

COMMENT

The Religious Market and its Regulation: A Sociological Perspective

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INTRODUCTION

Dutch public radio offers space for an evangelical organisation to present its view on the news and to spread the Gospel of Jesus Christ in the world of media. Early in 2006, it broadcast a discussion about the government's proposal to put additional restrictions on the immigration of religious leaders. For immigrants to the Netherlands from outside the European Union, knowledge of Dutch language and culture is tested. Preachers, pastors, monks and evangelists however have to undergo a more difficult test. The Dutch government wants immigrants to participate in Dutch society and not follow the culture and values of their homeland. Therefore, religious leaders, who are supposed to have a strong influence on immigrants, need a full understanding of the Dutch social context so that they can guide their believers. The evangelical radio station was opposed to this; they were concerned that closing the borders might prevent Dutch society hearing the Good News. There might be a real prophet in the United States or in Africa or elsewhere preaching the true Gospel but denied access to the Netherlands, they argued. Could the government in conscience withhold from the Dutch people the Divine Truth? Under rules like this, the Netherlands would never have become a Christian country, because great missionaries like Willibrord and Boniface would not have been allowed to cross the border.

The government was unimpressed: if Holland missed out on the Good News because of a democratic political decision, so be it. But this example makes clear how well-intentioned decisions can affect the ordinary functioning of religious communities. Government regulation may withhold from the faithful the

¹ This is a revised version of a paper delivered at the Second International Summer School in Law and Religion: 'Regulating the Religious Market', Siena, 27 August–2 September 2006, reported at (2007) 9 Ecc LJ 127.

pastoral care they wish. It may decide which kind of preaching is allowed in the public sphere, or exclude competitors in favour of traditional religious bodies. It may decide where a new building is to be placed, or criminalise religious organisations and put them under some form of state control. In short, government regulation can provide for the people to decide for themselves what kind of religion they prefer, or provide that it be decided for them. This paper examines the legal regulation of religion from a sociological point of view, with specific reference to religious market theory.

MARKET THEORY

Religious market theory starts from the assumption, not discussed here,² that religious adherence by individuals is realised in an economic, cost-benefit exchange process.³ This process takes place in a market, where religious and social goods are exchanged. How can the religious market be described? First, the religious market is not real, but virtual; there is no specific marketplace where religion is 'sold'. The religious market is the whole of demand for and supply of religion in a specific place and time. There are individuals who are looking for supernatural meaning and comfort, and there are religious organisations that offer these. Between these two actors, an exchange arises: religious organisations and their 'customers' exchange secular and religious rewards between themselves. Money is exchanged for a candle; a prayer is exchanged for forgiveness of sins; and time is exchanged in return for belonging to the people of God. Supply on the one hand, demand on the other, and the exchange process between the two make the abstract picture of any market – the religious one included.⁴

The religious market is the whole of supply and demand, but the market itself is divided in numerous parts. Because people differ in their social, economic, psychological and biological characteristics, their religious preferences likewise differ. Some people like more intellectual forms of religion; some prefer plainer and more simple forms. Some people like liturgy, others prefer silence and meditation. Some people want a social and active form of religion; others want to study the Holy Scriptures. Some like very supernatural forms of religion; others more scientific. And some do not want religion at all. Religious market theory supposes that in any society at any time, most people prefer moderate liberal or moderate conservative forms of religion, and few people prefer

2 See, among many others, S Bruce, *Choice and Religion: a critique of the rational choice theory on religion* (Oxford, 1999); H Gooren, 'The religious market model and conversion: towards a new approach', (2006) 35 *Exchange: Journal of Missiological and Ecumenical Research* 39–60.

3 R Stark and W S Bainbridge, *A Theory of Religion* (New Brunswick, NJ, 1996), pp 27–28, 32, 113; R Stark and R Finke, *Acts of Faith: explaining the human side of religion* (Berkeley, CA, 2000), p 85.

