



BEYOND FORMALISM: SOCIOLOGICAL ARGUMENTATION IN THE “PUSSY RIOT” CASE

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RESUMEN: La jurisprudencia de Rusia pone de relieve que hay que vincular con mucha más frecuencia de lo que parece a las resoluciones de los actuales tribunales rusos con la Rechtswissenschaft alemana, tal y como era esta última a finales del siglo XIX y durante las dos primeras décadas del siglo XX. El presente artículo se centra en el famoso asunto criminal conocido como “Pussy Riot”, un grupo de rock duro. Miembros de ese grupo pronunciaron una serie de blasfemias en una Iglesia ortodoxa rusa de Moscú. Supuso una grave alteración del orden público y un ataque a verdades de la Iglesia Cristiana ortodoxa. El comportamiento fue calificado como una muestra intolerable de gamberrismo, no exclusivamente de blasfemia. Delito este último castigado en Rusia con una multa de 1.000 rublos, que es una cantidad sumamente pequeña. La sentencia del 17 de junio de 2012 (número 1-170/12 del tribunal judicial moscovita del distrito Khoroshevski) condenó a dos años de cárcel a Nadezhda Tolokonnikova, Ekaterina Samutsevitch y Maria Alekhina. El art. 148 del Código penal ruso fue modificado para poder castigar aquellas acciones llevadas a cabo con un propósito decidido de atacar los sentimientos religiosos. Esta modificación está vigente desde el 1 de Julio de 2013.

PALABRAS CLAVE: Blasfemia, Religión ortodoxa, Gamberrismo, Pussy Riot, Nadezhda Tolokonnikova, Ekaterina Samutsevitch, Maria Alekhina.

RESUM: La jurisprudència de Rússia posa en relleu que cal vincular amb molta més freqüència del que sembla a les resolucions dels actuals tribunals russos amb la Rechtswissenschaft alemanya, tal com era aquesta última a la fi del segle XIX i durant les dues primeres dècades del segle XX. El present article se centra en el famós assumpte criminal conegut com “Pussy Riot”, un grup de rock dur. Membres d'aquest grup van pronunciar una sèrie de blasfèmies en una Església ortodoxa russa de Moscou. Va suposar una greu pertorbació de l'ordre públic i un atac a veritats de l'Església Cristiana ortodoxa. El comportament va ser qualificat com una mostra intolerable de gamberrisme, no exclusivament de blasfèmia. Delicte aquest castigat a Rússia amb una multa d'1.000 rubles, que és una quantitat summament petita. La sentència del 17 de juny de 2012 (número 1-170/12 del tribunal judicial moscovita del districte Khoroshevski) va condemnar a dos anys de

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presó a Nadezhda Tolokonnikova, Ekaterina Samutsevitch i Maria Alekhina. L'art. 148 del Codi penal rus va ser modificat per poder castigar aquelles accions dutes a terme amb un propòsit decidit d'atacar els sentiments religiosos. Aquesta modificació està vigent des de l'1 de Juliol de 2013.

PARAULES CLAU: Blasfèmia, Religió ortodoxa, Gamberrisme, Nadezhda Tolokonnikova, Ekaterina Samutsevitch, Maria Alekhina.

1. Introduction

The Russian courts, especially those of the general jurisdiction (considering criminal, administrative, and civil affairs, except those cases which are connected with commerce¹), are often accused of excessive formalism. This is not a surprise, as the Russian jurisprudence is still keeps fidelity to the postulates of the German *Rechtswissenschaft* of the beginning of the 20th century, which was received by the Russian pre-revolutionary legal thinkers and which had been kept practically intact (apart from some ideological innovations which do not touch the substance of the legal schemes and definitions²) during the Soviet rule and in the post-Soviet Russian legal science. Nevertheless, the situation is not of a black-white contrast, as it could appear to external observer who forms his or her judgment about philosophy of the contemporary Russian procedural law basing on the general philosophical schemes.³

From the internal perspective of a participant (to refer to the famous distinction between internal and external perspectives largely discussed by H.L.A. Hart⁴) it is possible to suggest that this philosophy is not as monolith as it is sometimes described in the bulk of the comparative literature on the Russian law. In some of our earlier works we discussed the hidden motives behind the reasoning of the Russian courts, explaining it in the cases connected with federalism and execution of foreign decisions in the perspective of the sovereignty arguments.⁵ It is with the help of those arguments that the Russian judiciary (also politicians, legislators, etc.) shapes its own continuum of legal argumentation. Niklas Luhmann depicted law as a social system that creates itself through differentiation from the external sphere, from other social systems.⁶ In a broader sense, this differentiation might imply also construction

¹ At the moment this article was finalized, the Russian parliament adopted the amendments into the Constitution proposed by the President (the bill No. 352924-6) according to which both general jurisdiction and commercial courts were fused into one jurisdiction under the auspices of the Supreme Court of Russia.

