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An Analysis of the Impending Disestablishment of the Church of Sweden*

I. INTRODUCTION

There is a contemporary trend in some European countries to strengthen the relations between one or more preferred denominations and the state, at the expense of other religions. Austria, for example, recently “passed a new law creating a second class of religions that are not entitled to the full benefits and protections afforded traditional religions.”¹ The state of Austria recognizes only twelve religions.² Other denominations are not considered religions but are only identified as “Confessional Communities.”³ Before being recognized as a religion, the new law requires that an association have at least 16,000 members, that its “teachings are not considered dangerous by the government,” and that it spend ten or twenty years as a Confessional Community, depending on whether the association already has applied for recognition as a religion.⁴

The Church of Sweden, originally a Catholic province, became a state church through the Reformation.⁵ It was decided

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1. Christopher J. Miner, *Losing My Religion: Austria's New Religion Law in Light of International and European Standards of Religious Freedom*, 1998 BYU L. REV. 607, 607.

2.

The twelve recognized religions in Austria are: The Catholic Church, The Protestant [Lutheran] Church, The Greek Oriental Church, The Old Catholic Church, The Armenian Apostolic Church, The Syrian Orthodox Church, The Methodist Church, The Church of Jesus Christ of Latter-Day Saints (Mormon), The Jewish Religious Community, Islam, and the Austrian Buddhist Religious Society. . . . The twelve recognized religions are exempt from meeting the new requirements.

Id. at 608 n.9.

3. *See id.* at 607-08.

4. *Id.* at 607.

5. *See* Regeringens skrivelse till kyrkomötet: Ändrade relationer mellan staten och Svenska kyrkan [The Government's Draft Proposal to Kyrkomötet: Changed Relations Between the State and the Church of Sweden], RegSkr 1995:1 § 1, at 4

in 1593 that the new state church would be of an evangelical-Lutheran nature and that strong ties between it and the state should be developed.⁶ Subsequently, the Church of Sweden Act of 1686 provided that the secular state, especially the King, should be responsible for and should regulate the Church,⁷ which was to be the official religion to the exclusion of all other denominations. However, in contrast to its fellow European member states, the Swedish government presented, and the parliament passed, a proposal⁸ in 1995 which created a vehicle for the disestablishment of the Church of Sweden by January 1, 2000.⁹ This proposal did not attempt to resolve all of the problems that naturally will occur when changing a nation's fundamental structure, system and laws. Instead, when the governing body of Sweden decided as a matter of principle that the Church of Sweden should be disestablished by the year two thousand, it only suggested solutions to some questions. It left other concerns to be investigated, debated and resolved before completing the separation between the Church and the state.

Many nations enact legislation to regulate how religious associations may obtain legal entity status. Such regulation may be enacted for honorable or dubious purposes, however. To illustrate, Russia and the individual states of the United States have enacted laws governing the legal status of religious associations.¹⁰ These laws appear similar in that they "characteristically describe the basic qualifications for setting up legal entities, the formalities that must be included in charter documents, description of the institutional mechanisms for processing such documents, grounds for dissolution, and so

[hereinafter RegSkr 1995:1] (trans. by this author).

6. *See id.*

7. *See id.*

8. *See id.*

9. *See* Konstitutionsutskottets betänkande: Staten och trossamfunden—grundlagsfrågor m.m. [Consideration of the Department of Constitutional Questions: The State and the Religious Denominations, etc.] 1997/98:KU20, at 1, also available at (visited March 16, 1999) <<http://www.riksdagen.se/debatt/9798/utskott/ku/ku20/KU200006.ASP>> [hereinafter 1997/98:KU20] (trans. by this author).

10. *See* W. Cole Durham, Jr. & Lauren B. Homer, *Russia's 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT'L L. REV. 101, 113 (1998).

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forth.”¹¹ Nonetheless, at least one author has made a distinction between the underlying purposes of these laws:

[I]n the United States, the primary impetus of such laws is

to *facilitate* religious activity by making flexible entity structures easily available to religious groups so that a religious association can use these vehicles to carry out its religious mission. In Russia (and much of Eastern Europe, for that matter), there is a much greater tendency to assume that the purpose of such laws is to effectuate *control* of religious organizations and to prevent troublesome groups from obtaining legal entity status.¹²

The question is whether the motivation for the Swedish reform is honorable or dubious. At the time this article is written, less than one year remains until the ties between the Church of Sweden and the state will be dissolved. The state-church relationship has developed over hundreds of years, and cannot easily be discarded. As will be seen, even though the governing body has decided to put the Church of Sweden on equal footing with other denominations—a very commendable objective—it is not easy to create one law that equally governs all faiths, particularly when there are strong historical ties between the state and one or more denominations.

The year-two-thousand reform will produce the Religious Denomination Act that will govern all religious associations, including the Church of Sweden. The Act will enable each denomination to register to obtain constitutional protection, including protection for its organization and religious beliefs. On the other hand, the parliament also enacted a special Church of Sweden Act, which will specifically govern the Church after the reform. This special Act may be to some an indication of a dubious attempt on the part of the parliament to preserve the historical, preferential status of the Church. However, this author believes that despite the special Act, which may be a symbolic gesture to the Church at the end of the Swedish state-church era, the parliament’s motives for reforming state-church relations are honorable and based on a genuine interest in promoting religious freedom and equality

11. *Id.*

12. *Id.*

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among, and constitutional protection for, all denominations. The year-two-thousand reform is simply a substantial and necessary step in the process of completely severing the ties between the Church and the state.

This Comment will analyze and describe the efforts to disestablish the Church of Sweden in order to illustrate how one nation dealt with the difficulties a state-church regime faces in today's modern, pluralistic world. Part II of this Comment describes the rise of the Church of Sweden as a Catholic province and the ensuing reformation, which changed the Church into an evangelical-Lutheran denomination. This Part also reveals the struggle for power between the Catholic Church and state, which fueled the reformation. Part III discusses the development of freedom of religion in Sweden and the influence of the Freedom of Religion Act on the impending disestablishment of the Church of Sweden. Part III also highlights various attempts at reforming state-church relations up until the parliament made the decision in 1995 to disestablish the Church. Part IV analyzes the government's 1995 proposal, parts of the subsequent Church- and state-sponsored investigations, and the parliamentary debate and decisions, all in an attempt to provide solutions to existing and anticipated problems and questions in conjunction with the disestablishment.

Lastly, in Part V, the author concludes that although the Swedish government is intent on severing the ties between the Church and the state, the strong historical and political relationship between the two institutions prevents a wholesale separation at this time. Some preferential treatment of the Church of Sweden will appear to exist at least formally in the newly devised laws governing religion in Sweden. The upcoming disestablishment should not be viewed as a complete separation; rather, it should be viewed as one more step—a substantial one—in the process of completely separating the Church and the state. Just as it took Christianity several attempts and three hundred years to overcome the pagan religion in Sweden, further reaching reforms will be required before Sweden achieves full equality between all denominations. The development of the Church of Sweden has

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been one of evolution rather than revolution.¹³ The disestablishment that will take place in the year two thousand is no different.

II. THE RISE OF THE CHURCH OF SWEDEN

Sweden is a fairly young nation-state in view of the history of other European nations. Svealand and Götaland,¹⁴ two provinces of present-day Sweden, merged around 900 A.D. and formed the foundation of the modern Swedish state.¹⁵ The young nation did not easily convert to Christianity. By most accounts, three hundred years passed from the time the first missionary appeared in Sweden until a solid foundation for Christianity was laid in Sweden.¹⁶

A. *Sweden's Emergence and the Christian Missionaries*

In response to a request for Christian missionaries by King Björn of Birka,¹⁷ King Louis the Pious of Aquitaine and the Franks¹⁸ sent Ansgar, a Benedictine monk, to the northern na

13. A slower process of change may not be all bad. In fact, Edmund Burke preferred evolution over revolution:

In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances and admit to infinite modifications, they cannot be settled upon any abstract rule; and nothing is so foolish as to discuss them upon that principle. . . .

. . . .
The science of constructing a commonwealth, or renovating it, or reforming it, is, like every other experimental science, not to be taught *a priori*.

EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE 69 (Thomas H.D. Mahoney ed., Macmillan Publishing 1955) (1790).

14. The Swedes come from many different tribes, such as the västgötar, östgötar, värmänningar, finnar och svear. See HERMAN LINDQVIST, HISTORIEN OM SVERIGE: FRÅN ISLOSSNING TILL KUNGARIKE [HISTORY OF SWEDEN: FROM THE END OF THE ICE ERA TO KINGDOM] 209 (1992) (trans. by this author).

15. See *id.* at 17.

16. See REV. H.M. WADDAMS, THE SWEDISH CHURCH 1 (Greenwood Press 1981) (1946); BRITA STENDAHL, THE FORCE OF TRADITION: A CASE STUDY OF WOMEN PRIESTS IN SWEDEN 65 (1985) ("The christianizing of Sweden began in the ninth century, but it took three centuries before the country could be considered a Christian country . . .").

17. The city of Birka was at this period Sweden's most important center of trade. Birka was located about eighteen miles west of present-day Stockholm. See WADDAMS, *supra* note 16, at 1.

18. King Louis was the King of Aquitaine from 781 until 814, and King of the

tion in 829.¹⁹ Ansgar established the first Swedish congregation, which consisted of Christian slaves and some native Swedes.²⁰ Christianity's initial success in Sweden would be short-lived, however, as a strong pagan reaction to the Christian conversion formed.²¹ On the other hand, in addition to missionary efforts, the growth of Christianity was promoted by the fact that Swedish commercial and political interests shifted from Russia in the East to the European continent in the South.²² Consequently, in the early 1000s, Olov Skötkonung became the first Swedish King to be baptized a Christian.²³ At the end of the eleventh century, "[the pagan] temple at Uppsala was demolished and a [Christian] church built on [its] foundations."²⁴ Uppsala became the Episcopal seat in the 1130s,²⁵ three hundred years after Ansgar's first mission to Sweden.²⁶ At that time, many churches had been built in strategic and well-populated centers of Sweden,²⁷ and Sweden obtained its own archbishop in Uppsala.²⁸ By the 1100s, Sweden had become a Christian nation.²⁹

B. The Church Obtains Political Power in Sweden

The Catholic Church brought to Sweden a well-developed system of laws (the Canon Laws) which governed the new

Franks from 814 until his death in 840. *See* (visited March 16, 1999) <<http://www.ghg.net/shetler/oldimp/299.html>>. King Louis was baptized April 15, 781 in Rome. *See* Albert E. Myers (visited March 16, 1999) <<http://www.ezonline.com/aem/gen/d0022/g0000097.html#1778>>.

19. *See* WADDAMS, *supra* note 16, at 1.

20. *See* ROBERT MURRAY, A BRIEF HISTORY OF THE CHURCH OF SWEDEN: ORIGINS AND MODERN STRUCTURE 9 (Nils G. Sahlin trans., 2d ed. 1969).

21. *See id.*

22. *See id.* at 10-11. Swedes started during the Twelfth Century to study at famous foreign universities, which assisted in cultural, political and religious exchange. *See also* Statens offentliga utredningar: Betänkande av utredningen om trossamfundens rättsliga reglering: Staten och trossamfundet, Rättslig reglering [The Government's Public Investigations: The Consideration of the Committee on Constitutional Questions: The State and the Religious Denominations] SOU 1997:41, at 54 [herein after SOU 1997:41] (trans. by this author).

23. *See* WADDAMS, *supra* note 16, at 2 (writing that King Olov was baptized 1008).

24. MURRAY, *supra* note 20, at 11.

25. *See id.*

26. *See* WADDAMS, *supra* note 16, at 3-4.

27. *See id.* at 4; *see also* MURRAY, *supra* note 20, at 11.

28. *See* MURRAY, *supra* note 20, at 11.

29. *See* SOU 1997:41, *supra* note 22, at 11.

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supra-national religious organization.³⁰ The church began to amass and use spiritual, legal and political power against the Swedish secular state.³¹ During the twelfth century, the archbishop became a member of the King's Counsel,³² and the Pope asserted direct influence in Sweden. In fact, the Pope claimed "the king of Sweden . . . acknowledged [the Pope] as his superior, and that his kingdom was a tributary to Rome."³³ Consequently, the King had to swear love to God and the Holy Church and was anointed by the Archbishop in the Uppsala church.³⁴

The legitimacy of the Church diminished as a result of the Great Western Schism.³⁵ More importantly, the Church undermined its own authority and power through its "involvement . . . in political matters [and] existing economic conditions."³⁶ When the Swedish King Sten Sture attempted to limit the power of the Church,³⁷ the Archbishop of Uppsala conspired with the Danes against the Swedish King,³⁸ and many Swedish leaders were executed. These executions, now known as "The Blood Bath of Stockholm,"³⁹ profoundly impacted the development of the Reformation.⁴⁰ Although the Church still held much spiritual and political power, its moral authority had been compromised.⁴¹

C. The Reformation

After the executions in Stockholm, a young nobleman, Gustav Vasa, successfully led an uprising against the Danes.⁴²

30. *See id.* at 54.

31. *See WADDAMS, supra* note 16, at 4-5.

32. *See id.*

33. *See id.* at 6.

34. *See LINDQVIST, supra* note 14, at 252, 255. The first of these ceremonies that is known occurred 1210, when Erik Knutsson was anointed King. *See id.* at 255; *see also* SOU 1997:41, *supra* note 22, at 56.

35. This was the period "during which the rival pope in Avignon was recognized by some of the Swedish dioceses, while the majority held to the pope in Rome." MURRAY, *supra* note 20, at 19.

36. *Id.*

37. *See id.* at 21.

38. *See WADDAMS, supra* note 16, at 8-9.

39. *Id.* at 9.

40. *See id.*

41. *See MURRAY, supra* note 20, at 22.

42. *See id.* at 23.

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The Danes were driven out of Sweden,⁴³ and only a few years later Archdeacon Laurentius Andreae, who later became the King's chancellor, proclaimed Gustav Vasa the new King of Sweden.⁴⁴ The King, on Laurentius' recommendations, made Olaus Petri a secretary of the City Council and a preacher at the Great Church.⁴⁵ Olaus Petri, who had studied at Luther's university in Germany, brought Lutheranism to Sweden.⁴⁶

The new King found the Catholic Church's supra-national organization to be a threat to a united Swedish nation-state.⁴⁷ King Gustav Vasa consequently came to prefer the reformers' view of the relationship between the state and church, which originated with Luther's teachings that both the secular and spiritual systems were instituted by and served the interests of God. In effect, the secular government was to provide peace and a structure under which the church could operate. The King therefore naturally became the Church's First Member and Protector⁴⁸ and "took over the affairs of the Church,"⁴⁹ thereby becoming its head, in place of the Pope,⁵⁰ and "encouraged the spreading of the teachings of Olaus."⁵¹ Sweden declared itself to be an evangelical-Lutheran kingdom for the first time in 1544, and proclaimed that anyone who opposed the new teachings or promoted other religions would be severely punished.⁵²

III. FREEDOM OF RELIGION AND THE DISESTABLISHMENT OF THE CHURCH OF SWEDEN

The first glimpses of freedom of religion in Sweden came during the first half of the Seventeenth Century. Mostly for economic reasons, the state granted in 1724 limited freedom of religion to immigrants who were skilled in trades, and in 1781 all immigrants who belonged to some Christian denomination were given the right to set up congregations.⁵³ The Swedes were

43. *See id.*

44. *See id.*

45. *See id.*

46. *See* WADDAMS, *supra* note 16, at 12.

47. *See* SOU 1997:41, *supra* note 22, at 58.

48. *See id.* at 58-60.

49. MURRAY, *supra* note 20, at 25.

50. *See* SOU 1997:41, *supra* note 22, at 58.

51. WADDAMS, *supra* note 16, at 12.

52. *See* SOU 1997:41, *supra* note 22, at 59, 61.

53. *See id.* at 62.

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not granted the same freedom, however, until the state enacted a new statute regarding the freedom of consciousness in 1809.⁵⁴ The famous section 16 dictated that “The King . . . ought not to force or cause another to force any person’s consciousness, but rather ought to protect each person’s right to freely exercise his or her religion, so long as the person does not disturb the public order.”⁵⁵ Despite section 16, the King and other important state officers had to swear allegiance to the evangelical-Lutheran faith. Moreover, the King was still the head of both the Church and the state, and made no formal distinction between the religious and secular spheres when making laws.⁵⁶

In the mid-eighteenth century, the fight for freedom of religion, waged mainly by the movement of Free-Churches (called “Frikyrkorörelsen”), as well as the ensuing prohibition of alcohol movement,⁵⁷ became an essential element in the later fight for democracy in Sweden. Other folk movements⁵⁸ and political associations developed in the wake of the freedom gained by these groups.⁵⁹ During this time, many began questioning the idea that Church interests should be decided by the secular state, which led to an unsuccessful proposal for a Church of Sweden Act in 1846. In 1863, however, the Church obtained some independence from the state, and influence over laws affecting it, through an organization that operated on a national level and was led by the archbishop. This organization became known as “Kyrkomötet”⁶⁰ and consisted of thirty priests, including all bishops, and thirty laypersons.⁶¹ Kyrkomötet met at least once every five years, at the King’s

54. *See id.* at 63.

