

Fordham International Law Journal

Volume 38, Issue 2

2015

Article 4

Making the Case for Antiestablishmentarianism: The Church and State in Norway

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ARTICLE

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ANTIESTABLISHMENTARIANISM:
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INTRODUCTION

This Article questions the compatibility of the establishment of religion with international human rights principles, investigating the Church-State relationship in Norway as a case study.¹ Exploring these issues in the context of a country such as Norway, which is usually perceived to be quite progressive concerning most human rights issues, provides a more thought-provoking environment than exploring them in the context of a country with more extensive human rights challenges.² Moreover, just as it is easier to conduct an experiment with only one variable in order to determine the effects of that variable—in this case, the existence of a State religion as a potential human rights violation—as opposed to multiple variables complicating the analysis—*i.e.*, multiple human rights violations evident in some other countries—it may be easier to examine possible human rights violations caused by the establishment of religion in Norway, since this country faces relatively few other major issues with respect to human rights.

Despite recent movements toward disestablishment, the Norwegian government remains closely intertwined with the Church of Norway.³ For instance, the Constitution provides in Article 2 that,

1. The scope of this Article is limited to exploring the issue of state religions within the context of the international human rights framework through an examination of international and regional treaties, declarations, and similar instruments. Although interesting questions may be raised about whether religion should be treated in the same manner as political doctrines such as capitalism, such issues are outside the parameters of this Article.

2. See, e.g., JOHN L. ESPOSITO, *WHAT EVERYONE NEEDS TO KNOW ABOUT ISLAM* 180 (2d ed. 2002).

3. Presentation: State and Church in Norway (Norwegian Ministry of Culture, Department of Church Affairs 2014) (on file with author) [hereinafter *State and Church in Norway*] (“Norway still has some form of state-church system.”). *State and Church Move Towards Greater Separation in Norway*, INTERNATIONAL HUMANIST AND ETHICAL UNION (June 26, 2012), <http://iheu.org/state-and-church-move-towards-greater-separation-norway/> (“On May 21st, Church and State moved a little further apart in Norway. The reality is not as dramatic as many of the international headlines stating that Norway has disestablished its State Church, but it is a major step towards the ultimate goal of completely separating the Lutheran

“Our values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, a State based on the rule of law and human rights.”⁴ As a hereditary monarchy, Article 4 pronounces that, “The King shall at all times profess the Evangelical-Lutheran religion.”⁵ According to Article 9, “As soon as the King, being of age, accedes to the Government, he shall take the following oath before the Storting: ‘I promise and swear that I will govern the Kingdom of Norway in accordance with its Constitution and Laws; so help me God, the Almighty and Omniscient.’”⁶ Article 16 indicates that:

All inhabitants of the Realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and life stance communities should be supported on equal terms.⁷

These provisions demonstrate that Norway continues to maintain an established Church, in spite of the ongoing changes in the relationship between the State and the Church of Norway.

Constitutional provisions that were recently deleted from the Norwegian Constitution had previously more deeply enshrined the Church of Norway within the State.⁸ For example, Article 2 had previously indicated that, “All inhabitants of the Realm shall have the right to free exercise of their religion. The Evangelical-Lutheran

Church of Norway from the Norwegian State.”). This counters the assertion in some reports that Norway has disestablished the relationship between the church and state. *See, e.g., Norway Abolishes Church of Norway*, NORWAY NEWS (May 16, 2012), <http://www.norwaynews.com/en/~view.php?72049547064836t285Mjj844WN288aQO76Azn353QcZ8> (“[T]he Norwegian Parliament is set to separate church and state when it carries a constitutional amendment to abolish the Church of Norway. The nation will become secular, with no official religion . . .”).

4. Constitution of the Kingdom of Norway, art. 2, *available at* <https://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/>.

5. *Id.* art. 4.

6. *Id.* art. 9.

7. *Id.* art. 16.

8. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, 3 (2012), *available at* www.state.gov/documents/organization/193059.pdf. As recently as the beginning of 2012, the State Department reported about Norway that:

The state supports the church financially, and there is a constitutional requirement that the king and at least one-half of the cabinet belong to this church. The king in council (the king jointly approving with the council of state, composed of the prime minister and other cabinet members), who heads the state church, formally nominates bishops, and the law regulates clerical salaries and pensions. *Id.*

religion shall remain the official religion of the State. The inhabitants professing it are bound to bring up their children in the same,”⁹ and maintained a quota system reserving high governmental positions for Lutherans.¹⁰ Authority was vested in the monarch to select, appoint, and dismiss all senior ecclesiastical officials, to “ordain” all religious meetings and public worship and services, and to “ensure[] that public teachers of religion follow the norms prescribed for them.”¹¹ Although these provisions were eliminated in 2012, they reveal how closely the ties between the State and the Lutheran religion have been in Norway, including up until very recently.¹² The continuing relationship between the Church and State demonstrates that these recent steps toward disestablishment have not yet abolished a *de jure* and *de facto* State Church in Norway.

Moreover, in recent decades the Norwegian Parliament has enacted a series of laws requiring mandatory religious education for all students in the public school system throughout the country, with a significant focus on Lutheranism. The controversy over these laws, as well as the broader public debate that has occurred in Norway about the close ties between Church and State, make this country an interesting case study for exploring the principle of antiestablishmentarianism.¹³ Of course, religious education in public schools, as well as other manifestations of religion by the government, could take place without the establishment of a State religion, and may raise its own complex issues with respect to religious rights. However, the fact that religious education in public schools is occurring in Norway cannot be ignored when examining the overall relationship between the Church and State under international human rights principles.

In Norway, which is widely seen as a leader in upholding human rights principles, these theocratic remnants are troubling, especially since the global community is currently grappling with extreme

9. Constitution of the Kingdom of Norway of 1814, art. 2, available at <http://www.constitution.org/cons/norway/dok-bn.html>.

10. *Id.* art. 4.

11. *Id.* art. 16, 21, 22.

12. State and Church in Norway, *supra* note 3, at 10 (for example, “The King is no longer the supreme governor of the church.”).

13. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, *supra* note 8, at 3 (“There was continued robust public debate about introducing greater separation between church and state.”). Moreover, the Author of this Article has Scandinavian heritage and is a member of the Evangelical Lutheran Church of America, making the situation in Norway of particular personal interest.

violations of religious rights perpetrated by governments with State religions in other parts of the world. The legitimacy of international condemnation of religious discrimination may be undermined if such discrimination is not consistently censured, including with respect to more progressive countries such as Norway. Therefore, it is important that legal scholars concerned with international human rights, as well as the international human rights bodies themselves, raise and examine concerns about State religions in well-established democracies with good human rights records, as well as in countries with less stellar marks.

This Article underscores the importance of Church-State separation as an essential precondition for the protection of religious rights under the international human rights framework, exploring the example of Lutheranism in Norway to illustrate its main points. In other words, the Article concludes that states that maintain an official State religion are in violation of internationally recognized human rights, and that disestablishment is necessary in order to comply with international human rights norms. This contention runs counter to the assumption held by many that an official State Church, in and of itself, does not violate human rights.¹⁴ After this introduction in Part I, Part II explores the relationship between the Church and State in Norway. It briefly reviews the history of the Church-State relationship, and then examines the recent constitutional changes with respect to religion and the status of the Church of Norway. It then examines pronouncements by international human rights bodies that aspects of this relationship have encroached upon religious rights, particularly with respect to State-mandated religious education. Part III of the Article briefly reviews the human rights principles embodied in international instruments that protect religious rights. It suggests that religious rights are not capable of being entirely fulfilled in countries maintaining a State religion, and encourages human rights proponents to question the compatibility of a State religion with human rights. This Section draws heavily upon an article that the author published in 2014.¹⁵ This Part suggests that human rights organizations do not go far enough in their critique of the Church-

14. State and Church in Norway, *supra* note 3, at 19 (“A state-church system is—in itself—not considered to be in legal conflict with human rights conventions.”).

15. Julia L. Ernst, *Rethinking the Validity of State Religions: Is Antiestablishmentarianism a Fundamental Prerequisite for the Protection of Religious Rights under International Human Rights Law?*, 34 N. ILL. U. L. REV. 333 (2014).

State relationship in Norway. The Article concludes in Part IV that religious rights may be better protected if the international human rights community explicitly recognizes and affirms the principle of anti-establishmentarianism as a necessary prerequisite for the protection of religious rights within the international human rights framework, and that Norway would be an appropriate country at which to direct this critique.

I. *THE EVOLVING CHURCH-STATE RELATIONSHIP IN NORWAY*

The Norwegian government is closely intertwined with the Church of Norway, which follows the Evangelical Lutheran religion.¹⁶ The debate over the Church-State relationship in Norway has ebbed and flowed over the centuries, and has resurfaced in recent decades, in part because of changes in legislation requiring compulsory religious education focusing substantially on Lutheranism for all children in public schools. As discussed below, a movement toward easing the ties between the Church and State has emerged among politicians, Church leaders, and the general population. However, recent advancements stop short of a clear separation between the national government¹⁷ and the Church of Norway.¹⁸ The history of the Church-State relationship in Norway, recent constitutional and legislative changes, religious education in Norwegian schools, and the current status of religion among the people living in Norway are explored in greater depth in this Section.

16. CHURCH OF NORWAY, A SHORT PRESENTATION OF THE CHURCH OF NORWAY BROCHURE (2013), *available at* http://www.gammel.kirken.no/english/doc/engelsk/engelsk_brosjyre_2013.pdf (“With its roots in the Catholic Church of the Middle Ages the Church of Norway became a Lutheran church through the Reformation in 1537.”).

17. For purposes of this Article, the term “government” is used synonymously with the term “state” to indicate the conglomeration of entities tasked with running the country, including the legislative, executive, and judicial branches. The term is not used in the more limited sense of referring solely to the executive branch.

18. U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012, 4 (2013), *available at* <http://www.state.gov/documents/organization/208564.pdf>

(In May parliament passed a constitutional amendment separating the state from the ELC [Evangelical Lutheran Church]. The government no longer appoints bishops, priests, and church clerks, although church staff are still considered public employees. Government ministers are no longer required to be members of the ELC Although no longer under full state control, the ELC receives some benefits not available to other religious groups. The state supports the church financially and the law regulates clerical salaries and pensions.).

A. *The Historical Relationship between the Church of Norway and the Norwegian Government*

To understand the current situation with respect to the Church of Norway, the government of Norway, and the recent constitutional and legal changes mediating their relationship, a basic familiarity with their history and recent developments is crucial. This Section provides a succinct overview of the Church's history, as well as the transformations that occurred in society and in the legal framework, that lead up to the more radical changes that have taken place in the last several years, and that promise to continue into the future.

1. A Brief Chronicle of the Church of Norway

Christianity was introduced in the territory now known as Norway a thousand years ago, and it was consolidated in 1030 through the death of King Olaf Haraldsson at the Battle of Stiklestad.¹⁹ The influence of the Church rose, and as of 1300, the Church of Norway was the largest landowner in the country.²⁰ Over time, Catholicism became the predominant religion, which lasted through the Middle Ages until the early sixteenth century.²¹ In 1537, the King of Norway, Christian III, who also ruled Denmark in union with Norway, endorsed the Lutheran Reformation by royal decree, initiating the relationship between the Norwegian government and the Lutheran Church.²² The monarchy and the State have maintained strong ties with the Christian Church since the introduction of

19. State and Church in Norway, *supra* note 3, at 6 (“1030: The King Olav Haraldsson, who was a key figure in bringing [C]hristianity to Norway, was killed in battle. He was declared a saint.”).

20. Bryggens Museum Exhibit, Bergen, Norway, visited on June 8, 2014.

21. State and Church in Norway, *supra* note 3, at 6 (“900-1537: Six hundred years of Roman-Catholic faith.”).

22. *Norway Lutherans Vote to Cut Church-State Ties*, 123 THE CHRISTIAN CENTURY 17 (2006); *Church-State Split is Sought in Norway*, DESERET MORNING NEWS, Dec. 9, 2006, <http://www.deseretnews.com/article/650213367/Church-state-split-is-sought-in-Norway.html?pg=all>; State and Church in Norway, *supra* note 3, at 5 (“The Church of Norway has represented in the main, at times almost the only, expression of religious belief in Norway for 1000 years.”); *id.* at 5 (“The church has belonged to the Evangelical-[L]utheran branch of the Christian church since the 16th century and has been a state-church since then.”); *id.* at 6 (“1537: The [L]utheran Reformation was adopted in Denmark-Norway.”).

Christianity, with the king historically ruling with absolute authority over the Church, State, and people within his realm.²³

The Norwegian Constitution, as adopted in 1814, contained numerous provisions enconcing the structure of government control of the Church of Norway which remained largely intact for nearly two centuries.²⁴ Although it was progressive for its time, and was modeled after the US Constitution, Norway's Constitution of 1814 failed to provide protections for religious freedom.²⁵ The Constitution instituted the Evangelical Lutheran faith as the official State religion and required that "[t]he inhabitants professing it are bound to bring up their children in the same."²⁶ It contained a quota system reserving high governmental positions for Lutherans, requiring that the monarch and at least one half of the cabinet officials be Lutheran.²⁷ Authority was vested in the monarch to select, appoint, and dismiss all senior ecclesiastical officials, to "ordain" all religious meetings and public worship and services, and to "ensure[] that public teachers of religion follow the norms prescribed for them."²⁸

Over time, changes took place within society, within the State, and within the Church that affected the relationship between the Church and State.²⁹ In 1870, a government body recommended separation of Church and State, but the Parliament voted to maintain a State religion.³⁰ In 1877, a group of congregations broke away from the Church of Norway in a dispute over the Church-State system and formed the Evangelical Lutheran Free Church, which currently has

23. State and Church in Norway, *supra* note 3, at 5 ("Strong bonds between King/state and church."); *Id.* at 6 ("The King ruled with absolute power—religion/church and state, and church and people, [were] identical entities.").

