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14. Moving Frontiers: Configuring Religion Law and Religious Law, and Law-Religion Relations

Pamela Slotte

The Constitution of 1919 (*Regeringsformen* 94/1919) of the newly independent Finnish republic formally recognised individual and collective religious freedom and established state neutrality in relation to religion.[1] How things actually looked in practice, however, is another thing. The first Act on the Freedom of Religion (267/1922) came into effect in 1923. According to Leena Sorsa, negative and positive understandings of religious freedom, freedom "from" and "to" religion, cross swords throughout the period of independence.[2] Throughout the 20th century, the Act on the Freedom of Religion of 1922 met with resistance

[1]Pekka Hallberg et al., eds., *Perusoikeudet*, Online library Alma Talent, 2011, accessed May 29, 2019, http://fokus.almatalent.fi/teos/FAIBCXJTBF; *PeVL 12/1982 vp*: Perustuslakivaliokunnan lausunto. According to Juha Seppo, religious freedom as a collective freedom was also guaranteed at the constitutional level through the so-called "church-paragraph" (83§), which mentioned the majority church and confirmed its special legal status. See Juha Seppo, *Uskonnonvapaus 2000-luvun Suomessa* (Helsinki: Edita, 2003), 38–39. In fact, Finland had four "constitutions", or as Markku Suksi has called it, "a multi-documentary formal Constitution" comprising the 1919 Instrument of Government (Constitution) (*Regeringsformen* 94/1919), the 1922 Ministerial Responsibility (Constitution) Act (*Lag angående rätt för riksdagen att granska lagenligheten av medlemmarnas av statsrådet och justitiekanslerns ämbetsåtgärder*), the 1922 Court of the Realm (Constitution) Act (*Lag om riksrätten*), and the 1928 Parliament (Constitution) Act (*Riksdagsordning*). See Markku Suksi, "Common Roots of Nordic Constitutional Law?," in *The Nordic Constitutions: A Comparative and Contextual Study*, ed. Helle Krunke and Björg Thorarensen (Oxford: Hart Publishing), 27. The 1919 Instrument of Government was the "main" constitution. Through the constitutional reform at the end of the 20th century, this legislation was merged into one law. *KM 1997:13*: Perustuslaki 2000 - komitean mietintö, 10; *PeVM 10/1998 vp*: Perustuslakivaliokunnan mietintö, Hallituksen esitys uudeksi Suomen Hallitus-muodoksi, 3–5; *HE 1/1998 vp*: Hallituksen esitys Eduskunnalle uudeksi Suomen Hallitusmuodoksi, 32–33. For an overview of the various stages of the work to thoroughly renew the Constitution, the beginnings to which can be traced back to the end of the 1960s, see Ilkka Saraviita, *Perustuslaki 2000: Kommentaariteos uudesta valtiosäännöstä Suomelle* (Helsinki: Lakimiesliiton Kustannus, 2000), 1–45. This chapter has been written as part of the author's academy research fellow project "Management of the Sacred: A Critical Inquiry", funded by the Academy of Finland 2013-2018 (grant number: 265887) and work as vice-director of the Centre of Excellence in Law, Identity and the European Narratives, Academy of Finland 2018-2025 (grant number: 312430).

[2] Leena Sorsa, *Kansankirkko, uskonnonvapaus ja valtio: Suomen evankelis-luterilaisen kirkon kirkolliskokouksen tulkinta uskonnonvapaudesta 1963-2003* (PhD diss., Tampere: Kirkon tutkimuskeskus, 2010), 71.

from so-called "free thinkers". In addition, various religious minorities have been dissatisfied with the Act from an equality perspective.[3]

The more specific background for the new Act on the Freedom of Religion (453/2003) that was elaborated at the turn of the 21st century is, however, the basic rights reform that was carried out in 1995, the section on freedom of religion and conscience of the new Constitution (731/1999, in force 2000), as well as the international human rights treaties that Finland has ratified, including the European Convention on Human Rights and Fundamental Freedoms which came into effect in 1990.[4] The key considerations pertaining to the new Act on the Freedom of Religion 2003 relates to this.[5] The work to reform basic rights protection formed part of a more comprehensive effort to renew the Constitution, an endeavour that included addressing questions about societal power relations, religion-state relations, and the religious freedom of churches and other religious communities.[6]

This chapter focuses timewise on the last part of the 20th century and the beginning of the 21st century, when these major legal reforms took place in Finland and the new 2000 Constitution and the new Act on the Freedom of Religion were elaborated. More specifically, the chapter studies the new legal framework of religious freedom (broadly understood, including the new Constitutional guarantees) and the deliberations accompanying its elaboration (including parliamentary debates, the input of majority and minority religious communities at different times in the legislative process/law-making procedures, etc.). Broadly speaking, the aim is to investigate how international and European human rights law (legal transplants[7]) affected the law of the land, in particular the understanding thereof as well as the legal perception of and regulation of religion (and belief) with regard to minority and

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[3] Seppo, *Uskonnonvapaus*, 58–59.

[4] *HE 309/1993 vp*: Hallituksen esitys Eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta, 39.

[5] *KM 1999:5:* Uskonnonvapauskomitean välimietintö*,* 15–16; *KM 2001:1*: Uskonnonvapauskomitean mietintö, 19–20; Seppo, *Uskonnonvapaus*, 80.

[6] Seppo, *Uskonnonvapaus*, 56. The membership of the Council of Europe (1989) and the European Union (1995) are also important for the increased importance of basic rights and human rights in Finland. Before the 1980s, basic and human rights play a more minor role in the Finnish legal context. Basic rights were basically seen as setting limits to the power of the legislator. Tuomas Ojanen, *Johdatus perus- ja ihmisoikeusjuridiikkaan* (Helsinki: Helsingin yliopiston oikeustieteellisen tiedekunnan julkaisuja, 2009), 10–11.

[7] Terminology from Kaarlo Tuori, *Critical Legal Positivism* (Aldershot: Ashgate, 2002), 164, who in turn refers readers to the concept of legal transplants as exposed in Alan Watson, "Legal Transplants and Law Reform," *The Law Quarterly Review* 92, no. 1 (1976): 79–84; Alan Watson, "Comparative Law and Legal Change," *Cambridge Law Journal* 37, no. 2 (1978): 313–36.

majority religious positions in Finland.[8] The following sections will offer an overview of previous research with regard to the theme of the chapter, as well as present the theoretical framework for the analysis conducted, after which the research aim will be specified in more detail.

Previous Research

The following overview of previous research primarily concentrates on monographs. The renewal of Finnish religious freedom legislation and fundamental rights protection with regard to freedom of religion or belief around the turn of the last century has engaged scholars of law, ecclesiastical law and church history, as well as (to some extent) religious studies. The studies by Juha Seppo are to be counted as among the more important works, for example his *Uskonnonvapaus 2000-luvun Suomessa*. Likewise of importance as regards the more general legal reforms are, for example, Ilkka Saraviita's *Perustuslaki 2000: kommentaariteos uudesta valtiosäännöstä Suomelle* (2000), *Perusoikeudet* (2011) by Pekka Hallberg et al., *Uusi perustuslakimme* (2000) by Antero Jyränki, and *Uusi perustuslakikontrolli* (2010) by Juha Lavapuro.[9]

The position of the Evangelical Lutheran Church of Finland vis-à-vis religious freedom in a broad sense, and the standpoints of the church on proposed reforms of Finnish religion law during the latter part of the 20th century, was the object of Leena Sorsa's doctoral dissertation in church history, *Kansankirkko, uskonnonvapaus ja valtio: Suomen evankelis-luterilaisen kirkon kirkolliskokouksen tulkinta uskonnonvapaudesta 1963-2003* (2010).[10]

Different religious minority positions in relation to the new Act on the Freedom of Religion 2003 was the object of the article of Tuula Sakaranaho, "Kohti moniuskontoista Suomea? Vähemmistönäkökulma uuteen uskonnonvapauslakiin" in the edited volume *Kirkko ja usko tämän päivän Suomessa* (2007).[11] Also relevant in this context is the article by Johannes Heikkonen "Yhdenvertaisen uskonnon- ja omantunnonvapauden kipupisteitä

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[8] See also the chapters by Helle Krunke and Helge Årsheim in this volume.

[9] Seppo, *Uskonnonvapaus*; Saraviita, *Perustuslaki*; Hallberg et al., *Perusoikeudet*; Antero Jyränki, *Uusi perustuslakimme* (Turku: Iura Nova, 2000); Juha Lavapuro, *Uusi perustuslakikontrolli* (Helsinki: Suomalainen Lakimiesyhdistys, 2010).

[10] Sorsa, *Kansankirkko.*

[11] Tuula Sakaranaho, "Kohti moniuskontoista Suomea? Vähemmistönäkökulma uuteen uskonnonvapauslakiin," in *Kirkko ja usko tämän päivän Suomessa,* ed. Aku Visala (Helsinki: Suomalainen teologinen kirjallisuusseura, 2007), 124–59.