55. *Id.* (“Konungen bör—ingens samvete tvinga eller tvinga låta, utan skydda var och en vid fri utövning av sin religion, så vitt han därigenom icke störer samhällets lugn eller allmän förargelse åstadkommer.”) (trans. by this author).

56. *See id.* at 63-64.

57. “Nykterhetsrörelsen.” (trans. by author).

58. “Folkrörelser.” (trans. by author).

59. *See* Birgit Friggebo (fp), Protokoll 1995/96:34, anf. 2 [Protocol 1995/96:34, address 2] (trans. by author). Ms. Friggebo is a member of the Liberal Party in the Swedish Parliament.

60. “Kyrkomötet” may be translated as the “General Synod.” The General Synod today “consists of 251 members and meets annually. [Its] decisions are executed by the Central Board of the Church (Svenska kyrkans centralstyrelse).” Robert Schött, *State and Church in Sweden*, in *STATE AND CHURCH IN THE EUROPEAN UNION* 295, 299 (Gerhard Robbers ed., 1996).

61. *See* SOU 1997:41, *supra* note 22, at 67.

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request.⁶² The Swedish Constitution⁶³ was modified in 1866 to ensure it con-formed to the new role of Kyrkomötet as part of the law making body concerned with the Church's affairs.

A. Early Indications of a Need to Separate the Church and the State and the Freedom of Religion Act of 1951

In the early twentieth century, the debate concerning religious freedom intensified, and the parliament and Church received many motions and proposals,⁶⁴ some of which led to changes in the laws.⁶⁵ One of the more important enactments occurred in 1951, when Sweden obtained its Freedom of Religion Act, preceded by arguments for equality and the right to religious freedom.

1. Bishop Billing's view of people's right to leave the Church of Sweden

Bishop Billing, a member of Kyrkomötet, spent much of his time performing research at the University of Uppsala before becoming bishop of the Västerås diocese in 1920. Billing substantially influenced the debate on the relationship between

62. *See id.*

63. Sweden has a written Constitution, consisting of several Fundamental Laws, which is also complemented by unwritten rules. *See* JAN KIESER & KJELL RYDÉN, SAMHÄLLSBOKEN: SAMHÄLLSKUNSKAP FÖR GYMNASIESKOLANS TRE- OCH FYRÅRIGA LINJER [TEXT OF SOCIAL SCIENCES: SOCIAL SCIENCES FOR THE THIRD AND FOURTH YEAR LINES AT THE GYMNASIUM SCHOOLS] 347-50 (3d ed. 1989). The Swedish Constitution is somewhat easier to change than the U.S. Constitution. A change to the Swedish Constitution will change the actual Constitution rather than modifying it through the enactment of amendments. "Sweden [today] has four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and, since 1992, the Fundamental Law on Freedom of Expression. The Riksdag Act occupies a position somewhere between fundamental law and ordinary statute law." Birgitta Dahl, *Foreword* (visited Mar. 14, 1999) <http://www.riksdagen.se/arbetar/grundbok_en/FOREWORD.htm>. These fundamental laws "cannot be changed other than after very careful consideration and on the basis of broad political [sic] majorities Fundamental laws are enacted by means of two identical decisions of the Riksdag. These decisions must be separated by a general election." *Id.* In 1974, the Riksdag replaced the old Instrument of Government of 1809 and the Riksdag Act of 1866. *See* KIESER & RYDÉN, *supra*, at 348.

64. The first motion for changes in state-church relations was submitted in 1909. *See* Marita Ulvskog, Protokoll 1995/96:34, anf. 32.

65. *See* SOU 1997:41, *supra* note 22, at 71. Two items of discussion were whether a person had the right to freely withdraw from the Church of Sweden and to avoid the obligation of paying taxes to the Church if one was allowed to relinquish one's membership. *See id.*

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the Church and the state. Billing's research focused on moral theology,⁶⁶ and although his theology has been subjected to various interpretations,⁶⁷ his arguments pertaining to the relationship between the Church and the state are both illuminating and remarkable, particularly considering that these arguments were presented in the early Nineteenth Century. The arguments in two areas affecting the Church are particularly relevant to the contemporary debate regarding the disestablishment of the Church of Sweden and, therefore, deserve some notice.

Bishop Billing and two other bishops, on the direction of Biskopsmötet,⁶⁸ authored a proposal that became the foundation for a motion, signed by most other bishops, discussed at Kyrkomötet of 1929.⁶⁹ This motion proposed that people should be given the right to renounce their membership in the Church of Sweden, and requested that questions and possible consequences resulting from such a law be investigated and solutions suggested.⁷⁰ In this motion, Billing reconciled two apparently contradictory fundamental principles associated with membership in the Church of Sweden. In essence, he showed that the people's right to leave the church was consistent with and in fact would promote the Church's interests.

The first principle was that of automatic membership in the Church of Sweden. A child born to at least one parent who was a member in the Church automatically became a member of the Church as well, unless the parent took affirmative action against such membership.⁷¹ This automatic membership

66. See GÖSTA WREDE, KYRKOSYNNEN I EINAR BILLINGS TEOLOGI [THE VIEW OF THE CHURCH IN EINAR BILLING'S THEOLOGY] 11 (Axel Abrahamsons Boktryckeri AB, Karlskrona 1966) (trans. by this author).

67. See *id.* at 12.

68. See *id.* at 175. "Biskopsmötet" may be translated as the "Bishops' Conference" and "is an unofficial body where the bishops confer on issues of mutual concern." Schött, *supra* note 60, at 302.

69. See WREDE, *supra* note 66, at 175.

70. See SOU 1997:41, *supra* note 22, at 71.

71. See *id.* at 73. Note, however, that since January 1, 1996, a child will only become a member through baptism or as a result of the parents' active pursuit of such membership by notification to the proper Church administrators that the child will be a member of the Church while waiting for baptism. ("Från och med den 1 januari 1996 blir ett barn kyrkotillhörigt först i och med dopet, eller genom ett meddelande från föräldrarna om att det ska tillhöra Svenska kyrkan i väntan på

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resulted from the idea that fellowship in the Church was based on the grace of God without any effort on the part of the member.⁷² Bishop Billing understood this to be a consequence of the notion that the Church of Sweden was a “Folkkyrka;”⁷³ every citizen was entitled to belong to the Folkkyrka, regardless of the person’s standing in society or otherwise.⁷⁴

However, this principle of automatic membership for a child, according to Bishop Billing, had to be weighed against a second principle which posits that membership in the Church of Sweden should be voluntary.⁷⁵ For Billing, membership in the Church would be insignificant, even if granted by the grace of God, unless it resulted from a deliberate choice by a mature adult. The membership must be expressed in the adult member’s relationship with the Church through that person’s affirmation or annulment of the membership.⁷⁶ The membership depended for its existence on the grace of God, while the person’s free will had to account for its continuing vitality and legitimacy.⁷⁷ “The Church’s religious task require[d] . . . the employment of a logically consistent principle of freedom.”⁷⁸

Billing promoted a person’s right to freely leave the Church for at least two reasons. First, forced membership impeded an individual’s freedom of religion, thereby violating logically consistent principles of freedom.⁷⁹ Second, forced membership prevented people from viewing the Church of Sweden as a religiously motivated organization.⁸⁰ Due to this forced membership, the Church could easily be mistaken for a

dopet.”). See *En svensk nationalkyrka* [A Swedish State-Church], (visited Mar. 14, 1999) <<http://www.svkyrkan.se/svk/nycklar/national.htm>> (trans. by this author); SOU 1997:41, *supra* note 22, at 87.

72. See WREDE, *supra* note 66, at 173.

73. “Folkkyrka” may be translated as “People’s Church.”

74. See WREDE, *supra* note 66, at 173. The concept of the Church as a Folkkyrka resulted in the principle that the Church had an obligation to allow every person to become a member from the earliest part of life. Birth therefore created an unlimited right to membership in the Church of Sweden. See *id.* at 176.

75. See *id.* at 174.

76. See *id.*

77. See *id.*

78. *Id.* at 178 n.51 (“Kyrkans religiösa uppgift kräver enligt min mening längs hela linjen en konsekvent genomförd frihetsprincip.”) (trans. by this author).

79. See *id.* at 178.

80. See *id.* at 179.

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government institution, and membership could be regarded as “nothing more than” citizenship.⁸¹ Consequently, neither the Church nor membership in the Church embodied any religious meaning, power or influence.⁸² The religious character of the Church of Sweden, argued Billing, would be apparent to the Swedish Folk,⁸³ thereby creating a true Folkkyrka, only if membership in the Church and citizenship of the state was more than different sides of the same coin.⁸⁴ Kyrkomötet of 1929 passed the motion due at least in part to these arguments, as evidenced by its statement that giving people a right to leave the Church would benefit the Church, as forced membership “diminishes the Church’s religious character and weakens its possibilities to make its characteristics and identity more known and legitimate.”⁸⁵

2. *Bishop Billing’s view of church and state*

Luther’s teachings regarding the relationship between church and state influenced Billing insofar as it required that the two institutions should be independent of one another.⁸⁶ The church represented God’s kingdom, and its sphere of operation must be the teaching of the gospel,⁸⁷ whereas the state represented the worldly kingdom, and should be concerned with the enactment and enforcement of laws to provide an orderly society in which the Church could perform its duty of preaching the gospel.⁸⁸ The two institutions resemble two complementary brigades in God’s army performing separate functions.⁸⁹ Billing therefore argued that the state must not exert power over the Church or consider it a subordinate institution.⁹⁰ On the other hand, Billing said that

81. *See id.*

82. *See id.*

83. “Folk” may be translated as “People.”

84. *See WREDE, supra note 66, at 179.*

85. SOU 1997:41, *supra note 22, at 71-72* (“[Den fria utträdesrätten] . . . skulle enligt kyrkomötet ’avlägsna ett moment, som i icke ringa mån bidrar till att fördunkla kyrkans religiösa karaktär och försvagar dess möjligheter att göra denna känd och erkänd.”) (citation omitted) (trans. by this author).

86. *See WREDE, supra note 66, at 240.*

87. *See id.* at 237.

88. *See id.*

89. *See id.* at 240.

90. *See id.* at 241.

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when discussing the church-state relationship, one must take into consideration the Church's social responsibility.⁹¹ The Church and state, said Billing, share some responsibilities that may be the ground for some type of relationship.⁹² Billing seemed to suggest that a relationship between the Church and the state must not be subservient or vertical, or such that the Church and the state are linked, because the Church could not perform its religious duties to society as a quasi-state institution. To the contrary, these responsibilities require a horizontal relationship in that the Church must be separate and independent from the state to obtain legitimacy and acceptance among the people which it serves before it is able to discharge its religious obligations.

The opposing view, that church and state should not be separate institutions, was espoused by Arthur Engberg⁹³ at Kyrkomötet of 1932, who argued against a proposal by the King to decentralize the management of the Church's financial affairs.⁹⁴ Arthur Engberg viewed the Church of Sweden as a state institution, and just as he believed the state had an obligation to support culture, the state had an obligation to support the Church.⁹⁵ Engberg also argued that a centralized governing body should be created for the Church,⁹⁶ and he sought thereby to bind the Church and the state closer and provide the state with more influence over the Church's internal affairs.⁹⁷ In his response to Engberg, Bishop Billing argued that precisely because the Church and State have areas of shared responsibilities, the independence of the Church must

91. *See id.* at 233.

92. *See id.* at 234 (stating that "[t]he responsibilities that the Church and the state may share should be the object of investigations"); *see also infra* notes 343-45 and accompanying text.

93. Engberg was Church Minister and made a 180 degree turn-around from being a proponent of freedom of religion to becoming a state-church system champion. *See* Birgit Friggebo (fp), Protokoll 1995/96:34, anf. 2.

94. *See* WREDE, *supra* note 66, at 238-39.

95. *See id.* at 239 n.23 ("[B]land annat som jag lärt mig, är detta, att en kulturdemokrati icke kan ställa sig likgiltig till det religiösa livets utgestaltning." ["Among other things I have learned is this, that a cultural democracy must not be lethargic with respect to the development of the religious life."]) (trans. by this author).

96. *See id.*

97. *See id.*

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be emphasized.⁹⁸ For the Church to perform its duties, which derive from religion, the Church's principal existence and mode of operation must be religious, not cultural or political.⁹⁹

3. *The evolution of the Freedom of Religion Act of 1951*

While the debate continued within the Church, the state explored possible solutions to the state-church predicament. The state created the Committee on the Dissenter Laws¹⁰⁰ in 1943 to investigate problems surrounding religious freedom.¹⁰¹ The Committee recommended the enactment of a Freedom of Religion Act, which would affirm the principles of religious freedom and freedom of association for religious purposes as well as establish nonmembers' right to pay no more than half of the Church taxes ordinarily assessed against members.¹⁰² The Committee also considered the legal status of religious associations other than the Church of Sweden and suggested a distinction between organizations inside the framework of the Church, called *Trossammanslutningar*,¹⁰³ and religious associations not affiliated with the Church, labeled *Trossamfund*.¹⁰⁴ The various religious associations were to be given as much freedom as possible, but because of society's important interests in these organizations, they had to meet

98. *See id.* at 239.

99. *See id.* at 240.

100. "Dissenterlagskommitteen." The laws governing the renunciation of one's membership in the Church are called the Dissenter laws.

101. *See* SOU 1997:41, *supra* note 22, at 72.

102. *See id.* Nonmembers currently pay a Dissenter Tax to finance the Church's obligation to provide burial grounds for nonmembers as well as members.

103. "Trossammanslutningar" may be translated as "Organizations based on faith." The Dictionary of the Academy of Sweden states that a "sammanslutning" is an organization created by people for a particular purpose. "[O]rganisation bildad av personer i persongrupper o. d. som slutit sig samman i visst syfte, förbund, förening o.d." *Sammanslutning*, (visited Mar. 14, 1999) <http://g3.spraakdata.gu.se/tmp/SAMMAAAA9b9Yd_.html>. The difference between a *sammanslutning* and a *samfund* appears to this author negligible. In fact, the Investigatory Committee of 1997 stated that the differentiation based on whether an organization is part of the Church of Sweden or is of another denomination, according to the Committee on the Dissenter Laws, was no longer warranted. *See* SOU 1997:41, *supra* note 22, at 72.

104. "Trossamfund" may be translated as "association based on faith." The Dictionary of the Academy of Sweden states that *samfund* is a loosely organized association based on a common belief. "[M]indre fast organiserad grupp av personer (i. personligt tänkta väsen), som uppfattas ss. en av gemensam tro." *Samfund* (visited Mar. 14, 1999) <http://g3.spraakdata.gu.se/tmp/SAMFUAAAEna3F_.html>.

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stringent requirements before becoming independent legal entities.¹⁰⁵ Finally, the Committee recommended that the King should determine which religious associations could obtain the status of Trossamfund.

Many forces combined with the Committee recommendations to compel the enactment of the Freedom of Religion Act. Most arguments raised in support of the passage of the Freedom of Religion Act were based on two principles: freedom of religion and the equal treatment of all denominations and their members.¹⁰⁶ Although scheduled to be replaced on January 1, 2000,¹⁰⁷ the Act is still in effect and provides for each person's right to freely exercise the religion of one's choice, to participate in religious activities with others and to hold public sermons.¹⁰⁸ Under the Act, a person's religious freedom can only be limited if the exercise of the religion disrupts or interferes with public order. This portion of the Act protects what is called the "positive freedom of

105. See SOU 1997:41, *supra* note 22, at 72.

106. See *id.*

107. See Svensk författningssamling [The Code of Swedish Statutes] 1951:680 [hereinafter SFS] (SFS is the official abbreviation for "Svensk författningssamling," which may be translated as "The Code of Swedish Statutes" or "Swedish Collection of Code." The abbreviation "SFS" will be used for the remainder of this Comment.).

108. The Act provides:

Om religionsfrihet 1 § Envar äger rätt att fritt utöva sin religion, såvitt han icke därigenom stör samhällets lugn eller åstadkommer allmän förargelse. 2 § Det står envar fritt att för religiös gemenskap delta i sammankomst och sammansluta sig med andra. 3 § För offentlig gudstjänst gälla ej andra hinder än sådana som i allmänhet äro stadgade för sammankomst, till vilken allmänheten har tillträde. 4 § Ej må någon vara skyldig tillhöra trossamfund. Åtagande i strid mot denna bestämmelse vare utan verkan. Med trossamfund förstås, förutom svenska kyrkan, sammanslutning för religiös verksamhet, vari ingår att anordna gudstjänst.

