

Building Bridges in a Changing World - Introductory Reflections

*Mikele Schultz-Knudsen*¹

How are bridges being built between Nordic legal practices and Muslim legal practices? That was essentially the question we asked the contributors of this issue. But why this question?

We are living in a globalized world. In the last decades, people have been travelling around the world more than ever before. Many people readily move from one side of the planet to the other, while modern technology allows them to keep in contact with families and cultural ideas from their home country.

Many children are transnational from birth, such as the child of a Moroccan mother and a Pakistani father born and raised in Denmark. This can lead to questions of identity, as well as doubts about which ethnicity and nationality to identify with – if any at all. In this time, which has been described as post-secular, religion has become one thing to identify with - or against. Children with mixed backgrounds might reject their parents' cultural practices but hold on to religious practices. They might identify as "Swedish Muslims", an inclusive term which is open for all regardless of whether their family background is Arab, Bosnian, Pakistani or Turkish.

Not only people spread across the world. Ideas are also spreading, including religious ideas. People from Nordic countries are taking inspiration from, or even converting to, religions that a century ago were almost non-existent in this part of the world. That goes for Buddhism and Hinduism, Hara Krishna and Mormonism and many others, including Islam.

Culture and religion are intertwined with law and legal practices. As cultural and religious practices spread across the world, it also influences legal behavior and perceptions of law. This is also happening in the Nordic countries. So what is the

¹ Mikele Schultz-Knudsen is PhD student at the Centre for European and Comparative Legal Studies (CECS), Faculty of Law, University of Copenhagen.

relation between the existing legal systems and the new and emerging legal practices? Does it necessarily lead to conflict or can they work together and inspire each other?

One of the most noticed and discussed changes in the Nordic countries has become the presence of Islam. Although the majority population in the Nordic countries have been Lutheran for around 500 years, it is by no means the first time that religious minority groups have also been present. The Sámi people, Jews, Catholics, Orthodox Christians and Huguenots are just some examples of religious groups that historically and today are part of the Nordic countries. In recent years, other religions than Islam have also been on the rise, but Islam is generally the largest of these "new" religions and has become the center of most debate.

Often debates on immigration and Islam are combined, as if they are one and the same. Islam is seen by many as a new and foreign religion in the Nordic countries. In the media and political debates, it is often the conflicts between "the West" and Islam that are highlighted. However, that focus cannot stand alone. Many Muslim families have lived in the Nordic countries for generations, and their children are living as both Europeans and Muslims. Even in the Middle East, many Muslims are strongly influenced by Western culture, while also retaining their religion. There is also a growing number of European converts to Islam. Thus, the practical reality is that Muslims are building bridges between Islam and the Western world. In some areas, the surrounding Western societies and governments are also trying to build bridges or include Islam in the society. These developments are also taking place in the Nordic countries.

Thus, when we made the call for this issue, we directly chose to search for articles that focused on the bridge-building. Either articles that came with suggestions for how to build a bridge between Muslims in the Nordic countries and the rest of the society within the area of law, or articles which highlighted situations where such bridges were already being built, where practical solutions were being found or where consensus areas between Muslim and Nordic legal practices were explored.

I am writing this introduction in the autumn of 2020. The world is marked by the Covid-19 pandemic, which has spread across all parts of the world. In some ways, this is the largest crisis so far for the idea of globalization, internationalization and free movement. Worldwide, air travel has been shut down and borders have been closed. Even internally in the EU, free movement has been heavily restricted, as countries

have sought to protect themselves from outbreaks in other countries. The epidemic hit suddenly and for most unexpectedly. Young people traveling freely around the world found themselves trapped in a foreign country, unable to find a plane home to their families. Just like many other families, my family is spread across the world. We have been unable to visit close family members for many months now. I know that the same goes for many other families, who might have parents living in one country and adult children in another. These families took advantage of globalization, but the pandemic is making them doubt their choices.

However, seen from another angle, the pandemic has more than anything shown us how small and intertwined our world has become. What begins in China – or anywhere else in the world – has immediate consequences for the rest of the world. The lockdowns have also clearly shown us how dependent we have become on a globalized world. It is in no way sustainable – for the economy, for families or for societies – to continue these lockdowns indefinitely. The situation has shown the need for solidarity, locally and internationally. Healthy people are wearing masks to protect more vulnerable people. Young people are restricting themselves to protect the elderly. Countries are sending equipment to each other to help end outbreaks – because even an outbreak on the other side of the planet might also reach us. Globally, we form a world together, and locally, we form a society together, regardless of our cultural, ethnic or religious differences. Any attempts to only show solidarity with our own country, our own ethnic group or our own religious group are doomed to fail.

