded as an individual's or group's religion, separate from "secular" customs, common culture etc., and be granted this right.

We have to ask why the practices of people with religious belonging or belief should be exclusively protected and treated in a different way than the practices of people who do not refer to religion (c.f. Leigh, 2012). When the demand for special regulation of religion is discussed, a control question should be: Can this regulation be part of common law for all people without discriminating people without religion or belief?

Do we need special regulation of religion?

As described Europe has passed through an historical development from unitary collectivistic societies to functionally differentiated liberal democracies promoting freedom of the individual. From religious control by monopoly state-related churches to religious freedom in religiously neutral states. Today individuals find their own way of forming their religious beliefs, practices and identities in various ways apart from the standard models of the religious authorities. From theoretical as well as empirical perspectives, the concept of religion becomes increasingly difficult to define and the category of religion is fundamentally questioned by researchers.

Against this background, the title of this chapter raises the question if we really need special regulation of religion. This question can be further specified: Do we really need special regulation of religion apart from the common law for all people regardless of religion? A lot of misunderstandings, confusion, conflict and inequality between people with and without religion, would be avoided if there was no special regulation of religion and the concept of religion was not used as an argument for special treatment or rights. If special regulation of religion would be argued, the problem to define the concept of religion persists and opens up for conflicts when the special regulation is to be applied. When it comes to the four above-mentioned dimensions of religion – *belonging, identity, belief and practice* – common law for all people should grant religious freedom, tentatively as the following:

Belief/Identity

Common law should grant all people; freedom of thought, conscience or belief – including religious, philosophical, ethical, scientific, political, etc., views; freedom to change thought, conscience or belief; not to be discriminated because of any kind of belief or identity, regardless if it is religious, philosophical, ethical, scientific, political etc. No special regulation of religion is needed.

Belonging

The same common law concerning belonging to, and form organisations/associations should be applied to all kinds of organisations/associations: religious, philosophical, ethical, scientific, political etc. Freedom of religious belonging needs no special regulation apart from common general regulation on belonging/membership in organisations. General restrictions concerning membership to certain types of organisations/associations (*e.g.*, destructive, antidemocratic or fascist organisations) should be applied also concerning religious organisations/associations. No special regulation of religion would be needed.

Practice

When demands for special regulation of religion are raised in the public debate, politics etc. they concern in most cases religious practice that are manifested in public. Sometimes issues on special regulation of religion are raised to restrict the religious practices. Sometimes exemptions from common law are requested by individuals or groups referring to religious freedom. However, any special regulation with reference to religion would require a clear definition of religion and what kind of practices that should be regarded as religious practices. As discussed, this would not be possible. Consequently, common law on freedom and restrictions in private and public life should be applied also to the multifaceted field of religion.

Conclusion

Someone's religious belonging, identity, belief or practice is mostly regarded as a private matter as long as it is kept in the private sphere. Questions on special regulation of religion arise in most cases regarding religious practice, when it is expressed in public and when such practices require exemptions from common law/regulations. Such demand by religious individuals or groups to be specially treated and have special rights or exemptions would require a clear definition of religion. However, since we cannot define "religion", law should not grant people certain rights that others do not have – motivated by their religious beliefs,

belonging or identity. Arguing for certain religious rights leads to discrimination against people whose religion is disfavoured and people who don´t self-identify as being religious (Sullivan, 2005). The different social constructions of the concept of "religion" and the lack of a common definition of "religion" imply that we should not refer to religion as an argument in politics, law and other public social contexts.

References

Beckford. J. (2003). *Social Theory and Religion.* Cambridge University Press.

Cavanaugh, W. (2009). *The Myth of Religious Violence: Secular ideology and the roots of modern conflict.* Oxford University Press.

Chaves, M. (1994). Secularization as Declining Religious Authority. *Social Forces*, *72*(3), 749–774.

Davie, G. (2000). *Religion in Modern Europe. A Memory Mutates*. Oxford University Press.

Dobbelaere, K. (2002). *Secularization: An Analysis at Three Levels*. Peter Lang.

Doe N. (2011). *Law and Religion in Europe: A Comparative Introduction.* Oxford University Press.

Durkheim, E. (1995/1912). *The Elementary Forms of Religious Life.* The Free Press.

Fitzgerald, T. (2007). *Discourse on Cilvility and Barbarity.* Oxford University Press.

Fitzgerald, T. (2015). Negative Liberty, Liberal Faith Posulates and World Disorder. In T. Stack, N.R. Goldeberg & T. Fitzgerald (Eds.), *Religion as a Category of Governance and Sovereignty* (pp. 248-279). Brill.