24. Stoichevski, *No More State Church in Norway?*, THE LUTHERAN, Aug. 2006, at 36-37; State and Church in Norway, *supra* note 3, at 7 ("1814: The Norwegian Constitution was established—the official religion 'remains' and the basic legal framework for the system was established.").

25. State and Church in Norway, *supra* note 3, at 7 ("Inspired by liberal ideas (France, USA), radical at the time, but no religious freedom.").

26. Constitution of the Kingdom of Norway of 1814, *supra* note 9, art. 2.

27. *Id.* art. 4, 12.

28. *Id.* art. 16, 21, 22.

29. State and Church in Norway, *supra* note 3, at 7 ("Developments in the state-church system, adopted to changes in society, in the state and in the church.").

30. Stoichevski, *supra* note 24, at 37.

21,000 members in eighty congregations.³¹ Until 1911, Confirmation for all young people was required by law.³²

The Church came under the authority of various departments within the executive branch of government, and civil servants began to hold significant authority over the Church of Norway.³³ For instance, during certain periods the Church of Norway has been placed under the jurisdiction of the Ministry of Church and Cultural Affairs in the Norwegian government,³⁴ as well as the Ministry of Church, Education, and Science.³⁵ The government retained authority over significant decisions affecting the Church; for example, civil servants approved the appointment of bishops and clergy.³⁶ Historically through the present, the State of Norway has owned all property of the Church of Norway, maintained hundreds of Lutheran buildings, and paid the salaries of Lutheran Church employees, including bishops and clergy.³⁷

Increasingly, calls for greater autonomy of the Church and for freedom of religion within the country continued to mount.³⁸ The Constitution was amended in 1964 to include an express provision granting freedom of religion in Norway, formalizing the right of non-Lutherans to observe their own religions, which had already been respected in practice by the government prior to the amendment.³⁹ Parliament then adopted a law in 1969 regarding the status of religious communities to ensure freedom of religion and to provide economic support for other religious entities in Norway.⁴⁰ In recent decades, State financial support has been provided to all registered

31. *First Woman Pastor in Norway Church*, ANGLICAN JOURNAL, Jan. 2006, at 18.

32. Edd Doerr, *Church and State: Report from Norway*, THE HUMANIST, July/Aug. 2001, at 43.

33. Stoichevski, *supra* note 24, at 36.

34. *Norwegian Government Ministries*, GOVERNMENT.NO, <https://www.regjeringen.no/en/the-government/previous-governments/ministries-and-offices/government-secretariats-and-ministries-s/ministries-since-1814/id426141/> (last visited Feb. 28, 2015).

35. Bente Sandvig, *Norwegian Religious Education*, IHEU, Apr. 1, 1996, available at <http://www.iheu.org/node/536>.

36. Stoichevski, *supra* note 24, at 36.

37. *Id.* at 36; *Norway to Debate Church-State Split*, DESERET MORNING NEWS, Apr. 29, 2006, at E03.

38. State and Church in Norway, *supra* note 3, at 7 (“Church autonomy, religious freedom.”); *id.* at 8 (“Autonomy—church-elected governing bodies.”).

39. *Id.* at 8 (“1964: Freedom of religion was formally expressed in the Constitution.”).

40. *Id.* at 8 (“1969: The law on the status of religious communities in general (economic support, etc.)”); *id.* at 15 (“Freedom of religion . . . Legislation—law on religious communities (1969) and on life stance communities (1980).”).

religious denominations in proportion to their membership.⁴¹ In 1980, Parliament passed a law ensuring rights for life stance communities, such as the Norwegian Humanist Association.⁴² The Church of Norway was granted greater autonomy by Parliament in 1981, although Parliament refused to abolish its status as the official State Church.⁴³ The Norwegian Humanist Association, which advocates for the rights of people who do not profess a formal religious affiliation, has received funding from the government since 1982, when individuals attained the ability to designate the portion of their tax dollars that had previously gone to the Church of Norway to other religious or non-religious entities.⁴⁴ The current governing body within the Church of Norway—the General Synod—was instituted in 1984.⁴⁵ Prior to 1989, most of the pastors within the Church were appointed by the government or by the Council of State. Starting in 1989, the pastors have been appointed by the Diocesan Councils within the Church, while the Council of State still retained the authority to appoint deans and bishops.⁴⁶ The Church Law of 1996 provided even greater self-governance for the Church at all levels.⁴⁷

Government involvement in the Church of Norway has sometimes led to progressive reforms within the Church, such as changes to policies discriminating against gays and lesbians.⁴⁸ For

41. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007 (2008), available at <http://www.state.gov/j/drl/rls/irf/2007/90192.htm>; State and Church in Norway, *supra* note 3, at 3 (“The state also supports other religious and life-stance communities.”).

42. State and Church in Norway, *supra* note 3, at 15 (“Freedom of religion . . . Legislation—law on religious communities (1969) and on life stance communities (1980).”).

43. *Id.* at 8 (“1981: The Parliament (Storting) voted to retain the state church, while granting it more autonomy.”).

44. Bente Sandvig, *Norwegian Religious Education*, INT'L HUMANIST & ETHICAL UNION, (Apr. 1, 1996), <http://iheu.org/article-categories/ihn-19961-april>.

45. State and Church in Norway, *supra* note 3, at 8 (“1984: The General Synod in the Church of Norway was established.”).

46. FRANK CRANMER ET AL., CHURCH AND STATE: A MAPPING EXERCISE 90 (2006), available at <http://www.ucl.ac.uk/spp/publications/unit-publications/133.pdf>.

47. Ingvill Thoren Plesner, *State Church and Church Autonomy in Norway*, in CHURCH AUTONOMY: A COMPARATIVE SURVEY 476 (Gerhard Robbers ed., 2001).

48. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT) 6 (2011), available at www.state.gov/j/drl/irf/rpt/

(In April parliament amended the Worker Protection and Working Environment Act (WPWEA) and the Gender Equality Act to remove exemptions for discrimination on religious grounds. The amendments removed religious organizations' explicit right to inquire about an applicant's sexual orientation or discriminate on the basis of gender, unless the differential treatment is shown to have a legitimate purpose.

example, in 2000 the government appointed a person in a gay relationship to the clergy in accordance with secular anti-discrimination laws, despite the fact that this action contravened the religious doctrine of the Church of Norway at that time.⁴⁹ In March 2008, the government proposed a new law that would allow gays and lesbians to be married in churches, although it did not mandate that any religious official or entity administer the service.⁵⁰ Changes in Church policies to allow women to become pastors were also initiated earlier than they may have been had the Church not been influenced by the State. The percentage of female pastors and bishops has been growing significantly within the Church of Norway, resulting in twenty-five percent female pastors and one-fourth female bishops (three out of twelve) in 2014.⁵¹

2. Recent Steps Toward the Separation of Church and State in Norway

Calls for loosening the ties between the Norwegian government and the Lutheran Church have come from multiple constituencies, including government officials,⁵² the General Synod of the Church of Norway,⁵³ religious leaders,⁵⁴ and non-governmental organizations.⁵⁵ In response to increasing criticism of the Church-State relationship, the government formed a commission in 2003 to evaluate whether the

Previously the WPWEA permitted employers to ask job applicants applying for positions in religious or other private schools and day care centers whether they would agree to teach and behave in accordance with the institution's or religion's beliefs and principles. Religious organizations retain the right to use discretion in their hiring processes, however, as "legitimate purpose" is broadly defined.)

49. *Norway May Separate Church and State*, GRAND RAPIDS PRESS, Feb. 11, 2006, at D8.

50. *Norway Considers Expanding Gay Rights*, ORLANDO SENTINEL, Mar. 15, 2008, at A5; *Norway Proposal Full Marital Gay Rights*, SEATTLE TIMES, Mar. 15, 2008, at A7.

51. *Basics and Statistics*, CHURCH OF NORWAY (Feb. 16, 2015), <http://kirken.no/nb-NO/church-of-norway/about/basics-and-statistics/>.

52. *Solberg's Government*, (Nov. 26, 2014), <http://www.regjeringen.no/en/The-Government/stoltenberg-ii.html?id=85843>; Stoichevski, *supra* note 24, at 26.

53. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, WINNIPEG FREE PRESS, Nov. 26, 2006, at B8.

54. Doerr, *supra* note 32, at 43 ("[P]articipation in the humanist-sponsored forum on 'Freedom of Religion and Belief' by an Italian Catholic expert on church-state issues and a Norwegian Lutheran minister served to remind me that a great many outside the humanist orbit share the humanist concern for and dedication to church-state separation.").

55. See, e.g., HUMAN RIGHTS COMMITTEE OF THE NORWEGIAN BAR ASSOCIATION ET AL., SUPPLEMENTARY REPORT TO NORWAY'S 5TH PERIODIC REPORT ON ICCPR.

current structure should be maintained, reformed, or discontinued, and to propose new models for the Church-State relationship.⁵⁶ The commission, which conducted a three-year inquiry, was led by Church of Norway pastor Kjell Magne Bondevik and included representatives from the Church and other religious groups, community leaders, legal experts, politicians, the Sami people, and others.⁵⁷ During this time, the Church-State relationship continued to be controversial. For example, in the fall of 2005, Norway was criticized for its “Christian quota,” referring to the constitutional provision mandating that at least half of the cabinet members be Lutheran.⁵⁸

The commission presented its recommendations to the Church and Cultural Affairs Minister on January 31, 2006.⁵⁹ One proposal was that the government should no longer hold the authority to govern the Church, such as naming the bishops.⁶⁰ The commission also suggested that all constitutional provisions giving the king and government authority over the Church be removed, slating seven paragraphs of the Constitution to be amended.⁶¹ However, only a minority of the commission members advocated for severing all ties between the Church and State.⁶² For example, the commission advised that the Constitution should retain references to “Christian and humanistic” values. Of the twenty members, eighteen voted in favor of a “National Church;”⁶³ fourteen recommended that the Lutheran Church should retain special status; and only four favored equal treatment for all faiths.⁶⁴ Most commission members suggested only small changes in funding, with two committee members wanting

56. Stoichevski, *supra* note 24, at 26; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

57. Stoichevski, *supra* note 24, at 26; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

58. Stoichevski, *supra* note 24, at 26; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

59. Stoichevski, *supra* note 24, at 26; *Norway May Separate Church and State*, *supra* note 49, at D8. *State and Church in Norway*, *supra* note 3, at 9 (“2006: Report on the state-church system from a government-appointed committee.”).

60. Stoichevski, *supra* note 24, at 26; *Norway May Separate Church and State*, *supra* note 49, at D8.

61. Stoichevski, *supra* note 24, at 26; *Norway May Separate Church and State*, *supra* note 49, at D8.

62. Stoichevski, *supra* note 24, at 26; *Norway May Separate Church and State*, *supra* note 49, at D8.

63. Stoichevski, *supra* note 24, at 26.

64. *Norway May Separate Church and State*, *supra* note 49, at D8.

to retain full State funding for the Church.⁶⁵ One possibility would be to transfer all Church property from the government to a new organization, yet retain State funding to pay salaries and maintain the churches.

In November 2006, the General Synod of the Church of Norway met to discuss the proposed separation of the Church from the State.⁶⁶ As the nominal head of the Church of Norway, King Harald attended the opening day of the Synod meeting.⁶⁷ While remaining neutral on the substance of the debate, he expressed his approval that the discussion was taking place, indicating that “the church still means a lot to our people.”⁶⁸ The Synod voted to move toward greater autonomy from the State along the lines of the recommendations by the State-Church Commission.⁶⁹ Out of eighty-five Synod delegates, sixty-three favored having the synod assume all Church authority that currently falls under the purview of the king and national government, including the power to appoint clergy, and removing reference to the Lutheran Church in the Constitution as a State Church.⁷⁰ Only nineteen Synod delegates voted to retain the government’s system of authority over the Church as it was then constituted.⁷¹ Other religious groups have also supported the move toward Church-State separation in Norway. For example, Bernt Eidsvig, the Roman Catholic Bishop of Oslo, stated that, “The idea of the government as the supreme leadership of the Church of Norway belongs to another time than ours.”⁷²

65. Stoichevski, *supra* note 24, at 26.

66. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, *supra* note 53, at B8.

67. *Norway Considers Disestablished Church*, UNITED PRESS INTERNATIONAL NEWS TRACK, Nov. 14, 2006.

68. *Id.*

69. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, *supra* note 53, at B8.

70. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, *supra* note 53, at B8.

71. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, *supra* note 53, at B8.

72. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Church votes to end official Lutheranism*, *supra* note 53, at B8.

