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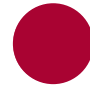

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DET TEOLOGISKE FAKULTET
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Muslim Positions in the Religio-Organisational Fields of Denmark, Germany and England

Niels Valdemar Vinding

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Centre for European Islamic Thought,
Faculty of Theology,
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For

KMK and AMV

Thank you for making the difficult parts a little easier and for being there when even the easiest proved incredibly difficult.

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Chapter One

Introduction

1.1 The challenge of modelling Islam and Muslim organisations

It is difficult to say what in the discourses, debates and discussions about Islam in the West holds so much power and influence over how we think, understand and frame Muslim life in Europe. Is it the way religious life is structured, governed, and regulated in the deep structures of those old models of state sponsored norms of Christianity that still holds sway over the constricted field in which Muslim institutions and organisations must navigate? Is it the inculcated self-effacing and victimization of Muslims in Europe that locks Muslim organisations in internal strife? Is it the mismatched expectations and political manhandling, which leaves organised Islam unable to meet the difficult institutional challenges state and government? Is it the societal pressure from right-wing conservatives, liberal secularism, media and the court of public opinion? Or, is it all a matter of misrepresentation and a powerful game of shadows and symbolic communication orchestrated across the width of the plural, modern society?

In the 1990's and early 2000's, when trying to make sense of the permanent presence of Islam and Muslims in Europe, the established research networks and groups of scholars initially perceived of Muslim institutions and organizations in relation to or in extension of the existing state and religion research (cf. Ferrari 2000; Robbers 2001, 2005; Sandberg 2008). When trying to structure and interpret the increasing data and material on Islam, this sort of research framed the findings within the existing parameters and paradigms of religion in Europe. Initially, this allowed for a starting point that could help open the field of Islam in Europe research. It helped scholars and researchers grapple with the new realities and provided a macro-level working hypothesis of how things were. Then in time, the state of research would mature and the bodies of research widen and a more coherent understanding would materialise.

However, as with most initial hypotheses and models, they were crude, generalizing and made unsubstantiated assumptions of a reality still in the workings. Furthermore, the modelling and the attempt at analyzing patterns and trends did not take Islam as a religion as the point of origin, but rather Islam in Europe was understood as migratory labour, as a refugee crisis, as an economic challenge, as a political agenda in itself, as a gender problem, as a post-colonial trend, or even as a medieval legal system. There were

truth in all of these partial perspectives, but only a few of them took the approach of Islamic Studies in order to see how Islam as a religion did meet the challenge of Europe and how Muslims framed their responses to a new reality. In the perspective of the models of Europe, Islam remains a 'case' and an example to illustrate a point already made (Bæk Simonsen 2002, 23).

In all fairness, from the perspective of the theorists and researchers building and discussing these models, it is important to stress that they often are among the first to criticize the imperfect nature of modelling and the limits of such an endeavour. However, the models and paradigms created by scholars and academics were adopted by governments and politicians in order to make sense of the political, social, economic and religious challenge posed by Islam and Muslims. In this adoption, the inherent problems of the working hypotheses were forgotten and during the 1970's, 1980's and 1990's the assumptions made of Islam and Muslims were embedded into the state structures and institutions.

As will be shown in this thesis, these models, hypotheses, conceptual frameworks and attempts at analyzing patterns and trends in Islam in Europe have been of substantial value for decades, but now they warrant a serious and critical review. Equally, alternatives to modelling must be explored. Although they are an important part of the history of research on Islam in Europe, models and hypotheses have in them an important feature that is relevant when making sense of Muslims and Muslim organisations. That is, models can never just be models *of* something as mere depictions, but are always models *for* shaping, adapting and conforming to some ideal or norm built into the very model. As the American anthropologist Clifford Geertz observed, models shape and change the social world as they express and describe it (Geertz 1973, 93). Due to the observer effect, the modelling at work wields a power that changes the very things it is trying to depict. It is often the problem with academic research that it is often bound to manipulate the very thing it sets out to handle and describe. As such, it remains both descriptive and normative.

1.2 The religio-organisational field and the 'peculiar game of chess'

Rather than limiting the theoretical and exploratory scope by proposing hypotheses and models, the ambition of this thesis is to study the institutionalization of Muslim organisations as these position themselves within the frame of the religio-organisational field.

The phrase *religio-organisational field* is coined for the occasion and it builds on the theories and concepts advanced by French philosopher, anthropologist and sociologist Pierre Bourdieu (1930–2002). The field is "defined as a network, or a configuration, of objective relations between positions" (Bourdieu & Wacquant 1992, 96). Bourdieu compares it to a

social arena, a playground or even a battlefield, where there are basic rules, tools and resources available and where those who enter use what they have to make the best of it. The religio-organisational field is such a social arena, where religious organisations and institutions struggle to gain influence, recognition, power and capital. The religio-organisational field is made up of all the institutions, organisations and agents that contest to positions available in the field and lay claim to the power and capital to be gained from these. Paraphrasing organisational theorists, who discuss Bourdieu's influence on recent organisational theory, it is of great importance to know that the organizational field includes not just one type of organisation, such as religious organisations, but all the organisations that play one role or another in the activity in question, such as the buildings used in religious service, the functionaries of these buildings, the people who attend services, the media, international religious actors and institutions, the local and national governments and ministries, and so on (cf. Emirbayer & Johnson 2008, 2-3).

The field has the significant advantage as an analytical strategy when considering the problems of modelling. The virtue of the field is not to simplify by reducing complexity as models tend to do, but rather to limit the scope of study by focussing and to maintain the complexity of the relevant conflicts and struggles studied.

Illustrating the difference between analytically entering the field rather than relying on a model, a rather peculiar game of chess comes to mind. The field is comparable to a chessboard that is unlimited in the number of spaces and where hundreds of chess pieces are lined up. With scores of different capabilities these are gathered in a complex cluster of stalemates and locked positions. Within the field of this peculiar game of chess, the clusters of pieces are locked in positions actually held and the open spaces on the board are the potential of positions to be occupied. However, the strategic value of a position is entirely dependent on where the other pieces are.

In order to play this peculiar game of chess, we must use not only the standard rules for the game, known as the 'Official Laws of Chess,' but we must imagine additional variant rules for new kinds of pieces and a new number of implicit prudent moves and a new ethics of conduct. Here are vast scenarios of conflict, stalemates and deadlocks. The chess problems are so complex and so difficult that they may never be solved and here are all sorts of different possible moves, which cannot be determined to be right or wrong in the light of the whole game, but only in the light of the limited scope and their subjective position.

From an epistemological point of view, the whole of this peculiar game can never be appropriately described and so a strategy of limitation must be chosen. One such choice could be to produce statistics of the population of

pieces, or a history of moves, or even a political analysis of the strategy of possible moves to be made with the most powerful of pieces. Similarly, a 'case' may be focused upon and described in depth as to know the outcome of the moves to be made in one focused part of the field or in a particular difficult problem or deadlock.

However, and this is the point of the example of the peculiar game, the field retains its complexity beyond the epistemological choices and holds unlimited potential of knowledge more or less relevant, but is always unfolding. From an epistemological point of view, the analytical strategy of the model, by contrast, excels by virtue of the statement "White is winning!" – followed perhaps by the question "What else do you need to know?" Albeit exaggerated, this reflects the logic of reduction of complexity and with it follows disinterest and redundancy. The analysis of the field may never enjoy the privilege of asserting the all-decisive judgment of the peculiar game of chess, but it does not indulge in the normative and declarative conclusions to which the model is prone.

Imagine again the peculiar game of chess, and now add to it another colour in addition to white and black. For the sake of argument, we shall choose the colour green. The model still shows that white is winning, but it does not know what to make of green. What is at stake? Why join now, when winning is no longer a likely option? The model was made on the basis of only two colours and builds on the assumption that winning was the goal. Now the model is skewed, biased and no longer has the requisite variety to represent the dynamics of the game. The field, however, retains its nuance and new research may be launched on the basis of changing conditions and facts. Such research could be on the integration of the green pieces into the field, it could be a comparison of the social performance of the green pieces to the others or it could even be on the 'threat' of the new green force that is expanding rapidly within the boundaries of the old game?

Metaphorically, it is within this peculiar game of chess that this thesis will pursue an analytical strategy of a religio-organisational focus on Muslim organizations in Denmark, Germany and England.

1.3 What's at stake?

The overall guiding questions of the thesis are,

> What is at stake for Muslim organisations in Denmark, Germany and England? Which conflicts and fault lines arise when they enter the religio-organisational field? What is to be won and lost by addressing and challenging the states, churches and other relevant institutional actors? How do Muslim organisations change the religio-organisational field as they enter it and how do the struggles in the religio-organisational field change Muslims and Islam?

The problem, with which this thesis grapples, goes beyond the mere epistemological concern of focusing rather than modelling. It is focused on specific problems that Muslim organisations and the Islamic community struggles with as they navigate and position themselves amongst the old churches, the state institutions and the many other relevant actors in the religio-organisational field.

The questions are sought answered throughout the chapters of the thesis, but as will become evident when discussing the outline of the thesis, the questions will receive the keenest attention in the Chapters Five, Six and Seven, each of which focuses on select fault lines in the religio-organisational fields in Denmark, Germany and England. By contrast, Chapters Two, Three and Four are theoretical, discursive and introductory.

The idea to explain the presence and peril of Muslims in Europe in terms of fields is far from new. Lene Kühle in her thesis from 2004 spoke of the Muslim field. She was followed by other scholars, who have "utilized the concept of a Muslim field with explicit reference to Bourdieu to describe the establishment and institutionalization of Muslims in national contexts in Europe" (Kühle 2012C, 9). Kühle discusses the Muslim field in the context of Bourdieu's religious field and she presents an intriguing innovation in the idea of a field of religious powers into which the Muslim field is presented as a subfield.

The approach of the present thesis, however, while acknowledging the existence and the explicability of the field of religious powers and while being concerned with several similar issues has a distinct focus on both the institutional and the organisational in its construction of a field. A field exists, as will be explored further in Chapter Two, where there is a 'network, or a configuration, of objective positions" (Bourdieu & Wacquant 1992, 97) and the interest here remains with these objective positions, the Muslim organisations that hold them and the environment of state and other religious organisations and institutions that contest and challenge these.

1.4 The original application

This thesis is the product of a PhD project based at the Centre for European Islamic Thought at the Faculty of Theology, University of Copenhagen. It was funded from 1 September 2009 to 31 August 2012 and Prof. Jørgen S. Nielsen served as advisor and Prof. Hanne Petersen from the Centre for Studies in Legal Cultures at the Faculty of Law served as co-advisor.

The objective of the project in the original application was to investigate the relationship and interaction between organised Muslims and the states in England, Germany and Scandinavia. On one hand, the ambition was to study the current situation and conditions in these countries of Islam and organised Muslims. On the other hand, the ambition was to investigate

states' understanding of the regulation of religion in general and Islam specifically. However, much changed during the project and several choices where made, which warrants further comment.

The choice to focus on the frame of the religio-organisational field rather than on the specific intricacies of Muslim organisations grew out of the questions that Nielsen posed in his chapter on Muslim organisations of his *Muslims in Western Europe* (2004). He had specified a number of research problems that had to do specifically with the Muslim organisations, but pointed to the importance of further research into the context and environments. In addition, Fetzer & Soper's *Muslims and the State in Britain, France and Germany* (2005) has been a significant inspiration and the theories tested lay much of the foundation in the present thesis. As a supplement to both these studies, there was a need to consider the frame in which Muslim organisations had to operate. As such, the focus on the religio-organisational field is in first instance a focus on the environment of Muslim organisations and a focus on the impact of context.

The choice of countries was made primarily on the basis on the fact that Denmark, Germany and England are relatively comparable in terms of the challenges that state and government institutions face in dealing with Muslim organisations and vice versa. As will be discussed further in Chapter Four, there are a number of similar circumstances that shows that the problems are similar and, with reasonable variation, so are the solutions attempted. In addition to this, the choice was based on accessibility in terms of geographical proximity, language and the availability of information concerning the specific cases analysed.[1]

Regarding the choice of cases, the original perspective was much wider than the end product could hope to be. Originally nine different cases were identified, which dealt with the same three problems across each of the three countries. Unfortunately, due to the complexity of the individual cases the complimentary perspective from the two other countries has been abandoned. Each of the three remaining cases are, however, fairly easily relatable to anyone familiar with one or more of the three countries.

The Danish case focuses on the administration of the government approval authorising religious communities to perform marriages with civil

[1] When speaking of Denmark, the thesis excludes the Faroe Islands and Greenland. There is no basis in any of the material to make any assumptions as to what is going on in these autonomous political entities. Something similar may be said of England. The study makes no claims as to what is going on in Wales, Scotland or Northern Ireland. As such, this is not a study of Britain or the United Kingdom, but of England. The reason for this is amongst others that the much of the material only covers laws of the English Parliament and the Church of England. As for Germany, the study considers unified Germany although many current religio-organisational constellations originate in West Germany (cf. Nielsen 2004).

validity. This is seen by Muslims as a mechanism of arbitrary differentiation in the religio-organisational field and is the reason for much frustration amongst Muslim organisations. Obvious German parallels can be made to the corporation status under public law and English parallels can be made to the charitable status.

The German case focuses on the German Islam Conference and the deliberation of a number of issues concerning the constitution, the organisational coherence of the Muslim organisations and a perceived 'religious risk' as to what might happen if Muslims were treated as other religious communities. Obvious Danish parallels can be made to the Church of Denmark 'religion meeting,' which is a forum for cooperating with Muslim organisations, and English parallels can be made to the formation of the Muslim Council of Britain.

The English case focuses on the Shari'a councils and their position between the Muslim communities and the wider English society. Obvious parallels can be made to similar institutions in Denmark and German, where the threat of parallel societies and legal orders is just as worrying to the state and governments.

Each of these three cases focuses on fault lines in the religio-organisational field and on the structural dispossession of Muslim organisations. Commenting on such a select and particular approach to cases, Bourdieu observes provokingly that "A particular case that is well constructed ceases to be particular" (Bourdieu & Wacquant 1992: 77).

1.5 Method and epistemological approach

Both the choice of method and the analytical strategy applied originate from the epistemological position close to the nature of the problem and the questions asked.

As the field is clearly a social construction and the norms, capital and power available are all contingent upon the social relations of human beings, this thesis is firmly based in the epistemology of social constructivism. (Barlebo Wenneberg, 2000). Human knowledge is only possible in the construction of categories, which again are drawn from the differences and distinction present in social life. According to Peter Berger and Thomas Luckmann, who in 1966 published *The Social Construction of Realtity – A treatise in the Sociology of Knowledge*, the foundations of human knowledge are drawn from the structures and institutions of every day life. "The social order exists only as a product of human activity," (Berger & Luckmann 1966, 70) and the institutions, organisations, habits, norms, symbols, structure, religions and much more are such products.

Needless to say, the very wide social arena of the religio-organisational field is such a human and social product. Bourdieu's theories and concepts are very much advanced continuations to these initial social constructivist

observations. In its own right, the term that fits Bourdieu theories is structuralism (Kunin 2011) with significant contributions to network analysis (Adams 2011). The study into the field is a study of the structures of relations that are constructed in relations between individuals, organisations and institutions. Much of Bourdieu's effort goes into understanding the power of symbols and social representations as strategies for minimizing human effort and maximizing social impact in the field. Therefore he observes, human "…action aims to produce and impose representations (mental, verbal, visual and theatrical) of the social world which may be capable of acting on this world by action on agents' representation of it. [M]ore precisely, it aims to make or unmake groups – and, by the same token, the collective actions they can undertake to transform the social world in accordance with their interests – by producing, reproducing or destroying the representations that make groups visible for themselves and for others" (Bourdieu 1991, 127). Chapter Two deals in much greater detail with these issues but suffice to say that in order to approach these human products analytically through any methodology, such a method needs to be attuned to social relations and social interconnectedness.

The overall approach to the questions in this thesis is sociological. Following Danish sociologist of religions Vejrup Nielsen and Kühle, the choices in this thesis adhere to an understanding of sociology that goes beyond merely counting and calculating under the banner call of 'if you don't count, you don't count.'[2] By contrast, Vejrup Nielsen & Kühle has a threefold understanding of sociology in their research on state and religion relations in Denmark:

> "First, it means taking a bird's eye view. Research on church and state in Denmark has mostly been conducted from a legal or theological perspective, typically with a normative focus. […] Second, it entails transcending the Danish context. Discussions on religion and state in Denmark have had an inherently 'local' feel. […] Third, a sociological perspective means looking beyond the formal content of the constitutions and church laws"
>
> (Nielsen & Kühle 2011, 174).

This approach is applied in the present work and this sociological perspective can be fruitfully taken in regards to Germany and England as well. As such, this sociology promotes a macro level of study with focus on the specific divisions in the religio-organisational field. As soon as the religio-organisational field has been defined, conscious and focused

[2] This phrase is quoted here without any reference, as it has only been related orally and it has been impossible to verify its origins.

choices must be made as to what to include and not to include from the study because it is utterly impossible to look at everything at once.

As for the specifics of the methodological choices, the information presented and analysed in the chapters of this thesis come from a number of different sources. However, all of the three countries rely on a combination of three approaches.

Firstly, in relation to the RELIGARE project[3] under the European Commissions 7th Framework Programme, a number of qualitative interviews were made in Denmark and England. The 20 Danish interviews were conducted primarily by Christoffersen and are available in the Danish report that followed from these interviews, *Danish Regulation of Religion, State of Affairs and Qualitative Reflections*, by Vinding & Christoffersen (2012). The material from the 26 English interviews was made available in the *UK Report on Fieldwork* by Hoque & Shah (2011). The interviews from both Denmark and England reflected broadly the religio-social spheres in these countries, including judges, religious leaders, politicians, key media profiles and academics. The questions asked focused, however, on the basic tensions of conflict regarding issues of religious diversity and secular models. The diverse nature of the material has been excellent for the framing of the religio-organisational field. While the RELIGARE project did not conduct interviews in Germany, interviews have been related in media and in reports concerning the key Muslim participants of the German Islam Conference. Here, the website[4] of the conference relates a number of highly useful interview portraits, which have informed the analysis of Chapter Six.

Secondly, a significant amount of generally available 'normative material' has been studied in building the general overview of the religio-organisational field and the specific cases. This includes the constitutions of Denmark and Germany, the relevant constitutional statutes in England, a number of government reports and studies on the questions of state and religion, policy papers and ministerial guidelines. In addition, many of the by-laws and foundational declarations of Muslim organisation in Denmark, Germany and England were gathered in the project. Much of this is available online and has been used to inform the self-expressions and interpretations of the positions of the state and Muslim organisations made by the institutions themselves. Such material is biased, of course, and this bias has helped to inform the tensions, conflicts and struggles in the field.

Thirdly, a number of specific initiatives were taken to build the three focus cases in Denmark, Germany and England. In Denmark, two Freedom of Information Requests were filed in the spring of 2012, which were

[3] www.religareproject.eu – accessed 20 February 2013.
[4] www.deutsche-islam-konferenz.de – accessed 20 February 2013

granted on 26 September 2012 and 1 October 2012, respectively. The first request regarded material from the Division of Family Affairs with the government agency of National Social Appeals Board concerning Advisory Committee on Religious Denominations and the second regarded the consultations of the Prime Minister with Muslim leaders held on 30 November 2004, 20 September 2005 and 13 February 2006. In Germany, all the public information regarding the German Islam Conference was analysed in the light of the criticism from German academics and Muslim leaders. In England, all the available academic studies on Shari'a councils were gathered and access was granted to a number of commission reports during a week long visit to the British Library in the early summer of 2011.

All of this material was analysed in order to produce the overview of the religio-organisational field and the specific cases. Analysis is defined as "an explicit rendering of structure, order and pattern" (Daly 2007, 209) and the analytical strategy build around the Bourdieuian concepts and focus on the religio-organisational field in Chapter Two has been guiding the analysis in the thesis.

At this early point, let it be emphasised that the analyses here are not designed to be comparative, and that the thesis holds no ambition of a true comparative basis for the three countries in question. It is rather to be seen as a demonstration of an approach to Muslim organisations in the religio-organisational field, which will be shown to be equally applicable in different foci. This is not to say that there is no basis for comparison in the material and a reader familiar with the issues and challenges in one of the three countries will most likely recognise parallels and patterns in the material presented.

1.6 Outline of the structure

There is deliberate purpose behind the structure of the thesis.

Chapter Two introduces the analytical strategy for studying Muslim organisations as they are embedded in the frame of the religio-organisational field, which is their institutional environment. In doing this, in turn, it introduces and discusses the definitions and concepts of models, of fields, of organisations and institutions, of norms and of symbolic representations. The chapter is informed by the theories and concepts by Bourdieu, which is a returning perspective in the entire thesis. The Chapter grows into a strategy for developing focus case studies in the religio-organisational field and as such it goes beyond what the thesis can deliver in the chapters to come.

Chapter Three looks at the existing models of Islam within the paradigm of European church and state research. It was conceived as an introductory discussion of research history but grew into a critique of the oversimplifications of the governing academic models of Islam in the

European context broadly and in Denmark, Germany and England specifically. Therefore, the argument that unfolds in Chapter Three is rather of the presence of Islam as a catalyst for the critical revision of the models traditionally applied to church and state relations.

Chapter Four is an introductory chapter which frames and constructs the religio-organisational fields in Denmark, Germany and England. Here, the history of regulating religion is seen as a building on the structures into which Muslim organisations must now navigate and position themselves. A returning focus in each of the three country subsections is the relationship of Muslim organisations to the states and governments and to the other religious communities. The presentations and outlines given are by no means exhaustive or even begin to draw a complete outline of the religio-organisational fields in question. Rather, Chapter Four is meant as an introduction to the most important historical and legislative contexts and the most essential facts about Muslims and Muslim organisations, in order to prepare the reader for the more specific analyses in Chapters Five, Six and Seven.

Chapter Five discusses the Danish case of the administration of the government approval authorising the religious communities to perform marriages with civil validity. Of specific focus is the Advisory Committee on Religious Denominations, who since 1998 have advised on the approval of religious communities. The Bourdieuian perspective applied here is on the construction and maintenance of fundamental dividers in the religio-organisational field.

Chapter Six focuses on the German Islam Conference and looks at the struggle between the German government and the Muslim organisations who are trying to position themselves as eligible and respectable partners in the religio-organisational field. The Bourdieuian perspective applied here is on the generative structuration that transforms 'Muslims in Germany' to 'German Muslims.'

Chapter Seven focuses on the Shari'a councils and their position between the Muslim communities and the wider English society. The Shari'a councils are locked in a tricky game of managing expectations and have the difficult task of stewardship of the cluster of Islamic norms embedded in Shari'a. The Bourdieuian perspective is on the symbolic resignification and reproduction of Shari'a norms as these become new resources for Muslims in the religio-organisational field.

Chapter Eight concludes on the guiding questions of the thesis and outlines the most important perspectives from the analyses of the religio-organisational fields. The conclusion, furthermore, summarises the most important and critical insights into the impositions of division in the religio-organisational field and the Muslim positions taken in response to these impositions.

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Chapter Two

Theories, Concepts and an Analytical Strategy of the Religio-Organisational Field

2.0 Introduction

The ambition of this chapter is to build the analytic strategy for conducting studies of detailed and focused cases within the religio-organisational given field. Rather than settling for modelling as an analytical strategy, the attempt here is to construct the field in which the religious organisations and institutions navigate. The construction of the field is as much a hypothesis as it is a map in the sense that it does not only concern itself with the positions taken and the relations formed, but with the possible positions and relations available. The power of this hypothetical and descriptive view is to maintain that, while the focus of the individual organisation may be subjective, the entire field in itself has objective structure. As introduced in Chapter One, the simultaneous social construction of society as both objective and subjective is maintained as we embed the individual organisation into its environment and into its social and institutionalised reality (Berger & Luckmann 1966). The theoretical foundation of the analysis of Muslim religious organisations and institutions is to hypothesize the socially institutionalised reality of the religio-organisational field as an environment that frames and engulfs these organisations and institutions.

The power of Bourdieu's theoretical apparatus comes from its applicability as integrated theories of the individual agent (habitus), of the social structure (the field), and the power relations (the forms of capital) (Dobbin 2008, 53). This makes the theory ideal for studying not only the inter-organisational relations and structures, but also the intra-organisational focus in a study of the organizational environment and associated institutions and agents. For the purpose of the present study, this wider field of associated organisations is delimited by the factor of, and focus on, religion; thus, the theoretical insights drawn from Bourdieu will help create the outline of an analytical strategy of the religio-organisational field.

Although each is made a spokesman of their perspective, Foucault, Bourdieu and Geertz, could by right of their respective oeuvres, easily explain all three Bourdieuian concepts from slightly different angles. However, of the three, Bourdieu's key insights are used throughout the

discussion of this chapter. Bourdieu's idea of field will inform the first third of this chapter, his insights into institutionalization will be crucial in the second, and his notion of symbolic power will guide the final third of the chapter.

This chapter concerns itself with introductions to the problems discussed within this thesis. It unfolds in five sections, in the attempt to break down the interrelated concepts that inform the religio-organisational field. The account of the religio-organisational field is ambitious and hypothetical, and must be taken one step at the time. Therefore in this chapter, the five related concepts that give language to the further analysis will be introduced and discussed in the chapters to come.

Initially, Clifford Geertz' definition of religion a both *models of* and *models for* reality as religious ethos and religious worldview are elucidated. Here, some of the reoccurring themes in the symbolic mediation of the objective world of structures and the subjective world of relations emerge.

Second, Pierre Bourdieu's concept of *field* as a structured social space in which positions and relations meet is discussed. The field is a socially and institutionally constructed reality that is both historical and objective, but equally changing and subjective. The field concept is applicable to an analysis of the accommodation available for Muslim organizations in the national use of European religious models. The discussion of fields gives an initial outline of what a religious field can be considered as, as well as what organisational theorists inspired by Bourdieu (eg. DiMaggio and Scott 1983) imagine an organisational field to be.

The chapter then introduces institutionalisation as the all-important constructivist element as it defines the concepts of organisation and institution. With institutionalisation it becomes clear how meaning and stability are created and become necessary in maintaining the field and the positions and relations within it.

Next, in order to understand the structures of power at play in the religio-organisational field, a quite thorough account of the concept and applicability of norms must be given. Brought together with the stability and meaning of institutions and the structure of positions and relations of fields, norms are viewed as the qualifying standards operable within the social space, and are embedded in the models for social action and power dominant within the field. Norms are essentially definers of groups that create distinctions, levels, and hierarchies with the field. The section on norms will demonstrate how three related applications of norms can be devised as technologies of the self in the religio-organisational field.

Finally, as power is involved in a relationship between the dominant and the dominated, the power of visibility, recognition, and representation comes into play. Here an introduction to Bourdieu's understanding of symbols and symbolic power is useful. Symbolic power is an invisible

power that serves to distort and produce legitimacy irrespective of reason. Like other models, representations and symbols work by way of reducing complexity and hiding details, so with a reminder from cybernetics of the importance of requisite variety, the conclusions of the chapter summarise the analytical strategy to be applied in the chapters to come.

2.1 Models

2.1.1 Clifford Geertz and the two sides of models

In 1973, the American anthropologist Clifford Geertz published a collection of essays entitled *The Interpretation of Culture*. Here, he not only sketched his interpretive theory of culture – which would direct the discipline of anthropology towards a cultural analysis of the symbolic dimension of social action – but also defined and interpreted religion as a cultural system (Geertz 1973: 87f). Although Geertz' approach is anthropological, his framing of religion closely relates to "the cultural turn in sociology" within cultural sociology (Alexander & Smith 2011, 4). With religion understood under a heading of cultural sociology and anthropology, the object of study and the premise of Geertz' work becomes a social constructivist making of meaning, which is exactly what cultural sociology defines as its object (Spillman 2002). In his definition of religion, Geertz therefore focuses on distinct patterns of meanings that are embodied in a symbolic system by which mankind communicates the ethos of life and worldview. He defines religion as:

> "…a system of symbols which acts to establish powerful, persuasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic."
>
> (Geertz 1973, 90)

Geertz' essay "Religion As a Cultural System" is a five-part explanatory exegesis of this definition, through which he means to give to the anthropological study of religion as a way to reinvigorate general academic stagnation. Inspired by the analytical ideas of philosophy, history, law, literature and other sciences, he sought to develop the cultural dimension of religious analysis (ibid., 87-88). It is not without reason that he is both praised and criticized as a "darling of the humanities" (Schilbrack 2005) and as a "proponent of humanistic, interpretative, hermeneutic" scholarship (Olson 1991). Not surprisingly, the cultural sociologists have adopted him as one of their own (Spillman 2002, 10), as his theories and ethnographical empirical data supply cases and examples to sociology and its related disciplines. Leaving the traditional confines of his own discipline, Geertz'

approach paradigmatically takes its point of entry with the premise that the cultural system of sacred symbols functions to bring peoples' *ethos* and *worldview* together in the representative synthesis that is the religious symbol. These two concepts are the pillars of his definition of religion. Ethos is understood as "the tone, character, and quality of life, its moral and aesthetic style and mood" (Geertz 1973, 89), while worldview is "the picture people have of the way things are, their most comprehensive ideas of order" (Ibid.). According to Geertz, these two concepts enlighten each other in religious groups' religious belief and practice, as:

> "Ethos is rendered intellectually reasonable by being shown to represent a way of life ideally adapted to the actual state of affairs the world view describes, while the world view is rendered emotionally convincing by being presented as an image of an actual state of affairs peculiarly well-arranged to accommodate such a way of life."
>
> (Geertz 1973, 90)

Geertz's understanding of religion builds on a confrontation and mutual confirmation between a rational, objective approach by the descriptive worldview, and an emotional, subjective approach by the imperative of the ethos. This mutual confirmation has two functions in the religious life of the group. On one hand, it builds a common sense, or a set of beliefs, with which to approach the reality of the world, while on the other hand, it confirms this common sense by offering emotionally and aesthetically experienced evidence for the truth embedded within it (Ibid.). The constructs of this mutually confirming confrontation between worldview and ethos are the symbols by which the religious groups navigate life and give it meaning. This construction, or systematization of symbols, depends on the ever-changing calibration of these symbols of embedded ethos and the particular structure of the world around the religious group, and is of great importance for Geertz' definition of religion and for the institutionalization of a religious organization.

Remaining, however, with the definition of religion and its inaugural concept of 'a system of symbols,' we return to the emphasis that cultural sociology puts on the making of meaning. Symbols are products of the human mind. They are signifiers, constructions of correlations and conceptions of meaning, which are understood by Geertz as acts of culture performed by social beings. In fact, Geertz tends to frame cultural acts, generally, "as the construction, apprehension, and utilizations of symbolic forms," (Geertz 1973, 91). As culture is by its nature is a social thing – and as cultural acts appear in society with structure and pattern – Geertz' theory views cultural acts as systems of symbols with near endless complexity as the only limit. One cultural act after another constitutes as such a cultural pattern or complex system of symbols.

These systems of symbols – that are the backbone of the definition of religion that Geertz later qualifies – are not only cultural acts, but also have a life of their own in relation to one another. Cultural patterns are considered as models when put in relation to each other. Together they form a set of symbols. Entities and processes, as well as physical, organic, social, and psychological phenomena relate to other such phenomena and form relations by way of paralleling, imitating, simulating, or struggling with one another. Thus, a model is born from patterns consisting of one set of symbols maintaining relations to another set. The relational rationality is one of the frequent ways in which social life is explained and communicated, whether it is in Habermas' *Theory of Communicative Action* (1985) or in George Lakoff's and Mark Johnson's *Metaphors We Live By* (1980). Geertz' original contribution, however, is to add a distinction to the basic concept of a 'model' by pointing out two categorical senses of the concept. On the one hand, models are sometimes *models of* something that render aspects of reality apprehensible in depictions or descriptions. On the other hand, models can also be *models for* something that manipulate or organize reality in accordance with a truth already established in the model. Therefore, the first understanding of models as 'models of' informs description and the second as 'models for' informs prescription. This feeds well with ethos as a normative prescriptive and worldview as descriptive, while both are socially constructed reductions or representations. When speaking of cultural patterns in particular, Geertz not only distinguishes the one from the other, but maintains that both happen at once:

> "Unlike genes, and other symbolic information sources, which are only models *for*, not models *of*, culture patterns have an intrinsic double aspect: they give meaning, that is, objective conceptual form, to social and psychological reality both by shaping themselves to it and by shaping it to themselves"
>
> (Geertz 1973, 93)

According to Geertz, this dual feature of models is unique to human activity. Broadly speaking, many aspects of life model themselves to something else and dictate modes of action, development or survival. However, the constructions of 'models of' as representations or symbols in addition to the 'models for' are fundamental traits of human thought. This holds immense impact for our production of cultural patterns and religious symbols. To the anthropologist in Geertz – and to generations from a wide array of disciplines – this dual feature of constructing models is what keeps his analytical interest in religion and returns him to the interpretation of culture. In short, Geertz' definition of religion thus combines the ethos in the 'model for' and the world view in the 'model of' into the complex of

symbols or pattern of culture, which is the religion's model of reality and by which religious groups create meaning.

2.1.2 Talal Asad's postcolonial criticism of Geertz' definition of religion

Although Geertz' program and definition enjoys wide acceptance, it also became the object of serious criticism – most notably from fellow anthropologist Talal Asad (Asad 1993, Schilbrack 2005). In his 1993 book, *Genealogies of Religion – Discipline and Reasons of Power in Christianity and Islam*, Talal Asad argues in a series of essays against the asymmetrical power relations in the constructed opposition between "the West" and "the non-West". This dichotomy is, in Asad's view, partially produced in religious genealogy that arose as western culture changed in the seventeenth and eighteenth centuries. With the advance of natural sciences and the increasing contact with the rest of the world, there need arose for a definition of religion as a trans-historical, universal essence. Asad is problematizing this essentialism which he finds in Geertz' definition as such an understanding of religion is constructed as part of the modern, Western world (Asad 1993, 54), and is "specific [to] Christian history" (Asad 1993, 42). The critique is manifold, but in this context, it has relevant implications for the examination of the models. This examination rests on a premise in Asad's criticism that Geertz holds a cognitive assumption in his essentialism – that is, that Geertz' definition is a mere acceptance of an established set of propositions from Christian history. "Geertz' treatment of religious belief, which lies at the core of his conception of religion is a modern, privatized Christian one," Asad argues, "because and to the extent that it emphasizes the priority of belief as a state of mind rather than constituting activity in the world" (Asad 1993, 47). Here, Asad clearly states the 'state-of-mind' cognitive premise assumed in Geertz' argument and Asad's conclusion is that this is done at the expense of 'activity in the world.'

However, according to a thorough reading of both positions by Kevin Schilbrack (2005) Asad is misreading Geertz' position. The reading by Schilbrack constructively explores lessons from each opinion and argues that the problem with Asad's criticism is an assumption of a problem in the cognitive claims in Geertz' definition. "It is precisely by insisting that one of the things that religions do is to make cognitive claims," Schilbrack argues, "that Geertz *distinguishes* his approach from the modern study of religion" (Schilbrack 2005, 437). Modernists in the study of religion tend to deny that religion has anything to say about the inter-subjective world. On the contrary, Geertz, Berger, and Luckmann, as well as later schools of research of the religious subjectivity and the sense of selfhood and self-consciousness in religion, argue in favour of the co-examination of the subjective with the objective (Grøn & Zahavi 2002). Such is Bourdieu's

perspective, as will be seen in the next section of this chapter. By insisting that religions hold a worldview that they teach, Geertz is leaving the modernist trends behind. The point which Asad misses is that Geertz' definition of complex cultural patterns consisted of bringing together an ethos and a worldview--and that this is simultaneously a cognitive and a communicatory endeavour, and, must be both subjective and inter-subjective by definition. If it were not for the mutual qualification of both ethos and worldview, Asad would have been correct in his critique of the cognitive. Nonetheless, he overlooks the importance in Geertz' definition of the objective and graspable nature of religion. A worldview is exactly based on acceptance of certain phenomena as real. In fact, Geertz insists that the meaning created in religion is "as public as marriage and as observable as agriculture" (Geertz 1973, 91). The two processes of making sense and meaning in the language of a given ethos, and of correlating this to the phenomena of the world are, according to Asad, confused in Geertz' definition. Asad rightly states that "theological discourse does not necessarily induce religious dispositions, and … conversely, having religious dispositions does not necessarily depend on a clear-cut conception of the cosmic framework on part of the religious actor" (Asad 1993, 36).

However, this is not Geertz' claim in his definition. Rather, he advocates an implicit and not conscious correlation of the metaphysical to the real in interpretation, representation or resonance. He is far from interested in theological discourse or clear-cut conceptions, but they too are included in his twofold model. The very notion of a dialectical relationship between the metaphysical and the real, the ethos and the worldview, can easily exist in both an explicit theological discourse and in an implicit ritual or a humorous puppet show. In fact, this is what makes Geertz' definition so applicable and so insightful, and it returns to the importance of the idea of cultural patterns as models of reality and models for reality. Again, Asad misreads Geertz in his dialectics, because Asad assumes that social change can never occur if cultural patterns both shape themselves to the world, and shape the world to themsleves (Asad 1993, 32). The assumption is that these are the only things that shape cultural patterns and the world. The instance a dissonance occurs in both, each must change in accordance. Such a dissonance can be political, social, cognitive, or even doctrinal. Put critically, Asad mistakes institutional stability for unchangeable paradigms in cultural patterns, and misses the social constructivist point that objective reality is socially produced through institutionalisation of habitual actions (Berger & Luckmann, 1966). By contrast to his argument, cultural patterns actually allow for what Asad initially praises of modelling-- namely that "it allows for the possibility of conceptualizing discourses in the process of elaboration, modelling, testing, and so forth" (Asad 1993, 32).

In sum, the coercive, modern, stabilizing, theological post-colonialism that Asad assumes for Geertz' definition appears to be misplaced. By taking the objective reality and the inter-subjective creation of meaning together, these concepts allow for an ongoing discourse that conceptualizes our reality. However, the lesson to take away from the argument between Asad and Geertz, as mediated by Kevin Schilbrack, is that religious meaning cannot be treated as autonomous from its social context. Both social context and religious meaning must be kept in dialogue with the other. This is part of both Geertz' and Asad's agenda. Geertz stress it in the duality of the model, where reality is both portrayed and changed by religious symbols and cultural patterns. Asad makes similar claims in his genealogy of religions. He maintains that Christianity is both a model of society in its historical context and that it becomes a model for the world with the colonial and imperial powers that be. Asad's argument and Geertz' definition seem convergent when speaking of the implicit adoption of an ethos and the interpretation of a worldview within current and changing contexts.

Asad's criticism of the Christian genesis of western thought and Geertz modelling both operate with an assumption that takes the anthropologists out of Europe and Christianity into the worlds of other religions, and each brings a warning. Geertz argues for putting sufficient energy into a thorough analysis of the meanings of symbols that make up the religions encountered. We cannot cope effectively with religions if we neglect the reality produced in both aspects of the symbolic modelling. In addition, Asad warns against forcing the products of our particular history of knowledge and power upon the rest of the world.

The insights of Asad and Geertz are central to this thesis, as they add a very important understanding of modelling of religion-state relations in Europe. If we refocus on the critical post-colonial perspective and look at the change in Europe, the warnings synthesised from Asad and Geertz seem doubly relevant. We are not anthropologists that bring an ethos into the world and try to challenge the existing worldview. Rather, as sociologists, we must that see the Eurocentric models in their original setting and add the world of incoming religions. In such a context, we are to consider the ethos of Islam and the view of the world in Europe (Grillo, Ballard, Ferrari, Hoekema, Maussen, and Shah 2009). However, Kevin Schilbrack's work demonstrates that Talal Asad misreads Clifford Geertz' definition of religion, and together, they add a defining layer of cognitive self-consciousness that brings *both* the ethnocentricity of culturally dependent models *and* the social context of state, church, and religion in today's Europe to the forefront.

Realising that the construction of meaning has social context that shapes both the context and itself, a wider and more dynamic space is needed in

which both the subjective and the objective become analytically operable. The idea complex of cultural patterns is a model both as a representation of reality and as a guide for its change, and begs at least two further definitions before the dual dynamics of the religious models can be explored. On one hand, the scope and limitations of the worldview implicit in the 'models *of*' a specific reality must be defined. This is proposed through the development of Bourdieu's concept of field. On the other hand, the workings of the particular norms in the 'models *for'* must be established as the techniques of the social institutionalisation. Both of these perspectives must come together before we can analyse the structure and context that work on Muslim organisations and institutions, and of the positions and relations in which they act.

2.2 Field

2.2.1 Pierre Bourdieu and fields of social reality

The work on *theories of praxis* by French philosopher, anthropologist and sociologist Pierre Bourdieu are an attempt to map out the mechanisms of control within an existing social order between the dominating and the dominated (Bourdieu & Wacquant 1992, 106; DiMaggio 1979, 1460). In Bourdieu's scope, all individual and institutional social life unfolds in praxis, and thus, praxis is the object of his theories. The theories of praxis consist primarily of a theoretical complex of three related and constituent ideas. The first is the material, social, and cultural structures and relations consisting of positions, which he terms *field*; the second is individual and institutional habitual dispositions, termed *habitus*; and the third is *capital*, or the sum and application of all available resources related to a position within the field. These three must be examined together. The language that Bourdieu uses to describe these three aspects of his theory is complex, and the English translations give little credit to the many simultaneous levels of abstraction on which he speaks. Therefore, the three ideas have been expressed and phrased in many different ways to illuminate their individual and collective aspects. In order to give a satisfactory explanation of Bourdieu's theories in their own right, while making clear why and how they can be applied to the organizational and institutional life of religious groups, an epistemological context seems in order.

Bourdieu's work is in many ways both broad and bridging, which can be credited to his focus on the praxis of social life. As individuals and institutions simultaneously relate to the *objective* structure of a framing system while they also perceive, experience, and interpret things *subjectively* as a product of consciousness, these two concepts are connected.

In this observation, Bourdieu can be related to Geertz, Berger, and Luckmann. It is, therefore, fruitful to think of Bourdieu's overall project as an ongoing attempt to link different theories of the social in a twofold perspective of praxis, and as a balancing act giving equal credit to the structuralist and the phenomenologist theories (Furseth & Repstad 2003, 79). His original approach is what he calls *generative structuration*, which focuses on the twofold process of interaction between subjective positions and objective structures (Ibid.). Basically, generative structuration is the production of and 'being-produced-by' structures in a network of social relations. According to Merriam-Webster, the term generative refers to the "power or function of generating, originating, producing or reproducing" (2013). Again the terminology used varies, but Bourdieu groups both the positions to be taken in a social structure and also the processes of taking these positions under one perspective (Emirbayer & Johnson 2008: 2). The language of "positions" and "position-taking" infers that relations are the very structures of social life, and that social interaction requires people to take positions in relation to each other (ibid.). Elsewhere, Bourdieu explains that individuals and institutions relate to existing 'structured structures' while at the same time generating new ones by 'structuring structures' (Bourdieu 1985, 13; Wilken 2005, 214). This generative process of both 'changing' and 'being changed by' is structuration. It merges the social with the societal – especially in organizations or religion (Calhoun 1991, xi). The generative structuration approach is defining for Bourdieu's work; that is, keeping in mind that social life unfolds in relations of positions is the hallmark of Bourdieu's contribution to relational sociology (Emirbayer & Johnson, 2008).[5] In order to explain how, why, and when generative structuration unfolds, Bourdieu applies the three core theorems of praxis – habitus, capital, and field.

Habitus explains what people and institutions are able to do or not do; that is, what positions are available to them. Bourdieu defines habitus as a "system of lasting and transposable dispositions which, integrating past experiences, functions at every moment as a matrix of perceptions, appreciations and actions" (Bourdieu & Wacquant 1992, 94ff). Habitus is closely related to habitualisation, which Berger & Luckmann explains to be the production of the social human being in relation to his environment (Berger & Luckmann 1966; 70). To be a habitual creature is to cast any

[5] The term structuration, as employed by Anthony Giddens, labels his entire theory. Giddens holds that structuration are the conditions governing the continuity or transformation of structures, and thereby, the reproduction of social systems. He states, "[a]ccording to the notion of the duality of structure, the structural properties of systems are both medium and outcome of the practices they recursively organise… Structure is not to be equated with constraint, but is always both constraining and enabling" (Giddens 1984: 25).

frequently repeated action "into a pattern, which can then be reproduced with an economy of effort and which, *ipso facto*, is apprehended by its performer *as* that pattern" (Ibid, 70-71). The habitual pattern is, in Bourdieu's terms, the result of different experiences and different connections collected over time, and allows for a measure of the available tools in dealing with a new situation.

Capital explains why certain positions are more attractive than others; that is, what looks good socially or pays off strategically. Capital is a good in itself, as well as a resource to be applied. To the individual it may be an endowment, while to the structure, it remains the measure or height of the position. Capital takes many shapes and may be economic, social, or cultural and there seems to be a strategic advantage to those who successfully manage to exchange one for another. Both habitus and capital are applicable in the objective reality and by the subjective due to their part in the *field*. More will be said of capital in section 2.5, as different kinds of capital may appear to have symbolic power if the holder can demonstrate the attractiveness of the particular kind capital in a particular position.

As the primary focus of this section, *field* explains how social space is constrained by existing positions and limited by resources and time. If resources were limitless and no other demands, socially speaking, everything would be possible and there would be not constraints. Equally, everything would be impossible because in social life people act in relations because there are social positions and prestige to be gained or lost. Specifically, Bourdieu defines *field* as "structured spaces of positions (or posts) whose properties depend on their position within these spaces, and which can be analysed independently of the characteristics of their occupants" (Bourdieu 1993, 73). The field is an autonomous space, where social relations and interactions are played out, and where resources, power, acceptance, and recognition as well as material, cultural, social/symbolic capital are distributed—depending on the condition (and power) of the relations. Bourdieu likens field to a social arena, a playground, a schoolyard or battlefield – all connotations which are embedded in the French word *champ*. Entering a field is like playing a game; with a rudimentary understanding of the rules, those who enter use what they have (i.e. their habitus in terms of experience and their capital in terms of abstract resources) and make the best of it, while continuing to learn about the existing positions and the positions to be taken. In a lecture series from 1987/88, published in *An Invitation to Reflexive Sociology*, Bourdieu explores the metaphor of the game to further explain the concept of field. He does this with explicit reference to the two other features of his theory of praxis and shows how the application of all three gives language to the praxis of playing a game:

> "We can picture each player as having in front of her a pile of tokens of different colors, each color corresponding to a given species of capital she holds, so that her *relative force in the game*, her *position* in the space of play, and also her *strategic orientation toward the game* – what we call in French her 'game,' the moves she makes, more or less risky or cautious, subversive of conservative, depend both on the total number of tokens and on the consumption of the piles of tokens she retains, that is, on the volume and structure of her capital[…] To be more precise, the strategies of the 'player' and everything that defines his 'game' are a function not only of the volume and structure of his capital *at the moment under consideration* and of the game chances[…] they guarantee him, but also of the *evolution over time* of the volume and structure of this capital, that is, of his social trajectory and of the dispositions (habitus) constituted in the prolonged relation to definite distribution of objective chances"
>
> (Bourdieu & Wacquant 1992: 99)

Winning – if there is such a thing – is, from a structural point of view, gaining more capital and occupying better positions. The mechanisms of the field reveal that all social life, all things changing and changeable, and all social organization is build on relationships of power, constructed culture, and social stratification.

There are many different fields, levels of fields, and fields within fields. Each field has its own implicit premises, its own external boundaries, and its internal relations with constitutive powers and norms. These must be observed together if any sense is to be made of a field. Accounting for the borders and limits of a field, for its premises and its constituent norms, are the initial steps toward building an analytical strategy out of the theoretical building blocks that make up a field. This is the difficult task undertaken in the chapters to come. "The process of constructing the field is," as Bourdieu points out, "perhaps among the most difficult and challenging of all phases of research. It is a process that obeys principles that are less of a method (a route that one retraces after the fact) and more than a simple theoretical institution" (Bourdieu 1996: 232).

For this purpose, Bourdieu outlines a few initial steps in the study of fields. First, the given field must be seen in relation to the different kinds of forces or powers at play. Bourdieu explains that physical, social, economic, or symbolic powers enter into a balance where one form of power is opposed to another, and that a struggle unfolds between them (Bourdieu & Wacquant 1992, 76). This overarching power struggle seems general to society and will feed into any field analysed. Depending on the governing logic, the hierarchy of the power, and the distribution of capital in this field, there will be a counter-power of the dominated that will be distributed in an inversely symmetrical pattern within the hierarchy. Thus, for example, in a field of material production, the holders of economical capital will be challenged by, and poised against, the holders of symbolic capital. Second, the analyst or researcher must try to map out the hierarchy

and structure of positions in the field. This is done in order to see how power is distributed within the field. It is important to distinguish between the objective positions in the field, understood as possible positions to occupy, and the stances actually taken by individual organisations or institutions (Bourdieu & Wacquant 1992, 105). A place to start is to look at the positions of distinguished power or most capital, and to see how this position is separated from others. Once the dominating position is identified, the various degrees of the dominated slowly becomes clear in the analysis.

As mentioned briefly above, the first of the defining features of fields is that they are relational. This concerns the coupling of the subjective interactions of people and institutions with the objective relations that are the constraints of available positions within a structure. The focus on relations is an old truth in sociology, and both Karl Marx and John Dewey, the American pragmatist, held this view before Bourdieu. Marx maintained that capital was not a thing, 'but a social relation,' while Dewey stresses that behavior of one thing "is modified by its connection with others" (Dewey 1988; Emirbayer & Johnson 2008; 5-6). Ultimately, the relational approach holds that nothing exists entirely in isolation, but is always related to something.

In their reading of Bourdieu for the purposes of organizational analysis, American sociologists Mustafa Emirbayer and Victoria Johnson stress the importance of the relationalism of the field, and paraphrase Bourdieu's definition in order to clarify that "any field… must be conceptualized as a configuration of relationships *not* between the concrete entities themselves… but rather, between the nodes those entities happen to occupy within the given network or configuration" (Emirbayer & Johnson 2008, 6). This is important to the understanding of the dichotomy between the objective relations of the structure and subjective interactions. It is not enough just to see how one organization looks to other organizations to map out their interactions. Rather, the positions and the nodes within the structure are different from the stances actually held by the individual organization – which has significance for the generative structuration. The stances are so because different organizations manoeuvre and navigate in and out of different positions at different times--according to their institutional habitus and dispositions, and depending on the capital available. This they do exactly because the structure is objective and the positions held at any given moment grant a subjective view from inside these positions.

The distinction between positions actually held and potential or hypothetical positions is the analytical virtue of looking for the structural when trying to map out the relations between organizations within a field. Given the objective nature of the structure, it becomes possible for one

organization to take a dominating position and force others into subjection. This power and position relationship is the premise for all relations within the field. Although a definition of field was already given above, Bourdieu reiterates the importance of position in the field, especially when concerned with analysis of the field:

> "In analytic terms, a field may be defined as a network, or a configuration, of objective relations between positions. These positions are objectively defined, in their existence and in the determinations they impose upon their occupants, agents or institutions, by their present and potential situation (*situs*) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, etc.)"
> (Bourdieu & Wacquant 1992, 96).[6]

With this understanding of the relational nature of fields, a second insight becomes clear; namely, that fields extend only so far as the relations of power extend (Emirbayer & Johnson 2008, 7). As organizations relate, structure, and dominate each other into holding varying levels of attractive positions, the limits of the field becomes clearer. Key positions are considered to be key, and poor positions are considered to be poor, because something within a field is worth fighting over. That something is, in Bourdieu's words, the *capital* appropriate to the field; the general idea being that there are as many fields as there are forms of capital to be fought over. Capital may assume different shapes and sizes relative to the field and is changed according to the struggling individuals and institutions. Capital as such is an abstraction that denotes the specific value appropriated and valid within the field. As inspired by Marx, capital in the sense of worth and value is expressed as positions within the structural grid of relations. Max Weber informs us of the virtue of classic capitalist theory of Adam Smith and Benjamin Franklin[7], that holds that capital in addition to being a resource, must be applied, practiced, and put to use (Weber 2005, 14). In this language, the field extends as far as capital has value and as far as there are positions to be held in relation to the value of other positions held elsewhere in the structure. The field ends when there are no more relations or when the nature of the attractive and valuable capital changes.

Thirdly, there is an unspoken consensus about the constitutive elements of the fields. Bourdieu calls these *doxa*, Greek for a common belief or

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[6] For the purpose of the analysis in the chapters to come, this distinction between stances actually held and positions capable of being held will reveal the first key parts of the religio-organisational field as the analysis unfolds.

[7] "Remember, that time is money… Remember, that credit is money… Remember, that money is of the prolific, generating nature" (Exert from Benjamin Franklin, full quote in Weber 2005, 14-15).

opinion. They are the ground rules or common conceptions without which there would be no field. The maintenance of the ground rules is critical to the field, and when contested, most agents within field will try to support them. In a key quote from a later synthesis of the understanding of field, Bourdieu addresses the implications of the implicit agreements for the whole field; "another property of fields, a less visible one, is that all the agents that are involved in a field share a certain number of fundamental interests, namely everything that is linked to the very existence of the field. This leads to an objective complicity, which underlies all the antagonisms. It tends to be forgotten that a fight presupposes agreement between the antagonists about what is worth fighting about; theses points of agreement are held at the level of what 'goes without saying' they are left in a state of doxa, in other words everything that makes the field itself, the game, the stakes, all the presuppositons that one tacitly and even unwittingly accepts by the mere fact of play, of entering into the game" (Bourdieu 1993, 73-74). The secondary legal rules and subset of regulations that English legal theorist H.L.A. Hart maintained as ways of validation and recognition of legality seem to be an exemplification of the doxa pertaining to the legal system and the legal fields (Hart 1961: 91ff., Freeman 1994: 345, Vinding 2009, 61).

Fourthly, the norms and principles of a field are paramount for any concrete analysis. If structured positions were constitutive to the field, if capital was the motivator for struggle within the field, and if doxa were the implicit of secondary ground rules, then norms are the principles of division within the field that not only presumes the three prior, but also gives the field both its hierarchy, its durability, and its dynamics.[8] The principles for division and distinction are "the system of criteria that could account for the set of meaningful and significant differences that objectively separate [entities within the field] or, if you will, enable the set of relevant differences among [them] to arise" (Bourdieu, quoted in Emirbayer & Johnson 2008, 8). Bourdieu summerizes this as "vision and division" (Bourdieu 2000, 65). The very existence of these normative criteria will give rise to the dynamics and the change within the field, as Bourdieu states, "struggles for the impositions of the principle of legitimate hierarchization do in fact cause the dividing-line between those who belong and those who do not to be constantly discussed and disputed, and therefore [to be] shifting and fluctuating, at every moment and above all according to the moment" (Bourdieu 1988: 77).

It is the norms that make the field of positions and structure hierarchical. The relations of positions hold power and the capital accounts for the value

[8] Doxa as ground rules or implicit assumptions are of course also to be considered norms, although not necessarily contested.

and the possibilities within the field, but the norms qualify and empower the value of the positions. By definition, the divisions of inside and outside that the norms set up within the field are those that give the levels and ranks native to hierarchy. The most powerful of norms yield the strongest divisions and, in turn, are those most difficult to transgress and transform. These strong dividers give stability to a field and allow for positions to be held for a long time and at low upkeep. Simultaneously, it is because of these norms that struggles arise and positions are challenged, which in turn yields the shifting and fluctuating dynamics of the fields. In Bourdieu's terms, this is the nature of differentiation and struggle (Bourdieu & Wacquant 1992, 100-101).

As norms are so important to illustrating 'how' rather than 'why' stability is enforced and challenged, they will be further developed in section 2.4 of this chapter. It will suffice here to stress that they remain of analytical importance in the development of the analytical strategy, that they are much more than mere rules, and they hold much more power than sanctions. An analytical focus on the normativities and regularities of a field is critical because it gives a much more complex idea of the navigations of a field.

2.2.2 Religious fields

For this chapter and the theoretical framing of the institutional positioning of Muslim organizations in the religio-organisational fields in Denmark, Germany, and England, there is need to elaborate further on a few of the implications of examining specific fields, and what a theory about fields has to offer when looking at organizations and religion.

Building on what we know about fields theoretically, there is basis in Bourdieu's own analyses to go deeper into the two related fields of organizations and religions. This will help to clarify important aspects for the expositions and analyses later in this thesis, and help to further specify the object of this study – establishing a framework for the study of religious organizations.

Craig Calhoun, who translated and published Bourdieu's 1971 work on religious fields "Genesis and Structure of the Religious Field", observes how field and the procedural view on structuration engages directly with the great minds of sociology of religion such as Weber (1978, 2005) and Durkheim (1912). "Religion is constituted as a specialized field addressable as such," he states of the historical transformations that become visible in the analysis of the religious field, and continues on to state, "from this vantage point we can look back to see the religious dimensions of societies which were much less clearly differentiated into fields, and forward to see (perhaps always partial and temporary) 'domestication' of religion by its compartmentalization" (Calhoun 1991, xii). Indeed,

Bourdieu's concept of field can be seen as a reduction of a social complex by variation of the governing logic of that particular field. Equally, the governing logic within the field defines the appropriate and applicable strategies operating within that same field.

When looking specifically at religion in Bourdieu's essay, it becomes clear that religious organizations are dually exposed to structuration by compartmentalization. Religion, as a field, has only narrow space to operate within society, and this space is continuously confirmed from the outside as well as contested from within. Amongst the agents and institutions inside the field, the limited space available becomes more critical and the strategies applied in the struggle thus more inventive. Both tendencies seem to be confirmed by a review of increased attention in the first decade of the millennium and that the recent resurgence of religion is cause for such uproar seem only to confirm that religion has indeed been assumed domesticated and that things now seem to change "after secularization" (Casanova 2006).

The concept of a limited space with available positions, scarce resources, and influence and power in relations is not only a convincing theoretical approach, but it is also a way for specific agents to give language to their positional struggle within this compartmentalized space. This is seen in particular in the specific case of the religious field which he develops in "Genesis and Structure of the Religious Field" from 1971 (Bourdieu 1991 in Calhoun 1991). Here, Bourdieu considers religion as "language, that is as both an instrument of communication and an instrument of knowledge or, more precisely, as a *symbolic medium at once structuring and structured*" (Bourdieu 1991, 2, my italics). Clearly, in this perspective Bourdieu is on par with Geertz, and although they each take a distinct perspective and use different terms, there is little distance between Geertz' ideas from 1973 and Bourdieu's from 1971. Both are deeply indebted to Durkheim in appreciation of the religious semiology and both define religion as a symbolic system. However, Geertz does so for a much wider model perspective, which takes into account the whole worldview. In that sense, Geertz is much closer to Peter L. Berger and his *Sacred Canopy* from 1967 (Berger 1967). By contrast, Bourdieu sets his system of symbols into the frame of field, where the structural division creates stronger and weaker positions. "Because symbolic systems derive their structure, as the case of religions shows, from the systematic application of one and the same principle of division, and because they can organize the natural and the social world only by carving out antagonistic classes (owing to the fact that they give birth to meaning and consensus on meaning by logic of inclusion and exclusion), they are predisposed by their very structure simultaneously to serve the functions of inclusion and exclusion, of association and dissociation, of integration and distinction" (Bourdieu

1991, 3). This "carving out of antagonism" is, by definition, the social power of the symbolic systems of religion, and is a clear reference to Durkheim. The categorisation of the world in a sacred-profane divide on Bourdieu's part is the point of origin for his own generative structuralism. Within the religious field, structuring and being structured, positions and position-taking, and communication between subjects and knowledge of objects, is governed by the social differentiation and legitimation of differences by the 'one and the same principle of division.' This is the basic religious norm, and from this first divider, the rest of the field can be mapped. With the system of symbols, the division principles of norms and the relational power of the structures, the religious field rests on a correspondence between social structures and mental structures. In a very compact quote from Bourdieu, the generative structuration between the objective and the subjective of the religious field receives its most condensed expression:

> "If one takes serious both the Durkheimian hypothesis of the social origin of schemes of thought, perception, appreciation, and actions and the fact of class divisions, one is necessarily driven to the hypothesis that a correspondence exists between social structures (strictly speaking, power structures) and mental structures.
>
> This correspondence [is] obtain[ed] through the structure of symbolic systems, language, religion, art, and so forth; or, more precisely, religion contributes to the (hidden) imposition of the principles of structuration of the perception and thinking of the world, and of the social world in particular, insofar as it imposes a system of practices and representations whose structure, objectively founded on a principle of political division, presents itself as the natural-supernatural structure of the cosmos."
>
> (Bourdieu 1991, 5)

To Bourdieu it is "the production, reproduction and diffusion of religious goods of salvation", the systematisation and the symbolic representation of this production constitutes "relatively autonomous religious field" (Bourdieu 1991, 7). The production of religious goods of salvation are produced and generated into religious capital by those who as priests or religious specialists have religious knowledge and who can dispossess those who are excluded from the production. Again the language is borrowed from capitalist criticism of Marx, but Bourdieu soberly maps out the implication of this capitalist criticism in the language of sociology of religion. This field is reproduced and differentiated by a division of responsibilities and an organisational hierarchy with priests at the top.

With reference to Durkheim's fundamental observation of religion as the very first categoriser of the social world, Bourdieu argues that the priests of religion were the ones to apply the sacred-profane set of principal divisions within the different classes of society. "The construction of a religious field

goes hand in hand with the objective dispossession of those who are excluded from it and and who thereby find themselves constituted as the *laity* (or the *profane*, in the double meaning of the word) dispossessed of *religious capital* (as accumulated symbolic labour) and recognizing the legitimacy of that dispossession from the mere fact that they misrecognize it as such…" (Bourdieu 1991, 11)

Bourdieu's understanding of the religious field with the dispossessed of religious capital and the misrecognition of the legitimacy are key elements of the construction of the religious field. On the one hand, the laity is those who do not produce religious capital, which Bourdieu defines as accumulated symbolic labour; while on the other hand, the laity needs to recognize the dispossession, that is, understand the legitimate the order of the symbolic system. This order, Bourdieu reveals, is naturally arbitrary, which makes the nature of the recognition as mis-recognition. Profane means both the religious ignorant and those who cannot administer the sacred (Bourdieu 1991, 12).

The basic opposition between the sacred and the profane is the basis of religious knowledge and is created by those who draw the limits between these produce the sacred and the religious knowledge. This dispossession of religious knowledge is embedded in the structure between the dominating position and the dominated position. The symbolic order of the social world becomes religion because it is legitimate and recognised, rather than magic or sorcery, which is the name of the dominated religion. "Religion can produce the objectivity it produces in structuring structure," Bourdieu says, "only by producing the misrecognition of the limits of the knowledge it makes possible. Religion therefore adds the symbolic reinforcement of its sanctions to the limits and… barriers imposed by a determinate type of material conditions of existence" (Bourdieu 1991, 14). Knowledge of the sacred and the generation of religious capital are identical to the stronger, and therefore, structuring position in the religious field. In addition, the mis-recognition of the limits of the knowledge, i.e., the idea that religious specialists may know the intention of gods or the end of days, allows for a sanctioning force that reinforces the original symbolic order. The illegitimacy of the structuring structure makes it objectively arbitrary rather than relational. It is through the subsequent mis-recognition that the dominated are assigned position and relations. Established religion and religious practice is only "a function of the reinforcement that the considered religion, by its power to legitimate arbitrariness, can bring to the material and symbolic force that can be mobilized by this group or class in legitimating the material or symbolic properties attached to a definite position in the social structure." As is slowly becoming clear, when we discuss the postions held and the potential positions capable of being held, there is a relationship of power between the two. A strong position in the

social structure is so because of the capital required and applied, but there are material and symbolic force attached to this specific position. These forces are legitimated by reference to the objective position in the structure with which it overlaps as a 'second-order objectivation of meaning' that is a 'process of explaining and justifying' as Berger & Luckmann explains (Berger & Luckmann 1966, 110-111). In this case, it is done by reference to the 'symbolic processes […] of signification that refer to the realities other than those of everyday experience" (Ibid., 111). This circular argument is exactly what makes the power to legitimate arbitraryness and it lives only because of the laity, the other religions and the weaker positions, that do not see that the recognition of legitimation is mis-recognition.

