European Islam in the Age of Globalisation and Legal Pluralism: Not Easy Being European

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Abstract

The article argues that polycentric and polyphonic basic principles of pluralist navigation are always needed as balancing tools to preserve sensitivity and awareness of agile agency of various legal, social and religious stakeholders to allow situation-specific forms of navigation. Clearly, this does not mean that 'anything goes', but demands that complex hybrid solutions have to be sought. Obviously states must retain a right to determine responsibly how their respective national identity and legal order should develop in conditions, nowadays, of intense pluralist challenges posed by increasingly diverse demographic structures. Especially the presence of many people in the Nordic countries who are Muslims, may have strong links to other legal orders, and feel connected to a religion that they value as part of their own life and identity while also claiming the right to be Danish, Finnish, Norwegian or Swedish, cannot be ignored.

Introduction: Changing demographic and religious landscapes in Europe and the involvement of Islam and Muslims

In this age of globalisation and legal pluralism (Michaels, 2009), it has become increasingly reductionist, and dangerous, to insist that 'law' or 'religion' as monist entities on their own can manage sustainably how we live together in Europe and construct multi-cultural societies and legal orders that do not violate basic rights of non-majoritarian actors at different levels or scales. The challenges identified and discussed in this article relate as much to the importance of what it means to be Islamic (Ahmed,

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2016), modern challenges to Islamic law (Ali, 2016) as well as presumed challenges that Islam and Muslims pose, in virtually all European countries, to modalities of living together in peace and harmony. It has recently been argued that there is no necessary contradiction or conflict between secular modernity and liberalism on the one hand, and Islamic notions of the 'good life', on the other (Jamal, 2018). However, while it may be fairly easy to theorise this elegantly, in practice and lived reality significant challenges have arisen that do require much more sustained and informed debate and careful balancing of competing expectations. This article will illustrate these predicaments, but also the constructive possibilities, by focusing on the model of responsible law-related management through flying kites (Menski, 2011; 2013; 2014a, b; 2018a).

While significant demographic changes are underway that appear to Islamise parts of Europe in new ways, it is evident that old and new conflicts and tensions of 'law' and 'religion' continue to exist, in new contexts, so that much agile learning about skilful balancing of competing expectations has to be undertaken. Arguing with the help of the kite model that we always need alert navigation or, to use a different image, that it will be necessary to engage in bridge-building, stipulates up-front that the problems to be debated have to be seen as a complex interdisciplinary field of academic as well as practical analyses. This results in many hybrid forms of managing diversity at various levels and in different domains, of which many useful examples already exist. These especially illustrate how young Muslims in Europe are trying to navigate traditions, while also making change (Barylo, 2018).

My academic work about kite-flying warns against 'quick fixes', but recognises that the various challenges, with goodwill and a constructive predisposition on all sides, can be overcome in efforts to harmonise normative pluralism and human rights (Topidi, 2018). However, if there are bad intentions and destructive agenda, then reasoned debate and calm balancing may simply become impossible, and we fall victim to terror and chaos. Hence, this article also warns states and law makers that ignoring the existing plurality of voices and perceptions and pushing through any particular narrow and nationalistic perspective may result in violence and wanton destruction. Such disaster scenarios confirm the limits of law in regulating highly contested issues simply through imposition of state-centric legal regulation and purportedly liberal reliance on human rights arguments that simply treat socio-cultural and religious traditions, whether of Muslims or other minorities, as completely intolerable. As Europeans, we might know

a lot about freedom and basic rights, but ignoring voices from all over the world, and especially the Global South, in debates about Islam and Europeanisation, seems short-sighted. Simplistic images of 'the West' and 'the rest' reflect power structures that legal pluralist navigation needs to scrutinise if we want to learn lessons from history. Most recent developments in reaction to the murder of a history teacher in France in late 2020, sadly, reinforce this point.

In post-World War II Europe, there were few Muslims, but many 'others'. Meanwhile, increasing international migration and much ethnic and religious global pluralisation has become a fact, which pans out in very different ways into local realities, sometimes with tensions, but also with much multi-cultural mixing. Along with this, the increasing presence of Muslims and of Islamic law in Europe has become a hugely important issue, so that new questions about 'law' and 'religion' and especially state law and Islamic normativities constantly arise. In highly diverse ways, thus, the situation-specificity of 'law' as a global phenomenon (Allott, 1980) has constantly been reconfigured, and some parts of Europe have experienced intense plurification of law itself, too. For example, many British and German judges are busy, all the time, with handling cases involving Muslim law and a variety of foreign national legal systems. Private international law has experienced significant growth, but of course the law-related actions of Muslims in European jurisdictions (except certain parts of Greece) are not formally recognised as 'law'. This scenario has inter alia led to new tensions about where and how to draw the boundaries between private and public spheres, raising also important questions about who should adapt to whom? Should migrants from different countries and their descendants simply follow the law, so that the old Latin phrase 'cuius regio eius religio' gets new meanings? Or to what extent should legal orders adapt to social and religious diversities caused by globalising forms of demographic change. In British discussions, Modood (1992) suggested early on that it was '[n]ot easy being British', and in 2010 found in a new study that it was '[s]till not easy being British'. The highly experienced social anthropologist Roger Ballard (1994), based on intense ethnographic studies over many years, developed a model of 'skilled cultural navigation' among Asian immigrants in Britain, also in terms of religion, and taught that Britain's Asian minorities have become an integral part of the British social order, but 'they have done so *on their own terms*' (Ballard, 1994: 8, emphasis in the original). Detailed legal studies during the same period observed the unofficial emergence of hybrid forms of British Muslim law or 'Angrezi Shariat' (Pearl and Menski, 1998: 116). Subsequent developments have not contradicted that pattern, and have rather strengthened and

further diversified it, as various kinds of British Muslims are still engaged, in numerous ways, in navigating the co-existence of English state law and their respective Muslim personal laws, which they brought with them to their new European home, or passed on to the next generation(s) in various ways.