[Regarding freedom of religion: § 1. Each person is entitled to freely exercise his or her religion, so long as he or she does not thereby disturb the public order. § 2. Each person is free to participate in activities and meetings for religious purposes or to join others [to form an organization] for religious purposes. § 3. No other limits may be imposed on public sermons than those limits imposed on nonreligious public gatherings. § 4. No person shall be obligated to join or participate in any religious association or denomination. Any agreement in conflict with this statute will be null and void. A religious association or denomination is defined for purposes of this statute, other than the Church of Sweden, as an association or group of people gathered for religious purposes, including sermons.]

SFS 1951:680, §§ 1-4 (trans. by this author).

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religion.”¹⁰⁹ There is yet another protection under the Act, necessitated by history,¹¹⁰ labeled the “negative freedom of religion.”¹¹¹ The negative freedom emphasizes a person’s right not to be a member of any religious association. Under this part of the Act, a person who desired to leave the Church became free to renounce his or her membership by giving notice to the proper Church administrator;¹¹² the Church of Sweden thereby became at least partially independent from the state for the first time since the Reformation. Bishop Billing’s desire for voluntary membership had been partially fulfilled, and membership in the Church could no longer be directly analogized with citizenship of the state.¹¹³

B. Modern Movements for Disestablishment

The Church of Sweden has traditionally been very important in the development of the Swedish society.¹¹⁴ Although not many Swedes actively attend church, most are members of the Church of Sweden.¹¹⁵ Swedish society is today much more value-pluralistic, however, than it was in the beginning of the twentieth century. Sweden has become a multireligious and multicultural society during the last few decades as a result of international integration.¹¹⁶ Through this internationalization, the relationships between the religious denominations in Sweden have changed, and it has put pressure on the Church of Sweden to more clearly market its

109. “Positiva religion sfriheten.”

110. The forced membership in the Church of Sweden, in particular.

111. “Negativa religion sfriheten.”

112. See SOU 1997:41, *supra* note 22, at 73.

113. See *id.*

114. See RegSkr 1995:1, *supra* note 5, at 6.

115. Germany had about fourteen million members of the Lutheran faith in 1996. Sweden had the second highest membership in Europe, totaling 7,630,000. The third and fourth highest membership existed in Finland and Denmark, totaling 4,577,106 and 4,539,773 respectively. The United States’ membership totaled 8,420,543. See LUTHERAN WORLD INFORMATION 13-17 (No. 1/96). The number of Swedish Lutheran members is quite remarkable, especially considering that Sweden had a total population of 8,778,000 in 1994. See THE WORLD ALMANAC AND BOOK OF FACTS 1995, at 823 (1994).

116. See Kommittédirektiv: Ändrade relationer mellan staten och Svenska kyrkan m.m. [Directive for the Committee: Changed Relations between the state and the Church of Sweden, etc.] Dir. 1995:162, in SVENSKA KYRKAN I FÖRNYAD GESTALT [THE REFORMED CHURCH OF SWEDEN] 217, 218 (Verbum 1996) [hereinafter Dir. 1995:162] (trans. by this author).

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beliefs and services.¹¹⁷ The Roman Catholic Church, the Orthodox churches, non-Christian denominations and free-churches have all increased in number, with the most notable changes occurring in large cities where immigrants account for a substantial part of the population.¹¹⁸ The pluralism and urbanization of religion has highlighted the problems of religious freedom in Sweden.¹¹⁹ Before the parliament passed the Freedom of Religion Act of 1951,¹²⁰ a person could not revoke his or her membership in the Church of Sweden without joining another Christian denomination that had been approved by the King.¹²¹ Although withdrawal from membership in the Church of Sweden does not directly relate to the disestablishment of the Church, it does illustrate that rapid social changes made a revision of the relations between the state and Church of Sweden necessary.¹²²

Although an improvement, the Freedom of Religion Act did not effectuate religious freedom and equality among all denominations. In particular, the Act of 1951 did not completely eliminate the unique status afforded the Church through its historical relationship with the state; nor did it reform the requirements for becoming a member of the Church. A child born to at least one member-parent would still automatically become a member of the Church, unless the parent took affirmative action against membership for the newborn child.¹²³

117. See RegSkr 1995:1, *supra* note 5, at 9.

118. See Dir. 1995:162, *supra* note 116.

119. See RegSkr 1995:1, *supra* note 5, at 6; En historisk reform: Regeringens skrivelse till kyrkomötet: Staten och trossamfundet—grundläggande frågor [A Historic Reform: The Government's Draft Proposal to Kyrkomötet: The State and the Religious Denominations—Foundational Questions], RegSkr 1997:2, *also available at* (visited Mar. 14, 1999) <http://www.svkyrkan.se/km_2_97/km/skriv/helaskr6.htm> [hereinafter A Historic Reform, RegSkr 1997:2].

120. See SFS 1951:680. The Act became effective on January 1, 1952. See SOU 1997:41, *supra* note 22, at 73.

121. See SOU 1997:41, *supra* note 22, at 72; RegSkr 1995:1, *supra* note 5, at 6.

122. See RegSkr 1995:1, *supra* note 5, at 6.

123. See E-mail from Urban Gibson to E. Kenneth Stegeby (December 29, 1998) (on file with the author) (stating that the reform made membership in the Church dependent on a voluntary, affirmative action rather than automatic; today, a child must be baptized or the parents must register the child before the child will be considered a member of the Church) [hereinafter Gibson]; see also SOU 1997:41, *supra* note 22, at 72-73. Note, however, that the affirmative and voluntary action required for membership need not originate with the child who becomes a member but may come from the parents. See Gibson, *supra*. Urban Gibson, presently in

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Almost three decades would pass before the latter obstacle to a more independent Church of Sweden would be eliminated.¹²⁴ Additionally, although the Act protected freedom of religion, it was still very difficult for a person to organize a new denomination or creed. For example, certain formalistic organizational requirements were not suitable to many nontraditional religions, such as Japanese Buddhism.¹²⁵ The flaws of the Act of 1951 necessitated further changes and improvements.

1. Committee investigations of the 1950s, 1960s, and 1970s

The Freedom of Religion Act of 1951 ensured that the Church's status became that of a religious organization, rather than a state institution.¹²⁶ However, as stated above, more had to be done to achieve religious freedom and equality. Consequently, in 1956, the parliament requested the King to devise an impartial Investigatory Committee¹²⁷ to examine the church-state issue.¹²⁸ The Committee commenced its investigations in 1958, with a directive to propose how the future relationship between the Church and the state, if any,

retirement, is a former Commissioner of the Executive Board of the City of Sollentuna. He has been employed by the Church of Sweden as Vice President of the Church's printing company and President of the Church Fund. He is member of Kyrkomötet (The General Church Synod), which he joined in 1975, and has been the Chairman of the Liberal Party's Committee of Kyrkomötet. He was for six years a member of Kyrkomötet's Executive Committee (Kyrkans centralstyrelse), and has been an observer of questions of religious freedom and other human rights for The Conference of European Churches.

124. See SOU 1997:41, *supra* note 22, at 73.

125. See Eva Goës & Ewa Larsson, Motion till riksdagen [Motion to the Parliament] Mot. 1996/97:K802 (This comment will often cite Motions to the Parliament. These citations will be put in the form ordinarily used for citing U.S. legislative materials and the short forms for the same. "Mot." refers to "Motions to the Parliament." The year code 1995/96 indicates the legislative session for the Swedish parliament, during which the motion was submitted. The letter "K" stands for Konstitutionsutskottet, which is the Committee on Constitutional Questions. Lastly, the number following the letter designating the Committee refers to the various motions submitted to the Committee.); see also SOU 1997:41, *supra* note 22, at 122.

126. See SOU 1997:41, *supra* note 22, at 75.

127. When the Swedish government wishes to enact substantial changes in the laws, it often creates an organization that will be in charge of investigating advantages and disadvantages of various possibilities. This organization is generally called "Utredningen," which is literally translated as "The Investigation."

128. See SOU 1997:41, *supra* note 22, at 75.

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should be formed. After ten years and ten volumes of interim findings, the Committee published its proposal, which consisted of four hypothetical scenarios, ranging from generally no modifications to a complete severance of the ties between the Church and the state.¹²⁹

While the proposal was sent to experts and possibly affected persons and organizations for comments,¹³⁰ the government established the Preparatory Committee.¹³¹ The Committee, directed by chairperson Alva Myrdal, who was also the Minister of Church Affairs, was instructed to make preliminary decisions about the church-state relationship based on the 1958 investigations.¹³² This committee submitted its proposal to the government in 1972,¹³³ which focused on two main themes: first, that Swedish society had become much more pluralistic,¹³⁴ and second, that religious freedom required that all religious associations be treated equally, prohibiting preferential treatment of any denomination, including the Church of Sweden.¹³⁵ The proposal suggested that the local parishes of the Church should no longer have the right to tax people,¹³⁶ that the Church should be allowed to regulate its internal affairs and questions of religious doctrine, and that the government should subsidize denominations that served more than three

129. See *Statens offentliga utredningar* [The Government's Public Investigations] SOU 1968:11 (trans. by this author).

130. In Sweden, the government often sends out published proposals to those affected and to experts for comments. This procedure is called "Remissbehandling."

131. After an Investigatory Committee completes its investigation and proposes various solutions, the proposal will often be processed by a Preparatory Committee, in this case called "Kyrkoberedningen," and this Committee will take a preliminary stand on the various proposed solutions.

132. See SOU 1997:41, *supra* note 22, at 76.

133. See *Statens offentliga utredningar* [The Government's Public Investigations] SOU 1972:36.

134. The Swedish Church states on its homepages that there are 150,000 members of the Roman-Catholic church, 300,000 members of "free churches" and 60,000 Muslims. See *En svensk nationalkyrka* [A Swedish State-Church], (visited Mar. 14, 1999) <<http://www.svkyrkan.se/svk/nycklar/national.htm>> ("I dag finns en lång rad trossamfund i Sverige. Den romersk-katolska kyrkan räknar in cirka 150 000 'betjänade medlemmar'. Den klassiska frikyrkligheten har närmare 300 000 medlemmar, av vilka en del samtidigt tillhör Svenska kyrkan. I Sverige finns också 60 000 utövande muslimer.")

135. See SOU 1997:41, *supra* note 22, at 76.

136. See *infra* notes 143 through 147 and accompanying text. The Church's local parishes have the status of municipalities and may as such impose a mandatory tax on both members and nonmembers within its borders.

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thousand members.¹³⁷ Because this proposal met strong opposition from both potentially affected organizations and experts, and lacked broad political support, probably because of an impending election,¹³⁸ the government declared in 1973 that it did not intend to recommend any substantial changes to the existing church-state relationship.¹³⁹

After the government declined to act on the important work performed by the Investigatory and Preparatory Committees, the Church of Sweden decided to pursue its own exploration of possible reforms, based on the program for reform as formulated by Kyrkomötet of 1968. Although intent on keeping its connections with the state,¹⁴⁰ the Church's goal in supporting reform was to strongly emphasize the individual citizen's religious freedom, while at the same time establish the Church's independence as a religious association. This goal was to be achieved through the creation of executive and legislative, or norm-setting, organizations on a national level.¹⁴¹ The state recognized the importance of this work and requested the Church investigators to work in conjunction with a committee formed by the state to outline concrete solutions to the problems that previously precluded broad political and Church-based support.¹⁴²

The combined efforts of the Church and the state investigators yielded results in the form of yet another proposition, consisting of five main suggestions.¹⁴³ First, the responsibility for providing burial grounds, both to members and nonmembers, was to be transferred from the Church to the local secular municipalities. Second, the suggestion was again made that local parishes should no longer be considered separate municipalities, thereby forfeiting their power to tax the people living within their boundaries; the state would, in return, promise to assist in collecting whatever Church fees

137. See SOU 1997:41, *supra* note 22, at 76.

138. See Gibson, *supra* note 123.

139. See SOU 1997:41, *supra* note 22, at 76.

140. See *id.* at 77.

141. See *id.*

142. See *id.*

143. See Statens offentliga utredningar [The Government's Public Investigations] SOU 1978:1. This proposition was called Stat-kyrka—Ändrade relationer mellan staten och Svenska kyrkan [State-Church—Changed relations between the state and the Church of Sweden] (trans. by this author).

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would be payable by members of the Church. Third, the power to regulate local church activities as internal Church business should be transferred to the Church. Fourth, on the national level, a new organization would be created, including a reformed legislative body, still called Kyrkomötet, whose decisions would be executed by a new organization called the Central Board of the Church.¹⁴⁴ Lastly, a law would be enacted with the purpose of protecting certain organizational structures of the Church considered to be vital for society as a whole.¹⁴⁵ Although it received much negative feedback from the local parishes, the government submitted the proposal to Kyrkomötet of 1979 for consideration. It was rejected,¹⁴⁶ mainly out of the Church's concern that losing its right of taxation would prevent it from being able to maintain its services.¹⁴⁷

2. *Reforms during the 1980s*

As it did not appear to be possible to attain a broad majority in support of separating the Church and the state, the parliament during the 1980s attempted only piecemeal reform with no mention of disestablishment. One important reform came about on January 1, 1983,¹⁴⁸ which resulted in several changes, one of which pertained to the procedure for passing laws regarding the Church's internal affairs and organization. The Swedish parliament is ultimately responsible for regulating all of the Church's internal affairs and organization. On the other hand, the parliament has the authority to delegate legislative power, and had previously entrusted some law-making competence in the Church, in juxtaposition with the parliament's, over its organization and internal affairs in specific religious areas.¹⁴⁹ This delegation, in effect, granted

144. "Svenska kyrkans centralstyrelse." This executive organization may appear to satisfy Arthur Engberg's call for a central organization. *See supra* notes 94-97 and accompanying text. However, in contrast to Engberg's proposed organization, this Centralstyrelse would be independent from the state.

145. Four paragraphs were proposed that would protect the general character of the Church and its democratic foundations. This law also provided that the Church's holdings would be transferred to the Church through foundations directed by the Church. *See* SOU 1997:41, *supra* note 22, at 77.

146. *See id.* at 78.

147. *See infra* notes 284-85 and accompanying text.

148. *See* SOU 1997:41, *supra* note 22, at 78.

149. This is referred to as "Normgivningskompetens," which literally translated

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Kyrkomötet special status as the parliament's colegislature in these areas, although under the supervision of the parliament, and provided some constitutional power to coissue regulations with the parliament that affected the Church.

The reform revoked Kyrkomötet's legislative power, as well as its status as a kind of colegislature, in an effort to create greater equality among all religious denominations. The parliament thereby became the sole law-making body in the religious arena. At the same time, the parliament ensured that the Church would continue to have some influence, though not constitutionally mandated or delegated by the parliament, over the government's regulation of its internal affairs. This was made possible by modifying the Fundamental Laws so that Kyrkomötet obtained the right to issue nonbinding comments on—not changes to—important pieces of legislation before their passage.¹⁵⁰ At the same time, the parliament granted Kyrkomötet the right to govern some of the Church's internal affairs, independent of the parliament, through decrees rather than constitutionally mandated laws.¹⁵¹ The reform thereby accomplished a preparatory separation of the Church and the state and, at the same time, promoted the Church's demand and need for self-governance.

After this reform, the Church no longer had a preferential position to other denominations with respect to lawmaking authority over its internal affairs. At the same time, the Church had obtained authority and power to regulate its internal affairs, independent of, and not delegated from, the state. In order to properly use this new-found authority, Kyrkomötet was reorganized under the guiding principles of providing it with a broad-based support and a more democratic structure.¹⁵² The resulting, and still existing, organization consists of 251 freely elected members. Sweden's thirteen bishops are required to attend Kyrkomötet's conferences and

is "Norm-giving competence."

150. See SOU 1997:41, *supra* note 22, at 79.

151. See *id.* The specific areas in which Kyrkomötet could issue decrees included Church doctrine, missionary work, Church books, sermons, the sacrament and procedures for fulfilling its functions and those functions related to its subordinate organizations. See *Kyrkomötet* (visited Mar. 14, 1999) <http://www.svkyrkan.se/km_om_98/kyrkomot.htm>.

