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LEGISLATIVE TERRORISM: A Primer for the Non-Islamic State; Secularism and Different Believers

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LEGISLATIVE TERRORISM: A Primer for the Non-Islamic State
Secularism and *Different Believers*

by

Gwendolyn Yvonne Alexis

May 2003

Submitted to the Graduate Faculty of Political and Social Science of the New School University in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

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LEGISLATIVE TERRORISM: A Primer for the Non-Islamic State

Secularism and *Different Believers*

Gwendolyn Y. Alexis, Author

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Abstract

In industrial societies where civil law and state institutions have become well-established secular vehicles for governing the populace, it is widely assumed that the state no longer has an interest in fortifying the religious sector as a complementary source of social control. Thus, a distinction is drawn between the Islamic state that is ruled by religious law and the secular state of Western industrial societies in which religion is deemed to have lost its influence in the public sphere. This dissertation argues that civil law is not religiously neutral and thus challenges a central premise of secularization theory. Introducing a new theoretical model that classifies civil law on the basis of its purpose--to protect religious liberty, engage or fortify the religious sector, or to advance universal norms--the author examines the impact of the three different types of legislation upon religious freedom and the individual autonomy of religious minorities in Sweden, an aggressively secularized industrial society. The author concludes that, viewed from the standpoint of a religious nonconformist, there is no discernible difference between living in a society that is overtly ruled by religious law (e.g., an Islamic state) and living in a "secular" society that is ruled by civil law either embedded with religious norms or designed to facilitate state appropriation of the religious sector as a complementary means of social control. In either environment, the author argues, the religious nonconformist will be forced to conform to the religious norms of the predominant religious group.

To Erik, who listened to my dreams and made me follow them.

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Chapter 1

INTRODUCTION: A NEW THEORETICAL MODEL

Theocracy by Another Name

Christian prisoners aren't expected to pay for chapel chairs, so why should Muslim prisoners be expected to buy their own prayer mats?

A Visiting Muslim Cleric in a British Prison¹

It is obvious that this Muslim imam, a part-time worker in the British penal system, is being more Socratic than inquisitive. He realizes that in adopting internal rules and procedures, the prison administration would scarcely have considered the fact that a prayer mat creates sacred space in the Muslim prayer ritual in much the same fashion that stained glass windows and an altar symbolically shut out the profane world for Christian worshipers. He asks the question because he knows that it is up to him as the outsider--someone with no vested interest in the status quo--to point out that there is but one rational basis for distinguishing between religious symbolisms. And, in terms of the cost factor, the prayer mat wins "hands down."

Like the British imam, my viewpoint is that of an outsider. A lawyer in academia, I arrived certain that I would be in my element among the most obstreperous of the academics, the sociologists. However, I have learned that lawyers and sociologists have a different theoretical orientation. As a lawyer, I have been trained to develop theory by looking for similarities - to link my legal argument, my client's situation, and the facts of the case to favorable legal precedents of the past. Sociologists, on the other hand, develop their theories by looking for breaks with the

¹ Statement of a Visiting Minister in a British Prison from the book, *Religion in Prison: Equal Rites in a Multi-Faith Society*, by James Beckford and Sophie Gilliat, quoted in Book Review by Dr.

past. It is at the point of rupture with the past that their theorizing begins. Hence, their quest is for dissimilarities, while mine is for sameness.

In this dissertation, I argue that it is specious to draw a distinction between the Islamic state where religion influences laws and the Western "secular" state where laws are influenced by religion. One is overt, the other covert – Tweedle-dee and Tweedle-dum. There are two ways in which religion influences the laws of Western states. First, these are predominantly Christian nations and hence their secular law is embedded with norms that reflect a Western Christian worldview ("*embeddedness*"). Second, in those states with a penchant for social engineering, the religious sector is often the sector of choice for implementing social programs aimed at integrating the socially marginalized into the larger society. Thus, secular laws are put in place that facilitate formation of religious groups and that assure that, once established, these groups will be relieved of many of the fiscal responsibilities that burden their secular counterparts. This assures a vigorous representation of religious groups among the voluntary associations making up civil society. This second dynamic of state legislative action to fortify the religious sector is referred to herein as "*religious advocacy*."

The internal guidelines in force in the British penal system are an example of *embeddedness*. The fact that the requisition guidelines for furnishing worship space within the penal system were based on Christian norms surfaced only after these guidelines were shown to work an inequity on Muslim prisoners while serving no demonstrable secular purpose of the British penal system. Needless to say, the very existence of a Prison Service Chaplaincy within the secular setting of a state prison exemplifies *religious advocacy*. Of course, *embeddedness* and *religious advocacy* are interrelated concepts. This is demonstrated by the fact that even though as early as 1997, statistics showed that 11% of those incarcerated in British prisons are non-Christians, all of the 132 full-time chaplains in the Prison Service Chaplaincy are Christians,

Paul Weller, Division of Social Science, University of Derby. [MOST Journal on Multicultural Societies](http://www.unesco.org/most/v1n1wel.htm), vol. 1, no. 1. (1999) Online. 1 May 2002 <<http://www.unesco.org/most/v1n1wel.htm>>.

with 104 being Anglican and the rest Roman Catholics and Methodists.² (Recall that the British imam was only a "Visiting" Cleric.) *Pace* sociological theories of difference, Islamic states and Western secular states travel along the same road to theocracy. The swiftness of the journey is determined not by whether claim to divine rule is actual or *de facto*; rather, it is determined by the willingness of the state in question to trample on the religious freedom of *different believers* within its domain.

Structuring the Exploration

Nowhere is the proliferation of legislation aimed at social control more evident than in the U.S. and Sweden, two states with a penchant for social engineering. Consequently, I have chosen to navigate the social terrain of these two secular Western states with a nascent theoretical model that I find useful in analyzing the interaction between different categories of statutory law generally found in democratic lands. By use of its lawmaking power, a state can enhance the moral autonomy of individuals domiciled within its domain or it can severely constrict the sphere within which individuals are free to behave in accordance with their own personal convictions. The two extremes are found in the theocratic state and the *laissez faire* state, respectively.

The theoretical model uses individual moral autonomy as a barometer for gauging the theocratic bent of the state. In other words, the relationship is inverse; i.e., the more theocratic the state, the less likely it is that individuals living within its domain possess moral autonomy. A note on terminology, I use moral autonomy and religious freedom interchangeably. As a legal concept, religious freedom entails the right to be irreligious or religious in a manner of one's own choosing. The methods used in data collection will be discussed in the final section of this introductory chapter. However, first I present the theoretical model.

² *Ibid.*

Theoretical Model

Three types of legislation have a critical impact upon whether religious activities wind up (1) within the private domain beyond the jurisdiction of the state's governing authority, (2) within the public domain and under governmental regulatory authority, or (3) in a gray area between the private and public domains. The three types of legislation are DML (*de minimus* legislation), RFL (religion-friendly legislation), and UNL (universal norm legislation). I will discuss these three categories of legislation in kind.

DML (De Minimus Legislation)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

U.S. Constitution, First Amendment

Each citizen shall have the right to [...] alone, or together with others, practice his religion.

Swedish Constitution (SFS 1974:152, Chap. 2, Sec. 1)

Legislation establishing religious life and personal morality as the private concern of the individual and thus outside of the scope of the state's governing authority is herein referred to as DML (*de minimus* legislation). DML is the minimum amalgamation of statutes, acts and case law required to (a) guarantee religious freedom to the individual, and (b) strip the state of authority to regulate religious life. DML allows the individual to adopt either a secular or a religious worldview in accordance with her own personal conscience. It does this by creating an enforceable right that the individual can exercise to hold the state at bay in matters that do not directly affect the community at large. Since DML protects *individual* rights, one does not have to belong to a group to seek redress in the judicial system of a democratic state for violation of rights secured by law - generally these rights consist of freedom of conscience, religion, speech, association, assembly, and the right to privacy.

Not all democratic governments have DML in place. To illustrate, in democratic states which have establishment religions (e.g., Great Britain, Norway, Ireland, Greece, etc.), the

second prong of the two-prong DML standard is missing; namely, the state is not stripped of authority to regulate the religious lives of its inhabitants. Indeed, in states with establishment religions, the clergy of the establishment church are paid from the general tax revenues thereby forcing all taxpayers (religious and non-religious, members of the established church and non-members) to support the national religion. Moreover, there is generally mandatory religious instruction in the primary schools and even where the instruction is broadly Christian rather than narrowly sectarian (e.g., Anglicanism, Lutheranism, Catholicism, Greek Orthodox, etc.), it undermines the right of parents to determine what, if any, religious training they wish their impressionable young children to have.

Below, Chart I summarizes DML in terms of the benefits it confers:

<u>DML (De Minimus Legislation)</u>	
Benefit Conferred:	Right of self-determination with respect to how and whether to pursue a lifestyle that is religious, secular, or some hybrid of the two
Class Protected:	Individual Persons
Persons with legal standing to enforce their right to moral autonomy:	
<u>Religious Individuals</u> Believer in Traditional Religion Believer in Non-Traditional Religion	
<u>Irreligious Individuals</u> Atheist Religiously Indifferent	
CHART I	

RFL (Religion-Friendly Legislation)

Legislation that serves to ensure a continual religious presence within a state is here referred to as RFL (religion-friendly legislation). Generally, RFL is enacted to create a "public good" or to advance the "public interest" as currently being defined by those in control of the government. RFL usually contains a statement setting forth the public purpose to be achieved by the legislation. Thus, unlike DML which sounds more of paraenesis than of law, RFL is directed legislation. With RFL, one does not find the broad-sweeping language of DML that lends itself to diverse interpretations. In fact, RFL is always accompanied by detailed regulations that specify requirements for qualifying for the benefits of the legislation. Often RFL creates an agency to oversee compliance with the regulations and to ensure that the religious groups receiving benefits have not lost their eligibility by violating any of the regulatory guidelines. Table 1 below sets forth RFL currently in force in Sweden and the U.S.

TABLE 1. RFL (Religion-Friendly Legislation) in Sweden and the U.S.
--

<u>Swedish Legislation</u>	<u>U.S. Legislation and Case Law</u>
1) Subsidization of Religious Groups (SFS 1999:932)	1) No Taxation of Property Used for Religious Purposes (1st Amendment, U.S. Const.; <i>Walz v. Tax Comm'n</i> , 397 U.S. 664 [1970])
2) Government Collection of Church Dues (SFS 1998:1593, Sec. 16)	2) Philanthropy Protection Act of 1995, P.L. 104-62, facilitating fund-raising by religious groups
3) Subsidization of Theological Education (SFS 1999:974, Sec. 4)	3) Tax Deductibility of Gifts to Religious Groups on Donor Income- and Estate-Tax Returns, I.R.C. 501(c)(3)
4) Subsidization of Acquisition and Maintenance of Sites for Religious Activities (SFS 1999:974, Sec. 12)	4) "Charitable Choice" Faith-Based Initiative (1996 Welfare Reform Law, P.L. 104-193)

Under the "Table 1 RFL," religious groups in Sweden and the U.S. can qualify for free state services, public funds (subsidies, grants, and government contracts for which funds will be allocated from the tax revenue of the state), and tax incentives (tax credits, tax exemptions, or reduced tax rates). As is typical for RFL, only groups - not individuals - can qualify for the

benefits. RFL is always aimed at the religious sector as a distinctive segment of the private sphere, a segment that is both non-commercial and ethically motivated.

There will be a more detailed discussion of this ethical dimension in a subsequent chapter, but for now it is sufficient to note that the state is irresistibly drawn to the religious sector because the state sees the religious mission as one of moral uplift and thus as being compatible with the government function of social control. RFL is quintessential *religious advocacy*, but it also entails *embeddedness* because the legislation is crafted using the religious practices of the predominant religio-cultural group in the state of enactment as the norm. Hence, RFL sanctions the prevalent societal notion of what constitutes religion and what qualifies as a religious practice by offering benefits to religious groups that conform to the norms embedded in the legislation.

This means that non-traditional religious groups will have a difficult time qualifying for benefits under RFL (and for their rightful share of the tax revenues that are used to pay for these benefits) unless they are willing to "repackage" themselves so as to more closely resemble the predominant religio-cultural group. Hence, in the long run, RFL tends to standardize religious practices among the diverse religious groups that are receiving benefits under the legislation. This is ironic in the case of Sweden, which enacted all of the legislation listed in its column of the Table 1 RFL in order to promote religious pluralism. Consequently, even when RFL is enacted for the purpose of advancing religious pluralism (e.g., by alleviating financial barriers to becoming an established religious group in the state), it will actually work against long-term religious diversity since the very rules establishing qualification for the benefits under RFL serve to standardize the religious practices of all religious groups in the state.

An important difference between RFL and DML is that RFL does not purport to create enforceable rights. In fact, the situation is just the opposite. RFL belongs to a broader category of legislation known as, "government-entitlement legislation" - which means that the *government is entitled*, in its sole discretion, to determine whether a group qualifies to receive benefits and when such benefits shall be withdrawn or when the particular entitlements program is to be discontinued.

Because of its focus on religious groups, RFL undermines the DML emphasis on the protected rights of the individual in matters of religion. The emphasis on the collective tends to muddy up the waters in terms of who is entitled to access to the coercive powers of the state; e.g., law enforcement agencies and the judiciary. It will be recalled that under the first prong of DML, civil liberties protections reside with the individual and, in fact, are defensible against religious groups as well as the state. This distinction is important in that it implies the right to convert to a new religion or to no religion when one attains sufficient age to make independent decisions (set at age 12 in the Swedish Constitution). A second problem with the group orientation of RFL is that it implies that some type of religious affiliation is the norm thus stigmatizing those embracing a secular worldview and privileging denominationalism and congregationalism--that is to say, organized religion--as more acceptable than individualized spirituality.

It is also problematic that RFL entails a financial incentive for group formation on the basis of religious identity in contradistinction to what might be more politically salient bases for collective identity. That is to say, marginalized segments of the population might make more political headway by networking on the basis of an immutable status such as gender, race, ethnicity, or national origin. Certainly, in the U.S., those being colonized under the religious sector by means of the "Charitable Choice" initiative (Item 4 on the Table 1 RFL) --namely, America's underclass--would be better off organizing on the basis of socio-economic status. This is *religious advocacy* reflected in its worse light and is sufficient reason to view RFL (the main vehicle for *religious advocacy*) with the hermeneutics of suspicion. Is RFL merely self-interested behavior on the part of a state bent on steering insular minorities away from formation of groups that will focus a critical lens on systemic sources of inequality in the present administration?

Loïc Wacquant has noted that in America, "the concept of 'ghetto' has been stripped

of its ethnoracial referent and denuded of any mention of group power and oppression."³

According to Wacquant, this obfuscation of U.S. history serves the purposes of policy analysts and designers who may then deal with income as a benign variable. *Apropos* of Wacquant's observation, one is immediately taken aback by the nature of the problems to be addressed by means of the FBIs (faith-based initiatives) of the current White House Administration. Wasting no time after taking office in 2001, President Bush issued an Executive Order creating the White House Office of Faith-Based and Community Initiatives ("White House OFBCI") on January 29, 2001. The task of the White House OFBCI is to cultivate contacts within the religious sector and spread the news that religious groups can sign on as government vendors (i.e., third-party contractors) and receive public funds for providing social services to America's underclass; namely, unwed mothers in single-family households, innercity at-risk youth (mainly racial and/or ethnic minorities), the chronically unemployed, the homeless, and others who receive or are in need of public assistance for survival - except for undocumented aliens who are left to fend for themselves. The public policy statement set forth in the Executive Order provides in relevant part:

*Section 1. Policy. Faith-based and other community organizations are indispensable in meeting the needs of poor Americans and distressed neighborhoods. [...] The paramount goal is compassionate results, and private and charitable community groups, including religious ones, should have the fullest opportunity permitted by law to compete on a level playing field, **so long as they achieve valid public purposes, such as curbing crime, conquering addiction, strengthening families and neighborhoods, and overcoming poverty.***⁴

The Policy Statement contains a laundry list of the social problems associated with urban poverty (i.e., crime, substance abuse, crumbling families, deteriorating neighborhoods), yet Bush is suggesting that these problems can (and should?) be solved by the already overextended

³ Loïc Wacquant, "A Black City Within the White," *Renaissance Noire* 2 (Fall/Winter 1998) 1:141-151.

⁴ (Emphasis Added.) President George W. Bush, Executive Order No. 13198 (29 January 2001), Washington D.C.: White House. Online. Accessed 16 November 2002.
<[http://www.whitehouse.gov/news/releases/2001/01/print/200010129-2.h1...>](http://www.whitehouse.gov/news/releases/2001/01/print/200010129-2.h1...)

community organizations located within the very communities that have fallen victim to urban blight.

Of course, there is a cost to religious groups for partaking of the state largesse by way of RFL. Dealing with the government always involves compliance with a certain amount of administrative detail. For example, both Sweden and the U.S. require religious groups to become incorporated and to adopt by-laws in order to qualify for any of the benefits flowing from the Table 1 RFL. Being an incorporated entity necessitates complying with annual reporting requirements to keep the state apprised of the holding of the yearly meeting, the election of officers, and the continuing validity of information previously supplied as to the group's registered agent. Thus, at a minimum the incorporated religious group is required to maintain minutes of all annual meetings. A continuing reporting obligation generally constitutes an undesirable burden for groups that have been organized mainly for religious purposes and which rely on a staff of volunteers to carry out most of their operations.

Moreover, the need to become incorporated and to adopt by-laws injects a profane element--one that hails from the corporate business world of limited liability and protection of material assets--into sacred space. This detracts from the spiritual purpose of most religious organizations. The requirement that incorporated bodies have an elected Board of Directors--a hierarchical structure within the religious community--is problematic for those faiths that take a normative stance against inequality among believers. For instance, according to Islamic theology, there is no need for a mediator between Allah and the believer. Therefore, Muslims do not have professional clergy, and even the concept of membership in a particular congregation--i.e., belonging to a particular mosque--is foreign to Islam.

Chart II, below, summarizes RFL:

RFL (Religion-Friendly Legislation)	
<u>Benefits Conferred</u>	
✓	Free State Services
✓	Public Funds
	Subsidies
	Grants
	Government Contracts
✓	Tax Incentives
	Tax Credits
	Tax Exemptions
	Reduced Tax Rates
<u>Class Entitled to Benefits</u>	
	Incorporated Religious Groups
	Parachurch Organizations
	Sectarian Schools
	Schools for Clergy
	Religiously Affiliated Hospitals
<i>State sets standards and has complete discretion in determining whether or not a group qualifies to receive benefits under RFL!!</i>	
Chart II	

The Problem of Inequality

Given that RFL targets only the religious sector for privileged access to revenues that have been collected from the public at large, the problem of unequal treatment of taxpayers exists. Both the U.S. and Sweden have laws protecting individuals from discriminatory treatment. In the U.S., the Civil Rights Act of 1964 (as subsequently amended by various Public Laws), bars discrimination among equally situated persons across the board, including discrimination in connection with federally funded programs and religious discrimination experienced as a result of laws enacted at the local, state, or federal level.⁵ The Fourteenth

⁵ 42 USC, Chap. 21, Sec. 2000(a) et.seq. (Civil Rights Act of 1964).