My own academic work over several decades, including participation as an expert, mainly on South Asian Muslim laws before courts in many cases, has taught me to identify some key challenges apart from falling victim to simple reductionist concepts of 'law' and 'religion', and specifically 'Islam'. Before I come to the kite model and various strategies of navigating diversities and pluralities, I briefly illustrate that as a result of global migration movements, which have clearly also affected Nordic countries, demographic realities have changed entire local landscapes. This has posed challenges not only to state legal systems, but especially, though often far less visibly, to regional and local authority laws, for example in the domain of planning laws. As such developments have happened haphazardly and unevenly and are often taking local authorities by surprise, they can only be inadequately regulated on a local case-by-case basis, rather than forming a firm body of national policy. The UK often employed interventionist policies of dispersal for specific ethnic or religious minorities when they arrived. The resulting and highly diverse settlement patterns, but also concentrations of ethnic minority populations despite attempted dispersal, challenge both state authorities and the various Muslim communities.

My experience is that many scholars in the academic disciplines concerned with such developments lack ethnographic curiosity or the necessary skills to follow up and map such changes. As a result, they struggle to assess demographic and religious change, which is complex, fast and often takes many hidden dimensions. A most impressive documentation of the unofficial status of Islam and Muslims, is provided in the eye-opening pictoral collection presented by Degiorgis (2014), showing *Hidden Islam* in Islamic 'makeshift' places of worship all over Northeast Italy in 2009 to 2014. This study in effect demonstrates the desire of the Italian state, as well as the more or less silent consent of Muslim communities, to maintain an invisible bridge between the Italian state and the increasing numbers of Muslim residents by rendering evidence of Muslim religious activity invisible to outsiders. To what extent such invisibility is partly a defining phenomenon of Islam in Europe today would be important to research, for a few showy and prominent mosques in major cities clearly do not convey the full picture of the lively practice of European Islam today.

Moreover, there has been, and continues to be, huge mobility of Muslims (and other minorities) not only into Europe, but within Europe. Thus, many Danish Pakistani and Somali Muslims have been moving to the UK, and tens of thousands of Somalis have come from all over Europe to settle in the UK, maybe an unmentioned aspect of the current BREXIT agonies that nobody even dares to raise in public. That is then matched by continuing deliberate official ignorance over who these foreign Muslims are that have come to Europe. For example, the British Census, so far, does not count Somalis as a separate category, with the result that we have wildly differing estimates of that specific population, which is almost entirely Muslim, but may also self-identify as Middle-Eastern or African. Similarly, in the UK most Pakistanis, as only some experts seem to (want to) know, are actually Kashmiris, and among Turks in Germany, there are very many Kurds. In Norway, I found that many of the Pakistani Muslims are actually Ahmadis, members of a particular sect that are, in Pakistan, not even allowed to call themselves Muslims. Here, too, we see that the highly contested balancing of internal diversities within Muslim communities in Europe raises challenges that must not be ignored, especially since, as was also discussed during the conference, it remains impossible to identify who should be speaking to the respective Nordic state on behalf of Muslims.

While I am German and studied in Germany, I am actually much more familiar with developments in the UK. As part of my MA studies at the University of Kiel, I produced a map of the entire UK which shows the county-wise distribution of ethnic minorities on the basis of the 1971 Census figures in Britain. At that early postcolonial time, place of birth was the core census criterion, which was not actually very helpful in identifying specific ethnic or religious criteria. For example, persons identified in the 1971 Census as being born in what was then Muslim-dominated Pakistan might actually be Hindu or Sikh refugees that fled to India in 1947. They could even be descendants of British colonial officers born abroad while their parents served the Crown. And in summer 1971 this still included all persons born in what today is Muslim-dominated Bangladesh. Similarly, many Asian persons born in East African countries would actually be counted as East African, among whom there are also many Muslims. The British Census only introduced a specific, non-compulsory question about religion in 2001.

The national picture of the UK regarding ethnic minority settlement and religion is remarkable in several respects. It shows the reality of a multicultural Britain already in

1971, concentrated in certain central and mostly urbanised parts of the country, right up to Glasgow and Edinburgh, and of course in London, while Britain's peripheral regions were still almost completely 'white'. If such a map were to be drawn today, based on the 2011 Census, one would definitely see an intensification of the multicultural central areas, and also a significant pluralisation of many more peripheral and originally 'white' areas. Nationally, Britain almost had a Muslim Prime Minister, Sajid Javid, in summer 2019, before Boris Johnson gained power. Notably, London has for some years now had a Muslim mayor, Sadiq Khan, and many smaller local authorities in the UK have prominent Muslim leaders and numerous Muslim local councillors.

The place that I know best and where I have my ear to the ground, the well-known multi-cultural city of Leicester, is famous for its football team (which also has some Muslim players), but also because of its so-called Golden Mile of Asian shops which even attracts customers from Nordic countries, as I found already in the 1970s. A local council survey in 1983 counted 12.436 Muslims in the city, in a total population of just under 300,000. Of note here was the ethnic diversity of these Muslims, since 11,614 were identified as 'Asian', 383 as 'Other', 332 as 'White', and 107 as 'West Indian'. Since the 1980s, much Muslim in-migration has been seen in Leicester, and more recent Census figures tell the remarkable story of gradual Islamisation of the local population in this central English city. Below, I first report the national picture and then focus on the city of Leicester.