Suomessa" (2012), and the article by Matti Kotiranta, "The Recent Developments in the Relationship between State and Religious Communities in Finland" in Wilhelm Rees et al., *Neuere Entwicklungen im Religionsrecht europäischer Staaten* (2013).[12]

The nature of the law of the Evangelical Lutheran Church of Finland and its relation to the general law of the land and, to a lesser extent, international law has been extensively researched by Pekka Leino in his books *Kirkkolaki vai laki kirkosta* (2002)*, Kirkko ja perusoikeudet* (2003), and *Endast kyrkans egna angelägenheter* (2012).[13] Questions pertaining to the autonomy of the Evangelical Lutheran Church was also the topic of Arto Seppänen's doctoral dissertation in law, *Tunnustus kirkon oikeutena* (2007).[14]

The previous research listed above partly represents diverging views on religio-political questions. For example, conservative Lutheranism in legal garb comes up against a more comprehensive freedom of religion or belief perspective, in which issues of equality call for a redefinition of the legal and wider societal status of the majority faith. The latter research, to the extent it is legal research, is predominantly legal dogmatic, focusing on what Kaarlo Tuori calls the "surface level" of law.[15] The theological (church historical) research is, as far as concrete religion law goes, largely descriptive. While some references can be found, on the whole the above-mentioned contributions do not draw extensively on, nor enter into a discussion with, a wider international academic law & religion discussion and theoretical framework. Accordingly, the present chapter aims to complement previous research by adopting a more theoretical approach that for its theoretical framework draws its inspiration

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[12] Johannes Heikkonen, "Yhdenvertaisen uskonnon- ja omantunnonvapauden kipupisteitä Suomessa," *Oikeus* 41, no. 4 (2012): 554–63; Matti Kotiranta, "The Recent Developments in the Relationship between State and Religious Communities in Finland," in *Neuere Entwicklungen im Religionsrecht europäischer Staaten*, ed. Wilhelm Rees, María Roca, and Balázs Schanda (Berlin: Dunker & Humblot, 2013), 303–31. Kotiranta has also other publications documenting Finnish religion-state relations, e.g. Matti Kotiranta, "The Application of Freedom of Religion Principles of the European Convention on Human Rights in Finland," in *Religious Freedom in the European Union: The Application of the European Convention on Human Rights in the European Union*, ed. Achilles Emilianides (Leuven: Peeters, 2011), 129–52.

[13] Pekka Leino, *Kirkkolaki vai laki kirkosta: Hallinto-oikeudellinen tutkimus kirkon oikeudellisista normeista ja niiden synnystä* (PhD diss., Helsinki: Suomalainen Lakimiesyhdistys, 2002); Pekka Leino, *Kirkko ja perusoikeudet* (Helsinki: Suomalainen Lakimiesyhdistys, 2003); Pekka Leino, *"Endast kyrkans egna angelägenheter": En kyrkorättslig undersökning av kyrkans egna angelägenheter i kyrkolagstiftningen om Evangelisk-lutherska kyrkan i Finland* (PhD diss., Turku: Åbo Akademis förlag, 2012).

[14] Arto Seppänen, *Tunnustus kirkon oikeutena* (PhD diss., Rovaniemi: Lapin yliopisto, 2007).

[15] Tuori, *Critical Legal Positivism*, 147.

from a broader international scientific conversation within the field of law & religion for the purpose of conducting a "multi-layered" study of Finnish religion law and its foundational assumptions at the turn of the 21st century.[16] The following section will explain the theoretical framework of this chapter in more detail.

Theoretical Framework

Zachary Calo has observed that the statement that (modern) law is secular by and large suggests that the speaker presumes that law has freed itself from a theological economy (in a "jurisdictional" and "ontological" sense[17]).[18] Thus the meaning of law exists unconstrained by religion, even if law is not void of value commitments.[19] But law has no substance apart from what we choose to fill it with. The frame of reference of law is immanent, and meaning is produced according to an internal logic.[20] Added to this, alternative strong narratives ("thick forms of meaning", "strong moralities") including religious ones that challenge the law, are considered problematic.[21]

In both this and other volumes resulting from the project *Protestant Legacies in Nordic Law*, we have sought to deepen the understanding of the sense in which the above claim – i.e., law's meaning being wholly detached from religion – is or is not the case as far as Nordic law is concerned. We are particularly interested in the "legal turn"[22] that followed in the wake of the Protestant reformations and in how a Protestant legacy has had a bearing on Nordic law

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[16] An exception to the research that is usually either legal or historically focused is a chapter by the systematic theologian Hans-Olof Kvist. According to Kvist, his chapter has a more systematic-theological focus. However, it mostly presents a historical overview from the time of the early Church, and only on its penultimate page mentions in passing the new 2000 Constitution and its section on freedom of religion and conscience. Hans-Olof Kvist, "Kirkon omimmista lähtökohdista nousevien perustavien struktuurien teologista reflektointia kirkkoa, valtiouskontoa, valtiokirkkoa ja tunnustuksetonta valtiota koskevassa asiakentässä," in *Julkisoikeudellinen yhteisö vai Kristuksen kirkko?*, ed. Tapani Ihalainen and Antti Laato (Kaarina: Fonticulus, 2008), 15–77.

[17] Zachary R. Calo, "Christianity, Islam, and Secular Law," *Ohio Northern Law Review* 39, no. 3 (2013): 881.

[18] Zachary R. Calo, "Constructing the Secular: Law and Religion Jurisprudence in Europe and the United States," in Robert Schuman Centre for Advanced Studies Research Paper No. RSCAS 2014/94 (2014): 2–3, 23.

[19] Calo, "Constructing the Secular," 23.

[20] Calo, "Christianity," 880; referring to Rémi Brague, *The Law of God: The Philosophical History of an Idea* (Chicago: University of Chicago Press, 2005), 1.

[21] Calo, "Constructing the Secular," 11.

[22] Terminology borrowed from John Witte Jr., "From Gospel to Law: The Lutheran Reformation and Its Impact on Legal Culture," *Ecclesiastical Law Journal* 19, no. 3 (2017): 275.

and the understanding of the same – to the extent that is has – and how this impact has changed through the centuries as a consequence of external and internal factors. As far as this volume goes, the focus is on the second half of the 20th century until today, a time marked *inter alia* by "juridification" in the sense of a growth and diversification of the international legal framework, more supervisory bodies including supranational human rights courts, and increased litigation in matters of religion and belief.[23]

Calo emphasises the necessity of not getting stuck in a binary way of thinking that contrasts religion-secularism and views it as a zero sum game in which "every gain for religion comes at the expense of secularism and vice-versa".[24] Something is either secular or religious. Calo is obviously not alone in raising this critical point.[25] To study history can be a way of pointing to alternative ways of thinking about and realising the relation between the "religious" and the "secular" with respect to law. This can also take place, for example, by showing how religion persists in informing the law in partly indirect ways: for example, by studying concrete legislation and adjudication and the ideas that in such cases make themselves known about division of power and spheres of competence, and "legality".[26]

Likewise, in this and other volumes resulting from this research project we present "theological accounts of the secular as a challenge to the secular/religious binary"[27], including in the matter of law. In a broad sense, law can form part of "external" religious organization and thus form a part of "practice". "Secular" law can be something one engages with and relates to, for example, through litigation or by giving input, including upon request, in legislative processes. This is not necessarily seen as alien to one's own faith.[28] In the context of discussing the laws of churches, Norman Doe talks about religious law as "applied

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[23] For a discussion of juridification in relation to religion, see Helge Årsheim and Pamela Slotte, "The Juridification of Religion?," *Brill Research Perspectives in Law and Religion* 1, no. 2 (2017): 1–89.

[24] Calo, "Constructing the Secular," 22–23. See also Calo, "Christianity," 880.

[25] See, e.g., Silvio Ferrari, "Law and Religion in a Secular World: A European Perspective," *Ecclesiastical Law Journal* 14, no. 3 (2012): 356.

[26] Topics such as spheres of competence and division of powers between "secular" and "religious" actors have occupied Pekka Leinonen and Arto Seppänen in their research into the law of the Evangelical Lutheran Church of Finland.

[27] Zachary R. Calo, "Law in the Secular Age," *European Political Science Review* 13, no. 3 (2014): 308.

[28] For an overview of how a number of contemporary Christian and Islamic thinkers seek to formulate constructive understandings of "the secular" and of "secular law", with a point of departure in the perspective of their own theological traditions, and of the relations between theology and secular modern law, see Calo, "Christianity."

theology".[29] However, depending on the religious community in question, a strict division between religious law and religion law cannot necessarily be made. Perhaps better said, religion law may also form part of the "internal" regulation of a religious community. In light of what I have noted thus far, it is already not far-fetched to draw the conclusion that such can be the case with relation to a majority religious community in a particular context.

Calo proposes that the relations between "religious" and "secular" values in law should be seen as dialectic rather than binary.[30] Certainly, it is worthwhile inquiring into the particular dialectics at play, shifting the focus from ascertaining that something either is or is not "religious" or "secular", to illuminating how these kinds of labels are employed, the underlying assumptions steering their employment, and what they hereby "*do*".

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In the book *The Origins of Political Order*, Francis Fukuyama underlines the importance of the idea that political leaders are also subordinate to the law.[31] According to Fukuyama, functional democracy is dependent on rule of law, a state centralised power, and a government that is accountable to the people.[32] The idea that also those holding political power are subordinate to the law is a prerequisite for rule of law.[33] In his book, Fukuyama traces "instances where religious ideas played an independent role in shaping political outcomes."[34] As far as western Europe is concerned, the roots of rule of law are to be located in the particular shape western European Christendom took on in Premodernity.[35] Furthermore, Fukuyama maintains that the Scandinavian countries – and in his book he de

[29] Norman Doe, *Christian Law: Contemporary Principles* (Cambridge: Cambridge University Press, 2013), 384–85.