Amendment to the U.S. Constitution provides that none of the individual states in the U.S. may "deny to any person within its jurisdiction the equal protection of the laws." As to the Federal Government, the U. S. Supreme Court has interpreted the Due Process Clause of the Fifth Amendment as prohibiting the Federal Government from discriminatory treatment of persons found to be in the same classification.⁶

Among the foundational precepts of the Swedish Constitution is a commitment to the "equality of all members of society."⁷ Further, the Swedish Constitution provides that, "equality of all persons must be respected in exercising public authority."⁸ In light of the clear mandate in both countries for equal treatment of the populace, the obvious inequality of treatment that results from RFL should be troubling. Below, Chart III contains a comparison of the potential beneficiaries of DML and RFL respectively.

POTENTIAL TO BENEFIT DIRECTLY OR INDIRECTLY FROM DML AND RFL				
	IRRELIGIOUS TAXPAYER		RELIGIOUS TAXPAYER	
	<u>Atheist</u>	<u>Religiously Indifferent</u>	<u>Traditional</u>	<u>Non-Traditional</u>
DML	✓	✓	✓	✓
RFL			(✓)	[]

LEGEND:

✓ Likely to Benefit (Indirectly in the case of RFL which targets groups)

[] Could benefit indirectly if state qualifies non-traditional religious groups for RFL

Chart III

⁶ *Shapiro v. Thompson* 394 U.S. 618 (1969); and *Schneider v. Rusk*, 377 U.S. 163 (1964).

⁷ Swedish Constitution, SFS 2002:903, Chap. 1, §2.

⁸ Basic Principles (*Statskicketsgrunder*), Swedish Constitution, SFS 2002:903, Chap. 1, §2.

UNL (Universal Norm Legislation)

The third type of legislation, UNL (universal norm legislation) is enacted to enforce what are deemed to be universally valid standards for human behavior. Therefore, it has strong public policy implications in that it is legislation aimed at moral uplift. Thus, even where the standards are not really universal--and the UNL reflects *embeddedness*--UNL will be upheld and requests for exemptions from adhering to the standards (in order to engage in religio-cultural practices that are inconsistent with the standards) will be denied. Tension between UNL and DML arises most often when UNL has been enacted for protection of human rights, animal rights, and the natural environment. Local courts will invariably find justification for limits being placed on civil liberties where unabridged exercise of a civil right would violate UNL.

For example, the animal protection laws in Sweden prohibit slaughter of animals in accordance with the theological dictates of Islam and Judaism because of the animal protection laws. The theologically dictated slaughtering procedure is deemed to be unnecessary cruelty to animals. This means Swedish Muslims and Jews, who are meat eaters, must import their meat from some place outside of Sweden. In the U.S., the City of Hialeah (Florida) enacted a series of ordinances barring ritual animal sacrifice as "religious practices inconsistent with public morals, peace, or safety."⁹ The City had crafted the ordinances to prohibit members of the Church of Lukumi Babalu Aye who practice the Santeria religion from sacrificing chickens that were actually cooked and eaten after the ritual (unless the sacrifice was in connection with a death rite or to cure the sick). The City won in all the lower courts, but the U.S. Supreme Court eventually ruled the ordinances to be an unconstitutional restriction on religious freedom. Nonetheless, the Hialeah ordinances are typical of UNL and its long-term "civilizing" project - a project that pits UNL against tradition and mystical worldviews while placing it firmly in the camp of modernity, science, and progress.

⁹ City of Hialeah Resolution 87-66 cited in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

The more managerial the state, the more likely it is that a well-developed body of statutory law is in existence, much of which will be UNL. UNL is enacted to keep public space free of behavior that cannot be rationally and logically justified. For example, a group of men engaging in ritual prayer in the middle of a busy international airport may scarcely attract notice in Cairo or Jerusalem; however, when this same behavior takes place at Newark Liberty International or Stockholm Arlanda airports, more than a few people will stare aghast. And, the worshippers are likely to be violating some fire or safety ordinance by disrupting the flow of traffic in a public place. Because pervasive statutory law implies an expansive role for the state in everyday life, it raises special problems for religious traditions that do not accept the notion that religion is separate from daily life; e.g., Hinduism, Islam, and Judaism:

In both Islam and Hinduism, the notion that religion is separate from life is unthinkable. In many states Islam describes itself as a way of life rather than as a faith; and Hinduism as a term of reference to a 'faith' is something of an external creation. The name was introduced by the Persians to describe all beliefs in India - across the River Indus. Hindus themselves see what they believe as being how they live. There is no sense of one set of beliefs for everyday life and another for religious life. Judaism is also particular, since it is both a way of life and an ethnic identity - not always linked to religious belief or practice.¹⁰

Where adherents to these "not-easily secularized religions" constitute *different believers* in a society, they are often unable to rely upon the civil liberties protections of DML for redress when UNL prohibits them from following certain theological mandates of their faith. Indeed, the general response of the secular authorities will be that the practice in question has nothing to do with religion.¹¹ For example, the prohibition against polygamy exists in all Western states. It is impossible to obtain an exemption from this UNL on the basis that polygamy is a religious practice, even if such is the case, while domiciled in a Western state. In the U.S., Mormons attempted to defend polygamy as a religious practice back in the 19th Century, but the U.S. Supreme Court ruled that it is not a permissible religious practice in the U.S. In short, UNL

¹⁰ Joanne O'Brien and Martin Palmer, *The State of Religion Atlas* (New York: Simon & Shuster, 1993), 96.

is social engineering and as such it tends to result in homogenization of religious practices in much the same way that RFL does. Invariably, what is allowed under UNL coincides closely with the religious practices of the dominant religion in society. In Table 2 below, I have set forth UNL currently in effect in the U.S.

**Table 2.
Life-Cycle Guidelines for United States
Dictated by UNL (Universal Norm Legislation)**

UNL determines:

- (1) when life begins (for purposes of regulating abortion);
- (2) when one reaches adulthood and can therefore consent to sex, purchase alcohol and cigarettes, quit school, work without a work permit, and marry without parental consent;¹²
- (3) what constitutes a permissible marriage (e.g., what is an allowable degree of consanguinity);
- (4) how one becomes legally divorced and whether there is a continuing financial obligation to support a former spouse or the children of the severed relationship;
- (5) what constitutes parental neglect of a child's physical and mental well-being (and when parental decision-making will be overridden by the educational system or by some state administrative authority or juridical body);
- (6) when one is legally dead (e.g., no brain waves, no heartbeat, no pulse, or missing for 7 years);
- (7) when a decedent may be buried (e.g., not before 24 hours has elapsed, or not until after an autopsy); and
- (8) what methods of disposing of human remains are permissible (e.g., in-ground, at sea, by cremation) and which methods are disallowed (e.g., spreading cremated remains in one's backyard or over an inland stream).

¹¹ Göran Gustafsson, *Tro, samfund och samhälle: Sociologiska perspektiv* (Örebro: Bokförlaget Libris, 2000), 109 (hereafter, "Gustafsson 2000").

¹² In virtually every state in the U.S., parents are legally obligated to support unmarried children who are under 18 years of age. This means that the parents cannot use money earned by their children for the support of the children (and certainly not the family) since it is a parental obligation to support their offspring. In the U.S., children under 18 cannot receive large sums of money (generally over \$5,000) outright from insurance, an inheritance, etc.; the money must be held in trust for them by a fiduciary until such time as they come of age.

In Chapter 2, the Swedish Burial Law--which contains a vague mandate for local public cemetery authorities to uphold "Good Burial Culture" (*god gravkultur*)--will be examined in connection with its impact upon the right of religious minorities to adhere to particularized burial rituals in accordance with their respective faiths. The Swedish Burial Law is an example of expansive UNL in that it contains provisions vesting the local public cemetery authorities with power to override individual decision-making with respect to grave design in order to "protect the environment, the safety of those visiting the cemeteries, and the work milieu of cemetery employees."¹³ This, of course, presents a potential for abuse by public cemetery authorities given that virtually all public cemeteries in Sweden are managed and operated by the Lutheran parish administration in the vicinage. The likelihood of clashes occurring between Swedish culture and the religious practices of recent immigrant arrivals in Sweden has been noted by Sociologist Jonas Alwall, a frequent writer on Muslims in Sweden:

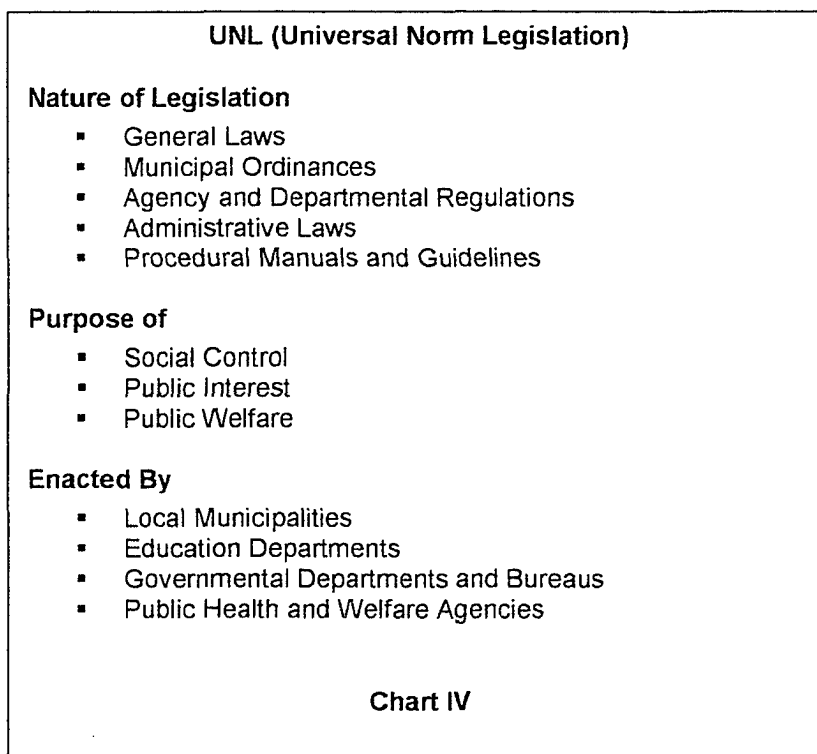
A very obvious aspect of the Swedish lack of preparation is the unfamiliarity with people's way of being religious in everyday life. Among other things this has to do with the dominant Swedish view of religion. On one side, the starting point is a narrow concept of religion, where religion is seen as divorced from politics, economics, law, health, hygiene, diet, dress, ritual for greetings and sex life. On the other side, religion is above all seen as something spiritual, religion is faith, feeling and inner life--not rite, rules and prescriptions.¹⁴

Apropos of Alwall's assessment of the Swedish view of religion is the fact that effective October 2001, circumcision of boys is regulated as a medical procedure (discontinuing the previous religious exemption) - one that is to be performed by a doctor or (in cases where the boy is under two months old) by a person who has received a permit from the Department of Social Services to perform circumcisions.¹⁵ Social to be a medical practice rather than a religious practice demonstrated without Alwall's

Chart IV, below, summarizes the foregoing discussion of UNL.

¹³ Swedish Burial Law, SFS 1990:1144, Chap. 7, §30. See Table 3, "The Legal Matrix," in Chapter 2.

¹⁴ (Emphasis in original.) Jonas Alwall, *Muslim Rights and Plights* (Lund: Lund University Press, 1998), Note 1, 190.



Summary of Theoretical Model

It will be useful at this point to summarize the theoretical paradigm and Chart V below serves this purpose. In viewing Chart V, keep in mind that the protective canopy of DML shrinks in proportion to the growth of RFL and UNL. Of course, UNL is an unavoidable fact of life in modern industrial societies, with the only variables being *embeddedness* and the abundance of such legislation. That is, *in situ* investigation will reveal whether heavy-handed use of UNL embedded with the norms of a predominant religious group serves to undermine religious liberty and moral autonomy with the consequence that any existing DML is circumvented. In Chart V, dark (↑) and light (↑) arrows serve to distinguish heavy-handed and moderate use of UNL. The

¹⁵ "Law on Circumcision of Boys" (*Lag om omskärelse av pojkar*), SFS 2001:499, passed June 7, 2001 for prospective application effective October 1, 2001.

Chart shows how the three categories of legislation impact upon religious liberty and how they are used by a *laissez faire* secular state and, its nemesis, the theocratic state.

Three Categories of Legislation and Religious Liberty	
Religious Liberty	(↑DML) (↑UNL) (↓RFL)
<u>INDIVIDUAL POSSESSES MORAL AUTONOMY:</u>	
	☐ No Financial Penalty or Social Stigma for Irreligiosity (↑DML) (UNL↑)
	☐ Free to Fully Embrace or to Totally Discard Religious Heritage (↑DML) (UNL↑)
	☐ No Pressure to Embrace Dualistic Secular Lifestyle (↑DML) (UNL↑)
	☐ Ability to Preserve Undiluted Non-Conformist Religious Heritage (↑DML) (UNL↑)
Laissez Faire State:	Policy of Benign Neglect of Religion (↓RFL), Substantial DML (↑) Moderate use of UNL (↑)
Theocratic State:	Heavy reliance on: RFL (↑) and UNL (↑) Therefore, emasculated DML (↓)
Chart V	

Methods and Sources of Data Collection

I conducted field research in Sweden and the U.S. during the period June 1998 through February 2003. Three separate trips were made to Sweden during the research period, two short visits (one for 1 month, one for 3 weeks) and a longer stay of six months (July - December 2001), during which time I maintained an office as a Visiting Scholar in the History Department at the University of Lund. My field research activities consisted of observing, interviewing, participant observation, and also collecting secondary source materials *in situ*. During the research period, I attended meetings of special interest groups, religious services in churches, Hindu and Jewish temple services and ceremonies and *satsangs* (Hindu worship services in private homes). I participated in various social and cultural events held in religious fellowship halls, school gymnasiums, and university facilities in various parts of Sweden and in

New Jersey, Pennsylvania and New York. In New Jersey, I twice served as a judge of the annual Indian Folk Dancing Contest and Beauty Pageant held in connection with a Cultural Festival that takes place on India's National Day. (Although the event is held in Northern New Jersey, it attracts members of the East Asian Indian Diaspora from the entire Tri-State Area.)

Seminars in Sweden

During the Fall 2001 academic semester, I participated in the following seminars and workshops:

(a) I offered an interdisciplinary seminar series (given in Swedish) with the theme, "Culture, Identity, and Beyond." It proved to be invaluable in terms of gaining access to a wide range of thinking on issues of multiculturalism as the seminar series attracted academics from various parts of Sweden and many non-academics from the Greater Lund area.

(b) I attended all meetings of a seminar entitled, "Advanced Sociology of Religion" (*Seminarier i Högre Religions sociologi*) offered by Professor Göran Gustafsson at Lund University (Theological Institute). This was on the order of a writer's workshop with different scholars presenting their work in the Sociology of Religion. Also, Gustafsson presented his ongoing studies as a leading statistician and demographer for The Church of Sweden. At one special session, Gustafsson analyzed the exit poll survey results (he had written the questionnaire) for the first independent election held by The Church of Sweden after disestablishment. At another session, he presented a paper developing a theory of state, market and civil society based upon the historical treatment of death and burial in Sweden ("Begravningen - en skärningspunkt mellan stat, marknad och civilt samhälle")

(c) The History Department at Lund held bi-weekly luncheon seminars during which History professors (current and emeritus) presented their scholarly work. I attended those luncheon seminars and at one luncheon presented the results of my ongoing field research on religious diversity in Sweden. It was extremely helpful in terms of their suggestions regarding not neglecting history in carrying out my research. Professor Yvonne Marie Werner, a Religion Historian (expert on Catholicism in Sweden)--the person who arranged for me to become

affiliated with the History Department as a Visiting Scholar during my stay--was an invaluable source of information on the experiences of both Jewish and Catholic minorities in Sweden.

(d) The Middle Eastern Association at Lund University, *Lunds Akademiska Mellanöstern Förening* (LAMÖF) had a Fall series of lectures at which noted Islamic scholars spoke on topical subjects. I attended all of those lectures and, additionally, participated in all of the social outings arranged by LAMÖF.

Seminars, Workshops and Conferences in the U.S.

I participated in the following opportunities for scholarly interaction and exchange:

(a) During the Spring 2000 semester--now ongoing--while writing this dissertation, I am teaching a course entitled "Religion and Human Experience," at the County College of Morris. I am inaugurating the nascent theoretical model used in this dissertation by using it as a teaching tool for understanding the state dynamic in religious life. At least two students plan to use the theory as a perspective in writing their research papers for the course.

(b) At New School University, I attended the Spring 2000 semester session of José Casanova's "Immigration and Religion Seminar" at the Graduate Faculty. During the seminar I started my field research and participant observation in the Hindu diaspora of Northwest New Jersey and benefited from an exchange of ideas with other students in the seminar who were doing similar field research at religious communities in the Greater Manhattan area.

(c) At Princeton University, I attended a year-long "Religion & Culture" workshop, led by Professor Robert Wuthnow, during the 1998/1999 academic year. During the Fall 1998 Term of the workshop, I presented a paper on the response of religious communities to the AIDS crisis and received suggestions on expanding my research in a fruitful manner.

Scholarly Conferences in the U.S. and Sweden

Many of my ideas took shape during participation in the following four conferences:

- March 1999 Spring Symposium "Religion and Welfare," jointly sponsored by the Center for the Study of American Religion (CSAR) and the Woodrow Wilson School, both are part of Princeton University where the Symposium took place.

- October 2001 "We and Them" (*Vi och Dem*) Conference sponsored by the College of Communication on the Helsingborg Campus of Lund University, Sweden. This was a multidisciplinary conference on cultural, ethnic, and religious diversity in Scandinavia.
- May 2002 "Religion and Immigrant Incorporation in New York" Conference called by the International Center for Migration, Ethnicity, and Citizenship (ICMEC) at New School University, Manhattan
- August 2002 "Sixteenth Nordic Conference on the Sociology of Religion" held in Sigtuna/Uppsala, Sweden, with the theme "Religion, Voluntarism, and Globalization," at which I presented the preliminary findings of my study in a paper entitled, "The Legislative Route to Activating Faith Communities: Swedish and American Parallels."

Secondary Sources (Archival Research and Site Visits)

I conducted library research in private, public and university libraries in Sweden and the U.S. as well as via Internet. Additionally, useful materials were collected during visits to the Church of Sweden in Manhattan, the cultural center at the Scandinavian House in Manhattan, and the Sri Venkateswara Temple and Community Center in Bridgewater, NJ (a Pan-Hindu Temple). In both Sweden and the U.S., archival data, pamphlets, brochures, catalogues, internal memoranda, procedural manuals, periodicals, and other literature were collected during meetings with officers, professionals, clerical and administrative personnel at the administrative offices of diverse religious groups, professional associations and organizations within the burial industry, local municipal offices in Sweden, parish administrative offices within the Lutheran Church (in Sweden), Islamic cultural centers, student club houses, and the group headquarters of various African cultural groups (in Sweden).

Chapter 2

A FALL DAY AT THE WOODLAND CEMETERY (Skogskyrkogården)

Field Research is to Theory as....

Kommissarie: *Nej, men ni får väl äta här vid vårt servicentrum?*

Gwen: *Ojdå, tyvärr har vi redan bokat bord vid en restaurant i stan, men tack så hemskt mycket för en otroligt intressant och trevlig dag!*

English Translation

Curator: But, you can eat here in our Service Center!

Gwen: Uh, unfortunately, we have already reserved a table at a restaurant in Town, but thank you so very much for an unbelievably interesting and pleasant day.