The British Census figures for 2001 on religion, then counted by the Census for the first time, identified for the whole UK a Christian population of 42.079 million (71.6 per cent), but already then 9.104 million people (15.5 per cent) claimed to have no religion, and another 4.289 million (7.3 per cent) did not state their religion. The 2001 Census also counted 1.591 million Muslims (2.7 per cent), as well as 559.000 Hindus (1.0 per cent) and 336.000 Sikhs (0.6 per cent). The corresponding Census figures for 2011 show a significant decline of the Christian population to 33.2 million (59.3 per cent), further growth of the presumably 'secular' population claiming to have no religion to 14.1 million (25.1 per cent), while slightly less people than in 2001, namely 4.1 million (7.2 per cent) did not state their religion. Muslims had by 2011 increased to 2.7 million (5.0 per cent), Hindus to 817.000 (1.5 per cent), and Sikhs to 423.000 (0.8 per cent).

The corresponding figures for Leicester confirm how internally diverse and complex one of Europe's globally known most diverse cities has now become. Leicester had a population of 279.921 in 2001, with far less Christians than average for the UK, just 125.187 persons (44.7 per cent), while even more people than elsewhere claimed to have no religion, namely 48.789 persons (17.4 per cent), and another 19.785 persons (7.0 per cent) did not state their religion. In 2001, Leicester was still a Hindu-dominated city when we look at ethnic minority religions, with 41.248 Hindus (14.7 per cent), 30.885 (11.0 per cent) Muslims, and 11.796 (4.2 per cent) Sikhs. The 2011 Census figures for Leicester are intriguing, as the city population had grown to 329.839 persons, of whom now only 106.872 (32.4 per cent) identified as Christians, 75.280 persons (22.8 per cent) claimed to have no religion, and only 18.345 persons (5.6 per cent) did not state their religion. Most significantly, Islam was now Leicester's largest ethnic minority religion, with 61.440 Muslims (18.6 per cent), while Hindus had grown to 50.087 persons (15.2 per cent) and there were 14.457 Sikhs (4.4 per cent) in 2011.

This city has now almost 100 mosques, many of whom are purpose-built and quite prominent. There are also many more places for Muslim religious and educational activities, including many Koran schools (madrasah) and several Muslim state schools. A significant case arose in 1988, hotly contested under the city's planning laws, when a large private house in a fairly central suburb was found to be used as an unlicensed mosque and local residents, mainly Sikhs at that time, complained about this to the City Council. However, the Muslims, partly relying on arguments regarding rights to practise their religion, won this significant case and secured the right to use this property as a mosque, with certain conditions imposed about noise and traffic regulations. This house is now a very active madrasah, while two streets away, at a very strategic crossroads location, we now have since 2000 Masjid Umar, one of the largest purpose-built mosques in the city, which attracts many worshippers. This is very visible several times a day, especially on Fridays and festival days, as hundreds of local Muslim residents walk to this mosque. In fact this whole middle class neighbourhood, including shops and other facilities, has now become almost completely Muslim-dominated, while the Sikh residents have mostly moved away from this area to another part of the town.

Such ethnographic ground-level observations about the prominent place of Islam and Muslims in a major European city today give rise to several important questions. Should one be worried about such evidence of a gradual Muslim takeover of urban spaces with

such high visibility, and perceive it as somewhat dangerous Islamisation of Europe? Or should one celebrate this as evidence of the peaceful adaptation of European Islam, leading us to engage in a pluralist dance of joy about the evident glocalisation and pluralisation of post-modern Europe? Is there a case for getting stressed out over certain socio-legal perspectives regarding Islam and Europeanisation, as the streets are full of Muslims wearing all kinds of Islamic dress, including many women with face veils?

The Copenhagen conference in early October 2019 was a welcome occasion to compare notes and to discuss to what extent, in Denmark and the Nordic countries, there seem to be new efforts now to think about building bridges. If locally, Muslims are a demographic majority, are we still going to be happy to use images of bridge-building, or should one prefer to talk about balancing acts? I do not know whether the British evidence is of any help in this context, for it seems to me that, wherever we are, everything is still possible in terms of patterns of interaction of Muslims and Europeanisation. Many European Muslims are clearly very modern and actively search for change (Barylo, 2018). While Tariq Modood (2010) has proposed that it is still not so easy being a Muslim in Europe, other Europeans may feel that Muslim are taking over entire neighbourhoods. In London, for example, there have been contentions over efforts to establish alcohol-free zones and private policing of certain Muslim-dominated neighbourhoods.

But how does one Europeanise Islam? Does 'the law' really have the power it seems to claim? To what extent do we need to recognise and account for Islamic practices or actions by Muslims that appear to counteract Europeanisation, and may lead to forms of ethnic or religious segregation that are the opposite of bridge-building? There have been endless debates about this, and there is no clearly visible solution in sight. Therefore I could have stopped my presentation here to invite discussion. However, my own work (Menski, 2018a) and also Jamal (2018) suggest that much plurality-conscious balancing is required, and is possible to achieve bridge-building and sustainable hybrid outcomes for a peaceful co-existence of Muslims and other Europeans.

The law-focused methodology of flying kites as a balancing exercise

Much of my recent work on legal pluralism has depicted the plural entity of 'law' explicitly as a kite with four corners (Menski, 2011; 2012; 2013; 2014a, b; 2018a). I

see with increasing clarity that one can apply this highly dynamic model to all kinds of different scenarios of decision making, especially as a tool to try and understand the position of any 'other' and then to manage conflicts and competitions. The kite model itself is really quite simple and almost commonsensical. In essence, its depiction of different competing types of law reflects a kind of global legal realism, not that dissimilar, I suggest, from Scandinavian legal realism. The kite model incorporates what lawyers have been studying in different classes, yet have not been taught to relate to 'law and life', perhaps because legal scholarship has been too impressed with its own sense of power, rather than engaging in democratic balancing of competing and overlapping claims. The pluralist kite model tends to irk state-centric lawyers and aggressive human rights protagonists, because it reminds them that their respective favourite source of law, whether state law or human rights and international law, is certainly not the only source of legal authority and thus not the only type of law that counts in any specific context.