² See: Antonov, *The Philosophy of Sovereignty, Human Rights, and Democracy in Russia*.

³ So, in his recent book about legal practitioners in Russia William Butler writes: "Whether the legal system is the reflection or a cause I cannot be certain, but there are elements of formality and bureaucratic procedure endemic to centuries of Russian legal behavior that do separate them in degree from other legal cultures" (Butler, *The Russian Legal Practitioner*, 14). Sometimes, these innocent general considerations turns into false assertions like that Russians feel aversion toward rule of law (e.g., Wilson, *Russia's Cultural Aversion to the Rule of Law*, 195-231).

⁴ Hart, *The Concept of Law*, 86 ff.

⁵ Antonov, *Theoretical Issues of Sovereignty in Russia and Russian Law*, 95-113; id. *Foreign Court Decisions, Arbitral Awards and Sovereignty in Russia*, 317-40.

⁶ Luhmann, *Operational Closure and Structural Coupling: the Differentiation of the Legal System*. See also: Krawietz, *Legal Communication in Modern Law and Legal Systems. A Multi-Level Approach to the Theory and Philosophy of Law*.

of a legal system by the way of its opposition to other legal systems (not so much in the light of rules and codes, but rather the legal values endemic to this system and argumentation about them). Thus, the protective shell of sovereignty argumentation (the “external perspective”) can be explained as a means to shape a legal system in Russia through introducing a binary code “our law” and “not our law”,⁷ through barring Russian judges and legislators from using “alien values” in their reasoning (the “internal perspective”). From this standpoint, the presumed formalism of the Russian judiciary can be seen rather as a symptom of an external expression of that logic which incites legal actors⁸ to build the Russian legal system opposing it to the alleged Western influences. Thus, fidelity to the letter of law is a means to an end, but not an end. Gerry Postema writes: “The law, like other similar social practices, is constituted not only by intricate patterns of behavioral interactions, but also by the beliefs, activities, judgments and understandings of participants. The practice has an ‘inside,’ the ‘internal point of view’ of participants”.⁹

Here we would throw a light on the famous criminal case of “Pussy Riot” singers, and particularly on the argumentation the judge used in the verdict against these singers. This case shows that the formalist, syllogistic mode of legal thinking can sometimes be overruled by the sociological arguments, even in the criminal cases where the rule *nulla crimen, nulla poena sine lege praevia* persists. It is not the place here to hint on any possible political put-up job behind this case (the province of the research which should rather be reserved for political science): we would just examine the argumentation of the court decision to demonstrate flexibility of legal argumentation (in this case, in the Russian criminal procedure particularly, and in law generally) to overcome the positivist restraints. These restraints were advocated by many legal scholars (so, in the words of Charles Montesquieu, “the national judges are no more than the mouth that pronounces the words of the law, mere passive beings incapable of moderating either its force or rigor”,¹⁰ or William Blackstone who understands judges as merely “oracles of the law”¹¹); they are widely imposed in the civil-law legal doctrine into the judge who is censed not to be able to go beyond the law (especially in criminal cases). In the case we examine below, the judge evidently diverged from literal reading of the law. Why did she do it, what was her “internal perspective”: it is the central question investigated in the present paper.

Ronald Dworkin,¹² Alexander Peczenik,¹³ Aulis Aarnio,¹⁴ Arthur Kaufmann¹⁵ and many other outstanding legal philosophers of the 20th century insisted that

⁷ See an interesting example of this reconstruction undertaken in the first years of the Soviet Rule by a follower of Leon Petrazycki: Reisner, *Law, our law, foreign law, general law*, 83 ff. Construction of a legal system through opposition to the legal systems of the rest of the world is something which is quite well known in the Soviet legal theory, and also in the post-Soviet Russian legal philosophy of our days. See on this continuity: Butler, *Russian Law*.