4 Stark and Finke, *Acts of Faith*, p 193.

extreme liberal or extreme conservative forms. The result is a hypothetical distribution of religious niches: a bell-shaped curve with high levels of moderate liberal and moderate conservative religion in the middle, and low levels of extreme liberal and extreme conservative religion at either end.⁵

REGULATION OF THE RELIGIOUS MARKET

No religious market is completely free. There will always be some secular laws or rules that limit one form of religion and promote another. The political body charged with the governance of a geographical area primarily exercises this regulation of the religious market. By regulation, governments can decide which forms of religious 'demand' are legitimate enough to be expressed, and which kinds of 'supply' are allowed to fulfil the demands in the area under their control. Regulation is thus an artificial way of controlling how the exchange processes in this market take place and who may engage in them. There are two basic, general forms of regulation: suppression and subsidy. By suppression, the costs for certain forms of religion are artificially raised; by subsidy, the costs for certain forms of religion are artificially decreased. By modifying the costs of certain forms of religion, governments can make them more or less easily available or attractive to the population.⁶

Based on the amount of regulation and the level of enforcement, three possible market-situations can be distinguished. The market may be highly regulated with many rules in force concerning religious exchange. In a situation like this, the number of religious organisations and the diversity of religious exchanges will be limited, as newcomers or non-compliant organisations are punished with extra costs. The options for the religious consumer will be few and limited. At the other side of the scale is the free religious market in which there are no rules regulating exchange. Everyone and every organisation may offer religious products as they wish. The result is a pluralistic religious economy with organisations in a competitive relationship, each serving a specific market niche. The third situation is the mixed situation, where there is a degree of regulation but still some level of competition. This situation is afforded limited coverage in published literature.⁷ Religious market theory points to examples such as Poland under communism and the Netherlands before 1960. In these situations, the religious market was regulated by the state (in the case of Poland) or by a limited number of specific religious organisations dominating the religious market (in the case of Holland). There is,

5 Stark and Finke, *Acts of Faith*, pp 195–197.

6 R Finke, 'The consequences of religious competition: supply-side explanations for religious change' in L Young (ed), *Rational Choice Theory and Religion: summary and assessment* (New York, NY, 1997), pp 46–65, especially 50–52.

7 Cf Stark and Finke, *Acts of Faith*, p 202.

however, some level of competition, because the religious organisations served as vehicles for protest against the state (in Poland) or for social emancipation (in the Netherlands).

CHAVES AND CANN

Chaves and Cann designed a very influential, and much quoted, categorisation of religious regulation in 1992,⁸ comprising six elements:

- i. *A single, designated state church.* This is the case in Scandinavian countries with the Lutheran Church and in England with the Church of England. Features may include the monarch as the head of the church, that every newborn is automatically a member of a certain church, that only a certain church may or can deal with the government or that other churches are not fully recognised;
- ii. *State recognition of a limited number of denominations.* This is the case in Russia and some Eastern European countries. Here, churches have to register with a public office and, once registered, they enjoy the full rights of other similar organisations. If they are not admitted, they are usually considered to be illegal sects. Freedom of religion is normally afforded to religions that have a long tradition of presence in a certain area, with newer religions normally excluded;
- iii. *State appointment or approval of church leaders.* An historical example is the attempt of the Dutch King William I to exercise influence over the appointment of catholic priests and bishops. William pursued a deliberate policy to reform the churches in a liberal and enlightened way. He decided that only priests who had been educated at his own seminary could be appointed in his kingdom. In negotiations about a concordat with the Vatican, he wanted a paragraph stating that the king had a veto in the appointment of bishops, but the Vatican declined. King William had no success with his policy of influencing the preaching and teaching of the Roman Catholic Church, and under his successor such attempts were abandoned;⁹
- iv. *State payment of salaries of church personnel.* This is the case in Belgium. The Belgian state traditionally pays the salary of catholic priests and of a small group of protestant pastors.¹⁰ This means that Muslims and free

8 M Chaves and D Cann 'Regulation, pluralism, and religious market structure: explaining religion's vitality', (1992) 4 *Rationality and Society* 272–290.

9 E Sengers 'Al zijn we katholiek, we zijn Nederlanders': *opkomst en verval van de katholieke kerk in Nederland sinds 195 vanuit rational choice-perspectief* (Delft, 2003), p 77.