[30] Calo, "Constructing the Secular," 3.

[31] Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (New York: Farrar, Straus and Giroux, 2011), 15–16.

[32] I am grateful to Kimmo Ketola for drawing my attention to this idea in the writings of Fukuyama. Fukuyama, *The Origins of Political Order,* 15–16.

[33] Fukuyama, *The Origins of Political Order*, 246.

[34] Fukuyama, *The Origins of Political Order*, 444.

[35] Fukuyama, *The Origins of Political Order*, 262, 275. He notes that: "While comparable independent religious institutions existed in India, the Middle East, and the Byzantine Empire, none succeeded to the extent of the Western church in institutionalizing an independent legal order. Without the investiture conflict and its consequences, the rule of law would never have become so deeply rooted in the West." Fukuyama, *The Origins of Political Order*, 444.

facto presents Denmark as a kind of ideal type – have taken the lead when it comes to developing an understanding of rule of law and "accountability". Hereby he gives prominence to the Protestant Reformation, among other things.[36] The start of the Reformation as it pertains exactly to this was perhaps not that promising. As John Witte, Jr observes:

> The Lutheran reformers removed the Pope … But the reformers ultimately anointed the secular prince as the new vice-regent of God on earth, the *summus episcopus*, with too few constitutional safeguards against his tyrannical excesses and too few intellectual resources to support civil disobedience, let alone political revolt.[37]

Simultaneously, Witte underlines that *reconstruction* became a very important task for Lutheran theologians and jurists of 1530s Germany onwards: "reconstruction of the civil law on the strength of the gospel".[38] The two kingdoms doctrine came to be of importance in the redefinition of the understanding of authority, government and division of power, between the church and the state, between canon law and civil law.[39]

Other volumes of the *Protestant Legacies in Nordic Law* project study how this reconstruction took expression both in Germany and in the Nordic countries at the time of the Reformation and during the succeeding centuries.[40] As far as this chapter goes, I will limit myself to noting that the rule of law forms a cornerstone of modern law. By zeroing in on it, we move from what can be seen as the *surface level* of law (notably statutes and other legal regulations, court decisions, statements of legal science), down through the layer of the *legal culture* (professional culture, general doctrines of different fields of law, and the doctrine of the sources of law), to the study of what Tuori has called the *deep structure* of law (basic categories, fundamental principles and "a fundamental type of rationality"). This slowly-transforming layer of law, "the *longue durée* of the law", which together with the legal culture both renders possible and sets bounds to what takes place at the surface level, carries a legacy

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[36] Fukuyama, *The Origins of Political Order*, 432–34.

[37] Witte, "From Gospel," 288.

[38] Witte, "From Gospel," 274.

[39] Witte, "From Gospel," 276, 278–79.

[40] See Tarald Rasmussen and Jørn Sunde, eds., *Protestant Legacies of Nordic Law: The Early Modern Period* (Paderborn: Brill-Schönningh, 2020, *forthcoming*); Anna-Sara Lind and Victoria Enkvist, eds., *Constitutionalisation and Hegemonisation: Exploring the Boundaries of Law and Religion 1800-1950* (Odense: University Press of Southern Denmark, *forthcoming*).

that only slowly changes or is phased out.[41] The surrounding culture, in a broad sense and not limited to national borders, has contributed to the development of the foundational categories, principles and the understanding of the "type of law" we are dealing with today: "mature modern law" as Tuori calls it.[42]

According to Tuori, modern law is about change and renewal. However, in talking about law's different layers, Tuori wants to underscore law's historicity, among other things[43]:

> the purposive rationality of modern law – the conscious aspiration to achieve social changes through legislation – entails a tendency to disengage the past from the future … not even as positive law does the law wholly lose its memory or sever all its ties to its past. With respect to the continuous alternations at the law's surface level, the legal culture represents the memory of the law and keeps alive the connection to the past of the law; when the legal culture encounters new legislation, the past encounters the future, and this cannot but leave traces in the law, primary oriented towards the future.[44]

Moreover, the slowly transforming deep structure of law can bear a legacy from earlier types of law. With reference to Michel Foucault, and drawing attention to a crucial focal point of the project *Protestant Legacies in Nordic Law*, Tuori talks of "continuities in the *epistemes* of successive epochs, for instance in their constitutive concepts" and infers that such is the case,

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[41] Tuori, *Critical Legal Positivism*, 147, 150, 154–55, 157, 165–66, 169, 173–74, 177, 183–84, 186–88, 191–92. Tuori wants to make us aware of the fact that law is more than its surface level. He is flexible as to how many "layers" we might want to attribute to law, and what to locate at each level, but in principle he identifies three layers. Tuori, *Critical Legal Positivism*, 154, 196. He allocates basic and human rights to the different levels in different ways. See, e.g., Tuori, *Critical Legal Positivism*, 190, 240.

[42] Tuori, *Critical Legal Positivism*, 154, 194.

[43] Tuori, *Critical Legal Positivism*, 197.

[44] Tuori, *Critical Legal Positivism*, 162–63. The memory about which he speaks more in particular in this instance is the "practical knowledge" of the culture of professional lawyers. Tuori, *Critical Legal Positivism*, 163. Both the level of the legal culture and the level of the deep structure are present in actors of the legal community in *sensu stricto* in the form of an internalised practical knowledge/consciousness. Tuori, *Critical Legal Positivism*, 133, 161, 163. For a study of how a Protestant legacy is kept alive in the professional Nordic legal culture in an era that emphasizes the secularity of law, see Kjell Å. Modéer's chapter "Christian Torchbearers in the Dark of Positivism: Survivors and Catalysts within Nordic Law and Religion 1950 – 2000," in this volume.

for example, as far as some of the categories at law's deep structure are concerned.[45] Returning to Fukuyama, we could think of *rule of law* here.

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In the writings of Hussein Ali Agrama, we encounter a way of formulating an understanding of "religious" and "secular" beyond binary oppositions and which at a theoretical level connects this, among other things, to a discussion of legality, rule of law and the relation between law and the surrounding (majority)culture.[46] The concrete context in which he writes is primarily Egypt, but the following basic theoretical points of his are of broader relevance.[47]

In a manner that echoes Calo, Agrama notes that we cannot answer the "binary" question of whether something is a religious state or a secular state. Simultaneously, it is not a false question. "[I]t is rather a question whose persistence, force, and inability to be resolved expresses the peculiar *intractability* of our contemporary secularity."[48] Hence, while the question cannot be answered, it at once constitutes an inescapable aspect of what Agrama calls our "modern secularity". Another basic feature of this secularity is the central position attributed to the modern state and its legal powers, embodied in the rule of law.[49] In fact, according to Agrama, "a rule of law is indispensible to how secular power works".[50]

Secular power makes possible "state sovereign capacity", by which Agrama means the capacity to regulate "over and within social life". This should not be mistaken for actual control. Rather, it is about the state's "in-principle right and responsibility to regulate should this be deemed necessary."[51] Moreover, sovereignty does not solely allude to the capacity to regulate our lives when this is needed. It also refers to how this concept structures the understanding of reality. "It is also a central organizing concept of contemporary life. As such

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[45] Tuori, *Critical Legal Positivism*, 189.

[46] Hussein Ali Agrama, *Questioning Secularism: Islam, Sovereignty, and the Rule of Law in Modern Egypt* (Chicago: University of Chicago Press, 2012).

[47] In addition, as Agrama notes, to a large extent the Egyptian legal system is based on European law and in particular French law. Agrama, *Questioning Secularism*, 2.

[48] Agrama, *Questioning Secularism*, 71.

[49] Agrama, *Questioning Secularism*, 30.

[50] Agrama, *Questioning Secularism*, 35.

[51] Agrama, *Questioning Secularism*, 31.

it brings together commonplace concerns into a specific constellation of desire and anxiety."[52] This includes the visualization and regulation of the place of religion in society.

> The state's authority to decide what counts as religious and what scope it can have in society is crucially vested in a rule of law, and thus the law is always entangled in the question of religion and politics.[53]

A legal key concept "at the heart of the rule of law, and which it is responsible to protect" is "public order". Historically, this concept developed concurrently with understandings of the modern state, its sovereignty and regulative power. According to Agrama, it obtains its distinctive shape during the mid- and latter- 19th century in connection with the development of European private law to handle legal pluralism.

> Within this doctrine, public order is defined as those laws and values that are essential to a state's social and legal cohesion and that are usually held by the majority of its citizens. As an international law concept, public order is understood to consist of the general principles that underlay liberal legality – such as procedural fairness and formal liberal equality. But as a concept bound by the state, it is also understood to consist of the *particular* values and laws specific states deem to be foundational to their own social and legal cohesion. The public order is therefore seen as an intrinsically flexible concept whose contents, because they change over time and between states, are for judges to decide.[54]

That is, "public order" is thought to comprise general principles that are key to liberal legality. The purpose is to uphold the rule of law. However, this simultaneously confirms state sovereignty. It is the state that decides, at least in the first instance, when there exists a threat against public order and if the protection of public order *de facto* demands that valid

[52] Agrama, *Questioning Secularism*, 32.

[53] Agrama, *Questioning Secularism*, 33.