The basic kite structure, which should not be viewed as a square box, but indeed a kite-like, quite subtle structure that connects the different corner points, is easily explained. At the top, kite corner 1 represents various forms of traditional natural law, ethics and values, including religion. The latter, in traditional contexts, including Islamic scenarios, also makes religiously-grounded claims to globalising universality and then incorporates major elements of corner 4 of the kite. Significantly, before the kite model became prominent, I developed a triangular structure of law (Menski, 2006: 612), influenced by the earlier teachings of Professor Masaji Chiba (1986) from Japan. Once I understood that Chiba's 'legal postulates' as his term of art for ethics and values of all kinds included both 'traditional' and 'modern', even 'global' values, the kite as a four-cornered structure appeared. It now helps to understand why 'traditional' and 'modern' values are so prominently engaged in hazardous clashes between old forms of natural law (which are not defunct) and various kinds of 'new natural law' (Menski, 2014b).

Next, connected to corner 1, on the kite's right-hand side, corner 2 signifies various social normativities as well as economic sustainability. On the left-hand side, kite corner 3 represents the various familiar forms and manifestations of state law, which are often not made by the state, but were adopted from other sources. Lastly, kite corner 4 at the bottom concentrates on and depicts the new natural law of human rights and various forms of international law regulation, potentially a kind of new global legal positivism.

Depicting law as a kite and analysing the operation of law as the skilful balancing of this kite structure in the air, and seeking to avoid crashes, has the advantage of concentrating the mind on several important components of this kind of game theory. This is not fun on the beach, but illustrates how law actually works in practice and indicates how boring and full of routine it may actually be to simply ensure legal stability over a long time. This model also tells us that law is always dependent on time, space and context. Therefore operating any law involves a never-ending, largely invisible sequence of kite-flying scenarios. We may not see the gusts of wind that push and pull the kite in different directions, but it is, like life itself, never static. Significantly, non-Western legal orders tend to internalise such basic characteristics of law and life without mortal fears of slipping into theocracy. Consequently, it is a core-element of non-Western approaches to law that one seeks to look for the justice of any particular scenario at any specific moment or in any given context. One does not, as we tend to do in the 'modern' West, measure justice against an existing written secular text, whether a code of law or a judicial decision taken to stand as precedent. The radical situation-specificity of non-Western legal reasoning, which sees a new scenario in every split-second moment, gives the kite model a relentless and potentially precarious volatility. But it also empowers the skilled kite-flyer, in other words, the legally conscious individual as a law-related agent, to adjust instantly to the slightest challenges. Observing this, one constantly measures split-second decisions while various legal actors, silently, or with much sound and fury, apply this model.

The kite structure also depicts the competing manifestations of law as irrevocably interconnected, so that no component could claim to be truly and fully autonomous. The various actors are all responsible, to some extent, for each other. This mutual multilateral co-ordination and agile cross-supervision not only protects the whole structure from the constant risk of total abuse of power and/or chaotic destruction, leading to a crashing kite. This requires alert individual or shared, and hence negotiated efforts to navigate any tensions between the various competing elements. Since it appears that the right balance makes a kite fly safely, the central question always remains what is the right balance in any particular scenario. That one may not expect total agreement about this is evident, in all cultures and legal orders.

In addition, the kite corners also identify four possible legal agents, who could of course be Muslims living in Nordic countries. In corner 1, we observe the individual agent, but to what extent is such a law-related actor connected to any higher authority, rather

than just claiming autonomy? Corner 2 is the arena of the individual agent acting as a member of any specific group or society, while corner 3 identifies the individual actor as a citizen (*homo politicus*), or maybe an agent of the state, a judge or a bureaucrat. Corner 4 signifies the individual as a global citizen (*homo globalis*), such as a human rights activist who wants to achieve change.

Globally we find that this constant four-cornered contest gives rise to only three basic types of state-centric legal management, and it appears that all law-related action takes place within that broader framework. In a Type 1 legal system, which is typical of the Global North, official claims are advanced that the state law is uniform and supreme. It is basically claimed that there is just one law for all, such as Danish law. Though there will be certain exceptions, these are at the discretion of the respective state authorities and are sought to be kept to a minimum. All Nordic countries would seem to subscribe to that pattern. But all Nordic countries also fall under the second type of state-centric legal order known to the world, which makes certain exemptions or special provisions for specific groups of the population that were the original owners of the land. This applies to the Sami in Norway, Sweden and Finland, while Danish law has specific exemptions for the people of Greenland and the German minority. This type of legal ordering is widespread throughout the world, prominently in the USA, Canada, Australia and New Zealand, but also in many countries of the Global South, notably more recently in Latin America with its increasing recognition of indigenous people's rights.

The third type of state-centric legal order takes the element of exemptions or special provisions for specific groups even more seriously and allows structural exceptions for different socio-cultural groups as law-related communities. Such legal orders explicitly recognise the co-existence of a general law, such as the country's Constitution, common contract laws, procedural and evidence laws, and so on. This is then combined with a set of so-called 'personal laws' that differ from country to country and reflect the demographic and socio-religious realities of specific communities of citizens. So, for Pakistan as an Islamic Republic, there would be a majority Muslim personal law, and then officially recognised minority personal laws for Christians, Hindus, Sikhs, Parsis and Buddhists, earlier even for Jews. This type of legal order, though widely seen as problematic by 'modern' scholars, is actually the globally dominant legal arrangement. Hence it is no coincidence that a large number of migrants to the Nordic states who originate from such types of legal orders remember this pattern as part of their lived

legal experience. The problems we were concerned with in the Conference and related debates largely arise when such migrants then seek to practise 'their' laws in Nordic countries and/or may seek to pass such values, norms and processes on to subsequent generations, even while living as new citizens in Nordic countries.