"Because religion, like all symbolic systems, is predisposed to fulfil a function of association and dissociation or, better, distinction, a system of practices and beliefs is made to appear as *magic* or *sorcery*, an inferior religion, whenever it occupies a dominated position in the structure of relations of symbolic power, that is, in the system of relations between the systems of practices and beliefs belonging to a determined social formation" (Bourdieu 1991, 12). As the picture of the religious field becomes the more nuanced, it is possible also to see the relations between different religions, where the structuring and dominating position is able to see other religions as inferior and therefore by definition as magic. This is because the production of religious knowledge and 'the sacred' in other religions is seen as illegitimate and by definition as profane. "Every dominated practice or belief is doomed to appear as *profanatory*, inasmuch as, by its very existence and in the absence of any intention of profanation, it constitutes an objective contestation of the monopoly over the administration of the sacred, and therefore the *legitimacy* of the holders of the monopoly."

Although Bourdieu is very indebted to the capitalist criticism from Marx (1887), it is of course possible to distil the structuralism of the religious field specifically and other fields in general without turning to Marxism. The focus is very much on the relationship between the priests and the laity as religious capitalists by establishment and religiously dispossessed labourers or religious consumers. Even further, Bourdieu contrasts the religious establishment to the religious irregular entrepreneurs like prophets and sorcerers. When keeping the structuralism and distinguishing it from the capitalist critique, what remains is a picture of the structure of the religious field, which we can build further on later in the chapter when turning to the organisational field. The organisational theorist are very successful in the exercise to take the structuralism away from the capitalist critique and apply the lessons learned to modern businesses and corporate knowhow.

In summing up the lessons for future analysis, these are the initial items to look for when sketching out the dynamics of different fields. Firstly, analysis requires identification of relations of positions rather than mere interactions. Secondly, the nature of the capital common to the field ust be established. A field is only as wide as those positions to be taken within the field are attractive. Thirdly, that distinct logic of the common rules of the game will need identification, and fourthly, norms understood and identified both as barriers and qualifiers following the principles of the generative structuration. Fifthly and lastly, the field can be constructed as it streches between on the one hand the objective dispossession and exclusion and, on the other hand, the socially symbolic power of the positional hierarchy.

2.3 Institutions and organisations

We have already made brief acquaintance with Berger and Luckmann and their *Social Construction of Reality* from 1966, both in Chapter One and previously in the present, but not yet treated their contributions systematically. As mentioned, Berger & Luckmann are, as the book title suggests, concerned with the *social construction of reality* rather than, as John Searle was, the *construction of social reality* (Searle 1996). The relevant difference is in the observation of the sociality of the construction rather than the sociality of the created. This stronger statement on behalf of Berger and Luckmann reflects that the creation of everything objectively and subjectively real is social by definition, because man is a *Homo Socius* that socially produces himself and the knowledge of himself (Berger & Luckmann 1966, 69). As such, “social order exists only as a product of human activity” (Ibid.). With a statement like this, and with an endeavour to analyse the social construction of knowledge, it is clear that Berger and Luckmann draw from Durkheimian sociology. They concern themselves with the same overall themes as Durkheim in the search for the foundations of social reality (Berger & Luckmann 1966, 28). Seen from the history of these ideas, Berger and Luckmann may be tentatively understood as the mediators and stewards of the Durkheimian sociology with their own distinct contributions. As such, on one hand they compliment Bourdieu in his dialectical structure between the positions objectively available and the stances taken and on the other, they provide a basis for many of the institutional theorists with their dynamics between the institutionalisation of the objective reality and the internalisation of the subjective reality. Many of Berger and Luckmann’s contributions add context to Bourdieu’s theory of fields and they clearly inform neo-institutionalist and organisational analysts when these adopt Bourdieu’s thinking into their study of the organizational field. Going further, the recent focus by

institutionalist theorists on the relational nature of the organisational field has clear references to the social constructivism that Berger and Luckmann represent together with a new appreciation of relations as expressions of the structural (Wooten and Hoffman 2008, 141).

Like Geertz and Bourdieu, Berger and Luckmann operate with both the objective and the subjective social reality. In doing so, they understand the dual dynamics of institutionalisation and internalisation as mutual ways of making the two realities into each other. In this respect, the section on institutionalisation will receive thorough attention, as the production of institutions is of great importance for an understanding of the organisational realities and environments constituent to the organisational field. Internalisation becomes a relevant perspective when organisations and individuals are asked to position themselves and navigate within structured fields.

With their social constructivist point of origin in their treatise, Berger and Luckmann naturally place the social man in an open relationship with the world around him. He is free to establish relationships with and structure the environment around him as far as humanness becomes a socio-cultural variable contingent on these relationships (Berger & Luckmann 1966, 65-66). Resonating the lesson from Durkheim that "…we have taken [the structures] from society and projected them into our representation of the world. Society has furnished the canvas on which logical thought has worked" (Durkheim 1912 [1995], 149), Berger and Luckmann remind their readers that man's humanity and his logic are inseparably intertwined in the social world (Berger & Luckmann 1966, 69, n. 13). Similarly, under threat of chaos and the collapse of order, the social world must continuously be produced and reproduced in an ongoing externalisation of the structures he himself has created, because "… the social order exists *only* as a product of human activity …" (Ibid., 69-70). According to Berger and Luckmann, the emergence, reproduction, maintenance and transmission of social order becomes the subject of a habitually repeated pattern and ultimately results in institutionalisation. As this section of the chapter unfolds, this making of institutions will be explored further, and we hone in on the institutionalist definitions of institution, organisation and organisational fields.

2.3.1 Institutions, institutionalisation and neoinstitutionalism

Understanding, conceptualising and defining institutions and institutionalisation is the self-proclaimed task of institutionalism theory and institutional analysis. Such an endeavour has a long history and tradition in a wide array of disciplines and academic fields. In particular, however, the most recent school within institutional theory, the so-called neo-institutionalism, takes a particular view of institutions and

institutionalisation in that they focus on the sociological, political and economic perspective on institutions and organisations. They theorise and analyse how institutions interact with and affect society. Neo-institutionalism therefore focuses as much on the individual institution and organisation as it does on the relations to the whole of society and to the surrounding environment. Neo-institutionalism is something new only to the extent that the focus on the sociological and behavioural is new to classical organisational and management theory. Thus it characterises itself by the interdisciplinary approaches, by the implicit rejection of the rational economic behaviour of actors, agents and organisations (Thronton and Ocasio 2008, 100), and neo-institutionalists take as their object of study the inter-organisational field and the relations between organisations and institutions that unfold within this field.

Obviously the history of institutional research has wider foundations that the neo-institutionalist merger of institutional theory and socio-economic method and arguably the sociological perspective has been there all along. Karl Marx with his materialist criticism (Marx 1887), Max Weber with his analysis of the bureaucracy (Weber 1978) and Emile Durkheim with his 'crystallized social facts' (Durkheim 1982) understood as institutions are foundational (Alexander 1983, vol. 2, 259; Scott 2008: 12). In addition, in his review of the history of institutional research W. Richard Scott count also Parsons, Mead, Bourdieu and Berger and Luckmann amongst the ranks of pioneers (Scott 2008). Talcott Parsons laid the mirco-sociological foundations to neo-institutionalism with his focus on institutions as systems of norms that regulate the relations of individuals to each other (Parsons 1990; DiMaggio and Powell 1991, 15-18; Scott 2008, 14). George Herbert Mead conferred that meaning is created by social interaction and gave attention to the role of the symbolic systems in the creation of the social and the institutional (Scott 2008, 15-16). Common to both Mead and Berger and Luckmann is the social constructivist and the symbol-interactionist approach to organised social life, where Parsons is more of a structural functionalist. The merger of the social constructivist and the structural functionalist seems foundational to institutional theory and resonates well with Bourdieu's overarching ambition of a theory of practice beyond the subjectivist-objectivist divide.

The reason for the prominent position of Berger and Luckmann in the institutionalism theory is in part due to the cognitive construction of shared knowledge and symbolic systems in the dynamics of the objectively and subjectively real. As mentioned, the predominance of the cognitive construction in Berger and Luckmann's theory resonate Durkheim, but when put in institutionally sensitive language it has strong inter-disciplinary impact and could cross-fertilize institutional theory. As opposed both to the classical sociology of Durkheim and Weber and to the

normative perspectives of Parsons and colleagues, Berger and Luckmann "… had a more direct influence on institutionally minded organizational scholars, no doubt because it granted institutions a larger role in ensuring social order …" (DiMaggio and Powell 1991, 21).

Brokering social constructivism to the neo-institutionalists, Berger and Luckmann's definitions of institutions and institutionalisation provides an excellent epistemological and comparative point of entry for a discussion of these concepts and for their utilization of the returning outlook towards an analytical strategy of the religio-organisational field. Taking both institutions and the social construction of institutions, i.e. the institutionalization, under one, Berger and Luckmann define these, saying, "Institutionalization occurs whenever there is *a reciprocal typification of habitualized actions* by types of actors. Put differently, any such typification is an institution…" (Berger and Luckmann 1966, 72, my italics). Defining institutions as reciprocal typifications of habitualized actions is, Berger and Luckmann admit in the note to the paragraph, "broader than the prevailing [understanding] in contemporary sociology" (Berger and Luckmann 1966, 221, n 21). From a social cognitive and constructivist point of view the definition is applicable, although not exhaustive. Habitualized actions are those frequently repeated actions that by mere repetition constitute social patterns. The cognitive recognition of this pattern and its repetition paves the way for cognitive categorisation and typification, and once this is externalised, shared, and socially recognized, we see and understand these actions as institutions. As such, these institutions are products of human actions and gain history and stability by the externalisation and objectivities of the common and reciprocal use (Ibid., 72). With their historicity and their stability, "…institutions also, by the very fact of their existence, control human conduct by setting up predefined patterns of conduct, which channel it in one direction as against the many other directions that would theoretically be possible …" (Ibid.). This structural control has direct parallels to the social structures and the structuration that both Bourdieu and Giddens spoke of and points to the fact of power and capital by merits of merely being institutionalised (Bourdieu 1985, Giddens 1984, Scott 2008). American sociologists and first generation neo-institutionalists Paul DiMaggio and Walter W. Powell comment on this definition of institutionalisation and the power that institutions have, saying, "Berger and Luckmann grant extraordinary power to institutions as cognitive constructions, suggesting that they 'control human conduct … prior to or apart from any mechanisms or sanctions specifically set up to support' them …" (DiMaggio and Powell 1991, 21; Berger and Luckmann 1966, 72). Whether or not the power of institutionalisation to control human conduct is too extraordinary, as seen from the point of view of DiMaggio and Powell, there is no doubt that the

power invoked by institutions being produced must be understood in addition to the structures that are secondary to them. The lessons learned from Bourdieu would suggest that institutions hold power by merits of their place in the overall structure and that they – inherently – themselves direct behaviour and impose limits on social structure.

However well the Berger and Luckmann definition of institutions provide context for the social construction of reality and however well it speaks to neo-institutionalists, it does not exhaust the possible conceptions of institutions and there are several additional useful definitions to be championed. Taking stock of the developments in institutional theory of the 1970s and 1980s, DiMaggio and Powell edited an anthology volume on *The New Institutionalism in Organizational Analysis* published in 1991. Here several of the influential articles within neo-institutionalism were reprinted, including DiMaggio's and Powell's own "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields" originally from 1983. This edited volume was also the occasion for revising and refining institutional theory and for this purpose Ronald L. Jepperson wrote a review-article on "Institutions, Institutional Effects and Institutionalism" in which he described the core semantic field of institutional terms and terminology. He set out to weed out misconceptions and conflations of the terms of institutional theory in order to gain some clarity and agreement about the concepts of institution and institutionalisation (Jepperson 1991).

According to Jepperson, the word institution is used to describe anything from marriage and motels to vacations and voting and is often misused, but must commonly refer vaguely to large or significant associations (Jepperson 1991, 143-144). Despite obvious differences between these social entities, there are important and abstract commonalities amongst them that warrant the label institution for all of them. They are all 'stable designs for repeated activity sequences,' which is how Jepperson propose we begin the clarification of the concept. "… *Institution* represents a social order or pattern that has attained a certain state or property; *institutionalization* denotes the process of such attainment. By *order* or *pattern*, I refer, as is conventional, to standardized interaction sequences. An institution is then a social pattern that reveals a particular reproduction process" (Jepperson 1991, 145, original italics). At first glance there seems to be little difference between this and the definition presented by Berger and Luckmann as both reference the reproduction of a social pattern. However, the Berger and Luckmann definition refers to actions by actors and this seems to be a cardinal issue of criticism in Jepperson's understanding. He says of institutions that "their persistence is not dependent, notably, upon recurrent collective mobilization … that is, institutions are not reproduced by 'action,' … rather, routine reproductive

procedures support and sustain the pattern, furthering its reproduction – unless collective action blocks, or environmental shock disrupts, the reproductive process" (Ibid.).

The contrast between institutionalisation and action is a core aspect of Jepperson's critically revised definition. Institutionalisation understood as the reproduction process of social patterns is sharply contrasted to actions, which Jepperson defines as another and different form of reproduction (Jepperson 1991, 148). Action is understood as a weaker form of social reproduction, because it relies on repetitive mobilization and will face problems and high costs in the attempt to reignite social initiative and to repeat social production (Ibid.). By contrast, institutionalisation is characterised by convention and congruence with existing social patterns and stability in the 'taken-for-grantedness' of certain social facts, such as those Berger and Luckmann analysed (Berger & Luckmann 1966, 65ff.). In his analysis, Jepperson's contrast seems as stark as to suggest that institution is 'non-action,' just as the taken-for-grantedness can be characterised by the absence of active thought (Douglas 1986). In fact, Jepperson states that "… if one participates conventionally in a highly institutionalized social pattern, one does not take action, that is, intervene in a sequence, make a statement. If shaking hands is an institutionalized form of greeting, one takes action only by refusing to offer one's hand. […] The point is a general one: one enacts institutions; one takes action by departing from them, not by participating in them …" (Jepperson 1991, 148-149).

This understanding of institutions as relatively self-activating social processes that reproduce themselves without any deliberate action provides a useful point of origin for a revised sociological analysis of institutions in, say, organised religious life. However, a third definition may add further perspective to the insights from Berger, Luckmann and Jepperson. American sociologist and institutional theorist, W. Richard Scott, has in his third edition of *Institutions and Organisations* from 2008 set out to give an omnibus definition that would incorporate perspectives from the two previous definitions, but also add to an analytical framework for approaching institutions and organisations more generally (Scott 2008). After a review of early institutionalism and the foundations of neo-institutional theory, Scott gives his broad definition as an attempt to 'encompass a variety of arguments' and to 'identify the analytical elements' of institutions. Thus, "Institutions are comprised of regulative, normative and cultural-cognitive elements that, together with associated activities and resources, provide stability and meaning to social life" (Scott 2008, 48).

While Scott calls this his definition and refers to it as such, it seems he has given something rather like a statement of three constituent elements,

which he investigates further. He comes closer to an actual statement of what institutions are in the subsequent paragraph, where it becomes clear that "institutions are multifaceted, durable social structures made up of symbolic elements, social activities, and material resources" (Ibid.). Almost like an homage to Durkheim, Weber and Marx in turn, the durable social structures that are institutions draw on the symbolic, the socially active and the material. However, it is the feature of stability and meaning provided to social life that is the focus of Scott's definition of institutions. They are relatively resistant, enduring and stable and they continuously provide meaning to the social life around them. Scott agrees with Berger and Luckmann and Jepperson in the observation of enduring meaning and he acknowledges that institutions exhibit these properties by reference to reproductive processes in addition to supportive behaviour and resources. However, Scott's claim is that these processes themselves are set in motion by the regulative, the normative and the cultural-cognitive elements that remain the key 'facets' or pillars of institutions (Scott 2008, 49).

Notwithstanding the three regulative, normative and cultural-cognitive elements, Scott is very close to the understanding of institutions as provided by Anthony Giddens in *The Constitution of Society* from 1984, saying, "institutions by definition are the more enduring features of social life … giving 'solidity' [to social system] across time and space" (Giddens 1984, 24). Giddens is not concerned with institutions as such, but rather with defining them in opposition to action they are the frames, which provide the structure of social systems.

The three pillars are Scott's original contribution to institutional theory, which itself is a construct drawn from the theoretical literature and collected into an analytical framework that maps the trends within existing research and guides future endeavours. Being regulative, normative and cultural-cognitive the three pillars form a continuum from the legally enforced to the taken for granted (Scott 2008, 50-51). In his definition these three elements draw together divergent perspectives that need to be looked at both independently and in conjunction. Drawing up a dense table of constituent elements, Scott analyse each pillar in turn from the perspective of how it warrants compliance, how it creates order, the mechanisms, logics and indicators of each, the affect it has in social life and the basis of legitimacy upon which the institution draws. The table is reproduced in part below for the sake of reference as each of the principal dimensions is of great interest to the analytical chapters in this thesis. The complete table holds further reference to various arguments and assumptions in the literature, but the five dimensions included are the most significant for understanding institutions.

Table 2.1 "The three pillars of institutions," after Scott (2008, 51).

	Regulative	*Normative*	*Cultural-Cognitive*
Basis of compliance	Expedience	Social obligation	Taken-for-grantedness, shared understanding
Basis of order	Regulative rules	Binding expectations	Constitutive schema
Basis of legitimacy	Legally sanctioned	Morally governed	Recognizable, culturally supported
Logic	Instrumentality	Appropriateness	Orthodoxy
Affect	Fear of guilt vs. innocence	Shame vs. honour	Certainty / confusion

The *regulative pillar* informs those institutions that constrain and regularize behaviour. The regulatory process and systems are seen as those that govern society by expedience. Scott quotes economic historian and Nobel laureate Douglass North for holding institutions as 'perfectly analogous' to the rules of the game and considering the formal written rules and the unwritten codes of conduct as the basic regulatory instruments (North 1990, 4; Scott 2008, 52). The economic systems, the legal systems and many of the rules, governances and by-laws that by statute and measures govern our lives are very much institutions of society. A legislative body that holds jurisdiction and gives laws according to established principles is the principal agent or organisation to reproduce the regulative institutions. Control, coercion and legal sanctions are the principal powers that maintain and support the regulative institutions. Equally, the legal instrument is sought to enable and empower constituents and actively reproduce the existing order in society. The normative power that the regulative pillar holds is embedded both in this coercive power and in the enabling powers. Scott warns against conflating the functions and instrumentality of law with the normative and cognitive dimensions that are also part of the socio-legal complex of law and regulation. Law is so much more than a mere instrument (Scott 2008, 54).

Scott sums up his understanding of the regulative view of institutions, saying, "A stable system of rules, whether formal or informal, backed by surveillance and sanctioning power that is accompanied by feelings of fear / guilt or innocence / incorruptibility is one prevailing view of institutions" (Scott 2008, 54). The regulative norm will affect and delimit a social body into a dichotomy of two groups, namely the guilty and the innocent. As we

shall see with the two other institutional pillars, despite the name that Scott has given then, each of the three will, with reference to a norm, delimit and divide the social body into two primary categories. It seems this is to a lesser degree function of the institution and more a function of the particular norms that are constitutive to the pillar and regulative elements of institutions, but this is an argument that we will return to later in the section on norms in this chapter.

The *normative pillar* and the corresponding trend in institutional theory focus on normative rules and the prescriptive, evaluative, and obligatory dimensions of social life (Scott 2008, 54). The imperatives in play in this kind of institution are those social obligations, moral codes and the normative social statements and expectations of 'how to behave' and 'what one ought to do'. These are social conventions and paradigms, which are those that define the group or collective. Values and other definitions of the 'good,' the 'right' and the 'beautiful' morally govern these groups. By socially sanctioning and enforcing the collective identifiers, standards are erected and institutionalised.

Like the regulatory institutions, the normative both constrain and enable social action and do so through the logic of the acceptable and the appropriate. Violating the values of the group and thereby trespassing on the protective norms, the repercussion and sanctions are disgrace or shame (Scott 2008, 55-56). As mentioned in the previous paragraph, from a sociological perspective, there is little difference between the regulative and the normative as one seems to be a representation of the other. Normative institutions regulate behaviour and regulatory institutions proclaim a normative order.

The *cultural-cognitive pillar* of institution theorists, which by Scott's account include Clifford Geertz, Peter L. Berger, Paul DiMaggio, Walter Powell and Scott himself, emphasise the social constructivist nature of social life and the construction of meaning by reference to the symbolic systems of culture (Scott 2008, 56-57). Quoting Scott, it is not difficult to see the kinship with Geertz and Berger and Luckmann: "Symbols – words, signs and gestures – shape the meanings we attribute to objects and activities. Meanings arise in interaction and are maintained and transformed as they are employed to make sense of an ongoing stream of happenings" (Scott 2008, 57). The taken-for-grantedness and low maintenance reproduction that speak of a high degree of institutionalisation would often fall under this pillar. The deeply rooted cultural habits and conventions of culture explain the compliance to this kind of institutions. A handshake or the wearing of ties is taken for granted in some cultures and strange in others. Intuitively we recognise these institutions as 'the way we have always done things,' and we recognise the fact that it may be arbitrarily constituted, but normal and accepted. These intuitions are more

deeply rooted than mere values and are governed by a logic of orthodoxy and, perhaps, of orthopraxy in that 'this is how we do' and 'this is how we think.' Scott concludes his introduction to the culturally-cognitive by saying, "a cultural-cognitive conception of institutions stresses the central role played by the socially mediated construction of a common framework of meaning" (Scott 2008, 59). The wording of the common framework of meaning is very significant for the understanding of the norms that tacitly operate behind these institutions. Oddity, confusion, cluelessness and perhaps even craziness characterise the trespassing of the culturally-cognitive norms in play as opposed to the normal, taken for granted and confident certitude that operate here.

Regarding the issues of this thesis and the progress of this chapter, it will be easy to identify the social constructivist and symbolically sensitive approach presented here as part of the cultural-cognitive pillar. Repeated reference has been made to Clifford Geertz, to Bourdieu, and to Berger & Luckmann. However – and this opens for a criticism of the three pillars that Scott presents – there is good reason to approach institutions without reproducing the sharp distinctions implied in Scott's scheme.[9]

While it may be fruitful to distinguish the three pillars from one another in analysis, there is good reason to make Scott keep his promise of approaching the pillars as aspects and facets of the same institutions (Scott 2008, 50-51). It seemed the three aspects were more a distillation of the literature on institutions. In presenting the pillars, Scott gave order and structure to the research on institutions rather than defining institutions and actual difference in the institutions analysed. Scott's definition only looked at these elements and did not distinguish and delimit institutions from what they are not, which remains one of the virtues of a definition. Therefore, for the purpose of understanding institutions in the analyses in this thesis, Scott's three aspects of the institution should be considered against the two previous definitions given by Berger & Luckmann and Jepperson. This will also help summing up what we know about institutions so far and how it is relevant to the returning perspective on the religio-organisational field.

Reading the three definitions together in the light of Bourdieu's structuralism and his idea of capital as an expression of positions in a structured field, it becomes clear that the power of institutionalisation is a

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[9] Religion, for example, operates within each of the three pillars. Berger may emphasise the World-construction and projection upon the sacred canopy (Berger 1967), while others may look to religion as governing the right and the good from a moral or ethical perspective, while still others look to religion for a deep institutionalisation of laws that govern society, economics and politics and direct the sanctions for the maintenance of these. This is clear in both a very secular society like the French, where the Burka has been outlawed, and in a very religious society like the Iranian, where the clergy legislate by authority of God.

positional power. When the upkeep and maintenance of a position is institutionalised, the capital needed for maintenance is greatly reduced. When Berger and Luckmann speak of the extraordinary power that institutions have in and of themselves, this power is in part relational, but also an expression of the capital needed for the taking of the position in the first place. The revision and refining of the Berger and Luckmann definition by Jepperson did away with the conscious action in upholding the positional power of institutionalisation. The reciprocal typification of habit was complimented by the 'certain property or state' that a social order or pattern had attained to be an institution. The maintaining in a particular reproduction process *without* action of a position, state or pattern, is institutionalisation. A highly institutionalised position is maintained at a very low cost and almost taken for granted. The power of being taken for grated is indeed extraordinary and must be established by an abundance of the social or symbolic capital and only when seen as legitimate. Taking Jepperson's insight even further, it becomes clear that it takes an effort of action and power to vacate an institutionalised position within a social structure. Challenging and overtaking a social position requires not only adequate capital, but also legitimate power and deliberate action. By the capital required, the power and action needed to attain it, a measure of the stability of an institutionalised position in social life becomes clear.

The duality of structure versus agency, which is clear throughout the institutional literature and presents itself in the disagreement between Berger and Luckmann's definition on the one hand and Jepperson's on the other, returns to Bourdieu's overcoming of the opposition of objective and subjective. The resulting "structuralist constructivism or constructivist structuralism" (Bourdieu & Wacquant, 1992: 11) returns us to the dual focus of both positions and relational structures. It reminds us that institutionalisation is a characteristic of the position held, not necessarily of the organisation that holds the position, and is thus contingent on the structures rather than the individual dispositions and habitus of the organisation.

A final comment before looking further into organisations and organisational fields may be to reiterate the point that Jepperson made about institutionalisation and the process of turning into an institution. His argument in short was, "that institutionalisation best denotes a distinct social property or state, and that institutions should not be specifically identified, as they often are, with either cultural elements or a type of environmental effect" (Jepperson 1991, 144). Keeping in mind that institutions express a property or state of a social pattern that is characterised by a particular reproduction process, it becomes clear also why Scott keeps talking about pillars, aspects, elements and facets. He is describing these properties and not specifying their object. As such, it

seems Scott has more to say about laws, norms and symbols, rather than institutions specifically. This question of what institutions are a property or state of, is exactly what we need to keep in mind when looking firstly at organisation, but also in the final sections of this chapter at norms and symbols. We will see that the ability to convey stability, meaning and order, is why organisations, norms and symbols may be called institutions or rather are described as having institutional properties.

2.3.2 Organisations, organisational theory and organisational environments

Organisation studies and the theory of organisations have, to a certain extent, been co-opted by institutional theory. There is, however, good reason to try to distinguish these, as there is significant difference in certain crucial aspects such as the object of study, the methodology and the academic tradition.

Taken at its very core, organisation can be understood by reference to its etymological origin. The word derives from Greek όργανον, meaning instrument, tool, or organ by which something is done and infers instrumentalisation for a specific goal or task (Liddell and Scott, 2002). As such, an organisation is an entity or social group, which solves tasks and reaches goals by a particular distribution of assignments. Organisation as a term or label can be used equally of the group of people, the ordering principles and the distribution of tasks and assignments.

Many theorists of organisations have a management or administrative perspective on the study of organisations, but as organisational theory was consolidated during the first half of the 20th century, it became apparent that organisations could and should be approached from all sorts of disciplinary and methodological angles. American organisation theorist Mary Jo Hatch, in her *Organisational Theory* from 1997 argues that organisations must be understood in the intersection of the different spheres of life that contextualise these: "…organisations are usefully conceptualized as technologies, social structures, cultures, and physical structures that overlap and interpenetrate one another within the context of an environment …" (Hatch 1997, 15). These four spheres are the returning focus of her exposition of organisational theory and they represent the classical understanding of what managers of organisations need to account for in the ordering and distribution of the organisational body.

Adding 'environment' as a crucial fifth factor or sphere, organisational theory moves forward into a much more nuanced understanding of how "… [the organisational environment] influences organizational outcomes by imposing constraints and demanding adaptation as the prize of survival …" (Hatch 1997, 63). Survival in the long run is the structural criteria of success for organisations in this perspective. The environment of an

organisation is a highly complex construct and is usually seen from the point of view of the organisation as something surrounding it. However, when orienting itself from within the environment, the organisation is biased and subjective in its view of its own position in the structures. Although it may be needed to do so for the purpose of analysis, it is counterproductive to distinguish sharply between the organisation and its environment. Rather, the organisation is embedded in the environment and remains contingent upon the conditions, change and complexity of the environment (Hatch 1997, 75-77).

In her view of the environment that embeds organisations, Hatch follows the neo-institutional approaches introduced in the previous sections. Describing above organisation theory as co-opted by neo-institutionalism, reference is made to the research focus of neo-institutionalists on how the environment puts demands and requirements on the organisations. Organisational studies don institutionalism in the recognition that institutionalisation, as an organisational strategy, is a very effective way to conform to the demands and expectations of society. The low maintenance reproduction and recalibration of stability and meaning that is institutionalisation is by definition conformity and synchronicity with the governing social order. The risk of not responding to environmental demands or the risk of losing social, political or legal legitimacy is a very real danger to organisations. "Organisations adapt, not only to the strivings of their internal groups, but to the values of the external society" (Hatch 1997, 83-84). The governing rationality is that of conformity and tuning in to the institutional environment. It is not surprising, then, that Hatch and much of contemporary organisational theory subscribes to the incarnations of institutional theory as expressed by W. Richard Scott and others (Powell & DiMaggio 1991; Scott 1992; Hatch 1997, 83-87).

While Hatch frame the organisational environment as different sectors that include the social, cultural, legal, political, economic, technological and physical factors (Hatch 1997, 67-69), Scott similarly understand environment as sectors, but frame these as institutional influences that include regulatory structures, government agencies, laws and courts, professions, interest groups and mobilized public opinion (Scott 1987; Scott & Meyer 1991: 117). The high complexity, inconsistency and unpredictability of organisational environments have massive impact on organisations and the institutionalisation process (Scott 2008: 159-160). For institutional theorists and analysts this explains the difference and variety of institutions. As a consequence and in order to reduce the complexity, the environmental impact on organisations can be seen at the level of the mentioned sectors rather than at the whole width of the general, 'big picture' environment (Hatch 1997: 67-73).

As a result, Scott and fellow Stanford colleague John W. Meyer argue in favour of applying societal sectors as the analytical focus and prefers to look at groups of organisations under one scope. These societal sectors are defined as "… (1) a collection of organisations operating in the same domain, as identified by the similarity of their services, products or functions, (2) together with those organisations that critically influence the performance of the focal organisations; for example, major suppliers and customers, owners and regulators, funding sources and competitors …" (Scott & Meyer 1991; 117). These sectors incorporate much of what is traditionally understood in economic theory as industry with its kinship of products and services, but Scott and Meyer see the societal sectors as much wider. They encompass different types of organisations and include many of the institutions that are secondary to the focus organisations. All manners of supporting, enabling, framing, and constraining institutions are likely to be included in the sector environment. This all adds to the institutional environments of the organisation, which Scott and Meyer define as "… characterized by the elaboration of rules and requirements to which the individual organizations must conform if they are to receive support and legitimacy. The requirements may stem from regulatory agencies authorized by the nation-state, from professional or trade associations, from generalized belief systems that define how specific types of organisations are to conduct themselves …" (Scott and Meyer 1991, 123; also, Meyer and Rowan 1977; DiMaggio and Powell 1983).

Returning to our recurring reference to Bourdieu and to an analytical strategy of the religio-organisational field, it becomes clear that organisations are to be understood as holding a position within the structure of the surrounding environment. An organisation is understood as biased and subjective in its positioning and tries to make sense of the structures around it from its point of view. This exercise is the institutionalisation strategy analysed by neo-insitutionalists. The language from Bourdieu provides additional understanding of the internalisation of the environmental structures and culture. The organisation may be seen to have a certain *habitus* as it navigates the structures of the environment (Scott 2008: 42). In the sections above, habitus was understood as the lasting and transposable dispositions, which functions as perception, appreciation and action by – in this case – the organisation. Habitus allows the organisation to structure its behaviour and appropriate its strategies contingent on the environment as a sort of internalization of society and culture (Ibid.). In the paragraphs above, the societal sector was seen as the collective of both the organisations that are similar in production and service and the organisations that support or limit this production or service. Added to that was the institutional environments, which were defined as the rules, principles and requirements that govern the possible actions of the

organisation. Taken together, the societal sectors as analytical subject-matter and the institutional environment as the structuring principles, we begin to see the outline of a particular field of positions taken, positions to be taken and structures and relations in between them. This is analogous to the religious field, but with a distinct focus on organisations and with a different set of institutional logics and structures.

2.3.3 Organisational fields

Research on organisational fields is integral to neo-institutionalism and American institutional sociologist Paul DiMaggio gave one of the first American readings of Bourdieu in a 1979 review essay of two translations into English, *Reproduction in Education, Society and Culture* (Bourdieu 1977A) and *Outline of a Theory of Practice* (Bourdieu 1977B), in which DiMaggio introduces Bourdieu's concepts and theories to new American readers (DiMaggio 1979). He relates the important aspects loyally, while still giving his own critical reading. DiMaggio centres on *field* as "the critical metaphor in Bourdieu's work," as "field refers to both the totality of actors and organizations involved in an arena of social and cultural production and the dynamic relationships amongst them" (Ibid., 1462). In the same breath as he accounts for Bourdieu's understanding of fields as relatively autonomous entities that operate according to their own internal logics and dynamics of conflict, DiMaggio gives similar properties to institutions embedded as agents within the fields stressing that the structuring logic of the fields govern the institutions (Ibid., 1468).

This demonstrates a plausible and operational correlation between the positions in the field and the field itself. This shows not only how DiMaggio is thinking in Bourdieu's analytical terms, but also suggests that much of the early neo-institutional theory on environment and the organisational field is influenced by Bourdieu. DiMaggio follows Bourdieu and regards the organizational field in that he proposes to think of it "… in the dual sense in which Bourdieu uses 'champ,' to signify both common purpose and an arena of strategy and conflict" (DiMaggio 1983, 149). Furthermore, he paraphrases Bourdieu referring to fields as "… both the totality of actors and organisations involved in an arena of social or cultural productions and the dynamic relationships among them" (DiMaggio 1979: 1463).

DiMaggio is indeed one of the early adopters of Bourdieu's thoughts on the American scene. Although he warns against the possible transformation of the theories as they enter American sociology and against a productive misreading, he is himself guilty of such 'creative treason' (DiMaggio 1979, 1472). He stresses a focus on organisations and in Bourdieu's name directs his fellow sociologists to 'inspect the relationship between social structure and symbolic production' in the diverse fields of prevailing research (Ibid.,

1471). In addition, he places his own 'cultural-organisational' approach to the interplay of relationships between organisations and their culture within the organisational field (Ibid. 1472). In his review of Bourdieu it could even be suggested that the early strokes of the 'new institutionalism in organizational analysis' (Powell and DiMaggio 1991) are visible and that Bourdieu's framework in his concept of *field* is indeed transformed by American organizational theorists. This is at least how Scott reads the influence (Scott 2008, 16). Important here, however, is that the concept of *field* holds such inspiring and fruitful analytical properties and is equally ambiguously defined that it is both adaptable and applicable. The institutional processes that define the struggles over capital and influence in the field can be shown to work equally well both inside organizations and amongst them, both structuring them and making them structuring agents (DiMaggio 1979; 1471-2; DiMaggio & Powell 1983; Powell & DiMaggio 1991, 25-26; Scott 2008, 16).

As Hatch suggested it is in the organisational field that we find the environment of the organisation with all its contingencies and demands. In 1983, DiMaggio and Powell defined the organisational field as "…those organisations that, in the aggregate, constitute a recognised area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organisations that produce similar services or products" (DiMaggio & Powell 1983, 143), while in 1995, Scott defines the organisational field as "a community of organisations that partakes of a common meaning system and whose participants interacts more frequently and fatefully with one another than with actors outside the field" (Scott 1995, 56; Scott 2008, 86). From an analytical point of view, organisational fields present themselves as a considerable complex. As already suggested we are moving into the inter-organisational level – as opposed to intra-organisational – of analysis and focus on how individual organisations navigate and position themselves (Emirbayer & Johnson 2008, 2).

In a recent reading of Bourdieu and the applicability of his theories for organizational analysis from 2008, Mustafa Emirbayer and Victoria Johnson promote 'a relational agenda for organizational research,' which aspires to bring a study the organisational fields back to a closer relation with Bourdieu's own concept of field. In fairness, the field concept that DiMaggio referenced in 1979 has later been given additional specification, and in the Chicago conversations from the winter of 1987/88, the relational nature of the field was given emphasis (Bourdieu & Wacquant 1992, 94-115).

Emirbayer and Johnson stressed the importance of the relationalism of the field and thus gave an understanding of organisational fields that was much closer to Bourdieu's own, defined the organisational fields from the point of interest of the organisations rather than the theorists, stating

"Organisations must always be situated within the matrices of relations, the relational contexts, within which they are constituted in sometimes unseen or unrecognizable ways and with which they are ever dialogically engaged" (Emirbayer & Johnson 2008, 5) and went further, drawing on both the DiMaggio and Powell emphasis as well as the Scott definition,

> "An organizational field includes not just one type of organization (e.g., all car manufacturers), but all the organizations that play one role or another in the activity in question (e.g., car manufacturers and steel suppliers, dealer, consumers, insurers, and local and federal government agencies regulating the manufacture and operation of cars). Because the institutions governing a given organization's structure and practices are often influenced by a wide variety of other organizations – a variety not adequately captured by other organization-theoretic concepts – the concept of organizational field has been of particular value to neo-institutionalist scholars"
>
> (Emirbayer & Johnson 2008, 2-3).

To Emirbayer and Johnson, the return of focus in neo-institutional theory to the influence by Bourdieu gives a central place to the social conditions of the power relations in play between organisations. The consequence for organisational and institutional theory is that the argument of the difference in positions of structure and the stances taken by individual organisations must be taken seriously and holds crucial analytical value. As mentioned in previous sections, the field consists of nodes or positions in organisational space, which taken together with the forces between them, are the very structure of the field. The relational nature of the study of the organisations' fields thus focuses not on the actual organisations, but the relations between them. Emirbayer and Johnson stress this point: "… any field – one consisting, for example, of two or more organisations – must be conceptualized as a configuration of relationships *not* between the concrete entities themselves – e.g., the specific organisations at hand – but rather, between the nodes those entities happen to occupy within the given network or configuration" (Emirbayer and Johnson 2008, 6).

This lesson is of great significance to the analysis of the organisational field. Bourdieu (1993) stresses the importance of not looking at the arbitrary holders of positions but rather looking at the structural relationship between the dominant and the dominated. An analysis that mistakes structural positions for the organisations holding them will expose itself to the accidental particularities and subjectivity of the organisations and not necessarily learn anything about the structural powers at play.

As have been touched upon, there are two analytical difficulties to consider when trying to make sense of the organisational field that informs any analytical strategy. The first is to delimit and define the field, which is

done by reference to the logic of the field, and the second is to define the basic principles of division within the field.

The first difficulty in making sense of the organisational field – as with any field – is defining its commonalities and its boundaries. In such an endeavour, we are returned to the insights from Bourdieu and can benefit from the much closer reading of his influence by Emirbayer and Johnson. The common logic of the field, or rather, the implicit agreement that the struggle of being in the field is worth the effort is what grants access to the field. For businesses and others that are the subject of most established organisational theory, access to the organisational field is granted by the struggle for survival and success. The logic can be stated tautologically in that it defines the premise. For example, the quote attributed to Milton Friedman – "the business of business is business" – becomes the doxa or implicit belief of the field of competitive business to the exclusion of all other logic (Bourdieu & Wacquant 1992, 98). The field by this trait only exists so far as this principle governs and "… the boundaries of the field extent only so far as the power relations – field effects – that are themselves constitutive of that field hold sway" (Emirbayer & Johnson 2008, 7). For the analyst considering the organisational field, the task is to give language to the doxology of the field and then investigate the extent of its effect. This must be done individually for each field considered and must draw from empirical data. This is the only way to identify the limits of the field. For a generic game of cards, for example, this logic would be that there is something to win that is worth the effort and the risk and all players in the field agree. Seen from a statistical or a strategic point of view, playing the game is not worth it to most of the players, however, but such perspective does not enter into the field as it defies the logic of the field.

The second analytical step in to uncover the basic principles of division within the field. Any structure and any competition imaginable originate with differentiation. Without difference there would be no competition and nothing to win. When the logic in the organisational field has been identified, "one seeks to identify the most pertinent indicators, properties, or principles of division within the field" (Emirbayer & Johnson 2008, 8). This basic principle of division in the field requires, according to Bourdieu, a "system of criteria that could account for the set of meaningful and significant differences that objectively separate [entities in the field] or, if you will, enable the set of relevant differences among [them] to arise…" (Bourdieu 1996, 232; Emirbayer & Johnson 2008, 7-8). At the risk of oversimplification, there is a need in the field both for something to fight about or compete over and for this 'system of criteria' that establishes the

basic principles of division in the field, which is crucial.[10] From this basic principle of division, the dominant will dominate the dominated and thus the outline of a tautology appears that will define the hierarchy of the field. Of this tautology normativity originates and thus within an organisational field, "… the dominant firms exert their pressure on the dominated firms and their strategies: they define the *regularities* and sometimes the *rules* of the game" (Bourdieu 2005: 195). Defining the rules of the game and with it the normativity of the field is perhaps the strongest position of power in the field and will introduce a meta-game within the game by which inclusion and exclusion operates. It changes the nature of the stakes and the values of the capital in play and will ultimately qualify some and disqualify others. In the end, the "participants in a field … constantly work to differentiate themselves from their closest rivals in order to reduce competition and to establish a monopoly over a particular subsector of the field" (Bourdieu & Wacquant 1992: 100). Setting up criteria and establishing difference by reference to a governing norm is one of the most significant institutional strategies an organisation can apply.

For the intents and purposes of devising an analytical strategy of the religio-organisational field, it seems clear that there is firstly a need to identify the governing logic empirically within the religio-organisational field, guided perhaps by the symbolic-interpretive insights from Geertz and Bourdieu. Secondly and in addition to identifying the logic empirically, we must also establish an operational understanding of norms that is applicable across the religious and the organisational fields.

2.4 Norms

2.4.1 Introduction and a little context to the present study of norms

If Bourdieu created the frame and structure of the field with a strong focus on the relations between positions, and Geertz nuanced the dual aspects of the models operating within the structures in this field, then it will take a Michel Foucault to develop the power of the relations so crucial in Bourdieu's structuration and it will take a Francois Ewald to develop the functional aspects of norms. Although relationalism is a strong trend in Bourdieu's thinking about the functions of the field, it is in need of adaption and supplementation by Foucault and Ewald.

The striking thing about norms is that they seem key both in Geertz' model, in Bourdieu's structuration of difference and in the institutional

[10] This logic resonates Durkheim and many others after him, in that his entire sociological theory of knowledge rests on the basic criterion of distinction between sacred and profane. The basic categories of thought are the origins of knowledge (Durkheim 1912/1995, 17), and thus of differentiation.

order as Scott presented it above. As implicit forces in a Western understanding of religions, they were unmasked in Asad's criticism and for the purpose of the religio-organisational field in present day Denmark, Germany and England the chapters to come will explore their role further. To illustrate this perspective, it seems the core of normative contestation of the increased attention to Islam is the presence, position and character of Shari'a in the West. As will be unfolded further in Chapter Seven, Shari'a is usefully understood as the hub of Islamic norms and every argument against Islam in Europe seems to at one point or the other to return to a criticism of the strict demands and radical punishments imposed by Shari'a. Whether this is a correct understanding of Shari'a and Islamic norms or not, every defence of Islam returns to the position that there is no Islam without Shari'a, and that Shari'a is not something to dispose of, but is the true way of life for Muslims (Ramadan 2004). Thus it can be argued that a survey of conflicting legal, social and religious cases in Europe would show that presently the most tension occurs when Shari'a is identified or thought to be involved.[11] This is seen in the plethora of cases concerning the headscarves, it is seen in the question of prayer and work relations, but most significantly it is seen in the cases of the Muslim arbitration and dispute resolution institutions and the institutions of Shari'a councils, as they are popularly referred to.

Without unfolding this argument further at the present stage, the core of the problem is the perception of Shari'a from a Western discourse point of view. As will be demonstrated, this is the realisation that the Islamic norms are very different. They are so firstly in that legal, social and religious norms in Islam cannot be meaningfully separated from one another, secondly in that they cannot without serious effort be understood comparatively to the concepts of norms that Western legal and sociological traditions apply, and thirdly, they cannot without political, social and religious effort and understanding on our behalf be made commensurable with Western traditions (March 2009). This is crucial in order to understand and distinguish the potential in Shari'a both for conflict but certainly also for conflict resolution. Naturally, this leaves a series of questions about what Shari'a is; who can interpret and re-interpret true Shari'a and what parts should be given preference in resolving conflicts of norms? This includes both issues internal to Islam and Shari'a, but as in the cases mentioned above, it remains highly relevant in the encounter with Western ideas or concepts of conduct, belief and justice.

Before any of these questions can be answered in the chapters to come, a deeper understanding of norms in relation to the religio-organisational field

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[11] The RELIGARE project, amongst others, have set out to survey socio-legal conflict and tensions in six different European countries. Cf. Vinding & Christoffersen 2012 and Bader 2011.

is needed. The section unfolds in two overall steps that will distinguish different understandings and technologies of norms within a given relational field. On one hand, sanctioned norms are introduced as legal and social norms that wield a power that has been conferred unto it. On the other hand, norms can be seen to hold power in their own right by being identifiers of the collective and institutions of the commons. Initially, however, this twofold distinction is traced back to Durkheim as this is where both Bourdieu and Foucault find their sociological point of origin in regards to the institutionality and technology of norms.

2.4.2 "What, then, is a norm?"

In his article "Norms, Discipline and the Law" from 1990, Francois Ewald half way through his argument asks enigmatically, "What, then, is a norm?" (Ewald 1990, 154). He does so because, following Foucault, his endeavour is to make us rethink the nature and impact of norms, as it seems that normalisation is the regulatory paradigm of the modern era (Foucault 1980, 135). Under the logic of bio-power, the force of the normal holds exceptional power by virtue of the public nature of common norms and protects against the different and 'uncommon,' as well as holding a capital of distributed risk (Ewald 1991, 202). As will be explored in the present section, the history of research into the power of norms establish these as two-fold, where some norms seem to be sanctioned and others do not. For the benefit of the analytical strategy applied in the chapters to come, an operational definition and typology of norms will be developed that goes beyond the limits of a particular discipline.

There is clear common ground in the predominant understanding of norms as they constitute, "... cultural phenomena that prescribe and proscribe behaviour in specific circumstances" (Hechter & Opp 2001: xi). Norms play an integral part in the construction and regulation of individual and collective social behaviour between 'right' and 'wrong'. As such, both can be said to address issues regarding the implications of 'Ought' rather the statements of 'Is' (von Wright 1963). Roughly stated, however, this is the limit of the consensus in the literature. Serious disagreement arises from the logical, theoretical and empirical implications of these two concepts that question the language, the nature and function of norms.

While much of the contemporary understanding of norms in organisational sociology and neo-institutionalism goes back to William G. Sumner and his research on folkways and mores, to Charles H. Cooley and his primary social groups or perhaps at a later date to Talcott Parsons and his system of norms that regulate the relations of individuals to one another, there is significant reason to take a starting point with Durkheim before exploring contemporary sociology of norms (Mortensen 1990, 97-106). With Durkheim originates the analytical sensitivity that distinguishes

a societal level and an inter-subjective level, which is crucial for a sociologically operative understanding of the moral imperatives and sanctions usually associated with norms.

In *The Determination of Moral Facts* originally from 1906 (2010), Durkheim ventures an investigation into a qualified understanding of norms as seen from the point of view of morality (Durkheim 1906 [2010], 16). Although the authority on morality and normative imperative at the time of Durkheim remained Emanuel Kant, who stressed duty and obligation in adherence to a normative command, Durkheim insists that the normative power of morality is not exhausted by the concept of duty (Ibid.). Durkheim orders his concept of norms from the question, "by what characteristics can we recognize and distinguish moral facts?" (Durkheim 1906 [2010], 20). The answer he gives is in the violation of the rules of conduct and by the consequences that follow. "The violation of a rule generally brings unpleasant consequences to the agent" (Ibid.). In this regard, Durkheim distinguishes between two different kinds of consequences of violation – one that automatically and mechanically follows from the act of violation and one that does not:

> "… (i) The first results mechanically from the act of violation. If I violate a rule of hygiene that orders me to stay away from infection, the result of this act will automatically be disease. The act, once it has been performed, sets in motion the consequences, and by analysis of the act we can know in advance what the result will be. (ii) When, however, I violate the rule that forbids me to kill, an analysis of my act will tell me nothing. I shall not find inherent in it the subsequent blame or punishment.
>
> There is complete heterogeneity between the act and its consequence. It is impossible to discover *analytically* in the act of murder the slightest notion of blame. The link between act and consequence is here a *synthetic* one. Such consequences attached to acts by synthetic links I shall call *sanctions* "
>
> (Durkheim 1906 [2010], 20)

These remarks are the origins of Durkheim's idea of non-sanctioned and sanctioned norms by which he distinguishes between those that follow analytically from the violation and those that follows by consequence of a synthetic link. Analysis of the immoral act itself will not reveal any idea of punishment. There is no necessary consequence from performing an act and the sanction that follows, which is why Durkheim points to the social fact that sanction occurs because there is a relation between the rule that forbids an act and the act itself (Ibid.). He explains further, "it is because there is a pre-established rule, and the breach is a rebellion against this rule, that a sanction is entailed" (Ibid., 21). The moral rules are the synthetic norms with a socially established relation to the collective, while other norms, when violated reveal themselves as automatic in their result.

From this initial exploration of the moral sanctions of norms, Durkheim concludes that moral rules and norms by their relational result must take the collective as its object. The individual relations will not do, and "… there remains as the only possible object of moral activity the *sui generis* collective being formed by the plurality of the individuals associated to form the group …" (Durkhiem 1906 [2010], 25). As such, society is a moral authority that constitutes a moral power that in objective relations govern the lives of individuals.

Durkheim adds, as way of bridging the understanding of the Kantian emphasis of command and obligatory duty, that there is indeed in morality and in the power of norms also a crucial element of desirability. He thus not only operates with negative sanctions such as blame and punishment in a subjective domination of the violator, but also positive sanctions that result in praise and honour and serves to promote disciplinary self-restraint (Ibid., 21-22).

With these very few observations from Durkheim, the influence on both Bourdieu and Foucault shows itself. The structural nature of objective relations that governs the individual has influenced Bourdieu and the normative and disciplinary power of the norms are early precursors to Foucault's bio-power and governmentality. As opposed to the power of force of the sanctioned system, Foucault points to the paradigmatic power of normalisation that ”has to qualify, measure, appraise, and hierarchize rather than display itself in its murderous splendor" (Foucault 1980, 144). Durkheim's distinction between the synthetic and the analytic consequences to violation of a norm suggests that there is a critical difference between sanctioned and non-sanctioned norms. As will be seen, legal norms and social norms are well within the parameters of the synthetically sanctioned norms, but as Foucault and in turn Ewald develop the disciplinary power of normalisation, the contours of a non-sanctioned norm appear – a norm without any sanction beyond that of mere deviance. This is emphasised by reference to norms as common denominators and as symbols that identify the collective.

2.4.3 Legal norms

The first of the two established concepts of norms that are synthetic and sanctioned are legal norms. These can be explained to be positive commands, imperatives, ought-statements or – in a philosophical sense – performative utterances or speech acts (Searle 1969). The legal norms are deliberately designed with a clear regulatory purpose in mind and they are written and formalised by being explicitly sanctioned (Hechter & Opp 2001: xi). However, the most significant feature of legal norms are their systemity as they are understood in the extensive legal scholarship by Hans Kelsen (1881 – 1973) and the generation of legal scholars who came after

him.[12] Kelsen had set out to refine a *Pure Theory of Law* (1934/1960) that centres on the positively established norms within an orderly system. These positive norms are basically either duty-imposing or power-conferring, and derive their validity from a basic norm (Freeman 1994: 274, 280).

The idea of purity of law rests on its sole reference to a basic and stronger norm and nothing outside of this norm. This is, therefore, in sharp contrast to moral or religious norms that have recourse to some subjective basis (Hartney 1990: xxi) and to social norms that are unwritten, irregular, and informal which makes these unfit and invalid for a legal system that champions equality before the law, accountability, transparency and the rule of law.[13] The social norms will be elaborated on further in the section.

The basic distinction between norms as commandments, imperatives or basically duty-imposing and norms as power-conferring has to do with the key question of validity. In order for norms to be valid laws – that is legally enacted and enforceable laws – they must be backed by secondary rules or norms that are equally important parts of the legal system (Hart 1961: 92; Woodman 2009, 136). These are the rules of change, rules of adjudication and rules of recognition. The first two prescribe the proper and just use of power and how to enact new laws without revolution and how to punish crimes. These are the power-conferring norms that enable one norm to sanction another, that is, be imposable by the judiciary and enactable by the executive. This is an important part of the systematic nature of legal orders and illustrates how the individual norm and its incentive are disjoined within the system. It is not the singular law or norm that you violate that secures punishment, but it is the secondary sanction. We will return to this when looking at social norms, because here is a notable difference. The third kind of secondary rules are the rules of recognition. These are unique in that they distinguish themselves not by conferring power, but by not doing it (Hart 1961: 97). The core of the *rules of recognition* is that the legal institutions recognize the validity and due process of the individual

[12] See amongst others, H. L. A. Hart, *Concept of Law* from 1961, and Joseph Raz, *Concept of Legal System* from 1971. For a fuller discussion, see Vinding 2009, in particular Chapter Two on Regulation as Governance.

[13] For good measure, there is reason to hold that positive law is not the only authority enforceable by courts. The argument of legal pluralism remains that courts may adjudicate on the basis of moral and religious orders and social customs. Discussing English legal practice and the conflict that arises from the integration of foreign legal cultures, Woodman reiterates an argument in favour of law as 'social phemomenon' (Woodman 2009, 137). Of significance for distinction between legal norms and social norms, Woodman argues in favour of a *normative recognition* of valid norms rather than *institutional recognition* that limits recognition to the critieria of the production of the laws. For a detailed discussion, see Woodman 2009 and for additional aspects of legal practice and cultural diversity Grillo, Ballard, Ferrari, Hoekema, Maussen and Shah 2009.

law in applying it. The same is true when laws that are recognized as just do not result in civil disobedience or non-conformity. The community and the subjects of the law will adhere to a law it if the judiciary maintains its legality, and the judiciary will maintain a law that the subjects of the law recognizes as legitimate.

One of the most interesting observations about the legal norms returns to their positivity. In being explicitly enacted to impose duties on behalf of the greater collective and in being recognised as justly so, the legal-systematic understanding of norms entail that they have constitutive and constructive power. The examples of this are plenty and draw upon the very reason for having laws. It is clear that the legal norms of a common legal system under the same jurisdiction functions to bring together the community and protect it from destructive forces. By upholding legitimate justice the polity may build stronger relations within the community. Legal norms become tools or building blocks that construct, maintain and perfect a community. This feature of law is the key feature in any constitutional theory of society and maintains law as both a social construction and socially constructed.[14]

2.4.4 Social norms

By contrast, the second approach to sanction and synthetic norms concerns the social norms. These norms are understood to be spontaneous, unwritten and informally sanctioned, in the sense that it is unclear and difficult to predict how sanctioning will occur (Hechter & Opp 2001: xi). The social sciences terminology applied to norms is very diverse and the versatility of the language makes it even more difficult to pin down. Thus, customs, conventions, roles, rules, principles, identities, institutions and cultures (Horne 2001: 3) are all terms applied in describing or referring to norms or normativity.

Within the social sciences, one of the more predominant approaches to the study of norms is focused on behaviour and behavioural structures. In the sociological and psychological literature, this approach to understanding how groups and individuals influenced by norms is heralded most significantly by Michael Hechter (2001, 2004) and Christine Horne (2001, 2009) and others. The sentiment is that norms are rules that enjoy some sort of social consensus and that this consensus is enforced by social

[14] In a Danish context, the Codex Holmiensis 'Code of Jutland' from 1241 dictates that With law shall land [nation] be built. [...] And if all men would keep [be content with] what is theirs, and let others enjoy the same rights, there would be no need of [a] law. [...] If the land had no law, then he would have the most who could grab [by force] the most." (From the Royal Library, http://www.kb.dk/permalink/2006/manus/41/, accessed 13 January 2013). For a fuller discussion of the constitutional theory of such a social-constructivist view, see Friedrich Hayek *The Constitution of Liberty* (1960) and *Law, Legislation and Liberty* (1973).

sanctions (Horne 2009: 401). Horne and others (Bendor & Swistak, 2001: 1403ff.; Coleman 1990; Giddens *et al* 2009) agree that indeed the essential component in the study of norms is sanctioning. Bendor and Swistak note that the nature of sanctioning is integral to the 'social' of the social norms. First of all, if there were no triggers of punishment, there would not be any incentive, and secondly, the execution of punishment is not necessarily between the two parties directly involved, but can be and often is extended to third parties (Bendor & Swistak, 2001: 1404).[15] It is this involvement of the third parties that qualify norms as 'quintessentially social.'

However, the complexity and indeed the very nature of social behaviour suggests that there may be norms without sanctions, or, more precisely, that there are some norms that have power even when not violated and which do not incur sanctions when violated. We may call these norms natural, necessary, arbitrary or automatic. They are the basic social conventions and institutions that embody the very social itself such as the preference of right to left, or the names or associations of colours, or even the names we give things. Although this is not the place for philosophical speculations about the nature of these social and psychological phenomena, but it suggests that we need to think norms separately from their violations and sanctions and that we must explain the power of norms without reference to these. This way of thinking about norms is implicitly institutional and brings the taken-for-grantedness and 'banality' of the social and religious institutions front and centre (Berger 1967; Woodhead 2011, 124-127).

The relational nature of norms maintains that there is power and force in the relation itself. This is not controversial, but shows that both the legal and the social norms presented above are blind to the power of the norm itself. It seems that the individuals or groups who are depended on or constituent to the norms – that is those who are part of the legal or social system – do not necessarily experience the immediate independent power of norms beyond its sanctions. Nonetheless, this independent relational power of the norms is still present and can be observed once the perspective turns to those outside society or those outside the law, in an extra-systemic sense.

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[15] Although the economical aspects of sanctioning and any spin-off into game theory experimental modelling may prove very rewarding research, the concern of the present chapter is the continued reference to a third party. The concept of 'meta-norms' in the social system and the secondary rules of the legal system seem to be somewhat akin. Both lead to, or presume, extra-systemic sanctions that are crucial to the strategic decisions within the system. A common language of power seen in the light of the Kelsian positivism may suggest that norm and power are two sides of the same coin (Bobbio 1998: 435; MacCormick 1998), and this will also explain the secondary nature of sanctions, as no ruler can rule through coercion alone (Weber 1978).

In addition to the two well-established approaches to norms presented above, three further approaches to norms present themselves. Focusing not on the individual or the group, but on the phenomenon of the entire society, there is a growing realization that society itself is not a given. This means that society is no longer something in itself, but a product of social ingenuity and the meaning and ideas we introduce as core constituent entities. Society is no different than the elements that compose it.

These three approaches to norms present themselves as technologies of normalisation and instrumentalise the power of the norm itself in the construction of 'common denominators' (2.4.5), 'instruments of examination' (2.4.6) and 'procedural management of risk' (2.4.7).

2.4.5 Norms as common denominators

The ability to decide or to know what is good for society rests on or draws upon a basic structure of normativity in society. Therefore a profound understanding of the norms of a given society constitutes perhaps the first and basic precondition for the government of this society. Without norms or guidelines there would be no conductibility of conduct, and thus there would be neither order nor governance nor leadership. Therefore, the norms and the ability to manipulate and control norms is a returning basis for government. This is exactly the realisation that arises from a concept of norms that is separate from the threat of sanction by coercion. Government to the good of society in this sense uses norms without recourse to violence.

The deliberate inclusion of norms into strategies of governance goes back very far, but Michel Foucault have in his neologism of governmentality traced some of the key aspects of norms that can be compared to the idea of the secondary rules of the legal system. In an interview in 1982, Michel Foucault elaborates on his understanding of the word government in its broader sense: ”This word [government] must be allowed the very broad meaning which it had in the sixteenth century. ’Government’ did not refer only to political structures or the management of states; rather it designates the way in which the conduct of individuals or states might be directed: the government of children, of souls, of communities, of families, of the sick. Not only did it cover the legitimately constituted forms of political or economic subjugation, but also modes of action, more or less considered, which were designed to act upon the possibilities of action of other people. *To govern, in this sense, is to structure the possible field of action of others*” (Foucault 2002b: 341, my italics). To govern is to develop and further the spheres of action of right and limit the spheres of action of wrong, and this is especially relevant in relations and networks, where power manifests itself. The art of government is to refine and perfect the ability to build network and

relations. A social-constructivist understanding of norms, as presented in what follows, clarifies how the direction of conduct and thus the very social structure norms transcends a use of sanctions. With this understanding from Foucault on governing and structuring the possible field of action of others, a clear parallel to Bourdieu's structuration and thinking in terms of fields can be made.

François Ewald, who was a close associate of Foucault's at the *Collège de France*, have developed and refined the idea of governance on the basis of the common norms of society (Touri 2002: 53). Ewald argues that norms are the basic tools to regulate the conduct of individuals and groups in society. He establishes three different yet related concepts of norms, all of which stress the normative power of the 'common' (Ewald 1990: 154).

Firstly, a norm is the common denominator of a certain group or society. It is entirely contingent on the group and thus independent of any external source of validity, "… What, then, is a norm? It is a way for a group to provide itself with a *common denominator* in accordance with a rigorous principle of self-referentiality, with no recourse to any kind of external reference point, either in the form of an idea or an object" (Ewald 1990: 154). Norms are the expression of a group and serves to identify the group with itself and to maintain it as such; it is the group's recognition of itself. It is the way the group defines itself apart from any other group. Thus common norms are the first characteristic of a group, and the norms define what is inside and what is outside the group. In this way, the norms can be understood as the truths that a certain group or society can agree upon. This is the idea from which Ewald's two additional understandings of norms unfold.

Secondly, norms are to be understood as standards and yardsticks. The common denominator in this sense implies a specific idea of what is common. To explain this Ewald draws upon a common sense understanding of 'standard' (Ewald 1990: 148), as exemplified in the Encyclopaedia Britannica article: "... A standard is that which has been selected as a model to which objects or actions may be compared" (*Encyclopedia Britannica* 1988, vol. 11, 209). As an ideal the norm is the common standard; it is when held against this a group is constituted and defined. The norm is visible and comprehensive, but is indispensable and necessary for the group. As it defines unity in the group, the norm is always relative. In Ewald's concept, the norm is only a norm to those who relate to it and can conceive of it (Ewald 1990: 156), which fits very nicely with the fourth concept of norms to be elaborated below.

The third sense of common norms is developed from the second. In applying the idea of a standard, the norm is the basis for control, testing and evaluation. It is meaningless to conceive of a common norm, if it is not able to both qualify and disqualify. Thus, the norm is the basis of social

judgements in society. It is this sense of the word that derives the concept of 'normal' and through this sense it is normalising. To be normal is to be measured against the norm and to fall inside the commonality of the norm. To be abnormal is to be measured against the same norm and to be judged dissimilar. Yet to be abnormal is still to be in relation to and measured against the norm. (Ewald 1990: 156-7). This reveals that norms are also the basis for comparison and examination, and thus the basis of a process of normalisation. Normalisation can be defined as the production of these norms and standards in the breadth of their employment within the given field. Ewald note that the power of normalisation is not only the standard to which conformity is measured, but additionally the overall agreement as to conform: "Normalization, then, is less a question of making products conform to a standard model than it is of reaching an understanding with regard to the choice of a model" (Ewald 1990: 148). This 'understanding with regard to the choice of model' seems to be similar to what Bourdieu says of doxa and the implicit agreement of the field in question. It is the implicit and initial choice of model that allows for the secondary question conformity or non-conformity, of adherence or deviance. Bourdieu's choice of words for the commonality of the norm and the imperative of conformity that comes from it would be communication. The common denominator unifies through communication and to separates through division (Bourdieu 1991B, 167). Section 2.5.1 returns to this point in particular and will elaborate upon it further.

Norms are not to be understood as unchangeable or governing entities in themselves. Norms are constructions in social relations and are subject to change and continuous negotiation. This is the feature that makes norms interesting in the context of governance. When a group actively establishes themselves with reference to the norm, it is basis for unity and understanding, but when norms provide means for separation and disunity, it will accentuate difference (Ewald 1990: 154). When norms are the basis for comparison they tend to individualise as they emphasise the smallest of differences against a higher standard and marks the difference between each individual. Thus norms are both including and excluding, but also establish a spectrum on which everyone measuring against the norm can be tracked. One of Ewald's most distinguished contributions is the suggestion that the norms in social spheres help to polarise and differentiate against a necessarily common denominator, which renders both the normal and the abnormal to be measured against the same scale. The consequence of this is that the conventional meaning of 'different' disappears and becomes abstract (Ibid.: 157). In this radical sense, to be different is to be utterly unable to judge against any norm, and therefore to be outside the normative order and unattainable by both norms and secondary norms.