[54] Agrama, *Questioning Secularism*, 95.

law is limited or suspended.[55] Agrama hereby identifies a space for interpretation as well as an indeterminacy at the heart of key categories.[56]

Further, it is important to note that as the concept of public order is connected to the state, it is also made up of the values and laws that the state in question considers essential for social and legal cohesion. We are dealing here with a flexible concept with changing content, at least in some sense. "Public order" conveys "the principles and sensibilities of particularist narratives, putatively rooted in majority sentiments, but that are also deemed foundational to the state."[57] Majoritarian values and perceptions, for example pertaining to religion and the boundaries of freedom of religion or belief, are alterable (something which for purposes of this chapter below will be connected explicitly with the internationalisation of religion law). Accordingly, the legal notion of public order "blurs division between legal equality and

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[55] Agrama, *Questioning Secularism*, 38, 97. It is not far-fetched to draw a connection here to Carl Schmitt's analysis about the nature of law and his observation that "Sovereign is he who decides on the exception", by which he means the particular moment when it is appropriate to step outside the rule of law in the interest of the public. Carl Schmitt, *Politiche Theologie: Vier Kapitel zur Lehre von der Souveränitet*, 2nd ed. (Munich: Leipzig Verlag von Duncker & Humblot, 1934). Agrama also mentions Schmitt in a presentation of Giorgio Agamben's ideas of law and the sovereign as being simultaneously both within and outside law, "simultaneously legal and nonlegal". Agrama, *Questioning Secularism*, 142–43; Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA: Stanford University Press, 1998).

[56] Agrama, *Questioning Secularism*, 98. In relation hereto, it is worth noting that, in relation to all layers of law, Tuori underscores the role of actors (judges, lawyers, legal experts and scholars) in interpreting and applying the law, and in systematizing, construing and reconstructing and renewing the law. Tuori, *Critical Legal Positivism*. According to Witte, Luther considered the question of equity as central in all rule application, both with regard to legal rules and other rules. The result could be to strictly apply or not apply a rule, while the rule as such was not to be undermined. Witte, "From Gospel," 283–84; WA, TR 3, no. 4178: Martin Luther, *D. Martin Luthers Werke*. Kritische Gesamtausgabe. *Tischreden*, 6 vols (Weimar: Hermann Böhlaus Nachfolger, 1912-21); *LW* 54:43–44, 325; Martin Luther, *Luther's Works*, ed. Jaroslav Pelikan, Helmut T. Lehmann, and Christopher Boyd Brown, 75 vols (Philadelphia, PA/St. Louis, MO: Concordia Publishing House, 1955-); WA, TR 1, no. 315: Martin Luther, *D. Martin Luthers Werke*. Kritische Gesamtausgabe. *Tischreden*, 6 vols (Weimar: Hermann Böhlaus Nachfolger, 1912-21); WA 14: 667ff: Martin Luther, *D. Martin Luthers Werke*. Kritische Gesamtausgabe. 73 vols (Weimar: Böhlau, 1883-2009); *LW* 46:100: Martin Luther, *Luther's Works*, ed. Jaroslav Pelikan, Helmut T. Lehmann, and Christopher Boyd Brown, 75 vols (Philadelphia, PA/St. Louis, MO: Concordia Publishing House, 1955-).

[57] Agrama, *Questioning Secularism*, 38.

majority values".[58] Formal equality before the law concretely takes on a shape influenced by majoritarian views.

> Thus the rule of law, through its connection to public order, becomes firmly attached to majority-minority relations even though it is supposed to promote formal equality between citizens of the state. And because of this, legal entanglements with theological questions can also become attached to majority-minority relations.[59]

In the second part of this chapter, I will make use of the theoretical framework presented above for the purpose of examining how, in a Finnish context, ideas of rule of law, legality and public order, and so forth, have been connected to issues of religion (regulation of religion and religious regulation), when a movement "downwards" from the international plane through legal transplants[60] encounters a movement "upwards" from the local level.

The Internationalisation of Finnish Religion Law

The concrete empirical context is the legislative changes in Finland pertaining to freedom of religion or belief at the turn of the last century. According to Talal Asad, state power has always been unstable; he asks where the margins of the state are, those places where state law and order continuously have to be reestablished.[61] Asad further notes that "the origins of the modern (secular) state are connected to the concern for agreement among 'reasonable' men and thus to the creation of a margin to which 'religion' (and other forms of uncertain belief) properly belonged."[62] Legislative processes are places where such reestablishment by agreement takes place.

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[58] Agrama, *Questioning Secularism*, 98.

[59] Agrama, *Questioning Secularism*., 98.

[60] For example, legality (in the sense of "prescribed by law") and "public order" are mentioned in Article 9(2) of the European Convention on Human Rights and Fundamental Freedoms as legitimate grounds for restricting manifestations of religion or belief and play key roles in the jurisprudence of the European Court of Human Rights.

[61] Talal Asad, "Where Are the Margins of the State?," in *Anthropology in the Margins of the State*, ed. Veena Das and Deborah Poole (Santa Fe, NM: School of American Research Press, 2004), 281.

[62] Asad, "Where Are the Margins of the State?," 285.

In the following, I offer an account of the concrete reforms carried out, and the discussions accompanying them, at the end of the 20th and beginning of the 21st century and which were explicitly legitimized, *inter alia*, by reference to the need of the Finnish state to live up to its international legal obligations as regards human rights. What is it that takes place? What becomes an issue at all? What ends up being the focus of the reforms as far as freedom of religion or belief goes? Hereby, how is the state interpretative prerogative conceptualised within the structure of a secular frame narrative and unremitting majoritarian sensibilities when it comes to looking at law and the relation between religion and politics? What understanding of religion and its boundaries thereby emerges? How and when can freedom of religion or belief be limited? When and how are questions of "rule of law", "legality" and "public order" actualised? When an aim is to strengthen the autonomy of religious communities, as the committee established to draft the new Act on the Freedom of Religion notes,[63] what is this autonomy taken to encompass? To what extent does one discuss internal regulation and religious law in this context? More generally, what does one consider necessary to regulate, and where? Who should be responsible for what (regulation)? And what does all this tell us about the "secularity" of contemporary Finnish law of the land, how it is constructed and reconstructed (to refer back to Witte's terminology), and hereby deals (or not) with a religious legacy.

Until the 1980s, fundamental rights and human rights did not play a key role in Finnish legal reality.[64] But international human rights treaties came to serve as a guide for the fundamental rights committee that was appointed 1989 and completed its work in 1992, with the fundamental rights reform taking place in 1995.[65] In addition, the membership of the Council of Europe (1989) and the European Union (1995) were important for the increased

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[63] *KM 1999:5*, 19; *KM 2001:1*, 1, 22.

[64] Ojanen, *Johdatus*, 10. As mentioned earlier, basic rights are primarily seen as setting limits to the power of the legislator. Ojanen, *Johdatus*, 10.

[65] *KM 1992:3*: Perusoikeuskomitean mietintö, 13; *HE 309/1993 vp*, 5–6; Jyränki, *Uusi perustuslakimme*, 277; Seppo, *Uskonnonvapaus*, 53; Ojanen, *Johdatus*, 49. The work of thinking through fundamental rights had been ongoing through the 70s but had not really taken off. The work was done in committees and working groups, but no agreement was reached; in the 80s, fundamental rights was above all the subject of expert opinions. *KM 1992:3*, 13; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, Oikeusministeriön lainvalmisteluosaston julkaisu, 2/1993 (Helsinki: Oikeusministeriö, 1993), 3; *HE 309/1993 vp*, 36; Jyränki, *Uusi perustuslakimme*, 277; Seppo, *Uskonnonvapaus*, 53.

importance of basic rights and human rights in Finland.[66] Legal transplants thus affected the understanding and regulation of freedom of religion or belief in Finland.

The Finnish fundamental rights reform emphasizes the state's "positive" obligations to promote or guarantee the actual realization of fundamental and human rights, alongside the "negative" obligation to respect these rights.[67] A key feature of the reform is also the aspiration to expand the substantial reach of fundamental rights. No longer is it almost solely about "classic" freedom rights but also about social, economic and cultural rights (albeit not always phrased in the form of subjective individual rights), which up to that point had been spottily regulated in the 1919 Constitution.[68] In this and other ways, the 1919 Constitution 1919 and the Finnish fundamental rights system is considered outdated.[69] International human rights treaties play an important role here.[70]

More specifically, the fundamental rights reform also brought with it a broader concept of religious freedom as "conviction", which was introduced as a separate category alongside religion after having been identified as a lack at the preparatory stage.[71] "Conviction" is taken to encompass both religious and other kinds of convictions.[72] The new set of fundamental

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[66] *KM 1992:3*, 13; *HE 309/1993 vp*, 8–9, 40–41.

[67] *KM 1992:3*, 117–19, 373–74.

[68] *KM 1992:3*, 13–18, 46, 90–91; *HE 309/1993 vp*, 1, 5, 14, 16; Ojanen, *Johdatus*, 12; Tuomas Ojanen, "Human Rights in Nordic Constitutions and the Impact of International Obligations," in *The Nordic Constitutions: A Comparative and Contextual Study*, ed. Helle Krunke and Björg Thorarensen (Oxford: Hart Publishing, 2018), 142. The fundamental rights committee linked this emphasis on social, cultural and economic rights explicitly to the welfare state, which was considered to be the current form of a state governed by the rule of law (*oikeusvaltio*). *KM 1992:3*, 46.