Freud, S. (1913). *Totem und Tabu: einige* Übereinstimmungen *im Seelenleben der Wilden und der Neurotiker.* Heller.

Gauthier F. & Martikainen T. (2013). *Religion in Consumer Society.* Ashgate.

Giddens, A. (1991). *Modernity and Self-Identity: Self and Society in the Late Modern Age*. Polity Press.

Greely, A.M. (2017). *Religion as Poetry*. Routledge.

Heelas P. & Woodhead L. (2005). *The Spiritual Revolution: Why Religion is Giving Way to Spirituality*. Wiley-Blackwell.

Hervieu-Léger, D. (2000). *Religion as a Chain of Memory.* Polity Press.

Horii, M. (2015). Critical Reflections of the Category of 'Religion' in Contemporary Sociological Discourse'. *Nordic Journal of Religion and Society*, *28*(1), 21-36.

Horii, M. (2021). *'Religion' and 'Secular' Categories in Sociology. Decolonizing the Modern Myth.* Springer Nature.

Jakelić, S. (2010). *Collectivistic Religion. Religion, Choice and Identity in Late Modernity.* Ashgate.

Leigh, I. (2012). Balancing Religious Autonomy and Other Human Rights under the European Convention. *Oxford Journal of Law and Religion*, *1*(1), 109-125.

Lind A.S., Lövheim M. & Zachariasson U. (Eds.) (2016). *Reconsidering Religion, Law and Democracy.* Nordic Academic Press.

Luhmann, N. (1982). *The Differentiation of Society.* Columbia University Press.

Martin, D. (1978). *A General Theory of Secularization.* Blackwell.

Marx, K. (1970/1844) Ökonomisch-philosophische *Manuskripte.* Geschrieben von April bis August 1844. Karl Marx. Einl. u. Anm. v. Joachim Höppner. Nach der Handschrift. Leipzig Reclam Verlag.

Mattes, A. (2018). How religion came into play: "Muslim" as a category of practice in immigrant debates. *Religion, State & Society, 46*(3), 186-205.

Pettersson, P. (2019). The Problem of Defining Religion in an Increasingly Individualised and Functionally Differentiated Society. In U. Riegel, S. Heil, B. Kalbheim & A. Unser (Eds.), *Understanding Religion. Empirical Perspectives in Practical Theology. Essays in Honour of Hans￼ Georg Ziebertz* (pp. 165-178). Waxmann.

Schilbrack, K. (2012). The Social Construction of "Religion" and Its Limits: A Critical Reading of Timothy Fitzgerald. *Method and Theory in the Study of Religion,* 24, 97-117.

Schilderman, H. (Ed.) (2015). *The Concept of Religion: Defining and Measuring Contemporary Beliefs and Practices.* Brill.

Shiffauer, W. (2007). Der unheimliche Muslim – Staatsbürgerschaft und zivilgesellshaftsliche Ängste. In M. Wohlrab-Sahr & L. Tezcan (Eds.), *Konfliktfeld Islam' in Europa.* Soziale Welt, Sonderband 17 (pp. 111-134). Nomos.

Smith, W.C. (1962). *The Meaning and End of Religion.* Fortress.

Spickard, J.V. (2017). *Alternative Sociologies of Religion – Through Non-Western Eyes.* New York University Press.

Stark R. & Glock C.Y. (1968). *American Piety.* University of California Press.

Sullivan, W.F. (2005). *The Impossibility of Religious Freedom.* Princeton University Press.

Universal Declaration of Human Rights, adapted and proclaimed by United Nations General Assembly resolution 217 (III) of 10 December 1948. Accessible: https://www.un.org/en/universal-declaration-human-rights/.

Vaillancourt, J.G. (2008). From Five to Ten Dimensions of Religion: Charles Y. Glock's Dimensions of Religiosity Revisited. *Journal for the Academic Study of Religion*, 21(1), 58-69.

Vilaça H., Pace E., Furseth I. & Pettersson P. (Eds.) (2014). *The Changing Soul of Europe: Religions and Migrations in Northern and Southern Europe.* Ashgate.

Weber, M. (1920). *Gesammelte Aufsätze Zur Religionssoziologie I.* Tübingen.

Woodhead, L. (2017). Five Concepts of Religion. *International Review of Sociology*, *21*(1), 121-143.

Ziebertz H-G. & Riegel U., (Eds.) (2008). *Europe: Secular or Post-Secular?* Lit Verlag.