152. See SOU 1997:41, *supra* note 22, at 79.

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meetings, and are given the right to speak and submit motions at the same; however, they are prohibited from participating in the decision-making process by voting, unless they have been duly elected to one of the 251 seats of Kyrkomötet.¹⁵³ The reform also created the Central Board of the Church,¹⁵⁴ which is the preparatory¹⁵⁵ and executive organization of Kyrkomötet.¹⁵⁶

3. Reforms of the 1990s

Because of the piecemeal reforms and the uncertainty stemming from the church-state relationship, Kyrkomötet requested in 1988 that the government examine the Church's economic and legal status.¹⁵⁷ The government created an Investigatory Committee called the ERK-inquiry,¹⁵⁸ which published its findings in 1992.¹⁵⁹ The report disclosed the Church's economic and legal rights in detail and described possible changes in the relation between the Church and the state in the form of three models, ranging from making the Church a completely independent denomination to keeping the existing relationship with some minor changes.¹⁶⁰

a. *The Investigatory Committee of 1994.* The ERK-inquiry resulted in further and more substantial explorations of the church-state relationship. An Investigatory Committee¹⁶¹ was created in the spring of 1992, chaired by Carl Axel Petri.¹⁶² In 1994, this Committee published a recommendation¹⁶³ that would become the foundation for the Government's proposal to the parliament in 1995 for disestablishing the Church of Sweden in the year two thousand. The Committee concluded

153. *See id.*

154. *See supra* note 144 and accompanying text. In Swedish, the Central Board is called "Svenska kyrkans centralstyrelse."

155. This function entails preparing and making preliminary decisions regarding investigatory material for submission to Kyrkomötet for final decision.

156. *See* SOU 1997:41, *supra* note 22, at 79.

157. *See id.* at 82.

158. *See id.*

159. *See* Statens offentliga utredningar [The Government's Public Investigations] SOU 1992:9.

160. *See* SOU 1997:41, *supra* note 22, at 82-83.

161. "Kyrkoberedningen."

162. Carl Axel Petri presided at the time over one of Sweden's appellate courts, in Götaland, with the title Hovrättspresident.

163. *See* Statens offentliga utredningar [The Government's Public Investigations] SOU 1994:42.

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that there were reasons for the state to be generally positive about religion. However, the state must respect every person who does not wish to participate in religious activities. It must not, for any reason, favor one or more denominations over others; rather, the state must, as far as practically possible, remain neutral in its interactions within and regulations of the religious arena.¹⁶⁴ The Committee of 1994 therefore recommended that the Church of Sweden be given a legal entity status independent of the state—both on a national and local level.¹⁶⁵ The local parishes would cease to be municipalities, but would keep their status as legal entities.¹⁶⁶ It was recommended that the Church be granted constitutionally mandated norm-giving or legislative authority over its local parishes by changing the Constitution and enacting a special Church of Sweden Act.¹⁶⁷ The Act was to be constructed as a framework act that would preserve the Church's identity, oblige the Church members to pay a Church fee rather than a tax, thereby also completely relieving nonmembers of the burden of paying any Church taxes,¹⁶⁸ and empower Kyrkomötet to decide questions related to internal Church business.¹⁶⁹ Additionally, the Committee recommended that the state aid the Church in collecting the Church fees through its regular tax institutions, free of charge.¹⁷⁰ The Church of Sweden Act and the changes to the Constitution favoring the Church over other denominations were justified on the basis of the special tasks rendered by the Church due to its historical relationship with the state. Such tasks included providing burial grounds for members and nonmembers, keeping and storing public records regarding citizens and caring for culturally and historically significant landmarks.¹⁷¹

In conformity with the equality principle, however, the Committee's recommendation provided that denominations other than the Church should be eligible to procure assistance

164. *See* SOU 1997:41, *supra* note 22, at 84.

165. *See id.*

166. *See id.*

167. *See id.*

168. *See id.* at 85.

169. *See id.* at 84.

170. *See id.*

171. *See id.*

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from the state in collecting their fees through the state's ordinary tax institutions, free of charge.¹⁷² More importantly, the recommendation suggested all denominations should be given an opportunity to obtain the same constitutionally protected legal entity status proposed for the Church of Sweden. The Committee therefore advocated that the government create a special kind of legal organization, the "registered denomination,"¹⁷³ especially tailored for use by religious associations, including the Church of Sweden.¹⁷⁴ It was suggested that the parliament enact a special law about registered denominations,¹⁷⁵ and religious freedom in general, to effectuate the new legal form of association, in addition to the proposed special law about the Church of Sweden.¹⁷⁶ The Committee also presented a modification to the Constitution that would grant all denominations the same constitutional protection given the Church.¹⁷⁷

b. The Church of Sweden Act of 1993 replaces the Church of Sweden Act of 1686. While the 1994 Investigatory Committee worked on its recommendations to the government, the parliament passed the current Church of Sweden Act,¹⁷⁸ replacing the old Church of Sweden Act of 1686 and various other statutes.¹⁷⁹ The new act became effective on January 1, 1993¹⁸⁰ and will be repealed when the disestablishment occurs on January 1, 2000.¹⁸¹ The parliament did not enact the 1993 Act based on the 1994 Committee's investigations, which were completed later, but the investigations do deserve some recognition, as they aid, to some extent, the development of the separation of the Church and the state. The Church of Sweden Act pertains only to the Church of Sweden, and its purpose is to emphasize the identity of the Church as a generally independent denomination, although its organization and

172. *See id.* at 84-85.

173. "Registrerat Trossamfund."

174. *See* SOU 1997:41, *supra* note 22, at 85.

175. *See supra* notes 101 through 104 and accompanying text.

176. *See* SOU 1997:41, *supra* note 22, at 85.

177. *See id.*

178. *See* SFS 1992:300.

179. *See* SOU 1997:41, *supra* note 22, at 85.

180. *See id.*

181. *See* SFS 1992:300.

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operations are regulated by the state.¹⁸² This Act regulates the Church in areas such as its confession, membership requirements, organization, property and wealth, music and elections to offices.¹⁸³

The parliament modified the Church of Sweden Act in 1996 to harmonize the membership requirements of the Church with the religious freedom principles proclaimed in the Constitution and law. These modifications were also based on a request by the Church; it was reprehensible to the Church to think of membership as being forced upon people.¹⁸⁴ The 1996 reforms removed from the Act the automatic membership of a child born to at least one member-parent, which ensured that membership in the Church would now be based on an affirmative and voluntary act on the part of the child, its parents, or an adult seeking membership in the Church, just as Bishop Billing envisioned seventy years ago.

As noted earlier in this Comment, prior to the 1996 changes, a child born to at least one member-parent would automatically become a member of the Church of Sweden, unless the parent notified the proper Church authorities otherwise.¹⁸⁵ Furthermore, a member of the Church could not freely revoke his or her membership prior to the enactment of the Freedom of Religion Act of 1951¹⁸⁶ without joining another Christian denomination.¹⁸⁷ By removing the automatic membership of children and allowing revocation of an existing membership in the Church, forced membership in the Church had been eliminated, and people thereby became free to view the Church as a religiously motivated organization, rather than a state institution, just as bishop Billing had advised.¹⁸⁸

4. *The parliament's proposal for disestablishment*

The report produced by the Investigatory Committee of 1994 was sent to many organizations and experts to obtain feedback

182. See SOU 1997:41, *supra* note 22, at 85.

183. See SFS 1992:300.

184. See SOU 1997:41, *supra* note 22, at 85.

185. See *supra* notes 71-74 and accompanying text.

186. See *supra* notes 111-12 and accompanying text.

187. See RegSkr 1995:1, *supra* note 5, at 6; SOU 1997:41, *supra* note 22, at 73.

188. See *supra* notes 80-84 and accompanying text.

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and commentary.¹⁸⁹ Based on the report and commentary, the Social Democratic government presented a recommendation to Kyrkomötet on June 15, 1995¹⁹⁰ stating that the Church of Sweden, as a matter of principle, should be disestablished.¹⁹¹ The Social Democrats convinced the Center Party, which until this time had been the primary opponent to disestablishment both politically and in Kyrkomötet, to vote for a separation of the Church and the state.¹⁹² Kyrkomötet considered the government's recommendation during a congress in August of 1995 and concluded that the principal components of the recommendation properly accounted for the Church's needs, and could therefore be the foundation for a reformation of the then existing relationship between the Church and the state.¹⁹³ Due to the broad political and Church-based support it wielded, the government submitted in October of 1995 a proposal to the parliament for the disestablishment of the Church of Sweden, a severance that would undo many hundreds of years of preferential treatment of one denomination over others.¹⁹⁴

IV. LEGISLATIVE HISTORY AND AN ANALYSIS OF THE DISESTABLISHMENT OF THE CHURCH OF SWEDEN

No debate or deliberation by the governing body in Sweden has been as lengthy as the one pertaining to the relationship between the state and the Church of Sweden.¹⁹⁵ Since the beginning of the early twentieth century, many people have proposed various solutions to the increasingly recognized need for a change in the church-state relations.¹⁹⁶ Several investigations have been performed and some changes carried out.¹⁹⁷ Most reforms have focused on making the Church successively more independent of the state. The proposal

189. See SOU 1997:41, *supra* note 22, at 88. For a summary of the responses, please refer to DS 1995:34 [Departementsserien 1995:34].

190. See RegSkr 1995:1, *supra* note 5.

191. See SOU 1997:41, *supra* note 22, at 88.

192. See Dir. 1995:162, *supra* note 116, at 218; see also Gibson, *supra* note 123.

193. See SOU 1997:41, *supra* note 22, at 88.

194. See *id.*

195. See Statens offentliga utredningar [The Government's Public Investigations] SOU 1997:55, at 3 [hereinafter SOU 1997:55]; A Historic Reform, RegSkr 1997:2, *supra* note 119.

196. See SOU 1997:55, *supra* note 195, at 3.

197. See SOU 1997:41, *supra* note 22, at 74-87.

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submitted by the government and passed by the parliament¹⁹⁸ on December 8, 1995, is one more substantial step in the direction of creating an independent Church of Sweden and equality among all religious associations in relation to the state.¹⁹⁹

A. *The Government's Draft Proposal to Kyrkomötet*

Before the government formulated its proposal in 1995, it went through the customary "remissbehandling"²⁰⁰ period, during which comments were solicited from affected organizations and experts. After receiving feedback on the recommendation from the Investigatory Committee of 1994, the Social Democratic government submitted a draft proposal to Kyrkomötet for comments,²⁰¹ in which it proposed two main ideas. First, a special Church of Sweden Act should be enacted, in which the basic functions and organizations of the Church should be regulated. Second, equality among all religious associations should be promoted by giving all denominations the same constitutional protection as the Church of Sweden. This would occur through the enactment of a law pertaining to all religious associations which would provide for a special form of association called the registered denomination.²⁰²

As basic premises for its draft proposal, the government stated that it was obliged to design a new type of relation to the Church of Sweden, one more adapted to the modern Swedish

198. When the government submits a proposal to the parliament, it will be assigned to one of many Standing Committees to be prepared for submission to the full chamber for voting. For a description of how the Swedish government and parliament work, see Sveriges Riksdagen, The Swedish Parliament Web Site (visited Apr. 9, 1999) <http://www.riksdagen.se/arbeta/frbeslut/kamml_k.htm> and <http://www.riksdagen.se/arbeta/frbeslut/utsk_k.htm> (information is primarily in Swedish). Hence, the parliament did not pass The Government's Proposal as such but instead passed what is called a "Utskottsbetänkande," which may be translated as the Committee's Recommendation.

199. See Alf Svensson, Motion till riksdagen [Motion to the Parliament] 1995/96:K5.

200. See *supra* note 130.

201. See RegSkr 1995:1, *supra* note 5.

202. See Andra kyrkolagsutskottets betänkande [Consideration of the Second Committee on Church Laws] 2KL 1995:1, in SVENSKA KYRKAN I FÖRNYAD GESTALT [THE REFORMED CHURCH OF SWEDEN] 69, 83 (Verbum 1996) [hereinafter 2KL 1995:1] (trans. by this author).

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society.²⁰³ Such a relation must be acceptable to a great majority of the society, thereby creating a stable and long-lasting working environment for the Church and all other denominations in relation to the state.²⁰⁴ Another fundamental objective was that a solution to the existing relationship must ensure that the Church, even in the future, could serve the entire Swedish society.²⁰⁵ The government also said the reforms should increase equality among all denominations, including the Church of Sweden.²⁰⁶

1. Constitutional considerations

The Investigatory Committee suggested to the government that a new chapter about the Church of Sweden be added to the Constitution, which would provide for a specially enacted Church of Sweden Act, through which constitutionally mandated norm-giving or legislative authority could be granted to the Church over its local parishes.²⁰⁷ Laws regulating religious associations in general were suggested to be enacted as ordinary statutes.²⁰⁸ Both types of laws would be amenable to modification only by the same procedures used when changes to the Parliamentary Act were made, with the intention that the laws would be granted more protection than a regular statute, but less than a constitutional or fundamental law.²⁰⁹ Several organizations objected to this part of the Committee's recommendation as being too vague or not sufficiently justified.²¹⁰ To illustrate, the Swedish Supreme Court criticized the proposed new chapter granting constitutional legislative authority to the Church on the basis that it may violate the

203. See RegSkär 1995:1, *supra* note 5, at 14.

204. See *id.*

205. See *id.*

206. See *id.*

207. See *id.* at 13.

208. See *id.*

209. The Parliamentary Act is in Swedish "The Riksdag Act." "The Riksdag Act occupies a position somewhere between fundamental law and ordinary statute law," which "cannot be changed other than after very careful consideration and on the basis of broad political [sic] majorities." Dahl, *supra* note 63; see also discussion *supra* note 63.

210. "Förslaget . . . har av bl.a. *Justitiekanslern, Svea hovrätt och Kammarrätten i Stockholm* ansetts otillräckligt motiverat eller preciserat." RegSkär 1995:1, *supra* note 5, at 13 (trans. by author).

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religious freedom of each parish to decide its own affairs.²¹¹ The critics noted that Kyrkomötet's recommended authority would possibly eliminate the local parishes' autonomy,²¹² which is one of the pillars of the democratically organized folk church. Further problems with the proposal, according to the Court, included the fact that the Church as a whole and each parish would obtain legal entity status, and that the question of which part of the Church would be legally responsible in various situations had not been determined. The Court was also concerned that the laws did not specify the division of power between the Church as a whole and the individual parishes.²¹³

In its draft proposal, the government recognized that the Committee's recommendation to give the Church of Sweden preferential status over all other denominations, through constitutionally mandated norm-giving or legislative authority and a special Church of Sweden Act, had incurred the most emphatic criticism.²¹⁴ Bestowing the Church with such status would not be acceptable to the critics, especially considering the Freedom of Religion Act and equality principles.²¹⁵ In particular, the critique focused on the fact that Kyrkomötet would be able to issue regulations based on constitutional authority, albeit binding only upon the Church's internal organizations and local parishes.²¹⁶ The critics suggested that with such powers, the Church must still be considered part of the state apparatus because its norm-giving capacity would be derived from the Instrument of Government²¹⁷ and from the delegation of those powers by the parliament.²¹⁸

In response to this critique, the government reasoned that the strong historical ties between the Church and the state could not be altogether disregarded.²¹⁹ Many people are still closely attached to their local parish, and the historically important church buildings and the cultural milieu this

211. *See id.* at 13-14.

212. *See id.* at 15.

213. *See id.* at 14.

214. *See id.*

215. *See id.*

216. *See id.* at 15.

217. The Instrument of Government, "Regeringsformen," is one of Sweden's fundamental laws and is part of the Swedish Constitution. *See* Dahl, *supra* note 63.

218. *See* RegSkr 1995:1, *supra* note 5, at 15.

219. *See id.* at 8.

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environment creates, so the Church has an important role even in the modern society.²²⁰ Nonetheless, the preferential status of the Church is not contemporary; it is at least to some degree obsolete. Furthermore, it is difficult to reconcile this historic relationship and the existing preferential status of the Church with the principle that the state must remain neutral, though positive, with respect to all denominations.²²¹ The government acknowledged that it does not have any reason for continuing the preferential treatment of the Church at the expense of all other religious associations.²²² It therefore found the critique well founded and decided to exclude from its draft proposal the Investigatory Committee's recommendation that Kyrkomötet be granted constitutionally mandated norm-giving or legislative authority.²²³ In fact, the government said in the draft proposal that there is no constitutional need for such preferential treatment.²²⁴ Instead, the Church must be given other tools for regulating its internal affairs.²²⁵ The government offered a compromise, consisting of removing from the Constitution the Church's authority over its local organizations and instead placing such authority only in the Church of Sweden Act.²²⁶ The government stated that the Act should establish Kyrkomötet—based on democratic elections—as the leading organization for the Church on the national level, while also providing that the local parishes and dioceses be responsible for local church activities.²²⁷ Through this compromise, the government constructed an organization that could administer to the Church's internal business on a national level. At the same time, the government protected the local organizations' autonomy and neutralized much of the criticism based on the constitutional mandate recommended by the Committee.

On the other hand, the government did not respond satisfactorily to the argument that, although the Church no

220. *See id.*

221. *See id.* at 15.

222. *See id.*

223. *See id.*; *see also* Prot. 1995/96:34, anf. 57, 58.

224. *See* RegSkr 1995:1, *supra* note 5, at 18 ('Det finns däremot inte något konstitutionellt behov av att i grundlag skriva in att det skall finnas en särskild lag om Svenska kyrkan.') (trans. by author).