In the context of this exposition, the two most notable features of the norm as a common denominator are, firstly, that norms both define groups in their totality and individuals in their singularity, and secondly that norms themselves are changeable. If one is capable of governing through the construction or definition of new or altered norms, one can define groups and their understanding of themselves and define the individuals both inside and outside the group. This is the realisation that makes norms necessary in the governance of conflict. Not the norms in their incidental appearance, but in the techniques for the control and structuring of the norms. In the quest for the conduct of conduct, when norms can be said to be constituent to society, they are also constituent to the art of governing. In other words, to govern society is to govern norms.

This technology of norms as common denominators will be explored further in Chapter Seven in the English case of the Muslim alternatives to dispute resolution in the religio-organisational field.

2.4.6 Norms as instruments of examination

In *Discipline and Punish* from 1975, Foucault accounts for the normativity of power and demonstrates some of the basic mechanisms of this normativity. He favours the expression 'discipline' to describe the normativity, and his returning example is the prison as a metaphor for society. What happens in prison and incarceration reflects the surrounding society (Heede 2004: 93). At the core of the government of prison lie the ideas of submission and surveillance. Both apply the norm as its basic concept in the discipline of the inmates that is both the understanding of the norm as judgement and as standard. The key word is control, which captures both these senses of the norm; control as inspection and surveillance and control as constraint. In order to institutionalise and employ these two technical applications of the norm, it must be established as a standard to the groups and individuals that are to be disciplined. From what was mentioned above, it becomes clear that to establish a norm as a model for comparison is to create the norm as such.

According to Ewald, norms become standards by selection of authority, custom or consent, but these rests on the recognition and acceptance of this selection (Ewald 1990: 152). To recognise and accept is to choose and to validate, and the creation of norms is a technical and social process of power that rests on recognition in the political process (Ewald 1990: 152). According to Ewald this is what Foucault calls disciplinary 'normalisation' (ibid.: 148). In the normalisation process the norm and the society, by which it is defined, is inextricably connected. Society is created through the recognition of the norm, which itself is created by the unity of society. Ewald maintains that the reciprocity between norm and society is one of the fundamental social processes of society (Ewald 1990: 149). Ewald calls

this the paradox of the norm, and the paradox can only be understood by reference to other norms in the sharing and communication of their normativity: ”… The norm finds meaning only in relation to other norms: only a norm can provide a normative value for another norm. The paradox of the norm is that before one can exist, there must be another” (Ewald 1990: 153).[16] Neither Ewald nor Foucault has any interest in this paradox itself, but in the political opportunity that grows out of the paradox. For norms to partake in networks and social systems they, and thus one norm, defines another. This is the basic idea in the power of discipline that the norm of a higher order or authority defines the normativity of other norms (Ewald 1990: 153).

The governing and controlling of the normative discipline is expressed as the attempt to design or reshape the dispositions of the individual and the group and this is done by its own logic of perfection of the art of governance. Earlier imprisonment was to be punishment, but in the logic of governmentality the imprisonment has to be both productive and rational. Thus the productive and the normalising are found to be convergent and everything in society is determined by its productivity and efficiency, and this again is done by carefully selecting the appropriate strategy or technology calibrated to the problem at hand. The strategies and technologies are expressed through institutions, procedures, analysis, methods, programmes, tools, policies and tactics. Surveillance and control are institutionalised and spread to the entire society, and the techniques and methods are continuously made more effective. The methods are calibrated and made available to the governing institutions. They are cumulatively made stronger by their confluence, and thus new tactics, programmes and procedures are developed.

According to Foucault, one of the most distinct and effective techniques of norms is the social institution of examination (Foucault 2005: 201). The examination is the epitome of governmentality as it is well established in the history of man and is found in every part of society. Also, it is sensitive to nuances of power and it promotes and demands self-discipline. In the word itself both control and surveillance is understood. The examination is done to make sure that the standards are met. Soldiers, for example, are measured and weighed in order to make sure they are physically fit, patients are examined to make sure they are healthy, and guidelines are established in order to ensure fitness and health in a normalising process. But the examination takes this further. Not only are the examined found to

[16] The paradox is, as most paradoxes are, a question of perception. In this case the common denominator is framed as an expression of identity according to a ‘rigorous principle of self-referentiality’ while it exists only in relation to other norms. However, the self-referentiality is only perceived to be so and is very much a product of contrast to that which is outside the self, that is, the norms of the other.

be fit or unfit, healthy or sick, but the examination also qualifies and graduates the investigation according to the spectrum of the standard. Thus the examination in the first instance is normalising, but in the second instance it also distinguishes the examined from one another into a hierarchy or order.

Although examinations are often used as control and graduation of character or standard, the examination also qualifies the normative order itself. When Ewald states that norms governs each other, this can be developed with reference to the process of examination in that the exam is also a process of authorisation and delegation of power. By institutionalising the examination a weak or secondary norm can be empowered or enforced, which enables it to define a broader group or society. This is also done by concrete techniques and processes. By establishing the authority to examine the governing institution's strong position may further relations and manipulate the balances of power (Foucault 2005: 326).

Bourdieu conducted his own study of the academic examination and has demonstrated how the normative institution has the power to create a categorical difference and deep divides in the continuities of a community or population. He borrows the language of religious rituals and rites in his description of the acts of institution, and points to the Durkheimian insight that such institutional rites and acts "tend to consecrate or legitimate an arbitrary boundary, by fostering a misrecognition of the arbitrary nature of the limit and encouraging a recognition of it as legitimate" (Bourdieu 1991, 118). This is the same arbitrary power to draw a line that created symbolic capital in the religious field, as seen above, and in general creates the difference in positions in the field.

Following the observations that Foucault and Ewald made on the graduation on the scale of norms that was the outcome of the examination, Bourdieu returns to the observation of the most powerful consequence of the acts of institutionalisation by making divisions. Truly Durkheimian in his perspective, the categorisation, or line-drawing, is the most powerful function of norms according to Bourdieu and is one of the fundamental operations in order to give structure to the field, but also to propose organisation and distribution of efforts to solve a problem or meet a challenge (Bourdieu 2000, 53, cited in Epstein 2012, 168-169).

Bourdieu prefers *nomos*, rather than 'norm' and its principle of internal coherence, and thus stresses the etymology, which returns to Greek *nemos*, meaning to divide or to separate. As Charlotte Epstein explains it in her article on *Bourdieu's nomos, or the structural power of norms* (2012), "The *nomos* is first and foremost a principle of inclusion and exclusion that sets the boundaries of a field" (Epstein 2012, 169-170). In this understanding, norms are a basic principle of organisation, and Bourdieu in his eloquence

calls it 'a principle of vision and division,' which very much anticipates connection of the normative and the symbolic, on which the next section will expand further (Bourdieu 2000, 65; cited from Epstein 2000, 170). In the field in question, the religio-organisational field, the most fundamental struggles and games to be played, are those about the constitutions of identity and definitions of division in the field.

In Bourdieu's study of the academic examination, the structuring division is not between those who get top grades and those who get average grades, but between those who fail and those who pass. In the case of the ritual of religion, the division is not between boys and men, but between those who are not subject to it, i.e. the girls and women: "In fact, the most important division, and one which passes unnoticed, is the division it creates between all those who are subject […] and those who are not subject to it, […] There is thus a hidden set of individuals in relation to which the instituted group is defined. The most important effect of the rite is one which attracts the least attention: by treating men and women differently, the rite *consecrates* the difference, institutes it, while instituting man as man, […] and women as women …" (Bourdieu 1991B, 118). In order to cement the observance of the arbitrary nature of the act of institutionalisation, he maintains that "it tends to make the smallest, weakest, in short the most effeminate man into a truly manly man, separated by a difference in nature and essence from the most masculine woman, the tallest, strongest woman, etc. To institute, in this case, is to consecrate, that is, to sanction and sanctify a particular state of things, an established order, in exactly the same way a *constitution* does in the legal and political sense of the term" (Bourdieu 1991B, 119).

This technology of norms as instruments of examination will be explored further in Chapter Five on the Danish case of the institutions that define the limits of approval and recognition as these are fundamental dividers in the Danish religio-organisational field.

2.4.7 Norms as procedural management of risk

Additionally, norms and drawing boundaries in the social field is a technology of managing risk and a social strategy of limiting exposure to unnecessary danger. This sense of norms draws on the two previous technologies, as the essential feature of warding against risk remains the protection of the common and the critical evaluation of who do and who do not belong.

Insurance is the management and technology of distributing and minimizing risk and it applies the normative order that defines a social collective. Insurance is an old discipline and takes as its object the idea of risk, which is derived from Italian *risco*, meaning 'that which cuts' in reference to reefs and the dangers of navigation (Ewald 1991, 198-199).

Italian bankers and merchants developed production of insurance that would limit and distribute losses amongst other equal buyers of insurance.

Although everyday language connotes risk with danger or peril, it is not an event as such, "but a specific mode of treatment of certain events capable of happening to a group of individuals – or, more exactly, to values or capitals possessed or represented by a collectivity of individuals" (Ewald 1991, 199). According to this definition, risk is not anything real, but something potential that is, a hazard or eventuality and it follows a logic of randomness and chance. However, with the realisation that hazards happens regularly and at a certain rate, it becomes calculable when taking the perspective of the collective. Put another way, framing risk and taking insurance is a way of regularizing the dynamics of a complex and open-ended world.

"Insurance can only cover groups; it works by socializing risks. It makes each person a part of the whole. Risk itself only exists as an entity, a certainty, in the whole, so that each person insured represents only a fraction of it. Insurance's characteristic operation is the constitution of mutualities …" (Ewald 1991, 203). The question of norms enters the discourse of risk and management, when the technology of insurance puts a capital on the mutuality and thus defines the individuals eligible to enter into the collective. In the language of the norm, one must be normal to qualify for insurance and for the identity of the collective, which it brings with it. "Insurance individualizes, it defines each person as a risk, but the individuality [is] relative to that of the other members of the insured population, an average sociological individuality" (Ewald 1991, 203). As such, speaking both in financial and in social terms, the cost of the premium and the security of capital is only available to those who have a position or capital to be lost.

From this logic, it is the norm of the collective of insurers that defines and identifies risk. The technology of insurance allows for the cost of accidents and the prize of the risk to be distributed amongst the mutual constituents of the collective whose capital may be threatened or in danger. The technology of insurance is limited by two parameters in that "… risk can only be insured when they are sufficiently separable and dispersed, and when the value of the risk is not in excess of the insurer's capacities" (Ewald 1991, 200). In a social sense and for the kinds of capital that are not economic, the insurance must also be socially constituent. An individual must be part of a group of equals in order to be eligible, and thus the technology of insurance draws on the two technologies mentioned above, namely, of defining the commonality and defining the criteria for qualification.

In addition to a technology of insurance, the reality of risk also warrants safety. The identification of a particular source of harm or a specific hazard

demands action that limits the danger. Where as insurance would generalize and regularize risks of the collective, the specific knowledge of foreseeable danger demands safety principles and norms of procedure that works to eliminate or reduce the hazard. In the philosophy of technology, as discussed in the *Stanford Encyclopedia of Philosophy* entry on risk, safety is devised as contingency measures that seek to establish multiple independent barriers, where if the first fail a second, and perhaps third, principle of safety comes into operation (Hansson 2012). They are to be sensitive to different kinds of impact and danger, so that one event does not eliminate all safety procedures. By contrast to insurance, safety factors "…aim at protecting us not only against risks that can be assigned meaningful probability estimates, but also against dangers that cannot be probabilized, such as the possibility that some unanticipated type of event gives rise to an accident" (Hansson 2012).

Risk as managed through insurance and safety measures carry with it a normative order when looking at the social world. The dangers and hazardous elements of the foreign and unknown, which may harm us, must either be insured by the guarantees of mutuality in the social power of the collective or – if insurance will not be able to transfer the potential loss equitably – the vulnerable individual or group must devise social safety measures and barriers. In the case of social insurance, the norm that defines the common of the collective is estimated to be so strong as to be able to absorb the potential damage. The norm in this case will be seen to be stronger than the foreign normative orders, which in turn will be rejected, integrated or assimilated by the common order. In the case of the safety measures that would seek to eliminate or reduce exposure to risk, a procedural norm demands cautionary action to ward of the uncertainty. The procedural norm of safety would isolate a weak social entity and close it unto itself by erecting normative divisions. The virtue of procedure is to dictate proper and safe action and is well known through out the social world. The procedural protective norm is institutionally expressed, i.e., in the Standard Operating Procedures of routine action designed to guarantee a specific result, in the rituals of religion where the procedural performance may if done properly manipulate the gods, in the procedures of the legislative or the courtroom designed to deliver justice and protect against anarchy, in the methods of science that yield a correct result and accurate knowledge or in the everyday life of the 'straight and narrow path' designed to further moral virtue and limit the exposure to sin and moral hazard.

In short, the power and technology of the norm explains how 'society must be defended' and how the 'vision and division' of the field comes about.

For the purpose of the present analytical strategy, this technology of norms as procedural management of risk will be explored further in Chapter Six on the German case, where the granting of the privileges of corporation status to the German Muslims is perceived to threaten the constitution.

2.5 Symbols, representations and requisite variety

This fifth and final section seeks to bring together the different strands of the argument in the chapter and seeks to bring together the key ideas of the analytical strategy for entering the religio-organisational field. We return to the idea of 'symbolic system,' into which art, language, culture and religion count and which Clifford Geertz saw to be conceptions of a general world order that was presented and understood as factual. The relationship between 'reality' and the symbols thereof was presented in a frame where the model in its twofold implication - as a model of and a model for – sought to bridge the indicative and the imperative of a normative symbolic order. Bourdieu's treatment of the symbolic system brings together elements of the contemporary theories of religions and worldviews, the relational powers in the structural system of positions, the normative power of defining and drawing lines and the notion of symbolic capital that will further the analytical strategy before entering in the overall game of power and positions in the religio-organisational field.

2.5.1 Symbolic capital and symbolic power

As the social world is understood as accumulated history, so capital is understood as accumulated labour (Bourdieu 1986, 241). By contrast to games of chance, capital is characterised by the capacity it has to produce and reproduce profits and it endures in the reproduction of itself. As such – not randomly produced and not distributed by chance – capital is a testament to the objectivity of the structure that distributes it (Ibid.). Bourdieu operates as mentioned in section 2.2.1 primarily with three types of capital. *Economic* capital which sums up monetary value and other financial resources, investments and other practical assets as well as institutionalised economic capital in rights of property and such (Bourdieu 1986, Anheier *et al* 1995). *Cultural capital* is the product of socialisation and culturation in a process of embodiment and labour of inculcation, which is a personal investment in time and effort by the individual, and it often takes the shape of schooling, competence, appreciation and apprehension (Bourdieu 1986, Anheier *et al* 1995). *Social capital* is the total of potential and practical resources, which can be drawn from membership of organisations, associations and social networks in the widest definition as the product of "institutionalised relationships of mutual

acquaintance and recognition" (Bourdieu 1986). Common to all three is that the language applied is drawn from the financial world and that the strength of capital determines the appropriate position in a particular field corresponding to the appreciation of the type of capital. The concept of capital infers liquidity and convertibility and thus exchanging one type of capital for another is done at a rate with the assumption of a loss in the transaction, but with the promise of a stronger position in the field.

Also, common to all three types of capital, and this is the key to this chapter, they can all be guised as symbolic capital through the act of institution as mentioned above in section 2.4.6. The social transformation or disjunction of the reality and the model of it is the product of the act of institution and is sanctioned by the governing norm or performed by the technology of the non-sanctioned norms – or both. As such, there is a performative doubling in the act of institution as the effect of symbols comes from the distance between something and its representation. This was true in the modelling, as seen in Geertz' quotes above, which gave a world in the indicative (models of) and the imperative (models for). Bourdieu is very much attuned to this understanding of the relationship between models and reality, and from the perspective of field he is concerned not only with symbols and symbolic representations, but with the effect and power of symbols. "Symbolism is not effective on its own, but only insofar as it *represents* – in the theatrical sense of the term – the delegation" (Bourdieu 1991, 115, original italics). The power of symbols is indeed an important factor in the structuration and the game of positions and positioning that unfold in every field. In the sections above, Bourdieu has been shown to see the field as a battlefield or a game that unfolds with all its rewards, gains, profits and sanctions, but, concerning the symbolic, additional attention must be given to the more or less implicit rules of the game (Bourdieu & Wacquant 1992: 18), which is where symbols and representations come into the argument. "Symbolic power is that invisible power which can be exercised only with the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it" (Bourdieu 1991B, 164).

The most important feature of symbols is that they are instruments in the service of those that produce them and must be understood as a form of capital, very much on par with other forms of capital. As such, they are a resource that determine potentials and define the positions to be occupied in the structure of the field in question. Symbolic capital is a crucial source of power, in that it is an appropriation or instrumentalisation of any of the three (or more) kinds of capital. Indeed, power follows from the ability to mobilize capital. When these kinds of capital are perceived through the distinctions and classifications of the structured field, the holder of the symbolic capital can dominate those who hold less or none. The generic

types of capital may don the cloak of symbolic capital to distinguish themselves, and therefore not to represent, but to be un-recognisable and thus function to exert an effect of misrecognition. The task it performs is to present one type of capital – or one position – as legitimate, attractive, natural, proper or authoritarian, when it is not by default. This is the specific symbolic logic of distinction and representation, which "secures material and symbolic profits for the possessors of a large cultural capital [in that] any given cultural competence derives a scarcity value from its position in the distribution of cultural capital and yields profits of distinction for its owner" (Bourdieu 1968). In short, symbolic power works to misrepresent itself to those who are objectively dispossessed.

This converges well with the one of the most important observations from the Bourdieuian complex of norms as institutions and means of structuring structures and imposing social dominance in a given field, namely, that these norms as institutions and acts of institutions can both produce symbols and produce themselves as symbols. It is the distinctions in the field by the force of the institutionally enacted norms that gives the unequal distribution of capital and thereby creates distinction and division (Bourdieu 1986). Bourdieu explains that the symbolic capital comes from defining these divisive lines. "To institute, to assign an essence, a competence, is to impose a right to be that is an obligation of being so (or to be so). It is to *signify* to someone what he is and how he should conduct himself as a consequence. In this case, the indicative is an imperative …" (Bourdieu 1991, 120). This clearly echoes Geertz with his models of and models for, but also echoes Foucault, who said of governmentality that it was the 'conduct of conduct," and that with the mere institutional being comes a normative imperative. In the light of this, he goes on clarify his understanding of institutionalisation in this specific social context: "The institute, to give a social definition, an identity, is also to impose boundaries…" (Ibid.). And to return once more to his comtemporary Durkheimian perspective, the institutionalisation is also "… an act of communication, but of a particular kind: it *signifies* to someone what his identity is, but in a way that both expresses it to him and imposes it on him by expressing it in from of everyone (*kategorein*, meaning originally, to accuse publically) and thus informing him in an authoritative manner of what he is and what he must be …" (Bourdieu 1991B: 121).

The holder of a significant position in the field with its institutional embedding and its relational power can, once it is visible and subject to cognition and re-cognition, be understood as a symbol or representation of itself and in its position (Honneth 2003). As such, the Marxist tradition, on which Bourdieu reflects, maintains that such a symbolic production in its relational context can have substantial ideological effect on the power and capital at stake in the field. Bourdieu points to the nature of the power of

the symbolic production as entirely dependent on the ability to unify through communication and to separate through division. In the power play of the field, Bourdieu says, "the dominant culture produces this ideological effect by concealing the function of division beneath the function of communication: the culture which unifies (the medium of communication) is also the culture which separates (the instrument of distinction) and which legitimates distinctions by forcing all other cultures (designated as subcultures) to define themselves by the distance from the dominant culture" (Bourdieu 1991B, 167). This resonates very well with the above technological power of the norm, which used this ability of the symbol to both unite and divide the community.

2.5.2 Representation

Bourdieu sums up his understanding of institutionalisation and its symbolic consequences by underlining the importance of the "symbolic efficacy of rites of institution, that is, the power […] to act on reality by acting on its representation." This is the case of the investiture, that is, the placing into office or into a position of power.

> "An investiture consists of sanctioning and sanctifying a difference (pre-existent or not) by making it *known* and *recognized*; it consists of making it exist as a social difference, known and recognized as such by the agent invested and everyone else […] the process of investiture, exercises a symbolic efficacy that is quite real in that it really transforms the person consecrated: first, because it transforms the representations others have of him and above all the behaviour they adopt towards him (most visible change being the fact that he is given titles of respect and the respect actually associated with these enunciations); and second, because it simultaneously transforms the representation that the invested person has of himself, and the behaviour he feels obliged to adopt in order to conform to that representation. By the same logic, one can understand the effect of social titles of credit and credence – of *credentials* – which, like aristocratic titles and academic qualification, increase in a durable way the value of their bearer by increasing the extent and the intensity of the belief in their value"
>
> (Bourdieu 1991B, 119).

Further, and for the specifics of the sociology of groups and organisations, this has implications of the symbolic use of social capital institutionalised in the norms that define the borders of the group and the value at the core that symbolises the totality or essence of the group. The act of consecration by institutionalisation and the bestowing of credentials upon someone is the social production of the group that provides its members with collectively owned social capital vis-à-vis the membership. This is key to the survival and the social formation of the group or organisation.

The social capital is seen as closer relations within the group or as rights and obligations secured institutionally. This capital is maintained and

reproduced in the social relations of mutual exchanges of goods and mutual recognition of the symbolic power of the social capital. “Exchange transforms the things exchanged into signs of recognition and, through the mutual recognition and the recognition of group membership which it implies, reproduces the group. By the same token, it reaffirms the limits of the group, i.e., the limits beyond which the constitutive exchange – trade, commensality, or marriage – cannot take place” (Bourdieu 1986).

This is also the fundamental liability of the symbolic constitution of the organisation or group, in that these signs of recognition keep the social entity bound together. “Through the introduction of new members into a family, a clan, or a club, the whole definition of the group, i.e., its fines, its boundaries, and its identity, is put at stake, exposed to redefinition, alteration, adulteration” (Bourdieu 1986). From a social point of view, there is no greater risk than the exposition of the very identity and definition of core values. Following the technology of norms and the management of risk from section 2.4.7, this is why it not only takes an act of institution to reproduce the group, but also procedure and proper conduct to make sure that new members live up to the norms and standards, and that – so to speak – the credentials are in order.

Coupling this to the divisions drawn by the norms of the field and the distinction between layers, hierarchy and structure that follow from these, Bourdieu is able to point to the symbolic power in making models. Models are representations and needed to create the social reality of groups and to make visible the divisions in the field. From semiotics it is known that ”models are made when an observer is confronted with a complex phenomenon, which cannot be exhaustively explained by everyday language alone. In such a case, the model is a *representation*, which in part is simpler than the phenomenon itself and in part explains the phenomenon by reference to structural relations between primitive cognitive elements, which require no further specification” (Østergaard 1998, 188, my translation, original italics). Representation is particularly interesting to Bourdieu as it is an investment of the collective social capital into one particular focus, and from the perspective of the field, where groups vis-à-vis their representatives hold certain positions, the representative receives a symbolic or iconic power that underlines the normative difference (Giesen 2012). As such, in the structures of the field,

> ”everything combines to cause the signifier to take the place of the signified, the spokesmen that of the group he is supposed to express, not least because his distinction, his ‘outstandingness,’ his visibility constitute the essential part, if not the essence, of this power, which, being entirely set within the logic of knowledge

> and acknowledgment, is fundamentally a symbolic power; but also because the representative, the sign, the emblem, may be, and create, the whole reality of groups which receive effective social existence only in and through representation"
>
> (Bourdieu 1986, 253)

This seems to be both an advantage and a risk to the group in question. As such, the delegated power of the representative can be wielded much more effectively and nimbly, but is equally exposed to corruption and compromise.

> "Every group has its more or less institutionalized forms of delegation which enable it to concentrate the totality of the social capital, which is the basis of the existence of the group (a family or a nation, of course, but also an association or a party), in the hands of a single agent or a small group of agents and to mandate this plenipotentiary, charged with plena potestas agendi et loquendi, ('full power to act and speak') to represent the group, to speak and act in its name and so, with the aid of this collectively owned capital, to exercise a power incommensurate with the agent's personal contribution."
>
> (Bourdieu 1986, 245)

Ritual symbolism, then, seems to be at the core of Bourdieu's understanding of institutions, of norms, and of the symbolic representations of different kinds of capital in the guise of identity, of definition and of other types of accumulated work in need of protection and procedural safekeeping. Bourdieu pays careful attention to the symbols and the play of visibility and invisibility in the field and he underscores the importance of the implicit rules of the game and observance of order in this regard (Bourdieu 1991B, 115). The reason for this – and the need for the protective acts of the institution – comes from the inherent risk that follows from acting upon a representation. Although necessary in social life, this acting on the symbol and the model, rather than upon the totality of the social world and the reduction of complexity that comes with it, is inherently dangerous and potentially deceiving.

2.5.3 Requisite variety

As we saw in the quote from Østergaard above, models are representations that are simpler than the phenomenon itself and that explain the phenomenon by reference to cognitive structural relations (Østergaard 1998, 188). Østergaard draws on the lessons from semiotics and says of models that their defining ability is the depiction of a complex phenomena or domain by reference to a simpler phenomena or domain, which in turn has cognitive explanatory power (Østergaard 1998, 189). Metaphoric images or simple geometrical structures are examples of such simple domains that depict complex domains.

A chaotic pattern is an indicator of complexity (Østergaard 1998, 193) and the model becomes a mental construction when coping with the apparently chaotic complexity and as such the model is simplistic reductions and generalisations that deal away with complexity. However, “a chaotic appearance is one level of reality, caused by a hidden organising principle, which must be found at another level …” (Østergaard 1998, 193).

When talking about systems and structure – which is the basis of the whole idea of fields, and when talking about the reduction of complexity in iconic symbols and representations, a very important lesson from cybernetics must be highlighted. Semiotics is very clear about the use of models and representations and from it follows a heeded word of warning. Symbolic power – as well as tangible risk, as Bourdieu is well aware – follows from the use and misuse of representations and recognitions, which is the essence of the manipulation of the rules of the game.

Cybernetics, which is the analytical study of systems, their structures and their dynamics, and most widely used in mathematics and science, are the rules of mechanics and ’self-operating’ systems. Both the words cybernetics and governance has the same origin in the Greek verb κυβερνάω which means *to steer* or *to guide*. We usually define it with some reference to power or authority and it means to control, structure or regulate. There are plenty of references to a contemporary use of law as governance while Foucault has demonstrated that governance becomes a bio-ethical necessity in most aspects of human life. However, the Catholic Church also uses the name ’Kybernetik’ for the governance of the Church and as such, it is an ecclesiastic discipline that is as much theology as it is law (Grandfield 1968 on *Ecclesiastical Cybernetics*)

Cybernetics has defined the logical limit to effective reductions of complexity. To a certain extent simplifications are necessary, but not to the degree of loss of regulatory control or loss of critical nuance. To this end, William Ross Ashby (1903-1972) in his *An Introduction to Cybernetics* from 1956 formulated the Law of Requisite Variety, which states that a model or regulator can only model or regulate something to the extent that it has sufficient internal variety to represent it. Variety is understood as the possible number of positions or variations in a system (Risbak 1985). That is, the model must be able to express the complexity and variety it is set in motion to depict or represent. For example, in order to make representation of a world in colours a television needs to be able project colours. A black and white image does not have the requisite variety to represent the complexity of colours. The Law of Requisite Variety also goes by the name of the ‘hammer law,’ in that if the only tool available is a hammer, all problems will be treated like nails – to an unsatisfactory result. Therefore, two lessons can be drawn about modelling from the law of requisite

variety. Firstly, the quantity of variety that the model possesses provides an upper bound for the quantity of variety that can be modelled. Secondly, a model that is less complex than the reality it is trying to represent will yield an unreliable result and most likely reproduce the assumptions for entering into modelling in the first place.

In the governance of larger systems and in the modelling of great complexity, the Law of Requisite Variety defines the possible limits of regulatory governance in the sense that a regulatory scheme that does not have requisite variety will not have the instrumental norms required to affect change and will return to its own 'self-operating' dispositions and result in a compartmentalised autonomy.

When approaching models and representations in Bourdieu's reading of norms, symbolic power and the entire system of the field, the cybernetic and systemic insights are important, because the struggle in the field is defined by the number of positions taken and the number of positions there are to be taken. The structures of the field are likened to the rules of the game and the limit the positioning, i.e. dispositions., of the organisations, groups and other agents in the field. Sociologically speaking, these are the 'ties that bind' (Kymlicka 1995, 173; Marshall 1964, 69; Vinding 2009, 90). The most successful player, and structurally, the agent in the strongest, dominating position, is the one who has regulatory control – that is, the power to model – the relations and positions available.[17]

Before concluding on the entire chapter, with insight from his understanding of the political field, we may note a trait that is not only characteristic for the political field in particular, but common to all fields that interchange symbolic, political and other forms of capital. "The field as a whole is defined as a system of deviations on different levels and nothing, either in the institutions or in the agents, the acts or the discourses they produce, has meaning except relationally, by virtue of the interplay of oppositions and distinctions" (Bourdieu 1991B, 185). From this the importance of not reducing complexity, not marvelling in the visions of the symbolic and not necessarily acting on the representations of the model the technology of the norms and the acts of institutions keeps the interplay of

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[17] Emirbayer and Johnson's observation on the organizational field and its complexity seem relevant. "An organizational field includes not just one type of organization (e.g., all car manufacturers), but all the organizations that play one role or another in the activity in question (e.g., car manufacturers and steel suppliers, dealer, consumers, insurers, and local and federal government agencies regulating the manufacture and operation of cars). Because the institutions governing a given organization's structure and practices are often influenced by a wide variety of other organizations – a variety not adequately captured by other organization-theoretic concepts – the concept of organizationsal field has been of particular value to neo-institutionalist scholars" (Emirbayer & Johnson 2008, 2-3).

opposition and distinction alive, even when perceiving the width and depth of the religio-organisational field.

2.6 Conclusion: the religio-organisational field and the analytical strategy to approach it

Geertz defined religion as a system of symbols and throughout the chapter both the systemic and the symbolic was given serious attention. It was demonstrated how the system of symbols was designed to bring people's *ethos* and *worldview* together in the representative synthesis that is the focus of the religious symbol. The symbolic power of representation was the identification of a way of life with a perception of the world, which indeed is one of the most powerful social constructs. It serves to build the commonalities and the identity of the religious group and in the returning cases of Islam, the recreation of the religion and reproduction of the institutionalisation is entirely dependent on the calibration and power of the iconic symbols of the religion. Attention to other definitions of religion will be given in the next chapter as focus turns to the specific models of religion, generally, and Islam, specifically.

In terms of the system of symbols, the models of the world are reductions of the complexity of these systems. Geertz stressed the near endless complexity of the cultural patterns that make up religion. Here the cultural patterns, called models, aided the cognitive effort by the individual and the institutional constructivist effort of the organisation in creating identity and expressing this symbolically. The patterns and models was shown to have a twofold ability to both represent and depict the world, while at the same time expressing an agenda for the world and an imperative to those who identify with the worldview.

The postcolonial criticism that Talal Asad addressed in Geertz' definition of religion exposed the asymmetrical power relations in any construction of reality. The criticism brought to the fore the assumptions of modelling – both as a social constructivist endeavour, but also as an academic effort. Following this, it gave rise to two epistemological consequences for the analytical strategy in this thesis. Firstly, any approach must be attentive to the dialects between the subjective world and the objective structures that frame it. Secondly, that the presentation of the dialects must be absolutely aware of the potential misrepresentation that follows from any modelling and any rendition into symbols. Geertz stressed the immense effort that goes into analysis of symbols and Asad reminded researchers that the products of particular efforts always remain particular and therefore biased.

Although the chapter introduced Geertz' definition of religion and models, the discussion between Geertz and Asad made necessary the

adoption of Bourdieu's concept of field into the analytical strategy of the thesis. Defined as '…structured spaces of positions (or posts) whose properties depend on their position within these spaces and which can be analysed independently of the characteristics of their occupants,' (Bourdieu 1993, 73) it was able to give focus to both the subjective and the objective, to the particularities of a given position and to the universality of the entire system, to both the structural disadvantages of certain positions and the potential power of the same. Ultimately, it is able to grasp both the complexity necessary and the unavoidable simplifications.

As a veritable Egg of Columbus, the concept of field works on two parallel analytical levels, one religio-organisational, the other academic-epistemological and both of them in jeopardy of misrepresenting its object by not satisfactorily revising its models and always at risk of being blinded by its own iconic oversimplifications. As such, the use of field in this thesis echoes Bourdieu's approach, which was both a 'reflective sociology' (Bourdieu & Wacquant 1992) and a 'reflexive epistemology' (Pouliot & Merand 2012, 26).

2.6.1 The analytical strategy of the religio-organisational field

From the many references Bourdieu and others make to the different aspects of the field and from the difficulties, warnings, benefits and potentials to be drawn from field analysis, it is possible to distill a framework for an analytical strategy for the field in general and for the religio-organisational field in general. As already referenced above, Bourdieu famously said, "the process of constructing the field is perhaps among the most difficult and challenging of all phases of research. It is a process that obeys principles that are less of a method (a route that one retraces after the fact) and more than a simple theoretical institution" (Bourdieu 1996: 232). He does, however specify that the given field must be seen in relation to the different kinds of forces or powers at play. The analyst or researcher must try to map out the hierarchy and structure of positions in the field. For the present purposes and by way of concluding the present chapter, some six lessons for future analysis of the field are presented here, which will identify the relations and the structure of positions in the field.

Firstly, the field itself is a representation of a complex struggle and will help to explain how a social space is constructed and limited by resources and time. Rather than reducing complexity by way of reducing variety, the field reduces complexity by way of scope. Thus, the field is focused rather than homogenous and may operate with requisite variety. In order to produce this focus, it is important to identify the borders and limits of the field. According to Bourdieu, this is done by identifying the species of appropriate capital, that is, those that hold value to the given field. There

are as many fields as there are forms of capital to be fought over. The field extends as far as the appropriate type of capital has value, because where there is capital with value, there will also be relations of power.

Secondly, and this is closely related, the constituent logic of the field needs to be identified. Bourdieu's concept of field can be seen as a reduction of a social complex by focus on the governing logic of that particular field. This logic is expressed as the common rules of the game, the doxa, without which there would be no game and thus no field. This logic can be identified empirically by identifying the implicit principles at work. For business, i.e., these are the logics of valuation, namely, that the value of things can be agreed upon and that wealth must be accumulated. For the social fields, these principles are the principles of social interaction and the value of community and commonality. As such, the governing logic within the field defines the appropriate and applicable strategies operating within that field and becomes the logical premise for a field's existence. Without profits there can be no economic field, and without collectivity no social field. Bourdieu reminds us that "all the agents that are involved in a field share a certain number of fundamental interests, namely everything that is linked to the very existence of the field … these points of agreement are held at the level of what 'goes without saying' they are left in a state of doxa … [these are] in other words, everything that makes the field itself, the game, the stakes, all the presuppositions that one tacitly and even unwittingly accepts by the mere fact of play, of entering into the game" (Bourdieu 1993, 73-74). Governed by the limits of its logics, the field has the potential of an unlimited number of positions, combinations of these and the capital required and the interrelated relations. These are only limited by the bindings of the logics and 'rules' of the field, which can in turn be renegotiated or subverted, and by the structures of domination of those in stronger positions and with more capital.

Thirdly, from these two instances, the specific and most dominant positions in the field are to be accounted for. This will reveal how power is distributed in the field. This part of the analysis starts with the positions of distinguished power or most capital and goes on to specify how this position is separated from others. Once the dominant position is identified, the various degrees of the dominated will slowly become clear.

Fourthly, it is important to distinguish between the objective positions in the field, understood as possible positions to occupy, and the stances actually taken by individual organisations or institutions. The structure of the positions available is different from the position actually taken. The position occupied defines the relative force in the game from where the individual organisation orients itself and acts according to its dispositions and its habitus. Both the availabilities of positions in the field and the social

or organisational trajectories over time in the objective structures are defined by these specific and subjective preferences.

Fifthly, it is the norms that make the field of positions and structure hierarchical. The relations of positions hold power and the capital accounts for the value and the possibilities within the field, but the norms qualify and empower the capital value of the positions. By definition, the divisions of inside and outside, which the norms set up within the field, are those that specify the levels and ranks native to a hierarchy. The most powerful of norms yield the strongest divisions and, in turn, are those most difficult to transgress and transform. These strong dividers give stability to a field and allow for positions to be held for a long time and at low upkeep. By contrast, it is exactly because of these norms that struggles arise and positions are challenged, which in turn yields the 'shifting and fluctuating' dynamics of the fields. Equally, the inverse is true as these dynamic define the structuration as generative. The weaker norms shape themselves to the stronger norms and as well as shaping the strong to the weak.

Sixthly, according to Bourdieu a struggle arises from the nature of the norms. This is the struggle "…for the impositions of the principle of legitimate hierarchization [which] cause the dividing-line between those who belong and those who do not to be constantly discussed and disputed, and therefore [to be] shifting and fluctuating, at every moment and above all according to the moment" (Bourdieu 1988: 77). If anything, this is the struggle of the field and the struggle to be identified in the chapters to come. Here, the different technologies of norms will be seen as decisive. These technologies of norms were shown to define the commons, to establish legitimate principles of division through examination and to specify how risk is managed collectively and procedurally in the face of danger to positions and capital.

2.6.2 The hidden imposition of arbitrary principles of division

Before drawing this chapter to a close, there is reason to dwell on the specific impact of an analysis of the religio-organisational field. This returns to 'the imposition of the principle of legitimate hierarchization' and the recognition of it. For Bourdieu this is a specific point he makes for the religious field and one that seems valid, also for the related organisational subfield of the religious field. Quoting Bourdieu once more, we know that "… religion contributes to the (hidden) imposition of the principles of structuration of the perception and thinking of the world, and of the social world in particular, insofar as it imposes a system of practices and representations whose structure, objectively founded on a principle of political division… " (Bourdieu 1991, 5). As has been established repeatedly, Bourdieu borrows this insight from Durkheim, but Bourdieu draws attention to the 'hidden imposition of the principles of structuration,'

which is the specific application of the game of perception and representation to be found in every field. The religious hierarchy serves to Bourdieu as an example of the arbitrary nature whereby the principle of division and structuration is imposed. The defining difference that leads to the powerful objective dispossession and exclusion of those in a weaker position is not the production of accumulated symbolic labour, but the recognition by the dispossessed of the dispossession as legitimate. This is where it all becomes a matter of the relative position in the game of the field. From the limited scope of a weak position, that which is recognized as legitimate is only so because of the fundamental deception of the structure of the field. This recognition is therefore mis-recognition and arbitrarily illegitimate.

This arbitrary principle of division and the arbitrary legitimacy that follows from the mis-recognition of the perspective of a weak position allows for the power of symbolic capital to receive its effect. An effect that is enhanced by the social patterns that are institutionalisation by way of habitualized and frequently repeated actions. Once the in-action of the habitual repetition kicks in, the cost decreases and the division widens. The maintaining in a particular reproduction process *without* action of a position, state or pattern, is institutionalisation. A highly institutionalised position is maintained at a very low cost and almost taken for granted. It is the ability to convey stability, meaning and order at a low cost of maintenance with no deliberate action or effort and the product of well defined positions of capital that makes the institutional trait so attractive to organisations and makes it an inherent characteristic of many of the norms in the religio-organisational field.

Bourdieu sums up his understanding of institutionalisation and its symbolic consequences by underlining the importance of the "symbolic efficacy of rites of institution, that is, the power […] to act on reality by acting on its representation. For the specifics of the sociology of organisations, this has implications of the symbolic use of social capital institutionalised in the norms that define the borders of the group and the value at the core that symbolises the totality or essence of the group. The capital that is the identity and common values of the group is maintained and reproduced in the social relations of mutual exchanges and mutual recognition of the symbolic power of the social capital.

Symbols, we learned from Berger & Luckmann, are products of the human mind. They are signifiers, constructions of correlations and conceptions of meaning and are understood by Geertz as acts of culture performed by social beings. Geertz' definitions of religion, the ethos in the 'model for' and the world view in the 'model of', were combined into the complex of symbols or patterns of culture, which is the religion's model of reality and by which religious groups create meaning. The concept of field

brings together the *objective* structure of cognitive and social systematisation and the perspective, experience and interpretation of things *subjectively* as a product of consciousness. From this objective structure comes knowledge and from the subjective relations comes communication. As an addendum drawn from this Durkheimian insight drawn from Geertz, Bourdieu reminds us "the systematic application of one and the same principle of division" is the basic organisational principle which serves "the functions of inclusion and exclusion, of association and dissociation, of integration and distinction" (Bourdieu 1991, 3). Following the organisational logic, which "solves tasks and reaches goals by a particular distribution of assignments," the arbitrary symbolic order with its principle of division does exactly this. So as a point of origin for analysing the religio-organisational field, we must assume that the distribution of assignments is particular, but that principles of division are arbitrary. A final reminder from Bourdieu holds true in that "symbolic power is that invisible power which can be exercised only with the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it" (Bourdieu 1991B, 164).

In sum, it may solve its tasks and live up to its purpose by a particular distribution and ordering of its tasks while the original divisor is arbitrary. The specific organisations are always locked in a network of relations that are difficult to pin down in the unseen and mis-recognisable dominated or dominating positions, but, taking all the organizations that play a role in field into the equation, it becomes the object of analytical examination and therefore exposed. This is exactly how the relative position of the individual organisation may be legitimate, while the whole order of the particular religio-organisational field may be arbitrary.

Chapter Three

The Governing Models of Church, State and Religion Relations in Europe

3.1 Introduction

"Church-state relations constitute a classical topic in the sociology of religion, as well as in the related disciplines of church history and ecclesiastical law," writes Lene Kühle introducing a recent thematic issue of *Nordic Journal of Religion and Society* on church and state in the Nordic countries, and continues: "In recent years, however, church-state relations have been reformulated to 'religion-state relations', and these issues have moved center-stage" (Kühle 2011B, 111). In the introduction to the theme of the issue, Kühle argues for a new approach to religion-state relations in Europe. A call for a new approach assumes that the old approach is outdated, but the change that Kühle so precisely calls the reformulation of a traditional church-state perspective into a religion-state relations perspective is very saying of the change in the empirical material available to scholars. Kühle is far from alone in this call for a revision of research on religion-state relations in contemporary Europe. She joins a growing body of researchers and scholars, who in their work criticise the reliance on old stereotypes and outdated models. Most significantly, perhaps, Silvio Ferrari repeatedly (2000; 2002; 2003; 2006; 2008; 2010) has argued that the traditional model is "outdated and does not answer the needs of contemporary societies" (Ferrari 2008, 107). Ferrari and Kühle are joined by British colleague Russell Sandberg of Cardiff Law School, who argues 'that scholarship itself has become a barrier to the understanding of church and state relations' (Sandberg 2008: 329). Sandberg has written repeatedly about the shortcomings of the old approach of building models of church and state relations. He calls for a 'sociology of law and religion' as it infers an interdisciplinary approach that takes seriously the input from both sociology, law and studies of religion (Doe & Sandberg 2007, Sandberg 2008). All three are joined by German colleagues, among them Sabine Riedel who, with reference to immigration and the Muslim presence, states that the academic "challenges to church-state relations in European democracies are obvious" (Riedel 2008: 251). Ferrari's repeated argument of the outdated model seems to be well received empirically and analytically in Denmark, Germany and England.

A central theme to this thesis and through out this chapter is that the fact of the presence of Islam and Muslims plays a key part as a catalyst for the critical revision of the models traditionally applied to church and state relations. Both the argument of the critical revision of the model and the argument of the role of Islam presented here is as much an epistemological argument as it is sociological. The core sentiment is that the presence of Islam as religion and Muslims organisations as an institutional factor challenges the prevailing models to the extent of revision because the relevance of these models seems to have diminished. The sociological fact of Islam demonstrates the diminishing explanatory value of the existing models, which is how it becomes an epistemological problem more that anything else.

In the first section of this chapter, section 3.2, the ambition is to give an introduction to the history of the models in the research of church and state relations in Europe as seen in three distinct phases. In addition, the ambition is to critically discuss the 'perils of modelling' (Bader 2007B) as this becomes a factor in research on church and state relations in Denmark, Germany and England. This is done in section 3.3. The development of modelling in this area of research is seen through the epitomic example in the research of Silvio Ferrari with repeated references to the substantial body of literature, both in Europe and in the three countries in focus, in each of the three phases, which the research on church and state goes through in the attempt to incorporate the fact and presence of Islam. From the point of view of the history of research in resent years, the research by Ferrari is particularly interesting, because he has been a proponent, a critic and a commentator of each of the three phases of modelling.

Beginning with the traditional tripartite model of that which has been handed down from the large clusters of European church-state researchers,[18] the first phase grows out of the secularization thesis with its assumption of a diminishing relevance to religion and its secondary position of church in relation to state. The crisis of the secularisation thesis inaugurates the first review of the models. The second phase acknowledges the fact of Islam and the endeavour is reformulated into state and religion research, as remarked by Lene Kühle above. A second crisis and thus a third phase unfolds with the challenge of Islam and the revised model is shown to misrepresent the observed facts of religion in the interactions with state equally as much. As Ferrari states in 2003, "European Islam has yet to find a precise place within this model," (Ferrari 2003: 241) and suggested by Jytte Klausen's 2005, 'The Islamic Challenge,' Islam becomes a significant political and academic challenge. Particularly after 9/11 there

[18] To this effect the European Consortium of Church and State Research has had substantial influence and has been gathering on a yearly basis since 1989 (http://www.churchstate.eu, accessed 19 January 2013).

has been a growing literature on the crises and challenges that the models of church and state relations in Europe face in the presence of Islam. This challenge is more and more apparent, as "the visible and active presence of Muslims in European societies has increased the ambiguities and struggles over the meanings and implications of dominant norms and principles, especially due to the fact that Muslim communities have started to demand spaces for recognition, sometimes even in the name of such norms" (Amir-Moazami 2005, 278). As shall be explored both in the present chapter and throughout the thesis as it unfolds further, the challenges that Islam pose hinge on conventions that no longer enjoy the agreement they once had, norms that no longer reflect the common identities, regulative criteria that no longer reflects meaningful differences in society and Muslim communities who refuse to be subject to discrimination and prejudice.

The limitations and inadequacies of the research paradigm of church and state relations modelling become clearer as the focus on the contemporary situation of Islam in Europe grows. The understanding of models introduced and discussed in chapter two can be seen in both its epistemological nature and its history of research when, in section 3.5, we turn to some of the alternatives discussed by researchers. Amongst these, the religio-organisational field takes shape as a viable analytical alternative to the collapsing models in Europe. The virtue of thinking in terms of fields rather than models is one of nuanced focus that seeks to identify the specifics of Denmark, Germany and England. In the third phase of the recent history of research, the researchers of religion and state relations begin to apply a developing understanding of field as the models start to wither and as the complexity of the object of study increases.

One of the outcomes of the inadequacies of the models of church and state relations is an increase in the attempts to 'pin down' Muslims or fit them into the models. As the crisis of the models become more urgent the attempted definitions of Muslims in Europe expose themselves more and more to the critique from Muslims, Islamic scholars and Islamic Studies researchers alike. This is seen in the attempt of subjective models to frame Muslims and structure their possible fields of actions as was framed theoretically by reference to Geertz, Asad, Bourdieu and Foucault in the previous chapter. However, as this chapter delves further into the epistemological and sociological realities of the research currently done, it becomes apparent that a reaction or countermeasure to the 'essentialisation' of the models can be seen in a recent tendency, where the problems and inadequacies of defining, ordering and counting Muslims is emphasised. This is an attempt to counter the model-tendency and try to deconstruct Muslims within the limits of research. The resultant minimum definition of Muslims is almost as wide as possible and adds a further factor to the already increasing complexity. This deconstruction of Muslims is the point

of origin when we begin to define the significant limitations that in turn will help us narrow the religio-organisational field in Denmark, Germany and England.

3.2 The governing paradigm of models and modelling

From 1991 to 2002, W.A.R. Shadid and P.S. van Koningsveld published a series of six edited volumes on *The Integration of Islam and Hinduism in Western Europe* from 1991, on *Religious Freedom and the Position of Islam in Western Europe* from 1995, on *Muslims in the Margin: Political Responses to the Presence of Islam in Western Europe* from 1996, on *Political Participation and identities of Muslims in Non-Muslim States* from 1996, on *Religious Freedom and the neutrality of the State: The Position of Islam in the European Union* from 2002 and *Intercultural Relations and Religious Authority: Muslims in the European Union* also from 2002.

With these comprehensive thematic investigations, Shadid & Koningsveld took great steps towards making sense of Muslims and Islam in Western Europe from a specific church and state perspective. An abundance of similar volumes with similar thematic approaches were published in the same period, such as *Islam and European Legal Systems* by Silvio Ferrari and Anthony Bradney from 2000, *Islam and the European Union* by Richard Potz and Wolfgang Wieshaider from 2004, and Gerhard Robbers' second edition of *State and Church in the European Union* from 2005, which does not mention Islam in the title, but certainly addresses it in the country reports. More recent volumes in this trend include *Islam & Europe: Challenges and Opportunities* edited by Marie-Claire Foblets in 2008 and *Islam & Europe: Crises are Challenges* edited by Marie-Claire Foblets and Jean-Yves Carlier from 2010. Also, the Muslim Minorities book series, edited by Jørgen S. Nielsen and in particular *Muslims in the Enlarged Europe: Religion and Society*, edited by Brigitte Marechal, Stefano Allievi, Felice Dassetto and Jørgen S. Nielsen in 2003, maps out the main characteristics and specific challenges of contemporary European Islam. Although it is impossible to mention everything, the *Yearbook of Muslims in Europe*, now in its fourth volume (Brill, 2012) seems to warrant a word. It goes country by country to give an overview of Muslims and Islam in 46 countries. In addition to this Europe-wide perspective, a body of research is expanding on country-specific perspectives, on cross-country comparisons with one or more thematic foci and purely thematic or issue-specific approaches.[19]

[19] The EURISLAM bibliographical database provides an overview over this body of research. It is "intended for scholars and teachers, and takes into account all publications concerning the current situation, in contemporary Europe in a wide sense,

Turning the perspective and focus to research projects, the interest in Islam and Muslims in the context of church and state inflates greatly. Here it seems appropriate to mention the most key of the very large pan-European top-down sponsored projects such as the ongoing "International Migration, Integration and Social Cohesion (IMISCOE)"[20] research network run out of University of Amsterdam, the "Religious Diversity and Secular Models in Europe project (RELIGARE)"[21] based at University of Leuven from 2010 to 2013, "A European Approach to Multicultural Citizenship Legal Political and Educational Challenges (EMILIE)"[22] running from 2006 to 2009 out of Bristol University, "Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe (ACCEPT)"[23] based at the European University Institute in Florence and running from 2010 to 2013, the "European Consortium for Church and State Research, (ECCSR)"[24] which has been active since 1989 and the "International Consortium for Law and Religion Studies (ICLARS)"[25], "European Studies on Religion and State Interaction Network (EuReSIS NET)"[26], the "Law and Religion Scholars Network (LARSN)"[27], and the "Sociological and legal data on religions in Europe website (EUREL)."[28] In addition to and with considerable overlap with the projects are the very large national research centres, university departments and clusters, such as – but not limited to – the "Erlanger Zentrum für Islam und Recht in Europa (EZIRE)"[29] at Friedrich-Alexander-Universität Erlangen-Nürnberg, the "International Institute for the Study of Islam in the Modern World (ISIM),"[30] based in Netherlands across four Dutch universities, but discontinued in 2008, the "The Impact of Religion –

of Islam as a religion (beliefs and religious practices, religious sensibilities) and of Muslims as a diversified group of population (Muslim immigration, institutions, public regulation). The database contains press articles, books, book sections, study or investigation reports, theses, grey literature" (EURISLAM 2013). The database currently holds some 4480 entries.

[20] IMISCOE, www.imiscoe.org, - accessed 20 January 2013

[21] www.religareproject.eu, - accessed 20 January 2013

[22] EMILIE at Bristol University webpage, http://www.bristol.ac.uk/ethnicity/projects/emilie/, - accessed 20 January 2013

[23] http://accept-pluralism.eu/Home.aspx, - accessed 20 January 2013

[24] http://www.churchstate.eu, - accessed 20 January 2013

[25] http://www.iclars.org/, - accessed 20 January 2013

[26] http://www.euresisnet.eu - accessed 20 January 2013

[27] http://www.law.cf.ac.uk/clr/networks/lrsn2.html, - accessed 20 January 2013

[28] http://www.eurel.info, - accessed 20 January 2013

[29] http://www.ezire.uni-erlangen.de/, - accessed 20 January 2013

[30] No website available, but the National Academic Research and Collaborations Information System in the Netherlands has this brief about ISIM, http://www.narcis.nl/organisation/RecordID/ORG1238811, (accessed 20 January 2013)

Challenges for Society, Law and Democracy (IMPACT),"[31] which is a centre of excellence at Uppsala University sponsored for at ten year period from 2008 to 2018, the Centre for Law and Religion in Cardiff[32], the "Politics, Religion, Institutions and Societies: European Mutations (PRISME),"[33] based in University of Strasbourg, and the "Centre for European Islamic Thought (CEIT),"[34] based in Copenhagen. There are plenty more, but these are a few of the ones that have informed different aspects of this thesis. Finally, of course there are the countless smaller and individual projects that are directly, somewhat loosely or not at all affiliated with these institutions. Taken together the body of research on Islam in relation to state, religion, politics, media, governance, globalisation, secularisation, securitisation and so on seems to indicate that Islam and Muslims have drawn considerable academic attention from church, state and religion scholars. It is from this body of academic endeavours, institutions and projects – of which I have only mentioned a fraction – that the critical perspectives on modelling discussed here are directly and indirectly drawn.[35]

The paradigm of modelling has its clearest manifestation in the work of Silvio Ferrari. As a key member of many of the Europe-wide research groups and programmes, Silvio Ferrari, Professor at the Law Faculty of the Universita degli Studi di Milano and president of the International Consortium for Law and Religion Studies, has in a series of different introductory articles spread over more than a decade suggested and revised a model for understanding the position of Islam in the existing church, state and religion relations. Analysis of his work shows that he does not only suggest patterns and models, but in the span of a decade of articles (Ferrari 2000, 2002, 2003, 2006, 2008, 2010) a history of an understanding of Islam's position in the European models of church and state can be seen in three phases.

In the first phase, a crude but functional tripartite model classifies patterns of Church and state relations into separation systems, concordat systems and national Church systems (Ferrari 2002: 6). In the second phase, the classification is revised to include a greater focus on religious rights to freedom and equality. With the focus on these rights the question

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[31] http://www.crs.uu.se/Forskning/impactofreligion/, (accessed 20 January 2013)
[32] http://www.law.cf.ac.uk/clr/, (accessed 20 January 2013)
[33] http://prisme.u-strasbg.fr/pindex.htm, (accessed 20 January 2013)
[34] http://www.teol.ku.dk/ceit/english/, (accessed 20 January 2013)
[35] It must be clearly stated that neither Shadid and Koningsveld, nor Ferrari, nor any other of the theorists discussed in this section have any illusions about the durability or denies that there are problems with the existing models. In the articles that discuss Islam and church-state relations, indeed much time and energy is devoted to elaborating on the inadequacies and inabilities of the models.

of religious autonomy arises. In the third phase, religious communities and churches begin to struggle with the model that defines the state as the point of origin of the state-religion relationship. Alliances between different religious organisations start forming and the political authority and the legal jurisdiction of the state is seriously contested when it comes to the question of religion.

The virtue of the example of Silvio Ferrari's research in the decade of articles is that he not only revises his own point of view in each of the three phases, but also develops a criticism of the previous phase. As such, the analysis of Ferrari's work suggests an epitomic case for demonstrating the redundancy of modelling and for showing how traditional church and state researchers have gone through these three different phases of church and state modelling in the attempt to make Islam and Muslims fit into the models.

3.2.1 First phase of modelling: church and state

In the article aptly titled 'Islam and the Western European Model of Church and State Relations' (Ferrari 2002), Silvio Ferrari pursues to demonstrate how the European model for state and church relations in the so-called tripartite classification is in need of amendment with the advent of Islamic norms and communities in Europe. The article first introduces the patterns of church and state relations as (i) separation systems, (ii) concordat systems and (iii) national church systems and secondly revises this first phase in suggesting an alternative understanding in order to fit Islam and Muslims into the paradigm of the tripartite model. This model has been widely used, referenced and criticised in the body of academic endeavours mentioned above (e.g., Bader 2007B, Riedel 2008, Sandberg 2008, all of whom are very critical).

The first of the tripartite classifications are the countries with a separation model of regulating relations between state and church. These are the secular ones and include most obviously France, but also Ireland, Belgium and the Netherlands fit the model with reasonable variety. The Netherlands, for example, has traditionally applied an ordering of society into Protestant, Catholic, Liberal and Socialist 'pillars,' although with the Muslims present as a viable 'fifth pillar,' this distinction has in general become more difficult and Dutch society is becoming more multicultural (Riedel 2008, 259; Kaya 2009, 140). By contrast, France adheres to the principles of *laïcité*, which can be defined as a layman's rule. According to the 'Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État,' France is a secular state, where religion has no institutional influence on state affairs and where the state is not to interfere with religion. Although this is the clearest expression of the separation model, even in France the state, the churches and the religions must interact. This

is seen in a vast number of issues, such as maintenance of buildings, the regulations of the religious labour market, the fundamental freedoms, religious functionaries and chaplaincies in the armed forces because the 1905 law does not apply to the armed forces. By such interaction in practice and by such systematic exceptions, it becomes clear that a separation model can only explain so much and thus the limits of modelling begin to show. In "Church-State relations in Europe and the crisis of the 'European social model'" from 2008, Luca Diotallevi argues that secularisation does no longer explain the role of religion in Europe: "The old paradigm for explaining the crisis of laïcité regimes (the so-called 'inherent model') is not good enough. Indeed, positing the demise of laïcité is equivalent to positing the crisis of the old paradigm itself – the crisis of the classical secularization theories" (Diotallevi 2008: 128). This echoes Jose Casanova, who unequivocally says, "the return of religion to the European public sphere as a contentious issue does constitute a challenge to European secularism and to European secular identities." (Casanova 2008, 74).

Turning to the second of the tripartite classifications, the concordation model also known as the coorporation model or hybrid model, we find in this category, states that govern state and religion relations by entering into agreements and concordats with religious institutions and churches (Riedel 2008). The obvious examples are Spain, Italy, Poland and Portugal, because these states have a strong history of making legally binding bilateral treatises of international law with the Holy See in Rome, who speaks on behalf of Catholic institutions internationally. This principle is then applied to other religious communities with obvious problems for Muslims, who do not by default follow the institutional logics of the strong churches (Nalborczyk & Borecki 2011). According to Ferrari (2002), Germany also falls into this category with its ongoing negotiation of certain corporation status for religious communities and churches together with old and implicit agreements with the Catholic and Protestant churches.

The third of these classification models is the national church model, also known as the Establishment model or state church model. Denmark and England are the examples followed in this thesis, but the other British and Nordic countries have the same or similar model, except perhaps Ireland. While everyone has freedom of religion and the freedom to worship, there is no religious equality and the state or national Church enjoys preferential treatment in the relationship with the state and state institutions. There is in some of the countries in this category a tendency to disestablish the relationship between state and church, as is seen in for example Scotland, where the Church of Scotland was disestablished in 1921, or in Sweden, where *Svenska Kyrkan* was so in 2000, changing from a state church to a people's church. In this regard, former Archbishop

Gunnar Weman of Uppsala argued, “the disestablishment is coming in a friendly climate that should be better for the church. It will be a revival of the people’s church’ (Interviewed in Trexler 1996).

In this tripartite model, Ferrari acknowledges a pattern of church and state relations, that was an academic point of reference when scholars during the eighties and early nineties tried to make sense of the Europe wide perspective. This was done most significantly under the auspices of the European Consortium of Church and State Research. Here scholars have met on a yearly basis since 1989 and consecutively published the proceedings from their meetings in the attempt to map the church and state affairs in Europe with a new thematic focus for each issue. Ferrari, however, warns against the tripartite classifications and he calls it a ‘gross oversimplification’ (Ferrari 2000, 4) and stresses “… the need to tackle the question in a more articulate and precise way …” (Ibid.). In his 2002 article he clearly states, “… this traditional tripartition is culturally and legally outdated. Therefore it is of little use in understanding what is going on in the field of Church and State relations…” (Ferrari 2002: 6). Ferrari distances himself from the model of this first phase and calls it a ‘leftover of a Europe divided.’ In spite of this, however, he insists on a revised model of church and state relations, which he builds on a wider basis than law and on a common pattern on religious rights protected under the authority of the states that have promised to protect the rights of religion. Furthermore, Ferrari maintains that a revised model must incorporate and understand Islamic principles of regulation of state and religion in order to come to grips with the complexity of that is introduced as Islam enters the model (Ferrari 2000: 3). Although his criticism of the model is already clear by the article from 2000, Silvio Ferrari does not abandon the reference to the classification of countries in the tripartite system. In 2008, he writes “… although the classification is outdated and does not answer the need of contemporary societies, we start with the distinction …” (Ferrari 2008: 107). It seems clear that although he adds the reservation of the model being outdated, Ferrari still regards it as informative of the relations between state, church and religion in Europe – at least at a pedagogical level.

The tripartite model finds its demise by the realisation that religion is a living, changing and challenging social fact. The secularisation thesis in its varieties and with its proponents accepts that religion is still highly relevant and as such secularisation is in need of critical rethinking (Casanova 2008, 7). In their book on *Religion and Democracy in Contemporary Europe*, Yochi Fischer and Gabriel Motzkin generalise the experience of the ‘re-entry of religion’ and give voice to a revision of the model of church and state:

> "Until 20 years ago, most scholars in various disciplines adhered to a variety of 'secularization theses' that stressed the gradual 'victory' of secularism over the old religious past. The experience of recent decades has shown that religion is not about to disappear from the European national public or private sphere. On the contrary, the last decades have witnessed the re-entry of religions into the public arena, which has involved the emergence of new religions with novel features as well as significant changes in the old religions. These processes of religious resurgence and religious transformation have accelerated and intensified on account of rapid growth of immigration and the creation of new diasporic communities that are globally networked. In contrast to the idea of a one-track 'secularization process', religion is now playing an important role in constituting collective identities and in shaping both national and international cultural characteristics and boundaries"
>
> (Fischer & Motzkin 2008, 13-14)

3.2.2 Second phase of modelling: religion and state

After the criticism of the first phase of the model, Silvio Ferrari asks: "Does a European, or at least Western European model, of state-church relations exist?" (Ferrari 2003: 226). His answer is neither affirmative nor dissentient, but he reframes the problem of state and church modelling and changes the perspective. Thus, the second phase is not as much a revision of the tripartite classification as it is a framing to extent the model to include state relations with both church and religion. The revised model focuses on the limits, power and selective cooperation of the state. It centres on the state perspective in the individual country and underlines the common features of the different national systems. The second phase begins to wrestle significantly with the question and position of Islam in the church and state model and as the complexity of the issues increases, the body of literature begins to expand rapidly.

As indicated by the bulk of the volumes edited by Shadid and Koningsveld, this second phase is spread from mid 1990'es to the first few years into the 21st century. Ten years ago, Shadid and Koningsveld wrote about the future of Islam and the existing church and state relations; "[Islam] could contribute to reform a system of Church-State relations that can still offer a sound legal framework to the peaceful co-existence of religious groups in Europe" (Shadid and Koningsveld 2002, 2). Equally, Ferrari's earlier articles speak into this phase, most significantly those from 2000, 2002, and 2003. Arguing out of the criticism of the first phase, he suggests a deeper pattern that is characterised by religion and state relations rather than church and state relations. As such, the revised model is characterised by three features. Firstly, the pattern is characterised by a right to and protection of religious liberty. Secondly, the pattern insists on the principal incompetence of the state in religious affairs and the autonomy of religious groups. Thirdly, it includes the feature of selective

cooperation between state and religious groups. These are the three basic tenets of the second phase of church and state research. Each of these three adds an increased political and cultural European focus while also taking serious the legal impact of Islam. Ferrari visualises the new model in a pyramid outline of state and religion relations in Europe situated around the right to religious liberty and the limits of the state.

