

Law, Justice, and Juridification of Religion

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Law and human rights play a central role, some would even say crucial role, in how we approach issues of justice, equality, and non-discrimination, be it in the area of religious matters or other issues. Human rights have emerged as an authoritative voice and a language for utopia in times of ‘post-modern insecurity’, having achieved an almost hegemonic position when it comes to envisioning (decent) human life. Thus, their role in relation to perceptions of the human being must not be underestimated. We usually imagine human rights as above and beyond mundane politics, that is the utopian feature. We also attach certain expectations to human rights in their legal configurations. And sure enough, neutrality or impartiality is intrinsic to our image of law. This concerns both international and national law. The same is the case with our understanding of law’s relationship to religion. Even so, law sets forth frames of meaning and shapes our vision of human life and behaviour. Law makes sense of some things while downplaying the significance of other things. Beyond addressing disputes that arise and regulating societal life, law is “a species of social imagination”.¹

In fact, it seems to have become an increasingly significant one if we are to believe those scholars who direct our attention to the various dimensions of what they have titled *juridification*. Juridification denotes the expansion of legal regulation on area after area of human life, as well as the fact that society to an increasing extent seeks to settle conflicts with the help of law. This leads to redistribution and displacement of power, e.g. to lawyers, courts and judges. A certain group is held up as experts and authorities. Lastly, also ‘legal framing’ forms part of this juridification, meaning that individuals, groups and other entities start to articulate their self-understanding ever more in legal terminology, as ‘legal subjects’ with individual rights etcetera, in accordance with the articulation of religion which the legal framework provides.²

What this means, I argue, is, that if our aim is, e.g., to analyse thoroughly the way in which society organises, regulates and meets religious manifoldness and religious minority positions, and to find out if this societal response is to all its part sufficient or in need of constructive revision (and how), we need to analyse the various dimensions and consequences of juridification of religion. We need to move beyond a ‘superficial’ mapping and analysis of the legal framework (consisting of religious law, i.e. religions’ own regulation, and religion law, i.e. ‘external’ regulation of religion of national, regional and international kind). In order for the perspective to be meaningful, it has to be complemented. We have to ask questions like: How does power shift and how is it divided between the state and different religious actors? Where does the decision-making take place, who are held out as experts and what does expertise in religious matters seemingly consist of? What does it mean to formulate oneself about religion in legal vocabulary and to construe religious

¹ Rosen, Lawrence, *Law as Culture*, Princeton: Princeton University Press, 2006, 8-9, 11-12.

² Blicher, Lars C. & Molander, Anders, ‘Mapping Juridification’, 14 *European Law Journal* 1 (2008), 36-54; and as regards the juridification of religion, also e.g. Russell Sandberg, *Law and Religion*, Cambridge: Cambridge University Press, 2011, 193-194.

identity in close affinity to legal positions? What are the results of this process of translation, the distributive consequences?

In my paper, I propose to explore these matters regarding juridification through examples from (primarily) European human rights law and – arbitration, critically analysing the articulation of religion and religious freedom currently put forward there, the conceptual presuppositions and deep structures of the legal framework, and its limits when it comes to envisioning life, freedom and equality in matters of faith. It will lead me to claim that the ‘egalitarian imaginary’ of human rights, e.g., that is ostensibly neutral, ‘non-political’ and ‘agnostic’, when it comes to religion *de facto* privileges some believers over others. Law is exclusionary in a way that contradicts the ideals it praises.

References

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