Between April and December 2006, the government of Norway initiated a series of town hall hearings on the current system and new proposals to gather viewpoints from over 2500 participants—including every congregation and municipality—in order to select one of the proposed models for the Church-State relationship.⁷³ A national poll in May 2006 reflected that nearly sixty-nine percent of respondents preferred voting on the issue in a referendum, as opposed to nearly nineteen percent who were comfortable allowing the Parliament to resolve the matter.⁷⁴ Also in May 2006, a new political party, Forum for the State Church, was created by Gunnar Staalsett, former Oslo bishop and former Lutheran World Federation General Secretary, with a single-issue platform—to retain a strong Church-State relationship and maintain the Church of Norway’s status within the Constitution.⁷⁵ The new party formed a close bond with the Centre Party, whose membership is comprised largely of Norway’s agrarian population.⁷⁶ In early 2007 the Minister of Culture and Churches, Trond Giske, reportedly indicated that “there is no public demand for the state church system to be disbanded,” in conjunction with the release of a poll of towns and Church councils reflecting that fifty-seven percent opposed a possible separation between the government and the Lutheran Church.⁷⁷ However, some government officials asserted the importance of religious equality and non-discrimination for all citizens in Norway. For example, one official noted that “[a] goal for the government is social inclusion and integration of all citizens (or citizens to be) of Norway. Everyone is to participate and have equal opportunities regardless of gender, religion, belief, ethnicity [sic], political affiliation, sexual orientation, disability or age.”⁷⁸

73. Townships and church councils were to provide feedback by December 1, 2006. *See Church-State Split is Sought in Norway*, *supra* note 22, at E03; *Norway Considers Church-State Split*, CHI. TRIB., Apr. 28, 2006, at 10. In March, public calls for the separation of church and state were fuelled by statements of Ole Christian Kvarme, Bishop of Oslo, that “seemed to advise homosexuals to seek psychiatric help for ‘re-orienting of their predilection,’” making front-page news. Stoicheveski, *supra* note 24, at 37.

74. *Norway Should Separate Church & State, Panel Says*, 220 HUMAN QUEST 9 (2006).

75. Stoicheveski, *supra* note 24, at 37.

76. *Id.* at 37.

77. *A Possible Split Between the Lutheran Church and the State in Norway*, LONDON TIMES, Jan. 27, 2007, at 78. Trond Giske later spearheaded the successful compromise in parliament leading to the constitutional amendments in 2012.

78. HEGE NYGÅRD, NORWAY MINISTRY OF CHILDREN AND EQUALITY, INTRODUCTORY INTERVENTION TO THE CEDAW COMMITTEE’S EXAMINATION OF NORWAY’S 7TH REPORT (2007).

In 2008, Norway had a coalition government led by the Labour Party, which has been one of the strongest proponents of separation of Church and State.⁷⁹ In April 2008, the ruling and opposition parties within the government of Norway reached an accord to relax Church-State ties, including proposed constitutional amendments providing that Norway would no longer have an official State religion, and that Lutherans would no longer be required to raise their children in the Lutheran faith.⁸⁰ Also, the State would turn the right to appoint bishops over to the Church, and government financial support would be expanded for other religious, atheist, or agnostic groups, in addition to the Church of Norway. As described by the US Department of State in its 2010 annual report on religious freedom in Norway:

There is continued public debate about introducing greater separation between church and state. In 2008 the minister of culture presented a parliament-commissioned report on the state and church relationship. The report, which took five years to complete and included significant public input, called for maintaining, but further democratizing, the state church. It proposed changes to the constitution to separate church and state functions further. One of the immediate effects was an agreement, signed by the seven parties in parliament, to support amending the constitution to give the state church the ability to select, but not appoint, its bishops. The agreed wording also would institute the constitutionally recognized system of public financing for all religious groups, similar to existing public financing for the state church.⁸¹

Some predicted that any measures to separate the Church and State would move slowly and take several years to go into effect, since constitutional amendments must be approved by two consecutive Parliaments with a vote of two-thirds in each Parliament.⁸² A new white paper by the Norwegian government was provided to Parliament in late 2008.⁸³

79. *Solberg's Government*, *supra* note 52; Stoicheveski, *supra* note 24, at 37.

80. *Norway: Church and State to Relax Ties*, N.Y. TIMES, Apr. 11, 2008, at A10.

81. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT), *supra* note 48, at 4.

82. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; *Church-State Split is Sought in Norway*, *supra* note 22, at E03; Stoichevski, *supra* note 24, at 37.

83. *Norway Lutherans Vote to Cut Church-State Ties*, *supra* note 22, at 17; State and Church in Norway, *supra* note 3, at 9 ("2008: White Article from the government.").

B. New Changes in the Constitution and Laws Regarding Religion

The Parliament of Norway enacted the new amendments to the Constitution on May 21, 2012.⁸⁴ These fairly sweeping changes revolutionized the relationship between the Church and State in Norway. For example, the State no longer has the authority under the Constitution to appoint bishops, and such authority is being transferred to the Church itself.⁸⁵ However, significant ties between the Church and State remain under the present constitutional provisions, as demonstrated in the articles quoted below.

Article 2:

Our values will remain our Christian and humanist heritage. This Constitution shall ensure democracy, a state based on the rule of law and human rights.⁸⁶

Article 4:

The King shall at all times profess the Evangelical-Lutheran religion.⁸⁷

Article 9:

As soon as the King, being of age, accedes to the Government, he shall take the following oath before the Storting: "I promise and swear that I will govern the Kingdom of Norway in accordance with its Constitution and Laws; so help me God, the Almighty and Omniscient."⁸⁸

Article 16:

All inhabitants of the realm shall have the right to free exercise of their religion. The Church of Norway, an Evangelical-Lutheran church, will remain the Established Church of Norway and will as such be supported by the State. Detailed provisions as to its

84. CHURCH OF NORWAY *supra* note 16, at 3; *Norway Abolishes Church of Norway*, *supra* note 3 ("All 169 members of the seven parties in Parliament, including 10 representatives from the Christian Democratic Party and 30 from the Conservative Party, are said to be behind the move. . .").

85. CHURCH OF NORWAY, *supra* note 16, at 3; State and Church in Norway, *supra* note 3, at 10 (in accordance with the changes made in 2012, "The King no longer appoints bishops and deans" and "The General [S]ynod decides on internal church matters, such as liturgy.").

86. Grl. art. 2, *translation at* <https://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/> (last updated Oct. 7, 2011); The Constitution of the Kingdom of Norway, *supra* note 4; State and Church in Norway, *supra* note 3, at 10 ("The changes in 2012 From state religion to [C]hristian and humanistic heritage as basic values for the state.").

87. Grl., *supra* note 86, art. 4.

88. *Id.* art. 9.

system will be laid down by law. All religious and life stance communities should be supported on equal terms.⁸⁹

Article 21:

The King shall choose and appoint, after consultation with his Council of State, all senior civil and military officials. Before the appointment is made, such officials shall swear or, if by law exempted from taking the oath, solemnly declare obedience and allegiance to the Constitution and the King, although senior officials who are not Norwegian nationals may by law be exempted from this duty. The Royal Princes must not hold senior civil offices.⁹⁰

Article 22:

The Prime Minister and the other Members of the Council of State, together with the State Secretaries, may be dismissed by the King without any prior court judgment, after he has heard the opinion of the Council of State on the subject. The same applies to senior officials employed in government ministries or in the diplomatic or consular service, the highest-ranking civil officials, commanders of regiments and other military formations, commandants of fortresses and officers commanding warships. Whether pensions should be granted to senior officials thus dismissed shall be determined by the next Storting. In the interval they shall receive two thirds of their previous pay.

Other senior officials may only be suspended by the King, and must then without delay be charged before the Courts, but they may not, except by court judgment, be dismissed nor, against their will, transferred.

All senior officials may, without a prior court judgment, be discharged from office upon attaining the statutory age limit. It

89. *Id.* art. 16; State and Church in Norway, *supra* note 3, at 11. Note that another official website of the Parliament of Norway provides the following, slightly different translation of Article 16 (the differences are italicized): "All inhabitants of the Realm shall have the right to free exercise of their religion. The *Norwegian Church*, an Evangelical-Lutheran church, will remain the *Norwegian National Church* and will as such be supported by the State. Detailed provisions as to its system will be laid down by law. All religious and *philosophical* communities should be supported on equal terms." Grl., *supra* note 86, art. 16.

90. Grl. *supra* note 86, art. 21. Therefore, all senior officials must swear or declare allegiance to the provisions concerning Christianity in the constitution.

may be determined by law that certain senior officials who are not judges may be appointed for a term of years.⁹¹

Article 44:

The Princess or Prince who, in the cases mentioned in Article 41,⁹² conducts the government shall make the following oath in writing before the Storting: "I promise and swear that I will conduct the government in accordance with the Constitution and the Laws, so help me God, the Almighty and Omniscient."⁹³

Article 75:

It devolves upon the Storting:

- a) to enact and repeal laws; to impose taxes, duties, customs and other public charges, which shall not, however, remain operative beyond 31 December of the succeeding year, unless they are expressly renewed by a new Storting;
- b) to raise loans in the name of the realm;
- c) to supervise the economic affairs of the realm;
- d) to appropriate the moneys necessary to meet government expenditure;
- e) to decide how much shall be paid annually to the King for the Royal Household, and to determine the Royal Family's appanage, which may not, however, consist of real property;
- f) to have submitted to it the records of the Council of State, and all public reports and documents;
- g) to have communicated to it the treaties which the King, on behalf of the State, has concluded with foreign powers;
- h) to have the right to require anyone, the King and the Royal Family excepted, to appear before it on matters of State; the exception does not, however, apply to the Royal Princes if they hold any public office;

91. *Id.* art. 22. Of course, the officials in constitutional provision include those within the governmental ministries that still maintain control over certain aspects of the Church of Norway and of other religious and life stance communities in Norway.

92. Article 41 states "If the King is absent from the realm unless commanding in the field, or if he is so ill that he cannot attend to the Government, the person next entitled to succeed to the Throne shall, provided that he has attained the age stipulated for the King's majority, conduct the government as the temporary executor of the Royal Powers. If this is not the case, the Council of State will conduct the administration of the Realm." *Id.* art. 41.

93. *Id.* art. 44.

- i) to review the provisional lists of salaries and pensions and to make therein such alterations as it deems necessary;
- k) to appoint five auditors, who shall annually examine the State Accounts and publish extracts of the same in print, for which purpose the Accounts shall be submitted to the auditors within six months of the end of the year for which the appropriations of the Storting have been made, and to adopt provisions concerning the procedure for authorising the accounts of government accounting officials;
- l) to appoint a person, not a member of the Storting, in a manner prescribed by law, to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen;
- m) to naturalise aliens.⁹⁴

Article 81:

All Acts (with the exception of those mentioned in Article 79) are drawn up in the name of the King, under the Seal of the Realm of Norway, and in the following terms: “We, X, make it publicly known: that the decision of the Storting of the date stated has been laid before Us: (here follows the decision). In consequence whereof We have assented to and confirmed, as We hereby do assent to and confirm the same as Law under Our Hand and the Seal of the Realm.”⁹⁵

Article 116:

The purchase money, as well as the revenues of the landed property constituting ecclesiastical benefices, shall be applied solely to the benefit of the clergy and to the promotion of education. The property of charitable foundations shall be applied solely to the benefit of the foundations themselves.⁹⁶

Article 110(c):

It is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties thereon shall be determined by law.⁹⁷

The above provisions demonstrate that Norway continues to maintain an established Church, in spite of the ongoing changes in the

94. *Id.* art. 75. These provisions include the laws, taxes, expenditures, etc., that specifically concern the Church of Norway and to other religious and life stance communities.

95. *Id.* art. 81 (explaining that a Lutheran king must assent to all legislation).

96. *Id.* art. 106.

97. *Id.* art. 110(c).

relationship between the State and the Church of Norway and the government's continued affirmation of human rights. Moreover, numerous statutory laws and governmental programs in Norway also affect religious entities—both the Church of Norway and entities organized by people adhering to other religions and belief systems. For example, the religious law continues the tradition, now enshrined in the Constitution, of governmental financial support for the Church of Norway and for other religious and life-stance entities.⁹⁸ Each religious entity must register with the government and provide its membership lists to the government in order to receive this funding.⁹⁹ A separate law still regulates the internal organization of the Church of Norway.¹⁰⁰ The Church is not a separate legal entity, but instead remains a part of the government.¹⁰¹ The State continues to employ all bishops, clergy, and clerical staff within the Church of Norway, and the State also continues to regulate their salaries and pensions—in contrast with employees of other religions, who are employed by their own religious entities, which are independent of the State.¹⁰² The municipal governments fund the local Church budgets, for example, to help pay for the maintenance of Church buildings and salaries.¹⁰³ Out of the overall funding for the Church of Norway, approximately 1/3 is provided by the national government and about 2/3 is provided

98. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, 3 (2014), *available at* <http://www.state.gov/documents/organization/222465.pdf> (“Other religious groups may register with the government to receive state financial support. The government provides financial support to all registered denominations in proportion to their formally registered membership.”).

99. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT), *supra* note 48, at 5 (“A religious community must register with the government only if it desires state financial support, which is provided to all registered denominations in proportion to their formally registered membership. Some faith groups argued that this registration requirement disadvantages their efforts to get funding . . .”). For example, the Jewish community has expressed concern about giving membership lists to the government.