225. *See id.* at 15.

226. *See id.*

227. *See id.*

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longer has constitutionally mandated legislative authority over its internal organization, there will still be a special Church of Sweden Act. No other religious association will be governed by a special law, so this Act smacks of violation of the principle of equal treatment of all religious associations. The government's answer to this critique is two fold. First, the Church has such a particular position in the Swedish society, derived from its historical ties to the state and the development of the society in general, and still performs such important public functions²²⁸ that special regulations must be enacted for the Church; one general law regulating all denominations would be a greater violation of the requirement of equal treatment in the laws as it would be much too dominated by the special rules necessary to govern the Church. Second, the proposed Act will not force anyone to participate in religious activities, nor hinder anyone from exercising a religion of his or her choice.²²⁹ The Act does not therefore conflict with the Freedom of Religion Act.²³⁰

Furthermore, the government proposed to Kyrkomötet an extension to all religious associations, including the Church of Sweden, of constitutional protection in regards to both legal entity status and the procedure for enacting laws regulating the religious associations in order to provide equality and stability for and among all denominations.²³¹ At present, only the Church has a right to participate in the making of laws affecting it in the religious arena. The process by which the parliament passes such regulation is controlled by the rules protecting the Riksdags Act,²³² thus providing some heightened protection to the Church against unfavorable regulation.²³³ In contrast, laws regulating religious associations other than the Church may be enacted as ordinary statutes,²³⁴ which offer no more protection than ordinary traffic and tax laws.²³⁵

228. The Church keeps many of the public records of the citizens, and it is responsible for providing burial grounds for members and nonmembers alike.

229. See RegSkr 1995:1, *supra* note 5, at 18.

230. See *id.*

231. See *id.* at 16.

232. See *supra* note 63.

233. See RegSkr 1995:1, *supra* note 5, at 16.

234. See *id.* at 17.

235. See *id.*

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The government stated in its draft proposal that it did not see the need to add a new chapter to the Constitution to effectuate constitutional protection for all religious associations. Rather, the government proposed to reactivate and modify section 6 of chapter 8 of the Instrument of Government to include general regulation of, and protection for, all religious associations.²³⁶ The purpose of such a provision was to ensure equality among the denominations, as well as a stable environment for the particular services that religious associations contribute to society, without affording them greater protection than what was given to other voluntary and civic associations—no religious association should be immune against ordinary civil²³⁷ and public²³⁸ laws.²³⁹

2. *Municipality status*

After having explained its position on the question of constitutional protection and equality among all religious associations, the government focused on the recommendation of the Committee of 1994 that the current status as a municipality should be revoked from the local parishes of the Church.²⁴⁰ The parishes have strongly opposed such action for several reasons. First, municipality status is closely linked with economics—the parishes' ability to collect Church taxes to pay for services depends on their municipality status. If the parishes lose one, they would lose the other; they were thus afraid that if they could no longer collect Church taxes, they

236. *See id.* at 47. The suggested language of Chapter 8, section 6 provided: "Regulations affecting the Church of Sweden and all other religious associations will be enacted as laws. Such laws may regulate the basic foundations of the organization and activities of the Church of Sweden." *Id.* ("Föreskrifter om Svenska kyrkan och andra trossamfund meddelas genom lag. I sådan lag får bestämmas grunderna för Svenska kyrkans organisation och verksamhet.") (trans. by author).

237. "Civilrättslig lagstiftning." Civil laws are those that regulate the individual citizens' rights against one another. *See* Konstitutionsutskottets betänkande [Consideration of the Committee on Constitutional Questions] 1995/96:KU12, *in* SVENSKA KYRKAN I FÖRNYAD GESTALT [THE REFORMED CHURCH OF SWEDEN] 191, 199 (Verbum 1996) [hereinafter 1995/96:KU12] (trans. by author).

238. "Offentligrättslig lagstiftning." Public laws regulate the state's and society's structure and the state's relation to its citizens as it exercises its official power and authority. *See* 1995/96:KU12, *supra* note 237, at 199.

239. *See* RegSkr 1995:1, *supra* note 5, at 17.

240. *See id.* at 18.

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would not be able to provide their services.²⁴¹ Second, the municipality status provides stability for the parishes by granting each parish independent legal entity status.²⁴² Lastly, the parishes, in their comments on the Committee's recommendations, stated that it is not necessarily the municipality status itself they strive to protect. Rather, it is important to them that the values promoted by such status be preserved, particularly the values of the parishes as locally anchored and democratically governed organizations.²⁴³

Although it acknowledged that the parishes' comments must be respected, the government said that several reasons exist for revoking from the parishes their status as municipalities.²⁴⁴ The most important justification for denying parishes municipality status lies in the fact that, just as citizenship in secular municipalities is mandatory for those within its boundaries, so is membership in the local Church municipality also mandatory for members and nonmembers alike.²⁴⁵ Although forced membership in the Church has been removed from the law books, each citizen of Sweden still belongs to both a secular and a Church municipality, even if the latter is only for purposes of assessing the Church and Dissenter Taxes²⁴⁶ that in part pay for cultural and historical upkeep and public burial grounds.²⁴⁷ This forced inclusion is the basis for the municipality status of each parish. However, the mandatory membership in one's local Church municipality operates contrary to the constitutional solution of the government's draft proposal,²⁴⁸ and it is incompatible with the Freedom of Religion Act of 1951. It also arguably violates the 1996 modifications of the membership requirements of the Church of Sweden Act, which removed the final element of

241. See *infra* notes 283-85 and accompanying text.

242. See RegSkr 1995:1, *supra* note 5, at 18.

243. See *id.* at 19.

244. See *id.*

245. See Marita Ulvskog (s), Prot. 1995/96:34, anf. 32 ("Alla som är folkbokförda i en församling är medlemmar i den oberoende av om de tillhör Svenska kyrkan eller inte."); see also RegSkr 1995:1, *supra* note 5, at 19.

246. Members of the Church of Sweden pay a Church Tax, and nonmembers pay a Dissenter Tax that is about twenty-five percent of the ordinary Church Tax. For more information, see *supra* note 102.

247. See RegSkr 1995:1, *supra* note 5, at 19.

248. See *id.*

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forced membership in the Church.²⁴⁹ In its draft proposal, the government stated that there is broad support to eliminate the Dissenter Tax presently assessed to nonmembers and replace the Church Tax with a Church Fee, payable only by members of the Church.²⁵⁰ Removal of the Dissenter Tax would extinguish mandatory membership in the local Church municipalities, and the local parishes could then by definition no longer be considered municipalities.²⁵¹ The government concluded that no compelling reasons existed for preserving the Church municipality.²⁵²

Additionally, the third concern raised by the local parishes²⁵³ in relation to losing their municipality status would be resolved under the draft proposal as the local parishes would continue to be locally anchored and democratically governed under the Act.²⁵⁴ Accepting that argument, one organization remarked that because the Church is a "Folkkyrka,"²⁵⁵ the real contribution of the Church of Sweden occurs on the local rather than on the regional or national level, and the parishes must therefore be guaranteed a democratic form of organization.²⁵⁶ Several commentators focused on the same point, arguing that the national organization must therefore not be given too broad of powers over the local parishes. Such powers would impede the democratic form of governance, which is one of the essential characteristics of the Church.²⁵⁷ The problem accentuated by these arguments, however, is that allowing each parish to become a legal status and self-governing entity may create a situation where the Church on the national level pulls in one direction, while the local parishes drive in several other directions.²⁵⁸ One organization responded that a framework should be set up within which the local parishes may act independently, balancing the power of the Kyrkomötet and

249. *See supra* notes 184-88 and accompanying text.

250. *See* RegSkr 1995:1, *supra* note 5, at 19.

251. *See id.*

252. *See id.*

253. *See supra* note 240-43 and accompanying text.

254. *See* RegSkr 1995:1, *supra* note 5, at 19.

255. *See supra* note 73.

256. *See* RegSkr 1995:1, *supra* note 5, at 21.

257. *See id.*

258. *See id.* at 22.

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other Church organizations on a national level with the local parishes' need for autonomy.²⁵⁹

On this problem, the government simply stated that there is no reason to presume that the various levels of the Church will be at odds.²⁶⁰ Local parishes, independently engaged in the work of the Church, are some of the Church's most important resources and are what will allow the Church in the long run to stay vibrant and energetic.²⁶¹ Consequently, the government expressly stated in its draft proposal that the Church of Sweden Act should provide for and ensure that the local parishes are independent and self-governing democratic organizations.²⁶²

3. *The Church of Sweden Act*

As mentioned above, the government agreed with the recommendation of the Committee of 1994 that a special Church of Sweden Act should be enacted²⁶³ so as to preserve the Church's identity and characteristics.²⁶⁴ The government stated to Kyrkomötet that this Act ought to provide that the Church be of an evangelical-Lutheran confession and Episcopal structure, and that it be a democratically based, nationwide Folkkyrka.²⁶⁵ This Act should also establish the independence and self-governance of the local parishes and dioceses, and the mandatory obligation for members of the Church to pay a Church Fee.²⁶⁶ The state must not through this Act determine the Church's identity in detail, however. Hence, the Act should only include the essential provisions to ensure the protection of the Church's fundamental qualities.²⁶⁷ Based on the critique leveled against this special law,²⁶⁸ the government stated in its draft proposal to Kyrkomötet that this issue must be further

259. *See id.*

260. *See id.* at 16.

261. *See id.*

262. *See id.* at 20.

263. *See id.*

264. *See id.* at 22.

265. *See id.* at 20.

266. *See id.*

267. *See id.* at 23.

268. See the text accompanying footnotes 228 through 230 for an idea of the government's response to the critique that religious freedom does not allow for a separate Church of Sweden Act.

investigated. The government also said, however, that the need for more information should not be an obstacle to making a decision, as a matter of principle, to disestablish the Church.²⁶⁹

B. Kyrkomötet's Consideration

Although Kyrkomötet recognized the need for more equality among all religious associations, its consideration of the government's draft proposal²⁷⁰ strongly emphasized that the historical, economic, and social ties between the Church, state and society in general would in reality necessitate a certain preferential treatment of the Church, whether "one likes it or not."²⁷¹ That the state shares this view is demonstrated in the proposed Church of Sweden Act, said Kyrkomötet.²⁷² The historical ties are evidenced in the church buildings and burial grounds; the social ties are shown in the high percentage of Church participation in momentous times of peoples' lives and the high percentage of Church membership and the nationwide Church activity; the economic ties derive from the costs of preserving the cultural and historical monuments and rendering social services.²⁷³

Based in part on its approval of the principle of equality, and in smaller part on the government's recognition that the Church deserves some special status, Kyrkomötet accepted the government's proposal to modify the Constitution to provide protection for all religious associations, including the Church, and the proposal that a Church of Sweden Act be enacted.²⁷⁴ Kyrkomötet said the Church of Sweden Act must be constructed as a framework law, supplying only the basic organizational structure of the Church. Nevertheless, it must be more specific than presented in the draft proposal regarding the division of power between the local, regional and national divisions of the Church.²⁷⁵ It noted that norm-giving or

269. See RegSkr 1995:1, *supra* note 5, at 23.

270. See 2KL 1995:1, *supra* note 202, at 69.

271. *Id.* at 93 ("Men det är av historiska, sociala och ekonomiska skäl illusoriskt att påstå att Svenska kyrkan i praktiken inte skulle ha en särställning, man må gilla denna eller inte.") (trans. by author).

272. See *id.*

273. See *id.* at 93-94.

274. See *id.* at 106.

275. See *id.* at 95-96.

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legislative authority will not be delegated from the state to the Church and said that this will enable the Church to become more independent. Such independence would open up opportunities for the Church to renew itself as an open and democratically based Folkkyrka.²⁷⁶

As the draft proposal suggested a decision about disestablishment only as a matter of principle rather than a fully detailed and complete resolution, Kyrkomötet expressed that the ensuing investigations must be public and allow active participation on the part of affected organizations, including the Church.²⁷⁷ Two such investigations involved the areas of the Dissenter Tax and municipality status of the local parishes. There is broad support within the Church for removing the Dissenter Tax, based on the principle of religious freedom.²⁷⁸ Kyrkomötet said that because the Church views itself as an open Folkkyrka, it was natural for the Church to request the removal of a tax imposed on people who are not members of the Church.²⁷⁹ The Dissenter Tax is based on the still existing mandatory membership in the Church municipality.²⁸⁰ This forced membership was, according to Kyrkomötet, incompatible with the religious freedom and removal of the Dissenter Tax.²⁸¹ More importantly, any mandatory membership is contrary to the Church's view of itself as a Folkkyrka.²⁸² Kyrkomötet therefore agreed that the next logical step must be to remove the Church municipality status.²⁸³

The Church, it must be noted, was troubled by the prospect of losing the municipality status during its examination in 1979 of a proposal similar to the one considered in 1995.²⁸⁴ This concern had changed by 1995, and it is important to consider the basis for the transformation of the Church's disposition. On the one hand, the Church was concerned that it could not provide its services due to the lack of funding after a severance

276. *See id.* at 95.

277. *See id.* at 96.

278. *See id.* at 97.

279. *See id.*

280. *See supra* notes 245 through 252 and accompanying text.

281. *See* 2KL 1995:1, *supra* note 202, at 97.

282. *See id.*

283. *See id.*

284. *See supra* notes 146 and 147 and accompanying text.

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of the ties with the state. On the other hand, the Church knew that it must become an independent religious association in order to clarify its religious message, just as Bishop Billing had argued in the 1920s.²⁸⁵ One key to the change may lie in Kyrkomötet's comments on the government's draft proposal. It stated that the Church is a denomination grounded in God's grace, and that one basic characteristic of God's grace is that it is not based on force. This was the guiding principle for the bishops in 1929 and the proponents of the Freedom of Religion Act of 1951 when advancing the rights of people not to be forced into membership in the Church.²⁸⁶ What used to be generally acceptable—forced membership in the Church—is in modern society no longer agreeable.²⁸⁷ The identity of the Church is determined in light of its relation with other associations, both religious and secular, and with society in general. It was therefore important to one organization that dialogue be promoted with other organizations and society based on religious freedom and equality,²⁸⁸ which would not be possible without removing the Church's municipality status.

In essence, forced membership in a Church municipality and the obligation to pay a Dissenter Tax have outlived their usefulness. Kyrkomötet said that “[c]ontinuity and change complement one another.”²⁸⁹ The continuity consists of the Church's religious message to everyone in the society, but continuity does not require that all of society be compelled into membership in the Church or Church municipality, as this would be contrary to the grace of God.²⁹⁰ Indeed, to maintain its character of a Folkkyrka, the Church must change with the society it serves. “The municipality status, which has greatly benefited the Church for over one hundred years, is not as clearly a benefit in today's multi-cultural and multi-religious society.”²⁹¹ In its consideration, Kyrkomötet concluded that the

285. See *supra* notes 75-76, 84-85 and accompanying text.

286. See 2KL 1995:1, *supra* note 202, at 97.

287. See *id.*

288. See *id.* at 112 (Bilaga 3, Lärnämndens yttrande 1995:17 [Appendix 3, A Statement by the Committee on Learning]).

289. 2KL 1995:1, *supra* note 202, at 98 (“Kontinuitet och förnyelse betingar varandra.”) (trans. by author).

290. See *id.* at 97.

291. *Id.* at 98 (“Kommunbegreppet, som under ett drygt århundrade i hög grad gagnat Svenska kyrkan, är inte lika självklart en tillgång i den aktuella

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Church of Sweden Act and the general protection for all religious associations will allow the Church to preserve the democratic values, local activities and self-governance that were safeguarded under the parishes' status as municipalities.²⁹² To remove the municipality status would therefore not threaten the Church's identity and its ability to continue to serve the society. To the contrary, such a reform is precisely the change that the Church needs to remain a dynamic, energetic and legitimate Folkkyrka.

*C. The Government's Proposal to the Parliament and
Kyrkomötet's Consideration*

The government submitted its final proposal to the parliament on October 5, 1995. This proposal was almost identical to the draft proposal presented to Kyrkomötet for feedback. In the final proposal, the government noted Kyrkomötet's concession that municipality status was not an obvious benefit to the Church in today's value-pluralistic society.²⁹³ The proposal also recognized that Kyrkomötet had said that the withdrawal of norm-giving competency will allow the Church to show society that it is a religiously motivated, independent organization,²⁹⁴ thereby allowing its religious message to be more pronounced.²⁹⁵ In addition, the proposed Church of Sweden Act does not violate the religious freedom of the Church, although it will specially regulate the Church, as the Church for the most part agrees to the general provisions of the Act. Nonetheless, the government agreed with Kyrkomötet that the scope and terms of the Act required further analysis and investigation.²⁹⁶ Kyrkomötet gave its recommendations for and prompted the government to include in the Act well defined

mångkulturella och mångreligiösa samhället (trans. by author).

292. *See id.* at 98.