10 This includes priests of the Church of England licensed by the Bishop of Gibraltar to serve in chaplaincies in Belgium, being part of the Diocese in Europe.

protestant churches, such as evangelicals and pentecostals, have to pay the salary of their pastors themselves, in addition to the tax they pay for the other churches;

- v. *National church tax.* Germany is the most obvious example, where members of the church have to pay a special tax that is given directly to the church to which they belong. Whether they are satisfied with the services offered or whether they attend the church does not matter: as long as they declare themselves to be members they are obliged to pay the tax. The tax system only applies to a limited number of churches: Roman Catholic, Lutheran, Jews and certain others thus have a ready income which is denied to others;
- vi. *State subsidies for the operating, maintenance or capital expenses of churches.* France is a good example. Here, the state pays for the maintenance of the church building, thus helping religious organisations in a very costly aspect of their functioning. Other organisations have to pay for the upkeep of their ecclesiastical buildings, as well as paying taxes to maintain those of others. This makes it additionally expensive for a religious organisation to settle in France.

GRIM AND FINKE

The most recent publication on regulation of the religious market is by Grim and Finke,¹¹ in which they develop a new index of religious regulation. First, they differentiate between government favouritism and government regulation.

Government favouritism	Government regulation
Imbalanced government funding of religion	Missionary work is prohibited
Degree to which a religion is favoured	Proselytizing, preaching or conversion is limited or restricted
Inequitable level of government favour	Government interferes with an individual's right to worship
Inequitable government funding of things related to religion	No legal or practical protection for freedom of religion
Government funding index (school, media, clergy, etc)	Government does not generally respect freedom of religion Government policy does not contribute to freedom of religion

Source: Grim and Finke (2006), pp 12–19.

11 B Grim and R Finke, 'International religion indexes: government regulation, government favouritism, and social regulation of religion' (2006) 2 *Interdisciplinary Journal of Research on Religion*, article 1.

As well as state regulation, they also identify social forms of regulation. These are unofficial methods of regulation, exercised by other religious or non-religious groups or by society at large. Grim and Finke articulate five different forms of action:¹²

- i. Negative attitudes towards other or non-traditional religions;
- ii. Negative social attitudes towards conversion to other religions;
- iii. Negative attitudes to proselytising;
- iv. Existing religions attempting to shut out newcomers;
- v. Social movements against certain religious types.

For example, Turkey is a secular state but Islam is the dominant religion in society.¹³ This makes it far from easy for non-Muslim religions to preach in public, to proselytise or to build new churches. Repeatedly there are signs that local officials, loosely connected to the secular centre, hinder non-Muslim believers in their region in the exercise of their rights. Also, various groupings in Turkish society try to change the secular state into a religious one. On the other hand, the attacks on mosques and Muslim primary schools in the Netherlands after the assassination of the filmmaker Theo van Gogh can also be viewed as a form of *de facto* social regulation. Though condemned by the government, some groups took the law into their own hands. The debate fostered by Ayaan Hirsi Ali and others, about the compatibility of Islam with western culture, can also be seen as social regulation of religion. It creates a culture where Muslims do not feel free to express their religion in public. Social regulation is also in force when certain religious groups alone or in concert are successful in influencing the policy of the government or of other social actors. This was the case in Greece, where the Orthodox Church prevented the construction near the main international airport of what would have been the biggest mosque in Europe, on the basis that this would have disturbed the picture of Greece as an Orthodox Christian country.

DISCUSSION

Regulation of the religious market is a very dynamic area. As religious organisations become creative in dealing with existing measures, governments have to invent new forms of regulation to check the conduct of actors in the market. And as new religious practices are introduced, as the result of immigration, invention by religious entrepreneurs or changing social circumstances, laws have to be adapted to these new practices. Grim and Finke portray their analysis

12 Grim and Finke, 'International religion indexes', pp 19–20.

13 See R Bottoni, 'The origins of secularism in Turkey' (2007) 9 *Ecc LJ* 175.

as an improvement, and in many ways it is. The table of government regulation and government favouritism, however, is not as clear as it might be. Certain items overlap: what is the difference between missionary work and proselytising, or between the three items on freedom of religion, or between the items on government funding? Some leave much room open for subjective interpretation of the researcher: for example, when is the level of favour or funding 'inequitable'? The scale of social regulation is a very useful addition, as it points to forms of regulation that might not be official but are effective in regulating religious exchange in a certain society.