⁸ By “actor” in this context can be meant anyone who intends to do what the law requires him or her to do.

⁹ Postema, *Jurisprudence as Practical Philosophy*, 329.

¹⁰ Montesquieu, *The Spirit of Laws*, 226.

¹¹ Blackstone (*Commentaries on the Laws of England*, Vol. 1, 69) describes judges as “the living oracles, who must decide in all cases of doubt, and who are bound by an oath to decide according to the law of the land.”

¹² See: Dworkin, *Law as Interpretation*, 179-200; and more extensively: id., *Law's Empire*.

¹³ See, e.g.: Peczenik, *On Law and Reason*.

the court practice is in a major part defined rather by the current representations in the judicial community about the factual and ideological constraints (inclusive of the argumentation techniques, the political and societal balances, the goals of judicial activity, the hierarchical order of different rules and principles, and so on), and that legal texts always leave a room for margin of appreciation (e.g., “penumbra cases” masterly described by H.L.A. Hart). This assumption does not mean that the legal texts (such as Penal code) do not play any role in adjudication of the cases before the court (we are far from the contention that “the law is what the judges say it is”, to recall the famous phrase of Charles Evans Hughes¹⁶). Doubtlessly, these texts do play a certain role in fixing what the *corpus delicti* is and in setting out a general framework for the legal argumentation to establish the connection between the factual state of affairs and the abstract *corpus delicti* (to determine which facts are relevant, which circumstances aggravate or alleviate the liability, etc.), but the court’s judgment on the relative weight of the arguments, the persuasive force of the evidences, the severity of the punishment and many other factors in each concrete case cannot rest on the textual wording of the concerned provision of statutes.

In this perspective, it is possible to argue that meaning of any law is found in application to particular facts and not in advance of application.¹⁷ These facts largely (if not totally, as argued Karl Llewellyn and other ideologists of the fact-skepticism¹⁸) prefigure the outcome of the proceedings and the final verdict of the court. Although, it is not a set of facts which finally shapes the margin of appreciation of the judge, but *vice versa*, it is the judge who picks up the facts to insert them into a framework of reasoning he or she already has in mind. This framework can be revealed through reconstructing the conceptual model (the ‘audience’ in the terms of the theory of legal argumentation by Chaim Perelman) to which the corresponding arguments were addressed to.¹⁹

2. *The Pussy Riot case and the sociological arguments behind it*

The accusation brought under article 213 of Penal Code of Russia (hooliganism) against the feminist singers, members of the rock-group “Pussy Riot”, who performed blasphemy songs (“punk prayer”) in the Orthodox Church of Saint Savior in Moscow, was grounded on the allegation that this action constituted a serious infraction of the social order and expressed an open disrespect of the society, this disrespect being based on the religious hatred and enmity against a certain social group – which is *corpus delicti* of article 213. Below we will analyze how the court came to the conclusion that an antireligious action conducted inside the church walls can be identified with a serious infraction of order of the entire society and with the disrespect of this entire society, and not only of some of the Orthodox believers. The argumentation of the court refers to several ideas about the social control which shall be provided by the state and its courts and constructs the society as the addressee of the

¹⁴ Aarnio, *Reason and Authority*.

¹⁵ Kaufmann, *Preliminary Remarks on a Legal Logic and Ontology Relations*.

¹⁶ Hughes, *Speech in Elmira*, 139.

¹⁷ Walshaw, *Interpretation is Understanding and Application*, 101 ff.

¹⁸ Twining, *Karl Llewellyn and the Realist Movement*.

¹⁹ Christie, *The Notion of an Ideal Audience in Legal Argument*; Perelman, Olbrechts-Tyteca, *The Treatise on New Rhetoric and Argumentation*.

blasphemy action. Such a technique allowed to the court to infer that the action was not political one, that it endangered the entire society and not only its part. This question was one of the most material ones for the case, as if it were only insulting of the believers' feelings and not challenging the entire society, the action had to be qualified as a misdemeanor under part 2 of article 5.26 of Administrative code (Code of Administrative Misdemeanors) with the maximal fine of 25 Euros (1000 rubles).²⁰ Putatively, this blasphemy action was conceived of and conducted with regard to its possible legal qualification as of a minor misdemeanor (the materials of the criminal dossier show that the action was not spontaneous, and was carefully planned and prepared). But in its reasoning the court has ruled out application of this administrative fine, finding that the action brought about a serious threat to the society, and requires a stronger punishment. Here the principles of legal certainty, on the one hand, and the interests of social integrity, on the other, were put at the stake, the court balancing them and choosing the second one.