Memorial Grove, The Woodland Cemetery

PHOTO A

As the above exchange took place, the two Monica's were already backing away from the tour group. However, my friend Luitpold who does not speak Swedish just stood there looking as though he would never be released from "this place." Slowly, a look of relief crept over his face when I said to him in English that we would be leaving. Poor Luitpold, he had just spent the last 2-1/2 hours touring a cemetery of 200+ acres on his first ever visit to Stockholm - certainly there were other sights he would rather have seen. Moreover, with the entire tour being conducted in Swedish, Luitpold had been forced to try and glean what he could from a language which, although Germanic, is melodic rather than sharp and precise like his native German tongue.

Luitpold Rampeltshammer and I became friends while fellow students at the New School for Social Research. He and his girlfriend, Tamara Enhuber, and I were all part of a study group that prepared for the Master's Exam in Sociology the year before. The two Monica's-- Monica Fredriksson and Monica Hallerstedt--are my fun-loving friends from SKKF (Sweden's Cemetery and Crematorium Association). SKKF is the foremost professional organization within Sweden's Burial Industry and it is one of the four organizations constituting the CGK (Central Grave Care Committee), which publishes the manuals that set the standards for operation and management of the nation's cemeteries. The SKKF Board of Directors includes representatives from the Swedish Regulatory Authority for Cemeteries, the Church of Sweden, and other government officials.¹

Even though he said nothing, I suspected that Luitpold was secretly blaming Tamara for the last 2-1/2 hours. She had supplied me with the dates he would be in Stockholm; and I had arranged to be there at the same time. He was in Stockholm to attend the October 2001 "Conference on the impact of the Economic and Monetary Union (EMU) and the EURO Currency on Employment Relations." Like me, Luitpold was in the midst of field research in connection with writing a dissertation and eventually earning a PhD in Sociology. He was carrying out his preliminary field research at the European Union (EU) Headquarters in Brussels, where he had landed the perfect paid internship in a branch concerned with mobilizing transnational trade unions. His dissertation deals with the consequences for labor of globalization, with particular focus on workers within the chemical industries of Germany and Britain. Thus, the cemetery held little promise in terms of supplying him with research material.

¹ According to the motto appearing on *Kyrkogården*--an SKKF publication--SKKF seeks to "advance the interests of its members and the Burial Sector of the Swedish economy in the areas of R&D, advice, information distribution, and education." *Kyrkogården* is a combination professional journal and news magazine. The membership of SKKF includes private entrepreneurs who operate mortuaries, nonprofit foundations operating cemeteries and memorial gardens, parish administrators of public cemeteries, municipal administrators and other governmental regulators of the burial industry. SKKF has a comprehensive educational program, offering seminars nationwide.

I was spending six months in Lund, Sweden, collecting empirical evidence to buttress the central theoretical argument of my dissertation; to-wit, from the standpoint of a religious nonconformist, there is no difference between a country that is overtly ruled by religious law, like the so-called "Islamic state," and a country that is covertly ruled by religious law, like the purportedly secular states of the West that govern by means of secular law embedded with Christian norms and values. In either case, I argue, the religious nonconformist lacks moral autonomy and is under duress to behave in accordance with a predominant religio-cultural ethos. The theoretical model here advanced presupposes that there are two types of legislation that keep the "secular" Western state under the influence of Christianity: (i) UNL (universal norm legislation) that is embedded with norms emanating from BT/PE (Biblical tenets and Protestant exegesis), and (ii) RFL (religion-friendly legislation) that serves to fortify a religious sector in which the dominant religious groups adhere to BT/PE. *Embeddedness* is the terminology I use to capture the UNL problematic, while *religious advocacy* is used to encapsulate the RFL dynamic.

Why Sweden? Why Cemeteries? Why Stockholm?

After a church-state union of almost five centuries, the Church of Sweden (Evangelical-Lutheran) was disestablished effective January 1, 2000. An amendment to the Swedish Constitution abolished the Church Minister's Seat in Parliament as well as the mandatory Church Tax (*kyrkoskatt*) that had long been the mainstay of the Church of Sweden (hereafter, "The Church"). However, the cohabitation of church and state in Sweden continues even after the divorce. As indicated by the Table 1 RFL in the Introduction, the Swedish Government is lending its bureaucratic machinery to the religious sector by collecting the voluntary Church Dues (*kyrkoavgift*) through the Swedish Tax System for any religious group that registers for the service. My interest on that particular fall day at the Woodland Cemetery was not RFL, however. It was UNL that had brought me to Stockholm; namely, Sweden's Burial Law, which governs cemetery ownership and operation in Sweden. Table 3, below, contains the

legal matrix created by the Burial Law. Although the Law designates The Church as national Trustee (*Huvudmannen*) of all of the public cemeteries in Sweden, the Swedish Government retains the right to appoint municipalities as local cemetery authorities. So far, however, the only municipally run public cemeteries are in Stockholm and the small town of Tranås.

TABLE 3
THE LEGAL MATRIX: Processing of the Dead in Sweden

<u>Burial Law Reference</u>	<u>Provision</u>
SFS 1990:1144 9 kap. 1§, 2§	<u>Burial Tax</u> The Church of Sweden serves as Controller for this Tax. Assessment varies widely from parish to parish. Assessed as separate Tax only on non-Lutherans. (Voluntary Church Dues covers Tax for Lutherans)
SFS 1990: 1144 9 kap. 6§	<u>National Burial Plan</u> "Basic Burial" includes grave for 25 years; grave opening and closing; cremation; locale for preserving and viewing body; use of funeral chapel without religious symbols; transport for body from time cemetery authority takes charge of body until burial.
SFS 1990: 1144 2 kap. 1§	<u>The Church of Sweden Trusteeship of Public Cemeteries</u> Although The Church is nationwide Trustee, authority is reserved to make a municipality the local cemetery authority.
SFS 1990: 1144 2 kap. 6§	<u>Limitation on Operation of Private Cemeteries</u> Only religious communities and nonprofit foundations may operate cemeteries. (Must get Permit from Provincial Administrator.)
SFS 1990:1144 7 kap. 26§	<u>"Good Burial Culture" Mandate</u> Local cemetery authority may limit the grave owner's decision-making ability if necessary in order to maintain good burial culture.
SFS 1990:1144 7 kap. 30§	<u>Changes to Grave by Cemetery Authority</u> Local cemetery authority may make changes to a grave that overrides decision-making by the grave owner where the authority deems it necessary in order to protect the environment, the health and safety of cemetery employees, and the visiting public.

Therefore, I was not in Stockholm merely to torture Luitpold! I was investigating *in situ* whether secularly managed cemeteries were less contentious sites for the burial of non-Lutherans than those under the management of a local parish authority.² There had been an ugly incident involving burial of a Muslim decedent in the southern part of Sweden (where Lund is located). The Muslim had died a resident of Landskrona where the public cemetery is not suitable for a Muslim burial. Therefore, the decedent's family had opted for a public cemetery in nearby Malmö as an acceptable alternative. However, the Lutheran parish personnel in charge of the Malmö cemetery fought against the interment of the Muslim decedent for four months before finally allowing the burial in the cemetery. Given that Muslim tradition dictates a speedy interment, generally within 24 hours, the case will forever live in infamy and it served as a rallying cry for Muslims in Sweden.

*Burial is an important religious concern for Muslims. In areas with large Muslim populations, the burial question is solved, but not in other areas. "The Landskrona Case" is often mentioned. [...] Muslim communities have determined to keep pressure on the responsible authorities until this burial issue is resolved.*³

² Over 80% of Sweden's inhabitants are members of The Church and, thus, would have no problem with being buried in a Lutheran parish churchyard. Of course, the percentage of the population electing to be buried in the public cemeteries is even higher than the membership roster for The Church. Most Christians, regardless of denomination, would have no objection to being buried in the Lutheran churchyards although the Catholics prefer to maintain their own graveyards. Moreover, some public cemeteries are autonomous graveyards—that is, not Lutheran churchyards—and many of these are suitable for burial of non-Christians and secularists. In 1994, 91.4% of all funerals were held in one of the Lutheran parish churches. We can assume that all of those decedents (91.4%) were buried in a public cemetery. In fact, the percentage using the public cemeteries was certainly greater than 91.4%, considering the shortage of viable alternatives. For example, with Christian denominations, a funeral service will be held in a Baptist, Pentecostal, or Methodist church, but the burial will be in one of the public cemeteries.

³ Translation from Swedish by Author. "With a Face Toward Mecca Waiting for Allah" (*Med Ansiktet mot Mekka i Väntan på Allah*), *Muslimskt Begravningskick*. Online. Accessed 13 October 2000 <<http://www.htg.se/uinst/rekuguib/AB/1998/redivusunin2/muslimska/1.html>>.

There are now over 300,000 Muslims living in Sweden. With a population of about 9 million, this means that 1 out of every 33 inhabitants of Sweden is a Muslim. Muslims begin arriving in Sweden in large numbers in the last quartile of the 20th Century. They came from Turkey, the former Yugoslavia, Albania, Iran, Iraq, Lebanon, Pakistan, Bangladesh, Egypt, West Africa, and East Africa. In his classic essay on human relations, "The Stranger," Georg Simmel speaks of the outsider who "comes today and stays tomorrow." This is, indeed, an apt description of the Muslim immigrants in Sweden; and since they will not return to from whence they came, they must eventually be buried on Swedish soil. Surely, it is with the Muslim burial ritual that the need to confront "inner enemies" will surface in Sweden:

The stranger, like the poor and like sundry 'inner enemies,' is an element of the group itself. His position as a full-fledged member involves both being outside it and confronting it.⁴

According to the eschatology of Islam, at the end of time, the body shall rise from the grave and be judged. Therefore, Islam prohibits cremation. However, cremation is the norm in Sweden where 70% of decedents are cremated. That is the nationwide average; in urban areas like Stockholm, the percentage of decedents that are cremated exceeds 90%. There are other specific requirements of the Islamic burial ritual that differ from Christian burial practices. The corpse is washed in a simple ceremony (only males wash males, and females wash females). The washing occurs at the place of death or perhaps in a special room of a mosque. At any rate, the washing is not to be done by funeral home personnel or to take place in a funeral home. Then, the body is wrapped in sheets of unstitched white cloth with three cloths for male decedents and five cloths for women. The body is then placed in the grave without a casket; it is placed on its right side and facing Mecca. The grave is then mounded or framed to make sure that it will not be walked on by accident. Nothing can be placed on top of a Muslim grave, as

⁴ Georg Simmel, "The Stranger," *The Sociology of Georg Simmel*, trans. Kurt Wolff (New York: Free Press, 1950), 402-408, 402.

that would delay the grave exit on the Day of Resurrection.

It is important to Muslims that there not be Christian symbolisms near a Muslim gravesite. This is made evident by a news story that recently appeared in *Kyrkogården*, the SKKF Journal.⁵ The story reports that a section of Furets Woodland Cemetery (Furets skogskyrkogård) in Mark--an area in Western Sweden not far from Gothenburg--is being used to build a new Muslim cemetery. According to the piece, a growing Muslim population in Mark justified subdividing off a portion of the Furets Woodland Cemetery for a Muslim graveyard. Moreover, the Muslims had complained about having to travel to a distant cemetery for Muslim burials. Apparently, the negotiations for the Muslim site had been long and drawn out since the story states that "the one thing that the Muslims insisted upon" for the new cemetery section was *that there be no Christian symbols in eyesight when they turn toward Mecca*.

Worth special note is what the Muslims were willing to give up in exchange for not having Christian symbolisms near Muslim graves. According to the news story, the Muslims' non-negotiable demand is being complied with by locating the Muslim cemetery on the easternmost section of the Furets Woodland Cemetery up against a forest, but in exchange for this "accommodation" on the part of the cemetery authority, the Muslims had to agree to use caskets for the Muslim decedents that are buried in the new cemetery. In other words, the Muslims were required to forego just enshrouding corpses in accordance with Islamic burial ritual. This type of "rehabilitation" of those adhering to non-conforming burial practices (i.e., forcing them to bring their burial practices in line with those of the dominant Christian groups) occurs despite DML (*de minimus* legislation) in Sweden giving religious and cultural minorities the right to choose religious practices based upon personal conscience. In the next chapter, we will look at various theoretical approaches to understanding the standardization of burial

⁵ "Muslimsk begravningsplats i Mark," *Kyrkogården*, 75 (January 2003), 17. (The information in the article was originally reported in the *Borås Tidning*, a newspaper.)

practices that is occurring in Sweden despite the fact that civil liberties protections are more expansive in Sweden than in the U.S.

A Rational Approach to Burial

There is a marked contrast between the theologically dictated ritual of Muslim burial and the secularly derived norms for burial in Sweden. As the summary of the Burial Law (Table 3 above) indicates, rationalization of "the processing of the dead" has gone a long way in Sweden. Broadly stated, the cemeteries of Sweden are cultural monuments. They serve as permanent reminders of the intermingled cultures and histories of the Scandinavian peoples. Over the centuries, parts of Sweden have belonged to Norway and Denmark; and at one time, Finland belonged to Sweden. The fluidity that numerous wars gave to Sweden's borders is reflected in the engravings found on the stone, iron, and brass grave markers and headstones, as well as on the unique porcelain grave medallions found in the graveyards of Sweden - graveyards that date back to Medieval times.

Thus, the immaculately kept cemeteries of Sweden are a source of immense national pride and cultural hubris. It should, therefore, come as no surprise that in addition to being governed by the Burial Law, the cemeteries are protected by a Cultural Monuments Statute that automatically confers historical status on certain graves and establishes the criteria for determining when a grave is to be considered culturally valuable.⁶ That the nation's cemeteries are considered national heirlooms is evident in the following excerpt from a pamphlet published by the CGK (Central Grave Care Committee):

⁶ As an example of the relevant criteria for making determinations with respect to preservation of graves, the Cultural Monuments Statute (*Kulturminneslagen*) provides that graves dating before 1850 should be preserved because they are "handmade products that predate the Industrial Revolution" (SFS 1988:950). Thus, these graves are exceptions to the 25-year recycling rule for graves.

Most of our cemeteries have been in existence for centuries. They are often from the middle ages and are adjacent to the parish church. Over the passage of time, the cemeteries have changed in different respects in accordance with the preferences of the day and local changes in burial practices. Thus, the way the cemeteries appear today reflects in many respects society's development over a long period of time, both in terms of grave monuments and in terms of overall graveyard architecture. Hence the cemeteries are an important part of the cultural heritage and the cemetery authorities have a large responsibility to protect this cultural heritage. The responsibility is based upon regulations contained in the Cultural Monuments Law and the Burial Law, but strong local involvement in the preservation effort is also required if it is to be successful.⁷

Yet, cemeteries are places of spiritual renewal as well as cultural space. They offer a reprieve from the hectic pace of the day - a place where one can experience the beauty and tranquility of nature and have a sense of being connected with those who have gone before as well as those who will come after. In fact, one might say that Sweden's cemeteries are "life cycle theme parks." And, the futuristic element should not be downplayed. Indeed, the determination to protect the natural resources of the planet for future generations is very evident in the stringent environmental controls that are in place in the nation's cemeteries. Plastic flowers (or anything else plastic) cannot be used on graves in Sweden, and all caskets and urns must be made of biodegradable material. Sweden's ongoing commitment to protection of the environment is demonstrated by the fact that the Swedish Constitution was amended effective January 1, 2003, to include a mandate that, "The public administration shall promote sustainable development, which leads to a good living environment for present and future generations."⁸

An environmentally informed approach to allocation of land, as a scarce natural resource, helps to explain the high incidence of cremation in Sweden - a land where even the practice of cremation has been subjected to environmental controls. In order to regulate the

⁷ Translation from Swedish by Author. *Grave Care: General Advice for Preserving and Recycling (Gravvårdar: Allmänna råd för bevarande och återanvändning.)* 3rd ed. (Stockholm: CGK, 1998), 1. (This is a publication of the Central Grave Care Committee.)

⁸ Basic Principles (*Statsskicketsgrunder*), Swedish Constitution, SFS 1974:152, Chap. 1, §2(3).

emission of pollutants into the atmosphere, the Swedish Government has set limits on the number of cremations that can be performed in a given area annually. A recent issue of *Kyrkogård* reported that the Environmental and Health Protection Authority had shut down the crematorium in Mora, Sweden, because it had gone 100 cremations over the limit of 800 cremations annually. The operator of the Mora crematorium stated that he had exceeded the authorized limit in order to help out the crematorium in the town of Falun where the cremation oven had broken down. The crematorium was shut down, nonetheless, and thus an expensive cremation oven (less than two years old) stood idle in Mora and the bodies of decedents who died residents of Mora had to be transported to Falun and Ludvika for cremation. The hapless operator was awaiting a decision on his application to increase the allowed number of cremations that he could handle to 1200 annually.⁹

The memorial grove (*minneslund*) offers yet another environmentally sensitive alternative. It is a group grave containing the cremated remains of several decedents. Normally sited in the most picturesque section of a cemetery from the standpoint of natural surroundings such as trees, water, hills, etc., the memorial grove is always beautifully landscaped with lawn, stone, water, and attractive plantings. At the beginning of this Chapter (page 22), Photo A is the memorial grove in The Woodland Cemetery. Below, Photo B shows the memorial grove in Sköns Cemetery in Sundsvall, a town near Stockholm:

⁹ "För många kremationer - krematoriet stängs," *Kyrkogården*, 75 (January 2003), 16.



Minneslundan som denna på Sköns kyrkogård i Sundsvall bildar ett gemensamt gravområde utan markerade gravplatser. På särskild anvisad plats kan besökaren placera sina blommor eller ljus.
Bild: Rune Östberg

Memorial Grove, Sköns Cemetery, Sundsvall
Photo B

These collective burial spaces first appeared in Sweden in 1958 and have become increasingly popular. The actual burial of the cremains takes place at the convenience of cemetery personnel and, hence, there can be no type of graveside memorial service. Headstones or grave markers are not used. The following description gives a sense of the reasoning behind this approach to burial:

It is a reasonable and practical way to have a pretty memorial for which relatives do not need to be responsible for grave upkeep. One thought behind the memorial grove is anonymity, that one can feel solidarity with the collective, and that sorrow can be shared with others facing the same situation. If one chooses to be buried in a memorial grove, then one has elected not to raise a personal

*monument-- everyone becomes equal in death, poor and rich.*¹⁰

The political commentary in this statement is not an isolated voice tilting at windmills. In connection with my field research, I offered a seminar series under the rubric of "Culture, Identity, & Beyond" at Lund University where I was a Visiting Scholar in the History Department. At one of these seminars, Sociologist Göran Gustafsson, a Lund professor and nationally recognized as an expert in Sweden's burial culture, presented a paper entitled "Viewing Burial from the Perspective of Equality and Parity" (*Jämlikhets- och jämställdhetsperspektiv på begravning*). The paper reported Gustafsson's study of the content of death announcements and the number of funeral attendees at different historical periods in Sweden for the purpose of theorizing about the societal position of the decedents.

Two students of Landscape Architecture at SLU (the Swedish University of Agricultural Sciences) in Uppsala who attended the seminar were involved in planning a "non-denominational" graveyard that would be "non-denominational" and also a burial site where there would be no visible symbols of class distinctions. In fact, one of the two "cemetery planners" stated that the use of individual graves should be discontinued entirely since "gravestones merely replicate the class difference with which people are plagued during life." This viewpoint received support from other graduate students in my corridor in the Vildanden Graduate Student Housing complex who were present at the seminar. Many of my "corridor buddies" supported group graves for environmental reasons as well as for political reasons, expressing the view that individual graves wasted valuable land.