293. *See* Regeringens proposition [The Government's Proposal] 1995/96:80, in SVENSKA KYRKAN I FÖRNYAD GESTALT [THE REFORMED CHURCH OF SWEDEN] 139, 149 (Verbum 1996) [hereinafter Prop. 1995/96:80] (trans. by author).

294. *See id.* at 139, 154.

295. The government noted in a draft proposal to Kyrkomötet in 1997 that "[t]he role [of the Church of Sweden] as a religious association has come to be emphasized as obligations of a social and secular nature has been removed and the activities have been concentrated on the Church's main obligation, which is to spread the gospel." A Historic Reform, RegSkr 1997:2, *supra* note 119 (trans. by this author).

296. *See* Prop. 1995/96:80, *supra* note 293, at 162.

guidelines in regards to responsibilities, obligations and regulatory authority among the local, regional and national organizations of the Church.²⁹⁷ Agreeing to most of Kyrkomötet's comments, the government called in its proposal for future investigation of the boundaries of the Church of Sweden Act, both as to the internal regulation by the Church and as to the external limits of the Act itself.²⁹⁸

D. Two Debates in Regards to the Government's Proposal

The members of parliament met the government's proposal with an unusual set of coalitions and fence straddling. Under ordinary circumstances, the two prevalent parliamentary coalitions in Sweden pit the Conservative, Christian Democratic, Liberal and Center parties against the Social Democratic, Communist and Environmental parties. During the debates over the changed relations between the Church and the state, however, these traditional alliances were bypassed on two levels. First, the Conservative, Christian Democratic, Center and Social Democratic parties in general combined against the Liberal, Communist and Environmental parties. Second, there was a breakdown of intraparty consensus, as several important members aligned themselves with other parties—producing somewhat unusual allies.²⁹⁹ Due to the fact that this unusual situation makes it difficult to generalize about each party's standpoints on the church-state issues, this comment will present the two most important debates, in the Committee on Constitutional Questions and in the parliament's Chamber, as they occurred.

Although subarguments surfaced during the two debates, the principal focus concerned whether the reform would go far enough with respect to the principles of religious freedom and equality among all denominations. In particular, the debates

297. *See id.*

298. *See id.* at 159. The investigations that commenced after the government's proposal passed in 1995 have been utilized to some extent in this comment. However, a thorough analysis of these investigations is not possible in this comment. For further analysis, the reader may turn to the published considerations by the various Investigatory Committees: SOU 1997:41-47, 55, *supra* note 22.

299. To illustrate, a Communist and a Conservative found themselves arguing for similar conclusions as the Liberals in regards to whether one or two laws should be enacted to govern all religious associations, including the Church of Sweden.

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centered around whether the parliament should enact one or two laws, that is, whether it should enact one law governing all religious associations, including the Church of Sweden, or enact one law to regulate and give special status to the Church, and another law for all other religious associations.

1. The motions in the Committee on Constitutional Questions

After the government submits a proposal to the parliament, it is assigned to a parliamentary Committee that will prepare the proposal for a vote by the parliament in the Chamber. Due to the constitutional nature of the proposal, it was forwarded to the Committee on Constitutional Questions.³⁰⁰ The Communists³⁰¹ on the Committee submitted a motion to reject the proposal on the basis that no religious association should be regulated by the state, including the Church of Sweden.³⁰² They argued that the Church's fear of losing a great portion of its membership is no justification for granting it special status in the Constitution or in a special act.³⁰³ No reasonable rationale exists, said the Communists, for enacting regulations or protections of religious associations, as the Constitution already provides each person and an association with sufficient protection of their religious freedoms.³⁰⁴ In fact, granting constitutional protection to an association only because it is based on religious beliefs violates nonreligious associations' rights to freedom of conscience and equality.³⁰⁵ Moreover, it is not clear whether the

300. "Konstitutionsutskottet." (trans. by author).

301. "Vänsterpartiet." (trans. by author).

302. See Motion till riksdagen [Motion to the Parliament] Mot. 1995/96:K7. See *supra* note 125 for an explanation of Motion till riksdagen numbering.

303. See *id.*

304. The Swedish Constitution provides that "[a]ll citizens shall be guaranteed the following in their relations with the public administration: . . . 6. freedom of worship: the freedom to practise one's own religion either alone or in the company of others." SWEDISH CONST., THE INSTRUMENT OF GOVERNMENT ch. 2, art. 1, ¶ 6, also available at Sveriges Riksdagen, The Swedish Parliament Web Site (visited Mar. 14, 1999) <http://www.riksdagen.se/arbetsgrundbok_en/IG02.htm>.

305. "No other organizations, political or otherwise, or unions, have obtained the protection of specially enacted laws. To enact such laws for religious associations would in our opinion violate the freedom of association, or at least grant religious associations a special status not given to other organizations." Mot. 1995/96:K7 ("Inga andra organisationer, politiska, fackliga eller andra har någon särskild lag. Att göra en särlagstiftning för trossamfunden anser vi strida mot föreningsfriheten, i vart fall ger det en särställning.") (trans. by author).

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proposal provides more freedom of religion, the Communists stated, as the proposal draws all religious associations in under the state's watchful and regulatory eye.³⁰⁶ Along the same line, the liberals³⁰⁷ stated that they were concerned over the "effect of contagiousness"³⁰⁸ of regulatory fever: "The state may in the future embrace a false understanding that it may impose on religious associations other than the Church of Sweden the same obligations proposed to be contained in the Church of Sweden Act."³⁰⁹

One member of the Committee proceeded in a motion with a rather strong assertion based on the religious freedom principle.³¹⁰ Gustaf von Essen³¹¹ noted the irony in the fact that while it prides itself to be a champion of human rights and freedoms, Sweden has not moved forward on the religious freedom front until very recently, and these late reforms have not been able to fully accomplish the goal of freedom of religion.³¹² Indeed, said Essen, one will not find laws granting the position of monopoly enjoyed by the Church of Sweden—after the proposed reforms—even in nations dominated by the Catholic Church; rather, one must look to the parts of the world under Islamic control in order to find parallels to the suggested Swedish church-state model.³¹³ Sweden is today a multicultural and multireligious society, and the yearning for pluralism and religious as well as civic freedom is deeply rooted in the development of the modern Swedish society, irrespective of which political majority governs the nation, said Essen.³¹⁴ It appears to this author that people expect such a pluralistic society to protect all and not favor any one set of values or beliefs. The strong desire for freedom and pluralism must be satisfied, both for the individual *qua*

306. *See id.*

307. "Folkpartiet." (trans. by author).

308. "Smittoeffekten." Mot. 1995/96:K6 (trans. by author).

309. Mot. 1995/96:K6 ("En annan risk är . . . att statsmakterna i en framtid kommer att anse sig kunna ställa samma krav på andra samfund som på Svenska kyrkan.") (trans. by author).

310. *See* Mot. 1995/96:K2.

311. Essen is a member of the Conservative party, "Moderata samlingspartiet" (trans. by author).

312. *See* Mot. 1995/96:K2.

313. *See id.*

314. *See id.*

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individual and for society in general, for a state-church system, or rather the lack of, to be legitimate and, paradoxically, stable and long-lasting.

The progress toward greater pluralism has created a problem of two dimensions for the Church of Sweden, according to Essen.³¹⁵ First, a state-church system is not acceptable to and does not reflect the modern Swedish society, which has created a forceful demand on the government to reform or abolish the outmoded system.³¹⁶ Second, a pluralistic society is almost inevitably less ordered and stable than a homogeneous society, causing people to become bewildered and disconcerted.³¹⁷ The Church, through its ties to the state and its antiquated organizational models, cannot, according to Essen, develop the dynamism and energy necessary to lead and guide people through the fast-paced modernization of society and the ensuing challenges people face due to these changes.³¹⁸

Along the line of Bishop Billing's argument seventy years ago, one member of the Conservative Party stated in a motion to the Committee that "[t]he Church's responsibility to preach the Gospel and Christianity is . . . no less important today than before."³¹⁹ The government's proposal, responded Essen, will not allow the Church to become sufficiently independent to serve the Swedish people in these changing times, because the state will, through the Church of Sweden Act, continue to regulate the Church's confession, organization and other matters. Moreover, these special regulations will give the Church a special status over other religious associations, conflicting with the principle of religious freedom.³²⁰ Essen suggested the government enact only one law that would govern all religious associations equally, without regulating a denomination's confession, organization or extent of geographical coverage.³²¹ No principled reason will justify

315. *See id.*

316. *See id.*

317. *See id.*

318. *See id.*

319. Carl Bildt, Mot. 1995/96:K1 ("Svenska kyrkans uppdrag att genom evangelium förmedla det kristna budskapet är därför inte mindre viktigt idag än vad det varit tidigare.") (trans. by author).

320. *See* Mot. 1995/96:K2.

321. *See id.*

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differential treatment, either negative or positive, of one or more denominations.³²² The individual demands by citizens cannot be resolved by collective solutions created by the state.³²³ In essence, Essen argued that the state should therefore simply sever the bonds between the Church and the state and allow the Church to differentiate itself from other religions based on its own identity, characteristics and confession, rather than through a state regulated scheme.

Essen realizes that the Church of Sweden will be regulated separately in several areas even after the reform. That the responsibility for providing burial grounds, as it is now, will continue to lie with the Church was especially not acceptable to Essen, however. This responsibility should instead be entrusted to the civic municipalities, which in turn should be authorized to delegate such responsibility to any religious association, including the Church.³²⁴ Likewise, as the maintenance and preservation of cultural values embedded in Sweden's old churches and other historical monuments are very important to society, Essen suggested that it is only natural that the state take upon itself the burden of conserving these cultural objects in place of the Church.³²⁵ Likewise, the Communists argued in their motion that the responsibility for maintaining the culturally and historically valuable monuments should not rest with the Church; rather, these monuments are of interest to all of society, and the responsibility for their upkeep should be shared in the same way it is shared for other cultural objects such as castles and museums.³²⁶

The views of the Communists, Liberals and Essen did not hold a majority,³²⁷ and the Committee, for several reasons,

322. *See id.*

323. *See id.*

324. *See id.*

325. *See id.*

326. *See* Mot. 1995/96:K7.

327. Although the government will continue to regulate the Church, it is worth noting that Essen, and presumably the people of his view that only one, and not two, laws should be enacted, rightly did not place all the blame for not drafting a proposal for a complete disestablishment on the government. He said that the Church of Sweden did not appear to have enough self-confidence to accept the challenge to devise a confession and organization independent of the state that would attract people and to participate in a movement that could allow Christianity to play a more important role in the development of the twenty-first millennium's advancing society. *See* Mot. 1995/96:K2.

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rejected the idea of categorical freedom of religion, which would have resulted in a single law governing all religious associations.³²⁸ First, the majority of the Committee agreed with the government's proposal that the disestablishment must take into account the Church's opinion as well as the existing circumstances in society. It is essential to find the right balance between the Church's special characteristics and position in society and the need for reform in accordance with the principles of religious freedom and equality.³²⁹ Second, the Committee knew there was broad support in the parliament, Church and society for some regulation of religious associations.³³⁰ Third, the proposed regulation did not violate the constitutional right to religious freedom, as no citizen would be prevented from exercising the religion of his or her choice, alone or in association with others; the regulation did not compel any person to join a religious association and would not coerce people into disclosing their religious affiliation.³³¹ Fourth, the Church would not be a state institution after the reform and the local parishes' municipality status will be removed. Hence, some regulation of the Church of Sweden was deemed both necessary and permitted, even in the face of the principles of freedom of religion and equality. However, both the scope and details of the Church of Sweden Act must be limited to include only that which is absolutely necessary;³³² the Act must not contain any excessive regulations.³³³

Carl Bildt of the Conservative party stated in a motion that the party viewed the Church of Sweden Act positively. Bildt felt that some regulation may be necessary to preserve the Church's identity, particularly the idea of the Church as a *Folkkyrka*. It was important to Bildt that the Church continue to promote renewal of, and participation in, society. These obligations require that it be given an opportunity to function as a true *Folkkyrka*, open and accessible to people in all geographical

328. See 1995/96:KU12, *supra* note 237, at 200-02.

329. See *id.*

330. See Mot. 1995/96:K3, K5.

331. See 1995/96:KU12, *supra* note 237, at 202.

332. The Church agreed with the government that the scope of the Act must be analyzed further. See *supra* note 298 and accompanying text.

333. See 1995/96:KU12, *supra* note 237, at 203.

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areas of Sweden.³³⁴ The Church should therefore be required to serve in both populated and rural areas,³³⁵ despite the fact that the urbanization of religion creates an incentive for religious associations to serve the more heavily populated areas for both efficiency and economic reasons.

Marita Ulvskog³³⁶ stated that in addition to being readily available on a nationwide basis, the idea of a Folkkyrka includes the requirement that it be accessible to the gamut of spirituality displayed in all of society, from those of little or no spirituality to people who have infinite faith.³³⁷ Anders Svärd³³⁸ explained the concept of Folkkyrka as an association based on the Gospel, baptism and sacrament, rejecting no one. To function as a Folkkyrka, the Church must, according to Svärd, be democratically organized.³³⁹ That these important characteristics, necessary to the concept of the Church of Sweden as a Folkkyrka, should be regulated is to some degree necessary, and a majority of the members of the Conservative, Social Democratic and Liberal parties therefore accepted the reform, including the special Church of Sweden Act, as a substantial and essential step towards a future of complete separation notwithstanding the resulting preferential treatment of the Church.³⁴⁰

Alf Svensson of the Christian Democratic Party³⁴¹ also accepted the Act as a substantial step in the right direction despite the fact that the Act grants the Church a special status.³⁴² According to Svensson, the guiding principle for the reform should be to allow all religious associations to fulfill their religious and civic responsibilities on as equal terms as possible. The modifications to the church-state relations do not change the responsibilities of the religious associations; rather, they will open up new possibilities for all denominations.

334. See Mot. 1995/96:K1.

335. See *supra* notes 118-19 and accompanying text.

336. Ulvskog is a member of the Social Democratic Party. She was the Church Minister in 1995 and was the moving force behind the government's proposal and its passage. See *infra* note 391.

337. See Marita Ulvskog (s), Prot. 1995/96:34, anf. 41.

338. Svärd is a member of the Liberal Party.

339. See Anders Svärd (c), Prot. 1995/96:34, anf. 50.

340. See Motion till riksdagen [Motion to the Parliament] Mot. 1995/96:K1.

341. "Kristdemokraterna" (trans. by author).

342. See Mot. 1995/96:K5.

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Religious activities, including those provided by the Church of Sweden, cannot be isolated from society in general, according to Svensson.³⁴³ A state cannot be based on neutral ethics or values; because the state and its political parties should and must be nonconfessional, Svensson said, the religious associations of a society must embrace the task of promulgating, clarifying and imparting respect for the values and views of life underlying the cohesive forces that allow for a nation's society to remain concordant.³⁴⁴ "The most important task for the Church is and has always been to preach the Gospel of Christ."³⁴⁵ Since the Church of Sweden has preached the Gospel in all of Sweden, and has historical importance for the development of Swedish society, the Church has a particularly great responsibility to be present on a nationwide scale.³⁴⁶ It is therefore acceptable to have some temporary regulation of the Church, said Svensson.

On the other hand, the task of promoting values to society, including the necessary principles of freedom of religion, thought and expression, requires the removal of any ties between the state and any denominations,³⁴⁷ just as Bishop Billing argued seventy years ago. Furthermore, the opportunity for people to practice or not to practice according to religious faiths and belief systems other than what is promoted by the Church of Sweden should not be thwarted merely because Sweden has declared itself a Christian nation and culture for many hundreds of years.³⁴⁸ A balance must be found that considers both of these factors, according to Svensson. It appears that the government's proposal of enacting a framework law regulating only the essential characteristics of the Church satisfied Svensson's concern for a balance between the state's demands on the Church and the need for religious freedom and equality, as he accepted the Church of Sweden Act.

343. *See id.*; *see also supra* notes 91 and 92 and accompanying text.

344. *See* Mot. 1995/96:K5.

345. *Id.* ("Kyrkans viktigaste uppgift är och har alltid varit att förmedla det kristna budskapet.") (trans. by author).

346. *See id.*

347. *See id.*

348. *See id.*

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The majority of the Committee on Constitutional Questions noted that the government's proposal to disestablish the Church as a matter of principle called for further investigations to solve the paramount questions involved in the impending disestablishment. Consequently, the majority of the Committee ultimately suggested that the parliament pass the government's proposal in its entirety, including the Church of Sweden Act, as working guidelines for the disestablishment of the Church of Sweden.³⁴⁹ Nonetheless, four reservations were allowed to accompany the Committee's consideration as alternative considerations for the final vote by the parliament. The first was made by Kenneth Kvist,³⁵⁰ who suggested that the government's proposal be rejected as it violates the principle of religious freedom and equality.³⁵¹ Birgit Friggebo and Håkan Holmberg³⁵² drafted the second and third alternatives, which proposed that the meaning of the proposal be rewritten to say that the church-state relations will be modified in accordance with the requirements of full equality and religious freedom; that the Church is not to be governed by public law;³⁵³ that the Constitution must not be modified to include provisions granting special status to the Church of Sweden; that the law pertaining to all religious associations be strictly construed insofar as it requires any special provisions regulating the Church; and that the Church should be authorized to decide its internal affairs.³⁵⁴ The last alternative, submitted by some Conservatives and Liberals, pertained to giving support to the Church for the maintenance of culturally and historically valuable religious monument.