In our analysis we are far from evaluating the verdict on its merits, from stating whether from the legal point of view the accusation was brought correctly or not, whether the evidences were persuasive enough to convict the members of "Pussy Riot" of hooliganism, what were the real intention of the accused and the social impact of their action. Our analysis is confined only to the arguments with the help of which the court linked the requirement of observance of the church rules with the demand that the entire social order shall not be impinged on. If nothing else is mentioned, we will refer to the pages of the verdict of 17 August, 2012 in the case No. 1-170/12 of Khoroshevsky district court of Moscow pursuant to which Nadezhda Tolokonnikova, Ekaterina Samutsevitch, and Maria Alekhina were found guilty in committing the crime of hooliganism (part 2 of article 213 of Penal Code) and sentenced to two years of imprisonment each. The citations from the ruling of the Moscow city court which heard this case in the cassation procedure will be marked additionally.

Beginning its reasoning at page 2, the court finds the complicity of the three accused persons in the fact that they have bought "the clothes which overtly and evidently contradict to the general church rules, to the requirement of order and of discipline, and to the inner tenor of life in the church... with the intention to garb themselves in motley in order to demonstrate their disrespect toward the Christian world and to the church canons".²¹ Planning their action and willing to make it known "not only to the visitors and the church's personnel, but also to other citizens who were not present in the church", the accused informed the bloggers of the planned action, inviting them to join it. Here the court links the church rites and rules which were the immediate target of the crime, with the social impact which was intended by the action in question. In this reasoning the court implicitly presumes that the inner orders of the church and their possible violation, if known to the public, can exert an influence on the entire society, and finds in the plans of the accused exactly this malice intent.

This intent has been carried out, the accused penetrated into the sanctuary and uttered there their profanities, which resulted in "the violation of the public

²⁰ After this case the article 148 of Penal Code was amended to provide a punishment for "the public actions conducted with the purpose of insulting religious feelings". On 11 June, 2013 the bill passed the final reading and came into force from 1 July, 2013 (Federal law No. 136-FZ of 29 June, 2013).

²¹ All translations from Russian into English are by the present author unless otherwise noted.

tranquility and order, in disturbance of the normal functioning of the Saint Savior Church, as it is established in the internal regulation of the Church, in the demonstration of disrespect toward those who were inside the Church, in the insulting the feelings of those of them who are religious” (page 3). The next sentence is of particular interest, as here the court qualifies the blasphemy as infringement of the principles of the social order to connect it with the *corpus delicti* of hooliganism: “In general, the action in question has been carried out in an evidently pious and irreverent form which was devoid of any morals or ethical standards, and which has uttered the religious hatred and enmity to one of the existing religions – the Christianity, impinging on the equality, identity, and the vital importance of this religion for a big number of nations and peoples” (page 3). In this argumentation the court bridges the connection between the first premise (the fact of insulting the feelings of the believers) and the expected conclusion (that the action contravenes the ethical standards and endangers the social order), in the meantime introducing the presumption that the Christianity is vital for many nations and peoples. With these precepts at hand, the court infers that the blasphemy uttered in the given circumstances was dangerous for some peoples and nations (not concretized in the verdict, putatively the Russian nation is implicated *inter alia*), and thereof it concludes that the action encroaches on the vital basis of the society which is built up by these peoples and nations.

Rejecting the objections of the defense based on inadmissibility of referring to any canon laws or regulations, and of bringing in the state court an accusation based on these canon laws, the court agreed that the inner order in the churches is established only on the grounds of the ecclesiastical texts. But their ecclesiastical character does not mean that they cannot be protected by the state which is proclaimed to be secular. In the court’s opinion, as the freedom of worship is guaranteed by the Constitution, the infraction of the ecclesiastical rules can be classified as the infraction of the social order, which includes the worship and ritual rites indirectly protected by the constitutional norms (pages 31-32). This argumentation is founded on the assumption that there is no need for the state to introduce official legal norms for the behavior inside the churches, as such conduct can be regulated by the church rules; the fact of such internal regulation does not stand in any contradiction to the Constitution and does not strip the church rules of conduct of the protection from the part of the state. Such reasoning constitutes an additional linkage between the violation of the church rules, the obligation of the state to protect these rules, and the qualification of the “Pussy Riot” action as of an act of hooliganism.