This specific scenario of intercultural and plurilegal conflict is a truly global predicament, as law and religion always co-exist and compete. To that extent, Nordic countries are, I suggest, not unique, as these plurality-dominated kites exist in all legal/ religious orders and simply experience different Nordic mixities. Pluri-legal scholars will not be surprised about these kinds of intercultural conflicts. However, since the 'modern West' privileges secular state laws as the supreme power, and state-building processes are built on presumptions that citizens have given the state authority to act on their behalf, individual citizens are now deemed to be only indirectly, through voting rights and democratic representation, a law-making entity.

However, in non-Western legal orders and worldviews, the state and its laws have a different role, with huge impacts also on debates about the place of Muslims in relation to Europeanisation. Of course, notions of state power, even a strong state, are also present in Islamic law and in Hindu law (Derrett, 1968). But as primarily global religious and legal orders, with their own polysemic terminologies for various types of law in the corners of their respective kites of law and life, such legal orders do not accept uncritically that the state power holds supreme authority. In various culture-specific forms, these 'traditional' legal orders also envisage that the individual as a law-related entity is connected into a giant web of wide-ranging responsibilities, as Rankin (2018) has recently shown for the ancient, small religious community of Jains.

Being faced with such visions of order, even of a Global Order, from which there is simply no escape, does not mean this completely and fatally controls all individual agency. But it expects and demands responsible action, now in new contexts interpreted as subtle forms of environmental consciousness (Rankin, 2018). Hence the legal traditions of Islam, Hinduism and Jainism all hold the respective state authorities accountable for 'good governance', in the sense of protecting this believed-in higher Order. The state, and any official office holders, then, become servants of that higher order, rather than holding dominant legal authority. Such a state system can still exercise wide-ranging powers, but there is acute awareness that somehow this is not all there is. Notably, people living in and under such legal orders have, in my experience, far less

reluctance to accept the kite model of law as a realistic depiction of the intersectionality of law and life.

One can also depict the four interconnected kite corners by using a different graphic structure, namely four overlapping circles. This further reinforces the realisation that all these intersecting types of laws inevitably co-exist in multiple competitions and mixities. This then calls for conscious, responsible action for what one may call 'public interest', rather than narrower forms of 'private interest'. Another, somewhat deeper level of analysis would add power to this complex kite structure, specifically the power to make decisions at any moment. This slightly more complicated image depicts every kite corner not as an end point, but as another kite, in which again the four corners are present. This results in a superdiverse 'plurality of pluralties', in which four types of power aligned to the four kite corners move into focus. Corner 1 represents now a set of power from within, convictions, we might say, more or less strongly held values and beliefs. Corner 2 denotes a set of powers shared with others, exercised as a group rather than individually. Corner 3 represents the power over others, either because one was elected or appointed to be a legal or political office holder. Significantly, in training programmes for judges at European level, but also in India and Bangladesh, as I saw, these judicial actors realise within seconds that their power derives from such official appointments, anchoring them to corner 3, irrespective of who or what they are as persons. Finally, corner 4 manifests the double whammy, as I call it, of power from within and power over others, most evidently displayed when human rights activists, but also many law teachers these days, employ structures and powers of international law to promote their convictions, either in various legal actions or through teaching processes.

One can therefore look outside and beyond the kite to select what one considers the right tools for navigation and balancing in any particular scenario. But it is equally productive, it seems to me, to look inside the kite structure and to scrutinise where precisely in this law-related arena any particular position or decision may be inscribed or located. This method has not yet been fully enough explored, but offers huge scope for more fruitful navigation of conflicts, and is particularly relevant in arbitration or adjudication contexts. The internal structure of the kite, it appears, also has many substructures that allow the mapping of decision-making. Here, any conflicts of law and religion within a pluri-legal context may be analytically interrogated in terms of their value as components of responsible action.

In this context, however, pluri-legal kite flying in modern environments such as the Nordic countries also runs into ideological trouble. The dominant modern state-centric proposition in this secular-dominated age, we are told, means that 'religion' is simply not 'law'. Thus, it has to be the law that controls religion, and it could and must not be the other way around. While nobody really suggests, I think and hope, that Europe should ultimately be a theocracy, the above arguments privileging secular state laws risk rejecting any place or consideration for religion within the legal sphere. In its extreme form, this approach risks denying a voice to religion/culture in shaping 'the law' in any form. In kite-related language, it risks that corners 3 and 4 collude to deny any legal relevance to corners 1 and 2. The power kite image suggests, however, that such a truncated kite would crash. A total ban on any law-related input from corners 1 and 2 is simply not feasible. This cannot be responsible action, because it also denies the sub-voices of corners 1 and 2 that are hidden in kite corners 3 and 4 of the power kite structure explained above. The highly integrated nature of the kite demands respect for pluri-legal alertness.

An alert kite model always needs to use all four corners and cannot, literally, cut out any corner, otherwise the whole entity would crash and there would be actual or perceived epistemic violence. Therefore, to avoid the risks of unequal and toxic contests of power, of denying certain connections, and ultimately of burning bridges, the kite model teaches several basic principles. It insists on the need to consciously cultivate knowledge and awareness about the key role of individual agency and of alertness about the various intersectionalities of law and life. It also demands that knowledge from different socio-cultural and value-based contexts is incorporated in legal decision-making processes. When a Muslim in Denmark or other Nordic countries interacts with the respective state law, it may not be entirely irrelevant, in certain contexts more so than others, that the legal arena is in Europe. But the Muslim individual also has connections of various kinds that may extend beyond the European sphere. Expert guidance may therefore be needed on 'foreign' legal cultures, and responsible legal and religious decision making and skillful cultural and legal navigation are called for.