Moreover, there were some practical reasons offered in support of memorial groves also. All of the students had come to Lund University from some other part of Sweden and none,

¹⁰ Translation from Swedish by Author. "Allmänt om Kyrkogårdar och Begravningsplatser," *Ysane KyrkogårdHomepage*. Länsstyrelsen Blekinge Län. 26 March 2003. <<http://www.k.lst.se/version1/kulturm/Kyrkor/Ysane/Ysane.pdf>>

except for two students from Stockholm had any intent of returning to their home area after completing their schooling. They noted the difficulty of getting to gravesites to maintain the graves (of mostly grandparents). In fact, most of them indicated that after trying for a number of years to visit the graves and keep them up, their parents had opted to pay the parish cemetery authority to maintain the graves. Under Sweden's Burial Law, a grave owner is obligated to see to grave upkeep or else the cemetery authority can recycle the grave prior to the expiration of the usual 25-year period.

The State as *Parens Patriæ*

The day before our tour of The Woodland Cemetery, I had been at the Stockholm Headquarters of SKKF where I met with Executive Director Ulf Lagerström and General Counsel Elisabeth Janson. The meeting was akin to having my own personal SKKF seminar, only with the top brass as seminar leaders instead of the regular instructors SKKF uses in the seminars offered nationwide to professionals within the burial industry. The meeting was arranged by Monica Fredriksson with whom I had been exchanging e-mails for over a year prior to arriving in Sweden. (Little did Monica know that her thankless repayment would be that she would end up on a 2-1/2 hour cemetery tour.) It was the General Counsel, Elisabeth Janson, who arranged for our four-person group to join the small private tour of The Woodland Cemetery--a UNESCO World Heritage Site--that was being led the next day by an extremely knowledgeable curator, Börje Olsson.

The Woodland Cemetery was constructed between 1917 and 1920 as a showcase public cemetery--a site restricted to interment of cremated remains. The undertaking of this massive project on 200+ acres of prime forestland south of Stockholm heralded a new epoch in processing of the dead in Sweden. With the support of the Swedish State, the City Council of Stockholm used The Woodland Cemetery project to promote cremation as a viable solution to the many problems that were being experienced with cemeteries in the urban environment. Not

only were there odor and sanitation concerns caused by having in-ground burial (with rotting corpses) in the midst of burgeoning metropolises, but the scarcity of urban space made it increasingly difficult to justify using up valuable property for in-ground burial of caskets, when urns with cremated remains would require much less space and, at the same time, solve the sanitation problem. The Woodland Cemetery project was launched with great fanfare by the City of Stockholm:

A modern society called for solutions that were both beautiful and functional, and this also applied to resting places for the dead. A major international competition for the design of the Southern Cemetery in Stockholm [Woodland Cemetery] was announced in 1915 and won by Gunnar Asplund and Sigurd Lewerentz. [...]

The architectural commission involved strict requirements as regards a number of practical functions: cremation instead of burial, for example was one directive the architects had to follow.¹¹

It is noteworthy that back in 1888, the Swedish Government had put the brakes on an escalating use of cremation by enacting a law requiring that an autopsy be performed prior to cremation. More often than not, the autopsy took place in the decedent's home with the cost of the autopsy being borne by the decedent's estate. However, effective September 14, 1917, which was perfect timing in terms of The Woodland Cemetery project, the law requiring the performance of an autopsy prior to cremating a decedent was revoked. Thus, the State signaled that there was a new public policy favoring cremation in the public cemeteries of Sweden albeit that at this juncture, The Church was not fully on board.¹²

Göran Gustafsson has offered an insightful sociological analysis of why the Swedish Government first lowered the boom on cremation and then became an ardent supporter.

¹¹ Translation from Swedish by Author. "Skogskyrkogården," *Riksantikvarieambetet Homepage*. Accessed 28 February 2003 <<http://www.raa.se/varveng/skogse.asp>>.

¹² According to Sten Ingemark, who was selected by the Swedish Crematorium Association to write the history of the first century of the Association's existence (1882-1982), it was not until the 1960s that The Church fully accepted cremation as an alternative to in-ground burial. Ingemark

Gustafsson is a consummate statistician and has served on the Research Council for The Church for a number of years. Viewing the cremation movement as typical of the "liberal and radical" social movements that sprung forth in civil society during the latter part of the 19th Century, Gustafsson states:

During the break with tradition that occurred around the turn of the century [i.e., the onset of the 20th Century], civil society in the form of burial societies were the most influential actors with respect to burial in the rapidly growing urban environments (except for the immediate family of a deceased person). [...]

The Cremation Association ["Likbränningsföreningen"] was a decidedly elitist movement with well-known names at the head [...]. The magnitude of the societal changes that were taking place at the time is evidenced by the fact that the Association built the crematorium and started to use it before it deigned to inform the Government of its activities, and then it demanded that the Government should accept the new method of handling the dead.¹³

In short, Gustafsson views the dispute between the state and civil society as having been jurisdictional rather than over the relative advantages or disadvantages of cremation. That is to say, the State acted to situate the matter of burial squarely within the public realm where it would be subject to state regulation.

When the State "put the freeze" on cremation in 1888, the Swedish Burial Law provided that a priest of the Church of Sweden was to preside over the interment of all decedents whether Lutheran or non-Lutheran - even atheists. Indeed, this continued to be the law even after 1917 when the State changed to a more accepting attitude toward cremation. In fact, coinciding with the move of the State toward championing cremation as a burial alternative was the installation of columbaria in the Lutheran parish churches and chapels for permanent storage of the cremated remains. Having the cremains within the sanctity of the parish churches effectively short-circuited any implication that cremation entailed independent social action by

states that it was first necessary "to get rid of all of the romanticizing." Sten Ingemark, *Svenska Eldbegängelseföreningen igår och idag* (Bollnäs: Nyströms Tryckeri, 1982), 9.

agents of civil society without sanction by the State and its establishment religion. Hence, cremation was no longer an affront to the State's authority in matters of burial.

The State had by means of its position in the cremation question demonstrated that when it comes to burial and the burial procedure, it was the State which had the final say. [...] Members of non-Lutheran churches who were not connected with the Church of Sweden as well as atheists who decried all religious dogma were both subjected to the requirement that a priest preside over their interment.¹⁴

Taking Leave of the Woodland Cemetery Tour

We had been walking in a thicket of trees when the Chapel suddenly appeared out of nowhere. We passed through iron gates to cross a small yard and arrive at the portal of a wooden chapel. I distinctly remember having the sensation that I was entering the giant trunk of one of the majestic Redwood trees in Northern California. Once inside, the rustic beauty of our cavern-like surroundings simply overwhelmed me. Olsson had arranged for the white candles that serve as the only chapel lighting to be lit prior to our arrival and they provided warmth and a mystic glow. As we sat there in a cocoon of whitewashed walls, Olsson told us about Greta Garbo's memorial service, which had taken place in that simple space where the only adornment of note is a sculpture of an angel in flight. This chapel, the Woodland Chapel, is the only one of the five chapels on the premises with a name that does not suggest a Biblical theme. Nonetheless, the flying angel ambushed my original intent to declare the space religiously neutral territory.

Olsson was a real insider at the Woodland Cemetery; he had been involved in many of the historical occurrences at the Cemetery. In fact, he had been the curator selected to accompany Greta Garbo around the grounds years ago when she traveled to Stockholm (during

¹³ Translation from Swedish by Author. Göran Gustafsson, "Burial—an Intersection of State, Market, and Civil Society," ("Begravningen—en skärningspunkt mellan stat, marknad och civilt samhälle") *Kirke Religion Samfunn*, 13 (2000), 37-49:40. (Hereafter, "Gustafsson 2000a.")

¹⁴ Translation from Swedish by Author. Gustafsson 2000a, 40.

her mature years) to select a burial site at the Woodland Cemetery. He had escorted her to the secluded grove that she eventually chose and where the urn with her ashes was to be interred upon her death in 1999. Our tour party visited the site after leaving the Woodland Chapel. It was at Garbo's gravesite that Olsson and I had the exchange related at the opening of this Chapter. By that time, the sun had gone down and there was still no sign that the tour was nearing its end. In fact, I was certain that the Service Center and the sustenance Olsson mentioned were still at least an hour and an additional 50-acre trek away. And, Luitpold and I had not eaten anything since having a light snack at the Wasa Warship Museum over 5 hours before.¹⁵

Nonetheless, just being hungry would not have caused me to leave the ongoing Woodland Cemetery tour had I felt there was more to learn at the site. But, I had seen enough during the preceding 2-1/2 hours to conclude that secular management of the public cemeteries would not make them religiously neutral sites. The municipally managed Woodland Cemetery is awash in Christian symbolisms. All five chapels on the property evoke either Christian or Biblical themes. Three of the chapels (The Chapel of the Holy Cross, The Chapel of Hope, and The Chapel of Faith) share a large front lawn upon which an enormous granite cross has been erected. A fourth chapel, The Chapel of Resurrection was named after the large sculpture above its entrance. And, as I later learned, the angel in flight in The Woodland Chapel is a Carl Milles sculpture entitled, "The Angel of Death."

As we left the Woodland Cemetery heading for the subway to Stockholm Centrum, I picked up a leaflet at the exit gate that described the Woodland Cemetery in English. The rose

¹⁵ The Wasa Ship is a war ship that sank in Stockholm Harbor while on its maiden voyage in 1628 and remained under water for 350 years until it was lifted safely to shore and made into a museum.

colored leaflet is written by Caroline Constant, an Associate Professor of Architecture at the University of Florida. Obviously she had toured the Cemetery because her words capture the majestic beauty of the place. However, just as obvious is the fact that she is a secular Christian. Or else, she could not have described the Woodland Cemetery as "a triumph over Christian iconography" as she does in the leaflet. Again Simmel comes to mind; this time in connection with how familiarity prejudices our perceptions. Simmel notes that the stranger "is freer practically and theoretically; he surveys conditions with less prejudice, his criteria for them are more general and more objective ideals; he is not tied down in his action by habit, piety, and precedent."¹⁶

To illustrate Simmel's point, my husband, Erik, collects old and unusual clocks so that there is always chiming, ringing, cuckooing, or ticking going on in our house. Many of the "chimers" check in every fifteen minutes with a few melodic tones. However, we are so used to the sounds that we have become oblivious to the background noise. It is only when we have guests and forget to disengage the clocks close to the bedrooms and on the stairwell wall that we are reminded that our house is not "normal." On those occasions, our guests look absolutely haggard at breakfast and generally volunteer that they did not get an ounce of sleep because of all of the noise - "like trying to get to sleep in a clock store," said one irate guest the morning after a night in our house.

By contrast, both Erik and I are disturbed during the spring mating season for frogs when the shrill of the male frogs in our garden pond is incessant for a few weeks. But, that is just it; it is not a sound that is a long-term part of our environment or we would stop hearing it. That is what happened when the cicada were here for an entire summer a few years back and we stopped hearing the shrill sound (exactly the same sound as the male frog mating call) after a couple of weeks, even though the cicada were here for a couple of months--mating, reproducing,

Ibid., 403.¹⁶ Ibid., 403. Wolff (New York: Free Press, 1950), 402-408, 403.

and dying with their thin amber shells left as the only reminder of the puzzling orgy that takes place only once in every 28 years. Yes, I am certain that it is only the lull of familiarity that allowed Constant to portray the Woodland architects who had designed the five chapels, and doubtless had an input in selecting their Christian ornamentation, in the following manner:

Asplund and Lewerentz rejected traditional European prototypes for the cemetery, the city of the dead or the paradise garden, and turned instead to forms embodying more primitive Nordic associations in order to renew and revitalize landscape traditions. Their starting point was the site itself. Transcending any dependence on traditional Christian iconography, they relied primarily on attributes of the landscape - hill and valley, earth and sky, forest and clearing, meadow and marsh - to invoke associations of death and rebirth in a landscape of psychic dimensions. [...]

At the entry a monumental semi-circular forecourt leads to an open lawn, free of burial markers, that imparts a sense of serenity to the landscape. From here a large granite cross is the only object to break the horizon. It provides a threshold to the three chapels perched at the end of the clearing, endowing visual and symbolic dominance to the landscape. (Emphasis Added.)¹⁷

When does a large granite cross cease to be Christian iconography? When it has become so familiar that it is like our clocks, just so much background noise of which we take no note unless someone - a *stranger* - calls it to our attention. It is significant that the author of the leaflet text is domiciled in the U.S. - a land where Christian iconography is so familiar in public life (e.g., Photo C below) that the highest court in the land could rule that "the nativity scene--the Christian representation of the divine birth of Jesus--is not a *religious* symbol."¹⁸

¹⁷ (Emphasis Added.) Caroline Constant, *The Woodland Cemetery in Stockholm* (Stockholm: The Cemetery Association of Stockholm, May 1998 leaflet).

¹⁸ Alan M. Dershowitz, *Chutzpah* (New York: Simon & Shuster, 1991), 332. Dershowitz is referring to the case of *Lynch v. Donnelly*, 465 U.S. 668 (1984).

Within the religious community, questions about Bush's initiatives



George W. Bush, speaking at the 1999 Christmas Eve service in Colfax, 1999, last year, with Bush-based anti-abortion activists at the core of his conservative base.

**President Bush and Jesus of Nazareth
Photo C**

In commenting on the familiarity of Christian iconography in American political life, especially around election time, noted jurist Alan Dershowitz has stated that it is common for political candidates to "wrap themselves in the cross as well as the flag."¹⁹ Far from viewing

¹⁹ Ibid., 330.

the practice as "harmless" civil religion, Dershowitz likens the practice of public officials waving the flag in one hand while holding the cross in the other as making Christianity an establishment religion in the U.S. Moreover, to the extent Dershowitz recognizes civil religion as a secular practice, he notes that it is a dangerous one: "This backdoor method of 'establishing' the majority religion by secularizing it is dangerous both to the religion and to the Constitution."²⁰

²⁰ *Ibid.*, 326.

Chapter 3

The Red Herring: Church-State Separation

PART I

"The" Election

October 8, 2001, Teologiska Institutionen, Lunds Universitet, Sal 215

Göran: *Vi körde 4 bussar med 250 respondenter på varje tur.*

Gwen: *Usch, fick dom sitta kvar på bussarna mens dom fyllde i enkätformulären eller kördes dom någonstans lite mera bekvämt?*

Göran: *Nu tror jag att du har missuppfattat någonting, det är inte transport det handlar om. Det gäller ledningar i en dator!*

English Translation

Göran: We ran 4 busses with 250 respondents each time.

Gwen: Wow, did they have to stay on the busses while they completed the questionnaires or were they taken some place more comfortable?

Göran: I am afraid you have misunderstood. This is not about transportation; it is about feeding data into a computer!

Göran Gustafsson, Professor in the Sociology of Religion at Lund University, held a special session of his Fall 2001 seminar in the Advanced Sociology of Religion (*Högseminariet i Religionsociologi*) on Monday, October 8, 2001, to share with our seminar group (a varied group of a dozen or more professors, researchers, Lutheran priests in academia, post-doctoral students, and graduate students) the results of a nationwide exit poll administered in connection with the first independently held election of The Church.

Prior to its disestablishment on January 1, 2000, the election of the members of the governing boards of The Church was an integral part of the general election administered by the Swedish Government. However, separation of church and state meant that The Church was free to hold an autonomous election in accordance with its own by-laws, rather than following the

dictate of a law enmeshed in the Swedish Constitution. Gustafsson, a skilled demographer, had been selected by the Research Advisory Board of The Church well in advance of the historic September 16, 2001, election to prepare a questionnaire for use in an exit poll. The purpose of the poll was to get some sense of the voter characteristics of those voting in the first independent election. Indeed, since these would be people who were at the polls specifically for the purpose of having a say in the affairs of The Church rather than voters who happened to be at the polls anyway to vote in the general election, The Church could get a real sense of its constituency. Fortunately, the voter turnout had exceeded all expectations!

Gustafsson had culled the demographic data, which he was about to share with us when I interrupted with my simple-minded but sincerely asked question. I was having a difficult time figuring out the logistics of the exit poll operation. Assuming Gustafsson was talking about the number of passengers on each bus, I wondered why and how they had managed to pack 250 people on one bus. I knew it was customary to use an "accordion-middle" double bus for airport transport in Sweden, but I had never seen longer articulated busses than double length. Certainly, I reasoned, the discomfort must have influenced the quality of the responses they collected from these poor people who were packed together like sardines while completing a 3-page questionnaire! I had visualized the busses as being parked outside of the voting polls with fresh-faced young people approaching voters as they exited the polls and asking them to take "just a minute" to fill out a questionnaire.

One reason for my confusion was a dated Swedish vocabulary. I had not actually resided in Scandinavia since 1978 when I served as Legal Affairs Officer at the American Embassy in Copenhagen. Therefore, even though I was well into my field research by the time of Gustafsson's seminar, I was still playing "catch-up" in terms of learning Swedish words for technology that had come into common use since I departed from Scandinavia 23 years before; e.g., laptop computers, microwaves, VCRs, CD burners, faxes, e-mail, etc. Another reason was my lack of any technical knowledge about how a computer converts raw data into more palatable

material. As it turns out, I subsequently learned from my husband (an engineer) that the English word for those data transports is also "bus."

Changing While Staying the Same

Well, once Gustafsson brought me into the 21st Century, the seminar could get underway; and he gave us copies of the cover sheet that accompanied the Questionnaire that had served to emphasize for the respondents the importance of the historical event in which they had just participated:

*The Church Election today is in many ways **something entirely new in the life of the Church of Sweden**. The Church is completely in charge of the voting procedure and you who are voting are not just choosing the leadership at the parish level, but also the leadership of the Diocese Council (stiftsfullmäktige) and the [national] Church Assembly (kyrkomöte).¹*

Gustafsson gave us printouts of the election results at both the diocese level and the national level. Of course, it is at these higher levels of governance that one would expect to see any changes as a consequence of separation of church and state.

Diocese Level Results

There are thirteen diocesan jurisdictions within The Church, covering the whole of Sweden - a country the size of California with less than one-third of its population. Approximately 82% of Sweden's population of 9 million has membership in The Church - a surprising statistic given that 20% of Sweden's population is of immigrant stock. However, Nordic immigrants (particularly from Finland) constitute 5% of the foreign population. The high percentage of membership in The Church also reflects the fact that it is not unusual for non-Lutherans (immigrants and indigenous Swedes alike) to maintain dual church memberships. That is, they

¹ Translation from Swedish by Author. (Emphasis Added.) Voting Management, Church of Sweden, "Some Questions for you who Voted Today in the Västerhaninge-Muskö Congregation." (*Några frågor till Dig som röstat idag i Västerhaninge-Muskö församling, "Valledningen inom Svenska kyrkan.*) Cover Sheet attached to Questionnaire distributed at specified voting site.

are registered as members of The Church and of some other religious denomination.² Hence, membership in The Church does not imply commitment to Lutheranism. In fact, one member of our seminar group, Sociologist Eva Hamberg (who is also a professor in the Sociology of Religion at Lund's Theological Institute), has described membership in The Church as having more to do with commitment to a particular politico-cultural ethos than to religious belief:

That more than 80% of the population belongs to the Church of Sweden, even though only a little minority expresses a Christian belief and participates in The Church's worship services, may seem paradoxical. However, it is explained by the fact that membership in the [Lutheran] Church in the Nordic countries does not necessarily express a commitment to Christianity, but to other factors. To belong to the Church of Sweden can be viewed as an expression of solidarity with Swedish Society and with its fundamental values.³

Consequently, even though those who voted in the election had an interest in the affairs of The Church (since they turned out for an election solely devoted to the leadership of The Church), no assumptions should be made with regard to the religiosity of the individuals who voted. This is inconsequential for the immediate inquiry since we are investigating how, not why they voted. That is to say, how they voted is useful for anticipating how *the life of The Church* will change as a result of its new-found autonomy. Table 4, below, shows the slates in the Diocese contest. It is only slate No. 6--the POSK (Party for the Politically Uncommitted in the Swedish Church)--that claims no political affiliation. I found the name very funny and it took all the self-restraint I could muster to say nothing. However, I felt that I had already used up my share of seminar time with my "bus" inquiry. Nonetheless, different versions of the name kept popping into my head - the "nonparty, party" or the "nonpolitical party, party" or even the "party parting with the political."