The six pointers of religious regulation may need to be revisited following the recent resurgence of regulation of the religious market in reaction to global religious terrorism. The categorisation of Chaves and Cann is oriented too strongly towards the relationship between church and state, whereas governments also intervene in the social functioning of religious organisations. This aspect might be as relevant for the functioning of a religious organisation as an intervention in the heart of the religious organisation itself. Religious social organisations include schools, youth clubs, healthcare, cultural groups, broadcast media and so on. Regulation may consist of a limitation in their range of expression, freedom to serve the public of their own choosing, control on the delivered content, or the setting of certain standards of professionalism and organisation required for public functioning or funding.

An example is the discussion in the Netherlands about Muslim primary schools. By constitutional and regular state law, religious schools may be established with a full subsidy from the Dutch government. After several years of existence, in the course of growing cultural and religious tensions worldwide, the question was asked if these schools complied with Dutch culture, how far they could be allowed to deviate, and whether it was desirable that these schools existed in the light of national unity (a strange insinuation, as over half the primary schools are religiously based). Both the Dutch secret service and the ministry of education investigated these schools from the point of sex segregation, religious education programme, the use of Dutch language at school, the influence of foreign regimes, the contacts with mosques and rules about dress.¹⁴ Although little that was disturbing was found, it was still decided by local and national politicians that the number of Muslim primary schools (currently about 55) should not increase and that tighter control of these schools – and, in consequence of equality before the law, of every religious school – was necessary. Regulation of the social organisations operated by

14 *De democratische rechtsorde en Islamitisch onderwijs: buitenlandse inmenging en anti-integratieve tendensen* (Den Haag, 2002), *Islamitische scholen en sociale cohesie* (Den Haag, 2002), A Dijkstra and F Janssens, *Islamitische scholen nader onderzocht* (Den Haag, 2003).

religious groups is not an example of regulation of religion per se: the regulation of schools does not necessarily influence the way mosques and churches function. But, seen from the perspective of the religious organisation, the regulation is keenly felt. The Roman Catholic Church, for example, claims for itself the right to own every worldly object that is considered necessary for the free exercise of its religion.¹⁵ When the Catholic Church considers it necessary to have a brewery for its religion, it will have a brewery. In the same way, the Catholic Church traditionally has a large array of social organisations and institutions at its disposal to facilitate its presence in society and to further the Gospel in its surroundings. Seen from this perspective, every regulation of Catholic social organisations must be considered a regulation of the religion itself. The same applies for Islam, which has a close nexus between mosques and social organisations. Moreover, it is necessary for religious organisations to offer social rewards in addition to their religious rewards.¹⁶ No religious organisation attracts individuals merely with a message of salvation; it also does so by offering childcare, education, career opportunities and so forth. A regulation of religious organisations in this field is therefore at least an indirect regulation of religion itself.

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The Causes of Saints: A Papal Pronouncement and New Measures

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Eric Kemp concluded his major historical study of canonisation with some remarks that can serve as an introduction to this comment. He noted how, from the earliest times, there has been an impulse in the Christian Church for the faithful to observe with warm-hearted devotion the memory of those who have been conspicuous by heroism of life or death for the service of their Master. This devotion has been accorded spontaneously, but dangers were to appear. In time, and for various reasons, an elaborate process was developed for canonisations and they were drawn within the orbit of papal authority as 'major causes' (*maiores causae*).¹ In the Roman Catholic Church, the exercise of papal authority in the causes of saints is still extensive, although the

¹⁵ Code of Canon Law 1983, canon 1254.

¹⁶ Sengers, 'Al zijn we katholiek . . .', p 41–43.

¹ EW Kemp, *Canonization and Authority in the Western Church* (Oxford, 1948), pp 169–170.