Although the idea for this journal and for the individual articles were thought up before this epidemic, they deal with some of the same themes. Essentially, it is a fact that the Nordic countries are made up of various ethnic and religious groups, but we form one society, where we are dependent on each other. We need to find ways to make the society work without insisting that everyone conform to the majority culture and religion, but also without creating parallel societies that do not form a cohesive society.

This journal issue is inspired by two conferences arranged in 2019 by the Centre for European and Comparative Legal Studies (CECS) at the Faculty of Law, University of Copenhagen, Denmark. The first conference focused on Islam and Danish law, while the second conference took a wider focus on Islam and law in Europe. At both conferences, several of the speakers – on their own initiative – focused on areas of consensus or on attempts at bridge-building. There seems to be a general interest in

this focus, both among researchers and increasingly among policy makers, but perhaps even more among the people who are practically dealing with these topics as part of daily life. This includes Muslims themselves, who have to find ways to live life both as Muslims and as people of the Nordic. However, it also includes civil servants, attorneys, judges, religious scholars and others, who are faced with situations where they have to find practical solutions on how to live a Muslim life without being in conflict with state regulation, or who have to practically decide to which extent state regulation prohibits certain ways of living.

Looking at the articles in this issue, it becomes clear that many different bridge-building attempts are in progress and they are initiated by different actors. While some articles look at how Muslims are trying to build bridges, others look at how NGO's, governments and legislators, courts and researchers can or are contributing to this bridge building.

One group of actors are the Muslims themselves. How are they trying to build bridges with the legislation and society around them?

The article "The mosque is for all: Waqf as an emerging structure of Islamic institutionalization in Denmark" by Lene Kühle looks at how Muslims in Denmark have combined the Islamic concept of "waqf" (Islamic foundations) with Danish legislation on foundations. This article is an interesting addition to debates about the use of "sharia law" in Europe. Such debates generally focus on only a few controversial elements of sharia law, but Lene Kühle brings light to a rarely discussed Islamic legal concept, which is finding its way into Europe. Lene Kühle points out that in Denmark, the number of mosques being housed in buildings owned by Muslim foundations have been rising, and argues that waqfs might be a good way for Muslims to solve some of the practical problems they are facing, such as how to finance mosques and secure a practical footing in Denmark. Waqfs might especially be able to provide enough economic backbone to eliminate the need for foreign donations. However, the establishment of Muslim foundations in Denmark is still not widespread. Lene Kühle identifies a number of obstacles for the further development of waqfs in Denmark, such as the fact that the traditional waqf differs from the Danish foundations in several ways, but also opposition to the idea of Islamic waqfs in Denmark from both within the Muslim community and the wider society.

The contribution by Shaheen Sardar Ali, Justin Jones and Ayesha Shahid titled "To register or not to register? Reflections on Muslim marriage practices in Britain" also focuses on what takes place among Muslims. This is an in-depth analysis of developments in Britain, which we believe can also provide valuable insights for the Nordic countries. The article focuses on the religious Muslim marriages (nikah) and specifically on whether Muslims choose to register these marriages, thus making them both religiously and legally valid. The article especially focuses on whether decisions not to register are informed and conscious. The article is based on multiple types of research, including surveys and group discussions. The findings suggest that the trend is towards registering marriages, and that this is a conscious choice due to the respondents wanting to follow the law of the land. Some respondents even argued that this was a religious obligation. Amongst those participating in the survey who had not registered their marriages, the majority explained that this was due to lack of awareness. However, looking deeper at those who chose not to register led the researchers to conclude that it happens due to a multitude of reasons, including mutual wishes to try out the relationship before legally being married (sometimes called "halal dating"). The researchers also heard examples of women who preferred being in a part-time polygamous marriage (sharing their husband with another woman) and therefore were fine with not having their marriage registered. This led the researchers to conclude that Muslims in Britain are developing new Muslim marriage practices that move far beyond the classical Islamic concepts.

Jesper Petersen's article "The Islamic juridical vacuum and Islamic authorities' role in divorce cases" also looks at how Muslims are dealing with marriage, more specifically with divorce in a Danish setting. His main argument is that there is an Islamic juridical vacuum in Denmark. With this, he means that there is a demand for legal institutions to assist women who want to divorce Islamically, but no institution in Denmark has so far been able to handle this demand. Instead, women approach imams and Islamic teachers and ask for their help in getting a divorce, but these Islamic authorities are generally reluctant to get involved. This finding differs from the general assumption in the Danish public debate, which is that imams are eager to uphold a parallel legal jurisdiction in which they make and enforce decisions. Jesper Petersen finds that most imams do not think they have the power to make or enforce a divorce decision and that they refuse to take such a role. Some of them instead take the role of mediators, which entails trying to convince the husband to agree to the divorce. Due to security concerns from violent husbands, other imams have formed ad hoc divorce councils where

they try to comfort the woman by declaring that she is divorced, however, even these decisions might be disputed by the husband or others. Thus, there is still no uniform practice and the concrete actions and solutions depend on the woman's situation, resources and her social network.