² "Svenska kyrkan tycks behålla sina medlemmar" (The Church of Sweden Appears to be Retaining its Members), *Aftonbladet*, October 29, 1999. Online. Accessed 11 March 2003. <http://www.aftonblade.se/vss/telegram/0,1082,1928151_INR_p_19991029,00html>.

³ Translation from Swedish by Author. Eva Hamberg, "Kristen tro och praxis i dagens Sverige," *Världsbild och mening: En empirisk studie av livsåskådningar i dagens Sverige*, ed. Carl Reinhold Bråkenhielm (Nora: Nya Doxa, 2001), 33-65:57.

Table 4
Candidates (by Slate) for Diocese Council Seats

<u>Swedish Name</u>	<u>English Equivalent</u>
(1) Socialdemokraterna	Social Democrats
(2) Centerpartiet	Center Party
(3) Folkpartiet liberalerna	Liberal Party
(4) Kristdemokraterna	Christian Democrats
(5) Moderata Samlingspartiet	Right Wing Party
(6) Partipolitiskt obundna i Svenska kyrkan (POSK)	Party for the Politically Uncommitted in the Swedish Church ("POSK")
(7) Vänsterpartiet	Left Wing Party
(8) Annan nomineringsgrupp	Candidates of Other Groups

I had picked up one of the POSK brochures before the election. It was a *nonparty* clearly on the defensive, despite the fact that if separation of church and state means anything (and my argument is that it does not mean nearly as much as most people think), it would have been the other slates that were "running scared":

A free and independent church is a church where the political parties do not have the power! With the separation of church and state (effective January 1, 2000), the influence of the State, the Swedish Parliament, and the Government over the Church of Sweden has been drastically reduced. Yet, the political parties are tightening their grip on the Church of Sweden. The Party for the Politically Uncommitted in the Swedish Church in Lund is working to minimize the influence of the political parties over the Church. This is best accomplished by adopting a practice of electing individual candidates [not political party platforms] at all of the decision-making levels of the Church of Sweden.

Elected officials of the Church should be selected on the basis of their commitment to the Church not to some political party. It is those who involve themselves in the Church's activities who ought to also have responsibility for making decisions. In many lands with [national] churches like our Swedish Church (e.g., Finland and Germany), they are able to conduct church elections without the political parties becoming involved. Therefore, the candidates that are on our slate have been selected from among those who attend the worship

services.⁴

Alas, the POSK Party got only 13.1% of the vote, far behind the second place Right Wing Party (*Moderaterna*), which garnered 20.4% of the vote. This, despite the fact that during the 1998/99 session of the Swedish Parliament, the Right Wing Party had joined forces with the Left Wing Party to introduce Proposition K11, opposing subsidization of The Church (after disestablishment) to help alleviate some of the expense that The Church incurs in preserving historical and culturally valuable church properties.⁵ The other co-sponsor of Proposition K11--the Left Wing Party--managed to rake in 3.7% of the vote. The Left Wing Party had shed "Communist" from its name since the time I lived in Sweden in the mid 1970s. Then, the Party was known as "The Left-Wing Communist Party" (*Vänsterpartiet Kommunisterna*).

The top vote drawer in the historic election was the Social Democratic Party, which garnered 38% of the vote. The *Christian* Democratic Party came in at fourth place with only 8.3% of the vote - so much for name recognition. Perhaps the Christian Democratic Party made such a poor showing because it, like the POSK *nonparty*, had let it be known that it was in favor of The Church amplifying its identity as a "religious community" and abandoning its role as a political actor:

*The increasingly obsolete role of national church and authority should be replaced with a clear and amplified identity as a people's church and religious community. The Church of Sweden must, precisely like other churches and congregations, have complete freedom to decide its own affairs. The widespread sentiment regarding the necessity of such reform is also shared by the Christian Democratic Party. During the time that we, the Christian Democratic Party, held the Church Minister's Seat in the Government, we took the initiative to push the church-state issue forward. The studies that were conducted at our behest laid the important groundwork that made it possible for the Parliament and the 1995 Church Meeting Congress to arrive at an agreement-in-principle on the issue.*⁶

⁴ Translated from Swedish by Author. (Emphasis in Original.) POSK, *Partipolitiskt obundna i Svenska kyrkan, Kyrkoval 16 september* (Lund: POSK, 2001 campaign brochure).

⁵ Riksdagen (Swedish Parliament), "Konstitutionsutskottets betänkande 1998/99:KU28." Accessed 16 April 2000. <<http://www.riksdagen.se/debatt/9899>>.

⁶ Translated from Swedish by Author. Kristdemokraterna Homepage. "Vår politik," March 2000. Accessed 29 October 2000. <<http://www.kristdemokrat.se/default.asp>>.

Church Assembly Results

The highest decision making body of The Church is a national body, the Church Assembly (*kyrkomötet*) which has 251 members. The election results for seats on the Church Assembly replicated the results at the diocesan level, with the exception that the Left Wing Party did not run a slate, allowing the Right Wing Party to increase its share of the vote from 20.4% to 21.1% and the POSK *nonparty* to increase its share from 13.1% to 14.1%. The Social Democrats were again in first place, with 37.8% of the vote. Table 5 summarizes the winners and losers at the national and diocesan levels in the historic election of September 16, 2001:

Table 5
Election Results for Diocese Councils and Church Assembly Seats

Political Party (English Equivalent)	Diocese Councils	Church Assembly
(1) Social Democrats	38.0 %	37.8 %
(2) Center Party	4.8	4.9
(3) Liberal Party	4.9	4.1
(4) Christian Democrats	8.3	8.7
(5) Right Wing Party	20.4	21.1
(6) POSK <i>nonparty</i>	13.1	14.1
(7) Left Wing Party	3.7	---
(8) Candidates of Other Groups	1.8	3.1

Hence, the major players at the national level, as at the diocesan level are politicians with political commitments and agendas, not religious. Thus, although The Church no longer has a Minister's Seat in Government, it is still being run by political actors, not religious actors; and these political actors have pledged allegiance to the same political parties as the political actors seated in the Swedish Parliament. The message was sent loud and clear that the voting constituency of The Church wants politicians in the driver's seat. Again, these were not casual voters who just happened to be at the polls. These voters had made a point of going to the polls specifically to have a say in who should lead the newly privatized Church of Sweden. And,

considering the age of those who voted, getting to the polls may have required some effort. Of those who voted, 35.8% were over the age of 60; in fact, 7.2% were between 70-79 years of age. A full 61.4% of the voters were over 50 years of age.

Prior to the election, I had taken an informal survey of the fifteen graduate students living in my corridor in the Vildanden Graduate Student Housing complex to see who intended to vote in the historic election. There were sixteen of us sharing a kitchen. The students were aged 23-25; two were Jewish and one was a Canadian citizen. The remaining twelve were members of The Church and, thus, eligible to vote. Nary a one intended to vote; they all told me it was unimportant; even Martin and Thomas who every other Saturday were in the Lund Cathedral listening to the free organ concerts - concerts at risk of being discontinued depending on the election results at the parish level, as were the generous open hours and free tours of the historic Cathedral with the massive astronomical medieval clock covering an entire wall. Consequently, most of those who voted in the election were old enough to remember the days before the welfare state and perhaps felt it was important to have The Church continue to function as a political actor - one that could be relied upon to put moral issues on the State public policy agenda.

A Bifurcated Theocracy?

Neither the demystification of societal institutions nor structural differentiation necessarily results in a diminution of religious influence in a society or in its people. Indeed, one ought to question whether the demystification of institutions or structural differentiation has anything at all to do with the influence of religion, either in society or in the individual conscience. In other words, why not discontinue thinking of religion in connection with laws and legislation? Indeed, it is quite conceivable that humans retain religious faith and keep religious meaning in their lives so long as all societal institutions are considered God-given and so long as all religious institutions fulfill important societal functions without regard for their religious character.⁷

Certainly, there has been nothing in the behavior of the Archbishop of The Church, K.G. Hammar, to indicate that he sees the structural differentiation that took place on January 1, 2000, as having impacted upon the ability of The Church to mobilize shame when necessary to keep the State on track in fulfilling its responsibility to the impoverished of the world. Ten months after the historic church-state separation, Archbishop Hammar, along with four fellow members of the 23-member Christian Council of Sweden, dropped in on Parliament while it was debating a foreign aid bill. Not only did the Archbishop's presentation defy any notion that he felt he was out of his element due to the privatization of The Church, the tone of moral outrage in his delivery reflected confidence in the continuing role of The Church as the moral conscience of the nation! Indeed, the Archbishop so forcefully stated his case against the Government "abandoning its obligation" to the impoverished of the world that one long-standing member of Parliament, Alf Svensson, the leader of the Christian Democratic Party, retorted:

But, I recognize the Archbishop's style of argumentation. [...] It is well known that he has leftist views, which he has a right to have. But, I am justified in wondering what it means when the Church of Sweden's highest officer behaves in this fashion.⁸

And, this was just a warm-up. Before Svensson concluded his verbal assault on the good Archbishop, he had actually referred to him as a "hooligan in priest clothing."

⁷ *Translated from Swedish by Author. Gustafsson 2000, 240.*

It is, therefore, safe to assume that with or without a Minister's seat in Government, The Church will remain active in politics. Thus, while structurally a part of the private sphere, The Church will continue to be influential in establishing the public policy goals of the nation and in helping the Government implement the internal public policy agenda. What should be made of the Janus-faced position of this new member of civil society? The Church has a registered constituency of 7.4 million people in a country with a population of only 9 million. Virtually every member of the Swedish Parliament is a member of The Church, and the same is true of the officials constituting the "powers that be" in the Swedish Government.

Moreover, with assets of \$30 billion, The Church is a major economic player in Swedish society.⁹ In order to grasp the enormity of The Church's presence in Swedish Society, it is useful to compare it with other large public entities in Sweden. This is done in Chart VI depicting the relative position of The Church with respect to other sources of public employment in the year prior to its disestablishment. At the dawn of the new millennium, The Church was the third largest public sector employer in Sweden with 25,000 employees. Only the university system and the military had more employees. Since the onset of the millennium, the number of employees of The Church has grown to 27,000.¹⁰

⁸ Translated from Swedish by Author. Quoted in Arne Thorén, "Hulliganer i prästkappa," *Nordstjerna*, 128:37 (October 12, 2000), 8.

⁹ Included among the assets of The Church are thousands of acres of forests (which generate income) as well as thousands of church buildings (i.e., worship space and community centers) along with adjacent churchyards and autonomous cemeteries. All properties, except the forests require enormous expenditures for upkeep. And, Proposition K11--the jointly sponsored bill of the Right Wing and Left Wing Parties--made its mark even though the bill did not become law. The Church is only receiving an interim subsidy to preserve historical and culturally valuable church properties; and this subsidization is scheduled to expire at the end of 2009.

¹⁰ Svenska kyrkan, "Svenska kyrkan i korthet." Accessed 13 April 2003. <http://www.svenskakyrkan.se/fakta-om_svenska_kyrkan.asp>.

Chart VI

Four Largest Public Sector Employers in Sweden (Employees in Thousands)

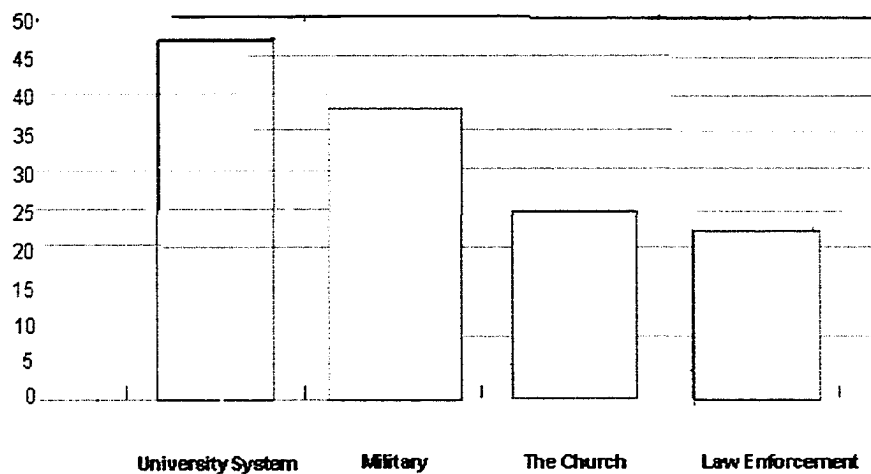


Chart Based Upon Data In 1999 Statistical Yearbook of Sweden

For those unfamiliar with the social scene in Sweden, it is difficult to imagine the importance of The Church as a social institution. Because of its extensive church properties and its thousand-year history as an institution in Swedish society (first a Catholic institution and then a Lutheran one), The Church has a monopoly on *place* in terms of commemorating passage through the lifecycle and in celebrating holidays whether secular such as the end of the school year and the start of summer (a uniquely Swedish celebration) or religious such as *Julotta*, an early morning worship service on Christmas Day. As an illustration of The Church monopoly on *place*, see Photos D and E below of an "American Thanksgiving Day Celebration."



Photos D and E - Thanksgiving 2001
Helgeands Parish House, Lund, Sweden

When I decided to host the Thanksgiving Dinner for those with whom I worked and lived during my field research period in Lund, the only banquet facilities available for a private party of 38 were in the various parish community centers of The Church!

The point that I wish to emphasize is that notwithstanding the high degree of secularity of the Swedish people,¹¹ the facilities of The Church constitute important social space in Swedish society. The Church offers a variety of programs during the week at the various parish community centers, and these centers are also available to other formal and informal voluntary associations (at no charge) to serve as sites for putting on community events. Therefore, they become gathering places for local clubs and charitable organizations, senior citizens groups, after-school programs, exercise groups, and various other community activities. In the Lund area alone, there are over a dozen parish churches and community centers, plus two majestic cathedrals. One could keep a busy social calendar just attending their offerings of lectures, concerts, exhibits, etc. During my stay in Lund, I attended some very nice weekday luncheons with travelogues, lectures, and musical entertainment at parish community centers in the Greater Lund area. In short, in Lund, The Church is a worthy competitor with Lund University in terms of social offerings to the general public. Moreover, The Church plays an important part in both preserving and reproducing Swedish culture. Without having visited Sweden, it is hard to imagine the contribution that the architecturally unique parish churches with their pristine churchyards make to the pastoral landscape that has come to signify the peaceful and slow pace of life in Sweden. In Photo F below is the Skee Church where my son Sven and my husband Erik were baptized (as were many generations of Carlsson's before them). Prominent in the

¹¹ According to a study conducted by the Research Advisory Board of The Church, during one fall weekend (September 24 - 26, 1999), only 3% of the membership of The Church had actually attended a church service. During that same weekend, 20% of the membership of the immigrant churches in Sweden took advantage of their service offerings. Jonas Alwall, "Invandrade grupper trossamfund och församlingar," *Det religiösa Sverige*, ed. Margareta Skog (Örebro: Libris, 2001), 162.

foreground of the photo is the Skee churchyard where Sven's paternal grandparents, and great grandparents are buried.



**Photo F. Skee Kyrka
(11th Century)**

These parish churches are an important part of Swedish history and the Scandinavian cultural heritage. For instance, Skee Church is on the west coast of Sweden (near the Norwegian border) in the province of Bohuslän, an area that has been part of Norway and Denmark in its long history. Therefore, Skee Church although now Swedish Lutheran, has been Norwegian, Danish, and Catholic (before the Reformation)! I should not leave the impression that everyone

in Sweden is positive to the cultural contribution made by the churches—500 of which have towers with ringing bell clocks, as the environmentalists against "noise pollution" have noted.¹²

Very important in terms of it being a bearer of Swedish culture is the fact that it is the traditional *place* to commemorate life cycle events for Swedes at home and abroad. Outside of Sweden, The Church has churches scattered throughout the world in 40 different locations. Also, The Church offers summer programs in Sweden designed especially for confirmation-aged Swedes (i.e., 14-year olds) living abroad so that they can attend classes in Sweden during the summer to prepare for confirmation in The Church, without having to miss any of their regular school year in the country where they are temporarily domiciled.

My son Sven participated in such a summer program at age 14. Below, Photo G shows Sven with his confirmation class; he is holding the cross. In Photo H, Sven is pictured at a younger age attending the end-of-the-school-year celebration (for the Swedish Language School he attended) in the Church of Sweden in Manhattan; here he is standing by the flag. (Sven was 12 years old at the time.) It is worth noting that Sven, who is now 22, also spent three summers living in a Buddhist Temple in Japan and studying Buddhism. This all goes to show that being a member of The Church is not about being Lutheran, it is about being Swedish.

¹² "Socialstyrelsen rekommenderar tyst kyrkklocka," *Sydsvenskan* August 19, 2001:A6.



Photo G. Confirmation in Gränna, Sweden



Photo H. End-of-School-Year Ceremony in Church of Sweden, Manhattan

In light of the unchallenged monopoly of The Church, it is not too farfetched to examine whether The Church, even as a private entity, is best viewed as an agent of the Swedish State. Has The Church been dispatched into civil society to do the State's bidding in restructuring the diverse and fledgling immigrant religions so that they will better fit into the footprint of The Church? Religion in Sweden is secular Christianity, no more, no less. Might the Swedish State have delegated to The Church the task of standardizing the religious practices of the assorted religions in Sweden's religious sector? Sociologist and Ethicist Alan Wolfe described just such an occurrence in a chapter of *The Limits of Legitimacy* entitled, "The Franchise State at Work":

Almost by accident, the idea was advanced of encouraging cooperation among businessmen, not by forcing it on them through the state, and not by suggesting it in a way that would have no impact, but through a combination of the two. Specifically, state power itself could be delegated to a private agency that would then exercise it in the name of the state. When this was done by a trade association, all needs for inner class cooperation could be met. That public authority was being exercised could not be doubted, but at the same time the form of this authority came in the clothing of one's own colleagues, somehow making it all seem more acceptable. Compulsion, in other words, could be used if things came to that, but in all likelihood they would not, because a juggling of the distinction between public and private authority would allow informal negotiations to work out (privately) the conflicts.¹³

Recall the situation related in Chapter 2 in which Muslims were coerced into compromising the integrity of their burial ritual (by using caskets) in order to secure space in the Furets Woodland Cemetery in Mark, which would not have Christian symbolisms in plain view. Recall also from Chapter 2 the incident with the Muslim decedent from Landskrona whose family wanted him buried in a nearby public cemetery in Malmö, but had to battle the local parish cemetery authority for four months before the decedent was finally laid to rest in the Malmö cemetery.