This linkage allowed to the court to proceed to the central issue of these criminal charges – whether there was infraction of the moral rules or of the religious ones, and whether the blasphemy in question does not go beyond insulting the feelings of the believers and in this sense shall be qualified as a misdemeanor under part 2 of article 5.26 of Administrative Code. The court reasoned that it could accept these arguments of the defense were the action conducted outside of the religious site (page 33). But given that the action is carried out inside, it “changes the very object of the crime, which is the social order, as this action involves the complex of the relationships between the human beings, of the rules of conduct set forward in the normative regulations, in the morality, and in the traditions which secure the social tranquility and

protection of the people in various spheres of activities, of the normal functioning of the state and social institutions” (page 33). In the following argumentation the court held that “the places of cult and the buildings which stand in the centre of the social attention (such as churches, cathedrals, temples, etc.) and where the worship and other religious rites are accomplished, are public places” (page 38). Here the reasoning relies on the previous findings according to which the disrespect of the church rules can be identified as the disregard of the order of the entire society (page 2), because of the vital role of the Christianity (page 3) and because of the legal protection granted by the Constitution to the religious communities, their ceremonies and rites (page 32).

This reasoning led the court to the conclusion that “uttering the cuss words publicly and in the nearby of the Orthodox icons and sanctuaries, given the place of this action, cannot be considered otherwise as infraction of the social order, ... insofar as the people inside the Church were scoffed and goofed on, the social tranquillity has been broken” (page 35). The court pursued that this action has been targeted “not only at the personnel and at the visitors of the Church, but also at other people who were not present in the Church at the moment, and who share the Orthodox traditions and customs” (page 36). The justification of the verdict is thus achieved through constructing a “universal audience” (in the sense of Chaim Perelman’s conception) composed of all those who respect the religious culture, and it is this “audience” which constituted the community whose traditions and customs were associated by the court with the rules of the social order. In this regard, it can be mentioned that the Council of the Russian Muftis has officially supported the accusation act (pages 27-28). Regardless of the issue of qualification of this crime, one can mention the use of the argumentation techniques which were applied by the court to this case dealing with some important problems discussed by the legal philosophers for ages.

Rebuffing the arguments of the defence pursuing that Russia is a secular state and shall not favour a religious confession at the detriment of the freedom of expression, the court stressed that this freedom is outweighed in this case by the rights and freedoms of the believers (article 9 of the European Convention on Human Rights is not directly mentioned but the court evidently takes into consideration the balances set out in this article). The court reasoned that the accused “opposed themselves against the adherents of the Orthodox, Christian values, and thereby in a demonstrative and pretentious manner expressed their disrespect to the church traditions and dogmas which have been protected and revered from centuries past, exhibited themselves in the light which humiliates the inner convictions of the people spiritually linked to God” (page 36). It was especially noted in the verdict that during the blasphemy action no mention has been made about any of the politicians, nor any political claims have been uttered (page 38), so that the “audience” to which was addressed the action was the religious one and not the political.

The sociological arguments were also reiterated in the second instance court, the Moscow City Court, where on 10 October, 2012 was heard the cassation appeal of the accused girls.²² Among others, the advocates mentioned the following reasons to reverse the accusation verdict and to plea their clients non-guilty: (1) rules of behaviour inside of a church are rules of a religious

²² Cited according to: <http://www.kommersant.ru/Doc/2046311>.

organization and therefore cannot be considered as recognized by all; (2) there is no such a social group as the community of Orthodox believers; (3) the court of the first instance used in its reasoning such arguments and concepts which are not formulated in statutes. In her particular appeal Samutsevitch accused the court of “confusing the commonly recognized norms with rules of social behavior and with rules of conduct inside of a church which resulted in interpreting the Russian society as a religious one”. Quashing these arguments, the court reasoned that the reasoning of a judge is not limited with the words and concepts fixed in statutes; that the social order includes also system of protection of religious feelings. To justify this finding, the court repeated the definition of social order given by the first instance court, claiming that “social order assure tranquility and security not only of large groups of citizens, but also of each individual member of society”. The consequent complaints and the court decisions held on these complaints are mostly repetitive of the main arguments made by the two afore-mentioned judgments, so we do not reproduce here these further decisions.