100. State and Church in Norway, *supra* note 3, at 12 (“The church organization is still regulated by a specific church law.”).

101. *Id.* at 14 (“Not a separate legal entity, formally part of public administration, public law.”).

102. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 3 (“The government does not appoint bishops, priests, and church clerks, although church staff are still considered public employees The state supports the ELC [Evangelical Lutheran Church] financially and the law regulates clerical salaries and pensions.”); State and Church in Norway, *supra* note 3, at 12 (“The clergy are still formally state officials and their salaries are funded by the state.”).

103. State and Church in Norway, *supra* note 3, at 12 (“The local governments (municipalities) fund the local church budgets (church buildings, salaries etc.).”).

by the local governments.¹⁰⁴ Ten religious holidays are officially recognized and celebrated by the State of Norway, all of which celebrate Christian traditions.¹⁰⁵ Laws addressing religion guarantee people in Norway the freedom to select the religion with which they choose to affiliate, to practice their religion, and to change their religion.¹⁰⁶ Parents can determine the religion of their children before they reach the age of fifteen, but once they reach the age of seven their views must be considered, and must be given greater weight over the age of twelve.¹⁰⁷ Upon the age of fifteen, children may decide on their own whether to maintain their religion, change their religion, or adopt no religion.¹⁰⁸ The statutes addressing the slaughter of livestock effectively prohibit the production of kosher meat within Norway, therefore obliging people of the Jewish faith to import kosher products.¹⁰⁹ Although the military permits its members to wear religious articles, including religious head coverings, the police force in Norway does not.¹¹⁰

104. *Id.* at 14 (“The Church of Norway . . . funded 2/3 by the municipalities and 1/3 by the state.”).

105. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012, *supra* note 18, at 4. (“The government observes the following religious holidays as national holidays: Palm Sunday, Maundy Thursday, Good Friday, Easter Sunday, Easter Monday, Ascension Day, Pentecost, Whit Monday, Christmas Day, and Saint Stephen’s Day.”).

106. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 2 (“The law on religious freedom and affiliation further specifies the right of individuals to choose, change, and practice their religion.”).

107. *Id.* at 2 (“While parents have the right to decide their child’s religion before age 15, the views of children over seven years must be taken into consideration and, when over 12 years, the child’s opinion must be given emphasis.”).

108. *Id.* at 2 (“Any person over the age of 15 years has the right to join or leave a religious community.”).

109. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 2 (The constitution provides the right to practice religion, but some laws conflict with practical lifestyle aspects of certain religious groups. According to the law, the slaughter of an animal must be preceded by stunning or administering anesthetics, which conflicts with kosher slaughter requirements and some interpretations of halal meat preparation requirements. The law effectively bans the production of kosher meat in the country, thus requiring the Jewish community to import it.).

110. *See id.* at 2; *see also* U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2013, Norway 16 (2013) [hereinafter Country Reports Norway], available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220317#wrapper> (“Uniformed members of the military are permitted religious head coverings such as hijabs, turbans, and skullcaps as part of the service uniform.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT), *supra* note 48, at 6

(A ban remained on policewomen wearing the hijab (head covering) with police uniforms, despite the government’s earlier support of a proposal to allow wearing it.

Therefore, important ties between the Norwegian government and the Lutheran Church have remained under the reforms to the Constitution and the statutory laws. As noted above, the State has continued to provide significant financial support for the Lutheran Church as well as other religious and life-stance institutions. The Constitution still mandates that the monarch be Lutheran.¹¹¹ Moreover, not everyone has supported the move toward separation of Church and State in Norway, so discussions around this issue continue.¹¹² Some may lament the decline of religion and the importance of the Church of Norway in the life of the general populace, particularly those who maintain a vested personal interest in the institution and those who prefer a more conservative and insular society rather than accepting diversity within the country. These constituencies continue to hold a substantial political voice. The ways in which the constitutional and statutory provisions may continue to pose violations of religious rights under international treaties to which Norway is a party are discussed in greater detail in Part II, below.

C. A Closer Look at Religious Education in Norwegian Public Schools

This Section discusses the State-mandated religious education within public schools in Norway and pronouncements by various

In August the Equality and Antidiscrimination Tribunal ruled that banning religious headscarves in police uniform regulations violated the Antidiscrimination and Equality Act, confirming an earlier decision by the equality and antidiscrimination ombudsman. The justice minister and the Police Federation responded that after a thorough political and judicial evaluation of the regulations concerning police uniforms, the decision to forbid hijabs would remain in force.);

U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2009, 3 (2010), available at <http://www.state.gov/j/drl/rls/irf/2009/127329.htm>

(In February 2009 the Police Directorate, responding to a petition by a Muslim woman, proposed that the hijab be permitted to be worn with the police uniform in order to recruit a broader field of candidates for police work. This proposal caused an intense nationwide political and media debate, and the police union came out firmly against the change. Some commentators argued that all policewomen should dress the same, and citizens might be afraid that they would not receive equal treatment from a policewoman wearing a hijab. Two weeks after it initially expressed its support for the Police Directorate's proposal, the Justice Ministry withdrew its support and ruled against allowing the hijab to be worn. Many in the Muslim community were disappointed by the Government's reversal.)

111. *Norway: Church and State to Relax Ties*, *supra* note 80.

112. Stoichevski, *supra* note 24, at 26.

human rights bodies, which state that the original iteration of this legislation infringed upon the right to freedom of religion or belief, particularly with respect to non-members of the Church of Norway. Since their inception, Norwegian public schools have always provided some type of religious education, with the option for non-Lutherans to opt out of these classes since the mid-1800s. Yet in the 1990s, the Norwegian Parliament enacted a series of laws requiring mandatory religious education for all students in the public school system throughout the country. These laws were challenged by parents and students in the national courts and subsequently through the Human Rights Committee and the European Court of Human Rights, with varying results. The plaintiffs initially lost in the domestic courts and then won on certain points in the international venues. However, the underlying fact that Norway espouses an official State religion, as a potential concern in and of itself, seems to have been largely ignored. Nonetheless, the government has taken some steps to address the concerns raised by the religious education scheme, although there may be some continuing issues. The paragraphs below briefly describe the history of religious education in Norwegian public schools, the changes made to the laws in recent decades, the resulting legal challenges, and the subsequent legislative changes to the program of religious education on Norwegian public schools.

Christianity had been taught in schools since compulsory education was introduced in Norway in 1739.¹¹³ In that year, general compulsory education was initiated by the State, including religious education focusing on Christianity.¹¹⁴ With the enactment of the Dissenter or Non-Conformist Act of 1845, non-Christian children have had a right of exemption from the Christian education classes, and have had the right to participate in an alternative non-denomination class.¹¹⁵ The alternative subject covering other religions had been offered for those who did not want to take the traditional Christian-Lutheran-based religious education.¹¹⁶ The alternative class was also not mandatory, so students could opt out of taking that

113. *Unn et al. v. Norway*, Comm. No. 1155/03, CCPR/C/82/D/1155/2003, ¶ 2.1 (Nov. 23, 2004).

114. *Id.*

115. *Id.* ¶ 2.2.

116. Moreover, some students did not receive any religious instruction, either because schools did not have the resources to provide the course, or because the parents of the students did not want them to attend the classes. See Sandvig, *supra* note 35.

course as well.¹¹⁷ Since 1845, people who were not members of the official Church had the right to exempt their children from religious education in public schools;¹¹⁸ therefore, up until the changes in the law in 1997, parents could withdraw their children from religion classes.¹¹⁹ The religious curriculum developed by the State for public education had been closely tied with the Evangelical Lutheran faith, so the exemption was a nod to the principle of freedom of religion for those who did not adhere to the State religion.¹²⁰

In the early 1990s, the Minister of Church, Education, and Science appointed a committee to review the status of religious education in Norway.¹²¹ On May 3, 1995, the committee “presented a government report which suggested that all pupils, whether Christians, Muslims, Jews or humanists, should receive a religious education which should be common for all.”¹²² Non-Christians, teachers unions, government officials, and others expressed concern over several provisions in the proposed measure, including the Christian-aim clause governing public schools, the obligation to teach according to the Lutheran confession, and the lack of sufficient reflection of the different religious and non-religious beliefs among the population in Norway.¹²³ Through a campaign against the measure formed by minority religious and non-religious organizations, a teachers’ union, several student unions, and other groups, 20,000 postcards protesting the legislation were presented to the chair of the parliamentary committee considering the bill.¹²⁴ The Department of Foreign Affairs and the Children’s Ombudsman asserted that the legislation would contravene international human rights obligations undertaken by Norway through ratifying various human rights treaties and declarations.¹²⁵ Proponents of the bill reportedly felt it would resolve societal problems “such as racism, ignorance and social

117. *See Unn*, Comm. No. 1155/03 ¶ 2.1.

118. *See id.*; *see also* Sandvig, *supra* note 35, at 1.

119. Matt Cherry, *UN Backs Norwegian Humanists, Overturns Compulsory Christian Education*, HUMANIST NETWORK NEWS (Nov. 17, 2004), <http://www.americanhumanist.org/hnn/archives/?id=167&article=2>; *see also* U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, *supra* note 41, at 2.

120. Sandvig, *supra* note 35, at 1.

121. *Id.* (“The committee was led by Mr. Erling Pettersen, who was at the time, head of the Institute of Christian Upbringing.”).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

instability.”¹²⁶ According to the same account, “the Christian People’s Party’s spokesman has expressed how pleased he is that the new subject is deeply rooted in the Evangelical-Lutheran confession and ensures that new generations will base their beliefs in the Christian faith.”¹²⁷

In response to the constituencies supporting mandatory religious education for all students, Parliament has enacted a series of laws since the late 1990s requiring religious education for all students in the public school system throughout the country. One of the most controversial aspects of government-imposed religious activity in Norway in recent years has been the Christian Knowledge and Religious and Ethical Education (“CKREE”) course, which was first implemented in 1997.¹²⁸

Despite the objections expressed by people adhering to minority religions and others concerned about compulsory religious education, in 1997, the Parliament passed legislation mandating the CKREE course for all students in grades one through ten—ages six through sixteen—regardless of their religious beliefs or those of their parents.¹²⁹ An extensive proportion of the curriculum was devoted to the study of Christianity, particularly Evangelical Lutheranism, although the class also reviewed other major world religions and philosophies, and purported to promote tolerance and respect for all religious beliefs.¹³⁰ For example, the high school curriculum included information about the treatment of Norwegian Jews during the

126. *Id.*

127. *Id.*

128. See Cherry, *supra* note 119; see also INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 4.

129. See Cherry, *supra* note 119; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 3

(Citing the country’s Christian history, the CKREE course devotes extensive time to studying Christianity, but includes discussion of other religious groups. The course is mandatory, and there are no exceptions for children from other religious or non-religious groups. Students, however, may be exempted from participating in or performing specific religious acts during the course, such as attending Christmas church services.);

INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 4.

130. See Cherry, *supra* note 119; see also U.S. DEP’T OF STATE, *supra* note 41, at 3 (“CKREE reviews world religions and philosophies while promoting tolerance and respect for all religious beliefs. Citing the country’s Christian history, the CKREE course devotes extensive time to studying Christianity, but includes discussion of other religious groups.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4.

Holocaust.¹³¹ The statute required that the course “provide a thorough knowledge of the Bible and Christianity both as cultural heritage and Evangelical-Lutheran faith.”¹³² Parents could request a limited exemption for their children on certain grounds from participating in Church services or performing religious acts, but could not request exemption from religious instruction in its entirety.¹³³ The decision whether to grant a partial exemption based on such a request was left to the discretion of the schools,¹³⁴ although parents could appeal a school’s denial of a partial exemption to the local government and then to the courts.¹³⁵

In 1999, more than a dozen parents challenged the law in Norwegian courts, seeking the right to a full exemption from the course for their children, on the grounds that providing only a limited exemption violated both the International Covenant on Civil and Political Rights and the European Convention on Human Rights.¹³⁶ Organizations representing both atheists and Muslim communities challenged the legality of the mandatory religious instruction imposed by the law requiring the CKREE course.¹³⁷ The petitioners claimed that the law violated the right to freedom of religion and the right of parents to determine what religious instruction would be provided to their children.¹³⁸ Moreover, the parents were concerned about the

131. See Cherry, *supra* note 119; see also U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, *supra* note 41, at 3; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4.

132. See Cherry, *supra* note 119; see also U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, *supra* note 41, at 3; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4.

133. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 3. See also INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 4.

134. See Cherry, *supra* note 119.

135. *Unn et al. v. Norway*, Comm. No. 1155/03, CCPR/C/82/D/1155/2003, ¶ 2.1 (Nov. 23, 2004).

136. See Cherry, *supra* note 119; see also NORWAY MINISTRY OF FOREIGN AFFAIRS, SEVENTEENTH/EIGHTEENTH PERIODIC REPORT SUBMITTED BY NORWAY UNDER ARTICLE 9 OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (2005) [hereinafter NORWAY PERIODIC REPORT].