Particularly with respect to the burial practices of non-Christians, it can be anticipated that a lack of bargaining power will force them to continually modify their burial rituals until they are more attuned to what is customary in Sweden. Because of the secular legislation--both RFL

¹³ Alan Wolfe, *The Limits of Legitimacy* (New York: The Free Press: 1977), 128.

and UNL--that was enacted in 1999 in preparation for disestablishment of The Church, the loci for settling disputes arising from differing religious worldviews are no longer institutionalized adjudicatory forums within the state bureaucracy. Instead, the confrontations have been moved to the Lutheran frontier where dispute resolution is handled *mano a mano*--the elephant vs. the ant. In the legal arena, minority litigants could call the State to task to make good on the lavishly enacted DML found in the Swedish Constitution--DML that protects the civil liberties of citizens and foreigners alike. However, in the Lutheran outback, the rule of law gives way to the art of negotiation and, as the Muslims in Mark realized, "a bird in the hand is worth two in the bush."

Looming large are the issues of religious freedom and the democratic process. In all religious traditions, the burial ritual is among the most sacred of observances. In Part II of this Chapter, I will focus on the entangled web of RFL and UNL that enabled the parish cemetery authorities in the Furets Woodland Cemetery case and the Landskrona case to circumvent the impressive body of DML that Swedish lawmakers saw fit to put in place to protect religious liberty and individual moral autonomy of citizen and foreigner alike. The discussion will draw on the Table 1 RFL in Chapter 1, "The Legal Matrix" in Table 3 of Chapter 2, and on Table 6 below, "How Rights are Wronged in Sweden":

TABLE 6. HOW RIGHTS ARE WRONGED IN SWEDEN: DML and RFL

DML (*de minimus* legislation) in Restated Constitution of Sweden

Chap. 1 Basic Principles

2§ Opportunities should be promoted for Ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.
(SFS 2002:903, Ch. 1, Art. 2)

Chap. 2 Basic Freedoms and Rights

1§ Each citizen shall have the right to:
[...]

(6) Religious Freedom - to alone, or together with others, practice his religion.
(SFS 1974:152, Chap. 2, Art. 1)

22§ A foreigner within the Realm has equal rights with a Swedish citizen with respect to:

(1) protection against coercion to participate in [...] or to belong to any religious congregation or other association.
[...]

Unless otherwise provided by special rules of law, a foreigner within the Realm has equal rights with a Swedish citizen also in respect of [...] freedom of expression, freedom of information, freedom of assembly, freedom to demonstrate, freedom of association, and freedom of religion.
(SFS 1974:152; SFS 2002:904)

23§ No law or other regulation shall be enacted which conflicts with Sweden's obligation as a member of the European Union to protect human rights and basic freedoms. (SFS 1994:1468)

RFL (religion-friendly legislation) Burial Law and the Moral Agenda

Chap. 2 Cemeteries

Public Cemeteries

1§ The local parishes within the Church of Sweden shall provide and maintain public cemeteries with a sufficient number of graves and other burial structures of an appropriate type. In special cases, the Government may determine that a municipal authority instead [of a local parish] shall provide and maintain public cemeteries for those who are resident within the particular municipality.

Private Cemeteries

6§ Only religious communities or [nonprofit] foundations that have received authorization may provide and maintain private cemeteries. Requests for authorization are to be filed with the provincial authority in the province where the cemetery is located or to be located.

7§ Permission to establish and maintain a private cemetery may only be given if there is a special reason and if it can be assumed that the religious community or foundation can maintain the cemetery and fulfill the obligations that befall upon the owner of a cemetery.

8§ Special provisos may be attached to the grant of permission to establish and maintain a private cemetery. (SFS 1999:306)

PART II

The Lives of Different Believers

The Disenfranchised

*The Law (new Burial Law) allows other denominations to have their own graveyards. - But, then one has to come to an agreement with The Church's Lutheran parish in the area. This is not always easy. We Catholics and the Muslims can attest to that.*¹⁴

In the above passage, a Catholic priest bemoans the fact that it is the local Lutheran parish priest who "calls the shots" in terms of determining how the local parish will comply with its mandate to provide for the burial of non-Lutherans residing within its geographical territory. For burial of Christians (Lutheran or non-Lutheran), the relevant portion of the Burial Law is Section I, Chapter 2, which provides: "The parishes of The Church of Sweden shall arrange for and maintain public cemeteries with a sufficient number of graves and other burial arrangements of appropriate type."¹⁵ Where the burial needs of non-Christians are to be accommodated, the applicable section of the Burial Law is Section 2 of Chapter 2 of the Burial Law:

*The cemetery authority shall arrange for special graves for those not belonging to a Christian denomination either within its own administrative area or in a nearby vicinage.*¹⁶

Thus, when it comes to non-Christians, a parish cemetery authority has four methods of providing for their burial, any one of which will satisfy the requirements of the Burial Law. The four available options are set forth below in Table 7.

¹⁴ Translated from Swedish by Author. Åke Göransson quoted in, "Sverige blir mångreligiösa: Samma regler för alla trossamfund när kyrkan skiljs från staten" by Ivan Garcia, *Sesam* (July 7, 1999), Online. Accessed 9 November 2000. <<http://www.inv.se/pls/sverigemangreligiost.html>>.

¹⁵ Translated from Swedish by Author. See Table 3 with respect to how this law fits into the "Legal Matrix." SFS 1990:1144, Chap. 2, Sec. 1.

¹⁶ Translated from Swedish by Author. SFS 1990:1144, Chap. 2, Sec. 2.

Table 7
Cemetery Authority Options for Handling Non-Christian Burials

Option 1. Make arrangements for the burial of any non-Christian decedent in a neighboring vicinage of The Church where there is a cemetery that can accommodate the burial needs of the decedent.

Option 2. Construct a separate section in an existing public cemetery for burial of non-Christians.

Option 3. Construct a completely new autonomous public cemetery for all non-Christians.

Option 4. Construct new autonomous public cemeteries for specifically designated non-Christian denominations; e.g., a Muslim cemetery, a Jewish cemetery, a Secular Humanist cemetery, etc.

It will be recalled that Sweden requires taxpayers to support a national burial plan by paying a mandatory burial fee (*begravningsavgift*), referred to herein as a "Burial Tax," because of its non-elective nature. (See, Legal Matrix set forth in Table 3.) The "basic burial" included in the burial plan entitles a decedent to a 25-year grave occupancy right, at which time the grave is recycled. For Muslims and Jews, in particular, recycling of graves after a 25-year period is not a viable alternative due to the eschatology of their respective faiths (namely, that on Judgment Day, God will come to the cemetery to judge "the quick and the dead"). Since the 25-year limit is generally applicable to the graves in regular public cemeteries, these cemeteries must be eliminated from consideration for the indiscriminate burial of Muslims and Jews.¹⁷

Although, any of the four options set forth in Table 7 satisfies the legal requirements, it is certain that both Jews and Muslims prefer Option 4. Of course, since Option 4 is the most expensive alternative, it is the alternative that is least likely to be selected by cost-conscious

¹⁷ Additional factors weigh against burial of Muslims and Jews in predominantly Lutheran public cemeteries. For example, only Jews can be buried in Jewish graveyards, and thus it can be assumed that few Jews would willingly consent to burial in a Christian graveyard. Moreover, we have seen that Muslims choose not to be buried near Christian symbolisms. Of course, crosses are likely to be present on graves where Christians are buried so segregating Muslim graves from Christian graves is the only practical solution.

parish cemetery authorities. Moreover, parish cemetery authorities will risk little by selecting the cheapest alternative available any time the need arises to bury a non-Christian decedent.¹⁸ This is because non-Christians are unable to register a protest at the polls since they are not eligible to vote in The Church election. Notably, foreigners are eligible to vote in municipal elections in Sweden, which means an advantage accrues to Non-Lutheran immigrants in Stockholm or Tranås in that they enjoy political clout. Thus, if residents in those two cities feel that tax revenues should be allocated to building non-Lutheran cemeteries, they can make their voices heard at the polls.¹⁹

Clearly, non-Christians have a lot at stake in terms of the decision-making within the various Lutheran vicinages as to how it is determined to comply with the Burial Law mandate to provide "special graves" for non-Christians. Of course, a strong argument can be made that all non-Lutherans should be allowed to vote for (and against) the leadership of The Church at the parish and diocesan levels. Given that decisions are made at these levels to determine how The Church's obligation to provide for the burial of non-Lutherans will be met, non-Lutherans clearly have an interest in which political slates take the leadership reins at the parish and diocese levels, even if they are not allowed to vote for the 251 national officers who will be seated on the Church Assembly. Yet, non-Lutherans have never been able to vote in The Church Election (even when the Swedish Government administered the election as part of the general election). Alas, only registered members of The Church have a say in selecting the leadership of The Church and, thus, have the ability to exert influence in terms of how The Church manages its internal affairs. Of course, because of the continuing public role of The Church, its internal affairs greatly effect the lives (and deaths) of non-Lutherans.

¹⁸ It is possible that in an area where there is a good deal of negative sentiment against non-Christians that the parish cemetery authority will fare better by always choosing the cheapest alternative when called upon to supply graves for non-Christians.

¹⁹ It may just be a coincidence, but the assessment rate for the Burial Tax in Stockholm is one of the lowest in Sweden.

Is Church-State Separation Merely a Red Herring?

The decision of the Swedish Government to vest a private Lutheran church with authority to coerce non-Lutherans into adhering to a Lutheran standard in burial must be viewed in light of two facts. First, Muslims constitute the largest immigrant minority in Sweden and, thus, it may be assumed that Government tactics that appear to be aimed at coerced conformity with Lutheran norms are most likely targeting the Muslim population. Second, a widely held view in Sweden is that Islam is in need of rehabilitation before it can be accepted as a religion on a par with other religions in Sweden:

In 1990, a survey was undertaken which showed that 65 per cent of the Swedes held a negative personal view of the Islamic religion, and that as many as 88 per cent regarded Islam as not being consistent with a democratic system of the Swedish type.²⁰

Aside from the *religious advocacy* implicit in making parish cemetery authorities the rule and municipally run cemetery authorities the exception, there is the *embeddedness* problem as well in the 1999 revisions of the Burial Law in anticipation of the "disestablishment" of The Church. Embedded in the Burial Fee computation section provision is preferential treatment for Lutherans. With the onset of the "new" relationship between church and state, a uniform rate of assessment for the Burial Tax is guaranteed to all Lutherans whereas the assessment rate for non-Lutherans is dependent upon their place of residence. Prior to disestablishment, the Burial Tax was called a "Parish Tax" and the mandatory tax was based upon a locally determined assessment rate for both Lutherans and non-Lutherans alike. However, now disparate treatment of Lutherans and non-Lutherans is embedded in the "secular" law:

Determination of the Burial Fee

4 § The Government or other authority designated by the Government shall utilize the recommendation of the [parish] cemetery authority to determine the assessment rate to apply for the payment of the Burial Fee by those who do not belong to the Church of Sweden. The Trustee (The Church) shall determine the

²⁰Jonas Alwall, *Muslim Rights and Plights: The Religious Liberty Situation of a Minority in Sweden* (Lund: Lund University Press, 1998), 188.

assessment rate for those who belong to the Church of Sweden. However, in situations where a municipality is the cemetery authority [i.e., in Stockholm and Tranås], the municipality shall determine the assessment rate. The assessment rate shall be based upon an independent accounting of the income and expenses related to the operation of the graveyards (Burial Law, Chapter 9, Article 4: SFS 1999:1268).

Thus, non-Lutheran taxpayers living in a parish where the local Lutheran church incurs high costs in managing the burial business (whether legitimately or as a result of inefficient management) wind up paying a higher Burial Tax than non-Lutheran taxpayers who have fortuitously settled within the geographical domain of a parish where the local Lutheran church administration runs a low-cost burial business.²¹ Late in 1999, a Swedish newspaper carried an article setting forth the difference in assessments for the Burial Tax (when it was still called a "Parish Tax") and the tax ranged from a low of .062% of taxable income to a high of to 2.48% of taxable income.²²

This provides a strong economic incentive for high-income earners who are non-Lutherans to become Lutherans or to pick up stakes and move from a parish jurisdiction where they are being assessed at the highest rate (2.48% in 1999) to one where they are assessed at the lowest rate (.062% in 1999). Since the Burial Tax covers only a "basic burial" no matter where you live and no matter what your religious preference, there is very little reason to pay up to forty times more for the same services. Because of this economic incentive, it can be argued that this is "coercion to participate in ... or to belong to" a Lutheran congregation in violation of Chapter 2, Article 22(1) of the Swedish Constitution. (See Table 6.)

²¹ There are strong arguments for establishing the Burial Tax on a nationwide basis so as not to penalize some taxpayers while benefiting others. Two graduate students in Economics at Luleå University attempted to establish a model which could be used by different parishes to standardize the computation of actual burial expenses and found the variations from parish to parish too great to come up with a useful model. Anders Granberg and Mattias Lundkvist, "Svenska kyrkan och begravningsverksamheten: en studie över förutsättningarna för kostnadsallokering," 18 Jan. 1999 Luleå Universitetsbibliotek. Online. Microsoft. Accessed 19 Oct. 2000. <http://epubl.luth.se/1402-1579/1999/037/index.html>.

²² Arne Norlin, "Så dyr är kyrkan," 9 Oct. 99 Aftonbladet ekonomi. Online. Microsoft. Accessed 12 Oct. 00. (Article title translated: "The Expense of Church Membership.")

A look at the administrative provisions of the Burial Law detailing how The Church is to supply the Government with the information that it needs to establish the Burial Tax assessment rate based upon the recommendations of The Church provides further evidence that church-state separation may have been more of a public relations ploy than a substantive change in the relationship between The Church and the Swedish Government:

The Church of Sweden shall by computerized medium inform the Government, or other authority designated by the Government, of the level of the [Burial] Fee assessment rates that it recommends for the following fiscal period. [...] In the same manner, the Church of Sweden shall provide the National Tax Authority with the additional information that it needs to calculate, assess, validate, and collect the Fees. (Burial Law, Chapter 9, 14 §)

Certainly, this sound like one branch of the Government giving instructions to another governmental department. In the least, it speaks of the creation of a principal/agent relationship between the Swedish Government and The Church.

Because the Burial Tax is supposed to cover the costs associated with running the cemeteries and not be used to cover any of the costs attributable to maintaining the Lutheran parish church buildings or payment of administrative costs related to the work of church personnel in carrying out the religious mission of the churches, separate books have to be maintained at the various parish churches. Of course, if any portion of the Burial Tax revenue is being used to cover the cost of running the churches, this not only results in higher assessments for the Burial Tax than necessary, it also has the effect of allowing The Church to use the tax dollars of non-Lutherans to support Lutheranism. Certainly, this would be unacceptable in that getting rid of the mandatory Church Tax--which had forced all taxpayers to support Lutheranism--was the main reason for disestablishment.

It is worth noting that The Church collects the Burial Tax assessed against Lutherans as an undifferentiated portion of the regular Church Dues (*kyrkoavgift*) whereas the Burial Tax is imposed as a separate assessment on non-Lutherans. That is, non-Lutherans must pay a separate Burial Tax in addition to any Church Dues payments that they make to their own faith communities. Thus, for employed non-Lutherans, there are two payroll deductions, one for

Church Dues and one for the Burial Tax. (Recall that under Table I RFL, Church Dues are collected by the Swedish Tax Authority.) Among the voices that have been raised in opposition to the disparate treatment of Lutherans and non-Lutherans in this regard is that of Ulf Lagerström, Executive Director of SKKF:

Another curiosity is that the Burial Tax for Church [of Sweden] members is included in The Church dues. One can ask the reason for this. Should not all taxpayers, without regard for their church membership, have their Burial Tax established and collected in the same manner? [...]

A uniform accounting of the Burial Tax for everyone, whether a member of The Church of Sweden or not, would be more in line with the type of impartiality expected in the matter of burial of the dead - a societal responsibility that is unique among public service obligations.²³

There is the added problematic of non-Lutherans having no right to demand to see the books of The Church as non-members. This places extra onus upon the Swedish Government to be diligent in keeping tabs on the "agent" to which it has granted access to tax revenues. Surprisingly, to meet its obligation, the Government has created 26 part-time ombuds positions to oversee the nationwide empire of The Church.²⁴ Needless to say, this falls far short of the level of fiscal accountability one expects when an outside vendor is entrusted with government funds. The Church is not required to hire independent outside auditors, but instead the Swedish Government has "dispatched the M.T.V. generation to monitor Enron," so to speak.

Moreover, the very title of "Ombuds" (*ombud*), rather than "auditor," suggests that these workers (who are free to determine how much or how little time they will devote to the job) are not there to look over the shoulder of The Church, but to serve as a liaison between the non-Lutheran community and The Church--even though the ombuds are officially assigned to local municipalities. This is either evidence of a surprising degree of confidence in The Church or an astonishing disregard for non-Lutherans on the part of the Swedish Government. The ombuds

²³ Translation from Swedish by Author. Ulf Lagerström, "Orimliga skillnader i utdebitering," *Kyrkogården*, 73 (August 2001), 3.

position pays a small stipend plus the chance to earn a few extra crowns each time an ombuds manages to "crash" a meeting at which parish officers are discussing the financial records of the parish. Just how rarely this happens is evident by the following excerpt from a recent *Kyrkogård* article:

The intent is that the Burial Ombuds work together with the parishes on issues involving the cemetery operations. But when it came to the annual audit, there were reports of a lot of hassles. It was not completely clear that the Ombuds should be invited to all the meetings where the burial operations were on the agenda and some of the Ombuds have had difficulty getting access to the information they need to express their viewpoint on the Burial Fee.

*'If one cannot get access to the necessary information, then it is difficult to do one's job,' says [County Assessor] Lars-Eric Anderfjärd. 'And I can imagine that even without the problem of access, the task would be difficult for some of the Ombuds. They have to be able to differentiate between what constitutes burial operations and what are activities associated with the congregation.'*²⁵

The Ombuds report that they are having difficulty even establishing communication with non-Lutherans for whom they are presumed to be advocates. Of course, where the non-Lutheran is an atheist, it is entirely possible that the person is not a member of any organized group with which the Ombuds could make contact. Contacting non-Lutherans on an individual basis is not practical, or possible, given the small number of Ombuds appointed to cover the entire country. One Ombuds, Eva Segerström, has noted that the immigrants that she seeks to make contact with to apprise them of their rights are too young to have experienced a death in the family so that they are just not interested. In fact, she mentioned that when she has written articles for local newspapers to help publicize the work of the corps of Ombuds, the only responses she has received have been from people wanting to air their hostilities toward immigrants.²⁶ However, even more problematic is the fact that people within the parish cemetery administration do not feel the need to be held accountable to non-Lutherans. Segerström has

²⁴ The Ombuds position is only a 4-year appointment since the program is not a permanently budgeted program!

²⁵ Translation from Swedish by Author. Eva Janson, "Dags att utse nya begravningsombud," *Kyrkogården*, 74 (June 2002), 9.

noted that the most difficult part about being an Ombuds is dealing with the attitudes toward her clientele as non-Lutherans:

I have heard people talking about heathen funerals [...] and some have said, 'We are here in the first place for our own.'²⁷

Consequently, with respect to their standing vis-à-vis Lutherans, non-Lutherans are no better off in terms of being treated equally after church-state separation than they were before. The Church is able to privilege its members by assuring them a uniform rate of assessment for the Burial Tax throughout Sweden, while non-Lutherans are assessed at rates gyrating wildly from area to area throughout the 930 vicinages with parish cemetery authorities in control of cemetery operations. Continued enjoyment of establishment status by The Church is evident in the fact that the Government is treating The Church as a trusted internal division of the government, rather than as an outsider that has been given access to taxpayer dollars and which should, therefore, be closely monitored.