2. *The parliamentary debate on the consideration of the Committee on Constitutional Questions*

On December 8, 1995, the parliament debated and voted on the completed consideration submitted by the Committee on Constitutional Questions.³⁵⁵ Birgit Friggebo spoke first and

349. See 1995/96:KU12, *supra* note 237, at 191.

350. Kvist is a member of the Communist Party.

351. See *supra* notes 301 through 306 and accompanying text.

352. Both Friggebo and Holmberg are members of the Liberal Party.

353. See *supra* note 238.

354. See 1995/96:KU12, *supra* note 237, at 215.

355. See Prot. 1995/96:34

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asked whether the state-church system will in reality be dissolved in the year two thousand, considering that the results of the called-for investigations will not be known at the time of the vote.³⁵⁶ She also objected that the government's proposal was too vague. Friggebo's concern was in large part grounded on the fact that the government's proposal mentioned a special understanding between the Social Democratic government and the Center Party, as the latter firmly stated during the debate that the reform in no way causes a separation of the Church and the state—it was, according to the Center Party, only a modification of the existing relations between the two institutions.³⁵⁷ The proposal acknowledges, said Friggebo, that Sweden has a state-church system at present but does not pronounce that this system will be abolished. Instead, the phrases “changed relations” or “changes in the relations” between the Church and the state are used, indicating the relations will continue to exist.³⁵⁸ Moreover, the proposal speaks of increased equality, but does not suggest fully developed equality among all denominations. To the contrary, the government seeks to establish a balance between the Church's special status and the principle of freedom of religion.³⁵⁹ Religious freedom demands complete equality among all religious associations, thought Friggebo; however, due to the historical church-state relationship, Friggebo said she would be willing to compromise, allowing some special treatment of the Church, if such treatment was kept to a bare minimum.³⁶⁰ Her compromise consisted of a reservation to the proposal, admitting that some special—but very limited—regulations may be necessary, stating that the Church, rather than the parliament, must be allowed to regulate its internal affairs and confession.³⁶¹ The reservation was ultimately not successful, however, and received only forty-seven of two hundred and ninety-eight votes.³⁶²

356. See Birgit Friggebo (fp), Prot. 1995/96:34, anf. 2.

357. See Prot. 1995/96:34, anf. 38.

358. See Birgit Friggebo (fp), Prot. 1995/96:34, anf. 2.

359. See *id.*

360. See *id.*

361. See *supra* note 354 and accompanying text.

362. See Prot. 1995/96:34. A total of 251 votes supported the proposal (140 Social Democratic Party, 65 Conservative Party, 21 Center Party, 14 Environmental Party,

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Nils Fredrik Aurelius of the Conservative Party responded to Friggebo's arguments by acknowledging that the proposal is a compromise and not flawless. However, Aurelius said the people who argue for the various reservations and further-reaching reforms do not appear to realize they thereby promote the status quo or, in the best case, greater delays. This proposal is, according to Aurelius, a necessary and substantial, though perhaps an incomplete, step in the right direction toward a just objective—a complete severance of the church-state ties.³⁶³ Aurelius also affirmed that the Church would be allowed to govern its internal affairs, although historical reasons and the need for broad support from both the political and Church spheres dictate that a separate law for the Church be enacted.³⁶⁴ In support of a separate law for the Church, Aurelius argued that a common law for all religious associations would, through the sheer volume of the regulation necessary to preserve the Church's identity and obligations, be overwhelmed by such regulation.³⁶⁵

The Church of Sweden Act contains at present some seven hundred sections, said Friggebo.³⁶⁶ If a law governing all denominations other than the Church would need only a few sections, the great collection of regulations for the Church may appear to demand a separate Church of Sweden Act, as argued by the government, Aurelius and others. Nonetheless, noted Friggebo, a draft law submitted to the Investigatory Committee of 1994 refuted this argument. Friggebo said the draft law contained and needed only eighteen sections to govern all religious associations, including the Church of Sweden. It consisted of eight sections specifically designed to govern the Church, four sections aimed at overseeing denominations other than the Church, and four sections common to all religious associations.³⁶⁷ This "eighteen section law" argument, thought Friggebo, showed it is possible to regulate all denominations

11 Christian Democrats), and 47 voted for the alternative (4 Conservative Party, 23 Liberal Party, 18 Communist Party, 2 Environmental Party); 3 abstained and 48 were absent. *See* Prot. 1995/96:34.

363. *See id.*

364. *See* Nils Fredrik Aurelius (m), Prot. 1995/96:34, anf. 3.

365. *See id.*

366. *See* Birgit Friggebo (fp), Prot. 1995/96:34, anf. 4.

367. *See id.*

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with one law that would include, but not be overwhelmed by, the regulations necessary to preserve the Church's identity. Thus, the argument that the regulations of the Church would overpower a single law governing all religious associations should be of little, if any, concern and does not logically justify a separate law and special treatment of the Church of Sweden.³⁶⁸

Whether there should be one law governing all religious associations, which would include all regulations of the Church of Sweden, or one law for all religious associations and one separate law containing the regulations for the Church, has become a symbolic question, Friggebo continued.³⁶⁹ Marita Ulvskog, although nonresponsive to the "eighteen section law" argument, answered that she did not wish to impart greater importance to the question of whether to enact one or two laws for the Church and other denominations, as she viewed it as an issue only of practical significance.³⁷⁰

Eva Zetterberg³⁷¹ agreed with Friggebo and said she had hoped that Kyrkomötet would recommend to the government that it should enact one general law for all religious associations rather than two laws.³⁷² In response to Ulvskog, she also said it is wrong to view this question only as a practical issue—it does, after all, involve principles that are fundamental to a progressive society.³⁷³ Pär-Axel Sahlberg, of the same party as Ulvskog, answered that the need for two laws lies in the government's intentions to protect religious associations other than the Church, in particular the non-Christian denominations which often operate under structures and values very different from the Church's.³⁷⁴ One law would be

368. *See id.* This "eighteen section law" argument seems very persuasive, at least against the contention that one law governing all religious associations—including the Church—would be overpowered by the necessary and special regulations for the Church. The "eighteen section law" argument seems even more persuasive when considering that the government's final proposal for a Church of Sweden Act contained only fourteen sections and the Religious Denomination Act consisted of only seventeen sections. *See* Regeringens proposition [The Government's Proposal], Prop. 1997/98:116, at 5-11 [hereinafter Prop. 1997/98:116]. Strangely enough, no one seems to have pursued this argument much further.

369. *See id.*

370. *See* Marita Ulvskog (s), Prot. 1995/96:34, anf. 57.

371. Zetterberg is a member of the Communist Party.

372. *See* Eva Zetterberg (v), Prot. 1995/96:34, anf. 53.

373. *See id.* at anf. 58.

374. *See* Pär-Axel Sahlberg (s), Prot. 1995/96:34, anf. 56.

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overwhelmed by the regulations of the Church.³⁷⁵ Zetterberg replied that it had been determined during the investigations that most of the religious associations would prefer one law over two, based on equality and religious freedom principles.³⁷⁶

Sahlberg's answer that the government intends to protect religious associations other than the Church is not satisfactory to this author. Besides the lack of response to the "eighteen section law" argument described above,³⁷⁷ he attempts to justify a separate law for the Church of Sweden on the basis that the other religious associations come from situations that are too different from the Church's to be accounted for in one general law. This argument does not make much sense to this author, as the various religious associations in Sweden that would be lumped together in the general law come from equally varied situations. A Swedish Baptist would have more in common with the Church of Sweden than with a Japanese Buddhist or a person devoted to Islamic teachings.

It appears to the author that the proponents for two separate laws come from two camps, espousing either an ideological or a pragmatic position. First, the Center Party illustrates the ideological position, in that it argues for the enactment of two laws, rather than one, on the grounds it wishes to keep a relationship between the Church and the state and substantially regulate the Church even after the reforms occur.³⁷⁸ This seems to the author to also be the basis for Sahlberg's position. On the other hand, Aurelius accepts the two laws based on the pragmatic position, as the enactment of two laws appear to be necessary in order to reach a political consensus for taking this substantial, but incomplete, step toward a full disestablishment.

The more important concern to Aurelius was not whether there was one or two laws; rather, the important fact is that the

375. *See id.* at anf. 54.

376. *See* Eva Zetterberg (v), Prot. 1995/96:34, anf. 55.

377. *See supra* notes 366 through 368 and accompanying text.

378. Paradoxically, the more regulations of the Church one includes in the reform, the greater the persuasive power for an argument from the premise "regulations for the Church would be too overpowering" becomes, as this argument is based on an equivocation of two ideas of equality. The first idea, which this comment discusses, consists of equality among all religious associations in that they should all be treated the same by the state. The other idea is that each entity or person should be treated equally in any enacted law, in the law itself.

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Constitution will only generally reference a law regulating the Church and all other religious associations and not grant lawmaking or norm-giving authority to the Church.³⁷⁹ Whether a person attaches symbolic meaning to the enactment of one or two laws must be Friggebo's individual concern, according to Aurelius. However, since Friggebo has conceded that historical and practical reasons may dictate the special treatment of the Church of Sweden, a debate on the topic is merely academic.³⁸⁰

A stronger attack along the same question of equality among religious associations was advanced by Kenneth Kvist,³⁸¹ who said that although the proposal indicates a step in the right direction, the proposed reform is far from being complete.³⁸² The Communists viewed the proposal as a compromise, not the definitive separation of the Church and the state demanded by religious freedom, and they therefore felt obliged to mark the point of disagreement with the majority through a reservation to the proposal.³⁸³ Kvist argued that not one person had proven the existing constitutional protection of freedom of religion and association for both individuals and organizations to be ineffective or insufficient.³⁸⁴ No other form of association or corporation enjoys special protection under the law,³⁸⁵ he pointed out, and a law enacted for the protection of religious associations, and particularly an Act specifically designed for the Church of Sweden, should absolutely be opposed on the principle of religious freedom.³⁸⁶ Furthermore, the proposed reform would not further the protection of religious associations; on the contrary, it would subject such associations to more regulation than before, and would thus be a burden.³⁸⁷ Another proposal that clearly and absolutely severs the bonds between the state and any religious association should therefore be submitted to the parliament, said Kvist.³⁸⁸

379. See Nils Fredrik Aurelius (m), Prot. 1995/96:34, anf. 5.

380. See *id.*

381. Kvist is a member of the Communist party.

382. See Kenneth Kvist (v), Prot. 1995/96:34, anf. 8.

383. See *id.*

384. See *supra* note 304 and accompanying text.

385. See *supra* note 305 and accompanying text.

386. See Kenneth Kvist (v), Prot. 1995/96:34, anf. 8.

387. See *supra* notes 306-09 and accompanying text.

388. See Kenneth Kvist (v), Prot. 1995/96:34, anf. 8.

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Aurelius responded with two questions. First, how much more time would be needed to prepare a new proposal? Second, how can constitutional protection of religious associations be considered a burden?³⁸⁹ No well-formulated responses came from Kvist on these questions. On the other hand, Pär-Axel Sahlberg of the Social Democratic government said the Communists appeared to completely disregard the problems of non-Christian denominations, such as Japanese Buddhism,³⁹⁰ that are forced into a form of association that is not suitable to their structure.³⁹¹ The proposal will alleviate this problem by allowing such denominations to obtain legal entity status along with all other registered Trossamfund, without compromising its original structure.³⁹²

A pragmatic approach, similar to that of the Conservatives, came from Inger Davidson.³⁹³ She first noted that all previous proposals for disestablishment were rejected by the government and Kyrkomötet. She also commented that any proposal, to be successful, would need to further the equality and religious freedom principle to the greatest possible extent by severing as many ties between the Church and the state as possible, while also maintaining the support of a broad majority in both the political and religious spheres.³⁹⁴ As a Church Minister under the previous Conservative government, Davidson attempted to implement such a proposal.³⁹⁵ The new Social Democratic government's proposal, which continued Davidson's project by using the proposition of the Committee of 1994 as a foundation, had obtained such broad political support.³⁹⁶ The alternatives proposed by the Communists and others, to make a more progressive or radical reform by a complete disestablishment, would not obtain the same broad support given the existing proposal; if the parliament were to reject the present proposal, said Davidson, any kind of reform would be impeded, and

389. See Nils Fredrik Aurelius (m), Prot. 1995/96:34, anf. 9.

390. See *supra* note 125 and accompanying text.

391. See Pär-Axel Sahlberg (s), Prot. 1995/96:34, anf. 12.

392. See *infra* notes 408 through 410 and accompanying text.

393. Davidson is a member of the Christian Democratic Party.

394. See Inger Davidson (kds), Prot. 1995/96:34, anf. 11.

395. There was a shift in the government from a conservative to a socialist coalition before Davidson could complete her project. See Inger Davidson (kds), Prot. 1995/96:34, anf. 11.

396. See Inger Davidson (kds), Prot. 1995/96:34, anf. 11.

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perhaps made impossible.³⁹⁷ The Christian Democrats, therefore, supported the government's proposal. They were, as Davidson stated, aware the Church would continue to enjoy a special status after the year-two-thousand reform; the proposal was, according to her, still a substantial move in the direction of equality and religious freedom.³⁹⁸ She also said that the Church's status must be subjected to further discussions after the reform is enacted.³⁹⁹ Nonetheless, Davidson said the "Christian Democrats prefer to cooperate and make possible a move forward rather than trudge in the same footsteps for the next several years."⁴⁰⁰

E. Committee Investigations, Constitutional Changes, the Church of Sweden Act, and the Religious Denomination Act

The parliament passed the government's proposal in December 1995. Because the proposal did not answer several important questions in relation to the disestablishment, more investigations were found to be necessary. The government issued a directive⁴⁰¹ that authorized and obligated several Investigatory Committees to analyze and propose solutions to specific problems in relation to disestablishment, including questions of a constitutional, legal and regulatory nature.⁴⁰²

Enacting laws affecting the Church of Sweden is currently possible, though the existing Church of Sweden Act provides heightened protection against frivolous regulation of the Church. Other religious associations have no such protection.⁴⁰³ In its directive, the government stated the protection against regulation of the Church should be transferred to chapter eight of the Constitution, and that it should encompass all religious associations, including the Church.⁴⁰⁴ The constitutional modifications, according to the directive, should be the grounds for a future Church of Sweden Act, which ought to contain the

397. *See id.*

398. *See id.*

399. *See id.*

400. *Id.* ("Vi kristdemokrater föredrar att medverka till att det steget tas framför att stå och stampa på samma fläck under ytterligare några år.") (trans. by author).

401. *See Dir. 1995:162, supra* note 116, at 217.

402. *See id.* ("Konstitutionella och andra rättsliga frågor.") (trans. by author).

403. *See supra* notes 231 through 239 and accompanying text.

404. *See Dir. 1995:162, supra* note 116, at 221.

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special regulations necessary to maintain the characteristics and identity of the Church of Sweden, and a Religious Denomination Act, governing all religious associations—including the Church.⁴⁰⁵

The instructions said the Church of Sweden Act should contain only a framework of regulations pertaining to that which is essential to the characteristics of the Church, such as guidelines for the responsibilities and obligations among the local, regional and national levels of the Church. In particular, it should explicitly state that Church members are obligated to pay a Church fee.⁴⁰⁶ The directive emphasized the importance of authorizing the Church to regulate its internal affairs without coupling this authority too closely to the state and without making the Church of Sweden Act more intrusive than a simple framework act.⁴⁰⁷ Moreover, the Religious Denomination Act must create greater equality between the Church and all other religious associations. Today, as noted earlier, it is difficult for Japanese Buddhism to conduct its religious affairs under its traditional structure, or lack thereof, as no legal form of organization can accommodate its traditional means of operating.⁴⁰⁸ One important step toward equality among all denominations is to allow each religious association to formally and legally conduct itself according to its essential, religious characteristics, thereby accommodating religious associations for which existing legal forms of association are not suitable—Japanese Buddhism is but one example of such associations.⁴⁰⁹ The directive stated that a new legal form of organization should be created and labeled the “Religious Denomination.” The government said in its directive that the guidelines for this new legal organization, as proposed by the Investigatory Committee of 1994, should be examined, and that the comments submitted by affected organizations and experts during the “remissbehandlings” period should be given due consideration when drafting the Religious Denomination Act.⁴¹⁰

405. *See id.*

406. *See id.*

407. *See id.*

408. *See supra* notes 125, 390-91 and accompanying text.