[69] *HE 309/1993 vp*, 14. A further task highlighted during the fundamental rights reform was to more generally ponder what role and emphasis to give to collective rights, including the right of minorities to uphold and develop their language and culture. *KM 1992:3*, 92, 110.

[70] Ojanen, *Johdatus*, 48.

[71] *HE 309/1993 vp*, 14, 18, 55; Seppo, *Uskonnonvapaus*, 10–11. However, there also had existed a right to leave a religious community; thus, other convictions than religious ones had been recognised in practice. Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö,* 7; *KM 1992:3*, 289. For an overview of discussions pertaining to "conviction" during the preparatory work, see *PeVM 25/1994 vp*: Perustuslakivaliokunnan mietintö n:o 25 hallituksen esityksestä perustuslakien perusoikeussäännösten muuttamisesta, 8-9; *PeVM 25/1994 vp*, Liite 3 Eduskunnan Sivistyslautakunnan Lausunto n:o 3, 38–39; *KM 1992:3*, 286; Tuula Majuri*, Lausunnot Perusoikeuskomitean mietinnöstä: Tiivistelmä* (Helsinki: Oikeusministeriö, 1992), 72–75.

[72] Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö,* 79; *KM 1992:3*, 95.

rights norms as such was moved to the new Constitution.[73] This placement is considered as underlining that fundamental rights naturally are linked to issues of division and use of state power and should inform the interpretation of the latter, and that many other rules in the Constitution are of importance for the functioning of the fundamental rights system.[74]

The Special Status of the Evangelical Lutheran Church Remains

Interestingly enough, when the work on the new Constitution commenced, the first draft of a new Constitution did not include mention of the so-called "church-paragraph", Section 83 of the 1919 Constitution, which specifically mentioned the majority church and confirmed its special legal status. The working group *Perustuslaki 2000* ("Constitution 2000") chose to omit it on the grounds that the Constitution should not mention the Evangelical Lutheran Church or any other churches or religious communities. The working group also wanted to dispense with the legislative procedure for enactment of church law that had been regulated in the Church Act 1993/1054: namely, that it is up to the Evangelical Lutheran church itself to propose new legislation in everything pertaining to its own internal affairs, changes to the Church Act and the abolishment of the Church Act.[75] As Seppo sees it, the working group wanted to extend the powers of the parliament at the expense of the church's own institutions.[76] However, it is worth remembering that a key aspect of the overall reform indeed was to strengthen parliamentarism.[77]

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[73] Pekka Hallberg, "Johdanto," in *Perusoikeudet*, ed. Pekka Hallberg et al., Online library Alma Talent, 2011, accessed May 29, 2019, http://fokus.almatalent.fi/teos/FAIBCXJTBF. The new set of fundamental rights included in the 2000 Constitution also includes Section 1 proclaiming the inviolability of human dignity and the obligation to promote justice in society. In addition, an explicit prohibition of discrimination was added (in Section 5). For a discussion of the latter, see Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö,* 16, 54–57.

[74] Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö,* 50; *KM 1992:3*, 95.

[75] Perustuslaki 2000-työryhmä, *Perustuslaki 2000*: *Yhtenäiset perustuslain tarve ja keskeiset valtiosääntöoikeudelliset ongelmat*; *Työryhmän mietintö*, Oikeusministeriön lainvalmisteluosaston julkaisu, 8/1995 (Helsinki: Oikeusministeriö), 1996.

[76] Seppo, *Uskonnonvapaus*, 56. This can be related to Sorsa's observation that the working group *Perustuslaki 2000* wanted to tone down the collective role and meaning of religion, emphasizing instead increased protection of individual understandings of religion. Sorsa, *Kansankirkko*, 229.

[77] *HE 1/1998 vp*, 5; *HE 232/1988 vp*: Hallituksen esitys Eduskunnalle tasavallan presidentin vaalitavan muuttamista ja eräiden valtaoikeuksien tarkistamista koskevaksi lainsäädännöksi; *KM 1997:3*, 70.

However, the subsequent *Perustuslaki 2000* ("Constitution 2000") committee was receptive to the criticism that these proposals encounter from the church. The committee included in its proposed bill a section stating that it was the Church Act which regulated the organisation and administration of the Evangelical Lutheran Church. The proposed bill also affirmed the legislative procedure for enacting the Church Act.[78] Both aspects found expression in what became Section 76 ("The Church Act") of the 1999 Constitution: "Provisions on the organisation and administration of the Evangelical Lutheran Church are laid down in the Church Act. The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code." However, contrary to what was the case in Section 83:3 of the 1919 Constitution, mention of other religious communities and their right to establish themselves in Finland is omitted. The committee report PeVM 10/1998 observed that other communities were covered by Section 13:2-3 of the Constitution, on the freedom of assembly and freedom of association, as well as by the Associations Act 503/1989.[79]

Hence, *de facto* the Evangelical-Lutheran Church was afforded more exclusive explicit attention in the new constitution. This is the case even though the fundamental rights reform underlined the principle of non-discrimination that was subsequently included in Section 5:2 of the 2000 Constitution, and which is said to require that public power treat all religious communities and world views even-handedly.[80] Yet, it was conceded during the preparatory work of the fundamental rights reform that this did not require making changes to state-church relations or taking measures with regard to Section 83 of the 1919 Constitution, or other rules regulating the relations between the state and religious communities, even if there is an indirect link to freedom of religion or conviction.[81]

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[78] *KM 1997:13*, 229–30.

[79] *PeVM 10/1998 vp*, 13. An explanation offered is that, given that the new Constitution was systematized in a different way and its headings did not mention institutions, the subsection mentioning other religious communities was omitted. Martin Scheinin, "Uskonnon ja omantunnon vapaus (PL 11 §)," in *Perusoikeudet*, ed. Pekka Hallberg et al. (Helsinki: Werner Söderström lakitieto, 1999), 355; Sorsa, *Kansankirkko*, 253.

[80] Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 79; *HE 309/1993 vp,* 55. This prohibition of discrimination including on grounds of religion rendered obsolete the earlier Section 9 in the 1919 Constitution that had prohibited discrimination on the basis of membership in a particular religious community. *HE 309/1993 vp*, 44.

[81] Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 79; *HE 309/1993 vp*, 55.

Against this backdrop, the new Act on the Freedom of Religion (453/2003) also leaves intact the basic structure when it comes to religion law in Finland. That is, one continues to distinguish between national churches (the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church) and other registered religious communities with corresponding legal status. As Seppo sees it, the reason is that the Constitution did not demand anything else. The government proposal for the new Act on the Freedom of Religion also maintained that there was no need to change state-church relations.[82] According to Seppo, it also was not part of the government proposal for the new Act on the Freedom of Religion and other related laws to examine the legal status of the national churches. Thus, this was not seen as necessary for the purpose of safeguarding religious freedom,[83] nor as a hindrance to formal or substantial equality. Indeed, the government proposal for the new Act of Freedom of Religion observes that it is a testimony to the state's wish to treat registered religious communities even-handedly that the new Act regulates specifically about them in Chapter 2, while the activities of the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church are regulated in their respective special laws.[84]

The New Section on Freedom of Religion and Conscience

As mentioned above, the new set of fundamental rights norms as such was moved to the new Constitution. As far as freedom of religion or belief is concerned, Section 11 ("Freedom of religion and conscience") of the new Constitution includes the following:

> Everyone has the freedom of religion and conscience.
>
> Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.[85]

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[82] *HE 170/2002 vp*: Hallituksen esitys eduskunnalle uskonnonvapauslaiksi ja eräiksi siihen liittyviksi laeiksi, 7, 24; Seppo, *Uskonnonvapaus*, 81.

[83] Seppo, *Uskonnonvapaus*, 216–17.

[84] *HE 170/2002 vp,* 30.

[85] To be sure, the question of whether the concept of "conscience" is legally viable or not – because of its Christian legacy – was the topic of discussion during the fundamental rights reform. Tuomas Ojanen and Martin

For the purposes of this chapter, it is also worth mentioning Section 2 of the Constitution, entitled "Democracy and the rule of law": "The powers of the State in Finland are vested in the people, who are represented by the Parliament. Democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions. The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed." This section reaffirms that Finland is a representative democracy. The parliament is the highest state organ and all exercise of public power has to be democratically grounded, as well as grounded in and strictly following the law. The rule of law forms part of the Finnish system of government.[86] The Evangelical Lutheran Church is considered part of public power and has to respect the law in all its activities.[87] Also important is Section 22 of the Constitution, entitled "Protection of basic rights and liberties": "The public authorities shall guarantee the observance of basic rights and liberties and human rights." This is interpreted as supplying the basis – at the constitutional level – for a "human rights friendly" interpretation of law.[88]

The renewed section on freedom of religion and conscience differs from its predecessor in various ways. It applies to everyone residing in Finland and not only to Finnish citizens.[89] The earlier section did not explicitly speak in terms of freedom of conscience, whereas now it

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Scheinin, "Uskonnon ja omantunnon vapaus (PL 11 §)," in *Perusoikeudet*, ed. Pekka Hallberg et al., Online library Alma Talent, 2011, accessed May 29, 2019, http://fokus.almatalent.fi/teos/FAIBCXJTBF; *PeVM 25/1994 vp*, 8–9.

[86] *KM 1997:13*, 24, 134–35; *HE 1/1998 vp*, 74.