The fact that the Government has made it unnecessary for The Church to establish contact with the non-Lutheran community on its own through implementation of some type of community outreach program aimed at non-Lutherans seems to be ill-advised, judging from the comment, "We are here in the first place for our own." This comment evidences an entrenchment that will only harden as time goes by and the positions of "We and Them" become firmly fixed.

²⁶ Eva Segerström, quoted by Eva Janson, *ibid.* 9.

²⁷ Eva Segerström, *Ibid.*

Chapter 4

PULLING IT ALL TOGETHER: A New Analytical Tool for Secularism

PART I

A Dubious Legacy: Xenophobic Social Theory

The European enlightenment constitutes the historical site from which Westerners typically approach non-Western traditions. That approach has tended to evaluate and measure traditions according to their distance from enlightenment and liberal models. Thus, Islamic states are typically regarded as absolutist, and the practice of public criticism is seen as alien to them.¹

Sociology is rooted in the scholarly work of European intellectuals who tilled the soil of the Enlightenment for an antidote to religion. As might be expected, the social theory sprouted in this foundation is more creative than scientific. Unfortunately, this means that Sociology's legacy consists of an early body of work that is narrative in nature and which evinces more than a trace of the xenophobia disdained by Anthropologist Talal Asad in the above quote. In this Chapter, we will start by taking a brief look at the work of three of the giant social thinkers from the early days of Sociology. Their work will help to shed light on why so-called secular states nonetheless engage in *religious advocacy*.

Echoing the premise introduced in Chapter 3, I mean to draw a comparison between the red herring of church-state separation and the "Enlightenment Narratives" of Sociology's "Big Three"—Comte, Durkheim, and Weber. My argument is that the so-called secular state is caught on the horns of the dilemma that plagued the Big Three; namely, how not to throw out the baby with the bath water. Although the Big Three were obsessed with getting rid of religion, they were equally concerned with maintaining the moral order. And, they lived in a time when even the most enlightened intellectual credited religion with having a central role in maintaining the moral

¹ Talal Asad, *Genealogies of Religion* (Baltimore: Johns Hopkins University Press, 1993), 202.

order.² Similarly, the influx of non-Christian immigrants to the predominantly Christian host nations of the West has made it obligatory for them to have civil law and state institutions (together referred to as "secular structures" hereafter) that are bereft of Christian influence, while the need to fulfill the *parens patriæ* role of the state has made severing all ties with the religious sector too risky.

The compromise settled on by the liberal secular states of the West is *religious advocacy* and this is accomplished with RFL or UNL. Although the emphasis of this Dissertation has been on RFL and UNL in Sweden, I have also presented examples of RFL and UNL from the U.S. and Great Britain. Today's secular state, then, faces the same dilemma that the earliest social theorists faced; to-wit, how to reap the benefits of religion-based morality without becoming too entangled with religion and tarnishing a secular image. Therefore, it will be "enlightening" to take a look back at how the founding fathers grappled with the need to maintain a Janus-faced position in the early days of Sociology.

The Enlightenment Narratives and the Moral Agenda

*No less than their predecessors [Comte and Marx], Durkheim and Weber approached human studies with moral and sometimes specifically political purposes. Their sociology was formed in response to particular social developments with the aim of affecting their outcome. Despite their rhetoric of value-neutrality and objectivity, they constructed social visions that carried moral and political import.*³

Sociology has manifested moral pretensions from the beginning. August Comte (the Frenchman who named Sociology) theorized that Sociology would "serve both as a positive science

² Rodney Stark has noted that the most widely accepted "functionalist claim" about religion is that it sustains the moral order: "That classic proposition, handed down from the founders, is regarded by many as the closest thing to a 'law' that the social-scientific study of religion possesses." Rodney Stark, "Why Gods Should Matter in Social Science," *The Chronicle of Higher Education*, XLIX (June 6, 2003), B8. (Hereafter, "Stark 2003.")

³ Steven Seidman, *CONTESTED KNOWLEDGE: Social Theory in the Postmodern Era* (Malden, MA: Blackwell Publishers, 1994), 85. (Hereafter, "Seidman 1994.").

of morality and as the basis for a new secular faith."⁴ Comte posited three stages in the evolution of human thought; namely, theological, metaphysical, and positive. Whereas traditional clergy were the leaders in stage one, and philosophers the guides in stage two, social scientists would be the prophets in stage three - the stage in which Sociology would integrate all knowledge with respect to the natural and social laws of mankind, thereby making it possible to take a scientific approach to human affairs.⁵

David "Emile" Durkheim—clearly the most influential writer in the positivistic tradition of Comte—extended the Comtean law of three stages to the five stages set forth in Table 8 below:

Table 8. Durkheim's Theory of the Evolution of Morality

FIVE EVOLUTIONARY STAGES OF MORALITY:

- 1) **Mysticism** - performance of sacred rituals to please the God(s)
- 2) **Christianity** - love of fellowman to please God. (Ritual still exists.)
- 3) **Protestantism** - moral functions of divinity sole *raison d' être*. (No Ritual)
- 4) **Spiritualistic Philosophy** - autonomous spirituality sans organized religion
- 5) **Autonomous Morality** - morality by reason alone

Durkheim introduced his evolutionary theory of morality in one of twenty lectures he gave on "Moral Education" at the Sorbonne in 1902 and 1903. Durkheim's lectures were part of a larger series of lectures dealing with the Science of Education. Hence, his lectures were crafted to elucidate how the French School System could build a curriculum that would help children develop into moral beings without resorting to religious instruction. Durkheim was lecturing at a

⁴ Paul DiMaggio, "Epilogue: Sociology as a Discipline," *Sociological Visions*, Ed. Kai Erikson (Lanham: Rowman & Littlefield Publishers, Inc., 1997), 185-215, 185.

⁵ Seidman 1994, 28.

time when compulsory secular education in public elementary schools was still relatively new in France, having only become a reality at the end of the 19th Century.⁶

The Catholic Church had always been in charge of education in the rural areas and the Bible had been the main textbook. Therefore, during this embryonic stage of secular education, there was still considerable resistance to the central government push for a completely secular curriculum in France's elementary schools (especially in the rural areas where the Catholic priests still wielded considerable influence). With his Sorbonne lectures, Durkheim sought to prevent another setback for secular schooling like the one that had occurred in 1850 when a law was passed to "moralize education" as having become "too cut off from religion." That 1850 law had paved the way for the Catholic Church to reestablish its dominion over education of the young.⁷ Durkheim realized that his task was not an easy one. As the following excerpt from one of his lectures reveals, Durkheim felt it would take some time for morality to become independent of religion, regardless of whether the religious foundation for morality was real or merely imagined:

It was enough, so they said, to teach the old morality of our fathers, while avoiding recourse to any religious notion. In reality, the task was much more complex. [...]

Of course, if religious symbols were simply overlaid upon moral reality, there would indeed be nothing to do but lift them off, thus finding in a state of purity and isolation a self-sufficient rational morality. But the fact is that these two systems of beliefs and practices have been too inextricably bound together in history; for centuries they have been too interlaced for their connections possibly to be so external and superficial and for the separation to be so easily consummated.⁸

During the Sorbonne lectures, Durkheim resorted to both paraenesis and hyperbole to establish the readiness of the French for morality by reason alone. He noted the ability of the

⁶ Abram DeSwaan credits Ferry's laws of 1881-2 and 1886 with finally bringing free secular public education to all French children. Abram DeSwaan, *In Care of the State* (New York: Oxford University Press, 1988), 98.

⁷ *Ibid.*

French to "strip things of their individual and concrete elements," thereby making it possible to represent ideas in the "most general and abstract form." According to Durkheim, this "universalist and therefore cosmopolitan tendency" of French thought made it unnecessary for them to rely on the foreboding of "supernatural sanctions" or other religion-based eschatology to impart moral teachings to their young. The French, exhorted Durkheim, are gifted with a Cartesian intellect that makes them "thirst for rationalism." Therefore, he surmised, a secular educational system could instill French children with a "self-sufficient rational morality."⁹

Putting to the side the chauvinistic hyperbole, the fact that dispensing with ritual merits higher placement on Durkheim's evolutionary ladder serves to portray Catholicism as a more "primitive" religion than Protestantism. This can be chalked up to the fact that Durkheim--as a secular Frenchman (although he was post-Jewish, not post-Christian)--had a bone to pick with the not-completely-dethroned Catholic Church. In deference to Talal Asad's observation, however, it is worth noting that the ordering of Durkheim's schema also serves to elevate religions of the West over religions of the East, given that ritual plays an important part in many Eastern religions.

Although Max Weber's well-known theory of the rationalization of society has strains of the evolutionary thinking that prevailed among theorists of Modernity in his day, he did not use evolutionary stages in fashioning his *Sociology of Religion*.¹⁰ Yet, it is Weber--not the evolutionary theorists in Sociology, most of whom have been discredited--who is responsible for an expanding body of xenophobic social theory. Indeed, the view has been expressed that, "*The*

⁸ Emile Durkheim, *Moral Education: A Study in the Theory & Application of the Sociology of Education*, ed. Everett K. Wilson, trans. Everett K. Wilson and Herman Schnurer (New York: The Free Press, 1961), 8. (Hereafter, "Durkheim 1961.")

⁹ Durkheim 1961, 278-79.

¹⁰ Weber's *Sociology of Religion* is developed in the following works: *The Protestant Ethic and the Spirit of Capitalism* (1904), *The Religion of China* (1915), *The Religion of India* (1916), *Ancient Judaism* (1917), and *The Sociology of Religion* (1922).

Protestant Ethic and the Spirit of Capitalism, has contributed mightily to the myth of the superiority of Western rationality over Eastern traditionalism."¹¹

The Weberian "profiling" technique is grounded in the differentiated paths to salvation that Weber identified in the doctrines of world religions and which he associated with predictable mindsets and lifestyles. To illustrate, where Weber viewed the eschatology of a particular religious tradition as insufficiently threatening to motivate its adherents to lead moral lifestyles, he classified the tradition as "other-worldly mysticism." Thus, whereas the evolutionary theses of Comte and Durkheim allowed for "primitives" to evolve into "secular moderns," under Weberian theory, there is no escaping the propensities with which one is inculcated as a result of religious belief (or because of one's ascribed religious identity). Inexplicably, the system still has widespread appeal among sociologists, even though today's youth are given to changing their religious affiliation with the same nonchalance as they change their address--rendering the religious profiling all the more unscientific. Nonetheless, the staying power of the Weberian religio-cultural stereotypes is demonstrated by the fact that they are still used by Western sociologists *to classify* non-Western religious traditions, rather than as a starting point for using the scientific method to investigate the true nature of "the other":

*Gods can lend sanctions to the moral order only if they are concerned about, informed about, and act on behalf of humans. Moreover, to promote virtue among humans, Gods must be virtuous--they must favor good over evil. Finally, Gods will be effective in sustaining moral precepts, the greater their scope--that is, the greater the diversity of their powers and the range of their influence. All-powerful Gods ruling the entire universe are the ultimate deterrent.*¹²

A final word on the Weberian schema - it, perhaps coincidentally, bore a striking resemblance to the then-existing world economic order in that the religio-cultural stereotypes affixed to religious traditions found in Western cultures (with growth economies) were associated with rational purposive activities during life whereas the religio-cultural stereotypes affixed to the

¹¹ Charles Lemert, "Social Theory: Its Uses and Pleasures," *SOCIAL THEORY: The Multicultural and Classic Readings*, ed. Charles Lemert (Boulder: Westview Press, 1993), 1-24, 9.

religious traditions found chiefly in non-Western cultures (with stagnant economies) were associated with non-rational behavior of a mystic type.¹³

The *Parens Patriæ* Role of the State

*Above all, in democratic societies like ours is it essential to teach the child this wholesome self-control. For, since in some measure the conventional restraints are no longer effective -- barriers which in societies differently organized rigorously restrict people's desires and ambitions -- there remains only moral discipline to provide the necessary regulatory influence.*¹⁴

In fulfilling its duties as *parens patriæ*--sovereign in charge of the public welfare--the democratic state is precluded from using the most expeditious means of maintaining social control, implementing societal reform, and uplifting communal behavioral norms. Constrained by the rule of law, it cannot arbitrarily silence dissidents, redistribute wealth, and establish incontrovertible ethical guidelines for the citizenry. Nonetheless, democratically ruled states like Sweden and the U.S. have had remarkable success in implementing wide-ranging social reforms that have made human equality the norm and inequality and intolerance unacceptable aberrations within their societies. That this feat has been accomplished without social upheaval or violence to democratic principles indicates a synergism of interests. By and large, throughout the Western world, the democratic state has made forays into the private sector to there galvanize a community of interests that serve to augment its limited resources for societal control, reform and uplift. And, in the final analysis, it is this success that must be taken into account in judging *religious* advocacy. It will be useful for the reader to keep this in mind while reading this section on the *parens patriæ* role of the state.

¹² Stark 2003, B9.

¹³ Steven Seidman calls into question the objectivity of Weber's classification of the various religions by accusing him of having an ulterior motive in writing *The Protestant Ethic and the Spirit of Capitalism*: "Although the chief theme revolves around the link between Protestantism and capitalism, the subtext is Weber's appeal to the disillusioned, hard-working inner-directed Puritan as an ideal for the German middle class." Seidman 1994, 72. (Weber was German.)

¹⁴ Durkheim 1961, 49.

A Valid State Interest: Moral Edification

Civil Government therefore, availing itself only of its own powers, is extremely defective; and unless it can derive assistance from some superior power, whose laws extend to the temper and disposition of the human heart, and before whom no offense is secret, wretched indeed would be the state of man under a civil condition of any form.

This most manifest truth has been felt by Legislators in all ages, and as man is born, not only a social, but a religious being, so in the Pagan world false and absurd systems of religion were adopted and patronized by the magistrate, to remedy the effects necessarily existing in a Government merely civil.¹⁵

This dictum from an 1810 case was written by then Chief Justice Theophilus Parsons of the Massachusetts Supreme Court. Justice Parsons was defending Article III of the Massachusetts Constitution of 1780, which imposed mandatory religious taxation on all citizens to support "a public protestant teacher of piety, religion and morality" for each parish in the Commonwealth. Justice Parsons had actually drafted Article III of the Constitution when he served as the youngest delegate to the 1779 Framing Convention for the Massachusetts Constitution.¹⁶ Although only 28 years old at the time, he had authored *The Essex Result*, which was a critique of an earlier proposal for a state constitution that was presented at a convention held in Essex County, Massachusetts in 1778. In *The Essex Result*, Parsons outlined the main principles for a republican form of government and pointed out what was lacking in the constitution proffered at the 1778 Essex convention.

The Essex Result was widely acclaimed and Parsons gained considerable stature among political elites of the day including John Adams (later to become the second President of

¹⁵ Thomas Barnes v. The Inhabitants of the First Parish in Falmouth, 6 Mass. 401 (1810). (Hereafter, "The Barnes Case, 1810.")

¹⁶ In a letter to Parsons' son, written after Parsons' death for inclusion in a publication of his memoirs, Judge Daniel A. White of Salem, Massachusetts, mentions Parsons as being active in drafting the final version of "the famous third article." Judge Daniel A. White, Letter of September 15, 1858, to Theophilus Parsons, Jr., son of Chief Justice Theophilus Parsons, *Memoir of Theophilus Parsons, Chief Justice of the Supreme Judicial Court of Massachusetts*, by Theophilus Parsons [Jr.], (Boston: Ticknor and Fields, 1859), 454.

the U.S.) who had been entrusted with overall responsibility for the drafting of the Massachusetts Constitution. Therefore, Adams assigned the young Parsons to the important committee of 30 delegates charged with the task of preparing the draft of the Massachusetts Constitution that was laid before the entire assembly at the 1779 Convention. It follows that we can accept Justice Parsons' dicta in the *Barnes* case as a reliable interpretation of the legislative intent in enacting Article III of the Massachusetts Constitution. As a matter of interest, the Massachusetts Constitution of 1780 is still being used today, although it has been modified and amended quite a number of times. It has the distinction of being the oldest of the individual state constitutions still in use in the U.S. It is, in fact, nine years older than the U.S. Constitution, which did not go into operation until March 4, 1789.

The *Barnes* case is important because it memorializes the thoughts of one of the great legal minds of the day on a burning issue then and now; namely, the social, political, and legal justifications for state involvement in the religious lives of the citizenry. In one part of his decision, Justice Parsons takes note of the inability of civil government to enact laws that "extend to the temper and disposition of the human heart." Certainly, this statement sheds some light on why *religious advocacy* is an irresistible temptation for even the most aggressively secularized state. Patronizing those institutions that instill citizens with a sense of accountability to a superior power, from whom "no offense is secret," just makes good sense for a government "merely civil" charged with the task of social control. Of course, following quickly on the heels of this strain of thought is the recognition that some religious traditions - those with theologies of retribution - are more complementary to the task of government than others. Justice Parsons offers insightful comments in this regard:

In selecting a religion, the people [of the Commonwealth of Massachusetts] were not exposed to the hazard of choosing a false and defective religious system. Christianity had long been promulgated, its pretensions and excellencies well known, and its divine authority admitted. [...] And this religion as understood by Protestants, tending by its effects to make every man submitting to its influence,

*a better husband, parent, child, neighbour, citizen and magistrate, was by the people established as a fundamental and essential part of their Constitution.*¹⁷

As a matter of historical note, at the time Justice Parsons wrote the *Barnes* decision, the First Amendment ("Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof") had been in effect for almost 20 years. However, the First Amendment was interpreted as prohibiting the federal government from becoming involved in local matters best left to the individual states such as the health, safety, and welfare of a state's residents. And, no one doubted that responsibility for upholding community morals rested with the local authorities closest to the situation. Given that religion was uniformly believed to be the foundation of morality, encouraging religiosity among the populace was deemed to be indispensable to the task of civil government, and therefore clearly an objective that state governments should try to achieve by every available means, including making it part of their public policy agenda and enacting RFL to fortify the religious sector!

Therefore, it would have been highly unusual for a state court of the period to interpret the First Amendment in a manner that served to weaken the ability of the individual states to maintain social control by denying them the right to continue with practices such as mandatory church attendance for all state residents (under penalty of fine or imprisonment.) Moreover, the Tenth Amendment to the Federal Constitution (which became effective at the same time as the First Amendment) specifically provides that all powers not specifically delegated to the Federal Government in the Constitution are reserved to the individual states (unless specifically prohibited) or to the people. As a consequence, fostering the religious life of the populace and establishing certain religions as the only acceptable modes of religious expression were widely accepted as integral to the task of governing at the state level in the U.S. for the first half of the 19th Century.

¹⁷ The Barnes Case, 1810.