3. Conclusion

This analysis shows that the judicial decisions made by the Russian courts can be studied more productively in the light of the applied techniques and arguments²³ than in the perspective of the alleged political manipulations and of the supposed show trials. The language and the argumentation of the examined verdict shows that the judge was familiarized with the basic concept of the Orthodox Church and the canons of the Church; she has elaborated her position on the philosophical issue of the connection between the church rules and the social order; she has some established ideas about the function of religion and of the religious rites in the society (here we do not enter into discussing the independence of the judge, including the extent to which she reproduced the arguments of the accusation act, as well as the matter of admissibility of “copy-paste” technique employed by many Russian judges in criminal cases, as this issue necessitates conducting another research). One can agree or disagree with the ideas and conclusions advocated by the judge,²⁴ but one shall not neglect the additional mechanisms of the social control which are sometimes (and not only in Russia) introduced by the judiciary to protect the values and interests which are not sufficiently (in the courts’ opinion) defended by the acting statutes. In the present case the derisory fine provided by the Administrative Code for insulting the religious beliefs was considered by the court as obviously disproportional given the social danger of the blasphemy action in question, so that the court in this trial has circuitously designed a new defence to protect “the social order”.

²³ See: Soboleva, *Hate Speech Litigation in Russia*, 99 ff.

²⁴ In our opinion, there is no stable ground for appreciation of these and other arguments, much hinges on the internal beliefs which are supported by the evidences chosen, picked up by a judge (Feeney *et alt.*, *Background beliefs and evidence interpretation*, 97-124). It concerns not only the court case in question, but any other court case. Our legal knowledge is a coherent system linked to justifications made by us, so that “the fully adequate development of any philosophical position has to take into view the holistic issue of how its own deliberations fit into the larger scheme of things” (Rescher, *Philosophical Reasoning. A Study in the Methodology of Philosophizing*, 43).

To follow the ideas of Michel Troper, “when the State imposes a religious rule, it does so by means of its own law and thus immediately translates the religious rule into a secular one that will be interpreted and applied as such”.²⁵ It can be so with the judgment in the Pussy Riot case, where the judge has delivered the decision with the thoroughly elaborated linkage between the infraction of the religious rules and the sanction from the state law – such a linkage can be considered as an individual norm (in the terms of Hans Kelsen’s theory). Even if formally it could be deemed wrong, this verdict might be justified in the perspective of a broader understanding of the role of the court as of an institution whose function is to be “the architect of social engineering”.²⁶ It is in the interplay of internal (attitude of the judge to her role of “social engineer”) and external (the obligation of the judge to keep fidelity to the letter of law) aspects, that we can reassess legal argumentation laid down in this verdict, as well as in many other court decisions. Differentiating of these two aspects can be of great importance for someone who makes his or her research in comparative law and who undertakes to analyze the juridical practice in another country. As H. L. A. Hart puts it: “Indeed, until its importance is grasped, we cannot properly understand the whole distinctive style of human thought, speech and action which is involved in the existence of rules and which constitutes the normative structure of society”.²⁷ In this sense, Oliver W. Holmes Jr. was right when claiming that “The life of the law has not been logic; it has been experience”.

We are aware of the limits of our conclusions which do not claim to go beyond the analyzed case and its explicit argumentation. Naturally, the relation between legal norms and social norms were and are investigated also by the other courts, e.g. the ECtHR, and to arrive at a broader perspective, one needs to encompass the entire massive of the case law of the Russian courts, as well of the international courts and courts of other countries which often face similar issues. On the other hand, the Pussy Riot judgment does not flow in a vacuum but is a part of complex legal (and social) system, and to draw broader conclusions one needs to look at it from other perspectives, including institutional and political ones (here we abstained from examination of these perspectives, but it does not prevent other scholars with other objectives to include them into their research). Investigation of proportionality between the freedom of speech and protection of religious rules and of the connection between religious rules and the official law, between rules and policies is a waste and fruitful object for a more extensive comparative-law research, for which our article can serve as one of many constructive elements.

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²⁵ Troper, *Sovereignty and Laïcité*, 561.

²⁶ Pound, *The Lawyer as a Social Engineer*, 292 ff.

²⁷ Hart, *The Concept of Law*, 88.

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