Thus, the three articles by Lene Kühle, Jesper Petersen and Shaheen Sardar Ali et. al. all show examples of how Muslims are trying to build bridges and navigate the terrain between Islamic tradition and Western law. They show a clear tendency and willingness to find solutions, even if it means reinterpreting the Islamic tradition, whether it be in regards to how to form foundations, how to form marriages or how to achieve religious divorces. However, they also all show that the bridge-building is only on its way. Practices are very diverse and bridge-building attempts are facing obstacles due to legislation or cultural concerns.

Farhat Taj's article "The cultural adoption of human rights in a local context: A case in Norway" has a different focus. Instead of looking directly at the actions of Muslims, it looks at how NGO's might be able to help build bridges. The article focuses on a NGO in Norway, Pakwom, consisting of Norwegian-Pakistani women. It especially works for the human rights of women who have little contact with the wider Norwegian society. It also provides support to individual women struggling with marital problems rooted in domestic violence and divorce. Farhat Taj focuses on a concrete case, in which a woman, Asma, had suffered a great deal of violence from her husband and in-laws. Her husband applied for separation from her, but before the separation had gone through, he married another woman in Pakistan. Asma knew very few people in Norway but found Pakwom. She felt that the domestic violence she had suffered had violated her dignity, and she wanted to see her former husband behind bars. The caseworker in Pakwom suggested to have the former husband charged for bigamy, despite this not being Asma's primary objection to her husband. Asma was happy to learn that she could teach her former husband a lesson, and after winning the case, she became more confident, actively found a job and married another man. The case also inspired other women in similar situations to learn more about their rights in Norwegian law. The article shows how important legal literacy can be. It was in the dialogue between the caseworker and Asma that this rather creative way of punishing the husband showed itself. The article also shows interesting considerations about how to vernacularize human rights into Islamic thinking, since the caseworker and Asma developed an Islamic argument for the case together. Many Muslims would consider polygamy allowed within Islam, but

Asma made it very clear during interviews that the case also involved Islam, which, in her understanding, did not allow her husband to violate the law of the country he was living in. This understanding became possible by making a different interpretation of Islam on polygamy, similar to how the articles above showed new interpretations on marriage and divorce.

While NGO's can help build bridges, another central group of actors is the governments and legislators.

In the article "In what sense is Islamic religious law legally recognised in Denmark?" Niels Valdemar Vinding asks whether Denmark might already have recognized the use of Islamic law in Denmark. His conclusion is that it seems a bold but appropriate statement to say that sharia is legally recognized in Denmark – at least in part. His analysis is focused on a recent Danish legislation on the recognition of religious communities in Denmark. This legislation allows for the recognition of religious communities under certain conditions. One condition is that the articles of association of the community as well as descriptions of rituals and basic doctrines of faith are made public online. Taking inspiration from Norman Doe's "Comparative Religious Law – Judaism, Christianity, Islam", Niels Valdemar Vinding discusses what recognition is and how the term has been used in Danish law. He then operationalize the term Islamic religious law to analyze to which extent it appears in these documents uploaded by the communities. He finds that six substantial aspects of Islamic religious law are part of the documents and therefore core parts of the material substance of legal recognition of Islamic religious communities in Denmark. On that basis, he finds that Islamic religious law is a relevant and legal fact in Denmark. This does not mean that Islamic religious law is a valid source of law in Denmark, but it does mean that those parts of Islamic religious law that have been used as the basis for recognizing the Islamic communities are now legally recognized facts in Denmark. However, Niels Valdemar Vinding ends his article with pointing out that this is not the same as political recognition and that many Muslims might not see themselves as recognized.

Effie Fokas looks at another actor: the courts. In her article "Islam at the European Court of Human Rights" she specifically looks at both the European Court of Human Rights (ECtHR) and – to some extent - at the Court of Justice of the European Union (CJEU). While other articles have pointed out examples of bridge-building, this article is more aimed at criticizing the lack of bridge-building from these European courts.