Finally, in 1868, the Fourteenth Amendment became part of the U.S. Constitution and closed the First Amendment loophole. The Fourteenth Amendment makes it clear that civil liberties protections flow from the Federal Constitution to the individual citizen and thus the privileges and immunities of U.S. citizenship are enjoyed by citizens regardless of their state of residence. This effectively precluded state courts from rendering decisions interpreting the First Amendment silence on state action as a license for states to regulate the religious lives of their inhabitants. Notably, it is at this late stage, 92 years after the founding of the American nation, that DML was finally in place in the U.S.--not before.¹⁶ However, democratic governments remain as dependent as ever upon forming alliances with those societal institutions that promote the values and ethical lifestyles that facilitate ease of government. Hence, it can be expected that secular democratic states will continue to patronize those social institutions found to serve ends that are complementary to those of government.

¹⁶ See Chapter 1, page 4, for the DML standard.

PART II

Theorizing About Thinning Communities of Virtue in a Global Age

To the extent that social issues can be dealt with on the basis of reliable information, the potential for conflict resolution is much higher.¹⁹

Weighing heavily against the reliability of the foundational precepts handed down by the founding fathers of Sociology is the fact that they formulated their theoretical propositions with a thought to advancing a particular political agenda. The problem of a lack of objectivity at the formulation stage was compounded by the fact that the founding fathers never sought to put their theories to the test of empirical verification, either by engaging in field research or by collecting data by some other method in order to validate (or refute) their theoretical propositions. Of particular relevance in terms of the changed religio-cultural landscape of the West is the extent to which secularization has actually resulted in secular structures that do not favor Christians over non-Christians or the religious over the irreligious.

Ironically, a cloud looms over the secularization thesis--a theory of paradigmatic standing in Sociology--at a time when the stakes are highest for Western host nations, in terms of their need to be able to rely on the validity of the thesis of secular neutrality. Of course, a primary question is whether secularization ever took place given that the Enlightenment Narratives were visions of the future, not historical accounts of ongoing events. In this vein, José Casanova has noted--in a seminal work, *Public Religions in the Modern World*--that most sociologists of religion are inclined to discard the theory of secularization as "an unscientific, mythological account of the modern world."²⁰ Alas, it seems the excesses of "The Fathers have fallen on the sons." On the other hand, the loss of a dubious legacy is almost certainly a blessing in disguise. The discrediting of xenophobic social theories that were developed at a time when religiously

¹⁹ Kenneth Hoover and Todd Donovan, *The Elements of Social Scientific Thinking* (New York: St. Martin's Press, 1995), 156.

homogeneous societies were the norm comes at an opportune time in light of the changed religio-cultural landscape of the West. Increased numbers of non-Christian, non-Western peoples in the immigrant host nations of the West means Western sociologists are finding the need to take a more critical look at their own societies. However, there is a dearth of theoretical tools that treat religion as a disruptive rather than an integrative force. Certainly, the bell has tolled on the structural-functionalist perspective, too long a staple of sociologists studying religion.

Unlike the functionalist perspective, which orients the inquiry toward the social system on the whole, making the final units of analysis structures and institutions, the Tripartite Theoretical Model (hereafter, "TTM") introduced in this Dissertation focuses on laws, making the final unit of analysis social interaction. Thus, TTM has more probative value in terms of teasing out power relationships and conflicts; it automatically engages the conflict perspective. With TTM, the social theorist is on the lookout for points of contention, whether it be reflected in power struggles among humans or in the emasculation of DML by UNL or RFL. Laws are effective on the societal level where social groups (dominant and minority) interact with each other and at the same time attempt, with differing degrees of success, to navigate secular structures. Thus, TTM offers the perfect vantage point for critically evaluating the social changes that occur as a result of secularization.

By contrast, the main concern of the structural-functionalist perspective is how religion functions as part of the social system; it therefore misses much of what is going on beneath the surface. As an example, the ability to resist integration into the dominant social system is often the impetus for minority group formation. Hence, a conflict perspective is more conducive to enabling the social theorist to identify salient issues and settle on relevant variables so that social problems are *dealt with on the basis of reliable information*.

²⁰ José Casanova, *Public Religions in the Modern World* (Chicago: University of Chicago Press, 1994), 18.

In terms of applying TTM, it is important to keep in mind that laws both reflect and control societal norms. Therefore, both textual analysis of the laws and *in situ* observation of the effect of the laws *in society* are necessary in order for the sociologist to develop sound theory, to interpret past events, or to explain the present social world. However, the pay off is large for the sociologist who is willing to invest time in examining how particular laws (a) get enacted, (b) are variously enforced, and (c) alter or reinforce the power structures in a given society. The knowledge acquired will be based upon empirical evidence that can be well documented and, therefore, made available to substantiate any theories developed on the basis of the data.

Another shortcoming of the structural-functionalist perspective is that it engulfs religion in the concept of "culture," where it gets no more than superficial treatment as an aspect of "latent pattern maintenance."²¹ This results in an all too easy acceptance of the religious sector as a cohesive integrated whole. By contrast, TTM allows for a more penetrating analysis that includes the often contentious interactions between the individual and the religious group; between the individual and the state (especially individuals who are atheists or who are only weakly integrated into a religious group); between diverse religious groups and the state as these groups jockey for public stature while trying to maintain sufficient autonomy to remain true to their spiritual mission; and among diverse religious groups with competing visions of the sacred.

Because TTM categorizes laws, not institutions, it allows the social theorist to analyze institutions that are not functioning in accordance with some preconceived category. To illustrate, Civil Society Theory considers religious institutions as part of the voluntary private sector. However, using TTM as an analytical tool makes it clear that because of the usefulness of the

²¹ The structural-functionalist perspective, honed to an art form by Talcott Parson, portrays the social world as a sort of mainframe computer, with all societal institutions working together to maintain the social system in working order. The Parson's schema actually posited a social system with four subsystems: (1) the economy, (2) political institutions, (3) the legal subsystem and (4) the cultural subsystem (in which Parsons included family, *religion*, and education). The four subsystems fulfilled the social system's functional needs for adaptation, goal attainment,

religious sector to the state (and its easy appropriation by the state by means of RFL and UNL), it is at best a hybrid member of "civil society." Indeed, it is unlikely that the religious institutions in any liberal state function solely as agents of civil society (e.g., setting their own agendas independently of the state bureaucratic machinery), in light of the ability of the state to attach conditions to the tax relief upon which religious institutions, as voluntary non-profit associations, so heartily rely. Hence, it is perhaps more fruitful when applying Civil Society Theory to the religious sector to posit this sector as being in a liminal state in which it lacks the autonomy to serve solely as an agent of civil society because of its continuing allegiance to or manipulation by the state.

CONCLUSION

What I hope to establish with this Dissertation is that it is laws, not labels, that separate the theocratic state from the democratic state. Hence, the sociological task cannot start and end with the sorting of nation-states into designated geopolitical regions for application of the "appropriate" social theory for a particular region. Something is seriously wrong when the fact that a state is Eastern or Western, Christian or Islamic determines the depth and type of analysis it will receive before being proclaimed theocratic or democratic. Because TTM focuses on laws and human interaction, it does not allow for prejudicial application based upon a state's geopolitical region. Therefore, the sociologist utilizing TTM will evaluate social facts by the same criteria regardless of where they are found.

What TTM enabled me to uncover in Sweden demonstrates that TTM is well suited to applying critical theory to evaluate secularism in the Western state. And, despite the difference in the cultures of Sweden and the U.S., what I found in Sweden indicates the need to turn a critical eye to the study of the public role of religion in the U.S. The freshness of Sweden's separation of church and state facilitated evaluation of the secular laws that were put in place in preparation for

integration, and latent pattern maintenance. Talcott Parsons, *The Social System* (New York: The

disestablishment of The Church. My examination of these laws revealed them to be good-faith efforts to level the playing field for all religious traditions in Sweden. The patently undiminished stature of The Church (and hence of secular Lutheranism) in the public sphere in post-establishment Sweden, despite the presence of the newly enacted laws, calls into question the relevance of disestablishing a religion that enjoys a position of overwhelming dominance in a society.²² More specifically, my finding that church-state separation has had little effect in terms of changing the status quo in Sweden gives cause to question whether, despite mandatory church-state separation in the U.S., there is an American establishment religion.

It is necessary to get past the red herring of church-state separation in order to critically explore the connection between establishment religion and the U.S. "civil religion."²³ It certainly seems that the fact that religious freedom is ballyhooed as a founding precept of the American nation has lulled sociologists into an uncharacteristic complacency in terms of critiquing the U.S. civil religion. Yet, the U.S. civil religion bears all of the trappings of an establishment religion, albeit a generalized Christianity or monotheism. The following excerpt is typical of the kid-glove treatment given to the U.S. civil religion:

One might say that American culture sanctions a secular state, but also a religious nation. Thus, while there can be no 'state church,' there is evidence for a 'civil religion' which overarches particular denominational differences in order to express a sense that the American people are united under the governance of a provident God who watches over their destiny and fortunes.²⁴

The authors of *The Sacred Quest*, from which the above excerpt was taken, seem determined to find ways to distinguish the establishment religions of the West from those found in

Free Press, 1951), 17.

²² Both RFL and UNL have contributed to the continued status of The Church as a cultural icon in Sweden.

²³ "Civil religion, narrowly conceived, is the use of God language with reference to the nation. [...] More broadly conceived, civil religion may be defined as the symbolism by which a people interprets its historical existence in light of transcendent reality." Robert Wuthnow, *Producing the Sacred: An Essay on Public Religion* (Urbana: University of Illinois Press, 1994), 130.

²⁴ Lawrence S. Cunningham and John Kelsay, *The Sacred Quest* (Upper Saddle River, NJ: Prentice Hall, 2002), 92.

the East. For example, in the same work, the authors point to a difference between the state-backed religion in Great Britain and that in Saudi Arabia by noting that the Islamic state "institutionalizes a particular religion," which makes for "a much closer identification between a particular religion and political structure than, say, in a situation such as Great Britain in which the Anglican church is state supported [...] but the church has no direct role in secular governance or the shaping of state policy."²⁵ It will be recalled from Chapter 1 of this Dissertation that the experience of the Muslim cleric with the Prison Service Chaplaincy in the British penal system refutes the notion of any difference when viewed from the standpoint of non-members of the Anglican Church.²⁶

Getting back to the U.S. civil religion, there is no doubt that non-believers and *different* believers alike have cause for concern over its vitality. Indeed, the intransigency of the current White House Administration in promoting monotheistic religion is evident in the ongoing battle over whether "under God" is to be removed from the Pledge of Allegiance. Although the Ninth Circuit Court of Appeals issued a ruling in June 2002 to the effect that having public school children recite the phrase as part of the daily Pledge is an unconstitutional endorsement of religion, the George W. Bush Administration has launched an all-out effort to discredit that ruling.²⁷

One implication of the state asserting other than a neutral position on the subject of religion is that this implies that citizens of the state are expected to have some type of religious identity. Sociologist Robert Wuthnow has pointed out that it is religious institutions that convey religious identity upon the individual. Hence, a non-neutral stance toward religion on the part of

²⁵ Ibid, 91-92.

²⁶ The Muslim cleric's experience is related in Chapter 1 ("Introduction") at pages 1-2.

²⁷ President George W. Bush signed a bill on November 13, 2002, reaffirming the "under God" phrase in the Pledge, but the newly created law has not stopped the judicial appeals process and the controversy is working its way up to the U.S. Supreme Court. See, "Bush signs bill reaffirming reference to God in pledge," *The Star-Ledger*, November 14, 2002: 3; and Charles

the state constitutes *religious advocacy* because, by its coercive effect on the citizenry, it gives religious groups a competitive edge over secular voluntary associations within the private sector:

The more individuals were expected to adopt a religious identity, the more important the church became as the social institution responsible for conferring that identity. Indeed, we have ample evidence of this relationship from comparisons with countries where religious identity is still ascribed at birth by territorial residence and countries where religious identity is voluntary.²³

The immigrant host lands of the West are experiencing "deep diversity" in that both the immigrant and indigenous segments of their populations are undergoing religious change. Some are embracing new faiths; others are abandoning traditional religion entirely. The unrelenting movement of peoples and ideas across national borders during the last two decades has made it impossible to stave off the implosion of the world into every crevice and corner of the globe. This has resulted in a globalization of human thought. With ready access to other ways of being "normal," "religious," "moral," "good," "evil," "spiritual," and "civilized" than that embraced in any one geopolitical region, questions begin to arise as to the sanctity of any particular worldview. Today, inherited truth is a subject of investigation and ascribed ideology is an object of contempt. This means that religious institutions have, like the nation-state, suffered a reversal of fortunes in terms of being opinion shapers in today's world of endless cable and invisible cells. The following excerpt from a protest letter addressed to Sweden's Prime Minister by a secular humanist group in Sweden is evidence of the contentiousness of assuming religion to be the primary source of morality in this day and age; the letter is protesting Swedish RFL that I have included in the Table I RFL set forth above at page 6.

The Humanist Association feels its activities should be subsidized by the State for the same reason that was given to justify State subsidies for the independent [non-Lutheran] congregations; namely that the Association 'assists in the ongoing development of norms, a process that is necessary to uphold and strengthen the

Lane, "U.S. states its case for 'under God': Top court is asked to restore Pledge of Allegiance's wording in California," *The Star-Ledger*, May 1, 2003:4.

²³ Robert Wuthnow, *Christianity in the 21st Century: Reflections on the Challenges Ahead* (New York: Oxford University Press, 1993), 44.

basic values that are essential to our society.' The Association is the only secular organization fulfilling this role. If the Swedish State truly desires to be neutral in terms of letting the citizens choose between a religious and a non-religious worldview, then it is self-evident that the present situation is completely unsatisfactory in light of the obvious requirement of equal treatment.²⁹

The abundance of new religious choices and alternatives to religion have expanded the types of grievances that are cognizable as religious liberty violations. As an example, the right to convert to a new religion has been asserted as a component of religious liberty by youth who have been "rescued" by their parents from religious "cults" or "sects" and subjected to professional deprogramming to rid them of the "brainwashing" that caused them to abandon their religious heritage. Likewise, second-generation Muslim immigrants are asserting the right to be free from religion. It is with these second-generation Muslims that the tension between RFL and DML is most pronounced. The RFL emphasis on the group has rendered Western democratic states vulnerable to accusations of unequal treatment where the new immigrant religions in their midst are bearers of cultural practices that fly in the face of individual autonomy in general, and religious freedom, in particular.³⁰ A Norwegian scholar, Oddbjørn Leirvik, has succinctly outlined the issues that need to be addressed by managerial states using RFL to colonize the marginalized under the religious sector:

And who should be the bearers of rights in matters of religious freedom - individuals, and/or faith communities? Should the state in any way support individuals - for instance women, or homosexuals - against their faith communities (the Norwegian state has indirectly done so, by appointing liberal bishops)? Or should religious pluralism only be dealt with in a liberal 'politics of

²⁹ Translated from Swedish by Author. Humanisterna (Swedish Humanists), "Samhället och de sekulära livssynsalternativen," March 9, 2001. Accessed 4 March 2002. <http://www.humanisterna.org/skrivelser/sekular_full.html>.

³⁰ Carol J. Williams, "Deadly Clash of Cultures in Sweden: Daughter is Slain by her Kurdish Father After She Refuses an Arranged Marriage," *The Star-Ledger* (Morris Edition), March 8, 2002:2.

*recognition' which limits itself to protect and support the freedom of faith communities to choose their particular ways?*³¹

In the U.S., the political fallout from "Charitable Choice" (listed in the Table 1 RFL at page 6) is *apropos* of the susceptibility to criticism that exists for states using RFL as a means of social-engineering. With Charitable Choice the U.S. is being accused of having a double standard when it comes to protecting the individual rights of members of marginalized segments of its population. The Charitable Choice provision of the 1996 Welfare Reform Law has resulted in welfare recipients being coerced into patronizing the religious sector in order to receive needed social services in an expedited manner. It is a prime example of *religious advocacy* and *embeddedness* working together in one piece of legislation to replicate theocratic rule. Charitable Choice is a directive of the federal government to the individual states to treat FBOs (faith-based organizations) on the same basis as secular nonprofit social services providers when outsourcing social services delivery to welfare recipients. However, preference for FBOs in delivering social services to the downtrodden has been the result, not merely equal treatment of secular and religious social services providers.³²

Prior to the Charitable Choice initiative, FBOs had been at a disadvantage in seeking to become third-party social services providers specifically because of their religious nature. U.S. courts have consistently interpreted the First Amendment prohibition against church-state intermingling as requiring strict scrutiny of any taxpayer funded social services delivery programs of religious nonprofit organizations in order to ascertain that public funds are not being used to subsidize social services programs that are essentially religious in nature. However, under Charitable Choice, FBOs are not even required to sanitize their social services delivery of

³¹ Oddbjørn Leirvik, "Christian-Muslim Relations in a State Church Situation: Lessons from Norway," Muslim Minority Workshop, University of Erfurt, Germany, March 2-3, 2001. Accessed 1 May 2002. <<http://www.uni.erfurt.de/islamwissenschaft/projecte2000.html>>.

³² Aggressive recruitment of churches and parachurch organizations has occurred at both the state and federal level. See, Amy Sherman, "Implementing 'Charitable Choice,'" *Philanthropy* (January/February 1999), 14-19. (Hereafter, "Sherman 1999.")

religious content.³³ Cognizant that Charitable Choice would be breaking new ground in terms of church-state intermingling in the U.S., the following provision was included in the Charitable Choice legislation.

(e) Rights of Beneficiaries of Assistance. --

(1) In general.-- If an individual [. . .] has an objection to the religious character of the organization or institution from which the individual receives, or would receive, assistance funded under any program described in subsection (a)(2), the State in which the individual resides shall provide such individual (if otherwise eligible for such assistance) within a reasonable period of time after the date of such objection with assistance from an alternative provider that is accessible to the individual and the value of which is not less than the value of the assistance which the individual would have received from such organization. (Emphasis Added.)

Charitable Choice Provision (P.L. 104-193)

Although it is noteworthy that the legislation contains a caveat that the civil liberties of welfare recipients must be protected when religious groups are used as social services providers to the welfare dependent population (referred to in the legislation as, "beneficiaries of assistance"), the fact remains that the Charitable Choice initiative seriously undermines DML the U.S. has put in place to protect the moral autonomy of U.S. citizens. Putting the onus upon welfare recipients (who have qualified to receive publicly funded social services because they are destitute and desperate) to opt out of receiving services from a religious group is hardly a corrective for this type of *religious advocacy*. It is safe to assume that most welfare recipients will be coerced into accepting social services from an existing religious third-party contractor in order to avoid having to wait for their state to establish a contractual relationship with a secular social services provider in their geographical area. Additionally, the Charitable Choice legislation

³³ Current U.S. Attorney General John Ashcroft (then a U.S. Senator from Missouri) was a driving force in pushing the Charitable Choice initiative through Congress. Ashcroft felt it was important that FBOs be allowed to remain true to their spiritual mission: "One of my goals in proposing the 'Charitable Choice' provision was to encourage faith-based organizations to expand their involvement in the welfare reform effort by providing assurances that their religious integrity would be protected." Quoted in Sherman 1999, 5.

exudes the Protestant work ethic; it, therefore, evinces *embeddedness*. Clearly, the nod to religious nonprofits must be understood as sending the message that welfare dependency denotes some moral deficiency and as implying that matters of morality are best addressed by the religious sector.

In summary, we are living in a time when religious space is contentious space. Yet, democratic nations are governed by laws. My suggestion is that sociologists begin to incorporate investigation of these laws into the empirical phase of their work. I am certain that doing so will take critical theory to a new level, and TTM is my contribution to this worthwhile cause.

Gwen Alexis, May 2003

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