[87] *HE 309/1993 vp*, 26; Jyränki, *Uusi perustuslakimme*, 68; Ojanen, *Johdatus*, 32. See also Perusoikeustyöryhmä 1992, 37-8. I will not enter here into a more comprehensive discussion of how this is to be interpreted. Interestingly enough, according to case law public law bodies (*julkisoikeudellinen yhteisö*) do not enjoy fundamental rights protection. Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 33, as well as e.g. *PeVL 18/1982 vp*: Perustuslakivaliokunnan lausunto; *PeVL 6/1990 vp*: Perustuslakivaliokunnan lausunto; *PeVL 7/1990 vp*: Perustuslakivaliokunnan lausunto.

[88] Ojanen, *Johdatus*, 49.

[89] Here also, international human rights law has an impact. Ojanen, *Johdatus*, 48–49. See also *KM 1992:3*, 46; *HE 309/1993 vp*, 2, 5, 21. In general, it is a basic rule today that fundamental rights belong to all natural persons under Finnish jurisdiction. Ibid., 23; Jyränki, *Uusi perustuslakimme*, 285; Ojanen, *Johdatus*, 21. Indirectly, fundamental rights protection is extended to legal persons as some fundamental rights are of direct importance to legal persons. This is because many of these rights are such that they cannot be seen as simply "individual". Some rights can only be fully realised in community with others. Jyränki, *Uusi perustuslakimme*, 286; Ojanen, *Johdatus*, 24–25, 30.

does. Freedom of conscience is taken to cover both religious and other worldviews or life stances.[90] Moreover, influenced by international human rights treaties, one makes a distinction between freedom to have a religion and the right to practice religion, as well as between the freedom to have a conviction and the right to express one's convictions.[91]

The New Act on the Freedom of Religion: Focus on Positive Freedom and Enhanced Religious Autonomy

The Act on the Freedom of Religion (453/2003) regulates in more detail the practice of freedom of religion and conscience as protected in the new Constitution.[92] The Ministry of Education, which appointed a committee to develop the new Act on the Freedom of Religion, observed that the fundamental rights reform that had taken place had broadened the concept of freedom of religion to encompass freedom of religion and conviction, and that the new rule was more comprehensive, as it covered both religions and other worldviews and life stances. One also noted, again, the way the ratification by Finland of a number of international human rights treaties entailing freedom of thought, conscience and religion had altered the situation, requiring action.[93] In addition, certain specific problems were mentioned as reasons for the need for a new Act on the Freedom of Religion: the way the old act was systematically organised was considered outdated, and leading to administrative problems and problems related to the drafting of law; the way in which age limits related to the religious affiliation of children were determined; the question of how persons could cease to be members of religious communities (one needs to visit a public authority); out-of-date rules for registration of a religious community; topical issues related to graveyards and burial places.[94]

In turn, the appointed committee observed in its so-called middle-report that in relation to the Act of religious freedom (267/1922), the new Act would have the same scope of application. However, the committee found it necessary to revise concrete regulation considered outdated with regard to its structure and style of writing. The old Act had obvious flaws and left unnecessary room for interpretation. It had to be revised in the new context of

[90] *HE 170/2002 vp*, 7. See also *PeVM 25/1994 vp*, 8–9, as well as e.g. *KM 1992:3*, 104, 110.

[91] *HE 170/2002 vp*, 7; Seppo, *Uskonnonvapaus*, 55.

[92] Ojanen and Scheinin, "Uskonnon ja omantunnon vapaus."

[93] Opetusministeriö, project number OPM0610:00/30/06/1998. See also *HE 170/2002 vp*, 5, 20.

[94] Seppo, *Uskonnonvapaus*, 60.

the present day.[95] Furthermore, as the committee noted in its reports, a basic feature of the reforms was to strive to increase the autonomy and improve the conditions for the operating of religious communities, and to survey which parts of the Associations Act 503/1989 that were or were not applicable to religious communities given their special status as legal subjects.[96]

The emphasis placed on autonomy is a consequence of the importance afforded to the positive freedom to practice religion in light of present-day and international human rights treaties. It is assumed that this positive freedom to practice religion requires that individuals and religious communities are afforded maximum autonomy as far as freedom to practice one's religion goes. The role of the state is only to "create the general external constitutional conditions for religious practice, but leave all decisions that truly concerns substance to the parties concerned".[97] What this autonomy would include in more detail is explicated in rather standard terms by Seppo in his comment on the position of the constitutional committee during the legislative process: the cult, the choice of leaders, the establishment of religious educational institutions, and religious publications.[98]

Among other things, this emphasis on autonomy led to the suggestion of a period of transition allowing religious communities an opportunity to regulate internally issues that the committee suggested should form part of the new Act on the Freedom of Religion. More to the point, the committee wanted to give individuals the opportunity to be members of more than one religious community, something which was prohibited under the Act on the Freedom of Religion of 1922.[99] Hence, the state wanted to regulate the matter in accordance with what it understood religious autonomy to encompass. Yet simultaneously and for reasons of consistency the state wished to give communities a chance to react in time so that they

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[95] *KM 1999:5*, 15–16; *KM 2001:1,* 19–20; Seppo, *Uskonnonvapaus*, 64. See also *HE 170/2002 vp*, 20, 22.

[96] *KM 1999:5*, 47–49; Seppo, *Uskonnonvapaus*, 77–78. See also *HE 170/2002 vp*, 5.

[97] Seppo, *Uskonnonvapaus*, 80–81. My translation. As the committee observes, the aim is to get rid of unnecessary regulation of registered religious communities, and promote evenhanded treatment by public power, while still retaining the possibility for public authorities to intervene when a religious community is violating human dignity, fundamental rights or otherwise acts in opposition with the foundations of the legal order. *KM 2001:1*, 22.

[98] Seppo, *Uskonnonvapaus*, 191; *PeVM 10/2002 vp*: Perustuslakivaliokunnan mietintö, Hallituksen esitys uskonnonvapauslaiksi ja eräiksi siihen liittyviksi laeiksi, 2–3, making reference also to the preparatory work of the fundamental rights reform*, HE 309/1993 vp*, 55. See further also e.g. *KM 1992:3*, 287–88.

[99] *KM 1999:5*, 31.

articulated in the form of own regulation their theological position on the matter in a way that safeguarded their autonomy. It was up to the churches and religious communities themselves to set the criteria for membership.[100]

Where to Regulate What?

The work carried out resulted in a new Act on the Freedom of Religion as well as changes to a number of other laws relating to religious freedom such as the *Basic Education Act* 628/1998, the *Act on General Upper Secondary Education* 629/1998 and the *Accounting Act* 1336/1997. In addition, entirely new legislation, a *Burial Act* 457/2003, was enacted. Section 1 of the *Burial Act* in addition to spelling out the content/scope of the act, defers also to the *Church Act* and the *Act on the Orthodox Church* 521/1969 (and, following later revisions, to the *Act on the Orthodox Church* 985/2006 and also to the *Church Order of the Orthodox Church* 174/2006) and what there is prescribed regarding funeral activities in a burial ground of one of these churches.

This tells us something about what one considers ought to be regulated where, and about who is or should be responsible for what. Quite concretely, it was suggested that certain matters should be moved from one piece of legislation to another. The reports of the committee as well as the governmental proposal mention funerals, taxation, marriage and religious education as such matters,[101] and as noted above, changes were made. Moreover, as has been said, certain things were supposed to be left completely to so-called "internal regulation".

In general, one goal was a slimmed down Act. The previous Act had been too detailed. It was not considered appropriate that the Act on the Freedom of Religion regulate such matters that with regard to substance were regulated elsewhere or that fit better as regulated elsewhere. To give a further example, in the desire to escape overlapping (double) legislation, it was considered worthwhile to only regulate in the Act on the Freedom of Religion those matters which were specific to religious communities, while that which united religious

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[100] The committee ended up proposing a period of transition of three years after the entry into force of the new Act on the Freedom of Religion (before the prohibition of multiple membership of the old Act of Religious Freedom was overturned) so that the national churches and other religious communities had time to reflect and take a stand on the question of dual membership. The Church Act and the Act on the Orthodox Church of the time did not take a stand on the issue. *KM 2001:1*, 29–30; Seppo, *Uskonnonvapaus*, 81–82.

[101] *KM 1999:5*, 17–18; See also *KM 2001:1*, 21–22, 28; *HE 170/2002 vp*, 22–23, 30.

communities and non-profit associations was to be regulated in the Associations Act 503/1989.[102] However, in order to know what needed to be regulated in the Act on the Freedom of Religion, the committee concluded that one had to define what is meant by the terms "religion" and the "practice of religion", as this would make it easier to distinguish religious communities from other voluntary associations whose activities likewise were regulated by the Associations Act.[103] These considerations are reflected in the explications of what is the "purpose and forms of activity of a registered religious community" in Section 7 of the new Act:

> The purpose of a registered religious community is to organise and support individual, communal and public activities relating to the profession and practise of religion that are based on a creed, religious texts regarded as sacred, or another specified and established basis for activities regarded as sacred.[104]

Hence, we can conclude from this that while there is a push for the broadest possible collective religious autonomy, and it is underscored that what is aimed for is a slimmed down Act that also leaves certain things to be regulated solely by the religious communities or national churches themselves, "secular" national law beyond the Act on the Freedom of Religion is also still very much (in a non-problematic way) considered "religion law". A slimmed-down Act on the Freedom of Religion does not by definition equal less external regulation of matters of concern to churches and other religious communities. Moreover, for purposes of deciding what should be regulated where, religion actually has to be defined for the purposes of the law (even if the constitution itself does not define "religion" or "conviction").