Effie Fokas goes through the kind of cases the ECtHR has dealt with regarding Islam. This includes cases regarding religious communities' right to autonomy from the state, restrictions on religious clothing, cases regarding bans on e.g. religious political parties and minarets and finally cases on the legal status of religious groups and the use of sharia law. Effie Fokas brings forward several criticisms of this court practice, which has been raised by scholars before her. One especially important criticism is that the court is treating secularism as an extra-conventional goal, allowing secularism to be used as a reason for limiting the freedom of religion, despite secularism not being mentioned as a reason for limitation in the Convention. Another criticism is that there appears to be a double-standard when comparing the treatment of Islam with the treatment of Christianity, where Christian practices appear to be better protected. Finally, the ECtHR has also been criticized for putting politics over religious freedom, as public debates seem to have influenced the court. Looking instead at the CJEU, Effie Fokas discussed whether this might be an alternative venue for Muslims to seek protection. However, the CJEU has a more limited competence and in the limited case law regarding religion, it seems to suffer from some of the same problems as the ECtHR. This includes a political sensitivity that appears to influence cases on Islam more than cases on Christianity. Effie Fokas ends her article with pointing out that the decisions from these two courts do not just have a direct effect on the parties in the concrete cases. The messages that the court decisions communicate more broadly to society at large are far more important in terms of potential impact on people's perceptions of their rights, and Effie Fokas finds that the overall message communicated to Muslims in these decisions is less than encouraging.

Mikele Schultz-Knudsen and Rubya Mehdi also look at the possibility judges have for bridge-building and combine this with looking at what legal researchers can gain from using bridge-building in their research. In the first part of their article, "Marital rape in Denmark and Pakistan: Minorities, culture and law", they compare the historical development of rape regulation in Denmark with the parallel development in Muslim law and Pakistan. Their analysis shows that comparing Danish law with Pakistani and Muslim law can lead to powerful insights about both systems, which in this case are relevant for current debates on rape legislation. The authors point out that recent debates in Denmark on rape legislation have not really considered how concepts such as consent and threat can have very different implications in minority cultures. The authors also show how societal and cultural views on women and sexuality have influenced rape legislation in both jurisdictions. Both in Denmark and Pakistan,

socio-economic changes challenge older views on rape, while the legal system tries to maintain as much continuity in the rape definition as possible. The authors show how the wording of written legislation is influenced by culture, but also how written texts are being interpreted and applied very differently depending on which cultural views influence judges, jurors and other interpreters of the text. The authors' ultimate aim is to inspire judges, lawyers, legislators and other professional actors on what to be aware of in cases concerning elements of sexuality and culture. After looking at the cultural influence on legislation, they focus on two concrete Danish court cases about marital rape within Danish-Pakistani couples. They show examples of how understanding the culture of the parties can help judges and lawyers ask the right questions and understand the testimonies. More importantly, the two cases underscore how culture can vary even among people from the same ethnic background, and how parties in a court case may rely on stereotypical cultural views to portray the other party negatively. Thus, the article highlights the importance of judges considering how their own culture is affecting their decisions, as well as how to avoid letting parties' stereotypical descriptions unduly influence decisions.

This issue ends with the article from Werner Menski, titled "European Islam in the age of globalisation and legal pluralism: Not easy being European". Werner Menski has developed a model for pluralist navigation, which can be useful for various actors involved in this field. The model can be used by Muslims, legislators, judges and others and is part of discussions on who should adapt to whom. Should Muslims simply follow the law of the land with no regards to their culture and religion? Or should legal orders adapt to social and religious diversity? The model imagines a kite as a metaphor for how important it is to use polycentric and polyphonic principles to balance the four corners of a situation. The corners are different competing types of law, namely: traditional natural law (including religion), social normativities, state law and the new natural law (including human rights). The model reminds us that e.g. state law is not the only source of legal authority and therefore not the only type of law that counts. Finding the right balance is necessary to ensure legal stability over a long time and often require complex hybrid solutions. Werner Menski further deepens the metaphor of the kite by encouraging us to use it to analyze where on the kite various positions and decisions are located. The model shows that prioritizing state law completely, and rejecting any place for religion in the legal sphere, runs the risk of leading to an ultimate crash. Similarly, if a Muslim rejects state law and human rights and only focuses on what religion says, it may lead to a crash. Instead, the model insists on the need to incorporate knowledge

from different socio-cultural contexts into decision-making processes. There are no ready solutions, but a strong suggestion to us all to be diversely connected.

Finally, I would like to thank the Centre for European and Comparative Legal Studies (CECS) for arranging the conferences in 2019 that inspired this journal, as well as both the Faculty of Law at the University of Copenhagen and the Dreyer Foundation for supporting the conference on Islam in Europe financially.

I would also like to thank all of the contributors for taking upon themselves the challenge of answering our question. The articles show many different approaches on how to face the challenges within this field, and they offer many creative new insights, solutions or suggestions, which we hope will inspire either practitioners or researchers to further initiatives. I would also like to thank the anonymous peer reviewers who have helped improve and clarify the articles and have offered new insights and suggestions that have made it into the articles.