137. See U.S. DEP’T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (1ST REPORT), 6-7 (2011), available at <http://www.state.gov/j/drl/rls/irf/2010/148970.htm>. (“Organizations for atheists, as well as Muslim communities, contested the legality of mandatory religious education, claiming that it was a breach of freedom of religion and parents’ right to provide religious instruction to their children.”); see also INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 3.

138. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 3.

effects that the course was having on their children. For example, a psychologist investigating the impact of CKREE on minority religious communities “concluded that children and parents ‘experience conflicts of loyalty, pressure to conform and acquiesce to the norm, and for some of the children bullying and a feeling of helplessness.’”¹³⁹ When those efforts failed despite appeals to the highest levels of the domestic judicial system, the Norwegian Humanist Association filed cases in 2002 before the UN Human Rights Committee representing one group of parents and children and before the European Court of Human Rights representing a different group of parents and children.¹⁴⁰

Notably, although the plaintiffs won on certain points in the international venues, the underlying fact that Norway espouses an official State religion, as a potential concern in and of itself, appears not to have been addressed.

1. Human Rights Committee Decision

Four sets of parents filed a case before the Human Rights Committee challenging the validity of the statute forcing their children to participate in the CKREE religious instruction.¹⁴¹ Chaired by the UN Special Rapporteur for Freedom of Religion or Belief, the committee received communications and heard arguments from the parents and the Norwegian government.¹⁴²

The parents argued that the legislation forcing all students to take a Christian and Lutheran focused course with no possibility of a complete exemption violated Articles 17, 18(4), and 26 of the International Covenant on Civil and Political Rights (“ICCPR”). They raised several objections to the statute: (1) it was not a neutral and objective survey of major world religions and beliefs, but instead gave preferential treatment to the Evangelical Lutheran faith; (2) it exposed their children to religious teachings even though some parents did not want their children to be exposed to such religious instruction; (3) it was compulsory for all students in the public school system; (4) the partial exemption provision required parents to

139. See Cherry, *supra* note 119.

140. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41, at 3-4; NORWAY PERIODIC REPORT, *supra* note 136, at 21.

141. *Unn et al. v. Norway*, Comm. No. 1155/03, CCPR/C/82/D/1155/2003, ¶ 2.1 (November 23, 2004); see also Cherry, *supra* note 119.

142. See Cherry, *supra* note 119.

undertake an exhaustive and onerous study of the entire syllabus and make specific objections to each component to which they had an objection, an exercise that was not imposed on parents who did not raise objections, thus leading to de facto discrimination between parents who were Christians and non-Christians,¹⁴³ (5) the school officials had discretion whether to allow the student to be exempted from the parts to which the parents had an objection, thus the students may still be obligated to participate in the objectionable aspects; (6) the students were still responsible for knowing about the components from which they were exempted—*e.g.*, hymns, creeds, etc., even if they were exempted from singing or reciting them; (7) this system resulted in ostracism of some children, damaging their self-esteem; and (8) it caused conflicts of loyalty for the children between the school and home.¹⁴⁴

The State of Norway argued that the claim was inadmissible on the grounds that a similar claim had been filed before the European Court of Human Rights. However, the Committee dismissed the claim regarding admissibility, since the other case was brought by a different set of complainants.¹⁴⁵ Regarding the substance of the complaint, the State noted that under a prior decision, *Hartikainen v. Finland*, the Committee held that compulsory religious education does not violate the ICCPR as long as it is “objective and neutral,” and asserted that CKREE met that test.¹⁴⁶ Alternatively, if the Committee found that CKREE did not meet that test, the State argued that the partial exemption provided a sufficient alternative to accommodate the petitioners’ beliefs.

In 2004, the Committee decided in *Unn et al. v. Norway* that the law requiring mandatory religious instruction violated Article 18(4) of ICCPR and infringed upon the right of parents to determine their children’s religious and moral education.¹⁴⁷ The Committee indicated

143. Of course, Christians who were not members of the Evangelical Lutheran Church may have had objections, as well.

144. *Unn et al. v. Norway*, Comm. No. 1155/03, CCPR/C/82/D/1155/2003, ¶ 2.1 (Nov. 23, 2004).

145. See First Optional Protocol to the International Covenant on Civil and Political Rights art. 5(2)(a), *adopted* Dec. 16, 1966, 999 U.N.T.S. 302, 303 (entered into force Mar. 23, 1976).

146. See Sarah Joseph, *United Nations Human Rights Committee: Recent Cases*, 6 HUMAN RIGHTS L. REV. 361, 370 (2006); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

147. See *Unn*, Comm. No. 1155/03, ¶ 2.1; see also Joseph, *supra* note 146, at 370; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

that neutral and objective education about the general history of religions and ethics does not contravene Article 18, but instruction in a particular religion or belief does, unless non-discriminatory opportunities for exemption or other alternatives acceptable to the parents are available.¹⁴⁸ The Committee concluded that Norway was obligated to amend the statute to allow parents to ensure that their children are provided with religious and moral education in conformity with their own convictions, and gave Norway ninety days in which to explain how it would implement the decision.¹⁴⁹

As a result of this decision, the government of Norway granted parents the ability to exempt their children from the course until August 2005, when a new curriculum was adopted. The revised course retained its focus on Christianity and its mandatory requirement for all children, with only limited exemptions for specific activities such as singing hymns and praying publicly.¹⁵⁰ The Norwegian Humanist Association continued to oppose the new curriculum, asserting that the revisions did not create a course that was neutral as to religion or beliefs, in continuing violation of Article 18 of ICCPR, and advocated that the right to exemption be expanded.

2. European Court of Human Rights Decision

The European Court of Human Rights heard the case, *Folgero and Others v. Norway*, in December 2006.¹⁵¹ In its decision on June 29, 2007, the court held that the statute violated Article 2 of Protocol No. 1 of the European Convention, noting that the statute requires the syllabus to give predominance to Christianity, both quantitatively and qualitatively.¹⁵² Moreover, the process for obtaining the limited exemption was found to place a heavy burden on parents, requiring them to indicate specifically and in detail to which provisions in the syllabus they object, and school officials could dispute the reasonableness of any requests and deny the exemption.¹⁵³ The Court dismissed the State's argument that parents who opposed CKREE could send their children to private school: "The Court considers that

148. NORWAY PERIODIC REPORT, *supra* note 136.

149. See Cherry, *supra* note 119.

150. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

151. *Id.*; *Folgero v. Norway*, 2007-III Eur. Ct. H.R. (2007).

152. Council of Europe, *Execution of Judgments of the European Court of Human Rights*, http://www.coe.int/t/e/human_rights/execution/03_cases/Norway.pdf [hereinafter *Execution of Judgments*].

153. *Id.*

the existence of alternative education in private schools could not dispense the State from its obligation to safeguard pluralism in State schools which are open to everyone.”¹⁵⁴ The Court explained:

The State must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions [Norway could not be said to have taken sufficient care] that information and knowledge included in the curriculum be conveyed in an objective, critical and pluralistic manner for the purposes of Article 2 of Protocol No. 1. Accordingly, the refusal to grant the applicant parents full exemption from the KRL subject for their children gave rise to a violation of Article 2 of Protocol No. 1.¹⁵⁵

The Minister of Education indicated that the government would not appeal the case, would evaluate the opinion, and would determine whether additional changes should be made to the curriculum.¹⁵⁶ The government of Norway indicated its willingness once again to review the CKREE course, and on October 12, 2007, the Committee of Ministers, which oversees implementation of the Court’s judgments, received a letter from the government of Norway announcing that changes to the statute and curriculum would be implemented in 2008.¹⁵⁷ In response to the concern expressed by the Human Rights Committee and the European Court of Human Rights regarding the religious education program in Norway, the government made some additional modifications to the renamed Religion, Philosophies of Life, and Ethics (“RLE”) program.¹⁵⁸

154. *Id.*

155. *Strasbourg Court Victory on Religious Education in Norway*, INTERNATIONAL HUMANIST AND ETHICAL UNION, (Aug. 7, 2007), <http://iheu.org/strasbourg-court-victory-religious-education-norway/> (quoting *Folgero and Others v. Norway*).

156. International Religious Freedom Report for 2007, *supra* note 41.

157. *See Execution of Judgments, supra* note 152.

158. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT), *supra* note 48 (“After objections from atheists as well as Muslim communities, the government modified the curriculum and expanded the education to more thoroughly discuss other religions while continuing an emphasis on Christianity as the religion of the majority of citizens.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (1ST REPORT), *supra* note 137 (“After the case was heard before the ECHR in 2002 and again in 2006, the government modified the curriculum and expanded the education to more thoroughly discuss other religions while continuing an emphasis on Christianity as the religion of the majority of citizens.”).

D. *Recent Trends and Current Status of Religion among People in Norway*

Out of approximately five million residents of Norway, an estimated seventy-five percent are considered to be members of the Evangelical Lutheran Church of Norway as of 2014,¹⁵⁹ although these numbers are thought to be significantly inflated due to the government's record-keeping methodology. For example, in prior years, the government considered all citizens of Norway to be members of the Church of Norway unless each individual took the explicit step of submitting to the Church an official letter of resignation.¹⁶⁰ Notably, the percentage of the population who are members of the Church of Norway has dropped significantly within the last few years. As recently as 2012, an estimated seventy-seven to seventy-nine percent of the population belonged to the Church of Norway,¹⁶¹ down from eighty-five percent in 2007.¹⁶² Of course, some of this change is due to increases in the percentages of people belonging to other faiths, largely due to immigration, but some is a result of people resigning from or refusing to become members of the Church of Norway.¹⁶³ Currently over 430,000 people belong to other

159. State and Church in Norway, *supra* note 3, at 13 (“75% members.”).

160. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, *supra* note 8, at 1 (“Citizens are considered to be members of the state church, the Evangelical Lutheran Church, unless they send a resignation letter to the church. For example, citizens may elect to associate themselves with another denomination, a nonreligious organization (for example, the Norwegian Humanist Association), or to have no religious affiliation.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2nd Report), *supra* note 48, at 1.

161. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 1 (“The U.S. government estimates the population at 4.7 million (July 2013 estimate). Norway’s national statistical agency estimated the national population at 5.08 million as of July. An estimated 79 percent of the population belongs to the Evangelical Lutheran Church”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2nd Report), *supra* note 48, at 2 (“An unknown number of persons belong to religious institutions but do not formally register with the government; they are not reflected in the statistics.”). A 2012 report from the Church of Norway indicated that 77% of the population were currently members. *Basics and Statistics*, *supra* note 51.

162. *Norway Loosens Ties of Church, State*, NAT’L POST (CANADA), Apr. 11, 2008, at A13; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

163. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98 (“Immigrants make up the majority of religious groups outside of the ELC. Large immigrant populations from Poland and the Philippines have increased the Catholic population. Immigrants from Muslim countries, including Pakistan and Somalia, have contributed to the growth of Islam. Both of these groups have higher populations in cities more than in rural areas.”);

INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (1ST REPORT), *supra* note 137 (“Of all the religious communities in the country, Islam increased by the greatest number in

faiths or groups.¹⁶⁴ This includes other Christian denominations—with 313,000 registered members, including 121,000 Roman Catholics, up from 46,400 Roman Catholics in 2007—Muslims—120,900, up from 72,023 in 2007—and small numbers of Buddhists, Hindus, Orthodox Christians, and Sikhs—which total less than five percent of the population combined.¹⁶⁵ Of the 1500–2000 Jewish people in Norway, 788 belonged to one of the two official Jewish congregations—one in the nation’s capital of Oslo and one in Trondheim near the western coast of the country.¹⁶⁶ The Norwegian Humanist Association, an organization for people who do not practice formal religion, has 76,470 members.¹⁶⁷ The government of Norway estimates that 252,000 people do not formally practice religion (about 6.7 percent).¹⁶⁸ In September 2012, the King appointed the first Muslim to the cabinet, Hadia Tajik, who served as Minister of Culture.¹⁶⁹ The numbers of people practicing religions other than Evangelical Lutheranism in Norway have increased significantly within the last few years due to immigration.¹⁷⁰

2009, with 9,000 newly registered members (an 11 percent increase). Hinduism saw the largest percentage increase, with 15 percent more registered members in 2009 than in 2008.”)

164. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98.

165. *Id.* at 1; *Norway Loosens Ties of Church, State, supra* note 162, at A13; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

166. Country Reports Norway, *supra* note 110, at 14 (“There were approximately 1,500–2,000 Jewish persons in the country, including those who have not registered in a congregation.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 1 (“Membership in Jewish congregations is 788. There are two official Jewish congregations, one in Oslo and one in Trondheim.”).

167. *See Norway Loosens Ties of Church, State, supra* note 162, at A13.

168. *Id.*

169. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4 (“An opinion poll in August found that 40 percent of Norwegians approved of former Minister of Culture Hadia Tajik, making her the most popular Minister of Culture in the past decade. Tajik was the first Muslim ever appointed to the cabinet.”); INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012, *supra* note 18, at 4 (“In September Hadia Tadjik was appointed Minister of Culture. She is the first Muslim ever appointed to the cabinet.”).

170. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, *supra* note 8, at 1 (Of the Christian denominations, the Roman Catholic Church is the largest and, because of recent immigration, has increased to an estimated 83,000 registered members (from 57,000 in 2010), while the Pentecostal Church has approximately 40,000 registered members. Membership in Muslim congregations (there are 126 mosques nationwide) has increased to 106,700 (from 93,000 in 2010), while membership in Jewish congregations has decreased to 818 (from 850 in 2009).