409. *See Dir.* 1995:162, *supra* note 116, at 219.

410. *See id.*

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1. Constitutional modifications

The Investigatory Committee of Constitutional Questions published its findings in 1997⁴¹¹ and suggested that the language of chapter 8, section 6 should read as follows: “Regulations affecting religious associations will be enacted as laws. In such a law shall regulations of the basic foundations of the Church of Sweden as a religious association be promulgated.”⁴¹² The government’s draft proposal submitted to Kyrkomötet in 1995 stated that “Regulations affecting the Church of Sweden and all other religious associations will be enacted as laws. Such laws may regulate the basic foundations of the organization and activities of the Church of Sweden.”⁴¹³ Comparing the language of the government’s draft proposal of 1995 and the Committee’s findings, one observes that the second part of section 6 still contains language that grants the parliament authority to enact the Church of Sweden Act. Note, however, the key difference between the new and old versions: the removal of the statement “[T]he Church of Sweden and all other.”⁴¹⁴ The elimination of this language achieves greater equality among all religious associations through the government’s rejection of constitutionally mandated authority in Kyrkomötet over the Church’s internal organization—a point of great contention during the previous deliberations.⁴¹⁵ Furthermore, the Committee suggested that section 16 of chapter 8 should be changed to read: “The Riksdags Act *and laws under section 6 of this chapter . . .*”⁴¹⁶ Such language will provide all religious associations with the heightened protection granted the Riksdags Act and the Church of Sweden against reckless lawmaking.⁴¹⁷

411. SOU 1997:41, *supra* note 22.

412. *Id.* (“Föreskrifter om trossamfund meddelas i lag. I sådan lag skall meddelas föreskrifter om grunderna för Svenska kyrkan som trossamfund.”) (trans. by author).

413. RegSkr 1995:1, *supra* note 5, at 47 (“Föreskrifter om Svenska kyrkan och andra trossamfund meddelas genom lag. I sådan lag får bestämmas grunderna för Svenska kyrkans organisation och verksamhet.”) (trans. by author).

414. *Id.* “Svenska kyrkan och andra . . .” *Id.* (trans. by author).

415. *See supra* notes 214 through 218 and accompanying text.

416. SOU 1997:41, *supra* note 22, at 19 (“Riksdagsordningen *samt lag som avses i 6 § . . .*”) (trans. by this author).

417. *See supra* notes 63, 232-33 and accompanying text.

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Based on the consideration of the Committee of 1997, the government drafted two proposals, one containing suggestions for changes to the Constitution,⁴¹⁸ and the other formulating the Church of Sweden and Religious Denomination Acts.⁴¹⁹ The new proposal for constitutional changes included slight differences when compared to the Committee's consideration. The government changed the second sentence to read "Regulations of the basic foundations of the Church of Sweden as a religious association shall be promulgated in a law."⁴²⁰ This change of language appears to broaden the powers of the parliament, as it removes the reference to laws regulating religious associations in general. In the least, it makes clearer the government's intention that the Church of Sweden shall be governed by a separate act rather than by the Religious Denomination Act. In further agreement with the Committee, however, the government's proposal added a third sentence to the proposed constitutional modification, which provides that "Section 16, regulating the process of enacting the Riksdags Act, shall govern the process of enacting, modifying or eliminating such law."⁴²¹ This clause will grant to all religious associations the same heightened protection against frivolous regulations that the Church presently enjoys.⁴²²

2. *The Religious Denomination Act*

The government's proposal for a Religious Denomination Act contains seventeen short sections organized into two major parts. The first part of the Act is labeled "General rules regarding Religious Associations,"⁴²³ and provides for the general protection of religious freedom. Section 1 provides that "The right to freedom of religion is contained in the Instrument of Government and the European Convention in regards to the

418. See Regeringens proposition [The Government's Proposal] Prop. 1997/98:49 [hereinafter Prop. 1997/98:49].

419. See *id.*

420. *Id.* ("I lag skall också meddelas föreskrifter om grunderna för Svenska kyrkan som trossamfund.") (trans. by author).

421. *Id.* ("Vid stiftande, ändring eller upphävande av sådan lag gäller vad som sägs i 16 § om stiftande av riksdagsordningen.") (trans. by author).

422. See *supra* notes 63, 232-33 and accompanying text.

423. SOU 1997:41, *supra* note 22, at 24 ("Allmänna bestämmelser om trossamfund m.m.") (trans. by author).

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protection of human rights and basic freedoms,”⁴²⁴ and section 3 states that a person is not obligated to join any religious association.⁴²⁵

Section 2 defines which denominations should be eligible to request registered status⁴²⁶ and provides that “[a] denomination for purposes of this law is defined as an association with the purpose of performing religious activities, part of which is to hold sermons.”⁴²⁷ Some concerns were raised regarding this definition of eligible denominations. Arguments have been raised that organizations may abuse the law based on this broad language, and various groups therefore requested that a requirement of a certain number of members or a relation to some religious belief or doctrine be included in the law.⁴²⁸ The government rejected this idea, and stated that the law is sufficiently narrow to avoid abuse. Moreover, the requested additional requirements would constitute an unreasonable burden on those who wished to register a religious association.⁴²⁹ The government maintained that the purpose of the creation of a new form of association was to allow most existing and many future denominations to obtain the protection afforded by the registration⁴³⁰ so that adding more and difficult registration requirements would not advance the purpose of the law. The government also emphasized that a registration would not be an endorsement of the activity

424. Prop. 1997/98:116, *supra* note 368, at 5 (“Bestämmelser om religionsfrihet finns i regeringsformen och den europeiska konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna.”) (trans. by author).

425. *See id.*

426. *See* 1997/98:KU20, *supra* note 9, at 9; Prop. 1997/98:116, *supra* note 368, at 17.

427. SOU 1997:41, *supra* note 22, at 24 (“Med trossamfund avses i denna lag en gemenskap för religiös verksamhet, där det ingår att anordna gudstjänst.”) (trans. by author).

428. *See* Lag om trossamfund: Regeringens skrivelse till kyrkomötet: Staten och trossamfundet—grundläggande frågor [Religious Denomination Act: The Government’s Draft Proposal to Kyrkomötet: The State and the Religious Denominations—Foundational Questions], RegSkr 1997:2 (visited Mar. 14, 1999) <http://www.svkyrkan.se/km_2_97/km/skriv/helaskr8.htm> [hereinafter Religious Denomination Act, RegSkr 1997:2] (trans. by this author); Prop. 1997/98:116, *supra* note 368, at 17.

429. *See* Prop. 1997/98:116, *supra* note 368, at 17.

430. *See* Religious Denomination Act, RegSkr 1997:2, *supra* note 428; Prop. 1997/98:116, *supra* note 368, at 17; *see also* discussion *infra* notes 441, 444 and accompanying text.

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performed by the registered associations, neither would it be a stamp of approval or quality.⁴³¹ To the contrary, this author believes the underlying motivation for the parliament to propose the Church of Sweden and Religious Denomination Acts was benign in that it attempted to provide for a “marketplace of ideas,” religious ideas in particular, as advocated by John Stuart Mill.⁴³² In such a system, each person should have the freedom to propound his or her ideas in competition with others’, and each individual ultimately would be free to embrace and follow, or not to follow, those beliefs and ideas which appear best to that individual.

The second part of the Religious Denomination Act actualizes the new legal form of association called “Registered Denomination.”⁴³³ The Church of Sweden is automatically given status as a Registered Denomination, while all other denominations will be required to go through a process of registration.⁴³⁴ Subordinate levels within a Registered Denomination may also become registered as separate legal entities, extending constitutional protection to, for example, each local parish of the Church.⁴³⁵ This unique form of association, specifically tailored to deal with religious denominations, allows all religious associations to become registered to secure constitutional protection. Sections 7 and 8 set forth the requirements for registration. Section 7 provides that “[t]he government, or the state institution designated by the government to be in charge of such registration, shall register a denomination upon its request, provided the denomination has ordinances indicating its purpose and how decisions regarding its interests shall be made.”⁴³⁶ This section contains several crucial points. First, the state “shall register” a

431. See Prop. 1997/98:116, *supra* note 368, at 17.

432. See JOHN STUART MILL, ON LIBERTY 15-52 (Elizabeth Rapaport ed., 1978) (1859).

433. See Prop. 1997/98:116, *supra* note 368, at 5 (“Registrerat trossamfund.”) (trans. by author).

434. See *id.*

435. See *id.*

436. SOU 1997:41, *supra* note 22, at 25 (“Ett trossamfund som har stadgar där det finns bestämmelser om trossamfundets ändamål och om hur beslut i trossamfundets angelägenheter kommer till stånd skall registreras av regeringen eller den myndighet som regeringen bestämmer, om trossamfundet begär det.”) (trans. by author).

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denomination “upon its request.” Through this language, the government may reach its goal to allow all religious associations that so wish to become registered. Second, the conditions for registration are not based on any fixed numerical or structural prerequisite; they are instead based upon whether the association has devised some structure to govern its internal affairs and interests, which most organizations have, so there is nothing in the language that appears to deliberately hinder any religious organization from registering. The proposal did not state how strictly the requirements of section 7 should be interpreted, but if the prior open and rather unbiased preparatory work is any indication, interpretative problems will likely be resolved on behalf of the religious associations to effectuate the government’s intentions of allowing greater equality among all denominations. The parliament’s purpose with the new reforms seems rather benign in that it truly attempts to provide for a more equal standing of all religious associations in relation to the state and to allow the Church greater independence and freedom.

Once a religious association becomes a Registered Denomination, it obtains legal status such that it may acquire legal rights and obligations and be a party to a lawsuit.⁴³⁷ Under this law, the members of the association will also be protected against personal liability accruing against the registered denomination to the benefit of a third party.⁴³⁸ Also, the association’s name would be better protected under the new law, and it would be eligible to procure help free of charge from the government in collecting any church-affiliated fees or payments through income deductions.⁴³⁹

3. *The Church of Sweden Act*

The government would, through the Church of Sweden Act, provide the guidelines and rules that are considered necessary to preserve the Church’s essential characteristics and historical identity.⁴⁴⁰ The Church is defined in sections 1 through 3 of this

437. *See id.*

438. *See* Prop. 1997/98:116, *supra* note 368, at 20.

439. *See* 1997/98:KU20, *supra* note 9, at 4.

440. The government submitted a proposal to Kyrkomötet of 1997 for feedback, in which it indicated the importance for the Church of Sweden to be declared an

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Act as an evangelical-Lutheran denomination, built upon a democratic organization, and it must be open to all—a so-called “Folkkyrka”); the Church must also maintain congregations in all parts of Sweden,⁴⁴¹ irrespective of the urbanization of religion.⁴⁴² Even though the law declares the Church’s fundamental religious beliefs, the Church itself would be allowed to determine the details of its doctrine and teachings.⁴⁴³ In fact, the government stated in its writings to the Church Office in 1997 that “[i]t is of great importance that the law does not leave room for detailed regulation by the government of doctrine and other concerns that pertain to the exercise of the faith and other internal matters of the Church of Sweden.”⁴⁴⁴

One important point that is not included in the Church of Sweden Act pertains to the King’s Church affiliation requirement. As portrayed earlier in this Comment, the Swedish King has been the head of the Church since the Middle Ages and has had to swear allegiance to God and the Church.⁴⁴⁵ The King is under the same obligation today, although it does not appear to be compatible with the current transformation of church-state relations. Nonetheless, to obtain broad support for the reforms, the government chose not to remove this

evangelical-Lutheran denomination to show continuity from the Church’s earliest history, beginning in the late Fifteenth Century. *See* Prop. 1997/98:116, *supra* note 368, at 28-29.

441. *See* SOU 1997:41, *supra* note 22, at 27. The Church of Sweden performs most of the marriage and burial services in Sweden, and it is therefore important that everyone feels welcome in the Church. Because Sweden is a sparsely populated country, it is also important that such services are made available even to people in rural areas. The Church must therefore be accessible in all parts of the country. *See* Lag om Svenska kyrkan: Regeringens skrivelse till kyrkomötet: Staten och trossamfunden—grundläggande frågor [Church of Sweden Act: The Government’s Draft Proposal to Kyrkomötet: The State and the Religious Denominations—Foundational Questions], RegSkr 1997:2, *also available* (visited Mar. 14, 1999) <http://www.svkyrkan.se/km_2_97/km/skriv/helaskr9.htm>.

442. *See supra* notes 117 and 118 and accompanying text.

443. *See* Prop. 1997/98:116, *supra* note 368, at 29.

444. Konstitutionell reglering: Regeringens skrivelse till kyrkomötet: Staten och trossamfunden—grundläggande frågor [Constitutional Regulation: The Government’s Draft Proposal to Kyrkomötet: The State and the Religious Denominations—Foundational Questions], RegSkr 1997:2, *also available* (visited Mar. 14, 1999) <http://www.svkyrkan.se/km_2_97/km/skriv/helaskr9.htm> [hereinafter Constitutional Regulation, RegSkr 1997:2] (“Det är av stor betydelse att bestämmelsen inte lämnar något utrymme för en detaljerad reglering av lärofrågor och annat som kan sägas höra till tros livet och Svenska kyrkans egna angelägenheter.”) (trans. by author).

445. *See supra* note 34 and accompanying text.

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requirement due to the serious rift between the opposing sides of the question.⁴⁴⁶ On this issue, the government could have adapted Inger Davidson's statement that it would rather "cooperate and make possible a move forward rather than trudge in the same footsteps for the next several years."⁴⁴⁷

V. CONCLUSION

After decades of debate and incremental reform, the time has come in Sweden to reform church-state relations. The Church of Sweden's status as a state church, instituted in the Fifteenth Century, is no longer strongly supported by either the people or the state. Societal changes during the last fifty years have necessitated a reexamination of the existing relations between the Church and the state. The first modern state-sponsored series of investigations occurred between 1958 and 1968, and the arguments for a separation of the ties between the state and Church were mainly based on freedom of religion.⁴⁴⁸ In 1973, Alva Myrdal drafted a proposal based on the decade long investigations; Olof Palme, who was the Minister of Ecclesiastical Affairs, did not submit the proposal to the parliament because of an upcoming election.⁴⁴⁹ Meanwhile, the Church commenced its own investigations, and the state later became interested in cooperating with the Church's investigators. However, this attempt at reforming church-state relations failed in 1979. A majority supported a motion to stop the suggested reforms, mainly because of an apprehension regarding the proposition that the Church should no longer have the right to collect a Church tax from members and nonmembers.⁴⁵⁰ Nonetheless, in 1995 the parliament agreed to pass a proposal submitted by the government,⁴⁵¹ which suggested reforms very similar to the recommendations of 1979.⁴⁵²

The parliament's and Kyrkomötet's reversal of position twenty years later may be linked to changes in society and in

446. See Constitutional Regulation, RegSkr 1997:2, *supra* note 444.

447. See *supra* note 400.

448. See Gibson, *supra* note 123.

449. See *id.*

450. See *id.*

451. See generally RegSkr 1995:1, *supra* note 5.

452. See Gibson, *supra* note 123.

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the attitude of the Church. Whatever the cause, a transformation of the relations between the state and Church will occur by January 1, 2000. This will put the Church of Sweden in a more equal position to all other denominations operating in Sweden. However, one cannot conclude that the Church of Sweden will become one among many churches. There will be a special law governing the Church, and the Church will automatically obtain status as a Registered Denomination, whereas all other denominations must prove they fulfill the requirements for registration. The King will still be the head of the Church and must swear allegiance to its faith, and the King's children will be under the same requirement.

It is also important to note the fact that the Church has, throughout the history of Sweden, been an integral part of both society and the state, and this will not easily be eradicated from the culture, society or the individual Swedish person's mind. The Church is in many ways the source for modern Swedish society and state, and as Edmund Burke observed:

We have real hearts of flesh and blood beating in our bosoms.

We fear God; we look up with awe to kings, with affection to parliaments, with duty to magistrates, with reverence to priests, and with respect to nobility. Why? Because when such ideas are brought before our minds, it is *natural* to be so affected.⁴⁵³

It is often as difficult to let go of the past. One need not and should not forget the past; rather, one should use the past as a stepping stone toward something greater, something richer and fuller. In a nation's development, we may call it social progress.

The proposed disestablishment will not achieve a full separation of the church and state, but it is an important and necessary step in the direction of religious freedom in Sweden. History shows that the rise of the Church of Sweden came about as an evolution, rather than through a revolution. Since the first glimpse of religious freedom sparkled in the Seventeenth Century, many steps have been taken towards severing the ties between the state and church. The proposed

453. BURKE, *supra* note 13, at 98.

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disestablishment of the year two thousand will be yet another step in this evolution.

E. Kenneth Stegeby