Legal Limits to Freedom of Religion and Conscience

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[102] *KM 1999:5*, 17–22, 48–49; *KM 2001:1*, 22–24, 28; Seppo, *Uskonnonvapaus*, 19, 190. See also *HE 170/2002 vp*, 50–54.

[103] *KM 1999:5*, 26–27: "Within the context of the new act on the freedom of religion, confessing and practicing religion would mean activities that take expression in the cult and other private, communal and public forms of religious practice and which are based on a creed, writings considered holy or other individualised religious grounds." [My translation]. See also *KM 2001:1*, 35; *HE 170/2002 vp*, 38.

[104] Translation by the Ministry of Education and Culture, available at URL [accessed June 1, 2020]: https://www.finlex.fi/fi/laki/kaannokset/2003/en20030453.pdf.

The new Act on the Freedom of Religion is ordinary law, and all ordinary law and its application must conform to the Constitution, including the section on freedom of religion and conscience. However, as a part of Finnish law, neither fundamental rights nor human rights are *absolute*. When it comes to fundamental rights, this is discernible from the legal text itself.

An aim of the fundamental rights reform at the end of the 20th century was to dispose of outdated and overly general formulations that made possible too far-reaching restrictions on fundamental rights.[105] The 1919 Constitution had given the legislator ("*laadittu lainvarainen*") broad scope to limit fundamental rights in ordinary law.[106] The designation "in law" served the purpose of signalling that a matter that previously had been an administrative matter or dealt with at a lower level in the rule hierarchy should now be reserved for the legislator. Several of the so-called legal reservations (*lakivaraus*) were "simple" ones, however, that did not specify further the criteria for the discretion of the legislator. This had resulted in a situation in which establishing the boundary between acceptable and inadmissible legislative limits to fundamental rights had become ambiguous.[107]

Further, the position at the time of the fundamental rights reform was that the 1919 Constitution model with its extensive use of generally phrased legal reservations did not fit well with the idea that fundamental rights ought to be binding on the legislator. As explicated in detail during the preparatory work, the general conditions were that any limitation must have a basis in an act of parliament.[108] It must also be based on acceptable grounds that are clearly delimited, precise and discernible from the law itself.[109] It should not be allowed to regulate about extensive, summary and unusual limitations to fundamental rights in ordinary law.[110] Any justified limitation must answer to a pressing societal need/general interest and be

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[105] *HE 309/1993 vp*, 17.

[106] *KM 1992:3*, 59–60; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 9.

[107] *HE 309/1993 vp*, 7, 14; *PeVM 25/1994*, 4. See also *KM 1992:3*, 56–57, 133; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 45.

[108] *HE 309/1993 vp*, 29. See also *PeVM 25/1994 vp*, 5; *KM 1992:3*, 380. This follows, as Ojanen points out, from "the rule of law principle". Ojanen, "Human Rights," 146. An aim of the overall constitutional reforms was to strengthen the principle of the rule of law, among other things by specifying the matters having to be regulated in law. *KM 1997:3*, 86–87.

[109] *HE 309/1993 vp*, 23; *PeVM 25/1994 vp*, 5. See also *KM 1992:3*, 138–39.

[110] *HE 309/1993 vp*, 30. An additional general limitation clause, as proposed by the *Perusoikeuskomitea* (see, e.g., *KM 1992:3*, 138) was discarded by the *Perusoikeustyöryhmä*, and also does not appear in the resulting Government proposal. Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 29, 47. See also *HE 309/1993,* 38; *PeVM 25/1994 vp*, 4.

necessary for the attainment of the acceptable goal in question.[111] Finally, any limitation must not affect the essential core of a fundamental right, nor be out of tune with Finland's obligations under international human rights law.[112] Simultaneously, flexibility is also underscored as important, meaning that the fundamental rights and their limitations have to be formulated in a "timeless" manner so as to be applicable for some time into the 21st century and under changed circumstances.[113]

The result is that several provisions of the new set of fundamental rights contain a so-called regulation reservation (*regleringsförbehåll*). This means that the legislator has the power to regulate in ordinary law in more detail regarding the use of the fundamental right, including limiting the right in question, as long as the right is not "weakened". It also *de facto* means that the lawmaker is obliged to regulate about reservations in law. Some fundamental rights provisions, in turn, include a so-called qualified legal reservation (*kvalificerat lagförbehåll*). This means that the provision in question in an exhaustive manner stipulates the grounds on which the fundamental right can be limited.[114]

Section 11 of the 2000 Constitution, on freedom of religion and conscience, does not include a limitation clause.[115] This means that it is possible in law to set limits to this fundamental right in keeping with the general requirements that pertain to limitations to fundamental rights and freedoms. Any limit has to have been legislated about in a law passed by parliament (the criterion of legality) and may not come into conflict with Finland's human

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[111] *PeVM 25/1994 vp*, 5. See also *KM 1992:3*, 385–86.

[112] *HE 309/1993*, 46; *PeVM 25/1994 vp*, 5. See also *KM 1992:3*, 19, 116, 139–40, 381–84; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 17. More comprehensive limitations should be prohibited under normal circumstances. *KM 1992:3*, 19; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 17. I will not here enter into a discussion about the possibility to derogate from fundamental rights during times of so-called public emergency. It was a topic, however, during the fundamental rights reform and constitutional reform. See, e.g., Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 122; *KM 1992:3*, 148–51, 158, 390–98. Ojanen notes that Section 23 of the 2000 Constitution here closely follows international human rights law (ICCPR, Article 4 and ECHR, Article 15). Ojanen, "Human Rights," 147.

[113] *HE 1/1998 vp*, 31; *PeVM 25/1994 vp*, 4; *KM 1997:3*, 69.

[114] *HE 309/1993 vp*, 27–30; *PeVM 25/1994 vp*, 4–6; Jyränki, *Uusi perustuslakimme*; 292–93; Saraviita, *Perustuslaki*, 110–11; Ojanen, *Johdatus*, 37. See also Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 41; *KM 1992:3*, 119–20.

[115] During the fundamental rights reform, it was observed that the lack of a limitation clause would underline the "heightened protection of this freedom amongst other fundamental rights", notwithstanding the fact that the freedom can be limited on certain grounds. *KM 1992:3*, 286.

rights obligations. In the case of freedom of religion and conscience, this means that the limitation clauses in ICCPR Art. 18 and ECHR Art. 9 have to be taken into account insofar as "the practice or expression of freedom of religion and conscience" goes.[116] The memorandum of the constitutional committee in connection with the fundamental rights reform offers guidance as to what this means more concretely[117] and, as commentators have pointed out, shows close affinity with the criteria used by the European Court of Human Rights to determine whether or not a limitation is legitimate.[118] As far as ECHR Article 9 goes, the justified limitations listed in paragraph 2 are as follows: "freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."[119]

In practice this suggests that there is an inviolable core to the freedom: the inner freedom of thought of the individual, the freedom to have and adopt a faith or conviction or to abstain from such, freedom from coercion in matters of faith, as well as the right not to have to participate in foreign religious practice. What can legitimately be limited on certain grounds are the "external forms" of manifestation, of practice of the freedom of religion or conscience, including collective action (practice).[120]

Additionally, during the fundamental rights reform it was stated in the government proposal for the fundamental rights reform that the lack of an explicit limitation clause in relation to freedom of religion and conscience does not authorise activities that violate "human dignity, other human rights, or are against the foundations of the legal order

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[116] Ojanen and Scheinin, "Uskonnon ja omantunnon vapaus," [My translation]. See also *HE 309/1993 vp*, 40; *PeVM 25/1994 vp*, 5; Perusoikeustyöryhmä, *Perusoikeustyöryhmä 1992 mietintö*, 80–81.

[117] *PeVM 25/1994 vp*, 5; Ojanen and Scheinin, "Uskonnon ja omantunnon vapaus." *PeVM 25/1994 vp*, 5, calls for "interpretative harmonisation of fundamental rights and human rights".

[118] Veli-Pekka Viljanen, "Perusoikeuksien rajoittaminen," in *Perusoikeudet*, ed. Pekka Hallberg et al., Online library Alma Talent, 2011, accessed May 29, 2019, http://fokus.almatalent.fi/teos/FAIBCXJTBF; Jukka Viljanen, "Euroopan ihmisoikeusopimuksen rajoituslausekkeen tulkinnan yhteys perusoikeusuudistukseen – kohti yleistä perus- ja ihmisoikeuksien rajoituskriteeristöä," *Oikeus*, no. 4 (1995): 377–79; Jukka Viljanen, "Euroopan ihmisoikeussopimus perustuslakivaliokunnan tulkintakäytännössä," in *Oikeustiede – Jurisprudentia* XXXVIII, ed. Leena Hallila (Helsinki: Suomalainen Lakimiesyhdistys, 2005): 461–520.

[119] See also *HE 170/2002 vp*, 8.

[120] Ojanen and Scheinin, "Uskonnon ja omantunnon vapaus." See also e.g. *KM 1992:3*, 286–87.