The kite model may help in this, as a management tool, while in itself it offers no ready solutions. It is prescriptive only in suggesting that being diversely connected, and being aware of such connections, is a solid rational basis of thought and action for human law-related agents. The key points here are insistence, firstly, that 'religion' is not per se irrational and secondly, that as humans, we are never really alone, nor fully

autonomous. Muslims would have no problems with these two points, yet in developed, modern secular contexts, it becomes tempting to argue that what is known as Enlightenment prevents 'religion' from being a dominant power. There will then also be tendencies to claim that individuals should be 'free' to act as they wish, though in late modernity or post-modern perspectives, such hedonistic and potentially irresponsible approaches and actions would struggle to pass the test of 'goodness'.

Rather than theorising this further here, I suggest focus on practical aspects of the kite model, which stipulates that finding the right balance for responsible action is necessary at any moment of one's life. This indicates attention to consciousness about duties rather than rights, and recognises that neither careless hedonism nor completely fatalistic subjugation of individual agency are likely to be conducive to responsible human co-existence. The challenge will therefore always be to find the right balance. Yet, as soon as one seeks to relate this, anywhere, to concepts of justice and equity, and good, stable, sustainable development and governance, different evaluations of what any of these desirable components and entities mean, and how they are to be achieved, will surface.

Having stated already that it is unwise to leave the law-related decisions only to states, international regulations or human rights activists, it is now necessary to examine the central role of individual agency and responsibility. Individual agency, whether anchored in kite corner 1, 2, 3 or 4, can be empowering and may help shape successful outcomes. Ideally all individuals should act responsibly and should strive to be the best they can be. But we know from bitter experience that abuses of discretion and power, and unrealistic dreams of domination, risk disaster and turmoil. The Danish Cartoon Affair of 2005 was a case in point, now replicated in France in 2020. While in 2020 Britain's BREXIT troubles still cause havoc and kite turbulences, earlier, the politician-journalist Boris Johnson, presently the British Prime Minister, compared veiled Muslim women to bank robbers. This incited increased violence against such Muslim women on the streets of Britain. Such episodes and interventions mark efforts to stir up trouble against 'others' and are hard to control if there is ill-will (Menski, 2018a: 21-22) and, equally dangerous, self-righteousness (Menski, 2018b: 92). If we ask how one secures a proper balance, it appears that the first requirement may be that one needs to know who one is, what one wants to achieve and why. The accompanying question, all the time, ought to be: 'Is this good?'

Yet my experiments with this kind of truth quickly ran aground. If a troublemaker thinks that his or her actions are justifiable in view of the desired aim, and thus are 'good', there is no guarantee that this is good also for others. Specifically, I learnt quickly that relying on the popular notion of the 'good Muslim', even the 'moderate Muslim' (Benkin, 2017), does not help to avoid endorsing terrorist activities in the name of Islam. If, as experienced experts have observed, Islamist rhetoric is 'music to the ears of pious Muslims' (Benkin, 2017: 93; Menski, 2018b: 95), it does not help to adduce arguments by 'liberal' Muslims that a responsible Muslim (*khalifa*) should not engage in violence against others. If 'fundamentalist' Muslims continue to argue that it is part of their responsibility to God that the whole world should be Islamic, the 'enlightened' or 'liberal' response that this is a 'wrong' interpretation of what being a Muslim means most likely fails to impress those who self-righteously push for global Islamisation and oppose Europeanisation.

A truly holistic 'ecology of law', however, reminds all voices in this contest to be truly 'liberal' (Jamal, 2018). It also needs to take responsibility for avoiding, as much as possible, any form of suffering (Baxi, 2002:34) in efforts to promote human rights. While not only Buddhism teaches that life itself is suffering, responsibility in life, right now, but also for the future and for future generations is increasingly asked for in recent global environmental discourses. These, too, seek to promote conscious use of people's agency as interconnected individuals and law-related entities. Everywhere, this raises questions about how to manage laws, in a variety of ways at different levels. But a major challenge remains that there is neither complete agreement over what 'law' or 'Islam' mean and imply. Since both are evidently highly plural entities, the scope for more or less violent disagreement is always latent.

The three-step approach of kite-flying

Aware of such lurking threats, I argue that using the kite flying methodology can help in making sense of such complexities and may offer guidance for responsible human action. I envisage this in three steps. Step 1 demands that any law-related actors first have to know and identify who or what they are and what they want to achieve. A later challenge will then be how to find and maintain a sustainable balance. The starting point of the mental kite journey thus locates and defines the identity of the law-related acting self. As indicated, is this legal actor simply an individual located in kite corner 1, with certain values, beliefs and presuppositions? Or is this individual agent operating

from corner 2 as a member of a social group, whether a family, a particular community or society, or a business? Or does this individual actor, perhaps hidden behind an official smokescreen of some office or function exercise choice and make decisions as a citizen and/or agent of a state in corner 3? Or, finally, is this law-related actor perceiving himself or herself as a global citizen or a representative of some global value or rule system? The trouble is, I suggest, that as individuals we are always all of this at the same time, in different kinds of mixities and roles. But like judges who have to make a decision and cannot say that they do not know, human kite flyers first have to make up their mind about their own position, preferences and ambitions. But then, immediately after that moment, there is a need for further decisions.

Having opted for any of the four above-mentioned possibilities, the chosen kite corner now becomes the location for the second step or stage of decision making. Now appears the power kite model, explained above, in which the sub-kite located in any of the four corners still contains all four competing elements. Step 2 of decision-making demands now that one must consider all four competing elements again to connect one's chosen primary identity in some form to these other types of law, in a particular sequence.