Average attendance at services in the Church of Norway has dwindled to only about three percent of the population.¹⁷¹ The percentage of people who actually consider themselves to be Lutheran are thought to be considerably lower than official statistics claim. In fact, a 2007 survey in Norway revealed that only 51.6 percent of the population believes in God, and only 40.3 percent claims faith in Jesus—a central tenet of Lutheranism.¹⁷² Another report indicated that the percentage of the population belonging to the Church of Norway declined from 86.3 percent in 2000 to 78 percent in 2010, and that people on average attend Church services only once per year, largely to attend baptisms of children.¹⁷³ The Bishop of the Diocese of Tunsberg, Laila Riksaasen Dahl, indicated that people may not have a fully affirmative experience with the Church by attending services for christenings, since such a low number of regular congregants attend.¹⁷⁴

With respect to the current governing structure of the Church of Norway, members of the Church elect the members of the Parish Council and the eleven Diocesan Councils.¹⁷⁵ The Diocesan Councils convene annually for the General Synod meeting.¹⁷⁶ The Church of Norway maintains about 1600 churches and chapels, with 1400 pastors and 1260 parishes and congregations.¹⁷⁷ About sixty-six percent of all infants born in Norway in 2011 were baptized into the Church of Norway.¹⁷⁸ Funding for the Church of Norway in 2011 by the national and municipal governments totaled about 4.3 billion Norwegian kroner—about US\$700 million.¹⁷⁹

171. CHURCH OF NORWAY, <http://www.kirken.no/english/engelsk.cfm?artid=5276> (last visited Feb. 11, 2015).

172. *Half Have Faith in God*, AFTENPOSTEN, Oct. 25, 2007, <http://www.aftenposten.no/english/local/article2066214.ece>.

173. *Briefly Noted*, 128 CHRISTIAN CENTURY 21 (2011).

174. *Id.* The Author of this Article had the same experience attending a church service in Moss, Norway, on Sunday, May 18, 2014, at which five infants were baptized along with their extended families, but with relatively few other churchgoers in attendance.

175. *Basics and Statistics*, *supra* note 51.

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

II. *RELIGIOUS RIGHTS IN NORWAY*A. *Religious Rights Protected by Human Rights Instruments*

Religious rights are enshrined in numerous international and regional human rights agreements. Through these agreements, State parties have committed themselves to protecting and promoting specific human rights within their own borders, and to ensuring that their governments do not cause violations of those rights. For example, the following international documents contain provisions protecting religious rights:

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“Declaration on Religion”),¹⁸⁰

Universal Declaration of Human Rights (“UDHR”),¹⁸¹

International Covenant on Civil and Political Rights (“ICCPR”),¹⁸²

International Covenant on Economic, Social and Cultural Rights (“ICESCR”),¹⁸³ and

Convention on the Rights of the Child (“CRC”).¹⁸⁴

Religious rights are also addressed in regional human rights agreements,¹⁸⁵ including the following:

European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”),¹⁸⁶

180. See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 36/55 U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981) [hereinafter Declaration].

181. See Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 183d plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

182. See International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), ¶ 21, U.N. GAOR Supp. No. 16, U.N. Doc. A/6316, at 52 (Dec. 19, 1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]. See Appendix B for relevant provisions.

183. See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), ¶ 21, U.N. GAOR Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16, 1966), 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

184. See Convention on the Rights of the Child, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) (entered into force Sept. 2, 1990) [hereinafter CRC].

185. Since the Arab Charter on Human Rights offers more circumscribed provisions on religious freedom and has been criticized for privileging Islam, this treaty is not addressed. See Revised Arab Charter on Human Rights, *reprinted in* 12 INT’L HUM. RTS. REP. 893 (2005), available at <http://www1.umn.edu/humanrts/instree/loas2005.html>.

American Convention on Human Rights (“American Convention”),¹⁸⁷

American Declaration of the Rights and Duties of Man (“American Declaration”),¹⁸⁸ and

African Charter on Human and People’s Rights (“African Charter”).¹⁸⁹

Examples of the rights affecting religion that are protected under these documents include the right to non-discrimination and equality on the basis of religion or belief, the right to freedom of religious practice and belief, the rights of parents and children regarding the religious upbringing of children, the right to change one’s religious affiliation and beliefs, the right to dignity, the right to freedom of marriage, and others. These human rights documents protect the rights of people within countries who practice a religious faith that is different from that of the majority of the population, or who do not profess any religious belief. Such rights include the right to non-discrimination on the basis of religion, and the right to equal treatment by the government irrespective of religious beliefs. The religious rights protected by international and regional human rights documents also protect the rights of people who belong to the majority religion within each country. Such rights include the rights of parents with respect to the religious upbringing of their children and the right to non-discrimination.

Norway is a party to several of these human rights treaties, including the ICCPR, the ICESCR, the CRC, and the European Convention.¹⁹⁰ It has also concurred with the Declaration on Religion

186. See European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222 (entered into force Sept. 3, 1953) (as amended by Protocols 2 (ETS 44), 3 (ETS 45), 5 (ETS 55), 8 (ETS 118), and 11 (ETS 155), which entered into force May 18, 1954, Sept. 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and May 11, 1994, respectively) [hereinafter European Convention].

187. See American Convention on Human Rights, 1144 U.N.T.S. 123 (entered into force July 18, 1978), art. 12 (the article addressing religious freedom closely tracks the language set forth in ICCPR) [hereinafter American Convention].

188. See American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949) [hereinafter American Declaration].

189. See African Charter on Human and People’s Rights, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21, 1986), art. 8 [hereinafter African Charter].

190. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010 (2ND REPORT), *supra* note 48, at 2 (“Religious freedom is further secured by the European Convention on Human

and the UDHR. Therefore, it has voluntarily undertaken the obligation to protect the human rights—including the religious rights—of the people living within its borders.

B. Examples of Infringements by Norway's Church-State Relationship

Despite the constitutional reforms and ongoing legislative changes, the State still maintains ties with the Church of Norway that continue to be problematic.¹⁹¹ The relationship between the Church and State in Norway has arguably continued to give rise to violations of religious rights. These ties not only discriminate against minority religious populations, since the Church of Norway receives substantial privileges that other religions do not, but they also infringe upon the religious freedom of the Church of Norway and its members, since the State continues to hold power to influence much of the internal decision-making authority of the Church.¹⁹² This Section asserts that the recent moves toward greater separation of Church and State in Norway are a positive, yet insufficient, step in the right direction to protect religious rights in Norway. It suggests that the international human rights bodies do not go far enough in their critique of the Church-State relationship in Norway, and that an expanded conceptualization of religious rights should encourage the

Rights, which provides individuals the right to freedom of thought, conscience, and religion.”); *see also id.* at 3 (“Citizens have a right to sue the government for violations of religious freedom and may also file cases with the European Court of Human Rights (ECHR).”).

191. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2012, *supra* note 18, at 1 (In May the parliament passed a constitutional amendment to separate the church from the state, although some ties remain. The constitution now states that the country’s values are based on its Christian and humanist heritage. The Evangelical Lutheran Church (ELC), the state church prior to passage of the constitutional amendment, still receives some benefits not available to other religious groups.).

192. *See* Barry W. Lynn, *Of Vikings, Trolls and Translation Trouble: How I Learned about Church and State in Norway*, 63 *CHURCH AND STATE* 23 (2010)

(I can’t help but see the Norwegian experience as one more example of how religion is always undermined by the alleged ‘assistance’ of government. Government wants to dictate policies and provides funding for churches. That means churches may decide that asking people to put their own money where their faith is seems like just too much trouble. Finally, the church becomes so state dependent that its vitality withers. Keeping *kirke* and *regjering* separate is critically important for the health of both institutions, whether it’s in Norway or here [in the United States].);

see also INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 3 (“The ELC (Evangelical Lutheran Church) receives some benefits not available to other religious groups.”).

government to consider broader measures to extract itself from its current entanglement with the Church of Norway.

Each of the remaining ties between the government and Church encroaches in some measure upon freedom of religion or belief in Norway. For example, instead of proclaiming an official State Church, the Constitution has been revised to assert that “[t]he basic values of our nation shall be our Christian and humanistic heritage.”¹⁹³ Although some people may feel that this statement simply recognizes the historical philosophy and heritage of the nation, others may feel that this statement, using the phrase “our” Christian and humanistic heritage, implicitly excludes non-Christians and non-humanists from full recognition as true citizens of the nation. Enshrining in the Constitution the assertion that the nation’s values are Christian is also a possible misrepresentation—based on the poll demonstrating that only 40.3 percent of the population subscribes to basic Christian tenets and only 51.6 percent believe in God¹⁹⁴—and is facially discriminatory.¹⁹⁵ Considering the fact that average attendance at Church services has dwindled to only about three percent of the population, and the percentage of people who actually consider themselves to be Lutheran is thought to be considerably lower than official statistics claim, the governmental benefits privileging the Church of Norway infringe upon the rights of an even greater percentage of the population than first appears.¹⁹⁶

The Special Rapporteur on Freedom of Religion or Belief has warned that “aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology . . . some will see the mere profession of that faith—whatever the good intentions of the State—as a form of

193. Howard Friedman, *Norway Will End Evangelical Lutheran Church As State Religion*, RELIGION CLAUSE BLOG (April 12, 2008), <http://religionclause.blogspot.com/2008/04/norway-will-end-evangelical-lutheran.html>.

194. *Half Have Faith in God*, *supra* note 172.

195. According to another account, “79 percent of Norwegians are registered members, but only about 20 percent make religion a large part of their lives and only two percent attend church regularly, according to 2009 and 2010 data. A 2002 study done by Gustafsson and Pettersson revealed that 72 percent of Norwegians do not believe in a personal God.” *Norway Abolishes Church of Norway*, NORWAY NEWS (May 16, 2012), <http://www.norwaynews.com/en/~view.php?72O49547O64836t285Mjj844WN288aQO76Azn353QcZ8>.

196. CHURCH OF NORWAY, *supra* note 171.

discrimination against the ethnic or religious minority or minorities.”¹⁹⁷ The Special Rapporteur has also cautioned:

Formal or legal distinctions between different kinds of religious or faith-based communities carry the seed of discrimination insofar as such a distinction in their status implies a difference in rights or treatment. Consequently . . . the legalization of such a distinction between different categories of religion is liable to pave the way for future violations of the right to freedom of religion or for discrimination on the basis of religion or belief.¹⁹⁸

Moreover, such assertions in the Constitution supporting Christianity may fuel the anti-non-Christian sentiments that have led to discriminatory acts against people holding non-Christian religious beliefs in Norway. For example, in recent years Norway has witnessed anti-Semitic incidents, including vandalism of Jewish religious properties, semi-automatic weapon fire upon a synagogue in Oslo, physical and verbal attacks on Jewish citizens, threats and harassment via telephone and e-mail, and “articles, reports and political cartoons appeared in the media that vilified and demeaned the Jewish people and community and minimized the Holocaust.”¹⁹⁹ Acts of hostility against Muslims have also continued to occur.²⁰⁰

Actions by local governments also highlight instances of intolerance of non-Christians. For example, in March 2006, the city of Bergen forced a mosque to close its temporary location due to building code violations before its permanent structure had been completed.²⁰¹ The Muslim community planned to protest the eviction through a prayer vigil in a public square.²⁰² According to the State Department Human Rights Report, “[a] representative of a small political party opposed the vigil and threatened to place pig ears around the square and taunt vigil attendees with pig noises,” and as a

197. A/CONF.189/PC.1/7, ¶ 119, as cited in the Framework for Communications of the Special Rapporteur on Freedom of Religion or Belief, *available at* <http://www2.ohchr.org/english/issues/religion/V3.htm>.

198. *Id.* ¶ 62.

199. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

200. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 17 (During just one week in September [2013], the Islamic Council of Norway reported three threats against mosques: an Oslo mosque received an e-mail from a group threatening to burn mosques in the country; someone hung up an anti-Muslim poster outside a mosque in Frederikstad; and a pig’s head was left at another mosque in Oslo.).

201. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41.

202. *See id.*

result the prayer vigil was cancelled.²⁰³ Due to the resulting public outcry, the city of Bergen financed the work to address the building code violations and allowed the mosque to remain at the temporary facility until the end of 2007.²⁰⁴ Presumably such an incident would not occur with Lutheran churches, since they are all owned and maintained by the government. Also in 2006, the city of Oslo recommended banning clothing worn by certain Muslims—burqas and nikabs—in schools, and sought legislative changes through the Ministry of Education and Research to implement the ban.²⁰⁵ In February 2007, the Ministry indicated that legislative changes were unnecessary and encouraged each school independently to adopt bans on such Islamic clothing.²⁰⁶ The government currently allows each school to decide whether to permit or prohibit religious clothing.²⁰⁷ Although the government asserts that it encourages religious tolerance, such as through CKREE, one might ponder whether its strong, pervasive, and predominant support for the Lutheran Church, also through CKREE, might foster an environment in which intolerance of other religions is not a surprising outcome.