The basic rights of religious communities are guarantied by the International Covenant on Civil and Political Rights[36] (art. 18) and the European Convention on Human Rights[37] (art. 9), and are signed by most countries in Europe (Ferrari 2002, 7). Equally, most European countries have provisions for the protection of religious liberty. The protection of these basic rights is enforced by the individual states and holds a two-fold mandate. On the one hand, the state must make sure that religious practice does not inhibit other political or civil rights and there must be no discrimination by reference to religion. On the other hand, the states must also protect the fundamental values and principles of society, such as rule of law, public safety, and general clauses of non-discrimination and protection of the individual against what a religious community might see as their obligation. To this, Ferrari adds, the important platform of collective rights that most religious communities enjoy in Europe. These are amongst others the right to assemble, the right to publish and express a religious view, the right to educate and teach religion, the right to receive financial contributions and the other basic collective freedoms of a democracy. The fact this is available to religious communities is by no means irrelevant, he says (Ferrari 2002, 8).

In addition to these fundamental rights, Silvio Ferrari points to the limits of state jurisdiction and the autonomy of the religious group as a fundamental condition for religious communities in Europe. "The most relevant difference among the E.U. States," says Ferrari, "regards the extent of the autonomy granted to religious groups" (Ferrari 2002, 9). Many of the European states and certainly Denmark, Germany and England hold a constitutional promise of recognition of self-determination and autonomy of religious groups with more or less a minimum of registration.[38] The principle of autonomy is very closely related to that of sovereignty in both internal doctrinal and organisational affairs. However,

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[36] Full text available from the Office of the United Nations High Commissioner for Human Rights, http://www2.ohchr.org/english/law/ccpr.htm (Accessed 20 January 2013).

[37] Full text available from the European Court of Human Rights, http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf, (Accessed 20 Januart 2013).

[38] For England, understand a quasi-constitutional promise or a constitutional principle distributed among a number of legal texts and decisions (Turpin & Tomkins 2007).

the freedom to decide for one-self and independently is not one that can be given by any other entity or force or be dependent of anything external. According to liberal philosopher Isaiah Berlin, freedom is ultimately defined negatively as freedom from something rather than positively as a freedom to do something, which in turn is a right rather than a freedom (Berlin 1969). In 2001, Gerhard Robbers defined church autonomy as "…the right to self-determination of religious bodies. They decide freely their teachings and offices, the range of their activities and the shape of their structures …" (Robbers 2001: 5).

In the three country cases, the very question and promise of religious autonomy and self-determination is part of the changing of the models of state, religion and church. As a negatively defined phenomenon in the freedom to decide for oneself, autonomy cannot strictly speaking be given at the legislative benevolence of a ruling parliament or government. Rather, the sovereignty of self-determining autonomy can only either be recognised or denied by the governing polity. The difficulty of autonomy which legal scholars from both Denmark (e.g., Christoffersen 2010B), Germany (e.g., von Campenhausen 2001) and England (e.g., Hill 2001; Doe 2011; Sandberg 2008) return to is where to draw the limit between the right to self-determination and the "law that applies to all," (von Campenhausen 2001, 83) which includes religious communities. Because there can be no exhaustive enumeration of all the laws that apply to all, von Campenhausen specifies that "the whole civil law as well as the regulations of the public law, which constitute the basis of the public order that applies to all, is part of it" (Ibid.). However, according to von Campenhausen not just any limitation of the right to self-determination can be made by the legislative. While the legislator "hold the sovereignty of lawgiving and determines the limits of ecclesiastical autonomy," he should only make a law "which is *mandatory* for a peaceful communal life in a state, which is neutral towards religion and ideology thus respecting the independence of the religious communities" (von Campenhausen 2001, 84, original italics). Well intended as this overarching principle is with regard to the limits and inner affairs of religious life, it does not, however, absolve the fact that the autonomy of organised religion is structurally compartmentalised and remains at the mercy of the legislative. In the language of the generative structuration from chapter two, organised religion is organised in two related senses. Not only is organised religion organised by its own internal prerogatives, but it is also organised by the structures that the powerful bodies of its environment makes available for it. At the end of the day, autonomy in the modern constitutional democracies is autonomy on the basis of legal delegation (Bader 2007A).

It is from this context of autonomy that the critical idea of state incompetence is derived and Ferrari holds that states do not have the

jurisdiction to "… outlaw a religious group just because its doctrine is in contrast with State laws" (Ferrari 2002: 9). The important fact here is that state – even in the sum of the separated and delegated powers – is by far omnipotent and that there are serious limits to what a religious community can be held accountable for. The individual may be punished for polygamous marriage,[39] but the Islam as religion and the Muslim community may freely support polygamy. The question has everything to do with the struggle between competing norms, as was introduced in chapter two, but which we will return to later in chapters five, six and seven.

Having framed the limits of state and the rights of religious communities, Ferrari sketches a pyramid to illustrate the relationship of religious communities to the state that governs through formal and informal agreements and arrangements to the result of a selection amongst the religious communities. This is a key aspect of how the second phase of state-church-relations research understands the patterns as it draws up the levels of the pyramid. The defining feature that determines the cooperation of the model is the proximity of values of the religious community to the values of the state: "generally speaking, co-operation is broader where the central principles and values of a religious group are in accordance with the principles and values shared by the majority of the … society" (Ferrari 2002, 10).

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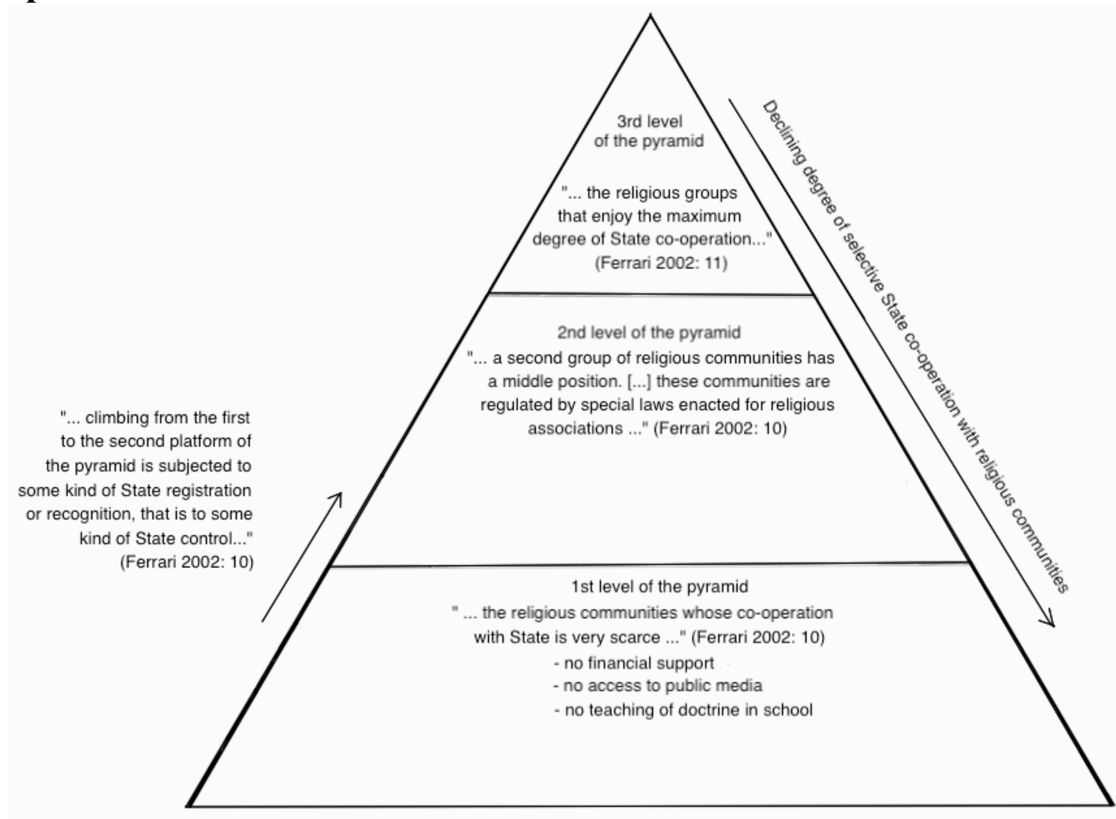
[39] Such is the case of a former leader of the Slough Tory party, Pervez Choudhry, who admitted to and was convicted of bigamy. http://www.sloughobserver.co.uk/news/slough/articles/2012/05/22/59745-/ (Accessed June 12, 2012)

Figure 3.1: The Silvio Ferrari pyramid priority of selective State co-operation[40]



An important aspect of the three features of second phase of modelling is that they introduce not only compartments and positions defined in relation to the state, but also that these are separated by norms and normative institutions that all govern the appropriate level into which a religious community is allowed. "Climbing from the first to the second platform of the pyramid," Silvio Ferrari argues, "is subjected to some kind of State registration or recognition, that is to some kind of State control…" (Ferrari 2002, 10). The appropriate difference may be clear in the language of core values which are compatible with state values, but the impact of this difference is governed by state sponsored norms of distinction, differentiation and separation according to the logic of norms as presented and discussed in chapter two. Here Bourdieu reminds us that such criteria should "account for the set of meaningful and significant differences that objectively separate entities in the field," and which "enable a set of relevant differences … to arise" (Bourdieu 1996, 232). The impact of such a differentiation will be explored both later in this chapter and in the

[40] This diagram is drawn from the descriptions in Ferrari 2002, 10-11. Later on, he adds that the close relationship with state at the 3rd level of the pyramid can even result in the values of religion, say for example Catholic values, to be "…raised to the rank of civil religion." (Ferrari 2010, 29)

chapter five on the gate-keeping institutions in the Danish religio-organisational field.

Two final perspectives of this second model must be stressed. On one hand, it explicitly refers to religion rather than churches, which adds nuance and complexity to the model. On the other hand, it demonstrates the unequal distance between state and the different religious groups and communities. As such, the pyramid model focuses on the state perspective and frames many of the in-detail questions into the priority of the selective state cooperation.

These reservations notwithstanding, Silvio Ferrari is still able to conclude this about the features and models: "It must be stressed that the model described in this paragraph is just a model: it does not correspond perfectly to the Church-State system in force in any E.U. country. But it is fair to say that everywhere State co-operation with religious groups is selective and graduated …" (Ferrari 2002). The state maintains a selective prerogative and, obviously, this concerns Islam. Fitting Islam into the model, it is assumed that Islam will organise, represent itself and try to climb from the first level to the second. It is clear from the very struggle with models and modelling that Islam is primarily understood in relation to this hierarchy of state relations and that institutional and organisational Islam is expected to orient itself in relation to the model and integrate itself into the given frame.

As such, the second phase ends as each phase does when the model is unable to answer or explain what is going on in a satisfactory degree. This time, however, it seems the problem with the expectations build into the pyramid model occurs when Islam and Muslims do not conform to the space set aside for it. Here – amongst others[41] – Werner Menski has demonstrated that an alternative legal order is forming and that Islam and Muslims are far from dependent on the paths of other religious associations. Menski specifically has pointed to *angrezi shariat* as an English Shari'a (lit. trans. from Urdu, Pearl & Menski 1998, 73). As such, it is an experiment with bringing together the internal structures of the Muslim community and the external frames that are set up by the English state. In Pearl & Menski's analysis constitutes a new form of "recreating shari'a in Britain" (ibid.: 74). The hybrid *angrezi shariat* occurs because Muslims have slowly learned to navigate their legal needs between the traditional norms of the Muslim community and the official legal system. Pearl & Menski indicate that the English legal system is understood by Muslims as valid jurisdiction, but that it is only recognised as such out of necessity. "… the development of angrezi shariat is marked by awareness

[41] See c.f., *Legal Practice and Cultural Diversity* from 2009 by Grillo *et al.*

of the need to combine the requirements of both legal systems" (Pearl & Menski 1998: 77).

The construction of *angrezi shariat* as an object of research is an attempt to develop a model for how Muslims at a late stage in their integration in England begins to take a critical and active stance. Pearl & Menski calls it "... a process of consciously building the English legal requirements into the framework of localised shari'a rules" (ibid.). However, as of recent, some Muslims have started to ignore the English legal system, even though they are aware that it has jurisdiction. "… British Muslims, men and women, are now refusing to accept English law as binding for them and feel that recourse to Muslim law in Britain, albeit unofficial, is preferable" (Menski 2008: 60). Thereby they renounce the formal legal certainty that the state guarantees to both Muslims and everyone else. They have no confidence in the official system. According to Menski, this is a new stage in the development of angrezi shariat. The hybrid is rejected, the legal needs, demands and security of the Muslim legal subjects disappear from the knowledge and watchful eye of the state, and an informal shari'a is preferred to the public 'angrezi,' "After 9/11 and 7/7 we are now learning that many Muslims in Britain are simply refusing to follow English legal requirements, even though they are aware of them. This is a new … stage" (Menski 2008: 48).

3.2.3 Third phase of modelling: the Islamic challenge

The realisation out of this is that the state has to do with an Islam that does not conform neither to the governance models of the legal system nor to the analytical models of the scholars. In this context Veit Bader (2007B) introduces his perspective on the governance of Islam with the insight that focus needs to turn away from the internal aspects of Islam and instead towards the external frame. In a sense, this is a reflexive turn in two parallel steps. Firstly, the state institutions begin to realise that the models and assumptions have their limits and that also the state and government institutions must change its regulatory and governmental paradigms. The state has to include itself in the equations of regulating religion and can no longer – if ever – assume the prerogative of the invisible hand or power to regulate systemically. This is the challenge that Islam poses to the states. Secondly, the academics researching state, church and religion relations also reflexively realise that the framing environment of religion has significant impact. It is no longer enough to research Islam on its own premises with its everyday religiosity or its doctrinal articulations, but the agency and position of Islam must be taken into the perspective of the researcher and thus into the models. "… We can see a shift from research of the internal structure and culture of Muslim religiosity – the formation of their associations and organisation, the development of Muslim identities

(if any) – to the 'way in which societies create opportunities for the development of Islam, or oppose them,' in other words, to the external opportunity structure generally" (Bader 2007B).

This is what can be called the institutionalist turn in research on Islam in Europe and taken together with the Islamic challenge – in that Islam is not challenged, but rather challenging the governmental and academic presumptions (Klausen 2005, *The Islamic Challenge*) – it inaugurates the third phase of modelling. With the dual realisation as the state and religion models are challenged by Islam, it becomes explicit that churches and Muslim organisations alike share the problems of recognition and autonomy in relation to the state. The third phase begins with dual reflection on the bias of modelling which coincides with the entering into explicit alliance between churches and Muslim organisations resolving pressing issues without the state locally (Jonker 2003, 60) and in joined lobbying of the state on a national level (Modood 1998; Ferrari 2008, 108; Fetzer & Soper 2005).

With their *Muslims and the State in Britain, France and Germany* from 2005, Fetzer & Soper were amongst the first to actively engage with a critical examination of the influence that the existing models of church and state had upon the conditions of Islam in these three countries. Their overarching research question concerns why different states have responded differently to the needs of Muslims (Fetzer & Soper 2005, 2, 12). The overall argument of Fetzer & Soper is indeed a part of the institutional turn in the study of Muslims in Europe. The correlation of the generative structuration seems to be direct, as Fetzer & Soper seek to examine the hypothesis that "… the constitutional and legal status of religions in each nations, along with the historical context through which the institutions of church and state have been related, are very significant in shaping how Britain, France and Germany have accommodated the religious needs of Muslim groups" (Fetzer & Soper 2005, 13). Although the focus is indeed the relationship between the states and Muslims, the questions of 'accommodating' and 'shaping' posed are addressed more to the state and the frame that the state provides than it is to Muslims and organised Islam. Similar to Jytte Klausens analysis of the challenge that Islam poses to the political agendas in contemporary Europe (Klausen 2005), Fetzer & Soper apply a language of the Islamic challenge to the state and to the models the state has applied so far "… the migration and the settlement of a large number of Muslims into Western Europe poses a challenge to the existing church-state arrangements in countries and has resurrected somewhat dormant religious disputes…" (Fetzer & Soper 2005, 6).

At this point it is significant to note that Silvio Ferrari maintains that "European Islam has yet to find a precise place within the European model

of Church-State relations," (Ferrari 2006: 88). After exploring the model of state religion relations in the pyramid of the second phase of modelling, he still insists that the critical evaluation of the models of state and religion relations is far from complete. On par with Bader and Fetzer & Soper, Ferrari is well aware that the burden of shaping and changing belongs to the state and the government institutions. From this realisation he goes on to explore the aim of "identifying a methodology with which to evaluate the possibility of accepting the requests put forward by the Muslim community, bearing in mind the European model of relations between states and religions…" (Ferrari 2003, 242 / Ferrari 2006, 89). Although he goes on to list and discuss the items put forward by the Muslim community that cause the scandals (gr., σκάνδαλον, lit., stumbling block) in state and religion relationship, Ferrari does not specify what this methodology implies.

As the institutional and organisational fact of Islam begins to gain influence in the change of the modelling, political opportunities and strategic alliances become available to Muslims and Muslim organisations (Fetzer & Soper 2005, 10-13). Far from left, passively at the mercies of state powers of recognition, approval, acknowledgement and accommodation, Islam enters the politics of multiculturalism (Modood 2005), which can be seen by the growing language of alliances between churches and Muslim organisations in opposition to the state (Ferrari 2008, 108). The clearest example, which is also returned to in chapter seven, is that of the Church of England and the willingness to re-interpret the mandate of the Bishops in the House of Lords as speaking on behalf of all religion in consultation with other religious denominations. This is done exactly in understanding of the need to accept the religious pluralism in contemporary England, and thus building a stronger case for the interests of religion. Fetzer & Soper observe, "Britain's established Church has been an ally of Muslims, who want the state to positively recognize their religious claims. The religious establishment provided institutional access for Muslims to make the case of their religious needs for state recognition. Moreover, the religious establishment sustains a cultural assumption shared by most Muslims that religion has a public function and that it is appropriate for the state and religious groups to cooperate to achieve common goals" (Fetzer & Soper 2005, 38).

From a Danish perspective this highly visible and very public position of religion would be difficult to imagine. "In Denmark, religion is generally believed to belong to the private sphere, and the Evangelical Lutheran majority church is considered to have only a very limited role in society…" (Kühle 2011C: 209). On this question, there is ongoing political and academic debate as to what the Danish model of religion should include and how it should be framed. A Danish politician, Ms PVB, representing

one of the parties in government reflected in an interview the ambiguities of the Danish calibration of modelling: “I don’t want a model where religion is completely in the realm of the private sector, outside the reach of the public, but I don’t want us to be a non-secular society either. I would like a middle road where we make religion part of the society and community, somewhere between the state and the free market …” (PVB, quoted in Vinding & Christoffersen 2012). Recently, there has been put considerable academic effort into qualified discussion of what changes are coming to the *Future Model of Religion in Denmark* (Christoffersen, Iversen, Kærgård & Warburg 2012).

At the present state of the models of state, church and religion – especially as they are expressed in Silvio Ferrari’s research – it seems that something has got to give. Muslim organisations have voiced their demands and needs for rights for at least three decades and at the institutionalist turn with the alliances of religion it seems that an opposition to the state is forming. However, there remains a significant tendency to fit Islam into the model of church and state research and Ferrari throughout the decade maintains that “…the fundamental principles of the European model of relationships between religion, politics and law cannot be altered” (Ferrari 2000, 5). The frame of mind that insists on modelling is very much well and alive in the scholars and research of today. This is only natural as models may be fruitful and productive if revised frequently enough. Furthermore, in the investigations of the kind that needs to be done in Europe now and in the future, the models will prove important stepping stones towards a more nuanced picture. As no-one can cope with everything all of the time, some things need simplified descriptions, which models amply supply. However, and this is the task of the next section, the modelling frame of mind and the lingering of depleted models may do more harm than good.

From this short review of the three phases of modelling and modulation of the relationship between state, church and religion, as challenged by the catalyst of Islam, it seems that some considerable ‘perils of modelling’ arise (Bader 2007B).

3.3 “The peril of modelling” and other criticisms

The interesting thing about the different phases of modelling as seen through Silvio Ferrari’s research is that while he is one of the most significant reproducers of the models in the academic literature of the 1990s and 2000s, he is equally one of the most vocal of its critics. Ferrari has somehow become a spokesman for both the model and its shortcomings. Each of the six articles referenced here reproduce an aspect of modelling in one of the phases discussed and actively applies it as a

frame for understanding the European configuration of constitutional law. At times, however, he is one of the most explicit critics of the tripartite model "… this traditional tripartition is culturally and legally outdated. Therefore it is of little use in understanding what is going on in the field of Church and State relations…" (Ferrari 2002: 6). In all fairness, this quote reveals that Ferrari does distinguish between the models and the realities of the 'field of Church and State relations,' but he never really departs from the paradigm of modelling.

The paradigm of models has been criticised from different disciplines and different contexts. The present section will limit itself to a critical perspective from each of the three countries of interest to the thesis, before returning to Veit Bader's 'perils of modelling' and the institutional shortcomings of the attempts to model state, church and religion relations.

Taking a cue from the criticism voiced by Silvio Ferrari and recognising the limits of law in the struggle to perceive the 'complex interactions between laws and religion,' Russell Sandberg develops an outline of an alternative to modelling (Sandberg 2008: 329). Sandberg calls the 'conventional approach misguided,' he suggests that the models themselves have become 'a barrier to the understanding of law and religion', and he vocally calls for 'critically evaluating the model approach' by striving towards a 'new conceptualisation of the field of law and religion' (Sandberg 2008: 329-330). Criticising the tripartite model of the first phase of modelling, he deconstructs the country perspectives one by one until only the flawed and crude generalisations remain. While the separation model is shown to be myth and the idea of neutrality and secularity as a passive obligation is refuted, Sandberg collapses the distinctions between the state church categorisation on the one hand and the residual category of the hybrid country models on the other. His criticism of the state church categorisation is at least three-fold and leaves the category, to which Denmark and England belongs, in ruins (Ibid.).

Firstly, the countries labelled under the state church heading do indeed have a preferential relationship with one religious community, but this is only by the fact of the constitutional letter. Many of the other countries in Europe has a special relationship with one church, be it either the Catholic Church in Southern Europe or the Orthodox Churches in Eastern Europe, the only difference is the formality of the relationship. The perspective of constitutional law neglects both the social realities and the positivity of the lived law in the courts and administrations across Europe and the models that build on it are blind to these perspectives.

Secondly, Sandberg goes even further in his criticism. He argues that merely stating the fact of state churches or established churches says very little about the legal regulation of religion in these countries in general (Sandberg 2008, 331). As a matter of fact, there is an argument to be made

that the established churches are the special cases on the backdrop of general principles of freedom and equality of religion that the states would apply to all religions (Vinding 2012). From this point of view, the ordering of state relations to religion should begin at the general principles and then at look at the special and singular cases of the established churches. In Denmark and England, especially, the nature of the established church is the object of serious study, as we shall see in the sections on Denmark and England in the next chapter.

Thirdly, and this follows from the previous point, the focus on the state church ignores the nature of the relationship with the other religious groups. This echoes the criticism presented in the second phase, but the assumption is of the state church countries that they are religiously homogeneous. This is as far from the reality as can be and it is counterproductive to understanding the serious challenges that the states face with pluralism and multiculturalism. There is no state or government in Europe that does not somehow relate to or cooperate with the religious groups and communities within their dominion. In his argument, Sandberg convincingly demonstrates that the complex nature of the state church countries qualifies them for the residual category of the hybrid or corporation rather than a distinct mislabelled category (Sandberg 2008, 331).

Sandberg changes perspective and turns to the hybrid category. As the residual category it is for all those countries that do not have either a separation model or a state church model, the hybrid or concordation model is very difficult to define and seems to have no common distinguishing features independently of the other tripartite perspectives. More or less formal agreements of cooperation characterises most of the countries in Europe whether it is rights and support, pending recognition, or informal, historically favoured positions. The only real distinction between state church countries and hybrid countries is, according to Sandberg, that "… the favouring of a particular religious group is provided in a different constitutional form, in terms of agreements as opposed to classical establishment" (Sandberg 2008, 334). Playing favourites in regards to religion seems to be a feature of most, if not all, European countries.

This point is amplified by reference to Germany,[42] where Sandberg's criticism of the tripartite models and the collapsing categories addresses Gerhard Robbers' characterisation of Germany as a hybrid model, or

[42] Summerizing her analysis of the troubles and struggles concerning Muslim organisations in Germany, Schirin Amir-Moazami argues "the German model is today characterised by the principle of coorperation between church and state institutions, which attributes to the Christian churchs a remarkably strong public role. Depending on one's standpoint, Germany is therefore characterised a having undergone a 'friendly' or an 'incomplere' version of church and state separation" (Amir-Moazami 2005, 270).

amalgamated model, that follows the middle road between state church and strict separation (Robbers 2005, 579). Sandberg argues that ”the existence of a formal agreement is merely a reflection of the cooperationist nature of the system rather than the proof of the existence of a cooperationist system” (Sandberg 2008, 334). Sandberg’s argument reiterates the early, but very saying, observation of Monsma & Soper’s that Germany can be labelled as ‘an informal multiple establishment’ (Monsma & Soper 1997: 11). This is a point that Fetzer & Soper returns to and argues that the multiplicity of establishment is both at the national level with several religious organisations and at the *länder* levels (Fetzer & Soper 2005, 105).

Ultimately, Sandberg finishes his critical review of the model by summarizing that ‘it seems that the characteristics commonly attributed to hybrid states are invariably characteristics common to Europe as a whole and cannot distinguish or justify the existence of a separate ‘catch-all’ category” (Sandberg 2008, 335). He reiterates Ferrari’s repeated critique, while doing little to hide the fact that Silvio Ferrari laments the persistent recourse to an outmoded model and thus “… the question of whether there is a preferable approach remains unanswered” (Sandberg 2008: 336).

Common to many of the scholars and researchers, who are trying to grapple the Muslims out of the models of state and church, is that they find fault with the initial attempt of defining religion generally and defining Muslims specifically. Amongst others, scholars from minority studies and from religious studies argue that models not only frame and define the relations to state and other religions, but that they label, essentialise and even define Muslims in this relationship. Amongst others Nadia Jeldtoft argues that “… the process of counting and identifying is … neither objective nor neutral, because it always depends on contextual and relational circumstances” (Jeldtoft 2009, 9). Out of a Danish context, she argues that Muslims are such a heterogeneous group that do not easily fit one category, but rather constitute a ‘complex empirical reality’ (Jeldtoft 2009, 10). Politicians and statisticians obviously do this, but researchers also fall prone to the reductionist essentialisation: “… When Islam research all the time focuses on how minorities are religious and ask people what role Islam plays in their lives, a definitional pressure arises and the interviewees will describe their religiosity in an other way, because they are all the time being told that they are Muslims” (Jeldtoft 2007, my translation).[43] In this process, Islam research amplifies the biases of the models rather than adding analytical nuance.

[43] The original Danish qoute: ”Når islamforskningen hele tiden fokuserer på, hvordan minoriteten er religiøs, og spørger folk, hvor stor en rolle islam spiller i deres liv, så opstår der et definitorisk pres, og interviewpersonerne kommer til at beskrive deres religiøsitet på en anden måde, fordi de hele tiden får at vide, at de er muslimer… ” (Jeldtoft 2007)

As similar point is made by Riem Spielhaus, who is researching the German discourses of defining and 'making sense of Muslims.' Spielhaus takes cue from Peter Mandaville (2007) and applies his observations to the contested German contexts. Mandaville argues that "not all of those identified as European Muslims necessarily identify primarily or even strongly with Islam. Many are 'Muslims' in the sense of having an ethno-national background from a Muslim majority country" (Mandaville 2007, 294). In the context of recent German debates Spielhaus argues that the construction of Muslims in public and academic models and the subsequent identification as 'those Muslims' remains a reductionist stigmatization: "… the terminology of religious differentiation leads to the reduction of individuals to their being Muslim or at least to an emphasis on this fact" (Spielhaus 2010, 25). Religion as identifier is emphasised at the expense of nuance and complexity in the economic, political, social and legal debates about the future of Germany and the community of those who live in Germany. In a sense, religion becomes the overarching explanatory category that every argument returns to. "Religion thereby becomes the pattern for explaining both positive but especially negative social behaviour. This obscures the more complex reality that religion is neither the only nor the most important identity for the majority of Muslims, and it is certainly not the only reason for their actions" (Spielhaus 2006, 18).

Both the Danish and the German analysis of the modelling made by researchers and politicians alike and its crude representation of the empirical data, reveal some of weaknesses of models and how these expose themselves to considerable risk, cf. chapter two, section 2.4.7. If the assumptions and the theories, on which the models are built, do not hold true or are attuned to the changes, variety and the dynamics of the real world, the models do a disservice to those who rely on them. In the chapters to come, this will be shown to be the case in all three countries, and Spielhaus is adamant that this is what is currently happening in Germany, "the assumption that all people coming from Muslim countries are a closely related group, whose supposedly joint interests could be represented by a single delegation, is a false assessment of the situation and partially caused by the misleading term being used to describe them" (Spielhaus 2006, 20).

A final critical perspective returns to Veit Bader's warning against the 'perils of modelling' (2007B). From an institutionalist perspective Bader addresses the "inherent problems of constructing models of regimes of governance of religion" (Bader 2007B, 873). His argument is that the regimes of religious governance face the critical 'perils of modelling' if they do not approach these with proper concern. Bader warns against overreliance on patterns, because unforeseen changes will appear with time and an over-focus on patterns will neglect this. It seems that for every

variable exchanged for a constant the model is likely to become increasingly redundant (Bader 2007B, 875). Furthermore, he warms against the overexposure of similarities to the exclusion of heterogeneous elements that do not fit the models. It is often the heterogeneous elements that are the most interesting (Ibid.). Finally, he warns against trading of coherence against sensitivity of the model in that it seems models allow only for one or the other (Bader 2007B, 876).

3.4 Fragments of alternatives

Although the criticism of the models may be significant, although the attempts at defining Muslims are failing and at times inappropriate, and although much of the language used insufficiently describes the complex nature of law, religion and churches in contemporary Europe, there are a few serious attempts at framing an alternative to modelling. For the purpose of highlighting the difficulties with overcoming modelling, three scholars have given voice to sketch fragments of some alternatives to modelling. For one, Veit Bader's alternative is an institutionalist focus on governance based on the complex of actual interactions. Secondly, Silvio Ferrari is calling for a reexamination of the foundations of European law. Thirdly, Lene Kühle returns to Bourdieu and his relevance in a critical study of conflict and contestation in pluralistic societies (Kühle 2011A, 2012B).

Implicitly in Veit Bader's warnings and criticism of modelling there is a suggestion for an alternative that points in the direction of a new, institutionally sensitive research agenda for the understanding and governance of religion and Islam in the contemporary European reality. Bader's argument remains that models are important, but that it is equally important to keep in mind the actualities and complexities of the structures studied. This is indeed part of the institutionalist research agenda and it assumes many of the concepts and theories introduced in chapter two. In order to conduct studies of societal structures and in order to properly apply the technologies of governance that – according to Bader - is a supplementary alternative to modelling, researchers and politicians alike must inform themselves of two necessary conditions of governance.

Firstly, researchers and politicians need to widen the focus not only to the religious institutions and organisations directly involved. Rather, argues Bader, they need to take heed of the "relevant interactions between economic, social, cultural, political, legal, juridical, administrative and religious relations in all their diversity" (Bader 2007B, 873). He further insists that, "studies of society-religion patterns have to analyse all mechanisms of action-coordination – markets, networks, associations, communities, private and public hierarchies – and all relevant coalitions of

actors, their organisations and strategies, including governments at all levels" (ibid.). Comprehensiveness seems to be the operable word to describe Bader's first focus.

Secondly, rather than limiting themselves to the constitutional perspective, which has been the approach of the prevailing models, researchers and scholars must look at what is actually done. Echoing Sandberg and others, Bader argues that "much less research has been done on what state (e.g. courts, administrations) actually do, on how these diverse and changing practices relate to the country-specific predominant legal models or ideological policy-models, and on how different religious minorities respond to those policies, which include not only legal opportunities and threats but a broad spectrum of other resources (money, expertise, networks etc) and policy options (incentives and persuasions)" (Bader 2007B, 875).[44]

With these two conditions of governance and with Bader insisting on this 'fuller analysis' it seems almost impossible to make any models at all. Bader does not shy away from complexity and it seems that the comprehensive governance approach championed here needs complexity to be effective. With its resonance to Foucaultian bio-power, it seems the governance and the governmentality in play tries to transcend the need for models. The governance of the modern state strives to know everything about its subjects and with comprehensive knowledge seeks to control 'one and all' ("Omnes et Singulatim," Foucault 2002). As such it will seek to build only normative models for the population to follow while seldom relying on crude generalisations or reductions of complexity. Veit Bader's endeavour is to insist that the state, church and religion relations are understood and analysed in these terms.

As Silvio Ferrari comments on the crisis that Islam presents to the revised models, he points to the limits of law. He insists that if the models are outdated it must be because there is a need for revised foundational principles upon which to create a new legal commonality in Europe. Silvio Ferrari sketches what seems like a manifesto for devising an alternative or supplement to modelling. This concerns "the definition of the lineaments of a European law in order to provide the frame within which to place the different national legislations and their provisions with regard to Islam. It is necessary to identify a few principles, which translate what is in common in the legal tradition of Europe, leaving ample room for what is different in

[44] The question of 'how' as Bader champions here concerns the instrumentality of technologies and production. As was seen in chapter two, section five, norms these are to be understood as structural instruments. As demonstrated in the three specifications of section 2.5, these are technologies that perform a desired function when applied. In order to understand how all the diverse institutions and organisations in the religio-organisational field do what they do, we must analyse the technologies.

the individual national realities. A reexamination of the foundations of European law is called for. This must be done in such a way as to allow us to integrate the values of a different legal culture into the context of a new 'ius commune'. It is on this ground that the legal approach can provide an original contribution towards resolving the problems raised by the Muslim presence in Europe" (Ferrari 2000, 8).

It is difficult to assess the extents of this very ambitious and very European call for the re-examination of European foundational values. This fragment of Ferrari's conclusions is his original, legally based contribution to the problems brought out by the presence of Islam and Muslim organisations. Ferrari seems to take the full logical consequence of the new socio-economic outline of Europe. His solution is nothing short of a new 'ius commune' – a new common law – based on those few core values that may fathom and frame all the peoples, cultures, religions and traditions of Europe. 'Re-examining' is the operative term and it seems that Ferrari is willing to apply the first two of the technologies of norms, as seen in chapter two, section 2.4.5 and 2.4.6. Ferrari's alternative to the old models is to reconstruct the principles on which these models where negotiated. To do this he must redefine the common denominators of Europe.

From a pluralist perspective, a third alternative to modelling could be suggested. In her dissertation from 2004, Lene Kühle defines the field of religious power as a way to study relations between religions in a contested, pluralistic situation (Kühle 2004; 2012B). She writes, "the existence of a religious field of power is identified by existence of a specific logic (capital) and specific existence of relations between religious organizations. These relations can be seen directly as 'objective' social relations in the form of cooperation, competition, or hostility" (Kühle 2012B, 12). As specific competitors in a field of power, religious agents seek to gain the recognition of their religion and affirmation of their religious capital as genuine and therefore of value to the wider religious field (Ibid.). This power struggle between limited numbers of producers of religious capital is a struggle with different strategies, which rests on a common logic. The field of religious power rests on the agreement that religion as such is relevant and that it is worthwhile. The religious disagreement comes second to this premise. Therefore the introduction of Islam into the spheres of state and church and the subsequent struggles to reframe the nuances and complexity of religious diversity is a testimony to the viability of a concept of field (Ibid., 13).

In a perspective of models, Lene Kühle demonstrates that the concept of field is an applicable alternative. Rather than a reduction of complexity by reducing variety to simpler constants, the field is an alternative, as it reduces complexity by scope. The field perspective is focus on that which is worth fighting over, those who fight and what divides them. This is the

logic of the field. From the perspective of this governing focus, all relevant empirical evidence must be taken into account. Thus she calls for new research programs, where "new types of data on religion-state relations need to be collected in addition to traditional data" (Kühle 2011A, 116)

Studying the field does not yield exhaustive information on everything, nor does it give a wide overview, but neither does it propose to do so. It does, however, give a reliable focus on conflict, which allows for emphasis on heterogeneity and it is capable of a limited and concentrated coherent and sensitive snapshot of conflict.

3.5 Conclusions and steps towards the religio-organisational field

The analysis and discussions in the present chapter has focused on the governing models of church, state and religion relations in Europe with a special focus on Islam as a catalyst for revisions of these models. Drawing on the concepts from chapter two, the models constructed and applied by academics and politicians are locked in their dual nature. On one hand they are models of a reality because they are built on an empirical reality and are presented as simplifications that contain the most important variables of the complex, difficult and insurmountable empirical evidence. As such, models are important tools in the attempt to master the many facets of state, church and religion relations. On the other hand, the models are also shown to be attempts to structurally transform Islam and Muslim organisations, because models have a strong normative claim over the modelled. They are normative propositions that in the attempt to define and delimit in fact essentialise and reduce the object of concern to fit the models. The critical discussion about the perils of modelling has demonstrated this and Veit Bader's comments supplement the discussion of model representivity and the laws of requisite variety from chapter two, sections 2.5.2 and 2.5.3 nicely. Stating that a model or regulator can only model or regulate something to the extent that it has sufficient internal variety to represent it, the laws of requisite variety are given additional governmental perspective. Bader reminds us that with additional variety comes additional difficulty in modelling, because models tend to overexpose of similarities, exclude heterogeneity and can seldom be both coherent and sufficiently sensitive to a comprehensive analysis of the complex evidence of church, religion and state relations (Bader 2007B, 876).

The criticism of the models made Russell Sandberg call for 'critically evaluating the model approach' by striving towards a 'new conceptualisation of the field of law and religion' (Sandberg 2008: 329-330). Similarly, Silvio Ferrari who was giving voice to the three models discussed in the chapter, nonetheless criticised the models, calling them 'gross oversimplifications' (Ferrari 2000, 4) as these were "of little use in

understanding what is going on in the field of church and state" (Ferrari 2002, 8). Ultimately, he argued for "a more articulate and precise way" of analysis and he suggested a critical reexamination of the foundations of European law in order to build a new, Europe wide 'ius commune,' that could resolve the Islamic challenges to state and law. In addition, to these two alternatives, Lene Kühle noted the urgency of reformulating state and religion relations and applying a field focus rather than attempting to build models, new research programs, where "new types of data on religion-state relations need to be collected in addition to traditional data" (Kühle 2011A, 116).

Each of these three contemporary researchers of church, state and religion relations applies a qualified term of field as alternative to the existing model approach. Sandberg identifies the need for 'new conceptualisation of the field of law and religion,' Ferrari is determined to investigate 'what is going on in the field of church and state' and Kühle identifies the field as the focus to study the 'existence of relations between religious organizations.' Therefore, before concluding this chapter it seems appropriate to summarize the perspectives that have been brought forward and point to the need of analysis of the religio-organisation field as is the possible alternative to modelling suggested in this PhD thesis. The religio-organisational field was conceptually devised in chapter two and has an analytical focus on 'the relations and positions of religious organisations in the wider institutional environment.' As seen throughout the present chapter, the analysis, discussions and criticisms of models have yielded additional insight as to this religio-organisational field.

Several critics and analysts (Sandberg 2008, Ferrari 2008, Bader 2007B, Spielhaus 2010) referenced in this chapter have voiced concern with the complexity of the empirical data that grows when the introduction of the many new variables and contested presumptions following the presence of Islam. With this presence comes the complexity of culture, ethnicity, religion, demography, language and so on, and the explanatory power of the models begins to fade. The revisions of the models need to include institutions of the organisational environment that Bader listed as 'markets, networks, associations, communities, private and public hierarchies' with its 'relevant interactions between economic, social, cultural, political, legal, juridical, administrative and religious relations in all their diversity' (Bader 2007B, 875). As a logical extension of this, Lene Kühle calls for a renewed effort to collect new data and conduct new studies in the comprehensive breadth and depth of the field in order to, on a continuously revised basis, propose new models. What is sought is a comprehensiveness of a more complex representation and mapping that does not modulate.

For this purpose, the religio-organisational field as a distinct focus, rather than as a model, seems to be a viable, alternative strategy. The virtue

of a field focus is reduction of complexity not by simplification but by limit of scope. Rather than a field of religious power, which is defined by the value and exchange of religious capital as its governing logics, the religio-organisational field is a field where the organisational, neo-institutional logic governs. Rather than a struggle between different religions, the religio-organisational field is a struggle between different organisational actors in the struggle for positions and capital of different sorts. The religio-organisational field therefore includes state, church and religious organisations defined by the logic of organisational institutionality. It is the recognition of both the organisational and the religious presence of Muslim organisations that is at stake and fought over. The religio-organisational field emphasises the number of relations to religious as well as non-religious actors, organisations and institutions. By contrast to Lene Kühle's field of religious power, the religio-organisational field as analytical strategy looks not only for recognition and positional strength amongst religious organisations, but between all the relevant influences on this struggle for institutional recognition and strong positions. Also in contrast to the field of religious power, the religio-organisational field does not reflect one single kind of capital, but is focused on the exchange of different kinds of capital and the positioning of this capital as symbolic.

Simply said, success for Muslim organisations in the religio-organisational field would be to be taken for granted and to be an integrated and autonomous part of organised religious life. Failure in the religio-organisational field, by contrast, would be to disappear from the struggles and debates and be relegated to an irrelevant and unrelated position. Without anticipating the analysis in the chapters to come, it is safe to say that Muslims are at present somewhere in between and that the shortcomings of modelling are a testament to this. As long as the state maintains a selective prerogative and trying to fit Islam into the model, assuming that it will organise like churches, and represent itself to the state on the state arbitrarily demands, the struggle of the religio-organisational field will be ongoing.

Chapter Four

Outlines of the Religio-Organisational Fields in Denmark, Germany and England

4.1 Introduction: Muslims in the religio-organisational field

Framing and constructing a religio-organisational field is by default a particular exercise dealing with concrete entities of time and space. It is particular by reference to the organisations that enter into the field and to the variety and complexity of the positions available. Perhaps most particular to the exercise is the task of framing and understanding the relationships that govern the power, the hierarchies and the capital available at the most augmented positions in the field. In the religio-organisational fields in Denmark, Germany and England the associated institutions of the state do, not surprisingly, hold such augmented and defining positions. The legislative, judicial and administrative regulation of religion and the law of organised religion are central, because these produce and reproduce many of the formal and informal norms that govern relations and organise structure. Not only do they regulate the relationship of church and religion with the state, but together with the more informal norms of the field, they also regulate the relations to other religions and other actors in the wider organisational environment.

The relationship with the state is, of course, of considerable importance to a nuanced understanding of the religio-organisational field, but so are the intra- and interreligious relations that are outside the jurisdiction and political mandate of the state. Of equal importance are the particularities of certain religious aspects that are of little relevance to the state. Important are also the organisational environment that influences the religious groups not by design but by circumstance. Ultimately perhaps, some of the most interesting relations in the religio-organisational field are those that are in opposition to state regulation and that hold an institutional position of counter-power designed to be invisible to the state. Strictly speaking these are still in relation to the state and the performance and symbol-production is contingent upon the state, but it is so in a cultural, political and religious disagreement with government and state affairs.

The religio-organisational fields in Denmark, Germany and England are particularly complex, because in these countries there is no single and explicit regulatory norm that defines the regulation of the state relations to neither religion nor other religions. It was seen in Chapter Three that the

constitutional models that would label the different European countries were flawed and too simple to describe the complexity of the objects framed within the paradigm of church, state and religion relations. The categories into which Muslim organisations in Denmark, Germany and England were labelled could not satisfactorily explain the particularities or the commonalities of the three countries. Russell Sandberg took the failure of the tripartite models as an opportunity to introduce an interdisciplinary perspective (Sandberg 2008: 329). Silvio Ferrari reprimanded the oversimplifications and called for a new principle for regulating European church, state, and religion relations in the wake of the emergence of European Islam (Ferrari 2000, 4). Veit Bader called for a study programme of the 'relevant interactions between economic, social, cultural, political, legal, juridical, administrative and religious relations in all their diversity' (Bader 2007B). None of these alternatives, however, went into significant detail and neither is conducive for a comparison of these three countries.

From a comparison point of view, what is interesting in the three countries is that all three are characterised by diversity, 'fuzziness' (Menski 2010) or intertwinement (Christoffersen 2006, Vinding 2009) in the approach to religion. None of the three countries employ a single unequivocal regulatory norm when dealing with church and religion, and there is no unconditional recognition of religion. Nonetheless, all three countries have incontrovertibly guaranteed freedom of religion and all three have what can be called an established relationship with religion. In Denmark, this is the established relationship with the Church of Denmark and the Evangelical Lutheran faith. In Germany, this is the 'informal multiple establishment' (Monsma & Soper 1997, 11; Sandberg & Doe 2007, 569) relationship with, most notably, the Roman Catholic Church and the *Evangelische Kirche in Deutschland* (EKD) and thus with the Catholic and the Evangelical Protestant faiths. In England, this is the established relationship with the Church of England and the Anglican faith.

Despite these significant and deeply institutionalised relations embedded in the religio-organisational fields and the inescapable connection with the state, there is no governing political paradigm or strategy to deal with religion and from a sociological point of view different religions are privileged in different ways. Each of the three countries has media-debates, academics, political parties and opinion makers that try to essentialize religion in general or Islam in particular to the specific ends of many different agendas. Equally, each of the three countries has had its experience with religiously motivated terrorism and as one of many consequences, the public position of religion in society have become seriously contested. All of which characterise the mark-up of the religio-organisational field and influence the position of institutionalised Islam and Muslim organisations.

A final common trait of these three countries and a trait that they share with many other European polities is the fact of Islam. ”Today, it is clear that Islam is part of Europe’s demographic and cultural landscape. Europe’s Muslims are no longer guests that one day will return home, but rather Europeans of Muslim faith, who will remain a permanent part of Europe’s social and political fabric” (Ramadan 2001, 207).

The present chapter concerns itself with the structures of this social and political fabric. The chapter focuses on four perspectives pertaining to the religio-organisational field in each of the three countries. This follows the analytical strategy introduced in Chapter Two, building in particular on the ideas of Bourdieu (1985, 1986, 1990 *inter alia*), Bourdieu & Wacquant (1992), Powell & DiMaggio (1983, 1991), Hatch (1997) and Scott (2008). Firstly, a general historical and socio-legal introduction to the structures of the environment in which Islam and Muslim organisations must navigate. Specifically, this involves the neo-institutional understanding of the taken-for-grantedness of the dominating norms and positions in the field. Secondly, the chapter presents the current status and challenges of the legal regulation of church, state and religion relations. Thirdly, an introductory analysis of the Muslims and Muslim organisations concerns itself with the positions taken, but also the positions available to the Muslim organisation. In turn, this reveals the outline of dominating structures and the strategies available to Muslims. This includes an outlook on the inherent and limited opportunities for Muslims and the strategic potential of navigating and overcoming the structural challenges of the old models and old paradigms, which for all there countries include the established relationship of church and state (Nielsen (2004; Soper & Fetzer 2005; Klausen 2005; Kühle 2004, 2012B and others). Fourthly, each section ends with a summary of the basic tenets of the religio-organisational field in the country in question.

Before venturing forth with the country introductions and the outlines of fields below, one important caveat must be reiterated. This chapter is by no means an exhaustive, or even sufficiently detailed, presentation of the religio-organisational fields in Denmark, Germany and England. It attempts to outline the most important parts of the historical and legal context for Islam and Muslims and it introduces some of the most important facts about Muslim organisations in their environments in the three countries. The chapter is intended to be introductory and to serve as a resource for the much more focused and detailed studies into select aspects of the religio-organisational fields in Chapters Five, Six and Seven.

4.2 An outline of the religio-organisational field in Denmark[45]

From a legal point of view, it is the Danish Constitutional Act from 1849 (Danmarks Grundlov) that governs the frame of the relationship between the state, the Church of Denmark and 'the religious communities other than the Evangelical-Lutheran Church of Denmark,' as they are termed in Article 69 of the Constitutional Act (*My Constitutional Act,* 2012, 39). The constitutional act has been amended several times, lately in 1953, and apart from the deletion of a small section on taxation for the educational system, according to Professor of Ecclesiastical Law, Lisbet Christoffersen, the "Constitutional law governing relations between State, Church and Religions has not been changed in the 160 years since 1849" (Christoffersen 2010A, 147). It guarantees freedom of religion and belief and there is no legal demand in Denmark to register or to get approval in matters of faith and religion. However, there is also no equality of religion and the Danish history of regulating religion is characterised by the difficulty of deciding politically over religious affairs, even if such political settlements should merely regulate the external affairs of religious life (Vinding & Christoffersen 2012).

With *My Constitutional Act* (2012)*,* the Danish Parliament has published a semi-official English translation of the Constitutional Act with explanations by and in consultation with Supreme Court Judge, Jens Peter Christensen. Here, Article 4 of the Constitutional Act defines the nature of the relationship between State and Church, stating, "The Evangelical-Lutheran Church of Denmark (Folkekirken) is the established Church of Denmark and, as such, is supported by the State" (*My Constitutional Act* 2012, 3). Article 4 identifies the confessional specificities of the supported church and defines the relationship with the State as obliged to support the Church financially as well as in other ways. A direct translation of the Article has 'the Evangelical-Lutheran church is the People's Church (lit., folkekirken) and is supported as such by the state' (Zahle 2006). Apparently, the Danish text does not have the word 'established,' nor does 'Church of Denmark' appear twice, but it rather identifies the Evangelical-Lutheran church – *inter alia* – as the Church of Denmark. The grammar of the Article is a basic subject complement with the Church of Denmark as the predicative nominal expression that renames and describes the subject, here the Evangelical-Lutheran church. As such, legally speaking the Constitutional Act transforms the Church of Denmark from a State church to an established Church (*My Consitutional Act,* 2012, 3).

Part seven of the constitutional act gives the specificities of the religious matters in Articles 66 through 70. In Article 66 it is specified, "the Constitution of the Evangelical-Lutheran Church of Denmark is regulated

[45] Several of the paragraphs in section 4.2 follow Vinding and Christoffersen 2012.

by an Act" (*My Consitutional Act,* 2012, 38). This is a provision that dates back to the 1849, but it has never been implemented beyond the administrative practices of the government ministries. Article 67 mandates that "Members of the public are entitled to associate in communities to worship God according to their convictions, but nothing may be taught or done that contravenes decency or public order" (Ibid.). This is the positively defined freedom to associate and to worship and Article 70 negatively defines the guarantee that "nobody may be deprived of access to the full enjoyment of civil and political rights or evade the fulfilment of any general civic duty on the grounds of his or her profession of faith" (Ibid., 39). There is no obligation to be a member of a specific religious community, let alone the Church of Denmark. Nobody is to be discriminated against on account of religion and people may serve public office regardless of religious affiliation. This, in turn, means that religion in Denmark is public and that people are allowed to gather publically in worship (Christoffersen 2012B, 243).

In specific relation to Islam and other minority religions, Article 69 of the Constitutional Act enables Parliament to pass an act regulating other religious communities: "The affairs of religious communities other than the Evangelical-Lutheran Church of Denmark are regulated by an Act" (Ibid., 39). Again, the English translation falls short of the original Danish, which has the word 'deviant' rather than 'other' in defining the relationship to state in contrast to the relationship enjoyed by the Church of Denmark. Also, here the object of regulation by the Act is not the communities themselves, but rather the affairs of these. No such act has been passed yet and the promise of this is seen as analogous to the promise in Article 66. A number of rules and regulations, however, exist to recognise religious clergy and communities to perform ceremonies and weddings. These rules and regulations amount to a ministerial administrative practice regarding religious communities with the Minister of Ecclesiastical Affairs and other ministries, which governs the legal frames of the communities until the promise in Article 69 is enacted (Roesen 1976; Huulgaard 2004, 29).

4.2.1 History of Regulation of Religion in Denmark

Denmark has a history of regulating religion that draws on a particular majority context of Evangelical Lutheranism after the Peace of Augsburg (1555) where the principle of *cujus regio, ejus religio*[46] defined that the religion of the country was the religion of the sovereign (Witte 2002, 4, 14). Although the Peace of Augsburg was set in a German context, the Kingdom of Denmark and the Duchies of Sleswick and Holstein had in 1537 adopted the Evangelical Lutheran faith as laid down by the Augsburg

[46] From Latin, 'Whose realm, his religion.' Ozment (1980) note that the phrase was not coined at the Peace of Augsburg, but by jurist Joachim Stephani in 1582.

Confession from 1530.[47] Until the introduction of the democratic Constitutional Act of 1849, matters of religion were under the jurisdiction of the King. Here, Article 4 of the Constitutional Act of 1849 did firmly establish the Evangelical Lutheran Church as one of the four pillars of Danish society where the territory, the monarchy and the divisions of power were the first three (*My Constitutional Act*, 2012, 3; See also Christoffersen 2010A). As mentioned, religion was given a dual constitutional promise of autonomy and establishment, where, on the one hand, Article 66 promised a law that would establish the Church of Denmark as a self-determining and autonomous institution independent of, but supported by, the state, and on the other hand, Article 69 was to regulate on equal terms the status of other religious communities with an expectation of similar freedoms and responsibilities granted to the Church of Denmark. However, and this defines many of the contemporary debates on church, state and religion in Denmark, no such laws were ever passed and instead of becoming a societal institution supported by the state, the Church of Denmark still resembles a state church more than anything imagined by Martin Luther (Andersen 2010, 393; See also Witte 2002, 97ff). Contemporary Danish theologian Peter Lodberg notes that the Church of Denmark is to be identified somewhere “between state church and free church” (Lodberg 2005, 18), which nicely captures the difficulties of defining the Church of Denmark.

During the second half of the 19th century and repeatedly in the 20th century attempts were made to fulfil the legislative agendas promised in the 1849 constitutional act. From then until today, three short-lived crises and subsequent changes in the political landscape managed to put religion on the political agenda, only for it to be neglected in the dawning political reality of the succeeding governments.

Already in the first decades after the constitution, three commissions were set up to begin the promised legislative processes. The work of the first two commissions, of 1853 and 1868 respectively, stranded in internal disagreement amongst the different wings of the Church of Denmark. The Church Council of 1883 that was set up to finally produce a workable political, ecclesiastical, and legal compromise was disbanded in 1901. By this time the entire political structure had been reformed with the introduction of the parliamentary system, which meant the end of any effective political power of the king and the formation of governments based on the mandate of the popular vote (Vinding & Christoffersen 2012, 10-11).

[47] Following years of feud from 1533 and a coup in 1536, Christian III could on 2 September 1537 established an Evangelical Lutheran Church Order for the Kingdoms of Denmark and Norway and the Duchies of Sleswick and Holstein (*Ordinatio ecclesiastica regnorum Daniae et Norwegiae et ducatuum Slesvicencis et Holtsatiae*). C.f. Schwarz Lausten (1989, 2002).

The second change came with the politico-economic arrangement of 1933 that aimed, firstly, to end a general conflict on the reduction of wages between unions and employers; secondly, to avoid a threatening crisis for Danish agricultural exports; and thirdly and most importantly, to open up for social reforms that would build the foundation of the modern welfare state. Although the issue of religion and church affairs had resurfaced in the Church Council working from 1928 to 1939, the religio-political agenda gave way to the social reformist agenda of the Social Democrat party, which in turn backed away from a traditional leftist opposition to established religion. This reframed and re-systematised the entire social welfare system and made it primarily an issue of state rather than of other actors, including the churches. In research on the subject (Østergaard 2005, Hansen, Petersen & Petersen 2010 and others) there is widespread disagreement as to whether the Danish welfare state is built on Lutheran ethics – in their adaptation following N.F.S. Grundtvig (1783–1872), who stressed individual engagement and voluntarism – or whether it is the product of a social democratic agenda that succeeded to the extent of becoming obsolete. Whatever the case, the very nature of the crisis of the 1920s and 1930s paved the way for the social and economic empowerment instituted in the settlement of 1933. Danish welfare became a matter for the state and religious issues disappeared once again from the political agenda.

A third attempt was made by a commission on the structure of the Church set up in 1964 to establish the nature of the relationship between the state, the people, and the Church of Denmark. The Social Democrat Minister of Church Affairs, Bodil Koch (1903-72), wanted to know how best to secure church and religion as the 'marrow and muscle of the people'. Unfortunately, the work of the commission ceased with a change of government and the coincidental death of the minister. The result was the reaffirmation of Danish church law by permanent secretary August Roesen (1909-87) on the argument that the Church of Denmark had in fact become a part of public administration and in effect had no independent governance. All matters pertaining to the Church of Denmark would be regulated by Parliament and the Minister of Church Affairs, while the 10 bishops would remain 'inspectors' of the Church of Denmark and consultants to the Ministry (Roesen 1976; Huulgaard 2004, 29).

From the time of the 1849 constitution and up until very recently, Denmark seemed to be Christian by history and culture on one hand, and secular in all legal, public, and administrative matters on the other.

4.2.2 Current status of law and religion in Denmark

The two promised sets of legal norms that would ideally give autonomy to the Church of Denmark and equality of religion among other religious

communities never came into being. Until recently, the political and public debates always ended without substantial change. The legislative agenda was never revived and the administrative handling of religious issues remained the law of the land. Over time, the best of worlds envisioned by the constitution made way for the dual reality of regulating religion in Denmark. Firstly, the sociological reality that the actual numbers of "other religions" was insignificant, and secondly, the closely related political reality that there were no problems to mention, no significant dissidents, no media attention, and most importantly, no votes to be gathered in a political engagement with religion.

Christoffersen notes that as Denmark with Articles 67 and 70 of the Constitutional Act guarantees the freedom of religion, there is no case for illegal discrimination in the inequality of the religious communities in Denmark. "The system of an established church combined with freedom of religion, yet inequality between religious communities, was accepted as the Danish structure when Denmark ratified the European Convention of Human Rights in 1950" (Christoffersen 2010A, 154). She does, however, also note that with the changing religious landscape in Denmark and the influx of a sizeable Muslim population opens for a new debate about the law of religions in Denmark. Similar pressure on existing structures comes from the other churches outside the establishment that goes beyond the mere change in demographics (Ibid, 159).

Agreeing with Christoffersen, Danish sociologists of religion Marie Vejrup Nielsen and Lene Kühle suggest a recent shift in relations between state and religion that is not entirely visible from a legislative point of view or with a focus merely on formal norms (Vejrup Nielsen & Kühle 2011). They point to a number of changes that seems to confront the unequal treatment of other religions and the lack of religious autonomy. The aftermath of the Cartoons Crisis from 2005-6, the inauguration of a Muslim burial ground in 2006 and the very symbolic, but entirely legal ban on veiling for judges and laymen in court from 2008-9, are all examples of how pressure is put on the treatment of other religions in the public sphere (Vejrup Nielsen & Kühle 2011, 173-174). While Vejrup Nielsen & Kühle highlight that discrimination does not mean deprivation of religious freedom, they do operate with a descriptive understanding of discrimination as constitutionally enacted differential treatment.

Both Christoffersen and Vejrup Nielsen & Kühle observe that the question of enacting the constitutional promise of autonomy to the Church of Denmark is the single most defining issue in current Danish law and religion. While Vejrup Nielsen & Kühle maintain that the lack of autonomy is a key for understanding religion-state relation in Denmark (Vejrup Nielsen & Kühle 2011, 178), Christoffersen in *Law and Religion in the 21st Century – Nordic Perspectives* (Christoffersen, Modeer and Andersen

2010) goes as far as to say that autonomy is the defining challenge for law and religion as it pushes on the limits of the constitutional legitimacy. Christoffersen quotes Robbers (2001) and understands autonomy to be "a freedom of institutions of pre-constitutional existence. It is not formed by the constitution, it has to be respected and protected by the law. "Church autonomy means the right of self-determination of religious bodies" (Robbers 2002, 5; cf. Christoffersen 2010B, 565). From a legal point of view – Christoffersen's point of view – the difficulty of granting or recognising church autonomy rather than mere freedom of religion is that autonomy implies a jurisdiction parallel to the civil legal realm (Christoffersen 2010B, 565). Structurally speaking, these are the internal affairs protected by an autonomous rule of the church, which are beyond the jurisdiction of the parliament and thus falls back to the privilege of the sovereign. Christoffersen clarifies,

> "… the concept of *Church Autonomy* thus in this understanding means a broad understanding – based on freedom of religion – of a right for religious communities to act *outside* the law of the state, framing their own legal structures. That is: church autonomy implies an understanding of parallel legal systems with national law as one legal system, regulation areas outside the religious realm…"
> (Christoffersen 2012B, 565)

This is the logic implicit in an argument in favour of autonomy taken to its ultimate conclusion in a completely parallel and entirely separate jurisdiction, which originates from before the constitution. As such, it is a legal freedom of the same nature as, and parallel to, the one granted universally in the constitution. If such autonomy ever were to be recognised, the question of competence and jurisdiction would need a clear definition as to the limits of the respective legal systems, because much of what pertains to the regulation of church affairs that falls outside the religious realm. It is important to note that autonomy is not strictly speaking what was promised in Article 67 of the constitutional act. Rather, the promise was for a law governing and regulating the Church of Denmark under the jurisdiction of the constitution. Law cannot enact 'true' autonomy, which in its literal sense means 'giving oneself one's own law' (Cf. section 3.2.2 in Chapter Three).

The lack of autonomy and the lack of legislation promised in Article 66 have the consequence of a lack of self-determination for the Church of Denmark. This in turn means that there is no independent representation, the legislative body of the Church is and remains Parliament and there is no such thing as a general synod or a governing council of the Church. It is easy to speak of wide freedoms and benign prerogatives at the everyday and local levels of the Church, where it enjoys limited self-government and "a relative broad range of freedom" (Mortensen 2001, 398). As such, the

Church of Denmark is organised structurally from the bottom, but institutionalised legally from the top.

Describing this specifically Danish constellation of church and state relations, Christoffersen applies a concept of 'intertwinement', which pragmatically infers distinction but maintains inseparability (Christoffersen 2006, 109). At the face of it 'intertwinement' and 'autonomy' are ideas that point in separate directions, but the pragmatic argument from the ministerial departments has always been that the strong relations to the state have been in defence of the internal freedoms and tolerance that the church enjoys (Vejrup Nielsen 2012, 42). The unresolved questions of autonomy for the state and inequality for the other communities seems to have a decisive impact on the mark up of the entire religio-organisational field in Denmark

This intertwinement of church and state, with its lack of self-determination and organisational clarity, has a significant impact on the minority religions in Denmark. An important and very fundamental principle that both Vejrup Nielsen & Kühle and Christoffersen operate with is the assumption of a correlation of the conditions of the both the Church of Denmark and other religious communities. The state has always organised its relationship to religion in general through the specific focus on the Church of Denmark (Vejrup Nielsen 2012, 42), and changes in the one will have implications for the other. This reflects the principle of state cooperation with church and religion in the pyramid model suggested by Silvio Ferrari (Cf. section 3.2.2 in chapter three).

The most recent and most significant of changes in the regulation of religion in Denmark is the announcement by current Minister of Ecclesiastical Affairs, Manu Sareen, of the formation of a commission to look into the relations between Church and state with specific reference to Article 66 of the Constitutional Act (*Ministeriet for Ligestilling og Kirke,* 2012; Broadbridge 2012). The commission was announced on the 10th of September 2012 and the aim is to 'have proposals for one or more models for the administrative future of the Danish Lutheran Church' by the end of 2013 (Broadbridge 2012). The announcement follows the vision for the agenda of the centre-left government from 2011 and there has been some academic speculation into the work of the commission and its eventual proposals. Speculating about the outcome of the commission, the Danish Society for Church Law published a draft report titled 'A Constitution for the Church anno 2011' in an attempt to re-ignite both the public and the political debate about the future of the church (Christensen *et al* 2011). The commission is chaired by former Ombudsman and professor of Law, Hans Gammeltoft-Hansen, and consists of some 20 members drawn from academia, from the political parties, from the relevant ministries, from the ranks of bishops in the Church of Denmark, and from many of the

institutions associated with the Church, such as the National Association of Parish Churches and aid associations with a Christian life stance. (*Ministeriet for Ligestilling og Kirke,* 2012)

The changes under way have considerable impact on the Church of Denmark, but also a potential influence on the frames of the religious communities other than the Evangelical-Lutheran Church of Denmark and most significantly so for the Muslim communities and organisations in Denmark. The Constitutional Act applied a legal framework for explicit recognition by royal decree of the small number of religious communities that were already present in Denmark by the time of the constitution. This recognition by royal decree was a continuation of a practice from before 1849. Among the communities that were recognised by royal decree were the Jewish community, which had been recognised already in 1685. This system of administrative recognition was extended after the introduction of the constitution to include a list of Christian churches, such as the Roman Catholic Church, the Orthodox Russian church in Copenhagen, the Norwegian, the Swedish and the English (Anglican) Churches, the reformed churches, the Baptists, and the Methodists.