One cannot avoid this process, since no viable decision would be reached otherwise. As already stated, cutting out certain kite corners has the effect that the kite will crash. An individual who at this moment fails to make a decision may well cease to function. If someone has decided to be only a more or less autonomous 'I', and at the second step of decision making also insists on only being 'I', this depicts a terribly isolated individual with no support mechanisms or connections, and even no desire to use connectivity productively. Such a person risks becoming suicidal. Perhaps more dangerously, though, if this is a Muslim individual, insisting on an identity as a 'good Muslim I', perhaps even claiming that this is not merely a matter of individual identity, but an issue of global connectivity in relation to a strong worldview or belief, we face someone who is a religion-inspired Muslim. Co-opting corners 1 and 4, at stage 1 as well as stage 2 of the decision-making process and denying or rejecting any links to the other two corners, this individual could easily become an Islamic terrorist, or indeed someone like Anders Behring Breivik in Norway in 2011. It is quite evident that not only Muslims face kite-flying challenges.

The two-step process of decision-making thus teaches three important lessons. First, it confirms in principle that it is impossible to deny a voice and role to any of the

four competing kite corner elements. No matter how much an individual may hate any particular pluri-legal component, it cannot simply be completely ignored and literally cut out of the decision-making process. Secondly, this suggests that responsible individual action cannot be anchored purely in belief structures, values and convictions, whether of a religious or secular nature, but has to connect in some form also to socio-economic, political and legal entities and domains. Thirdly, though, this also means that any responsible institutional law-related action, whether on the part of a state agent or an international organisation, cannot completely ignore value-based elements in kite corner 1 and socio-cultural norms in corner 2. Responsible use of law-related agency thus always involves specific combinations of 1-2-3-4. Responsible actors have to handle the co-existence of values, norms and processes and need to record and explicitly mark the presence of what they do not like, as failure to do so would amount, as noted, to epistemic violence. In real life, human actors seem to manage this constant challenge quite strategically, by simply putting last what they like least, even what they hate.

Evidently, such pluralist chain constructs result in deeply contested and conflicting positions. It is an entirely different debate in what ways such positioning may be questioned and challenged, and to what extent decision-making processes are a matter of basic human rights, including the right to make wrong decisions according to the assessment of others. The kite model allows, as indicated, other methods and strategies to trace and assess why and how different positions arose and then to proceed with efforts to harmonise specific competing or clashing perspectives and positions. One may see this as step 3 of the kite flying process, a kind of corrective or confirmatory re-balancing through negotiation of conflicts and conciliation of rival positions. Step 3, however, requires looking inside the kite graph structure to locate specific positions and to map and retrace particular decision-making processes and competing positions. This may occur with a view to modifying any decisions made or seeking to persuade a competitor or any identified 'other' to revise their decision. The scope for such re-balancing processes largely depends on individual discretion and on skills, and of course on one's agenda, including the basic willingness to negotiate, which unfortunately we cannot take for granted (Menski, 2018a: 21-22).

Looking inside the kite brings more surprises, for the internal web structure of the kite is much more complex than we think. Dotted everywhere are four corner points of smaller decision-making arenas, at different levels of precision. It will help to take an example. Let us assume a Muslim individual in a Nordic country wants to protect his

or her values and religion against excessive Europeanisation. Four steps in the decision-making process become relevant, namely A, B, C and D. As we are deling with an individual, the decision-making process starts in corner 1 with step A. But the issue would be immediately to what extent this individual would prefer to co-opt any power from corner 2, the family or the community. So the question becomes how far from the starting point in corner 1 this individual point A actually moves closer towards corner 2 and point B. If the individual's choice in step A would simply be to stay strictly in corner 1, pray to God and leave it to Him to protect Islam in the Nordic countries, this could be interpreted as an individual attempt to pray for theocracy. How that person then manages daily social and political life in the secular environment of Nordic countries becomes an important question.

More likely, as individuals also need the support of broader society, a skillful combination and balancing of corners 1 and 2 and points A and B might result in specific forms of *Dansk Shariat* or some kind of custom (*riwaj*), law-related cultural constructs that are likely to be informal and may remain largely invisible. But they are possible, as Ballard (1994) convincingly showed for the UK, on the terms of the individuals concerned, more so if such navigation processes can be kept away from the potentially interventionist powers and supervision of state authorities. I am certainly not saying here that the Nordic states have no right to monitor what goes on in people's homes. But it is a matter of realism to accept that such legal interventions may have limits of reach and effect or, as Degiorgis (2014) illustrates so well regarding unofficial mosques and 'hidden Islam' in Northern Italy, the state itself may choose not to intervene. In Britain, the home schooling of Muslim children, which the state law allows, is such a potentially highly relevant issue. How does one effectively monitor what is taught in the home?

Whatever the precise relationship between corners 1 and 2 and the trajectory of decision-making between points A and B on the template of the inner kite structure, a Muslim in a Nordic country would probably need to cultivate all kinds of relationships with state agencies, and the individual's actions need to be lawful. A skilful combination of corners 1, 2 and 3, and thus a movement on the decision trajectory from point B towards a point C in the direction of the state corner would however still permit individual discretion to cultivate some kind of private *Dansk Shariat*. Here arises the issue of individuals failing to register their marriages according to Nordic state laws, for example. Finally, to what extent such an individual Muslim co-opts a globalised or

Europeanised transnational corner 4 and thus moves the decision-making trajectory towards a point D in the direction of corner 4 would depend on many factors and individual circumstances. It is not suggested that the necessary endpoint has to be the precise centre of the kite structure as an indicator of ideal balance or 'the right law' (Menski, 2012).