As indicated above, the Norwegian Constitution explicitly favors the Church of Norway and discriminates against individuals and religious entities that do not subscribe to Evangelical Lutheranism. It therefore does not treat equally people who adhere to different religions, contrary to some assertions that have been made about the revised Constitution.²⁰⁸ The privileged status of the Church of Norway may be thought to implicitly conflate religion with nationality and ethnicity—*e.g.*, that all citizens of Norway are tacitly presumed to be Lutherans of Scandinavian descent—and may perpetuate religious, racial, and ethnic discrimination and stereotypes that mask the diversity within Norway.²⁰⁹ Moreover, in a country that

203. *Id.*

204. *See id.*

205. *See id.* at 5.

206. *See id.*

207. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4 (“The government permitted individual schools to determine independently whether to implement policies banning religious garb such as burqas or niqabs.”).

208. *See Norway Abolishes Church of Norway*, *supra* note 3 (“Norway will treat all religions and philosophies equally.”).

209. *See* Concluding Observations of the Committee on Economic, Social and Cultural Rights, ¶ 7, June 23, 2005, E/C.12/1/Add.109 (“The Committee notes with appreciation the submission to parliament, on 1 October 2004, of a new White Article on Norway as a

is largely populated by a dominant ethnic group, such as Norway, the importance of State vigilance in protecting the rights of minorities is heightened, as the rights of those minorities could easily be disregarded and violated.²¹⁰ For example, as of 2007, less than 665,000 people out of almost 4.7 million had an immigrant background.²¹¹ Freedom of religion intersects with the rights of immigrants and indigenous populations, and the tension between the extent to which such groups should assimilate into the predominant culture—including religion—versus the extent to which their distinct cultures—including religion—should be protected, preserved, and celebrated. As the Special Rapporteur on Freedom of Religion or Belief has noted:

[N]ational or ethnic, religious and linguistic minorities are in a particularly vulnerable situation [regarding freedom of religion or belief]. The identity of many minorities is defined by various aspects, and instances of discrimination, for example when based both on racial and on religious motives, are aggravated by the effects of multiple identities States have an obligation under international human rights law to guarantee the right of minorities to profess and practice their own religion. The State remains responsible even when abuses are committed against minorities by non-State actors.²¹²

In an attempt to address the significant problem of religious discrimination, as well as other types of discrimination, the Norwegian government passed an Anti-Discrimination Act in 2005 that “forbids unequal treatment on the basis of religion and belief . . .

multicultural society that includes people of various backgrounds, ethnicities, religions, cultures, languages and ways of life.”).

210. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 4–5 (There were media and nongovernmental organization (NGO) reports of societal discrimination based on religious affiliation, belief, or practice Because ethnicity and religion were often inextricably linked, it was difficult to categorize many incidents specifically as ethnic or religious intolerance. There were four reports of religious discrimination made to the equality and anti-discrimination ombudsman as of December, and the police had filed 21 reports of crime with a religious motive by the end of August.).

211. *Population 1st January 2006 and 2007 and Changes in 2006, by Immigrant Category and Country Background*, STATISTICS NORWAY, available at http://www.ssb.no/english/subjects/02/01/10/innvbef_en/tab-2007-05-24-01-en.html.

212. Asma Jahangir, Report of the Special Rapporteur on Freedom of Religion or Belief, ¶ 34, July 20, 2007, A/HRC/6/5/ (hereinafter Special Rapporteur Report). Tensions between women’s rights and religious/minority/immigrant rights, though critically important, will be addressed in a future article.

and applies to all areas of society,” prohibiting both direct and indirect discrimination.²¹³ It was enacted to protect human rights recognized under the International Covenant for Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.²¹⁴ It also tasked an ombudsman employed by the government with overseeing its implementation and enforcement.²¹⁵ Unfortunately, instances of discrimination based on immigrant status or ethnicity continue to occur in Norway.²¹⁶

The Constitution still requires that the monarch adhere to the Evangelical Lutheran faith.²¹⁷ The fact that the monarch must be Lutheran is also a clear violation of the right to freedom of religion.²¹⁸ The Council on Ecumenical and International Relations of the Church of Norway and the Islamic Council of Norway signed a declaration in 2007 indicating that people who want to change their religious beliefs should not suffer from discrimination.²¹⁹ The statement provides: “We reject and want to work against violence, discrimination and

213. INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41. Article 2 of the Constitution provides that “[a]ll inhabitants of the Realm shall have the right to free exercise of their religion.”

214. *See id.*

215. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, *supra* note 8 (“The equality and anti-discrimination ombudsman is charged with enforcing the Anti-Discrimination Act of 2005, which prohibits discrimination on the basis of religion, ethnicity, national origin, ancestry, skin color, language, and ethical orientation.”); *see also* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010, *supra* note 48:

(The Equality and Anti-Discrimination Ombud was established in 1978 as the Gender Equality Ombud, the first of its kind in the world. In 2006 the ombud was reorganized to include discrimination in general. The ombud’s mandate is to enforce the Gender Equality Act, antidiscrimination provisions of the Worker Protection and Working Environment Act, and the Discrimination Act. The latter act prohibits discrimination on the basis of ethnicity, national origin, ancestry, skin color, language, religion, and ethical orientation. During the reporting period, the ombud issued a new handbook entitled “Religion in the Workplace,” addressing the rights and duties of employers and employees regarding prayer in the work place.)

216. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, *supra* note 98, at 15 (“Discrimination towards immigrants and ethnic minorities remained a problem during the year.”).

217. *See* INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41; *see also State and Church Move Towards Greater Separation in Norway*, *supra* note 3, at 3 (“The Lutheran Church remains entangled with the State in several ways: The constitution still requires that the Norwegian monarch, who serves as head of state, must be a member of the Norwegian Lutheran Church. But the old constitutional requirement that the monarch “protect and maintain” the state religion has been dropped.”).

218. *See* Bess Twiston Davies, *Church of Norway on Faith Changing*, LONDON TIMES, Aug. 25, 2007, at 71.

219. *Id.*

harassment due to a person wanting to convert or having converted from one religion to another.”²²⁰ Under the current Constitution, presumably if the monarch wants to convert to another religion, he or she must abdicate the throne—a severe penalty and considerable restriction upon the right to change one’s religion. This provision may also restrict the monarch’s freedom to marry a spouse who is not Lutheran, since that might mean that the children who would be next in line of succession may not be Lutheran, and therefore the monarch could not pass the crown to heirs, infringing not only upon religious freedom but also upon other rights concerning marriage and family. The Special Rapporteur has indicated in her 2007 report that “[v]iolations and limitations of the freedom to adopt, change or renounce a religion or belief are unacceptable and still occur too often,” and has identified as violations “[s]ituations where religious conversion is prohibited by law and punished accordingly.”²²¹

Bishops and deans currently remain State employees,²²² and the government still maintains the Church buildings and property and provides other financial resources. The government’s retention of significant financial control over the Church of Norway is also arguably problematic. First, this relationship is discriminatory against other religions, which do not receive anywhere close to the same amount of financial support as the Church of Norway. The Human Rights Committee has indicated that:

[T]he fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the

220. *Id.*

221. Special Rapporteur Report, *supra* note 212, ¶ 8.

222. See Lynn, *supra* note 192 (Referring to the legal changes in the church-state relationship in Norway, a church tour guide commented in 2010 that:

“nobody really knows what this will mean,” but indicated that church personnel (and church guides) might no longer be paid salaries by the state. This turns out to be an unlikely immediate result. Although Parliament has moved in the direction of giving the church more autonomy—it can name its own bishops if they are democratically elected—government is still likely to pay many church employees. In part, this is a function of the Norwegian principle that virtually all charities get funding from the government, and churches get it proportionate to their membership.).

Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.²²³

The government's financial and statutory control over the Church of Norway is also discriminatory toward the Church itself, because of the inherent power that the government retains over it.²²⁴ This is evidenced by the fact that the new legislation requires a restructuring of the Church's internal governance, and that the government retains control over clergy salaries.²²⁵ The political compromise requires that the internal governing structure of the Church of Norway be reformed to give more power to its members.²²⁶ The Church is still regulated by a specific statute that does not govern the other religious entities.²²⁷ The Special Rapporteur has noted:

[S]ome States encroach on the appointment procedure of religious leaders or require approval by the authorities for certain promotions within religious groups. The Special Rapporteur would like to emphasize that the freedom of religion or belief also protects the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers.²²⁸

223. See U.N. Comm'n on Human Rights, General Comment No. 22 on Article 18 of the International Covenant on Civil and Political Rights: The Right to Freedom of Thought, Conscience and Religion, U.N. Doc. CCPR/C/48/CRP.2/Rev.1 (1993), at para. 9.

224. *But see* Lynn, *supra* note 192 (expressing another concern that "Church membership is declining so rapidly, that the institution may soon have so few members the government subsidy will dry up.").

225. See U.N. Comm'n on Human Rights, *supra* note 223; see also INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2009, *supra* note 110, at 3:

(In April 2008 the Minister of Culture presented the results of a parliament-commissioned report on the state and church relationship that had been five years in the making and had included significant public input. The report called for maintaining the state church but for further democratization of the Church and for the Government to consider changes to the Constitution that would further separate church and state functions. One of the immediate effects was the signing of a church agreement that gives the state church the ability to select, but not appoint, its own bishops, a role that had previously been fulfilled by the Government. The legal power to officially appoint bishops will not be transferred to the Church until Parliament amends the Constitution on this point, which it was expected to do during the 2009–11 session.)

226. See Howard Friedman, *Norway Will End Evangelical Lutheran Church As State Religion*, RELIGION CLAUSE, Apr. 12, 2008, <http://religionclause.blogspot.com/2008/04/norway-will-end-evangelical-lutheran.html>.

227. See *State and Church Move Towards Greater Separation in Norway*, *supra* note 3, at 3 ("The Lutheran Church is still going to be regulated through a special law—the church law—not through the same law as other religious and life stance communities.").

228. See Special Rapporteur Report, *supra* note 212, ¶ 16.

The employer-employee relationship that the government of Norway would retain over clergy members entails a similar interference with the internal governance of the Church, since the power of the purse strings can be extremely influential.²²⁹

As noted above, in the not-so-distant past, citizens have been deemed to be members of the Church of Norway unless they explicitly expressed otherwise, and registration as a member of the Church of Norway has been automatic at birth.²³⁰ This mechanism has reportedly artificially inflated membership in the Church of Norway, enabling the government to funnel more tax dollars to the Church of Norway, at the expense of entities based upon other religions or beliefs, which have not had their numbers similarly inflated.²³¹

Moreover, it remains to be seen what the government of Norway will do with respect to its continued implementation of religious education in public schools. Under the jurisprudence of the Human Rights Committee and the European Court of Human Rights, the course would be in violation unless it provides “objective and neutral” education about religion.²³² Paradoxically, the Court and Committee

229. See *State and Church Move Towards Greater Separation in Norway*, *supra* note 3, at 3

(There will still be a Lutheran Church department in the government, and a government minister who is going to have the responsibility for this department. It will still be the state which has the employment responsibility for priests and church employees. The requirement that employees in the department’s church department, along with the minister, have to be members of the Norwegian church, has however been withdrawn. The state will also not give the church the ability to become an independent legal entity, which the church itself wants. Thus the church of Norway will still be the same legal entity as the government, both on a national and the local level.)

230. See *Norway to Debate Church-State Split*, *supra* note 37, at E03; INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2007, *supra* note 41

(Citizens are considered to be members of the state church . . . unless they explicitly note otherwise. For example, citizens may elect to associate themselves with another denomination, non-religious organization (e.g., the Norwegian Humanist Association), or no religious affiliation at all. An estimated 85 percent of the population . . . nominally belongs to the state church. However, actual church attendance is quite low.)

231. See *id.*; see also CHURCH OF NORWAY, *supra* note 171.

232. See, e.g., U.N. Comm’n on Human Rights, *supra* note 223, ¶6. The committee has indicated that states are permitted to provide “public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way.” Indeed, the Special Rapporteur on Freedom of Religion or Belief has gone even farther in encouraging States to provide such instruction: “Education should be aimed at strengthening the promotion and protection of human rights, eradicating prejudices and conceptions incompatible with

both then seem to contradict themselves by allowing instruction in a particular religion, including specific elements incorporating the practice of that religion, as long as an exemption is made for students who object to the religious practice. Arguably, for such education possibly to be considered “objective and neutral,” then elements of religious practice should be incorporated for all the religions that are covered in the course—which is not the case in Norway, as the religious practice components focus on Lutheranism. Moreover, to be considered “objective and neutral,” presumably both the quantitative and qualitative treatment of all religions must be equal, regardless of whichever religion predominates in a specific country. The claim by the Norwegian government that children who adhere to Muslim, Jewish, or other faiths or beliefs must receive a more intensive education in Lutheranism because Lutheranism is their “culture and heritage” is simply not true; instead, the State is imposing the religion of the majority onto minority religious groups, which is conceivably a classic case of discrimination and should be recognized as such by the international human rights community.