In speaking of the minority religions and religious communities, there is a need to critically distinguish between 'official or constitutional recognition,' 'recognition' and 'approval' due to the history of changes in the practices. Official recognition – meaning legal and based in the constitution – is according to Christoffersen (2012A) limited to the Church of Denmark in the identification with the Evangelical Lutheran faith in Article 4 of the Constitutional Act. This 'recognition' is recognition of the state's responsibility towards the specific Church of the majority of the people in Denmark, as long as they are the majority (Christoffersen 2012A, 76). In this strict legal reading, no other communities or faiths are recognised by law, but there is a historic and political reason to speak of a practice of recognition by royal decree, which is a status that 11 religious communities currently enjoy (Christoffersen 1998; Jacobsen 2012B, 177).

In 1969, this paradigm of recognition by royal decree was ended with a change in marriage legislation. The pre-constitutional system of recognition was abandoned because the Marriage Act of 1970 now had jurisdiction, so that religious communities such as Muslims and Buddhists who arrived in significant numbers after the Second World War had only been 'approved' by the Minister of Church Affairs (Geertz 2007, 27). 'Approved' meaning only in the strictest legal sense authorised to perform marriages of civil legal validity. Those who have already attained recognition by royal decree did not loose this symbolically important recognition by royal decree. After 1969, the more recent religious communities were thus relegated to the administrative competences of the ministers and permanent secretaries of changing ministerial departments

and offices. These asked the Bishop of Copenhagen and his special advisor for counsel in questions of approval and more often than not the recommendations of the Bishop were followed (Christoffersen 2012A).

Being approved as a religious denomination or congregation will allow the religious group to perform weddings with civil, legal validity. In addition, there is a financial upside to registering as a religious denomination with the ministry responsible. There are tax deductions for those who support such a community and the community may apply for tax exemptions from real estate taxes (Christoffersen 2012A, Kühle 2011A, Kühle 2011B). As an alternative, a religious organisation may freely register as a voluntary cultural association, which may attract subsidies for work with children and youth or integration and education (Kühle 2012A, 89). Kühle have demonstrated as early as in 2002 and 2004 that many Muslim organisations chose not to register with the tax authorities, but are looking for the public recognition and symbolic – rather than the financial – capital available (Kühle 2002, Kühle 2012A).

In 1998, after significant criticism from religious communities and from scholars of both law and religion, *Det Rådgivende Udvalg vedr. Trossamfund* (Advisory Committee on Religious Denominations) was established. This was a change of procedure and the new committee was to consist of impartial, knowledgeable persons. Four professors of sociology of religion, history of religion, law and theology, respectively, were appointed (Geertz 2007, 28). According to the press release by then Minister of Ecclesiastical Affairs, Ole Vig Jensen, the committee was to "advise the Ministry of Ecclesiastical Affairs on applications concerning official recognition as religious denominations" (Press Release, February 4, 1998, cited in Geertz 2007, 28). However, even in the press releases from the ministry, there seems to be much confusion surrounding Danish 'official regulation' of minority religions. The language used to distinguish recognition and approval is, as mentioned above, legally specific, and as such, the committees sees it as its task to continue the practice laid down by the ministry from 1969 and therefore to define and clarify the terminology in use, clarify the procedural rules of approval and to specify the requirements in place (Geertz 2007). This includes significant demands for organisational structure and demands for a particular understanding of religion on behalf of the applicants. As will be seen both in the next sections and in Chapter Five, this is especially important when understanding the attitude of Muslims towards the Advisory Committee on Religious Denominations and the entire system of state recognition and approval.

4.2.3 Islam and Muslim organisations in Denmark

According to a critical and calibrated estimate from January 2012 there are some 236.300 Muslims in Denmark (Jacobsen 2012B). Of these, most come from or are descendants of immigrants from Turkey (23.6 per cent), from Iraq (10.8 per cent), from Lebanon (9.9 per cent), from Pakistan (8.7 per cent) and from Somalia (7.2 per cent), but there are also significant communities of Muslims from Bosnia, Afghanistan, Iran and Morocco, not to mention the Danish converts (Jacobsen 2012A, 45-46).

From a structural and institutional point of view, Muslim life in Denmark is most commonly organised around the ethnic-religious associations and is often related to or located at a Mosque or a prayer halls. While an optimistic 2004 estimate has 150 mosques in Denmark (Klausen 2005), Kühle has a more recent and more conservative approximate number in 130 such Mosques and prayer halls (Kühle 2012A, 83). Following the outline of a significant fieldwork study of Mosques in Denmark from 2006 (Kühle 2006), these can be classified into lay mosques, organisation mosques and sheikh mosques. Most of the Danish literature on organised Islam follows this typology (Kühle 2006, 2011A, 2012A; Jensen 2007; Jacobsen 2012B). Lay mosques are organised by the local community or congregation and attracts a varied audience and has no specific theological observance within Islam. Most have small democratically elected boards in charge and are often narrowly defined according to ethnicity. Typically, they do not have paid staff, but openly welcome imams and *khutaba* with knowledge of Islam (Jensen 2007, 125; Kühle 2012A, 87). There are an estimated 70 per cent of mosques that organise in this way (Kühle 2012A, 87).

As for the organisation mosques, these are usually organised with strong ties to the international organisations and communities of Muslims. They actively engage with the ethnicities and countries of origin and seem to blur the distinction between organisations acting on behalf of foreign governments and ordinary civil society organisations (Kühle 2012B). Amongst the most significant ethnic-religious associations is the *Dansk Tyrkisk Islamisk Stiftelse* (Danish Turkish Islamic Foundation) with its relation to the Diyanet and the Turkish authority for religious affairs in Denmark. A number of local Turkish associations have established the *Danimarka Müslüman Göcmeler Teskilati* (Union of Muslim Immigrant Associations), which is regarded as having relations to the Milli Görüs movement (Jacobsen 2012B, 178). Five Bosniaki congregations constitute the *Den Islamiske Forening af Bosniakker i Danmark* (Islamic Association of Bosniacs in Denmark), which in 2001 was approved by the ministry as a religious denomination in Denmark. Also *Det Albanske Trossamfund* (Albanian Religious Community) and the Idara Minhaj-ul-Qur'an

International Denmark have established themselves with strong relations to the ethnic community (Jacobsen 2012B).

As for the sheikh mosques, these centre on the authority of the imam and identify with him on basis of his charisma and his position within the Muslim environment. Such a mosque will usually organise as an Islamic Centre and be very active as hubs for Arabic classes, after school projects, integration and dialogue and work to further the general knowledge about Islam. Financially speaking they are well to do and have the ability to invite international speakers and authorities of Islam. Among the most significant of the sheikh mosques, Danish commentators count *Islamisk Trossamfund* (Islamic Faith Community) formerly lead by the late Imam Abu Laban (Jensen 2007, 127). Similarly, the Danish Islamic Centre seems to be a loosely organised community of different Muslim institutions that follow the convert imam Abdul Wahid Petersen. Amongst these are the independent non-profit relief agency, Danish Muslim Aid, and the bookstore Zahra Book, both of which are run by imam Petersen. In her characteristic of Abdul Wahid Petersen, Kühle observes that "due to his position as a convert [Petersen] has managed to move successfully around in the Islamic milieus of Denmark" (Kühle 2012A, 83). Futhermore, Kühle elaborates on the positional power of these 'sheikh'-imams and note that although this kind of mosques only make up some 5 per cent of Sunni mosques in Denmark, these usually take a dominant position in relation to other mosques "…and may regard themselves as the natural leaders of Islam in Denmark" (Kühle 2012A, 87). This was in part evident by the impact that the Cartoons Crisis in 2005-06 had, where both Abdul Wahid Petersen and Abu Laban had significant influence (Kühle 2012A, 83). From the perspective of the religio-organisational field, these imams are examples of how different institutions like books stores, community centres, Mosques and relief agencies are tied together in institutional relations across the environment. Although strictly speaking not a part of religion, they are rather important elements of the production of religious and symbolic capital that can be reapplied to secure better and stronger positions of the imams in the wider religio-organisational field.

Of recent development these past ten years, researchers note the coming to life of Muslim umbrella organisations and more advanced networking organisations in Denmark. The purpose, reception, lifespan and success of these have been very diverse. Some of them disappeared quickly and some are still active, but from an instiutionalist perspective the reasons for their existence and demise are interesting and reveal important insights into how Muslims address their environment and navigate the religio-organisational field. Compared with Germany or England they are relatively recent, but like other countries there is no single Muslim organisation that can claim to represent neither all nor most Muslims.

In 2002, *Muslimernes Landsorganisation* (National Organisation of Muslims) was established by imams Fatih Alev and Abdul Wahid Petersen. Both these imams embrace Danish as the language of Muslims in Denmark and the ambition was to unite Muslims from across ethnic divides. They aimed to become a partner or party to negotiations with the public authorities in Denmark regarding matters of Muslims and Islam (Kühle 2012A, 90). However, the organisation never gained any real support and was unable to corral existing Muslim associations and groups under their authority. Imam Alev was one of the informants of Jytte Klausen's *The Islamic Challenge – Politics and Religion in Western Europe* from 2005, where he is described as one of "Europe's new Muslim political elite" (Klausen 2005, 15). They are seen as well educated, talented and have risen to the top of the political and civic institutional life because of their engagement with both the Muslim environment but also the surrounding religio-organisational field. Both imams Petersen and Alev have been very active in *Islamisk-Kristent Studiecenter* (Islamic-Christian Study centre) that is promoting interreligious dialogue as well as the Church of Denmark standing forum on the religions' meeting (*Folkekirkens Religionsmøde*), which is engaging both Muslim and Christian leaders in high profile religious dialogue. As for the National Organisation of Muslims, it was never able to gain critical mass and never able to attract the attention of the government and other public authorities. Something similar can be said for the uniting initiatives of *Islamisk Trossamfund* (Islamic Faith Society) and *Det Danske Islamiske Råd* (Danish Islamic Council) (Kühle 2012A, Jacobsen 2012B).

Regarding the ambition on behalf of Muslims in engaging state and government in dialogue, a series of three meetings held in 2004, 2005, and 2006 are of particular interest. At the initiative of then Prime Minister Anders Fogh Rasmussen, who gained international fame during the Cartoons Crisis, the Ministry and Office of the Prime Minister invited a number of immigrants and politicians to informal talks at the official residence, Marienborg. On the agendas of the meetings held 30 November 2004, 20 September 2005 and 13 February 2006 were issues concerning integration, terrorism, Islamic extremism and Muslims in Dialogue. However, what remains clear from the press releases and the comments from these meetings is that participants were invited, the agenda was set and the meetings were held entirely at the discretion of the Office of the Prime Minister. There were a clear secular approach to the issues and the participants were deliberately selected in order to promote consultation as part of the existing policies. At this point the idea of including any widely represented Muslim organisations was utterly foreign and even impossible due to the limited scope of the existing organisations at the time. As shall be seen in the German discussions, there is ample opportunity for a

comparison with the endeavours of the German Islam Conference (cf. section 4.3.4 below and Chapter Six).

Much of this changed after the Cartoons Crisis, were – amongst other realisations – the Muslim community saw a need for a consensus internally and the government saw the potential of dialogue with a widely representative Muslim organisation (Klausen 2009). Thus in September 2006 – approximately one year after the Cartoons were originally published – the United Council of Muslims (*Muslimernes Fællesråd*) held its first General Assembly. The organisation brings together thirteen different Muslim organisations, mosques and schools widely representing Sunni Muslims in Denmark (Kühle 2012A, 90-91). The United Council of Muslims united some 40.000 members of which the Danish Turkish Islamic Foundation is the largest of the associate organisations speaking on behalf of some 30.000 members. Through its diverse support base, the United Council of Muslims acts as a body that speaks on behalf of its members and is actively in dialogue with the authorities, the Church and many Danish NGOs.

The second of the umbrella organisations speaking on behalf of a wide base of Muslims in Denmark is *Dansk Muslimsk Union* (Danish Muslim Union). Set up in 2008, the Danish Muslim Union brings together a number of significant ethnic-religious organisations and the objective is to create a common institution for a large number of Muslim associations, promoting integration and fighting extremism. According to the statement issued at the formation of the union, the ambition is to go beyond ordinary advisory functions, ”We do not limit ourselves to only providing counselling to our members, to the Muslim community in Denmark or to the public authorities and other institutions that require our advice regarding Muslims and Islam, but we cooperate internally in all areas to strengthen our community and our Muslim identity.”[48] The Danish Muslim Union seems to go to certain lengths in the statements to stress the unique and groundbreaking work in the organisation, without, however, having much to show for it. There is ongoing cooperation between the Danish Muslim Union and the Muslim Council of Britain. On occasion they have held conferences together and it seems the Danish Muslim Union is looking to the British as an organisational pattern to build on. According to its own claims, the Danish Muslim Union speaks on behalf of 25.000 members.

Other, narrower networking organisations in Denmark include *Muslimer i Dialog* (Muslims in Dialogue) from 2003. It has four direct affiliate branches that work under the national organisations and seek to “make Muslim values visible through active civic citizenship and dialogue, and to promote Danish-Muslim identity.”[49] It currently has 440 members

[48] www.dmu.nu, my translation – accessed 20 February 2013.
[49] www.muslimeridialog.dk, my translation - accessed 1 October 2012

(Jacobsen 2012A). *Forum for Kritiske Muslimer* (Forum for Critical Muslims) from 2001 work for a democratic and pluralistic approach to Islam, and there are other, less significant organisations as well (See further, Jacobsen 2012A, "Denmark" in *Yearbook of Muslims in Europe*, Nielsen 2012).

In general, it seems that the realisation that Muslims in Denmark are poorly organised and not sufficiently represented helped bring about the formation of the umbrella organisations, especially in the wake of the Cartoons Crisis. Also, there seems to be a significant need for clarion voices that are able to speak authoritatively about Islam in the Danish public beyond much of the internal strife of the Muslim environment. However, as Kühle stresses repeatedly (2011A, 2012A) there is no consensus and despite the two significant umbrella organisations, there is no unity amongst Muslims in Denmark.

4.2.4 The Religio-Organisational Field in Denmark

In her analysis of the State's relations to religious organisations, Vejrup Nielsen employs a hierarchical mapping of levels of structural positions in Denmark. All religious communities in Denmark are governed by the religio-organisational logic evident in this hierarchy and can be placed somewhere on the same gradient scale between proximity to the state and internal autonomy. Ultimately, no religious communities in Denmark have any independent legislative autonomy or jurisdiction, but are free to practice their religion under the privileges secured and guaranteed by the state and in relation to the state. Vejrup Nielsen writes:

> " … the state in Denmark has organised its relationship to religious communities in three categories. The first is the Church of Denmark, which is closely related to the state, due to its constitutional relationship to the state, through the political composition of the ministry of ecclesiastical affairs, and via the different tasks performed by the Church on behalf of the state – just to name a few. Next is the category of 'approved / recognised religious communities,' where groups, who have received approval from the state, receive certain privileges, i.e. in relation to deductions and visa for visiting religious leaders. The third category may be characterised best as 'everything else' and includes all religious activity that does not enter into formalised relations to the state and is regulated only by general laws…"
>
> (Vejrup Nielsen 2012, 45, my translation)

This rudimentary outline of the three categories – taken together with the evidence from Danish researchers and scholars presented in this chapter – points to a few distinguishing features of the religio-organisational field in Denmark. As can be seen from the quote, Vejrup Nielsen's categories are similar to the pyramid model used by Silvio Ferrari (Cf. section 3.2.2).

Firstly, this echoes one of the key lessons from Fetzer & Soper's study on *Muslims and the State in Britain, France, and Germany* from 2005, namely that the historical relationship between Church and state greatly influence the Muslim organisations. From the bird's eye perspective of the religio-organisational field the Church of Denmark enjoys a privileged position and the impact of the relationship between state and church cannot be overstated. The mere number of members, churches, ministers and capital available – not to mention the long history and the deep institutional relations – are beyond anything that any minority religion or religious community can ever muster. However, a warning against viewing the Church of Denmark as one coherent institution in agreement with itself is warranted. While most of the other religious communities are relegated to the fringes or analogies of the state and church relationship, this seems far from the case of Muslim organisations when noting the differences within the church, the available soft structure positions in Denmark and the relative voice given to minorities in debates on civil, political and religious engagement of religion in the public sphere. This means that while there is no unified voice that may speak on behalf of the Church and while there is a difference of opinion and attitude regarding Muslims in Denmark from within the Church, there is nonetheless a potential for alliances between Muslim organisations and Church institutions. These may prove to be both a positional resource for Muslim organisations and a sounding board for Muslim voices in the greater public debates. The presence of both the Islamic-Christian Study centre and the Church of Denmark standing forum on the meeting of religions testify to this and the later have grown to become an institutionalised forum for much of the high level interreligious talks between Christians and Muslims in Denmark

Secondly, Muslim organisations are clearly faced with two structural-normative barriers in the religio-organisational field. The first barrier presents itself in the guise of the guidelines of the Advisory Committee on Religious Denominations, which advices the ministry on approval of religious denominations, and the second barrier is seen as the limits in access and equality. Far be it from all Muslim organisations to want the approval and limited privileges that come with the ministerial approval, but as the chairman of the Advisory Committee on Religious Denominations, Armin Geertz note, "most applicants are apparently interested in something else entirely, namely symbolic advantages" (Geertz 2007, 40), which is not what the technical and legalistic approval is about. As a result, until 2004 few Muslim organisations and communities had taken advantage of the ministerial approval. This number, however, is increasing and with the increasing public awareness on Islam and the greater visibility of both mosques and Muslim organisations the values and prestige of the recognition embedded in the 'approval' increases greatly (Kühle 2011A).

That being said, Kühle concludes that "the establishment of Muslim organisation in Denmark may be described as an aspect of the institutionalization of Islam," (Kühle 2012A, 83) which in turn points to the fact that Muslim organisations are an unavoidable part of the religio-organisational field.

Thirdly, a particular characteristic of the Muslim organisations' navigation in the religio-organisational field is the alternative of exploring the hidden potential of the fieldin Denmark. The ability to build institutions like book stores, relief agencies, community centres, Mosques, political and cultural associations and more is a testament to the opportunities navigated. These different institutions are structural resources and will help Muslims establish a stable base for contesting future opportune positions in Denmark. Kühle note that these "Muslim strategies of incorporation relate to the opportunity structure present" (Kühle 2012B, 88; following Nielsen 2004).

Fourthly, the limits of the religio-organisational field become clear where religious activity does not organise, does not address the state or government associations and does not conform to the institutional logic at play amongst the existing religious organisations. In Denmark and in the case of Muslims, the recent PhD thesis by Nadia Jeldtoft has clearly demonstrated that this *Everyday Lived Islam* gives preference to highly individualized, pragmatic and innovative ways of practicing Islam and that many "prioritise personal autonomy over religious authority and they place their own 'true selves' at the centre of what it means to be Muslim" (Jeldtoft 2012, 283). To many of these Muslims the idea of an organizational expression of religious commitment does not resonate and as such the symbolic power of a strong institutional position holds no currency to them.

A specific focus in the religio-organisational field in Denmark, which draws on much of the material form this section, is analysed in Chapter Five.

4.3 An outline of the religio-organisational field in Germany

Turning the perspective to Germany, it is clear that the composition of the religio-organisational field is significantly different from the Danish. Taken together, the facts of the federal system, the Christian history, the German church, state and religion relations, the history of migration, and the recent discourses on Islam, integration and security all point to the applicability of the analytical strategy of the religio-organisational field. As Kerstin Rosenow-Williams note in her insightful monograph *Organizing Muslims and Integrating Islam in Germany* from 2012, "the German institutional environment provides a rich field of study with regard to shifting dynamics

between the government, the media, the general public, and different groups of Muslims and their organisations" (Rosenow-Williams 2012, 105).

As with the two other countries of focus in this thesis, the history of religion and state relations has major influence on the current legal status of Islam in Germany. Here, especially the status of corporations of public law granted to select religious organisations in Germany is a contested issue. From this and from all the other influences in this 'rich field,' the turn of the millennium has seen at least three significant changes in the structures that define the position of Muslim organisations in Germany. Firstly, the German conception of migration and the approach to immigrants has become more inclusive. Secondly, the question of security and a recent shift in security laws produce a considerable normative pressure on Muslims and Muslim organisations (Rosenow-Williams 2012, 106). Thirdly, the German federal state has sought to establish an active and inclusive dialogue with the major Muslim organisations in the German Islam Conference (cf. Chapter Six). After these framing observations, the specifics of Islam and Muslim organisations in Germany will be introduced, before concluding the German section of the chapter with a summery of the religio-organisational field in Germany.

4.3.1 History of religion and state relations in Germany

Understanding how the German state and the Muslim organisations in Germany have struggled over the official recognition and status of Islam requires a critical insight into the history of church and state relations in Germany (Jonker 2002, 2003; Robbers 2001, 2005, 2010; Rohe 2008, 2012; Rosenow-Williams 2012).

The Protestant Reformation of the 16th century has informed much of the later configurations of church and state in Germany. The reformation of the Roman-Catholic Church by Martin Luther (1483-1546) from 1517 onwards and the subsequent wars and schisms of Christian denominations were the catalyst for a century or more of remarkable changes (Robbers 2005, 78).[50] At the time, the German Empire was governed as many *Länder* under the rule of different princes and lords, who as it were, had pledged allegiance to the different factions of the religious schism. Seeking to balance power and enforce peace, the Peace of Augsburg from 1555, which decided to distribute power over religion according the principle of *cujus regio, ejus*

[50] Luther, obviously, was not the only reformist influence in Germany. Within the Lutheran reformation, he is joined by Philipp Melanchthon (1497-1560) and John Bugenhagen (1485-1558) and others. Melanchton became known as *Praeceptor Germaniae*, which literally means the 'teacher of Germany', whereas Bugenhagen's great feat was spreading the Lutheran reformation to the northern German *Länder* and the Scandinavia. Somewhat parallel to the Lutheran, the reforms of Ulrich Zwingly (1484-1531) and John Calvin (1509-1564) had significant impact on religious life in Germany in the 16th and 17th centuries; cf. Witte 2002.

religio, which as seen above had significance influence in Denmark as well (Robbers 2010, 39). The great minds of the German reformation had been able to bring about the changes with the support of the German princes and lords, who in turn were to be *summus episcopus* (lat. 'supreme bishop') of churches of the different *Länder*. This rather close relationship between the 'Throne and Altar' existed until 1919 (Robbers 2010, 38). From this emerged the constellation of different Lutheran territorial churches in Germany (and Scandinavia) that would position the churches parallel to the universities and the courts as institutions under the authority of the sovereign princes (Witte 2002). With the Peace of Augsburg followed - in theory - the right to emigrate from the specific territory if a citizen's religious faith and conscience did not match that of the sovereign. This would allow religious and political homogeneity to grow without forced conversion or religious prosecution.

However, tension grew significantly between the Protestants and Catholics during the following century. The Catholic counterreformation and the subsequent Catholic revival from the middle of the 16th century brought about the Thirty Year's War (1618-1648), which spread to most of Europe. With over a hundred different parties to the conflict, the war ended with these signing the Peace of Westphalia[51] in 1648. Part of the cause of war between Protestants and Catholics was that the ruling sovereign had previously personally decided the denomination of the different German *Länder*. This was changed with the Peace of Westphalia, which embedded the religious denomination of either Protestantism or Catholicism into the constitution of the state. With this constitutional basis, Protestantism and Catholicism were equal before that law and the state was to be religiously neutral (Robbers 2010, 39). The impact of this can to this day be seen in the religious demography in the different German *Länder*, as some are predominantly Protestant while others are Catholic.

During the 17th and 18th centuries, not only *Länder* sovereignty in religious affairs grew with the increased power over the state churches, but also individual freedom was allowed to grow. The Huguenots from France, who were Calvinists, were in 1685 granted full religious freedom (Robbers 2010, 40). A century later, in 1794, a change in the common laws of Prussia made it illegal for the state to legislate on questions of individual conscience, belief and other affairs 'concerning God and godly issues' (Robbers 2010, 41). Privately any religious service could be held. Publically deviant church associations were tolerated. However, the demand from the state remained that public laws were obeyed, loyalty to state intact, public moral and order kept, and that nothing taught that was irreverent to God (Ibid.).

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[51] The Peace of Westfalia was in fact a series of peace accords signed in Münster and Osnabrück during May to October of 1648.

Seen from a contemporary perspective, there are several reasons why there is no strict separation between church and state in Germany and why scholars are speaking of a multiple establishment in the German context (Jonker 2002, Fetzer & Soper 2005, Sandberg & Doe 2007). Even though the Peace of Westphalia had significant impact, the cohesion of the earlier German Empires was fragile and did not have the institutional stability and wide legitimacy required of, e.g., the later constitutions. As a consequence, the members of the different *Länder* with each their denomination usually stayed close to their sovereign to be protected against the violence and the intrusions of the other members of the confession. This explains the close relationship between the denominations and the *Länder* in Germany. However, it also maintained a denominational duality in Germany, where none of the two denominations would become too powerful within the German republic. This in turn meant that an opposition to the churches could emerge, which would eventually lead to the cultural struggles of the 19th and 20th centuries.

For a brief period of time from 1848-49 to 1851, full freedoms of belief and conscience were granted in the revolutionary German Constitution of 1848. Robbers references the articles of religious freedom from this constitution, saying, “Article 147 of the German Constitution provided that each religious association shall regulate and administer their affairs independently, but remain subjects to the general laws of state” (Robbers 2010, 42). The freedoms extended in this constitution coincide with the articles from the Danish constitution from 1849. However, the short-lived revolution that had given this liberal constitution failed in 1851 and the constitution was formally repealed.

The struggles and development of the second half of the 19th century had significant impact on the composition of the German national state. The overwhelmingly Protestant Prussia had succeeded in a unification of German speaking states, which rendered the Catholics in a minority position. After the Franco-Prussian wars and the Treaty of Versailles of 1871, a unified German Empire with Prussia as the largest constituent both in terms of population and territory had emerged. As chancellor of the Empire and Minister President of Prussia, Otto von Bismarck was able to unite German interests with the Prussian Protestant *realpolitik* (Lamberti 2001). With these combined powers, the Protestants and Catholics clashed in what came to be known as the ‘Kulturkampf,’ (lit. ‘cultural struggle’). Protestants wanted to enact a neutral system with non-confessional education and civil marriage (Riedel 2008, 254). This was rejected by the Catholics who saw it as an attack on the institutional power and influence of the Roman-Catholic Church. Being in the superior public position, Bismarck abolished the Catholic department of the Ministry of Ecclesiastical Affairs and Education, imposed government supervision of

Catholic education and made sure that Germany broke off diplomatic relations with the Holy See (Robbers 2010, 43). Michael B. Gross, a historian and scholar of the Kulturkampf, observed that ”the attack on the church included a series of Prussian, discriminatory laws that made Catholics feel understandably persecuted within a predominantly Protestant nation.” (Gross 2004, 1).

Rather than weakening the Roman-Catholic Church, the Kulturkampf united the Catholics who formed the Catholic Center Party, which was launched to defend Catholic interests. The German Kulturkampf was a blow to the liberal political voices and despite the intensity of the struggles it did not lead to a marked secularisation of the German state. In the end, Catholic and other resistance to the suppression of the Kulturkampf was so great that the laws enacted were repealed or accepted into the concordats made with the Vatican in the wake of the struggles (Robbers 2010, 43).

After the First World War and the 1919 Treaty of Versailles, the Weimar Constitution of 1919 gradually liberalized state and church relations, but the changes came about without assaulting the churches. This established the foundations for legal separation of Church and State. Article 135 guaranteed full freedom of religion and belief, while Articles 136 to 141 provided religious freedom and freedom of manifestation of religion or belief for all individuals and for all religious, confessional, non-confessional and philosophical communities (Robbers 2010, Ibid.). Compared with earlier German constitutional orders, the Constitution of Weimar was the first coherent and institutionally stable regulation of the church and state relations in Germany, which allowed for religious freedom and autonomy without discrimination. The provisions of the Weimar Constitution guaranteed that the discrimination of one denomination by the state – as seen during the Kulturkampf – could not happen again. The carefully organised outcome was a system where the establishment of a single state church was forbidden, but which allowed for connections between churches and state in a number of associated areas, thus “recognizing and allowing for a cooperation in matters such as religious instruction in the public school system, the Church tax and military chaplaincy” (Robbers 2010, 43).

After the Second World War and the aftermath in the years following the war, the constitution of 1949, also known as the Basic Law of the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*),[52] was enacted (Robbers 2010, 24). As shall be seen, in regards to church,

[52] The German Bundestag Administration’s Public Relations Division provides an English translation of the Basic Law; *The Basic Law for the Federal Republic of Germany,* translated by Professor Christian Tomuschat and Professor David P. Currie in 2008.

state and religion affairs and freedom of religion and belief, the Basic Law follow in the tradition of the Weimar Republic.

4.3.2 Current status of law and religion in Germany

At the hub of the German legal system is the Basic Law. As the most basic and therefore highest ranking norm in the German legal system, the Basic Law governs the federal system and sets the legal frame for the constitutions of the *Länder*. This means that these lesser ranking constitutions must conform to and be interpreted according to the federal constitution of the Basic Law (Robbers 2010, 24). This also means that if legal conflict should arise federal law takes precedence over the laws of the *Länder*.

In Germany, the Basic Law governs the legal frame of church, state and religion relations. While it contains the most important provisions in its own articles, it indirectly governs all law on church and religion. Legally speaking much of the regulation of law and religion in Germany is embedded in the distributed federal system, where the individual *Land* has the legislative and judicial competence to decide in a series of matters of relevance to the religio-organisational field, including police, education, administration, culture and other non-federal issues (Robbers 2010, 23).

In the Basic Law, several specific measures regulate the most important principles of the German system. The specific measures of the constitution include the preamble, Article 4 on freedom of faith, conscience and creed, Article 7 on religious education in public schools, and Article 140, which includes provisions respecting religious societies and builds upon the Articles 136 to 139 and 141. It is here and in the administrative practice that the principles structure the relationship between church, state and religion. In Robbers' typology of the legal system, these include the principles of cooperation and separation, the principles of neutrality, the principles of tolerance, the principles of parity and pluralism and the principles of institutionalism. In what follows, these measures and principles will be explored as these give a status of the law on religion in Germany while giving a crude outline of the legal aspects of the religio-organisational field in Germany.

4.3.2.1 The articles of the Basic Law concerning religion

The preamble to the Basic Law states, "Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law" (*Basic Law for the Federal Republic of Germany*, 13). The preamble does not imply that the Basic Law is given by the grace of God, but rather calls attention to the fact that this law is adopted in humility of the human legislative endeavour.

The reference to God is non-specific, anti-total and inclusive of all religion. It serves as a reminder that the state is not all encompassing and that constitution is a human creation and structuration of its own doing (Robbers 2010, 75).

With Article 4 the freedoms of faith, conscience and creed are guaranteed. This includes the freedom to profess religious and philosophical creeds without being violated by state. It also includes the provision that no-one shall be compelled into military service against their conscience.

Article 7 regulates the entire German school system and every school in Germany operates under the supervision of the state. According to Section 3 of Article 7 religious instruction and education is an ordinary subject in public schools, limited by the freedoms that teachers are not obliged to teach against their convictions and parents are free to control the participation of their children (Robbers 2005, 85).

Article 140 is without a doubt the most influential legal text when it comes to the regulation of church, state and religion relations. Here the relationship to religious communities is specified and the law of religious denominations given. The provision of Article 140 is a direct incorporation of the articles from the Weimar Constitution. The text of the article merely states, "The provisions of Articles 136, 137, 138, 139, and 141 of the German Constitution of August 11, 1919 shall be an integral part of this Basic Law" (*Basic Law for the Federal Republic of Germany*, 89).

The Weimar Constitution Article 136 specifies the free exercise of religious freedom. This means the separation of civil and political rights and duties from religious affiliation, including eligibility for public office. No one is required neither to disclose religious convictions nor to perform any religious acts or ceremonies. Article 138 of the Weimar Constitution guarantees additional rights, article 139 specifies that the holidays shall remain as they are and article 141 enables the possibility of religious service and pastoral work in public institutions. This leaves the Weimar Constitution Article 137, which has the most impact on the affairs and regulations of the religious communities in Germany. Here it is as extracted from the Weimar Constitution and appended to the Basic Law:

> Article 137
>
> (1) There shall be no state church.
>
> (2) The freedom to form religious societies shall be guaranteed. The union of religious societies within the territory of the Reich shall be subject to no restrictions.
>
> (3) Religious societies shall regulate and administer their affairs independently within the limits of the law that applies to all. They shall confer their offices without the participation of the state or the civil community.

(4) Religious societies shall acquire legal capacity according to the general provisions of civil law.
(5) Religious societies shall remain corporations under public law insofar as they have enjoyed that status in the past. Other religious societies shall be granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. If two or more religious societies established under public law unite into a single organisation, it too shall be a corporation under public law.
(6) Religious societies that are corporations under public law shall be entitled to levy taxes on the basis of the civil taxation lists in accordance with Land law.
(7) Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies.
(8) Such further regulation as may be required for the implementation of these provisions shall be a matter for Land legislation.

(*Basic Law for the Federal Republic of Germany*, 93).

As the text reads, it becomes clear that this is where most of the divisions and distinctions in the German religio-organisational field originate. Although the first three paragraphs dismiss state churches, restrictions of religion and dependence of religious societies on the state, the limits to religion in Germany reveal themselves. Obviously, religious societies must remain with in the 'limits of the law that applies to all,' but in addition religious societies are to acquire legal capacity as regulated by civil law. This clearly defines religious societies as governable and legally regular entities. The fifth paragraph is perhaps the most important as this is where the legal category of 'corporations under public law' (*Körperschaft des öffentlichen Rechts*) becomes applicable to religious societies. This grants the religious societies the right to levy taxes, to organize as a parish, to have their employees recognized under religion-oriented labour law, tax reductions for buildings and other exemptions, and the right to nominate members to the boards of broadcasting corporations (Rohe 2008, 57).

The legal status of religious communities is framed widely by Article 140 of the Basic Law and narrowly by the Weimar Constitution. Article 137 requires some additional comments as it has significant influence on the current status of Muslims in Germany. Robbers calls it the "central reference point for the legal and social existence of religious communities in the Federal Republic of Germany" (Robbers 2005, 82). As things currently are, the largest religious communities and also a significant number of smaller religious communities have the status of corporations under public law. This includes of course the Protestants and the Catholics, but also the Orthodox Christians, the Jewish community, the Jehovah's witnesses and several others enjoy this status (Jonker 2003, 50-51). While regulated as corporations under public law, religious communities are not

part of the state structure. They are guaranteed their independence by section 3 of the Weimar Constitution Article 137.

The status as corporation under public law has clear historical origins. The idea of public law corporation can be traced back to German constitutional law of the 17th and 18th century. Here, the Lutheran churches, in particular, were granted the special status as they organised social work for the poor, weak and elderly and organised education for children on behalf of the state (Jonker 2003, 50). The status of corporation under public law was a convenient way to organise for both state and church. Through specific contracts with the individual *Land*, the churches would be obligated to provide welfare, pastoral care and education in return for the state collecting religious taxes (Jonker 2002, 38). According to the text of the Weimar Constitution article 137, it takes as its object the religious societies and not religion as such. This means that the protection extended is for the individuals and groups in worship only, rather than the abstract entities of religion.

Today – that is, after 1919 – any religious community can apply to the *Länder* government in their state and will be eligible for the status of a corporation under public law if and when they live up to the standards set. Religious communities need to demonstrate the democratic nature of membership, transparency in structure and by-laws, well defined articles of faith, sufficient numbers and a stable tradition and permanent community in Germany (Jonker 2002, 40). According to Mathias Rohe, professor of civil and comparative law and a former Court of Appeals judge, this is interpreted to mean that a religious community has to prove that it has been a stable entity during a period of at least 30 years (Rohe 2008, 57) and that it represents at least 0.1% of the state's population (Rohe 2012, 247). It is the courts and in particular the Federal Constitutional Court that decides on eligibility and exceptions can be made from case to case (Ibid.). In this regard, the Federal Constitutional Court has clearly stated that a loyalty to the law and allegiance to the constitution is required to in order to receive the status as corporation under public law.

However, as seen from the perspective of the non-Christian religions, these stipulations can be difficult to meet. For Muslim organisations the proof of institutional durability and organisational transparency does not easily translate into inherently Muslim dispositions. The courts in Germany have stipulated that status as corporation under public law requires a membership organisation with bureaucracy and a clear representative body with decision making powers. As Gerdien Jonker argues, Muslims might not prefer intermediary institutions to broker their relationship with God and she warns against "pressing Muslim community life in the mould of a democratically organized bureaucracy with boards, directors and expert committees [as these] produce severe changes in the traditional forms of

bonding, which provokes uneasiness and withdrawal on the part of believers” (Jonker 2002, 40).

In the light of the German history of regulating the relationship between church, state and religion, Jonker explains this forcing of Muslim community life in the context of the predominant Protestantism. This she argues is a challenge to all non-Protestant religious communities in Germany and the first to experience this was the Roman-Catholic Church, who in important cases transferred decision-making power to the Holy See. Jonker’s conclusion is that of an institutionally embedded bias in favour of Protestantism against other communities: “… As might be expected given its historical roots, the article regulating the relationship between church and state was formulated with the Lutheran Church in mind. And indeed the Lutheran Church represents the cast that others now have to try to fit into. Lutherans *can* produce a democratically chosen board and internal structures, which have given it more and more the shape of a bureaucracy. Thus, over the past 80 years the Lutheran Church has produced and perfected the standard by which every new religious candidate wishing to enter the public sphere has been measured” (Jonker 2002, 41).

So far, there is no Muslim community in Germany that has achieved the status of corporation under public law. The question, if and under which circumstances Muslim communities might achieve this status is very much discussed in Germany.

4.3.2.2 The principles of the Basic Law concerning religion

As noted above, Gerhard Robbers has identified the most important principles that structure the relationship between church, state and religion. These all follow from the articles of the Basic Law and are all aspects of the emphasis in German constitutional law on the duality of cooperation and separation. Robbers explains, “under the church-state systems of Europe, Germany takes a middle of the road approach between that of having a State Church and having a strict separation between church and state. The Basic Law lays down a system under which there is a separation of church and state while at the same time a constitutionally secured form of co-operation exists between the two institutions” (Robbers 2005, 80. Cf. Robbers 2010, 86). In the light of this governing principle of separation-with-cooperation, the principle of neutrality, the principle of tolerance, the principles of parity and pluralism and the principles of institutionalism are introduced (Robbers 2005, 2010).

Cooperation is only possible if the state is neutral and does not identify with a specific religious community. This in turn means that the state must separate itself from the churches and not establish any single church, according to Article 137 of the Weimar Constitution. Furthermore, neutrality means that the state must not disadvantage a religious

community or enact anti-religious policy as was the case of the Kulturkampf. Equally, the state is not allowed to intervene or take any particular action in the autonomous dispositions of the religious community, but must remain completely impartial (Robbers 2005, 80). In the interpretation of these principles of the German legal system the neutrality of the state is interpreted in contrast to the French idea of laïcité, in that the official discourse of state authorities insist on neutrality meaning positive neutrality and equal treatment (Robbers 2010, 86-87). The state is obliged to support religious communities and to make sure that religions are given ample room to establish themselves autonomously. Robbers observes that this has been a defining challenge in the integration of the Muslim population (Robbers 2010, 87).

While neutrality regards the organised religious communities, tolerance addresses the religious creeds and beliefs of the individual and requires the state to respect all religious and non-religious positions of conscience and belief. This is seen most significantly in the school system where attendance in religious services is completely optional and discrimination as a consequence of opting out is not tolerated (Robbers 2005, 80).

The principles of parity and pluralism grow out of the German history of church and state relations. As Robbers explains, "parity is a specific, group-oriented shaping of the idea of equal treatment that finds its historical roots in the equality of confessions – the result of the religious wars of the 16th and 17th century" (Robbers 2005, 80-81). The virtue of parity in this context is symmetry and equal treatment without identical treatment. In the light of the history of strife between the Protestants and the Catholics, parity was a crucial principle of realpolitik. When dealing with more than two religious communities, parity roughly translates to pluralism, providing equal opportunity and making no preferences in the religious landscape of great variety (Robbers 2010, 88).

The last of the principles of significance in Robbers' typology is institutionalism. This returns to the decrees of the Weimar Constitution Article 137, sections 4 and 5, where religious communities are understood as legal capacities with the option to receive status as corporations under public law. German constitutionalism assumes that religions take the form of religious communities and operates only with these as such. This is based on the expectation that the religious communities will represent themselves to the state, so the state may deal with them, cooperate with them and establish structure and relationship with them. This is the institutionalist assumption that is embedded in the German Basic Law, and as Gerdien Jonker noted above, it is one of the primary reasons for the serious challenge that Islam has posed to the German legal system (Robbers 2005, 88; Jonker 2002, 40-41).

As shall be demonstrated below, Islam and Muslim organisations as seen from a German constitutional point of view pose at least three significant challenges to the structures of church, state and religion relations as defined by the articles and principles of the Basic Law.

4.3.3 Islam and Muslim organisations in Germany

According a recent estimate from the German chapter in the recent volume of *The Yearbook of Muslims in Europe* (Rohe 2012) there are around 3.8 and 4.3 million Muslims living in Germany. Most of these come from or are decendants of immigrants and guest workers from Turkey to the amount of approximately 2.5 million. From the Middle East and North Africa there are some 600.000, mostly from Egypt, Iraq and Libanon. From the former Yugoslavia and the Balkans there are more than half a million Muslims. South and South East Asia accounts for approximately 180.000 Muslims, while roughly 70.000 Shi'a Muslims can be traced back, primarily, to Iran (Rohe 2012, 246). In his enumeration of Muslims in Germany, Mathias Rohe estimates that there can be anything between 10.000 to 100.000 converts.

From an organisational point of view, it seems Muslims have so far organized in one of two ways; either at a local level with the purpose of running Mosques or prayer halls and usually as associations under civil law, or, as major organisations on the national level with the purpose of organizing local member communities and Mosques (Rohe 2012, 249).

Concerning the Mosques and the prayer halls, Rohe (2012, 251) estimates that there are approximately 2,700 buildings used for Muslim religious purposes, while Rosenow-Williams estimate that there exist some 2,400 communities (2012, 164). Most of these are not built for this purpose, but have been refurbished to house congregations and communities in prayer. Some 200 buildings are built for the specific purpose and these draw on or are inspired by the traditional architecture of Mosques in the Middle East, North Africa and South East Asia (Rohe 2012, 251-252). There is much debate about Mosques in Germany and while there is not legal basis for restricting Muslim rights to establish houses of worship (cf. Article 4 of the Basic Law), the popular opinion is in favour of restricting the religious freedom of Muslims in Germany (Rohe 2012, 252).

Turning the perspective to the major Muslim organisations that organize as umbrella organisations for local communities and Mosques, it seems a very long list can be composed. For the purpose of giving an overview of those that represent the far largest sections of Muslims in Germany, this presentation is primarily concerned with four organisations and the coordination council they formed in 2007. They are the *Türkisch-Islamische Union der Anstalt für Religion e.V.* (DITIB – Diyanet İşleri

Türk İslam Birliği / Turkish-Islamic Union for Religious Affairs), the *Islamrat für die Bundesrepublik Deutschland e.V.* (IRD – The Islamic Council for the Federal Republic of Germany), the *Verband der Islamischen Kulturzentren e.V.* (VIKZ – the Association of Islamic Cultural Centres) and the *Zentralrat der Muslime in Deutschland e.V.* (ZMD – Central Council for Muslims in Germany).

By far the largest umbrella organisation in Germany is the DITIB. It was established in 1984 and is closely linked to the Turkish Directorate of Religious Affairs (Diyanet İşleri Başkanlığı). It has almost 900 member associations and one of the most important functions of the DITIB is to make sure that religious personnel trained in Turkey according to the directions of the Diyanet serve these associations. As Muslims of Turkish background are the largest segment in Germany, it is not surprising that they are a very heterogeneous group and as a consequence there are a host of other Turkish umbrella organisations. However, the DITIB is the most influential and most professional of Muslim organisations in Germany and institutionally speaking it sets the standard. It participated in both phases of the German Islam Conference (Rosenow-Williams 2012, 166; Rohe 2012, 250).

The Islamic Council for the Federal Republic of Germany (IRD) was established in 1986 and it represents some thirty member organisations, including the IGMG and others. It was set up as national coordination institution and common decision-making body of Islamic religious groups in and around Berlin. On its website, the IRD state that it is an autonomous Islamic religious cmmunity in the Federal Republic of Germany under the Constitution (Basic Law) and the laws of the Federal Republic of Germany.[53] This is an important part of the IRD's perception of itself and it sees itself as a Muslim community in a secular and pluralistic polity structured. It does so because "The Islamic Council seeks recognition as a corporation under public law on behalf of Islam in Germany and it seeks of the equality with the two Christian churches and the Greek Orthodox Church" (islamrat.de, *my translation*).

The Association of Islamic Cultural Centres (VIKZ) is based on a former association based in Cologne named the Islamic Culture Centre that was founded in 1973.[54] It defines itself as a social and cultural charitable organisation that seeks to further its Islamic activities under the provisions of the law. Today it coordinates and represents the efforts of more that 300 mosque and educations associations. It is important to the VIKZ to state explicitly that it is committed to the constitution of Germany and that it is politically neutral and works in line with a free democratic order.

[53] www.islamrat.de - accessed 20 February 2013.
[54] www.vikz.de/index.php/organisation.html - accessed 20 February 2013

The Central Council for Muslims in Germany (ZMD) was one of the first attempts in Germany to organise a Muslim umbrella organisation in Germany united by a focus on the common interests of the Muslims in Germany (Rosenow-Williams 2012, 355). It was based on earlier groups from 1988, but was registered first in 1994. In 2002, the ZMD gained considerable attention by drafting the Islamic Charta, the long title of which was "Fundamental Declaration of the Central Council of Muslims in Germany (ZMD) on the relationship between Muslims, their State and their Society" (ZMD 2002). In this twenty-one point declaration, the ZMD actively sought to position themselves in the German religio-organisational field, stating "As an important minority in this country, Muslims are under the obligation to integrate themselves into German society, with an open mind, and to enter into dialogue about their faith and religious practices" (ZMD 2002).

Of the organisations mentioned here, the ZMD is probably the one most oriented towards the general public as it understands itself primarily as an interest organisation (Rosenow-Willliams 2012, 349). The organisation survives as long as it is able to demonstrate that it successfully fights for equality and rights. The ZMD distances itself from the agendas of the German Government and vocal protests against policies, as this maintains its membership base (Ibid.).

The creation of the Coordination Council of Muslims was a reconciliation of internal disputes in the Muslim community and the bringing together of the DITIB, the Milli Görüs and the Süleymali movement was a significant organisational achievement. Also in light of state relations and the wider German public, the establishment of the Coordination Council of Muslims was in organisational terms a prudent and timely thing to do and would place the Muslims in a strong position in the light of the emerging possibilities of receiving the status of a public law corporation. As Frank Peter observes, the "reconciliation and the recreation of the KRM marks a crucial shift in the organisation of Islam in Germany" (Peter 2010, 122).

Rosenow-Williams makes several observations about the place of KRM in the wider Muslim community. Firstly, similar to the comments made by Spielhaus (2010) and Jeldtoft (2006) in chapter three, she stresses that Muslims are not a coherent group of people and not everyone feels represented by a religiously focused coordination council. Secondly, in order to be able to speak on behalf of Muslim in the strictest sense, the KRM must have a significant number of formal members (Rosenow-Williams 2012, 170). Both of these reservations return to the implicit Christian assumptions that govern the institutional expectations to organised Islam in Germany. Very few of the individual associations require formal membership or rites of initiation, such as the Christian

parallel of baptism. Rather, the sentiment remains that ‘one belongs to Islam through sheer belief’ (Şen 2008, quoted in Rosenow-Williams 2012, 170). The Federal Government in Germany estimates that somewhere between 15% and 20% of Muslims are formal members of a religious association or organisation, while some half a million attend the community prayers Friday at noon (Ibid.).

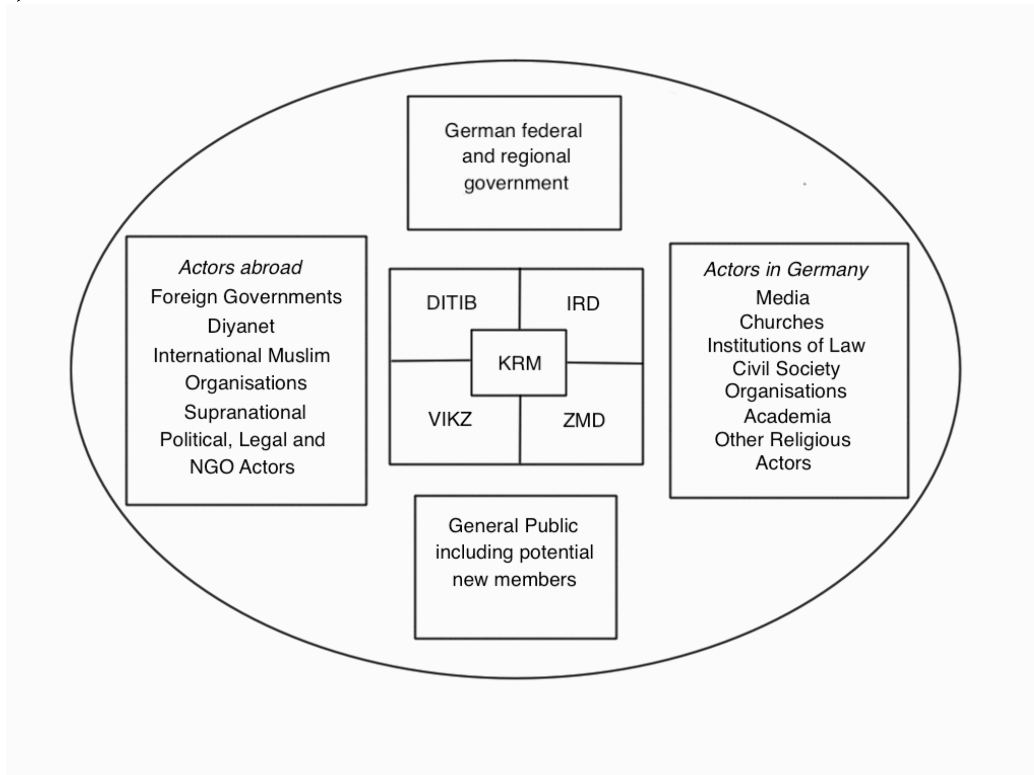
On the large national umbrella organisations and the coordinating council, Rosenow-Williams conclude that although the official recognition and status as corporation under public law has significant priority to the Muslim organisations, they are not yet in a position to represent the majority of Muslims nor demonstrate the official affiliation that the German courts require regarding the recognition as corporation under public law (Rosenow-Williams 2012, 172).

Turning the focus to the religio-organisational field in Germany, it becomes clear that in this official barrier has been of huge hindrance in the ability of organised Muslims to relate and incorporate with both the political levels and the other organisations in Germany.

4.3.4 The Religio-Organisational Field in Germany

The achievement of Kerstin Rosenow-Williams is the in-depth analysis of the Muslim organisations in the micro, meso, and macro level the organisational field. Building on organisational sociology and neo-institutionalist theory, primarily drawn from Scott and DiMaggio & Powell, she has conducted some very comprehensive case studies into the shifting relationships and interactions of Muslim umbrella organisations and the other actors in their environment (Rosenow-Williams 2012, 351ff.). These include the Federal and individual Länder governments, the churches, the media and public debates, the courts and other institutions of law, academia, the many other groups and organisations, and international actors, just to name a few. An exhaustive study of relations and interactions amongst these institutions and organisations is virtually impossible, and as discussed in Chapter One a critical choice of focus must be made. As can be seen from figure 4.1 below, to Rosenow-Williams this choice is to focus on the four umbrella organisations that have united into the KRM.

Figure 4.1: The organisational field of the four main Islamic umbrella organisations in Germany, adapted from Rosenow-Williams (2012, 352).



There is a slight difference in the conceptual difference between Rosenow-Williams' organisational field where she looks at Muslim umbrella organisations and the religio-organisational field, which has been the returning focus of this PhD thesis. The most significant difference is that Rosenow-Williams does not include any reference what so ever to Bourdieu or the theories associated with his thinking. Rather, the organisational sociology and neo-institutional theory that Rosenow-Williams apply is traced back to the DiMaggio & Powell characterisation of the organisational field, also included in the discussions in Chapter Two. This means that Rosenow-Williams does not have an eye for the struggle and conflict in the field, which is the specific value of Bourdieu's theory. By contrast, the present PhD thesis has as specific focus on the tensions, fault lines and conflicts on the different religio-organisational fields to the exclusion of the very wide and comprehensive analysis championed by Rosenow-Williams.

As will be seen in Chapter Six, a narrower focus on conflict and tensions in the relations and interactions between Muslim organisations and its environment can be seen in the specific case of the German Islam Conference. This is done to the exclusion of most of the other actors in the field, the international actors and the relations to the general public, cf. Figure 4.1. The institutions of the German government, in particular the

Ministry of the Interior and the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) has made it very difficult for Muslim organisations to take part in the wider political, civic and public parts of life (Azzaoui 2010). Especially, the coveted status as corporation under public law has proven to be a glass ceiling and dominating force, which keeps the Muslim minority from achieving institutional equality and the symbolic status associated with it (Azzaoui 2010, 4). The German government and the Ministry of the Interior specifically maintain that the Muslims in Germany do not have the institutional stability and organisational structure needed to achieve the public corporation status. This has been met with significant criticism from academics and commentators and seems to be single most contested aspect of German regulation of Muslim organisations and affairs.

A staunch critic of the structural power play in the politics of German state and religion relations, Frank Peter notes that ”the standard charge made by German politicians that Muslims do not have an organisational structure adequate for the incorporation into the German legal system has served for many years as a welcome excuse for ignoring Muslim demands and excluding them from the benefits accorded other ’churches’” (Peter 2010, 126). In this interpretation of the denial of the status, Peter draws on the research of professor Axel von Campenhausen, who as a director of the Institute for Ecclesiastical Law of the Evangelical Church in Germany has argued, that the organisational demands made by the state should be changed, rather than insisting that the Muslim organisations should make up for their ‘organisational deficiencies’ (Campenhausen 2000). Speaking exactly of the Muslim organisations, Campenhausen notes “the constitutional reality and the constitutional culture cannot endure permanently a status in which major parts of society are excluded from the legal options available” (Campenhausen 2000, my translation).

Evidence of the field returns to the assumptions on behalf of Muslims, that they will act as other religions have before them. It was an explicit expectation from politicians and Christian leaders in Germany that Muslims would have one national Muslim organisation with one spokesperson, “similar to the spokespersons of churches and the Jewish community” (Spielhaus 2006, 20). If religious groups and organisations behave in a similar way and adapt institutionally to each other, they will fit the models and pattern assumed of them, cf. Chapter Three, section 3.3.

Overall, it seems fair to conclude that Muslim organisations have taken considerable important steps towards meeting the demands and expectations of the state structures. The old state relationship with the two Christian churches has defined a number of formal principles to which the Muslim organisations must comply, most particularly the demands required to become corporations under public law. In this regard Muslims have

explicitly stated their fidelity to the German constitution, they have sought to organise as an umbrella organisation to live up to the demands of representivity and by 2013 it has been more than forty years since the first Muslims settled as labour migrants. However, as will be seen in Chapter Six, the standards against which the Muslims have to measure are nearly impossible. The consequence seems to be a German Islam Conference that is the scene and setting for the struggle of Muslim organisations in the religio-organisational field.

4.4 An outline of the religio-organisational field in England[55]

In his *Leviathan* from 1651, Thomas Hobbes could declare, "… both State and Church are the same men… " (Hobbes 1996: 366). There could be none without the other and the epithet 'Christian' was impossible not to carry if one would assume to be 'English.' Religion was impossible to ignore. Today a similar point can be made, in spite of a 20th century of secularism. In their 2011 RELIGARE country report on fieldwork in the United Kingdom, Ashraf-Ul Hoque and Prakash Shah state that it is "… difficult to imagine a field of life in its inter-relationship with the law which has remained untouched by religious questions" (Hoque and Shah 2011). The urgency of the religious questions and the breadth of their influence is a testimony to the social and public reality of religion in England. While 'Christian' was the predominant identifier in Hobbes' account, the present situation seems to be addressing religion in its broadest appeal, not monotheistic, but 'hyper-diverse'. Borrowing the term from Vertovec (2007), Hoque and Shah see religious hyper-diversity as pluralism taken to a significant extent.

4.4.1 History of Regulation of Religion in England

It is helpful to recapture the history of church, state and religion relations in England in order to see how it is not a model paradigm or exemplary framework but rather the product or expression of English history with all its negotiations, struggles and challenges (Hill 2010: 199).

It was the will of King Henry VIII to be "… the only supreme head on Earth of the Church of England" that gave birth to the Church of England (Davie 2008, 2). Prior to the English reformation the name of the former institution had been *Ecclesia Anglicana* (ibid.), which was the English Church in the Roman-Catholic Church and its ultimate authority rested with the Holy See in Rome. Through the *Act of Supremacy* from 1534, Henry VIII was able to name himself Supreme Governor of the Church of

[55] Some of the material in the English sections are based on – and follow closely – the much more extended presentations and discussions in *The English State's Regulation of the Relationship between the State and Anglicanism and Islam, respectively* (Vinding 2009), which won the University of Copenhagen Gold Medal for Academic Excellence in 2009.

England and both the Crown and Parliament would be free of the Roman-Catholic Church by the provisions of the *Act against the Papal Authority of 1536*. In addition, the property of the Church was seized through the *Act for the Submission of the Clergy and Restraint Appeals* from 1534. From a historical perspective, these three acts of legislation are the beginning of all state regulation of church and religion in England (Vinding 2009, 22).

Obviously, the regulatory body concerning the Church of England did not change so drastically over night. Rather, with the annexation of the church institutions, many of the responsibilities of the church became the responsibilities of the state, now delegated to the Church of England. Hospitals, poorhouses, schools and much more now slowly grew to be part of the state. The most important of these institutions were the trained scholars of the local administrative institutions of the Church who had experience with the kind of tasks that now fell to the state (Vinding 2009, 24). William T. Cavanaugh makes an excellent point in the regard, namely that the annexation of the Church institutions not only gave birth to the Church of England, but also gave birth to the administrative body of the modern state, "... The concept of religion being born here is one of domesticated belief systems which are, insofar as it is possible, to be manipulated by the sovereign for the benefit of the State. Religion is no longer a matter of certain bodily practices within the Body of Christ, but is limited to the realm of the 'soul,' and the body is handed over to the state" (Cavanaugh 1995, 9).

As Queen Elizabeth I succeeded to the throne in 1558, she set out to give the Church of England a legal frame and a set of governing principles that would allow it some measures of autonomy under the discretionary rule of the sovereign (Vinding 2009, 23). She revised Henry's *Act of Supremacy* and she gave the *Act of Uniformity* from 1559, which defined the proper order of prayers in the English Book of Common Prayers and made it mandatory to go to church on Sundays. The purpose, of course, was to secure the protestant faith against the turmoil of the Catholic elements that remained. By 1563 she would authorizes the *Thirty-Nine Articles of Religion*, which would define the doctrines and sacraments of the Church of England (Smith 1997, 110-113).

The autonomy, which the Church had known as *Ecclesia Anglicana*, would not an option for the Church of England until 1919. In the years since the Glorious Revolution, the policy and internal affairs had been governed through acts of Parliament with the institutions of the Church as advisory bodies (Hill 2007, 34). By the authority of the *Church of England Assembly (Powers) Act of 1919*, the Church would be free to govern its internal affairs and it would maintain a constructive and established relationship between Church and State. The act allows the Church of England to legislate on its affairs through the legal instruments of

measures, which have the force and effect of Acts of Parliament but are restricted to the dealings of the Church.

Although the Church of England through its long history would be able to use its close and established relationship the state to its benefit and gain much both legislative and executive power and influence, the history of regulation of religions would not be so kind to the other and deviant religions in England. Catholics, first of all, saw centuries of persecution, as did other Christian denominations. It was not until the so-called Glorious Revolution of 1689 that non-Anglican Christian dissenters would be tolerated in England, although this did not include the Catholics. Through the *Toleration Act of 1689* it became possible to not be a member of the Church of England, and with the *Bill of Rights 1689*, some civil and political rights were extended to other religious groups (Vinding 2009, 43).

During the 19th Century, a number of concessions were made to the other religious communities and denominations in England. During four decades from 1820's to 1850's, the legal frameworks for the modern church, state and religion relationship was given (Rivers 2010, 20-24). The changes to the *Test and Corporations Act* from 1828 dealt away with most of the religious tests and requirements for the non-conformists and dissenters in England (Ibid., 20). By the authority of the *Roman Catholic Relief Act 1829* and the *Roman Catholic Charities Act 1932*, the Catholics were allowed civic participation and they were to be treated as the other dissenting Christian communities. With the *Births, Deaths and Marriages Registration Act 1836*, the General Registry was created and it was made compulsory to register all births, deaths and marriages. This separated the religious ceremonies from the civil institutions. By 1855, it was the *Liberty of Religious Worship Act* and the *Places of Worship Act*, also from 1855, that gave Jews, Catholics and other religions the means for registering places of worship with the Registrar General (Rivers 2010, 21). Julian Rivers in his *The Law of Organized Religions* called this "a slow transition from the maintenance of one true religion to the principle that there is, in law, no false religion" (Rivers 2010, 24). The change was significant and the foundational assumption of law, when dealing with religion, was completely turned around, "Rather than assuming that all religion was unlawful except for that of the established Church and other 'sects' expressly tolerated by Act of Parliament, the underlying assumption became that all religion was lawful unless it breached some specific prohibition" (Ibid.).

As for explicit freedom of religion as a statutory right, it was not until the *Human Rights Act of 1998* that England adopted the right to freedom of religion as a 'right and fundamental freedom.' In March 1951, England had ratified the European Convention of Human Rights with its article 9 on

freedom of thought, conscience and religion, but tolerance nonetheless seemed to be the legal doctrine of the land.

4.4.2 Current status of law and religion in England

Two aspects are of the particular importance when considering regulation of religion in England. Generally speaking, legal authority in England follows two overall paths that determine both legislative and administrative regulation is not random, not without precedence and not without specific intention. One is by statutory law and the other is by common law. These need to be considered before turning to the specifics of law and religion in England.

In the English legal system, the laws that have been enacted in Parliament and that are mandatory for all subjects are called statutory laws. These are legal norms understood to be an Act of Parliament in the sense that this is what has been agreed to act upon or to give legal action. These statutory laws are explicit and have been written down. (Walker 1980: 1184). When speaking of statutory law as regulation in England it means that the executive powers – those of the Crown, which are delegated to the government – are restricted in their authority. Regulation in this sense is a limitation of the executive by the legislative (Vinding 2009, 56).

That the regulatory powers in the 'statutory law' are limited to the executive does not mean that both the legislative and the judiciary do not have considerable influence. In England, the judges and courts have an explicit responsibility to common law and its impact on what is considered the body of law. This is in contrast to the regulation of statutory law.