[*oikeusjärjestys*]".[121] Among these activities outlawed are counted: mutilation of the human body, under any circumstances, including female circumcision, as well as polygamy – which is seen as "not compatible with the Finnish legal order". Furthermore:

> the constitutional protection of freedom of religion and conscience does not hinder the enacting of legislation related to peace and order [*järjestysluonteinen*] that are expressive of generally accepted moral and ethical values in society, legislation which different religious movements must take into consideration in their religious and related practice.[122]

This statement echoes Agrama's observation that what is public order falls back on particular (majoritarian) values and that the purpose to uphold the rule of law simultaneously confirms state sovereignty. Moreover, according to the government proposal, the perspective of other people's fundamental rights has to be taken into account when interpreting the scope of fundamental rights, including the concept of practicing religion. According to the government proposal, the fundamental rights of children, including their right to life and personal integrity, cannot be violated by referring to someone else's freedom of religion and conscience.[123]

To Follow the Law and Respect Fundamental and Human Rights

This relates to a further dimension of the limits of freedom of religion and conscience. Section 8 of the 1919 Constitution states that: "A Finnish citizen has the right to practice religion in public and in private as long as this does not violate the law or good habits, publicly and privately practice religion, and also, in a way that is regulated separately, withdraw from the religious community to which he belongs, and the freedom to join another religious community."[124] The new 2000 Constitution does not mention the prohibition of violating the law or good habits. Likewise, Section 1 of the 1922 Act on the Freedom of Religion states:

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[121] *HE 309/1993 vp*, 56 [My translation]. The same observation was made during the reform of the Freedom of Religion Act by the committee appointed to draft the new Act and is also included in the governmental proposal. *KM 1999:5*, 28; *KM 2001:1*, 7, 35–36; *HE 170/2002 vp*, 7, 9.

[122] *HE 309/1993 vp*, 56 [My translation]. See also e.g. *KM 2001:1*, 35–36.

[123] *HE 309/1993 vp*, 56; Ojanen and Scheinin, "Uskonnon ja omantunnon vapaus."

[124] My translation. See also *HE 309/1993 vp*, 7.

"In Finland it is allowed to practice religion in public and in private, as far as law or good habit are not violated."[125] No such limitation clause can be found in the 2003 Act on the Freedom of Religion. Section 1 of that Act states: "The purpose of this Act is to safeguard the exercise of the freedom of religion as provided in the Constitution of Finland. In addition, this Act lays down provisions on the founding of registered religious communities and the basis for their activities".

It is clear from an examination of the preparatory work that "good habits/customs" (*hyvät tavat*) is considered "too vague and subjective in a pluralistic society".[126] Moreover, the committee elaborating the new act found that the criterion of legality, that law sets limits to the practice of freedom of religion and conviction, was covered by other legislation (and we have seen above how this plays out) and that a separate mention was therefore superfluous.[127] Likewise, the subsequent government proposal for the new Act on the Freedom of Religion states that it is not necessary to include a limitation clause spelling out that the law has to be obeyed.[128] In addition, the Evangelical Lutheran Church is counted as part of public power and in accordance with Section 2 of the new Constitution must observe the law in all its public activities.[129]

On the other hand, added to the new Act on the Freedom of Religion, is the requirement in Section 7 ("Purpose and forms of activity of a registered religious community"), that a registered religious community "shall fulfil its purpose with respect for fundamental and human rights". We can view this as an expression of the internationalisation of religion law. What does this mean more concretely, in addition to what has been spelled out in the previous section? Section 25 ("Dissolution of a community and warning") of the new Act states that:

> The competent court of first instance of the municipality in which a registered religious community has its registered office may, upon action brought by the

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[125] My translation.

[126] *KM 1999:5*, 53; *KM 2001:1*, 21, 35; *HE 170/2002 vp*, 22 [My translation]. The same limitation clause also appeared elsewhere than in Section 1: e.g., in relation to registration of religious communities.

[127] *KM 1999:5*, 4, 28–29, 53; *KM 2001:1*, 7, 21, 35. See also *HE 170/2002 vp*, 22. In the old Act, Section 4), acts of private religious practice that violated the law or good habits could result in a fine (unless stricter punishment was called for). The committee found this provision outdated, recognising also the right to privacy and the difficulty of proving a violation of such kind. *KM 1999:5*, 28–29.

[128] *HE 170/2002 vp*, 39.

[129] Ojanen, *Johdatus*, 32.

> Ministry of Education, a public prosecutor or a member of the religious community, declare the community dissolved if the community acts *materially against the law* or its purpose laid down in the community by-laws.
>
> If the *public interest* does not require that the community be dissolved, a warning may be issued to the community instead of dissolution.[130]

According to Seppo, who was a member of the committee, the dissolution of a community is a very exceptional case. That a registered religious community must have acted in a way that in a material – substantial – way breaks the law means that the unlawful behaviour must have been continuous, and it has to be proven that one has clearly been indifferent to the legal rules. The other basis for dissolution, that the community acts against "its purpose as laid down in the community by-laws", refers to the criterion of importance ("materially").[131] In addition, it is worth mentioning the reference to public interest in Section 25, which Seppo does not mention, but which offers a link back to the discussion in the first part of this article.

Concluding Remarks

At the end of the 20th century, a culture of fundamental rights and human rights took root in the Finnish legal context in a different way than before. The purpose of this article has been to examine how this concretely works together with – reaffirms and reconfigures – ideas about religious freedom, and "deep structure" ideas about rule of law and legality. What we encounter is an expansion of the substantial basic rights protection, including an expanded concept of freedom of religion and a stronger emphasis on positive freedom of religion, and on collective religious autonomy (which the introduction to this volume identifies as an aspect of "re-confessionalisation"). The perception of what this collective religious autonomy is supposed to include seems standard.

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[130] Translation by the Ministry of Education and Culture, accessed June 2, 2020, https://www.finlex.fi/fi/laki/kaannokset/2003/en20030453.pdf. My emphasis.

[131] Seppo, *Uskonnonvapaus*, 205; *KM 2001:1,* 46; *HE 170/2002 vp*, 49. Seppo further notes that dissolution would mean a limitation to a fundamental right and that in such cases, the rules that govern how fundamental rights can be limited must be followed. Seppo, *Uskonnonvapaus*, 205.

Another key concern of the reform, alongside expansion of the scope of fundamental rights, was to clarify the grounds for the limitation of rights.[132] It is interesting to notice that key clauses on freedom of religion and conscience in the Constitution (Section 11) and the Act on the Freedom of Religion (Section 1) no longer include a limiting clause referring to the need to follow (ordinary secular) law. From the perspective of the wider Finnish legal context, however, it is clear that this should not be taken to mean that individual and collective religious freedom cannot be restricted or limited on legal grounds. The examination of the wider legal context has also shown the influence of international human rights law when it comes to the interpretation of the grounds of limitation – including public order – and the way this further affirms secular power (to refer back to Agrama), and indeed to Section 22 of the new Finnish Constitution. "Deep structure" ideas of rule of law and legality are affirmed, with the state as the guarantor.[133]

Moreover, looking at the concrete legislative changes that took place, the legal reforms come across very much as being about harmonization of law, of international law with national law, and harmonization within the context of national law: of different pieces of legislation with each other.[134] Or perhaps in the latter case, we could also say that the reforms very much emphasized clarification and simplification: in partly rethinking what should go where, and in getting rid of overlapping legislation. It appears that much of this work fell back on an understanding of the law of the land as "one" (albeit not totally). We encounter an "uncomplicated" view on religion law. For the changes seem to have been not simply of a principled nature (as we might have expected) and about having a law that is up-to-date, but rather also to a large extent legal technical, as, for example, when regulations of concern to

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[132] *HE 309/1993 vp*, 14.

[133] The new Constitution opens with an affirmation of state sovereignty in Section 1, which includes internal sovereignty in the sense of supreme domestic legislative power. Jyränki, *Uusi perustuslakimme*, 54.

[134] See, e.g., *HE 1/1998 vp*, 30–32; *KM 1997:3*, 69. The aim of the overall constitutional reforms was not about changing the basic constitutional principles, including the rule of law, parliamentarism and division of power, but about achieving new clarity, intelligibility, coherence and up-to-date legal provisions. *HE 1/1998 vp*, 22; *KM 1997:3*, 70, 72. Ojanen ascribes "harmonisation of constitutional and international protection of human rights" via the impact of international human rights treaties on constitutional reforms, e.g., also to the other Nordic countries. Ojanen, "Human Rights," 143.

churches and religious communities are inserted in those laws where they are considered to make most sense with regard to their substance.[135]

To sum up, the basic system was thus kept intact, including regarding the fundamental distinction between national churches and registered religious communities with resulting different legal status. Perhaps we see here to some extent the remnants of Protestant hegemony, including the seemingly persistent understanding of the law of the land as secular – both in the sense of "secularity^{meaning1}" and "secularity^{meaning2}" as identified in the introduction to this volume.

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KM 1999:5: Uskonnonvapauskomitean välimietintö.

KM 1997:13: Perustuslaki 2000 - komitean mietintö.

KM 1992:3: Perusoikeuskomitean mietintö.

[135] Cf. Saraviita, *Perustuslaki*, 27, who observes that the overall constitutional reforms were marked by a sense of urgency and the reasons given for the need for reform were of a more practical, functional nature, with restraint shown with regard to broader questions of a principled nature.

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List of abbreviations

HE: hallituksen esitys [government proposal]

KM: komiteanmietintö [committee Report]

PeVL*:* perustuslakivaliokunnan lausunto [statement of the Constitutional Law Committee]

PeVM: Perustuslakivaliokunnan mietintö [report of the Constitutional Law Committee]

vp: valtiopäivät [Parliament]