One might call into question whether religious education can ever truly be “objective and neutral.” Within each of the major world religions, many different interpretations, beliefs, denominations, sects, philosophies and practices exist—making it necessary for the State to choose certain precepts over others, thus imposing its own religious interpretations. As indicated previously, the State should not be involved in promoting certain religious precepts over others, or taking sides among differing denominations within religions. Moreover, the government should be particularly cautious about requiring mandatory religious education of school-aged children in public schools, who are still impressionable and highly susceptible to influence that may be exerted in such classes. Instead, perhaps the State should leave such education up to the religious institutions themselves—*e.g.*, Lutheran children could receive religious instruction in Sunday school classes provided by the Church. Of course, education explaining the background of historical events could refer to the role that various religious groups have played in these events, such as the geo-political role of religious groups within the Middle East. But such education would not need to include education about the specific religious tenets of those religious groups.

freedom of religion or belief, and ensuring respect for and acceptance of pluralism and diversity in the field of religion or belief.” Special Rapporteur Report *supra* note 212, ¶ 32.

Once older children and young adults have acquired the capacity to think critically about various religions and belief systems, and can decide whether they want such education—*e.g.*, elective courses in State-run universities—then perhaps State-supported religious education may be more acceptable. Of course, religious education can never fully be objective and neutral, in same the way that education about history, art, and literature can never be fully objective and neutral—none of these subjects can be completely explained because none can ever include all aspects and viewpoints. The lingering problem then becomes how to develop and measure a standard for being acceptably neutral?²³³ While this question is outside the scope of this Article, it is an important issue for any program of religious education to attempt to address.²³⁴

Continuing problems with the religious education legislation, as well as the constitutional provisions discriminating in favor of the Church of Norway, demonstrate violations of the right to nondiscrimination and to freedom of religion or belief in Norway that result from the Church of Norway's status as the official State religion. However, in light of the above analysis, neither the European Court of Human Rights nor the Human Rights Commission went far enough in their critique of State-mandated religious education. Other international human rights bodies have also expressed only limited concern about the current Church-State relationship in Norway, failing to address many of the issues raised above. In fairness, the Committee on the Rights of the Child noted concern about discrimination against children in public schools on the basis of their religious backgrounds,²³⁵ and the Human Rights Committee indicated concern that the previous constitutional provision mandating that members of the Lutheran Church must raise their children in accordance with the Lutheran faith contravenes Article 18 of the ICCPR. But notably, the Committee on the Elimination of Racial Discrimination failed to address religious discrimination at all in its 2006 review of Norway's report, despite the fact that racial and

233. My thanks go to my research assistant, Kendra Olson, for contributing to these thoughts, among others in this Article.

234. *See, e.g., Teaching About Religion: In Support of Civic Pluralism*, www.teachingaboutreligion.org (last visited Feb. 28, 2015) (showing one approach to this issue that has been taken in the United States).

235. *See* Committee on the Rights of the Child, *Concluding Observations: Norway*, CRC/C/15/Add.263 18 (Sept. 21, 2005).

religious discrimination often go hand in hand.²³⁶ The lack of responsiveness on the part of most international human rights bodies highlights the need for greater attention by the international human rights community to the issue of discrimination stemming from State religions. Under the current religious education, it would be difficult to deny the fact that the public schools promote the established Church by giving it significant preference regarding the percentage of the course that is devoted to the Evangelical Lutheran faith and its place of prominence within Norway.

If the government of Norway were to take the lead in effecting a more complete separation between Church and State, it could become a positive example and spur other governments to make similar changes. Such a stance would be more in keeping with Norway's reputation as a model of democracy and human rights concerning most issues. International organizations concerned with protecting the right to freedom of religion or belief have highlighted the global significance of Norway's infringements upon religious freedoms, particularly regarding religious education:

We are aware that the Scandinavian countries, and not least the famous peace-negotiator Norway, are looked upon as models for democracy. It is therefore most regrettable that the lack of religious freedom in Norwegian schools may legitimate human rights violations in undemocratic regimes. IHEU very much hopes that governments, groups, institutions and courts dealing with freedom and dignity of minorities within today's Europe will realize the harmful effect of discriminatory practices in relation to children's cultural identity, who are the next generation of decision making adults in a growing multicultural society. Compulsory indoctrination in the beliefs of the majority religion should not be allowed anywhere in the world and is contrary to established universal standards of human rights.²³⁷

Similarly, in commenting on Norway's fifth report to the Human Rights Committee, one committee member expressed that he was "concerned about freedom of religion in the country, as well as cases of racial discrimination. He stressed that Norway's status as a model on human rights practices made it very important to address those and

236. See generally Concluding Observations of the Committee on the Elimination of Racial Discrimination: Norway, CERD/C/NOR/CO/18, (Oct. 19, 2006).

237. Babu Gogineni, *Statement of Support to Norwegian Complaint*, as quoted in *IHEU Writes to ECHR*, INTERNATIONAL HUMANIST AND ETHICAL UNION (November 28, 2002), <http://iheu.org/iheu-writes-echr/>.

other matters in a comprehensive and timely manner.”²³⁸ The Special Rapporteur has emphasized that “[h]armony between and among religious communities can only flourish if Governments remain committed to the promotion of freedom of religion or belief in a neutral and balanced manner.”²³⁹ This goal is impossible to meet in countries that maintain a State religion, as the State is arguably in violation of its obligation to protect religious rights under international human rights law.

The recent moves toward the separation of Church and State are a positive, yet insufficient, step in the right direction to protect religious rights in Norway. The interested parties in Norway should consider taking further steps toward a more comprehensive break between the government and the Church, in light of the government’s commitments to uphold the religious rights of all of its inhabitants. Disestablishment of the State religion in Norway could provide an example for other nations to address similar State-religion relationships and their intrinsic problems.

CONCLUSION

In summary, this Article focuses upon Norway as a fascinating case study through which to explore the principle of anti-establishmentarianism and the need for States to adopt this principle in order to comply fully with international human rights norms. If the State religion poses human rights violations in Norway—and this Article argues that it does—this suggests that there is no intermediate ground between establishment and disestablishment. The Church and State must be separated in order to protect religious rights.

When one considers all of the manifestations of human rights violations noted above—as well as more egregious violations in other nations imposing State religions that this Article does not address—taken together they suggest that the entwinement of Church and State will inevitably involve infringements upon human rights. As a practical matter, there does not appear to be any State with an established religion that does not raise these issues. As indicated above, even if the national government only declares a State religion and takes no further action, issues remain, since the State is providing

238. Human Rights Committee, 86th Sess. 2341st and 2342d meetings, HR/CT/673/Rev.1, Mar. 14, 2006, Roman Wieruszewski, expert from Poland.

239. Special Rapporteur Report *supra* note 212, ¶ 24.

its moral statement promoting the validity of the favored religion and opposing the validity of other religions and beliefs. This in turn may lead to discrimination against adherents to the non-favored religions or even more violent attacks upon them by adherents to the favored religion, who may consider themselves to have a higher moral ground since they have the moral support of the government. This situation creates a society in which certain religion is privileged and other religions are disadvantaged, in which individuals are given a reason to feel entitled to discriminate on the basis of religion, and in which xenophobia may flourish. The separation of Church and State promotes religious rights for people who are not of the majority religion—*e.g.*, regarding public funding of sectarian schools, teaching religion in secular schools, etc. —as well as religious rights for people who are of the majority religion—*e.g.*, regarding control of Church property, control over Church leadership, etc. The international human rights bodies addressing these issues should consider whether they could better advance religious rights by recognizing and affirming the necessity of anti-establishmentarianism as a central principle of religious rights within the international human rights framework.

Norway is an interesting example and its situation is evolving. While normally seen as quite a progressive country, Norway is in the midst of grappling with numerous religious rights challenges inherent in its establishment of a State religion. The government and religious communities are attempting to foster greater understanding and tolerance of religious diversity within the country.²⁴⁰ Yet with each differentiation that the government makes between the Church of Norway and other religions, it demonstrates problems with the establishment of religion.²⁴¹ As depicted above, the country has been

240. See INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2011, *supra* note 8, at 7 (The Council for Religious and Life Stance Communities includes the state church and 12 other religious and humanistic communities, among them the Jewish, Muslim, and Buddhist communities. The council seeks to prevent differences in belief from being used as a basis for prejudice and xenophobia and has received government support for its work since 1998. The council, acting as an umbrella organization, organized many events that furthered interreligious dialogue and debate.).

241. See *State and Church Move Towards Greater Separation in Norway*, *supra* note 3, at 3 (Roar Johnsen, IHEU First Vice President and former president of NHA, said, “Norway is moving gradually and by consensus towards separation of religion and state. Humanists will continue to press for complete separation, but I’m afraid we will still have to wait a while

dealing with discrimination against minority religions. Moreover, the Lutheran population in Norway has been questioning the value of the Church-State relationship for the Church of Norway, and indeed for Lutheranism as a viable and vibrant faith community. The Norwegian example suggests that such a relationship does damage to the religion itself, illustrating why Lutherans themselves are raising the disestablishment issue. One could also look at countries that have recently disestablished, like Sweden, as well as calls for disestablishment in other countries—though of course, strong anti-disestablishmentarianism movements exist as well, driven by people who benefit in some way from the establishment of religion. This issue is important not only in purportedly “homogeneous” societies—because there is never complete homogeneity, neither within one religion nor across different religions—but also as countries become increasingly heterogeneous, with the growing globalization of the world.

The question comes down to what is, and what should be, the role of the State with respect to religion and human rights?²⁴² Of course, tensions exist between various human rights, and this Article does not attempt to resolve all of those issues. It simply takes on one small, yet important, facet—whether or not a State may establish a religion without violating human rights—and asserts that doing so is inherently problematic. This Article argues that it cannot, and that this issue must be addressed head-on.

Disestablishment is necessary, but not sufficient, for achieving the protection of religious rights under international human rights principles. Of course, disestablishment will not solve all of the problems surrounding Church-State relationships. Other issues must be addressed as well, but are outside the scope of this Article.²⁴³ As is well-known in the context of US constitutional law and history, anti-establishmentarianism has been viewed as an essential foundation of

longer before we have reached full equality between the different religions, beliefs and life stance communities.”).

242. For an interesting examination of government involvement in religion within various democracies around the world, see Jonathan Fox and Jonathan Rynhold, *A Jewish and Democratic State? Comparing Government Involvement in Religion in Israel with other Democracies*, 9 *TOTALITARIAN MOVEMENTS AND POL. RELIGIONS* 507 (exploring “whether a country can both strongly endorse a religion and be democratic.”).

243. *E.g.*, countries in which the state forbids religion—certainly disestablished, but also clearly a violation of religious rights. Some states have more than one established religion (China—5), which is still problematic.

religious rights in the United States.²⁴⁴ The First Amendment was adopted in large part as a reaction to the religious persecution and lack of religious freedom that the colonists had previously experienced in their countries of origin. Unfortunately, many of those coming to the “new world” to escape religious persecution subsequently inflicted similar transgressions upon others who did not share their religious beliefs—such as indigenous populations and other immigrants adhering to different creeds. Of course, the precise contours of the Establishment Clause are still hotly contested within the United States,²⁴⁵ such as whether the government should provide no aid versus equal aid to religious entities,²⁴⁶ and whether government aid must support no religious uses, or whether private choices should determine how government aid can be used.²⁴⁷ Additional issues in the United States include the nativity scene cases, Ten Commandments cases, Pledge of Allegiance cases, government employed chaplains, and of course, currency in the United States that proclaims “In God We Trust,” which may be problematic for atheists and agnostics. However, the fact that the full contours of the doctrine of Church-State separation have not entirely been settled in the United States does not mean that anti-establishmentarianism should necessarily be rejected in its entirety by the international human rights community, as its core principles may also prove to be useful in an international context.

Therefore, this Article concludes that religious rights will be better protected once the international human rights community explicitly recognizes and affirms the principle of anti-establishmentarianism as a necessary precondition for the protection of religious rights within the international human rights framework. Disestablishment is necessary in order to protect religious rights fully. Of course, one must take into consideration the practical realities that international human rights bodies face—that they can push states only

244. U.S. CONST. amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”)

245. *See generally* THOMAS C. BERG, *THE STATE AND RELIGION IN A NUTSHELL* (Thompson West 2004).

246. *See, e.g.*, the debate in the majority and minority opinions in *Everson v. Bd. of Educ.*, 300 U.S. 1 (1947); *Rosenberger v. Rector of Univ. of Va.*, 515 U.S. 819 (1995).

247. *See, e.g.*, *Zelman v. Simmons-Harris* 536 U.S. 639 (2002); *Witters v. Wash. Dep’t of Servs.* 474 U.S. 481 (1986); *Mueller v. Allen* 463 U.S. 388 (1983); *Comm. for Pub. Educ. and Religious Liberty v. Nyquist* 413 U.S. 756 (1973); *Lemon v. Kurtzman* 403 U.S. 602 (1971); *Tilton v. Richardson* 403 U.S. 672 (1971).

so far. It may be understandable that, up to this point in time, the international human rights bodies have deliberately chosen to attenuate their language in questioning the compatibility of State religions with human rights, for valid practical and strategic reasons. However, this Article urges them to raise the core issue whenever possible, directly probing the validity of State religions *per se*, in addition to addressing the multiple symptomatic problems that maintaining a State religion might raise. Yet we have to start somewhere, and this is perhaps where scholars, non-governmental organizations, and others can help initiate and lead the call for anti-establishmentarianism. Once again, this Article suggests that religious rights are not capable of being entirely fulfilled in countries maintaining a State religion, and that anti-establishmentarianism is therefore a necessary prerequisite for protecting religious rights.