In the English legal system and its accentuation of common law there is much greater focus on the establishment of law in the courts rather than in the codices of civil and statutory law. The rulings of the courts are part of a very large corpus of binding legal precedent. It is a widely used part of the English legal system that cases are tried at court because there is no valid, statutory law that has jurisdiction. A case by case assessment is made, where the judge exercises his legal authority and actively deal with the details and facts of the case. He will interpret these and in his judgement, which – if the court is of sufficient relevance – will be binding upon the body of common law (Wacks 2005, 84). As part of this assessment, former and similar cases are brought into consideration, the precedent is examined and the intentions of the relevant and related laws are considered. The common law exists of course to secure justice, but it does so at the level of the common man and the common land (Walker 1980, 1184).

Common law must be understood in principle as a residual category of law, which governs where nothing else has jurisdiction – not the King, the Lords, the Church or any of the many other sovereign bodies in the old England. According to an English judge, it is the judicial establishment that

maintains common law as a defining influence on what England could and should be. This anonymous judge is quoted by Sebastian Poulter, saying, ”England, it may be said, is not a country where everything is forbidden except what is expressly permitted; it is a country where everything is permitted except where it is expressly forbidden” (Poulter 1990, 1). This distinction is defining to an understanding of English law and it remains a relevant aspect when considering legal practice of interpreting foreign law and when considering what is common in a country with a growing multicultural population and their legal plurality.

England does not have a constitution in the way that most of continental Europe of a civil legal tradition has. Rather, England is drawing upon a cross between common law and a constitutional practice that relegates the governing institutions under the sovereign power of Parliament. In England, the legislative, executive and judicial institutions are kept in balance rather than strictly separated (Vinding 2009, 57). This is called ”… the doctrine of the mixed or balanced constitution, in which monarchical, aristocratic and democratic elements were joined and held in equilibrium, rather than strictly separated” (Turpin & Tomkins 2007, 103). To be broad it can be argued that the separation of powers in England is a political idea rather than embedded directly into law. According to renowned jurist and constitutional theorist A.V. Dicey, the reason for this is the principle of parliamentary sovereignty whereby ‘Crown in Parliament’ has the ‘right to make and unmake any law whatever’ (Dicey 1885[1915], 37ff.).

The constitutional system in England and the importance of the difference between common and statutory law, allows for the specificities of Ecclesiastical and Canon Law to be of much relevance still – even when approaching Muslim communities in England. The most central feature perhaps of the English state of affairs regarding state, church and religion – and a key institution in the religio-organisational field – is the established relationship between Church of England and the English state.

Beyond the specific legislation mentioned in the present and previous sections, it is important to stress that England has no common legal or constitutional regime that governs the status of religion (McLoughlin 2012, 620). Rather, as was seen above, specific aspects are governed by specific measures and mostly for the individual aspects of religion. There are however, two important aspects of public religion that are important to understand when approaching the religio-organisational field in England. In his analysis, Julian Rivers identifies two possible candidates for a ‘regime of public religion’ in England (Rivers 2010, 147), namely, the registration of places of worship and the charitable status.

The registration of places of worship had been mandatory since 1689, but in 1977 the obligation to register was formally repealed leaving a right for religious communities to register. Certain privileges follow form

registering as a place of worship including specific protections under public order law, exemptions from Local Government taxes, the right to solemnize marriages with civil legal validity and as a registered place of worship, there is no reason to register as a charity (Rivers 2010, 153). With these privileges the sacredness of the place of worship is respected and with the exemptions available, it notion of registering reflects the idea that certain religious practices are and must be 'publicly accessible and publicly beneficial' (Ibid., 147). If a religious community agrees with these ideas and want to take their religion into the public sphere, they can register with the General Registrar Office to receive the certification needed. Private chapels and businesses cannot be certified and do not receive the tax exemptions (Ibid., 156). On an ad hoc basis, other venues may be approved for the registration of civil marriages independently of religious affiliation.

For the second of the two aspects of public religion in England, the advancement of religion is considered a charitable act if it is to public benefit. In the *Charities Act of 2006*, religion does no need to involve the belief in one god, but might as well be many gods or none at all (Rivers 2010, 158). It is the different Charity commissioners that in their practice administer the limits, but it is debated very much in several court cases. With the charitable status follows financial advantages and the religious organisations that are interested in the status must demonstrate public benefit. Rivers note the difficulty of this and says, '"at the heart of the problem of a definition of charitable religion lies the uncomfortable fact that it is not possible to completely transcend religious difference" (Rivers 2010, 159). The issues addressed when dealing with charity status and religious difference comes close to the issues dealt with in Denmark with 'approval' of religious communities and in Germany with the 'status as corporation under public law.' In his diagnosis of the problem, Rivers demonstrates the impossibility of government regimes that will 'approve' through secular privileges without engaging directly with religion and the merits of their arguments,

> "… Once the courts had decided that they were not able to take sides on the relative merits of any religion, they were left searching for supposedly neutral or secular principles by which to determine which religious objects do and do not merit public recognition and privilege. But wherever one draws the lines, it is relatively easy to show that the criteria of distinction are themselves bound up in controverted value-judgements … with all its profession of neutrality, the law still shows a 'Protestant bias'…"
>
> (Rivers 2010, 159)

Rivers argues against the subordination of religion to government ends and that government should accept direct engagement with religion. An approach to religion that would no try to assimilate the religious diversity

and pluralism into the existing protestant categories would allow for more autonomy and allow for religious organisations to position themselves independently and to the benefit of the public. Ultimately, the argument is in favour of a regime that 'levels up' and approaches religion rather than 'levels down' and distances itself from religion.

Similar issues will be addressed in Chapters Five, Six and Seven, and will be discussed in the conclusions in Chapter Eight.

4.4.3 Islam in England

There is no specific account of the first visit of Muslims to the British Isles, or of the first Muslim residents. Coins have been found with Arabic inscriptions and Quranic references dating back to the eighth century, but it is impossible to know whether these have been used by Muslim merchants in England or English merchants who brought them home (Khaliq 2004, 219; Gilliat-Ray 2010, 7; McLoughlin 2012, 619). In all likelihood, travellers and merchants sailed between England and the Muslim al-Andalus on the Iberian Peninsula as early as early medieval times (Badawi 1981, 7). Despite the fact that nothing can be known for certain about the earliest influences, Sophie Gilliat-Ray nonetheless concludes, "The very existence of this nevertheless indicates some degree of influence from the Islamic World upon the Anglo-Saxon economies and politics" (Gilliat-Ray 2010, 7).

Additionally, the renowned Islamic philosophers Avicenna (Ibn Sīnā, c. 980-1037) and Averröes (Ibn Rushd, 1126-1198) were known in England from early on and their texts were used and discussed at the Universities in the fields of theology, law, philosophy and medicine and knowledge. In the general public, by contrast, the myths and stories of the Arabic world have, without a doubt, been influenced by the crusades and the Christian propaganda (Badawi 1981, 7).

The first encounter between Islam and the English legal system date back to 1764, where the courts discussed whether a Muslim could swear on the Qur'an rather than the Bible (Khaliq 2004, 219). An English version of the Qur'an is known from the hand of Alexander Ross, who was a chaplain to King Charles I (Gilliat-Ray 2010, 19). The first Mosque in England was built in 1890 in Woking near London with the support of a wealthy Indian Lord (Bradney 2000, 182). The Mosque was intended for diplomats, travellers and resident Muslims from South East Asia. At the beginning of the 20th century Muslims in England were still considered a very small community and Ansari estimates some 10.000 in all (Ansari 2004; Gilliat-Ray 2010, 32).

It was not until after the Second World War that actual migration to and settlement in England came about. Most were subjects of the Crown who came from the former colonies in South East Asia, the Middle East and

North Africa. Just after the war it was mostly a few hundred men who had served during the war, who would continue to serve back in England (Nielsen 2004: 40). As more and more of the colonies became independent and the new countries in the New British Commonwealth struggled to establish themselves, many found that they were British rather than anything else. As subjects of the Crown, anyone from the Commonwealth enjoyed the 'automatic right of entry' and was allowed to take up permanent residence in England (Nielsen 2001, 146). As a subject of the Crown and as a permanent resident, one was considered a member of the English society and enjoyed full civil and political rights (Vinding 2009, 159).

With the economic boost of the late 1950's and the 1960's, the demand for an able workforce grew and many the former colonies would seek their fortunes in England (Nielsen 2001, 145). By 1962 the rules of immigration were tightened with the Commonwealth Immigrants Act 1962 and significant migration control was set up. With the increased migration and the changing conjectures of the 1960's, the policy on immigration changed. By 1968 the automatic right of entry was abandoned and now only family reunification was possible (Nielsen 2004, 41).

In many ways the migration history in England is similar to the patterns of the rest of Northern Europe, where labour migration would be succeeded by chain migration, which again was succeeded by family reunifications, which again was succeeded by significant rise in refugees. These came to England from Iran and Iraq, Lebanon in the 1980's and later on from Bosnia, from former Yugoslavia and from Palestine in the 1990's (Nielsen 2004, 43). Much of the migration into England in this period can be understood in terms of a structural 'push and pull' mechanism, where poverty and wars would push people from their homes and where the demand for labour and the promises of a better life would pull them to Europe and England (Gilliat-Ray 2010, 44-45).

The event that had the most significance the Muslim life in England was the publication of the *Satanic Verses* in 1988 by Salman Rushdie. It and the subsequent chain of events would bring Muslims from the periphery English society to the very centre of the political agenda (Vinding 2009, 111). Many Muslims in the United Kingdom and in the rest of the world saw the publication as an attack on the Quran and the personal integrity of the Profet Muhammad (Allievi 2003, 334). In the winter of 1989 this brought about book burnings in Bolton and Bradford, which was covered by the media and broadcast across the world (Joppke 1999, 253). This led to significant reactions in Pakistan, India, and the Middle East and in Iran, where on 14 February the Ayatollah Khomeini would release his infamous Fatwa commanding just Muslims to murder Salman Rushdie (Modood 2005, 107). During the spring of 1989 demonstrations would be frequent

and in London some 20.000 people would meet on Parliament Square and demand the trial of Rushdie according to the English law that would protect against blasphemy (Pipes 1990, 181). In the light of the past 25 years since the publication of the *Satanic Verses*, it may be seen as the occasion of the return of religion to the public debates, which was to be a complete surprise to the political agenda in England.

The conflict of the Rushdie Affair can be explained as a riposte to the English integration and race policies of the 1970's and 1980's. A contested revision of the problematic *Race Relations Act of 1976*, which focused on ethnic rather than religious discrimination, was made in 1992 by the Commission for Racial Equality, which maintained that "… Incitement to hatred against a religious group and discrimination against a person because of membership of that group are lawful in Great Britain" (*Commission for Racial Equality* 1992, 17). Some exceptions were made by explicit statutory law, such as the *Motor-Cycle Crash Helmets (Religious Exemption) Act* from 1976 and *The Slaughterhouse Act* from 1974 (Joppke 1999, 234), but the Blasphemy legislation concerns specifically the Church of England: "…The law of blasphemy was thus restricted to protecting the tenets and beliefs of the Church of England, other religions being protected only to the extent that their beliefs overlapped with those of the Church of England" (*House of Lords Select Committee* 2003, 46). The report from 1992 by the Commission for Racial Equality point to the clear injustice in this, "… There is good reason to suppose that in not offering any protection in respect of religion the UK is in breach of international treaty obligations as regards Britain" (*Commission for Racial Equality* 1992, 60). It was not until ten years after the Human Rights Act of 1998 that the common law offence of blasphemy was repealed in 2008.

As Muslims in England experience their religion as discriminated against and distinguished for no apparent reason, the unjust or even arbitrary nature of the system becomes visible. Muslims naturally perceive this as Islamophobic or xenophobic. In 1997, the Runnymede Trust published a report on "Islamophobia – A Challenge for Us All," which gives evidence of a mistrust and deliberate misunderstanding of Muslims in England. One Muslim voice referenced in the Runnymede report gave expression to the Muslim frustration, "instead of trying to understand the offence The Satanic Verses has caused to Islam and Muslims and instead of listening to authentic Muslim points of view, the entire establishment in the West, with a few exceptions, has turned against Islam and hounded the Muslim community with all its might and contempt" (Ahsan 1991, quoted in Runnymede 1997, 28).

It is against such arbitrary discrimination and structural dispossession that Muslim organisational struggles takes place in the religio-organisational field in England.

4.4.4 Muslim organisations and institutions in England

According to the estimates by Sean McLoughlin in the *Yearbook of Muslims in Europe* (2012), which is built on a 2010 estimate, there are some 2.869.000 Muslims in the United Kingdom of Great Britain and Northern Ireland (McLoughlin 2012, 619). This translates to 4.6 per cent of the population by 2010. As per the numbers of the Census 2011, the number of Muslims in England and Wales are 2.706.066, which translates to 4,8 per cent of the population (Office for National Statistics 2012).

As with Denmark and Germany the composition of the Muslim population in England reflects the history of migration, which is why most Muslims are from India, Pakistan, and Bangladesh. The data from the 2011 Census correlating the numbers of religion and ethnicity have not been made available, but in England and Wales there are 1.412.958 who identified as Indian, 1.124.511 who identified as Pakistani, and 447.201 who identified as Bangladeshi (Office for National Statistics 2012). These probably identify with most religions, but building on 2001 number, we know that 73.7 per cent of those identified as Muslim were of Asian origin.

Demographically considered, Muslims are an exposed group. An estimated 60 per cent of all Muslims are living in London, compared to 17 per cent of the general population (Office for National Statistics 2012). According to the Census 2011, the local authorities with the highest proportions of Muslims are Tower Hamlets with 34.5 per cent and Newham with 32 per cent, both in London (Ibid.). For Tower Hamlets specifically the number in 2001 was 36 per cent, but self identified Christians have gone down from 39 per cent in 2001 to 27 per cent in 2011 (Ibid.). One researcher estimated in 2004 that the majority of Muslims have not gained any better position or status in England since the arrival of their earlier generations, ”many are still concentrated in semi-skilled and unskilled sectors of industry, thereby stratifying them as ’working class’ … [they] suffer from unemployment, poor working conditions, poverty, poor and overcrowded housing, poor health, and low educational qualifications” (Ansari 2004, 257).

A special characteristic of Muslims by contrast to the Jewish community and the Church of England, is that there is no single Muslim representative organisation, but rather a number of contesting Umbrella organisations who speak for different segments and clusters of Muslims in England. Of the largest and most important Muslim umbrella organisations in England, the *Union of Muslim Organisations* (UMO) is the oldest, as it was founded in 1970. The UMO is based in London and designates itself as a

representative body of the Muslim community living in the UK and Ireland. It is a registered charity.

The largest of the Muslim umbrella organisations is the *Muslim Council of Britain* (MCB). The MCB was created in 1997 in close collaboration with Labour Home Secretary Jack Straw after realising the frustration of conflicting and disagreeing Muslim parties. This frustration was the unofficial reason why Iqbal Sacranie, who had actively protested the Rushdie affair, was responsible for the series of hearings and consultations among 250 organizations in the Muslim community, which lead to the formation of the MCB (Q-News 2002, 22; Vinding 2009, 165; McLoughlin 2012).

According to their own website, the MCB is an umbrella organization consisting of more than 500 different Muslim organizations, mosques, local religious, charitable foundations and private schools, at both local and regional levels. MCB is organized as an independent, impartial, non-sectarian umbrella organization a thought as a representative of both individuals and Muslim groups.[56] The ambition of MCB is to "… make Britain a successful multi-faith and multi-cultural society" (Modood 2005: 166). The MCB is a charitable foundation.

Another large Muslim organisation in England is the *British Muslim Forum* (BMF), who claim to have the largest network of Sunni members in England and has a strong base in the Midlands and in North England. It was established in 2005, and gained considerable influence after the London Bombings when the political agenda of Preventing Violent Extremism marshalled Muslim partners. Under the strategy of Pursue, Prevent, Protect and Prepare, the UK Government sought to fight religious extremism by 'Understanding, and engagement with, Muslim communities' (*Preventing Violent Extremism* 2010, 5). The BMF benefitted from the PVE funds and made a name for itself in contrast to MCB who represented Muslim groups, who felt the PVE programme was made to 'spy' on and stigmatize Muslims, rather than focus broadly on political and religious extremism (Ibid., 3). The BMF is a registered charity.

The *Muslim Association of Britain* (MAB), which was also established in 1997, has ties to the Muslim Brotherhood and denied to support the government's 'War on Terror' and the PVE. This seems to be the reason why the MAB needs to specify on their website that, "MAB cooperates with others in tackling the complex and intractable issues affecting our society like rising crime, failure in education, the spread of racism, drug addiction, disassociation of youth from society, rise in anti-Islam hatred

[56] www.mcb.org.uk - accessed 20 February 2013.

and violence — whether organised or individual, regardless of its motives."[57] The MAB is a charitable trust.

Besides these few umbrella organisations, many of the organisations seen in Denmark and in Germany are also found in England. There are Sufi organisations like the Sufi Muslim Council (SMC) and the Pakistani originating Minhaj ul-Quran (MuQ). Of special interest among the Muslim organisations in the English religio-organisational field are the considerable number of Shari'a councils that provide arbitration and mediation to the Muslim communities in England. There are of course examples of these in Denmark and Germany, but the phenomenon is much more widespread in England. Chapter Seven returns to the Shari'a councils and will take a closer look at six of these, at Alternative Dispute Resolution and their symbolic importance in the religio-organisational field in England.

4.4.5 The religio-organisational field in England

In the light of the history of regulating religion, the specific approach to Islam and especially following the Rushdie affair and the Preventing Violent Extremism programme, it seems fair to say that the attitude of the state and legal system towards Muslims is minimal. The English legal system allows for what has not yet been regulated and generally speaking Muslims have benefitted from this, while they at times have been neglected.

The approach to Muslims in England demonstrates that structurally speaking Muslims hold a marginal position. As seen through the example of the Blasphemy legislation, Muslims did not warrant a dedicated norm, but were merely tolerated. From the Muslim perspective this is seen as a systematic reluctance to incorporate and accommodate Islamic culture and religion. Werner Menski explains this pragmatically, stating "… 'traditional model jurisprudence' appears to leave no formally recognised space for a personal law system based on different religious and cultural traditions" (Pearl & Menski 1998, 51).

Menski takes a highly critical position against the state's regulation of the minority legal orders. He argues, "... the policy of the English legal system towards recognition of ethnic minority laws has been inconsistent, haphazard and uncoordinated" (Pearl & Menski 1998, 70). It is the deliberate strategy of the state to consider Islam not as a coherent whole, but rather in its particularity. The state's relationship to Islam is defined by its approach of not addressing or taking note of Islam as religion, but rather as an irregularity in society.

This is a dangerous strategy and the state risks that Muslim organisations will withdraw from the public sphere and stop addressing the courts and the

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[57] www.mabonline.net - accessed 20 February 2013.

government institutions when solving the problems of interest and importance to the common good. This tendency was discussed in Chapter Three and Menski argued that "… British Muslims, men and women, are now refusing to accept English law as binding for them and feel that recourse to Muslim law in Britain, albeit unofficial, is preferable" (Menski 2008: 60). This strategy of withdrawal is a countermeasure to the lack of recognition in the English legal system and the consequence will be the undermining of English legal authority and it increases the religious risk in England. From a Muslim organisational perspective in the religio-organisational field it is a strong move that will expose the distance from an unengaged and mis-recognising state to religion in general.

In his conclusions, Julian Rivers says of the positions of religions in the English legal system that the place of religion is relegated to certain small compartments. This he argues is the case of both Christianity and Islam. He observes, "… religion in the secular State is entirely interstitial, playing its part in the gaps left by the law. The only question is the size of the gaps" (Rivers 2010, 332). This gap or these compartments are created because the English state and government do not properly distinguish between secularism-as-separation and secularism-as-indifference (Rivers 2010, 331). The first principle recognises that religious organisations are distinct and justified institutions that exist to the benefit of their communities and to the promotion of religion as a public good. The second principle, however, with its inherent indifference, creates as legal body with allows the state an unlimited sphere of activity without respecting the autonomy of non-religious norms and institutions. Rivers quote the Archbishop of Canterbury, who on behalf of all religion argues against 'an unqualified secular legal monopoly' (Williams 2008; Rivers 2010, 332).

Muslims and Christians form, in this regard, a particular alliance against the indifference of secularism. It is the criticism of the state and the respect for religious life that provides common ground of Organised Islam and the Church of England. Williams observes that "... Christians and Muslims can work together to challenge uncritical models of state sovereignty, and top down models of social management. This seems to me to be something that we can do, that we are doing and that we ought to be doing more of ..." (Williams 2007: 345). The joined opposition to the state is self-reinforcing for base for criticism of the state and it allows the organised religion a much stringer voice than what the Church or the Muslim organisations could muster independently. Not only are this religious alliance in a strong position against the state, the mutual recognition of religions further refines the criticism of the state in that the Church of England does exactly that which the state neglects: the Church of England actively recognizes Islam as legitimate in its own right. Islam is, and should be, part of a serious

discussion about faith and religion and about the position of religion in the legal system (Vinding 2009, 144-145).

Taken together, the counter power of Muslim organisations arguing for recognition of their minority legal order and the strong alliance with the Chruch of England are key aspects if the overall position of Muslims in the religio-organisational field. As will be discussed in Chapter Seven, this position holds the potential of symbolic and institutional recreations of Islamic norms and Muslim identity.

4.5 Conclusions

When adding up the different key elements presented in this chapter, a governing logic of the religio-organisational fields begins to emerge, although with slight differences in each of the three countries. It seems that the logic, which governs the structures and positions available to Islam and Muslim organisations, is the logic that was shaped historically through the dealings of the state with religion. As each of the country cases suggest, this is no mere coincidence or feat of a long history, but rather it seems to be embedded into the structure of the state from its very genesis. As the modern apparatus of the state grew, it borrowed its mode of governance from the Christian churches, which it had subjugated by securing legitimate jurisdiction.

When dealing with a new religious community and new religious organisations, like the Muslim, an institutionally embedded paradigm of structural ecclesiastification is applied. In treating Muslim organisations as if they were Christian churches, the expectations, the governing norms and the logic of perceiving that recognise religion are the same that have always been used. This is amounts to an institutional mis-interpretation of Muslim organisations and the result is a structural mis-recognition of Islam.

The examples of this are clear in each of the three countries. In Denmark, the impossibility of recognition and the subsequent 'lesser status' is a source of frustration for Muslims. In Germany, Gerdien Jonker argues against 'pressing Muslim community life in the mould' of the existing relationship with Christianity. In England, Julian Rivers point the fact that a neutral and benignly distant secular state ends up alienating religion, which is relegated to roaming in the gaps and compartments of limited structured space not yet regulated (Rivers 2010, 332).

Something similar is seen in the repeated examples of optional schemes of 'approval' in Denmark, 'corporation status under public law' in Germany and 'charitable status' in England. These are all built upon models that favour the religions that originally informed the creation of these models. In this context, Muslim organisations are doing the best to try

to fit the standards, expectations and requirements, which the state defines. All of these are of course voluntary and anyone is free to exercise their religion, but with the incentives built into the statuses, the Muslim organisations that are fighting to establish themselves in the religio-organisational field would be mistaken not to pursue the opportunities available and to attempt to gain the access, the status and the resources contingent upon the approval and certification of the state. As such, the states and governments are able to define a distinguishing norm and thereby divide the field of organised religions. As Vejrup Nielsen (2012) argued – echoing Ferrari (2002) – the categorisation of organised religion follows a logic of selective cooperation with the state. A defining feature of the religio-organisational fields in Denmark, Germany and England seems to be that it is the degree to which a religious organisation cooperates with the state that dictates its status and position in the field.

As Menski suggested in his criticism of the inconsistent and haphazard approach to ethnic minority law, this forcing of Muslim organisations into pre-designed moulds and compartments might result in Muslim organisations actively opting out of the structures of the religio-organisational field. Rather than cooperating with state and government, Muslim organisations are actively moving away from the structures and programmes of the state and actively resisting the paradigms of approval and registration.

The alternative to opting out is seen in the corporation of Muslim organisations with the Churches. In Denmark, the Church of Denmark has a standing forum on meetings of religion, which actively includes Muslim and others into the conversation about public religion. In Germany, the regional churches are actively helping local and regional Muslim organisations set their structures and organisations. In England, the Archbishop of Canterbury voices a common cause of public religion against the indifference of secularist state institutions.

Equally, Muslim organisations can be seen to take advantage of the width of the religio-organisational field. Imams in Denmark, for example, use different institutions like books stores, community centres, Mosques and relief agencies, which they tie together in institutional relations across the environment. Although strictly speaking not a part of religion, they are rather important elements of the production of religious and symbolic capital that can be reapplied to secure better and stronger positions of Muslim organisations in the wider religio-organisational field.

Chapter Five

The Advisory Committee on Religious Denominations, Danish Muslim Organisations and the fundamental dividers in the religio-organisational field in Denmark.

5.1 Introduction

In the religio-organisational field it seems every case must be treated as a special case. The need for a coherency and requisite variety in order to represent the complexity of church, state and religion relations demands that the socio-religious fact of Islam in the European context be worked into the models that both the policy and academia had been relying on. In an attempt to move away from generalisations, simplifications and exclusions of heterogeneity, studies into the religio-organisational field demand a specific focus and limitation of scope. The deliberate choice of emphasis and focus becomes that much more important if it is to be of significance and interest to the particularities and varieties of the field. The focus should therefore be on those fault lines in the field where the struggle is visible, where it is revealed how positions are lost and won, how capital is produced, reproduced and converted and how the governing logic of the field operates and influences the organisations and institutions of the field. Denmark, the country case of this chapter, has such a complexity of church, state and religion relations in the religio-organisational field and nowhere are the struggles, logic and positions that define this field more clearly seen than in the specific example of the Advisory Committee on Religious Denominations (*Det Rådgivende Udvalg vedr. Trossamfund*).[58]

As was shown in Chapter Four, the pragmatism and realism of the Danish history of regulating church, state and religion relations in the wide religio-organisational field had crystallised into a ministerial practice rather than into either of the two constitutionally promised laws (cf. section 4.2 in Chapter Four). The Advisory Committee on Religious Denominations is the partially reinvented continuation and administration of this ministerial practice. Formally speaking, the committee is an advisory institution that produces an opinion and a recommendation on whether or not the relevant ministry should delegate the competence to perform legally valid marriages on behalf of the state. This is the approval that the state makes available to

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[58] A literal translation of the name of the committee would have the 'Advisory Committee regarding Faith Communities.' However, I follow professor Armin W. Geertz, chairman of the committee, and his translation from 2007.

religious communities and - in the strictest sense of the law - it is an approval specifically to perform these legally recognised marriages. A delegation of power on behalf of the state and nothing else.

The Advisory Committee on Religious Denominations becomes the focus of this chapter and of particular relevance for a study into the religio-organisational field because this is the institution to which changing governments have delegated and allocated the last forty years of the state's perception of and attitude towards the 'religious communities other than the Evangelical-Lutheran Church of Denmark.' Strictly speaking, the Advisory Committee on Religious Denominations only has the competence to advise on issues regarding approval of religious communities to perform legally valid marriages. However, this delegation of power can be given only if the religious community lives up to a number of specific organisational, structural and institutional demands and norms and must live up to a the specific legal interpretation of what it means to be religious communities and denominations.

The opinions and recommendations of the experts in the Advisory Committee on Religious Denominations thus become of great importance in deciding who receives the only approval available to religious communities in Denmark. Although it is the law of the land that draws the definitional lines between different religious communities and it is the ministry department which delegates the approval, the committee holds the power to administer and execute the interpretation of the norm that arrange and classify the religious communities in the religio-organisational field in Denmark. This power is accentuated by perceptions held, often mistakenly, by the religious communities who believe that the committee can grant recognition of religious communities on behalf of the state. Such a practice, however, is defunct as of the Marriage Law 1969 (cf. section 4.2 in Chapter Four) and only the approval to perform marriages of civil legal validity remains. The importance of approval or recognition, mistaken as it might be, is of extraordinary significance when seen from the structural and institutional perspective of marginalised or recently established religious communities such as the Muslim organisations. To them, the perceived official recognition is thought to bring with it access to an attractive position in the religio-organisational field and is seen as a public acceptance of the religion in question by state officials in Denmark.

The present chapter is a presentation and analysis of the institution of the Advisory Committee on Religious Denomination in the religio-organisational field. It has become an institutional focus for many of the norms that draw the all-important boundaries in the field in order to protect the core values of society. As an extension of its advisory capacity, the committee has set about to decide what religion is in order to properly decide on the religious communities (Geertz 2007, 34). Furthermore, the

committee has revised the procedural rules for approval and thereby sought to define the divisions and distinctions between positions in the religio-organisational field.

The chapter first presents the transition from the defunct legal paradigm of recognition to the new procedural rules (5.2). These are presented as they are interpreted in the preceding ministerial practice and in the Guidelines that the committee has given to itself and to the religious communities who are considering an application for approval. Following this self-understanding of the committee, the next section (5.3) focuses on the Muslim organisations and institutions that for more than fifty years have been applying for recognition and approval. The applications have been of varying purpose and quality and have led to some being approved, but most denied and none recognised.

The materials for the analyses in this chapter are drawn primarily from two different sources. Firstly, in the general characteristics of the committee and its regulatory context, the chapter relies on the Guidelines (2011), which are now in their sixth revised edition and the other public comments, presentations and discussions made by the members of the committee. This includes a paper from 2007 given by the Chairman of the committee, Professor Armin W. Geertz, titled "Recognition of Minority Denominations in the Kingdom of Denmark" (Geertz 2007) and an article from 1998 by associate member of the committee, Professor Margit Warburg, titled "Lige ret for Loke så vel som for Thor? Religionsbegreber og retspraksis i forbindelse med religioner uden for Folkekirken" (Warburg 1996).[59] Secondly, in addition to this publically available information, the chapter relies heavily on material received from an extensive freedom of information request from the spring of 2012 to the Division of Family Affairs with the government agency of National Social Appeals Board, which is where the approval of religious communities is currently based. The freedom of information request was granted on 26 September 2012 after looking through a 25.000 page body of case files during a few weeks of the summer of 2012. The material included in the granted request includes applications from 26 Muslim organisations and religious communities as well as from 31 other religious communities totalling more than 1.000 pages. The oldest of the applications go back to 1961, where representatives from Islam's Ahmadiyya Mission in Scandinavia are applying for official recognition and the most recent are from the spring of 2012. For all the applications made in the time of the Advisory Committee on Religious Denominations, the freedom of information request also

[59] The title translated is "Equal Justice for Loke as well as for Thor? Concepts of religion and case law concerning religions outside the Church of Denmark." The question in the title is an unattributed reference to N.F.S. Grundtvig who in *The Mythology of the North* from 1832 argued for 'Freedom for Loke as well as for Thor' (Grundtvig 1832).

included the responses and opinions of the committee as well as answers and interpretations given by the relevant ministers on various issues regarding recognition and approval. Building on this vast material, three aspects of the procedural and administrative practice of the Advisory Committee on Religious Denominations and its guidelines are presented. Firstly, this regards the recognition of Islam as religious denomination (5.3.1) secondly, the demand for a 'primary purpose of god worship' (5.3.2) and thirdly, the organisational and institutional demands (5.3.3). The Muslim criticisms and frustrations from the encounters with the structural barriers are voiced and the position of the Advisory Committee on Religious Denominations in the religio-organisational field is discussed and critiqued, and the explicit Bourdieuan perspective in the analysis is revisited and especially the question of symbolic capital is discussed (5.4).

5.2 From defunct recognition to new procedural rules

In Denmark, the affairs of religious communities have historically been managed administratively through a ministerial practice because legislation on different, 'deviant' faiths never came into being. As things are presently, religious communities outside the Church of Denmark can either have the status of 'recognised religious community' or as a 'religious community approved' by authorisation to perform marriages of civil validity. There are eleven communities in Denmark who enjoy the former of these two statuses and since the Marriage Act of 4 June 1969 the practice of recognition through royal decree is defunct. As of 1 January 1970, the provision of article 16, section 1 of the Marriage Act made the need for a royal decree redundant as it is now regulated directly by law.

This new provision stated that a religious marriage could be performed "within other religious communities, when one of the parties belonged to this community, and when the religious community have priests, who are authorised by the Minister of Ecclesiastical Affairs to perform such marriages" (*Kirkeministeriet* 1998, *my translation*). During the deliberations and discussions in Parliament before passing the Marriage Act of 1969, the Ministry of Ecclesiastical Affairs had clarified what it meant to be a religious community as this was a precondition on the authorisation to perform marriages. Quoting from the clarifying notes that the Ministry of Ecclesiastical Affairs produced in 1998, the specification is that the applicant to be approved must be,

> "a proper religious community in the ordinary meaning of the word, and not just a part of a religious movement or a religious or philosophical association, but an association or body (a religious community), whose primary purpose is god worship (cult) according to specially formulated teachings and rites"
>
> (*Kirkeministeriet* 1998, *my translation*).

In order to help assess what a 'proper religious community in the ordinary meaning of the word' is, the ministry responsible for the recognising and approving religious communities would solicit the advice and recommendations from the Bishop of Copenhagen and who-ever he would consult in the diocese and in his administration. This practice has seen criticism from multiple angles and has been partially reorganised by setting up the impartial committee of the Advisory Committee on Religious Denominations (Warburg 1996, Christoffersen 1998, *Kirkeministeriet* 1998).

Currently it is the Advisory Committee on Religious Denominations that advises the Division of Family Affairs at the National Social Appeals Board under the Ministry for Social and Integration Affairs in matters concerning the recognition of religious communities. The committee was originally established in March 1998 to advise the Ministry of Ecclesiastical Affairs in matters of religious communities outside the Church of Denmark. (*Kirkeministeriet* 1998). The Committee consists of four academics from law, theology, history of religion and sociology of religion. It has produced a set of guidelines to advise applicants. These guidelines are now as of 18 August 2011 in the sixth revised edition. As chairman, Professor Armin W. Geertz states regarding the guidelines, "the idea was to give the impression that this was a typical, standard Danish bureaucratic procedure, and that there was no reason for panic" (Geertz 2007, 33), and as such the guidelines are designed to provide transparency and ensure professional, unbiased assessment of religious affairs (Guidelines 2011, 1). These guidelines are a key document and they provide information about the committee's self-understanding, the working definitions of both religions, denominations and religious communities, and – last but not least – it introduces the normative framework on the basis of which Danish society assess communities before delegating the executive power that is embedded in the marriage authorization.

According to the Guidelines (2011), central to the particularities of approval of a religious community is the need for religious diversity and pluralism, and the right of a minority religion to believe, think and profess freely. The Advisory Committee on Religious Denominations is therefore working with an inclusive and broad definition of religion. The intention is to set the individual free to have his understanding of religion and belief and to make organizations free to preach and administer rituals as they see fit. Accordingly, the definition that "the committee understand a religion as a specifically formulated belief in human dependence on a power or powers that are beyond people and the laws of nature, and a belief that guides human ethics, morality and behavior" (Guidelines 2011, 2). The committee does not see it as its task to assess religions or to pass essentialist judgement on a religious community.

By contrast, the Advisory Committee on Religious Denominations sees it "as its main task to ensure that all organizations seeking special status as a religious community in Denmark, will be evaluated based on uniform, clear, objectively justified criteria" (Guidelines 2011, 2). Thus, it is important for the committee that approval as a religious community happens on objective criteria and that neither the Ministry nor the committee under any circumstances make judgments of religion. Therefore, the committee shall only consider applications from religious organizations seeking the National Social Appeals Board for approval as a religious denomination or community and in the end it is the National Social Appeals Board, which makes the decision on approval (Guidelines 2011, 3). From the freedom of information request it is clear that the associates at the National Social Appeals Board put the committee to good use and did not blindly accept the recommendations of the committee.

Both the Advisory Committee on Religious Denominations and National Social Appeals Board apply the distinction established in the Constitutional Act between, on one hand *religions*, which enjoy absolute freedom, and on the other *religious denominations or communities* whose affairs and relationship to the state is governed by law. It is rightly only the latter, which may be required to adhere to the criteria in the guidelines of the committee and only if they apply at their own initiative. It is these requirements and criteria are cornerstones of its work. In the committee's prioritization of criteria the organizational structure and institutional stability holds significant weight. Based on the Parliament discussions of Marriage Act and existing administrative precedents, the committee has determined that considerable emphasis is put on size, on institutional durability and on the stability of the organization to ensure that in the future there will be a well-trained staff to manage the religious ceremonies and the delegated power (Guidelines 2011, 5). Therefore the committee maintains by definition that stable organization means that religious denominations must have at least 150 members and religious congregations must have at least 50 members.

In addition, in relation to practice of approval, the committee regards it as its legal position to make some content-based demands of religious communities, which they must meet in order to obtain approval. The committee builds upon the established understanding of the religious communities, which they summarize as follows,

> Based on the existing state of the law, the committee has given the following summary:
>
> First, the term "worship" is a theistic concept, which is too narrow for a modern, religiously pluralistic society. Therefore, it is necessary to use a more abstract

"concept of God" as covering "the perception that people rely on one (or more) transcendent power(s)."

Secondly, worship takes place on the basis of specifically formulated teachings,
a) There must be a creed or other text that summarizes and refers to the religion's teachings basis and / or learning tradition.
b) That there must be a common faith, which gives guidelines for human actions, i.e. ethics, morality and behaviour.
c) That there must be a common faith, as expressed through marriage and other rituals.
d) That there should be a rule or a description of the most important rituals.
e) The wedding ritual must meet the requirements of Danish marriage law.

Thirdly, the term "religious community" is understood as follows:
a) That society has such an organizational structure that can serve as an accessible basis for public scrutiny and approval. There shall be by-laws that may be subject to assessment under Danish law.
b) There must be designated representatives who can be held accountable to the authorities.
c) That there is formal membership with guidelines for both recording of members of both voluntary as involuntary termination of membership.
(Guidelines 2011, 7, *my translation*).

In this summary of applicable requirements and criteria, it is clear that these are the three prevailing terms, that are most significant to understand the structural demands and institutional norms to which Muslim organisations and communities are held. Firstly, a religious community belong to a religion, with the provision that it is not everything that looks like religion that actually is. Secondly, the religious community based must be based on 'specially formulated teachings,' which must be explicitly formulated, written down and made available to the members of the community. Thirdly, the community make organizational and formally understandable to the authorities and conform to the international human rights standards of equality between the genders and refrains from violence and coercion.

5.3 Muslim organisations and fifty years of struggle for recognition

Reviewing the vast material and the many correspondences between on one hand Muslim representatives and organisations in Denmark and on the other hand the various Ministers of Ecclesiastical Affairs, permanent secretaries, associate secretaries and the advisory institutions, three issues seem to be problematic for Muslim organisations in Denmark, when dealing with the question of recognition and approval. These three issues concern firstly the repeated demand from Muslims that they ought to be recognised by royal decree as a religious community like the Church of

Denmark, the Jewish Community in Denmark and the other ten recognised communities in Denmark. Secondly, the issues concern the demand for 'specifically formulated teachings,' the demand for explicitly formulated rituals and the demand for a clear statement of religious purpose in the by-laws of the Muslim community, as per the requirements of the guidelines above. Thirdly, many of the problems occur for Muslim organisations when applying for approval because their organisational structure and by-laws, their membership numbers and their institutional stability do not meet the demands of the law or the interpretations of the committee.

Three examples from the material of the freedom of information request are discussed to illustrate these three problems. The examples illustrate the length and consistency of the Muslim struggle for recognition of Muslim organisations in Denmark these past fifty years. From the 42 members of 'Islam Denmark' and the religion of migrant workers in 1961 to the more than 236.300 Muslims across several hundred organisations and Mosques, the struggle of Muslim organisations seem to be locked in one or more of the structural challenges of the three problems discussed here.

5.3.1 Recognition of Islam as religious community

A repeated reason for indignation and criticism from the Muslim communities in Denmark has been the reluctance prior to 1970 to extend recognition as a religious community to Muslim communities and after 1970 the legal impossibility of such recognition. An excellent example for discussing the issue of recognition is the case of *Islam's Ahmadiyya Mission in Scandinavia* and the attempts on behalf of its Vice President Abdus Salam Madsen to obtain the recognition by royal decree for 'Islam Denmark.' The material in the freedom of information request consists of correspondence between A. S. Madsen and the Ministry of Ecclesiastical Affairs from 18 April 1961 through to 8 February 1975. Madsen addresses the ministry as 'Amiir' of the Danish Muslim congregation and asks how the ministry would react to an application for recognition from 'Islam Denmark.' Madsen and the Muslim organisation are asking for the delegation of the right to naming, to perform marriage ceremonies and to conduct funerals with full civil validity (Madsen, 18.04.1961).

Throughout the correspondence with the Ministry and then Minister of Ecclesiastical Affairs, Bodil Koch, it becomes clear that the primary conditions for recognition are the size of the community and its organisational stability. Koch clarifies that recognition "will in the first instance depend on the size of the community and whether it has a sufficiently firm organisation, including training facilities for priests, that there can be given a guarantee of the continued existence of the community and continued supply of priests" (Koch 08.07.1961, *my translation*). The argument hinges on the fact that Madsen and *Islam's Ahmadiyya Mission*

in Scandinavia can only muster 42 members (45 in December 1961), because resident foreigners and diplomatic personnel are not included.

This is to Madsen's obvious frustration. On 15 November 1961, Madsen filed a complaint with the office of the Ombudsman and in the review of the case the legal reason for the difficulty of recognition becomes clear (*Folketingets Ombudsman*, 16.12.1961). The Ombudsman notes that while there are no explicitly defined conditions to live up to, the problem remains the size of the community. He concurs that it would be unlikely that the administrative practice of the Ministry would result in granting the desired right to perform religious ceremonies with legal validity (Ibid.). Both the Ombudsman and the Ministry underline in their correspondence that 'Islam Denmark' is protected by the freedom of religion and that they may practice their religion freely.

The Ombudsman does, however, take the time to consider the administrative practice and its legal basis somewhat further. After the Constitutional Act of 1849, the first religious community to apply for recognition were the Methodists. As the promised law in Article 69 of the constitution had never been established, the debates in Parliament from 23 and 24 February concluded that 'regarding the recognition, the government would be allowed to resolve the matter administratively' (*Folketingets Ombudsman*, 16.12.1961, 3, *my translation*). From the debates it was also revealed that the Methodists were 'about 100 members' and that this was a problematically low number, because 'of the conclusions to be drawn thereof by other quite small communities' (Ibid.). According to the conclusions of the Ombudsman, there is no reason to criticise the Ministry's decisions and any recognition will only be possible, if the organisation has a fitting number of members, but that such a number would remain unspecified. The ambition of Madsen and *Islam's Ahmadiyya Mission in Scandinavia* to be recognised would remain unaccomplished.

As late as 6 August 1973, Madsen writes to the Ministry once more to request recognition. He states that there are now more than 12.000 Muslims in Copenhagen and that some 3 to 4.000 are in contact with their Mosque. By 1973, however, the recognition by royal decree had been discontinued as a legal option because of the jurisdiction of the Marriage Act 1969. *Islam's Ahmadiyya* is therefore encouraged to apply for approval, which it receives in 1974 as the first Muslim community in Denmark.

The fascinating thing about this example is the mismatched expectations on behalf of the Muslim community. In the letters at the hand of Madsen it is clear that the symbolic aspect of the recognition is important and that the lack of recognition is an affront to the Muslims' understanding of religious equality. This lesser position and the weaker status remains a source of continuous frustration to Muslims. In a consultation with then Minister of

Ecclesiastical Affairs, now Minister for Economic and Interior Affairs, Margrethe Vestager, Muslim representatives gave clear evidence of this. "To a large degree it does concern emotions, and we would very much like to see a breakthrough regarding religious equality," one representative said (*Kirkeministeriet*, 15.07.1998).

The mismatch of expectations on behalf of Muslims also affects the relations with the Advisory Committee on Religious Denominations and as will be seen below (5.4), it is exactly the 'symbolic advantages' of recognition and approval that are the object of the struggle.

5.3.2 An association 'whose primary purpose is god worship'

Another of the repeated problems faced by Muslim organisations is the insistence in the opinions of the Advisory Committee on Religious Denomination that it can only recommend for approval organisations 'whose primary purpose is god worship.' As is seen from the materials in the freedom of information request, the committee allows for little ambiguity or deviance from this provision.

Here another mismatch is seen. Muslim organisations that apply for approval are under the impression that interreligious dialogue, ambitions to further democracy and general social welfare are important for the approval. However, as is seen from the material of the freedom of information request, this is not the case. Actually, it is often counterproductive to the approval.

The case of the *Islamic Community in Northern Jutland* reflects this well. The community applied for approval on 14 September 2001 and had submitted their by-laws and gave an account of their membership figures. In their by-laws, the community specifies that their purpose is threefold:

> Article 2, Purpose
>
> 1. To serve the interest of Muslims [and] to defend their religion and to aid them in adhering to their Islamic obligations, as God says in Sura 5, Verse 4 of the Quran: (But aid one another in justice and fear of God and do not aid one another in sin and trespasses)
> 2. To create a good contact, and honest, just cooperation with members of the Danish society to the common societal interest.
> 3. To mission under free conditions and without force, as God says in the Quran in Sura 16, Verse 126: (Call to the road of your Lord through wisdom and good admonition and struggle in the best way possible) and as God also says in the Quran, Sura 2, Verse 257: (there is no compulsion in religion)
>
> (Ankestyrelsen 14.09.2001, "75868-92073," *my translation*)

In reviewing these by-laws, the purpose of the *Islamic Community in Northern Jutland* and the other relevant articles, the Advisory Committee on Religious Denomination conclude in their assessment that,

> "Of the above mentioned formulations of by-laws, it reads that two of three of the purposes of the association are of a religious nature, but these formulations are contradicted by two conditions. Firstly, the application as well as article 1 of the by-laws stress that the main purpose is to further constructive dialogue between Muslims and non-Muslims in Denmark. Secondly, it reads in article 3 of the by-laws that the working methods are not of a religious nature. The committee is therefore on this basis unable to conclude that at this is a religious community with god worship as its primary purpose" (Ankestyrelsen 22.04.2002, "98531-120155," 2, *my translation*)

As is clearly seen from these conclusions, the committee actively interprets and weighs the information available and makes an overall assessment of the religious community. This is an established part of the ministerial practice, which the committee has integrated into its procedures. In the assessment of the different aspects of the application by the *Islamic Community in Northern Jutland*, it is clear that the 'constructive dialogue' and the working methods 'not of a religious nature' is enough to outweigh the two explicitly religious statements of purpose of the association.

Almost all of the Muslim organisations that apply have some statement in their by-laws that promotes celebration of ethnic or national occasions, intercultural cooperation, cultural dialogue, and the general promotion of non-violence and welfare. Laudable as these intentions may be, they are of no interest to the committee who focus solely on god worship in the specified requirements.

As a direct consequence of the structural insistence on the religious purpose explicitly demonstrated in the articles of association, there are numerous examples of organisations that are deliberately changing their name and statements of purpose to fit the requirements. Former ethnic and cultural associations are now Islamic associations and several of the applicants have been aided by lawyers, who have drafted new by-laws that fit the requirements of the committee.

In a downplayed tone, Armin W. Geertz comments on this fact, "We have noticed that a dialectical relationship has risen between the committee's rules of procedure and the applications that we receive. It is sometimes quite obvious that organisational structure, rituals, and even beliefs reflect our rules" (Geertz 2007, 41). The consequence of the structural demand that the association has as its primary purpose the god worship and that it therefore is 'a proper religious community in the ordinary meaning of the word' seems clear. The requirements of law and the practice of the Advisory Committee on Religious Denominations are effectively creating Muslim and Islamic religious communities in Denmark. This is a generative structuration as coined by Bourdieu and presented in Chapter Two. Structuration was defined as the production and

'being-produced-by' structures in a network of social relations. In the present case, the structures of the law and the practice of the experts of the committee produce its own legal and academic object. As such, the cultural and national associations of the immigrants and guest-workers of the 1960's, 1970's and 1980's are now structurally becoming Islamic and Muslim associations and organisations.

The *Islamic Community in Northern Jutland* has not been approved.

5.3.3 Organisational structure and institutional stability

The third of the returning problems of Muslim organisations that apply for approval to perform marriages with legal validity is the issue of having sufficient institutional durability and the stability of organization to ensure that in the future there will be a well-trained staff to manage the religious ceremonies and the delegated power. In the guidelines, the number of members has been understood as a mere 50 to be approved as a religious congregation and some 150 for a religious denomination. In addition, the by-laws and articles of association must comply with the three requirements of organisational structure, designate responsible representatives and formal membership in order to satisfy the committee.

As for the number of members required, there is evidence in the freedom of information request to substantiate that some Muslim organisations misunderstood this criterion to their own misfortune. One organisation could not demonstrate that they had enough members because they only listed the male individuals of the organisation in keeping with a customary practice of guardianship. Other organisations do not specify membership, but assume that they represent an extended group of people who frequent the Mosque or celebrate occasionally. Still others do not live up to the requirement to explicitly state in their by-laws that they adhere to the associational freedom of the individual to enter and exit the organisation willingly. There are several examples of this in the material and the committee will often return the application, asking the organisation to remedy or specify the matter.

Similarly, a recurring problem for Muslim organisations has been to demonstrate that they are accountable in terms structure and leadership. Besides the question of the primary purpose of worship, which was discussed above, the articles of association must demonstrate that the organisation will submit itself to public scrutiny and assessment under Danish law. In the material from the freedom of information request, it seems that the committee understand the relations of Muslim organisations with international umbrella or mother associations as a problematic issue. When confronted with the matter, the Muslim organisations have been asked to verify that they are autonomously led organisations in Denmark. This was the example of the Association Ahlul Bait, who during 2002 to

2004, was corresponding with the Ministry of Ecclesiastical Affairs and the Advisory Committee on Religious Denomination about the circumstances of their approval. Here, Ahlul Bait had to specify, "… the Danish association is an independent association, cf. By-Laws, Art 1. The connection to the international association is solely of a spiritual kind and is only relevant if disagreement should arise between Danish members in religious questions" (Ankestyrelsen, 10.12.2004, "180684-215486", 2, *my translation*).

From the first assessment made by the committee in August 2002 it was clear that the Association Ahlul Bait did not live up to the requirements and could not be considered a religious community (Ankestyrelsen, 31.08.2002, "11639-136004"). The association did not have any services or religious activities and was according to its by-laws more of a representative and administrative unit than a religious community. However, in the course of the correspondence and the deliberations between the lawyer of the association, the Ministry and the committee, it became clear that the most significant problem for the association was their insufficiently audited accounts. The committee had requested a copy of these, but were given only account statements and the comments from an authorized auditor, who had declined to do the audit, because of "the want of administrative procedures of the association which would result in deficiencies in the financial accounts" (Ankestyrelsen, 10.12.2004, "180684-215486", 2, *my translation*).

From the review of the case of Ahlul Bait, it becomes clear that the committee understood the requirement of by-laws as an indirect requirement of financial auditing of the accounts of the community. The Association Ahlul Bait received its approval in 2005 after satisfying the committee on the issue of the audited accounts.

5.4 The Consecration of Arbitrary Boundaries

Armin W. Geertz, who has been the chairman of the Advisory Committee on Religious Denomination since its inauguration in 1998, has from time to time written about the work of the committee, taking the opportunity to comment on criticism and misunderstandings. In an English article from 2007, written on the basis of a Danish outline from 2004, he gives a thorough introduction to the responsibilities that the committee has been given and the choices made as part of its mandate.

Regarding the applications of Muslim communities and the recommendations of the committee, Geertz observe, "out of all those applications who consider themselves to be Islamic organizations, we have recommended that 71% be rejected. This high rate of rejection is due to the fact that the applications are often immigrant organizations that do not

distinguish between cultural clubs and religious denominations" (Geertz 2007, 40).

The committee promotes a distinction between culture and religion, but the argument on behalf of the Muslims organisations is that such a distinction is artificial and counterproductive. It reflects a Christian paradigm and understanding of religion that does not correspond to anything Muslim or non-European.[60] Equally, the distinction between religious communities as approved to perform marriages with legal validity and the many other purposes that a religious community may have to its members and general society seems alien to Muslim organisations. It is seen as a narrow, exclusive and quasi-Protestant interpretation of religion and religious communities that the Danish state and government will only designate the increased status and strongly symbolic approval to those organisations that fulfil the requirements.

Why Muslim organisations that are cultural rather than religious do apply nonetheless, Geertz explains by guessing at the motives of the applications. "Most applications are apparently interested in something else entirely, namely the symbolic advantages. The well known French sociologist Pierre Bourdieu understood the term 'symbolic capital' as a resource used to create one's own reality in terms of the reality of the majority […] Symbolic capital is apparently very important for Muslim organizations in Denmark" (Geertz 2007, 40).

In his efforts to explain and legitimate the definitions and boundaries of the religio-organisational field as guarded by the Advisory Committee on Religious Denominations, Armin W. Geertz clearly places the mandate of the Committee with a frame of societies defining reality. "Definers decide who or what is to be included and excluded. In terms of religion and denominations, the Danish Parliament mandated the Ministry of Ecclesiastical Affairs to define what is meant by denominations outside the Church of Denmark." (Geertz 2007, 35-36). He goes on to explain how societies "use classificatory systems and canons of law built on values and concepts that order and classify the world. They build up institutions that ensure that the citizens abide by the system. Social and legal boundaries are drawn and those individuals or groups that try to move these boundaries can expect reactions from society" (Geertz 2007, 34).

Geertz comments on the procedural rules in the guidelines, stressing that, "the committee understands a religion to be a specifically formulated belief in humanity's dependence on a transcendental power which stands over and above humanity and the forces of nature, and a belief which serves as guidelines for ethics and morals." (Geertz 2007, 39). This understanding of

[60] Nor, for that matter, does it correspond to the everyday functions of an ordinary Parish Council in the Church of Denmark.

religion with its basis in the academic research on religion is given a legal basis, as the work committee has become part of the administrative practice in Denmark. The experts in the committee are allowed to both define the norm and are charged with the task of inspecting and controlling that the norm is upheld. As such, the committee claims a technocratic power.

Geertz notes the reference to Bourdieu and observes that there is struggle for symbolic capital in relation to the institutionalisation that the Advisory Committee on Religious Denominations had to offer. This he explains has to do with the power that has been delegated to the committee. However, he does not reflect further on this struggle for symbolic power and does note take heed of the conceptual understanding that Bourdieu provides into these struggles. While Geertz argues that society will make order, it becomes clear from a Bourdieuian critique, that the making of order is delegated to the Advisory Committee on Religious Denominations. “To institute, in this case, is to consecrate, that is, to sanction and sanctify a particular state of things, an established order, in exactly the same way a *constitution* does in the legal and political sense of the term” (Bourdieu 1991B, 119).

The approval and recognition of religious communities in Denmark, as Margit Warburg writes, "determine how the Danish government distinguish between religious and nonreligious organizations" (Warburg 1996, 9). The division in the field that the committee is producing by the continuous examination of Muslim organisations, requires according to Bourdieu: “a system of criteria that could account for the set of *meaningful and significant differences* that objectively separate entities in the field, or if you will, enable a set of *relevant differences* among them to arise” (Bourdieu 1996, 232, *my italics*). From this quote a criticism for the Advisory Committee on Religious Denomination and the comments by Armin Geertz can be drawn. Division must be built on these three criteria (i) meaningful and significant difference must be established, (ii) that are objectively defined, that is not, contingent on coincidences or particular accidents, and (iii) relevant, in that these are the differences in play of the particular logics and capital of the corresponding field.

From a Muslim perspective the definitions and boundaries are not necessarily seen as ‘a system of criteria’ that is build on meaningful and significant differences between those who are approved and those who are not. The consequence of this is the loss of legitimacy and loss of the authority that the government enjoys concerning validation of marriage, specifically, and regulation of religion, generally.

The Imam from Nørrebro, AWP, who was interviewed in Vinding & Christoffersen 2012, gave evidence of the loss of legitimacy and the increasing distance that some Muslims are putting between the state and their own institutions:

> AWP: "So we are a few, and I'm one of them, who have chosen not to seek marriage authorisation from the ministry because I am not interested at all in performing civil marriages. I am utterly indifferent to that in a religious context. Of course, I advise people when they come to me solely for a religious marriage. I advise them to also have a civil marriage performed.
>
> AWP: […] because then you're under a ministry, no no, that's the last thing that I'd want… it'd be terrible to have a political boss. No. [laughing] That's doubly bad goes double. Internal freedom to preach. But also protection against outside influence, I mean wouldn't... that's the last thing I could imagine, that Muslims would be under some ministry or other and there'd a publicly elected politician sitting there, bossing around what you can and can't do. No thank you!"
>
> (Quote 3.09 & 6.22 in Vinding & Christoffersen)

The Imam is disjoining the civil marriage from the religious marriage and thereby he makes the power of the Advisory Committee on Religious Denominations redundant. He is structuring religious life independently of the opportunities of the state and thereby he exposes the state to the risk of not being the only legitimate provider of marriage. This danger includes the risk making the marriage invalid in the eyes of the state, where by the rights and protections for spouses seeking divorce is also put at risk. (cf. Liversage & Jensen, 2011).

Though the definition of religion proposed by the committee, a symbolic definition is also given of the collective of organisations that is eligible to enter the stronger positions in the religio-organisational fields. The social capital required is defined and a structural boundary is created to keep certain religious groups in a dominated position. It seems society in Denmark has delegated the very laborious expenditure of time and energy to the committee. The social capital invested in the existing, 'recognised' religious groups is the result of decades of accumulation and maintenance, and will not easily be put at risk. The power of the committee is institutional in the sense that it not only maintains a distinction and protects the social investment and the symbolic status thereof, but it also does this by way of procedure, namely, management of risk.

The profound confusion that Geertz reproduce in his dealing with Muslim organisations is that symbolic power is not something to be had as a 'symbolic advantage', but is a strategy of misrepresentation and domination. In a note on his 1986 argument on capital, Bourdieu says "*Symbolic capital*, that is to say, capital – in whatever form – insofar as it is represented, i.e., apprehended symbolically, in a relationship of knowledge or, more precisely, of misrecognition and recognition, presupposes the intervention of the habitus, as a socially constituted cognitive capacity" (Bourdieu 1986). This he explains further a few years later, saying: "Symbolic power is that invisible power which can be exercised only with

the complicity of those who do not want to know that they are subject to it or even that they themselves exercise it" (Bourdieu 1991B, 164).

In summary of the symbolic struggle between the Advisory Committee on Religious Denominations and the Muslim organisations and communities, it seems clear that the power of institution embedded with the committee is a power to establish and consecrate a difference, which in the eyes of Muslims is both illegitimate, arbitrary and artificial. From a Bourdieuian perspective this is not surprising and it seems that Muslims are not subjecting themselves to the dominance of the established order reproduced by the committee. Structurally speaking, it seems the that well hidden behind a veil of objectivity and a cloak of unbiased knowledge, the committee is a technocratic institution that enforces a ministerial interpretation of the constitutional promise. The enforcement builds on an arbitrary set of criteria in order to maintain, consecrate and sanction the existing order of things. This is indeed far from the promise of an act governing the affairs of minorities as given in the constitutional act.

5.5 Conclusion: Limited Muslim positions

"The State's choice to have an official religion presupposes a religiously homogeneous country: when people are divided among different faiths, the State adoption of one of them becomes a hindrance because it prevents a part of the citizens from fully identifying with the public institutions. The new religious, ethical and cultural plurality has outdated the systems of Church-State relations that are characterised by the legal identification of the State with one religion." This is the analysis that allows Silvio Ferrari to conclude that out of a Nordic context, "only Denmark seems to resist the wind of change" (Ferrari 2010, 33-34).

Returning to the models introduced and discussed in Chapter Three, it seems the Danish regulatory paradigm concerning church, state and religion lingers in the model that was referenced as the 'Silvio Ferrari pyramid priority of selective State co-operation' (See section 3.2.2., Figure 3.1). The state control that Ferrari argues is embedded in the structured recognition of the Danish administrative practice. Islam as is the particular case here is allocated as "a second group of religious communities [in] a middle position" and remains "regulated by special laws enacted for religious associations" (Ferrari 2002, 10). The fact remains that this allocation is wholly decided by the governing state institutions and are allowed to hold only limited positions in the associated field of selective state cooperation.

As the Danish case illustrates, the question remains that the narrow understanding of religious communities and the demand for a 'primary purpose that is god worship' as a condition for performing the civil and legally valid marriage does not correspond very well with Muslim

understanding of a religious community in all its inclusive variation and it does not correspond very well with the demands that society in general have of religious organisations. All purpose and intentions to promote integration, democracy, welfare, fight discrimination, fight radicalisation and to educate and build the future generations has no relevance to the Advisory Committee on Religious Denominations if the main purpose of the organisation is not the worship of a god, as understood and interpreted from the discussions in parliament in 1969.

The Bourdieuian understanding of the divisions in the religio-organisational field and the insistence on selective state co-operation by the Danish government explains how the Advisory Committee on Religious Denominations has become an institution to delimit by definition and subjugate by structure the Muslim organisations in Denmark. In his conclusions, Armin Geertz writes,

> "Definitions and rules of procedure are acts of power in the name of clarity and routine. They create all kinds of problems even as they resolve other problems. Even though it is a universal human trait that societies define their social reality in this manner, it is just as universal that exceptions to the rules are quickly discovered and used. […] Majorities maintain their majority, and minorities use whatever means the have to improve their situation. There are often clashes of worldviews within a society with resultant battles for symbolic capital. Applying for official recognition as a religious denomination in Denmark is one way of winning the battle of self definition" (Geertz 2007, 46).

With a focus on the scope for action arising from the normative evaluation that takes place in the Advisory Committee on Religious Denominations it is clearly demonstrated in this chapter how Muslim organisations seeking formal recognition must navigate within the organizational framework as a religious community different from the church. Equally, there are several organisational and institutional tests they must pass in order to have a form and face where the Danish administration is able to relate to them. Communities that want recognition must face a number of clearly defined requirements and criteria and from the analyses it seems three possible positions are available to Muslim organisations in Denmark. Firstly, they can adapt to these standards and through an application satisfactorily demonstrate that their values and organizational forms are acceptable to the wider Danish public. Secondly, for one reason or other there is in the Danish religio-organisational field the possibility that they do not succeed in obtaining the recognition, and if they wish to remain organised they are welcome to do so within the general Danish legislation. From a legal or administrative point of view they will not be seen as religious community, but seen as any other association or group free to gather and worship. Thirdly, in Denmark there are communities who do not seek recognition

and do not want the government and authorities to do them any favours or give them any privileges. In the first two cases, the norms and standards of the committee govern the frame for Muslim organisations and communities and it is clear that there is a tendency towards majority of dominance and that there is a distinct risk that the minority religions are left in a limited position of adaption. In the third case, there is room to manoeuvre for religious organisations. This, however, represents the danger that Muslim organisations may disappear from the awareness of the state and escape the regulatory sphere.

Chapter Six

The German Islam Conference and the Structuration of Muslims in Germany

6.1 Introduction

A team of skilled researchers associated with Werner Schiffauer (2012) has successfully and convincingly documented and criticized the power struggle and the security risk management executed at the expense of the Muslim organisations by various institutions of the German government and state in the context of the German Islam Conference. These include Frank Peter (2010, 2012), Levent Tezcan (2012), Schirin Amir-Moazami (2005, 2011), Riem Spielhaus (2006, 2010) and Nina Mühe (Mühe 2011, Mühe and Schiffauer 2012). Their approach is very much inspired by Michel Foucault (2009), Judith Butler (1997), and Wendy Brown (2001, 2006). The main objective of this team of young researchers has been to demonstrate that the German Islam Conference (*Deutsche Islamkonferenz*, DIK) is the place not only for dialogue and integration, but also an occasion for reasserting a domestic security agenda and maintaining Muslim organisations in a structurally dominated position. In a number of critical analyses the researchers investigate and question a number of power tactics, social constructionist initiatives and struggles over the definition, the understanding and the identity of Muslim organised life in Germany.

By drawing on the material, results and conclusions of this group, the contribution in this chapter is to add the religio-organisational field as a frame for the struggles and to add the insights of a Bourdieu-inspired analysis to the specific case of the German Islam Conference. The game in the religio-organisational field as it unfolds in the context of the German Islam Conference can be seen as a game of symbolic recognition and mis-recognition, representation and misrepresentation of Muslim organisations. The assumed representivity of Muslims in the German Islam Conference and the realization of the myth of such representation reveals that symbolic domination and divisive normative powers are pitting the Muslim groups against each other and splitting the fragile unity of the Muslim organisations and environment into factions. As the four key Muslim umbrella organisations, contrary to expectations, actually do organise into the Coordination Councils of Muslims in Germany in early 2007, the government representatives of the German Islam Conference actively

discredits their legitimacy and questions the representative authority of the Muslim groups.