The result, it appears, would be that in all cases diligent analysis of these complex processes of pluri-legal conflict negotiation is possible, capturing multiple situations where normative pluralism and human rights tend to clash or exist in various uneasy relationships of tension (Menski, 2018a). As long as there is readiness to navigate and negotiate, there is much hope for sustainable solutions (Topidi, 2018). However, if there is lack of goodwill, or some kind of bad-tempered insistence on certain deemed or actual powers, there will be serious trouble, and there is no known insurance against this.

Key findings and conclusions

Responsible balancing of law and religion by people or states always involves specific combinations of 1-2-3-4 in the context of the kite model. Within the web of the immensely complex relationship of Muslims and Nordic countries, when it comes to the modalities and extent of Europeanisation, there is certainly a legitimate place for religion in European legal structures, also for minority religions. But since European state law and global international norms tend to view themselves as superior powers, a plurality-conscious analysis needs to remain sensitive to evidence of risks of enforced Europeanisation, which is known to have driven many Muslims away from Nordic countries. At the same time, there is still some room for discretion by Muslims in Europe to keep their identity more or less strictly Islamic, if that is what they wish to achieve. But there will be a price for this in the form of possibly restrictive strategic silences (Degiorgis, 2014), though such deliberate non-engagement may be cultivated by both sides. In any case, care must be taken to ensure that individual Muslims and non-majoritarian Muslims are not facing loss or impairment of their basic human rights in the name of Islam, nor in the name of Europeanisation.

It seems unwise and is probably impossible in practice for state law to totally deny Muslims in Nordic countries agency and voices regarding how to manage various core aspects of their respective culture/tradition and religion/values. It would infringe the

right to freedom of religion. The state, despite overarching claims to legal supervision, may thus in reality have limited control over what Muslims actually do behind closed doors or inside their own four walls, as long as they do not infringe state law. This observation, however, raises highly sensitive and important public/private boundary issues and indicates, in overall conclusion, that all stakeholders in these law-related balancing acts, which seem like a high-risk yet essential strategy for both sides, Muslims and Nordic countries, need to remain alert and co-operative, ready to learn from each other. There will continue to be much need for skillful compromises along the journey.

In the discussion after this paper, I gave the example of a highly significant, but unreported case involving a Muslim couple engaged in divorce in London in 2000. I conclude with this example here to reiterate that careful, plurality-conscious balancing is a crucial survival skill for all stakeholders in this never-ending kite contest. The so-called 'Case of the missing £1' (*Ali v. Ali*, unreported, High Court in London, 2000) involved a Bengali Muslim man and woman who worked in the city of London and, already in their early thirties and quite independent personalities, agreed to get married. The couple had a registered marriage under English law in London as a well as a Muslim marriage, a *nikah*. Part of the Muslim marital contract was an agreement by the husband to pay the wife a dower (*mahr*) of £30.001 in case of divorce. We see here that this highly educated couple skillfully used all four kite corners to construct a marriage that would be valid under English law and under Muslim law as applied by Bengalis, in London and anywhere else in the world.

However, this marriage did not last more than six months and one night, after an intense argument, the husband uttered an instant triple *talaq* and unilaterally ended the Muslim marriage, as he deemed to be his right. The wife was not actually opposed to this, yet when the husband next moved the English High Court to obtain an English divorce on the ground of irretrievable breakdown, she reminded the judge that she was owed £30.001, claiming her religious, socio-cultural and human rights, relying on corners 1, 2 and 4. The husband, however, strategically insisted on the formal legal position that under English law, a *mahr* is not known and could not be implemented. His argument relied only on corner 3, to the exclusion of all other corners. The judge struggled to understand this dispute before him and probably consulted peers overnight. Next morning, he granted the wife £30.000, and thus deliberately kept the London-based Muslim contract out of English law by the fictitious deduction of £1. He did not implement the Muslim contract, therefore, maintaining in effect the fiction that English

law is the same law for all. He simply made an ad-hoc equitable exemption for this specific woman to protect her human rights, her socio-economic entitlements, and also her religious principles. The kite sequence in the judicial mind might have been 3-4-2-1. The husband's effort to cut out corners 1, 2 and 4 to gain an unfair advantage from being in Europe completely failed.

I see this as a remarkably sharp and conscious pluri-legal decision, prompted perhaps by my expert intervention, which suggested to the judge that if he did not accept the woman's claim, she would get her money through a Sharia Council in London. For the past two decades, in numerous highly contested cases, English judges have continuously been engaged in highly sophisticated kite balancing, which of course would not please all participants in that kind of litigation (see K v K. [2016] EWHC 3380 Fam). But this is what responsible governance in multi-cultural Europe is now about, too: Europe's judges, in particular, are constantly called upon to find sustainable balances between completely contradictory positions of Muslim litigants that arise all the time when socio-cultural and religious elements of Islam and trends towards Europeanisation meet and clash. Flying kites responsibly helps in such scenarios to avoid individual tragedies and, possibly, avoids social unrest and disquiet. Whatever we call this highly plural exercise, there is little doubt that the kite flying methodology and related strategies are useful tools for shaping a Europeanising Islam and finding appropriate balances.

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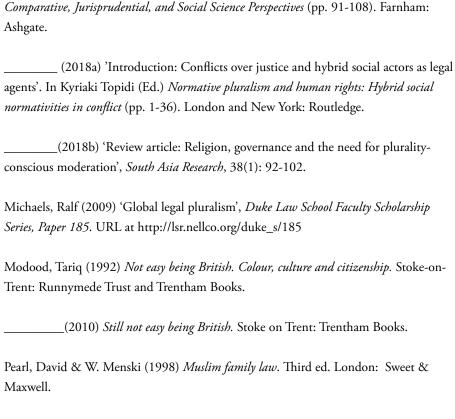
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