In the case of the German Islam Conference, the normative power of vision and division is utilized once more. As was seen in Chapter Two, the norms – the nomos in Bourdieuan terms – was first of all the principle of inclusion and exclusion in relations to the field. This is put to specific use when deciding who speaks on behalf of the Muslim community in Germany in the eyes of the state and by strategically changing the norms and standards that Muslims are held to. If Muslims want to achieve the status of corporation under public law in the short run and a more publically integrated position in the long run, Muslim organisations are to be measured against a higher standard of cultural norms embedded in the agenda of the German Islam Conference. The game of exclusion and inclusion is analysed in this chapter in terms of an examination of the Muslim norms and ideals.

A second relevant perspective from the theory of fields, as suggested by Bourdieu, is the symbolic or signifying application of the institutionalised identity of Muslim organisations. A struggle over how to perceive Muslims is being fought in the documents, proceedings and conclusions of the German Islam Conference and it seems the tactics and social technologies applied are particularly refined on behalf of both parties. On one hand, with a security-based agenda, the state representatives are framing Muslim support for and adherence to the higher standards of the conference as a sign of support for the fundamentals of the Basic Law. This is put in terms by the German Muslims as a higher standard – a ‘Constitution Plus’ - applied to them only and a ‘loyalty test’ that they as the only religious community are asked to meet. On the other hand, Muslim organisations are working to frame the dialogue in terms of fundamental freedoms and rights of religion and belief, and the Ministry of the Interior in particular are seen as overreaching, power hungry and manipulative in their denial of the basic freedom of all religions. The threat to core values and the identity of the nation is portrayed as substantial and the stakes are high. This struggle is asymmetrical and biased against the Muslims and presently it seems that the possible field of action for Muslims in the religio-organisational field is being re-defined and re-negotiated.

In this light, the German Islam Conference constitutes some of the most significant fault lines in the German religio-organisational field and is therefore the returning focus of the present analysis. Many of the different relations and interactions in the religio-organisational field can be seen as tied together in the case of the German Islam Conference because it involves both a broad number state representatives and institutions, other religious and civil society associations, the public, media and more (Cf. Figure 4.1 in Chapter Four, see further Rosenow-Williams 2012, 352).

The relations and interactions of the Muslim umbrella organisation in Germany are in play and the future positions, resources and institutional reproduction of Muslim identity in the German public sphere seems to be at stake. The structures of the old church and state relations seem to hold much influence still, and when – or if – change will come to the Muslim organisations in the religio-organisational field in Germany, it will be incremental and it will be at significant cost for both the established norms of the German *leitkultur* (lit. 'Guiding Culture') and to Muslim organisations in Germany.

6.2 The German Islam Conference

The German Islam Conference (*Deutsche Islam Konferenz*) was initially intended to shape specific policy that aimed at integrating foreigners in Germany and improving the state's ability to counteract terrorism (Van Wyck 2012, 42). After the Christian Democrats successfully established government in 2005 and after having assumed office as Chancellor in November 2005, Angela Merkel appointed Wolfgang Schäuble as Minister of the Interior and charged him with the task of developing initiatives for furthering the unresolved policy issues. Therefore, in September 2006, Schäuble presented the idea of the German Islam Conference to the German Parliament. In contrast to earlier attempts, he specified that through this forum of larger planar sessions and smaller working groups Muslims and non-Muslims, citizens and non-citizens should 'produce readily implementable policy recommendations and the "end result should be concrete guidance derived from careful analysis" (Schäuble 2006; Cf. Van Wyck 2012, 43).

As of end of 2012, two independently commissioned phases of the German Islam Conference has taken shape. The first was set up in 2006 by the initiative of Schäuble and was concluded in 2009. This initiative is often referred to as DIK I. The second was set up after the Christian Democrats had renewed their mandate and a new Minister of the Interior, Thomas de Maiziere, had assumed office. This process, often referred to as DIK II, began in 2010 with a new constellation of participants, new guidelines and a new practical approach to producing support of the government policies amongst Muslims (Rosenow-Williams 2012, 379).

Seen in the light of the history of migration and religious integration, the dialogue set up in the German Islam Conference is generally regarded as a positive, open and respectful initiative (Azzaoui 2010, 5). Initially, Muslims and politicians alike welcomed it and at the hand of Schäuble it had been given higher priority compared to previous attempts. However, as things progressed and especially looking back, Frank Peter is rather critical and insists, "the DIK was and remains a contested initiative" (Peter 2012,

121). The difference in these two attitudes towards the German Islam Conference reflects the great expectations that followed the first announcements of the conference. At the time it was a significant innovation and it marked a departure from the policies of migration, citizenship and non-recognition of the previous decades (Peter 2010, 122).

6.2.1 Framing and structuring the German Islam Conference

The German Islam Conference from 2006 to 2009 was made up of 30 invited participants;of these, 15 were drawn from the German political establishment from different federal, regional and local levels and another 15 were Muslim representatives. Of these 15, five were speaking on behalf of German Muslim umbrella organisations. These were the DITIB, the IRD, the VIKZ and the ZMD which were introduced in Chapter Four and in addition, it included the Alevi Community in Germany (AABF - Almanya Alevi Birlikleri Federasyonu, Alevitischen Gemeinde in Deutschland e.V.).[61] The other ten Muslim representatives were teachers, authors, economists, leaders and more from the 'public Muslim life,' but these were invited as individual members and spoke only as such (Rosenow-Williams 2012, 379).

Working under the slogan "Muslims in Germany – Muslim Germans," the first phase was organised around four annual plenary meetings and during the span of the phase four working groups were working with four key topics. The items for the working groups were (i) the "German Social System and Value Consensus", (ii) "Questions of Religion in the German Constitutional Framework", (iii) "the Economy and Media as Bridges" and (iv) "Security and Islamism" (Van Wyck 2012, 46; Rosenow-Williams 2012, 379). The topics had been decided by the Ministry of the Interior, who as hosts had invited the ones they saw most fit, facilitated the process and – as will be discussed below – took charge of the conference's minutes and conclusions.

The second phase, which began in 2010, has seen some major changes. Drawing on the experience of the first phase and taking into consideration the new political mandate from the 2009 election, the conference has been structured in a 'more practical way'.[62] While keeping the plenary sessions hosted by the Minister of the Interior, now Thomas de Maiziere, with parity amongst the representatives with 15 from the government institution and 15 from the Muslim communities, a significant change has been made to the

[61] In particular, the specific participants from the Muslim organisations were: Sadi Arslan, Counsellor for Religious Affairs of the Turkish Embassy in Berlin and Chairman of the DITIB; Ayyub Axel Köhler, Chairman of the ZMD; Mehmet Yilmaz, president of the VIKZ; Kızılkaya Ali, chairman of the IRD and a member of the Islamic Association Milli Görüş; Ali Ertan Toprak, Secretary General of the AABF.
[62] According to the material made available by the German Islam Conference on its website, http://www.deutsche-islam-konferenz.de/DIK/EN/DIK/UeberDIK/Struktur/struktur-node.html, accessed 1 February 2013.

composition of the Muslim organisational representative. Due to the security risk of their involvement with the IGMG, the Islamic Community of Millî Görüs, and the ongoing investigations, the IRD was excluded from the second phase. This sparked criticism from the other representatives from the Muslim organisations and the ZMD initially boycotted the preliminary meeting conference on 24 March 2010 only later to resign completely from the conference (Rosenow-Williams 2012, 379).

A further new feature of the second phase of the conference is the new topics proposed for the conference and the way in which the topics are framed. The main issue remains to improve Muslim integration into Germany and in the second phase this seems to embody a trade-off between the government institutions and the Muslim communities. Quoting from the website of the German Islam Conference, the balance of the second phase finds its equilibrium thusly:

> "… The central issue for the German Islam Conference remains improving the integration of Muslims in Germany. This encompasses issues of structural integration, such as promoting co-operation between the German state and Muslims based on the principles of the German religious constitutional law. This includes, for example, gradually establishing Islamic religious studies lessons in schools, Islamic theological courses at universities and offering state-funded training and further education of imams.
>
> However, it also includes promoting social cohesion in Germany, which will continue to be a central issue for the German Islamic Conference. This will particularly involve the issue of gender equality and the prevention of extremism and social polarisation"
>
> (www.deutsche-islam-konferenz.de, accessed 1 February 2013)

In short, the second phase of the German Islam Conference seems only to be possible if the government is willing to facilitate Islamic theological courses at universities, state-funded training and education of imams, while the Muslims must be willing to discuss and enforce gender equality and help prevent extremism and social polarisation.

6.2.2 The symbolic struggle

As mentioned in Chapter Four, it was the occasion of the German Islam Conference that in March 2007 led to the formation of the Coordination Council of Muslims (*Koordinierungsrat der Muslime*, KRM) as a unifying umbrella organisation of Muslims in Germany. It was created in March 2007 as the possibilities of incorporating Islam under the status as a corporation under public law looked hopeful. At the time, it seemed the organisationally prudent thing to do. It gave Muslims a very strong voice and position as they engaged with the German Islam Conference.

The establishment was welcomed by the Ministry of the Interior calling it 'an important and significant step' and Frank Peter notes that, "while the

ministry regularly points out that it was not in a position to identify Muslim representatives due to Germany's lack of adequate Islamic organisational structures, the convening of the conference and the selection of Muslim members by the ministry itself constituted a major attempt to define both the boundaries of Germany's 'Muslim community' and the qualifications of those authorized to speak for it" (Peter 2010, 120). Van Wyck (2012) concurs and notes, "As a symbol, the KRM embodies [a] new era in inter-associational relations" (Van Wyck 2012, 47).

Seeing the formation of the Coordination Council of Muslims in the light of the German Islam Conference, the four founding umbrella organisations made a strategically appropriate move. They pooled organisational resources, put aside significant differences of a national, religious and political nature and gathered the social and cultural capital needed for a strategically opportune conversion of these resources and this capital into symbolic capital. This gave them a very strong and unified position in the German Islam Conference and by extension in the German religio-organisational field.

The symbolic power of this apparently unified position, as we saw in Chapter Two, was twofold.[63] On one hand it allowed Muslim organisations the symbolic efficacy of acting on the representation of Muslims, rather than on any actually delegated mandate or even on any deeply rooted base of support amongst Muslims. Crudely stated, Muslims entered the world of theatrics by establishing the Coordination Council as a symbol. On the other hand, it allowed Muslims to define and to institute themselves according to a common norm amongst the four organisations. This would not only allow the Muslim organisations to unite and stand stronger in agreement, but also allowed Muslims to present the Muslim position as legitimate, attractive, natural, proper or authoritarian, when it when it clearly was not so by default. This allowed the Muslim organisations a window of opportunity to oust 'the hidden imposition of arbitrary principles of division' applied by the government institutions in the German Islam Conference (Cf. Chapter Two, section 2.6.2).

In short, through the establishment of the Coordination Council of Muslims, the Muslim organisations in Germany are attempting to muster

[63] In order to recapture the essential observations by Bourdieu from Chapter Two, these are some of the relevant quotes, "To institute, to assign an essence, a competence, is to impose a right to be that is an obligation of being so (or to be so). It is to signify to someone what he is and how he should conduct himself as a consequence. In this case, the indicative is an imperative …" (Bourdieu 1991B, 120). And further, "The institute, to give a social definition, an identity, is also to impose boundaries…" (Ibid.). And to return once more to his comtemporary durkeheimian perspective, the institutionalisation is also "… an act of communication, but of a particular kind: it signifies to someone what his identity is, but in a way that both expresses it to him and imposes it on him by expressing it in from of everyone (kategorein, meaning originally, to accuse publically) and thus informing him in an authoritative manner of what he is and what he must be …" (Bourdieu 1991B: 121). Cf. Chapter Two, section 2.5.1.

the complete force, efficacy and power of being a properly institutionalized organisation.

As could be expected, both aspects of this stronger Muslim and symbolic position were vehemently questioned and discredited by the representatives of the Ministry of the Interior and their dominating discourse of the texts and proceedings of the German Islam Conference. This concerns both the claim to represent Muslims and the attempt to present the Muslim position as legitimate. As will be demonstrated through the criticisms from the Schiffauer team, the question of representivity is a myth kept alive for the Muslims to keep struggling towards. Equally, the legitimacy of the Muslim position was denied by the ex-Muslim speakers invited to keep Islam contested in the forum of the conference. The technology of norms here used by the representatives from the Ministry of the Interior was the norms and strategy of examination (Section 6.3). In addition, this strategy was supported by a number of different tactics of power (Section 6.4) as analysed by the team of young scholars associated with Werner Schiffauer.

6.2.3 Understanding and interpreting the German Islam Conference

The team of young researchers affiliated with Werner Schiffauer gives at different times and in different contexts at least five interpretations of how to ‘basically,’ ‘at a fundamental level’ and ‘generally’ understand the German Islam Conference. The language used in all five of these observations is summarizing, interpretative and may be seen as generalising, but taken together they demonstrate a tendency in the perception of the German Islam Conference. The factual basics have been given above, but each of these observations is an attempt to distil the essence of the entire dialogue project and its impact on Muslims specifically and the German state and population generally.

The first of these distilled interpretations of the German Islam Conference is given by Schirin Amir-Moazami, who argues that ‘the DIK could firstly […] be interpreted as an overdue political commitment to the ideological diversity of Germany. Regarding Muslims as a ‘section of German society,’ [it] must firstly be interpreted as a symbolic gesture of acceptance” (Amir-Moazami 2011, 7). Although imagined as a ‘free and democratic’ enterprise by then Minister of the Interior Wolfgang Schäuble (2006), the reality of the conference was that Muslim organisations were seen more as ‘security partners’ who needed to be persuaded to distribute the government security agenda into the extended networks of the umbrella organisations. This could happen only if the conference is received by the Muslim organisations as a ‘gesture of acceptance,’ symbolic as it may be.

The second interpretation is drawn from Frank Peter’s analysis of the difficult integration of the Muslim organisations into the established

spheres of the German religio-organisational field. He says, "at a fundamental level, the DIK is concerned with forms of self-government and the field of possible actions by subjects […] Its primary aim is to remake Muslim subjectivities – by interpellating them as objects of tolerance – and to simultaneously guide them in a continual process of normalization. The DIK thus conforms to a productive exercise of power" (Peter 2010, 128). Peter obviously seeks to find the deepest and most fundamental level of the discourse of the German Islam Conference. The hidden ambition of the conference is to have Muslim organisations and the Muslim community in general adopt the structures and norms set forth not only by the Basic Law but also by the additional standards Muslims are held to. Peter draws from the core observations from Foucault (2009, 1-4) on the governmental strategy bio-power, which makes human life in all its aspects a governable object of power. This totality of the object of power is only possible in this case if the Muslim subjectivities will only emerge if they willingly and knowingly produce and govern themselves.

The third interpretation also comes from Peter's critical analysis and builds on the above given interpretation. He expands on the normalizing and governmental aspects into a full scale pastoral bio-power project on behalf of the German state: "At its most basic level then, the goal of the DIK is to change how German Muslims understand themselves as Muslims in the context of Germany, a context whose specificity is itself defined in the process by the government and the DIK […] Government discourse around the DIK addresses Muslim representatives, and German Muslims more generally, as moral subjects who are (supposed to be) willing to contribute to the integration of Islam in Germany …" (Peter 2010, 129). This is a significant observation and follows from the extraordinary demands made to the Muslims in Germany. They should not just live, work and be citizens in Germany and it is not the responsibility of the state to integrate Muslims into the organised and public life in Germany as it was in the cases of the other religions in Germany. Rather, it seems Muslims should demonstrate their willingness and moral obligation by integrating Germany into the Islamic worldview. If this is the true ambition and if it is to succeed, it will be a true feat of Foucaultian bio-power and pastoral governance.

Like the second and the third interpretation, the fourth comes from Frank Peter who has now brought his critical arguments full circle and returned to German Islam Conference to the frame of the existing norms, laws and heritage. "The DIK should be considered, at its most basic level, as one institution contributing to the discursive interpellation of Muslims as objects of tolerance. It addresses Muslims as not-yet-perfected Germans and situates them in a specifically German moral landscape. The major points of reference in this landscape are the law, Germany's historical

identity and memories, its Christian heritage and its dominant social norms" (Peter 2010, 134). This, then, becomes the formula for the perfect Muslim as a perfect German. Such a perfection of Muslims will only come when Muslims themselves takes it upon themselves to demonstrate their loyalty to the law, to integrate the identity and embody the memory of Germany's history and last, but certainly not least, as Muslims submit themselves to the social norms and dominant norms of the Christian heritage.

The fifth and final of the interpretations of the German Islam Conference is drawn from Werner Schiffauer, who argues that the "basic idea behind the *Islamkonferenz* was to make the major Sunni Islamic Organizations (whichare suspected of creating parallel societies) accept a European Islam which presumably would fit into the Federal Republic of Germany. It was after they had proved to be hesitant in accepting such attempts at modelling them by referring to their constitutional rights that one community – seen as the 'heart' of the resistance – was overrun with a series of meanwhile abandoned court cases and subsequently excluded from the conference" (Schiffauer 2012, 363). This interpretation of the German Islam Conference summarizes the very heart of the problem that Germany – as well as many other European countries – face, in that it is the abundance of assumptions of the Muslim motives that create the very problem. Here, the basic idea is to make Muslim organisations conform to a European ideal of Islam that is modelled according to the assumptions of the constitution and backed by the legal system out of fear of emerging parallel societies and jurisdictions. Organised Islam is seen as a subversive resistance that must fought legally and structurally, but Schiffauer's argument is that the resistance and subversive stance is only a reaction to the very condition of Islam in Germany. The result is a conundrum of a circular logic, which forces the earnest ambition of dialogue framed by Schäuble in 2006 into the intricacies of securitization, normalisation, pastoral governance of conduct and impossible standards. In what follows, several different tactics are put in to motion and calculated dominance is asserted in order to carve out a limited space available for Muslim organisations in the religio-organisational field.

6.3 The Examination of Islam in Germany and German Muslim Organisations

The Muslim umbrella organisations in Germany are being put to the test in the German Islam Conference. In her discussion of the possibility of Muslims being granted the recognition and the coveted status as corporations under public law, Amir-Moazami noted, "the state rhetoric and setting of subjects for discussion make it clear time and time again that

Muslims first of all must fulfil certain conditions and/or that when the state gives recognition to Muslims it is able to demand certain preconditions from them in return" (Amir-Moazami 2011, 7).

There is a clearly asymmetrical relationship between the state representatives and the Muslims in the German Islam Conference, which leaves the state representatives in a position of power and dominance. This structurally asserted and symbolically rebuffed dominance opens for a number of specific tactics of power to be applied by the state representatives in securing the strategic dominance over Muslim organisations and closely managing the space and positions allowed for Muslim organisations in the religio-organisational field.

In 2005, Fetzer & Soper included Germany as one of the three comparative countries in their study and stressed the importance of the institutional heritage of church and state relations (Fetzer and Soper 2005, 126-129). This was seen to be of special importance to the calibrations of mutual expectations between state institutions and Muslim organisations that entered into the German Islam Conference. As Fetzer & Soper note, "Muslims expect the state to accommodate them in the same manner that the state treats Christian religious groups" (Fetzer & Soper 2005, 127). This specific expectation had been voiced by Muslim representatives repeatedly as they entered the first phase of the German Islam Conference in September 2006. Of the many different factors that went into consideration, when the Muslim umbrella organisations decided to create the coordination council (KRM), it was a definite part that a unifying institution that could be able to speak on behalf of most Muslims would help speed along the process of granting Muslims the status of corporation under public law; "The Islamic organizations expected – wrongly, as it turned out – that the DIK would finally resolve the pending question of the legal status of Islam in Germany and their recognition as religious communities" (Rosenow-Williams 2012, 380). Rosenow-Williams even references an interview with key participants amongst the Muslims who said that this hope of recognition was the 'main reason of motivation' for entering into the German Muslim Conference (Ibid.).

The expectations on behalf of the Muslims to be treated similarly to, by analogy to or be held to the same standards as Christian organisations were not met by the state and came to be a serious disappointment to Muslims. If Muslims desired the equal treatment of the law and enjoy the privileges that had been delegated to the Christians as an integral part of the church and state relations in Germany, they would have to meet the standards of the law and the standards to which the other religious communities in Germany were to be held. This was repeated by courts and ministries alike and had even been incorporated into the attitudes of the German Churches, among whom the *Evangeliche Kirche in Deutschland* that argued that the

reasons for incorporating Christian religious institutions were the exact same for incorporating the Muslims (EKD 1999, referenced in Fetzer & Soper 2005, 128).

However, as Muslims started to position and reproduce themselves to meet the standards that had been repeated as the expectations of them, the reality of the structural predispositions in the German model gradually became clear. Rather than issues of theology, which would be part of the negotiations that the state would enter into with religious communities, it became clear that a series of security-related topics were on the agenda. It soon became clear that Muslims were to explain themselves and their positions on a number of issues like domestic policy, security and loyalty to the constitution. Even further, Muslim organisations on the German Islam Conference were put into a default apologetic position as the Ministry of the Interior had invited several individuals to speak, who were highly critical of Islam as such (Rosenow-Williams 2012, 382-383).

The Muslim representatives were very disappointed with this and repeatedly argued that this was not how the state would deal with the Churches or other religious communities. They explained that they were put to a 'loyalty test' by the Ministry of the Interior and that a 'principle of divide and rule' were applied to divide the Muslim organisations (Rosenow-Williams 2012, 360). In her extensive research, Rosenow-Williams gives evidence of an interview with a representative from the ZMD, who argues that the state institutions and representatives had repeatedly tried to find fault with Muslims in order to reprimand them,

> "…ZMD has been related to *Millî Görüs* […] and I think one [Un-specified state institution] finds accusations for every association. DITIB was criticised for its closeness to Turkey. Therefore, every organization has some hobbyhorse for which it is reprimanded and told 'you have to look at this. And none of you is in line with the constitutional requirements' […] I think that this is also a political game that was played as soon as one noticed that they [the Islamic organisations] band together and achieve to become a unity, then one approaches one [of the organisations] with a carrot and tries to achieve a new division …"
>
> (ZMD interviewee, quoted in Rosenow-Williams 2012, 360)

According to the interviewee, the 'carrot and the stick' is the preferred technique for creating division. The sentiment in the interview is similar to the sentiment that the Muslims voiced after the first sessions of the German Islam Conference. One interviewee referenced by Rosenow-Williams was convinced that the German government never intended to grant neither recognition nor status of corporation under public law, but rather wanted to 'make the establishment of a corporation of public law unnecessary' (DITIB interviewee, quoted in Rosenow-Williams 2012, 381). The interviewee further accused the Ministry of the Interior of trying to

'circumvent its own constitution' by resolving the issues in the less formal German Islam Conference rather than by the measures and privileges of the formal law (Ibid.). According to the minutes of the meetings in 2008 and 2009, the fact of the matter remains that the issue never makes any appearance in any of the working groups (Van Wyck 2012, 56).

From Peter's and Schiffauer's analyses and from the comments by both Muslim members and commentators, it seems clear that a number of higher standards are applied to the Muslim organisations in Germany. Muslims are asked to adhere to a higher standard, namely a demand of extra loyalty colloquially dubbed 'Constitution Plus' (*Grundgesetz Pluz*, see Amir-Moazami 2011, 8), and to demonstrate a rather formalistic understanding of representation, that no other religious group in Germany must adhere to. Peter's criticism of the German Islam Conference and the government discourse that surrounds it focuses on the substantial deviations from the governing principles of regulating religion in Germany. Most significantly, the regular accusations of extremism and demands for Muslims to distance themselves from all sorts of biased assumptions are testing the Muslim community and organisations.

The mutually mis-calibrated expectations between state and Muslim organisations and the apprehension of the much higher standards to which the Muslims are held make it clear to Muslim parties that the level of expectations are continuously being raised on them and that the state and government institutions have deliberately worked to circumvent the possibility of recognition.

However, it equally becomes clear through the critical analysis that a certain essential criterion is being applied over and again in the examination of the Muslim organisations in Germany. This criterion is the 'being-as-church' and with that the fitting of the Muslim organisations into the model of the churches. As discussed in section 2.4.6 of Chapter Two, from a Foucaultian reading the examination was seen as the epitome of governmentality and is designed to discipline a body of the population into the frames designed for them. If this principle was the only one defining the criteria concerning Muslims, it would be plausible that certain Muslim organisations would have met the criteria. It seems Muslims have not failed for lack of trying (Jonker 2002, 2003). Rather the insight from Bourdieu is of particular relevance here as it becomes clear that the impossible standards are institutionalised "to consecrate or legitimate an arbitrary boundary, by fostering a misrecognition of the arbitrary nature of the limit and encouraging a recognition of it as legitimate" (Bourdieu 1991, 118). The consequence of this kind of examination is that it does not concern the Muslims, but rather is a process of institutionalising and protecting the existing order in Germany. The division is indeed arbitrary, but the line drawn between Muslims and Christians is the most important division, in

that it passes unnoticed, because it separates those who are subject to it from those who are not (Bourdieu 1991B, 118-119).

In this context, Gerdien Jonker (2002) has put forth a critical analysis, which demonstrates exactly that it is only those Muslim organisations willing to transform themselves and conform to the arbitrary standards, and thereby implement the Christian community structures, that are even subject to the examination. It is their attempts and achievements that are measured and graded, while those Muslim organisations that do not transform themselves and insist on their legitimate Muslim identity can never be subject to the examination for the status of corporation under public law. Jonker's analysis furthermore demonstrates that this division is driving a wedge through the Muslim community:

> "The wish to obtain the right to enter schools and provide religious instruction is a powerful motor indeed. It has set in motion forms of religious self-organisation that are foreign to the Islamic tradition. It also created a new divide among Muslims themselves. On the one side there are the orthodox believers, those who are engaged in more intensive forms of religiousness and willing to devote their lives to a mission. Through the building of Christian-type community structures they hope to satisfy the majority society and gain acceptance. Even if they are treated with suspicion, in the eyes of German majority society these Muslims form the centre of Muslim religious life as they aim to meet the legal demands. On the other side, there is a new periphery emerging. It consists of individuals who do not want to be represented – especially not by zealots that, in the eyes of what might be considered the Muslim majority, mightily 'overdo' it and in any case do not represent 'normal' Muslim faith. […]
>
> This is the trap that the German legislation has set up, and it is still likely to function. On the one hand, legislature has set up rules for the acceptance of new faith communities. In turn, these set into motion the building of a new centre and a new periphery, forcing activist believers and secularised Muslims into two different camps. On the other hand, the legislation made the demand for loyalty – a rather vague notion that in public discourse seems to comprise both the legislation, the government, and German identity"
>
> (Jonker 2002, 44)

As is well-known, so far no Muslim organisation has been granted the status as corporation under public law. The attempts so far have furthered disunity in the Muslim community. It is clear that, if ever the Muslim organisations were to meet the structural standards set up for them they would be perfect Germans, which by default means being as Christian Germans. This again is, to many Muslims, utterly incompatible with being Muslim.

6.4 Tactics of power

In the religio-organisational microcosm of the German Islam Conference, the Ministry of the Interior was in a powerful position to use a number of specific tactics. These are deliberate and calculated actions or events that take advantage of opportunities offered by the gaps within the structures of the conference, specifically, and the religio-organistional field, generally. Werner Schiffauer (Schiffauer 2012) has demonstrated in his analysis that three such tactics were applied in order to undercut the position of Muslim organisations. This was done firstly by denying the representivity of the German Muslim umbrella organisations, secondly by controlling the operational procedures of the conference and thirdly by keeping the records and writing the conclusions (Schiffauer 2012: 367-70). Schiffauer is not amicable in his critique of the Ministry of the Interior and in what follows his analysis of the three tactical instruments is examined a little closer.

6.4.1 The dogma and myth of representivity

On the first point of critique, Schiffauer exposes the non-corporation by the Ministry of the Interior regarding the representative position of the Muslim organisations in the conference. With reference to the balance of the composition of the conference, the Ministry of the Interior invited a number of individuals with a Muslim background to occupy a third of the seats available. This attempt at balancing the conference was made by reference to a 2009 report by the Federal Office for Migration and Refugees, which showed that only about a third of the respondents had declared themselves as Muslims. These were respectable individuals but did not represent anyone and spoke only as individuals. The objective, Schiffauer maintains, was to level and to undercut the voice of the organised representatives. As some of the individuals were known critics of organised Muslim life, Schiffauer concludes that, "the authorities followed a plan by which certain critics on the one side and the representatives on the other side would neutralize each other so that the previously defined line of action of the Ministry of the Interior could now appear as a rational compromise" (Schiffauer 2012, 368).

This denial of the representivity of Muslim organisations is especially problematic in the light of the repeated demands by the state for the Muslims to organize properly as one single partner (Schiffauer 2012, 368, n. 8). Then as the Coordination Council does present itself as the representative partner ready to negotiate recognition on behalf of the Muslims, the State institutions disqualify the very notion of a single representative body of Muslims. Mournir Azzaoui has documented this change of position on the representivity of Muslims and he calls the question of representivity a dogma that is invented for the occasion (Azzaoui 2009, 2010). First of all, it has no basis in law and nowhere else

is representivity a demand. Secondly, in the reports on which the Ministry of the Interior base their criticism of the Coordination Council, there is no distinction between Muslims and other immigrants from the Muslim countries. Thirdly, if true representivity was to be accomplished, Azzaoui argues, why not invite the hundreds of Muslim student organisations, youth organisations and women's associations to the table (Azzaoui 2009). His fourth and last argument is common sense politically and he maintains that the failure to develop 'a Muslim representation' is because representation in Germany is a political issue and is left to the political parties in the democratic institutions at local, *Länder* and federal level (Azzaoui 2010, 4). Ultimately, the tactical maneuvering by the Ministry and the politicians has "led to a large reduction in trust and de-motivated Muslims in general to conduct further organizational changes to adapt to the German religious constitutional law" (Azzaoui 2010, 5).

Seen in the light of the structural attempts to discredit organised Muslim positions, it becomes clear that representivity as such has a very important dual power as applied by the representatives of the Ministry of the Interior. Firstly, keeping the myth alive of the needed religious representivity posed an ambitious goal to reach and thus Muslims exhausted significant resources to demonstrate that they were like the other religious communities in this regard. Secondly, with the question of representivity it was easy for the government representatives to keep moving the goalposts on the Muslims and keep insisting discursively that the Muslims did not meet the standards. Quoting from a 2009 article available from the magazine that the German Islam Conference published, titled "Muslim Associations: New Figures, But No End to the Debate," it becomes clear that the repeated questioning of the representivity of Muslims discursively denies this very representivity. "The majority, a half, or less than a quarter? For how many Muslims in Germany can the Muslim associations speak? Various figures have been bandied around for years on members, mosque attendance and Muslims for or against the claim of associations for representation and recognition. The study 'Muslim life in Germany' provides new figures … but no end to the debate" (DIK magazine, 2 October 2009). As long as the debate is kept alive the problem remains and the representivity needed to gain influence in the German Islam Conference and needed for the coveted status of corporation under public law remains absent.

6.4.2 Power over conference procedures

The second point of criticism championed by Schiffauer is the very tight control over the operational procedures of the conference (Schiffauer 2012, 368). Not only was the composition of the Conference defined single-handedly by the Ministry for the Interior, but also the agenda, the topics of

discussion and even the structure of the sessions were defined by the state representatives.

Schiffauer notes that the unilateral concern with the topics of discussion and the procedures was especially worrisome with regard to the theme heading of security. Although the Muslim organisations invited had repeatedly suggested that under the heading of security issues, the problem of the security of mosques and the security of daily life of the communities associated with the mosques should be a topic under the security agenda. However, as Schiffauer observes, "the proposal was rejected as the issue of the whole circle of discussion was to discuss the risks caused by the Muslim communities rather than the threats they are exposed to" (Schiffauer 2012, 269; Shiffauer 2008).

What is at risk are the privileges that are to be granted to Muslim organisations if they successfully adapt to the demands of the constitution and the courts and eventually receive the coveted status as public law corporation. With this comes influence into the core German formative institutions, such as protection as legal persona, influence on school curricula, recognition and representation in different public institutions and so on. Frank Peter notes that "among the political establishment today, there is near consensus that the German state has long failed to sufficiently attend to the question of Islam and, in this way, has neglected its duty to protect the security and well-being of the German population" (Peter 2010, 127).

The issue of procedure and the concerns with security and risk are very much interrelated. Referencing the discussions from Chapter 2, the insights from Ewald, Hatch, and Bourdieu may cast some light on what is at stake in German Islam Conference. From an institutionalist and organisational point of view, Hatch (1997) argued that organisations expose themselves to risk if they cannot adequately respond to the changes of their environment. Looking to the Ministry of the Interior and the organisers of the German Islam Conference, exactly the inadequacy of integrating and engaging in dialogue with Muslims and Muslim organisations over the past thirty years was now posing a considerable risk. As social organisations and institutional guardians of the values of the German people, both the Ministry of the Interior and Federal Office for the Protection of the Constitution were now struggling to remedy this oversight. From a social point of view, Bourdieu maintained that there is no greater risk than the exposition of the very identity and definition of core values, and according to their own analyses this was what the two state institutions were facing. Risk is the calculated potential of loss of capital and, as Ewald argues, norms with their techniques of building divisions in society are a procedural way of limiting risk and insuring society against the negative impact when destruction does occur (Ewald 1991). As Bourdieu suggests,

norms may limit the exposure of core values to unwelcome change with the divisions of limited space, hierarchical levels and social compartments they produce to maintain disaster. In addition to this, Ewald has a focus on the normative imperatives and moral orders as expressions of procedure that will keep the adherents out of harms way. Under threat of direct and indirect sanction, the normative power of procedures are social insurance technologies that guarantee that if they are followed to the last detail, then the desired result will occur and nothing bad will occur.

In this light it becomes clear that with the German Islam Conference the Ministry of the Interior and Federal Office for the Protection of the Constitution are trying to minimize the risk that they feel exposed to by immigration and by the permanent presence of Muslims – to say nothing of the Muslim organisations that might prove any threat, imagined or real. The procedures of the conference are put in place to minimize the risk of the conference being a failure, which would in turn mean that the politicians, the state institutions and the general public would be exposed to a privileged and empowered Muslim body in Germany. Rather, the straight and narrow procedural path could not be strayed from under any circumstances.

6.4.3 The power of the narrative: keeping record and writing conclusions

In the third of his criticisms of the structural tactics employed by the state representatives in the German Islam Conference, Schiffauer points to the insistence of the authorities to write the proceedings and conclusions of the thematic sessions and the general meetings.

Control of the narrative of the German Islam Conference is a significant source of symbolic capital to control, as it will keep the Muslim organisations in line. The framing the outcome and the conclusions are made against a backdrop of immanent Islamic extremism and continuously relates to the security agenda-driven narrative of a constant threat of Muslim organisations subverting the constitution. Against this implicit misrepresentation of the motives of the Muslim organisations in Germany, the state representatives are forcing the Muslims to commit to the proceedings and conclusions of conference. Any criticism of details or disengagement and withdrawal from the conclusions will be seen in the media and in the public as support for the framed narrative of the subversion of the constitution, and will come at too dear a price for the Muslim organisations.

6.5 Conclusion: From "Muslims in Germany" to "German Muslims"

Applying the analysis of Frank Peter, the governable difference in the religio-organisational field in Germany with regard to Muslims is

embedded in the motto of the German Islam Conference, “Muslims in Germany – Muslim Germans” (Peter 2010, 130). All of the strategies and tactics analysed above are put into operation in order to limit the manoeuvrability of Muslim organisations and to define the position available for them within the religio-organisational field in Germany. Here, they must conform to the norms and standards of adapted Christian community structures. “The gap separating ‘Muslims in Germany’ from ‘German Muslims’ is identified by politicians with reference to a number of norms which Muslims today do not fulfil sufficiently” (Peter 2010, 130).

The logic of representation as Bourdieu had proposed it still holds its symbolic power over the Muslims in the religio-organisational field in Germany. While the credentials explicitly given by the invitation to the German Islam Conference are made to look authentic, rather it is a division made between different groups of Muslims in Germany. In Germany, there are those who have the status of public corporation and those who do not. Muslims belong to the latter of these groups. Yet even here, there seems to be a division within the Muslim community. The division is between those invited and those not invited, but this divison is only made to draw the attention away from the coveted recognition, which remains unavailabe. The struggle of the field in German is – like the Danish – layered, but the hierarchy is more obscure and more difficult to manage.

However, as with the power of the norm, this division in the Muslim community is not the most significant one. This is merely a division or examination between those qualified and those not. Rather, the true distinction – or most significant division – is between those who will adhere to the entire system or field or those who will abandon it – between those who will struggle for a stronger or weaker position and those who do not even address themselves in the field.

As seen from the interpretations of the German Islam Conference, there is significant ongoing academic effort to perceive and understand what is going on and where things are going in the dialogue. This reveals that there is plenty at stake and it underscores that German Islam Conference is a sort of microcosm or modelled representation of the broader changes and challenges in German society. It seems that this is where they are breaking new land with regards to the fundamentals of the German identities and values. As was demonstrated, this does not happen without significant costs to the Muslim organisations as they are examined and scrutinized in the light of the governing norms and it is not without significant risk to the core values and beliefs of the German nation.

Max Weber said of political change that it is ”a slow, powerful drilling through hard boards” (Weber 2004/1919: 93) and that when striving for change and ideal goals through political means, they act in the name of an ethics of responsibility and make use of violent methods. In so doing they

jeopardize the 'salvation of their souls'" (Weber 2004 / 1919: 91). As the question of representivity so nicely reveals, the change that Muslims are waiting for in Germany is political in nature and the lesson from Weber remains that it comes only in excruciating increments to those who want it. As Frank Peter's analysis nicely reveals, the 'goal of the DIK is to change how German Muslims understand themselves as Muslims in the context of Germany.' To both the state representatives and to the conservative forces who oppose the coming of new norms and who risk the renegotiation of identity and to the Muslim organisations engaged in structuring and organising their whole future existence, it seems a small comfort that in the process something of the soul may be lost. However, to all those engaged in the German Islam Conference and to all those who expect anything from the dialogue on Islam, state and religion in Germany, may they remember that the methods of all struggle – in the religio-organisational field as well as elsewhere – is violent.

The result of the struggle, however, is change.

Chapter Seven

Muslim Alternative Dispute Resolution in England and the power of symbols

7.1 Introduction

On 7 February 2008, the Archbishop of Canterbury, Dr. Rowan Williams, gave a by now rather infamous lecture, which under the title 'Civil and Religious Law in England: A religious perspective' (Williams 2008) addressed some rather hot-button issues and made the so-called 'Shari'a debate' peak. In England, the lecture addressed the broader problems that arise from the clash of legal needs and norms when religious groups relate to the civic English legal system and find that the laws do not take religious motivations and practices seriously (Williams 2008: 262). Needless to reiterate, the lecture – and the BBC interview the same day – sparked a number of calls for the Archbishop's resignation and kept a public and media driven debate alive for several months, which in turn has resulted in significant political and academic attention (Bano 2008; Blackett 2009; Ballard, Ferrari, Hoekema, Maussen and Shah 2009; Bowen 2010; Cumper 2011; Douglas et al 2011).

Much has been said and written of the Archbishop's speech itself and there is plenty of public and scholarly debate on the matter (Bano 2008, Shah 2009, 120), but some of the most iconic of his remarks were drawn from the BBC interview where he demonstrates that the matter of recognition is at the heart of the issue: "... certain provision[s] of Sharia are already recognised in our society and under our law; ... we already have in this country a number of situations in which the internal law of religious communities is recognised by the law of the land as justified conscientious objections in certain circumstances in providing certain kinds of social relations" (BBC 2008, 07.02.08). Not only did the Archbishop give a precise and nuanced reading of the current legal status of the internal law of religious communities, which Lord Phillips, then Lord Chief Justice, concurred in a speech of his own in July 2008 (Phillips 2008), but he also argued a wider demand for recognition of religious law from the state. Both the religious communities and the state may benefit from a constructive mutual interest in matters of religious concern. That 'something other than the British legal system alone' (Williams 2008, 262) which the religious communities relate to is key in the attempt by the communities to define and redefine its norms and its collective. The Anglican community in and

around the Church of England and the many other religious communities in England stand to benefit from a furthered and nuanced view of the complex religious, ethical and legal norms that remain intertwined in the internal affairs of religious communities. A non-recognition or misrecognition on behalf of the state as understood by multiculturalists like Charles Taylor (Taylor 1994: 25-26) and understood by Bourdieu as a symbolic power grab and as a form of oppression will lead to a counterproductive view of Shari'a and Muslim norms broadly understood. Although the state does not do this deliberately, the Archbishop's argument seems to be that it falls to him and the Church of England to argue the case of proper recognition of these issues, because the Church through its established position speaks on behalf of all religion. As argued in Chapter Two, the misrecognition of religious groups and their normative cores are – according to Bourdieu – a first step towards symbolic violence and subversive struggle in the religio-organisational field. The extraordinary public and academic attention given to Shari'a these last years is symptomatic of this emerging struggle and making anew of iconic Islamic norms and Muslim identities. As such, the Archbishop's speech was occasion for criticism of Shari'a rather than reason for it and did little more than light the spark (Cumper 2011).

One of the reasons for this increased attention is that the issue of Shari'a in Europe is very complex, difficult to make sense of, and very easily misunderstood. The Archbishop is well aware of this and quotes Oxford Professor of Contemporary Islamic Studies, Tariq Ramadan, who in his *Western Muslims and the Future of Islam* points to the fact that "… In the West, the idea of *Sharia* calls up the darkest images of Islam: repression of women, physical punishments, stoning, and all other such things. It has reached the extent that many Muslim intellectuals do not dare even to refer to the concept for fear of frightening people or arousing suspicion of all their work by the mere mention of the word" (Ramadan 2004, 31; Williams 2008, 263). The Archbishop quotes only the first of these two sentences, however, and the speech does exactly that which is the object of fear in the second. So much stronger then, seems the images of darkness and the deficiency of Islam, when the discussion turns to the so-called Shari'a councils with their assumed subversions and parallel legal systems.

The identification of Shari'a as given by Ramadan resonates not only mis-recognition but a deliberate symbolic struggle that – as will be shown in this chapter – is a catalyst of Muslim production of clear markers of identity, reasserted norms and a strong continuous production of religious iconic symbols in their everyday life. There is a sense in both interview material and academic literature of a potential clash of conflicting norms that will impact how people of faith resolve conflicts in family matters. This clash requires critical investigation. Why – for example – do some Muslims and Jews address their legal needs to the Imam or the Rabbi, and

what difference does it make to them? From the perspective of the established legal systems some concerns may rightly be raised, i.e., how does this impact the rule of law, for the principle of equality before law, not to mention the expectation of equality of justice in a modern democracy? From the perspective of both the Muslim communities and the Shari'a councils themselves, what supplementary functions and what particular needs cannot be fulfilled by the established legal system? What other legal, ethical and religious needs are heeded or performed by the Shari'a councils?

The ambition of this seventh and penultimate chapter is neither to endeavour an explanation or introduction to Shari'a nor to educate on how in a European context Shari'a is to be properly understood by both Muslims and non-Muslims alike. Rather, this chapter takes the opportunity of the complexity of the issue to address the structural position of Shari'a councils within the breadth and depth of the religio-organisational field. In doing so, the chapter unfolds an analysis that will maintain the complexity of the issues concerning Shari'a while at the same time opening up for an interpretive approach to the symbolic performance of the councils. It becomes clear that the Shari'a councils in a highly institutionalised context need to navigate the difficult structural environment flanked by the Muslim community, the men and women who address the councils and the wider public. It is an exposed position and it holds both risks and potential rewards. On the one hand, the religiously motivated legal dispositions of the Muslim community provide both opportunity and necessity for institutions such the councils to address family matters, divorce, inheritance, private international legal matters and ad hoc conflict resolution and arbitration. All of these issues are community sensitive and the Shari'a councils depend on the ability to perform a desired service and function. On the other hand, the two-fold normative structuration from the formal legal system and the informal popular debate force the Shari'a councils to justify, legitimize and repeatedly explain themselves and their purpose. Between these two ends the contestations surrounding the councils are frequent and the Shari'a councils seem to hold very difficult positions in the religio-organisational field in England.

The argument of the chapter maintains that much of the trouble and many of the misunderstandings surrounding the councils must be understood not only within the structuring analysis championed by Bourdieu, but also in the light of the active institutional production and continual reproduction of new Islamic and symbolic norms. The production and reproduction aspect is particularly important to the analysis as it demonstrates that not only in spite of, but due to the structurally challenges of position and the lack of conventional capital resources, the Shari'a councils and their communities are producing a stronger and more resilient

religion. It seems to be a logic that counters the prevailing one, which is predominant both amongst a host of non-Muslim observers and to Muslim men, namely that Shari'a disadvantages and dominates women financially, socially, legally and religiously. However, the argument has been made by the academics who have done detailed analysis (Bano 2004, Douglas et al 2011, Walker 2012), by many of the Muslim women (ibid.) and key Muslim observers (Birt 2011, Ramadan 2011) and by non-Muslim religious leaders and observers, primarily Hindu and Jewish (Patel 2011, Wittenberg 2011), that the Shari'a councils perform a function solicited by the women in particular to strengthen their faith, to empower them and to the perfection of their religion (On the virtues of perfection of religion, see Murata & Chittick 2000).

The chapter returns to one of the classic Bourdieuian arguments, namely, that of the structural power of the resignification of symbolic capital, which was put forth in section 2.5 of Chapter Two. It seems that in addressing the Shari'a courts, the women are at a more or less favourable rate exchanging financial and formal normative capital against symbolic and informal normative capital. In doing so, *mahr* may be forfeited and some women may freely choose a less favourable legal position, but there seems to be a significant gain in symbolic and religious power and capital. Not only are the women socially and religiously re-established as seen from their communities in the encounter with the Shari'a council, but the Shari'a council becomes the producer and re-producer of redefined Islamic norms.

For the analysis of this chapter much information and data is drawn from the growing academic literature and surveys on Shari'a councils in England. Most prominently, perhaps, Samia Bano's dissertation from 2004 was one of the first and most extensive studies of Shari'a councils and the construction of identity of South Asian Muslim women, who address these councils in family matters such as marriage, divorce, and matters of custody and marital assets. Bano's work was not the first done on the Shari'a councils nor on religiously based mediation (Poulter 1995, Mir-Hosseini 2000, Shah-Kamezi 2001), but her accomplishment is a very thorough anthropological investigation of the relationship between Muslim Pakistani women and a select group of Shari'a councils in England. From the point of view of the scholarly field on Islam in Europe, she was integral in putting the Shari'a councils on the map amongst scholars of legal pluralism and sociology of religion. On a critical note on previous studies, she says that these "fail to achieve the active engagement of women in developing strategies, negotiations and interrogation spaces that challenge the hegemonic power inherent in both official and unofficial law" (Bano 2004, 152). Following her, the literature on Shari'a councils grew, but it was the speech by the Archbishop that gave the religiously based dispute resolution a public and highly contested profile. With the speech, further

academic study and publication on the subject has increased many fold (Bano 2008, Williams 2008, Blackett 2009, Bowen 2010 & 2012, Shah 2009 & 2010, Christoffersen & Nielsen 2010, Cumber 2011, Douglas 2011, Douglas *et al* 2011, Walker 2012, just to mention a few). Still, only a relatively small number of these have actually done fieldwork within or on the councils themselves. This small number of studies inform the present chapter.

Closely following Samia Bano's study (2004), Tanya Walker conducted in-depth interviews from 2009 to 2011, observed sessions and did case-by-case studies of four of the most significant Shari'a Councils in England (Walker 2012). Walker's specific focus was the Muslim women who addressed their legal and religious needs to the courts. Walkers approach is ethnographical and from the perspective of the women she challenges the assumptions of power and authority that cling to the courts. Inspired by Saba Mahmood's *Politics of Piety* (2005), which investigates the deliberate strategy of structural subversion within the field of power by Muslim women in Egypt, Walker's research suggests that Muslim women in England are applying calculated tactics of power in addressing the religious councils. In spite of the women's refusal of the councils' authority, they address themselves nonetheless. This is done, firstly, to resolve their legal issues, but secondly because their communities believe in the authority of the councils. As Walker explains, "the women attempted to use processes that they assumed were held as authoritative by their communities, in order to govern and to manipulate the responses of those communities in line with the women's own desires" (Walker 2012, 184). For the present purpose, Walker's ethnography informs the sociological dialectics between the women, the councils and both the narrow Muslim community and the wider public community.

Gillian Douglas and colleagues from Cardiff Law School undertook to investigate religious mediation at three different religious courts and published their most significant findings in *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts* (2011). In order to remedy some of the lack of knowledge of how religious courts operate, the report introduces the general status of regulation of religion in England and Wales before turning to the Jewish Beth Din in London, the Shariah Council at Birmingham Central Mosque and the Catholic National Tribunal for Wales in Cardiff. Especially, the question of jurisdiction of these courts is explored and evaluated in order to compare with and distinguish from the jurisdiction of the civil legal system.

After attending sessions of several of the Shari'a councils in England, John Bowen published a book on *Blaming Islam* (Bowen 2012) in which he looks at the relationship between Shari'a councils and the English law. Here, and in the 2010 and 2012 articles, he studies the reception and

discursive context of the Shari'a councils and seeks to actively debunk a number of myths surrounding the councils and the public misconceptions about Islam. From a structural point of view, the question of recognition of the councils by the English civil courts seems to be at the core. His results from studying the civil courts and the religious councils suggest that "… tribunals provide an open and institutionalized framework to encourage a convergence of Islamic norms with English law" (Bowen 2012, 92). Bowen is expected to publish the full analysis of his results on Islam and Shari'a in England in the near future.

To these four specific studies, the RELIGARE material on the United Kingdom and the interviews conducted by Dr Prakash Shah and Mr Ashraf Ul-Hoque in 2011 are added as basis for the analysis of the chapter. From the interviews with key informants and elite profiles within the religio-organisational field in UK are drawn a substantial number of the evidential quotes cited here, and the evidence therein points to the field's reception and the position therein of the Shari'a councils. As a contrast to the evidence and research drawn from the likes of Bano, Walker and partially from Douglas *et al*, the RELIGARE material views the Shari'a councils from the structurally objective point of view, by which it becomes apparent how the Shari'a councils impact the wider field. As such, the point of view of the RELIGARE interviews is akin to that of the Archbishop, the Chief Justice Phillips and the observers from the legal system, which includes Knights (2007), Blackett (2009), Shah (2009) and to a certain extent also Douglas *et al* (2011).

These studies, articles and reports inform the basis of the analysis in this chapter. As such, no original data is presented here, but rather an interpretative exploration of the recurring question 'Why do Muslims take their disputes to the Shari'a councils'? (Walker 2012, 54) is given with particular emphasis on the implications for the 'religio-organisational field'. The material gives evidence of the position of the Shari'a councils as seen from the councils themselves, from the women who address them and from the local Muslim communities that draw normative identity from the councils. As will be argued throughout the present chapter, the position of the Shari'a councils is symbolically iconic and central to the local communities as brokers of appropriate conduct and as setting the standard of epitomic Muslim identity. As such, the Shari'a councils may be understood in part as conveyers of legal resolution to conflicts of personal and family law, but also to a substantial degree as institutions of Muslim norms that protect the significant values of the community. So much so are these councils brokers of norms that they can even be understood as normative signifiers of the common values and thus themselves gain a symbolic or iconic power both within and outside the community. All this, of course, generated within the compartment or subsection appropriated for

mediation, negotiation and arbitration within the broader religio-organisational field in the UK.

The chapter first explores how Shari'a is understood and misunderstood (7.2) and attempts to give context to the transportation and transformation of Islamic norms from a distant time and place to the present modern and European context. Based on this firmer understanding of Shari'a, the chapter turns to introduce the Shari'a councils (7.3) and to investigate how, with procedural precautions, these are navigating the dangers and opportunities of their environments. This of course begs the questions of how the Shari'a councils appropriate their Islamic norms and put them to use as arbitration in the context of the English legal system (7.4). From the perspective of the Muslim community and wider environment and society (7.5), the Shari'a councils hold a much contested position and have recently become the object of specific legal measures, as is seen by the bill proposed by Baroness Cox. The chapter concludes with a discussion of the resignification of the Islamic norms and the reproduction of Islam in the English context (7.6).

7.2 How Shari'a is understood and misunderstood

In order to properly assess what Shari'a is in the context of Shari'a councils, of the European legal systems, and in relation to the religio-organisational field, an apt and inclusive understanding of Shari'a must be discussed. There is no agreement of a single definition of the term Shari'a, but it is commonly thought to be the body of codes, standards and criteria of Islamic norms given on the basis of primarily the two core Islamic sources of knowledge: the divine revelation given in the Qur'an and the Sunnah-example of the Prophet drawn from the many subsequent Hadith-collections thereof. In turn, this has been developed in later Muslim generations by the different bodies of legal and theological doctrinal scholarship to become the Islamic law, often associated with the word Shari'a. From the Arabic root, the word Shari'a denotes a 'path that leads to the spring,' (Ramadan 2004, 31) which in the context of the legal codes and theological ethics is understood to be the right path of conduct that leads to the metaphoric spring of salvation, justice or peace – that is, to proper Islam (Kamali 2008, 2). This, however, has in history of Islam been understood differently in different spheres of life. Firstly, in its outset Shari'a gives explanations to the concepts of creation, existence, life and death and directs conduct of a Muslim's way of life. This general understanding of Shari'a is concerned with the values and good of Islam and assumes a theological or ethic character. Secondly, from this is derived the detailed body of principles for understanding Shari'a, which is known as Fiqh, or Islamic jurisprudence. This serves to bring the message of the

Prophet forward to deal with the problems of Muslims of a new day and age. The directives and principles of the Prophet have been scholastically refined over centuries by different jurisprudential schools and as such constitute an ongoing human effort known as Usul al-Fiqh, or the legal theory of Islamic jurisprudence. This is the continued efforts to produce law as based on the Islamic legal sources of which the Qur'an and the Sunnah are the primary ones, but to which later generations have added consensus of the scholar (Ijma) and the analogy of new problems to the existing law (Qiyas). According to Norwegian Historian and Professor of Islamic Studies, Knut Vikør, Shari'a must be understood as "a body of sources of revelation and a methodology for making rules from these sources" (Vikør 2005, 1), which means that validity and applicability does not derive from "any decision from a parliament or council, but is the result of individual efforts by the scholars working with God's revelation" (Vikør 2005, 3).

Taking the study and application of Shari'a into any contemporary context, European or otherwise, warrants a number of warnings – or rather, calls for nuance – from scholars of Shari'a. Being subject as it is to misunderstandings and prejudice, as the examples from section 7.1 show, any operational understanding of Shari'a must represent it earnestly and prudently. This means maintaining nuance, taking heed of warnings and pitfalls, satisfactory breath of the representation, meeting complexity with requisite variety (section 2.5) and avoiding simplicity, stereotypes and reductions to essentials.

In an attempt to produce such appropriate nuance, contemporary scholar on Islamic law and jurisprudence Mohammad Hashim Kamali reference Joseph Schacht and his understanding of "… Shari'ah … as the core and kernel of religion and the essence of Islam itself" (Kamali 2008, 1). Avoiding such simplification and presenting a detailed analysis, Kamali shows that Shari'a understood narrowly as legal code finds little basis in the sources. He maintains that Islam is primarily faith and Shari'a moral code (Kamali 2008, 5), while the Islamic law and the legalistic content of Shari'a are secondary aspects. Kamali strongly warns against 'the total emphasis on conformity to rules and statements … that designate Islam as a law-based religion, a nomocracy and so forth, and not enough emphasis on the meaning and purpose of Islam and integration of its values in one's conduct" (Kamali 2008, 6). Such a warning is echoed by McGill Professor of Islamic Law, Wael B. Hallaq, who takes the cultural and conceptual ambiguity of the Western term 'law' to be "… responsible for a thorough and systematic misunderstanding of the most significant features of the so-called Islamic law …" (Hallaq 2009, 1-2). They both stress that Islamic law only becomes law through the interpretation, application and human cognitive endeavour.

In a European setting and taking note of such frequent misunderstandings of Shari'a in the public debates, Tariq Ramadan adds to the depth of understanding Shari'a by adding his warning not to simplify the comprehensiveness of Islam and the extent to which Shari'a as complex of norms influence the lives of Muslims (Ramadan 2004, 33). Comprehensiveness does not mean that Muslims are incapable of integrating into secularized societies, but rather that "*Sharia*, insofar as it is the expression of the 'the way to faithfulness,' deduced and constructed a posteriori, is the work of human intellect" (Ramadan 2004, 34). Ramadan, summing up his careful distinction between human and divine affair, spell out his position on the sociological nature of both religion and Shari'a: "The 'way to the source' is never confused with the Source itself: the latter declares the absolute and the universal outside of time, but everything along the way must consider itself in time, in change, in imperfection, immersed in the reality of humankind" (Ramadan 2004, 37).

Taking the consequence of Shari'a as an ongoing historical institution and production of human endeavour, Wael Hallaq has in his impressive body of work – of which *Shari'a. Theory, Practice and Transformations* from 2009 is a prime example – given a crucial lesson and warning about understanding Shari'a from a 21st century European perspective. Hallaq distinguishes between the 'systemic components of Shari'a' and the 'other contingent features that vary from time and place' (Hallaq 2009: 15). The first of these two – 'the systemic components' – is his primary concern and he gives a detailed and accurate historical narrative of the structures of authority and the discursive and cultural practices that are integral to Shari'a. Of relevance to the present concern with the Shari'a councils of contemporary England, these include the function and modality of the legal system in its complexity, which defines Shari'a in its particularities. The critical institutional functions within the system – or the critical positions with the field, as Bourdieu would say – include the "… jurisconsult (mufti), the judge (qadi), the author-jurist (musannif), the law professor (shaykh), the notary (shuruti), the court scribe (katib), and several other 'functionaries' who were constants insofar as their *structural* performances were concerned" (Hallaq 2009, 16). These functions constitute, according to Hallaq, "… the highest achievement in practicing, performing and living the Shari'a" (Ibid.). However, the second of the two, the 'other contingent features' as mentioned above, have substantial impact on the systemity and practice of Shari'a. Referencing Foucault,[64] Hallaq speaks of an epistemic break or rupture in the system. Hallaq gives a thorough account of the

[64] Hallaq does not realise that Foucault incidentally has it from Gaston Bachelard's *The Formation of the Scientific Mind* from 1940 (Bachelard 2002). The epistemic ruptures are understood as unconscious structures that are immanent in the realm of knowledge, such as principles of division and distinction. Naturally, it is of interest to the present endeavour.

development and progression of Shari'a until the dawn of modernity, where he points to a collapse of those structures of authority and discourse that always existed within the system. These, however, 'met their structural death in the nineteenth and early twentieth centuries' (Hallaq 2009, 15-16).

This epistemic breakdown or structural death at the dawn of modernity points to the institutional collapse of the very features of Shari'a that made it possible in the first place and made it self-reproductive over time (Hallaq 2009, 15, n 33). Hallaq's analysis demonstrates that because the structurally and systemically reproductive features were destroyed with modernity, colonisation and all-important hegemonic domination of Islam before and around the turn of the 20th century, the interrelation amongst the juridical, the juristic and legal functionaries disappeared. It is now impossible for academics, scholars or Muslims to 'inspect and speak of the Shari'a's episteme" (Ibid.). Keeping with the language of Bourdieu and the neo-institutionalists as presented in Chapter Two, it seems the institutionalisation of Shari'a has broken down, which means that the historic coherence of Shari'a and its impact as a complex set of social, economic, moral and cultural norms was transformed or mediated into something else (Hallaq 2009, 545). Hallaq is very direct and not the least amicable in his description of the 'displacement,' the 'transmutation,' the 'desiccation and final dismantling of the Shari'a's institutional structures and he assigns responsibility to centralisation, codification, bureaucratization, jural homogenization and ubiquitous militarization, "which are all the props of the modern state project" (Hallaq 2009, 547). The encounter with the modern state meant the downfall and death of Shari'a and rendered it nothing but a textual residue:

> "Over the past two centuries or so, the Shari'a has been transformed from a worldly institution and culture to a textuality that not only represents the subtracted differential between the pre-modern organic structure and its entexted version, but also engages the very characteristic of being entexted in a politics that the pre-modern counterpart did not know. Which is to say that even the surviving residue, the entexted form, functions in such uniquely modern ways that the very residue is rendered foreign, in substance and function to any possible genealogical counterpart […] Profoundly epistemic and structural, this transformation was the outcome of the confrontation between the Shari'a and the most significant and weighty institution that emerged out of, and at once defined, modernity, i.e., the state …"
>
> (Hallaq 2009, 547).

Despite this very discouraging diagnosis of the desiccated and dismantled Shari'a, Hallaq does point to the transformation and 'transmutation' as the future of Shari'a. It cannot be a reincarnation of its historical self, nor can it be reinstated or reengineered to perform a function at the will of the state (Hallaq 2009, 550). The normative power of the legal and juristic

institutions of Shari'a has disappeared. However – and this is a deliberate irony in Hallaq's analysis – Shari'a itself has become a modern expression and marker of identity much more concerned with culture and politics than with law. In his analysis, he predicts that Shari'a as such an identity marker will be very enduring.

Hallaq's analysis of the dismantled key Muslim institutions of Shari'a and the epistemic systemity needed for Shari'a to function within a set of checks and balances seem to be both a criticism of those who still speak of Max Weber's *kadijustiz* and to champion the potential for reinterpretation and reproduction that still lies within the tradition of Shari'a. Weber assumes that the decisions of the qadis are "…informal judgements rendered in terms of concrete ethical or other practical valuations … Kadi-justice knows no rational 'rules of decision' (Urteilsgründe) whatever." (Weber 1968, 3, 976, quoted in Turner 1978, 109). Max Weber's well known criticism of the Islamic legal and ethical complex behind the wide label of Shari'a was exactly that the practitioners of justice, the qadi's and councillors from the shura-councils were unable to operate within the complex and resorted to dispensing justice at a whim: "… according to considerations of individual expediency" (Weber 1954: 351, cf. Rosen 1989, 58; Vikør 2005, 13-19, Shah 2009A, 82). Weber sees Shari'a in an apparent entanglement of normative principles: "… [Shari'a has] an inadequate differentiation of ethical, religious and legal norms and a low level of systematization" (Turner 1978, 111). From this it seems clear Hallaq is opposing the Weberian position. Hallaq demonstrated exactly a high degree of institutionalised systematization with appropriate checks and balances between qadis and other practitioners within the field of Islamic justice. In the light of Hallaq's analysis, it seems the understanding of Shari'a that Weber depicts is unfitting of classic Shari'a, but it is also clear that modern Shari'a is being dismantled and remains only in textual residue and in scattered practice.

It seems the insight to be taken from both Hallaq and Weber remains that the legitimate normative power of the legal and juristic institutions of Shari'a has disappeared as it once was and what only remains now is one of two possible shapes. On the one hand, Shari'a with 'no rational rules of decision,' justice according to individual expediency and is at the service of the modern nation state in its political power game, which is roughly speaking how it is applied today in Marocco (Rosen 2000), Malaysia (Jahan 1992) and Palestine (Welchman 2000). Many of these strong warnings against misunderstanding Shari'a are important to keep in mind, when understanding the relationship of Shari'a to the states across the world, Muslim or not. The reason for this remains its instrumental and political application rather than its systemic and highly institutionalised function in the service of religion. On the other hand, Shari'a can be

reapplied as an identity marker that draws the values and norms of a heritage and tradition rather than a system. As such, it is normative still, but as something symbolic, essential or iconic of the community in its new time and context.

In the context of the Archbishop's speech, it seems that the understanding of Shari'a remains split between the before and after positions of Hallaq's epistemic breakdown. The Archbishop assumes the possibility of a return to the comprehensive Shari'a, but notes that such a scenario is not yet viable. Shari'a "… is to some extent unfinished business so far as codified and precise provisions are concerned. To recognise Shari'a is to recognize a method of jurisprudence governed by revealed texts rather than a single system" (Williams 2008, 264). Somehow, the textuality governs the jurisprudence, but without the systemity. Tariq Ramadan is sceptical of the import of Shari'a norms from another time or another part of the world. Commenting specifically on demands for recognition of Shari'a in an English context and referencing the Archbishops position, he states:

> "… I see too many scholars and people just importing ideas [from the Islamic world] and thinking that the only way to be faithful is to be faithful the way we were. … Muslims should understand that they have a great deal of reassessing the priorities and what they want to achieve … This is what I said when the Archbishop said that we need to find a place for shariah; I thought that he was right from a legal viewpoint – it's open and it's offered already – but I don't think that Muslims need that today. At the end of the day, what we need, is trying to understand how Islamic references work in the West, trying to find merging processes and not parallel systems. If you have parallel systems, then it's not really your country"
>
> (Ramadan interview 2011, Hoque & Shah 2011, 37).

In responding specifically to the archbishops lecture, Samia Bano says "Muslim engagement with Shari'a cannot be understood merely in terms of the need for legal right and obligations to be reformulated to make faith-based minority communities more legally and socially inclusive" (2005) but remains a much more complex matter. It seems Shari'a may fruitfully be understood as a comprehensive and complex body of norms, which derives from human effort with divine revelation and application in most aspects of life. It requires great earnestness and prudence to approach Shari'a both academically, theoretically and practically because the law cannot simply be taken out of Shari'a and looked at independently. Shari'a councils in particular as an Islamic institution must be seen in its organisational environment that is appreciative of both the norms at play and the community needs at stake. This means that the Shari'a is to be understood in connection to its field. The religio-organisational field, as demonstrated in chapters two and four, is a subdivision of the overarching

field of power relations, and this focus on the religio-organisational is framing Shari'a in the English context. The field in question can cope with the complexity and the variety of the norms, institutions and agents, without preconceptional reduction to models and without limiting the breadth of academic disciplines in the study of Shari'a councils.

The question of what Muslims need and do not need seems to be at the core of the question of the Shari'a councils. No doubt about the fact that the Shari'a councils serve to resolve conflict, mediate and sort unofficial Muslim family matters, but in the quote above Ramadan seems to imply that resolutions for these needs have already been offered - either by way of the established legal system in England or by way of the limited leniencies already given to arbitration and mediation (Phillips 2008). Rather, the Muslim matter of understanding 'how Islamic references work in the west,' is the need at the end of the day. According to Ramadan, the needs of Muslims concern the reception, understanding, and cognitive recognition of the complex of Shari'a in the west, generally, and in the English debates on Shari'a courts, specifically. This comes much closer to Shari'a as an identity marker that Hallaq suggested and in this guise Shari'a is a good example of 'Islamic references in the West,' which has a life of its own. With a pairing of the strictly legal power of Shari'a to a new iconic and symbolic power of shari'a as an identity marker, the layers of the complex of Shari'a seem to become visible and analytically discernable.

7.3 The Shari'a Councils and the power of the procedures

The Shari'a councils in England are not something new, and even though the majority of studies made on the councils are recent, academics and commentators have made note of the community mediation in the late eighties and early nineties. Both Poulter and Badawi gave a status on Muslim arbitration in England in Michael King's *God's Law versus State Law* from 1995, with Badawi summarizing the situation: "… Having recognised that the official legal system has hesitated to solve their disputes in the context of Islamic family law, Muslims have established informal conciliation mechanisms … they interpret Islamic law according to the needs of the Muslim community in Britain" (Badawi 1995, 77; Walker 2012, 23). If, structurally speaking, the Shari'a councils can be assumed to address the needs of the community, then a closer look the councils themselves will provide insight into the Muslim community understood as a key part of the institutional environment of the councils.

Amongst the studies referenced there is a general agreement as to the overall profile of Shari'a councils in England. Each of the studies address a particular angle of the related questions of resolving marital disputes (Bano 2004), authority (Walker 2012), jurisdiction (Douglas *et al* 2011) and

association with the civil courts (Bowen 2010, 2012). Basically, the Shari'a councils are more or less formally established institutions that offer a service of reconciliation guidance, mediation, dispute resolution and/or divorce to the different Muslim communities in England. None of the studies cited gives a precise number of Shari'a councils in England. While Bano (2007) estimates somewhere between 60 and 70 larger or smaller councils, the very critical Civitas report *Shariah Law or 'One Law for All'?* (2009) asserts that there is at least 85 councils operating in England – either out of mosques or other more or less established network relations (MacEoin 2009; Douglas *et al* 2011, 28). Walker, however, takes this number to be inflated and she argues that smaller, unofficial, ad hoc groupings of local dispute resolution should be regarded as part of the everyday business of different ethnic and language groups (Walker 2012, 58-59) Together with Bano, Walker takes an interest in the 'larger, more prominent councils' which operate in the different languages and provide a number of similar services for the Muslim communities. As a rule these services include general guidance and advice, counselling and mediation in marital disputes, miscellaneous social affairs (Walker 2012, 60, 64) and 'producing expert opinion reports on Muslim family law and practice' (Malik 2009, 17). Douglas *et al* suggests that 95 per cent of their material regarding the Shari'a councils concerns matrimonial problems of one sort or the other (2011, 29). Specific to these problems, the issuing of internationally recognised Islamic certificates of divorce is the single most important service provided (Malik 2009, 17).

Walker's and Bano's focus on the more prominent councils has certain overlaps. They both consider the *Islamic Sharia Council* (ISC) in London and the *Sharia Council of Birmingham Central Mosque* (BSC). As it happens, of the religious courts in Douglas *et al* (2011), the only Muslim institution studied was the BSC, and Bowen (2012), in turn, refer to both the ISC, the BSC and in a forthcoming article on his research also to the *Muslim Arbitration Tribunal* (MAT), (Bowen, *forthcoming).* However, Bano (2004, 129 – 131) in addition looks at the *Muslim Law (Shariah) Council* (MLSC) and the *Shariah Court of the UK* (SCUK), while Walker (2012, 60 – 72) in particular looks at further at the *Family and Social Affairs Department of the Islamic Centre of England* (ICE) and the MAT. This brings the number of Sharia Councils studied in detail up to six. In due order, these six are presented here.

The *Islamic Sharia Council of Great Britain and Northern Ireland* (ISC) has its base in London, offices in Leyton and representatives across England. It was established in 1982, and deals annually with approximately 500 to 600 cases and services a diverse clientele in multiple languages. The members of the council who are involved in deliberating on cases are considered by the clients to be Islamic scholars. The ISC draws from all

four Sunni legal schools in deciding disputes and are very explicit about their rules of procedure in order to complement the work of civil courts and hoping for closer collaboration in the future (Bowen, *forthcoming*). Furthermore, the ISC is a registered charity with the Charity Commission, which means that its financial summaries and records are publically available. (Bano 2004, 131; Walker 2012, 60-82; Bowen 2012, 78-83; Bowen, *forthcoming*).

The *Muslim Law (Shariah) Council* (MLSC) is located in Ealing, London, and was one of the first institutions of its kind. The MLSC was established in 1985 and has dealt with over 3000 cases so far.[65] There are at present twenty-one Ulama, Imams, scholar and various barristers on the council and it works with the 'various schools of Fiqh in Great Britain,' which must be assumed to be both Sunni and Shi'i. It primarily provides a number of services for the Muslim community, but is very much aware of its position within the wider religio-organisational field, as it is frequently "… approached by institutions, organizations and individuals from diverse spectrum of ethnicity and faiths seeking expert opinions in accordance to Islamic Law on social, theological, cultural, political and academic issues. Solicitors and other legal bodies and authorities also approach the Council for guidelines on cases relating to Muslim families," and even helps with queries that " … are referred to the Council from other European countries where no such Islamic Council is available to help the Muslim Community" (www.shariahcouncil.org, 2012). Even thought the MLSC does not necessarily enjoy the key position both nationally and internationally, it claims, it nonetheless seems the MLSC is positioning itself strategically and availably. The MLSC operates from the Muslim College in West London, which is "a religious academic institution specialising in the study of Islam, its culture and history" and which enjoys status as a registered charity (Bano 2004, 130, 169-175).

The *Shariah Court of the UK* (SCUK) was established in 1992 and is located in Tottenham, North London. It was set up to give advice and to mediate locally, and consists of an Imam, a Muslim solicitor and three co-counsellors, who work as witnesses on behalf of the community. It is perhaps the smallest of the six councils mentioned here, and by the data given by Bano, it seems to be organised in a rather simple and straight-forward fashion, which reflects the organisational minimums of a Shari'a council (Bano 2004, 132, 182-186) or of the informal mediation of the community elders. It operates closely to the person of the imam, who in 2004 was Sheikh Abdullah and at a later point seems to be Dr Anjem Choudary. A web search reveals that most of the information available on

[65] Most of the information provided is available on the MLSC website: www.shariahcouncil.org

the SCUK is given by the critics from the far right politic, the media and the public. It is unclear whether the SCUK is currently in operation.

The *Sharia Council of Birmingham Central Mosque* (BSC) is as the name suggests located in Birmingham and has gained some attention as a council run by a majority of women as part of a crisis centre begun by Dr. Wageha Syeda. It was established in the mid-1990s and is run voluntarily with the assistance of the mosque. With approximately 150 ongoing cases, the BSC meets once a month, which is an increase in meetings since Bano's visits in 2004. The BSC explores reconciliation as a first option and if the parties are irreconcilable, it insists on a civil divorce before granting a religious one. Walker explains this by reference to the Islamic principle of public welfare – *maslaha* – and references the council, saying, "it would be to the harm of the Muslim community and to the individuals involved if they were married under one law and divorced under another" (Walker 2012, 63). Like the ISC, the BSC makes its decisions based on the four Sunni legal schools. The BSC does not shy away from tangible and practical advice to the women, who are mainly of Bangladeshi or Pakistani origin, and tries to help the women with the general direction of their lives (Bano 2004, 130-131, 149-168; Bowen 2012, 84-87; Walker 2012, 62-63).

The *Family and Social Affairs Department of the Islamic Centre of England* (ICE) is the only council in the different studies that is an explicitly Shi'a institution. The Islamic Centre of England was established in 1995 and is closely associated with a number of Shi'i organisations in England, such as the El-Khoei foundation and the Imam Ali foundation. Together, these three form the Family Affairs Committee (FAC) which draws together the resources and contacts of the wider Shi'a community. Although the ICE services both Sunni and Shi'i clients, there is a strong link to the Iranian community in England. The council provides guidance explicitly according to Iranian law, so divorcees may travel to Iran without added difficulty. For this reason, the ICE does also solemnise marriages, but the main issues dealt with remain to be marital disputes and divorces. The ICE has a wider ambition of providing spiritual guidance and spread the knowledge about Islam (Walker 2012, 64-66).

The *Muslim Arbitration Tribunal* (MAT) is the most recent of the Shari'a councils surveyed and was established in 2004-05 (or 2007, accourding to Walker), after Bano completed her fieldwork. Shaykh Faiz al-Aqtab Siddiqi is the head of a Sufi community in the Midlands where he, his late father, Muhammad Abdul Wahhab Siddiqui, and several brothers and brothers-in-law run the Hijaz College Islamic University and several affiliate institutions (Bowen, *forthcoming*). Shaykh Siddiqui had been mediating family conflicts as part of his community engagement, but together with the fellow leaders of the Hijaz Sufi community, they decided to formally set up the MAT in order to make the decisions contractually

binding. Although Shaykh Siddiqui is distancing himself from the other Shariah councils in England, Bowen nonetheless calls the work at the Hijaz community a "full-service religion and law centre for some young women …" (Bowen, *forthcoming*). It is important to stress that the MAT does not apply arbitration, as the name suggests, to family law and custody cases, because this is not subject to arbitration according to British law. Strictly speaking, the MAT and Shaykh Siddiqi work as arbiters in business disputes (Bowen, *forthcoming*) and in disputes between groups and Mosques in the Muslim community (Walker 2012, 68). Strictly speaking, alternative dispute resolution or mediation would cover marital issues and disputes (See also further in this chapter about arbitration). The MAT is one of the Shari'a councils in England that remains shrouded in imprecise media stories and accusations of public mis-representation. Most of it seems to be run of the mill prejudice and printed rumours, but it remains problematic that Shaykh Siddiqui makes almost no distinction between his acts as head of the community and spiritual leader, nor between what the Hijaz community has achieved these past thirty years and what the MAT is currently doing (Walker 2012; Bowen, *forthcoming*).

These six councils are in addition to being the more prominent, also the leading representatives of Shari'a councils in England. There is evidence to suggest that these hold the stronger positions within the religio-organisational field and that they have the most significant impact on the other Muslim institutions and the communities in their environment. On basis of her empirical work, Walker defines community rather widely, as referring "to any collective group of (Muslim) people who were associated together in the women's minds as forming their social field" (Walker 2012, 142). The social field, in turn, infers geography, kinship, and the Muslim community as a whole. The position of the Shari'a councils and the interactions with the women involved are framed within this social field as the particular interpretations of Shari'a are taken together with the community norms of law, religion and culture into shaping a wider 'field of possibilities,' which is Walker's borrowing from Foucault. This field of possible action, as Walker presents it, is drawn from the subjective intra-positional view of the women involved, and as such, is to be seen in a dialectic relationship with the objective inter-positional view taken by Bourdieu. Walker, again borrowing from Foucault, sees the women in 'relations of domination,' but taking the wider field into account, it seems reasonable to apply Bourdieu's terminology and analytical framework of structuration and distinction as presented in Chapter Two.

Walker, Bano and to a certain extent Bowen look at the structural position of the Muslim women between the community and the councils, trying to answer the question 'why do individual Muslim women living in Britain choose to take up their disputes in these unofficial fora?' (Walker

2012, 14). This is the most common approach in the literature (Bano, Walker, Bowen) and the focus on the women and their struggles is also the starting point for the study of the legal implications of the religiously motivated mediation and arbitration (Bowen, Douglas *et al*, Shah & Hoque). While Bano maintains that the community context is to be understood as linked internationally to the countries of origin in Pakistan and Bangladesh (Bano 2004, 2007), Walker accentuates the human agency of the women with the structures of subordination (Walker 2012, 33). Rather than accepting the clichés concerning the weak, forced and subjugated women, the strength of Walker's argument is that women have possibilities and agency in the structural positions they hold; "Women act to negotiate and navigate their way through these inequalities – reinterpreting, subverting, and manipulating hegemonic norms and praxis to their own desired ends in creative and instructive ways" (Walker 2012, 34). The women do not necessarily accept the authority of the Shari'a councils, but use them and address them as they act on the viable options in managing the expectations of their communities.

Bowen (2012) also notes the structural position of the women, but his focus is on the councils themselves. He argues the structural function that the councils have in relation to the women as seen from the wider society perspective: " … the shariah councils require that wives get civil divorces as well as religious ones […] They thus push the women toward the justice system, not away from it" (Bowen 2012, 87). Bano also pays careful attention to the councils and she stresses the procedural aspects of the work of the Shari'a councils. She meticulously recounts the details of the procedures of the four councils in her study, noting commonalities, variations and differences. From her findings, Bano distils a 'common' approach to granting a divorce, which takes the main applicant trough a number of stages and the council through a number of procedural steps.

A word of warning is in order before looking into synthezised procedure of the councils. Both Bano and Walker come dangerously close to an oversimplification of the procedures involved, and as was noted above in the presentation of the six different councils, they are very different institutions. They are in turn Sunni, Shi'a and sufi, and some have legal and political ambitions while others have spiritual ambitions. The main trait to keep in mind, when looking at similarities, is that these councils are diverse, mainly because they service different communities and manage very different expectations from different constituents.

Procedurally speaking, the first step towards a divorce is the initial contact. In the accounts given, there is no evidence of obligation or coercion in the use of the Shari'a councils, and emphasis is on the willingness of the community – though the council – to help remedy the present problem or conflict. This is usually done at the initiative of the

women, who are usually the ones in distress and in increasing numbers. From an Islamic point of view, men are usually easier to divorce due to the unilateral nature of the *talaq* proclamations. Divorce, when initiated by women is called a *khula*, which requires the consent and sanction by the Shari'a council. The contact is established through friends or family, who are familiar with the particular council and the first exchange of information is with a clerk or secretary at the council and made through telephone, email or done in person (Bano 2004, 133-137).

Secondly, an application is produced. The Shari'a council asks the applicants, or 'petitioners' as they are called, to fill in a detailed form stating the reason for the breakdown in the marriage, the grounds for divorce and the impossibility of reconciliation. The burden of proof rests with the applicant and the councils usually see this as an opportunity for a new attempt at reconciliation. The forms are designed to stress the seriousness and importance of the proceedings and that a khula-divorce is neither given easily nor without reason. The records reviewed by Bano reveal that the applicant takes the opportunity to state a version of the events. Commonly, they cite their husband's impotence, bigamy, abuse, threats, lies and physical harm as the main reasons and usually several of these at once. It remains the task of the council to investigate the facts of the conflict. Also, a registration fee is due before the investigations can begin (Bano 2004, 137-140).

Thirdly, an investigation into the facts and details of the conflict is launched. Typically, this begins with establishing contact to the husband and gathering his perspective. He may challenge the claims and grounds, which requires the wife to provide the proof. If he agrees or does not respond to the council, they will proceed. This includes uncovering whether civil divorce proceedings have been undertaken and establishing whether there are reliable witnesses who can testify to the breakdown of the marriage. The question of evidence draws on a long Islamic tradition and is different from council to council and often subject to an assessment in the individual case. This has a structural bias in favour of the husband to the extent that he can deliberately extend the proceeding to the suffering of the women.

Fourthly, the Shari'a council meets and weighs the facts of the application and the investigation after which the decision is made and the applicant is informed. Typically, a panel of minimum three scholars weigh the facts of the case and attention is given to the possibility of reconciliation, the validity of the marriage, any evidence of abuse, wider family and community implications or breakdown in relations, and other factors such as desertion or impotence (Bano 2004, 144). If the council does not find proper cause for divorce, this usually means that the wife must return to her husband or restate her case after a specific waiting

period in order to properly establish the breakdown of the marriage. If the council finds in favour of a divorce, it is usually a khula divorce. This is the most common result and the woman is expected to return the dowry (mahr) to the husband and forfeit any claims of maintenance (Bowen, *forthcoming*). From the perspective of the council, this is done so the husband will be more lenient, but often done at the protest of the women, who argue her right to the dowry as the marriage was valid and argue that the husband was deliberately looking for this outcome adding a financial gain to strained and prolonged process. In the case of the ICE, Bowen notes the strategic value the return of the dowry and suggests that such procedures are deliberate and increases likelihood of the husband's acceptance (Ibid., 17).

As a final part of the process, the council issues a divorce certificate, which is made so as to satisfy the Muslim community and the counterparts of the Shari'a institutions in the Muslim world.

In a discussion of the power at play in the procedures of the Shari'a councils, Walker contests the constructions of authority that the councils create (Walker 2012, 92-109). She challenges the authority and even though the councils claim to build on Islamic principles and derive their reasoning from the schools of law, she finds critical defects in the deliberations (Walker 2012, 95). Specifically, the ISC and the BSC asserted the interpretation of Islamic texts as their authoritative core, but Walker find that 'the deliberations lacked any formal procedure and appeared to draw loosely on broad maxims" (Walker, ibid.). In addition, she found "an unusual shortage of formal cross-referencing of opinions and rulings, which were rather (at best) prefaced with a general acknowledgment such as 'according to Islamic law' or 'according to the Qur'an/hadith'" (Walker 2012, 96). Walker's criticism is directed at most of the deliberations she witnessed and seems to echo Max Weber and his *kadijustiz*, which criticized exactly the fact that the deliberation of justice was informal, 'at a whim' and had no rational 'rules of decision.' She, however, takes the criticism into a contemporary context and speculates as to the motive of the lack of formality. She suggests that this is a specific strategy of the councils and a 'potentially calculated part of the power relations:'

> "The lack of clarity regarding the form and types of laws being applied work to cloud the mechanisms of power at work and the kinds of 'truth' being called upon in judgements. This hinders the ability of Muslim women who approach the Shari'a councils to question judgements or to navigate the process for their own advantage (through the strategic negotiation of legal provisions), as they do not have access to the modes of reasoning that lead judges to their final pronouncements." (Walker, 96, n. 102).

The entire proceedings – especially the investigations and deliberations – constitute a very sensitive part of the work of the councils. Any procedural misconduct has serious implications not only for the welfare of the applicants and their families, but also poses a critical risk to the work of the council. The proper procedure and conduct in establishing the case is of dire importance for the needed legitimacy and credibility. Furthermore, proper procedure is an expression of justice as seen from an Islamic point of view. Allah will judge those who judge, and the councillors are usually well aware of this. In contrast to Walker, Bowen argues that the councils are highly aware of their environment both locally within the Muslim community, nationally within the wider society and even internationally in relation to the Muslim world. "The councillors believe that the legitimacy of their outcomes, in the eyes of the British officials, British Muslims, and even overseas judges, depends on maintaining transparent and consistently followed procedures" (Bowen, *forthcoming*, 12). It seems there is an added value from the institutionalisation of councils. Discussing cases from the MAT and the Hijaz Sufi community, Bowen is not blind to the outcome for the community; "Hijaz ended up recruiting two new acolytes as the outcome of the dispute, just as Meena became a member of the community. Disputes begin with practical concerns, but lead some individuals toward spirituality" (Bowen, *forthcoming*, 9). Summing up his conclusions, Bowen speaks of 'articulating religiosity with legalism,' and he suggests that the procedural regularity and legitimacy drawn from this will be conductive to the religious development of the juridical institutions in Britain. In these perspectives, Bowen thus returns to the debate on the Archbishop and the Chief Justice with a reiterated answer "… tribunals provide an open and institutionalized framework to encourage a convergence of Islamic norms with English law. Ultimately, it is in this sense that we ought to understand the calls by the archbishop and Lords Phillips to 'recognize sharia'" (Bowen 2012, 92).

7.4 Arbitration and the institutional application of Islamic norms

In addition to pronunciation and certification of Islamic divorces, perhaps the single most defining feature of the relationship between the Shari'a councils and their communities is the promise to arbiter or mediate in conflicts.

Bano, Bowen and Douglas *et al* in particular discuss the implications of the arbitration within the Shari'a councils, whereas Walker with her ethnographic approach focuses on authority rather than the arbitration specifics. As mentioned in Chapter Four, in England religious groups are considered voluntary associations, which means that they may make rules and organise structures, which are binding upon their members (Douglas *et*

al 2011, 9). Civil courts remain therefore reluctant to involve themselves in disputes of religious law and religious family law. Religious family law has only in a few cases been treated as part of the facts of a case or as part of the special rules that concern different religious groups in England, such as the Welfare of Animals (Slaughter or Killing) Regulations 1995, which allow for Muslim and Jewish ritual slaughter. Most relevant for the Shari'a councils, however, there is in English law recognition of religious bodies through alternative dispute resolution, which has been practiced in Britain for decades and is regulated by the Arbitration Act of 1996. Equally, the social, religious and cultural aspects of Islam are (mostly) uncontested, and recognized and provided for in Britain.

The complex and comprehensive nature of Shari'a means that the different legal, theological and ethical aspects are always embedded in any partial representation of Shari'a and it means that in the restricted space available to Shari'a in the religio-organisational field in England, only a limited representation of Shari'a is available. The compartmentalisation of religion in England that was demonstrated in Chapter Four by reference to Julian Rivers' analysis of the law of organised religion (Rivers 2010, 276), leave religious organisations and institutions in a position of emerging constrains when asked to remain distinctly religious in a 'culture of equality' and 'informal pressure' (Rivers 2010, 284). Rivers is writing with an outlook on both majority and minority organised religion in England points to harrowing reality of negative liberalism, where "… religion in the secular State is entirely interstitial, playing its part in the gaps left by the law. The only question is the size of the gaps" (Rivers 2010, 332). Adding to Rivers' observations drawn from the broader religio-organisational field, the *UK RELIGARE report on Fieldwork* by Shah and Hoque (2011) observes, "… that religion is treated as a marginal issue in various, arguably 'public', areas of life …" (Hoque & Shah 2011, 2). From Rivers and Shah & Hoque, it is safe to conclude that not only the legal and administrative dispositions by the state have massive impact on the manoeuvrability of the religious organisations, but also that it only leaves the organisations two choices. Either to establish themselves in the dominated position left for them or to dissociate themselves completely from the state structures.

It is in these compartments in the religio-organisational field that Shari'a councils find their structural positions. The specific organisations and councils are left to take a particular stance in between the 'gaps left by the law' and the demands of the communities of representing authentic Shari'a on their behalf. This means that the application of Shari'a must take place in the compartments of law, such as the Arbitration Act of 1996 which stresses the freedom to knowingly and willingly enter into agreement with another party (Blackett 2009), and the Human Rights Act of 1998, which

protects the freedom of religion of organised religions to regulate their internal or spiritual affairs in consistent analogy with the Church of England (Knights 2007, 75). Prakash Shah comments further on the possibility of operating analogously to the other religious communities: "In the UK, the Arbitration Act of 1996 offers a perfectly operable system and the Jewish Beth Din have been using this mechanism for decades, but no reported case of a Muslim arbitration can be found as having been settled under its auspices although certain Muslim bodies are gearing up to use this legislation effectively, while Lord Phillips, in his speech of July 2008, certainly seems to favour this option" (Shah 2009, 85).

The compartments are not voluntary expressions of an Islamic disposition of freedoms and organisational prerogative. Rather, it seems that the room to manoeuvre made available by legislation is given analogously – that is institutionally isomorphic – to the other and more deeply rooted institutions in the religio-organisational field, such as the mediation initiatives in the Church of England, the Catholic tribunals and the Jewish Beth Din (Douglas *et al* 2011).

7.5 The structural environment of the Shari'a councils

In an analysis of the religio-organisational position of the Shari'a councils in England, it is necessary to make sense of the environment of the councils. Most of the studies do refer to the communities surrounding the councils, but none of them go deeper into the relationship between the communities and the councils. Professor of Law at King's College in London, Maleiha Malik, places the social activism that is the 'call for religious arbitration and tribunals' squarely within the context of the Muslim communities (Malik 2009, 16). In her optics, Shari'a councils are framed as Muslim community organisations and the needs met and functions performed are the needs and functions of the community. According to Malik, there is a correlation between the family law issues and the institutionalisation of the Shari'a courts which has everything to do with the interrelated triad of the councils, the women involved and the wider community.

> "Women and family law become a focus […] for traditional groups concerned with the preservation and transmission of their culture or religion because they *recreate* collective identity by *reproducing* and socialising future members of the group. … From this perspective, it becomes a critical matter that women should enter into their most intimate relationships and functions in a way that preserves the membership boundaries and identity of the whole community … Women are also often given the status of passing on the particular collective history of the tradition and its social, cultural and religious norms to the next generation. Women become a public symbol of the group as a whole …"

(Malik 2009, 19, *My italics*)

The impression from the Malik quote is reflected in the data presented by Bano. She quotes a Sheikh Abdullah, a religious scholar with the SCUK, who says, "Women nurture the Muslim family and today these roles are being undermined and destroyed with this emphasis on material wealth. Twenty years ago we would not have had so many young women walk away from their marriages as we see today" (Adbullah, quotes in Bano 2004, 137).

The reproduction and recreation of Islamic identity markers are at stake in the focus on the community that both the Malik quote and the Abdullah quote indicates. While the Muslim women are often seen as 'forced' into the forum of the councils and in the two qoutes women are made to be the carriers of the social, cultural and religious norms it seems that they often use these willingly, actively and to successfully navigate the expectations of the communities (Walker 2012, 183; Malik 2009, 18). Also, the instrumentalisation of the women on behalf of the communities denies the agency and active engagement that Walker argues so well. While Malik is correct that these norms do need to be carried and do need to be transmitted, recreated and reproduced, the women do not embody the adequate degree of institutionalisation that is required for this to make any impact on the structural position of Muslims in religio-organisational field.

Rather, from a structural point of view, it is the councils that are symbolic representations of the reaffirmation of Muslim identity and Shari'a as a complex of norms is institutionally expressed. These are the institutions that carry and protect the Islamic norms on behalf of the community. As was seen in section 2.4 of Chapter Two, norms were both common denominators, standards for the community and technologies of control and security. All three of these functions are performed by the councils on behalf of the community. They ultimately protect the community – both against itself and outside influences. It is by the discipline, the examination and the policing by the councils that the recreation and reproduction of the norms of Shari'a is made and the Muslim community as a group can define and position itself. As Bourdieu had so eloquently stated, norms is a 'principle of vision and division,' and as a consequence, the normative division that maintains the Muslim group as a whole in the self-interest of the Muslim community has been both visible and invisible. The visibility of the Muslim community is focused on the Shari'a councils and they are made to represent or signify the community. The public debates concerning Shari'a in England is a testament to this and will be explored in the next section. But the construction and constitution of Muslim identity vis-à-vis the symbolic power and position of the councils also has an invisible and arbitrary nature

to it, in that the difference and contrast needed in the positioning often comes at the price of a strict internal discipline and critique of those not Muslim 'enough,' Muslim in another and unorganised way (Jeldtoft 2012) or critical of the 'credential' invested with the councils.

Such a critical internal voice is Yahya Birt, a London convert, who is speaking to the organisational and institutional order of this within the Shari'a councils. His criticism exposes exactly that which the councils seek to hide from the public image and protect with the formalities of procedure "… shariah councils seem to me to be currently highly amateurish, disorganised, and some of the practices are not correct. Some of the people making the decisions are woefully misinformed […] If shariah councils cannot organize sufficiently, that may encourage the state to come in and regulate – which I've seen in a number of cases. In a number of our institutions, where things aren't being done properly, the state has not been able to wait; it's had to move in and regulate. It moves Muslim community leaderships and organization to sort these issues out responsibly…" (Yahya Birt interview 2011, Hoque & Shah 2011, 37). Birt echoes Walker in her criticism of the power at play in the councils and their inappropriate and generic references to the dogmas of Islam. By contrast to Walker, however, Birt's argument is entirely institutional and raises a demand that the Muslim community leadership are to professionally and sufficiently organize rather than allow the state to define the frames of the Muslim community and thereby force through regulation. This has exactly to do with the imperative of the organisational theory that calls for the solution of problems and achievement of goals by a particular distribution and management of assignments.

Seen from the wider, external environment that surrounds the Shari'a councils in England, of course the government and the other well established institutions play a significant part in the religio-organisational field. The Archbishop of Canterbury have weighed in on the Shari'a council as have the former Chief Justice Phillips, both voicing their individual points of view within their respective institutions and the wider debate. Famously, also the Prime Minister David Cameron expressed his view on radicalisation and Islamic extremism and attacked the failure of 'state multiculturalism' (Cameron 2011). Cameron is an opponent of the arbitration provisions and has jokingly said that he was 'contemplating introducing sharia law for bicycle theft' (Cameron 2008, quoted in Cumper 2011). It is a given that the issue of the Shari'a councils provoke the far right of the British National Party, but it is evident that even within the core institutions of state it is a divisive issue.

Most clearly, perhaps, this is seen from within Parliament. Criticism of religious law and arbitration, in particular, has been voiced has come both government and opposition. Baroness Falkner of Margravine, Liberal

Democrat and herself of Pakistani origin, strikes down the notion dispute resolution according to religious law: “No. Statute and case law should always be followed when possible to ensure that the law is concise and consistent. Religious law is often used by one partner to coerce the other partner” (Baroness Falkner interview, Hoque & Shah 2011, 34). Baroness Falkner’s point of view is common and it underscores the point that the compartmented space available to religion should be limited according to the provisions of the secular law of the state.

There are voices within Parliament that would close even these small compartments. Baroness Cox of Queensbury, cross-bench member of the House of Lords, has introduced the *Arbitration and Mediation Services (Equality) Bill* (HL Bill 7, 2012-13) as a private members bill to amend the Equality Act 2010. It had its second reading on October 19, 2012, and is at presently in committee in the House of Lords. The bill is to address the ‘religiously sanctioned gender discrimination’ and the parallel ‘quasi-legal system which undermines the fundamental principles of one law for all (HL Bill 7, 2012-13). The bill explicitly targets religious arbitration and makes it a crime to ‘falsely claim legal jurisdiction’. In addition, it states that discrimination law applies directly to arbitration tribunal proceedings. It also requires public institutions to inform women that they do not enjoy the full set of legal rights if their marriage is not registered by the civil legal system. It explicitly specifies that arbitration tribunals may not deal with matters of criminal law. Family law was also part of the items that the arbitration tribunals would not be allow to deal with, but as of the second reading Baroness Cox intents to amend the bill and remove references to family law. Also, the bill does not interfere in ‘internal theological affairs of religious groups’ nor ‘abnegate conscience,’ and it still allows for people “… to submit voluntarily to the rulings of any body, religious or otherwise, even if that means surrendering their rights under English law’ (Cox in ‘Second Reading,’ HL Bill 7, 2012-13).

In discussion of the law in both first and second reading, Baroness Cox reproduces some of the misunderstandings that surround the Shari’a councils in England. Firstly, she repeatedly speaks of MATs – that is Muslim arbitration tribunals –, which grossly confuses the Hijaz Community institution with the other Shari’a councils at work and gives the actual MAT significant overexposure. Secondly, she remains under the impression that the Arbitration Act of 1996 opened up for the establishment of the arbitration institutions. This is not the case as Blackett clarified above, because these have been part of English law for decades. Thirdly, there are several of the aspects of the protections under the bill that are already covered, but which the bill seeks to make clearer or emphasise. While there are these factual and substantial misunderstandings in Baroness Cox’ perception of the Shari’a tribunals, the bill and her

arguments in favour of it does reveal an important perspective of relevance for this chapter. It seems that it addresses through an instrument of law an issue that is either already covered or that an additional piece of legislation will not remedy. The problems of discrimination, misappropriation, domestic violence and so on are urgent indeed, but it is difficult to see how the bill will be a solution.

Rather, it seems that in her support of the bill, Baroness Cox goes out of her way to associate the Shari'a councils engross with a number of different crimes and she does so on a very questionable basis. In sharp contrast to the Archbishop of Canterbury, the Baroness Cox builds her argument on rumours, biased reports by think tanks and imprecise accounts from the media. In her own words, she builds on accounts that state that 'scores more Imams dispense justice through their own mosques' and 'sharia us being used informally within the Muslim community to tackle a plethora of crime' (Cox in 'Second Reading,' HL Bill 7, 2012-13). Furthermore, she holds all councils accountable for the misdoings of a very limited number of them. While Yahya Birt's critique that they may be amateurish and disorganised seems relevant, the Baroness Cox' critique speaks of Shari'a seems not to be seriously concerned with the Shari'a councils or the Muslim community in any substantial or factual way.

The debate during the second reading of the bill echoes these initial observations, but the Bishop of Manchester, Nigel McCulloch, in his response addressed the more significant problems and discrepancies of proposing this particular legislative solution to these problems.

He doubts whether there is "sufficient evidence to show that, for those Sharia councils that may be claiming false jurisdiction on criminal and family cases, making such conduct a specific criminal offence is the best way of preventing it from happening. Most religious courts are not arbitration courts so the majority of practices in these courts would be unaffected by the Bill […] the real problem may not be so much false claims to civil legality but a lack of awareness of, and engagement with, civil legality, which itself is a symptom of a wider religious alienation from state and civil society" (McCulloch in 'Second Reading,' HL Bill 7, 2012-13). This 'real problem' of Muslims alienated from state and civil society echoes Werner Menski's research on Muslims withdrawing from the civil courts and addressing their needs elsewhere (Menski 2008, 60). In turn, the wider religious alienation that is not only a trait of the Muslim community, but was exactly the problem that Julian Rivers identified. The allocation of the religious into compartments without sufficient participation and little positional room to manoeuvre seems to be the reinforcing tendency only pushing the religiously minded even further away from state and civil society. Similarly, the Bishop of Manchester voices his "concern that the legislative solution proposed in the Bill, with its implied emphasis on

Muslims and Sharia, could have the opposite, and doubtless unintended, effect of stigmatising those individuals in communities it is aiming to help" (McCulloch in 'Second Reading,' HL Bill 7, 2012-13).

From the Bishop of Manchester's remarks, it seems the bill is a response and an act of communication with the purpose of sending signals rather than making law. The number of misconceptions, misguided measures and factual mistakes aside, the bill appears to be an attempt at 'explicitly stating' that which is already law while pointing blame and unfounded accusations at the Muslim community at large. As such, the bill seems largely a symbolic 'legislative response' and a statement of values. Therefore it was a bill that gained much support during the two first readings exactly because the issues are so important. From the jurisprudential point of view that the Bishop of Manchester voiced, 'fresh legislation' seems, however, redundant.

Robert Blackett's observations from his review of arbitration echoes the Bishop of Manchester. Concluding his discussion of arbitration, Blackett states that in the debates on Shari'a there is " … an inaccurate perception as to how the current law of arbitration works, and a tendency to mischaracterise and exaggerate its effects. Before one can have a meaningful dialogue about how the law should be reformed, it is necessary to have a clear idea about what the law presently is" (Blackett 2009, 19).

7.6 Conclusion: The resignification and reproduction of Shari'a norms

"Of all Western countries, Britain has the most developed set of institutions for Islamic dispute mediation," (Bowen 2012, 74) writes John Bowen and it seems the reason for this is threefold. Firstly, the sense of Shari'a as a complex yet dismantled set of legal and ethical norms warrant a re-production of Shari'a as an identity marker of the Muslim community in England. Secondly, there is a practical legal and social need within the Muslim community, which is to be satisfied, and the Shari'a councils are providing the service required. Thirdly, there is a structural opportunity for a stronger institutional position in the religio-organisational field, which the Shari'a councils are filling. This is the general impression from the empirical studies made on the Shari'a councils that have been analysed in the present chapter.

Seen from within the community, the norms of the Shari'a councils are institutionalised and socially sanctioned, but taken from an outside perspective, the norms of the Shari'a councils are symbolic positions that articule the Shari'a complex of norms.

The Shari'a councils are indeed in – if there ever were – a structurally dominated position with very limited capital or room to navigate. In such a position, as understood from both Foucault and Bourdieu in Chapter Two

and as Walker, Malik and Bowen suggested from each of their perspectives, one of the most viable strategies is to re-signify or to re-present the constitutive norms of the community. This means readdressing the legal and ethical norms with a sanctioning power into representational iconic norms with a symbolic-confessional counter-power. Bourdieu calls this a conversion of capital, where a symbolic and cultural capital opposes a formalised legal or economic capital, which to the organisation proves to be a more effective type of power in the specific dominated position in the religio-organisational field (Bourdieu 1986, 252-253).

In the present context, resignification as a strategy means transforming and re-presenting the norms of Shari'a. As the analysis by Hallaq and Ramadan (7.2) demonstrated, Shari'a has been displaced and dismantled into fragments of its former self. These fragments are being re-assembled and reproduced in the Shari'a councils as identifiers and symbols of the Muslim communities and common identities.

Thus, when addressing the norms of the Shari'a councils, this in itself becomes a statement and a choice of symbolic significance. To address a Shari'a council is addressing the religious rather than the legal, and becomes a question of addressing a religious identity as Muslims rather than a legal need as citizen. Such an act is confessional in that it demonstrates to the community that the applicant has the proper faith. As such, the councils themselves become focused symbols of a community and a faith. Indeed, the Shari'a councils are one of the few places in Britain where Islamic norms are distinctly institutionalized and operationalized.

This communal and collective aspect is important to understand in order to grasp why the Shari'a councils are religious expressions rather than legal. As part of their key findings, Douglas *et al* conclude that "All of the institutions studied see their work as a religious duty. They regard themselves as providing important mechanisms for the organisation of community affairs and the fulfilment of community need. The structural framework, organisation, resourcing, and staffing of each of the tribunals in many ways reflect the history, economic resources, and social development of the communities they serve. The Beth Din, Shariah Council and Catholic Tribunal, provide an important service for those Jews, Muslims and Catholics for whom a religious divorce 'in the sight of God' is important from both a spiritual and religious legal perspective" (Douglas *et al* 2011, 48).

The operative word here is 'in the sight of God' and if one holds Durkheimian tendencies, one might add 'in the sight of man.' As seen both directly from the careful procedural attention that the councils pay to the outcome and success of their deliberations and indirectly from the symbolic legislation proposed by Baroness Cox, it is clear that the Shari'a councils are under close observation. They are being watched to see if they pose any

danger or risk to society, if they can deliver what they have promised the communities and if they are capable of transforming and reproducing Shari'a. To be able to do this and to really perform the transformation, they must – as Bourdieu suggests – truly represent the community. "The performative magic of ritual functions fully only as long as the religious official who is responsible for carrying it out in the name of the group acts as a kind of *medium* between the group and itself; it is the group which, through its intermediary, exercises on itself the magical efficacy contained in the performative (Bourdieu 1991, 116, original italics). It is this 'performative magic' that works through the medium of the Shari'a councils. Thereby the Muslim community reproduces itself according to its own norms as good Muslims and true believers in the context of 21st Century England.

The direct value of this performance and symbolic position-taking is seen at the individual level of the women who address the councils. For the individual women, Walker argues, the outcome is not the only thing, or even the most important thing. In the process of re-producing the Muslim norm, the Shari'a councils seem to assign value to the individuals from the community. As one Muslim woman from Walker's study indicates, "My valuation lies in their judgement," (Walker 2012, 136). Thus, the Shari'a council functions as an institute of evaluation that draws lines and distinctions within the group, indicating what is proper Islam in accordance with the Shari'a norms of the community. In this process, Shari'a does not necessarily assume something out of the Islamic sources, but is rather the name of the common norm and the insignia worn by the members of the community.

Taken in its dual positional context of the dominant culture of the broader society and the subculture of the local community, the Shari'a councils are locked in a difficult position. The contemporary context briefly sketched in the introduction to this chapter adds to the general outline of the religio-organisational field in England from Chapter Four and the difficulty of Muslim organisations in it becomes clear. On the one hand, the dominant culture labels and structuring initiatives like 'Britishness,' 'togetherness,' and a general concern with social cohesion helped both to unify and to clarify distinctions by forcing sub-cultures to distance themselves from their symbolic identity expressions (Bourdieu 1991, 167). The Shari'a councils are fighting to resist this. On the other hand, the local Muslim community reiterates its demand for authentic Shari'a, which the councils cannot recreate. Forever lost in the epistemic rupture, the Shari'a of old does not exist anymore, but the councils are fighting to produce an alternative that will keep the Muslim community intact and protect Islam.

By way of conclusion, the Shari'a councils must be both English and Muslim at once, while under pressure from the structural contexts to be one

to the mutual exclusion of the other. This is the structured position, which the Shari'a councils hold. The continuous reading of Bourdieu points to the fact that most structured positions are also structuring positions themselves, and that the agency and the specific stance of the individual Shari'a council demonstrates the wriggle room and the power to symbolically reinterpret their norms and thus navigate into a stronger institutional position. This is the on-going game of recognition and misrecognition of Shari'a norms, which leads to understanding and misunderstanding pending the perspective, argumentative strategy and normative position in the field.

Chapter Eight

Muslim Positions Won and Lost

8.1 What's at stake?

The peculiar game of chess, into which the green pieces were introduced, had for centuries been a long and unruly game. However, the positions of the black and white pieces had found a relatively stable balance, which had built on centuries of struggle, negotiations and violent conflict. The recent introduction of a new colour into this balance has been a catalyst for dislodging old assumptions about the positions in the game and, with this change, new possibilities and new dangers has emerged.

As we have seen in the analyses in the thesis, upon entering the religio-organisations fields in Denmark, Germany and England, Muslim organisations enter a space of deeply embedded and highly institutionalised social forces, close relations and entrenched positions. Pierre Bourdieu's theory of the field and associated concepts opened up for an analysis of the complex struggles between a number of different organisations and institutions. Common to these is the conflict between meaningful and significant differences and the contestation of possible positions in the field. Each of them maintains a claim to the limited power and capital available in the field.

In the specific and focused studies into the Muslim positions in the religio-organisational fields in Denmark, Germany and England, it becomes clear that something is at stake in the struggles and conflicts, which to Muslim organisations is worth fighting over. The study of these was the overall guiding question of the thesis.

The field is defined not only by limited resources and something of value worth fighting over, but also by an institutional logic of common rules and common purpose. These two aspects taken together may shed light on why Muslim organisations are engaging with the other institutions and organisations in the religio-organisational fields in Denmark, Germany and England.

8.2 Something to be won

To Muslim organisations the recognition, acceptance and respect for their religion, their world view and their defining norms is what is to be won.

In Denmark, mere approval seemed to be unsatisfactory when others had been recognised. The symbolic logic of the arbitrary differentiation was a continued source of frustration to Muslim organisations. Even though the actual difference between the recognised, the approved and the not approved was arguably negligible, it seems the categorisation and normative evaluation of Muslim organisations into a lesser position was taken by these as structural stigmatisation. Structurally speaking, and as seen from the Muslim perspective, the normative evaluations of the Advisory Committee on Religious Denominations are understood in Bourdieuian terms as sanctioning and sanctifying an arbitrary difference in the religio-organisational field. While the committee assumes an unbiased approach and insists on god worship as the defining trait of Muslim communities, it was acknowledged by chairman of the committee Armin W. Geertz that the committee administers the ministry mandate to 'decide who or what is to be included and excluded' and to 'build up institutions that ensure that the citizens abide by the systems.' As definers of boundaries and writers of guidelines, the committee is able to structure the possible field of action of Muslim organisations and is therefore able to govern them. In this position, the committee is an institutional gatekeeper in the religio-organisational field.

In the Bourdieuian analysis of the thesis, it became clear that the problem with this, from the Muslim perspective, was the system of criteria, which did not build on a set of meaningful and significant differences. The distinction was seen as arbitrary and unjust. This criticism of arbitrary difference reveals in the analysis the Muslim reasons for entering into the field in the first place and for struggling with the Danish ministries and the committee for approval. They want the official Danish institutions to recognize that the distinctions between religions in Denmark are arbitrary and exist only to subjugate some religious communities by establishing others. By insisting on the recognition of Islam, Muslim organisations hope to draw attention to the arbitrary inequality between religious communities in Denmark. Ultimately, it seems the Muslim organisational struggle is against the illegitimate arbitrariness of the category of 'deviant from the Church of Denmark' and against the reproduction of the same arbitrariness of the Advisory Committee on Religious Denominations.

Something similar can be said for the German case. Here Muslim organisations enter an old context of religious struggles and a finely calibrated consensus. For this reason, it seems Muslims are put to a rather hard test. Muslims in Germany has pooled their institutional capital and launched their uniting umbrella organisation, the coordination council of Muslims, in order to have structural parity upon entering the German Islam Conference. With this, they hoped to be eligible for the status of corporations under the public law and thereby secure structural equality

with the churches and the Jewish community. However, the German Islam Conference was seen to be a way of holding Muslim organisations to the standards of the Constitution Plus (‘Grundgesetz Pluz’) rather than the actual word and practice of the law. These standards have for Muslims been impossible to meet and so far the concessions won by Muslims on Germany have been very limited.

In the religio-organisational field, Muslim organisations seem to fight to level the playing field and in this struggle they are supported by a number of other actors in the field. In Denmark, this was first and foremost the Church of Denmark and its standing committee on the religions’ meeting. In Germany, the support was drawn from the academic context, where a number of scholars argued against the securitization of Islam and the impossible standards. Also, the German Evangelical Church argues in favour of equal treatment of Muslims. In England, the Archbishop of Canterbury spoke in favour of a common purpose of religious communities and against the secularist disrespect of religious law. From this it is seen that a number of different agents, institutions and organisations in the religio-organisational field share a number of fundamental common interests. These include the level playing field, the legitimacy of rules and standards and equal conditions and treatment by the government institutions. It is this level playing field and understanding of equality that is the common logic – the doxa – which all the organisations and institutions in the field agrees on and protects. This includes the state and governments, although differences of interpretation of what such a playing field entails are frequent and used strategically by all parties.

8.3 Something to be lost

As is with all struggles, while there is something to be won, there is something to be lost as well. This holds for all agents in the religio-organisational field. However, to those with the stronger positions in the field there seems to be more to lose and to those in dominated positions there seems to be more to win.

For each of the three country cases a danger can be identified, which carries with it significant ‘religious risk’ to the legitimacy and authority of the state and government institutions. As was seen in the analysis, institutional legitimacy is a fragile phenomenon and its being taken for granted is lost when it is called into attention by critical voices. As such the legitimacy and authority must be actively qualified again and perhaps rebuilt on stronger normative foundations.

In Denmark, the treat of possible loss of legitimacy, which follows from the Muslim criticism, holds the danger of turning Muslim and state relations into a scenario of mutual non-recognition. While legal, the

approval of religious communities does not enjoy a well founded legitimacy as it remains the ministry and the Advisory Committee on Religious Denominations, who govern the approval, rather than an Article of Law as promised in Article 69 of the Constitutional Act.

In Germany, the perceived security threat and non-German nature of Muslim organisations seems to force the state to hesitate with recognising Muslims as eligible for the status as corporations under public law. This exposes the state to significant criticism from Muslims and German academics, who argue that the state is biased and unjust in keeping the Muslims in this structurally disenfranchised and illegitimately dispossessed.

In England, from the perspective of state and government institutions, the risk and possibility of loss of legitimacy is expressed most clearly in the encounter with the Shari'a councils. In a Weberian sense, the state holds the monopoly to dispense legal justice and have therefore enjoyed an institutional authority so far taken for granted. As seen, Muslims are not necessarily conforming to the structures of the English legal system and are not addressing their legal needs to the courts. Rather Muslims are addressing the norms of the Shari'a councils which is a statement and a choice of considerable symbolic significance.

Ultimately, in all three countries the possible loss of legitimacy may call into question the state's position as an authority that addresses itself to everyone and which may make the same claims of everyone. This question is triggered by inequality and bias. Once this is called into attention, it may point further to some of the other deeply rooted and taken for granted assumptions as to the state. The threats of such a scenario would include a dangr to legitimate jurisdiction, the institution of marriage, additional aspects of family law and so on. The result would be disconcerting and would eventually weaken the foundations of the state.

However, state and government institutions are not the only ones put at risk in the struggles of the field. Because the Muslim challenge to the legitimacy and authority of the state and government institutions is so pertinent, it puts Muslims themselves at risk. As pressure begets pressure in the confined structures of the field, Muslim organisations are heavily invested in their positions in the field and risk losing much that is dear to them.

In Denmark, they risk not being ble to recognise themselves as religious communities in the eyes of the state and public. The power to define themselves would be handed over to the state and government institutions and the culture, ethnicity and tradition that are embedded into and carried by the organisations would risk withering away.

In Germany, they risk having their identities co-opted by the German 'leitkultur' and are likely to become German Muslims rather than Muslims

in Germany. This is the ecclesiastification scenario that builds on the normative power of the existing church and state relations. Here Muslims are treated, understood and they themselves start acting as if they were Christian churches. Institutionally, they would become like churches, which would be very alienating to Muslim organisations.

In England, the risk to Muslim organisations is, perhaps, the most significant. The strategy of withdrawal from the legal system was a countermeasure to the lack of recognition and it increased the religious risk to the state in England. However, it has also exposeses the Muslim organisations to considerable risk. The process of producing and re-producing re-defined Islamic norms, which is done in the procedures and stewardship of the Shari'a council, is fragile and exposed. From a Muslim organisational perspective in the religio-organisational field it is a daring move and it exposes the illegitimacy of recent bills in Parliament and the lack of recognition of law as valid. It also puts distance between Islamic norms and society and will make it increasingly difficult for Muslims and Muslim organisations to remain a permanent part of Europe's social and political fabric (cf. Ramadan 2001, 207; Menski 2008: 60)

Potentially, Islam and Muslim organisations risk disappearing from the struggles of the field and risk being relegated to irrelevant and peripheral positions. Here, they would be defined entirely by their subjected and subjugated relations to others and they would no longer be recognisable to themselves and others as Muslim and Islamic.

In the end, to all those who engage in the religio-organisational field and to all those who expect anything from the struggles between institutions and organisations in the religio-organisational field in Denmark, Germany, and England may they remember that all struggle is slow, difficult and violent and that participate stand to both win and loose.

The result of the struggle, however, is structurally generative change.

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Summary

Muslim Positions in the Religio-Organisational Fields of Denmark, Germany and England

The thesis studies the specific problems that Muslim organisations struggle with as they navigate and position themselves amongst the churches, the state institutions and the many other relevant organisational actors in the religio-organisational fields in Denmark, Germany and England.

In framing an analytical focus on the relations and environment of Muslim organisations, the thesis applies the concepts of field, doxa, capital, norms and symbolic power as theorised by Pierre Bourdieu and others. The thesis proposes the idea of the religio-organisational field as a construct informed by the spheres of religious life and of organised, institutional logics. The religio-organisational field frames the struggle for the positions of power, recognition and capital available in the structural relations of the field.

In this context, the thesis seeks to identify what Muslim organisations stand to win and loose in the pursuit of the stronger positions in the field. Also, the thesis questions how the Muslim organisation impacts and changes the existing institutions and organisations. This is done by investigating the structural norms, technologies, tactics and powers of dominations and subjection as applied by both the Muslim organisations and the governing institutions in the field.

A core assumption of the thesis is that since the introduction of Islam and Muslim organisations into the European context, Islam has been a catalyst or occasion for significant changes in the balances of power amongst states and churches.

This is investigated further by looking at the history of regulating religion, which is the structural context in which Muslim organisations must navigate and position themselves. Not only the history of churches and states is revealing, but also the specific laws and norms that frame and structure the possible field of action of Muslims are of relevance.

Within this normative and historical context, a case from each of the three countries is analysed and discussed in depth.

In Danmark, the focus is on Muslim organisations who seek recognition and approval to perform marriages with civil validity. The analysis goes into significant detail about the ministrial practices and procedures as managed by the Advisory Committee on Religious Denominations. The Bourdieuian perspective applied here is on the construction and

maintenance of fundamental dividers in the religio-organisational field and the strict scrutiny to which Muslim organisations are submitted.

Next, the focus is on the German Islam Conference. This analysis looks at the struggle between the German government and the Muslim organisations who are trying to position themselves as eligible and respectable partners in the religio-organisational field. The Bourdieuian perspective applied here is on the generative structuration that transforms ‘Muslims in Germany’ to ‘German Muslims’ by analogy to the Christian institutions.

In the English case the focus is on the Shari’a councils and their position between the Muslim communities and the wider English society. The Shari’a councils are locked in a tricky game of managing expectations from both these sides. They have the difficult task of stewardship of the Islamic norms embedded in Shari’a, which is challenged in a modern context. The Bourdieuian perspective is on the symbolic resignification and reproduction of Shari’a norms as these become new resources for Muslims in the religio-organisational field.

The thesis concludes on the overall guiding questions and outlines the most important perspectives from the analyses of the religio-organisational fields. This is done by looking specifically at what Muslim organisations, on one hand, and state and governments, on the other, stand to win and loose in the struggles of the field. The conclusion, furthermore, summarises the most important and critical insights into the impositions of division in the religio-organisational field and into the Muslim positions taken in response to these impositions.

Resumé

Muslimske Positioner i det Religionsorganisatoriske Felt i Danmark, Tyskland og England

Denne afhandling undersøger de specifikke problemer, som muslimske organisationer kæmper med, når de må navigere og positionere sig blandt kirker, statslige institutioner og mange andre relevante organisatoriske aktører i de religionsorganisatoriske felter i Danmark, Tyskland og England.

Med analytisk fokus på muslimske organisationers relationer og miljø benytter afhandlingen sig af begreberne felt, doxa, kapital, normer og symbolsk magt som udformet af Pierre Bourdieu og andre. Afhandlingen foreslår og anvender idéen om det religionsorganisatoriske felt, som en konstruktion, der samtidig trækker på de religiøse magtsfærer og på organisationers institutionelle logikker. Det religionsorganisatoriske felt danner rammen om kampen om magtpositioner, anerkendelse og kapital i de strukturelle forhold i feltet.

I denne forbindelse søger afhandlingen at afdække, hvad muslimske organisationer står til at vinde og tabe i bestræbelsen på de stærkere positioner i feltet. Endvidere spørger afhandlingen, hvordan de muslimske organisationer påvirker og ændrer de eksisterende institutioner og organisationer. Dette gøres ved at undersøge de strukturelle normer, teknologier, taktikker og magthandlinger, som anvendes af de styrende institutioner i feltet.

Afhandlingen bygger på et argument om, at efter islam og muslimske organisationer for alvor kom ind i den europæiske kontekst, har islam været en katalysator eller foranledning til væsentlige ændringer i magtbalancen mellem stat og kirke.

Dette belyses ved at se på den historiske regulering af religion. Her findes den strukturelle sammenhæng, som muslimske organisationer må navigere og positionere sig i. I den forbindelse er ikke kun kirkers og staters magtkampe relevante, men også de konkrete love og normer, der indrammer og strukturerer muslimske organisationers mulige handlerum.

Inden for denne normative og historiske ramme analyseres og diskuteres et eksempel fra hvert af de tre lande.

I Danmark er fokus på de muslimske organisationer, der søger anerkendelse og godkendelse til at foretage vielser med borgerlig gyldighed. Analysen går i væsentlig detaljer ind i den ministrielle praksis og de procedurer, som forvaltes af Det Rådgivende Udvalg vedrørende

Trossamfund. Perspektivet fra Bourdieu, som anvendes her, viser, hvordan der bygges og vedligeholdes grundlæggende skillelinjer i det religionsorganisatoriske felt. Ligeledes undersøges den strenge normative kontrol, som muslimske organisationer underkastes i forbindelse med ansøgning om godkendelse.

Dernæst er der fokus på den tyske islamkonference. Denne analyse ser på kampen mellem den tyske regering og de muslimske organisationer, som forsøger at positionere sig som berettigede og respektable partnere i det religionsorganisatoriske felt i Tyskland. Perspektivet fra Bourdieu anvendt her ser på den generative strukturering der omdanner 'muslimer i Tyskland' til 'tyske muslimer' i analogi til de kristne institutioner.

I den engelske tilfælde er fokus på Shari'a-rådene og deres placering mellem de muslimske samfund og det bredere engelske samfund. Shari'a-rådene er låst i en vanskelig situation, hvor de må forvalte forventninger fra begge sider. Dertil kommer den vanskelige opgave at forvalte de islamiske normer som er indlejret i Shari'a og som er udfordret i en moderne kontekst. Perspektivet fra Bourdieu anvendt her ser på den symbolske genfortolkning og reproduktion af Shari'a normer, og viser hvordan disse bliver nye ressourcer for muslimer i det religionsorganisatoriske felt.

Afhandlingen konkluderer på de grundlæggende problemformuleringer og skitserer analysernes vægtigste argumenter og perspektiver. Dette gøres ved at se på, hvad de muslimske organisationer på den ene side og staten og regeringerne på den anden side står til at vinde og tabe i kampene i feltet. Konklusionen opsummerer desuden de vigtigste og mest kritiske perspektiver på grænsedragningen i det religionsorganisatoriske felt og på de positioner som muslimer har taget som reaktion på disse grænser.

Appendix

At several points in the thesis reference is made to the Freedom of Information Requests made in the spring and early summer of 2012 and granted on 26 September 2012 and 1 October 2012, respectively. These are attached here and may serve as reference to anyone who wishes to pursue the material in further depth.

Ankestyrelsen
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2200 København N

J.nr.: 2012-819-00093 Sagsbehandler: Marte Volckmar Kaasa Dato: 26. september 2012

Afgørelse om aktindsigt

Du har til brug for et forskningsprojekt på Københavns Universitet ved brev af 22. maj 2012 anmodet om aktindsigt i en række af Ankestyrelsens Familieretsafdelings sager om trossamfund. Du har bedt om aktindsigt i sagerne om godkendelse af 14 navngivne trossamfund samt i alle sager om godkendelse af trossamfund for perioden 1998-2012, der ikke er resulteret i en godkendelse.

Du har efterfølgende haft lejlighed til nærmere at præcisere omfanget af din anmodning om aktindsigt.

Vi giver dig hermed aktindsigt i dokumenterne og vedlægger kopi af akterne. Vi har dog undtaget nogle akter og oplysninger fra aktindsigt.

Vi har undtaget interne arbejdsdokumenter fra aktindsigt. Vi har truffet denne afgørelse efter offentlighedslovens § 7, stk. 1, nr. 1 og 2. Efter denne bestemmelse omfatter retten til aktindsigt ikke en myndigheds interne arbejdsdokumenter. Som interne arbejdsdokumenter anses blandt andet dokumenter, der udarbejdes af en myndighed til eget brug, og brevveksling mellem forskellige enheder inden for samme myndighed.

Efter § 11, stk. 1, skal oplysninger i dokumenter, der er omfattet af § 7 og § 10, nr. 1-4, om faktiske omstændigheder, der er af væsentlig betydning for sagsforholdet, uanset disse bestemmelser meddeles i overensstemmelse med lovens almindelige regler. I de interne arbejdsdokumenter, som vi har undtaget fra aktindsigt, er der ingen faktiske omstændigheder, der er af væsentlig betydning for sagsforholdet, som ikke i øvrigt fremgår af sagen.

Vi har også undtaget oplysninger om enkeltpersoners private forhold. Vi har truffet denne afgørelse efter offentlighedslovens § 12, stk. 1, nr. 1. Efter denne bestemmelse kan oplysninger om enkeltpersoners private, herunder økonomiske, forhold undtages fra retten til aktindsigt. De oplysninger, som vi har undtaget fra aktindsigt, omhandler enkeltpersoners religiøse tilhørsforhold.

Vend →

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Vi har ved afgørelsen om undtagelse af akter og oplysninger overvejet, om dokumenterne og oplysningerne bør udleveres efter princippet om meroffentlighed (offentlighedslovens § 4, stk. 1, 2. pkt.). Efter denne bestemmelse kan en forvaltningsmyndighed i forbindelse med behandlingen af en anmodning om aktindsigt efter offentlighedsloven give aktindsigt i videre omfang, medmindre andet følger af regler om tavshedspligt mv.. Vi mener imidlertid, at der ikke grundlag herfor. Vi har herved foretaget en afvejning af de beskyttelsesinteresser, der ligger bag undtagelsesbestemmelserne i offentlighedslovens § 7, stk. 1, nr. 1 og 2, og § 12, stk. 1, nr. 1, (beskyttelsen af at interne arbejdsdokumenter er fritaget fra retten til aktindsigt samt beskyttelsen af enkeltpersoners private forhold), over for den berettigede interesse du som forsker må antages at have i, at din anmodning imødekommes.

Med venlig hilsen
Ankestyrelsen
Familieretsafdelingen

Marte Volckmar Kaasa

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Dato: 1. oktober 2012
J.nr. 230-1149
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Juridisk Afdeling

Niels Valdemar Vinding

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Ved e-mail af 3. juli 2012 til Statsministeriet har De anmodet om aktindsigt på følgende måde:

»I forbindelse med ph.d.-afhandling, der sammenligner regeringers konsultationer med muslimske grupper i Danmark, Tyskland og England, har jeg følgende forespørgsel.

Så vidt der findes dokumenter fra daværende Statsminister Anders Fogh Rasmussens møder med muslimske ledere og repræsentanter på Marienborg fra henholdsvis 13. februar 2006, 30. november 2004, 20. september 2005, og 26. juli 2007, ønskes der aktindsigt i disse. Hvilke invitationer er blevet udsendt og til hvem? Hvem deltog? Hvem deltog ikke? Var der dagsordner for møderne? Findes der referater eller gengivelser af møderne i Statsministeriet eller i andre arkiver?«

Statsministeriet kan som svar på Deres henvendelse oplyse, at der har været afholdt møder af den nævnte karakter på Marienborg den 30. november 2004, den 20. september 2005 samt den 13. februar 2006. Der ses imidlertid ikke at have været afholdt et sådant møde den 26. juli 2007.

./. For så vidt angår mødet den 30. november 2004 og den 20. september 2005 vedlægges invitationer, udskrift af pressemeddelelser, som indeholder oplysninger om tema for det enkelte møde samt liste over inviterede. Statsministeriet ses ikke at være i besiddelse af referater af de pågældende møder.

./. For så vidt angår mødet den 13. februar 2006 vedlægges udskrift af pressemeddelelse, som indeholder oplysninger om temaet for mødet, samt referat af det pågældende møde. Der ses ikke at være udsendt invitationer til det pågældende møde.

Det bemærkes, at Statsministeriet herudover ikke ses at være i besiddelse af særskilte opgørelser over, hvem der deltog i de pågældende møder.

Med venlig hilsen

Charlotte Krüger